

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



**July 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.<sup>1</sup> Data is reported on an annual basis in the Commission's *Annual Report* and *Sourcebook of Federal Sentencing Statistics*.<sup>2</sup>

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*.<sup>3</sup> 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 May 13, 2008, and which were received, coded, and edited at the U.S. Sentencing Commission by July 7, 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.

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<sup>1</sup> 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).

<sup>2</sup> See the Commission's website, [www.ussc.gov](http://www.ussc.gov), for electronic copies of the 1995-2007 *Annual Report* and *Sourcebook of Federal Sentencing Statistics*.

<sup>3</sup> See [www.ussc.gov/bf.htm](http://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 RANGE<sup>1</sup>  
Fiscal Year 2005, Post-Booker - 2008, Kimbrough/Gall Preliminary Data**

	<i>Post-Booker</i>		<i>Post-Kimbrough/Gall</i>	
	N	%	N	%
<b>TOTAL CASES</b>	<b>204,830</b>	<b>100.0</b>	<b>26,328</b>	<b>100.0</b>
<b>CASES SENTENCED WITHIN GUIDELINE RANGE</b>	<b>125,537</b>	<b>61.3</b>	<b>15,711</b>	<b>59.7</b>
<b>CASES SENTENCED ABOVE GUIDELINE RANGE</b>	<b>3,218</b>	<b>1.6</b>	<b>436</b>	<b>1.7</b>
<b>DEPARTURE ABOVE GUIDELINE RANGE</b>	<b>1,286</b>	<b>0.6</b>	<b>172</b>	<b>0.7</b>
Upward Departure From Guideline Range <sup>2</sup>	898	0.4	121	0.5
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	388	0.2	51	0.2
<b>OTHERWISE ABOVE GUIDELINE RANGE</b>	<b>1,932</b>	<b>1.0</b>	<b>264</b>	<b>1.0</b>
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	1,384	0.7	226	0.9
All Remaining Cases Above Guideline Range <sup>5</sup>	548	0.3	38	0.1
<b>GOVERNMENT SPONSORED BELOW RANGE<sup>6</sup></b>	<b>50,927</b>	<b>24.8</b>	<b>6,599</b>	<b>25.1</b>
§5K1.1 Substantial Assistance Departure	29,579	14.4	3,530	13.4
§5K3.1 Early Disposition Program Departure	14,720	7.2	2,001	7.6
Other Government Sponsored Below Range	6,628	3.2	1,068	4.1
<b>NON-GOVERNMENT SPONSORED BELOW RANGE</b>	<b>25,148</b>	<b>12.2</b>	<b>3,582</b>	<b>13.6</b>
<b>DEPARTURE BELOW GUIDELINE RANGE</b>	<b>8,244</b>	<b>4.0</b>	<b>866</b>	<b>3.3</b>
Downward Departure From Guideline Range <sup>2</sup>	5,162	2.5	526	2.0
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	3,082	1.5	340	1.3
<b>OTHERWISE BELOW GUIDELINE RANGE</b>	<b>16,904</b>	<b>8.2</b>	<b>2,716</b>	<b>10.3</b>
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	13,338	6.5	2,449	9.3
All Remaining Cases Below Guideline Range <sup>5</sup>	3,566	1.7	267	1.0

<sup>1</sup>The cases in this table described as Post-*Kimbrough/Gall* reflect the 26,901 cases sentenced subsequent to the date of *Kimbrough v. United States* and *Gall v. United States* (December 10, 2007), through May 13, 2008 with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by July 7, 2008. Of these, 573 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 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 reasons. Descriptions of variables used in this table are provided in Appendix A.

<sup>2</sup>All cases with departures in which the court did not indicate as a reason either *United States v. Booker*, 18 U.S.C. § 3553, or a factor or reason specifically prohibited in the provisions, policy statements, or commentary of the *Guidelines Manual*.

<sup>3</sup>All cases sentenced outside of the guideline range in which the court indicated both a departure (see footnote 2) and a reference to either *United States v. Booker*, 18 U.S.C. § 3553, or related factors as a reason for sentencing outside of the guideline system.

<sup>4</sup>All cases sentenced outside of the guideline range in which no departure was indicated and in which the court cited *United States v. Booker*, 18 U.S.C. § 3553, or related factors as one of the reasons for sentencing outside of the guideline system.

<sup>5</sup>All cases sentenced outside of the guideline range that could not be classified into any of the three previous outside of the range categories. This category includes cases in which no reason was provided for a sentence outside of the guideline range.

<sup>6</sup>Cases in which a reason for the sentence indicated that the prosecution initiated, proposed, or stipulated to a sentence outside of the guideline range, either pursuant to a plea agreement or as part of a non-plea negotiation with the defendant.

SOURCE: U.S. Sentencing Commission, 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 RANGE<sup>1</sup>**  
Fiscal Year 2005, Post-*Booker* - 2008, *Kimbrough/Gall* Preliminary Data

	<i>Post-Booker</i>		<i>Post-Kimbrough/Gall</i>	
	N	%	N	%
<b>TOTAL CASES</b>	<b>1,366</b>	<b>100.0</b>	<b>162</b>	<b>100.0</b>
<b>CASES SENTENCED WITHIN GUIDELINE RANGE</b>	<b>653</b>	<b>47.8</b>	<b>72</b>	<b>44.4</b>
<b>CASES SENTENCED ABOVE GUIDELINE RANGE</b>	<b>31</b>	<b>2.3</b>	<b>0</b>	<b>0.0</b>
<b>DEPARTURE ABOVE GUIDELINE RANGE</b>	<b>12</b>	<b>0.9</b>	<b>0</b>	<b>0.0</b>
Upward Departure From Guideline Range <sup>2</sup>	8	0.6	0	0.0
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	4	0.3	0	0.0
<b>OTHERWISE ABOVE GUIDELINE RANGE</b>	<b>19</b>	<b>1.4</b>	<b>0</b>	<b>0.0</b>
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	12	0.9	0	0.0
All Remaining Cases Above Guideline Range <sup>5</sup>	7	0.5	0	0.0
<b>GOVERNMENT SPONSORED BELOW RANGE<sup>6</sup></b>	<b>488</b>	<b>35.7</b>	<b>64</b>	<b>39.5</b>
§5K1.1 Substantial Assistance Departure	366	26.8	52	32.1
§5K3.1 Early Disposition Program Departure	0	0.0	0	0.0
Other Government Sponsored Below Range	122	8.9	12	7.4
<b>NON-GOVERNMENT SPONSORED BELOW RANGE</b>	<b>194</b>	<b>14.1</b>	<b>26</b>	<b>16.1</b>
<b>DEPARTURE BELOW GUIDELINE RANGE</b>	<b>58</b>	<b>4.2</b>	<b>9</b>	<b>5.6</b>
Downward Departure From Guideline Range <sup>2</sup>	18	1.3	3	1.9
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	40	2.9	6	3.7
<b>OTHERWISE BELOW GUIDELINE RANGE</b>	<b>136</b>	<b>9.9</b>	<b>17</b>	<b>10.5</b>
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	104	7.6	14	8.6
All Remaining Cases Below Guideline Range <sup>5</sup>	32	2.3	3	1.9

<sup>1</sup>The cases in this table described as *Post-Kimbrough/Gall* reflect the 162 cases sentenced in the D.C. Circuit subsequent to the date of *Kimbrough v. United States* and *Gall v. United States* (December 10, 2007), through May 13, 2008 with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by July 7, 2008. The cases in this table described as *Post-Booker* reflect the 1,296 cases sentenced in the D.C. Circuit after the date of *United States v. Booker* (January 12, 2005) through September 30, 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.

<sup>2</sup>All cases with departures in which the court did not indicate as a reason either *United States v. Booker*, 18 U.S.C. § 3553, or a factor or reason specifically prohibited in the provisions, policy statements, or commentary of the *Guidelines Manual*.

<sup>3</sup>All cases sentenced outside of the guideline range in which the court indicated both a departure (see footnote 2) and a reference to either *United States v. Booker*, 18 U.S.C. § 3553, or related factors as a reason for sentencing outside of the guideline system.

<sup>4</sup>All cases sentenced outside of the guideline range in which no departure was indicated and in which the court cited *United States v. Booker*, 18 U.S.C. § 3553, or related factors as one of the reasons for sentencing outside of the guideline system.

<sup>5</sup>All cases sentenced outside of the guideline range that could not be classified into any of the three previous outside of the range categories. This category includes cases in which no reason was provided for a sentence outside of the guideline range.

<sup>6</sup>Cases in which a reason for the sentence indicated that the prosecution initiated, proposed, or stipulated to a sentence outside of the guideline range, either pursuant to a plea agreement or as part of a non-plea negotiation with the defendant.

SOURCE: U.S. Sentencing Commission, 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 RANGE<sup>1</sup>**  
Fiscal Year 2005, Post-*Booker* - 2008, *Kimbrough/Gall* Preliminary Data

	<i>Post-Booker</i>		<i>Post-Kimbrough/Gall</i>	
	N	%	N	%
<b>TOTAL CASES</b>	<b>4,962</b>	<b>100.0</b>	<b>518</b>	<b>100.0</b>
<b>CASES SENTENCED WITHIN GUIDELINE RANGE</b>	<b>3,327</b>	<b>67.0</b>	<b>307</b>	<b>59.3</b>
<b>CASES SENTENCED ABOVE GUIDELINE RANGE</b>	<b>80</b>	<b>1.6</b>	<b>6</b>	<b>1.2</b>
<b>DEPARTURE ABOVE GUIDELINE RANGE</b>	<b>27</b>	<b>0.6</b>	<b>2</b>	<b>0.4</b>
Upward Departure From Guideline Range <sup>2</sup>	19	0.4	2	0.4
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	8	0.2	0	0.0
<b>OTHERWISE ABOVE GUIDELINE RANGE</b>	<b>53</b>	<b>1.0</b>	<b>4</b>	<b>0.8</b>
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	41	0.8	2	0.4
All Remaining Cases Above Guideline Range <sup>5</sup>	12	0.2	2	0.4
<b>GOVERNMENT SPONSORED BELOW RANGE<sup>6</sup></b>	<b>713</b>	<b>14.3</b>	<b>88</b>	<b>16.9</b>
§5K1.1 Substantial Assistance Departure	582	11.7	65	12.5
§5K3.1 Early Disposition Program Departure	0	0.0	0	0.0
Other Government Sponsored Below Range	131	2.6	23	4.4
<b>NON-GOVERNMENT SPONSORED BELOW RANGE</b>	<b>842</b>	<b>17.0</b>	<b>117</b>	<b>22.7</b>
<b>DEPARTURE BELOW GUIDELINE RANGE</b>	<b>263</b>	<b>5.3</b>	<b>32</b>	<b>6.2</b>
Downward Departure From Guideline Range <sup>2</sup>	183	3.7	17	3.3
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	80	1.6	15	2.9
<b>OTHERWISE BELOW GUIDELINE RANGE</b>	<b>579</b>	<b>11.7</b>	<b>85</b>	<b>16.5</b>
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	460	9.3	79	15.3
All Remaining Cases Below Guideline Range <sup>5</sup>	119	2.4	6	1.2

<sup>1</sup>The cases in this table described as Post-*Kimrough/Gall* reflect the 522 cases sentenced in the First Circuit subsequent to the date of *Kimrough v. United States* and *Gall v. United States* (December 10, 2007), through May 13, 2008 with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by July 7, 2008. Of these, four 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 September 30, 2007. Of these, 58 cases were excluded for the above reasons. Descriptions of variables used in this table are provided in Appendix A.

<sup>2</sup>All cases with departures in which the court did not indicate as a reason either *United States v. Booker*, 18 U.S.C. § 3553, or a factor or reason specifically prohibited in the provisions, policy statements, or commentary of the *Guidelines Manual*.

<sup>3</sup>All cases sentenced outside of the guideline range in which the court indicated both a departure (see footnote 2) and a reference to either *United States v. Booker*, 18 U.S.C. § 3553, or related factors as a reason for sentencing outside of the guideline system.

<sup>4</sup>All cases sentenced outside of the guideline range in which no departure was indicated and in which the court cited *United States v. Booker*, 18 U.S.C. § 3553, or related factors as one of the reasons for sentencing outside of the guideline system.

<sup>5</sup>All cases sentenced outside of the guideline range that could not be classified into any of the three previous outside of the range categories. This category includes cases in which no reason was provided for a sentence outside of the guideline range.

<sup>6</sup>Cases in which a reason for the sentence indicated that the prosecution initiated, proposed, or stipulated to a sentence outside of the guideline range, either pursuant to a plea agreement or as part of a non-plea negotiation with the defendant.

SOURCE: U.S. Sentencing Commission, 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 RANGE<sup>1</sup>  
Fiscal Year 2005, Post-Booker - 2008, Kimbrough/Gall Preliminary Data**

	<i>Post-Booker</i>		<i>Post-Kimbrough/Gall</i>	
	N	%	N	%
<b>TOTAL CASES</b>	<b>13,179</b>	<b>100.0</b>	<b>1,457</b>	<b>100.0</b>
<b>CASES SENTENCED WITHIN GUIDELINE RANGE</b>	<b>6,641</b>	<b>50.4</b>	<b>667</b>	<b>45.8</b>
<b>CASES SENTENCED ABOVE GUIDELINE RANGE</b>	<b>127</b>	<b>0.9</b>	<b>9</b>	<b>0.6</b>
<b>DEPARTURE ABOVE GUIDELINE RANGE</b>	<b>57</b>	<b>0.4</b>	<b>3</b>	<b>0.2</b>
Upward Departure From Guideline Range <sup>2</sup>	39	0.3	1	0.1
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	18	0.1	2	0.1
<b>OTHERWISE ABOVE GUIDELINE RANGE</b>	<b>70</b>	<b>0.5</b>	<b>6</b>	<b>0.4</b>
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	41	0.3	4	0.3
All Remaining Cases Above Guideline Range <sup>5</sup>	29	0.2	2	0.1
<b>GOVERNMENT SPONSORED BELOW RANGE<sup>6</sup></b>	<b>3,199</b>	<b>24.3</b>	<b>334</b>	<b>22.9</b>
§5K1.1 Substantial Assistance Departure	2,856	21.7	284	19.5
§5K3.1 Early Disposition Program Departure	3	0.0	0	0.0
Other Government Sponsored Below Range	340	2.6	50	3.4
<b>NON-GOVERNMENT SPONSORED BELOW RANGE</b>	<b>3,212</b>	<b>24.3</b>	<b>447</b>	<b>30.7</b>
<b>DEPARTURE BELOW GUIDELINE RANGE</b>	<b>1,186</b>	<b>9.0</b>	<b>130</b>	<b>8.9</b>
Downward Departure From Guideline Range <sup>2</sup>	675	5.1	60	4.1
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	511	3.9	70	4.8
<b>OTHERWISE BELOW GUIDELINE RANGE</b>	<b>2,026</b>	<b>15.3</b>	<b>317</b>	<b>21.8</b>
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	1,585	12.0	300	20.6
All Remaining Cases Below Guideline Range <sup>5</sup>	441	3.3	17	1.2

<sup>1</sup>The cases in this table described as *Post-Kimbrough/Gall* reflect the 1,469 cases sentenced in the Second Circuit subsequent to the date of *Kimbrough v. United States* and *Gall v. United States* (December 10, 2007), through May 13, 2008 with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by July 7, 2008. Of these, 12 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 September 30, 2007. Of these, 189 cases were excluded for the above reasons. Descriptions of variables used in this table are provided in Appendix A.

<sup>2</sup>All cases with departures in which the court did not indicate as a reason either *United States v. Booker*, 18 U.S.C. § 3553, or a factor or reason specifically prohibited in the provisions, policy statements, or commentary of the *Guidelines Manual*.

<sup>3</sup>All cases sentenced outside of the guideline range in which the court indicated both a departure (see footnote 2) and a reference to either *United States v. Booker*, 18 U.S.C. § 3553, or related factors as a reason for sentencing outside of the guideline system.

<sup>4</sup>All cases sentenced outside of the guideline range in which no departure was indicated and in which the court cited *United States v. Booker*, 18 U.S.C. § 3553, or related factors as one of the reasons for sentencing outside of the guideline system.

<sup>5</sup>All cases sentenced outside of the guideline range that could not be classified into any of the three previous outside of the range categories. This category includes cases in which no reason was provided for a sentence outside of the guideline range.

<sup>6</sup>Cases in which a reason for the sentence indicated that the prosecution initiated, proposed, or stipulated to a sentence outside of the guideline range, either pursuant to a plea agreement or as part of a non-plea negotiation with the defendant.

SOURCE: U.S. Sentencing Commission, 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 RANGE<sup>1</sup>**  
**Fiscal Year 2005, Post-Booker - 2008, Kimbrough/Gall Preliminary Data**

	<i>Post-Booker</i>		<i>Post-Kimbrough/Gall</i>	
	N	%	N	%
<b>TOTAL CASES</b>	<b>9,048</b>	<b>100.0</b>	<b>1,179</b>	<b>100.0</b>
<b>CASES SENTENCED WITHIN GUIDELINE RANGE</b>	<b>4,778</b>	<b>52.8</b>	<b>626</b>	<b>53.1</b>
<b>CASES SENTENCED ABOVE GUIDELINE RANGE</b>	<b>112</b>	<b>1.3</b>	<b>19</b>	<b>1.7</b>
<b>DEPARTURE ABOVE GUIDELINE RANGE</b>	<b>33</b>	<b>0.4</b>	<b>11</b>	<b>1.0</b>
Upward Departure From Guideline Range <sup>2</sup>	17	0.2	9	0.8
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	16	0.2	2	0.2
<b>OTHERWISE ABOVE GUIDELINE RANGE</b>	<b>79</b>	<b>0.9</b>	<b>8</b>	<b>0.7</b>
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	61	0.7	8	0.7
All Remaining Cases Above Guideline Range <sup>5</sup>	18	0.2	0	0.0
<b>GOVERNMENT SPONSORED BELOW RANGE<sup>6</sup></b>	<b>2,614</b>	<b>28.9</b>	<b>319</b>	<b>27.1</b>
§5K1.1 Substantial Assistance Departure	2,455	27.1	303	25.7
§5K3.1 Early Disposition Program Departure	0	0.0	0	0.0
Other Government Sponsored Below Range	159	1.8	16	1.4
<b>NON-GOVERNMENT SPONSORED BELOW RANGE</b>	<b>1,544</b>	<b>17.0</b>	<b>215</b>	<b>18.3</b>
<b>DEPARTURE BELOW GUIDELINE RANGE</b>	<b>404</b>	<b>4.4</b>	<b>38</b>	<b>3.3</b>
Downward Departure From Guideline Range <sup>2</sup>	237	2.6	23	2.0
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	167	1.8	15	1.3
<b>OTHERWISE BELOW GUIDELINE RANGE</b>	<b>1,140</b>	<b>12.6</b>	<b>177</b>	<b>15.0</b>
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	935	10.3	159	13.5
All Remaining Cases Below Guideline Range <sup>5</sup>	205	2.3	18	1.5

<sup>1</sup>The cases in this table described as *Post-Kimbrough/Gall* reflect the 1,179 cases sentenced in the Third Circuit subsequent to the date of *Kimbrough v. United States* and *Gall v. United States* (December 10, 2007), through May 13, 2008 with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by July 7, 2008. 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 September 30, 2007. Of these, 99 cases were excluded because information was missing from the submitted documents that prevented the comparison of the sentence and the guideline range. Descriptions of variables used in this table are provided in Appendix A.

<sup>2</sup>All cases with departures in which the court did not indicate as a reason either *United States v. Booker*, 18 U.S.C. § 3553, or a factor or reason specifically prohibited in the provisions, policy statements, or commentary of the *Guidelines Manual*.

<sup>3</sup>All cases sentenced outside of the guideline range in which the court indicated both a departure (see footnote 2) and a reference to either *United States v. Booker*, 18 U.S.C. § 3553, or related factors as a reason for sentencing outside of the guideline system.

<sup>4</sup>All cases sentenced outside of the guideline range in which no departure was indicated and in which the court cited *United States v. Booker*, 18 U.S.C. § 3553, or related factors as one of the reasons for sentencing outside of the guideline system.

<sup>5</sup>All cases sentenced outside of the guideline range that could not be classified into any of the three previous outside of the range categories. This category includes cases in which no reason was provided for a sentence outside of the guideline range.

<sup>6</sup>Cases in which a reason for the sentence indicated that the prosecution initiated, proposed, or stipulated to a sentence outside of the guideline range, either pursuant to a plea agreement or as part of a non-plea negotiation with the defendant.

SOURCE: U.S. Sentencing Commission, 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 RANGE<sup>1</sup>  
Fiscal Year 2005, Post-Booker - 2008, Kimbrough/Gall Preliminary Data**

	<i>Post-Booker</i>		<i>Post-Kimbrough/Gall</i>	
	N	%	N	%
<b>TOTAL CASES</b>	<b>18,130</b>	<b>100.0</b>	<b>2,492</b>	<b>100.0</b>
<b>CASES SENTENCED WITHIN GUIDELINE RANGE</b>	<b>12,641</b>	<b>69.7</b>	<b>1,659</b>	<b>66.6</b>
<b>CASES SENTENCED ABOVE GUIDELINE RANGE</b>	<b>276</b>	<b>1.6</b>	<b>58</b>	<b>2.4</b>
<b>DEPARTURE ABOVE GUIDELINE RANGE</b>	<b>138</b>	<b>0.8</b>	<b>34</b>	<b>1.4</b>
Upward Departure From Guideline Range <sup>2</sup>	92	0.5	20	0.8
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	46	0.3	14	0.6
<b>OTHERWISE ABOVE GUIDELINE RANGE</b>	<b>138</b>	<b>0.8</b>	<b>24</b>	<b>1.0</b>
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	103	0.6	22	0.9
All Remaining Cases Above Guideline Range <sup>5</sup>	35	0.2	2	0.1
<b>GOVERNMENT SPONSORED BELOW RANGE<sup>6</sup></b>	<b>3,370</b>	<b>18.6</b>	<b>444</b>	<b>17.8</b>
§5K1.1 Substantial Assistance Departure	3,173	17.5	409	16.4
§5K3.1 Early Disposition Program Departure	2	0.0	0	0.0
Other Government Sponsored Below Range	195	1.1	35	1.4
<b>NON-GOVERNMENT SPONSORED BELOW RANGE</b>	<b>1,843</b>	<b>10.2</b>	<b>331</b>	<b>13.2</b>
<b>DEPARTURE BELOW GUIDELINE RANGE</b>	<b>553</b>	<b>3.1</b>	<b>64</b>	<b>2.5</b>
Downward Departure From Guideline Range <sup>2</sup>	319	1.8	43	1.7
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	234	1.3	21	0.8
<b>OTHERWISE BELOW GUIDELINE RANGE</b>	<b>1,290</b>	<b>7.1</b>	<b>267</b>	<b>10.7</b>
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	1,019	5.6	241	9.7
All Remaining Cases Below Guideline Range <sup>5</sup>	271	1.5	26	1.0

<sup>1</sup>The cases in this table described as *Post-Kimbrough/Gall* reflect the 2,614 cases sentenced in the Fourth Circuit subsequent to the date of *Kimbrough v. United States* and *Gall v. United States* (December 10, 2007), through May 13, 2008 with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by July 7, 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 19,440 cases sentenced in the Fourth Circuit after the date of *United States v. Booker* (January 12, 2005) through September 30, 2007. Of these, 1,310 cases were excluded for the above reasons. Descriptions of variables used in this table are provided in Appendix A.

<sup>2</sup>All cases with departures in which the court did not indicate as a reason either *United States v. Booker*, 18 U.S.C. § 3553, or a factor or reason specifically prohibited in the provisions, policy statements, or commentary of the *Guidelines Manual*.

<sup>3</sup>All cases sentenced outside of the guideline range in which the court indicated both a departure (see footnote 2) and a reference to either *United States v. Booker*, 18 U.S.C. § 3553, or related factors as a reason for sentencing outside of the guideline system.

<sup>4</sup>All cases sentenced outside of the guideline range in which no departure was indicated and in which the court cited *United States v. Booker*, 18 U.S.C. § 3553, or related factors as one of the reasons for sentencing outside of the guideline system.

<sup>5</sup>All cases sentenced outside of the guideline range that could not be classified into any of the three previous outside of the range categories. This category includes cases in which no reason was provided for a sentence outside of the guideline range.

<sup>6</sup>Cases in which a reason for the sentence indicated that the prosecution initiated, proposed, or stipulated to a sentence outside of the guideline range, either pursuant to a plea agreement or as part of a non-plea negotiation with the defendant.

SOURCE: U.S. Sentencing Commission, 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 RANGE<sup>1</sup>  
Fiscal Year 2005, Post-Booker - 2008, Kimbrough/Gall Preliminary Data**

	<i>Post-Booker</i>		<i>Post-Kimbrough/Gall</i>	
	N	%	N	%
<b>TOTAL CASES</b>	<b>45,040</b>	<b>100.0</b>	<b>6,316</b>	<b>100.0</b>
<b>CASES SENTENCED WITHIN GUIDELINE RANGE</b>	<b>32,591</b>	<b>72.4</b>	<b>4,442</b>	<b>70.3</b>
<b>CASES SENTENCED ABOVE GUIDELINE RANGE</b>	<b>859</b>	<b>1.9</b>	<b>128</b>	<b>2.0</b>
<b>DEPARTURE ABOVE GUIDELINE RANGE</b>	<b>318</b>	<b>0.7</b>	<b>49</b>	<b>0.8</b>
Upward Departure From Guideline Range <sup>2</sup>	218	0.5	36	0.6
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	100	0.2	13	0.2
<b>OTHERWISE ABOVE GUIDELINE RANGE</b>	<b>541</b>	<b>1.2</b>	<b>79</b>	<b>1.2</b>
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	415	0.9	71	1.1
All Remaining Cases Above Guideline Range <sup>5</sup>	126	0.3	8	0.1
<b>GOVERNMENT SPONSORED BELOW RANGE<sup>6</sup></b>	<b>8,300</b>	<b>18.4</b>	<b>1,313</b>	<b>20.7</b>
§5K1.1 Substantial Assistance Departure	3,650	8.1	483	7.6
§5K3.1 Early Disposition Program Departure	3,174	7.0	469	7.4
Other Government Sponsored Below Range	1,476	3.3	361	5.7
<b>NON-GOVERNMENT SPONSORED BELOW RANGE</b>	<b>3,290</b>	<b>7.4</b>	<b>433</b>	<b>6.9</b>
<b>DEPARTURE BELOW GUIDELINE RANGE</b>	<b>1,236</b>	<b>2.8</b>	<b>145</b>	<b>2.3</b>
Downward Departure From Guideline Range <sup>2</sup>	1,021	2.3	127	2.0
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	215	0.5	18	0.3
<b>OTHERWISE BELOW GUIDELINE RANGE</b>	<b>2,054</b>	<b>4.6</b>	<b>288</b>	<b>4.6</b>
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	1,622	3.6	240	3.8
All Remaining Cases Below Guideline Range <sup>5</sup>	432	1.0	48	0.8

<sup>1</sup>The cases in this table described as *Post-Kimbrough/Gall* reflect the 6,348 cases sentenced in the Fifth Circuit subsequent to the date of *Kimbrough v. United States* and *Gall v. United States* (December 10, 2007), through May 13, 2008 with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by July 7, 2008. Of these, 32 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 September 30, 2007. Of these, 330 cases were excluded for the above reasons. Descriptions of variables used in this table are provided in Appendix A.

<sup>2</sup>All cases with departures in which the court did not indicate as a reason either *United States v. Booker*, 18 U.S.C. § 3553, or a factor or reason specifically prohibited in the provisions, policy statements, or commentary of the *Guidelines Manual*.

<sup>3</sup>All cases sentenced outside of the guideline range in which the court indicated both a departure (see footnote 2) and a reference to either *United States v. Booker*, 18 U.S.C. § 3553, or related factors as a reason for sentencing outside of the guideline system.

<sup>4</sup>All cases sentenced outside of the guideline range in which no departure was indicated and in which the court cited *United States v. Booker*, 18 U.S.C. § 3553, or related factors as one of the reasons for sentencing outside of the guideline system.

<sup>5</sup>All cases sentenced outside of the guideline range that could not be classified into any of the three previous outside of the range categories. This category includes cases in which no reason was provided for a sentence outside of the guideline range.

<sup>6</sup>Cases in which a reason for the sentence indicated that the prosecution initiated, proposed, or stipulated to a sentence outside of the guideline range, either pursuant to a plea agreement or as part of a non-plea negotiation with the defendant.

SOURCE: U.S. Sentencing Commission, 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 RANGE<sup>1</sup>  
Fiscal Year 2005, Post-Booker - 2008, Kimbrough/Gall Preliminary Data**

	<i>Post-Booker</i>		<i>Post-Kimbrough/Gall</i>	
	N	%	N	%
<b>TOTAL CASES</b>	<b>15,203</b>	<b>100.0</b>	<b>1,878</b>	<b>100.0</b>
<b>CASES SENTENCED WITHIN GUIDELINE RANGE</b>	<b>8,631</b>	<b>56.8</b>	<b>1,024</b>	<b>54.5</b>
<b>CASES SENTENCED ABOVE GUIDELINE RANGE</b>	<b>201</b>	<b>1.3</b>	<b>35</b>	<b>1.9</b>
<b>DEPARTURE ABOVE GUIDELINE RANGE</b>	<b>70</b>	<b>0.5</b>	<b>16</b>	<b>0.9</b>
Upward Departure From Guideline Range <sup>2</sup>	43	0.3	13	0.7
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	27	0.2	3	0.2
<b>OTHERWISE ABOVE GUIDELINE RANGE</b>	<b>131</b>	<b>0.8</b>	<b>19</b>	<b>1.0</b>
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	95	0.6	13	0.7
All Remaining Cases Above Guideline Range <sup>5</sup>	36	0.2	6	0.3
<b>GOVERNMENT SPONSORED BELOW RANGE<sup>6</sup></b>	<b>4,158</b>	<b>27.4</b>	<b>528</b>	<b>28.2</b>
§5K1.1 Substantial Assistance Departure	3,857	25.4	478	25.5
§5K3.1 Early Disposition Program Departure	3	0.0	1	0.1
Other Government Sponsored Below Range	298	2.0	49	2.6
<b>NON-GOVERNMENT SPONSORED BELOW RANGE</b>	<b>2,213</b>	<b>14.5</b>	<b>291</b>	<b>15.4</b>
<b>DEPARTURE BELOW GUIDELINE RANGE</b>	<b>612</b>	<b>4.0</b>	<b>61</b>	<b>3.2</b>
Downward Departure From Guideline Range <sup>2</sup>	324	2.1	27	1.4
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	288	1.9	34	1.8
<b>OTHERWISE BELOW GUIDELINE RANGE</b>	<b>1,601</b>	<b>10.5</b>	<b>230</b>	<b>12.2</b>
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	1,297	8.5	201	10.7
All Remaining Cases Below Guideline Range <sup>5</sup>	304	2.0	29	1.5

<sup>1</sup>The cases in this table described as *Post-Kimbrough/Gall* reflect the 1,887 cases sentenced in the Sixth Circuit subsequent to the date of *Kimbrough v. United States* and *Gall v. United States* (December 10, 2007), through May 13, 2008 with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by July 7, 2008. Of these, nine 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 September 30, 2007. Of these, 316 cases were excluded for the above reasons. Descriptions of variables used in this table are provided in Appendix A.

<sup>2</sup>All cases with departures in which the court did not indicate as a reason either *United States v. Booker*, 18 U.S.C. § 3553, or a factor or reason specifically prohibited in the provisions, policy statements, or commentary of the *Guidelines Manual*.

<sup>3</sup>All cases sentenced outside of the guideline range in which the court indicated both a departure (see footnote 2) and a reference to either *United States v. Booker*, 18 U.S.C. § 3553, or related factors as a reason for sentencing outside of the guideline system.

<sup>4</sup>All cases sentenced outside of the guideline range in which no departure was indicated and in which the court cited *United States v. Booker*, 18 U.S.C. § 3553, or related factors as one of the reasons for sentencing outside of the guideline system.

<sup>5</sup>All cases sentenced outside of the guideline range that could not be classified into any of the three previous outside of the range categories. This category includes cases in which no reason was provided for a sentence outside of the guideline range.

<sup>6</sup>Cases in which a reason for the sentence indicated that the prosecution initiated, proposed, or stipulated to a sentence outside of the guideline range, either pursuant to a plea agreement or as part of a non-plea negotiation with the defendant.

SOURCE: U.S. Sentencing Commission, 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 RANGE<sup>1</sup>  
Fiscal Year 2005, Post-Booker - 2008, Kimbrough/Gall Preliminary Data**

	<i>Post-Booker</i>		<i>Post-Kimbrough/Gall</i>	
	N	%	N	%
<b>TOTAL CASES</b>	<b>8,729</b>	<b>100.0</b>	<b>1,065</b>	<b>100.0</b>
<b>CASES SENTENCED WITHIN GUIDELINE RANGE</b>	<b>5,451</b>	<b>62.4</b>	<b>602</b>	<b>56.5</b>
<b>CASES SENTENCED ABOVE GUIDELINE RANGE</b>	<b>119</b>	<b>1.4</b>	<b>18</b>	<b>1.7</b>
<b>DEPARTURE ABOVE GUIDELINE RANGE</b>	<b>46</b>	<b>0.5</b>	<b>1</b>	<b>0.1</b>
Upward Departure From Guideline Range <sup>2</sup>	25	0.3	0	0.0
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	21	0.2	1	0.1
<b>OTHERWISE ABOVE GUIDELINE RANGE</b>	<b>73</b>	<b>0.9</b>	<b>17</b>	<b>1.6</b>
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	50	0.6	12	1.1
All Remaining Cases Above Guideline Range <sup>5</sup>	23	0.3	5	0.5
<b>GOVERNMENT SPONSORED BELOW RANGE<sup>6</sup></b>	<b>1,707</b>	<b>19.5</b>	<b>216</b>	<b>20.3</b>
§5K1.1 Substantial Assistance Departure	1,521	17.4	191	17.9
§5K3.1 Early Disposition Program Departure	1	0.0	1	0.1
Other Government Sponsored Below Range	185	2.1	24	2.3
<b>NON-GOVERNMENT SPONSORED BELOW RANGE</b>	<b>1,452</b>	<b>16.7</b>	<b>229</b>	<b>21.5</b>
<b>DEPARTURE BELOW GUIDELINE RANGE</b>	<b>428</b>	<b>4.9</b>	<b>35</b>	<b>3.3</b>
Downward Departure From Guideline Range <sup>2</sup>	232	2.7	11	1.0
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	196	2.2	24	2.3
<b>OTHERWISE BELOW GUIDELINE RANGE</b>	<b>1,024</b>	<b>11.8</b>	<b>194</b>	<b>18.2</b>
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	783	9.0	178	16.7
All Remaining Cases Below Guideline Range <sup>5</sup>	241	2.8	16	1.5

<sup>1</sup>The cases in this table described as *Post-Kimbrough/Gall* reflect the 1,071 cases sentenced in the Seventh Circuit subsequent to the date of *Kimbrough v. United States* and *Gall v. United States* (December 10, 2007), through May 13, 2008 with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by July 7, 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 8,805 cases sentenced in the Seventh Circuit after the date of *United States v. Booker* (January 12, 2005) through September 30, 2007. Of these, 76 cases were excluded for the above reasons. Descriptions of variables used in this table are provided in Appendix A.

<sup>2</sup>All cases with departures in which the court did not indicate as a reason either *United States v. Booker*, 18 U.S.C. § 3553, or a factor or reason specifically prohibited in the provisions, policy statements, or commentary of the *Guidelines Manual*.

<sup>3</sup>All cases sentenced outside of the guideline range in which the court indicated both a departure (see footnote 2) and a reference to either *United States v. Booker*, 18 U.S.C. § 3553, or related factors as a reason for sentencing outside of the guideline system.

<sup>4</sup>All cases sentenced outside of the guideline range in which no departure was indicated and in which the court cited *United States v. Booker*, 18 U.S.C. § 3553, or related factors as one of the reasons for sentencing outside of the guideline system.

<sup>5</sup>All cases sentenced outside of the guideline range that could not be classified into any of the three previous outside of the range categories. This category includes cases in which no reason was provided for a sentence outside of the guideline range.

<sup>6</sup>Cases in which a reason for the sentence indicated that the prosecution initiated, proposed, or stipulated to a sentence outside of the guideline range, either pursuant to a plea agreement or as part of a non-plea negotiation with the defendant.

SOURCE: U.S. Sentencing Commission, 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 RANGE<sup>1</sup>  
Fiscal Year 2005, Post-Booker - 2008, Kimbrough/Gall Preliminary Data**

	<i>Post-Booker</i>		<i>Post-Kimbrough/Gall</i>	
	N	%	N	%
<b>TOTAL CASES</b>	<b>14,674</b>	<b>100.0</b>	<b>1,747</b>	<b>100.0</b>
<b>CASES SENTENCED WITHIN GUIDELINE RANGE</b>	<b>9,708</b>	<b>66.2</b>	<b>1,136</b>	<b>65.0</b>
<b>CASES SENTENCED ABOVE GUIDELINE RANGE</b>	<b>239</b>	<b>1.6</b>	<b>38</b>	<b>2.3</b>
<b>DEPARTURE ABOVE GUIDELINE RANGE</b>	<b>106</b>	<b>0.7</b>	<b>20</b>	<b>1.2</b>
Upward Departure From Guideline Range <sup>2</sup>	73	0.5	15	0.9
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	33	0.2	5	0.3
<b>OTHERWISE ABOVE GUIDELINE RANGE</b>	<b>133</b>	<b>0.9</b>	<b>18</b>	<b>1.1</b>
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	98	0.7	15	0.9
All Remaining Cases Above Guideline Range <sup>5</sup>	35	0.2	3	0.2
<b>GOVERNMENT SPONSORED BELOW RANGE<sup>6</sup></b>	<b>2,739</b>	<b>18.7</b>	<b>309</b>	<b>17.7</b>
§5K1.1 Substantial Assistance Departure	2,210	15.1	258	14.8
§5K3.1 Early Disposition Program Departure	120	0.8	10	0.6
Other Government Sponsored Below Range	409	2.8	41	2.3
<b>NON-GOVERNMENT SPONSORED BELOW RANGE</b>	<b>1,988</b>	<b>13.6</b>	<b>264</b>	<b>15.1</b>
<b>DEPARTURE BELOW GUIDELINE RANGE</b>	<b>561</b>	<b>3.8</b>	<b>46</b>	<b>2.6</b>
Downward Departure From Guideline Range <sup>2</sup>	353	2.4	19	1.1
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	208	1.4	27	1.5
<b>OTHERWISE BELOW GUIDELINE RANGE</b>	<b>1,427</b>	<b>9.8</b>	<b>218</b>	<b>12.5</b>
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	1,153	7.9	196	11.2
All Remaining Cases Below Guideline Range <sup>5</sup>	274	1.9	22	1.3

<sup>1</sup>The cases in this table described as *Post-Kimbrough/Gall* reflect the 1,751 cases sentenced in the Eighth Circuit subsequent to the date of *Kimbrough v. United States* and *Gall v. United States* (December 10, 2007), through May 13, 2008 with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by July 7, 2008. Of these, four 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 September 30, 2007. Of these, 79 cases were excluded for the above reasons. Descriptions of variables used in this table are provided in Appendix A.

<sup>2</sup>All cases with departures in which the court did not indicate as a reason either *United States v. Booker*, 18 U.S.C. § 3553, or a factor or reason specifically prohibited in the provisions, policy statements, or commentary of the *Guidelines Manual*.

<sup>3</sup>All cases sentenced outside of the guideline range in which the court indicated both a departure (see footnote 2) and a reference to either *United States v. Booker*, 18 U.S.C. § 3553, or related factors as a reason for sentencing outside of the guideline system.

<sup>4</sup>All cases sentenced outside of the guideline range in which no departure was indicated and in which the court cited *United States v. Booker*, 18 U.S.C. § 3553, or related factors as one of the reasons for sentencing outside of the guideline system.

<sup>5</sup>All cases sentenced outside of the guideline range that could not be classified into any of the three previous outside of the range categories. This category includes cases in which no reason was provided for a sentence outside of the guideline range.

<sup>6</sup>Cases in which a reason for the sentence indicated that the prosecution initiated, proposed, or stipulated to a sentence outside of the guideline range, either pursuant to a plea agreement or as part of a non-plea negotiation with the defendant.

SOURCE: U.S. Sentencing Commission, 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 RANGE<sup>1</sup>  
Fiscal Year 2005, Post-Booker - 2008, Kimbrough/Gall Preliminary Data**

	<i>Post-Booker</i>		<i>Post-Kimbrough/Gall</i>	
	N	%	N	%
<b>TOTAL CASES</b>	<b>38,222</b>	<b>100.0</b>	<b>4,805</b>	<b>100.0</b>
<b>CASES SENTENCED WITHIN GUIDELINE RANGE</b>	<b>17,413</b>	<b>45.6</b>	<b>2,131</b>	<b>44.3</b>
<b>CASES SENTENCED ABOVE GUIDELINE RANGE</b>	<b>622</b>	<b>1.7</b>	<b>52</b>	<b>1.1</b>
<b>DEPARTURE ABOVE GUIDELINE RANGE</b>	<b>318</b>	<b>0.9</b>	<b>23</b>	<b>0.5</b>
Upward Departure From Guideline Range <sup>2</sup>	253	0.7	18	0.4
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	65	0.2	5	0.1
<b>OTHERWISE ABOVE GUIDELINE RANGE</b>	<b>304</b>	<b>0.8</b>	<b>29</b>	<b>0.6</b>
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	165	0.4	20	0.4
All Remaining Cases Above Guideline Range <sup>5</sup>	139	0.4	9	0.2
<b>GOVERNMENT SPONSORED BELOW RANGE<sup>6</sup></b>	<b>15,627</b>	<b>40.9</b>	<b>2,028</b>	<b>42.3</b>
§5K1.1 Substantial Assistance Departure	3,946	10.3	455	9.5
§5K3.1 Early Disposition Program Departure	9,920	26.0	1,324	27.6
Other Government Sponsored Below Range	1,761	4.6	249	5.2
<b>NON-GOVERNMENT SPONSORED BELOW RANGE</b>	<b>4,560</b>	<b>12.0</b>	<b>594</b>	<b>12.3</b>
<b>DEPARTURE BELOW GUIDELINE RANGE</b>	<b>1,696</b>	<b>4.5</b>	<b>157</b>	<b>3.2</b>
Downward Departure From Guideline Range <sup>2</sup>	984	2.6	107	2.2
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	712	1.9	50	1.0
<b>OTHERWISE BELOW GUIDELINE RANGE</b>	<b>2,864</b>	<b>7.5</b>	<b>437</b>	<b>9.1</b>
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	2,071	5.4	381	7.9
All Remaining Cases Below Guideline Range <sup>5</sup>	793	2.1	56	1.2

<sup>1</sup>The cases in this table described as *Post-Kimbrough/Gall* reflect the 5,028 cases sentenced in the Ninth Circuit subsequent to the date of *Kimbrough v. United States* and *Gall v. United States* (December 10, 2007), through May 13, 2008 with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by July 7, 2008. Of these, 223 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 September 30, 2007. Of these, 3,675 cases were excluded for the above reasons. Descriptions of variables used in this table are provided in Appendix A.

<sup>2</sup>All cases with departures in which the court did not indicate as a reason either *United States v. Booker*, 18 U.S.C. § 3553, or a factor or reason specifically prohibited in the provisions, policy statements, or commentary of the *Guidelines Manual*.

<sup>3</sup>All cases sentenced outside of the guideline range in which the court indicated both a departure (see footnote 2) and a reference to either *United States v. Booker*, 18 U.S.C. § 3553, or related factors as a reason for sentencing outside of the guideline system.

<sup>4</sup>All cases sentenced outside of the guideline range in which no departure was indicated and in which the court cited *United States v. Booker*, 18 U.S.C. § 3553, or related factors as one of the reasons for sentencing outside of the guideline system.

<sup>5</sup>All cases sentenced outside of the guideline range that could not be classified into any of the three previous outside of the range categories. This category includes cases in which no reason was provided for a sentence outside of the guideline range.

<sup>6</sup>Cases in which a reason for the sentence indicated that the prosecution initiated, proposed, or stipulated to a sentence outside of the guideline range, either pursuant to a plea agreement or as part of a non-plea negotiation with the defendant.

SOURCE: U.S. Sentencing Commission, 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 RANGE<sup>1</sup>**  
Fiscal Year 2005, Post-*Booker* - 2008, *Kimbrough/Gall* Preliminary Data

	<i>Post-Booker</i>		<i>Post-Kimbrough/Gall</i>	
	N	%	N	%
<b>TOTAL CASES</b>	<b>15,657</b>	<b>100.0</b>	<b>2,068</b>	<b>100.0</b>
<b>CASES SENTENCED WITHIN GUIDELINE RANGE</b>	<b>9,762</b>	<b>62.3</b>	<b>1,251</b>	<b>60.5</b>
<b>CASES SENTENCED ABOVE GUIDELINE RANGE</b>	<b>201</b>	<b>1.4</b>	<b>32</b>	<b>1.5</b>
<b>DEPARTURE ABOVE GUIDELINE RANGE</b>	<b>51</b>	<b>0.4</b>	<b>6</b>	<b>0.2</b>
Upward Departure From Guideline Range <sup>2</sup>	43	0.3	3	0.1
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	8	0.1	3	0.1
<b>OTHERWISE ABOVE GUIDELINE RANGE</b>	<b>150</b>	<b>1.0</b>	<b>26</b>	<b>1.3</b>
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	110	0.7	26	1.3
All Remaining Cases Above Guideline Range <sup>5</sup>	40	0.3	0	0.0
<b>GOVERNMENT SPONSORED BELOW RANGE<sup>6</sup></b>	<b>3,974</b>	<b>25.4</b>	<b>515</b>	<b>24.9</b>
§5K1.1 Substantial Assistance Departure	1,418	9.1	147	7.1
§5K3.1 Early Disposition Program Departure	1,330	8.5	188	9.1
Other Government Sponsored Below Range	1,226	7.8	180	8.7
<b>NON-GOVERNMENT SPONSORED BELOW RANGE</b>	<b>1,720</b>	<b>11.1</b>	<b>270</b>	<b>13.0</b>
<b>DEPARTURE BELOW GUIDELINE RANGE</b>	<b>694</b>	<b>4.5</b>	<b>77</b>	<b>3.7</b>
Downward Departure From Guideline Range <sup>2</sup>	479	3.1	48	2.3
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	215	1.4	29	1.4
<b>OTHERWISE BELOW GUIDELINE RANGE</b>	<b>1,026</b>	<b>6.6</b>	<b>193</b>	<b>9.3</b>
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	826	5.3	182	8.8
All Remaining Cases Below Guideline Range <sup>5</sup>	200	1.3	11	0.5

<sup>1</sup>The cases in this table described as Post-*Kimrough/Gall* reflect the 2,163 cases sentenced in the Tenth Circuit subsequent to the date of *Kimrough v. United States* and *Gall v. United States* (December 10, 2007), through May 13, 2008 with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by July 7, 2008. Of these, 95 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 September 30, 2007. Of these, 693 cases were excluded for the above reasons. Descriptions of variables used in this table are provided in Appendix A.

<sup>2</sup>All cases with departures in which the court did not indicate as a reason either *United States v. Booker*, 18 U.S.C. § 3553, or a factor or reason specifically prohibited in the provisions, policy statements, or commentary of the *Guidelines Manual*.

<sup>3</sup>All cases sentenced outside of the guideline range in which the court indicated both a departure (see footnote 2) and a reference to either *United States v. Booker*, 18 U.S.C. § 3553, or related factors as a reason for sentencing outside of the guideline system.

<sup>4</sup>All cases sentenced outside of the guideline range in which no departure was indicated and in which the court cited *United States v. Booker*, 18 U.S.C. § 3553, or related factors as one of the reasons for sentencing outside of the guideline system.

<sup>5</sup>All cases sentenced outside of the guideline range that could not be classified into any of the three previous outside of the range categories. This category includes cases in which no reason was provided for a sentence outside of the guideline range.

<sup>6</sup>Cases in which a reason for the sentence indicated that the prosecution initiated, proposed, or stipulated to a sentence outside of the guideline range, either pursuant to a plea agreement or as part of a non-plea negotiation with the defendant.

SOURCE: U.S. Sentencing Commission, 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 RANGE<sup>1</sup>  
Fiscal Year 2005, Post-Booker - 2008, Kimbrough/Gall Preliminary Data**

	<i>Post-Booker</i>		<i>Post-Kimbrough/Gall</i>	
	N	%	N	%
<b>TOTAL CASES</b>	<b>18,361</b>	<b>100.0</b>	<b>2,641</b>	<b>100.0</b>
<b>CASES SENTENCED WITHIN GUIDELINE RANGE</b>	<b>12,510</b>	<b>68.1</b>	<b>1,794</b>	<b>67.9</b>
<b>CASES SENTENCED ABOVE GUIDELINE RANGE</b>	<b>312</b>	<b>1.6</b>	<b>41</b>	<b>1.5</b>
<b>DEPARTURE ABOVE GUIDELINE RANGE</b>	<b>100</b>	<b>0.5</b>	<b>7</b>	<b>0.3</b>
Upward Departure From Guideline Range <sup>2</sup>	63	0.3	4	0.2
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	37	0.2	3	0.1
<b>OTHERWISE ABOVE GUIDELINE RANGE</b>	<b>212</b>	<b>1.1</b>	<b>34</b>	<b>1.2</b>
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	167	0.9	33	1.2
All Remaining Cases Above Guideline Range <sup>5</sup>	45	0.2	1	0.0
<b>GOVERNMENT SPONSORED BELOW RANGE<sup>6</sup></b>	<b>3,529</b>	<b>19.2</b>	<b>441</b>	<b>16.7</b>
§5K1.1 Substantial Assistance Departure	3,292	17.9	405	15.3
§5K3.1 Early Disposition Program Departure	34	0.2	8	0.3
Other Government Sponsored Below Range	203	1.1	28	1.1
<b>NON-GOVERNMENT SPONSORED BELOW RANGE</b>	<b>2,010</b>	<b>10.9</b>	<b>365</b>	<b>13.9</b>
<b>DEPARTURE BELOW GUIDELINE RANGE</b>	<b>481</b>	<b>2.6</b>	<b>72</b>	<b>2.8</b>
Downward Departure From Guideline Range <sup>2</sup>	292	1.6	41	1.6
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	189	1.0	31	1.2
<b>OTHERWISE BELOW GUIDELINE RANGE</b>	<b>1,529</b>	<b>8.3</b>	<b>293</b>	<b>11.1</b>
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	1,286	7.0	278	10.5
All Remaining Cases Below Guideline Range <sup>5</sup>	243	1.3	15	0.6

<sup>1</sup>The cases in this table described as *Post-Kimbrough/Gall* reflect the 2,707 cases sentenced in the Eleventh Circuit subsequent to the date of *Kimbrough v. United States* and *Gall v. United States* (December 10, 2007), through May 13, 2008 with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by July 7, 2008. Of these, 66 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 September 30, 2007. Of these, 1,139 cases were excluded for the above reasons. Descriptions of variables used in this table are provided in Appendix A.

<sup>2</sup>All cases with departures in which the court did not indicate as a reason either *United States v. Booker*, 18 U.S.C. § 3553, or a factor or reason specifically prohibited in the provisions, policy statements, or commentary of the *Guidelines Manual*.

<sup>3</sup>All cases sentenced outside of the guideline range in which the court indicated both a departure (see footnote 2) and a reference to either *United States v. Booker*, 18 U.S.C. § 3553, or related factors as a reason for sentencing outside of the guideline system.

<sup>4</sup>All cases sentenced outside of the guideline range in which no departure was indicated and in which the court cited *United States v. Booker*, 18 U.S.C. § 3553, or related factors as one of the reasons for sentencing outside of the guideline system.

<sup>5</sup>All cases sentenced outside of the guideline range that could not be classified into any of the three previous outside of the range categories. This category includes cases in which no reason was provided for a sentence outside of the guideline range.

<sup>6</sup>Cases in which a reason for the sentence indicated that the prosecution initiated, proposed, or stipulated to a sentence outside of the guideline range, either pursuant to a plea agreement or as part of a non-plea negotiation with the defendant.

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

Table 2

**SENTENCES RELATIVE TO THE GUIDELINE RANGE BY CIRCUIT AND DISTRICT<sup>1</sup>**  
**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	%
<b>TOTAL</b>	<b>26,328</b>	<b>15,711</b>	<b>59.7</b>	<b>121</b>	<b>0.5</b>	<b>51</b>	<b>0.2</b>	<b>226</b>	<b>0.9</b>	<b>38</b>	<b>0.1</b>
<b>D.C. CIRCUIT</b>	<b>162</b>	<b>72</b>	<b>44.4</b>	<b>0</b>	<b>0.0</b>	<b>0</b>	<b>0.0</b>	<b>0</b>	<b>0.0</b>	<b>0</b>	<b>0.0</b>
District of Columbia	162	72	44.4	0	0.0	0	0.0	0	0.0	0	0.0
<b>FIRST CIRCUIT</b>	<b>518</b>	<b>307</b>	<b>59.3</b>	<b>2</b>	<b>0.4</b>	<b>0</b>	<b>0.0</b>	<b>2</b>	<b>0.4</b>	<b>2</b>	<b>0.4</b>
Maine	89	53	59.6	0	0.0	0	0.0	1	1.1	0	0.0
Massachusetts	186	97	52.2	2	1.1	0	0.0	1	0.5	1	0.5
New Hampshire	74	35	47.3	0	0.0	0	0.0	0	0.0	0	0.0
Puerto Rico	134	95	70.9	0	0.0	0	0.0	0	0.0	1	0.7
Rhode Island	35	27	77.1	0	0.0	0	0.0	0	0.0	0	0.0
<b>SECOND CIRCUIT</b>	<b>1,457</b>	<b>667</b>	<b>45.8</b>	<b>1</b>	<b>0.1</b>	<b>2</b>	<b>0.1</b>	<b>4</b>	<b>0.3</b>	<b>2</b>	<b>0.1</b>
Connecticut	143	58	40.6	0	0.0	0	0.0	1	0.7	0	0.0
New York											
Eastern	410	173	42.2	0	0.0	0	0.0	2	0.5	2	0.5
Northern	156	82	52.6	0	0.0	1	0.6	0	0.0	0	0.0
Southern	423	177	41.8	0	0.0	0	0.0	0	0.0	0	0.0
Western	260	151	58.1	0	0.0	1	0.4	1	0.4	0	0.0
Vermont	65	26	40.0	1	1.5	0	0.0	0	0.0	0	0.0
<b>THIRD CIRCUIT</b>	<b>1,179</b>	<b>626</b>	<b>53.1</b>	<b>9</b>	<b>0.8</b>	<b>2</b>	<b>0.2</b>	<b>8</b>	<b>0.7</b>	<b>0</b>	<b>0.0</b>
Delaware	32	18	56.3	0	0.0	0	0.0	1	3.1	0	0.0
New Jersey	378	194	51.3	2	0.5	0	0.0	4	1.1	0	0.0
Pennsylvania											
Eastern	287	121	42.2	2	0.7	1	0.3	2	0.7	0	0.0
Middle	256	140	54.7	3	1.2	0	0.0	0	0.0	0	0.0
Western	200	136	68.0	2	1.0	1	0.5	0	0.0	0	0.0
Virgin Islands	26	17	65.4	0	0.0	0	0.0	1	3.8	0	0.0
<b>FOURTH CIRCUIT</b>	<b>2,492</b>	<b>1,659</b>	<b>66.6</b>	<b>20</b>	<b>0.8</b>	<b>14</b>	<b>0.6</b>	<b>22</b>	<b>0.9</b>	<b>2</b>	<b>0.1</b>
Maryland	252	121	48.0	3	1.2	0	0.0	2	0.8	0	0.0
North Carolina											
Eastern	270	152	56.3	12	4.4	11	4.1	3	1.1	2	0.7
Middle	108	89	82.4	0	0.0	0	0.0	1	0.9	0	0.0
Western	307	200	65.1	1	0.3	0	0.0	3	1.0	0	0.0
South Carolina	535	359	67.1	0	0.0	0	0.0	3	0.6	0	0.0
Virginia											
Eastern	544	409	75.2	2	0.4	3	0.6	5	0.9	0	0.0
Western	170	120	70.6	2	1.2	0	0.0	0	0.0	0	0.0
West Virginia											
Northern	188	131	69.7	0	0.0	0	0.0	3	1.6	0	0.0
Southern	118	78	66.1	0	0.0	0	0.0	2	1.7	0	0.0



**Table 2 (cont.)**

CIRCUIT	§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	%
<b>TOTAL</b>	<b>3,530</b>	<b>13.4</b>	<b>2,001</b>	<b>7.6</b>	<b>1,068</b>	<b>4.1</b>	<b>526</b>	<b>2.0</b>	<b>340</b>	<b>1.3</b>	<b>2,449</b>	<b>9.3</b>	<b>267</b>	<b>1.0</b>
<b>D.C. CIRCUIT</b>	<b>52</b>	<b>32.1</b>	<b>0</b>	<b>0.0</b>	<b>12</b>	<b>7.4</b>	<b>3</b>	<b>1.9</b>	<b>6</b>	<b>3.7</b>	<b>14</b>	<b>8.6</b>	<b>3</b>	<b>1.9</b>
District of Columbia	52	32.1	0	0.0	12	7.4	3	1.9	6	3.7	14	8.6	3	1.9
<b>FIRST CIRCUIT</b>	<b>65</b>	<b>12.5</b>	<b>0</b>	<b>0.0</b>	<b>23</b>	<b>4.4</b>	<b>17</b>	<b>3.3</b>	<b>15</b>	<b>2.9</b>	<b>79</b>	<b>15.3</b>	<b>6</b>	<b>1.2</b>
Maine	24	27.0	0	0.0	0	0.0	2	2.2	1	1.1	8	9.0	0	0.0
Massachusetts	16	8.6	0	0.0	14	7.5	8	4.3	7	3.8	38	20.4	2	1.1
New Hampshire	11	14.9	0	0.0	2	2.7	1	1.4	3	4.1	21	28.4	1	1.4
Puerto Rico	13	9.7	0	0.0	7	5.2	5	3.7	3	2.2	8	6.0	2	1.5
Rhode Island	1	2.9	0	0.0	0	0.0	1	2.9	1	2.9	4	11.4	1	2.9
<b>SECOND CIRCUIT</b>	<b>284</b>	<b>19.5</b>	<b>0</b>	<b>0.0</b>	<b>50</b>	<b>3.4</b>	<b>60</b>	<b>4.1</b>	<b>70</b>	<b>4.8</b>	<b>300</b>	<b>20.6</b>	<b>17</b>	<b>1.2</b>
Connecticut	22	15.4	0	0.0	8	5.6	12	8.4	16	11.2	25	17.5	1	0.7
New York														
Eastern	74	18.0	0	0.0	18	4.4	14	3.4	25	6.1	91	22.2	11	2.7
Northern	41	26.3	0	0.0	1	0.6	13	8.3	6	3.8	12	7.7	0	0.0
Southern	60	14.2	0	0.0	12	2.8	13	3.1	17	4.0	139	32.9	5	1.2
Western	75	28.8	0	0.0	7	2.7	0	0.0	1	0.4	24	9.2	0	0.0
Vermont	12	18.5	0	0.0	4	6.2	8	12.3	5	7.7	9	13.8	0	0.0
<b>THIRD CIRCUIT</b>	<b>303</b>	<b>25.7</b>	<b>0</b>	<b>0.0</b>	<b>16</b>	<b>1.4</b>	<b>23</b>	<b>2.0</b>	<b>15</b>	<b>1.3</b>	<b>159</b>	<b>13.5</b>	<b>18</b>	<b>1.5</b>
Delaware	3	9.4	0	0.0	0	0.0	0	0.0	0	0.0	6	18.8	4	12.5
New Jersey	101	26.7	0	0.0	4	1.1	6	1.6	3	0.8	60	15.9	4	1.1
Pennsylvania														
Eastern	100	34.8	0	0.0	2	0.7	3	1.0	9	3.1	44	15.3	3	1.0
Middle	74	28.9	0	0.0	6	2.3	6	2.3	0	0.0	22	8.6	5	2.0
Western	21	10.5	0	0.0	2	1.0	8	4.0	3	1.5	26	13.0	1	0.5
Virgin Islands	4	15.4	0	0.0	2	7.7	0	0.0	0	0.0	1	3.8	1	3.8
<b>FOURTH CIRCUIT</b>	<b>409</b>	<b>16.4</b>	<b>0</b>	<b>0.0</b>	<b>35</b>	<b>1.4</b>	<b>43</b>	<b>1.7</b>	<b>21</b>	<b>0.8</b>	<b>241</b>	<b>9.7</b>	<b>26</b>	<b>1.0</b>
Maryland	50	19.8	0	0.0	11	4.4	4	1.6	4	1.6	50	19.8	7	2.8
North Carolina														
Eastern	74	27.4	0	0.0	1	0.4	2	0.7	2	0.7	10	3.7	1	0.4
Middle	12	11.1	0	0.0	0	0.0	0	0.0	0	0.0	6	5.6	0	0.0
Western	80	26.1	0	0.0	2	0.7	6	2.0	2	0.7	10	3.3	3	1.0
South Carolina	107	20.0	0	0.0	7	1.3	10	1.9	0	0.0	40	7.5	9	1.7
Virginia														
Eastern	27	5.0	0	0.0	8	1.5	16	2.9	9	1.7	60	11.0	5	0.9
Western	26	15.3	0	0.0	3	1.8	1	0.6	0	0.0	17	10.0	1	0.6
West Virginia														
Northern	18	9.6	0	0.0	3	1.6	4	2.1	2	1.1	27	14.4	0	0.0
Southern	15	12.7	0	0.0	0	0.0	0	0.0	2	1.7	21	17.8	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	%
<b>FIFTH CIRCUIT</b>	<b>6,316</b>	<b>4,442</b>	<b>70.3</b>	<b>36</b>	<b>0.6</b>	<b>13</b>	<b>0.2</b>	<b>71</b>	<b>1.1</b>	<b>8</b>	<b>0.1</b>
Louisiana											
Eastern	186	149	80.1	2	1.1	3	1.6	3	1.6	1	0.5
Middle	77	54	70.1	1	1.3	0	0.0	0	0.0	0	0.0
Western	124	86	69.4	0	0.0	0	0.0	3	2.4	0	0.0
Mississippi											
Northern	84	54	64.3	0	0.0	0	0.0	3	3.6	0	0.0
Southern	129	110	85.3	1	0.8	1	0.8	1	0.8	0	0.0
Texas											
Eastern	351	255	72.6	3	0.9	0	0.0	0	0.0	1	0.3
Northern	400	270	67.5	11	2.8	4	1.0	14	3.5	1	0.3
Southern	2,328	1,345	57.8	11	0.5	1	0.0	8	0.3	4	0.2
Western	2,637	2,119	80.4	7	0.3	4	0.2	39	1.5	1	0.0
<b>SIXTH CIRCUIT</b>	<b>1,878</b>	<b>1,024</b>	<b>54.5</b>	<b>13</b>	<b>0.7</b>	<b>3</b>	<b>0.2</b>	<b>13</b>	<b>0.7</b>	<b>6</b>	<b>0.3</b>
Kentucky											
Eastern	227	108	47.6	0	0.0	0	0.0	2	0.9	1	0.4
Western	149	104	69.8	2	1.3	0	0.0	1	0.7	0	0.0
Michigan											
Eastern	290	161	55.5	3	1.0	0	0.0	2	0.7	0	0.0
Western	168	99	58.9	4	2.4	2	1.2	3	1.8	3	1.8
Ohio											
Northern	259	141	54.4	1	0.4	0	0.0	0	0.0	1	0.4
Southern	218	96	44.0	0	0.0	1	0.5	0	0.0	0	0.0
Tennessee											
Eastern	246	153	62.2	1	0.4	0	0.0	1	0.4	1	0.4
Middle	91	55	60.4	0	0.0	0	0.0	0	0.0	0	0.0
Western	230	107	46.5	2	0.9	0	0.0	4	1.7	0	0.0
<b>SEVENTH CIRCUIT</b>	<b>1,065</b>	<b>602</b>	<b>56.5</b>	<b>0</b>	<b>0.0</b>	<b>1</b>	<b>0.1</b>	<b>12</b>	<b>1.1</b>	<b>5</b>	<b>0.5</b>
Illinois											
Central	157	91	58.0	0	0.0	0	0.0	0	0.0	1	0.6
Northern	209	95	45.5	0	0.0	0	0.0	1	0.5	2	1.0
Southern	122	90	73.8	0	0.0	1	0.8	3	2.5	0	0.0
Indiana											
Northern	177	121	68.4	0	0.0	0	0.0	0	0.0	1	0.6
Southern	129	68	52.7	0	0.0	0	0.0	4	3.1	1	0.8
Wisconsin											
Eastern	200	86	43.0	0	0.0	0	0.0	3	1.5	0	0.0
Western	71	51	71.8	0	0.0	0	0.0	1	1.4	0	0.0
<b>EIGHTH CIRCUIT</b>	<b>1,747</b>	<b>1,136</b>	<b>65.0</b>	<b>15</b>	<b>0.9</b>	<b>5</b>	<b>0.3</b>	<b>15</b>	<b>0.9</b>	<b>3</b>	<b>0.2</b>
Arkansas											
Eastern	147	99	67.3	2	1.4	0	0.0	0	0.0	1	0.7
Western	80	59	73.8	0	0.0	0	0.0	0	0.0	0	0.0
Iowa											
Northern	125	78	62.4	6	4.8	2	1.6	3	2.4	1	0.8
Southern	55	41	74.5	0	0.0	0	0.0	0	0.0	0	0.0
Minnesota	237	107	45.1	1	0.4	0	0.0	1	0.4	0	0.0
Missouri											
Eastern	325	212	65.2	0	0.0	0	0.0	3	0.9	0	0.0
Western	300	204	68.0	0	0.0	2	0.7	4	1.3	1	0.3
Nebraska	247	179	72.5	6	2.4	0	0.0	2	0.8	0	0.0
North Dakota	68	34	50.0	0	0.0	0	0.0	0	0.0	0	0.0
South Dakota	163	123	75.5	0	0.0	1	0.6	2	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	%
<b>FIFTH CIRCUIT</b>	<b>483</b>	<b>7.6</b>	<b>469</b>	<b>7.4</b>	<b>361</b>	<b>5.7</b>	<b>127</b>	<b>2.0</b>	<b>18</b>	<b>0.3</b>	<b>240</b>	<b>3.8</b>	<b>48</b>	<b>0.8</b>
Louisiana														
Eastern	11	5.9	0	0.0	1	0.5	3	1.6	1	0.5	12	6.5	0	0.0
Middle	19	24.7	0	0.0	0	0.0	0	0.0	1	1.3	2	2.6	0	0.0
Western	11	8.9	0	0.0	0	0.0	0	0.0	2	1.6	13	10.5	9	7.3
Mississippi														
Northern	18	21.4	0	0.0	5	6.0	0	0.0	0	0.0	2	2.4	2	2.4
Southern	9	7.0	0	0.0	0	0.0	0	0.0	1	0.8	4	3.1	2	1.6
Texas														
Eastern	46	13.1	0	0.0	24	6.8	9	2.6	3	0.9	10	2.8	0	0.0
Northern	65	16.3	0	0.0	5	1.3	3	0.8	0	0.0	25	6.3	2	0.5
Southern	123	5.3	410	17.6	294	12.6	73	3.1	1	0.0	54	2.3	4	0.2
Western	181	6.9	59	2.2	32	1.2	39	1.5	9	0.3	118	4.5	29	1.1
<b>SIXTH CIRCUIT</b>	<b>478</b>	<b>25.5</b>	<b>1</b>	<b>0.1</b>	<b>49</b>	<b>2.6</b>	<b>27</b>	<b>1.4</b>	<b>34</b>	<b>1.8</b>	<b>201</b>	<b>10.7</b>	<b>29</b>	<b>1.5</b>
Kentucky														
Eastern	96	42.3	0	0.0	2	0.9	0	0.0	0	0.0	16	7.0	2	0.9
Western	23	15.4	0	0.0	4	2.7	2	1.3	0	0.0	11	7.4	2	1.3
Michigan														
Eastern	58	20.0	0	0.0	9	3.1	2	0.7	5	1.7	48	16.6	2	0.7
Western	33	19.6	0	0.0	0	0.0	4	2.4	2	1.2	17	10.1	1	0.6
Ohio														
Northern	63	24.3	0	0.0	7	2.7	4	1.5	5	1.9	29	11.2	8	3.1
Southern	62	28.4	0	0.0	11	5.0	8	3.7	14	6.4	21	9.6	5	2.3
Tennessee														
Eastern	58	23.6	0	0.0	2	0.8	4	1.6	2	0.8	21	8.5	3	1.2
Middle	15	16.5	0	0.0	4	4.4	2	2.2	4	4.4	10	11.0	1	1.1
Western	70	30.4	1	0.4	10	4.3	1	0.4	2	0.9	28	12.2	5	2.2
<b>SEVENTH CIRCUIT</b>	<b>191</b>	<b>17.9</b>	<b>1</b>	<b>0.1</b>	<b>24</b>	<b>2.3</b>	<b>11</b>	<b>1.0</b>	<b>24</b>	<b>2.3</b>	<b>178</b>	<b>16.7</b>	<b>16</b>	<b>1.5</b>
Illinois														
Central	30	19.1	1	0.6	3	1.9	3	1.9	1	0.6	26	16.6	1	0.6
Northern	37	17.7	0	0.0	5	2.4	3	1.4	18	8.6	41	19.6	7	3.3
Southern	13	10.7	0	0.0	1	0.8	0	0.0	4	3.3	9	7.4	1	0.8
Indiana														
Northern	33	18.6	0	0.0	1	0.6	0	0.0	1	0.6	14	7.9	6	3.4
Southern	29	22.5	0	0.0	7	5.4	3	2.3	0	0.0	17	13.2	0	0.0
Wisconsin														
Eastern	43	21.5	0	0.0	7	3.5	1	0.5	0	0.0	59	29.5	1	0.5
Western	6	8.5	0	0.0	0	0.0	1	1.4	0	0.0	12	16.9	0	0.0
<b>EIGHTH CIRCUIT</b>	<b>258</b>	<b>14.8</b>	<b>10</b>	<b>0.6</b>	<b>41</b>	<b>2.3</b>	<b>19</b>	<b>1.1</b>	<b>27</b>	<b>1.5</b>	<b>196</b>	<b>11.2</b>	<b>22</b>	<b>1.3</b>
Arkansas														
Eastern	24	16.3	0	0.0	3	2.0	2	1.4	4	2.7	9	6.1	3	2.0
Western	15	18.8	0	0.0	0	0.0	0	0.0	0	0.0	6	7.5	0	0.0
Iowa														
Northern	14	11.2	0	0.0	0	0.0	0	0.0	3	2.4	18	14.4	0	0.0
Southern	6	10.9	0	0.0	1	1.8	1	1.8	0	0.0	2	3.6	4	7.3
Minnesota	74	31.2	0	0.0	7	3.0	3	1.3	9	3.8	33	13.9	2	0.8
Missouri														
Eastern	38	11.7	0	0.0	7	2.2	7	2.2	4	1.2	47	14.5	7	2.2
Western	46	15.3	0	0.0	8	2.7	4	1.3	6	2.0	24	8.0	1	0.3
Nebraska	15	6.1	8	3.2	13	5.3	0	0.0	1	0.4	22	8.9	1	0.4
North Dakota	21	30.9	2	2.9	0	0.0	1	1.5	0	0.0	10	14.7	0	0.0
South Dakota	5	3.1	0	0.0	2	1.2	1	0.6	0	0.0	25	15.3	4	2.5

**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	%
<b>NINTH CIRCUIT</b>	<b>4,805</b>	<b>2,131</b>	<b>44.3</b>	<b>18</b>	<b>0.4</b>	<b>5</b>	<b>0.1</b>	<b>20</b>	<b>0.4</b>	<b>9</b>	<b>0.2</b>
Alaska	36	25	69.4	0	0.0	0	0.0	1	2.8	0	0.0
Arizona	1,358	430	31.7	13	1.0	1	0.1	1	0.1	2	0.1
California											
Central	451	212	47.0	1	0.2	1	0.2	2	0.4	1	0.2
Eastern	332	161	48.5	0	0.0	1	0.3	1	0.3	2	0.6
Northern	239	130	54.4	0	0.0	0	0.0	2	0.8	0	0.0
Southern	1,182	559	47.3	0	0.0	1	0.1	2	0.2	2	0.2
Guam	28	21	75.0	1	3.6	0	0.0	0	0.0	0	0.0
Hawaii	106	40	37.7	0	0.0	0	0.0	0	0.0	0	0.0
Idaho	93	50	53.8	0	0.0	0	0.0	1	1.1	0	0.0
Montana	148	107	72.3	0	0.0	1	0.7	4	2.7	0	0.0
Nevada	166	110	66.3	1	0.6	0	0.0	2	1.2	0	0.0
Northern Mariana Islands	2	1	50.0	0	0.0	0	0.0	0	0.0	0	0.0
Oregon	232	103	44.4	0	0.0	0	0.0	1	0.4	1	0.4
Washington											
Eastern	118	43	36.4	0	0.0	0	0.0	2	1.7	0	0.0
Western	314	139	44.3	2	0.6	0	0.0	1	0.3	1	0.3
<b>TENTH CIRCUIT</b>	<b>2,068</b>	<b>1,251</b>	<b>60.5</b>	<b>3</b>	<b>0.1</b>	<b>3</b>	<b>0.1</b>	<b>26</b>	<b>1.3</b>	<b>0</b>	<b>0.0</b>
Colorado	163	93	57.1	0	0.0	0	0.0	0	0.0	0	0.0
Kansas	231	137	59.3	1	0.4	2	0.9	17	7.4	0	0.0
New Mexico	1,036	628	60.6	2	0.2	0	0.0	2	0.2	0	0.0
Oklahoma											
Eastern	39	38	97.4	0	0.0	0	0.0	0	0.0	0	0.0
Northern	79	57	72.2	0	0.0	0	0.0	0	0.0	0	0.0
Western	157	115	73.2	0	0.0	0	0.0	6	3.8	0	0.0
Utah	254	116	45.7	0	0.0	0	0.0	1	0.4	0	0.0
Wyoming	109	67	61.5	0	0.0	1	0.9	0	0.0	0	0.0
<b>ELEVENTH CIRCUIT</b>	<b>2,641</b>	<b>1,794</b>	<b>67.9</b>	<b>4</b>	<b>0.2</b>	<b>3</b>	<b>0.1</b>	<b>33</b>	<b>1.2</b>	<b>1</b>	<b>0.0</b>
Alabama											
Middle	108	62	57.4	0	0.0	0	0.0	2	1.9	0	0.0
Northern	168	100	59.5	0	0.0	2	1.2	4	2.4	0	0.0
Southern	191	124	64.9	1	0.5	0	0.0	2	1.0	0	0.0
Florida											
Middle	610	361	59.2	1	0.2	1	0.2	3	0.5	0	0.0
Northern	135	96	71.1	0	0.0	0	0.0	2	1.5	0	0.0
Southern	793	593	74.8	0	0.0	0	0.0	7	0.9	1	0.1
Georgia											
Middle	173	140	80.9	0	0.0	0	0.0	1	0.6	0	0.0
Northern	231	138	59.7	1	0.4	0	0.0	2	0.9	0	0.0
Southern	232	180	77.6	1	0.4	0	0.0	10	4.3	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	%
<b>NINTH CIRCUIT</b>	<b>455</b>	<b>9.5</b>	<b>1,324</b>	<b>27.6</b>	<b>249</b>	<b>5.2</b>	<b>107</b>	<b>2.2</b>	<b>50</b>	<b>1.0</b>	<b>381</b>	<b>7.9</b>	<b>56</b>	<b>1.2</b>
Alaska	5	13.9	0	0.0	1	2.8	0	0.0	1	2.8	3	8.3	0	0.0
Arizona	78	5.7	707	52.1	36	2.7	14	1.0	10	0.7	57	4.2	9	0.7
California														
Central	48	10.6	84	18.6	32	7.1	11	2.4	10	2.2	39	8.6	10	2.2
Eastern	47	14.2	71	21.4	12	3.6	7	2.1	4	1.2	23	6.9	3	0.9
Northern	28	11.7	10	4.2	21	8.8	3	1.3	6	2.5	29	12.1	10	4.2
Southern	56	4.7	397	33.6	48	4.1	37	3.1	1	0.1	61	5.2	18	1.5
Guam	3	10.7	0	0.0	0	0.0	1	3.6	0	0.0	1	3.6	1	3.6
Hawaii	34	32.1	0	0.0	2	1.9	2	1.9	2	1.9	26	24.5	0	0.0
Idaho	17	18.3	15	16.1	1	1.1	0	0.0	1	1.1	8	8.6	0	0.0
Montana	20	13.5	0	0.0	0	0.0	2	1.4	1	0.7	13	8.8	0	0.0
Nevada	13	7.8	0	0.0	18	10.8	5	3.0	1	0.6	14	8.4	2	1.2
Northern Mariana Islands	1	50.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Oregon	48	20.7	10	4.3	15	6.5	11	4.7	4	1.7	39	16.8	0	0.0
Washington														
Eastern	6	5.1	21	17.8	21	17.8	0	0.0	2	1.7	21	17.8	2	1.7
Western	51	16.2	9	2.9	42	13.4	14	4.5	7	2.2	47	15.0	1	0.3
<b>TENTH CIRCUIT</b>	<b>147</b>	<b>7.1</b>	<b>188</b>	<b>9.1</b>	<b>180</b>	<b>8.7</b>	<b>48</b>	<b>2.3</b>	<b>29</b>	<b>1.4</b>	<b>182</b>	<b>8.8</b>	<b>11</b>	<b>0.5</b>
Colorado	29	17.8	0	0.0	8	4.9	7	4.3	3	1.8	21	12.9	2	1.2
Kansas	37	16.0	0	0.0	17	7.4	2	0.9	1	0.4	17	7.4	0	0.0
New Mexico	30	2.9	120	11.6	137	13.2	31	3.0	14	1.4	70	6.8	2	0.2
Oklahoma														
Eastern	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	2.6	0	0.0
Northern	15	19.0	0	0.0	1	1.3	0	0.0	0	0.0	6	7.6	0	0.0
Western	11	7.0	0	0.0	1	0.6	2	1.3	0	0.0	20	12.7	2	1.3
Utah	13	5.1	68	26.8	11	4.3	4	1.6	2	0.8	36	14.2	3	1.2
Wyoming	12	11.0	0	0.0	5	4.6	2	1.8	9	8.3	11	10.1	2	1.8
<b>ELEVENTH CIRCUIT</b>	<b>405</b>	<b>15.3</b>	<b>8</b>	<b>0.3</b>	<b>28</b>	<b>1.1</b>	<b>41</b>	<b>1.6</b>	<b>31</b>	<b>1.2</b>	<b>278</b>	<b>10.5</b>	<b>15</b>	<b>0.6</b>
Alabama														
Middle	34	31.5	0	0.0	0	0.0	1	0.9	0	0.0	8	7.4	1	0.9
Northern	29	17.3	0	0.0	1	0.6	2	1.2	0	0.0	29	17.3	1	0.6
Southern	43	22.5	0	0.0	0	0.0	0	0.0	2	1.0	19	9.9	0	0.0
Florida														
Middle	124	20.3	8	1.3	10	1.6	11	1.8	8	1.3	80	13.1	3	0.5
Northern	26	19.3	0	0.0	0	0.0	2	1.5	0	0.0	7	5.2	2	1.5
Southern	75	9.5	0	0.0	5	0.6	8	1.0	18	2.3	81	10.2	5	0.6
Georgia														
Middle	20	11.6	0	0.0	1	0.6	1	0.6	0	0.0	10	5.8	0	0.0
Northern	31	13.4	0	0.0	9	3.9	12	5.2	3	1.3	32	13.9	3	1.3
Southern	23	9.9	0	0.0	2	0.9	4	1.7	0	0.0	12	5.2	0	0.0

<sup>1</sup>Of the 26,901 cases, 573 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 (35.1%), Central California (25.8%), Eastern Virginia (16.6%), Middle Georgia (11.7%), Middle Tennessee (6.2%), and Southern Mississippi (5.1%).

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 CATEGORY<sup>1</sup>  
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	%
<b>TOTAL</b>	<b>26,254</b>	<b>15,681</b>	<b>59.7</b>	<b>121</b>	<b>0.5</b>	<b>51</b>	<b>0.2</b>	<b>226</b>	<b>0.9</b>	<b>38</b>	<b>0.1</b>
Murder	19	11	57.9	0	0.0	0	0.0	1	5.3	0	0.0
Manslaughter	20	14	70.0	2	10.0	0	0.0	0	0.0	0	0.0
Kidnapping/Hostage Taking	26	9	34.6	0	0.0	0	0.0	0	0.0	0	0.0
Sexual Abuse	178	133	74.7	1	0.6	0	0.0	6	3.4	0	0.0
Assault	230	160	69.6	3	1.3	2	0.9	5	2.2	1	0.4
Robbery	391	248	63.4	6	1.5	1	0.3	4	1.0	3	0.8
Arson	15	7	46.7	0	0.0	0	0.0	0	0.0	0	0.0
Drugs - Trafficking	8,831	4,605	52.1	16	0.2	6	0.1	21	0.2	13	0.1
Drugs - Communication Facility	127	81	63.8	0	0.0	0	0.0	1	0.8	0	0.0
Drugs - Simple Possession	137	120	87.6	0	0.0	0	0.0	3	2.2	2	1.5
Firearms	2,993	2,043	68.3	26	0.9	9	0.3	36	1.2	6	0.2
Burglary/B&E	12	9	75.0	0	0.0	0	0.0	1	8.3	0	0.0
Auto Theft	26	17	65.4	0	0.0	0	0.0	1	3.8	0	0.0
Larceny	480	355	74.0	3	0.6	1	0.2	8	1.7	2	0.4
Fraud	2,429	1,548	63.7	10	0.4	2	0.1	22	0.9	3	0.1
Embezzlement	157	107	68.2	0	0.0	1	0.6	1	0.6	0	0.0
Forgery/Counterfeiting	371	252	67.9	0	0.0	0	0.0	4	1.1	1	0.3
Bribery	87	32	36.8	0	0.0	0	0.0	0	0.0	0	0.0
Tax	179	75	41.9	1	0.6	1	0.6	2	1.1	0	0.0
Money Laundering	280	108	38.6	1	0.4	0	0.0	1	0.4	0	0.0
Racketeering/Extortion	242	118	48.8	1	0.4	0	0.0	6	2.5	1	0.4
Gambling/Lottery	40	25	62.5	0	0.0	0	0.0	1	2.5	0	0.0
Civil Rights	21	13	61.9	0	0.0	0	0.0	0	0.0	0	0.0
Immigration	7,272	4,504	61.9	38	0.5	18	0.2	84	1.2	5	0.1
Pornography/Prostitution	585	316	54.0	4	0.7	6	1.0	8	1.4	0	0.0
Prison Offenses	140	106	75.7	2	1.4	0	0.0	3	2.1	0	0.0
Administration of Justice Offenses	348	206	59.2	4	1.1	2	0.6	4	1.1	1	0.3
Environmental/Wildlife	62	43	69.4	0	0.0	0	0.0	1	1.6	0	0.0
National Defense	19	12	63.2	0	0.0	0	0.0	0	0.0	0	0.0
Antitrust	10	1	10.0	0	0.0	0	0.0	0	0.0	0	0.0
Food & Drug	17	12	70.6	0	0.0	0	0.0	0	0.0	0	0.0
Other Miscellaneous Offenses	510	391	76.7	3	0.6	2	0.4	2	0.4	0	0.0

**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	%
<b>TOTAL</b>	<b>3,520</b>	<b>13.4</b>	<b>1,985</b>	<b>7.6</b>	<b>1,057</b>	<b>4.0</b>	<b>524</b>	<b>2.0</b>	<b>339</b>	<b>1.3</b>	<b>2,445</b>	<b>9.3</b>	<b>267</b>	<b>1.0</b>
Murder	2	10.5	0	0.0	1	5.3	0	0.0	1	5.3	2	10.5	1	5.3
Manslaughter	0	0.0	0	0.0	2	10.0	1	5.0	0	0.0	1	5.0	0	0.0
Kidnapping/Hostage Taking	7	26.9	1	3.8	3	11.5	1	3.8	1	3.8	4	15.4	0	0.0
Sexual Abuse	10	5.6	1	0.6	11	6.2	1	0.6	3	1.7	12	6.7	0	0.0
Assault	4	1.7	4	1.7	15	6.5	4	1.7	3	1.3	22	9.6	7	3.0
Robbery	42	10.7	0	0.0	14	3.6	12	3.1	11	2.8	47	12.0	3	0.8
Arson	3	20.0	0	0.0	1	6.7	1	6.7	1	6.7	2	13.3	0	0.0
Drugs - Trafficking	2,276	25.8	397	4.5	289	3.3	160	1.8	127	1.4	844	9.6	77	0.9
Drugs - Communication Facility	19	15.0	0	0.0	6	4.7	0	0.0	2	1.6	17	13.4	1	0.8
Drugs - Simple Possession	5	3.6	0	0.0	5	3.6	0	0.0	0	0.0	1	0.7	1	0.7
Firearms	315	10.5	13	0.4	90	3.0	54	1.8	51	1.7	315	10.5	35	1.2
Burglary/B&E	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	8.3	1	8.3
Auto Theft	5	19.2	0	0.0	1	3.8	0	0.0	1	3.8	1	3.8	0	0.0
Larceny	37	7.7	1	0.2	12	2.5	7	1.5	3	0.6	43	9.0	8	1.7
Fraud	338	13.9	1	0.0	64	2.6	59	2.4	40	1.6	308	12.7	34	1.4
Embezzlement	12	7.6	0	0.0	7	4.5	4	2.5	3	1.9	21	13.4	1	0.6
Forgery/Counterfeiting	45	12.1	0	0.0	4	1.1	8	2.2	3	0.8	49	13.2	5	1.3
Bribery	22	25.3	0	0.0	5	5.7	1	1.1	2	2.3	24	27.6	1	1.1
Tax	35	19.6	0	0.0	7	3.9	8	4.5	7	3.9	41	22.9	2	1.1
Money Laundering	70	25.0	2	0.7	21	7.5	8	2.9	9	3.2	54	19.3	6	2.1
Racketeering/Extortion	53	21.9	0	0.0	17	7.0	5	2.1	4	1.7	31	12.8	6	2.5
Gambling/Lottery	6	15.0	0	0.0	0	0.0	0	0.0	0	0.0	7	17.5	1	2.5
Civil Rights	1	4.8	0	0.0	1	4.8	1	4.8	0	0.0	5	23.8	0	0.0
Immigration	103	1.4	1,560	21.5	412	5.7	155	2.1	30	0.4	306	4.2	57	0.8
Pornography/Prostitution	19	3.2	1	0.2	30	5.1	14	2.4	21	3.6	161	27.5	5	0.9
Prison Offenses	6	4.3	2	1.4	4	2.9	2	1.4	1	0.7	14	10.0	0	0.0
Administration of Justice Offenses	30	8.6	2	0.6	22	6.3	7	2.0	7	2.0	57	16.4	6	1.7
Environmental/Wildlife	9	14.5	0	0.0	1	1.6	1	1.6	1	1.6	6	9.7	0	0.0
National Defense	1	5.3	0	0.0	1	5.3	2	10.5	0	0.0	3	15.8	0	0.0
Antitrust	8	80.0	0	0.0	0	0.0	0	0.0	0	0.0	1	10.0	0	0.0
Food & Drug	3	17.6	0	0.0	1	5.9	1	5.9	0	0.0	0	0.0	0	0.0
Other Miscellaneous Offenses	34	6.7	0	0.0	10	2.0	7	1.4	7	1.4	45	8.8	9	1.8

<sup>1</sup>Of the 26,901 cases, 647 were excluded due to one or both of the following reasons: missing primary offense (76) or missing information from the submitted documents that prevented the comparison of the sentence and the guideline range (573). 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 CATEGORY<sup>1</sup>  
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	%
<b>TOTAL</b>	<b>204,602</b>	<b>125,404</b>	<b>61.3</b>	<b>898</b>	<b>0.4</b>	<b>388</b>	<b>0.2</b>	<b>1,381</b>	<b>0.7</b>	<b>547</b>	<b>0.3</b>
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	%
<b>TOTAL</b>	<b>29,556</b>	<b>14.4</b>	<b>14,696</b>	<b>7.2</b>	<b>6,601</b>	<b>3.2</b>	<b>5,158</b>	<b>2.5</b>	<b>3,078</b>	<b>1.5</b>	<b>13,330</b>	<b>6.5</b>	<b>3,565</b>	<b>1.7</b>
<b>Murder</b>	23	9.5	1	0.4	15	6.2	5	2.1	5	2.1	17	7.1	4	1.7
<b>Manslaughter</b>	1	0.6	1	0.6	8	4.4	7	3.9	3	1.7	17	9.4	1	0.6
<b>Kidnapping/Hostage Taking</b>	48	33.8	2	1.4	15	10.6	1	0.7	0	0.0	9	6.3	4	2.8
<b>Sexual Abuse</b>	18	1.9	1	0.1	72	7.6	19	2.0	17	1.8	74	7.8	16	1.7
<b>Assault</b>	28	1.7	22	1.3	115	7.0	58	3.5	35	2.1	114	6.9	33	2.0
<b>Robbery</b>	416	12.0	1	0.0	93	2.7	138	4.0	94	2.7	261	7.5	66	1.9
<b>Arson</b>	51	25.6	0	0.0	5	2.5	3	1.5	1	0.5	5	2.5	0	0.0
<b>Drugs - Trafficking</b>	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
<b>Drugs - Communication Facility</b>	198	17.3	0	0.0	39	3.4	21	1.8	23	2.0	107	9.4	25	2.2
<b>Drugs - Simple Possession</b>	26	1.6	1	0.1	13	0.8	4	0.3	7	0.4	24	1.5	16	1.0
<b>Firearms</b>	2,845	11.6	108	0.4	619	2.5	653	2.7	432	1.8	1,801	7.3	428	1.7
<b>Burglary/B&amp;E</b>	5	3.8	0	0.0	3	2.3	3	2.3	3	2.3	11	8.4	5	3.8
<b>Auto Theft</b>	29	16.0	0	0.0	3	1.7	5	2.8	2	1.1	12	6.6	2	1.1
<b>Larceny</b>	309	6.4	18	0.4	94	2.0	107	2.2	53	1.1	275	5.7	115	2.4
<b>Fraud</b>	3,072	15.3	12	0.1	445	2.2	540	2.7	397	2.0	1,659	8.3	541	2.7
<b>Embezzlement</b>	51	3.4	0	0.0	27	1.8	37	2.5	40	2.7	153	10.3	51	3.4
<b>Forgery/Counterfeiting</b>	320	9.9	5	0.2	56	1.7	59	1.8	49	1.5	227	7.0	64	2.0
<b>Bribery</b>	193	31.8	1	0.2	21	3.5	13	2.1	10	1.7	56	9.2	20	3.3
<b>Tax</b>	273	15.5	6	0.3	49	2.8	99	5.6	55	3.1	291	16.5	76	4.3
<b>Money Laundering</b>	684	25.7	21	0.8	135	5.1	70	2.6	84	3.2	276	10.4	78	2.9
<b>Racketeering/Extortion</b>	437	23.7	0	0.0	112	6.1	47	2.6	24	1.3	144	7.8	43	2.3
<b>Gambling/Lottery</b>	43	13.0	0	0.0	7	2.1	11	3.3	5	1.5	31	9.4	17	5.1
<b>Civil Rights</b>	44	23.0	1	0.5	6	3.1	7	3.7	5	2.6	17	8.9	4	2.1
<b>Immigration</b>	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
<b>Pornography/Prostitution</b>	166	4.3	13	0.3	148	3.8	111	2.8	113	2.9	573	14.7	72	1.8
<b>Prison Offenses</b>	39	4.0	16	1.6	25	2.6	22	2.2	12	1.2	54	5.5	16	1.6
<b>Administration of Justice Offenses</b>	369	12.6	17	0.6	167	5.7	100	3.4	59	2.0	254	8.6	78	2.7
<b>Environmental/Wildlife</b>	53	11.7	2	0.4	27	5.9	19	4.2	7	1.5	33	7.3	18	4.0
<b>National Defense</b>	23	25.0	1	1.1	7	7.6	7	7.6	3	3.3	12	13.0	6	6.5
<b>Antitrust</b>	23	59.0	0	0.0	1	2.6	1	2.6	3	7.7	5	12.8	0	0.0
<b>Food &amp; Drug</b>	19	9.5	0	0.0	8	4.0	2	1.0	1	0.5	7	3.5	1	0.5
<b>Other Miscellaneous Offenses</b>	225	7.5	12	0.4	90	3.0	80	2.7	42	1.4	222	7.4	72	2.4

<sup>1</sup>Of 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		Below Range	
			Gdline Only	with Booker	Above Range with Booker	All Others	\$5K1.1	\$5K3.1	Other Gov't	Gdline Only	with Booker	with Booker	All Others
§2N1.1	0	0	0	0	0	0	0	0	0	0	0	0	0
§2N1.2	0	0	0	0	0	0	0	0	0	0	0	0	0
§2N1.3	1	0	0	0	0	0	0	0	0	1	0	0	0
§2N2.1	5	5	0	0	0	0	0	0	0	0	0	0	0
§2N3.1	0	0	0	0	0	0	0	0	0	0	0	0	0
§2P1.1	91	63	1	1	2	0	3	2	3	2	1	13	0
§2P1.2	37	33	1	0	0	0	1	0	1	0	0	1	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	15	6	0	0	1	0	1	0	0	1	2	4	0
§2Q1.3	15	3	0	0	0	0	6	0	1	2	1	1	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	42	31	0	0	0	0	4	0	1	0	0	5	1
§2Q2.2	0	0	0	0	0	0	0	0	0	0	0	0	0
§2R1.1	7	1	0	0	0	0	6	0	0	0	0	0	0
§2S1.1	331	118	1	1	3	0	104	2	19	9	8	60	6
§2S1.2	1	1	0	0	0	0	0	0	0	0	0	0	0
§2S1.3	72	37	0	0	0	0	8	0	8	1	2	13	3
§2S1.4	0	0	0	0	0	0	0	0	0	0	0	0	0
§2T1.1	164	66	1	0	1	0	31	0	6	10	7	41	1
§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	37	16	0	0	0	0	5	0	2	0	3	10	1
§2T1.5	0	0	0	0	0	0	0	0	0	0	0	0	0
§2T1.6	4	1	0	0	0	0	0	0	0	0	0	2	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	1	0	0	0	0	0	1	0	0	0	0	0	0
§2T2.1	0	0	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	4	3	0	0	0	0	1	0	0	0	0	0	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	96	53	0	0	2	0	29	0	1	1	0	8	2
§2X2.1	0	0	0	0	0	0	0	0	0	0	0	0	0
§2X3.1	33	17	0	0	2	0	6	1	3	0	1	3	0
§2X4.1	160	104	1	1	0	1	14	0	8	3	0	26	2
§2X5.1	0	0	0	0	0	0	0	0	0	0	0	0	0
§2X5.2	56	51	0	1	0	0	0	0	1	0	0	1	2
§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
<b>TOTAL</b>	<b>24,919</b>	<b>14,525</b>	<b>115</b>	<b>45</b>	<b>224</b>	<b>37</b>	<b>3,490</b>	<b>1,949</b>	<b>1,007</b>	<b>518</b>	<b>335</b>	<b>2,417</b>	<b>257</b>

<sup>1</sup>Of the 26,901 cases, 1,982 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 (573) or missing guideline applied (1,855). 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 CATEGORY<sup>1</sup>**  
**2008 Post-Kimbrough/Gall Preliminary Data**

<b>PRIMARY OFFENSE</b>	<b>n</b>	<b>Median Sentence in Months</b>	<b>Median Decrease in Months From Guideline Minimum</b>	<b>Median Percent Decrease From Guideline Minimum</b>
<b>TOTAL</b>	<b>3,342</b>	<b>37.0</b>	<b>30.0</b>	<b>47.2</b>
<b>Murder</b>	1	--	--	--
<b>Manslaughter</b>	0	--	--	--
<b>Kidnapping/Hostage Taking</b>	6	174.0	68.0	28.9
<b>Sexual Abuse</b>	10	50.5	32.5	40.7
<b>Assault</b>	4	5.0	24.5	76.2
<b>Robbery</b>	41	48.0	21.0	33.3
<b>Arson</b>	3	36.0	12.0	33.2
<b>Drugs - Trafficking</b>	2,162	51.0	39.2	44.3
<b>Drugs - Communication Facility</b>	18	16.5	21.0	61.2
<b>Drugs - Simple Possession</b>	5	38.0	18.0	39.7
<b>Firearms</b>	299	55.0	28.0	39.9
<b>Burglary/B&amp;E</b>	0	--	--	--
<b>Auto Theft</b>	5	24.0	14.0	28.1
<b>Larceny</b>	34	6.0	12.0	67.0
<b>Fraud</b>	321	12.0	14.0	60.0
<b>Embezzlement</b>	11	0.0	10.0	100.0
<b>Forgery/Counterfeiting</b>	45	0.0	8.0	100.0
<b>Bribery</b>	21	1.0	19.0	90.0
<b>Tax</b>	34	0.0	15.0	100.0
<b>Money Laundering</b>	64	12.0	27.0	62.4
<b>Racketeering/Extortion</b>	50	37.5	32.5	50.0
<b>Gambling/Lottery</b>	6	0.0	8.0	100.0
<b>Civil Rights</b>	1	--	--	--
<b>Immigration</b>	97	13.0	10.0	42.9
<b>Pornography/Prostitution</b>	19	70.0	47.0	40.0
<b>Prison Offenses</b>	4	8.6	18.5	54.6
<b>Administration of Justice Offenses</b>	29	0.0	12.0	100.0
<b>Environmental/Wildlife</b>	9	0.0	12.0	100.0
<b>National Defense</b>	1	--	--	--
<b>Antitrust</b>	8	2.0	10.0	83.3
<b>Food &amp; Drug</b>	2	--	--	--
<b>Other Miscellaneous Offenses</b>	32	5.5	13.5	75.8

<sup>1</sup>Of the 26,901 cases, 3,530 received a §5K1.1 substantial assistance departure. Of these, 3,381 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 37 cases were also excluded from this table. Of the remaining 3,344 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 CATEGORY<sup>1</sup>**  
**Fiscal Year 2005, Post-Booker - 2008, Pre-Kimbrough/Gall Preliminary Data**

<b>PRIMARY OFFENSE</b>	<b>n</b>	<b>Median Sentence in Months</b>	<b>Median Decrease in Months From Guideline Minimum</b>	<b>Median Percent Decrease From Guideline Minimum</b>
<b>TOTAL</b>	<b>27,856</b>	<b>36.0</b>	<b>29.0</b>	<b>47.9</b>
<b>Murder</b>	14	74.0	93.0	51.5
<b>Manslaughter</b>	1	--	--	--
<b>Kidnapping/Hostage Taking</b>	37	120.0	78.0	43.3
<b>Sexual Abuse</b>	17	30.0	24.0	39.1
<b>Assault</b>	28	28.0	16.5	44.9
<b>Robbery</b>	402	50.0	27.0	34.0
<b>Arson</b>	46	40.0	28.0	47.3
<b>Drugs - Trafficking</b>	17,570	51.0	39.0	43.8
<b>Drugs - Communication Facility</b>	197	12.0	17.9	60.4
<b>Drugs - Simple Possession</b>	22	19.3	11.0	61.5
<b>Firearms</b>	2,556	40.0	25.0	44.4
<b>Burglary/B&amp;E</b>	4	2.5	4.5	68.8
<b>Auto Theft</b>	27	24.0	18.0	36.7
<b>Larceny</b>	293	5.0	10.0	67.5
<b>Fraud</b>	2,899	3.3	12.0	83.5
<b>Embezzlement</b>	48	0.0	10.5	99.7
<b>Forgery/Counterfeiting</b>	313	3.0	9.0	77.4
<b>Bribery</b>	192	5.0	18.0	86.7
<b>Tax</b>	264	0.0	10.0	100.0
<b>Money Laundering</b>	657	15.0	22.0	59.5
<b>Racketeering/Extortion</b>	397	30.0	31.0	52.6
<b>Gambling/Lottery</b>	41	0.0	8.0	100.0
<b>Civil Rights</b>	42	12.0	12.0	69.3
<b>Immigration</b>	937	12.0	10.0	47.8
<b>Pornography/Prostitution</b>	157	46.0	29.0	38.3
<b>Prison Offenses</b>	34	12.0	8.5	52.0
<b>Administration of Justice Offenses</b>	341	0.0	12.0	100.0
<b>Environmental/Wildlife</b>	48	0.0	12.0	100.0
<b>National Defense</b>	23	12.0	25.0	63.7
<b>Antitrust</b>	16	5.0	10.0	69.4
<b>Food &amp; Drug</b>	19	0.0	12.0	100.0
<b>Other Miscellaneous Offenses</b>	214	0.0	13.0	99.9

<sup>1</sup>Of 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 CATEGORY<sup>1</sup>**  
**2008 Post-Kimbrough/Gall Preliminary Data**

<b>PRIMARY OFFENSE</b>	<b>n</b>	<b>Median Sentence in Months</b>	<b>Median Decrease in Months From Guideline Minimum</b>	<b>Median Percent Decrease From Guideline Minimum</b>
<b>TOTAL</b>	<b>1,901</b>	<b>18.0</b>	<b>7.0</b>	<b>28.3</b>
Murder	0	--	--	--
Manslaughter	0	--	--	--
Kidnapping/Hostage Taking	1	--	--	--
Sexual Abuse	1	--	--	--
Assault	4	25.5	3.5	15.5
Robbery	0	--	--	--
Arson	0	--	--	--
Drugs - Trafficking	378	13.0	10.0	35.1
Drugs - Communication Facility	0	--	--	--
Drugs - Simple Possession	0	--	--	--
Firearms	12	19.5	5.5	16.1
Burglary/B&E	0	--	--	--
Auto Theft	0	--	--	--
Larceny	1	--	--	--
Fraud	0	--	--	--
Embezzlement	0	--	--	--
Forgery/Counterfeiting	0	--	--	--
Bribery	0	--	--	--
Tax	0	--	--	--
Money Laundering	1	--	--	--
Racketeering/Extortion	0	--	--	--
Gambling/Lottery	0	--	--	--
Civil Rights	0	--	--	--
Immigration	1,498	18.0	6.0	27.8
Pornography/Prostitution	1	--	--	--
Prison Offenses	2	--	--	--
Administration of Justice Offenses	2	--	--	--
Environmental/Wildlife	0	--	--	--
National Defense	0	--	--	--
Antitrust	0	--	--	--
Food & Drug	0	--	--	--
Other Miscellaneous Offenses	0	--	--	--

<sup>1</sup>Of the 26,901 cases, 2,001 received a §5K3.1 early disposition program departure. Of these, 1,902 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 CATEGORY<sup>1</sup>**  
**Fiscal Year 2005, Post-Booker - 2008, Pre-Kimbrough/Gall Preliminary Data**

<b>PRIMARY OFFENSE</b>	<b>n</b>	<b>Median Sentence in Months</b>	<b>Median Decrease in Months From Guideline Minimum</b>	<b>Median Percent Decrease From Guideline Minimum</b>
<b>TOTAL</b>	<b>14,055</b>	<b>18.0</b>	<b>7.0</b>	<b>27.8</b>
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

<sup>1</sup>Of 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 CATEGORY<sup>1</sup>**  
**2008 Post-Kimbrough/Gall Preliminary Data**

<b>PRIMARY OFFENSE</b>	<b>n</b>	<b>Median Sentence in Months</b>	<b>Median Decrease in Months From Guideline Minimum</b>	<b>Median Percent Decrease From Guideline Minimum</b>
<b>TOTAL</b>	<b>983</b>	<b>23.0</b>	<b>9.0</b>	<b>25.0</b>
<b>Murder</b>	1	--	--	--
<b>Manslaughter</b>	2	--	--	--
<b>Kidnapping/Hostage Taking</b>	3	235.0	84.0	27.5
<b>Sexual Abuse</b>	9	96.0	37.0	41.5
<b>Assault</b>	10	5.6	11.0	83.1
<b>Robbery</b>	14	47.0	10.5	17.9
<b>Arson</b>	1	--	--	--
<b>Drugs - Trafficking</b>	274	60.0	14.0	20.8
<b>Drugs - Communication Facility</b>	6	13.7	15.5	53.7
<b>Drugs - Simple Possession</b>	4	34.5	10.8	20.7
<b>Firearms</b>	80	36.0	15.0	28.7
<b>Burglary/B&amp;E</b>	0	--	--	--
<b>Auto Theft</b>	1	--	--	--
<b>Larceny</b>	12	0.0	7.0	100.0
<b>Fraud</b>	58	12.3	10.0	49.9
<b>Embezzlement</b>	7	0.0	8.0	99.8
<b>Forgery/Counterfeiting</b>	4	14.5	11.5	45.2
<b>Bribery</b>	5	60.0	27.0	33.3
<b>Tax</b>	7	2.0	10.0	88.9
<b>Money Laundering</b>	20	22.5	10.0	35.8
<b>Racketeering/Extortion</b>	15	48.0	17.0	14.3
<b>Gambling/Lottery</b>	0	--	--	--
<b>Civil Rights</b>	1	--	--	--
<b>Immigration</b>	387	12.0	3.9	21.1
<b>Pornography/Prostitution</b>	29	70.0	37.0	35.1
<b>Prison Offenses</b>	3	10.0	12.0	50.0
<b>Administration of Justice Offenses</b>	17	0.0	12.0	100.0
<b>Environmental/Wildlife</b>	1	--	--	--
<b>National Defense</b>	1	--	--	--
<b>Antitrust</b>	0	--	--	--
<b>Food &amp; Drug</b>	1	--	--	--
<b>Other Miscellaneous Offenses</b>	10	0.5	8.0	84.6

<sup>1</sup>Of the 26,901 cases, 1,068 received an other government sponsored downward departure. Of these, 988 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. Of the remaining 984 cases, one was 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 CATEGORY<sup>1</sup>  
Fiscal Year 2005, Post-Booker - 2008, Pre-Kimbrough/Gall Preliminary Data**

<b>PRIMARY OFFENSE</b>	<b>n</b>	<b>Median Sentence in Months</b>	<b>Median Decrease in Months From Guideline Minimum</b>	<b>Median Percent Decrease From Guideline Minimum</b>
<b>TOTAL</b>	<b>6,039</b>	<b>24.0</b>	<b>10.0</b>	<b>29.5</b>
<b>Murder</b>	13	120.0	72.0	35.7
<b>Manslaughter</b>	7	15.0	10.0	47.1
<b>Kidnapping/Hostage Taking</b>	14	156.5	52.0	23.6
<b>Sexual Abuse</b>	67	40.0	21.0	35.1
<b>Assault</b>	106	18.0	12.0	47.8
<b>Robbery</b>	84	64.0	26.5	29.7
<b>Arson</b>	4	42.0	19.5	33.7
<b>Drugs - Trafficking</b>	2,038	60.0	18.0	25.8
<b>Drugs - Communication Facility</b>	37	24.0	24.0	50.0
<b>Drugs - Simple Possession</b>	9	6.0	9.0	40.0
<b>Firearms</b>	562	37.0	15.0	30.0
<b>Burglary/B&amp;E</b>	3	10.0	27.0	73.0
<b>Auto Theft</b>	3	93.0	42.0	14.7
<b>Larceny</b>	83	0.0	10.0	100.0
<b>Fraud</b>	398	5.4	10.3	66.7
<b>Embezzlement</b>	26	0.0	8.0	99.7
<b>Forgery/Counterfeiting</b>	48	3.8	10.0	66.7
<b>Bribery</b>	20	2.5	10.0	93.3
<b>Tax</b>	46	1.2	10.0	95.1
<b>Money Laundering</b>	122	15.0	12.0	40.3
<b>Racketeering/Extortion</b>	102	46.0	20.4	32.4
<b>Gambling/Lottery</b>	7	0.0	8.0	100.0
<b>Civil Rights</b>	6	0.0	20.0	100.0
<b>Immigration</b>	1,799	12.0	4.0	21.7
<b>Pornography/Prostitution</b>	145	60.0	30.0	30.0
<b>Prison Offenses</b>	23	10.0	6.0	25.0
<b>Administration of Justice Offenses</b>	144	6.4	12.0	58.4
<b>Environmental/Wildlife</b>	23	0.0	10.0	100.0
<b>National Defense</b>	7	12.0	19.0	63.3
<b>Antitrust</b>	1	--	--	--
<b>Food &amp; Drug</b>	8	17.0	14.5	39.7
<b>Other Miscellaneous Offenses</b>	84	0.0	11.8	100.0

<sup>1</sup>Of 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 CATEGORY<sup>1</sup>  
2008 Post-Kimbrough/Gall Preliminary Data**

<b>PRIMARY OFFENSE</b>	<b>n</b>	<b>Median Sentence in Months</b>	<b>Median Decrease in Months From Guideline Minimum</b>	<b>Median Percent Decrease From Guideline Minimum</b>
<b>TOTAL</b>	<b>504</b>	<b>27.0</b>	<b>11.0</b>	<b>26.0</b>
Murder	0	--	--	--
Manslaughter	1	--	--	--
Kidnapping/Hostage Taking	0	--	--	--
Sexual Abuse	1	--	--	--
Assault	4	25.0	13.0	49.1
Robbery	12	24.0	16.5	30.1
Arson	1	--	--	--
Drugs - Trafficking	156	61.5	14.5	19.8
Drugs - Communication Facility	0	--	--	--
Drugs - Simple Possession	0	--	--	--
Firearms	51	30.0	9.0	19.8
Burglary/B&E	0	--	--	--
Auto Theft	0	--	--	--
Larceny	7	0.0	10.0	100.0
Fraud	55	8.0	12.0	55.6
Embezzlement	3	1.0	10.0	87.5
Forgery/Counterfeiting	8	5.2	9.0	62.0
Bribery	1	--	--	--
Tax	8	1.5	8.0	85.0
Money Laundering	6	28.0	14.5	29.1
Racketeering/Extortion	4	50.5	14.5	18.2
Gambling/Lottery	0	--	--	--
Civil Rights	1	--	--	--
Immigration	151	24.0	8.0	25.0
Pornography/Prostitution	14	60.0	32.0	35.0
Prison Offenses	2	--	--	--
Administration of Justice Offenses	7	0.0	10.0	100.0
Environmental/Wildlife	1	--	--	--
National Defense	2	--	--	--
Antitrust	0	--	--	--
Food & Drug	1	--	--	--
Other Miscellaneous Offenses	7	0.0	9.0	100.0

<sup>1</sup>Of the 26,901 cases, 526 received a downward departure from the guideline range. Of these, 504 had complete guideline application 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 8A**

**DOWNWARD DEPARTURES FROM GUIDELINE RANGE: DEGREE OF DECREASE FOR OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY<sup>1</sup>**  
**Fiscal Year 2005, Post-Booker - 2008, Pre-Kimbrough/Gall Preliminary Data**

<b>PRIMARY OFFENSE</b>	<b>n</b>	<b>Median Sentence in Months</b>	<b>Median Decrease in Months From Guideline Minimum</b>	<b>Median Percent Decrease From Guideline Minimum</b>
<b>TOTAL</b>	<b>4,838</b>	<b>24.0</b>	<b>10.0</b>	<b>29.5</b>
<b>Murder</b>	5	70.0	27.0	27.8
<b>Manslaughter</b>	7	21.0	12.0	26.8
<b>Kidnapping/Hostage Taking</b>	1	--	--	--
<b>Sexual Abuse</b>	19	24.0	7.0	14.3
<b>Assault</b>	54	12.0	8.0	42.3
<b>Robbery</b>	132	44.0	11.0	20.5
<b>Arson</b>	1	--	--	--
<b>Drugs - Trafficking</b>	1,509	60.0	15.0	23.1
<b>Drugs - Communication Facility</b>	20	12.0	10.0	37.4
<b>Drugs - Simple Possession</b>	3	70.0	16.0	23.9
<b>Firearms</b>	625	27.0	11.0	25.9
<b>Burglary/B&amp;E</b>	3	6.0	5.0	50.0
<b>Auto Theft</b>	5	7.0	41.0	42.5
<b>Larceny</b>	100	0.0	8.0	100.0
<b>Fraud</b>	502	2.9	10.0	80.9
<b>Embezzlement</b>	36	0.0	10.0	99.6
<b>Forgery/Counterfeiting</b>	58	5.5	8.0	59.2
<b>Bribery</b>	12	0.0	9.0	100.0
<b>Tax</b>	94	0.0	10.0	100.0
<b>Money Laundering</b>	63	16.0	12.0	49.9
<b>Racketeering/Extortion</b>	42	30.0	13.0	28.0
<b>Gambling/Lottery</b>	9	0.0	8.0	100.0
<b>Civil Rights</b>	7	0.0	6.0	100.0
<b>Immigration</b>	1,207	24.0	7.0	22.1
<b>Pornography/Prostitution</b>	110	24.0	21.0	34.4
<b>Prison Offenses</b>	18	15.0	5.5	33.3
<b>Administration of Justice Offenses</b>	94	0.0	10.0	100.0
<b>Environmental/Wildlife</b>	19	0.0	8.0	100.0
<b>National Defense</b>	7	10.0	36.0	78.3
<b>Antitrust</b>	1	--	--	--
<b>Food &amp; Drug</b>	1	--	--	--
<b>Other Miscellaneous Offenses</b>	74	0.0	10.0	100.0

<sup>1</sup>Of 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.

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

**Table 9**

**DOWNWARD DEPARTURES WITH *BOOKER* /18 U.S.C. § 3553: DEGREE  
OF DECREASE FOR OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY<sup>1</sup>  
2008 Post-Kimbrough/Gall Preliminary Data**

<b>PRIMARY OFFENSE</b>	<b>n</b>	<b>Median Sentence in Months</b>	<b>Median Decrease in Months From Guideline Minimum</b>	<b>Median Percent Decrease From Guideline Minimum</b>
<b>TOTAL</b>	<b>321</b>	<b>27.0</b>	<b>15.0</b>	<b>36.4</b>
Murder	1	--	--	--
Manslaughter	0	--	--	--
Kidnapping/Hostage Taking	0	--	--	--
Sexual Abuse	2	--	--	--
Assault	3	0.0	17.5	100.0
Robbery	11	37.0	11.8	21.7
Arson	1	--	--	--
Drugs - Trafficking	118	60.0	22.5	28.4
Drugs - Communication Facility	2	--	--	--
Drugs - Simple Possession	0	--	--	--
Firearms	50	24.0	16.0	34.1
Burglary/B&E	0	--	--	--
Auto Theft	1	--	--	--
Larceny	3	0.0	6.0	100.0
Fraud	40	5.5	12.0	62.5
Embezzlement	3	0.0	12.0	99.9
Forgery/Counterfeiting	3	0.0	10.0	100.0
Bribery	1	--	--	--
Tax	7	0.0	8.0	100.0
Money Laundering	8	21.0	12.0	40.0
Racketeering/Extortion	4	31.9	33.1	67.3
Gambling/Lottery	0	--	--	--
Civil Rights	0	--	--	--
Immigration	27	28.0	13.0	33.2
Pornography/Prostitution	20	42.5	25.5	36.6
Prison Offenses	1	--	--	--
Administration of Justice Offenses	7	4.0	9.0	60.0
Environmental/Wildlife	1	--	--	--
National Defense	0	--	--	--
Antitrust	0	--	--	--
Food & Drug	0	--	--	--
Other Miscellaneous Offenses	7	5.4	10.0	84.4

<sup>1</sup>Of the 26,901 cases, 340 received a downward departure from the guideline range with *Booker* /18 U.S.C § 3553. Of these, 322 had complete guideline application information. Due to an inability to calculate the extent of departure for cases with a guideline minimum of life, one additional case was 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 CATEGORY<sup>1</sup>  
Fiscal Year 2005, Post-Booker - 2008, Pre-Kimbrough/Gall Preliminary Data**

<b>PRIMARY OFFENSE</b>	<b>n</b>	<b>Median Sentence in Months</b>	<b>Median Decrease in Months From Guideline Minimum</b>	<b>Median Percent Decrease From Guideline Minimum</b>
<b>TOTAL</b>	<b>2,856</b>	<b>24.0</b>	<b>15.0</b>	<b>40.0</b>
<b>Murder</b>	4	78.0	36.0	26.7
<b>Manslaughter</b>	3	12.0	8.0	33.3
<b>Kidnapping/Hostage Taking</b>	0	--	--	--
<b>Sexual Abuse</b>	17	37.0	21.0	26.1
<b>Assault</b>	34	4.5	12.0	79.4
<b>Robbery</b>	87	45.0	17.0	23.1
<b>Arson</b>	0	--	--	--
<b>Drugs - Trafficking</b>	1,023	60.0	22.0	31.3
<b>Drugs - Communication Facility</b>	20	3.8	24.0	83.0
<b>Drugs - Simple Possession</b>	7	0.0	12.0	100.0
<b>Firearms</b>	402	24.0	13.0	35.1
<b>Burglary/B&amp;E</b>	3	13.0	6.0	25.0
<b>Auto Theft</b>	2	--	--	--
<b>Larceny</b>	51	0.0	10.0	100.0
<b>Fraud</b>	367	6.0	12.0	68.6
<b>Embezzlement</b>	40	0.0	10.0	99.7
<b>Forgery/Counterfeiting</b>	47	1.6	9.0	93.4
<b>Bribery</b>	7	12.0	15.0	50.0
<b>Tax</b>	55	0.0	10.0	100.0
<b>Money Laundering</b>	78	13.5	12.0	50.7
<b>Racketeering/Extortion</b>	23	15.0	24.0	41.7
<b>Gambling/Lottery</b>	4	2.4	8.5	78.9
<b>Civil Rights</b>	4	6.0	12.0	74.9
<b>Immigration</b>	351	22.0	12.0	34.9
<b>Pornography/Prostitution</b>	105	36.0	24.0	41.0
<b>Prison Offenses</b>	12	8.1	3.0	32.9
<b>Administration of Justice Offenses</b>	57	3.0	10.0	85.0
<b>Environmental/Wildlife</b>	6	0.0	7.0	100.0
<b>National Defense</b>	3	40.0	12.0	25.8
<b>Antitrust</b>	3	0.0	15.0	100.0
<b>Food &amp; Drug</b>	1	--	--	--
<b>Other Miscellaneous Offenses</b>	40	0.0	12.0	100.0

<sup>1</sup>Of 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 CATEGORY<sup>1</sup>  
2008 Post-Kimbrough/Gall Preliminary Data**

<b>PRIMARY OFFENSE</b>	<b>n</b>	<b>Median Sentence in Months</b>	<b>Median Decrease in Months From Guideline Minimum</b>	<b>Median Percent Decrease From Guideline Minimum</b>
<b>TOTAL</b>	<b>2,320</b>	<b>27.0</b>	<b>12.0</b>	<b>33.3</b>
<b>Murder</b>	2	--	--	--
<b>Manslaughter</b>	1	--	--	--
<b>Kidnapping/Hostage Taking</b>	3	252.0	70.0	30.0
<b>Sexual Abuse</b>	11	14.0	13.0	41.3
<b>Assault</b>	22	16.5	12.0	41.1
<b>Robbery</b>	46	40.0	13.5	24.1
<b>Arson</b>	2	--	--	--
<b>Drugs - Trafficking</b>	800	60.0	17.0	25.4
<b>Drugs - Communication Facility</b>	17	28.0	12.0	33.3
<b>Drugs - Simple Possession</b>	1	--	--	--
<b>Firearms</b>	310	26.5	12.0	29.6
<b>Burglary/B&amp;E</b>	1	--	--	--
<b>Auto Theft</b>	1	--	--	--
<b>Larceny</b>	41	0.0	8.0	100.0
<b>Fraud</b>	292	6.0	10.0	58.3
<b>Embezzlement</b>	21	0.0	9.0	99.3
<b>Forgery/Counterfeiting</b>	48	0.0	10.0	99.9
<b>Bribery</b>	13	12.0	12.0	56.8
<b>Tax</b>	39	0.0	12.0	100.0
<b>Money Laundering</b>	47	20.0	12.0	35.1
<b>Racketeering/Extortion</b>	28	49.0	12.0	21.7
<b>Gambling/Lottery</b>	7	0.0	10.0	100.0
<b>Civil Rights</b>	5	3.0	10.0	75.0
<b>Immigration</b>	284	24.0	10.0	27.8
<b>Pornography/Prostitution</b>	158	60.0	30.0	33.3
<b>Prison Offenses</b>	13	6.0	9.0	50.3
<b>Administration of Justice Offenses</b>	55	4.0	9.0	66.7
<b>Environmental/Wildlife</b>	6	0.0	8.0	100.0
<b>National Defense</b>	3	0.1	9.9	98.7
<b>Antitrust</b>	1	--	--	--
<b>Food &amp; Drug</b>	0	--	--	--
<b>Other Miscellaneous Offenses</b>	42	0.0	8.2	100.0

<sup>1</sup>Of the 26,901 cases, 2,449 were sentenced below the guideline range with *Booker* /18 U.S.C § 3553. Of these, 2,334 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 seven cases were also excluded from this table. Furthermore, two cases were excluded due to several logical criteria. Of the remaining 2,325 cases, five were excluded due to one or both of the following reasons: missing primary offense category (1) or missing sentence information (5). 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 CATEGORY<sup>1</sup>  
Fiscal Year 2005, Post-Booker - 2008, Pre-Kimbrough/Gall Preliminary Data**

<b>PRIMARY OFFENSE</b>	<b>n</b>	<b>Median Sentence in Months</b>	<b>Median Decrease in Months From Guideline Minimum</b>	<b>Median Percent Decrease From Guideline Minimum</b>
<b>TOTAL</b>	<b>12,414</b>	<b>27.0</b>	<b>12.0</b>	<b>33.3</b>
<b>Murder</b>	12	90.0	22.0	20.3
<b>Manslaughter</b>	17	18.0	12.0	40.0
<b>Kidnapping/Hostage Taking</b>	9	121.0	60.0	27.8
<b>Sexual Abuse</b>	63	36.0	17.0	34.8
<b>Assault</b>	107	12.0	10.0	42.9
<b>Robbery</b>	252	51.0	14.0	20.5
<b>Arson</b>	4	27.0	14.5	35.0
<b>Drugs - Trafficking</b>	4,340	60.0	19.0	23.4
<b>Drugs - Communication Facility</b>	102	25.5	13.5	33.3
<b>Drugs - Simple Possession</b>	22	3.9	6.1	66.4
<b>Firearms</b>	1,710	27.0	12.0	28.2
<b>Burglary/B&amp;E</b>	11	6.0	8.0	52.4
<b>Auto Theft</b>	12	6.5	8.0	57.9
<b>Larceny</b>	260	0.0	9.0	100.0
<b>Fraud</b>	1,559	5.3	10.0	66.7
<b>Embezzlement</b>	143	0.0	9.0	99.6
<b>Forgery/Counterfeiting</b>	215	4.0	8.0	75.0
<b>Bribery</b>	53	5.0	10.0	74.5
<b>Tax</b>	272	3.0	10.0	75.0
<b>Money Laundering</b>	247	18.0	12.0	47.4
<b>Racketeering/Extortion</b>	132	30.0	12.0	33.3
<b>Gambling/Lottery</b>	30	0.0	6.0	100.0
<b>Civil Rights</b>	16	6.0	12.0	86.2
<b>Immigration</b>	1,737	24.0	10.0	33.2
<b>Pornography/Prostitution</b>	544	48.0	25.0	33.3
<b>Prison Offenses</b>	51	10.0	8.0	35.1
<b>Administration of Justice Offenses</b>	234	6.0	10.0	66.4
<b>Environmental/Wildlife</b>	30	0.0	6.5	100.0
<b>National Defense</b>	10	34.5	34.0	36.4
<b>Antitrust</b>	5	6.0	7.0	50.0
<b>Food &amp; Drug</b>	7	0.0	10.0	100.0
<b>Other Miscellaneous Offenses</b>	208	0.0	10.0	100.0

<sup>1</sup>Of 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 CATEGORY<sup>1</sup>**  
**2008 Post-Kimbrough/Gall Preliminary Data**

<b>PRIMARY OFFENSE</b>	<b>n</b>	<b>Median Sentence in Months</b>	<b>Median Decrease in Months From Guideline Minimum</b>	<b>Median Percent Decrease From Guideline Minimum</b>
<b>TOTAL</b>	<b>229</b>	<b>21.0</b>	<b>7.0</b>	<b>33.3</b>
<b>Murder</b>	0	--	--	--
<b>Manslaughter</b>	0	--	--	--
<b>Kidnapping/Hostage Taking</b>	0	--	--	--
<b>Sexual Abuse</b>	0	--	--	--
<b>Assault</b>	5	12.0	10.0	77.9
<b>Robbery</b>	3	25.0	13.0	35.1
<b>Arson</b>	0	--	--	--
<b>Drugs - Trafficking</b>	65	60.0	12.0	29.3
<b>Drugs - Communication Facility</b>	1	--	--	--
<b>Drugs - Simple Possession</b>	1	--	--	--
<b>Firearms</b>	33	69.0	8.0	14.3
<b>Burglary/B&amp;E</b>	1	--	--	--
<b>Auto Theft</b>	0	--	--	--
<b>Larceny</b>	8	0.0	6.0	100.0
<b>Fraud</b>	29	12.0	6.0	43.2
<b>Embezzlement</b>	1	--	--	--
<b>Forgery/Counterfeiting</b>	5	5.0	6.0	66.7
<b>Bribery</b>	1	--	--	--
<b>Tax</b>	2	--	--	--
<b>Money Laundering</b>	5	0.0	6.0	100.0
<b>Racketeering/Extortion</b>	4	87.0	32.0	18.3
<b>Gambling/Lottery</b>	1	--	--	--
<b>Civil Rights</b>	0	--	--	--
<b>Immigration</b>	46	4.7	5.0	33.3
<b>Pornography/Prostitution</b>	5	60.0	27.0	50.0
<b>Prison Offenses</b>	0	--	--	--
<b>Administration of Justice Offenses</b>	6	1.5	5.5	96.3
<b>Environmental/Wildlife</b>	0	--	--	--
<b>National Defense</b>	0	--	--	--
<b>Antitrust</b>	0	--	--	--
<b>Food &amp; Drug</b>	0	--	--	--
<b>Other Miscellaneous Offenses</b>	7	0.0	6.0	100.0

<sup>1</sup>Of the 26,901 cases, 267 were otherwise sentenced below the guideline range. Of these, 233 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.

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 CATEGORY<sup>1</sup>  
Fiscal Year 2005, Post-Booker - 2008, Pre-Kimbrough/Gall Preliminary Data**

<b>PRIMARY OFFENSE</b>	<b>n</b>	<b>Median Sentence in Months</b>	<b>Median Decrease in Months From Guideline Minimum</b>	<b>Median Percent Decrease From Guideline Minimum</b>
<b>TOTAL</b>	<b>3,081</b>	<b>18.0</b>	<b>9.3</b>	<b>40.0</b>
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

<sup>1</sup>Of 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 CATEGORY<sup>1</sup>  
2008 Post-Kimbrough/Gall Preliminary Data**

<b>PRIMARY OFFENSE</b>	<b>n</b>	<b>Median Sentence in Months</b>	<b>Median Increase in Months From Guideline Maximum</b>	<b>Median Percent Increase From Guideline Maximum</b>
<b>TOTAL</b>	<b>111</b>	<b>65.0</b>	<b>13.0</b>	<b>29.4</b>
Murder	0	--	--	--
Manslaughter	2	--	--	--
Kidnapping/Hostage Taking	0	--	--	--
Sexual Abuse	1	--	--	--
Assault	3	60.0	8.0	31.4
Robbery	6	127.5	53.0	48.4
Arson	0	--	--	--
Drugs - Trafficking	15	162.0	36.0	35.0
Drugs - Communication Facility	0	--	--	--
Drugs - Simple Possession	0	--	--	--
Firearms	25	120.0	15.0	18.3
Burglary/B&E	0	--	--	--
Auto Theft	0	--	--	--
Larceny	3	37.0	16.0	76.2
Fraud	10	65.5	14.5	42.1
Embezzlement	0	--	--	--
Forgery/Counterfeiting	0	--	--	--
Bribery	0	--	--	--
Tax	1	--	--	--
Money Laundering	1	--	--	--
Racketeering/Extortion	1	--	--	--
Gambling/Lottery	0	--	--	--
Civil Rights	0	--	--	--
Immigration	31	30.0	6.0	25.0
Pornography/Prostitution	4	283.5	46.5	16.4
Prison Offenses	2	--	--	--
Administration of Justice Offenses	3	20.0	8.0	100.5
Environmental/Wildlife	0	--	--	--
National Defense	0	--	--	--
Antitrust	0	--	--	--
Food & Drug	0	--	--	--
Other Miscellaneous Offenses	3	36.0	6.0	20.0

<sup>1</sup>Of the 26,901 cases, 121 received an upward departure from the guideline range. Of these, 112 had complete guideline application information. One additional 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 12A

**UPWARD DEPARTURES FROM GUIDELINE RANGE: DEGREE OF  
INCREASE FOR OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY<sup>1</sup>**  
Fiscal Year 2005, Post-Booker - 2008, Pre-Kimbrough/Gall Preliminary Data

<b>PRIMARY OFFENSE</b>	<b>n</b>	<b>Median Sentence in Months</b>	<b>Median Increase in Months From Guideline Maximum</b>	<b>Median Percent Increase From Guideline Maximum</b>
<b>TOTAL</b>	<b>835</b>	<b>48.0</b>	<b>11.0</b>	<b>33.3</b>
<b>Murder</b>	11	300.0	105.0	77.8
<b>Manslaughter</b>	8	102.0	18.0	39.0
<b>Kidnapping/Hostage Taking</b>	1	--	--	--
<b>Sexual Abuse</b>	18	66.0	19.5	34.3
<b>Assault</b>	38	72.0	20.0	39.1
<b>Robbery</b>	27	168.0	49.0	48.8
<b>Arson</b>	5	120.0	36.0	42.9
<b>Drugs - Trafficking</b>	90	72.0	14.5	28.5
<b>Drugs - Communication Facility</b>	3	48.0	29.0	25.2
<b>Drugs - Simple Possession</b>	11	12.0	6.0	100.0
<b>Firearms</b>	137	77.0	14.0	27.0
<b>Burglary/B&amp;E</b>	0	--	--	--
<b>Auto Theft</b>	2	--	--	--
<b>Larceny</b>	12	39.0	7.0	34.0
<b>Fraud</b>	80	47.0	11.0	48.9
<b>Embezzlement</b>	0	--	--	--
<b>Forgery/Counterfeiting</b>	28	48.0	14.5	44.7
<b>Bribery</b>	0	--	--	--
<b>Tax</b>	1	--	--	--
<b>Money Laundering</b>	11	108.0	34.0	90.5
<b>Racketeering/Extortion</b>	15	96.0	15.0	31.7
<b>Gambling/Lottery</b>	1	--	--	--
<b>Civil Rights</b>	0	--	--	--
<b>Immigration</b>	257	18.0	6.0	28.6
<b>Pornography/Prostitution</b>	37	110.0	26.0	24.2
<b>Prison Offenses</b>	4	54.0	6.0	13.8
<b>Administration of Justice Offenses</b>	23	24.0	8.0	71.4
<b>Environmental/Wildlife</b>	0	--	--	--
<b>National Defense</b>	0	--	--	--
<b>Antitrust</b>	0	--	--	--
<b>Food &amp; Drug</b>	3	36.0	18.0	100.0
<b>Other Miscellaneous Offenses</b>	12	50.5	8.5	31.0

<sup>1</sup>Of 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 CATEGORY<sup>1</sup>  
2008 Post-Kimbrough/Gall Preliminary Data**

<b>PRIMARY OFFENSE</b>	<b>n</b>	<b>Median Sentence in Months</b>	<b>Median Increase in Months From Guideline Maximum</b>	<b>Median Percent Increase From Guideline Maximum</b>
<b>TOTAL</b>	<b>43</b>	<b>73.0</b>	<b>15.0</b>	<b>56.3</b>
Murder	0	--	--	--
Manslaughter	0	--	--	--
Kidnapping/Hostage Taking	0	--	--	--
Sexual Abuse	0	--	--	--
Assault	2	--	--	--
Robbery	1	--	--	--
Arson	0	--	--	--
Drugs - Trafficking	5	240.0	55.0	22.9
Drugs - Communication Facility	0	--	--	--
Drugs - Simple Possession	0	--	--	--
Firearms	8	120.0	42.5	44.2
Burglary/B&E	0	--	--	--
Auto Theft	0	--	--	--
Larceny	1	--	--	--
Fraud	2	--	--	--
Embezzlement	1	--	--	--
Forgery/Counterfeiting	0	--	--	--
Bribery	0	--	--	--
Tax	1	--	--	--
Money Laundering	0	--	--	--
Racketeering/Extortion	0	--	--	--
Gambling/Lottery	0	--	--	--
Civil Rights	0	--	--	--
Immigration	12	13.0	6.0	100.3
Pornography/Prostitution	6	188.0	52.5	61.5
Prison Offenses	0	--	--	--
Administration of Justice Offenses	2	--	--	--
Environmental/Wildlife	0	--	--	--
National Defense	0	--	--	--
Antitrust	0	--	--	--
Food & Drug	0	--	--	--
Other Miscellaneous Offenses	2	--	--	--

<sup>1</sup>Of the 26,901 cases, 51 received an upward departure from the guideline range with *Booker* /18 U.S.C § 3553. Of these, 45 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 CATEGORY<sup>1</sup>  
Fiscal Year 2005, Post-Booker - 2008, Pre-Kimbrough/Gall Preliminary Data**

<b>PRIMARY OFFENSE</b>	<b>n</b>	<b>Median Sentence in Months</b>	<b>Median Increase in Months From Guideline Maximum</b>	<b>Median Percent Increase From Guideline Maximum</b>
<b>TOTAL</b>	<b>358</b>	<b>72.0</b>	<b>18.0</b>	<b>38.8</b>
<b>Murder</b>	4	276.0	84.5	56.0
<b>Manslaughter</b>	7	96.0	21.0	25.0
<b>Kidnapping/Hostage Taking</b>	0	--	--	--
<b>Sexual Abuse</b>	14	138.0	51.5	48.7
<b>Assault</b>	9	115.0	28.0	72.8
<b>Robbery</b>	15	96.0	18.0	23.1
<b>Arson</b>	4	93.0	17.0	19.6
<b>Drugs - Trafficking</b>	33	108.0	31.0	37.1
<b>Drugs - Communication Facility</b>	2	--	--	--
<b>Drugs - Simple Possession</b>	4	13.5	5.5	85.7
<b>Firearms</b>	67	63.0	15.0	33.3
<b>Burglary/B&amp;E</b>	2	--	--	--
<b>Auto Theft</b>	1	--	--	--
<b>Larceny</b>	6	54.0	13.5	29.0
<b>Fraud</b>	65	60.0	18.0	53.8
<b>Embezzlement</b>	1	--	--	--
<b>Forgery/Counterfeiting</b>	7	78.0	30.0	64.7
<b>Bribery</b>	0	--	--	--
<b>Tax</b>	3	30.0	9.0	29.7
<b>Money Laundering</b>	3	121.0	7.0	11.1
<b>Racketeering/Extortion</b>	5	200.0	46.0	23.5
<b>Gambling/Lottery</b>	0	--	--	--
<b>Civil Rights</b>	0	--	--	--
<b>Immigration</b>	58	40.0	11.0	33.3
<b>Pornography/Prostitution</b>	22	180.0	48.0	36.7
<b>Prison Offenses</b>	1	--	--	--
<b>Administration of Justice Offenses</b>	15	36.0	12.0	71.4
<b>Environmental/Wildlife</b>	1	--	--	--
<b>National Defense</b>	0	--	--	--
<b>Antitrust</b>	0	--	--	--
<b>Food &amp; Drug</b>	0	--	--	--
<b>Other Miscellaneous Offenses</b>	9	27.0	6.0	23.9

<sup>1</sup>Of 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 CATEGORY<sup>1</sup>  
2008 Post-Kimbrough/Gall Preliminary Data**

<b>PRIMARY OFFENSE</b>	<b>n</b>	<b>Median Sentence in Months</b>	<b>Median Increase in Months From Guideline Maximum</b>	<b>Median Percent Increase From Guideline Maximum</b>
<b>TOTAL</b>	<b>218</b>	<b>48.0</b>	<b>12.0</b>	<b>42.9</b>
<b>Murder</b>	1	--	--	--
<b>Manslaughter</b>	0	--	--	--
<b>Kidnapping/Hostage Taking</b>	0	--	--	--
<b>Sexual Abuse</b>	6	120.0	15.5	30.9
<b>Assault</b>	5	120.0	33.0	41.2
<b>Robbery</b>	4	132.0	30.5	31.6
<b>Arson</b>	0	--	--	--
<b>Drugs - Trafficking</b>	20	96.0	15.5	17.0
<b>Drugs - Communication Facility</b>	1	--	--	--
<b>Drugs - Simple Possession</b>	3	8.0	2.0	33.3
<b>Firearms</b>	34	101.0	16.0	25.0
<b>Burglary/B&amp;E</b>	1	--	--	--
<b>Auto Theft</b>	1	--	--	--
<b>Larceny</b>	8	54.5	16.0	45.6
<b>Fraud</b>	21	48.0	9.0	50.0
<b>Embezzlement</b>	0	--	--	--
<b>Forgery/Counterfeiting</b>	3	60.0	30.0	100.0
<b>Bribery</b>	0	--	--	--
<b>Tax</b>	2	--	--	--
<b>Money Laundering</b>	1	--	--	--
<b>Racketeering/Extortion</b>	6	132.0	55.5	97.2
<b>Gambling/Lottery</b>	1	--	--	--
<b>Civil Rights</b>	0	--	--	--
<b>Immigration</b>	82	18.0	6.5	67.7
<b>Pornography/Prostitution</b>	8	140.0	27.5	25.3
<b>Prison Offenses</b>	3	24.0	12.0	33.3
<b>Administration of Justice Offenses</b>	4	104.5	22.5	51.7
<b>Environmental/Wildlife</b>	1	--	--	--
<b>National Defense</b>	0	--	--	--
<b>Antitrust</b>	0	--	--	--
<b>Food &amp; Drug</b>	0	--	--	--
<b>Other Miscellaneous Offenses</b>	2	--	--	--

<sup>1</sup>Of the 26,901 cases, 226 were sentenced above the guideline range with *Booker* /18 U.S.C § 3553. Of these, 218 had complete guideline application 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.

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



Table 14A

**ABOVE GUIDELINE RANGE WITH *BOOKER* /18 U.S.C. § 3553: DEGREE  
OF INCREASE FOR OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY<sup>1</sup>  
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
<b>TOTAL</b>	<b>1,272</b>	<b>48.0</b>	<b>12.0</b>	<b>46.3</b>
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

<sup>1</sup>Of 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 CATEGORY<sup>1</sup>**  
**2008 Post-Kimbrough/Gall Preliminary Data**

<b>PRIMARY OFFENSE</b>	<b>n</b>	<b>Median Sentence in Months</b>	<b>Median Increase in Months From Guideline Maximum</b>	<b>Median Percent Increase From Guideline Maximum</b>
<b>TOTAL</b>	<b>29</b>	<b>63.0</b>	<b>12.0</b>	<b>23.1</b>
<b>Murder</b>	0	--	--	--
<b>Manslaughter</b>	0	--	--	--
<b>Kidnapping/Hostage Taking</b>	0	--	--	--
<b>Sexual Abuse</b>	0	--	--	--
<b>Assault</b>	0	--	--	--
<b>Robbery</b>	2	--	--	--
<b>Arson</b>	0	--	--	--
<b>Drugs - Trafficking</b>	10	148.0	15.0	14.6
<b>Drugs - Communication Facility</b>	0	--	--	--
<b>Drugs - Simple Possession</b>	2	--	--	--
<b>Firearms</b>	6	180.0	33.5	33.9
<b>Burglary/B&amp;E</b>	0	--	--	--
<b>Auto Theft</b>	0	--	--	--
<b>Larceny</b>	2	--	--	--
<b>Fraud</b>	2	--	--	--
<b>Embezzlement</b>	0	--	--	--
<b>Forgery/Counterfeiting</b>	0	--	--	--
<b>Bribery</b>	0	--	--	--
<b>Tax</b>	0	--	--	--
<b>Money Laundering</b>	0	--	--	--
<b>Racketeering/Extortion</b>	0	--	--	--
<b>Gambling/Lottery</b>	0	--	--	--
<b>Civil Rights</b>	0	--	--	--
<b>Immigration</b>	4	33.0	5.5	23.3
<b>Pornography/Prostitution</b>	0	--	--	--
<b>Prison Offenses</b>	0	--	--	--
<b>Administration of Justice Offenses</b>	1	--	--	--
<b>Environmental/Wildlife</b>	0	--	--	--
<b>National Defense</b>	0	--	--	--
<b>Antitrust</b>	0	--	--	--
<b>Food &amp; Drug</b>	0	--	--	--
<b>Other Miscellaneous Offenses</b>	0	--	--	--

<sup>1</sup>Of the 26,901 cases, 38 were otherwise sentenced above the guideline range. Of these, 35 had complete guideline application information. Six 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 CATEGORY<sup>1</sup>**  
**Fiscal Year 2005, Post-Booker - 2008, Pre-Kimbrough/Gall Preliminary Data**

<b>PRIMARY OFFENSE</b>	<b>n</b>	<b>Median Sentence in Months</b>	<b>Median Increase in Months From Guideline Maximum</b>	<b>Median Percent Increase From Guideline Maximum</b>
<b>TOTAL</b>	<b>425</b>	<b>55.0</b>	<b>12.0</b>	<b>33.3</b>
<b>Murder</b>	5	240.0	72.0	42.9
<b>Manslaughter</b>	5	41.0	14.0	41.2
<b>Kidnapping/Hostage Taking</b>	0	--	--	--
<b>Sexual Abuse</b>	7	180.0	37.0	30.0
<b>Assault</b>	16	98.0	27.0	42.3
<b>Robbery</b>	11	168.0	27.0	23.7
<b>Arson</b>	3	84.0	13.0	18.3
<b>Drugs - Trafficking</b>	72	77.0	15.5	26.7
<b>Drugs - Communication Facility</b>	4	29.1	2.1	21.0
<b>Drugs - Simple Possession</b>	8	24.0	12.0	100.0
<b>Firearms</b>	69	72.0	15.0	27.7
<b>Burglary/B&amp;E</b>	1	--	--	--
<b>Auto Theft</b>	3	36.0	6.0	50.4
<b>Larceny</b>	21	36.0	12.0	50.0
<b>Fraud</b>	56	38.5	7.0	31.9
<b>Embezzlement</b>	0	--	--	--
<b>Forgery/Counterfeiting</b>	8	65.5	31.5	55.6
<b>Bribery</b>	0	--	--	--
<b>Tax</b>	2	--	--	--
<b>Money Laundering</b>	3	56.9	15.9	38.7
<b>Racketeering/Extortion</b>	9	120.0	42.0	53.8
<b>Gambling/Lottery</b>	0	--	--	--
<b>Civil Rights</b>	0	--	--	--
<b>Immigration</b>	94	24.0	6.0	25.5
<b>Pornography/Prostitution</b>	14	180.0	59.0	45.8
<b>Prison Offenses</b>	5	50.0	5.0	12.5
<b>Administration of Justice Offenses</b>	5	12.0	4.0	50.4
<b>Environmental/Wildlife</b>	0	--	--	--
<b>National Defense</b>	0	--	--	--
<b>Antitrust</b>	0	--	--	--
<b>Food &amp; Drug</b>	0	--	--	--
<b>Other Miscellaneous Offenses</b>	4	30.0	15.0	91.7

<sup>1</sup>Of 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.

# 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 of Conviction 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 also are excluded. In most cases for which the exact term is unknown, the Judgment of Conviction 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 Pre-sentence 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 of Conviction 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 of Conviction 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 of Conviction order. Unless otherwise indicated, the sentencing year is defined as the fiscal year in which the offender was sentenced.