

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



January 2011 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 from and based on 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 of offenses involving crack cocaine prior to November 1, 2007.

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 promulgate Amendment 713, which added Amendment 706 as amended by 711, to the amendments listed in subsection © in §1B1.10 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 1995-2009 *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 January 31, 2011, and for which court documentation was received, coded, and edited at the U.S. Sentencing Commission by February 2, 2011. 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	25,214	16,317	64.7	8,897	35.3						
Eastern Virginia	1,629	1,052	64.6	577	35.4	Massachusetts	208	134	64.4	74	35.6
Middle Florida	1,352	727	53.8	625	46.2	Kansas	197	194	98.5	3	1.5
Western North Carolina	957	429	44.8	528	55.2	Northern Mississippi	184	152	82.6	32	17.4
South Carolina	939	727	77.4	212	22.6	Western Kentucky	182	90	49.5	92	50.5
Eastern North Carolina	892	480	53.8	412	46.2	Western Wisconsin	180	128	71.1	52	28.9
Western Virginia	846	517	61.1	329	38.9	Southern Iowa	171	101	59.1	70	40.9
Western Texas	663	445	67.1	218	32.9	Northern New York	163	114	69.9	49	30.1
Eastern Texas	582	440	75.6	142	24.4	Eastern Arkansas	161	105	65.2	56	34.8
Northern Florida	579	240	41.5	339	58.5	Western Pennsylvania	158	123	77.8	35	22.2
Southern Florida	567	278	49.0	289	51.0	Eastern Kentucky	153	79	51.6	74	48.4
Eastern Missouri	519	452	87.1	67	12.9	Eastern Wisconsin	145	103	71.0	42	29.0
Middle North Carolina	487	257	52.8	230	47.2	Middle Alabama	139	132	95.0	7	5.0
Southern New York	477	199	41.7	278	58.3	New Jersey	135	108	80.0	27	20.0
Maryland	476	329	69.1	147	30.9	Colorado	130	69	53.1	61	46.9
Middle Georgia	459	319	69.5	140	30.5	Northern Georgia	127	77	60.6	50	39.4
Northern Texas	458	276	60.3	182	39.7	Maine	111	60	54.1	51	45.9
Southern Georgia	452	218	48.2	234	51.8	Middle Louisiana	110	75	68.2	35	31.8
Northern West Virginia	433	428	98.8	5	1.2	Southern Indiana	109	64	58.7	45	41.3
Eastern Louisiana	432	199	46.1	233	53.9	Central California	107	66	61.7	41	38.3
Central Illinois	413	160	38.7	253	61.3	New Hampshire	94	49	52.1	45	47.9
Western Missouri	391	226	57.8	165	42.2	Eastern California	94	93	98.9	1	1.1
Southern West Virginia	387	266	68.7	121	31.3	Western Oklahoma	93	91	97.8	2	2.2
Southern Texas	387	280	72.4	107	27.6	Western Arkansas	86	53	61.6	33	38.4
Southern Alabama	381	255	66.9	126	33.1	Northern Oklahoma	77	43	55.8	34	44.2
Western Louisiana	366	210	57.4	156	42.6	Alaska	71	42	59.2	29	40.8
Middle Pennsylvania	354	226	63.8	128	36.2	Rhode Island	70	57	81.4	13	18.6
Southern Illinois	353	309	87.5	44	12.5	Nevada	67	58	86.6	9	13.4
Northern Ohio	347	309	89.0	38	11.0	Middle Tennessee	61	48	78.7	13	21.3
Nebraska	316	250	79.1	66	20.9	Western Washington	48	47	97.9	1	2.1
Eastern Tennessee	306	189	61.8	117	38.2	New Mexico	47	43	91.5	4	8.5
Western Michigan	301	162	53.8	139	46.2	Northern California	42	42	100.0	0	0.0
Northern Alabama	287	135	47.0	152	53.0	Delaware	35	26	74.3	9	25.7
Northern Illinois	283	249	88.0	34	12.0	Hawaii	29	25	86.2	4	13.8
Connecticut	282	179	63.5	103	36.5	Vermont	23	23	100.0	0	0.0
Minnesota	273	188	68.9	85	31.1	Oregon	20	19	95.0	1	5.0
Puerto Rico	272	95	34.9	177	65.1	Utah	18	17	94.4	1	5.6
Northern Indiana	271	218	80.4	53	19.6	Eastern Oklahoma	17	13	76.5	4	23.5
Eastern Pennsylvania	265	217	81.9	48	18.1	Eastern Washington	16	9	56.3	7	43.8
Northern Iowa	261	147	56.3	114	43.7	Southern California	13	13	100.0	0	0.0
Southern Ohio	252	215	85.3	37	14.7	Montana	8	4	50.0	4	50.0
Eastern Michigan	248	220	88.7	28	11.3	South Dakota	7	7	100.0	0	0.0
Southern Mississippi	235	197	83.8	38	16.2	Virgin Islands	5	5	100.0	0	0.0
District of Columbia	225	214	95.1	11	4.9	Arizona	3	3	100.0	0	0.0
Western New York	219	137	62.6	82	37.4	Idaho	3	2	66.7	1	33.3
Western Tennessee	213	143	67.1	70	32.9	Wyoming	1	1	100.0	0	0.0
Eastern New York	209	102	48.8	107	51.2						

SOURCE: U.S. Sentencing Commission, Preliminary 2008-2011 Datafiles, USSCFY08-USSCFY11.

Table 2

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

Circuit	N	Granted	Denied
TOTAL	25,214	16,317	8,897
FOURTH CIRCUIT	7,046	4,485	2,561
ELEVENTH CIRCUIT	4,343	2,381	1,962
FIFTH CIRCUIT	3,417	2,274	1,143
EIGHTH CIRCUIT	2,185	1,529	656
SIXTH CIRCUIT	2,063	1,455	608
SEVENTH CIRCUIT	1,754	1,231	523
SECOND CIRCUIT	1,373	754	619
THIRD CIRCUIT	952	705	247
FIRST CIRCUIT	755	395	360
TENTH CIRCUIT	580	471	109
NINTH CIRCUIT	521	423	98
D.C. CIRCUIT	225	214	11

SOURCE: U.S. Sentencing Commission, Preliminary 2008-2011 Datafiles, USSCFY08-USSCFY11.

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

Fiscal Year	Total	Granted		Denied	
	N	N	%	N	%
Total	24,599	15,952	64.8	8,647	35.2
2009	67	4	6.0	63	94.0
2008	638	157	24.6	481	75.4
2007	3,534	2,383	67.4	1,151	32.6
2006	3,394	2,393	70.5	1,001	29.5
2005	2,954	1,989	67.3	965	32.7
2004	2,461	1,689	68.6	772	31.4
2003	2,313	1,532	66.2	781	33.8
2002	1,787	1,175	65.8	612	34.2
2001	1,430	946	66.2	484	33.8
2000	1,278	802	62.8	476	37.2
1999	1,027	664	64.7	363	35.3
1998	807	502	62.2	305	37.8
1997	644	397	61.6	247	38.4
1996	601	373	62.1	228	37.9
1995	439	259	59.0	180	41.0
1994	410	215	52.4	195	47.6
1993	298	168	56.4	130	43.6
1992	220	130	59.1	90	40.9
1991	126	71	56.3	55	43.7
1990	119	66	55.5	53	44.5
1989	52	37	71.2	15	28.8

¹ Of the 25,214 cases, 615 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 2008-2011 Datafiles, USSCFY08-USSCFY11.

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	14,891	12,532	84.2	0	0.0	2,359	15.8
D.C. CIRCUIT	188	184	97.9	0	0.0	4	2.1
FIRST CIRCUIT	384	328	85.4	0	0.0	56	14.6
SECOND CIRCUIT	703	487	69.3	0	0.0	216	30.7
THIRD CIRCUIT	605	599	99.0	0	0.0	6	1.0
FOURTH CIRCUIT	4,148	3,556	85.7	0	0.0	592	14.3
FIFTH CIRCUIT	1,971	1,461	74.1	0	0.0	510	25.9
SIXTH CIRCUIT	1,339	1,193	89.1	0	0.0	146	10.9
SEVENTH CIRCUIT	1,199	1,168	97.4	0	0.0	31	2.6
EIGHTH CIRCUIT	1,458	1,355	92.9	0	0.0	103	7.1
NINTH CIRCUIT	333	298	89.5	0	0.0	35	10.5
TENTH CIRCUIT	462	442	95.7	0	0.0	20	4.3
ELEVENTH CIRCUIT	2,101	1,461	69.5	0	0.0	640	30.5

¹ Of the 16,317 cases in which the court granted a motion for a sentence reduction due to retroactive application of the crack cocaine amendment, 1,486 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, 14,891 origins were cited for the 14,831 cases.

² In 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	1,038	944	5.9	94	4.8
Black	15,454	13,746	86.2	1,708	87.0
Hispanic	1,274	1,126	7.1	148	7.5
Other	152	138	0.9	14	0.7
Total	17,918	15,954		1,964	
Citizenship					
U.S. Citizen	16,812	14,943	94.8	1,869	95.1
Non-Citizen	921	825	5.2	96	4.9
Total	17,733	15,768		1,965	
Gender					
Male	17,006	15,135	94.1	1,871	95.1
Female	1,041	944	5.9	97	4.9
Total	18,047	16,079		1,968	
Average Age					
	30	30		30	

¹ The 1,968 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 6,929 cases in which the court denied the request for a sentence reduction, 4,521 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 2,408 cases, 574 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, 625 were excluded from this analysis because the offender was not sentenced for a drug offense, 959 were excluded from this analysis because crack cocaine was not involved in the offense, and 250 were excluded from this analysis because the reason for the court's decision cannot yet be determined.

SOURCE: U.S. Sentencing Commission, Preliminary 2008-2011 Datafiles, USSCFY08-USSCFY11.

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	24.6	24.1	28.4
Firearms Mandatory Minimum Applied	10.5	10.1	13.8
Safety Valve	8.9	9.4	4.3
Guideline Role Adjustments			
Aggravating Role (USSG §3B1.1)	10.4	9.4	18.5
Mitigating Role (USSG §3B1.2)	2.9	2.7	4.5
Obstruction Adjustment (USSG §3C1.1)	6.3	6.2	7.4
Sentence Relative to the Guideline Range			
Within Range	69.3	71.0	55.9
Above Range	0.4	0.4	1.0
Below Range	30.3	28.7	43.1
Criminal History Category			
I	21.7	22.4	15.7
II	12.8	12.8	12.9
III	23.0	23.1	21.8
IV	16.9	17.3	13.6
V	10.4	10.4	11.0
VI	15.2	14.0	25.0

¹ The 1,968 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 6,929 cases in which the court denied the request for a sentence reduction, 4,521 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 2,408 cases, 574 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, 625 were excluded from this analysis because the offender was not sentenced for a drug offense, 959 were excluded from this analysis because crack cocaine was not involved in the offense, and 250 were excluded from this analysis because the reason for the court's decision cannot yet be determined.

SOURCE: U.S. Sentencing Commission, Preliminary 2008-2011 Datafiles, USSCFY08-USSCFY11.

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	6,478	100.0	6,478	100.0
Guideline Minimum	4,153	64.1	4,293	66.3
Lower Half of Range	1,146	17.7	888	13.7
Midpoint of Range	313	4.8	484	7.5
Upper Half of Range	440	6.8	403	6.2
Guideline Maximum	426	6.6	410	6.3

¹ Of the 16,317 cases in which a motion for retroactive application of the crack cocaine amendment was granted, 8,462 received a sentence within the guideline range at both their original and current sentencing. Of these, 1,984 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 (1,435), the case is missing sentence length or guideline relevant statutory information from the original sentence (479), the new sentence had a guideline minimum and maximum that were identical (195) or the original sentence had a guideline minimum and maximum that were identical (35).

SOURCE: U.S. Sentencing Commission, Preliminary 2008-2011 Datafiles, USSCFY08-USSCFY11.

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	14,729	149	123	26	17.0
D.C. CIRCUIT	145	134	112	22	16.2
District of Columbia	145	134	112	22	16.2
FIRST CIRCUIT	341	122	100	22	17.3
Maine	60	126	104	22	16.8
Massachusetts	97	143	119	24	16.9
New Hampshire	47	96	78	19	19.3
Puerto Rico	89	108	87	21	18.0
Rhode Island	48	126	106	20	15.8
SECOND CIRCUIT	644	124	104	20	15.8
Connecticut	154	116	96	20	17.2
New York					
Eastern	89	125	103	22	17.2
Northern	80	134	113	21	15.6
Southern	179	144	121	22	14.8
Western	126	103	89	15	14.5
Vermont	16	97	78	18	18.6
THIRD CIRCUIT	597	132	110	22	16.2
Delaware	25	165	136	30	17.6
New Jersey	104	120	101	19	15.9
Pennsylvania					
Eastern	176	147	121	26	16.4
Middle	182	126	105	20	16.3
Western	109	123	104	19	15.7
Virgin Islands	1	--	--	--	--
FOURTH CIRCUIT	4,125	157	130	27	16.9
Maryland	288	160	132	29	17.5
North Carolina					
Eastern	468	173	143	29	16.6
Middle	251	168	140	28	16.2
Western	339	191	160	31	15.4
South Carolina	702	155	127	28	17.5
Virginia					
Eastern	963	159	131	28	16.9
Western	492	152	129	24	15.5
West Virginia					
Northern	367	118	96	22	18.2
Southern	255	139	113	26	18.6

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	2,083	144	119	25	17.3
Louisiana					
Eastern	188	135	117	19	13.8
Middle	66	119	101	19	15.9
Western	191	166	137	29	17.1
Mississippi					
Northern	137	123	101	22	18.0
Southern	178	124	103	21	17.4
Texas					
Eastern	433	138	111	26	18.7
Northern	262	177	145	32	18.1
Southern	229	153	127	26	16.3
Western	399	140	115	24	17.3
SIXTH CIRCUIT	1,367	129	108	21	16.1
Kentucky					
Eastern	71	104	87	18	16.3
Western	89	126	108	18	14.5
Michigan					
Eastern	171	155	128	27	16.6
Western	160	126	106	19	15.2
Ohio					
Northern	305	107	89	18	17.2
Southern	209	133	112	22	16.3
Tennessee					
Eastern	185	138	118	21	14.5
Middle	43	153	124	29	17.0
Western	134	138	115	24	16.9
SEVENTH CIRCUIT	1,127	158	129	29	17.7
Illinois					
Central	145	167	138	29	17.0
Northern	222	146	121	25	16.7
Southern	302	181	146	35	18.1
Indiana					
Northern	209	131	108	22	17.2
Southern	51	194	163	31	15.5
Wisconsin					
Eastern	96	133	109	24	18.6
Western	102	165	129	36	21.2
EIGHTH CIRCUIT	1,364	141	117	25	16.9
Arkansas					
Eastern	83	141	116	25	17.9
Western	53	102	86	17	16.7
Iowa					
Northern	127	164	135	29	17.6
Southern	95	159	133	27	16.4
Minnesota	160	174	143	32	17.0
Missouri					
Eastern	421	116	97	19	16.1
Western	180	159	131	29	17.0
Nebraska	239	140	115	25	16.9
North Dakota	0	--	--	--	--
South Dakota	6	137	78	60	44.1

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	376	145	121	24	16.2
Alaska	38	157	136	22	14.1
Arizona	3	213	171	42	19.8
California					
Central	56	168	136	32	18.6
Eastern	82	143	119	24	16.4
Northern	39	115	99	16	14.0
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	56	155	129	26	16.3
Northern Mariana Islands	0	--	--	--	--
Oregon	14	112	95	17	16.7
Washington					
Eastern	9	138	121	17	12.1
Western	46	143	115	28	17.3
TENTH CIRCUIT	424	152	126	27	17.2
Colorado	65	161	132	29	17.5
Kansas	175	129	107	22	16.8
New Mexico	42	144	119	25	16.8
Oklahoma					
Eastern	13	161	134	27	18.4
Northern	40	191	159	32	16.2
Western	74	187	153	35	18.5
Utah	14	120	100	20	16.0
Wyoming	1	--	--	--	--
ELEVENTH CIRCUIT	2,136	167	137	30	17.6
Alabama					
Middle	130	176	145	31	17.0
Northern	105	141	120	22	14.4
Southern	249	192	156	36	18.1
Florida					
Middle	688	164	133	32	18.4
Northern	206	232	189	43	18.1
Southern	264	141	117	24	16.9
Georgia					
Middle	246	130	105	25	19.2
Northern	70	186	152	33	17.8
Southern	178	162	139	23	13.9

¹ Of the 25,214 cases, 615 were excluded from this analysis because the case cannot be matched with an original case in the Commission's records and 8,647 were excluded from this analysis because the court denied the motion for a sentence reduction. Of the remaining 15,952 cases, 1,223 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 2008-2011 Datafiles, USSCFY08-USSCFY11.

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

REASONS	N	%
Offense does not involve crack cocaine	1,034	10.6
Case does not involve crack cocaine	860	8.8
Sentence is determined by a non-drug guideline	174	1.8
Offender not eligible under §1B1.10	6,481	66.5
Career Offender or Armed Career Criminal provisions control sentence	2,387	24.5
Statutory mandatory minimum controls sentence	2,334	23.9
Case involved more than 4.5 kg of crack cocaine	880	9.0
Guideline range does not change	311	3.2
Base offense level does not change (due to multiple drugs)	266	2.7
Original sentence has been served	213	2.2
Statutory maximum sentence is less than applicable guideline range	83	0.9
Base offense level is 12 or lower	7	0.1
Base offense level is 43	0	0.0
Denied on the merits	1,463	14.9
Offender has already benefitted from departure or variance	494	5.1
Offender subject to guideline reduction at original sentencing	276	2.8
18 U.S.C § 3553(a) factors	236	2.4
Protection of the public	206	2.1
Post-sentencing or post-conviction conduct	160	1.6
Denial because of binding plea	91	0.9
No reason provided/Other reason	777	8.0
No reason provided	435	4.5
Other	342	3.5

¹ Courts 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, 9,755 reasons were cited for the 8,897 cases. Of the 435 cases in which the court did not give a reason for the denial, 286 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 286 cases, a statutory mandatory minimum controlled the sentence in 45 cases, in 30 cases the quantity of crack cocaine in the case exceeded 4.5 Kg, in 40 cases the sentence was determined by a non-drug guideline, in 14 cases no change in the guideline range was found, in 53 cases crack cocaine was not involved, in 63 cases Career Offender or Armed Career Criminal provisions controlled the sentence, in 26 cases the offender was predicted to have been released, in nine 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 two case there was no record on file with the Bureau of Prisons.

SOURCE: U.S. Sentencing Commission, Preliminary 2008-2011 Datafiles, USSCFY08-USSCFY11.