

initial sentencing. 18 U.S.C. § 3583(a). Unlike parole, a term of supervised release does not replace a portion of the sentence of imprisonment, but rather is an order of supervision in addition to any term of imprisonment imposed by the court. Accordingly, supervised release is more analogous to the additional “special parole term” previously authorized for certain drug offenses.

The conditions of supervised release authorized by statute are the same as those for a sentence of probation, except for intermittent confinement. (Intermittent confinement is available for a sentence of probation, but is available as a condition of supervised release only for a violation of a condition of supervised release.) When the court finds that the defendant violated a condition of supervised release, it may continue the defendant on supervised release, with or without extending the term or modifying the conditions, or revoke supervised release and impose a term of imprisonment. The periods of imprisonment authorized by statute for a violation of the conditions of supervised release generally are more limited, however, than those available for a violation of the conditions of probation. 18 U.S.C. § 3583(e)(3).

3. Resolution of Major Issues

(a) Guidelines versus Policy Statements.

At the outset, the Commission faced a choice between promulgating guidelines or issuing advisory policy statements for the revocation of probation and supervised release. After considered debate and input from judges, probation officers, and prosecuting and defense attorneys, the Commission decided, for a variety of reasons, initially to issue policy statements. Not only was the policy statement option expressly authorized by statute, but this approach provided greater flexibility to both the Commission and the courts. Unlike guidelines, policy statements are not subject to the May 1 statutory deadline for submission to Congress, and the Commission believed that it would benefit from the additional time to consider complex issues relating to revocation guidelines provided by the policy statement option.

Moreover, the Commission anticipated that, because of its greater flexibility, the policy statement option would provide better opportunities for evaluation by the courts and the Commission. This flexibility is important, given that supervised release as a method of post-incarceration supervision and transformation of probation from a suspension of sentence to a sentence in itself represented recent changes in federal sentencing practices. After an adequate period of evaluation, the Commission intended to promulgate updated revocation policies.

(b) Choice Between Theories.

The Commission initially debated two different approaches to sanctioning violations of probation and supervised release.

The first option considered a violation resulting from a defendant’s failure to follow the court-imposed conditions of probation or supervised release as a “breach of trust.” While the nature of the conduct leading to the revocation would be considered in measuring the extent