

UNITED STATES SENTENCING COMMISSION

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PROPOSED AMENDMENTS TO THE
FEDERAL SENTENCING GUIDELINES

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PUBLIC MEETING

+ + + + +

THURSDAY
APRIL 12, 2018

+ + + + +

The United States Sentencing Commission met in the Suite 2-500, One Columbus Circle, N.E., Washington, D.C., at 11:30 a.m., the Honorable William H. Pryor, Jr., Acting Chair, presiding.

PRESENT

- WILLIAM H. PRYOR, JR., Acting Chair
- RACHEL E. BARKOW, Commissioner
- CHARLES R. BREYER, Commissioner
- DANNY C. REEVES, Commissioner
- ZACHARY BOLITHO, Ex Officio Commissioner

ALSO PRESENT

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

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

2 11:32 a.m.

3 ACTING CHAIR PRYOR: This meeting is
4 called to order. Thank you for attending this
5 public meeting of the United States Sentencing
6 Commission. The Commission appreciates the
7 attendance of those joining us here, as well as
8 those watching our live-stream broadcast on our
9 website. As always, we welcome and encourage the
10 significant public interest in federal sentencing
11 issues and the work of the Commission.

12 I would like to start by introducing
13 the other members of the Commission. To my
14 immediate left is Commissioner Rachel Barkow, who
15 is the Segal Family Professor of Regulatory Law
16 and Policy at the New York University School of
17 Law and serves as the faculty director of the
18 Center on the Administration of Criminal Law at
19 the law school.

20 To my immediate right is Judge Charles
21 Breyer, who is a Senior District Judge for the
22 Northern District of California and has served as

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1 a District Judge since 1998.

2 To my far left is Judge Danny Reeves,
3 who is a District Judge for the Eastern District
4 of Kentucky and has served in that position since
5 2001.

6 Finally, to my far right, is Zachary
7 Bolitho, who is the Ex Officio Commissioner from
8 the Department of Justice. Commissioner Bolitho
9 serves as Deputy Chief of Staff and Associate
10 Deputy Attorney General to the Deputy Attorney
11 General of the United States.

12 The first order of business today is a
13 vote to adopt the January 19, 2018, public
14 meeting minutes. Is there a motion to do so?

15 COMMISSIONER BREYER: So moved.

16 ACTING CHAIR PRYOR: Is there a
17 second?

18 COMMISSIONER REEVES: Second.

19 ACTING CHAIR PRYOR: Any discussion?

20 Vote on the motion by saying aye.

21 MEMBERS: Aye.

22 ACTING CHAIR PRYOR: Any nays? The

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1 motion is adopted by a voice vote.

2 The next item of business is the
3 Report of the Chair. Before we begin our
4 hearing, I would like to update the public
5 briefly on some of the Commission's most recent
6 publications and actions.

7 Since we last met in March for the
8 second public hearing on proposed amendments, the
9 Commission released two new publications. One
10 publication is related to mandatory minimum
11 penalties for federal firearms offenses. I
12 discussed this publication at our last meeting
13 and encourage you to read the report's full
14 findings that are now available on the
15 Commission's website.

16 Another new publication is titled
17 "Recidivism Among Federal Offenders Receiving
18 Retroactive Sentencing Reductions: The 2011 Fair
19 Sentencing Act Guideline Amendment." This study
20 analyzes the recidivism rates for offenders who
21 received the retroactive benefit of the guideline
22 amendment implementing the Fair Sentencing Act of

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1 2010, which reduced the statutory mandatory
2 minimum penalties for crack cocaine offenses.

3 While Congress did not make the
4 statutory changes retroactive, the Commission did
5 make the ensuing 2011 guideline amendment
6 retroactive. The publication compares the
7 recidivism rates for those offenders who received
8 a retroactive reduction in their sentences with
9 the rates for those offenders who would have been
10 eligible to seek a reduced sentence under the
11 2011 guideline amendment, but who served their
12 full sentences before it went into effect. The
13 Commission conducted a similar analysis of its
14 retroactive 2007 "Crack Minus Two" amendment. In
15 the latest publication, the Commission found that
16 recidivism rates were virtually identical, 37.9
17 percent, for offenders who were released early
18 through retroactive application of the Fair
19 Sentencing Act Guideline Amendment and offenders
20 who had served their full sentences before the
21 guideline reduction retroactively took effect.

22 Turning to the business of the day,

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1 the Commission would like to thank the numerous
2 individuals and groups who submitted thoughtful
3 comments and recommendations during our most
4 recent public comment periods.

5 The next item of business is possible
6 votes to promulgate proposed amendments. The
7 General Counsel will advise the Commission on the
8 first possible vote on the technical amendment.

9 MS. GRILLI: Thank you, Judge Pryor.
10 This proposed amendment makes various technical
11 changes to the Guideline Manual. First, it makes
12 clarifying changes to Chapter One, Part A,
13 Subpart 1, and Application Note 2(A) to §2B1.1.

14 Next, it makes technical changes to
15 provide updated references to certain sections in
16 the United States Code that were either restated
17 in legislation or reclassified. Those are
18 §2B1.5, Appendix A, §2A3.5, §2X5.2, §5B1.3, and
19 §5D1.3.

20 Finally, the proposed amendment makes
21 clerical changes to various listed guidelines in
22 Appendix A. A motion to promulgate the proposed

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1 amendment with an effective date of November 1,
2 2018, and technical and conforming amendment
3 authority to staff is appropriate at this time.

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

7 COMMISSIONER BARKOW: So moved.

8 ACTING CHAIR PRYOR: Is there a
9 second?

10 COMMISSIONER BREYER: Second.

11 ACTING CHAIR PRYOR: Any discussion?
12 Vote on the motion by saying aye.

13 MEMBERS: Aye.

14 ACTING CHAIR PRYOR: Any nays? The
15 motion is adopted and let the record reflect that
16 four Commissioners voted in favor of the motion.

17 The General Counsel will advise the
18 Commission on a possible vote on the marijuana
19 equivalency amendment.

20 MS. GRILLI: This proposed amendment
21 makes technical changes to §2D1.1, specifically
22 replacing the term "marijuana equivalency" as the

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1 conversion factor for determining quantity
2 penalties for controlled substances that are
3 either not specifically referenced in the drug
4 quantity table or when combining differing
5 controlled substances.

6 The term "marijuana equivalency" is
7 replaced with the new term "converted drug
8 weight." This new conversion factor is added to
9 all provisions of the drug quantity table and
10 changed the title of the Drug Equivalency Table
11 to Drug Conversion Table. In addition, there are
12 technical changes made throughout §2D1.1.

13 A motion to promulgate the proposed
14 amendment with an effective date of November 1,
15 2018, and technical and conforming amendment
16 authority to staff is appropriate at this time.

17 ACTING CHAIR PRYOR: Is there a motion
18 to promulgate the proposed amendment as suggested
19 by the General Counsel?

20 COMMISSIONER REEVES: I'll make the
21 motion.

22 ACTING CHAIR PRYOR: Is there a

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1 second?

2 COMMISSIONER BARKOW: Second.

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

5 MEMBERS: Aye.

6 ACTING CHAIR PRYOR: Any nays? The
7 motion is adopted and let the record reflect that
8 four Commissioners voted in favor of the motion.

9 The General Counsel will advise the
10 Commission on the first possible vote on the
11 miscellaneous amendment.

12 MS. GRILLI: Yes. This amendment
13 responds to recently enacted legislation and
14 miscellaneous guideline issues. It contains five
15 parts. Part A responds to the Transnational Drug
16 Trafficking Act by amending §2B5.3.

17 Part B responds to the International
18 Megan's Law to Prevent Child Exploitation and
19 Other Sexual Crimes Through Advanced Notification
20 of the Traveling Sex Offenders Act by amending
21 §2A3.5, §2A3.6, and Appendix A.

22 Part C responds to the Frank R.

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1 Lautenberg Chemical Safety for the Twenty-First
2 Century Act by amending Appendix A. And Part D
3 amends §2G1.3 to clarify how the computer
4 enhancement at Subsection (b)(3) interacts with
5 its correlating commentary.

6 Part E responds to the Justice for All
7 Reauthorization Act of 2016 by amending §5D1.3.
8 A motion to promulgate the amendment with an
9 effective date of November 1, 2018, and technical
10 and conforming amendment authority to staff is in
11 order at this time.

12 ACTING CHAIR PRYOR: Is there a motion
13 to promulgate the proposed amendment as suggested
14 by the General Counsel?

15 COMMISSIONER BREYER: So moved.

16 ACTING CHAIR PRYOR: And is there a
17 second?

18 COMMISSIONER REEVES: Second.

19 ACTING CHAIR PRYOR: Is there any
20 discussion? Vote on the motion by saying aye.

21 MEMBERS: Aye.

22 ACTING CHAIR PRYOR: Any nays? The

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1 motion is adopted and let the record reflect that
2 four Commissioners voted in favor of the motion.

3 The General Counsel will now advise
4 the Commission on a possible vote on the Tribal
5 Issues amendment.

6 MS. GRILLI: Yes. This proposed
7 amendment is the result of the Commission's study
8 of the May 2016 report of the Commission's ad hoc
9 Tribal Issues Advisory Group and contains two
10 parts.

11 Part A would amend the Commentary to
12 §4A1.3 to set forth a non-exhaustive list of
13 factors for the court to consider in determining
14 whether and to what extent an upward departure
15 based on a tribal court conviction is
16 appropriate.

17 Part B would amend the Commentary of
18 §1B1.1, which are application instructions, to
19 provide a definition of "court protection order"
20 that is derived from federal statute. It also
21 makes technical and conforming changes to the
22 Commentary of §2B1.3 and §2L1.1.

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1 A motion to promulgate the proposed
2 amendment with an effective date of November 1,
3 2018, and with technical and conforming amendment
4 authority to staff is appropriate at this time.

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

8 COMMISSIONER REEVES: So moved as to
9 both parts.

10 ACTING CHAIR PRYOR: Is there a
11 second?

12 COMMISSIONER BREYER: Second.

13 ACTING CHAIR PRYOR: Any discussion?
14 Vote on the motion -- before we do that, I want
15 to say a few words about it. Let me start by
16 thanking the members of the Tribal Issues
17 Advisory Group for their recommendations in their
18 2016 report to the Commission and their expertise
19 regarding this amendment.

20 The six factors outlined in the
21 amendment provide a framework for courts to use
22 when determining whether an upward departure is

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1 appropriate to account for prior tribal
2 convictions. Collectively, these
3 factors balance the rights of defendants and the
4 unique and important status of tribal courts. The
5 amendment also provides a definition for the term
6 "court protection order," which incorporates the
7 statutory definition of "protection order."

8 By adopting a clear definition, the
9 guidelines will ensure that court protection
10 orders issued by tribal courts receive treatment
11 consistent with that of other jurisdictions.

12 Vote on the motion by saying aye.

13 MEMBERS: Aye.

14 ACTING CHAIR PRYOR: Any nays? The
15 motion is adopted and let the record reflect that
16 four Commissioners voted in favor of the
17 amendment.

18 The General Counsel will now advise
19 the Commission on a possible vote on the
20 Acceptance of Responsibility amendment.

21 MS. GRILLI: This proposed amendment
22 amends the Commentary to §3E1.1 to clarify how a

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1 defendant's challenge to relevant conduct should
2 be considered in determining whether the
3 defendant has accepted responsibility.

4 Specifically, the proposed amendment
5 would revise Application Note 1(A) to state that
6 "the fact that a defendant's challenge is
7 unsuccessful does not necessarily establish that
8 it was either a false denial or frivolous."

9 A motion to promulgate the proposed
10 amendment with an effective date of November 1,
11 2018, and technical and conforming amendment
12 authority to staff is in order at this time.

13 ACTING CHAIR PRYOR: Is there a motion
14 to promulgate the proposed amendment as suggested
15 by the General Counsel?

16 COMMISSIONER BREYER: So moved.

17 ACTING CHAIR PRYOR: Is there a
18 second?

19 COMMISSIONER BARKOW: Second.

20 ACTING CHAIR PRYOR: Any discussion?
21 The Commission has heard concerns that some
22 courts have interpreted the current commentary to

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1 §3E1.1 as automatically precluding the reduction
2 for acceptance of responsibility when the
3 defendant makes an unsuccessful good faith, non-
4 frivolous challenge to relevant conduct.

5 This amendment clarifies that the
6 unsuccessful nature of a challenge to relevant
7 conduct does not necessarily establish that the
8 challenge was either a false denial or frivolous.

9 Vote on the motion by saying aye.

10 MEMBERS: Aye.

11 ACTING CHAIR PRYOR: Any nays? The
12 motion is adopted and let the record reflect that
13 four Commissioners voted in favor of the motion.

14 The General Counsel will advise the
15 Commission on a possible vote on the Bipartisan
16 Budget Act amendment.

17 MS. GRILLI: This proposed amendment
18 responds to the Bipartisan Budget Act of 2015
19 which, among other things, amended three existing
20 criminal statutes concerning fraudulent claims
21 under certain Social Security programs.

22 The Act added new subdivisions

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1 prohibiting conspiracy to commit fraud for
2 substantive offenses contained in 42 United
3 States Code §§ 408, 1011, and 1383a.

4 The proposed amendment would amend Appendix A so
5 that these sections are referenced not only to
6 §2B1.1 but also to the conspiracy guideline,
7 §2X1.1.

8 The Act also amended those sections to
9 add increased penalties for certain specified
10 persons who commit fraud offenses under the
11 relevant Social Security programs.

12 A person who meets these statutory
13 requirements and are convicted of a fraud offense
14 under one of the three amended statutes may be
15 imprisoned for not more than 10 years, which is
16 double the otherwise applicable five-year penalty
17 for other offenders.

18 The proposed amendment would amend
19 §2B1.1 to address cases in which a defendant was
20 convicted under these specified statutes and the
21 maximum term of 10 years imprisonment applies by
22 adding an enhancement of four levels and a

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1 minimum offense level of 12 for such cases.

2 It also adds commentary specifying
3 that if the enhancement applies, the court should
4 not apply an adjustment under §3B1.3, the abuse
5 of position of trust enhancement. The proposed
6 amendment also makes clarifying technical and
7 conforming changes to other provisions of §2B1.1
8 and its commentary.

9 A motion to promulgate the proposed
10 amendment with an effective date of November 1,
11 2018, and technical and conforming amendment
12 authority to staff would be in order at this
13 time.

14 ACTING CHAIR PRYOR: Is there a motion
15 to promulgate the proposed amendment as suggested
16 by the General Counsel?

17 COMMISSIONER BREYER: So moved.

18 ACTING CHAIR PRYOR: Is there a
19 second?

20 COMMISSIONER REEVES: Second.

21 ACTING CHAIR PRYOR: Any discussion?
22 Before I comment on this amendment, I'd like to

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1 note the Commission's appreciation for the
2 constructive comment it received from the Senate
3 Committee on Finance, the House Ways and Means
4 Committee, the House Judiciary Committee as well
5 as the Social Security Administration regarding
6 the Bipartisan Budget Act of 2015.

7 We value their past and current
8 important work on this topic. This amendment
9 ensures that the guidelines reflect the
10 Bipartisan Budget Act's increased penalties
11 related to fraudulent claims under certain Social
12 Security programs.

13 The proposed sentencing enhancement,
14 in particular, reflects the seriousness with
15 which both Congress and the Commission view
16 violations by defendants in positions of trust
17 engaged in these sophisticated fraudulent
18 schemes.

19 Vote on the motion by saying aye.

20 MEMBERS: Aye.

21 ACTING CHAIR PRYOR: Any nays? The
22 motion is adopted and let the record reflect that

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1 four Commissioners voted in favor of the motion.

2 The General Counsel will advise the
3 Commission on a possible vote on Illegal Reentry
4 Guideline Enhancements amendment.

5 MS. GRILLI: This proposed amendment
6 contains two parts, Parts A and B. Part A
7 responds to a suggestion that the illegal reentry
8 guideline enhancements for prior convictions
9 contain a gap in coverage.

10 Specifically, neither Subsection
11 (b)(2) nor Subsection (b)(3) provide for an
12 increase in the defendant's offense level in a
13 situation where a defendant engaged in criminal
14 conduct before being deported or ordered removed
15 from the United States for the first time but did
16 not sustain a conviction or convictions for that
17 criminal conduct until after he or she was first
18 deported or ordered removed.

19 Part A of the proposed amendment would
20 amend §2L1.2 to cover this situation by revising
21 Subsection (b)(2) so that its applicability turns
22 on when the defendant engaged in the criminal

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1 conduct before he or she was first removed or
2 ordered deported rather than whether the
3 defendant sustained the resulting conviction
4 before that event.

5 Part A also makes other non-
6 substantive conforming changes to the language of
7 Subsection (b)(3) . Part A would also amend the
8 commentary to §2L1.2, adding an application note
9 to provide that in the event that the conduct
10 occurs both before and after deportation, only
11 Subsection (b)(2)'s enhancement should be
12 applied.

13 Part B of the proposed amendment
14 responds to an issue that has arisen in
15 litigation concerning how §2L1.2's enhancement
16 for prior convictions apply in a situation where
17 defendant's prior conviction included a term of
18 probation, parole, or supervised release that was
19 subsequently revoked and an additional term of
20 imprisonment imposed.

21 Part B would revise the definition of
22 "sentence imposed" in Application Note 2 of the

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1 commentary to §2L1.2 to clarify that, consistent
2 with the meaning of "sentence of imprisonment"
3 under §4A1.2, the phrase "sentence imposed" as
4 used in §2L1.2 includes any term of imprisonment
5 given upon revocation of probation, parole, or
6 supervised release regardless of when that
7 revocation occurred.

8 A motion to promulgate the proposed
9 amendment with an effective date of November 1,
10 2018, and technical and conforming amendment
11 authority to staff is appropriate.

12 ACTING CHAIR PRYOR: Is there a motion
13 to promulgate the proposed amendment as suggested
14 by the General Counsel?

15 COMMISSIONER REEVES: I'll make the
16 motion.

17 ACTING CHAIR PRYOR: Is there a
18 second?

19 COMMISSIONER BARKOW: Second.

20 ACTING CHAIR PRYOR: Any discussion?
21 As many of you know, the Commission passed a
22 comprehensive amendment to the illegal reentry

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1 guideline in 2016.

2 This amendment clarifies certain
3 discrete application issues that have arisen in
4 litigation and that have been brought to our
5 attention through the Department of Justice. The
6 amendment makes clear that the prior criminal
7 conduct enhancement should apply regardless of
8 when an illegal reentry offender's conviction is
9 final.

10 This amendment also makes clear that
11 defendants who commit criminal conduct before
12 their first order of removal, but who are not
13 convicted until after that order is issued,
14 are subject to the relevant sentencing
15 enhancements.

16 Vote on the motion by saying aye.

17 MEMBERS: Aye.

18 ACTING CHAIR PRYOR: Any nays? The
19 motion is adopted and let the record reflect that
20 four Commissioners voted in favor of the motion.

21 The General Counsel will advise the
22 Commission on a possible vote on the Synthetic

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1 Drugs amendment.

2 MS. GRILLI: This proposed amendment
3 is a result of the Commission's multi-year study
4 involving synthetic drugs, fentanyl, and fentanyl
5 analogues. The proposed amendment contains three
6 parts.

7 Part A would amend the drug
8 equivalency tables in §2D1.1 to adopt a class-
9 based approach to account for synthetic
10 cathinones, setting forth a single marijuana
11 equivalency of 1 gram to 380 grams of marijuana
12 and making this class-based marijuana equivalency
13 also applicable to methcathinone by deleting the
14 specific reference to that drug from the drug
15 equivalency tables.

16 It also sets a minimum base offense
17 level of 12 for cases involving synthetic
18 cathinones and provides a departure provision
19 based on the potency of the synthetic cathinone.

20 Part B would amend the drug
21 equivalency tables in §2D1.1 to adopt a class-
22 based approach to account for synthetic

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1 cannabinoids. It sets a single marijuana
2 equivalency applicable to cannabinoids to 1 gram
3 is equal to 167 grams of marijuana.

4 It adds a provision defining the term
5 synthetic cannabinoid, provides for a minimum
6 base-offense level of 12, and a departure
7 provision for certain cases involving synthetic
8 cannabinoids.

9 Finally, Part C of the proposed
10 amendment would amend §2D1.1 in several ways to
11 account for fentanyl and fentanyl analogues. It
12 provides a definition of the term, "fentanyl
13 analogue," sets forth a single marijuana
14 equivalency applicable to fentanyl analogue of 1
15 gram is equal to 10 kilograms of marijuana, and
16 specifies in the drug quantity table that the
17 penalties relating to fentanyl apply to the
18 substance identified by that specific chemical
19 name applicable to fentanyl in statute.

20 In addition, Part C of the proposed
21 amendment amends §2D1.1 to provide a four-level
22 enhancement in cases in which fentanyl or

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1 fentanyl analogue is misrepresented or marketed
2 as another substance.

3 A motion to promulgate the proposed
4 amendment with an effective date of November 1,
5 2018, and technical and conforming amendment
6 authority to staff is appropriate.

7 ACTING CHAIR PRYOR: Is there a motion
8 to promulgate the proposed amendment as suggested
9 by the General Counsel?

10 COMMISSIONER REEVES: So moved.

11 ACTING CHAIR PRYOR: Is there a
12 second?

13 COMMISSIONER BREYER: Second.

14 ACTING CHAIR PRYOR: Any discussion?
15 The Commission will now vote on a multi-part
16 amendment regarding synthetic drugs which
17 includes, but is not limited to, synthetic
18 cathinones, otherwise known as bath salts;
19 synthetic cannabinoids, including but not limited
20 to K2 or spice; fentanyl and fentanyl analogues.

21 This amendment draws upon public comment, expert
22 testimony, and data analysis gathered during a

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1 multi-year study of synthetic drugs.

2 Currently, many new synthetic drugs
3 are not referenced in the Federal Sentencing
4 Guidelines. As a result, courts have faced
5 expensive and resource-intensive hearings. The
6 amendment pending before the Commission today
7 reflects the evolving nature of these new drugs.

8 In addition, it will simplify and promote
9 uniformity in federal sentencing.

10 The amendment will also create a new
11 guideline definition of the term "fentanyl
12 analogue." The change effectively raises the
13 guideline penalties for fentanyl analogues to a
14 level more consistent with the current statutory
15 penalty structure.

16 To address the severe dangers posed by
17 fentanyl, the amendment also creates a four-level
18 sentencing enhancement for knowingly
19 misrepresenting or knowingly marketing fentanyl
20 or fentanyl analogues as another substance, which
21 equates to an approximate fifty percent increase
22 in sentence length.

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1 The new amendment also establishes
2 drug ratios and minimum offense levels for
3 two new classes of synthetics drugs: synthetic
4 cathinones and synthetic cannabinoids. Following
5 a multi-year study and series of public hearings
6 with experts, the Commission has determined that
7 synthetic cathinones possess a common chemical
8 structure that is sufficiently similar to treat
9 as a single class of synthetic drugs.

10 The Commission also found that, while
11 synthetic cannabinoids differ in chemical
12 structure, the drugs induce similar biological
13 responses and share similar pharmacological
14 effects. In proposing these new drug ratios, the
15 Commission also considered, among other factors,
16 the severity of the medical harms to the user,
17 the current ratios applied in similar cases,
18 known trafficking behaviors, and concerns for
19 public safety.

20 Vote on the motion by saying aye.

21 MEMBERS: Aye.

22 ACTING CHAIR PRYOR: Any nays? The

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1 motion is adopted and let the record reflect that
2 four Commissioners voted in favor of the motion.

3 The General Counsel will advise the
4 Commission on a possible vote on the Alternatives
5 to Incarceration for Nonviolent First Offenders
6 amendment.

7 MS. GRILLI: This proposed amendment
8 is a result of the Commission's continued study
9 of alternatives to incarceration. The proposed
10 amendment amends the Commentary to §5C1.1 to add
11 a new application note stating that if a
12 defendant is a nonviolent first offender and the
13 applicable guideline range is in Zone A or B of
14 the Sentencing Table, the court should consider
15 imposing a sentence other than imprisonment.

16 The application note defines the term
17 "nonviolent first offender" as "a defendant who
18 has no prior convictions or any other comparable
19 judicial dispositions of any kind and who did not
20 use violence or credible threats of violence or
21 possess a firearm or other dangerous weapon in
22 connection with the offense of conviction."

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1 In addition, the proposed amendment
2 amends the Commentary to §5F1.2 to remove
3 language instructing that electronic monitoring
4 ordinarily should be used in connection with home
5 detention. Alternative means of surveillance may
6 be used, so long as they are effective as
7 electronic monitoring and surveillance necessary
8 for effective use of home detention ordinarily
9 requires electronic monitoring.

10 Finally, the proposed amendment makes
11 conforming changes to other provisions in Chapter
12 Five. A motion to promulgate the proposed
13 amendment with an effective date of November 1,
14 2018, and technical and confirming amendment
15 authority to staff would be in order at this
16 time.

17 ACTING CHAIR PRYOR: Is there a motion
18 to promulgate the proposed amendment as suggested
19 by the General Counsel?

20 COMMISSIONER BARKOW: So moved.

21 ACTING CHAIR PRYOR: Is there a
22 second?

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1 COMMISSIONER BREYER: Second.

2 ACTING CHAIR PRYOR: Is there any
3 discussion?

4 I'd like to discuss the Commission's
5 reason for considering this new application note.
6 The new application note provides that judges
7 should consider alternative sentencing options
8 for "nonviolent first offenders" whose applicable
9 guideline range falls within Zones A or B.

10 Eligible defendants must not have any
11 prior convictions and must not have used
12 violence, credible threats of violence, or
13 possessed a firearm or other dangerous weapon in
14 the offense. This narrowly-tailored amendment is
15 consistent with the directive to the Commission
16 in 28 U.S.C. § 994(j).

17 Vote on the motion by saying aye.

18 MEMBERS: Aye.

19 ACTING CHAIR PRYOR: Any nays? The
20 motion is adopted and let the record reflect that
21 four Commissioners voted in favor of the motion.

22 I would like to acknowledge the unique

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1 challenge that the Commission faced during the
2 current amendment cycle. The Sentencing Reform
3 Act of 1984 contemplates that there will be seven
4 voting members on the Commission appointed by the
5 President and confirmed by the Senate.

6 While setting sentencing policy is
7 always difficult because it impacts the liberty
8 of our fellow citizens, reaching consensus was
9 particularly challenging and critical this
10 amendment cycle. Under the statute, we need an
11 affirmative vote of four Commissioners to approve
12 any pending amendments.

13 Among the four of us here today, the
14 unanimous agreement on this slate of amendments
15 reflects even more collaboration and compromise
16 than in a typical amendment cycle. I would like
17 to thank my fellow Commissioners for their time
18 and service.

19 We worked together to develop
20 solutions that improve the Federal Sentencing
21 Guidelines in a manner that balances fairness,
22 justice, fiscal responsibility, and public

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1 safety.

2 I look forward to working with my
3 colleagues to strengthen and to simplify the
4 guidelines. Working together, we can continue our
5 efforts to ensure clear and effective guidance
6 for federal courts across the country.

7 As one important part of that ongoing
8 work, I would like to mention an upcoming event,
9 the Commission's National Seminar on the Federal
10 Sentencing Guidelines in San Antonio, Texas.

11 The seminar will take place from May
12 30th through June 1st. These annual trainings
13 provide specialized instruction to probation
14 officers, prosecutors, and defense attorneys on
15 the guidelines. I look forward to seeing many of
16 you there.

17 Is there any further business before
18 the Commission?

19 COMMISSIONER BREYER: Just this. I
20 think I speak on behalf of the three
21 Commissioners here to thank you for your
22 leadership. Without your leadership, it would

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1 have been impossible to arrive at a consensus on
2 these amendments, so thank you.

3 ACTING CHAIR PRYOR: Thank you.

4 Is there a motion to adjourn?

5 COMMISSIONER BARKOW: Yes. So moved.

6 ACTING CHAIR PRYOR: Is there a
7 second?

8 COMMISSIONER REEVES: Second.

9 ACTING CHAIR PRYOR: Vote on the
10 motion by saying aye.

11 MEMBERS: Aye.

12 ACTING CHAIR PRYOR: Anyone opposed?
13 The motion is adopted by voice vote and the
14 meeting is adjourned. Have a great day.

15 (Whereupon, the above-entitled matter
16 went off the record at 12:02 p.m.)

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