

Proposed Amendment - Conditions of Probation and Supervised Release

Synopsis of Proposed Amendment: This is a three-part amendment that corrects a number of omissions arising out of last year's reworking of the guidelines related to conditions of probation, §5B1.3, and supervised release, §5D1.3.

(A) Deportation as a Condition of Probation: First, the amendment adds to §5B1.3 a condition of probation regarding deportation, in response to §374 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. That section amended 18 U.S.C. §3563(b) to add a new discretionary condition of probation, reflected in the amendment below, with respect to deportation.

Proposed Amendment:

§5B1.3. Conditions of Probation

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- (d) The following "special" conditions of probation are recommended in the circumstances described and, in addition, may otherwise be appropriate in particular cases:

* * *

(6) Deportation

A condition ordering deportation by a United States district court or a United States magistrate if (A) the defendant and the United States entered into a stipulation of deportation pursuant to section 238(d)(5) of the Immigration and Nationality Act; or (B) in the absence of a stipulation of deportation, if, after notice and hearing pursuant to such section, the Attorney General demonstrates by clear and convincing evidence that the alien is deportable.

§5D1.3. Conditions of Supervised Release

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- (d) The following "special" conditions of supervised release are recommended in the circumstances described and, in addition, may otherwise be appropriate in particular cases:

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(6) Deportation

A condition ordering deportation by a United States district court or a United States magistrate if (A) the defendant and the United States entered into a stipulation of deportation pursuant to section 238(d)(5) of the Immigration and Nationality Act; or (B) in the absence of a stipulation of deportation, if, after notice and hearing pursuant to such section, the Attorney General demonstrates by clear and convincing evidence that the alien is deportable.

(B) Deletion of "Just Punishment" as Reason for Imposing Curfew as a Condition of Supervised Release: This part of the amendment deletes the reference in the supervised release guideline to "just punishment" as a reason for the imposition of curfew as a condition of supervised release. The need to provide "just punishment" is not included in 18 U.S.C. § 3583(c) as a factor to be considered in imposing a term of supervised release.

Proposed Amendment:

§5D1.3. Conditions of Supervised Release

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(e) Additional Conditions

The following "special conditions" may be appropriate on a case-by-case basis:

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(5) Curfew

A condition imposing a curfew may be imposed if the court concludes that restricting the defendant to his place of residence during evening and nighttime hours is necessary to provide just punishment for the offense, to protect the public from crimes that the defendant might commit during those hours, or to assist in the rehabilitation of the defendant. Electronic monitoring may be used as a means of surveillance to ensure compliance with a curfew order.

(C) Discretionary Conditions of Probation and Supervised Release as Policy Statements: The final part of this proposal amends the guidelines pertaining to conditions of probation and supervised release to indicate that discretionary (as opposed to mandatory) conditions are policy statements of the Commission, not binding guidelines.

Proposed Amendment:

§5B1.3. Conditions of Probation

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- (c) **(Policy Statement)** The following "standard" conditions are recommended for probation. Several of the conditions are expansions of the conditions required by statute:

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- (d) **(Policy Statement)** The following "special" conditions of probation are recommended in the circumstances described and, in addition, may otherwise be appropriate in particular cases:

* * *

- (e) **Additional Conditions (Policy Statement)**

The following "special conditions" may be appropriate on a case-by-case basis:

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§5D1.3. Conditions of Supervised Release

* * *

- (c) **(Policy Statement)** The following "standard" conditions are recommended for supervised release. Several of the conditions are expansions of the conditions required by statute:

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- (d) **(Policy Statement)** The following "special" conditions of supervised release are recommended in the circumstances described and, in addition, may otherwise be appropriate in particular cases:

* * *

- (e) **Additional Conditions (Policy Statement)**

The following "special conditions" may be appropriate on a case-by-case basis:

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