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Supervised Release (Parole): An Abbreviated Outline of Federal Law

Updated September 28, 2021

Congressional Research Service

<https://crsreports.congress.gov>

RS21364



RS21364

September 28, 2021

Charles Doyle
Senior Specialist in
American Public Law

Supervised Release (Parole): An Abbreviated Outline of Federal Law

Federal courts sentence almost 75% of the defendants convicted of federal offenses to a term of supervised release. A term of supervised release is a period following a defendant's release from prison when a probation officer monitors the defendant to ensure compliance with the conditions for the defendant's release. Under some circumstances, the court may terminate the term of supervised release, extend it, or revoke it.

Supervised release replaces parole for federal crimes committed after November 1, 1987. Like parole, supervised release is a period of restricted freedom following a defendant's release from prison. The nature of supervision and the conditions imposed during supervised release are similar to those that applied in the earlier system of federal parole. However, while parole operates in lieu of the remainder of an unexpired prison term, supervised release begins only after a defendant has completed his full prison sentence. Where revocation of parole could result in a defendant's return to prison to finish out his original sentence, revocation of supervised release can lead to a return to prison for a term in addition to that imposed for the defendant's original sentence.

A sentencing court determines the duration and conditions for a defendant's supervised release at the time of initial sentencing. As a general rule, federal law limits the maximum duration of supervised release to five years, although in the case of serious drug, sex, and terrorism-related offenses it sometimes permits, and sometimes mandates, supervision for a term of any duration or for life.

Several conditions are standard features of supervised release. Some conditions, such as a ban on the commission of further crimes, are required. Other conditions, such as an obligation to report to a probation officer, have become standard practice by the operation of the Sentencing Guidelines, which federal courts must consider along with other statutorily designated considerations. Together with these regularly imposed conditions, the Sentencing Guidelines recommend additional conditions appropriate in specific offense- or offender- situations. A sentencing court may impose any of these discretionary conditions, as long as they offend no constitutional limitations, involve no greater deprivation of liberty than is reasonably necessary, and are "reasonably related" to the nature of the offense, the defendant's crime-related history, deterrence of crime, protection of the public, or the defendant's rehabilitation. If the court finds that a defendant has violated a condition of his release, it may revoke his supervised release and resentence him to a further term of imprisonment and supervised release.

Both a defendant's constitutional rights and separation-of-powers concerns set boundaries for supervised release conditions. Federal courts have upheld a wide range of conditions against constitutional challenges. A constitutionally suspect condition is also likely to run afoul of statutory "reasonably related" or excessive "deprivation of liberty" limitations. In such cases, the courts often resolve the issue on statutory grounds.

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Introduction¹

Federal courts sentence close to three quarters (72.9%) of the defendants convicted of federal offenses to a term of supervised release. Supervised release is the successor to parole in the federal criminal justice system. In the 1984 Sentencing Reform Act, Congress eliminated parole in future cases to create a more determinate federal sentencing structure. In its place, Congress instituted a system that includes supervised release, which applies to all federal crimes committed after November 1, 1987.

Both parole and supervised release call for a period of supervision following release from prison and for a return to prison upon a failure to observe designated conditions. Parole ordinarily stands in lieu of a portion of the original term of imprisonment, while supervised release begins only after full service of the original term (less any “good time” credits). Parole restrictions last no longer than the remainder of a defendant’s original sentence. Supervised release restrictions can last for the remainder of a defendant’s life, although the court may modify the conditions at any time and may terminate supervised release after a year.

Because of their differences, some commentators and judges have highlighted the way that supervised release works differently from parole. Differences and critics notwithstanding, supervised release is now a regular feature of sentencing in the federal system. Parole is not.

Federal courts ordinarily set the terms and conditions of supervised release when they sentence a criminal defendant to prison, and “[t]he duration, as well as the conditions of supervised release are components of a sentence.” Sentencing courts have broad discretion when imposing the conditions of supervised release yet their exercise of such discretion must be understood within the confines established for mandatory conditions, the scope of permissible standard discretionary conditions and special conditions, and the deference that must be afforded the Sentencing Guidelines.

Except in certain drug offenses, federal crimes of terrorism, designated sex offenses, and domestic violence cases, courts may decline to impose supervised release for a particular defendant. However, the Sentencing Guidelines, promulgated by the United States Sentencing Commission, recommend that sentencing courts impose a term of supervised release in most felony cases. A term of supervised release begins when a prisoner is actually released, regardless of when he should have been released. A court may sentence a defendant to several terms of supervised release for each of several crimes, but the terms are served at the same time rather than consecutively. This rule applies even when criminal statutes require a defendant to serve the multiple terms of imprisonment consecutively.

Duration

Section 3583(b) sets the authorized duration for a term of supervised release, subject to exceptions for certain drug, terrorism, and sex offenses:

Generally

- Class A felony (felony punishable by death or life imprisonment): 5 years (max.)
- Class B felony (felony punishable by imprisonment for a max. of 25 years or more.): 5 years (max.)

¹ This report is an abridged form, without the footnotes, attributions, citations to authority, or attachments available in a longer report, of CRS Report RL31653, *Supervised Release (Parole): An Overview of Federal Law*, by Charles Doyle.

- Class C felony (felony punishable by imprisonment for a max. of 10 years or more but less than 25 years): 3 years (max.)
- Class D felony (felony punishable by imprisonment for a max. of 5 years or more but less than 10 years): 3 years (max.)
- Class E felony/misdemeanor (felony punishable by imprisonment): 1 year (max.)

Exceptions

- Drug trafficking: life (max.)/mandatory min. range from 2 to 10 years
- Federal “crime of terrorism”: life (max.)
- Designated sex offenses against a child: life (max.)/ mandatory min.- 5years

The court may terminate a defendant’s term of supervised release at any time after the defendant has served a year on supervised release, based on the defendant’s conduct, the interests of justice, and consideration of several of the general sentencing factors.

Conditions

Conditions for supervised release are determined during a federal defendant’s initial sentencing, based on the nature of the offense, the defendant’s particular history, and other factors. When determining applicable conditions, courts consider both federal statutory requirements and the federal Sentencing Guidelines. There are mandatory and discretionary conditions for supervised release.

Mandatory Conditions

Section 3583 makes several conditions mandatory regardless of the crime of conviction, and a few additional conditions mandatory in cases involving domestic violence or sex offenses. All supervised release orders require defendants to: (1) refrain from criminal activity; (2) forgo the unlawful possession of controlled substances; (3) refrain from the unlawful use of controlled substances and submit to periodic drug tests; (4) cooperate with collection of DNA samples; (5) prior to release, agree to adhere to the payment schedule for any unpaid fine imposed; (6) pay any remaining restitution balance; (7) first-time domestic violence offenders must attend an approved rehabilitation program if one is located within 50 miles of their residence; and (8) convicted sex offenders must register with relevant authorities if federal sex offender registry requirements apply.

Discretionary Conditions

Courts have relatively broad discretion to impose other conditions of supervised release to supplement the mandatory conditions. Section 3583(d) is very specific about a few of these discretionary conditions. For example, it states that a court may condition an alien’s supervised release upon his deportation and remaining outside the United States, although the Sentencing Guidelines recommend a limited exercise of the authority. Under this authority, the defendant’s term of supervised release is “in fact unsupervised release with mandatory and standard conditions and the special condition that [the defendant] not illegally re-enter the United States.”

Section 3583(d) also authorizes a court, in the case of an offender required to register as a sex offender, to condition supervised release upon the offender’s submission to warrantless, suspicionless searches by his probation officer, or with reasonable suspicion warrantless searches by any law enforcement officer. The section adopts the statutory list of conditions for probation as another source of discretionary conditions of supervised release. Finally, the section allows a court to impose any other appropriate condition subject to the general limitations on discretionary

conditions of supervised release, *i.e.*, the condition must be *reasonably related* to one of several sentencing goals, it may involve *no greater deprivation of liberty* than is reasonably necessary to accommodate those goals, and it must be *consistent with Sentencing Guideline* policy statements.

Limits on Discretionary Conditions

Reasonably Related: The threshold question for any discretionary condition of supervised release is whether it is reasonably related to the offense, the defendant, increased public safety, or one of several other sentencing factors. Factors to which the condition must be “reasonably related” include (1) the nature and circumstances of the offense and the defendant’s history and character; (2) deterrence of crime; (3) protection of the public; and (4) the defendant’s rehabilitation. Since a condition may be reasonably related to a defendant’s history or to future protection of the public, it need not be related to the offense for which supervised release was ordered. Yet “reasonably related” may turn on the currency and seriousness of past misconduct.

Unnecessary Deprivation of Liberty: The courts’ general discretionary authority to order conditions of supervised release is likewise bound by the requirement that it “involve[] no greater deprivation of liberty than is reasonably necessary” for the reasonably related purposes. The assessment is one of balancing. A considerable deprivation of liberty will be considered justified, when a condition is clearly reasonably related to a serious crime of conviction and a criminal history that cries out for close supervision. At the other end of the spectrum, a serious deprivation of liberty will not be considered justified, when the connection between the condition and the defendant’s crime and his past is tenuous. Between the two poles, some courts see the standard as “a narrow tailoring requirement,” one that compels the district court to “choose the least restrictive alternative.”

Consistent with Guidelines’ Policy Statements: The third discretionary condition requirement, that it be consistent with pertinent Sentencing Guidelines policy statements. The Sentencing Commission has captioned the sentencing guidelines for standard conditions, special conditions, and additional conditions – “policy statements,” *i.e.*, conditions must be consistent with Guideline requirements.

Three Classes of Discretionary Conditions

The Sentencing Guidelines quote some of the statutorily identified discretionary conditions, suggest expanded versions of others, and propose additional considerations in still other situations. They divide the discretionary conditions into three groups—Thirteen “standard” conditions, which courts impose as a matter of practice in most cases; eight “special” conditions that may be applied to particular kinds of cases; and six “additional” conditions. When a court elects to impose a discretionary condition of supervised release, it must refer to the condition during the pronouncement of sentence.

Standard Discretionary Conditions: For the most part, the Sentencing Guidelines’ standard conditions replicate or build upon the probation conditions or statutory conditions of supervised release. Courts regularly impose the Sentencing Guidelines’ standard conditions as a matter of practice. Many of these conditions relate to the defendants relationship with their probation officers. The standard conditions require that a defendant: (1) report to the probation office upon release from prison; (2) follow instructions relating to reporting to a probation officer; (3) refrain from leaving the judicial district without permission; (4) answer the probation officer’s questions truthfully; (5) live in an approved residence and notify the probation officer of moves; (6) allow probation officer visits and permit the officer to seize prohibited items found in plain sight; (7) secure or seek full-time employment; (8) avoid communications or contact with convicted felons or anyone engaged in criminal activity; (9) notify the probation officer of arrest or police questioning; (10) refrain from possession of firearms or dangerous weapons; (11) avoid becoming

an informant without permission; (12) notify third parties of risks posed by the defendant upon the probation officer's determination; and (13) adhere to the probation officer's instructions concerning the conditions of release.

Special Discretionary Conditions: The conditions which the statute refers to as "other" discretionary conditions, the Sentencing Guidelines divides into "special" and "additional" discretionary conditions. The so-called special discretionary conditions address case-specific factors, such as the nature of an offense, the defendant's character, or another condition contained in a defendant's sentence. For example, when a conviction is for a sex offense, a court might mandate sex-offender treatment, limit computer use, or authorize warrantless searches of the defendant's possessions by a law enforcement officer on reasonable suspicion or by a probation officer. Other special conditions based on a particular defendant's character or history include requiring participation in a drug or mental health treatment program based on a history of substance abuse or mental health problems; or ordering deportation if the defendant is an alien who is eligible for deportation under immigration laws.

In cases involving financial offenses, unpaid fees, or restitution orders, the Sentencing Guidelines recommend that a court prohibit a defendant from incurring new credit charges, or opening additional lines of credit without approval of the probation officer unless the defendant is in compliance with his scheduled payments, or mandating the probation officers' access to a defendant's financial information.

More specifically, the eight special conditions include requirements that direct the defendant to: (1) support his dependents; (2) satisfy his debt obligations; (3) provide the probation officer with financial information; (4) abstain from controlled substances and alcohol and participate in a substance abuse treatment program; (5) participate in a mental health program; (6) adhere to deportation requirements; (7) particularly for sex offenders. (a) participate in a sex offender treatment program; (b) refrain from computer use; (c) submit to searches; and (8) notify the probation officer of a change in economic circumstances.

Additional Discretionary Conditions: The Sentencing Guidelines identify other, "additional" conditions which address a defendant's mobility and work activities. They include community confinement; home detention; community service; curfew; and restrictions on a defendant's occupation.

Perhaps because many additional conditions restrict a defendant's freedom of movement, commentary accompanying these additional conditions in the Sentencing Guidelines shows a special caution that such restrictions not become excessive. For example, the commentary advises that "[c]ommunity confinement generally should not be imposed for a period in excess of six months," although "[a] longer period may be imposed to accomplish the objectives of a specific rehabilitative program, such as drug rehabilitation." Likewise, it limits community service conditions to no more than 400 hours.

The inventory of additional conditions relates to: (1) community confinement; (2) home detention; (3) community service; (4) occupational restrictions; (5) curfew; and (6) intermittent confinement.

Modification and Revocation

Although it first considers supervised release when it initially sentences a defendant, a court retains an important decision-making function, and broad discretion, throughout a defendant's term of supervised release. In addition to early termination of a defendant's term of supervised release, a court may modify supervised release conditions at any time, or revoke a defendant's term of supervised release, require him to return to prison for an additional term of imprisonment

for breach of a condition of release, and impose an additional term of supervised release to be served thereafter.

Modification of Conditions

The court will ordinarily conduct a hearing on a petition to modify a defendant's conditions of supervised release, although the party at interest may waive under some circumstances. In considering whether to modify the conditions of supervised release, the court weighs the same sentencing factors that it considers in an early termination of a term of supervised release: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed- (a) to afford adequate deterrence to criminal conduct, (b) to protect the public from further crimes of the defendant; and (c) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; (3) the kinds of sentence and the sentencing range established for the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines; (4) any pertinent policy statement issued by the Sentencing Commission; (5) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and (6) the need to provide restitution to any victims of the offense.

A district court may summarily deny a motion to modify the conditions of supervised release as long as the record supports the conclusion that the court considered the required factors. Breach of an existing condition or a change in circumstances may justify modification, but neither is required. In some instances, the courts have greeted objections to the imposition of a condition at sentencing with the observation that it can be changed after the defendant is released from prison. In others, they have observed that this can be an uncertain benefit.

Revocation

Sometimes revocation is required. Sometimes it is not. By statute, a court must revoke a defendant's supervised release for (1) unlawful drug or firearm possession; (2) refusal to comply with a drug testing condition; or (3) three or more positive drug tests within a single year. The Sentencing Guidelines are more demanding. They recommend that a court revoke a defendant's supervised release for the commission of any federal or state crime punishable by imprisonment for more than a year.

Courts may revoke supervised release for breach of any other condition. A court's revocation jurisdiction, however, expires when the term of supervised release expires, unless the government began the revocation process prior to expiration, or unless the defendant is imprisoned for 30 days or more in "connection with" a conviction for a federal, state, or local crime.

By virtue of the Due Process Clause and operation of the Federal Rules of Criminal Procedure, a person facing revocation of supervised release enjoys many, but not all, of the rights that attend a criminal trial. He must be taken promptly before a magistrate following his arrest for violation of the conditions of supervised release. The federal bail statutes apply to his pre-hearing release, although he has the burden of establishing that he is neither dangerous nor a flight risk. He is entitled to a probable cause preliminary hearing at which he may be represented by appointed counsel if he cannot secure one. He may present evidence at the preliminary hearing and has a limited right to confrontation.

Upon a finding of probable cause to believe that he has violated a condition of his supervised release, the defendant is entitled to a hearing and enjoys the benefit of counsel, appointed if necessary. As in the case of the preliminary hearing, he is entitled to notice of the charges, to present evidence, to make a statement and offer mitigating evidence, as well as, to a limited extent, to confront witnesses against him.

Nevertheless, the Fifth Amendment's Self-Incrimination Clause does not preclude introduction of compelled incriminating statements at the revocation hearing, nor does the Fourth Amendment exclusionary rule apply in revocation proceedings. Moreover, a person subject to a revocation hearing is not entitled to a jury; or to the benefit of proof beyond a reasonable doubt. The court may revoke his supervised release if it finds by a preponderance of the evidence that he has breached one or more of the conditions of his release. Any time served under supervision prior to revocation is erased.

Upon revocation of a term of supervised release, the court may order the defendant returned to prison for a term capped by the length of "the term of supervised release authorized by statute for the offense that resulted in such term," which is generally: five years for defendants originally convicted of a Class A felony; three years for a Class B felony; two years for a Class C or D felony; and one year in all other cases. The courts have rejected the argument that the term of the revocation sentence of imprisonment, when added to the time the defendant has already served for the underlying crime before his release, may not exceed the statutory maximum for the underlying crime of conviction.

Upon revocation, the court may also impose a new term of supervised release to be served after the defendant is release from prison under the revocation sentence. The usual caps on the duration of supervision release apply less the length of the term of imprisonment levied upon revocation, except that the court is not bound by any statutory mandatory term of supervised release originally required.

Assuming a timely objection below, federal appellate courts will uphold the sentence imposed upon revocation, unless it is procedurally or substantively unreasonable. A procedurally unreasonable sentencing involves the district court "failing to calculate (or improperly calculating) the [Sentencing] Guideline range, treating the Guidelines as mandatory, failing to consider the § 37553(a) factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence – including an explanation for any deviation from the Guideline range."

In some circuits a sentence imposed upon revocation of supervised release is substantively reasonable if it "is supported by a plausible sentencing rationale and reaches a defensible result." For others, "a revocation sentence 'is substantively unreasonable if it (1) does not account for a factor that should have received significant weight; (2) gives significant weight to an irrelevant or improper factor, or (3) represents a clear error of judgment in balancing the sentencing factors.'" In still others, a sentence is substantively unreasonable "if it is shockingly high, shockingly low, or otherwise unsupportable as a matter of law" or is "arbitrary, capricious, whimsical, or manifestly unreasonable . . . given all the circumstances of the case in light of . . . the factors set forth in 18 U.S.C. § 3553(a)."

Constitutional Considerations

The Constitution limits the range of permissible conditions of supervised release. Even if a condition of supervised release satisfies all statutory requirements, a court will invalidate it if it runs afoul of a defendant's constitutional rights. On the other hand, a condition which raises constitutional concerns is likely to offend statutory norms as well and can be resolved on those grounds.

Article III

The Constitution vests the judicial power of the United States in the Supreme Court and such inferior courts as Congress shall ordain and establish. The power cannot be exercised elsewhere. Sentencing, including imposing the terms and conditions of supervised release, is the exercise of judicial power. In supervised release cases, the issue arises most often in the context of the extent of discretion which a court may assign to a probation officer. In crafting the conditions for a particular defendant, a sentencing court will often delegate initial implementing responsibilities to a probation officer. The line between permissible and impermissible delegation is not always clear. In some cases, it is a question of whether the task assigned a probation officer in a condition of supervised release touches upon a defendant's significant liberty interest. In others, it is a matter of whether the court has declared that a particular condition is to be imposed, even though thereafter the court may have delegated considerable implementing discretion. Yet elsewhere, the issue turns on the level of court oversight of the probation officer when implementing a condition.

First Amendment

The sex offender conditions have generated a number of First Amendment challenges, primarily in two areas: overbreadth and freedom of association. Under the First Amendment overbreadth doctrine, a condition is overbroad if it sweeps in a substantial amount of constitutionally protected speech along with legitimately targeted unprotected speech. The courts also recognize a right to intimate or familial relationships as a component of the freedom of association which extends to "personal decisions about marriage, childbirth, raising children, cohabiting with relatives, and the like." Defendants have often contended that a particular condition to which they are subject is overbroad, or improperly intrudes upon their freedom of association. Both doctrines have companions in due process, discussed below. Both challenges are often resolved by recourse to Section 3583(d)'s "reasonably related" and "no unnecessary deprivation of liberty" requirements, which can provide the narrow tailoring that the First Amendment demands. Cases that have First Amendment implications are often resolved on those statutory grounds.

A number of First Amendment challenges have been turned back by distinguishing them from the facts in *Packingham v. North Carolina*, a case in which the Court found First-Amendment-deficient a statute that restricted registered sex offenders' access to social media sites.

Fourth Amendment

The Fourth Amendment guarantees protection "against unreasonable searches and seizures." Following an individual's criminal conviction, however, the Supreme Court has used a "general balancing" test, in which it assesses "on the one hand, the degree to which [the government action] intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate interests." Because people on supervised release, like others along the "continuum of punishment," have a "reduced expectation of privacy" under the Court's Fourth Amendment jurisprudence, their privacy interests carry less weight in this balancing test.

Section 3583(d) and the corresponding Sentencing Guideline authorize warrantless search conditions in the case of offenders required to register as sex offenders, based on reasonable suspicion of a violation of a condition of supervised release. The Guidelines also permit a warrantless search and plain-view seizure in cases that do not involve a sex offender, if based on reasonable suspicion. As a general rule any condition, other than the conditions required by statute, must be no greater deprivation of liberty than reasonably necessary to deter future criminal conduct, protect the public, or provide for the defendant's rehabilitation. They must also be reasonably related to one of these purposes or to the defendant's offenses or background. With these limitations, the courts have upheld search conditions that might otherwise be suspect. The

courts are divided over the question of whether probation officers may conduct a warrantless search in the absence of a specific condition.

Should a probation officer's visit lead to the discovery of incriminating evidence, the defendant's motion to suppress may have to overcome many of the obstacles to the exclusionary rule, including plain view doctrine, the reasonable suspicion standard, inevitable discovery, and officer's good faith among others.

Fifth Amendment

The Fifth Amendment declares that "No person . . . shall . . . be subject for the same offence to be twice put in jeopardy of life or limb[.]" This Double Jeopardy Clause, however, does not bar both a revocation of a defendant's supervised release and a separate criminal conviction.

In addition, the Fifth Amendment provides that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself[.]" The privilege against self-incrimination does not preclude a condition of supervised release that requires the defendant to submit to periodic polygraph testing to ensure his compliance with the conditions of his supervised release when the government asserts that it will not seek revocation based on a valid claim of the privilege.

The Amendment also declares that "[n]o person shall . . . be deprived of life, liberty, or property, without due process of law[.]" Due process requires that a defendant facing revocation of his supervised release be given a reasonably prompt hearing, and be "given adequate notice, represented at all times, [permitted to] appear[] at the hearing, and . . . afforded an opportunity to make a statement and present information in mitigation." "The minimum requirements of due process [also] include the right to confront and cross examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation)." These minimum requirements include a right to representation by counsel "when a defendant has a colorable claim that he has not violated the condition of release, or if he has a substantial case to make against revocation. . . ." Due process also colors the extent to which a condition of supervised release may bar a defendant's access to his own children.

One of the more common due process complaints has been that a particular condition of supervised release is constitutionally vague. "A condition of supervised release is unconstitutionally vague if it does not afford a person of reasonable intelligence with sufficient notice as to the conduct prohibited." The popularity of the challenge may have something to do with the fact that the statutory and Guidelines conditions are worded in general terms in order to allow sentencing courts to adjust them to the facts before them. The most troubling appear to have been adjusted in the 2016 amendments to the Guidelines.

In addition, the Supreme Court in *Haymond* held that one revocation subsection of Section 3583(k) constitutes a violation of Fifth Amendment due process and the Sixth Amendment right to trial by jury. In the case of certain sex offenses, Section 3583(k) purported to establish a mandatory term of reimprisonment and a mandatory term of supervised release thereafter. To exercise the authority of Section 3583(k), a court was required to make certain findings by a preponderance of the evidence. Justice Breyer, whose concurrence marks the point of agreement in the 4-1-4 division of the Court, agreed that Section 3583(k) is unconstitutional. He viewed the procedure under the section as "punishment of new criminal offenses" (the statutorily identified, revocation-triggering offenses) and constitutionally suspect because "a jury [not a judge] must find facts that trigger a mandatory minimum prison term." Subsequent lower court decisions have held that infirmities of section 3583(k) do not imperil revocation under section 3583(e).

Sixth Amendment

The Sixth Amendment assures the accused a number of rights during the course of his trial. As just noted, the Fifth Amendment Due Process Clause assures the defendant of comparable, if more limited, rights at sentencing and during supervised release revocation hearings. The Sixth Amendment rights, however, do not apply there. More specifically, the Sixth Amendment's right to a speedy trial is not implicated by the passage of time between a defendant's conviction and the revocation hearing triggered by allegations of a violation of the defendant's condition of supervised release. The Sixth Amendment Jury Trial Clause trial does not apply to revocation hearings under Section 3583(e); neither do the Sixth Amendment Confrontation nor the Assistance of Counsel Clauses.

Eighth Amendment

The Eighth Amendment prohibits cruel and unusual punishment. Its proscription encompasses both the inherently barbaric punishment and in rare cases those grossly disproportionate to the crime for which punishment was inflicted. Eighth Amendment challenges of a sentence of supervised release are rare, and thus far, even more rarely successful.

Author Information

Charles Doyle
Senior Specialist in American Public Law

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