

United States Sentencing Commission



Statistical Information Packet

Fiscal Year 2004

Second Circuit

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(October 1, 2003, through September 30, 2004)

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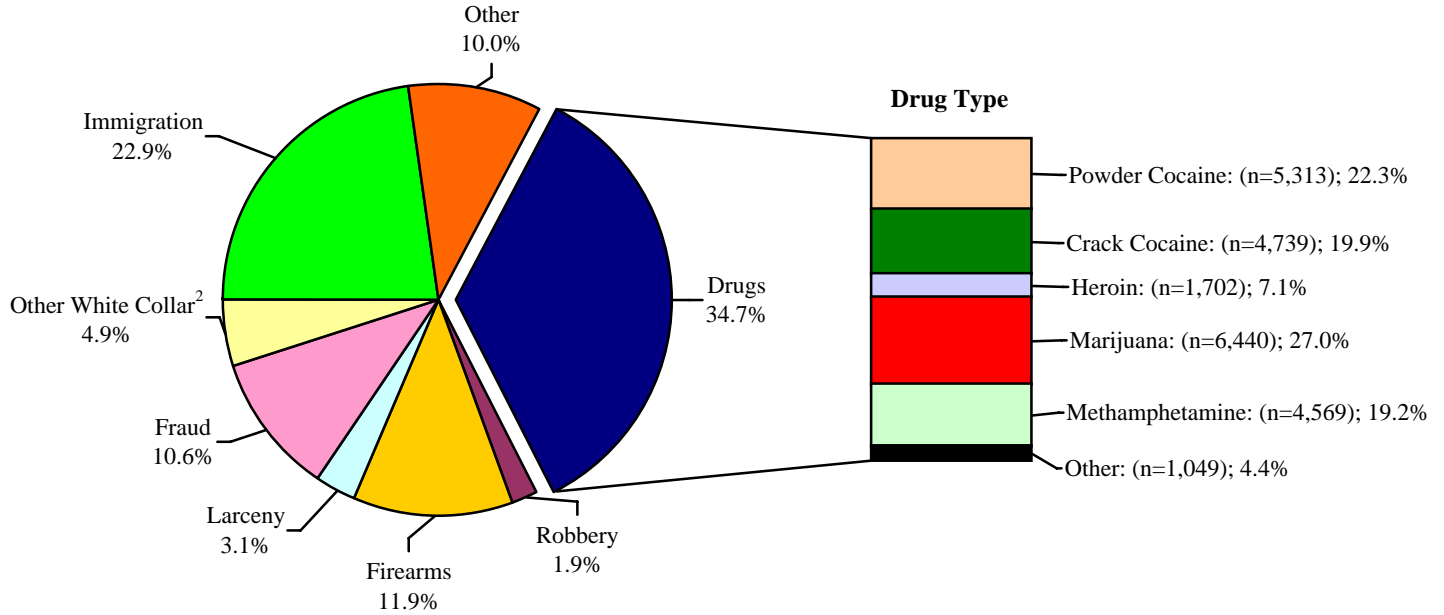
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SECTION ONE: Fiscal Year 2004
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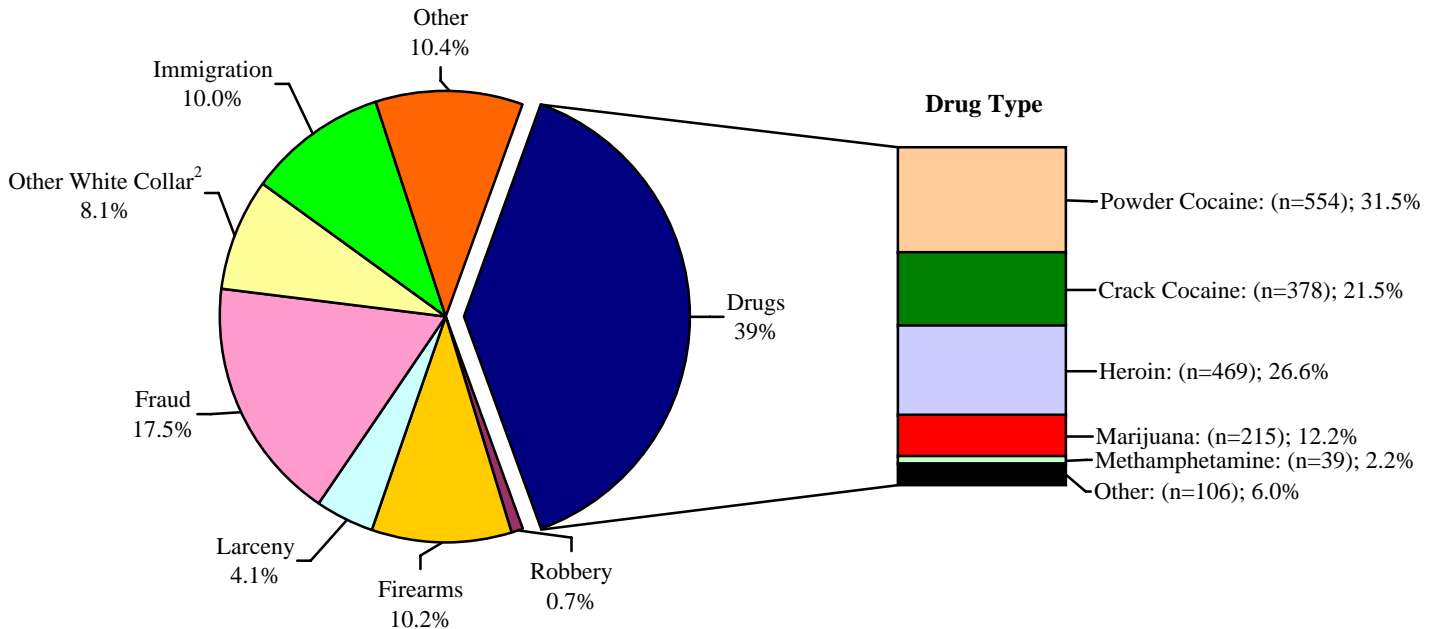
Figure A

DISTRIBUTION OF SENTENCED GUIDELINE OFFENDERS BY SELECT PRIMARY OFFENSE CATEGORY¹
Fiscal Year 2004

National



Second Circuit



¹Of the 70,068 guideline cases, 1,538 cases were excluded due to one of the following reasons: missing primary offense category (136) or missing drug type (1,402). Of the 4,553 guideline cases from the Second Circuit, 34 cases were excluded due to one of the following reasons: missing primary offense category (8) or missing drug type (26).

²The Other White Collar category includes the following offense types: Embezzlement, Forgery/Counterfeiting, Bribery, Money Laundering and Tax.

Table 1

**DISTRIBUTION OF GUIDELINE DEFENDANTS SENTENCED
BY PRIMARY OFFENSE CATEGORY
Fiscal Year 2004**

PRIMARY OFFENSE	National		Second Circuit	
	Number	Percent	Number	Percent
TOTAL	69,932	100.0	4,545	100.0
Murder	76	0.1	6	0.1
Manslaughter	63	0.1	0	0.0
Kidnapping/Hostage Taking	39	0.1	3	0.1
Sexual Abuse	276	0.4	9	0.2
Assault	621	0.9	14	0.3
Robbery	1,320	1.9	32	0.7
Arson	72	0.1	4	0.1
Drugs - Trafficking	23,572	33.7	1,710	37.6
Drugs - Communication Facility	346	0.5	31	0.7
Drugs - Simple Possession	1,296	1.9	46	1.0
Firearms	8,133	11.6	460	10.1
Burglary/B&E	63	0.1	0	0.0
Auto Theft	95	0.1	6	0.1
Larceny	2,133	3.1	185	4.1
Fraud	7,261	10.4	793	17.4
Embezzlement	630	0.9	45	1.0
Forgery/Counterfeiting	1,182	1.7	82	1.8
Bribery	166	0.2	26	0.6
Tax	515	0.7	81	1.8
Money Laundering	842	1.2	133	2.9
Racketeering/Extortion	621	0.9	150	3.3
Gambling/Lottery	100	0.1	19	0.4
Civil Rights	71	0.1	2	0.0
Immigration	15,717	22.5	451	9.9
Pornography/Prostitution	876	1.3	81	1.8
Prison Offenses	380	0.5	11	0.2
Administration of Justice Offenses	1,026	1.5	55	1.2
Environmental/Wildlife	155	0.2	14	0.3
National Defense	34	0.0	2	0.0
Antitrust	11	0.0	4	0.1
Food & Drug	75	0.1	4	0.1
Other Miscellaneous Offenses	2,165	3.1	86	1.9

Of the 70,068 guideline cases, 136 cases were excluded due to missing information on primary offense category.

Of the 4,553 guideline cases from the Second Circuit, eight cases were excluded due to missing information on primary offense category.

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2004 Datafile, OPAFY04.

SECTION TWO: Pre-*Blakely*
(October 1, 2003, through June 24, 2004)

Table 2

MODE OF CONVICTION BY CIRCUIT AND DISTRICT
Fiscal Year 2004, Pre-Blakely (October 1, 2003, through June 24, 2004)

CIRCUIT District	TOTAL	PLEA		TRIAL	
		Number	Percent	Number	Percent
TOTAL	51,666	49,350	95.5	2,316	4.5
D.C. CIRCUIT	418	378	90.4	40	9.6
District of Columbia	418	378	90.4	40	9.6
FIRST CIRCUIT	1,297	1,234	95.1	63	4.9
Maine	170	160	94.1	10	5.9
Massachusetts	371	344	92.7	27	7.3
New Hampshire	170	163	95.9	7	4.1
Puerto Rico	494	479	97.0	15	3.0
Rhode Island	92	88	95.7	4	4.3
SECOND CIRCUIT	3,496	3,343	95.6	153	4.4
Connecticut	273	258	94.5	15	5.5
New York					
Eastern	1,135	1,094	96.4	41	3.6
Northern	351	331	94.3	20	5.7
Southern	1,201	1,130	94.1	71	5.9
Western	384	378	98.4	6	1.6
Vermont	152	152	100.0	0	0.0
THIRD CIRCUIT	2,140	2,006	93.7	134	6.3
Delaware	87	80	92.0	7	8.0
New Jersey	609	580	95.2	29	4.8
Pennsylvania					
Eastern	731	668	91.4	63	8.6
Middle	377	365	96.8	12	3.2
Western	261	246	94.3	15	5.7
Virgin Islands	75	67	89.3	8	10.7
FOURTH CIRCUIT	4,669	4,378	93.8	291	6.2
Maryland	408	375	91.9	33	8.1
North Carolina					
Eastern	438	419	95.7	19	4.3
Middle	270	255	94.4	15	5.6
Western	355	330	93.0	25	7.0
South Carolina	971	917	94.4	54	5.6
Virginia					
Eastern	1,533	1,445	94.3	88	5.7
Western	323	296	91.6	27	8.4
West Virginia					
Northern	178	163	91.6	15	8.4
Southern	193	178	92.2	15	7.8

CIRCUIT District	TOTAL	PLEA		TRIAL	
		Number	Percent	Number	Percent
FIFTH CIRCUIT	9,880	9,544	96.6	336	3.4
Louisiana					
Eastern	267	260	97.4	7	2.6
Middle	136	129	94.9	7	5.1
Western	285	258	90.5	27	9.5
Mississippi					
Northern	123	115	93.5	8	6.5
Southern	256	248	96.9	8	3.1
Texas					
Eastern	632	603	95.4	29	4.6
Northern	828	789	95.3	39	4.7
Southern	3,703	3,582	96.7	121	3.3
Western	3,650	3,560	97.5	90	2.5
SIXTH CIRCUIT	3,563	3,367	94.5	196	5.5
Kentucky					
Eastern	370	357	96.5	13	3.5
Western	323	300	92.9	23	7.1
Michigan					
Eastern	575	534	92.9	41	7.1
Western	257	244	94.9	13	5.1
Ohio					
Northern	573	545	95.1	28	4.9
Southern	354	338	95.5	16	4.5
Tennessee					
Eastern	480	460	95.8	20	4.2
Middle	231	213	92.2	18	7.8
Western	400	376	94.0	24	6.0
SEVENTH CIRCUIT	2,282	2,143	93.9	139	6.1
Illinois					
Central	281	268	95.4	13	4.6
Northern	844	781	92.5	63	7.5
Southern	249	240	96.4	9	3.6
Indiana					
Northern	264	242	91.7	22	8.3
Southern	249	233	93.6	16	6.4
Wisconsin					
Eastern	249	242	97.2	7	2.8
Western	146	137	93.8	9	6.2
EIGHTH CIRCUIT	3,555	3,363	94.6	192	5.4
Arkansas					
Eastern	208	199	95.7	9	4.3
Western	136	131	96.3	5	3.7
Iowa					
Northern	368	346	94.0	22	6.0
Southern	272	252	92.6	20	7.4
Minnesota	322	295	91.6	27	8.4
Missouri					
Eastern	656	629	95.9	27	4.1
Western	557	531	95.3	26	4.7
Nebraska	615	593	96.4	22	3.6
North Dakota	144	134	93.1	10	6.9
South Dakota	277	253	91.3	24	8.7

CIRCUIT District	TOTAL	PLEA		TRIAL	
		Number	Percent	Number	Percent
NINTH CIRCUIT	11,221	10,915	97.3	306	2.7
Alaska	152	141	92.8	11	7.2
Arizona	3,426	3,383	98.7	43	1.3
California					
Central	1,216	1,168	96.1	48	3.9
Eastern	685	660	96.4	25	3.6
Northern	519	502	96.7	17	3.3
Southern	2,495	2,459	98.6	36	1.4
Guam	71	68	95.8	3	4.2
Hawaii	314	301	95.9	13	4.1
Idaho	183	176	96.2	7	3.8
Montana	274	230	83.9	44	16.1
Nevada	489	468	95.7	21	4.3
North Mariana Islands	22	18	81.8	4	18.2
Oregon	467	458	98.1	9	1.9
Washington					
Eastern	307	297	96.7	10	3.3
Western	601	586	97.5	15	2.5
TENTH CIRCUIT	4,043	3,918	96.9	125	3.1
Colorado	404	383	94.8	21	5.2
Kansas	500	479	95.8	21	4.2
New Mexico	1,627	1,609	98.9	18	1.1
Oklahoma					
Eastern	104	91	87.5	13	12.5
Northern	122	110	90.2	12	9.8
Western	457	442	96.7	15	3.3
Utah	635	620	97.6	15	2.4
Wyoming	194	184	94.8	10	5.2
ELEVENTH CIRCUIT	5,102	4,761	93.3	341	6.7
Alabama					
Middle	145	138	95.2	7	4.8
Northern	439	422	96.1	17	3.9
Southern	216	204	94.4	12	5.6
Florida					
Middle	1,254	1,172	93.5	82	6.5
Northern	334	308	92.2	26	7.8
Southern	1,483	1,366	92.1	117	7.9
Georgia					
Middle	359	340	94.7	19	5.3
Northern	582	531	91.2	51	8.8
Southern	290	280	96.6	10	3.4

Of the 51,865 guideline cases, 199 cases were excluded due to missing information on mode of conviction.

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2004 Datafile, OPAFY04, Pre-*Blakely* Only Cases (October 1, 2003, through June 24, 2004).

Table 3

**MODE OF CONVICTION BY PRIMARY OFFENSE CATEGORY
Fiscal Year 2004, Pre-*Blakely* (October 1, 2003, through June 24, 2004)**

PRIMARY OFFENSE	TOTAL	National				Second Circuit			
		PLEA		TRIAL		PLEA		TRIAL	
		n	%	n	%	n	%	n	%
TOTAL	51,657	49,341	95.5	2,316	4.5	3,342	95.6	153	4.4
Murder	57	40	70.2	17	29.8	2	66.7	1	33.3
Manslaughter	45	40	88.9	5	11.1	0	--	0	--
Kidnapping/Hostage Taking	29	26	89.7	3	10.3	3	100.0	0	0.0
Sexual Abuse	199	179	89.9	20	10.1	6	85.7	1	14.3
Assault	463	420	90.7	43	9.3	11	100.0	0	0.0
Robbery	950	900	94.7	50	5.3	22	88.0	3	12.0
Arson	61	54	88.5	7	11.5	2	100.0	0	0.0
Drugs - Trafficking	17,575	16,717	95.1	858	4.9	1,297	96.7	44	3.3
Drugs - Communication Facility	262	260	99.2	2	0.8	23	100.0	0	0.0
Drugs - Simple Possession	1,014	998	98.4	16	1.6	33	100.0	0	0.0
Firearms	6,016	5,531	91.9	485	8.1	323	94.2	20	5.8
Burglary/B&E	47	45	95.7	2	4.3	0	--	0	--
Auto Theft	67	54	80.6	13	19.4	2	100.0	0	0.0
Larceny	1,558	1,521	97.6	37	2.4	139	99.3	1	0.7
Fraud	5,531	5,282	95.5	249	4.5	588	95.0	31	5.0
Embezzlement	456	443	97.1	13	2.9	28	93.3	2	6.7
Forgery/Counterfeiting	902	884	98.0	18	2.0	58	96.7	2	3.3
Bribery	130	121	93.1	9	6.9	18	85.7	3	14.3
Tax	372	336	90.3	36	9.7	50	90.9	5	9.1
Money Laundering	631	573	90.8	58	9.2	93	93.0	7	7.0
Racketeering/Extortion	481	445	92.5	36	7.5	110	90.2	12	9.8
Gambling/Lottery	77	76	98.7	1	1.3	12	100.0	0	0.0
Civil Rights	66	47	71.2	19	28.8	1	100.0	0	0.0
Immigration	11,183	11,021	98.6	162	1.4	330	97.1	10	2.9
Pornography/Prostitution	644	611	94.9	33	5.1	61	93.8	4	6.2
Prison Offenses	274	261	95.3	13	4.7	10	100.0	0	0.0
Administration of Justice Offenses	756	720	95.2	36	4.8	41	91.1	4	8.9
Environmental/Wildlife	117	105	89.7	12	10.3	8	80.0	2	20.0
National Defense	27	18	66.7	9	33.3	2	100.0	0	0.0
Antitrust	7	7	100.0	0	0.0	4	100.0	0	0.0
Food & Drug	64	62	96.9	2	3.1	4	100.0	0	0.0
Other Miscellaneous Offenses	1,596	1,544	96.7	52	3.3	61	98.4	1	1.6

Of the 51,865 guideline cases, 208 cases were excluded due to one or both of the following reasons: missing primary offense category (107) or missing mode of conviction (199).

Of the 3,507 guideline cases from the Second Circuit, 12 cases were excluded due to one or both of the following reasons: missing primary offense category (4) or missing mode of conviction (11).

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2004 Datafile, OPAFY04, Pre-*Blakely* Only Cases (October 1, 2003, through June 24, 2004).

Table 4

TYPE OF SENTENCE IMPOSED BY PRIMARY OFFENSE CATEGORY
Fiscal Year 2004, Pre-*Blakely* (October 1, 2003, through June 24, 2004)

National

PRIMARY OFFENSE	TOTAL	Prison		Prison/Community Split Sentence		Probation and Confinement		Probation Only	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent
TOTAL	51,076	42,957	84.1	1,508	3.0	2,165	4.2	4,446	8.7
Murder	58	56	96.6	2	3.4	0	0.0	0	0.0
Manslaughter	47	41	87.2	4	8.5	1	2.1	1	2.1
Kidnapping/Hostage Taking	29	29	100.0	0	0.0	0	0.0	0	0.0
Sexual Abuse	199	188	94.5	2	1.0	3	1.5	6	3.0
Assault	461	365	79.2	12	2.6	26	5.6	58	12.6
Robbery	947	919	97.0	9	1.0	5	0.5	14	1.5
Arson	61	58	95.1	0	0.0	1	1.6	2	3.3
Drugs - Trafficking	17,504	16,580	94.7	349	2.0	243	1.4	332	1.9
Drugs - Communication Facility	261	225	86.2	5	1.9	14	5.4	17	6.5
Drugs - Simple Possession	972	603	62.0	6	0.6	28	2.9	335	34.5
Firearms	6,008	5,466	91.0	141	2.3	172	2.9	229	3.8
Burglary/B&E	47	43	91.5	2	4.3	2	4.3	0	0.0
Auto Theft	67	53	79.1	3	4.5	6	9.0	5	7.5
Larceny	1,498	547	36.5	122	8.1	250	16.7	579	38.7
Fraud	5,496	3,317	60.4	448	8.2	657	12.0	1,074	19.5
Embezzlement	445	170	38.2	62	13.9	57	12.8	156	35.1
Forgery/Counterfeiting	895	550	61.5	43	4.8	113	12.6	189	21.1
Bribery	130	55	42.3	7	5.4	34	26.2	34	26.2
Tax	366	186	50.8	48	13.1	61	16.7	71	19.4
Money Laundering	628	460	73.2	23	3.7	69	11.0	76	12.1
Racketeering/Extortion	481	412	85.7	11	2.3	21	4.4	37	7.7
Gambling/Lottery	76	15	19.7	8	10.5	30	39.5	23	30.3
Civil Rights	66	48	72.7	2	3.0	8	12.1	8	12.1
Immigration	11,148	10,736	96.3	101	0.9	110	1.0	201	1.8
Pornography/Prostitution	643	602	93.6	15	2.3	14	2.2	12	1.9
Prison Offenses	274	250	91.2	8	2.9	8	2.9	8	2.9
Administration of Justice Offenses	751	464	61.8	35	4.7	86	11.5	166	22.1
Environmental/Wildlife	103	28	27.2	4	3.9	13	12.6	58	56.3
National Defense	27	22	81.5	2	7.4	0	0.0	3	11.1
Antitrust	7	3	42.9	0	0.0	1	14.3	3	42.9
Food & Drug	61	11	18.0	1	1.6	5	8.2	44	72.1
Other Miscellaneous Offenses	1,320	455	34.5	33	2.5	127	9.6	705	53.4

Of the 51,865 guideline cases, 789 cases were excluded due to one or more of the following reasons: missing sentencing information (257), missing primary offense category (107), or cases in which the defendant received no imprisonment or probation (523).

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2004 Datafile, OPAFY04, Pre-*Blakely* Only Cases (October 1, 2003, through June 24, 2004).

Table 5

TYPE OF SENTENCE IMPOSED BY PRIMARY OFFENSE CATEGORY
Fiscal Year 2004, Pre-Blakely (October 1, 2003, through June 24, 2004)

Second Circuit

PRIMARY OFFENSE	TOTAL	Prison		Prison/Community Split Sentence		Probation and Confinement		Probation Only	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent
TOTAL	3,483	2,646	76.0	139	4.0	223	6.4	475	13.6
Murder	3	3	100.0	0	0.0	0	0.0	0	0.0
Manslaughter	0	0	--	0	--	0	--	0	--
Kidnapping/Hostage Taking	3	3	100.0	0	0.0	0	0.0	0	0.0
Sexual Abuse	7	7	100.0	0	0.0	0	0.0	0	0.0
Assault	11	8	72.7	2	18.2	0	0.0	1	9.1
Robbery	25	25	100.0	0	0.0	0	0.0	0	0.0
Arson	2	2	100.0	0	0.0	0	0.0	0	0.0
Drugs - Trafficking	1,342	1,216	90.6	23	1.7	35	2.6	68	5.1
Drugs - Communication Facility	23	13	56.5	1	4.3	3	13.0	6	26.1
Drugs - Simple Possession	31	9	29.0	1	3.2	4	12.9	17	54.8
Firearms	341	299	87.7	14	4.1	13	3.8	15	4.4
Burglary/B&E	0	0	--	0	--	0	--	0	--
Auto Theft	2	1	50.0	0	0.0	0	0.0	1	50.0
Larceny	138	24	17.4	12	8.7	29	21.0	73	52.9
Fraud	615	334	54.3	58	9.4	62	10.1	161	26.2
Embezzlement	29	14	48.3	2	6.9	5	17.2	8	27.6
Forgery/Counterfeiting	59	32	54.2	2	3.4	6	10.2	19	32.2
Bribery	21	6	28.6	2	9.5	9	42.9	4	19.0
Tax	55	26	47.3	6	10.9	8	14.5	15	27.3
Money Laundering	100	74	74.0	1	1.0	11	11.0	14	14.0
Racketeering/Extortion	122	107	87.7	1	0.8	3	2.5	11	9.0
Gambling/Lottery	12	3	25.0	1	8.3	7	58.3	1	8.3
Civil Rights	1	1	100.0	0	0.0	0	0.0	0	0.0
Immigration	342	301	88.0	5	1.5	8	2.3	28	8.2
Pornography/Prostitution	65	57	87.7	3	4.6	1	1.5	4	6.2
Prison Offenses	10	9	90.0	0	0.0	1	10.0	0	0.0
Administration of Justice Offenses	44	25	56.8	4	9.1	9	20.5	6	13.6
Environmental/Wildlife	10	8	80.0	0	0.0	1	10.0	1	10.0
National Defense	2	2	100.0	0	0.0	0	0.0	0	0.0
Antitrust	4	0	0.0	0	0.0	1	25.0	3	75.0
Food & Drug	4	1	25.0	0	0.0	0	0.0	3	75.0
Other Miscellaneous Offenses	60	36	60.0	1	1.7	7	11.7	16	26.7

Of the 3,507 guideline cases from the Second Circuit, 24 cases were excluded due to one or more of the following reasons: missing sentencing information (6), missing primary offense category (4) or cases in which the defendant received no imprisonment or probation (17).

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2004 Datafile, OPAFY04, Pre-Blakely Only Cases (October 1, 2003, through June 24, 2004).

Table 6

**INCARCERATION RATE OF DEFENDANTS ELIGIBLE FOR NON-PRISON SENTENCES
BY PRIMARY OFFENSE CATEGORY
Fiscal Year 2004, Pre-*Blakely* (October 1, 2003, through June 24, 2004)**

PRIMARY OFFENSE	TOTAL	National				Second Circuit			
		Prison Sentence		Non-Prison Sentence		Prison Sentence		Non-Prison Sentence	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent
TOTAL	9,747	5,032	51.6	4,715	48.4	204	31.2	450	68.8
Fraud	2,148	852	39.7	1,296	60.3	67	32.5	139	67.5
Larceny	949	202	21.3	747	78.7	8	8.2	89	91.8
Immigration	2,867	2,621	91.4	246	8.6	82	73.9	29	26.1
Embezzlement	272	77	28.3	195	71.7	0	0.0	9	100.0
Drugs - Trafficking	478	241	50.4	237	49.6	10	19.6	41	80.4
Drugs - Simple Possession	622	307	49.4	315	50.6	6	20.7	23	79.3
Firearms	341	162	47.5	179	52.5	7	38.9	11	61.1
Forgery/Counterfeiting	355	104	29.3	251	70.7	0	0.0	18	100.0
Other Miscellaneous Offenses	1,715	466	27.2	1,249	72.8	24	20.9	91	79.1

Of the 51,865 guideline cases, 42,118 cases were excluded due to one or more of the following reasons: defendant ineligible for non-prison alternatives (42,082), missing sentencing information (257) or missing primary offense category (107).

Of the 3,507 guideline cases from the Second Circuit, 2,853 cases were excluded due to one or more of the following reasons: defendant ineligible for non-prison alternatives (2,851), missing sentencing information (6) or missing primary offense category (4).

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2004 Datafile, OPAFY04, Pre-*Blakely* Only Cases (October 1, 2003, through June 24, 2004).

Table 7

**AVERAGE LENGTH OF IMPRISONMENT BY PRIMARY OFFENSE CATEGORY
Fiscal Year 2004, Pre-*Blakely* (October 1, 2003, through June 24, 2004)**

PRIMARY OFFENSE	National			Second Circuit		
	Mean Months	Median Months	Number	Mean Months	Median Months	Number
TOTAL	58.3	36.0	43,961	54.9	37.0	2,739
Murder	216.2	168.0	55	240.0	168.0	3
Manslaughter	35.7	18.0	45	--	--	0
Kidnapping/Hostage Taking	124.2	87.0	27	--	--	2
Sexual Abuse	99.5	78.0	190	124.7	120.0	7
Assault	37.9	27.0	373	30.3	25.5	10
Robbery	97.6	72.0	926	100.3	60.0	25
Arson	69.4	48.0	57	--	--	2
Drugs - Trafficking	84.2	60.0	16,843	68.7	46.0	1,231
Drugs - Communication Facility	47.5	48.0	230	41.9	30.5	14
Drugs - Simple Possession	9.8	6.0	570	11.1	10.4	10
Firearms	82.8	51.0	5,589	73.2	41.0	312
Burglary/B&E	23.6	24.0	45	--	--	0
Auto Theft	74.9	24.0	54	--	--	1
Larceny	17.9	12.0	661	17.9	12.0	34
Fraud	22.2	15.0	3,698	22.3	13.0	383
Embezzlement	11.5	6.1	228	16.3	15.0	16
Forgery/Counterfeiting	20.6	15.0	584	20.1	18.0	32
Bribery	21.5	15.0	62	14.1	13.5	8
Tax	18.6	15.0	232	19.8	15.0	31
Money Laundering	46.4	33.0	479	41.5	36.0	75
Racketeering/Extortion	101.8	60.0	420	89.7	50.5	108
Gambling/Lottery	8.3	6.0	23	1.6	0.7	4
Civil Rights	43.7	33.0	50	--	--	1
Immigration	24.9	21.0	10,623	28.3	24.0	291
Pornography/Prostitution	65.5	41.0	616	61.4	46.0	60
Prison Offenses	17.7	14.0	257	14.8	15.0	9
Administration of Justice Offenses	24.1	15.0	487	27.6	15.0	27
Environmental/Wildlife	18.2	12.0	30	22.8	18.0	7
National Defense	103.5	30.0	24	--	--	2
Antitrust	4.3	4.0	3	--	--	0
Food & Drug	27.9	21.0	10	--	--	1
Other Miscellaneous Offenses	20.6	9.0	470	31.8	20.0	33

Of the 51,865 guideline cases, 7,904 cases were excluded for one or more of the following reasons: zero months prison ordered (7,052), missing primary offense category (107) or missing or indeterminable sentencing information (846).

Of the 3,507 guideline cases from the Second Circuit, 768 cases were excluded due to one or more of the following reasons: zero prison months ordered (742), missing primary offense category (4) or missing or indeterminable sentencing information (25).

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2004 Datafile, OPAFY04, Pre-*Blakely* Only Cases (October 1, 2003, through June 24, 2004).

Table 8

**GUIDELINE DEPARTURE RATE BY CIRCUIT AND DISTRICT
Fiscal Year 2004, Pre-*Blakely* (October 1, 2003, through June 24, 2004)**

CIRCUIT District	TOTAL	SENTENCED WITHIN GUIDELINE RANGE		SUBSTANTIAL ASSISTANCE DEPARTURE		GOVERNMENT INITIATED DEPARTURE		OTHER DOWNWARD DEPARTURE		UPWARD DEPARTURE	
		n	%	n	%	n	%	n	%	n	%
TOTAL	48,251	34,815	72.2	7,484	15.5	3,072	6.4	2,498	5.2	382	0.8
D.C. CIRCUIT	409	242	59.2	128	31.3	15	3.7	20	4.9	4	1.0
District of Columbia	409	242	59.2	128	31.3	15	3.7	20	4.9	4	1.0
FIRST CIRCUIT	1,279	1,018	79.6	177	13.8	7	0.5	66	5.2	11	0.9
Maine	170	108	63.5	54	31.8	0	0.0	6	3.5	2	1.2
Massachusetts	364	290	79.7	30	8.2	3	0.8	38	10.4	3	0.8
New Hampshire	169	96	56.8	58	34.3	2	1.2	8	4.7	5	3.0
Puerto Rico	485	445	91.8	26	5.4	2	0.4	11	2.3	1	0.2
Rhode Island	91	79	86.8	9	9.9	0	0.0	3	3.3	0	0.0
SECOND CIRCUIT	3,426	2,187	63.8	659	19.2	86	2.5	465	13.6	29	0.8
Connecticut	269	161	59.9	28	10.4	16	5.9	58	21.6	6	2.2
New York											
Eastern	1,132	612	54.1	226	20.0	58	5.1	228	20.1	8	0.7
Northern	328	215	65.5	73	22.3	2	0.6	38	11.6	0	0.0
Southern	1,174	899	76.6	167	14.2	5	0.4	95	8.1	8	0.7
Western	371	217	58.5	119	32.1	5	1.3	25	6.7	5	1.3
Vermont	152	83	54.6	46	30.3	0	0.0	21	13.8	2	1.3
THIRD CIRCUIT	2,086	1,305	62.6	632	30.3	21	1.0	115	5.5	13	0.6
Delaware	87	56	64.4	15	17.2	1	1.1	15	17.2	0	0.0
New Jersey	587	376	64.1	157	26.7	10	1.7	42	7.2	2	0.3
Pennsylvania											
Eastern	712	406	57.0	257	36.1	7	1.0	39	5.5	3	0.4
Middle	366	233	63.7	119	32.5	3	0.8	8	2.2	3	0.8
Western	261	182	69.7	69	26.4	0	0.0	8	3.1	2	0.8
Virgin Islands	73	52	71.2	15	20.5	0	0.0	3	4.1	3	4.1
FOURTH CIRCUIT	4,185	3,304	78.9	699	16.7	12	0.3	128	3.1	42	1.0
Maryland	383	247	64.5	82	21.4	2	0.5	50	13.1	2	0.5
North Carolina											
Eastern	410	256	62.4	136	33.2	0	0.0	13	3.2	5	1.2
Middle	268	236	88.1	29	10.8	0	0.0	0	0.0	3	1.1
Western	352	226	64.2	110	31.3	3	0.9	12	3.4	1	0.3
South Carolina	967	745	77.0	196	20.3	2	0.2	13	1.3	11	1.1
Virginia											
Eastern	1,117	1,020	91.3	54	4.8	4	0.4	29	2.6	10	0.9
Western	318	243	76.4	61	19.2	1	0.3	5	1.6	8	2.5
West Virginia											
Northern	177	146	82.5	26	14.7	0	0.0	3	1.7	2	1.1
Southern	193	185	95.9	5	2.6	0	0.0	3	1.6	0	0.0

CIRCUIT District	TOTAL	SENTENCED WITHIN GUIDELINE RANGE		SUBSTANTIAL ASSISTANCE DEPARTURE		GOVERNMENT INITIATED DEPARTURE		OTHER DOWNWARD DEPARTURE		UPWARD DEPARTURE	
		n	%	n	%	n	%	n	%	n	%
FIFTH CIRCUIT	9,773	7,842	80.2	1,005	10.3	490	5.0	361	3.7	75	0.8
Louisiana											
Eastern	282	243	86.2	25	8.9	5	1.8	6	2.1	3	1.1
Middle	136	95	69.9	32	23.5	3	2.2	1	0.7	5	3.7
Western	276	236	85.5	31	11.2	0	0.0	5	1.8	4	1.4
Mississippi											
Northern	123	70	56.9	45	36.6	6	4.9	2	1.6	0	0.0
Southern	253	211	83.4	37	14.6	1	0.4	4	1.6	0	0.0
Texas											
Eastern	626	550	87.9	56	8.9	2	0.3	17	2.7	1	0.2
Northern	827	710	85.9	79	9.6	3	0.4	20	2.4	15	1.8
Southern	3,695	2,775	75.1	312	8.4	385	10.4	207	5.6	16	0.4
Western	3,555	2,952	83.0	388	10.9	85	2.4	99	2.8	31	0.9
SIXTH CIRCUIT	3,434	2,394	69.7	836	24.3	13	0.4	175	5.1	16	0.5
Kentucky											
Eastern	377	235	62.3	133	35.3	2	0.5	4	1.1	3	0.8
Western	275	230	83.6	30	10.9	0	0.0	13	4.7	2	0.7
Michigan											
Eastern	571	396	69.4	131	22.9	3	0.5	39	6.8	2	0.4
Western	250	194	77.6	42	16.8	0	0.0	13	5.2	1	0.4
Ohio											
Northern	541	377	69.7	114	21.1	2	0.4	47	8.7	1	0.2
Southern	342	203	59.4	106	31.0	2	0.6	29	8.5	2	0.6
Tennessee											
Eastern	466	289	62.0	158	33.9	3	0.6	15	3.2	1	0.2
Middle	221	173	78.3	40	18.1	0	0.0	7	3.2	1	0.5
Western	391	297	76.0	82	21.0	1	0.3	8	2.0	3	0.8
SEVENTH CIRCUIT	2,224	1,676	75.4	423	19.0	15	0.7	82	3.7	28	1.3
Illinois											
Central	267	196	73.4	51	19.1	0	0.0	16	6.0	4	1.5
Northern	811	555	68.4	205	25.3	8	1.0	37	4.6	6	0.7
Southern	249	216	86.7	26	10.4	0	0.0	4	1.6	3	1.2
Indiana											
Northern	257	188	73.2	55	21.4	3	1.2	10	3.9	1	0.4
Southern	246	175	71.1	56	22.8	1	0.4	6	2.4	8	3.3
Wisconsin											
Eastern	248	210	84.7	22	8.9	3	1.2	9	3.6	4	1.6
Western	146	136	93.2	8	5.5	0	0.0	0	0.0	2	1.4
EIGHTH CIRCUIT	3,528	2,715	77.0	540	15.3	77	2.2	165	4.7	31	0.9
Arkansas											
Eastern	201	174	86.6	24	11.9	0	0.0	2	1.0	1	0.5
Western	135	104	77.0	29	21.5	1	0.7	0	0.0	1	0.7
Iowa											
Northern	368	272	73.9	84	22.8	1	0.3	3	0.8	8	2.2
Southern	270	199	73.7	55	20.4	0	0.0	16	5.9	0	0.0
Minnesota	323	217	67.2	75	23.2	2	0.6	27	8.4	2	0.6
Missouri											
Eastern	643	508	79.0	116	18.0	1	0.2	16	2.5	2	0.3
Western	557	424	76.1	102	18.3	5	0.9	21	3.8	5	0.9
Nebraska	612	477	77.9	22	3.6	53	8.7	58	9.5	2	0.3
North Dakota	144	117	81.3	12	8.3	11	7.6	3	2.1	1	0.7
South Dakota	275	223	81.1	21	7.6	3	1.1	19	6.9	9	3.3

CIRCUIT District	TOTAL	SENTENCED WITHIN GUIDELINE RANGE		SUBSTANTIAL ASSISTANCE DEPARTURE		GOVERNMENT INITIATED DEPARTURE		OTHER DOWNWARD DEPARTURE		UPWARD DEPARTURE	
		n	%	n	%	n	%	n	%	n	%
NINTH CIRCUIT	9,377	5,792	61.8	990	10.6	1,927	20.6	596	6.4	72	0.8
Alaska	153	99	64.7	41	26.8	1	0.7	11	7.2	1	0.7
Arizona	2,806	1,060	37.8	206	7.3	1,359	48.4	152	5.4	29	1.0
California											
Central	787	682	86.7	60	7.6	11	1.4	33	4.2	1	0.1
Eastern	681	476	69.9	112	16.4	58	8.5	32	4.7	3	0.4
Northern	496	358	72.2	74	14.9	16	3.2	42	8.5	6	1.2
Southern	1,921	1,342	69.9	74	3.9	402	20.9	97	5.0	6	0.3
Guam	70	36	51.4	28	40.0	0	0.0	6	8.6	0	0.0
Hawaii	311	207	66.6	89	28.6	1	0.3	12	3.9	2	0.6
Idaho	183	80	43.7	51	27.9	39	21.3	11	6.0	2	1.1
Montana	267	218	81.6	33	12.4	0	0.0	10	3.7	6	2.2
Nevada	476	397	83.4	49	10.3	10	2.1	18	3.8	2	0.4
Northern Mariana Islands	21	18	85.7	3	14.3	0	0.0	0	0.0	0	0.0
Oregon	421	288	68.4	70	16.6	2	0.5	55	13.1	6	1.4
Washington											
Eastern	297	218	73.4	27	9.1	7	2.4	43	14.5	2	0.7
Western	487	313	64.3	73	15.0	21	4.3	74	15.2	6	1.2
TENTH CIRCUIT	3,728	2,754	73.9	385	10.3	399	10.7	165	4.4	25	0.7
Colorado	397	254	64.0	115	29.0	2	0.5	25	6.3	1	0.3
Kansas	487	385	79.1	85	17.5	2	0.4	14	2.9	1	0.2
New Mexico	1,621	1,112	68.6	63	3.9	384	23.7	52	3.2	10	0.6
Oklahoma											
Eastern	105	91	86.7	7	6.7	4	3.8	0	0.0	3	2.9
Northern	120	107	89.2	11	9.2	0	0.0	0	0.0	2	1.7
Western	185	146	78.9	28	15.1	1	0.5	7	3.8	3	1.6
Utah	621	505	81.3	54	8.7	4	0.6	53	8.5	5	0.8
Wyoming	192	154	80.2	22	11.5	2	1.0	14	7.3	0	0.0
ELEVENTH CIRCUIT	4,802	3,586	74.7	1,010	21.0	10	0.2	160	3.3	36	0.7
Alabama											
Middle	141	85	60.3	47	33.3	0	0.0	8	5.7	1	0.7
Northern	408	282	69.1	115	28.2	0	0.0	5	1.2	6	1.5
Southern	216	146	67.6	62	28.7	1	0.5	5	2.3	2	0.9
Florida											
Middle	1,248	891	71.4	299	24.0	0	0.0	54	4.3	4	0.3
Northern	321	208	64.8	102	31.8	0	0.0	6	1.9	5	1.6
Southern	1,422	1,183	83.2	197	13.9	2	0.1	36	2.5	4	0.3
Georgia											
Middle	286	204	71.3	73	25.5	1	0.3	2	0.7	6	2.1
Northern	562	437	77.8	81	14.4	5	0.9	33	5.9	6	1.1
Southern	198	150	75.8	34	17.2	1	0.5	11	5.6	2	1.0

Of the 51,865 guideline cases, 94 cases with no analogous guidelines were excluded from the table. Of the remaining 51,771 cases, 3,520 were excluded due to missing departure information. Districts for which departure information is missing in five percent or more of the cases received included: Western Oklahoma (59.4%), Central California (36.0%), Southern Georgia (32.0%), Eastern Virginia (27.4%), Southern California (23.2%), Middle Georgia (20.3%), Western Washington (18.7%), Arizona (18.2%), Western Kentucky (13.8%), Oregon (10.0%), Northern Alabama (7.3%), Northern New York (7.1%), Eastern North Carolina (6.6%), Maryland (6.6%), Northern Ohio (5.7%), Central Illinois (5.3%), and Northern California (5.3%).

A portion of this data was collected prior to the issuance of AO Form 245B, Revision 12/03, which now provides specific entries for the sentencing court to indicate whether a departure was initiated by one of the parties. As a result, the Commission could not definitively determine the attribution for every case. However, based on a review of the available sentencing documentation by USSC legal staff the Commission believes that the overwhelming majority of the government initiated departures listed in this table are properly categorized. For a list of the reasons used in the category see Appendix A in the 2004, Sourcebook of Federal Sentencing Statistics.

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2004 Datafile, OPAFY04, Pre-*Blakely* Only Cases (October 1, 2003, through June 24, 2004).

Table 9

**GUIDELINE DEPARTURE RATE BY PRIMARY OFFENSE CATEGORY
Fiscal Year 2004, Pre-*Blakely* (October 1, 2003, through June 24, 2004)**

National

PRIMARY OFFENSE	TOTAL	SENTENCED WITHIN GUIDELINE RANGE		SUBSTANTIAL ASSISTANCE DEPARTURE		GOVERNMENT INITIATED DEPARTURE		OTHER DOWNWARD DEPARTURE		UPWARD DEPARTURE	
		n	%	n	%	n	%	n	%	n	%
TOTAL	48,181	34,760	72.1	7,473	15.5	3,072	6.4	2,494	5.2	382	0.8
Robbery	928	696	75.0	136	14.7	5	0.5	71	7.7	20	2.2
Drugs - Trafficking	17,217	11,014	64.0	4,532	26.3	863	5.0	765	4.4	43	0.2
Drugs - Simple Possession	519	497	95.8	5	1.0	1	0.2	2	0.4	14	2.7
Firearms	5,884	4,685	79.6	694	11.8	70	1.2	352	6.0	83	1.4
Larceny	1,410	1,218	86.4	98	7.0	8	0.6	70	5.0	16	1.1
Fraud	5,201	3,955	76.0	843	16.2	57	1.1	292	5.6	54	1.0
Embezzlement	434	373	85.9	16	3.7	6	1.4	38	8.8	1	0.2
Forgery/Counterfeiting	868	709	81.7	116	13.4	9	1.0	30	3.5	4	0.5
Immigration	10,393	7,652	73.6	256	2.5	1,909	18.4	539	5.2	37	0.4
Other Miscellaneous Offenses	5,327	3,961	74.4	777	14.6	144	2.7	335	6.3	110	2.1

Second Circuit

PRIMARY OFFENSE	TOTAL	SENTENCED WITHIN GUIDELINE RANGE		SUBSTANTIAL ASSISTANCE DEPARTURE		GOVERNMENT INITIATED DEPARTURE		OTHER DOWNWARD DEPARTURE		UPWARD DEPARTURE	
		n	%	n	%	n	%	n	%	n	%
TOTAL	3,424	2,186	63.8	658	19.2	86	2.5	465	13.6	29	0.8
Robbery	25	17	68.0	3	12.0	0	0.0	3	12.0	2	8.0
Drugs - Trafficking	1,323	720	54.4	364	27.5	34	2.6	200	15.1	5	0.4
Drugs - Simple Possession	33	31	93.9	1	3.0	0	0.0	0	0.0	1	3.0
Firearms	335	233	69.6	57	17.0	3	0.9	37	11.0	5	1.5
Larceny	136	117	86.0	7	5.1	3	2.2	9	6.6	0	0.0
Fraud	602	392	65.1	109	18.1	13	2.2	82	13.6	6	1.0
Embezzlement	28	21	75.0	1	3.6	0	0.0	6	21.4	0	0.0
Forgery/Counterfeiting	57	45	78.9	5	8.8	0	0.0	7	12.3	0	0.0
Immigration	338	262	77.5	21	6.2	1	0.3	53	15.7	1	0.3
Other Miscellaneous Offenses	547	348	63.6	90	16.5	32	5.9	68	12.4	9	1.6

Of the 51,865 guideline cases, 3,684 cases were excluded due to one or more of the following reasons: no analogous guidelines (94), missing or indeterminable departure information (3,520) or missing primary offense category (107).

Of the 3,507 guideline cases from the Second Circuit, 83 cases were excluded due to one or more of the following reasons: no analogous guidelines (4), missing or indeterminable departure information (77) or missing primary offense category (4).

A portion of this data was collected prior to the issuance of AO Form 245B, Revision 12/03, which now provides specific entries for the sentencing court to indicate whether a departure was initiated by one of the parties. As a result, the Commission could not definitively determine the attribution for every case. However, based on a review of the available sentencing documentation by USSC legal staff the Commission believes that the overwhelming majority of the government initiated departures listed in this table are properly categorized. For a list of the reasons used in the category see Appendix A in the 2004, Sourcebook of Federal Sentencing Statistics.

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2004 Datafile, OPAFY04, Pre-*Blakely* Only Cases (October 1, 2003, through June 24, 2004).

SECTION THREE: *Post-Blakely*
(June 25, 2004, through September 30, 2004)

Table 2

MODE OF CONVICTION BY CIRCUIT AND DISTRICT
Fiscal Year 2004, Post-*Blakely* (June 25, 2004, through September 30, 2004)

CIRCUIT District	TOTAL	PLEA		TRIAL	
		Number	Percent	Number	Percent
TOTAL	18,145	17,521	96.6	624	3.4
D.C. CIRCUIT	150	134	89.3	16	10.7
District of Columbia	150	134	89.3	16	10.7
FIRST CIRCUIT	456	434	95.2	22	4.8
Maine	71	65	91.5	6	8.5
Massachusetts	126	117	92.9	9	7.1
New Hampshire	50	46	92.0	4	8.0
Puerto Rico	162	160	98.8	2	1.2
Rhode Island	47	46	97.9	1	2.1
SECOND CIRCUIT	1,039	985	94.8	54	5.2
Connecticut	89	84	94.4	5	5.6
New York					
Eastern	307	293	95.4	14	4.6
Northern	155	152	98.1	3	1.9
Southern	254	226	89.0	28	11.0
Western	182	179	98.4	3	1.6
Vermont	52	51	98.1	1	1.9
THIRD CIRCUIT	683	652	95.5	31	4.5
Delaware	29	28	96.6	1	3.4
New Jersey	203	197	97.0	6	3.0
Pennsylvania					
Eastern	222	207	93.2	15	6.8
Middle	126	123	97.6	3	2.4
Western	86	81	94.2	5	5.8
Virgin Islands	17	16	94.1	1	5.9
FOURTH CIRCUIT	1,599	1,524	95.3	75	4.7
Maryland	162	150	92.6	12	7.4
North Carolina					
Eastern	149	143	96.0	6	4.0
Middle	94	86	91.5	8	8.5
Western	179	178	99.4	1	0.6
South Carolina	228	217	95.2	11	4.8
Virginia					
Eastern	532	507	95.3	25	4.7
Western	150	141	94.0	9	6.0
West Virginia					
Northern	73	72	98.6	1	1.4
Southern	32	30	93.8	2	6.3

CIRCUIT District	TOTAL	PLEA		TRIAL	
		Number	Percent	Number	Percent
FIFTH CIRCUIT	3,869	3,781	97.7	88	2.3
Louisiana					
Eastern	96	94	97.9	2	2.1
Middle	40	38	95.0	2	5.0
Western	104	97	93.3	7	6.7
Mississippi					
Northern	44	41	93.2	3	6.8
Southern	105	99	94.3	6	5.7
Texas					
Eastern	238	229	96.2	9	3.8
Northern	256	242	94.5	14	5.5
Southern	1,413	1,389	98.3	24	1.7
Western	1,573	1,552	98.7	21	1.3
SIXTH CIRCUIT	1,249	1,184	94.8	65	5.2
Kentucky					
Eastern	102	99	97.1	3	2.9
Western	116	111	95.7	5	4.3
Michigan					
Eastern	202	187	92.6	15	7.4
Western	102	96	94.1	6	5.9
Ohio					
Northern	227	217	95.6	10	4.4
Southern	112	107	95.5	5	4.5
Tennessee					
Eastern	164	155	94.5	9	5.5
Middle	77	74	96.1	3	3.9
Western	147	138	93.9	9	6.1
SEVENTH CIRCUIT	596	572	96.0	24	4.0
Illinois					
Central	54	53	98.1	1	1.9
Northern	176	170	96.6	6	3.4
Southern	65	63	96.9	2	3.1
Indiana					
Northern	58	57	98.3	1	1.7
Southern	69	64	92.8	5	7.2
Wisconsin					
Eastern	122	117	95.9	5	4.1
Western	52	48	92.3	4	7.7
EIGHTH CIRCUIT	1,246	1,193	95.7	53	4.3
Arkansas					
Eastern	90	84	93.3	6	6.7
Western	54	54	100.0	0	0.0
Iowa					
Northern	129	124	96.1	5	3.9
Southern	74	73	98.6	1	1.4
Minnesota	103	91	88.3	12	11.7
Missouri					
Eastern	233	229	98.3	4	1.7
Western	203	191	94.1	12	5.9
Nebraska	195	192	98.5	3	1.5
North Dakota	77	74	96.1	3	3.9
South Dakota	88	81	92.0	7	8.0

CIRCUIT District	TOTAL	PLEA		TRIAL	
		Number	Percent	Number	Percent
NINTH CIRCUIT	3,956	3,880	98.1	76	1.9
Alaska	38	38	100.0	0	0.0
Arizona	1,277	1,259	98.6	18	1.4
California					
Central	442	430	97.3	12	2.7
Eastern	244	237	97.1	7	2.9
Northern	180	180	100.0	0	0.0
Southern	923	907	98.3	16	1.7
Guam	12	12	100.0	0	0.0
Hawaii	72	71	98.6	1	1.4
Idaho	80	80	100.0	0	0.0
Montana	115	105	91.3	10	8.7
Nevada	139	134	96.4	5	3.6
Northern Mariana Islands	12	12	100.0	0	0.0
Oregon	161	160	99.4	1	0.6
Washington					
Eastern	98	94	95.9	4	4.1
Western	163	161	98.8	2	1.2
TENTH CIRCUIT	1,539	1,506	97.9	33	2.1
Colorado	143	139	97.2	4	2.8
Kansas	201	195	97.0	6	3.0
New Mexico	599	593	99.0	6	1.0
Oklahoma					
Eastern	46	44	95.7	2	4.3
Northern	67	64	95.5	3	4.5
Western	163	158	96.9	5	3.1
Utah	230	227	98.7	3	1.3
Wyoming	90	86	95.6	4	4.4
ELEVENTH CIRCUIT	1,763	1,676	95.1	87	4.9
Alabama					
Middle	34	34	100.0	0	0.0
Northern	135	131	97.0	4	3.0
Southern	79	72	91.1	7	8.9
Florida					
Middle	438	427	97.5	11	2.5
Northern	121	107	88.4	14	11.6
Southern	591	562	95.1	29	4.9
Georgia					
Middle	99	96	97.0	3	3.0
Northern	167	151	90.4	16	9.6
Southern	99	96	97.0	3	3.0

Of the 18,203 guideline cases, 58 cases were excluded due to missing information on mode of conviction.

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2004 Datafile, OPAFY04, Post-*Blakely* Only Cases (June 25, 2004, through September 30, 2004).

Table 3

**MODE OF CONVICTION BY PRIMARY OFFENSE CATEGORY
Fiscal Year 2004, Post-*Blakely* (June 25, 2004, through September 30, 2004)**

PRIMARY OFFENSE	TOTAL	National				Second Circuit			
		PLEA		TRIAL		PLEA		TRIAL	
		n	%	n	%	n	%	n	%
TOTAL	18,142	17,518	96.6	624	3.4	985	94.8	54	5.2
Murder	18	12	66.7	6	33.3	2	66.7	1	33.3
Manslaughter	16	16	100.0	0	0.0	0	--	0	--
Kidnapping/Hostage Taking	10	8	80.0	2	20.0	0	--	0	--
Sexual Abuse	77	70	90.9	7	9.1	2	100.0	0	0.0
Assault	153	141	92.2	12	7.8	3	100.0	0	0.0
Robbery	368	352	95.7	16	4.3	7	100.0	0	0.0
Arson	11	9	81.8	2	18.2	2	100.0	0	0.0
Drugs - Trafficking	5,968	5,750	96.3	218	3.7	352	96.2	14	3.8
Drugs - Communication Facility	84	84	100.0	0	0.0	8	100.0	0	0.0
Drugs - Simple Possession	274	272	99.3	2	0.7	13	100.0	0	0.0
Firearms	2,095	1,956	93.4	139	6.6	105	89.7	12	10.3
Burglary/B&E	16	15	93.8	1	6.3	0	--	0	--
Auto Theft	27	26	96.3	1	3.7	4	100.0	0	0.0
Larceny	570	554	97.2	16	2.8	44	97.8	1	2.2
Fraud	1,719	1,655	96.3	64	3.7	162	94.2	10	5.8
Embezzlement	173	167	96.5	6	3.5	15	100.0	0	0.0
Forgery/Counterfeiting	279	271	97.1	8	2.9	20	90.9	2	9.1
Bribery	36	32	88.9	4	11.1	5	100.0	0	0.0
Tax	143	132	92.3	11	7.7	25	96.2	1	3.8
Money Laundering	209	197	94.3	12	5.7	31	93.9	2	6.1
Racketeering/Extortion	138	124	89.9	14	10.1	21	77.8	6	22.2
Gambling/Lottery	23	23	100.0	0	0.0	7	100.0	0	0.0
Civil Rights	5	5	100.0	0	0.0	1	100.0	0	0.0
Immigration	4,515	4,471	99.0	44	1.0	106	99.1	1	0.9
Pornography/Prostitution	232	220	94.8	12	5.2	16	100.0	0	0.0
Prison Offenses	105	104	99.0	1	1.0	1	100.0	0	0.0
Administration of Justice Offenses	267	260	97.4	7	2.6	7	70.0	3	30.0
Environmental/Wildlife	38	37	97.4	1	2.6	4	100.0	0	0.0
National Defense	7	6	85.7	1	14.3	0	--	0	--
Antitrust	4	4	100.0	0	0.0	0	--	0	--
Food & Drug	11	10	90.9	1	9.1	0	--	0	--
Other Miscellaneous Offenses	551	535	97.1	16	2.9	22	95.7	1	4.3

Of the 18,203 guideline cases, 61 cases were excluded due to one or both of the following reasons: missing primary offense category (29) or missing mode of conviction (58).

Of the 1,046 guideline cases from the Second Circuit, seven cases were excluded due to one or both of the following reasons: missing primary offense category (4) or missing mode of conviction (7).

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2004 Datafile, OPAFY04, Post-*Blakely* Only Cases (June 25, 2004, through September 30, 2004).

Table 4

**TYPE OF SENTENCE IMPOSED BY PRIMARY OFFENSE CATEGORY
Fiscal Year 2004, Post-*Blakely* (June 25, 2004, through September 30, 2004)**

National

PRIMARY OFFENSE	TOTAL	Prison		Prison/Community Split Sentence		Probation and Confinement		Probation Only	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent
TOTAL	17,924	15,139	84.5	455	2.5	722	4.0	1,608	9.0
Murder	18	18	100.0	0	0.0	0	0.0	0	0.0
Manslaughter	16	12	75.0	0	0.0	3	18.8	1	6.3
Kidnapping/Hostage Taking	10	9	90.0	0	0.0	1	10.0	0	0.0
Sexual Abuse	77	74	96.1	1	1.3	1	1.3	1	1.3
Assault	153	126	82.4	3	2.0	8	5.2	16	10.5
Robbery	363	354	97.5	3	0.8	3	0.8	3	0.8
Arson	11	9	81.8	0	0.0	0	0.0	2	18.2
Drugs - Trafficking	5,955	5,642	94.7	107	1.8	94	1.6	112	1.9
Drugs - Communication Facility	84	71	84.5	1	1.2	4	4.8	8	9.5
Drugs - Simple Possession	258	129	50.0	1	0.4	17	6.6	111	43.0
Firearms	2,091	1,901	90.9	47	2.2	54	2.6	89	4.3
Burglary/B&E	16	11	68.8	1	6.3	1	6.3	3	18.8
Auto Theft	27	21	77.8	2	7.4	2	7.4	2	7.4
Larceny	528	204	38.6	27	5.1	83	15.7	214	40.5
Fraud	1,689	977	57.8	125	7.4	207	12.3	380	22.5
Embezzlement	170	57	33.5	26	15.3	24	14.1	63	37.1
Forgery/Counterfeiting	274	159	58.0	22	8.0	29	10.6	64	23.4
Bribery	36	15	41.7	4	11.1	5	13.9	12	33.3
Tax	141	61	43.3	12	8.5	21	14.9	47	33.3
Money Laundering	207	144	69.6	7	3.4	29	14.0	27	13.0
Racketeering/Extortion	138	120	87.0	1	0.7	10	7.2	7	5.1
Gambling/Lottery	22	6	27.3	3	13.6	9	40.9	4	18.2
Civil Rights	5	2	40.0	0	0.0	0	0.0	3	60.0
Immigration	4,504	4,358	96.8	36	0.8	35	0.8	75	1.7
Pornography/Prostitution	232	224	96.6	1	0.4	3	1.3	4	1.7
Prison Offenses	105	97	92.4	3	2.9	2	1.9	3	2.9
Administration of Justice Offenses	264	163	61.7	13	4.9	26	9.8	62	23.5
Environmental/Wildlife	35	4	11.4	2	5.7	8	22.9	21	60.0
National Defense	7	6	85.7	0	0.0	1	14.3	0	0.0
Antitrust	4	1	25.0	2	50.0	0	0.0	1	25.0
Food & Drug	11	4	36.4	0	0.0	3	27.3	4	36.4
Other Miscellaneous Offenses	473	160	33.8	5	1.1	39	8.2	269	56.9

Of the 18,203 guideline cases, 279 cases were excluded due to one or more of the following reasons: missing sentencing information (87), missing primary offense category (29), or cases in which the defendant received no imprisonment or probation (189).

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2004 Datafile, OPAFY04, Post-*Blakely* Only Cases (June 25, 2004, through September 30, 2004).

Table 5

TYPE OF SENTENCE IMPOSED BY PRIMARY OFFENSE CATEGORY
Fiscal Year 2004, Post-Blakely (June 25, 2004, through September 30, 2004)

Second Circuit

PRIMARY OFFENSE	TOTAL	Prison		Prison/Community Split Sentence		Probation and Confinement		Probation Only	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent
TOTAL	1,030	739	71.7	32	3.1	87	8.4	172	16.7
Murder	3	3	100.0	0	0.0	0	0.0	0	0.0
Manslaughter	0	0	--	0	--	0	--	0	--
Kidnapping/Hostage Taking	0	0	--	0	--	0	--	0	--
Sexual Abuse	2	2	100.0	0	0.0	0	0.0	0	0.0
Assault	3	2	66.7	0	0.0	0	0.0	1	33.3
Robbery	7	7	100.0	0	0.0	0	0.0	0	0.0
Arson	2	2	100.0	0	0.0	0	0.0	0	0.0
Drugs - Trafficking	363	307	84.6	10	2.8	17	4.7	29	8.0
Drugs - Communication Facility	8	4	50.0	0	0.0	1	12.5	3	37.5
Drugs - Simple Possession	12	3	25.0	0	0.0	0	0.0	9	75.0
Firearms	117	105	89.7	4	3.4	5	4.3	3	2.6
Burglary/B&E	0	0	--	0	--	0	--	0	--
Auto Theft	4	3	75.0	0	0.0	1	25.0	0	0.0
Larceny	45	15	33.3	1	2.2	12	26.7	17	37.8
Fraud	173	91	52.6	9	5.2	23	13.3	50	28.9
Embezzlement	14	6	42.9	1	7.1	2	14.3	5	35.7
Forgery/Counterfeiting	22	11	50.0	2	9.1	1	4.5	8	36.4
Bribery	5	1	20.0	1	20.0	0	0.0	3	60.0
Tax	26	8	30.8	1	3.8	7	26.9	10	38.5
Money Laundering	32	22	68.8	0	0.0	6	18.8	4	12.5
Racketeering/Extortion	27	24	88.9	0	0.0	2	7.4	1	3.7
Gambling/Lottery	7	4	57.1	1	14.3	1	14.3	1	14.3
Civil Rights	1	0	0.0	0	0.0	0	0.0	1	100.0
Immigration	105	90	85.7	0	0.0	5	4.8	10	9.5
Pornography/Prostitution	16	15	93.8	0	0.0	0	0.0	1	6.3
Prison Offenses	1	1	100.0	0	0.0	0	0.0	0	0.0
Administration of Justice Offenses	9	6	66.7	2	22.2	0	0.0	1	11.1
Environmental/Wildlife	4	0	0.0	0	0.0	1	25.0	3	75.0
National Defense	0	0	--	0	--	0	--	0	--
Antitrust	0	0	--	0	--	0	--	0	--
Food & Drug	0	0	--	0	--	0	--	0	--
Other Miscellaneous Offenses	22	7	31.8	0	0.0	3	13.6	12	54.5

Of the 1,046 guideline cases from the Second Circuit, 16 cases were excluded due to one or more of the following reasons: missing sentencing information (8), missing primary offense category (4) or cases in which the defendant received no imprisonment or probation (7).

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2004 Datafile, OPAFY04, Post-Blakely Only Cases (June 25, 2004, through September 30, 2004).

Table 6

**INCARCERATION RATE OF DEFENDANTS ELIGIBLE FOR NON-PRISON SENTENCES
BY PRIMARY OFFENSE CATEGORY
Fiscal Year 2004, Post-*Blakely* (June 25, 2004, through September 30, 2004)**

PRIMARY OFFENSE	TOTAL	National				Second Circuit			
		Prison Sentence		Non-Prison Sentence		Prison Sentence		Non-Prison Sentence	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent
TOTAL	3,566	1,969	55.2	1,597	44.8	96	38.4	154	61.6
Fraud	702	269	38.3	433	61.7	26	37.7	43	62.3
Larceny	352	77	21.9	275	78.1	8	26.7	22	73.3
Immigration	1,256	1,166	92.8	90	7.2	40	78.4	11	21.6
Embezzlement	123	48	39.0	75	61.0	4	33.3	8	66.7
Drugs - Trafficking	176	99	56.3	77	43.8	7	33.3	14	66.7
Drugs - Simple Possession	150	47	31.3	103	68.7	1	10.0	9	90.0
Firearms	116	54	46.6	62	53.4	2	66.7	1	33.3
Forgery/Counterfeiting	119	40	33.6	79	66.4	2	25.0	6	75.0
Other Miscellaneous Offenses	572	169	29.5	403	70.5	6	13.0	40	87.0

Of the 18,203 guideline cases, 14,637 cases were excluded due to one or more of the following reasons: defendant ineligible for non-prison alternatives (14,626), missing sentencing information (87) or missing primary offense category (29).

Of the 1,046 guideline cases from the Second Circuit, 796 cases were excluded due to one or more of the following reasons: defendant ineligible for non-prison alternatives (793), missing sentencing information (8) or missing primary offense category (4).

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2004 Datafile, OPAFY04, Post-*Blakely* Only Cases (June 25, 2004, through September 30, 2004).

Table 7

AVERAGE LENGTH OF IMPRISONMENT BY PRIMARY OFFENSE CATEGORY
Fiscal Year 2004, Post-*Blakely* (June 25, 2004, through September 30, 2004)

PRIMARY OFFENSE	National			Second Circuit		
	Mean Months	Median Months	Number	Mean Months	Median Months	Number
TOTAL	52.7	30.0	15,330	46.2	30.0	747
Murder	303.0	327.0	17	352.7	470.0	3
Manslaughter	42.1	27.0	12	--	--	0
Kidnapping/Hostage Taking	148.3	120.0	9	--	--	0
Sexual Abuse	84.0	72.0	75	--	--	2
Assault	32.6	28.5	126	--	--	2
Robbery	95.9	72.0	357	72.6	50.0	7
Arson	41.7	60.0	9	--	--	2
Drugs - Trafficking	76.3	60.0	5,731	52.1	37.0	313
Drugs - Communication Facility	44.4	48.0	72	63.5	32.5	4
Drugs - Simple Possession	9.8	6.0	108	12.3	12.0	3
Firearms	74.5	51.0	1,945	73.8	46.0	109
Burglary/B&E	25.2	27.0	12	--	--	0
Auto Theft	33.8	13.0	23	13.6	12.0	3
Larceny	16.0	12.0	229	12.2	9.0	15
Fraud	20.2	15.0	1,060	21.1	15.0	91
Embezzlement	8.1	4.0	82	18.8	9.5	6
Forgery/Counterfeiting	17.9	15.0	177	19.4	19.0	12
Bribery	19.3	21.0	19	--	--	2
Tax	21.8	15.0	73	18.1	15.0	9
Money Laundering	39.8	30.0	150	28.7	24.0	22
Racketeering/Extortion	73.7	57.0	120	74.6	41.0	24
Gambling/Lottery	6.7	6.0	9	7.0	6.0	5
Civil Rights	--	--	2	--	--	0
Immigration	23.0	18.0	4,238	22.1	12.0	84
Pornography/Prostitution	75.5	60.0	224	56.0	60.0	15
Prison Offenses	17.0	12.0	98	--	--	1
Administration of Justice Offenses	21.4	14.2	171	29.3	18.0	7
Environmental/Wildlife	6.3	5.5	6	--	--	0
National Defense	25.8	18.0	6	--	--	0
Antitrust	3.0	3.0	3	--	--	0
Food & Drug	45.5	26.0	4	--	--	0
Other Miscellaneous Offenses	16.1	7.5	163	13.0	13.0	6

Of the 18,203 guideline cases, 2,873 excluded for one or more of the following reasons: zero months prison ordered (2,582), missing primary offense category (29) or missing or indeterminable sentencing information (289).

Of the 1,046 guideline cases from the Second Circuit, 299 cases were excluded due to one or more of the following reasons: zero prison months ordered (283), missing primary offense category (4) or missing or indeterminable sentencing information (15).

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2004 Datafile, OPAFY04, Post-*Blakely* Only Cases (June 25, 2004, through September 30, 2004).

Table 8

**GUIDELINE DEPARTURE RATE BY CIRCUIT AND DISTRICT
Fiscal Year 2004, Post-*Blakely* (June 25, 2004, through September 30, 2004)**

CIRCUIT District	TOTAL	SENTENCED WITHIN GUIDELINE RANGE		SUBSTANTIAL ASSISTANCE DEPARTURE		GOVERNMENT INITIATED DEPARTURE		OTHER DOWNWARD DEPARTURE		UPWARD DEPARTURE	
		n	%	n	%	n	%	n	%	n	%
TOTAL	16,792	12,059	71.8	2,425	14.4	1,441	8.6	772	4.6	95	0.6
D.C. CIRCUIT	142	91	64.1	42	29.6	5	3.5	4	2.8	0	0.0
District of Columbia	142	91	64.1	42	29.6	5	3.5	4	2.8	0	0.0
FIRST CIRCUIT	446	344	77.1	74	16.6	0	0.0	25	5.6	3	0.7
Maine	71	46	64.8	24	33.8	0	0.0	1	1.4	0	0.0
Massachusetts	122	89	73.0	14	11.5	0	0.0	19	15.6	0	0.0
New Hampshire	45	24	53.3	18	40.0	0	0.0	2	4.4	1	2.2
Puerto Rico	161	146	90.7	12	7.5	0	0.0	2	1.2	1	0.6
Rhode Island	47	39	83.0	6	12.8	0	0.0	1	2.1	1	2.1
SECOND CIRCUIT	974	604	62.0	224	23.0	26	2.7	117	12.0	3	0.3
Connecticut	88	51	58.0	23	26.1	1	1.1	13	14.8	0	0.0
New York											
Eastern	298	135	45.3	80	26.8	18	6.0	65	21.8	0	0.0
Northern	143	99	69.2	34	23.8	1	0.7	8	5.6	1	0.7
Southern	224	177	79.0	27	12.1	2	0.9	18	8.0	0	0.0
Western	168	111	66.1	46	27.4	4	2.4	6	3.6	1	0.6
Vermont	53	31	58.5	14	26.4	0	0.0	7	13.2	1	1.9
THIRD CIRCUIT	658	429	65.2	176	26.7	3	0.5	49	7.4	1	0.2
Delaware	29	23	79.3	2	6.9	0	0.0	4	13.8	0	0.0
New Jersey	196	124	63.3	59	30.1	0	0.0	13	6.6	0	0.0
Pennsylvania											
Eastern	213	110	51.6	84	39.4	2	0.9	17	8.0	0	0.0
Middle	119	82	68.9	27	22.7	0	0.0	9	7.6	1	0.8
Western	85	75	88.2	4	4.7	0	0.0	6	7.1	0	0.0
Virgin Islands	16	15	93.8	0	0.0	1	6.3	0	0.0	0	0.0
FOURTH CIRCUIT	1,418	1,118	78.8	238	16.8	7	0.5	47	3.3	8	0.6
Maryland	155	103	66.5	36	23.2	2	1.3	12	7.7	2	1.3
North Carolina											
Eastern	136	68	50.0	59	43.4	0	0.0	8	5.9	1	0.7
Middle	91	80	87.9	8	8.8	0	0.0	3	3.3	0	0.0
Western	179	120	67.0	51	28.5	1	0.6	7	3.9	0	0.0
South Carolina	224	186	83.0	32	14.3	1	0.4	5	2.2	0	0.0
Virginia											
Eastern	379	347	91.6	18	4.7	1	0.3	9	2.4	4	1.1
Western	149	116	77.9	30	20.1	1	0.7	2	1.3	0	0.0
West Virginia											
Northern	73	67	91.8	3	4.1	1	1.4	1	1.4	1	1.4
Southern	32	31	96.9	1	3.1	0	0.0	0	0.0	0	0.0

CIRCUIT District	TOTAL	SENTENCED WITHIN GUIDELINE RANGE		SUBSTANTIAL ASSISTANCE DEPARTURE		GOVERNMENT INITIATED DEPARTURE		OTHER DOWNWARD DEPARTURE		UPWARD DEPARTURE	
		n	%	n	%	n	%	n	%	n	%
FIFTH CIRCUIT	3,802	2,980	78.4	366	9.6	347	9.1	94	2.5	15	0.4
Louisiana											
Eastern	98	81	82.7	14	14.3	0	0.0	3	3.1	0	0.0
Middle	39	21	53.8	18	46.2	0	0.0	0	0.0	0	0.0
Western	98	90	91.8	7	7.1	0	0.0	1	1.0	0	0.0
Mississippi											
Northern	44	24	54.5	17	38.6	0	0.0	3	6.8	0	0.0
Southern	105	93	88.6	10	9.5	0	0.0	2	1.9	0	0.0
Texas											
Eastern	227	198	87.2	23	10.1	1	0.4	5	2.2	0	0.0
Northern	253	190	75.1	51	20.2	3	1.2	5	2.0	4	1.6
Southern	1,406	1,032	73.4	85	6.0	237	16.9	46	3.3	6	0.4
Western	1,532	1,251	81.7	141	9.2	106	6.9	29	1.9	5	0.3
SIXTH CIRCUIT	1,187	842	70.9	268	22.6	18	1.5	52	4.4	7	0.6
Kentucky											
Eastern	97	60	61.9	35	36.1	0	0.0	0	0.0	2	2.1
Western	101	88	87.1	9	8.9	3	3.0	1	1.0	0	0.0
Michigan											
Eastern	202	125	61.9	67	33.2	0	0.0	10	5.0	0	0.0
Western	97	67	69.1	23	23.7	2	2.1	3	3.1	2	2.1
Ohio											
Northern	220	164	74.5	36	16.4	5	2.3	15	6.8	0	0.0
Southern	102	55	53.9	31	30.4	1	1.0	14	13.7	1	1.0
Tennessee											
Eastern	157	121	77.1	29	18.5	2	1.3	3	1.9	2	1.3
Middle	68	52	76.5	12	17.6	2	2.9	2	2.9	0	0.0
Western	143	110	76.9	26	18.2	3	2.1	4	2.8	0	0.0
SEVENTH CIRCUIT	530	409	77.2	90	17.0	5	0.9	20	3.8	6	1.1
Illinois											
Central	50	46	92.0	3	6.0	0	0.0	1	2.0	0	0.0
Northern	170	118	69.4	43	25.3	1	0.6	5	2.9	3	1.8
Southern	62	52	83.9	7	11.3	0	0.0	3	4.8	0	0.0
Indiana											
Northern	54	36	66.7	15	27.8	2	3.7	1	1.9	0	0.0
Southern	52	39	75.0	8	15.4	0	0.0	5	9.6	0	0.0
Wisconsin											
Eastern	104	86	82.7	11	10.6	2	1.9	4	3.8	1	1.0
Western	38	32	84.2	3	7.9	0	0.0	1	2.6	2	5.3
EIGHTH CIRCUIT	1,109	864	77.9	155	14.0	22	2.0	58	5.2	10	0.9
Arkansas											
Eastern	70	65	92.9	4	5.7	0	0.0	1	1.4	0	0.0
Western	50	42	84.0	5	10.0	0	0.0	3	6.0	0	0.0
Iowa											
Northern	115	83	72.2	25	21.7	1	0.9	2	1.7	4	3.5
Southern	74	55	74.3	15	20.3	0	0.0	4	5.4	0	0.0
Minnesota											
	96	64	66.7	19	19.8	0	0.0	11	11.5	2	2.1
Missouri											
Eastern	228	179	78.5	34	14.9	1	0.4	13	5.7	1	0.4
Western	192	147	76.6	38	19.8	1	0.5	5	2.6	1	0.5
Nebraska											
	185	151	81.6	11	5.9	9	4.9	13	7.0	1	0.5
North Dakota											
	75	60	80.0	0	0.0	10	13.3	5	6.7	0	0.0
South Dakota											
	24	18	75.0	4	16.7	0	0.0	1	4.2	1	4.2

CIRCUIT District	TOTAL	SENTENCED WITHIN GUIDELINE RANGE		SUBSTANTIAL ASSISTANCE DEPARTURE		GOVERNMENT INITIATED DEPARTURE		OTHER DOWNWARD DEPARTURE		UPWARD DEPARTURE	
		n	%	n	%	n	%	n	%	n	%
NINTH CIRCUIT	3,494	2,133	61.0	332	9.5	799	22.9	207	5.9	23	0.7
Alaska	35	26	74.3	3	8.6	0	0.0	5	14.3	1	2.9
Arizona	1,102	375	34.0	66	6.0	612	55.5	37	3.4	12	1.1
California											
Central	267	239	89.5	14	5.2	4	1.5	10	3.7	0	0.0
Eastern	243	150	61.7	54	22.2	26	10.7	11	4.5	2	0.8
Northern	174	121	69.5	25	14.4	10	5.7	15	8.6	3	1.7
Southern	881	674	76.5	32	3.6	116	13.2	59	6.7	0	0.0
Guam	12	6	50.0	4	33.3	0	0.0	2	16.7	0	0.0
Hawaii	72	40	55.6	24	33.3	0	0.0	8	11.1	0	0.0
Idaho	79	24	30.4	28	35.4	22	27.8	4	5.1	1	1.3
Montana	112	102	91.1	7	6.3	0	0.0	2	1.8	1	0.9
Nevada	134	109	81.3	16	11.9	1	0.7	8	6.0	0	0.0
Northern Mariana Islands	12	10	83.3	2	16.7	0	0.0	0	0.0	0	0.0
Oregon	140	93	66.4	23	16.4	2	1.4	20	14.3	2	1.4
Washington											
Eastern	96	75	78.1	11	11.5	0	0.0	10	10.4	0	0.0
Western	135	89	65.9	23	17.0	6	4.4	16	11.9	1	0.7
TENTH CIRCUIT	1,409	996	70.7	152	10.8	205	14.5	47	3.3	9	0.6
Colorado	142	88	62.0	41	28.9	1	0.7	12	8.5	0	0.0
Kansas	196	158	80.6	30	15.3	2	1.0	5	2.6	1	0.5
New Mexico	592	357	60.3	26	4.4	199	33.6	6	1.0	4	0.7
Oklahoma											
Eastern	44	40	90.9	4	9.1	0	0.0	0	0.0	0	0.0
Northern	65	60	92.3	4	6.2	0	0.0	1	1.5	0	0.0
Western	64	50	78.1	12	18.8	0	0.0	2	3.1	0	0.0
Utah	217	167	77.0	29	13.4	2	0.9	18	8.3	1	0.5
Wyoming	89	76	85.4	6	6.7	1	1.1	3	3.4	3	3.4
ELEVENTH CIRCUIT	1,623	1,249	77.0	308	19.0	4	0.2	52	3.2	10	0.6
Alabama											
Middle	30	22	73.3	7	23.3	0	0.0	1	3.3	0	0.0
Northern	123	80	65.0	39	31.7	0	0.0	4	3.3	0	0.0
Southern	79	65	82.3	12	15.2	0	0.0	2	2.5	0	0.0
Florida											
Middle	432	296	68.5	116	26.9	2	0.5	17	3.9	1	0.2
Northern	118	82	69.5	32	27.1	0	0.0	3	2.5	1	0.8
Southern	555	488	87.9	55	9.9	0	0.0	9	1.6	3	0.5
Georgia											
Middle	64	47	73.4	15	23.4	0	0.0	2	3.1	0	0.0
Northern	153	121	79.1	18	11.8	0	0.0	12	7.8	2	1.3
Southern	69	48	69.6	14	20.3	2	2.9	2	2.9	3	4.3

Of the 18,203 guideline cases, 46 cases with no analogous guidelines were excluded from the table. Of the remaining 18,157 cases, 1,365 were excluded due to missing departure information. Districts for which departure information is missing in five percent or more of the cases received included: South Dakota (72.4%), Western Oklahoma (61.0%), Central California (40.4%), Middle Georgia (34.0%), Southern Georgia (29.6%), Eastern Virginia (29.3%), Western Wisconsin (26.9%), Southern Indiana (23.5%), Eastern Arkansas (22.2%), Western Washington (17.2%), Eastern Wisconsin (15.4%), Arizona (13.8%), Oregon (12.5%), Southern New York (12.2%), Northern Iowa (11.5%), Western Kentucky (10.6%), Middle Tennessee (10.5%), New Hampshire (10.0%), Southern Ohio (9.7%), Northern New York (9.5%), Middle Alabama (9.1%), Western Arkansas (9.1%), Eastern North Carolina (8.7%), Northern Georgia (8.4%), Alaska (7.9%), Northern Alabama (7.5%), Central Illinois (7.4%), Minnesota (6.8%), Western New York (6.7%), Middle Pennsylvania (6.3%), Southern Florida (6.3%), Virgin Islands (5.9%), Western Louisiana (5.8%), Northern Indiana (5.3%), and Nebraska (5.1%).

A portion of this data was collected prior to the issuance of AO Form 245B, Revision 12/03, which now provides specific entries for the sentencing court to indicate whether a departure was initiated by one of the parties. As a result, the Commission could not definitively determine the attribution for every case. However, based on a review of the available sentencing documentation by USSC legal staff the Commission believes that the overwhelming majority of the government initiated departures listed in this table are properly categorized. For a list of the reasons used in the category see Appendix A in the 2004, Sourcebook of Federal Sentencing Statistics.

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2004 Datafile, OPAFY04, Post*Blakely* Only Cases (June 25, 2004, through September 30, 2004).

Table 9

**GUIDELINE DEPARTURE RATE BY PRIMARY OFFENSE CATEGORY
Fiscal Year 2004, Post-*Blakely* (June 25, 2004, through September 30, 2004)**

National

PRIMARY OFFENSE	TOTAL	SENTENCED WITHIN GUIDELINE RANGE		SUBSTANTIAL ASSISTANCE DEPARTURE		GOVERNMENT INITIATED DEPARTURE		OTHER DOWNWARD DEPARTURE		UPWARD DEPARTURE	
		n	%	n	%	n	%	n	%	n	%
TOTAL	16,774	12,048	71.8	2,421	14.4	1,439	8.6	771	4.6	95	0.6
Robbery	351	274	78.1	42	12.0	8	2.3	23	6.6	4	1.1
Drugs - Trafficking	5,763	3,680	63.9	1,483	25.7	343	6.0	249	4.3	8	0.1
Drugs - Simple Possession	152	143	94.1	4	2.6	3	2.0	0	0.0	2	1.3
Firearms	1,983	1,593	80.3	241	12.2	14	0.7	118	6.0	17	0.9
Larceny	500	440	88.0	35	7.0	5	1.0	15	3.0	5	1.0
Fraud	1,568	1,219	77.7	251	16.0	10	0.6	78	5.0	10	0.6
Embezzlement	167	141	84.4	6	3.6	5	3.0	15	9.0	0	0.0
Forgery/Counterfeiting	268	220	82.1	32	11.9	4	1.5	9	3.4	3	1.1
Immigration	4,282	3,017	70.5	83	1.9	1,006	23.5	164	3.8	12	0.3
Other Miscellaneous Offenses	1,740	1,321	75.9	244	14.0	41	2.4	100	5.7	34	2.0

Second Circuit

PRIMARY OFFENSE	TOTAL	SENTENCED WITHIN GUIDELINE RANGE		SUBSTANTIAL ASSISTANCE DEPARTURE		GOVERNMENT INITIATED DEPARTURE		OTHER DOWNWARD DEPARTURE		UPWARD DEPARTURE	
		n	%	n	%	n	%	n	%	n	%
TOTAL	973	604	62.1	223	22.9	26	2.7	117	12.0	3	0.3
Robbery	7	5	71.4	1	14.3	1	14.3	0	0.0	0	0.0
Drugs - Trafficking	348	168	48.3	124	35.6	3	0.9	53	15.2	0	0.0
Drugs - Simple Possession	13	10	76.9	3	23.1	0	0.0	0	0.0	0	0.0
Firearms	110	84	76.4	14	12.7	1	0.9	11	10.0	0	0.0
Larceny	41	33	80.5	3	7.3	2	4.9	3	7.3	0	0.0
Fraud	157	105	66.9	30	19.1	5	3.2	16	10.2	1	0.6
Embezzlement	15	11	73.3	0	0.0	1	6.7	3	20.0	0	0.0
Forgery/Counterfeiting	21	15	71.4	5	23.8	0	0.0	1	4.8	0	0.0
Immigration	95	78	82.1	4	4.2	0	0.0	13	13.7	0	0.0
Other Miscellaneous Offenses	166	95	57.2	39	23.5	13	7.8	17	10.2	2	1.2

Of the 18,203 guideline cases, 1,429 cases were excluded due to one or more of the following reasons: no analogous guidelines (46), missing or indeterminable departure information (1,365) or missing primary offense category (29).

Of the 1,046 guideline cases from the Second Circuit, 73 cases were excluded due to one or more of the following reasons: no analogous guidelines (3), missing or indeterminable departure information (69) or missing primary offense category (4).

A portion of this data was collected prior to the issuance of AO Form 245B, Revision 12/03, which now provides specific entries for the sentencing court to indicate whether a departure was initiated by one of the parties. As a result, the Commission could not definitively determine the attribution for every case. However, based on a review of the available sentencing documentation by USSC legal staff the Commission believes that the overwhelming majority of the government initiated departures listed in this table are properly categorized. For a list of the reasons used in the category see Appendix A in the 2004, Sourcebook of Federal Sentencing Statistics.

SOURCE: United States Sentencing Commission, Office of Policy Analysis, 2004 Datafile, OPAFY04, Post-*Blakely* Only Cases (June 25, 2004, through September 30, 2004).