

§7B1.3

- (d) Any restitution, fine, community confinement, home detention, or intermittent confinement previously imposed in connection with the sentence for which revocation is ordered that remains unpaid or unserved at the time of revocation shall be ordered to be paid or served in addition to the sanction determined under §7B1.4 (Term of Imprisonment), and any such unserved period of community confinement, home detention, or intermittent confinement may be converted to an equivalent period of imprisonment.
- (e) Where the court revokes probation and imposes a term of imprisonment, it shall increase the term of imprisonment determined under subsections (b), (c), and (d) above by the amount of time in official detention that will be credited toward service of the term of imprisonment under 18 U.S.C. § 3585(b), other than time in official detention resulting from the federal probation violation warrant or proceeding.
- (f) Any term of imprisonment imposed upon the revocation of probation shall be ordered to be served consecutively to any sentence of imprisonment that the defendant is serving, whether or not the sentence of imprisonment being served resulted from the conduct that is the basis of the revocation of probation.
- (g) If probation is revoked and a term of imprisonment is imposed, the provisions of §§5D1.1–1.3 shall apply to the imposition of a term of supervised release.

Commentary

Application Notes:

1. Revocation of probation generally is the appropriate disposition in the case of a Grade C violation by a defendant who, having been continued on probation after a finding of violation, again violates the conditions of his probation.
2. Subsection (e) is designed to ensure that the revocation penalty is not decreased by credit for time in official detention other than time in official detention resulting from the federal probation violation warrant or proceeding. **Example:** A defendant, who was in pre-trial detention for three months, is placed on probation, and subsequently violates that probation. The court finds the violation to be a Grade C violation, determines that the applicable range of imprisonment is 4–10 months, and determines that revocation of probation and imposition of a term of imprisonment of four months is appropriate. Under subsection (e), a sentence of seven months imprisonment would be required because the Federal Bureau of Prisons, under 18 U.S.C. § 3585(b), will allow the defendant three months' credit toward the term of imprisonment imposed upon revocation.
3. Subsection (f) provides that any term of imprisonment imposed upon the revocation of probation shall run consecutively to any sentence of imprisonment being served by the defendant. Similarly, it is the Commission's recommendation that any sentence of imprisonment for a criminal offense that is imposed after revocation of probation be run consecutively to any term of imprisonment imposed upon revocation.