

An hourglass graphic with a globe in the top bulb and a globe in the bottom bulb. The top bulb is dark blue, and the bottom bulb is light blue. The hourglass is light gray. The globe in the top bulb is dark blue, and the globe in the bottom bulb is light blue. The hourglass is centered on the page.

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Supervised Release: An Abbreviated Outline of Federal Law

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Abstract. Conviction of a federal crime ordinarily results in the imposition of a term of supervised release. Supervised release is the successor to parole in the federal system. Both parole and supervised release call for a period of supervision following release from prison and for reincarceration upon a failure to observe designated conditions. Parole ordinarily stands in lieu of a portion of the original term of imprisonment imposed, while supervised release begins only after the original term has been served. Probation officers monitor those on supervised release who must comply with a fairly extensive range of conditions crafted to reflect their offense, criminal history, and rehabilitative needs.

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Supervised Release: An Abbreviated Outline of Federal Law

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Summary

Conviction of a federal crime ordinarily results in the imposition of a term of supervised release. Supervised release is the successor to parole in the federal system. Both parole and supervised release call for a period of supervision following release from prison and for reincarceration upon a failure to observe designated conditions. Parole ordinarily stands in lieu of a portion of the original term of imprisonment imposed, while supervised release begins only after the original term has been served. Probation officers monitor those on supervised release who must comply with a fairly extensive range of conditions crafted to reflect their offense, criminal history, and rehabilitative needs. This is an abridged version of CRS Report RL31653, *Supervised Release: A Brief Sketch of Federal Law*, stripped of footnotes and citations to authority found in the longer version.

Length of Term. When sentencing a defendant to a term of imprisonment, a federal court usually imposes an additional term of supervised release to be served upon a defendant's release from prison. A term of supervised release is required by statute in certain drug and domestic violence cases and required by operation of the Sentencing Guidelines in most felony cases. Except for some drug or terrorism cases, the statute sets the maximum terms of supervised release at not more than five years for class A or class B felonies; not more than three years for class C or class D felonies; not more than one year for all other crimes. The USA PATRIOT Act and the USA PATRIOT Improvement and Reauthorization Act amended the supervisory release statute so that the maximum term of supervised release for certain crimes, frequently associated with acts of terrorism, is any term of years or life. Several federal controlled substance statutes establish mandatory minimum terms of supervised release. Thus, large scale drug traffickers in the most dangerous of controlled substances (more than a kilogram of heroin for instance) must be sentenced in a term of supervised release of not less than five years (not less than 10 years upon a second or subsequent conviction). The mandatory minimums are reduced when smaller quantities or less dangerous controlled substances are involved (1) at least four years (8 years for recidivists) for dealers in slightly small amounts for the most dangerous substances (between 100 and 1000 grams of heroin for instance); (2) at least

three years (6 years for recidivists) for slightly less dangerous controlled substances (for instance, GHB one of the so-called “date rape” drugs); (3) at least two years (4 years for recidivists) for controlled substances such as 50 kilograms of marijuana; and (4) at least one year (2 years for recidivists) for schedule IV or V controlled substances.

Under certain aggravating circumstances, these mandatory minimum terms of supervised release double (treble in the case of recidivists), *i.e.*: (1) distribution at a truck stop or highway rest area, (2) distribution to an individual under the age of 21, (3) distribution near a school, housing project, youth center or the like, (4) distribution using an individual under the age of 18, or (5) distribution to a pregnant woman.

Conditions. A defendant may be returned to prison if he violates any of the mandatory or discretionary conditions imposed as part of the term of supervised release. All supervised release orders contain conditions under which:

- defendants must refrain from criminal activity;
- any defendant in a domestic violence case must attend an approved offender rehabilitation program if one is located within 50 miles of his residence;
- any defendant convicted of sex offenses must register with state authorities;
- defendants must cooperate with the authorized collection of a DNA sample;
- defendants must submit to periodic drug tests; and
- defendants must adhere to the payment schedule for any unpaid fine imposed, restitution ordered, or special assessment.

The Sentencing Guidelines add two mandatory conditions, one for the payment of fines and the other for the payment of restitution, that must be imposed unless there are recognized grounds for not doing so.

The probation statute contains a long list of conditions that may be used in probation cases. The supervised release statute adopts most of these by cross reference and grants a sentencing court latitude to impose any other appropriate condition, but allows the court to impose only those conditions that are reasonably related to the crime, to the defendant’s crime-related history, deterrence of crime, protection of the public, or the defendant’s rehabilitation, and that involve no greater deprivation of liberty than is reasonably necessary.

The Sentencing Guidelines divide the specifically identified discretionary conditions into three groups: “standard” conditions that are imposed in most cases; “special” conditions that may be applied to particular kinds of cases, such as those that may apply when a defendant has unpaid fines or restitution obligations; and “additional” conditions that go to a defendant’s mobility and involve things like community confinement, curfews and occupational restrictions.

The Sentencing Guidelines’ standard conditions are crafted to permit the court to order defendants to remain in close conduct with a probation officer. They include the authority to order the defendant to:

- *report to a probation officer;*
- *allow his probation officer to visit him* (In addition to the visitation condition, a sentencing court may demand that the defendant consent to the warrantless search

of his person or property as a condition of supervised release, as long as the condition is reasonably related to the defendant's crime, history, or rehabilitation. Whether searches conducted pursuant to such a condition pass muster under the Fourth Amendment may depend upon the facts of an individual case.);

- *respond honestly to his probation officer's questions and follow the officer's instructions* (The condition requiring a defendant to respond to completely and truthfully is valid notwithstanding the defendant's Fifth Amendment privilege against self-incrimination, but the defendant's valid claim of the privilege may not be considered a violation of the condition.);

- *notify his probation officer any change of address or employment;*

- *remain in the district unless the court or probation officer approves travel;* and

- *notify his probation officer if the defendant is arrested.*

The standard conditions also give instructions calculated to ensure that the defendant avoids criminal entanglements. In this vein, they demand that the defendant:

- *avoid criminal associations* (The general condition restricting a defendant's contact with felons may be expanded to those convicted of related misdemeanors, the defendant's associational rights notwithstanding. Under the appropriate circumstances the restriction may be couched in geographical terms, banning a defendant from the scene of her past criminal activities, for instance. Where the defendant has a history of excessive gambling, the court may reasonably prohibit him from gambling or entering gambling establishments.);

- *avoid illicit drug markets, stash houses, and crack houses;*

- *avoid the use of illicit drugs or the excessive use of alcohol* (Although the Sentencing Guidelines specifically permit a court to prohibit the *excessive* consumption of alcoholic beverages as a condition of supervised release, conditions demanding total abstention are apparently common. The condition will be upheld where the defendant has a history of alcohol abuse even if the abuse is unrelated to the crime for which he was most recently convicted. The ban on alcoholic consumption, however, may not be imposed as condition of supervised release where there is no evidence that alcohol played a role in the defendant's crime or that the defendant has a history of alcohol abuse.);

- *avoid becoming an informant without permission of the court* (Under the general authority to impose "any other" conditions of supervised release the sentencing court considers appropriate, the courts have upheld conditions that strive to separate the defendant from other circumstances related to his past criminal conduct, including gambling prohibitions.); and

- *stay gainfully employed.*

The remaining standard conditions instruct the defendant to honor either specific or general legal obligations, ordering him to:

- *support his family* (A sentencing court may condition a defendant's supervised release on his compliance with the terms of a state child-support order, but it may not impose a more demanding payment schedule than the state order requires nor otherwise craft the condition in conflict with the state support order.);
- *pay any unpaid special assessment*;
- *advise his probation officer of circumstances that might prevent his making fine, restitution or special assessment payments*; and
- *notify victims and those possibly at risk* (The conditions may insist on compliance with state notification procedures even those procedures are not otherwise required.).

The "special" conditions are directions that a sentencing court may include within a supervised release order involving:

- *a ban on possession of weapons* (Under the appropriate circumstances, the condition limiting the possession of weapons may extend not only to firearms but to crossbows, bows, and arrows.);
- *limits on debt obligations* (The Sentencing Guidelines, however, do not authorize a condition that a defendant repay personal debts unrelated to the offense for which he was most recently convicted or to any other aspect of his criminal history.);
- *probation officer access to financial information* (The Sentencing Guidelines authorize access where the court has ordered restitution, forfeiture, notice to victims, or the payment of fine, but a court may condition supervised release upon access in other cases as well. Moreover, when reasonably related to the offense, the condition may include a demand to provide information concerning the financial activities of the defendant's spouse or legal entities under his control.);
- *drug treatment* (The court may condition a defendant's supervisory release upon participation in a drug treatment program based on substance abuse occurring prior to the offense conviction. Nevertheless, it may not condition his supervised release on his participation in a program of drug or alcohol abuse treatment in the absence of any evidence that drug or alcohol abuse figured in the defendant's offense or in his criminal history.);
- *mental health treatment* (The courts have experienced some difficulty in formulating conditions, other than treatment, in cases of sex offenders and defendants with a history of sexually abusing children, particularly when both the defendant's crime or history and the conditions involve computer use. When the offense of conviction is a sex offense or the defendant has a history of sexual misconduct, it is no abuse of discretion for a court to include within a defendant's supervisory release order a requirement to comply with state sex offender registration laws, to participate in sex offender treatment, or to refrain from having

contact with children, from engaging in an occupation that involves access to children, or from possessing sexually oriented material.);

- *deportation*; and

- *sex offender treatment* (The courts have experienced some difficulty in formulating conditions, other than treatment, in cases of sex offenders and defendants with a history of sexually abusing children, particularly when both the defendant's crime or history and the conditions involve computer use. When the offense of conviction is not a sex offense, a remote conviction for a sex offense in the defendant's past may be insufficient to justify a condition requiring the defendant to register under sex offender registration laws, participate in sex offender treatment, refrain from having contact with children or from engaging in an occupation that involves access to children, or from possessing sexual oriented material.).

The "additional" conditions speak to:

- *community confinement* (Supervised release, by definition, is a term served *after* release from prison. Yet the Sentencing Guidelines and at least one circuit court indicate that this does not preclude supervised release conditions that involve confinement for rehabilitative purposes other than in prison.);

- *home detention*;

- *community service*;

- *occupational restrictions* (Occupational restrictions are not favored, the Sentencing Guidelines demand that they be narrowly drawn, and they will not be upheld as a condition on supervised released unless they are directly related to the offense of conviction.);

- *curfew*; and

- *any other condition the court considers to be appropriate* (As with any other discretionary condition, a sentencing court may impose any condition that, among other things, is reasonably related to the crime, the defendant's crime-related history, deterrence of crime, protection of the public, and the defendant's rehabilitation, as long as the condition involves no greater deprivation of liberty than is reasonably necessary, 18 U.S.C. 3583(c), (d). Thus, a history of drug abuse and conviction for possession of a machine gun does not justify supervisory release conditions that prohibits the use of tobacco or the consumption without a prescription of aspirin or over the counter cold remedies.).

Modification and Revocation. The sentencing court may (1) modify the supervised release conditions at any time, (2) discharge the defendant from supervised release one year after the defendant's release, or (3) revoke the defendant's term of supervised release, require him to return to prison, and impose an additional term of supervised release to be served thereafter.

Modifications may be based on a number of factors:

- the nature of the crime and defendant's history;
- deterrence;
- public safety;
- rehabilitation;
- the Sentencing Guidelines;
- Sentencing Guideline policy statements;
- sentencing disparity; and
- restitution.

The grounds for modification permit both extension of a term of supervised release and an adjustment in the conditions of supervised release including a condition for home detention, notwithstanding the fact that home detention is elsewhere characterized available only as an alternative to incarceration. Adjustment may also include adjustment of the conditions dealing with the payment schedule for restitution or for the defendant's fine. A court may not, however, entertain a petition to modify conditions of a term of supervised release based on the purported illegality of the original conditions.

By statute, a court must revoke a defendant's supervised release for unlawful drug or firearm possession, refusal to comply with a drug testing condition or three positive drug tests within a year. The Sentencing Guidelines suggest as a matter of policy that a court should also revoke a defendant's supervised release for the commission of any felony. The same considerations which instruct modification direct revocation: (1) the nature of the crime and defendant's history, (2) deterrence, (3) public safety, (4) rehabilitation, (5) the Sentencing Guidelines, (6) Sentencing Guideline policy statements, (7) sentencing disparity, and (8) restitution.

Revocation and modification hearings are governed by the provisions of Rule 32.1 of the Federal Rules of Criminal Procedure. The fact that the revocation hearing is held without the benefit of a jury does not make it constitutionally suspect. Upon revocation of a term of supervised release, a defendant may be imprisoned for a term ranging from one to five years depending upon the seriousness of the original crime, and upon release may be subject to a new term of supervised release. As a matter of policy, the Sentencing Guidelines recommend various terms of imprisonment to be imposed upon revocation of an original term of supervised release calibrated according to the serious of the original crime and the criminal record of the defendant.