

## WHAT YOU NEED TO KNOW ABOUT THE U.S. SENTENCING COMMISSION'S CRACK GUIDELINE AMENDMENT

We encourage all of our members to remember that **the amendment is not retroactive yet, and may not become retroactive**. Here are answers to some frequently asked questions:

### **Q: When will the Commission make the amendment retroactive?**

A: The Commission can make the amendment retroactive any time after November 1, 2007. The Commission has not yet announced when it will decide whether to make the amendment retroactive.

### **Q: Will the crack amendment apply to me (or my loved one)?**

A: If the amendment is made retroactive, only the sentencing court can decide whether the amendment applies to the prisoner and whether the prisoner gets a sentence reduction. Those sentenced under the career offender guideline, U.S.S.G. § 4B1.1, or the armed career offender guideline, U.S.S.G. § 4B1.4, and those serving only the 5-year or 10-year mandatory minimum (i.e., they did not benefit from the safety valve or a downward departure for substantial assistance) cannot benefit from the amendment. **No one is guaranteed a sentence reduction, even if the amendment is made retroactive—it is entirely up to the sentencing court to grant or deny a reduction.**

### **Q: If the amendment is made retroactive, will it reduce my (or my loved one's) sentence automatically?**

A: No. There are three ways of obtaining a sentence reduction, and none of them is automatic:

- (1) You can make a motion to the court. This motion can be formal (i.e., a motion with legal arguments in its support) or informal (i.e., a letter to the court asking for a reduction), but cannot be brought until *after* the amendment is made retroactive;
- (2) The director of the BOP can make a motion to the court to have the amendment applied retroactively to your case; or
- (3) The court can act on its own, without any motion from you or the director of the BOP, and reduce your sentence. Whether courts decide to act on their own may vary from district to district.

FAMM does not know whether courts will decide to act on their own, whether the director of the BOP will decide to bring motions for reductions, or whether motions from prisoners will be required. If the amendment is made retroactive, FAMM will make resources available on our website, [www.famm.org](http://www.famm.org), to assist prisoners and their loved ones in the process of seeking a sentence reduction.

### **Q: Can someone at FAMM calculate what my (or my loved one's) new sentence will be if the amendment is made retroactive?**

A: No. We do not know all the details of each prisoner's case or all the factors used to calculate a sentence. We cannot recalculate sentences—this is best done by the prisoner's attorney or by the court that sentenced him or her.

**Q: Does the crack amendment do anything to reduce sentences for meth offenders?**

A: No, unless the crime involved meth *and* crack, and the sentence was calculated for meth *and* crack. Again, FAMM cannot tell prisoners whether they will be eligible for a sentence reduction, or recalculate their sentences—this is best done by the prisoner’s attorney or by the court that sentenced him or her.

**Q: Will FAMM announce when the Commission decides to make the amendment retroactive?**

A: Yes. As soon as the Commission announces its decision, FAMM will post the decision on its website ([www.famm.org](http://www.famm.org)), send out e-Alerts to its members, and notify the press.

**Q: Will FAMM have resources available to help prisoners file a motion for a sentence reduction?**

A: Yes. If the amendment is made retroactive, FAMM will have guidance and resources available to help prisoners with preparing and filing a motion for a sentence reduction.