

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

**PROCEDURES FOR HANDLING MOTIONS FOR
SENTENCING MODIFICATIONS UNDER 18 U.S.C. § 3582(c)(2)**

This memorandum sets forth the procedures adopted by the United States District Court for the Western District of Michigan for consideration of motions by defendants for sentence modifications arising from Amendments 706 and 711 of the United States Sentencing Guidelines. These amendments, effective March 3, 2008, retroactively modified the Drug Quantity Table with regard to cocaine base (crack cocaine). These procedures are intended to govern the expeditious handling of motions for sentence modification in the majority of cases; an individual judge, however, is free to alter these procedures to address the circumstances of any particular case.

As used in this memorandum, an *eligible defendant* means: (1) a person serving a term of imprisonment under a criminal judgment issued by this court; (2) whose sentencing guideline offense level was computed in whole or in part by reference to a quantity of crack cocaine; and (3) whose guideline range is lowered by application of Amendments 706 and 711 of the U.S. Sentencing Guidelines.

I. FORM AND FILING OF MOTIONS

A. Form of Motions

Motions must be filed on the court-approved form. No memorandum of law or attachments may accompany the motion. Non-conforming motions will be returned to the submitting party by order of court.

B. Filing of Motion

1. By the Federal Defender -
 - a. E-filed, with a copy automatically sent by CM/ECF to the U.S. Attorney's Office;
 - b. The motion will include a request for appointment of FPD and financial affidavit.

2. By a panel attorney who represented defendant at sentencing or on appeal -
 - a. E-filed, with a copy automatically sent by CM/ECF to the U.S. Attorney's Office;
 - b. The motion will include a request for appointment of the panel attorney and financial affidavit.
3. By retained counsel - E-filed, with a copy automatically sent by CM/ECF to the U.S. Attorney's Office.
4. By a *pro se* defendant -
 - a. Filed on paper and scanned into the CM/ECF system, with a copy automatically sent by CM/ECF to the U.S. Attorney's Office;
 - b. May request appointment of counsel in body of the form motion.

C. Appointment of Counsel

Appointment of counsel is discretionary with the court at any stage of the proceedings.

II. INITIAL CONSIDERATION

A. Initial Review

1. Immediately upon filing, the judge's office will review the motion to determine whether the defendant has been previously identified by the Sentencing Commission or the Administrative Office as an inmate potentially affected by Amendments 706 and 711.
 - a. If so, the court will move to Step B.
 - b. If not, the case will be referred to Probation for a review of the file, to determine whether the movant is an *eligible defendant*. This report should be filed within 7 business days, unless the Probation Office file is in storage.

- c. The Probation Office will file a short report, which will be served on the parties, stating whether or not the movant appears to be an *eligible defendant* and the basis for that conclusion. Any party objecting to the conclusion of the Probation Office must file the objection within 14 days of service.
2. If the defendant is clearly ineligible, the court may dismiss the motion. If the court determines that the movant may be an *eligible defendant*, the court will move to Step B.

B. Triage of Motions

1. Motions by potentially *eligible defendants* with release dates before January 1, 2012, will receive priority, and the court will immediately move to Step C.
2. Motions by potentially *eligible defendants* with release dates on and after January 1, 2012, will be held in abeyance. The court will reach those motions, moving to Step C, as more urgent cases are decided.

C. Issuance of Order for Sentence Modification Report

1. The court will order the Probation Office to prepare a Sentence Modification Report, addressing the following issues:
 - a. a brief procedural history of sentencing decisions, including whether the original sentence was imposed pursuant to *Booker*, reflected any departures or variances, or was reduced under U.S.S.G. § 5K1.1 or Rule 35(b);
 - b. the original Guideline calculation and a recalculation of the Guideline range in accordance with U.S.S.G. § 1B1.10(b)(1);
 - c. a statement whether the movant is an *eligible defendant* and the basis for that conclusion;
 - d. any information readily available to Probation from the BOP concerning defendant's post-sentencing conduct or misconduct;

- e. any information available to Probation concerning the danger to any person or the community that may be posed by a reduction in defendant's sentence;
 - f. a recommendation for disposition of the motion.
2. The U.S. Probation Office will be directed to prepare Sentence Modification Reports in a sequence consistent with projected release dates of the moving defendants, assuring those defendants eligible for imminent release are addressed first by the Court. Once all requested reports for inmates with projected release dates before January 1, 2012, are submitted to the Court, the U.S. Probation Office will prepare reports for moving defendants with release dates on or after January 1, 2012, in a sequence reflecting their projected release dates.
 3. Upon request, the Probation Office will provide a copy of the original Presentence Investigation Report to either party.

D. Submissions by the Parties

1. Defendant (or counsel) will have 21 days after service of the Sentence Modification Report to file a brief and supporting documents, addressing any legal or factual issue relevant to the motion for reduction of sentence.
2. Within 21 days of service of defendant's brief, the Government may file its brief and supporting materials, addressed to the same subjects.
3. Submissions in support of or in opposition to a motion must not exceed 20 pages, including attachments.
4. At any time before a decision on the motion, the parties may file with the court a joint recommendation for disposition of the motion, understanding that the ultimate decision is in the court's discretion.

E. Hearing

A hearing will be scheduled only if the court determines that a genuine issue of material fact must be resolved or that oral argument will be beneficial to the court. A defendant's presence for sentence modification is not required by the Federal Rules of Criminal Procedure. FED. R. CRIM. P. 43(b)(4). If either party seeks a hearing or defendant's personal presence, the party's brief must specifically request such relief and give reasons in support.