

**United
States
Sentencing
Commission**



Statistical Information Packet

Fiscal Year 2009

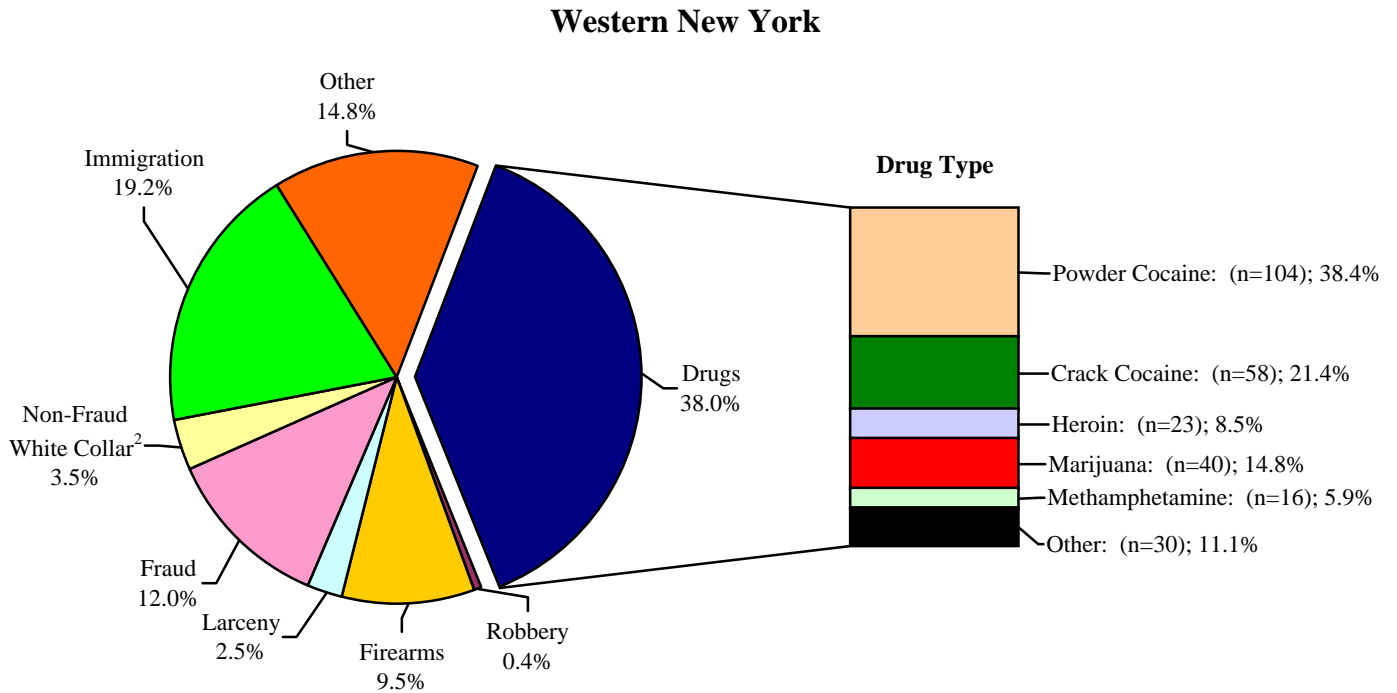
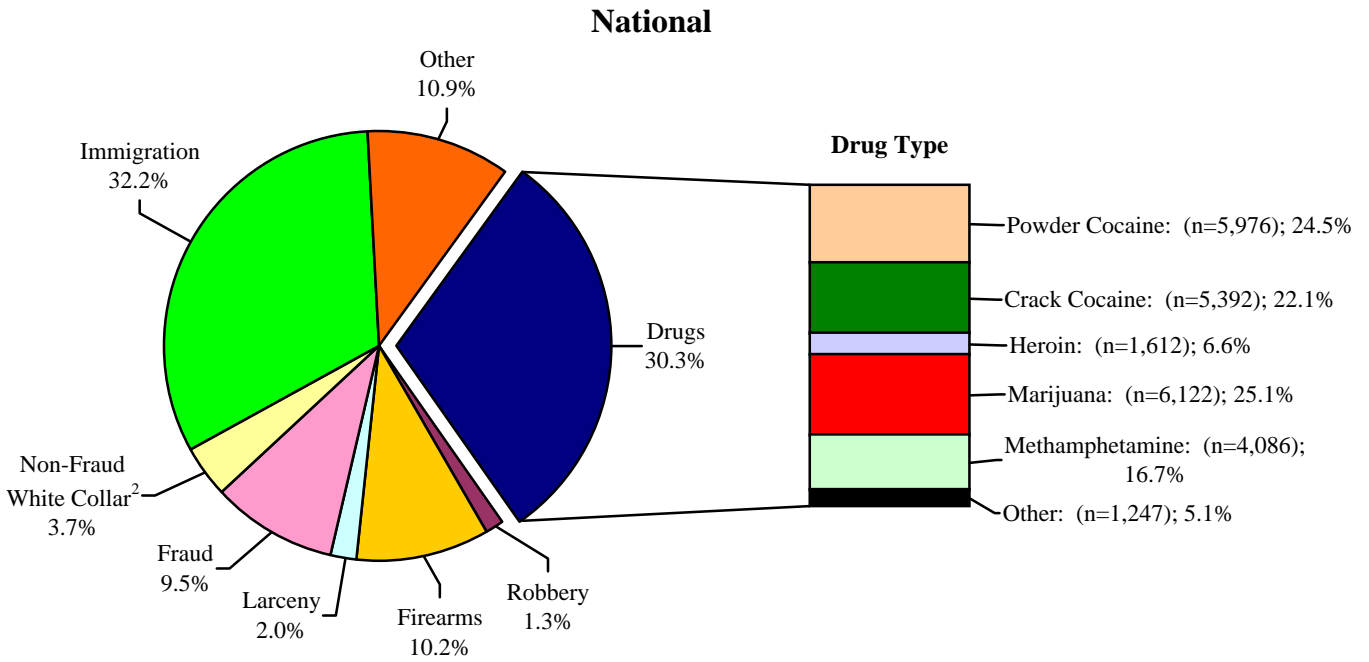
Western District of New York

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Figure A

**DISTRIBUTION OF GUIDELINE DEFENDANTS SENTENCED BY SELECT PRIMARY OFFENSE CATEGORY¹
Fiscal Year 2009**



¹Of the 81,372 guideline cases, 771 cases were excluded due to missing drug type.

Of the 715 guideline cases from the Western District of New York, one case was excluded due to missing drug type.

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

SOURCE: U.S. Sentencing Commission, 2009 Datafile, OPAFY09.

Table 1

**DISTRIBUTION OF GUIDELINE DEFENDANTS SENTENCED
BY PRIMARY OFFENSE CATEGORY
Fiscal Year 2009**

PRIMARY OFFENSE	National		Western New York	
	N	%	N	%
TOTAL	81,372	100.0	715	100.0
Murder	93	0.1	0	0.0
Manslaughter	59	0.1	0	0.0
Kidnapping/Hostage Taking	41	0.1	0	0.0
Sexual Abuse	478	0.6	7	1.0
Assault	660	0.8	3	0.4
Robbery	1,011	1.2	3	0.4
Arson	60	0.1	2	0.3
Drugs - Trafficking	23,938	29.4	216	30.2
Drugs - Communication Facility	508	0.6	39	5.5
Drugs - Simple Possession	760	0.9	17	2.4
Firearms	8,243	10.1	68	9.5
Burglary/B&E	36	0.0	0	0.0
Auto Theft	77	0.1	0	0.0
Larceny	1,592	2.0	18	2.5
Fraud	7,618	9.4	86	12.0
Embezzlement	471	0.6	4	0.6
Forgery/Counterfeiting	887	1.1	7	1.0
Bribery	171	0.2	0	0.0
Tax	633	0.8	8	1.1
Money Laundering	812	1.0	6	0.8
Racketeering/Extortion	635	0.8	1	0.1
Gambling/Lottery	62	0.1	0	0.0
Civil Rights	63	0.1	1	0.1
Immigration	25,927	31.9	137	19.2
Pornography/Prostitution	1,969	2.4	51	7.1
Prison Offenses	445	0.5	3	0.4
Administration of Justice Offenses	998	1.2	13	1.8
Environmental/Wildlife	231	0.3	1	0.1
National Defense	67	0.1	0	0.0
Antitrust	21	0.0	0	0.0
Food & Drug	80	0.1	0	0.0
Other Miscellaneous Offenses	2,726	3.4	24	3.4

Of the 81,372 guideline cases, no cases were excluded due to missing information on primary offense category.

Of the 715 guideline cases from the Western District of New York, no case was excluded.

SOURCE: U.S. Sentencing Commission, 2009 Datafile, OPAFY09.

Table 2

**MODE OF CONVICTION BY CIRCUIT AND DISTRICT
Fiscal Year 2009**

CIRCUIT District	TOTAL	PLEA		TRIAL	
		N	%	N	%
TOTAL	81,370	78,398	96.3	2,972	3.7
D.C. CIRCUIT	378	352	93.1	26	6.9
District of Columbia	378	352	93.1	26	6.9
FIRST CIRCUIT	1,782	1,692	94.9	90	5.1
Maine	227	207	91.2	20	8.8
Massachusetts	522	490	93.9	32	6.1
New Hampshire	205	200	97.6	5	2.4
Puerto Rico	697	669	96.0	28	4.0
Rhode Island	131	126	96.2	5	3.8
SECOND CIRCUIT	4,726	4,529	95.8	197	4.2
Connecticut	407	386	94.8	21	5.2
New York					
Eastern	1,213	1,159	95.5	54	4.5
Northern	547	525	96.0	22	4.0
Southern	1,649	1,572	95.3	77	4.7
Western	715	696	97.3	19	2.7
Vermont	195	191	97.9	4	2.1
THIRD CIRCUIT	3,083	2,862	92.8	221	7.2
Delaware	159	151	95.0	8	5.0
New Jersey	892	849	95.2	43	4.8
Pennsylvania					
Eastern	865	757	87.5	108	12.5
Middle	634	608	95.9	26	4.1
Western	460	441	95.9	19	4.1
Virgin Islands	73	56	76.7	17	23.3
FOURTH CIRCUIT	6,874	6,462	94.0	412	6.0
Maryland	801	738	92.1	63	7.9
North Carolina					
Eastern	659	639	97.0	20	3.0
Middle	431	408	94.7	23	5.3
Western	530	484	91.3	46	8.7
South Carolina	1,140	1,097	96.2	43	3.8
Virginia					
Eastern	2,116	1,955	92.4	161	7.6
Western	500	467	93.4	33	6.6
West Virginia					
Northern	413	394	95.4	19	4.6
Southern	284	280	98.6	4	1.4

CIRCUIT District	TOTAL	PLEA		TRIAL	
		N	%	N	%
FIFTH CIRCUIT	19,506	19,148	98.2	358	1.8
Louisiana					
Eastern	440	426	96.8	14	3.2
Middle	176	167	94.9	9	5.1
Western	351	311	88.6	40	11.4
Mississippi					
Northern	139	133	95.7	6	4.3
Southern	358	338	94.4	20	5.6
Texas					
Eastern	927	900	97.1	27	2.9
Northern	1,008	953	94.5	55	5.5
Southern	7,602	7,512	98.8	90	1.2
Western	8,505	8,408	98.9	97	1.1
SIXTH CIRCUIT	5,235	5,008	95.7	227	4.3
Kentucky					
Eastern	703	678	96.4	25	3.6
Western	425	410	96.5	15	3.5
Michigan					
Eastern	716	666	93.0	50	7.0
Western	484	468	96.7	16	3.3
Ohio					
Northern	673	645	95.8	28	4.2
Southern	619	605	97.7	14	2.3
Tennessee					
Eastern	652	622	95.4	30	4.6
Middle	320	306	95.6	14	4.4
Western	643	608	94.6	35	5.4
SEVENTH CIRCUIT	2,927	2,739	93.6	188	6.4
Illinois					
Central	349	330	94.6	19	5.4
Northern	919	837	91.1	82	8.9
Southern	314	298	94.9	16	5.1
Indiana					
Northern	452	422	93.4	30	6.6
Southern	233	213	91.4	20	8.6
Wisconsin					
Eastern	468	452	96.6	16	3.4
Western	192	187	97.4	5	2.6
EIGHTH CIRCUIT	5,440	5,203	95.6	237	4.4
Arkansas					
Eastern	416	401	96.4	15	3.6
Western	255	253	99.2	2	0.8
Iowa					
Northern	349	328	94.0	21	6.0
Southern	469	427	91.0	42	9.0
Minnesota	625	590	94.4	35	5.6
Missouri					
Eastern	1,053	1,019	96.8	34	3.2
Western	832	791	95.1	41	4.9
Nebraska	651	630	96.8	21	3.2
North Dakota	278	268	96.4	10	3.6
South Dakota	512	496	96.9	16	3.1

CIRCUIT District	TOTAL	PLEA		TRIAL	
		N	%	N	%
NINTH CIRCUIT	17,246	16,836	97.6	410	2.4
Alaska	184	170	92.4	14	7.6
Arizona	4,784	4,732	98.9	52	1.1
California					
Central	1,937	1,872	96.6	65	3.4
Eastern	1,036	1,012	97.7	24	2.3
Northern	907	892	98.3	15	1.7
Southern	4,838	4,766	98.5	72	1.5
Guam	62	58	93.5	4	6.5
Hawaii	303	283	93.4	20	6.6
Idaho	336	322	95.8	14	4.2
Montana	405	367	90.6	38	9.4
Nevada	406	378	93.1	28	6.9
Northern Mariana Islands	26	21	80.8	5	19.2
Oregon	640	626	97.8	14	2.2
Washington					
Eastern	429	413	96.3	16	3.7
Western	953	924	97.0	29	3.0
TENTH CIRCUIT	6,777	6,637	97.9	140	2.1
Colorado	524	512	97.7	12	2.3
Kansas	741	709	95.7	32	4.3
New Mexico	3,427	3,410	99.5	17	0.5
Oklahoma					
Eastern	98	88	89.8	10	10.2
Northern	218	209	95.9	9	4.1
Western	502	485	96.6	17	3.4
Utah	835	813	97.4	22	2.6
Wyoming	432	411	95.1	21	4.9
ELEVENTH CIRCUIT	7,396	6,930	93.7	466	6.3
Alabama					
Middle	236	212	89.8	24	10.2
Northern	488	460	94.3	28	5.7
Southern	430	405	94.2	25	5.8
Florida					
Middle	1,648	1,542	93.6	106	6.4
Northern	406	363	89.4	43	10.6
Southern	2,418	2,253	93.2	165	6.8
Georgia					
Middle	423	412	97.4	11	2.6
Northern	789	737	93.4	52	6.6
Southern	558	546	97.8	12	2.2

Of the 81,372 guideline cases, two cases were excluded due to missing information on mode of conviction.

SOURCE: U.S. Sentencing Commission, 2009 Datafile, OPAFY09.

Table 3

**MODE OF CONVICTION BY PRIMARY OFFENSE CATEGORY
Fiscal Year 2009**

PRIMARY OFFENSE	TOTAL	National				Western New York			
		PLEA		TRIAL		PLEA		TRIAL	
		N	%	N	%	N	%	N	%
TOTAL	81,370	78,398	96.3	2,972	3.7	696	97.3	19	2.7
Murder	93	68	73.1	25	26.9	0	--	0	--
Manslaughter	59	55	93.2	4	6.8	0	--	0	--
Kidnapping/Hostage Taking	41	36	87.8	5	12.2	0	--	0	--
Sexual Abuse	478	418	87.4	60	12.6	7	100.0	0	0.0
Assault	660	617	93.5	43	6.5	3	100.0	0	0.0
Robbery	1,011	970	95.9	41	4.1	3	100.0	0	0.0
Arson	60	54	90.0	6	10.0	2	100.0	0	0.0
Drugs - Trafficking	23,938	22,968	95.9	970	4.1	212	98.1	4	1.9
Drugs - Communication Facility	508	506	99.6	2	0.4	39	100.0	0	0.0
Drugs - Simple Possession	759	734	96.7	25	3.3	17	100.0	0	0.0
Firearms	8,243	7,649	92.8	594	7.2	65	95.6	3	4.4
Burglary/B&E	36	34	94.4	2	5.6	0	--	0	--
Auto Theft	77	76	98.7	1	1.3	0	--	0	--
Larceny	1,592	1,556	97.7	36	2.3	17	94.4	1	5.6
Fraud	7,618	7,231	94.9	387	5.1	82	95.3	4	4.7
Embezzlement	471	458	97.2	13	2.8	4	100.0	0	0.0
Forgery/Counterfeiting	887	872	98.3	15	1.7	7	100.0	0	0.0
Bribery	171	161	94.2	10	5.8	0	--	0	--
Tax	633	562	88.8	71	11.2	5	62.5	3	37.5
Money Laundering	812	759	93.5	53	6.5	6	100.0	0	0.0
Racketeering/Extortion	635	557	87.7	78	12.3	1	100.0	0	0.0
Gambling/Lottery	62	58	93.5	4	6.5	0	--	0	--
Civil Rights	63	56	88.9	7	11.1	1	100.0	0	0.0
Immigration	25,927	25,734	99.3	193	0.7	136	99.3	1	0.7
Pornography/Prostitution	1,969	1,859	94.4	110	5.6	49	96.1	2	3.9
Prison Offenses	445	437	98.2	8	1.8	3	100.0	0	0.0
Administration of Justice Offenses	998	948	95.0	50	5.0	12	92.3	1	7.7
Environmental/Wildlife	231	214	92.6	17	7.4	1	100.0	0	0.0
National Defense	67	61	91.0	6	9.0	0	--	0	--
Antitrust	21	21	100.0	0	0.0	0	--	0	--
Food & Drug	80	78	97.5	2	2.5	0	--	0	--
Other Miscellaneous Offenses	2,725	2,591	95.1	134	4.9	24	100.0	0	0.0

Of the 81,372 guideline cases, two cases were excluded due to missing mode of conviction.

Of the 715 guideline cases from the Western District of New York, no case was excluded.

SOURCE: U.S. Sentencing Commission, 2009 Datafile, OPAFY09.

Table 4
TYPE OF SENTENCE IMPOSED BY PRIMARY OFFENSE CATEGORY
Fiscal Year 2009

National

PRIMARY OFFENSE	TOTAL	Prison		Prison/Community Split Sentence		Probation and Confinement		Probation Only	
		N	%	N	%	N	%	N	%
TOTAL	80,550	70,090	87.0	2,072	2.6	2,491	3.1	5,897	7.3
Murder	93	93	100.0	0	0.0	0	0.0	0	0.0
Manslaughter	59	55	93.2	2	3.4	1	1.7	1	1.7
Kidnapping/Hostage Taking	41	40	97.6	1	2.4	0	0.0	0	0.0
Sexual Abuse	478	447	93.5	14	2.9	7	1.5	10	2.1
Assault	650	540	83.1	24	3.7	27	4.2	59	9.1
Robbery	1,007	964	95.7	23	2.3	9	0.9	11	1.1
Arson	60	57	95.0	2	3.3	1	1.7	0	0.0
Drugs - Trafficking	23,931	22,522	94.1	594	2.5	354	1.5	461	1.9
Drugs - Communication Facility	508	373	73.4	16	3.1	41	8.1	78	15.4
Drugs - Simple Possession	704	401	57.0	10	1.4	26	3.7	267	37.9
Firearms	8,229	7,510	91.3	210	2.6	197	2.4	312	3.8
Burglary/B&E	36	33	91.7	0	0.0	3	8.3	0	0.0
Auto Theft	77	67	87.0	2	2.6	2	2.6	6	7.8
Larceny	1,484	551	37.1	76	5.1	229	15.4	628	42.3
Fraud	7,583	5,491	72.4	409	5.4	601	7.9	1,082	14.3
Embezzlement	459	176	38.3	49	10.7	59	12.9	175	38.1
Forgery/Counterfeiting	883	593	67.2	45	5.1	104	11.8	141	16.0
Bribery	171	115	67.3	16	9.4	17	9.9	23	13.5
Tax	632	326	51.6	66	10.4	122	19.3	118	18.7
Money Laundering	811	591	72.9	48	5.9	62	7.6	110	13.6
Racketeering/Extortion	634	572	90.2	13	2.1	17	2.7	32	5.0
Gambling/Lottery	62	22	35.5	8	12.9	11	17.7	21	33.9
Civil Rights	62	33	53.2	3	4.8	10	16.1	16	25.8
Immigration	25,914	24,692	95.3	273	1.1	163	0.6	786	3.0
Pornography/Prostitution	1,969	1,891	96.0	23	1.2	40	2.0	15	0.8
Prison Offenses	445	414	93.0	12	2.7	7	1.6	12	2.7
Administration of Justice Offenses	981	589	60.0	44	4.5	102	10.4	246	25.1
Environmental/Wildlife	206	47	22.8	15	7.3	30	14.6	114	55.3
National Defense	67	52	77.6	6	9.0	4	6.0	5	7.5
Antitrust	20	16	80.0	1	5.0	1	5.0	2	10.0
Food & Drug	76	13	17.1	3	3.9	12	15.8	48	63.2
Other Miscellaneous Offenses	2,218	804	36.2	64	2.9	232	10.5	1,118	50.4

Of the 81,372 guideline cases, 822 cases were excluded due to one or more of the following reasons: missing sentencing information (24), or cases in which the defendant received no imprisonment or probation (798).

SOURCE: U.S. Sentencing Commission, 2009 Datafile, OPAFY09.

Table 5

TYPE OF SENTENCE IMPOSED BY PRIMARY OFFENSE CATEGORY
Fiscal Year 2009

Western New York

PRIMARY OFFENSE	TOTAL	Prison		Prison/Community Split Sentence		Probation and Confinement		Probation Only	
		N	%	N	%	N	%	N	%
TOTAL	710	518	73.0	16	2.3	54	7.6	122	17.2
Murder	0	0	--	0	--	0	--	0	--
Manslaughter	0	0	--	0	--	0	--	0	--
Kidnapping/Hostage Taking	0	0	--	0	--	0	--	0	--
Sexual Abuse	7	6	85.7	0	0.0	0	0.0	1	14.3
Assault	3	3	100.0	0	0.0	0	0.0	0	0.0
Robbery	2	2	100.0	0	0.0	0	0.0	0	0.0
Arson	2	2	100.0	0	0.0	0	0.0	0	0.0
Drugs - Trafficking	216	178	82.4	3	1.4	19	8.8	16	7.4
Drugs - Communication Facility	39	4	10.3	5	12.8	9	23.1	21	53.8
Drugs - Simple Possession	17	6	35.3	0	0.0	1	5.9	10	58.8
Firearms	68	56	82.4	2	2.9	4	5.9	6	8.8
Burglary/B&E	0	0	--	0	--	0	--	0	--
Auto Theft	0	0	--	0	--	0	--	0	--
Larceny	18	4	22.2	1	5.6	2	11.1	11	61.1
Fraud	83	50	60.2	2	2.4	6	7.2	25	30.1
Embezzlement	4	0	0.0	0	0.0	1	25.0	3	75.0
Forgery/Counterfeiting	7	4	57.1	0	0.0	1	14.3	2	28.6
Bribery	0	0	--	0	--	0	--	0	--
Tax	8	4	50.0	0	0.0	0	0.0	4	50.0
Money Laundering	6	3	50.0	1	16.7	0	0.0	2	33.3
Racketeering/Extortion	1	1	100.0	0	0.0	0	0.0	0	0.0
Gambling/Lottery	0	0	--	0	--	0	--	0	--
Civil Rights	1	0	0.0	0	0.0	0	0.0	1	100.0
Immigration	136	133	97.8	0	0.0	2	1.5	1	0.7
Pornography/Prostitution	51	48	94.1	0	0.0	1	2.0	2	3.9
Prison Offenses	3	1	33.3	0	0.0	2	66.7	0	0.0
Administration of Justice Offenses	13	5	38.5	1	7.7	3	23.1	4	30.8
Environmental/Wildlife	1	0	0.0	0	0.0	0	0.0	1	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	24	8	33.3	1	4.2	3	12.5	12	50.0

Of the 715 guideline cases from the Western District of New York, five cases were excluded due to cases in which the defendant received no imprisonment or probation.

SOURCE: U.S. Sentencing Commission, 2009 Datafile, OPAFY09.

Table 6

**INCARCERATION RATE OF DEFENDANTS ELIGIBLE FOR NON-PRISON SENTENCES
BY PRIMARY OFFENSE CATEGORY
Fiscal Year 2009**

PRIMARY OFFENSE	TOTAL	National				Western New York			
		Prison Sentence		Non-Prison Sentence		Prison Sentence		Non-Prison Sentence	
		N	%	N	%	N	%	N	%
TOTAL	16,832	11,441	68.0	5,391	32.0	147	58.6	104	41.4
Fraud	2,211	1,184	53.6	1,027	46.4	18	46.2	21	53.8
Larceny	968	199	20.6	769	79.4	1	7.7	12	92.3
Immigration	9,409	8,633	91.8	776	8.2	106	98.1	2	1.9
Embezzlement	245	41	16.7	204	83.3	0	0.0	3	100.0
Drugs - Trafficking	609	363	59.6	246	40.4	1	8.3	11	91.7
Drugs - Simple Possession	445	186	41.8	259	58.2	5	31.3	11	68.8
Firearms	272	98	36.0	174	64.0	7	77.8	2	22.2
Forgery/Counterfeiting	283	108	38.2	175	61.8	1	50.0	1	50.0
Other Miscellaneous Offenses	2,390	629	26.3	1,761	73.7	8	16.3	41	83.7

Of the 81,372 guideline cases, 64,540 cases were excluded due to one or more of the following reasons: defendant ineligible for non-prison alternatives (64,540), or missing sentencing information (24).

Of the 715 guideline cases from the Western District of New York, 464 cases were excluded due to the defendant being ineligible for non-prison alternatives.

SOURCE: U.S. Sentencing Commission, 2009 Datafile, OPAFY09.

Table 7

**AVERAGE LENGTH OF IMPRISONMENT BY PRIMARY OFFENSE CATEGORY
Fiscal Year 2009**

PRIMARY OFFENSE	National			Western New York		
	Mean Months	Median Months	Number	Mean Months	Median Months	Number
TOTAL	54.0	30.0	70,103	53.9	30.0	461
Murder	274.5	270.0	93	--	--	0
Manslaughter	68.7	50.0	57	--	--	0
Kidnapping/Hostage Taking	212.8	168.0	41	--	--	0
Sexual Abuse	96.0	60.0	460	71.2	53.0	6
Assault	43.8	30.0	554	16.0	8.0	3
Robbery	82.2	63.0	981	--	--	2
Arson	61.1	60.0	57	--	--	2
Drugs - Trafficking	81.2	60.0	22,867	60.4	41.0	173
Drugs - Communication Facility	42.9	46.0	383	17.2	6.0	9
Drugs - Simple Possession	8.5	2.0	355	13.9	6.0	6
Firearms	91.5	60.0	7,663	79.1	58.5	58
Burglary/B&E	26.7	24.0	31	--	--	0
Auto Theft	64.2	35.0	63	--	--	0
Larceny	16.4	12.0	609	9.8	12.0	5
Fraud	28.5	18.0	5,615	32.0	13.0	50
Embezzlement	16.5	12.0	216	--	--	0
Forgery/Counterfeiting	21.1	17.0	619	20.0	22.5	4
Bribery	26.4	21.0	128	--	--	0
Tax	22.4	18.0	390	20.5	21.0	4
Money Laundering	41.8	24.0	621	45.5	29.0	4
Racketeering/Extortion	102.7	60.0	580	--	--	1
Gambling/Lottery	10.9	6.0	28	--	--	0
Civil Rights	44.7	30.0	35	--	--	0
Immigration	18.9	12.0	23,757	10.6	6.8	70
Pornography/Prostitution	121.2	78.0	1,910	122.1	92.0	48
Prison Offenses	16.3	12.0	418	--	--	1
Administration of Justice Offenses	23.9	15.0	600	15.6	5.8	6
Environmental/Wildlife	12.0	10.0	60	--	--	0
National Defense	53.8	34.0	58	--	--	0
Antitrust	15.2	12.0	17	--	--	0
Food & Drug	14.9	10.5	14	--	--	0
Other Miscellaneous Offenses	18.7	10.0	823	11.3	8.0	9

Of the 81,372 guideline cases, 11,269 cases were excluded for one or more of the following reasons: zero months prison ordered (10,446), or missing or indeterminable sentencing information (823).

Of the 715 guideline cases from the Western District of New York, 254 cases were excluded due to one of the following reasons: zero prison months ordered (249) or missing or indeterminable sentencing information (5).

SOURCE: U.S. Sentencing Commission, 2009 Datafile, OPAFY09.

Table 8

**COMPARISON OF SENTENCE IMPOSED AND POSITION
RELATIVE TO THE GUIDELINE RANGE
Fiscal Year 2009**

	National		Western New York	
	N	%	N	%
TOTAL CASES¹	79,153	100.0	715	100.0
CASES SENTENCED WITHIN GUIDELINE RANGE	44,991	56.8	372	52.0
CASES SENTENCED ABOVE GUIDELINE RANGE	1,496	2.0	8	1.1
DEPARTURE ABOVE GUIDELINE RANGE	533	0.7	3	0.4
Upward Departure From Guideline Range ²	382	0.5	2	0.3
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	151	0.2	1	0.1
OTHERWISE ABOVE GUIDELINE RANGE	963	1.3	5	0.7
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	842	1.1	5	0.7
All Remaining Cases Above Guideline Range ⁵	121	0.2	0	0.0
GOVERNMENT SPONSORED BELOW RANGE⁶	20,011	25.3	227	31.7
§5K1.1 Substantial Assistance Departure	9,855	12.5	201	28.1
§5K3.1 Early Disposition Program Departure	7,242	9.1	0	0.0
Other Government Sponsored Below Range	2,914	3.7	26	3.6
NON-GOVERNMENT SPONSORED BELOW RANGE	12,655	15.9	108	15.1
DEPARTURE BELOW GUIDELINE RANGE	2,403	3.0	5	0.7
Downward Departure From Guideline Range ²	1,542	1.9	2	0.3
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	861	1.1	3	0.4
OTHERWISE BELOW GUIDELINE RANGE	10,252	12.9	103	14.4
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	9,358	11.8	95	13.3
All Remaining Cases Below Guideline Range ⁵	894	1.1	8	1.1

¹This table reflects the 81,372 cases sentenced nationally in Fiscal Year 2009, 715 of which were from the Western District of New York. Of these, 2,219 cases nationally were excluded because information was missing from the submitted documents that prevented the comparison of the sentence and the guideline range, while none from the Western District of New York were excluded.

²All 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*.

³All 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.

⁴All 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.

⁵All 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.

⁶Cases 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, 2009 Datafile, OPAFY09.

Table 9

**SENTENCES RELATIVE TO THE GUIDELINE RANGE BY CIRCUIT AND DISTRICT
Fiscal Year 2009**

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	%
TOTAL	79,153	44,991	56.8	382	0.5	151	0.2	842	1.1	121	0.2
D.C. CIRCUIT	373	147	39.4	2	0.5	0	0.0	1	0.3	1	0.3
District of Columbia	373	147	39.4	2	0.5	0	0.0	1	0.3	1	0.3
FIRST CIRCUIT	1,773	942	53.1	8	0.5	1	0.1	17	1.0	2	0.1
Maine	227	119	52.4	1	0.4	0	0.0	2	0.9	0	0.0
Massachusetts	516	180	34.9	5	1.0	0	0.0	6	1.2	1	0.2
New Hampshire	205	90	43.9	1	0.5	0	0.0	4	2.0	0	0.0
Puerto Rico	694	491	70.7	1	0.1	1	0.1	4	0.6	1	0.1
Rhode Island	131	62	47.3	0	0.0	0	0.0	1	0.8	0	0.0
SECOND CIRCUIT	4,655	2,023	43.5	7	0.2	3	0.1	17	0.4	1	0.0
Connecticut	406	157	38.7	3	0.7	0	0.0	1	0.2	0	0.0
New York											
Eastern	1,207	422	35.0	1	0.1	1	0.1	6	0.5	0	0.0
Northern	501	318	63.5	0	0.0	0	0.0	1	0.2	0	0.0
Southern	1,631	694	42.6	1	0.1	1	0.1	3	0.2	1	0.1
Western	715	372	52.0	2	0.3	1	0.1	5	0.7	0	0.0
Vermont	195	60	30.8	0	0.0	0	0.0	1	0.5	0	0.0
THIRD CIRCUIT	3,065	1,409	46.0	7	0.2	5	0.2	21	0.7	2	0.1
Delaware	158	65	41.1	0	0.0	0	0.0	2	1.3	0	0.0
New Jersey	886	411	46.4	1	0.1	1	0.1	3	0.3	0	0.0
Pennsylvania											
Eastern	862	327	37.9	4	0.5	1	0.1	7	0.8	1	0.1
Middle	629	280	44.5	2	0.3	3	0.5	3	0.5	1	0.2
Western	460	278	60.4	0	0.0	0	0.0	1	0.2	0	0.0
Virgin Islands	70	48	68.6	0	0.0	0	0.0	5	7.1	0	0.0
FOURTH CIRCUIT	6,467	4,059	62.8	49	0.8	22	0.3	64	1.0	16	0.2
Maryland	714	332	46.5	4	0.6	4	0.6	6	0.8	4	0.6
North Carolina											
Eastern	640	360	56.3	11	1.7	3	0.5	7	1.1	1	0.2
Middle	430	303	70.5	2	0.5	0	0.0	2	0.5	0	0.0
Western	529	285	53.9	3	0.6	1	0.2	5	0.9	1	0.2
South Carolina	1,135	733	64.6	12	1.1	3	0.3	2	0.2	3	0.3
Virginia											
Eastern	1,837	1,361	74.1	13	0.7	10	0.5	17	0.9	6	0.3
Western	498	265	53.2	3	0.6	1	0.2	13	2.6	0	0.0
West Virginia											
Northern	400	249	62.3	0	0.0	0	0.0	4	1.0	0	0.0
Southern	284	171	60.2	1	0.4	0	0.0	8	2.8	1	0.4

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	%
TOTAL	9,855	12.5	7,242	9.1	2,914	3.7	1,542	1.9	861	1.1	9,358	11.8	894	1.1
D.C. CIRCUIT	94	25.2	0	0.0	54	14.5	3	0.8	10	2.7	48	12.9	13	3.5
District of Columbia	94	25.2	0	0.0	54	14.5	3	0.8	10	2.7	48	12.9	13	3.5
FIRST CIRCUIT	209	11.8	35	2.0	118	6.7	33	1.9	37	2.1	339	19.1	32	1.8
Maine	60	26.4	0	0.0	1	0.4	4	1.8	1	0.4	38	16.7	1	0.4
Massachusetts	43	8.3	0	0.0	64	12.4	20	3.9	17	3.3	173	33.5	7	1.4
New Hampshire	51	24.9	0	0.0	23	11.2	1	0.5	0	0.0	34	16.6	1	0.5
Puerto Rico	43	6.2	35	5.0	26	3.7	7	1.0	19	2.7	43	6.2	23	3.3
Rhode Island	12	9.2	0	0.0	4	3.1	1	0.8	0	0.0	51	38.9	0	0.0
SECOND CIRCUIT	954	20.5	1	0.0	164	3.5	121	2.6	129	2.8	1,159	24.9	76	1.6
Connecticut	78	19.2	0	0.0	14	3.4	19	4.7	26	6.4	105	25.9	3	0.7
New York														
Eastern	314	26.0	1	0.1	61	5.1	34	2.8	36	3.0	303	25.1	28	2.3
Northern	79	15.8	0	0.0	11	2.2	17	3.4	6	1.2	66	13.2	3	0.6
Southern	232	14.2	0	0.0	39	2.4	36	2.2	39	2.4	552	33.8	33	2.0
Western	201	28.1	0	0.0	26	3.6	2	0.3	3	0.4	95	13.3	8	1.1
Vermont	50	25.6	0	0.0	13	6.7	13	6.7	19	9.7	38	19.5	1	0.5
THIRD CIRCUIT	784	25.6	0	0.0	97	3.2	39	1.3	54	1.8	608	19.8	39	1.3
Delaware	19	12.0	0	0.0	5	3.2	0	0.0	2	1.3	65	41.1	0	0.0
New Jersey	257	29.0	0	0.0	17	1.9	12	1.4	3	0.3	165	18.6	16	1.8
Pennsylvania														
Eastern	277	32.1	0	0.0	18	2.1	9	1.0	17	2.0	189	21.9	12	1.4
Middle	176	28.0	0	0.0	50	7.9	8	1.3	4	0.6	96	15.3	6	1.0
Western	49	10.7	0	0.0	7	1.5	10	2.2	24	5.2	88	19.1	3	0.7
Virgin Islands	6	8.6	0	0.0	0	0.0	0	0.0	4	5.7	5	7.1	2	2.9
FOURTH CIRCUIT	1,064	16.5	0	0.0	174	2.7	97	1.5	40	0.6	822	12.7	60	0.9
Maryland	176	24.6	0	0.0	48	6.7	12	1.7	15	2.1	97	13.6	16	2.2
North Carolina														
Eastern	209	32.7	0	0.0	3	0.5	4	0.6	0	0.0	37	5.8	5	0.8
Middle	78	18.1	0	0.0	1	0.2	1	0.2	2	0.5	40	9.3	1	0.2
Western	167	31.6	0	0.0	4	0.8	8	1.5	4	0.8	45	8.5	6	1.1
South Carolina	200	17.6	0	0.0	34	3.0	17	1.5	2	0.2	121	10.7	8	0.7
Virginia														
Eastern	71	3.9	0	0.0	26	1.4	32	1.7	13	0.7	266	14.5	22	1.2
Western	113	22.7	0	0.0	9	1.8	17	3.4	1	0.2	75	15.1	1	0.2
West Virginia														
Northern	30	7.5	0	0.0	47	11.8	3	0.8	0	0.0	66	16.5	1	0.3
Southern	20	7.0	0	0.0	2	0.7	3	1.1	3	1.1	75	26.4	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	%
FIFTH CIRCUIT	19,314	13,843	71.7	109	0.6	37	0.2	286	1.5	28	0.1
Louisiana											
Eastern	439	299	68.1	4	0.9	4	0.9	8	1.8	1	0.2
Middle	176	106	60.2	4	2.3	3	1.7	4	2.3	0	0.0
Western	345	271	78.6	5	1.4	3	0.9	13	3.8	2	0.6
Mississippi											
Northern	135	74	54.8	0	0.0	0	0.0	2	1.5	0	0.0
Southern	327	264	80.7	3	0.9	0	0.0	5	1.5	1	0.3
Texas											
Eastern	924	706	76.4	9	1.0	0	0.0	7	0.8	0	0.0
Northern	1,007	656	65.1	23	2.3	11	1.1	35	3.5	0	0.0
Southern	7,595	4,843	63.8	46	0.6	10	0.1	64	0.8	5	0.1
Western	8,366	6,624	79.2	15	0.2	6	0.1	148	1.8	19	0.2
SIXTH CIRCUIT	5,183	2,641	51.0	29	0.6	14	0.3	60	1.2	9	0.2
Kentucky											
Eastern	702	341	48.6	2	0.3	1	0.1	13	1.9	1	0.1
Western	418	278	66.5	1	0.2	0	0.0	3	0.7	0	0.0
Michigan											
Eastern	715	361	50.5	4	0.6	0	0.0	3	0.4	2	0.3
Western	481	294	61.1	6	1.2	4	0.8	13	2.7	1	0.2
Ohio											
Northern	671	338	50.4	2	0.3	0	0.0	5	0.7	1	0.1
Southern	618	206	33.3	5	0.8	5	0.8	6	1.0	2	0.3
Tennessee											
Eastern	648	375	57.9	4	0.6	0	0.0	4	0.6	2	0.3
Middle	304	133	43.8	2	0.7	2	0.7	5	1.6	0	0.0
Western	626	315	50.3	3	0.5	2	0.3	8	1.3	0	0.0
SEVENTH CIRCUIT	2,913	1,532	52.6	8	0.3	9	0.3	63	2.2	3	0.1
Illinois											
Central	349	179	51.3	0	0.0	0	0.0	2	0.6	0	0.0
Northern	908	410	45.2	1	0.1	3	0.3	15	1.7	2	0.2
Southern	314	228	72.6	2	0.6	5	1.6	5	1.6	0	0.0
Indiana											
Northern	452	290	64.2	0	0.0	1	0.2	10	2.2	0	0.0
Southern	232	135	58.2	4	1.7	0	0.0	10	4.3	0	0.0
Wisconsin											
Eastern	467	177	37.9	1	0.2	0	0.0	17	3.6	1	0.2
Western	191	113	59.2	0	0.0	0	0.0	4	2.1	0	0.0
EIGHTH CIRCUIT	5,424	3,096	57.1	31	0.6	16	0.3	55	1.0	9	0.2
Arkansas											
Eastern	414	262	63.3	2	0.5	3	0.7	9	2.2	2	0.5
Western	254	194	76.4	0	0.0	0	0.0	3	1.2	0	0.0
Iowa											
Northern	349	180	51.6	12	3.4	1	0.3	4	1.1	3	0.9
Southern	469	243	51.8	0	0.0	0	0.0	10	2.1	0	0.0
Minnesota	624	200	32.1	1	0.2	0	0.0	1	0.2	1	0.2
Missouri											
Eastern	1,048	608	58.0	1	0.1	0	0.0	7	0.7	0	0.0
Western	827	489	59.1	2	0.2	2	0.2	9	1.1	1	0.1
Nebraska	650	401	61.7	7	1.1	1	0.2	3	0.5	2	0.3
North Dakota	277	160	57.8	0	0.0	1	0.4	2	0.7	0	0.0
South Dakota	512	359	70.1	6	1.2	8	1.6	7	1.4	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	%
FIFTH CIRCUIT	1,351	7.0	1,252	6.5	446	2.3	531	2.7	47	0.2	1,215	6.3	169	0.9
Louisiana														
Eastern	54	12.3	0	0.0	19	4.3	16	3.6	1	0.2	28	6.4	5	1.1
Middle	44	25.0	0	0.0	0	0.0	0	0.0	2	1.1	13	7.4	0	0.0
Western	12	3.5	0	0.0	2	0.6	2	0.6	3	0.9	27	7.8	5	1.4
Mississippi														
Northern	38	28.1	0	0.0	7	5.2	1	0.7	0	0.0	11	8.1	2	1.5
Southern	18	5.5	0	0.0	1	0.3	4	1.2	0	0.0	25	7.6	6	1.8
Texas														
Eastern	67	7.3	0	0.0	57	6.2	16	1.7	6	0.6	49	5.3	7	0.8
Northern	146	14.5	0	0.0	11	1.1	4	0.4	5	0.5	109	10.8	7	0.7
Southern	444	5.8	1,107	14.6	230	3.0	336	4.4	10	0.1	477	6.3	23	0.3
Western	528	6.3	145	1.7	119	1.4	152	1.8	20	0.2	476	5.7	114	1.4
SIXTH CIRCUIT	1,260	24.3	0	0.0	149	2.9	83	1.6	105	2.0	769	14.8	64	1.2
Kentucky														
Eastern	264	37.6	0	0.0	7	1.0	4	0.6	1	0.1	64	9.1	4	0.6
Western	61	14.6	0	0.0	24	5.7	5	1.2	4	1.0	36	8.6	6	1.4
Michigan														
Eastern	142	19.9	0	0.0	21	2.9	15	2.1	10	1.4	150	21.0	7	1.0
Western	62	12.9	0	0.0	8	1.7	6	1.2	12	2.5	72	15.0	3	0.6
Ohio														
Northern	158	23.5	0	0.0	15	2.2	12	1.8	12	1.8	113	16.8	15	2.2
Southern	190	30.7	0	0.0	37	6.0	22	3.6	40	6.5	95	15.4	10	1.6
Tennessee														
Eastern	182	28.1	0	0.0	3	0.5	7	1.1	3	0.5	62	9.6	6	0.9
Middle	62	20.4	0	0.0	10	3.3	6	2.0	18	5.9	64	21.1	2	0.7
Western	139	22.2	0	0.0	24	3.8	6	1.0	5	0.8	113	18.1	11	1.8
SEVENTH CIRCUIT	485	16.6	0	0.0	97	3.3	47	1.6	105	3.6	509	17.5	55	1.9
Illinois														
Central	91	26.1	0	0.0	11	3.2	3	0.9	4	1.1	57	16.3	2	0.6
Northern	142	15.6	0	0.0	17	1.9	30	3.3	81	8.9	184	20.3	23	2.5
Southern	29	9.2	0	0.0	7	2.2	3	1.0	10	3.2	19	6.1	6	1.9
Indiana														
Northern	76	16.8	0	0.0	11	2.4	7	1.5	7	1.5	40	8.8	10	2.2
Southern	31	13.4	0	0.0	11	4.7	2	0.9	0	0.0	38	16.4	1	0.4
Wisconsin														
Eastern	91	19.5	0	0.0	39	8.4	1	0.2	2	0.4	125	26.8	13	2.8
Western	25	13.1	0	0.0	1	0.5	1	0.5	1	0.5	46	24.1	0	0.0
EIGHTH CIRCUIT	849	15.7	28	0.5	169	3.1	85	1.6	60	1.1	970	17.9	56	1.0
Arkansas														
Eastern	49	11.8	0	0.0	15	3.6	7	1.7	7	1.7	54	13.0	4	1.0
Western	33	13.0	0	0.0	1	0.4	4	1.6	0	0.0	17	6.7	2	0.8
Iowa														
Northern	69	19.8	0	0.0	5	1.4	1	0.3	0	0.0	74	21.2	0	0.0
Southern	81	17.3	0	0.0	13	2.8	3	0.6	3	0.6	110	23.5	6	1.3
Minnesota	193	30.9	0	0.0	10	1.6	18	2.9	14	2.2	176	28.2	10	1.6
Missouri														
Eastern	145	13.8	0	0.0	42	4.0	21	2.0	16	1.5	192	18.3	16	1.5
Western	178	21.5	0	0.0	25	3.0	1	0.1	3	0.4	106	12.8	11	1.3
Nebraska	17	2.6	28	4.3	37	5.7	7	1.1	5	0.8	137	21.1	5	0.8
North Dakota	63	22.7	0	0.0	6	2.2	6	2.2	3	1.1	35	12.6	1	0.4
South Dakota	21	4.1	0	0.0	15	2.9	17	3.3	9	1.8	69	13.5	1	0.2

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	%
NINTH CIRCUIT	16,161	6,463	40.0	94	0.6	29	0.2	113	0.7	34	0.2
Alaska	182	90	49.5	1	0.5	2	1.1	1	0.5	0	0.0
Arizona	3,811	1,061	27.8	53	1.4	4	0.1	15	0.4	8	0.2
California											
Central	1,920	620	32.3	8	0.4	8	0.4	19	1.0	6	0.3
Eastern	1,031	454	44.0	3	0.3	0	0.0	7	0.7	1	0.1
Northern	888	459	51.7	2	0.2	6	0.7	17	1.9	3	0.3
Southern	4,825	2,006	41.6	13	0.3	2	0.0	10	0.2	12	0.2
Guam	60	41	68.3	0	0.0	1	1.7	1	1.7	0	0.0
Hawaii	301	142	47.2	0	0.0	0	0.0	3	1.0	0	0.0
Idaho	332	153	46.1	2	0.6	1	0.3	3	0.9	1	0.3
Montana	401	284	70.8	1	0.2	3	0.7	8	2.0	2	0.5
Nevada	406	269	66.3	1	0.2	0	0.0	4	1.0	0	0.0
Northern Mariana Islands	26	24	92.3	0	0.0	0	0.0	0	0.0	0	0.0
Oregon	625	281	45.0	2	0.3	0	0.0	3	0.5	1	0.2
Washington											
Eastern	429	183	42.7	5	1.2	2	0.5	16	3.7	0	0.0
Western	924	396	42.9	3	0.3	0	0.0	6	0.6	0	0.0
TENTH CIRCUIT	6,727	4,182	62.2	25	0.4	2	0.0	46	0.7	2	0.0
Colorado	517	285	55.1	1	0.2	1	0.2	6	1.2	0	0.0
Kansas	724	411	56.8	4	0.6	0	0.0	21	2.9	0	0.0
New Mexico	3,425	2,190	63.9	10	0.3	0	0.0	2	0.1	1	0.0
Oklahoma											
Eastern	98	63	64.3	2	2.0	0	0.0	1	1.0	0	0.0
Northern	218	153	70.2	0	0.0	0	0.0	0	0.0	0	0.0
Western	483	384	79.5	0	0.0	0	0.0	9	1.9	1	0.2
Utah	833	439	52.7	4	0.5	0	0.0	3	0.4	0	0.0
Wyoming	429	257	59.9	4	0.9	1	0.2	4	0.9	0	0.0
ELEVENTH CIRCUIT	7,098	4,654	65.6	13	0.2	13	0.2	99	1.4	14	0.2
Alabama											
Middle	235	134	57.0	1	0.4	1	0.4	6	2.6	0	0.0
Northern	478	290	60.7	0	0.0	0	0.0	9	1.9	0	0.0
Southern	429	268	62.5	0	0.0	0	0.0	0	0.0	0	0.0
Florida											
Middle	1,634	943	57.7	5	0.3	1	0.1	18	1.1	3	0.2
Northern	397	270	68.0	1	0.3	1	0.3	6	1.5	0	0.0
Southern	2,291	1,604	70.0	2	0.1	6	0.3	26	1.1	7	0.3
Georgia											
Middle	309	236	76.4	1	0.3	1	0.3	6	1.9	1	0.3
Northern	767	473	61.7	0	0.0	3	0.4	7	0.9	3	0.4
Southern	558	436	78.1	3	0.5	0	0.0	21	3.8	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	%
NINTH CIRCUIT	1,268	7.8	5,227	32.3	819	5.1	317	2.0	168	1.0	1,386	8.6	243	1.5
Alaska	25	13.7	0	0.0	17	9.3	1	0.5	20	11.0	15	8.2	10	5.5
Arizona	182	4.8	2,094	54.9	99	2.6	52	1.4	27	0.7	183	4.8	33	0.9
California														
Central	215	11.2	477	24.8	122	6.4	62	3.2	43	2.2	267	13.9	73	3.8
Eastern	125	12.1	290	28.1	37	3.6	15	1.5	7	0.7	86	8.3	6	0.6
Northern	55	6.2	117	13.2	104	11.7	10	1.1	13	1.5	88	9.9	14	1.6
Southern	186	3.9	2,049	42.5	93	1.9	133	2.8	28	0.6	216	4.5	77	1.6
Guam	10	16.7	0	0.0	1	1.7	0	0.0	1	1.7	5	8.3	0	0.0
Hawaii	102	33.9	0	0.0	0	0.0	1	0.3	0	0.0	50	16.6	3	1.0
Idaho	67	20.2	38	11.4	10	3.0	4	1.2	4	1.2	42	12.7	7	2.1
Montana	39	9.7	0	0.0	3	0.7	6	1.5	3	0.7	49	12.2	3	0.7
Nevada	25	6.2	0	0.0	24	5.9	3	0.7	1	0.2	70	17.2	9	2.2
Northern Mariana Islands	2	7.7	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Oregon	108	17.3	41	6.6	79	12.6	8	1.3	4	0.6	93	14.9	5	0.8
Washington														
Eastern	24	5.6	79	18.4	31	7.2	8	1.9	3	0.7	78	18.2	0	0.0
Western	103	11.1	42	4.5	199	21.5	14	1.5	14	1.5	144	15.6	3	0.3
TENTH CIRCUIT	488	7.3	679	10.1	555	8.3	128	1.9	44	0.7	549	8.2	27	0.4
Colorado	98	19.0	0	0.0	18	3.5	17	3.3	3	0.6	84	16.2	4	0.8
Kansas	142	19.6	0	0.0	73	10.1	1	0.1	2	0.3	69	9.5	1	0.1
New Mexico	65	1.9	506	14.8	396	11.6	79	2.3	15	0.4	153	4.5	8	0.2
Oklahoma														
Eastern	13	13.3	0	0.0	1	1.0	2	2.0	1	1.0	14	14.3	1	1.0
Northern	40	18.3	0	0.0	1	0.5	0	0.0	1	0.5	23	10.6	0	0.0
Western	31	6.4	0	0.0	3	0.6	0	0.0	2	0.4	52	10.8	1	0.2
Utah	45	5.4	167	20.0	38	4.6	22	2.6	4	0.5	102	12.2	9	1.1
Wyoming	54	12.6	6	1.4	25	5.8	7	1.6	16	3.7	52	12.1	3	0.7
ELEVENTH CIRCUIT	1,049	14.8	20	0.3	72	1.0	58	0.8	62	0.9	984	13.9	60	0.8
Alabama														
Middle	62	26.4	0	0.0	2	0.9	0	0.0	1	0.4	25	10.6	3	1.3
Northern	107	22.4	0	0.0	1	0.2	1	0.2	2	0.4	64	13.4	4	0.8
Southern	102	23.8	0	0.0	0	0.0	2	0.5	2	0.5	54	12.6	1	0.2
Florida														
Middle	319	19.5	19	1.2	14	0.9	25	1.5	18	1.1	255	15.6	14	0.9
Northern	85	21.4	0	0.0	0	0.0	0	0.0	1	0.3	30	7.6	3	0.8
Southern	188	8.2	0	0.0	28	1.2	10	0.4	19	0.8	377	16.5	24	1.0
Georgia														
Middle	32	10.4	0	0.0	3	1.0	1	0.3	1	0.3	26	8.4	1	0.3
Northern	114	14.9	1	0.1	18	2.3	14	1.8	17	2.2	109	14.2	8	1.0
Southern	40	7.2	0	0.0	6	1.1	5	0.9	1	0.2	44	7.9	2	0.4

Of the 81,372 cases, 2,219 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 or more of the cases received included: Middle Georgia (27.0%), Arizona (20.3%), Eastern Virginia (13.2%), Maryland (10.9%), Southern Mississippi (8.7%), Northern New York (8.4%), Southern Florida (5.3%), and Middle Tennessee (5.0%).

SOURCE: U.S. Sentencing Commission, 2009 Datafile, OPAFY09.

Table 10

**GUIDELINE DEPARTURE RATE BY PRIMARY OFFENSE CATEGORY
Fiscal Year 2009**

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	%
TOTAL	79,153	44,991	56.8	382	0.5	151	0.2	842	1.1	121	0.2
Robbery	1,006	598	59.4	14	1.4	3	0.3	26	2.6	3	0.3
Drugs - Trafficking	23,899	11,087	46.4	56	0.2	15	0.1	93	0.4	24	0.1
Drugs - Simple Possession	530	477	90.0	3	0.6	1	0.2	13	2.5	3	0.6
Firearms	8,225	5,064	61.6	76	0.9	38	0.5	135	1.6	22	0.3
Larceny	1,510	1,128	74.7	6	0.4	2	0.1	10	0.7	5	0.3
Fraud	7,016	4,107	58.5	39	0.6	15	0.2	109	1.6	14	0.2
Embezzlement	466	316	67.8	0	0.0	1	0.2	4	0.9	0	0.0
Forgery/Counterfeiting	882	600	68.0	8	0.9	2	0.2	13	1.5	5	0.6
Immigration	25,385	15,860	62.5	106	0.4	37	0.1	278	1.1	26	0.1
Other Miscellaneous Offenses	10,234	5,754	56.2	74	0.7	37	0.4	161	1.6	19	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	%
TOTAL	715	372	52.0	2	0.3	1	0.1	5	0.7	0	0.0
Robbery	3	1	33.3	0	0.0	0	0.0	0	0.0	0	0.0
Drugs - Trafficking	216	55	25.5	0	0.0	1	0.5	1	0.5	0	0.0
Drugs - Simple Possession	17	17	100.0	0	0.0	0	0.0	0	0.0	0	0.0
Firearms	68	33	48.5	0	0.0	0	0.0	1	1.5	0	0.0
Larceny	18	15	83.3	0	0.0	0	0.0	0	0.0	0	0.0
Fraud	86	53	61.6	1	1.2	0	0.0	0	0.0	0	0.0
Embezzlement	4	2	50.0	0	0.0	0	0.0	0	0.0	0	0.0
Forgery/Counterfeiting	7	2	28.6	0	0.0	0	0.0	0	0.0	0	0.0
Immigration	137	114	83.2	1	0.7	0	0.0	1	0.7	0	0.0
Other Miscellaneous Offenses	159	80	50.3	0	0.0	0	0.0	2	1.3	0	0.0

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	%
TOTAL	9,855	12.5	7,242	9.1	2,914	3.7	1,542	1.9	861	1.1	9,358	11.8	894	1.1
Robbery	113	11.2	1	0.1	34	3.4	24	2.4	26	2.6	159	15.8	5	0.5
Drugs - Trafficking	6,192	25.9	1,438	6.0	867	3.6	409	1.7	297	1.2	3,223	13.5	198	0.8
Drugs - Simple Possession	10	1.9	0	0.0	4	0.8	5	0.9	0	0.0	9	1.7	5	0.9
Firearms	955	11.6	17	0.2	299	3.6	155	1.9	101	1.2	1,272	15.5	91	1.1
Larceny	88	5.8	1	0.1	35	2.3	19	1.3	15	1.0	165	10.9	36	2.4
Fraud	1,050	15.0	8	0.1	231	3.3	107	1.5	92	1.3	1,118	15.9	126	1.8
Embezzlement	14	3.0	0	0.0	11	2.4	9	1.9	10	2.1	88	18.9	13	2.8
Forgery/Counterfeiting	101	11.5	1	0.1	15	1.7	9	1.0	11	1.2	105	11.9	12	1.4
Immigration	317	1.2	5,753	22.7	713	2.8	591	2.3	126	0.5	1,336	5.3	242	1.0
Other Miscellaneous Offenses	1,015	9.9	23	0.2	705	6.9	214	2.1	183	1.8	1,883	18.4	166	1.6

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	%
TOTAL	201	28.1	0	0.0	26	3.6	2	0.3	3	0.4	95	13.3	8	1.1
Robbery	1	33.3	0	0.0	0	0.0	0	0.0	0	0.0	1	33.3	0	0.0
Drugs - Trafficking	126	58.3	0	0.0	5	2.3	1	0.5	1	0.5	24	11.1	2	0.9
Drugs - Simple Possession	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Firearms	16	23.5	0	0.0	5	7.4	0	0.0	0	0.0	13	19.1	0	0.0
Larceny	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	3	16.7	0	0.0
Fraud	8	9.3	0	0.0	1	1.2	1	1.2	1	1.2	20	23.3	1	1.2
Embezzlement	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	2	50.0	0	0.0
Forgery/Counterfeiting	3	42.9	0	0.0	1	14.3	0	0.0	0	0.0	1	14.3	0	0.0
Immigration	7	5.1	0	0.0	4	2.9	0	0.0	0	0.0	8	5.8	2	1.5
Other Miscellaneous Offenses	40	25.2	0	0.0	10	6.3	0	0.0	1	0.6	23	14.5	3	1.9

Of the 81,372 guideline cases, 2,219 cases were excluded due to missing information from the submitted documents that prevented the comparison of the sentence and the guideline range.

Of the 715 guideline cases from the Western District of New York, no case was excluded.

SOURCE: U.S. Sentencing Commission, 2009 Datafile, OPAFY09.