
THIRD READING

Bill No: ACA 3
Author: Kamlager (D), et al.
Amended: 6/27/22 in Senate
Vote: 27

SENATE PUBLIC SAFETY COMMITTEE: 5-0, 5/31/22
AYES: Bradford, Ochoa Bogh, Kamlager, Skinner, Wiener

SENATE ELECTIONS & C.A. COMMITTEE: 4-0, 6/13/22
AYES: Newman, Nielsen, Hertzberg, Leyva
NO VOTE RECORDED: Glazer

SENATE APPROPRIATIONS COMMITTEE: 5-0, 6/16/22
AYES: Portantino, Bradford, Kamlager, Laird, Wieckowski
NO VOTE RECORDED: Bates, Jones

SENATE FLOOR: 21-6, 6/23/22 (FAIL)
AYES: Atkins, Becker, Bradford, Cortese, Durazo, Eggman, Gonzalez, Hertzberg,
Kamlager, Laird, Leyva, Limón, McGuire, Newman, Pan, Portantino, Rubio,
Skinner, Stern, Umberg, Wiener
NOES: Dahle, Glazer, Grove, Nielsen, Ochoa Bogh, Wilk
NO VOTE RECORDED: Allen, Archuleta, Bates, Borgeas, Caballero, Dodd,
Hueso, Hurtado, Jones, Melendez, Min, Roth, Wieckowski

ASSEMBLY FLOOR: 59-0, 3/21/22 - See last page for vote

SUBJECT: Slavery

SOURCE: Young Women's Freedom Center

DIGEST: This constitutional amendment removes language in the state Constitution that allows involuntary servitude as punishment to a crime.

Senate Floor Amendments of 6/27/22 add “involuntary servitude” as a form of slavery and provide that the prohibition on slavery is not intended to have any effect on voluntary work programs in correctional settings.

Senate Floor Amendments of 6/23/22 clarify the definition of slavery.

ANALYSIS:

Existing constitutional law:

- 1) Prohibits slavery. (Cal. Const., Art. I, § 6.)
- 2) Prohibits involuntary servitude except to punish crime. (Cal. Const., Art. I, § 6.)

Existing law:

- 1) 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.)
- 2) 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 the California Department of Corrections and Rehabilitation (CDCR), the compensation paid to prisoners be included as an item of cost in fixing the final statutory price. (Pen. Code § 2700.)
- 3) Provides that one of the purposes of the California Prison Industry Authority (CalPIA) 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 constitutional amendment removes language in the state Constitution that allows involuntary servitude as punishment to a crime.

Background

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.)

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).)

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 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.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee:

- *CDCR/CalPIA:* Unknown, potentially significant costs to CDCR and CalPIA to increase wages for inmate labor (General Fund). Actual costs will depend on how involuntary servitude is legally defined. If CDCR and CalPIA are required to pay minimum wages for all prison jobs then actual costs could be in the billions annually.
- *Department of Justice (DOJ):* The DOJ reports costs of \$560,000 in Fiscal Year (FY) 2022-23, and \$772,000 in FY 2023-24 and annually thereafter (Special Fund – Legal Services Revolving Fund).
- *Courts:* Unknown, potentially significant cost pressures due to increased court workload resulting from an increase in court filings as a result of this constitutional amendment (Trial Court Trust Fund, General Fund).
- *Ballot Costs:* One-time Secretary of State costs in the range of \$546,000 to \$728,000 for printing and mailing costs to place the measure on the ballot for the next statewide general election (General Fund).

SUPPORT: (Verified 6/28/22)

Young Women’s Center (source)
Abolish Bondage Collectively
ACLU Action California
Asian Solidarity Collective
Borderlands for Equity
CAIR California
California Lawyers for the Arts
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

Episcopal Diocese of California
Freedom United
Friends Committee Legislation California
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
Prison Law Office
Progressive Democrats of America- Middle East Alliances
Racial Justice Coalition of San Diego
Rise Up San Diego
Root & Rebound
Rosen, Bien, Galvan & Grunfeld LLP
San Diego County Young Democrats
San Diego Progressive Democratic Club
San Diego - QTPOC
San Francisco Board of Supervisors
Showing Up for Racial Justice North County San Diego
Showing Up for Racial Justice San Diego
Sister Warriors Freedom Coalition
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: (Verified 6/28/22)

East Valley Republican Women Patriots

ASSEMBLY FLOOR: 59-0, 3/21/22

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, Mia Bonta, Bryan, Calderon, Carrillo, Cervantes, Choi, Cooley, Daly, Mike Fong, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Lackey, Lee, Levine, Low, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, O'Donnell, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Stone, Ting, Valladares, Villapudua, Waldron, Ward, Akilah Weber, Wicks, Wood, Rendon

NO VOTE RECORDED: Bigelow, Chen, Cooper, Cunningham, Megan Dahle, Davies, Flora, Fong, Gallagher, Kiley, Maienschein, Mathis, Nguyen, Patterson, Seyarto, Smith, Voepel

Prepared by: Stephanie Jordan / PUB. S. /
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