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# SENTENCING REFORM AMENDMENTS

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HEARING  
BEFORE THE  
SUBCOMMITTEE ON CRIMINAL JUSTICE  
OF THE  
COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

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ON

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## SENTENCING REFORM AMENDMENTS

WEDNESDAY DECEMBER 4, 1985

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON CRIMINAL JUSTICE,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The subcommittee met, pursuant to call, at 10:10 a.m., in room 2226, Rayburn House Office Building, Hon. John Conyers, Jr. (chairman of the subcommittee) presiding.

Present: Representatives Conyers, Boucher, and Gekas.

Staff present: Thomas W. Hutchison, counsel; Raymond V. Smietanka, associate counsel; and Bennie B. Williams, clerk.

Mr. CONYERS. Good morning. The subcommittee will come to order.

The Sentencing Reform Act of 1984 substantially revises Federal sentencing laws and practices. The act requires Federal judges to sentence convicted defendants within guidelines developed by a Sentencing Commission. While a judge may go outside of the guidelines, to do so, the judge must find that there is an aggravating or mitigating factor that was not adequately considered in formulating the guidelines. Departures from these guidelines, I believe it fair to say, are expected to be the exception.

Sentencing guidelines, therefore, are essential to the operation of the new sentencing system. They must be in place when the new sentencing system takes effect on November 1, 1986.

The Sentencing Reform Act gave the Sentencing Commission 18 months from the date of enactment to submit the initial set of guidelines to the Congress. Thus, the initial set of guidelines is due on April 13, 1986, and they are to take effect 6 months later.

This delicately balanced schedule was dependent upon the Sentencing Commission commencing its work before the end of last year. As the Senate Judiciary Committee report on the Sentencing Reform Act put it, "It is essential that the work of the Sentencing Commission begin as soon after the date of enactment of this Act as possible."

Unfortunately, the Sentencing Commission was not able to do that. The President did not name the members of the Commission until late September of this year, and the Senate did not confirm the Commission members until late October, over a year after the enactment of the law. The Commission is now in the process of starting up, locating office space, staffing, and other administrative matters, and hopes to begin its substantive work early next year.

If the present deadline is adhered to, the Commission would have only about 4 months before it would have to submit the initial

guidelines to Congress. This clearly was not anticipated when the law was enacted. While I was not enthusiastic about the Sentencing Reform Act, I believe the Commission deserves an adequate opportunity to carry out its work.

After informal discussions with the Commission, and in conjunction with the ranking minority member, Mr. Gekas, I have introduced H.R. 3837, with Mr. Boucher, to restore to the Commission the period of time it was expected to have for the preparation of the initial guidelines. Thus, the bill extends for 1 year the Commission's deadline for submitting the initial set of sentencing guidelines.

I welcome the chairman of the Sentencing Commission, and two members of the Commission. I yield to Mr. Boucher for any comments he might choose to make at this time.

Mr. BOUCHER. I have no comments, Mr. Chairman.

Mr. CONYERS. Mr. Gekas.

Mr. GEKAS. Thank you, Mr. Chairman.

Only to say that for a change we are doing something that can be deemed wise on the part of the subcommittee and the Congress as a whole to recognize the initial difficulties that we ourselves and the President caused in making this new concept in the Federal Establishment work. So we want to do everything now prudently and wisely, as I said, to make sure that you can do your work.

I thank you, Mr. Chairman.

Mr. CONYERS. We are very honored to have the Honorable William W. Wilkins, Jr., judge, the Chairman of the U.S. Sentencing Commission, accompanied by Commissioners Michael Block and Ilene Nagle of the U.S. Sentencing Commission, and a member of the Commission's staff.

We welcome you, Judge, and Commissioners. We are delighted to have you before this subcommittee, which figured prominently in the creation of the Commission and which you will administer. We are delighted to know of all the things that you have been doing within the short period of time that you have been on board.

We certainly, myself and my colleague from Pennsylvania, appreciated the invitation to your swearing in ceremonies at the Supreme Court. We are honored to have you here. We incorporate your prepared statement into the record and invite you to make any presentation as you choose.

**TESTIMONY OF HON. WILLIAM W. WILKINS, JR., CHAIRMAN, U.S. SENTENCING COMMISSION, ACCOMPANIED BY MICHAEL K. BLOCK AND ILENE H. NAGLE, COMMISSIONERS, AND DENIS HAUPTLY, ATTORNEY, U.S. SENTENCING COMMISSION**

Judge WILKINS. Thank you very much, Mr. Chairman, and members of this committee.

On behalf of the U.S. Sentencing Commission, let me express our appreciation for the opportunity to present our views on H.R. 3837, and quite frankly, the expeditious way in which you, Mr. Chairman, and members of your committee have responded to our request for an extension of the deadline.

I will summarize the testimony that has been previously prepared and submitted to you.

I would like to say that we understand that the bill that you have cosponsored, Mr. Chairman, in addition to extending the deadline, will also extend the deadline for the expiration of the Parole Commission. In doing so, this in effect restores the original statutory scheme of this legislation in toto. Taking into account the 12-month period between the passage of the Comprehensive Crime Control Act and the swearing in of the Commissioners, this bill would reestablish the time periods Congress originally proposed for the completion of all aspects of our work, including the many logistical, administrative and personnel matters that we have been dealing with for the last 5 weeks. To my right is Mr. Denis Hauptly—he represents 25 percent of our staff at this time. We are busy interviewing individuals and trying to gather a wide range of applications so that we can make the best decisions we can in the important task of bringing on board the right staff people. But we will hope to complete this within the next 2 months.

We also just yesterday located office space that we will be occupying on a temporary basis, and then on March 1 we have been guaranteed permanent office space. So that will facilitate our work a great deal. Previously we have been in one room with one telephone in the Justice Department. It is made for coziness but not for productivity, perhaps.

Let me outline just a couple of things I would like to bring to your attention, the things which this Commission feels that the Congress has required it to do. We have got to draft guidelines, but that is not all of it, that's the most important, perhaps, of our tasks. It is a very difficult task. If you look at the various combinations of crimes and circumstances that we may have to address, quite literally we are talking about thousands of situations that we have got to consider as we prepare these guidelines.

In addition to that, we have got to talk about the length of imprisonment if imprisonment is going to be imposed.

We need to address the issue of developing regulations for postrelease supervision since parole, of course, will be abolished under this bill.

For cases in which more than one crime is going to be dealt with in a trial or in a guilty plea, the issue of concurrent or consecutive sentences must be addressed and spelled out very clearly in the guidelines.

We have got to prepare policy statements elaborating on the guidelines and the appropriate circumstances in which a judge may sentence outside of the guidelines.

The use of postconviction supervision and then revocation of that is something which is very important, and guidelines need to be developed for that as well.

In addition to that, as you know, the law requires us to gather data and act as an information center and an education center for this bill as we are required to train all members of the justice system on the application of these guidelines once they have been implemented.

So we have a number of things to do, and this list that I have just given is not exhaustive, but as I said in my statement, it appears, perhaps to be exhausting, at least to us, as we begin to tackle this difficult task.

I wish to emphasize, too, that as we ask for a 12-month extension, this puts us back where the law intended us to be. But it may be, Mr. Chairman, and members of this Commission, that as we get into this difficult task, we may have to come back to you and tell you that we can not do the job which the Congress and the people have mandated within this short period of time.

It is not our intention to come back asking for an extension down the road. And, indeed, I pledge to you, and all of us say to you, that we are going to work as hard as we can to meet the deadline and even beat the deadline so that we can submit these guidelines to the Congress at the earliest possible date.

But I do wish to say that we don't want to foreclose the possibility that we may honestly say to you, this task is too much to be accomplished within the next 18 months. We don't anticipate that but I wish to emphasize that to you as we ask for this extension.

Thank you very much.

Mr. CONYERS. Thank you very much, Judge Wilkins.

Commissioner Block, do you have any comments, sir?

Mr. BLOCK. Mr. Chairman, no formal comments at this time.

Mr. CONYERS. All right.

Commissioner Nagle, do you have any comments?

Ms. NAGLE. No, thank you, sir.

Mr. CONYERS. All right. Thank you all very much.

Mr. Gekas.

Mr. GEKAS. I just have one question.

Where are the offices to be designated? Where are you going to be situated?

Judge WILKINS. At the building known as National Place, F and 13th Street. It is a new office building. In fact, 20 percent of it is owned by the Federal Government in some cooperative development plan with private industry and the Federal Government. A very nice building and it is centrally located.

Mr. GEKAS. Just far enough to be out of the influence of the Congress, that's good.

Judge WILKINS. I don't think we will ever get that far.

Mr. CONYERS. You can't escape. [Laughter]

Mr. CONYERS. Mr. Boucher?

Mr. BOUCHER. Thank you, Mr. Chairman.

I think, Mr. Wilkins, the need for this extension has been well made. I am sure we will be moving this legislation very promptly.

Let me ask you just a couple of questions that are apart from your testimony this morning. What is the level of appropriation that you have, and do you think that level of appropriation is adequate for your needs?

Judge WILKINS. Initially, the Administrative Office submitted and a budget was approved of \$2.3 million startup money. In addition to that, as now has been passed by both houses, an additional \$1.2 million has been appropriated, although I understand that is in the conference proceedings at this time.

The AO is working on a budget now and I anticipate our total budget of being somewhere around \$4 million—personnel and the computer equipment that we are going to have to purchase, the office space, it appears to me that that is the best estimate. We are going to submit this budget within the next several weeks.

Mr. BOUCHER. And that is a budget deemed adequate for your needs?

Judge WILKINS. At this point we think it is.

Mr. BOUCHER. The report on the Comprehensive Crime Control Act indicated that the Sentencing Commission should establish a number of subcommittees with specific delegated responsibilities. Have you given any thought to doing that yet?

Judge WILKINS. Yes.

Mr. BOUCHER. And have you made any progress in that regard?

Judge WILKINS. Again, yes, we have been giving a great deal of thought to developing subcommittees.

Are you referring to subcommittees within the Commission?

Mr. BOUCHER. Yes. The report that accompanied enactment of the Comprehensive Crime Control Act suggested that it would be appropriate for the Commission to divide itself into subcommittees with specific responsibilities, and that is the language to which I am referring.

Judge WILKINS. We have not done that yet, although we have given not only thought to it, but in fact a working paper is being drafted now to set up the various subcommittees. Then my intention is to allow the Commission members to pick those committees on which they wish to serve and where they feel they can best serve. I am sure that will be accomplished within the next several weeks. In fact, Commissioner Nagle has been working on that as one of her special duties.

Mr. BOUCHER. I would like to thank you for being with us this morning. It looks like you are off to a good start. We certainly wish you well.

Judge WILKINS. Thank you.

Mr. CONYERS. We also thank you for your remarks and we thank you very much for appearing.

We would like to extend the invitation that whenever in the course of next year you would feel it appropriate before we reach you to come before the sub-committee for any discussion, public or private, about any part of your responsibilities, I can say that the subcommittee would be standing ready and waiting to meet with you at any time.

Judge WILKINS. Thank you, Mr. Chairman, we intend to do that. We will be working, I am sure, not only with the members of the committee, but we have already developed a good liaison with members of your staff, and hopefully with a cooperative effort when the guidelines are finally submitted, they won't be a surprise to anybody.

Mr. CONYERS. Thank you again.

Judge WILKINS. Thank you very much.

[The prepared statement of Judge Wilkins follows:]

TESTIMONY OF WILLIAM W. WILKINS, JR., CHAIRMAN,  
UNITES STATES SENTENCING COMMISSION,  
BEFORE THE SUBCOMMITTEE ON CRIMINAL JUSTICE  
OF THE HOUSE JUDICIARY COMMITTEE

Mr. Chairman, on behalf of the United States Sentencing Commission I wish to express appreciation for the opportunity to present our views on H.R. 3837, the Sentencing Reform Amendments Act of 1985, and for the expeditious way in which you and your staff have responded to our request for consideration of an extension of our initial deadline.

In that request we confined ourselves to our own immediate problem, the April, 1986 deadline for submission of the initial set of guidelines. We asked for a one year extension of that date in consideration of the one year gap between enactment of the original legislation and activation of the Commission.

The bill itself expands somewhat on the request we made to you, in that it extends as well, and for a similar period, the deadline for the expiration of the Parole Commission. In so doing it restores the original statutory scheme in toto. Taking into account the 12 month period between passage of the Comprehensive Crime Control Act and the swearing in of the Commissioners, the bill would reestablish the time periods Congress originally proposed for completion of all aspects of this significant change in federal criminal law.

The Commission supports this legislation and urges its enactment.

A brief description of the tasks already accomplished and the things left to be done may help explain the need for this legislation.

Before the Commission can begin its substantive work, a host of logistical problems must be resolved. Some of those problems are obvious. Office space was needed, as well as desks and typewriters and basic supplies. The space problem, which was pressing, may be resolved this week; furniture and office equipment have been obtained in sufficient quantities for a start-up staff. A host of lesser items, from clocks on the walls to calendars on the desks must be obtained.

Staff must be hired. We now have four persons on our payroll and we expect to be making further hires in the near future. Personnel matter have been slowed by the need to hire senior staff members first. These positions are crucial and we have sought to have as broad a pool of applicants to choose from as possible. Once the senior staff members are in place, we will be in a position to fill positions in the legal, research and administrative areas. We hope to have completed most hiring by January.

If the April, 1986 deadline remained in place, we would have to complete the following substantive tasks in four months or less.

First, we must prepare guidelines governing the decision to sentence an offender to a fine, a term of probation, a term of imprisonment or some combination of these sanctions.

Second, where a term of imprisonment is deemed to be appropriate, we must prepare guidelines governing the length of that term.

Third, guidelines must be developed regulating the use of and length of post-release supervision.

Fourth, where the sentence involves terms of imprisonment for more than one crime, the guidelines must include a provision about concurrency.

Fifth, we must prepare policy statements elaborating on the guidelines and on the appropriate circumstances for imposition of sentences outside the guidelines.

Sixth, a separate set of guidelines and policy statements must be prepared governing the use of probation revocation and modification of the terms of probation and post-release supervision.

Seventh, before preparing the guidelines, the statute requires that we obtain data concerning the average sentence and actual time served in each offense category.

Eighth, concurrently with the work already described, we must prepare to comply with other aspects of the legislation including an analysis of prison facilities, recommendations as to changes in statutory maximums, and background work for the training of all components of the federal criminal justice system prior to the effective date of the initial guidelines.

Ninth, prior to submitting the guidelines to Congress, the statute requires public notice and hearings.

This list, while perhaps exhausting, is not exhaustive. It is possible to argue, as some do, that even an 18 month period is too short a time in which to conclude this work. Yet, we believe that in allowing 18 months, Congress understood the magnitude of the task and felt that it could be accomplished in that time.

At this point, we are in no position to dispute that judgment except by pure speculation. Thus, we ask simply for a restoration of the original 18 month period. In doing so we do not wish to foreclose the option of returning at some later date with a request for a further extension.

But to assume the need for a further extension now would be inappropriate for three reasons. First, it would be a rejection of Congress' original intention. Second, and as noted, such an assumption would not be based on facts. Third, a longer extension might result in an application of Parkinson's Law--that every task tends to take as much time as is allotted to it. As we continue our work and, in particular, as we begin to grapple with the broad policy questions and narrow details involved, we may find, factually, that 18 months is insufficient. If so we will reluctantly return.

For now, though, we wish to dedicate ourselves to completing the initial guidelines in as short a period of time as such a complex job can be done. Six months from now is demonstrably too little time. Whether 18 months is similarly premature remains to be seen.

We appreciate your time and your assistance. I would be happy to answer any questions you may have.

Mr. CONYERS. The subcommittee stands adjourned.  
[Whereupon, at 10:25 a.m., the subcommittee proceeded in  
markup session.]

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