

Table N-2

**COMPARISON OF SENTENCE IMPOSED AND POSITION
RELATIVE TO THE GUIDELINE RANGE BY CIRCUIT¹
Fiscal Year 2011**

	National		Second Circuit	
	N	%	N	%
TOTAL CASES	84,744	100.0	4,604	100.0
CASES SENTENCED WITHIN GUIDELINE RANGE	46,160	54.5	1,797	39.0
CASES SENTENCED ABOVE GUIDELINE RANGE	1,527	1.8	44	1.0
DEPARTURE ABOVE GUIDELINE RANGE	488	0.6	16	0.3
Upward Departure From Guideline Range ²	379	0.4	13	0.3
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	109	0.1	3	0.1
OTHERWISE ABOVE GUIDELINE RANGE	1,039	1.2	28	0.6
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	947	1.1	22	0.5
All Remaining Cases Above Guideline Range ⁵	92	0.1	6	0.1
GOVERNMENT SPONSORED BELOW RANGE⁶	22,295	26.3	991	21.5
§5K1.1 Substantial Assistance Departure	9,522	11.2	871	18.9
§5K3.1 Early Disposition Program Departure	9,057	10.7	0	0.0
Other Government Sponsored Below Range	3,716	4.4	120	2.6
NON-GOVERNMENT SPONSORED BELOW RANGE	14,762	17.4	1,772	38.5
DEPARTURE BELOW GUIDELINE RANGE	2,893	3.4	290	6.3
Downward Departure From Guideline Range ²	1,976	2.3	142	3.1
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	917	1.1	148	3.2
OTHERWISE BELOW GUIDELINE RANGE	11,869	14.0	1,482	32.2
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	11,371	13.4	1,443	31.3
All Remaining Cases Below Guideline Range ⁵	498	0.6	39	0.8

¹ This table reflects the 86,201 cases sentenced nationally in Fiscal Year 2011, 4,634 of which were from district courts in the Second Circuit. Of these, 1,457 cases nationally and 30 cases from courts in the Second 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.

² All 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*.

³ All 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.

⁴ All 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.

⁵ All 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.

⁶ Cases 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.