

\$5B1.3 / \$5D1.3 - Conditions of Probation & Supervised Release: US Sentencing Commission / 2016 Amendments Effective November 1st

The amendment revises, clarifies, and rearranges the conditions of probation and supervised release to make them easier for defendants to understand and probation officers to enforce. The classifications of “mandatory,” “standard,” and “special” have been changed for some conditions. *Mens rea* requirements are added in some conditions. The changes are consistent with proposed changes to the national judgment form (AO245B) endorsed by the Criminal Law Committee and the Administrative Office of the U.S. Courts (A.O.)

Highlights of the Changes Found in §§5B1.3 & 5D1.3

Court-Established Payment Schedules - Changed from a “standard” to a “mandatory” condition.

Sex Offender Registration and Notification Act - Condition identifies that it applies in all states.

Reporting to the Probation Officer - Split into two provisions: report within 72 hours; and thereafter report to the probation officer as instructed.

Leaving the Jurisdiction - Adds a *mens rea* requirement that the defendant shall not “knowingly” leave the jurisdiction.

Answer Truthfully; Follow Instructions - These are divided into two separate conditions, and Commentary is added to clarify that a defendant may invoke the Fifth Amendment privilege against self-incrimination without violating the condition requiring that s/he “answer truthfully” the questions of the probation officer.

In the condition to follow the instructions of the probation officer, the phrase “related to the conditions of supervision” is added.

Residence; Employment - Clarifies that the residence must be approved by the probation officer and that the defendant must work full-time (30 hours) unless excused by the probation officer.

Visits by Probation Officer - Provides plain language for notice to defendants and guidance to probation officers.

Also includes “the defendant shall permit the probation officer to take any items prohibited by the conditions of the defendant’s supervision that he or she observes in plain view.”

Association with Criminals - Replaces the term “associate” with more definite language, and adds

mens rea requirement: “... shall not communicate or interact with someone the defendant knows is engaged in criminal activity.” “If the defendant knows someone has been convicted of a felony, the defendant shall not knowingly communicate or interact with that person ...”

Arrested or Questioned by a Law Enforcement Officer - Minor clerical changes. Condition remains the same.

Firearms and Dangerous Weapons

Reclassified from a “special” to a “standard” condition. Amended to direct that the defendant shall not “own, possess, or have access to” such weapons. “Dangerous weapon” is defined

Acting as Informant - Reworded to clarify that the defendant shall not “act as a confidential human source or informant ...”

Challenges have been made on the basis that certain conditions are vaguely worded, pose constitutional concerns, or have been categorized as “standard” conditions in a manner that has led to their improper imposition upon particular offenders.

The amendment responds to many of the concerns raised in these challenges by revising, clarifying, and rearranging the conditions contained in §§5B1.3 and 5D1.3 in order to make them easier for defendants to understand.



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Duty to Notify Risks Posed by the Defendant - Revised to avoid potential ambiguity.

The condition provides that if the probation officer determines the defendant poses a risk to another person, the probation officer may require the defendant to tell the person about the risk and confirm that the defendant has done so.

Support of Dependents - Now a “special” condition, it requires that if the defendant has dependents, he or she shall support them; and, if the defendant is under a government order to pay child support, he or she shall make the payments in accordance with the terms of the order.

Alcohol; Controlled Substances; Frequenting Places Where Controlled Substances Are Sold - A new “special” condition states the defendant “shall not use or possess alcohol.”

Material Change in Economic Circumstances - The condition that the defendant must notify the probation officer of a material change in economic circumstances that might affect ability to pay restitution, fines, or special assessments is maintained as a “mandatory” condition of probation, but is reclassified from a “standard” to a “special” condition of supervised release.

AO 245B (Rev. 11/16) Judgment in a Criminal Case
Sheet 3 — Supervised Release

DEFENDANT:
CASE NUMBER:

Judgment—Page _____ of _____

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: _____

AO 245B (Rev. 11/16) Judgment in a Criminal Case
Sheet 4—Probation

DEFENDANT:
CASE NUMBER:

Judgment—Page _____ of _____

PROBATION

You are hereby sentenced to probation for a term of: _____

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. (check if applicable)
4. ☐ You must cooperate in the collection of DNA as directed by the probation officer. (check if applicable)
5. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. (check if applicable)
6. ☐ You must participate in an approved program for domestic violence. (check if applicable)
7. ☐ You must make restitution in accordance with 18 U.S.C. §§ 2248, 2259, 2264, 2327, 3663, 3663A, and 3664. (check if applicable)
8. You must pay the assessment imposed in accordance with 18 U.S.C. § 3013.
9. If this judgment imposes a fine, you must pay in accordance with 18 U.S.C. § 3013.

**For more information or to ask the Commission a question,
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The United States Sentencing Commission, an independent agency in the judicial branch of the federal government, was organized in 1985 to develop a national sentencing policy for the federal courts. The resulting sentencing guidelines provide structure for the courts' sentencing discretion to help ensure that similar offenders who commit similar offenses receive similar sentences.