

4.02 Revocation of probation or supervised release

Fed. R. Crim. P. 32.1; 18 U.S.C. §§ 3565 and 3583

Introductory note

Whenever a probationer or a person on supervised release fails to abide by the conditions of supervision or is arrested for another offense, a revocation hearing may be ordered. Revocation is mandatory if a probationer or supervised releasee possesses a firearm (including a destructive device) or a controlled substance or refuses to comply with required drug testing.¹ See 18 U.S.C. §§ 3565(b), 3583(g). Revocation is also mandatory under the Sentencing Guidelines for conduct that constitutes certain serious offenses. See U.S.S.G. §§ 7B1.1 and 7B1.3, p.s. (Nov. 1990).

Because the proceeding may result in incarceration, particular attention must be given to ensuring that the probationer or releasee receives substantive and procedural due process. The revocation procedure may be initiated by the court or at the request of the probation office or the office of the U.S. Attorney. An Order to Show Cause why probation or supervised release should not be revoked is effective for this purpose.

Preliminary hearing

If the probationer or releasee is in custody, Fed. R. Crim. P. 32.1(a)(1) requires a preliminary probable cause hearing before a district judge or magistrate judge. A probable cause hearing is not required if the probationer or releasee is arrested after the issuance of an Order to Show Cause and brought before the court for an immediate revocation hearing without being held in custody, or if he or she appears voluntarily in response to an Order to Show Cause or other notice. Fed. R. Crim. P. 32.1 and Notes of Advisory Committee on Rules.

1. The mandatory drug testing and revocation for refusal to comply provisions became effective Sept. 13, 1994. The ex post facto prohibition may prevent their application to defendants who committed their offenses before that date.