

COMMUNITY SERVICE
STANDARDS

Effective January 20, 1998

COMMUNITY SERVICE STANDARDS COMMITTEE

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COMMUNITY SERVICE STANDARDS

EFFECTIVE JANUARY 20, 1998

I. STATUTORY AUTHORITY FOR COMMUNITY SERVICE

- ! Article 65 of the Penal Law authorizes criminal courts to impose, except as otherwise required by law, sentences of probation and conditional discharge upon those convicted or adjudicated of a criminal offense.
- ! Section 65.10(2)(h) of the Penal Law restricts a community service condition to consenting defendants convicted of a violation, misdemeanor, or class D or class E felony, or any youthful offender finding replacing any such conviction and sentenced to either probation or conditional discharge.
- ! Section 170.55 of the Criminal Procedure Law authorizes criminal courts to require as a condition of an adjournment in contemplation of dismissal that a consenting defendant perform services for a public or not-for-profit corporation, association, institution, or agency.
- ! The Penal Law further establishes that community service can include, but is not limited to services for the Office of Alcohol and Substance Abuse Services or in an appropriate community program for removal of graffiti from public or private property.
- ! Community service may also include any property damaged in the underlying offense or services for the maintenance and repair of real or personal property maintained as a cemetery plot, grave, burial place, or other places of interment of human remains Penal Law Section (65.10(2)(h)).
- ! Lastly, the Board of Parole or any local conditional release commission may impose community service as a condition of state or local conditional release.

II. REGULATORY AUTHORITY

Section 243 of the Executive Law authorizes the State Director of Probation and Correctional Alternatives to exercise general supervision over probation departments and correctional alternative programs throughout the State. The Director further exercises general supervision over the administration and implementation of alternative to incarceration service plans under the provisions of Article 13-A of the Executive Law. Eligible programs are defined under Section 261(1)(b) to include community service programs. The State Director is

authorized to adopt general rules and regulations to regulate methods and procedures in the administration and funding of local probation departments and alternative to incarceration programs funded by the Division. Such rules and regulations are binding upon all counties, departments, and eligible programs funded in any plan and, when duly adopted, have the force and effect of law.

As a result of the authority given to the State Director, the state maintains a statewide oversight system for local community service programs funded by the Division. The state's regulatory responsibilities include but are not limited to:

- A. continual development, refinement, assessment, and revision of statewide standards;
- B. maintenance of program standards by monitoring the local delivery of program services;
- C. provision of technical assistance to local programs; and
- D. development and maintenance of a statewide management information system which collects and analyzes the data gathered by each local program.

III. APPLICABILITY

These standards are applicable to community service programs wherein offenders perform community service ordered by a criminal court, Board of Parole, or Conditional Release Commission.

IV. PROGRAM OBJECTIVES

- A. Any community service program funded by the Division shall be designed to achieve the following objectives:
 - 1. development of mechanisms through which community service orders are encouraged in a locality;
 - 2. provision to the Courts of an appropriate sentencing sanction, in a manner consistent with public safety;
 - 3. provision of relevant information to assist Courts in making community service sentencing decisions, and assurance that appropriate offenders are brought to the attention of the Court through timely program screening to identify eligible offenders;

4. usage of community service sanctions by the Court in accordance with an identified community service mechanism and local sentencing structure;
 5. reparation for crimes by selected offenders through performance of community service;
 6. maintenance of adequate and appropriate community service placement sites;
 7. preservation of the integrity of the community service sentence by maximizing success rates and timely notification to the Court of offenders' failure to complete community service obligations;
 8. periodic assessment and modification of specific program policies and procedures to determine if program objectives are being achieved.
- B. Any community service program funded by the Division as an alternative to incarceration shall be designed to achieve a reduction in reliance on incarceration as a sentencing sanction, thereby reducing inappropriate confinement.

V. PROCEDURAL STANDARDS

A. Participant Selection

1. Eligibility Criteria

- a. Any community service program funded by the Division as an alternative to incarceration shall establish objective eligibility criteria for determining suitability for community service programs which shall:
 - i. take into consideration the criminal history of the offender and EXCLUDE ALL INDIVIDUALS WITH PAST OR PRESENT CONVICTION/ADJUDICATION OF A SEX OFFENSE as defined in Article 130 of the Penal Law.
 - ii. indicate that where community service is imposed, the eligible participant would have been sentenced to a specified period of incarceration as delineated in the contract between the program and the Division; and
 - iii. include the requirement that the offender be 16 years of age or older, and ensure offenders 16 or 17 years of age perform

community service in accordance with Section 132 of the Labor Law, and that no offender who is a minor perform services prohibited by Section 133 of the Labor Law.¹

- b. Any community service program funded by the Division shall establish objective eligibility criteria for determining suitability for community service programs which:
 - i. include the requirement that the participant's consent (and consent of the participant's parent or legal guardian, where applicable) to the amount and conditions of community service be documented;
 - ii. do not discriminate against any individual in violation of the New York State Human Rights Law (Article 15 of the Executive Law); and
 - iii. are consistent with State statute and applicable case law relative to crime eligibility and worksite placement.

2. Participant Selection Process

- a. Programs shall deploy staff and services in a manner that facilitates making eligibility determinations at the earliest possible point in the criminal justice process. Participants may be identified through outreach efforts by the community service program, probation or court referral, or direct court order.

¹ Section 133 enumerates numerous work activities that youth are barred from performing. Examples of activities include, but are not limited to construction work (including wrecking, demolition, roofing, or excavating operations and the painting, or exterior cleaning of a building structure from an elevated surface); any occupations involving operation of power-driven hoisting apparatus, power-driven woodworking, metal-forming, metal-punching, metal-shearing, bakery, and paper products machines, circular saws, bandsaws, and guillotine shears; adjusting, cleaning, oiling or wiping machinery; or preparing any composition in which dangerous or poisonous acids are used. Additionally, Section 132 prohibits 16 or 17 year olds from performing service during school hours (“when attendance upon instruction is required by the education law”), except in narrow circumstances or in violation of any employment certificate or permit which must be issued in accordance with the Education Law. When school attendance is not required, such youth may perform casual employment consisting of yard work and household chores in and about a residence or the premises of a non-profit, noncommercial organization, not involving the use of power-driven machinery other than power-driven machinery ordinarily used in such yard work or household chores.

- i. Intervention points for making eligibility determinations as a result of outreach efforts by the community service program are as follows, in order of preference:
 - (a) pre-plea, pre-conviction, or pre-adjudication;
 - (b) prior to imposition of sentence/disposition; and
 - (c) after sentencing/disposition.
 - ii. In certain cases, a criminal court may wish to issue a direct court order imposing community service as an alternative to incarceration and a condition of another sentence/disposition when the offender has not previously been screened for eligibility or appropriateness. In such instances, upon receipt of the court order, the program shall notify the Court if it determines that the proposed community service participant is unsuitable, and seek further Court direction.
- b. The Community Service Order
- i. The community service program shall advocate among local criminal justice system practitioners concerning the appropriateness of a community service order as an alternative to incarceration.
 - ii. The community service program shall solicit input from local criminal justice system practitioners regarding whether community service orders in the locality should reflect:
 - (a) a "flat" sentencing/dispositional structure (for example, all community service offenders receive 70 hours of community service); or
 - (b) a sentencing/dispositional structure based on a formula equating hours of community service with displaced jail time (for example, six hours of community service replace one day of jail time); or
 - (c) a sentencing/dispositional structure based on a range of hours of service specific to the following levels of offense: Unclassified misdemeanor, B misdemeanor, A misdemeanor, and felonies; or

- (d) another formalized approach that seeks to serve the goal of community service as an alternative to incarceration.

Community service hours should only be set after due consideration of the duration of the individual's release; family, religious, social obligations, education and employment factors. The following are maximum hours based upon

underlying crime convictions:

D felony - 500

E felony - 400

A misdemeanor - 200

B misdemeanor and Unclassified misdemeanor - 100

Violation - 70

- iii. The community service program shall notify the Division of its identified methodology for determination of community service hours. This methodology shall be subject to review on an annual basis.
- iv. The community service program shall make all necessary efforts to facilitate utilization of its identified community service mechanism and sentencing/ dispositional structure.
- v. If the community service order of any given case deviates from the identified methodology for determination of community service hours, reasons for the deviation shall be documented in the case record.
- vi. The judge is the sole determinant of a court-ordered community service order. However, the community service program may provide the Court or probation department, where applicable, with a written request for a modification to the order with rationale for the request.

3. Intake

- a. All participants, regardless of intervention point and including those referred by direct court order, shall be subject to Intake screening.
- b. The community service program shall screen prospective participants in a manner consistent with use of community service as:

- i. an alternative to incarceration; or
 - ii. a condition of probation, conditional discharge, or ACOD.
- c. Inappropriate referrals are to be returned to the referral source with a declination to accept and reason(s) for the declination. In the case of inappropriate court-ordered cases, a request for further direction from the Court shall be included.
- d. The community service program shall conduct interviews with all participants. Information to be obtained from, verified by, or shared with the participant during the Intake interview includes, but is not limited to:
 - i. participant's eligibility for the program;
 - ii. a review of participant's legal history, where feasible;
 - iii. physical and mental health data relevant to program participation;
 - iv. description of the community service program;
 - v. participant's consent to the amount and conditions of community service; and
 - vi. expectations of terms and conditions.

B. Participant Placement

1. Development/Certification of Worksites

The community service program shall develop and implement policies and procedures for the selection, development, and certification of a sufficient number of worksites to place the anticipated annual number of participants. The program shall take necessary steps to assure that worksites receiving services do not utilize such services to displace regular employees. The array of worksites certified by a program shall allow for placements of individuals and/or groups (i.e., work crews). Worksites shall be limited to public or not-for-profit corporations, associations, institutions, or agencies. Community service programs are encouraged to contact the State Office of Alcohol and Substance Abuse Services, the Department of Environmental Conservation, and the New York State Office of Parks, Recreation and Historic Preservation concerning the availability of worksites.

2. Placement Considerations

The following considerations shall be applied in placing community service participants:

- a. All placements shall be made in a manner consistent with public safety.
- b. Participants shall be screened for all health, geographic, scheduling, and any other factors relevant to placement and, where feasible, worksite placement shall take into consideration the participant's schedule, location, skills, transportation availability, and physical capabilities.
- c. Every attempt shall be made to ensure equity in the placement of participants.

3. Placement Procedures

The following minimum placement procedures shall be adhered to:

- a. Prior to a participant's placement at a worksite, there shall be a preliminary agreement on the placement among the participant, the community service program, and the worksite. The community service program shall ensure that the participant is informed of the scope of duties and work schedule of the placement.
- b. The community service program is not precluded from requiring the worksite to conduct an initial interview with the participant, during which the participant is informed of the scope of duties and work schedule of the placement.
- c. The community service program shall document in the case record agreement among the participant, the community service program, and the worksite concerning the participant's initial work schedule. If the work schedule is altered, the change shall be documented in the case record.
- d. The community service program shall advise the participants of their responsibility to report according to the work schedule, complete all requirements of the community service order, and comply with all participant/community service program/worksite agreements stipulated during the placement process.

- e. The community service program shall provide the participant with all information necessary to report to the worksite.
- f. The community service program shall respond to requests from the Court and/or the probation department regarding the participant's placement and/or progress.
- g. The community service program shall promptly notify courts, where applicable, and probation of all clients who fail to perform required community service.

C. Compliance Monitoring

1. Worksite Monitoring

- a. All community service programs shall:
 - i. provide worksites with all forms, information, and structures necessary to report on participant compliance;
 - ii. contact active worksites regarding participant performance at regular, pre-determined intervals and, where appropriate and feasible, conduct regular site visits; and
- b. Each worksite shall:
 - i. respond in a timely manner to requests for client performance updates from the community service program;
 - ii. immediately notify the community service program of participant non-compliance or an unusual incident according to notification procedures established by the community service program; and
 - iii. upon participant completion of responsibilities, provide the community service program with written verification of hours completed.

2. Client Monitoring

- a. All community service programs shall:
 - i. establish formal, written policies and procedures to ensure timely response to participant non-compliance;

- ii. identify activities other than lack of adherence to the worksite schedule which may constitute grounds for non-compliance (e.g., assaultive and/or threatening acts, theft or destruction of property, physical incapacity due to apparent alcohol and/or substance abuse, arrest for a violent offense); and
- iii. upon notification of participant non-compliance with the worksite schedule, determine whether a different worksite placement and/or schedule, or placement at another agency would be more appropriate for the participant;
- iv. develop and implement a system of graduated responses/actions to participant non-compliance, with same ranging from admonition to written notification to the Court or probation department, where applicable;
- v. identify the agency to which a worksite shall take the response/action when public safety is at risk and establish a protocol for notification of such risk.

D. Case Closings

The community service program shall develop and implement case closing procedures which provide for:

- 1. timely submission to the Court and/or probation department of a final report developed with the worksite on each participant, providing an accounting of the participant's time and documenting the participant's successful completion of, or unsuccessful termination from the community service program; and
- 2. notification to the participant, to the Court and to the probation department, where applicable, of the participant's successful completion of, or unsuccessful termination from the community service program.

VI. ADMINISTRATIVE STANDARDS

A. General

Each community service program shall:

- 1. Adhere to the Standards prescribed herein, Division rules and regulations, and applicable laws and court orders.

2. Operate in such a manner that all defendants and courts within their jurisdiction may be effectively served.
3. Maintain neutrality and independence from either prosecution or defense so that reliable, objective information can be provided to the courts for more informed decisions.
4. Maintain policies and procedures including, but not limited to selection/exclusion criteria, offender monitoring, court/probation notification, referral to human service agencies and accident/liability reports.
5. The community service program shall attempt to ensure the provision of workers' compensation coverage.
6. The Community service program shall seek to secure third party liability insurance.

B. Data Collection and Reporting

Every community service program shall:

1. Develop and maintain an information system that permits ongoing monitoring of the effectiveness of the program and evaluation of local practices in relation to statewide standards.
2. Conduct periodic studies to determine whether any program practices, especially those relevant to case selection and placement, need to be reassessed in order to accomplish the objectives identified in Section IV of these Standards.
3. Submit data and other information as may be required by the Division.
 - a. Immediately notify the Division of unusual incidents involving the program, staff, or participants;
 - b. Inform the Division on a quarterly basis of participant non-compliance and/or successful/ unsuccessful program termination.

C. Training

1. The community service program shall ensure that employees are sufficiently trained to undertake the duties and responsibilities of the program.

2. Training shall include timely orientation of all program staff regarding these Standards and shall seek to ensure that all employees perform their duties consistent with the provisions of these Standards.
3. The community service program shall initiate training to educate other members of the criminal justice system regarding the policies and practices of community service programs.

D. Public Information

1. The community service program shall ensure that information regarding the program is disseminated to the criminal justice system and the public.
2. The community service program shall have available, for criminal justice officials and the public at large, copies of an annual report on program operations and their contribution to the local and criminal justice system.

E. Revision of Standards

1. The Division, after consultation with community service programs, shall review and revise these Standards based upon changes in law, practical experience and research.
2. The community service program shall provide feedback and suggestions regarding revisions to the Division based upon its practical experience.
3. Revised Standards shall be issued by the State Director of Probation and Correctional Alternatives when necessary and upon consultation with community service programs, and shall take effect upon issuance unless otherwise specified.