

# United States Sentencing Commission



## *Statistical Information Packet*

*Fiscal Year 2004*

*District of New Jersey*

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

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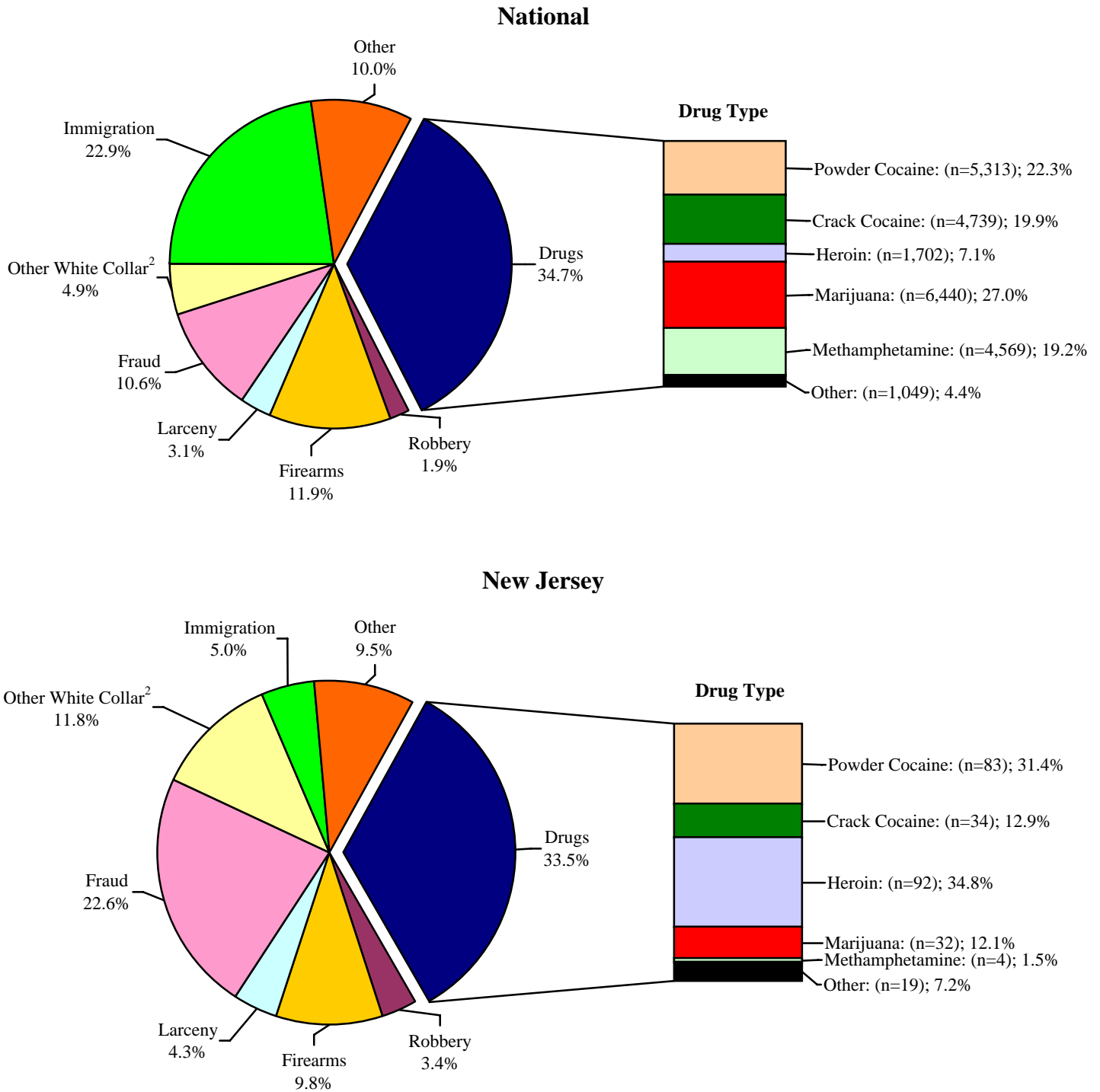
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**SECTION ONE: Fiscal Year 2004**  
*(October 1, 2003, through September 30, 2004)*

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**Figure A**

**DISTRIBUTION OF SENTENCED GUIDELINE OFFENDERS BY SELECT PRIMARY OFFENSE CATEGORY<sup>1</sup>**  
**Fiscal Year 2004**



<sup>1</sup>Of 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 813 guideline cases from the District of New Jersey, 26 cases were excluded due to missing drug type.

<sup>2</sup>The 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      |              | New Jersey |              |
|------------------------------------|---------------|--------------|------------|--------------|
|                                    | Number        | Percent      | Number     | Percent      |
| <b>TOTAL</b>                       | <b>69,932</b> | <b>100.0</b> | <b>813</b> | <b>100.0</b> |
| Murder                             | 76            | 0.1          | 0          | 0.0          |
| Manslaughter                       | 63            | 0.1          | 1          | 0.1          |
| Kidnapping/Hostage Taking          | 39            | 0.1          | 1          | 0.1          |
| Sexual Abuse                       | 276           | 0.4          | 3          | 0.4          |
| Assault                            | 621           | 0.9          | 9          | 1.1          |
| Robbery                            | 1,320         | 1.9          | 27         | 3.3          |
| Arson                              | 72            | 0.1          | 0          | 0.0          |
| Drugs - Trafficking                | 23,572        | 33.7         | 257        | 31.6         |
| Drugs - Communication Facility     | 346           | 0.5          | 5          | 0.6          |
| Drugs - Simple Possession          | 1,296         | 1.9          | 28         | 3.4          |
| Firearms                           | 8,133         | 11.6         | 77         | 9.5          |
| Burglary/B&E                       | 63            | 0.1          | 0          | 0.0          |
| Auto Theft                         | 95            | 0.1          | 1          | 0.1          |
| Larceny                            | 2,133         | 3.1          | 34         | 4.2          |
| Fraud                              | 7,261         | 10.4         | 178        | 21.9         |
| Embezzlement                       | 630           | 0.9          | 22         | 2.7          |
| Forgery/Counterfeiting             | 1,182         | 1.7          | 31         | 3.8          |
| Bribery                            | 166           | 0.2          | 6          | 0.7          |
| Tax                                | 515           | 0.7          | 17         | 2.1          |
| Money Laundering                   | 842           | 1.2          | 17         | 2.1          |
| Racketeering/Extortion             | 621           | 0.9          | 9          | 1.1          |
| Gambling/Lottery                   | 100           | 0.1          | 1          | 0.1          |
| Civil Rights                       | 71            | 0.1          | 5          | 0.6          |
| Immigration                        | 15,717        | 22.5         | 39         | 4.8          |
| Pornography/Prostitution           | 876           | 1.3          | 10         | 1.2          |
| Prison Offenses                    | 380           | 0.5          | 6          | 0.7          |
| Administration of Justice Offenses | 1,026         | 1.5          | 16         | 2.0          |
| Environmental/Wildlife             | 155           | 0.2          | 1          | 0.1          |
| National Defense                   | 34            | 0.0          | 0          | 0.0          |
| Antitrust                          | 11            | 0.0          | 0          | 0.0          |
| Food & Drug                        | 75            | 0.1          | 2          | 0.2          |
| Other Miscellaneous Offenses       | 2,165         | 3.1          | 10         | 1.2          |

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

Of the 813 guideline cases from the District of New Jersey, 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)***

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Table 2

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

| CIRCUIT<br>District   | TOTAL         | PLEA          |             | TRIAL        |            |
|-----------------------|---------------|---------------|-------------|--------------|------------|
|                       |               | Number        | Percent     | Number       | Percent    |
| <b>TOTAL</b>          | <b>51,666</b> | <b>49,350</b> | <b>95.5</b> | <b>2,316</b> | <b>4.5</b> |
| <b>D.C. CIRCUIT</b>   | <b>418</b>    | <b>378</b>    | <b>90.4</b> | <b>40</b>    | <b>9.6</b> |
| District of Columbia  | 418           | 378           | 90.4        | 40           | 9.6        |
| <b>FIRST CIRCUIT</b>  | <b>1,297</b>  | <b>1,234</b>  | <b>95.1</b> | <b>63</b>    | <b>4.9</b> |
| 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        |
| <b>SECOND CIRCUIT</b> | <b>3,496</b>  | <b>3,343</b>  | <b>95.6</b> | <b>153</b>   | <b>4.4</b> |
| 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        |
| <b>THIRD CIRCUIT</b>  | <b>2,140</b>  | <b>2,006</b>  | <b>93.7</b> | <b>134</b>   | <b>6.3</b> |
| 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       |
| <b>FOURTH CIRCUIT</b> | <b>4,669</b>  | <b>4,378</b>  | <b>93.8</b> | <b>291</b>   | <b>6.2</b> |
| 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<br>District    | TOTAL        | PLEA         |             | TRIAL      |            |
|------------------------|--------------|--------------|-------------|------------|------------|
|                        |              | Number       | Percent     | Number     | Percent    |
| <b>FIFTH CIRCUIT</b>   | <b>9,880</b> | <b>9,544</b> | <b>96.6</b> | <b>336</b> | <b>3.4</b> |
| 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        |
| <b>SIXTH CIRCUIT</b>   | <b>3,563</b> | <b>3,367</b> | <b>94.5</b> | <b>196</b> | <b>5.5</b> |
| 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        |
| <b>SEVENTH CIRCUIT</b> | <b>2,282</b> | <b>2,143</b> | <b>93.9</b> | <b>139</b> | <b>6.1</b> |
| 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        |
| <b>EIGHTH CIRCUIT</b>  | <b>3,555</b> | <b>3,363</b> | <b>94.6</b> | <b>192</b> | <b>5.4</b> |
| 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<br>District     | TOTAL         | PLEA          |             | TRIAL      |            |
|-------------------------|---------------|---------------|-------------|------------|------------|
|                         |               | Number        | Percent     | Number     | Percent    |
| <b>NINTH CIRCUIT</b>    | <b>11,221</b> | <b>10,915</b> | <b>97.3</b> | <b>306</b> | <b>2.7</b> |
| 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        |
| <b>TENTH CIRCUIT</b>    | <b>4,043</b>  | <b>3,918</b>  | <b>96.9</b> | <b>125</b> | <b>3.1</b> |
| 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        |
| <b>ELEVENTH CIRCUIT</b> | <b>5,102</b>  | <b>4,761</b>  | <b>93.3</b> | <b>341</b> | <b>6.7</b> |
| 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      |             |              |            | New Jersey |             |           |            |
|------------------------------------|---------------|---------------|-------------|--------------|------------|------------|-------------|-----------|------------|
|                                    |               | PLEA          |             | TRIAL        |            | PLEA       |             | TRIAL     |            |
|                                    |               | n             | %           | n            | %          | n          | %           | n         | %          |
| <b>TOTAL</b>                       | <b>51,657</b> | <b>49,341</b> | <b>95.5</b> | <b>2,316</b> | <b>4.5</b> | <b>580</b> | <b>95.2</b> | <b>29</b> | <b>4.8</b> |
| Murder                             | 57            | 40            | 70.2        | 17           | 29.8       | 0          | --          | 0         | --         |
| Manslaughter                       | 45            | 40            | 88.9        | 5            | 11.1       | 0          | --          | 0         | --         |
| Kidnapping/Hostage Taking          | 29            | 26            | 89.7        | 3            | 10.3       | 0          | --          | 0         | --         |
| Sexual Abuse                       | 199           | 179           | 89.9        | 20           | 10.1       | 1          | 100.0       | 0         | 0.0        |
| Assault                            | 463           | 420           | 90.7        | 43           | 9.3        | 5          | 83.3        | 1         | 16.7       |
| Robbery                            | 950           | 900           | 94.7        | 50           | 5.3        | 21         | 100.0       | 0         | 0.0        |
| Arson                              | 61            | 54            | 88.5        | 7            | 11.5       | 0          | --          | 0         | --         |
| Drugs - Trafficking                | 17,575        | 16,717        | 95.1        | 858          | 4.9        | 176        | 95.7        | 8         | 4.3        |
| Drugs - Communication Facility     | 262           | 260           | 99.2        | 2            | 0.8        | 3          | 100.0       | 0         | 0.0        |
| Drugs - Simple Possession          | 1,014         | 998           | 98.4        | 16           | 1.6        | 20         | 100.0       | 0         | 0.0        |
| Firearms                           | 6,016         | 5,531         | 91.9        | 485          | 8.1        | 60         | 95.2        | 3         | 4.8        |
| Burglary/B&E                       | 47            | 45            | 95.7        | 2            | 4.3        | 0          | --          | 0         | --         |
| 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        | 28         | 100.0       | 0         | 0.0        |
| Fraud                              | 5,531         | 5,282         | 95.5        | 249          | 4.5        | 130        | 95.6        | 6         | 4.4        |
| Embezzlement                       | 456           | 443           | 97.1        | 13           | 2.9        | 13         | 81.3        | 3         | 18.8       |
| Forgery/Counterfeiting             | 902           | 884           | 98.0        | 18           | 2.0        | 20         | 100.0       | 0         | 0.0        |
| Bribery                            | 130           | 121           | 93.1        | 9            | 6.9        | 5          | 83.3        | 1         | 16.7       |
| Tax                                | 372           | 336           | 90.3        | 36           | 9.7        | 16         | 100.0       | 0         | 0.0        |
| Money Laundering                   | 631           | 573           | 90.8        | 58           | 9.2        | 12         | 100.0       | 0         | 0.0        |
| Racketeering/Extortion             | 481           | 445           | 92.5        | 36           | 7.5        | 6          | 85.7        | 1         | 14.3       |
| Gambling/Lottery                   | 77            | 76            | 98.7        | 1            | 1.3        | 1          | 100.0       | 0         | 0.0        |
| Civil Rights                       | 66            | 47            | 71.2        | 19           | 28.8       | 0          | 0.0         | 5         | 100.0      |
| Immigration                        | 11,183        | 11,021        | 98.6        | 162          | 1.4        | 32         | 100.0       | 0         | 0.0        |
| Pornography/Prostitution           | 644           | 611           | 94.9        | 33           | 5.1        | 9          | 100.0       | 0         | 0.0        |
| Prison Offenses                    | 274           | 261           | 95.3        | 13           | 4.7        | 4          | 100.0       | 0         | 0.0        |
| Administration of Justice Offenses | 756           | 720           | 95.2        | 36           | 4.8        | 10         | 100.0       | 0         | 0.0        |
| Environmental/Wildlife             | 117           | 105           | 89.7        | 12           | 10.3       | 0          | 0.0         | 1         | 100.0      |
| 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        | 7          | 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 813 guideline cases from the District of New Jersey, 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    |
| <b>TOTAL</b>                       | <b>51,076</b> | <b>42,957</b> | <b>84.1</b> | <b>1,508</b>                    | <b>3.0</b> | <b>2,165</b>              | <b>4.2</b> | <b>4,446</b>   | <b>8.7</b> |
| 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)**

## New Jersey

| PRIMARY OFFENSE                    | TOTAL      | Prison     |             | Prison/Community Split Sentence |            | Probation and Confinement |            | Probation Only |             |
|------------------------------------|------------|------------|-------------|---------------------------------|------------|---------------------------|------------|----------------|-------------|
|                                    |            | Number     | Percent     | Number                          | Percent    | Number                    | Percent    | Number         | Percent     |
| <b>TOTAL</b>                       | <b>592</b> | <b>431</b> | <b>72.8</b> | <b>29</b>                       | <b>4.9</b> | <b>48</b>                 | <b>8.1</b> | <b>84</b>      | <b>14.2</b> |
| Murder                             | 0          | 0          | --          | 0                               | --         | 0                         | --         | 0              | --          |
| Manslaughter                       | 0          | 0          | --          | 0                               | --         | 0                         | --         | 0              | --          |
| Kidnapping/Hostage Taking          | 0          | 0          | --          | 0                               | --         | 0                         | --         | 0              | --          |
| Sexual Abuse                       | 1          | 1          | 100.0       | 0                               | 0.0        | 0                         | 0.0        | 0              | 0.0         |
| Assault                            | 6          | 6          | 100.0       | 0                               | 0.0        | 0                         | 0.0        | 0              | 0.0         |
| Robbery                            | 21         | 21         | 100.0       | 0                               | 0.0        | 0                         | 0.0        | 0              | 0.0         |
| Arson                              | 0          | 0          | --          | 0                               | --         | 0                         | --         | 0              | --          |
| Drugs - Trafficking                | 180        | 174        | 96.7        | 2                               | 1.1        | 3                         | 1.7        | 1              | 0.6         |
| Drugs - Communication Facility     | 3          | 2          | 66.7        | 0                               | 0.0        | 0                         | 0.0        | 1              | 33.3        |
| Drugs - Simple Possession          | 12         | 1          | 8.3         | 0                               | 0.0        | 0                         | 0.0        | 11             | 91.7        |
| Firearms                           | 62         | 57         | 91.9        | 0                               | 0.0        | 3                         | 4.8        | 2              | 3.2         |
| Burglary/B&E                       | 0          | 0          | --          | 0                               | --         | 0                         | --         | 0              | --          |
| Auto Theft                         | 1          | 1          | 100.0       | 0                               | 0.0        | 0                         | 0.0        | 0              | 0.0         |
| Larceny                            | 28         | 17         | 60.7        | 5                               | 17.9       | 3                         | 10.7       | 3              | 10.7        |
| Fraud                              | 135        | 65         | 48.1        | 11                              | 8.1        | 21                        | 15.6       | 38             | 28.1        |
| Embezzlement                       | 16         | 5          | 31.3        | 3                               | 18.8       | 1                         | 6.3        | 7              | 43.8        |
| Forgery/Counterfeiting             | 20         | 10         | 50.0        | 2                               | 10.0       | 4                         | 20.0       | 4              | 20.0        |
| Bribery                            | 6          | 1          | 16.7        | 0                               | 0.0        | 1                         | 16.7       | 4              | 66.7        |
| Tax                                | 16         | 7          | 43.8        | 2                               | 12.5       | 3                         | 18.8       | 4              | 25.0        |
| Money Laundering                   | 11         | 8          | 72.7        | 1                               | 9.1        | 2                         | 18.2       | 0              | 0.0         |
| Racketeering/Extortion             | 7          | 6          | 85.7        | 0                               | 0.0        | 1                         | 14.3       | 0              | 0.0         |
| Gambling/Lottery                   | 1          | 1          | 100.0       | 0                               | 0.0        | 0                         | 0.0        | 0              | 0.0         |
| Civil Rights                       | 5          | 5          | 100.0       | 0                               | 0.0        | 0                         | 0.0        | 0              | 0.0         |
| Immigration                        | 30         | 26         | 86.7        | 1                               | 3.3        | 0                         | 0.0        | 3              | 10.0        |
| Pornography/Prostitution           | 9          | 8          | 88.9        | 1                               | 11.1       | 0                         | 0.0        | 0              | 0.0         |
| Prison Offenses                    | 4          | 2          | 50.0        | 0                               | 0.0        | 2                         | 50.0       | 0              | 0.0         |
| Administration of Justice Offenses | 10         | 5          | 50.0        | 1                               | 10.0       | 2                         | 20.0       | 2              | 20.0        |
| Environmental/Wildlife             | 1          | 1          | 100.0       | 0                               | 0.0        | 0                         | 0.0        | 0              | 0.0         |
| National Defense                   | 0          | 0          | --          | 0                               | --         | 0                         | --         | 0              | --          |
| Antitrust                          | 0          | 0          | --          | 0                               | --         | 0                         | --         | 0              | --          |
| Food & Drug                        | 0          | 0          | --          | 0                               | --         | 0                         | --         | 0              | --          |
| Other Miscellaneous Offenses       | 7          | 1          | 14.3        | 0                               | 0.0        | 2                         | 28.6       | 4              | 57.1        |

Of the 609 guideline cases from the District of New Jersey, 17 cases were excluded due to missing sentencing information.

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        |             |                     |             | New Jersey      |             |                     |             |
|-------------------------------------|--------------|-----------------|-------------|---------------------|-------------|-----------------|-------------|---------------------|-------------|
|                                     |              | Prison Sentence |             | Non-Prison Sentence |             | Prison Sentence |             | Non-Prison Sentence |             |
|                                     |              | Number          | Percent     | Number              | Percent     | Number          | Percent     | Number              | Percent     |
| <b>TOTAL</b>                        | <b>9,747</b> | <b>5,032</b>    | <b>51.6</b> | <b>4,715</b>        | <b>48.4</b> | <b>22</b>       | <b>19.5</b> | <b>91</b>           | <b>80.5</b> |
| <b>Fraud</b>                        | <b>2,148</b> | 852             | 39.7        | 1,296               | 60.3        | 7               | 14.6        | 41                  | 85.4        |
| <b>Larceny</b>                      | <b>949</b>   | 202             | 21.3        | 747                 | 78.7        | 4               | 57.1        | 3                   | 42.9        |
| <b>Immigration</b>                  | <b>2,867</b> | 2,621           | 91.4        | 246                 | 8.6         | 2               | 50.0        | 2                   | 50.0        |
| <b>Embezzlement</b>                 | <b>272</b>   | 77              | 28.3        | 195                 | 71.7        | 2               | 22.2        | 7                   | 77.8        |
| <b>Drugs - Trafficking</b>          | <b>478</b>   | 241             | 50.4        | 237                 | 49.6        | 0               | 0.0         | 1                   | 100.0       |
| <b>Drugs - Simple Possession</b>    | <b>622</b>   | 307             | 49.4        | 315                 | 50.6        | 0               | 0.0         | 11                  | 100.0       |
| <b>Firearms</b>                     | <b>341</b>   | 162             | 47.5        | 179                 | 52.5        | 2               | 66.7        | 1                   | 33.3        |
| <b>Forgery/Counterfeiting</b>       | <b>355</b>   | 104             | 29.3        | 251                 | 70.7        | 1               | 12.5        | 7                   | 87.5        |
| <b>Other Miscellaneous Offenses</b> | <b>1,715</b> | 466             | 27.2        | 1,249               | 72.8        | 4               | 18.2        | 18                  | 81.8        |

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 609 guideline cases from the District of New Jersey, 496 cases were excluded due to one or both of the following reasons: defendant ineligible for non-prison alternatives (496) or missing sentencing information (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 7**

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

| PRIMARY OFFENSE                           | National    |               |               | New Jersey  |               |            |
|---|-------------|---------------|---------------|-------------|---------------|------------|
|   | Mean Months | Median Months | Number        | Mean Months | Median Months | Number     |
| <b>TOTAL</b>                              | <b>58.3</b> | <b>36.0</b>   | <b>43,961</b> | <b>54.0</b> | <b>37.0</b>   | <b>455</b> |
| <b>Murder</b>                             | 216.2       | 168.0         | 55            | --          | --            | 0          |
| <b>Manslaughter</b>                       | 35.7        | 18.0          | 45            | --          | --            | 0          |
| <b>Kidnapping/Hostage Taking</b>          | 124.2       | 87.0          | 27            | --          | --            | 0          |
| <b>Sexual Abuse</b>                       | 99.5        | 78.0          | 190           | --          | --            | 1          |
| <b>Assault</b>                            | 37.9        | 27.0          | 373           | 45.2        | 13.5          | 6          |
| <b>Robbery</b>                            | 97.6        | 72.0          | 926           | 99.5        | 84.0          | 21         |
| <b>Arson</b>                              | 69.4        | 48.0          | 57            | --          | --            | 0          |
| <b>Drugs - Trafficking</b>                | 84.2        | 60.0          | 16,843        | 67.7        | 46.0          | 174        |
| <b>Drugs - Communication Facility</b>     | 47.5        | 48.0          | 230           | --          | --            | 2          |
| <b>Drugs - Simple Possession</b>          | 9.8         | 6.0           | 570           | --          | --            | 1          |
| <b>Firearms</b>                           | 82.8        | 51.0          | 5,589         | 91.2        | 70.0          | 57         |
| <b>Burglary/B&amp;E</b>                   | 23.6        | 24.0          | 45            | --          | --            | 0          |
| <b>Auto Theft</b>                         | 74.9        | 24.0          | 54            | --          | --            | 1          |
| <b>Larceny</b>                            | 17.9        | 12.0          | 661           | 13.8        | 11.0          | 21         |
| <b>Fraud</b>                              | 22.2        | 15.0          | 3,698         | 22.6        | 15.0          | 76         |
| <b>Embezzlement</b>                       | 11.5        | 6.1           | 228           | 9.4         | 9.0           | 8          |
| <b>Forgery/Counterfeiting</b>             | 20.6        | 15.0          | 584           | 18.8        | 19.0          | 12         |
| <b>Bribery</b>                            | 21.5        | 15.0          | 62            | --          | --            | 1          |
| <b>Tax</b>                                | 18.6        | 15.0          | 232           | 12.4        | 12.0          | 9          |
| <b>Money Laundering</b>                   | 46.4        | 33.0          | 479           | 46.4        | 45.0          | 9          |
| <b>Racketeering/Extortion</b>             | 101.8       | 60.0          | 420           | 99.4        | 28.0          | 5          |
| <b>Gambling/Lottery</b>                   | 8.3         | 6.0           | 23            | --          | --            | 1          |
| <b>Civil Rights</b>                       | 43.7        | 33.0          | 50            | 48.0        | 33.0          | 5          |
| <b>Immigration</b>                        | 24.9        | 21.0          | 10,623        | 33.6        | 36.0          | 27         |
| <b>Pornography/Prostitution</b>           | 65.5        | 41.0          | 616           | 36.6        | 27.0          | 9          |
| <b>Prison Offenses</b>                    | 17.7        | 14.0          | 257           | --          | --            | 2          |
| <b>Administration of Justice Offenses</b> | 24.1        | 15.0          | 487           | 18.1        | 21.0          | 5          |
| <b>Environmental/Wildlife</b>             | 18.2        | 12.0          | 30            | --          | --            | 1          |
| <b>National Defense</b>                   | 103.5       | 30.0          | 24            | --          | --            | 0          |
| <b>Antitrust</b>                          | 4.3         | 4.0           | 3             | --          | --            | 0          |
| <b>Food &amp; Drug</b>                    | 27.9        | 21.0          | 10            | --          | --            | 0          |
| <b>Other Miscellaneous Offenses</b>       | 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 609 guideline cases from the District of New Jersey, 154 cases were excluded due to one of the following reasons: zero prison months ordered (136) or missing or indeterminable sentencing information (18).

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<br>District   | TOTAL         | SENTENCED<br>WITHIN<br>GUIDELINE RANGE |             | SUBSTANTIAL<br>ASSISTANCE<br>DEPARTURE |             | GOVERNMENT<br>INITIATED<br>DEPARTURE |            | OTHER<br>DOWNWARD<br>DEPARTURE |             | UPWARD<br>DEPARTURE |            |
|-----------------------|---------------|--|-------------|--|-------------|--------------------------------------|------------|--------------------------------|-------------|---------------------|------------|
|                       |               | n                                      | %           | n                                      | %           | n                                    | %          | n                              | %           | n                   | %          |
| <b>TOTAL</b>          | <b>48,251</b> | <b>34,815</b>                          | <b>72.2</b> | <b>7,484</b>                           | <b>15.5</b> | <b>3,072</b>                         | <b>6.4</b> | <b>2,498</b>                   | <b>5.2</b>  | <b>382</b>          | <b>0.8</b> |
| <b>D.C. CIRCUIT</b>   | <b>409</b>    | <b>242</b>                             | <b>59.2</b> | <b>128</b>                             | <b>31.3</b> | <b>15</b>                            | <b>3.7</b> | <b>20</b>                      | <b>4.9</b>  | <b>4</b>            | <b>1.0</b> |
| District of Columbia  | 409           | 242                                    | 59.2        | 128                                    | 31.3        | 15                                   | 3.7        | 20                             | 4.9         | 4                   | 1.0        |
| <b>FIRST CIRCUIT</b>  | <b>1,279</b>  | <b>1,018</b>                           | <b>79.6</b> | <b>177</b>                             | <b>13.8</b> | <b>7</b>                             | <b>0.5</b> | <b>66</b>                      | <b>5.2</b>  | <b>11</b>           | <b>0.9</b> |
| 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        |
| <b>SECOND CIRCUIT</b> | <b>3,426</b>  | <b>2,187</b>                           | <b>63.8</b> | <b>659</b>                             | <b>19.2</b> | <b>86</b>                            | <b>2.5</b> | <b>465</b>                     | <b>13.6</b> | <b>29</b>           | <b>0.8</b> |
| 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        |
| <b>THIRD CIRCUIT</b>  | <b>2,086</b>  | <b>1,305</b>                           | <b>62.6</b> | <b>632</b>                             | <b>30.3</b> | <b>21</b>                            | <b>1.0</b> | <b>115</b>                     | <b>5.5</b>  | <b>13</b>           | <b>0.6</b> |
| 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        |
| <b>FOURTH CIRCUIT</b> | <b>4,185</b>  | <b>3,304</b>                           | <b>78.9</b> | <b>699</b>                             | <b>16.7</b> | <b>12</b>                            | <b>0.3</b> | <b>128</b>                     | <b>3.1</b>  | <b>42</b>           | <b>1.0</b> |
| 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<br>District    | TOTAL        | SENTENCED<br>WITHIN<br>GUIDELINE RANGE |             | SUBSTANTIAL<br>ASSISTANCE<br>DEPARTURE |             | GOVERNMENT<br>INITIATED<br>DEPARTURE |            | OTHER<br>DOWNWARD<br>DEPARTURE |            | UPWARD<br>DEPARTURE |            |
|------------------------|--------------|--|-------------|--|-------------|--------------------------------------|------------|--------------------------------|------------|---------------------|------------|
|                        |              | n                                      | %           | n                                      | %           | n                                    | %          | n                              | %          | n                   | %          |
| <b>FIFTH CIRCUIT</b>   | <b>9,773</b> | <b>7,842</b>                           | <b>80.2</b> | <b>1,005</b>                           | <b>10.3</b> | <b>490</b>                           | <b>5.0</b> | <b>361</b>                     | <b>3.7</b> | <b>75</b>           | <b>0.8</b> |
| <b>Louisiana</b>       |              |  |             |  |             |                                      |            |                                |            |                     |            |
| 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        |
| <b>Mississippi</b>     |              |  |             |  |             |                                      |            |                                |            |                     |            |
| 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        |
| <b>Texas</b>           |              |  |             |  |             |                                      |            |                                |            |                     |            |
| 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        |
| <b>SIXTH CIRCUIT</b>   | <b>3,434</b> | <b>2,394</b>                           | <b>69.7</b> | <b>836</b>                             | <b>24.3</b> | <b>13</b>                            | <b>0.4</b> | <b>175</b>                     | <b>5.1</b> | <b>16</b>           | <b>0.5</b> |
| <b>Kentucky</b>        |              |  |             |  |             |                                      |            |                                |            |                     |            |
| 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        |
| <b>Michigan</b>        |              |  |             |  |             |                                      |            |                                |            |                     |            |
| 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        |
| <b>Ohio</b>            |              |  |             |  |             |                                      |            |                                |            |                     |            |
| 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        |
| <b>Tennessee</b>       |              |  |             |  |             |                                      |            |                                |            |                     |            |
| 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        |
| <b>SEVENTH CIRCUIT</b> | <b>2,224</b> | <b>1,676</b>                           | <b>75.4</b> | <b>423</b>                             | <b>19.0</b> | <b>15</b>                            | <b>0.7</b> | <b>82</b>                      | <b>3.7</b> | <b>28</b>           | <b>1.3</b> |
| <b>Illinois</b>        |              |  |             |  |             |                                      |            |                                |            |                     |            |
| 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        |
| <b>Indiana</b>         |              |  |             |  |             |                                      |            |                                |            |                     |            |
| 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        |
| <b>Wisconsin</b>       |              |  |             |  |             |                                      |            |                                |            |                     |            |
| 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        |
| <b>EIGHTH CIRCUIT</b>  | <b>3,528</b> | <b>2,715</b>                           | <b>77.0</b> | <b>540</b>                             | <b>15.3</b> | <b>77</b>                            | <b>2.2</b> | <b>165</b>                     | <b>4.7</b> | <b>31</b>           | <b>0.9</b> |
| <b>Arkansas</b>        |              |  |             |  |             |                                      |            |                                |            |                     |            |
| 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        |
| <b>Iowa</b>            |              |  |             |  |             |                                      |            |                                |            |                     |            |
| 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        |
| <b>Missouri</b>        |              |  |             |  |             |                                      |            |                                |            |                     |            |
| 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<br>District      | TOTAL        | SENTENCED<br>WITHIN<br>GUIDELINE RANGE |             | SUBSTANTIAL<br>ASSISTANCE<br>DEPARTURE |             | GOVERNMENT<br>INITIATED<br>DEPARTURE |             | OTHER<br>DOWNWARD<br>DEPARTURE |            | UPWARD<br>DEPARTURE |            |
|--------------------------|--------------|--|-------------|--|-------------|--------------------------------------|-------------|--------------------------------|------------|---------------------|------------|
|                          |              | n                                      | %           | n                                      | %           | n                                    | %           | n                              | %          | n                   | %          |
| <b>NINTH CIRCUIT</b>     | <b>9,377</b> | <b>5,792</b>                           | <b>61.8</b> | <b>990</b>                             | <b>10.6</b> | <b>1,927</b>                         | <b>20.6</b> | <b>596</b>                     | <b>6.4</b> | <b>72</b>           | <b>0.8</b> |
| 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        |
| <b>TENTH CIRCUIT</b>     | <b>3,728</b> | <b>2,754</b>                           | <b>73.9</b> | <b>385</b>                             | <b>10.3</b> | <b>399</b>                           | <b>10.7</b> | <b>165</b>                     | <b>4.4</b> | <b>25</b>           | <b>0.7</b> |
| 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        |
| <b>ELEVENTH CIRCUIT</b>  | <b>4,802</b> | <b>3,586</b>                           | <b>74.7</b> | <b>1,010</b>                           | <b>21.0</b> | <b>10</b>                            | <b>0.2</b>  | <b>160</b>                     | <b>3.3</b> | <b>36</b>           | <b>0.7</b> |
| 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                | %          |
| <b>TOTAL</b>                 | <b>48,181</b> | <b>34,760</b>                    | <b>72.1</b> | <b>7,473</b>                     | <b>15.5</b> | <b>3,072</b>                   | <b>6.4</b> | <b>2,494</b>             | <b>5.2</b> | <b>382</b>       | <b>0.8</b> |
| 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        |

**New Jersey**

| PRIMARY OFFENSE              | TOTAL      | SENTENCED WITHIN GUIDELINE RANGE |             | SUBSTANTIAL ASSISTANCE DEPARTURE |             | GOVERNMENT INITIATED DEPARTURE |            | OTHER DOWNWARD DEPARTURE |            | UPWARD DEPARTURE |            |
|------------------------------|------------|----------------------------------|-------------|----------------------------------|-------------|--------------------------------|------------|--------------------------|------------|------------------|------------|
|                              |            | n                                | %           | n                                | %           | n                              | %          | n                        | %          | n                | %          |
| <b>TOTAL</b>                 | <b>587</b> | <b>376</b>                       | <b>64.1</b> | <b>157</b>                       | <b>26.7</b> | <b>10</b>                      | <b>1.7</b> | <b>42</b>                | <b>7.2</b> | <b>2</b>         | <b>0.3</b> |
| Robbery                      | 21         | 12                               | 57.1        | 6                                | 28.6        | 0                              | 0.0        | 1                        | 4.8        | 2                | 9.5        |
| Drugs - Trafficking          | 177        | 92                               | 52.0        | 70                               | 39.5        | 5                              | 2.8        | 10                       | 5.6        | 0                | 0.0        |
| Drugs - Simple Possession    | 15         | 15                               | 100.0       | 0                                | 0.0         | 0                              | 0.0        | 0                        | 0.0        | 0                | 0.0        |
| Firearms                     | 62         | 43                               | 69.4        | 10                               | 16.1        | 1                              | 1.6        | 8                        | 12.9       | 0                | 0.0        |
| Larceny                      | 28         | 21                               | 75.0        | 6                                | 21.4        | 0                              | 0.0        | 1                        | 3.6        | 0                | 0.0        |
| Fraud                        | 133        | 85                               | 63.9        | 39                               | 29.3        | 3                              | 2.3        | 6                        | 4.5        | 0                | 0.0        |
| Embezzlement                 | 16         | 12                               | 75.0        | 2                                | 12.5        | 0                              | 0.0        | 2                        | 12.5       | 0                | 0.0        |
| Forgery/Counterfeiting       | 19         | 12                               | 63.2        | 5                                | 26.3        | 0                              | 0.0        | 2                        | 10.5       | 0                | 0.0        |
| Immigration                  | 30         | 24                               | 80.0        | 2                                | 6.7         | 1                              | 3.3        | 3                        | 10.0       | 0                | 0.0        |
| Other Miscellaneous Offenses | 86         | 60                               | 69.8        | 17                               | 19.8        | 0                              | 0.0        | 9                        | 10.5       | 0                | 0.0        |

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 609 guideline cases from the District of New Jersey, 22 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)***

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Table 2

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

| CIRCUIT<br>District   | TOTAL         | PLEA          |             | TRIAL      |             |
|-----------------------|---------------|---------------|-------------|------------|-------------|
|                       |               | Number        | Percent     | Number     | Percent     |
| <b>TOTAL</b>          | <b>18,145</b> | <b>17,521</b> | <b>96.6</b> | <b>624</b> | <b>3.4</b>  |
| <b>D.C. CIRCUIT</b>   | <b>150</b>    | <b>134</b>    | <b>89.3</b> | <b>16</b>  | <b>10.7</b> |
| District of Columbia  | 150           | 134           | 89.3        | 16         | 10.7        |
| <b>FIRST CIRCUIT</b>  | <b>456</b>    | <b>434</b>    | <b>95.2</b> | <b>22</b>  | <b>4.8</b>  |
| 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         |
| <b>SECOND CIRCUIT</b> | <b>1,039</b>  | <b>985</b>    | <b>94.8</b> | <b>54</b>  | <b>5.2</b>  |
| 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         |
| <b>THIRD CIRCUIT</b>  | <b>683</b>    | <b>652</b>    | <b>95.5</b> | <b>31</b>  | <b>4.5</b>  |
| 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         |
| <b>FOURTH CIRCUIT</b> | <b>1,599</b>  | <b>1,524</b>  | <b>95.3</b> | <b>75</b>  | <b>4.7</b>  |
| 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<br>District    | TOTAL        | PLEA         |             | TRIAL     |            |
|------------------------|--------------|--------------|-------------|-----------|------------|
|                        |              | Number       | Percent     | Number    | Percent    |
| <b>FIFTH CIRCUIT</b>   | <b>3,869</b> | <b>3,781</b> | <b>97.7</b> | <b>88</b> | <b>2.3</b> |
| 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        |
| <b>SIXTH CIRCUIT</b>   | <b>1,249</b> | <b>1,184</b> | <b>94.8</b> | <b>65</b> | <b>5.2</b> |
| 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        |
| <b>SEVENTH CIRCUIT</b> | <b>596</b>   | <b>572</b>   | <b>96.0</b> | <b>24</b> | <b>4.0</b> |
| 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        |
| <b>EIGHTH CIRCUIT</b>  | <b>1,246</b> | <b>1,193</b> | <b>95.7</b> | <b>53</b> | <b>4.3</b> |
| 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<br>District      | TOTAL        | PLEA         |             | TRIAL     |            |
|--------------------------|--------------|--------------|-------------|-----------|------------|
|                          |              | Number       | Percent     | Number    | Percent    |
| <b>NINTH CIRCUIT</b>     | <b>3,956</b> | <b>3,880</b> | <b>98.1</b> | <b>76</b> | <b>1.9</b> |
| 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        |
| <b>TENTH CIRCUIT</b>     | <b>1,539</b> | <b>1,506</b> | <b>97.9</b> | <b>33</b> | <b>2.1</b> |
| 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        |
| <b>ELEVENTH CIRCUIT</b>  | <b>1,763</b> | <b>1,676</b> | <b>95.1</b> | <b>87</b> | <b>4.9</b> |
| 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      |             |            |            | New Jersey |             |          |            |
|------------------------------------|---------------|---------------|-------------|------------|------------|------------|-------------|----------|------------|
|                                    |               | PLEA          |             | TRIAL      |            | PLEA       |             | TRIAL    |            |
|                                    |               | n             | %           | n          | %          | n          | %           | n        | %          |
| <b>TOTAL</b>                       | <b>18,142</b> | <b>17,518</b> | <b>96.6</b> | <b>624</b> | <b>3.4</b> | <b>197</b> | <b>97.0</b> | <b>6</b> | <b>3.0</b> |
| Murder                             | 18            | 12            | 66.7        | 6          | 33.3       | 0          | --          | 0        | --         |
| Manslaughter                       | 16            | 16            | 100.0       | 0          | 0.0        | 1          | 100.0       | 0        | 0.0        |
| Kidnapping/Hostage Taking          | 10            | 8             | 80.0        | 2          | 20.0       | 1          | 100.0       | 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        | 6          | 100.0       | 0        | 0.0        |
| Arson                              | 11            | 9             | 81.8        | 2          | 18.2       | 0          | --          | 0        | --         |
| Drugs - Trafficking                | 5,968         | 5,750         | 96.3        | 218        | 3.7        | 72         | 98.6        | 1        | 1.4        |
| Drugs - Communication Facility     | 84            | 84            | 100.0       | 0          | 0.0        | 2          | 100.0       | 0        | 0.0        |
| Drugs - Simple Possession          | 274           | 272           | 99.3        | 2          | 0.7        | 7          | 100.0       | 0        | 0.0        |
| Firearms                           | 2,095         | 1,956         | 93.4        | 139        | 6.6        | 13         | 92.9        | 1        | 7.1        |
| Burglary/B&E                       | 16            | 15            | 93.8        | 1          | 6.3        | 0          | --          | 0        | --         |
| Auto Theft                         | 27            | 26            | 96.3        | 1          | 3.7        | 0          | --          | 0        | --         |
| Larceny                            | 570           | 554           | 97.2        | 16         | 2.8        | 6          | 100.0       | 0        | 0.0        |
| Fraud                              | 1,719         | 1,655         | 96.3        | 64         | 3.7        | 38         | 90.5        | 4        | 9.5        |
| Embezzlement                       | 173           | 167           | 96.5        | 6          | 3.5        | 6          | 100.0       | 0        | 0.0        |
| Forgery/Counterfeiting             | 279           | 271           | 97.1        | 8          | 2.9        | 11         | 100.0       | 0        | 0.0        |
| Bribery                            | 36            | 32            | 88.9        | 4          | 11.1       | 0          | --          | 0        | --         |
| Tax                                | 143           | 132           | 92.3        | 11         | 7.7        | 1          | 100.0       | 0        | 0.0        |
| Money Laundering                   | 209           | 197           | 94.3        | 12         | 5.7        | 5          | 100.0       | 0        | 0.0        |
| Racketeering/Extortion             | 138           | 124           | 89.9        | 14         | 10.1       | 2          | 100.0       | 0        | 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        | 7          | 100.0       | 0        | 0.0        |
| Pornography/Prostitution           | 232           | 220           | 94.8        | 12         | 5.2        | 1          | 100.0       | 0        | 0.0        |
| Prison Offenses                    | 105           | 104           | 99.0        | 1          | 1.0        | 2          | 100.0       | 0        | 0.0        |
| Administration of Justice Offenses | 267           | 260           | 97.4        | 7          | 2.6        | 6          | 100.0       | 0        | 0.0        |
| Environmental/Wildlife             | 38            | 37            | 97.4        | 1          | 2.6        | 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        | 2          | 100.0       | 0        | 0.0        |
| Other Miscellaneous Offenses       | 551           | 535           | 97.1        | 16         | 2.9        | 3          | 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 204 guideline cases from the District of New Jersey, one case was excluded due to missing 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 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    |
| <b>TOTAL</b>                       | <b>17,924</b> | <b>15,139</b> | <b>84.5</b> | <b>455</b>                      | <b>2.5</b> | <b>722</b>                | <b>4.0</b> | <b>1,608</b>   | <b>9.0</b> |
| 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)**

## New Jersey

| PRIMARY OFFENSE                    | TOTAL      | Prison     |             | Prison/Community Split Sentence |            | Probation and Confinement |            | Probation Only |             |
|------------------------------------|------------|------------|-------------|---------------------------------|------------|---------------------------|------------|----------------|-------------|
|                                    |            | Number     | Percent     | Number                          | Percent    | Number                    | Percent    | Number         | Percent     |
| <b>TOTAL</b>                       | <b>202</b> | <b>150</b> | <b>74.3</b> | <b>7</b>                        | <b>3.5</b> | <b>17</b>                 | <b>8.4</b> | <b>28</b>      | <b>13.9</b> |
| Murder                             | 0          | 0          | --          | 0                               | --         | 0                         | --         | 0              | --          |
| Manslaughter                       | 1          | 0          | 0.0         | 0                               | 0.0        | 0                         | 0.0        | 1              | 100.0       |
| Kidnapping/Hostage Taking          | 1          | 1          | 100.0       | 0                               | 0.0        | 0                         | 0.0        | 0              | 0.0         |
| Sexual Abuse                       | 2          | 2          | 100.0       | 0                               | 0.0        | 0                         | 0.0        | 0              | 0.0         |
| Assault                            | 3          | 3          | 100.0       | 0                               | 0.0        | 0                         | 0.0        | 0              | 0.0         |
| Robbery                            | 6          | 6          | 100.0       | 0                               | 0.0        | 0                         | 0.0        | 0              | 0.0         |
| Arson                              | 0          | 0          | --          | 0                               | --         | 0                         | --         | 0              | --          |
| Drugs - Trafficking                | 73         | 68         | 93.2        | 3                               | 4.1        | 2                         | 2.7        | 0              | 0.0         |
| Drugs - Communication Facility     | 2          | 1          | 50.0        | 0                               | 0.0        | 1                         | 50.0       | 0              | 0.0         |
| Drugs - Simple Possession          | 7          | 2          | 28.6        | 0                               | 0.0        | 0                         | 0.0        | 5              | 71.4        |
| Firearms                           | 14         | 13         | 92.9        | 0                               | 0.0        | 1                         | 7.1        | 0              | 0.0         |
| Burglary/B&E                       | 0          | 0          | --          | 0                               | --         | 0                         | --         | 0              | --          |
| Auto Theft                         | 0          | 0          | --          | 0                               | --         | 0                         | --         | 0              | --          |
| Larceny                            | 6          | 3          | 50.0        | 0                               | 0.0        | 2                         | 33.3       | 1              | 16.7        |
| Fraud                              | 42         | 23         | 54.8        | 2                               | 4.8        | 6                         | 14.3       | 11             | 26.2        |
| Embezzlement                       | 6          | 0          | 0.0         | 0                               | 0.0        | 2                         | 33.3       | 4              | 66.7        |
| Forgery/Counterfeiting             | 10         | 8          | 80.0        | 1                               | 10.0       | 0                         | 0.0        | 1              | 10.0        |
| Bribery                            | 0          | 0          | --          | 0                               | --         | 0                         | --         | 0              | --          |
| Tax                                | 1          | 0          | 0.0         | 0                               | 0.0        | 1                         | 100.0      | 0              | 0.0         |
| Money Laundering                   | 5          | 3          | 60.0        | 1                               | 20.0       | 1                         | 20.0       | 0              | 0.0         |
| Racketeering/Extortion             | 2          | 2          | 100.0       | 0                               | 0.0        | 0                         | 0.0        | 0              | 0.0         |
| Gambling/Lottery                   | 0          | 0          | --          | 0                               | --         | 0                         | --         | 0              | --          |
| Civil Rights                       | 0          | 0          | --          | 0                               | --         | 0                         | --         | 0              | --          |
| Immigration                        | 7          | 7          | 100.0       | 0                               | 0.0        | 0                         | 0.0        | 0              | 0.0         |
| Pornography/Prostitution           | 1          | 1          | 100.0       | 0                               | 0.0        | 0                         | 0.0        | 0              | 0.0         |
| Prison Offenses                    | 2          | 2          | 100.0       | 0                               | 0.0        | 0                         | 0.0        | 0              | 0.0         |
| Administration of Justice Offenses | 6          | 4          | 66.7        | 0                               | 0.0        | 1                         | 16.7       | 1              | 16.7        |
| Environmental/Wildlife             | 0          | 0          | --          | 0                               | --         | 0                         | --         | 0              | --          |
| National Defense                   | 0          | 0          | --          | 0                               | --         | 0                         | --         | 0              | --          |
| Antitrust                          | 0          | 0          | --          | 0                               | --         | 0                         | --         | 0              | --          |
| Food & Drug                        | 2          | 0          | 0.0         | 0                               | 0.0        | 0                         | 0.0        | 2              | 100.0       |
| Other Miscellaneous Offenses       | 3          | 1          | 33.3        | 0                               | 0.0        | 0                         | 0.0        | 2              | 66.7        |

Of the 204 guideline cases from the District of New Jersey, two cases were excluded due to missing sentencing information.

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        |             |                     |             | New Jersey      |             |                     |             |
|-------------------------------------|--------------|-----------------|-------------|---------------------|-------------|-----------------|-------------|---------------------|-------------|
|                                     |              | Prison Sentence |             | Non-Prison Sentence |             | Prison Sentence |             | Non-Prison Sentence |             |
|                                     |              | Number          | Percent     | Number              | Percent     | Number          | Percent     | Number              | Percent     |
| <b>TOTAL</b>                        | <b>3,566</b> | <b>1,969</b>    | <b>55.2</b> | <b>1,597</b>        | <b>44.8</b> | <b>9</b>        | <b>27.3</b> | <b>24</b>           | <b>72.7</b> |
| <b>Fraud</b>                        | <b>702</b>   | 269             | 38.3        | 433                 | 61.7        | 3               | 25.0        | 9                   | 75.0        |
| <b>Larceny</b>                      | <b>352</b>   | 77              | 21.9        | 275                 | 78.1        | 1               | 50.0        | 1                   | 50.0        |
| <b>Immigration</b>                  | <b>1,256</b> | 1,166           | 92.8        | 90                  | 7.2         | 0               | --          | 0                   | --          |
| <b>Embezzlement</b>                 | <b>123</b>   | 48              | 39.0        | 75                  | 61.0        | 0               | 0.0         | 4                   | 100.0       |
| <b>Drugs - Trafficking</b>          | <b>176</b>   | 99              | 56.3        | 77                  | 43.8        | 1               | 100.0       | 0                   | 0.0         |
| <b>Drugs - Simple Possession</b>    | <b>150</b>   | 47              | 31.3        | 103                 | 68.7        | 1               | 16.7        | 5                   | 83.3        |
| <b>Firearms</b>                     | <b>116</b>   | 54              | 46.6        | 62                  | 53.4        | 0               | --          | 0                   | --          |
| <b>Forgery/Counterfeiting</b>       | <b>119</b>   | 40              | 33.6        | 79                  | 66.4        | 1               | 100.0       | 0                   | 0.0         |
| <b>Other Miscellaneous Offenses</b> | <b>572</b>   | 169             | 29.5        | 403                 | 70.5        | 2               | 28.6        | 5                   | 71.4        |

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 204 guideline cases from the District of New Jersey, 171 cases were excluded due to one or both of the following reasons: defendant ineligible for non-prison alternatives (171) or missing sentencing information (2).

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    |               |               | New Jersey  |               |            |
|---|-------------|---------------|---------------|-------------|---------------|------------|
|   | Mean Months | Median Months | Number        | Mean Months | Median Months | Number     |
| <b>TOTAL</b>                              | <b>52.7</b> | <b>30.0</b>   | <b>15,330</b> | <b>43.8</b> | <b>34.5</b>   | <b>157</b> |
| <b>Murder</b>                             | 303.0       | 327.0         | 17            | --          | --            | 0          |
| <b>Manslaughter</b>                       | 42.1        | 27.0          | 12            | --          | --            | 0          |
| <b>Kidnapping/Hostage Taking</b>          | 148.3       | 120.0         | 9             | --          | --            | 1          |
| <b>Sexual Abuse</b>                       | 84.0        | 72.0          | 75            | --          | --            | 2          |
| <b>Assault</b>                            | 32.6        | 28.5          | 126           | 20.3        | 12.0          | 3          |
| <b>Robbery</b>                            | 95.9        | 72.0          | 357           | 105.8       | 111.0         | 6          |
| <b>Arson</b>                              | 41.7        | 60.0          | 9             | --          | --            | 0          |
| <b>Drugs - Trafficking</b>                | 76.3        | 60.0          | 5,731         | 49.2        | 42.0          | 71         |
| <b>Drugs - Communication Facility</b>     | 44.4        | 48.0          | 72            | --          | --            | 1          |
| <b>Drugs - Simple Possession</b>          | 9.8         | 6.0           | 108           | --          | --            | 2          |
| <b>Firearms</b>                           | 74.5        | 51.0          | 1,945         | 72.9        | 63.0          | 13         |
| <b>Burglary/B&amp;E</b>                   | 25.2        | 27.0          | 12            | --          | --            | 0          |
| <b>Auto Theft</b>                         | 33.8        | 13.0          | 23            | --          | --            | 0          |
| <b>Larceny</b>                            | 16.0        | 12.0          | 229           | 7.7         | 8.0           | 3          |
| <b>Fraud</b>                              | 20.2        | 15.0          | 1,060         | 24.7        | 22.0          | 25         |
| <b>Embezzlement</b>                       | 8.1         | 4.0           | 82            | --          | --            | 0          |
| <b>Forgery/Counterfeiting</b>             | 17.9        | 15.0          | 177           | 23.7        | 18.0          | 9          |
| <b>Bribery</b>                            | 19.3        | 21.0          | 19            | --          | --            | 0          |
| <b>Tax</b>                                | 21.8        | 15.0          | 73            | --          | --            | 0          |
| <b>Money Laundering</b>                   | 39.8        | 30.0          | 150           | 18.9        | 18.0          | 4          |
| <b>Racketeering/Extortion</b>             | 73.7        | 57.0          | 120           | --          | --            | 2          |
| <b>Gambling/Lottery</b>                   | 6.7         | 6.0           | 9             | --          | --            | 0          |
| <b>Civil Rights</b>                       | --          | --            | 2             | --          | --            | 0          |
| <b>Immigration</b>                        | 23.0        | 18.0          | 4,238         | 39.7        | 41.0          | 7          |
| <b>Pornography/Prostitution</b>           | 75.5        | 60.0          | 224           | --          | --            | 1          |
| <b>Prison Offenses</b>                    | 17.0        | 12.0          | 98            | --          | --            | 2          |
| <b>Administration of Justice Offenses</b> | 21.4        | 14.2          | 171           | 39.0        | 34.5          | 4          |
| <b>Environmental/Wildlife</b>             | 6.3         | 5.5           | 6             | --          | --            | 0          |
| <b>National Defense</b>                   | 25.8        | 18.0          | 6             | --          | --            | 0          |
| <b>Antitrust</b>                          | 3.0         | 3.0           | 3             | --          | --            | 0          |
| <b>Food &amp; Drug</b>                    | 45.5        | 26.0          | 4             | --          | --            | 0          |
| <b>Other Miscellaneous Offenses</b>       | 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 204 guideline cases from the District of New Jersey, 47 cases were excluded due to one of the following reasons: zero prison months ordered (45) or missing or indeterminable sentencing information (2).

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<br>District   | TOTAL         | SENTENCED<br>WITHIN<br>GUIDELINE RANGE |             | SUBSTANTIAL<br>ASSISTANCE<br>DEPARTURE |             | GOVERNMENT<br>INITIATED<br>DEPARTURE |            | OTHER<br>DOWNWARD<br>DEPARTURE |             | UPWARD<br>DEPARTURE |            |
|-----------------------|---------------|--|-------------|--|-------------|--------------------------------------|------------|--------------------------------|-------------|---------------------|------------|
|                       |               | n                                      | %           | n                                      | %           | n                                    | %          | n                              | %           | n                   | %          |
| <b>TOTAL</b>          | <b>16,792</b> | <b>12,059</b>                          | <b>71.8</b> | <b>2,425</b>                           | <b>14.4</b> | <b>1,441</b>                         | <b>8.6</b> | <b>772</b>                     | <b>4.6</b>  | <b>95</b>           | <b>0.6</b> |
| <b>D.C. CIRCUIT</b>   | <b>142</b>    | <b>91</b>                              | <b>64.1</b> | <b>42</b>                              | <b>29.6</b> | <b>5</b>                             | <b>3.5</b> | <b>4</b>                       | <b>2.8</b>  | <b>0</b>            | <b>0.0</b> |
| District of Columbia  | 142           | 91                                     | 64.1        | 42                                     | 29.6        | 5                                    | 3.5        | 4                              | 2.8         | 0                   | 0.0        |
| <b>FIRST CIRCUIT</b>  | <b>446</b>    | <b>344</b>                             | <b>77.1</b> | <b>74</b>                              | <b>16.6</b> | <b>0</b>                             | <b>0.0</b> | <b>25</b>                      | <b>5.6</b>  | <b>3</b>            | <b>0.7</b> |
| 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        |
| <b>SECOND CIRCUIT</b> | <b>974</b>    | <b>604</b>                             | <b>62.0</b> | <b>224</b>                             | <b>23.0</b> | <b>26</b>                            | <b>2.7</b> | <b>117</b>                     | <b>12.0</b> | <b>3</b>            | <b>0.3</b> |
| 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        |
| <b>THIRD CIRCUIT</b>  | <b>658</b>    | <b>429</b>                             | <b>65.2</b> | <b>176</b>                             | <b>26.7</b> | <b>3</b>                             | <b>0.5</b> | <b>49</b>                      | <b>7.4</b>  | <b>1</b>            | <b>0.2</b> |
| 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        |
| <b>FOURTH CIRCUIT</b> | <b>1,418</b>  | <b>1,118</b>                           | <b>78.8</b> | <b>238</b>                             | <b>16.8</b> | <b>7</b>                             | <b>0.5</b> | <b>47</b>                      | <b>3.3</b>  | <b>8</b>            | <b>0.6</b> |
| 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<br>District    | TOTAL        | SENTENCED<br>WITHIN<br>GUIDELINE RANGE |             | SUBSTANTIAL<br>ASSISTANCE<br>DEPARTURE |             | GOVERNMENT<br>INITIATED<br>DEPARTURE |            | OTHER<br>DOWNWARD<br>DEPARTURE |            | UPWARD<br>DEPARTURE |            |
|------------------------|--------------|--|-------------|--|-------------|--------------------------------------|------------|--------------------------------|------------|---------------------|------------|
|                        |              | n                                      | %           | n                                      | %           | n                                    | %          | n                              | %          | n                   | %          |
| <b>FIFTH CIRCUIT</b>   | <b>3,802</b> | <b>2,980</b>                           | <b>78.4</b> | <b>366</b>                             | <b>9.6</b>  | <b>347</b>                           | <b>9.1</b> | <b>94</b>                      | <b>2.5</b> | <b>15</b>           | <b>0.4</b> |
| <b>Louisiana</b>       |              |  |             |  |             |                                      |            |                                |            |                     |            |
| 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        |
| <b>Mississippi</b>     |              |  |             |  |             |                                      |            |                                |            |                     |            |
| 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        |
| <b>Texas</b>           |              |  |             |  |             |                                      |            |                                |            |                     |            |
| 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        |
| <b>SIXTH CIRCUIT</b>   | <b>1,187</b> | <b>842</b>                             | <b>70.9</b> | <b>268</b>                             | <b>22.6</b> | <b>18</b>                            | <b>1.5</b> | <b>52</b>                      | <b>4.4</b> | <b>7</b>            | <b>0.6</b> |
| <b>Kentucky</b>        |              |  |             |  |             |                                      |            |                                |            |                     |            |
| 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        |
| <b>Michigan</b>        |              |  |             |  |             |                                      |            |                                |            |                     |            |
| 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        |
| <b>Ohio</b>            |              |  |             |  |             |                                      |            |                                |            |                     |            |
| 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        |
| <b>Tennessee</b>       |              |  |             |  |             |                                      |            |                                |            |                     |            |
| 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        |
| <b>SEVENTH CIRCUIT</b> | <b>530</b>   | <b>409</b>                             | <b>77.2</b> | <b>90</b>                              | <b>17.0</b> | <b>5</b>                             | <b>0.9</b> | <b>20</b>                      | <b>3.8</b> | <b>6</b>            | <b>1.1</b> |
| <b>Illinois</b>        |              |  |             |  |             |                                      |            |                                |            |                     |            |
| 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        |
| <b>Indiana</b>         |              |  |             |  |             |                                      |            |                                |            |                     |            |
| 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        |
| <b>Wisconsin</b>       |              |  |             |  |             |                                      |            |                                |            |                     |            |
| 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        |
| <b>EIGHTH CIRCUIT</b>  | <b>1,109</b> | <b>864</b>                             | <b>77.9</b> | <b>155</b>                             | <b>14.0</b> | <b>22</b>                            | <b>2.0</b> | <b>58</b>                      | <b>5.2</b> | <b>10</b>           | <b>0.9</b> |
| <b>Arkansas</b>        |              |  |             |  |             |                                      |            |                                |            |                     |            |
| 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        |
| <b>Iowa</b>            |              |  |             |  |             |                                      |            |                                |            |                     |            |
| 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        |
| <b>Minnesota</b>       |              |  |             |  |             |                                      |            |                                |            |                     |            |
|                        | 96           | 64                                     | 66.7        | 19                                     | 19.8        | 0                                    | 0.0        | 11                             | 11.5       | 2                   | 2.1        |
| <b>Missouri</b>        |              |  |             |  |             |                                      |            |                                |            |                     |            |
| 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        |
| <b>Nebraska</b>        |              |  |             |  |             |                                      |            |                                |            |                     |            |
|                        | 185          | 151                                    | 81.6        | 11                                     | 5.9         | 9                                    | 4.9        | 13                             | 7.0        | 1                   | 0.5        |
| <b>North Dakota</b>    |              |  |             |  |             |                                      |            |                                |            |                     |            |
|                        | 75           | 60                                     | 80.0        | 0                                      | 0.0         | 10                                   | 13.3       | 5                              | 6.7        | 0                   | 0.0        |
| <b>South Dakota</b>    |              |  |             |  |             |                                      |            |                                |            |                     |            |
|                        | 24           | 18                                     | 75.0        | 4                                      | 16.7        | 0                                    | 0.0        | 1                              | 4.2        | 1                   | 4.2        |

| CIRCUIT<br>District      | TOTAL        | SENTENCED<br>WITHIN<br>GUIDELINE RANGE |             | SUBSTANTIAL<br>ASSISTANCE<br>DEPARTURE |             | GOVERNMENT<br>INITIATED<br>DEPARTURE |             | OTHER<br>DOWNWARD<br>DEPARTURE |            | UPWARD<br>DEPARTURE |            |
|--------------------------|--------------|--|-------------|--|-------------|--------------------------------------|-------------|--------------------------------|------------|---------------------|------------|
|                          |              | n                                      | %           | n                                      | %           | n                                    | %           | n                              | %          | n                   | %          |
| <b>NINTH CIRCUIT</b>     | <b>3,494</b> | <b>2,133</b>                           | <b>61.0</b> | <b>332</b>                             | <b>9.5</b>  | <b>799</b>                           | <b>22.9</b> | <b>207</b>                     | <b>5.9</b> | <b>23</b>           | <b>0.7</b> |
| 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        |
| <b>TENTH CIRCUIT</b>     | <b>1,409</b> | <b>996</b>                             | <b>70.7</b> | <b>152</b>                             | <b>10.8</b> | <b>205</b>                           | <b>14.5</b> | <b>47</b>                      | <b>3.3</b> | <b>9</b>            | <b>0.6</b> |
| 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        |
| <b>ELEVENTH CIRCUIT</b>  | <b>1,623</b> | <b>1,249</b>                           | <b>77.0</b> | <b>308</b>                             | <b>19.0</b> | <b>4</b>                             | <b>0.2</b>  | <b>52</b>                      | <b>3.2</b> | <b>10</b>           | <b>0.6</b> |
| 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                | %          |
| <b>TOTAL</b>                 | <b>16,774</b> | <b>12,048</b>                    | <b>71.8</b> | <b>2,421</b>                     | <b>14.4</b> | <b>1,439</b>                   | <b>8.6</b> | <b>771</b>               | <b>4.6</b> | <b>95</b>        | <b>0.6</b> |
| 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        |

**New Jersey**

| PRIMARY OFFENSE              | TOTAL      | SENTENCED WITHIN GUIDELINE RANGE |             | SUBSTANTIAL ASSISTANCE DEPARTURE |             | GOVERNMENT INITIATED DEPARTURE |            | OTHER DOWNWARD DEPARTURE |            | UPWARD DEPARTURE |            |
|------------------------------|------------|----------------------------------|-------------|----------------------------------|-------------|--------------------------------|------------|--------------------------|------------|------------------|------------|
|                              |            | n                                | %           | n                                | %           | n                              | %          | n                        | %          | n                | %          |
| <b>TOTAL</b>                 | <b>196</b> | <b>124</b>                       | <b>63.3</b> | <b>59</b>                        | <b>30.1</b> | <b>0</b>                       | <b>0.0</b> | <b>13</b>                | <b>6.6</b> | <b>0</b>         | <b>0.0</b> |
| Robbery                      | 6          | 5                                | 83.3        | 1                                | 16.7        | 0                              | 0.0        | 0                        | 0.0        | 0                | 0.0        |
| Drugs - Trafficking          | 72         | 33                               | 45.8        | 33                               | 45.8        | 0                              | 0.0        | 6                        | 8.3        | 0                | 0.0        |
| Drugs - Simple Possession    | 8          | 8                                | 100.0       | 0                                | 0.0         | 0                              | 0.0        | 0                        | 0.0        | 0                | 0.0        |
| Firearms                     | 14         | 11                               | 78.6        | 1                                | 7.1         | 0                              | 0.0        | 2                        | 14.3       | 0                | 0.0        |
| Larceny                      | 4          | 2                                | 50.0        | 2                                | 50.0        | 0                              | 0.0        | 0                        | 0.0        | 0                | 0.0        |
| Fraud                        | 38         | 27                               | 71.1        | 11                               | 28.9        | 0                              | 0.0        | 0                        | 0.0        | 0                | 0.0        |
| Embezzlement                 | 6          | 4                                | 66.7        | 0                                | 0.0         | 0                              | 0.0        | 2                        | 33.3       | 0                | 0.0        |
| Forgery/Counterfeiting       | 10         | 7                                | 70.0        | 3                                | 30.0        | 0                              | 0.0        | 0                        | 0.0        | 0                | 0.0        |
| Immigration                  | 7          | 6                                | 85.7        | 0                                | 0.0         | 0                              | 0.0        | 1                        | 14.3       | 0                | 0.0        |
| Other Miscellaneous Offenses | 31         | 21                               | 67.7        | 8                                | 25.8        | 0                              | 0.0        | 2                        | 6.5        | 0                | 0.0        |

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 204 guideline cases from the District of New Jersey, eight 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).