

FEDERAL PUBLIC DEFENDER

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July 7, 2011

CRACK RETROACTIVITY

On June 30, 2011, the United States Sentencing Commission voted to give retroactive effect to the proposed amendment to federal sentencing guidelines implementing the Fair Sentencing Act of 2010. A “reader-friendly” version of the proposed amendment can be found on the Sentencing Commission website.¹

This retroactive application of the crack guideline will not take effect until November 1, 2011. No one will be released from prison as a result of crack retroactivity until November 1, 2011, at the earliest. Congress has the power to overturn the Commission’s decision, but it is unlikely that Congress will interfere with the Commission’s decision.

If you have been previously represented by our office and are eligible for a sentence reduction, we will contact you to inform you of your case status as soon as possible. Between now and November 1, 2011, our office will be reviewing all of our old files to determine who may be eligible for a reduction in sentence as a result of the retroactive application of the crack guideline. We will be prioritizing cases based upon potential release dates to ensure that those eligible for release on November 1st or shortly thereafter are the first to receive assistance. We ask for your patience.

If you were not previously represented by our office but would now like to seek our assistance in obtaining a possible sentence reduction, we will be happy to assist you. You may send us a written request for assistance at the address provided above. Some judges in the Eastern District of Virginia may refer cases to our offices, and others may not. We will advise you as soon as we determine which judge imposed the sentence in your case and after we have received further guidance from the Court.

We ask all potential candidates for a reduction to keep the following in mind:

- Not every federal crack cocaine offender in federal prison will be eligible for a lower sentence as a result of this decision. The Commission estimates that approximately 12,000 offenders may be eligible to seek a sentence reduction, but we will have to determine whether your case falls into the eligible category.
- The change in guidelines will have no effect on any minimum mandatory sentencing statute that may affect your case. Many crack offenders will still be required under federal law to serve mandatory five- or 10-year sentences because of the amount of crack cocaine involved in their offenses.
- A federal sentencing judge will make the final determination of whether an offender is eligible for a lower sentence and by how much that sentence should be lowered in accordance with instruction given by the Commission.

We look forward to assisting you with this important matter.

¹ http://www.ussc.gov/Legal/Amendments/Reader-Friendly/20110630_RF_Amendment_Retro.pdf.