

Table 58

GUIDELINE INVOLVED IN ISSUES APPEALED BY THE GOVERNMENT¹
Fiscal Year 2005, Pre-Booker (October 1, 2004, through January 11, 2005)

GUIDELINE	Number	Percent	Affirmance Rate²
TOTAL	59	100.0	47.5
5K2.0 (Departures)	13	22.0	38.5
2K2.1 (Firearms)	4	6.8	0.0
5H1.4 (Physical Condition)	3	5.1	66.7
5H1.6 (Family Ties and Responsibilities)	3	5.1	0.0
2G2.2 (Trafficking in Material Involving Sexual Exploitation of a Minor)	2	3.4	50.0
3B1.1 (Aggravating Role)	2	3.4	100.0
3B1.2 (Mitigating Role)	2	3.4	0.0
4A1.3 (Adequacy of Criminal History)	2	3.4	0.0
4B1.2 (Definitions of Career Offender)	2	3.4	50.0
5H1.1 (Age)	2	3.4	50.0
5H1.11 (Military, Civic, Charitable, or Public Service)	2	3.4	100.0
Constitutional Issues	1	1.7	100.0
Other Guidelines	12	20.3	58.3
Other Non-guideline Issues	9	15.3	77.8

¹Based on 1,198 "Pre-Booker" appeals defendants with sentencing as at least one of the reasons for appeal. Information on issues was available in 1,198 of these cases which cited 2,248 issues. Often more than one issue was appealed; consequently, the number of issues is more than the number of defendants. The "Other" category includes all issues appealed fewer than two times among relevant cases.

²Affirmance Rate includes all appeals cases not reversed or directly remanded by the circuit court.

SOURCE: U.S. Sentencing Commission, 2005 Appeals Datafile, APPFY05.