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Frequently Asked Questions: Retroactive Application of the 2014 Drug Guidelines Amendment

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Background Information

On April 30, 2014, the United States Sentencing Commission submitted to Congress an amendment to the federal sentencing guidelines that reduces the guidelines applicable to drug trafficking offenses. Specifically, **this amendment reduces by two the offense levels assigned in the Drug Quantity Table**, resulting in lower guideline ranges for most drug trafficking offenses. This amendment is sometimes called "drugs minus two" or the "2014 drug guidelines amendment. "

The proposed amendment will go into effect on November 1, 2014, unless Congress acts to modify or reject it. On July 18, 2014, the Commission voted to give retroactive effect to the proposed amendment. If Congress lets the amendment stand, **beginning November 1, 2014, eligible incarcerated offenders will be able to ask courts to reduce their sentences. Offenders whose requests are granted by the courts will be released from prison no earlier than November 1, 2015.**

The following information is provided in order to answer many basic questions that individuals may have about retroactivity, but is not legal advice.

Questions and Answers

What does it mean to make an amendment retroactive?

When the Commission amends the sentencing guidelines in a way that reduces sentencing ranges, it must consider whether to make that change applicable to people who have already been sentenced and are currently imprisoned. In this instance, the Commission has reduced the sentencing range for most, but not all, offenders sentenced under guideline §2D1.1 for drug trafficking. The Commission has determined that some offenders who have already been sentenced – and are currently serving prison sentences – are eligible to apply for retroactive application of the new guideline range. If an offender is eligible, a district judge will decide whether to reduce the offender's current sentence.

Who is eligible for retroactive application?

The amended guideline applies to most drug offenders convicted of drug trafficking offenses and sentenced under §2D1.1. There are no eligibility limitations based on criminal history, violence, weapons, or type of drug trafficked, but these are factors a court may consider in determining whether to grant a sentence reduction. Offenders who were sentenced as Career Offenders, Armed Career Criminals, or under other guidelines are unlikely to be eligible for retroactive application of the 2014 drug amendment. Those offenders who are already scheduled to be released before November 1, 2015 will not be able to receive a reduction in their sentences.

How many offenders are eligible for the reduction?

The Commission estimates that approximately 46,000 offenders sentenced between October 1, 1991 and October 31, 2014, are eligible to seek a reduction in their current sentence pursuant to retroactivity of the 2014 drug guideline amendment.

Where were the offenders who are eligible to seek a reduced sentence originally sentenced?

There will be eligible offenders who were sentenced in every district in the country, but there is a higher concentration in certain districts, including Western Texas, Southern Texas, Puerto Rico, Eastern Texas, Middle Florida, and Northern Texas.

Will all offenders who have been convicted of a federal drug offense automatically receive a reduction?

No one will automatically receive a sentence reduction. In order to be eligible for a sentence reduction, an offender must be serving a term of imprisonment, the guideline range applicable to the offender must have been lowered as a result of the 2014 drug amendment, and the offender must not already be scheduled to be released prior to November 1, 2015. If an offender's original sentence was below the new, reduced guideline, the offender likely will not be not entitled to a further reduction unless the original sentence was based on assistance to the government. If an offender is eligible for a reduction, a district court judge will review his or her case and decide whether a sentence reduction is appropriate.

What does the judge consider when deciding whether to grant a sentencing reduction?

The judge will consider all of the factors that a judge considers at an initial sentencing in determining whether a reduction in the defendant's term of imprisonment is warranted and the extent of any reduction. This means factors like the nature and circumstances of the offense, the characteristics of the offender, public safety, deterrence, and the sentencing guidelines will all be considered. In a judge's review of a motion for a reduction, there will likely be explicit attention to public safety, and this analysis will likely also include review of the offender's record while in prison.

Offenders requesting a sentencing reduction do not have a right to a hearing. Many requests will be resolved based on the written materials that are filed.

How do I make a motion for a reduction?

If the 2014 drug amendment and its retroactive application go into effect, judges may consider these motions beginning November 1, 2014.

The Commission does not comment on neither individual cases nor can it provide legal advice. For legal advice on how to file a motion for a sentence reduction, you may wish to contact an attorney.

What is the projected average reduction sentence for eligible offenders?

The Commission projects judges would be able to reduce sentences for eligible offenders by an average of 18. 8%. The average sentence for eligible offenders could drop from 133 months (11 years 1 months) to108 months (9 years).

Are there any limitations on the extent of the sentencing reduction a court can grant if an offender is eligible for a reduction?

Yes. The court is not permitted to reduce the offender's term of imprisonment to a term that is less than the bottom of the guideline range that would have applied if the 2014 drug amendment were in effect when the offender was sentenced. The only exception is if the offender received a downward departure pursuant to a government motion based on substantial assistance provided by the offender to the government. Courts are not otherwise entitled to sentence below the reduced guideline range.

Does retroactive application of the 2014 drug amendment reduce the mandatory minimum penalties associated with drug offenses?

No. Only Congress can change mandatory minimum penalties. The drug amendment adheres to all mandatory minimum penalties.

Is public safety a consideration in the determination as to whether a reduction in the offender's term of imprisonment is warranted and the extent of such a reduction?

Yes. The sentencing guidelines require the court to consider the nature and seriousness of the danger to any person or the community that may be posed by a reduction in the offender's term of imprisonment. Courts can consider an offender's prison record.

What happens to the people who could be released between November 1, 2014 and November 1, 2015?

The Commission has determined that no offenders will be released based on retroactive application of the 2014 drug amendment prior to November 1, 2015. They made this decision in order to allow for careful consideration by courts, transitional services for all released prisoners including transition through a halfway house or home confinement where appropriate, and preparation by probation officers to effectively supervise released offenders – all of which will promote public safety and successful reentry. This means that some offenders who would otherwise be eligible (almost 5,000) but who are already scheduled to be released before November 1, 2015, will not be able to seek a reduction and will instead be released after serving their full sentences.

Is retroactivity of the 2014 drug amendment different from clemency?

Yes. Granting clemency is a power of the President and is entirely at the discretion of the executive branch. The Sentencing Commission, an agency of the judicial branch of the federal government, does not have a role in the clemency process.

End Mass Incarceration Now

NYTIMES Editorial Board,
May 24, 2014

Several recent reports provide compelling proof that the United States "has gone past the point where the numbers of people in prison can be justified by social benefits," and that mass incarceration itself is "a source of injustice."

The nation's prison population has quadrupled to 2.2 million, making it the world's biggest. That is five to 10 times the incarceration rate in other democracies. More than half of state prisoners are serving time for nonviolent crimes.

Many politicians continue to fear appearing to be "soft on crime," even when there is no evidence that imprisoning more people has reduced crime by more than a small amount. Much of the world watches in disbelief. A report by Human Rights Watch notes that while prison should generally be a last resort, in the United States "it has been treated as the medicine that cures all ills," and that "in its embrace of incarceration, the country seems to have forgotten just how severe a punishment it is."

From 1980 to 2000, the number of children with fathers in prison rose from 350,000 to 2.1 million. Since race and poverty overlap so significantly, the weight of our criminal justice experiment continues to fall overwhelmingly on communities of color, and particularly on young black men.

All of this has come at an astounding economic cost,— $80 billion a year in direct corrections expenses alone, and more than a quarter-trillion dollars when factoring in police, judicial and legal services. Many of the solutions to this crisis are clear: reduce sentence lengths substantially. Provide more opportunities for rehabilitation inside prison. Use alternatives to imprisonment for nonviolent offenders, drug addicts and the mentally ill. Release elderly or ill prisoners, who are the least likely to re-offend.

The insanity of the situation is plain and uncontestable. The American experiment in mass incarceration has been a moral, legal, social, and economic disaster. It cannot end soon enough.

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