

Table 57

GUIDELINE INVOLVED IN ISSUES APPEALED BY THE DEFENDANTS¹
Fiscal Year 2005, Post-Booker (January 12, 2005, through September 30, 2005)

GUIDELINE	Number	Percent	Affirmance Rate²
TOTAL	11,041	100.0	65.6
2D1.1 (Drug Trafficking)	1,120	10.1	64.1
2L1.2 (Unlawfully Entering or Remaining in the United States)	745	6.7	84.2
2K2.1 (Firearms)	388	3.5	67.0
2B1.1 (Larceny, Embezzlement, and Theft)	275	2.5	56.7
3C1.1 (Obstruction of Justice)	212	1.9	63.7
3B1.1 (Aggravating Role)	165	1.5	66.7
4B1.1 (Career Offender)	146	1.3	82.9
5K2.0 (Departures)	130	1.2	81.5
2B3.1 (Robbery)	121	1.1	54.6
3E1.1 (Acceptance of Responsibility)	117	1.1	86.3
4A1.1 (Criminal History Category)	116	1.1	84.5
5E1.1 (Restitution)	103	0.9	62.1
3B1.2 (Mitigating Role)	102	0.9	88.2
7B1.3 (Revocation of Probation or Supervised Release)	101	0.9	92.1
4B1.4 (Armed Career Criminal)	81	0.7	80.2
2F1.1 (Fraud)	78	0.7	70.5
5C1.2 (Limitation on Applicability of Statutory Minimums)	74	0.7	91.9
4A1.3 (Adequacy of Criminal History)	65	0.6	78.5
7B1.4 (Term of Imprisonment)	64	0.6	95.3
4A1.2 (Definitions and Instructions of Criminal History)	63	0.6	79.4
5K1.1 (Substantial Assistance to Authorities)	59	0.5	81.4
2L1.1 (Smuggling, Transporting, or Harboring an Unlawful Alien)	46	0.4	69.6
5D1.3 (Conditions of Supervised Release)	44	0.4	65.9
2G2.2 (Trafficking in Material Involving Sexual Exploitation of a Minor)	42	0.4	54.8
1B1.3 (Relevant Conduct)	41	0.4	70.7
4B1.2 (Definitions for Career Offender)	35	0.3	85.7
18 U.S.C. § 3553(a) Factors	37	0.3	91.9
Constitutional Issues	4,034	36.5	51.9
Other Guidelines	779	7.1	65.7
Other Non-guideline Issues	1,658	15.0	79.3

¹Based on 5,010 "Post-Booker" appeals defendants with sentencing as at least one of the reasons for appeal. Information on issues was available in 5,010 of these cases which cited 11,192 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 30 times among relevant cases.

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