



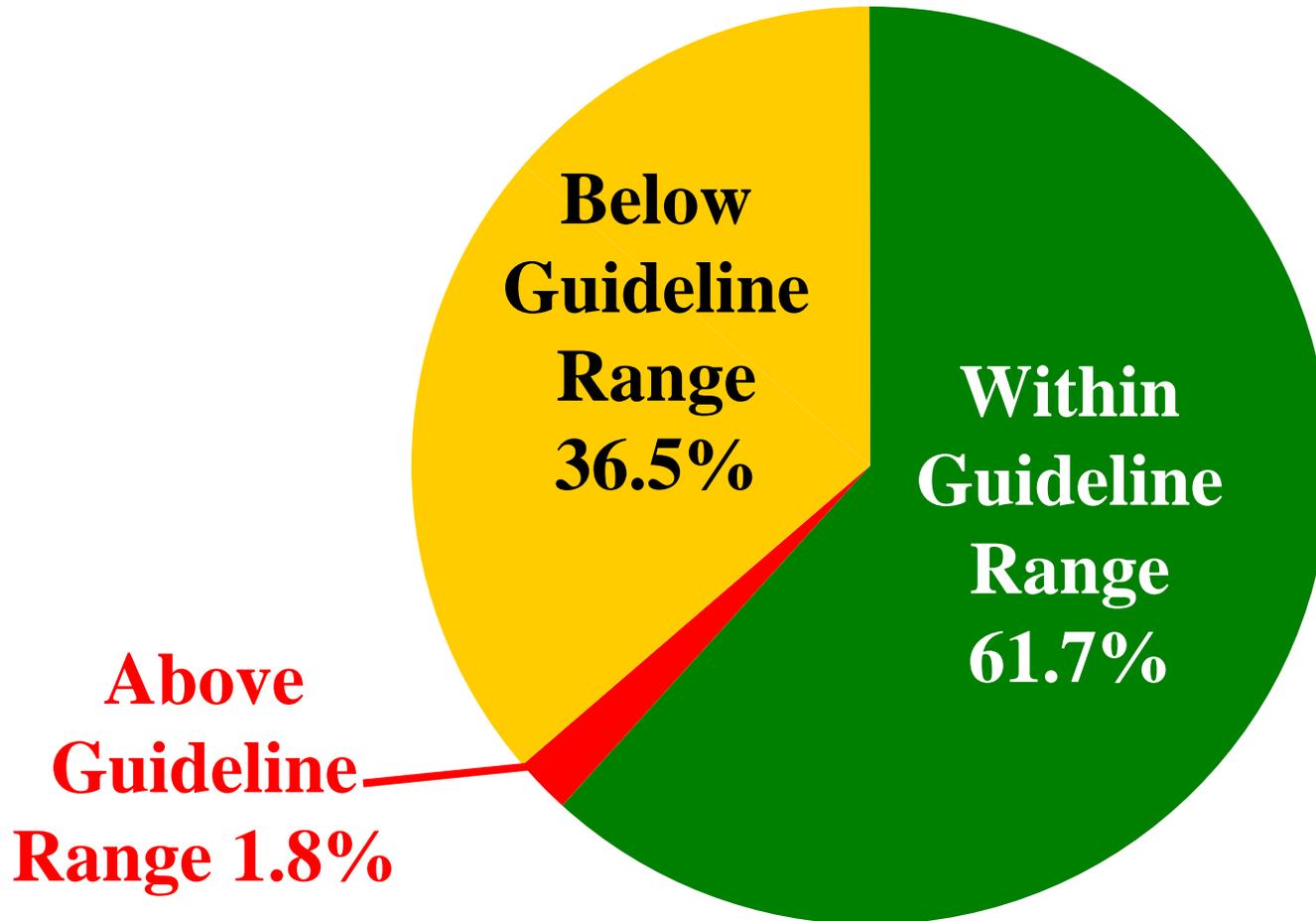
# Sentencing in the Aftermath of *United States v. Booker*

National Sentencing Policy Institute  
Washington, D.C.  
July 11-12, 2005



# **Position of Sentences in Relation to Guideline Range**

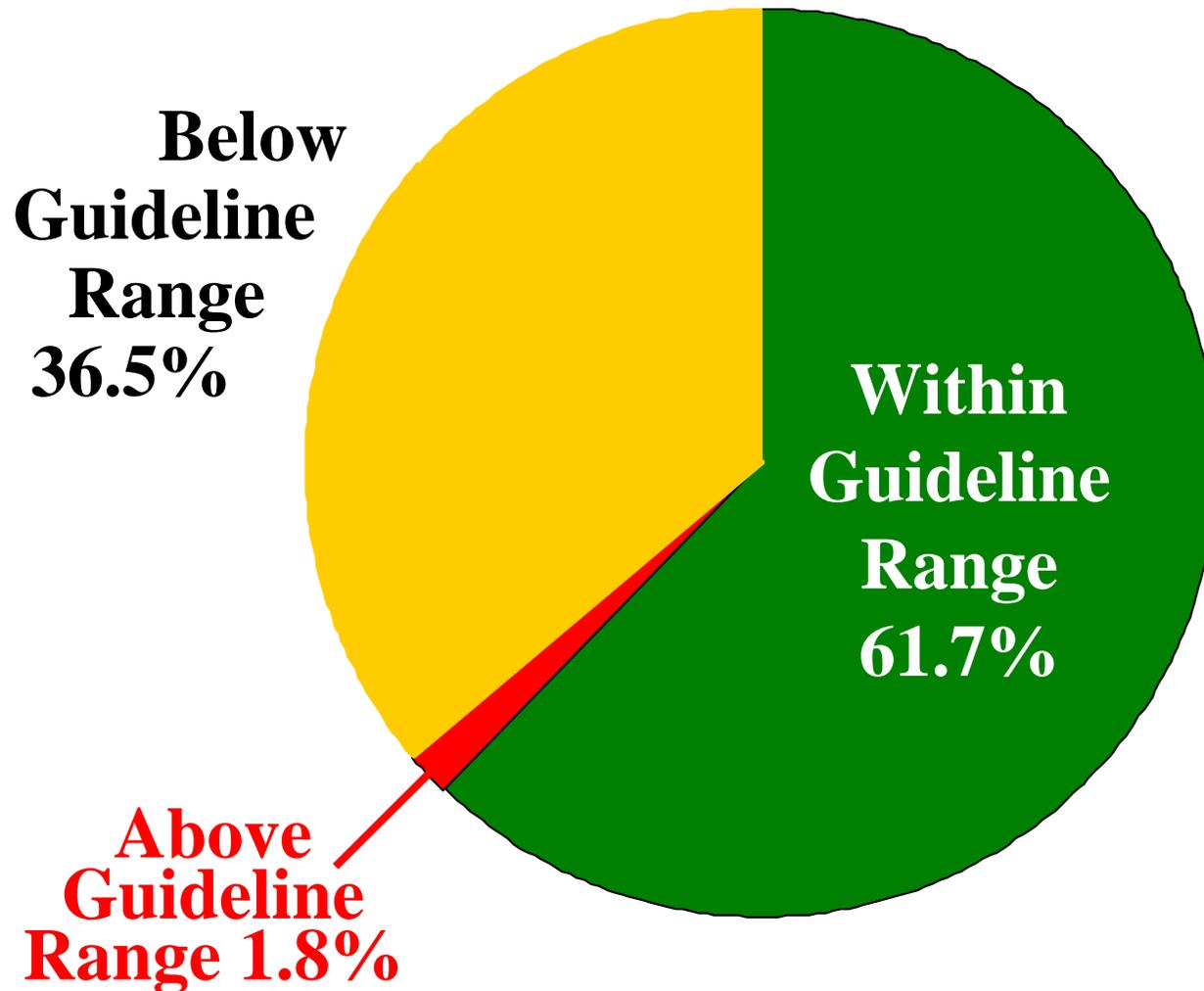
# Position of Sentences in Relation to Guideline Range After *United States v. Booker* Decision



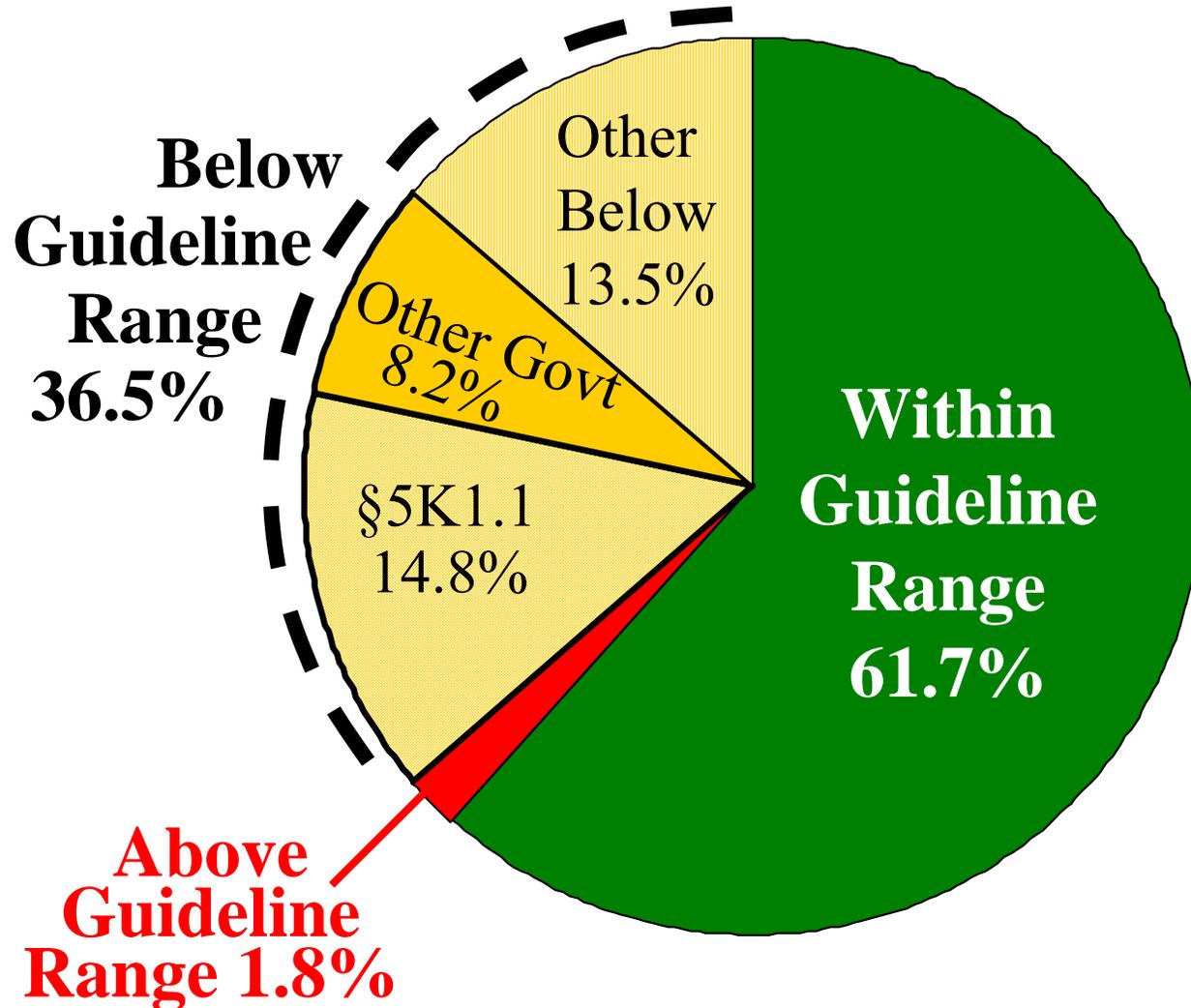
# **Differences Between Received Cases and Annual Caseload**

- **Roughly 30 percent of cases sentenced in a guideline sentencing year**
- **Certain high-volume districts are under-represented**
  - Only one-sixth of the expected cases from Southern New York
- **Possible shift in mix of offenses**
  - Firearms offenses: almost 30% increase
  - Immigration offenses: more than 10% increase
  - Theft/Fraud offenses: roughly 15% decrease

# Position of Sentences in Relation to Guideline Range After *United States v. Booker* Decision

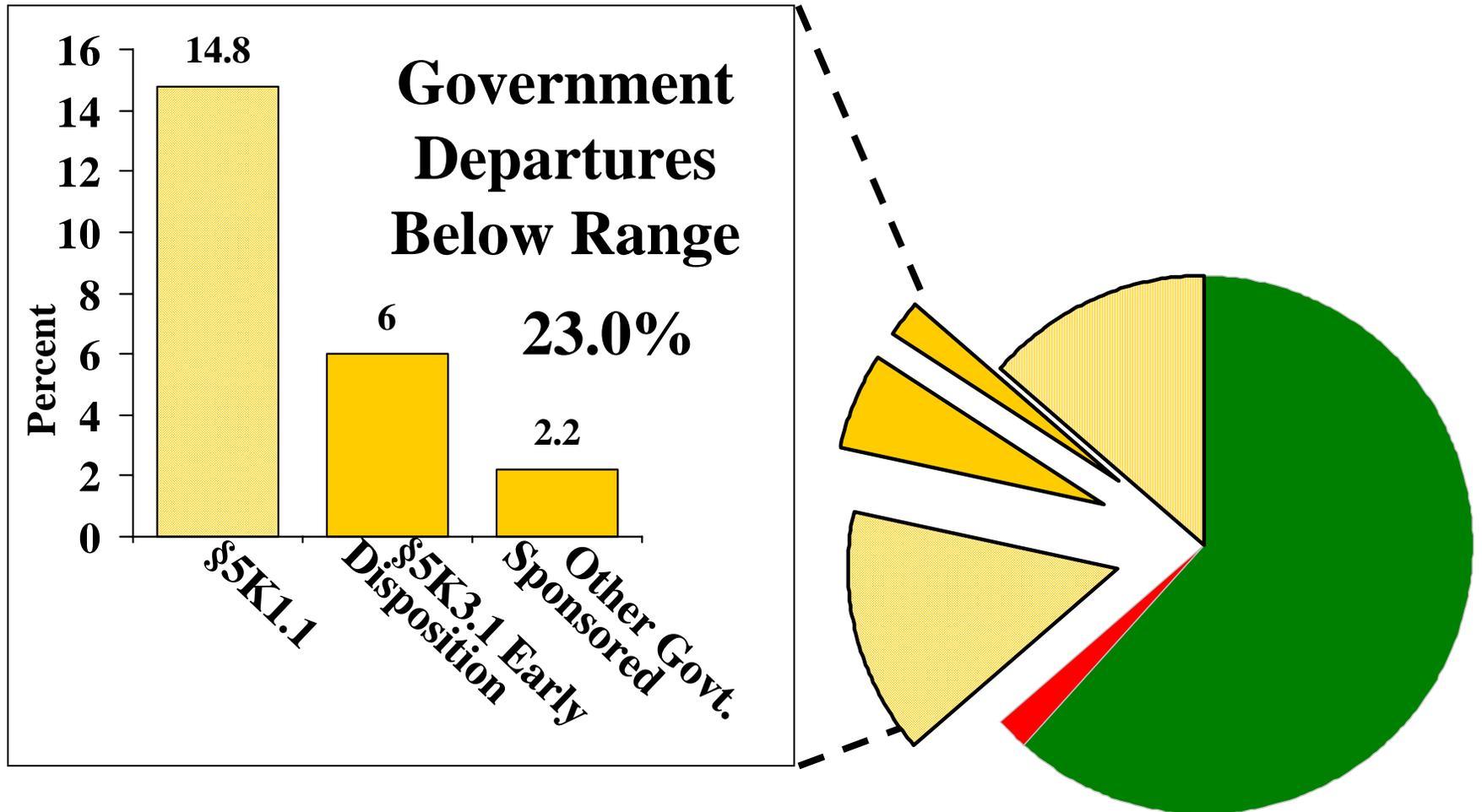


# Position of Sentences in Relation to Guideline Range After *United States v. Booker* Decision



# **Government-Sponsored Departures**

# Distribution of Cases Below the Guideline Range After *United States v. Booker* Decision

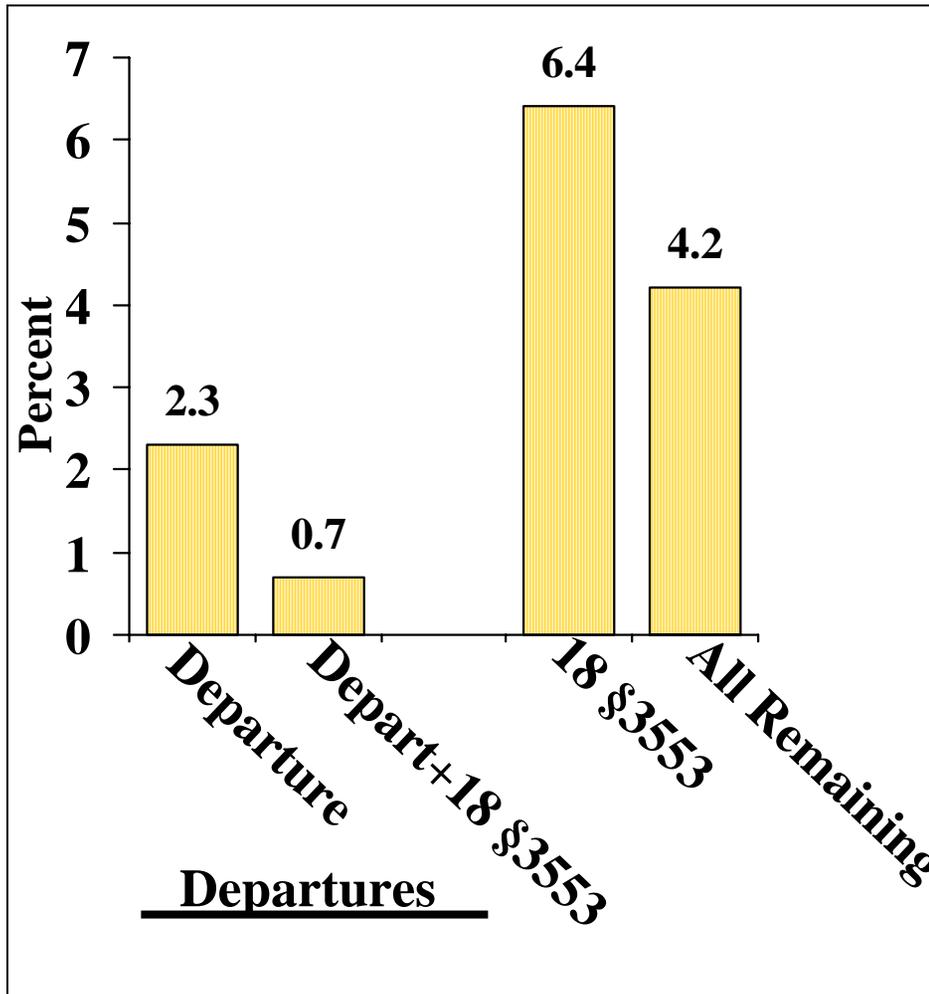


**Other Sentences  
Below the Guideline Range**

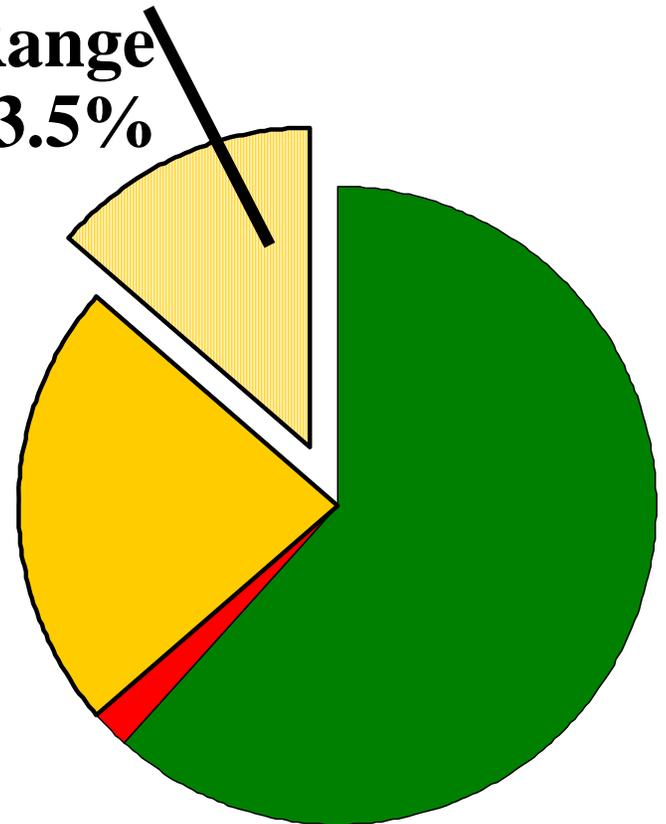
## **Determining the Sentence**

- **Perform guideline computation**
- **Evaluate departure permitted in the Guideline Manual**
- **Evaluate appropriate sentence under 18 USC §3553**
- **Document reason(s) on Statement of Reasons**

# Distribution of Cases Below the Guideline Range After *United States v. Booker* Decision



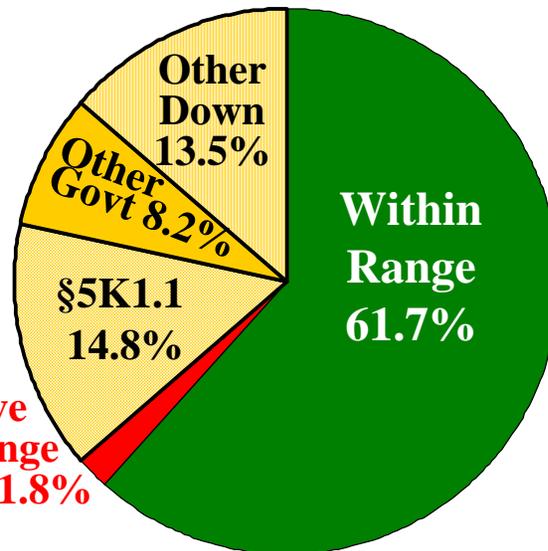
**Other  
Below  
Range  
13.5%**



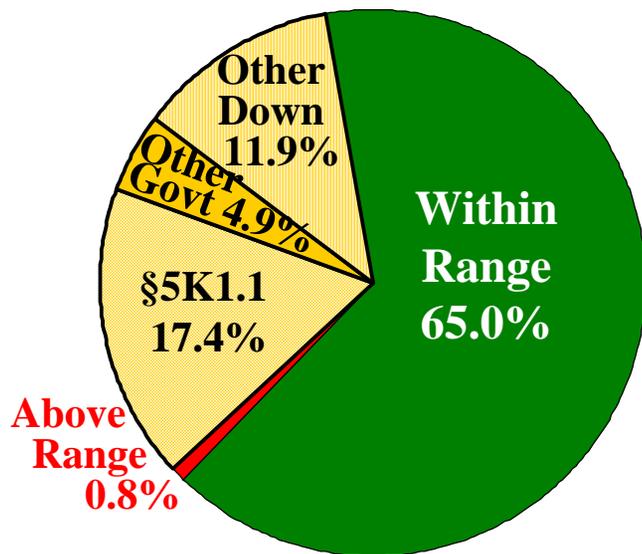
# **An Historical Perspective**

# Position of Sentences in Relation to Guideline Range

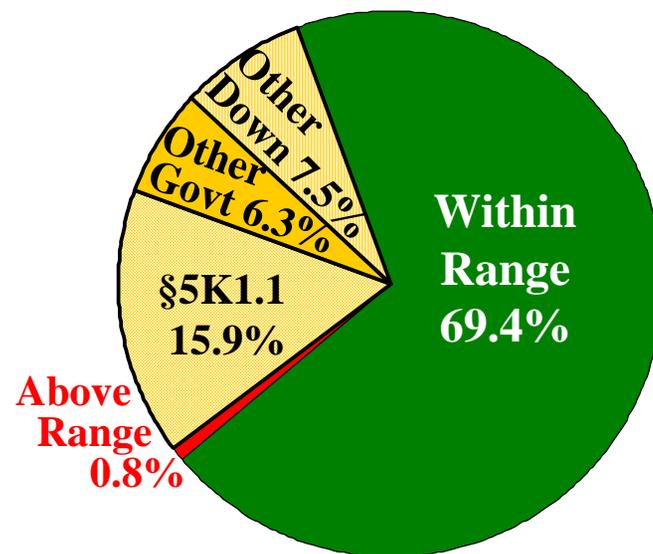
## Post-Booker (as of 6/6/05)



## Fiscal Year 2002



## Fiscal Year 2003



# **The Most-Frequently Applied Guidelines**

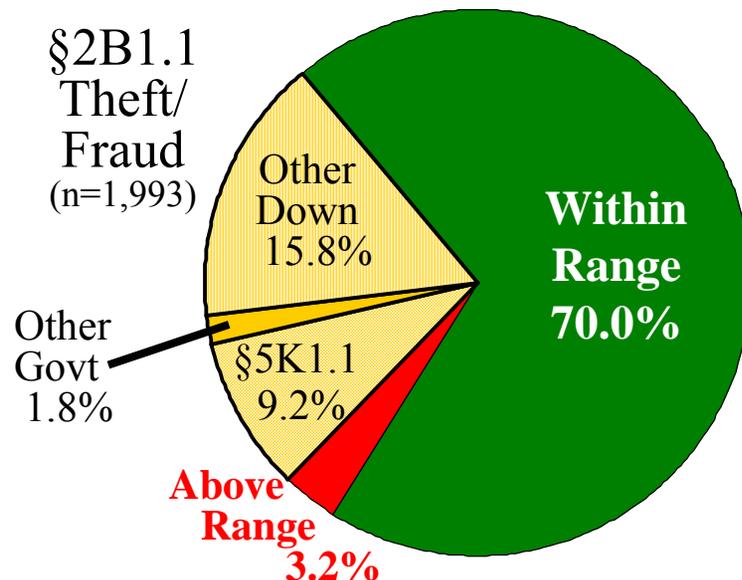
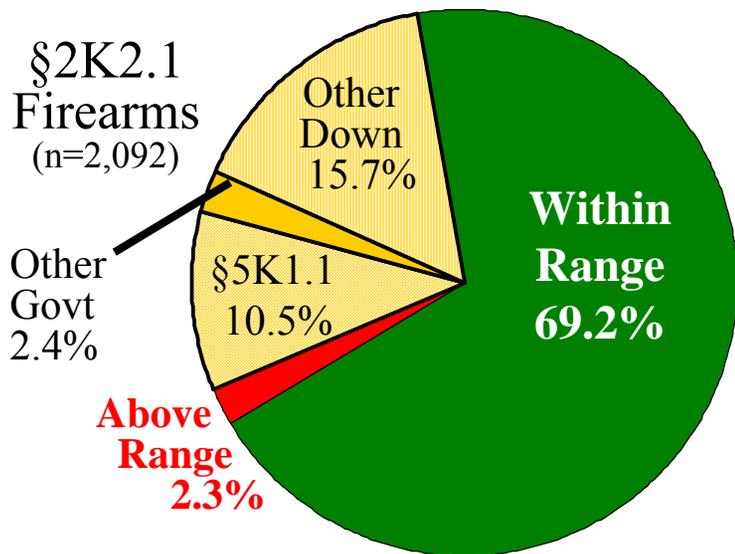
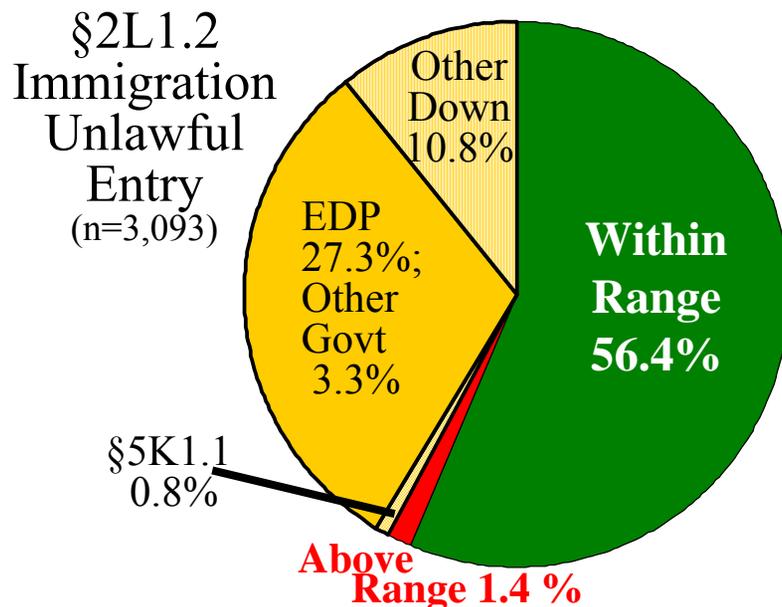
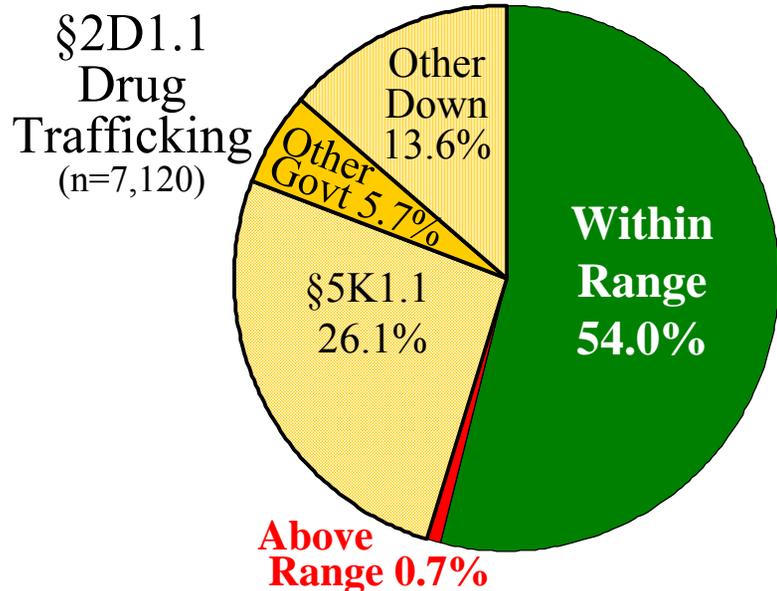
**§2D1.1 Drug Trafficking**

**§2L1.2 Immigration Unlawful Entry**

**§2K2.1 Firearms**

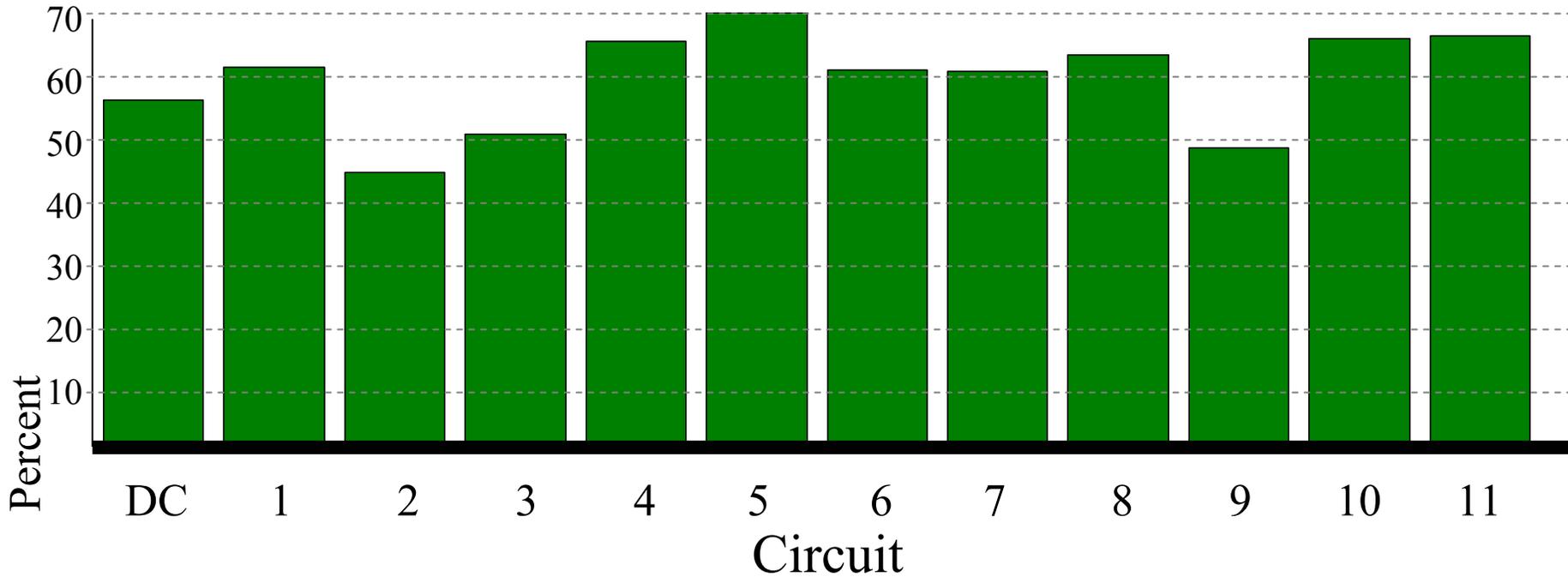
**§2B1.1 Theft and Fraud**

# Post-Booker: Position of Sentences in Relation to Guideline Range



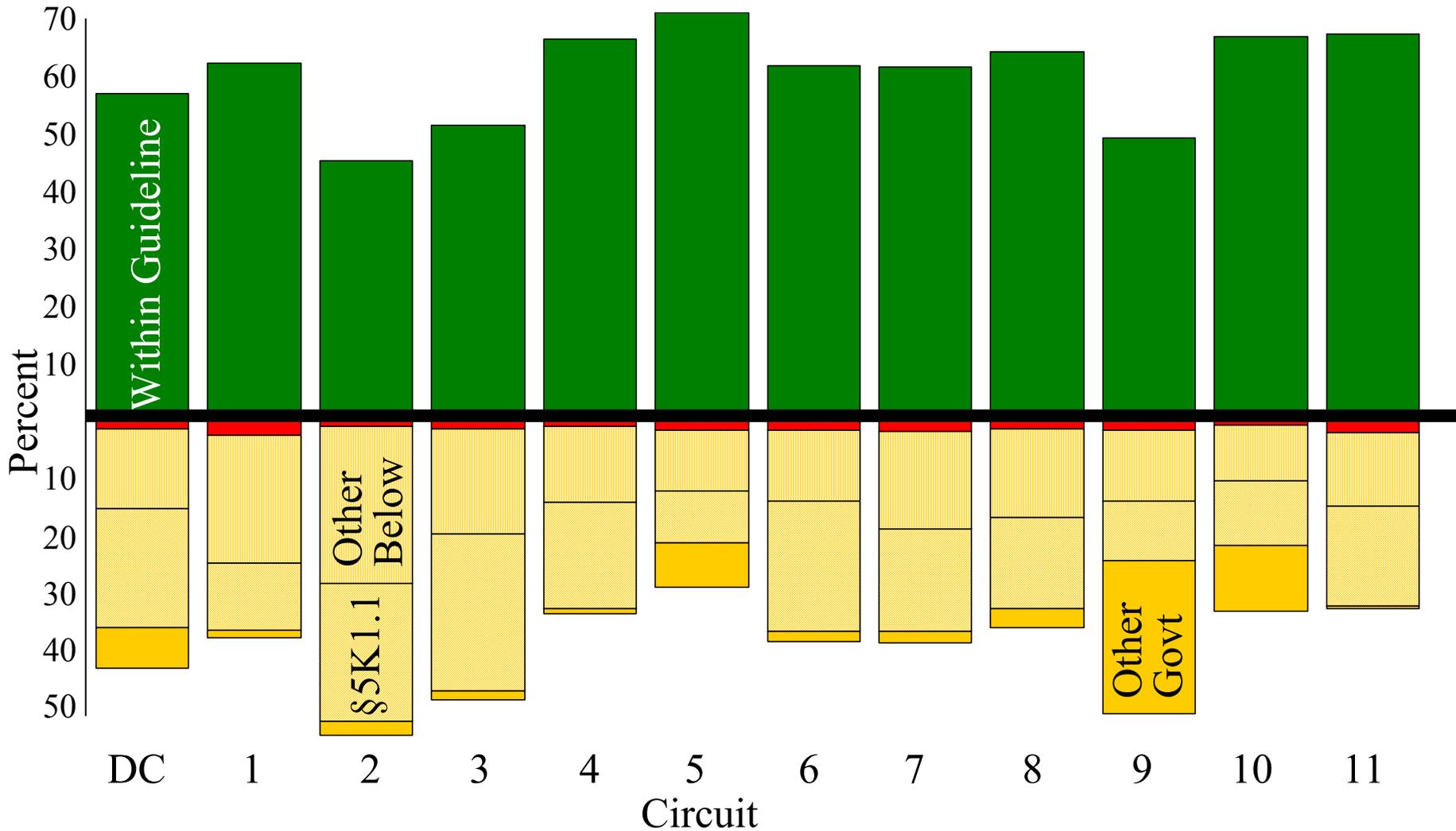
# **Post-Booker Sentencing by Circuit**

# Circuit: Position of Sentences in Relation to Guideline Range After *United States v. Booker* Decision



## Proportion Within Guideline Range

# Circuit: Position of Sentences in Relation to Guideline Range After *United States v. Booker* Decision

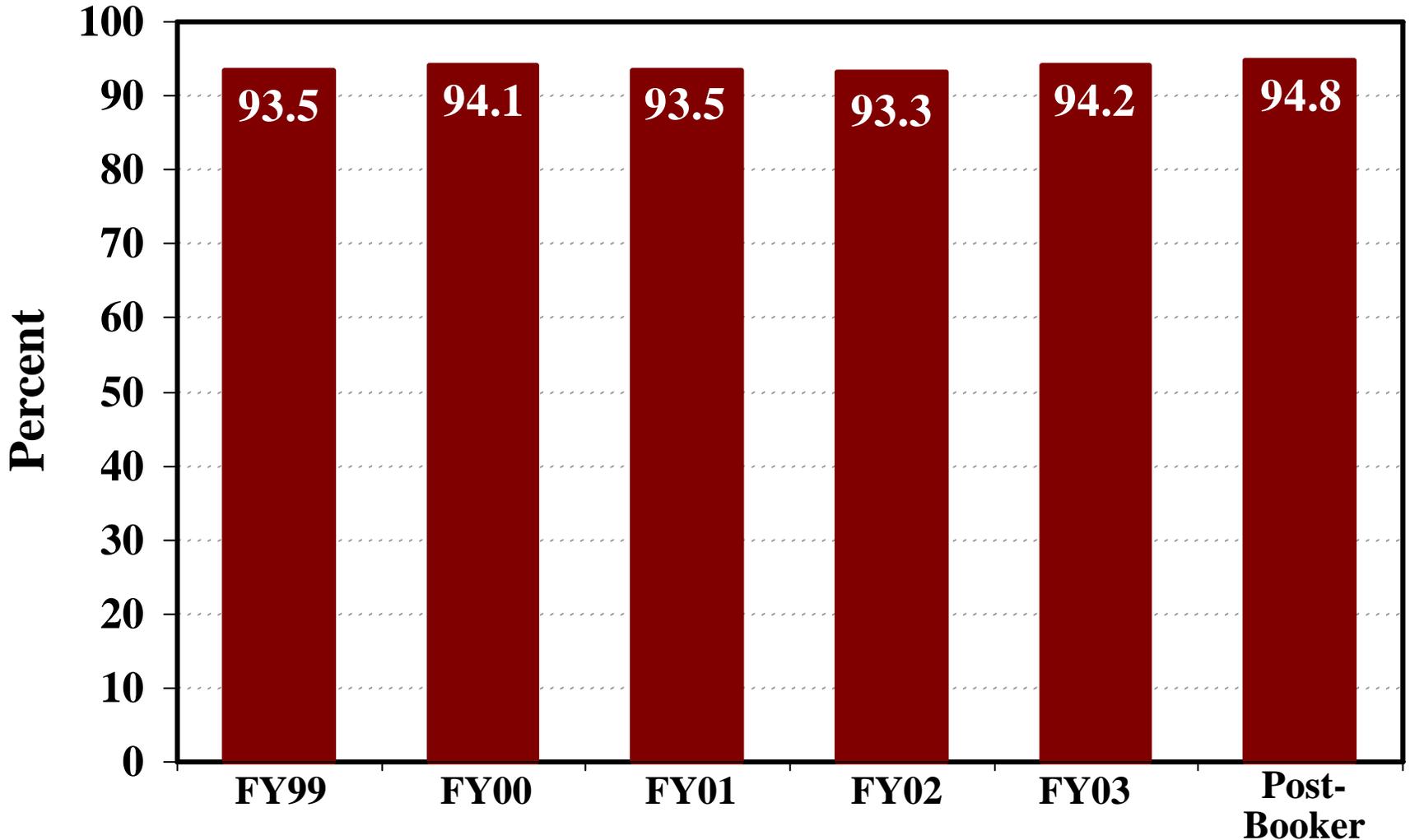


SOURCE: U.S. Sentencing Commission, Special Post-Booker Coding Project, BOOKER05 (data extraction on June 6, 2005; prepared July 11, 2005).

# **Sentence Length**

# Proportion of §2D1.1 Drug Trafficking Offenders Sentenced to Straight Prison Time

Fiscal Years 1999-2003, and Post-Booker 2005

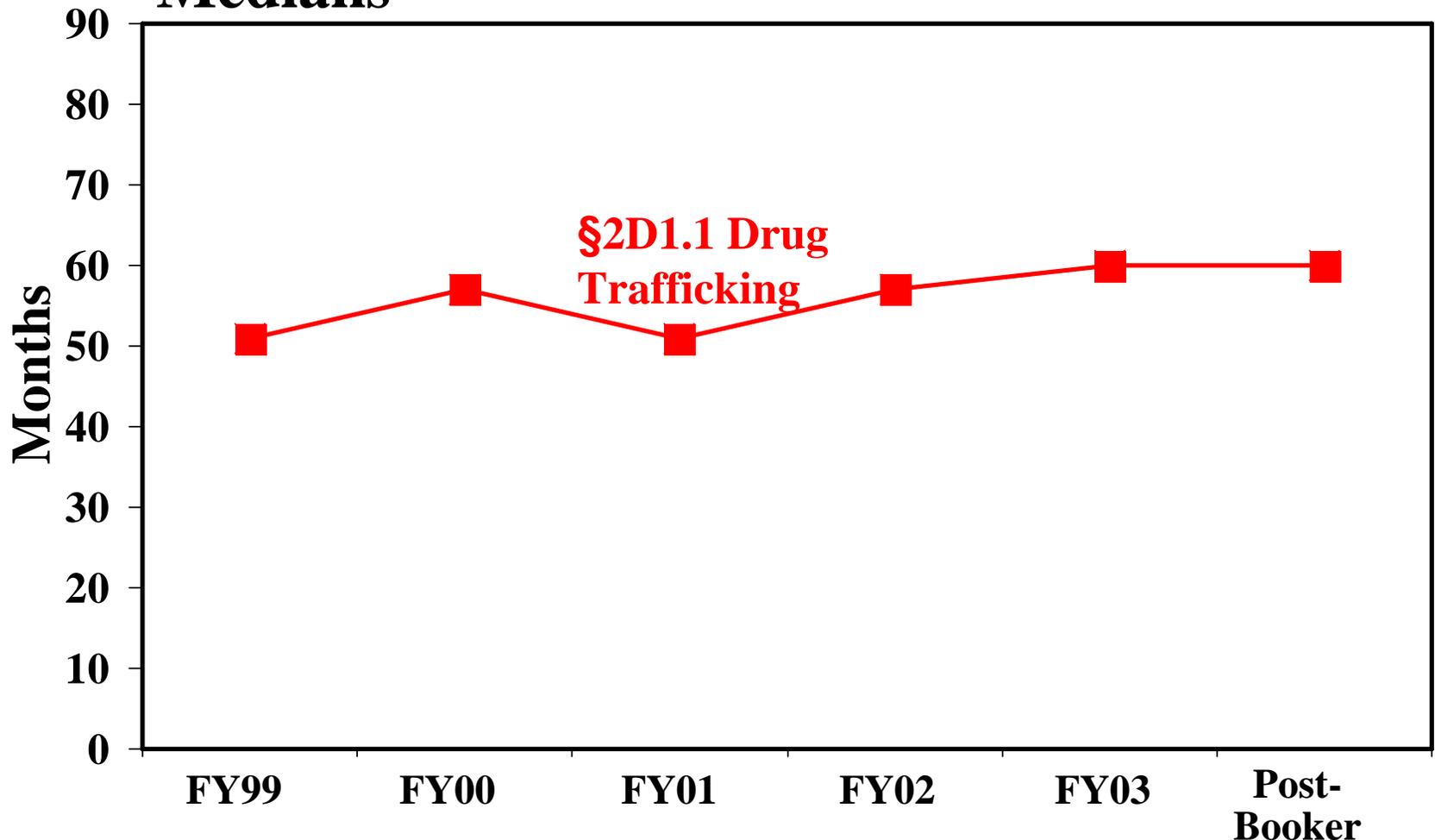


SOURCE: U.S. Sentencing Commission, Fiscal Year 1999-2003 Datafiles, USSCFY99-USSCFY03; Special Fiscal Year 2005 Post-Booker Coding Project BOOKER05 (data extracted June 6, 2005). Includes offenders receiving straight prison time for one single §2D1.1 computation.

# Imprisonment Sentences by Most Frequently Applied Guidelines for Offenders Receiving Straight Prison Time

Fiscal Years 1999-2003, and Post-Booker 2005

## Medians

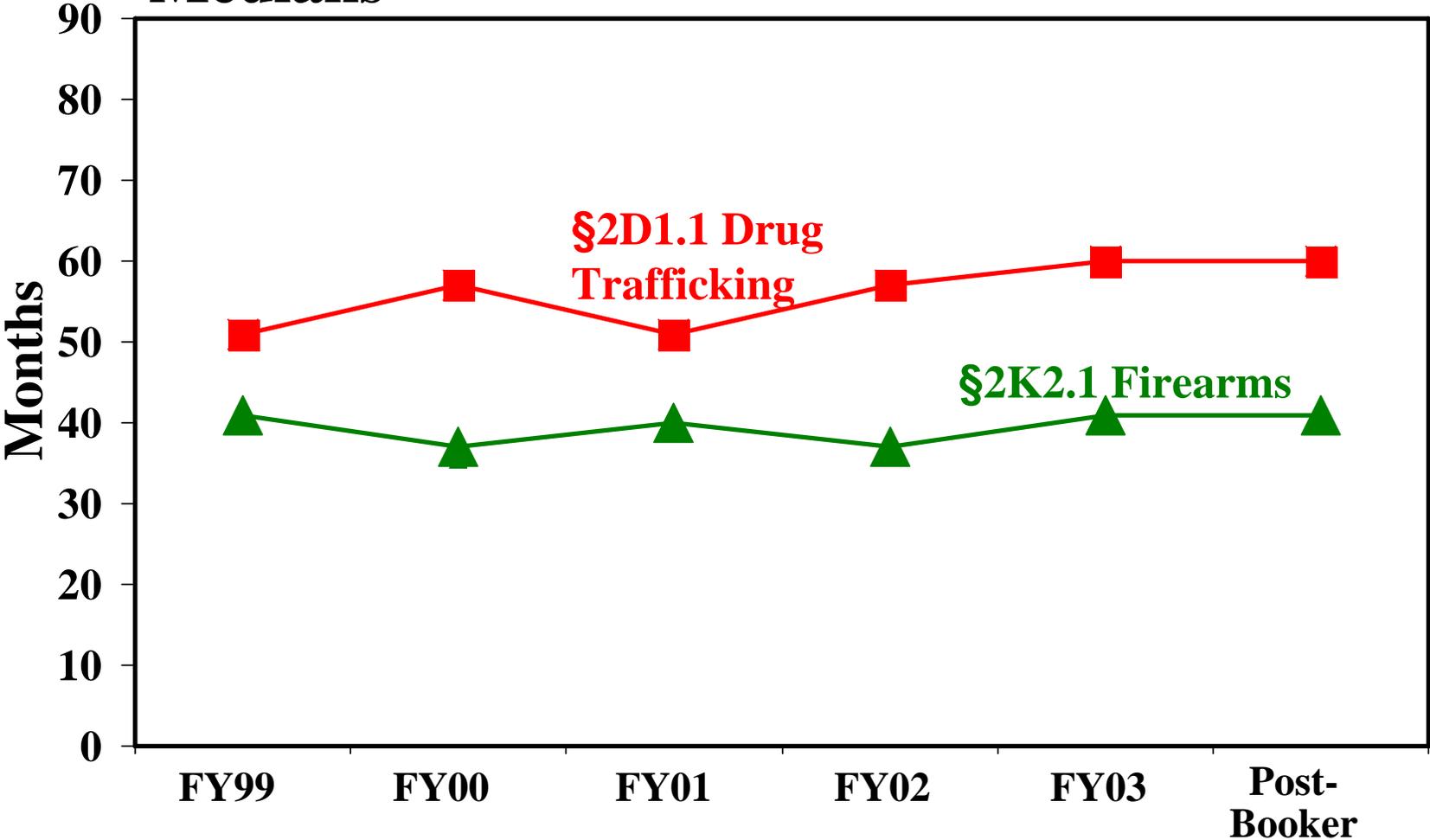


SOURCE: U.S. Sentencing Commission, Fiscal Year 1999-2003 Datafiles, USSCFY99-USSCFY03; Special Fiscal Year 2005 Post-Booker Coding Project BOOKER05 (data extracted June 6, 2005). Includes offenders receiving straight prison time for one single guideline computation as indicated.

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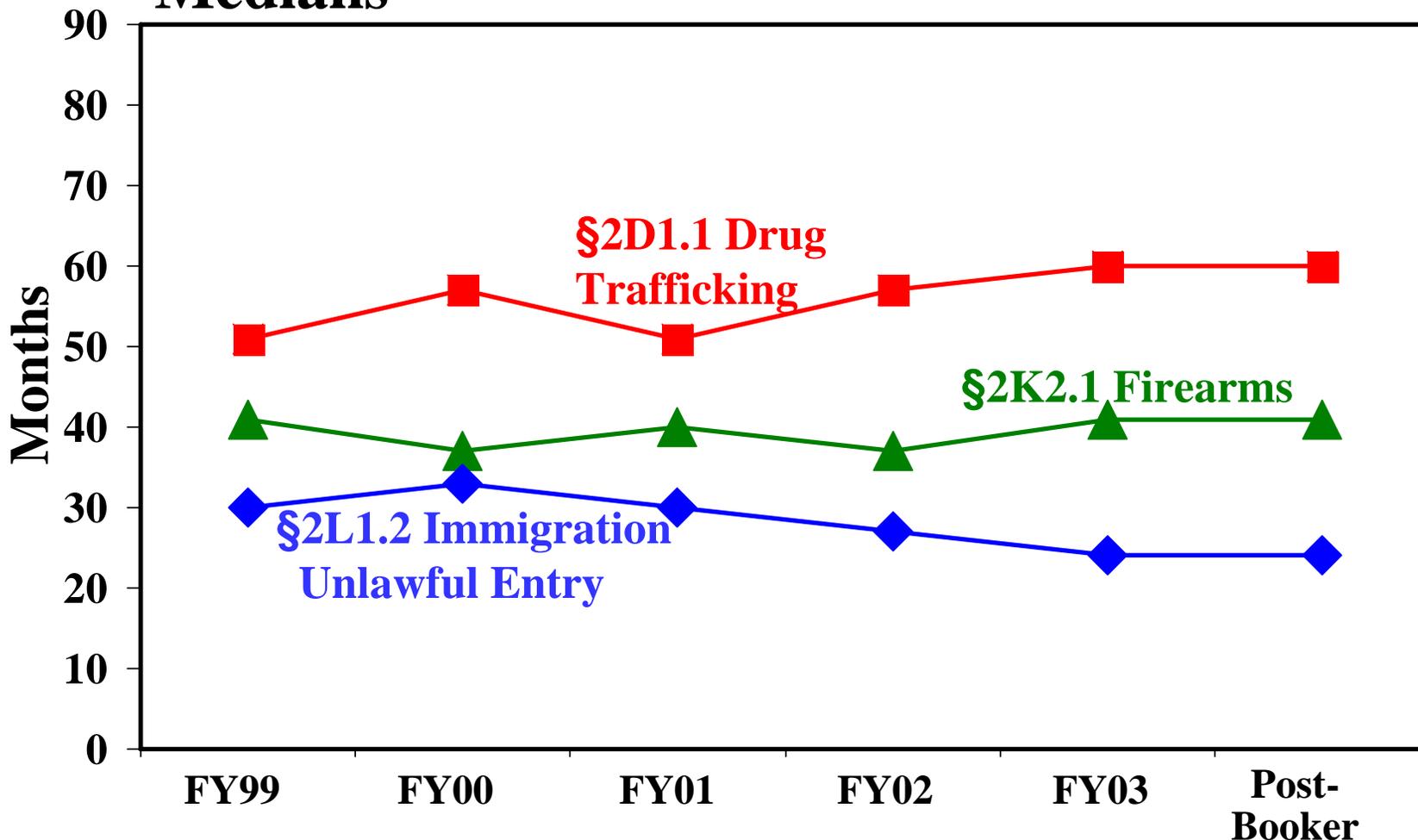


SOURCE: U.S. Sentencing Commission, Fiscal Year 1999-2003 Datafiles, USSCFY99-USSCFY03; Special Fiscal Year 2005 Post-Booker Coding Project BOOKER05 (data extracted June 6, 2005). Includes offenders receiving straight prison time for one single guideline computation as indicated.

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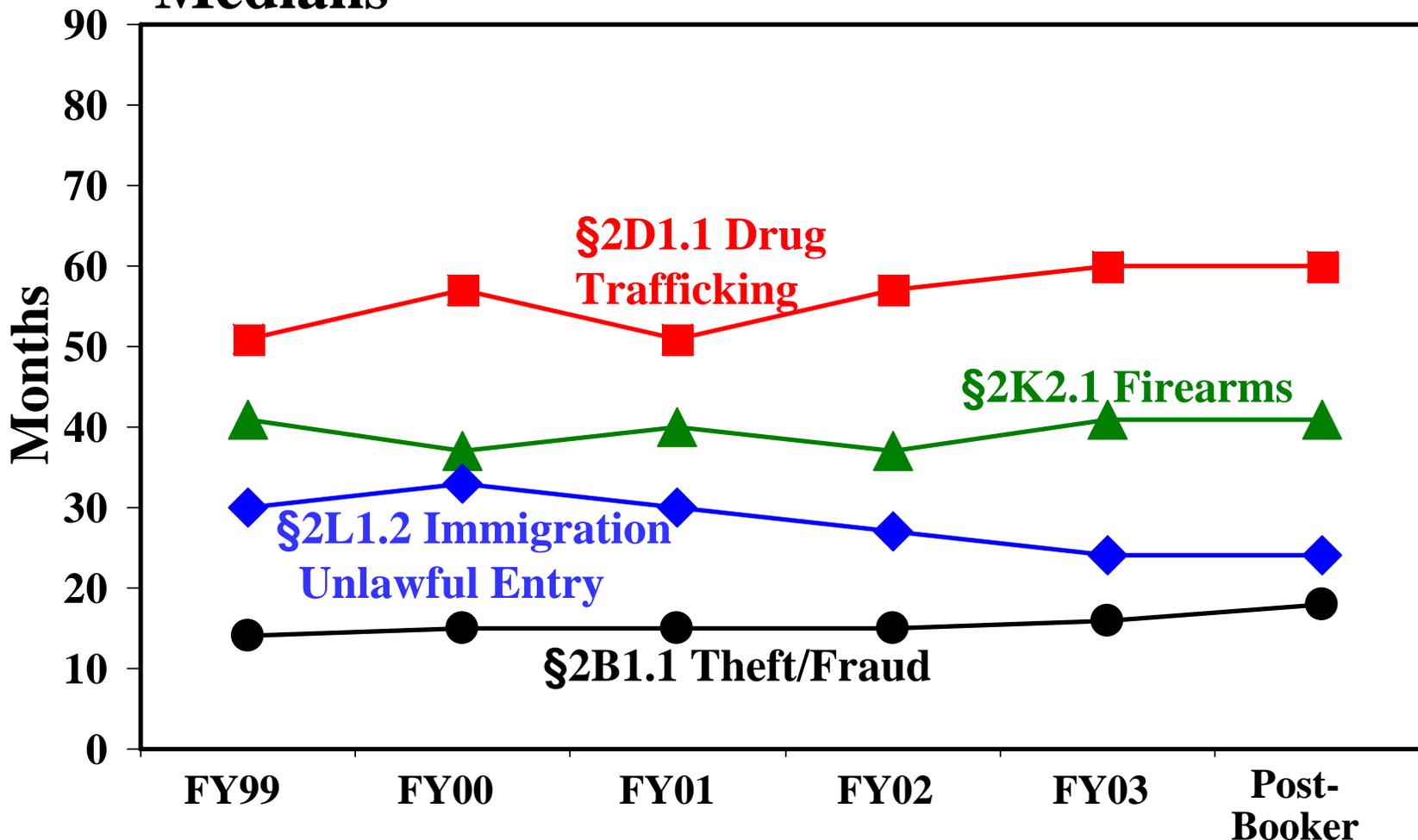


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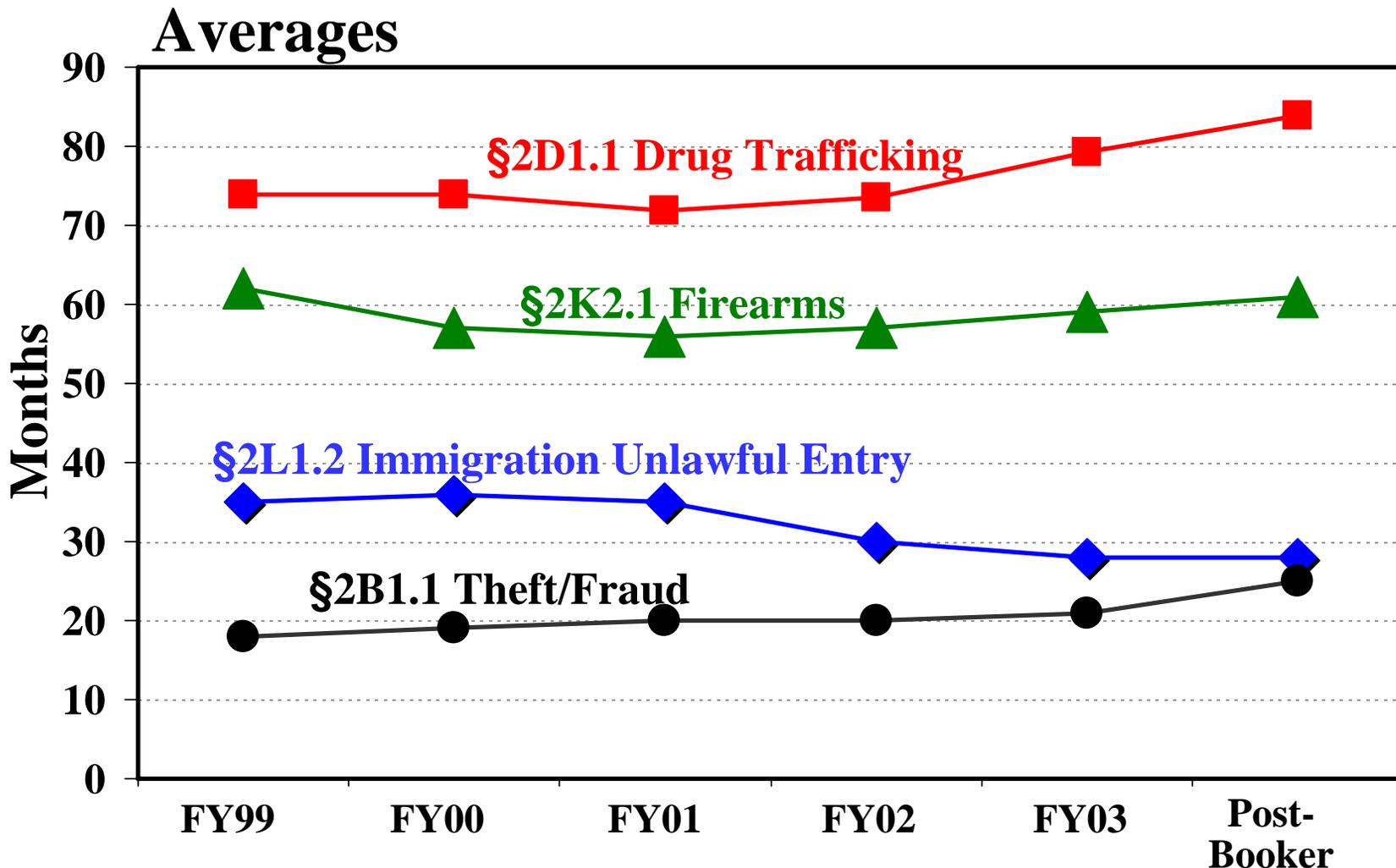
## Medians



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# **Conclusion**

## Conclusion

- **“Real-time” data**
- **Proportions within, above, or below guideline fairly stable**
- **Circuit within-guideline rates need to be viewed in context**
- **Sentence lengths showing no decline subsequent to *Booker***
- **Information courts need to report**
  - **Guideline range (prior to any departure from the range)**
  - **Reasons for sentence outside the range**
    - \* Cite guideline section if departure uses guideline authority
  - **Indicate clearly type of outside-the-range sentence**
    - \* Guideline departure authority
    - \* Pursuant to U.S. v. Booker

