
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: ACA 3 **Hearing Date:** May 31, 2022
Author: Kamlager
Version: December 18, 2020
Urgency: **Fiscal:** Yes
Consultant: SJ

Subject: *Involuntary servitude*

HISTORY

Source: Young Women's Freedom Center

Prior Legislation: SCR 69 (Bradford), not heard in Assembly Public Safety 2020

Support: Abolish Bondage Collectively; Asian Solidarity Collective; Borderlands for Equity; CAIR California; California Native Vote Project; California Nurses Association; California Public Defenders Association; Change Begins With Me-Indivisible; Communities United for Restorative Youth Justice; Community Advocates for Just and Moral Governance; Del Cerro for Black Lives Matter; Democratic Club of Vista; Democratic Women's Club of San Diego County; Ella Baker Center for Human Rights; Freedom United; Hillcrest Indivisible; Initiate Justice; Legal Aid at Work; Legal Services for Prisoners with Children; Mission Impact Philanthropy; Muslim American Society; National Association of Social Workers, California Chapter; National Nurses United; Partnership for the Advancement of New Americans; Pillars of the Community; Progressive Democrats of America- Middle East Alliances; Racial Justice Coalition of San Diego; Rise Up San Diego; Root & Rebound; San Diego County Young Democrats; San Diego Progressive Democratic Club; San Diego- QTPOC; Showing Up for Racial Justice North County San Diego; Showing Up for Racial Justice San Diego; Social Workers for Equity & Leadership; Starting Over; Team Justice; Transformative In-Prison Workgroup; Transforming Young Minds for Future Solutions; University City Democratic Club; Uprise Theater; We the People- San Diego

Opposition: None known

Assembly Floor Vote: 59 - 0

PURPOSE

The purpose of this measure is to remove language in the state Constitution that allows involuntary servitude as punishment to a crime.

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. Con., art. I, § 6.)

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

Existing law specifies that it is felony to hold any person in involuntary servitude, or assumes rights of ownership over any person, or who sells 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. (Pen. Code, § 181.)

Existing law requires that whenever by any statute a price is required to be fixed for any services to be performed in connection with the work program of CDCR, the compensation paid to prisoners be included as an item of cost in fixing the final statutory price. (Pen. Code, § 2700.)

Existing law states that one of the purposes of the Prison Industry Authority (PIA) is to operate a work program for prisoners 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).)

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

COMMENTS

1. Need for This Measure

According to the author:

On the heels of the nationwide abolition movement, The California Abolition Act seeks to abolish forced labor and involuntary servitude unconditionally in the state of California.

As it stands the Constitution of our State prohibits slavery and involuntary servitude —“except for the punishment of crime.” Abolition is not conditional. In the year 2021, in our great state of California— often touted as one of the most progressive states in the country— this is unacceptable.

Dissolving the remnants of slavery and racial inequality is more important now than ever before. Today, 12 states prohibit enslavement and involuntary servitude, however, their constitutions include the provision “with an exception of criminal punishments”; 9 states permit involuntary servitude as a criminal punishment - California being one of them; and one state (Vermont) permits involuntary servitude to “pay a debt, damage, fine, or cost.” Our state constitution has yet to reflect the values of equality and justice that Californians now hold so dear.

The California Abolition Act would amend Article 1, Section 6 of the California Constitution to prohibit slavery and involuntary servitude without exception.

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. 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 U.S. Supreme Court has consistently recognized that the Thirteenth Amendment does not prevent enforced labor as punishment for crime, and does not prevent state or federal governmental entities from compelling the performance of civic duties such as jury service (*Hurtado v. United States* (1973) 410 U.S. 578, 589) and military service (*Selective Draft Law Cases* (1918) 245 U.S. 366, 390). 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.)

3. Prison Labor

Generally

Federal courts have held that the U.S. Constitution does not prohibit incarcerated individuals from being required to work and does not provide incarcerated individuals a right to wages for work done in custody. In *Serra v. Lappin*, 600 F.3d 1191 (9th Cir. 2010), current and former federal inmates alleged that the low wages they were paid for work performed in prison violated their due process rights and various sources of international law. The Ninth Circuit Court of Appeals held that the U.S. Constitution does not provide prisoners any substantive entitlement to compensation for their labor. (*Id.* at p. 1196 (citing *Piatt v. MacDougall*, 773 F.2d 1032, 1035 (9th Cir. 1985) (holding that the state does not deprive an inmate 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.’ ” (*Id.*)

CDCR

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 work 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).)

4. Prison Wages

Generally

According to a memo prepared by the Senate Office of Research, approximately 58,000 incarcerated individuals are assigned to jobs in the state’s prisons. Each employed incarcerated person works an average of 6.5 hours/day and 32 hours/week in a variety of jobs, including food service, clerical work, maintenance and custodial work, and construction, among others. Existing law specifies that pay rates at each prison for paid assignments should reflect the level of skill and productivity required, and will be set with the assistance of the Institutional Inmate Pay Committee. (Cal. Code Regs., tit. 15, § 3041.2, subd. (a)(1)(2).) Current pay rates for most jobs are as follows:

Skill Level	Hourly (Min/Max)	Monthly (Min/Max)
Level 1 (Lead Person)	\$0.32-\$0.37	\$48-\$56
Level 2 (Special Skill)	\$0.19-\$0.32	\$29-\$48
Level 3 (Technician)	\$0.15-\$0.24	\$23-\$36
Level 4 (Semi-Skilled)	\$0.11-\$0.18	\$17-\$27
Level 5 (Laborer)	\$0.08-\$0.13	\$12-\$20

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 \$1.45 to \$3.90 per day based on skill level and position. When working as emergency firefighters during a wildfire, that pay is increased to \$1 per hour.

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. Approximately 7,000 incarcerated individuals work for CalPIA’s operations.

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.

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/>)

According to a memo prepared by the Senate Office of Research, 23 incarcerated individuals are currently employed through this program with wages ranging from \$14 to \$15.42 per hour.

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