

PART D - ORGANIZATIONAL PROBATION*Introductory Commentary*

Section 8D1.1 sets forth the circumstances under which a sentence to a term of probation is required. Sections 8D1.2 through 8D1.4, and 8F1.1, address the length of the probation term, conditions of probation, and violations of probation conditions.

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 422). Amended effective November 1, 2004 (see Appendix C, amendment 673).

§8D1.1. Imposition of Probation - Organizations

- (a) The court shall order a term of probation:
- (1) if such sentence is necessary to secure payment of restitution (§8B1.1), enforce a remedial order (§8B1.2), or ensure completion of community service (§8B1.3);
 - (2) if the organization is sentenced to pay a monetary penalty (e.g., restitution, fine, or special assessment), the penalty is not paid in full at the time of sentencing, and restrictions are necessary to safeguard the organization's ability to make payments;
 - (3) if, at the time of sentencing, (A) the organization (i) has 50 or more employees, or (ii) was otherwise required under law to have an effective compliance and ethics program; and (B) the organization does not have such a program;
 - (4) if the organization within five years prior to sentencing engaged in similar misconduct, as determined by a prior criminal adjudication, and any part of the misconduct underlying the instant offense occurred after that adjudication;
 - (5) if an individual within high-level personnel of the organization or the unit of the organization within which the instant offense was committed participated in the misconduct underlying the instant offense and that individual within five years prior to sentencing engaged in similar misconduct, as determined by a prior criminal adjudication, and any part of the misconduct underlying the instant offense occurred after that adjudication;
 - (6) if such sentence is necessary to ensure that changes are made within the organization to reduce the likelihood of future criminal conduct;
 - (7) if the sentence imposed upon the organization does not include a fine; or
 - (8) if necessary to accomplish one or more of the purposes of sentencing set forth in 18 U.S.C. § 3553(a)(2).

Commentary

Background: Under 18 U.S.C. § 3561(a), an organization may be sentenced to a term of probation. Under 18 U.S.C. § 3551(c), imposition of a term of probation is required if the sentence imposed upon the organization does not include a fine.

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 422). Amended effective November 1, 2004 (see Appendix C, amendment 673).

§8D1.2. Term of Probation - Organizations

- (a) When a sentence of probation is imposed—
- (1) In the case of a felony, the term of probation shall be at least one year but not more than five years.
 - (2) In any other case, the term of probation shall be not more than five years.

Commentary

Application Note:

1. *Within the limits set by the guidelines, the term of probation should be sufficient, but not more than necessary, to accomplish the court's specific objectives in imposing the term of probation. The terms of probation set forth in this section are those provided in 18 U.S.C. § 3561(c).*

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 422). Amended effective November 1, 2013 (see Appendix C, amendment 778).

§8D1.3. Conditions of Probation - Organizations

- (a) Pursuant to 18 U.S.C. § 3563(a)(1), any sentence of probation shall include the condition that the organization not commit another federal, state, or local crime during the term of probation.
- (b) Pursuant to 18 U.S.C. § 3563(a)(2), if a sentence of probation is imposed for a felony, the court shall impose as a condition of probation at least one of the following: (1) restitution or (2) community service, unless the court has imposed a fine, or unless the court finds on the record that extraordinary circumstances exist that would make such condition plainly unreasonable, in which event the court shall impose one or more other conditions set forth in 18 U.S.C. § 3563(b).
- (c) The court may impose other conditions that (1) are reasonably related to the nature and circumstances of the offense or the history and characteristics of the organization; and (2) involve only such deprivations of liberty or property as are necessary to effect the purposes of sentencing.

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 422). Amended effective November 1, 1997 (see Appendix C, amendment 569); November 1, 2009 (see Appendix C, amendment 733).

§8D1.4. Recommended Conditions of Probation - Organizations (Policy Statement)

- (a) The court may order the organization, at its expense and in the format and media specified by the court, to publicize the nature of the offense committed, the fact of conviction, the nature of the punishment imposed, and the steps that will be taken to prevent the recurrence of similar offenses.
- (b) If probation is imposed under §8D1.1, the following conditions may be appropriate:
 - (1) The organization shall develop and submit to the court an effective compliance and ethics program consistent with §8B2.1 (Effective Compliance and Ethics Program). The organization shall include in its submission a schedule for implementation of the compliance and ethics program.
 - (2) Upon approval by the court of a program referred to in paragraph (1), the organization shall notify its employees and shareholders of its criminal behavior and its program referred to in paragraph (1). Such notice shall be in a form prescribed by the court.
 - (3) The organization shall make periodic submissions to the court or probation officer, at intervals specified by the court, (A) reporting on the organization's financial condition and results of business operations, and accounting for the disposition of all funds received, and (B) reporting on the organization's progress in implementing the program referred to in paragraph (1). Among other things, reports under subparagraph (B) shall disclose any criminal prosecution, civil litigation, or administrative proceeding commenced against the organization, or any investigation or formal inquiry by governmental authorities of which the organization learned since its last report.
 - (4) The organization shall notify the court or probation officer immediately upon learning of (A) any material adverse change in its business or financial condition or prospects, or (B) the commencement of any bankruptcy proceeding, major civil litigation, criminal prosecution, or administrative proceeding against the organization, or any investigation or formal inquiry by governmental authorities regarding the organization.
 - (5) The organization shall submit to: (A) a reasonable number of regular or unannounced examinations of its books and records at appropriate business premises by the probation officer or experts engaged by the court; and (B) interrogation of knowledgeable individuals within the organization. Compensation to and costs of any experts engaged by the court shall be paid by the organization.
 - (6) The organization shall make periodic payments, as specified by the court, in the following priority: (A) restitution; (B) fine; and (C) any other monetary sanction.

Commentary

Application Note:

1. *In determining the conditions to be imposed when probation is ordered under §8D1.1, the court should consider the views of any governmental regulatory body that oversees conduct of the organization relating to the instant offense. To assess the efficacy of a compliance and ethics program submitted by the organization, the court may employ appropriate experts who shall be afforded access to all material possessed by the organization that is necessary for a comprehensive assessment of the proposed program. The court should approve any program that appears reasonably calculated to prevent and detect criminal conduct, as long as it is consistent with §8B2.1 (Effective Compliance and Ethics Program), and any applicable statutory and regulatory requirements.*

Periodic reports submitted in accordance with subsection (b)(3) should be provided to any governmental regulatory body that oversees conduct of the organization relating to the instant offense.

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 422). Amended effective November 1, 2004 (see Appendix C, amendment 673); November 1, 2010 (see Appendix C, amendment 744).

§8D1.5. [Deleted]

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 422); was moved to §8F1.1 effective November 1, 2004 (see Appendix C, amendment 673).