

What you need to know about the U.S. Sentencing Commission's proposed crack guideline amendment

RUMORS ARE FLYING about the U.S. Sentencing Commission's proposed amendment to the federal sentencing guidelines for crack cocaine, and who it may help. (See *FAMMGram* Summer 2007, page 1.) Here are some things you need to know about the U.S. Sentencing Commission's proposed crack guideline amendment and its possible retroactive application.

Will the Commission make the guideline retroactive?

We don't know but we are urging them to do so.

What is a retroactive guideline?

The majority of guideline amendments affect only people sentenced *after* the guideline goes into effect. A retroactive guideline is one that can be used to lower sentences for prisoners who were sentenced *before* the guideline went into effect. When the Sentencing Commission makes a guideline retroactive, prisoners sentenced before the guideline went into effect can ask the court for a sentence reduction based on the new, lower guideline range.

I am serving a mandatory minimum sentence for crack cocaine. Will I benefit if the guideline is made retroactive?

No. Retroactivity only affects sentences imposed below, above or between the mandatory minimum sentences for crack cocaine.

Example 1: A person convicted of a crack offense involving five grams of crack received a mandatory minimum sentence of five years. The guideline amendment, even if made retroactive, will not reduce this sentence.

Example 2: A person convicted of a crack offense involving 60 grams of crack received a guideline sentence of 151 months. This person's sentence could be reduced by the guideline amendment if it is made retroactive. However, unless the person received relief, such as the safety valve, in no event would this person's sentence be reduced below 120 months, the 10-year mandatory minimum required for crack offense involving 50 grams or more of crack.

When can I try to have the guideline amendment applied to my case?

The amendment does not go into effect until Novem-

ber 1 and is not yet retroactive. You must wait until the guideline goes into effect and **if** it is made retroactive, you may ask your sentencing judge to apply it to your sentence.

Let's assume the Commission makes the sentencing guideline retroactive. Who decides whether people who are already serving a crack sentence will have their sentences shortened?

The sentencing judge, or if that judge is no longer on the bench, another assigned from the same district court.

Is the reduction automatic?

No. The federal statute that makes it possible to reduce sentences when a guideline is made retroactive, 18 U.S.C. § 3582(c)(2), explains that the request for a lower sentence is made in a motion. A motion is the legal name for a request to the court. The motion contains the request and arguments supporting the request. These arguments usually include legal and factual discussions.

Who can ask the court for a sentence reduction?

The statute says that the § 3582(c)(2) motion can be made by the prisoner or by the Director of the Bureau of Prisons. The statute also says that the court, on its own motion, can reduce the sentence.

Does the court have to reduce my sentence?

No. The statute explains that when the motion is made, "the court may reduce the term of imprisonment, after considering the factors set forth in [18 U.S.C. § 3553(a)], to the extent that they are applicable...." Even if you file a motion, it is up to the judge to decide whether to grant the sentence reduction.

What should I do if I hear that the Sentencing Commission made the guideline retroactive?

Proceed with caution until you receive this information from a trusted source like FAMM. You should contact the lawyer who represented you to find out if the guideline will affect your sentence. FAMM will work with the Sentencing Commission, the Bureau of Prisons and defense attorneys to provide swift and accurate information and resources, including sample motions and guidance that will be available on www.famm.org and from FAMM's office in Washington, D.C.