

**Public Meeting Remarks of Circuit Judge William H. Pryor Jr.,
Acting Chair of the United States Sentencing Commission
December 13, 2018
Washington, D.C.**

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

I would like to start today by introducing the other members of the Commission.

First, I will 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 is a District Court Judge for the Eastern District of Kentucky and has served in that position since 2001.

David Rybicki joins us as the *ex officio* Commissioner from the Department of Justice. Commissioner Rybicki was appointed Deputy Assistant Attorney General for the Department of Justice's Criminal Division in 2017.

Patricia Cushwa, who represents the Parole Commission as the designated *ex officio* member of Commission, is not able to attend today's meeting.

Before we proceed with the business of the day, I would like to take a moment to comment on Commissioner Barkow's service on the Sentencing Commission. Today's public meeting marks Commissioner Barkow's last meeting with us and caps a 5-year tenure as a Commissioner. We've worked alongside each other here since she was confirmed by the Senate in 2013. Her steadfast commitment to fair sentencing and quick ability to process sentencing data served the Commission and the public well. Commissioner Barkow, thank you for your service. I will miss you.

Let me start with an update on the work of the Commission since our last public meeting in August. Most significantly, I'd call your attention to our new 2018 Guidelines Manual, which incorporates guideline amendments that took effect on November 1, 2018. For judges, probation officers, members of the bar, and other practitioners who have a hard copy of the new Guidelines Manual, you may notice that this year's version bears the color crimson, the color of a certain football team in Tuscaloosa, Alabama...Roll Tide.

You will notice that for the first time, there is a list and short description of each of the new amendments incorporated in the new Guideline Manual.

In addition to being on the Commission's website, the 2018 manual is available as a web-based app that features additional tools to assist in understanding and applying the federal sentencing guidelines.

With respect to research and publications, in September the Commission published a report entitled *Mandatory Minimum Penalties for Identity Theft Offenses in the Federal Criminal Justice System*. This publication is the fifth in the Commission's current series on the impact of mandatory minimum penalties on federal offenders. This publication examines recent trends in the charging of general identity theft and aggravated identity theft offenses. Some of the key findings include that 1.6 percent of all federal offenders were convicted under 18 U.S.C. § 1028A, the aggravated identity theft statute that carries a mandatory consecutive two-year mandatory minimum penalty. These offenders, however, comprised slightly more than half of all federal identity theft offenders and have more than doubled in number over the last decade.

The Commission will publish the final report in its current series on mandatory minimum penalties in January, which will study the impact of mandatory minimum penalties on federal sex offenders.

In November, the Commission also updated its publication titled *Federal Sentencing: The Basics*. This publication is a great resource for understanding basic application of the sentencing guidelines, related federal statutes, and rules of procedure. This publication discusses the landmark passage of the Sentencing Reform Act of 1984, key Supreme Court decisions concerning the guidelines, and the sentencing process today.

The Commission will have several other reports ready for publication in early 2019. In January, the Commission will release another report in our series of reports on recidivism, this one focusing on violent offenders. Among our findings are that violent federal offenders recidivate much more often than non-violent federal offenders, with a recidivism rate of 64 percent compared to 40 percent for non-violent offenders. Violent offenders recidivate more quickly and commit more serious offenses than non-violent offenders. And violent offenders do not age out of committing crime nearly to the degree as non-violent offenders. Over one-third—36%—of violent offenders older than 50 at the time of release reoffend, more than double the rate for non-violent offenders (15%).

The Commission also plans to release a report on recidivism and firearms offenders early in 2019.

The last upcoming report that I'd like to highlight is part of our ongoing examination of the overall structure and operation of the guidelines post-*Booker*. As part of that examination, in November 2017 we updated the analysis of demographic differences in federal sentencing in the 2012 *Booker* Report. Much like

the *Booker* Report, that updated analysis found that sentence length continues to be associated with some demographic factors, including race.

In January, the Commission will release a report that updates the portion of the 2012 *Booker* Report discussing different sentencing practices among judges in the same federal district, that is intra-district differences. For this upcoming report, we have refined our methodology to focus on judges who sit in the same city. It analyzes the sentencing practices of judges located in 30 large metropolitan areas nationwide, and finds that even within individual cities sentencing practices vary significantly.

Before I turn to the general counsel to advise us on possible votes to publish proposed amendments, I should note that since March 2017, the Commission has operated with four voting commissioners. Although only three affirmative votes are required to published proposed amendments, which we are doing today, by statute four affirmative votes are required to promulgate amendments. As I mentioned at the outset, Commissioner Barkow's term will come to an end when Congress adjourn sine die, as will mine. Four nominations are currently pending in the United States Senate, including mine to serve a second term along with a separate nomination to serve as the Chair. Therefore, unless the Senate confirms at least two commissioners, the Commission will lose its voting quorum and not be able to vote to promulgate the proposed amendments we publish today until a voting quorum is restored.

Once again, I would like to take this final opportunity to thank Commissioner Barkow for her service to the Commission. I would also like to publicly acknowledge and express my personal appreciation for the important service and contributions made by members of the Commission's Victims Advisory Group, who are departing us. The distinguished departing members include: Chair of the Victim's Advisory Group, T. Michael Andrews; Elizabeth Cronin; Kimberley Garth-James; Keli Luther; James Marsh; and Virginia Swisher. Similarly, I would also like to acknowledge and praise the service and work of Ronald Levine, whose term as Chair of the Commission's Practitioners Advisory Group has expired and the other members who are departing us: James Boren, Pamela Mackey, and Gordan Armstrong. Finally, I would like to thank Wendy Bremner, a member of the Tribal Issues Advisory Group, for her service.

Thank you for joining us today and, pending further action in the Senate, hope that I will see you again soon in January.