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## The County Convict Labor Statute

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## LEGISLATION

## THE COUNTY CONVICT LABOR STATUTE

This note seeks to consider the economic desirability of the present "county convict road force" statute<sup>1</sup> and not the sociological and humanitarian problems of imprisonment and punishment. Further the problem will be limited to *county* and *municipal* prisoners who may or must work out their sentences, fines, and costs at some kind of "hard labor."

Authorization for working county and municipal prisoners is provided for by the laws of a considerable number of states. The statutes are for the most part directory<sup>2</sup> — only Kansas,<sup>3</sup> New Mexico,<sup>4</sup> Rhode Island,<sup>5</sup> Texas,<sup>6</sup> and West Virginia<sup>7</sup> make

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<sup>1</sup> "Whenever any able-bodied male person over the age of sixteen years shall be convicted of an offense punishable with confinement in the county jail, before any court or justice of the peace, and sentenced by such court or justice of the peace to imprisonment in the county jail and to pay a fine and costs, he *shall* (italics ours) be sentenced by such court or justice of the peace to labor on the county-district roads of the county, . . ." W. VA. REV. CODE (1931) c. 17, art. 15, § 1. This provision is mandatory whenever a road project exists in the county. Operating under these mandatory provisions Kanawha County spent \$83,871.54 during 1930-1931 in maintaining their prisoner crew. The costs were as follows:

Overseer .....	\$ 1,290.12
Guards .....	5,905.86
Truck drivers .....	1,564.85
Blacksmith .....	671.10
Carpenter .....	135.00
Compressors .....	745.50
Truck drivers .....	993.50
Extras .....	31.60
Teams and labor .....	72,534.01
<b>TOTAL .....</b>	<b>\$83,871.54</b>

<sup>2</sup> ALA. CODE (Michie, 1928) §§ 3675-3702; ARIZ. CODE (Struckmeyer, 1928) §§ 5344-5347; ARK. DIG. STAT. (Crawford and Moses, 1921) §§ 2081-2088; CAL. CODES AND GEN. LAWS (Deering, Supp. 1929) § 4041.12; ILL. REV. STAT. (Smith-Hurd, 1929) §§ 38-390 - 38-391; IND. ANN. STAT. (Burns, 1926) §§ 2356-2357; IOWA CODE (1927) §§ 5512-5518; MINN. STAT. (1923) §§ 10853; MONT. REV. CODE (Choate, 1921) § 12483; N. Y. COUNTY LAW (1909) § 93; S. D. COMP. LAWS (1929) §§ 10221-10225; UTAH COMP. LAWS (1917) § 1400x15; VT. GEN. LAWS (1917) § 7257, 7259; WASH. COMP. STAT. (Remington, 1922) §§ 10189-10190; WIS. STAT. (1929) §§ 56.08-56.14; WYO. COMP. STAT. ANN. (1920) §§ 7694, 7695. (The recent laws of some states and the laws of Colorado, Idaho, Louisiana, Maine, and Nevada have not been available for the preparation of this note.)

<sup>3</sup> KAN. REV. STAT. ANN. (1923) §§ 62-2101 - 62-2108.

<sup>4</sup> N. M. STAT. ANN. (Courtright, 1929) 75-121, 75-122.

<sup>5</sup> R. I. GEN. LAWS (1923) 6453-64-56.

<sup>6</sup> TEX. COMP. STAT., Code Crim. Proc. (Vernon, 1928) art. 794.

<sup>7</sup> *Supra* n. 1. The sentencing of convicted persons to the "county convict road force" is compulsory except "for good cause appearing and entered of record", W. VA. REV. CODE (1931) c. 17, art. 15, § 2. Likewise the county

work compulsory. Where discretion concerning the working of the prisoners is permitted, it may be exercised by the committing magistrate,<sup>8</sup> the sheriff or jailer,<sup>9</sup> the county commissioners,<sup>10</sup> or some administrative body.<sup>11</sup> The prisoners may be worked upon the roads<sup>12</sup> (to include in most states streets and alleys of municipal corporations) in the preparation of road material,<sup>13</sup> on farms,<sup>14</sup> in work houses,<sup>15</sup> or in prison camps.<sup>16</sup> There is general authorization for counties to hire out their prisoners to the state road commission<sup>17</sup> or to other counties.<sup>18</sup> But contracts of hire to

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commissioners must work the prisoners regardless of the weather or the economic feasibility, so long as there is road work to be done in the county. But they can not detain a person in jail until a project is begun. See *Brown v. County Court*, 166 S. E. 2 (W. Va., 1932); *State ex rel. v. Stephenson*, 164 S. E. 38 (W. Va., 1932) and *State ex rel. v. Conley*, 160 S. E. 227 (W. Va., 1931).

<sup>8</sup> *E. g.*, ARIZ. CODE (Struckmeyer, 1928) § 5344; DEL. REV. CODE (1915) § 3606; IOWA CODE (1927) § 5512; Ky. Stat. (Carroll, 1930) § 1377 (magistrate and jury).

<sup>9</sup> *E. g.*, N. M. STAT. ANN. (Courtright, 1929) §§ 75-121; N. D. COMP. LAWS ANN. (1913) §§ 11331-11335; OKLA. COMP. STAT. ANN. (Bunn, 1921) §§ 8343.

<sup>10</sup> *E. g.*, CAL. CODES AND GEN. LAWS (Deering, Supp. 1929) § 4041.12; FLA. COMP. LAWS (1927) § 8549; KAN. REV. STAT. ANN. (1923) § 62-2101; MD. ANN. CODE (Bagby, 1924) art. 27, § 579.

<sup>11</sup> *E. g.*, ALA. CODE (Michie, 1928) § 3675; PA. STAT. ANN. (Purdon, 1930) § 12724; VA. CODE ANN. (Michie, 1930) § 2075.

<sup>12</sup> *E. g.*, CONN. GEN. STAT. (1930) § 1969; FLA. COMP. LAWS (1927) § 8549 IOWA CODE (1927) §§ 5512-18; MD. ANN. CODE (Bagby, 1924) art. 27, § 579; MONT. REV. CODE (Choate, 1921) § 12484.

<sup>13</sup> *E. g.*, KAN. REV. STAT. ANN. (1923) § 62-2101-8; MD. ANN. CODE (Bagby, 1924) art. 27, § 579.

<sup>14</sup> *E. g.*, CONN. GEN. STAT. (1930) §§ 2002-2009; DEL. REV. CODE (1915) § 3606 (prison camp); GA. CODE ANN. (Michie, 1926) §§ 1216-1218; MASS. GEN. LAWS (1921) c. 127, § 84; MISS. CODE ANN. (1930) §§ 4057-4063; NEB. COMP. STAT. (1922) §§ 3016-17; N. C. LAWS 1931, c. 142, N. C. CODE ANN. (Michie, 1927) § 1297.17; PA. STAT. ANN. (Purdon, 1930) § 12712; VA. CODE ANN. (1930) § 2880 *et seq.*

<sup>15</sup> *E. g.*, CONN. GEN. STAT. (1930) §§ 2002-9; ILL. REV. STAT. ANN. (Smith-Hurd, 1929) §§ 38-390 — 38-391; IND. ANN. STAT. (Burns, 1926) §§ 2356-2357; MASS. GEN. LAWS (1921) c. 127, §§ 50-51; N. H. PUB. LAWS (1926) c. 398, § 22; N. J. COMP. STAT. (1910) §§ 102-33; TENN. ANN. CODE (Shannon, 1917) § 1642; WIS. STAT. (1929) §§ 56.08 — 56.14.

<sup>16</sup> *E. g.*, DEL. REV. CODE (1915) § 3606; PA. STAT. ANN. (Purdon 1930) §§ 12724-12726.

<sup>17</sup> *E. g.*, Conn. Acts 1919, c. 341; FLA. COMP. LAWS (1927) §§ 8549-8559; MISS. CODE (1930) § 4063; Mass. Acts 1931, c. 394, § 101; VT. GEN. LAWS (1917) §§ 7257-7259.

<sup>18</sup> Most states permit prisoners to be transferred either with or without contract to other counties. W. VA. REV. CODE (1931) c. 17, art. 15, § 3: " . . . It shall be lawful for any county court to employ the prisoners of such county outside the county where they were convicted or imprisoned upon the same terms and conditions, and under the same regulations, as govern their employment within the county where they were convicted." See also *Ex parte Vass*, 90 W. Va., 220, 110 S. E., 558 (1922).

private individuals or corporations are for the most part prohibited.<sup>19</sup>

A few statutes mark out certain standards for the working of prisoners. Thus some statutes provide prisoners shall be worked only if the weather is favorable,<sup>20</sup> if the number of prisoners are few,<sup>21</sup> if it is "practical"<sup>22</sup> or "profitable".<sup>23</sup> The states in which the sentence is mandatory provide that the committing officer may "for good cause" omit the "hard labor" penalty. Such a provision exists in West Virginia.<sup>24</sup> Apparently this is for the relief of the prisoner and not for the protection of the county.<sup>25</sup>

Some states have authorized the district control of prisoners as a means of reducing expenses and duplication of needless effort. District institutions have been authorized in North Carolina,<sup>26</sup> Pennsylvania<sup>27</sup> and Virginia.<sup>28</sup> Not only do statutes of this character reduce (after the initial expenditure for building and equipment) expenses and provide for more efficient and scientific handling of prisoners but they also protect the innocent man awaiting trial from the stigma of confinement with guilty persons.

The present West Virginia statute is unsatisfactory. Its mandatory provisions require working prisoners when there is no economic advantages to the county or personal benefit to the prisoner. A modification of the present law to accomplish these

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<sup>19</sup> The prohibition of private contract labor exists in most states but some states permit it. See, ARK. DIG. STAT. (Crawford and Moses, 1921) §§ 2081-2088; WIS. STAT. (1929) §§ 56.08 - 56.14.

<sup>20</sup> "The place of working prisoners shall be determined by the county judge . . . and he shall give preference to work on the roads . . . whenever the weather will permit." KY. STAT. (Carroll, 1930) § 1379-1.

<sup>21</sup> Only in case there are ten or more prisoners in the jail is the labor sentence mandatory. MO. REV. STAT. (1919) § 9512.

<sup>22</sup> MASS. GEN. LAWS (1921) c. 127, § 83, 84; OHIO GEN. CODE (Page, 1931) § 2237.

<sup>23</sup> MD. ANN. CODE (Bagby, 1924) art. 27, § 713; N. D. COMP. LAWS ANN. (1913) §§ 11331-11335; OKLA. COMP. STAT. ANN. (Bunn, 1921) 8343.

<sup>24</sup> See, W. VA. REV. CODE (1931) c. 17, art. 15, § 2.

<sup>25</sup> See, State *ex rel.* v. Conley, *supra* n. 7, at 228.

<sup>26</sup> N. C. LAWS 1931, c. 132.

<sup>27</sup> Pa. Laws 1929, Act 468. By this act the state is divided into ten districts. Each district is authorized to establish an industrial farm and workhouse, to which any person committed to jail for more than ten days may be sent.

<sup>28</sup> VA. CODE ANN. (Michie, 1930) § 2880 *et seq.*, 2075. Under the Virginia system the board of supervisors of any county or council of any city may establish and maintain a farm, commit misdemeanants to that farm or to the state road convict force. If a county does not maintain a farm they may by agreement send their prisoners to another county's farm.

results is desirable. The forms of modification are several: 1. The replacement of county jails by centralized district institutions; 2. by a permissive statute granting discretion to committing magistrates or county commissioners. The first proposal will appeal to those who see the coordination of governmental functions and the reduction of governmental units as the only fundamental step to the reduction of governmental costs. To those unwilling to make so extensive and initially expensive change the removal of the mandatory provision of the present law would accomplish the reduction in costs that taxpayers demand. West Virginia can draft a satisfactory plan from the experience of other states.

—CHARLES H. HADEN.

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### SOME STATUTORY MODIFICATIONS OF THE HEARSAY RULE

The persistent strictness of the law of evidence has been relaxed in West Virginia in regard to certain exceptions to the hearsay rule. The business entries doctrine is illustrative.<sup>1</sup> According to the generally accepted view, a business entry is admissible when, among other things, the entrant is unavailable; but the orthodox view only recognizes, as forms of unavailability, death,<sup>2</sup> insanity,<sup>3</sup> and absence from the jurisdiction.<sup>4</sup> West Virginia has added to this list, commercial unavailability,<sup>5</sup> that is, the entry is admissible where the commercial inconvenience in calling the witness outweighs its utility. In this instance West Virginia has brought the law into accord with business practice without the aid of statutory enactment.

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<sup>1</sup> For a general discussion of the business entries doctrine see 2 WIGMORE, EVIDENCE (2d ed. 1923) § 1517 ff.

<sup>2</sup> The general principles of admissibility of business entries were first laid down in this state in *Vinal v. Gilman*, 21 W. Va. 301, 309 (1883). See also *Deitz v. McVey*, 77 W. Va. 601, 87 S. E. 926 (1916) and *DiBacco v. Benedetto*, 82 W. Va. 84, 95 S. E. 601 (1918).

<sup>3</sup> *Vinal v. Gilman*, *supra* n. 2.

<sup>4</sup> *Vinal v. Gilman*, *supra* n. 2, at 310; *Bourn v. Dobbins*, 92 W. Va. 263, 269, 115 S. E. 424 (1922); *State v. Martin*, 102 W. Va. 107, 134 S. E. 599 (1926) (Holding the entries admissible without producing the entrants, when their whereabouts were unknown). For comments see (1927) 33 W. VA. L. Q. 305, (1927) 25 MICH. L. REV. 305.

<sup>5</sup> *W. Va. Architects and Builders v. Stewart*, 68 W. Va. 506, 514, 70 S. E. 113 (1911); *State v. Larue*, 98 W. Va. 677, 690, 128 S. E. 116 (1925).