

Table 57

GUIDELINE INVOLVED IN ISSUES APPEALED BY THE DEFENDANTS¹
Fiscal Year 2005

GUIDELINE	Number	Percent	Affirmance Rate²
TOTAL	13,230	100.0	69.6
2D1.1 (Drug Trafficking)	1,248	9.4	66.9
2L1.2 (Unlawfully Entering or Remaining in the United States)	1,017	7.7	87.0
2K2.1 (Firearms)	431	3.3	69.8
2B1.1 (Larceny, Embezzlement, and Theft)	296	2.2	58.1
3C1.1 (Obstruction of Justice)	244	1.8	66.0
3B1.1 (Aggravating Role)	210	1.6	71.0
5K2.0 (Departures)	204	1.5	85.8
4B1.1 (Career Offender)	163	1.2	84.0
3E1.1 (Acceptance of Responsibility)	161	1.2	84.5
3B1.2 (Mitigating Role)	154	1.2	91.6
4A1.1 (Criminal History Category)	142	1.1	84.5
7B1.3 (Revocation of Probation or Supervised Release)	140	1.1	92.1
2B3.1 (Robbery)	132	1.0	56.1
5E1.1 (Restitution)	126	1.0	62.7
4A1.2 (Definitions and Instructions of Criminal History)	105	0.8	85.7
4B1.4 (Armed Career Criminal)	103	0.8	83.5
4A1.3 (Adequacy of Criminal History)	95	0.7	81.0
2F1.1 (Fraud)	94	0.7	69.2
5C1.2 (Limitation on Applicability of Statutory Minimums)	90	0.7	93.3
5K1.1 (Substantial Assistance to Authorities)	87	0.7	79.3
7B1.4 (Term of Imprisonment)	77	0.6	96.1
1B1.3 (Relevant Conduct)	60	0.5	76.7
5D1.3 (Conditions of Supervised Release)	56	0.4	69.6
2L1.1 (Smuggling, Transporting, or Harboring an Unlawful Alien)	55	0.4	70.9
2G2.2 (Trafficking in Material Involving Sexual Exploitation of a Minor)	41	0.3	59.6
4B1.2 (Definitions for Career Offender)	48	0.4	85.4
18 U.S.C. § 3553(a) Factors	37	0.3	91.9
Constitutional Issues	4,140	31.3	53.0
Other Guidelines	995	7.5	69.9
Other Non-guideline Issues	2,479	18.7	82.9

¹Based on 6,208 “Post-Booker” appeals defendants with sentencing as at least one of the reasons for appeal. Information on issues was available in 6,208 of these cases which cited 13,440 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 40 times among relevant cases.

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

SOURCE: U.S. Sentencing Commission, 2005 Appeals Datafile, APPFY05.