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A TIME FOR RECOGNITION: EXTENDING WORKMEN'S COMPENSATION COVERAGE TO INMATES

I. INTRODUCTION

Workmen's compensation laws provide benefits and medical care to individuals suffering from work-related injuries.¹ These laws were originally enacted to ameliorate social and economic discontent during the industrialization of Europe.² Their original purpose, which continues today, was to provide support and prevent destitution, rather than to adjudicate personal grievances between employers and employees.³ The cost of compensating the injured worker is ultimately passed on to the consumer⁴ because workmen's compensation insurance premiums are incorporated in the cost of the employer's product.⁵ Most workmen's compensation acts have four important features: (1) an employee is automatically entitled to certain benefits when he sustains a personal injury in the course of employment;⁶ (2) an employee's negligence or fault does

1. 1 A. LARSON, *WORKMEN'S COMPENSATION LAW* § 1.00 (1980).

2. A. MILLUS & W. GENTILE, *WORKERS' COMPENSATION LAW AND INSURANCE* 15 (1976). During the industrial revolution of the nineteenth century, job-related disabilities and deaths marked the advancement of society. *Id.* at 5. As a result, Germany enacted the first workmen's compensation statute in 1884. *Id.* The statute made the employer an insurer of his employees against injuries sustained in the course of employment. *Id.* at 16.

3. 1 A. LARSON, *supra* note 1, § 1.20. American workmen's compensation systems are neither a branch of tort law nor social insurance, but a rather unique mixture of the two. *Id.*

4. *Id.* § 1.10.

5. A. MILLUS & W. GENTILE, *supra* note 2, at 6. During the industrialization of Europe the laborer made flesh and blood contributions to the advancement of society, leading proponents of workmen's compensation to cry "[t]he cost of the product must bear the blood of the working man." *Id.*

6. 1 A. LARSON, *supra* note 1, § 20.00. To be compensable, an injury must arise not only within the time and space limits of the employment, but also in the course of an activity that relates to the employment. *Id.*

not diminish his rights to benefits;⁷ (3) employee status is a prerequisite for coverage;⁸ and (4) an employee and his dependents are precluded from exercising the common law to sue the employer for damages.⁹ Until recently, the North Dakota Workmen's Compensation Act neither provided nor denied coverage to inmates,¹⁰ and no case law interpreted it.¹¹ In 1985, however, the Forty-Ninth Legislative Assembly enacted chapter 65-06.2 of the North Dakota Century Code, which provides that the state's political subdivisions may elect to cover inmates and community-service-sentenced offenders¹² who are injured in assigned work activity.¹³ The aim of this Note is two-fold: (1) to explain the public

7. *Id.* § 2.10. Larson notes that: "The right to compensation benefits depends on one simple test: Was there a work-connected injury? Negligence, and, for the most part, fault, are not in issue and cannot affect the result." *Id.*

8. 1 C *id.* § 43.00. Most statutes define "employee" as every person in the service of another under either an implied or express contract of hire. *Id.*

9. *Id.* § 1.10. The North Dakota Workmen's Compensation Act provides as follows:

The state of North Dakota, exercising its police and sovereign powers, declares that the prosperity of the state depends in a large measure upon the well-being of its wage workers, and, hence, for workmen injured in hazardous employments, and for their families and dependents, sure and certain relief is hereby provided regardless of questions of fault and to the exclusion of every other remedy, proceeding, or compensation, except as otherwise provided in this title, and to that end, all civil actions and civil causes of action for such personal injuries and all jurisdiction of the courts of the state over such causes are abolished except as is otherwise provided in this title.

N.D. CENT. CODE § 65-01-01 (1985).

10. See N.D. CENT. CODE § 65-01-02(9) (1985). In defining employee, subsection (a) makes no mention of inmates. *Id.* Subsection 10 of the same statute, however, defines employer and applies the term to the state and all political subdivisions. N.D. CENT. CODE § 65-01-02(10) (1985).

11. Exhaustive research has uncovered no case law extending coverage to prisoners. This is in accord with the position of the North Dakota Workmen's Compensation Bureau. Interview with Joseph F. Larson II, Counsel for the Workmen's Compensation Bureau of North Dakota (June 4, 1984).

12. See Carleton, *Liability For Injuries To Offenders Sentenced to Community Service*, 30 BUFFALO L. REV. 387 (1981). Community service sentencing, an innovation of the last fifteen years, involves the placement of offenders in unpaid positions with either a private or tax supported agency to work a specific number of hours within a given time limit. *Id.*

13. N.D. CENT. CODE ch. 65-06.2 (1985). Chapter 65-06.2 provides:

65-06.2-01. Inmate defined. For the purposes of this chapter, an inmate is a person who is confined against the inmate's will in a city or county penal institution or is a person who, as a criminal defendant before a court, is ordered or elects to perform public service for a city or county in conjunction with or in lieu of a jail sentence. The term inmate shall not include an individual injured in a fight, riot, recreational activity, or other incident not directly related to the inmate's work assignment.

65-06.2-02. Coverage of inmates — Conditions.

1. If an inmate in performance of work in connection with the maintenance of the institution, or with any industry maintained therein, or with any public service activity, sustains a compensable injury, the inmate may, upon being released from the institution, or after discharge from public service, be awarded and paid compensation under the provision of this title.
2. Claims under this chapter shall also be filed and processed pursuant to section 65-05-01, except that an inmate shall also have one year from the date of first release from the institution or discharge from public service to file a claim.
3. Workmen's compensation benefits under this chapter accrue and are payable from the time of the inmate's release from the institution or after discharge from public service. Disability benefits shall be computed according to the methods provided in

policy considerations supporting the extension of workmen's compensation coverage to city and county inmates;¹⁴ and (2) to demonstrate the need for extending similar coverage to inmates at the state penitentiary.

II. TRADITIONAL RULE

Traditionally, inmates have been denied compensation for injuries sustained during assigned prison work.¹⁵ Seven states have statutes that expressly deny workmen's compensation coverage to inmates.¹⁶ In seventeen other states the courts have interpreted workmen's compensation statutes as barring benefits for inmates injured in assigned work activities.¹⁷

chapter 65-05. The inmate's weekly wage shall be computed using either the actual wage paid to the inmate or the federal minimum wage as of the date of injury, whichever is higher.

4. If a former inmate receiving disability benefits under the provisions of this chapter is recommitted or sentenced by a court to imprisonment in a penal institution, the disability benefits shall be suspended or paid during any confinement exceeding thirty consecutive days in the following manner:
 - a. If the employee has no spouse or child, any right to claim disability benefits under this title during imprisonment shall cease and the term of confinement shall be deducted from the period for which disability benefits are payable to the employee.
 - b. If the employee has a spouse or child, payment of disability benefits during the employee's imprisonment shall be paid to the spouse or child of the employee in the manner and in the amount provided in subsection 1 of section 65-05-17.

65-06.2-03. Workmen's compensation coverage of inmates. Any county or city may, by resolution of the governing body, elect to cover its inmates with workmen's compensation benefits in accordance with the provisions of this chapter. Any county or city which makes this election shall not be liable to respond in damages at common law or by statute for injuries to or the death of any inmate whenever the provisions of this chapter have been met and the premiums as set by the bureau are not in default.

Id.

14. Legal commentaries that advocate extending workmen's compensation coverage to inmates include the following: Campbell, *The Prisoner's Paradox: Forced Labor and Uncompensated Injuries*, 10 *NEW ENG. J. OF CRIM. AND CIV. CONFINEMENT* 123 (1984); Note, *Workers Compensation For Prisoners*, 51 *N.Y.U. L. REV.* 478 (1976); Note, *Granting Workmen's Compensation Benefits to Prison Inmates*, 46 *S. CAL. L. REV.* 1223 (1973).

15. 1 C.A. LARSON, *supra* note 1, § 47.31.

16. The following states statutorily deny compensation coverage to inmates: Arizona (*see* *ARIZ. REV. STAT. ANN.* § 23-901(5)(f) (West 1985) (individual confined to a penal institution is not an employee of the department)); Florida (*see* *FLA. STAT.* § 946.002(5) (1985) (prisoner is not considered an employee of the state; nor does a prisoner come within any other provision of the Workmen's Compensation Act)); Hawaii (*see* *HAWAII REV. STAT.* § 353-22.5(a) (Supp. 1984) (work release prisoner is not an agent or an employee of the state)); Massachusetts (*see* *MASS. ANN. LAWS* ch. 152, § 74 (Michie/Law. Coop. 1976) (inmates required to work are not covered)); Minnesota (*see* *MINN. STAT.* § 176.011(9)(7) (1984) (employee includes any voluntary uncompensated worker other than an inmate)); Mississippi (*see* *MISS. CODE ANN.* § 47-5-417 (Supp. 1984) (inmates not considered employees or involuntary servants of the state or any political subdivision)); Vermont (*see* *VT. STAT. ANN.* tit. 21, § 601(12)(L)(iii) (Supp. 1984) (public employment does not include prisoners or wards of the state)).

17. The seventeen states whose courts have barred compensation to inmates are: Alabama (*see* *Downey v. Bituminous Casualty Corp.*, 349 So.2d 1153 (Ala. 1977) (state prisoner working on highway department road crew was not an employee of the department)); Arizona (*see* *Watson v. Industrial Comm'n*, 100 *Ariz.* 327, 414 P.2d 144 (1966) (trustee injured while working on prison farm was not covered by workmen's compensation)); Arkansas (*see* *Taylor v. Arkansas Light & Power Co.*, 173 *Ark.* 868, 293 S.W. 1007 (1927) (injured convict furnished by the Arkansas Penitentiary Commission to work for a utility company was not entitled to compensation));

Workmen's compensation laws require employers to obtain insurance for their employees.¹⁸ Thus, many states require a contract for hire to determine the existence of an employment relationship, and hence workmen's compensation coverage.¹⁹ Because inmates are incapable of entering into true contracts for hire, most courts deny them compensation.²⁰

In *Spikes v. State*,²¹ the Rhode Island Supreme Court held that an inmate injured while on an assigned work project was not an employee of the state for workmen's compensation purposes.²² After noting that an employer-employee relationship must be based on an express or implied contract for hire,²³ the court found that the requisite elements for the contract were lacking; there was neither a voluntary relationship between the parties, nor an option to consent to the labor relationship.²⁴ Since the inmate was required

California (*see Parsons v. Workmen's Compensation Appeals Bd.*, 126 Cal. App. 3d 629, 179 Cal. Rptr. 88 (1981) (county prisoner granted probation and subsequently injured while working was not an employee of the county)); Georgia (*see Lawson v. Travelers Ins. Co.*, 37 Ga. App. 85, 139 S.E. 96 (1927) (convict injured while working on county chain gang was not an employee of the county and therefore was not entitled to compensation)); Idaho (*see Shain v. Idaho State Penitentiary*, 77 Idaho 292, 291 P.2d 870 (1955) (prisoner injured while working in license plate factory at the state penitentiary was not an employee within the terms of workmen's compensation)); Indiana (*see Schraner v. State Dep't of Correction*, 135 Ind. App. 504, 189 N.E.2d 119 (1963) (prisoner injured in state penal institution was not an employee of the state)); Kentucky (*see Tackett v. LaGrange Penitentiary*, 524 S.W.2d 468 (Ky. 1975) (convict working in prison industry was not an employee of the state)); Louisiana (*see Jones v. Houston Fire and Casualty Ins. Co.*, 134 So. 2d 377 (La. Ct. App. 1961) (inmate injured while working on cotton gin was not an employee of the state)); Massachusetts (*see Greene's Case*, 280 Mass. 506, 182 N.E. 857 (1932) (claimant injured while cleaning sewers after being sentenced to jail was not an employee of the county)); New Jersey (*see Goff v. Union County*, 26 N.J. Misc. 135, 57 A.2d 480 (1948) (county prisoner injured while painting was not an employee of the county)); New Mexico (*see Scott v. City of Hobbs*, 69 N.M. 330, 366 P.2d 854 (1961) (city prisoner injured while working on city street was not entitled to compensation)); New York (*see Reid v. New York State Dep't of Correctional Servs.*, 54 A.D.2d 83, 387 N.Y.S.2d 589 (N.Y. App. Div. 1976) (prisoner injured in carpentry shop at a state correctional facility was not an employee of the state)); Ohio (*see Tyner v. State*, No. 9-80-46 slip op. (Ct. App. Marion County, Ohio, Mar. 31, 1981) (prisoner injured while working on an institutional farm was not entitled to compensation)); Oklahoma (*see Kroth v. Oklahoma State Penitentiary*, 408 P.2d 335 (Okla. 1965) (widow of a state penitentiary prisoner killed while working on the prison honor farm was not entitled to death benefits)); Rhode Island (*see Spikes v. State*, 458 A.2d 672 (R.I. 1983) (inmate injured in fall was not an employee of the state)); Tennessee (*see Abrams v. Madison County Highway Dep't*, 495 S.W.2d 539 (Tenn. 1973) (workhouse inmate injured while repairing a large truck tire was not entitled to compensation)).

18. A. MILLUS & W. GENTILE, *supra* note 2, at 47. *See* N.D. CENT. CODE § 65-04-04 (Supp. 1983).

19. 1C A. LARSON, *supra* note 1, § 47.10. Most workmen's compensation acts maintain that a "contract for hire" is an essential feature of an employment relationship. *Id.*

20. *Id.* § 47.31.

21. 458 A.2d 672 (R.I. 1983).

22. *Spikes v. State*, 458 A.2d 672, 674 (R.I. 1983). In *Spikes* the claimant, an inmate at the Rhode Island Adult Correctional Institution, was painting the walls and ceilings of a minimum security building when he fell from a scaffold and was injured. *Id.* at 673.

23. *Id.* Stating that they would be bound by the statutory definition of employee, the court quoted section 28-29-2(b) of the Rhode Island General Laws as follows: "The word 'employee' means any person who has entered into the employment of or works under contract of service or apprenticeship with an employer . . ." *Id.* (quoting R. I. GEN. LAWS § 28-29-2(b) (1979 Reenactment)).

24. *Id.* The Court stated that "[t]his implies that services performed must be voluntary on the part of the employee. Wages must be paid and the two parties must be capable of giving their consent to enter into the relationship." *Id.*

by statute to work, no employment relationship existed, thus compensation was precluded.²⁵

Similarly, in *Jones v. Houston Fire and Casualty Insurance Co.*,²⁶ the Louisiana Court of Appeals held that an injured inmate was not entitled to compensation.²⁷ After concluding that the inmate could be covered by the workmen's compensation laws only if he had an employment relationship with the state,²⁸ the court stated that "[t]he essence of the relationship is the right to control."²⁹ Four evidentiary factors were considered in determining the existence of a right to control; selection and engagement, payment of wages, power of dismissal, and power of control.³⁰ The court determined that the inmate did not have a valid contract under the above test because the relationship was not created by mutual consent, the two-cent-per-hour incentive pay received by the inmate was not substantial enough to create an employment relationship, the warden could not dismiss the inmate, the inmate could not refuse work, and the state controlled all aspects of the inmate's life, including both work and nonwork activities.³¹

Although Nevada and South Dakota have neither statutes nor case law examining the issue, in both states, attorney general advisory opinions recommend denial of mandatory workmen's compensation coverage to inmates.³² Both attorney general opinions emphasize that an inmate does not perform labor under a valid contract for hire.³³ The Nevada attorney general maintained not only that inmates are not free to choose whether they work, but

25. *Id.* The court maintained that inmates at the Adult Correctional Institution were assigned to "work details" at the prison pursuant to section 42-56-21 of the Rhode Island General Laws, and that no language in the statute created an employer-employee relationship between the inmate and the state. *Id.* See R. I. GEN. LAWS § 42-56-21 (Supp. 1984).

26. 134 So. 2d 377 (La. Ct. App. 1961). In *Jones* an inmate at the Louisiana State Penitentiary at Angora sustained a hand crippling injury while working on a cotton gin. *Jones v. Houston Fire and Casualty Ins. Co.*, 134 So. 2d 377, 378 (La. Ct. App. 1961).

27. *Id.* at 380. The court in *Jones* gave the following explanation for denying the injured inmate's claim:

In the absence of a statute of this State declaring the inmate of the penitentiary to be an employee, and granting him benefits of the Workmen's Compensation Act, LSARS 23:1021 et seq., then, it is illogical to reason that an inmate of the Louisiana State Penitentiary, who works under compulsion and is in a state of penal servitude, is an employee of said State.

Id. (quoting *Turner v. Peerless Ins. Co.*, 110 So. 2d 807, 809 (La. Ct. App. 1959)) (emphasis in original).

28. *Id.* at 378. The court quoted pertinent portions of section 23:1034 of the Louisiana Revised Statutes Annotated, which require that an employee be working under a contract for hire, express or implied, oral or written. *Id.* See LA. REV. STAT. ANN. § 23:1034 (West Supp. 1985).

29. *Jones*, 134 So. 2d at 379 (quoting *Alexander v. J. E. Hixson & Sons Funeral Home*, 44 So. 2d 487, 488 (La. Ct. App. 1950)).

30. *Id.*

31. *Id.* at 379-80.

32. 172 Nev. Op. Att'y Gen. 48 (1974); S.D. Op. Att'y Gen. No. 75-55, 131 (1977).

33. Nev. Op. Att'y Gen., *supra* note 32, at 49; S.D. Op. Att'y Gen., *supra* note 32, at 131.

also that the reward collected by inmates is insufficient to create a contract for hire.³⁴

The traditional rule, then, denies workmen's compensation coverage to prisoners³⁵ and bases the denial on the perceived non-existence of a valid contract for hire.³⁶ However, the requirement that an inmate be working under a valid contract for hire is inconsistent with the conditions of modern society.³⁷ Not only have many prisons been transformed into "factories with fences,"³⁸ but in most cases all the ordinary features and risks of employment are present in the prison environment.³⁹ Moreover, in most cases the victim of a disabling prison work injury does not remain an inmate; upon release from prison the inmate's disability will pose new problems for society.⁴⁰ Thus, to require that an inmate labor under a contract for hire before workmen's compensation coverage is extended to him elevates form over substance; it deals with the problem by denying its existence.

III. CONVICTED OFFENDERS INJURED OUTSIDE A PENAL INSTITUTION

A. COURT-ORDERED WORK

Community service sentencing⁴¹ provides an alternative for judges who consider probation too lenient, incarceration too harsh, and a fine too much of a burden on the family of the offender.⁴² Numerous problems confront a political subdivision when a community-service-sentenced offender is injured. These problems include determining whether the offender is entitled to workmen's compensation,⁴³ whether the political subdivision is liable for the

34. Nev. Op. Att'y Gen., *supra* note 32, at 49. The warden of the Nevada State Penitentiary posed the following inquiry: "Are inmates who work in and around the prison at rates from \$1.00 per month to \$1.25 per day entitled to coverage under the Nevada Industrial Insurance Act?" *Id.* at 48. The attorney general answered the inquiry in the negative, emphasizing that the reward was merely an inducement to good behavior and an aid to rehabilitation. *Id.* at 49.

35. 1C A. LARSON, *supra* note 1, § 47.31.

36. *Id.* Seventeen states have case law that denies compensation to inmates because the inmate is not viewed as an employee. *See generally supra* note 17.

37. 1C A. LARSON, *supra* note 1, § 47.31.

38. Address by Chief Justice Burger, University of Nebraska at Lincoln (December 16, 1981) reprinted in 8 NEW ENG. J. ON PRISON LAW 111 (1982).

39. 1C A. LARSON, *supra* note 1, § 47.31.

40. *Id.*

41. Carleton, *supra* note 12, at 387. By 1979 nearly one-third of the states had statutes providing for community service work orders. U.S. DEPARTMENT OF JUSTICE, REPORT TO THE NATION ON CRIME AND JUSTICE 73 (1983) [hereinafter cited as REPORT].

42. Carleton, *supra* note 12, at 387. Under a community service sentence, the offender lives at home, but his service schedule is designed so it does not interfere with work, thus allowing the offender to pay his debt to society without the effects of traditional incarceration. *Id.* at 387-88.

43. The prevailing rule is that the offender is not entitled to workmen's compensation. *See Parsons v. Workers' Compensation Appeals Bd.*, 126 Cal. App. 3d 629, 179 Cal. Rptr. 88 (Cal. Ct. App. 1981).

offender's injury if workmen's compensation coverage doesn't exist,⁴⁴ and whether a release form relieving the subdivision of liability is legal.⁴⁵

1. Eligibility for Workmen's Compensation

Defining the work status of the offender usually determines whether workmen's compensation coverage exists.⁴⁶ A Nevada attorney general's opinion concluded that persons given the option of serving a public agency or nonprofit corporation in lieu of a fine or jail sentence are volunteers.⁴⁷ The volunteer status of the offender precludes mandatory workmen's compensation, but preserves the possibility of such coverage on a discretionary basis.⁴⁸

Two basic types of statutory provisions allow workmen's compensation coverage for individuals performing court-ordered work: those providing coverage for juveniles,⁴⁹ and those providing coverage for adults.⁵⁰ In the absence of an express statutory provision courts are reluctant to find an employer-employee relationship.⁵¹

In *Parsons v. Worker's Compensation Appeals Board*⁵² the California Court of Appeals held that the claimant, a county prisoner who had been granted probation on the condition that he

44. There is a split of authority on the issue of a political subdivision's liability to a community-service-sentenced offender: *Compare* La. Att'y Gen. Slip Op. No. 82-797 (Mar. 23, 1983) (a police jury may be liable) *with* Cal. 61 Op. Att'y Gen. 265 (June 1, 1978) (a county is immune from liability).

45. Carleton, *supra* note 12, at 398. A waiver form releasing the liability of a political subdivision is closely scrutinized by the court. *Id.*

46. *Id.* at 391.

47. Nev. Op. Att'y Gen. Slip Op. No. 80-15 (May 5, 1980). The attorney general reasoned that the offenders are not employees because in some sense they are compelled to work. *Id.* at 78.

48. *Id.* at 78-80. Nevada law provides that juveniles sentenced to court-ordered work are covered within the terms of Nevada's Industrial Insurance. *See* NEV. REV. STAT. § 616.082 (1979).

49. Four states provide workmen's compensation coverage for juveniles performing court-ordered work: California (*see* CAL. LAB. CODE § 3364.6 (West Supp. 1985) (juvenile traffic offenders and juvenile probationers are employees of the county for workmen's compensation)); Montana (*see* MONT. CODE ANN. § 39-71-118(1)(b) (1983) (juveniles working under authorization of a district court judge are covered)); Nevada (*see* NEV. REV. STAT. § 616.082 (1979) (juvenile who is subject to the jurisdiction of the district court and performs work is covered)); New York (*see* N.Y. WORK. COMP. LAW § 2(4) (McKinney Supp. 1984-85) (infant who renders services for the public good is an employee for workmen's compensation)).

50. The following two states provide workmen's compensation coverage for adults performing work under a community service sentence: Nebraska (*see* NEB. REV. STAT. § 48-115(1)(f) (1977) (extending coverage to anyone fulfilling the conditions of probation)); and Wyoming (*see* WYO. STAT. § 27-12-108(b)(ii) (1983) (any parolee working for a political subdivision is covered)). Two states deny workmen's compensation coverage to individuals performing court-ordered work following an alcohol-related traffic offense: Colorado (*see* COLO. REV. STAT. § 42-4-1202(4)(g)(iv) (1984)); and Florida (*see* FLA. STAT. §§ 948.01(6), 316.193 (Supp. 1983)).

51. Carleton, *supra* note 12, at 395. *See* City of Clinton v. White Crow, 488 P.2d 1232 (Okla. 1971) (city jail prisoner working out a fine and incarceration sentence as a municipal garbageman was not an employee of the city within the terms of workmen's compensation).

52. 126 Cal. App. 3d 629, 179 Cal. Rptr. 88 (Cal. Ct. App. 1981).

work on county roadways, was not an employee of the county.⁵³ The court's decision hinged on the nonexistence of an employment contract.⁵⁴ Since no consensual relationship existed between the county and the claimant, the court reluctantly determined that compensation could not be awarded.⁵⁵ Even though public policy might favor compensating the claimant, the court maintained that such an argument is properly made to the legislature.⁵⁶

2. *Liability in the Absence of Workmen's Compensation Coverage*

Jurisdictions are split on the issue of a political subdivision's liability to an injured community-service-sentenced offender in the absence of workmen's compensation coverage.⁵⁷ A California attorney general's opinion suggests that unless the offender was injured by a tort of a county employer or contractor, the county would not be liable.⁵⁸ However, a Louisiana attorney general's opinion maintains that a political subdivision may be liable for the offender's injury if the subdivision has any control over the agency for which the offender is working.⁵⁹

3. *Legality of Liability Waiver Forms*

Some community-service sentencing programs use liability waiver forms, which must be signed by the offender as a

53. *Parsons v. Workers' Compensation Appeals Bd.*, 126 Cal. App. 3d 629, 640, 179 Cal. Rptr. 88, 95 (Cal. Ct. App. 1981). After being convicted of a misdemeanor, the claimant was granted two years probation contingent upon his working for twenty-two consecutive weekends at the county road camp. *Id.* at 632, 179 Cal. Rptr. at 90. The claimant did not receive any wages for his labor and was injured while working as a kitchen helper. *Id.*

54. *Id.* at 638, 179 Cal. Rptr. at 94. The court listed the traditional features of an employment contract as consent of the parties, consideration for services rendered, and control by the employer over the employee. *Id.*

55. *Id.* The claimant's work was not incidental to incarceration, nor was it bargained for. *Id.*

56. *Id.* at 640, 179 Cal. Rptr. at 95. The court in *Parsons* maintained that:

Petitioners rather persuasive argument that county prisoners are entitled to workers' compensation when they perform essential work for the county (other than routine housekeeping duty in the jail or camps), which otherwise would be performed by hired personnel from the outside, is one properly made to the Legislature. It may well be that an enlightened public policy grounded on prisoner rehabilitation calls for workers' compensation coverage for all county prisoners who are required to work outside their cells during incarceration.

Id. See, e.g., Pruitt v. Workmen's Compensation Appeals Bd., 261 Cal. App. 2d 546, _____, 68 Cal. Rptr. 12, 16 (1968) (an inmate who volunteered to work at a city sewage plant was covered by workmen's compensation).

57. The following two states have attorney general opinions expressing differing views: California (*see* 61 Cal. Op. Att'y Gen. 265 (1978) (political subdivision is immune)); and Louisiana (*see* La. Att'y Gen. Op. Slip No. 82-797, *supra* note 44) (political subdivision may be liable).

58. 61 Cal. Op. Att'y Gen. 265, *supra* note 57.

59. La. Att'y Gen. Slip Op. No. 82-797, *supra* note 44. The attorney general stated that offenders are not entitled to workmen's compensation benefits because they are not government employees. *Id.*

prerequisite to participate in the program.⁶⁰ In fact, the community service program instituted in Grand Forks, North Dakota, remains active only because these liability waiver forms are used.⁶¹ Courts, however, have looked with disfavor upon blanket releases of liability before the occurrence of an injury.⁶² Moreover, in Louisiana the waiver contract is viewed as *contra bonos mores*⁶³ because the offender does not have equal bargaining power with the subdivision.⁶⁴

B. WORK RELEASE

Work release programs, in which an inmate works for a private employer outside the physical confines of the penal institution, operate in virtually every state.⁶⁵ In a work release program it is not the governmental entity that is the employer, but

60. Carleton, *supra* note 12, at 398. The waivers generally only relieve a governmental entity of liability, thus allowing liability for a referral agency or non-profit corporation. *Id.*

61. Interview with H.C. "Bud" Wessman, Mayor of Grand Forks, North Dakota, (October 15, 1984). The Grand Forks waiver provides:

Application for participation in "Work Release" Program and Release executed by _____ of _____ (address), City of _____, State of _____, as applicant, to the City of Grand Forks, North Dakota, a municipal corporation, its representatives, staff, agents, employees, and any other person representing the City of Grand Forks, North Dakota.

Applicant understands and agrees that:

- A. The City of Grand Forks, by and through the Municipal Court of the City of Grand Forks, North Dakota, has adopted a policy of alternative sentencing for convictions of violations in Municipal Court which alternative sentencing allows persons convicted of violations of law in the Municipal Court in the City of Grand Forks to perform public service functions in lieu of, or supplemental to, imposition of other sentencing which policy is hereinafter referred to as the "Work Release" Program.
- B. Applicant hereby applies for inclusion in the "Work Release" Program.
- C. In consideration of his participation in the "Work Release" Program as an alternative to, or as a supplement to, other sentencing, the undersigned applicant hereby releases and forever discharges the City of Grand Forks, North Dakota, its officers, staff, agents, employees and any other person representing the City of Grand Forks from all claims, damages, and causes of action that may arise from the participation of the applicant [sic] in the aforesaid "Work Release" Program.

This Release shall be binding upon the applicant, the spouse of the applicant, and on the heirs, legal representatives and assigns of the applicant.

Applicant has read all the terms of this instrument and understands the same.

IN WITNESS WHEREOF, applicant executes this Application and Release at Grand Forks, North Dakota, this ____ day of _____, 19____.

Applicant

62. La. Op. Att'y Gen., *supra* note 44.

63. "Against good morals. Contracts *contra bonos mores* are void." BLACK'S LAW DICTIONARY 291 (rev. 5th ed. 1979).

64. La. Op. Att'y Gen., *supra* note 44. The attorney general stated that "[t]he actions of the prisoners in either opting to be incarcerated or to work in community service activities would not be of such a sufficient voluntary nature to allow such a document to stand." *Id.*

65. W. BUSHER, ORDERING TIME TO SERVE PRISONERS 6 (1973). By April 1, 1972, only Mississippi and Nevada did not operate work release programs. *Id.* Furthermore, by April 1, 1972, 40 states had laws providing for the use of work release programs at the county level. *Id.*

the private employer who pays the inmate's wages for work performed outside the correctional facility.⁶⁶ A prisoner injured while working for a private employer may be entitled to workmen's compensation even though the compensation could be denied had the injury been sustained during assigned prison work.⁶⁷ In *Courtesy Construction Co. v. Derscha*,⁶⁸ the Florida Court of Appeals held that work-released prisoners engaged in work in private enterprise are not excluded from worker's compensation coverage.⁶⁹ In *Derscha*, the employer-construction company denied its liability to an injured work release prisoner because a Florida statute provided that no prisoner fell within the term of the Workers' Compensation Act.⁷⁰ The court determined that these private businesses were involved in work release programs in every practical sense of the word, and as such were not excluded from workers' compensation coverage.⁷¹

A majority of states utilize either community service sentencing programs⁷² or work release programs.⁷³ Although compensation is generally awarded to the inmate injured in a work release program,⁷⁴ it is generally denied to the injured community-service-sentenced offender.⁷⁵ By enacting chapter 65-06.2 of the North Dakota Century Code,⁷⁶ North Dakota moves one step

66. Ohio Op. Att'y Gen. Slip Op. No. 82-007, 2-25 (Mar. 11, 1982). The attorney general opined that:

although a prisoner engaged in the "work release" program is not an employee of the county, he or she would, in all likelihood, be an employee of the employer to whom he or she is being released for work and would be entitled to be compensated for work related injuries under that employer's workers' compensation coverage.

Id.

67. *Cf. Taylor v. Arkansas Light and Power Co.*, 173 Ark. 868, 293 S.W. 1007 (1927). In *Taylor* the court held that an injured convict who had been furnished by an Arkansas penitentiary to work for a utility company was not the company's employee and therefore was not entitled to workmen's compensation. *Id.* at ____, 293 S.W. at 1009. The case apparently turned on the fact that the state clothed, fed, and guarded the convicts while directing their movements at work. *Id.* at ____, 293 S.W. at 1008.

68. 431 So. 2d 232 (Fla. Ct. App. 1983).

69. *Courtesy Constr. Co. v. Derscha*, 431 So. 2d 232, 233 (Fla. Ct. App. 1983). The prisoner, who was on work release from a Miami correctional institution, performed construction work at \$1 below the normal wage for the company's other employees. *Id.* at 232-33. *See, e.g., Owens v. Swift Agricultural Corp.*, 477 F. Supp. 91 (E.D. Va. 1979) (work release prisoner injured while working for private corporation was covered by the corporation's workmen's compensation policy); *Johnson v. Industrial Comm'n*, 88 Ariz. 354, 356 P.2d 1021 (1960) (county prisoner injured while working for non-profit private corporation was entitled to workmen's compensation benefits).

70. 431 So. 2d at 232. *See* FLA. STAT. § 946.002(5) (1985).

71. 431 So. 2d at 232-33.

72. REPORT, *supra* note 41, at 73.

73. W. BUSHER, *supra* note 65, at 6.

74. Ohio Op. Att'y Gen. Slip Op. No. 82-007, *supra* note 66, at 2-25.

75. *See Pruitt v. Workmen's Compensation Appeals Bd.*, 261 Cal. App. 2d 546, 68 Cal. Rptr. 12 (1968).

76. N.D. CENT. CODE ch. 65-06.2 (1985). Chapter 65-06.2 provides that county and municipal governments may elect to provide compensation coverage for inmates and those performing court-ordered work. *Id.*

closer to recognizing that the offender-inmate exhibits the general characteristics of an average employee.⁷⁷ Thus, North Dakota is attempting to achieve uniformity in compensation law by recognizing that all workers, regardless of the nature or location of their work, should be covered by workmen's compensation.

IV. COVERAGE FOR INMATES

The federal government⁷⁸ and a growing minority of states⁷⁹ have extended workmen's compensation coverage to inmates. Three model acts extend coverage to inmates.⁸⁰ The American Bar Association also favors providing coverage for inmates.⁸¹

Five public policy considerations underlie the extension of workmen's compensation to cover inmates in North Dakota: (1) economic considerations;⁸² (2) justice and equity;⁸³ (3) constitutional guarantees;⁸⁴ (4) reduction of recidivism⁸⁵ by promotion of rehabilitation⁸⁶ and reintegration;⁸⁷ and (5) nonfault liability.⁸⁸

77. 1C A. LARSON, *supra* note 1, § 47.31.

78. 18 U.S.C. § 4126 (1979). In relevant part, section 4126 of title 18 of the United States Code provides for "compensation to inmates or their dependents for injuries suffered in any industry or work activity in connection with the maintenance or operation of the institution where confined." *Id.* See also Inmate Accident Company, 28 C.F.R. § 301 (specific provisions governing inmate injury benefits).

79. Ten states have extended workmen's compensation coverage to inmates: California (*see* CAL. LABOR CODE §§ 3351, 3370, 3371 (West Supp. 1983) (employee includes all persons incarcerated in a state correctional facility while performing assigned work)); Iowa (*see* IOWA CODE §§ 85.59 to 85.62 (1983) (person confined in a state penal institution is covered)); Maryland (*see* MD. ANN. CODE art. 101, § 35 (1979) (county prisoners are covered)); North Carolina (*see* N.C. GEN. STAT. § 97-13(c) (Supp. 1983) (only prisoners assigned to the State Department of Correction are covered)); Oregon (*see* OR. REV. STAT. §§ 655.505 to 655.550 (1983) (persons committed to the physical and legal custody of the Corrections Division of the Department of Human Resources are covered)); South Carolina (*see* S.C. CODE ANN. §§ 42-1-470 to 42-1-500 (Law. Coop. Supp. 1983) (state inmates are covered; county inmates may be covered if the governing body elects to do so)); Washington (*see* WASH. REV. CODE §§ 56.32.020 to 56.32.040 and §§ 72.60.100 to 72.60.280 (1983) (only specific inmates employed in specific institutional industries are covered)); Wisconsin (*see* Wis. STAT. ANN. § 56.21 (West Supp. 1984-85) (inmates of state institutions are covered)); and Wyoming (*see* WYO. STAT. §§ 27-12-106, 27-12-108(b) (1983) (inmates are included as employees only when employed by a county, city, or town, in a specifically listed extra-hazardous occupation)).

80. *See* Dahl, *The Model Iowa Worker's Compensation Act — Time for a Change*, 30 DRAKE L. REV. 693, 724 (1980); *Model Sentencing and Corrections Act*, § 4-901, 10 U.L.A. 205 (Supp. 1985); COUNCIL OF STATE GOVERNMENTS, *Model Act: Workmen's Compensation and Rehabilitation Law* (reprinted in 4 A. LARSON, WORKMEN'S COMPENSATION LAW 650 (1980)).

81. *Tentative Draft: The American Bar Association Standards Relating to the Administration of Criminal Justice — Recommended Legal Status of Prisoners Standards* (reprinted in 14 AM. CRIM. L. REV. 377, 458 (1977)).

82. *See* RESTATEMENT (SECOND) OF TORTS § 895B (1982). A majority of states have either abolished or modified governmental immunity at both the state and local levels. *Id.*, comment b.

83. *See* Garcia v. California, 247 Cal. App. 2d 814, 56 Cal. Rptr. 80 (1967) (the dependents of an inmate killed while on a work project could recover damages in a wrongful death claim).

84. *See* Morales v. Schmidt, 494 F.2d 85 (7th Cir. 1974) (prisoner-nonprisoner classifications need not be justified by applying principles developed under the guarantee of equal protection of the laws).

85. *See* M. TOBORG, THE TRANSITION FROM PRISON TO EMPLOYMENT: AN ASSESSMENT OF COMMUNITY BASED ASSISTANCE PROGRAMS 2 (1978).

86. *See generally* J. WILLIAMS, THE LAW OF SENTENCING AND CORRECTIONS 51 (1974).

87. *See generally* Conrad, CRIMINAL JUSTICE MONOGRAPH 10 (June 1973).

88. *See* 1 A. LARSON, *supra* note 1, § 2.20.

A. ECONOMIC CONSIDERATIONS

In *Kitto v. Minot Park District*⁸⁹ the North Dakota Supreme Court abolished the governmental immunity of the state's political subdivisions.⁹⁰ As a result, a subdivision's liability to an injured inmate may be as much as \$250,000.⁹¹ Surprisingly, prior to 1985 no political subdivision was covered by the North Dakota Workmen's Compensation Bureau; and even if a subdivision desired such coverage, the legality of allowing coverage under North Dakota's prior law was questionable.⁹² Chapter 65-06.2, however, affords county and local governments the opportunity to obtain this important economic protection.⁹³ Since workmen's compensation is the sole remedy of an injured worker,⁹⁴ the negligence claims of an injured inmate will be barred if the subdivision opts for coverage under chapter 65-06.2.⁹⁵

89. 224 N.W.2d 795 (N.D. 1974).

90. *Kitto v. Minot Park Dist.*, 224 N.W.2d 795 (N.D. 1974). The plaintiff in *Kitto* was the mother of a 12-year-old boy who drowned in a pond within a city park. *Id.* at 796-97. At trial the defendant park district's motion for summary judgment was granted on the ground that the district had no liability insurance and was immune. *Id.* at 797. In determining that the abolition of governmental immunity was applicable to the instant case, the court set forth a two-tier rationale: (1) the doctrine of government immunity had a judicial origin and had been judicially modified in the past — in other words, that which the judiciary creates, the judiciary may abolish; and (2) the distinction between the sovereign immunity of the state and the government immunity of its political subdivisions insured that the holding would not alter or affect the state's sovereign immunity. *Id.* at 799-800. See also N.D. CENT. CODE § 32-12.1-03(1) (Supp. 1985). In relevant part, subsection 32-12.1-03(1) provides: "Each political subdivision shall be liable for money damages for injuries when the injuries are approximately caused by the negligence or wrongful act or omission of any employee acting within the scope of the employee's employment. . . ." *Id.*

91. N.D. CENT. CODE § 32-12.1-03(2) (Supp. 1985). The statute provides:

The liability of political subdivisions under this chapter shall be limited to two hundred fifty thousand dollars per person and five hundred thousand dollars for injury to three or more persons during any single occurrence. Liability for punitive or exemplary damages may exceed those limitations when such injuries have been caused by willful or malicious behavior or conduct.

Id.

92. Interview with Joseph F. Larson II, Counsel for North Dakota Workmen's Compensation Bureau (Aug. 13, 1984). Assistant Attorney General Larson contended that the only available method by which a political subdivision could provide coverage for inmates prior to 1985 was to insure as a volunteer organization. *Id.* However, it was highly unlikely that an inmate performing labor would be a volunteer within the terms of existing law. *Id.* See N.D. CENT. CODE § 65-07-01 (1985) (volunteer organizations may contract for coverage).

93. N.D. CENT. CODE ch. 65-06.2 (1985).

94. *Id.* The state, however, does not need this economic protection. See N.D. CENT. CODE § 32-12.1-03(4) (Supp. 1985). The statute, in pertinent part, provides: "The sovereign immunity of the state is not waived in any manner by this chapter, and this chapter shall not be construed to abrogate the immunity of the state." *Id.*

95. N.D. CENT. CODE § 65-01-01 (1985). Section 65-01-01, in part, provides:

[S]ure and certain relief is hereby provided regardless of questions of fault and to the exclusion of every other remedy, proceeding, or compensation, except as otherwise provided in this title, and to that end all civil actions and civil causes of action for such personal injuries and all jurisdictions of the courts of the state over such causes are abolished except as is otherwise provided in this title.

Id. See generally *United States v. Demko*, 385 U.S. 149 (1966). In *Demko* a federal prisoner, seriously

Moreover, adjudication of an inmate's injury claim by the Workmen's Compensation Bureau is an efficient and economically attractive method of handling a case.⁹⁶ To require each injured prisoner to litigate a negligence claim in court would impose a financial burden on both the prisoner⁹⁷ and the political subdivision.⁹⁸ Thus, since it would not only reduce the load of the already over-crowded court dockets,⁹⁹ but also decrease the costs of handling the claim,¹⁰⁰ adjudication of an injured inmate's claim by the Workmen's Compensation Bureau is a superior alternative to court litigation.¹⁰¹

Denial of workmen's compensation to an injured inmate will not reduce the ultimate costs to society.¹⁰² If an inmate is disabled by a work-related injury and is subsequently denied compensation, he will be put on the welfare rolls.¹⁰³ Since inmate injuries contribute to recidivism,¹⁰⁴ society suffers not only increased property and health loss, but also loss of a future taxpayer.¹⁰⁵

Finally, extending workmen's compensation coverage to inmates would not transform the government into an insurer of the inmates' health, since only injuries sustained by an inmate in

injured while performing an assigned task, filed a claim for compensation under 18 U.S.C. § 4126 and was awarded \$180.00 monthly with the payments to start upon discharge from prison. *Id.* at 149-50. Subsequently, the prisoner brought a negligence action against the United States under the Federal Tort Claims Act and recovered another judgment. *Id.* The Court held that 18 U.S.C. § 4126 provided the prisoner with an exclusive remedy for his industrial injury, and thereby reversed the lower courts' tort judgment for the plaintiff. *Id.* at 152. *See, e.g.,* *Aston v. United States*, 625 F.2d 1210 (5th Cir. 1980); *Sturgeon v. Federal Prison Indus.*, 508 F.2d 1153 (8th Cir. 1979).

96. DAVIS, ADMINISTRATIVE LAW TEXT 14 (1972). Davis maintains that for adjudication of workmen's compensation cases, the courts are not the appropriate tribunals. *Id.* Part of his reason is that the judicial process is unduly awkward and slow. *Id.*

97. THE REPORT OF THE NATIONAL COMMISSIONERS OF STATE WORKMEN'S COMPENSATION LAWS 120 (1972) [hereinafter cited as COMMISSIONERS]. The determination of negligence is expensive and the outcome uncertain. *Id.* If the claimant is successful, payments tend to be delayed. *Id.* *See also* O'Connell, *Broadening the No-Fault Compensation Option*, FINAL EDITED PROCEEDINGS OF THE NATIONAL CONFERENCE ON "WORKER'S COMPENSATION AND WORKPLACE LIABILITY" 270 (L. Theberge, N. Hollenshead, R. Muth, & J. Wyenman ed. 1981).

98. *Inmate work release program for city and county jails and workmen's compensation coverage for participating inmates, 1985: Hearings on S. 2329 Before the Senate Comm. on State and Federal Government*, 49th N.D. Leg. Ass. (1985) (statement of Bill Sorenson, President of the North Dakota League of Cities). Sorenson maintained that S. 2329 would make it easier for the counties and cities to use inmate labor, because the bill would alleviate the current work release problems involving injuries and litigation against political subdivisions. *Id.* *See also* REPORT, *supra* note 41, at 89. Legal expenses dominate the budgets of local governments in four-fifths of the states. *Id.* In 1979 counties spent \$2.2 billion (39%) of the total of \$5.6 billion spent by all levels of government for courts, prosecution, legal services, and public defense. *Id.*

99. COMMISSIONERS, *supra* note 97, at 120.

100. REPORT, *supra* note 41, at 87.

101. COMMISSIONERS, *supra* note 97, at 120. The commission concluded that damage suits are an inferior alternative to workmen's compensation. *Id.*

102. 1 A. LARSON, *supra* note 1, § 2.20.

103. *Id.*

104. Note, *Granting Workmen's Compensation Benefits to Prison Inmates*, 46 S. CAL. L. REV. 1223, 1235-38 (1973).

105. REPORT, *supra* note 41, at 87. A prison injury results in the loss of a productive or potentially productive worker. *Id.* The state loses an inexpensive source of labor, one which is essential in keeping the prison solvent. *Id.* The state also loses a future taxpayer. *Id.*

performance of assigned work are compensable.¹⁰⁶ In *Kopacka v. Department of Industry, Labor & Human Relations*,¹⁰⁷ the Wisconsin Supreme Court held that since an inmate was not engaged in assigned work at the time of his injury, compensation was not available.¹⁰⁸ The court noted that workmen's compensation was intended to provide coverage only while the inmates were engaged in productive activities, and not to provide coverage for situations created by the prison environment.¹⁰⁹

B. JUSTICE AND EQUITY

Pursuant to title 18, section 4126 of the United States Code, inmates are entitled to compensation for injuries suffered in assigned work activity.¹¹⁰ Congress passed section 4126 in 1934.¹¹¹ In 1946 Congress passed the Federal Tort Claims Act,¹¹² which provides that in tort claims the United States shall be liable to the same extent a private individual would be liable.¹¹³ Since Congress enacted section 4126 twelve years before the Federal Tort Claims Act, it is logical to assume that congressional intent was not to prevent the possible negligence claims of injured inmates, but rather to compensate injury and thereby promote justice.¹¹⁴

The doctrine of governmental immunity has been modified or abolished in a majority of states.¹¹⁵ Generally, the abolition of governmental immunity allows an individual to bring a negligence

106. Workmen's compensation covers inmates only when they are engaged in assigned work activities. See *supra* notes 77 and 78.

107. 49 Wis. 2d 255, 181 N.W.2d 487 (1970).

108. *Kopacka v. Department of Indus., Labor, & Human Relations*, 49 Wis. 2d 255, 181 N.W.2d 487 (1970). The inmate, having finished with his morning work, was standing in line before entering the dining hall when a locker fell on his leg. *Id.*

109. *Id.* at _____, 181 N.W.2d at 488.

110. 18 U.S.C. § 4126 (1982).

111. 48 Stat. ch. 736 (1934).

112. 18 U.S.C. § 2674 (1982). Section 2674 provides:

The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for interest prior to judgment or for punitive damages.

If, however, in any case wherein death was caused, the law of the place where the act or omission complained of occurred provides, or has been construed to provide, for damages only punitive in nature, the United States shall be liable for actual or compensatory damages, measured by the pecuniary injuries resulting from such death to the persons respectively, for whose benefit the action was brought, in lieu thereof.

Id.

113. Revisor's Note, 18 U.S.C. § 2674 (1982). See 28 U.S.C. 1940 ed. § 931(a) (Aug. 2, 1946, c. 753, § 410(a), 60 Stat. 843).

114. See generally 18 U.S.C. § 4126 (1982). Legislative history does not reveal specific congressional intent concerning inmate injury compensation.

115. See RESTATEMENT (SECOND) OF TORTS § 895B comment b (1982).

claim against a governmental entity. In a recent New Jersey¹¹⁶ case, *Drake v. County of Essex*,¹¹⁷ the New Jersey Supreme Court held that since an injured county prisoner was not eligible for workmen's compensation, his tort action was not barred by the exclusivity of a workmen's compensation remedy.¹¹⁸ Even though California has abolished governmental immunity,¹¹⁹ a state statutory provision severely limits an inmate's ability to maintain a negligence suit against the government.¹²⁰ According, in *Sahley v. County of San Diego*,¹²¹ a California court held that a county was not liable for injuries sustained by an inmate.¹²² Therefore, if workmen's compensation benefits are denied to an inmate of a California subdivision, the injured party would have no recourse since civil litigation is not available.¹²³

C. CONSTITUTIONAL GUARANTEES

Although certain civil rights are necessarily abridged when one is sentenced to prison,¹²⁴ to a great extent the Constitution follows an individual into prison.¹²⁵ The denial of workmen's compensation benefits to inmates may violate the United States Constitution in two ways; prisoner-nonprisoner classifications may violate the fourteenth amendment's equal protection clause,¹²⁶ and forced work without the possibility of workmen's compensation

116. New Jersey has abolished governmental immunity. See N.J. STAT. ANN. § 59:1-2 (West 1982).

117. 192 N.J. Super. 177, 469 A.2d 512 (N.J. Super. Ct. App. Div. 1983). The inmate was injured while working as a plumber's helper in a county penal institution. *Drake v. County of Essex*, 192 N.J. Super. 177, 469 A.2d 512, 513 (N.J. Super. Ct. App. Div. 1983).

118. *Id.* at 513. Since there was no employment relationship between the county and the inmate, workmen's compensation was not applicable. *Id.* at 513.

119. See *Muskopf v. Corning Hosp. Dist.*, 55 Cal. 2d 211, 359 P.2d 457, 11 Cal. Rptr. 89 (1961); CAL. GOV'T CODE §§ 945-49 (West 1980).

120. CAL. GOV'T CODE § 844.6 (West 1980). In pertinent part, the statute provides that "a public entity is not liable for: . . . an injury to any prisoner." *Id.*

121. 69 Cal. App. 3d 347, 138 Cal. Rptr. 34 (Cal. Ct. App. 1977).

122. *Sahley v. County of San Diego*, 69 Cal. App. 3d 347, 348, 138 Cal. Rptr. 34, 35 (Cal. Ct. App. 1977). In *Sahley* a pre-conviction detainee sustained injuries when he slipped and fell in a county shower. *Id.*

123. See *Parsons v. Workmen's Compensation Appeals Bd.*, 126 Cal. App. 2d 629, 179 Cal. Rptr. 88 (Cal. Ct. App. 1981) (a county prisoner who was granted probation and subsequently injured while working at a county road camp was not an employee of the county). *Contra Heumphreus v. State*, 334 N.W.2d 757 (Iowa 1983) (if a prisoner's death did not result from prison work, his survivors would not be entitled to worker's compensation but could try to establish the state's tort liability). See generally *Sanders, The Sovereign Should Be Liable For The Wrongful Injury of Prisoners*, 2 PAC. L.J. 697 (1971); *Bowles, California Public Entity Immunity From Tort Claims by Prisoners*, 19 HASTINGS L.J. 573 (1968).

124. WILLIAMS, *supra* note 86, at 95. See generally *Sirico, Prisoner Classification and Administrative Decisionmaking*, 50 TEXAS L. REV. 1229 (1972).

125. BRONSTEIN, OFFENDERS RIGHTS LITIGATION, JUSTICE AS FAIRNESS 270 (D. Fogel & J. Hudson ed. 1981). Bronstein maintains that the Constitution was not always thought to follow an individual into prison. *Id.* For example, in 1871 a Virginia judge wrote that prisoners have no more rights than slaves. *Id.*

126. See *Morales v. Schmidt*, 494 F.2d 85 (7th Cir. 1974) (prisoner-nonprisoner classifications).

may be cruel and unusual punishment in violation of the eighth amendment.¹²⁷

1. *Equal Protection*

The fourteenth amendment guarantees all persons equal protection of the laws.¹²⁸ In broad terms, the equal protection clause imposes a general restraint on the use of classifications.¹²⁹ The court in *Morales v. Schmidt*¹³⁰ stated the proper standard for determining the constitutionality of prisoner-nonprisoner classifications: "The state must show on challenge that such restriction is related both reasonably and necessarily to the advancement of a justifiable purpose of imprisonment."¹³¹ Thus, to be a valid classification under the constitution, the denial of workmen's compensation benefits to inmates must reasonably and necessarily advance a justifiable purpose of imprisonment.¹³²

One important purpose of imprisonment is to reduce recidivism.¹³³ Unemployment and recidivism are closely related.¹³⁴ Since an injury resulting in a physical handicap decreases one's chances of attaining and maintaining gainful employment,¹³⁵

127. *Frederick v. Men's Reformatory*, 203 N.W.2d 797, 799 (Iowa 1983) ("[u]ncompensated disabilities which endure beyond termination of incarceration are a cruel and un contemplated form of enhanced punishment").

128. U.S. CONST. amend. XIV, § 1. Section 1 of the fourteenth amendment provides in part:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Id. (emphasis added).

129. J. NOWAK, R. ROTUNDA, & J. YOUNG, CONSTITUTIONAL LAW 586 (2d ed. 1983). Professor Nowak explains that the equal protection clause assures that the government will deal with similarly situated individuals in a similar manner. *Id.* The equal protection clause "does not reject the government's ability to classify persons or 'draw lines' in the creation and application of laws, but it does guarantee that those classifications will not be based upon impermissible criteria or arbitrarily used to burden a group of individuals." *Id.*

130. 49 F.2d 85 (7th Cir. 1974). In *Morales* an inmate filed suit when correspondence with his sister-in-law was restricted. *Morales v. Schmidt*, 49 F.2d 85, 86 (7th Cir. 1974).

131. *Id.* at 87. See, e.g., *Delorme v. Pierce Freightlines Co.*, 353 F. Supp. 258 (D. Or. 1973) (civil death statute was unconstitutional because it prevented an inmate from prosecuting a preexisting workmen's compensation claim); *Lunday v. Vogelmann*, 213 N.W.2d 904 (Iowa 1973) (plaintiff unsuccessfully argued that he was denied equal protection of the laws because a statute put victims of governmental torts in a different class than victims of private torts).

132. See, e.g., *Mabra v. Schmidt*, 356 F. Supp. 620 (W.D. Wis. 1973).

133. Address by Robert Martinson, National Conference on Criminal Justice (Jan. 25, 1973), reprinted in PROCEEDINGS OF THE NATIONAL CONFERENCE ON CRIMINAL JUSTICE, 235, 235 (1976). Professor Martinson states that incarceration was designed to have an effect on the convict's future tendency to engage in the prohibited behavior. *Id.* He maintains, however, that imprisonment rarely eliminates the undesired behavior. *Id.* See, e.g., Burger, *supra* note 38, at 112-13. The Chief Justice maintains that since crime results in the direct loss of billions of dollars annually, society has a "moral obligation" to change an inmate before he is released. *Id.* This "moral obligation" is not simply a matter of compassion — it is a matter of our own protection. *Id.* at 113.

134. M. TOBORG, *supra* note 85, at 2.

135. Note, *supra* note 14, at 1325.

denying the rehabilitative effect of workmen's compensation benefits to prisoners does not reasonably and necessarily advance society's interest in decreased recidivism.

2. *Cruel and Unusual Punishment*

The eighth amendment protects inmates from cruel and unusual punishment.¹³⁶ Resting upon the consideration of human decency,¹³⁷ the eighth amendment proscribes the unnecessary and wanton inflictions of pain; those that are without penological justification and result merely in the gratuitous infliction of suffering.¹³⁸ Moreover, in *Pugh v. Locke*,¹³⁹ the court stated that "[n]ot only is it cruel and unusual punishment to confine a person in an institution under circumstances that increase the likelihood of future confinement, but these same conditions defeat the goal of rehabilitation which prison officials have set for their institutions."¹⁴⁰

In a 1973 case, *Frederick v. Men's Reformatory*,¹⁴¹ the Iowa Supreme Court held that in the absence of a legislative provision, state inmates injured while working in prison industries were not entitled to workmen's compensation.¹⁴² However, the court stated:

Although prisoners are not covered by workmen's compensation while working in prison industries, their injuries are no less real than those suffered by other

136. U.S. CONST. amend. VIII. The eighth amendment provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." *Id.*

137. BRONSTEIN, *supra* note 126, at 276. Bronstein contends that the eighth amendment was intended to assure that punishment be exercised within the limits of civilized standards. *Id.*

138. *Gregg v. Georgia*, 428 U.S. 153, 173, 183 (1976), *reh'g denied*, 429 U.S. 875 (1976). The court held that the statutory system under which the defendant was sentenced to death did not violate the eighth amendment. *Id.* at 207. In reaching its decision the court explained that the prohibitions embodied in the eighth amendment have not been confined merely to torture and other barbarous methods of punishment; "[t]hus the Clause forbidding cruel and unusual punishments is not fastened to the obsolete but may acquire meaning as public opinion becomes enlightened by a humane justice." *Id.* at 171.

139. 406 F. Supp. 318 (M.D. Ala. 1976), *aff'd*, 559 F.2d 283 (5th Cir. 1977), *cert. denied*, 438 U.S. 915 (1978).

140. *Pugh v. Locke*, 406 F. Supp. 318, 330 (M.D. Ala. 1976), *aff'd*, 559 F.2d 283 (5th Cir. 1977), *cert. denied*, 438 U.S. 915 (1978). The *Pugh* court held that the conditions of the Alabama penal system violated the eighth amendment because they bore no reasonable relationship to legitimate institutional goals. 406 F. Supp. at 331. *See, e.g.*, *Hoptowit v. Spellman*, 753 F.2d 779 (9th Cir. 1984) (Washington state prison facilities violated the minimum requirements of eighth amendment); *Nelson v. Heyne*, 355 F. Supp. 451 (N.D. Ind. 1973) (condition at the Indiana Boys' School violated the eighth amendment), *aff'd*, 491 F.2d 352 (7th Cir. 1974), *cert. denied*, 417 U.S. 976 (1974).

141. 203 N.W.2d 797 (Iowa 1973). In *Frederick* a prisoner injured his hand while operating a punch press at the prison's license plate factory. *Frederick v. Men's Reformatory*, 203 N.W. 2d 797, 797 (Iowa 1973).

142. *Id.* at 799. Since the Iowa Code did not provide inmates with workmen's compensation coverage, the inmate would have been entitled to compensation only if he were determined to be an employee of the state. *Id.* at 798.

workers. Uncompensated disabilities which endure beyond termination of incarceration are a cruel and un contemplated form of enhanced punishment. They are an obstacle to rehabilitation and foreshadow incalculable social cost.¹⁴³

The Iowa legislature has since passed a statute providing workmen's compensation coverage for inmates.¹⁴⁴

D. REDUCING RECIDIVISM

It is generally accepted that inmates should perform constructive work,¹⁴⁵ partly because failure to do so results in a substantial economic loss to society.¹⁴⁶ Moreover, after an inmate's release from prison, his employment status affects the chances of his returning to prison.¹⁴⁷ Prison work programs ameliorate both situations. Not only does society add additional members to its tax base when prisoners are released, but the financial resources that working prisoners receive can be taxed and otherwise used in part to pay for the cost of their confinement.¹⁴⁸ Additionally, prisoners learn useful skills and work habits that help them stay out of prison in the future.¹⁴⁹ Prison work programs, which incorporate workmen's compensation coverage, help effectuate the two important goals of incarceration-rehabilitation¹⁵⁰ and reintegration.¹⁵¹ A disabled former inmate is doubly

143. *Id.* at 799.

144. IOWA CODE §§ 85.59 to 85.62 (1983). Section 85.59 defines inmate, while §§ 85.60 and 85.62 respectively provide that the state and county governments may elect to include an inmate as an employee. *Id.*

145. *Tentative Draft*, *supra* note 81, at 461. The American Bar Association maintains that "[i]t is universally agreed that prisoners should have constructive work." *Id.* See, e.g., AMERICAN CORRECTIONAL ASSOCIATION, ADULT LOCAL DETENTION FACILITIES 378 (1981).

146. *Tentative Draft*, *supra* note 81, at 461. With only 15% prison unemployment at the state and local level, an estimated two billion dollars per year is lost in productivity. *Id.*

147. M. TOBORG, *supra* note 85, at 2.

148. *Tentative Draft*, *supra* note 81, at 461. Allowing inmates to work, taxing their wages, and requiring them to pay for part of the expenses of their incarceration conforms to the standards of the American Correctional Association. See AMERICAN CORRECTIONAL ASSOCIATION, ADULT LOCAL DETENTION FACILITIES 377 (1981);

149. Note, *Prisoners As Entrepreneurs: Developing A Model for Prisoner-Run Industry*, 62 B.U.L. REV. 1163, 1164 n. 3 (1983). The author explains the importance of teaching prisoners useful skills as follows:

If a man who is ignorant and unskilled when he goes into prison can come out with some education and some usable skill, he has an improved chance of staying out of prison in the future. If he comes out as ignorant and unskilled as he goes in, recidivism on his part is almost inevitable.

Id. (quoting *Holt v. Sarver*, 309 F. Supp. 362, 379 (E.D. Ark. 1970)).

150. J. WILLIAMS, *supra* note 86, at 58.

151. Conrad, *supra* note 87, at 17.

disadvantaged in seeking employment, and without economic assistance, the individual is likely to return to crime.¹⁵²

1. *Rehabilitation*

Recognized by all courts as desirable, if not the requisite goal of imprisonment,¹⁵³ rehabilitation¹⁵⁴ is founded on the propositions that human behavior is the product of prior causes and that therapeutically treating the convicted offender effects changes in his behavior.¹⁵⁵ If the rehabilitation effort is to succeed, the prison society must simulate the outside world.¹⁵⁶ In the nonprison environment the right to workmen's compensation benefits depends on one test: "Was there a work-related injury?"¹⁵⁷ To deny compensation to a work-injured inmate would convince him not only that he cannot work within the system, but also that no opportunity exists for him.¹⁵⁸ Furthermore, granting compensation to an injured inmate should reduce the antagonism between him and society.¹⁵⁹ Thus, failure to extend workmen's compensation coverage to inmates impedes rehabilitation.¹⁶⁰

2. *Reintegration*

The purpose of reintegration¹⁶¹ is to reduce the stigma¹⁶² attached to criminality and thus ease the prisoner's entrance into

152. Comment, *The Employment Relation in Workmen's Compensation and Employer's Liability Legislation*, 10 UCLA L. REV. 161, 176 (1962).

153. 3 S. RUBIN, UNITED STATES PRISON LAW 223 (1976).

154. J. WILLIAMS, *supra* note 86, at 58. Well over a century ago the drafters of the Declaration of Principles of the American Prison Association maintained that rehabilitation and moral regeneration were the proper aims of corrections. TRANSACTIONS OF THE NATIONAL CONGRESS OF PENITENTIARY AND REFORMATORY DISCIPLINE, 541 (Principle II) (1871) (quoted in Comment, *A Statutory Right to Treatment For Prisoners: Society's Right of Self-Defense*, 50 NEB. L. REV. 543, 544 (1971)). See, e.g., Comment, *A Jam In the Revolving Door: A Prisoner's Right to Rehabilitation*, 60 GEO. L.J. 225 (1971).

155. F. ALLEN, *Legal Values and the Rehabilitative Ideal*, SENTENCING 110-11 (H. Gross & A. von Hirsch eds. 1981). The author contends that knowledge of the prior causes of human behavior makes it possible to scientifically control human behavior. *Id.* at 110.

156. See, e.g., Note, *supra* note 149, at 1164. See also Conrad, *supra* note 87, at 21.

157. 1 A. LARSON, *supra* note 1, § 2.10.

158. Conrad, *supra* note 87, at 17. An important consideration in support of S.2329 was the promotion of work release programs, which provide inmates with meaningful work and its rehabilitative effect. *Inmate work release program for city and county jails and workmen's compensation coverage for participating inmates, 1985: Hearings on S.2329 Before the Senate Comm. on State and Federal Government* (1985) (Statements of Ken Medeiros, Bismarck Chief of Police, and Pastor Cowell Rideout).

159. Comment, *supra* note 152, at 162. One of the reasons advanced for the initial passage of workmen's compensation legislation in California was that the common law system induced antagonism between the employee and the employer. *Id.*

160. Note, *supra* note 149, at 1164.

161. PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND THE ADMINISTRATION OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY 173 (1967). The Commission maintains that institutional communities, which keep people against their will, generate tension that lessens the successful reintegration of the prisoner into the community. *Id.* The Commission suggests that a collaborative institution — a small unit correctional institution which places a premium on community-oriented treatment — will help the inmate develop the motivation needed for vocational and self-improvement goals. *Id.*

162. *Id.* at 174. The Commission maintains that a correctional system which stresses

the community.¹⁶³ By stressing the internalization of community standards¹⁶⁴ the prisoner's sense of alienation is ameliorated.¹⁶⁵ Thus, reintegration emphasizes the inmate's similarities to society. One commentator has summed up the situation this way: "To the extent that the criminal sees himself different from us, he will play the obvious role of criminal. To the extent that he sees himself as more or less like anybody else, he will become part of that indefinable mass of people to which we all belong: the community."¹⁶⁶

Pre-release and work release programs¹⁶⁷ form the core of a reintegration program.¹⁶⁸ A correctional program that emphasizes the benefits of work effectively minimizes the differences between an inmate and society.¹⁶⁹ To extend workmen's compensation coverage to inmates injured in prison labor is consistent with the goals of reintegration because it will minimize the apparent difference between the inmate-worker and the noninmate-worker,¹⁷⁰ provide a positive incentive for work,¹⁷¹ and preserve the inmate's dignity and self-respect.¹⁷²

E. NONFAULT LIABILITY

Workmen's compensation is an example of nonfault

reintegration greatly diminishes the "rat complex." *Id.* The "rat complex" brings great social stigma and physical danger to an inmate who cooperates with traditional institutions. *Id.*

163. Duffee & O'Leary, *Models of Correction: An Entity in the Packer-Griffiths Debate*, 7 CRIM. L. BULL. 329, 344-45 (1971).

164. *Id.* at 344. By internalizing community standards an inmate learns that repeating past mistakes will not allow him to reach planned goals. *Id.*

165. Conrad, *supra* note 87, at 21. Also referred to as "normalizing," the process "involves not only the performance of acceptable behaviors by the individual, but also the achievement of a normal identity within both the individual personality and the social framework." Studt, *Reintegration From The Parolee's Perspective*, CRIMINAL JUSTICE MONOGRAPH 42 (June 1973).

166. Conrad, *supra* note 87, at 21. Conrad suggests that to denounce the criminal for his behavior may satisfy society's need to disapprove of his crime, but it decreases the probability that he will ever be a good citizen. *Id.* at 22.

167. Burger, *supra* note 38, at 116. The Chief Justice maintains that inmates do not share the work ethic concepts that motivate the rest of society. *Id.* He suggests, however, that if an inmate is placed in a factory, paid a reasonable wage, and charged something for room and board, the inmate will have a better chance to secure gainful employment upon release. *Id.*

168. Duffee & O'Leary, *supra* note 163, at 345. Prison work programs aid in minimizing breaks with the community, and thus help keep the lines of communication between prison and community open. *Id.*

169. Conrad, *supra* note 87, at 15-16. Although the author contends that we all live in an environment in which we are coerced to work, most of us find that work is not only economically satisfying, but also improves society or increases our knowledge. *Id.* at 16.

170. See generally Burger, *supra* note 38.

171. See Conrad, *supra* note 87, at 25. The author states that "[i]f offenders can see satisfying opportunities in their future and profit from them, they may indeed become like the rest of us." *Id.*

172. 1 A. LARSON, *supra* note 1, § 2.20. (granting workmen's compensation to an injured veteran of industry preserves his dignity and self-respect).

liability.¹⁷³ That is, negligence or fault do not affect the right to compensation benefits.¹⁷⁴ Three interrelated justifications for applying nonfault liability when an inmate is injured in the performance of assigned work are allocation of resources,¹⁷⁵ spreading the losses,¹⁷⁶ and general deterrence.¹⁷⁷

The allocation of resources theory is based on the laws of supply and demand.¹⁷⁸ In essence, the theory requires that the cost of injuries be born by the activities that caused them, thus allowing the marketplace to determine whether the expenses incurred are cost-prohibitive.¹⁷⁹ Since the cost of compensation insurance premiums are reflected in the cost of the product and are ultimately passed on to the consumer,¹⁸⁰ extending workmen's compensation coverage to inmates is consistent with society's interest in the efficient allocation of resources.¹⁸¹

Another justification for allocating losses on a nonfault basis is that if the losses are broadly spread, they are least harmful. The more people that share the burden and the longer the period of time over which the burden is borne, the smaller the burden on each individual.¹⁸² Accordingly, providing compensation for a work-injured inmate and thus spreading the costs of the benefits to consumers will result in a small fiscal burden on society.¹⁸³

A noted commentator states that "the principal functions of

173. *Id.* Larson explains that workmen's compensation employs nonfault liability because "[a] system of law based in any degree on individual merit at the instant of the accident can see only one result: nonliability." *Id.* Accordingly, nonliability compensation is a morally satisfactory solution. *Id.*

174. *Id.* § 2.10. The author contends that the applicability of workmen's compensation is not a matter of assessing blame, but of marking boundaries. *Id.*

175. Chesrow, Howard, & Howard, *Fault and Equity: Implied Indemnity After Houdaille*, 34 U. MIAMI L. REV. 727, 750 (1980) (a pairing of the cost of accidents with the economics of the injury results in an efficient allocation of resources).

176. See Calabresi, *Some Thoughts On Risk Distribution and the Law of Torts*, 70 YALE L.J. 499 (1961) (losses that are broadly spread are least harmful).

177. Note, *Granting Workman's Compensation Benefits to Inmates*, 46 S. CAL. L. REV. 1223, 1241 (1973) (the increased expense of an activity serves to deter participation in that activity).

178. Chesrow, Howard & Howard, *supra* note 175, at 752. The theory of resource allocation is premised on the notion that "proper allocation . . . will occur if the cost of injuries is born by the enterprise involved in the accident." *Id.*

179. See Calabresi, *supra* note 176, at 505 (the price of goods reflects their cost to society).

180. See A. MILLUS & W. GENTILE, *supra* note 2.

181. See Chesrow, Howard & Howard, *supra* note 175, at 752-53; Calabresi, *supra* note 176, at 500-05.

182. See Calabresi, *supra* note 176, at 517. Calabresi noted as follows:

The advantages of interpersonal loss spreading would probably be stated in terms of two propositions; (a) that taking a large sum of money from one person is more likely to result in economic dislocation, and therefore in secondary or avoidable losses, than taking a series of small sums from many people, and (b) that even if the total economic dislocation is the same, many small losses are preferable to one large one, simply because people feel they suffer less if 10,000 of them lost \$1 than if one loses \$10,000.

Id.

183. See *id.*, at 517-18. See also A. MILLUS & W. GENTILE, *supra* note 5.

'accident law' are to compensate victims and reduce accident costs."¹⁸⁴ So it is with workmen's compensation. Theoretically, workmen's compensation is not intended to hurt the employer, but to help the employee.¹⁸⁵ Consistent with its goals of maintenance of income, workmen's compensation offers incentives to improve the safety of working conditions.¹⁸⁶ The use of experience-rating devices, which use the number of claims filed against an employer to determine his premium rate, may indirectly impact the employer who is liable for large or frequent claims by increasing the ultimate cost of his product.¹⁸⁷ Furthermore, experience-rating encourages an employer to dramatically improve productivity and reduce labor costs by providing an incentive to develop safer practices and working conditions.¹⁸⁸ Thus, a fundamental tenet of workmen's compensation is general deterrence; a belief that accident costs will be reduced by placing the burden of payment on the activity.¹⁸⁹ Thus, the extension of workmen's compensation coverage to inmates will result not only in safer working conditions, but also fewer inmate injuries.¹⁹⁰

The modern rule extends workmen's compensation coverage to inmates.¹⁹¹ Five public policy considerations supported North Dakota's extension of such coverage: economic necessity, equity and justice, constitutional guarantees, reduction of recidivism, and nonfault liability.¹⁹² North Dakota was confronted with strong moral, legal, and social justifications for extending workmen's compensation coverage to inmates. The time was ripe for the state to acknowledge that both society and the inmate benefit when all employment-related industrial injuries are compensated.

V. CONCLUSION

Workmen's compensation laws recognize that work injuries

184. Calabresi, *The Decision for Accidents: An Approach to Nonfault Allocation of Costs*, 78 HARV. L. REV. 713 (1965).

185. 1 A. LARSON, *supra* note 1, § 2.70, at 13. Larson states that "tort litigation is an adversary contest to right a wrong between the contestants; workmen's compensation is a system, not a contest, to supply security to injured workers and distribute the costs to the consumers of the product." *Id.*

186. See COMMISSIONERS, *supra* note 97, at 22.

187. 1 A. LARSON, *supra* note 1, § 2.70. Larson notes that increased premiums can cause a competitive disadvantage because the relative generosity of compensation in one jurisdiction may unduly raise the price of one employer's product. *Id.* at 14 n. 18.

188. See COMMISSIONERS, *supra* note 97, at 22. In individual industries preventive health and safety programs reduce labor costs and improve productivity. *Id.*

189. See Note, *supra* note 177, at 1241. See also Calabresi, *supra* note 184, at 743. When dealing with deterrence of activities that are socially useful but cause accidents, Calabresi maintains that the marketplace decides to what extent the activities are needed. *Id.*

190. See 1 A. LARSON, *supra* note 1, § 2.70, at 14; COMMISSIONERS, *supra* note 97, at 22.

191. The federal government and ten states have extended coverage to inmates. See *supra* notes 78-79.

192. See *supra* notes 90-190.

and death are the by-products of consumer goods, and as such, the costs of the goods must "bear the blood of the working man."¹⁹³ In many states, however, as a result of either judicial intervention or statute, the work-related injuries of inmates are not compensated because the inmates are incapable of entering into a true contract for hire.¹⁹⁴ This antiquated reasoning is crumbling under the weight of enlightened realization that form should not be elevated over substance.

Society is increasingly aware that the working inmate is subjected to all the ordinary features and risks of employment.¹⁹⁵ Following the example of the federal government, a growing minority of states have extended workmen's compensation coverage to inmates injured in the performance of assigned work.¹⁹⁶ Although in some instances the abolition of governmental immunity and resulting possibility of tort liability may have prompted the extended coverage, a myriad of other public policy considerations support compensation coverage for inmates. Chapter 65-06.2 of the North Dakota Century Code provides North Dakota with a springboard to total recognition of the inmate as a bona fide worker.¹⁹⁷ The time for recognition has arrived. Workmen's compensation coverage should also be extended to inmates at the state penitentiary, not only for the sake of the disabled individual, but also to promote society's interest in reducing crime and promoting a healthy citizenry.¹⁹⁸

STEVEN A. WEILER

193. See A. MILLUS & W. GENTILE, *supra* note 2.

194. See *supra* notes 15-34.

195. See *supra* notes 37-40 and accompanying text.

196. See *supra* notes 78-79.

197. N.D. CENT. CODE ch. 65-06.2 (Supp. 1985).

198. In light of the modern trend abolishing or modifying governmental immunity, the exclusivity of a workmen's compensation remedy is economically appealing. See *supra* notes 88-107. Many other public policy considerations also support extending compensation coverage to inmates. See *supra* notes 108-188.

