



September 1, 2010

MEMORANDUM

TO: Chair Sessions
Commissioners
Judith W. Sheon

FROM: Office of Research and Data
Office of General Counsel

SUBJECT: Analysis of the Impact of Amendment to Section 4A1.1 of the
Sentencing Guidelines if the Amendment Were Applied Retroactively

I. INTRODUCTION

On May 1, 2010, the United States Sentencing Commission (the “Commission”) submitted to Congress an amendment¹ that would eliminate the consideration of “recency” points as described in subsection (e) of §4A1.1 of the Commission’s *Guidelines Manual*.² The amendment will become effective November 1, 2010, absent congressional action to the contrary. This memorandum estimates the impact of this amendment to the federal sentencing guidelines if the guideline amendment were made retroactively applicable to offenders currently incarcerated in the federal prison system.

Part II describes the current criminal history provision that is the subject of the amendment and the retroactive application of the applicable amendment under the sentencing guidelines. Part III contains an analysis of the impact this change would have on the sentence of offenders who are currently incarcerated if the Commission were to make the amendment retroactive.

¹ Sentencing Guidelines for United States Courts, 75 Fed. Reg. 27388-01 (May 14, 2010).

² United States Sentencing Commission, GUIDELINES MANUAL [hereinafter USSG].

II. RECENCY PROVISION

A. Recency Provision Before Amendment

The current version of the guidelines provides that, under USSG §4A1.1(e), one or two points are added to a defendant's criminal history score if the defendant committed the instant offense less than two years after release from imprisonment on a sentence counted under subsection (a) or (b) of USSG §4A1.1 or while in imprisonment or escape status on such a sentence. In the package of amendments submitted to Congress on May 1, 2010, the Commission submitted an amendment that would remove this provision from the guidelines.³ In its public Reason for Amendment, the Commission explained its reasoning as follows:

The amendment is a result of the Commission's continued review of criminal history issues. This multi-year review was prompted in part because criminal history issues are often cited by sentencing courts as reasons for imposing non-government sponsored below range sentences, particularly in cases in which recency points were added to the criminal history score under §4A1.1(e).

As part of its review, the Commission undertook analyses to determine the extent to which recency points contribute to the ability of the criminal history score to predict the defendant's risk of recidivism. *See generally* USSG Ch. 4, Pt. A, intro. comment ("To protect the public from further crimes of the particular defendant, the likelihood of recidivism and future criminal behavior must be considered."). Recent research isolating the effect of § 4A1.1(e) on the predictive ability of the criminal history score indicated that consideration of recency only minimally improves the predictive ability.

In addition, the Commission received public comment and testimony suggesting that the recency of the instant offense to the defendant's release from imprisonment does not necessarily reflect increased culpability. Public comment and testimony indicated that defendants who recidivate tend to do so relatively soon after being released from prison but suggested that, for many defendants, this may reflect the challenges to successful reentry after imprisonment rather than increased culpability.

Finally, Commission data indicated that many of the cases in which recency points apply are sentenced under Chapter Two guidelines that have provisions based on criminal history. The amendment responds

³ Sentencing Guidelines for United States Courts, 75 Fed. Reg. 27388-01 (May 14, 2010).

to suggestions that recency points are not necessary to adequately account for criminal history in such cases.⁴

B. Retroactivity of the Guideline Amendment

1. Statutory authority

The Commission is statutorily authorized to determine whether a guideline amendment that reduces the sentencing range applicable to a particular offense or category of offenses may be retroactively applied. Section 994(u) of title 28, United States Code, specifically provides that:

[i]f the Commission reduces the term of imprisonment recommended in the guidelines applicable to a particular offense or category of offenses, it shall specify in what circumstances and by what amount the sentences of prisoners serving terms of imprisonment for the offense may be reduced.⁵

Sentencing courts are statutorily precluded from applying a guideline amendment retroactively unless the Commission has designated such amendment for retroactive application. Section 3582(c)(2) of title 18, United States Code, provides that the court may not modify a term of imprisonment once it has been imposed except that:

in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o), . . . the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.⁶

2. Guidelines Manual policy statement

To implement 28 U.S.C. § 994(u) and to provide guidance to a court when considering a motion under 18 U.S.C. § 3582(c)(2), the Commission promulgated USSG §1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range) (Policy Statement). Subsection (a) of USSG §1B1.10 specifies when a reduction pursuant to 18 U.S.C. § 3582(c)(2) is available:

In a case in which a defendant is serving a term of imprisonment, and the guideline range applicable to that defendant has subsequently been

⁴ *Id.*

⁵ 28 U.S.C. § 994(u).

⁶ 18 U.S.C. § 3582(c)(2).

lowered as a result of an amendment to the Guidelines Manual listed in subsection (c) below, the court may reduce the defendant's term of imprisonment as provided by 18 U.S.C. § 3582(c)(2). As required by 18 U.S.C. § 3582(c)(2), any such reduction in the defendant's term of imprisonment shall be consistent with this policy statement.

Section 1B1.10 further explains that a reduction would not be consistent with the policy statement if none of the amendments listed in subsection (c) of USSG §1B1.10 is applicable to the defendant or if a listed amendment "does not have the effect of lowering the defendant's applicable guideline range."⁷ Additionally, that section provides that proceedings under 18 U.S.C. § 3582(c)(2) "do not constitute a full resentencing of the defendant."⁸

In addition to specifying which guideline amendments may be retroactively applied, consistent with 28 U.S.C. § 994(u), USSG §1B1.10 guides courts as to the amount by which a sentence may be reduced under 18 U.S.C. § 3582(c)(2). Subsection (b)(1) of USSG §1B1.10 states:

In determining whether, and to what extent, a reduction in the term of imprisonment is warranted for a defendant eligible for consideration under 18 U.S.C. § 3582(c)(2), the court shall determine the amended guideline range that would have been applicable to the defendant if the amendment(s) to the guidelines listed in subsection (c) had been in effect at the time the defendant was sentenced. In making such determination, the court shall substitute only the amendments listed in subsection (c) for the corresponding guideline provisions that were applied when the defendant was sentenced and shall leave all other guideline application decisions unaffected.⁹

Section 1B1.10 further provides that, as a general matter, the extent of the reduction granted should not go below the amended guideline range determined in

⁷ USSG §1B1.10(a)(2).

⁸ USSG §1B1.10(a)(3). Listing an amendment in §1B1.10(c) "reflects policy determinations by the Commission that a reduced guideline range is sufficient to achieve the purposes of sentencing and that, in the sound discretion of the court, a reduction in the term of imprisonment may be appropriate for previously sentenced, qualified defendants." See USSG §1B1.10, comment (backg'd.). The background commentary further provides that "authorization of such a discretionary reduction does not otherwise affect the lawfulness of a previously imposed sentence, does not authorize a reduction in any other component of the sentence, and does not entitle a defendant to a reduced term of imprisonment as a matter of right." *Id.* Among the factors considered by the Commission in selecting the amendments included in subsection (c) are "the purpose of the amendment, the magnitude of the change in the guideline range made by the amendment, and the difficulty of applying the amendment retroactively to determine an amended guideline range under subsection (b)(1)." *Id.*

⁹ USSG §1B1.10(b)(1).

accordance with subsection (b)(1).¹⁰ However, an exception is noted where the sentence originally imposed “was less than the term of imprisonment provided by the guideline range,” in which case “a reduction comparably less than the amended guideline range . . . may be appropriate.”¹¹

The analysis presented below is based on the constraints imposed by 18 U.S.C. § 3582(c)(2) and USSG §1B1.10 and its commentary on the extent of any reduction to the amended guideline range under section 3582(c)(2). Consequently, the analysis presented below accounts only for the application of the guideline amendment. Consistent with the United States Supreme Court’s recent decision in *Dillon v. United States*,¹² the analysis also is based on the inapplicability of the decision in *United States v. Booker*¹³ to 18 U.S.C. § 3582(c)(2) sentence modifications.

III. IMPACT OF RETROACTIVE APPLICATION OF THE RECENCY AMENDMENT

A. Introduction to the Data Analysis

This section of the memorandum provides an analysis of the estimated impact of the Recency Amendment, should it be made retroactive, on offenders who were sentenced on or before September 30, 2009, to a period of incarceration in the federal prison system.¹⁴ This analysis was prepared by the Commission’s Office of Research and Data (ORD). ORD estimates that 7,977 offenders would be eligible to receive a reduced sentence if the Recency Amendment were made retroactive.¹⁵

¹⁰ USSG §1B1.10(b)(2).

¹¹ USSG §1B1.10(b)(2)(B).

¹² *Dillon v. United States*, 130 S. Ct. 2683 (2010) (holding that proceedings under 18 U.S.C. § 3582(c)(2) do not implicate the Sixth Amendment’s jury trial right and that the remedial *Booker* opinion does not prevent the statute from giving §1B1.10 mandatory effect in such proceedings).

¹³ *United States v. Booker*, 543 U.S. 220 (2005) (rendering the guidelines advisory).

¹⁴ This analysis does not include any estimate of the number of offenders who may be sentenced during fiscal year 2010 (*i.e.*, after October 1, 2009), or the impact of the Recency Amendment on such offenders.

¹⁵ The findings, presented herein, on the impact of the removal of recency points from the criminal history score of offenders currently incarcerated differ markedly from the findings published in the recent Commission publication COMPUTATION OF “RECENCY” CRIMINAL HISTORY POINTS UNDER USSG §4A1.1(e), which estimated the impact of the removal of recency points from the criminal history score of offenders who will be sentenced in the future. The differences in findings result from the differences in the population under study. The population of offenders currently incarcerated, included in this analysis, comprise offenders sentenced to longer prison sentences over a substantial period of time (the past 20 years) and who, because of those lengthy sentences, remain incarcerated. These differences are reflected primarily in the distribution of offense types among the two populations, the length of current sentence, the extent of reduction as a result of the amendment, and the distribution of criminal history score among Criminal History Categories of the offenders eligible for a reduction. In particular, because the average sentence for drug trafficking offenders and firearms offenders is much longer than that for immigration

B. Estimate of the Total Number of Incarcerated Offenders Eligible for Sentence Modification

ORD estimates that 7,977 offenders would be eligible to receive a reduced sentence pursuant to the retroactive application of the Recency Amendment. These offenders were sentenced between October 1, 1990, and September 30, 2009 (fiscal years 1991 through 2009), and are currently incarcerated.¹⁶ This estimate was derived through the process described below.

1. Examination of the Commission's Files for Fiscal Years 1991 Through 2009 to Determine the Number of Offenders Receiving Recency Points and, of Those, the Number Still Incarcerated Who Appear to Be Eligible For Sentence Modification

ORD examined Commission datasets from October 1, 1990, through September 30, 2009 (fiscal years 1991 through 2009), to determine the number of cases in those datasets in which an offender appears to be eligible to receive a reduced sentence if the Recency Amendment were made retroactive. For purposes of this analysis, a case was considered to be eligible for retroactive application of the Recency Amendment if it met the following criteria:

- (a) recency points were included in the criminal history score for the offender pursuant to application of USSG §4A1.1(e); and
- (b) the inclusion of recency the points raised the offender's Criminal History Category to a category higher than the one to which the offender would have been assigned had the recency points not been included.

As described on Figure A, between fiscal years 1991 through 2009 there were 1,056,665 cases reported to the Commission in which an offender was sentenced under the guidelines. In 15.6 percent of those cases (n = 164,704) recency points were included in the calculation of the offender's criminal history score pursuant to §4A1.1(e). Of the cases involving recency points, 22,941 met the inclusion criteria for the analysis discussed in this memorandum and were ones in which the offender is projected to be

offenders, the population of offenders currently incarcerated (*i.e.*, those who might benefit from retroactive application of the recency amendment) consists of a greater proportion of drug trafficking and firearms offenders than is the case in the population of offenders who will be sentenced in the future pursuant to the recency amendment.

¹⁶ The Federal Bureau of Prisons (BOP) has informed the Commission that the BOP has records relating to 41,861 offenders sentenced between fiscal years 1991 and 2009 for whom points were assessed pursuant to §4A1.1(e) and who the BOP estimates will still be incarcerated on November 1, 2010. An additional 851 offenders not included in BOP records, but who were sentenced between October 1, 2008, and September 30, 2009, according to Commission records, and who the Commission projects will still be incarcerated on November 1, 2010, also have been included in this analysis. The total number of cases in this analysis is 42,712 cases.

incarcerated on November 1, 2010. Figure A summarizes the manner by which this number was derived.

Figure A

Summary Analysis of Retroactive Eligible Recency Cases Fiscal Years 1991 – 2009

All cases sentenced under the guidelines between fiscal years 1991 and 2009
N = **1,090,665**

Number of offenders in USSC dataset receiving criminal history points for recency
N = **164,704**

Number of offenders receiving criminal history points for recency
who are projected to be in prison on November 1, 2010
N = **42,712**

Number of those offenders receiving 14 or fewer total criminal history points
N = **29,215**

Number of those offenders not determined to be a Career Offender pursuant to §4B1.1
N = **23,990**

Number of those offenders for whom no other Chapter 4 provision required assignment
to a Criminal History Category higher than that determined under Chapter Four, Part A
N = **22,941**

2. Total Number of Offenders Eligible for Retroactive Application of the Recency Amendment

After ORD identified the 22,941 offenders who appeared eligible to receive a reduced sentence under 18 U.S.C. § 3582(c)(2) if the Recency Amendment were made retroactive, the Commission then recalculated the sentence for each offender using its Prison Impact Model (described below). Using this model, ORD determined that retroactive application of the Recency Amendment would have no effect on the guideline range that was determined at the time of sentencing for 14,964 of these 22,941 offenders. These offenders were removed from further analysis.

The reasons why no change in the respective guideline ranges occurred in their cases are as follows:

(A) in 13,401 cases the change in the criminal history score after application of the amendment did not change the final Criminal History Category to which the offender was assigned;

(B) in 728 cases the offender was sentenced at the statutory minimum sentence and that minimum did not change as a result of the amendment;

(C) in 369 cases the original guideline range was less than or equal to a statutory minimum sentence and the offender received a departure for substantial assistance pursuant to USSG §5K1.1, however, the guideline sentence did not change as a result of the amendment;¹⁷

(C) in 457 cases the guideline range did not change; and

(E) in 9 cases the offenders would receive a sentence reduction of less than one month.¹⁸

After accounting for those offenders for whom the sentencing range would not change after application of the Recency Amendment, ORD estimates that the total number of offenders who are estimated to be eligible to receive a reduced sentence under 18 U.S.C. § 3582(c)(2) and projected to be incarcerated on November 1, 2011, is 7,977.¹⁹

C. Distribution of Eligible Offenders by Year of Sentence

Table 1 presents the number of offenders eligible to seek a sentence reduction by the year in which they were sentenced. As would be expected, the more recent the sentencing year, the greater the number of offenders who would be eligible to receive a reduced sentence under 18 U.S.C. § 3582(c)(2). Over half of the eligible offenders identified in this analysis (n = 4,259) were sentenced in the two most recent fiscal years (FY2008 and FY2009).

¹⁷ See USSG §5G1.2(b). In such cases, the guideline sentence is the statutorily required minimum sentence.

¹⁸ These offenders would be eligible to receive a sentence reduction for the fractional portion of the month; however, the Commission's Prison Impact Model categorizes cases with a change in sentence of less than a month as a case in which no change would occur.

¹⁹ This estimate includes 161 offenders for whom the information necessary to perform the analysis in the Commission's Prison Impact Model was missing. They are included in the total number of offenders who appear to be eligible to receive a reduced sentence if the Recency Amendment was made retroactive because they meet the criteria for inclusion based on the information that is available.

Table 1
Offenders Eligible for Retroactive Application of the Recency Amendment
(FY1991 through FY2009)

FISCAL YEAR	ELIGIBLE RECENCY AMENDMENT OFFENDERS	
	N	%
	7,977	100.0
2009	2,742	34.4
2008	1,517	19.0
2007	969	12.1
2006	739	9.3
2005	489	6.1
2004	342	4.3
2003	249	3.1
2002	195	2.4
2001	136	1.7
2000	120	1.5
1999	92	1.2
1998	84	1.1
1997	59	0.7
1996	63	0.8
1995	49	0.6
1994	48	0.6
1993	31	0.4
1992	32	0.4
1991	21	0.3

Total percentages may not add to 100% due to rounding.

SOURCE: U.S. Sentencing Commission, 1991 - 2009 Datafiles,
USSCFY91 - USSCFY09.

D. Geographic Distribution of Eligible Offenders and Year of Sentence

Eligible offenders were sentenced in all federal judicial districts. The Southern District of Texas was the district with the most eligible offenders (n=724), accounting for 9.1 percent of all eligible offenders, while the fewest number of eligible offenders (n=1) were sentenced in the District of the Northern Mariana Islands. Seventeen of the 94 federal judicial districts account for half of all offenders eligible for retroactive application of the Recency Amendment. Three judicial districts bordering Mexico account for more than one fifth (21.2%) of all affected cases: Southern District of Texas (9.1%), Western District of Texas (7.3%), and Arizona (4.8%).

Table 2 presents information on the districts in which the eligible offenders were originally sentenced and, therefore, where the issue of retroactive application of the Recency Amendment likely would be decided. This list presents the districts in descending order by the number of eligible offenders sentenced in each district.

Table 2
Geographic Distribution of Offenders Eligible for Retroactive Application of the
Recency Amendment by Judicial District
(FY1991 through FY2009)

<u>DISTRICT</u>	<u>N</u>	<u>%</u>	<u>DISTRICT</u>	<u>N</u>	<u>%</u>
Total	7,977	100.0			
Southern Texas	724	9.1	Puerto Rico	56	0.7
Western Texas	579	7.3	Northern Indiana	56	0.7
Arizona	383	4.8	Western Oklahoma	55	0.7
Eastern Virginia	254	3.2	Southern Mississippi	54	0.7
Southern California	239	3.0	Minnesota	54	0.7
Northern Texas	226	2.8	Nevada	54	0.7
Central California	201	2.5	Western New York	53	0.7
Middle Florida	198	2.5	Western Washington	53	0.7
Eastern Texas	171	2.1	Colorado	53	0.7
Southern Florida	162	2.0	Western Louisiana	50	0.6
Eastern North Carolina	151	1.9	Southern Indiana	49	0.6
South Carolina	146	1.8	Eastern Kentucky	48	0.6
Eastern Missouri	144	1.8	Southern Iowa	47	0.6
Nebraska	137	1.7	Oregon	46	0.6
Eastern California	131	1.6	Northern New York	45	0.6
New Mexico	117	1.5	District of Columbia	44	0.6
Northern Illinois	115	1.4	Northern Alabama	44	0.6
Western North Carolina	103	1.3	Hawaii	43	0.5
Western Missouri	100	1.3	Wyoming	43	0.5
Western Tennessee	95	1.2	South Dakota	41	0.5
Southern New York	91	1.1	Western Wisconsin	40	0.5
Eastern Pennsylvania	91	1.1	Middle Georgia	40	0.5
Western Michigan	90	1.1	Southern West Virginia	39	0.5
Middle Pennsylvania	86	1.1	Middle Tennessee	38	0.5
Southern Ohio	84	1.1	Idaho	37	0.5
Eastern New York	82	1.0	Montana	35	0.4
Maryland	81	1.0	Eastern Washington	35	0.4
Middle North Carolina	81	1.0	Northern Oklahoma	33	0.4
Western Virginia	81	1.0	Massachusetts	32	0.4
Eastern Tennessee	81	1.0	Western Kentucky	30	0.4
Northern Ohio	79	1.0	Connecticut	28	0.4
Utah	77	1.0	Alaska	27	0.3
Southern Georgia	77	1.0	Middle Alabama	24	0.3
Northern West Virginia	72	0.9	Eastern Arkansas	23	0.3
Central Illinois	72	0.9	Western Arkansas	23	0.3
Eastern Michigan	68	0.9	Delaware	21	0.3
Eastern Wisconsin	68	0.9	Middle Louisiana	20	0.3
Kansas	68	0.9	North Dakota	19	0.2
Northern Florida	67	0.8	New Hampshire	18	0.2
Southern Illinois	65	0.8	Northern Mississippi	18	0.2
Southern Alabama	62	0.8	Rhode Island	15	0.2
Northern California	59	0.7	Maine	14	0.2
Northern Georgia	59	0.7	Vermont	12	0.2
Western Pennsylvania	58	0.7	Eastern Oklahoma	12	0.2
Eastern Louisiana	58	0.7	Virgin Islands	4	0.1
Northern Iowa	58	0.7	Guam	3	0.0
New Jersey	57	0.7	Northern Mariana Islands	1	0.0

Total percentages may not add to 100% due to rounding.

SOURCE: U.S. Sentencing Commission, 1991 - 2009 Datafiles, USSCFY91 - USSCFY09.

Table 3 presents the number of eligible offenders displayed by the circuit in which the district court that imposed the sentence is located. Over half (53.3%) of the eligible offenders were sentenced in district courts within three circuits. Nearly one quarter (23.8%) of the eligible offenders were sentenced in district courts in the Fifth Circuit (n=1,900), an additional 16.9 percent (n = 1,347) were sentenced in district courts in the Ninth Circuit, and 12.6 percent (n = 1,008) were originally sentenced in district courts in the Fourth Circuit. The fewest eligible offenders were sentenced in the District of Columbia Circuit (n = 44) (which comprises only one federal judicial district) and the First Circuit (n = 135).

Table 3
Geographic Distribution of Offenders Eligible for Retroactive Application of the
Recency Amendment by Judicial Circuit
(FY1991 through FY2009)

CIRCUIT	N	%
Fifth Circuit	1,900	23.8
Ninth Circuit	1,347	16.9
Fourth Circuit	1,008	12.6
Eleventh Circuit	733	9.2
Eighth Circuit	646	8.1
Sixth Circuit	613	7.7
Seventh Circuit	465	5.8
Tenth Circuit	458	5.7
Third Circuit	317	4.0
Second Circuit	311	3.9
First Circuit	135	1.7
DC Circuit	44	0.6
Total	7,977	100.0

Total percentages may not add to 100% due to rounding.

SOURCE: U.S. Sentencing Commission, 1991 - 2009 Datafiles, USSCFY91 - USSCFY09.

E. Offender and Offense Characteristics

Table 4 presents information on the demographic characteristics of the offenders eligible for retroactive application of the Recency Amendment. The majority are U.S. citizens (72.8%) and male (97.2%). African-Americans are the most common racial group among these offenders but account for less than half (40.8%) of the eligible offenders. The average age of these offenders on November 1, 2010, will be 36 years.

Table 4
Demographic Characteristics of Offenders Eligible for Retroactive Application
of the Recency Amendment
(FY1991 through FY2009)

DEMOGRAPHICS		
<u>Race/Ethnicity</u>		
White	1,694	21.3%
Black	3,244	40.8%
Hispanic	2,814	35.4%
Other	197	2.5%
Total	7,949	100.0%
<u>Citizenship</u>		
U.S. Citizen	5,805	72.8%
Non-Citizen	2,165	27.2%
Total	7,970	100.0%
<u>Gender</u>		
Male	7,756	97.2%
Female	220	2.8%
Total	7,976	100.0%
<u>Average Age</u>		
	36	32
	(as of November 1, 2010)	(at sentencing)

¹ The analysis involves a total of 7,977 cases; however, cases missing information for any specific analysis are excluded from that analysis.

Total percentages may not add to 100% due to rounding.

SOURCE: U.S. Sentencing Commission, 1991 - 2009 Datafiles, USSCFY91 - USSCFY09.

In order to better understand the offense conduct of the offenders who are eligible for retroactive application of the Recency Amendment, the Commission analyzed offense-related factors that contributed to the sentence originally imposed on each offender. Table 5 displays the offense types of the eligible offenders. Over eighty percent of these offenders were sentenced to one of three offense types: drug trafficking offenses (n = 2,989, 37.5%); firearms offenses (n = 1,877, 23.5%); and immigration offenses (1,834, 23.0%).²⁰ The data for drug tracking offenders is further analyzed by the primary drug type involved in the case.

Table 5
Selected Offense Types of Offenders Eligible for Retroactive Application
of the Recency Amendment
(FY1991 through FY2009)

PRIMARY OFFENSE	N	%
Drug Trafficking Offenses²	3,025	37.9
Powder Cocaine	509	17.0
Crack Cocaine	1,292	43.2
Heroin	125	4.2
Marijuana	307	10.3
Methamphetamine	696	23.3
Other	61	2.0
Firearms Offenses	1,878	23.5
Immigration Offenses	1,834	23.0
Robbery Offenses	432	5.4
All Other Offenses³	808	10.1
Total	7,977	100.0

¹The analysis involves a total of 7,977 cases. Total percentages for any specific year may not add to 100% due to rounding. Drug type information is not available for Fiscal Year 1991.

²Cases where drug type information is missing but the offense type is Drug Trafficking are included in the Drug Trafficking total but not in the drug type breakout.

³Cases missing offense type information are included in this category.

SOURCE: U.S. Sentencing Commission, 1991 - 2009 Datafiles, USSCFY91 - USSCFY09.

²⁰ The immigration offenders are predominately those convicted of unlawfully entering or remaining in the United States.

Table 6 displays the position of the original sentences relative to the guideline range of offenders eligible for retroactive application of the Recency Amendment. Two thirds of these offenders (67.5%) were originally sentenced within the applicable guideline range.

Table 6
Position Relative to the Guideline Range of Offenders Eligible for Retroactive
Application of the Recency Amendment
(FY1991 through FY2009)

Within Range	5,317	67.5%
Above Range	245	3.1%
Substantial Assistance §5K1.1	753	9.6%
Otherwise Below Range	1,557	19.8%
Total	7,872	100%

¹ The analysis involves a total of 7,977 cases; however, cases missing information for any specific analysis are excluded from that analysis.

Total percentages may not add to 100% due to rounding.

SOURCE: U.S. Sentencing Commission, 1991 - 2009 Datafiles, USSCFY91 - USSCFY09.

Table 7 displays the position of the sentence relative to the guideline range of the eligible offenders by the fiscal year of the sentencing date.

Table 7
Position Relative to the Guideline Range of Offenders Eligible for Retroactive
Application of the Recency Amendment by Fiscal Year of Sentencing
(FY1991 through FY2009)

	Fiscal Year	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Within Range	N	18	25	26	33	43	52	46	60	71	91	97	136	181	252	357	537	689	980	1,623
	%	90	83.3	89.7	75.0	91.5	91.2	88.5	83.3	79.8	85.0	74.6	74.3	74.2	75.9	73.9	73.0	71.4	64.9	59.2
Above Range	N	1	3	0	9	2	2	3	3	4	1	3	6	6	9	13	31	26	40	83
	%	5	10.0	0.0	20.5	4.3	3.5	5.8	4.2	4.5	0.9	2.3	3.3	2.5	2.7	2.7	4.2	2.7	2.6	3.0
Substantial Assistance USSG §5K1.1	N	1	1	1	1	0	2	0	4	7	9	18	22	39	56	53	80	112	152	195
	%	5	3.3	3.4	2.3	0.0	3.5	0.0	5.6	7.9	8.4	13.8	12.0	16.0	16.9	11.0	10.9	11.6	10.1	7.1
Otherwise Below Range	N	0	1	2	1	2	1	3	5	7	6	12	19	18	15	60	88	138	338	841
	%	0	3.3	6.9	2.3	4.3	1.8	5.8	6.9	7.9	5.6	9.2	10.4	7.4	4.5	12.4	12.0	14.3	22.4	30.7

The analysis involves a total of 7,977 cases; however, cases missing information for any specific analysis are excluded from that analysis. Total percentages for any specific year may not add to 100% due to rounding.

SOURCE: U.S. Sentencing Commission, 1991 - 2009 Datafiles, USSCFY91 - USSCFY09.

Table 8 presents information on the Criminal History Categories of offenders eligible for retroactive application of the Recency Amendment. The figure shows the number and percent of the eligible offenders in the Criminal History Category to which they were assigned when originally sentenced and then in the category to which they would be assigned pursuant to the amendment.

Table 8
Change in Criminal History Category of Offenders Eligible for Retroactive
Application of the Recency Amendment
(FY1991 through FY2009)

<u>Original Criminal History Category</u>	<u>New Criminal History Category</u>	<u>Number of Offenders Changing Criminal History Category</u>	<u>Percent of Offenders Changing Criminal History Category</u>
II	I	= 12	0.2%
III	II	= 731	9.7%
IV	III	= 2,363	31.3%
V	IV	= 2,477	32.8%
VI	V	= 1,966	26.0%
Total		= 7,549	100.0%

Total percentages may not add to 100% due to rounding.

SOURCE: U.S. Sentencing Commission, 1991 - 2009 Datafiles, USSCFY91 - USSCFY09.

F. Extent of Possible Sentence Reduction and Projected Release Dates

As part of its analysis, ORD estimated the release date for each offender eligible to receive a reduced sentence under 18 U.S.C. § 3582(c)(2) should the Recency Amendment be made retroactive, provided the documentation received for that offender's case was sufficient to perform the analysis.²¹ This calculation provides an estimate of the overall number of offenders whose sentence would expire in each fiscal year, if the amendment was applied to the maximum extent provided by USSG §1B1.10. This information is also presented by the judicial district in which the offenders were sentenced.

²¹ Of the 7,977 offenders who appear to be eligible for relief under the amendment, Commission records contained sufficient information to perform this analysis for 7,549 offenders.

1. Methodology and Assumptions for Determining Sentence Reduction and Release Dates

The methodology for this analysis is based on the Commission's Prison Impact Model, which has been in use in some form since the guidelines were first developed. This model is used to estimate the impact of proposed statutory and guideline amendments on newly sentenced offenders and to project the future impact those amendments will have on bed space in the BOP. For this analysis, those offenders who appear to be eligible to receive a reduced sentence under 18 U.S.C. § 3582(c)(2) were hypothetically "resentenced" with the computer program as if the amended guideline provisions had been in effect in the year in which they were sentenced. The new sentence for each offender was then compared with the original (*i.e.*, actual) sentence for that offender to determine the average reduction in sentence length.²² A new release date for each offender also was calculated in order to determine the year in which the offender would be eligible for release if he or she were provided the full reduction in sentence provided by the amendment.²³

In performing this analysis, ORD was required to make assumptions (set forth below) concerning the decisions courts would make in determining whether, and to what extent, to reduce the sentences of offenders eligible to receive a modification of sentence pursuant to the Recency Amendment. These assumptions may not hold in every case. The analysis estimates the impact of changes to USSG §4A1.1 reflecting the elimination of subpart (e). This analysis does not reflect any other change in the sentence, consistent with Application Note 2 of USSG §1B1.10.

²² As a result of the retroactive application of the 2007 Crack Cocaine Guideline Amendment to the Guidelines (Amendment 706, as amended by Amendment 711), which adjusted downward by two levels the base offense level assigned to each threshold quantity of crack cocaine listed in the Drug Quantity Table in USSG §2D1.1, the current sentence of some offenders differs from that originally imposed. For those offenders who received a modification of sentence pursuant to the 2007 Crack Cocaine Guideline Amendment that was reported to the Commission by July 20, 2010, the modified sentence was used as the original (*i.e.*, current) sentence for this analysis.

²³ In 446 cases included in the analysis as ones in which the offender is eligible for a sentence reduction under the Recency Amendment, the BOP reports the offender as still incarcerated, however, the Commission's prison impact model calculated that the offender should have been released before November 1, 2010. This discrepancy may result from several factors including: the offender did not begin serving his or her sentence until after the sentence date provided by the court, the offender did not begin serving his or her federal sentence until after serving a state sentence, or the offender committed an additional offense while incarcerated and was sentenced to serve an additional, and consecutive, term of imprisonment. Because the Commission's prison impact model calculated that these offenders would be released by November 1, 2010, the release timetables presented in this memorandum may incorporate an earlier release date for these offenders than actually will occur. These cases were retained in the tables in an effort to provide the most inclusive effect of the amendment.

The assumptions used in this analysis are as follows:

(1) offenders would be sentenced at the same point in the new guideline range as they were when originally sentenced;²⁴

(2) offenders sentenced outside the applicable guideline range at the time they were sentenced would be sentenced to a new position outside the amended guideline range that is the same proportional distance above or below the amended guideline range as their original sentence was from the guideline range in effect at the original sentencing;

(3) offenders for whom the new estimated sentence is below an applicable mandatory minimum sentence, and where no safety valve or substantial assistance reduction was applied when the offender was originally sentenced, would be sentenced at the applicable mandatory minimum;²⁵

(4) offenders classified as Career Offenders,²⁶ Armed Career Criminals,²⁷ Repeat and Dangerous Sex Offenders, or Terrorists, and assigned to a Criminal History Category equal to or greater than the Criminal History Category as determined by the offender's criminal history score would remain in those classifications;

(5) the sentence for each offender would be reduced based on the maximum good conduct credit allowed by the BOP; and

²⁴ As discussed in Part II of this memorandum, courts would not be required to reduce the sentence for any offender seeking such a reduction under the Recency Amendment, were it made retroactive. Courts also could sentence an offender to any point in the new guideline range, and would not be required to impose a sentence at the same point in the new range as it did when first sentencing the offender. For offenders sentenced to a higher point in the new sentencing range than in the original range, assumption (1) discussed in the text would overestimate the amount of the offender's sentence reduction. For offenders sentenced to a lower point in the new sentencing range than in the original range, that assumption would underestimate the amount of the offender's sentence reduction.

²⁵ This assumption is likely to underestimate the amount of the sentence reduction and projected release dates for some offenders. Because of limitations in Commission data, the final sentence imposed on any offender who received a reduced sentence pursuant to Federal Rule of Criminal Procedure 35(b) for cooperating with the government after they were incarcerated is unknown. Some offenders who received a reduced sentence under Rule 35(b) in this manner currently may have a sentence that is below the otherwise applicable statutory mandatory minimum penalty, because the court was authorized to impose a sentence below that mandatory minimum penalty. For these offenders, the Commission's assumption that any modification of sentence pursuant to the Recency Amendment would be limited by the statutory mandatory minimum penalties would be inaccurate and, therefore, underestimate the magnitude of sentence reduction for some offenders. In such a case, the actual release date for these offenders would be earlier than the projected release date.

²⁶ See USSG §4B1.1.

²⁷ See USSG §4B1.4.

(6) offenders would serve the lesser of the newly calculated sentence or their respective life expectancies.²⁸

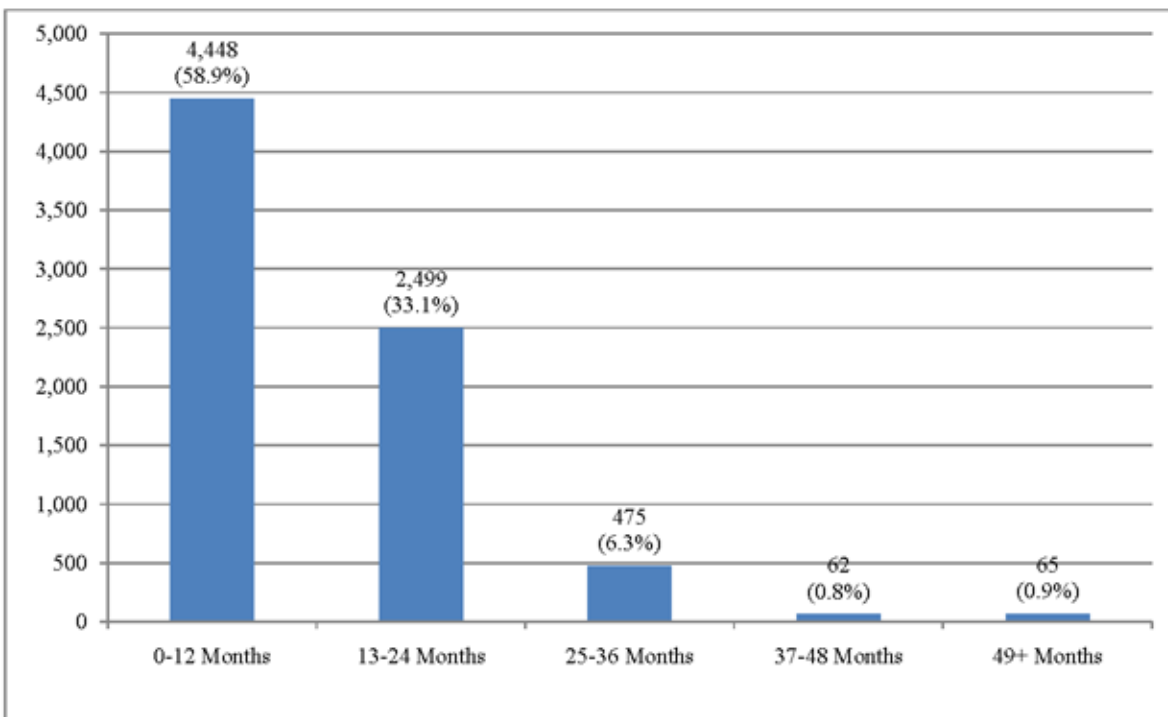
ORD further assumed that the effective date of the Recency Amendment if it were applied retroactively to these offenders would be November 1, 2010, and that pursuant to 18 U.S.C. § 3582(c)(2) courts applying the amendment retroactively would adhere to the limitations on the extent of sentence reduction outlined in USSG §1B1.10.

²⁸ The Commission's Prison Impact Model incorporates actuarial tables based on race and gender to predict life expectancy.

2. Estimated Sentence Reduction

Based on these assumptions, the average sentence reduction for all impacted offenders with sufficient information to perform this analysis would be 11.8 percent (or 13 months, from 110 months to 97 months). Table 9 shows that more than half of the eligible offenders (n = 4,448, 58.9%) would receive a sentence reduction of 12 months or less. Over 90 percent (n = 6,947, 92.0%) would receive a sentence reduction of less than 24 months.

Table 9
Sentence Reduction for Offenders Eligible for Retroactive Application
of the Recency Amendment²⁹
(FY1991 through FY2009)



Total percentages may not add to 100% due to rounding.

SOURCE: U.S. Sentencing Commission, 1991 - 2009 Datafiles, USSCFY91 - USSCFY09.

²⁹ Of the 7,977 offenders who appear to be eligible for relief under the amendment, Commission records contained sufficient information to perform this analysis for 7,549 offenders.

3. Projected Release Dates

Offenders eligible to receive a reduced sentence under 18 U.S.C. § 3582(c)(2) if the Recency Amendment was made retroactive would be eligible for release at various times. Commission records contained sufficient information to perform this analysis for 7,549 offenders. Table 10 shows the current projected release dates for all eligible offenders by year and compares them to the estimated release dates for these same offenders if the Recency Amendment was not made retroactive. The most significant impact of the Recency Amendment is seen in the first year after it becomes retroactive. Approximately 37.6 percent of these offenders (n = 2,838) would be eligible for release within the first year after November 1, 2010, if the amendment were made retroactive as of that date. If the Recency Amendment were not made retroactive, 1,834 of those offenders will be released within the first year after November 1, 2010, a difference of 1,004 offenders. Conversely, about 21.6 percent of these offenders (n = 1,634) would not be eligible for release within the first five years.

Table 10
Projected Year of Release for Offenders Eligible for Retroactive Application of the
Recency Amendment
(FY1991 through FY2009)

Release Date	IF AMENDMENT RETROACTIVE N	IF AMENDMENT NOT RETROACTIVE N
within 1 yr	2,838	1,834
within 2 yr	1,234	1,408
within 3 yr	822	981
within 4 yr	606	752
within 5 yr	415	552
within 6 yr +	1,634	2,022

Of the 7,977 offenders who appear to be eligible for relief under the amendment, Commission records contained sufficient information to perform this analysis for 7,549 offenders.

SOURCE: U.S. Sentencing Commission, 1991 - 2009 Datafiles, USSCFY91 - USSCFY09.

Table 11 displays the offense types of the eligible offenders by the estimated release date should the amendment be made retroactive with an effective date of November 1, 2010 for the 7,549 offenders as a group.³⁰

Table 11
Estimated Release Year for Retroactive Application
of the Recency Amendment By Offense Type
(FY1991 through FY2009)

PRIMARY OFFENSE	Total	Eligible for Immediate Release 11/1/2010		Eligible for Release in Year One		Eligible for Release in Year Two		Eligible for Release in Year Three		Eligible for Release in Year Four		Eligible for Release in Year Five		Eligible for Release in Six or More Years	
		N	%	N	%	N	%	N	%	N	%	N	%	N	%
TOTAL	7,549	1,185	15.7	1,653	21.9	1,234	16.3	822	10.9	606	8.0	415	5.5	1,634	21.6
Murder	16	0	0.0	1	6.3	0	0.0	3	18.8	0	0.0	1	6.3	11	68.8
Manslaughter	6	1	16.7	2	33.3	0	0.0	0	0.0	0	0.0	1	16.7	2	33.3
Kidnapping/Hostage Taking	18	0	0.0	2	11.1	2	11.1	0	0.0	0	0.0	2	11.1	12	66.7
Sexual Abuse	36	9	25.0	6	16.7	4	11.1	2	5.6	0	0.0	0	0.0	15	41.7
Assault	72	20	27.8	19	26.4	9	12.5	10	13.9	3	4.2	5	6.9	6	8.3
Robbery	406	64	15.8	69	17.0	69	17.0	52	12.8	38	9.4	17	4.2	97	23.9
Arson	8	1	12.5	1	12.5	3	37.5	1	12.5	0	0.0	2	25.0	0	0.0
Drugs - Trafficking	2,798	199	7.1	351	12.5	334	11.9	336	12.0	297	10.6	241	8.6	1,040	37.2
Drugs - Communication Facility	26	0	0.0	4	15.4	12	46.2	4	15.4	2	7.7	3	11.5	1	3.8
Drugs - Simple Possession	9	1	11.1	0	0.0	3	33.3	1	11.1	1	11.1	0	0.0	3	33.3
Firearms	1,814	248	13.7	387	21.3	317	17.5	223	12.3	177	9.8	110	6.1	352	19.4
Burglary/B&E	3	0	0.0	2	66.7	0	0.0	1	33.3	0	0.0	0	0.0	0	0.0
Auto Theft	10	2	20.0	1	10.0	2	20.0	1	10.0	0	0.0	0	0.0	4	40.0
Larceny	14	4	28.6	8	57.1	1	7.1	1	7.1	0	0.0	0	0.0	0	0.0
Fraud	176	43	24.4	48	27.3	43	24.4	14	8.0	7	4.0	7	4.0	14	8.0
Embezzlement	2	2	100.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Forgery/Counterfeiting	38	11	28.9	16	42.1	7	18.4	1	2.6	1	2.6	2	5.3	0	0.0
Bribery	3	1	33.3	1	33.3	1	33.3	0	0.0	0	0.0	0	0.0	0	0.0
Tax	3	1	33.3	1	33.3	0	0.0	0	0.0	1	33.3	0	0.0	0	0.0
Money Laundering	20	6	30.0	2	10.0	2	10.0	2	10.0	0	0.0	1	5.0	7	35.0
Racketeering/Extortion	86	5	5.8	17	19.8	14	16.3	9	10.5	7	8.1	8	9.3	26	30.2
Gambling/Lottery	1	0	0.0	0	0.0	0	0.0	0	0.0	1	100.0	0	0.0	0	0.0
Civil Rights	1	1	100.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Immigration	1,783	460	25.8	687	38.5	404	22.7	155	8.7	63	3.5	9	0.5	5	0.3
Pornography/Prostitution	54	4	7.4	1	1.9	3	5.6	3	5.6	4	7.4	4	7.4	35	64.8
Prison Offenses	77	70	90.9	5	6.5	0	0.0	0	0.0	0	0.0	1	1.3	1	1.3
Administration of Justice Offenses	46	24	52.2	12	26.1	2	4.3	1	2.2	4	8.7	1	2.2	2	4.3
Environmental/Wildlife	0	0	--	0	--	0	--	0	--	0	--	0	--	0	--
National Defense	1	0	0.0	0	0.0	1	100.0	0	0.0	0	0.0	0	0.0	0	0.0
Antitrust	0	0	--	0	--	0	--	0	--	0	--	0	--	0	--
Food & Drug	0	0	--	0	--	0	--	0	--	0	--	0	--	0	--
Other Miscellaneous Offenses	22	8	36.4	10	45.5	1	4.5	2	9.1	0	0.0	0	0.0	1	4.5

Of the 7,977 offenders identified as eligible for relief under the amendment, Commission records contained sufficient information to perform this analysis for 7,549 offenders.

Estimated release dates are determined using the Commission's prison and sentencing impact model which applies proposed guideline changes to affected offenders and re-sentences these offenders in a proportional manner. Under the model, affected offenders: 1) receive a new criminal history category, 2) have a new sentencing range determined (using the ranges from the Sentencing Tables), 3) are resentenced to the same relative position within (or outside) the original guideline range (e.g., an offender currently sentenced at the midpoint of the original guideline range then will be sentenced to the midpoint of the new guideline range), and 4) receive statutory and guideline trumps when applicable. Other assumptions incorporated into the model include: 1) offenders earn the maximum allowable good-time (currently 54 days per year served for imposed sentences greater than one year but not life imprisonment), and 2) offenders serve the lesser of A) the sentence imposed less the maximum allowable good conduct time, or B) their estimated remaining life expectancy, based upon an actuary table incorporating age, race, and sex.

SOURCE: U.S. Sentencing Commission, 1991 - 2009 Database: USSCFV01 - USSCFV09

³⁰ Of the 7,977 offenders estimated to be eligible for retroactive application of the Recency Amendment, sufficient information for this analysis was available for 7,549.

Table 12 shows the projected release dates by year for all eligible offenders displayed by the circuit and district in which each was sentenced.

Table 12
Possible Release Timing for Offenders Eligible for Retroactive Application of the
Recency Amendment
(FY1991 through FY2009)

CIRCUIT District	Total	Eligible for Immediate Release 11/1/2010		Eligible for Release in Year One		Eligible for Release in Year Two		Eligible for Release in Year Three		Eligible for Release in Year Four		Eligible for Release in Year Five		Eligible for Release in Six or More Years	
	N	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Total	7,549	1,185	15.7	1,653	21.9	1,234	16.3	822	10.9	606	8.0	415	5.5	1,634	21.6
D.C. CIRCUIT	40	8	20.0	10	25.0	3	7.5	8	20.0	2	5.0	4	10.0	5	12.5
District of Columbia	40	8	20.0	10	25.0	3	7.5	8	20.0	2	5.0	4	10.0	5	12.5
FIRST CIRCUIT	129	14	10.9	22	17.1	13	10.1	15	11.6	16	12.4	7	5.4	42	32.6
Maine	13	2	15.4	1	7.7	2	15.4	1	7.7	1	7.7	2	15.4	4	30.8
Massachusetts	32	1	3.1	6	18.8	6	18.8	4	12.5	4	12.5	3	9.4	8	25.0
New Hampshire	18	3	16.7	3	16.7	2	11.1	3	16.7	2	11.1	0	0.0	5	27.8
Puerto Rico	52	4	7.7	7	13.5	2	3.8	7	13.5	8	15.4	2	3.8	22	42.3
Rhode Island	14	4	28.6	5	35.7	1	7.1	0	0.0	1	7.1	0	0.0	3	21.4
SECOND CIRCUIT	260	29	11.2	53	20.4	46	17.7	31	11.9	29	11.2	10	3.8	62	23.8
Connecticut	23	2	8.7	7	30.4	5	21.7	6	26.1	0	0.0	0	0.0	3	13.0
New York															
Eastern	58	6	10.3	11	19.0	10	17.2	7	12.1	8	13.8	3	5.2	13	22.4
Northern	44	3	6.8	9	20.5	8	18.2	3	6.8	8	18.2	3	6.8	10	22.7
Southern	72	11	15.3	14	19.4	14	19.4	10	13.9	4	5.6	2	2.8	17	23.6
Western	52	7	13.5	8	15.4	6	11.5	5	9.6	8	15.4	2	3.8	16	30.8
Vermont	11	0	0.0	4	36.4	3	27.3	0	0.0	1	9.1	0	0.0	3	27.3
THIRD CIRCUIT	307	57	18.6	51	16.6	40	13.0	36	11.7	35	11.4	21	6.8	67	21.8
Delaware	20	4	20.0	5	25.0	4	20.0	4	20.0	2	10.0	0	0.0	1	5.0
New Jersey	56	8	14.3	5	8.9	11	19.6	11	19.6	8	14.3	4	7.1	9	16.1
Pennsylvania															
Eastern	87	13	14.9	16	18.4	6	6.9	6	6.9	10	11.5	8	9.2	28	32.2
Middle	84	22	26.2	11	13.1	8	9.5	10	11.9	11	13.1	6	7.1	16	19.0
Western	56	10	17.9	11	19.6	10	17.9	5	8.9	4	7.1	3	5.4	13	23.2
Virgin Islands	4	0	0.0	3	75.0	1	25.0	0	0.0	0	0.0	0	0.0	0	0.0
FOURTH CIRCUIT	939	97	10.3	126	13.4	108	11.5	106	11.3	77	8.2	79	8.4	346	36.8
Maryland	73	10	13.7	14	19.2	12	16.4	14	19.2	6	8.2	5	6.8	12	16.4
North Carolina															
Eastern	147	12	8.2	16	10.9	23	15.6	10	6.8	11	7.5	17	11.6	58	39.5
Middle	78	11	14.1	17	21.8	12	15.4	12	15.4	8	10.3	4	5.1	14	17.9
Western	98	9	9.2	10	10.2	12	12.2	18	18.4	5	5.1	10	10.2	34	34.7
South Carolina	143	19	13.3	19	13.3	14	9.8	10	7.0	14	9.8	8	5.6	59	41.3
Virginia															
Eastern	218	14	6.4	26	11.9	13	6.0	20	9.2	18	8.3	17	7.8	110	50.5
Western	74	4	5.4	7	9.5	9	12.2	5	6.8	10	13.5	6	8.1	33	44.6
West Virginia															
Northern	70	16	22.9	12	17.1	10	14.3	11	15.7	2	2.9	7	10.0	12	17.1
Southern	38	2	5.3	5	13.2	3	7.9	6	15.8	3	7.9	5	13.2	14	36.8

CIRCUIT District	Eligible for Immediate Release 11/1/2010		Eligible for Release in Year One		Eligible for Release in Year Two		Eligible for Release in Year Three		Eligible for Release in Year Four		Eligible for Release in Year Five		Eligible for Release in Six or More Years			
	N	%	N	%	N	%	N	%	N	%	N	%	N	%		
FIFTH CIRCUIT	1,871		373	19.9	479	25.6	336	18.0	193	10.3	137	7.3	77	4.1	276	14.8
Louisiana																
Eastern	58	7	12.1	6	10.3	10	17.2	6	10.3	6	10.3	6	10.3	17	29.3	
Middle	18	2	11.1	6	33.3	1	5.6	3	16.7	3	16.7	1	5.6	2	11.1	
Western	50	3	6.0	8	16.0	15	30.0	2	4.0	7	14.0	2	4.0	13	26.0	
Mississippi																
Northern	17	5	29.4	1	5.9	2	11.8	1	5.9	3	17.6	1	5.9	4	23.5	
Southern	52	12	23.1	11	21.2	10	19.2	6	11.5	4	7.7	2	3.8	7	13.5	
Texas																
Eastern	168	35	20.8	22	13.1	23	13.7	22	13.1	13	7.7	14	8.3	39	23.2	
Northern	223	28	12.6	46	20.6	33	14.8	26	11.7	20	9.0	12	5.4	58	26.0	
Southern	717	159	22.2	235	32.8	149	20.8	55	7.7	40	5.6	28	3.9	51	7.1	
Western	568	122	21.5	144	25.4	93	16.4	72	12.7	41	7.2	11	1.9	85	15.0	
SIXTH CIRCUIT	573		77	13.4	110	19.2	100	17.5	66	11.5	57	9.9	30	5.2	133	23.2
Kentucky																
Eastern	46	9	19.6	9	19.6	9	19.6	5	10.9	4	8.7	1	2.2	9	19.6	
Western	30	4	13.3	3	10.0	7	23.3	3	10.0	3	10.0	1	3.3	9	30.0	
Michigan																
Eastern	61	11	18.0	10	16.4	11	18.0	6	9.8	8	13.1	5	8.2	10	16.4	
Western	86	5	5.8	14	16.3	17	19.8	9	10.5	7	8.1	4	4.7	30	34.9	
Ohio																
Northern	76	8	10.5	24	31.6	7	9.2	6	7.9	7	9.2	6	7.9	18	23.7	
Southern	70	10	14.3	9	12.9	15	21.4	13	18.6	10	14.3	0	0.0	13	18.6	
Tennessee																
Eastern	77	15	19.5	15	19.5	10	13.0	7	9.1	5	6.5	6	7.8	19	24.7	
Middle	36	3	8.3	7	19.4	4	11.1	9	25.0	4	11.1	2	5.6	7	19.4	
Western	91	12	13.2	19	20.9	20	22.0	8	8.8	9	9.9	5	5.5	18	19.8	
SEVENTH CIRCUIT	425		34	8.0	73	17.2	63	14.8	53	12.5	28	6.6	30	7.1	144	33.9
Illinois																
Central	66	6	9.1	7	10.6	6	9.1	7	10.6	2	3.0	8	12.1	30	45.5	
Northern	99	5	5.1	20	20.2	15	15.2	15	15.2	10	10.1	4	4.0	30	30.3	
Southern	61	5	8.2	9	14.8	11	18.0	4	6.6	8	13.1	2	3.3	22	36.1	
Indiana																
Northern	54	6	11.1	14	25.9	8	14.8	7	13.0	2	3.7	5	9.3	12	22.2	
Southern	45	2	4.4	4	8.9	8	17.8	2	4.4	2	4.4	0	0.0	27	60.0	
Wisconsin																
Eastern	61	7	11.5	10	16.4	13	21.3	13	21.3	1	1.6	5	8.2	12	19.7	
Western	39	3	7.7	9	23.1	2	5.1	5	12.8	3	7.7	6	15.4	11	28.2	
EIGHTH CIRCUIT	618		88	14.2	102	16.5	93	15.0	73	11.8	57	9.2	42	6.8	163	26.4
Arkansas																
Eastern	21	7	33.3	1	4.8	1	4.8	1	4.8	2	9.5	3	14.3	6	28.6	
Western	22	0	0.0	3	13.6	8	36.4	3	13.6	2	9.1	1	4.5	5	22.7	
Iowa																
Northern	57	9	15.8	6	10.5	8	14.0	2	3.5	3	5.3	3	5.3	26	45.6	
Southern	46	5	10.9	2	4.3	7	15.2	6	13.0	4	8.7	1	2.2	21	45.7	
Minnesota	53	5	9.4	7	13.2	13	24.5	9	17.0	5	9.4	3	5.7	11	20.8	
Missouri																
Eastern	141	18	12.8	34	24.1	14	9.9	19	13.5	19	13.5	14	9.9	23	16.3	
Western	96	18	18.8	21	21.9	22	22.9	12	12.5	5	5.2	6	6.3	12	12.5	
Nebraska	124	17	13.7	14	11.3	15	12.1	18	14.5	13	10.5	6	4.8	41	33.1	
North Dakota	17	3	17.6	6	35.3	1	5.9	1	5.9	2	11.8	1	5.9	3	17.6	
South Dakota	41	6	14.6	8	19.5	4	9.8	2	4.9	2	4.9	4	9.8	15	36.6	
NINTH CIRCUIT	1,241		235	18.9	399	32.2	246	19.8	122	9.8	67	5.4	42	3.4	130	10.5
Alaska	23	2	8.7	5	21.7	2	8.7	7	30.4	2	8.7	3	13.0	2	8.7	
Arizona	381	82	21.5	149	39.1	92	24.1	23	6.0	15	3.9	6	1.6	14	3.7	
California																
Central	163	29	17.8	52	31.9	27	16.6	18	11.0	15	9.2	3	1.8	19	11.7	
Eastern	128	20	15.6	36	28.1	31	24.2	11	8.6	8	6.3	10	7.8	12	9.4	
Northern	54	9	16.7	10	18.5	10	18.5	10	18.5	3	5.6	2	3.7	10	18.5	
Southern	190	49	25.8	75	39.5	38	20.0	16	8.4	5	2.6	2	1.1	5	2.6	
Guam	3	0	0.0	1	33.3	0	0.0	0	0.0	0	0.0	0	0.0	2	66.7	
Hawaii	42	9	21.4	10	23.8	2	4.8	4	9.5	1	2.4	5	11.9	11	26.2	
Idaho	37	5	13.5	8	21.6	3	8.1	6	16.2	3	8.1	3	8.1	9	24.3	
Montana	35	3	8.6	5	14.3	5	14.3	4	11.4	1	2.9	0	0.0	17	48.6	
Nevada	52	7	13.5	11	21.2	10	19.2	8	15.4	3	5.8	3	5.8	10	19.2	
Northern Mariana Islands	1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	100.0	
Oregon	45	6	13.3	15	33.3	6	13.3	7	15.6	4	8.9	1	2.2	6	13.3	
Washington																
Eastern	34	6	17.6	10	29.4	7	20.6	3	8.8	3	8.8	1	2.9	4	11.8	
Western	53	8	15.1	12	22.6	13	24.5	5	9.4	4	7.5	3	5.7	8	15.1	

CIRCUIT District	Eligible for Immediate Release 11/1/2010		Eligible for Release in Year One		Eligible for Release in Year Two		Eligible for Release in Year Three		Eligible for Release in Year Four		Eligible for Release in Year Five		Eligible for Release in Six or More Years			
	N	%	N	%	N	%	N	%	N	%	N	%	N	%		
TENTH CIRCUIT	441		65	14.7	114	25.9	77	17.5	36	8.2	38	8.6	29	6.6	82	18.6
Colorado	51		11	21.6	14	27.5	4	7.8	4	7.8	3	5.9	4	7.8	11	21.6
Kansas	67		8	11.9	19	28.4	11	16.4	6	9.0	6	9.0	5	7.5	12	17.9
New Mexico	114		16	14.0	38	33.3	24	21.1	11	9.6	4	3.5	7	6.1	14	12.3
Oklahoma																
Eastern	11		1	9.1	1	9.1	3	27.3	1	9.1	3	27.3	1	9.1	1	9.1
Northern	32		1	3.1	5	15.6	8	25.0	1	3.1	5	15.6	3	9.4	9	28.1
Western	47		6	12.8	7	14.9	8	17.0	5	10.6	3	6.4	1	2.1	17	36.2
Utah	76		17	22.4	17	22.4	15	19.7	6	7.9	9	11.8	4	5.3	8	10.5
Wyoming	43		5	11.6	13	30.2	4	9.3	2	4.7	5	11.6	4	9.3	10	23.3
ELEVENTH CIRCUIT	705		108	15.3	114	16.2	109	15.5	83	11.8	63	8.9	44	6.2	184	26.1
Alabama																
Middle	24		6	25.0	4	16.7	1	4.2	2	8.3	1	4.2	1	4.2	9	37.5
Northern	42		7	16.7	5	11.9	6	14.3	7	16.7	7	16.7	3	7.1	7	16.7
Southern	60		8	13.3	12	20.0	8	13.3	6	10.0	6	10.0	1	1.7	19	31.7
Florida																
Middle	191		29	15.2	27	14.1	35	18.3	32	16.8	15	7.9	8	4.2	45	23.6
Northern	62		7	11.3	11	17.7	8	12.9	2	3.2	3	4.8	4	6.5	27	43.5
Southern	157		18	11.5	28	17.8	29	18.5	13	8.3	15	9.6	14	8.9	40	25.5
Georgia																
Middle	39		6	15.4	7	17.9	7	17.9	5	12.8	2	5.1	3	7.7	9	23.1
Northern	55		12	21.8	10	18.2	4	7.3	7	12.7	5	9.1	5	9.1	12	21.8
Southern	75		15	20.0	10	13.3	11	14.7	9	12.0	9	12.0	5	6.7	16	21.3

Of the 7,977 offenders identified as eligible for relief under the amendment, Commission records contained sufficient information to perform this analysis for 7,549 offenders.

Estimated release dates are determined using the Commission's prison and sentencing impact model which applies proposed guideline changes to affected offenders and re-sentences these offenders in a proportional manner. Under the model, affected offenders: 1) receive a new criminal history category, 2) have a new sentencing range determined (using the ranges from the Sentencing Tables), 3) are resentenced to the same relative position within (or outside) the original guideline range (e.g., an offender currently sentenced at the midpoint of the original guideline range then will be sentenced to the midpoint of the new guideline range), and 4) receive statutory and guideline trumps when applicable. Other assumptions incorporated into the model include: 1) offenders earn the maximum allowable good-time (currently 54 days per year served for imposed sentences greater than one year but not life imprisonment), and 2) offenders serve the lesser of A) the sentence imposed less the maximum allowable good conduct time, or B) their estimated remaining life expectancy, based upon an actuary table incorporating age, race, and sex.

SOURCE: U.S. Sentencing Commission, 1991 - 2009 Datafiles, USSCFY91 - USSCFY09.