
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: ACA 8 **Hearing Date:** June 11, 2024
Author: Wilson
Version: February 17, 2023
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Slavery*

HISTORY

Source: 10P Program; A New Way of Life; Abolish Slavery National Network; ACLU California Action; Aging People in Prison Human Rights Campaign; All of Us or None; Anti-Recidivism Coalition; Anti-Violence Safety and Accountability Project; ASCRIBE; Asian Prisoner Support Committee; California Lawyers for the Arts; Coalition for a Just and Equitable California; Coalition to Abolish Slavery and Trafficking; Communities United for Restorative Youth Justice; EDIFYE; Freedom United; GLIDE Foundation; Homies Unidos; Impact Justice; Indivisible; Just Cities; Legal Aid at Work; Legal Services for Prisoners with Children; March On; Norcal Resist; Pride In Truth; Prison from the Inside Out; Represent Justice; Sister Warriors Freedom Coalition; Starting Over, Inc.; The Love We Don't See; TimeDone; Village Advocates; Youth Leadership Institute

Prior Legislation: ACA 3 (Kamlager), failed passage on the Senate Floor 2022
SB 1371 (Bradford), vetoed in 2022
SCR 69 (Bradford), not heard in Assembly Public Safety 2020

Support: A.B.O. Comix; Alliance for Boys and Men of Color; Alliance of Californians for Community Empowerment Action; American Redress Coalition of California Bay Area; Arts for Healing and Justice Network; Asian Americans and Pacific Islanders for Civic Empowerment; Bend the Arc: Jewish Action; Black Equity Collective; California Black Chamber of Commerce; California Black Power Network; California Faculty Association; California Immigrant Policy Center; California Public Defenders Association; California Reparations Task Force Members Dr. Cheryl Grills, Lisa Holder, and Don Tamaki; Californians for Safety and Justice; California Native Vote Project; Californians for Safety and Justice; Caravan 4 Justice; Catalyst California; City and County of San Francisco, Board of Supervisors; Coalition for A Just and Equitable California; Coalition on Homelessness, San Francisco; Community Interventions; County of Los Angeles Board of Supervisors; Culver City Democratic Club; Ella Baker Center for Human Rights; Emend the Mass Media Group; Equal Justice Society; Faith in Action East Bay; Families Inspiring Reentry & Reunification 4 Everyone; Freedom 4 Youth; Freedom Within Project; Friends Committee on Legislation of California; GRIP Training Institute; Haiti Action Committee; Healthright 360; Honoring Resilience; Humane Prison Hospice Project; IKAR; Indivisible CA: StateStrong; Initiate Justice; Initiate Justice Action; Inland Empire United; Interfaith Coalition for Justice in Our Jails; Interfaith Movement for Human

Integrity; Kehilla Community Synagogue; Lawyers' Committee for Civil Rights of the San Francisco Bay Area; League of Women Voters of California; Live Free California; Multi-faith ACTION Coalition; Pacifica Social Justice; Planting Justice; Prison Law Office; Prison Yoga + Meditation; Rosen Bien Galvan & Grunfeld, LLP; San Francisco Public Defender; Santa Monica Democratic Club; SEIU California; Showing Up for Racial Justice Bay Area; Smart Justice California; Southeast Asia Resource Action Center; Riverside All of Us or None; Starting Over Strong; The Greenlining Institute; TheatreWorkers Project; Transitions Clinic Network; UC Berkeley's Underground Scholars Initiative; UnCommon Law; Western Center on Law & Poverty; Worksafe; 3 individuals

Opposition: None known

Assembly Floor Vote: 68 - 4

PURPOSE

The purpose of this measure is to prohibit slavery in any form, including forced labor compelled by the use or threat of physical or legal coercion.

Existing federal law states that neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. (U.S. Const., 13th Amend.)

Existing law prohibits slavery. (Cal. Const., art. I, § 6.)

Existing law prohibits involuntary servitude except to punish crime. (Cal. Const., art. I, § 6.)

Existing law authorizes the Secretary of the California Department of Corrections and Rehabilitation (CDCR) to enter into contracts with public entities, nonprofit or for profit organizations, and businesses for the purpose of conducting programs which use the labor of incarcerated individuals. (Cal. Const., art. XIV, § 5.)

Existing law authorizes CDCR to employ incarcerated individuals for the rendering of services that are needed by the state or any political subdivision thereof, including any county, district, city, school or other public use, or for use by the federal government, or any agency or department thereof, or that may be needed for use by the government of any other state, or any department, agency, or corporation thereof, and allows CDCR to enter into contracts for this purpose. (Pen. Code, § 2701, subd. (a).)

Existing law allows CDCR to employ incarcerated individuals for the rendering of emergency services for the preservation of life or property within the state, whether that property is owned by public entities or private citizens, when a county level state of emergency has been declared due to a natural disaster and the local governing board has requested assistance. (Pen. Code, § 2701, subd. (b).)

Existing law provides that CDCR require every able-bodied incarcerated individual imprisoned in any state prison as many hours of faithful labor in each day and every day during the person's

term of imprisonment as is prescribed by the rules and regulations of the Secretary. (Pen. Code, § 2700.)

Existing law states that one of the purposes of the Prison Industry Authority (PIA) is to operate a work program for incarcerated individuals which will ultimately be self-supporting by generating sufficient funds from the sale of products and services to pay all the expenses of the program, and one which will provide goods and services which are or will be used by CDCR, thereby reducing the cost of its operation. (Pen. Code, § 2801, subd. (c).)

Existing law establishes a minimum wage. Requires the Director of Finance to calculate and adjust the minimum wage annually, as specified. (Lab. Code, § 1182.12.)

Existing law makes it a felony to hold, or attempt to hold, any person in involuntary servitude, or assumes, or attempts to assume, rights of ownership over any person, or who sells, or attempts to sell, any person to another, or receives money or anything of value, in consideration of placing any person in the custody, or under the power or control of another, or who knowingly aids and assists in any manner anyone doing any of those things. (Pen. Code, § 181.)

Existing law establishes the crime of human trafficking if a person deprives or violates the personal liberty of another with the intent to obtain forced labor or services, and makes punishable by imprisonment in the state prison for 5, 8, or 12 years and a fine of not more than \$5,000. (Pen. Code, § 236.1, subd. (a).)

This measure removes language in the state Constitution that allows involuntary servitude as punishment to a crime.

This measure prohibits slavery in any form, including forced labor compelled by the use or threat of physical or legal coercion.

COMMENTS

1. Need for This Measure

According to the author:

California is among only 16 states with an exception clause for involuntary servitude in its state constitutions. Most recently, voters in Alabama, Oregon, Tennessee, and Vermont removed involuntary servitude language from their state constitutions. ACA 8 is an opportunity to catch up to these states and serve as a model for others in the nation.

Involuntary servitude is an extension of slavery. There's no room for slavery in our constitution, which should reflect our values in 2023. The legacy of slavery and forced labor runs deep in California's history, from the exploitation of Indigenous people in Spanish missions to Black slaves forced to mine for gold. Today, slavery takes on the modern form of involuntary servitude, including forced labor in prisons. Slavery is wrong in all forms and California should be clear in denouncing that in the Constitution.

ACA 8 prioritizes rehabilitation for incarcerated people. Incarcerated people should be able to choose jobs and shifts that allow them to continue their education, use the law library, get counseling, and participate in other rehabilitative programs that facilitate growth and transformation.

2. Involuntary Servitude

The Thirteenth Amendment of the U.S. Constitution was ratified in 1865 and prohibited slavery and involuntary servitude. However, an exception was allowed if involuntary servitude was imposed as punishment for a crime. The U.S. Supreme Court discussed the intent of the Thirteenth Amendment as it applied to involuntary servitude in the case of *Pollock v. Williams*:

The undoubted aim of the Thirteenth Amendment as implemented by the Antipeonage Act was not merely to end slavery but to maintain a system of completely free and voluntary labor throughout the United States. Forced labor in some special circumstances may be consistent with the general basic system of free labor. For example, forced labor has been sustained as a means of punishing crime, and there are duties such as work on highways which society may compel. But in general the defense against oppressive hours, pay, working conditions, or treatment is the right to change employers. When the master can compel and the laborer cannot escape the obligation to go on, there is no power below to redress and no incentive above to relieve a harsh overlordship or unwholesome conditions of work. (*Pollock v. Williams* (1944) 322 U.S. 4, 17-18.)

The Court subsequently stated:

Our precedents reveal that not all situations in which labor is compelled by physical coercion or force of law violate the Thirteenth Amendment. By its terms the Amendment excludes involuntary servitude imposed as legal punishment for a crime. Similarly, the Court has recognized that the prohibition against involuntary servitude does not prevent the State or Federal Governments from compelling their citizens, by threat of criminal sanction, to perform certain civic duties. See *Hurtado v. United States*, 410 U.S. 578, 589, n. 11 (1973) (jury service); *Selective Draft Law Cases*, 245 U.S. 366, 390 (1918) (military service); *Butler v. Perry, supra* (roadwork). Moreover, in *Robertson v. Baldwin*, 165 U.S. 275 (1897), the Court observed that the Thirteenth Amendment was not intended to apply to “exceptional” cases well established in the common law at the time of the Thirteenth Amendment, such as “the right of parents and guardians to the custody of their minor children or wards,” *id.*, at 282, or laws preventing sailors who contracted to work on vessels from deserting their ships. *Id.*, at 288.

Putting aside such exceptional circumstances, none of which are present in this case, our precedents clearly define a Thirteenth Amendment prohibition of involuntary servitude enforced by the use or threatened use of physical or legal coercion. (*United States v. Kozminski* (1988) 487 U.S. 931, 943-44.)

Article I, section 6, of the California Constitution contains the same prohibitions on slavery and involuntary servitude and the same exception for involuntary servitude as punishment for crime. The California Supreme Court has interpreted the prohibition on slavery and involuntary servitude contained in Article I, section 6 of the California Constitution to be coextensive with

the protection afforded by the Thirteenth Amendment. (*Moss v. Superior Court* (1998) 17 Cal.4th 396, 418.)

This measure amends the state Constitution by eliminating the reference to involuntary servitude, as well as the exception to involuntary servitude for punishment of a crime. This measure also specifies that slavery includes forced labor compelled by the use or threat of physical or legal coercion. Passage of this constitutional amendment by the Legislature would place this measure on the ballot to be decided by the voters.

3. Prison Labor Generally

Federal courts have held that the U.S. Constitution does not prohibit a requirement that incarcerated persons must work nor does it provide an incarcerated person a right to wages for work done in custody. Courts have consistently held that individuals incarcerated in state prisons are not employees entitled to minimum wage. (*Burleson v. California* (1996) 83 F.3d 311.)

In *Serra v. Lappin* (9th Cir. 2010) 600 F.3d 1191, current and former federal inmates alleged that the low wages they were paid for work performed in prison violated their due process rights and international law. In *Serra*, the federal inmates were paid for their work in prison based on a schedule set by the Inmate Work and Performance Pay Program. The wages were established by regulations promulgated by the Bureau of Prisons under the authority of the Attorney General. (*Id.* at p. 1195.) The incarcerated individuals earned between \$19.00 and \$145.00 per month at rates as low as nineteen cents per hour. (*Ibid.*) They argued the Federal Bureau of Prisons violated their rights by paying them such low wages. (*Ibid.*)

The Ninth Circuit Court of Appeals held that the U.S. Constitution does not provide incarcerated individuals any substantive entitlement to compensation for their labor. (*Id.* at p. 1196, citing *Piatt v. MacDougall* (9th Cir. 1985) 733 F.2d 1032, 1035 [holding that the state does not deprive a prisoner of a constitutionally protected liberty interest by forcing him to work without pay].) The court noted that, “Although the Constitution includes, in the Thirteenth Amendment, a general prohibition against involuntary servitude, it expressly excepts from that general prohibition forced labor “as a punishment for crime whereof the party shall have been duly convicted.” (*Ibid.*)

In addition to relying on the exception to involuntary servitude for punishment for a crime, federal courts have found that work performed by incarcerated individuals does not constitute “involuntary servitude” when the person has a choice to work. For example, the Fifth District Court of Appeals held that participation in a work release program did not constitute involuntary servitude, because the incarcerated persons were not “compelled” to participate in the work release program. The court acknowledged that the choice of whether to work outside of the jail for twenty dollars a day or remain inside the jail and earn nothing may have indeed been “painful” and quite possibly illegal under state law, but stated that the individuals were not forced to work or continued to work against their will. (*Watson v. Graves* (1990) 909 F.2d 1549, 1552.)

4. Work and Wages for the Incarcerated Population in California Prisons

Penal Code section 2700 provides that CDCR “require of every able-bodied prisoner imprisoned in any state prison as many hours of faithful labor in each day and every day during his or her term of imprisonment as shall be prescribed by the rules and regulations [of the department].”

(See also Cal. Code Regs., tit. 15, § 3040, subd. (a).) Upon arrival at a prison reception center, incarcerated individuals go through a classification process. During the classification process, incarcerated individuals are placed on waiting lists for jobs and rehabilitative programs. Incarcerated individuals cannot refuse a job assignment and may be disciplined for refusing or failing to show up to work. Refusal to accept or perform in a work or training assignment can also lead to reduced privileges, including limitations on visits, phone calls, canteen purchases, and yard, entertainment and recreation access. (<https://www.cdcr.ca.gov/ombuds/ombuds/entering-a-prison-faqs/>) Notably, incarcerated individuals may be assigned to a job in lieu of enrollment and participation in rehabilitative programs without the individual’s consent. (Cal. Code Regs., tit. 15, § 3040, subd. (g).)

Wages Generally

Beginning on April 16, 2024, CDCR increased wages for all incarcerated workers. The wage increase is expected to result in an increase in the number of half-time versus full-time jobs. In fact, CDCR expects that up to 75 percent of assignments will be half-time. Given that many incarcerated people have historically worked full-time assignments and had to choose between work assignments and rehabilitative programs, CDCR asserts that these changes expand opportunities for incarcerated people to work and programs. Wages were increased to a maximum of \$0.74 per hour. (Cal. Code Regs., tit. 15, § 3041.2, subd. (a)(1).) Current pay rates for most jobs are as follows:

Skill Level	Hourly (Min/Max)
Level 1 (Lead Person)	\$0.64-\$0.74
Level 2 (Special Skill)	\$0.38-\$0.64
Level 3 (Technician)	\$0.30-\$0.48
Level 4 (Semi-Skilled)	\$0.22-\$0.36
Level 5 (Laborer)	\$0.16-\$0.26

Fire Camps

Incarcerated individuals housed at one of the state’s conservation/fire camps are subject to a different pay scale with a pay rate of \$5.80 to \$10.24 per day based on skill level and position. The new maximum daily wage of \$10.24 represents a doubling of the previous daily wage.

CalPIA

Individuals working for the California Prison Industry Authority (CalPIA) are also subject to a different pay scale. CalPIA is a self-supporting state entity that was established to operate industrial, agricultural, and service enterprises employing incarcerated individuals in CDCR facilities to provide products and services needed by the state or other public entity or public use. Penal Code section 2801 provides that CalPIA is required to create and maintain working conditions within the enterprises as much like those which prevail in private industry as possible, to assure incarcerated individuals employed by CalPIA have the opportunity to work productively, to earn funds, and to acquire or improve effective work habits and occupational skills. CalPIA manages over 100 manufacturing, service, and consumable operations, including optical labs, carpentry and custodial services, production of license plates, among others.

Penal Code section 2811 prohibits CalPIA compensation from exceeding half of the minimum wage. CalPIA currently has a five-level pay scale with the lowest paid scale ranging from \$0.35-\$0.45 per hour and the highest scale ranging from \$0.80 to \$1 per hour. (Cal. Code Regs., tit. 15, § 8006, subd. (d)(1).)

Joint Venture Program

The Joint Venture Program was established via Proposition 139 in 1990 which allowed state prison and county jail officials to contract with public entities, businesses, and others to provide the labor of incarcerated workers. Wages are required to be comparable to the wages of non-incarcerated individuals doing similar work. These wages are subject to the following deductions which cannot in the aggregate exceed 80 percent of gross wages: federal, state, and local taxes, reasonable charges for room and board, court or victim restitution, and allocations for family support. (Pen. Code, § 2717.8.)

The following distributions are made from an incarcerated individual's net wages:

- 20% is sent to CDCR as a reimbursement for room and board
- 20% is used to pay restitution fines or paid directly to local crime victims' programs
- 20% is sent directly to the incarcerated individual's family for support or used to pay court ordered wage garnishments (i.e., child support)
- 20% is deposited in a mandatory savings account which is available to the person upon their release
- 20% is placed in the person's trust account at the institution for personal use (<https://jointventureprogram.calpia.ca.gov/workers-wages/>)

5. Work Groups and Privileges

Individuals incarcerated in the state's prisons are assigned to a work group. Each work group has associated privileges, with Work Group A having the most privileges. (Cal. Code Regs., tit. 15, § 3044.) Regulations provide that "inmate privileges are administratively authorized activities and benefits required of the secretary, by statute, case law, governmental regulations, or executive orders... governed by an inmate's behavior, custody classification and assignment." (Cal. Code Regs., tit. 15, § 3044, subd. (c).) Individuals in Privilege Group A generally have a full-time work or training assignment, as defined. (Cal. Code Regs., tit. 15, § 3044, subd. (d)(1).) Privileges afforded to Group A include family visits, the maximum monthly canteen draw, phone and tablet access, access to yard, recreation, and entertainment activities during the person's non-working or non-training hours, excused time off, and the receipt of four packages per year. (Cal. Code Regs., tit. 15, § 3044, subd. (d)(2).) In contrast, Privilege Group B is allowed fewer visits and seventy-five percent of the maximum monthly canteen draw. (Cal. Code Regs., tit. 15, § 3044, subd. (e)(2).) Individuals in Privilege Group C, including individuals who refuse to accept or perform in a work or training assignment, are not allowed family visits, access to recreation or entertainment activities, or to receive packages. (Cal. Code Regs., tit. 15, § 3044, subd. (f)(2).) In addition, individuals in Privilege Group C are only allowed twenty-five percent of the maximum monthly canteen draw and one personal call per week, and allowed exercise time that may be outdoors or in an enclosed setting as opposed to the access to yard that individuals in Groups A and B are allowed. (*Ibid.*)

6. Effect of This Measure

It is not clear how elimination of the exception to involuntary servitude for punishment of crime in the California Constitution would affect labor in the state's prisons as it currently exists. This measure adopts a definition of slavery that is similar to the U.S. Supreme Court's definition of involuntary servitude in *Kozminksi* (i.e., "a condition of servitude in which the victim is forced to work for [another person] by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through law or the legal process" (*Kozminksi, supra*, at p. 952).) It is unclear whether or how much compensation must be offered in order for the labor not to be "forced" or "coerced."

If litigated, courts would need to evaluate whether the working conditions for incarcerated individuals constitute forced labor compelled by the use or threat of physical or legal coercion. For example, would the fact that an individual who would prefer to participate solely in non-work programming but who chooses to work because certain privileges are only afforded to individuals with a work assignment be considered legal coercion?

7. Arguments in Support

Several organizations, including ACLU California Action, California Immigrant Policy Center, Catalyst California, Ella Baker Center for Human Rights, Initiate Justice, Legal Services for Prisoners With Children, Sister Warriors Freedom Coalition, and the Western Center on Law & Poverty, write:

Despite the Thirteenth Amendment outlawing slavery and involuntary servitude, the California Constitution states, "Involuntary servitude is prohibited except to punish crime." But Black's law dictionary makes clear that involuntary servitude is "when a person is forced to work against his or her will". Slavery." In short, involuntary servitude is a form of slavery. This forced labor exception has led to the exploitation of thousands of individuals and had a deep effect on a disproportionate number of those of African, Indigenous, and Indigenous/Latina descent.

The legacy of slavery and forced labor runs deep in California's history, from the 1850 Indian Indenture Act that criminalized everyday behavior and wrote racist language into California law, to Africans and African Americans who were forced to mine for gold and help build prisons. Though California entered the union as a "free" state, there were more than 1,000 enslaved African Americans as well as thousands of enslaved Indigenous people in California at a time when the total population was just 100,000.

...

Incarcerated people in California today are still forced to follow orders to work or face cruel treatment for any work absences: physical violence, solitary confinement, denial of phone calls and family visits, and disciplinary action that results in longer prison terms. Punishments are often issued even when absences are due to illness or injuries sustained through the work itself.

More than 94,000 Californians are currently enslaved in state prison. African Americans account for 28% of the prison population despite making up less than 6% of California's overall population. Although no courts explicitly order forced labor as a part of criminal sentencing, it's standard practice to force incarcerated people to perform labor.

The vast majority of incarcerated people want to work, further their education, and participate in rehabilitative programs — all of which facilitate personal transformation and successful reintegration. Incarcerated people often face a dilemma: report to CDCR-mandated work assignments or report to court-mandated rehabilitative programs such as Narcotics Anonymous. If they follow orders to work, their record will show they failed to complete programming as required. If they do not show up to their shifts, they receive a rules violation (at minimum). Either choice leads to one result: unjust disciplinary action.

Involuntary servitude leads to dangerous work conditions with virtually no accommodations, whether in CDCR factory settings or ever-increasing wildfires outside the prison. ...

The psychological effects of slavery and involuntary servitude are well documented throughout the history of California. People who suffer under these conditions develop long-term mental health conditions, including trauma, loss of self-esteem, and the stigma and shame of dehumanization.

ACA 8 is part of a national movement to ban slavery in all its forms. ...

It is a moral imperative that California dissolve the remnants of slavery from our constitution. The End Slavery in California Act would give voters the opportunity to amend Article 1, Section 6 of the California Constitution to prohibit slavery and involuntary servitude without exception.

The Prison Law Office and Rosen Bien Galvan & Grunfeld, LLP write:

... It is time for California to end involuntary servitude (slavery by another name).

Our organizations . . . represent every individual incarcerated in California's Department of Corrections and Rehabilitation adult institutions ("CDCR") as plaintiffs in the *Armstrong*, *Clark*, *Coleman*, and *Plata* class actions. We also represent certified putative classes of people incarcerated in numerous jails across the state...

Through our litigation on behalf of incarcerated people, we pursue rehabilitation and decarceration. ...

By law, CDCR forces many of the 93,000 people incarcerated in its facilities to work. ...

...

This work is not voluntary. ... CDCR punishes people who refuse to work by placing them in "Privilege Group C" and denying them good conduct credits, thereby lengthening the amount of time they remain in prison. CDCR also sharply curtails "privileges" for people who do not work, limiting their family visits, telephone calls, recreation, entertainment, outdoor exercise, and canteen (food and sundries access). These are necessities for physical and mental well-being while incarcerated. Failure to work can also result in disciplinary write-ups that present parole grants at the Board of Parole Hearings.

Many people in prison want to work. But they should have meaningful opportunities, not involuntary servitude. It is dehumanizing to force people to work for essentially no pay. It perpetuates the cycles of poverty that contribute to racial inequity and fuel overincarceration.

...

Honest pay for voluntary work will make CDCR safer and reduce recidivism. For decades, CDCR has required oversight by multiple judges in class actions seeking to stop staff abuse, suicide, and disability discrimination. ... Despite these measures, nothing will change until CDCR reforms its culture. Fair pay shows respect for incarcerated people and would allow them to save money to get back on their feet after returning to society.

...

Passing ACA 8 is a necessary first step toward reforming California's broken prison system.

-- END --