

**Table 57**

**GUIDELINE INVOLVED IN ISSUES APPEALED BY THE DEFENDANTS<sup>1</sup>**  
**Fiscal Year 2005, Pre-Booker (October 1, 2004, through January 11, 2005)**

<b>GUIDELINE</b>	<b>Number</b>	<b>Percent</b>	<b>Affirmance Rate<sup>2</sup></b>
<b>TOTAL</b>	<b>2,189</b>	<b>100.0</b>	<b>90.1</b>
2L1.2 (Unlawfully Entering or Remaining in the United States)	272	12.4	94.8
2D1.1 (Drug Trafficking)	128	5.8	91.4
5K2.0 (Departures)	74	3.4	93.2
3B1.2 (Mitigating Role)	52	2.4	98.1
3B1.1 (Aggravating Role)	45	2.1	86.7
3E1.1 (Acceptance of Responsibility)	44	2.0	79.6
2K2.1 (Firearms)	43	2.0	95.4
4A1.2 (Definitions and Instructions of Criminal History)	42	1.9	95.2
7B1.3 (Revocation of Probation or Supervised Release)	39	1.8	92.3
3C1.1 (Obstruction of Justice)	32	1.5	81.2
4A1.3 (Adequacy of Criminal History)	30	1.4	86.7
5K1.1 (Substantial Assistance to Authorities)	28	1.3	75.0
4A1.1 (Criminal History Category)	26	1.2	84.6
5E1.1 (Restitution)	23	1.1	65.2
4B1.4 (Armed Career Criminal)	22	1.0	95.4
2B1.1 (Larceny, Embezzlement, and Theft)	21	1.0	76.2
1B1.3 (Relevant Conduct)	19	0.9	89.5
4B1.1 (Career Offender)	17	0.8	94.1
2F1.1 (Fraud)	16	0.7	62.5
5C1.2 (Limitation on Applicability of Statutory Minimums)	16	0.7	100.0
1B1.10 (Retroactivity of Amended Guideline Ranges)	13	0.6	92.3
4B1.2 (Definitions for Career Offender)	13	0.6	84.6
7B1.4 (Term of Imprisonment)	13	0.6	100.0
5D1.3 (Conditions of Supervised Release)	12	0.5	83.3
2B3.1 (Robbery)	11	0.5	72.7
6A1.3 (Resolution of Disputed Factors)	11	0.5	81.8
2G2.2 (Trafficking in Material Involving Sexual Exploitation of a Minor)	10	0.5	80.0
Constitutional Issues	106	4.8	94.3
Other Guidelines	190	8.7	89.5
Other Non-guideline Issues	821	37.5	90.1

<sup>1</sup>Based on 1,198 "Pre-Booker" appeals defendants with sentencing as at least one of the reasons for appeal. Information on issues was available in 1,198 of these cases which cited 2,248 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 10 times among relevant cases.

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