

# THE PCR CONSULTANTS GUIDEBOOK TO FEDERAL PROBATION AND SUPERVISED RELEASE TERMINATION



**THE 2012-2013 GUIDE FOR RELEASED FEDERAL  
INMATES AND DEFENDANTS WHO WANT EARLY  
RELEASE FROM SUPERVISION**

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# CHAPTER 1 – Probation Basics

You can represent yourself, and you can do it without ever stepping foot into a courtroom! As of the date of this publication (Aug 28, 2012), not a single client of PCR Consultants has **EVER** been called into a courtroom for a hearing after submitting documents we prepared. And while you many not be an expert, yet, the basics are a great place to start. Here is a crash course on the fundamentals of federal supervision.

## Supervision, Defined

There are two different types of Federal Supervision. For those that are sentenced to prison, the supervision following incarceration is called **SUPERVISED RELEASE**. For the lucky ones who received no prison sentence, the form of supervision they are under is called **PROBATION**.

These are really just meaningless details. The supervising officers are nearly always the same. They all work for the United States Probation Office (USPO), and the conditions of supervision are all nearly identical. To understand just how rare simple probation is to get, consider these numbers below...

**93.6%** of federal criminal cases end in a guilty plea (6.4% go to trial);

**75.6%** of those that go to trial (the 6.4% left) are found guilty;

This means that **97%** of all criminal defendants are therefore sentenced;

**82.8% OF ALL FEDERAL DEFENDANTS GET PRISON SENTENCES!**

\* All these statistics are according to the Bureau of Justice Statistics.

## **The Rules**

There is one rule that cannot be ignored or wiggled around with federal probation termination. All released federal inmates, or defendants sentenced to a term of probation only, must complete **at least one year** under USPO supervision before they can be considered for early termination. No way around this one.

Other rules aren't quite as rigid. For instance, most USPOs have a standing policy to not recommend anybody on supervision for early release. If you think about it, their job depends on keeping their numbers up. If every person on federal supervision was let go, then they'd be out of work. So don't expect a lot of encouragement from your Probation Officer (PO). Not to worry though, there's hope.

...More on this topic later.

When it comes to eligibility for early release, there are no hard-and-fast rules to follow. There are many different, unique situations that exist out there but the best candidate for early termination is squeaky clean. A quick checklist for you:

- ✓ Don't get into any trouble
- ✓ complete whatever counseling or treatment or community service or whatever gets dictated by the USPO
- ✓ Wait until you are on what we like to call “Probationary Auto-Pilot”

If these three goals are reached, you're probably a good candidate for early termination. In the next few sections we'll look at the law, policies, and statistics behind early termination. However, before moving on, there is one big piece to this puzzle we haven't mentioned yet..

The judge has ultimate authority in granting or denying a request for early release. Most judges have a standing yet unofficial rule when considering these requests. That rule, as you may have heard, is the halfway point.

**If you're serving a 4-year term of supervised release, chances of early release rise significantly after 2 years has been fully completed**

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## CHAPTER 2 - The Law

There are two places where the guiding laws can be found regarding early termination requests. The first is in Title 18 of the United States Code, and the second in the Federal Rules of Criminal Procedure. Rule 32.1 to be exact.

## **The United States Code**

Title 18 U.S.C. §3583(e)(1) states that after considering several factors expressed in §3553(a) the Court may terminate a term of supervised release and discharge the defendant after serving one year of supervision if it is warranted by the conduct of the defendant and it is in the “interest of justice”.

While this may sound confusing, the core concept is very simple. A judge can let you go early if he considers the same factors he used originally to come up with the sentence he's about to cut short.

If you pass this test, you also must have completed one year of supervision and shown conduct that wouldn't make it an “injustice” to release you early. So what are these factors the judges must consider? See the table on the next page for a full list.\*



<b>1</b>	The nature and circumstances of the offense and the history and characteristics of the defendant
<b>2</b>	The need for the sentence imposed. . .
<b>(b)</b>	To afford adequate deterrence to criminal conduct
<b>(c)</b>	To protect the public from further crimes of the defendant
<b>(d)</b>	to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner
<b>4</b>	The kinds of sentences and ranges established for the criminal activity of the defendant
<b>5</b>	Any pertinent policy statements regarding early release
<b>6</b>	The need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct
<b>7</b>	The need to provide restitution to any victims of the offense

\*Note\* All of the factors above are paraphrased and are numbered from the actual law. Not all §3553 sentencing factors are to be considered in early termination of supervision pleadings. Only the factors below are mandatory.

## **The Federal Rules of Criminal Procedure**

The title of this section is the name of the rules that the court must abide by to do their business. It is a big intimidating book that has only one section regarding supervised release and probation termination.

This rule says that you can apply for early release from supervision, and that there is no hearing required if the modification sought is favorable to the defendant. Since a request to end supervision is technically a modification request, this rule applies.

**Important! The opposite is also true. That means that if your PO is trying to make things stricter for you, they will typically try to get you to sign off on the change. This document waives your right to a hearing. DO NOT SIGN THIS if you don't want the change!!**

Rule 32.1(c) states:

*(1) In General. Before modifying the conditions of probation or supervised release, the court must hold a hearing, at which the person has the right to counsel and an opportunity to make a statement and present any information in mitigation.*

*(2) Exceptions. A hearing is not required if:*

*(a) the person waives the hearing; or*

*(b) the relief sought is favorable to the person and does not extend the term of probation or of supervised release; and*

*(c) an attorney for the government has received notice of the relief sought, has had a reasonable opportunity to object, and has not done so.*

## CHAPTER 3 - Policies

There are specific policy factors which the USPO uses when asked to make a recommendation regarding early termination of federal supervision. These are rarely used as most USPOs, as you may remember, have a standing policy to never recommend anybody for early termination. However, there does exist standards by which offices that DO make these types of recommendations must adhere to.

Judges know well what the policies of the local USPO are and may adjust their viewpoint accordingly by using these standards when the USPO won't. We'll dive more into this in the Procedures chapter later.

For now we'll look at the policy standards themselves. These standards were adopted by the Judicial Conference Committee on Criminal Law in March of 2003. More importantly, these factors can play into a judge's decision to terminate probation or supervised release early.

## **Monograph 109 Factors**

There are nine of these policy factors, found in a document called Monograph 109, and each take a closer look at the offender. These are:

1. Stable community reintegration (e.g., residence, family employment);
2. Progressive strides toward supervision objectives and in compliance with all conditions of supervision;
3. No aggravated role in the offense of conviction, particularly large drug or fraud offenses
4. No history of violence (e.g., sexually assaultive, predatory behavior or domestic violence);
5. No recent arrests or convictions (including unresolved pending charges), or ongoing, uninterrupted patterns of criminal conduct;
6. No recent evidence of alcohol or drug abuse;
7. No recent psychiatric episodes;
8. No identifiable risk to the safety of any identifiable victim; and
9. No identifiable risk to public safety based on the Risk Prediction

## Index.

A look at these factors show that there are a lot of areas to consider when attempting to terminate a term of federal supervision. The entire history of an offender is considered.

Simply put, individuals who . . .

- **Have no supervision violations**
- **Don't see their Probation Officers more than just a few times per year, and**
- **Are a Waste the government's time and resources with continued supervision**

. . . have the greatest chance for early termination.

There are however, two factors not shown here than make the biggest difference. In the next section, we'll take a look at both.

## **Non-Policy Factors**

There is no silver bullet to getting off of federal probation or supervised release early, no guarantees that any applicant for early release from supervision will have his or her request granted. That decision, in all cases, is ultimately up to the judge. There are, however, some little known facts that can help those on supervision get an edge that other applicants don't have.

### **Secret #1. There are different levels of supervision, and Judges care!**

The USPO is the supervising authority over all federal cases and defendants sentenced to probation or supervised release. Within that office are policies that govern how intensely clients are supervised.

Early on, a probationer or supervisee sees a lot of their Probation Officer. Those on the Urinalysis Phase program will call in daily for their turn to come in. Eventually, though, things do relax. This early form of

supervision is often referred to “intense” or “formal” supervision. When things relax, this may actually signal a change in supervision level from intense or formal, to low-intensity or informal.

The decision to place a supervised individual onto lower levels of monitoring is made only by the Probation Office. It may not be applied for, nor granted by a judge. However, if it has been over a month or two since in-person contact with a Probation Officer has occurred (or Urinalysis call-in requirements cease, etc), this could signal that probationary supervision levels have decreased.

When considering a motion for early termination of supervised release, Judges routinely speak with the Movant’s (that is, the person motioning the court) Probation Officer. One question posed in these conversations is what level of supervision the Movant is currently on.

**Secret #2: The Sentencing Commission is now ENCOURAGING judges to terminate supervision terms!**

On November 1, 2011, that year’s amendments to the Sentencing Guidelines Manual became active. One major amendment concerned



Supervised Release. It did lots of things like reduce the term of supervision on different felony classes and discuss supervision of deportable aliens. Stuff like that. More importantly, though, was the Commission's new stance on Early Terminations.

This amendment added commentary to section 5D1.2 which specifically encouraged judges to terminate supervised release terms in "appropriate cases." The only example given is as follows:

*"For example, the court may wish to consider early termination of supervised release if the defendant is an abuser of narcotics, other controlled substances, or alcohol who, while on supervised release, successfully completes a treatment program, thereby reducing the risk to the public from further crimes of the defendant."*

So lets review:

**Have you completed any kind of treatment program since your release from federal prison?**

**Has it been a few months since you last saw your PO?**

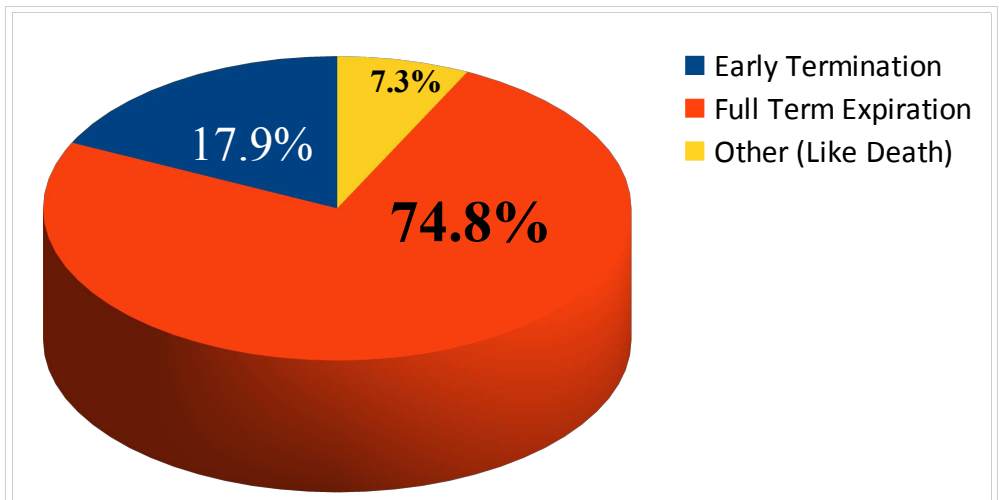
If the answer to either or both of these questions is yes, you could be well on your way to ending federal supervision early!

## CHAPTER 4 – Statistics

Most clients who contact PCR Consultants to ask questions regarding early release from supervision have the same questions. Most common concern what is the success rate for these motions and what are their specific chances. With those questions in mind, consider these statistics:

67% The number of supervision cases that successfully closed in 2008	33% Ended in revocations
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Of those 67% above that successfully completed supervision, only 17.9% were released by receiving early termination (that's 12% of all supervision cases). Here's how all successful terminations broke down in 2008.



One statistic the Administrative Office of the United States Courts, Office of Probation and Pretrial Services (AOUSC-OPPS), where this data comes from, is missing. How many of these people never even tried for early termination? That data has never, to our knowledge, been disclosed or even studied.

So the most relevant statistic to early termination involves the most frequently asked question in our initial consultations:

**Q: When should I apply?**

**A: On average, offenders whose supervised release terms were terminated early served more than 60% of the original supervision term imposed.**

So should you wait until you've completed more than half of your term before applying? Nope. Consider that 60% is the average length of time that early termination cases close. Math says that there are just as many who get free before that 60% mark as they do after it.

Logic also says that many of these cases were granted on their first try. So ask yourself, what if they had tried earlier? Here's more averages:

In 2006, offenders whose were released early from supervision were sentenced to an average term of 42 months ...and served an average of 26 months before being terminated.

## CHAPTER 5 – Procedures

This section may well be the most important, and at the same time the most boring section of this entire guidebook. Proper filing procedures, and knowing how the Court normally handles motions of this kind can make or break the chances of getting free of federal supervision.

Like the rest of the sections in this guidebook, there are two different parts to the procedures. Those are the filing procedures, and then the procedures judges will normally go through to process the requests.

### **Filing Procedures**

To properly file a motion *pro se* (which means you're submitting the document without a lawyer representing you), there are specific steps to take. These steps must be taken or risk the motion being denied on a technical fault, before it ever gets considered.

The federal court system is broken up into three levels. The lowest

level is District Court, followed by the appellate Circuit Courts, and finally the United States Supreme Court. Routine motions and filing such as a motion to terminate supervision will be filed at the District level.

Normally, the District Court is fairly informal as compared to Circuit Courts or the Supreme Court. Letters to the judge can sometimes be considered formal filings, and *pro se* filers are given wide leeway because the common citizen isn't expected to have all the training on court protocol that a lawyer would have. However, the better you can speak the court's language, the more effective you can be in your filings.

In basic terms, every formal filing must be given to the court Clerk, and a copy served upon every party in the case. In civil cases, this can be a lot of people. In a criminal case, there are only two places that a filing needs to go. The best news?

## **This can be done by mail!**

The Clerk of the specific court where the motion is filed at must be given **two copies** of each filing. One for their records, and one to be forwarded on to the judge assigned to your case. **One copy** must be filed

with the only other party involved with a criminal action: the office of the United States Attorney's Office.

Now, its better if you know your specific prosecutors name, so the motion gets directly to them. However, in most districts sending the filing to the main office of the United States Attorney will do the trick. In our new automated system, you can do either one.

All filings must come with a Certificate of Service to be made official. This document is a basic sworn affidavit stating that you have mailed copies of the motion to both the Clerk of the District Court and to the Office of the United States Attorney. Our automated system will give you a copy of this Certificate of Service document with the addresses for your specific courthouse clerk and United States Attorney's Office already loaded in.



## **Instructions for Filing your Motion**

1. Use two full sized envelopes (preferably 9"x11");
2. Sign and date three copies of the motion and two copies of the Certificate of Service;
3. Place one copy of the motion with one copy of the Certificate of Service in an envelope;
  - Address this envelope to the United States Attorney's Office;
  - Find that address on your Certificate of Service;
4. Place two copies of the motion with one copy of the Certificate of Service in another envelope;
  - Address this envelope to the Clerk of the District Court where you intend to file;
  - Find that address on your Certificate of Service;
5. Mail these two envelopes off and wait for the court to answer.

**That's It!**

## **After You File**

At this point, the waiting begins, and the waiting can be excruciating. Most of our clients who have moved the court for early termination hear back anywhere between 2 and 12 weeks after submission. However, this is not always the case. One client of PCR Consultants waited for almost 6

months before hearing back from the court. On the positive side, he received good news and is now free of all federal supervision.

After a motion is filed, the presiding judge will normally follow a few basic steps. He or she will look over the motion, speak with the Movant's supervising officer, speak with the prosecutor representing the government, and then make a decision.

**TIP**

Having the support of your supervising officer is very helpful in attempts like this. Letting your PO know about your motion early and serving them a courtesy copy can make a big difference in some cases.

However, just because your PO is against your early release doesn't mean it can't happen. Its all up to the judge.

In rare cases, a judge may call a hearing to get more facts. This is a trick that many lawyers use to bilk more money from their clients. A motion that lacks good arguments may cause a judge to want to hear more.

On the other hand, a well written and argued motion will usually stand on its own merit and not warrant a hearing.

This is why we go for broke on the motion. Most people motioning the court for early termination of supervision would rather not represent themselves in person, preferring instead to only be their own lawyer on paper.

If you remember from Chapter 1, not a single PCR Consultant's client has ever been called in for a court hearing when using documentation purchased from PCR Consultants. When these procedures are done correctly, and with the help of PCR Consultant's documentation service, you could be well on your way to terminating your own probation in just hours!

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That about wraps up this guidebook about early release from federal supervision. This is the third guidebook published by PCR Consultants and we hope you've found it helpful and informative. PCR Consultants wishes good luck to all former federal inmates and defendants who want to take control of their supervision and end it early!



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