

Table N-10

**COMPARISON OF SENTENCE IMPOSED AND POSITION
RELATIVE TO THE GUIDELINE RANGE BY CIRCUIT¹
Fiscal Year 2009**

	National		Tenth Circuit	
	N	%	N	%
TOTAL CASES	79,153	100.0	6,727	100.0
CASES SENTENCED WITHIN GUIDELINE RANGE	44,991	56.8	4,182	62.2
CASES SENTENCED ABOVE GUIDELINE RANGE	1,496	2.0	75	1.1
DEPARTURE ABOVE GUIDELINE RANGE	533	0.7	27	0.4
Upward Departure From Guideline Range ²	382	0.5	25	0.4
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	151	0.2	2	0.0
OTHERWISE ABOVE GUIDELINE RANGE	963	1.3	48	0.7
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	842	1.1	46	0.7
All Remaining Cases Above Guideline Range ⁵	121	0.2	2	0.0
GOVERNMENT SPONSORED BELOW RANGE⁶	20,011	25.3	1,722	25.6
§5K1.1 Substantial Assistance Departure	9,855	12.5	488	7.2
§5K3.1 Early Disposition Program Departure	7,242	9.1	679	10.1
Other Government Sponsored Below Range	2,914	3.7	555	8.3
NON-GOVERNMENT SPONSORED BELOW RANGE	12,655	15.9	748	11.1
DEPARTURE BELOW GUIDELINE RANGE	2,403	3.0	172	2.5
Downward Departure From Guideline Range ²	1,542	1.9	128	1.9
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	861	1.1	44	0.6
OTHERWISE BELOW GUIDELINE RANGE	10,252	12.9	576	8.6
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	9,358	11.8	549	8.2
All Remaining Cases Below Guideline Range ⁵	894	1.1	27	0.4

¹This table reflects the 81,372 cases sentenced nationally in Fiscal Year 2009, 6,777 of which were from district courts in the Tenth Circuit. Of these, 2,219 cases nationally and 50 cases from courts in the Tenth Circuit were excluded because information was missing from the submitted documents that prevented the comparison of the sentence and the guideline range. Descriptions of variables used in this table are provided in Appendix A.

²All cases with departures in which the court did not indicate as a reason either *United States v. Booker*, 18 U.S.C. § 3553, or a factor or reason specifically prohibited in the provisions, policy statements, or commentary of the *Guidelines Manual*.

³All cases sentenced outside of the guideline range in which the court indicated both a departure (see footnote 2) and a reference to either *United States v. Booker*, 18 U.S.C. § 3553, or related factors as a reason for sentencing outside of the guideline system.

⁴All cases sentenced outside of the guideline range in which no departure was indicated and in which the court cited *United States v. Booker*, 18 U.S.C. § 3553, or related factors as one of the reasons for sentencing outside of the guideline system.

⁵All cases sentenced outside of the guideline range that could not be classified into any of the three previous outside of the range categories. This category includes cases in which no reason was provided for a sentence outside of the guideline range.

⁶Cases in which a reason for the sentence indicated that the prosecution initiated, proposed, or stipulated to a sentence outside of the guideline range, either pursuant to a plea agreement or as part of a non-plea negotiation with the defendant.

SOURCE: U.S. Sentencing Commission, 2009 Datafile, USSCFY09.