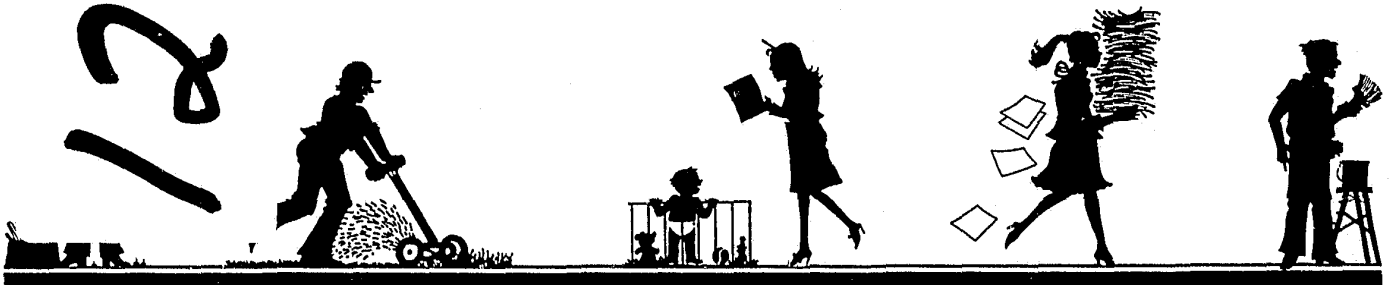




What if Something Happens?

A Guide to Risk Management and Insurance Options for Community Service Programs

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Executive Director
National Community Service Sentencing Association

April 1988

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U.S. Department of Justice
National Institute of Justice

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FOREWORD

The use of community service as a sanction for offenders has increased dramatically in recent years as jail overcrowding and public demands for restitution challenge already limited resources. Hundreds of thousands of offenders are currently providing valuable service to public and nonprofit agencies throughout the country in fulfillment of their sentences.

As the use of community service sanctions becomes more commonplace and program administration more sophisticated, questions about potential liability arise. Community service programs and worksites are becoming increasingly aware of potential liability and are developing program policies and procedures to minimize the possibility of accidents and incidents. They are also obtaining various forms of complete or partial insurance coverage to provide compensation or cover the cost of defending suits and any damage awards that may result. Community service programs may be sued by offenders who are injured while performing community service and by third parties who sustain damages or injuries as the result of offenders' actions.

To address these issues, the National Institute of Corrections in 1986 published Liability Issues in Community Service Sanctions by Dr. Rolando V. del Carmen. That publication pointed out various areas of potential liability and suggested preventative steps to be taken.

This publication, What if Something Happens?, expands upon that work by providing very specific examples of risk management techniques being used by agencies administering community service programs. We emphasize that the existence of potential liability should not deter use of community service, but rather encourage the effective management of community service programs.

Information for this report was gathered by the author over a period of years. A brief questionnaire distributed to over 300 participants at the 1987 National Community Service Symposium generated more current information. Experts in the fields of criminal justice liability and insurance were consulted at many stages and have been cited extensively throughout the report.

This material was developed for a national audience, and the reader is cautioned to obtain additional guidance at the local level.

Raymond C. Brown, Director
National Institute of Corrections

PREFACE

This guide describes the various methods of risk management currently used by community service programs. Risk management is the identification and management of risk through various methods including the development and dissemination of program policies and procedures; maintenance of commercial or self-insurance or participation in risk pooling; implementation of state laws providing immunity or mechanisms for claims; and waivers of liability. When available, appendices are included to provide further detail.

Although I have taken care to research and compile this information, I cannot guarantee accuracy, as laws, case law, and insurance company policies are highly transient. Corrections and additions are welcome, and may be forwarded to the Community Service Center at the address listed in Appendix D.

In examining risk management options, community service programs must conduct local research and obtain a variety of opinions from legal counsel, workers' compensation authorities, and insurance experts. Laws regarding tort claims, statutory immunity, workers' compensation, and other liability issues vary widely from state to state. Remember that this is a new area; in gathering and assembling this information, you will likely obtain a unique perspective and expertise of great value to policymakers.

When seeking coverage, programs should be persistent and contact a number of different insurance agents or brokers and management companies. Insurance brokers do not have access to all insurance companies. Rates quoted, even for coverage from the same insurance company, may fluctuate depending on the broker utilized, the broker's perception of the risks posed by your program, and its effectiveness in communicating this perception of risk to the insurer.

Readers are also encouraged to obtain and review the publications listed in Appendix D, Additional Resources. Risk management involves large and complex issues beyond the scope of this guide, and a more detailed understanding of the concepts and principles involved will undoubtedly be required.

Cres Van Keulen

ACKNOWLEDGMENTS

This guide is the result of many requests for information on community service liability, particularly a request made by members of the Maryland-Pennsylvania Alternative Sanctions Network during a May 1987 workshop organized by Patricia Price, coordinator of the Volunteer Community Service Program in Carroll County, Maryland.

The assistance of many colleagues made this guide possible. Much credit is due, in particular, to several persons who took time from their own endeavors to review drafts of this manuscript. Mary Lai of Lai Insurance Agents in Oakland, California, specializes in the insuring of non-profit organizations. She also coauthored Am I Covered For...? A Guide to Insurance for Non-Profits, a succinct yet thorough book on insurance that is cited extensively throughout this guide. Carlie Christensen, an assistant attorney general with the state of Utah, has conducted highly articulate presentations on the complex subject of liability at several community service conferences. In his position at the Center for Juvenile Justice Training and Research in Pennsylvania, John Herb conducted extensive research into insurance policies, which he shared generously. Another Pennsylvanian, Mark Bergstrom, a probation officer in Lancaster County, kept me apprised of results from his insurance policy searches. Dr. Rolando V. del Carmen, author of Liability Issues in Community Service Sanctions and an earlier publication for probation and parole officers, also reviewed the first draft and offered several useful suggestions.

Other contributors of valuable leads and information include Bill Burrell and Martin Kavanaugh of the New Jersey Administrative Office of the Courts; Susan Kaeser, director of the Alternative Community Service Program in Multnomah County, Oregon; Lauri Skala, director of the Alternative Sentencing Program in Mesa County, Colorado; Rick Hirt, director of the Court Referral Program at The Volunteer Center, Akron, Ohio; Steve Bryson, public service coordinator in McHenry County, Illinois; Kris Marriott, coordinator of the Adult Alternative Sentencing Program, United Way of Northern Nevada; Stephanie Haider-Bailey, community service coordinator for Dakota County Court Services, Minnesota; Lynn Lodmell, program manager, Community Service Programs, Washington State Department of Corrections; and Tom Miller, risk and insurance analyst, Marin County, California.

I am also indebted to numerous insurance agents and brokers, risk management specialists, and various government officials too numerous to list who patiently answered hundreds of questions, and to the National Institute of Corrections for their interest in, and support of community service sentencing in general, and this project in particular.

Last, I must thank the numerous community service professionals who have continually and urgently requested guidance on the issue of community service program liability. Their pressing need for definitive information fueled the fire.

INTRODUCTION

Why the Concern?

Why be concerned about cut fingers and strained backs? Shouldn't the offenders themselves be responsible for their injuries sustained while performing community service? What about unintentional harm caused by offenders to worksite staff, volunteers, or members of the public, or inadvertent damage to property? What if an offender deliberately hurts someone or destroys property while performing community service? Wouldn't the offender or the sentencing court be responsible?

The answer to these types of questions must often be, "We don't know..." or "It depends..." Very little case law exists in the area of community service sentencing. Because most lawsuits have been settled out of court with a stipulation of confidentiality, we can only rely on similar case law involving the criminal justice system and "traditional" volunteers to determine potential areas of liability. What we do know is that accidents and incidents occur, even with excellent risk management programs in place.

While some may claim that offenders, the sentencing courts, or the worksites should be responsible for accidents or incidents, others may argue that forcing a low-income offender to pay \$3,000 in medical bills for an arm accidentally broken in the course of court-ordered community service is unreasonable punishment beyond the scope or intent of the court order. In any event, our concern should not be with "fault," "blame," or "responsibility," but how to best protect community service programs, their staffs and volunteers, and our very important public and nonprofit agency partners from the risks they assume as worksites.

What is Risk Management?

Risk management is a way to address exposure to risk. There are two components to risk management: identifying the risk and managing the risk. Once the risk has been identified, risk management consists of various mechanisms to avoid, reduce, or transfer risk. Community service programs and worksites, increasingly aware of their potential liability, are managing risk by developing program policies and procedures to avoid or reduce the possibility of accidents and incidents. They also transfer their risks by obtaining various forms of insurance coverage to provide compensation or pay the costs of defending suits and any damages that may be awarded.

If these options are not available or feasible, some agencies might find it necessary to consider avoiding risk altogether by not operating a community service program.

Areas of Potential Liability

In a recent monograph published by the National Institute of Corrections,¹ Dr. Rolando V. del Carmen cautions that "complete avoidance of litigation is impossible in a country where access to court by everybody is a basic constitutional right." Potential liability is a fact of our everyday personal and professional lives and is not limited to, or necessarily excessive in, the area of community service sentencing.

Injuries to Offenders

Del Carmen describes seven areas in which community service programs, sponsoring public agencies (if any), worksites, and staff members and volunteers associated with these organizations may be held liable for an injury incurred by an offender performing community service:

- Negligent Failure to Train (failure to adequately train offenders to perform the required assignment).
- Negligent Hiring (failure to determine fitness for the job).
- Negligent Assignment (inappropriate assignment of work).
- Negligent Failure to Supervise (insufficient supervision of work).
- Negligent Failure to Direct (insufficient communication of job requirements or limits).
- Negligent Entrustment (failure to supervise control or use of equipment or facilities).
- Negligent Retention (inappropriate retention of a worker with a demonstrated unsuitability for the job).

In order for liability to ensue, the following elements must be established:

- A legal duty is owed to the plaintiff.
- A breach of that duty occurred by omission or commission.
- The plaintiff suffered an injury as a result of that breach.
- The defendant's act was the proximate cause of the injury.

An example of liability under these circumstances is if an offender informed the community service program of a back injury but was assigned work that required heavy lifting and subsequently aggravated the back injury. Another example is if a worksite assigned an offender to cut up scrap wood with a power saw without telling the offender how to properly use the saw or providing protective glasses or clothing, and the offender was subsequently injured by flying wood.

Injuries or Damages Sustained by Third Parties

Suits could also occur from injuries or damages to third parties caused by the negligence of the community service program. This may include "banana peel" injuries that occur on the program premises and that are caused or sustained by offenders, staff, volunteers, or members of the public. Liability may also be incurred for accidents or property damage to third parties that occur off-premises.

According to del Carmen, liability is possible only if two elements are present: **reasonably foreseeable risk** and **reliance**. Foreseeability might be established if the offender is placed in a type of work related to his/her previous offense. If any relationship exists between the offense and the community service, it is best to disclose the offense to the worksite. For example,

foreseeability might be established if a person convicted of larceny is assigned to sell ride tickets at a fundraising carnival and then steals the receipts.

Reliance means that the injured party relies on representations made by the community service program that the offender is sufficiently competent to do the community service safely. If an offender is known to have a physical or mental disability, it is best to advise the worksite of this disability, preferably in writing. These types of preventative techniques are discussed in more detail in the next section, "Risk Management Through Program Policies and Procedures."

Professional Liability

Professional liability may occur if a program does not act properly to carry out its mission safely. A common possibility may be a failure to report completion of community service, which results in the arrest of a program participant. An extreme example would be the molestation of a child by a sex offender assigned to work in a daycare center. Professional liability is discussed in more detail in a later section of this guide.

Defenses Against Liability

Common defenses include assertions that the alleged act did not take place or was not due to any of the negligence factors stated above, and arguments that the defendants were acting in good faith and within the scope of their duties or that they enjoy some form of absolute, quasi-judicial, or qualified immunity. While it is unlikely that a program or staff member would be held liable for the types of accidents or incidents described above unless negligence was proven (or an employer-employee relationship was established for workers' compensation), the costs of defending such suits can be astronomical and the credibility of the community service program can be severely damaged.

Types of Damages and Available Coverages

Different types of damages or awards are associated with certain types of injuries or losses. Some of the insurance coverages described in this guide might prevent suits by paying specific compensation on a "no-fault" basis; others will pay the cost of defending any suits as well as any damages awarded.

General or compensatory damages compensate the victim for any injury that directly flows from the wrongful conduct. In a personal injury case (such as an offender being injured while performing community service) this category includes damages for pain and suffering and damages for the loss of a limb, eyesight, or life. General liability policies pay for any awards associated with bodily injury to third parties (not employees) and may be purchased as part of a Business Office Policy (BOP). A BOP may also be written as an Owners, Landlords, and Tenants policy limited to on-premises injuries only. Commercial liability policies are explained in more detail later in this guide.

If the injured party is an offender covered by workers' compensation or an accident/medical policy, material losses (not pain and suffering) are paid on a no-fault basis, without filing a suit. If the victim is a third party (such as a client of a worksite) injured by an offender, the program would normally be defended by the general liability policy.

Special damages are those damages incidental to the wrongful conduct. For example, special damages include medical expenses, lost wages, or in some instances, property damage such as a damaged automobile or clothing. A general liability policy covers these damages. Again, offenders who are covered by workers' compensation or an accident/medical policy are covered for medical expenses up to an established limit, on a no-fault, no-suit basis.

Punitive and exemplary damages are awarded to the plaintiff to punish the defendant. Punitive damages are only awarded when the defendant's conduct is willful or intentional. Simple negligence is not sufficient for an award of punitive damages; however, in some jurisdictions, gross negligence is. General and professional liability policies generally exclude paying punitive or exemplary damages.

It is important to note that obtaining one type of coverage does not necessarily obviate the need for another type. While workers' compensation will pay for the cost of medical treatment for injuries sustained by an offender during the performance of community service, it will not help you defend against a lawsuit filed for property damage compensation. Benefits of specific types of coverages are covered in more detail in the following sections.

RISK MANAGEMENT THROUGH PROGRAM POLICIES AND PROCEDURES

Good policies and procedures, written down and disseminated to all involved parties, help prevent accidents and incidents and defend against litigation by proving that the community service is administered in a reasonably safe and responsible manner. Good policies and procedures may also help programs obtain advantageous insurance coverages.

As a major defense against liability, del Carmen cautions programs to have:

...a clear and comprehensive departmental policy concerning participation in community programs. To assure that these policies are legal and constitutional, have your legal counsel review them.

Carlie Christensen, a Utah Assistant Attorney General with expertise in criminal justice liability, recommended in technical assistance² to the National Community Service Sentencing Association that policies and procedures address:

- program objectives;
- eligibility criteria for offenders, including criminal history, risk assessment, the nature of the offense committed, age, maturity, job skills, and medical and psychological history;
- eligibility criteria for worksites, including risk of injury at the worksite based upon the type of work performed at the site, rehabilitative aspects of the assigned work, public versus private organizations, and profit versus nonprofit organization; and
- presumptive time limits (i.e. avoidance of excessive hours, disparity in amount of service required).

Christensen also advises programs to:

...review criteria periodically to ensure continued validity.... Apply criteria uniformly.... Familiarize yourself with policy and understand [it] thoroughly.

Programs are also advised, if at all possible, to have each specific community service placement approved by the sentencing judge. Doing this will help remove program liability for certain aspects of community service placements, as judges are immune from liability for discretionary acts.

The common practice of not obtaining criminal history records before placing offenders into community service may pose a particular danger to programs. Program liability may be established by foreseeability and reliance, concepts discussed in the Introduction.

Del Carmen further recommends that programs:

...require all agencies participating in community service to train volunteers as a prerequisite to working with offenders, or at least to acquaint volunteers with what they [the volunteers] can and cannot

do. A written policy defining these is good protection against liability as long as the policy is valid and constitutional when used to defeat claims under state tort law.

Of course, worksite staff must also be trained to work with offenders and must be acquainted with program policies and procedures.

Ninety-eight percent of all accidents are caused by human error and are largely preventable. The most effective method of risk management is to prevent the loss from happening in the first place. Good program policies and procedures help prevent losses by establishing specific methods and criteria that must be adhered to by program staff, offenders, and worksites.

What is obvious to one person--for example, that inexperienced juveniles with histories of poor self-control and irresponsibility should not be allowed to cut wood with chainsaws--is not necessarily obvious to everyone. Therefore, policies and procedures are necessary to spell out exactly what may or may not be done, and under what circumstances.

An excellent example of program policies and procedures is the program manual of the Alternative Community Service Program, Multnomah County Community Corrections Department, Oregon. (See Appendix A.)

Community service programs that operate work crews or frequently assign offenders to manual labor (particularly with nonprofit agencies that might not be familiar with Occupational Safety and Health Administration requirements) may want to use job analysis and facility inspection worksheets similar to those provided in Appendices B and C, respectively.

Other risk management publications of a general nature that may be of interest to community service programs are available from the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA). (See Appendix D, Additional Resources.)

Clear and consistent policies and procedures may also help a community service program obtain advantageous insurance coverage by demonstrating that the program is aware of the risks involved in community service sentencing, and that efforts have been made to reduce risk exposure.

A recent Peat, Marwick, Main and Company study of national nonprofit organizations revealed a widespread conviction that obtaining and retaining liability insurance is becoming a "crisis situation." It is widely recognized that government agencies have also experienced similar difficulties in recent years.

In a recent University of Pennsylvania Law Review article Jeffrey D. Kahn proposed a solution that would provide preferential insurance rates for certain nonprofits. Although it was initially designed for agencies using traditional volunteers, the proposed scheme contains excellent advice for community service programs. Kahn suggests:

...a general statutory scheme that entitles organizations to preferential insurance treatment if they meet certain requirements in their volunteer management methods.... The core requirement... is the creation of a written job description for every volunteer in an organization's program.... The job description must be fairly detailed and should include the volunteer's name and title, the program for which the volunteer works, a designated supervisor for the volunteer, a list of the volunteer's duties, a description of training and orientation

received by the volunteer, and specification of the time commitment expected from the volunteer. In addition, the organization must keep records of when each volunteer works. ³

Kahn points out that this scheme will encourage organizations to pinpoint the skills needed for each job and recruit qualified volunteers who are less likely to cause injuries. Job descriptions also allow organizations to exercise good risk management by alerting the organization to duties that may be dangerous, help evaluate volunteer performance, and clarify supervisory responsibility.

OFFENDER ACCIDENT COVERAGE

Without any provisions for paying of expenses related to accidents, injured offenders, their dependents, or survivors may claim negligence on the part of the program, worksite, and/or staff and may also sue to recover the cost of medical attention and long-term rehabilitation, loss of wages, suffering, and other exemplary or punitive compensation.

Offenders may also file with the State Workers' Compensation Appeals Board (or equivalent), claiming they were employees for purposes of workers' compensation.

The injury rate for offenders performing community service does not appear to be prohibitive. If experience indicated otherwise, it is unlikely that the community service option would have been used in this country for over 20 years. One study published by the California League of Alternative Service Programs ⁴ shows 174 injuries were sustained by 65,884 offenders who performed community service in California in 1983. (One probation department program accounted for 152 of the 174 injuries reported. In 1983, that program served 8,135 offenders, who performed 307,536 hours of community service.) The overall injury rate for nonprofit community service programs was 3 per 10,000; the rate for public agency programs was 70 per 10,000. (Calculated without the program accounting for the majority of injuries, the public agency rate is 10 per 10,000.)

More recent information provided by Marin County, California, shows that accident rates and workers' compensation claims of offenders performing community service are actually less than those of public works employees:

	<u>Community Service Programs</u>	<u>Public Works Dept</u>
<u>1987</u>		
number of workers	4,058	88
number of hours worked	134,892*	163,535
number of claims	12	49
number of claims per 10,000 hours	.9	3
total incurred loss	\$25,687	\$102,050
average incurred loss per claim	\$2,141	\$2,083
total incurred loss per 10,000 hours	\$1,904	\$6,240
<u>1986</u>		
number of claims	22	39
total incurred loss	\$12,312	\$206,582
average incurred loss per claim	\$560	\$5,297
<u>1985</u>		
number of claims	7	37
total incurred loss	\$117,763**	\$22,701
average incurred loss per claim	\$16,823	\$614
*estimate based on reported figure of 67,446 hours worked July 1-Dec 31		**figure skewed by one large claim

The following options are used by community service programs to provide partial or complete compensation for offender injuries.

Workers' Compensation

Am I Covered For...? A Guide to Insurance for Non-Profits provides an excellent explanation of workers' compensation:

In most states, workers' compensation insurance is a mandatory insurance coverage which must be carried by all businesses having employees. The coverage has been developed by statutes and may differ from state to state.... Workers' compensation does not depend upon proof of negligence or fault on the part of the employer. Injured workers are entitled to benefits solely because they were injured on the job, or became ill from hazards in the workplace. This is a true "no fault" coverage....

The policy benefits include payment for all medical bills incurred due to a job related injury or illness. Workers' compensation is also intended to reimburse the injured employee for lost wages during the time the employee is out of work due to injuries or illnesses sustained while in the course of employment. Benefits include temporary and long term disability to a maximum established by statute, and also death benefits, including burial expense... 5

In the past, in determining eligibility for workers' compensation, remuneration or compensation to the employee for services rendered was generally considered proof of an "employer-employee" relationship. Recently, however, Workers' Compensation Appeals Boards and courts have relied more on the employer's right to control or supervise the workers' behavior as proof of an employer-employee relationship. Because offenders performing community service are most often closely supervised, and therefore could not be considered independent contractors, they may become universally eligible for workers' compensation. Until that day comes, however, workers' compensation remains only an option for some jurisdictions, not a requirement.

Am I Covered For...? also contains some important facts about workers' compensation for traditional volunteers that relate to offenders. The authors point out that:

...the workers' compensation laws of most states do not include volunteers under the definition of employee. Many states do, however, allow employers to include volunteers by special endorsement.

This last point is particularly significant to community service programs. Your program may be able to obtain workers' compensation benefits for offenders performing community service. If offenders performing community service cannot be considered "employees" in your state, and therefore mandatory recipients of workers' compensation, chances are they can be considered "volunteers." The term "volunteer" is not defined by statute or case law in most states, or no differentiation is made between "court-referred" and "traditional" volunteers. It can be argued that offenders performing community service as a condition of probation are volunteers because probation is "voluntary" and can be accepted or rejected. Also, some state statutes authorizing community service specifically require that it be a voluntary sanction and that the offender agree to the community service.

In some states, such as California, workers' compensation has some very significant additional benefits to community service programs. Once again, Am I Covered For...? provides some interesting information on employers' liability:

Employers' liability is a standard coverage included in the workers' compensation policy at no extra cost. The insuring agreement agrees to "pay all sums, except punitive or exemplary damages, which the employer shall become obligated to pay for damages because of bodily injury." Many insurance companies place a limit of liability on employers' liability, but some policies have no limit.

Employers' liability is also the section of the policy that would most frequently come into play were a volunteer to be injured. Since, in most states, volunteers are not considered to be employees under the Workers' Compensation Act, they are not automatically included in workers' compensation coverages.... If, on the other hand, they can prove negligence on the part of the organization for which they were volunteering, the employer's liability section would come into play.

Because most community service programs do not directly supervise offenders, instead referring them to other worksites, they may find it difficult to purchase a workers' compensation policy. Workers' compensation is designed for the employer--the entity charged with the effective care, custody, and control of the employee. Are community service programs employers? According to Carlie Christensen, there are two tests to determine an employee-employer relationship. The first test is whether the employer has the right to control the alleged employee. The second test is whether the work performed by the alleged employee furthers the mission of the employer. Programs that provide actual supervision of offenders through work crew-type formats have a strong position with regard to both of these tests. A program that refers offenders to other worksites may also argue that it is the statutory employer because the program retains the absolute right to place, reassign, or remove the offender at any time. These broker programs may also argue that offenders performing community service are being punished, paying restitution, or performing rehabilitative work, all of which may be program goals. Regardless of technical requirements, community service programs in several jurisdictions throughout the country have acquired workers' compensation coverage.

Workers' compensation policies may be purchased from commercial insurance companies. Also, 17 states have established "workers' compensation state funds" to provide coverage. Uniform rates are established based on specific job classifications. For example, \$0.43 per hundred of payroll may be paid for a clerical classification, while \$8.50 per hundred of payroll may be paid for tow truck operators. If a worker performs several different job tasks, the classification code with the highest rate applies. Classification rates are based on actual experience of the class over a period of years. In requesting a new policy, any documentation a program can provide regarding prior accident rates might help establish an advantageous rate.

In most states, the same rates for each job classification must be charged; however, surcharges may be assessed to employers whose premiums may be low but whose exposure may be high. Also, since the rates will be the same regardless of where the policy was purchased, many companies compete for business by offering dividends, or rebates, based on the amount of claims incurred.

Depending on the state and insurance carrier, rates for "volunteers" or unpaid workers such as offenders performing community service may be calculated in several different ways. Smaller

community service programs and worksites that deal with a small number of offenders performing primarily clerical tasks might obtain advantageous rates by encouraging a computation based on each individual offender's assignment. By calculating a fictitious payroll based on the ordinary salary of a similar paid worker and applying the workers' compensation rate per hundred dollars of payroll for the appropriate job classification, a relatively small premium may be charged.

Larger community service programs and worksites, especially those that operate work crews, might wish to negotiate a flat rate based on the total number of hours worked by the offenders annually and the type of work performed. This will eliminate the need to acquire an estimate for the specific number of offenders in the program and might result in lower "group" rates.

The most desirable alternative is to establish a set rate for offenders performing community service, regardless of the type of work performed. Although this may require action by your state legislature or workers' compensation regulatory agency, establishing a set rate for offenders will encourage worksites to use offenders by simplifying the acquisition of workers' compensation policies and auditing requirements, and eliminating rate discrepancies. Most important, the possibility of lawsuits against worksites is greatly reduced by guaranteeing compensation for offenders' accidents.

For specific examples of this method, review the information on Nevada and Washington states workers' compensation provisions included in the next section of this guide.

Am I Covered For...? points out that nonprofits frequently have difficulty obtaining insurance coverage, particularly workers' compensation. The authors believe this is because insurance companies do not "understand" nonprofits, and because nonprofit program administrators are unsophisticated in dealing with insurance companies. When contacting insurance companies, the authors recommend that nonprofits emphasize good risk management practice, and demonstrate professionalism in management. (See section on "Risk Management Through Program Policies and Procedures.")

If you are interested in obtaining workers' compensation coverage for your program participants, contact the agent or broker who represents your agency for this coverage, provide that person with as much information as possible about the supervision of offenders by your organization, and ask that coverage be negotiated. Also, contact your state fund. Remember these key points:

- Attempt to have offenders classified in a low-risk occupation;
- Avoid surcharges;
- Negotiate a good dividend (if available); and
- Shop around!

Currently, workers' compensation is being used to provide coverage to offenders in several jurisdictions, as described below.

Commercial and State Fund Policies

Hood River County and Lincoln County, Oregon - The Community Corrections Department maintains workers' compensation insurance for offenders performing community service. The offenders are termed "volunteers" and are included in a policy for regular employees purchased from the Liberty Northwest Insurance Company. In Hood River County, offenders are charged a \$5 program participation fee, which partially offsets the cost of the workers'

compensation policy. (For more detailed Oregon workers' compensation information, see Marion County below.)

Humboldt County, California - Although it was self-insured, Humboldt County purchased a workers' compensation policy for offenders from the State Compensation Insurance Fund during 1981-83. Eighty offenders (felons, misdemeanants, and traffic offenders) were classified as "service workers 90150" with a premium of \$7.26 per hundred dollars of payroll. The total policy premium of \$973 was based on an estimated payroll of \$13,500, which was derived from a minimum wage of \$3.35 per hour times an average of 50 hours per offender. Because there were no claims, the county risk manager recommended that the policy be dropped in 1983, and that the offenders be adopted under the county's self-insurance policy for workers' compensation.

Self-Insurance for Workers' Compensation

Marin County, California - Nonprofit organizations "sponsoring" persons performing service as a condition of sentencing are specifically excluded from the definition of "employer" (Labor Code 3301) and are not required to provide workers' compensation coverage. However, nonprofits have the option of designating persons "gratuitously performing voluntary service" as employees for the purposes of workers' compensation (Labor Code 3363.6).

Public agencies also have the option of adopting volunteers as employees in order to extend workers' compensation coverage to them (Labor Code 3363.5). Counties may also extend coverage to juvenile court wards, traffic offenders, or probationers engaged in "rehabilitative work on public property" (Labor Codes 3364.55 and 3364.6 respectively).

California counties have the option of self-insuring for workers' compensation and including "volunteers" under the self-insurance coverage. Several counties, including Marin County, have voluntarily extended coverage to offenders performing community service, whether the work is performed for a county agency or for another public or nonprofit agency. (See Appendix E.)

Marion County, Oregon - This county has been self-insured since 1978, and elected to include offenders performing community service under worker's compensation to avoid lawsuits resulting from offender injuries. Currently, the county is self-insured to \$150,000; excess coverage over that amount is purchased from SAIF, the State Accident Insurance Fund. The Community Corrections Department pays into the county's dedicated insurance fund at a rate of \$1.78 per offender per 100 hours of community service. A \$10 fee collected from offenders pays this and other program costs. Insurance fund contributions are audited quarterly based on the number of offenders in the program, and the number of hours completed by the offenders. (See Appendix F.)

Cumberland County, New Jersey - Several New Jersey counties, including Cumberland County, are self-insured for workers' compensation. Until 1988, Cumberland maintained accident/medical coverage from the Guaranty National Insurance Company. Because no claims had ever been filed, the county brought offenders under self-insurance in 1988.

Workers' Compensation Mandated or Permitted by State Law

At least two states have laws that either mandate or permit worksites to cover offenders performing community service. This appears to be an ideal remedy to the problem of offender accident coverage as payments are made on a "no-fault" basis and offenders covered under workers' compensation are almost always prohibited from trying to recover any additional damages resulting from bodily injury.

State of Nevada - By state law, workers' compensation is extended to all offenders performing community service under court order. A special job classification is designated for community service workers. Using this classification code, the worksite simply reports the offender as an employee on a standard monthly audit form used for all employees and pays an additional premium of \$0.85 monthly, based on an imaginary wage of \$50. When an accident occurs, the offender files a workers' compensation claim, and is treated accordingly. (See Appendix G.)

State of Washington - An arrangement similar to the Nevada law that was originally designed for counties, then later extended to cities, towns, and nonprofit corporations exists here. Both adult and juvenile offenders may be covered. Unlike the Nevada policy, coverage is optional on the part of the worksite. Worksites pay \$0.1777 per hour of work. Coverage includes disability as well as medical. (See Appendix H.)

Accident/Medical Insurance Policies

Accident/medical or accident/health policies insure against bodily injury, disability, and accidental death. Medical expenses, less any deductible amount, are paid up to the limit of the policy, and compensation is made for loss of limbs, sight, or life according to a set schedule. There is normally a time limit during which these expenses may be incurred, ordinarily one year from the date of the injury.

These policies generally do not pay for loss of wages. Also, in contrast to most workers' compensation, the injured party is not precluded from seeking further compensation through a tort claim.

Accident/medical insurance policies can be obtained from several commercial insurance companies. Premiums are based on either the actual number of offenders in the program or the average number of job slots filled by the program (average caseload). Some programs collect all or part of the cost of the insurance from the offenders and incorporate fee collection into a regular collection procedure.

Some management companies and insurance carriers that offer accident/medical policies are as follows. This information was current in late 1987.

CIMA (Corporate Insurance Management) - The "Community Service Workers" policy is an extension of a long-standing Volunteer Insurance Service (VIS) insurance plan offered by CIMA. At least 100 community service programs currently maintain a CIMA policy. The insurer is The Life Insurance Company of North America. Programs must pay VIS a one-time fee of \$5 to join and an annual administrative fee of \$50. Premiums are \$2 per offender per year. The coverage will pay up to \$20,000 for medical treatment, hospitalization, and licensed nursing care for up to 1 year following the accident. Dental care is covered up to a maximum of \$500, and eyeglass damage to \$25. Accidental dismemberment and death benefits are also included in amounts of \$625 to \$2,500.

When applying for coverage, programs must submit a description of offenders' duties. The insurance company reserves the right to decline coverage for those volunteer organizations that do not meet its underwriting requirements. When the policy becomes active, offenders must be registered on a volunteer roster provided by VIS and maintained by the program. For more information, contact:

CIMA (Corporate Insurance Management)
216 S. Peyton Street
Alexandria, VA 22314
Phone (800) 468-4200 or (703) 739-9300

Reliance Standard Life Insurance Company - Through the Maksin Management Company, specialists in accident/medical policies, Reliance currently provides coverage to several community service programs throughout the country, including probation-run programs in nine New Jersey counties; the Volunteer and Community Service Program operated by the Lancaster County Probation Department in Pennsylvania; and a coalition of Pennsylvania juvenile restitution programs organized by the statewide Center for Juvenile Justice Training and Research.

Coverage limits are high: \$250,000 medical, \$10,000 dismemberment, \$5,000 death, and \$2,000 dental. Supervised travel is included. The basic cost is \$8.25 per offender. After the first \$100, secondary coverage will pay in excess of amounts payable by other valid and collectible insurance policies, to a maximum of \$250,000 with no deductible. Various premium discounts are also available: a 10 percent reduction if the coverage is completely secondary; and a sliding scale of reductions if various deductible amounts are excluded from coverage--15 percent for a \$50 deductible, 30 percent for \$100, 50 percent for \$300, 60 percent for \$500, and 70 percent for \$1,000.

A minimum premium of \$225 must be deposited; the actual policy premium is then determined by a quarterly or annual audit of program participants. In Lancaster County, the full cost of the coverage is paid by offenders through court costs. For more information, contact:

Reliance Standard Life Insurance Company
c/o Maksin Management Company
Marianne Adomanis
812 Kings Highway
P.O. Box 300
Haddon Heights, NJ 08035
Toll-free number (800) 257-6250
Toll-free number (800) 232-6671 New Jersey only
Phone (609) 546-3000 local New Jersey

National Union Fire Insurance Company - This company insures the Alternative Community Service Program operated by Clark County Probation Services, Washington State, and the Hudson County, New Jersey Probation Department's community service program.

The Clark County premium in 1986 was \$1.05 per offender (assignment). The premium total was \$1,133 for 1,078 offenders, including jail trustees and work release participants, as well as community service workers. Policy limits are low: \$2,500 for medical expenses resulting from accidents, with a deductible of \$25; and \$5,000 for accidental death and dismemberment. Benefits will not be paid for suicide or attempted suicide. An initial premium is paid at the beginning of the policy year, and adjustments are made at the conclusion of the year after an audit of actual program participants. Hudson County premiums and coverages are similar. For additional information, contact your insurance broker or:

National Union Fire Insurance Company
Ms. Jo Thomas
1325 Fourth Avenue, Suite 1111
Seattle, WA 98101
Phone (206) 622-3664

Hartford Insurance Company - The Passaic County, New Jersey, community service program, operated by the probation department, maintains an accident/medical policy with Hartford. An annual premium of about \$4,700 covers an active caseload of about 1,200 offenders assigned to worksites officially registered with the program. Coverage limits are \$10,000 medical; \$250 dental; and \$10,000 accidental death/dismemberment. In applicable cases, the policy will also pay \$50 disability payments for a maximum of 26 weeks. Contact your broker or:

Hartford Insurance Company
Associated Insurance Brokers
791 Passaic Avenue
Clifton, NJ 07012
Telephone (201) 471-4400

Life Insurance Company of North America - Several programs have obtained policies from the Life Insurance Company of North America (INA), including Bergen County, New Jersey, and Forsyth County Volunteers, Inc. in North Carolina.

Since 1983, the Work and Earn-It Program sponsored by Forsyth County Volunteers, Inc., has maintained accident/medical coverage from INA through the insurance broker listed above. The premium is \$1.50 per person, paid annually. Coverage limits are \$10,000 medical, \$500 dental, and \$2,500 accidental death/dismemberment. The accident must be reported within 60 days, and payments may be made for up to one year after the accident. Contact your broker or:

Life Insurance Company of North America
John McGee, Insurance Agent
Rollins, Burdick, Hunter of No. Carolina
P.O. Box 203
Winston-Salem, NC 27102
Telephone (919) 722-6123

Chubb Group of Insurance Companies - The Union County, New Jersey, community service program operated by the Probation Department maintains accident/medical insurance coverage through a local insurance broker. Policy limits are \$5,000 medical (\$25 deductible), \$10,000 death, and \$5,000 dismemberment. No dental coverage is included. The policy premium is \$6.50 per person; in 1987, Union County paid \$4,140 for 637 offenders. For more information, contact your broker.

Requirement for Worksites to Provide Coverage

Some community service programs require worksites to provide either workers' compensation or accident/health policies. For example, the Sentencing Alternatives Program of Sacramento, California, requires all worksites--180 in all--to submit proof of either accident/health or workers' compensation coverage. This policy was enacted after the program had been in existence for many years. Most worksites relied heavily on the court-referred volunteers and very few dropped out because of the insurance requirement. The offenders are also required to sign a waiver of liability, as discussed in a later section. Insurance companies offering accident/health policies for volunteers include those previously listed. Others that may also offer this coverage include Traveler's, American Home, and SAFECO.

COMMUNITY SERVICE PROGRAM LIABILITY COVERAGE

Whether individual community service programs are covered for general liability appears to depend largely on the program's operating base. Public agencies normally maintain commercial liability insurance, are self-insured, participate in a risk-sharing pool, or use a combination of these options. Unless it is specifically excluded, community service programs operated by public agencies are included in whatever insuring mechanism the parent public agency maintains. Some public agencies have also tried to obtain separate commercial liability coverage to afford additional protection to their community service programs.

While most nonprofits maintain some type of general liability policy for on-premises operations, many programs do not have general liability coverage for accidents or incidents that might occur off-premises. Why not? Although liability policies are obviously desirable, they are generally difficult to obtain, and very expensive.

Commercial Liability Insurance Policies

Various types of business office policies exist, all of which combine liability coverages and fire/theft on business personal property. Because much community service program activity occurs off-premises it is important to examine the liability agreement in your policy to ascertain whether it provides liability coverage only at the listed premises.

Some policies, called "business office package" (BOP) or "professional office package" policies (POP) are specific to small businesses. Most of these are written as owners, landlords, and tenants policies that provide coverage only for accidents/incidents that occur on the premises listed on the policy. A "commercial package policy" or "comprehensive business policy" is more extensive, providing general liability coverage for accidents or incidents that occur off-premises as well as on-premises.

Community service programs should attempt to obtain this commercial package type of general liability coverage that will cover off-premises incidents, and if at all possible, should consider naming employees, program volunteers, and offenders as additional insureds.

According to Am I Covered...?, the insuring agreement in a general liability policy will read:

The company will pay on behalf of the insured all sums which the insured will become legally obligated to pay as damages because of bodily injury or property damage to which this insurance applies, caused by an occurrence, and the company shall have the right and duty at its own expense to defend any suit against the insured seeking damages on account of such bodily injury or property damage, even if the allegations of the suit are groundless, false, or fraudulent, and may make such investigations and settlements of any claim or suit as it deems expedient, but the company shall not be obligated to pay any claim or judgment to defend any suit after the applicable limit of the company's liability has been exhausted by payment of judgments or settlements.

The authors also remind us that liability insurance is not "no fault," and the company will not pay any claims unless it believes that the injury or damage was due to policyholder negligence.

If it appears that the policyholder was not at fault, the injured party must sue for compensation and the insurance company must pay any damages ordered.

The authors also point out that the "insured" is always the entity named on the policy, such as the nonprofit organization. The policy therefore will protect only that organization and in certain circumstances, board members and officers. This is not the same as Directors and Officers errors and omissions insurance since it only defends board members and officers for bodily injury and property damage, not for injuries caused by making decisions or failing to make decisions.

An "additional insured--employees" endorsement may be added to protect employees while acting within the scope of their employment. Sometimes it is automatically included in a comprehensive general liability policy. And, although it may be difficult to obtain or may be prohibitively expensive (especially for offenders), an "additional insureds--volunteers" endorsement should be considered. **If a third party files a suit against the program and also sues any employees, program volunteers, and offenders involved in the incident, the staff, volunteers, and/or offenders can be coerced into testifying against the program in exchange for being let out of the suit.** This can be avoided by naming staff, volunteers, and offenders as additional insureds. By doing this, the insurance company must defend the staff, volunteers, and offenders and pay any judgment rendered against them. It should also be noted that a general liability policy will probably not cover "intentional acts" of the insured or additional insureds, and usually will not pay any exemplary or punitive damages awarded for outrageous conduct or negligence on the part of the insureds.

Programs should also note that all policies are written on either a "claims made" or "occurrence" basis. Am I Covered for...? explains the difference:

Your car insurance policy is an "occurrence" policy. As long as you have a policy in effect on the day when you have the accident, it doesn't matter whether or not you are still insured with the company later when you are sued....

On the other hand, a "claims made" policy requires that you not only have a policy when an accident or incident occurs, but also later when you are sued for the accident or incident. If you are not insured with the insurance company when the suit is actually brought against you, you will not have any protection from the policy.

When you cancel or nonrenew a "claims made" policy, you must therefore buy "tail coverage"....

Professional liability insurance, explained in a later section, may also be added to a general liability policy. Or, as in the case of the Scottsdale Insurance Company, general liability may only be purchased as part of a professional liability policy.

Following are a few limited examples of general liability policies obtained by community service programs. This information was current as of late 1987.

Scottsdale Insurance Company - A subsidiary of the Nationwide Insurance Company, Scottsdale Insurance Company insures consortiums of juvenile programs in two states through insurance brokers J.J. Negley and Associates.

Forty-five Pennsylvania juvenile restitution programs are insured for comprehensive general liability and professional liability through an insurance policy issued to the Shippensburg University Center for Juvenile Justice Training and Research by the Scottsdale Insurance Company. The professional liability section of the policy, with a limit of \$1 million each incident and \$1 million aggregate, covers negligent acts of directors, officers, employees, and volunteers while they are working on behalf of the program. If any individual or entity is covered by another professional liability policy, then this policy becomes excess over the amount provided by that policy.

The comprehensive general liability section of the policy covers negligent acts by staff and volunteers that result in bodily injury or property damage to third parties. The policy includes premises liability, contractual liability, premises medical payments, and personal injury liability. Policy limits are \$1 million each incident and \$1 million aggregate. The policy is written on a claims made basis. An annual premium of approximately \$17,000 covers the 45 programs' 159 full- and part-time staff who work with an estimated 2,200 juvenile offenders annually.

In a similar arrangement, Scottsdale also insures 16 program members of the 40-member North Carolina Association of Community Restitution Programs. General liability section limits are \$1 million aggregate/each incident for \$1 million product liability, \$1 million personal/advertising liability, \$50,000 fire, and \$1,000 medical. The professional liability section limit is \$1 million aggregate/each incident. The 1987-88 premium is \$7,608--\$1,008 for the general liability and \$6,600 for the professional liability.

J.J. Negley and Associates specializes in professional liability and does not offer general liability separately. (See section on professional liability.) Negley has also indicated a reluctance to entertain further requests for coverage, and would probably not insure any adult community service programs; the North Carolina and Pennsylvania programs serve juveniles only. For more information, contact:

Scottsdale Insurance Company
c/o J.J. Negley and Associates
Marilyn Davis
P.O. Box 206
Cedar Grove, NJ 07009
Phone (201) 239-9107

Guaranty National Insurance Company - The Mesa County, Colorado, Alternative Sentencing Program is covered by Guaranty National. Coverage limits are \$500,000 per occurrence and aggregate with a \$1,000 deductible on each claim. The policy covers bodily injury and property damage only. The premium for 1987-88 is \$12,375 for an estimated 800 drunk driving and traffic offenders and 576 misdemeanants performing 49,500 hours of work. Representatives of the insurance broker, Adco General Corporation, are not optimistic that this coverage would be universally extended to other community service programs; each program must be evaluated individually. Contact your broker for more information.

Nautilus Insurance Company - Until December 1987, Nautilus, a subsidiary of Nationwide Insurance Company, insured the Mesa County, Colorado, Alternative Sentencing Program (see above). The policy, comprehensive general liability coverage, covered bodily injury and property damage liability caused by offenders and was restricted to alcohol abusers only. The limit of liability, single limit and aggregate, was \$500,000 per occurrence with a \$500 deductible. Claims resulting from assault and battery, and payment of punitive or exemplary damages, were specifically excluded.

The policy premium was based upon the number of offenders admitted to the program, and the number of hours assigned to them. The cost for offenders assigned 1-50 hours was \$6.50

each; 51-150 hours was \$8.50 each; and 151 hours or more was \$12.50 each. An advance premium of \$3,350 for 700 offenders was paid, with a quarterly audit conducted thereafter to adjust to actual program admissions.

In December 1987, the Mesa County program opted for coverage by Scottsdale Insurance Company (above), which included misdemeanants as well as alcohol offenders. The Lancaster, Pennsylvania, Adult Probation Department community service program also approached Nautilus in 1987 about a general liability policy, and was quoted a rate of \$15 per offender, for adult drunk drivers only. The limit was \$500,000 with a \$500 deductible. In early 1988, Alternative Sentencing, Inc. of Fremont County, Colorado was offered a policy that would include "white collar" felons for the same rates quoted to Mesa County. For more information, contact:

Nautilus Insurance Company
14455 North Hayden Road
Scottsdale, AZ 85260
Phone (602) 951-0905

Self-Insurance for General Liability

In the last few years, insurance premiums have climbed while public agencies' budgets have declined. As a result, many public agencies have self-insured in part or in full for a variety of coverages, including general liability and workers' compensation. (See section on self-insuring for workers' compensation.) While some public entities might be reluctant to include community service programs under self-insurance because of a perceived high risk, it appears to be a much more viable option than purchasing commercial liability insurance. Three counties that have chosen this route are the following.

Marion County, Oregon -The community service program is operated by the Department of Community Corrections. About 1,000 adults perform community service each year. The county has been self-insured since 1978 and also maintains excess liability coverage with a \$500,000 deductible. Offenders performing community service are named as additional insureds. Marion County also covers offenders under its self-insurance policy for workers' compensation. (See Appendix F.)

Cumberland County, New Jersey -This county has been self-insured since July 1986. Like Marion County, Oregon, it extends coverage to offenders performing community service. The county maintains excess coverage for claims of \$500,000-\$1,500,000. (Claims under or over that range are paid by the county.) The county is also self-insured for workers' compensation. No one has filed a claim during the life of the program.

Bergen County, New Jersey -The Probation Department administers 800 community service assignments each year. Previously, a rider on the county's general liability policy provided additional protection to the community service program. Since January 1, 1988, the county's self-insurance has covered the program.

Risk-Pooling Entities

Various government and nonprofit organizations have initiated risk-pooling ventures by in response to the limited availability of commercial policies and skyrocketing rates. For example, the National Association of College and University Business Officers formed a risk-pooling enterprise called the School, College, and University Underwriters, Ltd. Contributing \$40 million for startup

expenses, policyholders will have \$5 million in directors' and officers' liability protection and \$5 million to \$25 million in excess liability insurance. Once the needs of charter members are met, the company plans to extend services to other tax-exempt, education-related institutions.

Nonprofit organizations have initiated legislation in various states (including Illinois, Minnesota, California, Michigan, Texas, New York, and Arizona) to allow risk-pooling. Many of the proposals do not allow nonprofit pools to indemnify against property losses and offer coverage only against liability.

Recent Arizona law established the \$1 million state-capitalized Social Services Contractors Indemnity Pool, available to all agencies who have contracts with the state of Arizona. First Trust (see below) will provide underwriting and reinsurance expertise to the program administrator, Southwest Risk Services, Inc.

First Trust - A nonprofit risk-pooling entity, First Trust was created specifically for and is owned by nonprofits. The Illinois General Assembly enacted the Religious and Charitable Risk Pooling Trust Act in 1977; First Trust was formed shortly thereafter. Coverages are available to IRS tax-exempt 501(c)(3) organizations only. First Trust offers its own benefit schedules to Illinois nonprofits only. In other states, First Trust offers coverage issued by the Great American Insurance Companies. Several Volunteer Centers which operate community service programs have obtained coverage from First Trust. Liability coverage is only offered as a part of a package including property insurance. First Trust is willing to name both employees and volunteers as additional insureds. For more information, contact:

First Non Profit Risk Pooling Trust
111 North Canal Street, Suite 955
Chicago, IL 60606
Phone (312) 930-9500

In California, Washington, and Oregon, contact the Western office:

First Non Profit Risk Pooling Trust
160 Spear Street, 11th Floor
San Francisco, CA 94105
Phone (415) 546-9300

Michigan Municipal Risk Management Authority (MMRA) - The MMRMA serves 1,000 Michigan cities, townships, school districts, and other government agencies. In Berrien County, the Southwestern Michigan Voluntary Action Center administers the Community Services Program. In operation since 1981, the program serves both district and circuit courts. About 10,000 hours of community service are performed each year.

A rider has been added to Berrien County's general liability policy naming the program as an additional insured. Offenders performing community service pay court costs of \$6 to cover this cost.

Public Risk and Insurance Management Association (PRIMA) - PRIMA is a resource for locating risk-pooling ventures in your area. A 1,400 member association of government and insurance industry risk managers, PRIMA maintains information on market assistance programs and offers numerous helpful publications. Contact:

Public Risk and Insurance Management Association
1120 G Street NW, Suite 400
Washington, DC 20005
Phone (202) 626-4650

State Law Immunizing Programs, Worksites, and Employees From Liability

Illinois law effective January 1, 1988, provides liability protection to state and local governments, community service programs, public and nonprofit worksites, and officials and employees of these agencies. The law modifies and expands previously existing statutes that immunized public agencies, employees, and officials, except for willful misconduct or gross negligence.

The law, Public Act 85-449, was sponsored by the public service work coordinators section of the Illinois Probation Court Services Association. Of 105 Illinois counties, at least half operate community service programs. All community service programs are based in public agencies. Some programs have had difficulty recruiting worksites because of concerns about potential liability. It is hoped that this law will ameliorate the situation and encourage worksites to participate in community service sentencing.

However, there are questions regarding the validity of this type of law, including statutes that immunize volunteers as discussed in "Liability Protection for Offenders" section of this guide. The original Illinois law did not include nonprofits, and was not tested in court. The state attorney general has not commented on either the old or the new law. (See Appendix I.)

State Law Permitting Claims for Compensation

Minnesota has addressed the issue of potential liability resulting from offender accidents or third-party injuries by enacting a law that permits claims to be filed against the state. The state or local agency responsible for supervising the work investigates claims up to \$500 to determine the validity of the claim and if the loss is covered by the claimant's insurance. Valid claims not covered by insurance are submitted to the department of corrections for payment. The legislature then reimburses the department of corrections annually. The legislature will also hear, and pay if approved, appeals of claims submitted and not approved by the Department of Corrections or any claim in excess of \$500. (See Appendix J.)

WAIVERS OF LIABILITY

Am I Covered For...? defines a waiver as "the giving up or surrender of a right or privilege which is known to exist."

Typical waiver language asks the offender to give up:

..any and all claims for accident or injury or compensation of any nature, growing out of said work against the Superior/Municipal Court, the judges of the Superior/Municipal Court, the City or County of XYZ, or Community Service Program, its officers, agents, or employees.

Another version obviously designed to avoid workers' compensation claims reads:

I agree to give my services without compensation and realize that, as a non-employee, I am not covered by insurance for any injury incurred while on the job. I will not hold either the worksite agency or the County of XYZ responsible for any injuries or disabilities incurred or resulting from this assignment and will be responsible for paying my own medical bills.

Christensen cautions that, "There are a number of questions as to the validity and enforceability of a release. The general rule is that a release which is executed before any liability arises may be void as contrary to public policy. Some states have legislation which expressly provides that these types of contracts are unenforceable."

Community service programs are advised never to rely on waivers as the exclusive remedy against liability for accidents or third party injuries or property damage.

PROFESSIONAL LIABILITY OF PROGRAM STAFF

As discussed in preceding chapters, community service programs, staff, and volunteers may be held liable for injuries or damages sustained by offenders performing community service or third parties. Individuals employed by community service programs may also be personally liable for certain acts or omissions relating to job activities, such as discrimination, libel, or deprivation of civil rights.

For example, if a caseworker arbitrarily denied an offender placement into community service, and the offender was subsequently jailed for failing to perform the community service, the caseworker could be sued for damages by the offender. In another example, assume that a certain program's procedures required that criminal records of all offenders be obtained and reviewed before the offenders are placed. A caseworker neglects to do this, and refers an offender with a history of sex offenses against children to a day care center. If the offender molests a child, the caseworker could be sued by the parents of the child.

In addition to insuring that program policies and procedures minimize the likelihood of this type of situation, program staff should determine if their employer would provide legal representation and pay any damages awarded or provide indemnification.

Probation officers or other correctional staff named in civil liability cases are likely to be covered if the officers were acting within the scope of their duties, and in "good faith." Of 49 states responding to a 1980 survey, 6 41 percent indicated that a probation officer would be defended by a government agency, and 59 percent indicated that a probation officer would sometimes be defended. The survey also revealed that if the program staff were found civilly liable, damage awards or indemnification would be provided by the government agency in 19 percent of the 48 states responding, and in some cases by 69 percent of the states. Damages would not be paid in 13 percent of the states. A later survey on indemnification and representation of state and judicial officials (including probation and parole officers) found that about half of the states had instituted indemnification and representation provisions. 7

Employees of nonprofit programs are much less likely to be protected by their employers, as few community service programs maintain professional liability insurance. (A few exceptions are listed under the section on "commercial general liability insurance policies." In these cases, the insurer required the programs to purchase professional liability insurance in order to obtain general liability coverage.) Staff not covered by their employers may wish to consider purchasing professional liability insurance through a professional association such as the American Correctional Association. To protect volunteers, programs may purchase a liability insurance policy for volunteers. Available from CIMA, this policy is the predecessor to a similar policy offered for offenders (see section on Commercial Liability Policy for Offenders). Some insurance companies, such as SAFECO, also offer extended liability coverage to holders of SAFECO homeowners' policies who serve as community volunteers.

LIABILITY PROTECTION FOR OFFENDERS

Offenders may also be protected against liability for unintentional injuries or damages they might cause while performing community service. Although concern about protecting offenders might be a lower priority for most programs than obtaining program liability coverage, offender liability protection should be examined for several reasons.

First, coverage for the offender's unintentional actions (along with workers' compensation or accident/medical coverage) might encourage worksites to accept offenders for community service. If something happens, chances are it will be covered by insurance. Second, offender liability coverage might encourage insurance companies to extend general liability coverage to both community service programs and to worksites, as the offender liability coverage provides some insulation against suits and might reduce the probability that the program will be sued.

Last, if both the offender and the community service program were sued as a result of injuries or damages to a third party and if coverage for defense and awards was available to the offender, the offender would be less likely to testify against the program in exchange for being let out of the suit.

Naming offenders as additional insureds to a program's general liability policy poses two problems: If this practice were allowed by the insurance company (it usually is not), it probably would be prohibitively expensive. Also, if a suit was filed, the offender (and all other additional insureds such as employees and volunteers) would share in the policy limits. This means that the amount of funds available for the program's defense and any damages awarded would be greatly reduced.

Commercial Liability Policy for Offenders

CIMA (Corporate Insurance Management) - A commercial policy option that preserves maximum access to the program's general liability policy coverage is the new personal liability policy to be offered by CIMA, sponsor of a similar liability policy for traditional volunteers, and the popular Court Referred Alternative Sentencing Volunteer accident/medical policy.

For a premium of \$2 to \$4 per offender, programs can insure offenders to \$1 million for bodily injury, personal injury, and property damage. The insurer is the CIGNA Insurance Company, parent of the Insurance Company of North America. Coverage is secondary or in excess of any coverage the offender may already maintain. Offenders convicted of certain types of offenses will be excluded from coverage. For more information, contact:

CIMA (Corporate Insurance Management)
216 So. Peyton Street
Alexandria, VA 22314
Toll-free phone (800) 468-4200
Telephone (703) 739-9300

State Laws Immunizing Volunteers From Liability

Ohio, Illinois, Colorado, Delaware, and California have enacted a variety of laws designed to limit the liability of volunteers. Similar federal legislation has been introduced. Congressman John Porter of Illinois is sponsoring H.B. 911 (companion bill S.B. 929), the "Volunteer

Protection Act of 1987." The bill encourages all states to exempt volunteers from liability for unintentional acts conducted in good faith. States not providing such exemption by 1989 could lose 1 percent of the social services block grants under Title XX of the Social Security Act.

It is important to note that this legislation does not attempt to exempt charitable organizations themselves. Nonprofits are still advised to maintain liability coverage.

In a recent First Trust newsletter article, President Byron Stone detailed three reasons why nonprofits should continue to carry directors and officers (D&O) coverage and other coverages for volunteers after a state has adopted a limited liability act:

The bill only covers volunteers, not its paid staff members. An agency should provide protection to its staff members, especially those who are operating or executive officers.

An injured party seeking recovery against an officer or director will allege that the event falls outside the scope of the limited liability because (1) the volunteer was not acting in good faith or (2) the volunteer was not acting within the scope of his or her official functions or duties or (3) the damage or injury was caused by the volunteer's willful and wanton misconduct. The coverages afforded by D&O liability will cover costs of establishing that the volunteer did fall within the scope of the limited liability. Without such coverages, the volunteer or the agency will have to bear the cost of defense.

There is no assurance that a state limited liability law will be held valid under the provisions of that state's constitution... Until there is a definitive court decision upholding a limited liability act, an agency would be wise to carry D&O for the benefit of its volunteers.

The Ohio law (Appendix K), effective October 1986, defines a "volunteer" as:

...an officer, trustee, or other person who performs services for a charitable organization but does not receive compensation, either directly or indirectly, for those services.

The Ohio law immunizes volunteers from damages resulting from a civil action for injury, death, or loss to persons or property that arises from the actions or omissions of any of the officers, employees, trustees, or other volunteers, unless the volunteer approves, actively participates in, or ratifies the action or omission. The volunteer is also similarly immunized from any liability in connection with any supervisory or corporate services performed, except if the loss results from an action or omission as described above, or if the action constitutes negligence, willful or wanton misconduct, or intentionally tortuous conduct.

The law's definition of "volunteers" is vague. Depending on the type of community service sentence and the circumstances of its conception and administration, some offenders may benefit from its provisions. An attorney general's opinion or case law will possibly provide further clarification in the near future.

EXCERPTS

ALTERNATIVE COMMUNITY SERVICE

PROGRAM MANUAL



MULTNOMAH COUNTY
COMMUNITY CORRECTIONS

January 1986

MULTNOMAH COUNTY ALTERNATIVE COMMUNITY SERVICE

THE PROGRAM AND PURPOSE

I. INTRODUCTION

Individual judges have long required offenders to perform some type of useful service as a means of "paying" for their crimes. Such penalties sometimes have been based on the belief that the entire community suffers from crime and that some recompense is needed to mend the social fabric. Judges also have reflected the view that the penalty imposed on the offender might as well help others. Sentences involving community service often have been regarded as more humane and productive as well as much less expensive than sanctions such as incarceration.

The concept of righting wrongs through service is consistent with historical concepts of justice. For example, a common response to vandalism is to have the offender make-up for the damage by fixing the victim's property. In such instances, the intent may be to help offenders appreciate more fully the impact of their damage and to accept responsibility for their actions. Penalties that necessitate affirmative activity on the part of offenders often are associated with a feeling that completion of the tasks results in a "clean slate."

The Multnomah County Alternative Community Service Program staff interview and screen convicted offenders who have been sentenced by judges to perform a specific number of hours of alternative community service work. In cooperation with participating non-profit or tax supported placement agencies, program staff assign alternative community service offenders to appropriate placement agencies to perform the required community service work by a specific deadline. Alternative community service offenders are required to sign an agreement consenting to do the volunteer work before they are sent to the placement agency. Alternative Community Service Program staff monitor the progress of the community service offender, issue reminders or warnings to the offenders, arrange placement changes, and assist placement agencies in working with offenders. Based on information supplied by the placement agencies, program staff make periodic reports to judges, probation officers, and other members of the justice system.

II. HISTORY

In response to a need for more constructive alternatives to jail, fines, and probation for sentenced misdemeanants, the Multnomah County Alternative Community Service Program began operation in December, 1972. Under the direction of the District Court, the program was aimed at reducing the probation caseload through targeting primarily first-time, low risk offenders who were capable of and willing to donate personal time in service to the community. During the program's first year of operation one thousand offenders were placed with fifteen local public and non-profit agencies.

Since the program's inception in Multnomah County, the utilization of community service as a viable sentencing option has increased throughout the county, state and the country. Presently, the Multnomah County Alternative Community Service Program is funded through Community Corrections Act monies given to Multnomah County Community Corrections under the Department of Justice Services. The program continues as a separate unit under Community Corrections with five full-time positions and one part-time position.

Due to the shortage of jail space and high unemployment in Multnomah County the Alternative Community Service Program has become a sentencing option in lieu of jail for felons and misdemeanants, and in lieu of fines for individuals convicted of violations and infractions. The program is no longer just for first-time offenders or offenders without assaultive backgrounds. In meeting the expanded demands for services, the program staff have been required to evaluate all relevant criminal history information and insure appropriate placement within the community by conducting more in-depth interviews.

III. GOAL

To provide the circuit and district court with a sentencing alternative beneficial to the community and appropriate for misdemeanants and felons as an alternative to fines, incarceration, or probation; to assist non-profit agencies in providing public services to the community while providing the community with the opportunity for involvement in corrections; to enhance opportunities for offenders to make a positive contribution to the community.

IV. OBJECTIVES

- Interview all offenders referred for community service work as provided for in ORS 137.126 - ORS 137.129;
- Place 90% of the interviewed offenders with appropriate placement agencies;
- Achieve and maintain an 80% compliance rate with the alternative community service condition;
- Monitor all clients referred to the Alternative Community Service Program and report on compliance/noncompliance to the supervising probation officer or the sentencing judge;
- Coordinate effective utilization of the Alternative Community Service Program through placement site visits and training seminars;
- Increase public awareness and utilization of the Program through the press;

- Provide weekend work crews to needy and appropriate agencies;
- Coordinate effective utilization of the Program through meetings with probation officers and sentencing judges.

MULTNOMAH COUNTY ALTERNATIVE COMMUNITY SERVICE
REFERRAL, INTERVIEWING, SCREENING AND PLACEMENT

I. REFERRAL CRITERIA

A. Legal definition.

According to the Oregon Revised Statutes, 137.128, "A judge may sentence an offender to community service either as an alternative to incarceration or fine or probation, or as a condition of probation."

B. Practical application.

Alternative community service is given to sentenced offenders, non-sentenced offenders, juveniles and adults in any one of the following situations:

1. In lieu of court fines, fees, or restitution;
2. In lieu of jail;
3. In lieu of either bench/court or formal probation;
4. As a condition of a bench/court probation;
5. As a condition of a formal probation;
6. As a condition of a civil compromise;
7. As a condition of a diversion agreement.

C. Referral requirements.

The Alternative Community Service Program will accept all adult community service offenders referred for any of the above situations. The Alternative Community Service Program requires the offender to live in Multnomah County and pay a one time supervision fee of \$25.00 when the offender is ordered to perform 40 hours or more. The Program prefers offenders referred to the program to have a minimum of 24 hours to perform.

All referrals to the Multnomah County Alternative Community Service Program must include one of the following:

1. Copy of the court order, court referral, or sentencing document;
or
2. Completed Courtesy Transfer if the offender is being referred from another community service program; or
3. Copy of the civil compromise/diversion agreement or acceptable documentation that a compromise or diversion agreement exist.

Each referral must include the following: true name of the client, known alias's, client's address, phone number, and date of birth, hours ordered, date of sentencing, court and/or jurisdiction of sentencing, judge's name/signature, court/docket/case number, offense of conviction, and due date for completion if given.

Referrals to the Alternative Community Service Program may be made by:

1. The Municipal, Justice, District, Circuit, and Federal Courts;
2. The supervising probation officer when the offender is given community service as a condition of a formal probation;
3. Another community service program when the offender does not reside in the county where he/she was convicted;
4. The attorney when the offender agrees to perform community service as a condition of a civil compromise or diversion agreement.

"Prior to (an) order of community service the offender must consent to donate labor for the welfare of the public." (ORS 137.128) The court is responsible for referring only offenders willing to perform community service work. If at any time the offender refuses to perform community service, the offender should be returned to the referring court for appropriate action.

II. INTERVIEWING CRITERIA

A. General information.

All offenders referred for community service placement will be interviewed either individually or in groups to obtain pertinent background information to be used in determining appropriate placement agency options. Each interviewer will complete the Intake Summary and cover the following:

1. Explanation of the community service sentence, the Multnomah County Alternative Community Service Program, and the types of agencies who participate in the program;
2. Client information: offender's true name and alias's, address, phone number, date of birth, work/school schedule, childcare concerns, transportation issues, limitations or disabilities, social needs, prior driving/criminal history, abilities, skills, and interest;
3. Information about the sentencing, including hours ordered, date of sentencing, court and/or jurisdiction of sentencing, judge, court/docket/case number, offense of conviction, and due date for completion if given;

4. Explanation of the offender's responsibilities that are outlined in the Alternative Community Service Agreement;
5. Explanation of the responsibilities of the Alternative Community Service Program Staff (medical insurance, timecard procedure, notification to probation officer or judge);
6. Information about the placement assignment with complete address of the agency, contact person, contact person's phone number, starting or interview date with the placement agency, and completion date (to be written on the Alternative Community Service Agreement);
7. Explanation of the responsibilities of the placement agency for timekeeping, training, and reporting problems/concerns.

Relevant statistical information that is collected during the interview must include: sex, age, employment status, marital status, race, classification of crime of conviction, probation status, and prior offenses.

The interview should be conducted in a private area free from interruptions. The Alternative Community Service Program staff conducting the interview may wish to include the offender's spouse, children, parents, or friends but must realize that others may detract from the goal of the interview. In some situations an interpreter or responsible third party who might be an appropriate support person for the offender should participate in the interview. The support person or interpreter could assist in facilitating understanding and thus increase the possibility of the offender successfully completing the community service sentence.

Interviews are an opportunity for the Alternative Community Service staff to get specific information about the offender, make an assessment, and then based on the assessment determine risk and assign the offender to an appropriate placement agency. The interview should also be used to address the offender's concerns about performing community service work at an agency where he/she knows no one. Many community service offenders have not done "volunteer" work in the past and this can be a very frightening experience. Addressing those concerns can help the offender have a positive and successful experience performing community service work.

III. SCREENING CRITERIA

Prior to placement with a community agency all offenders will be screened by program staff to determine their suitability for placement at an agency. The main objective in placing the offender is to find a suitable placement where the offender can assist the agency in meeting the agency's goals of serving the community. It is not the primary objective to find an agency that provides needed services to the offender unless the offender can also perform some viable service for the agency.

The following are areas that may present placement difficulties and represent a risk to the program and the community agencies:

- A. History of assaultive behavior;
- B. Prior or present conviction for Rape or Murder;
- C. History of sexual offenses where the risk of the offender re-offending is high;
- D. Prior criminal offenses or present offense involving physically threatening behavior toward another person;
- E. Severe emotional or mental problems that make it extremely difficult for the offender to follow through with commitments, work in mildly stressful situations, or function in a "normal" work environment;
- F. Extensive physical limitations;
- G. Physical limitations coupled with limited skills and transportation difficulties that preclude all existing placement sites;
- H. Hostile, belligerent, aggressive behavior exhibited during the interview, at the placement site, or with Alternative Community Service Program staff;
- I. Refusal to accept a placement or perform work at the placement agency;
- J. Poor performance, disruptive behavior, or criminal activity at the agency site during prior placement or present placement;
- K. Addiction to alcohol and/or drugs where the offender is unable to follow through with commitments or presents a risk to the placement site in terms of the offender's ability to perform the necessary work and/or there is a great risk of theft from the placement site by an offender supporting a habit;
- L. Extensive theft history that would indicate that the offender would be a potential theft risk to the agency;
- M. A work or school schedule of such a demanding nature that the offender is unable to schedule time in which to perform community service.

Violent offenders (those with convictions for rape, murder, negligent homicide - not auto related, sodomy, sex abuse, assault, and property offenses involving the use of weapons or threat of violence) **will be assigned to the Multnomah County Alternative Community Service Program Work Crew unless another appropriate placement exists and is willing to accept the offender.**

IV. PLACEMENT

A. Assignment.

A successful matching of an offender with an appropriate agency will increase the likelihood of a positive experience with community service for the offender, the placement agency, the community and the court. When the offender wishes to contribute positively to the community and has been given an appropriate opportunity to do so, the impact of the experience on the offender will be greater.

The key to placing offenders is adherence to the procedures outlined in this manual and an extensive knowledge of placement sites within the community. The Alternative Community Service Program staff must follow the guidelines made by the agencies and outlined in the Placement Agencies Resource Manual. During the placement interview the Alternative Community Service Program Staff should make sure the offender is able to perform the tasks requested by the agency and the agency is able to supervise the offender during hours the offender can work. According to the Oregon Revised Statutes 137.128, "The court or its delegate may select community service tasks that are within the offender's capabilities and are to be performed within a reasonable length of time during hours the offender is not working or attending school."

B. Agreement.

The purpose of the Agreement is to outline the responsibilities of the offender and to advise the offender what the actions of the Alternative Community Service Program Staff will be if the offender does not comply with the community service work. The Agreement will be discussed fully with the offender and contains the following information:

1. Name and address of placement agency, contact person, and contact person's phone number;
2. Number of hours ordered to perform, due date for completion of those hours, and minimum hours to be completed each month/week;
3. What the offender should do if he/she is injured while performing community service;
4. What the offender should do if he/she moves, changes phone numbers, or has difficulties performing the community service as scheduled at the placement agency;
5. Who the offender should contact when his/her hours are completed;
6. Signature of offender indicating acceptance of the conditions of the Agreement acknowledging his/her responsibilities, and acknowledging the consequences if he/she fails to comply with any of the conditions outlined;

7. Signature of community service staff;
8. Date of Agreement.

The Agreement may also include special conditions when appropriate, such as: "Will not consume any alcohol prior to reporting to my placement agency or while at my placement site," or "Will provide the community service program staff with documentation regarding my medical condition by..." The original copy of the agreement will be given to the offender and a copy will be kept in the file.

C. Agency.

Prior to placing any offender with an agency, the Alternative Community Service Program staff will review the agency's acceptance criteria and make sure the offender is an appropriate candidate for working at that placement. If the offender does not meet the agency acceptance criteria and the offender still might be an appropriate referral to that agency, the Alternative Community Service staff will call the agency contact, explain the situation and request an exception to the general agency criteria. If the agency contact is willing to accept the offender as an "exception to the rule" a summary of the conversation will be noted in the offender's file.

If the offender is a suitable candidate for the placement agency, the Alternative Community Service staff should follow the agency's established referral procedure. Most agencies require the Alternative Community Service staff to call them before assigning the client. This allows them the opportunity to ask pertinent questions, set the most convenient interview/starting date, or decline the assignment. Some agencies want the offender to report directly to them and do not require a phone call. When this is the case, the Alternative Community Service staff will set a date by which time the offender should have made contact with the agency.

When calling the agency the first interview/work date should be established for the offender and noted on the Agreement. The agency contact should be advised of any special needs the offender might have and specific problems and/or concerns should also be reviewed. This can be done with the offender present or during a private conversation, whichever seems most appropriate.

D. Due dates.

The Alternative Community Service staff should establish a due date by which the offender must complete the community service hours, unless a due date was ordered by the court. The Alternative Community Service staff should set a due date after evaluating the offender's work and school schedule, physical limitations, and other personal obligations such as counseling, substance abuse programs, and childcare needs and establish the minimum number of hours the offender should devote to community service work each week or month. Reasonable guidelines are as follows:

1. If the offender is working full-time or attending school full-time, require a minimum of six to eight hours a week or 24 to 32 hours a month of community service work; or
2. If the offender is working part-time, or attending school part-time, or has significant childcare concerns, require a minimum of eight to ten hours a week or 32 to 40 hours a month; or
3. If the offender is unemployed, even if he/she is looking for work, require a minimum of 16 hours a week or 64 hours a month.

In situations where the offender has been ordered to complete more than 80 hours of community service the Alternative Community Service staff should give the offender an extra 30 days to finish the hours. This "buffer" would give the placement agency an extra two weeks to obtain necessary materials, arrange training time and resolve scheduling conflicts. The other two weeks would be a "buffer" for the offender in anticipation of illness, family crises, work problems, and other personal conflicts.

E. Timecards.

Once the placement has been made, the Alternative Community Service staff will complete the Timecard and, in most cases, give it to the offender to take to his/her placement agency. Some placement agencies may want the Timecard mailed directly to them and that should be done following the interview. The Alternative Community Service staff should advise the offender that it is his/her responsibility to report to the Alternative Community Service staff when he/she has completed the assigned hours. It is also the offender's responsibility to remind the agency supervisor to return the completed Timecard to the Alternative Community Service Program's office.

F. Transfers.

When an offender is sentenced in Multnomah County but wishes to perform the community service in another county or state, the case should be transferred by using the Courtesy Transfer form. The Alternative Community Service staff should interview and screen the client as reviewed in Section II and Section III, and then complete the transfer document. Offenders wishing to be transferred to another jurisdiction should be interviewed immediately following their court appearance to facilitate the transfer process. Transferring offenders should not be charged any supervision/placement/insurance fee by the referring county. If the receiving county charges fees, the offender should be advised that he/she will need to pay that fee "for the privilege of performing the community service in the recipient county." In rare cases (for example, the offender lives more than 100 miles outside of Portland) the interview may be done by phone or mail when the offender already has left the county or state or when the offender was sentenced in absence. The Alternative Community Service staff should contact the receiving county by phone and arrange a time and date for the offender to report to the recipient county's program.

The Alternative Community Service staff will give the offender a copy of the Agreement with the contact person's name, address and phone number as well as the interview date on it. Two copies of the Courtesy Transfer will be sent by the Alternative Community Service staff to the recipient county and a copy will be kept in the file.

In situations where an offender is placed on formal probation and given community service as a condition of that formal probation and the formal probation is transferred to another jurisdiction, it is not necessary to transfer the community service through the Courtesy Transfer process. The supervising probation officer in the recipient county is responsible for referring the offender to the appropriate community service program.

MULTNOMAH COUNTY ALTERNATIVE COMMUNITY SERVICE

PLACEMENT AGENCIES

I. CRITERIA

A. Legal definition.

According to the Oregon Revised Statutes, "community service" means uncompensated labor for an agency whose purpose is to enhance physical or mental stability, environmental quality, or the social welfare. "Agency" means a nonprofit organization or public body agreeing to accept community service from offenders and to report on the progress of ordered community service to the court or its delegate.

B. Types of agencies.

Placement agencies can be divided into twelve (12) major areas based on the type of services they are providing to the community. The major areas are:

1. Public agencies (A) which serve the needs of the public, such as public works departments, park bureaus, and government-operated agencies.
2. Hospitals and medical agencies (B) which serve the health needs of the community, such as free clinics and health screening programs.
3. Educational agencies (C) which provide education, such as schools and tutoring centers.
4. Recreation (D) programs which provide recreation opportunities and activities to the public, such as the YMCA, Boys Clubs, and senior activities programs.
5. Cultural (E) agencies which provide cultural events and opportunities to the public, such as libraries, zoos, and theatres.
6. Rehabilitation and counseling (F) programs which provide special assistance to the public, such as residential treatment, counseling, and substance abuse treatment.
7. Information and referral (G) programs which provide information to the public, make general referrals, and advocate for causes, such as consumer services, the Urban League, and referral hot lines.
8. Childcare (H) agencies which provide day care for children.

9. Multi-purpose social services agencies (I) which provide a variety of social services, such as youth service centers and the Red Cross.
10. Ecology (J) programs which provide environmental services, such as recycling centers.
11. Food (K) programs which provide food assistance to people in need, such as Loaves and Fishes and FISH.
12. Miscellaneous (X) organizations which provide social services to people in need.

Profit making nursing homes, convalescent centers and care homes may make special arrangements with the Alternative Community Service Program Supervisor for community service clients to receive community service credit for providing patients with friendly visiting, entertainment, and personal involvement services. Churches may make special arrangements with the Alternative Community Service Program Supervisor for community service clients to receive community service credit for doing church-supervised work which benefits the entire community at large, such as serving meals in a food program which benefits low-income individuals in the neighborhood. Agencies which are engaged in overt political work or religious proselytizing are not appropriate placement agencies.

C. Recruitment.

New placement agencies are recruited by:

1. Alternative Community Service Program staff outreach;
2. Referrals from other agencies;
3. Direct requests from agencies;
4. Client requests for particular agencies; and
5. Referrals from other interested people, such as judges and concerned citizens.

D. Classification.

Participating placement agencies are classified as "on-going agencies" and "special projects."

1. On-going agencies are agencies which always or usually need the services of alternative community service clients.
2. Special projects are agencies which need the services of alternative community service clients specifically for a job that is limited in duration. For example, an agency needing assistance with a clean-up project or a special fundraising event may request clients for the "special project." Requests for

special project workers should be received by program staff at least three (3) weeks before the project begins to insure maximum participation on the part of alternative community service clients. Projects must be at least 24 hours in duration.

II. AGENCY SITE VISIT

In order to develop and maintain the optimum working relationship between the Alternative Community Service Program and the placement agencies, program staff will conduct site visits. The Program Supervisor will assign a staff liaison to each placement agency. Each placement agency will be visit at least once a year by the staff liaison.

A. Initial visit.

During the initial site visit the staff liaison will describe the Alternative Community Service Program to the agency contact and will gather necessary information about the potential placement agency.

1. Description of the Alternative Community Service Program.

The following information should be described in detail:

- a. Legal definition of "community service";
- b. Court referral procedures;
- c. Range of offenses for which community service is part of the sentence.
- d. Most typical offenses encountered;
- e. Program procedures for referrals to agencies;
- f. Record keeping requirements with emphasis on the need for accuracy;
- g. Timecard, deadline and extension procedures;
- h. Medical insurance provisions and procedures;
- i. Special Projects opportunity and procedures;

2. Description of the potential placement agency.

The following information should be gathered from the potential placement agency:

- a. Services provided;
- b. Population served;
- c. List of offenses which agency will not accept;
- d. List of tasks available for community service clients to perform;
- e. Number of clients that agency can accommodate;
- f. Hours and days agency can accommodate community service clients;
- g. Agency contact and phone number;
- h. Agency address and list of buses serving the area.

Whenever possible, the staff liaison should tour the potential placement agency's facility.

At the end of the initial site visit, the staff liaison will determine whether or not the potential placement agency meets the placement agency criteria. If the potential placement agency meets the criteria and wants to become an official placement agency, the Placement Agency Agreement is discussed and signed. The staff liaison and agency contact should exchange business cards. The staff liaison will provide the agency contact with a copy of the following:

- (1) Guidelines for Supervising Alternative Community Service Clients.
- (2) Guidelines for Working with Disabled Clients.
- (3) Insurance Information.

The staff liaison should request a copy of the agency's brochure which, along with a copy of the Agreement, should be filed in the Agency Resource File located in the Alternative Community Service Program Office.

B. Follow-up visit.

Follow-up visits will be conducted yearly with the placement agency. Whenever the agency contact changes, a follow-up visit is recommended. During the follow-up visit, procedures and problems should be discussed, evaluated and reviewed.

III. PLACEMENT AGENCIES RESOURCE MANUAL

The Multnomah County Alternative Community Service Program will maintain a Placement Agencies Resource Manual which contains the following information on all active placement agencies:

- A. Full name of agency;
- B. Agency's street address, including zip code;
- C. If different, the agency's mailing address, including zip code;
- D. Name of agency contact and any other agency personnel authorized to accept community service clients;
- E. Agency phone number;
- F. Brief description of services provided by the agency;
- G. List of specific tasks available for community service clients to perform; for example, "clerical, yard work, maintenance, assist with mailing";
- H. Hours and days when agency is open and can accommodate community service workers;

- I. Exact directions to the agency; for example, "located on N.W. 18th between N.W. Everett and Flanders";
- J. Bus number of buses that go by the agency;
- K. List of offenses the agency will not accept;
- L. Number of clients or hours per week that the agency can accommodate;
- M. Placement instructions; for example, "call first to make an appointment and tell agency contact what the offense is";
- N. Date of visits;
- O. Code letter for type of agency;
- P. Initials of staff liaison.

IV. AGENCY RESPONSIBILITIES

A. Agency contact.

The placement agency will designate a specific agency staff person who will act as the agency contact. The agency contact will be responsible for accepting or rejecting a potential Alternative Community Service volunteer. The agency contact will provide necessary information to the Alternative Community Service Program.

B. Nondiscrimination.

The placement agency must not discriminate in serving clients or in selecting volunteers on the basis of race, sex, age, marital status, color, political affiliations, national origin, religion, handicap, or any other nonmerit factor.

C. Interview.

The placement agency contact or his/her designee will interview the potential Alternative Community Service volunteer.

1. If the potential Alternative Community Service volunteer is accepted by the placement agency, the interviewer and the volunteer will establish work schedules and work assignments. The placement agency will provide all necessary training.
2. If the potential Alternative Community Service volunteer is not accepted by the placement agency, the agency contact will notify the Alternative Community Service Program staff who made the referral and will explain why the client was rejected by the agency.

D. Timecard.

1. The placement agency will document the hours worked by the Alternative Community Service volunteers and will record that information on the Alternative Community Service timecards.
2. The placement agency will maintain its own records of the hours worked by the Alternative Community Service volunteers.
3. The placement agency will report the hours worked when the Alternative Community Service Program staff requests the information.
4. When the Alternative Community Service volunteer's deadline has been reached, the placement agency will return the timecard to the Alternative Community Service Program.

E. Notification.

1. The placement agency will report the hours worked, supervision problems, and physical injuries to the Alternative Community Service Program staff.
2. When an injury occurs, the placement agency will:
 - a. Insure that proper medical care is provided; and
 - b. Notify the Alternative Community Service Program staff within one working day.
3. The placement agency will advise the Alternative Community Service Program staff liaison of any changes in the agency that would effect future use of the agency as a community service placement site.

F. Requests.

1. Whenever needed, the placement agency will request assistance from the Alternative Community Service Program for improving the agency's utilization of Alternative Community Service volunteers and maintenance of information.
2. Whenever a placement agency is engaged in a special work project (providing at least 24 hours of community service work) where additional Alternative Community Service volunteers are needed, the placement agency will request status as a "Special Project." The agency contact will provide all necessary information to the staff liaison at least three (3) weeks before the starting date of the special work project.

V. WITHDRAWAL OF AGENCIES

A. Initiated by the Alternative Community Service Program.

Whenever the Alternative Community Service Program Supervisor determines that a placement agency no longer meets the placement agency criteria or no longer follows the placement agency responsibilities, the Supervisor will remove the placement agency sheet from the Resource Manual and will notify the placement agency that it is no longer an active placement site.

B. Initiated by the Placement Agency.

Whenever a placement agency decides that the agency no longer wishes to be utilized as a placement site, the agency contact will notify the staff liaison, return all timecards, and provide the staff liaison with the reasons for the decision. The staff liaison will remove the placement agency sheet from the Resource Manual and will notify all Alternative Community Service Program staff that the agency is no longer an active placement site.

VI. AGREEMENT BETWEEN PLACEMENT AGENCY AND PROGRAM (to be given to the placement agency at the end of the initial site visit)

A. Purpose.

The purpose of this agreement is to formalize and enhance the working relationship between participating placement agencies and the Multnomah County Alternative Community Service Program.

B. Definitions.

According to the Oregon Revised Statutes, "community service" means uncompensated labor for an agency whose purpose is to enhance physical or mental stability, environmental quality or the social welfare. "Agency" means a nonprofit organization or public body agreeing to accept community service from offenders and to report on the progress of ordered community service to the court or its delegate.

C. Program description.

Program staff interview and screen convicted offenders who have been sentenced by judges to perform a specific number of hours of community service work. In cooperation with participating placement agencies, program staff assign Alternative Community Service workers to placement agencies to perform the required community service work by a specific deadline. Program staff monitor the progress of the Alternative Community Service worker and assist placement agencies in working with offenders. Based on information supplied by the placement agencies, program staff make periodic reports to judges, probation officers, and other members of the justice system.

D. Agency responsibilities.

1. The placement agency will designate a specific agency staff person who will act as the agency contact. The agency contact will be responsible for accepting or rejecting potential Alternative Community Service volunteers and will provide necessary information to the Alternative Community Service Program.
2. The placement agency will not discriminate in serving clients or in selecting volunteers on the basis of race, sex, age, marital status, religion, handicap, color, political affiliations, national origin or any other nonmerit factor.
3. The placement agency contact or his/her designee will interview the potential Alternative Community Service volunteer.
 - a. If the potential Alternative Community Service volunteer is accepted by the placement agency, the interviewer and the volunteer will establish work schedules and work assignments. The placement agency will provide reasonable training necessary for the successful completion of the work assigned to the volunteer.
 - b. If the potential Alternative Community Service volunteer is not accepted by the placement agency, the agency contact will notify the Alternative Community Service Program staff who made the referral and will explain why the client was rejected by the agency.
4. The placement agency will document the hours worked by the Alternative Community Service volunteers and will record that information on the Alternative Community Service timecards. The placement agency will maintain its own records of the hours worked by the Alternative Community Service volunteers. The placement agency will report the hours worked when the Alternative Community Service Program staff requests the information. When the Alternative Community Service volunteer's deadline has been reached, the placement agency will return the timecard to the Alternative Community Service Program.
5. The placement agency will report any supervision problems and physical injuries received by the volunteer to the Alternative Community Service Program staff. When an injury occurs, the placement agency will insure that proper medical care is provided and will notify the Alternative Community Service Program staff within one working day.
6. The placement agency will advise the Alternative Community Service Program staff liaison of any changes in the agency that would affect future use of the agency as a community service placement site.

7. If a placement agency is engaged in a special work project (of at least 24 hours duration) where additional Alternative Community Service volunteers are needed, the placement agency may request status as a "Special Project." In making the request, the agency contact will provide all necessary information to the staff liaison at least three (3) weeks before the starting date of the special work project.

E. Program responsibilities.

1. The Program Supervisor will assign a staff liaison to each placement agency. Each placement agency will be visited at least once a year by the staff liaison. The staff liaison will describe the Alternative Community Service Program to the agency contact and will gather necessary information about the placement agency.
2. The staff liaison will maintain Resource Manual placement agency information sheets and the Agency Resource Files in the Alternative Community Service Program office.
3. Whenever needed, the program staff will provide assistance to placement agencies to improve the agencies' utilization of Alternative Community Service volunteers and maintenance of information.
4. The Alternative Community Service Program will coordinate placement agency training sessions and provide resource information about working with offenders in a community setting.
5. The staff liaison will advise agency contacts of any changes in the Program that impact the placement agencies.
6. Program staff will assist placement agency personnel in resolving specific problems with individual Alternative Community Service volunteers.
7. Based on information provided by the Alternative Community Service volunteers and the placement agencies, program staff will assign appropriate Alternative Community Service volunteers to the placement agencies.

F. Agreement.

The undersigned representatives have read and accepted the provisions of the Agreement between _____ and Multnomah County Alternative Community Service Program.

Agency Contact

Date

Placement Specialist

Date

VII. GUIDELINES FOR SUPERVISING ACS WORKERS (to be given to the placement agency at the end of the initial site visit)

Thank you for accepting Alternative Community Service workers. We appreciate your participation in the Multnomah County Alternative Community Service Program. To assist you in your supervision of Alternative Community Service workers, we are offering these guidelines.

A. Alternative Community Service Workers.

Alternative Community Service (ACS) Workers are sentenced by judges to perform a specific number of hours of community service work after being convicted of a variety of offenses. Using information provided by the offender and the participating placement agencies, the Program staff screen ACS workers and then assign them to appropriate agencies. Some agency contacts prefer to know what offense was committed by the referred workers; others prefer not knowing. An agency contact is always free to ask program staff what the referred worker's offense was. Most ACS workers feel more comfortable when only the agency director and volunteer coordinator know about the offense. In making your agency's decision about who should know what about an ACS worker, please be discreet and strive for a balance between the need for adequate information and the desire to respect people's feelings.

B. Work schedule.

It is vital that the work schedule you set up with the ACS worker is one that is workable for both you and the worker and that allows the worker to complete by the required deadline. Once a schedule is established, be firm in expecting the community service worker to adhere to the schedule. In general, our minimum requirements are 6 - 8 hours of community service work per week if the worker is employed full-time and 16 hours of community service work per week if the worker is unemployed.

C. Supervision.

Many ACS workers have unsuccessful employment histories and lack time management and organizational skills. Therefore, close supervision is often necessary. ACS workers are most successful when they are given clear directions, are shown how to do a job and have a supervisor close at hand to give assistance. Also, since the supervisor is documenting the hours worked by the ACS worker, the supervisor needs to be in a position to know that the ACS worker did do the job.

D. Timecard.

We only require one piece of paperwork from you and it's an important piece -- the timecard. When the ACS worker first reports to you, he/she should give you the timecard. This timecard, along with the phone call you received from the ACS Program staff making the referral, is your assurance that the ACS worker has been screened by

the program staff and has been referred to you. If the worker doesn't have the timecard with him/her, ask him/her to get it or call the program staff for confirmation and a duplicate timecard.

You should keep the timecard and record the date and hours worked each time the worker comes in to do community service work. When the required hours have been completed or the deadline has been reached -- whichever happens first -- complete and return the timecard. Please keep a copy of the timecard and your own record of the worker's hours on file. This duplicate record is extremely important whenever there are questions about the work actually done by an ACS worker.

It is very important that the timecards are accurately maintained and are returned to the program staff in a timely manner. If program staff cannot ascertain hours worked by an ACS worker by a certain date, it could mean that the court would issue a bench warrant for the worker's arrest. Judges will be depending on the information you are providing.

E. Problems.

If a problem arises and you and the ACS worker cannot satisfactorily resolve the problem, please call the program staff who originally referred the worker to you. If a placement is not working out, please call the program staff who made the referral and explain the situation; other arrangements can then be made for the ACS worker.

F. Potential long-term volunteers.

Some of the ACS workers find their community service work rewarding and helpful and decide to continue on as volunteers after their community service work is completed. Whenever possible, do consider ACS workers as potential long-term volunteers.

VIII. GUIDELINES FOR SUPERVISING DISABLED ACS WORKERS (to be given to the placement agency at the end of the initial site visit)

Thank you for accepting Alternative Community Service workers. We appreciate your participation in the Multnomah County Alternative Community Service Program. From time to time we may ask you to accept Alternative Community Service (ACS) workers who have mental and/or physical disabilities. The following guidelines are offered to assist you in your supervision of these individuals.

A. Abilities.

When Alternative Community Service Program staff ask a participating placement agency to accept a physically or mentally disabled person, the program staff will describe to the agency liaison what the worker's disability is and any job-related limitations that the disability imposes upon the worker. When placed in a suitable job, most of these disabled workers are -- for all practical purposes -- not disabled. Matching the ability of the worker to the demands of

the job will make a placement much more successful. For example, a person doesn't have to hear to prepare food baskets or have an average I.Q. to sort and fold clothes.

B. Job analysis.

Analyze the job requirements and the skills necessary to do a good job. As part of the job training, allow the disabled ACS worker to observe another person doing the job. This will assist you and the worker in identifying the components of the task that must be done.

C. Accommodations.

Some accommodations of the work site or task may be needed to accommodate the needs of the disabled ACS worker. Discuss the situation with the worker and work together to make the necessary accommodations. For example, a person in a wheelchair may need to have a desk propped up on blocks; a visually-impaired person may need to work in a well-lit area; a person easily disturbed by stress may need to work in the least congested area available.

D. Communication.

As with any new worker, clear and accurate communication is essential in training and effectively utilizing disabled workers. Cooperation from the disabled worker's immediate supervisor is particularly important. Take the time to talk to the disabled worker about his/her skills and how those skills can be best utilized by the agency. If the placement still does not work out, explain the situation to the disabled worker and call the program staff to refer the disabled worker back to the Alternative Community Service Program for reassignment.

IX. **INSURANCE INFORMATION** (to be given to the placement agency at the end of the initial site visit)

Thank you for accepting Alternative Community Service workers. We appreciate your participation in the Multnomah County Alternative Community Service Program. You may have some specific questions regarding insurance coverage for Alternative Community Service workers. The following will give you information about our insurance coverage and guidelines about the limitations of the policy.

A. Coverage.

All Alternative Community Service (ACS) workers interviewed and placed by Alternative Community Service Program staff are medically insured by the Alternative Community Service Program while the ACS worker is performing the court ordered hours at the assigned placement site within the allocated time. This coverage is limited to medical expenses only -- the cost of emergency care and follow-up care resulting directly from an injury incurred while performing alternative community service hours.

B. Limitations.

The Alternative Community Service Program's insurance only covers those ACS workers who have been assigned by Alternative Community Service Program staff to your agency. It is vital that the staff liaison at the placement agency is certain that the ACS worker, who reports to the agency, was assigned to that agency before the ACS worker is allowed to begin working his/her hours. Verification of the placement can be obtained by a timecard, the client/program agreement, or by a phone call to the Alternative Community Service Program. If the placement agency chooses to allow an ACS worker to perform his/her hours at the agency, and the ACS worker was not sent by the Multnomah County Alternative Community Service Program, the agency will be responsible for insuring the ACS worker while he/she is performing his/her hours at that agency.

The Alternative Community Service Program staff will establish a deadline for the ACS worker to finish his/her court ordered hours. The ACS worker will then be insured by the Alternative Community Service Program until they finish the hours or the deadline is reached, whichever comes first. If you wish the ACS worker to finish his/her hours at your agency after the deadline has been reached, you must contact the Alternative Community Service Program staff who made the referral and make arrangements for the worker to have an extension.

Some ACS workers have physical limitations that require special placements where their present physical condition will not be aggravated by performing alternatives community service. It is essential that the ACS worker's limitation be taken into consideration when assigning him/her job tasks at your agency. According to the Oregon Revised Statutes alternative community service must be within "the offender's capabilities." Furthermore, our insurance will not cover injuries to pre-existing conditions. During the ACS worker's interview with the Alternative Community Service Program staff, the worker is asked about physical limitations, and in situations where severe physical limitations exist the ACS worker is required to bring documentation regarding his/her limitations. The ACS worker will then be assigned to an appropriate agency considering the ACS worker's limitations. For example: an ACS worker with back problems and a lifting limitation may be assigned to an agency where he/she can answer the phone or perform clerical functions.

C. Notification.

When an ACS worker is injured while performing alternative community service, the placement agency will:

- a. Insure that proper medical care is provided;
- b. Notify the Alternative Community Service Program staff within one working day of the injury; and

- c. In cases where the injury is major, write a summary of the accident which will include: (1) description of the accident, (2) names of witnesses, and (3) date, time, and location of the accident.

A copy of the report will be sent to the Alternative Community Service Program within one week after the occurrence of any major accident. Examples of major accidents are: someone requiring immediate transportation to the hospital; someone requiring the services of an ambulance, paramedic, or fire personnel; broken bones; and head injuries.

MULTNOMAH COUNTY ALTERNATIVE COMMUNITY SERVICE

CASELOAD MANAGEMENT

I. NO SHOWS

At sentencing, offenders are given a copy of their court order and instructed by the court to report to the Multnomah County Alternative Community Service Program office or the state probation intake office if the offender is given community service as a condition of a formal state probation. In direct referral cases a copy of the court order is sent by the sentencing court to the Alternative Community Service Program. In formal state and federal supervised cases a copy of the court order is sent to the Alternative Community Service Program by the supervising probation officer.

If an offender fails to contact the Program to arrange an interview within 30 days after the offender has been sentenced or referred to the Program, a Termination Notification will be sent to the sentencing judge or supervising probation officer.

When an offender fails to report to the Alternative Community Service Program for a scheduled interview, the court will be notified with a Failure to Report for Appointment form if the offender is not on formal probation. The sentencing judge may then issue a warrant, impose another sanction, or ask the Program to schedule a second and final interview with the offender. If the offender is given another chance by the sentencing judge but fails to contact the Program to arrange an interview within 10 days of the judge's request for another chance, a Termination Notification will be sent to the sentencing judge. If the offender is on formal probation, the supervising probation officer will be notified on the Community Service Update of the offender's failure to report and the offender will be given one final interview. If the offender fails to contact the Program to arrange an interview within 10 days of sending the Community Service Update, a Termination Notification will be sent to the supervising probation officer. If the offender is a courtesy referral and fails to report for the interview, only one subsequent interview will be scheduled.

II. MONITORING

Caseload monitoring is an essential part of caseload management. Timely contact by Alternative Community Service staff with placement agency supervisors or offenders can facilitate troubleshooting and reduce the possibility of scheduling conflicts or placement difficulties becoming major problems. The purpose of monitoring is to obtain regular updates on how the offender is doing and to allow the agency a chance to air concerns or share successes.

The ability of the Alternative Community Service staff to monitor the caseload and provide follow-up services is dependent upon the number of cases being supervised, the number of interviews conducted weekly, and the length of time a community service offender is in the program.

Minimal standards of monitoring are as follows:

A. Contact with the placement agency.

The Alternative Community Service staff should contact the placement agency within two weeks after the offender's completion date unless the completion date is the date the probation expires. In this situation verification of completion must be done at least two weeks prior to the date probation expires.

During site visits with the placement agency the Alternative Community Service staff should discuss the status of all offenders presently assigned to that agency site. The Alternative Community Service staff should train the placement agency supervisors to become comfortable contacting the Alternative Community Service staff whenever problems or concerns arise. Alternative Community Service staff should encourage the placement supervisor to contact the Program if the offender fails to show as scheduled, fails to report for his/her first work date, fails to complete the assignments/tasks adequately, or fails to conduct himself/herself in accordance with agency policies and the Alternative Community Service Agreement while at the placement site.

B. Request of the Court or Probation Officer.

Anytime the court or the supervising probation officer requires an update on the client the Alternative Community Service staff will treat these requests as high priority unless advised otherwise. The court may want to know how the offender is performing when determining whether to take formal court action, to grant extensions, or to allow conversion of the community service to another alternative.

The probation officer may require an update when he/she is formally advising the court of the offender's performance on probation, or when the offender has been re-arrested for a new crime, or when the offender has requested an alternative in lieu of the community service hours.

All conversations regarding an offender's performance on the Alternative Community Service Program will be documented in the client's file.

III. REASSIGNMENTS AND EXTENSIONS

Not everyone assigned to the Alternative Community Service Program comes in right away, reports to his/her placement as scheduled, and finishes his/her hours by his/her assigned deadline. Many offenders will require several placements, second interviews, extensions, and further

court action based upon their failure to comply with the community service condition. Supervision of these offenders, dealing with their daily placement problems, and managing the demands and needs of the caseload is the responsibility of the Alternative Community Service staff.

The following are possible actions that may be taken in the following situations:

A. When the offender has been assigned to a placement site but is not reporting as scheduled the Alternative Community Service staff should:

1. Contact the offender, review with the offender the expectations of the program, and remind the offender of his/her responsibilities; and/or
2. Contact the offender's probation officer and ask for the probation officer's assistance in "motivating" the offender to comply with the community service obligation; and/or
3. Contact the offender and reassign him/her to a new placement if there was a problem with the prior placement assignment; and/or
4. Require the offender to come in for a second interview, review with the offender the program's expectations and the offender's responsibilities, and complete a new Agreement with a new schedule, starting date and completion date if necessary; and/or
5. Return the case back to the court or to the probation officer for further court action.

B. When the offender was terminated by the placement or is requesting another placement assignment the Alternative Community Service staff should:

1. Determine why a new placement is needed, decide whether or not to reassign the offender, and, if appropriate, assign the offender to his/her final placement; or
2. Require the offender to come in for a second interview, review with the offender the program's expectations and the offender's responsibilities, and complete a new Agreement with a new schedule, starting date, and completion date, if necessary; or
3. Return the case back to the court or to the probation officer for further court action.

C. When the offender fails to complete the hours as ordered or scheduled the Alternative Community Service staff should:

1. Review the situation with the offender and determine if an extension is warranted and if the offender is capable of and willing to finish the hours if given more time. If the Alternative Community Service staff determines that an extension

is appropriate, the Alternative Community Service staff should (a) grant an extension based on the hourly requirements outlined in Chapter 2, Section IV.D., or (b) make a request for an extension to the probation officer or the sentencing judge if the offender has a judicial deadline.

2. Review the situation and if the Alternative Community Service staff determine that an extension is not warranted, the case should be referred back to the court or probation officer for further court action.

In some situations an offender will request an extension prior to reaching the due date. In these cases the Alternative Community Service staff should require the offender to complete some of the hours by the original due date before the Alternative Community Service staff considers an extension. If the offender fulfills that commitment an extension should be granted. If the offender fails to complete any additional hours by the due date the matter should be referred back to the court or probation officer for further action.

IV. ALTERNATIVE SENTENCES

When an offender is not willing to perform community service as ordered by the court, the Alternative Community Service staff will advise the court or the supervising probation officer. The Alternative Community Service Program staff will complete the Request for Alternative Sentence memo to the court and letter to the offender. Two copies of the request will be sent to the court or the supervising probation officer along with a copy of the letter to the client. A copy of the memo will remain in the client's file. A copy of the letter to the client will be sent or given to the client and a copy will remain in the file. Allow the client ten days to contact the court or his/her probation officer. Allow the court and the supervising probation officer thirty days to respond to the memo.

Some offenders will specifically request to pay a fine in lieu of their community service obligation. Alternative Community Service staff should not imply that the court will always substitute a fine in lieu of the community service hours. In some situations an offender is ordered to perform community service in lieu of incarceration, such as with SB 710/DUII cases, and a fine cannot be legally substituted. Alternative Community Service staff should also advise the offender that he/she may be required to reappear in court, if the court is to consider an alternative in lieu of the community service obligation, and that converting the community service to an alternative is a discretionary judicial decision. In some situations the court may be willing to sentence the offender to a sanction of his/her choice or the court may impose a less desirable alternative.

V. TERMINATIONS

Offenders participating in the Alternative Community Service Program will be terminated from the Program in one of the following ways:

A. When community service is a condition of a formal probation the Alternative Community Service staff will advise the supervising probation officer in writing when closing a file in any of the following situations:

1. Successful - the offender completes his/her hours; or
2. Successful plus - the offender completes extra hours, performs exceptionally, continues as a volunteer, and/or was hired by the placement; or
3. Successful with fine/jail - the offender completes some of the community service and pays a fine or serves a jail sentence in lieu of the balance of the hours; or
4. Pays a fine or serves a jail sentence - the offender has made arrangements to pay a fine or serve a jail sentence in lieu of the full community service obligation; or
5. Failure to report for placement interview - the offender fails to arrange a placement interview or complete the placement interview process; or
6. Unsuccessful - the offender fails to report to his/her assignment and complete any community service hours; or
7. Unsuccessful - the offender completes only part of the assigned hours; or
8. Judicial - the judge deletes, cancels, or suspends the community service obligation; or
9. Medical - the client is not medically able to perform community service or is deceased; or
10. Transfer - the offender is transferring to another jurisdiction and Multnomah County Alternative Community Service Program will no longer be supervising the case for the court.

Prior to closing any formal probation case unsuccessfully the supervising probation officer will be notified and be given thirty days in which to "motivate" his/her client, negotiate another placement or "chance," or review the case with the Alternative Community Service Program staff before the termination occurs. if no contact occurs within the thirty, the case will be closed.

B. When community service is a condition of a direct referral from the court the Alternative Community Service staff will advise the sentencing judge in writing when closing a file as outlined in Section V, Part A. 1 - 10.

C. When the Alternative Community Service Program is terminating a courtesy transfer the referring jurisdiction will be advised in writing when the Alternative Community Service staff closes the case.

The Alternative Community Service staff should advise the referring jurisdiction of the offender's performance while being supervised on community service, the number of hours completed, and the last day the offender worked.

If it is the offender's second failure with the Alternative Community Service Program, the court or supervising probation officer will be notified that the offender will not be accepted back in the program without approval from the Program Supervisor. Courtesy transfers will not be accepted for a "second chance."

In all cases a copy of the termination summary will be kept in the community service file.

VI. FILE MAINTENANCE

A file will be maintained for each community service referral. Each file should be kept in a secure location accessible to all program staff. Active files should be maintained by the supervising program staff and terminated cases will be maintained by the clerical support personnel. Closed files will be kept a minimum of three years after termination from the program. Computer printouts will be kept indefinitely.

JOB ANALYSIS

LOOK AT ENTIRE JOB

1. Request Received
2. Determine size of crew needed
3. Review the site for
 - a Slope
 - b Running Water
 - c Other life threatening conditions ETC
4. Determine tools required (NO POWER TOOLS)
5. Brief crew on how the job should be done
6. Make assignments and supervise work
7. As job progresses review decisions for changes needed
8. Make changes as needed
9. Supervise work

**** ** EXAMPLES ** ****

1. A 38-year old man, who suffered spinal injuries at a public pool, was awarded \$452,000 by a jury against the COUNTY OF LOS ANGELES.
2. A 22-year old man, with a fractured neck resulting from a swimming pool accident, receives a \$650,000 settlement from the COUNTY OF LOS ANGELES.
3. A Compton school district is liable for a \$1.1 million jury award to a severely injured police officer rear-ended by a school employee.
4. A \$2.1 million jury verdict (later reduced by 18.5% on the victim's contributory negligence) was awarded a family of an electrocuted boater against the boat manufacturer and Southern California Edison.
5. A \$2.1 million jury verdict against the CITY OF LOS ANGELES police department for treating a prisoner as if he were on drugs instead of being ill.
6. A \$3.9 million award to a quadriplegic man because Caltrans failed to re-stripe a section of a Pacific Coast highway directing motorists around a Malibu landslide.

FACILITY INSPECTION

INTRODUCTION --

The safe environment will exist only if hazards are discovered and corrected through regular and frequent inspections by administrators and supervisors.

HOW TO INSPECT ?

1. Inspections should be well planned in advance
2. Inspections should be systematic and thorough. No location that may contain a hazard should be overlooked.
3. Inspection reports should be clear and concise, but with sufficient explanation to make each recommendation for improvement understandable.

FOLLOW UP --

1. The current report should be compared with previous records to determine progress.
2. Each unsafe condition should be corrected as soon as possible.
3. A definite policy should be established in regard to taking materials and equipment out of service because of unsafe conditions.

PHYSICAL CONDITIONS--

1. Condition of stairways, aisles and floors ?
2. Condition of walls, windows, and ceiling ?
3. Illumination is safe, sufficient and well placed ?
4. Ventilation is adequate and proper for conditions ?
5. Fire extinguishers are of proper type, adequately supplied, properly located and maintained ?
6. Number and location of exits is adequate and properly identified ?
7. Proper procedures have been formulated for evacuations ?

HOUSEKEEPING--

1. General appearance as to orderliness ?
2. Materials are stored in an orderly and safe condition ?
3. Safety cans are provided for flammable liquids ?

EQUIPMENT--

1. All gears, moving belts, etc., are protected by permanent guards with openings no larger than one-half inch ?
2. All equipment control switches are easily available to the operator ?
3. Tools are kept sharp, clean and in safe working order

FACILITY INSPECTION

PAGE 2

ELECTRICAL--

1. Electrical outlets and circuits are properly wired and protected ?
2. All extension cords are three-wire grounded and are for temporary use only ?
3. All switches are enclosed ?

PERSONAL PROTECTION--

1. Goggles or protective shields are provided and required for all work where eye hazards exist ?
2. Proper respiratory protection is provided for dusty or atmospheric conditions such as when cutting weeds or spray painting ?
3. Proper footwear for each job is required ?

INSTRUCTIONS--

1. Talks on each different type of work must be given and documented ?

ACCIDENT REPORTS--

1. There is a written policy that all accidents must be reported ?
2. Each supervisor should look at their accidents and see how they can be prevented !

FIRST AID--

1. An adequately stocked first aid kit is provided to each work location ?
2. All personnel are trained in first aid and CPR ?

ADDITIONAL RESOURCES

Liability Issues in Community Service Sanctions. Rolando V. del Carmen, et al., 1986.
Legal Liabilities, Representations, and Indemnification of Probation and Parole Officers. Rolando V. del Carmen, et al., 1983. Both publications are available without charge from:

National Institute of Corrections
Information Center
1790 30th Street
Boulder, CO 80301
Phone (303) 444-1101

Am I Covered For...? A Guide to Insurance for Non-Profits. Mary L. Lai, et al., 1984. Available for \$11.50 from:

Consortium for Human Services, Inc.
P.O. Box 1183
San Jose, CA 95108
Phone (408) 297-0755

Community Service Liability Issues. Carlie Christensen, 1987. Technical assistance report to the National Community Service Sentencing Association. Included in *Proceedings of the 1987 National Community Service Symposium*. Available for \$15 from the National Community Service Sentencing Association (address on following page).

Guide to Risk Management for Non Profit Organizations, 1988. Publication #0559, available for \$22 from:

United Way of America
Sales Service Division
701 N. Fairfax
Alexandria, VA 22314-2045
Phone (703) 836-7100

Civil Liability in Criminal Justice. H.E. Barrieau 3d., 1986. A 105 page handbook on misconduct and negligence lawsuits against criminal justice agencies and individual practitioners with suggestions to minimize liability risks. Available for \$12.95 from:

Anderson Publishing Company
646 Main Street
Cincinnati, OH 45201
Phone (513) 421-4143

continued

Additional Resources
(continued)

All About OSHA and numerous safety publications including Job Hazard Analysis, Personal Protective Equipment, Hand & Power Tools, Excavating & Trenching Operations, Safety Standards for Scaffolds, and How to Prepare for Workplace Emergencies, are available from the Occupational Safety and Health Administration. Request a complete list of available publications and order form by writing:

OSHA Publications Distribution Office
US Department of Labor
200 Constitution Ave NW
Washington, DC 20210
Phone (202) 523-9667

Basic Risk Management Handbook for Local Governments, Pooling: An Introduction for Public Agencies, many other helpful publications and a Risk Watch information-sharing service are available from the Public Risk Insurance and Management Association. Contact:

PRIMA
1120 G St NW
Suite 400
Washington, DC 20005
Phone (202) 626-4650

Risk Management and Business Insurance, an introduction to the risk management process and basic business coverages, and other informational publications, are available from:

Insurance Information Institute
110 William Street
New York, NY 10038

For more information about community service sentencing and insurance/liability please contact:

National Community Service Sentencing Association
The Community Service Center
1368 Lincoln Avenue, Suite 108
San Rafael, CA 94901
Phone (415) 459-2234

additions or corrections to this guide are welcomed
and may be sent to the address above.

RESOLUTION NO. 79-47

RESOLUTION OF THE BOARD OF SUPERVISORS DESIGNATING AND AUTHORIZING CERTAIN VOLUNTEER EMPLOYEES AND MAKING PROVISION OF LABOR CODE APPLICABLE THERETO

WHEREAS, Section 3363.5 of the California Labor Code permits this Board to authorize and designate certain volunteer persons as eligible for Workers' Compensation in the event of injury, and

WHEREAS, services provided by the aforesaid volunteers are extremely valuable to the County of Marin;

NOW, THEREFORE, BE IT RESOLVED that those certain individuals who are providing voluntary services for the various departments of the County of Marin, and whose names appear on a roster of said departments, as being authorized volunteers, be and the same are designated and authorized by this Board to provide voluntary service without pay for the County of Marin;

BE IT FURTHER RESOLVED that the provisions of Section 3363.5 of the California Labor Code are hereby made applicable to such volunteers performing services for the County of Marin by this resolution.

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of Marin, State of California, held on the 13th day of February, 1979, by the following vote, to wit:

AYES: SUPERVISORS Bob Roumiguere, Gary Giacomini, Gail Wilhelm, Barbara Boxer, Denis J. Rice

NOES: SUPERVISORS -

ABSENT: SUPERVISORS -



CHAIRMAN OF THE BOARD OF SUPERVISORS

ATTEST:

BOARD OF SUPERVISORS OF THE COUNTY OF MARIN

RESOLUTION NO. 83-322

AMENDMENT TO BOARD OF SUPERVISORS
OF THE COUNTY OF MARIN
RESOLUTION No. 79-47

The Board of Supervisors does hereby resolve as follows:

WHEREAS, the Board of Supervisors of the County of Marin adopted Resolution No. 79-47 on the 13th day of February, 1979 and

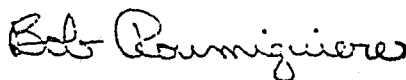
WHEREAS, there exists a current need to amend Resolution No. 79-47;

NOW, THEREFORE, BE IT RESOLVED that Resolution No. 79-47 be amended to add to Workers' Compensation coverage all persons assigned to Alternative Sentence Programs as ordered by the Court or Selected by the Probation Department;

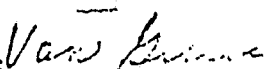
BE IT FURTHER RESOLVED that in all other respects Resolution No. 79-47 shall be in full force and effect.

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors held this 2nd day of August, 1983, by the following vote:

AYES: SUPERVISORS Bob Stockwell, Gary Giacomini, Harold Brown, Al Aramburu,
Bob Roumiguere
NOES: none
ABSENT: none



Chairman of the Board of Supervisors

ATTEST: 
Clerk





MARION COUNTY

Department of Community Corrections

Appendix F

BILLY F. WASSON
Director

Senator Building • 220 High Street NE • Salem, Oregon 97301-3670
(503) 588-5289/378-4605

Marion County Insurance Information

As a method of reducing government costs, Marion County initiated a self-insurance program in July of 1978. Prior to this date, the aggregate cost to County taxpayers for insurance premiums was considerable. Since the implementation of the self-insurance program, a net reduction of insurance costs has been realized. This program has been administered by Marion County's Risk Management Department under the guidance of the Risk Management Committee in conjunction with Fred S. James and Co. of Oregon, our Agent of Record.

As far as Community Service Volunteers are concerned:

The County carries a workers' compensation and employer's liability policy with limits of \$5,000,000 per occurrence and a self-insured retention of \$150,000 per occurrence. Coverage applies to the benefits provided by the Oregon Workers' Compensation Law and the liability exposures contemplated by the employer's liability coverage form. Again, for all claims which fall within the \$150,000 self-insured retention, the County is responsible for the claim as well as all investigative and loss expenses.

The County has reviewed the situation concerning volunteers who may be working for and on behalf of the County. At the present time, the County has elected to add the volunteers under their general liability insurance program as additional insureds. The County does not maintain any type of workers' compensation, medical or dental insurance, retirement, or any other incidents of regular employment. In addition, certain high risk departments have the option to include their volunteers if they feel the exposure is serious enough and they have the funds necessary to cover workers' compensation premiums (which we pay).

Excess policies carried by Marion County include:

- \$300,000 deductible with excess carried by SAIF Corp. on workers' comp.
- \$500,000 deductible liability with excess carried by Agriculture Excess and Surplus

Community Service completion hours are submitted to Risk Management on a quarterly basis. Risk Management then assesses the expenses, and then submits the amount of money necessary to pay for the coverage for the workers over the last quarter.

5-25-84 jms



United Way ... *people helping people*
OF NORTHERN NEVADA



April 29, 1986

United Way Voluntary Action Center's Adult Alternative Sentencing Program is currently requesting that all agencies accepting court placements through this office add the 6602 certification to their SIIS. This involves no added expense above the \$1.66 you are now paying toward insurance for each placement. In order to ensure coverage, it is important that this be done promptly.

We will be requesting a copy of the certificate of insurance for each of you from the SIIS Underwriting Services, and it must show the 6602 classification.

Please see the attached letter for further information.

Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Kris Marriott".

Kris Marriott
Alternative Sentencing Program/
Voluntary Action Center

KM:bd

Encl.

SERVING NORTHERN NEVADA AND LAKE TAHOE

P.O. Box 2730 - 500 Ryland Street - Reno, Nevada 89505-2730, (702) 322-8668

BILL McGOVERN, President; LYNN ATCHESON, Vice President; CLARK J. GUILD, JR., Campaign Chairman; C.H. CLIPPER, Executive Director

FUND RAISING BUDGETING PUBLIC INFORMATION PLANNING

616.082 "Employee": Persons ordered to work by court. Any person:

1. Less than 18 years of age who is subject to the jurisdiction of the juvenile division of the district court and who has been ordered by the

court to work for a community, upon compliance by the supervising authority; or

2. Eighteen years of age or older who has been ordered by any court to perform work for a community pursuant to NRS 176.087, upon compliance by the convicted person or the supervising authority, while engaged in that work, shall be deemed, for the purpose of this chapter, an employee of the supervising authority at a wage of \$50 per month, and is entitled to the benefits of this chapter.

(Added to NRS by 1971, 249; A 1973, 1580; 1981, 487; 1985, 576)

6602

THE COST PER EMPLOYEE WILL BE ¢.85 PER MONTH



STATE INDUSTRIAL INSURANCE SYSTEM

4600 Kietzke Lane
Building K, Suite 200
P.O. Box 10950
Reno, Nevada 89510

4-24-86

United Way of Northern Nevada
Attn: Chris Marriott
P O Box 2730
Reno, Nevada 89505

Re: Placement of Court Appointees

Dear Chris,

Regarding our telephone call on court appointees. As we discussed, it is very important that before placing an individual with an employer you advise the employer that he must contact SIIS Underwriting Dept. to have the classification 6602 Court Appointees @ 50.00 per month, added to his account. The employer is responsible for reporting a deemed wage of \$50.00 per individual each month for Worker Comp. Coverage. After that person has done so then you must request from Underwriting Services 885-5212 a Certificate of Insurance on that employer issued to United Way of Northern Nevada.

Once you receive that certificate you will then know that the employer has coverage for these individuals. Classification 6602 is being added to United Way of Northern Nevada Account 10825.0, as a precautionary measure in the event one of these employers does not have proper coverage. In that instance the United Way of Northern Nevada would be responsible for coverage and premium on these individuals.

If you have any questions please call me at 702-789-0355.
Thank You.

Sincerely,

A handwritten signature in cursive script that reads "Judy McGuire-Carlson".
Judy McGuire-Carlson
SIIS Field Representative

JOHN SPELLMAN
Governor

STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES
General Administration Building • Olympia Washington 98504

Director

SMALL BUSINESS ECONOMIC IMPACT STATEMENT

The Department of Labor and Industries, Division of Industrial Insurance, is proposing to amend two sections of Chapter 296-17 WAC, Manual of Rules, Classifications, Rates and Rating System for Washington Workers' Compensation Insurance.

The proposed amended rules will only affect counties, cities and towns and will have no direct economic impact on other employers.

AMEND WAC 296-17-765: Classification 72-3

This rule will change the classification phraseology to reflect the provisions of SSB 4334 which was signed into law by the Governor effective February 21, 1984. The new law provides elective coverage for offenders performing community service work pursuant to court order or under the provisions of Chapter 13.40 RCW at the option of any county, city or town. Previously the law provided such election of coverage only to counties.

AMEND WAC 296-17-895: Industrial Insurance Accident Fund Base Rates and Medical Aid Rates by Class of Industry

This rule provides for an accident fund rate for classification 72-3 (Community Service Workers). Prior to the enactment of SSB 4334 only medical aid coverage was provided to juvenile offenders performing community service work at the option of any county. With the enactment of SSB 4334 into law effective February 21, 1984, coverage was extended to all offenders performing community service work at the option of the county, city or town and provided the worker with all the benefits under Title 51, including time-loss benefits, as opposed to medical benefits only.

NOTICE OF INTENTION TO ADOPT, AMEND, OR REPEAL RULES

(Instructions for completion on back of page)
(Additional information may be typed on back of page)

(1) Notice is hereby given in accordance with the provisions of RCW 34.04.025
that the Department of Labor and Industries
(name of agency)

intends to adopt, amend, or repeal rules concerning:
Amending WAC 296-17-765 (classification 72-3) and WAC 296-17-895 (Industrial
Insurance Accident Fund Base Rates and Medical Aid Rates by Class of Industry).
These amendments provide for changes contained in SSB 4334 extending elective
coverage for all offenders performing community service work pursuant to court
order or under the provisions of Chapter 13.40 RCW at the option of any county,
city or town and providing an accident fund rate for classification 72-3.

(HEARING DATE AND PLACE)

(2) (Use only if hearing is to be held) that the agency will at
1:30 P.M. Tuesday May 22, 1984
(time) (day) (date)
in the Director's Conference Room, General Administration Building (3rd Floor)
Olympia, Washington (place)
conduct a public hearing on the proposed rules.

(3) (a) [X] The adoption, amendment, or repeal of the rules will take place immediately following the hearing.
OR
(b) [] The formal decision regarding adoption, amendment, or repeal of the rules will take place
on (date)

(4) (a) The authority under which these rules are proposed is: RCW 51.04.020 (1)

(b) The specific statute these rules are intended to implement is: RCW 51.16.100, Changes in
Classification

(5) Interested persons may submit data, views, or arguments to this agency in writing to be received by
this agency before 5 P.M., May 21, 1984
(date)

(6) The additional notice required by RCW 34.04.025 has been made by (a) mailing copies of this notice to all
persons who have made timely request of this agency for advance notice of its rule-making proceedings, and (b) filing
copies of this notice with the the rules review committee.

(7) This notice is connected to and continues the matter in Notice No(s). WSR
filed with the code reviser's office on (date)

Department of Labor and Industries

(AGENCY)
Dated: 4/13/84
By: Sam Rault
Director
(TITLE)

STATE OF WASHINGTON
FILED
APR 13 1984
CODE REVISER'S OFFICE
WSR 84-09-035
NOTICE #

(Do not write in this space)

N.B. These proceedings may require additional notice pursuant to the Open Public Meetings Act of 1971; consult
chapter 42.30 RCW.

1 AN ACT in relation to public and community service for 67
2 offenders. 68

3 Be it enacted by the People of the State of Illinois, 72
4 represented in the General Assembly:

5 Section 1. Sections 3-2, 3-8, 4-7 and 5-3 of the 74
6 "Juvenile Court Act", approved August 5, 1965, as amended, 75
7 are amended and Sections 1-15.1, 1-15.2, 1-22 and 1-23 are 76
8 added thereto, the added and amended Sections to read as 77
9 follows:

(Ch. 37, new par. 701-15.1) 79

10 Sec. 1-15.1. Public or Community Service. "Public or 81
11 Community Service" means uncompensated labor for a non-profit 82
12 organization or public body whose purpose is to enhance 83
13 physical, or mental stability, environmental quality or the 84
14 social welfare and which agrees to accept public or community 85
15 service from offenders and to report on the progress of the 86
16 public or community service to the Court.

(Ch. 37, new par. 701-15.2) 88

17 Sec. 1-15.2. "Site" means non-profit organization or 90
18 public body agreeing to accept community service from 91
19 offenders and to report on the progress of ordered public or 92
20 community service to the Court or its delegate.

(Ch. 37, new par. 701-22) 94

21 Sec. 1-22. Neither the State, any unit of local 96
22 government, probation department, public or community service 97
23 program or site, nor any official or employee thereof acting 98
24 in the course of their official duties shall be liable for 99
25 any injury or loss a person might receive while performing 100
26 public or community service as ordered by the Court, nor
27 shall they be liable for any tortious acts of any person 101
28 performing public or community service, except for wilful, 102
29 wanton misconduct or gross negligence on the part of such 103
30 governmental unit, official or employee.

Clerk of the House

John J. Brien

Originated in the House of Representatives

PUBLIC ACT 85-449

[Signature]

AN ACT

S.F. No. 231
CHAPTER No.242

Appendix 4

1

2 relating to criminal justice; permitting certain
3 individuals to make claims against the state;
4 clarifying the procedure for making certain claims
5 against the state; providing limitations on the
6 payment of claims; placing restrictions on places
7 where work in restitution or community service may be
8 performed; amending Minnesota Statutes 1984, sections
9 3.739, subdivisions 1, 2, and 2a; and 609.135,
10 subdivision 1.

11

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

13 Section 1. Minnesota Statutes 1984, section 3.739,
14 subdivision 1, is amended to read:

15 Subdivision 1. [PERMISSIBLE CLAIMS.] Claims and demands
16 arising out of the circumstances described in this subdivision
17 shall be presented to, heard, and determined as provided in
18 subdivision 2:

19 (1) An injury to or death of an inmate of a state,
20 regional, or local correctional facility or county jail who has
21 been conditionally released and ordered to perform uncompensated
22 work for a state agency, a political subdivision or public
23 corporation of this state, a nonprofit educational, medical, or
24 social service agency, or a private business or individual, as a
25 condition of his release, while performing the work;

26 (2) An injury to or death of a person sentenced by a court,
27 granted a suspended sentence by a court, or subject to a court
28 disposition order, and who, pursuant to court order, is

1 performing work (a) in restitution, (b) in lieu of or to work
2 off fines or court ordered costs, (c) in lieu of incarceration,
3 or (d) as a term or condition of a sentence, suspended sentence,
4 or disposition order, while performing the work; or

5 (3) An injury to or death of a person, who has been
6 diverted from the court system and who is performing work as
7 described in paragraph (1) or (2) pursuant to a written
8 agreement signed by himself, and if a juvenile, by his parent or
9 guardian; or

10 (4) An injury to or death of any person caused by an
11 individual who was performing work as described in paragraph
12 (1), (2), or (3).

13 Sec. 2. Minnesota Statutes 1984, section 3.739,
14 subdivision 2, is amended to read:

15 Subd. 2. [EVALUATION AND PAYMENT OF CLAIMS.] Claims not to
16 exceed \$500 arising out of this section shall be investigated by
17 the state or local agency responsible for supervising the work
18 to determine if the claim is valid and if the loss is covered by
19 the claimant's insurance. The investigating agency shall submit
20 all appropriate claims to the department of corrections. The
21 department shall pay the portion of any approved claim that is
22 not covered by the claimant's insurance within a reasonable
23 period of time. On or before the first day of each legislative
24 session, the department shall submit to the appropriate
25 committees of the senate and the house of representatives a list
26 of the claims paid by it during the preceding calendar year, and
27 shall be reimbursed pursuant to legislative appropriation for
28 the claims paid. For the purposes of this paragraph, in the
29 case of a juvenile claimant the term "claimant's insurance"
30 includes the insurance policy of the juvenile's parents if the
31 juvenile is covered by the policy.

32 Any claim in excess of \$500, and any claim that was not
33 paid by the department may be presented to, heard, and
34 determined by the appropriate committees of the senate and the
35 house of representatives and, if approved, shall be paid
36 pursuant to legislative claims procedure.

1 No juvenile claimant receiving payment pursuant to this
2 section may be identified by name either in the list of
3 claimants submitted by the department or in the legislative
4 appropriation.

5 Sec. 3. Minnesota Statutes 1984, section 3.739,
6 subdivision 2a, is amended to read:

7 Subd. 2a. [LIMITATIONS.] Compensation paid under this
8 section is limited to reimbursement for medical expenses and
9 compensation for permanent total or partial disability or
10 death. No compensation shall be paid pursuant to this section
11 for pain and suffering. Payments made pursuant to this section
12 shall be reduced by any proceeds received by the claimant from
13 any insurance policy covering the loss. For the purposes of
14 this section, "insurance policy" does not include the medical
15 assistance program authorized under chapter 256B, or the general
16 assistance medical care program authorized under chapter 256D.

17 Sec. 4. Minnesota Statutes 1984, section 609.135,
18 subdivision 1, is amended to read:

19 Subdivision 1. [TERMS AND CONDITIONS.] Except when a
20 sentence of life imprisonment is required by law, or when a
21 mandatory minimum term of imprisonment is required by section
22 609.11, any court may stay imposition or execution of sentence
23 and (a) may order noninstitutional sanctions without placing the
24 defendant on probation, or (b) may place the defendant on
25 probation with or without supervision and on the terms the court
26 prescribes, including noninstitutional sanctions when
27 practicable. The court may order the supervision to be under
28 the probation officer of the court, or, if there is none and the
29 conviction is for a felony or gross misdemeanor, by the
30 commissioner of corrections, or in any case by some other
31 suitable and consenting person. No noninstitutional sanction
32 may be ordered performed at a location that fails to observe
33 applicable requirements or standards of chapter 181A or 182, or
34 any rule promulgated under them. For purposes of this
35 subdivision, subdivision 6, and section 609.14, the term
36 "noninstitutional sanctions" includes but is not limited to

1 restitution, community work service, and work in lieu of or to
2 work off fines.
3 A court may not stay the revocation of the driver's license
4 of a person convicted of violating the provisions of section
5 169.121.

(Substitute Senate Bill No. 366)

AN ACT

To enact section 2305.38 of the Revised Code to confer qualified immunities from civil liability in tort upon uncompensated volunteers of nonprofit charitable organizations.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That section 2305.38 of the Revised Code be enacted to read as follows:

Sec. 2305.38. (A) AS USED IN THIS SECTION:

(1) "CHARITABLE ORGANIZATION" MEANS EITHER OF THE FOLLOWING:

(a) ANY NONHOSPITAL, CHARITABLE NONPROFIT CORPORATION THAT IS ORGANIZED AND OPERATED PURSUANT TO CHAPTER 1702. OF THE REVISED CODE, INCLUDING, BUT NOT LIMITED TO, ANY SUCH CORPORATION WHOSE ARTICLES OF INCORPORATION SPECIFY THAT IS ORGANIZED AND TO BE OPERATED FOR AN EDUCATION-RELATED PURPOSE;

(b) ANY NONHOSPITAL, CHARITABLE ASSOCIATION, GROUP, INSTITUTION, OR SOCIETY THAT IS NOT ORGANIZED AND NOT OPERATED FOR PROFIT, INCLUDING, BUT NOT LIMITED TO, ANY SUCH ASSOCIATION, GROUP, INSTITUTION, OR SOCIETY THAT IS ORGANIZED AND OPERATED FOR ANY EDUCATION-RELATED PURPOSE.

(2) "COMPENSATION" DOES NOT INCLUDE ACTUAL AND NECESSARY EXPENSES THAT ARE INCURRED BY A VOLUNTEER IN CONNECTION WITH THE SERVICES THAT HE PERFORMS FOR A CHARITABLE ORGANIZATION, AND THAT ARE REIMBURSED TO THE VOLUNTEER OR OTHERWISE PAID.

(3) "CORPORATE SERVICES" MEANS SERVICES THAT ARE PERFORMED BY A VOLUNTEER WHO IS ASSOCIATED WITH A CHARITABLE ORGANIZATION AS DEFINED IN DIVISION (A)(1)(a) OF THIS SECTION AND

THAT REFLECT DUTIES OR RESPONSIBILITIES ARISING UNDER CHAPTER 1702. OF THE REVISED CODE.

(4) "SUPERVISORY SERVICES" MEANS SERVICES THAT ARE PERFORMED BY A VOLUNTEER WHO IS ASSOCIATED WITH A CHARITABLE ORGANIZATION AS DEFINED IN DIVISION (A)(1)(a) OR (b) OF THIS SECTION AND THAT INVOLVE DUTIES AND RESPONSIBILITIES IN CONNECTION WITH THE SUPERVISION OF ONE OR MORE OFFICERS, EMPLOYEES, TRUSTEES, OR OTHER VOLUNTEERS OF THAT CHARITABLE ORGANIZATION.

(5) "VOLUNTEER" MEANS AN OFFICER, TRUSTEE, OR OTHER PERSON WHO PERFORMS SERVICES FOR A CHARITABLE ORGANIZATION BUT DOES NOT RECEIVE COMPENSATION, EITHER DIRECTLY OR INDIRECTLY, FOR THOSE SERVICES.

(B) A VOLUNTEER IS NOT LIABLE IN DAMAGES IN A CIVIL ACTION FOR INJURY, DEATH, OR LOSS TO PERSONS OR PROPERTY THAT ARISES FROM THE ACTIONS OR OMISSIONS OF ANY OF THE OFFICERS, EMPLOYEES, TRUSTEES, OR OTHER VOLUNTEERS OF THE CHARITABLE ORGANIZATION FOR WHICH HE PERFORMS SERVICES, UNLESS EITHER OF THE FOLLOWING APPLIES:

(1) OF AN ACTION OR OMISSION OF A PARTICULAR OFFICER, EMPLOYEE, TRUSTEE, OR OTHER VOLUNTEER, THE VOLUNTEER AUTHORIZES, APPROVES, OR OTHERWISE ACTIVELY PARTICIPATES IN THAT ACTION OR OMISSION;

(2) AFTER AN ACTION OR OMISSION OF A PARTICULAR OFFICER, EMPLOYEE, TRUSTEE, OR OTHER VOLUNTEER, THE VOLUNTEER, WITH FULL KNOWLEDGE OF THAT ACTION OR OMISSION, RATIFIES IT.

(C) A VOLUNTEER IS NOT LIABLE IN DAMAGES IN A CIVIL ACTION FOR INJURY, DEATH, OR LOSS TO PERSONS OR PROPERTY THAT ARISES FROM HIS ACTIONS OR OMISSIONS IN CONNECTION WITH ANY SUPERVISORY OR CORPORATE SERVICES THAT HE PERFORMS FOR THE CHARITABLE ORGANIZATION, UNLESS EITHER OF THE FOLLOWING APPLIES:

(1) AN ACTION OR OMISSION OF THE VOLUNTEER INVOLVES CONDUCT AS DESCRIBED IN DIVISION (B)(1) OR (2) OF THIS SECTION;

(2) AN ACTION OR OMISSION OF THE VOLUNTEER CONSTITUTES WILLFUL OR WANTON MISCONDUCT OR INTENTIONALLY TORTIOUS CONDUCT.

(D) A VOLUNTEER IS NOT LIABLE IN DAMAGES IN A CIVIL ACTION FOR INJURY, DEATH, OR LOSS TO PER-

SONS OR PROPERTY THAT ARISES FROM HIS ACTIONS OR OMISSIONS IN CONNECTION WITH ANY NON-SUPERVISORY OR NONCORPORATE SERVICES THAT HE PERFORMS FOR THE CHARITABLE ORGANIZATION, UNLESS EITHER OF THE FOLLOWING APPLIES:

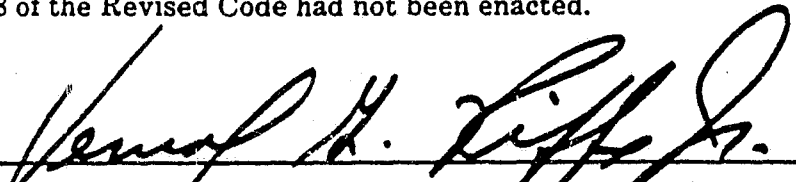
(1) AN ACTION OR OMISSION OF THE VOLUNTEER INVOLVES CONDUCT AS DESCRIBED IN DIVISION (B)(1) OR (2) OF THIS SECTION;


(2) AN ACTION OR OMISSION OF THE VOLUNTEER CONSTITUTES NEGLIGENCE, WILLFUL OR WANTON MISCONDUCT, OR INTENTIONALLY TORTIOUS CONDUCT.

(E)(1) THIS SECTION DOES NOT CREATE, AND SHALL NOT BE CONSTRUED AS CREATING, A NEW CAUSE OF ACTION OR SUBSTANTIVE LEGAL RIGHT AGAINST A VOLUNTEER.

(2) THIS SECTION DOES NOT AFFECT, AND SHALL NOT BE CONSTRUED AS AFFECTING, ANY IMMUNITIES FROM CIVIL LIABILITY OR DEFENSES ESTABLISHED BY ANOTHER SECTION OF THE REVISED CODE OR AVAILABLE AT COMMON LAW, TO WHICH A VOLUNTEER MAY BE ENTITLED UNDER CIRCUMSTANCES NOT COVERED BY THIS SECTION.

SECTION 2. Section 2305.38 of the Revised Code, as enacted by this act, shall apply only to causes of action against volunteers of charitable organizations for injury, death, or loss to persons or property that arise on or after the effective date of this act. With respect to causes of action against volunteers of charitable organizations for injury, death, or loss to persons or property that arose prior to the effective date of this act and that have not been barred by a statute of limitations, the liability or immunity from liability of such a volunteer, and defenses available to such a volunteer, shall be determined as if section 2305.38 of the Revised Code had not been enacted.


Speaker _____ of the House of Representatives.


President _____ of the Senate.

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- 1 del Carmen, Rolando V. and Trook-White, Eve. Liability Issues in Community Service Sanctions. National Institute of Corrections, 1986*.
- 2 Christensen, Carlie. Community Service Liability Issues, technical assistance report to the National Community Service Sentencing Association, TA #87-R156*. National Institute of Corrections, November 2-3, 1987.
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- 4 California League of Alternative Service Programs. Insurance Survey Findings. Summer 1984*.
- 5 Chapman, Terry S., Lai, Mary L., and Steinbock, Elmer L. Am I Covered For...? A Guide to Insurance for Non-Profits. Consortium for Human Services, 1984*.
- 6 del Carmen, Rolando V. and Veneziano, C. Legal Liabilities, Representations, and Indemnifications of Probation and Parole Officers. University of San Francisco, 1983*.
- 7 Murphey, Martha M. Judicial Immunity and Indemnification of State Officers and Employees. National Center for State Courts, 1983.
- 8 "Federal Limited Liability Bill Is Introduced But May Not Be the Answer for D&O." First Trust Newsletter, Vol. 7, No. 1, March 1987.

*for information on availability, see Appendix D, Additional Resources.

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