

STATE SENTENCING POLICY AND PROSECUTORIAL DECISIONS

A. STATE COCAINE SENTENCING POLICIES

In order to provide some contextual framework in which to assess federal cocaine sentencing policy, the 1995 Commission Report included a survey of the laws of the 50 states, the District of Columbia, and the Virgin Islands to determine whether and to what extent states distinguish between crack cocaine and powder cocaine penalties.¹⁵² The Commission conducted a similar survey for this report to determine whether there have been any recent trends in state legislative action that might be relevant to evaluating federal cocaine sentencing policy.¹⁵³

As part of this update, the Commission sought the following information:

- (1) Whether the state uses sentencing guidelines (and, if so, whether they are advisory or mandatory).
- (2) Whether state statutes and/or guidelines distinguish between crack cocaine and powder cocaine.
- (3) Whether state sentences are determinate or, alternatively, whether early release through parole is available.
- (4) Whether the state has enacted drug statutes containing mandatory minimum penalties.

Similar to the findings in the 1995 Report, and contrary to federal sentencing policy, the overwhelming majority of states do not distinguish between powder cocaine and crack cocaine offenses. Only 14 states have some form of distinction between crack cocaine and powder cocaine in their penalty schemes. Nebraska, Louisiana, Wisconsin, and the District of Columbia, among the 14 jurisdictions which did distinguish between the two forms of cocaine in 1995, no longer do. Conversely, Arizona, Maine, New Hampshire, and Ohio now have a statutory distinction between cocaine powder and crack cocaine, whereas they did not in 1995.

Of interest, only one state, Iowa, has a 100-to-1 drug quantity ratio in its statutory scheme. Unlike the federal statutory scheme, however, Iowa distinguishes between crack cocaine and powder cocaine only for purposes of statutory maximum penalties, not mandatory minimum penalties.

¹⁵² See USSC, *supra* note 1, at ch. 6, 129-138.

¹⁵³ In conducting the survey, the Commission reviewed state narcotics statutes addressing cocaine penalties and contacted each state sentencing commission or its counterpart, if the respective state had such an agency.

The Commission also researched whether states had sentencing guideline systems and whether imposed sentences were determinate (*i.e.*, sentence imposed is the sentence served) or indeterminate (*i.e.*, sentence or sentence range imposed with release into the community after service of less than the full sentence). Currently, 22 states use some form of sentencing guidelines compared to 21 states in 1995. Thirty states have determinate sentencing structures, some in combination with guidelines, compared to 20 states in 1995.

Currently, 38 states have statutory mandatory minimum penalties for drug offenses. In 1995, 32 states had mandatory minimum penalties for one or more type of drug offense (*e.g.*, trafficking, repeat trafficking, repeat possession, and sale of drugs within a certain distance of a protected area such as a school or playground).

The penalties structure of the 14 states that currently distinguish between powder cocaine and crack cocaine offenses are described briefly below.

1. Alabama

Alabama does not provide different penalties for crack cocaine and powder cocaine offenses, but uses a 10-to-1 drug quantity ratio for determining eligibility for its drug abuse diversion program. Under this program, any person arrested or charged with a controlled substance offense may file a request with the district attorney to enroll in a drug abuse treatment program in lieu of undergoing prosecution. The statutory provisions outlining eligibility for the diversion program provide different quantity levels for powder cocaine and crack cocaine offenders. For powder cocaine, the quantity cannot exceed five grams for eligibility for diversion. For crack cocaine, the quantity cannot exceed 500 milligrams (one-half gram).¹⁵⁴ For non-diversionary cocaine offenses, Alabama does not distinguish between crack cocaine and powder cocaine. For 28 grams or more but less than 500 grams, an offender is subject to a mandatory minimum term of three years imprisonment; for 500 grams but less than one kilogram, an offender is subject to a mandatory minimum term of five years imprisonment; for one kilogram but less than ten kilograms, an offender is subject to a mandatory minimum term of 15 years imprisonment.¹⁵⁵

¹⁵⁴ Alabama Code § 12-23-5(2) (2001).

¹⁵⁵ Alabama Code § 13A-12-231 (2001).

2. Arizona

Arizona distinguishes between offenses involving powder cocaine and crack cocaine using a drug quantity ratio of 12-to-1. Under Arizona's statute, nine grams of powder cocaine or 750 milligrams of cocaine base trigger the threshold amount for trafficking, with a presumptive sentence of five years imprisonment. The judge may sentence an offender to a minimum of four years imprisonment if mitigating factors are present, or a maximum of ten years if aggravating factors are present.¹⁵⁶ An offender convicted of trafficking is not eligible for suspension of sentence or release until the offender has served the sentence imposed by the court.¹⁵⁷

3. California

Offenders convicted of possession or possession with intent to sell crack cocaine and powder cocaine are sentenced to different terms under California law. Crack cocaine defendants are sentenced to either a three, four, or five-year term of imprisonment, while powder cocaine defendants are sentenced to either two, three, or four-year terms. Absent mitigating or aggravating factors, the sentencing judge sentences an offender to the middle of the statutory ranges.¹⁵⁸ Although the ranges fluctuate, a crack cocaine offender in effect serves 1.25 to 1.5 times longer than a powder cocaine offender. Possession with intent to sell carries a mandatory minimum penalty if a defendant has a prior conviction. California statutes provide enhancements if large quantities of drugs are involved in the offense. When calculating the quantity levels necessary to trigger these enhancements, however, California does not distinguish between crack cocaine and powder cocaine.

4. Connecticut

Connecticut distinguishes between trafficking offenses involving crack cocaine and powder cocaine using a drug quantity ratio of 56.7-to-1.¹⁵⁹ The penalty for trafficking in one ounce or more of powder cocaine is five years to life imprisonment. The same penalty applies for trafficking in .5 grams or more of cocaine base.

¹⁵⁶ Arizona Revised Statutes § 13-702 (2001).

¹⁵⁷ Arizona Revised Statutes §§ 3401(36), 3408(B) (2001).

¹⁵⁸ California Health and Safety Code §§ 11351, 11351.5. In California, sentencing ranges comprise three possible terms: normal, aggravating, and mitigating. The "normal" offender convicted of crack cocaine possession with intent to distribute receives a four-year term. If aggravating circumstances exist, the offender receives a five-year term. If mitigating circumstances exist, the offender receives a three-year term.

¹⁵⁹ Connecticut General Statutes Annotated § 21a-278(a) West Supp (2000).

5. Iowa

Iowa distinguishes between trafficking offenses involving crack cocaine and powder cocaine using a 100-to-1 drug quantity ratio. Unlike the federal statutes, however, this ratio is not reflected in the threshold amounts that trigger the mandatory minimum penalties; rather, the 100-to-1 ratio is reflected in the threshold amounts that determine the maximum statutory penalty. For example, more than five kilograms of powder cocaine or more than fifty grams of cocaine base trigger a maximum penalty of fifty years imprisonment. An offender with more than 500 grams of powder cocaine or more than five grams of cocaine base is subject to a maximum penalty of 25 years imprisonment.¹⁶⁰ Essentially, an offender must have 100 times more powder cocaine than crack cocaine to trigger the same statutory maximum penalty. Iowa also requires an offender who commits one of these offenses to serve a minimum period of confinement of one-third of the maximum sentence prescribed by law before being eligible for parole.¹⁶¹

6. Maine

Maine distinguishes between trafficking offenses involving crack cocaine and powder cocaine using a 3.5-to-1 drug quantity ratio. If an offender knowingly possesses 14 grams or more of powder cocaine or four grams or more of cocaine base, a presumption of unlawful trafficking is established.¹⁶² For aggravated trafficking, *i.e.*, 112 grams or more of powder cocaine or 32 grams or more of cocaine base, an offender is subject to a mandatory minimum sentence of four years imprisonment.¹⁶³

7. Maryland

Maryland distinguishes between offenses involving powder cocaine and crack cocaine using a 9-to-1 drug quantity ratio. Maryland has a five-year mandatory minimum penalty for trafficking 448 grams or more of powder cocaine or 50 grams or more of cocaine base.¹⁶⁴

8. Missouri

Missouri differentiates between offenses involving powder cocaine and crack cocaine using a 75-to-1 drug quantity ratio. Offenders who traffick more than 150 grams but less than 450 grams of cocaine powder are Class A felons. For cocaine base, two grams but less than six

¹⁶⁰ Iowa Code § 124.401 (2001).

¹⁶¹ Iowa Code § 124.413 (2001).

¹⁶² Maine Revised Statutes 17 § 1103(3) (2000).

¹⁶³ Maine Revised Statutes 17 § 1252(5-A) (2000).

¹⁶⁴ Maryland Code Annotated, Penal § 286(f) (2000).

grams trigger the same penalty. Offenders who traffick 450 grams or more of powder cocaine, or six or more grams of cocaine base, both Class A felonies, are ineligible for probation or parole.¹⁶⁵ Class A felonies carry an imprisonment term of not less than ten years and not more than thirty years.

9. New Hampshire

New Hampshire differentiates between trafficking offenses involving powder cocaine and crack cocaine using a 28-to-1 drug quantity ratio. New Hampshire provides a maximum penalty of 30 years imprisonment for trafficking in five ounces or more of powder cocaine. The same penalty applies for trafficking in five grams or more of cocaine base.¹⁶⁶

10. North Dakota

North Dakota differentiates between offenses involving powder cocaine and crack cocaine using a 10-to-1 ratio. North Dakota has an enhanced penalty that provides a maximum of life imprisonment with or without an opportunity for parole for trafficking fifty grams or more of powder cocaine or five grams or more of cocaine base. An offender who is classified as a Class AA felon, and who receives a sentence of life imprisonment with the possibility of parole, will not be eligible for parole for 30 years, less any sentence reduction earned for good conduct. Cocaine quantities less than the above-mentioned amounts qualify as a Class A felony, with a maximum penalty of 20 years imprisonment. Mandatory minimums apply if an offender has prior offenses. An offender with a prior offense is subject to a mandatory minimum of five years imprisonment; an offender with a third or subsequent offense is subject to a mandatory minimum of twenty years imprisonment.¹⁶⁷

11. Ohio

Ohio differentiates between offenses involving powder cocaine and crack cocaine using a graduated scale based on threshold amounts and felony categories imposed by statute. The felony categories are defined by degree: first, second, third, and fourth. The ratios vary between each individual felony category based on quantities from the low end of the range to the high end. For example, it is a felony in the third degree to distribute ten grams but less than 100 grams of powder cocaine. For cocaine base, the third-degree felony range is five grams but less than ten grams. The minimal drug quantity ratio is 2-to-1; the maximum drug quantity ratio for this category is 10-to-1. To qualify for a first-degree felony, an offender must distribute 500 grams but less than 1,000 grams of powder cocaine, and at least 25 grams but less than 100 grams of cocaine base, which results in a ratio fluctuation of between 10-to-1 and 20-to-1. For major drug offenders, Ohio uses a 10-to-1 ratio (1,000 grams cocaine powder and 100 grams of

¹⁶⁵ Missouri Annotated Statutes § 195.222(2) (2000).

¹⁶⁶ New Hampshire Revised Statutes Annotated § 318-B:26(I)(a)(1) (2000).

¹⁶⁷ North Dakota Century Code §§ 19-03.1-to-23.1(1)(C)&(2); 12.1-32-01; 19-03.1-23 (2000).

cocaine base) and prescribes a mandatory minimum term of ten years imprisonment with an additional one to ten-year term subject to judicial discretion.

12. Oklahoma

Oklahoma differentiates between trafficking offenses involving powder cocaine and crack cocaine using a 6-to-1 drug quantity ratio. The Oklahoma statutes provide mandatory minimum penalties of ten years imprisonment for offenses involving 28 grams or more of cocaine powder or five grams or more of cocaine base. The statutes also provide a 20-year mandatory minimum for offenses involving 300 grams or more of powder cocaine or 50 grams or more of cocaine base.¹⁶⁸

13. South Carolina

South Carolina's statutory scheme for cocaine penalties is complex, with different minimum and maximum penalties for possession, distribution, and trafficking of powder cocaine and crack cocaine. For possession offenses, crack cocaine is penalized more severely than powder cocaine. A first time offender with ten grains (.648 grams) or less of powder cocaine is subject to a statutory maximum penalty of two years imprisonment, but a first time offender with less than one gram of crack cocaine is subject to a statutory maximum penalty of five years imprisonment.¹⁶⁹ The penalties for first time distribution offenses do not differ between the two forms of cocaine, but the statutory inference that triggers applicability of the distribution statute varies somewhat. Offenses involving ten grains or more of powder cocaine (.648 grams) are presumed to be distribution offenses, and offenses involving one gram or more of crack cocaine are presumed to be distribution offenses. Interestingly, second time distribution offenses involving powder cocaine are penalized more severely (five to thirty years imprisonment) than those involving crack cocaine (zero to 25 years imprisonment).

14. Virginia

Virginia's statutes do not distinguish between offenses involving powder cocaine and crack cocaine generally. The penalties are determined by the schedule of the controlled substance involved in the offense, and all forms of cocaine are listed in schedule II. Virginia's "drug kingpin" statute, however, does distinguish between the two forms of cocaine using a 2-to-1 drug quantity ratio. Under this statute, an offender who trafficks five kilograms or more of powder cocaine or 2.5 kilograms or more of cocaine base is subject to a 20-year mandatory minimum sentence.

¹⁶⁸ Oklahoma Statutes Annotated Tit. 63, § 2-415(C)(2).

¹⁶⁹ South Carolina Code Annotated §§ 44.53-370, 44.53-375 (2000).

Table 4
State Cocaine Penalties

State	Crack/Powder Distinction	Guidelines System	Determinate Sentencing	Mandatory Minimum
Total Affirmative Responses	14	22	30	38
Alabama	Yes (10:1 ratio)	No	No	Yes
Alaska	No	No	Yes	Yes
Arizona	Yes (12:1 ratio)	No	Yes	Yes
Arkansas	No	Yes	Yes	Yes
California	Yes ¹⁷⁰	No	Yes	Yes
Colorado	No	No	Yes	Yes
Connecticut	Yes (56.7:1 ratio)	No	Yes	Yes
Delaware	No	Yes	Yes	Yes
District of Columbia	No	Yes	Yes	Yes
Florida	No	Yes	Yes	Yes
Georgia	No	No	Yes	Yes
Hawaii	No	No	No	No
Idaho	No	Yes	Yes	Yes
Illinois	No	No	Yes	Yes
Indiana	No	Yes	Yes	Yes
Iowa	Yes (100:1 ratio)	No	No	Yes
Kansas	No	Yes	No	Yes

¹⁷⁰ California does not use quantity-based distinctions between crack cocaine and powder cocaine; rather, it uses a penalty-based system. Crack cocaine offenders are sentenced to a three, four, or five-year term of imprisonment, while powder cocaine offenders are sentenced to a two, three, or four-year term. Quantities are irrelevant in this scheme.

Table 4 cont'd

State	Crack/Powder Distinction	Guidelines System	Determinate Sentencing	Mandatory Minimum
Kentucky	No	No	No	No
Louisiana	No	Yes	Yes	Yes
Maine	Yes (3.5:1 ratio)	No	Yes	Yes
Maryland	Yes (9:1 ratio)	Yes	No	Yes
Massachusetts	No	No	Yes	No
Michigan	No	No	Yes	Yes
Minnesota	No	Yes	Yes	Yes
Mississippi	No	No	No	Yes
Missouri	Yes (75:1 ratio)	Yes	No	Yes
Montana	No	No	No	No
Nebraska	No	No	No	No
Nevada	No	No	Yes	Yes
New Hampshire	Yes (28:1 ratio)	No	Yes	No
New Jersey	No	Yes	No	Yes
New Mexico	No	No	Yes	No
New York	No	No	No	Yes
North Carolina	No	Yes	Yes	Yes
North Dakota	Yes (10:1 ratio)	No	Yes	Yes
Ohio	Yes (10:1 ratio) ¹⁷¹	Yes	No	Yes
Oklahoma	Yes (6:1 ratio)	No	Yes	Yes
Oregon	No	Yes	Yes	No
Pennsylvania	No	Yes	Yes	Yes

¹⁷¹ Ohio has a ten-year mandatory minimum for its major drug offenders and uses a 10-to-1 drug quantity ratio at this category.

Table 4 cont'd

State	Crack/Powder Distinction	Guidelines System	Determinate Sentencing	Mandatory Minimum
Rhode Island	No	Yes	No	Yes
South Carolina	Yes	No	No	Yes
South Dakota	No	No	Yes	Yes
Tennessee	No	Yes	Yes	No
Texas	No	No	No	No
Utah	No	Yes	No	No
Vermont	No	No	No	No
Virgin Islands	No	No	No	Yes
Virginia	Yes (2:1 ratio) ¹⁷²	Yes	Yes	Yes
Washington	No	Yes	Yes	No
West Virginia	No	Yes	No	Yes
Wisconsin	No	No	No	Yes
Wyoming	No	No	No	No

B. INTERACTION OF PROSECUTORIAL DECISIONS AND STATE PENALTIES

Federal law enforcement and judicial resources are too limited to process all drug trafficking offenses at the federal level. In fact, one of the stated goals of the 1986 Act was to “give greater direction to the DEA and the U.S. Attorneys on how to focus scarce law enforcement resources.”¹⁷³ As stated in the preceding chapter, only a small minority – about ten percent – of all drug trafficking cases are brought at the federal level.

Because the states generally have not adopted the federal penalty structure for cocaine offenses, the decision whether to prosecute a crack cocaine offense at the federal or state level can have an especially significant effect for a crack cocaine offender. Commission data indicate that prosecutorial practices vary substantially among the various federal judicial districts, which

¹⁷² Virginia differentiates between the two forms of cocaine under its “drug kingpin” statute. Absent “kingpin” status, the statutes make no distinction between the two forms.

¹⁷³ H.R. Rep. No. 99–845, pt. 1, at 11-12 (1986).

suggests that the proportion of offenders negatively affected by the decision to prosecute at the federal level varies nationwide.

Table 5 shows, for each federal district, the number of crack cocaine and powder cocaine cases and the median drug quantity involved for both forms of cocaine. The districts are listed in ascending order by the median quantity of crack cocaine. The data demonstrate some interesting variations in prosecution practices. For example, largely rural jurisdictions such as Southern Iowa (41), Western North Carolina (51), New Hampshire (31), and Kansas (53) prosecute more crack cocaine cases than Northern Illinois (16), which includes Chicago, and Central California (31), which includes Los Angeles.

Table 5 also suggests that there are significant differences in the types of cocaine cases brought in the various federal districts. Based on median drug quantity in crack cocaine cases, prosecutors in some federal districts appear to focus on cases involving large quantities of crack cocaine, for example Eastern North Carolina (1,490.0 grams) and Northern Florida (812.0 grams), while other jurisdictions prosecute cases involving much smaller median quantities, for example Western New York (10.3 grams) and Northern West Virginia (14.2 grams). Even among federal judicial districts within states there is often significant variation in the types of crack cocaine cases prosecuted. For example, in Eastern New York the median quantity of crack cocaine is 362.4 grams, compared to 15.0 grams in Northern New York. Similarly, in Western Kentucky the median quantity of crack cocaine is 135.4 grams, compared to 14.6 grams in Eastern Kentucky.

Table 5
Median Drug Weight for Powder Cocaine and
Crack Cocaine Cases in Each Federal District
Fiscal Year 2000¹⁷⁴

District	Primary Drug Type			
	Crack Cocaine		Powder Cocaine	
	Number of Cases	Median Weight (Grams)	Number of Cases	Median Weight (Grams)
All Districts	3,800	71.6	3,732	3,012.5
North Dakota	0	-	0	-
Guam	0	-	0	-
Idaho	0	-	0	-
Montana	0	-	19	935.6

¹⁷⁴ Of the 22,639 cases sentenced under USSG §2D1.1, the primary drug trafficking guideline, 4,806 had crack cocaine and 5,241 had powder cocaine as their primary drug type. Due to missing drug weight data, 1,006 of the 4,806 crack cocaine cases and 1,509 of the 5,241 powder cocaine cases were excluded from the table.

Table 5 cont'd

District	Crack Cocaine		Powder Cocaine	
	Number of Cases	Median Weight (Grams)	Number of Cases	Median Weight (Grams)
Northern Mariana Islands	0	-	0	-
Oklahoma, Eastern	0	-	0	-
Virgin Islands	6	1.9	3	312,600.0
New Hampshire	31	3.7	5	442.0
Washington, Eastern	7	5.7	8	287.6
Alaska	7	6.8	34	2,360.9
Louisiana, Middle	5	7.0	3	2,000.0
New York, Western	28	10.3	17	192.4
Iowa, Northern	13	12.0	3	510.3
West Virginia, Northern	51	14.2	12	292.4
Kentucky, Eastern	32	14.6	58	1,130.0
New York, Northern	46	15.0	20	500.0
Missouri, Western	19	16.4	39	1,983.9
New Mexico	27	20.5	77	1,000.0
Rhode Island	31	20.6	14	529.0
West Virginia, Southern	50	22.3	20	568.7
Vermont	9	25.5	11	288.3
Kansas	53	25.7	25	3,000.0
Arkansas, Eastern	26	28.6	12	1,665.0
Missouri, Eastern	101	29.4	40	1,270.0
Tennessee, Eastern	74	29.5	31	610.9
Texas, Eastern	104	30.4	47	2,600.0
Oregon	11	33.0	9	2,253.8
Ohio, Northern	41	33.7	32	2,173.5
California, Southern	3	37.9	140	23,710.0
California, Northern	4	38.5	36	3,260.0
Michigan, Eastern	62	40.1	41	483.0
Texas, Western	78	40.4	198	2,042.0
Washington, Western	4	42.4	42	1,965.0
Puerto Rico	8	42.6	48	3,750.0
Arkansas, Western	8	42.8	6	896.8
Mississippi, Northern	30	46.8	1	1,117.7
Arizona	21	46.8	76	5,000.0
Utah	4	46.9	17	1,199.0
Illinois, Central	60	49.3	20	5,750.0
Wisconsin, Western	9	49.6	10	1,510.0

Table 5 cont'd

District	Crack Cocaine		Powder Cocaine	
	Number of Cases	Median Weight (Grams)	Number of Cases	Median Weight (Grams)
Pennsylvania, Middle	41	50.0	13	997.7
Georgia, Middle	63	50.0	31	1,000.0
Georgia, Northern	35	50.2	59	6,000.0
Massachusetts	75	52.0	48	1,000.0
Virginia, Western	67	52.9	9	453.6
Louisiana, Eastern	60	53.4	43	4,000.0
Alabama, Northern	43	53.7	19	1,000.0
Maine	6	54.4	11	689.7
Florida, Southern	110	55.5	504	7,574.5
Texas, Southern	142	57.4	312	10,575.0
New York, Southern	123	59.0	127	10,000.0
Tennessee, Middle	8	60.5	8	1,670.0
Nevada	30	60.9	9	82.9
Indiana, Northern	82	62.9	24	2,797.8
Georgia, Southern	29	63.5	8	248.3
Ohio, Southern	31	66.7	35	2,000.0
Alabama, Middle	32	69.2	8	625.0
California, Eastern	9	69.6	11	22,000.0
Nebraska	32	75.0	22	920.2
District of Columbia	57	77.0	8	943.5
Wyoming	3	84.0	11	1,200.0
Illinois, Southern	81	87.5	12	1,905.0
Florida, Middle	207	88.4	150	2,996.5
Pennsylvania, Eastern	65	93.6	56	2,870.0
Pennsylvania, Western	45	99.9	12	1,260.0
Mississippi, Southern	32	115.2	26	1,000.0
Colorado	14	118.4	39	1,444.2
Iowa, Southern	41	120.0	15	3,000.0
Wisconsin, Eastern	27	121.0	17	2,600.0
Texas, Northern	39	123.3	82	6,000.0
Connecticut	19	125.2	16	12,500.0
California, Central	31	126.0	68	27,910.0
Tennessee, Western	45	127.5	33	3,000.0
New Jersey	15	135.0	48	2,265.0
Kentucky, Western	18	135.4	18	989.6
Virginia, Eastern	219	135.5	47	990.0

District	Crack Cocaine		Powder Cocaine	
	Number of Cases	Median Weight (Grams)	Number of Cases	Median Weight (Grams)
South Carolina	131	148.5	37	2,028.0
North Carolina, Middle	56	168.5	31	2,443.0
Maryland	34	189.0	13	4,900.0
Michigan, Western	18	192.3	15	2,500.0
Hawaii	6	197.5	14	2,577.2
Minnesota	35	203.0	49	1,100.0
Delaware	11	204.0	4	537.5
Louisiana, Western	97	218.0	26	23,220.0
Illinois, Northern	16	248.5	99	4,750.0
Alabama, Southern	31	353.8	14	10,000.0
New York, Eastern	44	362.4	188	2,995.5
Indiana, Southern	13	381.1	11	4,000.0
North Carolina, Western	51	425.3	20	1,210.0
South Dakota	3	426.1	2	38.3
Florida, Northern	65	812.0	32	4,565.0
North Carolina, Eastern	116	1,490.0	26	1,023.1
Oklahoma, Western	31	3,694.6	7	496.2
Oklahoma, Northern	3	5,000.0	11	1,500.0

SOURCE: U.S. Sentencing Commission, 2000 Datafile, USSCFY00.

Table 6, which provides data on the number of cases involving less than 25 grams of crack cocaine brought in each federal jurisdiction, also demonstrates the prevalence of crack cocaine cases involving relatively small drug quantities in the various jurisdictions. Nationwide, 28.5 percent of all federal crack cocaine offenses in 2000 involved less than 25 grams of the drug. However, cases involving less than 25 grams represented over three-quarters of the crack cocaine cases prosecuted in the Virgin Islands (100.0%), Alaska (85.7%), Middle Louisiana (80.0%), and New Hampshire (77.4%). In contrast, such cases comprised less than five percent of the federal crack cocaine caseload in Eastern Wisconsin (3.7%), Central California (3.2%), Eastern North Carolina (0.9%), Southern Indiana (0.0%), South Dakota (0.0%), Western Washington (0.0%), Northern Oklahoma (0.0%), and Wyoming (0.0%).

The differences in prosecutorial practices suggested by this data occur for a number of reasons. For example, prosecutors may decide that prosecution at the federal level is not necessary because the state penalty for the particular offense is deemed adequate.¹⁷⁵ Or federal

¹⁷⁵ See, e.g., written statement by Bridget G. Brennan, Special Narcotics Prosecutor for the City of New York, to the U.S. Sentencing Commission, regarding Drug Penalties (February 26, 2002) at 2.

Table 6 cont'd

resources in a specific jurisdiction may be prioritized toward another drug type that is particularly problematic for that jurisdiction. Nevertheless, because of the significant difference between the federal and state cocaine penalty structures, these prosecutorial decisions can have a profound impact on the ultimate sentence visited on an individual crack cocaine offender.

Table 6¹⁷⁶
Crack Cocaine Cases With Less Than 25 Grams for Each District
Fiscal Year 2000

District	Total	Crack Cocaine Cases with Less than 25g	
		Number	Percent
All Districts	3,800	1,083	28.5
Virgin Islands	6	6	100.0
Alaska	7	6	85.7
Louisiana, Middle	5	4	80.0
New Hampshire	31	24	77.4
Washington, Eastern	7	5	71.4
New York, Western	28	18	64.3
Missouri, Western	19	12	63.2
New York, Northern	46	29	63.0
New Mexico	27	16	59.3
Rhode Island	31	18	58.1
West Virginia, Northern	51	29	56.9
Kentucky, Eastern	32	18	56.3
Iowa, Northern	13	7	53.8
West Virginia, Southern	50	26	52.0
Kansas	53	25	47.2
Arkansas, Eastern	26	12	46.2
Tennessee, Eastern	74	34	45.9

(“We have worked on successful joint investigations with federal prosecutors, during which we evaluated which set of laws would allow us to most appropriately prosecute and punish violent drug dealers. . . . Not every crack case went to federal prosecutors – only the narcotics cases against the most violent gang members.”).

¹⁷⁶ Of the 22,639 cases sentenced under the primary drug trafficking guideline, USSG §2D1.1, 4,806 had crack cocaine as the primary drug type. Of these 4,806 crack cocaine cases, 1,006 were excluded from the table due to missing data on drug weight. In each row, the percentages are based on the total number of crack cocaine cases in each district, regardless of weight, indicated in the Total column.

Table 6 cont'd

District	Total	Crack Cocaine Cases with Less than 25g	
		Number	Percent
Oregon	11	5	45.5
Texas, Western	78	34	43.6
Michigan, Eastern	62	27	43.5
Missouri, Eastern	101	43	42.6
Texas, Eastern	104	44	42.3
New York, Southern	123	47	38.2
Georgia, Northern	35	13	37.1
Indiana, Northern	82	30	36.6
Texas, Southern	142	50	35.2
Illinois, Central	60	21	35.0
Pennsylvania, Middle	41	14	34.1
Maine	6	2	33.3
Massachusetts	75	25	33.3
Vermont	9	3	33.3
Mississippi, Northern	30	10	33.3
Wisconsin, Western	9	3	33.3
Arizona	21	7	33.3
California, Southern	3	1	33.3
Hawaii	6	2	33.3
Ohio, Southern	31	10	32.3
Nevada	30	9	30.0
Virginia, Western	67	20	29.9
Illinois, Southern	81	24	29.6
Georgia, Middle	63	18	28.6
Georgia, Southern	29	8	27.6
Ohio, Northern	41	11	26.8
Puerto Rico	8	2	25.0
Mississippi, Southern	32	8	25.0
Tennessee, Middle	8	2	25.0
California, Northern	4	1	25.0
Utah	4	1	25.0
Virginia, Eastern	219	54	24.7
Alabama, Northern	43	10	23.3
Kentucky, Western	18	4	22.2
South Carolina	131	29	22.1
Florida, Southern	110	24	21.8
Pennsylvania, Eastern	65	14	21.5

Table 6 cont'd

District	Total	Crack Cocaine Cases with Less than 25g	
		Number	Percent
Colorado	14	3	21.4
Pennsylvania, Western	45	9	20.0
Florida, Middle	207	40	19.3
Nebraska	32	6	18.8
North Carolina, Western	51	9	17.6
District of Columbia	57	10	17.5
Louisiana, Western	97	16	16.5
New York, Eastern	44	7	15.9
Alabama, Middle	32	5	15.6
Tennessee, Western	45	7	15.6
Texas, Northern	39	6	15.4
Louisiana, Eastern	60	9	15.0
Illinois, Northern	16	2	12.5
Arkansas, Western	8	1	12.5
Maryland	34	4	11.8
Michigan, Western	18	2	11.1
California, Eastern	9	1	11.1
North Carolina, Middle	56	6	10.7
Oklahoma, Western	31	3	9.7
Alabama, Southern	31	3	9.7
Delaware	11	1	9.1
Iowa, Southern	41	3	7.3
New Jersey	15	1	6.7
Florida, Northern	65	4	6.2
Minnesota	35	2	5.7
Connecticut	19	1	5.3
Wisconsin, Eastern	27	1	3.7
California, Central	31	1	3.2
North Carolina, Eastern	116	1	0.9
Indiana, Southern	13	0	0.0
South Dakota	3	0	0.0
Washington, Western	4	0	0.0
Oklahoma, Northern	3	0	0.0
Wyoming	3	0	0.0
North Dakota	0	-	-
Guam	0	-	-
Idaho	0	-	-

Table 6 cont'd

District	Total	<u>Crack Cocaine Cases with Less than 25g</u>	
		Number	Percent
Montana	0	-	-
Northern Mariana Islands	0	-	-
Oklahoma, Eastern	0	-	-

SOURCE: U.S. Sentencing Commission, 2000 Datafile, USSCFY00.