

Purpose:

To provide all local community-based probation agencies with a consistent and uniform procedure for community service work for appropriate supervision placements. These guidelines are to be a part of the standard operating procedures regarding placement or referral to community service agencies or sites. They do not replace the standards but simply establish a baseline for standard operating procedures. Agencies must develop additional standard operating procedures (SOPs) in accordance with the requirements in the Minimum Standards.

Authority: §9.1-176 and §9.1-173 of the *Code of Virginia*

Related Statute: §8.1-226.8. Civil immunity for public officials [including probation officers] related to roadway litter pick-up program for offenders; §2.2-4343.1. Permitted contracts with certain religious organizations.

Related Standard: Department of Criminal Justice Services Minimum Standards for Local Community Corrections and Pretrial Services, §3.6 A.6., B.1. a. through f. and 3.7 C.

Definitions:

- Appropriate Supervision Placement, for purposes of local probation, is an adult offender (or one who has been adjudicated as an adult) sentenced to twelve months or less for a Class I or II misdemeanor or nonviolent felony, and who has been placed on probation with a local community-based probation agency following a sentence that has been suspended in whole or in part or who has been provided a deferred judgment and placed on probation for Class I or II misdemeanor offense authorized by state statute.
- Community Service Site is public property including works owned, leased or operated by any county, city or local public service authority including, but not limited to, any historic landmark, park, forest, playground, cemetery, school, library, public building or institution, hospital, community center, waterworks, sewage or waste disposal area, or recycling center, and any public national park on federal land or the property of a non-profit organization.
- Community Service Work is unpaid labor done for public and private non-profit agencies performed by offenders as directed by the court. The imposition of community service may be those hours calculated in lieu of fines or court costs, a condition of supervision, as a punitive or intermediate sanction, or in extenuating circumstances, pursuant to an approved standard operating procedure, in lieu of supervision and intervention fees or for payment of treatment costs. Community service excludes any direct reparation to a victim ordered by a court, by involvement in a restorative justice program, or as the result of mediation.
- Community Service Worksite Agreement is a written and signed arrangement between a worksite and the local community-based probation agency.
- Monitoring for Community Service is an optional service provided for adult offenders whose only condition is to perform court-ordered community service at approved work sites, pursuant to §9.1-176.1B. These offenders are not covered by the supplemental accident insurance provided by the Department.

- Nonprofit agency or organization is a party which is exempt from taxation under 26 U.S.C. §501 (c) (3) or (c) (4) and which is organized and operated for charitable or social welfare purposes.

Policy:

A. Responsibilities of the Program Director

1. Pursuant to established standard operating procedures, community service site selection and written agreements shall be developed and implemented by the program director or designee prior to any community service placement. Documentation of any variances must be in the case file.
2. Community service work includes, but is not limited to, litter abatement along a public roadway or waterway, repair or restoration of property within a locality, and any clean-up, beautification, landscaping, work on private property that is part of a community improvement project sponsored by a locality or that has structures that are found to be public nuisances, any skilled or unskilled labor performed for any agency of a local unit of government, and work on any property owned by a non-profit agency.
3. Community service sites should be in the locality serving as administrative agent or in any of the localities participating in a multi-jurisdictional community-based probation agency. Any variances must be documented. This may be in the form of a written signed community service worksite agreement.
4. Community service for offenders living in contiguous states shall only be completed within the state of Virginia, preferably within the supervising agency's service area. Extenuating circumstances must be documented.
5. Agreements for community service placements made with faith-based, non-profit agencies and organizations shall be the responsibility of the director or designee.
 - a. To the extent possible, faith-based organizations providing community service work sites should be organized and operated for charitable or social welfare purposes.
 - b. In order to ensure separation of church and state and freedom of religious choice or religious orientation, the faith-based organization shall, in its agreement to accept community service placements, stipulate that no local community-based offender will be subject to proselytizing, nor be required to attend religious services, participate in prayer or be subjected to meetings where prayer is a part of the organizational procedure without consent from the offender. (See sample worksite agreement attachment for faith-based organizations.)
6. The director or designee shall be responsible for establishing an objective method for determining the number of community service hours required when not specified by court order.

7. The director or designee shall be responsible for establishing an hourly rate, based on federal minimum wage, court order or local market rate, for community service in lieu of payment of fines and court costs.
8. The director or designee shall develop:
 - a. process to determine and document when offenders are not able to participate or are not appropriate for participation in community service due to medical, physical, mental, substance abuse or behavioral limitations or due to hardship or other extenuating circumstances. Documentation includes, but is not limited to, a medical statement, any treatment assessment evaluation or current disability claim.
 - b. A process for seeking a waiver for court-ordered community service in individual cases.

B. Insurance Requirements for Offenders on Community Service

1. The supplemental accidental medical insurance policy provided by the Department of Criminal Justice Services for accidental injury at a community service work site is applicable only for offenders performing community services who are appropriate supervision placements. Any claim made against this policy is a secondary claim for any offender who has a primary medical care or health insurance policy.
2. Localities monitoring offenders should provide separate locally funded supplemental accidental medical insurance for those who are performing community service. Monitoring cases include, but are not limited to, the following:
 - a. felony or misdemeanor offenders who do not fit the definition of appropriate supervision placements
 - b. offenders with a suspended sentence only [without probation]
 - c. offenders convicted of misdemeanor offenses that do not carry sentences to jail [fines only]
 - d. offenders ordered to perform community service in lieu of fines and costs

C. Prohibitions for Participation in Community Service

1. Pretrial defendants shall not be ordered by any judicial officer or required by any pretrial services agency to perform community service as a condition of bail or pretrial supervision. Any variances shall be documented.
2. The agency shall not permit local offenders:
 - a. to select their own community service work site without agency approval
 - b. to perform community service for a private business, company or enterprise
 - c. to be currently employed by the company or agency at which community service is being performed unless there is a documented extenuating circumstance or hardship
 - d. to receive any financial or monetary payment or incentive, or credit for hours not actually performed, for community service work.

D. Agreements with Other Agencies for Local Community-based Service Placement Oversight and Reporting

1. A local community-based probation agency may establish an MOA/MOU with a qualified public or private agency for the placement, oversight and reporting for offenders performing community service.
2. Procedures for the community-based probation agency and the community service placement agency shall, at a minimum, comply with the requirements of Standard § 3.6 B. 1 a. through d. and, where applicable, this guideline.
3. Other agencies that monitor community services placements shall comply with the Community Service Guidelines.

E. Requirements for Local Community-based Probation agencies, Community Criminal Justice Boards, Local Units of Government and Private Non-Profit Organizations

1. No staff of any local community-based probation agency, CCJB member, member of a local unit of government or board or staff member of any non-profit agency providing local community-based probation services by contract with the administrative agent of a local community-based probation agency shall have any offender work on property owned by them or on projects in which an individual has a financial or personal interest.
2. No CCJB member, local community-based probation agency, its administrative and fiscal agent, its multi-jurisdictional partners or any non-profit agency providing community-based probation services by contract or its private board shall accept or receive any financial incentive, contribution, payment, donation both real and personal, award, stipend or grant money from or on behalf of any agency that has received community service work from a local offender.
3. State grant funds may not be used for costs associated with the provision of these community service placements. These shall be provided by local government funds to include supervision and intervention fees collected from offenders. Offenders shall not be required to pay the provider agency a fee for community service placement.
4. No employee of a community service work site shall have any financial interest or receive any personal gain from work provided by local offenders.