

whether to impose a term of probation, and, if a term of probation is to be imposed, in determining the length of the term and the conditions of probation, shall consider the factors set forth in section 3553(a) to the extent that they are applicable.

(b) **EFFECT OF FINALITY OF JUDGMENT.**—Notwithstanding the fact that a sentence of probation can subsequently be—

(1) modified or revoked pursuant to the provisions of section 3564 or 3565;

(2) corrected pursuant to the provisions of rule 35 of the Federal Rules of Criminal Procedure and section 3742; or

(3) appealed and modified, if outside the guideline range, pursuant to the provisions of section 3742;

a judgment of conviction that includes such a sentence constitutes a final judgment for all other purposes.

(Added Pub. L. 98-473, title II, §212(a)(2), Oct. 12, 1984, 98 Stat. 1992; amended Pub. L. 101-647, title XXXV, §3583, Nov. 29, 1990, 104 Stat. 4930.)

Editorial Notes

REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in subsec. (b)(2), are set out in the Appendix to this title.

PRIOR PROVISIONS

For a prior section 3562, applicable to offenses committed prior to Nov. 1, 1987, see note set out preceding section 3551 of this title.

AMENDMENTS

1990—Subsec. (b)(2). Pub. L. 101-647 inserted “of the Federal Rules of Criminal Procedure” after “rule 35”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98-473, set out as a note under section 3551 of this title.

§ 3563. Conditions of probation

(a) **MANDATORY CONDITIONS.**—The court shall provide, as an explicit condition of a sentence of probation—

(1) for a felony, a misdemeanor, or an infraction, that the defendant not commit another Federal, State, or local crime during the term of probation;

(2) for a felony, that the defendant also abide by at least one condition set forth in subsection (b)(2) or (b)(12), unless the court has imposed a fine under this chapter, or unless the court finds on the record that extraordinary circumstances exist that would make such a condition plainly unreasonable, in which event the court shall impose one or more of the other conditions set forth under subsection (b);

(3) for a felony, a misdemeanor, or an infraction, that the defendant not unlawfully possess a controlled substance;

(4) for a domestic violence crime as defined in section 3561(b) by a defendant convicted of

such an offense for the first time that the defendant attend a public, private, or private nonprofit offender rehabilitation program that has been approved by the court, in consultation with a State Coalition Against Domestic Violence or other appropriate experts, if an approved program is readily available within a 50-mile radius of the legal residence of the defendant;

(5) for a felony, a misdemeanor, or an infraction, that the defendant refrain from any unlawful use of a controlled substance and submit to one drug test within 15 days of release on probation and at least 2 periodic drug tests thereafter (as determined by the court) for use of a controlled substance, but the condition stated in this paragraph may be ameliorated or suspended by the court for any individual defendant if the defendant's presentence report or other reliable sentencing information indicates a low risk of future substance abuse by the defendant;

(6) that the defendant—

(A) make restitution in accordance with sections 2248, 2259, 2264, 2327, 3663, 3663A, and 3664; and

(B) pay the assessment imposed in accordance with section 3013;

(7) that the defendant will notify the court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, fines, or special assessments;

(8) for a person required to register under the Sex Offender Registration and Notification Act, that the person comply with the requirements of that Act; and

(9) that the defendant cooperate in the collection of a DNA sample from the defendant if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000.

If the court has imposed and ordered execution of a fine and placed the defendant on probation, payment of the fine or adherence to the court-established installment schedule shall be a condition of the probation.

(b) **DISCRETIONARY CONDITIONS.**—The court may provide, as further conditions of a sentence of probation, to the extent that such conditions are reasonably related to the factors set forth in section 3553(a)(1) and (a)(2) and to the extent that such conditions involve only such deprivations of liberty or property as are reasonably necessary for the purposes indicated in section 3553(a)(2), that the defendant—

(1) support his dependents and meet other family responsibilities;

(2) make restitution to a victim of the offense under section 3556 (but not subject to the limitation of section 3663(a) or 3663A(c)(1)(A));

(3) give to the victims of the offense the notice ordered pursuant to the provisions of section 3555;

(4) work conscientiously at suitable employment or pursue conscientiously a course of study or vocational training that will equip him for suitable employment;

(5) refrain, in the case of an individual, from engaging in a specified occupation, business,

or profession bearing a reasonably direct relationship to the conduct constituting the offense, or engage in such a specified occupation, business, or profession only to a stated degree or under stated circumstances;

(6) refrain from frequenting specified kinds of places or from associating unnecessarily with specified persons;

(7) refrain from excessive use of alcohol, or any use of a narcotic drug or other controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802), without a prescription by a licensed medical practitioner;

(8) refrain from possessing a firearm, destructive device, or other dangerous weapon;

(9) undergo available medical, psychiatric, or psychological treatment, including treatment for drug or alcohol dependency, as specified by the court, and remain in a specified institution if required for that purpose;

(10) remain in the custody of the Bureau of Prisons during nights, weekends, or other intervals of time, totaling no more than the lesser of one year or the term of imprisonment authorized for the offense, during the first year of the term of probation or supervised release;

(11) reside at, or participate in the program of, a community corrections facility (including a facility maintained or under contract to the Bureau of Prisons) for all or part of the term of probation;

(12) work in community service as directed by the court;

(13) reside in a specified place or area, or refrain from residing in a specified place or area;

(14) remain within the jurisdiction of the court, unless granted permission to leave by the court or a probation officer;

(15) report to a probation officer as directed by the court or the probation officer;

(16) permit a probation officer to visit him at his home or elsewhere as specified by the court;

(17) answer inquiries by a probation officer and notify the probation officer promptly of any change in address or employment;

(18) notify the probation officer promptly if arrested or questioned by a law enforcement officer;

(19) remain at his place of residence during nonworking hours and, if the court finds it appropriate, that compliance with this condition be monitored by telephonic or electronic signaling devices, except that a condition under this paragraph may be imposed only as an alternative to incarceration;

(20) comply with the terms of any court order or order of an administrative process pursuant to the law of a State, the District of Columbia, or any other possession or territory of the United States, requiring payments by the defendant for the support and maintenance of a child or of a child and the parent with whom the child is living;

(21) be ordered deported by a United States district court, or United States magistrate judge, pursuant to a stipulation entered into by the defendant and the United States under section 238(d)(5) of the Immigration and Na-

tionality Act, except that, in the absence of a stipulation, the United States district court or a United States magistrate judge, may order deportation as a condition of probation, if, after notice and hearing pursuant to such section, the Attorney General demonstrates by clear and convincing evidence that the alien is deportable;

(22) satisfy such other conditions as the court may impose or;¹

(23) if required to register under the Sex Offender Registration and Notification Act, submit his person, and any property, house, residence, vehicle, papers, computer, other electronic communication or data storage devices or media, and effects to search at any time, with or without a warrant, by any law enforcement or probation officer with reasonable suspicion concerning a violation of a condition of probation or unlawful conduct by the person, and by any probation officer in the lawful discharge of the officer's supervision functions.

(c) MODIFICATIONS OF CONDITIONS.—The court may modify, reduce, or enlarge the conditions of a sentence of probation at any time prior to the expiration or termination of the term of probation, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation and the provisions applicable to the initial setting of the conditions of probation.

(d) WRITTEN STATEMENT OF CONDITIONS.—The court shall direct that the probation officer provide the defendant with a written statement that sets forth all the conditions to which the sentence is subject, and that is sufficiently clear and specific to serve as a guide for the defendant's conduct and for such supervision as is required.

(e) RESULTS OF DRUG TESTING.—The results of a drug test administered in accordance with subsection (a)(5) shall be subject to confirmation only if the results are positive, the defendant is subject to possible imprisonment for such failure, and either the defendant denies the accuracy of such test or there is some other reason to question the results of the test. A defendant who tests positive may be detained pending verification of a positive drug test result. A drug test confirmation shall be a urine drug test confirmed using gas chromatography/mass spectrometry techniques or such test as the Director of the Administrative Office of the United States Courts after consultation with the Secretary of Health and Human Services may determine to be of equivalent accuracy. The court shall consider whether the availability of appropriate substance abuse treatment programs, or an individual's current or past participation in such programs, warrants an exception in accordance with United States Sentencing Commission guidelines from the rule of section 3565(b), when considering any action against a defendant who fails a drug test administered in accordance with subsection (a)(5).

(Added Pub. L. 98-473, title II, §212(a)(2), Oct. 12, 1984, 98 Stat. 1993; amended Pub. L. 99-646, §§11(a), 12(a), Nov. 10, 1986, 100 Stat. 3594; Pub. L.

¹ So in original. Probably should be “; or”.

100-182, §§10, 18, Dec. 7, 1987, 101 Stat. 1267, 1270; Pub. L. 100-690, title VII, §§7086, 7110, 7303(a)(1), 7305(a), Nov. 18, 1988, 102 Stat. 4408, 4419, 4464, 4465; Pub. L. 101-647, title XXXV, §3584, Nov. 29, 1990, 104 Stat. 4930; Pub. L. 102-521, §3, Oct. 25, 1992, 106 Stat. 3404; Pub. L. 103-322, title II, §20414(b), title XXVIII, §280002, title XXXII, §320921(b), Sept. 13, 1994, 108 Stat. 1830, 2096, 2130; Pub. L. 104-132, title II, §203, Apr. 24, 1996, 110 Stat. 1227; Pub. L. 104-208, div. C, title III, §§308(g)(10)(E), 374(b), Sept. 30, 1996, 110 Stat. 3009-625, 3009-647; Pub. L. 104-294, title VI, §601(k), Oct. 11, 1996, 110 Stat. 3501; Pub. L. 105-119, title I, §115(a)(8)(B)(i)-(iii), Nov. 26, 1997, 111 Stat. 2465; Pub. L. 106-546, §7(a), Dec. 19, 2000, 114 Stat. 2734; Pub. L. 107-273, div. B, title IV, §4002(c)(1), (e)(12), Nov. 2, 2002, 116 Stat. 1808, 1811; Pub. L. 109-248, title I, §141(d), title II, §210(a), July 27, 2006, 120 Stat. 603, 615; Pub. L. 110-406, §14(a), (c), Oct. 13, 2008, 122 Stat. 4294.)

Editorial Notes

REFERENCES IN TEXT

The Sex Offender Registration and Notification Act, referred to in subsecs. (a)(8) and (b)(23), is title I of Pub. L. 109-248, July 27, 2006, 120 Stat. 590, which was classified principally to subchapter I (§16901 et seq.) of chapter 151 of Title 42, The Public Health and Welfare, prior to editorial reclassification as chapter 209 (§20901 et seq.) of Title 34, Crime Control and Law Enforcement. For complete classification of this Act to the Code, see Short Title of 2006 Act note set out under section 10101 of Title 34 and Tables.

Section 3 of the DNA Analysis Backlog Elimination Act of 2000, referred to in subsec. (a)(9), is section 3 of Pub. L. 106-546, which is classified to section 40702 of Title 34, Crime Control and Law Enforcement.

Section 238(d)(5) of the Immigration and Nationality Act, referred to in subsec. (b)(21), is classified to section 1228(d)(5) of Title 8, Aliens and Nationality.

The Federal Rules of Criminal Procedure, referred to in subsec. (c), are set out in the Appendix to this title.

PRIOR PROVISIONS

For a prior section 3563, applicable to offenses committed prior to Nov. 1, 1987, see note set out preceding section 3551 of this title.

AMENDMENTS

2008—Subsec. (a)(2). Pub. L. 110-406, §14(a), substituted “(b)(2) or (b)(12), unless the court has imposed a fine under this chapter, or” for “(b)(2), (b)(3), or (b)(13).”

Subsec. (b)(10). Pub. L. 110-406, §14(c), inserted “or supervised release” after “probation”.

2006—Subsec. (a)(8). Pub. L. 109-248, §141(d), amended par. (8) generally. Prior to amendment, par. (8) read as follows: “for a person described in section 4042(c)(4), that the person report the address where the person will reside and any subsequent change of residence to the probation officer responsible for supervision, and that the person register in any State where the person resides, is employed, carries on a vocation, or is a student (as such terms are defined under section 170101(a)(3) of the Violent Crime Control and Law Enforcement Act of 1994); and”.

Subsec. (b)(21). Pub. L. 109-248, §210(a)(1), which directed amendment of par. (21) by striking “or”, was executed by striking “or” at the end of the par. to reflect the probable intent of Congress.

Subsec. (b)(22). Pub. L. 109-248, §210(a)(2), substituted “or;” for period at end.

Subsec. (b)(23). Pub. L. 109-248, §210(a)(3), added par. (23).

2002—Subsec. (a). Pub. L. 107-273, §4002(e)(12)(A), made technical correction to directory language of Pub. L.

105-119, §115(a)(8)(B)(i). See 1997 Amendment note below.

Subsec. (a)(3) to (5). Pub. L. 107-273, §4002(c)(1), repealed Pub. L. 104-294, §601(k)(1), (2). See 1996 Amendment notes below.

Subsec. (e). Pub. L. 107-273, §4002(e)(12)(B), made technical correction to directory language of Pub. L. 107-273, §115(a)(8)(B)(ii). See 1997 Amendment note below.

2000—Subsec. (a)(9). Pub. L. 106-546 added par. (9).

1997—Subsec. (a). Pub. L. 105-119, §115(a)(8)(B)(i), as amended by Pub. L. 107-273, §4002(e)(12)(A), struck out at end “The results of a drug test administered in accordance with paragraph (4) shall be subject to confirmation only if the results are positive, the defendant is subject to possible imprisonment for such failure, and either the defendant denies the accuracy of such test or there is some other reason to question the results of the test. A defendant who tests positive may be detained pending verification of a positive drug test result. A drug test confirmation shall be a urine drug test confirmed using gas chromatography/mass spectrometry techniques or such test as the Director of the Administrative Office of the United States Courts after consultation with the Secretary of Health and Human Services may determine to be of equivalent accuracy. The court shall consider whether the availability of appropriate substance abuse treatment programs, or an individual’s current or past participation in such programs, warrants an exception in accordance with United States Sentencing Commission guidelines from the rule of section 3565(b), when considering any action against a defendant who fails a drug test administered in accordance with paragraph (4).” and inserted these provisions at the end of this section.

Subsec. (a)(6), (7). Pub. L. 105-119, §115(a)(8)(B)(iii)(I), made technical amendment to place pars. (6) and (7) in numerical order immediately after par. (5).

Subsec. (a)(8). Pub. L. 105-119, §115(a)(8)(B)(iii)(II)-(IV), added par. (8).

Subsec. (e). Pub. L. 105-119, §115(a)(8)(B)(ii), as amended by Pub. L. 107-273, §4002(e)(12)(B), designated provisions which were struck out from the concluding provisions of subsec. (a) and inserted at the end of this section by Pub. L. 105-119, §115(a)(8)(B)(i), as amended, as subsec. (e), inserted subsec. heading, and substituted “subsection (a)(5)” for “paragraph (4)” in two places.

1996—Subsec. (a)(3). Pub. L. 104-294, §601(k)(2)(A), which could not be executed due to prior amendment by Pub. L. 104-132, §203(1)(A), was repealed by Pub. L. 107-273, §4002(c)(1). See below.

Pub. L. 104-132, §203(1)(A), struck out “and” at end of par. (3).

Subsec. (a)(4), (5). Pub. L. 104-294, §601(k)(3), transferred pars. (4) and (5) to appear in numerical order.

Pub. L. 104-294, §601(k)(1), (2)(B), which could not be executed due to prior amendment by Pub. L. 104-132, §203(1)(B)-(D), was repealed by Pub. L. 107-273, §4002(c)(1). See below.

Pub. L. 104-132, §203(1)(B)-(D), redesignated second par. (4), relating to conditions of probation concerning drug use and testing, as (5), and substituted semicolon for period at end of pars. (4) and (5).

Subsec. (a)(6), (7). Pub. L. 104-132, §203(1)(E), added pars. (6) and (7).

Subsec. (b)(2). Pub. L. 104-132, §203(2)(C), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “make restitution to a victim of the offense under sections 3663 and 3664 (but not subject to the limitations of section 3663(a));”.

Pub. L. 104-132, §203(2)(A), (B), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: “pay a fine imposed pursuant to the provisions of subchapter C;”.

Subsec. (b)(3) to (20). Pub. L. 104-132, §203(2)(B), redesignated pars. (4) to (21) as (3) to (20), respectively. Former par. (3) redesignated (2).

Subsec. (b)(21). Pub. L. 104-208, §374(b), added par. (21). Former par. (21) redesignated (22).

Pub. L. 104-208, §308(g)(10)(E), substituted “238(d)(5)” for “242A(d)(5)”.

Pub. L. 104-132, §203(2)(B), redesignated par. (22) as (21). Former par. (21) redesignated (20).

Subsec. (b)(22). Pub. L. 104-208, §374(b), redesignated par. (21) as (22).

Pub. L. 104-132, §203(b)(2), redesignated par. (22) as (21).

1994—Subsec. (a). Pub. L. 103-322, §20414(b)(4), inserted at end of concluding provisions “The results of a drug test administered in accordance with paragraph (4) shall be subject to confirmation only if the results are positive, the defendant is subject to possible imprisonment for such failure, and either the defendant denies the accuracy of such test or there is some other reason to question the results of the test. A defendant who tests positive may be detained pending verification of a positive drug test result. A drug test confirmation shall be a urine drug test confirmed using gas chromatography/mass spectrometry techniques or such test as the Director of the Administrative Office of the United States Courts after consultation with the Secretary of Health and Human Services may determine to be of equivalent accuracy. The court shall consider whether the availability of appropriate substance abuse treatment programs, or an individual’s current or past participation in such programs, warrants an exception in accordance with United States Sentencing Commission guidelines from the rule of section 3565(b), when considering any action against a defendant who fails a drug test administered in accordance with paragraph (4).”

Subsec. (a)(2). Pub. L. 103-322, §§20414(b)(1), 320921(b)(1), amended par. (2) identically, striking out “and” at end.

Subsec. (a)(3). Pub. L. 103-322, §280002, substituted “unlawfully possess a controlled substance” for “possess illegal controlled substances”.

Pub. L. 103-322, §§20414(b)(2), 320921(b)(2), amended par. (3) identically, substituting “; and” for period at end.

Subsec. (a)(4). Pub. L. 103-322, §320921(b)(3), added par. (4) relating to attendance at a rehabilitation program in the case of conviction of a domestic violence crime.

Pub. L. 103-322, §20414(b)(3), added at end of subsec. (a) par. (4) relating to conditions of probation concerning drug use and testing.

1992—Subsec. (b)(21), (22). Pub. L. 102-521 added par. (21) and redesignated former par. (21) as (22).

1990—Subsec. (a). Pub. L. 101-647, §3584(1), substituted “defendant” for “defendent” in last sentence.

Subsec. (b)(3). Pub. L. 101-647, §3584(2), substituted “under sections 3663 and 3664” for “pursuant to the provisions of section 3663 and 3664” and “section 3663(a)” for “3663(a)”.

1988—Subsec. (a)(2). Pub. L. 100-690, §7086, inserted “, unless the court finds on the record that extraordinary circumstances exist that would make such a condition plainly unreasonable, in which event the court shall impose one or more of the other conditions set forth under subsection (b)”.

Subsec. (a)(3). Pub. L. 100-690, §7303(a)(1), added par. (3).

Subsec. (b)(3). Pub. L. 100-690, §7110, substituted “3663 and 3664 (but not subject to the limitations of 3663(a))” for “3556”.

Subsec. (b)(20), (21). Pub. L. 100-690, §7305(a), added par. (20) and redesignated former par. (20) as (21).

1987—Subsec. (b)(12). Pub. L. 100-182, §18, inserted “(including a facility maintained or under contract to the Bureau of Prisons)” after “facility”.

Subsec. (c). Pub. L. 100-182, §10, struck out comma after “The court may” and substituted “the modification of probation and” for “revocation or modification of probation”.

1986—Subsec. (b)(11). Pub. L. 99-646, §11(a), struck out “in section 3581(b)” after “the offense”.

Subsec. (c). Pub. L. 99-646, §12(a), struck out “, after a hearing” after “court may” and inserted “the provisions of the Federal Rules of Criminal Procedure relating to revocation or modification of probation” after “pursuant to”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-273, div. B, title IV, §4002(c)(1), Nov. 2, 2002, 116 Stat. 1808, provided that the amendment made by section 4002(c)(1) is effective Oct. 11, 1996.

Pub. L. 107-273, div. B, title IV, §4002(e)(12), Nov. 2, 2002, 116 Stat. 1811, provided that the amendment made by section 4002(e)(12) is effective Nov. 26, 1997.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-119 effective 1 year after Nov. 26, 1997, see section 115(c)(1) of Pub. L. 105-119, set out as a note under section 3521 of this title.

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by section 308(g)(10)(E) of Pub. L. 104-208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104-208, set out as a note under section 1101 of Title 8, Aliens and Nationality.

Amendment by Pub. L. 104-132 to be effective, to extent constitutionally permissible, for sentencing proceedings in cases in which defendant is convicted on or after Apr. 24, 1996, see section 211 of Pub. L. 104-132, set out as a note under section 2248 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-690, title VII, §7303(d), Nov. 18, 1988, 102 Stat. 4464, provided that: “The amendments made by this section [amending this section and sections 3565, 3583, 4209, and 4214 of this title] shall apply with respect to persons whose probation, supervised release, or parole begins after December 31, 1988.”

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-182 applicable with respect to offenses committed after Dec. 7, 1987, see section 26 of Pub. L. 100-182, set out as a note under section 3006A of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-646, §11(b), Nov. 10, 1986, 100 Stat. 3594, provided that: “The amendment made by this section [amending this section] shall take effect on the date of the taking effect of such section 3563(b)(11) [Nov. 1, 1987].”

Pub. L. 99-646, §12(c)(1), Nov. 10, 1986, 100 Stat. 3594, provided that: “The amendments made by subsection (a) [amending this section] shall take effect on the date of the taking effect of such section 3563(c) [Nov. 1, 1987].”

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98-473, set out as a note under section 3551 of this title.

§ 3564. Running of a term of probation

(a) COMMENCEMENT.—A term of probation commences on the day that the sentence of probation is imposed, unless otherwise ordered by the court.

(b) CONCURRENCE WITH OTHER SENTENCES.—Multiple terms of probation, whether imposed at the same time or at different times, run concurrently with each other. A term of probation runs concurrently with any Federal, State, or local term of probation, supervised release, or parole for another offense to which the defendant is subject or becomes subject during the term of probation. A term of probation does not run while the defendant is imprisoned in connection with a conviction for a Federal, State, or local