

Table 28A

**SENTENCES RELATIVE TO THE GUIDELINE RANGE
FOR OUTSIDE OF THE RANGE ATTRIBUTION CATEGORY¹
Fiscal Year 2008**

	Pursuant to a Plea Agreement										
	TOTAL CASES	§5K1.1 Plea Agreement		§5K3.1 Plea Agreement		Binding Plea Accepted by Court		Plea w/ Departure Court Finds Reasonable		Plea Agreement States Gov't Will Not Oppose	
		N	%	N	%	N	%	N	%	N	%
TOTAL	30,230	6,942	23.0	5,731	19.0	2,261	7.5	1,964	6.5	147	0.5
Above Range	1,195	5	0.4	5	0.4	200	16.7	129	10.8	1	0.1
Upward Departure From Guideline Range	326	1	0.3	4	1.2	78	23.9	47	14.4	0	0.0
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553	147	0	0.0	0	0.0	28	19.0	33	22.4	1	0.7
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553	622	0	0.0	0	0.0	90	14.5	36	5.8	0	0.0
All Remaining Cases Above Guideline Range	100	4	4.0	1	1.0	4	4.0	13	13.0	0	0.0
Government Sponsored Below Range	19,063	6,937	36.4	5,726	30.0	2,061	10.8	1,835	9.6	146	0.8
§5K1.1 Substantial Assistance Departure	10,048	6,937	69.0	109	1.1	220	2.2	209	2.1	28	0.3
§5K3.1 Early Disposition Program Departure	5,894	0	0.0	5,617	95.3	746	12.7	119	2.0	6	0.1
Other Government Sponsored Below Range	3,121	0	0.0	0	0.0	1,095	35.1	1,507	48.3	112	3.6
Below Range	9,972	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Downward Departure From Guideline Range	1,544	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553	915	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553	6,678	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
All Remaining Cases Below Guideline Range	835	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0

Table 28A (cont.)

	Pursuant to a Motion Not in a Plea Agreement													
	§5K1.1 Government Motion		§5K3.1 Government Motion		Other Government Motion		Defense Motion/ Government Did Not Object		Defense Motion/ Government Did Object		Other than a Plea/Motion by Parties		No Information Available	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
TOTAL	2,934	9.7	170	0.6	734	2.4	2,665	8.8	2,960	9.8	4,749	15.7	3,471	11.5
Above Range	6	0.5	0	0.0	141	11.8	8	0.7	6	0.5	568	47.5	254	21.3
Upward Departure From Guideline Range	2	0.6	0	0.0	48	14.7	4	1.2	2	0.6	116	35.6	40	12.3
Upward Departure With <i>Booker</i> / 18 U.S.C. § 3553	1	0.7	0	0.0	35	23.8	2	1.4	0	0.0	107	72.8	24	16.3
Above Guideline Range With <i>Booker</i> / 18 U.S.C. § 3553	0	0.0	0	0.0	56	9.0	1	0.2	3	0.5	333	53.5	115	18.5
All Remaining Cases Above Guideline Range	3	3.0	0	0.0	2	2.0	1	1.0	1	1.0	12	12.0	75	75.0
Government Sponsored Below Range	2,928	15.4	170	0.9	593	3.1	751	3.9	437	2.3	739	3.9	514	2.7
§5K1.1 Substantial Assistance Departure	2,928	29.1	4	0.0	264	2.6	310	3.1	217	2.2	336	3.3	235	2.3
§5K3.1 Early Disposition Program Departure	0	0.0	166	2.8	40	0.7	209	3.5	123	2.1	122	2.1	117	2.0
Other Government Sponsored Below Range	0	0.0	0	0.0	289	9.3	232	7.4	97	3.1	281	9.0	162	5.2
Below Range	0	0.0	0	0.0	0	0.0	1,906	19.1	2,517	25.2	3,442	34.5	2,703	27.1
Downward Departure From Guideline Range	0	0.0	0	0.0	0	0.0	479	31.0	354	22.9	485	31.4	263	17.0
Downward Departure With <i>Booker</i> / 18 U.S.C. § 3553	0	0.0	0	0.0	0	0.0	241	26.3	381	41.6	566	61.9	163	17.8
Below Guideline Range With <i>Booker</i> / 18 U.S.C. § 3553	0	0.0	0	0.0	0	0.0	1,155	17.3	1,749	26.2	2,360	35.3	1,529	22.9
All Remaining Cases Below Guideline Range	0	0.0	0	0.0	0	0.0	31	3.7	33	4.0	31	3.7	748	89.6

¹Multiple attributions may be made on the SOR. Therefore, the numbers reported in this table may exceed the number of total cases. For example, among SORs with an attribution, 8,268 cases indicated more than one attribution. Note that only outside of the range cases are included in this table. Descriptions of variables used in this table are provided in Appendix A.

SOURCE: U.S. Sentencing Commission, 2008 Datafile, USSCFY08.