



**FREQUENTLY ASKED QUESTIONS ABOUT
THE FAIR SENTENCING CLARIFICATION ACT OF 2010
(THE FEDERAL CRACK RETROACTIVITY BILL)**

Q-1: Is there an effort in Congress to make the Fair Sentencing Act of 2010 (FSA) retroactive?

A: Yes. On December 17, 2010, Representative Bobby Scott (D-Va.) introduced a bill in the U.S. House of Representatives to make the FSA’s changes to federal crack cocaine sentencing laws apply to people who have already been sentenced for their offenses (in other words, to make the FSA’s reforms “retroactive”). The retroactivity bill is called the Fair Sentencing Clarification Act of 2010. **The retroactivity bill is not yet law.**

Q-2: Why is the new retroactivity bill necessary?

A: On August 3, 2010, President Barack Obama signed S. 1789, the Fair Sentencing Act (FSA) of 2010, into law (for more details, see FAMM’s Frequently Asked Questions about the Fair Sentencing Act of 2010). That law changed the amounts of crack cocaine that trigger five and 10-year mandatory minimum sentences, as follows:

BILL	5 Year Mandatory Minimum	10 Year Mandatory Minimum	Simple possession of 5 grams of crack
Old law	5 g crack 500 g powder cocaine (100:1 ratio)	50 g crack 5,000 g powder cocaine (100:1 ratio)	5-year mandatory minimum sentence
Fair Sentencing Act of 2010	28 g crack 500 g powder cocaine (18:1 ratio)	280 g crack 5,000 g powder cocaine (18:1) ratio	No mandatory minimum

However, the FSA’s changes do not apply to people who were sentenced for a federal crack offense *before* August 3, 2010 (in other words, the FSA is not retroactive). Moreover, many people who committed their offense before August 3 who are being sentenced after the FSA was enacted are still being sentenced under the old law. The only way the FSA can indisputably be applied retroactively is if Congress passes a new law that makes the FSA retroactive. If passed, the Fair Sentencing Clarification Act would do this and would apply to all pending sentencings and could shorten sentences for thousands of crack offenders still serving prison sentences under the old crack law.

Q-3: Is the new retroactivity bill a law yet?

A: No. Like all criminal justice bills introduced in the House, the retroactivity bill must go through many steps before it can become law. First, it will be referred to the House Judiciary Committee for investigation and review. Second, it must be passed by the Judiciary Committee, then by the whole House. Third, the bill must be sent to the Senate, where it must be reviewed and passed by the Senate Judiciary Committee, then passed by the entire Senate. Finally, if the bill is passed by both the House and the Senate, it then goes to the President. The bill only



becomes a law if it signed by the President or, if Congress is in session, the President fails to veto (reject) the bill within 10 days of receiving it.

Q-4: How long will it take for the retroactivity bill to become a law?

A: It could take a long time or never. The current session of Congress will end no later than December 31, which means that there is very little time left in the year for Congress to pass the retroactivity bill.

Q-5: How likely is it that the retroactivity bill will be passed this year?

A: Not likely. The retroactivity bill was introduced very late in the year and will surely need more time to develop the support it needs to pass. The bill will have to be reintroduced in the new Congress, which convenes in January 2011, to be given adequate consideration by Congress and to have a chance of passing.

Q-6: Who would the new retroactivity bill help?

A: The bill, if passed, would potentially benefit thousands of crack cocaine offenders convicted in federal courts. The bill would *not* help people convicted in state courts, and it would *not* help anyone whose federal offense did not involve crack cocaine. So, for example, a person whose federal offense involved only marijuana or methamphetamine would not be eligible for a sentence reduction if the crack retroactivity bill passes.

Q-7: Does the retroactivity bill explain how people would go about obtaining sentence reductions if the bill becomes a law?

A: No. The bill says only that a motion for a crack sentence reduction must be made by the sentencing court, the Bureau of Prisons, or the defendant in order to obtain a sentence reduction. The retroactivity bill does not provide specific details on how people would obtain sentence reductions if the bill becomes law.

Q-8: Does the retroactivity bill require the U.S. Sentencing Commission to make recent changes to the crack sentencing guidelines retroactive?

A: No. The bill does not require or instruct the Commission to make its temporary amendments to the crack sentencing guidelines retroactive. The bill is silent on that issue, and FAMM does not know whether (or when) the Commission might decide to make the temporary crack guideline amendments retroactive.

Q-9: How can people help FAMM get the retroactivity bill passed by Congress?

A: You can start right now, by calling or emailing your representatives in the House and asking them to sign on to the Fair Sentencing Clarification Act as a co-sponsor. You can find out who your congressmen are and send an email by visiting <http://capwiz.com/famm/home/>.

Q-10: If the retroactivity bill is not likely to pass in 2010, why should FAMM members get involved in supporting it?

A: Showing members of Congress our vigorous support for retroactivity now will raise awareness about the bill, put it on the members' radar for next year, and make it easier to reintroduce and build support for the bill when Congress returns in 2011. Asking Congress



members to support the Fair Sentencing Clarification Act of 2010 now will educate them about the need for retroactivity, the fairness of reducing sentences, and the prison costs it would save American taxpayers. Visit www.famm.org today to contact your members of Congress and tell them to support making the FSA retroactive!

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