

**Table 57**

**GUIDELINE INVOLVED IN ISSUES APPEALED BY THE DEFENDANT<sup>1</sup>**  
**Fiscal Year 2012**

<b>GUIDELINE</b>	<b>N</b>	<b>%</b>	<b>Affirmance Rate<sup>2</sup></b>
<b>TOTAL</b>	<b>11,922</b>	<b>100.0</b>	<b>91.2</b>
18 U.S.C. § 3553(a) Factors	1,483	12.4	98.4
1B1.10 (Retroactivity of Amended Guideline Ranges)	726	6.1	95.2
2D1.1 (Drug Trafficking)	680	5.7	91.8
2L1.2 (Unlawfully Entering or Remaining in the United States)	315	2.6	85.4
2B1.1 (Larceny, Embezzlement, and Theft)	250	2.1	91.6
5D1.3 (Conditions of Supervised Release)	218	1.8	79.4
5E1.1 (Restitution)	186	1.6	72.6
4B1.4 (Armed Career Criminal)	185	1.6	90.3
3B1.1 (Aggravating Role)	177	1.5	95.5
2K2.1 (Firearms)	170	1.4	84.1
7B1.4 (Term of Imprisonment)	170	1.4	93.5
3E1.1 (Acceptance of Responsibility)	168	1.4	95.8
3C1.1 (Obstruction of Justice)	167	1.4	91.0
3B1.2 (Mitigating Role)	125	1.0	98.4
4B1.1 (Career Offender)	124	1.0	75.0
4A1.3 (Adequacy of Criminal History)	120	1.0	99.2
4A1.1 (Criminal History Category)	85	0.7	94.1
5K1.1 (Substantial Assistance to Authorities)	82	0.7	95.1
5C1.2 (Limitation on Applicability of Statutory Minimums)	78	0.7	93.6
7B1.3 (Revocation of Probation or Supervised Release)	72	0.6	88.9
2G2.2 (Trafficking Material Involving Sexual Exploitation of Minors)	69	0.6	89.9
6A1.3 (Resolution of Disputed Factors)	67	0.6	89.6
5G1.3 (Imposition of Sentence; Defendant Subject to Undischarged Term of Prison)	66	0.6	97.0
4A1.2 (Definitions and Instructions of Criminal History)	54	0.5	87.0
1B1.3 (Relevant Conduct)	52	0.4	94.2
4B1.2 (Definitions for Career Offender)	52	0.4	76.9
5E1.2 (Fines for Individual Defendants)	50	0.4	76.0
5D1.2 (Terms of Supervised Release)	48	0.4	79.2
1B1.4 (Information to be Used in Imposing Sentence)	45	0.4	100.0
Reasonableness Issues	3,021	25.3	96.8
Constitutional Issues	546	4.6	96.2
Other Guidelines	792	6.6	89.0
Other Non-guideline Issues	1,479	12.4	75.2

<sup>1</sup> Based on 5,928 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. There was missing information on the issue(s) appealed by the defendant in 389 appeals. The “Other Guidelines” category includes all issues appealed fewer than 40 times.

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