

**U.S. Sentencing Commission
Post-*Kimbrough*/*Gall* Data Report**



Fiscal Year 2008

Introduction

As part of its ongoing mission, the United States Sentencing Commission provides Congress, the judiciary, the executive branch, and the general public with data extracted and analyzed from sentencing documents submitted by courts to the Commission.¹ Data is reported on an annual basis in the Commission's *Annual Report* and *Sourcebook of Federal Sentencing Statistics*.²

The Commission also reports preliminary data for an on-going fiscal year in order to provide real-time analysis of sentencing practices in the federal courts. Since 2005, the Commission has published a series of Quarterly Reports that are similar in format and methodology to tables and figures produced in the *Sourcebook of Federal Sentencing Statistics* or in the Commission's *Final Report on the Impact of the United States v. Booker on Federal Sentencing*.³ The Quarterly Reports contain cumulative data for the on-going fiscal year (i.e., data from the start of the fiscal year through the most current quarter).

This report is another in the Commission's efforts to provide analysis of federal sentencing practices. This report relates to the period beginning on the date of the United States Supreme Court decision in *Kimbrough v. United States*, 552 U.S. ___, 128 S.Ct. 558 (2007) and *Gall v. United States*, 552 U.S. ___, 128 S.Ct. 586 (2007) and afterward. This version of the report contains data from cases in which the offender was sentenced between December 10, 2007 and September 30, 2008, and which were received, coded, and edited at the U.S. Sentencing Commission by February 10, 2009. This data is compared to data from cases in which the offender was sentenced on or after the date of the United States Supreme Court decision in *United States v. Booker*, 543 U.S. 220 (2005) through December 9, 2007.

¹ In each felony or Class A misdemeanor case sentenced in federal court, sentencing courts are required to submit the following documents to the Commission: the Judgment and Commitment Order, the Statement of Reasons, the plea agreement (if applicable), the indictment or other charging document, and the presentence report. See 28 U.S.C. § 994(w).

² See the Commission's website, www.ussc.gov, for electronic copies of the 1995-2008 *Annual Report* and *Sourcebook of Federal Sentencing Statistics*.

³ See www.ussc.gov/bf.htm for an electronic copy of the Commission's *Final Report on the Impact of United States v. Booker on Federal Sentencing*.

Table 1

**COMPARISON OF SENTENCE IMPOSED AND POSITION
RELATIVE TO THE GUIDELINE RANGE¹
Fiscal Year 2005, Post-Booker - 2008, Kimbrough/Gall Data**

	<i>Post-Booker</i>		<i>Post-Kimbrough/Gall</i>	
	N	%	N	%
TOTAL CASES	205,602	100.0	60,317	100.0
CASES SENTENCED WITHIN GUIDELINE RANGE	125,965	61.3	35,732	59.2
CASES SENTENCED ABOVE GUIDELINE RANGE	3,224	1.6	981	1.6
DEPARTURE ABOVE GUIDELINE RANGE	1,286	0.6	379	0.6
Upward Departure From Guideline Range ²	897	0.4	265	0.4
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	389	0.2	114	0.2
OTHERWISE ABOVE GUIDELINE RANGE	1,938	1.0	602	1.0
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	1,389	0.7	522	0.9
All Remaining Cases Above Guideline Range ⁵	549	0.3	80	0.1
GOVERNMENT SPONSORED BELOW RANGE⁶	51,162	24.8	15,254	25.3
§5K1.1 Substantial Assistance Departure	29,695	14.4	8,065	13.4
§5K3.1 Early Disposition Program Departure	14,808	7.2	4,693	7.8
Other Government Sponsored Below Range	6,659	3.2	2,496	4.1
NON-GOVERNMENT SPONSORED BELOW RANGE	25,251	12.2	8,350	13.8
DEPARTURE BELOW GUIDELINE RANGE	8,276	4.0	1,972	3.2
Downward Departure From Guideline Range ²	5,177	2.5	1,224	2.0
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	3,099	1.5	748	1.2
OTHERWISE BELOW GUIDELINE RANGE	16,975	8.2	6,378	10.6
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	13,395	6.5	5,682	9.4
All Remaining Cases Below Guideline Range ⁵	3,580	1.7	696	1.2

¹The cases in this table described as *Post-Kimbrough/Gall* reflect the 61,898 cases sentenced subsequent to the date of *Kimbrough v. United States* and *Gall v. United States* (December 10, 2007), through September 30, 2008 with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by February 10, 2009. Of these, 1,581 cases were excluded because information was missing from the submitted document that prevented the comparison of the sentence and the guideline range. The cases in this table described as *Post-Booker* reflect the 213,704 cases sentenced after the date of *United States v. Booker* (January 12, 2005) through December 9, 2007. Of these, 8,102 cases were excluded for the above reason. Descriptions of variables used in this table are provided in Appendix A.

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.

Table 1-DC

**DC CIRCUIT COMPARISON OF SENTENCE IMPOSED AND
POSITION RELATIVE TO THE GUIDELINE RANGE¹
Fiscal Year 2005, Post-Booker - 2008, Kimbrough/Gall Data**

	<i>Post-Booker</i>		<i>Post-Kimbrough/Gall</i>	
	N	%	N	%
TOTAL CASES	1,364	100.0	324	100.0
CASES SENTENCED WITHIN GUIDELINE RANGE	655	48.0	123	38.0
CASES SENTENCED ABOVE GUIDELINE RANGE	30	2.2	2	0.6
DEPARTURE ABOVE GUIDELINE RANGE	11	0.8	1	0.3
Upward Departure From Guideline Range ²	7	0.5	1	0.3
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	4	0.3	0	0.0
OTHERWISE ABOVE GUIDELINE RANGE	19	1.4	1	0.3
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	12	0.9	1	0.3
All Remaining Cases Above Guideline Range ⁵	7	0.5	0	0.0
GOVERNMENT SPONSORED BELOW RANGE⁶	487	35.7	140	43.2
§5K1.1 Substantial Assistance Departure	365	26.8	114	35.2
§5K3.1 Early Disposition Program Departure	0	0.0	0	0.0
Other Government Sponsored Below Range	122	8.9	26	8.0
NON-GOVERNMENT SPONSORED BELOW RANGE	192	14.1	59	18.3
DEPARTURE BELOW GUIDELINE RANGE	57	4.2	27	8.4
Downward Departure From Guideline Range ²	18	1.3	7	2.2
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	39	2.9	20	6.2
OTHERWISE BELOW GUIDELINE RANGE	135	9.9	32	9.9
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	104	7.6	25	7.7
All Remaining Cases Below Guideline Range ⁵	31	2.3	7	2.2

¹The cases in this table described as *Post-Kimbrough/Gall* reflect the 326 cases sentenced in the D.C. Circuit subsequent to the date of *Kimbrough v. United States* and *Gall v. United States* (December 10, 2007), through September 30, 2008 with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by February 10, 2009. Of these, two cases were excluded because information was missing from the submitted documents that prevented the comparison of the sentence and the guideline range. The cases in this table described as *Post-Booker* reflect the 1,379 cases sentenced in the D.C. Circuit after the date of *United States v. Booker* (January 12, 2005) through December 9, 2007. Of these, 15 cases were excluded for the above reason. Descriptions of variables used in this table are provided in Appendix A.

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, 2005 - 2008 Datafiles, USSCFY05 - USSCFY08.

Table 1-1

**FIRST CIRCUIT COMPARISON OF SENTENCE IMPOSED AND
POSITION RELATIVE TO THE GUIDELINE RANGE¹
Fiscal Year 2005, Post-Booker - 2008, Kimbrough/Gall Data**

	<i>Post-Booker</i>		<i>Post-Kimbrough/Gall</i>	
	N	%	N	%
TOTAL CASES	4,984	100.0	1,421	100.0
CASES SENTENCED WITHIN GUIDELINE RANGE	3,342	67.1	876	61.6
CASES SENTENCED ABOVE GUIDELINE RANGE	80	1.6	23	1.6
DEPARTURE ABOVE GUIDELINE RANGE	27	0.6	13	0.9
Upward Departure From Guideline Range ²	19	0.4	7	0.5
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	8	0.2	6	0.4
OTHERWISE ABOVE GUIDELINE RANGE	53	1.0	10	0.7
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	41	0.8	7	0.5
All Remaining Cases Above Guideline Range ⁵	12	0.2	3	0.2
GOVERNMENT SPONSORED BELOW RANGE⁶	716	14.3	237	16.7
§5K1.1 Substantial Assistance Departure	585	11.7	155	10.9
§5K3.1 Early Disposition Program Departure	0	0.0	17	1.2
Other Government Sponsored Below Range	131	2.6	65	4.6
NON-GOVERNMENT SPONSORED BELOW RANGE	846	17.0	285	20.0
DEPARTURE BELOW GUIDELINE RANGE	263	5.3	67	4.7
Downward Departure From Guideline Range ²	183	3.7	38	2.7
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	80	1.6	29	2.0
OTHERWISE BELOW GUIDELINE RANGE	583	11.7	218	15.3
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	464	9.3	196	13.8
All Remaining Cases Below Guideline Range ⁵	119	2.4	22	1.5

¹The cases in this table described as *Post-Kimbrough/Gall* reflect the 1,434 cases sentenced in the First Circuit subsequent to the date of *Kimbrough v. United States* and *Gall v. United States* (December 10, 2007), through September 30, 2008 with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by February 10, 2009. Of these, 13 cases were excluded because information was missing from the submitted documents that prevented the comparison of the sentence and the guideline range. The cases in this table described as *Post-Booker* reflect the 5,041 cases sentenced in the First Circuit after the date of *United States v. Booker* (January 12, 2005) through December 9, 2007. Of these, 57 cases were excluded for the above reason. Descriptions of variables used in this table are provided in Appendix A.

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, 2005 - 2008 Datafiles, USSCFY05 - USSCFY08.

Table 1-2

**SECOND CIRCUIT COMPARISON OF SENTENCE IMPOSED AND
POSITION RELATIVE TO THE GUIDELINE RANGE¹
Fiscal Year 2005, Post-Booker - 2008, Kimbrough/Gall Data**

	<i>Post-Booker</i>		<i>Post-Kimbrough/Gall</i>	
	N	%	N	%
TOTAL CASES	13,281	100.0	3,615	100.0
CASES SENTENCED WITHIN GUIDELINE RANGE	6,690	50.4	1,634	45.2
CASES SENTENCED ABOVE GUIDELINE RANGE	129	0.9	24	0.7
DEPARTURE ABOVE GUIDELINE RANGE	57	0.4	7	0.2
Upward Departure From Guideline Range ²	39	0.3	5	0.1
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	18	0.1	2	0.1
OTHERWISE ABOVE GUIDELINE RANGE	72	0.5	17	0.5
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	42	0.3	13	0.4
All Remaining Cases Above Guideline Range ⁵	30	0.2	4	0.1
GOVERNMENT SPONSORED BELOW RANGE⁶	3,226	24.3	904	25.0
§5K1.1 Substantial Assistance Departure	2,881	21.7	760	21.0
§5K3.1 Early Disposition Program Departure	3	0.0	0	0.0
Other Government Sponsored Below Range	342	2.6	144	4.0
NON-GOVERNMENT SPONSORED BELOW RANGE	3,236	24.3	1,053	29.2
DEPARTURE BELOW GUIDELINE RANGE	1,197	9.0	247	6.9
Downward Departure From Guideline Range ²	680	5.1	132	3.7
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	517	3.9	115	3.2
OTHERWISE BELOW GUIDELINE RANGE	2,039	15.3	806	22.3
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	1,595	12.0	763	21.1
All Remaining Cases Below Guideline Range ⁵	444	3.3	43	1.2

¹The cases in this table described as *Post-Kimbrough/Gall* reflect the 3,662 cases sentenced in the Second Circuit subsequent to the date of *Kimbrough v. United States* and *Gall v. United States* (December 10, 2007), through September 30, 2008 with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by February 10, 2009. Of these, 47 cases were excluded because information was missing from the submitted documents that prevented the comparison of the sentence and the guideline range. The cases in this table described as *Post-Booker* reflect the 13,479 cases sentenced in the Second Circuit after the date of *United States v. Booker* (January 12, 2005) through December 9, 2007. Of these, 198 cases were excluded for the above reason. Descriptions of variables used in this table are provided in Appendix A.

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, 2005 - 2008 Datafiles, USSCFY05 - USSCFY08.

Table 1-3

**THIRD CIRCUIT COMPARISON OF SENTENCE IMPOSED AND
POSITION RELATIVE TO THE GUIDELINE RANGE¹
Fiscal Year 2005, Post-Booker - 2008, Kimbrough/Gall Data**

	<i>Post-Booker</i>		<i>Post-Kimbrough/Gall</i>	
	N	%	N	%
TOTAL CASES	9,062	100.0	2,586	100.0
CASES SENTENCED WITHIN GUIDELINE RANGE	4,784	52.8	1,370	53.0
CASES SENTENCED ABOVE GUIDELINE RANGE	112	1.3	40	1.5
DEPARTURE ABOVE GUIDELINE RANGE	33	0.4	19	0.7
Upward Departure From Guideline Range ²	17	0.2	16	0.6
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	16	0.2	3	0.1
OTHERWISE ABOVE GUIDELINE RANGE	79	0.9	21	0.8
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	61	0.7	18	0.7
All Remaining Cases Above Guideline Range ⁵	18	0.2	3	0.1
GOVERNMENT SPONSORED BELOW RANGE⁶	2,618	28.9	674	26.0
§5K1.1 Substantial Assistance Departure	2,457	27.1	633	24.5
§5K3.1 Early Disposition Program Departure	0	0.0	1	0.0
Other Government Sponsored Below Range	161	1.8	40	1.5
NON-GOVERNMENT SPONSORED BELOW RANGE	1,548	17.1	502	19.4
DEPARTURE BELOW GUIDELINE RANGE	404	4.4	85	3.3
Downward Departure From Guideline Range ²	237	2.6	43	1.7
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	167	1.8	42	1.6
OTHERWISE BELOW GUIDELINE RANGE	1,144	12.7	417	16.1
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	938	10.4	364	14.1
All Remaining Cases Below Guideline Range ⁵	206	2.3	53	2.0

¹The cases in this table described as *Post-Kimbrough/Gall* reflect the 2,592 cases sentenced in the Third Circuit subsequent to the date of *Kimbrough v. United States* and *Gall v. United States* (December 10, 2007), through September 30, 2008 with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by February 10, 2009. Of these, six cases were excluded because information was missing from the submitted documents that prevented the comparison of the sentence and the guideline range. The cases in this table described as *Post-Booker* reflect the 9,175 cases sentenced in the Third Circuit after the date of *United States v. Booker* (January 12, 2005) through December 9, 2007. Of these, 113 cases were excluded for the above reason. Descriptions of variables used in this table are provided in Appendix A.

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, 2005 - 2008 Datafiles, USSCFY05 - USSCFY08.

Table 1-4

**FOURTH CIRCUIT COMPARISON OF SENTENCE IMPOSED AND
POSITION RELATIVE TO THE GUIDELINE RANGE¹
Fiscal Year 2005, Post-Booker - 2008, Kimbrough/Gall Data**

	<i>Post-Booker</i>		<i>Post-Kimbrough/Gall</i>	
	N	%	N	%
TOTAL CASES	18,196	100.0	5,188	100.0
CASES SENTENCED WITHIN GUIDELINE RANGE	12,692	69.8	3,403	65.6
CASES SENTENCED ABOVE GUIDELINE RANGE	276	1.6	117	2.3
DEPARTURE ABOVE GUIDELINE RANGE	138	0.8	68	1.3
Upward Departure From Guideline Range ²	92	0.5	40	0.8
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	46	0.3	28	0.5
OTHERWISE ABOVE GUIDELINE RANGE	138	0.8	49	1.0
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	103	0.6	45	0.9
All Remaining Cases Above Guideline Range ⁵	35	0.2	4	0.1
GOVERNMENT SPONSORED BELOW RANGE⁶	3,378	18.6	987	19.1
§5K1.1 Substantial Assistance Departure	3,180	17.5	906	17.5
§5K3.1 Early Disposition Program Departure	2	0.0	0	0.0
Other Government Sponsored Below Range	196	1.1	81	1.6
NON-GOVERNMENT SPONSORED BELOW RANGE	1,850	10.2	681	13.1
DEPARTURE BELOW GUIDELINE RANGE	555	3.1	132	2.5
Downward Departure From Guideline Range ²	319	1.8	90	1.7
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	236	1.3	42	0.8
OTHERWISE BELOW GUIDELINE RANGE	1,295	7.1	549	10.6
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	1,022	5.6	493	9.5
All Remaining Cases Below Guideline Range ⁵	273	1.5	56	1.1

¹The cases in this table described as *Post-Kimbrough/Gall* reflect the 5,655 cases sentenced in the Fourth Circuit subsequent to the date of *Kimbrough v. United States* and *Gall v. United States* (December 10, 2007), through September 30, 2008 with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by February 10, 2009. Of these, 467 cases were excluded because information was missing from the submitted documents that prevented the comparison of the sentence and the guideline range. The cases in this table described as *Post-Booker* reflect the 19,556 cases sentenced in the Fourth Circuit after the date of *United States v. Booker* (January 12, 2005) through December 9, 2007. Of these, 1,360 cases were excluded for the above reason. Descriptions of variables used in this table are provided in Appendix A.

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, 2005 - 2008 Datafiles, USSCFY05 - USSCFY08.

Table 1-5

**FIFTH CIRCUIT COMPARISON OF SENTENCE IMPOSED AND
POSITION RELATIVE TO THE GUIDELINE RANGE¹
Fiscal Year 2005, Post-Booker - 2008, Kimbrough/Gall Data**

	<i>Post-Booker</i>		<i>Post-Kimbrough/Gall</i>	
	N	%	N	%
TOTAL CASES	45,135	100.0	14,125	100.0
CASES SENTENCED WITHIN GUIDELINE RANGE	32,664	72.4	9,936	70.3
CASES SENTENCED ABOVE GUIDELINE RANGE	863	1.9	269	1.9
DEPARTURE ABOVE GUIDELINE RANGE	319	0.7	97	0.7
Upward Departure From Guideline Range ²	218	0.5	72	0.5
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	101	0.2	25	0.2
OTHERWISE ABOVE GUIDELINE RANGE	544	1.2	172	1.2
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	417	0.9	148	1.0
All Remaining Cases Above Guideline Range ⁵	127	0.3	24	0.2
GOVERNMENT SPONSORED BELOW RANGE⁶	8,312	18.4	2,875	20.3
§5K1.1 Substantial Assistance Departure	3,654	8.1	1,056	7.5
§5K3.1 Early Disposition Program Departure	3,181	7.0	1,037	7.3
Other Government Sponsored Below Range	1,477	3.3	782	5.5
NON-GOVERNMENT SPONSORED BELOW RANGE	3,296	7.4	1,045	7.4
DEPARTURE BELOW GUIDELINE RANGE	1,233	2.8	371	2.6
Downward Departure From Guideline Range ²	1,019	2.3	341	2.4
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	214	0.5	30	0.2
OTHERWISE BELOW GUIDELINE RANGE	2,063	4.6	674	4.8
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	1,627	3.6	565	4.0
All Remaining Cases Below Guideline Range ⁵	436	1.0	109	0.8

¹The cases in this table described as *Post-Kimbrough/Gall* reflect the 14,224 cases sentenced in the Fifth Circuit subsequent to the date of *Kimbrough v. United States* and *Gall v. United States* (December 10, 2007), through September 30, 2008 with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by February 10, 2009. Of these, 99 cases were excluded because information was missing from the submitted documents that prevented the comparison of the sentence and the guideline range. The cases in this table described as *Post-Booker* reflect the 45,471 cases sentenced in the Fifth Circuit after the date of *United States v. Booker* (January 12, 2005) through December 9, 2007. Of these, 336 cases were excluded for the above reason. Descriptions of variables used in this table are provided in Appendix A.

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, 2005 - 2008 Datafiles, USSCFY05 - USSCFY08.

Table 1-6

**SIXTH CIRCUIT COMPARISON OF SENTENCE IMPOSED AND
POSITION RELATIVE TO THE GUIDELINE RANGE¹
Fiscal Year 2005, Post-Booker - 2008, Kimbrough/Gall Data**

	<i>Post-Booker</i>		<i>Post-Kimbrough/Gall</i>	
	N	%	N	%
TOTAL CASES	15,261	100.0	4,303	100.0
CASES SENTENCED WITHIN GUIDELINE RANGE	8,664	56.8	2,304	53.5
CASES SENTENCED ABOVE GUIDELINE RANGE	201	1.3	69	1.5
DEPARTURE ABOVE GUIDELINE RANGE	70	0.5	29	0.6
Upward Departure From Guideline Range ²	43	0.3	19	0.4
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	27	0.2	10	0.2
OTHERWISE ABOVE GUIDELINE RANGE	131	0.8	40	0.9
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	95	0.6	31	0.7
All Remaining Cases Above Guideline Range ⁵	36	0.2	9	0.2
GOVERNMENT SPONSORED BELOW RANGE⁶	4,175	27.4	1,203	27.9
§5K1.1 Substantial Assistance Departure	3,871	25.4	1,089	25.3
§5K3.1 Early Disposition Program Departure	3	0.0	1	0.0
Other Government Sponsored Below Range	301	2.0	113	2.6
NON-GOVERNMENT SPONSORED BELOW RANGE	2,221	14.5	727	16.8
DEPARTURE BELOW GUIDELINE RANGE	615	4.0	169	3.9
Downward Departure From Guideline Range ²	327	2.1	77	1.8
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	288	1.9	92	2.1
OTHERWISE BELOW GUIDELINE RANGE	1,606	10.5	558	12.9
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	1,302	8.5	488	11.3
All Remaining Cases Below Guideline Range ⁵	304	2.0	70	1.6

¹The cases in this table described as *Post-Kimbrough/Gall* reflect the 4,343 cases sentenced in the Sixth Circuit subsequent to the date of *Kimbrough v. United States* and *Gall v. United States* (December 10, 2007), through September 30, 2008 with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by February 10, 2009. Of these, 40 cases were excluded because information was missing from the submitted documents that prevented the comparison of the sentence and the guideline range. The cases in this table described as *Post-Booker* reflect the 15,78 cases sentenced in the Sixth Circuit after the date of *United States v. Booker* (January 12, 2005) through December 9, 2007. Of these, 317 cases were excluded for the above reason. Descriptions of variables used in this table are provided in Appendix A.

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, 2005 - 2008 Datafiles, USSCFY05 - USSCFY08.

Table 1-7

**SEVENTH CIRCUIT COMPARISON OF SENTENCE IMPOSED AND
POSITION RELATIVE TO THE GUIDELINE RANGE¹
Fiscal Year 2005, Post-Booker - 2008, Kimbrough/Gall Data**

	<i>Post-Booker</i>		<i>Post-Kimbrough/Gall</i>	
	N	%	N	%
TOTAL CASES	8,828	100.0	2,436	100.0
CASES SENTENCED WITHIN GUIDELINE RANGE	5,516	62.5	1,300	53.4
CASES SENTENCED ABOVE GUIDELINE RANGE	119	1.3	40	1.6
DEPARTURE ABOVE GUIDELINE RANGE	46	0.5	10	0.4
Upward Departure From Guideline Range ²	25	0.3	3	0.1
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	21	0.2	7	0.3
OTHERWISE ABOVE GUIDELINE RANGE	73	0.8	30	1.2
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	51	0.6	25	1.0
All Remaining Cases Above Guideline Range ⁵	22	0.2	5	0.2
GOVERNMENT SPONSORED BELOW RANGE⁶	1,724	19.5	529	21.7
§5K1.1 Substantial Assistance Departure	1,534	17.4	465	19.1
§5K3.1 Early Disposition Program Departure	1	0.0	1	0.0
Other Government Sponsored Below Range	189	2.1	63	2.6
NON-GOVERNMENT SPONSORED BELOW RANGE	1,469	16.7	567	23.3
DEPARTURE BELOW GUIDELINE RANGE	437	5.0	112	4.6
Downward Departure From Guideline Range ²	236	2.7	33	1.4
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	201	2.3	79	3.2
OTHERWISE BELOW GUIDELINE RANGE	1,032	11.7	455	18.7
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	789	8.9	392	16.1
All Remaining Cases Below Guideline Range ⁵	243	2.8	63	2.6

¹The cases in this table described as *Post-Kimbrough/Gall* reflect the 2,461 cases sentenced in the Seventh Circuit subsequent to the date of *Kimbrough v. United States* and *Gall v. United States* (December 10, 2007), through September 30, 2008 with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by February 10, 2009. Of these, 25 cases were excluded because information was missing from the submitted documents that prevented the comparison of the sentence and the guideline range. The cases in this table described as *Post-Booker* reflect the 8,904 cases sentenced in the Seventh Circuit after the date of *United States v. Booker* (January 12, 2005) through December 9, 2007. Of these, 76 cases were excluded for the above reason. Descriptions of variables used in this table are provided in Appendix A.

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, 2005 - 2008 Datafiles, USSCFY05 - USSCFY08.

Table 1-8

**EIGHTH CIRCUIT COMPARISON OF SENTENCE IMPOSED AND
POSITION RELATIVE TO THE GUIDELINE RANGE¹
Fiscal Year 2005, Post-Booker - 2008, Kimbrough/Gall Data**

	<i>Post-Booker</i>		<i>Post-Kimbrough/Gall</i>	
	N	%	N	%
TOTAL CASES	14,715	100.0	4,468	100.0
CASES SENTENCED WITHIN GUIDELINE RANGE	9,734	66.2	2,852	63.8
CASES SENTENCED ABOVE GUIDELINE RANGE	239	1.6	84	1.9
DEPARTURE ABOVE GUIDELINE RANGE	106	0.7	37	0.8
Upward Departure From Guideline Range ²	73	0.5	26	0.6
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	33	0.2	11	0.2
OTHERWISE ABOVE GUIDELINE RANGE	133	0.9	47	1.1
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	98	0.7	39	0.9
All Remaining Cases Above Guideline Range ⁵	35	0.2	8	0.2
GOVERNMENT SPONSORED BELOW RANGE⁶	2,751	18.7	835	18.7
§5K1.1 Substantial Assistance Departure	2,221	15.1	667	14.9
§5K3.1 Early Disposition Program Departure	121	0.8	47	1.1
Other Government Sponsored Below Range	409	2.8	121	2.7
NON-GOVERNMENT SPONSORED BELOW RANGE	1,991	13.6	697	15.6
DEPARTURE BELOW GUIDELINE RANGE	562	3.8	120	2.7
Downward Departure From Guideline Range ²	353	2.4	58	1.3
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	209	1.4	62	1.4
OTHERWISE BELOW GUIDELINE RANGE	1,429	9.8	577	12.9
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	1,156	7.9	527	11.8
All Remaining Cases Below Guideline Range ⁵	273	1.9	50	1.1

¹The cases in this table described as *Post-Kimbrough/Gall* reflect the 4,482 cases sentenced in the Eighth Circuit subsequent to the date of *Kimbrough v. United States* and *Gall v. United States* (December 10, 2007), through September 30, 2008 with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by February 10, 2009. Of these, 14 cases were excluded because information was missing from the submitted documents that prevented the comparison of the sentence and the guideline range. The cases in this table described as *Post-Booker* reflect the 14,798 cases sentenced in the Eighth Circuit after the date of *United States v. Booker* (January 12, 2005) through December 9, 2007. Of these, 83 cases were excluded for the above reason. Descriptions of variables used in this table are provided in Appendix A.

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, 2005 - 2008 Datafiles, USSCFY05 - USSCFY08.

Table 1-9

**NINTH CIRCUIT COMPARISON OF SENTENCE IMPOSED AND
POSITION RELATIVE TO THE GUIDELINE RANGE¹
Fiscal Year 2005, Post-Booker - 2008, Kimbrough/Gall Data**

	<i>Post-Booker</i>		<i>Post-Kimbrough/Gall</i>	
	N	%	N	%
TOTAL CASES	38,407	100.0	11,288	100.0
CASES SENTENCED WITHIN GUIDELINE RANGE	17,461	45.5	5,052	44.8
CASES SENTENCED ABOVE GUIDELINE RANGE	622	1.7	141	1.2
DEPARTURE ABOVE GUIDELINE RANGE	318	0.9	68	0.6
Upward Departure From Guideline Range ²	253	0.7	55	0.5
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	65	0.2	13	0.1
OTHERWISE ABOVE GUIDELINE RANGE	304	0.8	73	0.6
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	165	0.4	58	0.5
All Remaining Cases Above Guideline Range ⁵	139	0.4	15	0.1
GOVERNMENT SPONSORED BELOW RANGE⁶	15,743	40.9	4,748	42.1
§5K1.1 Substantial Assistance Departure	3,974	10.3	1,005	8.9
§5K3.1 Early Disposition Program Departure	9,995	26.0	3,125	27.7
Other Government Sponsored Below Range	1,774	4.6	618	5.5
NON-GOVERNMENT SPONSORED BELOW RANGE	4,581	12.0	1,347	12.0
DEPARTURE BELOW GUIDELINE RANGE	1,702	4.5	330	3.0
Downward Departure From Guideline Range ²	987	2.6	210	1.9
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	715	1.9	120	1.1
OTHERWISE BELOW GUIDELINE RANGE	2,879	7.5	1,017	9.0
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	2,082	5.4	856	7.6
All Remaining Cases Below Guideline Range ⁵	797	2.1	161	1.4

¹The cases in this table described as *Post-Kimbrough/Gall* reflect the 11,734 cases sentenced in the Ninth Circuit subsequent to the date of *Kimbrough v. United States* and *Gall v. United States* (December 10, 2007), through September 30, 2008 with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by February 10, 2009. Of these, 446 cases were excluded because information was missing from the submitted documents that prevented the comparison of the sentence and the guideline range. The cases in this table described as *Post-Booker* reflect the 42,098 cases sentenced in the Ninth Circuit after the date of *United States v. Booker* (January 12, 2005) through December 9, 2007. Of these, 3,691 cases were excluded for the above reason. Descriptions of variables used in this table are provided in Appendix A.

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, 2005 - 2008 Datafiles, USSCFY05 - USSCFY08.

Table 1-10

**TENTH CIRCUIT COMPARISON OF SENTENCE IMPOSED AND
POSITION RELATIVE TO THE GUIDELINE RANGE¹
Fiscal Year 2005, Post-Booker - 2008, Kimbrough/Gall Data**

	<i>Post-Booker</i>		<i>Post-Kimbrough/Gall</i>	
	N	%	N	%
TOTAL CASES	16,766	100.0	4,767	100.0
CASES SENTENCED WITHIN GUIDELINE RANGE	10,398	62.0	2,945	61.8
CASES SENTENCED ABOVE GUIDELINE RANGE	216	1.4	79	1.8
DEPARTURE ABOVE GUIDELINE RANGE	55	0.4	15	0.4
Upward Departure From Guideline Range ²	46	0.3	12	0.3
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	9	0.1	3	0.1
OTHERWISE ABOVE GUIDELINE RANGE	161	1.0	64	1.4
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	119	0.7	61	1.3
All Remaining Cases Above Guideline Range ⁵	42	0.3	3	0.1
GOVERNMENT SPONSORED BELOW RANGE⁶	4,297	25.6	1,149	24.1
§5K1.1 Substantial Assistance Departure	1,494	8.9	329	6.9
§5K3.1 Early Disposition Program Departure	1,462	8.7	440	9.2
Other Government Sponsored Below Range	1,341	8.0	380	8.0
NON-GOVERNMENT SPONSORED BELOW RANGE	1,855	11.0	594	12.5
DEPARTURE BELOW GUIDELINE RANGE	743	4.4	176	3.7
Downward Departure From Guideline Range ²	510	3.0	119	2.5
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	233	1.4	57	1.2
OTHERWISE BELOW GUIDELINE RANGE	1,112	6.6	418	8.8
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	908	5.4	395	8.3
All Remaining Cases Below Guideline Range ⁵	204	1.2	23	0.5

¹The cases in this table described as *Post-Kimbrough/Gall* reflect the 4,982 cases sentenced in the Tenth Circuit subsequent to the date of *Kimbrough v. United States* and *Gall v. United States* (December 10, 2007), through September 30, 2008 with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by February 10, 2009. Of these, 215 cases were excluded because information was missing from the submitted documents that prevented the comparison of the sentence and the guideline range. The cases in this table described as *Post-Booker* reflect the 17,469 cases sentenced in the Tenth Circuit after the date of *United States v. Booker* (January 12, 2005) through December 9, 2007. Of these, 703 cases were excluded for the above reason. Descriptions of variables used in this table are provided in Appendix A.

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, 2005 - 2008 Datafiles, USSCFY05 - USSCFY08.

Table 1-11

**ELEVENTH CIRCUIT COMPARISON OF SENTENCE IMPOSED AND
POSITION RELATIVE TO THE GUIDELINE RANGE¹
Fiscal Year 2005, Post-Booker - 2008, Kimbrough/Gall Data**

	<i>Post-Booker</i>		<i>Post-Kimbrough/Gall</i>	
	N	%	N	%
TOTAL CASES	19,603	100.0	5,796	100.0
CASES SENTENCED WITHIN GUIDELINE RANGE	13,365	68.2	3,937	67.9
CASES SENTENCED ABOVE GUIDELINE RANGE	337	1.6	93	1.6
DEPARTURE ABOVE GUIDELINE RANGE	106	0.5	15	0.3
Upward Departure From Guideline Range ²	65	0.3	9	0.2
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	41	0.2	6	0.1
OTHERWISE ABOVE GUIDELINE RANGE	231	1.1	78	1.3
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	185	0.9	76	1.3
All Remaining Cases Above Guideline Range ⁵	46	0.2	2	0.0
GOVERNMENT SPONSORED BELOW RANGE⁶	3,735	19.0	973	16.8
§5K1.1 Substantial Assistance Departure	3,479	17.7	886	15.3
§5K3.1 Early Disposition Program Departure	40	0.2	24	0.4
Other Government Sponsored Below Range	216	1.1	63	1.1
NON-GOVERNMENT SPONSORED BELOW RANGE	2,166	11.1	793	13.7
DEPARTURE BELOW GUIDELINE RANGE	508	2.6	136	2.3
Downward Departure From Guideline Range ²	308	1.6	76	1.3
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	200	1.0	60	1.0
OTHERWISE BELOW GUIDELINE RANGE	1,658	8.5	657	11.4
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	1,408	7.2	618	10.7
All Remaining Cases Below Guideline Range ⁵	250	1.3	39	0.7

¹The cases in this table described as *Post-Kimbrough/Gall* reflect the 6,003 cases sentenced in the Eleventh Circuit subsequent to the date of *Kimbrough v. United States* and *Gall v. United States* (December 10, 2007), through September 30, 2008 with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by February 10, 2009. Of these, 207 cases were excluded because information was missing from the submitted documents that prevented the comparison of the sentence and the guideline range. The cases in this table described as *Post-Booker* reflect the 20,756 cases sentenced in the Eleventh Circuit after the date of *United States v. Booker* (January 12, 2005) through December 9, 2007. Of these, 1,153 cases were excluded for the above reason. Descriptions of variables used in this table are provided in Appendix A.

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, 2005 - 2008 Datafiles, USSCFY05 - USSCFY08.

Table 2

SENTENCES RELATIVE TO THE GUIDELINE RANGE BY CIRCUIT AND DISTRICT¹
Fiscal Year 2008, Post-Kimbrough/Gall Data

CIRCUIT District	TOTAL	WITHIN GUIDELINE RANGE		UPWARD DEPARTURE		UPWARD DEPARTURE W/ BOOKER		ABOVE RANGE W/ BOOKER		REMAINING ABOVE RANGE	
		N	%	N	%	N	%	N	%	N	%
TOTAL	60,317	35,732	59.2	265	0.4	114	0.2	522	0.9	80	0.1
D.C. CIRCUIT	324	123	38.0	1	0.3	0	0.0	1	0.3	0	0.0
District of Columbia	324	123	38.0	1	0.3	0	0.0	1	0.3	0	0.0
FIRST CIRCUIT	1,421	876	61.6	7	0.5	6	0.4	7	0.5	3	0.2
Maine	169	99	58.6	1	0.6	0	0.0	1	0.6	0	0.0
Massachusetts	369	182	49.3	3	0.8	0	0.0	4	1.1	1	0.3
New Hampshire	187	88	47.1	2	1.1	2	1.1	1	0.5	0	0.0
Puerto Rico	632	466	73.7	1	0.2	3	0.5	1	0.2	2	0.3
Rhode Island	64	41	64.1	0	0.0	1	1.6	0	0.0	0	0.0
SECOND CIRCUIT	3,615	1,634	45.2	5	0.1	2	0.1	13	0.4	4	0.1
Connecticut	353	143	40.5	1	0.3	0	0.0	2	0.6	0	0.0
New York											
Eastern	987	374	37.9	2	0.2	0	0.0	7	0.7	2	0.2
Northern	386	211	54.7	1	0.3	1	0.3	1	0.3	0	0.0
Southern	1,218	536	44.0	0	0.0	0	0.0	2	0.2	1	0.1
Western	537	318	59.2	0	0.0	1	0.2	1	0.2	1	0.2
Vermont	134	52	38.8	1	0.7	0	0.0	0	0.0	0	0.0
THIRD CIRCUIT	2,586	1,370	53.0	16	0.6	3	0.1	18	0.7	3	0.1
Delaware	127	65	51.2	0	0.0	0	0.0	2	1.6	0	0.0
New Jersey	831	421	50.7	3	0.4	1	0.1	6	0.7	2	0.2
Pennsylvania											
Eastern	614	259	42.2	2	0.3	1	0.2	7	1.1	0	0.0
Middle	526	299	56.8	9	1.7	0	0.0	0	0.0	1	0.2
Western	423	286	67.6	2	0.5	1	0.2	0	0.0	0	0.0
Virgin Islands	65	40	61.5	0	0.0	0	0.0	3	4.6	0	0.0
FOURTH CIRCUIT	5,188	3,403	65.6	40	0.8	28	0.5	45	0.9	4	0.1
Maryland	585	289	49.4	6	1.0	1	0.2	5	0.9	0	0.0
North Carolina											
Eastern	551	313	56.8	19	3.4	17	3.1	9	1.6	1	0.2
Middle	304	229	75.3	1	0.3	0	0.0	2	0.7	0	0.0
Western	601	391	65.1	3	0.5	3	0.5	4	0.7	0	0.0
South Carolina	1,020	667	65.4	2	0.2	0	0.0	4	0.4	0	0.0
Virginia											
Eastern	1,239	923	74.5	7	0.6	4	0.3	13	1.0	2	0.2
Western	315	208	66.0	2	0.6	1	0.3	2	0.6	1	0.3
West Virginia											
Northern	349	237	67.9	0	0.0	1	0.3	4	1.1	0	0.0
Southern	224	146	65.2	0	0.0	1	0.4	2	0.9	0	0.0

Table 2 (cont.)

CIRCUIT District	§5K1.1 SUBSTANTIAL ASSISTANCE		§5K3.1 EARLY DISPOSITION		OTHER GOV'T SPONSORED		DOWNWARD DEPARTURE		DOWNWARD DEPARTURE W/ BOOKER		BELOW RANGE W/ BOOKER		REMAINING BELOW RANGE	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
TOTAL	8,065	13.4	4,693	7.8	2,496	4.1	1,224	2.0	748	1.2	5,682	9.4	696	1.2
D.C. CIRCUIT	114	35.2	0	0.0	26	8.0	7	2.2	20	6.2	25	7.7	7	2.2
District of Columbia	114	35.2	0	0.0	26	8.0	7	2.2	20	6.2	25	7.7	7	2.2
FIRST CIRCUIT	155	10.9	17	1.2	65	4.6	38	2.7	29	2.0	196	13.8	22	1.5
Maine	43	25.4	0	0.0	0	0.0	4	2.4	1	0.6	19	11.2	1	0.6
Massachusetts	34	9.2	1	0.3	30	8.1	17	4.6	10	2.7	83	22.5	4	1.1
New Hampshire	39	20.9	0	0.0	6	3.2	4	2.1	6	3.2	36	19.3	3	1.6
Puerto Rico	35	5.5	16	2.5	28	4.4	12	1.9	11	1.7	44	7.0	13	2.1
Rhode Island	4	6.3	0	0.0	1	1.6	1	1.6	1	1.6	14	21.9	1	1.6
SECOND CIRCUIT	760	21.0	0	0.0	144	4.0	132	3.7	115	3.2	763	21.1	43	1.2
Connecticut	67	19.0	0	0.0	14	4.0	31	8.8	30	8.5	64	18.1	1	0.3
New York														
Eastern	229	23.2	0	0.0	74	7.5	26	2.6	39	4.0	217	22.0	17	1.7
Northern	90	23.3	0	0.0	5	1.3	28	7.3	6	1.6	43	11.1	0	0.0
Southern	198	16.3	0	0.0	31	2.5	23	1.9	30	2.5	374	30.7	23	1.9
Western	143	26.6	0	0.0	15	2.8	5	0.9	3	0.6	48	8.9	2	0.4
Vermont	33	24.6	0	0.0	5	3.7	19	14.2	7	5.2	17	12.7	0	0.0
THIRD CIRCUIT	633	24.5	1	0.0	40	1.5	43	1.7	42	1.6	364	14.1	53	2.0
Delaware	7	5.5	0	0.0	2	1.6	2	1.6	0	0.0	24	18.9	25	19.7
New Jersey	238	28.6	1	0.1	8	1.0	10	1.2	6	0.7	129	15.5	6	0.7
Pennsylvania														
Eastern	194	31.6	0	0.0	12	2.0	6	1.0	18	2.9	107	17.4	8	1.3
Middle	142	27.0	0	0.0	12	2.3	9	1.7	3	0.6	46	8.7	5	1.0
Western	45	10.6	0	0.0	4	0.9	16	3.8	14	3.3	50	11.8	5	1.2
Virgin Islands	7	10.8	0	0.0	2	3.1	0	0.0	1	1.5	8	12.3	4	6.2
FOURTH CIRCUIT	906	17.5	0	0.0	81	1.6	90	1.7	42	0.8	493	9.5	56	1.1
Maryland	130	22.2	0	0.0	26	4.4	9	1.5	15	2.6	91	15.6	13	2.2
North Carolina														
Eastern	149	27.0	0	0.0	3	0.5	3	0.5	5	0.9	30	5.4	2	0.4
Middle	51	16.8	0	0.0	0	0.0	1	0.3	0	0.0	20	6.6	0	0.0
Western	155	25.8	0	0.0	7	1.2	8	1.3	4	0.7	21	3.5	5	0.8
South Carolina	218	21.4	0	0.0	19	1.9	17	1.7	0	0.0	76	7.5	17	1.7
Virginia														
Eastern	82	6.6	0	0.0	14	1.1	43	3.5	14	1.1	119	9.6	18	1.5
Western	61	19.4	0	0.0	3	1.0	3	1.0	0	0.0	33	10.5	1	0.3
West Virginia														
Northern	34	9.7	0	0.0	9	2.6	4	1.1	2	0.6	58	16.6	0	0.0
Southern	26	11.6	0	0.0	0	0.0	2	0.9	2	0.9	45	20.1	0	0.0

Table 2 (cont.)

CIRCUIT District	TOTAL	WITHIN GUIDELINE RANGE		UPWARD DEPARTURE		UPWARD DEPARTURE W/ BOOKER		ABOVE RANGE W/ BOOKER		REMAINING ABOVE RANGE	
		N	%	N	%	N	%	N	%	N	%
FIFTH CIRCUIT	14,125	9,936	70.3	72	0.5	25	0.2	148	1.0	24	0.2
Louisiana											
Eastern	393	304	77.4	4	1.0	4	1.0	7	1.8	1	0.3
Middle	155	108	69.7	2	1.3	0	0.0	1	0.6	0	0.0
Western	248	179	72.2	1	0.4	0	0.0	8	3.2	0	0.0
Mississippi											
Northern	150	90	60.0	0	0.0	0	0.0	4	2.7	0	0.0
Southern	331	272	82.2	1	0.3	1	0.3	2	0.6	3	0.9
Texas											
Eastern	817	585	71.6	6	0.7	0	0.0	3	0.4	2	0.2
Northern	841	565	67.2	17	2.0	7	0.8	28	3.3	2	0.2
Southern	5,278	3,056	57.9	24	0.5	3	0.1	20	0.4	10	0.2
Western	5,912	4,777	80.8	17	0.3	10	0.2	75	1.3	6	0.1
SIXTH CIRCUIT	4,303	2,304	53.5	19	0.4	10	0.2	31	0.7	9	0.2
Kentucky											
Eastern	559	254	45.4	0	0.0	1	0.2	5	0.9	0	0.0
Western	370	257	69.5	3	0.8	0	0.0	1	0.3	0	0.0
Michigan											
Eastern	596	329	55.2	3	0.5	0	0.0	4	0.7	2	0.3
Western	350	207	59.1	5	1.4	3	0.9	8	2.3	3	0.9
Ohio											
Northern	730	396	54.2	1	0.1	1	0.1	6	0.8	1	0.1
Southern	501	197	39.3	1	0.2	2	0.4	0	0.0	1	0.2
Tennessee											
Eastern	474	297	62.7	1	0.2	1	0.2	3	0.6	2	0.4
Middle	235	124	52.8	1	0.4	1	0.4	0	0.0	0	0.0
Western	488	243	49.8	4	0.8	1	0.2	4	0.8	0	0.0
SEVENTH CIRCUIT	2,436	1,300	53.4	3	0.1	7	0.3	25	1.0	5	0.2
Illinois											
Central	309	169	54.7	0	0.0	0	0.0	0	0.0	1	0.3
Northern	743	327	44.0	1	0.1	3	0.4	3	0.4	2	0.3
Southern	245	186	75.9	1	0.4	3	1.2	4	1.6	1	0.4
Indiana											
Northern	359	235	65.5	0	0.0	1	0.3	1	0.3	1	0.3
Southern	226	123	54.4	1	0.4	0	0.0	5	2.2	0	0.0
Wisconsin											
Eastern	418	160	38.3	0	0.0	0	0.0	11	2.6	0	0.0
Western	136	100	73.5	0	0.0	0	0.0	1	0.7	0	0.0
EIGHTH CIRCUIT	4,468	2,852	63.8	26	0.6	11	0.2	39	0.9	8	0.2
Arkansas											
Eastern	348	246	70.7	2	0.6	2	0.6	0	0.0	2	0.6
Western	176	122	69.3	1	0.6	0	0.0	2	1.1	0	0.0
Iowa											
Northern	546	402	73.6	9	1.6	3	0.5	5	0.9	2	0.4
Southern	398	211	53.0	2	0.5	1	0.3	5	1.3	1	0.3
Minnesota	488	228	46.7	1	0.2	0	0.0	1	0.2	0	0.0
Missouri											
Eastern	816	551	67.5	0	0.0	0	0.0	6	0.7	0	0.0
Western	639	400	62.6	2	0.3	3	0.5	8	1.3	1	0.2
Nebraska	516	350	67.8	7	1.4	0	0.0	8	1.6	2	0.4
North Dakota	193	91	47.2	0	0.0	1	0.5	0	0.0	0	0.0
South Dakota	348	251	72.1	2	0.6	1	0.3	4	1.1	0	0.0

Table 2 (cont.)

CIRCUIT District	§5K1.1 SUBSTANTIAL ASSISTANCE		§5K3.1 EARLY DISPOSITION		OTHER GOV'T SPONSORED		DOWNWARD DEPARTURE		DOWNWARD DEPARTURE W/ BOOKER		BELOW RANGE W/ BOOKER		REMAINING BELOW RANGE	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
FIFTH CIRCUIT	1,056	7.5	1,037	7.3	782	5.5	341	2.4	30	0.2	565	4.0	109	0.8
Louisiana														
Eastern	39	9.9	0	0.0	7	1.8	5	1.3	2	0.5	20	5.1	0	0.0
Middle	35	22.6	0	0.0	0	0.0	2	1.3	1	0.6	6	3.9	0	0.0
Western	23	9.3	0	0.0	0	0.0	0	0.0	4	1.6	22	8.9	11	4.4
Mississippi														
Northern	33	22.0	0	0.0	13	8.7	2	1.3	0	0.0	5	3.3	3	2.0
Southern	23	6.9	0	0.0	1	0.3	2	0.6	2	0.6	16	4.8	8	2.4
Texas														
Eastern	88	10.8	0	0.0	80	9.8	24	2.9	4	0.5	21	2.6	4	0.5
Northern	137	16.3	0	0.0	16	1.9	5	0.6	1	0.1	58	6.9	5	0.6
Southern	304	5.8	912	17.3	600	11.4	183	3.5	1	0.0	154	2.9	11	0.2
Western	374	6.3	125	2.1	65	1.1	118	2.0	15	0.3	263	4.4	67	1.1
SIXTH CIRCUIT	1,089	25.3	1	0.0	113	2.6	77	1.8	92	2.1	488	11.3	70	1.6
Kentucky														
Eastern	237	42.4	0	0.0	5	0.9	5	0.9	1	0.2	44	7.9	7	1.3
Western	50	13.5	0	0.0	18	4.9	6	1.6	0	0.0	32	8.6	3	0.8
Michigan														
Eastern	118	19.8	0	0.0	12	2.0	10	1.7	10	1.7	102	17.1	6	1.0
Western	63	18.0	0	0.0	0	0.0	7	2.0	5	1.4	46	13.1	3	0.9
Ohio														
Northern	168	23.0	0	0.0	23	3.2	10	1.4	19	2.6	85	11.6	20	2.7
Southern	150	29.9	0	0.0	26	5.2	19	3.8	37	7.4	54	10.8	14	2.8
Tennessee														
Eastern	112	23.6	0	0.0	2	0.4	7	1.5	3	0.6	37	7.8	9	1.9
Middle	53	22.6	0	0.0	11	4.7	5	2.1	10	4.3	28	11.9	2	0.9
Western	138	28.3	1	0.2	16	3.3	8	1.6	7	1.4	60	12.3	6	1.2
SEVENTH CIRCUIT	465	19.1	1	0.0	63	2.6	33	1.4	79	3.2	392	16.1	63	2.6
Illinois														
Central	74	23.9	1	0.3	5	1.6	5	1.6	2	0.6	48	15.5	4	1.3
Northern	148	19.9	0	0.0	15	2.0	17	2.3	66	8.9	135	18.2	26	3.5
Southern	24	9.8	0	0.0	2	0.8	0	0.0	5	2.0	15	6.1	4	1.6
Indiana														
Northern	75	20.9	0	0.0	3	0.8	0	0.0	2	0.6	24	6.7	17	4.7
Southern	43	19.0	0	0.0	13	5.8	4	1.8	1	0.4	36	15.9	0	0.0
Wisconsin														
Eastern	90	21.5	0	0.0	25	6.0	4	1.0	0	0.0	116	27.8	12	2.9
Western	11	8.1	0	0.0	0	0.0	3	2.2	3	2.2	18	13.2	0	0.0
EIGHTH CIRCUIT	667	14.9	47	1.1	121	2.7	58	1.3	62	1.4	527	11.8	50	1.1
Arkansas														
Eastern	46	13.2	0	0.0	5	1.4	7	2.0	8	2.3	20	5.7	10	2.9
Western	32	18.2	0	0.0	0	0.0	2	1.1	0	0.0	17	9.7	0	0.0
Iowa														
Northern	47	8.6	31	5.7	1	0.2	0	0.0	3	0.5	41	7.5	2	0.4
Southern	83	20.9	0	0.0	22	5.5	5	1.3	3	0.8	56	14.1	9	2.3
Minnesota	137	28.1	0	0.0	8	1.6	9	1.8	18	3.7	83	17.0	3	0.6
Missouri														
Eastern	104	12.7	0	0.0	18	2.2	14	1.7	10	1.2	103	12.6	10	1.2
Western	114	17.8	0	0.0	18	2.8	8	1.3	10	1.6	73	11.4	2	0.3
Nebraska	20	3.9	14	2.7	39	7.6	5	1.0	5	1.0	61	11.8	5	1.0
North Dakota	76	39.4	2	1.0	3	1.6	2	1.0	0	0.0	17	8.8	1	0.5
South Dakota	8	2.3	0	0.0	7	2.0	6	1.7	5	1.4	56	16.1	8	2.3

Table 2 (cont.)

CIRCUIT District	TOTAL	WITHIN GUIDELINE RANGE		UPWARD DEPARTURE		UPWARD DEPARTURE W/ BOOKER		ABOVE RANGE W/ BOOKER		REMAINING ABOVE RANGE	
		N	%	N	%	N	%	N	%	N	%
NINTH CIRCUIT	11,288	5,052	44.8	55	0.5	13	0.1	58	0.5	15	0.1
Alaska	129	66	51.2	0	0.0	0	0.0	2	1.6	1	0.8
Arizona	2,865	920	32.1	32	1.1	2	0.1	8	0.3	2	0.1
California											
Central	1,344	505	37.6	3	0.2	4	0.3	11	0.8	4	0.3
Eastern	713	329	46.1	0	0.0	3	0.4	3	0.4	2	0.3
Northern	541	290	53.6	0	0.0	2	0.4	5	0.9	0	0.0
Southern	3,143	1,615	51.4	10	0.3	1	0.0	6	0.2	3	0.1
Guam	55	39	70.9	1	1.8	0	0.0	0	0.0	1	1.8
Hawaii	204	85	41.7	0	0.0	0	0.0	0	0.0	0	0.0
Idaho	222	100	45.0	0	0.0	0	0.0	3	1.4	0	0.0
Montana	311	224	72.0	3	1.0	0	0.0	6	1.9	0	0.0
Nevada	328	221	67.4	1	0.3	0	0.0	2	0.6	0	0.0
Northern Mariana Islands	9	6	66.7	0	0.0	0	0.0	0	0.0	0	0.0
Oregon	503	230	45.7	2	0.4	0	0.0	2	0.4	2	0.4
Washington											
Eastern	280	107	38.2	0	0.0	1	0.4	7	2.5	0	0.0
Western	641	315	49.1	3	0.5	0	0.0	3	0.5	0	0.0
TENTH CIRCUIT	4,767	2,945	61.8	12	0.3	3	0.1	61	1.3	3	0.1
Colorado	358	211	58.9	1	0.3	0	0.0	2	0.6	1	0.3
Kansas	544	325	59.7	2	0.4	2	0.4	38	7.0	1	0.2
New Mexico	2,351	1,474	62.7	4	0.2	0	0.0	4	0.2	1	0.0
Oklahoma											
Eastern	72	68	94.4	0	0.0	0	0.0	0	0.0	0	0.0
Northern	179	136	76.0	0	0.0	0	0.0	0	0.0	0	0.0
Western	289	206	71.3	1	0.3	0	0.0	9	3.1	0	0.0
Utah	692	342	49.4	4	0.6	0	0.0	6	0.9	0	0.0
Wyoming	282	183	64.9	0	0.0	1	0.4	2	0.7	0	0.0
ELEVENTH CIRCUIT	5,796	3,937	67.9	9	0.2	6	0.1	76	1.3	2	0.0
Alabama											
Middle	212	143	67.5	0	0.0	0	0.0	3	1.4	0	0.0
Northern	361	223	61.8	0	0.0	3	0.8	11	3.0	0	0.0
Southern	467	306	65.5	2	0.4	0	0.0	6	1.3	0	0.0
Florida											
Middle	1,363	832	61.0	1	0.1	1	0.1	7	0.5	0	0.0
Northern	278	201	72.3	1	0.4	0	0.0	4	1.4	0	0.0
Southern	1,788	1,307	73.1	0	0.0	1	0.1	18	1.0	1	0.1
Georgia											
Middle	285	234	82.1	0	0.0	0	0.0	5	1.8	0	0.0
Northern	615	354	57.6	2	0.3	1	0.2	5	0.8	0	0.0
Southern	427	337	78.9	3	0.7	0	0.0	17	4.0	1	0.2

Table 2 (cont.)

CIRCUIT District	§5K1.1 SUBSTANTIAL ASSISTANCE		§5K3.1 EARLY DISPOSITION		OTHER GOV'T SPONSORED		DOWNWARD DEPARTURE		DOWNWARD DEPARTURE W/ BOOKER		BELOW RANGE W/ BOOKER		REMAINING BELOW RANGE	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
NINTH CIRCUIT	1,005	8.9	3,125	27.7	618	5.5	210	1.9	120	1.1	856	7.6	161	1.4
Alaska	25	19.4	0	0.0	17	13.2	1	0.8	4	3.1	11	8.5	2	1.6
Arizona	138	4.8	1,464	51.1	105	3.7	38	1.3	23	0.8	117	4.1	16	0.6
California														
Central	169	12.6	355	26.4	86	6.4	27	2.0	27	2.0	108	8.0	45	3.3
Eastern	105	14.7	162	22.7	25	3.5	12	1.7	8	1.1	56	7.9	8	1.1
Northern	60	11.1	35	6.5	57	10.5	9	1.7	10	1.8	55	10.2	18	3.3
Southern	123	3.9	988	31.4	106	3.4	82	2.6	13	0.4	143	4.5	53	1.7
Guam	5	9.1	0	0.0	0	0.0	1	1.8	0	0.0	6	10.9	2	3.6
Hawaii	60	29.4	0	0.0	2	1.0	2	1.0	2	1.0	51	25.0	2	1.0
Idaho	62	27.9	29	13.1	2	0.9	1	0.5	3	1.4	19	8.6	3	1.4
Montana	40	12.9	0	0.0	0	0.0	3	1.0	3	1.0	29	9.3	3	1.0
Nevada	20	6.1	0	0.0	39	11.9	2	0.6	2	0.6	37	11.3	4	1.2
Northern Mariana Islands	2	22.2	0	0.0	0	0.0	0	0.0	1	11.1	0	0.0	0	0.0
Oregon	97	19.3	19	3.8	53	10.5	14	2.8	6	1.2	77	15.3	1	0.2
Washington														
Eastern	20	7.1	60	21.4	32	11.4	1	0.4	2	0.7	48	17.1	2	0.7
Western	79	12.3	13	2.0	94	14.7	17	2.7	16	2.5	99	15.4	2	0.3
TENTH CIRCUIT	329	6.9	440	9.2	380	8.0	119	2.5	57	1.2	395	8.3	23	0.5
Colorado	60	16.8	0	0.0	15	4.2	16	4.5	5	1.4	43	12.0	4	1.1
Kansas	93	17.1	0	0.0	31	5.7	3	0.6	2	0.4	46	8.5	1	0.2
New Mexico	62	2.6	287	12.2	280	11.9	74	3.1	29	1.2	130	5.5	6	0.3
Oklahoma														
Eastern	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	4	5.6	0	0.0
Northern	28	15.6	0	0.0	1	0.6	1	0.6	0	0.0	13	7.3	0	0.0
Western	18	6.2	0	0.0	3	1.0	4	1.4	0	0.0	46	15.9	2	0.7
Utah	42	6.1	153	22.1	38	5.5	19	2.7	2	0.3	79	11.4	7	1.0
Wyoming	26	9.2	0	0.0	12	4.3	2	0.7	19	6.7	34	12.1	3	1.1
ELEVENTH CIRCUIT	886	15.3	24	0.4	63	1.1	76	1.3	60	1.0	618	10.7	39	0.7
Alabama														
Middle	46	21.7	0	0.0	1	0.5	2	0.9	0	0.0	16	7.5	1	0.5
Northern	73	20.2	0	0.0	2	0.6	3	0.8	2	0.6	43	11.9	1	0.3
Southern	104	22.3	0	0.0	1	0.2	2	0.4	2	0.4	42	9.0	2	0.4
Florida														
Middle	269	19.7	24	1.8	19	1.4	19	1.4	14	1.0	172	12.6	5	0.4
Northern	53	19.1	0	0.0	0	0.0	2	0.7	1	0.4	14	5.0	2	0.7
Southern	166	9.3	0	0.0	16	0.9	18	1.0	27	1.5	216	12.1	18	1.0
Georgia														
Middle	32	11.2	0	0.0	3	1.1	1	0.4	0	0.0	10	3.5	0	0.0
Northern	107	17.4	0	0.0	15	2.4	23	3.7	14	2.3	84	13.7	10	1.6
Southern	36	8.4	0	0.0	6	1.4	6	1.4	0	0.0	21	4.9	0	0.0

¹Of the 61,898 cases, 1,581 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: Western Oklahoma (37.6%), Eastern Virginia (24.1%), Middle Georgia (21.1%), Central California (13.5%), Northern New York (8.3%), Southern Mississippi (7.8%), Maryland (7.0%), Middle Tennessee (5.6%), Western Washington (5.6%), Southern Florida (5.1%), and Northern Mississippi (5.1%). Descriptions of variables used in this table are provided in Appendix A.

SOURCE: U.S. Sentencing Commission, 2008 Datafile, USSCFY08.

Table 3

**SENTENCES RELATIVE TO THE GUIDELINE RANGE
BY EACH PRIMARY OFFENSE CATEGORY¹
Fiscal Year 2008, Post-Kimbrough/Gall Data**

PRIMARY OFFENSE	TOTAL	WITHIN GUIDELINE RANGE		UPWARD DEPARTURES		UPWARD DEPARTURES W/ <i>BOOKER</i>		ABOVE RANGE WITH W/ <i>BOOKER</i>		REMAINING ABOVE RANGE	
		N	%	N	%	N	%	N	%	N	%
TOTAL	60,287	35,714	59.2	265	0.4	114	0.2	522	0.9	80	0.1
Murder	46	21	45.7	5	10.9	1	2.2	2	4.3	0	0.0
Manslaughter	38	29	76.3	3	7.9	0	0.0	1	2.6	0	0.0
Kidnapping/Hostage Taking	47	17	36.2	0	0.0	0	0.0	1	2.1	0	0.0
Sexual Abuse	406	286	70.4	5	1.2	1	0.2	12	3.0	0	0.0
Assault	523	341	65.2	11	2.1	2	0.4	22	4.2	5	1.0
Robbery	841	533	63.4	11	1.3	10	1.2	10	1.2	2	0.2
Arson	50	28	56.0	2	4.0	0	0.0	0	0.0	0	0.0
Drugs - Trafficking	19,393	9,967	51.4	36	0.2	14	0.1	52	0.3	18	0.1
Drugs - Communication Facility	276	159	57.6	1	0.4	1	0.4	2	0.7	0	0.0
Drugs - Simple Possession	342	307	89.8	1	0.3	1	0.3	5	1.5	3	0.9
Firearms	6,586	4,363	66.2	49	0.7	24	0.4	88	1.3	13	0.2
Burglary/B&E	31	24	77.4	1	3.2	0	0.0	1	3.2	0	0.0
Auto Theft	49	32	65.3	0	0.0	0	0.0	2	4.1	0	0.0
Larceny	1,195	867	72.6	3	0.3	3	0.3	22	1.8	3	0.3
Fraud	5,944	3,640	61.2	20	0.3	6	0.1	55	0.9	12	0.2
Embezzlement	385	264	68.6	0	0.0	1	0.3	2	0.5	0	0.0
Forgery/Counterfeiting	800	542	67.8	1	0.1	3	0.4	14	1.8	2	0.3
Bribery	186	77	41.4	0	0.0	0	0.0	0	0.0	0	0.0
Tax	454	190	41.9	2	0.4	1	0.2	5	1.1	0	0.0
Money Laundering	708	286	40.4	2	0.3	0	0.0	4	0.6	0	0.0
Racketeering/Extortion	613	278	45.4	8	1.3	0	0.0	10	1.6	2	0.3
Gambling/Lottery	98	47	48.0	0	0.0	0	0.0	1	1.0	0	0.0
Civil Rights	50	23	46.0	1	2.0	0	0.0	0	0.0	0	0.0
Immigration	17,364	10,960	63.1	78	0.4	29	0.2	171	1.0	16	0.1
Pornography/Prostitution	1,326	688	51.9	10	0.8	9	0.7	18	1.4	0	0.0
Prison Offenses	309	235	76.1	2	0.6	3	1.0	4	1.3	0	0.0
Administration of Justice Offenses	804	474	59.0	6	0.7	3	0.4	9	1.1	2	0.2
Environmental/Wildlife	124	81	65.3	0	0.0	0	0.0	1	0.8	0	0.0
National Defense	41	22	53.7	0	0.0	0	0.0	1	2.4	0	0.0
Antitrust	23	4	17.4	0	0.0	0	0.0	0	0.0	0	0.0
Food & Drug	53	35	66.0	0	0.0	0	0.0	0	0.0	0	0.0
Other Miscellaneous Offenses	1,182	894	75.6	7	0.6	2	0.2	7	0.6	2	0.2

Table 3 (cont.)

PRIMARY OFFENSE	§5K1.1 SUBSTANTIAL ASSISTANCE		§5K3.1 EARLY DISPOSITION		OTHER GOV'T SPONSORED		BELOW DOWNWARD DEPARTURE		DOWNWARD DEPARTURE W/ BOOKER		BELOW RANGE W/ BOOKER		REMAINING BELOW RANGE	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
TOTAL	8,060	13.4	4,690	7.8	2,493	4.1	1,224	2.0	748	1.2	5,682	9.4	695	1.2
Murder	6	13.0	1	2.2	2	4.3	0	0.0	2	4.3	5	10.9	1	2.2
Manslaughter	0	0.0	0	0.0	2	5.3	1	2.6	0	0.0	2	5.3	0	0.0
Kidnapping/Hostage Taking	15	31.9	1	2.1	3	6.4	1	2.1	1	2.1	8	17.0	0	0.0
Sexual Abuse	14	3.4	1	0.2	25	6.2	4	1.0	7	1.7	47	11.6	4	1.0
Assault	6	1.1	5	1.0	41	7.8	22	4.2	8	1.5	51	9.8	9	1.7
Robbery	95	11.3	0	0.0	26	3.1	22	2.6	26	3.1	100	11.9	6	0.7
Arson	12	24.0	0	0.0	1	2.0	2	4.0	1	2.0	4	8.0	0	0.0
Drugs - Trafficking	5,028	25.9	890	4.6	677	3.5	349	1.8	264	1.4	1,941	10.0	157	0.8
Drugs - Communication Facility	46	16.7	1	0.4	14	5.1	3	1.1	3	1.1	41	14.9	5	1.8
Drugs - Simple Possession	9	2.6	0	0.0	8	2.3	0	0.0	1	0.3	4	1.2	3	0.9
Firearms	731	11.1	23	0.3	220	3.3	142	2.2	100	1.5	747	11.3	86	1.3
Burglary/B&E	2	6.5	0	0.0	0	0.0	1	3.2	0	0.0	1	3.2	1	3.2
Auto Theft	9	18.4	0	0.0	1	2.0	0	0.0	1	2.0	3	6.1	1	2.0
Larceny	82	6.9	5	0.4	31	2.6	20	1.7	12	1.0	116	9.7	31	2.6
Fraud	877	14.8	42	0.7	210	3.5	121	2.0	109	1.8	740	12.4	112	1.9
Embezzlement	22	5.7	0	0.0	12	3.1	8	2.1	6	1.6	61	15.8	9	2.3
Forgery/Counterfeiting	83	10.4	0	0.0	13	1.6	25	3.1	6	0.8	97	12.1	14	1.8
Bribery	50	26.9	0	0.0	12	6.5	1	0.5	3	1.6	40	21.5	3	1.6
Tax	95	20.9	0	0.0	16	3.5	12	2.6	18	4.0	105	23.1	10	2.2
Money Laundering	184	26.0	6	0.8	53	7.5	15	2.1	23	3.2	122	17.2	13	1.8
Racketeering/Extortion	156	25.4	0	0.0	64	10.4	13	2.1	6	1.0	65	10.6	11	1.8
Gambling/Lottery	19	19.4	0	0.0	10	10.2	4	4.1	1	1.0	11	11.2	5	5.1
Civil Rights	9	18.0	0	0.0	2	4.0	1	2.0	0	0.0	14	28.0	0	0.0
Immigration	254	1.5	3,706	21.3	852	4.9	368	2.1	69	0.4	713	4.1	148	0.9
Pornography/Prostitution	43	3.2	3	0.2	94	7.1	38	2.9	39	2.9	363	27.4	21	1.6
Prison Offenses	12	3.9	2	0.6	10	3.2	5	1.6	4	1.3	29	9.4	3	1.0
Administration of Justice Offenses	78	9.7	3	0.4	46	5.7	23	2.9	15	1.9	130	16.2	15	1.9
Environmental/Wildlife	14	11.3	0	0.0	9	7.3	1	0.8	3	2.4	13	10.5	2	1.6
National Defense	4	9.8	0	0.0	3	7.3	3	7.3	2	4.9	6	14.6	0	0.0
Antitrust	18	78.3	0	0.0	0	0.0	0	0.0	0	0.0	1	4.3	0	0.0
Food & Drug	8	15.1	0	0.0	2	3.8	2	3.8	1	1.9	5	9.4	0	0.0
Other Miscellaneous Offenses	79	6.7	1	0.1	34	2.9	17	1.4	17	1.4	97	8.2	25	2.1

¹Of the 61,898 cases, 1,611 were excluded due to one or both of the following reasons: missing primary offense (38) or missing information from the submitted documents that prevented the comparison of the sentence and the guideline range (1,581). Descriptions of variables used in this table are provided in Appendix A.

SOURCE: U.S. Sentencing Commission, 2008 Datafile, USSCFY08.

Table 3A

**SENTENCES RELATIVE TO THE GUIDELINE RANGE
BY EACH PRIMARY OFFENSE CATEGORY¹
Fiscal Year 2005, Post-Booker - 2008, Pre-Kimbrough/Gall Data**

PRIMARY OFFENSE	TOTAL	WITHIN GUIDELINE RANGE		UPWARD DEPARTURES		UPWARD DEPARTURES W/ <i>BOOKER</i>		ABOVE RANGE WITH W/ <i>BOOKER</i>		REMAINING ABOVE RANGE	
		N	%	N	%	N	%	N	%	N	%
TOTAL	205,423	125,853	61.3	897	0.4	389	0.2	1,386	0.7	548	0.3
Murder	241	143	59.3	12	5.0	5	2.1	6	2.5	5	2.1
Manslaughter	180	112	62.2	8	4.4	7	3.9	10	5.6	5	2.8
Kidnapping/Hostage Taking	142	62	43.7	1	0.7	0	0.0	0	0.0	0	0.0
Sexual Abuse	947	661	69.8	19	2.0	15	1.6	28	3.0	7	0.7
Assault	1,652	1,147	69.4	38	2.3	9	0.5	29	1.8	18	1.1
Robbery	3,471	2,307	66.5	27	0.8	16	0.5	32	0.9	14	0.4
Arson	199	114	57.3	5	2.5	4	2.0	8	4.0	3	1.5
Drugs - Trafficking	71,930	38,473	53.5	102	0.1	38	0.1	150	0.2	88	0.1
Drugs - Communication Facility	1,151	725	63.0	3	0.3	2	0.2	1	0.1	4	0.3
Drugs - Simple Possession	1,601	1,460	91.2	12	0.7	5	0.3	17	1.1	15	0.9
Firearms	24,592	17,141	69.7	154	0.6	74	0.3	225	0.9	88	0.4
Burglary/B&E	131	95	72.5	0	0.0	2	1.5	3	2.3	1	0.8
Auto Theft	181	118	65.2	2	1.1	1	0.6	4	2.2	3	1.7
Larceny	4,837	3,770	77.9	14	0.3	7	0.1	41	0.8	28	0.6
Fraud	20,190	13,010	64.4	88	0.4	71	0.4	219	1.1	83	0.4
Embezzlement	1,493	1,128	75.6	0	0.0	1	0.1	4	0.3	0	0.0
Forgery/Counterfeiting	3,244	2,385	73.5	27	0.8	8	0.2	27	0.8	11	0.3
Bribery	607	290	47.8	0	0.0	0	0.0	2	0.3	0	0.0
Tax	1,775	894	50.4	1	0.1	3	0.2	16	0.9	3	0.2
Money Laundering	2,670	1,285	48.1	11	0.4	4	0.1	12	0.4	4	0.1
Racketeering/Extortion	1,851	984	53.2	18	1.0	5	0.3	20	1.1	11	0.6
Gambling/Lottery	332	215	64.8	1	0.3	0	0.0	1	0.3	0	0.0
Civil Rights	191	104	54.5	0	0.0	0	0.0	3	1.6	0	0.0
Immigration	50,133	31,360	62.6	270	0.5	63	0.1	379	0.8	109	0.2
Pornography/Prostitution	3,914	2,556	65.3	39	1.0	22	0.6	75	1.9	18	0.5
Prison Offenses	980	774	79.0	4	0.4	1	0.1	8	0.8	9	0.9
Administration of Justice Offenses	2,952	1,814	61.4	26	0.9	16	0.5	37	1.3	11	0.4
Environmental/Wildlife	465	302	64.9	0	0.0	1	0.2	1	0.2	1	0.2
National Defense	94	32	34.0	0	0.0	0	0.0	1	1.1	0	0.0
Antitrust	39	6	15.4	0	0.0	0	0.0	0	0.0	0	0.0
Food & Drug	200	157	78.5	3	1.5	0	0.0	2	1.0	0	0.0
Other Miscellaneous Offenses	3,038	2,229	73.4	12	0.4	9	0.3	25	0.8	9	0.3

Table 3A (cont.)

PRIMARY OFFENSE	§5K1.1 SUBSTANTIAL ASSISTANCE		§5K3.1 EARLY DISPOSITION		OTHER GOV'T SPONSORED		BELOW DOWNWARD DEPARTURE		DOWNWARD DEPARTURE W/ BOOKER		BELOW RANGE W/ BOOKER		REMAINING BELOW RANGE	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
TOTAL	29,677	14.4	14,796	7.2	6,639	3.2	5,174	2.5	3,096	1.5	13,389	6.5	3,579	1.7
Murder	23	9.5	1	0.4	15	6.2	5	2.1	5	2.1	17	7.1	4	1.7
Manslaughter	1	0.6	1	0.6	8	4.4	7	3.9	3	1.7	17	9.4	1	0.6
Kidnapping/Hostage Taking	48	33.8	2	1.4	15	10.6	1	0.7	0	0.0	9	6.3	4	2.8
Sexual Abuse	19	2.0	1	0.1	72	7.6	19	2.0	17	1.8	74	7.8	15	1.6
Assault	29	1.8	23	1.4	116	7.0	59	3.6	35	2.1	114	6.9	35	2.1
Robbery	419	12.1	1	0.0	94	2.7	139	4.0	95	2.7	261	7.5	66	1.9
Arson	51	25.6	0	0.0	5	2.5	3	1.5	1	0.5	5	2.5	0	0.0
Drugs - Trafficking	18,597	25.9	3,673	5.1	2,203	3.1	1,633	2.3	1,117	1.6	4,735	6.6	1,121	1.6
Drugs - Communication Facility	199	17.3	0	0.0	39	3.4	21	1.8	24	2.1	107	9.3	26	2.3
Drugs - Simple Possession	26	1.6	1	0.1	13	0.8	4	0.2	7	0.4	25	1.6	16	1.0
Firearms	2,854	11.6	112	0.5	622	2.5	653	2.7	433	1.8	1,806	7.3	430	1.7
Burglary/B&E	5	3.8	0	0.0	3	2.3	3	2.3	3	2.3	11	8.4	5	3.8
Auto Theft	29	16.0	0	0.0	3	1.7	5	2.8	2	1.1	12	6.6	2	1.1
Larceny	312	6.5	18	0.4	96	2.0	107	2.2	53	1.1	275	5.7	116	2.4
Fraud	3,096	15.3	12	0.1	453	2.2	542	2.7	398	2.0	1,670	8.3	548	2.7
Embezzlement	51	3.4	0	0.0	27	1.8	38	2.5	40	2.7	153	10.2	51	3.4
Forgery/Counterfeiting	322	9.9	5	0.2	58	1.8	60	1.8	49	1.5	228	7.0	64	2.0
Bribery	194	32.0	1	0.2	21	3.5	13	2.1	10	1.6	56	9.2	20	3.3
Tax	277	15.6	6	0.3	50	2.8	100	5.6	57	3.2	292	16.5	76	4.3
Money Laundering	684	25.6	22	0.8	137	5.1	71	2.7	84	3.1	278	10.4	78	2.9
Racketeering/Extortion	440	23.8	0	0.0	112	6.1	48	2.6	24	1.3	146	7.9	43	2.3
Gambling/Lottery	43	13.0	0	0.0	7	2.1	11	3.3	6	1.8	31	9.3	17	5.1
Civil Rights	44	23.0	1	0.5	6	3.1	7	3.7	5	2.6	17	8.9	4	2.1
Immigration	991	2.0	10,855	21.7	1,986	4.0	1,281	2.6	384	0.8	1,882	3.8	573	1.1
Pornography/Prostitution	164	4.2	13	0.3	149	3.8	113	2.9	113	2.9	578	14.8	74	1.9
Prison Offenses	39	4.0	16	1.6	25	2.6	22	2.2	12	1.2	54	5.5	16	1.6
Administration of Justice Offenses	369	12.5	17	0.6	167	5.7	101	3.4	60	2.0	257	8.7	77	2.6
Environmental/Wildlife	54	11.6	2	0.4	27	5.8	19	4.1	7	1.5	33	7.1	18	3.9
National Defense	24	25.5	1	1.1	8	8.5	7	7.4	3	3.2	12	12.8	6	6.4
Antitrust	23	59.0	0	0.0	1	2.6	1	2.6	3	7.7	5	12.8	0	0.0
Food & Drug	19	9.5	0	0.0	8	4.0	2	1.0	1	0.5	7	3.5	1	0.5
Other Miscellaneous Offenses	231	7.6	12	0.4	93	3.1	79	2.6	45	1.5	222	7.3	72	2.4

¹Of the 213,704 cases, 8,281 were excluded due to one or both of the following reasons: missing primary offense (203) or missing information from the submitted documents that prevented the comparison of the sentence and the guideline range (8,102). Descriptions of variables used in this table are provided in Appendix A.

SOURCE: U.S. Sentencing Commission, 2005 - 2008 Datafiles, USSCFY05 - USSCFY08.

Table 4 (cont.)

Guideline	Total	Within Guideline Range	Upward				Government Sponsored			Downward			
			Departure		Above Range		Other Gov't	Departure		Below Range			
			Gdline Only	with Booker	with Booker	All Others		\$5K1.1	\$5K3.1		Gdline Only	with Booker	with Booker
§2N1.1	2	0	0	0	0	0	0	0	0	1	0	1	0
§2N1.2	1	1	0	0	0	0	0	0	0	0	0	0	0
§2N1.3	3	1	0	0	0	0	0	0	0	2	0	0	0
§2N2.1	19	18	0	0	0	0	0	0	0	0	0	1	0
§2N3.1	0	0	0	0	0	0	0	0	0	0	0	0	0
§2P1.1	205	144	1	3	3	0	8	2	7	5	4	25	3
§2P1.2	73	61	1	0	0	0	3	0	3	0	0	5	0
§2P1.3	0	0	0	0	0	0	0	0	0	0	0	0	0
§2P1.4	0	0	0	0	0	0	0	0	0	0	0	0	0
§2Q1.1	0	0	0	0	0	0	0	0	0	0	0	0	0
§2Q1.2	39	12	0	0	1	0	3	0	8	3	3	8	1
§2Q1.3	26	6	0	0	0	0	8	0	5	2	2	2	1
§2Q1.4	0	0	0	0	0	0	0	0	0	0	0	0	0
§2Q1.5	0	0	0	0	0	0	0	0	0	0	0	0	0
§2Q1.6	0	0	0	0	0	0	0	0	0	0	0	0	0
§2Q2.1	87	55	0	0	0	0	12	0	7	0	1	10	2
§2Q2.2	0	0	0	0	0	0	0	0	0	0	0	0	0
§2R1.1	16	4	0	0	0	0	12	0	0	0	0	0	0
§2S1.1	822	312	1	1	10	0	258	2	43	20	24	136	15
§2S1.2	5	4	0	0	0	0	1	0	0	0	0	0	0
§2S1.3	170	93	1	0	0	0	22	3	14	2	4	28	3
§2S1.4	0	0	0	0	0	0	0	0	0	0	0	0	0
§2T1.1	387	149	2	0	2	0	80	0	16	15	16	98	9
§2T1.2	0	0	0	0	0	0	0	0	0	0	0	0	0
§2T1.3	0	0	0	0	0	0	0	0	0	0	0	0	0
§2T1.4	91	41	0	0	1	0	20	0	2	0	4	21	2
§2T1.5	0	0	0	0	0	0	0	0	0	0	0	0	0
§2T1.6	16	4	0	0	0	0	2	0	0	0	0	9	1
§2T1.7	0	0	0	0	0	0	0	0	0	0	0	0	0
§2T1.8	0	0	0	0	0	0	0	0	0	0	0	0	0
§2T1.9	25	10	0	0	0	0	8	1	0	1	0	5	0
§2T2.1	1	1	0	0	0	0	0	0	0	0	0	0	0
§2T2.2	0	0	0	0	0	0	0	0	0	0	0	0	0
§2T3.1	10	7	0	0	0	0	2	0	0	0	0	1	0
§2T3.2	0	0	0	0	0	0	0	0	0	0	0	0	0
§2T4.1	0	0	0	0	0	0	0	0	0	0	0	0	0
§2X1.1	22	7	0	1	0	0	7	0	2	1	1	3	0
§2X2.1	0	0	0	0	0	0	0	0	0	0	0	0	0
§2X3.1	100	48	1	0	4	0	18	2	6	1	4	16	0
§2X4.1	390	238	3	1	2	1	38	0	22	14	2	64	5
§2X5.1	0	0	0	0	0	0	0	0	0	0	0	0	0
§2X5.2	124	116	1	1	0	1	0	0	1	0	0	1	3
§2X6.1	0	0	0	0	0	0	0	0	0	0	0	0	0
§2X7.1	0	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL	56,757	32,659	255	106	515	76	7,972	4,599	2,356	1,211	738	5,609	661

¹Of the 61,898 cases, 5,141 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 (1,581) or missing guideline applied (4,918). Descriptions of variables used in this table are provided in Appendix A.

SOURCE: U.S. Sentencing Commission, 2008 Datafile, USSCFY08.

Table 5

**§5K1.1 SUBSTANTIAL ASSISTANCE DEPARTURE CASES: DEGREE OF
DECREASE FOR OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY¹
Fiscal Year 2008, Post-Kimbrough/Gall Data**

PRIMARY OFFENSE	N	Median Sentence in Months	Median Decrease in Months From Guideline Minimum	Median Percent Decrease From Guideline Minimum
TOTAL	7,620	36.0	30.0	48.1
Murder	5	69.2	232.0	73.8
Manslaughter	0	--	--	--
Kidnapping/Hostage Taking	12	167.0	83.5	31.5
Sexual Abuse	14	60.0	32.5	40.7
Assault	6	7.0	13.0	59.5
Robbery	92	46.5	21.0	32.5
Arson	11	30.0	26.0	33.2
Drugs - Trafficking	4,780	51.0	40.0	44.8
Drugs - Communication Facility	43	12.0	16.2	67.5
Drugs - Simple Possession	9	18.0	18.0	43.2
Firearms	675	57.0	29.0	40.3
Burglary/B&E	2	--	--	--
Auto Theft	9	24.0	13.0	33.3
Larceny	77	8.0	12.0	59.9
Fraud	826	6.0	15.0	70.7
Embezzlement	21	0.0	10.0	100.0
Forgery/Counterfeiting	81	6.0	9.0	66.7
Bribery	49	2.0	18.0	79.2
Tax	90	0.0	12.0	100.0
Money Laundering	171	12.0	26.0	60.9
Racketeering/Extortion	144	30.0	27.0	50.0
Gambling/Lottery	18	0.0	6.0	100.0
Civil Rights	7	0.0	12.0	100.0
Immigration	242	12.0	10.7	47.3
Pornography/Prostitution	41	58.0	48.0	45.0
Prison Offenses	9	5.7	9.3	66.7
Administration of Justice Offenses	74	0.0	12.0	100.0
Environmental/Wildlife	14	0.0	12.0	100.0
National Defense	4	0.5	31.0	95.0
Antitrust	14	0.0	9.0	100.0
Food & Drug	7	0.0	12.0	100.0
Other Miscellaneous Offenses	73	1.0	12.0	96.7

¹Of the 61,898 cases, 8,065 received a §5K1.1 substantial assistance departure. Of these, 7,726 had complete guideline application information. Due to an inability to calculate the extent of departure for cases with a guideline minimum of life, an additional 96 cases were also excluded from this table. Of the remaining 7,630 cases, ten were excluded due to missing sentence information. Note that the information presented in this table does include sentences of probation, but does not include any time of alternative confinement as described in USSG §5C1.1. Descriptions of variables used in this table are provided in Appendix A.

SOURCE: U.S. Sentencing Commission, 2008 Datafile, USSCFY08.

Table 5A

**§5K1.1 SUBSTANTIAL ASSISTANCE DEPARTURE CASES: DEGREE OF
DECREASE FOR OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY¹
Fiscal Year 2005, Post-Booker - 2008, Pre-Kimbrough/Gall Data**

PRIMARY OFFENSE	N	Median Sentence in Months	Median Decrease in Months From Guideline Minimum	Median Percent Decrease From Guideline Minimum
TOTAL	27,977	36.0	29.0	48.0
Murder	14	74.0	93.0	51.5
Manslaughter	1	--	--	--
Kidnapping/Hostage Taking	37	120.0	78.0	43.3
Sexual Abuse	18	33.5	25.0	50.4
Assault	29	26.0	16.0	46.3
Robbery	405	50.0	27.0	34.1
Arson	46	40.0	28.0	47.3
Drugs - Trafficking	17,632	51.0	40.0	43.8
Drugs - Communication Facility	197	12.0	17.9	60.4
Drugs - Simple Possession	22	19.3	11.0	61.5
Firearms	2,565	40.0	25.0	44.4
Burglary/B&E	4	2.5	4.5	68.8
Auto Theft	27	24.0	18.0	36.7
Larceny	295	5.0	10.0	67.5
Fraud	2,922	3.1	12.0	83.8
Embezzlement	48	0.0	10.5	99.7
Forgery/Counterfeiting	314	3.0	9.0	78.3
Bribery	193	5.0	18.0	87.0
Tax	268	0.0	10.0	100.0
Money Laundering	656	15.0	22.0	59.5
Racketeering/Extortion	399	30.0	31.0	52.6
Gambling/Lottery	41	0.0	8.0	100.0
Civil Rights	42	12.0	12.0	69.3
Immigration	944	12.0	10.0	48.0
Pornography/Prostitution	155	46.0	28.0	38.5
Prison Offenses	34	12.0	8.5	52.0
Administration of Justice Offenses	341	0.0	12.0	100.0
Environmental/Wildlife	49	0.0	12.0	100.0
National Defense	24	12.0	23.5	61.9
Antitrust	16	5.0	10.0	69.4
Food & Drug	19	0.0	12.0	100.0
Other Miscellaneous Offenses	220	0.0	13.5	99.9

¹Of the 213,704 cases, 29,695 received a §5K1.1 substantial assistance departure. Of these, 28,431 had complete guideline application information. Due to an inability to calculate the extent of departure for cases with a guideline minimum of life, an additional 364 cases were also excluded from this table. Furthermore, 38 cases were excluded due to several logical criteria. Of the remaining 28,029 cases, 52 were excluded due to missing sentence information. Note that the information presented in this table does include sentences of probation, but does not include any time of alternative confinement as described in USSG §5C1.1. Descriptions of variables used in this table are provided in Appendix A.

Table 6

§5K3.1 EARLY DISPOSITION PROGRAM DEPARTURE CASES: DEGREE OF DECREASE FOR OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY¹
Fiscal Year 2008, Post-Kimbrough/Gall Data

PRIMARY OFFENSE	N	Median Sentence in Months	Median Decrease in Months From Guideline Minimum	Median Percent Decrease From Guideline Minimum
TOTAL	4,514	18.0	7.0	29.5
Murder	1	--	--	--
Manslaughter	0	--	--	--
Kidnapping/Hostage Taking	1	--	--	--
Sexual Abuse	1	--	--	--
Assault	5	18.0	3.0	16.7
Robbery	0	--	--	--
Arson	0	--	--	--
Drugs - Trafficking	848	13.0	10.0	37.5
Drugs - Communication Facility	1	--	--	--
Drugs - Simple Possession	0	--	--	--
Firearms	22	14.5	8.0	20.9
Burglary/B&E	0	--	--	--
Auto Theft	0	--	--	--
Larceny	5	6.0	6.0	28.6
Fraud	39	5.0	1.0	16.7
Embezzlement	0	--	--	--
Forgery/Counterfeiting	0	--	--	--
Bribery	0	--	--	--
Tax	0	--	--	--
Money Laundering	5	0.0	13.0	100.0
Racketeering/Extortion	0	--	--	--
Gambling/Lottery	0	--	--	--
Civil Rights	0	--	--	--
Immigration	3,577	18.0	6.0	28.3
Pornography/Prostitution	3	30.0	18.0	34.8
Prison Offenses	2	--	--	--
Administration of Justice Offenses	3	4.0	12.0	60.0
Environmental/Wildlife	0	--	--	--
National Defense	0	--	--	--
Antitrust	0	--	--	--
Food & Drug	0	--	--	--
Other Miscellaneous Offenses	1	--	--	--

¹Of the 61,898 cases, 4,693 received a §5K3.1 early disposition program departure. Of these, 4,515 had complete guideline application information. Furthermore, one case was excluded due to several logical criteria. Note that the information presented in this table does include sentences of probation, but does not include any time of alternative confinement as described in USSG §5C1.1. Descriptions of variables used in this table are provided in Appendix A.

SOURCE: U.S. Sentencing Commission, 2008 Datafile, USSCFY08.

Table 6A

§5K3.1 EARLY DISPOSITION PROGRAM DEPARTURE CASES: DEGREE OF DECREASE FOR OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY¹
Fiscal Year 2005, Post-Booker - 2008, Pre-Kimbrough/Gall Data

PRIMARY OFFENSE	N	Median Sentence in Months	Median Decrease in Months From Guideline Minimum	Median Percent Decrease From Guideline Minimum
TOTAL	14,161	18.0	7.0	27.8
Murder	0	--	--	--
Manslaughter	1	--	--	--
Kidnapping/Hostage Taking	2	--	--	--
Sexual Abuse	1	--	--	--
Assault	22	15.0	6.0	35.0
Robbery	1	--	--	--
Arson	0	--	--	--
Drugs - Trafficking	3,430	13.0	10.0	40.0
Drugs - Communication Facility	0	--	--	--
Drugs - Simple Possession	1	--	--	--
Firearms	106	12.0	6.0	21.6
Burglary/B&E	0	--	--	--
Auto Theft	0	--	--	--
Larceny	15	6.0	8.0	50.0
Fraud	9	0.0	6.0	100.0
Embezzlement	0	--	--	--
Forgery/Counterfeiting	5	4.4	5.6	58.3
Bribery	1	--	--	--
Tax	5	0.0	12.0	99.8
Money Laundering	21	3.9	6.0	60.0
Racketeering/Extortion	0	--	--	--
Gambling/Lottery	0	--	--	--
Civil Rights	1	--	--	--
Immigration	10,482	21.0	6.0	26.0
Pornography/Prostitution	11	28.0	21.0	43.2
Prison Offenses	15	12.0	5.0	22.2
Administration of Justice Offenses	17	6.0	5.5	43.1
Environmental/Wildlife	2	--	--	--
National Defense	1	--	--	--
Antitrust	0	--	--	--
Food & Drug	0	--	--	--
Other Miscellaneous Offenses	12	7.0	6.0	52.8

¹Of the 213,704 cases, 14,808 received a §5K3.1 early disposition program departure. Of these, 14,209 had complete guideline application information. Furthermore, 35 cases were excluded due to several logical criteria. Of the remaining 14,174 cases, 13 were excluded due to missing sentence information. Note that the information presented in this table does include sentences of probation, but does not include any time of alternative confinement as described in USSG §5C1.1. Descriptions of variables used in this table are provided in Appendix A.

SOURCE: U.S. Sentencing Commission, 2005 - 2008 Datafiles, USSCFY05 - USSCFY08.

Table 7

**OTHER GOVERNMENT SPONSORED BELOW RANGE CASES: DEGREE OF
DECREASE FOR OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY¹
Fiscal Year 2008, Post-Kimbrough/Gall Data**

PRIMARY OFFENSE	N	Median Sentence in Months	Median Decrease in Months From Guideline Minimum	Median Percent Decrease From Guideline Minimum
TOTAL	2,291	21.0	10.0	27.8
Murder	2	--	--	--
Manslaughter	2	--	--	--
Kidnapping/Hostage Taking	3	235.0	84.0	27.5
Sexual Abuse	23	70.0	15.0	30.6
Assault	34	14.8	11.5	42.1
Robbery	26	44.0	13.0	20.0
Arson	1	--	--	--
Drugs - Trafficking	643	60.0	15.0	23.7
Drugs - Communication Facility	14	24.0	19.5	40.6
Drugs - Simple Possession	7	60.0	10.0	16.4
Firearms	203	36.0	15.0	25.0
Burglary/B&E	0	--	--	--
Auto Theft	1	--	--	--
Larceny	28	0.0	7.5	100.0
Fraud	155	11.0	10.0	50.4
Embezzlement	12	0.0	10.0	99.9
Forgery/Counterfeiting	13	8.0	8.0	41.7
Bribery	12	34.0	22.5	46.7
Tax	16	0.0	12.0	100.0
Money Laundering	46	12.0	10.0	56.9
Racketeering/Extortion	57	24.0	10.0	27.0
Gambling/Lottery	10	0.0	6.0	99.8
Civil Rights	2	--	--	--
Immigration	798	12.0	3.7	21.5
Pornography/Prostitution	92	60.0	33.0	38.1
Prison Offenses	9	10.0	10.0	35.1
Administration of Justice Offenses	38	0.0	11.5	100.0
Environmental/Wildlife	9	0.0	13.0	100.0
National Defense	2	--	--	--
Antitrust	0	--	--	--
Food & Drug	2	--	--	--
Other Miscellaneous Offenses	31	0.0	12.0	100.0

¹Of the 61,898 cases, 2,496 received an other government sponsored downward departure. Of these, 2,301 had complete guideline application information. Due to an inability to calculate the extent of departure for cases with a guideline minimum of life, an additional eight cases were also excluded from this table. Of the remaining 2,293 cases, two were excluded due to missing sentence information. Note that the information presented in this table does include sentences of probation, but does not include any time of alternative confinement as described in USSG §5C1.1. Descriptions of variables used in this table are provided in Appendix A.

SOURCE: U.S. Sentencing Commission, 2008 Datafile, USSCFY08.

Table 7A

**OTHER GOVERNMENT SPONSORED BELOW RANGE CASES: DEGREE OF
DECREASE FOR OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY¹
Fiscal Year 2005, Post-Booker - 2008, Pre-Kimbrough/Gall Data**

PRIMARY OFFENSE	N	Median Sentence in Months	Median Decrease in Months From Guideline Minimum	Median Percent Decrease From Guideline Minimum
TOTAL	6,078	24.0	10.0	29.8
Murder	13	120.0	72.0	35.7
Manslaughter	7	15.0	10.0	47.1
Kidnapping/Hostage Taking	14	156.5	52.0	23.6
Sexual Abuse	67	40.0	21.0	35.1
Assault	107	18.0	12.0	47.8
Robbery	84	64.0	26.5	29.7
Arson	4	42.0	19.5	33.7
Drugs - Trafficking	2,046	60.0	18.0	25.8
Drugs - Communication Facility	37	24.0	24.0	50.0
Drugs - Simple Possession	9	6.0	9.0	40.0
Firearms	565	37.0	15.0	30.0
Burglary/B&E	3	10.0	27.0	73.0
Auto Theft	3	93.0	42.0	14.7
Larceny	85	0.0	10.0	100.0
Fraud	406	5.1	10.3	67.1
Embezzlement	26	0.0	8.0	99.7
Forgery/Counterfeiting	50	3.3	10.0	73.3
Bribery	20	2.5	10.0	93.3
Tax	47	0.0	10.0	100.0
Money Laundering	124	15.0	12.0	40.3
Racketeering/Extortion	102	46.0	20.4	32.4
Gambling/Lottery	7	0.0	8.0	100.0
Civil Rights	6	0.0	20.0	100.0
Immigration	1,807	12.0	4.0	21.7
Pornography/Prostitution	146	60.0	30.0	29.8
Prison Offenses	23	10.0	6.0	25.0
Administration of Justice Offenses	145	6.0	12.0	58.9
Environmental/Wildlife	23	0.0	10.0	100.0
National Defense	8	11.5	26.5	65.0
Antitrust	1	--	--	--
Food & Drug	8	17.0	14.5	39.7
Other Miscellaneous Offenses	85	0.0	11.6	100.0

¹Of the 213,704 cases, 6,659 received an other government sponsored downward departure. Of these, 6,131 had complete guideline application information. Due to an inability to calculate the extent of departure for cases with a guideline minimum of life, an additional 27 cases were also excluded from this table. Furthermore, 13 cases were excluded due to several logical criteria. Of the remaining 6,091 cases, 13 were excluded due to missing sentence information. Note that the information presented in this table does include sentences of probation, but does not include any time of alternative confinement as described in USSG §5C1.1. Descriptions of variables used in this table are provided in Appendix A.

SOURCE: U.S. Sentencing Commission, 2005 - 2008 Datafiles, USSCFY05 - USSCFY08.

Table 8

**DOWNWARD DEPARTURES FROM GUIDELINE RANGE: DEGREE OF
DECREASE FOR OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY¹
Fiscal Year 2008, Post-Kimbrough/Gall Data**

PRIMARY OFFENSE	N	Median Sentence in Months	Median Decrease in Months From Guideline Minimum	Median Percent Decrease From Guideline Minimum
TOTAL	1,166	24.0	10.0	28.5
Murder	0	--	--	--
Manslaughter	1	--	--	--
Kidnapping/Hostage Taking	1	--	--	--
Sexual Abuse	4	34.0	7.0	26.1
Assault	19	7.0	12.0	41.7
Robbery	22	27.0	15.0	26.2
Arson	2	--	--	--
Drugs - Trafficking	327	53.0	13.0	20.5
Drugs - Communication Facility	2	--	--	--
Drugs - Simple Possession	0	--	--	--
Firearms	136	30.5	9.0	19.4
Burglary/B&E	1	--	--	--
Auto Theft	0	--	--	--
Larceny	20	0.0	10.0	100.0
Fraud	114	5.0	10.0	64.6
Embezzlement	7	1.0	8.0	87.5
Forgery/Counterfeiting	24	2.7	8.5	70.8
Bribery	1	--	--	--
Tax	11	0.0	8.0	100.0
Money Laundering	13	21.0	8.0	18.2
Racketeering/Extortion	11	71.0	18.0	17.1
Gambling/Lottery	4	0.0	7.0	100.0
Civil Rights	1	--	--	--
Immigration	360	20.0	7.0	26.0
Pornography/Prostitution	37	46.0	25.0	31.0
Prison Offenses	5	12.0	3.0	19.8
Administration of Justice Offenses	23	6.0	9.0	60.0
Environmental/Wildlife	1	--	--	--
National Defense	3	7.0	10.0	30.0
Antitrust	0	--	--	--
Food & Drug	2	--	--	--
Other Miscellaneous Offenses	14	2.0	9.5	82.1

¹Of the 61,898 cases, 1,224 received a downward departure from the guideline range. Of these, 1,170 had complete guideline application information. Due to an inability to calculate the extent of departure for cases with a guideline minimum of life, an additional two cases were also excluded from this table. Of the remaining 1,168 cases, two were excluded due to missing sentence information. Note that the information presented in this table does include sentences of probation, but does not include any time of alternative confinement as described in USSG §5C1.1. Descriptions of variables used in this table are provided in Appendix A.

Table 8A

**DOWNWARD DEPARTURES FROM GUIDELINE RANGE: DEGREE OF
DECREASE FOR OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY¹
Fiscal Year 2005, Post-Booker - 2008, Pre-Kimbrough/Gall Data**

PRIMARY OFFENSE	N	Median Sentence in Months	Median Decrease in Months From Guideline Minimum	Median Percent Decrease From Guideline Minimum
TOTAL	4,856	24.0	10.0	29.6
Murder	5	70.0	27.0	27.8
Manslaughter	7	21.0	12.0	26.8
Kidnapping/Hostage Taking	1	--	--	--
Sexual Abuse	19	24.0	7.0	14.3
Assault	55	12.0	8.0	42.4
Robbery	133	42.0	11.0	20.5
Arson	1	--	--	--
Drugs - Trafficking	1,514	60.0	15.0	23.1
Drugs - Communication Facility	20	12.0	10.0	37.4
Drugs - Simple Possession	3	70.0	16.0	23.9
Firearms	625	27.0	11.0	25.9
Burglary/B&E	3	6.0	5.0	50.0
Auto Theft	5	7.0	41.0	42.5
Larceny	100	0.0	8.0	100.0
Fraud	504	2.4	10.0	82.1
Embezzlement	37	0.0	10.0	99.6
Forgery/Counterfeiting	59	5.0	8.0	60.0
Bribery	12	0.0	9.0	100.0
Tax	95	0.0	10.0	100.0
Money Laundering	64	17.0	12.0	49.2
Racketeering/Extortion	43	30.0	14.0	27.5
Gambling/Lottery	9	0.0	8.0	100.0
Civil Rights	7	0.0	6.0	100.0
Immigration	1,209	24.0	7.0	22.1
Pornography/Prostitution	112	25.0	21.0	33.7
Prison Offenses	18	15.0	5.5	33.3
Administration of Justice Offenses	95	0.0	10.0	100.0
Environmental/Wildlife	19	0.0	8.0	100.0
National Defense	7	10.0	36.0	78.3
Antitrust	1	--	--	--
Food & Drug	1	--	--	--
Other Miscellaneous Offenses	73	0.0	10.0	100.0

¹Of the 213,704 cases, 5,177 received a downward departure from the guideline range. Of these, 4,875 had complete guideline application information. Due to an inability to calculate the extent of departure for cases with a guideline minimum of life, an additional nine cases were also excluded from this table. Furthermore, two cases were excluded due to several logical criteria. Of the remaining 4,864 cases, eight were excluded due to missing sentence information. Note that the information presented in this table does include sentences of probation, but does not include any time of alternative confinement as described in USSG §5C1.1. Descriptions of variables used in this table are provided in Appendix A.

Table 9

**DOWNWARD DEPARTURES WITH *BOOKER* /18 U.S.C. § 3553: DEGREE
OF DECREASE FOR OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY¹
Fiscal Year 2008, Post-*Kimbrough*/*Gall* Data**

PRIMARY OFFENSE	N	Median Sentence in Months	Median Decrease in Months From Guideline Minimum	Median Percent Decrease From Guideline Minimum
TOTAL	709	24.0	15.0	40.0
Murder	2	--	--	--
Manslaughter	0	--	--	--
Kidnapping/Hostage Taking	0	--	--	--
Sexual Abuse	6	25.5	17.5	34.9
Assault	8	1.5	14.8	87.5
Robbery	26	44.5	13.0	22.8
Arson	1	--	--	--
Drugs - Trafficking	246	60.0	23.0	31.0
Drugs - Communication Facility	3	11.9	18.1	60.4
Drugs - Simple Possession	1	--	--	--
Firearms	98	24.0	15.0	35.0
Burglary/B&E	0	--	--	--
Auto Theft	1	--	--	--
Larceny	10	0.0	8.0	100.0
Fraud	104	6.0	12.0	66.7
Embezzlement	6	0.0	11.0	99.6
Forgery/Counterfeiting	6	0.0	14.0	100.0
Bribery	2	--	--	--
Tax	18	0.0	12.0	99.9
Money Laundering	22	21.0	16.5	79.2
Racketeering/Extortion	6	39.0	27.0	33.9
Gambling/Lottery	1	--	--	--
Civil Rights	0	--	--	--
Immigration	65	22.0	12.0	35.1
Pornography/Prostitution	38	51.0	25.5	38.5
Prison Offenses	4	16.5	4.5	22.4
Administration of Justice Offenses	14	6.0	9.5	61.0
Environmental/Wildlife	3	0.0	8.0	100.0
National Defense	1	--	--	--
Antitrust	0	--	--	--
Food & Drug	1	--	--	--
Other Miscellaneous Offenses	16	0.0	10.0	100.0

¹Of the 61,898 cases, 748 received a downward departure from the guideline range with *Booker*/ 18 U.S.C § 3553. Of these, 713 had complete guideline application information. Due to an inability to calculate the extent of departure for cases with a guideline minimum of life, an additional four cases were also excluded from this table. Note that the information presented in this table does include sentences of probation, but does not include any time of alternative confinement as described in USSG §5C1.1. Descriptions of variables used in this table are provided in Appendix A.

Table 9A

**DOWNWARD DEPARTURES WITH *BOOKER* /18 U.S.C. § 3553: DEGREE
OF DECREASE FOR OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY¹
Fiscal Year 2005, Post-Booker - 2008, Pre-Kimbrough/Gall Data**

PRIMARY OFFENSE	N	Median Sentence in Months	Median Decrease in Months From Guideline Minimum	Median Percent Decrease From Guideline Minimum
TOTAL	2,871	24.0	15.0	40.0
Murder	4	78.0	36.0	26.7
Manslaughter	3	12.0	8.0	33.3
Kidnapping/Hostage Taking	0	--	--	--
Sexual Abuse	17	37.0	21.0	26.1
Assault	34	4.5	12.0	79.4
Robbery	88	45.5	16.5	22.8
Arson	0	--	--	--
Drugs - Trafficking	1,028	60.0	22.0	31.4
Drugs - Communication Facility	21	6.0	24.0	71.4
Drugs - Simple Possession	7	0.0	12.0	100.0
Firearms	403	24.0	13.0	35.1
Burglary/B&E	3	13.0	6.0	25.0
Auto Theft	2	--	--	--
Larceny	51	0.0	10.0	100.0
Fraud	367	6.0	12.0	68.6
Embezzlement	40	0.0	10.0	99.7
Forgery/Counterfeiting	47	1.6	9.0	93.4
Bribery	7	12.0	15.0	50.0
Tax	57	0.0	10.0	100.0
Money Laundering	78	13.5	12.0	50.7
Racketeering/Extortion	23	15.0	24.0	41.7
Gambling/Lottery	5	0.1	8.0	99.4
Civil Rights	4	6.0	12.0	74.9
Immigration	352	22.0	12.0	34.9
Pornography/Prostitution	105	36.0	24.0	41.0
Prison Offenses	12	8.1	3.0	32.9
Administration of Justice Offenses	57	3.0	10.0	85.0
Environmental/Wildlife	6	0.0	7.0	100.0
National Defense	3	40.0	12.0	25.8
Antitrust	3	0.0	15.0	100.0
Food & Drug	1	--	--	--
Other Miscellaneous Offenses	43	0.0	12.0	100.0

¹Of the 213,704 cases, 3,099 received a downward departure from the guideline range with *Booker*/ 18 U.S.C § 3553. Of these, 2,886 had complete guideline application information. Due to an inability to calculate the extent of departure for cases with a guideline minimum of life, an additional 11 cases were also excluded from this table. Of the remaining 2,875 cases, four were excluded due to missing sentence information. Note that the information presented in this table does include sentences of probation, but does not include any time of alternative confinement as described in USSG §5C1.1. Descriptions of variables used in this table are provided in Appendix A.

Table 10

**BELOW GUIDELINE RANGE WITH *BOOKER*/18 U.S.C. § 3553: DEGREE
OF DECREASE FOR OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY¹
Fiscal Year 2008, Post-*Kimbrough*/*Gall* Data**

PRIMARY OFFENSE	N	Median Sentence in Months	Median Decrease in Months From Guideline Minimum	Median Percent Decrease From Guideline Minimum
TOTAL	5,396	27.0	12.0	33.3
Murder	5	240.0	52.0	16.7
Manslaughter	2	--	--	--
Kidnapping/Hostage Taking	7	240.0	70.0	30.0
Sexual Abuse	42	33.0	14.9	38.3
Assault	50	13.5	9.0	38.7
Robbery	97	40.0	12.0	21.7
Arson	4	66.0	13.5	17.7
Drugs - Trafficking	1,841	60.0	17.0	23.7
Drugs - Communication Facility	40	13.5	12.0	68.2
Drugs - Simple Possession	4	30.0	9.0	59.9
Firearms	721	27.0	12.0	30.1
Burglary/B&E	1	--	--	--
Auto Theft	3	6.0	4.0	40.0
Larceny	114	0.0	9.0	100.0
Fraud	701	8.0	10.0	58.3
Embezzlement	61	1.0	9.0	93.3
Forgery/Counterfeiting	93	0.0	10.0	100.0
Bribery	29	12.0	12.0	50.0
Tax	102	1.0	11.0	91.7
Money Laundering	113	20.0	12.0	35.1
Racketeering/Extortion	60	36.0	12.0	27.4
Gambling/Lottery	11	0.0	6.0	100.0
Civil Rights	14	8.5	10.0	52.5
Immigration	657	24.0	10.0	33.2
Pornography/Prostitution	357	60.0	28.0	34.8
Prison Offenses	29	9.0	8.0	37.5
Administration of Justice Offenses	127	6.0	9.8	59.9
Environmental/Wildlife	12	0.0	10.0	100.0
National Defense	6	3.2	9.7	71.6
Antitrust	1	--	--	--
Food & Drug	5	1.0	8.0	83.3
Other Miscellaneous Offenses	87	0.0	10.0	100.0

¹Of the 61,898 cases, 5,682 were sentenced below the guideline range with *Booker*/18 U.S.C § 3553. Of these, 5,431 had complete guideline application information. Due to an inability to calculate the extent of departure for cases with a guideline minimum of life, an additional 22 cases were also excluded from this table. Furthermore, two cases were excluded due to several logical criteria. Of the remaining 5,407 cases, 11 were excluded due to missing sentence information. Note that the information presented in this table does include sentences of probation, but does not include any time of alternative confinement as described in USSG §5C1.1. Descriptions of variables used in this table are provided in Appendix A.

Table 10A

**BELOW GUIDELINE RANGE WITH *BOOKER*/18 U.S.C. § 3553: DEGREE
OF DECREASE FOR OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY¹
Fiscal Year 2005, Post-Booker - 2008, Pre-Kimbrough/Gall Data**

PRIMARY OFFENSE	N	Median Sentence in Months	Median Decrease in Months From Guideline Minimum	Median Percent Decrease From Guideline Minimum
TOTAL	12,468	27.0	12.0	33.3
Murder	12	90.0	22.0	20.3
Manslaughter	17	18.0	12.0	40.0
Kidnapping/Hostage Taking	9	121.0	60.0	27.8
Sexual Abuse	63	36.0	17.0	34.8
Assault	107	12.0	10.0	42.9
Robbery	252	51.0	14.0	20.5
Arson	4	27.0	14.5	35.0
Drugs - Trafficking	4,358	60.0	19.0	23.4
Drugs - Communication Facility	102	25.5	13.5	33.3
Drugs - Simple Possession	22	3.9	6.1	66.4
Firearms	1,715	27.0	12.0	28.2
Burglary/B&E	11	6.0	8.0	52.4
Auto Theft	12	6.5	8.0	57.9
Larceny	260	0.0	9.0	100.0
Fraud	1,570	5.0	10.0	66.7
Embezzlement	143	0.0	9.0	99.6
Forgery/Counterfeiting	217	4.0	8.0	75.0
Bribery	53	5.0	10.0	74.5
Tax	273	3.0	10.0	75.0
Money Laundering	249	15.0	12.0	47.4
Racketeering/Extortion	133	30.0	12.0	33.3
Gambling/Lottery	30	0.0	6.0	100.0
Civil Rights	16	6.0	12.0	86.2
Immigration	1,745	24.0	10.0	33.2
Pornography/Prostitution	548	48.0	25.0	33.3
Prison Offenses	51	10.0	8.0	35.1
Administration of Justice Offenses	236	6.0	10.0	66.7
Environmental/Wildlife	30	0.0	6.5	100.0
National Defense	10	34.5	34.0	36.4
Antitrust	5	6.0	7.0	50.0
Food & Drug	7	0.0	10.0	100.0
Other Miscellaneous Offenses	208	0.0	10.0	100.0

¹Of the 213,704 cases, 13,395 were sentenced below the guideline range with *Booker*/18 U.S.C § 3553. Of these, 12,614 had complete guideline application information. Due to an inability to calculate the extent of departure for cases with a guideline minimum of life, an additional 119 cases were also excluded from this table. Furthermore, six cases were excluded due to several logical criteria. Of the remaining 12,489 cases, 21 were excluded due to one or both of the following reasons: missing primary offense category (1) or missing sentence information (20). Note that the information presented in this table does include sentences of probation, but does not include any time of alternative confinement as described in USSG §5C1.1. Descriptions of variables used in this table are provided in Appendix A.

Table 11

**ALL REMAINING BELOW GUIDELINE RANGE CASES: DEGREE OF
DECREASE FOR OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY¹
Fiscal Year 2008, Post-Kimbrough/Gall Data**

PRIMARY OFFENSE	N	Median Sentence in Months	Median Decrease in Months From Guideline Minimum	Median Percent Decrease From Guideline Minimum
TOTAL	608	15.0	7.0	35.5
Murder	0	--	--	--
Manslaughter	0	--	--	--
Kidnapping/Hostage Taking	0	--	--	--
Sexual Abuse	4	51.5	13.5	35.9
Assault	7	12.0	8.0	59.9
Robbery	6	44.5	14.0	22.0
Arson	0	--	--	--
Drugs - Trafficking	138	62.0	15.5	25.3
Drugs - Communication Facility	5	24.0	6.0	20.0
Drugs - Simple Possession	3	1.5	6.0	75.2
Firearms	80	70.0	10.0	16.5
Burglary/B&E	1	--	--	--
Auto Theft	1	--	--	--
Larceny	28	0.0	6.0	100.0
Fraud	98	4.6	6.0	53.5
Embezzlement	9	0.0	4.0	99.3
Forgery/Counterfeiting	12	2.5	6.0	83.1
Bribery	3	3.0	7.0	70.0
Tax	10	0.0	6.5	100.0
Money Laundering	10	0.1	6.0	98.1
Racketeering/Extortion	8	69.0	24.0	27.7
Gambling/Lottery	5	0.0	6.0	100.0
Civil Rights	0	--	--	--
Immigration	125	6.0	6.0	34.8
Pornography/Prostitution	20	65.0	35.5	28.0
Prison Offenses	3	6.0	2.0	25.0
Administration of Justice Offenses	10	0.0	7.5	100.0
Environmental/Wildlife	1	--	--	--
National Defense	0	--	--	--
Antitrust	0	--	--	--
Food & Drug	0	--	--	--
Other Miscellaneous Offenses	21	0.0	6.0	100.0

¹Of the 61,898 cases, 696 were otherwise sentenced below the guideline range. Of these, 615 had complete guideline application information. Due to an inability to calculate the extent of departure for cases with a guideline minimum of life, an additional six cases were also excluded from this table. Furthermore, one case was excluded due to several logical criteria. Note that the information presented in this table does include sentences of probation, but does not include any time of alternative confinement as described in USSG §5C1.1. Descriptions of variables used in this table are provided in Appendix A.

SOURCE: U.S. Sentencing Commission, 2008 Datafile, USSCFY08.

Table 11A

**ALL REMAINING BELOW GUIDELINE RANGE CASES: DEGREE OF
DECREASE FOR OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY¹
Fiscal Year 2005, Post-Booker - 2008, Pre-Kimbrough/Gall Data**

PRIMARY OFFENSE	N	Median Sentence in Months	Median Decrease in Months From Guideline Minimum	Median Percent Decrease From Guideline Minimum
TOTAL	3,102	18.0	9.1	40.0
Murder	1	--	--	--
Manslaughter	1	--	--	--
Kidnapping/Hostage Taking	3	324.0	84.0	20.6
Sexual Abuse	15	36.0	18.0	25.0
Assault	32	3.5	5.5	67.5
Robbery	62	48.0	17.5	23.0
Arson	0	--	--	--
Drugs - Trafficking	937	57.0	15.0	28.6
Drugs - Communication Facility	24	27.0	9.5	35.4
Drugs - Simple Possession	15	1.0	5.0	82.8
Firearms	390	36.0	10.0	27.7
Burglary/B&E	5	0.0	6.0	100.0
Auto Theft	2	--	--	--
Larceny	111	0.0	6.0	100.0
Fraud	492	0.0	6.0	99.7
Embezzlement	45	0.0	6.0	99.6
Forgery/Counterfeiting	58	0.0	6.0	100.0
Bribery	19	2.0	12.0	75.0
Tax	71	0.0	9.0	99.7
Money Laundering	75	5.0	6.0	66.7
Racketeering/Extortion	32	33.5	10.0	21.5
Gambling/Lottery	17	0.0	6.0	100.0
Civil Rights	4	2.5	8.5	79.0
Immigration	463	18.0	6.0	33.2
Pornography/Prostitution	67	30.0	15.0	33.3
Prison Offenses	13	12.0	6.0	48.1
Administration of Justice Offenses	63	6.0	7.3	71.3
Environmental/Wildlife	14	0.0	6.0	100.0
National Defense	6	21.0	29.0	50.7
Antitrust	0	--	--	--
Food & Drug	1	--	--	--
Other Miscellaneous Offenses	64	0.0	6.0	100.0

¹Of the 213,704 cases, 3,580 were otherwise sentenced below the guideline range. Of these, 3,147 had complete guideline application information. Due to an inability to calculate the extent of departure for cases with a guideline minimum of life, an additional 23 cases were also excluded from this table. Furthermore, eight cases were excluded due to several logical criteria. Of the remaining 3,116 cases, 14 were excluded due to missing sentence information. Note that the information presented in this table does include sentences of probation, but does not include any time of alternative confinement as described in USSG §5C1.1. Descriptions of variables used in this table are provided in Appendix A.

Table 12

**UPWARD DEPARTURES FROM GUIDELINE RANGE: DEGREE OF
INCREASE FOR OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY¹
Fiscal Year 2008, Post-Kimbrough/Gall Data**

PRIMARY OFFENSE	N	Median Sentence in Months	Median Increase in Months From Guideline Maximum	Median Percent Increase From Guideline Maximum
TOTAL	246	60.0	13.5	31.3
Murder	4	330.0	68.0	26.0
Manslaughter	3	60.0	14.0	30.4
Kidnapping/Hostage Taking	0	--	--	--
Sexual Abuse	5	84.0	27.0	47.4
Assault	11	90.0	24.0	46.3
Robbery	11	120.0	39.0	35.2
Arson	2	--	--	--
Drugs - Trafficking	35	156.0	27.0	24.4
Drugs - Communication Facility	1	--	--	--
Drugs - Simple Possession	1	--	--	--
Firearms	45	118.0	15.0	22.9
Burglary/B&E	1	--	--	--
Auto Theft	0	--	--	--
Larceny	3	37.0	16.0	76.2
Fraud	19	60.0	14.0	37.9
Embezzlement	0	--	--	--
Forgery/Counterfeiting	1	--	--	--
Bribery	0	--	--	--
Tax	2	--	--	--
Money Laundering	2	--	--	--
Racketeering/Extortion	8	72.0	18.0	33.1
Gambling/Lottery	0	--	--	--
Civil Rights	1	--	--	--
Immigration	70	24.0	6.0	33.3
Pornography/Prostitution	9	300.0	59.0	18.5
Prison Offenses	2	--	--	--
Administration of Justice Offenses	5	36.0	8.0	100.0
Environmental/Wildlife	0	--	--	--
National Defense	0	--	--	--
Antitrust	0	--	--	--
Food & Drug	0	--	--	--
Other Miscellaneous Offenses	5	36.0	6.0	20.0

¹Of the 61,898 cases, 265 received an upward departure from the guideline range. Of these, 250 had complete guideline application information. Due to an inability to calculate the extent of departure for cases with a sentence of life, one additional case was also excluded from this table. Furthermore, three cases were excluded due to several logical criteria. Note that the information presented in this table does not include any time of alternative confinement as described in USSG §5C1.1. Descriptions of variables used in this table are provided in Appendix A.

SOURCE: U.S. Sentencing Commission, 2008 Datafile, USSCFY08.

Table 12A

**UPWARD DEPARTURES FROM GUIDELINE RANGE: DEGREE OF
INCREASE FOR OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY¹
Fiscal Year 2005, Post-Booker - 2008, Pre-Kimbrough/Gall Data**

PRIMARY OFFENSE	N	Median Sentence in Months	Median Increase in Months From Guideline Maximum	Median Percent Increase From Guideline Maximum
TOTAL	835	48.0	11.0	33.3
Murder	11	300.0	105.0	77.8
Manslaughter	8	102.0	18.0	39.0
Kidnapping/Hostage Taking	1	--	--	--
Sexual Abuse	18	66.0	19.5	34.3
Assault	38	72.0	20.0	39.1
Robbery	27	168.0	49.0	48.8
Arson	5	120.0	36.0	42.9
Drugs - Trafficking	92	72.0	14.5	28.5
Drugs - Communication Facility	3	48.0	29.0	25.2
Drugs - Simple Possession	11	12.0	6.0	100.0
Firearms	137	77.0	14.0	27.0
Burglary/B&E	0	--	--	--
Auto Theft	2	--	--	--
Larceny	12	39.0	7.0	34.0
Fraud	80	47.0	11.0	48.9
Embezzlement	0	--	--	--
Forgery/Counterfeiting	27	48.0	14.0	50.0
Bribery	0	--	--	--
Tax	1	--	--	--
Money Laundering	11	108.0	34.0	90.5
Racketeering/Extortion	15	96.0	15.0	31.7
Gambling/Lottery	1	--	--	--
Civil Rights	0	--	--	--
Immigration	256	18.0	5.5	28.6
Pornography/Prostitution	37	110.0	26.0	24.2
Prison Offenses	4	54.0	6.0	13.8
Administration of Justice Offenses	23	24.0	8.0	71.4
Environmental/Wildlife	0	--	--	--
National Defense	0	--	--	--
Antitrust	0	--	--	--
Food & Drug	3	36.0	18.0	100.0
Other Miscellaneous Offenses	12	50.5	8.5	31.0

¹Of the 213,704 cases, 897 received an upward departure from the guideline range. Of these, 847 had complete guideline application information. Due to an inability to calculate the extent of departure for cases with a sentence of life, an additional four cases were also excluded from this table. Furthermore, four cases were excluded due to several logical criteria. Of the remaining 839 cases, four were excluded due to missing sentence information. Note that the information presented in this table does not include any time of alternative confinement as described in USSG §5C1.1. Descriptions of variables used in this table are provided in Appendix A.

Table 13

UPWARD DEPARTURES WITH *BOOKER*/18 U.S.C. § 3553: DEGREE OF INCREASE FOR OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY¹
Fiscal Year 2008, Post-Kimbrough/Gall Data

PRIMARY OFFENSE	N	Median Sentence in Months	Median Increase in Months From Guideline Maximum	Median Percent Increase From Guideline Maximum
TOTAL	100	72.5	24.0	56.0
Murder	1	--	--	--
Manslaughter	0	--	--	--
Kidnapping/Hostage Taking	0	--	--	--
Sexual Abuse	1	--	--	--
Assault	2	--	--	--
Robbery	9	168.0	52.0	82.5
Arson	0	--	--	--
Drugs - Trafficking	13	132.0	51.0	33.3
Drugs - Communication Facility	1	--	--	--
Drugs - Simple Possession	1	--	--	--
Firearms	22	108.0	36.0	52.1
Burglary/B&E	0	--	--	--
Auto Theft	0	--	--	--
Larceny	3	36.0	24.0	200.0
Fraud	4	46.0	9.5	24.4
Embezzlement	1	--	--	--
Forgery/Counterfeiting	3	36.0	8.0	50.0
Bribery	0	--	--	--
Tax	1	--	--	--
Money Laundering	0	--	--	--
Racketeering/Extortion	0	--	--	--
Gambling/Lottery	0	--	--	--
Civil Rights	0	--	--	--
Immigration	22	16.0	7.0	100.0
Pornography/Prostitution	9	240.0	56.0	56.3
Prison Offenses	2	--	--	--
Administration of Justice Offenses	3	24.0	6.0	20.0
Environmental/Wildlife	0	--	--	--
National Defense	0	--	--	--
Antitrust	0	--	--	--
Food & Drug	0	--	--	--
Other Miscellaneous Offenses	2	--	--	--

¹Of the 61,898 cases, 114 received an upward departure from the guideline range with *Booker*/18 U.S.C § 3553. Of these, 102 had complete guideline application information. Due to an inability to calculate the extent of departure for cases with a sentence of life, one additional case was also excluded from this table. Furthermore, one case was excluded due to several logical criteria. Note that the information presented in this table does not include any time of alternative confinement as described in USSG §5C1.1. Descriptions of variables used in this table are provided in Appendix A.

SOURCE: U.S. Sentencing Commission, 2008 Datafile, USSCFY08.

Table 13A

**UPWARD DEPARTURES WITH *BOOKER*/18 U.S.C. § 3553: DEGREE OF
INCREASE FOR OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY¹
Fiscal Year 2005, Post-Booker - 2008, Pre-Kimbrough/Gall Data**

PRIMARY OFFENSE	N	Median Sentence in Months	Median Increase in Months From Guideline Maximum	Median Percent Increase From Guideline Maximum
TOTAL	359	72.0	18.0	39.0
Murder	4	276.0	84.5	56.0
Manslaughter	7	96.0	21.0	25.0
Kidnapping/Hostage Taking	0	--	--	--
Sexual Abuse	14	138.0	51.5	48.7
Assault	9	115.0	28.0	72.8
Robbery	15	96.0	18.0	23.1
Arson	4	93.0	17.0	19.6
Drugs - Trafficking	33	108.0	31.0	37.1
Drugs - Communication Facility	2	--	--	--
Drugs - Simple Possession	4	13.5	5.5	85.7
Firearms	67	63.0	15.0	33.3
Burglary/B&E	2	--	--	--
Auto Theft	1	--	--	--
Larceny	6	54.0	13.5	29.0
Fraud	65	60.0	18.0	53.8
Embezzlement	1	--	--	--
Forgery/Counterfeiting	8	69.0	30.0	55.5
Bribery	0	--	--	--
Tax	3	30.0	9.0	29.7
Money Laundering	3	121.0	7.0	11.1
Racketeering/Extortion	5	200.0	46.0	23.5
Gambling/Lottery	0	--	--	--
Civil Rights	0	--	--	--
Immigration	58	40.0	11.0	33.3
Pornography/Prostitution	22	180.0	48.0	36.7
Prison Offenses	1	--	--	--
Administration of Justice Offenses	15	36.0	12.0	71.4
Environmental/Wildlife	1	--	--	--
National Defense	0	--	--	--
Antitrust	0	--	--	--
Food & Drug	0	--	--	--
Other Miscellaneous Offenses	9	27.0	6.0	23.9

¹Of the 213,704 cases, 389 received an upward departure from the guideline range with *Booker*/18 U.S.C § 3553. Of these, 369 had complete guideline application information. Due to an inability to calculate the extent of departure for cases with a sentence of life, an additional five cases were also excluded from this table. Furthermore, five cases were excluded due to several logical criteria. Note that the information presented in this table does not include any time of alternative confinement as described in USSG §5C1.1. Descriptions of variables used in this table are provided in Appendix A.

Table 14

ABOVE GUIDELINE RANGE WITH *BOOKER* /18 U.S.C. § 3553: DEGREE OF INCREASE FOR OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY¹
Fiscal Year 2008, Post-Kimbrough/Gall Data

PRIMARY OFFENSE	N	Median Sentence in Months	Median Increase in Months From Guideline Maximum	Median Percent Increase From Guideline Maximum
TOTAL	493	48.0	14.0	50.0
Murder	1	--	--	--
Manslaughter	1	--	--	--
Kidnapping/Hostage Taking	0	--	--	--
Sexual Abuse	12	132.0	26.5	30.9
Assault	21	72.0	23.0	42.9
Robbery	10	110.0	16.5	20.9
Arson	0	--	--	--
Drugs - Trafficking	49	96.0	14.0	20.0
Drugs - Communication Facility	2	--	--	--
Drugs - Simple Possession	4	9.5	3.5	52.4
Firearms	84	95.0	20.0	29.3
Burglary/B&E	1	--	--	--
Auto Theft	1	--	--	--
Larceny	21	36.0	14.0	54.2
Fraud	50	60.0	19.0	61.6
Embezzlement	1	--	--	--
Forgery/Counterfeiting	14	36.0	16.0	85.7
Bribery	0	--	--	--
Tax	5	82.0	13.0	43.9
Money Laundering	4	48.0	16.5	72.2
Racketeering/Extortion	10	132.0	48.0	68.5
Gambling/Lottery	1	--	--	--
Civil Rights	0	--	--	--
Immigration	163	18.0	6.0	71.4
Pornography/Prostitution	18	120.0	27.5	29.4
Prison Offenses	4	30.0	9.0	31.9
Administration of Justice Offenses	9	48.0	15.0	42.5
Environmental/Wildlife	1	--	--	--
National Defense	1	--	--	--
Antitrust	0	--	--	--
Food & Drug	0	--	--	--
Other Miscellaneous Offenses	5	18.0	12.0	50.0

¹Of the 61,898 cases, 522 were sentenced above the guideline range with *Booker*/ 18 U.S.C § 3553. Of these, 497 had complete guideline application information. Due to an inability to calculate the extent of departure for cases with a sentence of life, an additional two cases were also excluded from this table. Furthermore, two cases were excluded due to several logical criteria. Note that the information presented in this table does not include any time of alternative confinement as described in USSG §5C1.1. Descriptions of variables used in this table are provided in Appendix A.

Table 14A

**ABOVE GUIDELINE RANGE WITH *BOOKER* /18 U.S.C. § 3553: DEGREE
OF INCREASE FOR OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY¹
Fiscal Year 2005, Post-Booker - 2008, Pre-Kimbrough/Gall Data**

PRIMARY OFFENSE	N	Median Sentence in Months	Median Increase in Months From Guideline Maximum	Median Percent Increase From Guideline Maximum
TOTAL	1,275	48.0	12.0	46.3
Murder	6	270.0	56.0	31.0
Manslaughter	9	44.0	12.0	29.7
Kidnapping/Hostage Taking	0	--	--	--
Sexual Abuse	26	144.0	38.0	41.3
Assault	26	60.0	25.0	51.9
Robbery	29	125.0	33.0	35.2
Arson	8	120.0	42.5	65.9
Drugs - Trafficking	138	96.0	17.0	29.7
Drugs - Communication Facility	1	--	--	--
Drugs - Simple Possession	15	12.0	6.0	99.8
Firearms	203	72.0	18.0	37.5
Burglary/B&E	3	30.0	4.0	42.9
Auto Theft	4	168.0	75.0	89.3
Larceny	38	24.0	10.0	64.4
Fraud	201	48.0	12.0	36.7
Embezzlement	3	30.0	3.0	33.3
Forgery/Counterfeiting	23	36.0	14.0	66.7
Bribery	1	--	--	--
Tax	14	36.0	9.0	39.8
Money Laundering	11	120.0	20.0	87.5
Racketeering/Extortion	18	84.0	15.0	25.2
Gambling/Lottery	1	--	--	--
Civil Rights	3	208.0	37.0	24.5
Immigration	360	24.0	7.0	62.5
Pornography/Prostitution	68	156.0	39.5	40.0
Prison Offenses	8	33.0	8.5	43.9
Administration of Justice Offenses	33	36.0	10.0	37.4
Environmental/Wildlife	1	--	--	--
National Defense	1	--	--	--
Antitrust	0	--	--	--
Food & Drug	2	--	--	--
Other Miscellaneous Offenses	21	24.0	8.0	82.6

¹Of the 213,704 cases, 1,389 were sentenced above the guideline range with *Booker*/18 U.S.C § 3553. Of these, 1,312 had complete guideline application information. Due to an inability to calculate the extent of departure for cases with a sentence of life, an additional 14 cases were also excluded from this table. Furthermore, 22 cases were excluded due to several logical criteria. Of the remaining 1,276 cases, one was excluded due to missing sentence information. Note that the information presented in this table does not include any time of alternative confinement as described in USSG §5C1.1. Descriptions of variables used in this table are provided in Appendix A.

Table 15

**ALL REMAINING ABOVE GUIDELINE RANGE CASES: DEGREE OF
INCREASE FOR OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY¹
Fiscal Year 2008, Post-Kimbrough/Gall Data**

PRIMARY OFFENSE	N	Median Sentence in Months	Median Increase in Months From Guideline Maximum	Median Percent Increase From Guideline Maximum
TOTAL	51	60.0	9.0	23.1
Murder	0	--	--	--
Manslaughter	0	--	--	--
Kidnapping/Hostage Taking	0	--	--	--
Sexual Abuse	0	--	--	--
Assault	2	--	--	--
Robbery	2	--	--	--
Arson	0	--	--	--
Drugs - Trafficking	11	96.0	14.0	14.9
Drugs - Communication Facility	0	--	--	--
Drugs - Simple Possession	2	--	--	--
Firearms	11	180.0	18.0	37.4
Burglary/B&E	0	--	--	--
Auto Theft	0	--	--	--
Larceny	2	--	--	--
Fraud	5	60.0	14.0	23.5
Embezzlement	0	--	--	--
Forgery/Counterfeiting	1	--	--	--
Bribery	0	--	--	--
Tax	0	--	--	--
Money Laundering	0	--	--	--
Racketeering/Extortion	1	--	--	--
Gambling/Lottery	0	--	--	--
Civil Rights	0	--	--	--
Immigration	12	13.5	5.5	25.0
Pornography/Prostitution	0	--	--	--
Prison Offenses	0	--	--	--
Administration of Justice Offenses	2	--	--	--
Environmental/Wildlife	0	--	--	--
National Defense	0	--	--	--
Antitrust	0	--	--	--
Food & Drug	0	--	--	--
Other Miscellaneous Offenses	0	--	--	--

¹Of the 61,898 cases, 80 were otherwise sentenced above the guideline range. Of these, 74 had complete guideline application information. Furthermore, 23 cases were excluded due to several logical criteria. Note that the information presented in this table does not include any time of alternative confinement as described in USSG §5C1.1. Descriptions of variables used in this table are provided in Appendix A.

SOURCE: U.S. Sentencing Commission, 2008 Datafile, USSCFY08.

Table 15A

ALL REMAINING ABOVE GUIDELINE RANGE CASES: DEGREE OF INCREASE FOR OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY¹
Fiscal Year 2005, Post-Booker - 2008, Pre-Kimbrough/Gall Data

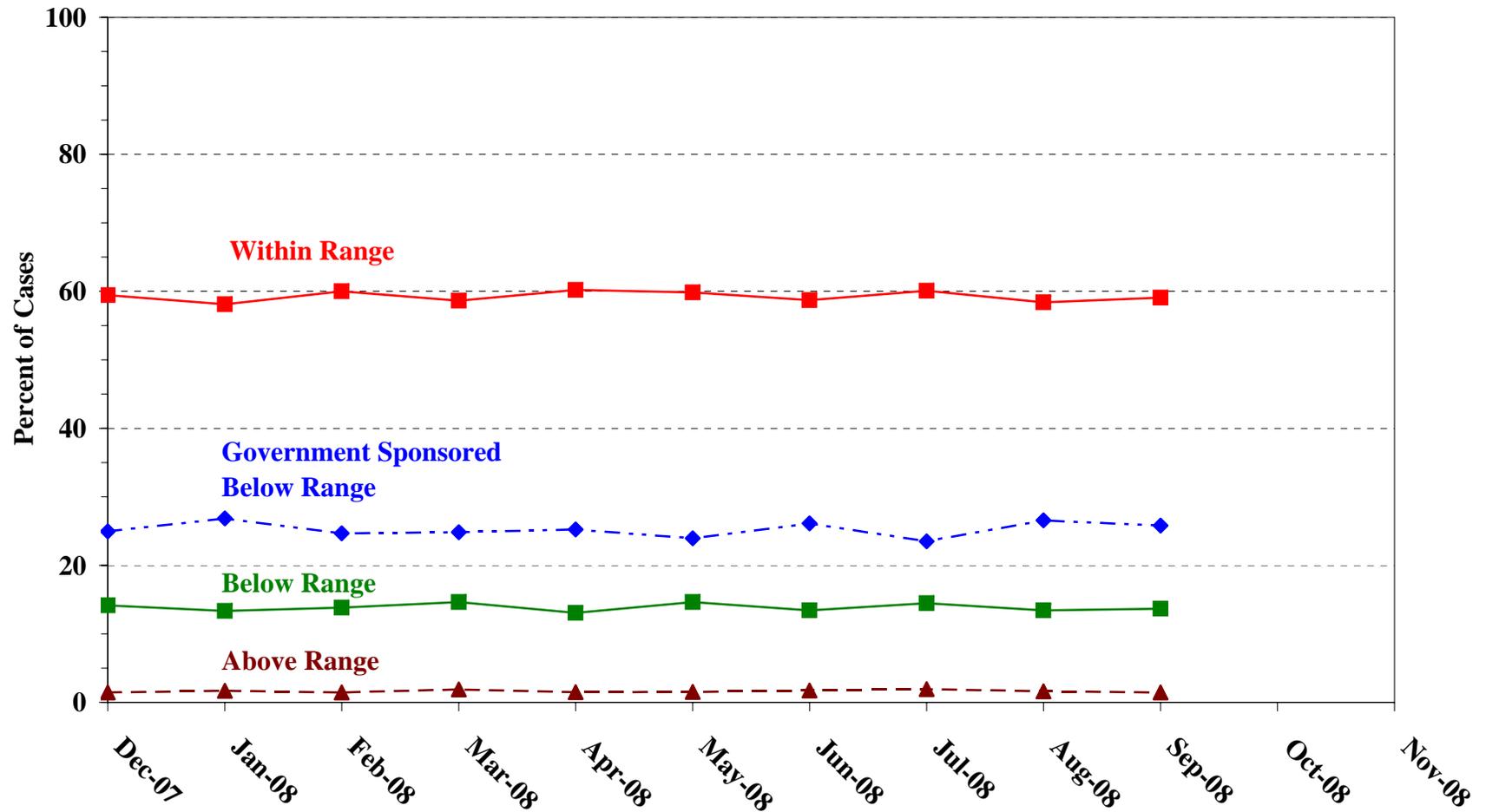
PRIMARY OFFENSE	N	Median Sentence in Months	Median Increase in Months From Guideline Maximum	Median Percent Increase From Guideline Maximum
TOTAL	424	53.5	12.0	33.3
Murder	5	240.0	72.0	42.9
Manslaughter	5	41.0	14.0	41.2
Kidnapping/Hostage Taking	0	--	--	--
Sexual Abuse	7	180.0	37.0	30.0
Assault	16	98.0	27.0	42.3
Robbery	11	168.0	27.0	23.7
Arson	3	84.0	13.0	18.3
Drugs - Trafficking	71	78.0	16.0	26.7
Drugs - Communication Facility	4	29.1	2.1	21.0
Drugs - Simple Possession	8	24.0	12.0	100.0
Firearms	69	72.0	15.0	27.7
Burglary/B&E	1	--	--	--
Auto Theft	3	36.0	6.0	50.4
Larceny	21	36.0	12.0	50.0
Fraud	56	38.5	7.0	31.9
Embezzlement	0	--	--	--
Forgery/Counterfeiting	8	65.5	31.5	55.6
Bribery	0	--	--	--
Tax	2	--	--	--
Money Laundering	3	56.9	15.9	38.7
Racketeering/Extortion	9	120.0	42.0	53.8
Gambling/Lottery	0	--	--	--
Civil Rights	0	--	--	--
Immigration	94	24.0	6.0	25.5
Pornography/Prostitution	14	180.0	59.0	45.8
Prison Offenses	5	50.0	5.0	12.5
Administration of Justice Offenses	5	12.0	4.0	50.4
Environmental/Wildlife	0	--	--	--
National Defense	0	--	--	--
Antitrust	0	--	--	--
Food & Drug	0	--	--	--
Other Miscellaneous Offenses	4	30.0	15.0	91.7

¹Of the 213,704 cases, 549 were otherwise sentenced above the guideline range. Of these, 489 had complete guideline application information. Furthermore, 65 cases were excluded due to several logical criteria. Note that the information presented in this table does not include any time of alternative confinement as described in USSG §5C1.1. Descriptions of variables used in this table are provided in Appendix A.

SOURCE: U.S. Sentencing Commission, 2005 - 2008 Datafiles, USSCFY05 - USSCFY08.

MONTHLY DATA FOR WITHIN RANGE AND OUT OF RANGE SENTENCES¹

Fiscal Year 2008, Post-*Kimbrough*/*Gall* Data



¹The data reported for December 2007 include only those cases sentenced after the date of the Supreme Court decisions in *Kimbrough v. United States* and *Gall v. United States* (December 10, 2007).

Table 16

MONTHLY DATA FOR WITHIN RANGE AND OUT OF RANGE SENTENCES¹
Fiscal Year 2008, Post-Kimbrough/Gall Data

Sentencing Month	WITHIN GUIDELINE RANGE	ABOVE GUIDELINE RANGE	GOVERNMENT SPONSORED BELOW RANGE	BELOW GUIDELINE RANGE
	%	%	%	%
December 2007	59.4	1.5	25.0	14.1
January 2008	58.1	1.7	26.8	13.4
February 2008	60.0	1.5	24.7	13.8
March 2008	58.6	1.9	24.8	14.6
April 2008	60.2	1.5	25.3	13.1
May 2008	59.9	1.5	24.0	14.6
June 2008	58.7	1.7	26.1	13.4
July 2008	60.1	1.9	23.5	14.5
August 2008	58.4	1.6	26.6	13.4
September 2008	59.1	1.4	25.8	13.7
October 2008	--	--	--	--
November 2008	--	--	--	--

¹The data reported for December 2007 include only those cases sentenced after the date of the Supreme Court decisions in *Kimbrough v. United States* and *Gall v. United States* (December 10, 2007).

SOURCE: U.S. Sentencing Commission, 2008 Datafile, USSCFY08.

Appendix A

Descriptions of Datafiles and Variables

Introduction

Federal courts are required to forward to the Commission sentencing documentation on all offenders sentenced under the Sentencing Reform Act of 1984 (SRA), except in cases that solely involve petty offenses. Standard information on each case is extracted from sentencing documents received and computerized for analysis.

Given the nature of the datafile and reporting requirements, the following are not included: cases initiated but for which no convictions were obtained, offenders convicted for whom no sentences were yet issued, and offenders sentenced but for whom no sentencing documents were submitted to the Commission. Because the Commission collects information only on cases sentenced under the guidelines, information on cases sentenced under prior law (pre-guidelines) during the current fiscal year is not available in this dataset. When cases are sentenced under both prior law and the guidelines, only the guideline relevant information is coded in the dataset.

Note that for all tables, total percentages may not add up to exactly 100 percent due to rounding.

Variables

The following section describes the variables used in this report.

Above Guideline Range With *Booker*/18 U.S.C. § 3553

Above Guideline Range with Booker/18 U.S.C. § 3553 consist of cases sentenced above 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 of the guideline system.

All Remaining Cases Above Guideline Range

All Remaining Cases Above Guideline Range consist of cases sentenced above the guideline range that could not be classified into any of the other three above the range categories. This category includes cases in which no reason was provided for a sentence above the guideline range.

All Remaining Cases Below Guideline Range

All Remaining Cases Below Guideline Range consist of cases sentenced below the guideline range that could not be classified into any of the other three below the range categories. This category includes cases in which no reason was provided for a sentence below the guideline range.

Average Sentence Length

Using sentencing information obtained from the Judgment and Commitment Order, *Average Sentence Length* is reported as the mean and median terms of imprisonment (including any months of alternative confinement as defined in §5C1.1) ordered for cases committed to the Bureau of Prisons. Cases that receive no term of imprisonment (i.e. probation) are also included in the average. Cases for which a term of imprisonment is ordered but the length is indeterminable are excluded. In most cases for which the exact term is unknown, the Judgment and Commitment Order merely specifies a sentence of time served. Prior to fiscal year 1993, the Commission defined life sentences as 360 months. However, to reflect life expectancy of federal criminal offenders more precisely and to provide more accurate length of imprisonment information, life sentences are now defined as 470 months.

Below Guideline Range With *Booker*/18 U.S.C. § 3553

Below Guideline Range with Booker/18 U.S.C. § 3553 consist of cases sentenced below 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 of the guideline system.

Degree of Decrease

Degree of Decrease is calculated based on the difference between the length of imprisonment (not including any months of alternative confinement as defined in §5C1.1) and the guideline minimum for the following categories of below range cases: departures below the guideline range, departures below the guideline range with *Booker*/18 U.S.C. § 3553, below the guideline range with *Booker*/18 U.S.C. § 3553, all other below range cases, §5K1.1 substantial assistance cases, and §5K3.1 early disposition program cases, and other government sponsored cases. Life sentences, and cases where the guideline minimum is zero months or life are all excluded from all degree of decrease calculations due to the logical difficulty in calculating a decrease from these values.

Degree of Increase

Degree of Increase is calculated based on the difference between the guideline maximum and the length of imprisonment (not including any months of alternative confinement as defined in §5C1.1) for the following categories of above range cases: departures above the guideline range, departures above the guideline range with *Booker*/18 U.S.C. § 3553, above the guideline range with *Booker*/18 U.S.C. § 3553, and all other above range cases. Life sentences, sentences of probation, and cases where the guideline minimum is life are all excluded from all degree of increase calculations due to the logical difficulty in calculating an increase from these values.

Downward Departure From Guideline Range

Downward Departure from Guideline Range consist of cases with downward 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*.

Downward Departure With *Booker*/18 U.S.C. § 3553

Downward Departure with Booker/18 U.S.C. § 3553 consist of cases sentenced below the guideline range in which the court indicated both a departure (see Downward Departure From Guideline Range) 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.

Government Sponsored

Government sponsorship of a departure is determined by a yearly case review by USSC staff of both the reasons for departure and the coding by USSC staff of any indication of government sponsorship as indicated on the Statement of Reasons. The SOR form AO245B version 12/03 and 06/05 have specific check-boxes to indicate the origins of the departure, but cases which do not use this form may also indicate in writing the origins of the departure. Additionally, all cases with one or more of the following reasons were classified as being sponsored by the government regardless of whether the SOR indicated sponsorship: pursuant to a plea agreement (binding, non-binding, or unknown), fast track, savings to the government, early plea, deportation, waiver of indictment and/or appeal, other government motion, global disposition, due to stipulations, facilitated early release of a material witness, joint recommendation, and large number of immigration cases. Note that since the USSC reviews the reasons on a yearly basis this list might be modified slightly from year to year. Unless otherwise broken out in the table or chart, this category also includes cases with §5K3.1 Early Disposition Program (EDP) departures.

Guideline Offenders Sentenced

Each *Guideline Offender Sentenced* or case, as recorded by the USSC, involves a single sentencing event for a single offender. Multiple counts, and even multiple indictments, are considered a single sentencing event if sentenced at the same time by the same judge. A single offender may appear in more than one case if involved in more than one sentencing event during the fiscal year. Co-offenders in the same sentencing will each appear as separate cases.

Guideline Sentencing Range

The *Guideline Sentencing Range* is taken from the Statement of Reasons provided by the sentencing court. Alternatively, if the Statement of Reasons is missing, then the information is taken from the presentence report.

For tables in this report, unless otherwise indicated, the guideline sentencing range does not take into account applicable statutory restrictions on either the maximum or the minimum of the range; therefore, it may differ from the available range, which does take into account the statutory restrictions.

Outside of the Range Attribution Categories

All categories replicate the list of checkboxes available on the SOR Form AO245B (Both 12/03 and 06/05). Not all checkbox categories are available in both the departure section and sentences outside the guideline system section on this form and that multiple checkboxes may be indicated in a single case so that totals in a table may exceed the total number of cases. USSC uses these checkboxes in determining government sponsorship: all cases in which one of the pursuant to a plea agreement boxes is indicated are attributed to the government. Additionally cases where a §5K1.1, §5K3.1, or other government motion checkbox was indicated in the pursuant to a motion not in a plea agreement section are also attributed to one of the government sponsored categories. Additionally other types of SOR forms may indicate sponsorship in writing and these attributions are also included in the appropriate category.

Position of Sentence

The *Position of Sentence* describes within-range guideline sentences in terms of their relative positions within their applicable guideline ranges. Only cases with complete information from the Statement of Reasons are used for this table. The *Position of Sentence* is determined by dividing the available range in half. This allows a sentence to fall into one of five distinct categories: the guideline minimum; the exact midpoint of the range; the guideline maximum; the lower-half of the range (when not at the guideline minimum); and the upper-half of the range (when not at the guideline maximum). The “available range” is the guideline range with applicable statutory restrictions on either the maximum or the minimum of the range taken into account. (For cases in which guideline §5C1.2 was applied, in accordance with the provisions of the guideline, the statutory restrictions on the range are those from 18 U.S.C. § 3553(f).) In cases in which the sentence is located outside the available sentencing range, departure information is provided as reported by the sentencing court. Differences in the number and percentage of cases in each range quarter may differ from other tables presented in this report; this is due to the exclusion of any case missing both complete information from the Statement of Reasons and information on statutory minima and maxima.

Post-Booker

Post-Booker means the period from the date of the United States Supreme Court decision in *United States v Booker*, 543 U.S. 220 (2005) (January 12, 2005) through December 9, 2007.

Post-Kimbrough/Gall

Post-Kimbrough/Gall means the period from the date of the United States Supreme Court decision in *Kimbrough v. United States*, 552 U.S. ____ (2007) and *Gall v. United States*, 552 U.S. ____ (2007) (December 10, 2007) and afterward.

Primary Offense Category

Information on *Primary Offense Category* is obtained from the Judgment and Commitment Order. The “primary” offense code for the case is determined to be the offense code applicable for the count of conviction with the highest statutory maximum. If two or more counts are found to have the same statutory maximum, “primary” offense is selected according to which count of conviction has the highest statutory minimum. Finally, in the event of a small number of cases still tied, the offense type that best represented the nature of the criminal behavior is chosen.

For convenience in analysis, a summary variable describing “primary offense category” is derived. This code is generated by grouping similar primary offense codes into a smaller set of categories. Note that the primary offense categories differ between the individual and organizational offender datafiles. Listed below are the offense types that are grouped into each of the primary offense categories used in the individual datafile tables for this report:

Murder includes first degree murder, felony with death resulting, second degree murder, and conspiracy to murder (with death resulting).

Manslaughter includes both involuntary and voluntary manslaughter.

Kidnapping/Hostage includes ransom taking and hostage/kidnapping.

Sexual Abuse includes sexual abuse of a minor, sexual abuse of a ward, criminal sexual abuse, and abusive sexual contact.

Assault includes attempt to commit murder, assault with intent to murder, threatening communication, aggravated assault, conspiracy with attempt to murder, obstructing or impeding officers, minor assault, and conspiracy that includes assault with attempt to murder.

Robbery includes bank robbery, aggravated bank robbery, Hobbs Act robbery, mail robbery, other robbery, and carjacking.

Arson also includes damage by explosives.

Drugs: Trafficking includes drug distribution/manufacture, drug distribution/manufacture – conspiracy, continuing criminal enterprise, drug distribution – employee under 21, drug distribution near school, drug import/export, drug distribution to person under 21, and establish/rent drug operation.

Drugs: Communication Facility includes use of a communication facility in a drug trafficking offense.

Drugs: Simple Possession includes distribution of a small amount of marijuana and simple possession.

Firearms includes unlawful possession/transportation of firearms or ammunition; possession of guns/explosives on aircraft; unlawful trafficking, etc. in explosives; possession of guns/explosives in federal facility/schools; use of fire or explosives to commit felony; and use of firearms or ammunition during crime.

Burglary/Breaking & Entering includes post office burglary, burglary of DEA premises (pharmacy), burglary of other structure, bank burglary, and burglary of a residence.

Auto Theft includes auto theft (including parts), receipt/possession of stolen auto or parts, and altered identification numbers/trafficking in altered (auto).

Larceny includes bank larceny, theft from benefit plans, other theft – mail/post office, receipt/possession of stolen property (not auto), other theft – property, larceny/theft-mail/post office, larceny/theft – property (not auto), and theft from labor union.

Fraud includes odometer laws and regulations, insider trading, and fraud and deceit.

Embezzlement includes embezzlement – property, embezzlement from labor unions, embezzlement – mail/post office, embezzlement from benefit plans, and bank embezzlement.

Forgery/Counterfeiting includes counterfeit bearer obligations and forgery/counterfeit (non-bearer obligations).

Bribery includes payment to obtain office, bribe involving officials, bribery – bank loan/commercial, loan or gratuity to bank examiner, etc., gratuity involving officials, and bribe or gratuity affecting employee plan.

Tax Offenses include receipt/trafficking in smuggled property, aid, etc., in tax fraud; fraud – tax returns, statements, etc.; fraud, false statement – perjury; failure to file or pay; tax evasion; evading import duties (smuggle); failure to collect or account for taxes; regulatory offenses – taxes; failure to deposit taxes in trust account; non-payment of taxes; conspiracy to avoid taxes; and offenses relating to withholding statements.

Money Laundering includes laundering of monetary instruments, monetary transaction from unlawful activity, failure to file currency report, and failure to report monetary transactions.

Extortion/Racketeering includes extortionate extension of credit, blackmail, extortion by force or treat, Hobbs Act extortion, travel in aid of racketeering, crime relating to racketeering, and violent crimes in aid of racketeering.

Gambling/Lottery includes engaging in a gambling business, transmission of wagering information, obstruction to facilitate gambling, and interstate transportation of wagering paraphernalia.

Civil Rights includes interference with rights under color of law; force or threats to deny benefits or rights; obstructing an election or registration; manufacture, etc. – eavesdropping device; other deprivations/discrimination; obstructing correspondence; peonage, servitude, and slave trade; intercept communication or eavesdropping; and

conspiracy to deprive individual of civil rights.

Immigration includes trafficking in U.S. passports; trafficking in entry documents; failure to surrender naturalization certificate; fraudulently acquiring U.S. passports; smuggling, etc.; unlawful alien; fraudulently acquiring entry documents; and unlawfully entering U.S.

Pornography, Prostitution includes dealing in obscene matter, transportation of minor for prostitution/sex, transportation for prostitution/sex (adult), sexual exploitation of minors, materials involving sexual exploitation of minors, obscene telephone or broadcasting, and selling or buying children for pornography.

Offenses In Prisons includes contraband in prisons, riots in federal facilities, and escape.

Administration of Justice includes commission of offense while on release, bribery of a witness, failure to appear by offender, contempt, failure to appear by material witness, obstruction of justice, payment of witness, perjury or subornation of perjury, misprision of a felony, and accessory after the fact.

Environmental/Fish And Wildlife includes waste discharge, specially protected fish, wildlife, and plants (waste discharge is presented as a separate offense category in Tables 51 and 52).

National Defense includes evasion of export controls and exportation of arms, etc., without license.

Antitrust includes bid-rigging, price-fixing, and market allocation agreement.

Food and Drug includes false information or tampering with products, tampering to injure business, tampering with risk of death or injury, and violation of regulations involving food, drugs, etc.

Other Miscellaneous Offenses includes illegal use of regulatory number – drugs; illegal transfer of drugs; illegal regulatory number to get drugs; drug paraphernalia; forgery/fraud for drugs; dangerous devices to protect drugs; manufacture drugs against quota; endangering life while manufacturing drugs; operate carrier under drugs; endangerment from hazardous/toxic substances; mishandling substances, records, etc.; threat of tampering with public water system; hazardous devices of federal lands; mishandling other pollutants, records, etc.; improper storage of explosives; record keeping violation – explosives; possession of other weapon – on aircraft, in federal facility; failure to report theft of explosives; feloniously mailing injurious articles; transport of hazardous material in commerce; interference with flight crew, other offense – aboard aircraft; criminal infringement of copyright/trademark; conflict of interest; unauthorized payment; non-drug forfeiture; impersonation; false statement to Employee Act; reporting offenses – labor related; criminal infringement of trademark; unlawful conduct relating to control/cigarettes; trespass; destruction of property; destruction of mail; aircraft piracy; conspiracy to murder (no death, assault, or attempt); conspiracy to commit murder; and all other miscellaneous offenses not previously listed in any of the other categories.

Type of Guideline Sentence Imposed

Using sentencing information obtained from the Judgment and Commitment Order, the *Total Receiving Prison* column includes the number of offenders sentenced (and percent of *Total Cases*) who received a commitment to the Bureau of Prisons. This column is the sum of cases in *Prison* and the *Prison/Community Split Sentence* categories.

The *Prison* category includes offenders sentenced to a term of imprisonment only, with no additional conditions of community confinement, home detention or intermittent confinement.

The *Prison/Community Split Sentence* category includes all cases in which offenders received prison and conditions of alternative confinement as defined in USSG §5C1.1. This category includes, but is not limited to, Zone A, Zone B, or Zone C cases receiving prison with additional conditions of a term of community confinement, home detention, or intermittent confinement.

The *Total Receiving Probation* column includes the number of offenders sentenced (and the percent of *Total Cases*) who received a term of probation with or without a condition of community confinement, intermittent confinement, or home detention. This column also represents the total of the *Probation Only* and *Probation and Confinement* categories.

The *Probation Only* column includes the number of offenders who received a term of probation without a condition of community confinement, intermittent confinement, or home detention.

Probation and Confinement includes the number of offenders who received a term of probation with a condition of community confinement, intermittent confinement, or home detention.

Upward Departure From Guideline Range

Upward Departure from Guideline Range consist of cases with upward 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*.

Upward Departure With *Booker*/18 U.S.C. § 3553

Upward Departure with Booker/18 U.S.C. § 3553 consist of cases sentenced above the guideline range in which the court indicated both a departure (see Upward Departure From Guideline Range) 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.

Year

Information on Year is obtained from the Judgment and Commitment Order. Unless otherwise indicated, the sentencing year is defined as the fiscal year in which the offender was sentenced.