

**Remarks of Circuit Judge William H. Pryor, Jr.,
Acting Chair of the United States Sentencing Commission
October 4, 2017 Public Hearing
*Synthetic Cathinones***

Welcome to the United States Sentencing Commission's public hearing on synthetic cathinones. 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 appreciate the significant public interest in the work of the Commission, particularly this year as we tackle the important and emerging issue of synthetic drugs.

I would like to start by introducing the other members of the Commission. First, I'll introduce Rachel Barkow. Commissioner 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 Charles Breyer is a Senior District Judge for the Northern District of California and has served as a United States District Judge since 1998.

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.

Next is Patricia Wilson Smoot, the designated ex officio member of the Commission representing the United States Parole Commission. Commissioner Smoot has served on the Parole Commission since 2010 and was designated as Chair in 2015.

Finally, Zachary Bolitho is the ex officio Commissioner from the Department of Justice. Commissioner Bolitho serves as Counsel to the Deputy Attorney General of the United States.

Before we begin the hearing, I would like to briefly update the public on some of the Commission's most recent work. Since our last public meeting on August 17th, the Commission has released two publications that I think many will find interesting. On September 5th, the Commission issued a report analyzing the almost 1,700 sentence commutations under President Obama's 2014 Clemency Initiative. It provides data concerning the offenders who received a sentence commutation under the initiative and the offenses for which they were incarcerated. It also provides an analysis of the extent to which they appear to have met the announced criteria for the initiative. Finally, it compares the number of offenders incarcerated at the time the initiative was announced with the number of offenders who actually received a sentence commutation.

And on September 28th, the Commission issued a report that discusses the many legal and social science issues relating to the alternative-to-incarceration court programs that have emerged in many federal district courts around the country. As part of its consideration of alternatives to incarceration, the Commission for some time has been studying specialized court programs for certain types of offenders, most commonly for those with substance abuse disorders. Out of necessity, the Commission's study has been

qualitative rather than quantitative because at this juncture there is a lack of robust empirical data available about them. The Commission did, however, send staff to visit five districts with established programs to interview program judges and staff and to observe proceedings. On April 18th, the Commission conducted a public hearing and received testimony from experts on state “drug courts” and other “problem-solving courts” as well as from federal district judges who have presided over three of the more established alternative-to-incarceration court programs.

Many questions about these programs cannot be answered at this point. Not only are they relatively new in the federal system and have graduated only a small number of participants to date, they also have developed in a decentralized manner and differ from each other in significant respects. Thus, they cannot yet be evaluated empirically to determine whether the programs meet their articulated goals as or more effectively than traditional federal sentencing and supervision options. In the report, the Commission recommends that existing programs and any newly developed programs include input from social scientists so that data may be properly collected to allow for a meaningful evaluation in the future.

Look for the Commission’s upcoming publication, *Mandatory Minimum Penalties for Drug Offenses in the Federal Criminal Justice System* and an update of the analysis of demographic differences in sentencing that the Commission performed for its 2012 *Booker* Report within the next few months.

With regard to training, on September 6th through 8th, approximately 500 judges, probation officers, defense attorneys, and prosecutors attended the Commission’s National Training Seminar in Denver, Colorado. Next year’s national training seminar will be held on May 30th through June 1st, 2018, in San Antonio, Texas. We hope to see many of you there.

Finally, I’d like to remind the public that the Commission is currently accepting public comment regarding seven proposed amendments to the guidelines. Among the proposed amendments are proposals to provide adjustments in the guidelines for certain first-time offenders, as well as further consideration of the availability of alternatives to incarceration for certain federal offenders; amendments that would respond to legislation, including implementation of the Bipartisan Budget Act, which relates to fraudulent claims under certain social security programs; and an amendment that would address recommendations from the Commission’s Tribal Issues Advisory Group regarding how tribal convictions are treated in Chapter Four of the *Guidelines Manual* and the definition of “court protection order” in the Manual. These are important issues, so I would urge the public to provide comment to the Commission by October 10, 2017, which is the close of the original public comment period. The Federal Register Notice and instructions on how to provide public comment can be found on the Commission’s website.

The Commission is also currently seeking public comment on an issue for comment pertaining to THC, synthetic cannabinoids, and synthetic cathinones, the latter of which is the subject of today’s hearing. The public comment period ends on October 27th, 2017, and again we look forward to receiving and reviewing the public comment as we grapple with this complicated issue.

This is our second public hearing on the general issue of synthetic drugs. We held a

public hearing on synthetic drugs on April 18th, which was within weeks of the Commission regaining its quorum. And the Commission is already planning a third public hearing for December that will focus on synthetic cannabinoids and fentanyl.

The issues raised by emerging synthetic drugs are very complicated and novel in many respects, and it is essential for the Commission to provide clear and practical guidance to courts on how to properly and fairly account for them under the guidelines. For that reason, we look forward to hearing from our expert witnesses today. Today's public hearing will focus on synthetic cathinones. We will hear testimony from experts on the pharmacological effects of these drugs and their chemical structure, observations from the medical community, and the challenges these drugs pose to law enforcement. We look forward to a thoughtful and engaging discussion.