

**United  
States  
Sentencing  
Commission**



***Statistical Information Packet***

***Fiscal Year 2005***

***Second Circuit***

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(October 1, 2004, through September 30, 2005)

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**SECTION ONE: Fiscal Year 2005**  
*(October 1, 2004, through September 30, 2005)*

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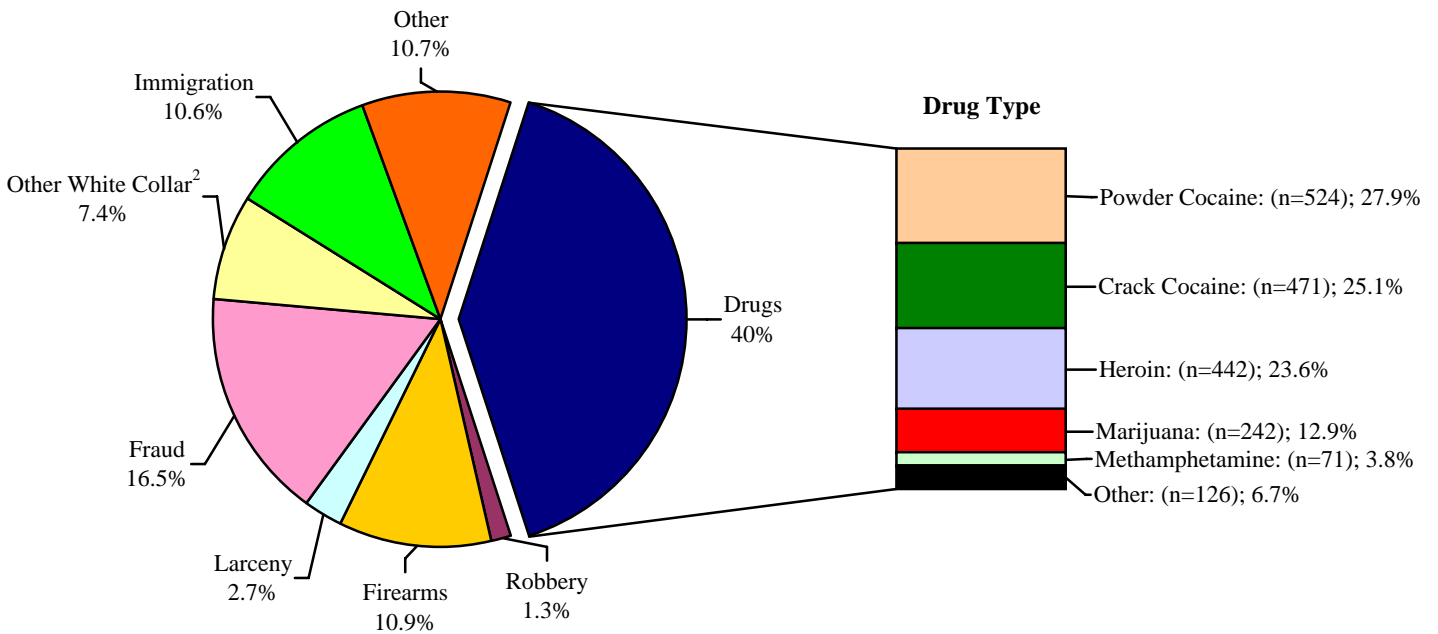
**Figure A**

**DISTRIBUTION OF SENTENCED GUIDELINE OFFENDERS BY SELECT PRIMARY OFFENSE CATEGORY<sup>1</sup>**  
**Fiscal Year 2005**

**National**



**Second Circuit**



<sup>1</sup>Of the 72,462 guideline cases, 1,519 cases were excluded due to one of the following reasons: missing primary offense category (54) or missing drug type (1,465). Of the 4,709 guideline cases from the Second Circuit, 18 cases were excluded due to missing drug type.

<sup>2</sup>The Other White Collar category includes the following offense types: Embezzlement, Forgery/Counterfeiting, Bribery, Money Laundering and Tax.

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2005 Datafile, OPAFY05.

**Table 1**

**DISTRIBUTION OF GUIDELINE DEFENDANTS SENTENCED  
BY PRIMARY OFFENSE CATEGORY  
Fiscal Year 2005**

PRIMARY OFFENSE	National		Second Circuit	
	Number	Percent	Number	Percent
<b>TOTAL</b>	<b>72,408</b>	<b>100.0</b>	<b>4,709</b>	<b>100.0</b>
Murder	91	0.1	11	0.2
Manslaughter	51	0.1	0	0.0
Kidnapping/Hostage Taking	42	0.1	2	0.0
Sexual Abuse	336	0.5	7	0.1
Assault	599	0.8	17	0.4
Robbery	1,370	1.9	63	1.3
Arson	51	0.1	3	0.1
Drugs - Trafficking	24,338	33.6	1,804	38.3
Drugs - Communication Facility	388	0.5	45	1.0
Drugs - Simple Possession	1,036	1.4	45	1.0
Firearms	8,648	11.9	510	10.8
Burglary/B&E	39	0.1	0	0.0
Auto Theft	67	0.1	9	0.2
Larceny	1,911	2.6	129	2.7
Fraud	6,809	9.4	772	16.4
Embezzlement	577	0.8	39	0.8
Forgery/Counterfeiting	1,083	1.5	61	1.3
Bribery	199	0.3	35	0.7
Tax	604	0.8	80	1.7
Money Laundering	934	1.3	130	2.8
Racketeering/Extortion	715	1.0	164	3.5
Gambling/Lottery	105	0.1	22	0.5
Civil Rights	72	0.1	6	0.1
Immigration	17,717	24.5	495	10.5
Pornography/Prostitution	1,198	1.7	91	1.9
Prison Offenses	367	0.5	12	0.3
Administration of Justice Offenses	1,047	1.4	61	1.3
Environmental/Wildlife	182	0.3	5	0.1
National Defense	27	0.0	4	0.1
Antitrust	18	0.0	1	0.0
Food & Drug	78	0.1	4	0.1
Other Miscellaneous Offenses	1,709	2.4	82	1.7

Of the 72,462 guideline cases, 54 cases were excluded due to missing information on primary offense category.

Of the 4,709 guideline cases from the Second Circuit, no case was excluded.

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2005 Datafile, OPAFY05.

**SECTION TWO: Pre-Booker**  
***(October 1, 2004, through January 11, 2005)***

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Table 2

**MODE OF CONVICTION BY CIRCUIT AND DISTRICT**  
**Fiscal Year 2005, Pre-Booker (October 1, 2004, through January 11, 2005)**

CIRCUIT District	TOTAL	PLEA		TRIAL	
		Number	Percent	Number	Percent
<b>TOTAL</b>	<b>18,749</b>	<b>17,917</b>	<b>95.6</b>	<b>832</b>	<b>4.4</b>
<b>D.C. CIRCUIT</b>	<b>144</b>	<b>126</b>	<b>87.5</b>	<b>18</b>	<b>12.5</b>
District of Columbia	144	126	87.5	18	12.5
<b>FIRST CIRCUIT</b>	<b>415</b>	<b>388</b>	<b>93.5</b>	<b>27</b>	<b>6.5</b>
Maine	70	67	95.7	3	4.3
Massachusetts	109	98	89.9	11	10.1
New Hampshire	44	43	97.7	1	2.3
Puerto Rico	170	161	94.7	9	5.3
Rhode Island	22	19	86.4	3	13.6
<b>SECOND CIRCUIT</b>	<b>1,065</b>	<b>1,028</b>	<b>96.5</b>	<b>37</b>	<b>3.5</b>
Connecticut	94	89	94.7	5	5.3
New York					
Eastern	312	299	95.8	13	4.2
Northern	147	145	98.6	2	1.4
Southern	284	270	95.1	14	4.9
Western	173	171	98.8	2	1.2
Vermont	55	54	98.2	1	1.8
<b>THIRD CIRCUIT</b>	<b>745</b>	<b>704</b>	<b>94.5</b>	<b>41</b>	<b>5.5</b>
Delaware	14	14	100.0	0	0.0
New Jersey	269	259	96.3	10	3.7
Pennsylvania					
Eastern	228	213	93.4	15	6.6
Middle	142	134	94.4	8	5.6
Western	75	70	93.3	5	6.7
Virgin Islands	17	14	82.4	3	17.6
<b>FOURTH CIRCUIT</b>	<b>1,647</b>	<b>1,530</b>	<b>92.9</b>	<b>117</b>	<b>7.1</b>
Maryland	161	144	89.4	17	10.6
North Carolina					
Eastern	195	185	94.9	10	5.1
Middle	71	67	94.4	4	5.6
Western	178	157	88.2	21	11.8
South Carolina	226	220	97.3	6	2.7
Virginia					
Eastern	549	516	94.0	33	6.0
Western	133	117	88.0	16	12.0
West Virginia					
Northern	71	68	95.8	3	4.2
Southern	63	56	88.9	7	11.1

CIRCUIT District	TOTAL	PLEA		TRIAL	
		Number	Percent	Number	Percent
<b>FIFTH CIRCUIT</b>	<b>4,088</b>	<b>3,978</b>	<b>97.3</b>	<b>110</b>	<b>2.7</b>
Louisiana					
Eastern	94	92	97.9	2	2.1
Middle	25	19	76.0	6	24.0
Western	108	101	93.5	7	6.5
Mississippi					
Northern	46	42	91.3	4	8.7
Southern	149	148	99.3	1	0.7
Texas					
Eastern	163	155	95.1	8	4.9
Northern	249	227	91.2	22	8.8
Southern	1,617	1,591	98.4	26	1.6
Western	1,637	1,603	97.9	34	2.1
<b>SIXTH CIRCUIT</b>	<b>1,335</b>	<b>1,261</b>	<b>94.5</b>	<b>74</b>	<b>5.5</b>
Kentucky					
Eastern	132	127	96.2	5	3.8
Western	91	86	94.5	5	5.5
Michigan					
Eastern	204	187	91.7	17	8.3
Western	105	101	96.2	4	3.8
Ohio					
Northern	256	239	93.4	17	6.6
Southern	138	128	92.8	10	7.2
Tennessee					
Eastern	159	156	98.1	3	1.9
Middle	82	79	96.3	3	3.7
Western	168	158	94.0	10	6.0
<b>SEVENTH CIRCUIT</b>	<b>541</b>	<b>516</b>	<b>95.4</b>	<b>25</b>	<b>4.6</b>
Illinois					
Central	41	40	97.6	1	2.4
Northern	162	158	97.5	4	2.5
Southern	55	53	96.4	2	3.6
Indiana					
Northern	69	62	89.9	7	10.1
Southern	86	84	97.7	2	2.3
Wisconsin					
Eastern	58	53	91.4	5	8.6
Western	70	66	94.3	4	5.7
<b>EIGHTH CIRCUIT</b>	<b>1,370</b>	<b>1,266</b>	<b>92.4</b>	<b>104</b>	<b>7.6</b>
Arkansas					
Eastern	94	84	89.4	10	10.6
Western	63	62	98.4	1	1.6
Iowa					
Northern	142	132	93.0	10	7.0
Southern	96	87	90.6	9	9.4
Minnesota	142	115	81.0	27	19.0
Missouri					
Eastern	220	212	96.4	8	3.6
Western	196	184	93.9	12	6.1
Nebraska	201	187	93.0	14	7.0
North Dakota	81	77	95.1	4	4.9
South Dakota	135	126	93.3	9	6.7



CIRCUIT District	TOTAL	PLEA		TRIAL	
		Number	Percent	Number	Percent
<b>NINTH CIRCUIT</b>	<b>3,989</b>	<b>3,879</b>	<b>97.2</b>	<b>110</b>	<b>2.8</b>
Alaska	37	35	94.6	2	5.4
Arizona	1,361	1,350	99.2	11	0.8
California					
Central	473	458	96.8	15	3.2
Eastern	236	228	96.6	8	3.4
Northern	219	213	97.3	6	2.7
Southern	746	721	96.6	25	3.4
Guam	15	14	93.3	1	6.7
Hawaii	46	46	100.0	0	0.0
Idaho	68	65	95.6	3	4.4
Montana	129	116	89.9	13	10.1
Nevada	127	120	94.5	7	5.5
Northern Mariana Islands	6	2	33.3	4	66.7
Oregon	175	172	98.3	3	1.7
Washington					
Eastern	106	96	90.6	10	9.4
Western	245	243	99.2	2	0.8
<b>TENTH CIRCUIT</b>	<b>1,518</b>	<b>1,466</b>	<b>96.6</b>	<b>52</b>	<b>3.4</b>
Colorado	187	184	98.4	3	1.6
Kansas	205	194	94.6	11	5.4
New Mexico	669	664	99.3	5	0.7
Oklahoma					
Eastern	30	29	96.7	1	3.3
Northern	53	49	92.5	4	7.5
Western	90	86	95.6	4	4.4
Utah	224	205	91.5	19	8.5
Wyoming	60	55	91.7	5	8.3
<b>ELEVENTH CIRCUIT</b>	<b>1,892</b>	<b>1,775</b>	<b>93.8</b>	<b>117</b>	<b>6.2</b>
Alabama					
Middle	52	49	94.2	3	5.8
Northern	133	126	94.7	7	5.3
Southern	84	80	95.2	4	4.8
Florida					
Middle	401	362	90.3	39	9.7
Northern	96	89	92.7	7	7.3
Southern	694	653	94.1	41	5.9
Georgia					
Middle	133	127	95.5	6	4.5
Northern	159	150	94.3	9	5.7
Southern	140	139	99.3	1	0.7

Of the 18,788 guideline cases, 39 cases were excluded due to missing information on mode of conviction.

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2005 Datafile, OPAFY05, Pre-Booker Only Cases (October 1, 2004, through January 11, 2005).

**Table 3**

**MODE OF CONVICTION BY PRIMARY OFFENSE CATEGORY  
Fiscal Year 2005, Pre-Booker (October 1, 2004, through January 11, 2005)**

PRIMARY OFFENSE	TOTAL	National				Second Circuit			
		PLEA		TRIAL		PLEA		TRIAL	
		n	%	n	%	n	%	n	%
<b>TOTAL</b>	<b>18,748</b>	<b>17,916</b>	<b>95.6</b>	<b>832</b>	<b>4.4</b>	<b>1,028</b>	<b>96.5</b>	<b>37</b>	<b>3.5</b>
<b>Murder</b>	<b>28</b>	<b>21</b>	<b>75.0</b>	<b>7</b>	<b>25.0</b>	<b>2</b>	<b>100.0</b>	<b>0</b>	<b>0.0</b>
<b>Manslaughter</b>	<b>9</b>	<b>9</b>	<b>100.0</b>	<b>0</b>	<b>0.0</b>	<b>0</b>	<b>--</b>	<b>0</b>	<b>--</b>
<b>Kidnapping/Hostage Taking</b>	<b>18</b>	<b>13</b>	<b>72.2</b>	<b>5</b>	<b>27.8</b>	<b>1</b>	<b>100.0</b>	<b>0</b>	<b>0.0</b>
<b>Sexual Abuse</b>	<b>99</b>	<b>89</b>	<b>89.9</b>	<b>10</b>	<b>10.1</b>	<b>5</b>	<b>100.0</b>	<b>0</b>	<b>0.0</b>
<b>Assault</b>	<b>143</b>	<b>129</b>	<b>90.2</b>	<b>14</b>	<b>9.8</b>	<b>6</b>	<b>85.7</b>	<b>1</b>	<b>14.3</b>
<b>Robbery</b>	<b>349</b>	<b>333</b>	<b>95.4</b>	<b>16</b>	<b>4.6</b>	<b>15</b>	<b>88.2</b>	<b>2</b>	<b>11.8</b>
<b>Arson</b>	<b>11</b>	<b>7</b>	<b>63.6</b>	<b>4</b>	<b>36.4</b>	<b>0</b>	<b>--</b>	<b>0</b>	<b>--</b>
<b>Drugs - Trafficking</b>	<b>5,975</b>	<b>5,654</b>	<b>94.6</b>	<b>321</b>	<b>5.4</b>	<b>347</b>	<b>97.7</b>	<b>8</b>	<b>2.3</b>
<b>Drugs - Communication Facility</b>	<b>79</b>	<b>78</b>	<b>98.7</b>	<b>1</b>	<b>1.3</b>	<b>9</b>	<b>100.0</b>	<b>0</b>	<b>0.0</b>
<b>Drugs - Simple Possession</b>	<b>312</b>	<b>306</b>	<b>98.1</b>	<b>6</b>	<b>1.9</b>	<b>11</b>	<b>100.0</b>	<b>0</b>	<b>0.0</b>
<b>Firearms</b>	<b>2,259</b>	<b>2,078</b>	<b>92.0</b>	<b>181</b>	<b>8.0</b>	<b>116</b>	<b>92.8</b>	<b>9</b>	<b>7.2</b>
<b>Burglary/B&amp;E</b>	<b>10</b>	<b>10</b>	<b>100.0</b>	<b>0</b>	<b>0.0</b>	<b>0</b>	<b>--</b>	<b>0</b>	<b>--</b>
<b>Auto Theft</b>	<b>20</b>	<b>17</b>	<b>85.0</b>	<b>3</b>	<b>15.0</b>	<b>3</b>	<b>100.0</b>	<b>0</b>	<b>0.0</b>
<b>Larceny</b>	<b>485</b>	<b>473</b>	<b>97.5</b>	<b>12</b>	<b>2.5</b>	<b>30</b>	<b>96.8</b>	<b>1</b>	<b>3.2</b>
<b>Fraud</b>	<b>1,733</b>	<b>1,650</b>	<b>95.2</b>	<b>83</b>	<b>4.8</b>	<b>174</b>	<b>96.1</b>	<b>7</b>	<b>3.9</b>
<b>Embezzlement</b>	<b>164</b>	<b>161</b>	<b>98.2</b>	<b>3</b>	<b>1.8</b>	<b>10</b>	<b>100.0</b>	<b>0</b>	<b>0.0</b>
<b>Forgery/Counterfeiting</b>	<b>288</b>	<b>279</b>	<b>96.9</b>	<b>9</b>	<b>3.1</b>	<b>13</b>	<b>100.0</b>	<b>0</b>	<b>0.0</b>
<b>Bribery</b>	<b>42</b>	<b>37</b>	<b>88.1</b>	<b>5</b>	<b>11.9</b>	<b>5</b>	<b>83.3</b>	<b>1</b>	<b>16.7</b>
<b>Tax</b>	<b>142</b>	<b>135</b>	<b>95.1</b>	<b>7</b>	<b>4.9</b>	<b>22</b>	<b>91.7</b>	<b>2</b>	<b>8.3</b>
<b>Money Laundering</b>	<b>216</b>	<b>205</b>	<b>94.9</b>	<b>11</b>	<b>5.1</b>	<b>32</b>	<b>97.0</b>	<b>1</b>	<b>3.0</b>
<b>Racketeering/Extortion</b>	<b>192</b>	<b>182</b>	<b>94.8</b>	<b>10</b>	<b>5.2</b>	<b>53</b>	<b>98.1</b>	<b>1</b>	<b>1.9</b>
<b>Gambling/Lottery</b>	<b>23</b>	<b>23</b>	<b>100.0</b>	<b>0</b>	<b>0.0</b>	<b>5</b>	<b>100.0</b>	<b>0</b>	<b>0.0</b>
<b>Civil Rights</b>	<b>26</b>	<b>24</b>	<b>92.3</b>	<b>2</b>	<b>7.7</b>	<b>1</b>	<b>100.0</b>	<b>0</b>	<b>0.0</b>
<b>Immigration</b>	<b>4,845</b>	<b>4,783</b>	<b>98.7</b>	<b>62</b>	<b>1.3</b>	<b>114</b>	<b>97.4</b>	<b>3</b>	<b>2.6</b>
<b>Pornography/Prostitution</b>	<b>298</b>	<b>285</b>	<b>95.6</b>	<b>13</b>	<b>4.4</b>	<b>14</b>	<b>100.0</b>	<b>0</b>	<b>0.0</b>
<b>Prison Offenses</b>	<b>89</b>	<b>88</b>	<b>98.9</b>	<b>1</b>	<b>1.1</b>	<b>3</b>	<b>100.0</b>	<b>0</b>	<b>0.0</b>
<b>Administration of Justice Offenses</b>	<b>265</b>	<b>247</b>	<b>93.2</b>	<b>18</b>	<b>6.8</b>	<b>10</b>	<b>90.9</b>	<b>1</b>	<b>9.1</b>
<b>Environmental/Wildlife</b>	<b>49</b>	<b>49</b>	<b>100.0</b>	<b>0</b>	<b>0.0</b>	<b>2</b>	<b>100.0</b>	<b>0</b>	<b>0.0</b>
<b>National Defense</b>	<b>8</b>	<b>8</b>	<b>100.0</b>	<b>0</b>	<b>0.0</b>	<b>0</b>	<b>--</b>	<b>0</b>	<b>--</b>
<b>Antitrust</b>	<b>6</b>	<b>6</b>	<b>100.0</b>	<b>0</b>	<b>0.0</b>	<b>0</b>	<b>--</b>	<b>0</b>	<b>--</b>
<b>Food &amp; Drug</b>	<b>21</b>	<b>19</b>	<b>90.5</b>	<b>2</b>	<b>9.5</b>	<b>2</b>	<b>100.0</b>	<b>0</b>	<b>0.0</b>
<b>Other Miscellaneous Offenses</b>	<b>544</b>	<b>518</b>	<b>95.2</b>	<b>26</b>	<b>4.8</b>	<b>23</b>	<b>100.0</b>	<b>0</b>	<b>0.0</b>

Of the 18,788 guideline cases, 40 cases were excluded due to one or both of the following reasons: missing primary offense category (30) or missing mode of conviction (39).

Of the 4,709 guideline cases from the Second Circuit, no case was excluded.

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2005 Datafile, OPAFY05, Pre-Booker Only Cases (October 1, 2004, through January 11, 2005).

Table 4

**TYPE OF SENTENCE IMPOSED BY PRIMARY OFFENSE CATEGORY**  
**Fiscal Year 2005, Pre-Booker (October 1, 2004, through January 11, 2005)**

**National**

PRIMARY OFFENSE	TOTAL	Prison		Prison/Community Split Sentence		Probation and Confinement		Probation Only	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent
<b>TOTAL</b>	<b>18,572</b>	<b>15,802</b>	<b>85.1</b>	<b>517</b>	<b>2.8</b>	<b>752</b>	<b>4.0</b>	<b>1,501</b>	<b>8.1</b>
Murder	28	28	100.0	0	0.0	0	0.0	0	0.0
Manslaughter	9	9	100.0	0	0.0	0	0.0	0	0.0
Kidnapping/Hostage Taking	18	18	100.0	0	0.0	0	0.0	0	0.0
Sexual Abuse	98	93	94.9	1	1.0	3	3.1	1	1.0
Assault	141	108	76.6	1	0.7	5	3.5	27	19.1
Robbery	344	321	93.3	2	0.6	9	2.6	12	3.5
Arson	11	11	100.0	0	0.0	0	0.0	0	0.0
Drugs - Trafficking	5,968	5,644	94.6	118	2.0	94	1.6	112	1.9
Drugs - Communication Facility	79	69	87.3	3	3.8	1	1.3	6	7.6
Drugs - Simple Possession	293	175	59.7	2	0.7	10	3.4	106	36.2
Firearms	2,254	2,066	91.7	58	2.6	57	2.5	73	3.2
Burglary/B&E	9	8	88.9	0	0.0	0	0.0	1	11.1
Auto Theft	20	17	85.0	2	10.0	0	0.0	1	5.0
Larceny	450	158	35.1	18	4.0	68	15.1	206	45.8
Fraud	1,716	1,022	59.6	143	8.3	198	11.5	353	20.6
Embezzlement	160	51	31.9	27	16.9	20	12.5	62	38.8
Forgery/Counterfeiting	287	195	67.9	19	6.6	26	9.1	47	16.4
Bribery	41	20	48.8	4	9.8	8	19.5	9	22.0
Tax	141	64	45.4	13	9.2	31	22.0	33	23.4
Money Laundering	216	153	70.8	14	6.5	25	11.6	24	11.1
Racketeering/Extortion	191	162	84.8	5	2.6	14	7.3	10	5.2
Gambling/Lottery	23	4	17.4	1	4.3	12	52.2	6	26.1
Civil Rights	26	10	38.5	2	7.7	5	19.2	9	34.6
Immigration	4,838	4,660	96.3	48	1.0	61	1.3	69	1.4
Pornography/Prostitution	297	287	96.6	4	1.3	5	1.7	1	0.3
Prison Offenses	89	82	92.1	1	1.1	1	1.1	5	5.6
Administration of Justice Offenses	262	158	60.3	10	3.8	35	13.4	59	22.5
Environmental/Wildlife	43	7	16.3	1	2.3	12	27.9	23	53.5
National Defense	8	4	50.0	2	25.0	0	0.0	2	25.0
Antitrust	5	4	80.0	0	0.0	0	0.0	1	20.0
Food & Drug	18	6	33.3	2	11.1	2	11.1	8	44.4
Other Miscellaneous Offenses	489	188	38.4	16	3.3	50	10.2	235	48.1

Of the 18,788 guideline cases, 216 cases were excluded due to one or more of the following reasons: missing sentencing information (71), missing primary offense category (30), or cases in which the defendant received no imprisonment or probation (141).

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2005 Datafile, OPAFY05, Pre-Booker Only Cases (October 1, 2004, through January 11, 2005).

Table 5

**TYPE OF SENTENCE IMPOSED BY PRIMARY OFFENSE CATEGORY**  
**Fiscal Year 2005, Pre-Booker (October 1, 2004, through January 11, 2005)**

**Second Circuit**

PRIMARY OFFENSE	TOTAL	Prison		Prison/Community Split Sentence		Probation and Confinement		Probation Only	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent
<b>TOTAL</b>	<b>1,051</b>	<b>784</b>	<b>74.6</b>	<b>45</b>	<b>4.3</b>	<b>80</b>	<b>7.6</b>	<b>142</b>	<b>13.5</b>
Murder	2	2	100.0	0	0.0	0	0.0	0	0.0
Manslaughter	0	0	--	0	--	0	--	0	--
Kidnapping/Hostage Taking	1	1	100.0	0	0.0	0	0.0	0	0.0
Sexual Abuse	5	4	80.0	0	0.0	1	20.0	0	0.0
Assault	7	4	57.1	0	0.0	2	28.6	1	14.3
Robbery	17	16	94.1	0	0.0	1	5.9	0	0.0
Arson	0	0	--	0	--	0	--	0	--
Drugs - Trafficking	355	314	88.5	11	3.1	10	2.8	20	5.6
Drugs - Communication Facility	9	7	77.8	0	0.0	0	0.0	2	22.2
Drugs - Simple Possession	11	1	9.1	0	0.0	1	9.1	9	81.8
Firearms	125	109	87.2	4	3.2	6	4.8	6	4.8
Burglary/B&E	0	0	--	0	--	0	--	0	--
Auto Theft	3	3	100.0	0	0.0	0	0.0	0	0.0
Larceny	30	2	6.7	3	10.0	8	26.7	17	56.7
Fraud	177	91	51.4	14	7.9	25	14.1	47	26.6
Embezzlement	10	4	40.0	1	10.0	2	20.0	3	30.0
Forgery/Counterfeiting	13	5	38.5	1	7.7	0	0.0	7	53.8
Bribery	6	3	50.0	0	0.0	2	33.3	1	16.7
Tax	23	7	30.4	1	4.3	8	34.8	7	30.4
Money Laundering	33	27	81.8	1	3.0	0	0.0	5	15.2
Racketeering/Extortion	54	47	87.0	4	7.4	2	3.7	1	1.9
Gambling/Lottery	5	1	20.0	1	20.0	1	20.0	2	40.0
Civil Rights	1	0	0.0	0	0.0	0	0.0	1	100.0
Immigration	117	112	95.7	1	0.9	1	0.9	3	2.6
Pornography/Prostitution	14	12	85.7	0	0.0	2	14.3	0	0.0
Prison Offenses	3	3	100.0	0	0.0	0	0.0	0	0.0
Administration of Justice Offenses	11	4	36.4	2	18.2	2	18.2	3	27.3
Environmental/Wildlife	2	0	0.0	0	0.0	2	100.0	0	0.0
National Defense	0	0	--	0	--	0	--	0	--
Antitrust	0	0	--	0	--	0	--	0	--
Food & Drug	2	0	0.0	0	0.0	1	50.0	1	50.0
Other Miscellaneous Offenses	15	5	33.3	1	6.7	3	20.0	6	40.0

Of the 1,065 guideline cases from the Second Circuit, 14 cases were excluded due to one of the following reasons: missing sentencing information (3) or cases in which the defendant received no imprisonment or probation (11).

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2005 Datafile, OPAFY05, Pre-Booker Only Cases (October 1, 2004, through January 11, 2005).

**Table 6**

**INCARCERATION RATE OF DEFENDANTS ELIGIBLE FOR NON-PRISON SENTENCES  
BY PRIMARY OFFENSE CATEGORY  
Fiscal Year 2005, Pre-Booker (October 1, 2004, through January 11, 2005)**

PRIMARY OFFENSE	TOTAL	National				Second Circuit			
		Prison Sentence		Non-Prison Sentence		Prison Sentence		Non-Prison Sentence	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent
<b>TOTAL</b>	<b>3,394</b>	<b>1,913</b>	<b>56.4</b>	<b>1,481</b>	<b>43.6</b>	<b>87</b>	<b>40.3</b>	<b>129</b>	<b>59.7</b>
<b>Fraud</b>	<b>659</b>	247	37.5	412	62.5	25	34.2	48	65.8
<b>Larceny</b>	<b>310</b>	61	19.7	249	80.3	2	8.7	21	91.3
<b>Immigration</b>	<b>1,301</b>	1,194	91.8	107	8.2	47	94.0	3	6.0
<b>Embezzlement</b>	<b>108</b>	31	28.7	77	71.3	0	0.0	3	100.0
<b>Drugs - Trafficking</b>	<b>153</b>	78	51.0	75	49.0	4	44.4	5	55.6
<b>Drugs - Simple Possession</b>	<b>141</b>	54	38.3	87	61.7	1	10.0	9	90.0
<b>Firearms</b>	<b>99</b>	52	52.5	47	47.5	3	60.0	2	40.0
<b>Forgery/Counterfeiting</b>	<b>98</b>	41	41.8	57	58.2	0	0.0	6	100.0
<b>Other Miscellaneous Offenses</b>	<b>525</b>	155	29.5	370	70.5	5	13.5	32	86.5

Of the 18,788 guideline cases, 15,394 cases were excluded due to one or more of the following reasons: defendant ineligible for non-prison alternatives (15,384), missing sentencing information (71), or missing primary offense category (30).

Of the 1,065 guideline cases from the Second Circuit, 849 cases were excluded due to one or both of the following reasons: defendant ineligible for non-prison alternatives (849) or missing sentencing information (3).

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2005 Datafile, OPAFY05, Pre-Booker Only Cases (October 1, 2004, through January 11, 2005).

**Table 7**

**AVERAGE LENGTH OF IMPRISONMENT BY PRIMARY OFFENSE CATEGORY  
Fiscal Year 2005, Pre-Booker (October 1, 2004, through January 11, 2005)**

PRIMARY OFFENSE	National			Second Circuit		
	Mean Months	Median Months	Number	Mean Months	Median Months	Number
<b>TOTAL</b>	<b>53.4</b>	<b>30.0</b>	<b>16,054</b>	<b>47.6</b>	<b>30.0</b>	<b>813</b>
<b>Murder</b>	189.3	120.0	28	--	--	2
<b>Manslaughter</b>	25.9	24.0	9	--	--	0
<b>Kidnapping/Hostage Taking</b>	149.3	114.0	18	--	--	1
<b>Sexual Abuse</b>	79.1	60.0	93	143.5	139.5	4
<b>Assault</b>	37.1	30.0	106	10.9	9.0	4
<b>Robbery</b>	85.8	70.0	322	57.9	41.0	16
<b>Arson</b>	67.3	60.0	11	--	--	0
<b>Drugs - Trafficking</b>	79.3	57.0	5,733	52.6	36.4	323
<b>Drugs - Communication Facility</b>	42.3	48.0	70	29.5	30.0	7
<b>Drugs - Simple Possession</b>	8.0	6.0	168	--	--	1
<b>Firearms</b>	76.1	51.0	2,112	63.6	46.0	111
<b>Burglary/B&amp;E</b>	16.1	17.5	8	--	--	0
<b>Auto Theft</b>	28.9	30.0	19	28.0	30.0	3
<b>Larceny</b>	16.0	12.0	174	5.4	5.0	5
<b>Fraud</b>	21.3	14.0	1,123	26.6	16.5	98
<b>Embezzlement</b>	11.0	6.0	77	14.2	12.0	5
<b>Forgery/Counterfeiting</b>	18.1	15.0	211	20.8	13.5	6
<b>Bribery</b>	21.2	19.5	24	12.1	10.0	3
<b>Tax</b>	17.0	15.0	77	21.3	18.0	8
<b>Money Laundering</b>	35.3	27.0	166	39.7	31.5	28
<b>Racketeering/Extortion</b>	86.0	60.0	164	102.0	65.4	50
<b>Gambling/Lottery</b>	16.3	14.0	4	--	--	1
<b>Civil Rights</b>	22.9	18.5	12	--	--	0
<b>Immigration</b>	22.8	18.0	4,561	21.8	10.5	110
<b>Pornography/Prostitution</b>	76.5	57.0	291	62.3	60.0	12
<b>Prison Offenses</b>	20.4	15.0	83	18.0	18.0	3
<b>Administration of Justice Offenses</b>	22.9	16.0	165	12.9	4.0	6
<b>Environmental/Wildlife</b>	13.5	9.0	8	--	--	0
<b>National Defense</b>	23.2	21.0	6	--	--	0
<b>Antitrust</b>	5.3	5.5	4	--	--	0
<b>Food &amp; Drug</b>	28.9	14.0	8	--	--	0
<b>Other Miscellaneous Offenses</b>	17.8	8.0	199	9.1	8.0	6

Of the 18,788 guideline cases, 2,734 cases were excluded for one or more of the following reasons: zero months prison ordered (2,492), missing primary offense category (30), or missing or indeterminable sentencing information (239).

Of the 1,065 guideline cases from the Second Circuit, 252 cases were excluded due to one of the following reasons: zero prison months ordered (238) or missing or indeterminable sentencing information (14).

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2005 Datafile, OPAFY05, Pre-Booker Only Cases (October 1, 2004, through January 11, 2005).

**Table 8**

**SENTENCES RELATIVE TO THE GUIDELINE RANGE BY CIRCUIT AND DISTRICT  
Fiscal Year 2005, Pre-Booker (October 1, 2004, through January 11, 2005)**

CIRCUIT District	TOTAL	SENTENCED WITHIN GUIDELINE RANGE		SUBSTANTIAL ASSISTANCE DEPARTURE		GOVERNMENT INITIATED DEPARTURE		OTHER DOWNWARD DEPARTURE		UPWARD DEPARTURE	
		n	%	n	%	n	%	n	%	n	%
<b>TOTAL</b>	<b>17,504</b>	<b>12,406</b>	<b>70.9</b>	<b>2,575</b>	<b>14.7</b>	<b>1,643</b>	<b>9.4</b>	<b>752</b>	<b>4.3</b>	<b>128</b>	<b>0.7</b>
<b>D.C. CIRCUIT</b>	<b>141</b>	<b>101</b>	<b>71.6</b>	<b>35</b>	<b>24.8</b>	<b>4</b>	<b>2.8</b>	<b>1</b>	<b>0.7</b>	<b>0</b>	<b>0.0</b>
District of Columbia	141	101	71.6	35	24.8	4	2.8	1	0.7	0	0.0
<b>FIRST CIRCUIT</b>	<b>390</b>	<b>315</b>	<b>80.8</b>	<b>55</b>	<b>14.1</b>	<b>2</b>	<b>0.5</b>	<b>15</b>	<b>3.8</b>	<b>3</b>	<b>0.8</b>
Maine	69	50	72.5	18	26.1	0	0.0	1	1.4	0	0.0
Massachusetts	103	74	71.8	15	14.6	2	1.9	12	11.7	0	0.0
New Hampshire	34	18	52.9	15	44.1	0	0.0	1	2.9	0	0.0
Puerto Rico	162	157	96.9	4	2.5	0	0.0	0	0.0	1	0.6
Rhode Island	22	16	72.7	3	13.6	0	0.0	1	4.5	2	9.1
<b>SECOND CIRCUIT</b>	<b>1,037</b>	<b>620</b>	<b>59.8</b>	<b>253</b>	<b>24.4</b>	<b>25</b>	<b>2.4</b>	<b>136</b>	<b>13.1</b>	<b>3</b>	<b>0.3</b>
Connecticut	93	60	64.5	21	22.6	1	1.1	10	10.8	1	1.1
New York											
Eastern	312	153	49.0	77	24.7	16	5.1	65	20.8	1	0.3
Northern	136	76	55.9	40	29.4	5	3.7	15	11.0	0	0.0
Southern	273	201	73.6	51	18.7	0	0.0	21	7.7	0	0.0
Western	168	106	63.1	45	26.8	3	1.8	13	7.7	1	0.6
Vermont	55	24	43.6	19	34.5	0	0.0	12	21.8	0	0.0
<b>THIRD CIRCUIT</b>	<b>713</b>	<b>481</b>	<b>67.5</b>	<b>192</b>	<b>26.9</b>	<b>11</b>	<b>1.5</b>	<b>26</b>	<b>3.6</b>	<b>3</b>	<b>0.4</b>
Delaware	13	9	69.2	2	15.4	0	0.0	2	15.4	0	0.0
New Jersey	260	188	72.3	67	25.8	0	0.0	4	1.5	1	0.4
Pennsylvania											
Eastern	212	110	51.9	77	36.3	9	4.2	16	7.5	0	0.0
Middle	141	106	75.2	30	21.3	2	1.4	2	1.4	1	0.7
Western	71	56	78.9	13	18.3	0	0.0	1	1.4	1	1.4
Virgin Islands	16	12	75.0	3	18.8	0	0.0	1	6.3	0	0.0
<b>FOURTH CIRCUIT</b>	<b>1,489</b>	<b>1,148</b>	<b>77.1</b>	<b>279</b>	<b>18.7</b>	<b>9</b>	<b>0.6</b>	<b>43</b>	<b>2.9</b>	<b>10</b>	<b>0.7</b>
Maryland	153	91	59.5	47	30.7	2	1.3	12	7.8	1	0.7
North Carolina											
Eastern	190	104	54.7	78	41.1	1	0.5	7	3.7	0	0.0
Middle	71	61	85.9	9	12.7	0	0.0	1	1.4	0	0.0
Western	175	117	66.9	50	28.6	4	2.3	4	2.3	0	0.0
South Carolina	224	182	81.3	33	14.7	0	0.0	8	3.6	1	0.4
Virginia											
Eastern	417	389	93.3	15	3.6	1	0.2	7	1.7	5	1.2
Western	131	91	69.5	36	27.5	1	0.8	2	1.5	1	0.8
West Virginia											
Northern	70	60	85.7	9	12.9	0	0.0	0	0.0	1	1.4
Southern	58	53	91.4	2	3.4	0	0.0	2	3.4	1	1.7

CIRCUIT District	TOTAL	SENTENCED WITHIN GUIDELINE RANGE		SUBSTANTIAL ASSISTANCE DEPARTURE		GOVERNMENT INITIATED DEPARTURE		OTHER DOWNWARD DEPARTURE		UPWARD DEPARTURE	
		n	%	n	%	n	%	n	%	n	%
<b>FIFTH CIRCUIT</b>	<b>4,052</b>	<b>3,127</b>	<b>77.2</b>	<b>337</b>	<b>8.3</b>	<b>450</b>	<b>11.1</b>	<b>102</b>	<b>2.5</b>	<b>36</b>	<b>0.9</b>
<b>Louisiana</b>											
Eastern	103	77	74.8	18	17.5	6	5.8	1	1.0	1	1.0
Middle	25	20	80.0	4	16.0	0	0.0	1	4.0	0	0.0
Western	102	82	80.4	16	15.7	0	0.0	1	1.0	3	2.9
<b>Mississippi</b>											
Northern	46	28	60.9	13	28.3	2	4.3	2	4.3	1	2.2
Southern	149	123	82.6	21	14.1	0	0.0	4	2.7	1	0.7
<b>Texas</b>											
Eastern	162	149	92.0	10	6.2	1	0.6	2	1.2	0	0.0
Northern	249	212	85.1	24	9.6	3	1.2	6	2.4	4	1.6
Southern	1,607	1,099	68.4	100	6.2	336	20.9	57	3.5	15	0.9
Western	1,609	1,337	83.1	131	8.1	102	6.3	28	1.7	11	0.7
<b>SIXTH CIRCUIT</b>	<b>1,302</b>	<b>908</b>	<b>69.7</b>	<b>315</b>	<b>24.2</b>	<b>8</b>	<b>0.6</b>	<b>65</b>	<b>5.0</b>	<b>6</b>	<b>0.5</b>
<b>Kentucky</b>											
Eastern	131	68	51.9	62	47.3	0	0.0	1	0.8	0	0.0
Western	86	67	77.9	12	14.0	2	2.3	4	4.7	1	1.2
<b>Michigan</b>											
Eastern	204	140	68.6	55	27.0	1	0.5	8	3.9	0	0.0
Western	104	80	76.9	17	16.3	0	0.0	7	6.7	0	0.0
<b>Ohio</b>											
Northern	250	187	74.8	46	18.4	0	0.0	15	6.0	2	0.8
Southern	133	90	67.7	28	21.1	0	0.0	15	11.3	0	0.0
<b>Tennessee</b>											
Eastern	154	103	66.9	42	27.3	2	1.3	5	3.2	2	1.3
Middle	75	57	76.0	14	18.7	0	0.0	3	4.0	1	1.3
Western	165	116	70.3	39	23.6	3	1.8	7	4.2	0	0.0
<b>SEVENTH CIRCUIT</b>	<b>480</b>	<b>359</b>	<b>74.8</b>	<b>90</b>	<b>18.8</b>	<b>6</b>	<b>1.3</b>	<b>20</b>	<b>4.2</b>	<b>5</b>	<b>1.0</b>
<b>Illinois</b>											
Central	40	30	75.0	9	22.5	1	2.5	0	0.0	0	0.0
Northern	156	106	67.9	38	24.4	4	2.6	6	3.8	2	1.3
Southern	55	48	87.3	4	7.3	0	0.0	3	5.5	0	0.0
<b>Indiana</b>											
Northern	69	53	76.8	14	20.3	1	1.4	0	0.0	1	1.4
Southern	75	47	62.7	22	29.3	0	0.0	5	6.7	1	1.3
<b>Wisconsin</b>											
Eastern	29	22	75.9	2	6.9	0	0.0	5	17.2	0	0.0
Western	56	53	94.6	1	1.8	0	0.0	1	1.8	1	1.8
<b>EIGHTH CIRCUIT</b>	<b>1,214</b>	<b>902</b>	<b>74.3</b>	<b>197</b>	<b>16.2</b>	<b>45</b>	<b>3.7</b>	<b>64</b>	<b>5.3</b>	<b>6</b>	<b>0.5</b>
<b>Arkansas</b>											
Eastern	51	41	80.4	7	13.7	1	2.0	1	2.0	1	2.0
Western	62	48	77.4	14	22.6	0	0.0	0	0.0	0	0.0
<b>Iowa</b>											
Northern	122	102	83.6	16	13.1	3	2.5	0	0.0	1	0.8
Southern	95	65	68.4	22	23.2	0	0.0	7	7.4	1	1.1
Minnesota	139	92	66.2	21	15.1	4	2.9	22	15.8	0	0.0
<b>Missouri</b>											
Eastern	220	167	75.9	45	20.5	1	0.5	6	2.7	1	0.5
Western	188	142	75.5	40	21.3	1	0.5	5	2.7	0	0.0
Nebraska	197	142	72.1	9	4.6	29	14.7	17	8.6	0	0.0
North Dakota	81	54	66.7	16	19.8	6	7.4	5	6.2	0	0.0
South Dakota	59	49	83.1	7	11.9	0	0.0	1	1.7	2	3.4



CIRCUIT District	TOTAL	SENTENCED WITHIN GUIDELINE RANGE		SUBSTANTIAL ASSISTANCE DEPARTURE		GOVERNMENT INITIATED DEPARTURE		OTHER DOWNWARD DEPARTURE		UPWARD DEPARTURE	
		n	%	n	%	n	%	n	%	n	%
<b>NINTH CIRCUIT</b>	<b>3,463</b>	<b>2,036</b>	<b>58.8</b>	<b>359</b>	<b>10.4</b>	<b>863</b>	<b>24.9</b>	<b>172</b>	<b>5.0</b>	<b>33</b>	<b>1.0</b>
Alaska	34	22	64.7	5	14.7	2	5.9	3	8.8	2	5.9
Arizona	1,094	340	31.1	77	7.0	627	57.3	28	2.6	22	2.0
California											
Central	325	284	87.4	25	7.7	4	1.2	12	3.7	0	0.0
Eastern	234	148	63.2	30	12.8	42	17.9	13	5.6	1	0.4
Northern	215	154	71.6	36	16.7	11	5.1	14	6.5	0	0.0
Southern	697	502	72.0	36	5.2	117	16.8	41	5.9	1	0.1
Guam	15	11	73.3	4	26.7	0	0.0	0	0.0	0	0.0
Hawaii	46	32	69.6	12	26.1	0	0.0	1	2.2	1	2.2
Idaho	68	31	45.6	15	22.1	17	25.0	4	5.9	1	1.5
Montana	127	112	88.2	14	11.0	0	0.0	0	0.0	1	0.8
Nevada	126	107	84.9	10	7.9	3	2.4	6	4.8	0	0.0
Northern Mariana Islands	5	5	100.0	0	0.0	0	0.0	0	0.0	0	0.0
Oregon	159	95	59.7	36	22.6	2	1.3	24	15.1	2	1.3
Washington											
Eastern	103	77	74.8	18	17.5	1	1.0	7	6.8	0	0.0
Western	215	116	54.0	41	19.1	37	17.2	19	8.8	2	0.9
<b>TENTH CIRCUIT</b>	<b>1,462</b>	<b>1,037</b>	<b>70.9</b>	<b>154</b>	<b>10.5</b>	<b>214</b>	<b>14.6</b>	<b>47</b>	<b>3.2</b>	<b>10</b>	<b>0.7</b>
Colorado	177	116	65.5	47	26.6	4	2.3	10	5.6	0	0.0
Kansas	201	161	80.1	32	15.9	3	1.5	3	1.5	2	1.0
New Mexico	657	410	62.4	19	2.9	206	31.4	20	3.0	2	0.3
Oklahoma											
Eastern	30	26	86.7	3	10.0	0	0.0	0	0.0	1	3.3
Northern	52	41	78.8	10	19.2	0	0.0	1	1.9	0	0.0
Western	75	57	76.0	15	20.0	0	0.0	1	1.3	2	2.7
Utah	211	187	88.6	14	6.6	0	0.0	8	3.8	2	0.9
Wyoming	59	39	66.1	14	23.7	1	1.7	4	6.8	1	1.7
<b>ELEVENTH CIRCUIT</b>	<b>1,761</b>	<b>1,372</b>	<b>77.9</b>	<b>309</b>	<b>17.5</b>	<b>6</b>	<b>0.3</b>	<b>61</b>	<b>3.5</b>	<b>13</b>	<b>0.7</b>
Alabama											
Middle	48	34	70.8	12	25.0	1	2.1	1	2.1	0	0.0
Northern	124	83	66.9	39	31.5	0	0.0	2	1.6	0	0.0
Southern	84	55	65.5	19	22.6	0	0.0	9	10.7	1	1.2
Florida											
Middle	399	270	67.7	110	27.6	1	0.3	16	4.0	2	0.5
Northern	95	73	76.8	20	21.1	0	0.0	1	1.1	1	1.1
Southern	651	572	87.9	55	8.4	3	0.5	19	2.9	2	0.3
Georgia											
Middle	91	67	73.6	23	25.3	0	0.0	0	0.0	1	1.1
Northern	152	128	84.2	12	7.9	1	0.7	8	5.3	3	2.0
Southern	117	90	76.9	19	16.2	0	0.0	5	4.3	3	2.6

Of the 18,788 guideline cases, 91 cases with no analogous guidelines were excluded from the table. Of the remaining 18,697 cases, 1,193 were excluded due to missing departure information. Districts for which departure information is missing in five percent or more of the cases received included: South Dakota (56.0%), Eastern Wisconsin (50.0%), Eastern Arkansas (45.7%), Central California (32.6%), Middle Georgia (23.5%), New Hampshire (22.7%), Eastern Virginia (20.7%), Western Wisconsin (20.0%), Arizona (19.3%), Northern Mariana Islands (16.7%), Southern Georgia (16.4%), Western Oklahoma (15.7%), Northern Iowa (14.1%), Southern Indiana (12.8%), Oregon (9.1%), Western Washington (8.9%), Delaware (7.1%), Eastern Pennsylvania (7.0%), Southern California (6.9%), Northern New York (6.8%), Southern West Virginia (6.5%), Southern Florida (6.2%), Virgin Islands (5.9%), Utah (5.8%), Western Louisiana (5.6%), Alaska (5.6%), Massachusetts (5.5%), Western Kentucky (5.5%), and Western Pennsylvania (5.3%).

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2005 Datafile, OPAFY05, Pre-Booker Only Cases (October 1, 2004, through January 11, 2005).

**Table 9**

**GUIDELINE DEPARTURE RATE BY PRIMARY OFFENSE CATEGORY  
Fiscal Year 2005, Pre-Booker (October 1, 2004, through January 11, 2005)**

**National**

PRIMARY OFFENSE	TOTAL	SENTENCED WITHIN GUIDELINE RANGE		SUBSTANTIAL ASSISTANCE DEPARTURE		GOVERNMENT INITIATED DEPARTURE		OTHER DOWNWARD DEPARTURE		UPWARD DEPARTURE	
		n	%	n	%	n	%	n	%	n	%
<b>TOTAL</b>	<b>17,484</b>	<b>12,396</b>	<b>70.9</b>	<b>2,569</b>	<b>14.7</b>	<b>1,639</b>	<b>9.4</b>	<b>752</b>	<b>4.3</b>	<b>128</b>	<b>0.7</b>
Robbery	332	258	77.7	50	15.1	4	1.2	18	5.4	2	0.6
Drugs - Trafficking	5,796	3,695	63.8	1,504	25.9	350	6.0	234	4.0	13	0.2
Drugs - Simple Possession	151	138	91.4	3	2.0	0	0.0	2	1.3	8	5.3
Firearms	2,201	1,719	78.1	309	14.0	36	1.6	116	5.3	21	1.0
Larceny	437	381	87.2	29	6.6	0	0.0	23	5.3	4	0.9
Fraud	1,595	1,207	75.7	273	17.1	18	1.1	86	5.4	11	0.7
Embezzlement	159	142	89.3	8	5.0	1	0.6	8	5.0	0	0.0
Forgery/Counterfeiting	265	206	77.7	32	12.1	6	2.3	17	6.4	4	1.5
Immigration	4,598	3,167	68.9	103	2.2	1,155	25.1	138	3.0	35	0.8
Other Miscellaneous Offenses	1,950	1,483	76.1	258	13.2	69	3.5	110	5.6	30	1.5

**Second Circuit**

PRIMARY OFFENSE	TOTAL	SENTENCED WITHIN GUIDELINE RANGE		SUBSTANTIAL ASSISTANCE DEPARTURE		GOVERNMENT INITIATED DEPARTURE		OTHER DOWNWARD DEPARTURE		UPWARD DEPARTURE	
		n	%	n	%	n	%	n	%	n	%
<b>TOTAL</b>	<b>1,037</b>	<b>620</b>	<b>59.8</b>	<b>253</b>	<b>24.4</b>	<b>25</b>	<b>2.4</b>	<b>136</b>	<b>13.1</b>	<b>3</b>	<b>0.3</b>
Robbery	17	9	52.9	5	29.4	0	0.0	3	17.6	0	0.0
Drugs - Trafficking	347	152	43.8	138	39.8	4	1.2	52	15.0	1	0.3
Drugs - Simple Possession	10	9	90.0	0	0.0	0	0.0	1	10.0	0	0.0
Firearms	124	82	66.1	27	21.8	3	2.4	12	9.7	0	0.0
Larceny	31	24	77.4	2	6.5	0	0.0	5	16.1	0	0.0
Fraud	175	123	70.3	32	18.3	3	1.7	17	9.7	0	0.0
Embezzlement	10	7	70.0	1	10.0	0	0.0	2	20.0	0	0.0
Forgery/Counterfeiting	13	10	76.9	2	15.4	0	0.0	1	7.7	0	0.0
Immigration	114	90	78.9	7	6.1	1	0.9	15	13.2	1	0.9
Other Miscellaneous Offenses	196	114	58.2	39	19.9	14	7.1	28	14.3	1	0.5

Of the 18,788 guideline cases, 1,304 cases were excluded due to one or more of the following reasons: no analogous guidelines (91), missing or indeterminable departure information (1,193), or missing primary offense category (30).

Of the 1,065 guideline cases from the Second Circuit, 28 cases were excluded due to one of the following reasons: no analogous guidelines (1) or missing or indeterminable departure information (27).

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2005 Datafile, OPAFY05, Pre-Booker Only Cases (October 1, 2004, through January 11, 2005).

**SECTION THREE: *Post-Booker***  
***(January 12, 2005, through September 30, 2005)***

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Table 2

**MODE OF CONVICTION BY CIRCUIT AND DISTRICT**  
**Fiscal Year 2005, Post-Booker (January 12, 2005, through September 30, 2005)**

CIRCUIT District	TOTAL	PLEA		TRIAL	
		Number	Percent	Number	Percent
<b>TOTAL</b>	<b>53,630</b>	<b>50,655</b>	<b>94.5</b>	<b>2,975</b>	<b>5.5</b>
<b>D.C. CIRCUIT</b>	<b>385</b>	<b>334</b>	<b>86.8</b>	<b>51</b>	<b>13.2</b>
District of Columbia	385	334	86.8	51	13.2
<b>FIRST CIRCUIT</b>	<b>1,165</b>	<b>1,058</b>	<b>90.8</b>	<b>107</b>	<b>9.2</b>
Maine	160	146	91.3	14	8.8
Massachusetts	357	316	88.5	41	11.5
New Hampshire	132	127	96.2	5	3.8
Puerto Rico	413	374	90.6	39	9.4
Rhode Island	103	95	92.2	8	7.8
<b>SECOND CIRCUIT</b>	<b>3,639</b>	<b>3,418</b>	<b>93.9</b>	<b>221</b>	<b>6.1</b>
Connecticut	317	301	95.0	16	5.0
New York					
Eastern	973	913	93.8	60	6.2
Northern	348	335	96.3	13	3.7
Southern	1,361	1,252	92.0	109	8.0
Western	490	468	95.5	22	4.5
Vermont	150	149	99.3	1	0.7
<b>THIRD CIRCUIT</b>	<b>2,477</b>	<b>2,273</b>	<b>91.8</b>	<b>204</b>	<b>8.2</b>
Delaware	131	112	85.5	19	14.5
New Jersey	740	700	94.6	40	5.4
Pennsylvania					
Eastern	745	646	86.7	99	13.3
Middle	466	453	97.2	13	2.8
Western	315	292	92.7	23	7.3
Virgin Islands	80	70	87.5	10	12.5
<b>FOURTH CIRCUIT</b>	<b>4,928</b>	<b>4,627</b>	<b>93.9</b>	<b>301</b>	<b>6.1</b>
Maryland	562	511	90.9	51	9.1
North Carolina					
Eastern	529	501	94.7	28	5.3
Middle	394	373	94.7	21	5.3
Western	429	399	93.0	30	7.0
South Carolina	773	741	95.9	32	4.1
Virginia					
Eastern	1,293	1,201	92.9	92	7.1
Western	467	447	95.7	20	4.3
West Virginia					
Northern	217	208	95.9	9	4.1
Southern	264	246	93.2	18	6.8

CIRCUIT District	TOTAL	PLEA		TRIAL	
		Number	Percent	Number	Percent
<b>FIFTH CIRCUIT</b>	<b>11,327</b>	<b>10,908</b>	<b>96.3</b>	<b>419</b>	<b>3.7</b>
Louisiana					
Eastern	289	277	95.8	12	4.2
Middle	135	132	97.8	3	2.2
Western	301	264	87.7	37	12.3
Mississippi					
Northern	150	138	92.0	12	8.0
Southern	255	241	94.5	14	5.5
Texas					
Eastern	546	512	93.8	34	6.2
Northern	654	602	92.0	52	8.0
Southern	4,797	4,634	96.6	163	3.4
Western	4,200	4,108	97.8	92	2.2
<b>SIXTH CIRCUIT</b>	<b>4,017</b>	<b>3,748</b>	<b>93.3</b>	<b>269</b>	<b>6.7</b>
Kentucky					
Eastern	361	347	96.1	14	3.9
Western	309	295	95.5	14	4.5
Michigan					
Eastern	541	495	91.5	46	8.5
Western	282	270	95.7	12	4.3
Ohio					
Northern	776	736	94.8	40	5.2
Southern	478	449	93.9	29	6.1
Tennessee					
Eastern	494	440	89.1	54	10.9
Middle	302	280	92.7	22	7.3
Western	474	436	92.0	38	8.0
<b>SEVENTH CIRCUIT</b>	<b>2,290</b>	<b>2,098</b>	<b>91.6</b>	<b>192</b>	<b>8.4</b>
Illinois					
Central	273	253	92.7	20	7.3
Northern	858	777	90.6	81	9.4
Southern	215	205	95.3	10	4.7
Indiana					
Northern	306	275	89.9	31	10.1
Southern	215	191	88.8	24	11.2
Wisconsin					
Eastern	287	265	92.3	22	7.7
Western	136	132	97.1	4	2.9
<b>EIGHTH CIRCUIT</b>	<b>3,597</b>	<b>3,388</b>	<b>94.2</b>	<b>209</b>	<b>5.8</b>
Arkansas					
Eastern	214	206	96.3	8	3.7
Western	138	136	98.6	2	1.4
Iowa					
Northern	244	222	91.0	22	9.0
Southern	275	258	93.8	17	6.2
Minnesota	379	349	92.1	30	7.9
Missouri					
Eastern	728	698	95.9	30	4.1
Western	557	523	93.9	34	6.1
Nebraska	586	560	95.6	26	4.4
North Dakota	164	150	91.5	14	8.5
South Dakota	312	286	91.7	26	8.3

CIRCUIT District	TOTAL	PLEA		TRIAL	
		Number	Percent	Number	Percent
<b>NINTH CIRCUIT</b>	<b>10,463</b>	<b>9,972</b>	<b>95.3</b>	<b>491</b>	<b>4.7</b>
Alaska	173	164	94.8	9	5.2
Arizona	3,160	3,106	98.3	54	1.7
California					
Central	1,390	1,290	92.8	100	7.2
Eastern	677	649	95.9	28	4.1
Northern	549	523	95.3	26	4.7
Southern	1,788	1,681	94.0	107	6.0
Guam	91	87	95.6	4	4.4
Hawaii	356	333	93.5	23	6.5
Idaho	152	146	96.1	6	3.9
Montana	271	233	86.0	38	14.0
Nevada	443	424	95.7	19	4.3
Northern Mariana Islands	24	19	79.2	5	20.8
Oregon	447	439	98.2	8	1.8
Washington					
Eastern	311	287	92.3	24	7.7
Western	631	591	93.7	40	6.3
<b>TENTH CIRCUIT</b>	<b>4,225</b>	<b>4,064</b>	<b>96.2</b>	<b>161</b>	<b>3.8</b>
Colorado	445	423	95.1	22	4.9
Kansas	468	439	93.8	29	6.2
New Mexico	1,904	1,873	98.4	31	1.6
Oklahoma					
Eastern	69	61	88.4	8	11.6
Northern	149	133	89.3	16	10.7
Western	256	243	94.9	13	5.1
Utah	715	683	95.5	32	4.5
Wyoming	219	209	95.4	10	4.6
<b>ELEVENTH CIRCUIT</b>	<b>5,117</b>	<b>4,767</b>	<b>93.2</b>	<b>350</b>	<b>6.8</b>
Alabama					
Middle	163	155	95.1	8	4.9
Northern	347	334	96.3	13	3.7
Southern	245	236	96.3	9	3.7
Florida					
Middle	1,302	1,232	94.6	70	5.4
Northern	239	209	87.4	30	12.6
Southern	1,667	1,533	92.0	134	8.0
Georgia					
Middle	319	294	92.2	25	7.8
Northern	544	490	90.1	54	9.9
Southern	291	284	97.6	7	2.4

Of the 53,674 guideline cases, 44 cases were excluded due to missing information on mode of conviction.

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2005 Datafile, OPAFY05, Post-Booker Only Cases (January 12, 2005, through September 30, 2005).

**Table 3**

**MODE OF CONVICTION BY PRIMARY OFFENSE CATEGORY  
Fiscal Year 2005, Post-Booker (January 12, 2005, through September 30, 2005)**

PRIMARY OFFENSE	TOTAL	National				Second Circuit			
		PLEA		TRIAL		PLEA		TRIAL	
		n	%	n	%	n	%	n	%
<b>TOTAL</b>	<b>53,624</b>	<b>50,649</b>	<b>94.5</b>	<b>2,975</b>	<b>5.5</b>	<b>3,418</b>	<b>93.9</b>	<b>221</b>	<b>6.1</b>
<b>Murder</b>	<b>63</b>	42	66.7	21	33.3	4	44.4	5	55.6
<b>Manslaughter</b>	<b>42</b>	37	88.1	5	11.9	0	--	0	--
<b>Kidnapping/Hostage Taking</b>	<b>24</b>	13	54.2	11	45.8	1	100.0	0	0.0
<b>Sexual Abuse</b>	<b>237</b>	209	88.2	28	11.8	2	100.0	0	0.0
<b>Assault</b>	<b>456</b>	405	88.8	51	11.2	9	90.0	1	10.0
<b>Robbery</b>	<b>1,021</b>	955	93.5	66	6.5	41	89.1	5	10.9
<b>Arson</b>	<b>40</b>	31	77.5	9	22.5	3	100.0	0	0.0
<b>Drugs - Trafficking</b>	<b>18,356</b>	17,230	93.9	1,126	6.1	1,364	94.2	84	5.8
<b>Drugs - Communication Facility</b>	<b>309</b>	306	99.0	3	1.0	36	100.0	0	0.0
<b>Drugs - Simple Possession</b>	<b>721</b>	704	97.6	17	2.4	32	94.1	2	5.9
<b>Firearms</b>	<b>6,384</b>	5,801	90.9	583	9.1	353	92.2	30	7.8
<b>Burglary/B&amp;E</b>	<b>29</b>	27	93.1	2	6.9	0	--	0	--
<b>Auto Theft</b>	<b>47</b>	42	89.4	5	10.6	6	100.0	0	0.0
<b>Larceny</b>	<b>1,424</b>	1,378	96.8	46	3.2	97	99.0	1	1.0
<b>Fraud</b>	<b>5,075</b>	4,734	93.3	341	6.7	556	94.2	34	5.8
<b>Embezzlement</b>	<b>413</b>	402	97.3	11	2.7	28	96.6	1	3.4
<b>Forgery/Counterfeiting</b>	<b>795</b>	773	97.2	22	2.8	46	95.8	2	4.2
<b>Bribery</b>	<b>157</b>	147	93.6	10	6.4	26	89.7	3	10.3
<b>Tax</b>	<b>461</b>	412	89.4	49	10.6	54	96.4	2	3.6
<b>Money Laundering</b>	<b>717</b>	626	87.3	91	12.7	83	86.5	13	13.5
<b>Racketeering/Extortion</b>	<b>523</b>	458	87.6	65	12.4	96	87.3	14	12.7
<b>Gambling/Lottery</b>	<b>82</b>	81	98.8	1	1.2	17	100.0	0	0.0
<b>Civil Rights</b>	<b>46</b>	34	73.9	12	26.1	3	60.0	2	40.0
<b>Immigration</b>	<b>12,862</b>	12,627	98.2	235	1.8	371	98.1	7	1.9
<b>Pornography/Prostitution</b>	<b>900</b>	860	95.6	40	4.4	74	96.1	3	3.9
<b>Prison Offenses</b>	<b>278</b>	271	97.5	7	2.5	9	100.0	0	0.0
<b>Administration of Justice Offenses</b>	<b>779</b>	724	92.9	55	7.1	41	82.0	9	18.0
<b>Environmental/Wildlife</b>	<b>133</b>	131	98.5	2	1.5	3	100.0	0	0.0
<b>National Defense</b>	<b>19</b>	17	89.5	2	10.5	3	75.0	1	25.0
<b>Antitrust</b>	<b>12</b>	11	91.7	1	8.3	1	100.0	0	0.0
<b>Food &amp; Drug</b>	<b>57</b>	54	94.7	3	5.3	2	100.0	0	0.0
<b>Other Miscellaneous Offenses</b>	<b>1,162</b>	1,107	95.3	55	4.7	57	96.6	2	3.4

Of the 53,674 guideline cases, 50 cases were excluded due to one or both of the following reasons: missing primary offense category (24) or missing mode of conviction (44).

Of the 3,644 guideline cases from the Second Circuit, five cases were excluded due to missing mode of conviction.

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2005 Datafile, OPAFY05, PostBooker Only Cases (January 12, 2005, through September 30, 2005).

Table 4

**TYPE OF SENTENCE IMPOSED BY PRIMARY OFFENSE CATEGORY**  
**Fiscal Year 2005, Post-Booker (January 12, 2005, through September 30, 2005)**

## National

PRIMARY OFFENSE	TOTAL	Prison		Prison/Community Split Sentence		Probation and Confinement		Probation Only	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent
<b>TOTAL</b>	<b>53,241</b>	<b>45,238</b>	<b>85.0</b>	<b>1,678</b>	<b>3.2</b>	<b>2,108</b>	<b>4.0</b>	<b>4,217</b>	<b>7.9</b>
Murder	63	63	100.0	0	0.0	0	0.0	0	0.0
Manslaughter	42	42	100.0	0	0.0	0	0.0	0	0.0
Kidnapping/Hostage Taking	24	24	100.0	0	0.0	0	0.0	0	0.0
Sexual Abuse	237	221	93.2	1	0.4	6	2.5	9	3.8
Assault	454	371	81.7	11	2.4	21	4.6	51	11.2
Robbery	1,011	982	97.1	16	1.6	5	0.5	8	0.8
Arson	40	39	97.5	1	2.5	0	0.0	0	0.0
Drugs - Trafficking	18,336	17,312	94.4	418	2.3	262	1.4	344	1.9
Drugs - Communication Facility	307	244	79.5	16	5.2	26	8.5	21	6.8
Drugs - Simple Possession	688	411	59.7	5	0.7	14	2.0	258	37.5
Firearms	6,369	5,763	90.5	181	2.8	205	3.2	220	3.5
Burglary/B&E	29	21	72.4	3	10.3	1	3.4	4	13.8
Auto Theft	47	42	89.4	2	4.3	1	2.1	2	4.3
Larceny	1,348	538	39.9	90	6.7	188	13.9	532	39.5
Fraud	5,036	3,086	61.3	407	8.1	569	11.3	974	19.3
Embezzlement	398	139	34.9	56	14.1	57	14.3	146	36.7
Forgery/Counterfeiting	791	483	61.1	52	6.6	92	11.6	164	20.7
Bribery	157	67	42.7	22	14.0	25	15.9	43	27.4
Tax	456	206	45.2	61	13.4	95	20.8	94	20.6
Money Laundering	716	526	73.5	35	4.9	64	8.9	91	12.7
Racketeering/Extortion	522	460	88.1	12	2.3	15	2.9	35	6.7
Gambling/Lottery	82	17	20.7	5	6.1	26	31.7	34	41.5
Civil Rights	45	28	62.2	2	4.4	8	17.8	7	15.6
Immigration	12,849	12,203	95.0	151	1.2	136	1.1	359	2.8
Pornography/Prostitution	900	836	92.9	17	1.9	28	3.1	19	2.1
Prison Offenses	278	248	89.2	9	3.2	7	2.5	14	5.0
Administration of Justice Offenses	766	455	59.4	41	5.4	102	13.3	168	21.9
Environmental/Wildlife	123	27	22.0	8	6.5	20	16.3	68	55.3
National Defense	18	14	77.8	1	5.6	1	5.6	2	11.1
Antitrust	12	6	50.0	3	25.0	1	8.3	2	16.7
Food & Drug	52	10	19.2	3	5.8	10	19.2	29	55.8
Other Miscellaneous Offenses	1,045	354	33.9	49	4.7	123	11.8	519	49.7

Of the 53,674 guideline cases, 433 cases were excluded due to one or more of the following reasons: missing sentencing information (102), missing primary offense category (24), or cases in which the defendant received no imprisonment or probation (325).

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2005 Datafile, OPAFY05, PostBooker Only Cases (January 12, 2005, through September 30, 2005).



Table 5

**TYPE OF SENTENCE IMPOSED BY PRIMARY OFFENSE CATEGORY**  
**Fiscal Year 2005, Post-Booker (January 12, 2005, through September 30, 2005)**

**Second Circuit**

PRIMARY OFFENSE	TOTAL	Prison		Prison/Community Split Sentence		Probation and Confinement		Probation Only	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent
<b>TOTAL</b>	<b>3,623</b>	<b>2,813</b>	<b>77.6</b>	<b>133</b>	<b>3.7</b>	<b>186</b>	<b>5.1</b>	<b>491</b>	<b>13.6</b>
Murder	9	9	100.0	0	0.0	0	0.0	0	0.0
Manslaughter	0	0	--	0	--	0	--	0	--
Kidnapping/Hostage Taking	1	1	100.0	0	0.0	0	0.0	0	0.0
Sexual Abuse	2	1	50.0	0	0.0	1	50.0	0	0.0
Assault	10	7	70.0	0	0.0	1	10.0	2	20.0
Robbery	46	44	95.7	0	0.0	0	0.0	2	4.3
Arson	3	3	100.0	0	0.0	0	0.0	0	0.0
Drugs - Trafficking	1,447	1,296	89.6	46	3.2	37	2.6	68	4.7
Drugs - Communication Facility	36	25	69.4	0	0.0	1	2.8	10	27.8
Drugs - Simple Possession	34	10	29.4	1	2.9	0	0.0	23	67.6
Firearms	385	343	89.1	16	4.2	9	2.3	17	4.4
Burglary/B&E	0	0	--	0	--	0	--	0	--
Auto Theft	6	6	100.0	0	0.0	0	0.0	0	0.0
Larceny	93	23	24.7	3	3.2	13	14.0	54	58.1
Fraud	590	329	55.8	40	6.8	67	11.4	154	26.1
Embezzlement	28	8	28.6	1	3.6	3	10.7	16	57.1
Forgery/Counterfeiting	47	29	61.7	2	4.3	2	4.3	14	29.8
Bribery	29	9	31.0	3	10.3	8	27.6	9	31.0
Tax	55	23	41.8	5	9.1	9	16.4	18	32.7
Money Laundering	96	72	75.0	3	3.1	5	5.2	16	16.7
Racketeering/Extortion	110	93	84.5	3	2.7	4	3.6	10	9.1
Gambling/Lottery	17	5	29.4	2	11.8	4	23.5	6	35.3
Civil Rights	5	5	100.0	0	0.0	0	0.0	0	0.0
Immigration	376	339	90.2	1	0.3	7	1.9	29	7.7
Pornography/Prostitution	77	70	90.9	0	0.0	2	2.6	5	6.5
Prison Offenses	9	9	100.0	0	0.0	0	0.0	0	0.0
Administration of Justice Offenses	45	28	62.2	4	8.9	5	11.1	8	17.8
Environmental/Wildlife	3	2	66.7	0	0.0	0	0.0	1	33.3
National Defense	4	3	75.0	0	0.0	0	0.0	1	25.0
Antitrust	1	0	0.0	0	0.0	0	0.0	1	100.0
Food & Drug	1	0	0.0	0	0.0	0	0.0	1	100.0
Other Miscellaneous Offenses	58	21	36.2	3	5.2	8	13.8	26	44.8

Of the 3,644 guideline cases from the Second Circuit, 21 cases were excluded due to one of the following reasons: missing sentencing information (3) or cases in which the defendant received no imprisonment or probation (18).

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2005 Datafile, OPAFY05, Post-Booker Only Cases (January 12, 2005, through September 30, 2005).

**Table 6**

**INCARCERATION RATE OF DEFENDANTS ELIGIBLE FOR NON-PRISON SENTENCES  
BY PRIMARY OFFENSE CATEGORY  
Fiscal Year 2005, Post-Booker (January 12, 2005, through September 30, 2005)**

PRIMARY OFFENSE	TOTAL	National				Second Circuit			
		Prison Sentence		Non-Prison Sentence		Prison Sentence		Non-Prison Sentence	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent
<b>TOTAL</b>	<b>8,969</b>	<b>5,106</b>	<b>56.9</b>	<b>3,863</b>	<b>43.1</b>	<b>244</b>	<b>39.2</b>	<b>378</b>	<b>60.8</b>
<b>Fraud</b>	<b>1,764</b>	759	43.0	1,005	57.0	68	36.4	119	63.6
<b>Larceny</b>	<b>787</b>	164	20.8	623	79.2	4	6.7	56	93.3
<b>Immigration</b>	<b>3,589</b>	3,209	89.4	380	10.6	107	76.4	33	23.6
<b>Embezzlement</b>	<b>222</b>	48	21.6	174	78.4	0	0.0	17	100.0
<b>Drugs - Trafficking</b>	<b>388</b>	192	49.5	196	50.5	18	37.5	30	62.5
<b>Drugs - Simple Possession</b>	<b>352</b>	135	38.4	217	61.6	9	36.0	16	64.0
<b>Firearms</b>	<b>275</b>	132	48.0	143	52.0	4	33.3	8	66.7
<b>Forgery/Counterfeiting</b>	<b>311</b>	120	38.6	191	61.4	6	31.6	13	68.4
<b>Other Miscellaneous Offenses</b>	<b>1,281</b>	347	27.1	934	72.9	28	24.6	86	75.4

Of the 53,674 guideline cases, 44,705 cases were excluded due to one or more of the following reasons: defendant ineligible for non-prison alternatives (44,698), missing sentencing information (102), or missing primary offense category (24).

Of the 3,644 guideline cases from the Second Circuit, 3,022 cases were excluded due to one or both of the following reasons: defendant ineligible for non-prison alternatives (3,022) or missing sentencing information (3).

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2005 Datafile, OPAFY05, Post-Booker Only Cases (January 12, 2005, through September 30, 2005).

**Table 7**

**AVERAGE LENGTH OF IMPRISONMENT BY PRIMARY OFFENSE CATEGORY  
Fiscal Year 2005, Post-Booker (January 12, 2005, through September 30, 2005)**

PRIMARY OFFENSE	National			Second Circuit		
	Mean Months	Median Months	Number	Mean Months	Median Months	Number
<b>TOTAL</b>	<b>58.5</b>	<b>36.0</b>	<b>46,459</b>	<b>57.5</b>	<b>36.0</b>	<b>2,905</b>
<b>Murder</b>	228.4	180.0	63	299.1	360.0	9
<b>Manslaughter</b>	45.9	36.0	42	--	--	0
<b>Kidnapping/Hostage Taking</b>	224.6	199.0	24	--	--	1
<b>Sexual Abuse</b>	95.9	60.0	222	--	--	1
<b>Assault</b>	44.0	35.5	376	19.6	12.0	7
<b>Robbery</b>	95.4	74.5	996	83.9	57.0	44
<b>Arson</b>	75.2	60.0	40	42.0	60.0	3
<b>Drugs - Trafficking</b>	84.4	60.0	17,698	68.5	50.0	1,335
<b>Drugs - Communication Facility</b>	41.4	41.0	253	44.7	45.0	23
<b>Drugs - Simple Possession</b>	12.7	6.0	391	33.3	4.0	11
<b>Firearms</b>	81.4	51.0	5,935	78.7	46.0	357
<b>Burglary/B&amp;E</b>	19.1	19.5	24	--	--	0
<b>Auto Theft</b>	61.6	26.0	44	27.5	26.0	6
<b>Larceny</b>	19.9	12.0	625	20.9	13.6	26
<b>Fraud</b>	23.6	15.0	3,440	23.1	15.0	361
<b>Embezzlement</b>	13.0	9.0	194	22.9	21.0	9
<b>Forgery/Counterfeiting</b>	19.8	15.0	528	25.3	24.0	31
<b>Bribery</b>	21.2	15.0	89	23.8	19.5	12
<b>Tax</b>	19.7	12.0	267	19.0	12.0	28
<b>Money Laundering</b>	46.0	30.0	557	34.1	31.0	74
<b>Racketeering/Extortion</b>	86.2	59.5	470	88.6	36.5	96
<b>Gambling/Lottery</b>	11.1	12.0	22	8.3	6.0	7
<b>Civil Rights</b>	80.1	21.5	30	150.2	46.0	5
<b>Immigration</b>	23.5	18.0	12,065	26.7	21.0	321
<b>Pornography/Prostitution</b>	82.4	60.0	853	72.8	60.0	70
<b>Prison Offenses</b>	18.3	14.0	257	15.7	15.0	9
<b>Administration of Justice Offenses</b>	24.0	15.0	485	43.3	15.0	30
<b>Environmental/Wildlife</b>	10.5	5.9	34	--	--	2
<b>National Defense</b>	126.7	27.0	15	316.2	32.0	3
<b>Antitrust</b>	10.3	8.0	9	--	--	0
<b>Food &amp; Drug</b>	18.4	16.0	13	--	--	0
<b>Other Miscellaneous Offenses</b>	18.4	6.2	398	17.7	16.0	24

Of the 53,674 guideline cases, 7,215 excluded for one or more of the following reasons: zero months prison ordered (6,776), missing primary offense category (24), or missing or indeterminable sentencing information (435).

Of the 3,644 guideline cases from the Second Circuit, 739 cases were excluded due to one of the following reasons: zero prison months ordered (719) or missing or indeterminable sentencing information (20).

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2005 Datafile, OPAFY05, Post-Booker Only Cases (January 12, 2005, through September 30, 2005).

**Table 8**

**SENTENCES RELATIVE TO THE GUIDELINE RANGE BY CIRCUIT AND DISTRICT  
Fiscal Year 2005, Post-Booker (January 12, 2005, through September 30, 2005)**

CIRCUIT District	TOTAL	SENTENCED WITHIN GUIDELINE RANGE		ABOVE RANGE DEPARTURE		ABOVE RANGE DEPARTURE W/BOOKER		ABOVE RANGE W/BOOKER		REMAINING ABOVE RANGE	
		n	%	n	%	n	%	n	%	n	%
<b>TOTAL</b>	<b>51,346</b>	<b>31,623</b>	<b>61.6</b>	<b>100</b>	<b>0.2</b>	<b>36</b>	<b>0.1</b>	<b>343</b>	<b>0.7</b>	<b>342</b>	<b>0.7</b>
<b>D.C. CIRCUIT</b>	<b>378</b>	<b>200</b>	<b>52.9</b>	<b>0</b>	<b>0.0</b>	<b>0</b>	<b>0.0</b>	<b>3</b>	<b>0.8</b>	<b>4</b>	<b>1.1</b>
District of Columbia	378	200	52.9	0	0.0	0	0.0	3	0.8	4	1.1
<b>FIRST CIRCUIT</b>	<b>1,132</b>	<b>717</b>	<b>63.3</b>	<b>1</b>	<b>0.1</b>	<b>1</b>	<b>0.1</b>	<b>21</b>	<b>1.9</b>	<b>8</b>	<b>0.7</b>
Maine	160	116	72.5	0	0.0	0	0.0	0	0.0	1	0.6
Massachusetts	336	169	50.3	1	0.3	0	0.0	1	0.3	2	0.6
New Hampshire	132	73	55.3	0	0.0	0	0.0	4	3.0	1	0.8
Puerto Rico	404	292	72.3	0	0.0	0	0.0	15	3.7	2	0.5
Rhode Island	100	67	67.0	0	0.0	1	1.0	1	1.0	2	2.0
<b>SECOND CIRCUIT</b>	<b>3,536</b>	<b>1,789</b>	<b>50.6</b>	<b>2</b>	<b>0.1</b>	<b>1</b>	<b>0.0</b>	<b>15</b>	<b>0.4</b>	<b>21</b>	<b>0.6</b>
Connecticut	312	144	46.2	1	0.3	0	0.0	0	0.0	3	1.0
New York											
Eastern	968	333	34.4	1	0.1	0	0.0	12	1.2	8	0.8
Northern	327	189	57.8	0	0.0	0	0.0	0	0.0	2	0.6
Southern	1,299	778	59.9	0	0.0	1	0.1	3	0.2	6	0.5
Western	480	267	55.6	0	0.0	0	0.0	0	0.0	2	0.4
Vermont	150	78	52.0	0	0.0	0	0.0	0	0.0	0	0.0
<b>THIRD CIRCUIT</b>	<b>2,449</b>	<b>1,250</b>	<b>51.0</b>	<b>4</b>	<b>0.2</b>	<b>2</b>	<b>0.1</b>	<b>15</b>	<b>0.6</b>	<b>13</b>	<b>0.5</b>
Delaware	131	85	64.9	0	0.0	0	0.0	0	0.0	0	0.0
New Jersey	729	365	50.1	1	0.1	0	0.0	4	0.5	5	0.7
Pennsylvania											
Eastern	731	303	41.5	1	0.1	2	0.3	5	0.7	4	0.5
Middle	465	214	46.0	2	0.4	0	0.0	3	0.6	3	0.6
Western	314	215	68.5	0	0.0	0	0.0	3	1.0	1	0.3
Virgin Islands	79	68	86.1	0	0.0	0	0.0	0	0.0	0	0.0
<b>FOURTH CIRCUIT</b>	<b>4,599</b>	<b>3,045</b>	<b>66.2</b>	<b>11</b>	<b>0.2</b>	<b>4</b>	<b>0.1</b>	<b>28</b>	<b>0.6</b>	<b>23</b>	<b>0.5</b>
Maryland	526	254	48.3	2	0.4	0	0.0	2	0.4	4	0.8
North Carolina											
Eastern	518	276	53.3	2	0.4	0	0.0	0	0.0	4	0.8
Middle	393	296	75.3	1	0.3	0	0.0	3	0.8	1	0.3
Western	423	254	60.0	0	0.0	0	0.0	3	0.7	1	0.2
South Carolina	761	527	69.3	3	0.4	0	0.0	1	0.1	2	0.3
Virginia											
Eastern	1,042	800	76.8	0	0.0	3	0.3	15	1.4	4	0.4
Western	467	277	59.3	2	0.4	0	0.0	2	0.4	5	1.1
West Virginia											
Northern	213	165	77.5	0	0.0	0	0.0	1	0.5	1	0.5
Southern	256	196	76.6	1	0.4	1	0.4	1	0.4	1	0.4

Table 8 (cont.)

CIRCUIT District	§5K1.1 SUBSTANTIAL ASSISTANCE		§5K3.1 EARLY DISPOSITION		OTHER GOV'T SPONSORED		BELOW RANGE DEPARTURE		BELOW RANGE DEPARTURE W/BOOKER		BELOW RANGE DEPARTURE W/BOOKER		REMAINING BELOW RANGE	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%
<b>TOTAL</b>	<b>7,524</b>	<b>14.7</b>	<b>3,208</b>	<b>6.2</b>	<b>1,481</b>	<b>2.9</b>	<b>1,197</b>	<b>2.3</b>	<b>487</b>	<b>0.9</b>	<b>3,199</b>	<b>6.2</b>	<b>1,806</b>	<b>3.5</b>
<b>D.C. CIRCUIT</b>	<b>103</b>	<b>27.2</b>	<b>0</b>	<b>0.0</b>	<b>23</b>	<b>6.1</b>	<b>4</b>	<b>1.1</b>	<b>6</b>	<b>1.6</b>	<b>19</b>	<b>5.0</b>	<b>16</b>	<b>4.2</b>
District of Columbia	103	27.2	0	0.0	23	6.1	4	1.1	6	1.6	19	5.0	16	4.2
<b>FIRST CIRCUIT</b>	<b>130</b>	<b>11.5</b>	<b>0</b>	<b>0.0</b>	<b>27</b>	<b>2.4</b>	<b>31</b>	<b>2.7</b>	<b>15</b>	<b>1.3</b>	<b>106</b>	<b>9.4</b>	<b>75</b>	<b>6.6</b>
Maine	32	20.0	0	0.0	0	0.0	3	1.9	0	0.0	5	3.1	3	1.9
Massachusetts	32	9.5	0	0.0	7	2.1	21	6.3	9	2.7	52	15.5	42	12.5
New Hampshire	34	25.8	0	0.0	8	6.1	3	2.3	1	0.8	6	4.5	2	1.5
Puerto Rico	29	7.2	0	0.0	9	2.2	4	1.0	2	0.5	34	8.4	17	4.2
Rhode Island	3	3.0	0	0.0	3	3.0	0	0.0	3	3.0	9	9.0	11	11.0
<b>SECOND CIRCUIT</b>	<b>758</b>	<b>21.4</b>	<b>0</b>	<b>0.0</b>	<b>109</b>	<b>3.1</b>	<b>155</b>	<b>4.4</b>	<b>66</b>	<b>1.9</b>	<b>369</b>	<b>10.4</b>	<b>251</b>	<b>7.1</b>
Connecticut	77	24.7	0	0.0	1	0.3	31	9.9	13	4.2	22	7.1	20	6.4
New York														
Eastern	219	22.6	0	0.0	73	7.5	66	6.8	28	2.9	139	14.4	89	9.2
Northern	86	26.3	0	0.0	2	0.6	13	4.0	3	0.9	13	4.0	19	5.8
Southern	177	13.6	0	0.0	19	1.5	37	2.8	18	1.4	162	12.5	98	7.5
Western	152	31.7	0	0.0	9	1.9	3	0.6	1	0.2	25	5.2	21	4.4
Vermont	47	31.3	0	0.0	5	3.3	5	3.3	3	2.0	8	5.3	4	2.7
<b>THIRD CIRCUIT</b>	<b>678</b>	<b>27.7</b>	<b>0</b>	<b>0.0</b>	<b>44</b>	<b>1.8</b>	<b>65</b>	<b>2.7</b>	<b>21</b>	<b>0.9</b>	<b>241</b>	<b>9.8</b>	<b>116</b>	<b>4.7</b>
Delaware	6	4.6	0	0.0	5	3.8	9	6.9	2	1.5	18	13.7	6	4.6
New Jersey	225	30.9	0	0.0	7	1.0	19	2.6	8	1.1	71	9.7	24	3.3
Pennsylvania														
Eastern	232	31.7	0	0.0	20	2.7	12	1.6	7	1.0	89	12.2	56	7.7
Middle	174	37.4	0	0.0	10	2.2	13	2.8	2	0.4	38	8.2	6	1.3
Western	39	12.4	0	0.0	2	0.6	12	3.8	2	0.6	23	7.3	17	5.4
Virgin Islands	2	2.5	0	0.0	0	0.0	0	0.0	0	0.0	2	2.5	7	8.9
<b>FOURTH CIRCUIT</b>	<b>847</b>	<b>18.4</b>	<b>2</b>	<b>0.0</b>	<b>67</b>	<b>1.5</b>	<b>73</b>	<b>1.6</b>	<b>40</b>	<b>0.9</b>	<b>309</b>	<b>6.7</b>	<b>150</b>	<b>3.3</b>
Maryland	141	26.8	0	0.0	22	4.2	19	3.6	6	1.1	30	5.7	46	8.7
North Carolina														
Eastern	184	35.5	0	0.0	6	1.2	7	1.4	5	1.0	19	3.7	15	2.9
Middle	45	11.5	0	0.0	3	0.8	4	1.0	3	0.8	21	5.3	16	4.1
Western	111	26.2	0	0.0	11	2.6	7	1.7	7	1.7	25	5.9	4	0.9
South Carolina	132	17.3	2	0.3	8	1.1	13	1.7	3	0.4	58	7.6	12	1.6
Virginia														
Eastern	59	5.7	0	0.0	9	0.9	11	1.1	4	0.4	101	9.7	36	3.5
Western	123	26.3	0	0.0	6	1.3	5	1.1	4	0.9	30	6.4	13	2.8
West Virginia														
Northern	22	10.3	0	0.0	1	0.5	4	1.9	3	1.4	13	6.1	3	1.4
Southern	30	11.7	0	0.0	1	0.4	3	1.2	5	2.0	12	4.7	5	2.0

CIRCUIT District	TOTAL	SENTENCED WITHIN GUIDELINE RANGE		ABOVE RANGE DEPARTURE		ABOVE RANGE DEPARTURE W/BOOKER		ABOVE RANGE W/BOOKER		REMAINING ABOVE RANGE	
		n	%	n	%	n	%	n	%	n	%
<b>FIFTH CIRCUIT</b>	<b>11,250</b>	<b>8,039</b>	<b>71.5</b>	<b>19</b>	<b>0.2</b>	<b>11</b>	<b>0.1</b>	<b>96</b>	<b>0.9</b>	<b>78</b>	<b>0.7</b>
<b>Louisiana</b>											
Eastern	291	213	73.2	3	1.0	2	0.7	2	0.7	5	1.7
Middle	135	80	59.3	0	0.0	1	0.7	1	0.7	8	5.9
Western	296	204	68.9	1	0.3	0	0.0	9	3.0	9	3.0
<b>Mississippi</b>											
Northern	151	95	62.9	0	0.0	1	0.7	4	2.6	2	1.3
Southern	249	197	79.1	0	0.0	0	0.0	3	1.2	2	0.8
<b>Texas</b>											
Eastern	545	428	78.5	0	0.0	1	0.2	6	1.1	4	0.7
Northern	652	477	73.2	1	0.2	1	0.2	19	2.9	12	1.8
Southern	4,783	3,099	64.8	11	0.2	3	0.1	17	0.4	17	0.4
Western	4,148	3,246	78.3	3	0.1	2	0.0	35	0.8	19	0.5
<b>SIXTH CIRCUIT</b>	<b>3,903</b>	<b>2,252</b>	<b>57.7</b>	<b>6</b>	<b>0.2</b>	<b>1</b>	<b>0.0</b>	<b>29</b>	<b>0.7</b>	<b>19</b>	<b>0.5</b>
<b>Kentucky</b>											
Eastern	360	180	50.0	0	0.0	0	0.0	6	1.7	4	1.1
Western	288	205	71.2	0	0.0	0	0.0	0	0.0	0	0.0
<b>Michigan</b>											
Eastern	537	291	54.2	0	0.0	1	0.2	2	0.4	4	0.7
Western	281	192	68.3	1	0.4	0	0.0	2	0.7	3	1.1
<b>Ohio</b>											
Northern	763	438	57.4	1	0.1	0	0.0	3	0.4	1	0.1
Southern	463	221	47.7	0	0.0	0	0.0	5	1.1	1	0.2
<b>Tennessee</b>											
Eastern	479	311	64.9	0	0.0	0	0.0	6	1.3	1	0.2
Middle	275	159	57.8	1	0.4	0	0.0	2	0.7	1	0.4
Western	457	255	55.8	3	0.7	0	0.0	3	0.7	4	0.9
<b>SEVENTH CIRCUIT</b>	<b>2,260</b>	<b>1,403</b>	<b>62.1</b>	<b>5</b>	<b>0.2</b>	<b>3</b>	<b>0.1</b>	<b>9</b>	<b>0.4</b>	<b>18</b>	<b>0.8</b>
<b>Illinois</b>											
Central	268	143	53.4	1	0.4	0	0.0	1	0.4	1	0.4
Northern	845	492	58.2	1	0.1	0	0.0	2	0.2	4	0.5
Southern	213	173	81.2	1	0.5	1	0.5	2	0.9	1	0.5
<b>Indiana</b>											
Northern	300	200	66.7	0	0.0	0	0.0	0	0.0	2	0.7
Southern	213	132	62.0	2	0.9	0	0.0	1	0.5	5	2.3
<b>Wisconsin</b>											
Eastern	287	152	53.0	0	0.0	2	0.7	2	0.7	4	1.4
Western	134	111	82.8	0	0.0	0	0.0	1	0.7	1	0.7
<b>EIGHTH CIRCUIT</b>	<b>3,564</b>	<b>2,283</b>	<b>64.1</b>	<b>2</b>	<b>0.1</b>	<b>4</b>	<b>0.1</b>	<b>31</b>	<b>0.9</b>	<b>28</b>	<b>0.8</b>
<b>Arkansas</b>											
Eastern	200	132	66.0	1	0.5	0	0.0	2	1.0	0	0.0
Western	137	96	70.1	0	0.0	0	0.0	0	0.0	0	0.0
<b>Iowa</b>											
Northern	243	173	71.2	0	0.0	0	0.0	7	2.9	2	0.8
Southern	275	128	46.5	0	0.0	0	0.0	2	0.7	2	0.7
Minnesota	375	197	52.5	0	0.0	0	0.0	1	0.3	1	0.3
<b>Missouri</b>											
Eastern	723	473	65.4	1	0.1	0	0.0	5	0.7	5	0.7
Western	552	363	65.8	0	0.0	0	0.0	4	0.7	8	1.4
Nebraska	583	371	63.6	0	0.0	0	0.0	3	0.5	2	0.3
North Dakota	164	116	70.7	0	0.0	0	0.0	0	0.0	0	0.0
South Dakota	312	234	75.0	0	0.0	4	1.3	7	2.2	8	2.6

CIRCUIT District	§5K1.1 SUBSTANTIAL ASSISTANCE		§5K3.1 EARLY DISPOSITION		OTHER GOV'T SPONSORED		BELOW RANGE DEPARTURE		BELOW RANGE DEPARTURE W/BOOKER		BELOW RANGE W/BOOKER		REMAINING BELOW RANGE	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%
<b>FIFTH CIRCUIT</b>	<b>922</b>	<b>8.2</b>	<b>870</b>	<b>7.7</b>	<b>215</b>	<b>1.9</b>	<b>200</b>	<b>1.8</b>	<b>83</b>	<b>0.7</b>	<b>481</b>	<b>4.3</b>	<b>236</b>	<b>2.1</b>
<b>Louisiana</b>														
Eastern	38	13.1	0	0.0	7	2.4	5	1.7	2	0.7	6	2.1	8	2.7
Middle	34	25.2	0	0.0	2	1.5	1	0.7	0	0.0	6	4.4	2	1.5
Western	29	9.8	0	0.0	1	0.3	6	2.0	1	0.3	18	6.1	18	6.1
<b>Mississippi</b>														
Northern	25	16.6	0	0.0	19	12.6	0	0.0	0	0.0	3	2.0	2	1.3
Southern	27	10.8	0	0.0	1	0.4	5	2.0	2	0.8	2	0.8	10	4.0
<b>Texas</b>														
Eastern	60	11.0	0	0.0	10	1.8	7	1.3	5	0.9	13	2.4	11	2.0
Northern	74	11.3	0	0.0	6	0.9	7	1.1	5	0.8	38	5.8	12	1.8
Southern	318	6.6	712	14.9	125	2.6	121	2.5	41	0.9	237	5.0	82	1.7
Western	317	7.6	158	3.8	44	1.1	48	1.2	27	0.7	158	3.8	91	2.2
<b>SIXTH CIRCUIT</b>	<b>974</b>	<b>25.0</b>	<b>0</b>	<b>0.0</b>	<b>74</b>	<b>1.9</b>	<b>76</b>	<b>1.9</b>	<b>44</b>	<b>1.1</b>	<b>285</b>	<b>7.3</b>	<b>143</b>	<b>3.7</b>
<b>Kentucky</b>														
Eastern	137	38.1	0	0.0	4	1.1	1	0.3	1	0.3	20	5.6	7	1.9
Western	59	20.5	0	0.0	2	0.7	3	1.0	1	0.3	12	4.2	6	2.1
<b>Michigan</b>														
Eastern	140	26.1	0	0.0	15	2.8	11	2.0	10	1.9	45	8.4	18	3.4
Western	46	16.4	0	0.0	3	1.1	4	1.4	4	1.4	17	6.0	9	3.2
<b>Ohio</b>														
Northern	172	22.5	0	0.0	10	1.3	31	4.1	7	0.9	69	9.0	31	4.1
Southern	148	32.0	0	0.0	3	0.6	13	2.8	6	1.3	46	9.9	20	4.3
<b>Tennessee</b>														
Eastern	112	23.4	0	0.0	5	1.0	0	0.0	3	0.6	31	6.5	10	2.1
Middle	54	19.6	0	0.0	9	3.3	6	2.2	8	2.9	13	4.7	22	8.0
Western	106	23.2	0	0.0	23	5.0	7	1.5	4	0.9	32	7.0	20	4.4
<b>SEVENTH CIRCUIT</b>	<b>395</b>	<b>17.5</b>	<b>1</b>	<b>0.0</b>	<b>54</b>	<b>2.4</b>	<b>54</b>	<b>2.4</b>	<b>31</b>	<b>1.4</b>	<b>192</b>	<b>8.5</b>	<b>95</b>	<b>4.2</b>
<b>Illinois</b>														
Central	58	21.6	0	0.0	2	0.7	9	3.4	2	0.7	42	15.7	9	3.4
Northern	169	20.0	0	0.0	26	3.1	27	3.2	16	1.9	60	7.1	48	5.7
Southern	11	5.2	0	0.0	2	0.9	1	0.5	4	1.9	13	6.1	4	1.9
<b>Indiana</b>														
Northern	69	23.0	0	0.0	7	2.3	8	2.7	1	0.3	6	2.0	7	2.3
Southern	46	21.6	0	0.0	9	4.2	4	1.9	0	0.0	11	5.2	3	1.4
<b>Wisconsin</b>														
Eastern	36	12.5	1	0.3	7	2.4	4	1.4	6	2.1	52	18.1	21	7.3
Western	6	4.5	0	0.0	1	0.7	1	0.7	2	1.5	8	6.0	3	2.2
<b>EIGHTH CIRCUIT</b>	<b>512</b>	<b>14.4</b>	<b>26</b>	<b>0.7</b>	<b>125</b>	<b>3.5</b>	<b>83</b>	<b>2.3</b>	<b>38</b>	<b>1.1</b>	<b>285</b>	<b>8.0</b>	<b>147</b>	<b>4.1</b>
<b>Arkansas</b>														
Eastern	28	14.0	0	0.0	3	1.5	6	3.0	0	0.0	13	6.5	15	7.5
Western	25	18.2	0	0.0	2	1.5	1	0.7	1	0.7	9	6.6	3	2.2
<b>Iowa</b>														
Northern	31	12.8	0	0.0	5	2.1	1	0.4	0	0.0	24	9.9	0	0.0
Southern	60	21.8	0	0.0	2	0.7	3	1.1	5	1.8	58	21.1	15	5.5
<b>Minnesota</b>														
	72	19.2	0	0.0	8	2.1	17	4.5	7	1.9	33	8.8	39	10.4
<b>Missouri</b>														
Eastern	139	19.2	0	0.0	6	0.8	21	2.9	8	1.1	45	6.2	20	2.8
Western	101	18.3	0	0.0	4	0.7	3	0.5	1	0.2	36	6.5	32	5.8
<b>Nebraska</b>														
	23	3.9	17	2.9	87	14.9	22	3.8	11	1.9	36	6.2	11	1.9
<b>North Dakota</b>														
	22	13.4	9	5.5	2	1.2	3	1.8	2	1.2	5	3.0	5	3.0
<b>South Dakota</b>														
	11	3.5	0	0.0	6	1.9	6	1.9	3	1.0	26	8.3	7	2.2

CIRCUIT District	TOTAL	SENTENCED WITHIN GUIDELINE RANGE		ABOVE RANGE DEPARTURE		ABOVE RANGE DEPARTURE W/BOOKER		ABOVE RANGE W/BOOKER		REMAINING ABOVE RANGE	
		n	%	n	%	n	%	n	%	n	%
<b>NINTH CIRCUIT</b>	<b>9,370</b>	<b>4,659</b>	<b>49.7</b>	<b>33</b>	<b>0.4</b>	<b>1</b>	<b>0.0</b>	<b>35</b>	<b>0.4</b>	<b>86</b>	<b>0.9</b>
Alaska	168	97	57.7	0	0.0	0	0.0	2	1.2	2	1.2
Arizona	2,827	823	29.1	24	0.8	0	0.0	3	0.1	35	1.2
California											
Central	900	662	73.6	0	0.0	0	0.0	3	0.3	1	0.1
Eastern	673	353	52.5	1	0.1	0	0.0	2	0.3	3	0.4
Northern	535	334	62.4	0	0.0	0	0.0	2	0.4	6	1.1
Southern	1,685	966	57.3	2	0.1	0	0.0	3	0.2	7	0.4
Guam	89	44	49.4	0	0.0	0	0.0	0	0.0	0	0.0
Hawaii	352	167	47.4	0	0.0	0	0.0	0	0.0	6	1.7
Idaho	145	58	40.0	0	0.0	1	0.7	1	0.7	1	0.7
Montana	269	207	77.0	2	0.7	0	0.0	6	2.2	3	1.1
Nevada	428	306	71.5	1	0.2	0	0.0	5	1.2	4	0.9
Northern Mariana Islands	24	19	79.2	0	0.0	0	0.0	0	0.0	1	4.2
Oregon	423	227	53.7	1	0.2	0	0.0	4	0.9	2	0.5
Washington											
Eastern	309	190	61.5	1	0.3	0	0.0	4	1.3	5	1.6
Western	543	206	37.9	1	0.2	0	0.0	0	0.0	10	1.8
<b>TENTH CIRCUIT</b>	<b>4,069</b>	<b>2,692</b>	<b>66.2</b>	<b>5</b>	<b>0.1</b>	<b>1</b>	<b>0.0</b>	<b>20</b>	<b>0.5</b>	<b>14</b>	<b>0.3</b>
Colorado	422	218	51.7	2	0.5	0	0.0	5	1.2	1	0.2
Kansas	467	309	66.2	1	0.2	1	0.2	2	0.4	2	0.4
New Mexico	1,892	1,232	65.1	1	0.1	0	0.0	2	0.1	6	0.3
Oklahoma											
Eastern	69	63	91.3	0	0.0	0	0.0	0	0.0	0	0.0
Northern	149	119	79.9	1	0.7	0	0.0	4	2.7	0	0.0
Western	168	124	73.8	0	0.0	0	0.0	5	3.0	1	0.6
Utah	684	489	71.5	0	0.0	0	0.0	2	0.3	1	0.1
Wyoming	218	138	63.3	0	0.0	0	0.0	0	0.0	3	1.4
<b>ELEVENTH CIRCUIT</b>	<b>4,836</b>	<b>3,294</b>	<b>68.1</b>	<b>12</b>	<b>0.2</b>	<b>7</b>	<b>0.1</b>	<b>41</b>	<b>0.8</b>	<b>30</b>	<b>0.6</b>
Alabama											
Middle	160	93	58.1	1	0.6	0	0.0	1	0.6	0	0.0
Northern	319	189	59.2	2	0.6	0	0.0	10	3.1	0	0.0
Southern	244	158	64.8	0	0.0	0	0.0	3	1.2	2	0.8
Florida											
Middle	1,296	835	64.4	0	0.0	2	0.2	12	0.9	3	0.2
Northern	232	162	69.8	0	0.0	3	1.3	2	0.9	4	1.7
Southern	1,573	1,185	75.3	4	0.3	1	0.1	9	0.6	4	0.3
Georgia											
Middle	271	183	67.5	1	0.4	0	0.0	1	0.4	5	1.8
Northern	536	348	64.9	1	0.2	0	0.0	1	0.2	5	0.9
Southern	205	141	68.8	3	1.5	1	0.5	2	1.0	7	3.4



CIRCUIT District	\$5K1.1 SUBSTANTIAL ASSISTANCE		\$5K3.1 EARLY DISPOSITION		OTHER GOV'T SPONSORED		BELOW RANGE DEPARTURE		BELOW RANGE DEPARTURE W/BOOKER		BELOW RANGE W/BOOKER		REMAINING BELOW RANGE	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%
<b>NINTH CIRCUIT</b>	<b>970</b>	<b>10.4</b>	<b>2,016</b>	<b>21.5</b>	<b>413</b>	<b>4.4</b>	<b>277</b>	<b>3.0</b>	<b>67</b>	<b>0.7</b>	<b>468</b>	<b>5.0</b>	<b>345</b>	<b>3.7</b>
Alaska	26	15.5	0	0.0	4	2.4	2	1.2	0	0.0	24	14.3	11	6.5
Arizona	179	6.3	1,480	52.4	102	3.6	79	2.8	8	0.3	51	1.8	43	1.5
<b>California</b>														
Central	60	6.7	5	0.6	13	1.4	28	3.1	15	1.7	64	7.1	49	5.4
Eastern	107	15.9	126	18.7	11	1.6	14	2.1	3	0.4	24	3.6	29	4.3
Northern	71	13.3	6	1.1	36	6.7	14	2.6	4	0.7	36	6.7	26	4.9
Southern	98	5.8	366	21.7	48	2.8	75	4.5	11	0.7	60	3.6	49	2.9
Guam	35	39.3	0	0.0	0	0.0	5	5.6	0	0.0	2	2.2	3	3.4
Hawaii	104	29.5	0	0.0	5	1.4	12	3.4	3	0.9	19	5.4	36	10.2
Idaho	44	30.3	14	9.7	4	2.8	4	2.8	1	0.7	12	8.3	5	3.4
Montana	27	10.0	0	0.0	1	0.4	7	2.6	2	0.7	10	3.7	4	1.5
Nevada	30	7.0	1	0.2	27	6.3	7	1.6	3	0.7	27	6.3	17	4.0
Northern Mariana Islands	3	12.5	0	0.0	1	4.2	0	0.0	0	0.0	0	0.0	0	0.0
Oregon	76	18.0	9	2.1	7	1.7	12	2.8	5	1.2	57	13.5	23	5.4
<b>Washington</b>														
Eastern	37	12.0	0	0.0	22	7.1	7	2.3	2	0.6	28	9.1	13	4.2
Western	73	13.4	9	1.7	132	24.3	11	2.0	10	1.8	54	9.9	37	6.8
<b>TENTH CIRCUIT</b>	<b>387</b>	<b>9.5</b>	<b>291</b>	<b>7.2</b>	<b>272</b>	<b>6.7</b>	<b>79</b>	<b>1.9</b>	<b>33</b>	<b>0.8</b>	<b>178</b>	<b>4.4</b>	<b>97</b>	<b>2.4</b>
Colorado	108	25.6	0	0.0	11	2.6	16	3.8	4	0.9	42	10.0	15	3.6
Kansas	76	16.3	0	0.0	21	4.5	7	1.5	3	0.6	38	8.1	7	1.5
New Mexico	65	3.4	291	15.4	194	10.3	28	1.5	10	0.5	38	2.0	25	1.3
<b>Oklahoma</b>														
Eastern	5	7.2	0	0.0	0	0.0	0	0.0	1	1.4	0	0.0	0	0.0
Northern	17	11.4	0	0.0	2	1.3	0	0.0	0	0.0	4	2.7	2	1.3
Western	16	9.5	0	0.0	2	1.2	4	2.4	2	1.2	10	6.0	4	2.4
Utah	66	9.6	0	0.0	18	2.6	20	2.9	12	1.8	37	5.4	39	5.7
Wyoming	34	15.6	0	0.0	24	11.0	4	1.8	1	0.5	9	4.1	5	2.3
<b>ELEVENTH CIRCUIT</b>	<b>848</b>	<b>17.5</b>	<b>2</b>	<b>0.0</b>	<b>58</b>	<b>1.2</b>	<b>100</b>	<b>2.1</b>	<b>43</b>	<b>0.9</b>	<b>266</b>	<b>5.5</b>	<b>135</b>	<b>2.8</b>
<b>Alabama</b>														
Middle	55	34.4	0	0.0	3	1.9	1	0.6	1	0.6	2	1.3	3	1.9
Northern	83	26.0	0	0.0	0	0.0	2	0.6	3	0.9	24	7.5	6	1.9
Southern	58	23.8	0	0.0	3	1.2	5	2.0	1	0.4	12	4.9	2	0.8
<b>Florida</b>														
Middle	294	22.7	1	0.1	6	0.5	34	2.6	12	0.9	86	6.6	11	0.8
Northern	43	18.5	0	0.0	3	1.3	2	0.9	2	0.9	4	1.7	7	3.0
Southern	149	9.5	0	0.0	20	1.3	30	1.9	12	0.8	92	5.8	67	4.3
<b>Georgia</b>														
Middle	61	22.5	0	0.0	2	0.7	1	0.4	0	0.0	8	3.0	9	3.3
Northern	75	14.0	1	0.2	19	3.5	16	3.0	11	2.1	31	5.8	28	5.2
Southern	30	14.6	0	0.0	2	1.0	9	4.4	1	0.5	7	3.4	2	1.0

Of the 53,674 guideline cases, 2,328 were excluded due to missing information needed to determine the relationship between the sentence imposed and the guideline range. Districts for which information needed to determine the relationship between the sentence imposed and the guideline range is missing in five percent or more of the cases received included: Central California (35.7%), Western Oklahoma (34.4%), Southern Georgia (29.6%), Eastern Virginia (19.5%), Middle Georgia (15.0%), Western Washington (13.9%), Arizona (10.5%), Middle Tennessee (9.2%), Northern Alabama (8.1%), Western Kentucky (7.1%), Maryland (6.6%), Eastern Arkansas (6.5%), Northern New York (6.0%), Southern Florida (6.0%), Massachusetts (5.9%), Southern California (5.8%), Oregon (5.4%), and Colorado (5.2%).

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2005 Datafile, OPAFY05, Post-Booker Only Cases (January 12, 2005, through September 30, 2005).

**Table 9**

**GUIDELINE DEPARTURE RATE BY PRIMARY OFFENSE CATEGORY  
Fiscal Year 2005, Post-Booker (January 12, 2005, through September 30, 2005)**

**National**

PRIMARY OFFENSE	TOTAL	WITHIN GUIDELINE RANGE		ABOVE RANGE DEPARTURE <sup>2</sup>		ABOVE RANGE DEPARTURE W/BOOKER <sup>2</sup>		ABOVE RANGE W/BOOKER <sup>2</sup>		REMAINING ABOVE RANGE	
		n	%	n	%	n	%	n	%	n	%
<b>TOTAL</b>	<b>51,329</b>	<b>31,610</b>	<b>61.6</b>	<b>100</b>	<b>0.2</b>	<b>36</b>	<b>0.1</b>	<b>343</b>	<b>0.7</b>	<b>342</b>	<b>0.7</b>
Robbery	1,001	678	67.7	3	0.3	0	0.0	8	0.8	11	1.1
Drugs - Trafficking	18,030	9,583	53.2	14	0.1	3	0.0	50	0.3	52	0.3
Drugs - Simple Possession	397	353	88.9	0	0.0	0	0.0	6	1.5	9	2.3
Firearms	6,308	4,353	69.0	23	0.4	7	0.1	55	0.9	64	1.0
Larceny	1,307	979	74.9	1	0.1	0	0.0	13	1.0	16	1.2
Fraud	4,877	3,122	64.0	11	0.2	9	0.2	57	1.2	51	1.0
Embezzlement	380	286	75.3	0	0.0	0	0.0	1	0.3	0	0.0
Forgery/Counterfeiting	766	570	74.4	4	0.5	0	0.0	7	0.9	5	0.7
Immigration	12,473	8,106	65.0	25	0.2	5	0.0	61	0.5	61	0.5
Other Miscellaneous Offenses	5,790	3,580	61.8	19	0.3	12	0.2	85	1.5	73	1.3

**Second Circuit**

PRIMARY OFFENSE	TOTAL	WITHIN GUIDELINE RANGE		ABOVE RANGE DEPARTURE <sup>2</sup>		ABOVE RANGE DEPARTURE W/BOOKER <sup>2</sup>		ABOVE RANGE W/BOOKER <sup>2</sup>		REMAINING ABOVE RANGE	
		n	%	n	%	n	%	n	%	n	%
<b>TOTAL</b>	<b>3,536</b>	<b>1,789</b>	<b>50.6</b>	<b>2</b>	<b>0.1</b>	<b>1</b>	<b>0.0</b>	<b>15</b>	<b>0.4</b>	<b>21</b>	<b>0.6</b>
Robbery	46	25	54.3	0	0.0	0	0.0	0	0.0	0	0.0
Drugs - Trafficking	1,412	548	38.8	0	0.0	1	0.1	4	0.3	3	0.2
Drugs - Simple Possession	31	22	71.0	0	0.0	0	0.0	0	0.0	0	0.0
Firearms	378	243	64.3	1	0.3	0	0.0	3	0.8	2	0.5
Larceny	91	61	67.0	0	0.0	0	0.0	1	1.1	0	0.0
Fraud	568	307	54.0	0	0.0	0	0.0	2	0.4	4	0.7
Embezzlement	27	20	74.1	0	0.0	0	0.0	0	0.0	0	0.0
Forgery/Counterfeiting	48	37	77.1	0	0.0	0	0.0	0	0.0	1	2.1
Immigration	363	257	70.8	1	0.3	0	0.0	1	0.3	3	0.8
Other Miscellaneous Offenses	572	269	47.0	0	0.0	0	0.0	4	0.7	8	1.4

**Table 9 (cont.)**

**National**

PRIMARY OFFENSE	§5K1.1 SUBSTANTIAL ASSISTANCE		§5K3.1 EARLY DISPOSITION		OTHER GOV'T SPONSORED		BELOW RANGE DEPARTURE		BELOW RANGE DEPARTURE W/BOOKER		BELOW RANGE W/BOOKER		REMAINING BELOW RANGE	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%
<b>TOTAL</b>	<b>7,523</b>	<b>14.7</b>	<b>3,208</b>	<b>6.2</b>	<b>1,481</b>	<b>2.9</b>	<b>1,197</b>	<b>2.3</b>	<b>486</b>	<b>0.9</b>	<b>3,198</b>	<b>6.2</b>	<b>1,805</b>	<b>3.5</b>
Robbery	123	12.3	0	0.0	24	2.4	32	3.2	18	1.8	62	6.2	42	4.2
Drugs - Trafficking	4,713	26.1	721	4.0	544	3.0	387	2.1	164	0.9	1,210	6.7	589	3.3
Drugs - Simple Possession	13	3.3	0	0.0	0	0.0	1	0.3	2	0.5	5	1.3	8	2.0
Firearms	704	11.2	23	0.4	157	2.5	153	2.4	74	1.2	466	7.4	229	3.6
Larceny	101	7.7	5	0.4	24	1.8	27	2.1	6	0.5	81	6.2	54	4.1
Fraud	765	15.7	2	0.0	105	2.2	124	2.5	53	1.1	336	6.9	242	5.0
Embezzlement	14	3.7	0	0.0	7	1.8	9	2.4	3	0.8	33	8.7	27	7.1
Forgery/Counterfeiting	66	8.6	1	0.1	15	2.0	9	1.2	11	1.4	53	6.9	25	3.3
Immigration	249	2.0	2,437	19.5	380	3.0	270	2.2	85	0.7	501	4.0	293	2.3
Other Miscellaneous Offenses	775	13.4	19	0.3	225	3.9	185	3.2	70	1.2	451	7.8	296	5.1

**Second Circuit**

PRIMARY OFFENSE	§5K1.1 SUBSTANTIAL ASSISTANCE		§5K3.1 EARLY DISPOSITION		OTHER GOV'T SPONSORED		BELOW RANGE DEPARTURE		BELOW RANGE DEPARTURE W/BOOKER		BELOW RANGE W/BOOKER		REMAINING BELOW RANGE	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%
<b>TOTAL</b>	<b>758</b>	<b>21.4</b>	<b>0</b>	<b>0.0</b>	<b>109</b>	<b>3.1</b>	<b>155</b>	<b>4.4</b>	<b>66</b>	<b>1.9</b>	<b>369</b>	<b>10.4</b>	<b>251</b>	<b>7.1</b>
Robbery	10	21.7	0	0.0	0	0.0	4	8.7	0	0.0	4	8.7	3	6.5
Drugs - Trafficking	427	30.2	0	0.0	35	2.5	72	5.1	31	2.2	183	13.0	108	7.6
Drugs - Simple Possession	5	16.1	0	0.0	0	0.0	0	0.0	1	3.2	0	0.0	3	9.7
Firearms	52	13.8	0	0.0	10	2.6	7	1.9	5	1.3	32	8.5	23	6.1
Larceny	5	5.5	0	0.0	3	3.3	3	3.3	1	1.1	9	9.9	8	8.8
Fraud	117	20.6	0	0.0	14	2.5	29	5.1	11	1.9	46	8.1	38	6.7
Embezzlement	0	0.0	0	0.0	0	0.0	1	3.7	0	0.0	3	11.1	3	11.1
Forgery/Counterfeiting	2	4.2	0	0.0	4	8.3	1	2.1	2	4.2	0	0.0	1	2.1
Immigration	28	7.7	0	0.0	7	1.9	10	2.8	4	1.1	30	8.3	22	6.1
Other Miscellaneous Offenses	112	19.6	0	0.0	36	6.3	28	4.9	11	1.9	62	10.8	42	7.3

Of the 53,674 guideline cases, 2,345 cases were excluded due to one or both of the following reasons: missing information needed to determine the relationship between the sentence imposed and the guideline range (2,328) or missing primary offense (24).

Of the 3,644 guideline cases from the Second Circuit, 108 cases were excluded due to missing information needed to determine the relationship between the sentence imposed and the guideline range.

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2005 Datafile, OPAFY05, Post-Booker Only Cases (January 12, 2005, through September 30, 2005).