

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



September 2010 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 September 24, 2010, and for which court documentation was received, coded, and edited at the U.S. Sentencing Commission by October 5, 2010. 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	24,714	16,077	65.1	8,637	34.9						
Eastern Virginia	1,586	1,028	64.8	558	35.2	Massachusetts	196	129	65.8	67	34.2
Middle Florida	1,339	719	53.7	620	46.3	Kansas	195	192	98.5	3	1.5
Western North Carolina	947	426	45.0	521	55.0	Western Kentucky	182	90	49.5	92	50.5
South Carolina	934	725	77.6	209	22.4	Western Wisconsin	180	128	71.1	52	28.9
Eastern North Carolina	877	476	54.3	401	45.7	Southern Iowa	171	101	59.1	70	40.9
Western Virginia	844	516	61.1	328	38.9	Northern New York	162	114	70.4	48	29.6
Western Texas	661	445	67.3	216	32.7	Eastern Arkansas	161	105	65.2	56	34.8
Eastern Texas	578	439	76.0	139	24.0	Eastern Kentucky	153	79	51.6	74	48.4
Northern Florida	577	239	41.4	338	58.6	Northern Mississippi	152	152	100.0	0	0.0
Southern Florida	562	276	49.1	286	50.9	Eastern Wisconsin	144	102	70.8	42	29.2
Eastern Missouri	519	452	87.1	67	12.9	Middle Alabama	139	132	95.0	7	5.0
Southern New York	474	197	41.6	277	58.4	New Jersey	132	107	81.1	25	18.9
Maryland	464	325	70.0	139	30.0	Colorado	131	69	52.7	62	47.3
Northern Texas	454	271	59.7	183	40.3	Northern Georgia	126	76	60.3	50	39.7
Southern Georgia	449	218	48.6	231	51.4	Western Pennsylvania	123	108	87.8	15	12.2
Middle Georgia	445	317	71.2	128	28.8	Maine	111	60	54.1	51	45.9
Northern West Virginia	433	428	98.8	5	1.2	Middle Louisiana	110	75	68.2	35	31.8
Eastern Louisiana	431	199	46.2	232	53.8	Southern Indiana	108	63	58.3	45	41.7
Central Illinois	413	160	38.7	253	61.3	Central California	106	66	62.3	40	37.7
Western Missouri	391	226	57.8	165	42.2	New Hampshire	96	48	50.0	48	50.0
Southern Texas	386	279	72.3	107	27.7	Eastern California	94	93	98.9	1	1.1
Southern Alabama	380	254	66.8	126	33.2	Western Oklahoma	92	90	97.8	2	2.2
Western Louisiana	362	209	57.7	153	42.3	Western Arkansas	85	52	61.2	33	38.8
Southern West Virginia	361	262	72.6	99	27.4	Northern Oklahoma	77	43	55.8	34	44.2
Middle Pennsylvania	350	224	64.0	126	36.0	Alaska	71	42	59.2	29	40.8
Middle North Carolina	348	178	51.1	170	48.9	Rhode Island	69	56	81.2	13	18.8
Northern Ohio	346	308	89.0	38	11.0	Nevada	67	58	86.6	9	13.4
Southern Illinois	335	297	88.7	38	11.3	Middle Tennessee	61	48	78.7	13	21.3
Nebraska	314	248	79.0	66	21.0	Western Washington	48	47	97.9	1	2.1
Eastern Tennessee	304	187	61.5	117	38.5	New Mexico	47	43	91.5	4	8.5
Northern Illinois	281	247	87.9	34	12.1	Northern California	42	42	100.0	0	0.0
Connecticut	279	176	63.1	103	36.9	Delaware	35	26	74.3	9	25.7
Northern Alabama	279	133	47.7	146	52.3	Hawaii	29	25	86.2	4	13.8
Minnesota	271	188	69.4	83	30.6	Vermont	23	23	100.0	0	0.0
Northern Indiana	270	217	80.4	53	19.6	Oregon	20	19	95.0	1	5.0
Puerto Rico	269	95	35.3	174	64.7	Eastern Oklahoma	17	13	76.5	4	23.5
Eastern Pennsylvania	266	217	81.6	49	18.4	Utah	17	16	94.1	1	5.9
Northern Iowa	261	147	56.3	114	43.7	Eastern Washington	16	9	56.3	7	43.8
Western Michigan	258	133	51.6	125	48.4	Southern California	13	13	100.0	0	0.0
Southern Ohio	248	212	85.5	36	14.5	Montana	8	4	50.0	4	50.0
Eastern Michigan	246	218	88.6	28	11.4	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	222	211	95.0	11	5.0	Arizona	3	3	100.0	0	0.0
Western New York	218	137	62.8	81	37.2	Idaho	3	2	66.7	1	33.3
Western Tennessee	214	143	66.8	71	33.2	Wyoming	1	1	100.0	0	0.0
Eastern New York	205	102	49.8	103	50.2						

SOURCE: U.S. Sentencing Commission, Preliminary 2008-2010 Datafiles, USSCFY08-USSCFY10.

Table 2

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

Circuit	N	Granted	Denied
TOTAL	24,714	16,077	8,637
FOURTH CIRCUIT	6,794	4,364	2,430
ELEVENTH CIRCUIT	4,296	2,364	1,932
FIFTH CIRCUIT	3,369	2,266	1,103
EIGHTH CIRCUIT	2,180	1,526	654
SIXTH CIRCUIT	2,012	1,418	594
SEVENTH CIRCUIT	1,731	1,214	517
SECOND CIRCUIT	1,361	749	612
THIRD CIRCUIT	911	687	224
FIRST CIRCUIT	741	388	353
TENTH CIRCUIT	577	467	110
NINTH CIRCUIT	520	423	97
D.C. CIRCUIT	222	211	11

SOURCE: U.S. Sentencing Commission, Preliminary 2008-2010 Datafiles, USSCFY08-USSCFY10.

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

Fiscal Year	Total	Granted		Denied	
	N	N	%	N	%
Total	24,105	15,713	65.2	8,392	34.8
2009	57	2	3.5	55	96.5
2008	602	150	24.9	452	75.1
2007	3,428	2,329	67.9	1,099	32.1
2006	3,346	2,366	70.7	980	29.3
2005	2,895	1,955	67.5	940	32.5
2004	2,424	1,668	68.8	756	31.2
2003	2,282	1,517	66.5	765	33.5
2002	1,761	1,158	65.8	603	34.2
2001	1,403	936	66.7	467	33.3
2000	1,253	791	63.1	462	36.9
1999	1,010	656	65.0	354	35.0
1998	796	497	62.4	299	37.6
1997	629	390	62.0	239	38.0
1996	585	366	62.6	219	37.4
1995	425	255	60.0	170	40.0
1994	399	209	52.4	190	47.6
1993	294	165	56.1	129	43.9
1992	220	129	58.6	91	41.4
1991	125	71	56.8	54	43.2
1990	119	66	55.5	53	44.5
1989	52	37	71.2	15	28.8

¹Of the 24,714 cases, 609 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 2008-2010 Datafiles, USSCFY08-USSCFY10.

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	14,662	12,309	84.0	0	0.0	2,353	16.0
D.C. CIRCUIT	185	181	97.8	0	0.0	4	2.2
FIRST CIRCUIT	377	321	85.1	0	0.0	56	14.9
SECOND CIRCUIT	698	484	69.3	0	0.0	214	30.7
THIRD CIRCUIT	589	583	99.0	0	0.0	6	1.0
FOURTH CIRCUIT	4,031	3,440	85.3	0	0.0	591	14.7
FIFTH CIRCUIT	1,963	1,454	74.1	0	0.0	509	25.9
SIXTH CIRCUIT	1,305	1,161	89.0	0	0.0	144	11.0
SEVENTH CIRCUIT	1,182	1,151	97.4	0	0.0	31	2.6
EIGHTH CIRCUIT	1,455	1,352	92.9	0	0.0	103	7.1
NINTH CIRCUIT	333	298	89.5	0	0.0	35	10.5
TENTH CIRCUIT	458	438	95.6	0	0.0	20	4.4
ELEVENTH CIRCUIT	2,086	1,446	69.3	0	0.0	640	30.7

¹Of the 16,077 cases in which the court granted a motion for a sentence reduction due to retroactive application of the crack cocaine amendment, 1,475 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, 14,662 origins were cited for the 14,602 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	1,023	930	5.9	93	4.8
Black	15,202	13,528	86.1	1,674	86.9
Hispanic	1,265	1,119	7.1	146	7.6
Other	150	137	0.9	13	0.7
Total	17,640	15,714		1,926	
Citizenship					
U.S. Citizen	16,551	14,719	94.8	1,832	95.1
Non-Citizen	904	809	5.2	95	4.9
Total	17,455	15,528		1,927	
Gender					
Male	16,740	14,904	94.1	1,836	95.1
Female	1,029	935	5.9	94	4.9
Total	17,769	15,839		1,930	
Average Age					
	30	30		30	

¹The 1,930 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 6,707 cases in which the court denied the request for a sentence reduction, 4,370 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 2,337 cases, 539 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, 614 were excluded from this analysis because the offender was not sentenced for a drug offense, 939 were excluded from this analysis because crack cocaine was not involved in the offense, and 245 were excluded from this analysis because the reason for the court's decision cannot yet be determined.

SOURCE: U.S. Sentencing Commission, Preliminary 2008-2010 Datafiles, USSCFY08-USSCFY10.

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	24.4	24.0	28.1
Firearms Mandatory Minimum Applied	10.3	9.9	13.7
Safety Valve	9.0	9.6	4.3
Guideline Role Adjustments			
Aggravating Role (USSG §3B1.1)	10.3	9.3	18.2
Mitigating Role (USSG §3B1.2)	2.9	2.7	4.6
Obstruction Adjustment (USSG §3C1.1)	6.2	6.1	7.3
Sentence Relative to the Guideline Range			
Within Range	69.2	70.9	55.8
Above Range	0.4	0.3	1.1
Below Range	30.3	28.7	43.2
Criminal History Category			
I	21.9	22.6	15.7
II	12.9	12.9	12.8
III	22.9	23.1	21.9
IV	16.9	17.3	13.5
V	10.4	10.3	11.2
VI	15.1	13.9	24.8

¹The 1,930 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 6,707 cases in which the court denied the request for a sentence reduction, 4,370 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 2,337 cases, 539 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, 614 were excluded from this analysis because the offender was not sentenced for a drug offense, 939 were excluded from this analysis because crack cocaine was not involved in the offense, and 245 were excluded from this analysis because the reason for the court's decision cannot yet be determined.

SOURCE: U.S. Sentencing Commission, Preliminary 2008-2010 Datafiles, USSCFY08-USSCFY10.

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	6,380	100.0	6,380	100.0
Guideline Minimum	4,111	64.4	4,250	66.6
Lower Half of Range	1,119	17.5	862	13.5
Midpoint of Range	303	4.7	471	7.4
Upper Half of Range	429	6.7	394	6.2
Guideline Maximum	418	6.6	403	6.3

¹Of the 16,077 cases in which a motion for retroactive application of the crack cocaine amendment was granted, 8,320 received a sentence within the guideline range at both their original and current sentencing. Of these, 1,940 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 (1,404), the case is missing sentence length or guideline relevant statutory information from the original sentence (464), the new sentence had a guideline minimum and maximum that were identical (188) or the original sentence had a guideline minimum and maximum that were identical (35).

SOURCE: U.S. Sentencing Commission, Preliminary 2008-2010 Datafiles, USSCFY08-USSCFY10.

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	14,492	148	122	26	17.0
D.C. CIRCUIT	142	134	112	22	16.1
District of Columbia	142	134	112	22	16.1
FIRST CIRCUIT	335	121	100	22	17.3
Maine	60	126	104	22	16.8
Massachusetts	93	143	119	24	16.9
New Hampshire	46	94	76	18	19.4
Puerto Rico	89	108	87	21	18.0
Rhode Island	47	125	106	20	15.7
SECOND CIRCUIT	639	124	104	20	15.8
Connecticut	151	116	96	20	17.2
New York					
Eastern	89	125	103	22	17.2
Northern	80	134	113	21	15.6
Southern	177	141	120	21	14.5
Western	126	103	89	15	14.5
Vermont	16	97	78	18	18.6
THIRD CIRCUIT	579	132	110	22	16.2
Delaware	25	165	136	30	17.6
New Jersey	103	119	100	19	15.8
Pennsylvania					
Eastern	176	147	121	26	16.4
Middle	180	125	105	20	16.3
Western	94	123	104	19	15.5
Virgin Islands	1	--	--	--	--
FOURTH CIRCUIT	4,004	156	129	27	16.9
Maryland	284	160	132	28	17.5
North Carolina					
Eastern	464	172	143	29	16.6
Middle	172	154	128	26	16.6
Western	336	190	159	31	15.4
South Carolina	700	154	127	28	17.5
Virginia					
Eastern	939	157	129	28	16.9
Western	491	152	129	24	15.5
West Virginia					
Northern	367	118	96	22	18.2
Southern	251	138	112	26	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	2,075	144	119	25	17.2
Louisiana					
Eastern	188	135	117	19	13.8
Middle	66	125	106	19	15.7
Western	190	165	137	29	17.1
Mississippi					
Northern	137	123	101	22	18.0
Southern	178	124	103	21	17.4
Texas					
Eastern	432	138	111	26	18.7
Northern	257	176	144	32	18.1
Southern	228	153	128	26	16.2
Western	399	140	115	24	17.3
SIXTH CIRCUIT	1,331	127	106	21	16.1
Kentucky					
Eastern	71	104	87	18	16.3
Western	89	126	108	18	14.5
Michigan					
Eastern	169	155	128	28	16.7
Western	131	108	92	16	15.0
Ohio					
Northern	304	107	89	18	17.2
Southern	207	133	111	22	16.3
Tennessee					
Eastern	183	138	118	20	14.4
Middle	43	153	124	29	17.0
Western	134	138	115	24	16.9
SEVENTH CIRCUIT	1,110	156	128	28	17.7
Illinois					
Central	145	167	138	29	17.0
Northern	220	146	121	25	16.7
Southern	290	174	141	34	18.1
Indiana					
Northern	208	131	108	22	17.2
Southern	50	194	163	31	15.6
Wisconsin					
Eastern	95	133	109	24	18.7
Western	102	165	129	36	21.2
EIGHTH CIRCUIT	1,361	141	117	25	16.9
Arkansas					
Eastern	83	141	116	25	17.9
Western	52	101	85	16	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	237	140	115	25	17.0
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	421	152	125	27	17.2
Colorado	65	161	132	29	17.5
Kansas	173	128	106	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	73	187	152	35	18.5
Utah	14	120	100	20	16.0
Wyoming	1	--	--	--	--
ELEVENTH CIRCUIT	2,119	167	137	30	17.6
Alabama					
Middle	130	176	145	31	17.0
Northern	103	142	120	22	14.5
Southern	248	191	156	36	18.1
Florida					
Middle	680	163	132	32	18.4
Northern	205	232	189	43	18.1
Southern	262	141	117	24	16.6
Georgia					
Middle	244	130	104	25	19.2
Northern	69	187	153	34	17.9
Southern	178	162	138	23	14.0

¹Of the 24,714 cases, 609 were excluded from this analysis because the case cannot be matched with an original case in the Commission's records and 8,392 were excluded from this analysis because the court denied the motion for a sentence reduction. Of the remaining 15,713 cases, 1,221 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 2008-2010 Datafiles, USSCFY08-USSCFY10.

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

REASONS	N	%
Offense does not involve crack cocaine	1,015	10.7
Case does not involve crack cocaine	847	8.9
Sentence is determined by a non-drug guideline	168	1.8
Offender not eligible under §1B1.10	6,287	66.4
Career Offender or Armed Career Criminal provisions control sentence	2,301	24.3
Statutory mandatory minimum controls sentence	2,275	24.0
Case involved more than 4.5 kg of crack cocaine	853	9.0
Guideline range does not change	301	3.2
Base offense level does not change (due to multiple drugs)	258	2.7
Original sentence has been served	208	2.2
Statutory maximum sentence is less than applicable guideline range	84	0.9
Base offense level is 12 or lower	7	0.1
Base offense level is 43	0	0.0
Denied on the merits	1,441	15.2
Offender has already benefitted from departure or variance	492	5.2
Offender subject to guideline reduction at original sentencing	264	2.8
18 U.S.C § 3553(a) factors	231	2.4
Protection of the public	203	2.1
Post-sentencing or post-conviction conduct	160	1.7
Denial because of binding plea	91	1.0
No reason provided/Other reason	742	7.9
No reason provided	424	4.5
Other	318	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, 9,485 reasons were cited for the 8,637 cases. Of the 424 cases in which the court did not give a reason for the denial, 275 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 275 cases, a statutory mandatory minimum controlled the sentence in 43 cases, in 29 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 52 cases crack cocaine was not involved, in 59 cases Career Offender or Armed Career Criminal provisions controlled the sentence, in 24 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 one case there was no record on file with the Bureau of Prisons.

SOURCE: U.S. Sentencing Commission, Preliminary 2008-2010 Datafiles, USSCFY08-USSCFY10.