



Yale Law School

February 27, 2025

Honorable Judge Carlton W. Reeves
Chair, United States Sentencing Commission
One Columbus Circle, N.E., Suite 2-500
Washington, D.C. 20002-8002

RE: Public Comment on Proposed Amendments to Supervised Release

Dear Judge Reeves:

We write in support of proposed amendments to Chapter 5 of the Sentencing Guidelines regarding supervised release. As we detail below, we hope that the Commission will adopt the proposed amendments. We do suggest one modification, as discussed below.

A word of introduction is in order about the bases for this comment. As part of our work in the Arthur Liman Center for Public Interest Law at Yale Law School, we researched the conditions that have been imposed when an individual's sentence includes supervised release. The enclosed report, *Collecting Conditions: A Snapshot of Supervised Release in 2023 in the U.S. District Court for the District of Connecticut*, details what we learned. Using the district in which we are located, we analyzed conditions imposed in 74 criminal judgments in 2023.¹ That set came from the Federal Public Defender's Office here, which enabled us to have information on the judgments for defendants whom that office represented during that year.

After reviewing the judgment for each defendant, we identified sixty-six whose sentences included supervised release. For each defendant, we recorded the number, type, and text of conditions imposed, including special conditions. In general, judges imposed all the mandatory and standard conditions and then some additional ones. After preparing a draft report, we circulated it to people knowledgeable about and involved in sentencing practices in this District. We then convened a seminar to discuss the draft with a few district court judges, federal public defenders, U.S. attorneys, probation officers, health care providers, and legal academics.

That session and other research enabled us to learn about problems, some of which stemmed from the fact that many conditions are imposed at the time of sentencing. As a result, for people serving time in prison, the interval between imposition and release may be months or years. By the time of release, a person may have different needs than had been anticipated at the time of sentencing. Furthermore, some of the regularly imposed conditions added challenges for

¹ Liz Beling, Katherine Braner, Elizabeth Clarke, Ibrahim Diallo, Avital Fried, Matthew Jennings, Zoë Mermelstein, Judith Resnik, Katherine Salinas, Julia Udell, & Paige Underwood, *Collecting Conditions: A Snapshot of Supervised Release in 2023 in the U.S. District Court for the District of Connecticut* 6-7 (Feb. 26, 2025) (enclosed).

individuals after they left prison. The travel condition² is one example. For people who are employed in transportation, the requirement of obtaining permission each time they go from Connecticut to Massachusetts or New York may impede their ability to comply with the needs of their employers. As we discuss below, our report thus illuminates the utility of recommendations before the Commission.

First, the proposed revisions to Chapter 5 are responsive to the concern that supervised release sentences are standardized and unvarying rather than tailored to an individual. Therefore, we support inclusion of a general proposition that courts should only impose supervised release if it is “warranted by an individualized assessment of the need for supervision.”³ And, as discussed, because many defendants are sentenced to years of imprisonment, a lag exists between imposition of supervised release and release from custody.⁴ The proposed amendment helpfully encourages judges to revisit the issues so as “to conduct such an assessment as soon as practicable after the defendant’s release from imprisonment.”⁵ This change would enable judges to have more information about which conditions would best contribute to an individual’s rehabilitation after release from custody.

Second, we support the reclassification of standard conditions of supervised release as “examples of common conditions that may be warranted in appropriate cases.”⁶ As noted, in our study, the list of all the standard conditions was included in the sixty-six judgments we reviewed in which defendants were sentenced to supervised release. Thus, the proposed addition to § 5D1.3(b) (Discretionary Conditions) is wise to encourage judges to “conduct an individualized assessment to determine what, if any, other conditions of supervised release are warranted.”⁷ Doing so serves as a helpful reminder that each condition must be relevant and involve “no greater deprivation of liberty than is reasonably necessary” for the statutory purposes of deterrence, protection of the public, and rehabilitation.⁸ Moreover, while some are concerned about the time that it takes to tailor conditions, doing so may save time later as individualization likely will improve compliance and may make the time of supervision as useful as possible.

² “You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.” U.S. Probation and Pretrial Services, District of Connecticut, *Conditions of Supervision*, CTP.USCOURTS.GOV, <https://www.ctp.uscourts.gov/conditions-supervision> (last visited June 28, 2024).

³ U.S. SENT’G COMM’N, PROPOSED AMENDMENTS TO THE SENTENCING GUIDELINES (PRELIMINARY) 3 (Jan. 24, 2025).

⁴ The median sentence of imprisonment in Fiscal Year 2023 was twenty-four months, and supervised release was ordered in 82.5% of cases. See U.S. SENT’G COMM’N, 2023 SOURCEBOOK OF FEDERAL SENTENCING tbl.15, 18 (2023). In our own set, the median length of imprisonment was forty months. Collecting Conditions, *supra* note 1, at 9.

⁵ U.S. SENT’G COMM’N, PROPOSED AMENDMENTS TO THE SENTENCING GUIDELINES (PRELIMINARY) 16 (Jan. 24, 2025).

⁶ *Id.* at 19.

⁷ *Id.*

⁸ 18 U.S.C. § 3583(d)(2).

Third, the proposed addition of § 5D1.4 (Modification, Early Termination, and Extension of Supervised Release (Policy Statement)) provides judges with guidance for deciding whether to grant a motion for early termination of supervised release under 18 U.S.C. § 3583(e)(1).⁹ In January of 2025, the Administrative Office of the U.S. Courts published a study that found that arrest rates were lower for individuals whose terms of supervision were terminated early.¹⁰ Thus, termination can support a person's reintegration in the community and conserve time of probation officers.¹¹ This guidance will also help judges, given that some district courts have required that a supervisee demonstrate "exceptional" behavior or "new or unforeseen" circumstances to support early termination of supervised release.¹² On occasion, even as courts of appeals have ruled that showings of "exceptional" behavior or "new or unforeseen" circumstances are not required, some district courts rely on those criteria. The factors enumerated in § 5D1.4(b) thus can also conserve judicial time by clarifying the criteria to apply.

We have a concern about one aspect of the proposed amendments. Provided as an example of a special condition is "requiring the defendant to participate in a program to obtain [a high school or equivalent] diploma."¹³ For some individuals, this obligation may be helpful but for others, with learning disabilities or otherwise, this proposal may be difficult to fulfill. Moreover, health and cognitive challenges are not always clear at sentencing; further, they can develop during incarceration. More generally, we invite the Commission to study the challenges that individuals with disabilities face in complying with many of the conditions of supervised release. We hope the Commission will consider how to shape conditions in light of the principles underlying the Americans with Disabilities Act and Section 504 of the Rehabilitation Act to provide accommodations when appropriate. Supervised release and the ADA both aim to be rehabilitative and tailored to the needs of individuals. Thus, we urge the Commission not to adopt or propose as a routine condition a requirement of obtaining a High School or Equivalent Diploma.

⁹ See Stefan R. Underhill, *Everyday Sentencing Reform*, 87 UMKC L. REV. 159, 166-67 (2018).

¹⁰ Thomas H. Cohen, *Early Termination: Shortening Federal Supervision Terms Without Endangering Public Safety*, ADMIN. OFFICE OF THE U.S. COURTS 21-22 (Jan. 22, 2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5098803. A 2013 study evaluating early termination found that individuals whose supervision ended early were less likely to commit crimes than individuals who served a full term of supervision. Laura M. Baber & James L. Johnson, *Early Termination of Supervision: No Compromise to Community Safety*, 77 FED. PROBATION 17, 21 (2013).

¹¹ See Jacob Schuman, *Terminating Supervision Early*, 62 AM. CRIM. L. REV. 5-6 (forthcoming 2025).

¹² See, e.g., *Whittingham v. United States*, No. 12-CR-0971, 2017 WL 2257347, at *6 (S.D.N.Y. May 22, 2017) ("[T]he law is clear that only 'exceptional cases' involving 'special, extraordinary, or unforeseen circumstance[s]' warrant early termination."); *United States v. Solano*, No. 19-CR-17, 2023 WL 4599937, at *3 (E.D.N.Y. July 18, 2023) ("[T]he Court also finds that Defendant relies primarily on his compliance with the terms of his supervised release to support his request for early termination and that he has not presented any 'new or unforeseen circumstances' that warrant this relief." (quoting *Lussier*, 104 F.3d at 36)); *United States v. Cohen*, No. 18-CR-602, 2024 WL 1193604, at *3 (S.D.N.Y. Mar. 20, 2024) ("[E]arly termination of supervised release . . . is only 'occasionally' justified due to 'changed circumstances,' such as 'exceptionally good behavior by the defendant.'" (citing *United States v. Lussier*, 104 F.3d 32, 36 (2d Cir. 1997))).

¹³ U.S. SENT'G COMM'N, PROPOSED AMENDMENTS TO THE SENTENCING GUIDELINES (PRELIMINARY) 16 (Jan. 24, 2025).

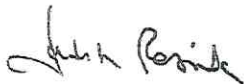
We have additional suggestions based on our research. One is to add language into the Guidelines encouraging judges to impose the minimum conditions needed to fulfill the statutory obligation of sentencing and to reserve additional conditions for post-incarceration modifications to supervised release conditions. Appendix B of our report illustrates how this recommendation can be applied. Further, and in line with the changes to § 5D1.3(b), we encourage the Commission to consider limiting the suggested list of standard conditions to those that are appropriate in a given case. Appendix D of our report provides an example of a limited list of conditions; we have drawn it from those used by a judge in the District of Connecticut.¹⁴ Third, to provide a time frame for early termination, we recommend the Commission include policy guidance stating that when an individual has been successful on supervised release for a year, sentencing judges should exercise their authority under § 3583(e)(1) to terminate supervised release.

Thank you for your consideration of these comments.

Respectfully submitted,



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¹⁴ See 18 U.S.C. § 3583; see also *United States v. Jackson*, No. 3:23-cr-00065, ECF No. 64 (D. Conn. Jan. 9, 2025) (imposing only conditions (1); (2); (4); (5); (6); (7); and (13) of the standard conditions contained in U.S.S.G. § 5D1.3(c)(1)-(13)).