



**FREQUENTLY ASKED QUESTIONS:
THE FAIR SENTENCING ACT OF 2010, S. 1789
FEDERAL CRACK REFORM BILL**

Q-1: Has Congress passed crack cocaine reform legislation?

A: Yes. On March 17, 2010, the U.S. Senate unanimously passed S. 1789, the Fair Sentencing Act of 2010, which reduces to 18-to-1 the current 100-to-1 ratio between the crack and powder cocaine quantities that trigger the 5- and 10-year mandatory minimums. The U.S. House of Representatives passed S. 1789 by a voice vote on July 28, 2010.

Q-2: Is the bill law?

A: Yes. The President Obama signed the bill into law on August 3.

Q-3: Does S. 1789 change any state laws?

A: No. S. 1789 only changes federal crack sentencing laws.

Q-4: Does the new crack law benefit people who are already in prison?

A: No. None of the crack mandatory minimum reforms in the new federal law apply to people who are already in prison for crack offenses. In other words, **the reforms are not “retroactive.”**

Q-5: How does the new crack law change the 100-to-1 ratio between crack and powder cocaine?

A: Under old law, conviction for possession with intent to distribute five grams of crack cocaine and 500 grams of powder cocaine trigger the same 5-year sentence. Fifty grams of crack cocaine and five kilograms of powder cocaine trigger the same 10-year sentence. This created what is commonly referred to as the 100-to-one ratio between crack and powder cocaine.

The new crack law reduces the 100-to-1 ratio to a ratio of 18-to-1. Under the new law (S. 1789), 28 grams of crack triggers a 5-year mandatory minimum, and 280 grams of crack triggers a 10-year mandatory minimum. S. 1789 did not change the powder cocaine triggering weights. The bill also eliminated the current 5-year mandatory minimum for simple possession (without intent to distribute) of crack cocaine. Here is a chart describing the old law and the new law (S. 1789):

	5 Year Mandatory Minimum	10 Year Mandatory Minimum	Simple possession of 5 grams of crack
Old crack 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
New crack law (S. 1789)	28 g crack 500 g powder cocaine (18:1 ratio)	280 g crack 5,000 g powder cocaine (18:1) ratio	No mandatory minimum



Q-6: Is it still possible for the House to pass a bill that equalizes crack and powder at a one-to-one ratio?

A: It is still possible, but it is highly unlikely. While the 18-to-1 ratio in S. 1789 does not eliminate the sentencing disparity, the 18-to-1 ratio was a bipartisan compromise. Bipartisan support was essential to passing crack sentencing reform. There is little bipartisan support for eliminating the sentencing disparity. The new law is not perfect, but it is the best that this current Congress was able to pass.

Q-7: How can we make the changes to the crack mandatory minimums retroactive?

A: By getting Congress to pass a new law that makes the changes to mandatory minimum crack sentences retroactive. This will require getting a member of Congress to introduce a new bill, and getting that bill passed by the House of Representatives and the Senate and signed into law by the president. Making a sentencing reform retroactive is controversial and extremely rare, but not impossible. Now that S. 1789 has become law, FAMM is urging Congress to make the changes retroactive. To learn more about retroactivity, read FAMM's FAQ, "Making Federal Crack Reforms Retroactive," at <http://www.famm.org/GetHelp/FrequentlyAskedQuestionsFAQ.aspx>.

Q-8: Going forward, how many people will the new crack law benefit?

A: The U.S. Sentencing Commission estimates that each year, nearly 3,000 people charged with federal crack offenses will receive shorter sentences because of the reforms in S. 1789. Going forward, the new crack law should shorten crack sentences by an average of 27 months, saving the government 1,500 prison beds and \$42 million over the next five years.

Q-9: Who will benefit from the new law?

A:

- People who are charged with possession with intent to distribute crack cocaine, and whose offense took place AFTER the bill was signed into law will be subject to the 5-year mandatory minimum only if their drug quantity is equal to or greater than 28 grams.
- People who are charged with possession with intent to distribute crack cocaine and whose offense took place AFTER the bill was signed into law will be subject to the 10-year mandatory minimum only if their drug quantity is equal to or greater than 280 grams.
- People who are charged with first-time simple possession of crack cocaine and whose offense took place AFTER the bill was signed into law will not be subject to a mandatory minimum sentence.

Q-10: Who will NOT benefit from the new crack law?

A: S. 1789 will not help

- People who are already sentenced and currently in federal prison.
- People convicted in state courts for state crimes. The new crack law only applies to people convicted in federal courts.
- People whose drug offenses do not involve crack cocaine. The new crack law only changes crack mandatory minimum sentences, not mandatory minimums for any other type of drug (e.g., methamphetamine, marijuana, heroin, etc.).



Q-11: If a person is awaiting sentencing (or resentencing after an appeal), should that person postpone sentencing (or resentencing) until the new law is made retroactive or the Commission amends the guidelines and makes those guideline changes retroactive?

A: People who are awaiting trial, sentencing, or resentencing after an appeal for a federal crack offense committed before August 3, 2010 should **discuss this question with their lawyers**. Whether, how, and/or when such a person can receive the benefit of the new crack law or any guideline amendments made by the Commission depends on many factors. For example, for people who may be subject to a mandatory minimum but have not yet been charged or convicted, prosecutors may have some discretion to decide or bargain with defendants over the facts or charges they will bring. There is also litigation over whether people who have already been convicted of a mandatory minimum offense but have not yet been sentenced (or resentenced) can benefit from the new law. FAMM cannot provide its members with legal advice or opinions on this issue. Again, people with questions about this issue should speak with their lawyers.

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