

U.S. Sentencing Commission Preliminary Crack Cocaine Retroactivity Data Report



March 2009 Data

Introduction

As part of its ongoing mission, the United States Sentencing Commission provides Congress, the judiciary, the executive branch, and the general public with data extracted and analyzed from sentencing documents submitted by courts to the Commission.¹ Data is reported on an annual basis in the Commission's *Annual Report* and *Sourcebook of Federal Sentencing Statistics*.²

The Commission also reports preliminary data for an on-going fiscal year in order to provide real-time analysis of sentencing practices in the federal courts. Since 2005, the Commission has published a series of quarterly reports that are similar in format and methodology to tables and figures produced in the *Sourcebook of Federal Sentencing Statistics* or in the Commission's *Final Report on the Impact of the United States v. Booker on Federal Sentencing*.³ The quarterly reports contain cumulative data for the on-going fiscal year (i.e., data from the start of the fiscal year through the most current quarter).

This report is another in the Commission's efforts to provide analysis of federal sentencing practices. It provides data concerning recent court decisions considering motions to reduce the length of imprisonment for certain offenders convicted prior to November 1, 2007 of offenses involving crack cocaine.

On May 1, 2007, pursuant to 28 U.S.C. § 994(a) and (p), the Commission submitted to Congress amendments to the federal sentencing guidelines that became effective on November 1, 2007. One of those amendments, Amendment 706, modified the drug quantity thresholds in the Drug Quantity Table of §2D1.1 so as to assign, for crack cocaine offenses, base offense levels corresponding to guideline ranges that include the statutory mandatory minimum penalties. Crack cocaine offenses for quantities above and below the mandatory minimum threshold quantities similarly were adjusted downward by two levels. The amendment also included a mechanism to determine a combined base offense level in an offense involving crack cocaine and other controlled substances.

On December 11, 2007, the Commission voted to approve Amendment 713 which amended §1B1.10 of the guidelines to include Amendment 706, as amended by Amendment 711, in the list of amendments that apply retroactively. The Commission voted to make Amendment 713 effective on March 3, 2008. As a result, some incarcerated offenders are eligible to receive a reduction in their sentence under 18 U.S.C. § 3582(c)(2) pursuant to Amendment 706.

¹ In each felony or Class A misdemeanor case sentenced in federal court, sentencing courts are required to submit the following documents to the Commission: the judgment and commitment order, the statement of reasons, the plea agreement (if applicable), the indictment or other charging document, and the presentence report. See 28 U.S.C. § 994(w).

² See the Commission's website, www.ussc.gov, for electronic copies of the 1995-2007 *Annual Report* and *Sourcebook of Federal Sentencing Statistics*.

³ See www.ussc.gov/bf.htm for an electronic copy of the Commission's *Final Report on the Impact of United States v. Booker on Federal Sentencing*.

This report provides information on all cases reported to the Commission in which the court considered a motion to reduce a sentence under 18 U.S.C. § 3582(c)(2) for an offender convicted of an offense involving crack cocaine. The data in this report represents information concerning motions decided through March 5, 2009 and for which court documentation was received, coded and edited at the U.S. Sentencing Commission by March 9, 2009. Users of this information are cautioned that the data are preliminary only and subject to change as the Commission receives, analyzes, and reports on additional cases.

In particular, the reader is cautioned with respect to drawing conclusions based on data concerning the denial of motions for sentence reduction pursuant to the crack cocaine amendment, as the judicial districts are employing various methods to prioritize the review of these motions. For example, in many districts, contested motions have not been decided by the court. Consequently, the data the Commission has received to date concerning cases in which the motion for a sentence reduction was denied may not be representative of the decisions that ultimately may be made in all districts or the nation as a whole.

Table 1

GEOGRAPHICAL DISTRIBUTION OF APPLICATION OF RETROACTIVE CRACK COCAINE AMENDMENT BY DISTRICT

District	N	Granted		Denied		District	N	Granted		Denied	
		N	%	N	%			N	%	N	%
TOTAL	19,239	13,408	69.7	5,831	30.3						
Eastern Virginia	1,312	827	63.0	485	37.0	Massachusetts	150	108	72.0	42	28.0
Middle Florida	1,166	663	56.9	503	43.1	Eastern Kentucky	143	74	51.7	69	48.3
South Carolina	811	653	80.5	158	19.5	Eastern New York	140	78	55.7	62	44.3
Western Virginia	809	513	63.4	296	36.6	Northern New York	135	110	81.5	25	18.5
Western Texas	569	404	71.0	165	29.0	Eastern Wisconsin	132	94	71.2	38	28.8
Eastern Missouri	497	438	88.1	59	11.9	Northern Iowa	132	132	100.0	0	0.0
Eastern Texas	483	389	80.5	94	19.5	Northern Mississippi	131	131	100.0	0	0.0
Northern Florida	481	218	45.3	263	54.7	Western Michigan	130	63	48.5	67	51.5
Southern Florida	428	246	57.5	182	42.5	Western Kentucky	124	71	57.3	53	42.7
Western North Carolina	422	263	62.3	159	37.7	Colorado	118	65	55.1	53	44.9
Eastern Louisiana	422	192	45.5	230	54.5	Northern Georgia	117	68	58.1	49	41.9
Northern Texas	407	237	58.2	170	41.8	Middle North Carolina	116	90	77.6	26	22.4
Middle Georgia	376	295	78.5	81	21.5	Maine	108	60	55.6	48	44.4
Southern Georgia	376	192	51.1	184	48.9	Western Pennsylvania	104	95	91.3	9	8.7
Southern Texas	353	263	74.5	90	25.5	New Jersey	97	93	95.9	4	4.1
Southern Alabama	352	238	67.6	114	32.4	Eastern California	88	87	98.9	1	1.1
Central Illinois	333	150	45.0	183	55.0	New Hampshire	87	47	54.0	40	46.0
Southern New York	320	131	40.9	189	59.1	Southern Indiana	85	44	51.8	41	48.2
Eastern North Carolina	320	236	73.8	84	26.3	Western Arkansas	81	51	63.0	30	37.0
Northern West Virginia	294	289	98.3	5	1.7	Middle Alabama	81	75	92.6	6	7.4
Middle Pennsylvania	288	186	64.6	102	35.4	Central California	64	52	81.3	12	18.8
Southern West Virginia	285	223	78.2	62	21.8	Northern Oklahoma	63	32	50.8	31	49.2
Northern Ohio	280	248	88.6	32	11.4	Western Oklahoma	62	62	100.0	0	0.0
Western Missouri	280	173	61.8	107	38.2	Rhode Island	60	47	78.3	13	21.7
Western Louisiana	274	162	59.1	112	40.9	Middle Louisiana	59	43	72.9	16	27.1
Nebraska	262	217	82.8	45	17.2	Alaska	59	33	55.9	26	44.1
Northern Indiana	258	208	80.6	50	19.4	Nevada	54	47	87.0	7	13.0
Northern Illinois	240	216	90.0	24	10.0	Western Washington	46	46	100.0	0	0.0
Maryland	239	178	74.5	61	25.5	New Mexico	36	36	100.0	0	0.0
Southern Illinois	237	231	97.5	6	2.5	Middle Tennessee	35	32	91.4	3	8.6
Eastern Pennsylvania	231	203	87.9	28	12.1	Northern California	31	31	100.0	0	0.0
Northern Alabama	229	114	49.8	115	50.2	Hawaii	29	25	86.2	4	13.8
Connecticut	228	151	66.2	77	33.8	Vermont	23	23	100.0	0	0.0
Minnesota	209	165	78.9	44	21.1	Oregon	20	19	95.0	1	5.0
Southern Ohio	205	185	90.2	20	9.8	Delaware	16	16	100.0	0	0.0
Southern Mississippi	200	181	90.5	19	9.5	Eastern Oklahoma	16	13	81.3	3	18.8
District of Columbia	193	183	94.8	10	5.2	Utah	16	15	93.8	1	6.3
Kansas	189	187	98.9	2	1.1	Southern California	12	12	100.0	0	0.0
Western Tennessee	183	132	72.1	51	27.9	Eastern Washington	12	5	41.7	7	58.3
Western New York	179	116	64.8	63	35.2	Montana	8	4	50.0	4	50.0
Eastern Tennessee	173	131	75.7	42	24.3	Virgin Islands	4	4	100.0	0	0.0
Eastern Michigan	168	160	95.2	8	4.8	Idaho	3	2	66.7	1	33.3
Puerto Rico	166	64	38.6	102	61.4	Arizona	2	2	100.0	0	0.0
Southern Iowa	166	97	58.4	69	41.6	South Dakota	1	1	100.0	0	0.0
Western Wisconsin	162	116	71.6	46	28.4	Wyoming	1	1	100.0	0	0.0
Eastern Arkansas	153	105	68.6	48	31.4						

SOURCE: U.S. Sentencing Commission, Preliminary 2008-2009 Datafiles, USSCFY08-USSCFY09.

Table 2

**GEOGRAPHICAL DISTRIBUTION OF APPLICATION OF
RETROACTIVE CRACK COCAINE AMENDMENT
BY JUDICIAL CIRCUIT**

Circuit	N	Granted	Denied
TOTAL	19,239	13,408	5,831
FOURTH CIRCUIT	4,608	3,272	1,336
ELEVENTH CIRCUIT	3,606	2,109	1,497
FIFTH CIRCUIT	2,898	2,002	896
EIGHTH CIRCUIT	1,781	1,379	402
SEVENTH CIRCUIT	1,447	1,059	388
SIXTH CIRCUIT	1,441	1,096	345
SECOND CIRCUIT	1,025	609	416
THIRD CIRCUIT	740	597	143
FIRST CIRCUIT	571	326	245
TENTH CIRCUIT	501	411	90
NINTH CIRCUIT	428	365	63
D.C. CIRCUIT	193	183	10

SOURCE: U.S. Sentencing Commission, Preliminary 2008-2009 Datafiles, USSCFY08-USSCFY09.

Table 3**APPLICATION OF RETROACTIVE CRACK COCAINE AMENDMENT BY
YEAR OF ORIGINAL SENTENCE¹**

Fiscal Year	Total	Granted		Denied	
	N	N	%	N	%
Total	18,784	13,117	69.8	5,667	30.2
2008	329	108	32.8	221	67.2
2007	2,599	1,851	71.2	748	28.8
2006	2,588	1,927	74.5	661	25.5
2005	2,297	1,634	71.1	663	28.9
2004	1,947	1,410	72.4	537	27.6
2003	1,789	1,282	71.7	507	28.3
2002	1,398	990	70.8	408	29.2
2001	1,134	802	70.7	332	29.3
2000	1,027	703	68.5	324	31.5
1999	808	570	70.5	238	29.5
1998	640	418	65.3	222	34.7
1997	498	328	65.9	170	34.1
1996	442	302	68.3	140	31.7
1995	331	211	63.7	120	36.3
1994	311	173	55.6	138	44.4
1993	240	146	60.8	94	39.2
1992	169	109	64.5	60	35.5
1991	99	63	63.6	36	36.4
1990	92	56	60.9	36	39.1
1989	46	34	73.9	12	26.1

¹Of the 19,239 cases, 455 were excluded from this analysis because the case cannot be matched with an original case in the Commission's records.

SOURCE: U.S. Sentencing Commission, Preliminary 2008-2009 Datafiles, USSCFY08-USSCFY09.

Table 4**ORIGIN OF GRANTED MOTION FOR SENTENCE REDUCTION DUE TO
RETROACTIVE APPLICATION OF CRACK COCAINE AMENDMENT¹**

CIRCUIT	N	Defendant		Director BOP²		Court	
		N	%	N	%	N	%
TOTAL	12,174	10,032	82.4	0	0.0	2,142	17.6
D.C. CIRCUIT	158	155	98.1	0	0.0	3	1.9
FIRST CIRCUIT	319	267	83.7	0	0.0	52	16.3
SECOND CIRCUIT	572	379	66.3	0	0.0	193	33.7
THIRD CIRCUIT	507	501	98.8	0	0.0	6	1.2
FOURTH CIRCUIT	2,991	2,465	82.4	0	0.0	526	17.6
FIFTH CIRCUIT	1,720	1,259	73.2	0	0.0	461	26.8
SIXTH CIRCUIT	1,003	877	87.4	0	0.0	126	12.6
SEVENTH CIRCUIT	1,032	1,002	97.1	0	0.0	30	2.9
EIGHTH CIRCUIT	1,318	1,221	92.6	0	0.0	97	7.4
NINTH CIRCUIT	285	257	90.2	0	0.0	28	9.8
TENTH CIRCUIT	403	387	96.0	0	0.0	16	4.0
ELEVENTH CIRCUIT	1,866	1,262	67.6	0	0.0	604	32.4

¹Of the 13,408 cases in which the court granted a motion for a sentence reduction due to retroactive application of the crack cocaine amendment, 1,284 were excluded from this analysis because the information received by the Commission prevented a determination of motion origin. Additionally, courts may cite multiple origins for a motion; consequently, the total number of origins cited generally exceeds the total number of cases. In this table, 12,174 origins were cited for the 12,124 cases.

²In eight cases, documents provided to the Commission indicated that the Bureau of Prisons Director made a motion. Those cases appear to be clerical errors.

Table 5

**DEMOGRAPHIC CHARACTERISTICS OF OFFENDERS CONSIDERED
FOR SENTENCE REDUCTION DUE TO APPLICATION OF
RETROACTIVE CRACK COCAINE AMENDMENT**

Race/Ethnicity	Total	Granted		Denied¹	
		N	%	N	%
White	861	792	6.0	69	5.0
Black	12,462	11,274	86.0	1,188	86.8
Hispanic	1,034	931	7.1	103	7.5
Other	123	115	0.9	8	0.6
Total	14,480	13,112		1,368	
Citizenship					
U.S. Citizen	13,566	12,265	94.7	1,301	95.1
Non-Citizen	750	683	5.3	67	4.9
Total	14,316	12,948		1,368	
Gender					
Male	13,683	12,385	93.8	1,298	94.7
Female	898	825	6.2	73	5.3
Total	14,581	13,210		1,371	
Average Age					
	30	30		30	

¹The 1,371 offenders represented in this column are those whom the Commission previously identified as eligible to seek a sentence reduction but whose petition for a reduction was denied by the court. Of the remaining 4,460 cases in which the court denied the request for a sentence reduction, 2,991 were excluded from this analysis because the offender was not previously identified as eligible to seek a sentence reduction for one or more reasons (see 'Analysis of the Impact of the Crack Cocaine Amendment If Made Retroactive' (October 3, 2007) available at www.uscc.gov). Of the remaining 1,469 cases, 256 were excluded from this analysis because the offender had been identified as released or projected to be released prior to November 1, 2007 and so was excluded from the Commission's prior analysis of eligible offenders, 382 were excluded from this analysis because the offender was not sentenced for a drug offense, 667 were excluded from this analysis because crack cocaine was not involved in the offense, and 164 were excluded from this analysis because the reason for the court's decision cannot yet be determined.

SOURCE: U.S. Sentencing Commission, Preliminary 2008-2009 Datafiles, USSCFY08-USSCFY09.

Table 6**SELECTED SENTENCING FACTORS FOR OFFENDERS WHO WERE CONSIDERED FOR SENTENCE REDUCTION DUE TO APPLICATION OF RETROACTIVE CRACK COCAINE AMENDMENT**

	All Cases	Granted	Denied¹
	%	%	%
Weapon			
Weapon Specific Offense Characteristic	23.4	23.0	27.4
Firearms Mandatory Minimum Applied	9.3	8.9	13.2
Safety Valve	10.0	10.5	5.6
Guideline Role Adjustments			
Aggravating Role (USSG §3B1.1)	9.3	8.5	17.3
Mitigating Role (USSG §3B1.2)	3.2	3.0	5.1
Obstruction Adjustment (USSG §3C1.1)	5.8	5.7	6.9
Sentence Relative to the Guideline Range			
Within Range	69.7	71.0	57.3
Above Range	0.4	0.3	1.2
Below Range	29.9	28.7	41.5
Criminal History Category			
I	23.3	23.9	17.2
II	13.2	13.1	13.5
III	23.1	23.4	20.8
IV	16.8	17.1	14.3
V	10.1	10.0	10.9
VI	13.5	12.5	23.2

¹The 1,371 offenders represented in this column are those whom the Commission previously identified as eligible to seek a sentence reduction but whose petition for a reduction was denied by the court. Of the remaining 4,460 cases in which the court denied the request for a sentence reduction, 2,991 were excluded from this analysis because the offender was not previously identified as eligible to seek a sentence reduction for one or more reasons (*see* 'Analysis of the Impact of the Crack Cocaine Amendment If Made Retroactive' (October 3, 2007) *available at* www.ussc.gov). Of the remaining 1,469 cases, 256 were excluded from this analysis because the offender had been identified as released or projected to be released prior to November 1, 2007 and so was excluded from the Commission's prior analysis of eligible offenders, 382 were excluded from this analysis because the offender was not sentenced for a drug offense, 667 were excluded from this analysis because crack cocaine was not involved in the offense, and 164 were excluded from this analysis because the reason for the court's decision cannot yet be determined.

SOURCE: U.S. Sentencing Commission, Preliminary 2008-2009 Datafiles, USSCFY08-USSCFY09.

Table 7

**POSITION OF WITHIN RANGE SENTENCES FOR OFFENDERS GRANTED A
SENTENCE REDUCTION DUE TO APPLICATION OF RETROACTIVE
CRACK COCAINE AMENDMENT¹**

	<u>ORIGINAL SENTENCE</u>		<u>CURRENT SENTENCE</u>	
	N	%	N	%
TOTAL	5,396	100.0	5,396	100.0
Guideline Minimum	3,518	65.2	3,649	67.6
Lower Half of Range	911	16.9	686	12.7
Midpoint of Range	265	4.9	404	7.5
Upper Half of Range	349	6.5	312	5.8
Guideline Maximum	353	6.5	345	6.4

¹Of the 13,408 cases in which a motion for retroactive application of the crack cocaine amendment was granted, 7,019 received a sentence within the guideline range at both their original and current sentencing. Of these, 1,623 cases were excluded from this analysis due to one or more of the following reasons: the case is missing sentence length or guideline relevant statutory information from the new sentence (1,218), the case is missing sentence length or guideline relevant statutory information from the original sentence (334), the new sentence had a guideline minimum and maximum that were identical (158) or the original sentence had a guideline minimum and maximum that were identical (25).

SOURCE: U.S. Sentencing Commission, Preliminary 2008-2009 Datafiles, USSCFY08-USSCFY09.

Table 8

**DEGREE OF DECREASE IN SENTENCE DUE TO RETROACTIVE APPLICATION OF
CRACK COCAINE AMENDMENT¹**

CIRCUIT		Average Current Sentence in Months	Average New Sentence in Months	Average Decrease in Months From Current Sentence	Average Percent Decrease From Current Sentence
District	N				
TOTAL	11,951	140	116	24	17.0
D.C. CIRCUIT	117	126	106	19	15.6
District of Columbia	117	126	106	19	15.6
FIRST CIRCUIT	275	111	92	19	17.3
Maine	60	126	104	22	16.8
Massachusetts	72	135	112	23	16.9
New Hampshire	45	95	76	18	19.5
Puerto Rico	60	80	66	14	17.3
Rhode Island	38	114	96	18	16.0
SECOND CIRCUIT	513	117	98	19	15.9
Connecticut	128	107	89	18	17.2
New York					
Eastern	69	118	98	20	17.3
Northern	76	134	113	21	15.5
Southern	118	132	111	20	14.9
Western	106	100	86	14	14.6
Vermont	16	97	78	18	18.6
THIRD CIRCUIT	493	126	105	21	16.4
Delaware	15	134	110	24	17.2
New Jersey	90	117	97	19	16.5
Pennsylvania					
Eastern	164	145	121	25	16.2
Middle	143	114	95	19	16.7
Western	81	115	97	18	16.1
Virgin Islands	0	--	--	--	--
FOURTH CIRCUIT	2,962	144	119	25	17.0
Maryland	141	137	113	24	17.1
North Carolina					
Eastern	228	138	115	23	16.5
Middle	89	144	119	26	17.1
Western	184	160	136	24	14.8
South Carolina	633	147	121	27	17.7
Virginia					
Eastern	755	155	127	28	17.2
Western	488	153	129	24	15.5
West Virginia					
Northern	232	92	75	17	18.2
Southern	212	134	109	25	18.7

Table 8 (continued)

**DEGREE OF DECREASE IN SENTENCE DUE TO RETROACTIVE APPLICATION OF
CRACK COCAINE AMENDMENT**

CIRCUIT District	N	Average Current Sentence in Months	Average New Sentence in Months	Average Decrease in Months From Current Sentence	Average Percent Decrease From Current Sentence
FIFTH CIRCUIT	1,826	139	115	24	17.2
Louisiana					
Eastern	181	133	115	18	13.7
Middle	35	94	82	12	13.9
Western	144	149	123	26	17.1
Mississippi					
Northern	117	109	89	20	18.1
Southern	162	122	101	21	17.4
Texas					
Eastern	387	133	108	25	18.7
Northern	226	172	141	31	17.9
Southern	212	152	126	26	16.2
Western	362	138	115	23	17.2
SIXTH CIRCUIT	1,021	118	99	19	16.2
Kentucky					
Eastern	67	103	85	18	16.5
Western	70	119	101	18	14.7
Michigan					
Eastern	118	136	112	24	16.8
Western	62	89	77	11	13.7
Ohio					
Northern	244	101	84	17	17.5
Southern	180	127	106	20	16.1
Tennessee					
Eastern	128	121	104	17	14.2
Middle	28	136	115	21	15.8
Western	124	135	112	23	17.2
SEVENTH CIRCUIT	956	145	119	26	17.6
Illinois					
Central	135	163	134	28	16.9
Northern	188	140	117	23	16.5
Southern	226	152	125	27	17.8
Indiana					
Northern	199	129	107	22	17.1
Southern	31	188	158	30	15.3
Wisconsin					
Eastern	87	128	104	23	18.7
Western	90	148	117	32	20.9
EIGHTH CIRCUIT	1,224	134	111	23	16.7
Arkansas					
Eastern	83	141	116	25	17.9
Western	51	101	85	16	16.7
Iowa					
Northern	112	158	130	28	17.5
Southern	92	161	134	27	16.1
Minnesota	139	161	132	28	17.2
Missouri					
Eastern	408	115	96	19	16.2
Western	132	132	110	23	16.4
Nebraska	207	133	109	23	17.0
North Dakota	0	--	--	--	--
South Dakota	0	--	--	--	--

Table 8 (continued)

**DEGREE OF DECREASE IN SENTENCE DUE TO RETROACTIVE APPLICATION OF
CRACK COCAINE AMENDMENT**

CIRCUIT		Average Current Sentence in Months	Average New Sentence in Months	Average Decrease in Months From Current Sentence	Average Percent Decrease From Current Sentence
District	N				
NINTH CIRCUIT	321	139	116	23	16.1
Alaska	30	156	135	21	13.9
Arizona	2	--	--	--	--
California					
Central	43	156	125	30	19.2
Eastern	76	135	113	22	16.0
Northern	28	104	89	15	13.7
Southern	9	154	133	21	14.5
Guam	0	--	--	--	--
Hawaii	18	125	104	21	16.3
Idaho	2	--	--	--	--
Montana	4	102	90	12	13.1
Nevada	45	155	129	26	16.1
Northern Mariana Islands	0	--	--	--	--
Oregon	14	112	95	17	16.7
Washington					
Eastern	5	117	107	10	9.2
Western	45	141	113	28	17.2
TENTH CIRCUIT	365	145	119	25	17.2
Colorado	61	158	129	29	17.6
Kansas	168	125	104	21	16.7
New Mexico	35	132	108	24	17.6
Oklahoma					
Eastern	13	161	134	27	18.4
Northern	29	191	159	32	16.1
Western	45	183	148	35	18.9
Utah	13	118	98	20	16.2
Wyoming	1	--	--	--	--
ELEVENTH CIRCUIT	1,878	164	134	30	17.6
Alabama					
Middle	75	167	137	30	17.2
Northern	86	142	120	22	14.6
Southern	233	187	153	35	18.1
Florida					
Middle	626	162	131	31	18.5
Northern	185	230	187	43	18.1
Southern	233	134	112	23	16.6
Georgia					
Middle	226	127	102	25	19.1
Northern	61	185	152	34	17.7
Southern	153	157	135	22	13.9

¹Of the 19,239 cases, 455 were excluded from this analysis because the case cannot be matched with an original case in the Commission's records and 5,667 were excluded from this analysis because the court denied the motion for a sentence reduction. Of the remaining 13,117 cases, 1,166 were excluded from this analysis because the offender was sentenced to time served and the resulting term of imprisonment could not be determined from the records received by the Commission.

SOURCE: U.S. Sentencing Commission, Preliminary 2008-2009 Datafiles, USSCFY08-USSCFY09.

Table 9**REASONS GIVEN BY SENTENCING COURTS FOR DENIAL OF MOTION¹**

REASONS	N	%
Offense does not involve crack cocaine	706	11.0
Case does not involve crack cocaine	598	9.3
Sentence is determined by a non-drug guideline	108	1.7
Offender not eligible under §1B1.10	4,175	64.9
Statutory mandatory minimum controls sentence	1,536	23.9
Career Offender or Armed Career Criminal provisions control sentence	1,453	22.6
Case involved more than 4.5 kg of crack cocaine	578	9.0
Guideline range does not change	209	3.3
Base offense level does not change (due to multiple drugs)	193	3.0
Original sentence has been served	137	2.1
Statutory maximum sentence is less than applicable guideline range	62	1.0
Base offense level is 12 or lower	7	0.1
Base offense level is 43	0	0.0
Denied on the merits	970	15.1
Offender has already benefitted from departure or variance	445	6.9
18 U.S.C § 3553(a) factors	164	2.6
Protection of the public	153	2.4
Post-sentencing or post-conviction conduct	121	1.9
Offender subject to guideline reduction at original sentencing	87	1.3
No reason provided/Other reason	579	9.0
Other	302	4.7
No reason provided	277	4.3

¹Courts may cite multiple reasons for denying a motion; consequently, the total number of reasons cited generally exceeds the total number of cases. In this table, 6,430 reasons were cited for the 5,831 cases. Of the 277 cases in which the court did not give a reason for the denial, 170 were previously identified as ineligible by the Commission for sentence reduction (*see* 'Analysis of the Impact of the Crack Cocaine Amendment If Made Retroactive' (October 3, 2007) *available at* www.uscc.gov). Of those 170 cases, a statutory mandatory minimum controlled the sentence in 33 cases, in 19 cases the quantity of crack cocaine in the case exceeded 4.5 Kg, in 21 cases the sentence was determined by a non-drug guideline, in 10 cases no change in the guideline range was found, in 33 cases crack cocaine was not involved, in 36 cases Career Offender or Armed Career Criminal provisions controlled the sentence, in eight cases the offender was predicted to have been released, in five cases the Bureau of Prisons informed the Commission that the offender was no longer serving time for the instant offense, in one case the base offense level was 12 or lower, in three cases the base offense level was 43 and in one case there was no record on file with the Bureau of Prisons.

SOURCE: U.S. Sentencing Commission, Preliminary 2008-2009 Datafiles, USSCFY08-USSCFY09.