

Table 28A

ATTRIBUTION CATEGORY FOR CASES OUTSIDE OF THE GUIDELINE RANGE<sup>1</sup>  
Fiscal Year 2010

	TOTAL CASES	Pursuant to a Plea Agreement									
		§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	%
<b>TOTAL</b>	<b>36,831</b>	<b>6,165</b>	<b>16.7</b>	<b>7,716</b>	<b>20.9</b>	<b>3,262</b>	<b>8.9</b>	<b>1,701</b>	<b>4.6</b>	<b>170</b>	<b>0.5</b>
<b>Above Range</b>	<b>1,512</b>	<b>8</b>	<b>0.5</b>	<b>8</b>	<b>0.5</b>	<b>215</b>	<b>14.2</b>	<b>98</b>	<b>6.5</b>	<b>0</b>	<b>0.0</b>
Upward Departure From Guideline Range	350	1	0.3	1	0.3	86	24.6	39	11.1	0	0.0
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553	119	1	0.8	0	0.0	21	17.6	7	5.9	0	0.0
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553	916	0	0.0	0	0.0	103	11.2	50	5.5	0	0.0
All Remaining Cases Above Guideline Range	127	6	4.7	7	5.5	5	3.9	2	1.6	0	0.0
<b>Government Sponsored Below Range</b>	<b>20,754</b>	<b>6,157</b>	<b>29.7</b>	<b>7,708</b>	<b>37.1</b>	<b>3,047</b>	<b>14.7</b>	<b>1,603</b>	<b>7.7</b>	<b>170</b>	<b>0.8</b>
§5K1.1 Substantial Assistance Departure	9,421	6,157	65.4	118	1.3	196	2.1	145	1.5	24	0.3
§5K3.1 Early Disposition Program Departure	8,119	0	0.0	7,590	93.5	1,252	15.4	489	6.0	15	0.2
Other Government Sponsored Below Range	3,214	0	0.0	0	0.0	1,599	49.8	969	30.1	131	4.1
<b>Below Range</b>	<b>14,565</b>	<b>0</b>	<b>0.0</b>	<b>0</b>	<b>0.0</b>	<b>0</b>	<b>0.0</b>	<b>0</b>	<b>0.0</b>	<b>0</b>	<b>0.0</b>
Downward Departure From Guideline Range	1,687	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	865	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	11,116	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
All Remaining Cases Below Guideline Range	897	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	%
<b>TOTAL</b>	<b>3,032</b>	<b>8.2</b>	<b>223</b>	<b>0.6</b>	<b>1,102</b>	<b>3.0</b>	<b>4,426</b>	<b>12.0</b>	<b>4,657</b>	<b>12.6</b>	<b>6,339</b>	<b>17.2</b>	<b>4,110</b>	<b>11.2</b>
<b>Above Range</b>	<b>4</b>	<b>0.3</b>	<b>0</b>	<b>0.0</b>	<b>219</b>	<b>14.5</b>	<b>9</b>	<b>0.6</b>	<b>9</b>	<b>0.6</b>	<b>754</b>	<b>49.9</b>	<b>309</b>	<b>20.4</b>
Upward Departure From Guideline Range	1	0.3	0	0.0	64	18.3	5	1.4	4	1.1	123	35.1	50	14.3
Upward Departure With <i>Booker</i> / 18 U.S.C. § 3553	0	0.0	0	0.0	31	26.1	1	0.8	1	0.8	104	87.4	16	13.4
Above Guideline Range With <i>Booker</i> / 18 U.S.C. § 3553	0	0.0	0	0.0	119	13.0	3	0.3	4	0.4	520	56.8	138	15.1
All Remaining Cases Above Guideline Range	3	2.4	0	0.0	5	3.9	0	0.0	0	0.0	7	5.5	105	82.7
<b>Government Sponsored Below Range</b>	<b>3,028</b>	<b>14.6</b>	<b>223</b>	<b>1.1</b>	<b>883</b>	<b>4.3</b>	<b>1,085</b>	<b>5.2</b>	<b>714</b>	<b>3.4</b>	<b>812</b>	<b>3.9</b>	<b>555</b>	<b>2.7</b>
§5K1.1 Substantial Assistance Departure	3,028	32.1	2	0.0	277	2.9	436	4.6	330	3.5	473	5.0	195	2.1
§5K3.1 Early Disposition Program Departure	0	0.0	221	2.7	28	0.3	368	4.5	291	3.6	116	1.4	290	3.6
Other Government Sponsored Below Range	0	0.0	0	0.0	578	18.0	281	8.7	93	2.9	223	6.9	70	2.2
<b>Below Range</b>	<b>0</b>	<b>0.0</b>	<b>0</b>	<b>0.0</b>	<b>0</b>	<b>0.0</b>	<b>3,332</b>	<b>22.9</b>	<b>3,934</b>	<b>27.0</b>	<b>4,773</b>	<b>32.8</b>	<b>3,246</b>	<b>22.3</b>
Downward Departure From Guideline Range	0	0.0	0	0.0	0	0.0	717	42.5	299	17.7	473	28.0	243	14.4
Downward Departure With <i>Booker</i> / 18 U.S.C. § 3553	0	0.0	0	0.0	0	0.0	289	33.4	400	46.2	480	55.5	134	15.5
Below Guideline Range With <i>Booker</i> / 18 U.S.C. § 3553	0	0.0	0	0.0	0	0.0	2,274	20.5	3,194	28.7	3,793	34.1	2,083	18.7
All Remaining Cases Below Guideline Range	0	0.0	0	0.0	0	0.0	52	5.8	41	4.6	27	3.0	786	87.6

<sup>1</sup> Multiple 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, 10,770 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, 2010 Datafile, USSCFY10.