



FEDERAL SENTENCING GUIDELINE AMENDMENTS IN A NUTSHELL

Who writes and amends the U.S. Sentencing Guidelines?

The U.S. Sentencing Commission (www.ussc.gov) is responsible for writing and updating the U.S. Sentencing Guidelines. These guidelines apply only in federal courts. States may have their own unique sentencing guidelines or no guidelines at all for state crimes.

Are the sentencing guidelines the same thing as mandatory minimum laws?

No. The federal sentencing guidelines are different than federal mandatory minimum laws. The guidelines are advisory; the mandatory minimums are not. The Commission does not write mandatory minimum laws. Mandatory minimum laws are written by Congress, and only Congress can change them. If a person is convicted of a crime carrying a mandatory minimum sentence, the courts must, with few exceptions, give the defendant the mandatory minimum. Not all crimes, however, carry mandatory minimum sentences. If a person is convicted of a crime that does not have a mandatory minimum, the judge consults the guidelines and may choose to sentence the defendant to a guideline sentence, or to a sentence lower or higher than the guideline sentence. This means that courts must consider the guidelines but do not have to follow them if, in the judge's opinion, they produce a sentence that doesn't achieve the purposes of punishment (e.g., rehabilitating the offender, protecting the public, deterring crime, and providing just punishment).

How often does the Commission change the sentencing guidelines?

Each year the Commission suggests changes – called “amendments” – to the guidelines. Amendments to the guidelines may reduce guideline sentences, give courts instructions on applying the guidelines, clarify confusing guidelines, or fix technical errors in the guidelines (e.g., grammar and punctuation).

Can an amendment to the guidelines eliminate mandatory minimum sentences?

No. Guideline amendments cannot change mandatory minimum sentences – only Congress can do that by passing new laws.

How does a guideline amendment get passed?

Guideline amendments go through the following steps:

Before May 1: The Commission announces proposed amendments and invites the public to comment on the proposals.

May 1: The Commission announces the final version of the amendments to the public and to Congress.

May 2 – Oct. 31: Congress has until October 31 to reject a proposed guideline amendment (rejecting an amendment requires a majority vote in both the Senate and the House of Representatives).

Nov. 1: If Congress doesn't reject an amendment, it goes into effect. The now amended guideline goes into effect on Nov. 1 and applies to everyone sentenced from that day forward.



After Nov. 1: The Commission decides whether to make any new amendments that lower sentences apply to people who were sentenced BEFORE the amendment went into effect on Nov. 1. This is called making an amendment “retroactive.”

Does FAMM get involved in the Commission’s process of passing amendments?

Yes. FAMM communicates often with the Commission, including pointing out problems in the guidelines and suggesting amendments. FAMM weighs in each year during the summer to tell the Commission what FAMM thinks its amendment priorities should be. Starting in the fall, the Commission begins proposing guideline amendments and asking for public comment. FAMM submits its own comments and feedback on those proposed amendments. FAMM also educates its members and the public about sentencing guideline amendments. When a guideline amendment reduces sentences, FAMM urges the Commission to make that amendment retroactive. FAMM played a central role in getting the Commission to make its 2007 amendments to crack cocaine guidelines retroactive. This resulted in thousands of prisoners being released from prison earlier than they otherwise would have been, and it saved the federal Bureau of Prisons thousands of dollars in incarceration costs.

How often do guideline amendments reduce sentences?

Very, very few guideline amendments reduce sentences.

Do guideline amendments that reduce sentences automatically apply to people in prison?

No. If a guideline amendment reduces sentences, it does not automatically apply to people who were sentenced *before* November 1 of the year the amendment was passed. The Commission must vote to apply sentence-reducing amendment to people who have already been sentenced or are in prison. This is called making an amendment retroactive. Very few guideline amendments that reduce sentences are made retroactive.

How do people get the benefit of a guideline amendment that is made retroactive?

If a guideline amendment reduces sentences *and* the Commission votes to make that amendment retroactive, the guidelines have a policy statement (U.S.S.G. § 1B1.10) that discusses the scope, limitations, and authority for granting sentence reductions. That policy statement also includes a list of all the guideline amendments that have been made retroactive. A prisoner who wants a sentence reduction based on a retroactive guideline must file a motion under 18 U.S.C. § 3582(c)(2). The motion is filed in the federal court where the defendant was sentenced. The court may or may not appoint a lawyer to help the defendant with the motion. The prosecution is given a chance to oppose the defendant’s request for a sentence reduction. Then, the court makes the final decision to grant or deny a sentence reduction. The court does not have to give the defendant a sentence reduction – rather, the court has to consider the guidelines’ purposes of sentencing and any relevant policy statements about the amendment and sentence reductions. For example, the policy statement at § 1B1.10 bans the courts from reducing a sentence unless the Commission has made the amendment that allows for that reduction retroactive. If the court denies the defendant’s motion for a sentence reduction, the defendant may appeal that decision. If the court grants the defendant’s motion, the defendant’s sentence will be adjusted accordingly.



Does FAMM provide people with legal help or advice when they file a motion to have a retroactive guideline amendment applied to their cases?

No. FAMM cannot provide people with any legal advice, research, representation, or referrals to other attorneys. If a guideline amendment reduces sentences and is made retroactive, people who may benefit should contact their former attorneys or the Federal Public Defender's office in the district where they were convicted.

If a guideline amendment is made retroactive, will FAMM help people compute a new guideline sentence in their cases?

No. If a guideline amendment reduces sentences and is made retroactive, people who may benefit should contact their former attorneys or the Federal Public Defender's office in the district where they were convicted. FAMM cannot calculate or recalculate sentences for people.

Where can I learn more?

Visit the U.S. Sentencing Commission online at www.usc.gov, or visit FAMM online at www.famm.org. You can also find FAMM on Twitter and Facebook!