

## **New Sentencing Guidelines for Crack Cocaine Possession May Apply Retroactively, July 2011**

Gary Fields, in his Wall Street Journal, July 1, 2011 article, notes that 12,040 inmates may soon be eligible to petition the federal courts, on a case-by-case basis, for reduction in their sentences. The average sentence could be reduced from 13 1/2 years down to 10 1/2 years, if the defendant can show that he is not dangerous. How this came about is interesting. In 2010, Congress passed The Fair Sentencing Act which created near parity in sentencing for crack cocaine possession and powder cocaine possession. On Thursday, June 30, 2011, the congressional panel that sets sentencing guidelines used by federal judges, the U.S. Sentencing Commission, voted 6-0 to apply the new sentencing guidelines retroactively. Inmates sentenced as far back as 1991, could be eligible to apply to federal courts for reduced sentencing.

Under the old law those convicted of possessing at least 5 grams of crack cocaine received a five-year sentence and those possessing 50 grams received a minimum of 10 years in prison. But, under the old sentencing guideline it took 500 grams and 5000 grams, respectively, of powder cocaine to bring the same sentences. Charges of racism and basic fairness were raised, because many men and women convicted of crack cocaine possession were black while many of those convicted of powder cocaine possession were white or Hispanic, as noted in the Wall Street Journal article. In the new sentencing guideline a five-year sentence would be given for the possession of 28 grams of crack cocaine and the 10 year sentence for 280 grams. The powder cocaine penalties remained the same.

Unless Congress moves to stop the US Sentencing Commission's ruling, the new sentencing law will, after November 1, 2011, apply retroactively as far back as 1991, for the 12,040 inmates. Some in congress may fight this and the entire matter may receive more attention. If the new sentencing guideline is applied retroactively, attorneys representing these inmates may find that forensic psychiatric evaluation and testimony about dangerousness and rehabilitation is necessary to address concerns raised, on a case-by-case basis, by federal judges who review requests to reduce crack cocaine possession sentences. Because correctional institutional charges are commonplace for rule violations while in prison, these inmates will find forensic psychiatric evaluations useful in the appropriate analysis of past behavioral problems before and after the sentencing they now appeal. Male and female inmates serving time for crack cocaine possession may also find themselves having to address mental illness as it relates to the risk of future violence and the issue of whether the federal judge will deem them safe enough to be granted a sentence reduction and early freedom. Additional rules may be forthcoming to further clarify applicable policies in these sentence modification hearings. Should federal courts rapidly process these cases, community mental health clinics and other social agencies will need to quickly plan for the additional services these men and women will require upon release.

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