

Supervised Release: Special Conditions for Sex Offense Cases

Statutes and Guidelines Implicated

18 U.S.C. § 3583(d)
18 U.S.C. § 3583(k)
§§5D1.1 – 5D1.3

Common Pitfalls in Supervised Release Conditions for Sex Offense Cases

Court needs to provide notice and explanation regarding imposition of special conditions of supervised release.

Court should examine length of time between instant offense and any prior sex conduct.

Conditions which involve fundamental liberties (e.g., association with own children, residency restrictions) typically need more detailed explanation than other conditions.

If a defendant is convicted of Failure to register as a sex offender, court should examine if the prior sex offense conviction involved a computer.



Recent Caselaw Analyzing Supervised Release Conditions in Sex Offense Cases

Contact with Minors

U.S. v. LeCompte, 800 F.3d 1209 (10th Cir. 2015) Restriction on minor prohibition remanded because court did not explain how applying the minor prohibition condition to the conduct here would achieve the purposes of deterring criminal activity, protecting the public, and promoting the defendant's rehabilitation.

U.S. v. Woodall, 782 F.3d 383 (8th Cir. 2015) Condition prohibiting contact with minors without probation officer approval affirmed based on his past sexual offenses (including abusing his 15 year old stepdaughter) and that he has never completed a sex-offender treatment program.

U.S. v. Bear, 769 F.3d 1221 (10th Cir. 2014) Restriction of contact with his children violated his constitutional liberty interest in relationship with his children.

U.S. v. Burns, 775 F.3d 1221 (10th Cir. 2014) Supervised release condition requiring approval to contact own daughter remanded because court did not make particularized findings.

Viewing Pornography

U.S. v. Martinez-Torres, 795 F.3d 1233 (10th Cir. 2015) "We conclude that on this record the district court abused its discretion in imposing the special condition prohibiting Defendant from viewing or possessing materials depicting or describing sexually explicit conduct."

U.S. v. Medina, 779 F.3d 55 (1st Cir. 2015) "Medina's failure-to-register offense did not itself, quite obviously, involve the use of pornographic or other sexually stimulating materials. And, revolting as the actions that led to Medina's 2008 conviction are, the record here... fails to reveal a link between Medina's commission of that offense and the prohibited adult materials. There may well be a reason to impose a pornography ban in this case. But if so, the District Court has not yet provided it."

Computer Restrictions

U.S. v. Duke, 788 F.3d 392 (5th Cir. 2015) Condition prohibiting accessing computer for rest of his life was unreasonable. Lifetime ban on association with minors for life was overbroad.

U.S. v. Fernandez, 776 F.3d 344 (5th Cir. 2015) Supervised release condition requiring software installation improper because it was not related to defendant's Failure to register conviction when his only prior sex offense conviction was for sexual assault of 14 year old which did not involve a computer.

U.S. v. Dunn, 777 F.3d 1171 (10th Cir. 2015) Condition requiring a defendant convicted of possessing child pornography to submit to computer monitoring and obtain permission to engage in other computer-related activities was plain error because the district court failed to make necessary findings to impose such a harsh restriction that materially affected the defendant's ability to obtain gainful employment.

Sex Offender Treatment

U.S. v. Von Behren, --F.3d--, 2016 WL 2641270 (10th Cir. 2016) Condition of supervised release that required participation in sex offender treatment, which included a mandatory polygraph, violated the defendant's right against self-incrimination because the questions required the defendant to admit to illegal sexual contact with minors and failure to participate in the polygraph would lead to revocation of his supervised release.

U.S. v. Mercado, 777 F.3d 532 (1st Cir. 2015) "In light of the defendant's prior conviction for a sex offense against a minor and his prodigious criminal history, we think it apparent that a sex-offender treatment condition is reasonably related to rehabilitation and protecting the public."