

U.S. Sentencing Commission  
Preliminary Post-*Kimbrough/Gall* Data Report



**February 2008 Data**

## Introduction

As part of its ongoing mission, the United States Sentencing Commission provides Congress, the judiciary, the executive branch, and the general public with data extracted and analyzed from sentencing documents submitted by courts to the Commission.<sup>1</sup> Data is reported on an annual basis in the Commission's Annual Report and *Sourcebook of Federal Sentencing Statistics*.<sup>2</sup>

The Commission also reports preliminary data for an on-going fiscal year in order to provide real-time analysis of sentencing practices in the federal courts. Since 2005, the Commission has published a series of Quarterly Reports that are similar in format and methodology to tables and figures produced in the *Sourcebook of Federal Sentencing Statistics* or in the Commission's *Final Report on the Impact of the United States v. Booker on Federal Sentencing*.<sup>3</sup> The Quarterly Reports contain cumulative data for the on-going fiscal year (i.e., data from the start of the fiscal year through the most current quarter).

This report is another in the Commission's efforts to provide analysis of federal sentencing practices. This report relates to the period beginning on the date of the United States Supreme Court decision in *Kimbrough v United States*, \_\_\_ U.S. \_\_\_, 128 S.Ct. 558 (2007) and *Gall v United States*, \_\_\_ U.S. \_\_\_, 128 S.Ct. 586 (2007) and afterward. That is, the data are taken from cases in which the defendant was sentenced on or after December 10, 2007. The data in this report are presented in a manner similar to portions of the Commission's Quarterly Reports.

Users of this information are cautioned that the data are preliminary only and subject to change as the Commission receives, analyzes, and reports on additional cases throughout the fiscal year.

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<sup>1</sup> In each felony or Class A misdemeanor case sentenced in federal court, sentencing courts are required to submit the following documents to the Commission: the Judgment and Commitment Order, the Statement of Reasons, the plea agreement (if applicable), the indictment or other charging document, and the presentence report. See 28 U.S.C. § 994(w).

<sup>2</sup> See the Commission's website, [www.ussc.gov](http://www.ussc.gov), for electronic copies of the 1995-2006 *Sourcebooks of Federal Sentencing Statistics* and Annual Report.

<sup>3</sup> See [www.ussc.gov/bf.htm](http://www.ussc.gov/bf.htm) for an electronic copy of the Commission's *Final Report on the Impact of U.S. v. Booker on Federal Sentencing*.

Table 1

**COMPARISON OF SENTENCE IMPOSED AND POSITION  
RELATIVE TO THE GUIDELINE RANGE<sup>1</sup>**  
**Fiscal Year 2005, Post-Booker - 4th Quarter 2007 Preliminary Cumulative Data,  
2008 Post-Kimbrough/Gall Preliminary Data**

	<i>Post-Booker</i>		<i>Post-Kimbrough/Gall</i>	
	N	%	N	%
<b>TOTAL CASES</b>	<b>191,426</b>	<b>100.0</b>	<b>6,765</b>	<b>100.0</b>
<b>CASES SENTENCED WITHIN GUIDELINE RANGE</b>	<b>117,434</b>	<b>61.3</b>	<b>4,044</b>	<b>59.8</b>
<b>CASES SENTENCED ABOVE GUIDELINE RANGE</b>	<b>3,010</b>	<b>1.6</b>	<b>122</b>	<b>1.8</b>
<b>DEPARTURE ABOVE GUIDELINE RANGE</b>	<b>1,192</b>	<b>0.6</b>	<b>49</b>	<b>0.7</b>
Upward Departure From Guideline Range <sup>2</sup>	836	0.4	30	0.4
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	356	0.2	19	0.3
<b>OTHERWISE ABOVE GUIDELINE RANGE</b>	<b>1,818</b>	<b>1.0</b>	<b>73</b>	<b>1.1</b>
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	1,289	0.7	61	0.9
All Remaining Cases Above Guideline Range <sup>5</sup>	529	0.3	12	0.2
<b>GOVERNMENT SPONSORED BELOW RANGE<sup>6</sup></b>	<b>47,353</b>	<b>24.8</b>	<b>1,692</b>	<b>25.0</b>
§5K1.1 Substantial Assistance Departure	27,712	14.5	901	13.3
§5K3.1 Early Disposition Program Departure	13,607	7.1	560	8.3
Other Government Sponsored Below Range	6,034	3.2	231	3.4
<b>NON-GOVERNMENT SPONSORED BELOW RANGE</b>	<b>23,629</b>	<b>12.3</b>	<b>907</b>	<b>13.3</b>
<b>DEPARTURE BELOW GUIDELINE RANGE</b>	<b>7,789</b>	<b>4.0</b>	<b>242</b>	<b>3.5</b>
Downward Departure From Guideline Range <sup>2</sup>	4,857	2.5	144	2.1
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	2,932	1.5	98	1.4
<b>OTHERWISE BELOW GUIDELINE RANGE</b>	<b>15,840</b>	<b>8.3</b>	<b>665</b>	<b>9.8</b>
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	12,399	6.5	597	8.8
All Remaining Cases Below Guideline Range <sup>5</sup>	3,441	1.8	68	1.0

<sup>1</sup>The cases in this table described as *Post-Kimbrough/Gall* reflect the 6,942 cases sentenced subsequent to the date of *Kimbrough v. U.S. and Gall v. U.S.* (December 10, 2007), with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by February 21, 2008. Of these, 177 cases were excluded because information was missing from the submitted documents that prevented the comparison of the sentence and the guideline range. The cases in this table described as *Post-Booker* reflect the 199,124 cases sentenced after the date of *U.S. v. Booker* (January 12, 2005) through September 30, 2007. Of these, 7,698 cases were excluded for the above reasons. Descriptions of variables used in this table are provided in Appendix A.

<sup>2</sup>All cases with departures in which the court did not indicate as a reason either *U.S. v. Booker*, 18 U.S.C. § 3553, or a factor or reason specifically prohibited in the provisions, policy statements, or commentary of the *Guidelines Manual*.

<sup>3</sup>All cases sentenced outside of the guideline range in which the court indicated both a departure (see footnote 2) and a reference to either *U.S. v. Booker*, 18 U.S.C. § 3553, or related factors as a reason for sentencing outside of the guideline system.

<sup>4</sup>All cases sentenced outside of the guideline range in which no departure was indicated and in which the court cited *U.S. v. Booker*, 18 U.S.C. § 3553, or related factors as one of the reasons for sentencing outside of the guideline system.

<sup>5</sup>All cases sentenced outside of the guideline range that could not be classified into any of the three previous outside of the range categories. This category includes cases in which no reason was provided for a sentence outside of the guideline range.

<sup>6</sup>Cases in which a reason for the sentence indicated that the prosecution initiated, proposed, or stipulated to a sentence outside of the guideline range, either pursuant to a plea agreement or as part of a non-plea negotiation with the defendant.

SOURCE: U.S. Sentencing Commission, 2005 - 2007 Datafiles, USSCFY05 - USSCFY07, and Preliminary 2008 Datafile, USSCFY08.

Table 1-DC

**DC CIRCUIT COMPARISON OF SENTENCE IMPOSED AND  
POSITION RELATIVE TO THE GUIDELINE RANGE<sup>1</sup>**  
**Fiscal Year 2005, Post-Booker - 4th Quarter 2007 Preliminary Cumulative Data,  
2008 Post-Kimbrough/Gall Preliminary Data**

	<i>Post-Booker</i>		<i>Post-Kimbrough/Gall</i>	
	N	%	N	%
<b>TOTAL CASES</b>	<b>1,282</b>	<b>100.0</b>	<b>53</b>	<b>100.0</b>
<b>CASES SENTENCED WITHIN GUIDELINE RANGE</b>	<b>624</b>	<b>48.7</b>	<b>20</b>	<b>37.7</b>
<b>CASES SENTENCED ABOVE GUIDELINE RANGE</b>	<b>26</b>	<b>2.0</b>	<b>0</b>	<b>0.0</b>
<b>DEPARTURE ABOVE GUIDELINE RANGE</b>	<b>11</b>	<b>0.8</b>	<b>0</b>	<b>0.0</b>
Upward Departure From Guideline Range <sup>2</sup>	7	0.5	0	0.0
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	4	0.3	0	0.0
<b>OTHERWISE ABOVE GUIDELINE RANGE</b>	<b>15</b>	<b>1.2</b>	<b>0</b>	<b>0.0</b>
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	9	0.7	0	0.0
All Remaining Cases Above Guideline Range <sup>5</sup>	6	0.5	0	0.0
<b>GOVERNMENT SPONSORED BELOW RANGE<sup>6</sup></b>	<b>454</b>	<b>35.4</b>	<b>21</b>	<b>39.6</b>
§5K1.1 Substantial Assistance Departure	339	26.4	17	32.1
§5K3.1 Early Disposition Program Departure	0	0.0	0	0.0
Other Government Sponsored Below Range	115	9.0	4	7.5
<b>NON-GOVERNMENT SPONSORED BELOW RANGE</b>	<b>178</b>	<b>13.9</b>	<b>12</b>	<b>22.7</b>
<b>DEPARTURE BELOW GUIDELINE RANGE</b>	<b>51</b>	<b>4.0</b>	<b>1</b>	<b>1.9</b>
Downward Departure From Guideline Range <sup>2</sup>	14	1.1	0	0.0
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	37	2.9	1	1.9
<b>OTHERWISE BELOW GUIDELINE RANGE</b>	<b>127</b>	<b>9.9</b>	<b>11</b>	<b>20.8</b>
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	99	7.7	10	18.9
All Remaining Cases Below Guideline Range <sup>5</sup>	28	2.2	1	1.9

<sup>1</sup>The cases in this table described as *Post-Kimbrough/Gall* reflect the 53 cases sentenced in the D.C. Circuit subsequent to the date of *Kimbrough v. U.S.* and *Gall v. U.S.* (December 10, 2007), with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by February 21, 2008. Of these, none were excluded because information was missing from the submitted documents that prevented the comparison of the sentence and the guideline range. The cases in this table described as *Post-Booker* reflect the 1,296 cases sentenced in the D.C. Circuit after the date of *U.S. v. Booker* (January 12, 2005) through September 30, 2007. Of these, 14 cases were excluded for the above reasons. Descriptions of variables used in this table are provided in Appendix A.

<sup>2</sup>All cases with departures in which the court did not indicate as a reason either *U.S. v. Booker*, 18 U.S.C. § 3553, or a factor or reason specifically prohibited in the provisions, policy statements, or commentary of the *Guidelines Manual*.

<sup>3</sup>All cases sentenced outside of the guideline range in which the court indicated both a departure (see footnote 2) and a reference to either *U.S. v. Booker*, 18 U.S.C. § 3553, or related factors as a reason for sentencing outside of the guideline system.

<sup>4</sup>All cases sentenced outside of the guideline range in which no departure was indicated and in which the court cited *U.S. v. Booker*, 18 U.S.C. § 3553, or related factors as one of the reasons for sentencing outside of the guideline system.

<sup>5</sup>All cases sentenced outside of the guideline range that could not be classified into any of the three previous outside of the range categories. This category includes cases in which no reason was provided for a sentence outside of the guideline range.

<sup>6</sup>Cases in which a reason for the sentence indicated that the prosecution initiated, proposed, or stipulated to a sentence outside of the guideline range, either pursuant to a plea agreement or as part of a non-plea negotiation with the defendant.

SOURCE: U.S. Sentencing Commission, 2005 - 2007 Datafiles, USSCFY05 - USSCFY07, and Preliminary 2008 Datafile, USSCFY08.

Table 1-1

**FIRST CIRCUIT COMPARISON OF SENTENCE IMPOSED AND  
POSITION RELATIVE TO THE GUIDELINE RANGE<sup>1</sup>**  
**Fiscal Year 2005, Post-Booker - 4th Quarter 2007 Preliminary Cumulative Data,  
2008 Post-Kimbrough/Gall Preliminary Data**

	<i>Post-Booker</i>		<i>Post-Kimbrough/Gall</i>	
	N	%	N	%
<b>TOTAL CASES</b>	<b>4,670</b>	<b>100.0</b>	<b>122</b>	<b>100.0</b>
<b>CASES SENTENCED WITHIN GUIDELINE RANGE</b>	<b>3,127</b>	<b>67.0</b>	<b>69</b>	<b>56.6</b>
<b>CASES SENTENCED ABOVE GUIDELINE RANGE</b>	<b>78</b>	<b>1.7</b>	<b>1</b>	<b>0.8</b>
<b>DEPARTURE ABOVE GUIDELINE RANGE</b>	<b>25</b>	<b>0.5</b>	<b>0</b>	<b>0.0</b>
Upward Departure From Guideline Range <sup>2</sup>	18	0.4	0	0.0
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	7	0.1	0	0.0
<b>OTHERWISE ABOVE GUIDELINE RANGE</b>	<b>53</b>	<b>1.2</b>	<b>1</b>	<b>0.8</b>
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	41	0.9	0	0.0
All Remaining Cases Above Guideline Range <sup>5</sup>	12	0.3	1	0.8
<b>GOVERNMENT SPONSORED BELOW RANGE<sup>6</sup></b>	<b>677</b>	<b>14.5</b>	<b>25</b>	<b>20.5</b>
§5K1.1 Substantial Assistance Departure	557	11.9	22	18.0
§5K3.1 Early Disposition Program Departure	0	0.0	0	0.0
Other Government Sponsored Below Range	120	2.6	3	2.5
<b>NON-GOVERNMENT SPONSORED BELOW RANGE</b>	<b>788</b>	<b>16.8</b>	<b>27</b>	<b>22.1</b>
<b>DEPARTURE BELOW GUIDELINE RANGE</b>	<b>247</b>	<b>5.3</b>	<b>10</b>	<b>8.2</b>
Downward Departure From Guideline Range <sup>2</sup>	172	3.7	4	3.3
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	75	1.6	6	4.9
<b>OTHERWISE BELOW GUIDELINE RANGE</b>	<b>541</b>	<b>11.5</b>	<b>17</b>	<b>13.9</b>
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	427	9.1	16	13.1
All Remaining Cases Below Guideline Range <sup>5</sup>	114	2.4	1	0.8

<sup>1</sup>The cases in this table described as *Post-Kimbrough/Gall* reflect the 123 cases sentenced in the First Circuit subsequent to the date of *Kimbrough v. U.S.* and *Gall v. U.S.* (December 10, 2007), with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by February 21, 2008. Of these, one case was excluded because information was missing from the submitted documents that prevented the comparison of the sentence and the guideline range. The cases in this table described as *Post-Booker* reflect the 4,727 cases sentenced in the First Circuit after the date of *U.S. v. Booker* (January 12, 2005) through September 30, 2007. Of these, 57 cases were excluded for the above reasons. Descriptions of variables used in this table are provided in Appendix A.

<sup>2</sup>All cases with departures in which the court did not indicate as a reason either *U.S. v. Booker*, 18 U.S.C. § 3553, or a factor or reason specifically prohibited in the provisions, policy statements, or commentary of the *Guidelines Manual*.

<sup>3</sup>All cases sentenced outside of the guideline range in which the court indicated both a departure (see footnote 2) and a reference to either *U.S. v. Booker*, 18 U.S.C. § 3553, or related factors as a reason for sentencing outside of the guideline system.

<sup>4</sup>All cases sentenced outside of the guideline range in which no departure was indicated and in which the court cited *U.S. v. Booker*, 18 U.S.C. § 3553, or related factors as one of the reasons for sentencing outside of the guideline system.

<sup>5</sup>All cases sentenced outside of the guideline range that could not be classified into any of the three previous outside of the range categories. This category includes cases in which no reason was provided for a sentence outside of the guideline range.

<sup>6</sup>Cases in which a reason for the sentence indicated that the prosecution initiated, proposed, or stipulated to a sentence outside of the guideline range, either pursuant to a plea agreement or as part of a non-plea negotiation with the defendant.

SOURCE: U.S. Sentencing Commission, 2005 - 2007 Datafiles, USSCFY05 - USSCFY07, and Preliminary 2008 Datafile, USSCFY08.

Table 1-2

**SECOND CIRCUIT COMPARISON OF SENTENCE IMPOSED AND  
POSITION RELATIVE TO THE GUIDELINE RANGE<sup>1</sup>**  
**Fiscal Year 2005, Post-Booker - 4th Quarter 2007 Preliminary Cumulative Data,  
2008 Post-Kimbrough/Gall Preliminary Data**

	<i>Post-Booker</i>		<i>Post-Kimbrough/Gall</i>	
	N	%	N	%
<b>TOTAL CASES</b>	<b>12,349</b>	<b>100.0</b>	<b>354</b>	<b>100.0</b>
<b>CASES SENTENCED WITHIN GUIDELINE RANGE</b>	<b>6,261</b>	<b>50.7</b>	<b>174</b>	<b>49.2</b>
<b>CASES SENTENCED ABOVE GUIDELINE RANGE</b>	<b>118</b>	<b>0.9</b>	<b>2</b>	<b>0.6</b>
<b>DEPARTURE ABOVE GUIDELINE RANGE</b>	<b>51</b>	<b>0.4</b>	<b>1</b>	<b>0.3</b>
Upward Departure From Guideline Range <sup>2</sup>	37	0.3	0	0.0
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	14	0.1	1	0.3
<b>OTHERWISE ABOVE GUIDELINE RANGE</b>	<b>67</b>	<b>0.5</b>	<b>1</b>	<b>0.3</b>
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	38	0.3	1	0.3
All Remaining Cases Above Guideline Range <sup>5</sup>	29	0.2	0	0.0
<b>GOVERNMENT SPONSORED BELOW RANGE<sup>6</sup></b>	<b>2,960</b>	<b>23.9</b>	<b>70</b>	<b>19.8</b>
§5K1.1 Substantial Assistance Departure	2,644	21.4	59	16.7
§5K3.1 Early Disposition Program Departure	2	0.0	0	0.0
Other Government Sponsored Below Range	314	2.5	11	3.1
<b>NON-GOVERNMENT SPONSORED BELOW RANGE</b>	<b>3,010</b>	<b>24.4</b>	<b>108</b>	<b>30.5</b>
<b>DEPARTURE BELOW GUIDELINE RANGE</b>	<b>1,113</b>	<b>9.0</b>	<b>33</b>	<b>9.3</b>
Downward Departure From Guideline Range <sup>2</sup>	631	5.1	16	4.5
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	482	3.9	17	4.8
<b>OTHERWISE BELOW GUIDELINE RANGE</b>	<b>1,897</b>	<b>15.4</b>	<b>75</b>	<b>21.2</b>
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	1,468	11.9	70	19.8
All Remaining Cases Below Guideline Range <sup>5</sup>	429	3.5	5	1.4

<sup>1</sup>The cases in this table described as *Post-Kimbrough/Gall* reflect the 362 cases sentenced in the Second Circuit subsequent to the date of *Kimbrough v. U.S.* and *Gall v. U.S.* (December 10, 2007), with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by February 21, 2008. Of these, eight cases were excluded because information was missing from the submitted documents that prevented the comparison of the sentence and the guideline range. The cases in this table described as *Post-Booker* reflect the 12,534 cases sentenced in the Second Circuit after the date of *U.S. v. Booker* (January 12, 2005) through September 30, 2007. Of these, 185 cases were excluded for the above reasons. Descriptions of variables used in this table are provided in Appendix A.

<sup>2</sup>All cases with departures in which the court did not indicate as a reason either *U.S. v. Booker*, 18 U.S.C. § 3553, or a factor or reason specifically prohibited in the provisions, policy statements, or commentary of the *Guidelines Manual*.

<sup>3</sup>All cases sentenced outside of the guideline range in which the court indicated both a departure (see footnote 2) and a reference to either *U.S. v. Booker*, 18 U.S.C. § 3553, or related factors as a reason for sentencing outside of the guideline system.

<sup>4</sup>All cases sentenced outside of the guideline range in which no departure was indicated and in which the court cited *U.S. v. Booker*, 18 U.S.C. § 3553, or related factors as one of the reasons for sentencing outside of the guideline system.

<sup>5</sup>All cases sentenced outside of the guideline range that could not be classified into any of the three previous outside of the range categories. This category includes cases in which no reason was provided for a sentence outside of the guideline range.

<sup>6</sup>Cases in which a reason for the sentence indicated that the prosecution initiated, proposed, or stipulated to a sentence outside of the guideline range, either pursuant to a plea agreement or as part of a non-plea negotiation with the defendant.

SOURCE: U.S. Sentencing Commission, 2005 - 2007 Datafiles, USSCFY05 - USSCFY07, and Preliminary 2008 Datafile, USSCFY08.

Table 1-3

**THIRD CIRCUIT COMPARISON OF SENTENCE IMPOSED AND  
POSITION RELATIVE TO THE GUIDELINE RANGE<sup>1</sup>**  
**Fiscal Year 2005, Post-Booker - 4th Quarter 2007 Preliminary Cumulative Data,  
2008 Post-Kimbrough/Gall Preliminary Data**

	<i>Post-Booker</i>		<i>Post-Kimbrough/Gall</i>	
	N	%	N	%
<b>TOTAL CASES</b>	<b>8,496</b>	<b>100.0</b>	<b>332</b>	<b>100.0</b>
<b>CASES SENTENCED WITHIN GUIDELINE RANGE</b>	<b>4,464</b>	<b>52.5</b>	<b>174</b>	<b>52.4</b>
<b>CASES SENTENCED ABOVE GUIDELINE RANGE</b>	<b>107</b>	<b>1.3</b>	<b>5</b>	<b>1.5</b>
<b>DEPARTURE ABOVE GUIDELINE RANGE</b>	<b>29</b>	<b>0.4</b>	<b>3</b>	<b>0.9</b>
Upward Departure From Guideline Range <sup>2</sup>	14	0.2	3	0.9
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	15	0.2	0	0.0
<b>OTHERWISE ABOVE GUIDELINE RANGE</b>	<b>78</b>	<b>0.9</b>	<b>2</b>	<b>0.6</b>
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	60	0.7	2	0.6
All Remaining Cases Above Guideline Range <sup>5</sup>	18	0.2	0	0.0
<b>GOVERNMENT SPONSORED BELOW RANGE<sup>6</sup></b>	<b>2,477</b>	<b>29.2</b>	<b>99</b>	<b>29.8</b>
§5K1.1 Substantial Assistance Departure	2,326	27.4	96	28.9
§5K3.1 Early Disposition Program Departure	0	0.0	0	0.0
Other Government Sponsored Below Range	151	1.8	3	0.9
<b>NON-GOVERNMENT SPONSORED BELOW RANGE</b>	<b>1,448</b>	<b>17.0</b>	<b>54</b>	<b>16.2</b>
<b>DEPARTURE BELOW GUIDELINE RANGE</b>	<b>382</b>	<b>4.4</b>	<b>11</b>	<b>3.3</b>
Downward Departure From Guideline Range <sup>2</sup>	225	2.6	4	1.2
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	157	1.8	7	2.1
<b>OTHERWISE BELOW GUIDELINE RANGE</b>	<b>1,066</b>	<b>12.6</b>	<b>43</b>	<b>12.9</b>
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	866	10.2	38	11.4
All Remaining Cases Below Guideline Range <sup>5</sup>	200	2.4	5	1.5

<sup>1</sup>The cases in this table described as *Post-Kimbrough/Gall* reflect the 332 cases sentenced in the Third Circuit subsequent to the date of *Kimbrough v. U.S.* and *Gall v. U.S.* (December 10, 2007), with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by February 21, 2008. Of these, none were excluded because information was missing from the submitted documents that prevented the comparison of the sentence and the guideline range. The cases in this table described as *Post-Booker* reflect the 8,594 cases sentenced in the Third Circuit after the date of *U.S. v. Booker* (January 12, 2005) through September 30, 2007. Of these, 98 cases were excluded for the above reasons. Descriptions of variables used in this table are provided in Appendix A.

<sup>2</sup>All cases with departures in which the court did not indicate as a reason either *U.S. v. Booker*, 18 U.S.C. § 3553, or a factor or reason specifically prohibited in the provisions, policy statements, or commentary of the *Guidelines Manual*.

<sup>3</sup>All cases sentenced outside of the guideline range in which the court indicated both a departure (see footnote 2) and a reference to either *U.S. v. Booker*, 18 U.S.C. § 3553, or related factors as a reason for sentencing outside of the guideline system.

<sup>4</sup>All cases sentenced outside of the guideline range in which no departure was indicated and in which the court cited *U.S. v. Booker*, 18 U.S.C. § 3553, or related factors as one of the reasons for sentencing outside of the guideline system.

<sup>5</sup>All cases sentenced outside of the guideline range that could not be classified into any of the three previous outside of the range categories. This category includes cases in which no reason was provided for a sentence outside of the guideline range.

<sup>6</sup>Cases in which a reason for the sentence indicated that the prosecution initiated, proposed, or stipulated to a sentence outside of the guideline range, either pursuant to a plea agreement or as part of a non-plea negotiation with the defendant.

SOURCE: U.S. Sentencing Commission, 2005 - 2007 Datafiles, USSCFY05 - USSCFY07, and Preliminary 2008 Datafile, USSCFY08.

Table 1-4

**FOURTH CIRCUIT COMPARISON OF SENTENCE IMPOSED AND  
POSITION RELATIVE TO THE GUIDELINE RANGE<sup>1</sup>**  
**Fiscal Year 2005, Post-Booker - 4th Quarter 2007 Preliminary Cumulative Data,  
2008 Post-Kimbrough/Gall Preliminary Data**

	<i>Post-Booker</i>		<i>Post-Kimbrough/Gall</i>	
	N	%	N	%
<b>TOTAL CASES</b>	<b>16,922</b>	<b>100.0</b>	<b>603</b>	<b>100.0</b>
<b>CASES SENTENCED WITHIN GUIDELINE RANGE</b>	<b>11,809</b>	<b>69.8</b>	<b>410</b>	<b>68.0</b>
<b>CASES SENTENCED ABOVE GUIDELINE RANGE</b>	<b>244</b>	<b>1.5</b>	<b>20</b>	<b>3.3</b>
<b>DEPARTURE ABOVE GUIDELINE RANGE</b>	<b>118</b>	<b>0.7</b>	<b>10</b>	<b>1.6</b>
Upward Departure From Guideline Range <sup>2</sup>	80	0.5	5	0.8
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	38	0.2	5	0.8
<b>OTHERWISE ABOVE GUIDELINE RANGE</b>	<b>126</b>	<b>0.8</b>	<b>10</b>	<b>1.7</b>
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	96	0.6	6	1.0
All Remaining Cases Above Guideline Range <sup>5</sup>	30	0.2	4	0.7
<b>GOVERNMENT SPONSORED BELOW RANGE<sup>6</sup></b>	<b>3,137</b>	<b>18.5</b>	<b>96</b>	<b>15.9</b>
§5K1.1 Substantial Assistance Departure	2,951	17.4	87	14.4
§5K3.1 Early Disposition Program Departure	2	0.0	0	0.0
Other Government Sponsored Below Range	184	1.1	9	1.5
<b>NON-GOVERNMENT SPONSORED BELOW RANGE</b>	<b>1,732</b>	<b>10.2</b>	<b>77</b>	<b>12.7</b>
<b>DEPARTURE BELOW GUIDELINE RANGE</b>	<b>524</b>	<b>3.1</b>	<b>19</b>	<b>3.1</b>
Downward Departure From Guideline Range <sup>2</sup>	298	1.8	11	1.8
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	226	1.3	8	1.3
<b>OTHERWISE BELOW GUIDELINE RANGE</b>	<b>1,208</b>	<b>7.1</b>	<b>58</b>	<b>9.6</b>
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	952	5.6	49	8.1
All Remaining Cases Below Guideline Range <sup>5</sup>	256	1.5	9	1.5

<sup>1</sup>The cases in this table described as *Post-Kimbrough/Gall* reflect the 643 cases sentenced in the Fourth Circuit subsequent to the date of *Kimbrough v. U.S.* and *Gall v. U.S.* (December 10, 2007), with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by February 21, 2008. Of these, 40 cases were excluded because information was missing from the submitted documents that prevented the comparison of the sentence and the guideline range. The cases in this table described as *Post-Booker* reflect the 18,185 cases sentenced in the Fourth Circuit after the date of *U.S. v. Booker* (January 12, 2005) through September 30, 2007. Of these, 1,263 cases were excluded for the above reasons. Descriptions of variables used in this table are provided in Appendix A.

<sup>2</sup>All cases with departures in which the court did not indicate as a reason either *U.S. v. Booker*, 18 U.S.C. § 3553, or a factor or reason specifically prohibited in the provisions, policy statements, or commentary of the *Guidelines Manual*.

<sup>3</sup>All cases sentenced outside of the guideline range in which the court indicated both a departure (see footnote 2) and a reference to either *U.S. v. Booker*, 18 U.S.C. § 3553, or related factors as a reason for sentencing outside of the guideline system.

<sup>4</sup>All cases sentenced outside of the guideline range in which no departure was indicated and in which the court cited *U.S. v. Booker*, 18 U.S.C. § 3553, or related factors as one of the reasons for sentencing outside of the guideline system.

<sup>5</sup>All cases sentenced outside of the guideline range that could not be classified into any of the three previous outside of the range categories. This category includes cases in which no reason was provided for a sentence outside of the guideline range.

<sup>6</sup>Cases in which a reason for the sentence indicated that the prosecution initiated, proposed, or stipulated to a sentence outside of the guideline range, either pursuant to a plea agreement or as part of a non-plea negotiation with the defendant.

SOURCE: U.S. Sentencing Commission, 2005 - 2007 Datafiles, USSCFY05 - USSCFY07, and Preliminary 2008 Datafile, USSCFY08.

Table 1-5

**FIFTH CIRCUIT COMPARISON OF SENTENCE IMPOSED AND  
POSITION RELATIVE TO THE GUIDELINE RANGE<sup>1</sup>**  
**Fiscal Year 2005, Post-Booker - 4th Quarter 2007 Preliminary Cumulative Data,  
2008 Post-Kimbrough/Gall Preliminary Data**

	<i>Post-Booker</i>		<i>Post-Kimbrough/Gall</i>	
	N	%	N	%
<b>TOTAL CASES</b>	<b>41,864</b>	<b>100.0</b>	<b>1,532</b>	<b>100.0</b>
<b>CASES SENTENCED WITHIN GUIDELINE RANGE</b>	<b>30,346</b>	<b>72.5</b>	<b>1,112</b>	<b>72.6</b>
<b>CASES SENTENCED ABOVE GUIDELINE RANGE</b>	<b>810</b>	<b>1.9</b>	<b>36</b>	<b>2.4</b>
<b>DEPARTURE ABOVE GUIDELINE RANGE</b>	<b>295</b>	<b>0.7</b>	<b>15</b>	<b>1.0</b>
Upward Departure From Guideline Range <sup>2</sup>	202	0.5	10	0.7
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	93	0.2	5	0.3
<b>OTHERWISE ABOVE GUIDELINE RANGE</b>	<b>515</b>	<b>1.2</b>	<b>21</b>	<b>1.4</b>
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	392	0.9	20	1.3
All Remaining Cases Above Guideline Range <sup>5</sup>	123	0.3	1	0.1
<b>GOVERNMENT SPONSORED BELOW RANGE<sup>6</sup></b>	<b>7,613</b>	<b>18.2</b>	<b>278</b>	<b>18.1</b>
§5K1.1 Substantial Assistance Departure	3,411	8.1	123	8.0
§5K3.1 Early Disposition Program Departure	2,964	7.1	97	6.3
Other Government Sponsored Below Range	1,238	3.0	58	3.8
<b>NON-GOVERNMENT SPONSORED BELOW RANGE</b>	<b>3,095</b>	<b>7.5</b>	<b>106</b>	<b>6.9</b>
<b>DEPARTURE BELOW GUIDELINE RANGE</b>	<b>1,147</b>	<b>2.8</b>	<b>34</b>	<b>2.2</b>
Downward Departure From Guideline Range <sup>2</sup>	942	2.3	32	2.1
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	205	0.5	2	0.1
<b>OTHERWISE BELOW GUIDELINE RANGE</b>	<b>1,948</b>	<b>4.7</b>	<b>72</b>	<b>4.7</b>
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	1,537	3.7	56	3.7
All Remaining Cases Below Guideline Range <sup>5</sup>	411	1.0	16	1.0

<sup>1</sup>The cases in this table described as *Post-Kimbrough/Gall* reflect the 1,543 cases sentenced in the Fifth Circuit subsequent to the date of *Kimbrough v. U.S.* and *Gall v. U.S.* (December 10, 2007), with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by February 21, 2008. Of these, 11 cases were excluded because information was missing from the submitted documents that prevented the comparison of the sentence and the guideline range. The cases in this table described as *Post-Booker* reflect the 42,184 cases sentenced in the Fifth Circuit after the date of *U.S. v. Booker* (January 12, 2005) through September 30, 2007. Of these, 320 cases were excluded for the above reasons. Descriptions of variables used in this table are provided in Appendix A.

<sup>2</sup>All cases with departures in which the court did not indicate as a reason either *U.S. v. Booker*, 18 U.S.C. § 3553, or a factor or reason specifically prohibited in the provisions, policy statements, or commentary of the *Guidelines Manual*.

<sup>3</sup>All cases sentenced outside of the guideline range in which the court indicated both a departure (see footnote 2) and a reference to either *U.S. v. Booker*, 18 U.S.C. § 3553, or related factors as a reason for sentencing outside of the guideline system.

<sup>4</sup>All cases sentenced outside of the guideline range in which no departure was indicated and in which the court cited *U.S. v. Booker*, 18 U.S.C. § 3553, or related factors as one of the reasons for sentencing outside of the guideline system.

<sup>5</sup>All cases sentenced outside of the guideline range that could not be classified into any of the three previous outside of the range categories. This category includes cases in which no reason was provided for a sentence outside of the guideline range.

<sup>6</sup>Cases in which a reason for the sentence indicated that the prosecution initiated, proposed, or stipulated to a sentence outside of the guideline range, either pursuant to a plea agreement or as part of a non-plea negotiation with the defendant.

SOURCE: U.S. Sentencing Commission, 2005 - 2007 Datafiles, USSCFY05 - USSCFY07, and Preliminary 2008 Datafile, USSCFY08.

Table 1-6

**SIXTH CIRCUIT COMPARISON OF SENTENCE IMPOSED AND  
POSITION RELATIVE TO THE GUIDELINE RANGE<sup>1</sup>**  
**Fiscal Year 2005, Post-Booker - 4th Quarter 2007 Preliminary Cumulative Data,**  
**2008 Post-Kimbrough/Gall Preliminary Data**

	<i>Post-Booker</i>		<i>Post-Kimbrough/Gall</i>	
	N	%	N	%
<b>TOTAL CASES</b>	<b>14,205</b>	<b>100.0</b>	<b>452</b>	<b>100.0</b>
<b>CASES SENTENCED WITHIN GUIDELINE RANGE</b>	<b>8,057</b>	<b>56.7</b>	<b>254</b>	<b>56.2</b>
<b>CASES SENTENCED ABOVE GUIDELINE RANGE</b>	<b>195</b>	<b>1.4</b>	<b>8</b>	<b>1.8</b>
<b>DEPARTURE ABOVE GUIDELINE RANGE</b>	<b>67</b>	<b>0.5</b>	<b>3</b>	<b>0.7</b>
Upward Departure From Guideline Range <sup>2</sup>	40	0.3	3	0.7
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	27	0.2	0	0.0
<b>OTHERWISE ABOVE GUIDELINE RANGE</b>	<b>128</b>	<b>0.9</b>	<b>5</b>	<b>1.1</b>
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	92	0.6	2	0.4
All Remaining Cases Above Guideline Range <sup>5</sup>	36	0.3	3	0.7
<b>GOVERNMENT SPONSORED BELOW RANGE<sup>6</sup></b>	<b>3,869</b>	<b>27.2</b>	<b>126</b>	<b>27.9</b>
§5K1.1 Substantial Assistance Departure	3,585	25.2	116	25.7
§5K3.1 Early Disposition Program Departure	3	0.0	0	0.0
Other Government Sponsored Below Range	281	2.0	10	2.2
<b>NON-GOVERNMENT SPONSORED BELOW RANGE</b>	<b>2,084</b>	<b>14.7</b>	<b>64</b>	<b>14.2</b>
<b>DEPARTURE BELOW GUIDELINE RANGE</b>	<b>581</b>	<b>4.1</b>	<b>17</b>	<b>3.8</b>
Downward Departure From Guideline Range <sup>2</sup>	306	2.2	8	1.8
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	275	1.9	9	2.0
<b>OTHERWISE BELOW GUIDELINE RANGE</b>	<b>1,503</b>	<b>10.6</b>	<b>47</b>	<b>10.4</b>
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	1,206	8.5	42	9.3
All Remaining Cases Below Guideline Range <sup>5</sup>	297	2.1	5	1.1

<sup>1</sup>The cases in this table described as *Post-Kimbrough/Gall* reflect the 457 cases sentenced in the Sixth Circuit subsequent to the date of *Kimbrough v. U.S.* and *Gall v. U.S.* (December 10, 2007), with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by February 21, 2008. Of these, five cases were excluded because information was missing from the submitted documents that prevented the comparison of the sentence and the guideline range. The cases in this table described as *Post-Booker* reflect the 14,512 cases sentenced in the Sixth Circuit after the date of *U.S. v. Booker* (January 12, 2005) through September 30, 2007. Of these, 307 cases were excluded for the above reasons. Descriptions of variables used in this table are provided in Appendix A.

<sup>2</sup>All cases with departures in which the court did not indicate as a reason either *U.S. v. Booker*, 18 U.S.C. § 3553, or a factor or reason specifically prohibited in the provisions, policy statements, or commentary of the *Guidelines Manual*.

<sup>3</sup>All cases sentenced outside of the guideline range in which the court indicated both a departure (see footnote 2) and a reference to either *U.S. v. Booker*, 18 U.S.C. § 3553, or related factors as a reason for sentencing outside of the guideline system.

<sup>4</sup>All cases sentenced outside of the guideline range in which no departure was indicated and in which the court cited *U.S. v. Booker*, 18 U.S.C. § 3553, or related factors as one of the reasons for sentencing outside of the guideline system.

<sup>5</sup>All cases sentenced outside of the guideline range that could not be classified into any of the three previous outside of the range categories. This category includes cases in which no reason was provided for a sentence outside of the guideline range.

<sup>6</sup>Cases in which a reason for the sentence indicated that the prosecution initiated, proposed, or stipulated to a sentence outside of the guideline range, either pursuant to a plea agreement or as part of a non-plea negotiation with the defendant.

SOURCE: U.S. Sentencing Commission, 2005 - 2007 Datafiles, USSCFY05 - USSCFY07, and Preliminary 2008 Datafile, USSCFY08.

Table 1-7

**SEVENTH CIRCUIT COMPARISON OF SENTENCE IMPOSED AND  
POSITION RELATIVE TO THE GUIDELINE RANGE<sup>1</sup>**  
**Fiscal Year 2005, Post-Booker - 4th Quarter 2007 Preliminary Cumulative Data,  
2008 Post-Kimbrough/Gall Preliminary Data**

	<i>Post-Booker</i>		<i>Post-Kimbrough/Gall</i>	
	N	%	N	%
<b>TOTAL CASES</b>	<b>8,223</b>	<b>100.0</b>	<b>235</b>	<b>100.0</b>
<b>CASES SENTENCED WITHIN GUIDELINE RANGE</b>	<b>5,133</b>	<b>62.4</b>	<b>151</b>	<b>64.3</b>
<b>CASES SENTENCED ABOVE GUIDELINE RANGE</b>	<b>108</b>	<b>1.3</b>	<b>3</b>	<b>1.3</b>
<b>DEPARTURE ABOVE GUIDELINE RANGE</b>	<b>44</b>	<b>0.5</b>	<b>1</b>	<b>0.4</b>
Upward Departure From Guideline Range <sup>2</sup>	25	0.3	0	0.0
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	19	0.2	1	0.4
<b>OTHERWISE ABOVE GUIDELINE RANGE</b>	<b>64</b>	<b>0.8</b>	<b>2</b>	<b>0.9</b>
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	42	0.5	2	0.9
All Remaining Cases Above Guideline Range <sup>5</sup>	22	0.3	0	0.0
<b>GOVERNMENT SPONSORED BELOW RANGE<sup>6</sup></b>	<b>1,615</b>	<b>19.6</b>	<b>42</b>	<b>17.9</b>
§5K1.1 Substantial Assistance Departure	1,440	17.5	38	16.2
§5K3.1 Early Disposition Program Departure	1	0.0	1	0.4
Other Government Sponsored Below Range	174	2.1	3	1.3
<b>NON-GOVERNMENT SPONSORED BELOW RANGE</b>	<b>1,367</b>	<b>16.5</b>	<b>39</b>	<b>16.6</b>
<b>DEPARTURE BELOW GUIDELINE RANGE</b>	<b>407</b>	<b>4.9</b>	<b>7</b>	<b>3.0</b>
Downward Departure From Guideline Range <sup>2</sup>	225	2.7	3	1.3
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	182	2.2	4	1.7
<b>OTHERWISE BELOW GUIDELINE RANGE</b>	<b>960</b>	<b>11.6</b>	<b>32</b>	<b>13.6</b>
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	726	8.8	32	13.6
All Remaining Cases Below Guideline Range <sup>5</sup>	234	2.8	0	0.0

<sup>1</sup>The cases in this table described as *Post-Kimbrough/Gall* reflect the 239 cases sentenced in the Seventh Circuit subsequent to the date of *Kimbrough v. U.S.* and *Gall v. U.S.* (December 10, 2007), with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by February 21, 2008. Of these, four cases were excluded because information was missing from the submitted documents that prevented the comparison of the sentence and the guideline range. The cases in this table described as *Post-Booker* reflect the 8,297 cases sentenced in the Seventh Circuit after the date of *U.S. v. Booker* (January 12, 2005) through September 30, 2007. Of these, 74 cases were excluded for the above reasons. Descriptions of variables used in this table are provided in Appendix A.

<sup>2</sup>All cases with departures in which the court did not indicate as a reason either *U.S. v. Booker*, 18 U.S.C. § 3553, or a factor or reason specifically prohibited in the provisions, policy statements, or commentary of the *Guidelines Manual*.

<sup>3</sup>All cases sentenced outside of the guideline range in which the court indicated both a departure (see footnote 2) and a reference to either *U.S. v. Booker*, 18 U.S.C. § 3553, or related factors as a reason for sentencing outside of the guideline system.

<sup>4</sup>All cases sentenced outside of the guideline range in which no departure was indicated and in which the court cited *U.S. v. Booker*, 18 U.S.C. § 3553, or related factors as one of the reasons for sentencing outside of the guideline system.

<sup>5</sup>All cases sentenced outside of the guideline range that could not be classified into any of the three previous outside of the range categories. This category includes cases in which no reason was provided for a sentence outside of the guideline range.

<sup>6</sup>Cases in which a reason for the sentence indicated that the prosecution initiated, proposed, or stipulated to a sentence outside of the guideline range, either pursuant to a plea agreement or as part of a non-plea negotiation with the defendant.

SOURCE: U.S. Sentencing Commission, 2005 - 2007 Datafiles, USSCFY05 - USSCFY07, and Preliminary 2008 Datafile, USSCFY08.

Table 1-8

**EIGHTH CIRCUIT COMPARISON OF SENTENCE IMPOSED AND  
POSITION RELATIVE TO THE GUIDELINE RANGE<sup>1</sup>**  
**Fiscal Year 2005, Post-Booker - 4th Quarter 2007 Preliminary Cumulative Data,  
2008 Post-Kimbrough/Gall Preliminary Data**

	<i>Post-Booker</i>		<i>Post-Kimbrough/Gall</i>	
	N	%	N	%
<b>TOTAL CASES</b>	<b>13,776</b>	<b>100.0</b>	<b>458</b>	<b>100.0</b>
<b>CASES SENTENCED WITHIN GUIDELINE RANGE</b>	<b>9,110</b>	<b>66.1</b>	<b>296</b>	<b>64.6</b>
<b>CASES SENTENCED ABOVE GUIDELINE RANGE</b>	<b>224</b>	<b>1.6</b>	<b>10</b>	<b>2.2</b>
<b>DEPARTURE ABOVE GUIDELINE RANGE</b>	<b>100</b>	<b>0.7</b>	<b>6</b>	<b>1.3</b>
Upward Departure From Guideline Range <sup>2</sup>	67	0.5	4	0.9
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	33	0.2	2	0.4
<b>OTHERWISE ABOVE GUIDELINE RANGE</b>	<b>124</b>	<b>0.9</b>	<b>4</b>	<b>0.9</b>
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	89	0.6	3	0.7
All Remaining Cases Above Guideline Range <sup>5</sup>	35	0.3	1	0.2
<b>GOVERNMENT SPONSORED BELOW RANGE<sup>6</sup></b>	<b>2,575</b>	<b>18.7</b>	<b>84</b>	<b>18.4</b>
§5K1.1 Substantial Assistance Departure	2,074	15.1	66	14.4
§5K3.1 Early Disposition Program Departure	115	0.8	4	0.9
Other Government Sponsored Below Range	386	2.8	14	3.1
<b>NON-GOVERNMENT SPONSORED BELOW RANGE</b>	<b>1,867</b>	<b>13.6</b>	<b>68</b>	<b>14.8</b>
<b>DEPARTURE BELOW GUIDELINE RANGE</b>	<b>533</b>	<b>3.9</b>	<b>9</b>	<b>1.9</b>
Downward Departure From Guideline Range <sup>2</sup>	338	2.5	2	0.4
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	195	1.4	7	1.5
<b>OTHERWISE BELOW GUIDELINE RANGE</b>	<b>1,334</b>	<b>9.7</b>	<b>59</b>	<b>12.9</b>
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	1,070	7.8	55	12.0
All Remaining Cases Below Guideline Range <sup>5</sup>	264	1.9	4	0.9

<sup>1</sup>The cases in this table described as *Post-Kimbrough/Gall* reflect the 463 cases sentenced in the Eighth Circuit subsequent to the date of *Kimbrough v. U.S.* and *Gall v. U.S.* (December 10, 2007), with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by February 21, 2008. Of these, five cases were excluded because information was missing from the submitted documents that prevented the comparison of the sentence and the guideline range. The cases in this table described as *Post-Booker* reflect the 13,852 cases sentenced in the Eighth Circuit after the date of *U.S. v. Booker* (January 12, 2005) through September 30, 2007. Of these, 76 cases were excluded for the above reasons. Descriptions of variables used in this table are provided in Appendix A.

<sup>2</sup>All cases with departures in which the court did not indicate as a reason either *U.S. v. Booker*, 18 U.S.C. § 3553, or a factor or reason specifically prohibited in the provisions, policy statements, or commentary of the *Guidelines Manual*.

<sup>3</sup>All cases sentenced outside of the guideline range in which the court indicated both a departure (see footnote 2) and a reference to either *U.S. v. Booker*, 18 U.S.C. § 3553, or related factors as a reason for sentencing outside of the guideline system.

<sup>4</sup>All cases sentenced outside of the guideline range in which no departure was indicated and in which the court cited *U.S. v. Booker*, 18 U.S.C. § 3553, or related factors as one of the reasons for sentencing outside of the guideline system.

<sup>5</sup>All cases sentenced outside of the guideline range that could not be classified into any of the three previous outside of the range categories. This category includes cases in which no reason was provided for a sentence outside of the guideline range.

<sup>6</sup>Cases in which a reason for the sentence indicated that the prosecution initiated, proposed, or stipulated to a sentence outside of the guideline range, either pursuant to a plea agreement or as part of a non-plea negotiation with the defendant.

SOURCE: U.S. Sentencing Commission, 2005 - 2007 Datafiles, USSCFY05 - USSCFY07, and Preliminary 2008 Datafile, USSCFY08.

Table 1-9

**NINTH CIRCUIT COMPARISON OF SENTENCE IMPOSED AND  
POSITION RELATIVE TO THE GUIDELINE RANGE<sup>1</sup>**  
**Fiscal Year 2005, Post-Booker - 4th Quarter 2007 Preliminary Cumulative Data,  
2008 Post-Kimbrough/Gall Preliminary Data**

	<i>Post-Booker</i>		<i>Post-Kimbrough/Gall</i>	
	N	%	N	%
<b>TOTAL CASES</b>	<b>35,621</b>	<b>100.0</b>	<b>1,350</b>	<b>100.0</b>
<b>CASES SENTENCED WITHIN GUIDELINE RANGE</b>	<b>16,231</b>	<b>45.6</b>	<b>586</b>	<b>43.4</b>
<b>CASES SENTENCED ABOVE GUIDELINE RANGE</b>	<b>587</b>	<b>1.7</b>	<b>14</b>	<b>0.9</b>
<b>DEPARTURE ABOVE GUIDELINE RANGE</b>	<b>301</b>	<b>0.9</b>	<b>6</b>	<b>0.4</b>
Upward Departure From Guideline Range <sup>2</sup>	240	0.7	4	0.3
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	61	0.2	2	0.1
<b>OTHERWISE ABOVE GUIDELINE RANGE</b>	<b>286</b>	<b>0.8</b>	<b>8</b>	<b>0.5</b>
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	153	0.4	6	0.4
All Remaining Cases Above Guideline Range <sup>5</sup>	133	0.4	2	0.1
<b>GOVERNMENT SPONSORED BELOW RANGE<sup>6</sup></b>	<b>14,473</b>	<b>40.6</b>	<b>598</b>	<b>44.3</b>
§5K1.1 Substantial Assistance Departure	3,675	10.3	136	10.1
§5K3.1 Early Disposition Program Departure	9,156	25.7	402	29.8
Other Government Sponsored Below Range	1,642	4.6	60	4.4
<b>NON-GOVERNMENT SPONSORED BELOW RANGE</b>	<b>4,330</b>	<b>12.0</b>	<b>152</b>	<b>11.4</b>
<b>DEPARTURE BELOW GUIDELINE RANGE</b>	<b>1,629</b>	<b>4.5</b>	<b>45</b>	<b>3.4</b>
Downward Departure From Guideline Range <sup>2</sup>	935	2.6	32	2.4
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	694	1.9	13	1.0
<b>OTHERWISE BELOW GUIDELINE RANGE</b>	<b>2,701</b>	<b>7.5</b>	<b>107</b>	<b>8.0</b>
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	1,936	5.4	94	7.0
All Remaining Cases Below Guideline Range <sup>5</sup>	765	2.1	13	1.0

<sup>1</sup>The cases in this table described as *Post-Kimbrough/Gall* reflect the 1,400 cases sentenced in the Ninth Circuit subsequent to the date of *Kimbrough v. U.S.* and *Gall v. U.S.* (December 10, 2007), with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by February 21, 2008. Of these, 50 cases were excluded because information was missing from the submitted documents that prevented the comparison of the sentence and the guideline range. The cases in this table described as *Post-Booker* reflect the 39,165 cases sentenced in the Ninth Circuit after the date of *U.S. v. Booker* (January 12, 2005) through September 30, 2007. Of these, 3,544 cases were excluded for the above reasons. Descriptions of variables used in this table are provided in Appendix A.

<sup>2</sup>All cases with departures in which the court did not indicate as a reason either *U.S. v. Booker*, 18 U.S.C. § 3553, or a factor or reason specifically prohibited in the provisions, policy statements, or commentary of the *Guidelines Manual*.

<sup>3</sup>All cases sentenced outside of the guideline range in which the court indicated both a departure (see footnote 2) and a reference to either *U.S. v. Booker*, 18 U.S.C. § 3553, or related factors as a reason for sentencing outside of the guideline system.

<sup>4</sup>All cases sentenced outside of the guideline range in which no departure was indicated and in which the court cited *U.S. v. Booker*, 18 U.S.C. § 3553, or related factors as one of the reasons for sentencing outside of the guideline system.

<sup>5</sup>All cases sentenced outside of the guideline range that could not be classified into any of the three previous outside of the range categories. This category includes cases in which no reason was provided for a sentence outside of the guideline range.

<sup>6</sup>Cases in which a reason for the sentence indicated that the prosecution initiated, proposed, or stipulated to a sentence outside of the guideline range, either pursuant to a plea agreement or as part of a non-plea negotiation with the defendant.

SOURCE: U.S. Sentencing Commission, 2005 - 2007 Datafiles, USSCFY05 - USSCFY07, and Preliminary 2008 Datafile, USSCFY08.

Table 1-10

**TENTH CIRCUIT COMPARISON OF SENTENCE IMPOSED AND  
POSITION RELATIVE TO THE GUIDELINE RANGE<sup>1</sup>**  
**Fiscal Year 2005, Post-Booker - 4th Quarter 2007 Preliminary Cumulative Data,  
2008 Post-Kimbrough/Gall Preliminary Data**

	<i>Post-Booker</i>		<i>Post-Kimbrough/Gall</i>	
	N	%	N	%
<b>TOTAL CASES</b>	<b>15,657</b>	<b>100.0</b>	<b>539</b>	<b>100.0</b>
<b>CASES SENTENCED WITHIN GUIDELINE RANGE</b>	<b>9,762</b>	<b>62.3</b>	<b>294</b>	<b>54.5</b>
<b>CASES SENTENCED ABOVE GUIDELINE RANGE</b>	<b>201</b>	<b>1.4</b>	<b>10</b>	<b>1.9</b>
<b>DEPARTURE ABOVE GUIDELINE RANGE</b>	<b>51</b>	<b>0.4</b>	<b>3</b>	<b>0.6</b>
Upward Departure From Guideline Range <sup>2</sup>	43	0.3	1	0.2
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	8	0.1	2	0.4
<b>OTHERWISE ABOVE GUIDELINE RANGE</b>	<b>150</b>	<b>1.0</b>	<b>7</b>	<b>1.3</b>
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	110	0.7	7	1.3
All Remaining Cases Above Guideline Range <sup>5</sup>	40	0.3	0	0.0
<b>GOVERNMENT SPONSORED BELOW RANGE<sup>6</sup></b>	<b>3,974</b>	<b>25.4</b>	<b>145</b>	<b>26.9</b>
§5K1.1 Substantial Assistance Departure	1,418	9.1	42	7.8
§5K3.1 Early Disposition Program Departure	1,330	8.5	54	10.0
Other Government Sponsored Below Range	1,226	7.8	49	9.1
<b>NON-GOVERNMENT SPONSORED BELOW RANGE</b>	<b>1,720</b>	<b>11.1</b>	<b>90</b>	<b>16.7</b>
<b>DEPARTURE BELOW GUIDELINE RANGE</b>	<b>694</b>	<b>4.5</b>	<b>28</b>	<b>5.2</b>
Downward Departure From Guideline Range <sup>2</sup>	479	3.1	19	3.5
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	215	1.4	9	1.7
<b>OTHERWISE BELOW GUIDELINE RANGE</b>	<b>1,026</b>	<b>6.6</b>	<b>62</b>	<b>11.5</b>
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	826	5.3	58	10.8
All Remaining Cases Below Guideline Range <sup>5</sup>	200	1.3	4	0.7

<sup>1</sup>The cases in this table described as *Post-Kimbrough/Gall* reflect the 562 cases sentenced in the Tenth Circuit subsequent to the date of *Kimbrough v. U.S.* and *Gall v. U.S.* (December 10, 2007), with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by February 21, 2008. Of these, 23 cases were excluded because information was missing from the submitted documents that prevented the comparison of the sentence and the guideline range. The cases in this table described as *Post-Booker* reflect the 16,311 cases sentenced in the Tenth Circuit after the date of *U.S. v. Booker* (January 12, 2005) through September 30, 2007. Of these, 654 cases were excluded for the above reasons. Descriptions of variables used in this table are provided in Appendix A.

<sup>2</sup>All cases with departures in which the court did not indicate as a reason either *U.S. v. Booker*, 18 U.S.C. § 3553, or a factor or reason specifically prohibited in the provisions, policy statements, or commentary of the *Guidelines Manual*.

<sup>3</sup>All cases sentenced outside of the guideline range in which the court indicated both a departure (see footnote 2) and a reference to either *U.S. v. Booker*, 18 U.S.C. § 3553, or related factors as a reason for sentencing outside of the guideline system.

<sup>4</sup>All cases sentenced outside of the guideline range in which no departure was indicated and in which the court cited *U.S. v. Booker*, 18 U.S.C. § 3553, or related factors as one of the reasons for sentencing outside of the guideline system.

<sup>5</sup>All cases sentenced outside of the guideline range that could not be classified into any of the three previous outside of the range categories. This category includes cases in which no reason was provided for a sentence outside of the guideline range.

<sup>6</sup>Cases in which a reason for the sentence indicated that the prosecution initiated, proposed, or stipulated to a sentence outside of the guideline range, either pursuant to a plea agreement or as part of a non-plea negotiation with the defendant.

SOURCE: U.S. Sentencing Commission, 2005 - 2007 Datafiles, USSCFY05 - USSCFY07, and Preliminary 2008 Datafile, USSCFY08.

Table 1-11

**ELEVENTH CIRCUIT COMPARISON OF SENTENCE IMPOSED AND  
POSITION RELATIVE TO THE GUIDELINE RANGE<sup>1</sup>**  
**Fiscal Year 2005, Post-Booker - 4th Quarter 2007 Preliminary Cumulative Data,  
2008 Post-Kimbrough/Gall Preliminary Data**

	<i>Post-Booker</i>		<i>Post-Kimbrough/Gall</i>	
	N	%	N	%
<b>TOTAL CASES</b>	<b>18,361</b>	<b>100.0</b>	<b>735</b>	<b>100.0</b>
<b>CASES SENTENCED WITHIN GUIDELINE RANGE</b>	<b>12,510</b>	<b>68.1</b>	<b>504</b>	<b>68.6</b>
<b>CASES SENTENCED ABOVE GUIDELINE RANGE</b>	<b>312</b>	<b>1.6</b>	<b>13</b>	<b>1.7</b>
<b>DEPARTURE ABOVE GUIDELINE RANGE</b>	<b>100</b>	<b>0.5</b>	<b>1</b>	<b>0.1</b>
Upward Departure From Guideline Range <sup>2</sup>	63	0.3	0	0.0
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	37	0.2	1	0.1
<b>OTHERWISE ABOVE GUIDELINE RANGE</b>	<b>212</b>	<b>1.1</b>	<b>12</b>	<b>1.6</b>
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	167	0.9	12	1.6
All Remaining Cases Above Guideline Range <sup>5</sup>	45	0.2	0	0.0
<b>GOVERNMENT SPONSORED BELOW RANGE<sup>6</sup></b>	<b>3,529</b>	<b>19.2</b>	<b>108</b>	<b>14.8</b>
§5K1.1 Substantial Assistance Departure	3,292	17.9	99	13.5
§5K3.1 Early Disposition Program Departure	34	0.2	2	0.3
Other Government Sponsored Below Range	203	1.1	7	1.0
<b>NON-GOVERNMENT SPONSORED BELOW RANGE</b>	<b>2,010</b>	<b>10.9</b>	<b>110</b>	<b>15.0</b>
<b>DEPARTURE BELOW GUIDELINE RANGE</b>	<b>481</b>	<b>2.6</b>	<b>28</b>	<b>3.8</b>
Downward Departure From Guideline Range <sup>2</sup>	292	1.6	13	1.8
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	189	1.0	15	2.0
<b>OTHERWISE BELOW GUIDELINE RANGE</b>	<b>1,529</b>	<b>8.3</b>	<b>82</b>	<b>11.2</b>
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	1,286	7.0	77	10.5
All Remaining Cases Below Guideline Range <sup>5</sup>	243	1.3	5	0.7

<sup>1</sup>The cases in this table described as *Post-Kimbrough/Gall* reflect the 765 cases sentenced in the Eleventh Circuit subsequent to the date of *Kimbrough v. U.S.* and *Gall v. U.S.* (December 10, 2007), with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by February 21, 2008. Of these, 30 cases were excluded because information was missing from the submitted documents that prevented the comparison of the sentence and the guideline range. The cases in this table described as *Post-Booker* reflect the 19,467 cases sentenced in the Eleventh Circuit after the date of *U.S. v. Booker* (January 12, 2005) through September 30, 2007. Of these, 1,106 cases were excluded for the above reasons. Descriptions of variables used in this table are provided in Appendix A.

<sup>2</sup>All cases with departures in which the court did not indicate as a reason either *U.S. v. Booker*, 18 U.S.C. § 3553, or a factor or reason specifically prohibited in the provisions, policy statements, or commentary of the *Guidelines Manual*.

<sup>3</sup>All cases sentenced outside of the guideline range in which the court indicated both a departure (see footnote 2) and a reference to either *U.S. v. Booker*, 18 U.S.C. § 3553, or related factors as a reason for sentencing outside of the guideline system.

<sup>4</sup>All cases sentenced outside of the guideline range in which no departure was indicated and in which the court cited *U.S. v. Booker*, 18 U.S.C. § 3553, or related factors as one of the reasons for sentencing outside of the guideline system.

<sup>5</sup>All cases sentenced outside of the guideline range that could not be classified into any of the three previous outside of the range categories. This category includes cases in which no reason was provided for a sentence outside of the guideline range.

<sup>6</sup>Cases in which a reason for the sentence indicated that the prosecution initiated, proposed, or stipulated to a sentence outside of the guideline range, either pursuant to a plea agreement or as part of a non-plea negotiation with the defendant.

SOURCE: U.S. Sentencing Commission, 2005 - 2007 Datafiles, USSCFY05 - USSCFY07, and Preliminary 2008 Datafile, USSCFY08.

**Table 2**

**SENTENCES RELATIVE TO THE GUIDELINE RANGE BY CIRCUIT AND DISTRICT<sup>1</sup>**  
**2008 Post-Kimbrough/Gall Preliminary Data**

CIRCUIT District	TOTAL	WITHIN GUIDELINE RANGE		UPWARD DEPARTURE		UPWARD DEPARTURE W/ BOOKER		ABOVE RANGE W/ BOOKER		REMAINING ABOVE RANGE	
		n	%	n	%	n	%	n	%	n	%
<b>TOTAL</b>	<b>6,765</b>	<b>4,044</b>	<b>59.8</b>	<b>30</b>	<b>0.4</b>	<b>19</b>	<b>0.3</b>	<b>61</b>	<b>0.9</b>	<b>12</b>	<b>0.2</b>
<b>D.C. CIRCUIT</b>	<b>53</b>	<b>20</b>	<b>37.7</b>	<b>0</b>	<b>0.0</b>	<b>0</b>	<b>0.0</b>	<b>0</b>	<b>0.0</b>	<b>0</b>	<b>0.0</b>
District of Columbia	53	20	37.7	0	0.0	0	0.0	0	0.0	0	0.0
<b>FIRST CIRCUIT</b>	<b>122</b>	<b>69</b>	<b>56.6</b>	<b>0</b>	<b>0.0</b>	<b>0</b>	<b>0.0</b>	<b>0</b>	<b>0.0</b>	<b>1</b>	<b>0.8</b>
Maine	24	13	54.2	0	0.0	0	0.0	0	0.0	0	0.0
Massachusetts	37	15	40.5	0	0.0	0	0.0	0	0.0	0	0.0
New Hampshire	19	9	47.4	0	0.0	0	0.0	0	0.0	0	0.0
Puerto Rico	33	25	75.8	0	0.0	0	0.0	0	0.0	1	3.0
Rhode Island	9	7	77.8	0	0.0	0	0.0	0	0.0	0	0.0
<b>SECOND CIRCUIT</b>	<b>354</b>	<b>174</b>	<b>49.2</b>	<b>0</b>	<b>0.0</b>	<b>1</b>	<b>0.3</b>	<b>1</b>	<b>0.3</b>	<b>0</b>	<b>0.0</b>
Connecticut	44	17	38.6	0	0.0	0	0.0	1	2.3	0	0.0
New York											
Eastern	80	34	42.5	0	0.0	0	0.0	0	0.0	0	0.0
Northern	47	25	53.2	0	0.0	1	2.1	0	0.0	0	0.0
Southern	101	45	44.6	0	0.0	0	0.0	0	0.0	0	0.0
Western	73	50	68.5	0	0.0	0	0.0	0	0.0	0	0.0
Vermont	9	3	33.3	0	0.0	0	0.0	0	0.0	0	0.0
<b>THIRD CIRCUIT</b>	<b>332</b>	<b>174</b>	<b>52.4</b>	<b>3</b>	<b>0.9</b>	<b>0</b>	<b>0.0</b>	<b>2</b>	<b>0.6</b>	<b>0</b>	<b>0.0</b>
Delaware	7	4	57.1	0	0.0	0	0.0	0	0.0	0	0.0
New Jersey	117	61	52.1	0	0.0	0	0.0	0	0.0	0	0.0
Pennsylvania											
Eastern	69	26	37.7	1	1.4	0	0.0	0	0.0	0	0.0
Middle	65	36	55.4	2	3.1	0	0.0	0	0.0	0	0.0
Western	64	40	62.5	0	0.0	0	0.0	0	0.0	0	0.0
Virgin Islands	10	7	70.0	0	0.0	0	0.0	2	20.0	0	0.0
<b>FOURTH CIRCUIT</b>	<b>603</b>	<b>410</b>	<b>68.0</b>	<b>5</b>	<b>0.8</b>	<b>5</b>	<b>0.8</b>	<b>6</b>	<b>1.0</b>	<b>4</b>	<b>0.7</b>
Maryland	62	36	58.1	0	0.0	0	0.0	1	1.6	0	0.0
North Carolina											
Eastern	83	40	48.2	5	6.0	4	4.8	3	3.6	4	4.8
Middle	24	19	79.2	0	0.0	0	0.0	0	0.0	0	0.0
Western	29	17	58.6	0	0.0	0	0.0	0	0.0	0	0.0
South Carolina	116	84	72.4	0	0.0	0	0.0	0	0.0	0	0.0
Virginia											
Eastern	150	108	72.0	0	0.0	1	0.7	1	0.7	0	0.0
Western	46	39	84.8	0	0.0	0	0.0	0	0.0	0	0.0
West Virginia											
Northern	57	44	77.2	0	0.0	0	0.0	1	1.8	0	0.0
Southern	36	23	63.9	0	0.0	0	0.0	0	0.0	0	0.0

**Table 2 (cont.)**

CIRCUIT	§5K1.1 SUBSTANTIAL ASSISTANCE		§5K3.1 EARLY DISPOSITION		OTHER GOV'T SPONSORED		DOWNWARD DEPARTURE		DOWNWARD DEPARTURE W/ BOOKER		BELOW RANGE W/ BOOKER		REMAINING BELOW RANGE	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%
<b>TOTAL</b>	<b>901</b>	<b>13.3</b>	<b>560</b>	<b>8.3</b>	<b>231</b>	<b>3.4</b>	<b>144</b>	<b>2.1</b>	<b>98</b>	<b>1.4</b>	<b>597</b>	<b>8.8</b>	<b>68</b>	<b>1.0</b>
<b>D.C. CIRCUIT</b>	<b>17</b>	<b>32.1</b>	<b>0</b>	<b>0.0</b>	<b>4</b>	<b>7.5</b>	<b>0</b>	<b>0.0</b>	<b>1</b>	<b>1.9</b>	<b>10</b>	<b>18.9</b>	<b>1</b>	<b>1.9</b>
District of Columbia	17	32.1	0	0.0	4	7.5	0	0.0	1	1.9	10	18.9	1	1.9
<b>FIRST CIRCUIT</b>	<b>22</b>	<b>18.0</b>	<b>0</b>	<b>0.0</b>	<b>3</b>	<b>2.5</b>	<b>4</b>	<b>3.3</b>	<b>6</b>	<b>4.9</b>	<b>16</b>	<b>13.1</b>	<b>1</b>	<b>0.8</b>
Maine	8	33.3	0	0.0	0	0.0	0	0.0	1	4.2	2	8.3	0	0.0
Massachusetts	9	24.3	0	0.0	2	5.4	1	2.7	3	8.1	7	18.9	0	0.0
New Hampshire	2	10.5	0	0.0	1	5.3	0	0.0	1	5.3	6	31.6	0	0.0
Puerto Rico	3	9.1	0	0.0	0	0.0	2	6.1	1	3.0	1	3.0	0	0.0
Rhode Island	0	0.0	0	0.0	0	0.0	1	11.1	0	0.0	0	0.0	1	11.1
<b>SECOND CIRCUIT</b>	<b>59</b>	<b>16.7</b>	<b>0</b>	<b>0.0</b>	<b>11</b>	<b>3.1</b>	<b>16</b>	<b>4.5</b>	<b>17</b>	<b>4.8</b>	<b>70</b>	<b>19.8</b>	<b>5</b>	<b>1.4</b>
Connecticut	5	11.4	0	0.0	4	9.1	2	4.5	6	13.6	8	18.2	1	2.3
New York														
Eastern	14	17.5	0	0.0	3	3.8	4	5.0	5	6.3	19	23.8	1	1.3
Northern	12	25.5	0	0.0	0	0.0	5	10.6	1	2.1	3	6.4	0	0.0
Southern	14	13.9	0	0.0	0	0.0	1	1.0	5	5.0	33	32.7	3	3.0
Western	13	17.8	0	0.0	4	5.5	0	0.0	0	0.0	6	8.2	0	0.0
Vermont	1	11.1	0	0.0	0	0.0	4	44.4	0	0.0	1	11.1	0	0.0
<b>THIRD CIRCUIT</b>	<b>96</b>	<b>28.9</b>	<b>0</b>	<b>0.0</b>	<b>3</b>	<b>0.9</b>	<b>4</b>	<b>1.2</b>	<b>7</b>	<b>2.1</b>	<b>38</b>	<b>11.4</b>	<b>5</b>	<b>1.5</b>
Delaware	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	14.3	2	28.6
New Jersey	35	29.9	0	0.0	1	0.9	1	0.9	0	0.0	18	15.4	1	0.9
Pennsylvania														
Eastern	31	44.9	0	0.0	0	0.0	0	0.0	5	7.2	6	8.7	0	0.0
Middle	18	27.7	0	0.0	2	3.1	1	1.5	0	0.0	4	6.2	2	3.1
Western	12	18.8	0	0.0	0	0.0	2	3.1	2	3.1	8	12.5	0	0.0
Virgin Islands	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	10.0	0	0.0
<b>FOURTH CIRCUIT</b>	<b>87</b>	<b>14.4</b>	<b>0</b>	<b>0.0</b>	<b>9</b>	<b>1.5</b>	<b>11</b>	<b>1.8</b>	<b>8</b>	<b>1.3</b>	<b>49</b>	<b>8.1</b>	<b>9</b>	<b>1.5</b>
Maryland	10	16.1	0	0.0	3	4.8	0	0.0	1	1.6	6	9.7	5	8.1
North Carolina														
Eastern	21	25.3	0	0.0	0	0.0	1	1.2	1	1.2	3	3.6	1	1.2
Middle	3	12.5	0	0.0	0	0.0	0	0.0	0	0.0	2	8.3	0	0.0
Western	8	27.6	0	0.0	1	3.4	1	3.4	0	0.0	2	6.9	0	0.0
South Carolina	25	21.6	0	0.0	0	0.0	1	0.9	0	0.0	3	2.6	3	2.6
Virginia														
Eastern	9	6.0	0	0.0	3	2.0	6	4.0	5	3.3	17	11.3	0	0.0
Western	4	8.7	0	0.0	0	0.0	0	0.0	0	0.0	3	6.5	0	0.0
West Virginia														
Northern	2	3.5	0	0.0	2	3.5	2	3.5	0	0.0	6	10.5	0	0.0
Southern	5	13.9	0	0.0	0	0.0	0	0.0	1	2.8	7	19.4	0	0.0

**Table 2 (cont.)**

CIRCUIT District	TOTAL	WITHIN GUIDELINE RANGE		UPWARD DEPARTURE		UPWARD DEPARTURE W/ BOOKER		ABOVE RANGE W/ BOOKER		REMAINING ABOVE RANGE	
		n	%	n	%	n	%	n	%	n	%
<b>FIFTH CIRCUIT</b>	<b>1,532</b>	<b>1,112</b>	<b>72.6</b>	<b>10</b>	<b>0.7</b>	<b>5</b>	<b>0.3</b>	<b>20</b>	<b>1.3</b>	<b>1</b>	<b>0.1</b>
Louisiana											
Eastern	31	22	71.0	1	3.2	0	0.0	1	3.2	0	0.0
Middle	3	2	66.7	0	0.0	0	0.0	0	0.0	0	0.0
Western	31	22	71.0	0	0.0	0	0.0	0	0.0	0	0.0
Mississippi											
Northern	15	9	60.0	0	0.0	0	0.0	1	6.7	0	0.0
Southern	32	23	71.9	0	0.0	1	3.1	1	3.1	0	0.0
Texas											
Eastern	93	70	75.3	1	1.1	0	0.0	0	0.0	0	0.0
Northern	100	69	69.0	3	3.0	3	3.0	4	4.0	0	0.0
Southern	518	325	62.7	3	0.6	0	0.0	2	0.4	1	0.2
Western	709	570	80.4	2	0.3	1	0.1	11	1.6	0	0.0
<b>SIXTH CIRCUIT</b>	<b>452</b>	<b>254</b>	<b>56.2</b>	<b>3</b>	<b>0.7</b>	<b>0</b>	<b>0.0</b>	<b>2</b>	<b>0.4</b>	<b>3</b>	<b>0.7</b>
Kentucky											
Eastern	48	20	41.7	0	0.0	0	0.0	0	0.0	0	0.0
Western	27	18	66.7	0	0.0	0	0.0	1	3.7	0	0.0
Michigan											
Eastern	67	41	61.2	1	1.5	0	0.0	0	0.0	0	0.0
Western	43	22	51.2	1	2.3	0	0.0	0	0.0	2	4.7
Ohio											
Northern	67	44	65.7	1	1.5	0	0.0	0	0.0	0	0.0
Southern	57	31	54.4	0	0.0	0	0.0	0	0.0	0	0.0
Tennessee											
Eastern	42	29	69.0	0	0.0	0	0.0	1	2.4	1	2.4
Middle	22	13	59.1	0	0.0	0	0.0	0	0.0	0	0.0
Western	79	36	45.6	0	0.0	0	0.0	0	0.0	0	0.0
<b>SEVENTH CIRCUIT</b>	<b>235</b>	<b>151</b>	<b>64.3</b>	<b>0</b>	<b>0.0</b>	<b>1</b>	<b>0.4</b>	<b>2</b>	<b>0.9</b>	<b>0</b>	<b>0.0</b>
Illinois											
Central	39	24	61.5	0	0.0	0	0.0	0	0.0	0	0.0
Northern	24	14	58.3	0	0.0	0	0.0	0	0.0	0	0.0
Southern	35	29	82.9	0	0.0	0	0.0	1	2.9	0	0.0
Indiana											
Northern	41	28	68.3	0	0.0	1	2.4	0	0.0	0	0.0
Southern	36	19	52.8	0	0.0	0	0.0	1	2.8	0	0.0
Wisconsin											
Eastern	41	21	51.2	0	0.0	0	0.0	0	0.0	0	0.0
Western	19	16	84.2	0	0.0	0	0.0	0	0.0	0	0.0
<b>EIGHTH CIRCUIT</b>	<b>458</b>	<b>296</b>	<b>64.6</b>	<b>4</b>	<b>0.9</b>	<b>2</b>	<b>0.4</b>	<b>3</b>	<b>0.7</b>	<b>1</b>	<b>0.2</b>
Arkansas											
Eastern	44	33	75.0	1	2.3	0	0.0	0	0.0	0	0.0
Western	19	15	78.9	0	0.0	0	0.0	0	0.0	0	0.0
Iowa											
Northern	41	26	63.4	1	2.4	1	2.4	0	0.0	1	2.4
Southern	19	14	73.7	0	0.0	0	0.0	0	0.0	0	0.0
Minnesota	54	28	51.9	0	0.0	0	0.0	0	0.0	0	0.0
Missouri											
Eastern	83	56	67.5	0	0.0	0	0.0	0	0.0	0	0.0
Western	74	49	66.2	0	0.0	1	1.4	1	1.4	0	0.0
Nebraska	67	38	56.7	2	3.0	0	0.0	2	3.0	0	0.0
North Dakota	21	9	42.9	0	0.0	0	0.0	0	0.0	0	0.0
South Dakota	36	28	77.8	0	0.0	0	0.0	0	0.0	0	0.0

**Table 2 (cont.)**

CIRCUIT District	§5K1.1 SUBSTANTIAL ASSISTANCE		§5K3.1 EARLY DISPOSITION		OTHER GOV'T SPONSORED		DOWNWARD DEPARTURE		DOWNWARD DEPARTURE W/ BOOKER		BELOW RANGE W/ BOOKER		REMAINING BELOW RANGE	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%
<b>FIFTH CIRCUIT</b>	<b>123</b>	<b>8.0</b>	<b>97</b>	<b>6.3</b>	<b>58</b>	<b>3.8</b>	<b>32</b>	<b>2.1</b>	<b>2</b>	<b>0.1</b>	<b>56</b>	<b>3.7</b>	<b>16</b>	<b>1.0</b>
Louisiana														
Eastern	3	9.7	0	0.0	1	3.2	0	0.0	0	0.0	3	9.7	0	0.0
Middle	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	33.3	0	0.0
Western	4	12.9	0	0.0	0	0.0	0	0.0	0	0.0	2	6.5	3	9.7
Mississippi														
Northern	4	26.7	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	6.7
Southern	5	15.6	0	0.0	0	0.0	0	0.0	0	0.0	1	3.1	1	3.1
Texas														
Eastern	14	15.1	0	0.0	4	4.3	0	0.0	0	0.0	4	4.3	0	0.0
Northern	14	14.0	0	0.0	0	0.0	1	1.0	0	0.0	5	5.0	1	1.0
Southern	25	4.8	86	16.6	48	9.3	18	3.5	0	0.0	8	1.5	2	0.4
Western	54	7.6	11	1.6	5	0.7	13	1.8	2	0.3	32	4.5	8	1.1
<b>SIXTH CIRCUIT</b>	<b>116</b>	<b>25.7</b>	<b>0</b>	<b>0.0</b>	<b>10</b>	<b>2.2</b>	<b>8</b>	<b>1.8</b>	<b>9</b>	<b>2.0</b>	<b>42</b>	<b>9.3</b>	<b>5</b>	<b>1.1</b>
Kentucky														
Eastern	22	45.8	0	0.0	2	4.2	0	0.0	0	0.0	4	8.3	0	0.0
Western	6	22.2	0	0.0	0	0.0	1	3.7	0	0.0	1	3.7	0	0.0
Michigan														
Eastern	13	19.4	0	0.0	0	0.0	0	0.0	2	3.0	8	11.9	2	3.0
Western	10	23.3	0	0.0	0	0.0	2	4.7	0	0.0	6	14.0	0	0.0
Ohio														
Northern	15	22.4	0	0.0	0	0.0	1	1.5	0	0.0	4	6.0	2	3.0
Southern	14	24.6	0	0.0	2	3.5	3	5.3	4	7.0	3	5.3	0	0.0
Tennessee														
Eastern	7	16.7	0	0.0	0	0.0	0	0.0	1	2.4	3	7.1	0	0.0
Middle	4	18.2	0	0.0	1	4.5	0	0.0	0	0.0	4	18.2	0	0.0
Western	25	31.6	0	0.0	5	6.3	1	1.3	2	2.5	9	11.4	1	1.3
<b>SEVENTH CIRCUIT</b>	<b>38</b>	<b>16.2</b>	<b>1</b>	<b>0.4</b>	<b>3</b>	<b>1.3</b>	<b>3</b>	<b>1.3</b>	<b>4</b>	<b>1.7</b>	<b>32</b>	<b>13.6</b>	<b>0</b>	<b>0.0</b>
Illinois														
Central	8	20.5	1	2.6	0	0.0	1	2.6	1	2.6	4	10.3	0	0.0
Northern	2	8.3	0	0.0	0	0.0	0	0.0	2	8.3	6	25.0	0	0.0
Southern	3	8.6	0	0.0	0	0.0	0	0.0	0	0.0	2	5.7	0	0.0
Indiana														
Northern	8	19.5	0	0.0	0	0.0	0	0.0	1	2.4	3	7.3	0	0.0
Southern	8	22.2	0	0.0	3	8.3	1	2.8	0	0.0	4	11.1	0	0.0
Wisconsin														
Eastern	8	19.5	0	0.0	0	0.0	1	2.4	0	0.0	11	26.8	0	0.0
Western	1	5.3	0	0.0	0	0.0	0	0.0	0	0.0	2	10.5	0	0.0
<b>EIGHTH CIRCUIT</b>	<b>66</b>	<b>14.4</b>	<b>4</b>	<b>0.9</b>	<b>14</b>	<b>3.1</b>	<b>2</b>	<b>0.4</b>	<b>7</b>	<b>1.5</b>	<b>55</b>	<b>12.0</b>	<b>4</b>	<b>0.9</b>
Arkansas														
Eastern	6	13.6	0	0.0	1	2.3	0	0.0	0	0.0	2	4.5	1	2.3
Western	4	21.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Iowa														
Northern	3	7.3	0	0.0	0	0.0	0	0.0	1	2.4	8	19.5	0	0.0
Southern	2	10.5	0	0.0	1	5.3	0	0.0	0	0.0	0	0.0	2	10.5
Minnesota	14	25.9	0	0.0	1	1.9	0	0.0	3	5.6	8	14.8	0	0.0
Missouri														
Eastern	13	15.7	0	0.0	3	3.6	1	1.2	1	1.2	9	10.8	0	0.0
Western	9	12.2	0	0.0	3	4.1	0	0.0	1	1.4	10	13.5	0	0.0
Nebraska	8	11.9	4	6.0	5	7.5	0	0.0	1	1.5	7	10.4	0	0.0
North Dakota	7	33.3	0	0.0	0	0.0	1	4.8	0	0.0	4	19.0	0	0.0
South Dakota	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	7	19.4	1	2.8

**Table 2 (cont.)**

CIRCUIT District	TOTAL	WITHIN GUIDELINE RANGE		UPWARD DEPARTURE		UPWARD DEPARTURE W/ BOOKER		ABOVE RANGE W/ BOOKER		REMAINING ABOVE RANGE	
		n	%	n	%	n	%	n	%	n	%
<b>NINTH CIRCUIT</b>	<b>1,350</b>	<b>586</b>	<b>43.4</b>	<b>4</b>	<b>0.3</b>	<b>2</b>	<b>0.1</b>	<b>6</b>	<b>0.4</b>	<b>2</b>	<b>0.1</b>
Alaska	5	2	40.0	0	0.0	0	0.0	0	0.0	0	0.0
Arizona	402	128	31.8	2	0.5	1	0.2	1	0.2	0	0.0
California											
Central	98	45	45.9	0	0.0	0	0.0	1	1.0	0	0.0
Eastern	111	62	55.9	0	0.0	0	0.0	0	0.0	1	0.9
Northern	38	24	63.2	0	0.0	0	0.0	0	0.0	0	0.0
Southern	338	148	43.8	0	0.0	0	0.0	0	0.0	0	0.0
Guam	12	10	83.3	0	0.0	0	0.0	0	0.0	0	0.0
Hawaii	33	12	36.4	0	0.0	0	0.0	0	0.0	0	0.0
Idaho	30	15	50.0	0	0.0	0	0.0	1	3.3	0	0.0
Montana	46	31	67.4	0	0.0	1	2.2	0	0.0	0	0.0
Nevada	51	35	68.6	0	0.0	0	0.0	2	3.9	0	0.0
Northern Mariana Islands	1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Oregon	54	21	38.9	0	0.0	0	0.0	0	0.0	0	0.0
Washington											
Eastern	37	11	29.7	0	0.0	0	0.0	1	2.7	0	0.0
Western	94	42	44.7	2	2.1	0	0.0	0	0.0	1	1.1
<b>TENTH CIRCUIT</b>	<b>539</b>	<b>294</b>	<b>54.5</b>	<b>1</b>	<b>0.2</b>	<b>2</b>	<b>0.4</b>	<b>7</b>	<b>1.3</b>	<b>0</b>	<b>0.0</b>
Colorado	50	27	54.0	0	0.0	0	0.0	0	0.0	0	0.0
Kansas	74	42	56.8	0	0.0	1	1.4	5	6.8	0	0.0
New Mexico	259	136	52.5	1	0.4	0	0.0	0	0.0	0	0.0
Oklahoma											
Eastern	4	4	100.0	0	0.0	0	0.0	0	0.0	0	0.0
Northern	27	18	66.7	0	0.0	0	0.0	0	0.0	0	0.0
Western	39	27	69.2	0	0.0	0	0.0	2	5.1	0	0.0
Utah	59	23	39.0	0	0.0	0	0.0	0	0.0	0	0.0
Wyoming	27	17	63.0	0	0.0	1	3.7	0	0.0	0	0.0
<b>ELEVENTH CIRCUIT</b>	<b>735</b>	<b>504</b>	<b>68.6</b>	<b>0</b>	<b>0.0</b>	<b>1</b>	<b>0.1</b>	<b>12</b>	<b>1.6</b>	<b>0</b>	<b>0.0</b>
Alabama											
Middle	16	6	37.5	0	0.0	0	0.0	1	6.3	0	0.0
Northern	42	24	57.1	0	0.0	1	2.4	2	4.8	0	0.0
Southern	34	24	70.6	0	0.0	0	0.0	0	0.0	0	0.0
Florida											
Middle	141	80	56.7	0	0.0	0	0.0	0	0.0	0	0.0
Northern	47	38	80.9	0	0.0	0	0.0	1	2.1	0	0.0
Southern	249	186	74.7	0	0.0	0	0.0	4	1.6	0	0.0
Georgia											
Middle	57	45	78.9	0	0.0	0	0.0	0	0.0	0	0.0
Northern	64	39	60.9	0	0.0	0	0.0	0	0.0	0	0.0
Southern	85	62	72.9	0	0.0	0	0.0	4	4.7	0	0.0

**Table 2 (cont.)**

CIRCUIT District	§5K1.1 SUBSTANTIAL ASSISTANCE		§5K3.1 EARLY DISPOSITION		OTHER GOV'T SPONSORED		DOWNWARD DEPARTURE		DOWNWARD DEPARTURE W/ BOOKER		BELOW RANGE W/ BOOKER		REMAINING BELOW RANGE	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%
<b>NINTH CIRCUIT</b>	<b>136</b>	<b>10.1</b>	<b>402</b>	<b>29.8</b>	<b>60</b>	<b>4.4</b>	<b>32</b>	<b>2.4</b>	<b>13</b>	<b>1.0</b>	<b>94</b>	<b>7.0</b>	<b>13</b>	<b>1.0</b>
Alaska	3	60.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Arizona	18	4.5	218	54.2	8	2.0	8	2.0	1	0.2	12	3.0	5	1.2
California														
Central	15	15.3	21	21.4	6	6.1	3	3.1	2	2.0	4	4.1	1	1.0
Eastern	21	18.9	18	16.2	3	2.7	2	1.8	0	0.0	4	3.6	0	0.0
Northern	5	13.2	2	5.3	2	5.3	0	0.0	0	0.0	5	13.2	0	0.0
Southern	24	7.1	127	37.6	11	3.3	9	2.7	0	0.0	16	4.7	3	0.9
Guam	1	8.3	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	8.3
Hawaii	7	21.2	0	0.0	0	0.0	1	3.0	1	3.0	12	36.4	0	0.0
Idaho	6	20.0	6	20.0	0	0.0	0	0.0	1	3.3	1	3.3	0	0.0
Montana	8	17.4	0	0.0	1	2.2	0	0.0	0	0.0	5	10.9	0	0.0
Nevada	5	9.8	0	0.0	3	5.9	2	3.9	1	2.0	2	3.9	1	2.0
Northern Mariana Islands	1	100.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Oregon	10	18.5	3	5.6	4	7.4	4	7.4	2	3.7	10	18.5	0	0.0
Washington														
Eastern	3	8.1	6	16.2	4	10.8	0	0.0	2	5.4	8	21.6	2	5.4
Western	9	9.6	1	1.1	18	19.1	3	3.2	3	3.2	15	16.0	0	0.0
<b>TENTH CIRCUIT</b>	<b>42</b>	<b>7.8</b>	<b>54</b>	<b>10.0</b>	<b>49</b>	<b>9.1</b>	<b>19</b>	<b>3.5</b>	<b>9</b>	<b>1.7</b>	<b>58</b>	<b>10.8</b>	<b>4</b>	<b>0.7</b>
Colorado	10	20.0	0	0.0	1	2.0	2	4.0	1	2.0	9	18.0	0	0.0
Kansas	12	16.2	0	0.0	7	9.5	1	1.4	1	1.4	5	6.8	0	0.0
New Mexico	9	3.5	35	13.5	37	14.3	15	5.8	4	1.5	21	8.1	1	0.4
Oklahoma														
Eastern	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Northern	6	22.2	0	0.0	0	0.0	0	0.0	0	0.0	3	11.1	0	0.0
Western	1	2.6	0	0.0	0	0.0	0	0.0	0	0.0	8	20.5	1	2.6
Utah	3	5.1	19	32.2	2	3.4	1	1.7	0	0.0	10	16.9	1	1.7
Wyoming	1	3.7	0	0.0	2	7.4	0	0.0	3	11.1	2	7.4	1	3.7
<b>ELEVENTH CIRCUIT</b>	<b>99</b>	<b>13.5</b>	<b>2</b>	<b>0.3</b>	<b>7</b>	<b>1.0</b>	<b>13</b>	<b>1.8</b>	<b>15</b>	<b>2.0</b>	<b>77</b>	<b>10.5</b>	<b>5</b>	<b>0.7</b>
Alabama														
Middle	6	37.5	0	0.0	0	0.0	0	0.0	0	0.0	2	12.5	1	6.3
Northern	5	11.9	0	0.0	1	2.4	1	2.4	0	0.0	7	16.7	1	2.4
Southern	4	11.8	0	0.0	0	0.0	0	0.0	1	2.9	5	14.7	0	0.0
Florida														
Middle	26	18.4	2	1.4	3	2.1	3	2.1	4	2.8	23	16.3	0	0.0
Northern	7	14.9	0	0.0	0	0.0	0	0.0	0	0.0	1	2.1	0	0.0
Southern	22	8.8	0	0.0	1	0.4	2	0.8	8	3.2	24	9.6	2	0.8
Georgia														
Middle	6	10.5	0	0.0	1	1.8	1	1.8	0	0.0	4	7.0	0	0.0
Northern	7	10.9	0	0.0	1	1.6	5	7.8	2	3.1	9	14.1	1	1.6
Southern	16	18.8	0	0.0	0	0.0	1	1.2	0	0.0	2	2.4	0	0.0

<sup>1</sup>Of the 6,942 cases, 177 were excluded because information was missing from the submitted documents that prevented the comparison of the sentence and the guideline range. Districts missing this information in five percent or more of the cases received included: Western Oklahoma (33.9%), Central California (18.3%), Eastern Virginia (18.0%), Alaska (16.7%), Middle Georgia (16.2%), Middle Tennessee (12.0%), Northern Florida (7.8%), and Northern Alabama (6.7%). Descriptions of variables used in this table are provided in Appendix A.

SOURCE: U.S. Sentencing Commission, Preliminary 2008 Datafile, USSCFY08.

Table 3

**SENTENCES RELATIVE TO THE GUIDELINE RANGE  
BY EACH PRIMARY OFFENSE CATEGORY<sup>1</sup>  
2008 Post-Kimbrough/Gall Preliminary Data**

PRIMARY OFFENSE	TOTAL	WITHIN GUIDELINE RANGE		UPWARD DEPARTURES		UPWARD DEPARTURES W/ <i>BOOKER</i>		ABOVE RANGE WITH W/ <i>BOOKER</i>		REMAINING ABOVE RANGE	
		n	%	n	%	n	%	n	%	n	%
<b>TOTAL</b>	<b>6,714</b>	<b>4,019</b>	<b>59.9</b>	<b>30</b>	<b>0.4</b>	<b>19</b>	<b>0.3</b>	<b>60</b>	<b>0.9</b>	<b>12</b>	<b>0.2</b>
Murder	8	4	50.0	0	0.0	0	0.0	1	12.5	0	0.0
Manslaughter	5	3	60.0	1	20.0	0	0.0	0	0.0	0	0.0
Kidnapping/Hostage Taking	9	2	22.2	0	0.0	0	0.0	0	0.0	0	0.0
Sexual Abuse	53	45	84.9	0	0.0	1	1.9	0	0.0	0	0.0
Assault	66	41	62.1	2	3.0	2	3.0	2	3.0	1	1.5
Robbery	99	69	69.7	1	1.0	1	1.0	0	0.0	1	1.0
Arson	3	1	33.3	0	0.0	0	0.0	0	0.0	0	0.0
Drugs - Trafficking	2,381	1,252	52.6	3	0.1	1	0.0	8	0.3	4	0.2
Drugs - Communication Facility	27	17	63.0	0	0.0	0	0.0	0	0.0	0	0.0
Drugs - Simple Possession	31	25	80.6	0	0.0	0	0.0	1	3.2	0	0.0
Firearms	709	496	70.0	4	0.6	2	0.3	8	1.1	1	0.1
Burglary/B&E	2	1	50.0	0	0.0	0	0.0	1	50.0	0	0.0
Auto Theft	3	0	0.0	0	0.0	0	0.0	1	33.3	0	0.0
Larceny	131	103	78.6	0	0.0	1	0.8	1	0.8	0	0.0
Fraud	555	354	63.8	4	0.7	1	0.2	7	1.3	0	0.0
Embezzlement	43	32	74.4	0	0.0	1	2.3	0	0.0	0	0.0
Forgery/Counterfeiting	87	63	72.4	0	0.0	0	0.0	1	1.1	1	1.1
Bribery	20	5	25.0	0	0.0	0	0.0	0	0.0	0	0.0
Tax	59	27	45.8	0	0.0	0	0.0	1	1.7	0	0.0
Money Laundering	73	30	41.1	0	0.0	0	0.0	0	0.0	0	0.0
Racketeering/Extortion	55	27	49.1	0	0.0	0	0.0	1	1.8	1	1.8
Gambling/Lottery	11	7	63.6	0	0.0	0	0.0	0	0.0	0	0.0
Civil Rights	9	7	77.8	0	0.0	0	0.0	0	0.0	0	0.0
Immigration	1,842	1,134	61.6	11	0.6	6	0.3	26	1.4	3	0.2
Pornography/Prostitution	156	88	56.4	1	0.6	2	1.3	1	0.6	0	0.0
Prison Offenses	30	20	66.7	1	3.3	0	0.0	0	0.0	0	0.0
Administration of Justice Offenses	99	58	58.6	2	2.0	0	0.0	0	0.0	0	0.0
Environmental/Wildlife	14	9	64.3	0	0.0	0	0.0	0	0.0	0	0.0
National Defense	7	6	85.7	0	0.0	0	0.0	0	0.0	0	0.0
Antitrust	2	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Food & Drug	7	4	57.1	0	0.0	0	0.0	0	0.0	0	0.0
Other Miscellaneous Offenses	118	89	75.4	0	0.0	1	0.8	0	0.0	0	0.0

**Table 3 (cont.)**

PRIMARY OFFENSE	§5K1.1 SUBSTANTIAL ASSISTANCE		§5K3.1 EARLY DISPOSITION		OTHER GOV'T SPONSORED		BELOW DOWNWARD DEPARTURE		DOWNWARD DEPARTURE W/ BOOKER		BELOW RANGE W/ BOOKER		REMAINING BELOW RANGE	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%
<b>TOTAL</b>	<b>894</b>	<b>13.3</b>	<b>545</b>	<b>8.1</b>	<b>230</b>	<b>3.4</b>	<b>144</b>	<b>2.1</b>	<b>97</b>	<b>1.4</b>	<b>596</b>	<b>8.9</b>	<b>68</b>	<b>1.0</b>
Murder	0	0.0	0	0.0	0	0.0	0	0.0	1	12.5	2	25.0	0	0.0
Manslaughter	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	20.0	0	0.0
Kidnapping/Hostage Taking	4	44.4	0	0.0	1	11.1	0	0.0	1	11.1	1	11.1	0	0.0
Sexual Abuse	2	3.8	1	1.9	2	3.8	0	0.0	0	0.0	2	3.8	0	0.0
Assault	1	1.5	2	3.0	5	7.6	3	4.5	0	0.0	4	6.1	3	4.5
Robbery	8	8.1	0	0.0	4	4.0	2	2.0	2	2.0	10	10.1	1	1.0
Arson	1	33.3	0	0.0	0	0.0	0	0.0	0	0.0	1	33.3	0	0.0
Drugs - Trafficking	596	25.0	127	5.3	66	2.8	44	1.8	40	1.7	221	9.3	19	0.8
Drugs - Communication Facility	4	14.8	0	0.0	1	3.7	0	0.0	0	0.0	4	14.8	1	3.7
Drugs - Simple Possession	3	9.7	0	0.0	2	6.5	0	0.0	0	0.0	0	0.0	0	0.0
Firearms	69	9.7	3	0.4	20	2.8	18	2.5	15	2.1	60	8.5	13	1.8
Burglary/B&E	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Auto Theft	2	66.7	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Larceny	6	4.6	1	0.8	2	1.5	3	2.3	0	0.0	13	9.9	1	0.8
Fraud	76	13.7	0	0.0	13	2.3	15	2.7	13	2.3	68	12.3	4	0.7
Embezzlement	2	4.7	0	0.0	0	0.0	2	4.7	0	0.0	6	14.0	0	0.0
Forgery/Counterfeiting	10	11.5	0	0.0	0	0.0	1	1.1	0	0.0	11	12.6	0	0.0
Bribery	6	30.0	0	0.0	1	5.0	0	0.0	1	5.0	7	35.0	0	0.0
Tax	8	13.6	0	0.0	2	3.4	4	6.8	5	8.5	11	18.6	1	1.7
Money Laundering	23	31.5	2	2.7	3	4.1	1	1.4	1	1.4	9	12.3	4	5.5
Racketeering/Extortion	16	29.1	0	0.0	5	9.1	1	1.8	0	0.0	4	7.3	0	0.0
Gambling/Lottery	3	27.3	0	0.0	0	0.0	0	0.0	0	0.0	1	9.1	0	0.0
Civil Rights	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	2	22.2	0	0.0
Immigration	23	1.2	409	22.2	84	4.6	46	2.5	7	0.4	79	4.3	14	0.8
Pornography/Prostitution	5	3.2	0	0.0	9	5.8	3	1.9	5	3.2	40	25.6	2	1.3
Prison Offenses	1	3.3	0	0.0	1	3.3	0	0.0	1	3.3	6	20.0	0	0.0
Administration of Justice Offenses	12	12.1	0	0.0	6	6.1	0	0.0	3	3.0	16	16.2	2	2.0
Environmental/Wildlife	0	0.0	0	0.0	0	0.0	0	0.0	1	7.1	4	28.6	0	0.0
National Defense	0	0.0	0	0.0	0	0.0	1	14.3	0	0.0	0	0.0	0	0.0
Antitrust	2	100.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Food & Drug	2	28.6	0	0.0	1	14.3	0	0.0	0	0.0	0	0.0	0	0.0
Other Miscellaneous Offenses	9	7.6	0	0.0	2	1.7	0	0.0	1	0.8	13	11.0	3	2.5

<sup>1</sup>Of the 6,942 cases, 228 were excluded due to one or both of the following reasons: missing primary offense (70) or missing information from the submitted documents that prevented the comparison of the sentence and the guideline range (177). Descriptions of variables used in this table are provided in Appendix A.

SOURCE: U.S. Sentencing Commission, Preliminary 2008 Datafile, USSCFY08.

Table 3A

**SENTENCES RELATIVE TO THE GUIDELINE RANGE  
BY EACH PRIMARY OFFENSE CATEGORY<sup>1</sup>  
Fiscal Year 2005, Post-Booker - 2007**

PRIMARY OFFENSE	TOTAL	WITHIN GUIDELINE RANGE		UPWARD DEPARTURES		UPWARD DEPARTURES W/ <i>BOOKER</i>		ABOVE RANGE WITH W/ <i>BOOKER</i>		REMAINING ABOVE RANGE	
		n	%	n	%	n	%	n	%	n	%
<b>TOTAL</b>	<b>191,258</b>	<b>117,327</b>	<b>61.3</b>	<b>836</b>	<b>0.4</b>	<b>356</b>	<b>0.2</b>	<b>1,286</b>	<b>0.7</b>	<b>528</b>	<b>0.3</b>
Murder	221	133	60.2	11	5.0	4	1.8	5	2.3	5	2.3
Manslaughter	165	103	62.4	8	4.8	6	3.6	10	6.1	5	3.0
Kidnapping/Hostage Taking	133	58	43.6	1	0.8	0	0.0	0	0.0	0	0.0
Sexual Abuse	873	609	69.8	15	1.7	14	1.6	25	2.9	7	0.8
Assault	1,539	1,065	69.2	35	2.3	8	0.5	29	1.9	18	1.2
Robbery	3,262	2,169	66.5	23	0.7	13	0.4	29	0.9	14	0.4
Arson	189	106	56.1	5	2.6	4	2.1	8	4.2	2	1.1
Drugs - Trafficking	67,110	35,956	53.6	95	0.1	35	0.1	136	0.2	85	0.1
Drugs - Communication Facility	1,076	673	62.5	3	0.3	2	0.2	1	0.1	4	0.4
Drugs - Simple Possession	1,530	1,397	91.3	12	0.8	4	0.3	17	1.1	15	1.0
Firearms	22,966	15,988	69.6	145	0.6	67	0.3	208	0.9	84	0.4
Burglary/B&E	117	86	73.5	0	0.0	2	1.7	3	2.6	1	0.9
Auto Theft	171	111	64.9	2	1.2	1	0.6	4	2.3	3	1.8
Larceny	4,484	3,478	77.6	14	0.3	6	0.1	38	0.8	26	0.6
Fraud	18,824	12,123	64.4	82	0.4	68	0.4	202	1.1	81	0.4
Embezzlement	1,395	1,058	75.8	0	0.0	1	0.1	4	0.3	0	0.0
Forgery/Counterfeiting	3,038	2,230	73.4	26	0.9	7	0.2	26	0.9	10	0.3
Bribery	575	272	47.3	0	0.0	0	0.0	2	0.3	0	0.0
Tax	1,655	831	50.2	1	0.1	2	0.1	15	0.9	3	0.2
Money Laundering	2,498	1,214	48.6	11	0.4	4	0.2	12	0.5	4	0.2
Racketeering/Extortion	1,729	923	53.4	14	0.8	5	0.3	18	1.0	11	0.6
Gambling/Lottery	304	199	65.5	0	0.0	0	0.0	1	0.3	0	0.0
Civil Rights	172	100	58.1	0	0.0	0	0.0	1	0.6	0	0.0
Immigration	46,425	29,169	62.8	251	0.5	57	0.1	354	0.8	104	0.2
Pornography/Prostitution	3,592	2,346	65.3	39	1.1	21	0.6	68	1.9	17	0.5
Prison Offenses	924	733	79.3	4	0.4	1	0.1	8	0.9	9	1.0
Administration of Justice Offenses	2,768	1,701	61.5	25	0.9	16	0.6	35	1.3	11	0.4
Environmental/Wildlife	419	271	64.7	0	0.0	1	0.2	1	0.2	1	0.2
National Defense	83	29	34.9	0	0.0	0	0.0	1	1.2	0	0.0
Antitrust	38	6	15.8	0	0.0	0	0.0	0	0.0	0	0.0
Food & Drug	182	139	76.4	3	1.6	0	0.0	2	1.1	0	0.0
Other Miscellaneous Offenses	2,801	2,051	73.2	11	0.4	7	0.2	23	0.8	8	0.3

**Table 3A (cont.)**

PRIMARY OFFENSE	§5K1.1 SUBSTANTIAL ASSISTANCE		§5K3.1 EARLY DISPOSITION		OTHER GOV'T SPONSORED		BELOW DOWNWARD DEPARTURE		DOWNWARD DEPARTURE W/ BOOKER		BELOW RANGE W/ BOOKER		REMAINING BELOW RANGE	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%
<b>TOTAL</b>	<b>27,699</b>	<b>14.5</b>	<b>13,595</b>	<b>7.1</b>	<b>6,015</b>	<b>3.1</b>	<b>4,854</b>	<b>2.5</b>	<b>2,929</b>	<b>1.5</b>	<b>12,393</b>	<b>6.5</b>	<b>3,440</b>	<b>1.8</b>
Murder	22	10.0	0	0.0	12	5.4	5	2.3	5	2.3	15	6.8	4	1.8
Manslaughter	1	0.6	1	0.6	6	3.6	7	4.2	2	1.2	15	9.1	1	0.6
Kidnapping/Hostage Taking	47	35.3	2	1.5	14	10.5	0	0.0	0	0.0	7	5.3	4	3.0
Sexual Abuse	16	1.8	1	0.1	68	7.8	19	2.2	17	1.9	68	7.8	14	1.6
Assault	26	1.7	20	1.3	111	7.2	57	3.7	34	2.2	103	6.7	33	2.1
Robbery	398	12.2	1	0.0	88	2.7	131	4.0	89	2.7	243	7.4	64	2.0
Arson	51	27.0	0	0.0	5	2.6	3	1.6	1	0.5	4	2.1	0	0.0
Drugs - Trafficking	17,355	25.9	3,379	5.0	1,996	3.0	1,525	2.3	1,059	1.6	4,402	6.6	1,087	1.6
Drugs - Communication Facility	187	17.4	0	0.0	36	3.3	21	2.0	23	2.1	101	9.4	25	2.3
Drugs - Simple Possession	25	1.6	1	0.1	10	0.7	4	0.3	7	0.5	23	1.5	15	1.0
Firearms	2,656	11.6	102	0.4	589	2.6	626	2.7	414	1.8	1,670	7.3	417	1.8
Burglary/B&E	3	2.6	0	0.0	3	2.6	2	1.7	3	2.6	10	8.5	4	3.4
Auto Theft	28	16.4	0	0.0	3	1.8	4	2.3	2	1.2	11	6.4	2	1.2
Larceny	297	6.6	17	0.4	88	2.0	104	2.3	50	1.1	257	5.7	109	2.4
Fraud	2,909	15.5	12	0.1	413	2.2	518	2.8	374	2.0	1,523	8.1	519	2.8
Embezzlement	45	3.2	0	0.0	25	1.8	32	2.3	37	2.7	143	10.3	50	3.6
Forgery/Counterfeiting	300	9.9	5	0.2	53	1.7	56	1.8	47	1.5	216	7.1	62	2.0
Bribery	183	31.8	1	0.2	21	3.7	12	2.1	10	1.7	54	9.4	20	3.5
Tax	258	15.6	6	0.4	47	2.8	96	5.8	55	3.3	270	16.3	71	4.3
Money Laundering	640	25.6	21	0.8	117	4.7	64	2.6	82	3.3	254	10.2	75	3.0
Racketeering/Extortion	407	23.5	0	0.0	104	6.0	46	2.7	24	1.4	134	7.8	43	2.5
Gambling/Lottery	41	13.5	0	0.0	7	2.3	10	3.3	5	1.6	28	9.2	13	4.3
Civil Rights	35	20.3	1	0.6	6	3.5	7	4.1	3	1.7	15	8.7	4	2.3
Immigration	901	1.9	9,968	21.5	1,766	3.8	1,192	2.6	360	0.8	1,753	3.8	550	1.2
Pornography/Prostitution	156	4.3	13	0.4	137	3.8	97	2.7	105	2.9	524	14.6	69	1.9
Prison Offenses	37	4.0	14	1.5	23	2.5	20	2.2	12	1.3	47	5.1	16	1.7
Administration of Justice Offenses	355	12.8	17	0.6	147	5.3	96	3.5	55	2.0	235	8.5	75	2.7
Environmental/Wildlife	46	11.0	2	0.5	25	6.0	16	3.8	7	1.7	32	7.6	17	4.1
National Defense	21	25.3	1	1.2	7	8.4	5	6.0	3	3.6	10	12.0	6	7.2
Antitrust	22	57.9	0	0.0	1	2.6	1	2.6	3	7.9	5	13.2	0	0.0
Food & Drug	19	10.4	0	0.0	8	4.4	2	1.1	1	0.5	7	3.8	1	0.5
Other Miscellaneous Offenses	212	7.6	10	0.4	79	2.8	76	2.7	40	1.4	214	7.6	70	2.5

<sup>1</sup>Of the 199,124 cases, 7,866 were excluded due to one or both of the following reasons: missing primary offense (191) or missing information from the submitted documents that prevented the comparison of the sentence and the guideline range (7,698). Descriptions of variables used in this table are provided in Appendix A.

SOURCE: U.S. Sentencing Commission, 2005 - 2007 Datafiles, USSCFY05 - USSCFY07.







**Table 4 (cont.)**

Guideline	Total	Within Guideline Range	Upward Departure		Above Range		Government Sponsored			Downward Departure		Below Range	
			Gdline Only	with Booker	with Booker	All Others	\$5K1.1	\$5K3.1	Other Gov't	Gdline Only	with Booker	with Booker	All Others
§2N1.1	0	0	0	0	0	0	0	0	0	0	0	0	0
§2N1.2	0	0	0	0	0	0	0	0	0	0	0	0	0
§2N1.3	0	0	0	0	0	0	0	0	0	0	0	0	0
§2N2.1	0	0	0	0	0	0	0	0	0	0	0	0	0
§2N3.1	0	0	0	0	0	0	0	0	0	0	0	0	0
§2P1.1	22	15	0	0	0	0	0	0	1	0	1	5	0
§2P1.2	5	3	1	0	0	0	0	0	0	0	0	1	0
§2P1.3	0	0	0	0	0	0	0	0	0	0	0	0	0
§2P1.4	0	0	0	0	0	0	0	0	0	0	0	0	0
§2Q1.1	0	0	0	0	0	0	0	0	0	0	0	0	0
§2Q1.2	5	2	0	0	0	0	0	0	0	0	1	2	0
§2Q1.3	1	0	0	0	0	0	0	0	0	0	0	1	0
§2Q1.4	0	0	0	0	0	0	0	0	0	0	0	0	0
§2Q1.5	0	0	0	0	0	0	0	0	0	0	0	0	0
§2Q1.6	0	0	0	0	0	0	0	0	0	0	0	0	0
§2Q2.1	11	7	0	0	0	0	0	0	0	0	0	4	0
§2Q2.2	0	0	0	0	0	0	0	0	0	0	0	0	0
§2R1.1	2	0	0	0	0	0	2	0	0	0	0	0	0
§2S1.1	88	31	0	0	1	0	35	2	2	2	1	11	3
§2S1.2	0	0	0	0	0	0	0	0	0	0	0	0	0
§2S1.3	17	11	0	0	0	0	2	0	2	0	0	2	0
§2S1.4	0	0	0	0	0	0	0	0	0	0	0	0	0
§2T1.1	48	23	0	0	1	0	5	0	2	4	4	9	0
§2T1.2	0	0	0	0	0	0	0	0	0	0	0	0	0
§2T1.3	0	0	0	0	0	0	0	0	0	0	0	0	0
§2T1.4	10	3	0	0	0	0	3	0	1	0	1	2	0
§2T1.5	0	0	0	0	0	0	0	0	0	0	0	0	0
§2T1.6	2	0	0	0	0	0	0	0	0	0	0	1	1
§2T1.7	0	0	0	0	0	0	0	0	0	0	0	0	0
§2T1.8	0	0	0	0	0	0	0	0	0	0	0	0	0
§2T1.9	1	0	0	0	0	0	1	0	0	0	0	0	0
§2T2.1	0	0	0	0	0	0	0	0	0	0	0	0	0
§2T2.2	0	0	0	0	0	0	0	0	0	0	0	0	0
§2T3.1	2	2	0	0	0	0	0	0	0	0	0	0	0
§2T3.2	0	0	0	0	0	0	0	0	0	0	0	0	0
§2T4.1	0	0	0	0	0	0	0	0	0	0	0	0	0
§2X1.1	16	8	0	0	1	0	5	0	1	0	0	1	0
§2X2.1	0	0	0	0	0	0	0	0	0	0	0	0	0
§2X3.1	11	6	0	0	0	0	2	0	2	0	1	0	0
§2X4.1	48	27	0	0	0	0	8	0	3	0	0	9	1
§2X5.1	0	0	0	0	0	0	0	0	0	0	0	0	0
§2X5.2	16	14	0	1	0	0	0	0	0	0	0	0	1
§2X6.1	0	0	0	0	0	0	0	0	0	0	0	0	0
§2X7.1	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>TOTAL</b>	<b>6,377</b>	<b>3,745</b>	<b>27</b>	<b>15</b>	<b>57</b>	<b>10</b>	<b>878</b>	<b>534</b>	<b>220</b>	<b>144</b>	<b>96</b>	<b>588</b>	<b>63</b>

<sup>1</sup>Of the 6,942 cases, 565 were excluded due to one or both of the following reasons: missing information from the submitted documents that prevented the comparison of the sentence and the guideline range (177) or missing guideline applied (526). Descriptions of variables used in this table are provided in Appendix A.

SOURCE: U.S. Sentencing Commission, Preliminary 2008 Datafile, USSCFY08.

**Table 5**

**§5K1.1 SUBSTANTIAL ASSISTANCE DEPARTURE CASES: DEGREE OF  
DECREASE FOR OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY<sup>1</sup>  
2008 Post-Kimbrough/Gall Preliminary Data**

<b>PRIMARY OFFENSE</b>	<b>n</b>	<b>Median Sentence in Months</b>	<b>Median Decrease in Months From Guideline Minimum</b>	<b>Median Percent Decrease From Guideline Minimum</b>
<b>TOTAL</b>	<b>827</b>	<b>37.0</b>	<b>30.0</b>	<b>45.9</b>
<b>Murder</b>	0	--	--	--
<b>Manslaughter</b>	0	--	--	--
<b>Kidnapping/Hostage Taking</b>	4	167.0	68.0	28.9
<b>Sexual Abuse</b>	2	--	--	--
<b>Assault</b>	1	--	--	--
<b>Robbery</b>	8	56.5	27.5	31.3
<b>Arson</b>	1	--	--	--
<b>Drugs - Trafficking</b>	552	51.0	37.0	41.5
<b>Drugs - Communication Facility</b>	3	18.0	24.0	50.0
<b>Drugs - Simple Possession</b>	3	38.0	18.0	39.7
<b>Firearms</b>	63	42.0	30.0	46.7
<b>Burglary/B&amp;E</b>	0	--	--	--
<b>Auto Theft</b>	2	--	--	--
<b>Larceny</b>	6	15.0	12.0	57.1
<b>Fraud</b>	71	1.2	14.0	93.2
<b>Embezzlement</b>	1	--	--	--
<b>Forgery/Counterfeiting</b>	10	3.0	6.0	93.5
<b>Bribery</b>	5	0.0	19.0	100.0
<b>Tax</b>	7	0.0	10.0	100.0
<b>Money Laundering</b>	22	9.0	27.5	67.1
<b>Racketeering/Extortion</b>	15	18.0	37.0	60.9
<b>Gambling/Lottery</b>	3	0.3	5.7	94.5
<b>Civil Rights</b>	0	--	--	--
<b>Immigration</b>	21	18.0	15.0	44.4
<b>Pornography/Prostitution</b>	5	70.0	59.0	28.1
<b>Prison Offenses</b>	0	--	--	--
<b>Administration of Justice Offenses</b>	10	0.0	13.5	100.0
<b>Environmental/Wildlife</b>	0	--	--	--
<b>National Defense</b>	0	--	--	--
<b>Antitrust</b>	2	--	--	--
<b>Food &amp; Drug</b>	2	--	--	--
<b>Other Miscellaneous Offenses</b>	8	6.0	23.0	86.9

<sup>1</sup>Of the 6,942 cases, 901 received a §5K1.1 substantial assistance departure. Of these, 845 had complete guideline application information. Due to an inability to calculate the extent of departure for cases with a guideline minimum of life, an additional 14 cases were also excluded from this table. Of the remaining 831 cases, four were excluded due to missing sentence information. Note that the information presented in this table does include sentences of probation, but does not include any time of alternative confinement as described in USSG §5C1.1. Descriptions of variables used in this table are provided in Appendix A.

SOURCE: U.S. Sentencing Commission, Preliminary 2008 Datafile, USSCFY08.

**Table 5A**

**§5K1.1 SUBSTANTIAL ASSISTANCE DEPARTURE CASES: DEGREE OF  
DECREASE FOR OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY<sup>1</sup>  
Fiscal Year 2005, Post-Booker - 2007**

<b>PRIMARY OFFENSE</b>	<b>n</b>	<b>Median Sentence in Months</b>	<b>Median Decrease in Months From Guideline Minimum</b>	<b>Median Percent Decrease From Guideline Minimum</b>
<b>TOTAL</b>	<b>26,099</b>	<b>36.0</b>	<b>29.0</b>	<b>48.2</b>
<b>Murder</b>	13	78.0	66.0	47.5
<b>Manslaughter</b>	1	--	--	--
<b>Kidnapping/Hostage Taking</b>	36	115.0	76.5	44.0
<b>Sexual Abuse</b>	15	30.0	23.0	39.1
<b>Assault</b>	26	30.0	17.5	46.8
<b>Robbery</b>	384	50.5	27.0	34.0
<b>Arson</b>	46	40.0	28.0	47.3
<b>Drugs - Trafficking</b>	16,448	51.0	40.0	43.9
<b>Drugs - Communication Facility</b>	186	12.0	17.5	62.5
<b>Drugs - Simple Possession</b>	21	2.6	10.0	66.7
<b>Firearms</b>	2,386	40.0	25.0	44.4
<b>Burglary/B&amp;E</b>	3	5.0	3.0	37.5
<b>Auto Theft</b>	26	22.5	18.0	38.0
<b>Larceny</b>	281	5.0	10.0	72.2
<b>Fraud</b>	2,742	3.0	12.0	85.5
<b>Embezzlement</b>	42	0.0	12.0	99.8
<b>Forgery/Counterfeiting</b>	293	3.0	9.0	80.0
<b>Bribery</b>	182	5.0	18.0	86.7
<b>Tax</b>	250	0.0	10.0	100.0
<b>Money Laundering</b>	615	15.0	23.0	59.9
<b>Racketeering/Extortion</b>	367	30.0	31.0	51.4
<b>Gambling/Lottery</b>	39	0.0	8.0	100.0
<b>Civil Rights</b>	35	8.0	12.0	70.7
<b>Immigration</b>	857	12.0	10.0	48.7
<b>Pornography/Prostitution</b>	147	46.0	28.0	38.3
<b>Prison Offenses</b>	33	12.0	9.0	54.1
<b>Administration of Justice Offenses</b>	327	0.0	12.0	100.0
<b>Environmental/Wildlife</b>	42	0.0	12.0	100.0
<b>National Defense</b>	21	12.0	22.0	63.7
<b>Antitrust</b>	15	5.0	10.0	72.2
<b>Food &amp; Drug</b>	19	0.0	12.0	100.0
<b>Other Miscellaneous Offenses</b>	201	0.0	12.0	100.0

<sup>1</sup>Of the 199,124 cases, 27,712 received a §5K1.1 substantial assistance departure. Of these, 26,529 had complete guideline application information. Due to an inability to calculate the extent of departure for cases with a guideline minimum of life, an additional 341 cases were also excluded from this table. Furthermore, 38 cases were excluded due to several logical criteria. Of the remaining 26,150 cases, 51 were excluded due to missing sentence information. Note that the information presented in this table does include sentences of probation, but does not include any time of alternative confinement as described in USSG §5C1.1. Descriptions of variables used in this table are provided in Appendix A.

**Table 6**

**§5K3.1 EARLY DISPOSITION PROGRAM DEPARTURE CASES: DEGREE OF DECREASE FOR OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY<sup>1</sup>**  
**2008 Post-Kimbrough/Gall Preliminary Data**

<b>PRIMARY OFFENSE</b>	<b>n</b>	<b>Median Sentence in Months</b>	<b>Median Decrease in Months From Guideline Minimum</b>	<b>Median Percent Decrease From Guideline Minimum</b>
<b>TOTAL</b>	<b>519</b>	<b>15.0</b>	<b>6.0</b>	<b>28.3</b>
Murder	0	--	--	--
Manslaughter	0	--	--	--
Kidnapping/Hostage Taking	0	--	--	--
Sexual Abuse	1	--	--	--
Assault	2	--	--	--
Robbery	0	--	--	--
Arson	0	--	--	--
Drugs - Trafficking	120	13.0	10.0	40.0
Drugs - Communication Facility	0	--	--	--
Drugs - Simple Possession	0	--	--	--
Firearms	3	21.0	3.0	11.1
Burglary/B&E	0	--	--	--
Auto Theft	0	--	--	--
Larceny	1	--	--	--
Fraud	0	--	--	--
Embezzlement	0	--	--	--
Forgery/Counterfeiting	0	--	--	--
Bribery	0	--	--	--
Tax	0	--	--	--
Money Laundering	1	--	--	--
Racketeering/Extortion	0	--	--	--
Gambling/Lottery	0	--	--	--
Civil Rights	0	--	--	--
Immigration	391	18.0	6.0	27.8
Pornography/Prostitution	0	--	--	--
Prison Offenses	0	--	--	--
Administration of Justice Offenses	0	--	--	--
Environmental/Wildlife	0	--	--	--
National Defense	0	--	--	--
Antitrust	0	--	--	--
Food & Drug	0	--	--	--
Other Miscellaneous Offenses	0	--	--	--

<sup>1</sup>Of the 6,942 cases, 560 received a §5K3.1 early disposition program departure. Of these, 519 had complete guideline application information. Note that the information presented in this table does include sentences of probation, but does not include any time of alternative confinement as described in USSG §5C1.1. Descriptions of variables used in this table are provided in Appendix A.

SOURCE: U.S. Sentencing Commission, Preliminary 2008 Datafile, USSCFY08.

**Table 6A**

**§5K3.1 EARLY DISPOSITION PROGRAM DEPARTURE CASES: DEGREE OF DECREASE FOR OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY<sup>1</sup>**  
**Fiscal Year 2005, Post-Booker - 2007**

<b>PRIMARY OFFENSE</b>	<b>n</b>	<b>Median Sentence in Months</b>	<b>Median Decrease in Months From Guideline Minimum</b>	<b>Median Percent Decrease From Guideline Minimum</b>
<b>TOTAL</b>	<b>13,009</b>	<b>18.0</b>	<b>7.0</b>	<b>27.8</b>
<b>Murder</b>	0	--	--	--
<b>Manslaughter</b>	1	--	--	--
<b>Kidnapping/Hostage Taking</b>	2	--	--	--
<b>Sexual Abuse</b>	1	--	--	--
<b>Assault</b>	19	15.0	6.0	33.3
<b>Robbery</b>	1	--	--	--
<b>Arson</b>	0	--	--	--
<b>Drugs - Trafficking</b>	3,151	13.0	10.0	40.0
<b>Drugs - Communication Facility</b>	0	--	--	--
<b>Drugs - Simple Possession</b>	1	--	--	--
<b>Firearms</b>	97	12.0	6.0	21.1
<b>Burglary/B&amp;E</b>	0	--	--	--
<b>Auto Theft</b>	0	--	--	--
<b>Larceny</b>	14	6.0	8.1	50.0
<b>Fraud</b>	9	0.0	6.0	100.0
<b>Embezzlement</b>	0	--	--	--
<b>Forgery/Counterfeiting</b>	5	4.4	5.6	58.3
<b>Bribery</b>	1	--	--	--
<b>Tax</b>	5	0.0	12.0	99.8
<b>Money Laundering</b>	20	3.9	6.0	60.0
<b>Racketeering/Extortion</b>	0	--	--	--
<b>Gambling/Lottery</b>	0	--	--	--
<b>Civil Rights</b>	1	--	--	--
<b>Immigration</b>	9,627	21.0	6.0	26.0
<b>Pornography/Prostitution</b>	11	28.0	21.0	43.2
<b>Prison Offenses</b>	13	10.0	5.0	22.2
<b>Administration of Justice Offenses</b>	17	6.0	5.5	43.1
<b>Environmental/Wildlife</b>	2	--	--	--
<b>National Defense</b>	1	--	--	--
<b>Antitrust</b>	0	--	--	--
<b>Food &amp; Drug</b>	0	--	--	--
<b>Other Miscellaneous Offenses</b>	10	6.0	6.0	57.8

<sup>1</sup>Of the 199,124 cases, 13,607 received a §5K3.1 early disposition program departure. Of these, 13,057 had complete guideline application information. 35 additional cases were excluded due to several logical criteria. Of the remaining 13,022 cases, 13 were excluded due to missing sentence information. Note that the information presented in this table does include sentences of probation, but does not include any time of alternative confinement as described in USSG §5C1.1. Descriptions of variables used in this table are provided in Appendix A.

**Table 7**

**OTHER GOVERNMENT SPONSORED BELOW RANGE CASES: DEGREE OF DECREASE FOR OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY<sup>1</sup>**  
**2008 Post-Kimbrough/Gall Preliminary Data**

<b>PRIMARY OFFENSE</b>	<b>n</b>	<b>Median Sentence in Months</b>	<b>Median Decrease in Months From Guideline Minimum</b>	<b>Median Percent Decrease From Guideline Minimum</b>
<b>TOTAL</b>	<b>217</b>	<b>21.0</b>	<b>9.0</b>	<b>25.9</b>
<b>Murder</b>	0	--	--	--
<b>Manslaughter</b>	0	--	--	--
<b>Kidnapping/Hostage Taking</b>	1	--	--	--
<b>Sexual Abuse</b>	1	--	--	--
<b>Assault</b>	3	32.0	5.0	19.0
<b>Robbery</b>	4	48.0	9.0	15.8
<b>Arson</b>	0	--	--	--
<b>Drugs - Trafficking</b>	64	75.0	19.5	21.9
<b>Drugs - Communication Facility</b>	1	--	--	--
<b>Drugs - Simple Possession</b>	2	--	--	--
<b>Firearms</b>	17	51.0	13.0	22.2
<b>Burglary/B&amp;E</b>	0	--	--	--
<b>Auto Theft</b>	0	--	--	--
<b>Larceny</b>	2	--	--	--
<b>Fraud</b>	12	0.0	9.0	99.8
<b>Embezzlement</b>	0	--	--	--
<b>Forgery/Counterfeiting</b>	0	--	--	--
<b>Bribery</b>	1	--	--	--
<b>Tax</b>	2	--	--	--
<b>Money Laundering</b>	2	--	--	--
<b>Racketeering/Extortion</b>	4	36.0	7.0	9.7
<b>Gambling/Lottery</b>	0	--	--	--
<b>Civil Rights</b>	0	--	--	--
<b>Immigration</b>	82	12.0	4.0	25.0
<b>Pornography/Prostitution</b>	9	60.0	27.0	33.3
<b>Prison Offenses</b>	1	--	--	--
<b>Administration of Justice Offenses</b>	6	0.0	13.5	100.0
<b>Environmental/Wildlife</b>	0	--	--	--
<b>National Defense</b>	0	--	--	--
<b>Antitrust</b>	0	--	--	--
<b>Food &amp; Drug</b>	1	--	--	--
<b>Other Miscellaneous Offenses</b>	2	--	--	--

<sup>1</sup>Of the 6,942 cases, 231 received an other government sponsored downward departure. Of these, 218 had complete guideline application information. Due to an inability to calculate the extent of departure for cases with a guideline minimum of life, one additional case was excluded from this table. Note that the information presented in this table does include sentences of probation, but does not include any time of alternative confinement as described in USSG §5C1.1. Descriptions of variables used in this table are provided in Appendix A.

SOURCE: U.S. Sentencing Commission, Preliminary 2008 Datafile, USSCFY08.

**Table 7A**

**OTHER GOVERNMENT SPONSORED BELOW RANGE CASES: DEGREE OF DECREASE FOR OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY<sup>1</sup>**  
**Fiscal Year 2005, Post-Booker - 2007**

<b>PRIMARY OFFENSE</b>	<b>n</b>	<b>Median Sentence in Months</b>	<b>Median Decrease in Months From Guideline Minimum</b>	<b>Median Percent Decrease From Guideline Minimum</b>
<b>TOTAL</b>	<b>5,491</b>	<b>24.0</b>	<b>10.0</b>	<b>30.0</b>
<b>Murder</b>	11	90.0	72.0	35.7
<b>Manslaughter</b>	5	37.0	9.0	37.5
<b>Kidnapping/Hostage Taking</b>	13	145.0	60.0	23.8
<b>Sexual Abuse</b>	64	38.0	20.0	35.1
<b>Assault</b>	102	18.0	12.0	47.0
<b>Robbery</b>	80	65.0	27.0	29.7
<b>Arson</b>	4	42.0	19.5	33.7
<b>Drugs - Trafficking</b>	1,849	60.0	19.0	27.0
<b>Drugs - Communication Facility</b>	34	24.0	24.0	50.0
<b>Drugs - Simple Possession</b>	7	6.0	9.0	40.0
<b>Firearms</b>	533	36.0	15.0	30.0
<b>Burglary/B&amp;E</b>	3	10.0	27.0	73.0
<b>Auto Theft</b>	3	93.0	42.0	14.7
<b>Larceny</b>	77	0.0	10.0	100.0
<b>Fraud</b>	369	5.0	10.0	66.7
<b>Embezzlement</b>	24	0.0	8.0	99.7
<b>Forgery/Counterfeiting</b>	45	4.0	10.0	66.7
<b>Bribery</b>	20	2.5	10.0	93.3
<b>Tax</b>	44	1.2	10.0	95.1
<b>Money Laundering</b>	106	17.0	12.0	38.4
<b>Racketeering/Extortion</b>	95	46.0	20.8	33.3
<b>Gambling/Lottery</b>	7	0.0	8.0	100.0
<b>Civil Rights</b>	6	0.0	20.0	100.0
<b>Immigration</b>	1,597	12.0	4.0	22.2
<b>Pornography/Prostitution</b>	135	60.0	30.0	29.6
<b>Prison Offenses</b>	21	12.0	9.0	28.1
<b>Administration of Justice Offenses</b>	127	9.8	12.0	51.4
<b>Environmental/Wildlife</b>	21	0.0	10.0	100.0
<b>National Defense</b>	7	12.0	19.0	63.3
<b>Antitrust</b>	1	--	--	--
<b>Food &amp; Drug</b>	8	17.0	14.5	39.7
<b>Other Miscellaneous Offenses</b>	73	0.0	11.6	100.0

<sup>1</sup>Of the 199,124 cases, 6,034 received an other government sponsored downward departure. Of these, 5,541 had complete guideline application information. Due to an inability to calculate the extent of departure for cases with a guideline minimum of life, an additional 25 cases were also excluded from this table. Furthermore, 13 cases were excluded due to several logical criteria. Of the remaining 5,503 cases, 12 were excluded due to missing sentence information. Note that the information presented in this table does include sentences of probation, but does not include any time of alternative confinement as described in USSG §5C1.1. Descriptions of variables used in this table are provided in Appendix A.

SOURCE: U.S. Sentencing Commission, 2005 - 2007 Datafiles, USSCFY05 - USSCFY07.

**Table 8**

**DOWNWARD DEPARTURES FROM GUIDELINE RANGE: DEGREE OF DECREASE FOR OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY<sup>1</sup>**  
**2008 Post-Kimbrough/Gall Preliminary Data**

<b>PRIMARY OFFENSE</b>	<b>n</b>	<b>Median Sentence in Months</b>	<b>Median Decrease in Months From Guideline Minimum</b>	<b>Median Percent Decrease From Guideline Minimum</b>
<b>TOTAL</b>	<b>138</b>	<b>24.0</b>	<b>10.0</b>	<b>25.0</b>
Murder	0	--	--	--
Manslaughter	0	--	--	--
Kidnapping/Hostage Taking	0	--	--	--
Sexual Abuse	0	--	--	--
Assault	3	38.0	8.0	17.4
Robbery	2	--	--	--
Arson	0	--	--	--
Drugs - Trafficking	42	81.5	15.5	19.4
Drugs - Communication Facility	0	--	--	--
Drugs - Simple Possession	0	--	--	--
Firearms	18	27.0	10.0	32.4
Burglary/B&E	0	--	--	--
Auto Theft	0	--	--	--
Larceny	3	0.0	6.0	100.0
Fraud	13	5.0	10.0	58.3
Embezzlement	1	--	--	--
Forgery/Counterfeiting	1	--	--	--
Bribery	0	--	--	--
Tax	4	8.0	9.0	66.7
Money Laundering	0	--	--	--
Racketeering/Extortion	1	--	--	--
Gambling/Lottery	0	--	--	--
Civil Rights	0	--	--	--
Immigration	46	18.0	6.0	25.0
Pornography/Prostitution	3	60.0	14.0	26.7
Prison Offenses	0	--	--	--
Administration of Justice Offenses	0	--	--	--
Environmental/Wildlife	0	--	--	--
National Defense	1	--	--	--
Antitrust	0	--	--	--
Food & Drug	0	--	--	--
Other Miscellaneous Offenses	0	--	--	--

<sup>1</sup>Of the 6,942 cases, 144 received a downward departure from the guideline range. Of these, 138 had complete guideline application information. Note that the information presented in this table does include sentences of probation, but does not include any time of alternative confinement as described in USSG §5C1.1. Descriptions of variables used in this table are provided in Appendix A.

SOURCE: U.S. Sentencing Commission, Preliminary 2008 Datafile, USSCFY08.

**Table 8A**

**DOWNWARD DEPARTURES FROM GUIDELINE RANGE: DEGREE OF  
DECREASE FOR OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY<sup>1</sup>  
Fiscal Year 2005, Post-Booker - 2007**

<b>PRIMARY OFFENSE</b>	<b>n</b>	<b>Median Sentence in Months</b>	<b>Median Decrease in Months From Guideline Minimum</b>	<b>Median Percent Decrease From Guideline Minimum</b>
<b>TOTAL</b>	<b>4,546</b>	<b>24.0</b>	<b>10.0</b>	<b>29.5</b>
<b>Murder</b>	5	70.0	27.0	27.8
<b>Manslaughter</b>	7	21.0	12.0	26.8
<b>Kidnapping/Hostage Taking</b>	0	--	--	--
<b>Sexual Abuse</b>	19	24.0	7.0	14.3
<b>Assault</b>	53	12.0	8.0	42.4
<b>Robbery</b>	125	46.0	11.0	20.0
<b>Arson</b>	1	--	--	--
<b>Drugs - Trafficking</b>	1,411	60.0	15.0	22.9
<b>Drugs - Communication Facility</b>	20	12.0	10.0	37.4
<b>Drugs - Simple Possession</b>	3	70.0	16.0	23.9
<b>Firearms</b>	601	27.0	11.0	26.0
<b>Burglary/B&amp;E</b>	2	--	--	--
<b>Auto Theft</b>	4	87.5	64.5	36.3
<b>Larceny</b>	97	0.0	8.0	100.0
<b>Fraud</b>	480	3.0	10.0	80.0
<b>Embezzlement</b>	31	0.0	10.0	99.5
<b>Forgery/Counterfeiting</b>	55	5.0	8.0	60.0
<b>Bribery</b>	11	0.0	8.0	100.0
<b>Tax</b>	91	0.0	10.0	100.0
<b>Money Laundering</b>	57	16.0	12.0	49.9
<b>Racketeering/Extortion</b>	41	30.0	12.0	27.5
<b>Gambling/Lottery</b>	8	0.0	8.0	100.0
<b>Civil Rights</b>	7	0.0	6.0	100.0
<b>Immigration</b>	1,122	24.0	7.0	23.6
<b>Pornography/Prostitution</b>	96	24.0	21.0	36.6
<b>Prison Offenses</b>	16	15.0	4.5	33.3
<b>Administration of Justice Offenses</b>	90	0.0	10.0	100.0
<b>Environmental/Wildlife</b>	16	0.0	8.5	100.0
<b>National Defense</b>	5	10.0	18.0	72.2
<b>Antitrust</b>	1	--	--	--
<b>Food &amp; Drug</b>	1	--	--	--
<b>Other Miscellaneous Offenses</b>	70	0.0	10.0	100.0

<sup>1</sup>Of the 199,124 cases, 4,857 received a downward departure from the guideline range. Of these, 4,565 had complete guideline application information. Due to an inability to calculate the extent of departure for cases with a guideline minimum of life, an additional nine cases were also excluded from this table. Furthermore, two cases were excluded due to several logical criteria. Of the remaining 4,554 cases, eight were excluded due to missing sentence information. Note that the information presented in this table does include sentences of probation, but does not include any time of alternative confinement as described in USSG §5C1.1. Descriptions of variables used in this table are provided in Appendix A.

**Table 9**

**DOWNWARD DEPARTURES WITH *BOOKER* /18 U.S.C. § 3553: DEGREE  
OF DECREASE FOR OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY<sup>1</sup>  
2008 Post-Kimbrough/Gall Preliminary Data**

<b>PRIMARY OFFENSE</b>	<b>n</b>	<b>Median Sentence in Months</b>	<b>Median Decrease in Months From Guideline Minimum</b>	<b>Median Percent Decrease From Guideline Minimum</b>
<b>TOTAL</b>	<b>93</b>	<b>30.0</b>	<b>18.0</b>	<b>34.9</b>
<b>Murder</b>	1	--	--	--
<b>Manslaughter</b>	0	--	--	--
<b>Kidnapping/Hostage Taking</b>	0	--	--	--
<b>Sexual Abuse</b>	0	--	--	--
<b>Assault</b>	0	--	--	--
<b>Robbery</b>	2	--	--	--
<b>Arson</b>	0	--	--	--
<b>Drugs - Trafficking</b>	38	79.0	30.5	26.3
<b>Drugs - Communication Facility</b>	0	--	--	--
<b>Drugs - Simple Possession</b>	0	--	--	--
<b>Firearms</b>	15	28.0	18.0	31.4
<b>Burglary/B&amp;E</b>	0	--	--	--
<b>Auto Theft</b>	0	--	--	--
<b>Larceny</b>	0	--	--	--
<b>Fraud</b>	13	6.0	12.0	70.0
<b>Embezzlement</b>	0	--	--	--
<b>Forgery/Counterfeiting</b>	0	--	--	--
<b>Bribery</b>	1	--	--	--
<b>Tax</b>	5	0.0	6.0	100.0
<b>Money Laundering</b>	1	--	--	--
<b>Racketeering/Extortion</b>	0	--	--	--
<b>Gambling/Lottery</b>	0	--	--	--
<b>Civil Rights</b>	0	--	--	--
<b>Immigration</b>	6	23.0	10.0	32.0
<b>Pornography/Prostitution</b>	5	54.0	18.0	30.8
<b>Prison Offenses</b>	1	--	--	--
<b>Administration of Justice Offenses</b>	3	18.0	10.0	40.0
<b>Environmental/Wildlife</b>	1	--	--	--
<b>National Defense</b>	0	--	--	--
<b>Antitrust</b>	0	--	--	--
<b>Food &amp; Drug</b>	0	--	--	--
<b>Other Miscellaneous Offenses</b>	1	--	--	--

<sup>1</sup>Of the 6,942 cases, 98 received a downward departure from the guideline range with *Booker*/ 18 U.S.C § 3553. Of these, 94 had complete guideline application information. Due to an inability to calculate the extent of departure for cases with a guideline minimum of life, one additional case was excluded from this table. Note that the information presented in this table does include sentences of probation, but does not include any time of alternative confinement as described in USSG §5C1.1. Descriptions of variables used in this table are provided in Appendix A.

SOURCE: U.S. Sentencing Commission, Preliminary 2008 Datafile, USSCFY08.

**Table 9A**

**DOWNWARD DEPARTURES WITH *BOOKER* /18 U.S.C. § 3553: DEGREE  
OF DECREASE FOR OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY<sup>1</sup>  
Fiscal Year 2005, Post-Booker - 2007**

<b>PRIMARY OFFENSE</b>	<b>n</b>	<b>Median Sentence in Months</b>	<b>Median Decrease in Months From Guideline Minimum</b>	<b>Median Percent Decrease From Guideline Minimum</b>
<b>TOTAL</b>	<b>2,720</b>	<b>24.0</b>	<b>15.0</b>	<b>40.0</b>
<b>Murder</b>	4	78.0	36.0	26.7
<b>Manslaughter</b>	2	--	--	--
<b>Kidnapping/Hostage Taking</b>	0	--	--	--
<b>Sexual Abuse</b>	17	37.0	21.0	26.1
<b>Assault</b>	33	3.0	12.0	83.8
<b>Robbery</b>	82	46.5	17.0	23.4
<b>Arson</b>	0	--	--	--
<b>Drugs - Trafficking</b>	974	60.0	22.0	31.3
<b>Drugs - Communication Facility</b>	20	3.8	24.0	83.0
<b>Drugs - Simple Possession</b>	7	0.0	12.0	100.0
<b>Firearms</b>	386	24.0	14.0	35.1
<b>Burglary/B&amp;E</b>	3	13.0	6.0	25.0
<b>Auto Theft</b>	2	--	--	--
<b>Larceny</b>	49	0.0	10.0	100.0
<b>Fraud</b>	347	6.0	12.0	66.7
<b>Embezzlement</b>	37	0.0	10.0	99.7
<b>Forgery/Counterfeiting</b>	45	3.0	9.3	85.7
<b>Bribery</b>	7	12.0	15.0	50.0
<b>Tax</b>	55	0.0	10.0	100.0
<b>Money Laundering</b>	76	12.5	12.0	52.4
<b>Racketeering/Extortion</b>	23	15.0	24.0	41.7
<b>Gambling/Lottery</b>	4	2.4	8.5	78.9
<b>Civil Rights</b>	2	--	--	--
<b>Immigration</b>	332	22.0	12.0	34.8
<b>Pornography/Prostitution</b>	97	36.0	23.0	41.0
<b>Prison Offenses</b>	12	8.1	3.0	32.9
<b>Administration of Justice Offenses</b>	53	2.1	10.0	90.0
<b>Environmental/Wildlife</b>	6	0.0	7.0	100.0
<b>National Defense</b>	3	40.0	12.0	25.8
<b>Antitrust</b>	3	0.0	15.0	100.0
<b>Food &amp; Drug</b>	1	--	--	--
<b>Other Miscellaneous Offenses</b>	38	0.0	12.0	100.0

<sup>1</sup>Of the 199,124 cases, 2,932 received a downward departure from the guideline range with *Booker*/ 18 U.S.C § 3553. Of these, 2,735 had complete guideline application information. Due to an inability to calculate the extent of departure for cases with a guideline minimum of life, an additional 11 cases were also excluded from this table. Of the remaining 2,724 cases, four were excluded due to missing sentence information. Note that the information presented in this table does include sentences of probation, but does not include any time of alternative confinement as described in USSG §5C1.1. Descriptions of variables used in this table are provided in Appendix A.

**Table 10**

**BELOW GUIDELINE RANGE WITH *BOOKER*/18 U.S.C. § 3553: DEGREE  
OF DECREASE FOR OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY<sup>1</sup>  
2008 Post-Kimbrough/Gall Preliminary Data**

<b>PRIMARY OFFENSE</b>	<b>n</b>	<b>Median Sentence in Months</b>	<b>Median Decrease in Months From Guideline Minimum</b>	<b>Median Percent Decrease From Guideline Minimum</b>
<b>TOTAL</b>	<b>558</b>	<b>24.0</b>	<b>12.0</b>	<b>33.3</b>
<b>Murder</b>	2	--	--	--
<b>Manslaughter</b>	1	--	--	--
<b>Kidnapping/Hostage Taking</b>	1	--	--	--
<b>Sexual Abuse</b>	2	--	--	--
<b>Assault</b>	4	20.0	8.8	32.8
<b>Robbery</b>	10	52.5	9.5	20.5
<b>Arson</b>	1	--	--	--
<b>Drugs - Trafficking</b>	206	60.0	15.0	23.2
<b>Drugs - Communication Facility</b>	3	24.0	13.0	35.1
<b>Drugs - Simple Possession</b>	0	--	--	--
<b>Firearms</b>	59	24.0	12.0	33.2
<b>Burglary/B&amp;E</b>	0	--	--	--
<b>Auto Theft</b>	0	--	--	--
<b>Larceny</b>	12	0.0	6.0	100.0
<b>Fraud</b>	64	11.0	12.0	58.7
<b>Embezzlement</b>	6	7.5	8.5	52.3
<b>Forgery/Counterfeiting</b>	10	6.2	10.5	58.7
<b>Bribery</b>	5	4.0	11.0	73.3
<b>Tax</b>	10	0.0	12.0	100.0
<b>Money Laundering</b>	9	24.0	15.0	40.5
<b>Racketeering/Extortion</b>	3	39.0	10.0	21.7
<b>Gambling/Lottery</b>	1	--	--	--
<b>Civil Rights</b>	2	--	--	--
<b>Immigration</b>	73	24.0	11.0	28.6
<b>Pornography/Prostitution</b>	38	60.0	29.0	37.3
<b>Prison Offenses</b>	6	4.7	8.5	55.1
<b>Administration of Justice Offenses</b>	15	8.3	9.0	44.9
<b>Environmental/Wildlife</b>	4	0.0	8.0	100.0
<b>National Defense</b>	0	--	--	--
<b>Antitrust</b>	0	--	--	--
<b>Food &amp; Drug</b>	0	--	--	--
<b>Other Miscellaneous Offenses</b>	11	0.0	10.0	100.0

<sup>1</sup>Of the 6,942 cases, 597 were sentenced below the guideline range with *Booker*/18 U.S.C § 3553. Of these, 563 had complete guideline application information. Due to an inability to calculate the extent of departure for cases with a guideline minimum of life, an additional two cases were also excluded from this table. Of the remaining 561 cases, three were excluded due to missing sentence information. Note that the information presented in this table does include sentences of probation, but does not include any time of alternative confinement as described in USSG §5C1.1. Descriptions of variables used in this table are provided in Appendix A.

SOURCE: U.S. Sentencing Commission, Preliminary 2008 Datafile, USSCFY08.

Table 10A

**BELOW GUIDELINE RANGE WITH *BOOKER*/18 U.S.C. § 3553: DEGREE  
OF DECREASE FOR OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY<sup>1</sup>  
Fiscal Year 2005, Post-Booker - 2007**

<b>PRIMARY OFFENSE</b>	<b>n</b>	<b>Median Sentence in Months</b>	<b>Median Decrease in Months From Guideline Minimum</b>	<b>Median Percent Decrease From Guideline Minimum</b>
<b>TOTAL</b>	<b>11,540</b>	<b>27.0</b>	<b>12.0</b>	<b>33.3</b>
<b>Murder</b>	10	108.0	22.0	19.8
<b>Manslaughter</b>	15	18.0	12.0	40.0
<b>Kidnapping/Hostage Taking</b>	7	216.0	60.0	26.0
<b>Sexual Abuse</b>	58	36.0	17.5	34.8
<b>Assault</b>	97	12.0	10.0	44.4
<b>Robbery</b>	234	51.0	13.0	20.5
<b>Arson</b>	3	24.0	13.0	35.1
<b>Drugs - Trafficking</b>	4,055	60.0	19.0	23.4
<b>Drugs - Communication Facility</b>	96	24.0	14.5	34.2
<b>Drugs - Simple Possession</b>	22	3.9	6.1	66.4
<b>Firearms</b>	1,587	27.0	12.0	28.6
<b>Burglary/B&amp;E</b>	10	6.0	8.5	56.2
<b>Auto Theft</b>	11	8.0	7.0	50.0
<b>Larceny</b>	243	0.0	9.0	100.0
<b>Fraud</b>	1,430	5.0	10.0	67.4
<b>Embezzlement</b>	133	0.0	9.0	99.6
<b>Forgery/Counterfeiting</b>	205	3.0	9.0	78.4
<b>Bribery</b>	51	6.0	10.0	74.5
<b>Tax</b>	252	3.0	10.0	77.5
<b>Money Laundering</b>	226	18.0	13.5	47.4
<b>Racketeering/Extortion</b>	122	30.0	12.0	33.3
<b>Gambling/Lottery</b>	28	0.0	6.0	100.0
<b>Civil Rights</b>	14	13.0	11.5	66.7
<b>Immigration</b>	1,623	24.0	10.0	33.2
<b>Pornography/Prostitution</b>	496	48.0	24.0	33.3
<b>Prison Offenses</b>	44	11.0	7.8	35.1
<b>Administration of Justice Offenses</b>	219	6.0	10.0	63.5
<b>Environmental/Wildlife</b>	29	0.0	6.0	100.0
<b>National Defense</b>	8	33.5	34.0	52.4
<b>Antitrust</b>	5	6.0	7.0	50.0
<b>Food &amp; Drug</b>	7	0.0	10.0	100.0
<b>Other Miscellaneous Offenses</b>	200	0.0	10.0	100.0

<sup>1</sup>Of the 199,124 cases, 12,399 were sentenced below the guideline range with *Booker*/18 U.S.C § 3553. Of these, 11,681 had complete guideline application information. Due to an inability to calculate the extent of departure for cases with a guideline minimum of life, an additional 115 cases were also excluded from this table. Furthermore, six cases were excluded due to several logical criteria. Of the remaining 11,560 cases, 20 were excluded due to one or both of the following reasons: missing primary offense category (1) or missing sentence information (19). Note that the information presented in this table does include sentences of probation, but does not include any time of alternative confinement as described in USSG §5C1.1. Descriptions of variables used in this table are provided in Appendix A.

**Table 11**

**ALL REMAINING BELOW GUIDELINE RANGE CASES: DEGREE OF  
DECREASE FOR OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY<sup>1</sup>  
2008 Post-Kimbrough/Gall Preliminary Data**

<b>PRIMARY OFFENSE</b>	<b>n</b>	<b>Median Sentence in Months</b>	<b>Median Decrease in Months From Guideline Minimum</b>	<b>Median Percent Decrease From Guideline Minimum</b>
<b>TOTAL</b>	<b>57</b>	<b>24.0</b>	<b>7.0</b>	<b>31.0</b>
<b>Murder</b>	0	--	--	--
<b>Manslaughter</b>	0	--	--	--
<b>Kidnapping/Hostage Taking</b>	0	--	--	--
<b>Sexual Abuse</b>	0	--	--	--
<b>Assault</b>	1	--	--	--
<b>Robbery</b>	1	--	--	--
<b>Arson</b>	0	--	--	--
<b>Drugs - Trafficking</b>	16	53.0	8.5	28.9
<b>Drugs - Communication Facility</b>	1	--	--	--
<b>Drugs - Simple Possession</b>	0	--	--	--
<b>Firearms</b>	13	72.0	10.0	12.5
<b>Burglary/B&amp;E</b>	0	--	--	--
<b>Auto Theft</b>	0	--	--	--
<b>Larceny</b>	1	--	--	--
<b>Fraud</b>	4	0.0	5.0	100.0
<b>Embezzlement</b>	0	--	--	--
<b>Forgery/Counterfeiting</b>	0	--	--	--
<b>Bribery</b>	0	--	--	--
<b>Tax</b>	1	--	--	--
<b>Money Laundering</b>	2	--	--	--
<b>Racketeering/Extortion</b>	0	--	--	--
<b>Gambling/Lottery</b>	0	--	--	--
<b>Civil Rights</b>	0	--	--	--
<b>Immigration</b>	10	14.0	6.0	34.0
<b>Pornography/Prostitution</b>	2	--	--	--
<b>Prison Offenses</b>	0	--	--	--
<b>Administration of Justice Offenses</b>	2	--	--	--
<b>Environmental/Wildlife</b>	0	--	--	--
<b>National Defense</b>	0	--	--	--
<b>Antitrust</b>	0	--	--	--
<b>Food &amp; Drug</b>	0	--	--	--
<b>Other Miscellaneous Offenses</b>	3	0.0	8.0	100.0

<sup>1</sup>Of the 6,942 cases, 68 were otherwise sentenced below the guideline range. Of these, 57 had complete guideline application information. Note that the information presented in this table does include sentences of probation, but does not include any time of alternative confinement as described in USSG §5C1.1. Descriptions of variables used in this table are provided in Appendix A.

SOURCE: U.S. Sentencing Commission, Preliminary 2008 Datafile, USSCFY08.

Table 11A

**ALL REMAINING BELOW GUIDELINE RANGE CASES: DEGREE OF  
DECREASE FOR OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY<sup>1</sup>  
Fiscal Year 2005, Post-Booker - 2007**

<b>PRIMARY OFFENSE</b>	<b>n</b>	<b>Median Sentence in Months</b>	<b>Median Decrease in Months From Guideline Minimum</b>	<b>Median Percent Decrease From Guideline Minimum</b>
<b>TOTAL</b>	<b>2,977</b>	<b>18.0</b>	<b>10.0</b>	<b>40.0</b>
Murder	1	--	--	--
Manslaughter	1	--	--	--
Kidnapping/Hostage Taking	3	324.0	84.0	20.6
Sexual Abuse	14	36.0	16.5	24.2
Assault	30	3.5	6.0	67.5
Robbery	60	48.0	17.5	23.0
Arson	0	--	--	--
Drugs - Trafficking	905	57.0	15.0	28.6
Drugs - Communication Facility	23	24.0	10.0	37.5
Drugs - Simple Possession	14	2.0	4.2	81.4
Firearms	377	36.0	10.0	27.3
Burglary/B&E	4	0.0	6.0	100.0
Auto Theft	2	--	--	--
Larceny	105	0.0	6.0	100.0
Fraud	464	0.0	6.0	99.6
Embezzlement	44	0.0	6.0	99.6
Forgery/Counterfeiting	56	0.0	6.0	100.0
Bribery	19	2.0	12.0	75.0
Tax	66	0.5	9.0	94.9
Money Laundering	72	4.8	6.0	67.0
Racketeering/Extortion	32	33.5	10.0	21.5
Gambling/Lottery	13	0.0	6.0	100.0
Civil Rights	4	2.5	8.5	79.0
Immigration	448	18.0	6.0	33.2
Pornography/Prostitution	62	24.0	12.5	34.0
Prison Offenses	13	12.0	6.0	48.1
Administration of Justice Offenses	62	5.5	7.7	73.1
Environmental/Wildlife	14	0.0	6.0	100.0
National Defense	6	21.0	29.0	50.7
Antitrust	0	--	--	--
Food & Drug	1	--	--	--
Other Miscellaneous Offenses	62	0.0	6.0	100.0

<sup>1</sup>Of the 199,124 cases, 3,441 were otherwise sentenced below the guideline range. Of these, 3,022 had complete guideline application information. Due to an inability to calculate the extent of departure for cases with a guideline minimum of life, an additional 23 cases were also excluded from this table. Furthermore, eight cases were excluded due to several logical criteria. Of the remaining 2,991 cases, 14 were excluded due to missing sentence information. Note that the information presented in this table does include sentences of probation, but does not include any time of alternative confinement as described in USSG §5C1.1. Descriptions of variables used in this table are provided in Appendix A.

**Table 12**

**UPWARD DEPARTURES FROM GUIDELINE RANGE: DEGREE OF  
INCREASE FOR OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY<sup>1</sup>  
2008 Post-Kimbrough/Gall Preliminary Data**

<b>PRIMARY OFFENSE</b>	<b>n</b>	<b>Median Sentence in Months</b>	<b>Median Increase in Months From Guideline Maximum</b>	<b>Median Percent Increase From Guideline Maximum</b>
<b>TOTAL</b>	<b>27</b>	<b>65.0</b>	<b>9.0</b>	<b>35.2</b>
<b>Murder</b>	0	--	--	--
<b>Manslaughter</b>	1	--	--	--
<b>Kidnapping/Hostage Taking</b>	0	--	--	--
<b>Sexual Abuse</b>	0	--	--	--
<b>Assault</b>	2	--	--	--
<b>Robbery</b>	1	--	--	--
<b>Arson</b>	0	--	--	--
<b>Drugs - Trafficking</b>	3	75.0	12.0	19.0
<b>Drugs - Communication Facility</b>	0	--	--	--
<b>Drugs - Simple Possession</b>	0	--	--	--
<b>Firearms</b>	4	83.5	16.5	24.0
<b>Burglary/B&amp;E</b>	0	--	--	--
<b>Auto Theft</b>	0	--	--	--
<b>Larceny</b>	0	--	--	--
<b>Fraud</b>	4	34.5	9.5	69.8
<b>Embezzlement</b>	0	--	--	--
<b>Forgery/Counterfeiting</b>	0	--	--	--
<b>Bribery</b>	0	--	--	--
<b>Tax</b>	0	--	--	--
<b>Money Laundering</b>	0	--	--	--
<b>Racketeering/Extortion</b>	0	--	--	--
<b>Gambling/Lottery</b>	0	--	--	--
<b>Civil Rights</b>	0	--	--	--
<b>Immigration</b>	9	32.0	9.0	14.9
<b>Pornography/Prostitution</b>	1	--	--	--
<b>Prison Offenses</b>	1	--	--	--
<b>Administration of Justice Offenses</b>	1	--	--	--
<b>Environmental/Wildlife</b>	0	--	--	--
<b>National Defense</b>	0	--	--	--
<b>Antitrust</b>	0	--	--	--
<b>Food &amp; Drug</b>	0	--	--	--
<b>Other Miscellaneous Offenses</b>	0	--	--	--

<sup>1</sup>Of the 6,942 cases, 30 received an upward departure from the guideline range. Of these, 27 had complete guideline application information. Note that the information presented in this table does not include any time of alternative confinement as described in USSG §5C1.1. Descriptions of variables used in this table are provided in Appendix A.

SOURCE: U.S. Sentencing Commission, Preliminary 2008 Datafile, USSCFY08.

Table 12A

**UPWARD DEPARTURES FROM GUIDELINE RANGE: DEGREE OF  
INCREASE FOR OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY<sup>1</sup>**  
**Fiscal Year 2005, Post-Booker - 2007**

<b>PRIMARY OFFENSE</b>	<b>n</b>	<b>Median Sentence in Months</b>	<b>Median Increase in Months From Guideline Maximum</b>	<b>Median Percent Increase From Guideline Maximum</b>
<b>TOTAL</b>	<b>778</b>	<b>48.0</b>	<b>11.0</b>	<b>33.3</b>
<b>Murder</b>	10	300.0	105.0	65.5
<b>Manslaughter</b>	8	102.0	18.0	39.0
<b>Kidnapping/Hostage Taking</b>	1	--	--	--
<b>Sexual Abuse</b>	14	66.0	15.0	29.8
<b>Assault</b>	35	70.0	18.0	36.8
<b>Robbery</b>	23	180.0	52.0	50.4
<b>Arson</b>	5	120.0	36.0	42.9
<b>Drugs - Trafficking</b>	85	72.0	14.0	25.0
<b>Drugs - Communication Facility</b>	3	48.0	29.0	25.2
<b>Drugs - Simple Possession</b>	11	12.0	6.0	100.0
<b>Firearms</b>	128	72.0	14.0	26.0
<b>Burglary/B&amp;E</b>	0	--	--	--
<b>Auto Theft</b>	2	--	--	--
<b>Larceny</b>	12	39.0	7.0	34.0
<b>Fraud</b>	74	46.0	11.0	50.0
<b>Embezzlement</b>	0	--	--	--
<b>Forgery/Counterfeiting</b>	26	48.0	14.5	51.2
<b>Bribery</b>	0	--	--	--
<b>Tax</b>	1	--	--	--
<b>Money Laundering</b>	11	108.0	34.0	90.5
<b>Racketeering/Extortion</b>	12	120.0	29.5	26.0
<b>Gambling/Lottery</b>	0	--	--	--
<b>Civil Rights</b>	0	--	--	--
<b>Immigration</b>	240	19.5	6.0	28.6
<b>Pornography/Prostitution</b>	37	110.0	26.0	24.2
<b>Prison Offenses</b>	4	54.0	6.0	13.8
<b>Administration of Justice Offenses</b>	22	30.0	8.5	85.7
<b>Environmental/Wildlife</b>	0	--	--	--
<b>National Defense</b>	0	--	--	--
<b>Antitrust</b>	0	--	--	--
<b>Food &amp; Drug</b>	3	36.0	18.0	100.0
<b>Other Miscellaneous Offenses</b>	11	41.0	8.0	30.4

<sup>1</sup>Of the 199,124 cases, 836 received an upward departure from the guideline range. Of these, 790 had complete guideline application information. Due to an inability to calculate the extent of departure for cases with a sentence of life, an additional four cases were also excluded from this table. Furthermore, four cases were excluded due to several logical criteria. Of the remaining 782 cases, four were excluded due to missing sentence information. Note that the information presented in this table does not include any time of alternative confinement as described in USSG §5C1.1. Descriptions of variables used in this table are provided in Appendix A.

**Table 13**

**UPWARD DEPARTURES WITH *BOOKER*/18 U.S.C. § 3553: DEGREE OF INCREASE FOR OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY<sup>1</sup>**  
**2008 Post-Kimbrough/Gall Preliminary Data**

<b>PRIMARY OFFENSE</b>	<b>n</b>	<b>Median Sentence in Months</b>	<b>Median Increase in Months From Guideline Maximum</b>	<b>Median Percent Increase From Guideline Maximum</b>
<b>TOTAL</b>	<b>14</b>	<b>73.5</b>	<b>28.5</b>	<b>76.2</b>
Murder	0	--	--	--
Manslaughter	0	--	--	--
Kidnapping/Hostage Taking	0	--	--	--
Sexual Abuse	1	--	--	--
Assault	2	--	--	--
Robbery	1	--	--	--
Arson	0	--	--	--
Drugs - Trafficking	0	--	--	--
Drugs - Communication Facility	0	--	--	--
Drugs - Simple Possession	0	--	--	--
Firearms	2	--	--	--
Burglary/B&E	0	--	--	--
Auto Theft	0	--	--	--
Larceny	1	--	--	--
Fraud	1	--	--	--
Embezzlement	1	--	--	--
Forgery/Counterfeiting	0	--	--	--
Bribery	0	--	--	--
Tax	0	--	--	--
Money Laundering	0	--	--	--
Racketeering/Extortion	0	--	--	--
Gambling/Lottery	0	--	--	--
Civil Rights	0	--	--	--
Immigration	2	--	--	--
Pornography/Prostitution	2	--	--	--
Prison Offenses	0	--	--	--
Administration of Justice Offenses	0	--	--	--
Environmental/Wildlife	0	--	--	--
National Defense	0	--	--	--
Antitrust	0	--	--	--
Food & Drug	0	--	--	--
Other Miscellaneous Offenses	1	--	--	--

<sup>1</sup>Of the 6,942 cases, 19 received an upward departure from the guideline range with *Booker*/18 U.S.C § 3553. Of these, 15 had complete guideline application information. One additional case was excluded due to several logical criteria. Note that the information presented in this table does not include any time of alternative confinement as described in USSG §5C1.1. Descriptions of variables used in this table are provided in Appendix A.

SOURCE: U.S. Sentencing Commission, Preliminary 2008 Datafile, USSCFY08.

Table 13A

**UPWARD DEPARTURES WITH *BOOKER*/18 U.S.C. § 3553: DEGREE OF  
INCREASE FOR OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY<sup>1</sup>  
Fiscal Year 2005, Post-Booker - 2007**

<b>PRIMARY OFFENSE</b>	<b>n</b>	<b>Median Sentence in Months</b>	<b>Median Increase in Months From Guideline Maximum</b>	<b>Median Percent Increase From Guideline Maximum</b>
<b>TOTAL</b>	<b>330</b>	<b>70.0</b>	<b>18.0</b>	<b>37.9</b>
<b>Murder</b>	4	276.0	84.5	56.0
<b>Manslaughter</b>	6	84.0	23.0	30.1
<b>Kidnapping/Hostage Taking</b>	0	--	--	--
<b>Sexual Abuse</b>	13	120.0	51.0	48.6
<b>Assault</b>	8	147.5	59.5	86.4
<b>Robbery</b>	12	84.0	16.5	23.1
<b>Arson</b>	4	93.0	17.0	19.6
<b>Drugs - Trafficking</b>	30	110.0	29.0	35.2
<b>Drugs - Communication Facility</b>	2	--	--	--
<b>Drugs - Simple Possession</b>	3	15.0	6.0	100.0
<b>Firearms</b>	61	60.0	15.0	33.3
<b>Burglary/B&amp;E</b>	2	--	--	--
<b>Auto Theft</b>	1	--	--	--
<b>Larceny</b>	5	48.0	13.0	29.7
<b>Fraud</b>	63	60.0	18.0	53.8
<b>Embezzlement</b>	1	--	--	--
<b>Forgery/Counterfeiting</b>	7	78.0	30.0	64.7
<b>Bribery</b>	0	--	--	--
<b>Tax</b>	2	--	--	--
<b>Money Laundering</b>	3	121.0	7.0	11.1
<b>Racketeering/Extortion</b>	5	200.0	46.0	23.5
<b>Gambling/Lottery</b>	0	--	--	--
<b>Civil Rights</b>	0	--	--	--
<b>Immigration</b>	53	40.0	10.0	33.3
<b>Pornography/Prostitution</b>	21	180.0	48.0	40.0
<b>Prison Offenses</b>	1	--	--	--
<b>Administration of Justice Offenses</b>	15	36.0	12.0	71.4
<b>Environmental/Wildlife</b>	1	--	--	--
<b>National Defense</b>	0	--	--	--
<b>Antitrust</b>	0	--	--	--
<b>Food &amp; Drug</b>	0	--	--	--
<b>Other Miscellaneous Offenses</b>	7	27.0	4.0	23.9

<sup>1</sup>Of the 199,124 cases, 356 received an upward departure from the guideline range with *Booker*/18 U.S.C § 3553. Of these, 339 had complete guideline application information. Due to an inability to calculate the extent of departure for cases with a sentence of life, an additional five cases were also excluded from this table. Furthermore, four cases were excluded due to several logical criteria. Note that the information presented in this table does not include any time of alternative confinement as described in USSG §5C1.1. Descriptions of variables used in this table are provided in Appendix A.

**Table 14**

**ABOVE GUIDELINE RANGE WITH *BOOKER* /18 U.S.C. § 3553: DEGREE  
OF INCREASE FOR OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY<sup>1</sup>  
2008 Post-Kimbrough/Gall Preliminary Data**

<b>PRIMARY OFFENSE</b>	<b>n</b>	<b>Median Sentence in Months</b>	<b>Median Increase in Months From Guideline Maximum</b>	<b>Median Percent Increase From Guideline Maximum</b>
<b>TOTAL</b>	<b>54</b>	<b>44.0</b>	<b>12.0</b>	<b>45.6</b>
<b>Murder</b>	1	--	--	--
<b>Manslaughter</b>	0	--	--	--
<b>Kidnapping/Hostage Taking</b>	0	--	--	--
<b>Sexual Abuse</b>	0	--	--	--
<b>Assault</b>	2	--	--	--
<b>Robbery</b>	0	--	--	--
<b>Arson</b>	0	--	--	--
<b>Drugs - Trafficking</b>	8	70.0	11.5	17.7
<b>Drugs - Communication Facility</b>	0	--	--	--
<b>Drugs - Simple Possession</b>	1	--	--	--
<b>Firearms</b>	5	60.0	24.0	32.4
<b>Burglary/B&amp;E</b>	1	--	--	--
<b>Auto Theft</b>	1	--	--	--
<b>Larceny</b>	1	--	--	--
<b>Fraud</b>	6	44.0	8.0	27.3
<b>Embezzlement</b>	0	--	--	--
<b>Forgery/Counterfeiting</b>	1	--	--	--
<b>Bribery</b>	0	--	--	--
<b>Tax</b>	1	--	--	--
<b>Money Laundering</b>	0	--	--	--
<b>Racketeering/Extortion</b>	1	--	--	--
<b>Gambling/Lottery</b>	0	--	--	--
<b>Civil Rights</b>	0	--	--	--
<b>Immigration</b>	24	12.0	6.0	64.4
<b>Pornography/Prostitution</b>	1	--	--	--
<b>Prison Offenses</b>	0	--	--	--
<b>Administration of Justice Offenses</b>	0	--	--	--
<b>Environmental/Wildlife</b>	0	--	--	--
<b>National Defense</b>	0	--	--	--
<b>Antitrust</b>	0	--	--	--
<b>Food &amp; Drug</b>	0	--	--	--
<b>Other Miscellaneous Offenses</b>	0	--	--	--

<sup>1</sup>Of the 6,942 cases, 61 were sentenced above the guideline range with *Booker*/18 U.S.C § 3553. Of these, 55 had complete guideline application information. Due to an inability to calculate the extent of departure for cases with a sentence of life, one additional case was excluded from this table. Note that the information presented in this table does not include any time of alternative confinement as described in USSG §5C1.1. Descriptions of variables used in this table are provided in Appendix A.

SOURCE: U.S. Sentencing Commission, Preliminary 2008 Datafile, USSCFY08.

Table 14A

**ABOVE GUIDELINE RANGE WITH *BOOKER* /18 U.S.C. § 3553: DEGREE  
OF INCREASE FOR OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY<sup>1</sup>  
Fiscal Year 2005, Post-Booker - 2007**

<b>PRIMARY OFFENSE</b>	<b>n</b>	<b>Median Sentence in Months</b>	<b>Median Increase in Months From Guideline Maximum</b>	<b>Median Percent Increase From Guideline Maximum</b>
<b>TOTAL</b>	<b>1,180</b>	<b>48.0</b>	<b>12.0</b>	<b>46.3</b>
<b>Murder</b>	5	240.0	40.0	24.5
<b>Manslaughter</b>	9	44.0	12.0	29.7
<b>Kidnapping/Hostage Taking</b>	0	--	--	--
<b>Sexual Abuse</b>	24	156.5	38.0	41.3
<b>Assault</b>	26	60.0	25.0	51.9
<b>Robbery</b>	27	125.0	33.0	35.2
<b>Arson</b>	8	120.0	42.5	65.9
<b>Drugs - Trafficking</b>	125	96.0	16.0	30.4
<b>Drugs - Communication Facility</b>	1	--	--	--
<b>Drugs - Simple Possession</b>	15	12.0	6.0	99.8
<b>Firearms</b>	186	72.0	17.0	34.2
<b>Burglary/B&amp;E</b>	3	30.0	4.0	42.9
<b>Auto Theft</b>	4	168.0	75.0	89.3
<b>Larceny</b>	35	24.0	10.0	66.7
<b>Fraud</b>	185	48.0	12.0	33.3
<b>Embezzlement</b>	3	30.0	3.0	33.3
<b>Forgery/Counterfeiting</b>	22	33.0	13.0	63.3
<b>Bribery</b>	1	--	--	--
<b>Tax</b>	13	36.0	9.0	33.3
<b>Money Laundering</b>	11	120.0	20.0	87.5
<b>Racketeering/Extortion</b>	16	87.0	17.0	29.8
<b>Gambling/Lottery</b>	1	--	--	--
<b>Civil Rights</b>	1	--	--	--
<b>Immigration</b>	335	22.0	7.0	62.2
<b>Pornography/Prostitution</b>	62	156.0	46.5	42.0
<b>Prison Offenses</b>	8	33.0	8.5	43.9
<b>Administration of Justice Offenses</b>	31	36.0	10.0	37.4
<b>Environmental/Wildlife</b>	1	--	--	--
<b>National Defense</b>	1	--	--	--
<b>Antitrust</b>	0	--	--	--
<b>Food &amp; Drug</b>	2	--	--	--
<b>Other Miscellaneous Offenses</b>	19	24.0	12.0	100.0

<sup>1</sup>Of the 199,124 cases, 1,289 were sentenced above the guideline range with *Booker*/18 U.S.C § 3553. Of these, 1,215 had complete guideline application information. Due to an inability to calculate the extent of departure for cases with a sentence of life, an additional 13 cases were also excluded from this table. Furthermore, 21 cases were excluded due to several logical criteria. Of the remaining 1,181 cases, one was excluded due to missing sentence information. Note that the information presented in this table does not include any time of alternative confinement as described in USSG §5C1.1. Descriptions of variables used in this table are provided in Appendix A.

**Table 15**

**ALL REMAINING ABOVE GUIDELINE RANGE CASES: DEGREE OF INCREASE FOR OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY<sup>1</sup>**  
**2008 Post-Kimbrough/Gall Preliminary Data**

<b>PRIMARY OFFENSE</b>	<b>n</b>	<b>Median Sentence in Months</b>	<b>Median Increase in Months From Guideline Maximum</b>	<b>Median Percent Increase From Guideline Maximum</b>
<b>TOTAL</b>	<b>6</b>	<b>79.5</b>	<b>9.0</b>	<b>16.8</b>
<b>Murder</b>	0	--	--	--
<b>Manslaughter</b>	0	--	--	--
<b>Kidnapping/Hostage Taking</b>	0	--	--	--
<b>Sexual Abuse</b>	0	--	--	--
<b>Assault</b>	0	--	--	--
<b>Robbery</b>	0	--	--	--
<b>Arson</b>	0	--	--	--
<b>Drugs - Trafficking</b>	4	148.0	9.0	8.5
<b>Drugs - Communication Facility</b>	0	--	--	--
<b>Drugs - Simple Possession</b>	0	--	--	--
<b>Firearms</b>	1	--	--	--
<b>Burglary/B&amp;E</b>	0	--	--	--
<b>Auto Theft</b>	0	--	--	--
<b>Larceny</b>	0	--	--	--
<b>Fraud</b>	0	--	--	--
<b>Embezzlement</b>	0	--	--	--
<b>Forgery/Counterfeiting</b>	0	--	--	--
<b>Bribery</b>	0	--	--	--
<b>Tax</b>	0	--	--	--
<b>Money Laundering</b>	0	--	--	--
<b>Racketeering/Extortion</b>	0	--	--	--
<b>Gambling/Lottery</b>	0	--	--	--
<b>Civil Rights</b>	0	--	--	--
<b>Immigration</b>	1	--	--	--
<b>Pornography/Prostitution</b>	0	--	--	--
<b>Prison Offenses</b>	0	--	--	--
<b>Administration of Justice Offenses</b>	0	--	--	--
<b>Environmental/Wildlife</b>	0	--	--	--
<b>National Defense</b>	0	--	--	--
<b>Antitrust</b>	0	--	--	--
<b>Food &amp; Drug</b>	0	--	--	--
<b>Other Miscellaneous Offenses</b>	0	--	--	--

<sup>1</sup>Of the 6,942 cases, 12 were otherwise sentenced above the guideline range. Of these, nine had complete guideline application information. Three additional cases were excluded due to several logical criteria. Note that the information presented in this table does not include any time of alternative confinement as described in USSG §5C1.1. Descriptions of variables used in this table are provided in Appendix A.

SOURCE: U.S. Sentencing Commission, Preliminary 2008 Datafile, USSCFY08.

**Table 15A**

**ALL REMAINING ABOVE GUIDELINE RANGE CASES: DEGREE OF INCREASE FOR OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY<sup>1</sup>**  
**Fiscal Year 2005, Post-Booker - 2007**

<b>PRIMARY OFFENSE</b>	<b>n</b>	<b>Median Sentence in Months</b>	<b>Median Increase in Months From Guideline Maximum</b>	<b>Median Percent Increase From Guideline Maximum</b>
<b>TOTAL</b>	<b>412</b>	<b>52.0</b>	<b>12.0</b>	<b>33.3</b>
<b>Murder</b>	5	240.0	72.0	42.9
<b>Manslaughter</b>	5	41.0	14.0	41.2
<b>Kidnapping/Hostage Taking</b>	0	--	--	--
<b>Sexual Abuse</b>	7	180.0	37.0	30.0
<b>Assault</b>	16	98.0	27.0	42.3
<b>Robbery</b>	11	168.0	27.0	23.7
<b>Arson</b>	2	--	--	--
<b>Drugs - Trafficking</b>	68	77.0	15.5	26.7
<b>Drugs - Communication Facility</b>	4	29.1	2.1	21.0
<b>Drugs - Simple Possession</b>	8	24.0	12.0	100.0
<b>Firearms</b>	67	72.0	14.0	25.0
<b>Burglary/B&amp;E</b>	1	--	--	--
<b>Auto Theft</b>	3	36.0	6.0	50.4
<b>Larceny</b>	21	36.0	12.0	50.0
<b>Fraud</b>	56	38.5	7.0	31.9
<b>Embezzlement</b>	0	--	--	--
<b>Forgery/Counterfeiting</b>	7	60.0	30.0	73.2
<b>Bribery</b>	0	--	--	--
<b>Tax</b>	2	--	--	--
<b>Money Laundering</b>	3	56.9	15.9	38.7
<b>Racketeering/Extortion</b>	9	120.0	42.0	53.8
<b>Gambling/Lottery</b>	0	--	--	--
<b>Civil Rights</b>	0	--	--	--
<b>Immigration</b>	90	24.0	6.0	25.0
<b>Pornography/Prostitution</b>	14	180.0	59.0	45.8
<b>Prison Offenses</b>	5	50.0	5.0	12.5
<b>Administration of Justice Offenses</b>	5	12.0	4.0	50.4
<b>Environmental/Wildlife</b>	0	--	--	--
<b>National Defense</b>	0	--	--	--
<b>Antitrust</b>	0	--	--	--
<b>Food &amp; Drug</b>	0	--	--	--
<b>Other Miscellaneous Offenses</b>	3	36.0	12.0	50.0

<sup>1</sup>Of the 199,124 cases, 529 were otherwise sentenced above the guideline range. Of these, 469 had complete guideline application information. 57 additional cases were excluded due to several logical criteria. Note that the information presented in this table does not include any time of alternative confinement as described in USSG §5C1.1. Descriptions of variables used in this table are provided in Appendix A.

SOURCE: U.S. Sentencing Commission, 2005 - 2007 Datafiles, USSCFY05 - USSCFY07.

# Appendix A

## Descriptions of Datafiles and Variables

### **Introduction**

Federal courts are required to forward to the Commission sentencing documentation on all offenders sentenced under the Sentencing Reform Act of 1984 (SRA), except in cases that solely involve petty offenses. Standard information on each case is extracted from sentencing documents received and computerized for analysis.

Given the nature of the datafile and reporting requirements, the following are not included: cases initiated but for which no convictions were obtained, offenders convicted for whom no sentences were yet issued, and offenders sentenced but for whom no sentencing documents were submitted to the Commission. Because the Commission collects information only on cases sentenced under the guidelines, information on cases sentenced under prior law (pre-guidelines) during the current fiscal year is not available in this dataset. When cases are sentenced under both prior law and the guidelines, only the guideline relevant information is coded in the dataset.

Note that for all tables, total percentages may not add up to exactly 100 percent due to rounding.

### **Variables**

The following section describes the variables used in this report.

#### **Above Guideline Range With *Booker*/18 U.S.C. § 3553**

*Above Guideline Range with Booker/18 U.S.C. § 3553* consist of cases sentenced above the guideline range in which no departure was indicated and in which the court cited *U.S. v. Booker*, 18 U.S.C. § 3553, or related factors as one of the reasons for sentencing of the guideline system.

#### **All Remaining Cases Above Guideline Range**

*All Remaining Cases Above Guideline Range* consist of cases sentenced above the guideline range that could not be classified into any of the other three above the range categories. This category includes cases in which no reason was provided for a sentence above the guideline range.

#### **All Remaining Cases Below Guideline Range**

*All Remaining Cases Below Guideline Range* consist of cases sentenced below the guideline range that could not be classified into any of the other three below the range categories. This category includes cases in which no reason was provided for a sentence below the guideline range.

#### **Average Sentence Length**

Using sentencing information obtained from the Judgment of Conviction order, *Average Sentence Length* is reported as the mean and median terms of imprisonment (including any months of alternative confinement as defined in §5C1.1) ordered for cases committed to the Bureau of Prisons. Cases that receive no term of imprisonment (i.e. probation) are also included in the average. Cases for which a term of imprisonment is ordered but the length is indeterminable also are excluded. In most cases for which the exact term is unknown, the Judgment of Conviction order merely specifies a sentence of time served. Prior to fiscal year 1993, the Commission defined life sentences as 360 months. However, to reflect life expectancy of federal criminal offenders more precisely and to provide more accurate length of imprisonment information, life sentences are now defined as 470 months.

### **Below Guideline Range With *Booker*/18 U.S.C. § 3553**

*Below Guideline Range with Booker/18 U.S.C. § 3553* consist of cases sentenced below the guideline range in which no departure was indicated and in which the court cited *U.S. v. Booker*, 18 U.S.C. § 3553, or related factors as one of the reasons for sentencing of the guideline system.

### **Degree of Decrease**

*Degree of Decrease* is calculated based on the difference between the length of imprisonment (not including any months of alternative confinement as defined in §5C1.1) and the guideline minimum for the following categories of below range cases: departures below the guideline range, departures below the guideline range with *Booker*/18 U.S.C. § 3553, below the guideline range with *Booker*/18 U.S.C. § 3553, all other below range cases, §5K1.1 substantial assistance cases, and §5K3.1 early disposition program cases, and other government sponsored cases. Life sentences, and cases where the guideline minimum is zero months or life are all excluded from all degree of decrease calculations due to the logical difficulty in calculating a decrease from these values.

### **Degree of Increase**

*Degree of Increase* is calculated based on the difference between the guideline maximum and the length of imprisonment (not including any months of alternative confinement as defined in §5C1.1) for the following categories of above range cases: departures above the guideline range, departures above the guideline range with *Booker*/18 U.S.C. § 3553, above the guideline range with *Booker*/18 U.S.C. § 3553, and all other above range cases. Life sentences, sentences of probation, and cases where the guideline minimum is life are all excluded from all degree of increase calculations due to the logical difficulty in calculating an increase from these values.

### **Downward Departure From Guideline Range**

*Downward Departure from Guideline Range* consist of cases with downward departures in which the court did not indicate as a reason either *U.S. v. Booker*, 18 U.S.C. § 3553, or a factor or reason specifically prohibited in the provisions, policy statements, or commentary of the *Guidelines Manual*.

### **Downward Departure With *Booker*/18 U.S.C. § 3553**

*Downward Departure with Booker/18 U.S.C. § 3553* consist of cases sentenced below the guideline range in which the court indicated both a departure (see Downward Departure From Guideline Range) and a reference to either *U.S. v. Booker*, 18 U.S.C. § 3553, or related factors as a reason for sentencing outside of the guideline system.

### **Government Sponsored**

Government sponsorship of a departure is determined by a yearly case review by USSC staff of both the reasons for departure and the coding by USSC staff of any indication of government sponsorship as indicated on the Statement of Reasons. The SOR form AO245B version 12/03 and 06/05 have specific check-boxes to indicate the origins of the departure, but cases which do not use this form may also indicate in writing the origins of the departure. Additionally, all cases with one or more of the following reasons were classified as being sponsored by the government regardless of whether the SOR indicated sponsorship: pursuant to a plea agreement (binding, non-binding, or unknown), fast track, savings to the government, early plea, deportation, waiver of indictment and/or appeal, other government motion, global disposition, due to stipulations, facilitated early release of a material witness, joint recommendation, and large number of immigration cases. Note that since the USSC reviews the reasons on a yearly basis this list might be modified slightly from year to year. Unless otherwise broken out in the table or chart, this category also includes cases with §5K3.1 Early Disposition Program (EDP) departures.

### **Guideline Offenders Sentenced**

Each *Guideline Offender Sentenced* or case, as recorded by the USSC, involves a single sentencing event for a single offender. Multiple counts, and even multiple indictments, are considered a single sentencing event if sentenced at the same time by the same judge. A single offender may appear in more than one case if involved in more than one sentencing event during the fiscal year. Co-offenders in the same sentencing will each appear as separate cases.

### **Guideline Sentencing Range**

The *Guideline Sentencing Range* is taken from the Statement of Reasons provided by the sentencing court. Alternatively, if the Statement of Reasons is missing, then the information is taken from the Pre-sentence Report.

For tables in this report, unless otherwise indicated, the guideline sentencing range does not take into account applicable statutory restrictions on either the maximum or the minimum of the range; therefore, it may differ from the available range, which does take into account the statutory restrictions.

### **Outside of the Range Attribution Categories**

All categories replicate the list of checkboxes available on the SOR Form AO245B (Both 12/03 and 06/05). Not all checkbox categories are available in both the departure section and sentences outside the guideline system section on this form and that multiple checkboxes may be indicated in a single case so that totals in a table may exceed the total number of cases. USSC uses these checkboxes in determining government sponsorship: all cases in which one of the pursuant to a plea agreement boxes is indicated are attributed to the government. Additionally cases where a §5K1.1, §5K3.1, or other government motion checkbox was indicated in the pursuant to a motion not in a plea agreement section are also attributed to one of the government sponsored categories. Additionally other types of SOR forms may indicate sponsorship in writing and these attributions are also included in the appropriate category.

### **Position of Sentence**

The *Position of Sentence* describes within-range guideline sentences in terms of their relative positions within their applicable guideline ranges. Only cases with complete information from the Statement of Reasons are used for this table. The *Position of Sentence* is determined by dividing the available range in half. This allows a sentence to fall into one of five distinct categories: the guideline minimum; the exact midpoint of the range; the guideline maximum; the lower-half of the range (when not at the guideline minimum); and the upper-half of the range (when not at the guideline maximum). The “available range” is the guideline range with applicable statutory restrictions on either the maximum or the minimum of the range taken into account. (For cases in which guideline §5C1.2 was applied, in accordance with the provisions of the guideline, the statutory restrictions on the range are those from 18 U.S.C. § 3553(f).) In cases in which the sentence is located outside the available sentencing range, departure information is provided as reported by the sentencing court. Differences in the number and percentage of cases in each range quarter may differ from other tables presented in this report; this is due to the exclusion of any case missing both complete information from the Statement of Reasons and information on statutory minima and maxima.

### **Post-Booker**

*Post-Booker* means the period from the date of the United States Supreme Court decision in *United States v Booker*, 543 U.S. 220 (2005) (January 12, 2005) through October 31, 2007.

### **Post-Kimbrough/Gall**

Post-Kimbrough/Gall means the period from the date of the United States Supreme Court decision in *Kimbrough v United States*, \_\_\_ U.S. \_\_\_ (2007) and *Gall v United States*, \_\_\_ U.S. \_\_\_ (2007) (December 10, 2007) and afterward.

### **Primary Offense Category**

Information on *Primary Offense Category* is obtained from the Judgment of Conviction order. The “primary” offense code for the case is determined to be the offense code applicable for the count of conviction with the highest statutory maximum. If two or more counts are found to have the same statutory maximum, “primary” offense is selected according to which count of conviction has the highest statutory minimum. Finally, in the event of a small number of cases still tied, the offense type that best represented the nature of the criminal behavior is chosen.

For convenience in analysis, a summary variable describing “primary offense category” is derived. This code is generated by grouping similar primary offense codes into a smaller set of categories. Note that the primary offense categories differ between the individual and organizational offender datafiles. Listed below are the offense types that are grouped into each of the primary offense categories used in the individual datafile tables for this report:

*Murder* includes first degree murder, felony with death resulting, second degree murder, and conspiracy to murder (with death resulting).

*Manslaughter* includes both involuntary and voluntary manslaughter.

*Kidnapping/Hostage* includes ransom taking and hostage/kidnapping.

*Sexual Abuse* includes sexual abuse of a minor, sexual abuse of a ward, criminal sexual abuse, and abusive sexual contact.

*Assault* includes attempt to commit murder, assault with intent to murder, threatening communication, aggravated assault, conspiracy with attempt to murder, obstructing or impeding officers, minor assault, and conspiracy that includes assault with attempt to murder.

*Robbery* includes bank robbery, aggravated bank robbery, Hobbs Act robbery, mail robbery, other robbery, and carjacking.

*Arson* also includes damage by explosives.

*Drugs: Trafficking* includes drug distribution/manufacture, drug distribution/manufacture – conspiracy, continuing criminal enterprise, drug distribution – employee under 21, drug distribution near school, drug import/export, drug distribution to person under 21, and establish/rent drug operation.

*Drugs: Communication Facility* includes use of a communication facility in a drug trafficking offense.

*Drugs: Simple Possession* includes distribution of a small amount of marijuana and simple possession.

*Firearms* includes unlawful possession/transportation of firearms or ammunition; possession of guns/explosives on aircraft; unlawful trafficking, etc. in explosives; possession of guns/explosives in federal facility/schools; use of fire or explosives to commit felony; and use of firearms or ammunition during crime.

*Burglary/Breaking & Entering* includes post office burglary, burglary of DEA premises (pharmacy), burglary of other structure, bank burglary, and burglary of a residence.

*Auto Theft* includes auto theft (including parts), receipt/possession of stolen auto or parts, and altered identification numbers/trafficking in altered (auto).

*Larceny* includes bank larceny, theft from benefit plans, other theft – mail/post office, receipt/possession of stolen property (not auto), other theft – property, larceny/theft-mail/post office, larceny/theft – property (not auto), and theft from labor union.

*Fraud* includes odometer laws and regulations, insider trading, and fraud and deceit.

*Embezzlement* includes embezzlement – property, embezzlement from labor unions, embezzlement – mail/post office, embezzlement from benefit plans, and bank embezzlement.

*Forgery/Counterfeiting* includes counterfeit bearer obligations and forgery/counterfeit (non-bearer obligations).

*Bribery* includes payment to obtain office, bribe involving officials, bribery – bank loan/commercial, loan or gratuity to bank examiner, etc., gratuity involving officials, and bribe or gratuity affecting employee plan.

*Tax Offenses* include receipt/trafficking in smuggled property, aid, etc., in tax fraud; fraud – tax returns, statements, etc.; fraud, false statement – perjury; failure to file or pay; tax evasion; evading import duties (smuggle); failure to collect or account for taxes; regulatory offenses – taxes; failure to deposit taxes in trust account; non-payment of taxes; conspiracy to avoid taxes; and offenses relating to withholding statements.

*Money Laundering* includes laundering of monetary instruments, monetary transaction from unlawful activity, failure to file currency report, and failure to report monetary transactions.

*Extortion/Racketeering* includes extortionate extension of credit, blackmail, extortion by force or treat, Hobbs Act extortion, travel in aid of racketeering, crime relating to racketeering, and violent crimes in aid of racketeering.

*Gambling/Lottery* includes engaging in a gambling business, transmission of wagering information, obstruction to facilitate gambling, and interstate transportation of wagering paraphernalia.

*Civil Rights* includes interference with rights under color of law; force or threats to deny benefits or rights; obstructing an election or registration; manufacture, etc. – eavesdropping device; other deprivations/discrimination; obstructing correspondence; peonage, servitude, and slave trade; intercept communication or eavesdropping; and

conspiracy to deprive individual of civil rights.

*Immigration* includes trafficking in U.S. passports; trafficking in entry documents; failure to surrender naturalization certificate; fraudulently acquiring U.S. passports; smuggling, etc.; unlawful alien; fraudulently acquiring entry documents; and unlawfully entering U.S.

*Pornography, Prostitution* includes dealing in obscene matter, transportation of minor for prostitution/sex, transportation for prostitution/sex (adult), sexual exploitation of minors, materials involving sexual exploitation of minors, obscene telephone or broadcasting, and selling or buying children for pornography.

*Offenses In Prisons* includes contraband in prisons, riots in federal facilities, and escape.

*Administration of Justice* includes commission of offense while on release, bribery of a witness, failure to appear by offender, contempt, failure to appear by material witness, obstruction of justice, payment of witness, perjury or subornation of perjury, misprision of a felony, and accessory after the fact.

*Environmental/Fish And Wildlife* includes waste discharge, specially protected fish, wildlife, and plants (waste discharge is presented as a separate offense category in Tables 51 and 52).

*National Defense* includes evasion of export controls and exportation of arms, etc., without license.

*Antitrust* includes bid-rigging, price-fixing, and market allocation agreement.

*Food and Drug* includes false information or tampering with products, tampering to injure business, tampering with risk of death or injury, and violation of regulations involving food, drugs, etc.

*Other Miscellaneous Offenses* includes illegal use of regulatory number – drugs; illegal transfer of drugs; illegal regulatory number to get drugs; drug paraphernalia; forgery/fraud for drugs; dangerous devices to protect drugs; manufacture drugs against quota; endangering life while manufacturing drugs; operate carrier under drugs; endangerment from hazardous/toxic substances; mishandling substances, records, etc.; threat of tampering with public water system; hazardous devices of federal lands; mishandling other pollutants, records, etc.; improper storage of explosives; record keeping violation – explosives; possession of other weapon – on aircraft, in federal facility; failure to report theft of explosives; feloniously mailing injurious articles; transport of hazardous material in commerce; interference with flight crew, other offense – aboard aircraft; criminal infringement of copyright/trademark; conflict of interest; unauthorized payment; non-drug forfeiture; impersonation; false statement to Employee Act; reporting offenses – labor related; criminal infringement of trademark; unlawful conduct relating to control/cigarettes; trespass; destruction of property; destruction of mail; aircraft piracy; conspiracy to murder (no death, assault, or attempt); conspiracy to commit murder; and all other miscellaneous offenses not previously listed in any of the other categories.

### **Type of Guideline Sentence Imposed**

Using sentencing information obtained from the Judgment of Conviction order, the *Total Receiving Prison* column includes the number of offenders sentenced (and percent of *Total Cases*) who received a commitment to the Bureau of Prisons. This column is the sum of cases in *Prison* and the *Prison/Community Split Sentence* categories.

The *Prison* category includes offenders sentenced to a term of imprisonment only, with no additional conditions of community confinement, home detention or intermittent confinement.

The *Prison/Community Split Sentence* category includes all cases in which offenders received prison and conditions of alternative confinement as defined in USSG §5C1.1. This category includes, but is not limited to, Zone A, Zone B, or Zone C cases receiving prison with additional conditions of a term of community confinement, home detention, or intermittent confinement.

The *Total Receiving Probation* column includes the number of offenders sentenced (and the percent of *Total Cases*) who received a term of probation with or without a condition of community confinement, intermittent confinement, or home detention. This column also represents the total of the *Probation Only* and *Probation and Confinement* categories.

The *Probation Only* column includes the number of offenders who received a term of probation without a condition of community confinement, intermittent confinement, or home detention.

*Probation and Confinement* includes the number of offenders who received a term of probation with a condition of community confinement, intermittent confinement, or home detention.

### **Upward Departure From Guideline Range**

*Upward Departure from Guideline Range* consist of cases with upward departures in which the court did not indicate as a reason either *U.S. v. Booker*, 18 U.S.C. § 3553, or a factor or reason specifically prohibited in the provisions, policy statements, or commentary of the *Guidelines Manual*.

### **Upward Departure With *Booker*/18 U.S.C. § 3553**

*Upward Departure with Booker/18 U.S.C. § 3553* consist of cases sentenced above the guideline range in which the court indicated both a departure (see Upward Departure From Guideline Range) and a reference to either *U.S. v. Booker*, 18 U.S.C. § 3553, or related factors as a reason for sentencing outside of the guideline system.

### **Year**

Information on Year is obtained from the Judgment of Conviction order. Unless otherwise indicated, the sentencing year is defined as the fiscal year in which the offender was sentenced.