

## **FREQUENTLY ASKED QUESTIONS: IS THIS A STATE OR FEDERAL CASE?**

### **Q1: What's the difference between state and federal courts?**

**A:** There are 51 state and federal court systems in the United States: one federal court system, and 50 state court systems (each of the 50 states has its own court system).

- State court systems handle violations of state (not federal) laws. The state's court system is usually broken down into county or district trial courts, an appellate court, and a state Supreme Court.
- The federal court system handles violations of federal (not state) laws. The federal court system is nation-wide. It is made up of 94 district courts (there is at least one federal district court in each state), divided among 11 geographical areas called "circuits." The federal court system also includes 11 appellate courts (one for each circuit), and the U.S. Supreme Court. You can learn more about federal courts at <http://www.uscourts.gov/about.html>.

Each state court system operates independently of the other state courts, and independently of the federal courts. The federal courts operate independently of the state courts.

### **Q2: How do I know which court I or my loved one is being prosecuted in?**

**A:** There are several ways to get this information:

- Call your or your loved one's attorney and ask. (Always do this first!)
- Call the courthouse where you or your loved one has been ordered to make an appearance. Ask to speak with the clerk of court, and then ask whether your or your loved one's case is in federal or state court.
- Look at the first page of any document filed in your or your loved one's case (i.e., the indictment, a legal brief). If the top of the page says "U.S. District Court," the case is being prosecuted in federal court. If the top of the page says something else (i.e., "Hennepin County District Court"), the case is being prosecuted in a state court.
- Look at the indictment or complaint that lists the offenses you or your loved one is being charged with (your attorney should have this document). Federal charges can only be prosecuted in federal courts. State charges can only be prosecuted in state courts.
  - The charges will include a citation to a law. Federal laws are always written as \_\_\_ U.S.C. § \_\_\_ (for example, 21 U.S.C. § 841). State laws are written differently and will not include the letters "U.S.C." in the citation.
  - Example: An indictment describes one of the charges as follows: "Conspiracy to possess with intent to distribute more than 28 grams of cocaine base, a violation of 21 U.S.C. § 841(b)." Just from the way the law citation is written (21 U.S.C. § 841(b)), you know that this is a federal charge. This is a federal court case.

### **Q3: Which crimes are prosecuted in federal court, and which are prosecuted in state court?**

**A:** Both the federal and state court systems hear and sentence criminal cases:

- State courts have the power to prosecute anything that the laws in that state say is a crime, as long as the crime occurred in the state or the state otherwise has jurisdiction over the crime. Almost all violent, sex, and property crimes (i.e., murder, rape, armed robbery, burglary, theft) are handled by state courts.
- Federal courts have the power to prosecute anything that federal law says is a crime. However, the Constitution generally limits the federal government to prosecuting a smaller group of crimes than states can prosecute. Federal courts most frequently handle drug, gun, immigration, terrorism, bank robbery, child pornography, identity theft, organized crime, piracy, and white collar offenses.
- Some crimes (i.e., immigration offenses) can usually only be prosecuted in federal court.
- Some crimes (including gun, drug, identity theft, child pornography, white collar, and bank robbery offenses) can be prosecuted in either state or federal courts, or in both.

**Q4: Who decides whether a crime will be prosecuted in federal court or in state court?**

**A:** For those crimes that can be prosecuted in either federal or state courts (e.g., drug and gun offenses), it is up to the state and federal prosecutors to decide which court will handle each case. The decision to prosecute a case in federal court instead of state court (or vice versa) cannot be appealed – it is entirely up to the prosecutors. In some cases, a person can be charged, convicted, and sentenced for the same crime in both state and federal courts – in this situation, there will be two separate court proceedings (one in state court and one in federal court) for the same crime. Again, choosing to prosecute a case this way is entirely up to the state and federal prosecutors.

**Q5: If a state legislature passes a new law that changes sentences, will it impact my or my loved one's sentence?**

**A:** Only if you or your loved one were convicted and sentenced under that state's law in that state's courts! Sentencing reforms passed by one state's legislature do not help people convicted in other states, under other states' laws. For example, if the Massachusetts legislature passes a law getting rid of its mandatory minimum laws, those reforms only apply to people convicted under those laws in the Massachusetts state court system. The Massachusetts state law reforms would not help, for example, people convicted of Delaware state crimes in Delaware state courts. The Massachusetts state law reforms also would not help people convicted of federal crimes in federal courts. Similarly, if the U.S. Congress passes a law reforming federal mandatory minimums, that reform would apply only to people convicted of federal crimes in the federal courts, and not to people convicted of state crimes in a state's courts.

**Q6: If Congress passes a new law that changes sentences, will it impact my or my loved one's sentence?**

**A:** Only if you or your loved one were convicted and sentenced in federal court! Remember:

- Congress can only change federal sentencing laws, not state sentencing laws.
- It is up to each state's legislature to change its own state's sentencing laws. State legislatures cannot change federal sentencing laws.
- If you or a loved one were sentenced in a state court, only changes to the sentencing laws in the state where you were convicted can potentially benefit you.

- If you or a loved one were sentenced in federal court, only changes to federal sentencing laws can potentially benefit you.
- Changes to sentencing laws do not apply to people who were sentenced before the date those changes were passed, unless the changes are made retroactive. Not all new laws are made retroactive.

**Q7: How can I help FAMM change federal and state sentencing laws?**

**A:** Learn more by visiting [www.famm.org](http://www.famm.org). Tell your friends and family about FAMM. Use our Citizen Action Kit (available at our website) to urge your state and federal legislators to reform sentencing laws. Finally, donate to our work so we can continue fighting for a fairer sentencing system!

**LEGAL DISCLAIMER:**

**FAMM cannot provide legal advice, representation, referrals, or guidance. Nothing on this form is intended to be legal advice or should be relied on as legal advice. If you or your loved one feel that you need legal advice, consult with an attorney.**

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