

**Table 57**

**GUIDELINE INVOLVED IN ISSUES APPEALED BY THE DEFENDANT<sup>1</sup>**  
**Fiscal Year 2010**

<b>GUIDELINE</b>	<b>N</b>	<b>%</b>	<b>Affirmance Rate<sup>2</sup></b>
<b>TOTAL</b>	<b>12,026</b>	<b>100.0</b>	<b>92.8</b>
2D1.1 (Drug Trafficking)	1,566	13.0	93.8
18 U.S.C. § 3553(a) Factors	1,471	12.2	94.6
1B1.10 (Retroactivity of Amended Guideline Ranges)	972	8.1	96.2
2L1.2 (Unlawfully Entering or Remaining in the United States)	375	3.1	90.4
2B1.1 (Larceny, Embezzlement, and Theft)	245	2.0	86.9
2K2.1 (Firearms)	233	1.9	88.4
3B1.1 (Aggravating Role)	182	1.5	96.7
3B1.2 (Mitigating Role)	163	1.4	97.6
3E1.1 (Acceptance of Responsibility)	159	1.3	95.6
7B1.3 (Revocation of Probation or Supervised Release)	154	1.3	95.4
5E1.1 (Restitution)	149	1.2	74.5
4B1.4 (Armed Career Criminal)	139	1.2	82.0
4B1.1 (Career Offender)	133	1.1	80.4
3C1.1 (Obstruction of Justice)	122	1.0	93.3
4A1.3 (Adequacy of Criminal History)	116	1.0	94.8
5G1.3 (Imposition of Sentence; Defendant Subject to Undischarged Term of Prison)	102	0.8	93.1
5D1.3 (Conditions of Supervised Release)	100	0.8	68.0
4A1.2 (Definitions and Instructions of Criminal History)	99	0.8	91.9
4A1.1 (Criminal History Category)	94	0.8	91.5
1B1.3 (Relevant Conduct)	90	0.7	92.2
7B1.3 (Revocation of Probation or Supervised Release)	89	0.7	92.1
2K2.4 (Use of Firearms During or in Relation to Certain Crimes)	83	0.7	83.1
5C1.2 (Limitation on Applicability of Statutory Minimums)	83	0.7	95.2
4B1.2 (Definitions for Career Offender)	79	0.7	59.5
2G2.2 (Trafficking Material Involving Sexual Exploitation of Minors)	76	0.6	93.4
1B1.4 (Information to be Used in Imposing Sentence)	69	0.6	94.2
5K1.1 (Substantial Assistance to Authorities)	64	0.5	90.6
6A1.3 (Resolution of Disputed Factors)	62	0.5	82.3
5K2.0 (Departures)	59	0.5	98.3
2L1.1 (Smuggling, Transporting, or Harboring an Unlawful Alien)	46	0.4	93.5
Constitutional Issues	2,968	24.7	96.6
Other Guidelines	852	7.1	88.6
Other Non-guideline Issues	832	6.9	90.3

<sup>1</sup> Based on 5,269 appeals by defendants with sentencing as at least one of the reasons for appeal. Often more than one issue was appealed; consequently, the number of issues is more than the number of defendants. The "Other Guidelines" category includes all issues appealed fewer than 40 times.

<sup>2</sup> Affirmance Rate includes all appeals cases not reversed or directly remanded by the courts of appeal.