

**NLWJC - Kagan**

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**Crime - Crack Sentencing [3]**

**UNITED STATES SENTENCING COMMISSION**  
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Crime -  
crack sentencing



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Washington, D.C. 20530

MAR 28 1997

EXECUTIVE SUMMARY

MEMORANDUM FOR THE ATTORNEY GENERAL

THROUGH: THE DEPUTY ATTORNEY GENERAL

FROM: Eric H. Holder, Jr.  
Chair, Racial Disparity Working Group  
United States Attorney  
District of Columbia

Carol DiBattiste  
Director  
Executive Office of United States Attorneys

SUBJECT: Report of the Racial Disparity Working Group

PURPOSE: To present, with the endorsement of the Attorney General's Advisory Committee (AGAC), the findings and recommendations of the Racial Disparity Working Group and to provide information on cocaine sentencing ratios.

TIMETABLE: At the Attorney General's earliest convenience.

SYNOPSIS: Although there is no clear evidence indicating that similarly situated defendants are treated differently, the attached action memorandum provides nine recommendations for the Attorney General's consideration to avoid even the appearance of bias.

DISCUSSION: The Working Group focused on three areas where disparity has been alleged: (1) crack prosecutions; (2) substantial assistance motions; and (3) gun charging practices. Differences among districts on crack prosecutions are generally explicable by the varying ability of state and local officials to deal with the crack problem. In

those districts where there appeared to be a racial difference in the use of substantial assistance motions, the disparity was explained by the districts in terms of the types of crimes committed (some being less amenable in the district to receive substantial assistance reductions) and the different attitude of groups toward working with the Government (e.g. white supremists who refuse to cooperate). The few districts that appeared to have racial disparity in filing § 924(c) charges explained the disparity by the likelihood of one group or the other to commit certain crimes common in their district (e.g. whites more likely to be involved in bank robberies, blacks more likely to be involved in violent crime).

The findings and recommendations of the Racial Disparity Working Group were presented to and approved by the AGAC.

**RECOMMENDATION:**

It is recommended that the Attorney General approve the Racial Disparity Working Group's nine recommendations detailed in the attached action memorandum and sign the attached memorandum (TAB A) to the United States Attorneys implementing recommendations 1 - 4.

**Attachments**




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MEMORANDUM FOR THE ATTORNEY GENERAL

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FROM:

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SUBJECT: Report of the Racial Disparity Working Group

PURPOSE: To present the findings and recommendations of the Racial Disparity Working Group, which have the endorsement of the Attorney General's Advisory Committee (AGAC) and to provide information on cocaine sentencing ratios.

TIMETABLE: At the Attorney General's earliest convenience.

SYNOPSIS: Although there is no clear evidence indicating a serious problem of racial disparity in the Federal system, because it is important to avoid even the appearance of racial bias, we recommend you approve the recommendations included below.

DISCUSSION: At a meeting convened by the Deputy Attorney General on October 19, 1995, the Deputy Attorney General asked United States Attorney Eric Holder (DC) to chair a working group of United States Attorneys and representatives of the Criminal Division to examine racial issues in the criminal justice system and recommend what additional steps, if any, United States Attorneys should take to ensure that race plays no role in prosecution

practices. Working Group members included Zachary W. Carter (EDNY), Jon E. DeGuilio (NDIN), Gregory M. Sleet (DE), Ron Cheng (CDCA), Monty Wilkinson (DC), Robert S. Litt, Mary F. Harkenrider, Julie E. Samuels, and Steven G. Shandy (Criminal Division), and Charysse L. Alexander (EOUSA).<sup>1</sup>

Recent studies and court decisions addressing the apparent racial disparity in state and Federal criminal justice systems have spawned renewed interest in examining this issue. For example, the Sentencing Project reported that one out of three black males in his twenties is presently under some form of criminal justice supervision -- either in prison or jail, or on probation or parole. Data published by the Bureau of Justice Statistics show that in 1994 there were more blacks than whites in the nation's prisons. (Of all Federal defendants in Bureau of Prisons custody at the end of fiscal year 1995, however, 59% were white, 38% were black, and 3% were American Indian, Asian or "other".) The United States Sentencing Commission (USSC), in yet unpublished work, has found some differences by race in the Federal system in both rates of substantial assistance motions made on behalf of defendants and charging practices relating to firearms.

Of all Federal defendants sentenced under the guidelines in FY 1994, 42% were white, 30% were black, 25% were hispanic, and 4% were identified as "other" (American Indian, Alaskan native, or Pacific Islander). The racial distribution of Federal defendants varies by offense. In 1994, of all defendants sentenced for Federal drug offenses 30% were white, 33% black, 35% hispanic, and 2% other. Of all Federal defendants sentenced for crack cocaine offenses, 90% were black, 6% hispanic, 4% white, and fewer than 1% other.

The Working Group focused on three points in the Federal system where "disparity" has been alleged: 1) crack prosecutions; 2) substantial assistance motions; and 3) gun charging practices.<sup>2</sup> Although the term disparity is often used, it is

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<sup>1</sup> The Group is grateful for technical assistance and analysis provided by the Bureau of Justice Statistics.

<sup>2</sup> The Group identified other practices that may have differing impacts on the races in the federal system, including death penalty prosecutions and enforcement practices, especially those which focus on gangs or violence. Although there was consensus that enforcement practices (both in terms of priorities set by agencies and at the individual investigator level) may greatly affect the racial composition of the defendants in a

rarely defined. Some commentators, for example, have concluded that disparity exists when the racial composition of Federal drug defendants does not match the composition of all drug users or of all drug arrestees. We believe that to assess whether disparity exists, one needs to determine whether "similarly situated offenders" are treated the same. For such an assessment to be valid, individuals with similar offense and offender characteristics must be compared.<sup>3</sup> Thus, aggregate data without knowing more about specific offenders can be very misleading. In considering the issue of disparity in the Federal system, we have attempted to differentiate between racial disparity and differences in treatment caused by different district policies that are unrelated to race. We have reported on differences in district practices at the Deputy Attorney General's request even though they may not be the cause of racial disparity.

The Working Group reviewed Federal crack prosecution statistics, preliminary findings from two USSC studies addressing substantial assistance departures and gun charging practices, and follow-up analyses by the Bureau of Justice Statistics on these practices. We also examined district statistics on substantial assistance motions and gun charging practices. Following this examination, we contacted a number of United States Attorneys' offices (USAOs) that had large numbers of "under 5 gram" crack cocaine cases or whose statistics reflected sizable percentage differences by race for either substantial assistance or 924(c) charges among defendants sentenced in 1994. We also contacted numerous USAOs that had unusually high or low rates of

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district, it was agreed that the Group should begin by reviewing practices more directly controlled by prosecutors.

Issues relating to death penalty prosecutions have been addressed by the protocol and the requirement for centralized review of all decisions regarding whether or not to seek the death penalty. The Group found that it was premature to evaluate whether this protocol has resolved any actual or perceived racial disparity in the imposition of the federal death penalty.

<sup>3</sup> As stated by the Supreme Court in United States v. Armstrong, May 13, 1996, "To establish a discriminatory effect in a race case, the claimant must show that similarly situated individuals of a different race were not prosecuted."



substantial assistance or 924(c) charges. In total, we contacted about 40 districts to learn more about their practices in one or more of these areas.<sup>4</sup>

This memorandum provides an overview of the Group's work and findings, discusses possible explanations for and significance of the findings and concludes with a number of recommendations to prevent any and all racial bias from influencing prosecutorial actions. The AGAC has reviewed and approved all the findings and recommendations in this report.

### CRACK COCAINE PROSECUTIONS

As noted above, over 90% of defendants prosecuted for crack offenses in the Federal system are black. We have no reason to believe that this anomaly qualifies as unwarranted "disparity." Indeed, to the extent that comparison is possible, it appears that persons arrested for crack cocaine offenses in both the state and Federal systems are overwhelmingly black. See Tab C. Even though we have no reason to believe that our crack prosecutions are racially biased, we acknowledge that, due to the more severe sentences for crack offenses based on the 100-to-1 quantity ratio in the Federal system, we should be especially sensitive to the proper use of our Federal resources in this area.

### Current Department Policy and Practice

United States Attorneys tailor their prosecutive priorities and corresponding declination policies on crack cocaine cases, as well as on other types of cases, to the needs of their districts. Two factors which United States Attorneys may consider when setting district declination policies are: the severity of the drug problem in the district and the ability of the state to address the drug problem effectively (state law enforcement resources, the effectiveness of the state court system, expected sentence length). A review of the United States Attorneys' policies for crack prosecutions revealed substantial variations among districts' declination guidelines and patterns of

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<sup>4</sup> We provided each district with data comparing its practices to those of other United States Attorneys' offices but, because the identifying case information was not available to us, the United States Attorneys could not pull specific files for the cases in question. Therefore, in response to our inquiries, we received anecdotal information and relevant documentation of office policies pertaining to the specific issue(s) discussed.

prosecutions. As a result, whether a person committing a given crack offense is prosecuted in the Federal system often depends on where the crime is committed. Regardless of these different declination levels, however, the vast majority of crack defendants in all districts are black.<sup>5</sup>

Of the 93 USAOs that responded to a 1995 EOUSA survey, 69 reported having quantity-based declination policies for crack, ranging from 0 to 500 grams. The most common quantity-based thresholds were 5 grams, which carries a five year minimum mandatory sentence (29 districts), and 50 grams, which carries a ten year minimum mandatory sentence (19 districts). An additional 10 districts have declination policies above 50 grams.<sup>6</sup> Virtually all districts with quantity-based guidelines made exceptions to the thresholds under certain circumstances, such as for the presence of a weapon or violence, prior criminal record, or gang affiliation.

Of the 2,971 defendants sentenced in 1994 for crack only offenses, approximately 40% involved amounts less than 50 grams. Nearly 80% of crack defendants who were sentenced for less than 50 grams, however, also possessed a weapon or had a Criminal History score above Level I. Tab B displays the distribution by amount of all 1994 defendants sentenced for crack only offenses.

The 11 districts with the largest number of crack defendants collectively accounted for over 43% of all crack defendants sentenced in 1994: MDL (195); DC (145); NDFL (129); EDVA (128); SDWV (116); EDNC (111); WDNC (108); SC (105); SDIL (90); WDTX (85); and WDVA (85).

Approximately 15% of all crack only defendants (n=438) were sentenced for offenses involving less than 5 grams. About 70% of these defendants were either in Criminal History Category II or

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<sup>5</sup> Tab C provides background data on crack use and drug arrests by race.

<sup>6</sup> The declination policies of the other 21 districts with quantity-based guidelines for crack specify the following minimum thresholds for federal prosecution: any amount (five districts); 0.25 grams (one district); 10 grams (two districts); 20 grams (one district); 25 grams (two districts); 75 grams (one district); 100 grams (six districts); 250 grams (two districts); and 500 grams (one district). The remaining 24 districts did not report any specific quantity-based declination threshold for crack prosecutions.

higher or had a weapon. Ten districts accounted for just over half of all crack defendants involving less than 5 grams:

DISTRICT	DEFENDANTS CHARGED WITH LESS THAN 5 GRAMS CRACK	TOTAL CRACK DEFENDANTS CHARGED IN DISTRICT
SD WV	61	116
WD TX	37	85
SC	35	105
ED TX	20	54
CD IL	18	38
SD TX	16	48
ED MI	16	57
WD VA	16	85
SD MS	13	43
WD TN	12	46

The Working Group contacted these 10 districts to discuss their crack problems and crack prosecution policies. A few of these districts indicated that the statistics reflected the policies of the previous United States Attorneys to bring smaller cases, and that they had since implemented new higher declination policies. Most districts associated their crack problems with gang infiltration and/or gang activity. A few districts noted an increase in Jamaican gang activity.

The ability of state and local officials to deal with the crack problems seemed to be a major problem. Most districts noted deficiencies with the sentences meted out for crack offenses in their state systems; several districts are concerned that crack offenders often receive probationary sentences. We were told that state prosecutors are often overwhelmed with the sheer volume of cases coming into the system and do not have enough resources to handle them. One district explained that some of its state prosecutors serve on a part-time basis and lack adequate training to handle drug cases.

Four of these districts now have 50 gram thresholds. Of those, three indicated that there is room for flexibility if a prosecution involving less than that quantity will further a significant Federal interest and/or aggravating factors are present. A few districts still have 5 gram thresholds but will consider smaller amounts in situations such as those mentioned above. Two districts stated that they have no strict guidelines

and that quantity is just one of many factors considered. One of these districts did state, however, that its primary focus is on organizations, drug pipelines and high-level dealers.

In response to a question about whether there should be a nationwide minimum threshold amount, the United States Attorneys we contacted expressed a resounding, "no." Most districts indicated that problems are unique in each jurisdiction, requiring discretion in the field. Nonetheless, some of the districts suggested that the Department provide better drug prosecution policy guidance.

Although changing prosecution strategies cannot totally resolve any inequities caused by the 100-to-1 sentencing ratio between powder and crack cocaine, the Group recommends that the Department give guidance to United States Attorneys on the appropriate Federal law enforcement role in crack prosecutions. The Group recognizes the need for individual districts to set prosecution policies in light of state and local capabilities. However, Federal prosecutors should be particularly cognizant of the unique role that Federal law enforcement can play in dismantling crack distribution organizations and networks and should not assume responsibility for cases that could be prosecuted effectively by state and local authorities. Toward that end, defendants prosecuted under Federal law should either be major traffickers within the context of the crack distribution system or significant threats to the local community, or potential witnesses against major traffickers or crack distribution enterprises. To the extent that the Federal focus is consistent and properly directed, there is less concern that defendants will be unfairly affected by the sentencing ratio.

Proposed guidance to United States Attorneys is provided in Tab A. Although the guidance contained in Tab A may not differ from the current practice in most districts, the Department has not formally issued written guidance on this issue in the past.

#### SUBSTANTIAL ASSISTANCE MOTIONS

##### Relevant Law

Several provisions of law address the issue of substantial assistance by a defendant in the investigation or prosecution of another person. First, the USSC's enabling statute includes a statutory direction to that body to assure:

that the guidelines reflect the general appropriateness of imposing a lower sentence than would otherwise be imposed, including a sentence that is lower than that established by statute as a minimum sentence, to take into account a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense.

28 U.S.C. § 994(n).

In addition, section 3553(e) of title 18, United States Code, authorizes a court to impose a sentence below a statutory minimum on this same basis. However, it authorizes such a reduction only upon motion of the Government and only in accordance with guidelines and policy statements issued by the USSC. Finally, Rule 35(b) of the Federal Rules of Criminal Procedure similarly provides for reduction of sentence (even below a mandatory minimum) on the basis of a defendant's substantial assistance provided after sentencing.

The USSC has issued a policy statement regarding substantial assistance that incorporates the standard set forth in the above statutes and rule and requires a motion of the Government. USSG § 5K1.1. The policy statement provides guidance for the court in determining how much to depart, but no definition of the term "substantial assistance."

#### Current Department Policy and Practice

On February 7, 1992, a "bluesheet" addition to the United States Attorneys' Manual (affecting section 9-27.451) was issued regarding substantial assistance motions. The bluesheet sought to ensure more procedural consistency across USAOs. Authority to approve a substantial assistance motion was limited to the United States Attorney, the Chief Assistant United States Attorney, supervisory criminal Assistant United States Attorneys, or a committee including at least one of these individuals. In addition, the bluesheet required that each office maintain documentation of the facts behind and justification for substantial assistance pleadings. These requirements were carried forward in the Revised Principles of Federal Prosecution of January 14, 1993. United States Attorneys' Manual § 9-27.410.

The Department has not issued substantive guidance detailing criteria for filing substantial assistance motions. Although some have expressed concern that this lack of specific substantive guidance has produced unwarranted disparity among the

districts, others believe that this decentralization allows for the individualized assessment of each case and the appropriate use of prosecutorial discretion.

Substantial assistance departures have steadily increased from 5.8% of all defendants sentenced in 1989 to 19.5% of all defendants sentenced in 1994. About two-thirds of the 7,507 defendants who received substantial assistance departures in 1994 were convicted for drug trafficking offenses. These 5,065 defendants represented about one-third of all drug trafficking defendants.

Use of substantial assistance motions varies greatly among the districts, from the Eastern District of Virginia with only 3.9% of its defendants receiving substantial assistance departures, to the Eastern District of Pennsylvania with 49.3% of its defendants receiving substantial assistance departures in 1994.<sup>7</sup> The Working Group contacted 11 districts that had unusually high or low rates of substantial assistance to explore why their districts' practices varied greatly from the national average in FY 1994. The responses identified a number of factors that help explain the widely varying substantial assistance rates, although these factors were not relevant in every district. They include differences in charging practices; views about what type of cooperation warrants substantial assistance motions; and the nature of the caseload, particularly the volume or type of drug cases.

For example, in contrast to at least one of the districts with low substantial assistance rates, several of the districts with high rates reported that they avoid charge bargaining. With respect to rewarding substantial assistance, one high-rate district stated that, "[w]here there has arguably been an articulable benefit to the Government, an AUSA should err in favor of a cooperating defendant and file a motion." Low-rate districts seemed to apply a tougher standard in determining whether to file a substantial assistance motion. The size and type of drug caseload is linked to an office's rate of substantial assistance motions, since most substantial assistance motions are granted in drug cases. One low-rate district, for example, noted that it has a much smaller proportion of drug cases than the national average. Other United States Attorneys

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<sup>7</sup> Our analysis indicated that the difference in substantial assistance rates among districts explains only some of the aggregate racial differences. More important are the comparative rates of substantial assistance between whites and blacks within each district.

explained that they had numerous drug conspiracy/organization cases, resulting in high rates of substantial assistance, while one district explained that it had a high proportion of drug cases involving low-level drug couriers apprehended at the border, who could provide little substantial assistance.

Only one district reported using Rule 35 as an alternative to 5K1.1 substantial assistance motions. This occurred because of the district's fast pace to trial and sentencing. When the Rule 35 motions were added to the 5K1.1 motions, the district's combined rate of sentence reductions for substantial assistance increased from about 4% to 11%, which was still below the national average of 20% for 5K1.1 motions only.

Internal office review procedures seemed to have little to do with whether a district has high or low rates of substantial assistance.

#### USSC Study of Substantial Assistance

The Sentencing Commission and many commentators have criticized the lack of uniformity in the Department's substantial assistance practice. In fact, the disparity in district rates and the increasing use of substantial assistance departures in sentencing prompted the USSC to pursue a study of substantial assistance practice. We summarize here only those findings relevant to the issue of race.<sup>8</sup>

In the aggregate, when no statistical controls for variations in offense or defendant characteristics were applied, the USSC found that 21.1% of white, 20.3% of black, 16.9% of hispanic, and 14.9% of defendants in the "other" racial category received § 5K1.1 departures in 1994. In other words, overall, about 1% more whites compared to blacks, and about 4% more whites compared to hispanics received substantial assistance departures. (The USSC's previous Race and Ethnicity Study (also unpublished) found a similar pattern: 16.7% of white, 14.8% of black, and 13.2% of hispanic defendants received § 5K1.1 departures in 1992.) When looking only at drug defendants, the category of defendants most likely to benefit from substantial assistance motions, the racial difference was more pronounced: the probability for blacks to receive the benefit of a substantial assistance motion was almost nine percentage points lower than that for whites (21% of black vs. 30% of white drug defendants received substantial assistance motions).

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<sup>8</sup> The apparent racial disparity is not a major focus of the Commission's report.

The USSC also conducted a multivariate statistical analysis, designed to measure the impact of each potential "explanatory" variable on the probability of receiving substantial assistance, while controlling for these other possible explanatory variables). This analysis found that race was a "statistically significant" variable in explaining whether or not a defendant received substantial assistance. Moreover, it showed that the disparity in receiving substantial assistance based on race was generally greater than in the aggregate (uncontrolled) analysis. Based on this multivariate analysis, for all defendants, the likelihood of receiving a substantial assistance departure was about 4.4% more for whites compared to blacks and 7.5% more for whites than for hispanics. These disparities were even more severe when the USSC examined only drug trafficking defendants: about 9% higher for whites than for blacks and 10.7% higher for whites than hispanics.

#### Possible Explanations for USSC Findings

Rather than having a series of hypotheses it wanted to test, the USSC conducted its statistical study as an exploratory exercise, where it included lots of variables and tried to discern the relationships among them. The USSC acknowledged that several variables were not available for inclusion in its study, and that these variables "may account for many of the results found." Most notably, the USSC did not consider the effects of a defendant's willingness to provide assistance to the Government, the degree and type of cooperation, and usefulness of information to the prosecution. Other potentially relevant but unavailable data included district charging practices and plea bargaining practices. Additionally, there is no viable method to account for the caliber of the defense attorney, another factor which could affect a defendant's ability or willingness to provide substantial assistance. Finally, it has been hypothesized that cultural or attitudinal differences may lead certain groups to place less trust in the system and thus be less willing to cooperate with the Government. To the extent that any of these variables correlate with the defendant's race, it would explain some of the racial difference found.

While many of these variables are non-quantifiable, and could not have been incorporated into the Commission's model, others could have been included. Indeed, a review of the USSC data revealed that differences among racial groups in their respective rates of pleading guilty, accepting responsibility, and U.S. citizenship influenced the results substantially. Defendants who refuse to plead guilty and/or accept responsibility for the offense presumably would not have been willing to provide assistance to the Government. When



considering in the aggregate only those defendants who pleaded guilty, 22.9% of whites, 23.0% of blacks, and 18.3% of hispanics received substantial assistance departures.<sup>9</sup> Similarly, when considering in the aggregate only those defendants who received a sentencing adjustment for acceptance of responsibility, 23.6% of whites, 24.1% of blacks, and 18.8% of hispanics received substantial assistance departures.

Nonetheless, even with this re-analysis, not all of the difference in substantial assistance rates disappeared when considering only drug defendants. According to BJS, about 8 percent of white drug defendants and 18 percent of black drug defendants went to trial. For the remaining drug defendants who pleaded guilty, nearly 40 percent of blacks and 45 percent of whites received substantial assistance departures. In other words, controlling for mode of disposition eliminated some but not all of the 9 percent disparity between white and black drug defendants estimated in the USSC's multivariate analysis.

Regarding the disparity for hispanics, when considering only U.S. citizens, the disparity in the aggregate between whites (21.1%) and hispanics disappears (22.0%, instead of 16.9%). Citizenship does not help explain any of the difference for black defendants.

#### District Findings on Substantial Assistance Rates by Race

The Working Group obtained special reports on substantial assistance rates in each district by race. These reports did not control statistically for variations in defendant characteristics. The district-based comparisons do not suggest that a few "outlier" districts account for the disparities reported in the USSC's aggregate results. Rather, the district-based comparisons suggest the pattern is mixed: a higher percentage of whites than blacks received substantial assistance departures in 53 districts and a higher percentage of black defendants received substantial assistance departures in 37

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<sup>9</sup> Of course, it could be argued that the racial difference in the guilty plea rate itself may merit further exploration. A prosecutor's decisions and actions in charging and bargaining may greatly influence a defendant's willingness to plead guilty. It is also possible that a lack of trust in defense counsel could lead a defendant to turn down a plea agreement and take his chances at trial.

districts.<sup>10</sup> Among drug defendants only, whites had a higher rate of receiving substantial assistance than blacks in 59 districts.<sup>11</sup>

The Working Group contacted nine districts to discuss the differences in their rates of substantial assistance for whites and blacks. The districts were generally perplexed by the data and, since we could not identify specific cases, they offered impressionistic views. Their answers did not suggest any general explanation for the apparent differences. A number of districts noted different offending patterns by race and differences by race in the willingness to cooperate. For example, in two districts in which whites received substantial assistance more frequently, the United States Attorneys reported that blacks commit offenses that are less likely to receive substantial assistance. In two districts where blacks receive substantial assistance more frequently than whites, the United States Attorneys reported that the black defendants are largely prosecuted for crack, and have an incentive to cooperate because of crack sentences, while the white drug defendants were unwilling to cooperate either because they were anti-Government or because their co-defendants were family members.

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<sup>10</sup> While simple comparisons by district of white-black substantial assistance departure rates are informative, they can also can be misleading. Fewer than 25 black defendants were sentenced in 19 of the 93 judicial districts in 1994, and no more than 4 black defendants received substantial assistance departures in any of these 19 districts. It is difficult to draw accurate conclusions about the use of substantial assistance departures in these districts because they had so few black defendants.

When these 19 districts are excluded, the split between whites and blacks is nearly equal: a higher percentage of white defendants received substantial assistance departures in 36 districts and a higher percentage of black defendants received substantial assistance departures in 35 districts (rates were equal in 3 districts).

<sup>11</sup> Of the total 5,395 black drug defendants, 31.9% (1,721) received substantial assistance departures. If black drug defendants had received substantial assistance departures at the same rate as whites (39%), 383 more black defendants would have received substantial assistance departures. Alternatively, had the 4,948 white drug defendants received substantial assistance departures at the lower rate for blacks (31.9%), 352 fewer whites would have received substantial assistance departures.

GUN CHARGING PRACTICES

Relevant Law

When a defendant uses or carries a firearm in connection with drug trafficking or a crime of violence, he can be charged with a violation of Title 18 United States Code § 924(c), which makes him subject to a 5-year mandatory minimum sentence in addition to the sentence for the underlying charge. The sentencing guidelines also provide for sentencing enhancements for possession of or use of a firearm in connection with crimes of violence and drug trafficking crimes. Thus, if a defendant is not charged with § 924(c) (or is acquitted of § 924(c)), he may still be subject to an enhanced guidelines penalty if the court finds at sentencing, by a preponderance of evidence, that a firearm was possessed or used in the offense. The sentencing guidelines enhancement generally would add less than a 5-year consecutive sentence to the underlying sentence for most defendants. The enhancement would not apply if § 924(c) were charged and proved.

Current Department Policy and Practice

Current Department policy regarding charging practices under 18 U.S.C. § 924(c) is the basic charging policy that applies to offenses generally. It is set forth in the "Revised Principles of Federal Prosecution," dated January 14, 1993, United States Attorneys' Manual, § 9-27.000 et seq., as clarified by a bluesheet addition to the Manual dated October 12, 1993. Under the Revised Principles, the attorney for the Government should charge "the most serious offense that is consistent with the nature of the defendant's conduct, and that is likely to result in a sustainable conviction." § 9-27.310. The same section reminds prosecutors that "when a defendant commits an armed bank robbery or other crime of violence or drug trafficking crime, appropriate charges include Title 18, United States Code § 924(c)." The Revised Principles also address plea bargaining, including charge bargaining, and provide, "As with the indictment decision, the prosecutor should seek a plea to the most serious readily provable offense charged." § 9-27.410.

A refinement of charging policy is contained in the October 12, 1993, bluesheet. It recognizes that prosecutors may select charges or enter into plea agreements "on the basis of an individualized assessment of the extent to which particular charges fit the specific circumstances of the case, are consistent with the purposes of the Federal criminal code, and maximize the impact of Federal resources on crime." In determining the most serious readily provable offense, the

bluesheet states that it is appropriate for prosecutors to consider such factors as the sentencing guideline range yielded by the charge and whether the penalty is proportional to the seriousness of the defendant's conduct, along with other law enforcement factors. This general approach applies to gun charges as well as other offenses.

There is wide variation in the practices of various districts as to whether they are more likely to charge § 924(c) or seek a sentencing enhancement when a firearm is present. The percentage of such defendants<sup>12</sup> charged with § 924(c) ranged from a low of 4% in the WDNY up to 76% in the WDPA and SDIA. Of the 92 districts with such defendants sentenced in 1994, nearly two-thirds (59) were more likely to use the sentencing enhancement than to charge a defendant with § 924(c). This general variation in § 924(c) charging practices does not appear to account for the racial differences discussed below.

The Group contacted five districts that had high rates and five districts that had low rates of charging § 924(c) violations in FY 1994. All high-rate districts indicated that they follow DOJ's policy on charging § 924(c) offenses, which they interpret as requiring them to charge a § 924(c) violation whenever it is readily provable. Some will negotiate the § 924(c) charge away in plea agreements, while others are successful in getting pleas to the § 924(c) charge. Other reasons given for their high § 924(c) rate include the following:

- Active United States Attorney involvement in reviewing indictments and requiring § 924(c) charges if supported by the evidence.
- Inadequate state penalties for gun charges.
- Aggressive investigation and prosecution of drug cases. Many drug defendants carry guns and are charged with § 924(c) violations.
- Aggressive Triggerlock programs.

Although districts with low rates of charging § 924(c) violations also indicated that they follow the Department's policy on charging § 924(c) violations, they seem to be more

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<sup>12</sup> For each district, we compared the number of defendants charged under § 924(c) with the total number of defendants who were either charged under § 924(c) or who received a sentencing enhancement for the presence of a weapon.

conservative about charging § 924(c) violations. No single factor emerged as the common cause of the low § 924(c) rate. There did appear to be more of a willingness among the low-rate districts to dismiss § 924(c) charges in return for cooperation. One district made it very clear that they generally use § 924(c) as a plea bargaining tool. Reasons provided for the low § 924(c) rate include the following:

- A thorough indictment review process which eliminates borderline § 924(c) cases. (Note: The indictment review process was also cited by one high-rate district, but with a different result: § 924(c) charges are added.)
- District makes a concerted effort to maximize the sentence in violent crime cases. (Charging decisions may be different in drug cases.) Cases are analyzed very carefully to determine which avenue will provide the higher sentence. If a § 924(c) charge will bring a higher sentence, it is charged. However, in many violent crime cases, especially those with aggravating circumstances, the sentencing guidelines bring the potential of a much higher sentence. In those cases, a § 924(c) violation will not be charged.
- Judges do not like charges that carry mandatory sentences.

#### USSC Findings on Gun Charging Practices

The USSC's study on Race and Ethnicity in the Federal Criminal System (unpublished study analyzing 1992 data) found that in sentenced cases involving firearms or dangerous weapons for bank robbery and drug trafficking, black defendants were more likely to have been charged with § 924(c) (45%) than white defendants (37%). BJS reached similar findings using 1994 data: 48.4% of black, 37.5% of white, and 30.1% of hispanic defendants were charged with § 924(c) out of their respective total numbers of defendants who were either charged with § 924(c) or received weapons-related sentencing enhancements.

#### Problems With Findings

It is problematic to compare the universe of cases in which § 924(c) charges have been brought against the universe of cases in which a weapon enhancement under the sentencing guidelines<sup>13</sup>

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<sup>13</sup> Weapons enhancements are found in the drug guideline, USSG § 2D1.1; robbery guideline, USSG § 2B1.3; aggravated assault guideline, USSG § 2A2.2; and kidnapping guideline, USSG § 2A4.1(b)(3).

applies. The criteria simply are not the same. For example, while § 924(c) applies to someone who "uses or carries a firearm,"<sup>14</sup> the drug guideline enhancement applies if a "dangerous weapon (including a firearm) was possessed." USSG § 2D1.1(b)(1). It would appear that the drug guideline standard is broader than the statutory one -- because it covers possession of weapons other than firearms. In addition, the relevant conduct guidelines address the issue of liability for the acts of others and may also result in a different standard of coverage than under statutory law. Finally, § 924(c) charges do not always disadvantage a defendant as compared to guidelines enhancements.<sup>15</sup>

#### District Findings on Gun Charging Practices by Race

Pursuant to the Group's request, BJS conducted a supplementary examination by district of all sentenced defendants who were either charged with § 924(c) or received a weapons-related sentencing enhancement. This analysis found that a higher percentage of black than white defendants were charged with § 924(c) violations (as opposed to receiving sentencing enhancements) in 57 districts.<sup>16</sup>

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<sup>14</sup> Prior to the Supreme Court's decision in United States v. Bailey, "use or carry" often was construed to include possession.

<sup>15</sup> For example, the robbery guideline provides differing enhancements (varying from a 5 to 7 level upward adjustment) depending on the use made of the firearm. USSG § 2B3.1(b)(2)(A)-(C). Depending on other aggravating factors, these enhancements could increase a sentence by more than the 5 years pursuant to 924(c). This is also potentially true in narcotics cases, but to a much lesser extent. In total, BJS estimated that 125 to 228 robbery and drug trafficking defendants -- depending on whether sentenced at the guideline minimum or maximum -- out of approximately 3,800 sentenced in FY 1994 could have received guideline enhancements exceeding 5 additional years.

<sup>16</sup> Of the total 2,434 black firearms defendants, 48.4% (1,178) were charged with 924(c). If black defendants had been charged with 924(c) at the same rate as whites (37.5%), 265 fewer black defendants would have received 924(c) charges. Alternatively, had the 1,348 white firearms defendants been charged with 924(c) at the same rate as blacks (48.4%), an additional 146 whites would have received 924(c) charges.

The Group contacted eight districts that charged blacks with § 924(c) at a higher rate than they charged whites, and five districts that charged whites with § 924(c) violations at a higher rate than they charged blacks. Generally, all the districts indicated that they followed Department policy in charging the most serious, readily provable offense; some districts expressed more of a willingness to dismiss the § 924(c) charge in return for cooperation than others. There did not appear to be any clear reason for the difference in rates.

As one possible explanation for the difference in rates, some districts reported that defendants from one particular racial group were more likely to commit offenses for which they would receive § 924(c) charges:

- In a couple of districts with higher rates of charging blacks with § 924(c) violations, black defendants are more likely to be involved in violent crime cases in which § 924(c) would always be charged.
- Conversely, in a couple of districts with higher rates of charging whites with § 924(c), whites were more likely to be involved in bank robberies or other crimes of violence, in which § 924(c) is almost a certain charge.

More than one district questioned the reliability of the statistics.

#### **WORKING GROUP CONCLUSIONS AND RECOMMENDATIONS**

We have no definitive conclusions to draw from the Sentencing Commission's work or our own study. We believe there are gaps in the Commission's methodology and analysis and that the studies do not prove "disparity" exists in the Federal system. Another major shortcoming of the USSC's work is that the Commission never attempts to quantify the effect of its finding that race is a "statistically significant" variable in explaining either substantial assistance rates or gun charging practices. Just because race is found to be "statistically significant" does not mean it has a practical impact on sentencing policy requiring action by policy makers. Our own attempts at quantifying the effects (see footnotes 11 and 16) are rudimentary at best.

While we have not seen evidence indicating a serious problem of racial disparity in the Federal system, we also cannot explain all of the statistical differences that have been identified in the various studies. Thus, although the practical significance of the findings relating to substantial assistance motions and

gun charging practices remains unclear, the Group recommends Departmental action aimed at eliminating even the appearance of racial bias. In addition, the actions recommended below could uncover whether there are practices that, while race neutral on their face, have a disparate racial impact not justified by the law enforcement objectives in question.

Finally, totally aside from the race issue, we are compelled to conclude that districts do have differing practices that may affect how defendants are treated in the Federal system. Because of different crack declination policies, a defendant may be charged with a crack offense in one district and not charged in another. In one district, a defendant might receive the benefit of a substantial assistance motion for specified cooperation, which cooperation may be deemed insufficient for a motion in another district. And, in one district, a defendant may be charged with § 924(c) mandating an additional 5-year penalty, while in another, the same defendant might receive a 2-level sentencing enhancement for use of a firearm. These differing practices may be an inevitable result of the decentralized United States Attorney system. However, the Group believes that its recommendations may aid in decreasing the district differences without mandating absolute uniformity.

The Group makes the following recommendations for your consideration:

**RECOMMENDATION #1 - Examine Prosecution Practices.**

Within a District. Direct all United States Attorneys to examine their office practices and procedures and take all necessary measures to ensure the use of race neutral policies in the exercise of prosecutorial discretion within a district. Absent compelling, specific law enforcement imperatives there is ordinarily no justification for differing policies and practices within a district, with respect to similarly situated defendants. Any race neutral policy that has a disparate racial impact should be carefully reviewed to determine whether the disparity is justified by law enforcement necessity and not the product of conscious or unconscious racial bias. A directive to this effect is contained in the proposed memorandum to United States Attorneys at Tab A.

Among Districts. At this time, we do not recommend setting additional nationwide standards, given the great diversity among the districts in community size, crime problems, and state and local law enforcement systems and resources. The Attorney General's priorities, the United States Attorneys'



Manual, (especially the Principles of Federal Prosecution), and other Departmental directives, can ensure, to the extent possible, that the districts are consistent in their approaches to Federal prosecutions. There are, however, several steps that can be taken to increase consistency among the districts, and to create a less individualized and more national perspective:

The Group recommends that the Attorney General issue written guidance (attached at Tab A) to the United States Attorneys on the prosecution of crack cocaine.

APPROVE: \_\_\_\_\_

Concurring Components:  
None

Nonconcurring Components:  
None

DISAPPROVE: \_\_\_\_\_

OTHER: \_\_\_\_\_

**RECOMMENDATION #2 - Review Substantial Assistance Motions.**

The Group recommends that the Attorney General ensure that the districts are following the directives in USAM 9-27.410 on substantial assistance, by reminding the districts that the Principles of Federal Prosecution require supervisory approval of substantial assistance and Rule 35 motions, and documentation of the underlying facts justifying such motions. USAM 9-27.410. Such a reminder is contained in the proposed memorandum to United States Attorneys at Tab A.

APPROVE: \_\_\_\_\_

Concurring Components:  
None

Nonconcurring Components:  
None

DISAPPROVE: \_\_\_\_\_

OTHER: \_\_\_\_\_

**RECOMMENDATION #3 - Review Dropped §924(c) Charges.**

The Group recommends that the Attorney General remind the districts that the Principles of Federal Prosecution require appropriate supervisory approval and an appropriate written record with respect to a decision to drop readily provable charges, including readily provable § 924(c) charges. USAM 9-27.410(B). Such a reminder is contained in the proposed memorandum from the Attorney General to United States Attorneys at Tab A.

APPROVE: \_\_\_\_\_

Concurring Components:

None

Nonconcurring Components:

None

DISAPPROVE: \_\_\_\_\_

OTHER: \_\_\_\_\_

**RECOMMENDATION #4 - Have United States Attorneys Discuss Racial Disparity Issues with District Law Enforcement Personnel.**

As the chief Federal law enforcement officer, United States Attorneys should take a leadership role in making all law enforcement in their districts aware of issues of racial disparity and in implementing race neutral policies. United States Attorneys should meet with the agency heads in their district to discuss these issues. A directive to this effect is included in the proposed memorandum to United States Attorneys at Tab A.

APPROVE: \_\_\_\_\_

Concurring Components:

None

Nonconcurring Components:

None

DISAPPROVE: \_\_\_\_\_

OTHER: \_\_\_\_\_

**RECOMMENDATION #5 - Consider Revision of Principles of Federal Prosecution.**

The Group recommends that by copy of this memorandum, the AGAC and the Criminal Division be asked to give careful consideration to revising the Principles of Federal Prosecution to make it clear that appropriate supervisory approval, and an appropriate written record, is required for any decision not to charge readily provable § 924(c) violations.

APPROVE: \_\_\_\_\_

Concurring Components:  
None

DISAPPROVE: \_\_\_\_\_

Nonconcurring Components:  
None

OTHER: \_\_\_\_\_

**RECOMMENDATION #6 - Discuss Disparity Issues with Investigative Agencies.**

The Group recommends that the Deputy Attorney General meet with investigative agencies to discuss issues relating to disparity.

APPROVE: \_\_\_\_\_

Concurring Components:  
None

DISAPPROVE: \_\_\_\_\_

Nonconcurring Components:  
None

OTHER: \_\_\_\_\_

**RECOMMENDATION #7 - Provide Additional Information to United States Attorneys.**

Provide statistical information to United States Attorneys so that they can review the overall effects of their

prosecution practices, compare their practices to other USAOs and determine whether any changes are warranted. This information would include tabulations of district crack declination policies, rates of substantial assistance motions, and use of § 924(c) charges versus use of sentencing enhancements for gun possession.

The USSC collects detailed information on sentenced defendants, including demographic data. This information, in relevant areas, could be provided to United States Attorneys at the end of each year. United States Attorneys do not maintain demographic information on defendants.

The Group recommends that the Executive Office for United States Attorneys (EOUSA) provide select statistical information of the type contained at Tab D to each United States Attorney on an annual basis.

APPROVE: \_\_\_\_\_

Concurring Components:  
None

Nonconcurring Components:  
None

DISAPPROVE: \_\_\_\_\_

OTHER: \_\_\_\_\_

**RECOMMENDATION #8 - Enlist the Assistance of EOUSA's Evaluation and Review Staff.**

The Group recommends that EOUSA's Evaluation and Review Staff be tasked with examining the issues discussed in this memorandum whenever they conduct United States Attorney's office evaluations.

APPROVE: \_\_\_\_\_

Concurring Components:  
None

Nonconcurring Components:  
None

DISAPPROVE: \_\_\_\_\_

OTHER: \_\_\_\_\_

**RECOMMENDATION #9 - Expand Education and Training.**

The Group recommends that EOUSA ensure that these issues are discussed at appropriate training seminars and conferences (e.g., May 1997 United States Attorneys' conference, Criminal Chief seminars, First Assistant United States Attorney seminars).

APPROVE: \_\_\_\_\_

Concurring Components:  
None

DISAPPROVE: \_\_\_\_\_

Nonconcurring Comments:  
None

OTHER: \_\_\_\_\_



Office of the Attorney General  
Washington, D. C. 20530

MEMORANDUM TO ALL UNITED STATES ATTORNEYS

FROM: THE ATTORNEY GENERAL

SUBJECT: Crack Prosecution Strategy and Perceived Racial  
Disparity in Prosecutions

In October 1995, at my request, a working group of United States Attorneys and representatives of the Criminal Division began reviewing allegations of prosecutorial racial disparity. The working group focused on three areas: crack prosecutions, substantial assistance motions, and gun charging practices. I am pleased to report that the group found no clear evidence of racial disparity in any of these areas. Nonetheless, because racial disparity is an issue of significant importance and ongoing concern, I am taking this opportunity to make clear the Department's policy and priorities in each of the areas reviewed.

CRACK PROSECUTION STRATEGY

Consistent with the Department's overall law enforcement strategy against drug trafficking, agents and prosecutors should direct their efforts toward the elimination of organizations involved in large-scale crack cocaine distribution or organizations that engage in violence in connection with their drug trafficking activities. Many such groups have spread across state boundaries and often recruit, train and employ young teenagers and other vulnerable individuals. Although these groups or gangs may deal in a volume of drugs lower than that seen in typical federal cases, the multi-state nature of their operations and the threat to local communities posed by their violence and exploitation of youth makes appropriate federal participation in investigation and prosecution.

Appropriate Uses Of Federal Resources

Federal agents and prosecutors are best equipped to prosecute manufacturing and distribution organizations. To eliminate these dangerous organizations, we should attack their

operational components including leadership, production facilities and sources of supply, distribution networks, and financial and other assets.

Federal prosecution of individual (and replaceable) retail-level dealers, without additional action, may result in only a short-term fix with no lasting impact on the overall crack distribution activity in a given jurisdiction. Cases involving street-level dealers are generally best handled by state and local prosecutors, although there are certain exceptions. Federal prosecutors should emphasize prosecutions that will reasonably aid in the elimination of a significant organization or those individuals engaged in violence in connection with their distribution activities. I do not suggest, however, that federal resources should be directed at street-level dealers merely because they possess a firearm.

Some districts already decline to prosecute cases involving quantities of crack too small to trigger the 10-year mandatory minimum penalty. In theory, such policies minimize the isolated prosecutions of street-level retail dealers. Often, though, street-level dealers distribute significant quantities of crack over a short period of time and the presence of couriers, runners or steerers during those transactions permits a conspiracy charge enabling aggregation of the quantities distributed. Prosecutors should take steps after identifying and prosecuting the courier, runner or steerer, to continue "working up the chain" toward the elimination of higher-level participants. However, aggregation of the quantities of crack involved in a series of small transactions to achieve a mandatory minimum sentence may not promote federal law enforcement goals. More useful investigations will take advantage of traditional tools such as the use of informants, consensually monitored conversations, pen registers and wiretaps to identify and prosecute higher level distributors.

The quantity of crack involved in a single transaction does not always accurately reflect an individual's position in the hierarchy of a drug trafficking organization. Proactive investigative initiatives therefore should envision making such a determination and should not merely rely on the possibility of the individual's cooperation after arrest with a significant quantity of crack. Where cooperation exists, every effort should be made to "work up the chain" with the goal of prosecuting the suppliers, managers, and other participants of these organizations.

### Cocaine Powder Suppliers

Crack trafficking patterns vary across the Nation and within each judicial district. At one extreme, users themselves convert powder to crack just prior to consumption. At the other extreme, trafficking organizations transport kilogram quantities of crack across state lines for further distribution to other wholesale distributors and, ultimately, to users who purchase retail quantities on street-corners or in crack houses. In some cases, couriers transport smaller quantities between jurisdictions for further wholesale or retail distribution. In other cases, local organizations or individuals purchase varying amounts of powder in order to manufacture crack for further distribution.

Cocaine powder distributors who supply individual crack distributors or crack distribution organizations while knowing of the impending conversion to crack should be held accountable. Investigators and prosecutors should vigorously pursue leads and use the panoply of investigative tools available to federal law enforcement to establish the requisite knowledge. The federal interest exists in these cases even though the cocaine powder supplier might not otherwise be a target based only upon his powder traffic.

When consistent with the principles of federal prosecution, prosecutors should charge these cocaine powder distributors as part of the crack conspiracy or enterprise or as aiders and abettors of particular transactions. In some cases, there may be a longstanding relationship between the cocaine powder supplier and the crack distributor. Other cases may involve a single transaction. In either scenario, the cocaine powder distributor who agrees to supply the crack distributor shares responsibility for the subsequent distribution of crack. This is true even though the cocaine powder dealer may be indifferent as to whether customers convert the product into crack.

### Sentencing

Prosecutors must remain cognizant of the numerous statutory and Sentencing Guidelines provisions for enhanced penalties and employ those provisions where applicable. Such provisions include enhanced penalties for engaging in a continuing criminal enterprise, using weapons in connection with drug trafficking offenses, trafficking near protected locations, using minors in



trafficking, distributing drugs to minors or to pregnant persons, distributing controlled substances the use of which results in death, and distributing controlled substances as a recidivist.

Coordination Of Federal, State, And Local Enforcement Efforts

Generally, federal, state and local governments have concurrent jurisdiction over the prosecution of drug trafficking offenses. To achieve the goal of disrupting significant crack trafficking organizations, we must have an integrated strategy that effectively distributes responsibility among federal, state, and local institutions. There are some assignments that only the federal authorities can fulfill and others in which federal authorities can assist their state and local counterparts in responding to the more immediate needs of the region or locality.

Task forces such as those in the Organized Crime Drug Enforcement Task Force (OCDEF), High Intensity Drug Trafficking Area (HIDTA), and Anti-Violent Crime Initiative programs, for example, utilize the range of federal investigative and prosecutive tools, as well as seizure and forfeiture laws, while facilitating cooperation and bridging gaps between efforts that are uniquely federal and those most successfully undertaken on a local level. These cooperative efforts and others extend the reach of the federal agencies into local communities in need. Federal investigative and prosecutive resources, however, should not be directed to tasks that will not significantly impact a crack trafficking organization or otherwise result in a long-term solution for a particular community or region affected by such trafficking. Considerations relevant to the decision to invoke federal jurisdiction generally are set forth at USAM 9-27.220 - 9-27.240.

REVIEW OVERALL PROSECUTION PRACTICES

Each United States Attorney should examine his or her office practices and procedures and take all necessary measures to ensure the use of race neutral policies in the exercise of prosecutorial discretion within a district. Absent compelling, specific law enforcement imperatives there is ordinarily no justification for differing policies and practices within a district, with respect to similarly situated defendants. Any race neutral policy that has a disparate racial impact should be

carefully reviewed to determine whether the disparity is justified by law enforcement necessity and not the product of conscious or unconscious racial bias.

#### SUBSTANTIAL ASSISTANCE

Care must be taken to assure that race plays no part in the Government's decision whether to file a substantial assistance motion. Review within the office of such motions helps assure uniformity and fairness within the district.

As set forth in the Comment to U.S.A.M. 9-27.410, the filing of a 5K1.1 pleading must be approved by the United States Attorney, the Chief Assistant, supervisory criminal AUSAs or a committee including at least one of these individuals. Each office must have in place a procedure for such approvals. In addition, every office must maintain documentation of the facts behind and justification for each substantial assistance pleading.

#### GUN CHARGING PRACTICES

Again, in order to avoid racial disparity, or the appearance thereof, prosecutors are reminded to abide by the strictures of U.S.A.M. 9-27.410 concerning the dropping of readily provable charges, including §924(c). As set forth in the Comment to U.S.A.M. 9-27.410, prosecutors may drop readily provable charges only with the specific approval of the United States Attorney or designated supervisory level officials for reasons set forth in the file of the case. Every office should have in place procedures implementing this policy.

#### RACIAL DISPARITY AWARENESS

As the chief federal law enforcement officer in the district, the United States Attorney should take a leadership role in ensuring that all agencies within the district are aware of issues of racial disparity. The United States Attorney should also be alert to the implementation of race neutral policies by all law enforcement within the district. These concerns should be raised by the United States Attorney in meetings with the agency heads.

Memorandum from the Attorney General  
Subject: Crack Prosecution Strategy and Perceived  
Racial Disparity in Prosecutions

Page 6

I am proud of the Department's record of race neutral prosecutorial decisions. Nonetheless, I believe constant vigilance in this area is essential. Sensitivity to the issue, and implementation of the measures outlined in this memorandum, will preserve and enhance the Department's record of race neutral prosecutions. In addition, and as importantly, it will ensure that there is no perception of racial disparity in the discharge of our duties. The public recognition that our policies are administered in a race-neutral fashion is as important as the reality that we do so administer them. I look forward to working with you in the pursuit of these goals.

TAB C

CRACK USE DATA\*

- According to NIDA data, most reported crack users--those who had ever used as well as those who had used during the last month--were white.
- Nonetheless, blacks as a group had a higher rate of crack use than other ethnic groups. Moreover, as the frequency of use increased, blacks made up a larger proportion of users.
- **Ever Used.** For 1994, of the estimated 4,042,000 persons who had ever used crack, about 19% were black, 70% were white, and 9% were hispanic. This translates to population estimates of 782,000 blacks, 2,816,000 whites, and 354,000 hispanics who had ever used crack.

**Rates of use.** 3.3% of blacks surveyed reported ever having used crack, compared to 1.8% of whites and 1.9% of hispanics.

- **Current Use/Past Month.** For 1994, of the estimated 520,000 persons who had used crack in the past month, about 31% were black, 56% were white, 13% were hispanic. This translates to population estimates of 161,000 blacks, 292,000 whites, and 68,000 hispanics who were current crack users.

**Rates of use.** 0.7% of blacks, 0.2% of whites, and 0.4% of hispanics reported having used crack in the past month.

- **Emergency Room Admissions (1992).** As part of its Drug Intelligence Report on Crack Cocaine, the DEA analyzed 1992 DAWN data and found that 71.5% of emergency room admissions for crack involved blacks.
- **Treatment Data (1993).** According to the Substance Abuse and Mental Health Services Administration (SAMSHA), over 69% of the admissions for treatment for crack abuse in 1993 were accounted for by blacks.

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\* Note that the "users" reported are population estimates based on NIDA's survey to a sample of specially selected households, and thus are approximations. Each estimate has an upper and lower confidence limit.

TAB C

1994 DRUG ARRESTS  
UCR DATA

- o Cocaine is not listed as a separate category in the Uniform Crime Reports system; it is grouped with opiates.

All Drug Arrests (1,061,563). 61% of those arrested for drugs were white and 38% were black.

Arrests for Drug Possession - All drugs (777,555). 65% were white, 34% were black.

Arrests for Possession of Opiates, Cocaine or derivatives (321,607). 52% were white, 48% were black.

Arrests for Drug Sales/Manufacture - All drugs (284,008). 50% were white, 50% were black.

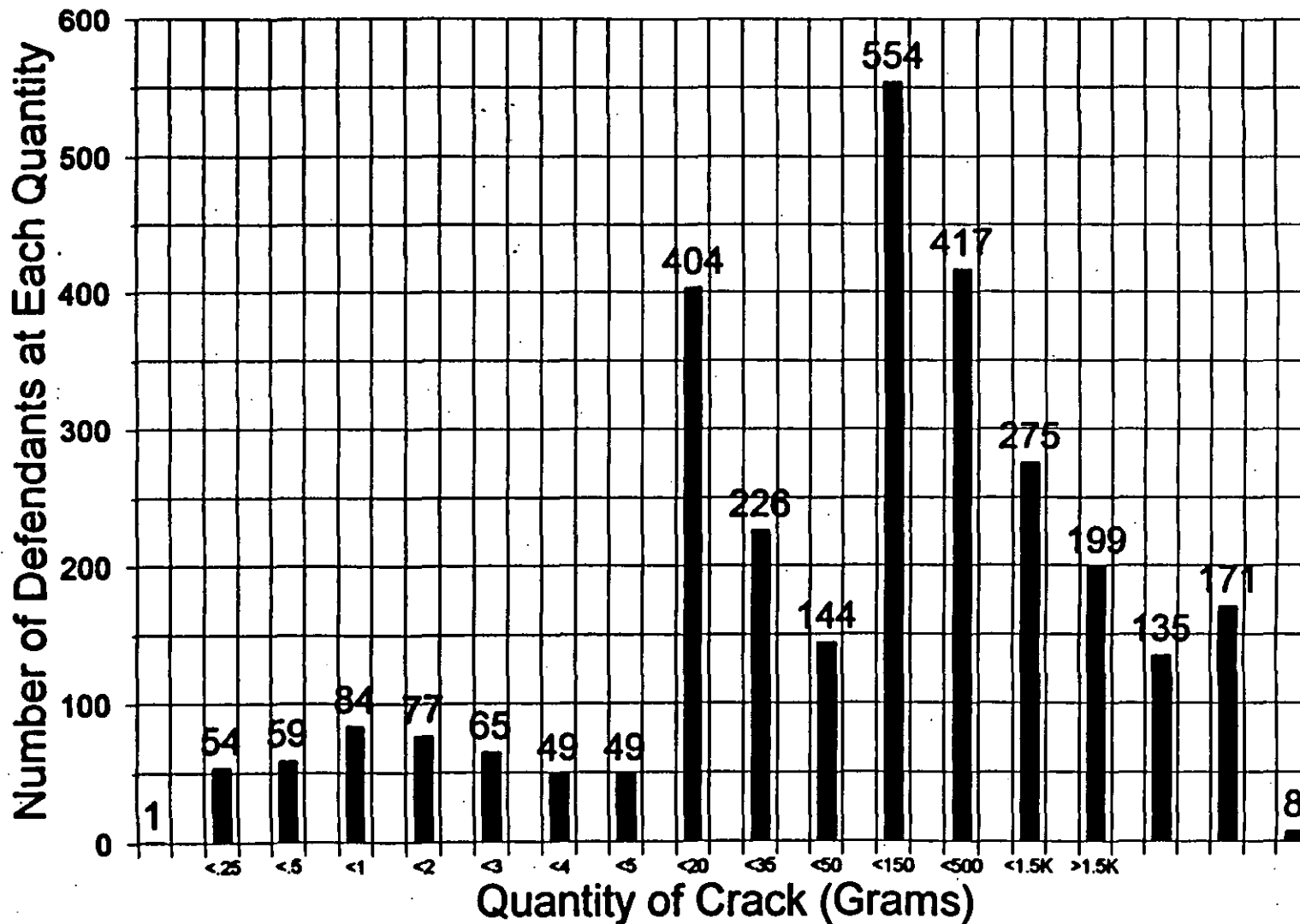
Arrests for Drug Sales/Manufacture - Opiates, Cocaine and derivatives. (178,297). 60% were black, 40% were white.

- o Although the 60/40 ratio of white to black drug arrests is often cited, when we look only at trafficking arrests, the ratio changes to 50/50. Further, when we look at drug trafficking arrests for opiates or cocaine, the ratio becomes 60/40 black to white.
- o Possession arrests account for almost 75% of all drug arrests, with an almost equal number of opium/cocaine arrests (321,607) and marijuana arrests (316,107).
- o The National Incident Based Reporting System (NIBRS), which is being phased in, separates cocaine from heroin and has a distinct category for crack. It includes both offense and arrest data, including the race of those arrested. Unfortunately, NIBRS is currently being implemented in only nine states, and is still incomplete and not validated for many of these states.

Available NIBRS data for 1994 show that 85% of those arrested for crack cocaine were black and 15% were white. Of the arrests reported by NIBRS in 1993, 88% of those arrested for crack were black.

## Crack Only Defendants by Quantity

### FY 1994 Sentenced Defendants (USSC)



The 5 and 10 year mandatory minimums are at 5 and 50 grams. Crack was the only drug for 2971 defendants sentenced under 2D1.1.

**UNITED STATES ATTORNEYS' OFFICES  
FISCAL YEAR 1994 SENTENCING DATA:**

- TABLE 1:** Crack/powder cocaine quantity-based declination policies; number of crack defendants sentenced for offenses involving less than 5 grams and less than 50 grams; and total crack defendants sentenced.
- TABLE 2:** Total white, black, and hispanic defendants sentenced and the percentage who received substantial assistance departures and other downward departures.
- TABLE 3:** White, black, and hispanic drug defendants sentenced and the percentage who received substantial assistance departures and other downward departures.
- TABLE 4:** White, black, and hispanic sentenced defendants charged with 924(c) or who received firearms-related sentencing enhancements.

TABLE 1

## CRACK/POWDER DECLINATION POLICIES AND CRACK SENTENCES BY DISTRICT, 1994

District	Minimum Quantity (gr)		Crack Def <5g	Pct <5g of Total	Crack Def <50g	Pct <50g of Total	Total Crack Def
	Crack	Powder					
1 ALABAMA, M	75	75	2	8.1%	7	21.2%	33
2 ALABAMA, N	5	500	9	17.3%	30	57.7%	52
3 ALABAMA, S	5	50	4	5.3%	14	18.7%	75
4 ALASKA			0	0.0%	0	0.0%	1
5 ARIZONA	50	5000	0	n/a	0	n/a	0
6 ARKANSAS, E			5	13.9%	27	75.0%	36
7 ARKANSAS, W	5	125	0	0.0%	4	100.0%	4
8 CALIFORNIA, C	100	1000	0	0.0%	2	8.3%	24
9 CALIFORNIA, E	100	5000	0	0.0%	1	16.7%	6
10 CALIFORNIA, N	100	1000	0	0.0%	0	0.0%	3
11 CALIFORNIA, S			11	26.8%	30	73.2%	41
12 COLORADO	5	500	2	8.0%	18	72.0%	25
13 CONNECTICUT	10	1000	0	0.0%	0	0.0%	6
14 DELAWARE	50	250	4	40.0%	8	80.0%	10
15 DIS OF COLUMBIA	50	500	11	7.6%	65	44.8%	145
16 FLORIDA, M	500	5000	3	1.5%	52	26.7%	195
17 FLORIDA, N	250	1000	1	0.8%	8	6.2%	129
18 FLORIDA, S	50	5000	1	2.6%	6	15.8%	38
19 GEORGIA, M			5	9.6%	15	28.8%	52
20 GEORGIA, N			3	5.9%	11	21.6%	51
21 GEORGIA, S	100	1000	1	1.9%	9	17.3%	52
22 GUAM & NMI			0	n/a	0	n/a	0
23 HAWAII	50	1000	0	n/a	0	n/a	0
24 IDAHO			0	n/a	0	n/a	0
25 ILLINOIS, C			18	47.4%	31	81.6%	38
26 ILLINOIS, N	5	500	0	0.0%	1	8.3%	12
27 ILLINOIS, S			8	8.9%	29	32.2%	90
28 INDIANA, N	5	500	1	14.3%	2	28.6%	7
29 INDIANA, S	5	500	0	0.0%	0	0.0%	2
30 IOWA, N	5	500	2	7.7%	16	61.5%	26
31 IOWA, S			0	0.0%	1	33.3%	3
32 KANSAS	5	500	1	5.3%	10	52.6%	19
33 KENTUCKY, E			0	0.0%	0	0.0%	1
34 KENTUCKY, W	5	500	1	12.5%	4	50.0%	8
35 LOUISIANA, E	50	500	4	22.2%	9	50.0%	18
36 LOUISIANA, M	5	500	6	100.0%	6	100.0%	6
37 LOUISIANA, W	100	1000	0	0.0%	2	25.0%	8
38 MAINE	5		1	100.0%	1	100.0%	1
39 MARYLAND			1	5.0%	4	20.0%	20
40 MASSACHUSETTS	50	2000	0	0.0%	3	50.0%	6
41 MICHIGAN, E	50	200	16	28.1%	35	61.4%	57
42 MICHIGAN, W	5	113	0	0.0%	1	100.0%	1
43 MINNESOTA	50	500	1	2.8%	13	36.1%	36
44 MISSISSIPPI, N			8	17.4%	16	34.8%	46
45 MISSISSIPPI, S	50	1000	13	30.2%	22	51.2%	43
46 MISSOURI, E	50	1000	4	28.6%	6	42.9%	14
47 MISSOURI, W	20	250	4	11.8%	14	41.2%	34
48 MONTANA		57	0	n/a	0	n/a	0
49 NEBRASKA	5	500	1	3.7%	12	44.4%	27
50 NEVADA		5000	2	14.3%	4	28.6%	14
51 NEW HAMPSHIRE	0		0	0.0%	0	0.0%	1

Note: 2D1.1 was the guideline with the highest offense level and crack was the only drug involved for all 2,971 defendants.



TABLE 1

## CRACK/POWDER DECLINATION POLICIES AND CRACK SENTENCES BY DISTRICT, 1994

District	Minimum Quantity (gr)		Crack Def <5g	Pct <5g of Total	Crack Def <50g	Pct <50g of Total	Total Crack Def
	Crack	Powder					
52 NEW JERSEY		1000	0	0.0%	4	50.0%	8
53 NEW MEXICO	25	500	2	40.0%	4	80.0%	5
54 NEW YORK, E	50	1000	1	11.1%	2	22.2%	9
55 NEW YORK, N			4	40.0%	8	80.0%	10
56 NEW YORK, S	5	500	5	12.5%	15	37.5%	40
57 NEW YORK, W	5	28	2	33.3%	4	66.7%	6
58 NO CAROLINA, E	50	500	12	10.8%	23	20.7%	111
59 NO CAROLINA, M	100	1000	2	3.0%	6	9.1%	66
60 NO CAROLINA, W			1	0.9%	23	21.3%	108
61 NORTH DAKOTA	0	0	0	n/a	0	n/a	0
62 OHIO, N			3	9.7%	9	29.0%	31
63 OHIO, S			6	13.3%	23	51.1%	45
64 OKLAHOMA, E	5	500	0	0.0%	1	100.0%	1
65 OKLAHOMA, N			1	14.3%	1	14.3%	7
66 OKLAHOMA, W	50	1000	0	0.0%	4	11.8%	34
67 OREGON	5	500	2	15.4%	11	84.6%	13
68 PENNSYLVANIA, E	50	1000	6	7.2%	28	33.7%	83
69 PENNSYLVANIA, M			4	40.0%	6	60.0%	10
70 PENNSYLVANIA, W	50	5000	3	9.7%	14	45.2%	31
71 PUERTO RICO	0	5000	0	0.0%	0	0.0%	1
72 RHODE ISLAND	5	200	0	0.0%	5	100.0%	5
73 SOUTH CAROLINA	50	300	35	33.3%	76	72.4%	105
74 SOUTH DAKOTA	5	28	3	75.0%	4	100.0%	4
75 TENNESSEE, E	5	200	3	17.6%	9	52.9%	17
76 TENNESSEE, M	10	1000	0	0.0%	1	50.0%	2
77 TENNESSEE, W	50	500	12	26.1%	29	63.0%	46
78 TEXAS, E	5	500	20	37.0%	30	55.6%	54
79 TEXAS, N			11	13.9%	23	29.1%	79
80 TEXAS, S	25	10000	16	33.3%	24	50.0%	48
81 TEXAS, W	5	500	37	43.5%	56	65.9%	85
82 UTAH	5	500	0	0.0%	1	20.0%	5
83 VERMONT	0	85	0	n/a	0	n/a	0
84 VIRGIN ISLANDS	5	50	0	0.0%	2	66.7%	3
85 VIRGINIA, E		500	4	3.1%	31	24.2%	128
86 VIRGINIA, W	5	500	16	18.8%	54	63.5%	85
87 WASHINGTON, E	5	500	3	30.0%	8	80.0%	10
88 WASHINGTON, W	250	1000	1	9.1%	1	9.1%	11
89 WEST VA, N	0.25	25	8	33.3%	20	83.3%	24
90 WEST VA, S	5	500	61	52.6%	99	85.3%	116
91 WISCONSIN, E	50	3000	0	0.0%	2	66.7%	3
92 WISCONSIN, W	5	500	0	0.0%	0	0.0%	4
93 WYOMING	0	57	0	0.0%	2	100.0%	2
<b>TOTAL</b>			<b>438</b>	<b>14.7%</b>	<b>1212</b>	<b>40.8%</b>	<b>2971</b>
	Average: 41	1149					
	Median: 5	500					
	TOTAL 71	69					

file: crackup4.wb2

Note: 2D1.1 was the guideline with the highest offense level and crack was the only drug involved for all 2,971 defendants.

**TABLE 2**

**Percentage of Total Defendants Sentenced Who Received Substantial Assistance Departures (SAD) and Other Downward Departures (ODD) in Fiscal Year 1994, by District and Race of Defendant**

District / USAO	Total Def. Sent.	Total Pct. SAD	Total Pct. ODD	White Def. Sent.	White Pct. SAD	White Pct. ODD	Black Def. Sent.	Black Pct. SAD	Black Pct. ODD	Hispanic Def. Sent.	Hispanic Pct. SAD	Hispanic Pct. ODD
<b>Total</b>	<b>36,931</b>	<b>19.8%</b>	<b>7.6%</b>	<b>15,914</b>	<b>21.1%</b>	<b>8.3%</b>	<b>11,626</b>	<b>20.3%</b>	<b>5.3%</b>	<b>9,391</b>	<b>16.9%</b>	<b>9.3%</b>
Alabama Middle	229	19.2%	2.6%	102	18.6%	4.0%	112	17.0%	0.0%	16	40.0%	0.0%
Alabama Northern	399	19.5%	2.5%	181	23.8%	4.4%	212	16.0%	0.0%	6	16.7%	0.0%
Alabama Southern	290	29.0%	4.1%	98	22.4%	5.1%	117	27.5%	4.1%	21	71.4%	0.0%
Alaska	90	10.0%	12.2%	57	14.0%	12.3%	24	4.2%	8.3%	9	0.0%	22.2%
Arizona	1,030	15.5%	35.7%	269	25.3%	20.1%	34	23.5%	20.6%	727	11.6%	42.2%
Arkansas Eastern	246	13.4%	4.9%	117	12.0%	8.8%	111	14.4%	2.7%	18	16.7%	5.6%
Arkansas Western	110	4.5%	1.8%	74	6.8%	2.7%	16	0.0%	0.0%	20	0.0%	0.0%
California Central	661	6.3%	5.5%	294	7.1%	5.1%	197	8.1%	6.1%	370	4.6%	5.4%
California Eastern	538	9.7%	9.9%	255	12.9%	8.2%	95	11.6%	12.6%	188	4.3%	10.6%
California Northern	367	15.5%	8.7%	177	20.9%	8.5%	127	7.9%	9.4%	63	15.9%	7.9%
California Southern	1,737	22.7%	13.4%	512	28.1%	17.4%	119	24.4%	20.2%	1,106	20.0%	10.8%
Colorado	346	21.1%	11.0%	196	24.5%	11.7%	68	13.2%	16.2%	82	19.5%	4.9%
Connecticut	244	8.6%	35.7%	143	4.9%	39.2%	64	12.5%	34.4%	37	16.2%	24.3%
Delaware	85	15.3%	1.2%	38	7.9%	2.6%	42	21.4%	0.0%	5	20.0%	0.0%
District of Columbia	460	13.3%	8.3%	53	15.1%	11.3%	384	12.0%	7.3%	23	30.4%	17.4%
Florida Middle	1,141	33.8%	4.5%	566	32.2%	4.9%	374	35.3%	5.3%	201	35.8%	1.5%
Florida Northern	393	41.0%	1.0%	159	29.6%	1.3%	198	46.5%	1.0%	36	61.1%	0.0%
Florida Southern	1,296	15.1%	5.2%	443	17.6%	6.5%	240	8.8%	2.9%	613	15.8%	5.1%
Georgia Middle	369	17.9%	2.4%	159	15.1%	2.5%	202	19.8%	2.5%	8	25.0%	0.0%
Georgia Northern	607	21.3%	5.9%	230	21.3%	9.1%	355	21.1%	3.9%	22	22.7%	4.5%
Georgia Southern	259	32.4%	5.8%	111	17.1%	8.1%	132	45.6%	4.5%	16	31.3%	0.0%
Guam	11	9.1%	0.0%	8	12.5%	0.0%	1	0.0%	0.0%	2	0.0%	0.0%
Hawaii	81	29.6%	8.6%	61	32.8%	8.2%	8	12.5%	12.5%	12	25.0%	8.3%
Idaho	85	8.2%	4.7%	52	11.5%	7.7%	3	0.0%	0.0%	30	3.3%	0.0%
Illinois Central	236	25.8%	1.3%	131	23.7%	2.3%	91	29.7%	0.0%	14	21.4%	0.0%
Illinois Northern	583	14.1%	5.1%	249	15.3%	7.2%	243	15.2%	3.3%	91	7.7%	4.4%
Illinois Southern	233	24.9%	3.0%	91	26.4%	4.4%	134	22.4%	2.2%	8	50.0%	0.0%
Indiana Northern	174	6.3%	4.6%	94	3.2%	3.2%	73	8.2%	6.8%	7	28.6%	0.0%
Indiana Southern	212	26.4%	1.9%	120	25.8%	2.5%	75	24.0%	1.3%	17	41.2%	0.0%
Iowa Northern	152	23.0%	7.2%	93	23.7%	7.5%	42	28.6%	7.1%	17	5.9%	5.9%
Iowa Southern	137	34.3%	3.6%	98	41.8%	4.1%	25	16.0%	4.0%	14	14.3%	0.0%
Kansas	294	15.0%	5.8%	167	16.8%	5.4%	96	11.5%	6.3%	31	16.1%	6.5%
Kentucky Eastern	322	25.2%	3.4%	254	23.6%	3.9%	55	25.5%	1.8%	13	53.8%	0.0%
Kentucky Western	282	8.2%	4.3%	165	6.7%	4.8%	105	10.5%	2.9%	12	8.3%	8.3%
Louisiana Eastern	378	7.7%	5.3%	165	10.3%	8.5%	175	5.7%	2.9%	38	5.3%	2.6%
Louisiana Middle	45	8.9%	2.2%	19	15.8%	5.3%	23	4.3%	0.0%	3	0.0%	0.0%
Louisiana Western	280	16.4%	2.9%	116	22.4%	0.9%	133	13.5%	3.0%	31	6.5%	9.7%

Source: U.S. Sentencing Commission data for white, black, and hispanic defendants sentenced in 1994 (excludes all other races).

TABLE 2

Percentage of Total Defendants Sentenced Who Received Substantial Assistance Departures (SAD) and Other Downward Departures (ODD) in Fiscal Year 1994, by District and Race of Defendant

District / USAO	Total Def. Sent.	Total Pct. SAD	Total Pct. ODD	White Def. Sent.	White Pct. SAD	White Pct. ODD	Black Def. Sent.	Black Pct. SAD	Black Pct. ODD	Hispanic Def. Sent.	Hispanic Pct. SAD	Hispanic Pct. ODD
<b>Total</b>	<b>36,931</b>	<b>19.8%</b>	<b>7.6%</b>	<b>15,914</b>	<b>21.1%</b>	<b>8.3%</b>	<b>11,626</b>	<b>20.3%</b>	<b>5.3%</b>	<b>9,391</b>	<b>16.9%</b>	<b>9.3%</b>
Maine	133	21.8%	0.8%	121	22.3%	0.8%	4	0.0%	0.0%	8	25.0%	0.0%
Maryland	353	23.5%	11.0%	133	20.3%	12.8%	210	28.2%	10.0%	10	10.0%	10.0%
Massachusetts	362	26.6%	12.2%	259	25.9%	12.7%	69	28.8%	8.5%	44	29.5%	13.6%
Michigan Eastern	807	20.7%	4.3%	344	18.6%	5.5%	375	19.7%	3.7%	88	33.0%	2.3%
Michigan Western	271	23.6%	3.3%	189	27.0%	3.7%	34	14.7%	5.9%	48	16.7%	0.0%
Minnesota	358	23.5%	10.1%	216	22.2%	13.0%	103	27.2%	6.8%	39	20.5%	2.6%
Mississippi Northern	183	13.1%	13.1%	58	6.9%	12.1%	119	16.0%	14.3%	6	16.7%	0.0%
Mississippi Southern	217	13.8%	4.6%	94	9.6%	4.3%	104	17.3%	5.8%	19	15.8%	0.0%
Missouri Eastern	383	27.7%	5.0%	190	30.5%	6.8%	176	23.9%	3.4%	17	35.3%	0.0%
Missouri Western	369	39.8%	4.6%	252	38.1%	4.8%	89	42.7%	4.5%	28	46.4%	3.6%
Montana	126	16.7%	15.9%	107	18.7%	18.7%	6	0.0%	0.0%	13	7.7%	0.0%
Nebraska	224	33.9%	7.6%	130	36.2%	7.7%	58	39.7%	10.3%	36	16.7%	2.8%
Nevada	364	11.0%	9.9%	222	12.2%	13.5%	85	12.9%	5.9%	57	3.5%	1.8%
New Hampshire	87	34.5%	8.0%	77	32.5%	9.1%	1	0.0%	0.0%	9	55.6%	0.0%
New Jersey	478	27.0%	3.3%	241	28.2%	4.6%	120	23.3%	0.0%	117	28.2%	4.3%
New Mexico	548	6.6%	15.1%	144	13.2%	22.2%	27	7.4%	14.8%	377	4.0%	12.5%
New York Eastern	1,127	18.9%	15.6%	375	20.8%	12.0%	349	18.9%	16.0%	403	17.1%	18.6%
New York Northern	289	23.2%	10.4%	172	22.7%	10.5%	58	35.7%	7.1%	61	13.1%	13.1%
New York Southern	1,097	17.0%	9.2%	377	18.3%	10.1%	285	14.4%	7.4%	435	17.7%	9.7%
New York Western	367	21.0%	12.0%	192	25.5%	12.5%	133	15.0%	11.3%	42	19.0%	11.9%
North Carolina Eastern	463	21.4%	3.7%	127	22.0%	3.9%	317	20.8%	3.5%	19	26.3%	5.3%
North Carolina Middle	288	24.3%	3.8%	93	24.7%	6.5%	189	23.3%	2.6%	6	50.0%	0.0%
North Carolina Western	707	44.4%	2.5%	332	40.1%	3.6%	316	48.4%	1.3%	59	47.5%	3.4%
North Dakota	88	12.5%	14.8%	70	15.7%	14.3%	4	0.0%	50.0%	14	0.0%	7.1%
Ohio Northern	548	19.4%	7.3%	229	11.8%	8.3%	255	14.5%	8.2%	62	67.7%	0.0%
Ohio Southern	399	28.8%	6.0%	167	20.4%	7.8%	205	36.1%	3.9%	27	25.9%	11.1%
Oklahoma Eastern	44	4.5%	0.0%	32	6.3%	0.0%	9	0.0%	0.0%	3	0.0%	0.0%
Oklahoma Northern	160	16.3%	6.3%	96	22.9%	8.3%	50	6.0%	2.0%	14	7.1%	7.1%
Oklahoma Western	242	11.2%	6.6%	148	8.8%	6.8%	66	18.2%	4.5%	28	7.1%	10.7%
Oregon	471	9.6%	14.6%	291	14.1%	17.9%	34	5.9%	26.5%	146	1.4%	5.5%
Pennsylvania Eastern	815	49.6%	3.7%	351	49.0%	4.6%	326	45.1%	3.1%	138	61.6%	2.9%
Pennsylvania Middle	281	23.3%	8.5%	170	27.1%	11.2%	77	22.1%	3.9%	34	23.5%	5.9%
Pennsylvania Western	278	11.5%	10.8%	142	12.7%	16.2%	132	9.8%	5.3%	4	25.0%	0.0%
Puerto Rico	430	17.2%	5.8%	21	38.1%	19.0%	19	15.8%	5.3%	390	16.2%	5.1%
Rhode Island	121	9.1%	6.6%	61	18.0%	8.2%	20	0.0%	5.0%	40	0.0%	5.0%
South Carolina	662	19.9%	2.7%	286	24.8%	4.2%	354	15.8%	1.4%	22	22.7%	4.5%
South Dakota	80	5.0%	5.0%	65	4.6%	6.2%	5	0.0%	0.0%	10	10.0%	0.0%

Source: U.S. Sentencing Commission data for white, black, and hispanic defendants sentenced in 1994 (excludes all other races).

**TABLE 2**

**Percentage of Total Defendants Sentenced Who Received Substantial Assistance Departures (SAD) and Other Downward Departures (ODD) in Fiscal Year 1994, by District and Race of Defendant**

District / USAO	Total Def. Sent.	Total Pct. SAD	Total Pct. ODD	White Def. Sent.	White Pct. SAD	White Pct. ODD	Black Def. Sent.	Black Pct. SAD	Black Pct. ODD	Hispanic Def. Sent.	Hispanic Pct. SAD	Hispanic Pct. ODD
<b>Total</b>	<b>38,931</b>	<b>19.8%</b>	<b>7.6%</b>	<b>15,914</b>	<b>21.1%</b>	<b>8.3%</b>	<b>11,626</b>	<b>20.3%</b>	<b>6.3%</b>	<b>9,391</b>	<b>16.9%</b>	<b>9.3%</b>
Tennessee Eastern	334	22.8%	3.3%	238	21.4%	3.8%	90	24.4%	1.1%	6	50.0%	16.7%
Tennessee Middle	217	13.4%	3.7%	110	11.8%	4.5%	101	12.9%	3.0%	6	50.0%	0.0%
Tennessee Western	405	23.0%	3.7%	178	23.0%	2.8%	209	22.5%	4.8%	18	27.8%	0.0%
Texas Eastern	387	10.1%	5.7%	209	12.4%	6.2%	151	8.6%	6.0%	27	0.0%	0.0%
Texas Northern	841	19.3%	4.3%	352	22.2%	7.1%	282	23.4%	1.8%	207	8.7%	2.9%
Texas Southern	1,451	18.1%	5.0%	238	27.3%	9.7%	128	20.3%	5.5%	1,085	15.8%	4.0%
Texas Western	1,383	17.5%	4.1%	329	21.0%	7.3%	215	14.4%	5.1%	839	16.9%	2.6%
Utah	249	9.2%	18.1%	179	8.4%	19.6%	13	15.4%	30.8%	57	10.5%	10.5%
Vermont	93	22.6%	10.8%	76	26.3%	13.2%	11	0.0%	0.0%	6	16.7%	0.0%
Virgin Islands	85	5.9%	0.0%	4	0.0%	0.0%	50	10.0%	0.0%	31	0.0%	0.0%
Virginia Eastern	857	4.1%	2.8%	308	2.3%	3.9%	479	5.8%	2.5%	70	0.0%	0.0%
Virginia Western	382	25.9%	5.2%	184	23.9%	4.9%	181	28.7%	5.5%	17	17.6%	5.9%
Washington Eastern	221	7.7%	5.9%	110	11.8%	10.0%	17	5.9%	5.9%	94	3.2%	1.1%
Washington Western	341	24.6%	10.9%	214	23.8%	10.3%	60	25.0%	11.7%	67	26.9%	11.9%
West Virginia Northern	136	14.7%	4.4%	91	18.7%	5.5%	40	7.5%	2.5%	5	0.0%	0.0%
West Virginia Southern	313	6.7%	5.8%	152	7.9%	5.3%	157	5.7%	6.4%	4	0.0%	0.0%
Wisconsin Eastern	228	14.9%	1.8%	103	18.4%	1.0%	91	11.0%	1.1%	34	14.7%	5.9%
Wisconsin Western	99	8.1%	2.0%	80	5.0%	2.5%	13	15.4%	0.0%	6	33.3%	0.0%
Wyoming	89	28.1%	10.1%	68	29.4%	8.8%	8	12.5%	25.0%	13	30.8%	7.7%

Note: The following example interprets the data for a specific district.

In the E.D. of Tennessee, a total of 334 defendants were sentenced for all offenses in FY 1994. Of these 334 defendants:

- o 22.8% (76 defendants) received substantial assistance departures and 3.3% (11 defendants) received other downward departures;
- o 238 defendants were white, of whom 21.4% (51 defendants) received substantial assistance departures and 3.8% (9 defendants) received other downward departures;
- o 90 defendants were black, of whom 24.4% (22 defendants) received substantial assistance departures and 1.1% (1 defendant) received a downward departure; and
- o 6 defendants were hispanic, of whom 50.0% (3 defendants) received substantial assistance departures and 16.7% (1 defendant) received a downward departure.

file: rdwg1.wb2[b]

Source: U.S. Sentencing Commission data for white, black, and hispanic defendants sentenced in 1994 (excludes all other races).

TABLE 3

Percentage of Drug Defendants Who Received Substantial Assistance Departures (SAD) and Other Downward Departures (ODD)  
In Fiscal Year 1994, by District and Race of Defendant

District / USAO	Total Def. Sent.	Total Pct. SAD	Total Pct. ODD	White Def. Sent.	White Pct. SAD	White Pct. ODD	Black Def. Sent.	Black Pct. SAD	Black Pct. ODD	Hispanic Def. Sent.	Hispanic Pct. SAD	Hispanic Pct. ODD
<b>Total</b>	<b>15,964</b>	<b>31.4%</b>	<b>7.2%</b>	<b>4,948</b>	<b>39.0%</b>	<b>6.0%</b>	<b>5,398</b>	<b>31.9%</b>	<b>8.3%</b>	<b>5,621</b>	<b>24.4%</b>	<b>10.1%</b>
Alabama Middle	78	39.7%	1.3%	17	52.0%	5.0%	64	33.3%	0.0%	7	57.1%	0.0%
Alabama Northern	155	38.7%	1.3%	56	55.4%	1.8%	95	29.5%	1.1%	4	25.0%	0.0%
Alabama Southern	140	50.0%	4.3%	39	46.2%	2.6%	81	45.7%	6.2%	20	75.0%	0.0%
Alaska	31	25.6%	12.9%	23	34.6%	13.0%	3	0.0%	0.0%	5	0.0%	20.0%
Arizona	512	23.2%	49.0%	81	46.9%	32.1%	8	66.7%	16.7%	425	18.1%	52.7%
Arkansas Eastern	138	17.4%	2.9%	56	14.3%	5.4%	69	20.3%	0.0%	13	15.4%	0.0%
Arkansas Western	19	5.3%	0.0%	13	7.7%	0.0%	6	0.0%	0.0%	0	0.0%	0.0%
California Central	178	15.7%	7.9%	42	28.6%	4.8%	29	20.7%	17.2%	107	9.3%	6.5%
California Eastern	142	23.0%	13.4%	74	27.0%	6.8%	18	33.3%	27.8%	50	16.0%	18.0%
California Northern	73	36.4%	12.3%	32	43.8%	9.4%	14	35.7%	7.1%	27	33.3%	16.5%
California Southern	1,028	31.7%	12.0%	282	37.2%	12.1%	54	27.8%	16.7%	692	29.6%	11.6%
Colorado	122	36.5%	9.8%	57	58.6%	0.0%	30	23.3%	20.0%	35	37.1%	11.4%
Connecticut	42	23.8%	35.7%	11	9.1%	27.3%	20	20.0%	60.0%	11	45.5%	0.0%
Delaware	26	42.3%	0.0%	4	25.0%	0.0%	19	47.4%	0.0%	3	33.3%	0.0%
District of Columbia	214	20.6%	9.3%	4	75.0%	0.0%	195	18.5%	8.7%	15	33.3%	20.0%
Florida Middle	635	47.4%	3.1%	214	55.1%	2.3%	261	45.6%	5.7%	160	40.0%	0.0%
Florida Northern	259	54.1%	0.8%	70	44.3%	1.4%	156	56.4%	0.6%	33	63.6%	0.0%
Florida Southern	667	24.1%	5.2%	182	33.0%	5.5%	101	17.8%	5.0%	384	21.8%	5.2%
Georgia Middle	94	39.4%	0.0%	22	36.4%	0.0%	70	38.6%	0.0%	2	100.0%	0.0%
Georgia Northern	294	33.7%	4.1%	102	36.3%	8.8%	177	32.2%	1.7%	15	33.3%	0.0%
Georgia Southern	138	47.8%	2.9%	47	23.4%	4.3%	83	63.9%	2.4%	8	25.0%	0.0%
Guam	6	0.0%	0.0%	4	0.0%	0.0%	1	0.0%	0.0%	1	0.0%	0.0%
Hawaii	29	48.3%	3.4%	23	47.8%	0.0%	2	50.0%	0.0%	4	50.0%	25.0%
Idaho	29	13.8%	0.0%	12	25.0%	0.0%	1	0.0%	0.0%	16	6.3%	0.0%
Illinois Central	106	48.1%	0.0%	34	70.6%	0.0%	63	39.7%	0.0%	9	22.2%	0.0%
Illinois Northern	177	21.5%	4.0%	28	42.9%	7.1%	81	25.9%	2.5%	68	7.4%	4.4%
Illinois Southern	155	28.4%	1.9%	40	32.5%	2.5%	108	25.0%	1.9%	7	57.1%	0.0%
Indiana Northern	49	18.4%	6.1%	14	21.4%	7.1%	30	13.3%	6.7%	5	40.0%	0.0%
Indiana Southern	65	50.8%	0.0%	34	50.0%	0.0%	18	55.6%	0.0%	13	46.2%	0.0%
Iowa Northern	93	33.3%	6.5%	56	33.9%	3.6%	32	34.4%	9.4%	5	20.0%	20.0%
Iowa Southern	74	46.6%	2.7%	49	63.3%	2.0%	14	21.4%	7.1%	11	18.2%	0.0%
Kansas	101	28.7%	3.0%	46	39.1%	4.3%	37	18.9%	2.7%	18	22.2%	0.0%
Kentucky Eastern	120	39.2%	1.7%	92	37.0%	2.2%	20	30.0%	0.0%	8	87.5%	0.0%
Kentucky Western	40	25.0%	5.0%	19	5.3%	5.3%	20	40.0%	5.0%	1	100.0%	0.0%
Louisiana Eastern	126	15.1%	3.2%	32	25.0%	3.1%	68	13.2%	2.9%	26	7.7%	15.4%
Louisiana Middle	21	14.3%	4.8%	6	33.3%	16.7%	13	7.7%	0.0%	2	0.0%	0.0%
Louisiana Western	77	16.9%	2.6%	23	13.0%	0.0%	41	19.5%	2.4%	13	15.4%	7.7%

Source: Data prepared by the U.S. Department of Justice from data provided by the Sentencing Commission.

TABLE 3

Percentage of Drug Defendants Who Received Substantial Assistance Departures (SAD) and Other Downward Departures (ODD)  
in Fiscal Year 1994, by District and Race of Defendant

District / USAO	Total Def. Sent.	Total Pct. SAD	Total Pct. ODD	White Def. Sent.	White Pct. SAD	White Pct. ODD	Black Def. Sent.	Black Pct. SAD	Black Pct. ODD	Hispanic Def. Sent.	Hispanic Pct. SAD	Hispanic Pct. ODD
<b>Total</b>	<b>15,964</b>	<b>31.4%</b>	<b>7.2%</b>	<b>4,948</b>	<b>39.0%</b>	<b>6.0%</b>	<b>5,395</b>	<b>31.9%</b>	<b>5.3%</b>	<b>5,621</b>	<b>24.4%</b>	<b>10.1%</b>
Maine	58	41.4%	0.0%	52	42.3%	0.0%	2	0.0%	0.0%	4	50.0%	0.0%
Maryland	102	39.2%	7.8%	26	50.0%	7.7%	71	36.6%	7.0%	5	20.0%	20.0%
Massachusetts	120	47.5%	5.8%	65	52.3%	4.6%	24	54.2%	8.3%	31	32.3%	6.5%
Michigan Eastern	328	36.3%	3.0%	100	33.0%	3.0%	160	38.1%	3.1%	68	36.8%	2.9%
Michigan Western	125	39.2%	1.6%	83	48.2%	2.4%	10	30.0%	0.0%	32	18.8%	0.0%
Minnesota	153	43.8%	7.2%	65	53.8%	9.2%	63	38.1%	7.9%	25	32.0%	0.0%
Mississippi Northern	76	30.3%	17.1%	13	30.8%	7.7%	59	30.5%	20.3%	4	25.0%	0.0%
Mississippi Southern	90	21.1%	3.3%	29	6.9%	0.0%	51	31.4%	5.9%	10	10.0%	0.0%
Missouri Eastern	164	39.0%	3.0%	74	52.7%	1.4%	76	25.0%	5.3%	14	42.9%	0.0%
Missouri Western	190	51.0%	4.1%	106	53.8%	3.8%	66	48.5%	6.1%	24	45.8%	0.0%
Montana	56	28.6%	1.8%	44	34.1%	2.3%	5	0.0%	0.0%	7	14.3%	0.0%
Nebraska	119	52.1%	8.4%	69	58.0%	7.2%	38	50.0%	10.5%	12	25.0%	8.3%
Nevada	889	18.0%	15.7%	38	21.1%	31.6%	20	30.0%	5.0%	31	6.5%	3.2%
New Hampshire	38	60.5%	5.3%	29	62.1%	6.9%	0	0.0%	0.0%	9	55.6%	0.0%
New Jersey	109	48.6%	2.8%	23	69.8%	0.0%	36	44.4%	0.0%	50	42.0%	6.0%
New Mexico	381	6.8%	15.0%	76	15.8%	21.1%	11	9.1%	27.3%	294	4.4%	12.9%
New York Eastern	573	21.1%	22.2%	77	27.3%	24.7%	196	20.4%	20.4%	300	20.0%	22.7%
New York Northern	95	49.5%	6.3%	45	53.3%	2.2%	33	51.5%	9.1%	17	35.3%	11.8%
New York Southern	340	32.2%	6.5%	57	31.6%	5.3%	49	32.7%	2.0%	234	19.2%	7.7%
New York Western	147	32.0%	6.8%	68	32.4%	11.8%	56	32.1%	3.6%	23	30.4%	0.0%
North Carolina Eastern	232	29.7%	3.4%	45	42.2%	0.0%	173	26.0%	4.0%	14	35.7%	7.1%
North Carolina Middle	115	37.4%	0.9%	20	55.0%	0.0%	89	32.6%	1.1%	6	50.0%	0.0%
North Carolina Western	435	61.6%	1.8%	198	56.8%	3.0%	190	67.4%	0.5%	47	59.6%	2.1%
North Dakota	21	47.6%	14.3%	17	58.8%	5.9%	1	0.0%	100.0%	3	0.0%	33.3%
Ohio Northern	159	47.2%	5.0%	26	38.5%	3.8%	80	30.0%	6.6%	53	77.7%	0.0%
Ohio Southern	129	54.0%	3.9%	30	56.7%	6.7%	64	57.1%	2.4%	15	33.3%	8.7%
Oklahoma Eastern	8	0.0%	0.0%	6	0.0%	0.0%	1	0.0%	0.0%	1	0.0%	0.0%
Oklahoma Northern	36	36.1%	0.0%	17	58.8%	0.0%	7	28.6%	0.0%	12	8.3%	0.0%
Oklahoma Western	93	24.7%	0.0%	41	26.8%	0.0%	42	26.2%	0.0%	10	10.0%	0.0%
Oregon	148	17.6%	8.9%	97	23.7%	19.6%	15	13.3%	40.0%	36	2.8%	8.3%
Pennsylvania Middle	75	46.7%	5.3%	33	63.6%	3.0%	31	32.3%	6.5%	11	36.4%	9.1%
Pennsylvania Eastern	399	61.4%	2.5%	142	59.9%	3.5%	141	58.2%	2.1%	116	67.2%	1.7%
Pennsylvania Western	93	20.4%	6.5%	30	30.0%	6.7%	60	15.0%	6.7%	3	33.3%	0.0%
Puerto Rico	279	22.6%	6.1%	14	42.9%	21.4%	16	18.8%	6.3%	249	21.7%	5.2%
Rhode Island	46	8.7%	2.2%	21	19.0%	4.8%	7	0.0%	0.0%	18	0.0%	0.0%
South Carolina	286	27.3%	2.4%	89	40.4%	3.4%	186	21.5%	2.2%	11	18.2%	0.0%
South Dakota	39	5.1%	2.6%	30	3.3%	3.3%	4	0.0%	0.0%	5	20.0%	0.0%

Source: Tabular data prepared by the U.S. Department of Justice from data provided by the U.S. Sentencing Commission.

**TABLE 3**

**Percentage of Drug Defendants Who Received Substantial Assistance Departures (SAD) and Other Downward Departures (ODD) in Fiscal Year 1994, by District and Race of Defendant**

District / USAO	Total Def. Sent.	Total Pct. SAD	Total Pct. ODD	White Def. Sent.	White Pct. SAD	White Pct. ODD	Black Def. Sent.	Black Pct. SAD	Black Pct. ODD	Hispanic Def. Sent.	Hispanic Pct. SAD	Hispanic Pct. ODD
<b>Total</b>	<b>15,964</b>	<b>31.4%</b>	<b>7.2%</b>	<b>4,948</b>	<b>39.0%</b>	<b>6.0%</b>	<b>5,395</b>	<b>31.9%</b>	<b>6.3%</b>	<b>5,621</b>	<b>24.4%</b>	<b>10.1%</b>
Tennessee Eastern	136	41.2%	2.2%	80	40.0%	2.5%	50	42.0%	0.0%	6	50.0%	16.7%
Tennessee Middle	40	35.0%	0.0%	17	23.5%	0.0%	19	36.8%	0.0%	4	75.0%	0.0%
Tennessee Western	157	40.1%	3.2%	40	55.0%	0.0%	102	35.3%	4.9%	15	33.3%	0.0%
Texas Eastern	173	9.2%	2.9%	60	11.7%	0.0%	92	9.8%	5.4%	21	0.0%	0.0%
Texas Northern	289	23.9%	3.1%	54	25.9%	5.6%	129	31.8%	2.3%	106	13.2%	2.8%
Texas Southern	853	24.4%	3.3%	75	45.3%	5.3%	69	31.9%	5.8%	709	21.4%	2.8%
Texas Western	759	24.2%	3.4%	129	36.4%	4.7%	103	16.5%	9.7%	527	22.8%	1.9%
Utah	99	15.2%	15.2%	52	15.4%	13.5%	9	22.2%	22.2%	38	13.2%	13.2%
Vermont	41	22.0%	4.9%	28	30.8%	7.7%	10	0.0%	0.0%	5	20.0%	0.0%
Virgin Islands	16	12.5%	0.0%	0	0.0%	0.0%	0	0.0%	0.0%	0	0.0%	0.0%
Virginia Eastern	322	8.4%	1.6%	75	5.3%	2.7%	212	10.8%	1.4%	35	0.0%	0.0%
Virginia Western	216	36.6%	4.6%	89	39.3%	3.4%	111	36.9%	5.4%	16	18.8%	6.3%
Washington Eastern	75	20.0%	2.7%	48	22.9%	2.1%	13	7.7%	7.7%	14	21.4%	0.0%
Washington Western	144	50.0%	3.5%	70	58.6%	0.0%	24	54.2%	8.3%	50	38.0%	6.0%
West Virginia Northern	82	13.4%	2.4%	47	21.3%	4.3%	31	3.2%	0.0%	4	0.0%	0.0%
West Virginia Southern	210	6.7%	5.7%	71	7.0%	4.2%	138	6.6%	6.6%	3	0.0%	0.0%
Wisconsin Eastern	74	24.3%	2.7%	28	34.6%	0.0%	23	17.4%	4.3%	25	20.0%	4.0%
Wisconsin Western	29	27.6%	0.0%	19	21.1%	0.0%	6	33.3%	0.0%	4	50.0%	0.0%
Wyoming	44	40.9%	4.5%	35	42.9%	2.9%	2	0.0%	0.0%	7	42.9%	14.3%

Note: The following example interprets the data for a specific district.

In the E.D. of Tennessee, a total of 136 defendants were sentenced for drug offenses in FY 1994. Of these 136 drug defendants:

- o 41.2% (56 defendants) received substantial assistance departures and 2.2% (3 defendants) received other downward departures;
- o 80 were white, of whom 40.0% (32 defendants) received substantial assistance departures and 2.5% (2 defendants) received other downward departures;
- o 50 were black, of whom 42.0% (21 defendants) received substantial assistance departures; and
- o 6 were hispanic, of whom 50.0% (3 defendants) received substantial assistance departures and 16.7% (1 defendant) received a downward departure.

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TABLE 4

Percentage of Defendants Who Were Charged With 924(c) or Received Firearms-Related Sentencing Enhancements  
in Fiscal Year 1994, by District and Race of Defendant

District / USAO	Total Gun Def. Sent.	Gun Pct 924c	Gun Pct S.E.	White Def. Sent.	White Pct 924c	White Pct S.E.	Black Def. Sent.	Black Pct 924c	Black Pct S.E.	Hispanic Def. Sent.	Hispanic Pct 924c	Hispanic Pct S.E.
Total	4,564	42.1%	57.9%	1,348	37.5%	62.5%	2,434	48.4%	51.6%	782	30.1%	69.9%
Alabama Middle	34	35.3%	64.7%	9	33.3%	66.7%	24	37.5%	62.5%	1	0.0%	100.0%
Alabama Northern	49	55.1%	44.9%	16	25.0%	75.0%	33	69.7%	30.3%	0	0.0%	0.0%
Alabama Southern	35	57.1%	42.9%	5	40.0%	60.0%	29	62.1%	37.9%	1	0.0%	100.0%
Alaska	19	57.9%	42.1%	14	50.0%	50.0%	5	80.0%	20.0%	0	0.0%	0.0%
Arizona	76	30.3%	69.7%	27	22.2%	77.8%	6	33.3%	66.7%	43	34.9%	65.1%
Arkansas Eastern	39	30.8%	69.2%	11	36.4%	63.6%	28	30.8%	69.2%	2	0.0%	100.0%
Arkansas Western	8	37.5%	62.5%	6	33.3%	66.7%	2	50.0%	50.0%	0	0.0%	0.0%
California Central	179	50.8%	49.2%	33	33.3%	66.7%	100	59.0%	41.0%	46	45.7%	54.3%
California Eastern	100	41.0%	59.0%	29	51.7%	48.3%	43	39.5%	60.5%	28	32.1%	67.9%
California Northern	38	28.9%	71.1%	15	40.0%	60.0%	19	28.3%	73.7%	4	0.0%	100.0%
California Southern	109	26.6%	73.4%	49	20.4%	79.6%	21	47.6%	52.4%	39	23.1%	76.9%
Colorado	47	42.6%	57.4%	15	60.0%	40.0%	21	42.9%	57.1%	11	18.2%	81.8%
Connecticut	28	25.0%	75.0%	9	0.0%	100.0%	10	60.0%	40.0%	9	11.1%	88.9%
Delaware	7	42.9%	57.1%	0	0.0%	0.0%	6	50.0%	50.0%	1	0.0%	100.0%
District of Columbia	50	38.0%	62.0%	0	0.0%	0.0%	49	38.8%	61.2%	1	0.0%	100.0%
Florida Middle	155	24.5%	75.5%	46	26.1%	73.9%	64	27.4%	72.6%	25	12.0%	88.0%
Florida Northern	100	29.0%	71.0%	15	60.0%	40.0%	73	24.7%	75.3%	12	16.7%	83.3%
Florida Southern	98	49.0%	51.0%	34	50.0%	50.0%	41	53.7%	46.3%	21	38.1%	61.9%
Georgia Middle	55	43.6%	56.4%	10	40.0%	60.0%	44	45.5%	54.5%	1	0.0%	100.0%
Georgia Northern	106	39.6%	60.4%	29	44.8%	55.2%	76	38.2%	61.8%	1	0.0%	100.0%
Georgia Southern	28	42.9%	57.1%	5	60.0%	40.0%	21	33.3%	66.7%	2	100.0%	0.0%
Guam	2	0.0%	100.0%	2	0.0%	100.0%	0	0.0%	0.0%	0	0.0%	0.0%
Hawaii	4	25.0%	75.0%	0	0.0%	0.0%	2	0.0%	100.0%	2	50.0%	50.0%
Idaho	8	62.5%	37.5%	6	66.7%	33.3%	0	0.0%	0.0%	2	50.0%	50.0%
Illinois Central	25	52.0%	48.0%	11	45.5%	54.5%	13	61.5%	38.5%	1	0.0%	100.0%
Illinois Northern	61	37.7%	62.3%	13	23.1%	76.9%	38	42.1%	57.9%	10	40.0%	60.0%
Illinois Southern	35	51.4%	48.6%	6	16.7%	83.3%	29	58.6%	41.4%	0	0.0%	0.0%
Indiana Northern	29	51.7%	48.3%	15	40.0%	60.0%	13	61.5%	38.5%	1	100.0%	0.0%
Indiana Southern	28	60.7%	39.3%	7	57.1%	42.9%	20	60.0%	40.0%	1	100.0%	0.0%
Iowa Northern	33	36.4%	63.6%	18	33.3%	66.7%	13	46.2%	53.8%	2	0.0%	100.0%
Iowa Southern	19	73.7%	26.3%	11	63.6%	36.4%	6	83.3%	16.7%	2	100.0%	0.0%
Kansas	46	47.8%	52.2%	15	60.0%	40.0%	30	40.0%	60.0%	1	100.0%	0.0%
Kentucky Eastern	39	56.4%	43.6%	33	51.5%	48.5%	6	83.3%	16.7%	0	0.0%	0.0%
Kentucky Western	19	63.2%	36.8%	6	62.5%	37.5%	11	63.6%	36.4%	0	0.0%	0.0%
Louisiana Eastern	30	53.3%	46.7%	10	30.0%	70.0%	17	64.7%	35.3%	3	66.7%	33.3%
Louisiana Middle	2	0.0%	100.0%	1	0.0%	100.0%	1	0.0%	100.0%	0	0.0%	0.0%
Louisiana Western	36	41.7%	58.3%	5	40.0%	60.0%	26	46.2%	53.8%	5	20.0%	80.0%



TABLE 4

Percentage of Defendants Who Were Charged With 924(c) or Received Firearms-Related Sentencing Enhancements  
In Fiscal Year 1994, by District and Race of Defendant

District / USAO	Total Gun Def. Sent.	Gun Pct 924c	Gun Pct S.E.	White Def. Sent.	White Pct 924c	White Pct S.E.	Black Def. Sent.	Black Pct 924c	Black Pct S.E.	Hispanic Def. Sent.	Hispanic Pct 924c	Hispanic Pct S.E.
<b>Total</b>	<b>4,564</b>	<b>42.1%</b>	<b>57.9%</b>	<b>1,348</b>	<b>37.5%</b>	<b>62.5%</b>	<b>2,434</b>	<b>48.4%</b>	<b>51.6%</b>	<b>782</b>	<b>30.1%</b>	<b>69.9%</b>
Maine	18	50.0%	50.0%	17	47.1%	52.9%	1	100.0%	0.0%	0	0.0%	0.0%
Maryland	45	51.1%	48.9%	7	28.6%	71.4%	38	55.3%	44.7%	0	0.0%	0.0%
Massachusetts	22	9.1%	90.9%	12	16.7%	83.3%	7	0.0%	100.0%	3	0.0%	100.0%
Michigan Eastern	78	35.8%	64.1%	19	31.6%	68.4%	53	39.6%	60.4%	6	16.7%	83.3%
Michigan Western	20	20.0%	80.0%	10	10.0%	90.0%	4	75.0%	25.0%	6	0.0%	100.0%
Minnesota	41	61.0%	39.0%	15	53.3%	46.7%	24	68.7%	33.3%	2	50.0%	50.0%
Mississippi Northern	24	66.7%	33.3%	6	66.7%	33.3%	18	66.7%	33.3%	0	0.0%	0.0%
Mississippi Southern	22	54.5%	45.5%	5	20.0%	80.0%	15	60.0%	40.0%	2	100.0%	0.0%
Missouri Eastern	68	44.1%	55.9%	18	33.3%	66.7%	47	48.9%	51.1%	3	33.3%	66.7%
Missouri Western	64	64.1%	35.9%	35	57.1%	42.9%	26	69.2%	30.8%	3	100.0%	0.0%
Montana	21	47.6%	52.4%	17	52.9%	47.1%	2	50.0%	50.0%	2	0.0%	100.0%
Nebraska	32	37.5%	62.5%	12	41.7%	58.3%	17	23.5%	76.5%	3	100.0%	0.0%
Nevada	59	39.0%	61.0%	20	55.0%	45.0%	27	29.6%	70.4%	12	33.3%	66.7%
New Hampshire	9	22.2%	77.8%	9	22.2%	77.8%	0	0.0%	0.0%	0	0.0%	0.0%
New Jersey	34	26.5%	73.5%	15	6.7%	93.3%	13	61.5%	38.5%	6	0.0%	100.0%
New Mexico	25	36.0%	64.0%	11	18.2%	81.8%	2	50.0%	50.0%	12	50.0%	50.0%
New York Eastern	86	37.2%	62.8%	27	11.1%	88.9%	36	66.7%	33.3%	23	21.7%	78.3%
New York Northern	13	53.8%	46.2%	9	55.6%	44.4%	4	50.0%	50.0%	0	0.0%	0.0%
New York Southern	141	34.0%	66.0%	28	25.0%	75.0%	33	38.4%	63.6%	80	36.3%	63.7%
New York Western	27	14.8%	85.2%	6	0.0%	100.0%	18	22.2%	77.8%	3	0.0%	100.0%
North Carolina Eastern	90	62.2%	37.8%	14	42.9%	57.1%	73	65.8%	34.2%	3	66.7%	33.3%
North Carolina Middle	48	56.3%	43.7%	5	80.0%	20.0%	43	53.5%	46.5%	0	0.0%	0.0%
North Carolina Western	133	66.2%	33.8%	39	64.1%	35.9%	90	70.0%	30.0%	4	0.0%	100.0%
North Dakota	1	0.0%	100.0%	0	0.0%	0.0%	0	0.0%	0.0%	1	0.0%	100.0%
Ohio Northern	65	50.8%	49.2%	11	36.4%	63.6%	49	57.1%	42.9%	6	20.0%	80.0%
Ohio Southern	58	39.3%	60.7%	6	50.0%	50.0%	47	40.4%	59.6%	3	0.0%	100.0%
Oklahoma Eastern	8	37.5%	62.5%	4	25.0%	75.0%	3	66.7%	33.3%	1	0.0%	100.0%
Oklahoma Northern	24	66.7%	33.3%	6	66.7%	33.3%	17	64.7%	35.3%	1	100.0%	0.0%
Oklahoma Western	43	32.6%	67.4%	24	37.5%	62.5%	14	35.7%	64.3%	5	0.0%	100.0%
Oregon	66	18.2%	81.8%	48	14.6%	85.4%	6	50.0%	50.0%	12	16.7%	83.3%
Pennsylvania Middle	40	32.5%	67.5%	18	27.8%	72.2%	19	31.6%	68.4%	3	66.7%	33.3%
Pennsylvania Eastern	139	48.2%	51.8%	25	28.0%	72.0%	97	54.6%	45.4%	17	41.2%	58.8%
Pennsylvania Western	27	70.4%	29.6%	7	57.1%	42.9%	19	73.7%	26.3%	1	100.0%	0.0%
Puerto Rico	30	46.7%	53.3%	2	50.0%	50.0%	1	100.0%	0.0%	27	44.4%	55.6%
Rhode Island	16	31.3%	68.7%	5	20.0%	80.0%	5	40.0%	60.0%	6	33.3%	66.7%
South Carolina	91	40.7%	59.3%	22	36.4%	63.6%	69	42.0%	58.0%	0	0.0%	0.0%
South Dakota	10	30.0%	70.0%	7	28.6%	71.4%	2	0.0%	100.0%	1	100.0%	0.0%

Source: Data prepared by the U.S. Department of Justice from data provided by the U.S. Sentencing Commission.

**TABLE 4**

**Percentage of Defendants Who Were Charged With 924(c) or Received Firearms-Related Sentencing Enhancements in Fiscal Year 1994, by District and Race of Defendant**

District / USAO	Total Gun Def. Sent.	Gun Pct 924c	Gun Pct S.E.	White Def. Sent.	White Pct 924c	White Pct S.E.	Black Def. Sent.	Black Pct 924c	Black Pct S.E.	Hispanic Def. Sent.	Hispanic Pct 924c	Hispanic Pct S.E.
<b>Total</b>	<b>4,564</b>	<b>42.1%</b>	<b>57.9%</b>	<b>1,348</b>	<b>37.5%</b>	<b>62.5%</b>	<b>2,434</b>	<b>48.4%</b>	<b>51.6%</b>	<b>782</b>	<b>30.1%</b>	<b>69.9%</b>
Tennessee Eastern	42	61.9%	38.1%	21	61.9%	38.1%	21	61.9%	38.1%	0	0.0%	0.0%
Tennessee Middle	38	52.8%	47.2%	13	53.8%	46.2%	21	52.4%	47.6%	2	50.0%	50.0%
Tennessee Western	75	52.0%	48.0%	19	28.3%	73.7%	55	60.0%	40.0%	1	100.0%	0.0%
Texas Eastern	83	54.2%	45.8%	22	36.4%	63.6%	58	58.8%	41.1%	5	80.0%	20.0%
Texas Northern	168	31.0%	69.0%	33	39.4%	60.6%	75	33.3%	66.7%	60	23.3%	76.7%
Texas Southern	112	24.1%	75.9%	9	44.4%	55.6%	27	22.2%	77.8%	76	22.4%	77.6%
Texas Western	153	30.1%	69.9%	44	38.6%	61.4%	40	42.5%	57.5%	69	17.4%	82.6%
Utah	19	57.9%	42.1%	9	33.3%	66.7%	4	100.0%	0.0%	6	66.7%	33.3%
Vermont	14	21.4%	78.6%	8	25.0%	75.0%	4	0.0%	100.0%	2	50.0%	50.0%
Virgin Islands	8	25.0%	75.0%	0	0.0%	0.0%	6	16.7%	83.3%	2	50.0%	50.0%
Virginia Eastern	154	44.2%	55.8%	29	44.8%	55.2%	123	43.9%	56.1%	2	50.0%	50.0%
Virginia Western	49	51.0%	49.0%	16	31.3%	68.7%	30	66.7%	33.3%	3	0.0%	100.0%
Washington Eastern	8	50.0%	50.0%	2	100.0%	0.0%	2	0.0%	100.0%	4	50.0%	50.0%
Washington Western	40	30.0%	70.0%	16	37.5%	62.5%	13	23.1%	76.9%	11	27.3%	72.7%
West Virginia Northern	14	42.9%	57.1%	2	0.0%	100.0%	12	50.0%	50.0%	0	0.0%	0.0%
West Virginia Southern	33	39.4%	60.6%	12	25.0%	75.0%	21	47.6%	52.4%	0	0.0%	0.0%
Wisconsin Eastern	30	56.7%	43.3%	6	0.0%	100.0%	22	68.2%	31.8%	2	100.0%	0.0%
Wisconsin Western	12	25.0%	75.0%	5	20.0%	80.0%	5	40.0%	60.0%	2	0.0%	100.0%
Wyoming	4	25.0%	75.0%	3	33.3%	66.7%	0	0.0%	0.0%	1	0.0%	100.0%

**Notes:**

(1) Table 4 differs from Tables 2 and 3 because all defendants were charged with 924(c) or received firearms-related sentencing enhancements. In contrast, only proportions of total defendants (or drug defendants) received substantial assistance or other downward departures.

(2) In the M.D. of Tennessee, a total of 38 defendants received 924(c) charges or firearms-related sentencing enhancements in FY 1994. Of the 38 total:

- o 52.8% (19 defendants) were charged with 924(c) and 47.2% (17 defendants) received firearms-related sentencing enhancements;
- o 13 defendants were white, of whom 53.8% (7 defendants) were charged with 924(c) and 46.2% (6 defendants) received sentencing enhancements;
- o 21 defendants were black, of whom 52.4% (11 defendants) were charged with 924(c) and 47.6% (10 defendants) received sentencing enhancements;
- o 2 defendants were hispanic, one of whom was charged with 924(c) (50.0%) and the other received a sentencing enhancement (50.0%).

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## BACKGROUND MATERIAL

### 1. Crack Statistics

Tab A: FY 1994 Crack Defendants in the Federal System

Tab B: 1994 Crack Use

Tab C: 1994 Drug Arrests

Tab D: Drug Trafficking and Crack Defendants in the States

Tab E: Race of Users Versus Race of Traffickers:  
Understanding Crack Markets

Tab F: FY 1995 Crack Defendants Sentenced in the Federal System

### 2. March 1996 Memorandum to the Attorney General Regarding Sentencing Options for Cocaine Offenses

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## A. FY 1994 CRACK DEFENDANTS SENTENCED IN THE FEDERAL SYSTEM

### PROFILE OF FY 1994 SENTENCED DEFENDANTS U.S. Sentencing Commission (USSC) Data

- o In FY 1994, there were approximately 3,500 defendants sentenced for crack offenses in the federal system.
- o The seriousness of these offenders can be measured in a number of ways: amount of drug involved; criminal history of the offender; and whether the offender had a weapon. All of these can be gleaned from USSC data.<sup>1</sup>

**Drug Amount** - Chart 1 shows the distribution of crack defendants by the amount of the drug: less than 5 grams, 5 grams up to 50 grams, and 50 grams and above. Keep in mind that 5 grams represents the 5 year mandatory minimum and 50 grams represents the 10 year mandatory minimum. About 60% of defendants had 50 grams or more and about 40% had less than 50 grams -- 26% had at least 5 grams but less than 50 grams, and 13% had less than 5 grams. There were 415 defendants with less than 5 grams.

**Criminal History** - Chart 2 shows the distribution of crack defendants by criminal history category. Note that crack defendants are generally in higher criminal history categories than powder defendants. For example, while 39% of crack defendants were in criminal history category I, 63% of powder defendants were in this category.

**Weapon Involvement** - Chart 3 displays the proportion of crack defendants who had a weapon and those who did not. Note that 30% of crack defendants as compared to 16% of powder defendants had a weapon.

The proportion of defendants who had a gun was fairly constant across criminal history categories.

- o **Sentences** - Chart 4 displays the distribution of final sentences for all crack defendants. About 72% of crack defendants received sentences exceeding 5 years. Crack defendants received downward departures 38% of the time (33% were substantial assistance departures), whereas 42% of powder defendants received downward departures.

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<sup>1</sup> Note that when we analyzed specific offense or offender characteristics (e.g., criminal history category, weapon involvement) and drug amounts the total number of defendants ("N") varied.

- o **Defendants with Less than 50 Grams** - About 40% of crack defendants had less than 50 grams of crack.

Nearly 70% of these defendants either had a gun or were in a criminal history category greater than I.

About 30% were in criminal history category I and had no gun. Chart 5 displays these "lower end" crack defendants by length of sentence. More than one-third of them received sentences of 5 years or more.

- o **Defendants with Less than 5 Grams** - About 15% of crack defendants had less than 5 grams of crack.

About 70% of these defendants either had a gun or were in a criminal history category greater than I. Consequently, about 30% were in criminal history category I and had no gun.

- o **District Declination Policies and Prosecution Practices** - Chart 6 summarizes the crack declination policies of the U.S. Attorneys' offices. In 29 districts, the declination threshold is 50 grams or more, while 34 districts have thresholds of 5 grams up to 50 grams (29 are at 5 grams). In addition, six districts have thresholds of less than 5 grams and 24 have no quantity thresholds. Most U.S. Attorneys with quantity-based policies will depart from these policies for aggravating factors such as presence of a weapon, prior criminal record, or gang affiliation.

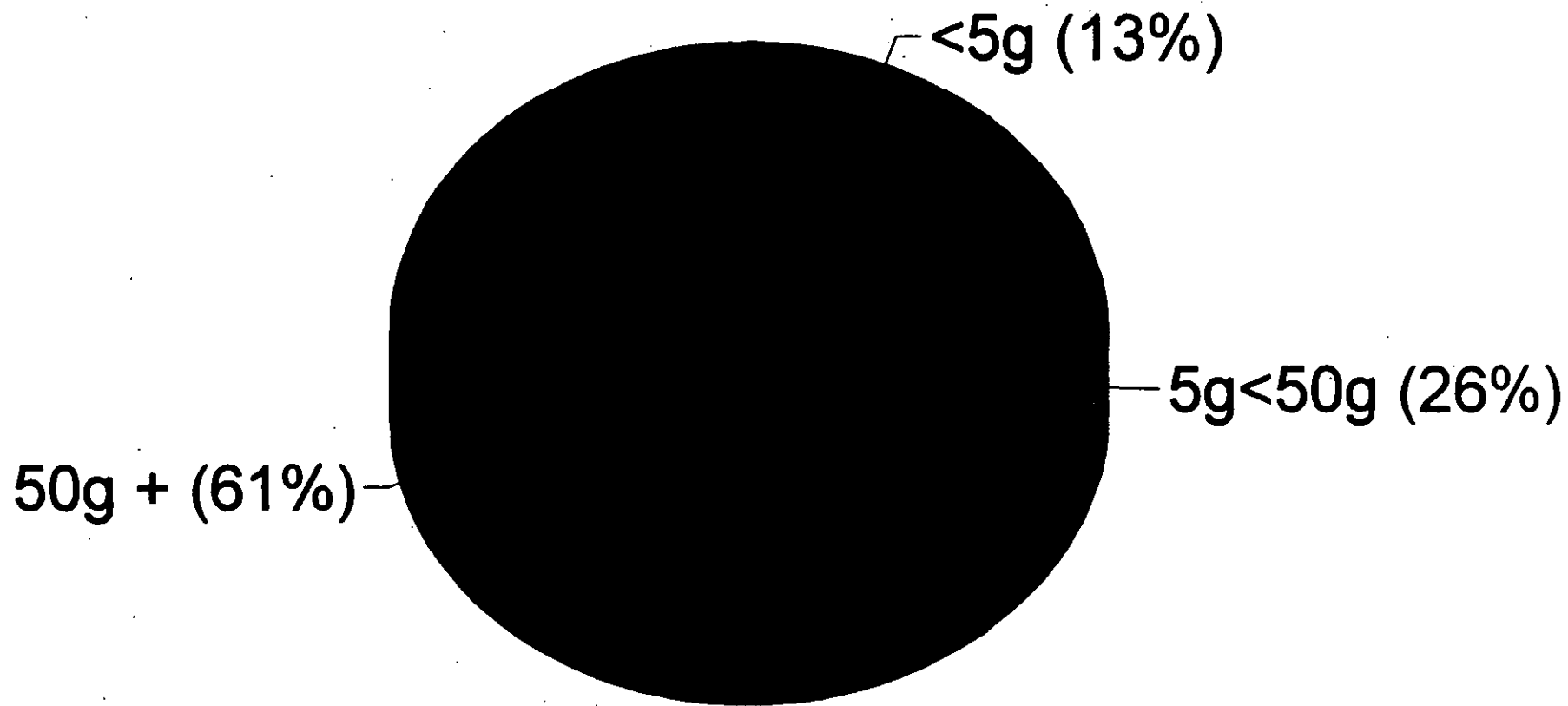
Chart 7 displays districts in which 20 or more crack defendants were sentenced for having less than 50 grams. (The percentage above each bar indicates the proportion of the district's crack caseload represented by under-50 gram defendants.)

Chart 8 displays districts in which 5 or more crack defendants were sentenced for under 5 grams. (The percentage above each bar indicates the proportion of the district's crack caseload represented by under-5 gram defendants.)

## F. FY 1995 CRACK DEFENDANTS SENTENCED IN THE FEDERAL SYSTEM

- o The total number of sentenced defendants has declined for the second year in a row. The change, from 39,971 to 38,500, represents a 3.7% reduction. Drugs still represent about 40% of sentenced defendants. The number of drug defendants is down about 8.5%, to 15,288.
- o The total number of crack defendants, 3,744, is up from 3,546. The proportion of all cocaine defendants sentenced for crack has increased. The number of powder cases is down -- from 5,100 to 4,480. If present trends continue, the numbers of crack and powder defendants will be about the same in the next year or so.
- o Comparing FY 1994 to FY 1995, crack cases involved larger drug amounts, with proportional declines in both lower and mid-level quantities and a corresponding increase in the high-level quantities. In addition, crack defendants had higher criminal history scores, and were more likely to have weapons and to receive aggravating role adjustments.
- o Nonetheless, sentences have decreased. There has been an increase in the plea rate, an increase in 5K1.1 departures, and an increase in acceptance of responsibility. We do not yet have data on the number of safety valve cases, which could also be partially responsible for this reduction in sentence length.

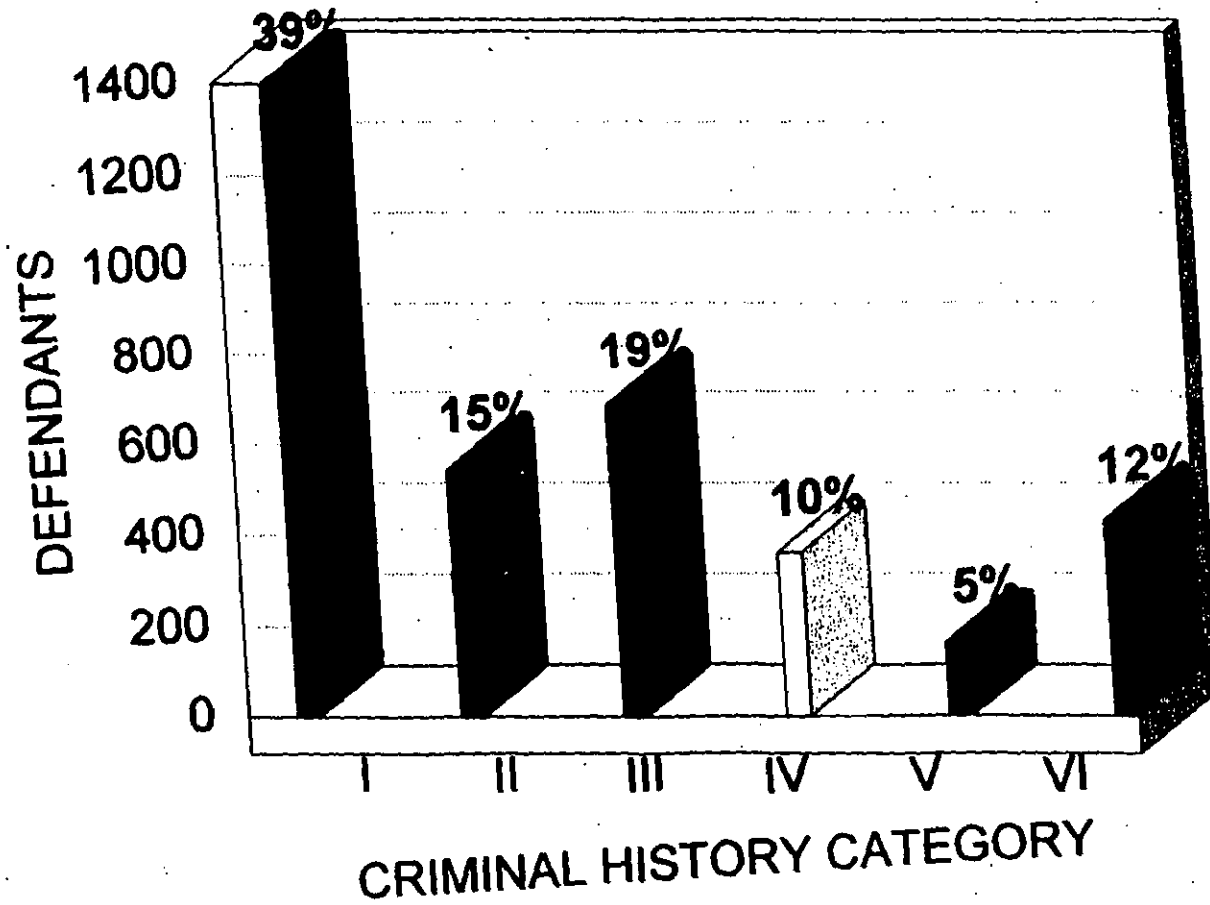
# CHART 1 CRACK DEFENDANTS BY DRUG AMOUNT



SOURCE: USSC 1994 Annual Report, Table 56  
N=3,299 Defendants



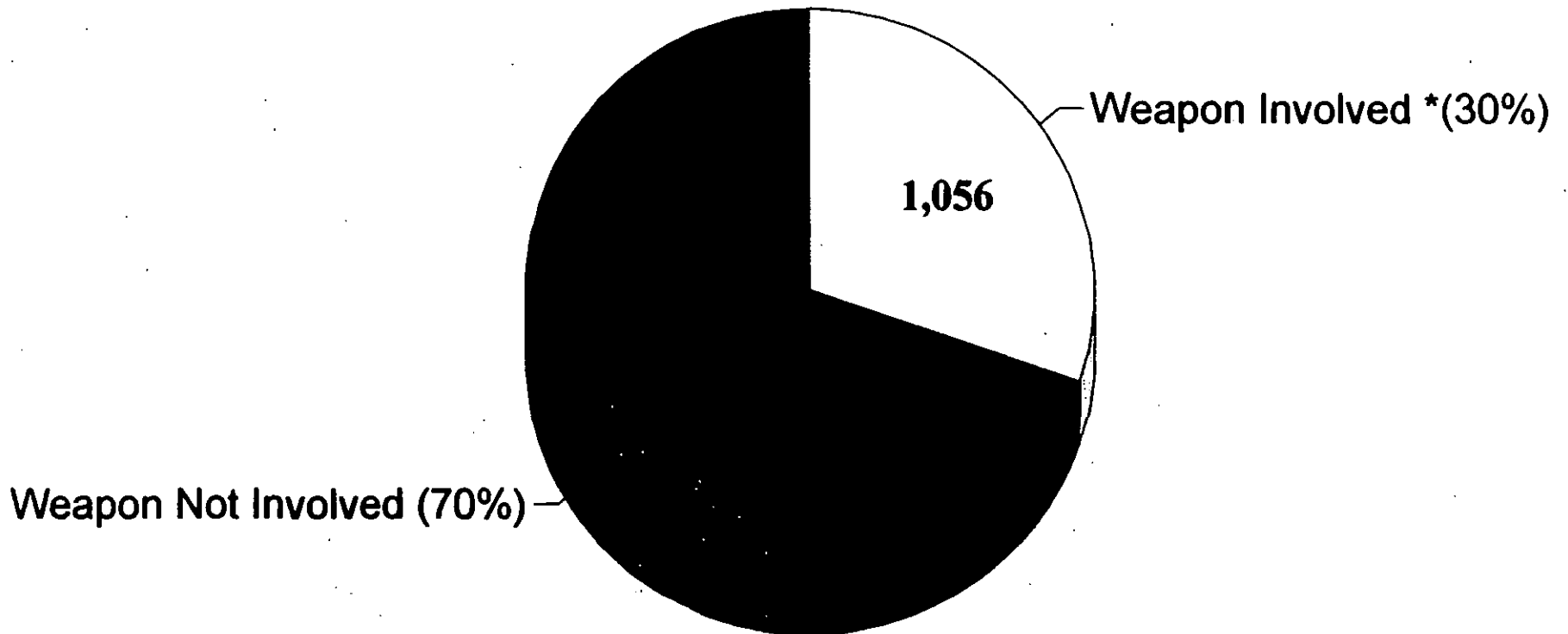
# CHART 2 CRACK DEFENDANTS BY CRIMINAL HISTORY



SOURCE: BOP Run from 1994 USSC MONFY94  
NOTE: 63% of powder cocaine defendants were in CHC I.  
N=3,585 Defendants

# CHART 3

## CRACK DEFENDANTS BY WEAPON INVOLVEMENT



SOURCE: BOP Run from 1994 USSC MONFY94

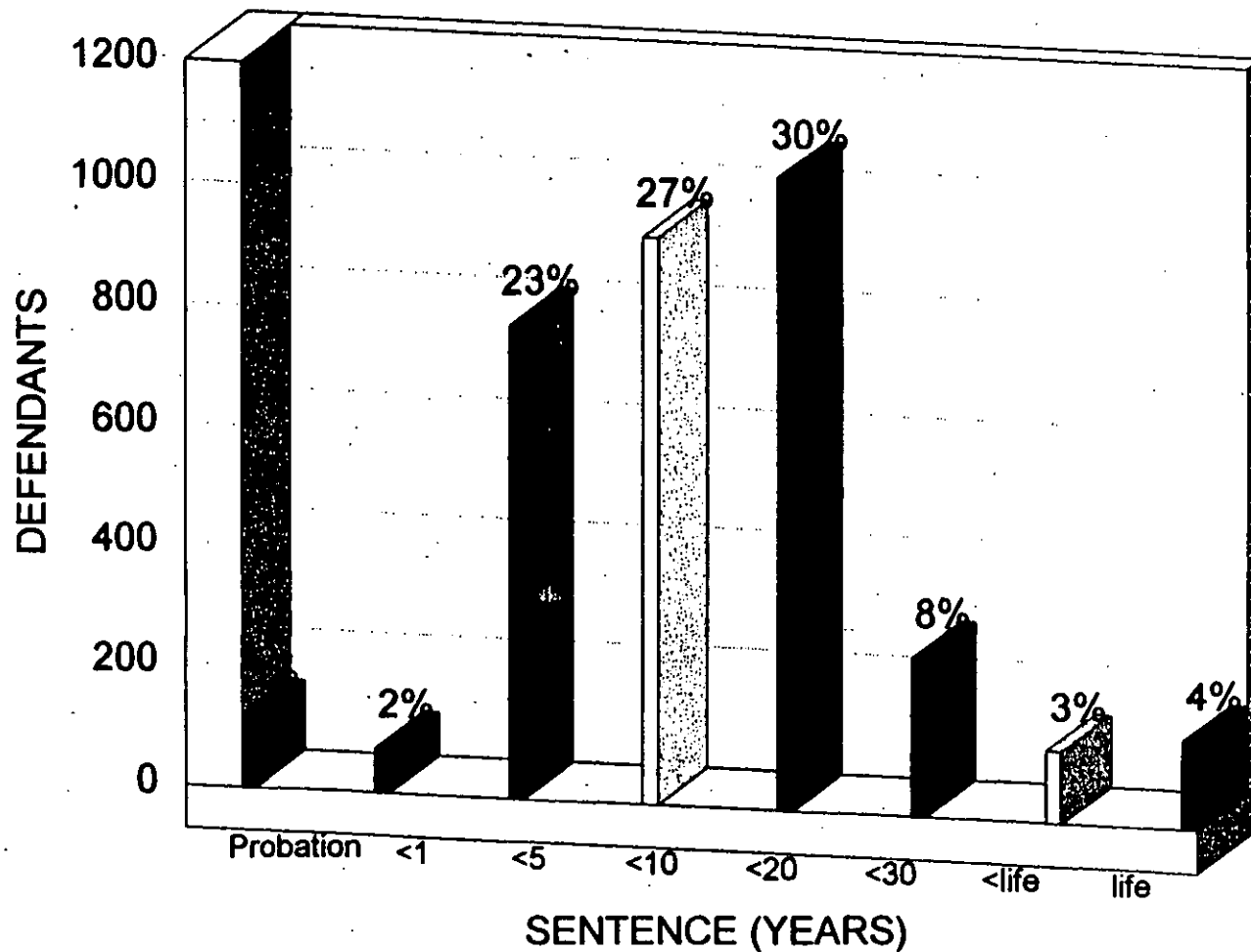
NOTE: Includes defendants with a sentencing enhancement for weapon possession (under section 2D1.1(b)(1) of the guidelines) or a conviction under 18 U.S.C. 924(c).

\*16% of powder cocaine defendants had a weapon involved.

N=3,497 Defendants

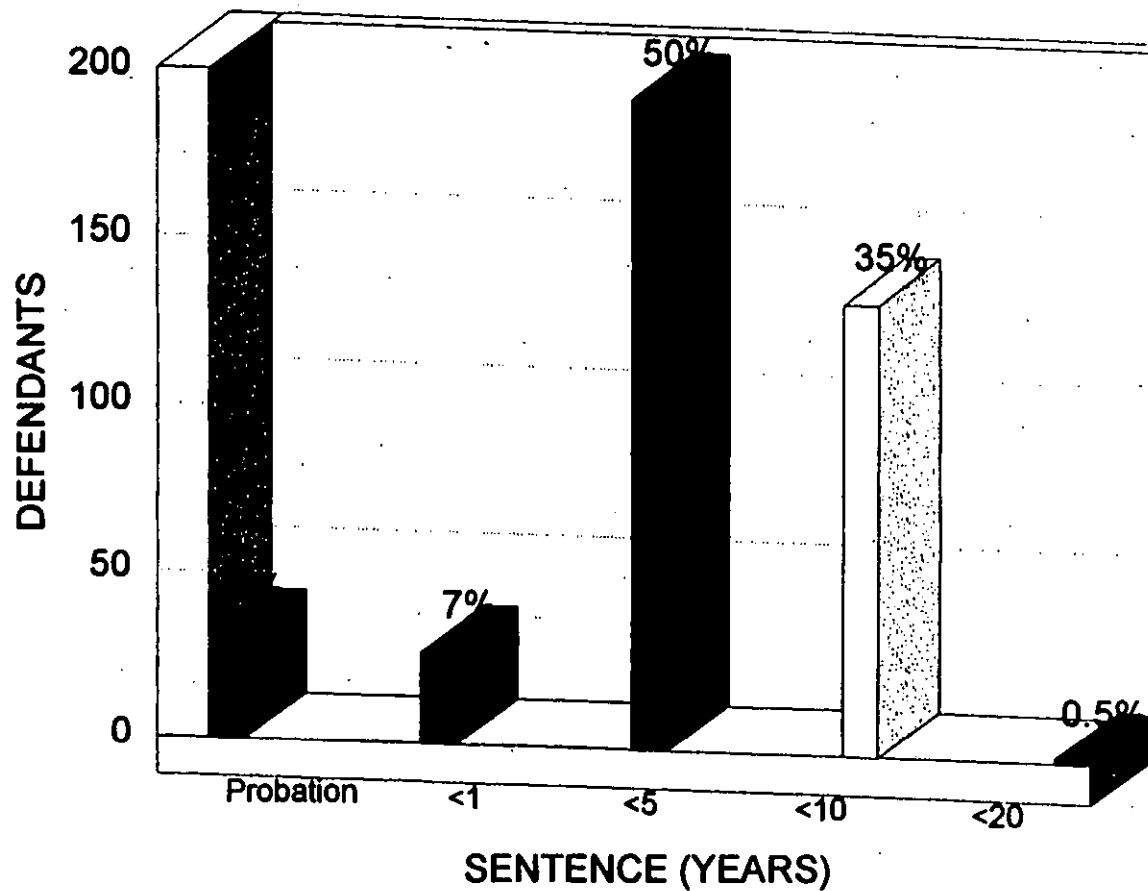
# CHART 4

## CRACK DEFENDANTS BY SENTENCE LENGTH



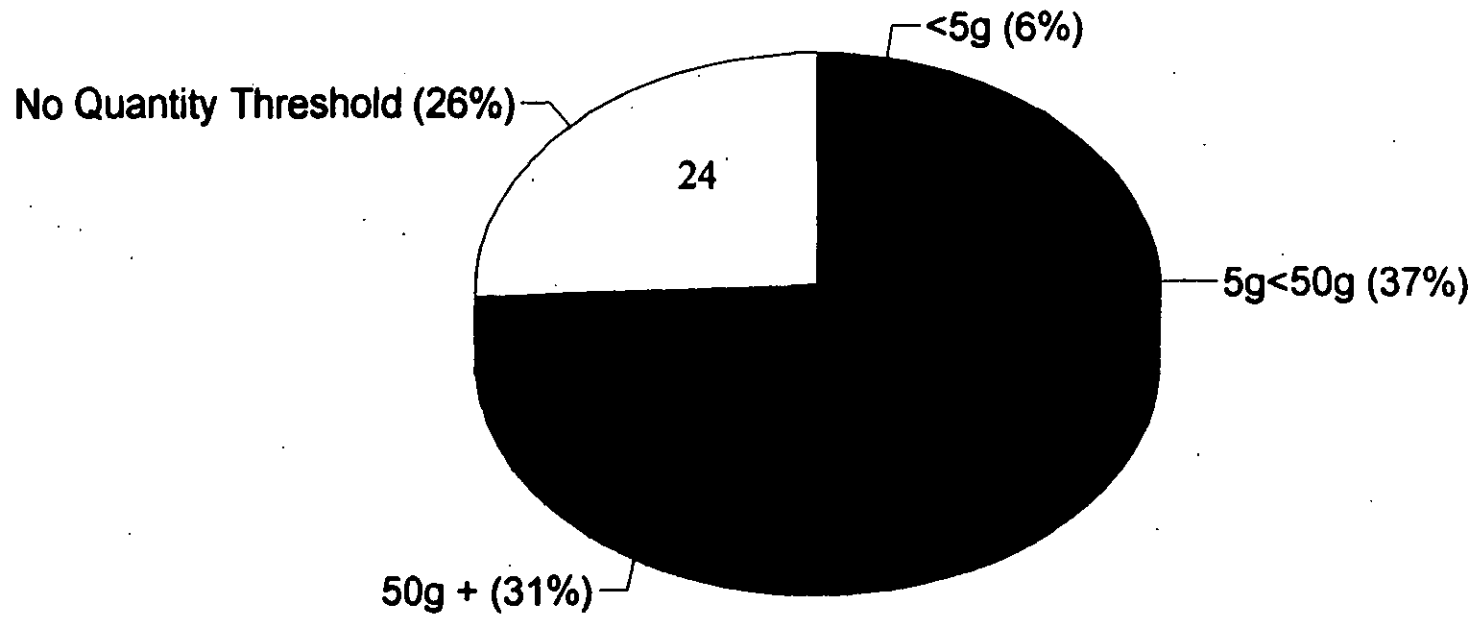
SOURCE: BOP Run from 1994 USSC MONFY 94  
N=3,490 Defendants

# CHART 5 LOWER-END CRACK DEFENDANTS BY SENTENCE (CHC=1, NO WEAPON, <50g)



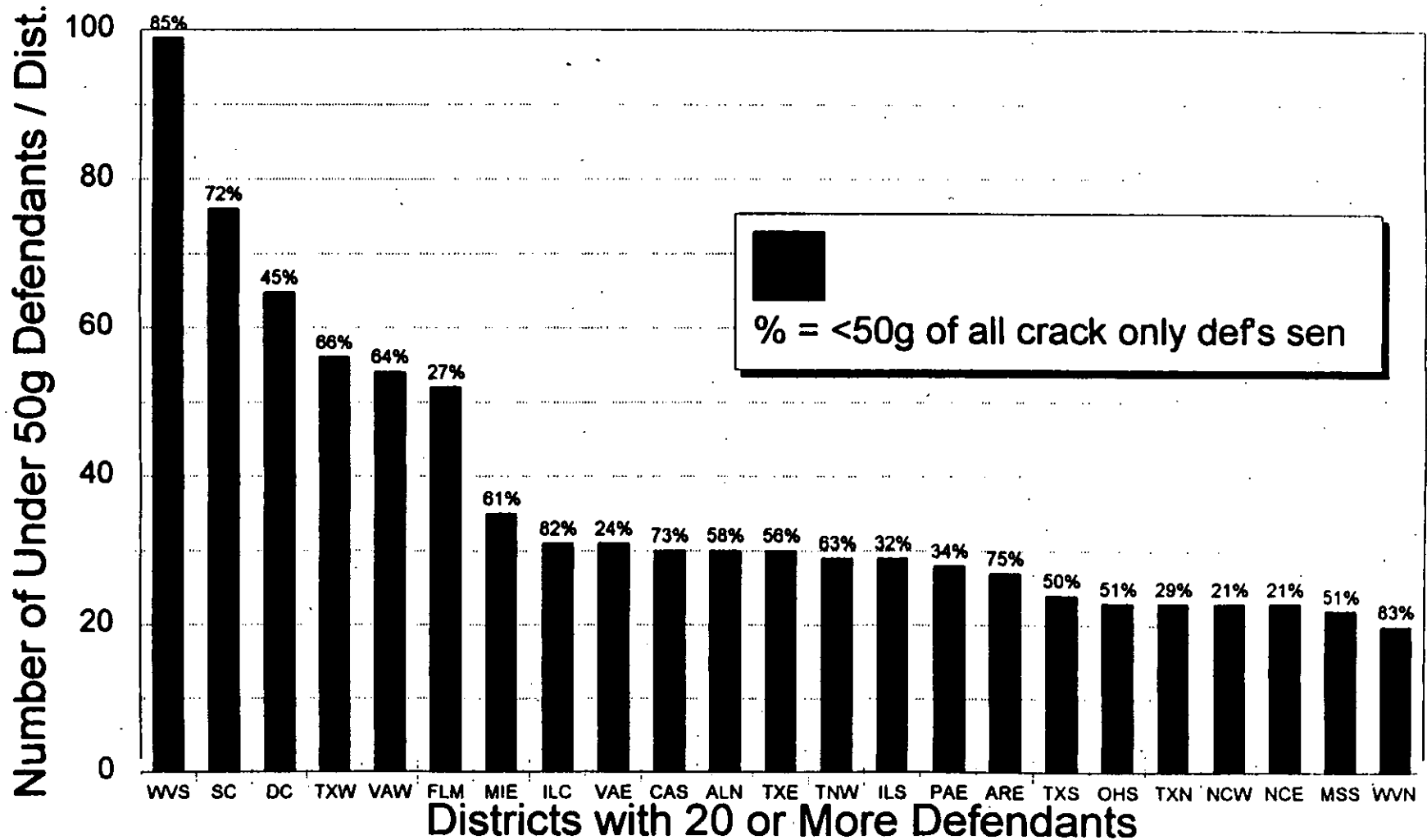
SOURCE: BOP Run from 1994 USSC MONFY94  
N=392 Defendants

# CHART 6 CRACK DECLINATION POLICIES: 95 SURVEY



# CHART 7

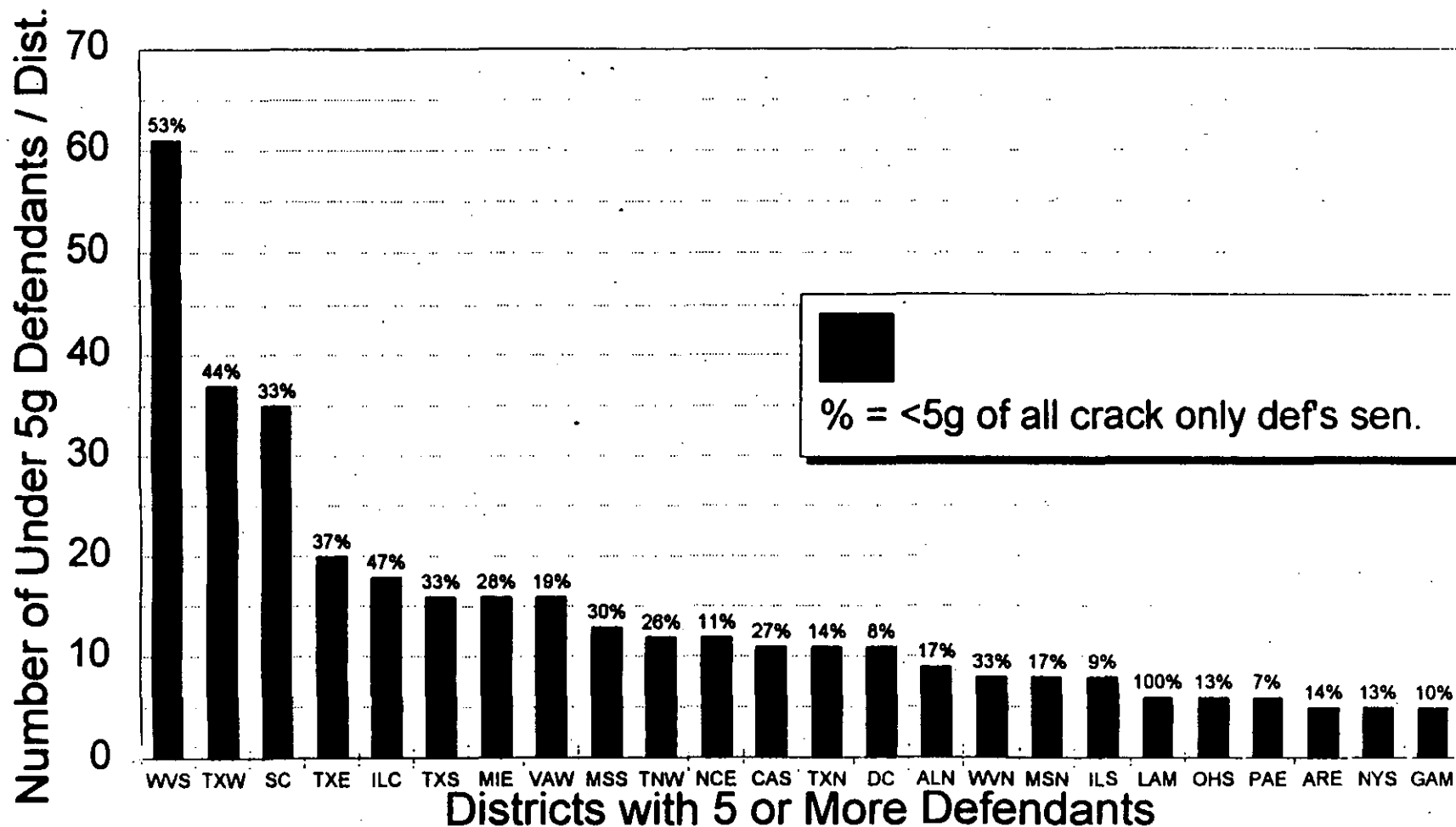
## Districts with 20 or more "Crack Only" Defendants Sentenced: Under 50 Grams



Note: These 23 districts account for 71% of all <50g crack defendants sentenced in FY 1994 (total = 1,212).

## CHART 8

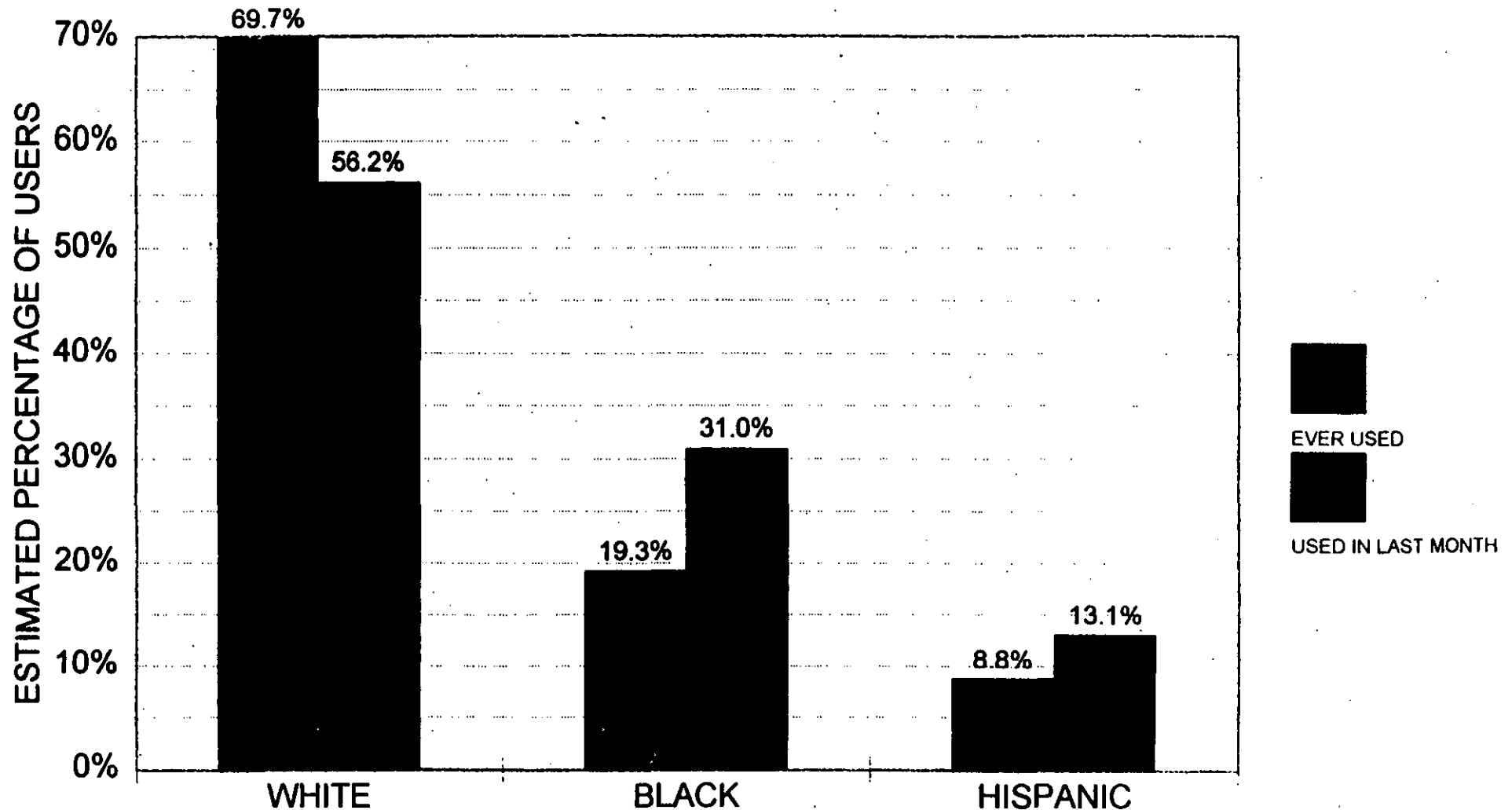
# Districts with 5 or more "Crack Only" Defendants Sentenced: Under 5 Grams



Note: These 23 districts account for 71% of all <50g crack defendants sentenced in FY 1994 (total = 1,212).

## CHART 9

# POPULATION EVER USED & USED IN THE LAST MONTH BY RACE



SOURCE: NIDA. National Household Survey on Drug Abuse for 1994.

Note: Users (population estimate) are in thousands. When making assumption regarding this data caution should be used since "users" represent population estimates, with confidence intervals that should be kept in mind.

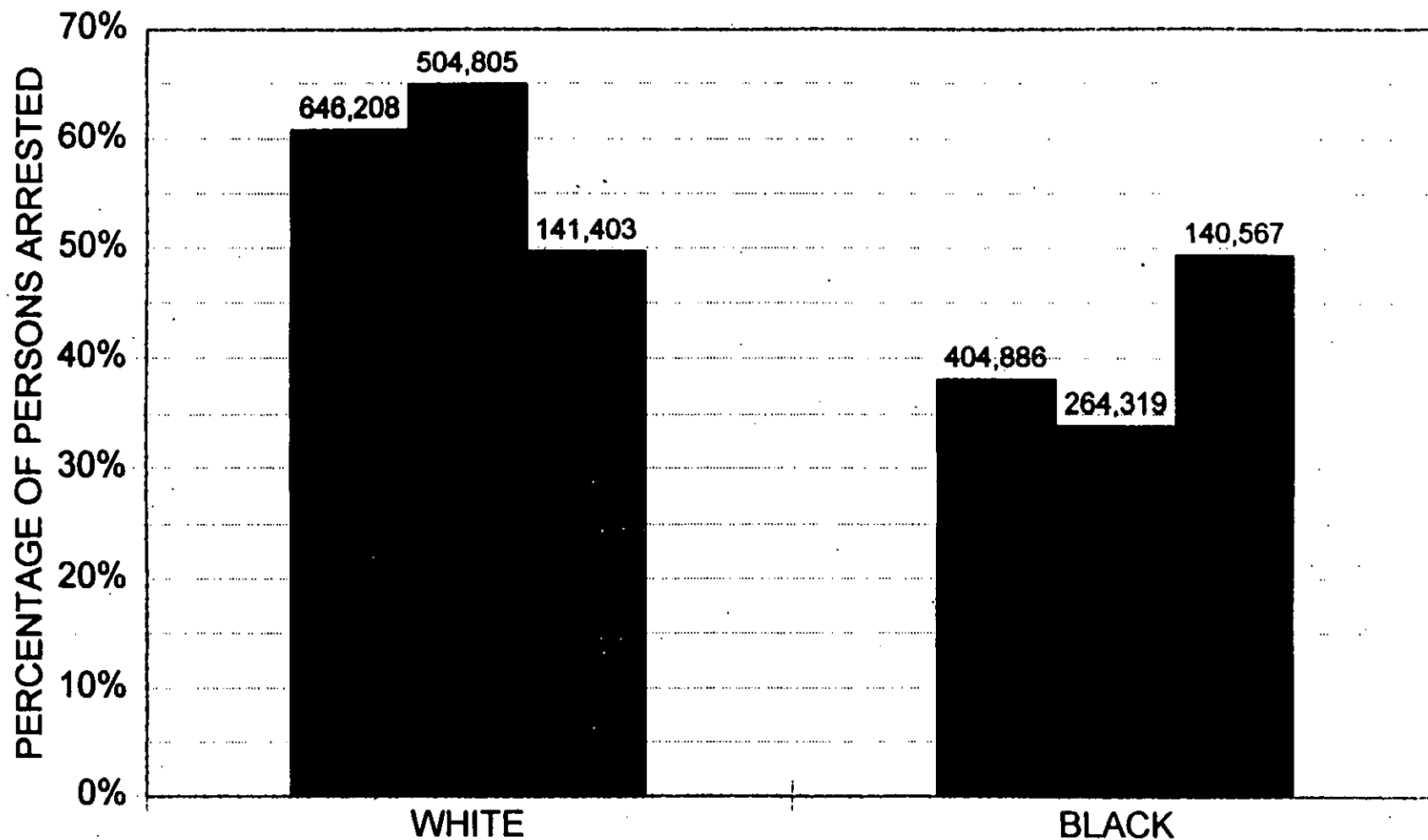
Percentages represent proportions of all persons who have ever used or who have used in the last month for 1994.

Percentages may not equal 100% due to rounding.



# CHART 10

## DRUG SALES/MANUFACTURING & POSSESSION ARRESTS BY RACE



■ DRUG ARRESTS

■ DRUG POSSESSION ARRESTS

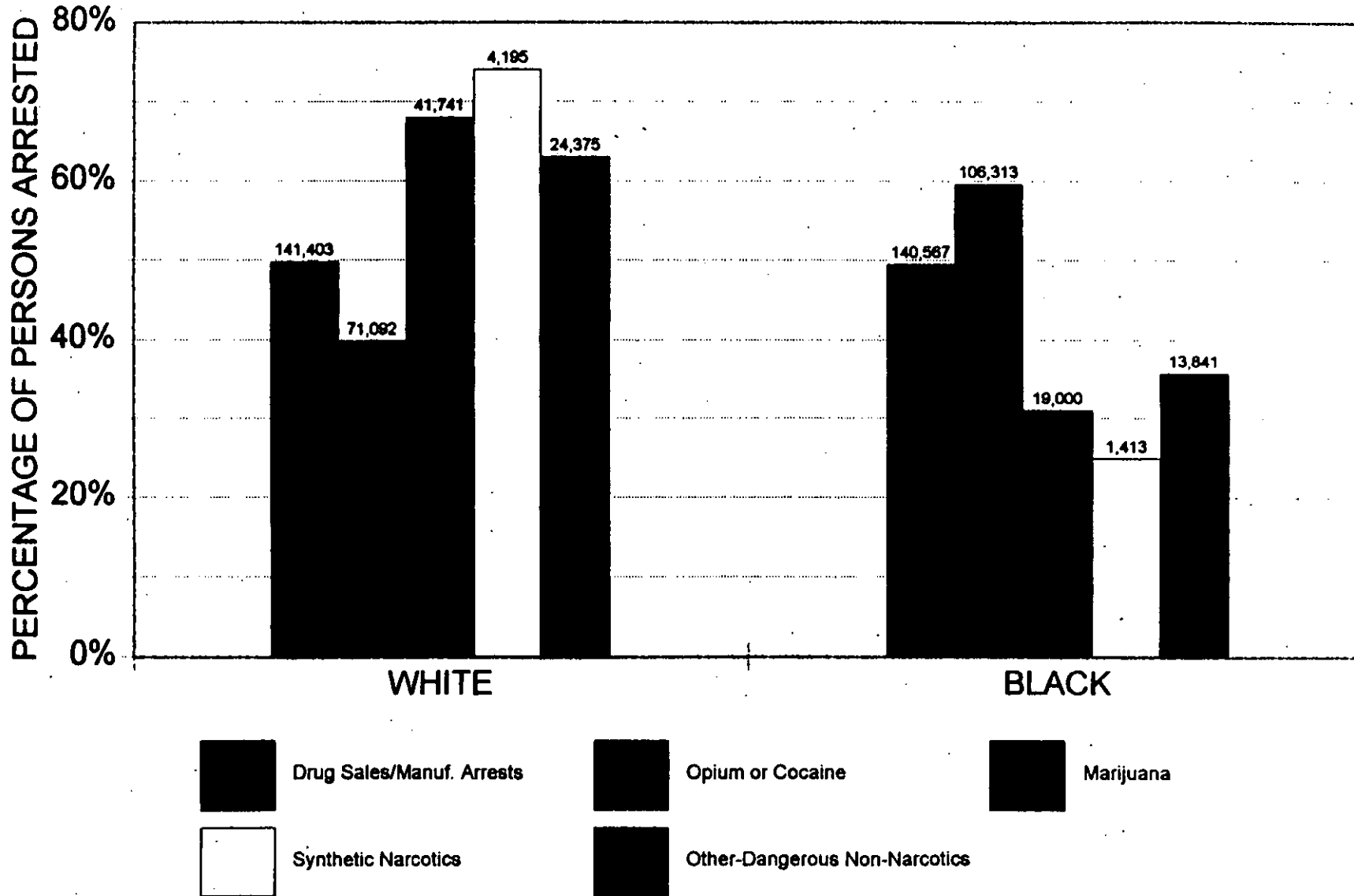
■ DRUG SALES/MANUF. ARRESTS

SOURCE: UCR special run.

NOTE: Percentages represent proportions of all persons arrested in each category.

# CHART 11

## DRUG SALES/MANUFACTURING ARRESTS BY RACE

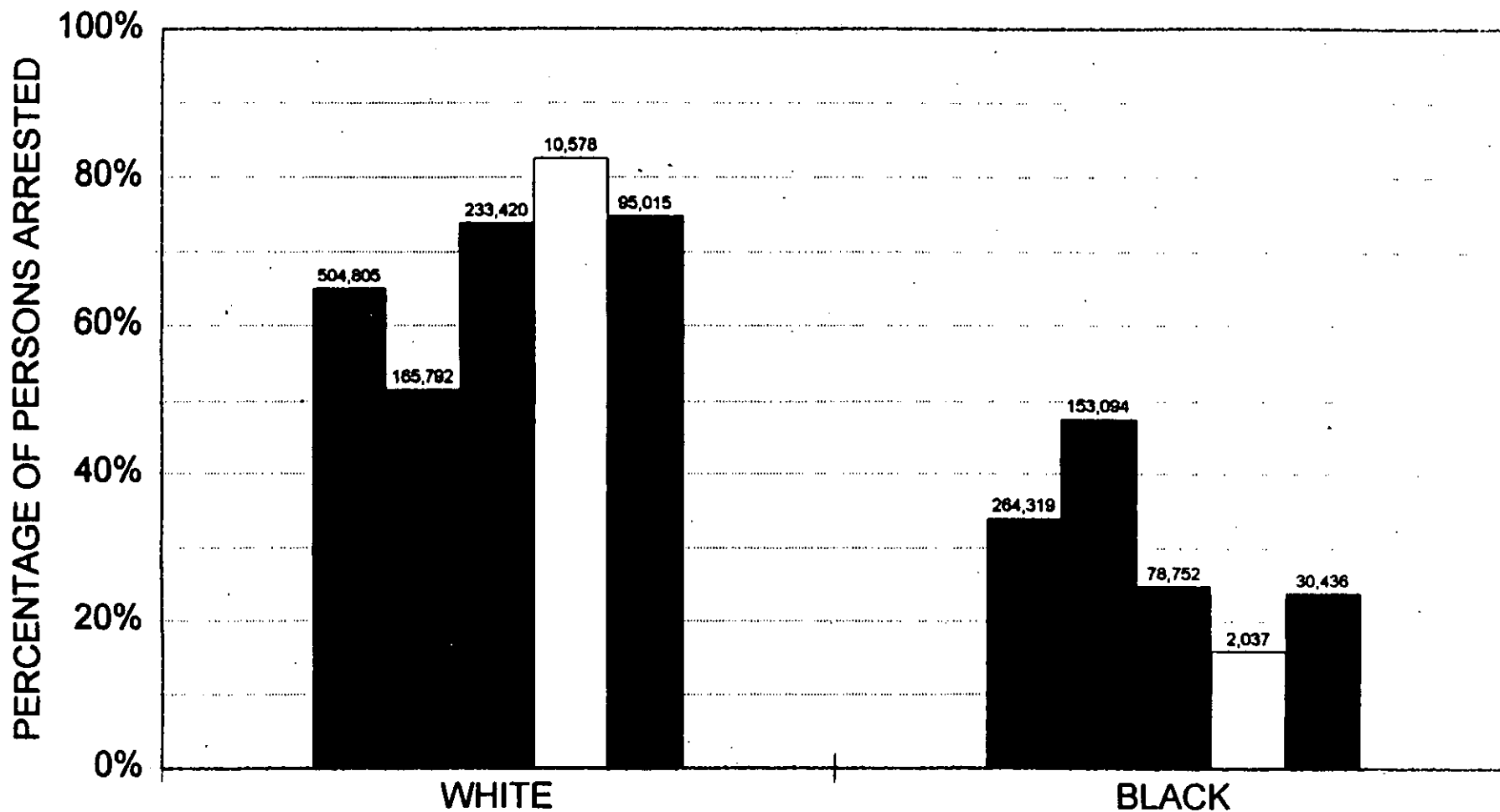


SOURCE: UCR special run.

NOTE: Percentages represent all persons arrested in each drug sales category.

# CHAR. 12

## DRUG POSSESSION ARRESTS BY RACE FOR 1994



Drug Possession Arrests



Opium or Cocaine



Marijuana



Synthetic Narcotics



Other-Dangerous Non-Narcotics

SOURCE: UCR special run.

NOTE: Percentages represent all persons arrested in each drug possession category.

## E. RACE OF USERS VERSUS RACE OF TRAFFICKERS: UNDERSTANDING CRACK MARKETS

- o Some commentators have compared the racial composition of crack users to the racial composition of federal sentenced crack defendants. The more appropriate comparison is between crack traffickers generally and defendants sentenced for crack in the federal system. It has become clear to us that we need to understand the demographics of crack traffickers generally.
- o Building on the Drug Use Forecasting System (DUF), NIJ implemented a Crack and Heroin Procurement Addendum last summer. In six cities, interviewers have been asking arrestees about their drug purchasing habits -- where they bought their drugs, from whom, how frequently, etc. NIJ has included a question about the race of the suppliers.

Preliminary results from three months of data showed the following:

- o **Distribution of Race in Six City Sample.** The total sample included 350 blacks, 164 whites, and 136 hispanics. 81% (129) of crack users in the sample were black, compared to 10% (16) white and 9% (15) hispanic.
- o **Race of Main Source of Crack.** In those cities represented in the sample, 59% (54) of crack users reported their main source for the drug was black, 5% (5) white, and 34% (31) hispanic.
- o **Where Crack was Purchased.** Overall, crack was purchased outdoor 73% of the time, while powder was bought outside 53% of the time. By race (averaged across sample cities), 77% (147) of blacks bought crack outdoors compared to 62% (29) of whites and 71% (17) of hispanics.
- o **Purchases During Past Seven Days.** Across all racial groups and sample cities, crack and heroin users report more purchases, on average, over the last week before their arrest than powder users.

Please note that because of the small sample size, these data must be considered very preliminary. Findings could change substantially with the addition of new data. NIJ plans to collect a full year's worth of data. As more quarters of data become available, NIJ will update and expand their analyses.

#### D. DRUG TRAFFICKING AND CRACK DEFENDANTS IN THE STATES

- o Although the USSC publishes detailed information about federal defendants sentenced for crack, there is no comparable information available for defendants prosecuted or sentenced for crack at the state level.
- o The majority of states do not distinguish between crack cocaine and powder cocaine for penalty or recordkeeping purposes. Indeed, many states only distinguish between possession and trafficking or manufacture, with no reference to drug type.
- o National data on defendants sentenced for drug offenses at the state level are estimated by the National Judicial Reporting Program (NJRP), a biennial survey that collects detailed information from a sample of jurisdictions on the sentences and characteristics of convicted felons. The NJRP estimates the number of felons convicted for drug possession and for drug trafficking. Among traffickers, the NJRP distinguishes only marijuana, other, and unspecified drugs; it does not identify felons convicted for crack.

The NJRP estimates that in 1992, 55% of convicted drug traffickers were black, 44% were white, and 1% were other.

- o The USSC's February 1995 Special Report to the Congress: Cocaine and Federal Sentencing Policy indicates that 14 states made some distinction between crack and powder cocaine in their statutory schemes. The Commission reported that only three states (South Carolina, Virginia, and Minnesota) were able to provide statistics on the number of crack cases. South Carolina reported that 50% of its drug cases involved crack cocaine. Minnesota reported that about 17% of its drug cases involved crack. Virginia reported that about 18% of its drug convictions were for crack cocaine, compared to about 53% for powder cocaine. The report did not include the race of the defendants.
- o NIJ has contacted Virginia, Minnesota, and South Carolina and has received data from them. Preliminary analysis from one state showed that 87% of those convicted for crack offenses in FY 1994 were black, 12% were white, and 1% were hispanic and other.

C. 1994 DRUG ARRESTS  
UCR DATA

- o Cocaine is not listed as a separate category in the Uniform Crime Reports system; it is grouped with opiates.

All Drug Arrests (1,061,563). 61% of those arrested for drugs were white and 38% were black. (See Chart 10)

Arrests for Drug Sales/Manufacture - All drugs (284,008). 50% were white, 50% were black. (See Chart 10)

Arrests for Drug Possession - All drugs (777,555). 65% were white, 34% were black. (See Chart 10)

Arrests for Drug Sales/Manufacture - Opiates, Cocaine and derivatives. (178,297). 60% were black, 40% were white. (See Chart 11)

Arrests for Possession of Opiates, Cocaine or derivatives (321,607). 52% were white, 48% were black. (See Chart 12)

- o Although the 60/40 ratio of white to black drug arrests is often cited, when we look only at trafficking arrests, the ratio changes to 50/50. Further, when we look at drug trafficking arrests for opiates or cocaine, the ratio becomes 60/40 black to white.
- o Possession arrests account for almost 75% of all drug arrests, with an almost equal number of opium/cocaine arrests (321,607) and marijuana arrests (316,107).
- o The National Incident Based Reporting System (NIBRS), which is being phased in, separates cocaine from heroin and has a distinct category for crack. It includes both offense and arrest data, including the race of those arrested. Unfortunately, NIBRS is currently being implemented in only nine states, and is still incomplete and not validated for many of these states.

Available NIBRS data for 1994 show that 85% of those arrested for crack cocaine were black and 15% were white. Of the arrests reported by NIBRS in 1993, 88% of those arrested for crack were black.

**B. 1994 CRACK USE  
HOUSEHOLD SURVEY DATA, NIDA\***

- o Most reported crack users--those who had ever used as well as those who had used during the last month--were white.
- o Blacks as a group had a higher rate of crack use than other ethnic groups. Moreover, as the frequency of use increased, blacks made up a larger proportion of users.
- o **Ever Used.** For 1994, of the estimated 4,042,000 persons who had ever used crack, about 19% were black, 70% were white, and 9% were hispanic. This translates to population estimates of 782,000 blacks, 2,816,000 whites, and 354,000 hispanics who had ever used crack.

**Rates of use.** 3.3% of blacks surveyed reported ever having used crack, compared to 1.8% of whites and 1.9% of hispanics.

- o **Current Use/Past Month.** For 1994, of the estimated 520,000 persons who had used crack in the past month, about 31% were black, 56% were white, 13% were hispanic. This translates to population estimates of 161,000 blacks, 292,000 whites, and 68,000 hispanics who were current crack users.

**Rates of use.** 0.7% of blacks, 0.2% of whites, and 0.4% of hispanics reported having used crack in the past month.

Chart 9 displays, by race, the proportions of all users who had ever used crack or who had used crack in the past month.

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\* Note that the "users" reported are population estimates based on NIDA's survey to a sample of specially selected households, and thus are approximations. Each estimate has an upper and lower confidence limit.



U.S. Department of Justice  
Criminal Division

**FILE COPY**

Office of the Assistant Attorney General

Washington, D.C. 20530

MAR 15 1996

**MEMORANDUM FOR THE ATTORNEY GENERAL**

**THROUGH:** The Deputy Attorney General

**FROM:** Robert S. Litt <sup>W</sup>  
Deputy Assistant Attorney General

Mary Frances Harkenrider *MFH*  
Counsel to the Assistant Attorney General

**SUBJECT:** Proposed Letter to the U.S. Sentencing Commission  
Regarding Crack Cocaine

**PURPOSE:** Responds to Request for a Letter to the U.S. Sentencing  
Commission Presenting the Department's Views on Crack  
Cocaine Issue

In response to the request of the Attorney General and the Deputy Attorney General, attached is a proposed letter to the United States Sentencing Commission presenting a scheme for sentencing cocaine offenses. The letter presents four options for sentencing ratios for trafficking offenses involving crack cocaine, eliminates the severe sentencing of simple possession of crack, and proposes additional sentencing enhancements. We believe these proposals would vindicate essential law enforcement interests. Our ratios are based on the assumption that crack trafficking should be punished more severely than powder trafficking, but that the disparity should be narrowed.

The Bureau of Prisons has estimated the net effects of these ratios five and ten years from now, as displayed in the following table. The ratio indicated after the letter identifying each option reflects the quantity ratio in grams of crack and powder, respectively, that triggers a five-year mandatory minimum sentence.



CRACK/ POWDER RATIOS	NET EFFECT: 5 YRS		NET EFFECT: 10 YRS	
	INMATES	\$ COSTS (millions)	INMATES	\$ COSTS (millions)
A: 50/250	+400	+15.6	+150	+34.0
B: 50/500	-2,900	-113.4	-5,300	-438.4
C: 25/250	+1,600	+189.5	+2,300	+520.2
D: 25/500	-1,700	-66.5	-3,200	-261.3

The proposed letter also addresses pending legislative proposals that would alter the crack/powder ratios and expresses the Department's opposition to these bills. Two of the pending bills would equalize powder and crack cocaine at the level of crack; another would raise powder penalties five-fold without changing crack penalties, thus resulting in a 20:1 ratio at the current crack level. The greater cocaine powder penalties proposed in these bills would cause a high increase in the federal prison population over levels currently projected, as displayed below. Both the 1:1 and 20:1 quantity ratios proposed would drain prison resources to an excessive degree, particularly in light of the absence of a law enforcement need for the sharp increase in the cocaine powder sentences proposed.

PENDING BILLS	NET EFFECT: 5 YEARS		NET EFFECT: 10 YEARS	
	INMATES	\$ COSTS (millions)	INMATES	\$ COSTS (millions)
Equalization at 5 grams	+14,000	+1,658.0	+26,600	+5,443.8
20:1 at 5/100	+6,000	+710.6	+10,500	+2,209.1

The letter would allow the Department to take an affirmative role in the discussion of crack sentencing policy. It could help establish a framework for discussion with the Commission to ensure that it works towards a reasonable ratio. It would also respond to past criticism that the Department was too vague about what sentencing scheme it considered appropriate.

On the other hand, any proposal that has the effect of decreasing sentences for some crack traffickers (as all of these proposals would do) could be used to portray the Department as soft on crime and drugs. Additionally, a letter at this point may regenerate interest in the issue, leading to the adoption of harsher proposals than we might prefer. Recommending legislation

at this time must also be considered against the backdrop of the recent enactment that disapproved the Sentencing Commission's proposal to reduce crack penalties to the levels applicable to cocaine powder, Pub. L. No. 104-38, 109 Stat. 334. The President's signing statement of October 30, 1995 (attached), contained strong references to the need for tough penalties and signaled a reluctance to reduce them: "I am not going to let anyone who peddles drugs get the idea that the cost of doing business is going down."

Finally, it bears noting that the Sentencing Commission has indicated its desire not to make recommendations on changes in the crack penalties until the 1997 amendment cycle. The Commission wishes to proceed slowly and to assure itself that it has carefully considered all options. The alternatives to sending the attached letter include not pursuing the issue at the current time at all, sending a letter from another Department official, or presenting the proposals through discussions with the Sentencing Commission. A combination of the first and last alternatives may be the most appealing. Members of the Commission have made numerous requests for the Department's position. When the Commissioners again focus on the issue, informal discussions would permit us to put forth our ideas to influence the Commission's eventual proposal to Congress, but in a manner that would not require us to take the lead.

**RECOMMENDATION:** The Criminal Division recommends that it be authorized to discuss the proposals outlined in the attached letter with the Sentencing Commission when the Commission next addresses the crack penalty issue and to share draft legislation implementing these proposals without submitting a formal recommendation to the Commission.

Approved: \_\_\_\_\_

Disapproved: \_\_\_\_\_

Date: \_\_\_\_\_

Attachment



Office of the Attorney General  
Washington, D. C. 20530

The Honorable Richard P. Conaboy  
Chairman  
United States Sentencing Commission  
One Columbus Circle, N.E.  
Suite 2-500, South Lobby  
Washington, D.C. 20002-8002

Dear Judge Conaboy:

As you know, the development of an appropriate sentencing scheme for cocaine offenses has been an important issue for the Department of Justice and one that continues to occupy our efforts. We believe it would be most useful if the Department and the United States Sentencing Commission could join forces and agree upon a new scheme for recommendation to Congress. To this end we offer for your consideration the following statutory amendments, including several options to amend current mandatory minimum sentences, as well as a guideline amendment. We believe it is important for these recommendations to be considered together as a complete package reflecting a balanced approach to sentencing crack and cocaine powder offenders. Our recommendations include:

- ▶ Changing the 100:1 ratio, as set forth below;
- ▶ Conforming penalties for simple possession of crack with penalties for simple possession of other drugs;
- ▶ Adding enhancements to address:
  - violence during a drug transaction;
  - using a minor in a drug transaction;
  - distributing powder cocaine knowing that it is to be converted into crack.

**Guiding Principles**

Our guiding principles are fourfold:

- (1) Crack cocaine is the more harmful form of cocaine. Therefore, the law should punish trafficking in crack

more severely than trafficking in equal quantities of cocaine powder.

- (2) Penalties for trafficking in crack must adequately punish this illegal activity, and any change in penalties must not send the wrong message. We continue to believe that the distribution of crack cocaine is a serious offense.
- (3) The disparity between crack and cocaine powder sentencing should be narrowed to recognize that powder cocaine is easily converted to crack. However, the narrowing should not result in the equalization of crack and powder penalties because some powder remains in this less harmful form when ultimately used.
- (4) The penalties for powder dealers must be sufficient to account for the harms associated with the distribution of crack cocaine -- harms that they set in motion by their traffic in powder cocaine. In addition, individuals who distribute powder cocaine knowing that it will be converted into crack should be punished more harshly than those individuals who traffic in powder cocaine without such knowledge.

Our guiding principles are consistent with the recently enacted legislation disapproving the Commission's previously proposed equalization of crack and cocaine powder penalties, which directed the Commission to submit to Congress recommendations regarding cocaine sentencing. That legislation further directed that the recommendations reflect such considerations as the need for sentences applicable to crack trafficking to exceed those applicable to trafficking in a like quantity of powder cocaine and the need for treating a powder seller like a crack seller if the former had knowledge that the powder would be converted into crack prior to its distribution to individual users. Pub. L. No. 104-38, 109 Stat. 334.

#### **Powder/Crack Ratio Options**

We believe that it is possible to develop a sentencing scheme for crack offenses that will vindicate the important law enforcement concerns listed above. We offer four options relating to the powder/crack ratio for consideration. We would find any one of the following acceptable:

- ▶ **Option A**, a 5:1 ratio, would provide for a five-year mandatory minimum at 50 grams of crack or 250 grams of powder and a ten-year mandatory minimum at 500 grams of crack or 2.5 kilograms of powder.

- ▶ Option B, a 10:1 ratio, would provide for a five-year mandatory minimum at 50 grams of crack or 500 grams of powder and a ten-year mandatory minimum at 500 grams of crack or 5 kilograms of powder.
- ▶ Option C, a 10:1 ratio, would provide for a five-year mandatory minimum at 25 grams of crack or 250 grams of powder and a ten-year mandatory minimum at 250 grams of crack or 2.5 kilograms of powder.
- ▶ Option D, a 20:1 ratio would provide for a five-year mandatory minimum at 25 grams of crack or 500 grams of powder and a ten-year mandatory minimum at 250 grams of crack or 5 kilograms of powder.

(The enclosed Appendix depicts the differences among the options and compares them to the current penalty structure.)

These options vary in four respects:

First, the ratio between powder and crack cocaine

There is no exact mathematical way to reflect the differences in harms caused by crack and powder cocaine trafficking. Nonetheless, we believe the differences best justify a ratio between 5:1 and 20:1, and that each ratio presented here reflects a reasonable assessment of the differences between crack and powder cocaine.

We believe the lowest supportable ratio to be 5:1, although we cannot recommend a 5:1 ratio that maintains the current powder penalties. Such a proposed ratio, like the equalization of penalties previously recommended by the Sentencing Commission, would reduce crack sentences too greatly and send the wrong message to crack dealers.

Second, the mandatory minimum penalties

Two of the options set a five-year mandatory minimum penalty for distribution of 25 grams of crack (Options C and D) and two at 50 grams of crack (Options A and B). We believe that either of these levels would be consistent with effective law enforcement by providing a mandatory minimum sentence for persons who deal in quantities of crack that merit such sentences. Setting the mandatory minimum at any amount greater than 50 grams, however, would send the wrong message to crack violators.

Third, whether powder sentences are increased

Two of the options raise cocaine powder penalties (Options A and C). These options achieve a lower ratio between the substances while reducing crack penalties to a lesser degree than the other options. Additionally, some argue that the present sentencing structure understates the harm done by cocaine powder because of its easy conversion to crack. Raising sentences for powder cocaine addresses this rationale as well.

Fourth, the impact on the prison system

Displayed below are Bureau of Prisons' estimates of the net effects of these ratios five and ten years from now, both in terms of population changes and increasing or decreasing costs. The ratio indicated after the letter identifying each option reflects the quantity in grams of crack and powder, respectively, that triggers a five-year mandatory minimum sentence.

CRACK/ POWDER RATIOS	NET EFFECT: 5 YRS		NET EFFECT: 10 YRS	
	INMATES	\$ COSTS (millions)	INMATES	\$ COSTS (millions)
A: 50/250	+400	+15.6	+150	+34.0
B: 50/500	-2,900	-113.4	-5,300	-438.4
C: 25/250	+1,600	+189.5	+2,300	+520.2
D: 25/500	-1,700	-66.5	-3,200	-261.3

**Pending Bills**

In addition to the ratio options presented above, there are at least three bills pending which would revise cocaine penalties: H.R. 2598, S. 1253, and S. 1398. H.R. 2598 and S. 1398 would equalize crack and cocaine powder trafficking penalties by raising powder penalties under 21 U.S.C. §841(b)(1) to the crack levels. S. 1253, sponsored by Senators Abraham, Kyl, Feinstein, and Shelby, would provide for a 20:1 quantity ratio between cocaine powder and crack by lowering the powder quantities (and thereby raising the penalties for offenses involving them) while leaving the current crack penalties untouched.

The greater cocaine powder penalties proposed by these bills would cause a high increase in the federal prison population over levels currently projected. The Bureau of Prisons has estimated the net effects of these ratios, as displayed below. Both the 1:1 and 20:1 quantity ratios proposed would drain prison resources to an excessive degree, particularly in light of the

absence of a law enforcement need for the sharp increase in the cocaine powder sentences proposed.

PENDING BILLS	NET EFFECT: 5 YEARS		NET EFFECT: 10 YEARS	
	INMATES	\$ COSTS (millions)	INMATES	\$ COSTS (millions)
Equalization at 5 grams	+14,000	+1,658.0	+26,600	+5,443.8
20:1 at 5/100	+6,000	+710.6	+10,500	+2,209.1

Equalization at crack penalty levels

The bills that equalize penalties for powder and crack trafficking offenses are inconsistent with the Department's stated position that the distribution of crack cocaine should be punished more harshly than the distribution of equal quantities of cocaine powder.<sup>1</sup> Moreover, the legislation disapproving the Sentencing Commission's attempt to equalize crack and powder penalties, Pub. L. No. 104-38, 109 Stat. 334, directed the Sentencing Commission to submit to Congress recommendations regarding changes to the statutes and sentencing guidelines relating to cocaine that must reflect, among other things, that sentences for trafficking in crack should generally exceed those for trafficking in a like quantity of cocaine powder.

Equalization at the level of current crack penalties is also problematic because it creates a sharp increase in powder sentences. As indicated above, it would result in a vast growth in the federal prison population. Finally, law enforcement concerns do not dictate the level of increase proposed, which seems to be based purely on the desire to address the current crack/powder differential.

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<sup>1</sup> H.R. 2598, introduced by Congressman Solomon, would also equalize the penalties for simple possession of 5 grams of powder and crack cocaine by providing a 5-year mandatory minimum for both. S. 1398, introduced by Senator Breaux, would leave intact the 5-year mandatory minimum for simple possession of crack cocaine without expanding this provision to powder cocaine. As more fully discussed below, we do not believe the mandatory minimum penalty is desirable for simple possession of either form of cocaine.

20:1 Ratio Maintaining Current Crack Penalties

S. 1253 would provide for a 20:1 quantity ratio between cocaine powder and crack by lowering the powder quantities (and thereby raising the penalties for offenses involving them) while leaving the current crack quantities untouched. Specifically, it

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amends 21 U.S.C. §841(b) to decrease the amount necessary to trigger the mandatory minimum sentences for cocaine powder from 500 grams and 5 kilograms to 100 grams and 1 kilogram for the 5- and 10-year penalties, respectively. It makes no adjustment to the current simple possession penalties.

Although a 20:1 quantity ratio is within the range of reasonableness, we do not favor reaching that result by only raising powder penalties. Our concerns about a sharp increase in powder sentences stated above with regard to the proposed equalization of crack and powder penalties extend as well to this proposed 20:1 ratio. That is, a five-year mandatory prison term for distributing 100 grams of cocaine powder is a harsher punishment than warranted to address law enforcement concerns involving cocaine powder and would produce too great an increase in the federal prison population.

**Conforming Penalties for Simple Possession of Crack with Penalties for Simple Possession of Other Drugs**

At present, simple possession of 5 grams of crack -- without the intent to distribute it -- carries a five-year mandatory minimum sentence. We recommend conforming penalties for simple possession of crack with penalties for simple possession of other drugs -- i.e., a maximum one-year penalty. Federal enforcement should be focused on those distributing drugs to others. While 5 grams of crack are generally more than a person would possess for personal use, the requirement of proving intent to distribute has not typically hindered prosecutions of actual dealers.

**New Enhancements**

We believe the law should provide stronger enhancements for particularly egregious trafficking cases to assure appropriate punishment and to send a clear message that this behavior will not be tolerated. Thus, we recommend the following in conjunction with a change in the sentencing ratio between crack and powder cocaine trafficking.



Violence During a Drug Transaction

We recommend consideration of a statutory change to provide a sentencing enhancement for violence during a drug transaction. The enhancement could take the form of an amendment to present 18 U.S.C. §924(c), which now provides a five-year additional penalty for using or carrying a firearm during a drug trafficking felony. It would provide a 10-year mandatory sentence for discharging a firearm or for causing serious bodily injury during a drug trafficking felony by the use of a firearm or other dangerous weapon. A statutory change of the type discussed would be preferable to a guideline enhancement in order to send a strong message to crack traffickers that violence will be dealt with severely.

Employing Minors in the Commission of a Drug Felony

We recommend consideration of a statutory change to provide a mandatory sentencing enhancement ranging from one to five years for employing a minor or minors in the commission of a drug felony. The sentencing guidelines presently contain enhancements that call for an approximately 25% increase in the guidelines sentence for drug offenses when minors are used. We believe the guidelines enhancement to be insufficient but must be wary of casting too wide a net. For example, we do not wish to over-punish a dealer who may have involved a single minor close to his or her age. One possibility may be to provide a one-year minimum enhancement for employing a single minor close in age to the offender, and a five-year minimum enhancement for employing more than one minor or employing one who is more than three years younger than the offender. In this regard a statutory amendment is needed to send a strong message to crack and other drug traffickers that employing youth will not be tolerated.

Trafficking in Powder with Knowledge It Will Be Converted to Crack

We recommend consideration of a sentencing guideline amendment to provide that if a distributor of cocaine powder knows it is to be converted to crack, the distributor should be sentenced as though he or she were distributing crack. This enhancement would provide clear authority to impose crack sentences for such more culpable powder dealers in instances in which we may not be successful in prosecuting them as crack conspirators.

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We would be pleased to work with the Commission to accomplish the goals set forth above.

Sincerely,

Janet Reno

Enclosure

## APPENDIX

### CHARTS

1. **Option A**, a 5:1 ratio, would provide for a five-year mandatory minimum at 50 grams of crack or 250 grams of powder and a ten-year mandatory minimum at 500 grams of crack or 2.5 kilograms of powder.
2. **Option B**, a 10:1 ratio, would provide for a five-year mandatory minimum at 50 grams of crack or 500 grams of powder and a ten-year mandatory minimum at 500 grams of crack or 5 kilograms of powder.
3. **Option C**, a 10:1 ratio, would provide for a five-year mandatory minimum at 25 grams of crack or 250 grams of powder and a ten-year mandatory minimum at 250 grams of crack or 2.5 kilograms of powder.
4. **Option D**, a 20:1 ratio would provide for a five-year mandatory minimum at 25 grams of crack or 500 grams of powder and a ten-year mandatory minimum at 250 grams of crack or 5 kilograms of powder.

**OPTION A:****5:1 RATIO WITH HIGHER CRACK THRESHOLDS/LOWER PENALTIES****AND LOWER POWDER THRESHOLDS/HIGHER PENALTIES:****CRACK THRESHOLDS AT 50 AND 500 GRAMS; POWDER THRESHOLDS AT 250 AND 2,500 GRAMS (2.5 KG)**

QUANTITY	DRUG (RANGE)	OFFENSE LEVEL	SENTENCE (IN MONTHS)	PENALTY RATIO (AT MINIMUM)	PRESENT OFFENSE LEVEL	SENTENCE (MONTHS)
5 G	Crack (5-10 G)	16	21-27	4.2:1 <sup>1</sup> -- crack/powder	26	63-78
	Powder (< 12.5 G)	12	10-16		12	10-16
10 G	Crack (10-20 G)	18	27-33	5.4:1 <sup>1</sup> -- crack/powder	26	63-78
	Powder (< 12.5 G)	12	10-16		12	10-16
25 G	Crack (20-30 G)	20	33-41	1.6:1 -- crack/powder	28	78-97
	Powder (25-50 G)	16	21-27		14	15-21
50 G	Crack* (50-200 G)	26	63-78	2.3:1 -- crack/powder	32	121-151
	Powder (50-100 G)	18	27-33		16	21-27
100 G	Crack (50-200 G)	26	63-78	1.9:1 -- crack/powder	32	121-151
	Powder (100-150 G)	20	33-41		18	27-33
200 G	Crack (200-350 G)	28	78-97	1.5:1 -- crack/powder	34	151-188
	Powder (200-250 G)	24	51-63		20	33-41
250 G	Crack (200-350 G)	28	78-97	1.2:1 -- crack/powder	34	151-188
	Powder* (250 G-1 KG)	26	63-78		20	33-41
500 G	Crack♦ (500 G-1.5 KG)	32	121-151	1.9:1 -- crack/powder	36	188-235
	Powder (250 G-1 KG)	26	63-78		26	63-78
2 KG	Crack (1.5-5 KG)	34	151-188	1.6:1 -- crack/powder	38	235-293
	Powder (1.75-2.5 KG)	30	97-121		28	78-97
2.5 KG	Crack (1.5-5 KG)	34	151-188	1.2:1 -- crack/powder	38	235-293
	Powder♦ (2.5-7.5 KG)	32	121-151		28	78-97
5 KG	Crack (5-15 KG)	36	188-235	1.6:1 -- crack/powder	38	235-293
	Powder (2.5-7.5 KG)	32	121-151		32	121-151

<sup>1</sup> Offense level 12 is subject to a split sentence with a minimum of 5 months incarceration. See U.S.S.G. § 5C1.1 (d) and (e).

**OPTION A:****5:1 RATIO WITH HIGHER CRACK THRESHOLDS/LOWER PENALTIES****AND LOWER POWDER THRESHOLDS/HIGHER PENALTIES:****CRACK THRESHOLDS AT 50 AND 500 GRAMS; POWDER THRESHOLDS AT 250 AND 2,500 GRAMS (2.5 KG)**

QUANTITY	DRUG (RANGE)	OFFENSE LEVEL	SENTENCE (IN MONTHS)	PENALTY RATIO (AT MINIMUM)	PRESENT OFFENSE LEVEL	SENTENCE (MONTHS)
15 KG	Crack (15 KG or >)	38	235-293	1.6:1 -- crack/powder	38	235-293
	Powder (7.5-25 KG)	34	151-188		34	151-188
50 KG	Crack (15 KG or >)	38	235-293	1.3:1 -- crack/powder	38	235-293
	Powder (25-75 KG)	36	188-235		36	188-235
150 KG	Crack (15 KG or >)	38	235-293	1:1 -- crack/powder	38	235-293
	Powder (75 KG or >)	38	235-293		38	235-293

**Key**

- ★ 5-year mandatory minimum triggered
- ◆ 10-year mandatory minimum triggered

**OPTION B: 10:1 RATIO WITH LOWER CRACK PENALTIES / HIGHER THRESHOLDS (50 & 500 GRAMS)  
AND POWDER PENALTIES / THRESHOLDS HELD AT PRESENT LEVELS (500 & 5,000 GRAMS (5 KG))**

QUANTITY	DRUG (RANGE)	OFFENSE LEVEL	SENTENCE (IN MONTHS)	PENALTY RATIO (AT MINIMUM)	PRESENT OFFENSE LEVEL	SENTENCE (MONTHS)
5 G	Crack (5-10 G) Powder (< 25 G)	16	21-27	4.2:1 -- crack/powder	26	63-78
		12	10-16		12	10-16
10 G	Crack (10-20 G) Powder (< 25 G)	18	27-33	5.4:1 -- crack/powder	26	63-78
		12	10-16		12	10-16
25 G	Crack (20-30 G) Powder (25-50 G)	20	33-41	2.2:1 -- crack/powder	28	78-97
		14	15-21		14	15-21
50 G	Crack★ (50-200 G) Powder (50-100 G)	26	63-78	3:1 -- crack/powder	32	121-151
		16	21-27		16	21-27
100 G	Crack (50-200 G) Powder (100-200 G)	26	63-78	2.3:1 -- crack/powder	32	121-151
		18	27-33		18	27-33
200 G	Crack (200-350 G) Powder (200-300 G)	28	78-97	2.4:1 -- crack/powder	34	151-188
		20	33-41		20	33-41
250 G	Crack (200-350 G) Powder (200-300 G)	28	78-97	2.4:1 -- crack/powder	34	151-188
		20	33-41		20	33-41
500 G	Crack♦ (500 G-1.5 KG) Powder★ (500 G-2 KG)	32	121-151	1.9:1 -- crack/powder	36	188-235
		26	63-78		26	63-78
2 KG	Crack (1.5-5 KG) Powder (2-3.5 KG)	34	151-188	1.9:1 -- crack/powder	38	235-293
		28	78-97		28	78-97
2.5 KG	Crack (1.5-5 KG) Powder (2-3.5 KG)	34	151-188	1.9:1 -- crack/powder	38	235-293
		28	78-97		28	78-97
5 KG	Crack (5-15 KG) Powder♦ (5-15 KG)	36	188-235	1.6:1 -- crack/powder	38	235-293
		32	121-151		32	121-151

<sup>1</sup> Offense level 12 is subject to a split sentence with a minimum of 5 months incarceration. See U.S.S.G. § 5C1.1 (d) and (e).

**OPTION B:****10:1 RATIO WITH LOWER CRACK PENALTIES / HIGHER THRESHOLDS (50 & 500 GRAMS)  
AND POWDER PENALTIES / THRESHOLDS HELD AT PRESENT LEVELS (500 & 5,000 GRAMS (5 KG))**

QUANTITY	DRUG (RANGE)	OFFENSE LEVEL	SENTENCE (IN MONTHS)	PENALTY RATIO (AT MINIMUM)	PRESENT OFFENSE LEVEL	SENTENCE (MONTHS)
15 KG	Crack (15 or > KG)	38	235-293	1.6:1 -- crack/powder	38	235-293
	Powder (15-50 KG)	34	151-188		34	151-188
50 KG	Crack (15 or > KG)	38	235-293	1.3:1 -- crack/powder	38	235-293
	Powder (50-150 KG)	36	188-235		36	188-235
150 KG	Crack (15 or > KG)	38	235-293	1:1 -- crack/powder	38	235-293
	Powder (150 or > KG)	38	235-293		38	235-293

**Key**

- ★ 5-year mandatory minimum triggered
- ◆ 10-year mandatory minimum triggered

**OPTION C:****10:1 RATIO WITH HIGHER CRACK THRESHOLDS/LOWER PENALTIES  
AND LOWER POWDER THRESHOLDS/HIGHER PENALTIES:****CRACK THRESHOLDS AT 25 AND 250 GRAMS; POWDER THRESHOLDS AT 250 AND 2,500 GRAMS (2.5 KG)**

QUANTITY	DRUG (RANGE)	OFFENSE LEVEL	SENTENCE (IN MONTHS)	PENALTY RATIO (AT MINIMUM)	PRESENT OFFENSE LEVEL	SENTENCE (MONTHS)
5 G	Crack (5-10 G)	18	27-33	5.4:1 <sup>1</sup> -- crack/powder	26	63-78
	Powder (< 12.5 G)	12	10-16		12	10-16
10 G	Crack (10-15 G)	20	33-41	6.6:1 -- crack/powder	26	63-78
	Powder (< 12.5 G)	12	10-16		12	10-16
25 G	Crack* (25-100 G)	26	63-78	3:1 -- crack/powder	28	78-97
	Powder (25-50 G)	16	21-27		14	15-21
50 G	Crack (25-100 G)	26	63-78	2.3:1 -- crack/powder	32	121-151
	Powder (50-100 G)	18	27-33		16	21-27
100 G	Crack (100-175 G)	28	78-97	2.4:1 -- crack/powder	32	121-151
	Powder (100-150 G)	20	33-41		18	27-33
200 G	Crack (175-250 G)	30	97-121	1.9:1 -- crack/powder	34	151-188
	Powder (200-250 G)	24	51-63		20	33-41
250 G	Crack ♦ (250-750 G)	32	121-151	1.9:1 -- crack/powder	34	151-188
	Powder* (250 G-1 KG)	26	63-78		20	33-41
500 G	Crack (250 G-750 G)	32	121-151	1.9:1 -- crack/powder	36	188-235
	Powder (250 G-1 KG)	26	63-78		26	63-78
2 KG	Crack (750 G-2.5 KG)	34	151-188	1.6:1 -- crack/powder	38	235-293
	Powder (1.75-2.5 KG)	30	97-121		28	78-97
2.5 KG	Crack (2.5-7.5 KG)	36	188-235	1.6:1 -- crack/powder	38	235-293
	Powder ♦ (2.5-7.5 KG)	32	121-151		28	78-97
5 KG	Crack (2.5-7.5 KG)	36	188-235	1.6:1 -- crack/powder	38	235-293
	Powder (2.5-7.5 KG)	32	121-151		32	121-151

<sup>1</sup> Offense level 12 is subject to a split sentence with a minimum of 5 months incarceration. See U.S.S.G. § 5C1.1 (d) and (e).



**OPTION C:****10:1 RATIO WITH HIGHER CRACK THRESHOLDS/LOWER PENALTIES****AND LOWER POWDER THRESHOLDS/HIGHER PENALTIES:****CRACK THRESHOLDS AT 25 AND 250 GRAMS; POWDER THRESHOLDS AT 250 AND 2,500 GRAMS (2.5 KG)**

QUANTITY	DRUG (RANGE)	OFFENSE LEVEL	SENTENCE (IN MONTHS)	PENALTY RATIO (AT MINIMUM)	PRESENT OFFENSE LEVEL	SENTENCE (MONTHS)
15 KG	Crack (7.5 KG or >)	38	235-293	1.6:1 -- crack/powder	38	235-293
	Powder (7.5-25 KG)	34	151-188		34	151-188
50 KG	Crack (7.5 KG or >)	38	235-293	1.3:1 -- crack/powder	38	235-293
	Powder (25-75 KG)	36	188-235		36	188-235
150 KG	Crack (7.5 KG or >)	38	235-293	1:1 -- crack/powder	38	235-293
	Powder (75 KG or >)	38	235-293		38	235-293

**Key**

- ★ 5-year mandatory minimum triggered
- ◆ 10-year mandatory minimum triggered

**OPTION D: 20:1 RATIO WITH LOWER CRACK PENALTIES / HIGHER THRESHOLDS (25 & 250 GRAMS)  
AND POWDER PENALTIES / THRESHOLDS HELD CONSTANT AT PRESENT LEVELS (500 AND 5,000 GRAMS (5 KG))**

QUANTITY	DRUG (RANGE)	OFFENSE LEVEL	SENTENCE (IN MONTHS)	PENALTY RATIO (AT MINIMUM)	PRESENT OFFENSE LEVEL	SENTENCE (MONTHS)
5 G	Crack (5-10 G)	18	27-33	5.4:1 <sup>1</sup> -- crack/powder	26	63-78
	Powder (< 25 G)	12	10-16		12	10-16
10 G	Crack (10-15 G)	20	33-41	6.6:1 <sup>1</sup> -- crack/powder	26	63-78
	Powder (< 25 G)	12	10-16		12	10-16
25 G	Crack* (25-100 G)	26	63-78	4.2:1 -- crack/powder	28	78-97
	Powder (25-50 G)	14	15-21		14	15-21
50 G	Crack (25-100 G)	26	63-78	3:1 -- crack/powder	32	121-151
	Powder (50-100 G)	16	21-27		16	21-27
100 G	Crack (100-175 G)	28	78-97	2.9:1 -- crack/powder	32	121-151
	Powder (100-200 G)	18	27-33		18	27-33
200 G	Crack (175-250 G)	30	97-121	2.9:1 -- crack/powder	34	151-188
	Powder (200-300 G)	20	33-41		20	33-41
250 G	Crack ♦ (250-750 G)	32	121-151	3.7:1 -- crack/powder	34	151-188
	Powder (200-300 G)	20	33-41		20	33-41
500 G	Crack (250 G-750 G)	32	121-151	1.9:1 -- crack/powder	36	188-235
	Powder* (500-2 KG)	26	63-78		26	63-78
2 KG	Crack (750 G-2.5 KG)	34	151-188	1.9:1 -- crack/powder	38	235-293
	Powder (2-3.5 KG)	30	78-97		28	78-97
2.5 KG	Crack (2.5-7.5 KG)	36	188-235	2.4:1 -- crack/powder	38	235-293
	Powder (2-3.5 KG)	32	78-97		28	78-97
5 KG	Crack (2.5-7.5 KG)	36	188-235	1.6:1 -- crack/powder	38	235-293
	Powder ♦ (5-15 KG)	32	121-151		32	121-151

<sup>1</sup> Offense level 12 is subject to a split sentence with a minimum of 5 months incarceration. See U.S.S.G. § 5C1.1 (d) and (e)

**OPTION D: 20:1 RATIO WITH LOWER CRACK PENALTIES / HIGHER THRESHOLDS (25 & 250 GRAMS)  
AND POWDER PENALTIES / THRESHOLDS HELD CONSTANT AT PRESENT LEVELS (500 AND 5,000 GRAMS (5 KG))**

QUANTITY	DRUG (RANGE)	OFFENSE LEVEL	SENTENCE (IN MONTHS)	PENALTY RATIO (AT MINIMUM)	PRESENT OFFENSE LEVEL	SENTENCE (MONTHS)
15 KG	Crack (7.5 KG or >)	38	235-293	1.6:1 -- crack/powder	38	235-293
	Powder (15-50 KG)	34	151-188		34	151-188
50 KG	Crack (7.5 KG or >)	38	235-293	1.3:1 -- crack/powder	38	235-293
	Powder (50-150 KG)	36	188-235		36	188-235
150 KG	Crack (7.5 KG or >)	38	235-293	1:1 -- crack/powder	38	235-293
	Powder (150 KG or >)	38	235-293		38	235-293

**Key**

- ★ 5-year mandatory minimum triggered
- ◆ 10-year mandatory minimum triggered