



FREQUENTLY ASKED QUESTIONS ABOUT THE 2010 RECENCY AMENDMENT TO THE FEDERAL SENTENCING GUIDELINES

Q-1: What is the recency amendment?

A: Each year, the U.S. Sentencing Commission (USSC) proposes changes – called “amendments” – to the U.S. Sentencing Guidelines (USSG). On May 1, 2010, the Commission proposed an amendment to the federal sentencing guidelines that would eliminate the addition of so-called “recency” points to a person’s criminal history score.

- To read the recency amendment, see page 22 of this document:
http://www.ussc.gov/2010guid/20100503_Reader_Friendly_Proposed_Amendments.pdf.
- To learn more about the guideline amendment process, read FAMM’s factsheet, Federal Sentencing Guideline Amendments in a Nutshell, available at:
<http://www.famm.org/GetHelp/FrequentlyAskedQuestionsFAQ.aspx>.

Q-2: How does the recency amendment change the federal sentencing guidelines?

A: The recency amendment will eliminate USSG § 4A1.1(e). This guideline instructs courts to add one or two criminal history points to a person’s criminal history score whenever a person committed his current crime (1) while in prison or on escape status or (2) within two years of being released from prison for a prior offense. The recency amendment eliminates these extra points because the Commission found that adding these points double-counts offenders’ criminal histories and penalizes people for the difficulties associated with reentry after leaving prison. The recency amendment does not change or shorten any mandatory minimum sentencing laws.

Q-3: When does the recency amendment go into effect?

A: The amendment becomes effective on November 1, 2010, unless Congress decides before then (by a majority vote in both houses) to reject the amendment.

Q-4: When it goes into effect, will the recency amendment apply to people who have already been sentenced?

A: No. On September 16, 2010, the Commission met and declined to make the recency amendment retroactive. If the recency amendment is not rejected by Congress, it will go into effect on November 1, 2010, and will apply only to people sentenced in federal courts **on or after** that date. The amendment is not retroactive and does not apply to people who have already been sentenced.

Q-5: If the recency amendment goes into effect, how many people could benefit from it in the future?

A: If it goes into effect, the recency amendment could impact thousands of people who are sentenced in federal courts each year. The Commission recently released a report showing how eliminating recency points would impact federal sentencing. The report uses Commission data from fiscal year 2009 to show how many people the amendment might impact each year **after** November 1, 2010. You can read the full report at
http://www.ussc.gov/general/USSC_Recency_Report_20100818w.pdf.



The report found that, based on FY 2009 data, if recency points had not been added,

- 4,189 federal offenders who received recency points would have been moved to the next lower criminal history category;
- This drop in criminal history category would have led to a 16.3% sentence reduction, on average, for these offenders;
- Sentences would have decreased for these offenders by an average of 8 months, from 49 months to 41 months; and
- The largest shifts in criminal history category would have been from Category IV to Category III (36.5% of impacted cases) and from Category V to Category IV (27.5% of impacted cases).

According to the report, the people who were most likely to be impacted by the elimination of recency points were immigration offenders (56% of the 4,189 who would have been impacted in FY 2009), followed by drug traffickers (17%), gun offenders (17%), other offenders (8%), and fraud offenders (3%).

Q-6: Will the changes made by the recency amendment save prison bed space in the future?

A: Yes. Using FY 2009 data, the Commission calculated that implementing the recency amendment could eliminate 1,391 federal prison beds over the next five years.

Q-7: Going forward, will the recency amendment benefit career offenders?

A: No. People who were sentenced under the Career Offender Guideline, USSG § 4B1.1, will not benefit from the recency amendment if it goes into effect on November 1, 2010. This is because the Career Offender Guideline requires everyone sentenced under it to be automatically placed in Criminal History Category VI, based on the number of prior convictions they have.

Q-8: Will the recency amendment benefit people convicted in state courts?

A: No. The amendment will only apply to people convicted of federal crimes in federal courts, not to people convicted in state courts.

Q-9: Can FAMM tell me whether the recency amendment will benefit me or my loved one?

A: No. FAMM cannot give people legal advice on whether the recency amendment will apply to or shorten their sentences. People who have not been sentenced yet should speak with their attorneys to learn whether they might benefit from the Commission's recency amendment.

LEGAL DISCLAIMER:

FAMM cannot provide people with legal advice, representation, referrals, or guidance. Nothing on this form is intended to be legal advice or should be relied on as legal advice. If you or your loved one feel that you need legal advice, consult with an attorney.