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File Copy

ROBIN L. TAYLOR
P.O. Box 869
Wrangell, AK 99929

March 18, 1981

Honorable Ernie Haugen
Representative
P.O. Box 1049
Petersburg, AK 99833

RE: Restitution sentencing and compensation
for injured probationers.

Dear Ernie:

As you are aware, I have extensively utilized community work and restitution programs in sentencing Wrangell and Petersburg misdemeanors for the last four years. I found that these sentences work where traditional incarceration often fails to rehabilitate the defendant and the community receives significant benefit from these programs. At my urging and that of many other people who had used this form of sentencing, the legislature in 1978 passed AS 12.55.055 and AS 12.55.045 to allow judges to use community work and restitution in sentencing, thus making legal that which some of us had been doing by stretching the existing statutes.

The problem is that though I have not only continued to utilize this form of sentencing and even expanded my applications of this type of sanction, most of the other judges in the state have been reluctant to move into this scheme. They have good cause for that reluctance.

I also find that some city officials and agency personnel are also reluctant to participate in these sentences as supervisors.

The reason that the restitution and community work concepts have not really gotten off the ground in this state is due to the fear of those involved that they and their city or agency might be liable should a probationer be injured while doing community service or restitution work. I personally carry an extra one million in personal liability insurance, and have not had one incident during the last four years which would cause concern. The possibility of liability does exist and I fear that unless the legislature acts to correct that situation, that there will be little or no community service sentencing going on in the state.

Honorable Ernie Haugen
March 18, 1981
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Pursuant to our discussion about this situation, I have drafted in very rough form a sample piece of legislation which might work to remedy the problem. It is tailored after a Minnesota statute passed in May of 1979.

This legislation leaves it up to the legislature to hold hearings and award compensation, which seems a bit awkward to me. It might be more workable if placed under the workmens compensation program or some other agency which routinely deals with claims of this nature. I will happily leave such refinement to your good offices and hope that these meager efforts of mine will be of assistance to you in this matter.

I heartily support the community service and restitution concepts as they succeed where more traditional approaches often fail.

The City of Wrangell alone has received over \$12,000 in free work over the last four years and the program is growing all the time. These same offenders have a recidivism rate of less than 10%, compared to more traditional forms of punishment which nationally were between 50 to 70% repeaters. In addition to all of that, the cost of running the jail and transporting prisoners is greatly reduced, thus saving the taxpayers a substantial sum each year. Best of all, the victim always gets taken care of first under this system instead of being forgotten as the judicial system often did.

In essence, Ernie, this works well for everyone concerned and I've convinced several other judges to take a hard look at using this approach, especially when they see the success I've had with this approach in Wrangell and Petersburg. It would be a shame to let it die because everyone is afraid of being sued.

An additional matter which we discussed again last session is that of judicial services for Wrangell and Petersburg. In 1979 the legislature created a superior court for Kotzebue. I believe that political considerations were probably the reason for the improved judicial services for that community.

On March 12, 1979, I wrote to you, Ernie, sending along a statistical comparison between the case loads of the Wrangell/Petersburg courts and the case load in Kotzebue. In the first nine months of 1979, Kotzebue had 368 cases filed; in the same time period Wrangell had 567 and Petersburg had 368, for a total of 953 cases for this district court location.

1980 and 1981 statistics only indicate that there has been a further significant increase in the case load in Wrangell and Petersburg, thus making the disparity between these towns and Kotzebue even more obvious.

The cost of changing from a district court to a superior/district court for Wrangell/Petersburg is only the difference between a superior court judges salary and that of a district court judge, approximately \$8,000 to \$10,000. The improved

Honorable Ernie Haugen
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quality services to both of these towns and their surrounding trade areas would certainly seem justified when compared with Kotzebue.

As you are aware, I have filed for the superior court seat in Juneau, vacated by Allan Compton's appointment to the Supreme Court. As I would rather live and raise my family in the Wrangell/Petersburg area, I will withdraw my name from contention if you and Dick believe there is a possibility either this year or next of the Wrangell/Petersburg court becoming a superior/district court. Because the selection process for Juneau is presently moving forward, your prompt response would be appreciated.

Sincerely Yours,

Robin L. Taylor

P.S. For further indication of the need for superior court jurisdiction in Wrangell and Petersburg, you might contact Robert Hubby, Probation Office, and other state agency personnel in both communities who are involved in the judicial process. Of course the attorneys who practice in these communities could also lend insight regarding this matter.

RLT/ji
enclosures
cc: Honorable Senator Richard Eliason



Official Business

Alaska State Legislature

Senate

Judiciary Committee

Pouch V
State Capitol
Juneau, Alaska 99811

April 15, 1981

Judge Robin L. Taylor
District Court
State of Alaska
First Judicial District
P. O. Box 869
Wrangell, Alaska 99929

Dear Judge Taylor:

Thank you for your comments and information on Senate Bill 285.

I expect the Judiciary Committee to hear and pass the bill out within a few weeks.

I will include your letter and enclosure in each committee member's file so they may review your comments and proposal.

Sincerely,

A handwritten signature in cursive script, appearing to read "Pat".

Senator Patrick M. Rodey
Chairman

PMR/ods



RECEIVED

APR 13 1981

District Court

State of Alaska

FIRST JUDICIAL DISTRICT

P. O. BOX 869

WRANGELL, ALASKA

99929

ROBIN L. TAYLOR, Judge

April 6, 1981

Honorable Patrick Rodey
Chairman, Senate Judiciary Committee
Pouch V
Juneau, Alaska 99811

Re: Senate Bill 285

Dear Senator:

Over the last four years I have extensively utilized community service as a sentencing tool and the results have been gratifying. The recidivism is reduced to approximately 7%, the costs of prisoner transport and jails is totally avoided and the community receives free labor. Best of all, the victim always gets paid for any damage done by the defendant.

Presently there are only a few judges in the state utilizing this form of sentencing. The reluctance of the judiciary is due to the fact that the legislature has not yet addressed two questions; work related injuries and liability for injuries or damages caused by these workers.

In 1978 the legislature passed AS 12.55.055 which allowed the courts to use community service sentencing. I had been using this form of sentencing extensively for two years at the time of the bill's passage. I crossed the liability question over 3 1/2 years ago by purchasing a million dollar floater on my personal policy. My response to the problem may not be appropriate but at least I could sleep nights and the program kept going.

The appropriate response is for the legislature to squarely address the question of liability of all participants in the community service sentencing problem and provide a solution so that this form of sentencing may truly become a reality. At the present time cities are unwilling to accept free services for fear of liability if the person doing the work gets

Honorable Patrick Rodey
April 6, 1981

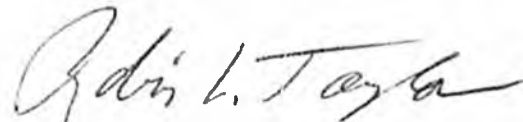
Page Two

injured or if that person injures someone else. Judges are unwilling to sentence people to do community service as the judge himself may bear some degree of responsibility to the parties.

Unless your committee is willing to solve the problem, there will be no community service sentencing in the near future. The concept is the most successful form of sentencing that I've seen - it works. It would be a tragedy to lose this alternative.

I have enclosed legislation enacted in Minnesota to solve part of the problem and have suggested in rough form similar legislation for this state, *which I forwarded to Ernie Haugen copy enclosed*

Sincerely yours,



Robin L. Taylor

copy

MINNESOTA STATUTES ANNOTATED

Sections

I to 9

3.739 Injury or death of conditionally released inmate

Subdivision 1. Legislative authority. Claims and demands arising out of the circumstances described in this subdivision shall be presented to, heard, and determined by the legislature:

(1) An injury to or death of an inmate who has been conditionally released from a state correctional facility and ordered to perform uncompensated work for a state agency, a political subdivision or public corporation of this state, or a nonprofit educational, medical, or social service agency, as a condition of his release, while performing the work;

(2) An injury to or death of a person who has been placed on probation by a court and who is performing work in restitution pursuant to court order; or

(3) An injury to or death of a person, including a juvenile who has been diverted from the court system and who is performing work in restitution pursuant to a written agreement signed by himself, and if a juvenile, by his parent or guardian.

Subd. 2. Evaluation of claims. Claims arising out of this section shall be paid pursuant to legislative appropriation following evaluation of each claim by the appropriate committees of the senate and house of representatives. Compensation will not be paid for pain and suffering.

Subd. 3. Exclusive remedy. The procedure established by this section is exclusive of all other legal, equitable and statutory remedies against the state, its political subdivisions, or any employees thereof.

Added by Laws 1979, c. 200, § 2, eff. May 30, 1979.

Library References
States §-184.21.
C.J.S. States §§ 277, 280.

Sec. 12.55.045. Restitution. (a) The court may order a defendant convicted of an offense to make restitution as provided in this section or as otherwise authorized by law. In determining the amount and method of payment of restitution, the court shall take into account the financial resources of the defendant and the nature of the burden its payment will impose.

(b) An order of restitution under this section does not limit any civil liability of the defendant arising from his conduct.

(c) If a defendant is sentenced to pay restitution, the court may grant permission for the payment to be made within a specified period of time or in specified installments. (§ 12 ch 166 SLA 1978; am § 38 ch 102 SLA 1980)

Effect of amendment. The 1980 amendment deleted the former first sentence of subsection (b), which read: "Before the court may sentence a defendant to a program of restitution, the victim must be given notice that restitution may be ordered."

Editor's note. Section 23 of ch 166, SLA 1978 provides, in subsection (d): "Except as provided in (c) of this section, sec 12 of this Act governs the punishment for any offense committed on or after the effective date of this Act." Subsection (c) relates to the applicability of AS 12.55.125 through 12.55.185.

Section 23 of ch 166, in subsection (f), provides: "Sections 1 - 4 of this Act do

not apply to or govern the construction of and punishment for any offense committed before the effective date of this Act or the construction or application of any defense to a prosecution for the offense. An offense shall be construed and punished according to the law existing at the time of the commission of the offense in the same manner as if this Act had not become law."

Legislative history report. For report on ch 102, SLA 1980 (HCS CSSR 511), see 1980 Senate Journal Supplement, No. 41, (May 29, 1980) or 1980 House Journal Supplement, No. 79, (May 29, 1980).

Sec. 12.55.055. Community work. (a) The court may order a defendant convicted of an offense to perform community work as a condition of a suspended sentence or suspended imposition of sentence, or in addition to any fine or restitution ordered. If the defendant is also sentenced to imprisonment, the court may recommend to the Department of Health and Social Services 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. (§ 12 ch 166 SLA 1978)

Sec. 12.55.065. Injury or death of conditionally released inmates and probationers. (a) All claims and demands arising out of the circumstances described herein shall be presented to, heard and determined by the legislature:

- (1) An injury to or death of an inmate who has been conditionally released from a state correctional facility and ordered to perform uncompensated work for a state agency, a political subdivision, or a public corporation of the state in a non profit educational, medical, or social service agency, as a condition of his release, while performing the work;
 - (2) An injury to or death of a person who has been placed on probation by a court and who is performing work in restitution pursuant to court order; or
 - (3) An injury to or death of a person, including a juvenile who has been diverted from the court system and who is performing work in restitution pursuant to a written agreement signed by the juvenile and by his parent or guardian.
- (b) Evaluation of Claims. Claims arising out of this section shall be paid pursuant to legislative appropriation of the senate and house of representatives.
- (c) Exclusive remedy. The procedure established by this section is exclusive of all other legal, equitable and statutory remedies against the state, its political subdivisions, or any employees thereof, including gratuitous volunteers providing supervisory assistance.



Superior Court

State of Alaska

FIRST JUDICIAL DISTRICT
415 MAIN STREET
KETCHIKAN, ALASKA
99901

RECEIVED

APR 03 1981

Chambers of
THOMAS E. SCHULZ, Judge

April 1, 1981

Senator Patrick M. Rodey
Chairman
Senate Judiciary Committee
Touch V
Juneau, Alaska 99811

Re: SB No. 285

Dear Senator Rodey:

As I remember, there are now two bills pending which relate to the alternatives to incarceration provisions in the new presumptive sentencing code. One is Senate Bill No. 285, and the other is a bill, which I do not have readily at hand, regarding the liability for injuries to the person performing the community work (workmen's compensation type claims). I support that legislation and would urge that the legislation be enacted.

Frankly, the Court in Ketchikan had better luck with community service before the new code went into effect than it does now, because the enactment of the new code caused some people to think about possible exposure to both workmen's compensation type claims and liability claims from third parties injured by either intentional or negligent acts of persons performing community service under court order. Those statutory provisions are extremely viable alternatives to incarceration, particularly in the case of first offenders, and this legislation is sorely needed in order to fully implement the alternatives presently available. Both the Borough and City governments and several State agencies in Ketchikan have expressed concern in both of these areas, and I am hopeful that they can be cleared up in this session of the legislature.

Very truly yours,

Thomas E. Schulz
Superior Court Judge



District Court

State of Alaska

FIRST JUDICIAL DISTRICT

P. O. BOX 869

WRANGELL, ALASKA

99929

ROBIN L. TAYLOR, Judge

April 6, 1981

Honorable Patrick Rodey
Chairman, Senate Judiciary Committee
Pouch V
Juneau, Alaska 99811

Re: Senate Bill 285

Dear Senator:

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The appropriate response is for the legislature to squarely address the question of liability of all participants in the community service sentencing problem and provide a solution so that this form of sentencing may truly become a reality. At the present time cities are unwilling to accept free services for fear of liability if the person doing the work gets

Honorable Patrick Rodey
April 6, 1981

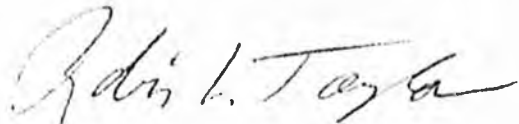
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injured or if that person injures someone else. Judges are unwilling to sentence people to do community service as the judge himself may bear some degree of responsibility to the parties.

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Sincerely yours,



Robin L. Taylor

Copy

MEMORANDUM

State of Alaska

TO: All Diversion Personnel

DATE: March 6, 1981

FILE NO.

TELEPHONE NO.

FROM: Wilson L. Condon
Attorney GeneralSUBJECT: Liability of State
for community work
service referralsDaniel W. Hickey
Chief ProsecutorBy: Patrick W. Conheady
Assistant Attorney General
Program Director

The issue of liability for clients referred to non-state agencies for community work service has finally been resolved by John Haywood of the Risk Management Division in the Department of Administration. Both referrals under Pretrial Intervention and under the Alternative Sentencing provisions are activities for which the State will assume liability, irrespective of accepting agency.

Agencies which raise the liability issue should be informed of this policy, and program personnel are authorized to state this in writing, if necessary.

ps

Frank:
I understood the dept. has withdrawn this letter - but it apparently has already confused the issue. Please see what you can do to take care of the liability problem. I've enclosed copies of Minnesota legis - our present legislation and a proposed draft of amending legis. If I can be of further assistance please call.

A. Davis

WORK ORDER REQUEST FORM

58 285

M12- 0596

KEYWORDS: availability

ASSIGNED TO Janet

original procedure

REQUEST FOR: BILL RESOLUTION RESEARCH OTHER

SUBJECT _____

REQUESTED FOR _____ BY _____ EXT. _____

* DELIVER TO _____ TAKEN BY _____

INSTRUCTIONS, EXPLANATIONS _____

OBTAIN

SPECIAL DRAFTING INSTRUCTIONS ATTACHED

AUTHORIZED TO CONFER WITH _____

RETURN _____

_____ TO REQUESTER

APPROVED: _____ Director, Legal Services

REVIEWED _____

IN _____ DUE _____

TYPED - Draft _____ DATE _____

Final _____ DATE _____

PROOFED _____ DELIVERED _____

SPECIAL INSTRUCTIONS TO TYPIST/PROOFREADER

DRAFT

FINAL