

RECOMMENDATION TO THE COMMISSION
FROM THE SENTENCING ALTERNATIVES WORKGROUP

Amend [AS 12.55.055](#), the Community Work Service (CWS) statute to convert unperformed CWS to a fine and eliminate the option of conversion of unperformed Community Work Service to jail.

SUMMARY

The Sentencing Alternatives Workgroup proposes changes to AS 12.55.055, the Community Work Service (CWS) statute. The Workgroup proposes that: (1) the value of CWS be tied to the State's minimum wage so further adjustments are not required; (2) any sentencing court imposing CWS hours also set a future hearing as a deadline to determine if the hours have been performed; and (3) any CWS hours which are not performed by the time of that hearing be converted to a fine (at the minimum wage rate) and not converted to jail time.

The proposal would accomplish savings of jail days, prosecutor, state funded defense, law enforcement, judicial and court staff time required to process petitions to revoke probation for CWS violations.

CURRENT LAW AND PROBLEM POSED

AS 12.55.055 now reads in pertinent part:

(c) The court may offer a defendant convicted of an offense the option of performing community work in lieu of a fine, surcharge, or portion of a fine or surcharge if the court finds the defendant is unable to pay the fine. The value of community work in lieu of a fine is \$3 per hour.

(d) The court may offer a defendant convicted of an offense the option of performing community work in lieu of a sentence of imprisonment. Substitution of community work shall be at a rate of eight hours for each day of imprisonment. A court may not offer substitution of community work for any mandatory minimum period of imprisonment or for any period within the presumptive range of imprisonment for the offense.

The CWS statute was likely intended to judges to offer a defendant the opportunity to perform CWS in lieu of jail, rather than ordering CWS and then converting to jail if not performed.

The way the statute is currently used, however, has led to the filing of **494 misdemeanor petitions to revoke probation in FY 14** (data supplied by the Alaska Court System) for failure to comply with the CWS requirement of a judgment. Each of these petitions require the prosecutor to prepare a formal petition and file it with the court. The court then reviews it, issues either a summons or a warrant for the defendant to appear in court, each of which require law enforcement to serve these on the defendant. Once the defendant appears in court, s/he is entitled to appointment of counsel, if indigent, a court hearing and court response.

In many of these cases, the court converts unperformed CWS hours into jail. This is so because a very high percentage of cases processed by the court are Driving While License Suspended (DWLS) cases. In FY 14 there were **1,950 Motor Vehicle cases filed, most of which are DWLS cases** filed in Anchorage. *Alaska Court System Annual Report FY 2014 page 132.*

A mandatory condition of probation for the first DWLS offense requires that the defendant complete 80 hours of CWS. AS 28.15.291 (A) and (C). Further, the case of State v. Fogg, 995 P2d 675 (Alaska App. 2000), requires conversion of these hours to jail which, at the current statutory rate, requires each defendant to serve **ten days of jail in lieu of the 80 hours mandatory CWS.**

SOLUTION

The Workgroup proposes that the CJC recommend that the legislature amend AS 12.55.055 as follows. Changes are shown in bold type.

Sec. 12.55.055. Community work. (a) The court may order a defendant convicted of an offense to perform community work in addition to any term of imprisonment, fine or restitution ordered. If the defendant is sentenced to imprisonment, the court may recommend to the Department of Corrections that the defendant perform community work.

(b) Community work includes work on projects designed to reduce or eliminate environmental damage, protect the public health, or improve public lands, forests, parks, roads, highways, facilities, or education. Community work may not confer a private benefit on a person except as may be incidental to the public benefit.

(c) The court may offer a defendant convicted of an offense the option of performing community work in lieu of a fine, surcharge, or portion of a fine or surcharge if the court finds the defendant is unable to pay the fine. The value of community work in lieu of a fine is **the State of Alaska's minimum wage** [~~§3~~] per hour.

(d) When a defendant has failed to perform community work in lieu of a fine, surcharge, or portion of a fine or surcharge as ordered, the court will send a notice to the defendant that the due date for demonstrating proof of community work has passed. If no request for hearing or proof of community work is filed with the court within 20 days of the date of the notice, the court shall convert those community work hours to a fine at the rate of Alaska's minimum wage per hour and issue a judgment against the defendant. The court shall not convert community work hours, even those mandated to be imposed by law, into a sentence of imprisonment.

(e) [re-lettered "d"]The court may offer a defendant convicted of an offense the option of performing community work in lieu of days of imprisonment. Substitution of community work shall be at a rate of eight hours for each day of imprisonment. A court may not offer substitution of community work for any mandatory minimum period of imprisonment or for any period within the presumptive range of imprisonment for the offense. **At the time of sentencing, the court shall schedule a future hearing by which date the defendant shall either have performed the community work in lieu of days of imprisonment or be required to serve the days of imprisonment ordered.**

(f) Medical benefits for an individual injured while performing community work at the direction of the state shall be assumed by the state to the extent not covered by collateral sources. When the state pays medical benefits under this subsection, a claim for medical expenses by the injured individual against a third party is subrogated to the state.

PROJECTED IMPACTS

The impacts projected are the savings of jail days, prosecutor, state funded defense, law enforcement, judicial and court staff time required to process petitions to revoke probation for CWS violations.

The court system would experience a reallocation of resources as it would be required to send notices of non-compliance out and issue judgments in these cases. This is much as it does now in Suspended Imposition of Sentence cases where non-compliances have occurred. However, the reallocation would be from judges, in courts and staff to staff only and would result in less work than issuing the summonses and bench warrants required to hail defendants to court and conducting 498 hearings per year.