

PART B - PROBATION AND SUPERVISED RELEASE VIOLATIONS*Introductory Commentary*

The policy statements in this chapter seek to prescribe penalties only for the violation of the judicial order imposing supervision. Where a defendant is convicted of a criminal charge that also is a basis of the violation, these policy statements do not purport to provide the appropriate sanction for the criminal charge itself. The Commission has concluded that the determination of the appropriate sentence on any new criminal conviction should be a separate determination for the court having jurisdiction over such conviction.

Because these policy statements focus on the violation of the court-ordered supervision, this chapter, to the extent permitted by law, treats violations of the conditions of probation and supervised release as functionally equivalent.

Under 18 U.S.C. § 3584, the court, upon consideration of the factors set forth in 18 U.S.C. § 3553(a), including applicable guidelines and policy statements issued by the Sentencing Commission, may order a term of imprisonment to be served consecutively or concurrently to an undischarged term of imprisonment. It is the policy of the Commission that the sanction imposed upon revocation is to be served consecutively to any other term of imprisonment imposed for any criminal conduct that is the basis of the revocation.

This chapter is applicable in the case of a defendant under supervision for a felony or Class A misdemeanor. Consistent with §1B1.9 (Class B or C Misdemeanors and Infractions), this chapter does not apply in the case of a defendant under supervision for a Class B or C misdemeanor or an infraction.

Historical Note: Effective November 1, 1990 (see Appendix C, amendment 362).

§7B1.1. Classification of Violations (Policy Statement)

- (a) There are three grades of probation and supervised release violations:
- (1) Grade A Violations — conduct constituting (A) a federal, state, or local offense punishable by a term of imprisonment exceeding one year that (i) is a crime of violence, (ii) is a controlled substance offense, or (iii) involves possession of a firearm or destructive device of a type described in 26 U.S.C. § 5845(a); or (B) any other federal, state, or local offense punishable by a term of imprisonment exceeding twenty years;
 - (2) Grade B Violations — conduct constituting any other federal, state, or local offense punishable by a term of imprisonment exceeding one year;
 - (3) Grade C Violations — conduct constituting (A) a federal, state, or local offense punishable by a term of imprisonment of one year or less; or (B) a violation of any other condition of supervision.

- (b) Where there is more than one violation of the conditions of supervision, or the violation includes conduct that constitutes more than one offense, the grade of the violation is determined by the violation having the most serious grade.

Commentary

Application Notes:

1. *Under 18 U.S.C. §§ 3563(a)(1) and 3583(d), a mandatory condition of probation and supervised release is that the defendant not commit another federal, state, or local crime. A violation of this condition may be charged whether or not the defendant has been the subject of a separate federal, state, or local prosecution for such conduct. The grade of violation does not depend upon the conduct that is the subject of criminal charges or of which the defendant is convicted in a criminal proceeding. Rather, the grade of the violation is to be based on the defendant's actual conduct.*
2. *"Crime of violence" is defined in §4B1.2 (Definitions of Terms Used in Section 4B1.1). See §4B1.2(a) and Application Note 1 of the Commentary to §4B1.2.*
3. *"Controlled substance offense" is defined in §4B1.2 (Definitions of Terms Used in Section 4B1.1). See §4B1.2(b) and Application Note 1 of the Commentary to §4B1.2.*
4. *A "firearm or destructive device of a type described in 26 U.S.C. § 5845(a)" includes a shotgun, or a weapon made from a shotgun, with a barrel or barrels of less than 18 inches in length; a weapon made from a shotgun or rifle with an overall length of less than 26 inches; a rifle, or a weapon made from a rifle, with a barrel or barrels of less than 16 inches in length; a machine gun; a muffler or silencer for a firearm; a destructive device; and certain large bore weapons.*
5. *Where the defendant is under supervision in connection with a felony conviction, or has a prior felony conviction, possession of a firearm (other than a firearm of a type described in 26 U.S.C. § 5845(a)) will generally constitute a Grade B violation, because 18 U.S.C. § 922(g) prohibits a convicted felon from possessing a firearm. The term "generally" is used in the preceding sentence, however, because there are certain limited exceptions to the applicability of 18 U.S.C. § 922(g). See, e.g., 18 U.S.C. § 925(c).*

Historical Note: Effective November 1, 1990 (see Appendix C, amendment 362). Amended effective November 1, 1992 (see Appendix C, amendment 473); November 1, 1997 (see Appendix C, amendment 568); November 1, 2002 (see Appendix C, amendment 646).

§7B1.2. Reporting of Violations of Probation and Supervised Release (Policy Statement)

- (a) The probation officer shall promptly report to the court any alleged Grade A or B violation.
- (b) The probation officer shall promptly report to the court any alleged Grade C violation unless the officer determines: (1) that such violation is minor, and not part of a continuing pattern of violations; and (2) that non-reporting will not present an undue risk to an individual or the public or be inconsistent with any directive of the court relative to the reporting of violations.