

Remarks of Circuit Judge William H. Pryor, Jr.,  
Acting Chair of the United States Sentencing Commission  
Public Hearing on Alternatives to Incarceration Court Programs & Synthetic Drugs  
April 18, 2017  
Washington D.C.

Welcome to the United States Sentencing Commission’s public hearing on two important issues, alternatives to incarceration programs in the federal court system, and synthetic drugs. I want to extend a warm welcome to our witnesses and to the public audience that joins us—both here in Washington, DC, and by live-stream via our website.

Before we get started, I would like to introduce the other members of the Commission, and I am pleased to say that we now have four voting members of the Commission. Seated next to me is Rachel Barkow, who joined the Commission in 2013. 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. When the terms of Chair Patti Saris, Judge Charles Breyer, and Dabney Friedrich expired at the end of the last Congress, Commissioner Barkow and I were the only two remaining voting commissioners.

But on March 21<sup>st</sup> the Senate confirmed two additional voting commissioners. Judge Breyer has served as a Senior District Judge for the Northern District of California since 1998. He initially joined the Commission in 2013, and has just begun a second term. Welcome back, Judge Breyer, we missed you.

Judge Danny Reeves was appointed to a first term and is the newest member of the Commission. Judge Reeves is a District Court Judge for the Eastern District of Kentucky, and has served in that position since 2001. Before his appointment to the bench, Judge Reeves practiced civil litigation in Lexington, Kentucky, for 18 years. Judge Reeves, welcome to the Commission.

Patricia Smoot serves as the *ex-officio* Commissioner from the United States Parole Commission. Commissioner Smoot joined the Parole Commission in 2010, and she became Chair in May 2015.

Finally, Jonathan Wroblewski serves as the *ex-officio* Commissioner from the Department of Justice. Commissioner Wroblewski has returned as Director of the Office of Policy and Legislation in the Criminal Division of the Department after serving as the Principal Deputy Assistant Attorney General of the Office of Legal Policy. Welcome back, Jonathan.

Although the Commission again has the four voting members required to promulgate guideline amendments, the lack of a voting quorum for almost three critical months of our amendment cycle means we will not be able to promulgate amendments this year. Those who closely follow us know that in December, we voted to publish several proposed amendments for comment, among them an amendment that would add a downward adjustment and encourage the use of alternatives for some first-time offenders, and amendments that would respond to recommendations made by the Tribal Issues Advisory Group regarding how tribal offenses and juvenile sentences are considered.

The public comment period has closed. We received a great deal of thoughtful public comment, which can be reviewed on our website. We thank the public for taking the time to give careful consideration to these proposals.

Ordinarily, we would have received testimony about the proposed amendments at a public hearing in March. But with only two voting commissioners we deferred scheduling a hearing until a reconstituted Commission was formed.

By statute, the Commission is required to submit any amendments to the guidelines to Congress by May 1<sup>st</sup> for a 180-day congressional review period. Because we did not have a voting quorum for almost three months, there simply is not enough time for us to schedule a public hearing on the proposed amendments, digest the public comment, deliberate, and hold a public vote by the statutory deadline. Therefore, this year we will not promulgate any amendments to the guidelines. But our data analysis, legal research, and public comment on these proposed amendments should provide us a sound basis for considering guideline amendments as early as possible during the next amendment cycle.

Before turning to the topics of our hearing, I would like to update you on some of the Commission's other ongoing activities. In March, the Commission released its 2016 *Annual Report and Sourcebook of Federal Sentencing Statistics*. The *Sourcebook* is a comprehensive compilation of sentencing data on every felony and class A misdemeanor sentenced in the federal courts. In fiscal year 2016, there were 67,742 cases reported to the Commission—down 4.6 percent from 71,003 in fiscal year 2015.

The Commission continues to collect and report sentencing data on retroactive application of the 2014 Drug Guidelines amendment, often referred to as “Drugs Minus Two.” As of last December, federal courts had considered 44,529 motions for retroactive application of the “Drugs Minus Two” amendment, and the courts granted 29,872 (or 67.1%) of them.

In addition, the Commission continues to publish new findings from its multi-year study of recidivism among the federal offender population. In February, we released a report examining 10,888 federal drug traffickers released in 2005. The

Commission found that over an 8-year follow-up period, one-half of federal drug traffickers were rearrested for a new crime or rearrested for a violation of supervised release. That figure is similar to the recidivism rate for federal offenders overall, but significantly lower than the 5-year recidivism rate of 76.9 percent for state drug offenders reported by the Bureau of Justice Statistics.

In March, the Commission released the third installment of its recidivism series. The report examines in further detail the strong association between an offender's criminal history calculation under the guidelines, and their risk of recidivism.

Finally, I'd like to remind everyone about the Commission's Annual National Seminars on the Federal Sentencing Guidelines. The Commission will hold two national programs—the first in Baltimore, Maryland, May 31<sup>st</sup> through June 2<sup>nd</sup>, and the second in Denver, Colorado, September 6<sup>th</sup> through the 8<sup>th</sup>. Registration for both seminars is open on the Commission's website. These seminars will provide training to probation officers, prosecutors, and defense attorneys.

Today's public hearing focuses on two multi-year policy priorities. First, we will hear from two panels of speakers about several programs in the federal court system designed to promote alternatives to incarceration. Then, we will move to another topic of current concern: synthetic drugs. We will hear testimony from experts on synthetic drugs, including their chemical structure, pharmacological effects, trafficking patterns, and community impact. We look forward to a thoughtful and engaging discussion.