

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



**September 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 June 30, 2008, and which were received, coded, and edited at the U.S. Sentencing Commission by September 8, 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>38,612</b>	<b>100.0</b>
<b>CASES SENTENCED WITHIN GUIDELINE RANGE</b>	<b>125,537</b>	<b>61.3</b>	<b>22,963</b>	<b>59.5</b>
<b>CASES SENTENCED ABOVE GUIDELINE RANGE</b>	<b>3,218</b>	<b>1.6</b>	<b>636</b>	<b>1.6</b>
<b>DEPARTURE ABOVE GUIDELINE RANGE</b>	<b>1,286</b>	<b>0.6</b>	<b>244</b>	<b>0.6</b>
Upward Departure From Guideline Range <sup>2</sup>	898	0.4	173	0.4
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	388	0.2	71	0.2
<b>OTHERWISE ABOVE GUIDELINE RANGE</b>	<b>1,932</b>	<b>1.0</b>	<b>392</b>	<b>1.0</b>
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	1,384	0.7	328	0.8
All Remaining Cases Above Guideline Range <sup>5</sup>	548	0.3	64	0.2
<b>GOVERNMENT SPONSORED BELOW RANGE<sup>6</sup></b>	<b>50,927</b>	<b>24.8</b>	<b>9,689</b>	<b>25.1</b>
§5K1.1 Substantial Assistance Departure	29,579	14.4	5,258	13.6
§5K3.1 Early Disposition Program Departure	14,720	7.2	2,893	7.5
Other Government Sponsored Below Range	6,628	3.2	1,538	4.0
<b>NON-GOVERNMENT SPONSORED BELOW RANGE</b>	<b>25,148</b>	<b>12.2</b>	<b>5,324</b>	<b>13.7</b>
<b>DEPARTURE BELOW GUIDELINE RANGE</b>	<b>8,244</b>	<b>4.0</b>	<b>1,281</b>	<b>3.3</b>
Downward Departure From Guideline Range <sup>2</sup>	5,162	2.5	786	2.0
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	3,082	1.5	495	1.3
<b>OTHERWISE BELOW GUIDELINE RANGE</b>	<b>16,904</b>	<b>8.2</b>	<b>4,043</b>	<b>10.4</b>
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	13,338	6.5	3,647	9.4
All Remaining Cases Below Guideline Range <sup>5</sup>	3,566	1.7	396	1.0

<sup>1</sup>The cases in this table described as Post-*Kimbrough/Gall* reflect the 39,477 cases sentenced subsequent to the date of *Kimbrough v. United States* and *Gall v. United States* (December 10, 2007), through June 30, 2008 with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by September 8, 2008. Of these, 865 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 reason. 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>225</b>	<b>100.0</b>
<b>CASES SENTENCED WITHIN GUIDELINE RANGE</b>	<b>653</b>	<b>47.8</b>	<b>87</b>	<b>38.7</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>94</b>	<b>41.8</b>
§5K1.1 Substantial Assistance Departure	366	26.8	80	35.6
§5K3.1 Early Disposition Program Departure	0	0.0	0	0.0
Other Government Sponsored Below Range	122	8.9	14	6.2
<b>NON-GOVERNMENT SPONSORED BELOW RANGE</b>	<b>194</b>	<b>14.1</b>	<b>44</b>	<b>19.5</b>
<b>DEPARTURE BELOW GUIDELINE RANGE</b>	<b>58</b>	<b>4.2</b>	<b>21</b>	<b>9.3</b>
Downward Departure From Guideline Range <sup>2</sup>	18	1.3	5	2.2
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	40	2.9	16	7.1
<b>OTHERWISE BELOW GUIDELINE RANGE</b>	<b>136</b>	<b>9.9</b>	<b>23</b>	<b>10.2</b>
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	104	7.6	19	8.4
All Remaining Cases Below Guideline Range <sup>5</sup>	32	2.3	4	1.8

<sup>1</sup>The cases in this table described as Post-*Kimrough/Gall* reflect the 225 cases sentenced in the D.C. Circuit subsequent to the date of *Kimrough v. United States* and *Gall v. United States* (December 10, 2007), through June 30, 2008 with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by September 8, 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 December 9, 2007. Of these, 14 cases were excluded because information was missing from the submitted documents that prevented the comparison of the sentence and the guideline range. Descriptions of variables used in this table are provided in Appendix A.

<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>	
	<u>n</u>	<u>%</u>	<u>n</u>	<u>%</u>
<b>TOTAL CASES</b>	<b>4,962</b>	<b>100.0</b>	<b>839</b>	<b>100.0</b>
<b>CASES SENTENCED WITHIN GUIDELINE RANGE</b>	<b>3,327</b>	<b>67.0</b>	<b>512</b>	<b>61.0</b>
<b>CASES SENTENCED ABOVE GUIDELINE RANGE</b>	<b>80</b>	<b>1.6</b>	<b>12</b>	<b>1.5</b>
<b>DEPARTURE ABOVE GUIDELINE RANGE</b>	<b>27</b>	<b>0.6</b>	<b>5</b>	<b>0.6</b>
Upward Departure From Guideline Range <sup>2</sup>	19	0.4	5	0.6
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>7</b>	<b>0.9</b>
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	41	0.8	3	0.4
All Remaining Cases Above Guideline Range <sup>5</sup>	12	0.2	4	0.5
<b>GOVERNMENT SPONSORED BELOW RANGE<sup>6</sup></b>	<b>713</b>	<b>14.3</b>	<b>137</b>	<b>16.4</b>
§5K1.1 Substantial Assistance Departure	582	11.7	98	11.7
§5K3.1 Early Disposition Program Departure	0	0.0	4	0.5
Other Government Sponsored Below Range	131	2.6	35	4.2
<b>NON-GOVERNMENT SPONSORED BELOW RANGE</b>	<b>842</b>	<b>17.0</b>	<b>178</b>	<b>21.3</b>
<b>DEPARTURE BELOW GUIDELINE RANGE</b>	<b>263</b>	<b>5.3</b>	<b>44</b>	<b>5.3</b>
Downward Departure From Guideline Range <sup>2</sup>	183	3.7	24	2.9
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	80	1.6	20	2.4
<b>OTHERWISE BELOW GUIDELINE RANGE</b>	<b>579</b>	<b>11.7</b>	<b>134</b>	<b>16.0</b>
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	460	9.3	123	14.7
All Remaining Cases Below Guideline Range <sup>5</sup>	119	2.4	11	1.3

<sup>1</sup>The cases in this table described as *Post-Kimbrough/Gall* reflect the 844 cases sentenced in the First Circuit subsequent to the date of *Kimbrough v. United States* and *Gall v. United States* (December 10, 2007), through June 30, 2008 with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by September 8, 2008. Of these, five cases were excluded because information was missing from the submitted documents that prevented the comparison of the sentence and the guideline range. The cases in this table described as *Post-Booker* reflect the 5,020 cases sentenced in the First Circuit after the date of *United States v. Booker* (January 12, 2005) through December 9, 2007. Of these, 58 cases were excluded for the above reason. Descriptions of variables used in this table are provided in Appendix A.

<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>2,255</b>	<b>100.0</b>
<b>CASES SENTENCED WITHIN GUIDELINE RANGE</b>	<b>6,641</b>	<b>50.4</b>	<b>1,003</b>	<b>44.5</b>
<b>CASES SENTENCED ABOVE GUIDELINE RANGE</b>	<b>127</b>	<b>0.9</b>	<b>15</b>	<b>0.6</b>
<b>DEPARTURE ABOVE GUIDELINE RANGE</b>	<b>57</b>	<b>0.4</b>	<b>5</b>	<b>0.2</b>
Upward Departure From Guideline Range <sup>2</sup>	39	0.3	3	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>10</b>	<b>0.4</b>
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	41	0.3	7	0.3
All Remaining Cases Above Guideline Range <sup>5</sup>	29	0.2	3	0.1
<b>GOVERNMENT SPONSORED BELOW RANGE<sup>6</sup></b>	<b>3,199</b>	<b>24.3</b>	<b>536</b>	<b>23.8</b>
§5K1.1 Substantial Assistance Departure	2,856	21.7	469	20.8
§5K3.1 Early Disposition Program Departure	3	0.0	0	0.0
Other Government Sponsored Below Range	340	2.6	67	3.0
<b>NON-GOVERNMENT SPONSORED BELOW RANGE</b>	<b>3,212</b>	<b>24.3</b>	<b>701</b>	<b>31.1</b>
<b>DEPARTURE BELOW GUIDELINE RANGE</b>	<b>1,186</b>	<b>9.0</b>	<b>183</b>	<b>8.1</b>
Downward Departure From Guideline Range <sup>2</sup>	675	5.1	85	3.8
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	511	3.9	98	4.3
<b>OTHERWISE BELOW GUIDELINE RANGE</b>	<b>2,026</b>	<b>15.3</b>	<b>518</b>	<b>23.0</b>
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	1,585	12.0	493	21.9
All Remaining Cases Below Guideline Range <sup>5</sup>	441	3.3	25	1.1

<sup>1</sup>The cases in this table described as *Post-Kimbrough/Gall* reflect the 2,275 cases sentenced in the Second Circuit subsequent to the date of *Kimbrough v. United States* and *Gall v. United States* (December 10, 2007), through June 30, 2008 with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by September 8, 2008. Of these, 20 cases were excluded because information was missing from the submitted documents that prevented the comparison of the sentence and the guideline range. The cases in this table described as *Post-Booker* reflect the 13,368 cases sentenced in the Second Circuit after the date of *United States v. Booker* (January 12, 2005) through December 9, 2007. Of these, 189 cases were excluded for the above reason. Descriptions of variables used in this table are provided in Appendix A.

<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>1,664</b>	<b>100.0</b>
<b>CASES SENTENCED WITHIN GUIDELINE RANGE</b>	<b>4,778</b>	<b>52.8</b>	<b>867</b>	<b>52.1</b>
<b>CASES SENTENCED ABOVE GUIDELINE RANGE</b>	<b>112</b>	<b>1.3</b>	<b>23</b>	<b>1.4</b>
<b>DEPARTURE ABOVE GUIDELINE RANGE</b>	<b>33</b>	<b>0.4</b>	<b>13</b>	<b>0.8</b>
Upward Departure From Guideline Range <sup>2</sup>	17	0.2	11	0.7
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	16	0.2	2	0.1
<b>OTHERWISE ABOVE GUIDELINE RANGE</b>	<b>79</b>	<b>0.9</b>	<b>10</b>	<b>0.6</b>
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	61	0.7	10	0.6
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>465</b>	<b>27.9</b>
§5K1.1 Substantial Assistance Departure	2,455	27.1	443	26.6
§5K3.1 Early Disposition Program Departure	0	0.0	0	0.0
Other Government Sponsored Below Range	159	1.8	22	1.3
<b>NON-GOVERNMENT SPONSORED BELOW RANGE</b>	<b>1,544</b>	<b>17.0</b>	<b>309</b>	<b>18.5</b>
<b>DEPARTURE BELOW GUIDELINE RANGE</b>	<b>404</b>	<b>4.4</b>	<b>56</b>	<b>3.3</b>
Downward Departure From Guideline Range <sup>2</sup>	237	2.6	32	1.9
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	167	1.8	24	1.4
<b>OTHERWISE BELOW GUIDELINE RANGE</b>	<b>1,140</b>	<b>12.6</b>	<b>253</b>	<b>15.2</b>
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	935	10.3	225	13.5
All Remaining Cases Below Guideline Range <sup>5</sup>	205	2.3	28	1.7

<sup>1</sup>The cases in this table described as *Post-Kimbrough/Gall* reflect the 1,665 cases sentenced in the Third Circuit subsequent to the date of *Kimbrough v. United States* and *Gall v. United States* (December 10, 2007), through June 30, 2008 with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by September 8, 2008. Of these, one case was excluded because information was missing from the submitted documents that prevented the comparison of the sentence and the guideline range. The cases in this table described as *Post-Booker* reflect the 9,147 cases sentenced in the Third Circuit after the date of *United States v. Booker* (January 12, 2005) through December 9, 2007. Of these, 99 cases were excluded for the above reason. Descriptions of variables used in this table are provided in Appendix A.

<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>3,436</b>	<b>100.0</b>
<b>CASES SENTENCED WITHIN GUIDELINE RANGE</b>	<b>12,641</b>	<b>69.7</b>	<b>2,284</b>	<b>66.5</b>
<b>CASES SENTENCED ABOVE GUIDELINE RANGE</b>	<b>276</b>	<b>1.6</b>	<b>77</b>	<b>2.3</b>
<b>DEPARTURE ABOVE GUIDELINE RANGE</b>	<b>138</b>	<b>0.8</b>	<b>43</b>	<b>1.3</b>
Upward Departure From Guideline Range <sup>2</sup>	92	0.5	24	0.7
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	46	0.3	19	0.6
<b>OTHERWISE ABOVE GUIDELINE RANGE</b>	<b>138</b>	<b>0.8</b>	<b>34</b>	<b>1.0</b>
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	103	0.6	31	0.9
All Remaining Cases Above Guideline Range <sup>5</sup>	35	0.2	3	0.1
<b>GOVERNMENT SPONSORED BELOW RANGE<sup>6</sup></b>	<b>3,370</b>	<b>18.6</b>	<b>638</b>	<b>18.6</b>
§5K1.1 Substantial Assistance Departure	3,173	17.5	588	17.1
§5K3.1 Early Disposition Program Departure	2	0.0	0	0.0
Other Government Sponsored Below Range	195	1.1	50	1.5
<b>NON-GOVERNMENT SPONSORED BELOW RANGE</b>	<b>1,843</b>	<b>10.2</b>	<b>437</b>	<b>12.7</b>
<b>DEPARTURE BELOW GUIDELINE RANGE</b>	<b>553</b>	<b>3.1</b>	<b>90</b>	<b>2.6</b>
Downward Departure From Guideline Range <sup>2</sup>	319	1.8	61	1.8
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	234	1.3	29	0.8
<b>OTHERWISE BELOW GUIDELINE RANGE</b>	<b>1,290</b>	<b>7.1</b>	<b>347</b>	<b>10.1</b>
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	1,019	5.6	312	9.1
All Remaining Cases Below Guideline Range <sup>5</sup>	271	1.5	35	1.0

<sup>1</sup>The cases in this table described as *Post-Kimbrough/Gall* reflect the 3,607 cases sentenced in the Fourth Circuit subsequent to the date of *Kimbrough v. United States* and *Gall v. United States* (December 10, 2007), through June 30, 2008 with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by September 8, 2008. Of these, 171 cases were excluded because information was missing from the submitted documents that prevented the comparison of the sentence and the guideline range. The cases in this table described as *Post-Booker* reflect the 19,440 cases sentenced in the Fourth Circuit after the date of *United States v. Booker* (January 12, 2005) through December 9, 2007. Of these, 1,310 cases were excluded for the above reason. Descriptions of variables used in this table are provided in Appendix A.

<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>8,962</b>	<b>100.0</b>
<b>CASES SENTENCED WITHIN GUIDELINE RANGE</b>	<b>32,591</b>	<b>72.4</b>	<b>6,290</b>	<b>70.2</b>
<b>CASES SENTENCED ABOVE GUIDELINE RANGE</b>	<b>859</b>	<b>1.9</b>	<b>176</b>	<b>2.0</b>
<b>DEPARTURE ABOVE GUIDELINE RANGE</b>	<b>318</b>	<b>0.7</b>	<b>61</b>	<b>0.7</b>
Upward Departure From Guideline Range <sup>2</sup>	218	0.5	44	0.5
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	100	0.2	17	0.2
<b>OTHERWISE ABOVE GUIDELINE RANGE</b>	<b>541</b>	<b>1.2</b>	<b>115</b>	<b>1.3</b>
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	415	0.9	97	1.1
All Remaining Cases Above Guideline Range <sup>5</sup>	126	0.3	18	0.2
<b>GOVERNMENT SPONSORED BELOW RANGE<sup>6</sup></b>	<b>8,300</b>	<b>18.4</b>	<b>1,869</b>	<b>20.9</b>
§5K1.1 Substantial Assistance Departure	3,650	8.1	699	7.8
§5K3.1 Early Disposition Program Departure	3,174	7.0	672	7.5
Other Government Sponsored Below Range	1,476	3.3	498	5.6
<b>NON-GOVERNMENT SPONSORED BELOW RANGE</b>	<b>3,290</b>	<b>7.4</b>	<b>627</b>	<b>7.0</b>
<b>DEPARTURE BELOW GUIDELINE RANGE</b>	<b>1,236</b>	<b>2.8</b>	<b>215</b>	<b>2.4</b>
Downward Departure From Guideline Range <sup>2</sup>	1,021	2.3	198	2.2
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	215	0.5	17	0.2
<b>OTHERWISE BELOW GUIDELINE RANGE</b>	<b>2,054</b>	<b>4.6</b>	<b>412</b>	<b>4.6</b>
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	1,622	3.6	354	4.0
All Remaining Cases Below Guideline Range <sup>5</sup>	432	1.0	58	0.6

<sup>1</sup>The cases in this table described as *Post-Kimbrough/Gall* reflect the 9,007 cases sentenced in the Fifth Circuit subsequent to the date of *Kimbrough v. United States* and *Gall v. United States* (December 10, 2007), through June 30, 2008 with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by September 8, 2008. Of these, 45 cases were excluded because information was missing from the submitted documents that prevented the comparison of the sentence and the guideline range. The cases in this table described as *Post-Booker* reflect the 45,370 cases sentenced in the Fifth Circuit after the date of *United States v. Booker* (January 12, 2005) through December 9, 2007. Of these, 330 cases were excluded for the above reason. Descriptions of variables used in this table are provided in Appendix A.

<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>2,728</b>	<b>100.0</b>
<b>CASES SENTENCED WITHIN GUIDELINE RANGE</b>	<b>8,631</b>	<b>56.8</b>	<b>1,464</b>	<b>53.7</b>
<b>CASES SENTENCED ABOVE GUIDELINE RANGE</b>	<b>201</b>	<b>1.3</b>	<b>51</b>	<b>1.9</b>
<b>DEPARTURE ABOVE GUIDELINE RANGE</b>	<b>70</b>	<b>0.5</b>	<b>21</b>	<b>0.8</b>
Upward Departure From Guideline Range <sup>2</sup>	43	0.3	14	0.5
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	27	0.2	7	0.3
<b>OTHERWISE ABOVE GUIDELINE RANGE</b>	<b>131</b>	<b>0.8</b>	<b>30</b>	<b>1.1</b>
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	95	0.6	22	0.8
All Remaining Cases Above Guideline Range <sup>5</sup>	36	0.2	8	0.3
<b>GOVERNMENT SPONSORED BELOW RANGE<sup>6</sup></b>	<b>4,158</b>	<b>27.4</b>	<b>756</b>	<b>27.6</b>
§5K1.1 Substantial Assistance Departure	3,857	25.4	691	25.3
§5K3.1 Early Disposition Program Departure	3	0.0	1	0.0
Other Government Sponsored Below Range	298	2.0	64	2.3
<b>NON-GOVERNMENT SPONSORED BELOW RANGE</b>	<b>2,213</b>	<b>14.5</b>	<b>457</b>	<b>16.7</b>
<b>DEPARTURE BELOW GUIDELINE RANGE</b>	<b>612</b>	<b>4.0</b>	<b>102</b>	<b>3.7</b>
Downward Departure From Guideline Range <sup>2</sup>	324	2.1	45	1.6
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	288	1.9	57	2.1
<b>OTHERWISE BELOW GUIDELINE RANGE</b>	<b>1,601</b>	<b>10.5</b>	<b>355</b>	<b>13.0</b>
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	1,297	8.5	314	11.5
All Remaining Cases Below Guideline Range <sup>5</sup>	304	2.0	41	1.5

<sup>1</sup>The cases in this table described as *Post-Kimbrough/Gall* reflect the 2,747 cases sentenced in the Sixth Circuit subsequent to the date of *Kimbrough v. United States* and *Gall v. United States* (December 10, 2007), through June 30, 2008 with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by September 8, 2008. Of these, 19 cases were excluded because information was missing from the submitted documents that prevented the comparison of the sentence and the guideline range. The cases in this table described as *Post-Booker* reflect the 15,519 cases sentenced in the Sixth Circuit after the date of *United States v. Booker* (January 12, 2005) through December 9, 2007. Of these, 316 cases were excluded for the above reason. Descriptions of variables used in this table are provided in Appendix A.

<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>	
	<u>n</u>	<u>%</u>	<u>n</u>	<u>%</u>
<b>TOTAL CASES</b>	<b>8,729</b>	<b>100.0</b>	<b>1,517</b>	<b>100.0</b>
<b>CASES SENTENCED WITHIN GUIDELINE RANGE</b>	<b>5,451</b>	<b>62.4</b>	<b>832</b>	<b>54.8</b>
<b>CASES SENTENCED ABOVE GUIDELINE RANGE</b>	<b>119</b>	<b>1.4</b>	<b>27</b>	<b>1.8</b>
<b>DEPARTURE ABOVE GUIDELINE RANGE</b>	<b>46</b>	<b>0.5</b>	<b>6</b>	<b>0.4</b>
Upward Departure From Guideline Range <sup>2</sup>	25	0.3	3	0.2
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	21	0.2	3	0.2
<b>OTHERWISE ABOVE GUIDELINE RANGE</b>	<b>73</b>	<b>0.9</b>	<b>21</b>	<b>1.4</b>
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	50	0.6	16	1.1
All Remaining Cases Above Guideline Range <sup>5</sup>	23	0.3	5	0.3
<b>GOVERNMENT SPONSORED BELOW RANGE<sup>6</sup></b>	<b>1,707</b>	<b>19.5</b>	<b>329</b>	<b>21.7</b>
§5K1.1 Substantial Assistance Departure	1,521	17.4	287	18.9
§5K3.1 Early Disposition Program Departure	1	0.0	1	0.1
Other Government Sponsored Below Range	185	2.1	41	2.7
<b>NON-GOVERNMENT SPONSORED BELOW RANGE</b>	<b>1,452</b>	<b>16.7</b>	<b>329</b>	<b>21.6</b>
<b>DEPARTURE BELOW GUIDELINE RANGE</b>	<b>428</b>	<b>4.9</b>	<b>58</b>	<b>3.8</b>
Downward Departure From Guideline Range <sup>2</sup>	232	2.7	20	1.3
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	196	2.2	38	2.5
<b>OTHERWISE BELOW GUIDELINE RANGE</b>	<b>1,024</b>	<b>11.8</b>	<b>271</b>	<b>17.8</b>
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	783	9.0	246	16.2
All Remaining Cases Below Guideline Range <sup>5</sup>	241	2.8	25	1.6

<sup>1</sup>The cases in this table described as *Post-Kimbrough/Gall* reflect the 1,530 cases sentenced in the Seventh Circuit subsequent to the date of *Kimbrough v. United States* and *Gall v. United States* (December 10, 2007), through June 30, 2008 with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by September 8, 2008. Of these, 13 cases were excluded because information was missing from the submitted documents that prevented the comparison of the sentence and the guideline range. The cases in this table described as *Post-Booker* reflect the 8,805 cases sentenced in the Seventh Circuit after the date of *United States v. Booker* (January 12, 2005) through December 9, 2007. Of these, 76 cases were excluded for the above reason. Descriptions of variables used in this table are provided in Appendix A.

<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>3,053</b>	<b>100.0</b>
<b>CASES SENTENCED WITHIN GUIDELINE RANGE</b>	<b>9,708</b>	<b>66.2</b>	<b>1,977</b>	<b>64.8</b>
<b>CASES SENTENCED ABOVE GUIDELINE RANGE</b>	<b>239</b>	<b>1.6</b>	<b>55</b>	<b>1.9</b>
<b>DEPARTURE ABOVE GUIDELINE RANGE</b>	<b>106</b>	<b>0.7</b>	<b>29</b>	<b>1.0</b>
Upward Departure From Guideline Range <sup>2</sup>	73	0.5	21	0.7
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	33	0.2	8	0.3
<b>OTHERWISE ABOVE GUIDELINE RANGE</b>	<b>133</b>	<b>0.9</b>	<b>26</b>	<b>0.9</b>
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	98	0.7	20	0.7
All Remaining Cases Above Guideline Range <sup>5</sup>	35	0.2	6	0.2
<b>GOVERNMENT SPONSORED BELOW RANGE<sup>6</sup></b>	<b>2,739</b>	<b>18.7</b>	<b>557</b>	<b>18.2</b>
§5K1.1 Substantial Assistance Departure	2,210	15.1	449	14.7
§5K3.1 Early Disposition Program Departure	120	0.8	40	1.3
Other Government Sponsored Below Range	409	2.8	68	2.2
<b>NON-GOVERNMENT SPONSORED BELOW RANGE</b>	<b>1,988</b>	<b>13.6</b>	<b>464</b>	<b>15.2</b>
<b>DEPARTURE BELOW GUIDELINE RANGE</b>	<b>561</b>	<b>3.8</b>	<b>79</b>	<b>2.6</b>
Downward Departure From Guideline Range <sup>2</sup>	353	2.4	39	1.3
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	208	1.4	40	1.3
<b>OTHERWISE BELOW GUIDELINE RANGE</b>	<b>1,427</b>	<b>9.8</b>	<b>385</b>	<b>12.6</b>
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	1,153	7.9	353	11.6
All Remaining Cases Below Guideline Range <sup>5</sup>	274	1.9	32	1.0

<sup>1</sup>The cases in this table described as *Post-Kimbrough/Gall* reflect the 3,059 cases sentenced in the Eighth Circuit subsequent to the date of *Kimbrough v. United States* and *Gall v. United States* (December 10, 2007), through June 30, 2008 with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by September 8, 2008. Of these, six cases were excluded because information was missing from the submitted documents that prevented the comparison of the sentence and the guideline range. The cases in this table described as *Post-Booker* reflect the 14,753 cases sentenced in the Eighth Circuit after the date of *United States v. Booker* (January 12, 2005) through December 9, 2007. Of these, 79 cases were excluded for the above reason. Descriptions of variables used in this table are provided in Appendix A.

<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>7,075</b>	<b>100.0</b>
<b>CASES SENTENCED WITHIN GUIDELINE RANGE</b>	<b>17,413</b>	<b>45.6</b>	<b>3,211</b>	<b>45.4</b>
<b>CASES SENTENCED ABOVE GUIDELINE RANGE</b>	<b>622</b>	<b>1.7</b>	<b>87</b>	<b>1.3</b>
<b>DEPARTURE ABOVE GUIDELINE RANGE</b>	<b>318</b>	<b>0.9</b>	<b>40</b>	<b>0.6</b>
Upward Departure From Guideline Range <sup>2</sup>	253	0.7	34	0.5
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	65	0.2	6	0.1
<b>OTHERWISE ABOVE GUIDELINE RANGE</b>	<b>304</b>	<b>0.8</b>	<b>47</b>	<b>0.7</b>
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	165	0.4	35	0.5
All Remaining Cases Above Guideline Range <sup>5</sup>	139	0.4	12	0.2
<b>GOVERNMENT SPONSORED BELOW RANGE<sup>6</sup></b>	<b>15,627</b>	<b>40.9</b>	<b>2,909</b>	<b>41.2</b>
§5K1.1 Substantial Assistance Departure	3,946	10.3	658	9.3
§5K3.1 Early Disposition Program Departure	9,920	26.0	1,879	26.6
Other Government Sponsored Below Range	1,761	4.6	372	5.3
<b>NON-GOVERNMENT SPONSORED BELOW RANGE</b>	<b>4,560</b>	<b>12.0</b>	<b>868</b>	<b>12.3</b>
<b>DEPARTURE BELOW GUIDELINE RANGE</b>	<b>1,696</b>	<b>4.5</b>	<b>218</b>	<b>3.1</b>
Downward Departure From Guideline Range <sup>2</sup>	984	2.6	143	2.0
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	712	1.9	75	1.1
<b>OTHERWISE BELOW GUIDELINE RANGE</b>	<b>2,864</b>	<b>7.5</b>	<b>650</b>	<b>9.2</b>
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	2,071	5.4	554	7.8
All Remaining Cases Below Guideline Range <sup>5</sup>	793	2.1	96	1.4

<sup>1</sup>The cases in this table described as *Post-Kimbrough/Gall* reflect the 7,432 cases sentenced in the Ninth Circuit subsequent to the date of *Kimbrough v. United States* and *Gall v. United States* (December 10, 2007), through June 30, 2008 with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by September 8, 2008. Of these, 357 cases were excluded because information was missing from the submitted documents that prevented the comparison of the sentence and the guideline range. The cases in this table described as *Post-Booker* reflect the 41,897 cases sentenced in the Ninth Circuit after the date of *United States v. Booker* (January 12, 2005) through December 9, 2007. Of these, 3,675 cases were excluded for the above reason. Descriptions of variables used in this table are provided in Appendix A.

<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>3,025</b>	<b>100.0</b>
<b>CASES SENTENCED WITHIN GUIDELINE RANGE</b>	<b>9,762</b>	<b>62.3</b>	<b>1,834</b>	<b>60.6</b>
<b>CASES SENTENCED ABOVE GUIDELINE RANGE</b>	<b>201</b>	<b>1.4</b>	<b>50</b>	<b>1.6</b>
<b>DEPARTURE ABOVE GUIDELINE RANGE</b>	<b>51</b>	<b>0.4</b>	<b>10</b>	<b>0.3</b>
Upward Departure From Guideline Range <sup>2</sup>	43	0.3	7	0.2
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>40</b>	<b>1.3</b>
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	110	0.7	36	1.2
All Remaining Cases Above Guideline Range <sup>5</sup>	40	0.3	4	0.1
<b>GOVERNMENT SPONSORED BELOW RANGE<sup>6</sup></b>	<b>3,974</b>	<b>25.4</b>	<b>753</b>	<b>24.9</b>
§5K1.1 Substantial Assistance Departure	1,418	9.1	211	7.0
§5K3.1 Early Disposition Program Departure	1,330	8.5	281	9.3
Other Government Sponsored Below Range	1,226	7.8	261	8.6
<b>NON-GOVERNMENT SPONSORED BELOW RANGE</b>	<b>1,720</b>	<b>11.1</b>	<b>388</b>	<b>12.8</b>
<b>DEPARTURE BELOW GUIDELINE RANGE</b>	<b>694</b>	<b>4.5</b>	<b>119</b>	<b>3.9</b>
Downward Departure From Guideline Range <sup>2</sup>	479	3.1	79	2.6
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	215	1.4	40	1.3
<b>OTHERWISE BELOW GUIDELINE RANGE</b>	<b>1,026</b>	<b>6.6</b>	<b>269</b>	<b>8.9</b>
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	826	5.3	254	8.4
All Remaining Cases Below Guideline Range <sup>5</sup>	200	1.3	15	0.5

<sup>1</sup>The cases in this table described as Post-*Kimrough/Gall* reflect the 3,154 cases sentenced in the Tenth Circuit subsequent to the date of *Kimrough v. United States* and *Gall v. United States* (December 10, 2007), through June 30, 2008 with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by September 8, 2008. Of these, 129 cases were excluded because information was missing from the submitted documents that prevented the comparison of the sentence and the guideline range. The cases in this table described as Post-*Booker* reflect the 17,417 cases sentenced in the Tenth Circuit after the date of *United States v. Booker* (January 12, 2005) through December 9, 2007. Of these, 693 cases were excluded for the above reason. Descriptions of variables used in this table are provided in Appendix A.

<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>3,833</b>	<b>100.0</b>
<b>CASES SENTENCED WITHIN GUIDELINE RANGE</b>	<b>12,510</b>	<b>68.1</b>	<b>2,602</b>	<b>67.9</b>
<b>CASES SENTENCED ABOVE GUIDELINE RANGE</b>	<b>312</b>	<b>1.6</b>	<b>63</b>	<b>1.6</b>
<b>DEPARTURE ABOVE GUIDELINE RANGE</b>	<b>100</b>	<b>0.5</b>	<b>11</b>	<b>0.3</b>
Upward Departure From Guideline Range <sup>2</sup>	63	0.3	7	0.2
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	37	0.2	4	0.1
<b>OTHERWISE ABOVE GUIDELINE RANGE</b>	<b>212</b>	<b>1.1</b>	<b>52</b>	<b>1.3</b>
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	167	0.9	51	1.3
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>646</b>	<b>16.9</b>
§5K1.1 Substantial Assistance Departure	3,292	17.9	585	15.3
§5K3.1 Early Disposition Program Departure	34	0.2	15	0.4
Other Government Sponsored Below Range	203	1.1	46	1.2
<b>NON-GOVERNMENT SPONSORED BELOW RANGE</b>	<b>2,010</b>	<b>10.9</b>	<b>522</b>	<b>13.6</b>
<b>DEPARTURE BELOW GUIDELINE RANGE</b>	<b>481</b>	<b>2.6</b>	<b>96</b>	<b>2.5</b>
Downward Departure From Guideline Range <sup>2</sup>	292	1.6	55	1.4
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 <sup>3</sup>	189	1.0	41	1.1
<b>OTHERWISE BELOW GUIDELINE RANGE</b>	<b>1,529</b>	<b>8.3</b>	<b>426</b>	<b>11.1</b>
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 <sup>4</sup>	1,286	7.0	400	10.4
All Remaining Cases Below Guideline Range <sup>5</sup>	243	1.3	26	0.7

<sup>1</sup>The cases in this table described as *Post-Kimbrough/Gall* reflect the 3,932 cases sentenced in the Eleventh Circuit subsequent to the date of *Kimbrough v. United States* and *Gall v. United States* (December 10, 2007), through June 30, 2008 with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by September 8, 2008. Of these, 99 cases were excluded because information was missing from the submitted documents that prevented the comparison of the sentence and the guideline range. The cases in this table described as *Post-Booker* reflect the 20,692 cases sentenced in the Eleventh Circuit after the date of *United States v. Booker* (January 12, 2005) through December 9, 2007. Of these, 1,139 cases were excluded for the above reason. Descriptions of variables used in this table are provided in Appendix A.

<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>38,612</b>	<b>22,963</b>	<b>59.5</b>	<b>173</b>	<b>0.4</b>	<b>71</b>	<b>0.2</b>	<b>328</b>	<b>0.8</b>	<b>64</b>	<b>0.2</b>
<b>D.C. CIRCUIT</b>	<b>225</b>	<b>87</b>	<b>38.7</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	225	87	38.7	0	0.0	0	0.0	0	0.0	0	0.0
<b>FIRST CIRCUIT</b>	<b>839</b>	<b>512</b>	<b>61.0</b>	<b>5</b>	<b>0.6</b>	<b>0</b>	<b>0.0</b>	<b>3</b>	<b>0.4</b>	<b>4</b>	<b>0.5</b>
Maine	120	72	60.0	1	0.8	0	0.0	1	0.8	0	0.0
Massachusetts	253	132	52.2	2	0.8	0	0.0	1	0.4	1	0.4
New Hampshire	115	55	47.8	1	0.9	0	0.0	0	0.0	0	0.0
Puerto Rico	305	221	72.5	1	0.3	0	0.0	1	0.3	3	1.0
Rhode Island	46	32	69.6	0	0.0	0	0.0	0	0.0	0	0.0
<b>SECOND CIRCUIT</b>	<b>2,255</b>	<b>1,003</b>	<b>44.5</b>	<b>3</b>	<b>0.1</b>	<b>2</b>	<b>0.1</b>	<b>7</b>	<b>0.3</b>	<b>3</b>	<b>0.1</b>
Connecticut	227	84	37.0	1	0.4	0	0.0	2	0.9	0	0.0
New York											
Eastern	623	256	41.1	1	0.2	0	0.0	4	0.6	2	0.3
Northern	221	117	52.9	0	0.0	1	0.5	0	0.0	0	0.0
Southern	726	306	42.1	0	0.0	0	0.0	0	0.0	0	0.0
Western	362	203	56.1	0	0.0	1	0.3	1	0.3	1	0.3
Vermont	96	37	38.5	1	1.0	0	0.0	0	0.0	0	0.0
<b>THIRD CIRCUIT</b>	<b>1,664</b>	<b>867</b>	<b>52.1</b>	<b>11</b>	<b>0.7</b>	<b>2</b>	<b>0.1</b>	<b>10</b>	<b>0.6</b>	<b>0</b>	<b>0.0</b>
Delaware	48	27	56.3	0	0.0	0	0.0	1	2.1	0	0.0
New Jersey	532	269	50.6	2	0.4	0	0.0	4	0.8	0	0.0
Pennsylvania											
Eastern	415	173	41.7	2	0.5	1	0.2	4	1.0	0	0.0
Middle	360	195	54.2	5	1.4	0	0.0	0	0.0	0	0.0
Western	265	175	66.0	2	0.8	1	0.4	0	0.0	0	0.0
Virgin Islands	44	28	63.6	0	0.0	0	0.0	1	2.3	0	0.0
<b>FOURTH CIRCUIT</b>	<b>3,436</b>	<b>2,284</b>	<b>66.5</b>	<b>24</b>	<b>0.7</b>	<b>19</b>	<b>0.6</b>	<b>31</b>	<b>0.9</b>	<b>3</b>	<b>0.1</b>
Maryland	384	188	49.0	3	0.8	0	0.0	3	0.8	0	0.0
North Carolina											
Eastern	377	210	55.7	13	3.4	14	3.7	6	1.6	2	0.5
Middle	182	137	75.3	1	0.5	0	0.0	1	0.5	0	0.0
Western	421	276	65.6	2	0.5	1	0.2	3	0.7	0	0.0
South Carolina	701	475	67.8	0	0.0	0	0.0	3	0.4	0	0.0
Virginia											
Eastern	765	576	75.3	3	0.4	4	0.5	9	1.2	1	0.1
Western	210	145	69.0	2	1.0	0	0.0	1	0.5	0	0.0
West Virginia											
Northern	237	169	71.3	0	0.0	0	0.0	3	1.3	0	0.0
Southern	159	108	67.9	0	0.0	0	0.0	2	1.3	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>TOTAL</b>	<b>5,258</b>	<b>13.6</b>	<b>2,893</b>	<b>7.5</b>	<b>1,538</b>	<b>4.0</b>	<b>786</b>	<b>2.0</b>	<b>495</b>	<b>1.3</b>	<b>3,647</b>	<b>9.4</b>	<b>396</b>	<b>1.0</b>
<b>D.C. CIRCUIT</b>	<b>80</b>	<b>35.6</b>	<b>0</b>	<b>0.0</b>	<b>14</b>	<b>6.2</b>	<b>5</b>	<b>2.2</b>	<b>16</b>	<b>7.1</b>	<b>19</b>	<b>8.4</b>	<b>4</b>	<b>1.8</b>
District of Columbia	80	35.6	0	0.0	14	6.2	5	2.2	16	7.1	19	8.4	4	1.8
<b>FIRST CIRCUIT</b>	<b>98</b>	<b>11.7</b>	<b>4</b>	<b>0.5</b>	<b>35</b>	<b>4.2</b>	<b>24</b>	<b>2.9</b>	<b>20</b>	<b>2.4</b>	<b>123</b>	<b>14.7</b>	<b>11</b>	<b>1.3</b>
Maine	33	27.5	0	0.0	0	0.0	2	1.7	1	0.8	9	7.5	1	0.8
Massachusetts	19	7.5	0	0.0	19	7.5	11	4.3	9	3.6	57	22.5	2	0.8
New Hampshire	23	20.0	0	0.0	3	2.6	2	1.7	3	2.6	26	22.6	2	1.7
Puerto Rico	22	7.2	4	1.3	12	3.9	8	2.6	6	2.0	22	7.2	5	1.6
Rhode Island	1	2.2	0	0.0	1	2.2	1	2.2	1	2.2	9	19.6	1	2.2
<b>SECOND CIRCUIT</b>	<b>469</b>	<b>20.8</b>	<b>0</b>	<b>0.0</b>	<b>67</b>	<b>3.0</b>	<b>85</b>	<b>3.8</b>	<b>98</b>	<b>4.3</b>	<b>493</b>	<b>21.9</b>	<b>25</b>	<b>1.1</b>
Connecticut	38	16.7	0	0.0	9	4.0	21	9.3	26	11.5	45	19.8	1	0.4
New York														
Eastern	131	21.0	0	0.0	24	3.9	21	3.4	31	5.0	141	22.6	12	1.9
Northern	59	26.7	0	0.0	1	0.5	15	6.8	6	2.7	22	10.0	0	0.0
Southern	110	15.2	0	0.0	20	2.8	16	2.2	26	3.6	237	32.6	11	1.5
Western	107	29.6	0	0.0	9	2.5	2	0.6	3	0.8	34	9.4	1	0.3
Vermont	24	25.0	0	0.0	4	4.2	10	10.4	6	6.3	14	14.6	0	0.0
<b>THIRD CIRCUIT</b>	<b>443</b>	<b>26.6</b>	<b>0</b>	<b>0.0</b>	<b>22</b>	<b>1.3</b>	<b>32</b>	<b>1.9</b>	<b>24</b>	<b>1.4</b>	<b>225</b>	<b>13.5</b>	<b>28</b>	<b>1.7</b>
Delaware	4	8.3	0	0.0	0	0.0	1	2.1	0	0.0	8	16.7	7	14.6
New Jersey	156	29.3	0	0.0	5	0.9	8	1.5	3	0.6	80	15.0	5	0.9
Pennsylvania														
Eastern	141	34.0	0	0.0	4	1.0	5	1.2	14	3.4	67	16.1	4	1.0
Middle	106	29.4	0	0.0	9	2.5	8	2.2	1	0.3	31	8.6	5	1.4
Western	30	11.3	0	0.0	2	0.8	10	3.8	6	2.3	36	13.6	3	1.1
Virgin Islands	6	13.6	0	0.0	2	4.5	0	0.0	0	0.0	3	6.8	4	9.1
<b>FOURTH CIRCUIT</b>	<b>588</b>	<b>17.1</b>	<b>0</b>	<b>0.0</b>	<b>50</b>	<b>1.5</b>	<b>61</b>	<b>1.8</b>	<b>29</b>	<b>0.8</b>	<b>312</b>	<b>9.1</b>	<b>35</b>	<b>1.0</b>
Maryland	87	22.7	0	0.0	19	4.9	6	1.6	9	2.3	61	15.9	8	2.1
North Carolina														
Eastern	106	28.1	0	0.0	2	0.5	2	0.5	3	0.8	18	4.8	1	0.3
Middle	30	16.5	0	0.0	0	0.0	1	0.5	0	0.0	12	6.6	0	0.0
Western	107	25.4	0	0.0	2	0.5	8	1.9	4	1.0	13	3.1	5	1.2
South Carolina	141	20.1	0	0.0	11	1.6	12	1.7	0	0.0	48	6.8	11	1.6
Virginia														
Eastern	43	5.6	0	0.0	9	1.2	27	3.5	9	1.2	75	9.8	9	1.2
Western	35	16.7	0	0.0	3	1.4	1	0.5	0	0.0	22	10.5	1	0.5
West Virginia														
Northern	22	9.3	0	0.0	4	1.7	4	1.7	2	0.8	33	13.9	0	0.0
Southern	17	10.7	0	0.0	0	0.0	0	0.0	2	1.3	30	18.9	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>8,962</b>	<b>6,290</b>	<b>70.2</b>	<b>44</b>	<b>0.5</b>	<b>17</b>	<b>0.2</b>	<b>97</b>	<b>1.1</b>	<b>18</b>	<b>0.2</b>
Louisiana											
Eastern	<b>269</b>	212	78.8	2	0.7	3	1.1	4	1.5	1	0.4
Middle	<b>116</b>	78	67.2	1	0.9	0	0.0	1	0.9	0	0.0
Western	<b>167</b>	118	70.7	0	0.0	0	0.0	3	1.8	0	0.0
Mississippi											
Northern	<b>105</b>	68	64.8	0	0.0	0	0.0	3	2.9	0	0.0
Southern	<b>201</b>	167	83.1	1	0.5	1	0.5	2	1.0	1	0.5
Texas											
Eastern	<b>510</b>	367	72.0	3	0.6	0	0.0	1	0.2	2	0.4
Northern	<b>572</b>	386	67.5	12	2.1	5	0.9	21	3.7	2	0.3
Southern	<b>3,325</b>	1,897	57.1	15	0.5	1	0.0	11	0.3	8	0.2
Western	<b>3,697</b>	2,997	81.1	10	0.3	7	0.2	51	1.4	4	0.1
<b>SIXTH CIRCUIT</b>	<b>2,728</b>	<b>1,464</b>	<b>53.7</b>	<b>14</b>	<b>0.5</b>	<b>7</b>	<b>0.3</b>	<b>22</b>	<b>0.8</b>	<b>8</b>	<b>0.3</b>
Kentucky											
Eastern	<b>352</b>	168	47.7	0	0.0	0	0.0	2	0.6	1	0.3
Western	<b>219</b>	152	69.4	3	1.4	0	0.0	1	0.5	0	0.0
Michigan											
Eastern	<b>400</b>	214	53.5	3	0.8	0	0.0	4	1.0	1	0.3
Western	<b>222</b>	130	58.6	4	1.8	3	1.4	8	3.6	3	1.4
Ohio											
Northern	<b>456</b>	257	56.4	1	0.2	0	0.0	1	0.2	1	0.2
Southern	<b>324</b>	130	40.1	0	0.0	2	0.6	0	0.0	1	0.3
Tennessee											
Eastern	<b>312</b>	188	60.3	1	0.3	1	0.3	2	0.6	1	0.3
Middle	<b>125</b>	77	61.6	0	0.0	0	0.0	0	0.0	0	0.0
Western	<b>318</b>	148	46.5	2	0.6	1	0.3	4	1.3	0	0.0
<b>SEVENTH CIRCUIT</b>	<b>1,517</b>	<b>832</b>	<b>54.8</b>	<b>3</b>	<b>0.2</b>	<b>3</b>	<b>0.2</b>	<b>16</b>	<b>1.1</b>	<b>5</b>	<b>0.3</b>
Illinois											
Central	<b>223</b>	126	56.5	0	0.0	0	0.0	0	0.0	1	0.4
Northern	<b>359</b>	158	44.0	1	0.3	0	0.0	2	0.6	2	0.6
Southern	<b>166</b>	129	77.7	1	0.6	2	1.2	3	1.8	0	0.0
Indiana											
Northern	<b>242</b>	160	66.1	0	0.0	1	0.4	1	0.4	1	0.4
Southern	<b>163</b>	83	50.9	1	0.6	0	0.0	4	2.5	1	0.6
Wisconsin											
Eastern	<b>280</b>	117	41.8	0	0.0	0	0.0	5	1.8	0	0.0
Western	<b>84</b>	59	70.2	0	0.0	0	0.0	1	1.2	0	0.0
<b>EIGHTH CIRCUIT</b>	<b>3,053</b>	<b>1,977</b>	<b>64.8</b>	<b>21</b>	<b>0.7</b>	<b>8</b>	<b>0.3</b>	<b>20</b>	<b>0.7</b>	<b>6</b>	<b>0.2</b>
Arkansas											
Eastern	<b>236</b>	169	71.6	2	0.8	1	0.4	0	0.0	2	0.8
Western	<b>103</b>	75	72.8	0	0.0	0	0.0	1	1.0	0	0.0
Iowa											
Northern	<b>437</b>	342	78.3	8	1.8	2	0.5	3	0.7	2	0.5
Southern	<b>212</b>	120	56.6	1	0.5	0	0.0	2	0.9	0	0.0
Minnesota	<b>352</b>	151	42.9	1	0.3	0	0.0	1	0.3	0	0.0
Missouri											
Eastern	<b>521</b>	341	65.5	0	0.0	0	0.0	3	0.6	0	0.0
Western	<b>461</b>	300	65.1	2	0.4	3	0.7	6	1.3	1	0.2
Nebraska	<b>347</b>	242	69.7	6	1.7	0	0.0	2	0.6	1	0.3
North Dakota	<b>145</b>	64	44.1	0	0.0	1	0.7	0	0.0	0	0.0
South Dakota	<b>239</b>	173	72.4	1	0.4	1	0.4	2	0.8	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>699</b>	<b>7.8</b>	<b>672</b>	<b>7.5</b>	<b>498</b>	<b>5.6</b>	<b>198</b>	<b>2.2</b>	<b>17</b>	<b>0.2</b>	<b>354</b>	<b>4.0</b>	<b>58</b>	<b>0.6</b>
Louisiana														
Eastern	22	8.2	0	0.0	3	1.1	5	1.9	1	0.4	16	5.9	0	0.0
Middle	31	26.7	0	0.0	0	0.0	0	0.0	1	0.9	4	3.4	0	0.0
Western	18	10.8	0	0.0	0	0.0	0	0.0	2	1.2	16	9.6	10	6.0
Mississippi														
Northern	21	20.0	0	0.0	8	7.6	0	0.0	0	0.0	2	1.9	3	2.9
Southern	14	7.0	0	0.0	1	0.5	0	0.0	1	0.5	10	5.0	3	1.5
Texas														
Eastern	55	10.8	0	0.0	46	9.0	14	2.7	2	0.4	17	3.3	3	0.6
Northern	90	15.7	0	0.0	13	2.3	3	0.5	0	0.0	38	6.6	2	0.3
Southern	209	6.3	589	17.7	388	11.7	116	3.5	1	0.0	86	2.6	4	0.1
Western	239	6.5	83	2.2	39	1.1	60	1.6	9	0.2	165	4.5	33	0.9
<b>SIXTH CIRCUIT</b>	<b>691</b>	<b>25.3</b>	<b>1</b>	<b>0.0</b>	<b>64</b>	<b>2.3</b>	<b>45</b>	<b>1.6</b>	<b>57</b>	<b>2.1</b>	<b>314</b>	<b>11.5</b>	<b>41</b>	<b>1.5</b>
Kentucky														
Eastern	142	40.3	0	0.0	2	0.6	3	0.9	1	0.3	29	8.2	4	1.1
Western	29	13.2	0	0.0	8	3.7	3	1.4	0	0.0	21	9.6	2	0.9
Michigan														
Eastern	84	21.0	0	0.0	9	2.3	3	0.8	7	1.8	72	18.0	3	0.8
Western	33	14.9	0	0.0	0	0.0	7	3.2	2	0.9	31	14.0	1	0.5
Ohio														
Northern	99	21.7	0	0.0	11	2.4	9	2.0	13	2.9	52	11.4	12	2.6
Southern	107	33.0	0	0.0	16	4.9	9	2.8	20	6.2	31	9.6	8	2.5
Tennessee														
Eastern	79	25.3	0	0.0	2	0.6	5	1.6	2	0.6	26	8.3	5	1.6
Middle	19	15.2	0	0.0	5	4.0	4	3.2	7	5.6	12	9.6	1	0.8
Western	99	31.1	1	0.3	11	3.5	2	0.6	5	1.6	40	12.6	5	1.6
<b>SEVENTH CIRCUIT</b>	<b>287</b>	<b>18.9</b>	<b>1</b>	<b>0.1</b>	<b>41</b>	<b>2.7</b>	<b>20</b>	<b>1.3</b>	<b>38</b>	<b>2.5</b>	<b>246</b>	<b>16.2</b>	<b>25</b>	<b>1.6</b>
Illinois														
Central	46	20.6	1	0.4	5	2.2	4	1.8	1	0.4	36	16.1	3	1.3
Northern	74	20.6	0	0.0	9	2.5	8	2.2	31	8.6	65	18.1	9	2.5
Southern	13	7.8	0	0.0	1	0.6	0	0.0	5	3.0	11	6.6	1	0.6
Indiana														
Northern	49	20.2	0	0.0	1	0.4	0	0.0	1	0.4	19	7.9	9	3.7
Southern	35	21.5	0	0.0	8	4.9	4	2.5	0	0.0	27	16.6	0	0.0
Wisconsin														
Eastern	62	22.1	0	0.0	17	6.1	2	0.7	0	0.0	74	26.4	3	1.1
Western	8	9.5	0	0.0	0	0.0	2	2.4	0	0.0	14	16.7	0	0.0
<b>EIGHTH CIRCUIT</b>	<b>449</b>	<b>14.7</b>	<b>40</b>	<b>1.3</b>	<b>68</b>	<b>2.2</b>	<b>39</b>	<b>1.3</b>	<b>40</b>	<b>1.3</b>	<b>353</b>	<b>11.6</b>	<b>32</b>	<b>1.0</b>
Arkansas														
Eastern	35	14.8	0	0.0	4	1.7	4	1.7	4	1.7	12	5.1	3	1.3
Western	18	17.5	0	0.0	0	0.0	1	1.0	0	0.0	8	7.8	0	0.0
Iowa														
Northern	22	5.0	29	6.6	0	0.0	0	0.0	3	0.7	25	5.7	1	0.2
Southern	43	20.3	0	0.0	7	3.3	3	1.4	2	0.9	27	12.7	7	3.3
Minnesota	106	30.1	0	0.0	7	2.0	6	1.7	13	3.7	65	18.5	2	0.6
Missouri														
Eastern	67	12.9	0	0.0	9	1.7	12	2.3	5	1.0	76	14.6	8	1.5
Western	75	16.3	0	0.0	12	2.6	6	1.3	7	1.5	47	10.2	2	0.4
Nebraska	16	4.6	9	2.6	24	6.9	1	0.3	4	1.2	40	11.5	2	0.6
North Dakota	62	42.8	2	1.4	2	1.4	1	0.7	0	0.0	13	9.0	0	0.0
South Dakota	5	2.1	0	0.0	3	1.3	5	2.1	2	0.8	40	16.7	7	2.9

**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>7,075</b>	<b>3,211</b>	<b>45.4</b>	<b>34</b>	<b>0.5</b>	<b>6</b>	<b>0.1</b>	<b>35</b>	<b>0.5</b>	<b>12</b>	<b>0.2</b>
Alaska	71	41	57.7	0	0.0	0	0.0	1	1.4	0	0.0
Arizona	1,800	580	32.2	25	1.4	1	0.1	5	0.3	2	0.1
California											
Central	836	366	43.8	3	0.4	1	0.1	6	0.7	4	0.5
Eastern	437	215	49.2	0	0.0	2	0.5	2	0.5	2	0.5
Northern	337	177	52.5	0	0.0	0	0.0	3	0.9	0	0.0
Southern	1,891	950	50.2	1	0.1	1	0.1	3	0.2	2	0.1
Guam	38	28	73.7	1	2.6	0	0.0	0	0.0	0	0.0
Hawaii	148	61	41.2	0	0.0	0	0.0	0	0.0	0	0.0
Idaho	141	65	46.1	0	0.0	0	0.0	1	0.7	0	0.0
Montana	213	158	74.2	1	0.5	1	0.5	4	1.9	0	0.0
Nevada	225	155	68.9	1	0.4	0	0.0	2	0.9	0	0.0
Northern Mariana Islands	4	2	50.0	0	0.0	0	0.0	0	0.0	0	0.0
Oregon	321	150	46.7	0	0.0	0	0.0	2	0.6	1	0.3
Washington											
Eastern	177	62	35.0	0	0.0	0	0.0	4	2.3	0	0.0
Western	436	201	46.1	2	0.5	0	0.0	2	0.5	1	0.2
<b>TENTH CIRCUIT</b>	<b>3,025</b>	<b>1,834</b>	<b>60.6</b>	<b>7</b>	<b>0.2</b>	<b>3</b>	<b>0.1</b>	<b>36</b>	<b>1.2</b>	<b>4</b>	<b>0.1</b>
Colorado	237	137	57.8	0	0.0	0	0.0	1	0.4	1	0.4
Kansas	334	202	60.5	2	0.6	2	0.6	22	6.6	1	0.3
New Mexico	1,496	916	61.2	2	0.1	0	0.0	2	0.1	2	0.1
Oklahoma											
Eastern	52	49	94.2	0	0.0	0	0.0	0	0.0	0	0.0
Northern	110	79	71.8	0	0.0	0	0.0	0	0.0	0	0.0
Western	195	144	73.8	0	0.0	0	0.0	7	3.6	0	0.0
Utah	434	204	47.0	3	0.7	0	0.0	3	0.7	0	0.0
Wyoming	167	103	61.7	0	0.0	1	0.6	1	0.6	0	0.0
<b>ELEVENTH CIRCUIT</b>	<b>3,833</b>	<b>2,602</b>	<b>67.9</b>	<b>7</b>	<b>0.2</b>	<b>4</b>	<b>0.1</b>	<b>51</b>	<b>1.3</b>	<b>1</b>	<b>0.0</b>
Alabama											
Middle	145	89	61.4	0	0.0	0	0.0	2	1.4	0	0.0
Northern	242	147	60.7	0	0.0	2	0.8	6	2.5	0	0.0
Southern	308	197	64.0	1	0.3	0	0.0	4	1.3	0	0.0
Florida											
Middle	883	517	58.6	1	0.1	1	0.1	6	0.7	0	0.0
Northern	198	141	71.2	1	0.5	0	0.0	3	1.5	0	0.0
Southern	1,160	866	74.7	0	0.0	0	0.0	14	1.2	1	0.1
Georgia											
Middle	225	184	81.8	0	0.0	0	0.0	1	0.4	0	0.0
Northern	368	220	59.8	1	0.3	1	0.3	3	0.8	0	0.0
Southern	304	241	79.3	3	1.0	0	0.0	12	3.9	0	0.0

**Table 2 (cont.)**

CIRCUIT District	§5K1.1 SUBSTANTIAL ASSISTANCE		§5K3.1 EARLY DISPOSITION		OTHER GOV'T SPONSORED		DOWNWARD DEPARTURE		DOWNWARD DEPARTURE W/ BOOKER		BELOW RANGE W/ BOOKER		REMAINING BELOW RANGE	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%
<b>NINTH CIRCUIT</b>	<b>658</b>	<b>9.3</b>	<b>1,879</b>	<b>26.6</b>	<b>372</b>	<b>5.3</b>	<b>143</b>	<b>2.0</b>	<b>75</b>	<b>1.1</b>	<b>554</b>	<b>7.8</b>	<b>96</b>	<b>1.4</b>
Alaska	15	21.1	0	0.0	4	5.6	0	0.0	2	2.8	8	11.3	0	0.0
Arizona	93	5.2	922	51.2	53	2.9	19	1.1	14	0.8	75	4.2	11	0.6
California														
Central	107	12.8	155	18.5	56	6.7	15	1.8	19	2.3	77	9.2	27	3.2
Eastern	59	13.5	101	23.1	13	3.0	7	1.6	4	0.9	28	6.4	4	0.9
Northern	43	12.8	16	4.7	35	10.4	7	2.1	6	1.8	38	11.3	12	3.6
Southern	78	4.1	604	31.9	78	4.1	56	3.0	4	0.2	83	4.4	31	1.6
Guam	4	10.5	0	0.0	0	0.0	1	2.6	0	0.0	2	5.3	2	5.3
Hawaii	46	31.1	0	0.0	2	1.4	2	1.4	2	1.4	34	23.0	1	0.7
Idaho	37	26.2	19	13.5	2	1.4	1	0.7	2	1.4	13	9.2	1	0.7
Montana	24	11.3	0	0.0	0	0.0	3	1.4	2	0.9	19	8.9	1	0.5
Nevada	13	5.8	0	0.0	21	9.3	5	2.2	1	0.4	25	11.1	2	0.9
Northern Mariana Islands	1	25.0	0	0.0	0	0.0	0	0.0	1	25.0	0	0.0	0	0.0
Oregon	63	19.6	14	4.4	25	7.8	12	3.7	6	1.9	48	15.0	0	0.0
Washington														
Eastern	12	6.8	37	20.9	24	13.6	0	0.0	2	1.1	34	19.2	2	1.1
Western	63	14.4	11	2.5	59	13.5	15	3.4	10	2.3	70	16.1	2	0.5
<b>TENTH CIRCUIT</b>	<b>211</b>	<b>7.0</b>	<b>281</b>	<b>9.3</b>	<b>261</b>	<b>8.6</b>	<b>79</b>	<b>2.6</b>	<b>40</b>	<b>1.3</b>	<b>254</b>	<b>8.4</b>	<b>15</b>	<b>0.5</b>
Colorado	38	16.0	0	0.0	12	5.1	12	5.1	4	1.7	30	12.7	2	0.8
Kansas	54	16.2	0	0.0	22	6.6	2	0.6	1	0.3	26	7.8	0	0.0
New Mexico	43	2.9	175	11.7	192	12.8	48	3.2	22	1.5	89	5.9	5	0.3
Oklahoma														
Eastern	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	3	5.8	0	0.0
Northern	20	18.2	0	0.0	1	0.9	1	0.9	0	0.0	9	8.2	0	0.0
Western	11	5.6	0	0.0	1	0.5	3	1.5	0	0.0	27	13.8	2	1.0
Utah	25	5.8	106	24.4	25	5.8	10	2.3	2	0.5	53	12.2	3	0.7
Wyoming	20	12.0	0	0.0	8	4.8	3	1.8	11	6.6	17	10.2	3	1.8
<b>ELEVENTH CIRCUIT</b>	<b>585</b>	<b>15.3</b>	<b>15</b>	<b>0.4</b>	<b>46</b>	<b>1.2</b>	<b>55</b>	<b>1.4</b>	<b>41</b>	<b>1.1</b>	<b>400</b>	<b>10.4</b>	<b>26</b>	<b>0.7</b>
Alabama														
Middle	40	27.6	0	0.0	0	0.0	2	1.4	0	0.0	11	7.6	1	0.7
Northern	50	20.7	0	0.0	2	0.8	2	0.8	1	0.4	31	12.8	1	0.4
Southern	73	23.7	0	0.0	1	0.3	1	0.3	2	0.6	29	9.4	0	0.0
Florida														
Middle	181	20.5	15	1.7	14	1.6	14	1.6	11	1.2	118	13.4	5	0.6
Northern	39	19.7	0	0.0	0	0.0	2	1.0	0	0.0	10	5.1	2	1.0
Southern	92	7.9	0	0.0	13	1.1	11	0.9	22	1.9	131	11.3	10	0.9
Georgia														
Middle	26	11.6	0	0.0	3	1.3	1	0.4	0	0.0	10	4.4	0	0.0
Northern	57	15.5	0	0.0	11	3.0	17	4.6	5	1.4	46	12.5	7	1.9
Southern	27	8.9	0	0.0	2	0.7	5	1.6	0	0.0	14	4.6	0	0.0

<sup>1</sup>Of the 39,477 cases, 865 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 (36.1%), Central California (22.3%), Middle Georgia (17.0%), Eastern Virginia (16.2%), Northern New York (6.8%), Middle Tennessee (6.0%), and Southern Mississippi (5.2%). 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>38,525</b>	<b>22,928</b>	<b>59.5</b>	<b>173</b>	<b>0.4</b>	<b>71</b>	<b>0.2</b>	<b>328</b>	<b>0.9</b>	<b>64</b>	<b>0.2</b>
Murder	33	16	48.5	4	12.1	1	3.0	2	6.1	0	0.0
Manslaughter	28	22	78.6	2	7.1	0	0.0	0	0.0	0	0.0
Kidnapping/Hostage Taking	37	13	35.1	0	0.0	0	0.0	0	0.0	0	0.0
Sexual Abuse	263	189	71.9	3	1.1	1	0.4	9	3.4	0	0.0
Assault	333	226	67.9	7	2.1	2	0.6	10	3.0	3	0.9
Robbery	567	365	64.4	6	1.1	3	0.5	6	1.1	3	0.5
Arson	29	16	55.2	1	3.4	0	0.0	0	0.0	0	0.0
Drugs - Trafficking	12,745	6,565	51.5	25	0.2	7	0.1	32	0.3	17	0.1
Drugs - Communication Facility	176	108	61.4	0	0.0	0	0.0	1	0.6	0	0.0
Drugs - Simple Possession	219	198	90.4	0	0.0	0	0.0	3	1.4	2	0.9
Firearms	4,356	2,944	67.6	34	0.8	12	0.3	52	1.2	12	0.3
Burglary/B&E	24	17	70.8	1	4.2	0	0.0	1	4.2	0	0.0
Auto Theft	36	23	63.9	0	0.0	0	0.0	2	5.6	0	0.0
Larceny	689	506	73.4	3	0.4	3	0.4	15	2.2	2	0.3
Fraud	3,726	2,327	62.5	12	0.3	2	0.1	32	0.9	8	0.2
Embezzlement	236	156	66.1	0	0.0	1	0.4	2	0.8	0	0.0
Forgery/Counterfeiting	525	363	69.1	0	0.0	1	0.2	7	1.3	1	0.2
Bribery	118	44	37.3	0	0.0	0	0.0	0	0.0	0	0.0
Tax	294	124	42.2	2	0.7	1	0.3	3	1.0	0	0.0
Money Laundering	453	176	38.9	1	0.2	0	0.0	3	0.7	0	0.0
Racketeering/Extortion	372	173	46.5	3	0.8	0	0.0	8	2.2	2	0.5
Gambling/Lottery	61	32	52.5	0	0.0	0	0.0	1	1.6	0	0.0
Civil Rights	34	17	50.0	1	2.9	0	0.0	0	0.0	0	0.0
Immigration	10,735	6,775	63.1	51	0.5	23	0.2	111	1.0	13	0.1
Pornography/Prostitution	852	440	51.6	6	0.7	8	0.9	13	1.5	0	0.0
Prison Offenses	194	150	77.3	2	1.0	1	0.5	3	1.5	0	0.0
Administration of Justice Offenses	508	296	58.3	4	0.8	3	0.6	6	1.2	1	0.2
Environmental/Wildlife	85	58	68.2	0	0.0	0	0.0	1	1.2	0	0.0
National Defense	27	15	55.6	0	0.0	0	0.0	1	3.7	0	0.0
Antitrust	16	3	18.8	0	0.0	0	0.0	0	0.0	0	0.0
Food & Drug	28	17	60.7	0	0.0	0	0.0	0	0.0	0	0.0
Other Miscellaneous Offenses	726	554	76.3	5	0.7	2	0.3	4	0.6	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>5,243</b>	<b>13.6</b>	<b>2,882</b>	<b>7.5</b>	<b>1,525</b>	<b>4.0</b>	<b>785</b>	<b>2.0</b>	<b>494</b>	<b>1.3</b>	<b>3,637</b>	<b>9.4</b>	<b>395</b>	<b>1.0</b>
Murder	2	6.1	0	0.0	1	3.0	0	0.0	1	3.0	5	15.2	1	3.0
Manslaughter	0	0.0	0	0.0	2	7.1	1	3.6	0	0.0	1	3.6	0	0.0
Kidnapping/Hostage Taking	11	29.7	1	2.7	3	8.1	1	2.7	1	2.7	7	18.9	0	0.0
Sexual Abuse	10	3.8	1	0.4	17	6.5	3	1.1	5	1.9	25	9.5	0	0.0
Assault	4	1.2	5	1.5	23	6.9	9	2.7	6	1.8	29	8.7	9	2.7
Robbery	63	11.1	0	0.0	17	3.0	16	2.8	16	2.8	69	12.2	3	0.5
Arson	6	20.7	0	0.0	1	3.4	1	3.4	1	3.4	3	10.3	0	0.0
Drugs - Trafficking	3,324	26.1	580	4.6	414	3.2	230	1.8	190	1.5	1,263	9.9	98	0.8
Drugs - Communication Facility	29	16.5	0	0.0	10	5.7	3	1.7	2	1.1	22	12.5	1	0.6
Drugs - Simple Possession	7	3.2	0	0.0	6	2.7	0	0.0	0	0.0	2	0.9	1	0.5
Firearms	465	10.7	16	0.4	133	3.1	88	2.0	66	1.5	479	11.0	55	1.3
Burglary/B&E	2	8.3	0	0.0	0	0.0	1	4.2	0	0.0	1	4.2	1	4.2
Auto Theft	6	16.7	0	0.0	1	2.8	0	0.0	1	2.8	2	5.6	1	2.8
Larceny	58	8.4	1	0.1	14	2.0	8	1.2	5	0.7	61	8.9	13	1.9
Fraud	545	14.6	34	0.9	107	2.9	81	2.2	64	1.7	454	12.2	60	1.6
Embezzlement	15	6.4	0	0.0	9	3.8	5	2.1	5	2.1	38	16.1	5	2.1
Forgery/Counterfeiting	57	10.9	0	0.0	7	1.3	12	2.3	3	0.6	65	12.4	9	1.7
Bribery	29	24.6	0	0.0	9	7.6	1	0.8	4	3.4	30	25.4	1	0.8
Tax	60	20.4	0	0.0	11	3.7	12	4.1	10	3.4	67	22.8	4	1.4
Money Laundering	114	25.2	2	0.4	35	7.7	12	2.6	11	2.4	91	20.1	8	1.8
Racketeering/Extortion	100	26.9	0	0.0	27	7.3	6	1.6	5	1.3	40	10.8	8	2.2
Gambling/Lottery	13	21.3	0	0.0	0	0.0	2	3.3	0	0.0	9	14.8	4	6.6
Civil Rights	3	8.8	0	0.0	1	2.9	1	2.9	0	0.0	11	32.4	0	0.0
Immigration	160	1.5	2,236	20.8	559	5.2	237	2.2	47	0.4	443	4.1	80	0.7
Pornography/Prostitution	26	3.1	2	0.2	52	6.1	26	3.1	29	3.4	240	28.2	10	1.2
Prison Offenses	7	3.6	2	1.0	4	2.1	3	1.5	1	0.5	20	10.3	1	0.5
Administration of Justice Offenses	51	10.0	2	0.4	33	6.5	11	2.2	9	1.8	84	16.5	8	1.6
Environmental/Wildlife	9	10.6	0	0.0	5	5.9	1	1.2	1	1.2	10	11.8	0	0.0
National Defense	2	7.4	0	0.0	3	11.1	2	7.4	1	3.7	3	11.1	0	0.0
Antitrust	12	75.0	0	0.0	0	0.0	0	0.0	0	0.0	1	6.3	0	0.0
Food & Drug	4	14.3	0	0.0	2	7.1	1	3.6	0	0.0	4	14.3	0	0.0
Other Miscellaneous Offenses	49	6.7	0	0.0	19	2.6	11	1.5	10	1.4	58	8.0	14	1.9

<sup>1</sup>Of the 39,477 cases, 952 were excluded due to one or both of the following reasons: missing primary offense (88) or missing information from the submitted documents that prevented the comparison of the sentence and the guideline range (865). 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	7	6	0	0	0	0	1	0	0	0	0	0	0
§2N3.1	0	0	0	0	0	0	0	0	0	0	0	0	0
§2P1.1	125	89	1	2	2	0	3	2	3	3	1	18	1
§2P1.2	51	45	1	0	0	0	2	0	1	0	0	2	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	25	9	0	0	1	0	1	0	4	3	2	5	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	66	45	0	0	0	0	6	0	5	0	0	9	1
§2Q2.2	0	0	0	0	0	0	0	0	0	0	0	0	0
§2R1.1	10	3	0	0	0	0	7	0	0	0	0	0	0
§2S1.1	535	199	1	1	7	0	160	2	28	14	11	103	9
§2S1.2	2	2	0	0	0	0	0	0	0	0	0	0	0
§2S1.3	103	54	0	0	0	0	11	0	12	1	3	19	3
§2S1.4	0	0	0	0	0	0	0	0	0	0	0	0	0
§2T1.1	257	102	2	0	2	0	49	0	10	15	10	64	3
§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	56	23	0	0	0	0	14	0	2	0	3	13	1
§2T1.5	0	0	0	0	0	0	0	0	0	0	0	0	0
§2T1.6	9	3	0	0	0	0	0	0	0	0	0	5	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	6	5	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	6	5	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	140	77	0	0	2	0	40	2	2	1	2	12	2
§2X2.1	0	0	0	0	0	0	0	0	0	0	0	0	0
§2X3.1	59	29	0	0	2	0	14	1	4	0	1	8	0
§2X4.1	236	145	1	1	1	1	26	0	12	6	0	40	3
§2X5.1	0	0	0	0	0	0	0	0	0	0	0	0	0
§2X5.2	75	70	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>36,304</b>	<b>21,014</b>	<b>165</b>	<b>65</b>	<b>324</b>	<b>62</b>	<b>5,189</b>	<b>2,816</b>	<b>1,428</b>	<b>775</b>	<b>486</b>	<b>3,600</b>	<b>380</b>

<sup>1</sup>Of the 39,477 cases, 3,173 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 (865) or missing guideline applied (2,999). 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>4,972</b>	<b>37.0</b>	<b>30.0</b>	<b>47.5</b>
<b>Murder</b>	1	--	--	--
<b>Manslaughter</b>	0	--	--	--
<b>Kidnapping/Hostage Taking</b>	8	167.0	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>	61	48.0	21.0	29.8
<b>Arson</b>	5	36.0	24.0	33.2
<b>Drugs - Trafficking</b>	3,162	52.0	40.0	44.4
<b>Drugs - Communication Facility</b>	28	16.5	13.5	61.2
<b>Drugs - Simple Possession</b>	7	18.0	18.0	39.7
<b>Firearms</b>	434	60.0	29.0	40.0
<b>Burglary/B&amp;E</b>	2	--	--	--
<b>Auto Theft</b>	6	24.0	13.5	27.8
<b>Larceny</b>	54	12.0	12.0	55.9
<b>Fraud</b>	520	12.0	14.0	65.9
<b>Embezzlement</b>	14	0.0	10.0	100.0
<b>Forgery/Counterfeiting</b>	56	6.0	7.5	81.1
<b>Bribery</b>	28	3.0	16.5	78.5
<b>Tax</b>	58	0.0	12.0	100.0
<b>Money Laundering</b>	107	12.0	27.0	57.9
<b>Racketeering/Extortion</b>	92	33.0	30.0	50.8
<b>Gambling/Lottery</b>	13	0.0	6.0	100.0
<b>Civil Rights</b>	3	0.0	18.0	100.0
<b>Immigration</b>	153	13.0	11.0	44.4
<b>Pornography/Prostitution</b>	25	60.0	47.0	40.0
<b>Prison Offenses</b>	4	8.6	18.5	54.6
<b>Administration of Justice Offenses</b>	48	0.0	14.5	100.0
<b>Environmental/Wildlife</b>	9	0.0	12.0	100.0
<b>National Defense</b>	2	--	--	--
<b>Antitrust</b>	9	4.0	10.0	66.7
<b>Food &amp; Drug</b>	3	0.0	11.0	100.0
<b>Other Miscellaneous Offenses</b>	46	4.5	15.0	79.6

<sup>1</sup>Of the 39,477 cases, 5,258 received a §5K1.1 substantial assistance departure. Of these, 5,033 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 59 cases were also excluded from this table. Of the remaining 4,974 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>2,756</b>	<b>18.0</b>	<b>7.0</b>	<b>28.3</b>
<b>Murder</b>	0	--	--	--
<b>Manslaughter</b>	0	--	--	--
<b>Kidnapping/Hostage Taking</b>	1	--	--	--
<b>Sexual Abuse</b>	1	--	--	--
<b>Assault</b>	5	18.0	3.0	16.7
<b>Robbery</b>	0	--	--	--
<b>Arson</b>	0	--	--	--
<b>Drugs - Trafficking</b>	549	13.0	10.0	36.4
<b>Drugs - Communication Facility</b>	0	--	--	--
<b>Drugs - Simple Possession</b>	0	--	--	--
<b>Firearms</b>	15	21.0	5.0	12.5
<b>Burglary/B&amp;E</b>	0	--	--	--
<b>Auto Theft</b>	0	--	--	--
<b>Larceny</b>	1	--	--	--
<b>Fraud</b>	33	5.0	1.0	16.7
<b>Embezzlement</b>	0	--	--	--
<b>Forgery/Counterfeiting</b>	0	--	--	--
<b>Bribery</b>	0	--	--	--
<b>Tax</b>	0	--	--	--
<b>Money Laundering</b>	1	--	--	--
<b>Racketeering/Extortion</b>	0	--	--	--
<b>Gambling/Lottery</b>	0	--	--	--
<b>Civil Rights</b>	0	--	--	--
<b>Immigration</b>	2,144	18.0	6.0	27.8
<b>Pornography/Prostitution</b>	2	--	--	--
<b>Prison Offenses</b>	2	--	--	--
<b>Administration of Justice Offenses</b>	2	--	--	--
<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 39,477 cases, 2,893 received a §5K3.1 early disposition program departure. Of these, 2,757 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>1,396</b>	<b>23.1</b>	<b>9.0</b>	<b>26.7</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>	14	90.0	44.0	44.4
<b>Assault</b>	18	12.9	10.0	53.3
<b>Robbery</b>	17	46.0	11.0	20.0
<b>Arson</b>	1	--	--	--
<b>Drugs - Trafficking</b>	394	60.0	14.0	22.1
<b>Drugs - Communication Facility</b>	10	24.0	15.5	40.6
<b>Drugs - Simple Possession</b>	5	9.0	10.0	25.0
<b>Firearms</b>	121	36.0	15.0	28.0
<b>Burglary/B&amp;E</b>	0	--	--	--
<b>Auto Theft</b>	1	--	--	--
<b>Larceny</b>	13	0.0	6.0	100.0
<b>Fraud</b>	80	10.5	10.0	50.0
<b>Embezzlement</b>	9	0.0	10.0	100.0
<b>Forgery/Counterfeiting</b>	7	8.0	9.0	44.5
<b>Bribery</b>	9	60.0	27.0	37.8
<b>Tax</b>	11	0.0	12.0	100.0
<b>Money Laundering</b>	32	13.5	10.0	49.6
<b>Racketeering/Extortion</b>	24	39.0	18.0	22.5
<b>Gambling/Lottery</b>	0	--	--	--
<b>Civil Rights</b>	1	--	--	--
<b>Immigration</b>	514	13.0	4.0	21.1
<b>Pornography/Prostitution</b>	52	61.5	37.0	38.1
<b>Prison Offenses</b>	3	10.0	12.0	50.0
<b>Administration of Justice Offenses</b>	27	0.0	11.0	100.0
<b>Environmental/Wildlife</b>	5	0.0	18.0	100.0
<b>National Defense</b>	2	--	--	--
<b>Antitrust</b>	0	--	--	--
<b>Food &amp; Drug</b>	2	--	--	--
<b>Other Miscellaneous Offenses</b>	18	0.0	11.0	100.0

<sup>1</sup>Of the 39,477 cases, 1,538 received an other government sponsored downward departure. Of these, 1,403 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 five cases were also excluded from this table. Of the remaining 1,398 cases, two were 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>750</b>	<b>27.0</b>	<b>10.0</b>	<b>25.6</b>
Murder	0	--	--	--
Manslaughter	1	--	--	--
Kidnapping/Hostage Taking	1	--	--	--
Sexual Abuse	3	36.0	4.0	21.7
Assault	7	12.0	12.0	80.9
Robbery	16	31.5	13.5	21.7
Arson	1	--	--	--
Drugs - Trafficking	219	60.0	14.0	19.9
Drugs - Communication Facility	2	--	--	--
Drugs - Simple Possession	0	--	--	--
Firearms	85	37.0	9.0	18.2
Burglary/B&E	1	--	--	--
Auto Theft	0	--	--	--
Larceny	8	3.0	8.0	83.3
Fraud	77	6.0	10.0	55.6
Embezzlement	4	2.5	9.0	77.1
Forgery/Counterfeiting	12	5.2	9.0	62.0
Bribery	1	--	--	--
Tax	11	0.0	10.0	100.0
Money Laundering	10	20.5	10.0	16.4
Racketeering/Extortion	5	57.0	13.0	18.6
Gambling/Lottery	2	--	--	--
Civil Rights	1	--	--	--
Immigration	229	21.0	7.0	25.0
Pornography/Prostitution	26	60.0	21.5	28.1
Prison Offenses	3	12.0	3.0	19.8
Administration of Justice Offenses	11	6.0	9.0	60.0
Environmental/Wildlife	1	--	--	--
National Defense	2	--	--	--
Antitrust	0	--	--	--
Food & Drug	1	--	--	--
Other Miscellaneous Offenses	10	2.0	6.5	82.1

<sup>1</sup>Of the 39,477 cases, 786 received a downward departure from the guideline range. Of these, 750 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.

**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>465</b>	<b>28.0</b>	<b>16.0</b>	<b>38.5</b>
Murder	1	--	--	--
Manslaughter	0	--	--	--
Kidnapping/Hostage Taking	0	--	--	--
Sexual Abuse	4	56.0	33.5	41.2
Assault	6	1.5	14.8	87.5
Robbery	16	39.0	10.9	22.8
Arson	1	--	--	--
Drugs - Trafficking	176	60.0	22.0	30.8
Drugs - Communication Facility	2	--	--	--
Drugs - Simple Possession	0	--	--	--
Firearms	64	24.0	16.0	35.0
Burglary/B&E	0	--	--	--
Auto Theft	1	--	--	--
Larceny	4	0.1	8.0	99.5
Fraud	62	6.0	12.0	63.9
Embezzlement	5	0.0	12.0	99.9
Forgery/Counterfeiting	3	0.0	10.0	100.0
Bribery	3	10.0	14.0	58.3
Tax	10	0.0	13.0	99.9
Money Laundering	10	15.0	13.5	40.0
Racketeering/Extortion	5	60.0	24.0	42.9
Gambling/Lottery	0	--	--	--
Civil Rights	0	--	--	--
Immigration	43	24.0	13.0	34.8
Pornography/Prostitution	28	42.5	36.0	39.2
Prison Offenses	1	--	--	--
Administration of Justice Offenses	9	8.0	9.0	60.0
Environmental/Wildlife	1	--	--	--
National Defense	1	--	--	--
Antitrust	0	--	--	--
Food & Drug	0	--	--	--
Other Miscellaneous Offenses	9	0.0	10.0	100.0

<sup>1</sup>Of the 39,477 cases, 495 received a downward departure from the guideline range with *Booker* /18 U.S.C § 3553. Of these, 469 had complete guideline application information. Due to an inability to calculate the extent of departure for cases with a guideline minimum of life, an additional four cases were also excluded from this table. Note that the information presented in this table does include sentences of probation, but does not include any time of alternative confinement as described in USSG §5C1.1. Descriptions of variables used in this table are provided in Appendix A.

**Table 9A**

**DOWNWARD DEPARTURES WITH *BOOKER* /18 U.S.C. § 3553: DEGREE  
OF DECREASE FOR OFFENDERS IN EACH PRIMARY OFFENSE 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>3,472</b>	<b>28.0</b>	<b>12.0</b>	<b>33.3</b>
<b>Murder</b>	5	240.0	52.0	16.7
<b>Manslaughter</b>	1	--	--	--
<b>Kidnapping/Hostage Taking</b>	6	240.0	89.0	31.7
<b>Sexual Abuse</b>	23	27.0	12.0	37.8
<b>Assault</b>	28	12.0	12.0	48.6
<b>Robbery</b>	67	38.0	12.0	21.7
<b>Arson</b>	3	72.0	15.0	21.1
<b>Drugs - Trafficking</b>	1,201	60.0	17.0	23.9
<b>Drugs - Communication Facility</b>	22	21.0	11.0	34.2
<b>Drugs - Simple Possession</b>	2	--	--	--
<b>Firearms</b>	470	27.0	12.0	29.9
<b>Burglary/B&amp;E</b>	1	--	--	--
<b>Auto Theft</b>	2	--	--	--
<b>Larceny</b>	59	0.0	8.0	100.0
<b>Fraud</b>	435	8.4	10.0	53.7
<b>Embezzlement</b>	38	0.5	9.0	96.3
<b>Forgery/Counterfeiting</b>	64	0.0	11.0	99.8
<b>Bribery</b>	19	9.4	12.0	56.8
<b>Tax</b>	64	0.0	11.0	99.9
<b>Money Laundering</b>	82	22.5	10.0	32.4
<b>Racketeering/Extortion</b>	37	45.0	12.0	21.7
<b>Gambling/Lottery</b>	9	0.0	7.0	100.0
<b>Civil Rights</b>	11	30.0	10.0	30.0
<b>Immigration</b>	414	24.0	10.0	29.8
<b>Pornography/Prostitution</b>	236	60.0	30.0	33.6
<b>Prison Offenses</b>	20	6.7	9.0	50.8
<b>Administration of Justice Offenses</b>	81	5.0	10.0	61.9
<b>Environmental/Wildlife</b>	10	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>	4	1.0	27.0	90.0
<b>Other Miscellaneous Offenses</b>	54	0.0	10.0	100.0

<sup>1</sup>Of the 39,477 cases, 3,647 were sentenced below the guideline range with *Booker* /18 U.S.C § 3553. Of these, 3,489 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 10 cases were also excluded from this table. Furthermore, two cases were excluded due to several logical criteria. Of the remaining 3,477 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**

PRIMARY OFFENSE	n	Median Sentence in Months	Median Decrease in Months From Guideline Minimum	Median Percent Decrease From Guideline Minimum
<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>342</b>	<b>17.6</b>	<b>6.4</b>	<b>34.3</b>
Murder	0	--	--	--
Manslaughter	0	--	--	--
Kidnapping/Hostage Taking	0	--	--	--
Sexual Abuse	0	--	--	--
Assault	7	17.0	8.0	59.9
Robbery	3	25.0	13.0	35.1
Arson	0	--	--	--
Drugs - Trafficking	84	69.7	13.0	25.6
Drugs - Communication Facility	1	--	--	--
Drugs - Simple Possession	1	--	--	--
Firearms	49	60.0	9.0	16.3
Burglary/B&E	1	--	--	--
Auto Theft	1	--	--	--
Larceny	11	0.0	6.0	100.0
Fraud	53	4.6	6.0	51.9
Embezzlement	5	0.0	4.0	99.3
Forgery/Counterfeiting	9	5.0	6.0	66.7
Bribery	1	--	--	--
Tax	4	9.0	6.5	49.9
Money Laundering	7	0.0	6.0	100.0
Racketeering/Extortion	6	70.5	15.5	19.3
Gambling/Lottery	3	0.0	6.0	100.0
Civil Rights	0	--	--	--
Immigration	65	6.1	5.0	33.3
Pornography/Prostitution	10	96.0	37.5	35.5
Prison Offenses	1	--	--	--
Administration of Justice Offenses	8	1.5	5.5	96.3
Environmental/Wildlife	0	--	--	--
National Defense	0	--	--	--
Antitrust	0	--	--	--
Food & Drug	0	--	--	--
Other Miscellaneous Offenses	12	0.0	6.0	100.0

<sup>1</sup>Of the 39,477 cases, 396 were otherwise sentenced below the guideline range. Of these, 348 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 five cases were also excluded from this table. Of the remaining 343 cases, one was excluded due to missing primary offense category. 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>159</b>	<b>63.0</b>	<b>13.0</b>	<b>29.4</b>
<b>Murder</b>	3	360.0	98.0	37.4
<b>Manslaughter</b>	2	--	--	--
<b>Kidnapping/Hostage Taking</b>	0	--	--	--
<b>Sexual Abuse</b>	3	84.0	27.0	47.4
<b>Assault</b>	7	96.0	24.0	46.3
<b>Robbery</b>	6	127.5	53.0	48.4
<b>Arson</b>	1	--	--	--
<b>Drugs - Trafficking</b>	24	159.0	31.0	30.0
<b>Drugs - Communication Facility</b>	0	--	--	--
<b>Drugs - Simple Possession</b>	0	--	--	--
<b>Firearms</b>	31	97.0	15.0	22.8
<b>Burglary/B&amp;E</b>	1	--	--	--
<b>Auto Theft</b>	0	--	--	--
<b>Larceny</b>	3	37.0	16.0	76.2
<b>Fraud</b>	12	62.0	11.0	38.1
<b>Embezzlement</b>	0	--	--	--
<b>Forgery/Counterfeiting</b>	0	--	--	--
<b>Bribery</b>	0	--	--	--
<b>Tax</b>	2	--	--	--
<b>Money Laundering</b>	1	--	--	--
<b>Racketeering/Extortion</b>	3	66.0	15.0	29.4
<b>Gambling/Lottery</b>	0	--	--	--
<b>Civil Rights</b>	1	--	--	--
<b>Immigration</b>	44	21.0	5.0	25.0
<b>Pornography/Prostitution</b>	6	270.0	36.0	14.4
<b>Prison Offenses</b>	2	--	--	--
<b>Administration of Justice Offenses</b>	3	20.0	8.0	100.5
<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	36.0	6.0	20.0

<sup>1</sup>Of the 39,477 cases, 173 received an upward departure from the guideline range. Of these, 162 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, two cases were excluded due to several logical criteria. Note that the information presented in this table does not include any time of alternative confinement as described in USSG §5C1.1. Descriptions of variables used in this table are provided in Appendix A.

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>62</b>	<b>72.5</b>	<b>23.5</b>	<b>56.0</b>
Murder	1	--	--	--
Manslaughter	0	--	--	--
Kidnapping/Hostage Taking	0	--	--	--
Sexual Abuse	1	--	--	--
Assault	2	--	--	--
Robbery	3	90.0	26.0	26.8
Arson	0	--	--	--
Drugs - Trafficking	6	180.0	34.0	20.6
Drugs - Communication Facility	0	--	--	--
Drugs - Simple Possession	0	--	--	--
Firearms	11	120.0	52.0	57.9
Burglary/B&E	0	--	--	--
Auto Theft	0	--	--	--
Larceny	3	36.0	24.0	200.0
Fraud	2	--	--	--
Embezzlement	1	--	--	--
Forgery/Counterfeiting	1	--	--	--
Bribery	0	--	--	--
Tax	1	--	--	--
Money Laundering	0	--	--	--
Racketeering/Extortion	0	--	--	--
Gambling/Lottery	0	--	--	--
Civil Rights	0	--	--	--
Immigration	16	13.0	6.0	100.0
Pornography/Prostitution	8	240.0	70.5	61.5
Prison Offenses	1	--	--	--
Administration of Justice Offenses	3	24.0	6.0	20.0
Environmental/Wildlife	0	--	--	--
National Defense	0	--	--	--
Antitrust	0	--	--	--
Food & Drug	0	--	--	--
Other Miscellaneous Offenses	2	--	--	--

<sup>1</sup>Of the 39,477 cases, 71 received an upward departure from the guideline range with *Booker* /18 U.S.C § 3553. Of these, 64 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>316</b>	<b>48.0</b>	<b>14.0</b>	<b>50.0</b>
<b>Murder</b>	1	--	--	--
<b>Manslaughter</b>	0	--	--	--
<b>Kidnapping/Hostage Taking</b>	0	--	--	--
<b>Sexual Abuse</b>	9	144.0	31.0	50.0
<b>Assault</b>	10	76.0	25.0	53.9
<b>Robbery</b>	6	132.0	30.5	34.6
<b>Arson</b>	0	--	--	--
<b>Drugs - Trafficking</b>	31	96.0	15.0	20.0
<b>Drugs - Communication Facility</b>	1	--	--	--
<b>Drugs - Simple Possession</b>	3	8.0	2.0	33.3
<b>Firearms</b>	49	94.0	16.0	25.0
<b>Burglary/B&amp;E</b>	1	--	--	--
<b>Auto Theft</b>	1	--	--	--
<b>Larceny</b>	15	40.0	15.0	54.2
<b>Fraud</b>	31	60.0	14.0	61.0
<b>Embezzlement</b>	1	--	--	--
<b>Forgery/Counterfeiting</b>	7	36.0	16.0	100.0
<b>Bribery</b>	0	--	--	--
<b>Tax</b>	3	100.0	13.0	14.9
<b>Money Laundering</b>	3	48.0	12.0	66.7
<b>Racketeering/Extortion</b>	8	132.0	52.5	77.7
<b>Gambling/Lottery</b>	1	--	--	--
<b>Civil Rights</b>	0	--	--	--
<b>Immigration</b>	108	18.0	7.5	71.4
<b>Pornography/Prostitution</b>	13	120.0	30.0	32.1
<b>Prison Offenses</b>	3	24.0	12.0	33.3
<b>Administration of Justice Offenses</b>	5	41.0	12.0	36.7
<b>Environmental/Wildlife</b>	1	--	--	--
<b>National Defense</b>	1	--	--	--
<b>Antitrust</b>	0	--	--	--
<b>Food &amp; Drug</b>	0	--	--	--
<b>Other Miscellaneous Offenses</b>	4	15.0	8.0	60.7

<sup>1</sup>Of the 39,477 cases, 328 were sentenced above the guideline range with *Booker* /18 U.S.C § 3553. Of these, 317 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. 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**

<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>1,272</b>	<b>48.0</b>	<b>12.0</b>	<b>46.3</b>
<b>Murder</b>	6	270.0	56.0	31.0
<b>Manslaughter</b>	9	44.0	12.0	29.7
<b>Kidnapping/Hostage Taking</b>	0	--	--	--
<b>Sexual Abuse</b>	26	144.0	38.0	41.3
<b>Assault</b>	26	60.0	25.0	51.9
<b>Robbery</b>	29	125.0	33.0	35.2
<b>Arson</b>	8	120.0	42.5	65.9
<b>Drugs - Trafficking</b>	137	96.0	18.0	29.7
<b>Drugs - Communication Facility</b>	1	--	--	--
<b>Drugs - Simple Possession</b>	15	12.0	6.0	99.8
<b>Firearms</b>	202	72.0	17.5	36.4
<b>Burglary/B&amp;E</b>	3	30.0	4.0	42.9
<b>Auto Theft</b>	4	168.0	75.0	89.3
<b>Larceny</b>	38	24.0	10.0	64.4
<b>Fraud</b>	201	48.0	12.0	36.7
<b>Embezzlement</b>	3	30.0	3.0	33.3
<b>Forgery/Counterfeiting</b>	23	36.0	14.0	66.7
<b>Bribery</b>	1	--	--	--
<b>Tax</b>	14	36.0	9.0	39.8
<b>Money Laundering</b>	11	120.0	20.0	87.5
<b>Racketeering/Extortion</b>	18	84.0	15.0	25.2
<b>Gambling/Lottery</b>	1	--	--	--
<b>Civil Rights</b>	3	208.0	37.0	24.5
<b>Immigration</b>	359	24.0	7.0	62.5
<b>Pornography/Prostitution</b>	68	156.0	39.5	40.0
<b>Prison Offenses</b>	8	33.0	8.5	43.9
<b>Administration of Justice Offenses</b>	33	36.0	10.0	37.4
<b>Environmental/Wildlife</b>	1	--	--	--
<b>National Defense</b>	1	--	--	--
<b>Antitrust</b>	0	--	--	--
<b>Food &amp; Drug</b>	2	--	--	--
<b>Other Miscellaneous Offenses</b>	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>44</b>	<b>63.0</b>	<b>10.0</b>	<b>23.3</b>
Murder	0	--	--	--
Manslaughter	0	--	--	--
Kidnapping/Hostage Taking	0	--	--	--
Sexual Abuse	0	--	--	--
Assault	0	--	--	--
Robbery	2	--	--	--
Arson	0	--	--	--
Drugs - Trafficking	13	96.0	14.0	14.9
Drugs - Communication Facility	0	--	--	--
Drugs - Simple Possession	2	--	--	--
Firearms	10	180.0	17.0	23.6
Burglary/B&E	0	--	--	--
Auto Theft	0	--	--	--
Larceny	2	--	--	--
Fraud	4	61.5	13.0	21.8
Embezzlement	0	--	--	--
Forgery/Counterfeiting	0	--	--	--
Bribery	0	--	--	--
Tax	0	--	--	--
Money Laundering	0	--	--	--
Racketeering/Extortion	1	--	--	--
Gambling/Lottery	0	--	--	--
Civil Rights	0	--	--	--
Immigration	9	15.0	6.0	25.0
Pornography/Prostitution	0	--	--	--
Prison Offenses	0	--	--	--
Administration of Justice Offenses	1	--	--	--
Environmental/Wildlife	0	--	--	--
National Defense	0	--	--	--
Antitrust	0	--	--	--
Food & Drug	0	--	--	--
Other Miscellaneous Offenses	0	--	--	--

<sup>1</sup>Of the 39,477 cases, 64 were otherwise sentenced above the guideline range. Of these, 60 had complete guideline application information. An additional 16 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**

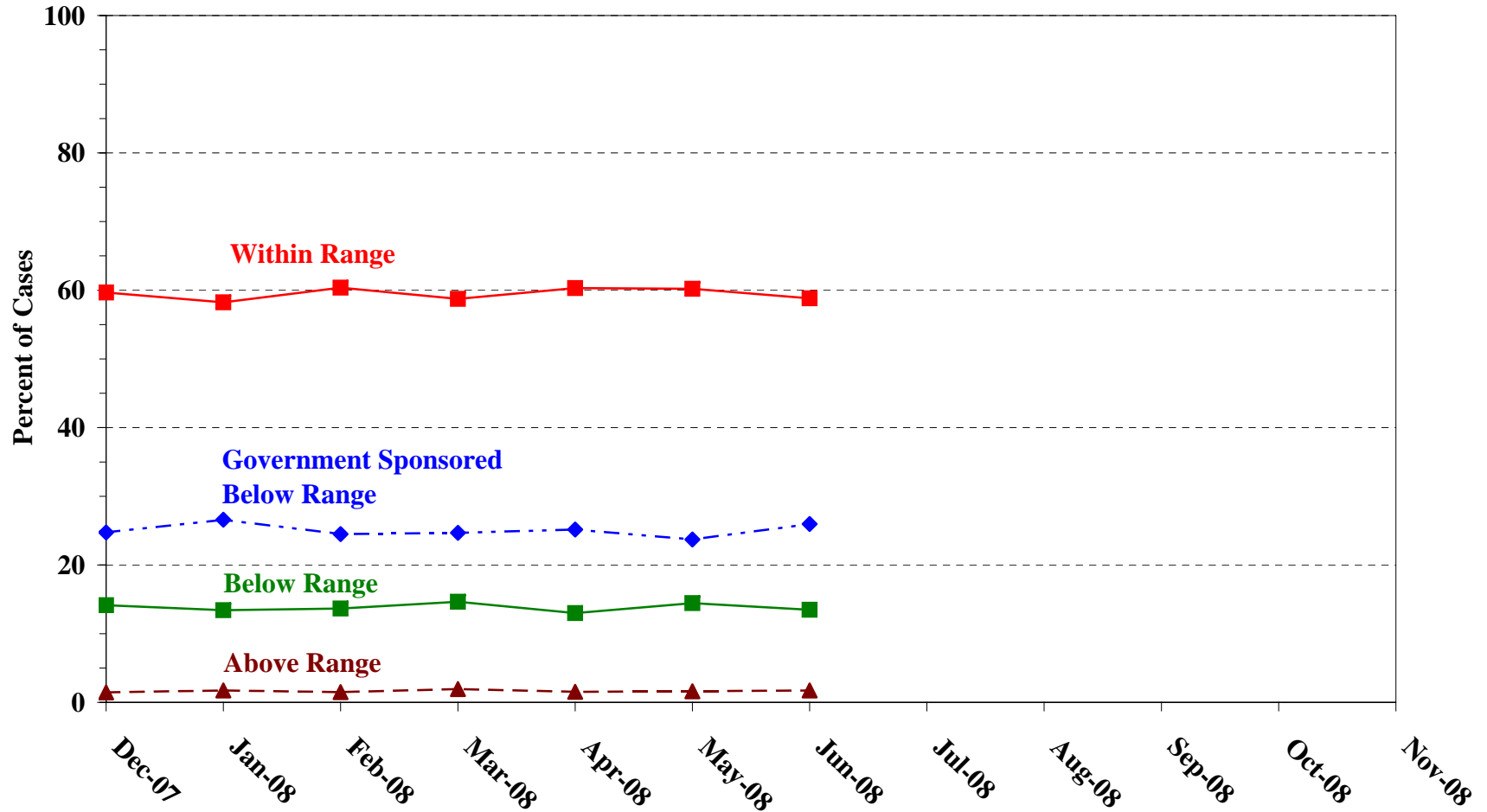
<b>PRIMARY OFFENSE</b>	<b>n</b>	<b>Median Sentence in Months</b>	<b>Median Increase in Months From Guideline Maximum</b>	<b>Median Percent Increase From Guideline Maximum</b>
<b>TOTAL</b>	<b>425</b>	<b>55.0</b>	<b>12.0</b>	<b>33.3</b>
<b>Murder</b>	5	240.0	72.0	42.9
<b>Manslaughter</b>	5	41.0	14.0	41.2
<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.

# MONTHLY DATA FOR WITHIN RANGE AND OUT OF RANGE SENTENCES<sup>1</sup>

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



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

**Table 16**

**MONTHLY DATA FOR WITHIN RANGE AND OUT OF RANGE SENTENCES<sup>1</sup>**  
**2008 Post-*Kimbrough/Gall* Preliminary Data**

<b>Sentencing Month</b>	<b>WITHIN GUIDELINE RANGE</b>	<b>ABOVE GUIDELINE RANGE</b>	<b>GOVERNMENT SPONSORED BELOW RANGE</b>	<b>BELOW GUIDELINE RANGE</b>
	<b>%</b>	<b>%</b>	<b>%</b>	<b>%</b>
<b>December 2007</b>	59.7	1.5	24.7	14.1
<b>January 2008</b>	58.2	1.7	26.6	13.4
<b>February 2008</b>	60.4	1.5	24.5	13.7
<b>March 2008</b>	58.7	1.9	24.7	14.6
<b>April 2008</b>	60.3	1.5	25.2	13.0
<b>May 2008</b>	60.2	1.6	23.7	14.4
<b>June 2008</b>	58.8	1.7	26.0	13.5
<b>July 2008</b>	--	--	--	--
<b>August 2008</b>	--	--	--	--
<b>September 2008</b>	--	--	--	--
<b>October 2008</b>	--	--	--	--
<b>November 2008</b>	--	--	--	--

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

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

# Appendix A

## Descriptions of Datafiles and Variables

### Introduction

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

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

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

### Variables

The following section describes the variables used in this report.

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

*Above Guideline Range with Booker/18 U.S.C. § 3553* consist of cases sentenced above the guideline range in which no departure was indicated and in which the court cited *United States v. Booker*, 18 U.S.C. § 3553, or related factors as one of the reasons for sentencing of the guideline system.

#### **All Remaining Cases Above Guideline Range**

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

#### **All Remaining Cases Below Guideline Range**

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

#### **Average Sentence Length**

Using sentencing information obtained from the Judgment 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.