PCR Consultants
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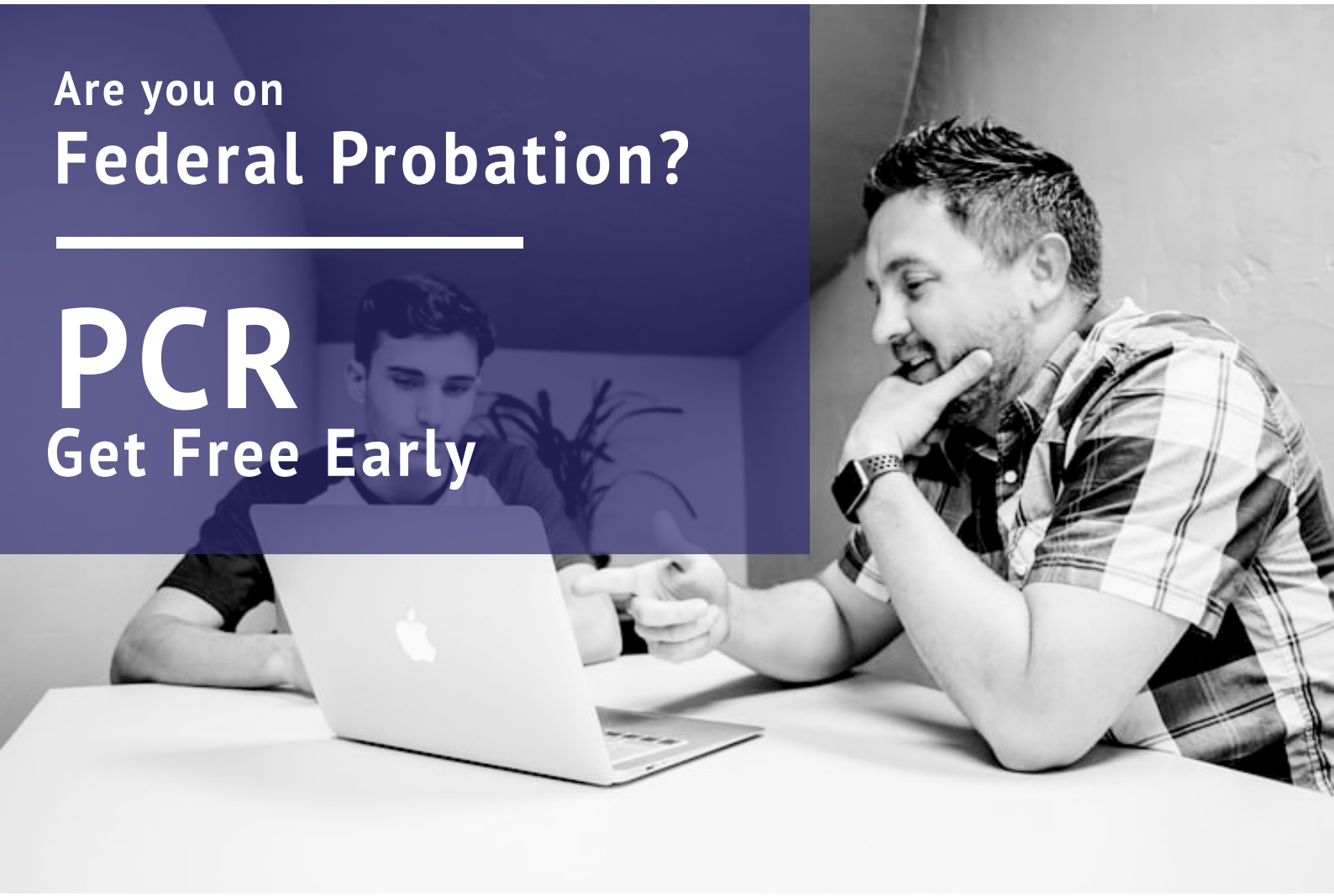
The Guidebook
Early Release from Federal Supervision



2020-21

Guidebook To Federal Probation And Supervised Release Termination

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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 5, 2020), only a tiny fraction of our clients have ever been called into a hearing. These happen almost exclusively in the California federal courts.[1]

While you many not be an expert on federal supervision issues yet, the basics are a great place to start. This guidebook is a crash-course on the fundamentals of federal supervision.

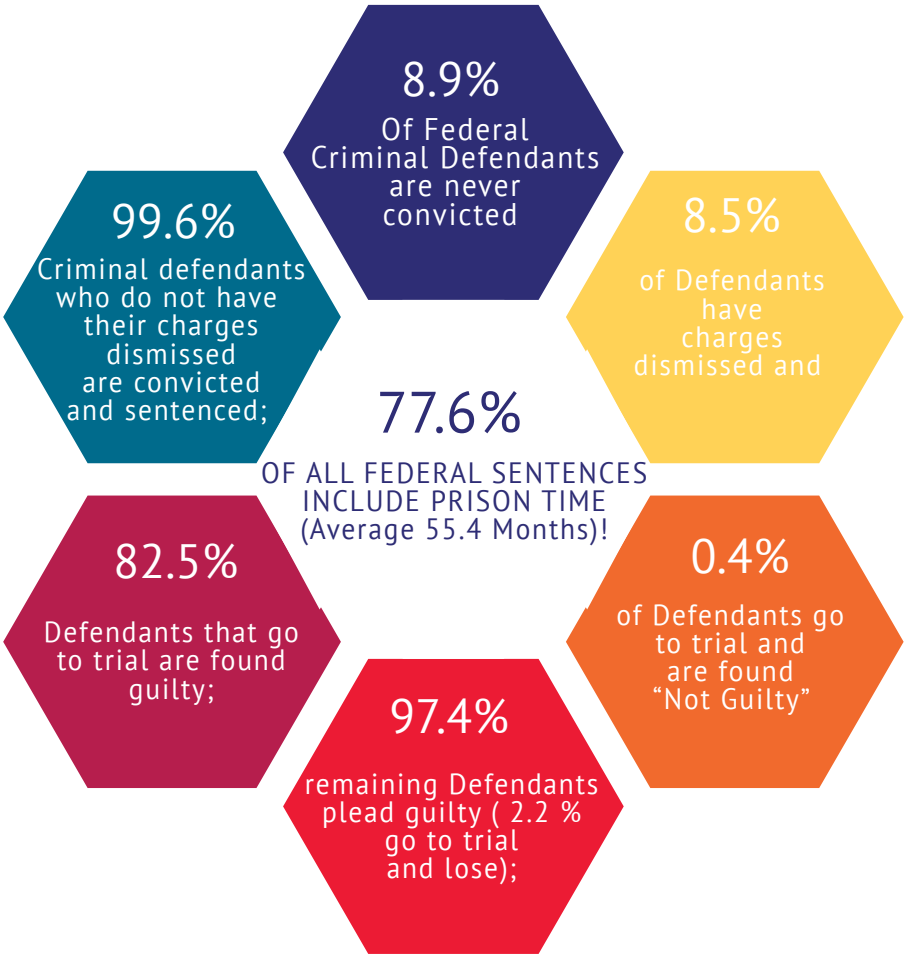
Supervision: Defined

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 few who received no prison time at sentencing, the supervision they are under is called **PROBATION**.

These are mostly just meaningless details. The officers that supervise both kinds of defendants are nearly always the same. They all work for the United States Probation Office (USPO), and the conditions of supervision are almost identical. To understand just how rare simple probation is given, consider these numbers below...

[1] This is because California federal Judges used to be California lawyers. California criminal court requires a hearing fornearly everything. Thus, judges that get appointed to the federal bench in California are simply accustomed to holding hearings for even small issues like this.



According to the Bureau of Justice Statistics Federal Justice Statistics, 2014 (Table 4.2)

The Rules

There are two rules that cannot be ignored or wiggled-around with federal supervised release or probation termination.

Rule 1: If convicted of a felony, all defendants on probation or supervised release must complete at least one year under USPO supervision before they can be considered for early termination. There is no way around this rule.

Rule 2: Early termination is a sentencing decision, and judges must be consistent with their sentencing decisions. That means that if a similar defendant, with a similar crime and criminal history, and similar time-served on supervision is released early, denying YOUR early termination could be appeal-able.
Other rules aren't quite as rigid. For instance, typically Probation Offices have a standard policy to not recommend anybody 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. That means you shouldn't expect a lot of encouragement from your Probation Officer.

Here's a quick checklist to demonstrate what this looks like

- Don't get into any trouble
- Complete whatever counseling or treatment or community service or whatever gets dictated by the USPO
- Pay off all money judgments like fines or restitution
- Complete all community service (if ordered to)
- Wait until you are on what we like to call "Probationary Auto-Pilot"

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

Your 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 (50%) point.

**While serving a 4-year term of supervision,
chances of early release rise significantly after 2 years has been fully completed**

CHAPTER 2

The Law and the Rules for Terminating Supervised Release

There are two places where the controlling laws can be found regarding early termination requests. Both are in Title 18 of the U.S. Code. The authority to grant early termination comes from §3583(e)(1):

"The court may, after considering the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7) – terminate a term of supervised release and discharge the defendant released at any time after the expiration of one year of supervised release, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation, if it is satisfied that such action is warranted by the conduct of the defendant released and the interest of justice".

Those sentencing factors are most of the same ones that are considered at the original sentencing hearing.

Requirements of the Law

Lets analyze the law a little bit. 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 from the rest of your supervised release or probation term if:

• The conduct of the person asking for early release warrants early termination;

After considering the same factors (minus one) considered originally to come up with the sentence he or she is 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?

The Sentence should consider...

1. The nature and circumstances of the offense and the history and characteristics of the defendant

2. The need for the sentence imposed. . .
   - **B.** To afford adequate deterrence to criminal conduct
   - **C.** To protect the public from further crimes of the defendant
   - **D.** To provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner

3. The kinds of sentences and ranges established for the criminal activity of the defendant

4. Any pertinent policy statements by the Sentencing Commission regarding early release

5. The need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct

6. The need to provide restitution to any victims of the offense

Note All of the factors above are paraphrased but are numbered from the actual law. Not all §3553 sentencing factors are to be considered in early termination of supervision pleadings. Only the factors listed here.

The Missing Factor Reveals a Little Known Fact About Supervised Release

Did you notice that the letter "(A)" is missing from number 2? This was intentionally left out by Congress when it designed supervised release. That factor requires a sentence to appropriately punish the defendant, promote respect for the law, and reflect the seriousness of the offense.

Supervised release is not intended to be part of the punishment phase of a sentence. It was designed only to transition a defendant from incarceration to full freedom, while providing enough support to accomplish whatever rehabilitation the Court deems necessary.

Once this process is completed, early termination is deserved. More simply put:

It does not matter how serious the crime of conviction was when applying for early termination of supervised release.

Supervised Release is not part of the punishment for a crime.
Supervision serves other purposes, but
(1) punishment
(2) promoting respect for the law, and
(3) reflecting the seriousness of the offense
are not part of those purposes and CANNOT be considered when ruling on a request for early termination.

The Federal Rules of Criminal Procedure

This is the procedural rulebook that federal courts must follow to conduct criminal matters. It is a big, intimidating book. Fortunately, it has only one section regarding supervised release and probation termination.

Note All of the factors above are paraphrased but are numbered from the actual law. Not all §3553 sentencing factors are to be considered in early termination of supervision pleadings. Only the factors listed here.

Federal Rule of Criminal Procedure 32.1(c):

(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**

(1) the person waives the hearing; or
(2) the relief sought is favorable to the person and does not extend the term of probation or of supervised release; and
(3) an attorney for the government has received notice of the relief sought, has had a reasonable opportunity to object, and has not done so.

This rule says that you can apply for early release from supervision, and that there is no hearing required to do it if a couple of conditions exist.

These conditions are:
1. Any modification of supervised release or probation requested must be favorable to the defendant (meaning less restrictive); and
2. The government prosecutor is given the opportunity to file any objections to the modification request.

Important Read Carefully !

A hearing IS required if a modification of supervision conditions is requested by the prosecutor or probation officer. **The only reason a hearing would not occur is if a defendant waives their Due Process right to a hearing.** Your PO does not have the authority to change your conditions of supervised release. Only a sentencing judge has the authority to do this. If a PO is trying to make things stricter for you, they will typically ask you to "sign off" on that change. This document you are being asked to sign waives your right to a hearing. It is literally called a "hearing waiver form."
If you do not want to waive your Due Process right to a hearing, DO NOT SIGN THIS! You have the right to argue against changes to your supervised release conditions in front of a judge.
Normally, the only form you need to sign at the Probation Officer's office is during your very first visit. This is a form acknowledging that you have read and understood the conditions and restrictions that they must now enforce upon you.
Very few other forms after this require a signature,and the only forms that do require a signatureare hearing waivers and violation reports.

Note All of the factors above are paraphrased but are numbered from the actual law. Not all §3553 sentencing factors are to be considered in early termination of supervision pleadings. Only the factors listed here.

CHAPTER 3

Policies About Supervising Federal Defendants and Specific Policies About Early Termination

Two different sets of policies exist that interact together when asking for early termination of probation. The first policy is part of those sentencing factors that were discussed in Chapter 2, above. Sentencing Factor §3553(a)(5) discusses policy of the Sentencing Commission.

A second set of policies are relevant when talking specifically about supervised release and probation. These policies that tell the probation offices and probation officers how to do their jobs. These policies are not made by the Sentencing Commission, but by the Judicial Conference Committee specifically designated to make policy for the Judicial branch of government.

Those policies create a guide for each individual District Probation Office to create their own internal policy. Each District's Probation Office are relatively autonomous and create their own rules for their offices. However, they are employees of the Judicial branch of government and that makes the local judges their boss.

Judges know 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 most recent revision to these policies were approved by the Judicial Conference Committee on Criminal Law in July of 2018. Here we'll start with Sentencing Commission policy and then move on to policy of the judicial branch.

This is a lengthy and sometimes boring discussion, but an important one. Skip to the summaries at the bottom of each section if you want the quick version.

U.S. Sentencing Commission Policy

The Sentencing Guidelines Manual has only one footnote talking about early termination, but it is important. U.S.S.G. §5D1.2, application note 5, addresses terminating supervised release.

"Early Termination and Extension"

The court has authority to terminate or extend a term of supervised release. See 18 U.S.C. § 3583(e)(1), (2). The court is encouraged to exercise this authority in appropriate cases. The prospect of exercising this authority is a factor the court may wish to consider in determining the length of a term of supervised release. 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."

There is a lot hidden in this application note. A Supreme Court decision in 2011[2] made it unlawful for a judge to make a sentence longer for the purposes of allowing a defendant to participate in RDAP. Even if the RDAP program carries a potential sentence reduction of 1-year, a judge cannot lengthen a prison sentence, according to this decision, to accommodate participation in this program.

This, the Supreme Court said, was what supervised release was for, and prison terms were too restrictive on constitutional liberty protections to be used this way. After this decision, the Sentencing Commission reacted, and encouraged longer supervised release terms to make sure rehabilitation was completed. Typically, now, judges will sentence a defendant to the 3- or 5-year maximum terms of supervised release allowed by law

2 Tapia v. United States, 564 U.S. 319 (2011)

Analysis Note:

Maximum lengths of supervised release are capped by law. Specifically §3583(b). This makes the maximum term of supervised release 1 year for Class E felonies, 3 years for Class C/D felonies, and 5 years for Class A/B felonies. These caps cannot be broken unless the crime of conviction requires certain terms of supervised release.

A few examples are drug offenses and sex offenses. Drug conspiracies over certain quantity weights require mandatory minimum terms of incarceration & supervised release. When this happens, supervised release terms can sometimes be up to Life.

The same reasoning applies to sexual offenses, although that provision is still resident in §3583, but in the last section of that law.

Judicial Policy Factors

The Judicial Branch of Government publishes their own policy on the supervision of federal offenders. This is updated periodically by the Judicial Conference Committee on Criminal Law, and is usually referred to as Monograph 109. The new title, as of July 2, 2018, is "Post-Conviction Supervision."

This policy guides probation offices around the country, as well as judges in district courts, on how to go about the business of supervising defendants on probation or supervised release. Probation Officers work for the Court, not the prosecutor's office. Sometimes it feels like they're an extension of the prosecutor, but remember, they work for the Judge.

Monograph 109 has a cut-off of 18 months that is significant for early termination. Before a defendant hits 18 months on supervision, the analysis of whether or not early termination is appropriate is based on two main points:

1) If the defendant has substantially satisfied the requirements of the Judgment Order; and,
2) If the defendant has demonstrated a willingness and capability to remain lawful beyond the period of supervised release.

The second half of this policy is more important and persuasive.
There is a presumption that early termination is deserved after 18 months so long as these six criteria are met:

1) The defendant is not a career offender, career drug offender, sex offender, or a terrorist;
2) The defendant presents no identified risk of harm to the public or victim;
3) The defendant is free from any court-reported violations over the last 12 months;
4) The defendant demonstrates the ability to lawfully self-manage beyond the period of supervision;
5) The defendant is in substantial compliance with all conditions of supervision;
6) The defendant engages in appropriate prosocial activities and receives sufficient prosocial support to remain lawful well beyond the period of supervision.

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

Little-Known Rules

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 their request granted.

In all cases, this decision is made by a District Judge, and is totally discretionary. 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 their Probation Officer frequently, usually once a month. Defendants on the Urinalysis Phase program will call in daily for their turn to come in. Eventually, though, things 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 USPO alone. 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.
This obviously doesn't always apply in strange situations, like the COVID-19 crisis that is causing many probation officers to "visit" their supervisee's via FaceTime or Zoom.

So, unless a pandemic is currently taking over the Country, or we're in the middle of some other apocalypse, the rate at which you see your probation officer matters. 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 which intensity level of supervision they are assigned.

Secret #2: Both Policies now ASSUME that Early Termination Should be Used During the Normal Course of a Sentence!

The policy of the Sentencing Commission changed in 2011 to add the note that was discussed above. It gives an example of an appropriate case for early termination as a substance abuser that completes treatment.

This means RDAP graduates are especially likely to get their supervision cut short.

> "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."

Judiciary Policy also changed. After 18 months of supervised release, this policy assumes that a defendant is appropriate for early termination if they are not career offenders, sex offenders, terrorists, and have no report violations in the previous 12 months.

Short Eligibility Checklist :

- Have you completed at least one year on supervised release?
- Have you been free of any reported violations in the last year?
- Has it been a few months since you last saw your PO?
- Did you complete any kind of treatment program in prison or since your release from federal prison?
- Do you have anything "achievable" left to accomplish on supervision, or are you on auto-pilot?
- Have you completed more than 18 months on supervision?

If the answer to most these questions is 'yes' you could be well on your way to ending federal supervision early!

If your answer to ALL of these questions is 'yes', and you're not a career offender, sex offender, or terrorism offender then you have a very good chance of getting early release on your first try!

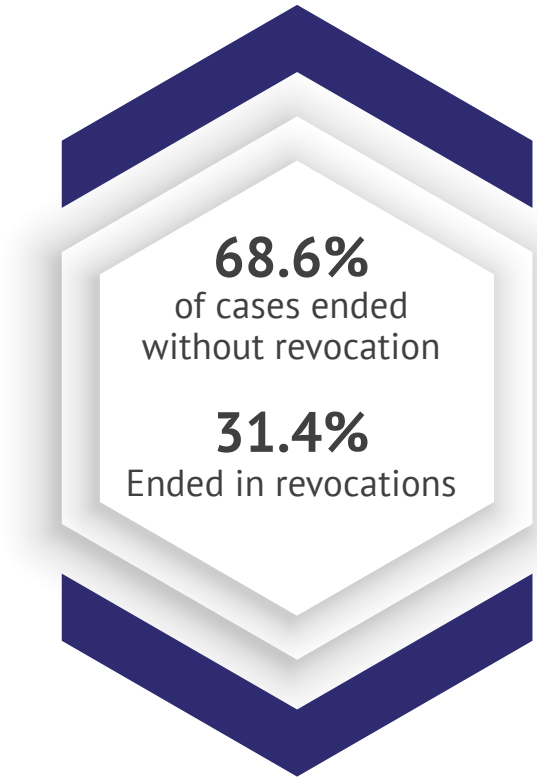
CHAPTER 4

Statistics

Most clients who contact PCR Consultants to ask questions regarding early release from supervision have essentially the same questions.

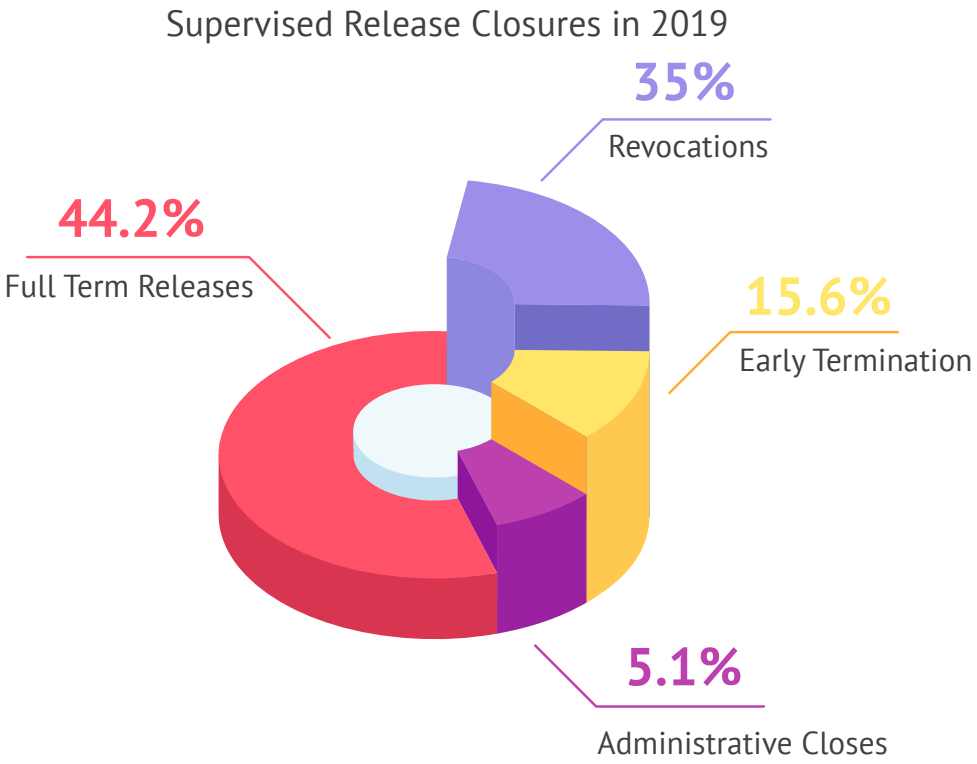
The most common concern what is the success rate for these motions and what are the chances that their own specific request will be granted. Here are the nationwide statistics.

As of **December 31, 2019**, there were 127,605 people under federal post-conviction supervision. 81.7% were male and 56. 9 % were 21-40 years old



Of the 68.6% of offenders that were not revoked, 15.9% had their supervised release terminated early and 5. 1% were administratively closed. "indicates a case filed was closed due to reasons like such as the death of a defendant, or the defendant was deported before supervision concluded.

Specifically for Supervised Release (excluding probation and parole for offenders sentenced before 1985), the chart below shows the breakdown of supervised release cases:



The Administrative Office of the United States Courts, office of Probation and Pretrial Services publishes these statistics. A few important stats are missing from these data sets.

The missing data would answer quite a few questions like: How many people on supervised release never even attempt to terminate their supervised release early? How many who did so were represented by counsel, and how many were self-represented (pro se)?

To our knowledge, that data has never, to our knowledge, been published. It is possible this data has never been collected. Here at PCR Consultants, our success rate across all genders, crime categories, and supervision types hovers right around 70%, meaning seven out of every ten clients will receive an order terminating their term of supervised release.

This number would actually be much higher, but some of our clients fall into the 35% revocation category after an initial wait period and are not able to try our services again.

The most relevant, and frequently asked question to early termination specifically ask about success chance and proper timing:

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.

Q: Should I wait, then, until I've finished 60% of my supervision term before applying?
A: Nope! 60% is the average, but we have had clients be released from 3-year terms in 1 year and 6 days (that's our record)!

Logic also says that many of these cases were granted on their first try. So ask yourself, what if they had tried earlier? Here is another important average:

Offenders who were released early from supervision were sentenced to an average term of **42 Months** and served an average of **26 months** before being terminated.

Q: Will getting denied prevent me from filing again?
A: No. You can request early release every week if you want to, as there is no statutory restriction on multiple applications for it. (Still, though, Don't do this.)

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 that are required. Without doing them, the motion may be 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 courts called "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, usually in the same court, in front of the same judge that presided over sentencing.

District Courts are fairly informal compared to Circuit Courts or the Supreme Court. Letters to the judge can even sometimes be considered formal motions, and pro se filiers are given wide leeway because the common citizen isn't expected to be trained as a lawyer.

Despite this leeway the better you can speak the court's language, the more effective your filings can be. To file, all papers must be given to the court Clerk, and a copy served upon every party involved in the case. In civil cases this can be a lot of people, but in a criminal case, there are only two parties that a filing needs to go. The best news?

Instructions for Filing your Motion

1. Use two full sized envelopes (preferably 9”x11” or 10”x13”); so the papers won’t be folded
2. Sign and date all 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 or three 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.

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.

Note: This is not always the case. Some clients wait for almost 6 months before hearing back from the court. The big positive side of the waiting: nearly all clients that wait more than two months before receiving an order were granted their request and terminated from supervision.

After a motion is filed, the presiding judge will normally follow a few basic steps. They will look over the motion, speak with the Movant's probation officer, speak with the prosecutor representing the government (or order formal objections), and then make a decision.

TIP

Having the support of your supervising officer is very helpful. Letting your PO know about your motion and serving them a courtesy copy can make a big difference.
However, just because your PO is against your early release doesn't mean it can't happen. Its 100% up to the judge to decide!

In rare cases, a judge may call a hearing to get more facts. This is a trick that many lawyers use to get more billable hours from their clients. A short motion that lacks thorough 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 arguments. 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, almost no client client has ever been called in for a court hearing (outside of California) when using documents purchased from PCR Consultants. When these procedures are done correctly, you could be well on your way to terminating your own probation in just hours!

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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