

Table 28A

ATTRIBUTION CATEGORY FOR CASES OUTSIDE OF THE GUIDELINE RANGE¹
Fiscal Year 2011

	TOTAL CASES	Pursuant to a Plea Agreement									
		§5K1.1 Plea Agreement		§5K3.1 Plea Agreement		Binding Plea Accepted by Court		Plea w/ Departure Court Finds Reasonable		Plea Agreement States Gov't Will Not Oppose	
		N	%	N	%	N	%	N	%	N	%
TOTAL	38,584	5,950	15.4	8,575	22.2	3,629	9.4	2,172	5.6	209	0.5
Above Range	1,527	4	0.3	15	1.0	291	19.1	93	6.1	1	0.1
Upward Departure From Guideline Range	379	2	0.5	6	1.6	127	33.5	32	8.4	0	0.0
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553	109	0	0.0	0	0.0	16	14.7	9	8.3	0	0.0
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553	947	0	0.0	0	0.0	145	15.3	50	5.3	1	0.1
All Remaining Cases Above Guideline Range	92	2	2.2	9	9.8	3	3.3	2	2.2	0	0.0
Government Sponsored Below Range	22,295	5,946	26.7	8,560	38.4	3,338	15.0	2,079	9.3	208	0.9
§5K1.1 Substantial Assistance Departure	9,522	5,946	62.4	138	1.4	185	1.9	178	1.9	21	0.2
§5K3.1 Early Disposition Program Departure	9,057	0	0.0	8,422	93.0	1,489	16.4	863	9.5	17	0.2
Other Government Sponsored Below Range	3,716	0	0.0	0	0.0	1,664	44.8	1,038	27.9	170	4.6
Below Range	14,762	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Downward Departure From Guideline Range	1,976	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553	917	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553	11,371	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
All Remaining Cases Below Guideline Range	498	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0

Table 28A (cont.)

	Pursuant to a Motion Not in a Plea Agreement													
	§5K1.1 Government Motion		§5K3.1 Government Motion		Other Government Motion		Defense Motion/ Government Did Not Object		Defense Motion/ Government Did Object		Other than a Plea/Motion by Parties		No Information Available	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
TOTAL	3,266	8.5	270	0.7	1,194	3.1	4,422	11.5	4,955	12.8	6,115	15.8	4,090	10.6
Above Range	0	0.0	0	0.0	188	12.3	10	0.7	7	0.5	704	46.1	271	17.7
Upward Departure From Guideline Range	0	0.0	0	0.0	63	16.6	1	0.3	0	0.0	133	35.1	38	10.0
Upward Departure With <i>Booker</i> / 18 U.S.C. § 3553	0	0.0	0	0.0	27	24.8	1	0.9	1	0.9	52	47.7	15	13.8
Above Guideline Range With <i>Booker</i> / 18 U.S.C. § 3553	0	0.0	0	0.0	98	10.3	8	0.8	6	0.6	514	54.3	146	15.4
All Remaining Cases Above Guideline Range	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	5	5.4	72	78.3
Government Sponsored Below Range	3,266	14.6	270	1.2	1,006	4.5	1,078	4.8	794	3.6	747	3.4	789	3.5
§5K1.1 Substantial Assistance Departure	3,266	34.3	6	0.1	242	2.5	476	5.0	307	3.2	453	4.8	215	2.3
§5K3.1 Early Disposition Program Departure	0	0.0	264	2.9	55	0.6	324	3.6	399	4.4	133	1.5	340	3.8
Other Government Sponsored Below Range	0	0.0	0	0.0	709	19.1	278	7.5	88	2.4	161	4.3	234	6.3
Below Range	0	0.0	0	0.0	0	0.0	3,334	22.6	4,154	28.1	4,664	31.6	3,030	20.5
Downward Departure From Guideline Range	0	0.0	0	0.0	0	0.0	722	36.5	383	19.4	602	30.5	317	16.0
Downward Departure With <i>Booker</i> / 18 U.S.C. § 3553	0	0.0	0	0.0	0	0.0	192	20.9	309	33.7	360	39.3	153	16.7
Below Guideline Range With <i>Booker</i> / 18 U.S.C. § 3553	0	0.0	0	0.0	0	0.0	2,419	21.3	3,457	30.4	3,690	32.5	2,079	18.3
All Remaining Cases Below Guideline Range	0	0.0	0	0.0	0	0.0	1	0.2	5	1.0	12	2.4	481	96.6

¹ Multiple attributions may be made on the SOR. Therefore, the numbers reported in this table may exceed the number of total cases. For example, among SORs with an attribution, 5,347 cases indicated more than one attribution. Note that only outside of the range cases are included in this table. Descriptions of variables used in this table are provided in Appendix A.

SOURCE: U.S. Sentencing Commission, 2011 Datafile, USSCFY11.