



## LOSS CONTROL GUIDELINES

### Public Works & Utilities

#### Using Inmates & Probationers for Public Service Work Projects

Note: The following statutes allow municipalities to use inmates or probationers on public service projects:

- T.C.A. § 41-3-107 - municipal offenders
- T.C.A. § 41-2-123 - prisoners in county jails
- T.C.A. § 41-9-104 - work by probationers
- T.C.A. § 41-22-127(a)(2) - state prisoners
- T.C.A. § 37-1-131(a)(7) - juveniles

In general, these statutes provide immunity for the municipality with regard to any injuries sustained by the inmate or probationer,<sup>1</sup> and with regard to any liability exposure created by the inmate or probationer.

- a. Utilizing inmates and probationers for local public service projects is allowable as long as the city is providing adequate supervision reasonably calculated to secure the safety of the general public and prevent the escape of the inmates or probationers. The high-risk area of exposure from these programs would be liability arising from inadequate supervision. **The city must provide constant supervision for inmates and probationers working in these projects.** Persons supervising the inmates and/or probationers in these programs should be given adequate training and guidance regarding appropriate techniques and methods in supervising and controlling inmates. This training and instruction should be documented and retained on file.
- b. The city must develop a written policy regarding the use and supervision of inmates or probationers for public service projects. This policy should include, as a minimum: the title of the city supervisor responsible for the program; the types of projects and work the inmates may assist with; procedures for the supervisors of the inmates (or probationers) to follow with regard to directing the laborers; the safety measures that are implemented for this program including the required personal protective equipment dictated by the type of work being performed; procedures to follow in emergency situations and in escape situations, etc. If juveniles are to be used as part of the city's program, the policy must state that any work performed would comply with federal and state child labor laws.

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<sup>1</sup> With regard to medical expenses of prisoners hurt while on work detail, T.C.A. § 9-8-307(a)(2) provides that the state is responsible for these expenses for state prisoners. T.C.A. §§ 41-4-115 and 41-2-118 provide that counties are responsible for providing medical care for all prisoners confined in the county jail or workhouse. In turn, T.C.A. §§ 41-4-115 and 41-11-101 and the following sections provide that counties can seek to recover these expenses from the inmates themselves.

NOTE: In developing the city's policy dealing with escapes and/or escape attempts, the city must consider how to supervise and control the remaining inmates or probationers while notification is given to prison or jail officials, a search begins, or other appropriate apprehension procedures are being implemented.

- c. Each inmate or probationer participating in this program for the city must be given a training orientation session outlining the proper methods of performing the job assigned and the appropriate safety guidelines that must be followed.
- d. All training, education, and instruction given city employees, city supervisors, and the inmates must be documented and retained on file. This documentation should include: (1) the date of the training; (2) the name of the person conducting the session; (3) the topics and nature of the instruction given; and (4) the names of the persons in attendance at the training.
- e. The city supervisor should examine each work project before work begins in an effort to identify and address unsafe conditions that may exist. This examination/inspection should be documented and retained on file.
- f. The inmates or probationers should not be allowed to operate motor vehicles or large equipment. Powered equipment use should be restricted to push mowers or weed trimmers. Equipment use may be further restricted by policy of the Department of Corrections, or by the written policy of the city.
- g. The city should not utilize any convicted murderers, rapists, other sex offenders, or other high-risk convicts (as determined by internal policy) in this work program.
- h. Every reasonable effort should be made to provide for the safety of the inmates or probationers. Subjects working in or near the right-of-way must be provided with and required to wear an appropriate orange safety vest. All other personal protective equipment will be dictated by the type of work being performed, but may include hard hats, goggles or other eye protection, hearing protection, gloves, etc. The inmates or probationers must be instructed on the use of the appropriate equipment, and its use must be enforced. Furthermore, adequate precautions should be made to prevent overexposure to heat or cold stress. Workers should be provided with adequate rest breaks, fluids, insulated clothing (in cold weather), etc.
- i. When participating in a work program with state prisoners, the city should ensure that all parties are in agreement that the prisoners are still "state inmates" for the purposes of medical attention for any possible injury, and that this medical attention will be provided by the state prison or Department of Corrections.<sup>2</sup> The prisoner workers and other inmates/probationers are not employees of the city and are not covered by workers' compensation benefits for injuries that may occur.
- j. The city should check the motor vehicle record (through the Tennessee Department of Safety) of any employee who may be transporting the inmates or probationers to a work site. Any employee having an adverse driver record should be prohibited from transporting the workers. Additionally, when they are being transported, the workers should not be allowed to ride in the back of a vehicle (or bed of truck) unattended.

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<sup>2</sup> See T.C.A. § 9-8-307(a)(2).



- k. To follow up on an earlier policy recommendation, it must be clear that, if juveniles are to be used for public service work projects, all federal and state child labor laws must be followed.
- l. There is a liability premium consideration for the inmate or probationer worker program based upon the city's general liability premium. The Pool's Underwriting Department must be notified if a city chooses to participate in such a program.
- m. A complete incident/accident report must be filed by the program supervisor following any accident or injury to a program participant or a member of the general public occurring during the course of prisoner participation in a public workers project. This documentation should include: (1) the date of accident/injury; (2) the time of day; (3) the injured person's name, address, and phone number(s); (4) the name of the injured person's parent or guardian, if a minor child; (5) the names of phone number(s) of any witnesses; and (6) a complete description of the events and circumstances surrounding the accident or injury. Note: Injury means bodily injury and/or property damage. These incident reports should be retained on file.

Any additional requirements made by federal, state, and/or local regulations that place further restrictions or guidelines upon the supervision and utilization of inmates or probationers for public works projects must be followed.

While there may be an increased risk exposure associated with utilizing inmates or probationers for public service projects, much of the risk can be reduced through proper supervision, documentation, and operating procedures.

The Pool does not represent that these recommendations identify and address all of the unsafe or hazardous conditions associated with the utilization of inmates or probationers for public works projects, nor do we represent that implementing our recommendations is the best possible solution and that no injury or financial loss will occur if they are followed. It is our opinion that implementing the recommendations should reduce the potential for accidents and/or financial loss.

(rev 5/2000)