Table 58

GUIDELINE INVOLVED IN ISSUES APPEALED BY THE GOVERNMENT¹ Fiscal Year 2005

TOTAL 206 100.0 37.9 5K2.0 (Departures) 41 19.9 31.7 2D1.1 (Drug Trafficking) 9 4.4 33.3 2B1.1 (Larceny, Embezzlement, and Theft) 5 2.4 20.0 2K2.1 (Firearms) 5 2.4 40.0 2L1.2 (Unlawfully Entering or Remaining in the United States) 5 2.4 40.0 3E1.1 (Acceptance of Responsibility) 5 2.4 40.0 3E1.1 (Acceptance of Authorities) 5 2.4 40.0 3B1.1 (Aggravating Role) 4 1.9 0.0 3B1.1 (Aggravating Role) 4 1.9 0.0 3B1.2 (Mitigating Role) 4 1.9 0.0 5H1.4 (Physical Condition) 4 1.9 0.0 5H1.6 (Family Ties and Responsibilities) 4 1.9 0.0 5H1.6 (Family Ties and Responsibilities) 4 1.9 0.0 5H1.6 (Family Ties and Responsibilities) 3 1.5 0.0 4H1.1 (Obstruction of Justice) 3 1.5 0	GUIDELINE	Number	Percent	Affirmance Rate ²
2D1.1 (Drug Trafficking) 9 4.4 33.3 2B1.1 (Larceny, Embezzlement, and Theft) 5 2.4 20.0 2K2.1 (Firearms) 5 2.4 0.0 2L1.2 (Unlawfully Entering or Remaining in the United States) 5 2.4 40.0 3E1.1 (Acceptance of Responsibility) 5 2.4 40.0 3E1.1 (Acceptance of Responsibility) 5 2.4 40.0 5K1.1 (Substantial Assistance to Authorities) 5 2.4 40.0 3B1.3 (Relevant Conduct) 4 1.9 0.0 3B1.1 (Aggravating Role) 4 1.9 0.0 3B1.2 (Mitigating Role) 4 1.9 0.0 5H1.4 (Physical Condition) 4 1.9 0.0 5H1.6 (Family Ties and Responsibilities) 4 1.9 0.0 5K2.13 (Diminished Capacity) 3 1.5 0.0 4A1.3 (Adequacy of Criminal History) 3 1.5 0.0 4B1.1 (Career Offender) 3 1.5 0.0 4B1.2 (Definitions for Career Offender) 3 1.5 0.0 4B1.2 (Definitions for Career Offender)	TOTAL	206	100.0	37.9
2B1.1 (Larceny, Embezzlement, and Theft) 5 2.4 20.0 2K2.1 (Firearms) 5 2.4 0.0 2L1.2 (Unlawfully Entering or Remaining in the United States) 5 2.4 40.0 3E1.1 (Acceptance of Responsibility) 5 2.4 40.0 5K1.1 (Substantial Assistance to Authorities) 5 2.4 40.0 1B1.3 (Relevant Conduct) 4 1.9 0.0 3B1.1 (Aggravating Role) 4 1.9 0.0 3B1.2 (Mitigating Role) 4 1.9 0.0 5H1.4 (Physical Condition) 4 1.9 0.0 5H1.6 (Family Ties and Responsibilities) 4 1.9 0.0 5K2.13 (Diminished Capacity) 3 1.5 100.0 3C1.1 (Obstruction of Justice) 3 1.5 0.0 4B1.1 (Career Offender) 3 1.5 0.0 4B1.2 (Definitions for Career Offender) 3 1.5 66.7 5H1.11 (Military, Civic, Charitable, or Public Service 3 1.5 100.0 18 U.S.C. §3553(a) Factors 3 1.5 33.3	5K2.0 (Departures)	41	19.9	31.7
2K2.1 (Firearms) 5 2.4 0.0 2L1.2 (Unlawfully Entering or Remaining in the United States) 5 2.4 40.0 3E1.1 (Acceptance of Responsibility) 5 2.4 60.0 5K1.1 (Substantial Assistance to Authorities) 5 2.4 20.0 1B1.3 (Relevant Conduct) 4 1.9 0.0 3B1.1 (Aggravating Role) 4 1.9 75.0 3B1.2 (Mitigating Role) 4 1.9 0.0 5H1.4 (Physical Condition) 4 1.9 0.0 5H1.4 (Physical Condition) 4 1.9 0.0 5H1.4 (Physical Condition) 4 1.9 0.0 5K2.13 (Diminished Capacity) 4 1.9 75.0 3C1.1 (Obstruction of Justice) 3 1.5 100.0 4A1.3 (Adequacy of Criminal History) 3 1.5 33.3 4B1.2 (Definitions for Career Offender) 3 1.5 66.7 5H1.11 (Military, Civic, Charitable, or Public Service 3 1.5 100.0 18 U.S.C. §3553(a) Factors 3 1.5 33.3	2D1.1 (Drug Trafficking)	9	4.4	33.3
2L1.2 (Unlawfully Entering or Remaining in the United States) 5 2.4 40.0 3E1.1 (Acceptance of Responsibility) 5 2.4 60.0 5K1.1 (Substantial Assistance to Authorities) 5 2.4 20.0 1B1.3 (Relevant Conduct) 4 1.9 0.0 3B1.1 (Aggravating Role) 4 1.9 0.0 3B1.2 (Mitigating Role) 4 1.9 0.0 5H1.4 (Physical Condition) 4 1.9 0.0 5H1.4 (Physical Condition) 4 1.9 0.0 5H1.4 (Physical Condition) 4 1.9 0.0 5K2.13 (Diminished Capacity) 4 1.9 75.0 3C1.1 (Obstruction of Justice) 3 1.5 0.00 4A1.3 (Adequacy of Criminal History) 3 1.5 0.0 4B1.1 (Career Offender) 3 1.5 66.7 5H1.11 (Military, Civic, Charitable, or Public Service 3 1.5 100.0 18 U.S.C. §3553(a) Factors 3 3.5 33.3	2B1.1 (Larceny, Embezzlement, and Theft)	5	2.4	20.0
3E1.1 (Acceptance of Responsibility)52.460.05K1.1 (Substantial Assistance to Authorities)52.420.01B1.3 (Relevant Conduct)41.90.03B1.1 (Aggravating Role)41.975.03B1.2 (Mitigating Role)41.90.05H1.4 (Physical Condition)41.90.05H1.6 (Family Ties and Responsibilities)41.90.05K2.13 (Diminished Capacity)41.975.03C1.1 (Obstruction of Justice)31.5100.04A1.3 (Adequacy of Criminal History)31.533.34B1.2 (Definitions for Career Offender)31.566.75H1.11 (Military, Civic, Charitable, or Public Service31.5100.018 U.S.C. §3553(a) Factors33.533.3	2K2.1 (Firearms)	5	2.4	0.0
5K1.1 (Substantial Assistance to Authorities)52.420.01B1.3 (Relevant Conduct)41.90.03B1.1 (Aggravating Role)41.975.03B1.2 (Mitigating Role)41.90.05H1.4 (Physical Condition)41.950.05H1.6 (Family Ties and Responsibilities)41.90.05K2.13 (Diminished Capacity)41.975.03C1.1 (Obstruction of Justice)31.5100.04A1.3 (Adequacy of Criminal History)31.533.34B1.2 (Definitions for Career Offender)31.566.75H1.11 (Military, Civic, Charitable, or Public Service31.5100.018 U.S.C. §3553(a) Factors33.533.3	2L1.2 (Unlawfully Entering or Remaining in the United States)	5	2.4	40.0
1B1.3 (Relevant Conduct)41.90.03B1.1 (Aggravating Role)41.975.03B1.2 (Mitigating Role)41.90.05H1.4 (Physical Condition)41.950.05H1.6 (Family Ties and Responsibilities)41.90.05K2.13 (Diminished Capacity)41.975.03C1.1 (Obstruction of Justice)31.5100.04A1.3 (Adequacy of Criminal History)31.533.34B1.2 (Definitions for Career Offender)31.566.75H1.11 (Military, Civic, Charitable, or Public Service31.5100.018 U.S.C. §3553(a) Factors33.533.3	3E1.1 (Acceptance of Responsibility)	5	2.4	60.0
3B1.1 (Aggravating Role)41.975.03B1.2 (Mitigating Role)41.90.05H1.4 (Physical Condition)41.950.05H1.6 (Family Ties and Responsibilities)41.90.05K2.13 (Diminished Capacity)41.975.03C1.1 (Obstruction of Justice)31.5100.04A1.3 (Adequacy of Criminal History)31.533.34B1.2 (Definitions for Career Offender)31.566.75H1.11 (Military, Civic, Charitable, or Public Service31.5100.018 U.S.C. §3553(a) Factors33.533.3	5K1.1 (Substantial Assistance to Authorities)	5	2.4	20.0
3B1.2 (Mitigating Role)41.90.05H1.4 (Physical Condition)41.950.05H1.6 (Family Ties and Responsibilities)41.90.05K2.13 (Diminished Capacity)41.975.03C1.1 (Obstruction of Justice)31.5100.04A1.3 (Adequacy of Criminal History)31.50.04B1.1 (Career Offender)31.533.34B1.2 (Definitions for Career Offender)31.566.75H1.11 (Military, Civic, Charitable, or Public Service31.5100.018 U.S.C. §3553(a) Factors33.533.3	1B1.3 (Relevant Conduct)	4	1.9	0.0
5H1.4 (Physical Condition)41.950.05H1.6 (Family Ties and Responsibilities)41.90.05K2.13 (Diminished Capacity)41.975.03C1.1 (Obstruction of Justice)31.5100.04A1.3 (Adequacy of Criminal History)31.50.04B1.1 (Career Offender)31.533.34B1.2 (Definitions for Career Offender)31.566.75H1.11 (Military, Civic, Charitable, or Public Service31.5100.018 U.S.C. §3553(a) Factors33.533.3	3B1.1 (Aggravating Role)	4	1.9	75.0
5H1.6 (Family Ties and Responsibilities)41.90.05K2.13 (Diminished Capacity)41.975.03C1.1 (Obstruction of Justice)31.5100.04A1.3 (Adequacy of Criminal History)31.50.04B1.1 (Career Offender)31.533.34B1.2 (Definitions for Career Offender)31.566.75H1.11 (Military, Civic, Charitable, or Public Service31.5100.018 U.S.C. §3553(a) Factors33.533.3	3B1.2 (Mitigating Role)	4	1.9	0.0
5K2.13 (Diminished Capacity)41.975.03C1.1 (Obstruction of Justice)31.5100.04A1.3 (Adequacy of Criminal History)31.50.04B1.1 (Career Offender)31.533.34B1.2 (Definitions for Career Offender)31.566.75H1.11 (Military, Civic, Charitable, or Public Service31.5100.018 U.S.C. §3553(a) Factors31.533.3	5H1.4 (Physical Condition)	4	1.9	50.0
3C1.1 (Obstruction of Justice)31.5100.04A1.3 (Adequacy of Criminal History)31.50.04B1.1 (Career Offender)31.533.34B1.2 (Definitions for Career Offender)31.566.75H1.11 (Military, Civic, Charitable, or Public Service31.5100.018 U.S.C. §3553(a) Factors31.533.3	5H1.6 (Family Ties and Responsibilities)	4	1.9	0.0
4A1.3 (Adequacy of Criminal History)31.50.04B1.1 (Career Offender)31.533.34B1.2 (Definitions for Career Offender)31.566.75H1.11 (Military, Civic, Charitable, or Public Service31.5100.018 U.S.C. §3553(a) Factors31.533.3	5K2.13 (Diminished Capacity)	4	1.9	75.0
4B1.1 (Career Offender) 3 1.5 33.3 4B1.2 (Definitions for Career Offender) 3 1.5 66.7 5H1.11 (Military, Civic, Charitable, or Public Service 3 1.5 100.0 18 U.S.C. §3553(a) Factors 3 1.5 33.3	3C1.1 (Obstruction of Justice)	3	1.5	100.0
4B1.2 (Definitions for Career Offender) 3 1.5 66.7 5H1.11 (Military, Civic, Charitable, or Public Service 3 1.5 100.0 18 U.S.C. §3553(a) Factors 3 1.5 33.3	4A1.3 (Adequacy of Criminal History)	3	1.5	0.0
5H1.11 (Military, Civic, Charitable, or Public Service31.5100.018 U.S.C. §3553(a) Factors31.533.3	4B1.1 (Career Offender)	3	1.5	33.3
18 U.S.C. §3553(a) Factors 3 1.5 33.3	4B1.2 (Definitions for Career Offender)	3	1.5	66.7
	5H1.11 (Military, Civic, Charitable, or Public Service	3	1.5	100.0
Constitutional Issues 38 18.4 31.6	18 U.S.C. §3553(a) Factors	3	1.5	33.3
	Constitutional Issues	38	18.4	31.6
Other Guidelines 27 13.1 40.7	Other Guidelines	27	13.1	40.7
Other Non-guideline Issues 24 11.7 58.3	Other Non-guideline Issues	24	11.7	58.3

¹Based on 6,208 "Post-*Booker*" appeals defendants with sentencing as at least one of the reasons for appeal. Information on issues was available in 6,208 of these cases which cited 13,440 issues. Often more than one issue was appealed; consequently, the number of issues is more than the number of defendants. The "Other" category includes all issues appealed fewer than three times among relevant cases.

²Affirmance Rate includes all appeals cases not reversed or directly remanded by the circuit court.

SOURCE: U.S. Sentencing Commission, 2005 Appeals Datafile, APPFY05.