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COMMUNITY SERVICE STANDARDS

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COMMUNITY SERVICE STANDARDS

FOREWORD

These Standards for Community Service are based upon the laws of New York State, which authorize the use of community service as a sanction for certain offenders in conjunction with specific dispositions imposed by a criminal court. While such a condition can be imposed by the family court, due to different issues and concerns, these Standards focus on handling of community service within the criminal justice system.

These Standards serve to update the Division of Probation and Correctional Alternatives (DPCA) 1988 minimum standards to reflect new laws and programmatic considerations, better address offender accountability, and promote uniformity in application and operation of services. There is considerable flexibility to recognize legitimate variations for local needs and circumstances.

During Governor George Pataki's Administration, new laws governing community service have been enacted which have increased use of community service as an alternative to incarceration and recognized its benefit and cost effectiveness to communities across the State.

Our research has found that some community service programs nationwide partner with other governmental entities, businesses, and not-for-profit organizations to provide community service as a means of collecting revenues which are earmarked for restitution, child support, fines, wages, and to offset programmatic operations. There are currently some programs in New York State and elsewhere in the nation which charge offenders a participant fee and some programs outside of the State impose a worksite fee via a contractual agreement. Such initiatives need to be carefully designed with input from legal, fiscal, executive, and/or legislative officials, to satisfactorily address tax implications and employer/employee relationship issues consistent with applicable laws, not interfere with offender financial obligations, and ensure designation of revenue streams and/or special accounts which will identify monies generated to achieve their underlying purpose.

We at DPCA believe that Community Service programming is consistent with the principles of restorative justice. It provides a positive means to repair property or offer other services of value and/or significance to victims, whether individual or the community at large. Further, it enables offenders to achieve a better understanding of how their actions impact the community, be held accountable for their offense, and learn pro-social behavior. I encourage public officials, the judiciary, and community service programs to collaborate with one another and develop greater opportunities for community service to contribute in addressing community and individual victim needs, enhance program resources, and promote offender reintegration.

TABLE OF CONTENTS

I.	NYS DIVISION OF PROBATION AND CORRECTIONAL ALTERNATIVES REGULATORY AUTHORITY.....	1
II.	STATUTORY PROVISIONS WITH RESPECT TO COMMUNITY SERVICE.....	1-5
	NYS Criminal Procedure Law.....	1-2
	NYS Environmental Conservation Law.....	2
	NYS Executive Law – Human Rights Law.....	2
	NYS General Municipal Law.....	2
	NYS Labor Law.....	3
	NYS Parks, Recreation and Historic Preservation Law.....	3
	NYS Penal Law.....	3-4
	NYS Vehicle and Traffic Law.....	4-5
	NYS Workers Compensation Law.....	5
III.	APPLICABILITY.....	5
IV.	PROGRAM GOAL.....	5
V.	PROGRAM OBJECTIVES.....	5-6
VI.	PROCEDURAL STANDARDS.....	6-12
	A. Eligibility Criteria.....	6-7
	B. Participant Selection Process.....	7
	C. The Community Service Order.....	7-8
	D. Intake.....	8-9
	E. Participant Placement.....	9-10
	F. Compliance Monitoring.....	11
	G. Client Monitoring.....	11-12
	H. Case Closings.....	12
VII.	ADMINISTRATIVE STANDARDS.....	12-14
	A. General.....	12-13
	B. Data Collection and Reporting.....	13
	C. Training.....	13
	D. Public Information.....	14
	E. Revision of Standards.....	14

I. NYS DIVISION OF PROBATION AND CORRECTIONAL ALTERNATIVES 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 (ATI) 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 ATI programs. Such adopted rules and regulations are binding upon all counties, departments, and eligible programs that may be funded in any alternative to incarceration service plan and 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.

II. STATUTORY PROVISIONS WITH RESPECT TO COMMUNITY SERVICE

Various statutory provisions promote and authorize imposition of community service as a condition of a community corrections release, yet establish other legal parameters, prerequisites, and limitations governing authority to impose such conditions.

NYS Criminal Procedure Law

Section 170.55

- Authorizes criminal courts to require as a condition of an adjournment in contemplation of dismissal (ACD) that a consenting defendant perform services for a public or not-for-profit corporation, association, institution or agency.

Section 390.30(6)

- Authorizes community service as a condition of interim probation supervision subject to the terms contained in Section 65.10(2)(h) of the Penal Law.

NYS Environmental Conservation Law

Section 3-0301(1)(hh)

- Requires the Commissioner of the Department of Environmental Conservation to cooperate with the Division of Probation and Correctional Alternatives (DPCA) by identifying worksites where persons performing community service as part of a criminal disposition may be assigned.

NYS Executive Law

Article 13-A Section 261(1)(b)

- Recognizes community service as an eligible program for any alternative to incarceration service plan submitted by a jurisdiction for DPCA approval and that programs may place persons performing such service at worksites identified by both agencies.

Article 15 – Human Rights Law

- Every community service program must adhere to Article 15 of the Executive Law (known as the Human Rights Law) and shall not discriminate against any employee, applicant for employment, or individual participant because/on the basis of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status.

NYS General Municipal Law

Section 52

- Establishes that each city and county may purchase liability insurance with such limits as it may deem reasonable for the purpose of protecting its officers and employees against liability for claims arising from their acts while exercising or performing or in good faith purporting to exercise or perform their powers and duties. Further, recognizes that persons performing community service pursuant to Section 170.55(5) of the Criminal Procedure Law or Section 65.10 (2)(h) of the Penal Law shall be deemed to be employees for purposes of such liability insurance.

NYS Labor Law

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, non-commercial organization, not involving the use of power-driven machinery other than power-driven machinery ordinarily used in such yard work or household chores.

Section 133

- Enumerates numerous work activities that youth are barred from performing. Examples of barred 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, band saws, and guillotine shears; adjusting, cleaning, oiling or wiping machinery; or preparing any composition in which dangerous or poisonous acids are used.

NYS Parks, Recreation and Historic Preservation Law

Section 3.09(2-f)

- Requires the Commissioner of the Office of Parks, Recreation and Historic Preservation to similarly cooperate with DPCA by identifying worksites where persons performing community service as part of a criminal disposition may be assigned.
- Identification of appropriate worksite assignments by either agency must be to preserve certain clean up and other maintenance services to preserve and enhance the state’s natural beauty and human-made scenic qualities. Such sites may include but are not limited to the state’s shorelines, beaches, parks, roadways, historic sites, and other natural or human-made resources.

NYS Penal Law

Section 65.10 (2) (h)

- Authorizes imposition of a community service condition to consenting defendants convicted of a violation, misdemeanor, or Class D or E Felonies, or any Youthful Offender finding,

replacing any such conviction where such individuals are sentenced to either probation or conditional discharge.

- Establishes that community service may include 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.
- Establishes that community service shall be for a public or not-for-profit corporation, association, institution, or agency, including but 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, including property damaged in the underlying offense.
- Performance of community service shall not result in displacement of employed workers, impairment of existing contracts, nor shall such services be required or permitted in any establishment involved in any labor strike or lockout.
- Recognizes that a court may establish provisions for early termination of a sentence of probation or conditional discharge, pursuant to the provisions of Section 410.90(3) of the Criminal Procedure Law, after community service has been completed.
- Although not expressly enumerated, any Criminal Court, Local Conditional Release Commission, or Board of Parole, whichever is applicable, may impose community service as a condition of an Adjournment in Contemplation of Dismissal in cases involving marihuana, local conditional release, parole, or state conditional release.

Section 60.28

- Establishes when a person is convicted of making graffiti or possession of graffiti instruments or of an attempt to commit such offenses, participation in a graffiti removal program where appropriate shall be a condition of any sentence of probation or conditional discharge imposed.

Section 60.29

- Establishes when a person is convicted of cemetery desecration in the First or Second Degree or an attempt to commit such offenses, participation in community service related to cemetery maintenance or repair where appropriate shall be a condition of any sentence of probation or conditional discharge imposed.

NYS Vehicle and Traffic Law

Section 1193

- Requires that a person convicted of a DWI after having been convicted of a DWI within the previous 5 years, in addition to any other penalty which may be imposed, must be sentenced to 5 days imprisonment or as an alternative to incarceration, 30 days of community service.

- Further requires that any person convicted of a DWI after having been twice convicted of a DWI within the previous 5 years, in addition to any other penalty which may be imposed, must be sentenced to 10 days imprisonment or as an alternative to incarceration, 60 days of community service.

NYS Workers Compensation Law

Section 2(9)(h)

- Defines wages, for purposes of workers compensation, to cover persons performing community service in fulfillment of a sentence of probation or conditional discharge or persons performing such services pursuant to provisions of Sections 170.55 or 170.56 of the Criminal Procedure Law.

Section (3)(1)(Group 19)

- Establishes that such persons shall be considered employees of any agency (public or not-for-profit corporation, association, institution or agency) where they are performing services and that such employer may elect to bring such employees within their workers compensation coverage in accordance with Section 50 of such law.

III. APPLICABILITY

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

IV. PROGRAM GOAL

Any alternative to incarceration community service program funded by the Division shall be designed to enforce community service sanctions through the provision of community-based supervision that ensures safe and effective service to the community and provides services to offenders designed to promote the development of a constructive, crime-free lifestyle.

V. PROGRAM OBJECTIVES

Any community service program funded by the Division shall consider the following objectives:

- a. Development of mechanisms through which community service orders are encouraged in a locality;
- b. Recommendation to the courts of an appropriate sanction, in a manner consistent with public safety;

- c. Usage of community service sanctions by the Court or releasing authority in accordance with an identified community service mechanism and local sanctioning structure;
- d. Reparation for crimes by selected offenders through performance of community service;
- e. Maintenance of an adequate number of appropriate community service placement sites;
- f. Preservation of the integrity of the community service sentence by maximizing success rates and timely notification to the Court or releasing authority of offenders' failure to complete community service obligations; and
- g. Periodic assessment and modification of specific program policies and procedures.

VI. PROCEDURAL STANDARDS

A. Eligibility Criteria

Community service programs shall establish objective eligibility and suitability criteria by:

1. reviewing criminal history to determine appropriateness of the offender and EXCLUDING ALL INDIVIDUALS WITH PAST OR PRESENT CONVICTION/ADJUDICATION OF A SEX OFFENSE as defined in Article 130 of the Penal Law;
2. verifying the offender is 16 years of age or older, and ensure that any offender 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;
3. ensuring that the participant's consent, and, where applicable, the consent of the participant's parent or legal guardian, to the amount and conditions of community service is documented (e.g. hours/days, nature/type of work and any probation fees);
4. adhering to the New York State Human Rights Law (Article 15 of the Executive Law); and
5. maintaining consistency with State law and applicable rules and regulations and case law relative to crime eligibility and worksite placement.

Interstate Transfers

No community service program shall accept interstate transfers that have not been processed through the Interstate Compact Office in New York State.

Program Administrators should attempt to collect identifying information regarding the offender (e.g. name, address, date of birth and social security number) and the sending state and provide this information to the Interstate Compact Office for verification.

Intrastate Transfers

No community service program shall accept intrastate transfers without an order from a court or releasing authority identifying the terms and conditions of the community service and the disposition.

B. Participant Selection Process

Programs shall, where practicable, 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: probation, defense or prosecution referral, court referral, direct court order or outreach efforts by the community service program. Intervention points for making eligibility determinations as a result of outreach efforts by the community service program are as follows:

1. Pre-arraignment, pre-plea, pre-conviction or pre-adjudication;
2. Pre-sentence;
3. Post-disposition; and
4. Pre and post-release from incarceration.

In instances where community service is ordered and the offender has been determined ineligible or unsuitable, the program shall immediately notify the releasing authority, and seek further direction as indicated.

C. The Community Service Order

The community service program shall advocate among local criminal justice system practitioners concerning the appropriateness of a community service order as an alternative sanction.

The community service program shall solicit input from such practitioners regarding whether community service orders in the locality should reflect:

1. a sentencing/dispositional structure based on a formula equating hours of community service with displaced jail time (for example, seven hours of community service replace one day of jail time); or
2. a sentencing/dispositional structure based on a range or a set number of hours of service specific to the levels of offense: violations, unclassified misdemeanor, B misdemeanor, A misdemeanor, E felony and D felony.

The following are suggested maximum hours based upon underlying crime convictions:

D Felony	500
E Felony	400
A Misdemeanor	200
Unclassified Misdemeanor	200
B Misdemeanor	100
Violation	70

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.

If the community service order in any given case deviates from the identified methodology for determining community service hours, reasons for the deviation shall be documented in the case record.

The community service program may provide the Court, releasing authority or probation department, where applicable, with a written request for a modification to the order with rationale for the request.

D. Intake

All participants, regardless of the point in the criminal case at which they are screened, including those referred by direct court order, shall be subject to intake screening.

The community service program shall screen prospective participants in a manner consistent with use of community service as:

1. an alternative sanction; or
2. a condition of probation, conditional discharge, ACD or release.

Inappropriate referrals are to be returned to the referral source with a declination to accept and reason(s) for the declination.

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 may include, but is not limited to:

1. participant's eligibility for the program;
2. a review of participant's legal history;
3. physical and mental health and substance abuse data relevant to program participation, along with authorized or required releases signed by participant to verify this information;
4. description of the community service program;
5. participant's consent to the amount and conditions of community service;
6. expectations of terms and conditions (e.g. appropriate behavior and dress); and
7. identification or photograph of the participant.

E. Participant Placement

1. Development/Certification of Worksites

The community service program shall develop and implement policies and procedures for the eligibility, selection, development, and certification of a sufficient number of worksites to place the anticipated annual number of participants.

Performance of community service shall not result in displacement of employed workers or impairment of existing contracts, nor shall such services be required or permitted in any establishment involved in any labor strike or lockout.

Worksites shall be limited to public or not-for-profit corporations, associations, institutions, or agencies, or where permitted by law, public or private property.

Worksite visits shall be conducted at the time the worksite is recruited and at least once annually thereafter and/or when a new contact person is appointed or upon request of the worksite. Worksite visits are necessary to develop and maintain optimal worksite relations. During the initial site visit, the liaison should:

- a. provide an overview of community service program goals and functions;
- b. describe the offender population including common offenses, work histories and hour assignments;

- c. describe court and program processes, procedures and worksite monitoring responsibilities;
- d. discuss worksite needs, limitations and/or special conditions;
- e. inspect the worksite in order to become familiar with worksite activities and the general atmosphere; and
- f. explain or review a program worksite agreement form.

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. Worksite placement shall take into consideration the participant's schedule, location, skills, transportation availability, physical and mental capabilities and any other factors relevant to placement.
- c. Every attempt shall be made to ensure safety and equality 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 with the participant, the community service program and the worksite as to the work schedule and scope of duties.
- b. Any change in work schedule or scope of duties shall be documented in the case record. The community service program shall advise participant to comply with terms and conditions of community service.
- c. The community service program shall provide the participant with all information necessary to report to the worksite.
- d. The community service program shall respond promptly to requests from the Court, releasing authority and/or the probation department regarding the participant's placement and/or progress.
- e. The community service program shall promptly notify the Court, releasing authority and/or the probation department when a participant fails to perform required community service.

F. Compliance Monitoring

Worksite Monitoring

All community service programs shall:

1. provide worksites with all forms, information, and structures necessary to report on participant compliance; and
2. contact active worksites regarding participant performance at regular, pre-determined intervals and, where appropriate and feasible, conduct periodic site visits.

Each worksite shall:

1. respond in a timely manner to requests for participant performance updates from the community service program;
2. immediately notify the community service program of participant non-compliance or an unusual incident according to notification procedures established by the community service program;
3. upon participant completion of responsibilities, provide the community service program with accurate written verification of hours completed; and
4. maintain confidentiality concerning information on offenders working at the worksite and provide certain information to an immediate supervisor on a “need to know” basis.

G. Client Monitoring

All community service programs shall:

1. establish formal, written policies and procedures to ensure timely response to participant non-compliance;
2. 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, disruptive/inappropriate behavior and/or dress and foul language);
3. develop and implement a system of graduated responses/actions to participant non-compliance, ranging from placement change, admonition, and case conference, to written notification to the Court, releasing authority or probation department, where applicable; and

4. establish procedures for emergency notification in the event of injury, illness, death, or criminal/disruptive behavior. At a minimum, in cases in which program staff has specific information leading to a belief that the participant intends to harm law enforcement authorities, particular individuals (e.g. victims), or the community at large, the program shall inform the court/releasing authority of the nature of the potential harm. Such notification is subject to any restrictions imposed by law (i.e. Public Health Law Section 2783 governing court authorization for disclosure of confidential HIV related information). The program shall disclose only such information as is necessary to fully advise the court/releasing authority of the nature and source of the potential harm, and to assist in locating the participant.

H. Case Closings

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

1. timely submission to the Court, releasing authority and/or probation department of a final report 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 of his/her satisfactory completion of, or unsatisfactory termination from, the community service program.

VII. ADMINISTRATIVE STANDARDS

A. General

Each community service program shall:

1. adhere to the Standards prescribed herein, applicable laws, court or releasing authority orders and Division rules and regulations;
2. operate in such a manner that all defendants and courts/releasing authorities within their jurisdiction may be effectively served;
3. maintain neutrality and independence from both prosecution or defense so that reliable, objective information can be provided to the courts/releasing authorities or probation for more informed decisions;
4. maintain policies and procedures including, but not limited to selection/exclusion criteria, offender monitoring, court/releasing authority/probation notification, referral to human service agencies and accident/liability reports;

5. avoid the appearance of impropriety, conflict of interest, and/or undue influence in program operation with respect to eligibility, selection of worksites, placement, monitoring, oversight and case closings. Programs shall ensure employees are familiar with any applicable laws or program policies in this area and shall take appropriate action in the event of non-compliance;
6. attempt to ensure the provision of workers' compensation coverage; and
7. 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 reviews 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 V of these Standards; and
3. submit data and other information as may be required by the Division:
 - a. **Immediately notify the Division of unusual incidents involving the respective project(s), its participants or staff, that may or has resulted in media inquiry, negative publicity, or other public, victim, staff safety concerns.**
 - b. Submit to the Division, Community Service Quarterly Reporting forms *within thirty (30) days of the close of each quarter; April 30th, July 30th, October 30th, and January 30th.*

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 the program.

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, copies of an annual report on program operations and their contribution to the local community 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. Community service programs shall provide feedback and suggestions to the Division based upon their practical experience.
3. Revised Standards shall be issued by the State Director of Probation and Correctional Alternatives when necessary and upon consultation with the State Probation Commission and community service programs, and shall take effect upon issuance unless otherwise specified.