

**U.S. Sentencing Commission
First Step Act of 2018 Resentencing Provisions
Retroactivity Data Report**



June 2019

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*. 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).

On three separate occasions in recent years the Commission has amended the federal sentencing guidelines to lower the punishment for certain drug trafficking crimes, and also voted to apply those reductions retroactively.³ Under section 3582(c)(2) of title 18, courts were authorized to reduce the sentences of incarcerated offenders pursuant to those retroactive guideline amendments. The Commission has periodically reported on the number of offenders who received a sentence reduction under those retroactive amendments and presented other data regarding those cases.⁴

One of those guideline amendments incorporated into the sentencing guidelines the statutory changes Congress made in the penalty provision for crack cocaine offenders through the Fair Sentencing Act of 2010.⁵ On December 21, 2018, the President signed into law the First Step Act of 2018.⁶ Section 404 of that act provides that any defendant sentenced before the effective date of the Fair Sentencing Act of 2010 (August 3, 2010) who did not receive the

¹ In each federal felony or Class A misdemeanor case, 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 Electronic copies of the 1995-2018 *Annual Report* and *Sourcebook of Federal Sentencing Statistics* are available at the Commission's website at www.ussc.gov.

³ *See* Amendment 706, as amended by Amendment 711, and made retroactive by Amendment 713 (the 2007 Crack Cocaine Amendment); Amendment 750, made retroactive by Amendment 759 (the 2010 Fair Sentencing Act Amendment); and Amendment 782 (the 2014 Drug Guidelines Amendment, often referred to as "Drugs Minus Two").

⁴ These retroactivity analyses and data reports are available at <https://www.ussc.gov/research/data-reports/retroactivity-analyses-and-data-reports>.

⁵ Pub L. No. 111-220 (2010). Section 2 of the Fair Sentencing Act increased the quantity of crack cocaine that triggered mandatory minimum penalties. Section 3 of the Fair Sentencing Act eliminated the statutory mandatory minimum sentence for simple possession of crack cocaine.

⁶ Pub. L. No. 115-391 (2018).

benefit of the statutory penalty changes made by that Act is eligible for a sentence reduction as if Sections 2 and 3 of the Fair Sentencing Act of 2010 were in effect at the time the offender was sentenced. The First Step Act authorizes the defendant, the Director of the Bureau of Prisons, the attorney for the Government, or the court to make a motion to reduce an offender's sentence.

The data in this report represents information concerning motions for a reduced sentence pursuant to Section 404 of the First Step Act which the courts have granted. The data in this report reflects all motions granted through April 30, 2019 and for which court documentation was received, coded, and edited at the Commission by May 17, 2019.

Table 1

GEOGRAPHICAL DISTRIBUTION OF GRANTED MOTIONS FOR SENTENCE REDUCTIONS DUE TO RESENTENCING PROVISIONS OF FIRST STEP ACT

District	N	%	District	N	%
TOTAL	1,051	100.0			
Middle Florida	78	7.4	Northern Alabama	7	0.7
South Carolina	73	6.9	Connecticut	5	0.5
Western Virginia	59	5.6	Southern Ohio	5	0.5
Southern Florida	52	4.9	District of Columbia	4	0.4
Eastern Virginia	47	4.5	Northern Texas	4	0.4
Central Illinois	34	3.2	Eastern Kentucky	4	0.4
Eastern Tennessee	31	2.9	Northern West Virginia	3	0.3
Northern Illinois	31	2.9	North Dakota	3	0.3
Northern Ohio	30	2.9	Northern Oklahoma	3	0.3
Eastern Louisiana	29	2.8	Western Oklahoma	3	0.3
Eastern North Carolina	28	2.7	New Hampshire	2	0.2
Western North Carolina	27	2.6	Northern Mississippi	2	0.2
Northern Florida	25	2.4	Southern Mississippi	2	0.2
Southern Iowa	24	2.3	Middle Tennessee	2	0.2
Middle Pennsylvania	21	2.0	Alaska	2	0.2
Eastern Missouri	20	1.9	Oregon	2	0.2
Southern Georgia	20	1.9	Western Washington	2	0.2
Eastern Arkansas	19	1.8	Colorado	2	0.2
Western Missouri	19	1.8	Northern Georgia	2	0.2
Rhode Island	17	1.6	Puerto Rico	1	0.1
Southern Illinois	17	1.6	Eastern New York	1	0.1
Northern Indiana	17	1.6	Vermont	1	0.1
Southern Indiana	17	1.6	Middle Louisiana	1	0.1
Kansas	17	1.6	Western Arkansas	1	0.1
Maryland	16	1.5	Minnesota	1	0.1
Central California	16	1.5	South Dakota	1	0.1
Eastern Texas	13	1.2	Northern California	1	0.1
Western Texas	13	1.2	Southern New York	0	0.0
Eastern Michigan	12	1.1	Delaware	0	0.0
Western Wisconsin	12	1.1	Virgin Islands	0	0.0
Middle Georgia	12	1.1	Middle North Carolina	0	0.0
Eastern Pennsylvania	11	1.0	Southern West Virginia	0	0.0
Western Pennsylvania	11	1.0	Western Tennessee	0	0.0
Massachusetts	10	1.0	Arizona	0	0.0
Northern New York	9	0.9	Southern California	0	0.0
Western Louisiana	9	0.9	Guam	0	0.0
Western Michigan	9	0.9	Hawaii	0	0.0
Eastern California	9	0.9	Idaho	0	0.0
Maine	8	0.8	Montana	0	0.0
Western New York	8	0.8	Nevada	0	0.0
New Jersey	8	0.8	Northern Mariana Islands	0	0.0
Southern Texas	8	0.8	Eastern Washington	0	0.0
Eastern Wisconsin	8	0.8	New Mexico	0	0.0
Nebraska	8	0.8	Eastern Oklahoma	0	0.0
Southern Alabama	8	0.8	Utah	0	0.0
Western Kentucky	7	0.7	Wyoming	0	0.0
Northern Iowa	7	0.7	Middle Alabama	0	0.0

SOURCE: U.S. Sentencing Commission, First Step Act Datafile.

Table 2

**YEAR OF ORIGINAL SENTENCE OF OFFENDERS
RECEIVING SENTENCE REDUCTIONS DUE TO
RESENTENCING PROVISIONS OF FIRST STEP ACT¹**

Fiscal Year	N	%
Total	1,045	100.0
2013	2	0.2
2012	2	0.2
2011	32	3.1
2010	145	13.9
2009	145	13.9
2008	134	12.8
2007	165	15.8
2006	97	9.3
2005	76	7.3
2004	62	5.9
2003	51	4.9
2002	35	3.3
2001	21	2.0
2000	17	1.6
1999	14	1.3
1998	12	1.1
1997	4	0.4
1996	9	0.9
1995	8	0.8
1994	5	0.5
1993	3	0.3
1992	2	0.2
1991	1	0.1
1990	3	0.3

¹ Of the 1,051 cases in which the court granted a motion for a sentence reduction due to Section 404 of the First Step Act of 2018, six were excluded from this analysis because the cases cannot be matched with an original case in the Commission's records.

SOURCE: U.S. Sentencing Commission, First Step Act Datafile.

Table 3**ORIGIN OF GRANTED MOTIONS FOR SENTENCE REDUCTIONS DUE TO
RESENTENCING PROVISIONS OF FIRST STEP ACT¹**

CIRCUIT	N	Defendant		Director BOP		Attorney for the Government		Court	
		N	%	N	%	N	%	N	%
TOTAL	1,180	931	78.9	0	0.0	139	11.8	110	9.3
D.C. CIRCUIT	3	3	100.0	0	0.0	0	0.0	0	0.0
FIRST CIRCUIT	45	37	82.2	0	0.0	8	17.8	0	0.0
SECOND CIRCUIT	29	23	79.3	0	0.0	5	17.2	1	3.4
THIRD CIRCUIT	61	51	83.6	0	0.0	10	16.4	0	0.0
FOURTH CIRCUIT	252	236	93.7	0	0.0	2	0.8	14	5.6
FIFTH CIRCUIT	97	63	64.9	0	0.0	17	17.5	17	17.5
SIXTH CIRCUIT	115	94	81.7	0	0.0	15	13.0	6	5.2
SEVENTH CIRCUIT	192	136	70.8	0	0.0	56	29.2	0	0.0
EIGHTH CIRCUIT	104	75	72.1	0	0.0	4	3.8	25	24.0
NINTH CIRCUIT	48	32	66.7	0	0.0	16	33.3	0	0.0
TENTH CIRCUIT	25	25	100.0	0	0.0	0	0.0	0	0.0
ELEVENTH CIRCUIT	209	156	74.6	0	0.0	6	2.9	47	22.5

¹ Of the 1,051 cases in which the court granted a motion for a sentence reduction due to Section 404 of the First Step Act of 2018, nine cases 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, 1,180 origins were cited for the 1,042 cases.

SOURCE: U.S. Sentencing Commission, First Step Act Datafile.

Table 4

**DEMOGRAPHIC CHARACTERISTICS OF OFFENDERS
RECEIVING SENTENCE REDUCTIONS DUE TO
RESENTENCING PROVISIONS OF FIRST STEP ACT**

Demographics	N	%
Race/Ethnicity		
White	45	4.3
Black	955	91.3
Hispanic	40	3.8
Other	6	0.6
Total	1,046	100.0
Citizenship		
U.S. Citizen	1,018	97.5
Non-Citizen	26	2.5
Total	1,044	100.0
Gender		
Male	1,033	98.4
Female	17	1.6
Total	1,050	100.0
Average Age at Original Sentence		32
Average Age at Resentencing		45

¹ Of the 1,051 cases in which the court granted a motion for a sentence reduction due to Section 404 of the First Step Act of 2018, cases were excluded from each section of this table due to the following reasons: missing race information (5), missing citizenship information (7), missing gender information (1), and missing age information (10).

SOURCE: U.S. Sentencing Commission, First Step Act Datafile.

Table 5

**SELECTED SENTENCING FACTORS FOR OFFENDERS
RECEIVING SENTENCE REDUCTIONS DUE TO RESENTENCING
PROVISIONS OF FIRST STEP ACT¹**

Sentencing Factors	%
<hr/>	
Weapon	
<hr/>	
Weapon Specific Offense Characteristic	21.2
Firearms Mandatory Minimum Applied	21.2
Safety Valve	0.4
<hr/>	
Guideline Role Adjustments	
<hr/>	
Aggravating Role (USSG §3B1.1)	7.1
Mitigating Role (USSG §3B1.2)	1.0
Obstruction Adjustment (USSG §3C1.1)	6.5
Sentence Relative to the Guideline Range	
<hr/>	
Within Range	72.9
Above Range	1.0
Below Range	26.2
Criminal History Category	
<hr/>	
I	3.8
II	5.9
III	11.6
IV	9.4
V	6.3
VI	63.0

¹ Of the 1,051 cases in which the court granted a motion for a sentence reduction due to Section 404 of the First Step Act of 2018, six were excluded from this analysis because the cases cannot be matched with an original case in the Commission's records.

SOURCE: U.S. Sentencing Commission, First Step Act Datafile.

Table 6

**EXTENT OF SENTENCE REDUCTIONS DUE
TO RESENTENCING PROVISIONS OF FIRST STEP ACT¹**

CIRCUIT	N	Mean			
		Current Sentence In Months	New Sentence In Months	Decrease In Months From Current Sentence ²	Percent Decrease From Current Sentence
TOTAL	696	239	166	73	29.4
D.C. CIRCUIT	3	195	132	64	33.9
District of Columbia	3	195	132	64	33.9
FIRST CIRCUIT	13	258	192	66	22.6
Maine	6	228	181	47	20.4
Massachusetts	4	322	231	91	22.1
New Hampshire	1	--	--	--	--
Puerto Rico	0	--	--	--	--
Rhode Island	2	--	--	--	--
SECOND CIRCUIT	11	248	170	78	28.4
Connecticut	0	--	--	--	--
New York					
Eastern	1	--	--	--	--
Northern	9	250	173	77	27.2
Southern	0	--	--	--	--
Western	1	--	--	--	--
Vermont	0	--	--	--	--
THIRD CIRCUIT	38	225	169	56	23.9
Delaware	0	--	--	--	--
New Jersey	7	201	148	53	26.3
Pennsylvania					
Eastern	4	237	167	70	28.4
Middle	16	235	174	61	24.5
Western	11	222	178	45	19.7
Virgin Islands	0	--	--	--	--
FOURTH CIRCUIT	159	226	159	67	28.1
Maryland	5	258	184	74	27.8
North Carolina					
Eastern	26	194	142	52	26.3
Middle	0	--	--	--	--
Western	3	307	201	105	28.7
South Carolina	64	235	161	74	30.0
Virginia					
Eastern	15	229	169	60	26.3
Western	43	220	155	65	27.4
West Virginia					
Northern	3	234	179	55	22.5
Southern	0	--	--	--	--

Table 6 (cont.)

CIRCUIT	District	N	Mean			
			Current Sentence In Months	New Sentence In Months	Decrease In Months From Current Sentence ²	Percent Decrease From Current Sentence
FIFTH CIRCUIT		66	232	149	83	35.3
Louisiana						
Eastern		28	224	132	91	40.0
Middle		0	--	--	--	--
Western		3	260	143	117	45.8
Mississippi						
Northern		0	--	--	--	--
Southern		2	--	--	--	--
Texas						
Eastern		13	243	170	73	30.1
Northern		2	--	--	--	--
Southern		5	218	154	63	27.3
Western		13	225	147	78	34.6
SIXTH CIRCUIT		59	238	161	78	32.0
Kentucky						
Eastern		0	--	--	--	--
Western		7	223	150	73	33.4
Michigan						
Eastern		6	245	179	66	29.5
Western		5	234	164	70	29.4
Ohio						
Northern		25	245	151	94	36.7
Southern		1	--	--	--	--
Tennessee						
Eastern		14	226	163	63	27.1
Middle		1	--	--	--	--
Western		0	--	--	--	--
SEVENTH CIRCUIT		74	241	161	80	30.3
Illinois						
Central		15	251	163	88	30.1
Northern		9	235	184	51	20.7
Southern		13	253	172	81	32.2
Indiana						
Northern		11	231	164	66	23.0
Southern		16	224	116	108	43.6
Wisconsin						
Eastern		1	--	--	--	--
Western		9	266	201	65	23.2
EIGHTH CIRCUIT		69	246	172	74	29.2
Arkansas						
Eastern		7	278	192	86	33.8
Western		1	--	--	--	--
Iowa						
Northern		6	247	164	83	33.0
Southern		20	228	163	65	28.4
Minnesota		0	--	--	--	--
Missouri						
Eastern		11	209	171	38	18.2
Western		19	272	172	100	34.9
Nebraska		2	--	--	--	--
North Dakota		3	257	175	82	30.0
South Dakota		0	--	--	--	--

Table 6 (cont.)

CIRCUIT	District	N	Mean			
			Current Sentence In Months	New Sentence In Months	Decrease In Months From Current Sentence ²	Percent Decrease From Current Sentence
NINTH CIRCUIT		27	236	161	75	31.1
	Alaska	2	--	--	--	--
	Arizona	0	--	--	--	--
	California					
	Central	16	245	161	84	33.8
	Eastern	9	231	167	64	27.5
	Northern	0	--	--	--	--
	Southern	0	--	--	--	--
	Guam	0	--	--	--	--
	Hawaii	0	--	--	--	--
	Idaho	0	--	--	--	--
	Montana	0	--	--	--	--
	Nevada	0	--	--	--	--
	Northern Mariana Islands	0	--	--	--	--
	Oregon	0	--	--	--	--
	Washington					
	Eastern	0	--	--	--	--
	Western	0	--	--	--	--
TENTH CIRCUIT		19	255	171	83	32.3
	Colorado	0	--	--	--	--
	Kansas	13	234	143	91	37.2
	New Mexico	0	--	--	--	--
	Oklahoma					
	Eastern	0	--	--	--	--
	Northern	3	379	303	76	19.9
	Western	3	220	161	59	23.9
	Utah	0	--	--	--	--
	Wyoming	0	--	--	--	--
ELEVENTH CIRCUIT		158	252	179	72	28.2
	Alabama					
	Middle	0	--	--	--	--
	Northern	1	--	--	--	--
	Southern	0	--	--	--	--
	Florida					
	Middle	73	249	175	74	29.3
	Northern	14	285	184	101	35.5
	Southern	50	252	188	64	24.6
	Georgia					
	Middle	11	233	166	67	29.0
	Northern	2	--	--	--	--
	Southern	7	235	168	66	27.5

¹ Of the 1,051 cases in which the court granted a motion for a sentence reduction due to Section 404 of the First Step Act of 2018, six cases were excluded from this analysis because the cases cannot be matched with an original case in the Commission's records. Of the remaining 1,045 cases, 349 cases were excluded from this analysis because the offender was sentenced to time served but the resulting term of imprisonment could not be determined from the records received by the Commission.

² The average sentence lengths and the average decrease in months from the current sentence are rounded to the nearest whole number. Consequently, the average decrease in months from the current sentence may not equal the difference between the rounded average current sentence and the rounded average new sentence.

SOURCE: U.S. Sentencing Commission, First Step Act Datafile.