

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



May 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 May 6, 2009 and for which court documentation was received, coded and edited at the U.S. Sentencing Commission by May 7, 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	20,753	14,118	68.0	6,635	32.0						
Eastern Virginia	1,370	873	63.7	497	36.3	Western Kentucky	164	83	50.6	81	49.4
Middle Florida	1,236	685	55.4	551	44.6	Massachusetts	159	116	73.0	43	27.0
South Carolina	828	665	80.3	163	19.7	Eastern Arkansas	156	105	67.3	51	32.7
Western Virginia	817	513	62.8	304	37.2	Eastern New York	154	82	53.2	72	46.8
Western Texas	597	416	69.7	181	30.3	Middle North Carolina	148	100	67.6	48	32.4
Western North Carolina	557	305	54.8	252	45.2	Eastern Kentucky	147	75	51.0	72	49.0
Eastern Missouri	502	441	87.8	61	12.2	Northern New York	143	112	78.3	31	21.7
Northern Florida	498	221	44.4	277	55.6	Northern Mississippi	143	143	100.0	0	0.0
Eastern Texas	497	400	80.5	97	19.5	Western Michigan	141	66	46.8	75	53.2
Southern Florida	458	256	55.9	202	44.1	Eastern Wisconsin	137	97	70.8	40	29.2
Eastern North Carolina	441	290	65.8	151	34.2	Colorado	122	67	54.9	55	45.1
Eastern Louisiana	424	193	45.5	231	54.5	Northern Georgia	119	69	58.0	50	42.0
Northern Texas	413	239	57.9	174	42.1	Maine	108	60	55.6	48	44.4
Southern Georgia	398	199	50.0	199	50.0	Western Pennsylvania	107	98	91.6	9	8.4
Central Illinois	385	153	39.7	232	60.3	New Jersey	105	100	95.2	5	4.8
Middle Georgia	385	301	78.2	84	21.8	Southern Indiana	92	50	54.3	42	45.7
Western Missouri	381	221	58.0	160	42.0	New Hampshire	91	47	51.6	44	48.4
Southern Alabama	368	247	67.1	121	32.9	Eastern California	88	87	98.9	1	1.1
Southern Texas	362	270	74.6	92	25.4	Western Arkansas	83	51	61.4	32	38.6
Southern New York	353	149	42.2	204	57.8	Middle Alabama	82	76	92.7	6	7.3
Northern West Virginia	335	330	98.5	5	1.5	Northern Oklahoma	69	36	52.2	33	47.8
Southern West Virginia	309	240	77.7	69	22.3	Middle Louisiana	68	49	72.1	19	27.9
Middle Pennsylvania	305	196	64.3	109	35.7	Central California	68	54	79.4	14	20.6
Northern Ohio	303	271	89.4	32	10.6	Rhode Island	67	54	80.6	13	19.4
Western Louisiana	280	167	59.6	113	40.4	Alaska	65	37	56.9	28	43.1
Nebraska	279	225	80.6	54	19.4	Nevada	63	55	87.3	8	12.7
Northern Indiana	267	215	80.5	52	19.5	Western Oklahoma	62	62	100.0	0	0.0
Maryland	264	193	73.1	71	26.9	Western Washington	47	47	100.0	0	0.0
Southern Illinois	259	251	96.9	8	3.1	New Mexico	43	40	93.0	3	7.0
Northern Iowa	255	143	56.1	112	43.9	Middle Tennessee	39	36	92.3	3	7.7
Northern Illinois	251	223	88.8	28	11.2	Northern California	33	33	100.0	0	0.0
Connecticut	246	159	64.6	87	35.4	Hawaii	29	25	86.2	4	13.8
Minnesota	240	178	74.2	62	25.8	Delaware	24	21	87.5	3	12.5
Northern Alabama	240	119	49.6	121	50.4	Vermont	23	23	100.0	0	0.0
Eastern Pennsylvania	231	203	87.9	28	12.1	Oregon	20	19	95.0	1	5.0
Southern Mississippi	215	189	87.9	26	12.1	Eastern Oklahoma	17	13	76.5	4	23.5
Southern Ohio	213	188	88.3	25	11.7	Utah	16	15	93.8	1	6.3
Puerto Rico	210	79	37.6	131	62.4	Eastern Washington	13	6	46.2	7	53.8
District of Columbia	199	189	95.0	10	5.0	Southern California	12	12	100.0	0	0.0
Western Tennessee	197	138	70.1	59	29.9	Montana	8	4	50.0	4	50.0
Eastern Tennessee	196	143	73.0	53	27.0	Virgin Islands	5	5	100.0	0	0.0
Kansas	191	189	99.0	2	1.0	Arizona	3	3	100.0	0	0.0
Western New York	190	124	65.3	66	34.7	Idaho	3	2	66.7	1	33.3
Eastern Michigan	181	171	94.5	10	5.5	South Dakota	1	1	100.0	0	0.0
Western Wisconsin	171	123	71.9	48	28.1	Wyoming	1	1	100.0	0	0.0
Southern Iowa	168	98	58.3	70	41.7						

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	20,753	14,118	6,635
FOURTH CIRCUIT	5,069	3,509	1,560
ELEVENTH CIRCUIT	3,784	2,173	1,611
FIFTH CIRCUIT	2,999	2,066	933
EIGHTH CIRCUIT	2,065	1,463	602
SIXTH CIRCUIT	1,581	1,171	410
SEVENTH CIRCUIT	1,562	1,112	450
SECOND CIRCUIT	1,109	649	460
THIRD CIRCUIT	777	623	154
FIRST CIRCUIT	635	356	279
TENTH CIRCUIT	521	423	98
NINTH CIRCUIT	452	384	68
D.C. CIRCUIT	199	189	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	20,263	13,813	68.2	6,450	31.8
2008	369	117	31.7	252	68.3
2007	2,821	1,970	69.8	851	30.2
2006	2,793	2,048	73.3	745	26.7
2005	2,468	1,719	69.7	749	30.3
2004	2,096	1,480	70.6	616	29.4
2003	1,931	1,343	69.5	588	30.5
2002	1,517	1,038	68.4	479	31.6
2001	1,221	845	69.2	376	30.8
2000	1,098	727	66.2	371	33.8
1999	863	592	68.6	271	31.4
1998	687	444	64.6	243	35.4
1997	529	343	64.8	186	35.2
1996	483	317	65.6	166	34.4
1995	354	219	61.9	135	38.1
1994	334	184	55.1	150	44.9
1993	252	149	59.1	103	40.9
1992	187	117	62.6	70	37.4
1991	106	63	59.4	43	40.6
1990	106	62	58.5	44	41.5
1989	48	36	75.0	12	25.0

¹Of the 20,753 cases, 490 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	12,838	10,642	82.9	0	0.0	2,196	17.1
D.C. CIRCUIT	164	161	98.2	0	0.0	3	1.8
FIRST CIRCUIT	348	294	84.5	0	0.0	54	15.5
SECOND CIRCUIT	609	409	67.2	0	0.0	200	32.8
THIRD CIRCUIT	531	525	98.9	0	0.0	6	1.1
FOURTH CIRCUIT	3,222	2,681	83.2	0	0.0	541	16.8
FIFTH CIRCUIT	1,775	1,302	73.4	0	0.0	473	26.6
SIXTH CIRCUIT	1,066	937	87.9	0	0.0	129	12.1
SEVENTH CIRCUIT	1,084	1,054	97.2	0	0.0	30	2.8
EIGHTH CIRCUIT	1,400	1,298	92.7	0	0.0	102	7.3
NINTH CIRCUIT	303	274	90.4	0	0.0	29	9.6
TENTH CIRCUIT	414	396	95.7	0	0.0	18	4.3
ELEVENTH CIRCUIT	1,922	1,311	68.2	0	0.0	611	31.8

¹Of the 14,118 cases in which the court granted a motion for a sentence reduction due to retroactive application of the crack cocaine amendment, 1,337 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, 12,838 origins were cited for the 12,781 cases.

²In nine 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	910	832	6.0	78	5.0
Black	13,222	11,861	85.9	1,361	86.6
Hispanic	1,119	996	7.2	123	7.8
Other	129	120	0.9	9	0.6
Total	15,380	13,809		1,571	
Citizenship					
U.S. Citizen	14,413	12,918	94.7	1,495	95.1
Non-Citizen	796	719	5.3	77	4.9
Total	15,209	13,637		1,572	
Gender					
Male	14,542	13,049	93.8	1,493	94.8
Female	945	863	6.2	82	5.2
Total	15,487	13,912		1,575	
Average Age					
	30	30		30	

¹The 1,575 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 5,060 cases in which the court denied the request for a sentence reduction, 3,405 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 1,655 cases, 294 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, 435 were excluded from this analysis because the offender was not sentenced for a drug offense, 741 were excluded from this analysis because crack cocaine was not involved in the offense, and 185 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	Denied ¹
	%	%	%
Weapon			
Weapon Specific Offense Characteristic	23.6	23.2	27.6
Firearms Mandatory Minimum Applied	9.5	9.1	13.0
Safety Valve	9.7	10.3	4.9
Guideline Role Adjustments			
Aggravating Role (USSG §3B1.1)	9.6	8.7	17.5
Mitigating Role (USSG §3B1.2)	3.1	2.9	5.0
Obstruction Adjustment (USSG §3C1.1)	5.8	5.7	6.9
Sentence Relative to the Guideline Range			
Within Range	69.5	71.1	55.4
Above Range	0.4	0.3	1.2
Below Range	30.2	28.6	43.4
Criminal History Category			
I	22.9	23.6	16.5
II	13.1	13.1	13.0
III	23.1	23.2	21.8
IV	16.9	17.1	14.2
V	10.2	10.1	11.2
VI	13.9	12.8	23.3

¹The 1,575 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 5,060 cases in which the court denied the request for a sentence reduction, 3,405 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 1,655 cases, 294 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, 435 were excluded from this analysis because the offender was not sentenced for a drug offense, 741 were excluded from this analysis because crack cocaine was not involved in the offense, and 185 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	5,692	100.0	5,692	100.0
Guideline Minimum	3,705	65.1	3,835	67.4
Lower Half of Range	969	17.0	733	12.9
Midpoint of Range	274	4.8	430	7.6
Upper Half of Range	376	6.6	337	5.9
Guideline Maximum	368	6.5	357	6.3

¹Of the 14,118 cases in which a motion for retroactive application of the crack cocaine amendment was granted, 7,391 received a sentence within the guideline range at both their original and current sentencing. Of these, 1,699 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 (1,260), the case is missing sentence length or guideline relevant statutory information from the original sentence (364), the new sentence had a guideline minimum and maximum that were identical (166) or the original sentence had a guideline minimum and maximum that were identical (26).

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	12,623	142	117	25	17.0
D.C. CIRCUIT	122	127	108	20	15.5
District of Columbia	122	127	108	20	15.5
FIRST CIRCUIT	304	115	95	20	17.2
Maine	60	126	104	22	16.8
Massachusetts	80	134	112	23	17.1
New Hampshire	45	95	76	18	19.5
Puerto Rico	74	91	75	16	17.3
Rhode Island	45	126	106	19	15.5
SECOND CIRCUIT	544	118	99	19	15.9
Connecticut	134	110	92	19	17.2
New York					
Eastern	72	117	97	20	17.4
Northern	77	134	113	21	15.6
Southern	132	134	114	21	14.8
Western	113	102	87	14	14.6
Vermont	16	97	78	18	18.6
THIRD CIRCUIT	519	128	107	21	16.3
Delaware	20	157	129	28	17.7
New Jersey	97	118	99	19	16.1
Pennsylvania					
Eastern	164	145	121	25	16.2
Middle	153	118	99	19	16.7
Western	84	117	98	18	16.0
Virgin Islands	1	--	--	--	--
FOURTH CIRCUIT	3,191	145	120	25	17.0
Maryland	155	140	116	24	17.1
North Carolina					
Eastern	282	139	115	23	16.5
Middle	99	145	120	25	16.9
Western	222	162	137	25	15.0
South Carolina	645	149	122	27	17.6
Virginia					
Eastern	799	155	127	28	17.1
Western	488	153	129	24	15.5
West Virginia					
Northern	272	99	81	18	18.3
Southern	229	137	112	25	18.5

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	1,885	140	116	24	17.2
Louisiana					
Eastern	182	133	115	18	13.7
Middle	40	107	94	13	13.5
Western	148	149	123	26	17.0
Mississippi					
Northern	129	118	97	21	18.0
Southern	170	123	102	21	17.4
Texas					
Eastern	398	133	108	25	18.8
Northern	228	172	141	31	18.0
Southern	219	153	127	26	16.3
Western	371	138	115	23	17.2
SIXTH CIRCUIT	1,093	120	100	20	16.2
Kentucky					
Eastern	68	104	87	18	16.4
Western	82	121	103	18	14.6
Michigan					
Eastern	128	141	116	25	17.1
Western	65	88	77	12	13.9
Ohio					
Northern	267	103	86	18	17.4
Southern	183	127	107	20	16.1
Tennessee					
Eastern	139	120	103	17	14.1
Middle	32	147	120	28	16.8
Western	129	137	114	23	17.0
SEVENTH CIRCUIT	1,007	149	122	26	17.6
Illinois					
Central	138	165	136	29	16.9
Northern	194	142	118	24	16.6
Southern	245	160	131	29	17.7
Indiana					
Northern	206	131	108	22	17.2
Southern	37	182	153	29	15.3
Wisconsin					
Eastern	90	129	105	24	18.7
Western	97	157	123	34	21.2
EIGHTH CIRCUIT	1,302	139	115	24	16.8
Arkansas					
Eastern	83	141	116	25	17.9
Western	51	101	85	16	16.7
Iowa					
Northern	123	163	134	29	17.6
Southern	93	160	134	27	16.2
Minnesota	151	168	139	29	16.9
Missouri					
Eastern	410	115	97	19	16.2
Western	176	159	130	29	16.9
Nebraska	215	134	110	24	17.2
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	340	141	117	24	16.1
Alaska	34	159	138	22	14.0
Arizona	3	213	171	42	19.8
California					
Central	45	157	127	30	19.1
Eastern	76	135	113	22	16.0
Northern	30	105	89	15	14.1
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	53	156	130	27	16.2
Northern Mariana Islands	0	--	--	--	--
Oregon	14	112	95	17	16.7
Washington					
Eastern	6	115	104	11	10.5
Western	46	143	115	28	17.3
TENTH CIRCUIT	377	148	122	26	17.1
Colorado	63	161	132	29	17.3
Kansas	170	126	104	21	16.7
New Mexico	39	136	112	24	17.0
Oklahoma					
Eastern	13	161	134	27	18.4
Northern	33	207	171	35	16.4
Western	45	183	148	35	18.9
Utah	13	118	98	20	16.2
Wyoming	1	--	--	--	--
ELEVENTH CIRCUIT	1,939	164	134	30	17.6
Alabama					
Middle	76	165	136	29	17.0
Northern	90	140	118	21	14.6
Southern	241	190	155	36	18.1
Florida					
Middle	649	163	132	32	18.4
Northern	188	229	186	43	18.1
Southern	243	134	111	23	16.6
Georgia					
Middle	230	128	103	25	19.2
Northern	62	187	153	34	17.8
Southern	160	157	135	23	14.1

¹Of the 20,753 cases, 490 were excluded from this analysis because the case cannot be matched with an original case in the Commission's records and 6,450 were excluded from this analysis because the court denied the motion for a sentence reduction. Of the remaining 13,813 cases, 1,190 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	771	10.6
Case does not involve crack cocaine	654	9.0
Sentence is determined by a non-drug guideline	117	1.6
Offender not eligible under §1B1.10	4,809	65.9
Statutory mandatory minimum controls sentence	1,787	24.5
Career Offender or Armed Career Criminal provisions control sentence	1,714	23.5
Case involved more than 4.5 kg of crack cocaine	631	8.6
Guideline range does not change	240	3.3
Base offense level does not change (due to multiple drugs)	209	2.9
Original sentence has been served	155	2.1
Statutory maximum sentence is less than applicable guideline range	66	0.9
Base offense level is 12 or lower	7	0.1
Base offense level is 43	0	0.0
Denied on the merits	1,155	15.8
Offender has already benefited from a departure or variance	455	6.2
18 U.S.C § 3553(a) factors	193	2.6
Protection of the public	172	2.4
Post-sentencing or post-conviction conduct	135	1.8
Offender subject to guideline reduction at original sentencing	132	1.8
Denial because of binding plea	68	0.9
No reason provided/Other reason	565	7.7
No reason provided	314	4.3
Other	251	3.4

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, 7,300 reasons were cited for the 6,635 cases. Of the 314 cases in which the court did not give a reason for the denial, 194 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 194 cases, a statutory mandatory minimum controlled the sentence in 36 cases, in 22 cases the quantity of crack cocaine in the case exceeded 4.5 Kg, in 26 cases the sentence was determined by a non-drug guideline, in 11 cases no change in the guideline range was found, in 38 cases crack cocaine was not involved, in 41 cases Career Offender or Armed Career Criminal provisions controlled the sentence, in 11 cases the offender was predicted to have been released, in four 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.