

**Table 58**

**GUIDELINE INVOLVED IN ISSUES APPEALED BY THE GOVERNMENT<sup>1</sup>**  
**Fiscal Year 2004, Pre-Blakely (October 1, 2003, through June 24, 2004)**

| <b>GUIDELINE</b>  | <b>Number</b> | <b>Percent</b> | <b>Affirmance Rate<sup>2</sup></b> |
|---|---------------|----------------|------------------------------------|
| <b>TOTAL</b>  | <b>156</b>    | <b>100.0</b>   | <b>26.9</b>                        |
| 5K2.0 (Departures)  | 31            | 19.9           | 25.8                               |
| 5H1.6 (Family Ties and Responsibilities)  | 10            | 6.4            | 20.0                               |
| 3E1.1 (Acceptance of Responsibility)  | 9             | 5.8            | 44.4                               |
| 3B1.2 (Mitigating Role)   | 7             | 4.5            | 28.6                               |
| 2D1.1 (Drug Trafficking)  | 6             | 3.8            | 50.0                               |
| 2L1.2 (Unlawfully Entering or Remaining in the United States)                       | 6             | 3.8            | 16.7                               |
| 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft)                             | 5             | 3.2            | 80.0                               |
| 4A1.3 (Adequacy of Criminal History)  | 5             | 3.2            | 0.0                                |
| 3C1.1 (Obstruction of Justice)  | 4             | 2.6            | 75.0                               |
| 2A3.2 (Criminal Sexual Abuse of a Minor (Statutory Rape))                           | 3             | 1.9            | 33.3                               |
| 2F1.1 (Fraud)   | 3             | 1.9            | 0.0                                |
| 3B1.1 (Aggravating Role)  | 3             | 1.9            | 33.3                               |
| 4B1.1 (Career Offender)   | 3             | 1.9            | 0.0                                |
| 5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases) | 3             | 1.9            | 33.3                               |
| 5H1.1 (Age)   | 3             | 1.9            | 0.0                                |
| 5K2.13 (Diminished Capacity)  | 3             | 1.9            | 0.0                                |
| Constitutional Issues   | 7             | 4.5            | 57.1                               |
| Other Guidelines  | 43            | 27.6           | 18.6                               |
| Other Non-guideline Issues  | 2             | 1.3            | 50.0                               |

<sup>1</sup>Based on 3,882 "Pre-Blakely" appeals defendants with sentencing as at least one of the reasons for appeal. Information on issues was available in 3,882 of these cases which cited 7,415 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.

<sup>2</sup>Affirmance Rate includes all appeals cases not reversed by the circuit court.

SOURCE: U.S. Sentencing Commission, 2004 Appeals Datafile, APPFY04.