

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF VIRGINIA

**Protocol for Determination of Possible Reduction  
of Sentences under the Amended Crack Cocaine Guideline**

February 6, 2008

1. Motions seeking reduction under 18 U.S.C. § 3582(c)(2) based on the amendment to the crack cocaine guideline will be assigned to the original sentencing judge. Defendants sentenced by the late Judge Michael will be assigned to Judge Jones. A pleading filed pro se will be liberally construed in determining whether it seeks a reduction under § 3582(c)(2). The presiding judge may also determine to consider a reduction in sentence sua sponte, without a motion, as is permitted under § 3582(c)(2). The Probation Office will provide to each judge a list of potentially eligible defendants sentenced by that judge, as shown by the Probation Office's records.

2. The Probation Office will supply to the presiding judge an Addendum to the Presentence Investigation Report ("PSR"). In the event that the defendant is not eligible for sentence reduction, an order will be entered by the judge denying the motion and briefly setting forth the reasons therefor. If the defendant is eligible for sentence reduction, the judge will also be provided the following:

- a. the PSR;
- b. a copy of the original Judgment;
- c. copies of any subsequent judgments or orders reducing the defendant's sentence under Fed. R. Crim. P. 35 or 36 or otherwise; and
- d. an Addendum containing a calculation of the defendant's amended guideline range. If the original term of imprisonment imposed was less than the term of imprisonment provided by the guideline range applicable to the defendant at the time of sentencing, there will also be included a calculation of a reduction comparably less than the amended guideline range. If the original term of imprisonment constituted a non-guideline sentence determined under United States v. Booker, 543 U.S. 220 (2005), the Addendum must include a recommendation of whether a further reduction would be appropriate. The Addendum must also include the defendant's current projected release date prior to any reduction. The Addendum may include any further information deemed relevant by the Probation Office or requested by the judge.

4. The presiding judge may direct appointment of counsel in any case where the defendant is eligible for reduction. In the event the presiding judge contemplates granting a reduction of sentence in a particular case, the judge may so notify the U.S. Attorney's Office and the defendant and if no objection is received within the time specified by the judge, the contemplated reduction may be granted without appointment of counsel or further proceedings. If there is objection, or otherwise in the judge's discretion, and the defendant is not currently represented by counsel, the presiding judge may advise the Federal Public Defender ("FPD"), who will determine whether the defendant is eligible for representation by the FPD. If for conflict reasons, the FPD is not available to represent the defendant, the FPD will recommend a specific CJA attorney for appointment. The Clerk's Office will obtain entry of an order appointing the FPD or a CJA panel member to represent the defendant in connection with the possible reduction in sentence.

5. The Probation Office is hereby authorized to disclose the PSR for any defendant seeking reduction, minus the PSR's confidential sentencing recommendation, to counsel for the United States and for the defendant. In accordance with Bureau of Prison policy, no PSR will be provided to inmates.

6. Any reduction will be determined on the record without a hearing, unless the judge determines that good cause for such a hearing exists. If a hearing is granted, the defendant has no right to be present, Fed. R. Crim. P. 43(b)(4), and to limit delay and for security reasons, will not be transported from prison unless exceptional circumstances exist.

7. To the extent practicable, priority will be given in this process to those defendants who if granted a reduction, would be entitled to immediate release. If a defendant's sentence is reduced to time served, the effective date of release will be stayed for 10 days to allow the Bureau of Prisons to arrange for the defendant's orderly release.

8. The presiding judge may vary the process described herein in any case.

At the Direction of the Court:

/s/ JAMES P. JONES  
Chief United States District Judge