

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



January 2020

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.⁷ The data in this report reflects all motions granted through December 31, 2019 and for which court documentation was received, coded, and edited at the Commission by January 29, 2020.

⁷ The Commission does not collect information on denials of motions under the First Step Act.

Table 1

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

District	N	%	District	N	%
TOTAL	2,387	100.0			
Eastern North Carolina	174	7.3	Eastern Kentucky	16	0.7
South Carolina	151	6.3	Southern New York	15	0.6
Middle Florida	142	5.9	Southern Texas	14	0.6
Eastern Virginia	130	5.4	Eastern California	14	0.6
Western Virginia	115	4.8	District of Columbia	13	0.5
Southern Florida	104	4.4	Northern Texas	13	0.5
Central Illinois	96	4.0	Northern New York	12	0.5
Eastern Tennessee	65	2.7	Western Kentucky	12	0.5
Northern Illinois	64	2.7	Nebraska	12	0.5
Eastern Louisiana	63	2.6	Western New York	11	0.5
Northern Florida	53	2.2	Middle Louisiana	10	0.4
Middle North Carolina	47	2.0	Southern Alabama	10	0.4
Southern Iowa	44	1.8	Eastern New York	9	0.4
Western Wisconsin	42	1.8	Northern West Virginia	9	0.4
Eastern Pennsylvania	40	1.7	Western Washington	9	0.4
Western North Carolina	39	1.6	Colorado	6	0.3
Northern Ohio	39	1.6	Western Oklahoma	6	0.3
Eastern Missouri	37	1.6	Western Arkansas	5	0.2
Middle Pennsylvania	36	1.5	Alaska	5	0.2
Western Michigan	36	1.5	Northern Georgia	5	0.2
Eastern Texas	35	1.5	New Hampshire	4	0.2
Eastern Michigan	34	1.4	Southern Mississippi	4	0.2
Southern Indiana	33	1.4	Middle Tennessee	4	0.2
Maryland	31	1.3	North Dakota	3	0.1
Western Texas	31	1.3	Northern California	3	0.1
Northern Indiana	28	1.2	Oregon	3	0.1
Connecticut	26	1.1	Northern Oklahoma	3	0.1
Southern Illinois	26	1.1	Northern Mississippi	2	0.1
Massachusetts	25	1.0	Eastern Washington	2	0.1
Western Pennsylvania	24	1.0	New Mexico	2	0.1
Western Missouri	24	1.0	Eastern Oklahoma	2	0.1
Kansas	24	1.0	Vermont	1	0.0
Central California	23	1.0	South Dakota	1	0.0
Southern Georgia	23	1.0	Arizona	1	0.0
Eastern Arkansas	22	0.9	Southern California	1	0.0
Middle Georgia	21	0.9	Nevada	1	0.0
Maine	20	0.8	Middle Alabama	1	0.0
Rhode Island	20	0.8	Puerto Rico	0	0.0
Western Louisiana	19	0.8	Delaware	0	0.0
Northern Iowa	18	0.8	Virgin Islands	0	0.0
Northern Alabama	18	0.8	Guam	0	0.0
New Jersey	17	0.7	Hawaii	0	0.0
Southern Ohio	17	0.7	Idaho	0	0.0
Western Tennessee	17	0.7	Montana	0	0.0
Eastern Wisconsin	17	0.7	Northern Mariana Islands	0	0.0
Minnesota	17	0.7	Utah	0	0.0
Southern West Virginia	16	0.7	Wyoming	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	2,376	100.0
2013	2	0.1
2012	18	0.8
2011	102	4.3
2010	319	13.4
2009	356	15.0
2008	316	13.3
2007	308	13.0
2006	187	7.9
2005	159	6.7
2004	130	5.5
2003	115	4.8
2002	75	3.2
2001	50	2.1
2000	43	1.8
1999	35	1.5
1998	33	1.4
1997	27	1.1
1996	26	1.1
1995	24	1.0
1994	23	1.0
1993	13	0.5
1992	7	0.3
1991	3	0.1
1990	5	0.2

¹ Of the 2,387 cases in which the court granted a motion for a sentence reduction due to Section 404 of the First Step Act of 2018, 11 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	2,592	2,223	85.8	0	0.0	229	8.8	140	5.4
D.C. CIRCUIT	12	12	100.0	0	0.0	0	0.0	0	0.0
FIRST CIRCUIT	85	68	80.0	0	0.0	16	18.8	1	1.2
SECOND CIRCUIT	79	72	91.1	0	0.0	5	6.3	2	2.5
THIRD CIRCUIT	130	116	89.2	0	0.0	14	10.8	0	0.0
FOURTH CIRCUIT	707	691	97.7	0	0.0	2	0.3	14	2.0
FIFTH CIRCUIT	214	165	77.1	0	0.0	26	12.1	23	10.7
SIXTH CIRCUIT	271	226	83.4	0	0.0	33	12.2	12	4.4
SEVENTH CIRCUIT	397	303	76.3	0	0.0	94	23.7	0	0.0
EIGHTH CIRCUIT	188	150	79.8	0	0.0	9	4.8	29	15.4
NINTH CIRCUIT	86	61	70.9	0	0.0	23	26.7	2	2.3
TENTH CIRCUIT	43	43	100.0	0	0.0	0	0.0	0	0.0
ELEVENTH CIRCUIT	380	316	83.2	0	0.0	7	1.8	57	15.0

¹ Of the 2,387 cases in which the court granted a motion for a sentence reduction due to Section 404 of the First Step Act of 2018, 26 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, 2,592 origins were cited for the 2,361 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	87	3.7
Black	2,172	91.4
Hispanic	100	4.2
Other	18	0.8
Total	2,377	100.0
Citizenship		
U.S. Citizen	2,305	97.2
Non-Citizen	67	2.8
Total	2,372	100.0
Gender		
Male	2,339	98.1
Female	46	1.9
Total	2,385	100.0
Average Age at Original Sentence		32
Average Age at Resentencing		45

¹ Of the 2,387 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 (10), missing citizenship information (15), missing gender information (2), and missing age information (21).

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	%
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Weapon^{2,3}	43.5
Weapon Specific Offense Characteristic	23.8
Firearms Mandatory Minimum Applied	20.7
Safety Valve²	0.6
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Guideline Role Adjustments²	
Aggravating Role (USSG §3B1.1)	12.9
Mitigating Role (USSG §3B1.2)	0.7
Obstruction Adjustment (USSG §3C1.1)	8.4
Sentence Relative to the Guideline Range	
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Within Range	70.3
Above Range	0.9
Below Range	28.8
Criminal History Category	
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I	4.2
II	5.1
III	9.6
IV	8.9
V	6.0
VI	66.2
Career Offender (§4B1.1)²	57.4
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¹ Of the 2,387 cases in which the court granted a motion for a sentence reduction due to Section 404 of the First Step Act of 2018, 11 were excluded from this analysis because the cases cannot be matched with an original case in the Commission's records.

² This section was limited to the 2,276 cases with complete guideline application information.

³ In 22 cases the court applied the weapon specific offense characteristic and the offender was also convicted of a firearms offense carrying a mandatory minimum penalty.

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

Table 6

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

CIRCUIT District	N	Mean			
		Current Sentence In Months	New Sentence In Months	Decrease In Months From Current Sentence ²	Percent Decrease From Current Sentence
TOTAL	1,654	258	187	71	26.0
D.C. CIRCUIT	8	255	191	64	30.1
District of Columbia	8	255	191	64	30.1
FIRST CIRCUIT	35	272	200	72	23.9
Maine	15	276	208	69	23.5
Massachusetts	14	281	202	79	24.4
New Hampshire	2	--	--	--	--
Puerto Rico	0	--	--	--	--
Rhode Island	4	238	175	63	24.8
SECOND CIRCUIT	32	255	178	77	28.8
Connecticut	4	259	169	89	28.9
New York					
Eastern	8	231	169	62	27.2
Northern	11	264	185	79	26.8
Southern	7	255	161	94	38.0
Western	3	256	205	51	19.9
Vermont	0	--	--	--	--
THIRD CIRCUIT	75	246	184	62	23.7
Delaware	0	--	--	--	--
New Jersey	11	233	166	67	25.2
Pennsylvania					
Eastern	18	279	211	68	22.9
Middle	24	246	177	68	26.7
Western	22	224	177	47	20.2
Virgin Islands	0	--	--	--	--
FOURTH CIRCUIT	510	255	191	64	23.4
Maryland	18	231	180	51	22.0
North Carolina					
Eastern	146	244	182	62	24.0
Middle	38	263	210	53	18.3
Western	9	274	206	69	22.5
South Carolina	128	252	190	63	23.4
Virginia					
Eastern	68	291	216	75	24.1
Western	84	243	174	69	25.4
West Virginia					
Northern	9	257	222	36	15.0
Southern	10	311	224	87	25.1

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		157	255	174	81	31.3
Louisiana						
Eastern		59	229	143	87	36.6
Middle		7	289	241	48	17.8
Western		10	234	160	74	29.8
Mississippi						
Northern		0	--	--	--	--
Southern		4	257	192	65	28.7
Texas						
Eastern		35	291	203	88	29.0
Northern		7	325	259	66	22.2
Southern		9	265	202	63	24.2
Western		28	238	158	80	31.6
SIXTH CIRCUIT		163	251	184	66	25.7
Kentucky						
Eastern		7	183	154	28	14.3
Western		12	263	177	86	30.5
Michigan						
Eastern		18	256	196	60	24.1
Western		28	264	200	64	23.8
Ohio						
Northern		35	254	177	78	29.9
Southern		5	225	169	57	29.7
Tennessee						
Eastern		45	257	187	70	25.9
Middle		3	213	134	79	34.9
Western		11	235	195	40	15.2
SEVENTH CIRCUIT		177	262	185	76	26.2
Illinois						
Central		48	264	194	70	24.0
Northern		30	284	198	86	23.5
Southern		20	263	190	73	27.8
Indiana						
Northern		21	244	192	52	17.9
Southern		32	245	146	99	37.2
Wisconsin						
Eastern		8	250	199	50	20.1
Western		19	270	190	80	27.5
EIGHTH CIRCUIT		134	254	186	67	25.5
Arkansas						
Eastern		11	278	215	63	25.7
Western		5	251	180	71	28.3
Iowa						
Northern		15	280	196	84	30.4
Southern		42	258	189	69	24.8
Minnesota		6	248	217	31	11.8
Missouri						
Eastern		22	204	168	36	17.7
Western		24	264	173	92	32.7
Nebraska		6	256	191	64	25.7
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		44	245	164	80	30.7
	Alaska	3	200	140	60	29.2
	Arizona	0	--	--	--	--
	California					
	Central	20	264	181	83	31.1
	Eastern	14	229	171	58	25.1
	Northern	0	--	--	--	--
	Southern	1	--	--	--	--
	Guam	0	--	--	--	--
	Hawaii	0	--	--	--	--
	Idaho	0	--	--	--	--
	Montana	0	--	--	--	--
	Nevada	1	--	--	--	--
	Northern Mariana Islands	0	--	--	--	--
	Oregon	1	--	--	--	--
	Washington					
	Eastern	1	--	--	--	--
	Western	4	253	136	117	40.5
TENTH CIRCUIT		32	260	185	75	29.0
	Colorado	3	322	242	80	25.4
	Kansas	18	243	158	85	35.2
	New Mexico	2	--	--	--	--
	Oklahoma					
	Eastern	2	--	--	--	--
	Northern	3	379	303	76	19.9
	Western	4	231	168	63	25.0
	Utah	0	--	--	--	--
	Wyoming	0	--	--	--	--
ELEVENTH CIRCUIT		281	275	195	80	27.4
	Alabama					
	Middle	1	--	--	--	--
	Northern	5	349	190	159	41.7
	Southern	1	--	--	--	--
	Florida					
	Middle	119	268	190	79	27.7
	Northern	30	337	217	119	34.6
	Southern	94	266	198	68	23.9
	Georgia					
	Middle	19	242	173	69	28.4
	Northern	3	300	219	81	26.7
	Southern	9	275	207	67	25.4

¹ Of the 2,387 cases in which the court granted a motion for a sentence reduction due to Section 404 of the First Step Act of 2018, 696 cases were excluded from this analysis because the resulting term of imprisonment could not be determined from the documents received by the Commission. Another 37 cases were excluded because the court documentation provided did not specify the length of a new sentence of imprisonment but only a modification to the length of supervised release.

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.