

# United States Sentencing Commission



## *Statistical Information Packet*

*Fiscal Year 2008*

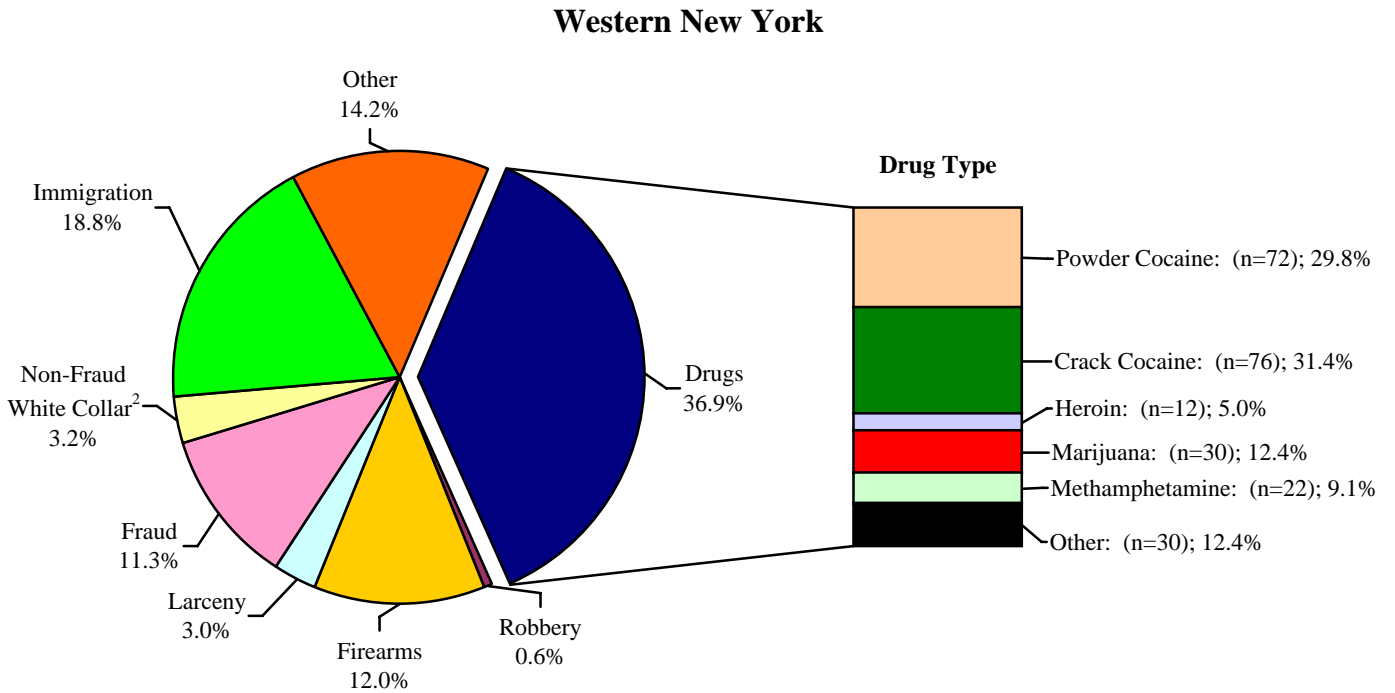
*District of Western New York*

## TABLE OF CONTENTS

<b>Figure A</b>	Distribution of Guideline Defendants Sentenced by Select Primary Offense Category	1
<b>Table 1</b>	Distribution of Guideline Defendants Sentenced by Primary Offense Category	2
<b>Table 2</b>	Mode of Conviction by Circuit and District	3
<b>Table 3</b>	Mode of Conviction by Primary Offense Category	6
<b>Table 4</b>	Type of Sentence Imposed by Primary Offense Category (National)	7
<b>Table 5</b>	Type of Sentence Imposed by Primary Offense Category (District)	8
<b>Table 6</b>	Incarceration Rate of Defendants Eligible for Non-Prison Sentences by Primary Offense Category	9
<b>Table 7</b>	Average Length of Imprisonment by Primary Offense Category	10
<b>Table 8</b>	Comparison of Sentence Imposed and Position Relative to the Guideline Range	11
<b>Table 9</b>	Guideline Departure Rate by Circuit and District	12
<b>Table 10</b>	Guideline Departure Rate by Primary Offense Category	18

**Figure A**

**DISTRIBUTION OF GUIDELINE DEFENDANTS SENTENCED BY SELECT PRIMARY OFFENSE CATEGORY<sup>1</sup>**  
**Fiscal Year 2008**



<sup>1</sup>Of the 76,478 guideline cases, 467 cases were excluded due to one of the following reasons: missing primary offense category (50) or missing drug type (417). Of the 657 guideline cases from the District of Western New York, one case was excluded due to missing drug type.

<sup>2</sup>The Non-Fraud White Collar category includes the following offense types: embezzlement, forgery/counterfeiting, bribery, money laundering, and tax.

SOURCE: U.S. Sentencing Commission, 2008 Datafile, OPAFY08.

**Table 1**

**DISTRIBUTION OF GUIDELINE DEFENDANTS SENTENCED  
BY PRIMARY OFFENSE CATEGORY  
Fiscal Year 2008**

PRIMARY OFFENSE	National		Western New York	
	N	%	N	%
<b>TOTAL</b>	<b>76,428</b>	<b>100.0</b>	<b>657</b>	<b>100.0</b>
Murder	69	0.1	0	0.0
Manslaughter	54	0.1	0	0.0
Kidnapping/Hostage Taking	56	0.1	1	0.2
Sexual Abuse	486	0.6	7	1.1
Assault	676	0.9	4	0.6
Robbery	1,052	1.4	4	0.6
Arson	60	0.1	0	0.0
Drugs - Trafficking	24,306	31.8	201	30.6
Drugs - Communication Facility	355	0.5	17	2.6
Drugs - Simple Possession	515	0.7	25	3.8
Firearms	8,250	10.8	79	12.0
Burglary/B&E	45	0.1	0	0.0
Auto Theft	60	0.1	0	0.0
Larceny	1,683	2.2	20	3.0
Fraud	7,472	9.8	74	11.3
Embezzlement	495	0.6	3	0.5
Forgery/Counterfeiting	1,018	1.3	5	0.8
Bribery	219	0.3	0	0.0
Tax	588	0.8	4	0.6
Money Laundering	893	1.2	9	1.4
Racketeering/Extortion	740	1.0	4	0.6
Gambling/Lottery	127	0.2	0	0.0
Civil Rights	70	0.1	0	0.0
Immigration	21,429	28.0	123	18.7
Pornography/Prostitution	1,657	2.2	32	4.9
Prison Offenses	371	0.5	5	0.8
Administration of Justice Offenses	1,039	1.4	20	3.0
Environmental/Wildlife	204	0.3	2	0.3
National Defense	54	0.1	0	0.0
Antitrust	24	0.0	0	0.0
Food & Drug	76	0.1	0	0.0
Other Miscellaneous Offenses	2,285	3.0	18	2.7

Of the 76,478 guideline cases, 50 cases were excluded due to missing information on primary offense category.

Of the 657 guideline cases from the District of Western New York, no case was excluded.

SOURCE: U.S. Sentencing Commission, 2008 Datafile, OPAFY08.

Table 2

**MODE OF CONVICTION BY CIRCUIT AND DISTRICT  
Fiscal Year 2008**

CIRCUIT District	TOTAL	PLEA		TRIAL	
		N	%	N	%
<b>TOTAL</b>	<b>76,427</b>	<b>73,617</b>	<b>96.3</b>	<b>2,810</b>	<b>3.7</b>
<b>D.C. CIRCUIT</b>	<b>409</b>	<b>376</b>	<b>91.9</b>	<b>33</b>	<b>8.1</b>
District of Columbia	409	376	91.9	33	8.1
<b>FIRST CIRCUIT</b>	<b>1,748</b>	<b>1,643</b>	<b>94.0</b>	<b>105</b>	<b>6.0</b>
Maine	210	198	94.3	12	5.7
Massachusetts	472	436	92.4	36	7.6
New Hampshire	223	209	93.7	14	6.3
Puerto Rico	754	716	95.0	38	5.0
Rhode Island	89	84	94.4	5	5.6
<b>SECOND CIRCUIT</b>	<b>4,607</b>	<b>4,418</b>	<b>95.9</b>	<b>189</b>	<b>4.1</b>
Connecticut	419	408	97.4	11	2.6
New York					
Eastern	1,246	1,185	95.1	61	4.9
Northern	533	523	98.1	10	1.9
Southern	1,588	1,495	94.1	93	5.9
Western	657	644	98.0	13	2.0
Vermont	164	163	99.4	1	0.6
<b>THIRD CIRCUIT</b>	<b>3,173</b>	<b>2,961</b>	<b>93.3</b>	<b>212</b>	<b>6.7</b>
Delaware	146	135	92.5	11	7.5
New Jersey	1,000	955	95.5	45	4.5
Pennsylvania					
Eastern	752	655	87.1	97	12.9
Middle	649	638	98.3	11	1.7
Western	544	514	94.5	30	5.5
Virgin Islands	82	64	78.0	18	22.0
<b>FOURTH CIRCUIT</b>	<b>7,025</b>	<b>6,723</b>	<b>95.7</b>	<b>302</b>	<b>4.3</b>
Maryland	782	728	93.1	54	6.9
North Carolina					
Eastern	692	668	96.5	24	3.5
Middle	355	346	97.5	9	2.5
Western	807	771	95.5	36	4.5
South Carolina	1,212	1,174	96.9	38	3.1
Virginia					
Eastern	2,032	1,936	95.3	96	4.7
Western	404	381	94.3	23	5.7
West Virginia					
Northern	469	456	97.2	13	2.8
Southern	272	263	96.7	9	3.3

CIRCUIT District	TOTAL	PLEA		TRIAL	
		N	%	N	%
<b>FIFTH CIRCUIT</b>	<b>17,509</b>	<b>17,175</b>	<b>98.1</b>	<b>334</b>	<b>1.9</b>
Louisiana					
Eastern	480	470	97.9	10	2.1
Middle	204	198	97.1	6	2.9
Western	340	318	93.5	22	6.5
Mississippi					
Northern	185	180	97.3	5	2.7
Southern	453	431	95.1	22	4.9
Texas					
Eastern	1,016	983	96.8	33	3.2
Northern	1,083	1,028	94.9	55	5.1
Southern	6,516	6,427	98.6	89	1.4
Western	7,232	7,140	98.7	92	1.3
<b>SIXTH CIRCUIT</b>	<b>5,409</b>	<b>5,190</b>	<b>96.0</b>	<b>219</b>	<b>4.0</b>
Kentucky					
Eastern	681	652	95.7	29	4.3
Western	497	475	95.6	22	4.4
Michigan					
Eastern	737	699	94.8	38	5.2
Western	455	430	94.5	25	5.5
Ohio					
Northern	905	886	97.9	19	2.1
Southern	627	603	96.2	24	3.8
Tennessee					
Eastern	593	572	96.5	21	3.5
Middle	308	299	97.1	9	2.9
Western	606	574	94.7	32	5.3
<b>SEVENTH CIRCUIT</b>	<b>3,068</b>	<b>2,856</b>	<b>93.1</b>	<b>212</b>	<b>6.9</b>
Illinois					
Central	392	370	94.4	22	5.6
Northern	928	846	91.2	82	8.8
Southern	312	289	92.6	23	7.4
Indiana					
Northern	455	420	92.3	35	7.7
Southern	295	283	95.9	12	4.1
Wisconsin					
Eastern	492	468	95.1	24	4.9
Western	194	180	92.8	14	7.2
<b>EIGHTH CIRCUIT</b>	<b>5,428</b>	<b>5,201</b>	<b>95.8</b>	<b>227</b>	<b>4.2</b>
Arkansas					
Eastern	434	419	96.5	15	3.5
Western	209	206	98.6	3	1.4
Iowa					
Northern	590	567	96.1	23	3.9
Southern	472	442	93.6	30	6.4
Minnesota	579	546	94.3	33	5.7
Missouri					
Eastern	1,015	986	97.1	29	2.9
Western	779	743	95.4	36	4.6
Nebraska	642	626	97.5	16	2.5
North Dakota	254	239	94.1	15	5.9
South Dakota	454	427	94.1	27	5.9

CIRCUIT District	TOTAL	PLEA		TRIAL	
		N	%	N	%
<b>NINTH CIRCUIT</b>	<b>14,621</b>	<b>14,251</b>	<b>97.5</b>	<b>370</b>	<b>2.5</b>
Alaska	169	156	92.3	13	7.7
Arizona	3,869	3,810	98.5	59	1.5
California					
Central	1,848	1,808	97.8	40	2.2
Eastern	891	870	97.6	21	2.4
Northern	717	701	97.8	16	2.2
Southern	3,822	3,744	98.0	78	2.0
Guam	68	66	97.1	2	2.9
Hawaii	279	265	95.0	14	5.0
Idaho	267	251	94.0	16	6.0
Montana	420	384	91.4	36	8.6
Nevada	433	418	96.5	15	3.5
Northern Mariana Islands	18	16	88.9	2	11.1
Oregon	644	625	97.0	19	3.0
Washington					
Eastern	338	326	96.4	12	3.6
Western	838	811	96.8	27	3.2
<b>TENTH CIRCUIT</b>	<b>6,140</b>	<b>5,977</b>	<b>97.3</b>	<b>163</b>	<b>2.7</b>
Colorado	488	473	96.9	15	3.1
Kansas	679	652	96.0	27	4.0
New Mexico	2,905	2,893	99.6	12	0.4
Oklahoma					
Eastern	89	86	96.6	3	3.4
Northern	214	194	90.7	20	9.3
Western	556	518	93.2	38	6.8
Utah	870	833	95.7	37	4.3
Wyoming	339	328	96.8	11	3.2
<b>ELEVENTH CIRCUIT</b>	<b>7,290</b>	<b>6,846</b>	<b>93.9</b>	<b>444</b>	<b>6.1</b>
Alabama					
Middle	269	252	93.7	17	6.3
Northern	493	458	92.9	35	7.1
Southern	556	533	95.9	23	4.1
Florida					
Middle	1,669	1,570	94.1	99	5.9
Northern	351	314	89.5	37	10.5
Southern	2,272	2,156	94.9	116	5.1
Georgia					
Middle	443	431	97.3	12	2.7
Northern	720	638	88.6	82	11.4
Southern	517	494	95.6	23	4.4

Of the 76,478 guideline cases, 51 cases were excluded due to missing information on mode of conviction.

SOURCE: U.S. Sentencing Commission, 2008 Datafile, OPAFY08.

**Table 3**

**MODE OF CONVICTION BY PRIMARY OFFENSE CATEGORY  
Fiscal Year 2008**

PRIMARY OFFENSE	TOTAL	National				Western New York			
		PLEA		TRIAL		PLEA		TRIAL	
		N	%	N	%	N	%	N	%
<b>TOTAL</b>	<b>76,426</b>	<b>73,616</b>	<b>96.3</b>	<b>2,810</b>	<b>3.7</b>	<b>644</b>	<b>98.0</b>	<b>13</b>	<b>2.0</b>
<b>Murder</b>	<b>69</b>	55	79.7	14	20.3	0	--	0	--
<b>Manslaughter</b>	<b>54</b>	50	92.6	4	7.4	0	--	0	--
<b>Kidnapping/Hostage Taking</b>	<b>56</b>	45	80.4	11	19.6	1	100.0	0	0.0
<b>Sexual Abuse</b>	<b>486</b>	429	88.3	57	11.7	7	100.0	0	0.0
<b>Assault</b>	<b>676</b>	601	88.9	75	11.1	4	100.0	0	0.0
<b>Robbery</b>	<b>1,052</b>	1,022	97.1	30	2.9	4	100.0	0	0.0
<b>Arson</b>	<b>60</b>	53	88.3	7	11.7	0	--	0	--
<b>Drugs - Trafficking</b>	<b>24,306</b>	23,368	96.1	938	3.9	197	98.0	4	2.0
<b>Drugs - Communication Facility</b>	<b>355</b>	352	99.2	3	0.8	17	100.0	0	0.0
<b>Drugs - Simple Possession</b>	<b>515</b>	503	97.7	12	2.3	25	100.0	0	0.0
<b>Firearms</b>	<b>8,250</b>	7,641	92.6	609	7.4	73	92.4	6	7.6
<b>Burglary/B&amp;E</b>	<b>45</b>	44	97.8	1	2.2	0	--	0	--
<b>Auto Theft</b>	<b>60</b>	57	95.0	3	5.0	0	--	0	--
<b>Larceny</b>	<b>1,683</b>	1,636	97.2	47	2.8	20	100.0	0	0.0
<b>Fraud</b>	<b>7,471</b>	7,082	94.8	389	5.2	73	98.6	1	1.4
<b>Embezzlement</b>	<b>495</b>	483	97.6	12	2.4	3	100.0	0	0.0
<b>Forgery/Counterfeiting</b>	<b>1,018</b>	1,001	98.3	17	1.7	5	100.0	0	0.0
<b>Bribery</b>	<b>219</b>	210	95.9	9	4.1	0	--	0	--
<b>Tax</b>	<b>588</b>	532	90.5	56	9.5	3	75.0	1	25.0
<b>Money Laundering</b>	<b>893</b>	844	94.5	49	5.5	9	100.0	0	0.0
<b>Racketeering/Extortion</b>	<b>740</b>	682	92.2	58	7.8	4	100.0	0	0.0
<b>Gambling/Lottery</b>	<b>127</b>	123	96.9	4	3.1	0	--	0	--
<b>Civil Rights</b>	<b>70</b>	59	84.3	11	15.7	0	--	0	--
<b>Immigration</b>	<b>21,429</b>	21,270	99.3	159	0.7	123	100.0	0	0.0
<b>Pornography/Prostitution</b>	<b>1,657</b>	1,592	96.1	65	3.9	32	100.0	0	0.0
<b>Prison Offenses</b>	<b>371</b>	363	97.8	8	2.2	5	100.0	0	0.0
<b>Administration of Justice Offenses</b>	<b>1,039</b>	984	94.7	55	5.3	20	100.0	0	0.0
<b>Environmental/Wildlife</b>	<b>204</b>	195	95.6	9	4.4	2	100.0	0	0.0
<b>National Defense</b>	<b>54</b>	49	90.7	5	9.3	0	--	0	--
<b>Antitrust</b>	<b>24</b>	23	95.8	1	4.2	0	--	0	--
<b>Food &amp; Drug</b>	<b>76</b>	73	96.1	3	3.9	0	--	0	--
<b>Other Miscellaneous Offenses</b>	<b>2,284</b>	2,195	96.1	89	3.9	17	94.4	1	5.6

Of the 76,478 guideline cases, 52 cases were excluded due to one or both of the following reasons: missing primary offense category (50) or missing mode of conviction (51).

Of the 657 guideline cases from the District of Western New York, no case was excluded.

SOURCE: U.S. Sentencing Commission, 2008 Datafile, OPAFY08.



**Table 4**  
**TYPE OF SENTENCE IMPOSED BY PRIMARY OFFENSE CATEGORY**  
**Fiscal Year 2008**

**National**

PRIMARY OFFENSE	TOTAL	Prison		Prison/Community Split Sentence		Probation and Confinement		Probation Only	
		N	%	N	%	N	%	N	%
<b>TOTAL</b>	<b>75,657</b>	<b>65,376</b>	<b>86.4</b>	<b>1,978</b>	<b>2.6</b>	<b>2,707</b>	<b>3.6</b>	<b>5,596</b>	<b>7.4</b>
Murder	69	68	98.6	1	1.4	0	0.0	0	0.0
Manslaughter	54	49	90.7	2	3.7	0	0.0	3	5.6
Kidnapping/Hostage Taking	56	56	100.0	0	0.0	0	0.0	0	0.0
Sexual Abuse	484	462	95.5	11	2.3	8	1.7	3	0.6
Assault	667	548	82.2	28	4.2	22	3.3	69	10.3
Robbery	1,051	1,002	95.3	22	2.1	8	0.8	19	1.8
Arson	60	57	95.0	1	1.7	0	0.0	2	3.3
Drugs - Trafficking	24,282	22,939	94.5	521	2.1	376	1.5	446	1.8
Drugs - Communication Facility	354	281	79.4	8	2.3	28	7.9	37	10.5
Drugs - Simple Possession	457	178	38.9	3	0.7	18	3.9	258	56.5
Firearms	8,235	7,577	92.0	182	2.2	224	2.7	252	3.1
Burglary/B&E	45	36	80.0	4	8.9	5	11.1	0	0.0
Auto Theft	60	49	81.7	2	3.3	4	6.7	5	8.3
Larceny	1,570	608	38.7	70	4.5	216	13.8	676	43.1
Fraud	7,445	5,082	68.3	491	6.6	706	9.5	1,166	15.7
Embezzlement	491	195	39.7	58	11.8	69	14.1	169	34.4
Forgery/Counterfeiting	1,015	646	63.6	64	6.3	146	14.4	159	15.7
Bribery	219	155	70.8	10	4.6	29	13.2	25	11.4
Tax	585	295	50.4	49	8.4	123	21.0	118	20.2
Money Laundering	889	660	74.2	31	3.5	72	8.1	126	14.2
Racketeering/Extortion	738	648	87.8	22	3.0	27	3.7	41	5.6
Gambling/Lottery	127	39	30.7	8	6.3	45	35.4	35	27.6
Civil Rights	70	43	61.4	4	5.7	10	14.3	13	18.6
Immigration	21,404	20,419	95.4	241	1.1	196	0.9	548	2.6
Pornography/Prostitution	1,656	1,604	96.9	20	1.2	16	1.0	16	1.0
Prison Offenses	370	337	91.1	10	2.7	9	2.4	14	3.8
Administration of Justice Offenses	1,016	606	59.6	41	4.0	105	10.3	264	26.0
Environmental/Wildlife	188	30	16.0	5	2.7	27	14.4	126	67.0
National Defense	53	41	77.4	4	7.5	4	7.5	4	7.5
Antitrust	21	8	38.1	3	14.3	6	28.6	4	19.0
Food & Drug	66	16	24.2	6	9.1	12	18.2	32	48.5
Other Miscellaneous Offenses	1,860	642	34.5	56	3.0	196	10.5	966	51.9

Of the 76,478 guideline cases, 821 cases were excluded due to one or more of the following reasons: missing sentencing information (102), missing primary offense category (50), or cases in which the defendant received no imprisonment or probation (718).

SOURCE: U.S. Sentencing Commission, 2008 Datafile, OPAFY08.

Table 5

**TYPE OF SENTENCE IMPOSED BY PRIMARY OFFENSE CATEGORY  
Fiscal Year 2008**

**Western New York**

PRIMARY OFFENSE	TOTAL	Prison		Prison/Community Split Sentence		Probation and Confinement		Probation Only	
		N	%	N	%	N	%	N	%
<b>TOTAL</b>	<b>654</b>	<b>482</b>	<b>73.7</b>	<b>12</b>	<b>1.8</b>	<b>41</b>	<b>6.3</b>	<b>119</b>	<b>18.2</b>
Murder	0	0	--	0	--	0	--	0	--
Manslaughter	0	0	--	0	--	0	--	0	--
Kidnapping/Hostage Taking	1	1	100.0	0	0.0	0	0.0	0	0.0
Sexual Abuse	7	7	100.0	0	0.0	0	0.0	0	0.0
Assault	4	3	75.0	1	25.0	0	0.0	0	0.0
Robbery	4	3	75.0	0	0.0	0	0.0	1	25.0
Arson	0	0	--	0	--	0	--	0	--
Drugs - Trafficking	201	167	83.1	4	2.0	16	8.0	14	7.0
Drugs - Communication Facility	17	13	76.5	0	0.0	1	5.9	3	17.6
Drugs - Simple Possession	24	2	8.3	0	0.0	1	4.2	21	87.5
Firearms	79	71	89.9	1	1.3	2	2.5	5	6.3
Burglary/B&E	0	0	--	0	--	0	--	0	--
Auto Theft	0	0	--	0	--	0	--	0	--
Larceny	20	3	15.0	0	0.0	3	15.0	14	70.0
Fraud	74	41	55.4	5	6.8	6	8.1	22	29.7
Embezzlement	3	1	33.3	0	0.0	1	33.3	1	33.3
Forgery/Counterfeiting	5	2	40.0	0	0.0	1	20.0	2	40.0
Bribery	0	0	--	0	--	0	--	0	--
Tax	4	1	25.0	0	0.0	1	25.0	2	50.0
Money Laundering	9	5	55.6	0	0.0	3	33.3	1	11.1
Racketeering/Extortion	4	4	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	121	109	90.1	0	0.0	0	0.0	12	9.9
Pornography/Prostitution	32	32	100.0	0	0.0	0	0.0	0	0.0
Prison Offenses	5	5	100.0	0	0.0	0	0.0	0	0.0
Administration of Justice Offenses	20	7	35.0	1	5.0	5	25.0	7	35.0
Environmental/Wildlife	2	0	0.0	0	0.0	0	0.0	2	100.0
National Defense	0	0	--	0	--	0	--	0	--
Antitrust	0	0	--	0	--	0	--	0	--
Food & Drug	0	0	--	0	--	0	--	0	--
Other Miscellaneous Offenses	18	5	27.8	0	0.0	1	5.6	12	66.7

Of the 657 guideline cases from the District of Western New York, three cases were excluded due to cases in which the defendant received no imprisonment or probation.

SOURCE: U.S. Sentencing Commission, 2008 Datafile, OPAFY08.

**Table 6**

**INCARCERATION RATE OF DEFENDANTS ELIGIBLE FOR NON-PRISON SENTENCES  
BY PRIMARY OFFENSE CATEGORY  
Fiscal Year 2008**

PRIMARY OFFENSE	TOTAL	National				Western New York			
		Prison Sentence		Non-Prison Sentence		Prison Sentence		Non-Prison Sentence	
		N	%	N	%	N	%	N	%
<b>TOTAL</b>	<b>14,464</b>	<b>9,400</b>	<b>65.0</b>	<b>5,064</b>	<b>35.0</b>	<b>121</b>	<b>51.9</b>	<b>112</b>	<b>48.1</b>
<b>Fraud</b>	<b>2,462</b>	1,257	51.1	1,205	48.9	20	46.5	23	53.5
<b>Larceny</b>	<b>980</b>	195	19.9	785	80.1	3	15.8	16	84.2
<b>Immigration</b>	<b>7,263</b>	6,687	92.1	576	7.9	86	86.9	13	13.1
<b>Embezzlement</b>	<b>257</b>	66	25.7	191	74.3	1	50.0	1	50.0
<b>Drugs - Trafficking</b>	<b>594</b>	287	48.3	307	51.7	1	8.3	11	91.7
<b>Drugs - Simple Possession</b>	<b>342</b>	103	30.1	239	69.9	1	4.3	22	95.7
<b>Firearms</b>	<b>304</b>	134	44.1	170	55.9	3	60.0	2	40.0
<b>Forgery/Counterfeiting</b>	<b>331</b>	116	35.0	215	65.0	1	50.0	1	50.0
<b>Other Miscellaneous Offenses</b>	<b>1,931</b>	555	28.7	1,376	71.3	5	17.9	23	82.1

Of the 76,478 guideline cases, 62,014 cases were excluded due to one or more of the following reasons: defendant ineligible for non-prison alternatives (62,010), missing sentencing information (102) or missing primary offense category (50).

Of the 657 guideline cases from the District of Western New York, 424 cases were excluded due to the defendant being ineligible for non-prison alternatives.

SOURCE: U.S. Sentencing Commission, 2008 Datafile, OPAFY08.

**Table 7**

**AVERAGE LENGTH OF IMPRISONMENT BY PRIMARY OFFENSE CATEGORY  
Fiscal Year 2008**

PRIMARY OFFENSE	National			Western New York		
	Mean Months	Median Months	Number	Mean Months	Median Months	Number
<b>TOTAL</b>	<b>56.9</b>	<b>33.0</b>	<b>66,104</b>	<b>57.5</b>	<b>37.0</b>	<b>421</b>
<b>Murder</b>	221.5	210.0	69	--	--	0
<b>Manslaughter</b>	48.5	40.0	51	--	--	0
<b>Kidnapping/Hostage Taking</b>	205.3	180.0	56	--	--	1
<b>Sexual Abuse</b>	95.0	66.0	469	108.1	120.0	7
<b>Assault</b>	44.3	33.0	568	17.5	16.0	4
<b>Robbery</b>	82.7	65.0	1,018	--	--	2
<b>Arson</b>	81.1	60.0	58	--	--	0
<b>Drugs - Trafficking</b>	83.2	60.0	23,279	71.4	51.0	166
<b>Drugs - Communication Facility</b>	43.2	48.0	282	30.6	12.0	11
<b>Drugs - Simple Possession</b>	18.9	6.0	167	--	--	2
<b>Firearms</b>	89.2	60.0	7,709	79.8	63.0	68
<b>Burglary/B&amp;E</b>	20.6	18.0	40	--	--	0
<b>Auto Theft</b>	55.5	24.0	51	--	--	0
<b>Larceny</b>	18.8	13.0	663	16.7	6.0	3
<b>Fraud</b>	28.6	18.0	5,375	17.4	12.0	40
<b>Embezzlement</b>	14.6	12.0	245	--	--	0
<b>Forgery/Counterfeiting</b>	22.2	18.0	695	--	--	1
<b>Bribery</b>	26.6	18.0	154	--	--	0
<b>Tax</b>	24.5	18.0	341	--	--	1
<b>Money Laundering</b>	42.9	30.0	675	13.2	12.0	5
<b>Racketeering/Extortion</b>	91.6	60.0	668	47.5	37.5	4
<b>Gambling/Lottery</b>	12.1	9.0	47	--	--	0
<b>Civil Rights</b>	56.8	30.0	47	--	--	0
<b>Immigration</b>	20.2	14.0	20,007	10.5	4.1	58
<b>Pornography/Prostitution</b>	122.2	78.0	1,621	99.4	78.0	32
<b>Prison Offenses</b>	17.8	15.0	343	11.4	12.0	5
<b>Administration of Justice Offenses</b>	25.6	15.0	628	16.5	13.0	6
<b>Environmental/Wildlife</b>	12.8	6.0	35	--	--	0
<b>National Defense</b>	62.5	30.0	45	--	--	0
<b>Antitrust</b>	11.9	6.0	11	--	--	0
<b>Food &amp; Drug</b>	9.7	6.0	20	--	--	0
<b>Other Miscellaneous Offenses</b>	17.5	9.0	667	23.4	21.0	5

Of the 76,478 guideline cases, 10,374 cases were excluded for one or more of the following reasons: zero months prison ordered (9,550), missing primary offense category (50) or missing or indeterminable sentencing information (824).

Of the 657 guideline cases from the District of Western New York, 236 cases were excluded due to one of the following reasons: zero prison months ordered (233) or missing or indeterminable sentencing information (3).

SOURCE: U.S. Sentencing Commission, 2008 Datafile, OPAFY08.

**Table 8**

**COMPARISON OF SENTENCE IMPOSED AND POSITION  
RELATIVE TO THE GUIDELINE RANGE  
Fiscal Year 2008**

	National		Western New York	
	N	%	N	%
<b>TOTAL CASES<sup>1</sup></b>	<b>74,493</b>	<b>100.0</b>	<b>655</b>	<b>100.0</b>
<b>CASES SENTENCED WITHIN GUIDELINE RANGE</b>	<b>44,263</b>	<b>59.4</b>	<b>381</b>	<b>58.2</b>
<b>CASES SENTENCED ABOVE GUIDELINE RANGE</b>	<b>1,195</b>	<b>1.5</b>	<b>7</b>	<b>1.2</b>
<b>DEPARTURE ABOVE GUIDELINE RANGE</b>	<b>473</b>	<b>0.6</b>	<b>4</b>	<b>0.7</b>
Upward Departure From Guideline Range <sup>2</sup>	326	0.4	1	0.2
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	147	0.2	3	0.5
<b>OTHERWISE ABOVE GUIDELINE RANGE</b>	<b>722</b>	<b>0.9</b>	<b>3</b>	<b>0.5</b>
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	622	0.8	2	0.3
All Remaining Cases Above Guideline Range <sup>5</sup>	100	0.1	1	0.2
<b>GOVERNMENT SPONSORED BELOW RANGE<sup>6</sup></b>	<b>19,063</b>	<b>25.6</b>	<b>194</b>	<b>29.7</b>
§5K1.1 Substantial Assistance Departure	10,048	13.5	174	26.6
§5K3.1 Early Disposition Program Departure	5,894	7.9	0	0.0
Other Government Sponsored Below Range	3,121	4.2	20	3.1
<b>NON-GOVERNMENT SPONSORED BELOW RANGE</b>	<b>9,972</b>	<b>13.4</b>	<b>73</b>	<b>11.2</b>
<b>DEPARTURE BELOW GUIDELINE RANGE</b>	<b>2,459</b>	<b>3.3</b>	<b>9</b>	<b>1.4</b>
Downward Departure From Guideline Range <sup>2</sup>	1,544	2.1	5	0.8
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	915	1.2	4	0.6
<b>OTHERWISE BELOW GUIDELINE RANGE</b>	<b>7,513</b>	<b>10.1</b>	<b>64</b>	<b>9.8</b>
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	6,678	9.0	60	9.2
All Remaining Cases Below Guideline Range <sup>5</sup>	835	1.1	4	0.6

<sup>1</sup>This table reflects the 76,478 cases sentenced nationally in Fiscal Year 2008, 657 of which were from the District of Western New York. Of these, 1,985 cases nationally and two cases from the District of Western New York were excluded because information was missing from the submitted documents that prevented the comparison of the sentence and the guideline range.

<sup>2</sup>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*.

<sup>3</sup>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.

<sup>4</sup>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.

<sup>5</sup>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.

<sup>6</sup>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.

SOURCE: U.S. Sentencing Commission, 2008 Datafile, OPAFY08.

**Table 9**

**SENTENCES RELATIVE TO THE GUIDELINE RANGE BY CIRCUIT AND DISTRICT  
Fiscal Year 2008**

CIRCUIT District	TOTAL	SENTENCED WITHIN GUIDELINE RANGE		ABOVE RANGE DEPARTURE		ABOVE RANGE DEPARTURE W/BOOKER		ABOVE RANGE W/BOOKER		REMAINING ABOVE RANGE	
		N	%	N	%	N	%	N	%	N	%
<b>TOTAL</b>	<b>74,493</b>	<b>44,263</b>	<b>59.4</b>	<b>326</b>	<b>0.4</b>	<b>147</b>	<b>0.2</b>	<b>622</b>	<b>0.8</b>	<b>100</b>	<b>0.1</b>
<b>D.C. CIRCUIT</b>	<b>406</b>	<b>154</b>	<b>37.9</b>	<b>1</b>	<b>0.2</b>	<b>0</b>	<b>0.0</b>	<b>4</b>	<b>1.0</b>	<b>1</b>	<b>0.2</b>
District of Columbia	406	154	37.9	1	0.2	0	0.0	4	1.0	1	0.2
<b>FIRST CIRCUIT</b>	<b>1,735</b>	<b>1,091</b>	<b>62.9</b>	<b>8</b>	<b>0.5</b>	<b>7</b>	<b>0.4</b>	<b>7</b>	<b>0.4</b>	<b>3</b>	<b>0.2</b>
Maine	210	130	61.9	2	1.0	0	0.0	1	0.5	0	0.0
Massachusetts	466	237	50.9	3	0.6	1	0.2	4	0.9	1	0.2
New Hampshire	223	108	48.4	2	0.9	2	0.9	1	0.4	0	0.0
Puerto Rico	748	563	75.3	1	0.1	3	0.4	1	0.1	2	0.3
Rhode Island	88	53	60.2	0	0.0	1	1.1	0	0.0	0	0.0
<b>SECOND CIRCUIT</b>	<b>4,547</b>	<b>2,063</b>	<b>45.4</b>	<b>7</b>	<b>0.2</b>	<b>6</b>	<b>0.1</b>	<b>17</b>	<b>0.4</b>	<b>5</b>	<b>0.1</b>
Connecticut	419	175	41.8	1	0.2	0	0.0	4	1.0	0	0.0
New York											
Eastern	1,242	479	38.6	2	0.2	1	0.1	7	0.6	2	0.2
Northern	488	260	53.3	1	0.2	1	0.2	1	0.2	0	0.0
Southern	1,580	702	44.4	0	0.0	1	0.1	3	0.2	2	0.1
Western	655	381	58.2	1	0.2	3	0.5	2	0.3	1	0.2
Vermont	163	66	40.5	2	1.2	0	0.0	0	0.0	0	0.0
<b>THIRD CIRCUIT</b>	<b>3,152</b>	<b>1,690</b>	<b>53.6</b>	<b>19</b>	<b>0.6</b>	<b>4</b>	<b>0.1</b>	<b>19</b>	<b>0.6</b>	<b>3</b>	<b>0.1</b>
Delaware	145	72	49.7	0	0.0	0	0.0	2	1.4	0	0.0
New Jersey	990	510	51.5	3	0.3	1	0.1	6	0.6	2	0.2
Pennsylvania											
Eastern	750	325	43.3	3	0.4	1	0.1	7	0.9	0	0.0
Middle	647	363	56.1	11	1.7	0	0.0	0	0.0	1	0.2
Western	539	366	67.9	2	0.4	2	0.4	1	0.2	0	0.0
Virgin Islands	81	54	66.7	0	0.0	0	0.0	3	3.7	0	0.0
<b>FOURTH CIRCUIT</b>	<b>6,462</b>	<b>4,286</b>	<b>66.3</b>	<b>52</b>	<b>0.8</b>	<b>36</b>	<b>0.6</b>	<b>52</b>	<b>0.8</b>	<b>9</b>	<b>0.1</b>
Maryland	731	362	49.5	6	0.8	2	0.3	6	0.8	2	0.3
North Carolina											
Eastern	673	378	56.2	25	3.7	19	2.8	9	1.3	1	0.1
Middle	355	272	76.6	1	0.3	0	0.0	2	0.6	0	0.0
Western	800	515	64.4	5	0.6	3	0.4	4	0.5	1	0.1
South Carolina	1,205	797	66.1	2	0.2	0	0.0	4	0.3	0	0.0
Virginia											
Eastern	1,562	1,176	75.3	11	0.7	9	0.6	16	1.0	4	0.3
Western	397	262	66.0	2	0.5	1	0.3	4	1.0	1	0.3
West Virginia											
Northern	468	338	72.2	0	0.0	1	0.2	4	0.9	0	0.0
Southern	271	186	68.6	0	0.0	1	0.4	3	1.1	0	0.0

CIRCUIT District	§5K1.1 SUBSTANTIAL ASSISTANCE		§5K3.1 EARLY DISPOSITION		OTHER GOV'T SPONSORED		BELOW RANGE DEPARTURE		BELOW RANGE DEPARTURE W/BOOKER		BELOW RANGE W/BOOKER		REMAINING BELOW RANGE	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
<b>TOTAL</b>	<b>10,048</b>	<b>13.5</b>	<b>5,894</b>	<b>7.9</b>	<b>3,121</b>	<b>4.2</b>	<b>1,544</b>	<b>2.1</b>	<b>915</b>	<b>1.2</b>	<b>6,678</b>	<b>9.0</b>	<b>835</b>	<b>1.1</b>
<b>D.C. CIRCUIT</b>	<b>140</b>	<b>34.5</b>	<b>0</b>	<b>0.0</b>	<b>33</b>	<b>8.1</b>	<b>11</b>	<b>2.7</b>	<b>22</b>	<b>5.4</b>	<b>30</b>	<b>7.4</b>	<b>10</b>	<b>2.5</b>
District of Columbia	140	34.5	0	0.0	33	8.1	11	2.7	22	5.4	30	7.4	10	2.5
<b>FIRST CIRCUIT</b>	<b>183</b>	<b>10.5</b>	<b>17</b>	<b>1.0</b>	<b>76</b>	<b>4.4</b>	<b>49</b>	<b>2.8</b>	<b>34</b>	<b>2.0</b>	<b>233</b>	<b>13.4</b>	<b>27</b>	<b>1.6</b>
Maine	49	23.3	0	0.0	0	0.0	4	1.9	1	0.5	22	10.5	1	0.5
Massachusetts	39	8.4	1	0.2	34	7.3	24	5.2	14	3.0	102	21.9	6	1.3
New Hampshire	48	21.5	0	0.0	7	3.1	7	3.1	6	2.7	39	17.5	3	1.3
Puerto Rico	41	5.5	16	2.1	33	4.4	12	1.6	11	1.5	49	6.6	16	2.1
Rhode Island	6	6.8	0	0.0	2	2.3	2	2.3	2	2.3	21	23.9	1	1.1
<b>SECOND CIRCUIT</b>	<b>997</b>	<b>21.9</b>	<b>1</b>	<b>0.0</b>	<b>172</b>	<b>3.8</b>	<b>181</b>	<b>4.0</b>	<b>150</b>	<b>3.3</b>	<b>890</b>	<b>19.6</b>	<b>58</b>	<b>1.3</b>
Connecticut	76	18.1	0	0.0	17	4.1	36	8.6	37	8.8	70	16.7	3	0.7
New York														
Eastern	290	23.3	1	0.1	89	7.2	47	3.8	54	4.3	250	20.1	20	1.6
Northern	133	27.3	0	0.0	5	1.0	33	6.8	7	1.4	46	9.4	1	0.2
Southern	283	17.9	0	0.0	36	2.3	39	2.5	40	2.5	444	28.1	30	1.9
Western	174	26.6	0	0.0	20	3.1	5	0.8	4	0.6	60	9.2	4	0.6
Vermont	41	25.2	0	0.0	5	3.1	21	12.9	8	4.9	20	12.3	0	0.0
<b>THIRD CIRCUIT</b>	<b>764</b>	<b>24.2</b>	<b>1</b>	<b>0.0</b>	<b>50</b>	<b>1.6</b>	<b>55</b>	<b>1.7</b>	<b>52</b>	<b>1.6</b>	<b>436</b>	<b>13.8</b>	<b>59</b>	<b>1.9</b>
Delaware	8	5.5	0	0.0	2	1.4	3	2.1	0	0.0	31	21.4	27	18.6
New Jersey	281	28.4	1	0.1	10	1.0	12	1.2	6	0.6	152	15.4	6	0.6
Pennsylvania														
Eastern	232	30.9	0	0.0	15	2.0	7	0.9	24	3.2	125	16.7	11	1.5
Middle	177	27.4	0	0.0	16	2.5	11	1.7	3	0.5	60	9.3	5	0.8
Western	58	10.8	0	0.0	5	0.9	22	4.1	18	3.3	59	10.9	6	1.1
Virgin Islands	8	9.9	0	0.0	2	2.5	0	0.0	1	1.2	9	11.1	4	4.9
<b>FOURTH CIRCUIT</b>	<b>1,135</b>	<b>17.6</b>	<b>0</b>	<b>0.0</b>	<b>93</b>	<b>1.4</b>	<b>111</b>	<b>1.7</b>	<b>52</b>	<b>0.8</b>	<b>563</b>	<b>8.7</b>	<b>73</b>	<b>1.1</b>
Maryland	173	23.7	0	0.0	29	4.0	10	1.4	19	2.6	108	14.8	14	1.9
North Carolina														
Eastern	191	28.4	0	0.0	3	0.4	5	0.7	5	0.7	34	5.1	3	0.4
Middle	56	15.8	0	0.0	0	0.0	2	0.6	0	0.0	22	6.2	0	0.0
Western	208	26.0	0	0.0	8	1.0	10	1.3	6	0.8	29	3.6	11	1.4
South Carolina	256	21.2	0	0.0	19	1.6	23	1.9	0	0.0	86	7.1	18	1.5
Virginia														
Eastern	101	6.5	0	0.0	17	1.1	51	3.3	18	1.2	134	8.6	25	1.6
Western	82	20.7	0	0.0	4	1.0	4	1.0	0	0.0	35	8.8	2	0.5
West Virginia														
Northern	40	8.5	0	0.0	13	2.8	4	0.9	2	0.4	66	14.1	0	0.0
Southern	28	10.3	0	0.0	0	0.0	2	0.7	2	0.7	49	18.1	0	0.0

CIRCUIT District	TOTAL	SENTENCED WITHIN GUIDELINE RANGE		ABOVE RANGE DEPARTURE		ABOVE RANGE DEPARTURE W/BOOKER		ABOVE RANGE W/BOOKER		REMAINING ABOVE RANGE	
		N	%	N	%	N	%	N	%	N	%
<b>FIFTH CIRCUIT</b>	<b>17,396</b>	<b>12,254</b>	<b>70.4</b>	<b>88</b>	<b>0.5</b>	<b>33</b>	<b>0.2</b>	<b>173</b>	<b>1.0</b>	<b>28</b>	<b>0.2</b>
<b>Louisiana</b>											
Eastern	479	367	76.6	5	1.0	4	0.8	9	1.9	1	0.2
Middle	204	143	70.1	2	1.0	0	0.0	1	0.5	0	0.0
Western	335	254	75.8	1	0.3	0	0.0	8	2.4	0	0.0
<b>Mississippi</b>											
Northern	177	109	61.6	0	0.0	0	0.0	4	2.3	0	0.0
Southern	422	341	80.8	1	0.2	2	0.5	4	0.9	3	0.7
<b>Texas</b>											
Eastern	1,012	735	72.6	8	0.8	0	0.0	4	0.4	3	0.3
Northern	1,081	736	68.1	22	2.0	12	1.1	35	3.2	2	0.2
Southern	6,511	3,754	57.7	29	0.4	3	0.0	24	0.4	11	0.2
Western	7,175	5,815	81.0	20	0.3	12	0.2	84	1.2	8	0.1
<b>SIXTH CIRCUIT</b>	<b>5,359</b>	<b>2,911</b>	<b>54.3</b>	<b>22</b>	<b>0.4</b>	<b>10</b>	<b>0.2</b>	<b>34</b>	<b>0.6</b>	<b>9</b>	<b>0.2</b>
<b>Kentucky</b>											
Eastern	681	313	46.0	0	0.0	1	0.1	5	0.7	0	0.0
Western	488	349	71.5	3	0.6	0	0.0	1	0.2	0	0.0
<b>Michigan</b>											
Eastern	736	403	54.8	3	0.4	0	0.0	4	0.5	2	0.3
Western	453	274	60.5	5	1.1	3	0.7	9	2.0	3	0.7
<b>Ohio</b>											
Northern	905	496	54.8	1	0.1	1	0.1	6	0.7	1	0.1
Southern	621	250	40.3	1	0.2	2	0.3	1	0.2	1	0.2
<b>Tennessee</b>											
Eastern	586	358	61.1	2	0.3	1	0.2	3	0.5	2	0.3
Middle	287	161	56.1	2	0.7	1	0.3	0	0.0	0	0.0
Western	602	307	51.0	5	0.8	1	0.2	5	0.8	0	0.0
<b>SEVENTH CIRCUIT</b>	<b>3,041</b>	<b>1,683</b>	<b>55.3</b>	<b>3</b>	<b>0.1</b>	<b>9</b>	<b>0.3</b>	<b>34</b>	<b>1.1</b>	<b>5</b>	<b>0.2</b>
<b>Illinois</b>											
Central	387	215	55.6	0	0.0	0	0.0	0	0.0	1	0.3
Northern	919	425	46.2	1	0.1	4	0.4	3	0.3	2	0.2
Southern	310	239	77.1	1	0.3	3	1.0	5	1.6	1	0.3
<b>Indiana</b>											
Northern	452	296	65.5	0	0.0	2	0.4	3	0.7	1	0.2
Southern	293	168	57.3	1	0.3	0	0.0	8	2.7	0	0.0
<b>Wisconsin</b>											
Eastern	490	192	39.2	0	0.0	0	0.0	13	2.7	0	0.0
Western	190	148	77.9	0	0.0	0	0.0	2	1.1	0	0.0
<b>EIGHTH CIRCUIT</b>	<b>5,407</b>	<b>3,476</b>	<b>64.3</b>	<b>32</b>	<b>0.6</b>	<b>11</b>	<b>0.2</b>	<b>48</b>	<b>0.9</b>	<b>8</b>	<b>0.1</b>
<b>Arkansas</b>											
Eastern	432	302	69.9	2	0.5	2	0.5	1	0.2	2	0.5
Western	206	146	70.9	1	0.5	0	0.0	2	1.0	0	0.0
<b>Iowa</b>											
Northern	590	429	72.7	10	1.7	3	0.5	5	0.8	2	0.3
Southern	470	253	53.8	2	0.4	1	0.2	5	1.1	1	0.2
Minnesota	575	272	47.3	1	0.2	0	0.0	1	0.2	0	0.0
<b>Missouri</b>											
Eastern	1,010	696	68.9	0	0.0	0	0.0	6	0.6	0	0.0
Western	778	497	63.9	2	0.3	3	0.4	10	1.3	1	0.1
<b>Nebraska</b>											
Nebraska	641	429	66.9	10	1.6	0	0.0	12	1.9	2	0.3
<b>North Dakota</b>											
North Dakota	251	122	48.6	0	0.0	1	0.4	1	0.4	0	0.0
<b>South Dakota</b>											
South Dakota	454	330	72.7	4	0.9	1	0.2	5	1.1	0	0.0



CIRCUIT District	§5K1.1 SUBSTANTIAL ASSISTANCE		§5K3.1 EARLY DISPOSITION		OTHER GOV'T SPONSORED		BELOW RANGE DEPARTURE		BELOW RANGE DEPARTURE W/BOOKER		BELOW RANGE DEPARTURE W/BOOKER		REMAINING BELOW RANGE	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
<b>FIFTH CIRCUIT</b>	<b>1,299</b>	<b>7.5</b>	<b>1,254</b>	<b>7.2</b>	<b>1,021</b>	<b>5.9</b>	<b>418</b>	<b>2.4</b>	<b>39</b>	<b>0.2</b>	<b>655</b>	<b>3.8</b>	<b>134</b>	<b>0.8</b>
<b>Louisiana</b>														
Eastern	53	11.1	0	0.0	7	1.5	6	1.3	4	0.8	23	4.8	0	0.0
Middle	44	21.6	0	0.0	1	0.5	4	2.0	1	0.5	7	3.4	1	0.5
Western	30	9.0	0	0.0	0	0.0	0	0.0	5	1.5	24	7.2	13	3.9
<b>Mississippi</b>														
Northern	40	22.6	0	0.0	14	7.9	2	1.1	0	0.0	5	2.8	3	1.7
Southern	36	8.5	0	0.0	1	0.2	2	0.5	3	0.7	17	4.0	12	2.8
<b>Texas</b>														
Eastern	104	10.3	0	0.0	91	9.0	28	2.8	6	0.6	27	2.7	6	0.6
Northern	173	16.0	0	0.0	23	2.1	7	0.6	3	0.3	62	5.7	6	0.6
Southern	371	5.7	1,095	16.8	802	12.3	225	3.5	1	0.0	184	2.8	12	0.2
Western	448	6.2	159	2.2	82	1.1	144	2.0	16	0.2	306	4.3	81	1.1
<b>SIXTH CIRCUIT</b>	<b>1,375</b>	<b>25.7</b>	<b>1</b>	<b>0.0</b>	<b>133</b>	<b>2.5</b>	<b>98</b>	<b>1.8</b>	<b>105</b>	<b>2.0</b>	<b>584</b>	<b>10.9</b>	<b>77</b>	<b>1.4</b>
<b>Kentucky</b>														
Eastern	290	42.6	0	0.0	6	0.9	7	1.0	1	0.1	51	7.5	7	1.0
Western	62	12.7	0	0.0	23	4.7	9	1.8	0	0.0	38	7.8	3	0.6
<b>Michigan</b>														
Eastern	154	20.9	0	0.0	12	1.6	11	1.5	14	1.9	125	17.0	8	1.1
Western	86	19.0	0	0.0	0	0.0	9	2.0	8	1.8	53	11.7	3	0.7
<b>Ohio</b>														
Northern	209	23.1	0	0.0	27	3.0	14	1.5	22	2.4	106	11.7	22	2.4
Southern	195	31.4	0	0.0	30	4.8	22	3.5	39	6.3	65	10.5	15	2.4
<b>Tennessee</b>														
Eastern	149	25.4	0	0.0	4	0.7	8	1.4	3	0.5	47	8.0	9	1.5
Middle	64	22.3	0	0.0	11	3.8	6	2.1	10	3.5	30	10.5	2	0.7
Western	166	27.6	1	0.2	20	3.3	12	2.0	8	1.3	69	11.5	8	1.3
<b>SEVENTH CIRCUIT</b>	<b>559</b>	<b>18.4</b>	<b>1</b>	<b>0.0</b>	<b>78</b>	<b>2.6</b>	<b>44</b>	<b>1.4</b>	<b>98</b>	<b>3.2</b>	<b>455</b>	<b>15.0</b>	<b>72</b>	<b>2.4</b>
<b>Illinois</b>														
Central	93	24.0	1	0.3	5	1.3	7	1.8	3	0.8	58	15.0	4	1.0
Northern	176	19.2	0	0.0	21	2.3	23	2.5	81	8.8	155	16.9	28	3.0
Southern	31	10.0	0	0.0	2	0.6	1	0.3	5	1.6	17	5.5	5	1.6
<b>Indiana</b>														
Northern	95	21.0	0	0.0	5	1.1	0	0.0	4	0.9	26	5.8	20	4.4
Southern	50	17.1	0	0.0	15	5.1	5	1.7	2	0.7	44	15.0	0	0.0
<b>Wisconsin</b>														
Eastern	102	20.8	0	0.0	30	6.1	4	0.8	0	0.0	134	27.3	15	3.1
Western	12	6.3	0	0.0	0	0.0	4	2.1	3	1.6	21	11.1	0	0.0
<b>EIGHTH CIRCUIT</b>	<b>814</b>	<b>15.1</b>	<b>53</b>	<b>1.0</b>	<b>144</b>	<b>2.7</b>	<b>73</b>	<b>1.4</b>	<b>76</b>	<b>1.4</b>	<b>613</b>	<b>11.3</b>	<b>59</b>	<b>1.1</b>
<b>Arkansas</b>														
Eastern	62	14.4	0	0.0	6	1.4	10	2.3	11	2.5	24	5.6	10	2.3
Western	33	16.0	0	0.0	0	0.0	2	1.0	0	0.0	21	10.2	1	0.5
<b>Iowa</b>														
Northern	57	9.7	31	5.3	1	0.2	0	0.0	3	0.5	46	7.8	3	0.5
Southern	101	21.5	0	0.0	25	5.3	6	1.3	3	0.6	62	13.2	11	2.3
Minnesota	164	28.5	0	0.0	8	1.4	11	1.9	23	4.0	92	16.0	3	0.5
<b>Missouri</b>														
Eastern	132	13.1	0	0.0	22	2.2	18	1.8	12	1.2	114	11.3	10	1.0
Western	136	17.5	0	0.0	21	2.7	8	1.0	11	1.4	87	11.2	2	0.3
Nebraska	24	3.7	19	3.0	44	6.9	7	1.1	6	0.9	79	12.3	9	1.4
North Dakota	93	37.1	3	1.2	3	1.2	3	1.2	1	0.4	23	9.2	1	0.4
South Dakota	12	2.6	0	0.0	14	3.1	8	1.8	6	1.3	65	14.3	9	2.0

CIRCUIT District	TOTAL	SENTENCED WITHIN GUIDELINE RANGE		ABOVE RANGE DEPARTURE		ABOVE RANGE DEPARTURE W/BOOKER		ABOVE RANGE W/BOOKER		REMAINING ABOVE RANGE	
		N	%	N	%	N	%	N	%	N	%
<b>NINTH CIRCUIT</b>	<b>14,074</b>	<b>6,282</b>	<b>44.6</b>	<b>68</b>	<b>0.5</b>	<b>17</b>	<b>0.1</b>	<b>70</b>	<b>0.5</b>	<b>21</b>	<b>0.1</b>
Alaska	164	84	51.2	0	0.0	0	0.0	3	1.8	2	1.2
Arizona	3,724	1,204	32.3	41	1.1	3	0.1	9	0.2	3	0.1
California											
Central	1,615	605	37.5	3	0.2	4	0.2	12	0.7	4	0.2
Eastern	884	425	48.1	0	0.0	4	0.5	6	0.7	2	0.2
Northern	704	371	52.7	0	0.0	2	0.3	5	0.7	0	0.0
Southern	3,757	1,889	50.3	10	0.3	2	0.1	6	0.2	3	0.1
Guam	68	51	75.0	1	1.5	0	0.0	0	0.0	1	1.5
Hawaii	278	119	42.8	0	0.0	0	0.0	1	0.4	1	0.4
Idaho	265	125	47.2	0	0.0	0	0.0	3	1.1	0	0.0
Montana	417	298	71.5	5	1.2	0	0.0	8	1.9	3	0.7
Nevada	429	292	68.1	1	0.2	1	0.2	2	0.5	0	0.0
Northern Mariana Islands	18	13	72.2	0	0.0	0	0.0	0	0.0	0	0.0
Oregon	631	296	46.9	2	0.3	0	0.0	3	0.5	2	0.3
Washington											
Eastern	337	132	39.2	1	0.3	1	0.3	8	2.4	0	0.0
Western	783	378	48.3	4	0.5	0	0.0	4	0.5	0	0.0
<b>TENTH CIRCUIT</b>	<b>5,876</b>	<b>3,581</b>	<b>60.9</b>	<b>15</b>	<b>0.3</b>	<b>4</b>	<b>0.1</b>	<b>70</b>	<b>1.2</b>	<b>5</b>	<b>0.1</b>
Colorado	473	285	60.3	2	0.4	0	0.0	2	0.4	2	0.4
Kansas	664	403	60.7	2	0.3	3	0.5	44	6.6	1	0.2
New Mexico	2,901	1,743	60.1	4	0.1	0	0.0	5	0.2	2	0.1
Oklahoma											
Eastern	89	83	93.3	0	0.0	0	0.0	0	0.0	0	0.0
Northern	213	165	77.5	2	0.9	0	0.0	0	0.0	0	0.0
Western	339	241	71.1	1	0.3	0	0.0	10	2.9	0	0.0
Utah	859	441	51.3	4	0.5	0	0.0	7	0.8	0	0.0
Wyoming	338	220	65.1	0	0.0	1	0.3	2	0.6	0	0.0
<b>ELEVENTH CIRCUIT</b>	<b>7,038</b>	<b>4,792</b>	<b>68.1</b>	<b>11</b>	<b>0.2</b>	<b>10</b>	<b>0.1</b>	<b>94</b>	<b>1.3</b>	<b>3</b>	<b>0.0</b>
Alabama											
Middle	266	174	65.4	0	0.0	0	0.0	5	1.9	0	0.0
Northern	478	304	63.6	0	0.0	3	0.6	13	2.7	0	0.0
Southern	556	364	65.5	2	0.4	0	0.0	6	1.1	0	0.0
Florida											
Middle	1,664	1,027	61.7	1	0.1	1	0.1	9	0.5	1	0.1
Northern	338	239	70.7	1	0.3	0	0.0	5	1.5	0	0.0
Southern	2,162	1,584	73.3	1	0.0	2	0.1	23	1.1	1	0.0
Georgia											
Middle	352	284	80.7	0	0.0	2	0.6	6	1.7	0	0.0
Northern	706	409	57.9	2	0.3	2	0.3	7	1.0	0	0.0
Southern	516	407	78.9	4	0.8	0	0.0	20	3.9	1	0.2

CIRCUIT District	§5K1.1 SUBSTANTIAL ASSISTANCE		§5K3.1 EARLY DISPOSITION		OTHER GOV'T SPONSORED		BELOW RANGE DEPARTURE		BELOW RANGE DEPARTURE W/BOOKER		BELOW RANGE W/BOOKER		REMAINING BELOW RANGE	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
<b>NINTH CIRCUIT</b>	<b>1,304</b>	<b>9.3</b>	<b>3,964</b>	<b>28.2</b>	<b>750</b>	<b>5.3</b>	<b>262</b>	<b>1.9</b>	<b>141</b>	<b>1.0</b>	<b>1,002</b>	<b>7.1</b>	<b>193</b>	<b>1.4</b>
Alaska	29	17.7	0	0.0	21	12.8	2	1.2	7	4.3	14	8.5	2	1.2
Arizona	183	4.9	1,931	51.9	118	3.2	48	1.3	26	0.7	139	3.7	19	0.5
<b>California</b>														
Central	212	13.1	430	26.6	109	6.7	31	1.9	31	1.9	124	7.7	50	3.1
Eastern	133	15.0	183	20.7	33	3.7	16	1.8	11	1.2	62	7.0	9	1.0
Northern	84	11.9	49	7.0	78	11.1	13	1.8	13	1.8	69	9.8	20	2.8
Southern	154	4.1	1,232	32.8	119	3.2	103	2.7	14	0.4	159	4.2	66	1.8
Guam	6	8.8	0	0.0	0	0.0	1	1.5	0	0.0	6	8.8	2	2.9
Hawaii	86	30.9	0	0.0	3	1.1	3	1.1	2	0.7	59	21.2	4	1.4
Idaho	70	26.4	33	12.5	4	1.5	1	0.4	3	1.1	23	8.7	3	1.1
Montana	54	12.9	0	0.0	0	0.0	4	1.0	3	0.7	36	8.6	6	1.4
Nevada	36	8.4	0	0.0	44	10.3	3	0.7	3	0.7	43	10.0	4	0.9
Northern Mariana Islands	4	22.2	0	0.0	0	0.0	0	0.0	1	5.6	0	0.0	0	0.0
Oregon	117	18.5	23	3.6	66	10.5	15	2.4	9	1.4	95	15.1	3	0.5
<b>Washington</b>														
Eastern	29	8.6	68	20.2	39	11.6	1	0.3	2	0.6	54	16.0	2	0.6
Western	107	13.7	15	1.9	116	14.8	21	2.7	16	2.0	119	15.2	3	0.4
<b>TENTH CIRCUIT</b>	<b>405</b>	<b>6.9</b>	<b>572</b>	<b>9.7</b>	<b>495</b>	<b>8.4</b>	<b>150</b>	<b>2.6</b>	<b>75</b>	<b>1.3</b>	<b>477</b>	<b>8.1</b>	<b>27</b>	<b>0.5</b>
Colorado	76	16.1	0	0.0	21	4.4	19	4.0	5	1.1	57	12.1	4	0.8
Kansas	106	16.0	0	0.0	41	6.2	3	0.5	3	0.5	57	8.6	1	0.2
New Mexico	91	3.1	392	13.5	367	12.7	93	3.2	41	1.4	155	5.3	8	0.3
<b>Oklahoma</b>														
Eastern	1	1.1	0	0.0	0	0.0	0	0.0	0	0.0	5	5.6	0	0.0
Northern	29	13.6	0	0.0	1	0.5	1	0.5	0	0.0	15	7.0	0	0.0
Western	21	6.2	0	0.0	3	0.9	4	1.2	1	0.3	56	16.5	2	0.6
Utah	52	6.1	180	21.0	48	5.6	25	2.9	3	0.3	90	10.5	9	1.0
Wyoming	29	8.6	0	0.0	14	4.1	5	1.5	22	6.5	42	12.4	3	0.9
<b>ELEVENTH CIRCUIT</b>	<b>1,073</b>	<b>15.2</b>	<b>30</b>	<b>0.4</b>	<b>76</b>	<b>1.1</b>	<b>92</b>	<b>1.3</b>	<b>71</b>	<b>1.0</b>	<b>740</b>	<b>10.5</b>	<b>46</b>	<b>0.7</b>
<b>Alabama</b>														
Middle	61	22.9	0	0.0	2	0.8	3	1.1	0	0.0	20	7.5	1	0.4
Northern	95	19.9	0	0.0	2	0.4	5	1.0	2	0.4	52	10.9	2	0.4
Southern	124	22.3	0	0.0	4	0.7	2	0.4	2	0.4	50	9.0	2	0.4
<b>Florida</b>														
Middle	328	19.7	30	1.8	22	1.3	21	1.3	15	0.9	203	12.2	6	0.4
Northern	66	19.5	0	0.0	0	0.0	4	1.2	1	0.3	20	5.9	2	0.6
Southern	198	9.2	0	0.0	19	0.9	23	1.1	33	1.5	257	11.9	21	1.0
<b>Georgia</b>														
Middle	39	11.1	0	0.0	5	1.4	2	0.6	0	0.0	13	3.7	1	0.3
Northern	119	16.9	0	0.0	16	2.3	25	3.5	18	2.5	98	13.9	10	1.4
Southern	43	8.3	0	0.0	6	1.2	7	1.4	0	0.0	27	5.2	1	0.2

Of the 76,478 cases, 1,985 were excluded because information was missing from the submitted documents that prevented the comparison of the sentence and the guideline range. Districts for which information needed to determine the relationship between the sentence imposed and the guideline range is missing in five percent missing in five percent or more of the cases received included: Western Oklahoma (39.0%), Eastern Virginia (23.1%), Middle Georgia (20.5%), Central California (14.6%), Northern New York (8.4%), Middle Tennessee (6.8%), Southern Mississippi (6.8%), Western Washington (6.6%), and Maryland (6.6%).

SOURCE: U.S. Sentencing Commission, 2008 Datafile, OPAFY08.

**Table 10**

**GUIDELINE DEPARTURE RATE BY PRIMARY OFFENSE CATEGORY  
Fiscal Year 2008**

**National**

PRIMARY OFFENSE	TOTAL	WITHIN GUIDELINE RANGE		ABOVE RANGE DEPARTURE		ABOVE RANGE DEPARTURE W/BOOKER		ABOVE RANGE W/BOOKER		REMAINING ABOVE RANGE	
		N	%	N	%	N	%	N	%	N	%
<b>TOTAL</b>	<b>74,452</b>	<b>44,240</b>	<b>59.4</b>	<b>326</b>	<b>0.4</b>	<b>147</b>	<b>0.2</b>	<b>622</b>	<b>0.8</b>	<b>100</b>	<b>0.1</b>
Robbery	1,050	671	63.9	15	1.4	13	1.2	13	1.2	2	0.2
Drugs - Trafficking	24,213	12,484	51.6	43	0.2	17	0.1	66	0.3	21	0.1
Drugs - Simple Possession	413	370	89.6	1	0.2	2	0.5	5	1.2	3	0.7
Firearms	8,212	5,516	67.2	58	0.7	31	0.4	105	1.3	17	0.2
Larceny	1,548	1,159	74.9	3	0.2	4	0.3	25	1.6	5	0.3
Fraud	7,310	4,527	61.9	26	0.4	9	0.1	72	1.0	14	0.2
Embezzlement	483	334	69.2	0	0.0	1	0.2	2	0.4	0	0.0
Forgery/Counterfeiting	1,006	697	69.3	2	0.2	4	0.4	15	1.5	3	0.3
Immigration	21,072	13,151	62.4	97	0.5	35	0.2	196	0.9	21	0.1
Other Miscellaneous Offenses	9,145	5,331	58.3	81	0.9	31	0.3	123	1.3	14	0.2

**Western New York**

PRIMARY OFFENSE	TOTAL	WITHIN GUIDELINE RANGE		ABOVE RANGE DEPARTURE		ABOVE RANGE DEPARTURE W/BOOKER		ABOVE RANGE W/BOOKER		REMAINING ABOVE RANGE	
		N	%	N	%	N	%	N	%	N	%
<b>TOTAL</b>	<b>655</b>	<b>381</b>	<b>58.2</b>	<b>1</b>	<b>0.2</b>	<b>3</b>	<b>0.5</b>	<b>2</b>	<b>0.3</b>	<b>1</b>	<b>0.2</b>
Robbery	4	4	100.0	0	0.0	0	0.0	0	0.0	0	0.0
Drugs - Trafficking	201	56	27.9	1	0.5	0	0.0	0	0.0	0	0.0
Drugs - Simple Possession	25	24	96.0	0	0.0	0	0.0	0	0.0	0	0.0
Firearms	79	46	58.2	0	0.0	1	1.3	0	0.0	0	0.0
Larceny	20	16	80.0	0	0.0	0	0.0	0	0.0	0	0.0
Fraud	74	53	71.6	0	0.0	0	0.0	1	1.4	0	0.0
Embezzlement	3	1	33.3	0	0.0	0	0.0	0	0.0	0	0.0
Forgery/Counterfeiting	5	2	40.0	0	0.0	0	0.0	0	0.0	0	0.0
Immigration	122	109	89.3	0	0.0	0	0.0	0	0.0	0	0.0
Other Miscellaneous Offenses	122	70	57.4	0	0.0	2	1.6	1	0.8	1	0.8

### National

PRIMARY OFFENSE	§5K1.1 SUBSTANTIAL ASSISTANCE		§5K3.1 EARLY DISPOSITION		OTHER GOV'T SPONSORED		BELOW RANGE DEPARTURE		BELOW RANGE DEPARTURE W/BOOKER		BELOW RANGE W/BOOKER		REMAINING BELOW RANGE	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
<b>TOTAL</b>	<b>10,038</b>	<b>13.5</b>	<b>5,891</b>	<b>7.9</b>	<b>3,117</b>	<b>4.2</b>	<b>1,544</b>	<b>2.1</b>	<b>915</b>	<b>1.2</b>	<b>6,678</b>	<b>9.0</b>	<b>834</b>	<b>1.1</b>
Robbery	116	11.0	0	0.0	32	3.0	30	2.9	32	3.0	118	11.2	8	0.8
Drugs - Trafficking	6,270	25.9	1,184	4.9	884	3.7	457	1.9	322	1.3	2,274	9.4	191	0.8
Drugs - Simple Possession	10	2.4	0	0.0	11	2.7	0	0.0	1	0.2	6	1.5	4	1.0
Firearms	929	11.3	33	0.4	253	3.1	169	2.1	119	1.4	883	10.8	99	1.2
Larceny	97	6.3	6	0.4	39	2.5	23	1.5	15	1.0	134	8.7	38	2.5
Fraud	1,064	14.6	42	0.6	250	3.4	145	2.0	133	1.8	887	12.1	141	1.9
Embezzlement	28	5.8	0	0.0	14	2.9	14	2.9	9	1.9	71	14.7	10	2.1
Forgery/Counterfeiting	105	10.4	0	0.0	18	1.8	29	2.9	8	0.8	109	10.8	16	1.6
Immigration	344	1.6	4,593	21.8	1,072	5.1	457	2.2	93	0.4	842	4.0	171	0.8
Other Miscellaneous Offenses	1,075	11.8	33	0.4	544	5.9	220	2.4	183	2.0	1,354	14.8	156	1.7

### Western New York

PRIMARY OFFENSE	§5K1.1 SUBSTANTIAL ASSISTANCE		§5K3.1 EARLY DISPOSITION		OTHER GOV'T SPONSORED		BELOW RANGE DEPARTURE		BELOW RANGE DEPARTURE W/BOOKER		BELOW RANGE W/BOOKER		REMAINING BELOW RANGE	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
<b>TOTAL</b>	<b>174</b>	<b>26.6</b>	<b>0</b>	<b>0.0</b>	<b>20</b>	<b>3.1</b>	<b>5</b>	<b>0.8</b>	<b>4</b>	<b>0.6</b>	<b>60</b>	<b>9.2</b>	<b>4</b>	<b>0.6</b>
Robbery	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Drugs - Trafficking	119	59.2	0	0.0	6	3.0	1	0.5	2	1.0	15	7.5	1	0.5
Drugs - Simple Possession	1	4.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Firearms	16	20.3	0	0.0	4	5.1	0	0.0	0	0.0	12	15.2	0	0.0
Larceny	0	0.0	0	0.0	0	0.0	1	5.0	0	0.0	2	10.0	1	5.0
Fraud	8	10.8	0	0.0	0	0.0	0	0.0	1	1.4	9	12.2	2	2.7
Embezzlement	1	33.3	0	0.0	0	0.0	0	0.0	0	0.0	1	33.3	0	0.0
Forgery/Counterfeiting	1	20.0	0	0.0	0	0.0	0	0.0	0	0.0	2	40.0	0	0.0
Immigration	0	0.0	0	0.0	3	2.5	2	1.6	0	0.0	8	6.6	0	0.0
Other Miscellaneous Offenses	28	23.0	0	0.0	7	5.7	1	0.8	1	0.8	11	9.0	0	0.0

Of the 76,478 guideline cases, 2,026 cases were excluded due to one or both of the following reasons: missing information from the submitted documents that prevented the comparison of the sentence and the guideline range (1,985) or missing primary offense (50).

Of the 657 guideline cases from the District of Western New York, two cases were excluded due to missing information needed to determine the relationship between the sentence imposed and the guideline range.

SOURCE: U.S. Sentencing Commission, 2008 Datafile, OPAFY08.