

# Alabama Law Regarding Inmate Work Release & Work Detail Crews

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# Types of Inmate Labor Available to Counties under Alabama Law

- Inmate Work Release Programs
  - Established and governed by Ala. Code §§ 14-8-1 through 44.
- Inmate Work Detail Crews
  - Established and governed by Ala. Code §§ 14-4-1 through 14 and 14-5-1 through 37.

# Work Release v. Work Detail Crews

## Work Release

- Inmates are Paid
- Inmates released into community to work for private or public parties
- Work Release statutes offer liability protection to the County as an "employer" of an inmate.

## Work Crews

- Unpaid Labor
- Inmates sentenced to labor or volunteer time
- Inmates not released into community, remain under control of assigned official
- Work release statute offers some liability protection



# Work Release Statutes Relevant to Counties

- Authorization for and Establishment of Work Release Programs by Alabama Counties:
  - There is hereby authorized in each county of the state a work release program for county inmates and state inmates in custody of the county. Such program may be established at the option of the county in accordance with the provisions of this article.

Ala. Code § 14-8-31.

# Work Release Statutes Relevant to Counties

- Designation by County of Officer or Employee to Manage Work Release Program:
  - The county commission may designate any officer or employee of the county to do and perform for the county any act or function this article empowers the county to do or perform; provided, however, that no elected official of the county shall be designated to do or perform any act or function for the county unless such elected officer is agreeable to being so designated.

Ala. Code § 14-8-41.

# Work Release Statutes Relevant to Counties

- Employment of Work Release Inmates by Counties:
  - The State of Alabama and any county are hereby authorized to become employers of work release inmates under this article, and as such may employ inmates to perform any state or county job available, including, but not limited to, road or bridge work, garbage collection and school grounds maintenance.
  - Inmates employed under this section shall be paid the federally established minimum wage.

Ala. Code § 14-8-36.



# Work Release Statutes Relevant to Counties

## Limitations on Liability for Employers of Work Release Inmates

- **No inmate** granted privileges under the provisions of this article **shall be deemed to be an agent**, employee, or involuntary servant of the department, state, or county while involved in the free community, while under the direction, control, and supervision of the inmate's employer, or while going to and from employment or other specified areas. Ala. Code § 14-8-40.
- § 14-8-40 works to protect the County from actions claiming that the County is responsible for a work release inmate's conduct based on the theory of respondeat superior.

# Work Release Statutes Relevant to Counties

## Limitations on Liability for Employers of Work Release Inmates

- **Any inmate** participating in a work release program authorized by this chapter or otherwise working outside the jail or a correctional facility **shall have no cause of action against the county** or a community correction agency, or an employee thereof, related to such activities, unless the county or community corrections agency, or employee thereof, is willfully negligent in carrying out their responsibilities. Ala. Code § 14-8-40.
- § 14-8-40 works to limit the County's liability from a work release inmate's claims directly against a county.



## Limitations on Liability for Employers of Work Release Inmates

- Ala. Code § 14-8-40, continued.
  - **Any inmate** participating in a work release program authorized by this chapter or otherwise working outside the jail or a correctional facility **shall have no cause of action against the county** or a community correction agency, or an employee thereof, related to such activities, unless the county or community corrections agency, or employee thereof, is willfully negligent in carrying out their responsibilities.
- The phrase “or otherwise working outside the jail” arguably works to apply the “willfully negligent” standard to Work Crew cases in addition to Work Release cases.
- Also, the phrase “or an employee thereof” arguably works to apply the “willfully negligent” standard to employees of the County.
- Application of the “willfully negligent” standard to the Sheriff’s employees?

# Work Release Statutes Relevant to Counties

## Effect of Inmate's Failure to Remain in Work Area

- The willful failure of an inmate to remain within the extended limits of his confinement or to return to the place of confinement within the time prescribed shall be deemed an escape from a state penal institution in the case of a state inmate and an escape from the custody of the sheriff in the case of a county inmate and shall be punishable accordingly. Ala. Code § 14-8-42.
- In other words, a work-release inmate that has strayed from a work-release job site is considered to be an escapee.



## Effect of Inmate's Status as Escapee on County Liability under § 14-8-42

- This statute can work to reduce County's liability with regard to any unlawful actions committed by a work-release inmate outside the extended limits of his confinement.
- Ala. Dept. of Corrections v. Thompson, 855 So. 2d 1016 (2003)
  - In Thompson, the Alabama Supreme Court addressed the duty governmental officials owe to third parties for the criminal acts of escapees.
  - After escaping from a correctional facility's technical college, an inmate broke into victim's home, assaulted her, and stole her car.
  - The Court held that corrections officers only owe a general duty to the public, not a duty to a specific person, to maintain custody of inmates.
  - Only Exception: where a plaintiff can prove that the corrections officials had prior knowledge that an escapee may harm a specific individual.



# Work Release: Examples of Potential County Liability

- Plaintiff Citizen v. Alabama County, et al.
  - Plaintiff sued County, Sheriff, and the Sheriff's Office Administrator after her sister was murdered by an inmate of the County Jail while he was participating in a work-release program.
  - On the day of the incident, the inmate was supposed to have reported to work at a nearby farm. However, the laborers had the day off due to rain. Rather than report back to the jail, the inmate went to visit his former girlfriend and thereafter murdered her.
  - The Plaintiff claimed that the County Defendants negligently and/or wantonly failed to maintain adequate rules and properly administer the work-release program.

# Work Release: Examples of County Liability

- Plaintiff Citizen v. Alabama County, et al., continued.
  - In addition to the absolute immunity argument on behalf of the Sheriff and state-agent argument on behalf of the Office Administrator, Defendants argued:
    - Under Ala. Code § 14-8-40: the inmate was not an agent of the County Defendants.
    - Under Ala. Code § 14-8-42: Because the inmate was an escapee and no special relationship existed between Sheriff or Office Administrator and the victim, the County Defendants lacked a duty to protect the victim from the inmate's criminal acts.



# Work Release: Examples of Potential County Liability

- Roberson v. Allied Foundry and Machinery Co., 447 So. 2d 720 (Ala. 1984).
  - Convenience store cashier brought negligence action against employer of two work release inmates.
    - The County could be considered an inmate “employer” if it hires an inmate as part of a work release program.
  - The state inmates were employed by Allied Foundry via their prison’s work release program.
    - As employees of Allied, the inmates were allowed three break times, during which they were permitted to leave the plant’s premises.
    - During their breaks, the inmates walked to a nearby convenience store. On their third visit, the inmates robbed and assaulted the cashier, causing serious physical injuries.
    - There was evidence that several Allied officials, including the inmate’s supervisors, knew, or were highly suspicious, that the inmates had been drinking intoxicants on the night of the incident.



# Work Release: Examples of Potential County Liability

Roberson v. Allied Foundry and Machinery Co., 447 So. 2d 720 (Ala. 1984).

- The Alabama Supreme Court held that Allied, as an employer of the work release inmates, had no special duty to supervise the inmates outside the scope of their employment. In so holding, the Court explained:
  - Work release inmates are certified to the employer by the State Board of Corrections to be “non-dangerous.”
  - Employers are instructed by the Board to treat work-release employees in the same manner as other employees and to apply the same policies as with other employees.
- Note: this opinion was published many years prior to the enactment of Ala. Code § 14-8-40, the statute directly limiting employer’s liability with respect to work release.

# Work Release: Examples of Potential County Liability

Walker v. City of Elba, Ala., 874 F. Supp. 361 (M.D. Ala. 1994).

- Work release inmate who worked for City Water and Electric Board brought action against City and Board under Title VII, § 1981 and for Alabama's tort of outrage.
- City and Board moved for summary judgment arguing that Title VII was inapplicable to either of them because they could not be deemed Walker's employer.
- The court granted summary judgment in favor of the City of Elba finding that Elba was not involved in any regard in the hiring or termination of Walker. Also, Elba neither constructed Plaintiff's work schedule, set Plaintiff's hours nor endorsed any pay checks distributed to Walker.
- However, the court denied summary judgment as to the Board, finding that, unlike the City of Elba, the Board was Walker's employer at all material times.



# Work Release: Examples of Potential County Liability

Allen v. Koch Foods, 2013 WL 3759098 (M.D. Ala. 2013).

- Plaintiff Allen, a work release inmate, brought an Americans with Disabilities Act (“ADA”) claim against the entity for which she worked Koch Foods.
- Defendant Koch Foods argued that Allen’s relationship with Koch arose from her incarceration, not as a private individual who chose to apply for employment with Koch. As a result, Koch argued that Allen was not an employee for the purposes of the ADA.
- The Court, based on Walker v. City of Elba and Roberson v. Allied Foundary & Mach. Co., 447 So. 2d 720 (Ala. 1984), held that the Plaintiff was an employee of Koch Foods for the purposes of bringing an ADA claim.



# Inmate Work Crews

- Persons convicted of a misdemeanor are sentenced to a definite term of imprisonment in the county jail or to hard labor for the county. Ala. Code § 13A-5-7.
- “Hard labor” is defined as “labor on the public roads, public bridges, and other public works in the county.” Ala. Code § 14-5-1.
- Section 14-4-2 of the Code of Alabama provides that “[h]ard labor for the county shall be under the superintendence and control of the county commission, which shall determine in what manner and on what particular works the labor shall be performed.” Ala. Code § 14-4-2 (1995).

# Inmate Work Crews

- A county inmate sentenced to a term of “imprisonment” may not be punished by “hard labor” unless the court has imposed that sentence on him or her. *See Kirby v. State*, 62 Ala. 51, 1878 WL 1111 (Ala. 1878).
- Accordingly, the county commission may not use an inmate on a work crew unless that inmate has been sentenced to hard labor.
- However, there appears to be no law prohibiting an inmate sentenced to a term of imprisonment from volunteering to work.

# Inmate Work Crews

## Example of Potential Liability

- Inmate v. Alabama County, et al.

- Inmate volunteered for a work crew that was assigned to go to the YMCA to move bleachers into the facility's gymnasium.
- A County Jailer transported the inmates to the YMCA and remained at the facility while the crew completed the work.
- In the gymnasium, there was a trampoline and a large pit filled with rectangular foam objects. The YMCA youth members used the trampoline and pit during gymnastics lessons.
- While taking a break, several of the inmates attempted to flip from the trampoline into the pit. One of the inmates hit his head when he landed, causing injuries which led to his paralysis. The inmate died several months after the accident.



# Inmate Work Crews

## Example of Potential Liability

- Inmate v. Alabama County, et al.
  - After the accident, the inmate sued the County, the Jailer, and the YMCA for negligent supervision.
  - Based on Ala. Code § 14-8-40, the County will argue that the Plaintiff cannot prove that the County Defendants were “willfully negligent.”
    - Although § 14-8-40 is technically a work-release statute, the “willfully negligent” standard also arguably applies to work crew cases, based on the statute’s inclusion of the phrase “or otherwise working outside the jail.”

# Inmate Work Crews

## Example of Potential Liability

- Buckley v. Barbour County, Ala., 624 F. Supp. 2d (M.D. Ala. 2008).
  - Plaintiff was a state inmate incarcerated at Ventress Correctional Facility in Barbour County. The Plaintiff was assigned to clear pine trees from a county road under the control of George Gamble, a county employee.
  - Plaintiff alleged that Gamble directed Plaintiff and another inmate to use a chainsaw to cut a large branch.
  - During this time, the Plaintiff was positioned under the tree in a ditch and was pinned by a large branch that had been chopped off by the other inmate.
  - As a result of the accident, the Plaintiff was severely injured and was rendered a paraplegic.



# Inmate Work Crews

## Example of Potential Liability

- Buckley v. Barbour County, Ala., 624 F. Supp. 2d (M.D. Ala. 2008).
  - Plaintiff sued the County and Gamble asserting:
    - Federal Claim: § 1983 violations for Defendants deliberate indifference to the substantial risk of harm to Buckley, which was tantamount to cruel and unusual punishment and deprivation of his right to due process.
    - State Law Claims:
      - Against Gamble for willful negligence in demanding that Buckley trim the tree.
      - Against the County for willful negligence for intentionally failing to adhere to regulations that govern safety of inmates performing tasks near a roadway.

## Buckley v. Barbour County, Ala., 624 F. Supp. 2d (M.D. Ala. 2008).

County Defendants filed a Motion to Dismiss. The District Court held:

- Federal § 1983 claims
  - Against County: Allowing inmates to use equipment such as chainsaws without training in operation safety raises a substantial risk.
    - The obvious nature of a chainsaw's risk permits the inference that the County knew inmates faced a substantial risk.
    - Buckley sufficiently alleged § 1983 claim against County.
  - Against Gamble:
    - Gamble not entitled to qualified immunity at the motion to dismiss stage of the case.
    - Buckley sufficiently alleged § 1983 claim against Gamble.



## Buckley v. Barbour County, Ala., 624 F. Supp. 2d (M.D. Ala. 2008).

County Defendants filed a Motion to Dismiss. The District Court held:

- Buckley's State Law Claims:
  - Buckley's allegation that the County had a duty to train employees using chainsaws and that it intentionally disregarded that duty is foreclosed at the motion to dismiss phase.
  - Buckley sufficiently alleged facts supporting a finding that a general harm would follow Gamble's ordering the inmates to cut the tree under the circumstances. Gamble disregarded the foreseeable harm.

Buckley v. Barbour County, Ala.,  
2010 WL 1993066 (M.D. Ala. 2010).  
Buckley II

County and Gamble filed motions for summary judgment.

- With regard to Gamble, the District County held:
  - Federal § 1983 Claims:
    - Violation committed by Gamble was not clearly established and thus, he is entitled to qualified immunity with respect to the 8<sup>th</sup> amendment claim.
  - State law claims:
    - The general risk created by the use of a chainsaw, the specific situation created by the tree laying across the ditch, and Buckely's warning to Gamble that he was uncomfortable using a chainsaw are sufficient to create genuine issue of fact, based on the willful negligence standard.



Buckley v. Barbour County, Ala.,  
2010 WL 1993066 (M.D. Ala. 2010).  
Buckley II

- With regard to the County, the District Court held:
  - Federal § 1983 Claims: summary judgment granted.
  - State Law Claims:
    - a claim for willful negligence cannot be premised solely on the violation of a regulation. Buckley's statement to Gamble that he was uncomfortable using the chainsaw was vital to the claims against Gamble. The Court will not impose respondeat superior liability for a statement that only Gamble heard.

Buckley v. Barbour County, Ala.,  
2010 WL 1993066 (M.D. Ala. 2010).  
Buckley II

- While Buckley arose out of the work crew context, as opposed to a work-release context, the Court applied the wilful negligence standard outlined in Ala. Code § 14-4-40 explaining that:
  - “While it appears that activity during which the injury took place may not have been a ‘work release program’ as defined in the statute, Mr. Buckley was indisputably ‘otherwise working outside’ his ‘correctional facility,’” rendering Defendants’ argument based on the precise nature of the program meritless. Buckley at \*8.
- Accordingly, there is a good argument that not only work release inmates, but also work crew inmates, cannot bring an action against the county unless he or she can demonstrate that the county was “willfully negligent.”



# Inmate Work Crews

## Example of Potential Liability

### Buckley II

- Buckley is currently the only Court decision discussing the willful negligent standard required by 14-4-40(b).
- Amidst much discussion regarding the apparent oxymoronic nature of the term “willful negligence,” the Court in Buckley stated that the standard’s definition is “apparently akin to wanton misconduct or wanton and reckless misconduct.”

# Alabama Attorney General's Opinions Discussing Lawful Parameters of Work Crew Tasks

*May inmates in the Colbert County Jail be assigned to assist the Young Farmers Association in setting up bleachers at the North Alabama Fairgrounds for a tractor pull?*

- Yes. Nothing in § 14-4-2 of the Code of Alabama precludes any county commission from including work, like that described in your opinion request, within its definition of permissible projects on which convict labor can be assigned to work.

Hon. Ronnie May, 256 Ala. Op. Atty. Gen. 46 (1999), 1999 WL 1288152.



# Alabama Attorney General's Opinions Discussing Lawful Parameters of Work Crew Tasks

*Can the Sheriff's Office use county vehicles and inmate labor on private property to obtain plants for landscaping of public property to save money and accommodate donations?*

- Yes. County inmate work details may be assigned to remove trees and shrubs from private property, if the county commission, pursuant to its powers under section 14-4-2 of the Code of Alabama, so directs.
- The decision of whether to allow convicts sentenced to hard labor or volunteering to work to be used on any particular project is a decision that lies solely within the discretion of the county commission.

Hon. James B. Johnson, Ala. Op. Atty. Gen. No. 2004-023, 2003 WL 22757873.

QUESTIONS?