



USSC Criminal History Retroactivity FAQ

Q. Is this decision a done deal?

A. Almost certainly. The amendments to the guidelines, including those amending criminal history go into effect on November 1, 2023, unless Congress acts. Congress has until November 1 to pass legislation blocking or modifying the implementation of these amendments. Both Houses of Congress would have to pass such a bill and it would not become law unless the President signs it. That is unlikely to happen and we expect the changes to go into effect on November 1.

Q. When does retroactivity go into effect? I heard there is a delay on when judges can rule on retroactivity. What is that about and why is there a delay?

A. The Commission decided that retroactivity orders cannot be issued until February 1, 2024. The agency explained that it was delaying implementation to give the agencies responsible for retroactivity -- that is the U.S. Courts, Department of Justice, Probation, and Federal Public Defenders, -- time to prepare. It also wanted to ensure that individuals who are to be released have the chance to participate in reentry and transitional programming and services.

Q. How do I know if this decision affects my loved one?

A. We don't yet know. We expect, but we do not yet know, that as in the past the courts, the Sentencing Commission, probation offices, prosecutors, and defense counsel will get together to identify individuals who may be eligible for retroactive relief. We will update this FAQ as we learn more.

Q. Do I/does my LO have to apply for this to get relief?

A. Generally a motion is filed by or on behalf of an individual seeking a retroactive sentence reduction. In the past, in many retroactivity cases federal public defenders filed those motions. In some districts they got together with prosecutors and probation officers to determine if some motions would be uncontested. But, in some districts there is no federal defender or they are not permitted to file these motions. It is too early to tell how eligible individuals will be identified. We will update this FAQ as we learn more.

Q. May I/can my loved one apply now?

A. It is best to wait. Judges cannot rule on retroactivity motions until November 1. Remember, even if the judge grants a retroactive reduction, they cannot issue the order until February 1, 2024.



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Q. Are these changes for every incarcerated person, whether in federal or state system?

A. No. It is only available to people convicted of federal crimes who meet the eligibility criteria.

Q. Can retroactive changes apply to reduce mandatory minimum sentences?

A. Generally no. Criminal history affects an individual's guideline sentence and cannot affect one's mandatory minimum sentence, unless the individual received a substantial assistance departure below the mandatory minimum when they were sentenced.

Q. I read where retroactivity was not for firearms charges. I was just wondering if that was the only one.

A. Our [explainer](#) describes limitations on retroactivity. For example, people serving a sentence who had zero criminal history points at sentencing will not benefit from zero-point retroactivity if they possessed, received, or otherwise handled a firearm or other dangerous weapon. People who used violence or credible threats of violence, or those convicted of sex offenses are ineligible for retroactivity. See the entire list of disqualifications on page 2 of the [explainer](#).

Q. Is it just for non-violent crime offenders even if they are first time offenders?

A. People who used violence or credible threats of violence in connection with the offense are not eligible for retroactivity of the zero-point provision. Retroactivity of status points does not preclude people convicted of a crime of violence from being eligible.

Q. Can the judge decide to keep the same sentence or do they have to resentence within the new guideline?

A. Retroactivity is not automatic. The judge must first find that the individual is eligible for retroactivity. They must then consider whether a reduction is appropriate in light of the factors courts consider at sentencing. Those factors can be found at [18 U.S.C. § 3553\(a\)](#). They direct the judge to consider circumstances of the crime, characteristics of the defendant and other features, including ensuring that the sentence advances the purposes of punishment. The court must also consider the public safety danger posed by releasing the individual. And the court may consider how the individual has conducted themselves since sentencing.