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TO: Senator Bill Ray

FROM: Paula d. Scavera

DATE: April 4, 1984

SECTIONAL ANALYSIS SB 539

SECTION 1

Gives the court an option of offering community work in lieu of a fine if the violator is unable to pay a fine. Sets a dollar value for each hour of community work. Gives the court the option in misdemeanor offenses of offering community work for jail sentences. Adds language so that the court may order a defendant to do community work as a condition of parole.

(Due to new department that was created-- on Line 20 the Department of Health and Social Services should be deleted and Department of Corrections inserted)

SECTION 2

Sets out guidelines for courts to follow in imposing community work service for various types of offenses.

SECTION 3

Changes "he" to "the defendant".

Adds cross references to the new language.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST:

Bill/Resolution No.: SB 539
Title: "An Act relating to community work.."

Sponsor: Judiciary Committee
Requestor: Judiciary Committee
Date of Request: April 6, 1984

FISCAL DETAIL:

Agency Affected: DEPARTMENT OF CORRECTIONS
Program Category Affected: _____
Administration of Justice
BRU, Program or Subprogram(s) Affected: _____
Northern, Southcentral & Southeastern
Regional Corrections

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY84	FY 85	F 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	*	*	*	*	*

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						
TOTAL	-0-	*	*	*	*	*

* See Analysis - Program Summary.

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						
TOTAL						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

The source of funds to offset the impact of this bill has not been identified by the bill sponsor.

ANALYSIS: Attach a separate page for any Analysis.

Prepared By: Roger C. Lange *Roger C. Lange*
Division: Administrative Services

Phone: 465-3376
Date: April 9, 1984

Approved by Commissioner: Roger V. Endell *Roger V. Endell*
Department: DEPARTMENT OF CORRECTIONS

Date: April 9, 1984

Distribution:

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency (ies)

ANALYSIS

I. Assumptions:

Enactment of Senate Bill No. 539 would expand authority for requiring persons guilty of crimes to perform community work, and would standardize the upper and lower limits of hours of community work to which a defendant could be sentenced according to the classification of the offense. The bill also specifies that the work be performed for and under the supervision of the State, a political subdivision of the State, or a non-profit organization.

It is assumed that enactment of this bill would:

- A. Increase the number of persons required to perform community work over that which now exists;
- B. Require effort by either the Department of Law or the Department of Corrections to develop/coordinate community work programs; and
- C. Increase the time-accounting activities required as a result of increased number of participants.

Therefore, it is assumed that there will be incremental costs generated as a result of this legislation, if passed.

II. Program Summary:

With the information available at this time, it is not possible to predict the extent of fiscal impact on the Department of Corrections. Community Counselors may be required to work with political subdivisions or non-profit organizations to develop and/or expand meaningful work projects. Depending on the time during the sentence of an incarcerated person, additional supervision may be necessary to accomplish the community work program. An adequate record keeping system must be kept to assure that all hours required for community work are performed (recording of hours worked; running balance of hours of work remaining, etc.).

It is the considered opinion of the Department of Corrections that it will take a year of tracking to measure the fiscal impact of this bill. There will be a fiscal impact, but the magnitude cannot be estimated at this time.

III Economic Impact:

Enactment of this bill would not have any significant impact on the State's economy.

IV. Impact on Local Governments:

Enactment of this bill may have a slight impact on local governmental units supervising community work programs, but this impact should be offset by the product of the work program.

DEPARTMENT OF CORRECTIONS
Pouch T
Juneau, Alaska 99811

POSITION PAPER
Senate Bill No. 539

"An Act relating to community work as a part of a criminal sentence."

Senate Bill No. 539 would expand authority for the community work program for sentenced offenders and establish the minimum/maximum numbers of hours a defendant could be sentenced to community work in the various classes of criminal offenses.

The general public would benefit as a result of the performance of the community work projects at little or no cost. It could also result in a slight reduction in the number of inmate days of care when performance of community work is done in lieu of incarceration.

The Department of Corrections agrees in concept with this proposed legislation and supports its passage.

Prepared by:

Roger C. Lange

Roger C. Lange
Internal Management Administrator

Date:

April 5, 1984

Approved by:

William W. Ladwig

William W. Ladwig
Assistant Commissioner
for Administration
Department of Corrections

Date:

April 9, 1984



THE CITY AND BOROUGH OF JUNEAU

CAPITAL OF ALASKA

155 SOUTH SEWARD ST. JUNEAU, ALASKA 99801

April 4, 1984

Senator Bill Ray, Chairman
Senate Judiciary Committee
Alaska State Senate
Pouch V
Juneau, AK 99811

File: SB 539 (Community Work Services by Convicted Persons)

Dear Senator Ray and Members of the Judiciary Committee:

While the assembly of the city and borough has not had an opportunity to review this bill and take a position on it, the municipality does presently participate in a community work program with the state of Alaska.

I offer the following comments and suggestions for your consideration. First, a close reading of the new language to be added in lines 10 through 15 on page 1 indicates that a defendant convicted of a misdemeanor for which the court imposes only a fine may not be offered the option of performing community work. Persons convicted of a misdemeanor may be offered the option of community work only when the sentence is imprisonment. I do not know whether this was intentional or not, but you may want to consider why a person convicted of a violation and fined \$100 may be given the option of community work while a person convicted of a misdemeanor and fined \$100 may not be given the same option.

There may be something of an inconsistency in the way violations are handled. It appears under the new language to be added under AS 12.55.055(a) that the court may offer the option of community work to a person convicted of a violation and that the person works off the fine imposed at the rate of \$5.00 per hour. Under the new subsection (d) it appears that the court may require a person to perform community work if they have been convicted of a violation. However, under the standards that are proposed under the new subsection (d) a person convicted of a violation may not be required to work less than eight hours nor more than twenty hours. This means that a person convicted of a violation who is fined \$300 may be given the option of working off the fine by performing sixty hours of community work; however, if the court wants to sentence the person to community work it would be able to require only twenty hours of community work. If the bill is amended to permit the court to offer community work as an alternative to a fine for a misdemeanor conviction, the same type of problem would probably occur for misdemeanors. You may want to expand the range of hours of work that

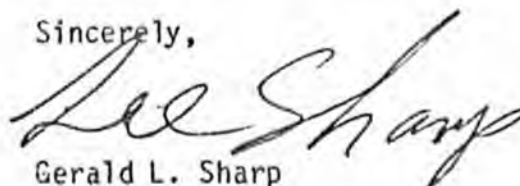
may be required when a defendant is sentenced to perform community work. In addition, the bill raises the question of whether a sentence of performing community work is in lieu of all fines and imprisonment or is in addition to authorized fines and imprisonment, or is a partial substitute for fines or imprisonment. Language clarifying this question would be helpful. Also, if it is intended that the community work be a partial substitute for fine or imprisonment, there should be some indication of how the conversion is made; e.g., fines at the rate of \$5.00 an hour and imprisonment at the rate of eight hours of community work for each day of imprisonment.

There are two matters of concern to the municipality. First, it appears that this bill applies only to offenses committed under the state statutes. For example, the new subsection (d) tracks with the state criminal code, and not with municipal ordinances. If the courts are to be able to offer or require convicted defendants to perform community work when the conviction is under a municipal ordinance, the bill should be changed to clearly indicate that municipal ordinance violations are included. If that is done, please bear in mind that the new subsection (d) will probably have to be changed and that violations of municipal ordinances range in seriousness from those of violations under the state criminal code to class C felonies yet they are all lumped together under a single category of ordinance violation.

The second area of concern to the municipality is the employee/employer relationship of a person performing community work for the municipality and the liability of the municipality for the acts of such community work persons while performing community work. While there is an attorney general's opinion to the effect that persons performing community work are not employees for worker's comp purposes, a statutory clarification of the status probably would not hurt; also, you may want to change that status.

Municipalities and private nonprofit corporations hesitate to participate in the community work program because of the added exposure to claims arising out of acts of the person performing the community work. Because the community work program is an alternative sentencing mechanism which is a function exclusively within the purview of the court, it would seem appropriate to place liability for the acts of the person performing community work on the court system. For the purpose of providing protection to the municipalities and nonprofit corporations that are willing to provide community work service opportunities to the court system, I suggest that this bill be amended to make it clear that persons performing community work as a part of a sentence be considered employees of the court system for worker's compensation purposes and that the state assume the liability for the acts of such persons if the acts are committed while the person is performing his or her community work. This approach should do much to eliminate one of the major problems municipalities and nonprofit corporations have in making available opportunities for convicted persons to perform community work.

Sincerely,



Gerald L. Sharp
City-Borough Attorney

TO: Senator Bill Ray

FROM: Paula d. Scavera

DATE: April 4, 1984

SECTIONAL ANALYSIS SB 539

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COMMUNITY WORK SERVICE

YEARLY REPORT

Office Location All Southeast Offices

Year 1983

Felony Clients:

Referred This Year	<u>72</u>
Active This Year	<u>152</u>
Terminated Favorably This Year	<u>24</u>
Terminated Unfavorably This Year	<u>12</u>
Total # Hours Performed	<u>7,844</u>

Misdemeanor Clients:

Referred This Year	<u>276</u>
Active This Year	<u>364</u>
Terminated Favorably This Year	<u>20</u>
Terminated Unfavorably This Year	<u>12</u>
Total # Hours Performed	<u>3,332</u>

Juvenile Clients:

Referred This Year	<u>208</u>
Active This Year	<u>292</u>
Terminated Favorably This Year	<u>76</u>
Terminated Unfavorably This Year	<u>16</u>
Total # Hours Performed	<u>2,452</u>

Diversion Clients:

Referred This Year	<u> </u>
Active This Year	<u>67</u>
Terminated Favorably This Year	<u>43</u>
Terminated Unfavorably This Year	<u>13</u>
Total # Hours Performed	<u>2,022</u>

Grand Total Hours Performed This Year

15,650

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION PRETRIAL DIVERSION PROGRAM

March 27, 1984

BILL SHEFFIELD, GOVERNOR

REPLY TO:

- POUCH KT
JUNEAU, ALASKA 99811
PHONE: (907) 465-3678
- 941 W 4th ST.
ANCHORAGE, ALASKA 99501
PHONE: (907) 278-3508
- 733 7th AVE.
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-7713

The Honorable Thomas E. Schulz
Presiding Judge
First Judicial District
415 Main St.
Ketchikan, AK 99901

Re: Community Work Service
Guidelines

Dear Judge Schulz:

I want to thank you for your time when I was in Ketchikan on February 16. Our discussion on the community work service program renewed my hope that some of the problems we are experiencing can be rectified and that this program will achieve its full potential as an alternative disposition for offenders. I apologize for not getting back to you earlier on this matter, however, with the Legislature in session it seems as though some of my normal responsibilities get relegated to the back burner.

As you are aware, the Pretrial Services Section of the Criminal Division, Department of Law is responsible for the placement and monitoring of offenders in community work service. As an adjunct to employment of community work service for diverted offenders, we contracted with the Adult Corrections Agency to provide a similar service for sentenced felons. At the time we entered into this agreement, we sought a consolidation of work under this program in order to promote uniformity in its application. As we undertook to perform these contracted duties, we likewise decided to offer our services to the district courts for sentenced misdemeanants. As we were under no duty to offer this service, it became our lowest priority, and we would undertake it to the extent of our available resources. We believed that this would offer a greater range of constructive alternatives to the courts at sentencing while, likewise continuing the uniform standards that are necessary to an efficient and successful program. Until recently we have been very satisfied with the cooperation between the community work service staff and the judiciary, and we feel that, at least in the First Judicial District, the program

is working well. However, as of lately, we are beginning to experience some difficulties, particularly with the service offered to District Court. I am disinclined to discontinue this service, however, unless the problems are rectified, I will find it necessary to do so. As you suggested, I have reviewed the problems we are experiencing, and offer the following standards for your consideration. I feel if these standards are utilized throughout the First Judicial District, the community work service program will continue to be an efficient and successful alternative program.

The nature of the problems we are encountering is wide. District court judges are ordering the performance of community work service in lieu of the payment of fines. While not an objectionable practice, obvious abuses are coming to light. For example, performance of a single hour of community work service in lieu of a \$10 fine amounts to a significant waste of my staff's time, not to mention the difficulty I have in believing that an offender didn't have \$10, and had no prospects of procuring \$10 within the foreseeable future.

It is becoming evident that the inquiry and examination of offenders sentenced to pay fines under AS 12.55.035 is not being conducted. Routinely, offenders are ordered to pay fines and immediately upon denial of the ability to pay the fine, they are given community work service in lieu thereof. AS 12.55.035(d) provides a procedure whereby the court can permit an offender to pay a fine over a period of time. Awareness and employment of this provision would vest some integrity in AS 12.55.035, and foreclose obvious abuses. Additionally, I believe the court has the inherent power to bring an offender who is "unable" to pay a fine back before it and have that offender voluntarily execute an assignment of a permanent fund dividend to satisfy an outstanding fine. Finally, on this issue, I believe that it is implicit in the Court of Appeals decision in Brezenoff v. State, 658 P.2d 1359 (Alaska 1983) that the court needs to fully explore an offender's claimed inability to pay before it makes that determination.

Another problematic area is the failure of the courts to follow through on those individuals who fail to perform community work service. While it may be somewhat inconvenient for some judges to do so, the fact that an

offender has ignored the court's judgment to perform community work service should not be dismissed. Time and again, my staff has attempted to put some teeth into the court's orders by unfavorably terminating offenders who fail to perform community work service. To our knowledge, in Ketchikan, nothing ever happens to these offenders (In Sitka and Juneau, Orders to Show Cause are issued, and offenders are held to answer for failure to comply). Rather, offenders in Ketchikan are either rereferred for community work service or the court merely dismisses the judgments without satisfaction. Needless to say, in smaller communities such as Ketchikan, word of the court's disinclination to back up its judgments becomes common knowledge within the community and operates to destroy the effectiveness of programs such as community work service.

Consistent with your request, I have discussed the operation of the community work service here in Southeast with my staff. We offer for your consideration the following minimum standards which need to be met to ensure a successful program:

1. Minimum Number of Hours. Considering there is a certain amount of time which we must invest in each referral for screening, placement and monitoring functions, as well as paperwork for each referral which we require of placement agencies, it is not cost-effective to work with any offender who has less than eight hours of community work service to perform.
2. Community Work Service in Lieu of Fines. C.W.S. should not be allowed as an alternative to a fine except (a) when a thorough examination of the offender is made to ascertain the inability to pay the fine; (b) the offender is unlikely to be able to pay the fine in the future under AS 12.55.-035(d); and (c) there is a substantial reason why the offender is unable to assign his permanent fund dividend to satisfy the fine. Only if this procedure is followed will community work service in lieu of fines be a legitimate alternative. Once an offender is found to be unable to satisfy a fine and community work service is ordered, the offender should not be permitted to "buy" his way out of Community Work Service by suddenly

"finding" sufficient funds to satisfy the fine. Realistically, if a thorough examination of the offender occurs before ordering performance of community work service in lieu of a fine, then this should not be a problem. It is problematic in terms of monitoring offenders to have them change from community work service to payment of the fine, especially when my staff is rarely notified of this occurrence.

3. Time Limits. When an offender is ordered to perform community work service, a time limit in which the work must be performed should be set. This reinforces in the offender the connection between community work service and the offense. Usually for misdemeanants or violators, a time period of three months, is sufficient although an extension of that period under legitimate circumstances should be allowed. For most minor offenders who rarely receive more than fifty hours, this amounts to one day per week for no more than half the thirteen week period. It is quite inconceivable that an offender cannot schedule that type of available time. And, as I previously stated, when the offender does have other legitimate activities which preclude performance within this period, adjustments in the time period can be arranged.
4. Unfavorable Terminations and Enforcement of the Court's Order. The major problem administering this program occurs with offenders who fail to perform. On numerous occasions, offenders ordered to perform community work service either fail to ever appear, or having appeared and been placed, fail to follow through. For example, a recent placement in Ketchikan was so unreliable and unsatisfactory in his performance that the referral agency has discontinued using Community Work Service offenders.

This type of offender is regularly terminated from the program with the cases being referred back to the court for further action. In Juneau and Sitka, these unfavorable terminations result in the offender being brought back before the court;

and additional consequences normally ensue. This is generally in the form of either jail time or additional community work service hours for contempt of court. In Ketchikan, there are generally no additional consequences, and the offender is rereferred to my staff for another chance. This type of offender is not any more responsive than previously. There has even been a case brought to my attention wherein the court just vacated its previous sentence. Needless to say, the credibility and integrity of the program are severely damaged. Absent consequences, especially in a community the size of Ketchikan, our ability to instill responsibility or otherwise motivate the more obdurate offender is strictly limited. Even a "You'll perform, or else" approach won't work when the offender knows the "or else" is meaningless. Only if the "or else" truly results in more severe consequences can this program be successfully and properly administered.

5. Referral of Municipal Cases. Although we generally do not make the distinction between the original source of a case referred for community work service, there is an exception. In that we are constantly in need of referral agencies which can absorb a large number of offenders and which will provide the greatest benefit to the largest number of people, we have utilized municipal governments for placements. However, there have been a few municipalities that have refused to accept referrals, not out of a lack of need for additional help, but only because they disagree with State policy regarding sharing any financial liability that may result from placement of these offenders. As a result of this position, we have likewise assumed the policy of not accepting cases involving municipal offenses in these communities. In the First Judicial District, only Ketchikan is affected by this policy, therefore we do not accept Ketchikan municipal cases.
6. Uniformity. In administering this program state-wide, I have noted a large disparity in the ordering of community work service. In your role as head of the sentencing guidelines committee, I

know you'll understand the offensiveness of disuniformity in sentencing practices. While this issue is not a "bottom line," it is one that needs to be addressed, and I would welcome any suggestions you might offer in seeing that some consistency occurs in ordering community work service.

The first problem in this area concerns the number of hours of community work service ordered as a reflection of the severity of the offense. I am enclosing a copy of the standards we employ within the diversion program when requiring community work service, as well as a copy of legislation I worked on a number of years ago on the same subject. If these numbers are agreeable to you, perhaps their implementation here would be the first step in instituting uniform guidelines for community work service.

The second area of concern involves the rate of exchange when an offender performs community work service in lieu of a fine. In Fairbanks, Anchorage, Juneau and Sitka, conversion is at the rate of \$5.00 per hour. In Ketchikan, the rate is \$10.00 per hour. The biggest anomaly occurs in Saxman, where community work service is performed at a rate of \$10.00 per hour, with our major referral agency being the City of Saxman. That municipality allows other residents to work off utility debts, performing the same work as the community work service referrals, but at a rate of \$7.00 per hour. Needless to say, this creates some problems.

I'm not sure of the resolution to these problems, but any assistance you can offer would be appreciated.

The Honorable Thomas E. Schulz
Presiding Judge
First Judicial District

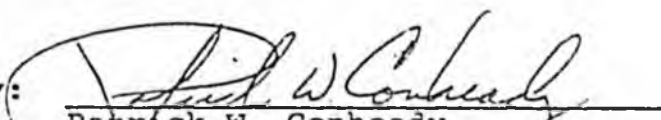
March 27, 1984
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In conclusion, I again want to thank you for your time and your efforts. Imposition of these standards throughout the First Judicial District will ensure a legitimate community work service program.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By:


Patrick W. Conheady
Assistant Attorney General

Enclosures

Copies to: Kelly Richards, Juneau
Sue White, Sitka
Kathy Saporito, Anchorage
Patty Moss, Fairbanks