

# United States Sentencing Commission



## *Statistical Information Packet*

*Fiscal Year 2004*

*State of Wisconsin*

## TABLE OF CONTENTS

### **SECTION ONE: Fiscal Year 2004 Tables and Figures**

(October 1, 2003, through September 30, 2004)

---

<b>Figure A</b> - Guideline Defendants Sentenced by Primary Offense	2
<b>Table 1</b> - Distribution of Guideline Defendants Sentenced by Primary Offense Category	3

### **SECTION TWO: Pre-*Blakely* Tables and Figures**

(October 1, 2003, through June 24, 2004)

---

<b>Table 2</b> - Mode of Conviction by Circuit and District	5
<b>Table 3</b> - Mode of Conviction by Primary Offense Category	8
<b>Table 4</b> - Type of Sentence Imposed by Primary Offense Category (National)	9
<b>Table 5</b> - Type of Sentence Imposed by Primary Offense Category (District)	10
<b>Table 6</b> - Incarceration Rate of Defendants Eligible for Non-Prison Sentences by Primary Offense Category	11
<b>Table 7</b> - Average Length of Imprisonment by Primary Offense	12
<b>Table 8</b> - Guideline Departure Rate by Circuit and District	13
<b>Table 9</b> - Guideline Departure Rate by Primary Offense Category	16

### **SECTION THREE: Post-*Blakely* Tables and Figures**

(June 25, 2004, through September 30, 2004)

---

<b>Table 2</b> - Mode of Conviction by Circuit and District	18
<b>Table 3</b> - Mode of Conviction by Primary Offense Category	21
<b>Table 4</b> - Type of Sentence Imposed by Primary Offense Category (National)	22
<b>Table 5</b> - Type of Sentence Imposed by Primary Offense Category (District)	23
<b>Table 6</b> - Incarceration Rate of Defendants Eligible for Non-Prison Sentences by Primary Offense Category	24
<b>Table 7</b> - Average Length of Imprisonment by Primary Offense	25
<b>Table 8</b> - Guideline Departure Rate by Circuit and District	26
<b>Table 9</b> - Guideline Departure Rate by Primary Offense Category	29

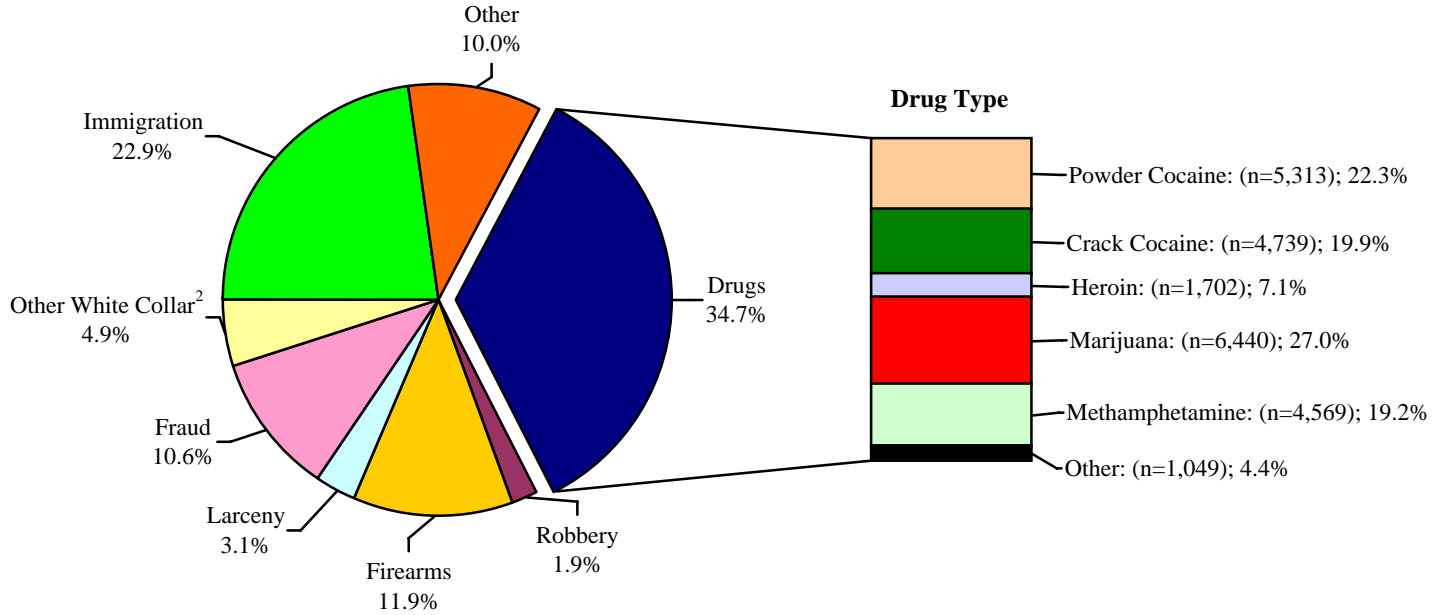
**SECTION ONE: Fiscal Year 2004**  
*(October 1, 2003, through September 30, 2004)*

---

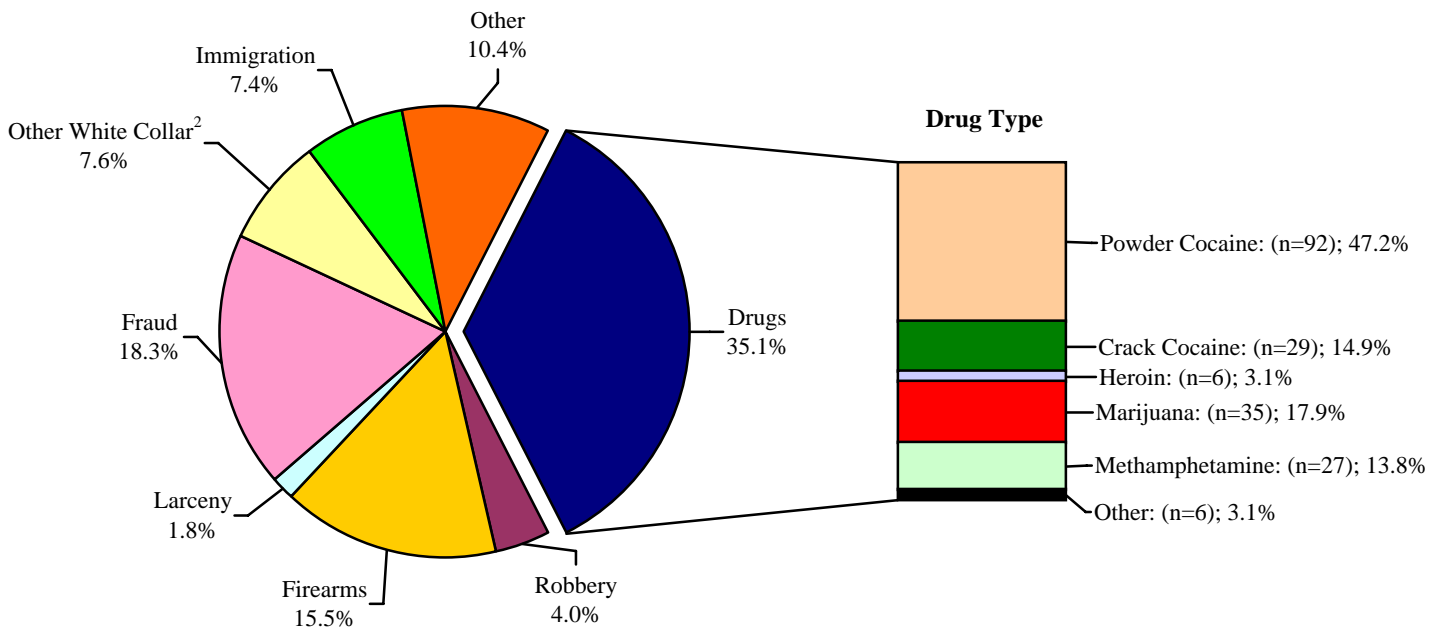
**Figure A**

**DISTRIBUTION OF SENTENCED GUIDELINE OFFENDERS BY SELECT PRIMARY OFFENSE CATEGORY<sup>1</sup>**  
**Fiscal Year 2004**

**National**



**Wisconsin**



<sup>1</sup>Of the 70,068 guideline cases, 1,538 cases were excluded due to one of the following reasons: missing primary offense category (136) or missing drug type (1,402). Of the 571 guideline cases from the State of Wisconsin, 15 cases were excluded due to missing drug type.

<sup>2</sup>The Other White Collar category includes the following offense types: Embezzlement, Forgery/Counterfeiting, Bribery, Money Laundering and Tax.

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2004 Datafile, OPAFY04.

**Table 1**

**DISTRIBUTION OF GUIDELINE DEFENDANTS SENTENCED  
BY PRIMARY OFFENSE CATEGORY  
Fiscal Year 2004**

PRIMARY OFFENSE	National		Wisconsin	
	Number	Percent	Number	Percent
<b>TOTAL</b>	<b>69,932</b>	<b>100.0</b>	<b>571</b>	<b>100.0</b>
Murder	76	0.1	1	0.2
Manslaughter	63	0.1	1	0.2
Kidnapping/Hostage Taking	39	0.1	0	0.0
Sexual Abuse	276	0.4	3	0.5
Assault	621	0.9	10	1.8
Robbery	1,320	1.9	22	3.9
Arson	72	0.1	1	0.2
Drugs - Trafficking	23,572	33.7	193	33.8
Drugs - Communication Facility	346	0.5	9	1.6
Drugs - Simple Possession	1,296	1.9	8	1.4
Firearms	8,133	11.6	86	15.1
Burglary/B&E	63	0.1	0	0.0
Auto Theft	95	0.1	1	0.2
Larceny	2,133	3.1	10	1.8
Fraud	7,261	10.4	102	17.9
Embezzlement	630	0.9	16	2.8
Forgery/Counterfeiting	1,182	1.7	11	1.9
Bribery	166	0.2	4	0.7
Tax	515	0.7	3	0.5
Money Laundering	842	1.2	8	1.4
Racketeering/Extortion	621	0.9	4	0.7
Gambling/Lottery	100	0.1	0	0.0
Civil Rights	71	0.1	1	0.2
Immigration	15,717	22.5	41	7.2
Pornography/Prostitution	876	1.3	7	1.2
Prison Offenses	380	0.5	2	0.4
Administration of Justice Offenses	1,026	1.5	8	1.4
Environmental/Wildlife	155	0.2	1	0.2
National Defense	34	0.0	0	0.0
Antitrust	11	0.0	0	0.0
Food & Drug	75	0.1	1	0.2
Other Miscellaneous Offenses	2,165	3.1	17	3.0

Of the 70,068 guideline cases, 136 cases were excluded due to missing information on primary offense category.

Of the 571 guideline cases from the State of Wisconsin, no case was excluded.

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2004 Datafile, OPAFY04.

**SECTION TWO: Pre-*Blakely***  
***(October 1, 2003, through June 24, 2004)***

---

Table 2

**MODE OF CONVICTION BY CIRCUIT AND DISTRICT**  
**Fiscal Year 2004, Pre-Blakely (October 1, 2003, through June 24, 2004)**

CIRCUIT District	TOTAL	PLEA		TRIAL	
		Number	Percent	Number	Percent
<b>TOTAL</b>	<b>51,666</b>	<b>49,350</b>	<b>95.5</b>	<b>2,316</b>	<b>4.5</b>
<b>D.C. CIRCUIT</b>	<b>418</b>	<b>378</b>	<b>90.4</b>	<b>40</b>	<b>9.6</b>
District of Columbia	418	378	90.4	40	9.6
<b>FIRST CIRCUIT</b>	<b>1,297</b>	<b>1,234</b>	<b>95.1</b>	<b>63</b>	<b>4.9</b>
Maine	170	160	94.1	10	5.9
Massachusetts	371	344	92.7	27	7.3
New Hampshire	170	163	95.9	7	4.1
Puerto Rico	494	479	97.0	15	3.0
Rhode Island	92	88	95.7	4	4.3
<b>SECOND CIRCUIT</b>	<b>3,496</b>	<b>3,343</b>	<b>95.6</b>	<b>153</b>	<b>4.4</b>
Connecticut	273	258	94.5	15	5.5
New York					
Eastern	1,135	1,094	96.4	41	3.6
Northern	351	331	94.3	20	5.7
Southern	1,201	1,130	94.1	71	5.9
Western	384	378	98.4	6	1.6
Vermont	152	152	100.0	0	0.0
<b>THIRD CIRCUIT</b>	<b>2,140</b>	<b>2,006</b>	<b>93.7</b>	<b>134</b>	<b>6.3</b>
Delaware	87	80	92.0	7	8.0
New Jersey	609	580	95.2	29	4.8
Pennsylvania					
Eastern	731	668	91.4	63	8.6
Middle	377	365	96.8	12	3.2
Western	261	246	94.3	15	5.7
Virgin Islands	75	67	89.3	8	10.7
<b>FOURTH CIRCUIT</b>	<b>4,669</b>	<b>4,378</b>	<b>93.8</b>	<b>291</b>	<b>6.2</b>
Maryland	408	375	91.9	33	8.1
North Carolina					
Eastern	438	419	95.7	19	4.3
Middle	270	255	94.4	15	5.6
Western	355	330	93.0	25	7.0
South Carolina	971	917	94.4	54	5.6
Virginia					
Eastern	1,533	1,445	94.3	88	5.7
Western	323	296	91.6	27	8.4
West Virginia					
Northern	178	163	91.6	15	8.4
Southern	193	178	92.2	15	7.8

CIRCUIT District	TOTAL	PLEA		TRIAL	
		Number	Percent	Number	Percent
<b>FIFTH CIRCUIT</b>	<b>9,880</b>	<b>9,544</b>	<b>96.6</b>	<b>336</b>	<b>3.4</b>
<b>Louisiana</b>					
Eastern	267	260	97.4	7	2.6
Middle	136	129	94.9	7	5.1
Western	285	258	90.5	27	9.5
<b>Mississippi</b>					
Northern	123	115	93.5	8	6.5
Southern	256	248	96.9	8	3.1
<b>Texas</b>					
Eastern	632	603	95.4	29	4.6
Northern	828	789	95.3	39	4.7
Southern	3,703	3,582	96.7	121	3.3
Western	3,650	3,560	97.5	90	2.5
<b>SIXTH CIRCUIT</b>	<b>3,563</b>	<b>3,367</b>	<b>94.5</b>	<b>196</b>	<b>5.5</b>
<b>Kentucky</b>					
Eastern	370	357	96.5	13	3.5
Western	323	300	92.9	23	7.1
<b>Michigan</b>					
Eastern	575	534	92.9	41	7.1
Western	257	244	94.9	13	5.1
<b>Ohio</b>					
Northern	573	545	95.1	28	4.9
Southern	354	338	95.5	16	4.5
<b>Tennessee</b>					
Eastern	480	460	95.8	20	4.2
Middle	231	213	92.2	18	7.8
Western	400	376	94.0	24	6.0
<b>SEVENTH CIRCUIT</b>	<b>2,282</b>	<b>2,143</b>	<b>93.9</b>	<b>139</b>	<b>6.1</b>
<b>Illinois</b>					
Central	281	268	95.4	13	4.6
Northern	844	781	92.5	63	7.5
Southern	249	240	96.4	9	3.6
<b>Indiana</b>					
Northern	264	242	91.7	22	8.3
Southern	249	233	93.6	16	6.4
<b>Wisconsin</b>					
Eastern	249	242	97.2	7	2.8
Western	146	137	93.8	9	6.2
<b>EIGHTH CIRCUIT</b>	<b>3,555</b>	<b>3,363</b>	<b>94.6</b>	<b>192</b>	<b>5.4</b>
<b>Arkansas</b>					
Eastern	208	199	95.7	9	4.3
Western	136	131	96.3	5	3.7
<b>Iowa</b>					
Northern	368	346	94.0	22	6.0
Southern	272	252	92.6	20	7.4
<b>Minnesota</b>	322	295	91.6	27	8.4
<b>Missouri</b>					
Eastern	656	629	95.9	27	4.1
Western	557	531	95.3	26	4.7
<b>Nebraska</b>	615	593	96.4	22	3.6
<b>North Dakota</b>	144	134	93.1	10	6.9
<b>South Dakota</b>	277	253	91.3	24	8.7



CIRCUIT District	TOTAL	PLEA		TRIAL	
		Number	Percent	Number	Percent
<b>NINTH CIRCUIT</b>	<b>11,221</b>	<b>10,915</b>	<b>97.3</b>	<b>306</b>	<b>2.7</b>
Alaska	152	141	92.8	11	7.2
Arizona	3,426	3,383	98.7	43	1.3
California					
Central	1,216	1,168	96.1	48	3.9
Eastern	685	660	96.4	25	3.6
Northern	519	502	96.7	17	3.3
Southern	2,495	2,459	98.6	36	1.4
Guam	71	68	95.8	3	4.2
Hawaii	314	301	95.9	13	4.1
Idaho	183	176	96.2	7	3.8
Montana	274	230	83.9	44	16.1
Nevada	489	468	95.7	21	4.3
North Mariana Islands	22	18	81.8	4	18.2
Oregon	467	458	98.1	9	1.9
Washington					
Eastern	307	297	96.7	10	3.3
Western	601	586	97.5	15	2.5
<b>TENTH CIRCUIT</b>	<b>4,043</b>	<b>3,918</b>	<b>96.9</b>	<b>125</b>	<b>3.1</b>
Colorado	404	383	94.8	21	5.2
Kansas	500	479	95.8	21	4.2
New Mexico	1,627	1,609	98.9	18	1.1
Oklahoma					
Eastern	104	91	87.5	13	12.5
Northern	122	110	90.2	12	9.8
Western	457	442	96.7	15	3.3
Utah	635	620	97.6	15	2.4
Wyoming	194	184	94.8	10	5.2
<b>ELEVENTH CIRCUIT</b>	<b>5,102</b>	<b>4,761</b>	<b>93.3</b>	<b>341</b>	<b>6.7</b>
Alabama					
Middle	145	138	95.2	7	4.8
Northern	439	422	96.1	17	3.9
Southern	216	204	94.4	12	5.6
Florida					
Middle	1,254	1,172	93.5	82	6.5
Northern	334	308	92.2	26	7.8
Southern	1,483	1,366	92.1	117	7.9
Georgia					
Middle	359	340	94.7	19	5.3
Northern	582	531	91.2	51	8.8
Southern	290	280	96.6	10	3.4

Of the 51,865 guideline cases, 199 cases were excluded due to missing information on mode of conviction.

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2004 Datafile, OPAFY04, Pre-*Blakely* Only Cases (October 1, 2003, through June 24, 2004).

**Table 3**

**MODE OF CONVICTION BY PRIMARY OFFENSE CATEGORY  
Fiscal Year 2004, Pre-*Blakely* (October 1, 2003, through June 24, 2004)**

PRIMARY OFFENSE	TOTAL	National				Wisconsin			
		PLEA		TRIAL		PLEA		TRIAL	
		n	%	n	%	n	%	n	%
<b>TOTAL</b>	<b>51,657</b>	<b>49,341</b>	<b>95.5</b>	<b>2,316</b>	<b>4.5</b>	<b>379</b>	<b>95.9</b>	<b>16</b>	<b>4.1</b>
Murder	57	40	70.2	17	29.8	1	100.0	0	0.0
Manslaughter	45	40	88.9	5	11.1	1	100.0	0	0.0
Kidnapping/Hostage Taking	29	26	89.7	3	10.3	0	--	0	--
Sexual Abuse	199	179	89.9	20	10.1	1	100.0	0	0.0
Assault	463	420	90.7	43	9.3	5	100.0	0	0.0
Robbery	950	900	94.7	50	5.3	17	100.0	0	0.0
Arson	61	54	88.5	7	11.5	1	100.0	0	0.0
Drugs - Trafficking	17,575	16,717	95.1	858	4.9	146	96.1	6	3.9
Drugs - Communication Facility	262	260	99.2	2	0.8	5	100.0	0	0.0
Drugs - Simple Possession	1,014	998	98.4	16	1.6	7	100.0	0	0.0
Firearms	6,016	5,531	91.9	485	8.1	56	93.3	4	6.7
Burglary/B&E	47	45	95.7	2	4.3	0	--	0	--
Auto Theft	67	54	80.6	13	19.4	1	100.0	0	0.0
Larceny	1,558	1,521	97.6	37	2.4	8	100.0	0	0.0
Fraud	5,531	5,282	95.5	249	4.5	58	95.1	3	4.9
Embezzlement	456	443	97.1	13	2.9	10	90.9	1	9.1
Forgery/Counterfeiting	902	884	98.0	18	2.0	4	100.0	0	0.0
Bribery	130	121	93.1	9	6.9	3	100.0	0	0.0
Tax	372	336	90.3	36	9.7	1	100.0	0	0.0
Money Laundering	631	573	90.8	58	9.2	8	100.0	0	0.0
Racketeering/Extortion	481	445	92.5	36	7.5	3	100.0	0	0.0
Gambling/Lottery	77	76	98.7	1	1.3	0	--	0	--
Civil Rights	66	47	71.2	19	28.8	1	100.0	0	0.0
Immigration	11,183	11,021	98.6	162	1.4	27	96.4	1	3.6
Pornography/Prostitution	644	611	94.9	33	5.1	3	100.0	0	0.0
Prison Offenses	274	261	95.3	13	4.7	1	100.0	0	0.0
Administration of Justice Offenses	756	720	95.2	36	4.8	2	66.7	1	33.3
Environmental/Wildlife	117	105	89.7	12	10.3	1	100.0	0	0.0
National Defense	27	18	66.7	9	33.3	0	--	0	--
Antitrust	7	7	100.0	0	0.0	0	--	0	--
Food & Drug	64	62	96.9	2	3.1	1	100.0	0	0.0
Other Miscellaneous Offenses	1,596	1,544	96.7	52	3.3	7	100.0	0	0.0

Of the 51,865 guideline cases, 208 cases were excluded due to one or both of the following reasons: missing primary offense category (107) or missing mode of conviction (199).

Of the 396 guideline cases from the State of Wisconsin, one case was excluded due to missing mode of conviction.

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2004 Datafile, OPAFY04, Pre-*Blakely* Only Cases (October 1, 2003, through June 24, 2004).

Table 4

**TYPE OF SENTENCE IMPOSED BY PRIMARY OFFENSE CATEGORY**  
**Fiscal Year 2004, Pre-Blakely (October 1, 2003, through June 24, 2004)**

## National

PRIMARY OFFENSE	TOTAL	Prison		Prison/Community Split Sentence		Probation and Confinement		Probation Only	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent
<b>TOTAL</b>	<b>51,076</b>	<b>42,957</b>	<b>84.1</b>	<b>1,508</b>	<b>3.0</b>	<b>2,165</b>	<b>4.2</b>	<b>4,446</b>	<b>8.7</b>
Murder	58	56	96.6	2	3.4	0	0.0	0	0.0
Manslaughter	47	41	87.2	4	8.5	1	2.1	1	2.1
Kidnapping/Hostage Taking	29	29	100.0	0	0.0	0	0.0	0	0.0
Sexual Abuse	199	188	94.5	2	1.0	3	1.5	6	3.0
Assault	461	365	79.2	12	2.6	26	5.6	58	12.6
Robbery	947	919	97.0	9	1.0	5	0.5	14	1.5
Arson	61	58	95.1	0	0.0	1	1.6	2	3.3
Drugs - Trafficking	17,504	16,580	94.7	349	2.0	243	1.4	332	1.9
Drugs - Communication Facility	261	225	86.2	5	1.9	14	5.4	17	6.5
Drugs - Simple Possession	972	603	62.0	6	0.6	28	2.9	335	34.5
Firearms	6,008	5,466	91.0	141	2.3	172	2.9	229	3.8
Burglary/B&E	47	43	91.5	2	4.3	2	4.3	0	0.0
Auto Theft	67	53	79.1	3	4.5	6	9.0	5	7.5
Larceny	1,498	547	36.5	122	8.1	250	16.7	579	38.7
Fraud	5,496	3,317	60.4	448	8.2	657	12.0	1,074	19.5
Embezzlement	445	170	38.2	62	13.9	57	12.8	156	35.1
Forgery/Counterfeiting	895	550	61.5	43	4.8	113	12.6	189	21.1
Bribery	130	55	42.3	7	5.4	34	26.2	34	26.2
Tax	366	186	50.8	48	13.1	61	16.7	71	19.4
Money Laundering	628	460	73.2	23	3.7	69	11.0	76	12.1
Racketeering/Extortion	481	412	85.7	11	2.3	21	4.4	37	7.7
Gambling/Lottery	76	15	19.7	8	10.5	30	39.5	23	30.3
Civil Rights	66	48	72.7	2	3.0	8	12.1	8	12.1
Immigration	11,148	10,736	96.3	101	0.9	110	1.0	201	1.8
Pornography/Prostitution	643	602	93.6	15	2.3	14	2.2	12	1.9
Prison Offenses	274	250	91.2	8	2.9	8	2.9	8	2.9
Administration of Justice Offenses	751	464	61.8	35	4.7	86	11.5	166	22.1
Environmental/Wildlife	103	28	27.2	4	3.9	13	12.6	58	56.3
National Defense	27	22	81.5	2	7.4	0	0.0	3	11.1
Antitrust	7	3	42.9	0	0.0	1	14.3	3	42.9
Food & Drug	61	11	18.0	1	1.6	5	8.2	44	72.1
Other Miscellaneous Offenses	1,320	455	34.5	33	2.5	127	9.6	705	53.4

Of the 51,865 guideline cases, 789 cases were excluded due to one or more of the following reasons: missing sentencing information (257), missing primary offense category (107), or cases in which the defendant received no imprisonment or probation (523).

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2004 Datafile, OPAFY04, Pre-Blakely Only Cases (October 1, 2003, through June 24, 2004).

Table 5

**TYPE OF SENTENCE IMPOSED BY PRIMARY OFFENSE CATEGORY**  
**Fiscal Year 2004, Pre-*Blakely* (October 1, 2003, through June 24, 2004)**

## Wisconsin

PRIMARY OFFENSE	TOTAL	Prison		Prison/Community Split Sentence		Probation and Confinement		Probation Only	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent
<b>TOTAL</b>	<b>394</b>	<b>332</b>	<b>84.3</b>	<b>22</b>	<b>5.6</b>	<b>16</b>	<b>4.1</b>	<b>24</b>	<b>6.1</b>
Murder	1	1	100.0	0	0.0	0	0.0	0	0.0
Manslaughter	1	1	100.0	0	0.0	0	0.0	0	0.0
Kidnapping/Hostage Taking	0	0	--	0	--	0	--	0	--
Sexual Abuse	1	0	0.0	1	100.0	0	0.0	0	0.0
Assault	5	4	80.0	0	0.0	0	0.0	1	20.0
Robbery	17	15	88.2	1	5.9	0	0.0	1	5.9
Arson	1	1	100.0	0	0.0	0	0.0	0	0.0
Drugs - Trafficking	152	150	98.7	2	1.3	0	0.0	0	0.0
Drugs - Communication Facility	5	2	40.0	1	20.0	2	40.0	0	0.0
Drugs - Simple Possession	6	1	16.7	1	16.7	0	0.0	4	66.7
Firearms	60	55	91.7	1	1.7	1	1.7	3	5.0
Burglary/B&E	0	0	--	0	--	0	--	0	--
Auto Theft	1	1	100.0	0	0.0	0	0.0	0	0.0
Larceny	8	2	25.0	3	37.5	2	25.0	1	12.5
Fraud	61	38	62.3	8	13.1	8	13.1	7	11.5
Embezzlement	11	8	72.7	2	18.2	0	0.0	1	9.1
Forgery/Counterfeiting	4	2	50.0	0	0.0	0	0.0	2	50.0
Bribery	3	3	100.0	0	0.0	0	0.0	0	0.0
Tax	1	0	0.0	0	0.0	1	100.0	0	0.0
Money Laundering	8	4	50.0	1	12.5	1	12.5	2	25.0
Racketeering/Extortion	3	3	100.0	0	0.0	0	0.0	0	0.0
Gambling/Lottery	0	0	--	0	--	0	--	0	--
Civil Rights	1	1	100.0	0	0.0	0	0.0	0	0.0
Immigration	28	28	100.0	0	0.0	0	0.0	0	0.0
Pornography/Prostitution	3	3	100.0	0	0.0	0	0.0	0	0.0
Prison Offenses	1	1	100.0	0	0.0	0	0.0	0	0.0
Administration of Justice Offenses	4	4	100.0	0	0.0	0	0.0	0	0.0
Environmental/Wildlife	1	1	100.0	0	0.0	0	0.0	0	0.0
National Defense	0	0	--	0	--	0	--	0	--
Antitrust	0	0	--	0	--	0	--	0	--
Food & Drug	0	0	--	0	--	0	--	0	--
Other Miscellaneous Offenses	7	3	42.9	1	14.3	1	14.3	2	28.6

Of the 396 guideline cases from the State of Wisconsin, two cases were excluded due cases in which the defendant received no imprisonment or probation.

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2004 Datafile, OPAFY04, Pre-*Blakely* Only Cases (October 1, 2003, through June 24, 2004).

**Table 6**

**INCARCERATION RATE OF DEFENDANTS ELIGIBLE FOR NON-PRISON SENTENCES  
BY PRIMARY OFFENSE CATEGORY  
Fiscal Year 2004, Pre-*Blakely* (October 1, 2003, through June 24, 2004)**

PRIMARY OFFENSE	TOTAL	National				Wisconsin			
		Prison Sentence		Non-Prison Sentence		Prison Sentence		Non-Prison Sentence	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent
<b>TOTAL</b>	<b>9,747</b>	<b>5,032</b>	<b>51.6</b>	<b>4,715</b>	<b>48.4</b>	<b>27</b>	<b>40.9</b>	<b>39</b>	<b>59.1</b>
<b>Fraud</b>	<b>2,148</b>	852	39.7	1,296	60.3	14	50.0	14	50.0
<b>Larceny</b>	<b>949</b>	202	21.3	747	78.7	1	25.0	3	75.0
<b>Immigration</b>	<b>2,867</b>	2,621	91.4	246	8.6	2	100.0	0	0.0
<b>Embezzlement</b>	<b>272</b>	77	28.3	195	71.7	5	83.3	1	16.7
<b>Drugs - Trafficking</b>	<b>478</b>	241	50.4	237	49.6	0	--	0	--
<b>Drugs - Simple Possession</b>	<b>622</b>	307	49.4	315	50.6	2	28.6	5	71.4
<b>Firearms</b>	<b>341</b>	162	47.5	179	52.5	1	20.0	4	80.0
<b>Forgery/Counterfeiting</b>	<b>355</b>	104	29.3	251	70.7	0	0.0	2	100.0
<b>Other Miscellaneous Offenses</b>	<b>1,715</b>	466	27.2	1,249	72.8	2	16.7	10	83.3

Of the 51,865 guideline cases, 42,118 cases were excluded due to one or more of the following reasons: defendant ineligible for non-prison alternatives (42,082), missing sentencing information (257) or missing primary offense category (107).

Of the 396 guideline cases from the State of Wisconsin, 330 cases were excluded due to defendant ineligible for non-prison alternatives.

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2004 Datafile, OPAFY04, Pre-*Blakely* Only Cases (October 1, 2003, through June 24, 2004).

**Table 7**

**AVERAGE LENGTH OF IMPRISONMENT BY PRIMARY OFFENSE CATEGORY  
Fiscal Year 2004, Pre-*Blakely* (October 1, 2003, through June 24, 2004)**

PRIMARY OFFENSE	National			Wisconsin		
	Mean Months	Median Months	Number	Mean Months	Median Months	Number
<b>TOTAL</b>	<b>58.3</b>	<b>36.0</b>	<b>43,961</b>	<b>73.8</b>	<b>57.0</b>	<b>354</b>
<b>Murder</b>	216.2	168.0	55	--	--	1
<b>Manslaughter</b>	35.7	18.0	45	--	--	1
<b>Kidnapping/Hostage Taking</b>	124.2	87.0	27	--	--	0
<b>Sexual Abuse</b>	99.5	78.0	190	--	--	1
<b>Assault</b>	37.9	27.0	373	34.3	35.0	4
<b>Robbery</b>	97.6	72.0	926	104.0	83.0	16
<b>Arson</b>	69.4	48.0	57	--	--	1
<b>Drugs - Trafficking</b>	84.2	60.0	16,843	106.8	91.0	152
<b>Drugs - Communication Facility</b>	47.5	48.0	230	24.7	24.0	3
<b>Drugs - Simple Possession</b>	9.8	6.0	570	--	--	2
<b>Firearms</b>	82.8	51.0	5,589	77.0	57.0	56
<b>Burglary/B&amp;E</b>	23.6	24.0	45	--	--	0
<b>Auto Theft</b>	74.9	24.0	54	--	--	1
<b>Larceny</b>	17.9	12.0	661	15.0	6.0	5
<b>Fraud</b>	22.2	15.0	3,698	19.6	12.0	46
<b>Embezzlement</b>	11.5	6.1	228	9.5	5.0	10
<b>Forgery/Counterfeiting</b>	20.6	15.0	584	--	--	2
<b>Bribery</b>	21.5	15.0	62	7.7	8.0	3
<b>Tax</b>	18.6	15.0	232	--	--	0
<b>Money Laundering</b>	46.4	33.0	479	39.6	28.0	5
<b>Racketeering/Extortion</b>	101.8	60.0	420	61.0	60.0	3
<b>Gambling/Lottery</b>	8.3	6.0	23	--	--	0
<b>Civil Rights</b>	43.7	33.0	50	--	--	1
<b>Immigration</b>	24.9	21.0	10,623	46.3	48.0	28
<b>Pornography/Prostitution</b>	65.5	41.0	616	34.3	33.0	3
<b>Prison Offenses</b>	17.7	14.0	257	--	--	1
<b>Administration of Justice Offenses</b>	24.1	15.0	487	19.3	15.0	4
<b>Environmental/Wildlife</b>	18.2	12.0	30	--	--	1
<b>National Defense</b>	103.5	30.0	24	--	--	0
<b>Antitrust</b>	4.3	4.0	3	--	--	0
<b>Food &amp; Drug</b>	27.9	21.0	10	--	--	0
<b>Other Miscellaneous Offenses</b>	20.6	9.0	470	28.5	26.0	4

Of the 51,865 guideline cases, 7,904 cases were excluded for one or more of the following reasons: zero months prison ordered (7,052), missing primary offense category (107) or missing or indeterminable sentencing information (846).

Of the 396 guideline cases from the State of Wisconsin, 42 cases were excluded due to one of the following reasons: zero prison months ordered (40) or missing or indeterminable sentencing information (2).

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2004 Datafile, OPAFY04, Pre-*Blakely* Only Cases (October 1, 2003, through June 24, 2004).

**Table 8**

**GUIDELINE DEPARTURE RATE BY CIRCUIT AND DISTRICT  
Fiscal Year 2004, Pre-*Blakely* (October 1, 2003, through June 24, 2004)**

CIRCUIT District	TOTAL	SENTENCED WITHIN GUIDELINE RANGE		SUBSTANTIAL ASSISTANCE DEPARTURE		GOVERNMENT INITIATED DEPARTURE		OTHER DOWNWARD DEPARTURE		UPWARD DEPARTURE	
		n	%	n	%	n	%	n	%	n	%
<b>TOTAL</b>	<b>48,251</b>	<b>34,815</b>	<b>72.2</b>	<b>7,484</b>	<b>15.5</b>	<b>3,072</b>	<b>6.4</b>	<b>2,498</b>	<b>5.2</b>	<b>382</b>	<b>0.8</b>
<b>D.C. CIRCUIT</b>	<b>409</b>	<b>242</b>	<b>59.2</b>	<b>128</b>	<b>31.3</b>	<b>15</b>	<b>3.7</b>	<b>20</b>	<b>4.9</b>	<b>4</b>	<b>1.0</b>
District of Columbia	409	242	59.2	128	31.3	15	3.7	20	4.9	4	1.0
<b>FIRST CIRCUIT</b>	<b>1,279</b>	<b>1,018</b>	<b>79.6</b>	<b>177</b>	<b>13.8</b>	<b>7</b>	<b>0.5</b>	<b>66</b>	<b>5.2</b>	<b>11</b>	<b>0.9</b>
Maine	170	108	63.5	54	31.8	0	0.0	6	3.5	2	1.2
Massachusetts	364	290	79.7	30	8.2	3	0.8	38	10.4	3	0.8
New Hampshire	169	96	56.8	58	34.3	2	1.2	8	4.7	5	3.0
Puerto Rico	485	445	91.8	26	5.4	2	0.4	11	2.3	1	0.2
Rhode Island	91	79	86.8	9	9.9	0	0.0	3	3.3	0	0.0
<b>SECOND CIRCUIT</b>	<b>3,426</b>	<b>2,187</b>	<b>63.8</b>	<b>659</b>	<b>19.2</b>	<b>86</b>	<b>2.5</b>	<b>465</b>	<b>13.6</b>	<b>29</b>	<b>0.8</b>
Connecticut	269	161	59.9	28	10.4	16	5.9	58	21.6	6	2.2
New York											
Eastern	1,132	612	54.1	226	20.0	58	5.1	228	20.1	8	0.7
Northern	328	215	65.5	73	22.3	2	0.6	38	11.6	0	0.0
Southern	1,174	899	76.6	167	14.2	5	0.4	95	8.1	8	0.7
Western	371	217	58.5	119	32.1	5	1.3	25	6.7	5	1.3
Vermont	152	83	54.6	46	30.3	0	0.0	21	13.8	2	1.3
<b>THIRD CIRCUIT</b>	<b>2,086</b>	<b>1,305</b>	<b>62.6</b>	<b>632</b>	<b>30.3</b>	<b>21</b>	<b>1.0</b>	<b>115</b>	<b>5.5</b>	<b>13</b>	<b>0.6</b>
Delaware	87	56	64.4	15	17.2	1	1.1	15	17.2	0	0.0
New Jersey	587	376	64.1	157	26.7	10	1.7	42	7.2	2	0.3
Pennsylvania											
Eastern	712	406	57.0	257	36.1	7	1.0	39	5.5	3	0.4
Middle	366	233	63.7	119	32.5	3	0.8	8	2.2	3	0.8
Western	261	182	69.7	69	26.4	0	0.0	8	3.1	2	0.8
Virgin Islands	73	52	71.2	15	20.5	0	0.0	3	4.1	3	4.1
<b>FOURTH CIRCUIT</b>	<b>4,185</b>	<b>3,304</b>	<b>78.9</b>	<b>699</b>	<b>16.7</b>	<b>12</b>	<b>0.3</b>	<b>128</b>	<b>3.1</b>	<b>42</b>	<b>1.0</b>
Maryland	383	247	64.5	82	21.4	2	0.5	50	13.1	2	0.5
North Carolina											
Eastern	410	256	62.4	136	33.2	0	0.0	13	3.2	5	1.2
Middle	268	236	88.1	29	10.8	0	0.0	0	0.0	3	1.1
Western	352	226	64.2	110	31.3	3	0.9	12	3.4	1	0.3
South Carolina	967	745	77.0	196	20.3	2	0.2	13	1.3	11	1.1
Virginia											
Eastern	1,117	1,020	91.3	54	4.8	4	0.4	29	2.6	10	0.9
Western	318	243	76.4	61	19.2	1	0.3	5	1.6	8	2.5
West Virginia											
Northern	177	146	82.5	26	14.7	0	0.0	3	1.7	2	1.1
Southern	193	185	95.9	5	2.6	0	0.0	3	1.6	0	0.0

CIRCUIT District	TOTAL	SENTENCED WITHIN GUIDELINE RANGE		SUBSTANTIAL ASSISTANCE DEPARTURE		GOVERNMENT INITIATED DEPARTURE		OTHER DOWNWARD DEPARTURE		UPWARD DEPARTURE	
		n	%	n	%	n	%	n	%	n	%
<b>FIFTH CIRCUIT</b>	<b>9,773</b>	<b>7,842</b>	<b>80.2</b>	<b>1,005</b>	<b>10.3</b>	<b>490</b>	<b>5.0</b>	<b>361</b>	<b>3.7</b>	<b>75</b>	<b>0.8</b>
<b>Louisiana</b>											
Eastern	282	243	86.2	25	8.9	5	1.8	6	2.1	3	1.1
Middle	136	95	69.9	32	23.5	3	2.2	1	0.7	5	3.7
Western	276	236	85.5	31	11.2	0	0.0	5	1.8	4	1.4
<b>Mississippi</b>											
Northern	123	70	56.9	45	36.6	6	4.9	2	1.6	0	0.0
Southern	253	211	83.4	37	14.6	1	0.4	4	1.6	0	0.0
<b>Texas</b>											
Eastern	626	550	87.9	56	8.9	2	0.3	17	2.7	1	0.2
Northern	827	710	85.9	79	9.6	3	0.4	20	2.4	15	1.8
Southern	3,695	2,775	75.1	312	8.4	385	10.4	207	5.6	16	0.4
Western	3,555	2,952	83.0	388	10.9	85	2.4	99	2.8	31	0.9
<b>SIXTH CIRCUIT</b>	<b>3,434</b>	<b>2,394</b>	<b>69.7</b>	<b>836</b>	<b>24.3</b>	<b>13</b>	<b>0.4</b>	<b>175</b>	<b>5.1</b>	<b>16</b>	<b>0.5</b>
<b>Kentucky</b>											
Eastern	377	235	62.3	133	35.3	2	0.5	4	1.1	3	0.8
Western	275	230	83.6	30	10.9	0	0.0	13	4.7	2	0.7
<b>Michigan</b>											
Eastern	571	396	69.4	131	22.9	3	0.5	39	6.8	2	0.4
Western	250	194	77.6	42	16.8	0	0.0	13	5.2	1	0.4
<b>Ohio</b>											
Northern	541	377	69.7	114	21.1	2	0.4	47	8.7	1	0.2
Southern	342	203	59.4	106	31.0	2	0.6	29	8.5	2	0.6
<b>Tennessee</b>											
Eastern	466	289	62.0	158	33.9	3	0.6	15	3.2	1	0.2
Middle	221	173	78.3	40	18.1	0	0.0	7	3.2	1	0.5
Western	391	297	76.0	82	21.0	1	0.3	8	2.0	3	0.8
<b>SEVENTH CIRCUIT</b>	<b>2,224</b>	<b>1,676</b>	<b>75.4</b>	<b>423</b>	<b>19.0</b>	<b>15</b>	<b>0.7</b>	<b>82</b>	<b>3.7</b>	<b>28</b>	<b>1.3</b>
<b>Illinois</b>											
Central	267	196	73.4	51	19.1	0	0.0	16	6.0	4	1.5
Northern	811	555	68.4	205	25.3	8	1.0	37	4.6	6	0.7
Southern	249	216	86.7	26	10.4	0	0.0	4	1.6	3	1.2
<b>Indiana</b>											
Northern	257	188	73.2	55	21.4	3	1.2	10	3.9	1	0.4
Southern	246	175	71.1	56	22.8	1	0.4	6	2.4	8	3.3
<b>Wisconsin</b>											
Eastern	248	210	84.7	22	8.9	3	1.2	9	3.6	4	1.6
Western	146	136	93.2	8	5.5	0	0.0	0	0.0	2	1.4
<b>EIGHTH CIRCUIT</b>	<b>3,528</b>	<b>2,715</b>	<b>77.0</b>	<b>540</b>	<b>15.3</b>	<b>77</b>	<b>2.2</b>	<b>165</b>	<b>4.7</b>	<b>31</b>	<b>0.9</b>
<b>Arkansas</b>											
Eastern	201	174	86.6	24	11.9	0	0.0	2	1.0	1	0.5
Western	135	104	77.0	29	21.5	1	0.7	0	0.0	1	0.7
<b>Iowa</b>											
Northern	368	272	73.9	84	22.8	1	0.3	3	0.8	8	2.2
Southern	270	199	73.7	55	20.4	0	0.0	16	5.9	0	0.0
Minnesota	323	217	67.2	75	23.2	2	0.6	27	8.4	2	0.6
<b>Missouri</b>											
Eastern	643	508	79.0	116	18.0	1	0.2	16	2.5	2	0.3
Western	557	424	76.1	102	18.3	5	0.9	21	3.8	5	0.9
Nebraska	612	477	77.9	22	3.6	53	8.7	58	9.5	2	0.3
North Dakota	144	117	81.3	12	8.3	11	7.6	3	2.1	1	0.7
South Dakota	275	223	81.1	21	7.6	3	1.1	19	6.9	9	3.3



CIRCUIT District	TOTAL	SENTENCED WITHIN GUIDELINE RANGE		SUBSTANTIAL ASSISTANCE DEPARTURE		GOVERNMENT INITIATED DEPARTURE		OTHER DOWNWARD DEPARTURE		UPWARD DEPARTURE	
		n	%	n	%	n	%	n	%	n	%
<b>NINTH CIRCUIT</b>	<b>9,377</b>	<b>5,792</b>	<b>61.8</b>	<b>990</b>	<b>10.6</b>	<b>1,927</b>	<b>20.6</b>	<b>596</b>	<b>6.4</b>	<b>72</b>	<b>0.8</b>
Alaska	153	99	64.7	41	26.8	1	0.7	11	7.2	1	0.7
Arizona	2,806	1,060	37.8	206	7.3	1,359	48.4	152	5.4	29	1.0
California											
Central	787	682	86.7	60	7.6	11	1.4	33	4.2	1	0.1
Eastern	681	476	69.9	112	16.4	58	8.5	32	4.7	3	0.4
Northern	496	358	72.2	74	14.9	16	3.2	42	8.5	6	1.2
Southern	1,921	1,342	69.9	74	3.9	402	20.9	97	5.0	6	0.3
Guam	70	36	51.4	28	40.0	0	0.0	6	8.6	0	0.0
Hawaii	311	207	66.6	89	28.6	1	0.3	12	3.9	2	0.6
Idaho	183	80	43.7	51	27.9	39	21.3	11	6.0	2	1.1
Montana	267	218	81.6	33	12.4	0	0.0	10	3.7	6	2.2
Nevada	476	397	83.4	49	10.3	10	2.1	18	3.8	2	0.4
Northern Mariana Islands	21	18	85.7	3	14.3	0	0.0	0	0.0	0	0.0
Oregon	421	288	68.4	70	16.6	2	0.5	55	13.1	6	1.4
Washington											
Eastern	297	218	73.4	27	9.1	7	2.4	43	14.5	2	0.7
Western	487	313	64.3	73	15.0	21	4.3	74	15.2	6	1.2
<b>TENTH CIRCUIT</b>	<b>3,728</b>	<b>2,754</b>	<b>73.9</b>	<b>385</b>	<b>10.3</b>	<b>399</b>	<b>10.7</b>	<b>165</b>	<b>4.4</b>	<b>25</b>	<b>0.7</b>
Colorado	397	254	64.0	115	29.0	2	0.5	25	6.3	1	0.3
Kansas	487	385	79.1	85	17.5	2	0.4	14	2.9	1	0.2
New Mexico	1,621	1,112	68.6	63	3.9	384	23.7	52	3.2	10	0.6
Oklahoma											
Eastern	105	91	86.7	7	6.7	4	3.8	0	0.0	3	2.9
Northern	120	107	89.2	11	9.2	0	0.0	0	0.0	2	1.7
Western	185	146	78.9	28	15.1	1	0.5	7	3.8	3	1.6
Utah	621	505	81.3	54	8.7	4	0.6	53	8.5	5	0.8
Wyoming	192	154	80.2	22	11.5	2	1.0	14	7.3	0	0.0
<b>ELEVENTH CIRCUIT</b>	<b>4,802</b>	<b>3,586</b>	<b>74.7</b>	<b>1,010</b>	<b>21.0</b>	<b>10</b>	<b>0.2</b>	<b>160</b>	<b>3.3</b>	<b>36</b>	<b>0.7</b>
Alabama											
Middle	141	85	60.3	47	33.3	0	0.0	8	5.7	1	0.7
Northern	408	282	69.1	115	28.2	0	0.0	5	1.2	6	1.5
Southern	216	146	67.6	62	28.7	1	0.5	5	2.3	2	0.9
Florida											
Middle	1,248	891	71.4	299	24.0	0	0.0	54	4.3	4	0.3
Northern	321	208	64.8	102	31.8	0	0.0	6	1.9	5	1.6
Southern	1,422	1,183	83.2	197	13.9	2	0.1	36	2.5	4	0.3
Georgia											
Middle	286	204	71.3	73	25.5	1	0.3	2	0.7	6	2.1
Northern	562	437	77.8	81	14.4	5	0.9	33	5.9	6	1.1
Southern	198	150	75.8	34	17.2	1	0.5	11	5.6	2	1.0

Of the 51,865 guideline cases, 94 cases with no analogous guidelines were excluded from the table. Of the remaining 51,771 cases, 3,520 were excluded due to missing departure information. Districts for which departure information is missing in five percent or more of the cases received included: Western Oklahoma (59.4%), Central California (36.0%), Southern Georgia (32.0%), Eastern Virginia (27.4%), Southern California (23.2%), Middle Georgia (20.3%), Western Washington (18.7%), Arizona (18.2%), Western Kentucky (13.8%), Oregon (10.0%), Northern Alabama (7.3%), Northern New York (7.1%), Eastern North Carolina (6.6%), Maryland (6.6%), Northern Ohio (5.7%), Central Illinois (5.3%), and Northern California (5.3%).

A portion of this data was collected prior to the issuance of AO Form 245B, Revision 12/03, which now provides specific entries for the sentencing court to indicate whether a departure was initiated by one of the parties. As a result, the Commission could not definitively determine the attribution for every case. However, based on a review of the available sentencing documentation by USSC legal staff the Commission believes that the overwhelming majority of the government initiated departures listed in this table are properly categorized. For a list of the reasons used in the category see Appendix A in the 2004, Sourcebook of Federal Sentencing Statistics.

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2004 Datafile, OPAFY04, Pre-*Blakely* Only Cases (October 1, 2003, through June 24, 2004).

**Table 9**

**GUIDELINE DEPARTURE RATE BY PRIMARY OFFENSE CATEGORY  
Fiscal Year 2004, Pre-*Blakely* (October 1, 2003, through June 24, 2004)**

**National**

PRIMARY OFFENSE	TOTAL	SENTENCED WITHIN GUIDELINE RANGE		SUBSTANTIAL ASSISTANCE DEPARTURE		GOVERNMENT INITIATED DEPARTURE		OTHER DOWNWARD DEPARTURE		UPWARD DEPARTURE	
		n	%	n	%	n	%	n	%	n	%
<b>TOTAL</b>	<b>48,181</b>	<b>34,760</b>	<b>72.1</b>	<b>7,473</b>	<b>15.5</b>	<b>3,072</b>	<b>6.4</b>	<b>2,494</b>	<b>5.2</b>	<b>382</b>	<b>0.8</b>
Robbery	928	696	75.0	136	14.7	5	0.5	71	7.7	20	2.2
Drugs - Trafficking	17,217	11,014	64.0	4,532	26.3	863	5.0	765	4.4	43	0.2
Drugs - Simple Possession	519	497	95.8	5	1.0	1	0.2	2	0.4	14	2.7
Firearms	5,884	4,685	79.6	694	11.8	70	1.2	352	6.0	83	1.4
Larceny	1,410	1,218	86.4	98	7.0	8	0.6	70	5.0	16	1.1
Fraud	5,201	3,955	76.0	843	16.2	57	1.1	292	5.6	54	1.0
Embezzlement	434	373	85.9	16	3.7	6	1.4	38	8.8	1	0.2
Forgery/Counterfeiting	868	709	81.7	116	13.4	9	1.0	30	3.5	4	0.5
Immigration	10,393	7,652	73.6	256	2.5	1,909	18.4	539	5.2	37	0.4
Other Miscellaneous Offenses	5,327	3,961	74.4	777	14.6	144	2.7	335	6.3	110	2.1

**Wisconsin**

PRIMARY OFFENSE	TOTAL	SENTENCED WITHIN GUIDELINE RANGE		SUBSTANTIAL ASSISTANCE DEPARTURE		GOVERNMENT INITIATED DEPARTURE		OTHER DOWNWARD DEPARTURE		UPWARD DEPARTURE	
		n	%	n	%	n	%	n	%	n	%
<b>TOTAL</b>	<b>394</b>	<b>346</b>	<b>87.8</b>	<b>30</b>	<b>7.6</b>	<b>3</b>	<b>0.8</b>	<b>9</b>	<b>2.3</b>	<b>6</b>	<b>1.5</b>
Robbery	17	13	76.5	3	17.6	0	0.0	0	0.0	1	5.9
Drugs - Trafficking	152	128	84.2	21	13.8	1	0.7	2	1.3	0	0.0
Drugs - Simple Possession	7	7	100.0	0	0.0	0	0.0	0	0.0	0	0.0
Firearms	60	56	93.3	3	5.0	0	0.0	0	0.0	1	1.7
Larceny	8	8	100.0	0	0.0	0	0.0	0	0.0	0	0.0
Fraud	60	54	90.0	1	1.7	1	1.7	3	5.0	1	1.7
Embezzlement	11	10	90.9	0	0.0	0	0.0	1	9.1	0	0.0
Forgery/Counterfeiting	4	4	100.0	0	0.0	0	0.0	0	0.0	0	0.0
Immigration	28	27	96.4	0	0.0	0	0.0	1	3.6	0	0.0
Other Miscellaneous Offenses	47	39	83.0	2	4.3	1	2.1	2	4.3	3	6.4

Of the 51,865 guideline cases, 3,684 cases were excluded due to one or more of the following reasons: no analogous guidelines (94), missing or indeterminable departure information (3,520) or missing primary offense category (107).

Of the 396 guideline cases from the State of Wisconsin, two cases were excluded due to missing or indeterminable departure information.

A portion of this data was collected prior to the issuance of AO Form 245B, Revision 12/03, which now provides specific entries for the sentencing court to indicate whether a departure was initiated by one of the parties. As a result, the Commission could not definitively determine the attribution for every case. However, based on a review of the available sentencing documentation by USSC legal staff the Commission believes that the overwhelming majority of the government initiated departures listed in this table are properly categorized. For a list of the reasons used in the category see Appendix A in the 2004, Sourcebook of Federal Sentencing Statistics.

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2004 Datafile, OPAFY04, Pre-*Blakely* Only Cases (October 1, 2003, through June 24, 2004).

**SECTION THREE: *Post-Blakely***  
***(June 25, 2004, through September 30, 2004)***

---

Table 2

**MODE OF CONVICTION BY CIRCUIT AND DISTRICT**  
**Fiscal Year 2004, Post-*Blakely* (June 25, 2004, through September 30, 2004)**

CIRCUIT District	TOTAL	PLEA		TRIAL	
		Number	Percent	Number	Percent
<b>TOTAL</b>	<b>18,145</b>	<b>17,521</b>	<b>96.6</b>	<b>624</b>	<b>3.4</b>
<b>D.C. CIRCUIT</b>	<b>150</b>	<b>134</b>	<b>89.3</b>	<b>16</b>	<b>10.7</b>
District of Columbia	150	134	89.3	16	10.7
<b>FIRST CIRCUIT</b>	<b>456</b>	<b>434</b>	<b>95.2</b>	<b>22</b>	<b>4.8</b>
Maine	71	65	91.5	6	8.5
Massachusetts	126	117	92.9	9	7.1
New Hampshire	50	46	92.0	4	8.0
Puerto Rico	162	160	98.8	2	1.2
Rhode Island	47	46	97.9	1	2.1
<b>SECOND CIRCUIT</b>	<b>1,039</b>	<b>985</b>	<b>94.8</b>	<b>54</b>	<b>5.2</b>
Connecticut	89	84	94.4	5	5.6
New York					
Eastern	307	293	95.4	14	4.6
Northern	155	152	98.1	3	1.9
Southern	254	226	89.0	28	11.0
Western	182	179	98.4	3	1.6
Vermont	52	51	98.1	1	1.9
<b>THIRD CIRCUIT</b>	<b>683</b>	<b>652</b>	<b>95.5</b>	<b>31</b>	<b>4.5</b>
Delaware	29	28	96.6	1	3.4
New Jersey	203	197	97.0	6	3.0
Pennsylvania					
Eastern	222	207	93.2	15	6.8
Middle	126	123	97.6	3	2.4
Western	86	81	94.2	5	5.8
Virgin Islands	17	16	94.1	1	5.9
<b>FOURTH CIRCUIT</b>	<b>1,599</b>	<b>1,524</b>	<b>95.3</b>	<b>75</b>	<b>4.7</b>
Maryland	162	150	92.6	12	7.4
North Carolina					
Eastern	149	143	96.0	6	4.0
Middle	94	86	91.5	8	8.5
Western	179	178	99.4	1	0.6
South Carolina	228	217	95.2	11	4.8
Virginia					
Eastern	532	507	95.3	25	4.7
Western	150	141	94.0	9	6.0
West Virginia					
Northern	73	72	98.6	1	1.4
Southern	32	30	93.8	2	6.3

CIRCUIT District	TOTAL	PLEA		TRIAL	
		Number	Percent	Number	Percent
<b>FIFTH CIRCUIT</b>	<b>3,869</b>	<b>3,781</b>	<b>97.7</b>	<b>88</b>	<b>2.3</b>
Louisiana					
Eastern	96	94	97.9	2	2.1
Middle	40	38	95.0	2	5.0
Western	104	97	93.3	7	6.7
Mississippi					
Northern	44	41	93.2	3	6.8
Southern	105	99	94.3	6	5.7
Texas					
Eastern	238	229	96.2	9	3.8
Northern	256	242	94.5	14	5.5
Southern	1,413	1,389	98.3	24	1.7
Western	1,573	1,552	98.7	21	1.3
<b>SIXTH CIRCUIT</b>	<b>1,249</b>	<b>1,184</b>	<b>94.8</b>	<b>65</b>	<b>5.2</b>
Kentucky					
Eastern	102	99	97.1	3	2.9
Western	116	111	95.7	5	4.3
Michigan					
Eastern	202	187	92.6	15	7.4
Western	102	96	94.1	6	5.9
Ohio					
Northern	227	217	95.6	10	4.4
Southern	112	107	95.5	5	4.5
Tennessee					
Eastern	164	155	94.5	9	5.5
Middle	77	74	96.1	3	3.9
Western	147	138	93.9	9	6.1
<b>SEVENTH CIRCUIT</b>	<b>596</b>	<b>572</b>	<b>96.0</b>	<b>24</b>	<b>4.0</b>
Illinois					
Central	54	53	98.1	1	1.9
Northern	176	170	96.6	6	3.4
Southern	65	63	96.9	2	3.1
Indiana					
Northern	58	57	98.3	1	1.7
Southern	69	64	92.8	5	7.2
Wisconsin					
Eastern	122	117	95.9	5	4.1
Western	52	48	92.3	4	7.7
<b>EIGHTH CIRCUIT</b>	<b>1,246</b>	<b>1,193</b>	<b>95.7</b>	<b>53</b>	<b>4.3</b>
Arkansas					
Eastern	90	84	93.3	6	6.7
Western	54	54	100.0	0	0.0
Iowa					
Northern	129	124	96.1	5	3.9
Southern	74	73	98.6	1	1.4
Minnesota	103	91	88.3	12	11.7
Missouri					
Eastern	233	229	98.3	4	1.7
Western	203	191	94.1	12	5.9
Nebraska	195	192	98.5	3	1.5
North Dakota	77	74	96.1	3	3.9
South Dakota	88	81	92.0	7	8.0

CIRCUIT District	TOTAL	PLEA		TRIAL	
		Number	Percent	Number	Percent
<b>NINTH CIRCUIT</b>	<b>3,956</b>	<b>3,880</b>	<b>98.1</b>	<b>76</b>	<b>1.9</b>
Alaska	38	38	100.0	0	0.0
Arizona	1,277	1,259	98.6	18	1.4
California					
Central	442	430	97.3	12	2.7
Eastern	244	237	97.1	7	2.9
Northern	180	180	100.0	0	0.0
Southern	923	907	98.3	16	1.7
Guam	12	12	100.0	0	0.0
Hawaii	72	71	98.6	1	1.4
Idaho	80	80	100.0	0	0.0
Montana	115	105	91.3	10	8.7
Nevada	139	134	96.4	5	3.6
Northern Mariana Islands	12	12	100.0	0	0.0
Oregon	161	160	99.4	1	0.6
Washington					
Eastern	98	94	95.9	4	4.1
Western	163	161	98.8	2	1.2
<b>TENTH CIRCUIT</b>	<b>1,539</b>	<b>1,506</b>	<b>97.9</b>	<b>33</b>	<b>2.1</b>
Colorado	143	139	97.2	4	2.8
Kansas	201	195	97.0	6	3.0
New Mexico	599	593	99.0	6	1.0
Oklahoma					
Eastern	46	44	95.7	2	4.3
Northern	67	64	95.5	3	4.5
Western	163	158	96.9	5	3.1
Utah	230	227	98.7	3	1.3
Wyoming	90	86	95.6	4	4.4
<b>ELEVENTH CIRCUIT</b>	<b>1,763</b>	<b>1,676</b>	<b>95.1</b>	<b>87</b>	<b>4.9</b>
Alabama					
Middle	34	34	100.0	0	0.0
Northern	135	131	97.0	4	3.0
Southern	79	72	91.1	7	8.9
Florida					
Middle	438	427	97.5	11	2.5
Northern	121	107	88.4	14	11.6
Southern	591	562	95.1	29	4.9
Georgia					
Middle	99	96	97.0	3	3.0
Northern	167	151	90.4	16	9.6
Southern	99	96	97.0	3	3.0

Of the 18,203 guideline cases, 58 cases were excluded due to missing information on mode of conviction.

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2004 Datafile, OPAFY04, Post-*Blakely* Only Cases (June 25, 2004, through September 30, 2004).

**Table 3**

**MODE OF CONVICTION BY PRIMARY OFFENSE CATEGORY  
Fiscal Year 2004, Post-*Blakely* (June 25, 2004, through September 30, 2004)**

PRIMARY OFFENSE	TOTAL	National				Wisconsin			
		PLEA		TRIAL		PLEA		TRIAL	
		n	%	n	%	n	%	n	%
<b>TOTAL</b>	<b>18,142</b>	<b>17,518</b>	<b>96.6</b>	<b>624</b>	<b>3.4</b>	<b>165</b>	<b>94.8</b>	<b>9</b>	<b>5.2</b>
<b>Murder</b>	<b>18</b>	12	66.7	6	33.3	0	--	0	--
<b>Manslaughter</b>	<b>16</b>	16	100.0	0	0.0	0	--	0	--
<b>Kidnapping/Hostage Taking</b>	<b>10</b>	8	80.0	2	20.0	0	--	0	--
<b>Sexual Abuse</b>	<b>77</b>	70	90.9	7	9.1	1	50.0	1	50.0
<b>Assault</b>	<b>153</b>	141	92.2	12	7.8	5	100.0	0	0.0
<b>Robbery</b>	<b>368</b>	352	95.7	16	4.3	5	100.0	0	0.0
<b>Arson</b>	<b>11</b>	9	81.8	2	18.2	0	--	0	--
<b>Drugs - Trafficking</b>	<b>5,968</b>	5,750	96.3	218	3.7	40	97.6	1	2.4
<b>Drugs - Communication Facility</b>	<b>84</b>	84	100.0	0	0.0	4	100.0	0	0.0
<b>Drugs - Simple Possession</b>	<b>274</b>	272	99.3	2	0.7	1	100.0	0	0.0
<b>Firearms</b>	<b>2,095</b>	1,956	93.4	139	6.6	24	96.0	1	4.0
<b>Burglary/B&amp;E</b>	<b>16</b>	15	93.8	1	6.3	0	--	0	--
<b>Auto Theft</b>	<b>27</b>	26	96.3	1	3.7	0	--	0	--
<b>Larceny</b>	<b>570</b>	554	97.2	16	2.8	2	100.0	0	0.0
<b>Fraud</b>	<b>1,719</b>	1,655	96.3	64	3.7	40	97.6	1	2.4
<b>Embezzlement</b>	<b>173</b>	167	96.5	6	3.5	5	100.0	0	0.0
<b>Forgery/Counterfeiting</b>	<b>279</b>	271	97.1	8	2.9	6	85.7	1	14.3
<b>Bribery</b>	<b>36</b>	32	88.9	4	11.1	1	100.0	0	0.0
<b>Tax</b>	<b>143</b>	132	92.3	11	7.7	2	100.0	0	0.0
<b>Money Laundering</b>	<b>209</b>	197	94.3	12	5.7	0	--	0	--
<b>Racketeering/Extortion</b>	<b>138</b>	124	89.9	14	10.1	1	100.0	0	0.0
<b>Gambling/Lottery</b>	<b>23</b>	23	100.0	0	0.0	0	--	0	--
<b>Civil Rights</b>	<b>5</b>	5	100.0	0	0.0	0	--	0	--
<b>Immigration</b>	<b>4,515</b>	4,471	99.0	44	1.0	13	100.0	0	0.0
<b>Pornography/Prostitution</b>	<b>232</b>	220	94.8	12	5.2	3	75.0	1	25.0
<b>Prison Offenses</b>	<b>105</b>	104	99.0	1	1.0	1	100.0	0	0.0
<b>Administration of Justice Offenses</b>	<b>267</b>	260	97.4	7	2.6	3	75.0	1	25.0
<b>Environmental/Wildlife</b>	<b>38</b>	37	97.4	1	2.6	0	--	0	--
<b>National Defense</b>	<b>7</b>	6	85.7	1	14.3	0	--	0	--
<b>Antitrust</b>	<b>4</b>	4	100.0	0	0.0	0	--	0	--
<b>Food &amp; Drug</b>	<b>11</b>	10	90.9	1	9.1	0	--	0	--
<b>Other Miscellaneous Offenses</b>	<b>551</b>	535	97.1	16	2.9	8	80.0	2	20.0

Of the 18,203 guideline cases, 61 cases were excluded due to one or both of the following reasons: missing primary offense category (29) or missing mode of conviction (58).

Of the 175 guideline cases from the State of Wisconsin, one case was excluded due to missing mode of conviction.

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2004 Datafile, OPAFY04, Post-*Blakely* Only Cases (June 25, 2004, through September 30, 2004).

Table 4

**TYPE OF SENTENCE IMPOSED BY PRIMARY OFFENSE CATEGORY**  
**Fiscal Year 2004, Post-Blakely (June 25, 2004, through September 30, 2004)**

## National

PRIMARY OFFENSE	TOTAL	Prison		Prison/Community Split Sentence		Probation and Confinement		Probation Only	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent
<b>TOTAL</b>	<b>17,924</b>	<b>15,139</b>	<b>84.5</b>	<b>455</b>	<b>2.5</b>	<b>722</b>	<b>4.0</b>	<b>1,608</b>	<b>9.0</b>
Murder	18	18	100.0	0	0.0	0	0.0	0	0.0
Manslaughter	16	12	75.0	0	0.0	3	18.8	1	6.3
Kidnapping/Hostage Taking	10	9	90.0	0	0.0	1	10.0	0	0.0
Sexual Abuse	77	74	96.1	1	1.3	1	1.3	1	1.3
Assault	153	126	82.4	3	2.0	8	5.2	16	10.5
Robbery	363	354	97.5	3	0.8	3	0.8	3	0.8
Arson	11	9	81.8	0	0.0	0	0.0	2	18.2
Drugs - Trafficking	5,955	5,642	94.7	107	1.8	94	1.6	112	1.9
Drugs - Communication Facility	84	71	84.5	1	1.2	4	4.8	8	9.5
Drugs - Simple Possession	258	129	50.0	1	0.4	17	6.6	111	43.0
Firearms	2,091	1,901	90.9	47	2.2	54	2.6	89	4.3
Burglary/B&E	16	11	68.8	1	6.3	1	6.3	3	18.8
Auto Theft	27	21	77.8	2	7.4	2	7.4	2	7.4
Larceny	528	204	38.6	27	5.1	83	15.7	214	40.5
Fraud	1,689	977	57.8	125	7.4	207	12.3	380	22.5
Embezzlement	170	57	33.5	26	15.3	24	14.1	63	37.1
Forgery/Counterfeiting	274	159	58.0	22	8.0	29	10.6	64	23.4
Bribery	36	15	41.7	4	11.1	5	13.9	12	33.3
Tax	141	61	43.3	12	8.5	21	14.9	47	33.3
Money Laundering	207	144	69.6	7	3.4	29	14.0	27	13.0
Racketeering/Extortion	138	120	87.0	1	0.7	10	7.2	7	5.1
Gambling/Lottery	22	6	27.3	3	13.6	9	40.9	4	18.2
Civil Rights	5	2	40.0	0	0.0	0	0.0	3	60.0
Immigration	4,504	4,358	96.8	36	0.8	35	0.8	75	1.7
Pornography/Prostitution	232	224	96.6	1	0.4	3	1.3	4	1.7
Prison Offenses	105	97	92.4	3	2.9	2	1.9	3	2.9
Administration of Justice Offenses	264	163	61.7	13	4.9	26	9.8	62	23.5
Environmental/Wildlife	35	4	11.4	2	5.7	8	22.9	21	60.0
National Defense	7	6	85.7	0	0.0	1	14.3	0	0.0
Antitrust	4	1	25.0	2	50.0	0	0.0	1	25.0
Food & Drug	11	4	36.4	0	0.0	3	27.3	4	36.4
Other Miscellaneous Offenses	473	160	33.8	5	1.1	39	8.2	269	56.9

Of the 18,203 guideline cases, 279 cases were excluded due to one or more of the following reasons: missing sentencing information (87), missing primary offense category (29), or cases in which the defendant received no imprisonment or probation (189).

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2004 Datafile, OPAFY04, Post-Blakely Only Cases (June 25, 2004, through September 30, 2004).



Table 5

**TYPE OF SENTENCE IMPOSED BY PRIMARY OFFENSE CATEGORY**  
**Fiscal Year 2004, Post-Blakely (June 25, 2004, through September 30, 2004)**

## Wisconsin

PRIMARY OFFENSE	TOTAL	Prison		Prison/Community Split Sentence		Probation and Confinement		Probation Only	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent
<b>TOTAL</b>	<b>175</b>	<b>117</b>	<b>66.9</b>	<b>12</b>	<b>6.9</b>	<b>16</b>	<b>9.1</b>	<b>30</b>	<b>17.1</b>
Murder	0	0	--	0	--	0	--	0	--
Manslaughter	0	0	--	0	--	0	--	0	--
Kidnapping/Hostage Taking	0	0	--	0	--	0	--	0	--
Sexual Abuse	2	2	100.0	0	0.0	0	0.0	0	0.0
Assault	5	5	100.0	0	0.0	0	0.0	0	0.0
Robbery	5	4	80.0	0	0.0	1	20.0	0	0.0
Arson	0	0	--	0	--	0	--	0	--
Drugs - Trafficking	41	36	87.8	2	4.9	2	4.9	1	2.4
Drugs - Communication Facility	4	2	50.0	0	0.0	1	25.0	1	25.0
Drugs - Simple Possession	1	0	0.0	0	0.0	0	0.0	1	100.0
Firearms	26	22	84.6	1	3.8	2	7.7	1	3.8
Burglary/B&E	0	0	--	0	--	0	--	0	--
Auto Theft	0	0	--	0	--	0	--	0	--
Larceny	2	0	0.0	0	0.0	1	50.0	1	50.0
Fraud	41	15	36.6	5	12.2	5	12.2	16	39.0
Embezzlement	5	1	20.0	1	20.0	0	0.0	3	60.0
Forgery/Counterfeiting	7	4	57.1	1	14.3	1	14.3	1	14.3
Bribery	1	1	100.0	0	0.0	0	0.0	0	0.0
Tax	2	1	50.0	0	0.0	0	0.0	1	50.0
Money Laundering	0	0	--	0	--	0	--	0	--
Racketeering/Extortion	1	1	100.0	0	0.0	0	0.0	0	0.0
Gambling/Lottery	0	0	--	0	--	0	--	0	--
Civil Rights	0	0	--	0	--	0	--	0	--
Immigration	13	11	84.6	2	15.4	0	0.0	0	0.0
Pornography/Prostitution	4	4	100.0	0	0.0	0	0.0	0	0.0
Prison Offenses	1	1	100.0	0	0.0	0	0.0	0	0.0
Administration of Justice Offenses	4	4	100.0	0	0.0	0	0.0	0	0.0
Environmental/Wildlife	0	0	--	0	--	0	--	0	--
National Defense	0	0	--	0	--	0	--	0	--
Antitrust	0	0	--	0	--	0	--	0	--
Food & Drug	0	0	--	0	--	0	--	0	--
Other Miscellaneous Offenses	10	3	30.0	0	0.0	3	30.0	4	40.0

Of the 175 guideline cases from the State of Wisconsin, no case was excluded.

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2004 Datafile, OPAFY04, Post-Blakely Only Cases (June 25, 2004, through September 30, 2004).

**Table 6**

**INCARCERATION RATE OF DEFENDANTS ELIGIBLE FOR NON-PRISON SENTENCES  
BY PRIMARY OFFENSE CATEGORY  
Fiscal Year 2004, Post-*Blakely* (June 25, 2004, through September 30, 2004)**

PRIMARY OFFENSE	TOTAL	National				Wisconsin			
		Prison Sentence		Non-Prison Sentence		Prison Sentence		Non-Prison Sentence	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent
<b>TOTAL</b>	<b>3,566</b>	<b>1,969</b>	<b>55.2</b>	<b>1,597</b>	<b>44.8</b>	<b>14</b>	<b>29.8</b>	<b>33</b>	<b>70.2</b>
<b>Fraud</b>	<b>702</b>	269	38.3	433	61.7	5	20.8	19	79.2
<b>Larceny</b>	<b>352</b>	77	21.9	275	78.1	0	0.0	2	100.0
<b>Immigration</b>	<b>1,256</b>	1,166	92.8	90	7.2	1	100.0	0	0.0
<b>Embezzlement</b>	<b>123</b>	48	39.0	75	61.0	2	40.0	3	60.0
<b>Drugs - Trafficking</b>	<b>176</b>	99	56.3	77	43.8	1	50.0	1	50.0
<b>Drugs - Simple Possession</b>	<b>150</b>	47	31.3	103	68.7	0	0.0	1	100.0
<b>Firearms</b>	<b>116</b>	54	46.6	62	53.4	1	33.3	2	66.7
<b>Forgery/Counterfeiting</b>	<b>119</b>	40	33.6	79	66.4	2	66.7	1	33.3
<b>Other Miscellaneous Offenses</b>	<b>572</b>	169	29.5	403	70.5	2	33.3	4	66.7

Of the 18,203 guideline cases, 14,637 cases were excluded due to one or more of the following reasons: defendant ineligible for non-prison alternatives (14,626), missing sentencing information (87) or missing primary offense category (29).

Of the 175 guideline cases from the State of Wisconsin, 128 cases were excluded due to defendant ineligible for non-prison alternatives.

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2004 Datafile, OPAFY04, Post-*Blakely* Only Cases (June 25, 2004, through September 30, 2004).

**Table 7**

**AVERAGE LENGTH OF IMPRISONMENT BY PRIMARY OFFENSE CATEGORY**  
**Fiscal Year 2004, Post-*Blakely* (June 25, 2004, through September 30, 2004)**

PRIMARY OFFENSE	National			Wisconsin		
	Mean Months	Median Months	Number	Mean Months	Median Months	Number
<b>TOTAL</b>	<b>52.7</b>	<b>30.0</b>	<b>15,330</b>	<b>72.1</b>	<b>48.0</b>	<b>129</b>
<b>Murder</b>	303.0	327.0	17	--	--	0
<b>Manslaughter</b>	42.1	27.0	12	--	--	0
<b>Kidnapping/Hostage Taking</b>	148.3	120.0	9	--	--	0
<b>Sexual Abuse</b>	84.0	72.0	75	--	--	2
<b>Assault</b>	32.6	28.5	126	56.8	57.0	5
<b>Robbery</b>	95.9	72.0	357	109.5	131.5	4
<b>Arson</b>	41.7	60.0	9	--	--	0
<b>Drugs - Trafficking</b>	76.3	60.0	5,731	95.9	70.0	38
<b>Drugs - Communication Facility</b>	44.4	48.0	72	--	--	2
<b>Drugs - Simple Possession</b>	9.8	6.0	108	--	--	0
<b>Firearms</b>	74.5	51.0	1,945	92.2	70.0	23
<b>Burglary/B&amp;E</b>	25.2	27.0	12	--	--	0
<b>Auto Theft</b>	33.8	13.0	23	--	--	0
<b>Larceny</b>	16.0	12.0	229	--	--	0
<b>Fraud</b>	20.2	15.0	1,060	18.5	9.0	20
<b>Embezzlement</b>	8.1	4.0	82	--	--	2
<b>Forgery/Counterfeiting</b>	17.9	15.0	177	12.4	8.0	5
<b>Bribery</b>	19.3	21.0	19	--	--	1
<b>Tax</b>	21.8	15.0	73	--	--	1
<b>Money Laundering</b>	39.8	30.0	150	--	--	0
<b>Racketeering/Extortion</b>	73.7	57.0	120	--	--	1
<b>Gambling/Lottery</b>	6.7	6.0	9	--	--	0
<b>Civil Rights</b>	--	--	2	--	--	0
<b>Immigration</b>	23.0	18.0	4,238	41.3	46.0	13
<b>Pornography/Prostitution</b>	75.5	60.0	224	232.3	91.0	4
<b>Prison Offenses</b>	17.0	12.0	98	--	--	1
<b>Administration of Justice Offenses</b>	21.4	14.2	171	34.0	27.0	4
<b>Environmental/Wildlife</b>	6.3	5.5	6	--	--	0
<b>National Defense</b>	25.8	18.0	6	--	--	0
<b>Antitrust</b>	3.0	3.0	3	--	--	0
<b>Food &amp; Drug</b>	45.5	26.0	4	--	--	0
<b>Other Miscellaneous Offenses</b>	16.1	7.5	163	21.0	15.0	3

Of the 18,203 guideline cases, 2,873 excluded for one or more of the following reasons: zero months prison ordered (2,582), missing primary offense category (29) or missing or indeterminable sentencing information (289).

Of the 175 guideline cases from the State of Wisconsin, 46 cases were excluded due to zero prison months ordered.

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2004 Datafile, OPAFY04, Post-*Blakely* Only Cases (June 25, 2004, through September 30, 2004).

**Table 8**

**GUIDELINE DEPARTURE RATE BY CIRCUIT AND DISTRICT**  
**Fiscal Year 2004, Post-Blakely (June 25, 2004, through September 30, 2004)**

CIRCUIT District	TOTAL	SENTENCED WITHIN GUIDELINE RANGE		SUBSTANTIAL ASSISTANCE DEPARTURE		GOVERNMENT INITIATED DEPARTURE		OTHER DOWNWARD DEPARTURE		UPWARD DEPARTURE	
		n	%	n	%	n	%	n	%	n	%
<b>TOTAL</b>	<b>16,792</b>	<b>12,059</b>	<b>71.8</b>	<b>2,425</b>	<b>14.4</b>	<b>1,441</b>	<b>8.6</b>	<b>772</b>	<b>4.6</b>	<b>95</b>	<b>0.6</b>
<b>D.C. CIRCUIT</b>	<b>142</b>	<b>91</b>	<b>64.1</b>	<b>42</b>	<b>29.6</b>	<b>5</b>	<b>3.5</b>	<b>4</b>	<b>2.8</b>	<b>0</b>	<b>0.0</b>
District of Columbia	142	91	64.1	42	29.6	5	3.5	4	2.8	0	0.0
<b>FIRST CIRCUIT</b>	<b>446</b>	<b>344</b>	<b>77.1</b>	<b>74</b>	<b>16.6</b>	<b>0</b>	<b>0.0</b>	<b>25</b>	<b>5.6</b>	<b>3</b>	<b>0.7</b>
Maine	71	46	64.8	24	33.8	0	0.0	1	1.4	0	0.0
Massachusetts	122	89	73.0	14	11.5	0	0.0	19	15.6	0	0.0
New Hampshire	45	24	53.3	18	40.0	0	0.0	2	4.4	1	2.2
Puerto Rico	161	146	90.7	12	7.5	0	0.0	2	1.2	1	0.6
Rhode Island	47	39	83.0	6	12.8	0	0.0	1	2.1	1	2.1
<b>SECOND CIRCUIT</b>	<b>974</b>	<b>604</b>	<b>62.0</b>	<b>224</b>	<b>23.0</b>	<b>26</b>	<b>2.7</b>	<b>117</b>	<b>12.0</b>	<b>3</b>	<b>0.3</b>
Connecticut	88	51	58.0	23	26.1	1	1.1	13	14.8	0	0.0
New York											
Eastern	298	135	45.3	80	26.8	18	6.0	65	21.8	0	0.0
Northern	143	99	69.2	34	23.8	1	0.7	8	5.6	1	0.7
Southern	224	177	79.0	27	12.1	2	0.9	18	8.0	0	0.0
Western	168	111	66.1	46	27.4	4	2.4	6	3.6	1	0.6
Vermont	53	31	58.5	14	26.4	0	0.0	7	13.2	1	1.9
<b>THIRD CIRCUIT</b>	<b>658</b>	<b>429</b>	<b>65.2</b>	<b>176</b>	<b>26.7</b>	<b>3</b>	<b>0.5</b>	<b>49</b>	<b>7.4</b>	<b>1</b>	<b>0.2</b>
Delaware	29	23	79.3	2	6.9	0	0.0	4	13.8	0	0.0
New Jersey	196	124	63.3	59	30.1	0	0.0	13	6.6	0	0.0
Pennsylvania											
Eastern	213	110	51.6	84	39.4	2	0.9	17	8.0	0	0.0
Middle	119	82	68.9	27	22.7	0	0.0	9	7.6	1	0.8
Western	85	75	88.2	4	4.7	0	0.0	6	7.1	0	0.0
Virgin Islands	16	15	93.8	0	0.0	1	6.3	0	0.0	0	0.0
<b>FOURTH CIRCUIT</b>	<b>1,418</b>	<b>1,118</b>	<b>78.8</b>	<b>238</b>	<b>16.8</b>	<b>7</b>	<b>0.5</b>	<b>47</b>	<b>3.3</b>	<b>8</b>	<b>0.6</b>
Maryland	155	103	66.5	36	23.2	2	1.3	12	7.7	2	1.3
North Carolina											
Eastern	136	68	50.0	59	43.4	0	0.0	8	5.9	1	0.7
Middle	91	80	87.9	8	8.8	0	0.0	3	3.3	0	0.0
Western	179	120	67.0	51	28.5	1	0.6	7	3.9	0	0.0
South Carolina	224	186	83.0	32	14.3	1	0.4	5	2.2	0	0.0
Virginia											
Eastern	379	347	91.6	18	4.7	1	0.3	9	2.4	4	1.1
Western	149	116	77.9	30	20.1	1	0.7	2	1.3	0	0.0
West Virginia											
Northern	73	67	91.8	3	4.1	1	1.4	1	1.4	1	1.4
Southern	32	31	96.9	1	3.1	0	0.0	0	0.0	0	0.0

CIRCUIT District	TOTAL	SENTENCED WITHIN GUIDELINE RANGE		SUBSTANTIAL ASSISTANCE DEPARTURE		GOVERNMENT INITIATED DEPARTURE		OTHER DOWNWARD DEPARTURE		UPWARD DEPARTURE	
		n	%	n	%	n	%	n	%	n	%
<b>FIFTH CIRCUIT</b>	<b>3,802</b>	<b>2,980</b>	<b>78.4</b>	<b>366</b>	<b>9.6</b>	<b>347</b>	<b>9.1</b>	<b>94</b>	<b>2.5</b>	<b>15</b>	<b>0.4</b>
<b>Louisiana</b>											
Eastern	98	81	82.7	14	14.3	0	0.0	3	3.1	0	0.0
Middle	39	21	53.8	18	46.2	0	0.0	0	0.0	0	0.0
Western	98	90	91.8	7	7.1	0	0.0	1	1.0	0	0.0
<b>Mississippi</b>											
Northern	44	24	54.5	17	38.6	0	0.0	3	6.8	0	0.0
Southern	105	93	88.6	10	9.5	0	0.0	2	1.9	0	0.0
<b>Texas</b>											
Eastern	227	198	87.2	23	10.1	1	0.4	5	2.2	0	0.0
Northern	253	190	75.1	51	20.2	3	1.2	5	2.0	4	1.6
Southern	1,406	1,032	73.4	85	6.0	237	16.9	46	3.3	6	0.4
Western	1,532	1,251	81.7	141	9.2	106	6.9	29	1.9	5	0.3
<b>SIXTH CIRCUIT</b>	<b>1,187</b>	<b>842</b>	<b>70.9</b>	<b>268</b>	<b>22.6</b>	<b>18</b>	<b>1.5</b>	<b>52</b>	<b>4.4</b>	<b>7</b>	<b>0.6</b>
<b>Kentucky</b>											
Eastern	97	60	61.9	35	36.1	0	0.0	0	0.0	2	2.1
Western	101	88	87.1	9	8.9	3	3.0	1	1.0	0	0.0
<b>Michigan</b>											
Eastern	202	125	61.9	67	33.2	0	0.0	10	5.0	0	0.0
Western	97	67	69.1	23	23.7	2	2.1	3	3.1	2	2.1
<b>Ohio</b>											
Northern	220	164	74.5	36	16.4	5	2.3	15	6.8	0	0.0
Southern	102	55	53.9	31	30.4	1	1.0	14	13.7	1	1.0
<b>Tennessee</b>											
Eastern	157	121	77.1	29	18.5	2	1.3	3	1.9	2	1.3
Middle	68	52	76.5	12	17.6	2	2.9	2	2.9	0	0.0
Western	143	110	76.9	26	18.2	3	2.1	4	2.8	0	0.0
<b>SEVENTH CIRCUIT</b>	<b>530</b>	<b>409</b>	<b>77.2</b>	<b>90</b>	<b>17.0</b>	<b>5</b>	<b>0.9</b>	<b>20</b>	<b>3.8</b>	<b>6</b>	<b>1.1</b>
<b>Illinois</b>											
Central	50	46	92.0	3	6.0	0	0.0	1	2.0	0	0.0
Northern	170	118	69.4	43	25.3	1	0.6	5	2.9	3	1.8
Southern	62	52	83.9	7	11.3	0	0.0	3	4.8	0	0.0
<b>Indiana</b>											
Northern	54	36	66.7	15	27.8	2	3.7	1	1.9	0	0.0
Southern	52	39	75.0	8	15.4	0	0.0	5	9.6	0	0.0
<b>Wisconsin</b>											
Eastern	104	86	82.7	11	10.6	2	1.9	4	3.8	1	1.0
Western	38	32	84.2	3	7.9	0	0.0	1	2.6	2	5.3
<b>EIGHTH CIRCUIT</b>	<b>1,109</b>	<b>864</b>	<b>77.9</b>	<b>155</b>	<b>14.0</b>	<b>22</b>	<b>2.0</b>	<b>58</b>	<b>5.2</b>	<b>10</b>	<b>0.9</b>
<b>Arkansas</b>											
Eastern	70	65	92.9	4	5.7	0	0.0	1	1.4	0	0.0
Western	50	42	84.0	5	10.0	0	0.0	3	6.0	0	0.0
<b>Iowa</b>											
Northern	115	83	72.2	25	21.7	1	0.9	2	1.7	4	3.5
Southern	74	55	74.3	15	20.3	0	0.0	4	5.4	0	0.0
<b>Minnesota</b>											
	96	64	66.7	19	19.8	0	0.0	11	11.5	2	2.1
<b>Missouri</b>											
Eastern	228	179	78.5	34	14.9	1	0.4	13	5.7	1	0.4
Western	192	147	76.6	38	19.8	1	0.5	5	2.6	1	0.5
<b>Nebraska</b>											
	185	151	81.6	11	5.9	9	4.9	13	7.0	1	0.5
<b>North Dakota</b>											
	75	60	80.0	0	0.0	10	13.3	5	6.7	0	0.0
<b>South Dakota</b>											
	24	18	75.0	4	16.7	0	0.0	1	4.2	1	4.2

CIRCUIT District	TOTAL	SENTENCED WITHIN GUIDELINE RANGE		SUBSTANTIAL ASSISTANCE DEPARTURE		GOVERNMENT INITIATED DEPARTURE		OTHER DOWNWARD DEPARTURE		UPWARD DEPARTURE	
		n	%	n	%	n	%	n	%	n	%
<b>NINTH CIRCUIT</b>	<b>3,494</b>	<b>2,133</b>	<b>61.0</b>	<b>332</b>	<b>9.5</b>	<b>799</b>	<b>22.9</b>	<b>207</b>	<b>5.9</b>	<b>23</b>	<b>0.7</b>
Alaska	35	26	74.3	3	8.6	0	0.0	5	14.3	1	2.9
Arizona	1,102	375	34.0	66	6.0	612	55.5	37	3.4	12	1.1
California											
Central	267	239	89.5	14	5.2	4	1.5	10	3.7	0	0.0
Eastern	243	150	61.7	54	22.2	26	10.7	11	4.5	2	0.8
Northern	174	121	69.5	25	14.4	10	5.7	15	8.6	3	1.7
Southern	881	674	76.5	32	3.6	116	13.2	59	6.7	0	0.0
Guam	12	6	50.0	4	33.3	0	0.0	2	16.7	0	0.0
Hawaii	72	40	55.6	24	33.3	0	0.0	8	11.1	0	0.0
Idaho	79	24	30.4	28	35.4	22	27.8	4	5.1	1	1.3
Montana	112	102	91.1	7	6.3	0	0.0	2	1.8	1	0.9
Nevada	134	109	81.3	16	11.9	1	0.7	8	6.0	0	0.0
Northern Mariana Islands	12	10	83.3	2	16.7	0	0.0	0	0.0	0	0.0
Oregon	140	93	66.4	23	16.4	2	1.4	20	14.3	2	1.4
Washington											
Eastern	96	75	78.1	11	11.5	0	0.0	10	10.4	0	0.0
Western	135	89	65.9	23	17.0	6	4.4	16	11.9	1	0.7
<b>TENTH CIRCUIT</b>	<b>1,409</b>	<b>996</b>	<b>70.7</b>	<b>152</b>	<b>10.8</b>	<b>205</b>	<b>14.5</b>	<b>47</b>	<b>3.3</b>	<b>9</b>	<b>0.6</b>
Colorado	142	88	62.0	41	28.9	1	0.7	12	8.5	0	0.0
Kansas	196	158	80.6	30	15.3	2	1.0	5	2.6	1	0.5
New Mexico	592	357	60.3	26	4.4	199	33.6	6	1.0	4	0.7
Oklahoma											
Eastern	44	40	90.9	4	9.1	0	0.0	0	0.0	0	0.0
Northern	65	60	92.3	4	6.2	0	0.0	1	1.5	0	0.0
Western	64	50	78.1	12	18.8	0	0.0	2	3.1	0	0.0
Utah	217	167	77.0	29	13.4	2	0.9	18	8.3	1	0.5
Wyoming	89	76	85.4	6	6.7	1	1.1	3	3.4	3	3.4
<b>ELEVENTH CIRCUIT</b>	<b>1,623</b>	<b>1,249</b>	<b>77.0</b>	<b>308</b>	<b>19.0</b>	<b>4</b>	<b>0.2</b>	<b>52</b>	<b>3.2</b>	<b>10</b>	<b>0.6</b>
Alabama											
Middle	30	22	73.3	7	23.3	0	0.0	1	3.3	0	0.0
Northern	123	80	65.0	39	31.7	0	0.0	4	3.3	0	0.0
Southern	79	65	82.3	12	15.2	0	0.0	2	2.5	0	0.0
Florida											
Middle	432	296	68.5	116	26.9	2	0.5	17	3.9	1	0.2
Northern	118	82	69.5	32	27.1	0	0.0	3	2.5	1	0.8
Southern	555	488	87.9	55	9.9	0	0.0	9	1.6	3	0.5
Georgia											
Middle	64	47	73.4	15	23.4	0	0.0	2	3.1	0	0.0
Northern	153	121	79.1	18	11.8	0	0.0	12	7.8	2	1.3
Southern	69	48	69.6	14	20.3	2	2.9	2	2.9	3	4.3

Of the 18,203 guideline cases, 46 cases with no analogous guidelines were excluded from the table. Of the remaining 18,157 cases, 1,365 were excluded due to missing departure information. Districts for which departure information is missing in five percent or more of the cases received included: South Dakota (72.4%), Western Oklahoma (61.0%), Central California (40.4%), Middle Georgia (34.0%), Southern Georgia (29.6%), Eastern Virginia (29.3%), Western Wisconsin (26.9%), Southern Indiana (23.5%), Eastern Arkansas (22.2%), Western Washington (17.2%), Eastern Wisconsin (15.4%), Arizona (13.8%), Oregon (12.5%), Southern New York (12.2%), Northern Iowa (11.5%), Western Kentucky (10.6%), Middle Tennessee (10.5%), New Hampshire (10.0%), Southern Ohio (9.7%), Northern New York (9.5%), Middle Alabama (9.1%), Western Arkansas (9.1%), Eastern North Carolina (8.7%), Northern Georgia (8.4%), Alaska (7.9%), Northern Alabama (7.5%), Central Illinois (7.4%), Minnesota (6.8%), Western New York (6.7%), Middle Pennsylvania (6.3%), Southern Florida (6.3%), Virgin Islands (5.9%), Western Louisiana (5.8%), Northern Indiana (5.3%), and Nebraska (5.1%).

A portion of this data was collected prior to the issuance of AO Form 245B, Revision 12/03, which now provides specific entries for the sentencing court to indicate whether a departure was initiated by one of the parties. As a result, the Commission could not definitively determine the attribution for every case. However, based on a review of the available sentencing documentation by USSC legal staff the Commission believes that the overwhelming majority of the government initiated departures listed in this table are properly categorized. For a list of the reasons used in the category see Appendix A in the 2004, Sourcebook of Federal Sentencing Statistics.

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2004 Datafile, OPAFY04, Post*Blakely* Only Cases (June 25, 2004, through September 30, 2004).

**Table 9**

**GUIDELINE DEPARTURE RATE BY PRIMARY OFFENSE CATEGORY  
Fiscal Year 2004, Post-*Blakely* (June 25, 2004, through September 30, 2004)**

**National**

PRIMARY OFFENSE	TOTAL	SENTENCED WITHIN GUIDELINE RANGE		SUBSTANTIAL ASSISTANCE DEPARTURE		GOVERNMENT INITIATED DEPARTURE		OTHER DOWNWARD DEPARTURE		UPWARD DEPARTURE	
		n	%	n	%	n	%	n	%	n	%
<b>TOTAL</b>	<b>16,774</b>	<b>12,048</b>	<b>71.8</b>	<b>2,421</b>	<b>14.4</b>	<b>1,439</b>	<b>8.6</b>	<b>771</b>	<b>4.6</b>	<b>95</b>	<b>0.6</b>
Robbery	351	274	78.1	42	12.0	8	2.3	23	6.6	4	1.1
Drugs - Trafficking	5,763	3,680	63.9	1,483	25.7	343	6.0	249	4.3	8	0.1
Drugs - Simple Possession	152	143	94.1	4	2.6	3	2.0	0	0.0	2	1.3
Firearms	1,983	1,593	80.3	241	12.2	14	0.7	118	6.0	17	0.9
Larceny	500	440	88.0	35	7.0	5	1.0	15	3.0	5	1.0
Fraud	1,568	1,219	77.7	251	16.0	10	0.6	78	5.0	10	0.6
Embezzlement	167	141	84.4	6	3.6	5	3.0	15	9.0	0	0.0
Forgery/Counterfeiting	268	220	82.1	32	11.9	4	1.5	9	3.4	3	1.1
Immigration	4,282	3,017	70.5	83	1.9	1,006	23.5	164	3.8	12	0.3
Other Miscellaneous Offenses	1,740	1,321	75.9	244	14.0	41	2.4	100	5.7	34	2.0

**Wisconsin**

PRIMARY OFFENSE	TOTAL	SENTENCED WITHIN GUIDELINE RANGE		SUBSTANTIAL ASSISTANCE DEPARTURE		GOVERNMENT INITIATED DEPARTURE		OTHER DOWNWARD DEPARTURE		UPWARD DEPARTURE	
		n	%	n	%	n	%	n	%	n	%
<b>TOTAL</b>	<b>142</b>	<b>118</b>	<b>83.1</b>	<b>14</b>	<b>9.9</b>	<b>2</b>	<b>1.4</b>	<b>5</b>	<b>3.5</b>	<b>3</b>	<b>2.1</b>
Robbery	4	2	50.0	2	50.0	0	0.0	0	0.0	0	0.0
Drugs - Trafficking	25	20	80.0	4	16.0	0	0.0	0	0.0	1	4.0
Drugs - Simple Possession	1	1	100.0	0	0.0	0	0.0	0	0.0	0	0.0
Firearms	23	22	95.7	0	0.0	0	0.0	1	4.3	0	0.0
Larceny	2	2	100.0	0	0.0	0	0.0	0	0.0	0	0.0
Fraud	37	31	83.8	4	10.8	0	0.0	2	5.4	0	0.0
Embezzlement	5	5	100.0	0	0.0	0	0.0	0	0.0	0	0.0
Forgery/Counterfeiting	6	3	50.0	1	16.7	1	16.7	0	0.0	1	16.7
Immigration	12	10	83.3	0	0.0	0	0.0	2	16.7	0	0.0
Other Miscellaneous Offenses	27	22	81.5	3	11.1	1	3.7	0	0.0	1	3.7

Of the 18,203 guideline cases, 1,429 cases were excluded due to one or more of the following reasons: no analogous guidelines (46), missing or indeterminable departure information (1,365) or missing primary offense category (29).

Of the 175 guideline cases from the State of Wisconsin, 33 cases were excluded due to missing or indeterminable departure information.

A portion of this data was collected prior to the issuance of AO Form 245B, Revision 12/03, which now provides specific entries for the sentencing court to indicate whether a departure was initiated by one of the parties. As a result, the Commission could not definitively determine the attribution for every case. However, based on a review of the available sentencing documentation by USSC legal staff the Commission believes that the overwhelming majority of the government initiated departures listed in this table are properly categorized. For a list of the reasons used in the category see Appendix A in the 2004, Sourcebook of Federal Sentencing Statistics.

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2004 Datafile, OPAFY04, Post-*Blakely* Only Cases (June 25, 2004, through September 30, 2004).