

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



**June 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.<sup>1</sup> Data is reported on an annual basis in the Commission's *Annual Report* and *Sourcebook of Federal Sentencing Statistics*.<sup>2</sup>

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*.<sup>3</sup> 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 (c) 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.

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<sup>1</sup> 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).

<sup>2</sup> See the Commission's website, [www.uscc.gov](http://www.uscc.gov), for electronic copies of the 1995-2010 *Annual Report* and *Sourcebook of Federal Sentencing Statistics*.

<sup>3</sup> See [www.uscc.gov/bf.htm](http://www.uscc.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 June 29, 2011, and for which court documentation was received, coded, and edited at the U.S. Sentencing Commission by July 8, 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               | Granted       |               | Denied      |              | District    | Granted              |     | Denied |       |    |      |
|------------------------|---------------|---------------|-------------|--------------|-------------|----------------------|-----|--------|-------|----|------|
|                        | N             | N             | %           | N            |             | %                    | N   | N      | %     | N  | %    |
| <b>TOTAL</b>           | <b>25,736</b> | <b>16,511</b> | <b>64.2</b> | <b>9,225</b> | <b>35.8</b> |                      |     |        |       |    |      |
| Eastern Virginia       | 1,647         | 1,059         | 64.3        | 588          | 35.7        | Western Tennessee    | 213 | 143    | 67.1  | 70 | 32.9 |
| Middle Florida         | 1,355         | 727           | 53.7        | 628          | 46.3        | Kansas               | 198 | 195    | 98.5  | 3  | 1.5  |
| Western North Carolina | 975           | 435           | 44.6        | 540          | 55.4        | Northern Mississippi | 194 | 154    | 79.4  | 40 | 20.6 |
| South Carolina         | 941           | 728           | 77.4        | 213          | 22.6        | Western Kentucky     | 183 | 91     | 49.7  | 92 | 50.3 |
| Eastern North Carolina | 902           | 482           | 53.4        | 420          | 46.6        | Western Wisconsin    | 180 | 128    | 71.1  | 52 | 28.9 |
| Western Virginia       | 851           | 517           | 60.8        | 334          | 39.2        | Southern Iowa        | 171 | 101    | 59.1  | 70 | 40.9 |
| Middle North Carolina  | 715           | 326           | 45.6        | 389          | 54.4        | Western Pennsylvania | 166 | 127    | 76.5  | 39 | 23.5 |
| Western Texas          | 667           | 446           | 66.9        | 221          | 33.1        | Northern New York    | 165 | 114    | 69.1  | 51 | 30.9 |
| Eastern Texas          | 592           | 443           | 74.8        | 149          | 25.2        | Eastern Arkansas     | 162 | 106    | 65.4  | 56 | 34.6 |
| Northern Florida       | 581           | 240           | 41.3        | 341          | 58.7        | Eastern Kentucky     | 153 | 79     | 51.6  | 74 | 48.4 |
| Southern Florida       | 572           | 280           | 49.0        | 292          | 51.0        | Eastern Wisconsin    | 145 | 103    | 71.0  | 42 | 29.0 |
| Eastern Missouri       | 519           | 452           | 87.1        | 67           | 12.9        | Middle Alabama       | 140 | 133    | 95.0  | 7  | 5.0  |
| Maryland               | 516           | 340           | 65.9        | 176          | 34.1        | New Jersey           | 135 | 108    | 80.0  | 27 | 20.0 |
| Southern New York      | 477           | 199           | 41.7        | 278          | 58.3        | Colorado             | 132 | 70     | 53.0  | 62 | 47.0 |
| Middle Georgia         | 468           | 321           | 68.6        | 147          | 31.4        | Northern Georgia     | 128 | 78     | 60.9  | 50 | 39.1 |
| Northern Texas         | 462           | 279           | 60.4        | 183          | 39.6        | Middle Louisiana     | 113 | 78     | 69.0  | 35 | 31.0 |
| Southern Georgia       | 457           | 220           | 48.1        | 237          | 51.9        | Maine                | 111 | 60     | 54.1  | 51 | 45.9 |
| Northern West Virginia | 439           | 431           | 98.2        | 8            | 1.8         | 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       | 414           | 161           | 38.9        | 253          | 61.1        | New Hampshire        | 102 | 50     | 49.0  | 52 | 51.0 |
| Southern West Virginia | 392           | 271           | 69.1        | 121          | 30.9        | Western Oklahoma     | 98  | 92     | 93.9  | 6  | 6.1  |
| Western Missouri       | 391           | 226           | 57.8        | 165          | 42.2        | Eastern California   | 96  | 94     | 97.9  | 2  | 2.1  |
| Southern Texas         | 389           | 282           | 72.5        | 107          | 27.5        | Western Arkansas     | 86  | 53     | 61.6  | 33 | 38.4 |
| Southern Alabama       | 382           | 256           | 67.0        | 126          | 33.0        | Northern Oklahoma    | 79  | 45     | 57.0  | 34 | 43.0 |
| Western Louisiana      | 367           | 211           | 57.5        | 156          | 42.5        | Alaska               | 71  | 42     | 59.2  | 29 | 40.8 |
| Southern Illinois      | 360           | 312           | 86.7        | 48           | 13.3        | Rhode Island         | 70  | 57     | 81.4  | 13 | 18.6 |
| Northern Ohio          | 356           | 318           | 89.3        | 38           | 10.7        | Nevada               | 67  | 58     | 86.6  | 9  | 13.4 |
| Middle Pennsylvania    | 354           | 226           | 63.8        | 128          | 36.2        | Middle Tennessee     | 61  | 48     | 78.7  | 13 | 21.3 |
| Western Michigan       | 320           | 169           | 52.8        | 151          | 47.2        | Western Washington   | 48  | 47     | 97.9  | 1  | 2.1  |
| Nebraska               | 316           | 250           | 79.1        | 66           | 20.9        | New Mexico           | 48  | 44     | 91.7  | 4  | 8.3  |
| Eastern Tennessee      | 313           | 195           | 62.3        | 118          | 37.7        | Northern California  | 42  | 42     | 100.0 | 0  | 0.0  |
| Northern Alabama       | 298           | 137           | 46.0        | 161          | 54.0        | Delaware             | 36  | 26     | 72.2  | 10 | 27.8 |
| Northern Illinois      | 285           | 251           | 88.1        | 34           | 11.9        | Hawaii               | 29  | 25     | 86.2  | 4  | 13.8 |
| Connecticut            | 283           | 180           | 63.6        | 103          | 36.4        | Vermont              | 23  | 23     | 100.0 | 0  | 0.0  |
| Northern Indiana       | 276           | 223           | 80.8        | 53           | 19.2        | Oregon               | 20  | 19     | 95.0  | 1  | 5.0  |
| Puerto Rico            | 275           | 95            | 34.5        | 180          | 65.5        | Eastern Oklahoma     | 18  | 13     | 72.2  | 5  | 27.8 |
| Minnesota              | 274           | 188           | 68.6        | 86           | 31.4        | Utah                 | 18  | 17     | 94.4  | 1  | 5.6  |
| Eastern Pennsylvania   | 268           | 219           | 81.7        | 49           | 18.3        | Eastern Washington   | 17  | 9      | 52.9  | 8  | 47.1 |
| Northern Iowa          | 262           | 148           | 56.5        | 114          | 43.5        | Southern California  | 13  | 13     | 100.0 | 0  | 0.0  |
| Eastern Michigan       | 253           | 225           | 88.9        | 28           | 11.1        | Montana              | 8   | 4      | 50.0  | 4  | 50.0 |
| Southern Ohio          | 253           | 216           | 85.4        | 37           | 14.6        | 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       | 220           | 138           | 62.7        | 82           | 37.3        | Idaho                | 3   | 2      | 66.7  | 1  | 33.3 |
| Massachusetts          | 218           | 139           | 63.8        | 79           | 36.2        | Wyoming              | 1   | 1      | 100.0 | 0  | 0.0  |
| Eastern New York       | 215           | 103           | 47.9        | 112          | 52.1        |                      |     |        |       |    |      |

Note: Some districts may not have reported all denials of motions seeking application of the retroactive crack cocaine amendment.

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**

| <b>Circuit</b>   | <b>N</b>      | <b>Granted</b> | <b>Denied</b> |
|------------------|---------------|----------------|---------------|
| <b>TOTAL</b>     | <b>25,736</b> | <b>16,511</b>  | <b>9,225</b>  |
| FOURTH CIRCUIT   | 7,378         | 4,589          | 2,789         |
| ELEVENTH CIRCUIT | 4,381         | 2,392          | 1,989         |
| FIFTH CIRCUIT    | 3,451         | 2,289          | 1,162         |
| EIGHTH CIRCUIT   | 2,188         | 1,531          | 657           |
| SIXTH CIRCUIT    | 2,105         | 1,484          | 621           |
| SEVENTH CIRCUIT  | 1,769         | 1,242          | 527           |
| SECOND CIRCUIT   | 1,383         | 757            | 626           |
| THIRD CIRCUIT    | 964           | 711            | 253           |
| FIRST CIRCUIT    | 776           | 401            | 375           |
| TENTH CIRCUIT    | 592           | 477            | 115           |
| NINTH CIRCUIT    | 524           | 424            | 100           |
| D.C. CIRCUIT     | 225           | 214            | 11            |

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

**Table 3****APPLICATION OF RETROACTIVE CRACK COCAINE AMENDMENT BY  
YEAR OF ORIGINAL SENTENCE<sup>1</sup>**

| <b>Fiscal<br/>Year</b> | <b>Total</b>  | <b>Granted</b> |             | <b>Denied</b> |             |
|------------------------|---------------|----------------|-------------|---------------|-------------|
|                        | <b>N</b>      | <b>N</b>       | <b>%</b>    | <b>N</b>      | <b>%</b>    |
| <b>Total</b>           | <b>25,143</b> | <b>16,148</b>  | <b>64.2</b> | <b>8,995</b>  | <b>35.8</b> |
| 2010                   | 18            | 1              | 5.6         | 17            | 94.4        |
| 2009                   | 88            | 5              | 5.7         | 83            | 94.3        |
| 2008                   | 655           | 158            | 24.1        | 497           | 75.9        |
| 2007                   | 3,631         | 2,425          | 66.8        | 1,206         | 33.2        |
| 2006                   | 3,456         | 2,414          | 69.8        | 1,042         | 30.2        |
| 2005                   | 3,023         | 2,012          | 66.6        | 1,011         | 33.4        |
| 2004                   | 2,495         | 1,701          | 68.2        | 794           | 31.8        |
| 2003                   | 2,344         | 1,546          | 66.0        | 798           | 34.0        |
| 2002                   | 1,819         | 1,191          | 65.5        | 628           | 34.5        |
| 2001                   | 1,456         | 959            | 65.9        | 497           | 34.1        |
| 2000                   | 1,299         | 811            | 62.4        | 488           | 37.6        |
| 1999                   | 1,053         | 673            | 63.9        | 380           | 36.1        |
| 1998                   | 822           | 508            | 61.8        | 314           | 38.2        |
| 1997                   | 659           | 404            | 61.3        | 255           | 38.7        |
| 1996                   | 611           | 375            | 61.4        | 236           | 38.6        |
| 1995                   | 453           | 266            | 58.7        | 187           | 41.3        |
| 1994                   | 424           | 220            | 51.9        | 204           | 48.1        |
| 1993                   | 309           | 170            | 55.0        | 139           | 45.0        |
| 1992                   | 224           | 133            | 59.4        | 91            | 40.6        |
| 1991                   | 129           | 73             | 56.6        | 56            | 43.4        |
| 1990                   | 121           | 66             | 54.5        | 55            | 45.5        |
| 1989                   | 54            | 37             | 68.5        | 17            | 31.5        |

<sup>1</sup> Of the 25,736 cases, 593 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 AMENDMENT<sup>1</sup>**

| <b>CIRCUIT</b>   | <b>Defendant</b> |               |             | <b>Director BOP<sup>2</sup></b> |            | <b>Court</b> |             |
|------------------|------------------|---------------|-------------|---------------------------------|------------|--------------|-------------|
|                  | <b>N</b>         | <b>N</b>      | <b>%</b>    | <b>N</b>                        | <b>%</b>   | <b>N</b>     | <b>%</b>    |
| <b>TOTAL</b>     | <b>15,077</b>    | <b>12,705</b> | <b>84.3</b> | <b>0</b>                        | <b>0.0</b> | <b>2,372</b> | <b>15.7</b> |
| D.C. CIRCUIT     | 188              | 184           | 97.9        | 0                               | 0.0        | 4            | 2.1         |
| FIRST CIRCUIT    | 390              | 334           | 85.6        | 0                               | 0.0        | 56           | 14.4        |
| SECOND CIRCUIT   | 706              | 489           | 69.3        | 0                               | 0.0        | 217          | 30.7        |
| THIRD CIRCUIT    | 610              | 604           | 99.0        | 0                               | 0.0        | 6            | 1.0         |
| FOURTH CIRCUIT   | 4,250            | 3,654         | 86.0        | 0                               | 0.0        | 596          | 14.0        |
| FIFTH CIRCUIT    | 1,986            | 1,473         | 74.2        | 0                               | 0.0        | 513          | 25.8        |
| SIXTH CIRCUIT    | 1,364            | 1,215         | 89.1        | 0                               | 0.0        | 149          | 10.9        |
| SEVENTH CIRCUIT  | 1,209            | 1,178         | 97.4        | 0                               | 0.0        | 31           | 2.6         |
| EIGHTH CIRCUIT   | 1,460            | 1,357         | 92.9        | 0                               | 0.0        | 103          | 7.1         |
| NINTH CIRCUIT    | 334              | 299           | 89.5        | 0                               | 0.0        | 35           | 10.5        |
| TENTH CIRCUIT    | 468              | 447           | 95.5        | 0                               | 0.0        | 21           | 4.5         |
| ELEVENTH CIRCUIT | 2,112            | 1,471         | 69.6        | 0                               | 0.0        | 641          | 30.4        |

<sup>1</sup> Of the 16,511 cases in which the court granted a motion for a sentence reduction due to retroactive application of the crack cocaine amendment, 1,495 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, 15,077 origins were cited for the 15,016 cases.

<sup>2</sup> 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**

| <b>Race/Ethnicity</b> | <b>Total</b>  | <b>Granted</b> |          | <b>Denied<sup>1</sup></b> |          |
|-----------------------|---------------|----------------|----------|---------------------------|----------|
|                       |               | <b>N</b>       | <b>%</b> | <b>N</b>                  | <b>%</b> |
| White                 | 1,052         | 955            | 5.9      | 97                        | 4.8      |
| Black                 | 15,691        | 13,919         | 86.2     | 1,772                     | 87.0     |
| Hispanic              | 1,286         | 1,134          | 7.0      | 152                       | 7.5      |
| Other                 | 155           | 140            | 0.9      | 15                        | 0.7      |
| <b>Total</b>          | <b>18,184</b> | <b>16,148</b>  |          | <b>2,036</b>              |          |
| <b>Citizenship</b>    |               |                |          |                           |          |
| U.S. Citizen          | 17,065        | 15,125         | 94.8     | 1,940                     | 95.2     |
| Non-Citizen           | 932           | 835            | 5.2      | 97                        | 4.8      |
| <b>Total</b>          | <b>17,997</b> | <b>15,960</b>  |          | <b>2,037</b>              |          |
| <b>Gender</b>         |               |                |          |                           |          |
| Male                  | 17,264        | 15,325         | 94.2     | 1,939                     | 95.0     |
| Female                | 1,050         | 949            | 5.8      | 101                       | 5.0      |
| <b>Total</b>          | <b>18,314</b> | <b>16,274</b>  |          | <b>2,040</b>              |          |
| <b>Average Age</b>    |               |                |          |                           |          |
|                       | <b>30</b>     | <b>30</b>      |          | <b>30</b>                 |          |

<sup>1</sup> The 2,040 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 7,185 cases in which the court denied the request for a sentence reduction, 4,684 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](http://www.ussc.gov)). Of the remaining 2,501 cases, 533 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, 658 were excluded from this analysis because the offender was not sentenced for a drug offense, 990 were excluded from this analysis because crack cocaine was not involved in the offense, and 320 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 <sup>1</sup> |
|---|-----------|---------|---------------------|
|   | %         | %       | %                   |
| <b>Weapon</b>                                   |           |         |                     |
| Weapon Specific Offense Characteristic          | 24.6      | 24.2    | 28.5                |
| Firearms Mandatory Minimum Applied              | 10.6      | 10.2    | 13.9                |
| <b>Safety Valve</b>                             | 8.8       | 9.4     | 4.2                 |
| <b>Guideline Role Adjustments</b>               |           |         |                     |
| Aggravating Role (USSG §3B1.1)                  | 10.5      | 9.5     | 18.5                |
| Mitigating Role (USSG §3B1.2)                   | 2.8       | 2.6     | 4.4                 |
| Obstruction Adjustment (USSG §3C1.1)            | 6.3       | 6.2     | 7.4                 |
| <b>Sentence Relative to the Guideline Range</b> |           |         |                     |
| Within Range                                    | 69.4      | 71.1    | 56.2                |
| Above Range                                     | 0.4       | 0.3     | 1.1                 |
| Below Range                                     | 30.2      | 28.6    | 42.7                |
| <b>Criminal History Category</b>                |           |         |                     |
| I   | 21.7      | 22.4    | 15.8                |
| II  | 12.8      | 12.8    | 12.7                |
| III   | 22.9      | 23.1    | 21.8                |
| IV  | 16.9      | 17.3    | 13.7                |
| V   | 10.4      | 10.3    | 10.8                |
| VI  | 15.3      | 14.1    | 25.2                |

<sup>1</sup> The 2,040 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 7,185 cases in which the court denied the request for a sentence reduction, 4,684 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](http://www.ussc.gov)). Of the remaining 2,501 cases, 533 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, 658 were excluded from this analysis because the offender was not sentenced for a drug offense, 990 were excluded from this analysis because crack cocaine was not involved in the offense, and 320 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 AMENDMENT<sup>1</sup>**

|                            | <u>ORIGINAL SENTENCE</u> |              | <u>CURRENT SENTENCE</u> |              |
|----------------------------|--------------------------|--------------|-------------------------|--------------|
|                            | N                        | %            | N                       | %            |
| <b>TOTAL</b>               | <b>6,557</b>             | <b>100.0</b> | <b>6,557</b>            | <b>100.0</b> |
| <b>Guideline Minimum</b>   | 4,188                    | 63.9         | 4,333                   | 66.1         |
| <b>Lower Half of Range</b> | 1,167                    | 17.8         | 907                     | 13.8         |
| <b>Midpoint of Range</b>   | 318                      | 4.8          | 488                     | 7.4          |
| <b>Upper Half of Range</b> | 451                      | 6.9          | 410                     | 6.3          |
| <b>Guideline Maximum</b>   | 433                      | 6.6          | 419                     | 6.4          |

<sup>1</sup> Of the 16,511 cases in which a motion for retroactive application of the crack cocaine amendment was granted, 8,592 received a sentence within the guideline range at both their original and current sentencing. Of these, 2,035 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 (1,457), the case is missing sentence length or guideline relevant statutory information from the original sentence (498), the new sentence had a guideline minimum and maximum that were identical (208) or the original sentence had a guideline minimum and maximum that were identical (37).

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 AMENDMENT<sup>1</sup>**

| <b>CIRCUIT</b>        |               | <b>Average<br/>Current<br/>Sentence<br/>in Months</b> | <b>Average<br/>New<br/>Sentence<br/>in Months</b> | <b>Average Decrease<br/>in Months From<br/>Current Sentence</b> | <b>Average Percent<br/>Decrease From<br/>Current Sentence</b> |
|-----------------------|---------------|---|---|---|---|
| District              | <b>N</b>      |   |   |   |   |
| <b>TOTAL</b>          | <b>14,918</b> | <b>150</b>  | <b>124</b>  | <b>26</b>   | <b>17.0</b>   |
| <b>D.C. CIRCUIT</b>   | <b>145</b>    | <b>134</b>  | <b>112</b>  | <b>22</b>   | <b>16.2</b>   |
| District of Columbia  | 145           | 134   | 112   | 22  | 16.2  |
| <b>FIRST CIRCUIT</b>  | <b>347</b>    | <b>124</b>  | <b>102</b>  | <b>22</b>   | <b>17.3</b>   |
| Maine                 | 60            | 126   | 104   | 22  | 16.8  |
| Massachusetts         | 102           | 149   | 124   | 26  | 16.9  |
| New Hampshire         | 48            | 99  | 80  | 19  | 19.3  |
| Puerto Rico           | 89            | 108   | 87  | 21  | 18.0  |
| Rhode Island          | 48            | 126   | 106   | 20  | 15.8  |
| <b>SECOND CIRCUIT</b> | <b>647</b>    | <b>125</b>  | <b>105</b>  | <b>20</b>   | <b>15.9</b>   |
| Connecticut           | 155           | 117   | 97  | 20  | 17.2  |
| New York              |               |   |   |   |   |
| Eastern               | 90            | 126   | 104   | 22  | 17.3  |
| Northern              | 80            | 134   | 113   | 21  | 15.6  |
| Southern              | 179           | 144   | 121   | 22  | 14.8  |
| Western               | 127           | 104   | 89  | 15  | 14.7  |
| Vermont               | 16            | 97  | 78  | 18  | 18.6  |
| <b>THIRD CIRCUIT</b>  | <b>603</b>    | <b>133</b>  | <b>111</b>  | <b>22</b>   | <b>16.2</b>   |
| Delaware              | 25            | 165   | 136   | 30  | 17.6  |
| New Jersey            | 104           | 120   | 101   | 19  | 15.9  |
| Pennsylvania          |               |   |   |   |   |
| Eastern               | 178           | 149   | 123   | 26  | 16.5  |
| Middle                | 182           | 126   | 105   | 20  | 16.3  |
| Western               | 113           | 124   | 105   | 19  | 15.7  |
| Virgin Islands        | 1             | --  | --  | --  | --  |
| <b>FOURTH CIRCUIT</b> | <b>4,228</b>  | <b>159</b>  | <b>132</b>  | <b>27</b>   | <b>16.9</b>   |
| Maryland              | 299           | 163   | 134   | 29  | 17.6  |
| North Carolina        |               |   |   |   |   |
| Eastern               | 470           | 174   | 144   | 30  | 16.6  |
| Middle                | 320           | 180   | 150   | 30  | 16.0  |
| Western               | 345           | 192   | 161   | 31  | 15.4  |
| South Carolina        | 703           | 155   | 127   | 28  | 17.6  |
| Virginia              |               |   |   |   |   |
| Eastern               | 969           | 159   | 132   | 28  | 16.9  |
| Western               | 492           | 152   | 129   | 24  | 15.5  |
| West Virginia         |               |   |   |   |   |
| Northern              | 370           | 119   | 97  | 22  | 18.2  |
| Southern              | 260           | 139   | 113   | 26  | 18.7  |

Table 8 (continued)

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

| <b>CIRCUIT</b><br>District | <b>N</b>     | <b>Average<br/>Current<br/>Sentence<br/>in Months</b> | <b>Average<br/>New<br/>Sentence<br/>in Months</b> | <b>Average Decrease<br/>in Months From<br/>Current Sentence</b> | <b>Average Percent<br/>Decrease From<br/>Current Sentence</b> |
|----------------------------|--------------|---|---|---|---|
| <b>FIFTH CIRCUIT</b>       | <b>2,097</b> | <b>145</b>  | <b>120</b>  | <b>25</b>   | <b>17.2</b>   |
| Louisiana                  |              |   |   |   |   |
| Eastern                    | 188          | 135   | 117   | 19  | 13.8  |
| Middle                     | 69           | 129   | 110   | 20  | 15.8  |
| Western                    | 192          | 166   | 137   | 29  | 17.1  |
| Mississippi                |              |   |   |   |   |
| Northern                   | 139          | 126   | 103   | 23  | 18.0  |
| Southern                   | 178          | 124   | 103   | 21  | 17.4  |
| Texas                      |              |   |   |   |   |
| Eastern                    | 435          | 138   | 112   | 26  | 18.7  |
| Northern                   | 265          | 176   | 144   | 32  | 18.1  |
| Southern                   | 231          | 154   | 128   | 26  | 16.2  |
| Western                    | 400          | 140   | 116   | 24  | 17.3  |
| <b>SIXTH CIRCUIT</b>       | <b>1,397</b> | <b>130</b>  | <b>109</b>  | <b>21</b>   | <b>16.1</b>   |
| Kentucky                   |              |   |   |   |   |
| Eastern                    | 71           | 104   | 87  | 18  | 16.3  |
| Western                    | 90           | 126   | 108   | 18  | 14.6  |
| Michigan                   |              |   |   |   |   |
| Eastern                    | 176          | 155   | 128   | 27  | 16.5  |
| Western                    | 167          | 130   | 110   | 20  | 15.3  |
| Ohio                       |              |   |   |   |   |
| Northern                   | 314          | 108   | 90  | 18  | 17.1  |
| Southern                   | 211          | 134   | 112   | 22  | 16.5  |
| Tennessee                  |              |   |   |   |   |
| Eastern                    | 191          | 140   | 119   | 21  | 14.5  |
| Middle                     | 43           | 153   | 124   | 29  | 17.0  |
| Western                    | 134          | 138   | 115   | 24  | 16.9  |
| <b>SEVENTH CIRCUIT</b>     | <b>1,137</b> | <b>160</b>  | <b>130</b>  | <b>29</b>   | <b>17.7</b>   |
| Illinois                   |              |   |   |   |   |
| Central                    | 146          | 169   | 139   | 30  | 17.0  |
| Northern                   | 224          | 147   | 122   | 25  | 16.7  |
| Southern                   | 305          | 182   | 147   | 35  | 18.1  |
| Indiana                    |              |   |   |   |   |
| Northern                   | 213          | 136   | 113   | 24  | 17.2  |
| Southern                   | 51           | 194   | 163   | 31  | 15.5  |
| Wisconsin                  |              |   |   |   |   |
| Eastern                    | 96           | 133   | 109   | 24  | 18.6  |
| Western                    | 102          | 165   | 129   | 36  | 21.2  |
| <b>EIGHTH CIRCUIT</b>      | <b>1,365</b> | <b>142</b>  | <b>117</b>  | <b>25</b>   | <b>16.9</b>   |
| Arkansas                   |              |   |   |   |   |
| Eastern                    | 83           | 141   | 116   | 25  | 17.9  |
| Western                    | 53           | 102   | 86  | 17  | 16.7  |
| Iowa                       |              |   |   |   |   |
| Northern                   | 128          | 166   | 136   | 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**

| <b>CIRCUIT</b>           |              | <b>Average<br/>Current<br/>Sentence<br/>in Months</b> | <b>Average<br/>New<br/>Sentence<br/>in Months</b> | <b>Average Decrease<br/>in Months From<br/>Current Sentence</b> | <b>Average Percent<br/>Decrease From<br/>Current Sentence</b> |
|--------------------------|--------------|---|---|---|---|
| District                 | <b>N</b>     |   |   |   |   |
| <b>NINTH CIRCUIT</b>     | <b>377</b>   | <b>145</b>  | <b>121</b>  | <b>24</b>   | <b>16.1</b>   |
| Alaska                   | 38           | 157   | 136   | 22  | 14.1  |
| Arizona                  | 3            | 213   | 171   | 42  | 19.8  |
| California               |              |   |   |   |   |
| Central                  | 56           | 168   | 136   | 32  | 18.6  |
| Eastern                  | 83           | 144   | 120   | 24  | 16.3  |
| Northern                 | 39           | 113   | 98  | 16  | 13.6  |
| 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  |
| <b>TENTH CIRCUIT</b>     | <b>428</b>   | <b>153</b>  | <b>126</b>  | <b>27</b>   | <b>17.1</b>   |
| Colorado                 | 65           | 161   | 132   | 29  | 17.5  |
| Kansas                   | 176          | 129   | 107   | 22  | 16.9  |
| New Mexico               | 43           | 146   | 122   | 25  | 16.5  |
| Oklahoma                 |              |   |   |   |   |
| Eastern                  | 13           | 161   | 134   | 27  | 18.4  |
| Northern                 | 42           | 188   | 157   | 31  | 16.0  |
| Western                  | 74           | 187   | 153   | 35  | 18.5  |
| Utah                     | 14           | 120   | 100   | 20  | 16.0  |
| Wyoming                  | 1            | --  | --  | --  | --  |
| <b>ELEVENTH CIRCUIT</b>  | <b>2,147</b> | <b>168</b>  | <b>137</b>  | <b>30</b>   | <b>17.6</b>   |
| Alabama                  |              |   |   |   |   |
| Middle                   | 131          | 176   | 145   | 31  | 17.0  |
| Northern                 | 107          | 143   | 121   | 22  | 14.4  |
| Southern                 | 250          | 192   | 156   | 36  | 18.1  |
| Florida                  |              |   |   |   |   |
| Middle                   | 688          | 164   | 133   | 32  | 18.4  |
| Northern                 | 206          | 232   | 189   | 43  | 18.1  |
| Southern                 | 266          | 142   | 117   | 24  | 16.8  |
| Georgia                  |              |   |   |   |   |
| Middle                   | 248          | 131   | 105   | 25  | 19.2  |
| Northern                 | 71           | 188   | 154   | 34  | 17.8  |
| Southern                 | 180          | 162   | 139   | 23  | 14.0  |

<sup>1</sup> Of the 25,736 cases, 593 were excluded from this analysis because the case cannot be matched with an original case in the Commission's records and 8,995 were excluded from this analysis because the court denied the motion for a sentence reduction. Of the remaining 16,148 cases, 1,230 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 MOTION<sup>1</sup>**

| <b>REASONS</b>   | <b>N</b>     | <b>%</b>    |
|--|--------------|-------------|
| <b>Offense does not involve crack cocaine</b>                        | <b>1,067</b> | <b>10.6</b> |
| Case does not involve crack cocaine                                  | 886          | 8.8         |
| Sentence is determined by a non-drug guideline                       | 181          | 1.8         |
| <b>Offender not eligible under §1B1.10</b>                           | <b>6,728</b> | <b>66.6</b> |
| Career Offender or Armed Career Criminal provisions control sentence | 2,481        | 24.6        |
| Statutory mandatory minimum controls sentence                        | 2,408        | 23.8        |
| Case involved more than 4.5 kg of crack cocaine                      | 919          | 9.1         |
| Guideline range does not change                                      | 333          | 3.3         |
| Base offense level does not change (due to multiple drugs)           | 274          | 2.7         |
| Original sentence has been served                                    | 221          | 2.2         |
| Statutory maximum sentence is less than applicable guideline range   | 85           | 0.8         |
| Base offense level is 12 or lower                                    | 7            | 0.1         |
| Base offense level is 43   | 0            | 0.0         |
| <b>Denied on the merits</b>  | <b>1,491</b> | <b>14.8</b> |
| Offender has already benefitted from departure or variance           | 495          | 4.9         |
| Offender subject to guideline reduction at original sentencing       | 300          | 3           |
| 18 U.S.C § 3553(a) factors   | 238          | 2.4         |
| Protection of the public   | 206          | 2.0         |
| Post-sentencing or post-conviction conduct                           | 160          | 1.6         |
| Denial because of binding plea                                       | 92           | 0.9         |
| <b>No reason provided/Other reason</b>                               | <b>813</b>   | <b>8.1</b>  |
| No reason provided   | 444          | 4.4         |
| Other  | 369          | 3.7         |

<sup>1</sup> 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, 10,099 reasons were cited for the 9,225 cases. Of the 444 cases in which the court did not give a reason for the denial, 289 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](http://www.uscc.gov)). Of those 289 cases, a statutory mandatory minimum controlled the sentence in 46 cases, in 32 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 55 cases crack cocaine was not involved, in 64 cases Career Offender or Armed Career Criminal provisions controlled the sentence, in 23 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.