

MICHIGAN DEPARTMENT OF CORRECTIONS POLICY DIRECTIVE	EFFECTIVE DATE 04/24/2017	NUMBER 03.02.121
	SUBJECT PUBLIC WORKS/GATE PASS ASSIGNMENTS	
SUPERSEDES PD 03.02.121 (09/30/2008)		AUTHORITY MCL 770.9a, MCL 791.203, MCL 791.265((d)); MCL 800.101; Administrative Rule 791.4410(1)(f), 791.4415
PAGE 1 OF 5		

POLICY STATEMENT:

The Department shall provide eligible offenders in Correctional Facilities Administration (CFA) institutions with an opportunity for work assignments outside the security perimeter of the facility as set forth in this policy.

RELATED POLICIES:

05.01.100 Prisoner Program Classification

POLICY:

DEFINITIONS

- A. Gate Pass Assignment - A supervised offender work assignment on Department grounds, but outside the secure perimeter of a facility.
- B. Public Works Assignment - A supervised offender work assignment off Department grounds, sponsored by a qualified public or non-profit agency.
- C. Public Works Supervisor - An employee of the MDOC who transports offender work crews to a qualified public or non-profit agency and provides supervision to those offenders.
- D. Qualified Private Non-Profit Agencies - An agency that serves a public interest or a charitable cause, which does not result in a competitive disadvantage to a for-profit agency, and is exempt from taxation pursuant to the Internal Revenue Code.
- E. Qualified Public Agencies - Agencies wholly supported by public funds, whether federal, state, county, city, township, or village.

GENERAL INFORMATION

- F. Prior to an offender being approved for a public works assignment, the Crime Victims Unit shall be contacted to ensure there is no objection on file from a victim to assign the offender to a public works assignment.
- G. Offenders shall be classified to public works and gate pass assignments, be evaluated and, if necessary, have their assignment terminated as set forth in PD 05.01.100 "Prisoner Program Classification."

ELIGIBILITY CRITERIA

- H. All prisoners and probationers in the Special Alternative Incarceration Program (SAI) are eligible for public works and gate pass assignments.
- I. Offenders classified as a true security Level I may be classified to a public works or gate pass assignment if they meet all of the following criteria:
 - 1. Not serving for, or have a history of, arson behavior, unless the arson was committed for profit (insurance fraud). However, offenders serving for, or having a history of, arson behavior considered to be a thrill type of offense (pyromania) are not eligible;

DOCUMENT TYPE POLICY DIRECTIVE	EFFECTIVE DATE 04/24/2017	NUMBER 03.02.121	PAGE 2 OF 5
-----------------------------------	------------------------------	---------------------	-------------

2. Not been found guilty of a non-bondable misconduct which occurred while on any previous public works, or gate pass assignment, unless approved by the appropriate Deputy Director or designee;
 3. Not currently serving on an escape sentence or been found guilty of a misconduct for escape or attempted escape during a sentence for which the offender is still serving;
 4. If serving for an offense identified as a violent or assaultive offense in Administrative Rule 791.4410(1)(l), including attempt or conspiracy to commit the offense, has served at least one-half of the minimum sentence and is within 12 months of the Parole Board Jurisdiction date (PBJ). However, if sentenced as a habitual offender for an offense identified in Administrative Rule 791.4410(1)(l), the offender is not eligible;
 5. If serving for an offense not identified as a violent or assaultive offense in Administrative Rule 791.4410(1)(l), are within three years of the PBJ;
 6. Not serving for, or having a history of, a sexual offense or any offense which involved a sex offense;
 7. Not a very high or potentially very high assaultive risk pursuant to PD 05.01.135 "Statistical Risk Screening;"
 8. No pending felony charge or felony or immigration detainer;
 9. No physical/mental condition inconsistent with the demands of the assignment;
 10. No conviction for a felony or misdemeanor which occurred while on a previous public works, or gate pass assignment;
 11. Not serving a life sentence;
 12. If serving a sentence under the Felony Firearm Law (MCL 750.227b), are within one year of the PBJ date;
 13. No documented objection to placement in the community from a local official, victim or unusual notoriety surrounding the current offense;
 14. Demonstrated a willingness to conform to the rules and regulations of the assignment, as determined by the Warden or designee;
 15. Meet additional criteria determined by the Warden and set forth in facility operating procedures.
- J. Offenders who are not classified to a security Level I facility, but screen true security Level I, may be classified to a gate pass assignment if housed at a facility approved by the CFA Deputy Director, provided they meet all of the criteria set forth in Paragraph I.
- K. An offender does not need to meet the requirements set forth in numbers 1 through 4 of Paragraph I once a positive parole action is received.
- L. Actual classification to and placement on a gate pass or public works assignment is subject to approval of the Warden or designee. The overall adjustment and criminal history of the offender shall be reviewed prior to classification.
- M. Offenders shall be tested for substance abuse prior to placement on a gate pass or public works assignment, and while on such assignments, as determined by the CFA Deputy Director, consistent with PD 03.03.115 "Substance Abuse Programming and Testing." Offenders who are found guilty of a misconduct for substance abuse, and SAI probationers disciplined in accordance with PD 05.01.142 "Special Alternative Incarceration Program" for refusing to be tested or for testing positive, shall not be placed on a gate pass or public works assignment until they test negative. If already on a gate pass or

DOCUMENT TYPE POLICY DIRECTIVE	EFFECTIVE DATE 04/24/2017	NUMBER 03.02.121	PAGE 3 OF 5
-----------------------------------	------------------------------	---------------------	-------------

public works assignment, the offender shall be removed from the assignment.

PUBLIC WORKS PROJECTS

Qualified Public Agencies

- N. Work for qualified public agencies must be performed for the benefit of the general public. Department offices and facilities are not considered qualified public agencies for purposes of this policy.

Qualified Private Non-Profit Agencies

- O. Offenders assigned to public works projects for private non-profit agencies shall not displace agency employees or replace agency employees who are on strike or locked out of work. If a collective bargaining unit agreement is in effect at the proposed work site, the bargaining unit must agree to the assignment of offender labor at the work-site prior to the work beginning.
- P. Each Warden who makes offenders available for work for private non-profit agencies shall ensure that a seven member Citizen's Advisory Committee (CAC) is established. The CAC shall be comprised of representatives from business, community service, and religious organizations, and the president of the local AFL-CIO Central Labor Council or designee. The Community Liaison Committee may be used in this capacity, provided it is comprised of these specially identified representatives. The purpose of the CAC is to provide public input on new proposals for public works projects with private non-profit agencies, prior to offenders being assigned to the project.
- Q. Wardens shall maintain records of the number of approved public works projects with private non-profit agencies at their respective facilities, the number of offenders assigned, the type of work performed and any problems raised by the CAC. This information shall be reported annually to the CFA Deputy Director, who shall ensure a report detailing this information is submitted to both the House and Senate Appropriations Subcommittees on Corrections by May 1 of each year.

Public Works Agreements

- R. All public works projects require approval by the appropriate Warden. A representative of the contracting agency must sign a Public Works Agreement - Non-State Department or Agency (CAJ-177) or Public Works Agreement - State Department or Agency (CAJ-177A), as appropriate, before work begins at the public works project. The contracting agency shall pay the Department as set forth in Attachment A for each offender assigned to public works.
- S. Prior to signing an agreement with a private non-profit agency, the appropriate Warden shall ensure that the proposed agreement is reviewed by the CAC. Following the signing of the agreement with the agency, a copy of the agreement shall be forwarded to the Director through the appropriate chain of command.
- T. The expense of supervising offenders by MDOC Corrections Officers will be borne by the public or non-profit agency as outlined on the Public Works Agreement – Non - State Department or Agency (CAJ-177).
- U. The Warden and the contracting agency have the right to cancel the agreement with 30-day prior written notice if both parties consent, or immediately by the Department for a violation of the supervision standards or other requirements set forth in this policy by the contracting agency. Any suspected criminal activity shall be referred to the Michigan State Police.
- V. The Warden shall ensure that each work site for approved public works projects is inspected at least monthly to ensure compliance with the public works agreement and applicable Department policies and procedures, including offender eligibility and supervision standards. A written report of the inspection shall be provided to the Warden.

SUPERVISION STANDARDS

- W. All offenders on public works and gate pass assignments shall be supervised at a level sufficient to

maintain the safety of the offenders, supervisors, and members of the public, as determined by the Warden. The level of supervision required shall depend upon the specific work site to which the offender will be assigned. Therefore, Wardens with public works or gate pass assignments shall ensure that a written assessment of each work site is completed. The assessment shall take into consideration at least the following factors:

1. The type of work to be performed at the work site;
 2. The location of the work site (e.g., on facility grounds, in a rural area, urban area, proximity to a public roadway or dwelling);
 3. The potential for contact with members of the public on the work site;
 4. The number of supervisors on the work site, with not less than one supervisor for each work crew on the site;
 5. The number of offenders at the work site;
 6. Availability of telephone/radio communications with supervisors on the site;
 7. The location of restroom and eating facilities at the work site.
- X. Based on the above assessment, the Warden shall assign in writing one of the following supervision levels for offenders while on the public works or gate pass assignment:
1. Supervision Level I, which requires direct visual observation of offenders at least every 30 minutes with a maximum of ten offenders on a crew.
 2. Supervision Level II, which requires direct visual observation of offenders at least every 15 minutes with a maximum of ten offenders on a crew.
 3. Supervision Level III, which requires direct visual observation of offenders at least every ten minutes with a maximum of ten offenders on a crew.
 4. Supervision Level IV, which requires offenders to be under direct visual observation at all times with a maximum of eight offenders on a crew except that in SAI a maximum of 15 offenders may be placed on a gate pass assignment.
- Y. The Warden shall determine the appropriate supervision level prior to offenders beginning work at the work site. Work crew supervisors shall report any change at the work site which may have an impact on the required supervision level (e.g., change in the degree of public contact) to the appropriate Warden to determine whether the supervision level should be changed.
- Z. All offenders assigned to public works and gate pass assignments shall be supervised by Department employees, except that employees of another State law enforcement agency may supervise public work crews if approved by the Warden. However, offenders serving sentences subject to disciplinary time shall be supervised only by Department employees. State law enforcement agencies providing supervision for public works crews shall be required to comply with the supervision standards established by the Warden pursuant to Paragraph Y. Employees of a State law enforcement agency who will be supervising a crew shall be required to successfully complete the Department's Outside Agency Supervisors Training Program. They also shall be required to follow all Department standards detailed in the training program.
- AA. Contracting State law enforcement agency supervisors shall ensure compliance with all of the following:
1. Excluding law enforcement officers, do not carry or transport weapons of any kind while supervising offenders;
 2. Comply with all facility security requirements, including supervision standards;

DOCUMENT TYPE POLICY DIRECTIVE	EFFECTIVE DATE 04/24/2017	NUMBER 03.02.121	PAGE 5 OF 5
-----------------------------------	------------------------------	---------------------	-------------

3. Supervise only one crew at a time;
4. Comply with and enforce applicable required State and Federal safety standards.

OFFENDER WAGES

- BB. SAI offenders on public works and gate pass assignments shall not be paid for the assignment. All other offenders on gate pass assignments shall be paid in accordance with PD 05.02.110 "Prisoner Work Assignment Pay and School Stipend." All other offenders on public works assignments shall be paid for actual days worked as set forth in Attachment A.

PROCEDURES

- CC. Wardens shall ensure that operating procedures are developed as necessary to implement requirements set forth in this policy directive within 60 calendar days after the effective date.

AUDIT ELEMENTS

- DD. A Primary Audit Elements List has been developed and is available on the Department's Document Access System to assist Wardens with self-audit of this policy pursuant to PD 01.05.100 "Self-Audits and Performance Audits."

ATTACHMENT

- EE. This policy directive contains the following attachment:
1. Attachment A - Offender Pay

APPROVED: HEW 03/07/2017

DOCUMENT TYPE PD ATTACHMENT	EFFECTIVE DATE 04/24/2017	NUMBER 03.02.121A	PAGE 1 OF 1
--------------------------------	------------------------------	----------------------	-------------

ATTACHMENT A

OFFENDER PAY

Except in SAI, offenders classified to a public works assignment shall receive the following pay for each day worked:

1. \$2.50 per day based on an eight hour day, five day per week assignment.
2. \$3.13 per day based on a ten hour, four day per week assignment.