

**Table 57**

**GUIDELINE INVOLVED IN ISSUES APPEALED BY THE DEFENDANTS<sup>1</sup>**  
**Fiscal Year 2008**

<b>GUIDELINE</b>	<b>Number</b>	<b>Percent</b>	<b>Affirmance Rate<sup>2</sup></b>
<b>TOTAL</b>	<b>13,839</b>	<b>100.0</b>	<b>92.1</b>
18 U.S.C. § 3553(a) Factors	1,676	12.1	94.4
2D1.1 (Drug Trafficking)	1,603	11.6	85.9
2L1.2 (Unlawfully Entering or Remaining in the United States)	1,032	7.5	94.4
2K2.1 (Firearms)	364	2.6	91.8
2B1.1 (Larceny, Embezzlement, and Theft)	353	2.6	90.9
3E1.1 (Acceptance of Responsibility)	227	1.6	96.0
3B1.1 (Aggravating Role)	225	1.6	92.4
3B1.2 (Mitigating Role)	215	1.6	98.1
7B1.3 (Revocation of Probation or Supervised Release)	177	1.3	96.6
3C1.1 (Obstruction of Justice)	173	1.3	94.2
4B1.4 (Armed Career Criminal)	160	1.2	92.5
7B1.4 (Term of Imprisonment)	153	1.1	91.5
4A1.3 (Adequacy of Criminal History)	152	1.1	94.7
5C1.2 (Limitation on Applicability of Statutory Minimums)	138	1.0	93.5
5E1.1 (Restitution)	137	1.0	79.6
4B1.1 (Career Offender)	134	1.0	97.0
5K2.0 (Departures)	126	0.9	89.7
5K1.1 (Substantial Assistance to Authorities)	121	0.9	95.9
5D1.3 (Conditions of Supervised Release)	120	0.9	75.8
2B3.1 (Robbery)	110	0.8	92.7
4A1.2 (Definitions and Instructions of Criminal History)	110	0.8	90.0
4A1.1 (Criminal History Category)	109	0.8	92.7
1B1.10 (Retroactivity of Amended Guideline Ranges)	107	0.8	87.8
1B1.3 (Relevant Conduct)	104	0.8	91.4
2G2.2 (Trafficking in Material Involving Sexual Exploitation of Minors)	101	0.7	93.1
5G1.3 (Imposition of Sentence; Defendant Subject to Undischarged Term of Prison)	86	0.6	88.4
2K2.4 (Use of Firearms in Relation to Certain Crimes)	80	0.6	90.0
6A1.3 (Resolution of Disputed Factors)	80	0.6	91.2
2L1.1 (Smuggling, Transporting, or Harboring an Unlawful Alien)	76	0.5	92.1
4B1.2 (Definitions for Career Offender)	59	0.4	79.7
5D1.2 (Term of Supervised Release)	55	0.4	72.7
Constitutional Issues	2,917	21.1	94.5
Other Guidelines	1,017	7.3	89.5
Other Non-guideline Issues	1,542	11.1	93.3

<sup>1</sup>Based on 6,246 appeals by defendants with sentencing as at least one of the reasons for appeal. 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 50 times among relevant cases.

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