



U.S. Sentencing Commission
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IN THE NEWS

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THE NATIONAL REVIEW ONLINE PUBLISHES EDITORIAL BY COMMISSIONER PRYOR

Today the *National Review Online* published an editorial by Circuit Judge William H. Pryor, Jr., entitled, “Why We Were Right to Reduce Sentencing Guidelines for Federal Drug Offenders” (November 4, 2015):

Why We Were Right to Reduce Sentencing Guidelines for Federal Drug Offenders *Judge Bill Pryor*

On November 2, Representative Bob Goodlatte, who chairs the House Judiciary Committee, published an article in **National Review Online** attacking the 2014 decision of the U.S. Sentencing Commission to reduce sentencing guidelines for federal drug offenders. If you were to read Chairman Goodlatte’s article with no knowledge of federal law, you would think that the Sentencing Commission operates “irresponsibly” and “recklessly,” without congressional oversight, and sets sentencing guidelines “without regard to an inmate’s criminal history and public safety.” Nothing could be further from the truth. As a member of the commission, allow me to set the record straight.

In 1984, Congress created the Sentencing Commission as an independent agency within the judicial branch; it was part of a law passed with broad bipartisan support and signed by President Reagan. That law defines the agency’s mission and governs everything it does. By law, the commission considers both an offender’s criminal history and the need to protect public safety in setting *every* sentencing guideline.

When the commission votes to amend the sentencing guidelines, its decision becomes effective no sooner than six months later -- that is, *only after* Congress has had an opportunity to exercise its statutory authority to reject the proposed change. Congress, of course, did not exercise that authority last year after the commission proposed modest changes in sentencing for drug cases. Instead, several members of Congress publicly supported those changes, and few said anything in opposition. In fact, Chairman Goodlatte did not even schedule a hearing to review our decision.

Now that the commission’s decision is being implemented without objection from Congress, Chairman Goodlatte objects to making the changes in drug sentencing retroactive, but he fails to mention that Congress gave the commission that authority. Indeed, Congress required the

commission, whenever it lowers *any* guideline, to consider whether to make that change retroactive. And every retroactive change becomes effective *only after* Congress has had the opportunity to reject that decision. Congress again did not reject the decision to make the changes in drug sentencing retroactive, and Chairman Goodlatte did not schedule a hearing about it.

Moreover, when the Commission makes a change retroactive, each inmate must go before the sentencing judge, who must then consider whether the inmate should receive a reduced sentence under the new guideline. A retroactive guideline is not a get-out-of-jail-free card: That is, an inmate does not automatically receive a reduced sentence. Every sentencing judge must separately consider each inmate's request together with any prosecution objection and then weigh concerns about each inmate's criminal history and the need to protect public safety before reducing any inmate's sentence. And the offenders who, over several years, will receive reduced sentences will have served on average more than eleven years in prison. The commission also delayed the implementation of its decision for one year to ensure that prison and court officials would have ample time to prepare for the release of prisoners in ways that would best protect public safety, with transitional services and supervision by probation officers.

Chairman Goodlatte referred to the commission as a group of "unelected officials" that is "going about sentencing reform in the wrong way," but he failed to mention that Congress, with the support of the Reagan administration, created the commission as a permanent agency to consider and make needed sentencing reforms. The commission has seven members appointed by the president and confirmed by the Senate for fixed terms. By law, at least three members must be federal judges, and the membership must be bipartisan. For example, I was appointed to the commission by President Obama based on the recommendation of Senate Republican leader Mitch McConnell. The commission conducts public hearings and considers thousands of public comments before changing any guideline. And our decision to change the drug guideline and to make it retroactive was *unanimous*.

Chairman Goodlatte wrote that he is pushing legislation to reform drug sentences because "there is a growing consensus in Congress that certain federal drug sentences, such as mandatory life imprisonment for a third drug-trafficking offense, are unnecessarily harsh and contribute to prison overcrowding and a ballooning federal prison budget." But these are the same concerns that drove the commission last year to reduce the guideline for drug offenders. That reduction still adhered to the mandatory minimum sentences that only Congress can change, but Congress required the commission by law to set the guidelines to reduce the incidence of prison overcrowding. The need to reduce prison overcrowding motivated the commission to act last year, and both the Department of Justice and the Criminal Law Committee of the U.S. Courts supported reducing the guideline for drug cases. Even after the commission acted, federal prisons remain overcrowded.

I and other members of the commission support Chairman Goodlatte's goal of saving taxpayer dollars, reducing prison overcrowding, and making drug sentencing fair and responsible. We look forward to working with him and other members of Congress toward those ends. But he should not pretend that the independent and bipartisan Sentencing Commission is some sort of bogeyman working against those interests. Nothing could be further from the truth.

— *Bill Pryor was appointed by president George W Bush to the U.S. Court of Appeals for the Eleventh Circuit, where he currently serves. He also serves on the U.S. Sentencing Commission. From 1997 to 2004, he was the attorney general of Alabama.*