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Community Service Offenders: Municipal Liability for Community Service Probationers

Sid Hemsley

Municipal Technical Advisory Service

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Municipal Law Report

1989 • No. 8

COMMUNITY SERVICE OFFENDERS

By Sidney D. Hemsley



THE UNIVERSITY OF TENNESSEE
Municipal Technical Advisory Service
in cooperation with
The Tennessee Municipal League

MTAS MUNICIPAL LAW REPORT NO. 8

**MUNICIPAL LIABILITY
FOR COMMUNITY SERVICE PROBATIONERS**

by

Sidney D. Hemsley

1989

**MUNICIPAL TECHNICAL ADVISORY SERVICE
The University of Tennessee
Knoxville, Tennessee**

in cooperation with the Tennessee Municipal League

ABSTRACT

Municipal Liability For Community Service Probationers considers the potential liabilities to municipalities when they use probationary offenders who are performing community service under their control and supervision.

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Dear Municipal Official:

It is a pleasure to present to you this Municipal Law Report No. 8, *Municipal Liability For Community Service Probationers* as prepared by The University of Tennessee's Municipal Technical Advisory Service (MTAS).

This Municipal Law Report has been prepared to help municipalities understand the potential liabilities they face when offenders are used while performing community service under their control and supervision.

Special recognition is given to Mr. Sidney D. Hemsley, MTAS Senior Municipal Legal Consultant, who prepared this Municipal Law Report. His research and efforts in preparing this report are appreciated.

Copies of this and other MTAS Municipal Law Reports are available on a complimentary basis to officials of all Tennessee municipalities and on a limited basis to state and federal government offices. Others wishing to obtain copies may do so on a pre-paid basis. An order form can be obtained by contacting our Knoxville office at (615) 974-5301.

We at MTAS hope you find this Municipal Law Report of assistance to you, and look forward to receiving your comments and suggestions.

Sincerely,



Randy Williams
Acting Executive Director

RW:dkl

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Sidney D. Hemsley

MTAS MUNICIPAL LAW REPORT NO. 8

**MUNICIPAL LIABILITY
FOR COMMUNITY SERVICE PROBATIONERS**

MUNICIPAL LIABILITY FOR COMMUNITY SERVICE PROBATIONERS

Introduction

Legislation in many states authorizes adult and juvenile courts to sentence offenders to perform community service as a condition of probation. Generally, such legislation permits local governments (and in some cases, private agencies) to use probationers in a variety of public service jobs. Community service probationer programs have generated questions about the liability of local governments for injuries caused and suffered by probationers performing work under their supervision. State legislation governing that liability is generally limited to the application of tort liability and workman's compensation laws to such offenders. But 42 U.S.C., Section 1983 is another possible avenue of liability. This report will consider what potential liabilities local governments in Tennessee face when they use probationers to perform community service.

Statutory Law Governing Community Service By Probationers In Tennessee

Under *Tennessee Code Annotated (TCA)*, Title 41, Chapter 9, defendants eligible for probation¹ may be ordered to perform community service as a condition of probation.² Probationers may be assigned to the Tennessee department of Corrections (TCA 41-9-101 et seq.) or to the county probation department (TCA 41-9-201 et seq.) to perform approved community work projects. In both cases, the local government is insulated from liability for injuries suffered, or caused by, the community service probationer while he is performing community service work, if the local government "exercised due care in the protection and supervision of such probationer" (TCA 41-9-104 and 41-9-204).³ However, that insulation is no greater than is already provided local governments under the Tennessee Tort Liability Act.

Local Government Tort Liability For Injuries Caused By Community Service Probationers

The Tennessee Tort Liability Act stripped local government of immunity from tort suits in several areas. Under that Act, local governments are now liable for injuries arising from the negligent operation of motor vehicles by its employees (TCA 29-20-202), unsafe streets and highways (TCA 29-20-203), dangerous structures (TCA 29-20-204), and the negligent acts or omissions of its employees (except for injuries arising from the performance of discretionary functions, false arrest and several other intentional torts, issuance and revocation of permits, inspections of property, judicial

and administrative prosecutions, employee misrepresentations, riots and other disorders, and the levy and collection of taxes) (TCA 29-20-205). The Tennessee Tort Liability Act provides that the Act is the exclusive route for a tort liability suit against a local government (TCA 29-20-101 et seq).

The most likely source of local government tort liability for injuries caused by a community service probationer is the negligent acts or omissions of its employees (TCA 29-20-205). But the local government cannot be reached directly through the conduct of the community service probationer because the latter is not a local government employee. The definition of "employee" in that Act provides that any person not an elected or appointed official or a member of a board, agency or commission, is not an employee of a governmental entity, unless the person meets all of the following requirements:

- o The governmental entity itself selected the person in question to perform services;
- o The governmental entity is liable for the payment of compensation for the performance of such services, and the person receives all of his compensation directly from the payroll department of the governmental entity;
- o The governmental entity provides the person in question the same benefits as all other employees of the governmental entity, including retirement benefits and the eligibility to participate in insurance programs.
- o The person acts under the control and direction of the governmental entity not only as to the result to be accomplished but as to the means and details by which the result is accomplished.
- o The person is entitled to the same job protection system and rules, such as civil service or grievance procedures, as are other persons employed by the governmental entity (TCA 29-20-107(a)[1]-[3]).

That narrow definition appears to conclusively exclude either adult or juvenile community service probationers. It would be extremely difficult for anyone claiming injury at the hands of a community service probationer to show that an employer-employee relationship existed between the local government and the community service probationer. While local governments apply for the use of probationers to perform community service, they probably do not "select" them to perform services within the meaning of the Tennessee Tort Liability Act; the selection is done by the

Tennessee Department of Corrections or the county probation department (TCA 1-9-104 and 41-9-204). In fact, as its title implies and its contents make clear, the *Community Service Participation Agreement With Supervising Agency* (See Appendix A) which the local government must sign as a condition to obtaining probationers from the Department of Corrections to perform community service, imposes extensive supervisory, but no selection, responsibilities on the local government. There are no local governments in Tennessee which compensate community service probationers or provide them with the same benefits and job protection they provide to their regular employees.

An even further limitation on the definition of an employee for the purposes of the Tennessee Tort Liability Act permits a local government to use and direct the labor of community service probationers without the danger of creating an employer-employee relationship. TCA 29-20-107(b) provides that:

A governmental entity's reservation of the right to approve employment or terminate employment by any contract, agreement or other means or such entity's ability to control or direct a person not otherwise in the regular employ of such entity shall not operate to make a person an employee of such entity for the purpose of the immunity granted by this chapter unless such person otherwise qualifies as an employee according to the provisions of this section.

However, the fact that community service probationers are not employees within the meaning of the Tennessee Tort Liability Act should not lull local governments into a false sense of security. Negligent acts and omissions of local government employees for which local governments are liable under that Act, undoubtedly include negligent supervision. A person claiming injury at the hands of a community service probationer could sue the local government on the ground that the failure of the local government's employees to adequately supervise the community service probationer was the cause of the injury. That person would be aided by both TCA, Title 41, Chapter 9, and the Tennessee Department of Corrections' *Community Service Participation Agreement With Supervising Agency*. TCA, Title 41, and Chapter 9, in a left-handed fashion, creates a statutory duty on the part of local governments to protect and supervise community service probationers. The *Agreement*, in clear and unmistakable terms, thrusts the responsibility for their protection and supervision on the user. The user agrees, among other things, to accept complete responsibility for "All supervision of every defendant who does work for my agency through this agreement" (Paragraph 2). In addition, the *Agreement* provides that:

IN CONSIDERATION, for participating in the Work Project Program, the supervising agency accepts full responsibility for the supervision of all defendants assigned to the agency. Should the supervising agency desire to be insured against any risk associated with the program, it is the supervising agency's responsibility to obtain and pay for such insurance coverage.

Other provisions in the *Agreement* give written notice to local governments that community service probationers can represent supervisory problems. That notice probably creates a correspondingly high supervisory duty on the part of the local government (especially Paragraph 10), a duty easy to carelessly breach.

But what about the insulation from liability given to local governments which use community service probations under TCA, Title 41, Chapter 9? That insulation is triggered only if the local government exercised "due care" in the protection and supervision of the community service probationer. Under Tennessee tort law due care and ordinary care are synonymous, and the lack of due (ordinary) care, under the circumstances, is negligence.⁴ The same standard for measuring whether the conduct of local government employees is negligent applies to the Tennessee Tort Liability Act; therefore, TCA, Title 41, Chapter 9 offers local governments no more insulation against claims of injuries suffered at the hands of community service probationers than they already have under the Tennessee Tort Liability Act. Any insulation TCA, Title 41, Chapter 9 appears to create is an illusion.

Local government employees using community service probationers have written notice of their supervisory and protective responsibilities under TCA, Title 41, Chapter 9, and the *Community Service Participation Agreement With Supervising Agency*. But the *Agreement* also provides local government employees written notice of something their common experience and good sense should have already told them: some of the probationers may not be Boy Scouts. Due or ordinary care under those circumstances probably dictates a higher duty on the part of the local government's employees to supervise and protect them than they would generally have with respect to other classes of persons, including fellow employees.

Tort Liability For Injuries To Community Service Probationers

Because community service probationers are not employees, local governments responsible for their control and supervision could be held liable under the Tennessee Tort Liability Act for injuries probationers suffer in the performance of community service work. There appears to be nothing in that Act which provides local governments any more protection against claims of injury from such persons than

they have against similar claims from members of the general public. In fact, TCA, Title 41, Chapter 9 gives the community service probationer the advantage of a statute which points to a duty on the part of the local government to supervise and protect him from injury.

An additional source of duty to protect the community service offender is the Department of Correction's *Community Service Participation Agreement With Supervising Agency*. The previous section demonstrated that a local government signing that agreement accepts written responsibility for the supervision of community service probationers. Some of the provisions of that agreement also impose a responsibility on the local government to protect them. Everything considered, the agreement is arguably more concerned with their protection than with injuries they may cause third parties. The participating agency has the responsibility, among other things, for "Seeing that all supervisors require defendants to wear safety devices as the situation may require" (Paragraph 7), and "Seeing that no tasks which would reasonably endanger the life or safety of the defendant is assigned to any defendant" (Paragraph 8).

The most likely sources of liability under that Act for injuries to community service probationers are the negligent acts or omissions of the local government's employees (TCA 29-20-205), and the negligent operation of a motor vehicle by the local government's employees (TCA 29-20-202).

For example, a community service probationer injured by a wrench carelessly dropped on his foot, or in a traffic accident in a vehicle driven by a local government employee, could sue the local government under the Tennessee Tort Liability Act the same as could any other member of the general public.

Under TCA, Title 41, Chapter 9, a local government is not liable for injuries caused or suffered by a community service probationer as long as it exercises "due care" in the supervision and protection of the probationer. But as the last section pointed out, "due care" is the same ordinary negligence standard that applies to the Tennessee Tort Liability Act. TCA, Title 41, Chapter 9 provides no additional protection to the local government defending the suit brought by the community service probationer injured by the dropped wrench or in the traffic accident.

A community service probationer injured while performing community service work for a local government enjoys a peculiar advantage over a local government employee injured in the performance of his job: He may recover under the Tennessee Tort Liability Act while the local government employee may recover only under the Tennessee Workers' Compensation Law. As the next section points out,

the community service probationer's recovery under the Tennessee Tort Liability Act may significantly exceed the municipal employee's recovery under the Worker's Compensation Act, even for identical injuries. But an advantage the employee enjoys under the Tennessee Workers' Compensation Act is that his own negligence causing or contributing to the injury will not bar his recovery. The community service probationer's own negligence causing or contributing to his injury may, in some circumstances, bar his recovery under the Tennessee Tort Liability Act.

Workers' Compensation Liability For The Community Service Probationer

Recovery by community service probationers under the Tennessee Workers' Compensation Act (TCA 50-6-101 et seq.) for injuries sustained in the performance of community service work, is apparently foreclosed by that law's definition of an employee. TCA 50-6-102(2)(a) defines an "employee" for the purpose of worker's compensation coverage as:

every person, including a minor, whether lawfully or unlawfully employed, the president, any vice-president, secretary, treasurer, or other executive officer of a corporate employer without regard to the nature of the duties of such corporate officials, in the service of an employer, as employer is defined in subdivision (a)(3), under any contract of hire or apprenticeship, written or implied... [Emphasis mine.]

The key to the above definition is the phrase "under any contract of hire or apprenticeship, written or implied..." There is no contract of hire or apprenticeship in the local government-community service probationer relationship. In a 1978 opinion, the California Attorney General's Office opined that an adult criminal defendant who elects to perform community service in exchange for probation in lieu of being jailed or fined, has the status of a "volunteer" for the purposes of California's Workman's Compensation Law. Community service probationers in Tennessee probably have the same status. They may not be volunteers in the traditional sense, but they "volunteer" to perform community service in lieu of other sentencing alternatives open to them.

The question of whether a volunteer was an employee for Tennessee Workers' Compensation Law purposes arose in *Hill v. King*, 663 S.W.2d 435 (Tenn. App. 1983). In that case a deputy sheriff was killed in the crash of an airplane piloted by the Robertson County Sheriff while they were transporting a prisoner from West Virginia to Robertson County. The deputy's survivors sued the sheriff personally, Robertson County, and an aviation company on various grounds. However, the issue in this case was the suit against Robertson County on the alternative grounds that the

deputy was entitled to compensation under the Tennessee Tort Liability Act, or under the Tennessee Workers' Compensation Law. The deputy's survivors appealed the trial court's decision that the deputy was an employee of Robertson County within the meaning of the Tennessee Workers' Compensation Law. The reason they objected to the trial court's decision is that, in Tennessee, the Workers' Compensation Law is the exclusive remedy of an employee against an employer for on-the-job injuries. If the trial court's ruling stood, the right of his survivors to claim a more generous recovery under the Tennessee Tort Liability Act would be extinguished.

In discussing the relationship between the deputy and Robertson County, the Court of Appeals found that:

the deceased sustained a unique relationship with Dan King, Sheriff of Robertson County. He had been commissioned a deputy sheriff, had received a pistol and uniform, and was authorized to serve process and transport prisoners. Each employee of the sheriff was permitted to eat one meal at the jail during each tour of duty... Deceased occasionally ate at the jail while on duty. He was paid no salary, could work as much or as little as he chose, and even when scheduled to work, he was not obliged to report for duty. He was reimbursed for fuel used and expenses incurred on official business. He did regularly report to work; and, when he did, he was subject to orders exactly as other salaried officers were.

That relationship did not make the deputy an employee within the meaning of the Workers' Compensation Law, held the Tennessee Court of Appeals. The deputy was, "not for hire;" he had not entered into an "agreement for pay." Absent the agreement for hire, even if he got occasional benefits as an employee, he did not give up his rights under the common law or the Tennessee Tort Liability Act. As to the limited benefits the deputy received, the Court said:

It is possible that a court might stretch the occasional meal to represent 'hire' if the question were whether or not workers' compensation were due although this is extremely doubtful. However, ... to impute or imply a waiver of so serious a right as the common law right to recover full compensation or the statutory right to recover within the limits of the Governmental Tort Liability Act, there must be such real, palpable and substantial consideration (hire) as would be expected to induce a reasonable man to give up such valuable rights. In other words, the law will not presume that Mr. King sold his birthright for a mess of pottage.

The "mess of pottage" was the relatively small death benefit payable to the deputy's survivors under the Workers' Compensation Law compared to the deputy's "birthright," the benefits payable under the Tennessee Tort Liability Act. While the task will not be undertaken here, a comparison of the Workers' Compensation Law's schedule of benefits and the damages recoverable under the Tennessee Tort Liability Act, will bring to mind a variety of circumstances under which a community service probationer is eligible for a recovery substantially greater than is a comparably injured local government employee. The community service offender is no more likely than the volunteer deputy sheriff to give up his birthright for a mess of pottage.

If the deputy sheriff in *Hill* was not an employee for Workers' Compensation purposes, it is unlikely that a "volunteer" community service probationer is an employee, even if he receives his meals on the job or other minor incidental employee benefits.

Even if the argument is accepted that a community service probationer is not a volunteer, that he was coerced to perform community service, it would still be difficult for him to claim that he is an employee for workers' compensation purposes. In the case of *Abrams v. Madison County Highway Department*, 495 S.W.2d 539 (1973) the Tennessee Supreme Court held that a prisoner performing compulsory labor for the county was not an employee within the meaning of the Tennessee Workers' Compensation Law because his labor was involuntary; he had not bargained for employment.

In other words, a community service offender is not an employee within the meaning of the Tennessee Workers' Compensation Law whether he is or is not a volunteer. In neither case has he bargained for employment or entered a contract for hire.

Section 1983 Liability For The Conduct Of Community Service Offenders

While the Tennessee Governmental Tort Liability Act is the exclusive route for a tort liability suit against a local government under Tennessee law, a person claiming injury arising from the violation of his civil rights by a local government may sue that government in federal court under 42 U.S.C. sec. 1983. Section 1983, as it is commonly called, provides simply that:

Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or

other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Since 1978, municipalities have been "persons" within the meaning of Section 1983. They have frequently been held liable for the conduct of their employees, and a few times for the conduct of non-employees under their control, when such conduct resulted in the deprivation of a third party's civil rights. As far as can be determined, no local government has been held liable under Section 1983 for the conduct of a community service probationer, but Section 1983 is broad enough to include such liability under the right circumstances.

It is not difficult to imagine the right circumstances involving community service probationers following the case of *Nishiyama v. Dickson County, Tennessee*, 814 F.2d 277 (6th Cir. 1987). There the U.S. Sixth Circuit Court of Appeals ruled that a county could be held liable under Section 1983 for the murder of a sixteen year old girl by a jail trusty. The facts in that case reflect incredibly poor judgment on the part of the sheriff and his deputy in exercising supervision and control over the trusty. They also illustrate how easy it is for poor judgement to be exercised "under color of statute," and to become government policy or custom resulting in the deprivation of constitutional rights for which the local government can be held liable.

The Sheriff of Dickson County, Tennessee accepted custody of Charles Hartman, a convicted burglar, sent to Dickson County by the Tennessee Department of Corrections under a Tennessee statute that permits counties to contract with the state to house nondangerous felons (TCA 41-8-101 et seq.). However, the Court of Appeals declared that the sheriff and his deputy "were on notice that Hartman was dangerous and had assaulted a young woman in the past," and that in the face of that knowledge,⁵ they gave him frequent unsupervised use of marked sheriff's department patrol cars fully equipped with lights and siren. Hartman used the patrol car to perform official and personal tasks for the sheriff and another deputy, and personal tasks for himself.

On one occasion Hartman, under orders of the deputy, drove the latter to his farm several miles from the Dickson County jail. Hartman did not reappear at the Dickson County Jail until ten hours later. During his absence he roamed the highways of Dickson, Houston and Montgomery Counties and stopped several motorists, using the patrol car's blue lights. One of the motorists he stopped was an unfortunate sixteen year old girl who he kidnapped and murdered. At one point the Montgomery County Sheriff's office learned that a Dickson County Sheriff's car

was stopping motorists in Montgomery County and reported that information to the Dickson County dispatcher.

The Dickson County dispatcher relayed that information to both the Dickson County Sheriff and his deputy, but neither treated Hartman as an escapee or took any other action. Even after the murder, the sheriff and his deputy continued the practice of letting trustees use sheriff's patrol cars until the Dickson County Grand Jury recommended an end to the practice.

The Court held that the practice of the sheriff and his deputy of providing Hartman with a clearly marked sheriff's patrol car was action taken under color of state law, and that:

the defendant's actions cannot be attributed to simple inattention or carelessness. Rather, the defendants consciously established a policy of allowing trustees to have use of official patrol cars with seeming indifference to consequences. The defendants consciously and voluntarily failed to respond to the danger presented by Hartman's use of the car to stop motorists.

Such "reckless indifference to the risk posed by their action" was sufficient to state a claim of action under Section 1983, said the Court.

Generally, cases in which local governments have been held liable for the conduct of their employees and non-employees under their control turn upon the ability of the courts to find one or more, hiring, screening, training, supervisory and disciplinary practices so negligently bad, that the negligence rises to the level of deliberate unconstitutional policy or custom on the part of the local government. *Nishiyama* demonstrates that the courts have shown a high degree of ability to find such practices on the part of local governments.

Both the Tennessee Department of Corrections and the county probation department have an obligation to screen candidates for community service work, and to regularly inspect each work project to insure that the probationer is being properly used (TCA 41-9-101 and 41-9-201). However, *Nishiyama* turned in part on the Court's view that the Sheriff of Dickson County had notice that Hartman was a dangerous person even though the sheriff only accepted custody of him from the Tennessee Department of Corrections. That case should warn local governments that, for purposes of Section 1983 liability, they cannot rely on the screening of probationers by the Tennessee Department of Corrections or the county probation department. Local governments may only accept, rather than select, community

service probationers to perform work projects under TCA, Title 41, Chapter 9, but the responsibility for determining who they have accepted remains in their hands. Every local government should independently and carefully screen (and in appropriate cases reject) every prospective community service probationer. Many of them will be relatively minor offenders, but others may, like Hartman, be ticking time bombs.

Local governments that use community service probationers should take seriously the supervisory requirements the *Community Service Participation Agreement With Supervising Agency* imposes on them, including the recordskeeping and reporting requirements. A poor record in this area will be used against the local government, both by a person claiming injury by a community service probationer, and by a community service probationer claiming injury. In either case, poor recordskeeping may be evidence of inadequate supervision and protection of the community service probationer.

Some local governments attempt to reduce the liability risks in the community service probationer program by requiring community service probationers to sign a waiver of claims before it puts them to work. Generally, by signing such a waiver, the community service probationer releases the local government from all claims for injuries or damages the probationer may suffer while performing community service work. There are two serious problems with such waivers.

First, it is questionable whether an "exculpatory contract" executed by a community service probationer is enforceable. Even if the community service probationer is a volunteer, it is the coercive power of the court to jail or fine the defendant which leads him to "volunteer" for community service as a condition of probation. The community service probationer is in a severely unequal bargaining position respecting his labor. Oddly enough, the same lack of "bargaining for hire" that defeats any claim that the community service probationer is an employee, may make such a waiver unenforceable as a matter of public policy. (See *Olsen v. Molzen*, 558 S.W.2d 429 [Tenn. 1977]). Even if that barrier is jumped, the left-handed statutory duty local governments owe under TCA, Title 41, Chapter 9 to use "due care" in the protection and supervision of community service probationers, might override any waiver signed by the probationer.

Second, the waiver cannot be made effective against a person suing the local government under the Tennessee Tort Liability Act or Section 1983 for injury at the hands of a community service probationer. The best that a waiver could do is waive the community service probationer's claims against the local government.

It is obvious that no matter what the source of potential liability of the local government in the use of community service probationers, the local government can minimize the risk of liability by using caution in screening them; assigning them to jobs in which the potential for injury to them and to others is small; adopting and enforcing clear, written policies governing the scope and conditions of their labor and their relations with the public and employees; and closely supervising and protecting them. The local government should also contact its insurance carrier to determine the extent of its coverage for injuries caused by and to community service probationers.

APPENDIX A

DEPARTMENT OF CORRECTION - DIVISION OF PROBATION

COMMUNITY SERVICE PARTICIPATION

AGREEMENT WITH SUPERVISING AGENCY



APPENDIX A

DEPARTMENT OF CORRECTION - DIVISION OF PROBATION COMMUNITY SERVICE PARTICIPATION AGREEMENT WITH SUPERVISING AGENCY*

THE UNDERSIGNED AGENCY HAS AGREED WITH THE DEPARTMENT OF CORRECTION TO PARTICIPATE IN THE COMMUNITY SERVICE PROGRAM IN EXCHANGE FOR LABOR TO BE DONE FOR THE AGENCY AT NO COST TO THE AGENCY. ANY FAILURE BY THE AGENCY TO COMPLY WITH THE ORDERS, RULES OR REGULATIONS OF THE DEPARTMENT OF CORRECTION MAY RESULT IN IMMEDIATE TERMINATION OF THE AGENCY FROM THE PROGRAM. THE FOLLOWING IS EXPRESSLY UNDERSTOOD AND AGREED:

1. I, _____, as the representative of the supervising agency participating in the Work Project Program understand that I am responsible for:
 2. All supervision of every defendant who does work for my agency through this program;
 3. For all records required by the coordinator;
 4. Making sure that the supervisor's log and the defendant's time sheet are kept on a daily basis;
 5. Seeing that injuries incurred with defendants are reported immediately to the coordinator;
 6. Notifying all supervisors working with defendants that any supervisor falsifying any records or showing favoritism toward any defendant could result in termination from the program;
 7. Seeing that all supervisors require defendants to wear safety devices as the situation may require;
 8. Seeing that no tasks which would reasonably endanger the life or safety of the defendant is assigned to any defendant;
 9. Seeing that appropriate work receipts are issued at the end of each day to each defendant and appropriate duplicates are maintained for the defendant;
 10. Seeing that any problems from defendants are reported immediately to the coordinator. Such problems may include, but are not limited to: (a) uncooperativeness, (b) tardiness, (c) possession of any weapon, (d) possession or use of any narcotics, alcohol or drugs, (e) use of profanity, (f) dangerous horse play;

IN CONSIDERATION, for participating in the Work Project Program the supervising agency accepts full responsibility for the supervision of all defendants assigned to the agency. Should the supervising agency desire to be insured against any risk associated with the program, it is the supervising agency's responsibility to obtain and pay for such insurance coverage.

The undersigned individual, signing in behalf of the supervising agency hereby acknowledges that I have the authority to bind the supervising agency to the terms of the agreement, I agree to abide by the terms of this agreement; the agreement has been adequately explained to me; I understand the full consequences if the agency should not comply with this agreement and I acknowledge receiving a copy of this agreement.

SUPERVISING AGENCY: _____

BY: _____

DATE: _____

COORDINATOR: _____

*This is a reproduction. Contact Department of Correction, Division of Probation for original.

ENDNOTES

1. Under TCA, Section 40-35-303, a defendant is eligible for probation if the sentence imposed is eight (8) years or less, with some exceptions for certain crimes. [1989 Criminal Sentencing Reform Act]
2. There is probably no authority under Tennessee law for a municipal court to "sentence" ordinance violators to community service as a condition of probation, or, for that matter, even to put municipal ordinance violators on probation.
3. TCA 41-9-104, which applies to probationers supervised by the Tennessee Department of Corrections, insulates charitable organizations and governmental entities authorized to utilize probationer labor under TCA 41-9-102. TCA 41-9-102(a) authorizes "any charitable organization or governmental entity within a judicial circuit" to utilize such labor. That authority, standing alone, undoubtedly includes municipalities within the judicial circuit. But TCA 41-9-102(c) also provides that any qualified charitable organization, or "any agency, branch, department or other entity of municipal, county or state government" may apply to the project coordinator of the judicial circuit where the work project is to be performed for probationer labor.

TCA 41-9-204, which applies to probationers supervised by the county probation department, in similar language insulates charitable organizations, and, specifically, municipalities, counties and political subdivisions authorized by TCA 41-9-102 to utilize probationer labor.
4. See *Street v. National Broadcasting Company*, 512 F.Supp. 398 (E.D.Tenn. 1977). Also see 19 TENNESSEE JURISPRUDENCE, Negligence, sec. 2.

If TCA, Title 41, Chapter 9 creates a statutory duty on the part of local governments to protect and supervise community service probationers, the breach of that duty may also constitute negligence per se.
5. It is not clear in this case either at the District Court or Court of Appeals level whether the sheriff and his deputy actually had access to Hartman's records, which apparently indicated his prior assault upon a woman.

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The University of Tennessee does not discriminate on the basis of race, sex, color, religion, national origin, age, disability, or veteran status in provision of educational programs and services or employment opportunities and benefits. This policy extends to both employment by and admission to The University.

The University does not discriminate on the basis of race, sex, or disability in its education programs and activities pursuant to the requirements of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act (ADA) of 1990.

Inquiries and charges of violation concerning Title VI, Title IX, Section 504, ADA, the Age Discrimination in Employment Act (ADEA), or any of the other above referenced policies should be directed to the Office of Vice President, Suite 105 Student Services Building, Knoxville, Tennessee 37996-0213, (865) 974-6622. Requests for accommodation of a disability should be directed to the ADA Coordinator at the same location.