

United States Sentencing Commission



Statistical Information Packet

Fiscal Year 2004

District of Montana

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

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(June 25, 2004, through September 30, 2004)

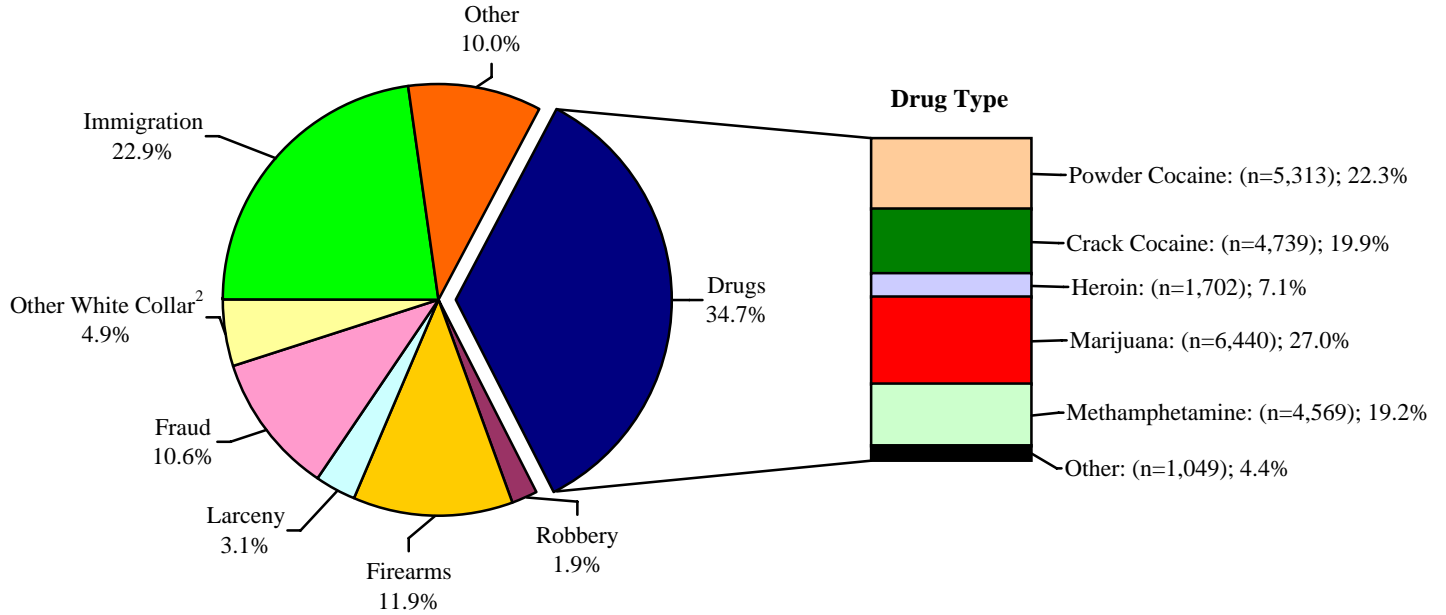
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SECTION ONE: Fiscal Year 2004
(October 1, 2003, through September 30, 2004)

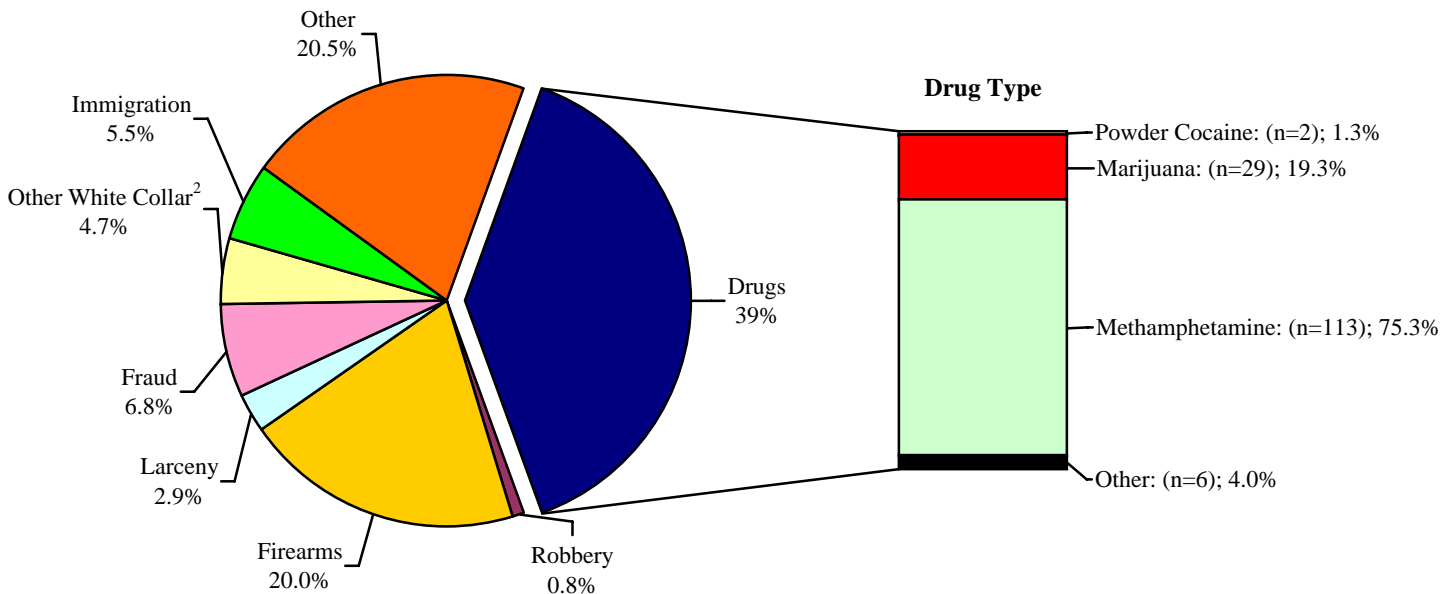
Figure A

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

National



Montana



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 389 guideline cases from the District of Montana, four cases were excluded due to missing drug type.

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

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

Table 1

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

| PRIMARY OFFENSE | National | | Montana | |
|------------------------------------|---------------|--------------|------------|--------------|
| | Number | Percent | Number | Percent |
| TOTAL | 69,932 | 100.0 | 389 | 100.0 |
| Murder | 76 | 0.1 | 2 | 0.5 |
| Manslaughter | 63 | 0.1 | 4 | 1.0 |
| Kidnapping/Hostage Taking | 39 | 0.1 | 0 | 0.0 |
| Sexual Abuse | 276 | 0.4 | 19 | 4.9 |
| Assault | 621 | 0.9 | 17 | 4.4 |
| Robbery | 1,320 | 1.9 | 3 | 0.8 |
| Arson | 72 | 0.1 | 1 | 0.3 |
| Drugs - Trafficking | 23,572 | 33.7 | 152 | 39.1 |
| Drugs - Communication Facility | 346 | 0.5 | 0 | 0.0 |
| Drugs - Simple Possession | 1,296 | 1.9 | 2 | 0.5 |
| Firearms | 8,133 | 11.6 | 77 | 19.8 |
| Burglary/B&E | 63 | 0.1 | 7 | 1.8 |
| Auto Theft | 95 | 0.1 | 1 | 0.3 |
| Larceny | 2,133 | 3.1 | 11 | 2.8 |
| Fraud | 7,261 | 10.4 | 26 | 6.7 |
| Embezzlement | 630 | 0.9 | 4 | 1.0 |
| Forgery/Counterfeiting | 1,182 | 1.7 | 10 | 2.6 |
| Bribery | 166 | 0.2 | 0 | 0.0 |
| Tax | 515 | 0.7 | 2 | 0.5 |
| Money Laundering | 842 | 1.2 | 2 | 0.5 |
| Racketeering/Extortion | 621 | 0.9 | 0 | 0.0 |
| Gambling/Lottery | 100 | 0.1 | 0 | 0.0 |
| Civil Rights | 71 | 0.1 | 0 | 0.0 |
| Immigration | 15,717 | 22.5 | 21 | 5.4 |
| Pornography/Prostitution | 876 | 1.3 | 8 | 2.1 |
| Prison Offenses | 380 | 0.5 | 0 | 0.0 |
| Administration of Justice Offenses | 1,026 | 1.5 | 8 | 2.1 |
| Environmental/Wildlife | 155 | 0.2 | 7 | 1.8 |
| National Defense | 34 | 0.0 | 0 | 0.0 |
| Antitrust | 11 | 0.0 | 0 | 0.0 |
| Food & Drug | 75 | 0.1 | 0 | 0.0 |
| Other Miscellaneous Offenses | 2,165 | 3.1 | 5 | 1.3 |

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

Of the 389 guideline cases from the District of Montana, no case was excluded.

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 | | | | Montana | | | |
|------------------------------------|---------------|---------------|-------------|--------------|------------|------------|-------------|-----------|-------------|
| | | PLEA | | TRIAL | | PLEA | | TRIAL | |
| | | n | % | n | % | n | % | n | % |
| TOTAL | 51,657 | 49,341 | 95.5 | 2,316 | 4.5 | 230 | 83.9 | 44 | 16.1 |
| Murder | 57 | 40 | 70.2 | 17 | 29.8 | 2 | 100.0 | 0 | 0.0 |
| Manslaughter | 45 | 40 | 88.9 | 5 | 11.1 | 3 | 75.0 | 1 | 25.0 |
| Kidnapping/Hostage Taking | 29 | 26 | 89.7 | 3 | 10.3 | 0 | -- | 0 | -- |
| Sexual Abuse | 199 | 179 | 89.9 | 20 | 10.1 | 11 | 84.6 | 2 | 15.4 |
| Assault | 463 | 420 | 90.7 | 43 | 9.3 | 10 | 76.9 | 3 | 23.1 |
| Robbery | 950 | 900 | 94.7 | 50 | 5.3 | 2 | 66.7 | 1 | 33.3 |
| Arson | 61 | 54 | 88.5 | 7 | 11.5 | 1 | 100.0 | 0 | 0.0 |
| Drugs - Trafficking | 17,575 | 16,717 | 95.1 | 858 | 4.9 | 86 | 83.5 | 17 | 16.5 |
| Drugs - Communication Facility | 262 | 260 | 99.2 | 2 | 0.8 | 0 | -- | 0 | -- |
| Drugs - Simple Possession | 1,014 | 998 | 98.4 | 16 | 1.6 | 2 | 100.0 | 0 | 0.0 |
| Firearms | 6,016 | 5,531 | 91.9 | 485 | 8.1 | 47 | 79.7 | 12 | 20.3 |
| Burglary/B&E | 47 | 45 | 95.7 | 2 | 4.3 | 1 | 33.3 | 2 | 66.7 |
| Auto Theft | 67 | 54 | 80.6 | 13 | 19.4 | 1 | 100.0 | 0 | 0.0 |
| Larceny | 1,558 | 1,521 | 97.6 | 37 | 2.4 | 6 | 100.0 | 0 | 0.0 |
| Fraud | 5,531 | 5,282 | 95.5 | 249 | 4.5 | 16 | 88.9 | 2 | 11.1 |
| Embezzlement | 456 | 443 | 97.1 | 13 | 2.9 | 3 | 100.0 | 0 | 0.0 |
| Forgery/Counterfeiting | 902 | 884 | 98.0 | 18 | 2.0 | 7 | 100.0 | 0 | 0.0 |
| Bribery | 130 | 121 | 93.1 | 9 | 6.9 | 0 | -- | 0 | -- |
| Tax | 372 | 336 | 90.3 | 36 | 9.7 | 2 | 100.0 | 0 | 0.0 |
| Money Laundering | 631 | 573 | 90.8 | 58 | 9.2 | 1 | 100.0 | 0 | 0.0 |
| Racketeering/Extortion | 481 | 445 | 92.5 | 36 | 7.5 | 0 | -- | 0 | -- |
| Gambling/Lottery | 77 | 76 | 98.7 | 1 | 1.3 | 0 | -- | 0 | -- |
| Civil Rights | 66 | 47 | 71.2 | 19 | 28.8 | 0 | -- | 0 | -- |
| Immigration | 11,183 | 11,021 | 98.6 | 162 | 1.4 | 11 | 84.6 | 2 | 15.4 |
| Pornography/Prostitution | 644 | 611 | 94.9 | 33 | 5.1 | 4 | 100.0 | 0 | 0.0 |
| Prison Offenses | 274 | 261 | 95.3 | 13 | 4.7 | 0 | -- | 0 | -- |
| Administration of Justice Offenses | 756 | 720 | 95.2 | 36 | 4.8 | 6 | 100.0 | 0 | 0.0 |
| Environmental/Wildlife | 117 | 105 | 89.7 | 12 | 10.3 | 4 | 66.7 | 2 | 33.3 |
| National Defense | 27 | 18 | 66.7 | 9 | 33.3 | 0 | -- | 0 | -- |
| Antitrust | 7 | 7 | 100.0 | 0 | 0.0 | 0 | -- | 0 | -- |
| Food & Drug | 64 | 62 | 96.9 | 2 | 3.1 | 0 | -- | 0 | -- |
| Other Miscellaneous Offenses | 1,596 | 1,544 | 96.7 | 52 | 3.3 | 4 | 100.0 | 0 | 0.0 |

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 389 guideline cases from the District of Montana, no case was excluded.

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)

Montana

| PRIMARY OFFENSE | TOTAL | Prison | | Prison/Community Split Sentence | | Probation and Confinement | | Probation Only | |
|------------------------------------|------------|------------|-------------|---------------------------------|------------|---------------------------|------------|----------------|------------|
| | | Number | Percent | Number | Percent | Number | Percent | Number | Percent |
| TOTAL | 274 | 235 | 85.8 | 9 | 3.3 | 8 | 2.9 | 22 | 8.0 |
| Murder | 2 | 2 | 100.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| Manslaughter | 4 | 3 | 75.0 | 1 | 25.0 | 0 | 0.0 | 0 | 0.0 |
| Kidnapping/Hostage Taking | 0 | 0 | -- | 0 | -- | 0 | -- | 0 | -- |
| Sexual Abuse | 13 | 13 | 100.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| Assault | 13 | 12 | 92.3 | 0 | 0.0 | 1 | 7.7 | 0 | 0.0 |
| Robbery | 3 | 3 | 100.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| Arson | 1 | 1 | 100.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| Drugs - Trafficking | 103 | 98 | 95.1 | 1 | 1.0 | 2 | 1.9 | 2 | 1.9 |
| Drugs - Communication Facility | 0 | 0 | -- | 0 | -- | 0 | -- | 0 | -- |
| Drugs - Simple Possession | 2 | 1 | 50.0 | 0 | 0.0 | 0 | 0.0 | 1 | 50.0 |
| Firearms | 59 | 52 | 88.1 | 2 | 3.4 | 1 | 1.7 | 4 | 6.8 |
| Burglary/B&E | 3 | 3 | 100.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| Auto Theft | 1 | 1 | 100.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| Larceny | 6 | 6 | 100.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| Fraud | 18 | 13 | 72.2 | 2 | 11.1 | 0 | 0.0 | 3 | 16.7 |
| Embezzlement | 3 | 0 | 0.0 | 1 | 33.3 | 1 | 33.3 | 1 | 33.3 |
| Forgery/Counterfeiting | 7 | 2 | 28.6 | 2 | 28.6 | 1 | 14.3 | 2 | 28.6 |
| Bribery | 0 | 0 | -- | 0 | -- | 0 | -- | 0 | -- |
| Tax | 2 | 1 | 50.0 | 0 | 0.0 | 0 | 0.0 | 1 | 50.0 |
| Money Laundering | 1 | 1 | 100.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| Racketeering/Extortion | 0 | 0 | -- | 0 | -- | 0 | -- | 0 | -- |
| Gambling/Lottery | 0 | 0 | -- | 0 | -- | 0 | -- | 0 | -- |
| Civil Rights | 0 | 0 | -- | 0 | -- | 0 | -- | 0 | -- |
| Immigration | 13 | 13 | 100.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| Pornography/Prostitution | 4 | 4 | 100.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| Prison Offenses | 0 | 0 | -- | 0 | -- | 0 | -- | 0 | -- |
| Administration of Justice Offenses | 6 | 4 | 66.7 | 0 | 0.0 | 0 | 0.0 | 2 | 33.3 |
| Environmental/Wildlife | 6 | 1 | 16.7 | 0 | 0.0 | 1 | 16.7 | 4 | 66.7 |
| National Defense | 0 | 0 | -- | 0 | -- | 0 | -- | 0 | -- |
| Antitrust | 0 | 0 | -- | 0 | -- | 0 | -- | 0 | -- |
| Food & Drug | 0 | 0 | -- | 0 | -- | 0 | -- | 0 | -- |
| Other Miscellaneous Offenses | 4 | 1 | 25.0 | 0 | 0.0 | 1 | 25.0 | 2 | 50.0 |

Of the 274 guideline cases from the District of Montana, no case was excluded.

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 | | | | Montana | | | |
|-------------------------------------|--------------|-----------------|-------------|---------------------|-------------|-----------------|-------------|---------------------|-------------|
| | | 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 | 25 | 51.0 | 24 | 49.0 |
| Fraud | 2,148 | 852 | 39.7 | 1,296 | 60.3 | 6 | 66.7 | 3 | 33.3 |
| Larceny | 949 | 202 | 21.3 | 747 | 78.7 | 4 | 100.0 | 0 | 0.0 |
| Immigration | 2,867 | 2,621 | 91.4 | 246 | 8.6 | 1 | 100.0 | 0 | 0.0 |
| Embezzlement | 272 | 77 | 28.3 | 195 | 71.7 | 0 | 0.0 | 2 | 100.0 |
| Drugs - Trafficking | 478 | 241 | 50.4 | 237 | 49.6 | 3 | 60.0 | 2 | 40.0 |
| Drugs - Simple Possession | 622 | 307 | 49.4 | 315 | 50.6 | 1 | 50.0 | 1 | 50.0 |
| Firearms | 341 | 162 | 47.5 | 179 | 52.5 | 2 | 33.3 | 4 | 66.7 |
| Forgery/Counterfeiting | 355 | 104 | 29.3 | 251 | 70.7 | 2 | 40.0 | 3 | 60.0 |
| Other Miscellaneous Offenses | 1,715 | 466 | 27.2 | 1,249 | 72.8 | 6 | 40.0 | 9 | 60.0 |

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 274 guideline cases from the District of Montana, 225 cases were excluded due to defendant ineligible for non-prison alternatives.

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 | | | Montana | | |
|---|----------------|------------------|---------------|----------------|------------------|------------|
| | Mean Months | Median Months | Number | Mean Months | Median Months | Number |
| TOTAL | 58.3 | 36.0 | 43,961 | 78.8 | 46.0 | 244 |
| Murder | 216.2 | 168.0 | 55 | -- | -- | 2 |
| Manslaughter | 35.7 | 18.0 | 45 | 35.3 | 32.5 | 4 |
| Kidnapping/Hostage Taking | 124.2 | 87.0 | 27 | -- | -- | 0 |
| Sexual Abuse | 99.5 | 78.0 | 190 | 110.3 | 105.0 | 13 |
| Assault | 37.9 | 27.0 | 373 | 72.3 | 35.0 | 12 |
| Robbery | 97.6 | 72.0 | 926 | 118.3 | 148.0 | 3 |
| Arson | 69.4 | 48.0 | 57 | -- | -- | 1 |
| Drugs - Trafficking | 84.2 | 60.0 | 16,843 | 108.6 | 72.0 | 99 |
| Drugs - Communication Facility | 47.5 | 48.0 | 230 | -- | -- | 0 |
| Drugs - Simple Possession | 9.8 | 6.0 | 570 | -- | -- | 1 |
| Firearms | 82.8 | 51.0 | 5,589 | 75.6 | 37.0 | 54 |
| Burglary/B&E | 23.6 | 24.0 | 45 | 26.3 | 30.0 | 3 |
| Auto Theft | 74.9 | 24.0 | 54 | -- | -- | 1 |
| Larceny | 17.9 | 12.0 | 661 | 14.1 | 6.0 | 6 |
| Fraud | 22.2 | 15.0 | 3,698 | 17.6 | 12.0 | 15 |
| Embezzlement | 11.5 | 6.1 | 228 | -- | -- | 1 |
| Forgery/Counterfeiting | 20.6 | 15.0 | 584 | 11.1 | 8.1 | 4 |
| Bribery | 21.5 | 15.0 | 62 | -- | -- | 0 |
| Tax | 18.6 | 15.0 | 232 | -- | -- | 1 |
| Money Laundering | 46.4 | 33.0 | 479 | -- | -- | 1 |
| Racketeering/Extortion | 101.8 | 60.0 | 420 | -- | -- | 0 |
| Gambling/Lottery | 8.3 | 6.0 | 23 | -- | -- | 0 |
| Civil Rights | 43.7 | 33.0 | 50 | -- | -- | 0 |
| Immigration | 24.9 | 21.0 | 10,623 | 34.6 | 33.0 | 13 |
| Pornography/Prostitution | 65.5 | 41.0 | 616 | 41.3 | 36.0 | 4 |
| Prison Offenses | 17.7 | 14.0 | 257 | -- | -- | 0 |
| Administration of Justice Offenses | 24.1 | 15.0 | 487 | 36.0 | 30.0 | 4 |
| Environmental/Wildlife | 18.2 | 12.0 | 30 | -- | -- | 1 |
| National Defense | 103.5 | 30.0 | 24 | -- | -- | 0 |
| Antitrust | 4.3 | 4.0 | 3 | -- | -- | 0 |
| Food & Drug | 27.9 | 21.0 | 10 | -- | -- | 0 |
| Other Miscellaneous Offenses | 20.6 | 9.0 | 470 | -- | -- | 1 |

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 274 guideline cases from the District of Montana, 30 cases were excluded due to zero prison months ordered.

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 |

Montana

| PRIMARY OFFENSE | TOTAL | SENTENCED WITHIN GUIDELINE RANGE | | SUBSTANTIAL ASSISTANCE DEPARTURE | | GOVERNMENT INITIATED DEPARTURE | | OTHER DOWNWARD DEPARTURE | | UPWARD DEPARTURE | |
|------------------------------|------------|----------------------------------|-------------|----------------------------------|-------------|--------------------------------|------------|--------------------------|------------|------------------|------------|
| | | n | % | n | % | n | % | n | % | n | % |
| TOTAL | 267 | 218 | 81.6 | 33 | 12.4 | 0 | 0.0 | 10 | 3.7 | 6 | 2.2 |
| Robbery | 3 | 2 | 66.7 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 1 | 33.3 |
| Drugs - Trafficking | 101 | 70 | 69.3 | 27 | 26.7 | 0 | 0.0 | 4 | 4.0 | 0 | 0.0 |
| Drugs - Simple Possession | 2 | 2 | 100.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| Firearms | 56 | 48 | 85.7 | 2 | 3.6 | 0 | 0.0 | 3 | 5.4 | 3 | 5.4 |
| Larceny | 6 | 6 | 100.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| Fraud | 18 | 16 | 88.9 | 2 | 11.1 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| Embezzlement | 3 | 3 | 100.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| Forgery/Counterfeiting | 7 | 7 | 100.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| Immigration | 13 | 13 | 100.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| Other Miscellaneous Offenses | 58 | 51 | 87.9 | 2 | 3.4 | 0 | 0.0 | 3 | 5.2 | 2 | 3.4 |

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 274 guideline cases from the District of Montana, seven cases were excluded due to missing or indeterminable departure information.

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 | | | | Montana | | | |
|------------------------------------|---------------|---------------|-------------|------------|------------|------------|-------------|-----------|------------|
| | | PLEA | | TRIAL | | PLEA | | TRIAL | |
| | | n | % | n | % | n | % | n | % |
| TOTAL | 18,142 | 17,518 | 96.6 | 624 | 3.4 | 105 | 91.3 | 10 | 8.7 |
| Murder | 18 | 12 | 66.7 | 6 | 33.3 | 0 | -- | 0 | -- |
| 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 | 6 | 100.0 | 0 | 0.0 |
| Assault | 153 | 141 | 92.2 | 12 | 7.8 | 4 | 100.0 | 0 | 0.0 |
| Robbery | 368 | 352 | 95.7 | 16 | 4.3 | 0 | -- | 0 | -- |
| Arson | 11 | 9 | 81.8 | 2 | 18.2 | 0 | -- | 0 | -- |
| Drugs - Trafficking | 5,968 | 5,750 | 96.3 | 218 | 3.7 | 41 | 83.7 | 8 | 16.3 |
| Drugs - Communication Facility | 84 | 84 | 100.0 | 0 | 0.0 | 0 | -- | 0 | -- |
| Drugs - Simple Possession | 274 | 272 | 99.3 | 2 | 0.7 | 0 | -- | 0 | -- |
| Firearms | 2,095 | 1,956 | 93.4 | 139 | 6.6 | 17 | 94.4 | 1 | 5.6 |
| Burglary/B&E | 16 | 15 | 93.8 | 1 | 6.3 | 3 | 75.0 | 1 | 25.0 |
| Auto Theft | 27 | 26 | 96.3 | 1 | 3.7 | 0 | -- | 0 | -- |
| Larceny | 570 | 554 | 97.2 | 16 | 2.8 | 5 | 100.0 | 0 | 0.0 |
| Fraud | 1,719 | 1,655 | 96.3 | 64 | 3.7 | 8 | 100.0 | 0 | 0.0 |
| Embezzlement | 173 | 167 | 96.5 | 6 | 3.5 | 1 | 100.0 | 0 | 0.0 |
| Forgery/Counterfeiting | 279 | 271 | 97.1 | 8 | 2.9 | 3 | 100.0 | 0 | 0.0 |
| Bribery | 36 | 32 | 88.9 | 4 | 11.1 | 0 | -- | 0 | -- |
| Tax | 143 | 132 | 92.3 | 11 | 7.7 | 0 | -- | 0 | -- |
| Money Laundering | 209 | 197 | 94.3 | 12 | 5.7 | 1 | 100.0 | 0 | 0.0 |
| Racketeering/Extortion | 138 | 124 | 89.9 | 14 | 10.1 | 0 | -- | 0 | -- |
| Gambling/Lottery | 23 | 23 | 100.0 | 0 | 0.0 | 0 | -- | 0 | -- |
| Civil Rights | 5 | 5 | 100.0 | 0 | 0.0 | 0 | -- | 0 | -- |
| Immigration | 4,515 | 4,471 | 99.0 | 44 | 1.0 | 8 | 100.0 | 0 | 0.0 |
| Pornography/Prostitution | 232 | 220 | 94.8 | 12 | 5.2 | 4 | 100.0 | 0 | 0.0 |
| Prison Offenses | 105 | 104 | 99.0 | 1 | 1.0 | 0 | -- | 0 | -- |
| Administration of Justice Offenses | 267 | 260 | 97.4 | 7 | 2.6 | 2 | 100.0 | 0 | 0.0 |
| Environmental/Wildlife | 38 | 37 | 97.4 | 1 | 2.6 | 1 | 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 | 1 | 100.0 | 0 | 0.0 |

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 115 guideline cases from the District of Montana, no case was excluded.

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)

Montana

| PRIMARY OFFENSE | TOTAL | Prison | | Prison/Community Split Sentence | | Probation and Confinement | | Probation Only | |
|------------------------------------|------------|-----------|-------------|---------------------------------|------------|---------------------------|------------|----------------|------------|
| | | Number | Percent | Number | Percent | Number | Percent | Number | Percent |
| TOTAL | 115 | 98 | 85.2 | 0 | 0.0 | 6 | 5.2 | 11 | 9.6 |
| Murder | 0 | 0 | -- | 0 | -- | 0 | -- | 0 | -- |
| Manslaughter | 0 | 0 | -- | 0 | -- | 0 | -- | 0 | -- |
| Kidnapping/Hostage Taking | 0 | 0 | -- | 0 | -- | 0 | -- | 0 | -- |
| Sexual Abuse | 6 | 6 | 100.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| Assault | 4 | 3 | 75.0 | 0 | 0.0 | 0 | 0.0 | 1 | 25.0 |
| Robbery | 0 | 0 | -- | 0 | -- | 0 | -- | 0 | -- |
| Arson | 0 | 0 | -- | 0 | -- | 0 | -- | 0 | -- |
| Drugs - Trafficking | 49 | 46 | 93.9 | 0 | 0.0 | 1 | 2.0 | 2 | 4.1 |
| Drugs - Communication Facility | 0 | 0 | -- | 0 | -- | 0 | -- | 0 | -- |
| Drugs - Simple Possession | 0 | 0 | -- | 0 | -- | 0 | -- | 0 | -- |
| Firearms | 18 | 18 | 100.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| Burglary/B&E | 4 | 4 | 100.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| Auto Theft | 0 | 0 | -- | 0 | -- | 0 | -- | 0 | -- |
| Larceny | 5 | 2 | 40.0 | 0 | 0.0 | 1 | 20.0 | 2 | 40.0 |
| Fraud | 8 | 3 | 37.5 | 0 | 0.0 | 2 | 25.0 | 3 | 37.5 |
| Embezzlement | 1 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 1 | 100.0 |
| Forgery/Counterfeiting | 3 | 2 | 66.7 | 0 | 0.0 | 1 | 33.3 | 0 | 0.0 |
| Bribery | 0 | 0 | -- | 0 | -- | 0 | -- | 0 | -- |
| Tax | 0 | 0 | -- | 0 | -- | 0 | -- | 0 | -- |
| Money Laundering | 1 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 1 | 100.0 |
| Racketeering/Extortion | 0 | 0 | -- | 0 | -- | 0 | -- | 0 | -- |
| Gambling/Lottery | 0 | 0 | -- | 0 | -- | 0 | -- | 0 | -- |
| Civil Rights | 0 | 0 | -- | 0 | -- | 0 | -- | 0 | -- |
| Immigration | 8 | 8 | 100.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| Pornography/Prostitution | 4 | 4 | 100.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| Prison Offenses | 0 | 0 | -- | 0 | -- | 0 | -- | 0 | -- |
| Administration of Justice Offenses | 2 | 1 | 50.0 | 0 | 0.0 | 1 | 50.0 | 0 | 0.0 |
| Environmental/Wildlife | 1 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 1 | 100.0 |
| National Defense | 0 | 0 | -- | 0 | -- | 0 | -- | 0 | -- |
| Antitrust | 0 | 0 | -- | 0 | -- | 0 | -- | 0 | -- |
| Food & Drug | 0 | 0 | -- | 0 | -- | 0 | -- | 0 | -- |
| Other Miscellaneous Offenses | 1 | 1 | 100.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |

Of the 115 guideline cases from the District of Montana, no case was excluded.

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 | | | | Montana | | | |
|-------------------------------------|--------------|-----------------|-------------|---------------------|-------------|-----------------|-------------|---------------------|-------------|
| | | 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 | 14 | 48.3 | 15 | 51.7 |
| Fraud | 702 | 269 | 38.3 | 433 | 61.7 | 3 | 37.5 | 5 | 62.5 |
| Larceny | 352 | 77 | 21.9 | 275 | 78.1 | 1 | 25.0 | 3 | 75.0 |
| Immigration | 1,256 | 1,166 | 92.8 | 90 | 7.2 | 2 | 100.0 | 0 | 0.0 |
| Embezzlement | 123 | 48 | 39.0 | 75 | 61.0 | 0 | 0.0 | 1 | 100.0 |
| Drugs - Trafficking | 176 | 99 | 56.3 | 77 | 43.8 | 4 | 57.1 | 3 | 42.9 |
| Drugs - Simple Possession | 150 | 47 | 31.3 | 103 | 68.7 | 0 | -- | 0 | -- |
| Firearms | 116 | 54 | 46.6 | 62 | 53.4 | 2 | 100.0 | 0 | 0.0 |
| Forgery/Counterfeiting | 119 | 40 | 33.6 | 79 | 66.4 | 1 | 50.0 | 1 | 50.0 |
| Other Miscellaneous Offenses | 572 | 169 | 29.5 | 403 | 70.5 | 1 | 33.3 | 2 | 66.7 |

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 115 guideline cases from the District of Montana, 86 cases were excluded due to defendant ineligible for non-prison alternatives.

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 | | | Montana | | |
|---|-------------|---------------|---------------|-------------|---------------|-----------|
| | Mean Months | Median Months | Number | Mean Months | Median Months | Number |
| TOTAL | 52.7 | 30.0 | 15,330 | 66.4 | 46.0 | 98 |
| Murder | 303.0 | 327.0 | 17 | -- | -- | 0 |
| Manslaughter | 42.1 | 27.0 | 12 | -- | -- | 0 |
| Kidnapping/Hostage Taking | 148.3 | 120.0 | 9 | -- | -- | 0 |
| Sexual Abuse | 84.0 | 72.0 | 75 | 135.3 | 121.0 | 6 |
| Assault | 32.6 | 28.5 | 126 | 48.3 | 37.0 | 3 |
| Robbery | 95.9 | 72.0 | 357 | -- | -- | 0 |
| Arson | 41.7 | 60.0 | 9 | -- | -- | 0 |
| Drugs - Trafficking | 76.3 | 60.0 | 5,731 | 77.4 | 55.5 | 46 |
| Drugs - Communication Facility | 44.4 | 48.0 | 72 | -- | -- | 0 |
| Drugs - Simple Possession | 9.8 | 6.0 | 108 | -- | -- | 0 |
| Firearms | 74.5 | 51.0 | 1,945 | 63.0 | 46.0 | 18 |
| Burglary/B&E | 25.2 | 27.0 | 12 | 32.3 | 33.5 | 4 |
| Auto Theft | 33.8 | 13.0 | 23 | -- | -- | 0 |
| Larceny | 16.0 | 12.0 | 229 | -- | -- | 2 |
| Fraud | 20.2 | 15.0 | 1,060 | 7.8 | 10.0 | 3 |
| Embezzlement | 8.1 | 4.0 | 82 | -- | -- | 0 |
| Forgery/Counterfeiting | 17.9 | 15.0 | 177 | -- | -- | 2 |
| Bribery | 19.3 | 21.0 | 19 | -- | -- | 0 |
| Tax | 21.8 | 15.0 | 73 | -- | -- | 0 |
| Money Laundering | 39.8 | 30.0 | 150 | -- | -- | 0 |
| Racketeering/Extortion | 73.7 | 57.0 | 120 | -- | -- | 0 |
| Gambling/Lottery | 6.7 | 6.0 | 9 | -- | -- | 0 |
| Civil Rights | -- | -- | 2 | -- | -- | 0 |
| Immigration | 23.0 | 18.0 | 4,238 | 41.9 | 45.0 | 8 |
| Pornography/Prostitution | 75.5 | 60.0 | 224 | 78.5 | 90.5 | 4 |
| Prison Offenses | 17.0 | 12.0 | 98 | -- | -- | 0 |
| Administration of Justice Offenses | 21.4 | 14.2 | 171 | -- | -- | 1 |
| 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 | -- | -- | 1 |

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 115 guideline cases from the District of Montana, 17 cases were excluded due to zero prison months ordered.

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 | | | | | | | | | | | |
| Northern | 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 | | | | | | | | | | | |
| Northern | 185 | 151 | 81.6 | 11 | 5.9 | 9 | 4.9 | 13 | 7.0 | 1 | 0.5 |
| North Dakota | | | | | | | | | | | |
| Northern | 75 | 60 | 80.0 | 0 | 0.0 | 10 | 13.3 | 5 | 6.7 | 0 | 0.0 |
| South Dakota | | | | | | | | | | | |
| Northern | 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 |

Montana

| PRIMARY OFFENSE | TOTAL | SENTENCED WITHIN GUIDELINE RANGE | | SUBSTANTIAL ASSISTANCE DEPARTURE | | GOVERNMENT INITIATED DEPARTURE | | OTHER DOWNWARD DEPARTURE | | UPWARD DEPARTURE | |
|------------------------------|------------|----------------------------------|-------------|----------------------------------|------------|--------------------------------|------------|--------------------------|------------|------------------|------------|
| | | n | % | n | % | n | % | n | % | n | % |
| TOTAL | 112 | 102 | 91.1 | 7 | 6.3 | 0 | 0.0 | 2 | 1.8 | 1 | 0.9 |
| Robbery | 0 | 0 | -- | 0 | -- | 0 | -- | 0 | -- | 0 | -- |
| Drugs - Trafficking | 47 | 40 | 85.1 | 7 | 14.9 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| Drugs - Simple Possession | 0 | 0 | -- | 0 | -- | 0 | -- | 0 | -- | 0 | -- |
| Firearms | 17 | 17 | 100.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| Larceny | 5 | 5 | 100.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| Fraud | 8 | 8 | 100.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| Embezzlement | 1 | 1 | 100.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| Forgery/Counterfeiting | 3 | 3 | 100.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| Immigration | 8 | 8 | 100.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| Other Miscellaneous Offenses | 23 | 20 | 87.0 | 0 | 0.0 | 0 | 0.0 | 2 | 8.7 | 1 | 4.3 |

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 115 guideline cases from the District of Montana, three cases were excluded due to missing or indeterminable departure information.

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).