

Remarks of Circuit Judge William H. Pryor, Jr.,  
Acting Chair of the United States Sentencing Commission  
August 17, 2017 Public Meeting

Thank you for attending this public meeting of the United States Sentencing Commission. The Commission appreciates the attendance of those joining us here as well as those watching our livestream broadcast on the Commission's website. As always, we welcome and encourage the significant public interest in federal sentencing issues and the work of the Commission.

Before we get started, I would like to introduce the other members of the Commission. Judge Charles Breyer, joins us by telephone today. Judge Breyer is a Senior District Judge for the Northern District of California and has served as a United States District Judge since 1998.

Next, Commissioner Rachel Barkow is the Segal Family Professor of Regulatory Law and Policy at the New York University School of Law, and serves as the faculty director of the Center on the Administration of Criminal Law at the law school.

Judge Danny Reeves was appointed to the Commission this year. Judge Reeves is a District Court Judge for the Eastern District of Kentucky, and has served in that position since 2001.

Finally, Zachary Bolitho is here as the new *ex officio* Commissioner from the Department of Justice. Commissioner Bolitho serves as Counsel to the Deputy Attorney General of the United States. Previously, he was an Assistant Professor at Campbell University School of Law in Raleigh, North Carolina from 2013 to 2017. Prior to his work as a law professor, he was an Assistant United States Attorney in the Eastern District of Tennessee from 2009 to 2013 where he served in both the Appellate and the General Crimes Sections. Welcome to the Commission.

Before we proceed with the business of the day, I would like to update you on the Commission's work.

As always, the Commission has continued its research and analysis of criminal cases in the federal system. The Commission has published several reports and publications this year all of which can be found on our website, including our 2016 *Annual Report and Sourcebook of Federal Sentencing Statistics*. The Commission received approximately 315,000 documents for nearly 68,000 federal offenders sentenced in fiscal year 2016. The annual *Sourcebook* provides policymakers and the public with critical federal sentencing data – all available on our website.

Most recently, the Commission published our 2017 *Overview of Mandatory Minimum Penalties in the Federal Criminal Justice System*. The 2017 *Overview*

analyzes the most recently available federal sentencing data to supplement the data presented in the 2011 *Mandatory Minimum Report*.

The Commission's overview found that mandatory minimum penalties continue to result in long sentences in the federal system. These penalties also have a significant impact on the size and composition of the federal prison population. The overview also found significant demographic shifts in the data relating to the application of mandatory minimum penalties from 2010 to 2016. This publication is part of a series of publications about mandatory minimum penalties.

The Commission will be releasing more reports this year, including an analysis of President Obama's clemency initiative that began in 2014 as well as an analysis of alternatives to incarceration programs in the federal courts.

Along with this research, the Commission continues to collect and report on sentencing data relating to the retroactive application of the 2014 Drug Guidelines amendment, often referred to as "Drugs Minus Two." As of July, federal courts have considered 47,100 motions for retroactive application of the "Drugs Minus Two" amendment. The courts have approved 30,730 (or 65.2%) of these applications.

Before we move on with the business of the day and the announcement of our final priorities, the Commission would like to thank the numerous individuals and groups who submitted thoughtful comments and recommendations during our most recent public comment period. The Commission received a record number of public comment—over 81,000 letters and emails were submitted during this public comment period, illustrating the continued public interest in the Commission's work.

I would like to take a moment to briefly discuss some of the priorities. Our policy priorities fall into the three major categories. First, there are several broad priorities that require close collaboration among all three branches of government, chief among them is our ongoing efforts to make the federal sentencing guidelines stronger and more effective. To that end, the Commission will continue its ongoing multi-year examination of the overall structure of the guidelines post-*Booker*, possibly including recommendations to Congress on any statutory changes and development of any guideline amendments.

As part of that examination, the Commission will study possible approaches to simplify the operation of the guidelines, promote proportionality and certainty, and reduce sentencing disparities, including demographic, geographic, and inter-judge disparities. This effort is important to ensure that the federal sentencing guidelines provide clear and effective guidance for federal courts across the country. This work will take time and presents us with a significant opportunity to

collaborate with Congress, the courts, the Department of Justice, and other stakeholders.

As part of that ongoing collaboration, the Commission will continue to study mandatory minimum penalties and will release a series of publications analyzing the impact of mandatory minimum penalties on offenders convicted of specific offense types.

We will also continue the work stemming from our 2016 *Report to the Congress: Career Offender Enhancements* in which the Commission recommended that Congress revise the directive in section 994(h) pertaining to career offenders to focus on offenders who commit violent offenses in either their instant federal offense or in their criminal history. The Commission's report also urged Congress to establish one definition of "crime of violence" for all criminal law purposes, and proposed that it adopt the Commission's definition of "crime of violence" as the single, uniform definition.

Our second major category is an emerging area and an urgent issue of public concern—synthetic drugs. The Commission is acutely aware of the increasing prevalence of synthetic drugs, including fentanyl. Within weeks of having our quorum reconstituted, we held a public hearing on synthetic drugs on April 18th, and we published an issue for comment on ecstasy and methydone in July.

We have already received very helpful comment about these drugs. Later during this meeting, we will publish two issues for public comment that will focus specifically on issues related to synthetic cathinones and synthetic cannabinoids.

The Commission is already planning a second public hearing on synthetic cathinones this fall, and another hearing soon after on synthetic cannabinoids. The Commission will continue to seek input from Congress, the Department of Justice, expert scientists, law enforcement, concerned citizens, and other stakeholders as we study this important topic – one that we fully intend to tackle this amendment cycle.

Lastly, there are several proposals that we were not able to fully consider last amendment cycle because we lost our quorum for three critical months. Implementation of federal legislation is always a top priority for the Commission. As one example, we will complete our work to implement the statutory changes made by the Bipartisan Budget Act. These changes relate to fraudulent claims under certain social security programs and we will discuss a proposed amendment to address this issue in a moment.

The Commission will also consider proposals for providing adjustments in the guidelines for first-time offenders, as well as further consideration of the availability of alternatives to incarceration for certain federal offenders.

In addition, the Commission continues to act on the recommendations from the Tribal Issues Advisory Group. In May, the Commission released a report detailing our own review and research related to youthful offenders in the federal system. Informed by that work, the Commission will consider how juvenile sentences are treated under the criminal history guidelines. Also informed by the recommendations of the Tribal Issues Advisory Group, the Commission will consider whether to provide a uniform definition of “court protection order” that would apply throughout the guidelines.

As we wrap up, I would like to mention an upcoming event, the Commission’s National Seminar on the Federal Sentencing Guidelines in Denver, Colorado, next month. This seminar will provide training to probation officers, prosecutors, and defense attorneys on the guidelines. We look forward to another big crowd in Denver where we expect over 500 attendees.

All of the Commission’s policy priorities and proposed amendments will be on the Commission website soon. We look forward to working with all of you as we move forward to another productive year. Thank you for joining us today.