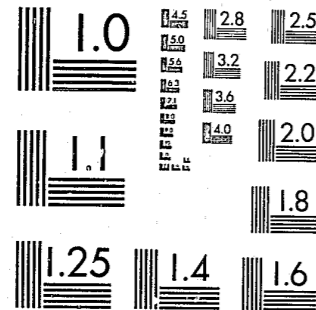


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LIABILITY IN COMMUNITY CORRECTIONS PROGRAMS

NCJRS

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Virginia Department of Criminal Justice Services

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LIABILITY IN COMMUNITY CORRECTIONS PROGRAMS

Community corrections programs are proving to be a very successful alternative to incarceration in Virginia. The costs for maintaining an offender in a community program are significantly lower than the costs for incarcerating that same offender in a state facility. As these community programs expand, a concern has arisen for the liabilities involved. Unfortunately, there is no clear-cut solution because of the absence of any specific litigation in this area. Nevertheless, there are several potential liabilities and alternative means of protection to be considered by those responsible for such programs.

Clearly the best protection for any of these programs is the exercise of caution in the selection of participating offenders and the type of community service tasks to which they are assigned. Additionally, insurance protection can be purchased to cover those instances which do not involve intentional torts. In this context, it is important to note that many localities with similar programs in other states have explored the insurance resources available and have deliberately chosen to remain self-insured or uninsured. The purpose of this pamphlet is to serve as a guide to the various liabilities which can conceivably, but may not necessarily, arise and to enumerate the insurance alternatives available.

To determine which kinds of insurance are appropriate for your particular program, you must first decide into which of the five categories below your program falls. Once you have done so, it is critical that you discuss the alternatives available with your local city or county attorney and present insurance carrier if you currently have a policy. If, after doing so, you choose to obtain insurance coverage, you will most likely receive the best rates from insurance companies and agents already providing insurance for the other activities of your agency or locality. If your agency or locality should already have the type of insurance necessary, it is strongly suggested that your present insurer have specific knowledge of your participation in the community corrections program.

Where the locality coordinating the community service program has assigned the offender to perform service with or for a nonprofit organization, it is advisable that the locality include in its contract with the nonprofit organization a clause holding the locality "harmless from all claims, suits, and liabilities caused by or resulting from the performance of the offenders" as well as a clause requiring the organization itself to obtain adequate insurance protection. In addition, a Certificate of Insurance should be provided by the local agency allowing thirty (30) days notice of cancellation or non-renewal.

CATEGORIES OF COMMUNITY CORRECTIONS PROGRAMS

I. If your program is one where the offender is not on probation and the offender's only responsibility is to perform certain community services for a local unit of government or for a nonprofit organization, the following liabilities and means for protection exist:

A. In the instance where the offender is injured while performing the community service work, there are two options to consider.

(1) The local unit of government or nonprofit organization may obtain an Accidental Injury Insurance Policy to provide the necessary protection.

(2) If the local unit of government or nonprofit organization has Workers' Compensation Insurance for its employees, the insurer may be requested to extend that coverage to include offenders performing in a community service capacity. If not, the local unit of government or nonprofit organization may obtain a Worker's Compensation Insurance Policy for the single purpose of providing coverage for offenders performing community services.¹

¹ In some states Workers' Compensation Insurance includes the offender as employee; in others it does not. In Virginia there are conflicting views on this issue. The Attorney General of Virginia has ruled in a particular case that criminal defendants who perform services pursuant to a diversionary program for a nonprofit or governmental entity without remuneration are not employees as defined in the Workers' Compensation Act. However, opinions by the Attorney General are advisory only. (See Virginia Code § 2.1-118.) The final authority on such matters is the State Industrial Commission, which has exclusive jurisdiction of "all questions arising under the Workers' Compensation Act." (See Virginia Code § 65.1-90).

- B. To protect itself from third party tort liability claims arising from tortious or criminal acts committed by an offender while performing his community services work, the local unit of government or nonprofit organization supervising the offender may obtain a Comprehensive General Liability Insurance Policy.

II. If your program is one where the offender is placed on probation and, in addition, required to perform certain community services for a local unit of government or nonprofit organization, the following liabilities and means for protection exist:

- A. Where the offender is injured while performing the community service work, the local unit of government or nonprofit organization may obtain an Accidental Injury Insurance Policy to provide the necessary protection.
- B. To provide protection from third party tort liability claims arising from tortious acts committed by an offender while performing his community service work, the local unit of government or nonprofit organization may obtain a Comprehensive General Liability Insurance Policy.

- C. To provide protection from third party tort liability claims arising from criminal acts committed by an offender while performing his community service work, there are two kinds of liability and protection to consider:

(1) The local unit of government or nonprofit organization supervising the offender may obtain a Comprehensive General Liability Insurance Policy.

(2) If the probation function is administered locally, rather than by the state, the local unit of government may purchase an Errors and Omissions Insurance Policy to cover liability for the professional errors of judgment of its probation officers. If the probation function is administered by the state, the Compass Insurance Company Liability Policy effective July 1, 1982 for state employees provides professional errors and omissions coverage for state employees providing probation services.

III. If your program is one where the offender is placed on probation, conditional or unconditional, there is one protection to consider: to provide protection from third party tort liability claims arising from criminal

acts committed by the offender while on probation.

- ° If the probation function is administered locally, rather than by the state, the local unit of government may purchase an Errors and Omissions Insurance Policy to cover liability for the professional errors of judgment of its probation officers. If the probation function is administered by the state, the Compass Insurance Company Liability Policy effective July 1, 1982 for state employees provides professional errors and omissions coverage for state employees providing probation services.

IV. If your program is one developed in accordance with the Community Diversion Incentive Act and, therefore, may involve restitution, community services, and probation, the following liabilities and means for protection exist:

- A. Where the offender is injured while performing community service work, there are the same two options available as set forth in paragraph I.A. (1) - (2) above.
- B. To provide protection from third party tort liability claims arising from tortious acts committed by an offender while performing his community service work, the local unit of government or nonprofit organization may obtain a Comprehensive General Liability Insurance Policy.

C. To provide protection from third party tort liability claims arising from criminal acts committed by an offender, there are four kinds of liability and protection to consider:

- (1) The local unit of government or nonprofit organization supervising the offender may obtain a Comprehensive General Liability Insurance Policy.
- (2) If the probation function is administered locally, rather than by the state, the local unit of government may purchase an Errors and Omissions Insurance Policy to cover liability for the professional errors of judgment of its probation officers. If the probation function is administered by the state, the Compass Insurance Company Liability Policy effective July 1, 1982 for state employees provides professional errors and omissions coverage for state employees providing probation services.
- (3) The locality involved may purchase an Errors and Omissions Policy to cover liability for the professional errors of judgment of its local coordinator for the community diversion incentive program and the members of the community corrections resources board.

- (4) The locality may obtain an endorsement to its existing Comprehensive General Liability Policy which extends that coverage to include the members of the community corrections resources board and the local coordinator for the community diversion incentive program.

V. If your program is one developed in accordance with the Community Diversion Incentive Act and may involve residential placement in a local facility, as well as restitution, community service, and probation, the following liabilities and means for protection exist:

- A. Where the offender is injured while performing community service work, there are the same two options available as set forth in paragraph I. A. (1) - (2) above.
- B. To provide protection from third party tort liability claims arising from tortious acts committed by an offender while performing his community service work, the local unit of government or nonprofit organization may obtain a Comprehensive General Liability Insurance Policy.
- C. To provide protection from third party tort liability claims arising from criminal acts committed by an offender,

there are four kinds of liability and protection to consider:

- (1) The local unit of government or nonprofit organization supervising the offender may obtain a Comprehensive General Liability Insurance Policy.
- (2) If the probation function is administered locally, rather than by the state, the local unit of government may purchase an Errors and Omissions Insurance Policy to cover liability for the professional errors of judgment of its probation officers. If the probation function is administered by the state, the Compass Insurance Company Liability Policy effective July 1, 1982 for state employees provides professional errors and omissions coverage for state employees providing probation services.
- (3) The locality involved may purchase an Errors and Omissions Policy to cover liability for the professional errors of judgment of its local coordinator for the community diversion incentive program and the members of the community corrections resources board.
- (4) The locality may obtain an endorsement to an existing Comprehensive General Liability Policy to extend its

coverage to include the members of the community corrections resources board and the local coordinator for the community diversion incentive program.

- D. To provide protection from third party tort liability claims arising from tortious acts committed by an offender while placed in a residential program, the public or private entity operating the program and supervising the offender may obtain a Comprehensive General Liability Insurance Policy.
- E. To provide protection from third party tort liability claims arising from criminal acts committed by an offender while placed in a residential program, the public or private entity operating the program and supervising the offender may purchase an Errors and Omissions Policy to cover liability for professional errors of judgment of the program's coordinator, counselors, and other professional staff.

This manual was prepared by the Department of Criminal Justice Services as a guide in addressing how to handle liability in community corrections programs. For further assistance contact the Department at 786-4000.

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END