

U.S. Sentencing Commission Special Post-Booker Coding Project



Information for All Cases

Cases Sentenced Subsequent to *U.S. v. Booker*
(Data Extraction as of September 30, 2005)

Prepared: October 13, 2005



U.S. SENTENCING COMMISSION
SPECIAL POST-BOOKER CODING PROJECT
DATA EXTRACTION DATE: SEPTEMBER 30, 2005

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**NATIONAL COMPARISON OF SENTENCE IMPOSED AND
POSITION RELATIVE TO THE GUIDELINE RANGE**

Cases Sentenced Subsequent to *U.S. v. Booker* with Data Available to USSC on September 30, 2005

	N	%
TOTAL ¹	41,579	100.0
WITHIN GUIDELINE RANGE	25,738	61.9
DEPARTURE ABOVE GUIDELINE RANGE	105	0.3
Upward Departure from the Guideline Range ²	71	0.2
Upward Departure with <i>Booker</i> /18 U.S.C. § 3553 ³	34	0.1
OTHERWISE ABOVE THE GUIDELINE RANGE	459	1.1
Above the Range with <i>Booker</i> /18 U.S.C. § 3553 ⁴	260	0.6
All Remaining Cases Above the Guideline Range ⁵	199	0.5
GOVERNMENT SPONSORED BELOW RANGE	9,946	23.9
§5K1.1 Substantial Assistance Departure	6,111	14.7
§5K3.1 Early Disposition Program Departure	2,583	6.2
Government-Sponsored Departure ⁶	1,252	3.0
DEPARTURE BELOW GUIDELINE RANGE	1,384	3.3
Downward Departure from the Guideline Range ²	986	2.4
Downward Departure with <i>Booker</i> /18 U.S.C. § 3553 ³	398	1.0
OTHERWISE BELOW THE GUIDELINE RANGE	3,947	9.5
Below the Range with <i>Booker</i> /18 U.S.C. § 3553 ⁴	2,498	6.0
All Remaining Cases Below the Guideline Range ⁵	1,449	3.5

¹This table reflects the 43,214 cases sentenced subsequent to the *U.S. v. Booker* decision on January 12, 2005, with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by September 30, 2005. Of this total, there are 1,635 cases excluded for one of two general reasons. Some excluded cases involve certain Class A misdemeanors or other offenses which do not reference a sentencing guideline. Other excluded cases have information missing from the submitted documents that prevents the comparison of the sentence and the guideline range. As missing documents are received, subsequent U.S. Sentencing Commission data releases will incorporate the new information.

²All cases with imposed sentences outside of the guideline range and citing reasons for departure limited to, and affirmatively and specifically identified in the provisions, policy statements, or commentary of the federal *Guidelines Manual*.

³All cases with imposed sentences outside of the guideline range citing reasons for departure limited to, and affirmatively and specifically identified in the provisions, policy statements, or commentary of the federal *Guidelines Manual*, and additionally mentioning either *U.S. v. Booker*, 18 U.S.C. § 3553, or related factors as a reason for a sentence outside of the guideline range.

⁴All cases with imposed sentences outside of the guideline range mentioning only *U.S. v. Booker*, 18 U.S.C. § 3553, or related factors as a reason for a sentence outside of the guideline range.

⁵Cases with imposed sentences outside of the guideline range that do not fall into the three previous categories. Based on the information submitted on the Statement of Reasons, these cases cannot be classified as a guideline departure, or as a sentence outside the guideline range pursuant to *Booker*/18 U.S.C. § 3553. This category includes cases which cite departure reasons that are not affirmatively and specifically identified in the provisions, policy statements, or commentary of the federal *Guidelines Manual* and cases which do not provide any reason for the sentence outside of the guideline range.

⁶Cases with a reason for departure indicating that the prosecution initiates, proposes, or stipulates to a sentence outside of the guideline range, either pursuant to a plea agreement or as part of a non-plea negotiation with the defendant.

SOURCE: U.S. Sentencing Commission, Special Post-*Booker* Coding Project, BOOKER05 (data extraction on September 30, 2005; table prepared on October 13, 2005). Numbers may not sum to 100 percent due to rounding.

MOST FREQUENTLY APPLIED GUIDELINES: COMPARISON OF SENTENCE IMPOSED AND POSITION RELATIVE TO THE GUIDELINE RANGE

Cases Sentenced Subsequent to *U.S. v. Booker* with Data Available to USSC on September 30, 2005

	Four Most Frequently Applied Primary Guidelines									
	All Cases		§2D1.1 Drug Trafficking		§2L1.2 Unlawful Entry		§2K2.1 Firearms		§2B1.1 Theft and Fraud	
	N	%	N	%	N	%	N	%	N	%
TOTAL¹	41,579	100.0	14,459	100.0	6,215	100.0	4,149	100.0	4,207	100.0
WITHIN GUIDELINE RANGE	25,738	61.9	7,751	53.6	3,540	57.0	2,896	69.8	3,008	71.5
DEPARTURE ABOVE GUIDELINE	105	0.3	9	0.1	11	0.2	16	0.4	15	0.4
Upward Departure from the Guideline Range ²	71	0.2	7	0.1	7	0.1	11	0.3	10	0.2
Upward Departure with <i>Booker</i> /18 USC § 3553 ³	34	0.1	2	0.0	4	0.1	5	0.1	5	0.1
OTHERWISE ABOVE THE RANGE	459	1.1	62	0.4	52	0.8	72	1.7	96	2.3
Above the Range with <i>Booker</i> /18 USC § 3553 ⁴	260	0.6	38	0.3	33	0.5	34	0.8	47	1.1
All Remaining Cases Above the Guideline Range ⁵	199	0.5	24	0.2	19	0.3	38	0.9	49	1.2
GOVERNMENT BELOW GUIDELINE	9,946	23.9	4,753	32.9	1,988	32.0	540	13.0	490	11.6
§5K1.1 Substantial Assistance Departure	6,111	14.7	3,781	26.2	40	0.6	410	9.9	407	9.7
§5K3.1 Early Disposition Program Departure	2,583	6.2	554	3.8	1,736	27.9	18	0.4	6	0.1
Government-Sponsored Departure ⁶	1,252	3.0	418	2.9	212	3.4	112	2.7	77	1.8
DEPARTURE BELOW GUIDELINE	1,384	3.3	451	3.1	215	3.4	173	4.2	144	3.4
Downward Departure from the Guideline Range ²	986	2.4	323	2.2	164	2.6	111	2.7	100	2.4
Downward Departure with <i>Booker</i> /18 USC § 3553 ³	398	1.0	128	0.9	51	0.8	62	1.5	44	1.0
OTHERWISE BELOW THE RANGE	3,947	9.5	1,433	9.9	409	6.6	452	10.9	454	10.8
Below the Range with <i>Booker</i> /18 USC § 3553 ⁴	2,498	6.0	947	6.6	251	4.0	299	7.2	248	5.9
All Remaining Cases Below the Guideline Range ⁵	1,449	3.5	486	3.4	158	2.5	153	3.7	206	4.9

¹This table reflects the 43,214 cases sentenced subsequent to the *U.S. v. Booker* decision on January 12, 2005, with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by September 30, 2005. Of this total, there are 1,635 cases excluded for one of two general reasons. Some excluded cases involve certain Class A misdemeanors or other offenses which do not reference a sentencing guideline. Other excluded cases have information missing from the submitted documents that prevents the comparison of the sentence and the guideline range. As missing documents are received, subsequent U.S. Sentencing Commission data releases will incorporate the new information.

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⁵Cases with imposed sentences outside of the guideline range that do not fall into the three previous categories. Based on the information submitted on the Statement of Reasons, these cases cannot be classified as a guideline departure, or as a sentence outside the guideline range pursuant to *Booker*/18 U.S.C. § 3553. This category includes cases which cite departure reasons that are *not* affirmatively and specifically identified in the provisions, policy statements, or commentary of the federal *Guidelines Manual* and cases which do not provide any reason for the sentence outside of the guideline range.

⁶Cases with a reason for departure indicating that the prosecution initiates, proposes, or stipulates to a sentence outside of the guideline range, either pursuant to a plea agreement or as part of a non-plea negotiation with the defendant.

SOURCE: U.S. Sentencing Commission, Special Post-*Booker* Coding Project, BOOKER05 (data extraction on September 30, 2005; table prepared on October 13, 2005). Cases with multiple guideline calculations are classified by the guideline with the highest offense level. Numbers may not sum to 100 percent due to rounding.

OFFENDERS SENTENCED FOR EACH CHAPTER TWO GUIDELINE¹
Special Post-Booker Coding Project (Data Extracted September 30, 2005)

Guideline	As Primary Guideline		As Any Guideline		Guideline	As Primary Guideline		As Any Guideline	
	n	%	n	%		n	%	n	%
2A1.1	92	0.2	100	0.2	2D1.8	35	0.1	60	0.1
2A1.2	22	0.1	26	0.1	2D1.9	0	0.0	0	0.0
2A1.3	10	0.0	10	0.0	2D1.10	14	0.0	15	0.0
2A1.4	26	0.1	26	0.1	2D1.11	118	0.3	131	0.3
2A1.5	9	0.0	26	0.1	2D1.12	22	0.1	34	0.1
2A2.1	26	0.1	49	0.1	2D1.13	0	0.0	0	0.0
2A2.2	218	0.5	252	0.6	2D2.1	232	0.6	284	0.7
2A2.3	25	0.1	28	0.1	2D2.2	20	0.0	24	0.1
2A2.4	82	0.2	95	0.2	2D2.3	1	0.0	1	0.0
2A3.1	92	0.2	97	0.2	2D3.1	3	0.0	3	0.0
2A3.2	96	0.2	114	0.3	2D3.2	0	0.0	0	0.0
2A3.3	4	0.0	4	0.0	2D3.3	0	0.0	0	0.0
2A3.4	23	0.1	30	0.1	2D3.4	0	0.0	0	0.0
2A4.1	41	0.1	56	0.1	2D3.5	0	0.0	0	0.0
2A4.2	1	0.0	1	0.0	2E1.1	21	0.1	74	0.2
2A5.1	0	0.0	1	0.0	2E1.2	8	0.0	58	0.1
2A5.2	5	0.0	5	0.0	2E1.3	0	0.0	15	0.0
2A5.3	0	0.0	0	0.0	2E1.4	10	0.0	14	0.0
2A6.1	86	0.2	91	0.2	2E1.5	0	0.0	0	0.0
2A6.2	5	0.0	11	0.0	2E2.1	22	0.1	28	0.1
2B1.1	4,346	10.9	4,722	10.8	2E3.1	72	0.2	87	0.2
2B1.2	0	0.0	0	0.0	2E3.2	0	0.0	0	0.0
2B1.3	4	0.0	4	0.0	2E3.3	0	0.0	0	0.0
2B1.4	2	0.0	2	0.0	2E4.1	17	0.0	23	0.1
2B1.5	6	0.0	6	0.0	2E5.1	9	0.0	13	0.0
2B2.1	37	0.1	42	0.1	2E5.2	0	0.0	0	0.0
2B2.2	0	0.0	0	0.0	2E5.3	2	0.0	6	0.0
2B2.3	1	0.0	1	0.0	2E5.4	0	0.0	0	0.0
2B3.1	1,146	2.9	1,223	2.8	2E5.5	0	0.0	0	0.0
2B3.2	34	0.1	55	0.1	2E5.6	0	0.0	0	0.0
2B3.3	8	0.0	13	0.0	2F1.1	831	2.1	877	2.0
2B4.1	40	0.1	42	0.1	2F1.2	2	0.0	3	0.0
2B5.1	325	0.8	346	0.8	2G1.1	45	0.1	78	0.2
2B5.2	0	0.0	0	0.0	2G1.2	1	0.0	1	0.0
2B5.3	80	0.2	90	0.2	2G1.3	22	0.1	22	0.1
2B5.4	0	0.0	0	0.0	2G2.1	65	0.2	76	0.2
2B6.1	11	0.0	11	0.0	2G2.2	282	0.7	293	0.7
2C1.1	147	0.4	161	0.4	2G2.3	0	0.0	0	0.0
2C1.2	14	0.0	14	0.0	2G2.4	278	0.7	307	0.7
2C1.3	5	0.0	5	0.0	2G2.5	1	0.0	1	0.0
2C1.4	2	0.0	2	0.0	2G3.1	9	0.0	11	0.0
2C1.5	0	0.0	0	0.0	2G3.2	0	0.0	0	0.0
2C1.6	0	0.0	0	0.0	2H1.1	35	0.1	38	0.1
2C1.7	23	0.1	26	0.1	2H1.2	0	0.0	0	0.0
2D1.1	14,813	37.0	15,518	35.6	2H1.3	0	0.0	0	0.0
2D1.2	199	0.5	206	0.5	2H1.4	0	0.0	0	0.0
2D1.3	0	0.0	0	0.0	2H1.5	0	0.0	0	0.0
2D1.4	0	0.0	0	0.0	2H2.1	8	0.0	8	0.0
2D1.5	12	0.0	15	0.0	2H3.1	4	0.0	5	0.0
2D1.6	20	0.0	115	0.3	2H3.2	0	0.0	0	0.0
2D1.7	10	0.0	11	0.0	2H3.3	7	0.0	11	0.0

(continued)

Guideline	As Primary Guideline		As Any Guideline		Guideline	As Primary Guideline		As Any Guideline	
	n	%	n	%		n	%	n	%
2H4.1	7	0.0	7	0.0	2M4.1	0	0.0	0	0.0
2H4.2	0	0.0	0	0.0	2M5.1	7	0.0	7	0.0
2J1.1	0	0.0	18	0.0	2M5.2	15	0.0	17	0.0
2J1.2	74	0.2	100	0.2	2M5.3	3	0.0	6	0.0
2J1.3	41	0.1	58	0.1	2M6.1	11	0.0	11	0.0
2J1.4	10	0.0	19	0.0	2M6.2	1	0.0	1	0.0
2J1.5	2	0.0	2	0.0	2N1.1	1	0.0	1	0.0
2J1.6	33	0.1	44	0.1	2N1.2	2	0.0	2	0.0
2J1.7	88	0.2	93	0.2	2N1.3	0	0.0	0	0.0
2J1.8	0	0.0	0	0.0	2N2.1	21	0.1	41	0.1
2J1.9	0	0.0	0	0.0	2N3.1	1	0.0	3	0.0
2K1.1	3	0.0	4	0.0	2P1.1	134	0.3	147	0.3
2K1.2	0	0.0	0	0.0	2P1.2	54	0.1	70	0.2
2K1.3	24	0.1	24	0.1	2P1.3	9	0.0	9	0.0
2K1.4	33	0.1	43	0.1	2P1.4	0	0.0	0	0.0
2K1.5	9	0.0	9	0.0	2Q1.1	0	0.0	0	0.0
2K1.6	1	0.0	1	0.0	2Q1.2	28	0.1	30	0.1
2K1.7	0	0.0	0	0.0	2Q1.3	31	0.1	31	0.1
2K2.1	4,216	10.5	4,461	10.2	2Q1.4	0	0.0	0	0.0
2K2.2	0	0.0	0	0.0	2Q1.5	0	0.0	0	0.0
2K2.3	0	0.0	0	0.0	2Q1.6	0	0.0	0	0.0
2K2.4	1	0.0	1	0.0	2Q2.1	71	0.2	74	0.2
2K2.5	8	0.0	9	0.0	2Q2.2	0	0.0	0	0.0
2K2.6	1	0.0	2	0.0	2R1.1	10	0.0	11	0.0
2K3.1	0	0.0	0	0.0	2S1.1	605	1.5	667	1.5
2L1.1	1,912	4.8	1,962	4.5	2S1.2	14	0.0	20	0.0
2L1.2	6,315	15.8	6,395	14.7	2S1.3	161	0.4	186	0.4
2L1.3	0	0.0	0	0.0	2S1.4	0	0.0	0	0.0
2L2.1	260	0.6	280	0.6	2T1.1	333	0.8	402	0.9
2L2.2	579	1.4	619	1.4	2T1.2	0	0.0	0	0.0
2L2.3	0	0.0	0	0.0	2T1.3	1	0.0	1	0.0
2L2.4	0	0.0	0	0.0	2T1.4	68	0.2	72	0.2
2L2.5	0	0.0	0	0.0	2T1.5	0	0.0	0	0.0
2M1.1	1	0.0	1	0.0	2T1.6	9	0.0	10	0.0
2M2.1	0	0.0	0	0.0	2T1.7	0	0.0	0	0.0
2M2.2	0	0.0	0	0.0	2T1.8	0	0.0	0	0.0
2M2.3	0	0.0	0	0.0	2T1.9	10	0.0	19	0.0
2M2.4	0	0.0	0	0.0	2T2.1	0	0.0	1	0.0
2M3.1	0	0.0	0	0.0	2T2.2	0	0.0	0	0.0
2M3.2	0	0.0	0	0.0	2T3.1	20	0.0	23	0.1
2M3.3	1	0.0	1	0.0	2T3.2	0	0.0	0	0.0
2M3.4	0	0.0	0	0.0	2T4.1	0	0.0	0	0.0
2M3.5	0	0.0	0	0.0	2X1.1	80	0.2	889	2.0
2M3.6	0	0.0	0	0.0	2X2.1	0	0.0	35	0.1
2M3.7	0	0.0	0	0.0	2X3.1	72	0.2	81	0.2
2M3.8	0	0.0	0	0.0	2X4.1	279	0.7	290	0.7
2M3.9	0	0.0	0	0.0	2X5.1	0	0.0	34	0.1
Total number of guidelines applied:						43,597			
Number of cases with at least one guideline applied:						40,014			

¹Of the 43,214 cases, 3,200 were excluded due to missing guideline applied. The total for any guideline can exceed that for primary guideline because a case can have several guidelines applied, but only one primary guideline.

GUIDELINE OFFENDERS IN EACH CIRCUIT AND DISTRICT¹
Special Post-Booker Coding Project (Data Extracted September 30, 2005)

CIRCUIT			CIRCUIT		
District	Number	Percent	District	Number	Percent
TOTAL	43,214	100.0			
D.C. CIRCUIT	355	0.8	FIFTH CIRCUIT	9,393	21.7
District of Columbia	355	0.8	Louisiana		
			Eastern	208	0.5
FIRST CIRCUIT	970	2.2	Middle	121	0.3
Maine	149	0.3	Western	287	0.7
Massachusetts	313	0.7	Mississippi		
New Hampshire	120	0.3	Northern	134	0.3
Puerto Rico	298	0.7	Southern	233	0.5
Rhode Island	90	0.2	Texas		
			Eastern	497	1.2
SECOND CIRCUIT	2,505	5.8	Northern	604	1.4
Connecticut	249	0.6	Southern	4,024	9.3
New York			Western	3,285	7.6
Eastern	754	1.7	SIXTH CIRCUIT	3,314	7.7
Northern	231	0.5	Kentucky		
Southern	756	1.7	Eastern	331	0.8
Western	376	0.9	Western	247	0.6
Vermont	139	0.3	Michigan		
			Eastern	417	1.0
THIRD CIRCUIT	2,168	5.0	Western	257	0.6
Delaware	109	0.3	Ohio		
New Jersey	665	1.5	Northern	619	1.4
Pennsylvania			Southern	386	0.9
Eastern	643	1.5	Tennessee		
Middle	419	1.0	Eastern	425	1.0
Western	270	0.6	Middle	221	0.5
Virgin Islands	62	0.1	Western	411	1.0
			SEVENTH CIRCUIT	1,899	4.4
FOURTH CIRCUIT	4,031	9.3	Illinois		
Maryland	450	1.0	Central	258	0.6
North Carolina			Northern	687	1.6
Eastern	407	0.9	Southern	150	0.3
Middle	298	0.7	Indiana		
Western	333	0.8	Northern	242	0.6
South Carolina	704	1.6	Southern	190	0.4
Virginia			Wisconsin		
Eastern	974	2.3	Eastern	248	0.6
Western	440	1.0	Western	124	0.3
West Virginia					
Northern	183	0.4			
Southern	242	0.6			

(continued)

CIRCUIT			CIRCUIT		
District	Number	Percent	District	Number	Percent
EIGHTH CIRCUIT	3,070	7.1	TENTH CIRCUIT	3,346	7.7
Arkansas			Colorado	384	0.9
Eastern	167	0.4	Kansas	427	1.0
Western	134	0.3	New Mexico	1,510	3.5
Iowa			Oklahoma		
Northern	233	0.5	Eastern	62	0.1
Southern	181	0.4	Northern	127	0.3
Minnesota	318	0.7	Western	158	0.4
Missouri			Utah	534	1.2
Eastern	610	1.4	Wyoming	144	0.3
Western	449	1.0			
Nebraska	568	1.3	ELEVENTH CIRCUIT	4,148	9.6
North Dakota	129	0.3	Alabama		
South Dakota	281	0.7	Middle	122	0.3
			Northern	254	0.6
NINTH CIRCUIT	8,015	18.5	Southern	195	0.5
Alaska	152	0.4	Florida		
Arizona	2,366	5.5	Middle	1,131	2.6
California			Northern	220	0.5
Central	914	2.1	Southern	1,265	2.9
Eastern	567	1.3	Georgia		
Northern	397	0.9	Middle	270	0.6
Southern	1,513	3.5	Northern	476	1.1
Guam	36	0.1	Southern	215	0.5
Hawaii	310	0.7			
Idaho	125	0.3			
Montana	228	0.5			
Nevada	260	0.6			
Northern Mariana Islands	17	0.0			
Oregon	356	0.8			
Washington					
Eastern	272	0.6			
Western	502	1.2			

SOURCE: U.S. Sentencing Commission, Special Post-Booker Coding Project, BOOKER05 (data extracted September 30, 2005; table prepared October 13, 2005). Percents may not sum to 100 percent due to rounding.

Guideline Application Trends, National and Circuit

Fiscal Years 2000, 2001, 2002, 2003, and Post-Booker FY2005¹

(Post-Booker data extracted September 30, 2005)

NATIONAL

Position of Sentence Relative to Guideline Range	FY2000	FY2001	FY2002	FY2003	FY2005 (Booker)
Within Range	64.5%	64.0%	65.0%	69.4%	61.9%
Upward Departures	0.7%	0.6%	0.8%	0.8%	0.3% ²
Otherwise Above Range	—	—	—	—	1.1% ³
Substantial Assistance Departures	17.9%	17.1%	17.4%	15.9%	14.7%
Other Gov't Sponsored Departures	—	—	—	6.3% ⁴	9.2% ⁴
Other Downward Departures	17.0% ⁵	18.3% ⁵	16.8% ⁵	7.5%	3.3% ²
Otherwise Below Range	—	—	—	—	9.5% ³

DC CIRCUIT

Position of Sentence Relative to Guideline Range	FY2000	FY2001	FY2002	FY2003	FY2005 (Booker)
Within Range	69.4%	74.6%	59.9%	64.6%	53.2%
Upward Departures	0.3%	0.4%	0.5%	0.2%	0.0% ²
Otherwise Above Range	—	—	—	—	1.5% ³
Substantial Assistance Departures	19.3%	13.8%	31.1%	26.4%	26.6%
Other Gov't Sponsored Departures	—	—	—	4.4% ⁴	6.7% ⁴
Other Downward Departures	11.0% ⁵	11.2% ⁵	8.5% ⁵	4.4%	2.6% ²
Otherwise Below Range	—	—	—	—	9.5% ³

FIRST CIRCUIT

Position of Sentence Relative to Guideline Range	FY2000	FY2001	FY2002	FY2003	FY2005 (Booker)
Within Range	69.9%	73.3%	75.7%	77.3%	62.5%
Upward Departures	0.8%	0.4%	0.6%	0.7%	0.3% ²
Otherwise Above Range	—	—	—	—	2.1% ³
Substantial Assistance Departures	15.9%	14.6%	14.4%	13.5%	12.0%
Other Gov't Sponsored Departures	—	—	—	0.7% ⁴	2.9% ⁴
Other Downward Departures	13.4% ⁵	11.7% ⁵	9.3% ⁵	7.8%	4.6% ²
Otherwise Below Range	—	—	—	—	15.6% ³

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Guideline Application Trends, National and CircuitFiscal Years 2000, 2001, 2002, 2003, and Post-Booker FY2005¹**SECOND CIRCUIT**

Position of Sentence Relative to Guideline Range	FY2000	FY2001	FY2002	FY2003	FY2005 (Booker)
Within Range	55.9%	57.5%	61.3%	63.2%	49.4%
Upward Departures	0.7%	0.4%	0.6%	0.5%	0.1% ²
Otherwise Above Range	—	—	—	—	0.8% ³
Substantial Assistance Departures	23.9%	21.7%	19.0%	17.5%	22.3%
Other Gov't Sponsored Departures	—	—	—	2.8% ⁴	2.7% ⁴
Other Downward Departures	19.6% ⁵	20.4% ⁵	19.1% ⁵	16.0%	7.4% ²
Otherwise Below Range	—	—	—	—	17.3% ³

THIRD CIRCUIT

Position of Sentence Relative to Guideline Range	FY2000	FY2001	FY2002	FY2003	FY2005 (Booker)
Within Range	59.7%	60.2%	58.9%	62.3%	51.1%
Upward Departures	0.7%	0.5%	0.9%	0.9%	0.3% ²
Otherwise Above Range	—	—	—	—	1.1% ³
Substantial Assistance Departures	30.5%	30.6%	32.3%	28.8%	27.8%
Other Gov't Sponsored Departures	—	—	—	0.6% ⁴	1.7% ⁴
Other Downward Departures	9.1% ⁵	8.8% ⁵	7.9% ⁵	7.4%	3.8% ²
Otherwise Below Range	—	—	—	—	14.2% ³

FOURTH CIRCUIT

Position of Sentence Relative to Guideline Range	FY2000	FY2001	FY2002	FY2003	FY2005 (Booker)
Within Range	73.4%	73.7%	76.6%	77.0%	66.2%
Upward Departures	0.8%	0.9%	0.7%	0.6%	0.3% ²
Otherwise Above Range	—	—	—	—	0.9% ³
Substantial Assistance Departures	20.9%	20.2%	18.6%	18.3%	18.7%
Other Gov't Sponsored Departures	—	—	—	0.3% ⁴	1.7% ⁴
Other Downward Departures	5.0% ⁵	5.2% ⁵	4.2% ⁵	3.8%	2.5% ²
Otherwise Below Range	—	—	—	—	9.7% ³

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Guideline Application, National and Circuit

Fiscal Years 2000, 2001, 2002, 2003, and Post-Booker FY2005¹

FIFTH CIRCUIT

Position of Sentence Relative to Guideline Range	FY2000	FY2001	FY2002	FY2003	FY2005 (Booker)
Within Range	72.3%	69.1%	71.0%	73.7%	71.7%
Upward Departures	0.5%	0.5%	0.9%	0.9%	0.2% ²
Otherwise Above Range	—	—	—	—	1.5% ³
Substantial Assistance Departures	13.6%	12.3%	13.4%	12.5%	8.1%
Other Gov't Sponsored Departures	—	—	—	5.4% ⁴	9.2% ⁴
Other Downward Departures	13.6% ⁵	18.1% ⁵	14.7% ⁵	7.5%	2.7% ²
Otherwise Below Range	—	—	—	—	6.6% ³

SIXTH CIRCUIT

Position of Sentence Relative to Guideline Range	FY2000	FY2001	FY2002	FY2003	FY2005 (Booker)
Within Range	67.2%	65.1%	66.9%	69.1%	59.0%
Upward Departures	0.6%	0.5%	0.8%	0.4%	0.2% ²
Otherwise Above Range	—	—	—	—	1.0% ³
Substantial Assistance Departures	24.4%	27.2%	26.0%	24.6%	24.3%
Other Gov't Sponsored Departures	—	—	—	0.5% ⁴	2.0% ⁴
Other Downward Departures	7.7% ⁵	7.3% ⁵	6.3% ⁵	5.3%	2.7% ²
Otherwise Below Range	—	—	—	—	10.8% ³

SEVENTH CIRCUIT

Position of Sentence Relative to Guideline Range	FY2000	FY2001	FY2002	FY2003	FY2005 (Booker)
Within Range	69.5%	71.0%	69.3%	72.5%	63.0%
Upward Departures	1.1%	1.0%	0.8%	1.0%	0.4% ²
Otherwise Above Range	—	—	—	—	0.9% ³
Substantial Assistance Departures	21.7%	21.2%	21.8%	21.2%	17.1%
Other Gov't Sponsored Departures	—	—	—	0.8% ⁴	2.7% ⁴
Other Downward Departures	7.7% ⁵	6.9% ⁵	8.1% ⁵	4.5%	3.9% ²
Otherwise Below Range	—	—	—	—	12.2% ³

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Guideline Application Trends By Circuit

Fiscal Years 2000, 2001, 2002, 2003, and Post-Booker FY2005¹

EIGHTH CIRCUIT

Position of Sentence Relative to Guideline Range	FY2000	FY2001	FY2002	FY2003	FY2005 (Booker)
Within Range	65.4%	66.8%	69.3%	72.2%	64.6%
Upward Departures	1.2%	0.7%	1.2%	1.1%	0.2% ²
Otherwise Above Range	—	—	—	—	1.3% ³
Substantial Assistance Departures	23.1%	22.0%	18.9%	17.6%	14.3%
Other Gov't Sponsored Departures	—	—	—	2.0% ⁴	4.9% ⁴
Other Downward Departures	10.3% ⁵	10.5% ⁵	10.7% ⁵	7.1%	3.5% ²
Otherwise Below Range	—	—	—	—	11.3% ³

NINTH CIRCUIT

Position of Sentence Relative to Guideline Range	FY2000	FY2001	FY2002	FY2003	FY2005 (Booker)
Within Range	49.9%	50.1%	48.8%	59.6%	49.3%
Upward Departures	0.6%	0.4%	0.7%	1.1%	0.3% ²
Otherwise Above Range	—	—	—	—	0.7% ³
Substantial Assistance Departures	11.6%	10.7%	11.8%	10.2%	10.4%
Other Gov't Sponsored Departures	—	—	—	19.2% ⁴	27.5% ⁴
Other Downward Departures	37.9% ⁵	38.7% ⁵	38.7% ⁵	9.9%	3.5% ²
Otherwise Below Range	—	—	—	—	8.3% ³

TENTH CIRCUIT

Position of Sentence Relative to Guideline Range	FY2000	FY2001	FY2002	FY2003	FY2005 (Booker)
Within Range	69.9%	65.0%	66.6%	73.1%	66.4%
Upward Departures	0.4%	0.7%	0.6%	0.6%	0.1% ²
Otherwise Above Range	—	—	—	—	0.7% ³
Substantial Assistance Departures	10.9%	11.0%	11.0%	9.4%	9.9%
Other Gov't Sponsored Departures	—	—	—	11.4% ⁴	13.5% ⁴
Other Downward Departures	18.8% ⁵	23.3% ⁵	21.9% ⁵	5.5%	2.9% ²
Otherwise Below Range	—	—	—	—	6.6% ³

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Guideline Application Trends By Circuit

Fiscal Years 2000, 2001, 2002, 2003, and Post-Booker FY2005¹

ELEVENTH CIRCUIT

Position of Sentence Relative to Guideline Range	FY2000	FY2001	FY2002	FY2003	FY2005 (Booker)
Within Range	71.0%	72.1	70.2%	74.5%	68.1%
Upward Departures	0.7%	0.6%	0.7%	0.8%	0.5% ²
Otherwise Above Range	—	—	—	—	1.4% ³
Substantial Assistance Departures	21.4%	19.9%	22.4%	19.9%	17.7%
Other Gov't Sponsored Departures	—	—	—	0.3% ⁴	1.4% ⁴
Other Downward Departures	6.9% ⁵	7.5% ⁵	6.7% ⁵	4.5%	2.9% ²
Otherwise Below Range	—	—	—	—	8.2% ³

¹In 2003, the Commission augmented its data coding procedures to determine the proportion of non-substantial assistance downward departures that were initiated by the government. Data prior to 2003 does not distinguish non-substantial assistance government initiated downward departures from other downward departures. In this table, data from FY2000, 2001, and 2002 on “Other Downward Departures” includes both government initiated and non-government initiated downward departures. For FY2003, the “Other Downward Departures” data distinguishes departures that were initiated or supported by the government from those not initiated/supported by the government. For example, using the national data, 6.3% of downward departures were government initiated and 7.5% were other downward departures; the combination of these values (13.8%) is directly comparable to the data for “Other Downward Departures” from the preceding years. For FY2005, this table reflects cases sentenced subsequent to the *US v Booker* decision on January 12, 2005, with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by September 30, 2005. In these cases, a further distinction is made among below guideline range sentences. The data report three categories of below range sentences: those initiated/supported by the government; those not initiated by the government and citing reasons for departure limited to, and affirmatively and specifically identified in the provisions, policy statements, or commentary of the federal Guidelines Manual; and those mentioning only *U.S. v. Booker*, 18 U.S.C. § 3553, or related factors as a reason for a sentence outside of the guideline range. Cases citing both reasons for departure limited to, and affirmatively and specifically identified in the provisions, policy statements, or commentary of the federal Guidelines Manual and mentioning *U.S. v. Booker*, 18 U.S.C. § 3553, or related factors are included in the “Other Downward Departures” category.

²Includes cases with imposed sentences outside of the guideline range and citing reasons for departure limited to, and affirmatively and specifically identified in the provisions, policy statements, or commentary of the federal Guidelines Manual and all cases with imposed sentences outside of the guideline range citing reasons for departure limited to, and affirmatively and specifically identified in the provisions, policy statements, or commentary of the federal Guidelines Manual, and additionally mentioning either *U.S. v. Booker*, 18 U.S.C. § 3553, or related factors as a reason for a sentence outside of the guideline range.

³Includes cases with imposed sentences outside of the guideline range mentioning only *U.S. v. Booker*, 18 U.S.C. § 3553, or related factors as a reason for a sentence outside of the guideline range and all cases with imposed sentences outside of the guideline range that do not fall into the previous category. This category includes cases which cite departure reasons that are *not* affirmatively and specifically identified in the provisions, policy statements, or commentary of the federal Guidelines Manual and cases which do not provide any reason for the sentence outside of the guideline range.

⁴Cases with a reason for departure indicating that the prosecution initiates, proposes, or stipulates to a sentence outside of the guideline range, either pursuant to a plea agreement or as part of a non-plea negotiation with the defendant. Note that §5K3.1 (Early Disposition Program) cases are included in this category.

⁵Includes cases in which the below range sentence was initiated/supported by the government and those not initiated/supported by the government. Prior to FY2003, the Commission did not code this distinction. SOURCE: U.S. Sentencing Commission Sourcebook of Federal Sentencing, FY2000 through FY2003, Table 26; Special Post-Booker Coding Project, BOOKER05 (data extracted September 30, 2005; table prepared October 13, 2005). Percents may not sum to 100 percent due to rounding.

Distribution of Offenders Receiving Sentencing Options for the Most Frequently Applied Guidelines
 Fiscal Years 1999-2003 and Post-Booker Fiscal Year 2005 (data extracted September 30, 2005)

	FY 1999		FY 2000		FY 2001		FY 2002		FY 2003		Post-Booker	
	N	%	N	%	N	%	N	%	N	%	N	%
Drug Trafficking §2D1.1¹	20,763	100.0	21,715	100.0	22,608	100.0	24,013	100.0	23,833	100.0	14,489	100.0
Prison only ²	19,406	93.5	20,422	94.0	21,143	93.5	22,407	93.3	22,455	94.2	13,682	94.4
Prison plus confinement conditions ³	481	2.3	430	2.0	469	2.1	515	2.1	402	1.7	319	2.2
Probation plus confinement conditions ⁴	400	1.9	379	1.7	488	2.2	465	1.9	469	2.0	218	1.5
Probation only ⁵	476	2.3	484	2.2	508	2.2	626	2.6	507	2.1	270	1.9
Immigration Unlawful Entry §2L1.2¹	5,547	100.0	6,341	100.0	5,946	100.0	6,993	100.0	9,167	100.0	6,257	100.0
Prison only ²	5,495	99.1	6,291	99.2	5,901	99.2	6,952	99.4	9,132	99.6	6,206	99.2
Prison plus confinement conditions ³	13	0.2	10	0.2	14	0.2	7	0.1	11	0.1	12	0.2
Probation plus confinement conditions ⁴	2	0.0	1	0.0	1	0.0	0	0.0	2	0.0	1	0.0
Probation only ⁵	37	0.7	39	0.6	30	0.5	34	0.5	22	0.2	38	0.6
Firearms §2K2.1¹	2,218	100.0	2,997	100.0	3,629	100.0	4,173	100.0	5,425	100.0	4,073	100.0
Prison only ²	1,976	89.1	2,604	86.9	3,177	87.5	3,680	88.2	4,779	88.1	3,637	89.3
Prison plus confinement conditions ³	82	3.7	104	3.5	141	3.9	158	3.8	174	3.2	127	3.1
Probation plus confinement conditions ⁴	87	3.9	147	4.9	155	4.3	139	3.3	224	4.1	161	4.0
Probation only ⁵	73	3.3	142	4.7	156	4.3	196	4.7	248	4.6	148	3.6
Theft/Fraud §2B1.1 or §2F1.1¹	8,979	100.0	9,015	100.0	8,768	100.0	9,243	100.0	9,606	100.0	4,988	100.0
Prison only ²	4,101	45.7	4,253	47.2	4,339	49.5	4,531	49.0	4,803	50.0	2,671	53.5
Prison plus confinement conditions ³	1,069	11.9	1,077	11.9	1,053	12.0	959	10.4	840	8.7	457	9.2
Probation plus confinement conditions ⁴	1,543	17.2	1,540	17.1	1,481	16.9	1,421	15.4	1,463	15.2	623	12.5
Probation only ⁵	2,266	25.2	2,145	23.8	1,895	21.6	2,332	25.2	2,500	26.0	1,237	24.8

¹Sections report only cases with one single guideline application using the indicated guideline. Cases receiving only monetary sentences are excluded.

²Prison only cases receive straight prison time.

³Prison plus confinement cases receive a combination of prison time and alternative confinement time as defined in USSG §5C1.1.

⁴Probation plus confinement cases receive, as a condition of probation, alternative confinement time as defined in USSG §5C1.1.

⁵Probation only cases receive straight probation time.

SOURCE: U.S. Sentencing Commission, 1999-2003 Fiscal Year Datafiles, USSCFY99-USSCFY03; Special Post-Booker Coding Project BOOKER05 (data extraction on September 30, 2005; table prepared October 13, 2005).

Average and Median Sentence Imposed¹ for the Most Frequently Applied Guidelines

Fiscal Year 1999 and Fiscal Year 2000

	Fiscal Year 1999				Fiscal Year 2000			
	Average Months	Median Months	GL Median ²	N	Average Months	Median Months	GL Median ²	N
All Cases (one guideline computation)³	51	30		48,611	50	30		51,342
Drug Trafficking §2D1.1⁴	71	48	60	20,763	72	50	60	21,715
Prison only ⁵	74	51	60	19,406	74	57	63	20,422
Prison plus confinement conditions ⁶	26	10	18	481	21	10	21	430
Probation plus confinement conditions ⁷	6	6	12	400	6	6	12	379
Probation only ⁸	0	0	—	476	0	0	—	484
Immigration Unlawful Entry §2L1.2⁴	35	30	46	5,547	36	33	46	6,341
Prison only ⁵	35	30	46	5,495	36	33	33	6,291
Prison plus confinement conditions ⁶	33	33	70	13	21	10	10	10
Probation plus confinement conditions ⁷	—	—	—	2	—	—	—	1
Probation only ⁸	0	0	—	37	0	0	—	39
Firearms §2K2.1⁴	58	37	37	2,218	53	37	37	2,997
Prison only ⁵	62	41	41	1,976	57	37	41	2,604
Prison plus confinement conditions ⁶	21	10	12	82	23	10	12	104
Probation plus confinement conditions ⁷	6	6	12	87	7	6	12	147
Probation only ⁸	0	0	—	73	0	0	—	142
Theft/Fraud §2B1.1 or §2F1.1⁴	14	10	10	8,979	14	10	10	9,015
Prison only ⁵	18	14	15	4,101	19	15	15	4,253
Prison plus confinement conditions ⁶	9	8	8	1,069	9	8	8	1,077
Probation plus confinement conditions ⁷	5	6	6	1,543	5	6	6	1,540
Probation only ⁸	0	0	—	2,266	0	0	—	2,145

¹Sentence data report the sum of imprisonment and any type of confinement as defined in USSG §5C1.1.

²For the guideline range of the sentencing table applied to the case, the lower value of the sentencing range.

³All statistics in the table report data for cases with one single guideline computation for the specified fiscal year. The “All Cases” row reports all cases regardless of the one guideline applied. Cases receiving only monetary sentences are excluded.

⁴Each guideline-specific section reports only cases with one single guideline application using the indicated guideline.

⁵Prison only sentence categories report straight prison time.

⁶Prison plus confinement sentence categories report the sum of prison time and alternative confinement time as defined in USSG §5C1.1.

⁷Probation plus confinement categories report statistics for cases receiving, as a condition of probation, alternative confinement time as defined in USSG §5C1.1.

⁸Probation only categories report cases receiving straight probation time. By definition, the confinement time is zero months for these cases.

Average and Median Sentence Imposed¹ for the Most Frequently Applied Guidelines

Fiscal Year 2001 and Fiscal Year 2002

	Fiscal Year 2001				Fiscal Year 2002			
	Average Months	Median Months	GL Median ²	N	Average Months	Median Months	GL Median ²	N
All Cases (one guideline computation)³	50	30		51,809	51	30		55,856
Drug Trafficking §2D1.1⁴	70	48	60	22,608	71	51	60	24,013
Prison only ⁵	72	51	60	21,143	74	57	57	22,407
Prison plus confinement conditions ⁶	29	10	18	469	22	10	10	515
Probation plus confinement conditions ⁷	6	6	12	488	6	6	6	465
Probation only ⁸	0	0	—	508	0	0	—	626
Immigration Unlawful Entry §2L1.2⁴	35	30	46	5,946	30	27	30	6,993
Prison only ⁵	35	30	46	5,901	30	27	30	6,952
Prison plus confinement conditions ⁶	20	10	12	14	20	10	10	7
Probation plus confinement conditions ⁷	—	—	—	1	—	—	—	0
Probation only ⁸	0	0	—	30	0	0	—	34
Firearms §2K2.1⁴	52	37	37	3,629	53	37	37	4,173
Prison only ⁵	56	40	41	3,177	57	37	37	3,680
Prison plus confinement conditions ⁶	22	10	15	141	18	10	12	158
Probation plus confinement conditions ⁷	6	6	12	155	6	6	12	139
Probation only ⁸	0	0	—	156	0	0	—	196
Theft/Fraud §2B1.1 or §2F1.1⁴	15	10	12	8,768	16	10	12	9,243
Prison only ⁵	20	15	15	4,339	20	15	15	4,531
Prison plus confinement conditions ⁶	9	8	8	1,053	9	10	10	959
Probation plus confinement conditions ⁷	5	6	6	1,481	6	6	6	1,421
Probation only ⁸	0	0	—	1,895	0	0	—	2,332

¹Sentence data report the sum of imprisonment and any type of confinement as defined in USSG §5C1.1.

²For the guideline range of the sentencing table applied to the case, the lower value of the sentencing range.

³All statistics in the table report data for cases with one single guideline computation for the specified fiscal year. The "All Cases" row reports all cases regardless of the one guideline applied. Cases receiving only monetary sentences are excluded.

⁴Each guideline-specific section reports only cases with one single guideline application using the indicated guideline.

⁵Prison only sentence categories report straight prison time.

⁶Prison plus confinement sentence categories report the sum of prison time and alternative confinement time as defined in USSG §5C1.1.

⁷Probation plus confinement categories report statistics for cases receiving, as a condition of probation, alternative confinement time as defined in USSG §5C1.1.

⁸Probation only categories report cases receiving straight probation time. By definition, the confinement time is zero months for these cases.

SOURCE: U.S. Sentencing Commission, 2001 and 2002 Fiscal Year Datafiles, USSCFY01 and USSCFY02.

Average and Median Sentence Imposed¹ for the Most Frequently Applied Guidelines

Fiscal Year 2003 and Post-Booker Fiscal Year 2005 (data extracted September 30, 2005)

	Fiscal Year 2003				Post-Booker FY2005			
	Average Months	Median Months	GL Median ²	N	Average Months	Median Months	GL Median ²	N
All Cases (one guideline computation)³	52	30		60,786	56	34		38,348
Drug Trafficking §2D1.1⁴	77	57	63	23,833	84	60	70	14,489
Prison only ⁵	79	60	70	22,455	86	63	78	13,682
Prison plus confinement conditions ⁶	20	10	15	402	21	10	21	319
Probation plus confinement conditions ⁷	6	6	12	469	6	6	15	218
Probation only ⁸	0	0	—	507	0	0	—	270
Immigration Unlawful Entry §2L1.2⁴	28	24	27	9,167	28	24	27	6,257
Prison only ⁵	28	24	27	9,132	28	24	27	6,206
Prison plus confinement conditions ⁶	22	10	10	11	11	10	15	12
Probation plus confinement conditions ⁷	—	—	—	2	—	—	—	1
Probation only ⁸	0	0	—	22	0	0	—	38
Firearms §2K2.1⁴	56	37	37	5,425	59	37	37	4,073
Prison only ⁵	59	41	41	4,779	62	41	46	3,637
Prison plus confinement conditions ⁶	21	10	12	174	30	11	12	127
Probation plus confinement conditions ⁷	6	6	12	224	7	6	12	161
Probation only ⁸	0	0	—	248	0	0	—	148
Theft/Fraud §2B1.1 or §2F1.1⁴	16	12	12	9,606	21	12	15	4,988
Prison only ⁵	21	16	18	4,803	26	18	18	2,671
Prison plus confinement conditions ⁶	9	10	10	840	10	10	10	457
Probation plus confinement conditions ⁷	6	6	6	1,463	6	6	6	623
Probation only ⁸	0	0	—	2,500	0	0	—	1,237

¹Sentence data report the sum of imprisonment and any type of confinement as defined in USSG §5C1.1.

²For the guideline range of the sentencing table applied to the case, the lower value of the sentencing range.

³All statistics in the table report data for cases with one single guideline computation for the specified fiscal year. The "All Cases" row reports all cases regardless of the one guideline applied. Cases receiving only monetary sentences are excluded.

⁴Each guideline-specific section reports only cases with one single guideline application using the indicated guideline.

⁵Prison only sentence categories report straight prison time.

⁶Prison plus confinement sentence categories report the sum of prison time and alternative confinement time as defined in USSG §5C1.1.

⁷Probation plus confinement categories report statistics for cases receiving, as a condition of probation, alternative confinement time as defined in USSG §5C1.1.

⁸Probation only categories report cases receiving straight probation time. By definition, the confinement time is zero months for these cases.

SOURCE: U.S. Sentencing Commission, 2003 Fiscal Year Datafile, USSCFY03; Special Post-Booker Coding Project BOOKER05 (data extraction on September 30, 2005; table prepared October 13, 2005).