

Table 57**GUIDELINE INVOLVED IN ISSUES APPEALED BY THE DEFENDANT¹
Fiscal Year 2011**

GUIDELINE	N	%	Affirmance Rate²
TOTAL	13,085	100.0	92.9
18 U.S.C. § 3553(a) Factors	1,405	10.7	97.9
2D1.1 (Drug Trafficking)	973	7.4	93.3
1B1.10 (Retroactivity of Amended Guideline Ranges)	691	5.3	94.4
2L1.2 (Unlawfully Entering or Remaining in the United States)	320	2.4	91.2
2B1.1 (Larceny, Embezzlement, and Theft)	259	2.0	87.3
3B1.1 (Aggravating Role)	189	1.4	94.7
6A1.3 (Resolution of Disputed Factors)	186	1.4	85.0
2K2.1 (Firearms)	160	1.2	82.5
4A1.1 (Criminal History Category)	153	1.2	92.2
3E1.1 (Acceptance of Responsibility)	152	1.2	94.1
5D1.3 (Conditions of Supervised Release)	144	1.1	74.3
4B1.4 (Armed Career Criminal)	141	1.1	80.8
3B1.2 (Mitigating Role)	138	1.1	97.8
3C1.1 (Obstruction of Justice)	138	1.1	94.9
2K2.4 (Use of Firearms During or in Relation to Certain Crimes)	125	1.0	96.8
5E1.1 (Restitution)	123	0.9	64.2
4B1.1 (Career Offender)	120	0.9	88.3
7B1.4 (Term of Imprisonment)	109	0.8	86.2
4A1.3 (Adequacy of Criminal History)	107	0.8	98.1
1B1.3 (Relevant Conduct)	92	0.7	89.1
5G1.3 (Imposition of Sentence; Defendant Subject to Undischarged Term of Prison)	92	0.7	92.4
5C1.2 (Limitation on Applicability of Statutory Minimums)	89	0.7	93.3
5K1.1 (Substantial Assistance to Authorities)	83	0.6	91.6
4A1.2 (Definitions and Instructions of Criminal History)	79	0.6	94.9
2G2.2 (Trafficking Material Involving Sexual Exploitation of Minors)	69	0.5	95.6
4B1.2 (Definitions for Career Offender)	60	0.5	80.0
1B1.4 (Information to be Used in Imposing Sentence)	57	0.4	96.5
2B3.1 (Robbery)	47	0.4	89.4
5K2.0 (Departures)	45	0.3	100.0
2L1.1 (Smuggling, Transporting, or Harboring an Unlawful Alien)	40	0.3	97.5
5E1.2 (Fines for Individual Defendants)	40	0.3	90.0
Reasonableness Issues	3,815	29.2	95.4
Constitutional Issues	732	5.6	96.7
Other Guidelines	741	5.7	90.6
Other Non-guideline Issues	1,371	10.5	87.7

¹ Based on 5,844 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 Guidelines” category includes all issues appealed fewer than 40 times.

² Affirmance Rate includes all appeals cases not reversed or directly remanded by the courts of appeal.