

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



December 2008 Data

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 November 3, 2008. 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.

Users of this information are cautioned that the data are preliminary only and subject to change as the Commission receives, analyzes, and reports on additional cases throughout the fiscal year.

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 1995-2007 *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 Preliminary Data**

	<i>Post-Booker</i>		<i>Post-Kimbrough/Gall</i>	
	N	%	N	%
TOTAL CASES	204,830	100.0	56,728	100.0
CASES SENTENCED WITHIN GUIDELINE RANGE	125,537	61.3	33,792	59.6
CASES SENTENCED ABOVE GUIDELINE RANGE	3,218	1.6	920	1.6
DEPARTURE ABOVE GUIDELINE RANGE	1,286	0.6	352	0.6
Upward Departure From Guideline Range ²	898	0.4	245	0.4
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	388	0.2	107	0.2
OTHERWISE ABOVE GUIDELINE RANGE	1,932	1.0	568	1.0
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	1,384	0.7	494	0.9
All Remaining Cases Above Guideline Range ⁵	548	0.3	74	0.1
GOVERNMENT SPONSORED BELOW RANGE⁶	50,927	24.8	14,235	25.1
§5K1.1 Substantial Assistance Departure	29,579	14.4	7,545	13.3
§5K3.1 Early Disposition Program Departure	14,720	7.2	4,345	7.7
Other Government Sponsored Below Range	6,628	3.2	2,345	4.1
NON-GOVERNMENT SPONSORED BELOW RANGE	25,148	12.2	7,781	13.8
DEPARTURE BELOW GUIDELINE RANGE	8,244	4.0	1,858	3.3
Downward Departure From Guideline Range ²	5,162	2.5	1,167	2.1
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	3,082	1.5	691	1.2
OTHERWISE BELOW GUIDELINE RANGE	16,904	8.2	5,923	10.5
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	13,338	6.5	5,324	9.4
All Remaining Cases Below Guideline Range ⁵	3,566	1.7	599	1.1

¹The cases in this table described as Post-*Kimbrough/Gall* reflect the 57,800 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 November 3, 2008. Of these, 1,072 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 212,808 cases sentenced after the date of *United States v. Booker* (January 12, 2005) through December 9, 2007. Of these, 7,978 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 - 2007 Datafiles, USSCFY05 - USSCFY07, and Preliminary 2008 Datafile, USSCFY08.

Table 1-DC

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

	<i>Post-Booker</i>		<i>Post-Kimbrough/Gall</i>	
	N	%	N	%
TOTAL CASES	1,366	100.0	300	100.0
CASES SENTENCED WITHIN GUIDELINE RANGE	653	47.8	116	38.7
CASES SENTENCED ABOVE GUIDELINE RANGE	31	2.3	0	0.0
DEPARTURE ABOVE GUIDELINE RANGE	12	0.9	0	0.0
Upward Departure From Guideline Range ²	8	0.6	0	0.0
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	0	0.0
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	12	0.9	0	0.0
All Remaining Cases Above Guideline Range ⁵	7	0.5	0	0.0
GOVERNMENT SPONSORED BELOW RANGE⁶	488	35.7	126	42.0
§5K1.1 Substantial Assistance Departure	366	26.8	105	35.0
§5K3.1 Early Disposition Program Departure	0	0.0	0	0.0
Other Government Sponsored Below Range	122	8.9	21	7.0
NON-GOVERNMENT SPONSORED BELOW RANGE	194	14.1	58	19.4
DEPARTURE BELOW GUIDELINE RANGE	58	4.2	28	9.4
Downward Departure From Guideline Range ²	18	1.3	8	2.7
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	40	2.9	20	6.7
OTHERWISE BELOW GUIDELINE RANGE	136	9.9	30	10.0
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	104	7.6	25	8.3
All Remaining Cases Below Guideline Range ⁵	32	2.3	5	1.7

¹The cases in this table described as Post-*Kimrough/Gall* reflect the 300 cases sentenced in the D.C. Circuit subsequent to the date of *Kimrough 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 November 3, 2008. The cases in this table described as Post-*Booker* reflect the 1,380 cases sentenced in the D.C. Circuit after the date of *United States v. Booker* (January 12, 2005) through December 9, 2007. 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. 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 - 2007 Datafiles, USSCFY05 - USSCFY07, and Preliminary 2008 Datafile, 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 Preliminary Data**

	<i>Post-Booker</i>		<i>Post-Kimbrough/Gall</i>	
	N	%	N	%
TOTAL CASES	4,962	100.0	1,307	100.0
CASES SENTENCED WITHIN GUIDELINE RANGE	3,327	67.0	802	61.4
CASES SENTENCED ABOVE GUIDELINE RANGE	80	1.6	22	1.7
DEPARTURE ABOVE GUIDELINE RANGE	27	0.6	13	1.0
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	0.5
OTHERWISE ABOVE GUIDELINE RANGE	53	1.0	9	0.7
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	41	0.8	6	0.5
All Remaining Cases Above Guideline Range ⁵	12	0.2	3	0.2
GOVERNMENT SPONSORED BELOW RANGE⁶	713	14.3	225	17.2
§5K1.1 Substantial Assistance Departure	582	11.7	149	11.4
§5K3.1 Early Disposition Program Departure	0	0.0	16	1.2
Other Government Sponsored Below Range	131	2.6	60	4.6
NON-GOVERNMENT SPONSORED BELOW RANGE	842	17.0	258	19.8
DEPARTURE BELOW GUIDELINE RANGE	263	5.3	62	4.8
Downward Departure From Guideline Range ²	183	3.7	35	2.7
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	80	1.6	27	2.1
OTHERWISE BELOW GUIDELINE RANGE	579	11.7	196	15.0
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	460	9.3	182	13.9
All Remaining Cases Below Guideline Range ⁵	119	2.4	14	1.1

¹The cases in this table described as *Post-Kimbrough/Gall* reflect the 1,317 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 November 3, 2008. Of these, 10 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 5,020 cases sentenced in the First Circuit after the date of *United States v. Booker* (January 12, 2005) through December 9, 2007. Of these, 58 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 - 2007 Datafiles, USSCFY05 - USSCFY07, and Preliminary 2008 Datafile, 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 Preliminary Data**

	<i>Post-Booker</i>		<i>Post-Kimbrough/Gall</i>	
	N	%	N	%
TOTAL CASES	13,179	100.0	3,257	100.0
CASES SENTENCED WITHIN GUIDELINE RANGE	6,641	50.4	1,463	44.9
CASES SENTENCED ABOVE GUIDELINE RANGE	127	0.9	20	0.6
DEPARTURE ABOVE GUIDELINE RANGE	57	0.4	6	0.2
Upward Departure From Guideline Range ²	39	0.3	4	0.1
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	18	0.1	2	0.1
OTHERWISE ABOVE GUIDELINE RANGE	70	0.5	14	0.4
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	41	0.3	10	0.3
All Remaining Cases Above Guideline Range ⁵	29	0.2	4	0.1
GOVERNMENT SPONSORED BELOW RANGE⁶	3,199	24.3	825	25.3
§5K1.1 Substantial Assistance Departure	2,856	21.7	691	21.2
§5K3.1 Early Disposition Program Departure	3	0.0	0	0.0
Other Government Sponsored Below Range	340	2.6	134	4.1
NON-GOVERNMENT SPONSORED BELOW RANGE	3,212	24.3	949	29.0
DEPARTURE BELOW GUIDELINE RANGE	1,186	9.0	231	7.0
Downward Departure From Guideline Range ²	675	5.1	122	3.7
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	511	3.9	109	3.3
OTHERWISE BELOW GUIDELINE RANGE	2,026	15.3	718	22.0
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	1,585	12.0	682	20.9
All Remaining Cases Below Guideline Range ⁵	441	3.3	36	1.1

¹The cases in this table described as *Post-Kimbrough/Gall* reflect the 3,287 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 November 3, 2008. Of these, 30 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 13,368 cases sentenced in the Second Circuit after the date of *United States v. Booker* (January 12, 2005) through December 9, 2007. Of these, 189 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 - 2007 Datafiles, USSCFY05 - USSCFY07, and Preliminary 2008 Datafile, 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 Preliminary Data**

	<i>Post-Booker</i>		<i>Post-Kimbrough/Gall</i>	
	N	%	N	%
TOTAL CASES	9,048	100.0	2,466	100.0
CASES SENTENCED WITHIN GUIDELINE RANGE	4,778	52.8	1,308	53.0
CASES SENTENCED ABOVE GUIDELINE RANGE	112	1.3	39	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	20	0.8
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	61	0.7	17	0.7
All Remaining Cases Above Guideline Range ⁵	18	0.2	3	0.1
GOVERNMENT SPONSORED BELOW RANGE⁶	2,614	28.9	650	26.3
§5K1.1 Substantial Assistance Departure	2,455	27.1	611	24.8
§5K3.1 Early Disposition Program Departure	0	0.0	1	0.0
Other Government Sponsored Below Range	159	1.8	38	1.5
NON-GOVERNMENT SPONSORED BELOW RANGE	1,544	17.0	469	19.0
DEPARTURE BELOW GUIDELINE RANGE	404	4.4	81	3.3
Downward Departure From Guideline Range ²	237	2.6	42	1.7
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	167	1.8	39	1.6
OTHERWISE BELOW GUIDELINE RANGE	1,140	12.6	388	15.7
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	935	10.3	345	14.0
All Remaining Cases Below Guideline Range ⁵	205	2.3	43	1.7

¹The cases in this table described as *Post-Kimbrough/Gall* reflect the 2,468 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 November 3, 2008. 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 9,147 cases sentenced in the Third Circuit after the date of *United States v. Booker* (January 12, 2005) through December 9, 2007. Of these, 99 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 - 2007 Datafiles, USSCFY05 - USSCFY07, and Preliminary 2008 Datafile, 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 Preliminary Data**

	<i>Post-Booker</i>		<i>Post-Kimbrough/Gall</i>	
	N	%	N	%
TOTAL CASES	18,130	100.0	4,931	100.0
CASES SENTENCED WITHIN GUIDELINE RANGE	12,641	69.7	3,240	65.7
CASES SENTENCED ABOVE GUIDELINE RANGE	276	1.6	112	2.3
DEPARTURE ABOVE GUIDELINE RANGE	138	0.8	65	1.3
Upward Departure From Guideline Range ²	92	0.5	38	0.8
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	46	0.3	27	0.5
OTHERWISE ABOVE GUIDELINE RANGE	138	0.8	47	1.0
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	103	0.6	43	0.9
All Remaining Cases Above Guideline Range ⁵	35	0.2	4	0.1
GOVERNMENT SPONSORED BELOW RANGE⁶	3,370	18.6	939	19.1
§5K1.1 Substantial Assistance Departure	3,173	17.5	861	17.5
§5K3.1 Early Disposition Program Departure	2	0.0	0	0.0
Other Government Sponsored Below Range	195	1.1	78	1.6
NON-GOVERNMENT SPONSORED BELOW RANGE	1,843	10.2	640	13.0
DEPARTURE BELOW GUIDELINE RANGE	553	3.1	127	2.6
Downward Departure From Guideline Range ²	319	1.8	87	1.8
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	234	1.3	40	0.8
OTHERWISE BELOW GUIDELINE RANGE	1,290	7.1	513	10.4
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	1,019	5.6	462	9.4
All Remaining Cases Below Guideline Range ⁵	271	1.5	51	1.0

¹The cases in this table described as *Post-Kimbrough/Gall* reflect the 5,189 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 November 3, 2008. Of these, 258 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 19,440 cases sentenced in the Fourth Circuit after the date of *United States v. Booker* (January 12, 2005) through December 9, 2007. Of these, 1,310 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 - 2007 Datafiles, USSCFY05 - USSCFY07, and Preliminary 2008 Datafile, 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 Preliminary Data**

	<i>Post-Booker</i>		<i>Post-Kimbrough/Gall</i>	
	N	%	N	%
TOTAL CASES	45,040	100.0	13,582	100.0
CASES SENTENCED WITHIN GUIDELINE RANGE	32,591	72.4	9,561	70.4
CASES SENTENCED ABOVE GUIDELINE RANGE	859	1.9	259	2.0
DEPARTURE ABOVE GUIDELINE RANGE	318	0.7	92	0.7
Upward Departure From Guideline Range ²	218	0.5	68	0.5
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	100	0.2	24	0.2
OTHERWISE ABOVE GUIDELINE RANGE	541	1.2	167	1.3
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	415	0.9	144	1.1
All Remaining Cases Above Guideline Range ⁵	126	0.3	23	0.2
GOVERNMENT SPONSORED BELOW RANGE⁶	8,300	18.4	2,755	20.3
§5K1.1 Substantial Assistance Departure	3,650	8.1	998	7.3
§5K3.1 Early Disposition Program Departure	3,174	7.0	1,012	7.5
Other Government Sponsored Below Range	1,476	3.3	745	5.5
NON-GOVERNMENT SPONSORED BELOW RANGE	3,290	7.4	1,007	7.4
DEPARTURE BELOW GUIDELINE RANGE	1,236	2.8	361	2.7
Downward Departure From Guideline Range ²	1,021	2.3	334	2.5
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	215	0.5	27	0.2
OTHERWISE BELOW GUIDELINE RANGE	2,054	4.6	646	4.7
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	1,622	3.6	545	4.0
All Remaining Cases Below Guideline Range ⁵	432	1.0	101	0.7

¹The cases in this table described as *Post-Kimbrough/Gall* reflect the 13,650 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 November 3, 2008. Of these, 68 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 45,370 cases sentenced in the Fifth Circuit after the date of *United States v. Booker* (January 12, 2005) through December 9, 2007. Of these, 330 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 - 2007 Datafiles, USSCFY05 - USSCFY07, and Preliminary 2008 Datafile, 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 Preliminary Data**

	<i>Post-Booker</i>		<i>Post-Kimbrough/Gall</i>	
	N	%	N	%
TOTAL CASES	15,203	100.0	4,045	100.0
CASES SENTENCED WITHIN GUIDELINE RANGE	8,631	56.8	2,176	53.8
CASES SENTENCED ABOVE GUIDELINE RANGE	201	1.3	67	1.6
DEPARTURE ABOVE GUIDELINE RANGE	70	0.5	29	0.7
Upward Departure From Guideline Range ²	43	0.3	19	0.5
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	38	0.9
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	95	0.6	30	0.7
All Remaining Cases Above Guideline Range ⁵	36	0.2	8	0.2
GOVERNMENT SPONSORED BELOW RANGE⁶	4,158	27.4	1,122	27.7
§5K1.1 Substantial Assistance Departure	3,857	25.4	1,021	25.2
§5K3.1 Early Disposition Program Departure	3	0.0	1	0.0
Other Government Sponsored Below Range	298	2.0	100	2.5
NON-GOVERNMENT SPONSORED BELOW RANGE	2,213	14.5	680	16.9
DEPARTURE BELOW GUIDELINE RANGE	612	4.0	157	3.9
Downward Departure From Guideline Range ²	324	2.1	71	1.8
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	288	1.9	86	2.1
OTHERWISE BELOW GUIDELINE RANGE	1,601	10.5	523	13.0
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	1,297	8.5	460	11.4
All Remaining Cases Below Guideline Range ⁵	304	2.0	63	1.6

¹The cases in this table described as *Post-Kimbrough/Gall* reflect the 4,074 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 November 3, 2008. Of these, 29 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 15,519 cases sentenced in the Sixth Circuit after the date of *United States v. Booker* (January 12, 2005) through December 9, 2007. Of these, 316 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 - 2007 Datafiles, USSCFY05 - USSCFY07, and Preliminary 2008 Datafile, 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 Preliminary Data**

	<i>Post-Booker</i>		<i>Post-Kimbrough/Gall</i>	
	N	%	N	%
TOTAL CASES	8,729	100.0	2,214	100.0
CASES SENTENCED WITHIN GUIDELINE RANGE	5,451	62.4	1,201	54.2
CASES SENTENCED ABOVE GUIDELINE RANGE	119	1.4	39	1.7
DEPARTURE ABOVE GUIDELINE RANGE	46	0.5	9	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	6	0.3
OTHERWISE ABOVE GUIDELINE RANGE	73	0.9	30	1.3
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	50	0.6	25	1.1
All Remaining Cases Above Guideline Range ⁵	23	0.3	5	0.2
GOVERNMENT SPONSORED BELOW RANGE⁶	1,707	19.5	478	21.5
§5K1.1 Substantial Assistance Departure	1,521	17.4	417	18.8
§5K3.1 Early Disposition Program Departure	1	0.0	1	0.0
Other Government Sponsored Below Range	185	2.1	60	2.7
NON-GOVERNMENT SPONSORED BELOW RANGE	1,452	16.7	496	22.4
DEPARTURE BELOW GUIDELINE RANGE	428	4.9	92	4.2
Downward Departure From Guideline Range ²	232	2.7	26	1.2
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	196	2.2	66	3.0
OTHERWISE BELOW GUIDELINE RANGE	1,024	11.8	404	18.2
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	783	9.0	357	16.1
All Remaining Cases Below Guideline Range ⁵	241	2.8	47	2.1

¹The cases in this table described as *Post-Kimbrough/Gall* reflect the 2,228 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 November 3, 2008. 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 8,805 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 - 2007 Datafiles, USSCFY05 - USSCFY07, and Preliminary 2008 Datafile, 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 Preliminary Data**

	<i>Post-Booker</i>		<i>Post-Kimbrough/Gall</i>	
	N	%	N	%
TOTAL CASES	14,674	100.0	4,250	100.0
CASES SENTENCED WITHIN GUIDELINE RANGE	9,708	66.2	2,728	64.2
CASES SENTENCED ABOVE GUIDELINE RANGE	239	1.6	78	1.8
DEPARTURE ABOVE GUIDELINE RANGE	106	0.7	35	0.8
Upward Departure From Guideline Range ²	73	0.5	25	0.6
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	33	0.2	10	0.2
OTHERWISE ABOVE GUIDELINE RANGE	133	0.9	43	1.0
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	98	0.7	36	0.8
All Remaining Cases Above Guideline Range ⁵	35	0.2	7	0.2
GOVERNMENT SPONSORED BELOW RANGE⁶	2,739	18.7	789	18.6
§5K1.1 Substantial Assistance Departure	2,210	15.1	634	14.9
§5K3.1 Early Disposition Program Departure	120	0.8	46	1.1
Other Government Sponsored Below Range	409	2.8	109	2.6
NON-GOVERNMENT SPONSORED BELOW RANGE	1,988	13.6	655	15.3
DEPARTURE BELOW GUIDELINE RANGE	561	3.8	112	2.6
Downward Departure From Guideline Range ²	353	2.4	55	1.3
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	208	1.4	57	1.3
OTHERWISE BELOW GUIDELINE RANGE	1,427	9.8	543	12.7
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	1,153	7.9	495	11.6
All Remaining Cases Below Guideline Range ⁵	274	1.9	48	1.1

¹The cases in this table described as *Post-Kimbrough/Gall* reflect the 4,256 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 November 3, 2008. 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 14,753 cases sentenced in the Eighth Circuit after the date of *United States v. Booker* (January 12, 2005) through December 9, 2007. Of these, 79 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 - 2007 Datafiles, USSCFY05 - USSCFY07, and Preliminary 2008 Datafile, 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 Preliminary Data**

	<i>Post-Booker</i>		<i>Post-Kimbrough/Gall</i>	
	N	%	N	%
TOTAL CASES	38,222	100.0	10,357	100.0
CASES SENTENCED WITHIN GUIDELINE RANGE	17,413	45.6	4,690	45.3
CASES SENTENCED ABOVE GUIDELINE RANGE	622	1.7	118	1.1
DEPARTURE ABOVE GUIDELINE RANGE	318	0.9	55	0.5
Upward Departure From Guideline Range ²	253	0.7	45	0.4
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	65	0.2	10	0.1
OTHERWISE ABOVE GUIDELINE RANGE	304	0.8	63	0.6
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	165	0.4	51	0.5
All Remaining Cases Above Guideline Range ⁵	139	0.4	12	0.1
GOVERNMENT SPONSORED BELOW RANGE⁶	15,627	40.9	4,296	41.5
§5K1.1 Substantial Assistance Departure	3,946	10.3	909	8.8
§5K3.1 Early Disposition Program Departure	9,920	26.0	2,817	27.2
Other Government Sponsored Below Range	1,761	4.6	570	5.5
NON-GOVERNMENT SPONSORED BELOW RANGE	4,560	12.0	1,253	12.2
DEPARTURE BELOW GUIDELINE RANGE	1,696	4.5	314	3.1
Downward Departure From Guideline Range ²	984	2.6	202	2.0
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	712	1.9	112	1.1
OTHERWISE BELOW GUIDELINE RANGE	2,864	7.5	939	9.1
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	2,071	5.4	804	7.8
All Remaining Cases Below Guideline Range ⁵	793	2.1	135	1.3

¹The cases in this table described as *Post-Kimbrough/Gall* reflect the 10,741 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 November 3, 2008. Of these, 384 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 41,897 cases sentenced in the Ninth Circuit after the date of *United States v. Booker* (January 12, 2005) through December 9, 2007. Of these, 3,675 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 - 2007 Datafiles, USSCFY05 - USSCFY07, and Preliminary 2008 Datafile, 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 Preliminary Data

	<i>Post-Booker</i>		<i>Post-Kimbrough/Gall</i>	
	N	%	N	%
TOTAL CASES	16,724	100.0	4,579	100.0
CASES SENTENCED WITHIN GUIDELINE RANGE	10,373	62.0	2,824	61.7
CASES SENTENCED ABOVE GUIDELINE RANGE	216	1.4	78	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	63	1.4
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	119	0.7	60	1.3
All Remaining Cases Above Guideline Range ⁵	42	0.3	3	0.1
GOVERNMENT SPONSORED BELOW RANGE⁶	4,283	25.6	1,113	24.3
§5K1.1 Substantial Assistance Departure	1,488	8.9	316	6.9
§5K3.1 Early Disposition Program Departure	1,458	8.7	427	9.3
Other Government Sponsored Below Range	1,337	8.0	370	8.1
NON-GOVERNMENT SPONSORED BELOW RANGE	1,852	11.0	564	12.4
DEPARTURE BELOW GUIDELINE RANGE	742	4.4	166	3.7
Downward Departure From Guideline Range ²	509	3.0	113	2.5
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	233	1.4	53	1.2
OTHERWISE BELOW GUIDELINE RANGE	1,110	6.6	398	8.7
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	906	5.4	377	8.2
All Remaining Cases Below Guideline Range ⁵	204	1.2	21	0.5

¹The cases in this table described as *Post-Kimbrough/Gall* reflect the 4,701 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 November 3, 2008. Of these, 122 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 17,417 cases sentenced in the Tenth Circuit after the date of *United States v. Booker* (January 12, 2005) through December 9, 2007. Of these, 693 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 - 2007 Datafiles, USSCFY05 - USSCFY07, and Preliminary 2008 Datafile, 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 Preliminary Data**

	<i>Post-Booker</i>		<i>Post-Kimbrough/Gall</i>	
	N	%	N	%
TOTAL CASES	19,553	100.0	5,440	100.0
CASES SENTENCED WITHIN GUIDELINE RANGE	13,330	68.2	3,683	67.7
CASES SENTENCED ABOVE GUIDELINE RANGE	336	1.6	88	1.5
DEPARTURE ABOVE GUIDELINE RANGE	106	0.5	14	0.2
Upward Departure From Guideline Range ²	65	0.3	8	0.1
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	41	0.2	6	0.1
OTHERWISE ABOVE GUIDELINE RANGE	230	1.1	74	1.3
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	184	0.9	72	1.3
All Remaining Cases Above Guideline Range ⁵	46	0.2	2	0.0
GOVERNMENT SPONSORED BELOW RANGE⁶	3,729	19.1	917	16.8
§5K1.1 Substantial Assistance Departure	3,475	17.8	833	15.3
§5K3.1 Early Disposition Program Departure	39	0.2	24	0.4
Other Government Sponsored Below Range	215	1.1	60	1.1
NON-GOVERNMENT SPONSORED BELOW RANGE	2,158	11.1	752	13.7
DEPARTURE BELOW GUIDELINE RANGE	505	2.6	127	2.3
Downward Departure From Guideline Range ²	307	1.6	72	1.3
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	198	1.0	55	1.0
OTHERWISE BELOW GUIDELINE RANGE	1,653	8.5	625	11.4
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	1,403	7.2	590	10.8
All Remaining Cases Below Guideline Range ⁵	250	1.3	35	0.6

¹The cases in this table described as *Post-Kimbrough/Gall* reflect the 5,589 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 November 3, 2008. Of these, 149 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 20,692 cases sentenced in the Eleventh Circuit after the date of *United States v. Booker* (January 12, 2005) through December 9, 2007. Of these, 1,139 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 - 2007 Datafiles, USSCFY05 - USSCFY07, and Preliminary 2008 Datafile, USSCFY08.

Table 2

SENTENCES RELATIVE TO THE GUIDELINE RANGE BY CIRCUIT AND DISTRICT¹
2008 Post-Kimbrough/Gall Preliminary 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	56,728	33,792	59.6	245	0.4	107	0.2	494	0.9	74	0.1
D.C. CIRCUIT	300	116	38.7	0	0.0	0	0.0	0	0.0	0	0.0
District of Columbia	300	116	38.7	0	0.0	0	0.0	0	0.0	0	0.0
FIRST CIRCUIT	1,307	802	61.4	7	0.5	6	0.5	6	0.5	3	0.2
Maine	166	97	58.4	1	0.6	0	0.0	1	0.6	0	0.0
Massachusetts	349	174	49.9	3	0.9	0	0.0	3	0.9	1	0.3
New Hampshire	184	86	46.7	2	1.1	2	1.1	1	0.5	0	0.0
Puerto Rico	549	407	74.1	1	0.2	3	0.5	1	0.2	2	0.4
Rhode Island	59	38	64.4	0	0.0	1	1.7	0	0.0	0	0.0
SECOND CIRCUIT	3,257	1,463	44.9	4	0.1	2	0.1	10	0.3	4	0.1
Connecticut	312	124	39.7	1	0.3	0	0.0	2	0.6	0	0.0
New York											
Eastern	940	368	39.1	1	0.1	0	0.0	6	0.6	2	0.2
Northern	340	180	52.9	1	0.3	1	0.3	0	0.0	0	0.0
Southern	1,012	432	42.7	0	0.0	0	0.0	1	0.1	1	0.1
Western	520	308	59.2	0	0.0	1	0.2	1	0.2	1	0.2
Vermont	133	51	38.3	1	0.8	0	0.0	0	0.0	0	0.0
THIRD CIRCUIT	2,466	1,308	53.0	16	0.6	3	0.1	17	0.7	3	0.1
Delaware	97	55	56.7	0	0.0	0	0.0	2	2.1	0	0.0
New Jersey	803	401	49.9	3	0.4	1	0.1	6	0.7	2	0.2
Pennsylvania											
Eastern	596	254	42.6	2	0.3	1	0.2	7	1.2	0	0.0
Middle	513	292	56.9	9	1.8	0	0.0	0	0.0	1	0.2
Western	407	275	67.6	2	0.5	1	0.2	0	0.0	0	0.0
Virgin Islands	50	31	62.0	0	0.0	0	0.0	2	4.0	0	0.0
FOURTH CIRCUIT	4,931	3,240	65.7	38	0.8	27	0.5	43	0.9	4	0.1
Maryland	561	273	48.7	6	1.1	1	0.2	5	0.9	0	0.0
North Carolina											
Eastern	548	311	56.8	19	3.5	16	2.9	9	1.6	1	0.2
Middle	294	222	75.5	1	0.3	0	0.0	2	0.7	0	0.0
Western	578	379	65.6	2	0.3	3	0.5	4	0.7	0	0.0
South Carolina	990	656	66.3	2	0.2	0	0.0	4	0.4	0	0.0
Virginia											
Eastern	1,096	821	74.9	6	0.5	4	0.4	12	1.1	2	0.2
Western	307	205	66.8	2	0.7	1	0.3	1	0.3	1	0.3
West Virginia											
Northern	339	231	68.1	0	0.0	1	0.3	4	1.2	0	0.0
Southern	218	142	65.1	0	0.0	1	0.5	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	7,545	13.3	4,345	7.7	2,345	4.1	1,167	2.1	691	1.2	5,324	9.4	599	1.1
D.C. CIRCUIT	105	35.0	0	0.0	21	7.0	8	2.7	20	6.7	25	8.3	5	1.7
District of Columbia	105	35.0	0	0.0	21	7.0	8	2.7	20	6.7	25	8.3	5	1.7
FIRST CIRCUIT	149	11.4	16	1.2	60	4.6	35	2.7	27	2.1	182	13.9	14	1.1
Maine	42	25.3	0	0.0	0	0.0	4	2.4	1	0.6	19	11.4	1	0.6
Massachusetts	32	9.2	1	0.3	29	8.3	16	4.6	10	2.9	78	22.3	2	0.6
New Hampshire	38	20.7	0	0.0	6	3.3	4	2.2	6	3.3	36	19.6	3	1.6
Puerto Rico	33	6.0	15	2.7	24	4.4	10	1.8	9	1.6	37	6.7	7	1.3
Rhode Island	4	6.8	0	0.0	1	1.7	1	1.7	1	1.7	12	20.3	1	1.7
SECOND CIRCUIT	691	21.2	0	0.0	134	4.1	122	3.7	109	3.3	682	20.9	36	1.1
Connecticut	59	18.9	0	0.0	13	4.2	28	9.0	29	9.3	55	17.6	1	0.3
New York														
Eastern	218	23.2	0	0.0	69	7.3	24	2.6	38	4.0	199	21.2	15	1.6
Northern	79	23.2	0	0.0	4	1.2	28	8.2	6	1.8	41	12.1	0	0.0
Southern	163	16.1	0	0.0	28	2.8	19	1.9	26	2.6	324	32.0	18	1.8
Western	139	26.7	0	0.0	15	2.9	4	0.8	3	0.6	46	8.8	2	0.4
Vermont	33	24.8	0	0.0	5	3.8	19	14.3	7	5.3	17	12.8	0	0.0
THIRD CIRCUIT	611	24.8	1	0.0	38	1.5	42	1.7	39	1.6	345	14.0	43	1.7
Delaware	5	5.2	0	0.0	1	1.0	2	2.1	0	0.0	18	18.6	14	14.4
New Jersey	232	28.9	1	0.1	8	1.0	9	1.1	6	0.7	128	15.9	6	0.7
Pennsylvania														
Eastern	185	31.0	0	0.0	11	1.8	6	1.0	17	2.9	104	17.4	9	1.5
Middle	140	27.3	0	0.0	12	2.3	9	1.8	3	0.6	42	8.2	5	1.0
Western	43	10.6	0	0.0	4	1.0	16	3.9	12	2.9	49	12.0	5	1.2
Virgin Islands	6	12.0	0	0.0	2	4.0	0	0.0	1	2.0	4	8.0	4	8.0
FOURTH CIRCUIT	861	17.5	0	0.0	78	1.6	87	1.8	40	0.8	462	9.4	51	1.0
Maryland	125	22.3	0	0.0	26	4.6	9	1.6	15	2.7	89	15.9	12	2.1
North Carolina														
Eastern	149	27.2	0	0.0	3	0.5	3	0.5	5	0.9	30	5.5	2	0.4
Middle	49	16.7	0	0.0	0	0.0	1	0.3	0	0.0	19	6.5	0	0.0
Western	148	25.6	0	0.0	7	1.2	8	1.4	4	0.7	18	3.1	5	0.9
South Carolina	208	21.0	0	0.0	19	1.9	17	1.7	0	0.0	70	7.1	14	1.4
Virginia														
Eastern	65	5.9	0	0.0	11	1.0	41	3.7	12	1.1	105	9.6	17	1.6
Western	59	19.2	0	0.0	3	1.0	2	0.7	0	0.0	32	10.4	1	0.3
West Virginia														
Northern	32	9.4	0	0.0	9	2.7	4	1.2	2	0.6	56	16.5	0	0.0
Southern	26	11.9	0	0.0	0	0.0	2	0.9	2	0.9	43	19.7	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	13,582	9,561	70.4	68	0.5	24	0.2	144	1.1	23	0.2
Louisiana											
Eastern	363	282	77.7	3	0.8	3	0.8	7	1.9	1	0.3
Middle	154	107	69.5	2	1.3	0	0.0	1	0.6	0	0.0
Western	230	163	70.9	1	0.4	0	0.0	6	2.6	0	0.0
Mississippi											
Northern	147	88	59.9	0	0.0	0	0.0	4	2.7	0	0.0
Southern	294	242	82.3	1	0.3	1	0.3	2	0.7	3	1.0
Texas											
Eastern	759	541	71.3	6	0.8	0	0.0	3	0.4	2	0.3
Northern	810	549	67.8	15	1.9	7	0.9	26	3.2	2	0.2
Southern	5,103	2,939	57.6	23	0.5	3	0.1	20	0.4	9	0.2
Western	5,722	4,650	81.3	17	0.3	10	0.2	75	1.3	6	0.1
SIXTH CIRCUIT	4,045	2,176	53.8	19	0.5	10	0.2	30	0.7	8	0.2
Kentucky											
Eastern	545	249	45.7	0	0.0	1	0.2	5	0.9	0	0.0
Western	335	236	70.4	3	0.9	0	0.0	1	0.3	0	0.0
Michigan											
Eastern	567	315	55.6	3	0.5	0	0.0	4	0.7	1	0.2
Western	339	199	58.7	5	1.5	3	0.9	8	2.4	3	0.9
Ohio											
Northern	671	368	54.8	1	0.1	1	0.1	5	0.7	1	0.1
Southern	464	183	39.4	1	0.2	2	0.4	0	0.0	1	0.2
Tennessee											
Eastern	450	279	62.0	1	0.2	1	0.2	3	0.7	2	0.4
Middle	202	108	53.5	1	0.5	1	0.5	0	0.0	0	0.0
Western	472	239	50.6	4	0.8	1	0.2	4	0.8	0	0.0
SEVENTH CIRCUIT	2,214	1,201	54.2	3	0.1	6	0.3	25	1.1	5	0.2
Illinois											
Central	301	165	54.8	0	0.0	0	0.0	0	0.0	1	0.3
Northern	573	262	45.7	1	0.2	2	0.3	3	0.5	2	0.3
Southern	232	176	75.9	1	0.4	3	1.3	4	1.7	1	0.4
Indiana											
Northern	337	219	65.0	0	0.0	1	0.3	1	0.3	1	0.3
Southern	224	122	54.5	1	0.4	0	0.0	5	2.2	0	0.0
Wisconsin											
Eastern	413	159	38.5	0	0.0	0	0.0	11	2.7	0	0.0
Western	134	98	73.1	0	0.0	0	0.0	1	0.7	0	0.0
EIGHTH CIRCUIT	4,250	2,728	64.2	25	0.6	10	0.2	36	0.8	7	0.2
Arkansas											
Eastern	336	239	71.1	2	0.6	2	0.6	0	0.0	2	0.6
Western	174	120	69.0	1	0.6	0	0.0	2	1.1	0	0.0
Iowa											
Northern	540	399	73.9	9	1.7	3	0.6	5	0.9	2	0.4
Southern	284	149	52.5	1	0.4	0	0.0	4	1.4	0	0.0
Minnesota	475	220	46.3	1	0.2	0	0.0	1	0.2	0	0.0
Missouri											
Eastern	785	533	67.9	0	0.0	0	0.0	5	0.6	0	0.0
Western	629	393	62.5	2	0.3	3	0.5	8	1.3	1	0.2
Nebraska	510	348	68.2	7	1.4	0	0.0	7	1.4	2	0.4
North Dakota	180	84	46.7	0	0.0	1	0.6	0	0.0	0	0.0
South Dakota	337	243	72.1	2	0.6	1	0.3	4	1.2	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	998	7.3	1,012	7.5	745	5.5	334	2.5	27	0.2	545	4.0	101	0.7
Louisiana														
Eastern	35	9.6	0	0.0	5	1.4	5	1.4	2	0.6	20	5.5	0	0.0
Middle	35	22.7	0	0.0	0	0.0	2	1.3	1	0.6	6	3.9	0	0.0
Western	23	10.0	0	0.0	0	0.0	0	0.0	4	1.7	22	9.6	11	4.8
Mississippi														
Northern	32	21.8	0	0.0	13	8.8	2	1.4	0	0.0	5	3.4	3	2.0
Southern	21	7.1	0	0.0	1	0.3	2	0.7	1	0.3	14	4.8	6	2.0
Texas														
Eastern	83	10.9	0	0.0	74	9.7	23	3.0	4	0.5	19	2.5	4	0.5
Northern	130	16.0	0	0.0	15	1.9	5	0.6	1	0.1	56	6.9	4	0.5
Southern	292	5.7	895	17.5	577	11.3	181	3.5	1	0.0	152	3.0	11	0.2
Western	347	6.1	117	2.0	60	1.0	114	2.0	13	0.2	251	4.4	62	1.1
SIXTH CIRCUIT	1,021	25.2	1	0.0	100	2.5	71	1.8	86	2.1	460	11.4	63	1.6
Kentucky														
Eastern	233	42.8	0	0.0	5	0.9	5	0.9	1	0.2	40	7.3	6	1.1
Western	45	13.4	0	0.0	16	4.8	5	1.5	0	0.0	26	7.8	3	0.9
Michigan														
Eastern	111	19.6	0	0.0	10	1.8	9	1.6	10	1.8	100	17.6	4	0.7
Western	61	18.0	0	0.0	0	0.0	7	2.1	4	1.2	46	13.6	3	0.9
Ohio														
Northern	148	22.1	0	0.0	19	2.8	10	1.5	18	2.7	81	12.1	19	2.8
Southern	140	30.2	0	0.0	23	5.0	17	3.7	33	7.1	52	11.2	12	2.6
Tennessee														
Eastern	107	23.8	0	0.0	2	0.4	7	1.6	3	0.7	36	8.0	9	2.0
Middle	43	21.3	0	0.0	9	4.5	5	2.5	10	5.0	23	11.4	2	1.0
Western	133	28.2	1	0.2	16	3.4	6	1.3	7	1.5	56	11.9	5	1.1
SEVENTH CIRCUIT	417	18.8	1	0.0	60	2.7	26	1.2	66	3.0	357	16.1	47	2.1
Illinois														
Central	72	23.9	1	0.3	5	1.7	5	1.7	2	0.7	46	15.3	4	1.3
Northern	109	19.0	0	0.0	13	2.3	10	1.7	53	9.2	104	18.2	14	2.4
Southern	24	10.3	0	0.0	1	0.4	0	0.0	5	2.2	15	6.5	2	0.9
Indiana														
Northern	70	20.8	0	0.0	3	0.9	0	0.0	2	0.6	24	7.1	16	4.7
Southern	43	19.2	0	0.0	13	5.8	4	1.8	1	0.4	35	15.6	0	0.0
Wisconsin														
Eastern	88	21.3	0	0.0	25	6.1	4	1.0	0	0.0	115	27.8	11	2.7
Western	11	8.2	0	0.0	0	0.0	3	2.2	3	2.2	18	13.4	0	0.0
EIGHTH CIRCUIT	634	14.9	46	1.1	109	2.6	55	1.3	57	1.3	495	11.6	48	1.1
Arkansas														
Eastern	45	13.4	0	0.0	5	1.5	7	2.1	7	2.1	18	5.4	9	2.7
Western	32	18.4	0	0.0	0	0.0	2	1.1	0	0.0	17	9.8	0	0.0
Iowa														
Northern	47	8.7	31	5.7	0	0.0	0	0.0	3	0.6	39	7.2	2	0.4
Southern	65	22.9	0	0.0	14	4.9	4	1.4	2	0.7	37	13.0	8	2.8
Minnesota	135	28.4	0	0.0	8	1.7	9	1.9	18	3.8	80	16.8	3	0.6
Missouri														
Eastern	99	12.6	0	0.0	17	2.2	13	1.7	8	1.0	100	12.7	10	1.3
Western	112	17.8	0	0.0	18	2.9	8	1.3	9	1.4	73	11.6	2	0.3
Nebraska	20	3.9	13	2.5	38	7.5	5	1.0	5	1.0	60	11.8	5	1.0
North Dakota	72	40.0	2	1.1	3	1.7	1	0.6	0	0.0	16	8.9	1	0.6
South Dakota	7	2.1	0	0.0	6	1.8	6	1.8	5	1.5	55	16.3	8	2.4

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	10,357	4,690	45.3	45	0.4	10	0.1	51	0.5	12	0.1
Alaska	97	51	52.6	0	0.0	0	0.0	1	1.0	0	0.0
Arizona	2,616	818	31.3	28	1.1	2	0.1	6	0.2	2	0.1
California											
Central	1,187	522	44.0	2	0.2	2	0.2	9	0.8	4	0.3
Eastern	677	310	45.8	0	0.0	2	0.3	3	0.4	2	0.3
Northern	458	248	54.1	0	0.0	2	0.4	5	1.1	0	0.0
Southern	2,884	1,474	51.1	5	0.2	1	0.0	6	0.2	3	0.1
Guam	46	36	78.3	1	2.2	0	0.0	0	0.0	0	0.0
Hawaii	194	80	41.2	0	0.0	0	0.0	0	0.0	0	0.0
Idaho	217	97	44.7	0	0.0	0	0.0	3	1.4	0	0.0
Montana	305	222	72.8	3	1.0	0	0.0	6	2.0	0	0.0
Nevada	323	218	67.5	1	0.3	0	0.0	2	0.6	0	0.0
Northern Mariana Islands	8	5	62.5	0	0.0	0	0.0	0	0.0	0	0.0
Oregon	465	208	44.7	2	0.4	0	0.0	2	0.4	1	0.2
Washington											
Eastern	270	105	38.9	0	0.0	1	0.4	6	2.2	0	0.0
Western	610	296	48.5	3	0.5	0	0.0	2	0.3	0	0.0
TENTH CIRCUIT	4,579	2,824	61.7	12	0.3	3	0.1	60	1.3	3	0.1
Colorado	344	205	59.6	1	0.3	0	0.0	2	0.6	1	0.3
Kansas	530	315	59.4	2	0.4	2	0.4	38	7.2	1	0.2
New Mexico	2,260	1,414	62.6	4	0.2	0	0.0	4	0.2	1	0.0
Oklahoma											
Eastern	68	64	94.1	0	0.0	0	0.0	0	0.0	0	0.0
Northern	175	135	77.1	0	0.0	0	0.0	0	0.0	0	0.0
Western	267	188	70.4	1	0.4	0	0.0	9	3.4	0	0.0
Utah	667	330	49.5	4	0.6	0	0.0	5	0.7	0	0.0
Wyoming	268	173	64.6	0	0.0	1	0.4	2	0.7	0	0.0
ELEVENTH CIRCUIT	5,440	3,683	67.7	8	0.1	6	0.1	72	1.3	2	0.0
Alabama											
Middle	199	132	66.3	0	0.0	0	0.0	3	1.5	0	0.0
Northern	331	204	61.6	0	0.0	3	0.9	9	2.7	0	0.0
Southern	389	253	65.0	2	0.5	0	0.0	6	1.5	0	0.0
Florida											
Middle	1,320	804	60.9	1	0.1	1	0.1	7	0.5	0	0.0
Northern	267	193	72.3	0	0.0	0	0.0	4	1.5	0	0.0
Southern	1,662	1,205	72.5	0	0.0	1	0.1	18	1.1	1	0.1
Georgia											
Middle	279	229	82.1	0	0.0	0	0.0	4	1.4	0	0.0
Northern	585	342	58.5	2	0.3	1	0.2	5	0.9	0	0.0
Southern	408	321	78.7	3	0.7	0	0.0	16	3.9	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	909	8.8	2,817	27.2	570	5.5	202	2.0	112	1.1	804	7.8	135	1.3
Alaska	22	22.7	0	0.0	12	12.4	1	1.0	2	2.1	8	8.2	0	0.0
Arizona	117	4.5	1,373	52.5	93	3.6	36	1.4	23	0.9	107	4.1	11	0.4
California														
Central	142	12.0	231	19.5	80	6.7	27	2.3	25	2.1	102	8.6	41	3.5
Eastern	99	14.6	158	23.3	24	3.5	12	1.8	8	1.2	52	7.7	7	1.0
Northern	50	10.9	22	4.8	51	11.1	7	1.5	8	1.7	51	11.1	14	3.1
Southern	110	3.8	915	31.7	101	3.5	78	2.7	12	0.4	133	4.6	46	1.6
Guam	4	8.7	0	0.0	0	0.0	1	2.2	0	0.0	2	4.3	2	4.3
Hawaii	59	30.4	0	0.0	2	1.0	2	1.0	2	1.0	48	24.7	1	0.5
Idaho	60	27.6	29	13.4	2	0.9	1	0.5	3	1.4	19	8.8	3	1.4
Montana	38	12.5	0	0.0	0	0.0	3	1.0	3	1.0	28	9.2	2	0.7
Nevada	20	6.2	0	0.0	36	11.1	3	0.9	2	0.6	37	11.5	4	1.2
Northern Mariana Islands	2	25.0	0	0.0	0	0.0	0	0.0	1	12.5	0	0.0	0	0.0
Oregon	93	20.0	17	3.7	50	10.8	13	2.8	6	1.3	73	15.7	0	0.0
Washington														
Eastern	17	6.3	59	21.9	31	11.5	1	0.4	2	0.7	46	17.0	2	0.7
Western	76	12.5	13	2.1	88	14.4	17	2.8	15	2.5	98	16.1	2	0.3
TENTH CIRCUIT	316	6.9	427	9.3	370	8.1	113	2.5	53	1.2	377	8.2	21	0.5
Colorado	57	16.6	0	0.0	14	4.1	16	4.7	4	1.2	41	11.9	3	0.9
Kansas	91	17.2	0	0.0	30	5.7	3	0.6	2	0.4	45	8.5	1	0.2
New Mexico	60	2.7	277	12.3	273	12.1	71	3.1	27	1.2	123	5.4	6	0.3
Oklahoma														
Eastern	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	4	5.9	0	0.0
Northern	25	14.3	0	0.0	1	0.6	1	0.6	0	0.0	13	7.4	0	0.0
Western	17	6.4	0	0.0	3	1.1	3	1.1	0	0.0	44	16.5	2	0.7
Utah	41	6.1	150	22.5	37	5.5	17	2.5	2	0.3	75	11.2	6	0.9
Wyoming	25	9.3	0	0.0	12	4.5	2	0.7	18	6.7	32	11.9	3	1.1
ELEVENTH CIRCUIT	833	15.3	24	0.4	60	1.1	72	1.3	55	1.0	590	10.8	35	0.6
Alabama														
Middle	45	22.6	0	0.0	1	0.5	2	1.0	0	0.0	15	7.5	1	0.5
Northern	66	19.9	0	0.0	2	0.6	3	0.9	2	0.6	41	12.4	1	0.3
Southern	89	22.9	0	0.0	1	0.3	1	0.3	2	0.5	34	8.7	1	0.3
Florida														
Middle	263	19.9	24	1.8	17	1.3	19	1.4	13	1.0	166	12.6	5	0.4
Northern	51	19.1	0	0.0	0	0.0	2	0.7	1	0.4	14	5.2	2	0.7
Southern	155	9.3	0	0.0	16	1.0	16	1.0	25	1.5	209	12.6	16	1.0
Georgia														
Middle	32	11.5	0	0.0	3	1.1	1	0.4	0	0.0	10	3.6	0	0.0
Northern	97	16.6	0	0.0	15	2.6	22	3.8	12	2.1	80	13.7	9	1.5
Southern	35	8.6	0	0.0	5	1.2	6	1.5	0	0.0	21	5.1	0	0.0

¹Of the 57,800 cases, 1,072 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 (26.8%), Middle Georgia (19.6%), Eastern Virginia (16.5%), Central California (14.4%), Northern New York (7.1%), and Middle Tennessee (6.5%). Descriptions of variables used in this table are provided in Appendix A.

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

Table 3

**SENTENCES RELATIVE TO THE GUIDELINE RANGE
BY EACH PRIMARY OFFENSE CATEGORY¹
2008 Post-Kimbrough/Gall Preliminary 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	56,703	33,778	59.6	245	0.4	107	0.2	494	0.9	74	0.1
Murder	41	18	43.9	4	9.8	1	2.4	2	4.9	0	0.0
Manslaughter	37	29	78.4	3	8.1	0	0.0	0	0.0	0	0.0
Kidnapping/Hostage Taking	44	15	34.1	0	0.0	0	0.0	1	2.3	0	0.0
Sexual Abuse	380	268	70.5	5	1.3	1	0.3	12	3.2	0	0.0
Assault	489	321	65.6	11	2.2	2	0.4	20	4.1	5	1.0
Robbery	805	511	63.5	10	1.2	10	1.2	10	1.2	2	0.2
Arson	47	27	57.4	2	4.3	0	0.0	0	0.0	0	0.0
Drugs - Trafficking	18,406	9,534	51.8	34	0.2	11	0.1	48	0.3	16	0.1
Drugs - Communication Facility	268	155	57.8	1	0.4	1	0.4	2	0.7	0	0.0
Drugs - Simple Possession	311	275	88.4	1	0.3	1	0.3	5	1.6	3	1.0
Firearms	6,280	4,185	66.6	47	0.7	22	0.4	83	1.3	12	0.2
Burglary/B&E	31	24	77.4	1	3.2	0	0.0	1	3.2	0	0.0
Auto Theft	48	31	64.6	0	0.0	0	0.0	2	4.2	0	0.0
Larceny	1,062	767	72.2	3	0.3	3	0.3	22	2.1	2	0.2
Fraud	5,450	3,366	61.8	20	0.4	6	0.1	48	0.9	12	0.2
Embezzlement	367	249	67.8	0	0.0	1	0.3	2	0.5	0	0.0
Forgery/Counterfeiting	742	504	67.9	1	0.1	2	0.3	10	1.3	2	0.3
Bribery	169	69	40.8	0	0.0	0	0.0	0	0.0	0	0.0
Tax	418	173	41.4	2	0.5	1	0.2	5	1.2	0	0.0
Money Laundering	634	259	40.9	1	0.2	0	0.0	4	0.6	0	0.0
Racketeering/Extortion	569	258	45.3	7	1.2	0	0.0	10	1.8	2	0.4
Gambling/Lottery	91	45	49.5	0	0.0	0	0.0	1	1.1	0	0.0
Civil Rights	48	22	45.8	1	2.1	0	0.0	0	0.0	0	0.0
Immigration	16,397	10,412	63.5	69	0.4	28	0.2	168	1.0	15	0.1
Pornography/Prostitution	1,250	652	52.2	8	0.6	9	0.7	17	1.4	0	0.0
Prison Offenses	286	218	76.2	2	0.7	3	1.0	4	1.4	0	0.0
Administration of Justice Offenses	752	450	59.8	6	0.8	3	0.4	9	1.2	1	0.1
Environmental/Wildlife	110	76	69.1	0	0.0	0	0.0	1	0.9	0	0.0
National Defense	40	21	52.5	0	0.0	0	0.0	1	2.5	0	0.0
Antitrust	21	4	19.0	0	0.0	0	0.0	0	0.0	0	0.0
Food & Drug	48	33	68.8	0	0.0	0	0.0	0	0.0	0	0.0
Other Miscellaneous Offenses	1,062	807	76.0	6	0.6	2	0.2	6	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	7,539	13.3	4,343	7.7	2,342	4.1	1,167	2.1	691	1.2	5,324	9.4	599	1.1
Murder	5	12.2	1	2.4	2	4.9	0	0.0	2	4.9	5	12.2	1	2.4
Manslaughter	0	0.0	0	0.0	2	5.4	1	2.7	0	0.0	2	5.4	0	0.0
Kidnapping/Hostage Taking	14	31.8	1	2.3	3	6.8	1	2.3	1	2.3	8	18.2	0	0.0
Sexual Abuse	13	3.4	1	0.3	23	6.1	4	1.1	7	1.8	45	11.8	1	0.3
Assault	5	1.0	5	1.0	38	7.8	18	3.7	8	1.6	47	9.6	9	1.8
Robbery	90	11.2	0	0.0	24	3.0	20	2.5	26	3.2	96	11.9	6	0.7
Arson	10	21.3	0	0.0	1	2.1	2	4.3	1	2.1	4	8.5	0	0.0
Drugs - Trafficking	4,736	25.7	843	4.6	639	3.5	332	1.8	248	1.3	1,829	9.9	136	0.7
Drugs - Communication Facility	45	16.8	1	0.4	14	5.2	3	1.1	3	1.1	38	14.2	5	1.9
Drugs - Simple Possession	9	2.9	0	0.0	8	2.6	0	0.0	1	0.3	5	1.6	3	1.0
Firearms	696	11.1	20	0.3	207	3.3	134	2.1	93	1.5	706	11.2	75	1.2
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	18.8	0	0.0	1	2.1	0	0.0	1	2.1	3	6.3	1	2.1
Larceny	78	7.3	3	0.3	26	2.4	17	1.6	11	1.0	106	10.0	24	2.3
Fraud	794	14.6	41	0.8	189	3.5	112	2.1	93	1.7	674	12.4	95	1.7
Embezzlement	20	5.4	0	0.0	12	3.3	8	2.2	6	1.6	61	16.6	8	2.2
Forgery/Counterfeiting	77	10.4	0	0.0	13	1.8	24	3.2	5	0.7	90	12.1	14	1.9
Bribery	47	27.8	0	0.0	12	7.1	1	0.6	3	1.8	36	21.3	1	0.6
Tax	87	20.8	0	0.0	15	3.6	12	2.9	16	3.8	98	23.4	9	2.2
Money Laundering	161	25.4	5	0.8	47	7.4	15	2.4	20	3.2	112	17.7	10	1.6
Racketeering/Extortion	147	25.8	0	0.0	59	10.4	12	2.1	4	0.7	61	10.7	9	1.6
Gambling/Lottery	18	19.8	0	0.0	10	11.0	3	3.3	1	1.1	10	11.0	3	3.3
Civil Rights	9	18.8	0	0.0	2	4.2	1	2.1	0	0.0	13	27.1	0	0.0
Immigration	240	1.5	3,414	20.8	812	5.0	360	2.2	67	0.4	681	4.2	131	0.8
Pornography/Prostitution	38	3.0	3	0.2	91	7.3	38	3.0	36	2.9	339	27.1	19	1.5
Prison Offenses	8	2.8	2	0.7	9	3.1	5	1.7	4	1.4	28	9.8	3	1.0
Administration of Justice Offenses	70	9.3	3	0.4	43	5.7	21	2.8	15	2.0	118	15.7	13	1.7
Environmental/Wildlife	12	10.9	0	0.0	6	5.5	1	0.9	2	1.8	11	10.0	1	0.9
National Defense	4	10.0	0	0.0	3	7.5	3	7.5	2	5.0	6	15.0	0	0.0
Antitrust	16	76.2	0	0.0	0	0.0	0	0.0	0	0.0	1	4.8	0	0.0
Food & Drug	6	12.5	0	0.0	2	4.2	2	4.2	0	0.0	5	10.4	0	0.0
Other Miscellaneous Offenses	73	6.9	0	0.0	29	2.7	16	1.5	15	1.4	85	8.0	21	2.0

¹Of the 57,800 cases, 1,097 were excluded due to one or both of the following reasons: missing primary offense (27) or missing information from the submitted documents that prevented the comparison of the sentence and the guideline range (1,072). Descriptions of variables used in this table are provided in Appendix A.

SOURCE: U.S. Sentencing Commission, Preliminary 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 Preliminary 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	204,602	125,404	61.3	898	0.4	388	0.2	1,381	0.7	547	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	948	662	69.8	19	2.0	15	1.6	28	3.0	7	0.7
Assault	1,643	1,144	69.6	38	2.3	9	0.5	29	1.8	18	1.1
Robbery	3,459	2,302	66.6	27	0.8	16	0.5	31	0.9	14	0.4
Arson	199	114	57.3	5	2.5	4	2.0	8	4.0	3	1.5
Drugs - Trafficking	71,731	38,373	53.5	101	0.1	38	0.1	149	0.2	89	0.1
Drugs - Communication Facility	1,142	719	63.0	3	0.3	2	0.2	1	0.1	4	0.4
Drugs - Simple Possession	1,589	1,449	91.2	12	0.8	5	0.3	17	1.1	15	0.9
Firearms	24,524	17,098	69.7	154	0.6	74	0.3	224	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	4,798	3,738	77.9	14	0.3	7	0.1	41	0.9	27	0.6
Fraud	20,054	12,927	64.5	88	0.4	71	0.4	219	1.1	83	0.4
Embezzlement	1,487	1,123	75.5	0	0.0	1	0.1	4	0.3	0	0.0
Forgery/Counterfeiting	3,230	2,377	73.6	28	0.9	7	0.2	27	0.8	11	0.3
Bribery	606	290	47.9	0	0.0	0	0.0	2	0.3	0	0.0
Tax	1,760	888	50.5	1	0.1	3	0.2	16	0.9	3	0.2
Money Laundering	2,660	1,281	48.2	11	0.4	4	0.2	12	0.5	4	0.2
Racketeering/Extortion	1,843	982	53.3	18	1.0	5	0.3	20	1.1	11	0.6
Gambling/Lottery	331	215	65.0	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	49,927	31,268	62.6	271	0.5	63	0.1	378	0.8	108	0.2
Pornography/Prostitution	3,897	2,548	65.4	39	1.0	22	0.6	74	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	2,937	1,803	61.4	26	0.9	16	0.5	37	1.3	11	0.4
Environmental/Wildlife	454	292	64.3	0	0.0	1	0.2	1	0.2	1	0.2
National Defense	92	32	34.8	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	3,006	2,208	73.5	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	29,556	14.4	14,696	7.2	6,601	3.2	5,158	2.5	3,078	1.5	13,330	6.5	3,565	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	18	1.9	1	0.1	72	7.6	19	2.0	17	1.8	74	7.8	16	1.7
Assault	28	1.7	22	1.3	115	7.0	58	3.5	35	2.1	114	6.9	33	2.0
Robbery	416	12.0	1	0.0	93	2.7	138	4.0	94	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	18,541	25.8	3,667	5.1	2,197	3.1	1,630	2.3	1,112	1.6	4,715	6.6	1,119	1.6
Drugs - Communication Facility	198	17.3	0	0.0	39	3.4	21	1.8	23	2.0	107	9.4	25	2.2
Drugs - Simple Possession	26	1.6	1	0.1	13	0.8	4	0.3	7	0.4	24	1.5	16	1.0
Firearms	2,845	11.6	108	0.4	619	2.5	653	2.7	432	1.8	1,801	7.3	428	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	309	6.4	18	0.4	94	2.0	107	2.2	53	1.1	275	5.7	115	2.4
Fraud	3,072	15.3	12	0.1	445	2.2	540	2.7	397	2.0	1,659	8.3	541	2.7
Embezzlement	51	3.4	0	0.0	27	1.8	37	2.5	40	2.7	153	10.3	51	3.4
Forgery/Counterfeiting	320	9.9	5	0.2	56	1.7	59	1.8	49	1.5	227	7.0	64	2.0
Bribery	193	31.8	1	0.2	21	3.5	13	2.1	10	1.7	56	9.2	20	3.3
Tax	273	15.5	6	0.3	49	2.8	99	5.6	55	3.1	291	16.5	76	4.3
Money Laundering	684	25.7	21	0.8	135	5.1	70	2.6	84	3.2	276	10.4	78	2.9
Racketeering/Extortion	437	23.7	0	0.0	112	6.1	47	2.6	24	1.3	144	7.8	43	2.3
Gambling/Lottery	43	13.0	0	0.0	7	2.1	11	3.3	5	1.5	31	9.4	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	984	2.0	10,767	21.6	1,979	4.0	1,279	2.6	382	0.8	1,874	3.8	574	1.1
Pornography/Prostitution	166	4.3	13	0.3	148	3.8	111	2.8	113	2.9	573	14.7	72	1.8
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	12.6	17	0.6	167	5.7	100	3.4	59	2.0	254	8.6	78	2.7
Environmental/Wildlife	53	11.7	2	0.4	27	5.9	19	4.2	7	1.5	33	7.3	18	4.0
National Defense	23	25.0	1	1.1	7	7.6	7	7.6	3	3.3	12	13.0	6	6.5
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	225	7.5	12	0.4	90	3.0	80	2.7	42	1.4	222	7.4	72	2.4

¹Of the 212,808 cases, 8,206 were excluded due to one or both of the following reasons: missing primary offense (253) or missing information from the submitted documents that prevented the comparison of the sentence and the guideline range (7,978). Descriptions of variables used in this table are provided in Appendix A.

SOURCE: U.S. Sentencing Commission, 2005 - 2007 Datafiles, USSCFY05 - USSCFY07, and Preliminary 2008 Datafile, 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	1	0	0	0	0	0	0	0	0	1	0	0	0
§2N1.2	0	0	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	18	17	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	192	136	1	3	3	0	5	2	6	5	4	24	3
§2P1.2	69	58	1	0	0	0	2	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	35	11	0	0	1	0	3	0	5	3	3	8	1
§2Q1.3	24	6	0	0	0	0	7	0	5	2	1	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	79	52	0	0	0	0	10	0	6	0	1	9	1
§2Q2.2	0	0	0	0	0	0	0	0	0	0	0	0	0
§2R1.1	14	4	0	0	0	0	10	0	0	0	0	0	0
§2S1.1	746	278	1	1	9	0	236	2	38	19	22	128	12
§2S1.2	5	4	0	0	0	0	1	0	0	0	0	0	0
§2S1.3	149	84	0	0	0	0	18	2	14	2	3	23	3
§2S1.4	0	0	0	0	0	0	0	0	0	0	0	0	0
§2T1.1	353	137	2	0	2	0	70	0	15	15	14	90	8
§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	88	38	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	14	3	0	0	0	0	1	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	21	9	0	0	0	0	8	1	0	0	0	3	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	19	5	0	1	0	0	7	0	2	1	1	2	0
§2X2.1	0	0	0	0	0	0	0	0	0	0	0	0	0
§2X3.1	90	44	1	0	4	0	16	1	6	1	4	13	0
§2X4.1	368	227	3	1	2	1	34	0	21	13	2	59	5
§2X5.1	0	0	0	0	0	0	0	0	0	0	0	0	0
§2X5.2	102	96	0	1	0	0	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	53,219	30,750	236	99	486	70	7,465	4,240	2,213	1,155	680	5,258	567

¹Of the 57,800 cases, 4,581 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 (1,072) or missing guideline applied (4,402). Descriptions of variables used in this table are provided in Appendix A.

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

Table 5

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

PRIMARY OFFENSE	N	Median Sentence in Months	Median Decrease in Months From Guideline Minimum	Median Percent Decrease From Guideline Minimum
TOTAL	7,170	37.0	30.0	47.5
Murder	4	64.6	201.4	72.5
Manslaughter	0	--	--	--
Kidnapping/Hostage Taking	12	167.0	83.5	31.5
Sexual Abuse	13	60.0	29.0	40.0
Assault	5	10.0	15.0	52.4
Robbery	88	46.0	20.5	32.5
Arson	9	30.0	24.0	33.2
Drugs - Trafficking	4,521	51.0	40.0	44.4
Drugs - Communication Facility	43	12.0	16.2	67.5
Drugs - Simple Possession	9	18.0	18.0	43.2
Firearms	647	57.0	29.0	40.0
Burglary/B&E	2	--	--	--
Auto Theft	9	24.0	13.0	33.3
Larceny	74	12.0	12.0	58.2
Fraud	756	8.0	15.0	69.2
Embezzlement	19	0.0	12.0	100.0
Forgery/Counterfeiting	76	7.5	8.0	66.7
Bribery	46	3.0	18.5	78.5
Tax	84	0.0	12.0	100.0
Money Laundering	153	12.4	25.0	57.9
Racketeering/Extortion	136	32.5	27.0	47.8
Gambling/Lottery	17	0.0	6.0	100.0
Civil Rights	7	0.0	12.0	100.0
Immigration	229	12.0	10.0	44.4
Pornography/Prostitution	37	60.0	47.0	44.8
Prison Offenses	6	8.6	13.0	54.6
Administration of Justice Offenses	67	1.0	12.0	91.7
Environmental/Wildlife	12	0.0	12.0	100.0
National Defense	4	0.5	31.0	95.0
Antitrust	12	2.0	10.0	92.7
Food & Drug	5	0.0	12.0	100.0
Other Miscellaneous Offenses	68	4.0	12.0	81.2

¹Of the 57,800 cases, 7,545 received a §5K1.1 substantial assistance departure. Of these, 7,261 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 89 cases were also excluded from this table. Of the remaining 7,172 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, Preliminary 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 Preliminary Data

PRIMARY OFFENSE	N	Median Sentence in Months	Median Decrease in Months From Guideline Minimum	Median Percent Decrease From Guideline Minimum
TOTAL	27,856	36.0	29.0	47.9
Murder	14	74.0	93.0	51.5
Manslaughter	1	--	--	--
Kidnapping/Hostage Taking	37	120.0	78.0	43.3
Sexual Abuse	17	30.0	24.0	39.1
Assault	28	28.0	16.5	44.9
Robbery	402	50.0	27.0	34.0
Arson	46	40.0	28.0	47.3
Drugs - Trafficking	17,570	51.0	39.0	43.8
Drugs - Communication Facility	197	12.0	17.9	60.4
Drugs - Simple Possession	22	19.3	11.0	61.5
Firearms	2,556	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	293	5.0	10.0	67.5
Fraud	2,899	3.3	12.0	83.5
Embezzlement	48	0.0	10.5	99.7
Forgery/Counterfeiting	313	3.0	9.0	77.4
Bribery	192	5.0	18.0	86.7
Tax	264	0.0	10.0	100.0
Money Laundering	657	15.0	22.0	59.5
Racketeering/Extortion	397	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	937	12.0	10.0	47.8
Pornography/Prostitution	157	46.0	29.0	38.3
Prison Offenses	34	12.0	8.5	52.0
Administration of Justice Offenses	341	0.0	12.0	100.0
Environmental/Wildlife	48	0.0	12.0	100.0
National Defense	23	12.0	25.0	63.7
Antitrust	16	5.0	10.0	69.4
Food & Drug	19	0.0	12.0	100.0
Other Miscellaneous Offenses	214	0.0	13.0	99.9

¹Of the 212,808 cases, 29,579 received a §5K1.1 substantial assistance departure. Of these, 28,309 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 363 cases were also excluded from this table. Furthermore, 38 cases were excluded due to several logical criteria. Of the remaining 27,908 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.

SOURCE: U.S. Sentencing Commission, 2005 - 2007 Datafiles, USSCFY05 - USSCFY07, and Preliminary 2008 Datafile, USSCFY08.

Table 6

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

PRIMARY OFFENSE	N	Median Sentence in Months	Median Decrease in Months From Guideline Minimum	Median Percent Decrease From Guideline Minimum
TOTAL	4,177	18.0	6.3	28.6
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	816	13.0	10.0	37.5
Drugs - Communication Facility	1	--	--	--
Drugs - Simple Possession	0	--	--	--
Firearms	19	18.0	6.0	19.6
Burglary/B&E	0	--	--	--
Auto Theft	0	--	--	--
Larceny	3	15.0	6.0	25.0
Fraud	39	5.0	1.0	16.7
Embezzlement	0	--	--	--
Forgery/Counterfeiting	0	--	--	--
Bribery	0	--	--	--
Tax	0	--	--	--
Money Laundering	4	6.5	11.5	67.6
Racketeering/Extortion	0	--	--	--
Gambling/Lottery	0	--	--	--
Civil Rights	0	--	--	--
Immigration	3,279	18.0	6.0	27.8
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	0	--	--	--

¹Of the 57,800 cases, 4,345 received a §5K3.1 early disposition program departure. Of these, 4,178 had complete guideline application information. One additional 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, Preliminary 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 Preliminary Data

PRIMARY OFFENSE	N	Median Sentence in Months	Median Decrease in Months From Guideline Minimum	Median Percent Decrease From Guideline Minimum
TOTAL	14,055	18.0	7.0	27.8
Murder	0	--	--	--
Manslaughter	1	--	--	--
Kidnapping/Hostage Taking	2	--	--	--
Sexual Abuse	1	--	--	--
Assault	21	15.0	6.0	34.9
Robbery	1	--	--	--
Arson	0	--	--	--
Drugs - Trafficking	3,423	13.0	10.0	40.0
Drugs - Communication Facility	0	--	--	--
Drugs - Simple Possession	1	--	--	--
Firearms	102	12.0	5.6	20.8
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	20	3.9	6.0	60.0
Racketeering/Extortion	0	--	--	--
Gambling/Lottery	0	--	--	--
Civil Rights	1	--	--	--
Immigration	10,389	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 212,808 cases, 14,720 received a §5K3.1 early disposition program departure. Of these, 14,103 had complete guideline application information. 35 additional cases were excluded due to several logical criteria. Of the remaining 14,068 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 - 2007 Datafiles, USSCFY05 - USSCFY07, and Preliminary 2008 Datafile, USSCFY08.

Table 7

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

PRIMARY OFFENSE	N	Median Sentence in Months	Median Decrease in Months From Guideline Minimum	Median Percent Decrease From Guideline Minimum
TOTAL	2,162	21.0	10.0	27.4
Murder	2	--	--	--
Manslaughter	2	--	--	--
Kidnapping/Hostage Taking	3	235.0	84.0	27.5
Sexual Abuse	21	72.0	21.0	41.5
Assault	31	14.8	12.0	42.7
Robbery	24	47.0	13.0	20.0
Arson	1	--	--	--
Drugs - Trafficking	615	60.0	15.0	23.4
Drugs - Communication Facility	14	24.0	19.5	40.6
Drugs - Simple Possession	7	60.0	10.0	16.4
Firearms	191	36.0	15.0	22.9
Burglary/B&E	0	--	--	--
Auto Theft	1	--	--	--
Larceny	24	0.0	9.0	100.0
Fraud	139	12.0	10.0	50.0
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	15	0.0	12.0	100.0
Money Laundering	42	12.4	10.0	47.0
Racketeering/Extortion	53	24.0	10.0	26.8
Gambling/Lottery	10	0.0	6.0	99.8
Civil Rights	2	--	--	--
Immigration	758	12.0	3.0	20.0
Pornography/Prostitution	89	60.0	34.0	38.1
Prison Offenses	8	11.0	11.0	34.2
Administration of Justice Offenses	35	0.0	12.0	100.0
Environmental/Wildlife	6	0.0	15.0	100.0
National Defense	2	--	--	--
Antitrust	0	--	--	--
Food & Drug	2	--	--	--
Other Miscellaneous Offenses	28	0.0	12.0	100.0

¹Of the 57,800 cases, 2,345 received an other government sponsored downward departure. Of these, 2,170 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 six cases were also excluded from this table. Of the remaining 2,164 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, Preliminary 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 Preliminary Data**

PRIMARY OFFENSE	N	Median Sentence in Months	Median Decrease in Months From Guideline Minimum	Median Percent Decrease From Guideline Minimum
TOTAL	6,039	24.0	10.0	29.5
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	106	18.0	12.0	47.8
Robbery	84	64.0	26.5	29.7
Arson	4	42.0	19.5	33.7
Drugs - Trafficking	2,038	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	562	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	83	0.0	10.0	100.0
Fraud	398	5.4	10.3	66.7
Embezzlement	26	0.0	8.0	99.7
Forgery/Counterfeiting	48	3.8	10.0	66.7
Bribery	20	2.5	10.0	93.3
Tax	46	1.2	10.0	95.1
Money Laundering	122	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	1,799	12.0	4.0	21.7
Pornography/Prostitution	145	60.0	30.0	30.0
Prison Offenses	23	10.0	6.0	25.0
Administration of Justice Offenses	144	6.4	12.0	58.4
Environmental/Wildlife	23	0.0	10.0	100.0
National Defense	7	12.0	19.0	63.3
Antitrust	1	--	--	--
Food & Drug	8	17.0	14.5	39.7
Other Miscellaneous Offenses	84	0.0	11.8	100.0

¹Of the 212,808 cases, 6,628 received an other government sponsored downward departure. Of these, 6,091 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 6,051 cases, 12 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 8

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

PRIMARY OFFENSE	N	Median Sentence in Months	Median Decrease in Months From Guideline Minimum	Median Percent Decrease From Guideline Minimum
TOTAL	1,115	24.0	10.0	27.8
Murder	0	--	--	--
Manslaughter	1	--	--	--
Kidnapping/Hostage Taking	1	--	--	--
Sexual Abuse	4	34.0	7.0	26.1
Assault	15	6.0	12.0	80.9
Robbery	20	27.0	15.0	26.2
Arson	2	--	--	--
Drugs - Trafficking	314	53.5	13.0	20.0
Drugs - Communication Facility	2	--	--	--
Drugs - Simple Possession	0	--	--	--
Firearms	129	31.0	9.0	19.3
Burglary/B&E	1	--	--	--
Auto Theft	0	--	--	--
Larceny	17	0.0	10.0	100.0
Fraud	106	5.0	10.0	60.4
Embezzlement	7	1.0	8.0	87.5
Forgery/Counterfeiting	23	4.3	8.0	66.7
Bribery	1	--	--	--
Tax	11	0.0	8.0	100.0
Money Laundering	13	21.0	8.0	18.2
Racketeering/Extortion	10	82.0	15.5	16.9
Gambling/Lottery	3	0.0	6.0	100.0
Civil Rights	1	--	--	--
Immigration	351	21.0	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	21	6.3	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 57,800 cases, 1,167 received a downward departure from the guideline range. Of these, 1,119 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 1,117 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 Preliminary Data

PRIMARY OFFENSE	N	Median Sentence in Months	Median Decrease in Months From Guideline Minimum	Median Percent Decrease From Guideline Minimum
TOTAL	4,838	24.0	10.0	29.5
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	54	12.0	8.0	42.3
Robbery	132	44.0	11.0	20.5
Arson	1	--	--	--
Drugs - Trafficking	1,509	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	502	2.9	10.0	80.9
Embezzlement	36	0.0	10.0	99.6
Forgery/Counterfeiting	58	5.5	8.0	59.2
Bribery	12	0.0	9.0	100.0
Tax	94	0.0	10.0	100.0
Money Laundering	63	16.0	12.0	49.9
Racketeering/Extortion	42	30.0	13.0	28.0
Gambling/Lottery	9	0.0	8.0	100.0
Civil Rights	7	0.0	6.0	100.0
Immigration	1,207	24.0	7.0	22.1
Pornography/Prostitution	110	24.0	21.0	34.4
Prison Offenses	18	15.0	5.5	33.3
Administration of Justice Offenses	94	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	74	0.0	10.0	100.0

¹Of the 212,808 cases, 5,162 received a downward departure from the guideline range. Of these, 4,857 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 4,846 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
2008 Post-Kimbrough/Gall Preliminary Data**

PRIMARY OFFENSE	N	Median Sentence in Months	Median Decrease in Months From Guideline Minimum	Median Percent Decrease From Guideline Minimum
TOTAL	657	26.0	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	235	60.0	23.0	31.0
Drugs - Communication Facility	3	11.9	18.1	60.4
Drugs - Simple Possession	1	--	--	--
Firearms	91	24.0	15.0	34.8
Burglary/B&E	0	--	--	--
Auto Theft	1	--	--	--
Larceny	9	0.0	9.9	100.0
Fraud	88	4.5	12.0	74.5
Embezzlement	6	0.0	11.0	99.6
Forgery/Counterfeiting	5	0.0	18.0	100.0
Bribery	2	--	--	--
Tax	16	0.0	12.0	99.9
Money Laundering	19	24.0	18.0	62.9
Racketeering/Extortion	4	39.0	17.0	24.0
Gambling/Lottery	1	--	--	--
Civil Rights	0	--	--	--
Immigration	62	18.0	11.5	35.1
Pornography/Prostitution	35	54.0	30.0	38.5
Prison Offenses	4	16.5	4.5	22.4
Administration of Justice Offenses	14	6.0	9.5	61.0
Environmental/Wildlife	2	--	--	--
National Defense	1	--	--	--
Antitrust	0	--	--	--
Food & Drug	0	--	--	--
Other Miscellaneous Offenses	15	0.0	10.0	100.0

¹Of the 57,800 cases, 691 received a downward departure from the guideline range with *Booker* /18 U.S.C § 3553. Of these, 661 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 Preliminary Data**

PRIMARY OFFENSE	N	Median Sentence in Months	Median Decrease in Months From Guideline Minimum	Median Percent Decrease From Guideline Minimum
TOTAL	2,856	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	87	45.0	17.0	23.1
Arson	0	--	--	--
Drugs - Trafficking	1,023	60.0	22.0	31.3
Drugs - Communication Facility	20	3.8	24.0	83.0
Drugs - Simple Possession	7	0.0	12.0	100.0
Firearms	402	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	55	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	4	2.4	8.5	78.9
Civil Rights	4	6.0	12.0	74.9
Immigration	351	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	40	0.0	12.0	100.0

¹Of the 212,808 cases, 3,082 received a downward departure from the guideline range with *Booker*/ 18 U.S.C § 3553. Of these, 2,871 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 2,860 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.

SOURCE: U.S. Sentencing Commission, 2005 - 2007 Datafiles, USSCFY05 - USSCFY07, and Preliminary 2008 Datafile, USSCFY08.

Table 10

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

PRIMARY OFFENSE	N	Median Sentence in Months	Median Decrease in Months From Guideline Minimum	Median Percent Decrease From Guideline Minimum
TOTAL	5,082	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	40	30.0	13.9	39.4
Assault	46	12.0	11.0	45.8
Robbery	94	40.0	12.5	21.7
Arson	4	66.0	13.5	17.7
Drugs - Trafficking	1,747	60.0	16.0	23.7
Drugs - Communication Facility	38	16.5	12.0	52.1
Drugs - Simple Possession	5	60.0	8.0	19.8
Firearms	687	28.0	12.0	30.0
Burglary/B&E	1	--	--	--
Auto Theft	3	6.0	4.0	40.0
Larceny	104	0.0	9.0	100.0
Fraud	645	10.0	10.0	53.7
Embezzlement	61	1.0	9.0	93.3
Forgery/Counterfeiting	88	0.0	10.0	100.0
Bribery	25	10.0	12.0	56.8
Tax	95	1.0	10.0	91.7
Money Laundering	103	22.0	12.0	33.3
Racketeering/Extortion	56	36.0	12.0	28.3
Gambling/Lottery	10	0.0	6.5	100.0
Civil Rights	13	3.0	10.0	75.0
Immigration	626	24.0	10.0	33.2
Pornography/Prostitution	333	60.0	28.0	34.8
Prison Offenses	28	10.5	8.5	43.8
Administration of Justice Offenses	115	6.0	9.0	59.9
Environmental/Wildlife	11	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	78	0.0	10.0	100.0

¹Of the 57,800 cases, 5,324 were sentenced below the guideline range with *Booker* /18 U.S.C § 3553. Of these, 5,109 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 19 cases were also excluded from this table. Furthermore, two cases were excluded due to several logical criteria. Of the remaining 5,088 cases, six 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 Preliminary Data

PRIMARY OFFENSE	N	Median Sentence in Months	Median Decrease in Months From Guideline Minimum	Median Percent Decrease From Guideline Minimum
TOTAL	12,414	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	4,340	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	1,710	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	1,559	5.3	10.0	66.7
Embezzlement	143	0.0	9.0	99.6
Forgery/Counterfeiting	215	4.0	8.0	75.0
Bribery	53	5.0	10.0	74.5
Tax	272	3.0	10.0	75.0
Money Laundering	247	18.0	12.0	47.4
Racketeering/Extortion	132	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	1,737	24.0	10.0	33.2
Pornography/Prostitution	544	48.0	25.0	33.3
Prison Offenses	51	10.0	8.0	35.1
Administration of Justice Offenses	234	6.0	10.0	66.4
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 212,808 cases, 13,338 were sentenced below the guideline range with *Booker*/18 U.S.C § 3553. Of these, 12,558 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 118 cases were also excluded from this table. Furthermore, six cases were excluded due to several logical criteria. Of the remaining 12,434 cases, 20 were excluded due to one or both of the following reasons: missing primary offense category (1) or missing sentence information (19). 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
2008 Post-Kimbrough/Gall Preliminary Data**

PRIMARY OFFENSE	N	Median Sentence in Months	Median Decrease in Months From Guideline Minimum	Median Percent Decrease From Guideline Minimum
TOTAL	522	14.0	6.0	35.1
Murder	0	--	--	--
Manslaughter	0	--	--	--
Kidnapping/Hostage Taking	0	--	--	--
Sexual Abuse	1	--	--	--
Assault	7	12.0	8.0	59.9
Robbery	6	44.5	14.0	22.0
Arson	0	--	--	--
Drugs - Trafficking	119	65.0	15.0	23.9
Drugs - Communication Facility	5	24.0	6.0	20.0
Drugs - Simple Possession	3	1.5	6.0	75.2
Firearms	70	66.0	9.5	15.9
Burglary/B&E	1	--	--	--
Auto Theft	1	--	--	--
Larceny	23	0.0	6.0	100.0
Fraud	82	6.0	6.0	50.9
Embezzlement	8	0.0	4.0	99.6
Forgery/Counterfeiting	13	0.0	6.0	99.5
Bribery	1	--	--	--
Tax	9	0.0	7.0	100.0
Money Laundering	8	0.0	5.9	100.0
Racketeering/Extortion	7	84.0	18.0	20.0
Gambling/Lottery	3	0.0	6.0	100.0
Civil Rights	0	--	--	--
Immigration	106	4.7	5.0	40.8
Pornography/Prostitution	18	71.0	46.0	32.2
Prison Offenses	3	6.0	2.0	25.0
Administration of Justice Offenses	9	0.0	6.0	100.0
Environmental/Wildlife	0	--	--	--
National Defense	0	--	--	--
Antitrust	0	--	--	--
Food & Drug	0	--	--	--
Other Miscellaneous Offenses	19	0.0	6.0	100.0

¹Of the 57,800 cases, 599 were otherwise sentenced below the guideline range. Of these, 529 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, Preliminary 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 Preliminary Data**

PRIMARY OFFENSE	N	Median Sentence in Months	Median Decrease in Months From Guideline Minimum	Median Percent Decrease From Guideline Minimum
TOTAL	3,081	18.0	9.3	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	30	3.5	6.0	67.5
Robbery	62	48.0	17.5	23.0
Arson	0	--	--	--
Drugs - Trafficking	933	57.0	15.0	28.6
Drugs - Communication Facility	23	24.0	10.0	37.5
Drugs - Simple Possession	15	1.0	5.0	82.8
Firearms	387	36.0	10.0	27.3
Burglary/B&E	5	0.0	6.0	100.0
Auto Theft	2	--	--	--
Larceny	110	0.0	6.0	100.0
Fraud	484	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	462	18.0	6.0	33.2
Pornography/Prostitution	65	30.0	15.0	33.3
Prison Offenses	13	12.0	6.0	48.1
Administration of Justice Offenses	64	6.0	6.7	65.6
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 212,808 cases, 3,566 were otherwise sentenced below the guideline range. Of these, 3,126 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 3,095 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
2008 Post-Kimbrough/Gall Preliminary Data**

PRIMARY OFFENSE	N	Median Sentence in Months	Median Increase in Months From Guideline Maximum	Median Percent Increase From Guideline Maximum
TOTAL	228	60.0	13.0	30.8
Murder	3	360.0	98.0	37.4
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	10	120.0	33.5	31.4
Arson	2	--	--	--
Drugs - Trafficking	33	156.0	27.0	23.9
Drugs - Communication Facility	1	--	--	--
Drugs - Simple Possession	1	--	--	--
Firearms	43	100.0	15.0	23.8
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	1	--	--	--
Racketeering/Extortion	7	78.0	19.0	29.4
Gambling/Lottery	0	--	--	--
Civil Rights	1	--	--	--
Immigration	62	22.5	6.0	33.3
Pornography/Prostitution	7	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 57,800 cases, 245 received an upward departure from the guideline range. Of these, 232 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.

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 Preliminary 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	90	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	28	48.0	14.5	44.7
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	257	18.0	6.0	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 212,808 cases, 898 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
2008 Post-Kimbrough/Gall Preliminary Data**

PRIMARY OFFENSE	N	Median Sentence in Months	Median Increase in Months From Guideline Maximum	Median Percent Increase From Guideline Maximum
TOTAL	94	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	10	170.0	61.0	33.0
Drugs - Communication Facility	1	--	--	--
Drugs - Simple Possession	1	--	--	--
Firearms	21	120.0	39.0	57.9
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	2	--	--	--
Bribery	0	--	--	--
Tax	1	--	--	--
Money Laundering	0	--	--	--
Racketeering/Extortion	0	--	--	--
Gambling/Lottery	0	--	--	--
Civil Rights	0	--	--	--
Immigration	21	18.0	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 57,800 cases, 107 received an upward departure from the guideline range with *Booker* /18 U.S.C § 3553. Of these, 96 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, Preliminary 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 Preliminary Data**

PRIMARY OFFENSE	N	Median Sentence in Months	Median Increase in Months From Guideline Maximum	Median Percent Increase From Guideline Maximum
TOTAL	358	72.0	18.0	38.8
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	7	78.0	30.0	64.7
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 212,808 cases, 388 received an upward departure from the guideline range with *Booker*/18 U.S.C § 3553. Of these, 368 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
2008 Post-Kimbrough/Gall Preliminary Data**

PRIMARY OFFENSE	N	Median Sentence in Months	Median Increase in Months From Guideline Maximum	Median Percent Increase From Guideline Maximum
TOTAL	467	48.0	14.0	50.0
Murder	1	--	--	--
Manslaughter	0	--	--	--
Kidnapping/Hostage Taking	0	--	--	--
Sexual Abuse	12	132.0	26.5	30.9
Assault	19	72.0	21.0	41.2
Robbery	10	110.0	16.5	20.9
Arson	0	--	--	--
Drugs - Trafficking	46	96.0	15.0	19.5
Drugs - Communication Facility	2	--	--	--
Drugs - Simple Possession	4	9.5	3.5	52.4
Firearms	80	96.0	19.0	28.9
Burglary/B&E	1	--	--	--
Auto Theft	1	--	--	--
Larceny	21	36.0	14.0	54.2
Fraud	44	60.0	18.0	60.5
Embezzlement	1	--	--	--
Forgery/Counterfeiting	10	33.0	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	159	18.0	7.0	71.4
Pornography/Prostitution	17	120.0	30.0	30.3
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	4	15.0	8.0	41.7

¹Of the 57,800 cases, 494 were sentenced above the guideline range with *Booker* /18 U.S.C § 3553. Of these, 470 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, 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.

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 Preliminary Data**

PRIMARY OFFENSE	N	Median Sentence in Months	Median Increase in Months From Guideline Maximum	Median Percent Increase From Guideline Maximum
TOTAL	1,272	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	137	96.0	18.0	29.7
Drugs - Communication Facility	1	--	--	--
Drugs - Simple Possession	15	12.0	6.0	99.8
Firearms	202	72.0	17.5	36.4
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	359	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 212,808 cases, 1,384 were sentenced above the guideline range with *Booker*/18 U.S.C § 3553. Of these, 1,308 had complete guideline application information. Due to an inability to calculate the extent of departure for cases with a sentence of life, an additional 13 cases were also excluded from this table. Furthermore, 22 cases were excluded due to several logical criteria. Of the remaining 1,273 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
2008 Post-Kimbrough/Gall Preliminary Data

PRIMARY OFFENSE	N	Median Sentence in Months	Median Increase in Months From Guideline Maximum	Median Percent Increase From Guideline Maximum
TOTAL	47	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	10	90.0	14.0	14.6
Drugs - Communication Facility	0	--	--	--
Drugs - Simple Possession	2	--	--	--
Firearms	10	180.0	33.5	27.0
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	11	12.0	6.0	25.0
Pornography/Prostitution	0	--	--	--
Prison Offenses	0	--	--	--
Administration of Justice Offenses	1	--	--	--
Environmental/Wildlife	0	--	--	--
National Defense	0	--	--	--
Antitrust	0	--	--	--
Food & Drug	0	--	--	--
Other Miscellaneous Offenses	0	--	--	--

¹Of the 57,800 cases, 74 were otherwise sentenced above the guideline range. Of these, 68 had complete guideline application information. 21 additional 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, Preliminary 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 Preliminary Data

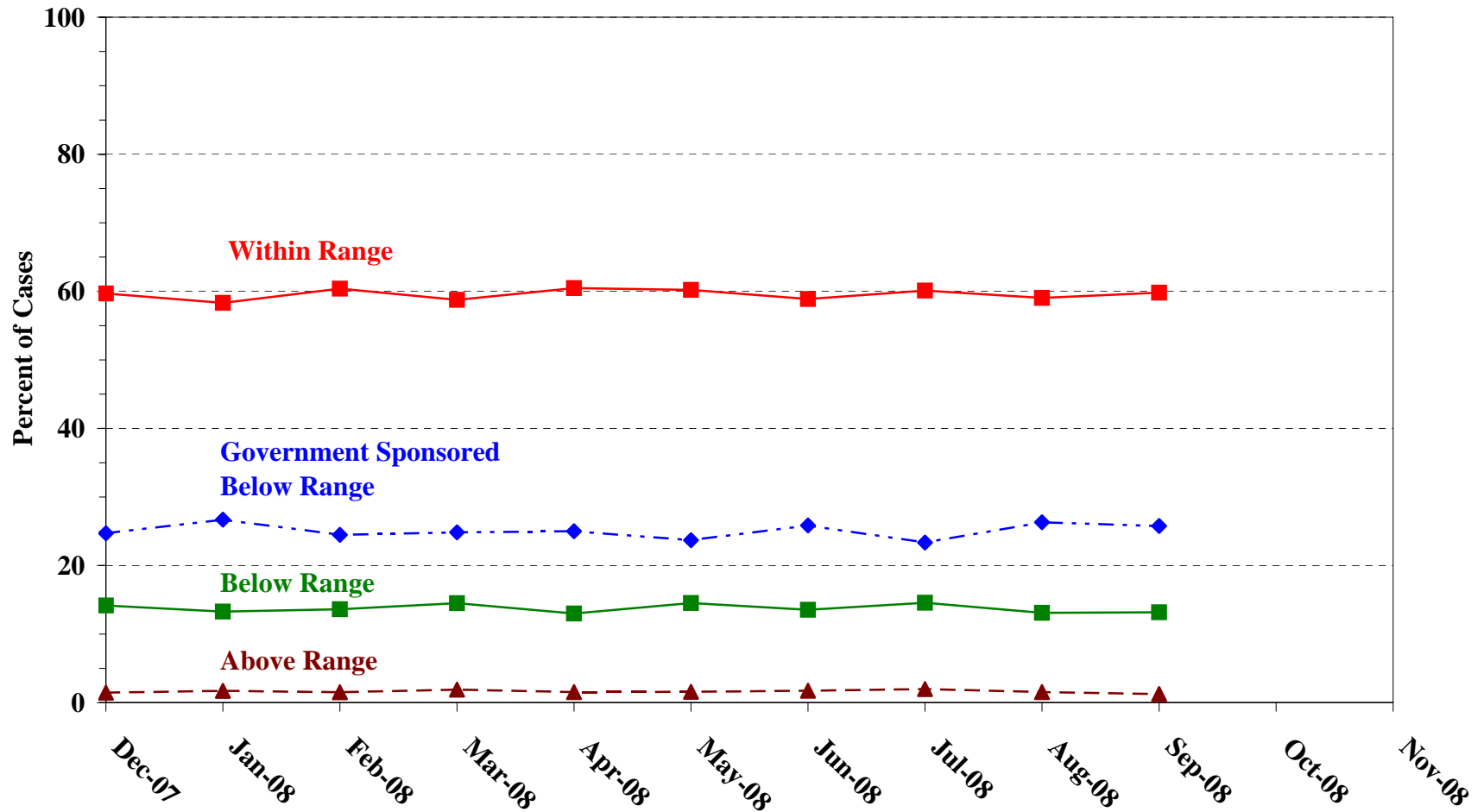
PRIMARY OFFENSE	N	Median Sentence in Months	Median Increase in Months From Guideline Maximum	Median Percent Increase From Guideline Maximum
TOTAL	425	55.0	12.0	33.3
Murder	5	240.0	72.0	42.9
Manslaughter	5	41.0	14.0	41.2
Kidnapping/Hostage Taking	0	--	--	--
Sexual Abuse	7	180.0	37.0	30.0
Assault	16	98.0	27.0	42.3
Robbery	11	168.0	27.0	23.7
Arson	3	84.0	13.0	18.3
Drugs - Trafficking	72	77.0	15.5	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 212,808 cases, 548 were otherwise sentenced above the guideline range. Of these, 488 had complete guideline application information. 63 additional 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 - 2007 Datafiles, USSCFY05 - USSCFY07, and Preliminary 2008 Datafile, USSCFY08.

MONTHLY DATA FOR WITHIN RANGE AND OUT OF RANGE SENTENCES¹

2008 Post-*Kimbrough*/*Gall* Preliminary Data



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

Table 16

MONTHLY DATA FOR WITHIN RANGE AND OUT OF RANGE SENTENCES¹
2008 Post-*Kimbrough/Gall* Preliminary Data

Sentencing Month	WITHIN GUIDELINE RANGE	ABOVE GUIDELINE RANGE	GOVERNMENT SPONSORED BELOW RANGE	BELOW GUIDELINE RANGE
	%	%	%	%
December 2007	59.7	1.4	24.7	14.2
January 2008	58.3	1.7	26.7	13.3
February 2008	60.4	1.5	24.5	13.6
March 2008	58.8	1.9	24.8	14.5
April 2008	60.5	1.5	25.0	13.0
May 2008	60.2	1.6	23.7	14.5
June 2008	58.9	1.7	25.9	13.5
July 2008	60.1	2.0	23.3	14.6
August 2008	59.0	1.5	26.3	13.1
September 2008	59.8	1.2	25.8	13.2
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, Preliminary 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.