

UNITED STATES SENTENCING COMMISSION

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PUBLIC MEETING

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THURSDAY  
AUGUST 17, 2017

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The Commission met in the Commissioners Hearing Room, Room 2-500 of the Thurgood Marshall Federal Judiciary Building located at 1 Columbus Circle, Northeast, Washington, D.C., at 11:00 a.m., William H. Pryor, Acting Chair, presiding.

PRESENT

WILLIAM H. PRYOR, Acting Chair  
CHARLES R. BREYER, Vice Chair (via telephone)  
RACHEL E. BARKOW, Commissioner  
DANNY C. REEVES, Commissioner  
ZACHARY BOLITHO, Ex Officio Commissioner

ALSO PRESENT

KATHLEEN C. GRILLI, General Counsel  
KENNETH P. COHEN, Staff Director

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2017-2018

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1 P-R-O-C-E-E-D-I-N-G-S

2 (11:02 a.m.)

3 ACTING CHAIR PRYOR: The meeting is  
4 called to order. I want to thank you for  
5 attending this public meeting of the United  
6 States Sentencing Commission. The Commission  
7 appreciates the attendance of those joining us  
8 here, as well as those watching our live stream  
9 broadcast on the Commission website.

10 As always, we welcome and encourage  
11 the significant public interest and federal  
12 sentencing issues, and the work of the  
13 Commission.

14 Before we get started, I would like to  
15 introduce the other members of the Commission.  
16 Judge Charles Breyer joins us by telephone today.  
17 Judge Breyer, can you hear us?

18 VICE CHAIR BREYER: Yes, I can.

19 ACTING CHAIR PRYOR: Good. Judge  
20 Breyer is the Senior District Judge for the  
21 Northern District of California and has served as  
22 a United States District Judge since 1998.

1                   To my left, Commissioner Rachel Barkow  
2                   is the Segal Family Professor of Regulatory Law  
3                   and Policy at the New York University School of  
4                   Law, and serves as the Faculty Director of the  
5                   Center on the Administration of Criminal Law at  
6                   the law school.

7                   To my right, Judge Danny Reeves was  
8                   appointed to the Commission this year. Judge  
9                   Reeves is a District Judge for the Eastern  
10                  District of Kentucky and has served in that  
11                  position since 2001.

12                  And to his right, finally, Zachary  
13                  Bolitho is here as the new ExOfficio Commissioner  
14                  from the Department of Justice. Commissioner  
15                  Bolitho serves as Counsel to the Deputy Attorney  
16                  General of the United States.

17                  Previously, he was an Assistant  
18                  Professor at Campbell University School of Law in  
19                  Raleigh, North Carolina from 2013 to 2017.  
20                  Before his work as a law professor, he was an  
21                  Assistant United States Attorney in the Eastern  
22                  District of Tennessee from 2009 to 2013 where he

1 served in both the appellate and general crime  
2 sections. Welcome to the Commission.

3 EX OFFICIO COMMISSIONER BOLITHO:  
4 Thank you.

5 ACTING CHAIR PRYOR: The first order  
6 of business is a vote to adopt the December 9th,  
7 2016 public meeting minutes. Is there a motion  
8 to do so?

9 COMMISSIONER BARKOW: So moved.

10 ACTING CHAIR PRYOR: Is there a  
11 second?

12 VICE CHAIR BREYER: Second.

13 ACTING CHAIR PRYOR: Judge Breyer  
14 seconded. Is there any discussion on the motion?

15 COMMISSIONER REEVES: I'll need to  
16 abstain since I was not present.

17 ACTING CHAIR PRYOR: Judge Reeves is  
18 going to abstain since he was not at the meeting.  
19 Vote on the motion by saying aye.

20 (Chorus of ayes)

21 ACTING CHAIR PRYOR: Any nays?

22 (No audible response)

1           ACTING CHAIR PRYOR:    The motion is  
2           adopted by voice vote.   The next item of business  
3           is the report of the Chair.   Before we proceed  
4           with the business of the day I would like to  
5           update you on the Commission's work.

6           As    always,    the    Commission    has  
7           continued its research and analysis of criminal  
8           cases in the federal system.   The Commission has  
9           published several reports and publications this  
10          year, all of which can be found on our website,  
11          including our 2016 Annual Report and Source Book  
12          of Federal Sentencing Statistics.

13          The Commission received approximately  
14          315,000 documents for nearly 68,000 federal  
15          offenders sentenced in fiscal year 2016.   The  
16          Annual Source Book provides policy makers and the  
17          public with critical federal sentencing data, all  
18          available on our website.

19          Most    recently,    the    Commission  
20          published our 2017 Overview of Mandatory Minimum  
21          Penalties in the Federal Criminal Justice System.  
22          The 2017 overview analyzes the most recently

1 available federal sentencing data to supplement  
2 the data presented in the 2011 Mandatory Minimum  
3 Report.

4 The Commission's overview found that  
5 mandatory minimum penalties continue to result in  
6 long sentences in the federal system. These  
7 penalties also have a significant impact on the  
8 size and composition of the federal prison  
9 population.

10 The overview also found significant  
11 demographic shifts in the data relating to the  
12 application of mandatory minimum penalties from  
13 2010 to 2016. This publication is part of a  
14 series of publications about mandatory minimum  
15 penalties.

16 The Commission will be releasing more  
17 reports this year including an analysis of  
18 President Obama's Clemency Initiative that began  
19 in 2014, as well as an analysis of alternative to  
20 incarceration programs in the federal courts.

21 Along with this research, the  
22 Commission continues to collect and report on

1 sentencing data related to the retroactive  
2 application of the 2014 Drug Guidelines  
3 Amendment, often referred to as Drugs Minus Two.

4 As of July, federal courts have  
5 considered 47,100 motions for retroactive  
6 application of the Drugs Minus Two amendment.  
7 The courts have approved 30,730, or 65.2 percent,  
8 of these applications.

9 Before we move on with the business of  
10 the day and the announcement of our final  
11 priorities, the Commission would like to thank  
12 the numerous individuals and groups who submitted  
13 thoughtful comments and recommendations during  
14 our most recent public comment period.

15 The Commission received a record  
16 number of public comments. Over 81,000 letters  
17 and emails were submitted during this public  
18 comment period, illustrating the continued public  
19 interest in the Commission's work.

20 As we ordinarily do in August, the  
21 Commission will now vote on the final policy  
22 priorities for the 2017-2018 amendment cycle.



1       Our General Counsel, Kathleen Grilli, will now  
2       advise the Commission on that matter.

3               MS. GRILLI:   Thank you, Judge.   In  
4       June of this year, as the Chair just mentioned,  
5       the Commission published a Notice of Proposed  
6       Policy Priorities for the amendment cycle which  
7       would end on May 1st, 2018.

8               After reviewing public comment, you  
9       have finalized a Notice of Final Priorities for  
10      this amendment cycle.   That notice is before you.  
11     A motion to adopt the Notice of Final Priorities  
12     and publish in the Federal Register would be in  
13     order at this time.

14              ACTING CHAIR PRYOR:   Is there a motion  
15     to adopt and publish into the Federal Register  
16     the Final Notice of Policy Priorities for the  
17     Commission's   2017-2018   amendment   cycle   as  
18     suggested by our General Counsel?

19              COMMISSIONER REEVES:   So moved.

20              ACTING CHAIR PRYOR:   Is there a  
21     second?

22              COMMISSIONER BARKOW:   Second.

1                   ACTING CHAIR PRYOR:    Is there any  
2   discussion on the motion?

3                   (No audible response)

4                   ACTING CHAIR PRYOR:    I would like to  
5   take a moment to briefly discuss some of the  
6   priorities. Our policy priorities fall into three  
7   major categories. First, there are several broad  
8   priorities that require close collaboration among  
9   all three branches of government.

10                  Chief among them are ongoing efforts  
11   to make the federal sentencing guidelines  
12   stronger and more effective. To that end, the  
13   Commission will continue its ongoing multi-year  
14   examination of the overall structure of the  
15   guidelines post-Booker, possibly including  
16   recommendations to Congress on any statutory  
17   changes and development of any guideline  
18   amendments.

19                  As part of that examination, the  
20   Commission will study possible approaches to  
21   simplify the operation of the guidelines, promote  
22   proportionality and certainty, and reduce

1 sentencing disparities including demographic,  
2 geographic, and inter-judge disparities.

3 This effort is important to ensure  
4 that the federal sentencing guidelines provide  
5 clear and effective guidance for federal courts  
6 across the country. This work will take time,  
7 and presents us with a significant opportunity to  
8 collaborate with Congress, the courts, the  
9 Department of Justice, and other stakeholders.

10 As part of that ongoing collaboration,  
11 the Commission will continue to study mandatory  
12 minimum penalties and will release a series of  
13 publications analyzing the impact of mandatory  
14 minimum penalties on offenders convicted of  
15 specific events types.

16 We will also continue the work  
17 stemming from our 2016 Report to Congress: Career  
18 Offender Enhancements in which the Commission  
19 recommended that Congress revise the Directive in  
20 Section 994(h) pertaining to career offenders to  
21 focus on offenders who commit violent offenses  
22 and either their instant federal offense or in

1 their criminal history.

2 The Commission's report also urged  
3 Congress to establish one definition of "crime of  
4 violence" for all criminal law purposes and  
5 proposed that it adopt the Commission's  
6 definition of "crime of violence" as the single  
7 uniform definition.

8 Our second major category is an  
9 emerging area and an urgent issue of public  
10 concern, synthetic drugs. The Commission is  
11 acutely aware of the increasing prevalence of  
12 synthetic drugs including fentanyl.

13 Within weeks of having our quorum  
14 reconstituted, we held a public hearing on  
15 synthetic drugs on April 18th, and we published  
16 an issue for comment on ecstasy and methyone in  
17 July.

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

1       cannabinoids.

2               The Commission is already planning a  
3       second public hearing on synthetic cathinones  
4       this fall, and another hearing soon after on  
5       synthetic cannabinoids.

6               The Commission will continue to seek  
7       input from Congress, the Department of Justice,  
8       expert scientists, law enforcement, concerned  
9       citizens, and other stakeholders as we study this  
10      important topic, one that we fully intend to  
11      tackle this amendment cycle.

12              Lastly, there are several proposals  
13      that we were not able to fully consider last  
14      amendment cycle because we lost our quorum for  
15      three critical months.       Implementation of  
16      federal legislation is always a top priority for  
17      the Commission.

18              As one example, we will complete our  
19      work to implement the statutory changes made by  
20      the Bipartisan Budget Act.   These changes relate  
21      to fraudulent claims under certain social  
22      security programs, and we will discuss a proposed

1 amendment to address this issue in a moment.

2 The Commission will also consider  
3 proposals for providing adjustments of the  
4 guidelines for first time offenders, as well as  
5 further consideration of the availability of  
6 alternatives to incarceration for certain federal  
7 offenders.

8 In addition, the Commission continues  
9 to act on the recommendations from the Tribal  
10 Issues Advisory group. In May, the Commission  
11 released its own report detailing its own review  
12 and research related to youthful offenders in the  
13 federal system.

14 Informed by that work, the Commission  
15 will consider how juvenile sentences are treated  
16 under the criminal history guidelines, also  
17 informed by the recommendations of the Tribal  
18 Issues Advisory group.

19 The Commission will consider whether  
20 to provide a uniform definition of court  
21 protection order that would apply throughout the  
22 guidelines.

1                   Hearing no further discussion, vote on  
2                   the motion by saying aye.

3                   (Chorus of ayes)

4                   ACTING CHAIR PRYOR: Any nays?

5                   (No audible response)

6                   ACTING CHAIR PRYOR: The motion is  
7                   adopted. And let the record reflect that at least  
8                   three commissioners voted in favor of the motion.

9                   The next item of business is a  
10                  possible vote to publish in the Federal Register  
11                  proposed guideline amendments and issues for  
12                  public comment.

13                  Our General Counsel will advise the  
14                  Commission on the first possible vote concerning  
15                  a proposed amendment on the Bi-Partisan Budget  
16                  Act.

17                  MS. GRILLI: Thank you, Judge. The  
18                  first proposed amendment for your consideration  
19                  responds to the Bi-Partisan Budget Act which  
20                  added new subdivisions prohibiting conspiracy to  
21                  commit fraud for substance offenses that were  
22                  already contained in title 42, United States

1 Code, Sections 408, 1011, and 1383(a).

2 The three amended statutes were  
3 already referenced in Appendix A to §2B1.1. The  
4 proposed amendment would also reference them to  
5 §2X1.1, which is the attempt solicitation or  
6 conspiracy guideline.

7 The Bi-Partisan Budget Act also  
8 amended those statutes to add increased penalties  
9 of ten years' imprisonment for certain persons  
10 who commit fraud offenses under relevant social  
11 security programs.

12 The new increase penalties apply to  
13 all of the fraudulent conduct in Subsection A of  
14 the three statutes.

15 The proposed amendment would amend  
16 §2B1.1 to address those types of cases on which  
17 a defendant was specifically convicted under the  
18 statute's reference and the statutory maximum  
19 term of ten years applies.

20 It provides an enhancement of either  
21 four or two levels and a minimum offense level of  
22 14 or 12 for such cases. It also adds commentary



1 specifying whether an adjustment under §3B1.3,  
2 which is the abuse of position of trust or use of  
3 a special skill/enhancement, applies by  
4 bracketing two possibilities.

5 If the new enhancement were to apply,  
6 then §3B1.3 would not, or if the enhancement  
7 applies, the adjustment is not precluded from  
8 applying. Issues for comment are also included.

9 A motion to publish the proposed  
10 amendment on the Bi-Partisan Budget Act would be  
11 in order at this time with an original comment  
12 period closing October 10th, a reply comment  
13 period closing November 6, and technical and  
14 conforming amendment authority to staff.

15 ACTING CHAIR PRYOR: Is there a motion  
16 to publish the proposed amendment as suggested by  
17 the general counsel?

18 COMMISSIONER BARKOW: So moved.

19 ACTING CHAIR PRYOR: Is there a  
20 second?

21 COMMISSIONER REEVES: Second.

22 ACTING CHAIR PRYOR: Is there any

1 discussion on the motion?

2 (No audible response)

3 ACTING CHAIR PRYOR: Vote on the  
4 motion by saying aye.

5 (Chorus of ayes)

6 ACTING CHAIR PRYOR: Any nays?

7 (No audible response)

8 ACTING CHAIR PRYOR: Let the record  
9 reflect that at least three commissioners voted  
10 in favor of the motion.

11 MS. GRILLI: The next amendment for  
12 your --

13 ACTING CHAIR PRYOR: Actually that  
14 was four, all four of us voted. We need that.  
15 The motion is adopted and we'll go now to the  
16 next one. The General Counsel will now advise  
17 the Commission on a possible vote concerning a  
18 proposed amendment on the Bi-Partisan Budget Act.

19 MS. GRILLI: On the Tribal Issues,  
20 Judge.

21 ACTING CHAIR PRYOR: You're right.  
22 My script actually says Bi-Partisan Budget Act -

1 -

2 MS. GRILLI: Sorry, Judge.

3 ACTING CHAIR PRYOR: -- but we need  
4 to return to Tribal Issues.

5 MS. GRILLI: The next proposed  
6 amendment arises from recommendations contained  
7 in the Tribal Issues Advisory Group report that  
8 was submitted to the Commission in summer of  
9 2016.

10 The proposed amendment contains two  
11 parts, neither of which is mutually exclusive.  
12 Part A would amend the commentary to §4A1.3 on  
13 departures for an inadequacy of criminal history  
14 category to set forth a non-exclusive list of  
15 factors for the court to consider in determining  
16 whether or to what extent an upward departure  
17 based on a tribal court conviction is  
18 appropriate.

19 Part B of the proposed amendment would  
20 amend the commentary to §1B1.1 to provide a  
21 definition of court protection order which is  
22 derived from title 18, United States Code,

1 Section 2266(b) with a provision that it be  
2 consistent with 18 USC Section 2265(b).

3 Each part of the proposed amendment  
4 also includes issues for comment. A motion to  
5 publish the proposed amendment with an original  
6 comment period closing October 10th, a reply  
7 comment period closing November 6, and technical  
8 and conforming amendment authority to staff would  
9 be in order at this time.

10 ACTING CHAIR PRYOR: Is there a motion  
11 to publish the proposed amendment as suggested by  
12 the General Counsel?

13 COMMISSIONER REEVES: So moved.

14 ACTING CHAIR PRYOR: Is there a  
15 second?

16 COMMISSIONER BARKOW: Second.

17 ACTING CHAIR PRYOR: Any discussion?

18 (No audible response)

19 ACTING CHAIR PRYOR: Vote on the  
20 motion by saying aye.

21 (Chorus of ayes)

22 ACTING CHAIR PRYOR: Any nays?

1 (No audible response)

2 ACTING CHAIR PRYOR: So that motion  
3 is adopted. And let the record reflect that at  
4 least three commissioners voted in favor of the  
5 motion. The General Counsel will now advise the  
6 Commission on a possible vote concerning a  
7 proposed amendment on first offenders and  
8 alternatives to incarceration.

9 MS. GRILLI: Yes. This next  
10 amendment relates to first offenders and  
11 alternatives to incarceration, and contains two  
12 parts, Parts A and B, either of which may be  
13 promulgated again as they are not mutually  
14 exclusive.

15 Part A sets forth a new Chapter 4  
16 guideline at §4C1.1 called First Offenders that  
17 would provide lower guideline ranges for first  
18 offenders generally, and increase the  
19 availability of alternatives to incarceration for  
20 such offenders at the lower levels of the  
21 sentencing table.

22 Part A of the proposed amendment

1 includes two options for defining a first  
2 offender who would be eligible for a decrease in  
3 offense under the new guideline.

4 Part B of the proposed amendment would  
5 expand Zone B of the Sentencing Table by  
6 consolidating Zones B and C. Part B also amends  
7 the commentary to §5F1.2 regarding home detention  
8 to remove language that required electronic  
9 monitoring.

10 Each part includes issues for comment.  
11 A motion to publish the proposed amendment with  
12 an original comment period closing October 10th,  
13 a reply comment period closing November 6, and  
14 technical and conforming amendment authority to  
15 staff would be in order at this time.

16 ACTING CHAIR PRYOR: Is there a motion  
17 to publish the proposed amendment as suggested?

18 VICE CHAIR BREYER: So moved.

19 ACTING CHAIR PRYOR: Is there a  
20 second?

21 COMMISSIONER BARKOW: Second.

22 ACTING CHAIR PRYOR: Is there any

1 discussion?

2 (No audible response)

3 ACTING CHAIR PRYOR: Vote on the  
4 motion by saying aye.

5 (Chorus of ayes)

6 ACTING CHAIR PRYOR: Any nays?

7 (No audible response)

8 ACTING CHAIR PRYOR: Let the record  
9 reflect that at least three Commissioners voted  
10 in favor of the motion to publish. The General  
11 Counsel will now advise the Commission on a  
12 possible vote concerning a proposed amendment on  
13 acceptance of responsibility.

14 MS. GRILLI: Yes. This proposed  
15 amendment responds to concern that the commentary  
16 to §3E1.1 encourages courts to deny a reduction  
17 in sentence when a defendant pleads guilty,  
18 accepts responsibility for the offense conduct,  
19 but unsuccessfully challenges the pre-sentence  
20 report assessment of relevant conduct.

21 The proposed amendment amends the  
22 commentary to §3E1.1 to revise how the

1 defendant's challenge of relevant conduct should  
2 be considered in determining whether the  
3 defendant has accepted responsibility for  
4 purposes of the guideline. An issue for comment is  
5 also included.

6 A motion to publish the proposed  
7 amendment with an original comment period closing  
8 October 10th, a reply comment period closing  
9 November 6, and technical and conforming  
10 amendment authority to staff would be in order at  
11 this time.

12 ACTING CHAIR PRYOR: Is there a motion  
13 to publish the proposed amendment as suggested by  
14 the general counsel?

15 COMMISSIONER BARKOW: So moved.

16 ACTING CHAIR PRYOR: Is there a  
17 second?

18 VICE CHAIR BREYER: Second.

19 ACTING CHAIR PRYOR: Any discussion?

20 (No audible response)

21 ACTING CHAIR PRYOR: Vote on the  
22 motion by saying aye.



1 (Chorus of ayes)

2 ACTING CHAIR PRYOR: Any nays?

3 COMMISSIONER REEVES: Nay.

4 ACTING CHAIR PRYOR: The motion is  
5 adopted. Let the record reflect that at least  
6 three Commissioners voted in favor of the motion  
7 to publish. The General Counsel will now advise  
8 the Commission on a possible vote concerning a  
9 proposed amendment for miscellaneous guideline  
10 issues.

11 MS. GRILLI: Yes, the next amendment  
12 responds to recently enacted legislation and  
13 miscellaneous guideline issues. It is a multi-  
14 part amendment. Again, each part is not mutually  
15 exclusive.

16 Part A responds to the Transnational  
17 Drug Trafficking Act of 2015 by amending§2B5.3,  
18 the criminal infringement of copyright or  
19 trademark guideline.

20 Part B responds to the International  
21 Megan's Law to prevent child exploitation and  
22 other sexual crimes by amending§2A3.5, §2A3.6,

1 and Appendix A. Issues for comment are included  
2 in this section.

3 Part C responds to the Frank  
4 Lautenberg Chemical Safety for the 21st Century  
5 Act by amending Appendix A. Part D amends §2G1.3  
6 to clarify how the use of computer enhancement in  
7 subsection (b)3 interacts with its correlating  
8 commentary.

9 And Part E responds to the Justice for  
10 All Reauthorization Act of 2016 by amending  
11 §5D1.3 regarding conditions and supervised  
12 release.

13 A motion to publish the proposed  
14 amendment with an original comment period closing  
15 October 10th, a reply comment period closing  
16 November 6th, and technical and conforming  
17 amendment authority to staff would be in order at  
18 this time.

19 ACTING CHAIR PRYOR: Is there a motion  
20 to publish the proposed amendment as suggested by  
21 the General Counsel?

22 COMMISSIONER REEVES: So moved.

1                   ACTING CHAIR PRYOR: Any second?

2                   COMMISSIONER BARKOW: Second.

3                   ACTING CHAIR PRYOR: Any discussion?

4                   (No audible response)

5                   ACTING CHAIR PRYOR: Vote on the  
6 motion by saying aye.

7                   (Chorus of ayes)

8                   ACTING CHAIR PRYOR: No nays, so that  
9 motion is adopted. And let the record reflect  
10 that at least three Commissioners voted in favor  
11 of the motion to publish.

12                   The General Counsel would now advise  
13 the Commission on a possible vote concerning a  
14 proposed technical amendment to replace the term  
15 marijuana equivalency.

16                   MS. GRILLI: Thank you, Judge. The  
17 next proposed amendment makes technical changes  
18 to §2D1.1, the drug trafficking guideline by  
19 amending §2D1.1 to replace the term "marihuana  
20 equivalency" in the Drug Equivalency Tables.

21                   It replaces that term throughout the  
22 guideline with the term "converted drug weight."

1 It also changes the title of the "Drug  
2 Equivalency Tables" to "Drug Conversion Tables."  
3 The proposed amendment is not intended as a  
4 substantive change in policy.

5 A motion to publish the proposed  
6 amendment with an original comment period closing  
7 October 10th, reply comment closing November 6,  
8 and technical and conforming amendment authority  
9 to staff would be in order.

10 ACTING CHAIR PRYOR: Is there a motion  
11 to publish the proposed amendment as suggested by  
12 the General Counsel?

13 COMMISSIONER BARKOW: So moved.

14 ACTING CHAIR PRYOR: Is there a  
15 second?

16 COMMISSIONER REEVES: Second.

17 ACTING CHAIR PRYOR: Any discussion?

18 (No audible response)

19 ACTING CHAIR PRYOR: Vote on the  
20 motion by saying aye.

21 (Chorus of ayes)

22 ACTING CHAIR PRYOR: No nays, so the

1 motion is adopted. And let the record reflect  
2 that at least three Commissioners voted in favor  
3 of the motion to publish.

4 The General Counsel will now advise  
5 the Commission on a possible vote concerning a  
6 proposed multi-part technical amendment.

7 MS. GRILLI: Yes, Judge, thank you.  
8 This technical amendment makes various technical  
9 changes to the guideline manual. Part A makes  
10 certain clarifying changes to Chapter One, Part  
11 A, Subpart 1(4)(b) and Application Note 2(a)  
12 to§2B1.1.

13 Part B makes technical changes to  
14 §§2Q1.3, 2R1.1, 4A1.2, and 4B1.4, to correct  
15 title references to§4A1.3.

16 And finally, Part C of the proposed  
17 amendment makes clerical changes to correct  
18 typographical errors and correct or add statutory  
19 or Appendix A references.

20 A motion to publish the proposed  
21 amendment with an original comment period ending  
22 October 10th, a reply comment period closing

1 November 6th, and technical and conforming  
2 amendment authority to staff would be in order at  
3 this time.

4 ACTING CHAIR PRYOR: Is there a motion  
5 to publish the proposed amendment as suggested by  
6 the General Counsel?

7 COMMISSIONER REEVES: So moved.

8 ACTING CHAIR PRYOR: Is there a  
9 second?

10 COMMISSIONER BARKOW: Second.

11 ACTING CHAIR PRYOR: Any discussion?

12 EX OFFICIO COMMISSIONER BOLITHO:  
13 Judge Pryor, the only thing I would mention, and  
14 I may have missed this, was whether we were going  
15 to look at that technical amendment regarding the  
16 §2L1.2 issue, the gap, that we had discussed.  
17 And I don't remember if we were going to look at  
18 that this time or another time.

19 ACTING CHAIR PRYOR: So that is  
20 something that would be within our authority  
21 under the miscellaneous guidelines issue  
22 amendment that we have already adopted.

1 EX OFFICIO COMMISSIONER BOLITHO:

2 Okay, thank you.

3 ACTING CHAIR PRYOR: So, where was I?

4 MS. GRILLI: Discussion.

5 ACTING CHAIR PRYOR: We second it.

6 Any discussion?

7 (No audible response)

8 ACTING CHAIR PRYOR: So vote on the  
9 motion by saying aye.

10 (Chorus of ayes)

11 ACTING CHAIR PRYOR: No nays, so the  
12 motion is adopted. And let the record reflect  
13 that at least three Commissioners voted in favor  
14 of the motion to publish.

15 As mentioned previously, the  
16 Commission's published amendments relate to the  
17 Bi-Partisan Budget Act, First Time Offenders,  
18 Tribal Issues, Alternatives to Incarceration, and  
19 other miscellaneous and technical amendments.

20 As our final item on the agenda, we  
21 will now vote on the Commission's issues for  
22 public comment.

1 MS. GRILLI: Yes, Judge. The issue  
2 for comment before you relates to your priority  
3 concerning the study of synthetic cathinones and  
4 synthetic cannabinoids, among others.

5 In August, you have indicated that one  
6 of your priorities will be the study of these  
7 offenses, including synthetic cathinones,  
8 cannabinoids, THC, fentanyl, and fentanyl  
9 analogues.

10 The issue for comment before you for  
11 consideration contains two parts, Parts A and  
12 Part B. Part A focuses on issues related to  
13 synthetic cathinones. Part B focuses on issues  
14 relating to THC and synthetic cannabinoids.

15 The proposed issue for comment seeks  
16 comment on factors relating to those drugs,  
17 including the chemical structure, the  
18 pharmacological effects, the potential for  
19 addiction and abuse, the pattern of abuse and  
20 harms associated with abuse, the patterns of  
21 trafficking and harms associated with  
22 trafficking, and additionally seeks information



1 about whether the Commission should adopt a  
2 broad, class based approach to synthetic drugs  
3 for sentencing purposes.

4 A motion to publish the proposed  
5 amendment with a public comment period closing  
6 October 27th, 2017, and technical and conforming  
7 amendment authority to staff would be in order at  
8 this time.

9 ACTING CHAIR PRYOR: Is there a motion  
10 to publish the proposed issue for comment as  
11 suggested by the General Counsel?

12 COMMISSIONER BARKOW: So moved.

13 ACTING CHAIR PRYOR: Is there a  
14 second?

15 COMMISSIONER REEVES: Second.

16 ACTING CHAIR PRYOR: Any discussion?

17 (No audible response)

18 ACTING CHAIR PRYOR: Vote on the  
19 motion by saying aye.

20 (Chorus of ayes)

21 ACTING CHAIR PRYOR: No nays, so the  
22 motion is adopted. Let the record reflect that

1 at least three Commissioners voted in favor of  
2 the motion to publish.

3 As we wrap up, I would like to mention  
4 an upcoming event, the Commission's National  
5 Seminar on the Federal Sentencing Guidelines in  
6 Denver, Colorado, next month.

7 This seminar will provide training to  
8 probation officers, prosecutors, and defense  
9 attorneys on the guidelines. We look forward to  
10 another big crowd in Denver where we expect over  
11 500 attendees.

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

18 Is there any further business before  
19 the Commission?

20 (No audible response)

21 ACTING CHAIR PRYOR: Hearing none, is  
22 there a motion to adjourn?

1 COMMISSIONER BARKOW: So moved.

2 ACTING CHAIR PRYOR: Is there a  
3 second?

4 COMMISSIONER REEVES: Second.

5 ACTING CHAIR PRYOR: Vote on the  
6 motion by saying aye.

7 (Chorus of ayes)

8 ACTING CHAIR PRYOR: The motion is  
9 adopted by voice vote, and the meeting is  
10 adjourned. Thank you very much.

11 (Whereupon, the above-entitled matter  
12 went off the record at 11:30 a.m.)

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