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PERSPECTIVE

# Ending involuntary servitude in California

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It is time to end involuntary servitude in California. While the 13th Amendment to the U.S. Constitution prohibits slavery and involuntary servitude for some, it contains a loophole that permits both practices “as a punishment for crime.” Many state constitutions contain similar clauses, including California’s, which prohibits “slavery” and provides: “Involuntary servitude is prohibited except to punish crime.” See Cal. Const., art I, Section 6.

California’s Legislature is currently considering Assembly Constitutional Amendment 3, which would give voters the opportunity in November to amend California’s constitution to ban involuntary servitude without exception. The proposed constitutional language is as simple as it is moral: “Slavery and involuntary servitude are prohibited.” In doing so, California would join at least three other states that recently closed their constitutional loopholes: Colorado, Nebraska and Utah.

Given the history and implications of involuntary servitude, the Legislature should pass ACA 3.

Following the Civil War, these federal and state constitutional loopholes allowed newly freed Black people to be forced into chain gangs, reinstating involuntary servitude through criminal prosecution. That history is still with us. As Michele Alexander demonstrated in her seminal book, “The New Jim Crow,” our criminal legal system has perpetuated a racial caste system through mass incarceration. During the first 30 years



Avenal State Prison in Avenal, California. | New York Times News Service

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of the “War on Drugs,” U.S. prison populations swelled from under 300,000 to over 2 million people. Today, prisons are disproportionately filled with people of color and those who grew up poor. No other nation in the world imprisons such a large percentage of its racial or ethnic minorities, nor of its overall population.

By law, California’s Department of Corrections and Rehabilitation forces many of the 96,000 people incarcerated in its prisons to work. California demands that “every able-bodied prisoner” shall work “as many hours of faithful labor in each day and every day during his or her term of imprisonment” as required by CDCR. Penal Code

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Section 2700. Many incarcerated workers receive no pay, while others earn a paltry \$0.08-\$0.37 per hour cleaning the toilets and mopping the floors of California's 34 prisons. 15 Cal. Code Regs. Section 3041.2. Only 4-5% work in vocational positions earning between \$0.35-\$1.00 per hour running basic prison services like laundry and manufacturing. 15 C.C.R. Section 8006. Incarcerated people also work as firefighters and have died protecting our communities from California's largest and deadliest fires, earning \$2.90-\$5.12 per day plus \$1.00 per hour when on the fire lines. This forced labor defrays the cost of mass incarceration by eliminating the need to hire employees at honest wages for the dirty work of maintaining and operating prisons, and providing cheap labor benefiting free Californians.

This work is not voluntary. CDCR punishes those who refuse to work by 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 writeups that prevent parole grants at the Board of Parole Hearings.

Efforts to challenge this forced labor regime through litigation have failed due to the slavery and involuntary servitude loopholes. See *Hale v. Arizona*, 993 F.2d 1387, 1394 (9th Cir. 1993); *Burleson v. State of Cal.*, 83 F.3d 311, 313 (9th Cir. 1996). Litigation by civil and pretrial detainees has been more successful. For example, a court certified classes in a forced-labor suit by civil immigration detainees who scrubbed bathrooms, swept floors, and prepared food at a for-profit detention company. *Owino v. CoreCivic, Inc.*, 17-CV-1112 (S.D. Cal. April 1, 2020).

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.

CDCR can and should have meaningful programs or jobs for everyone. The goal should be to

prepare people for release and allow them to earn money needed in prison, where they typically pay market or higher rates for phone calls, toiletries, food, stationary and reading material. People also want and should be allowed to contribute meaningfully to their families and society, including through child support and paying court-ordered victim restitution.

Honest pay 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. A federal court recently ordered California's prisons to deploy body-worn and audio-visual cameras to increase accountability for retaliation and abuse. *Armstrong et al. v. Newsom et al.*, 94-cv-02307 (N.D. Cal. March 11, 2021); *Armstrong v. Newsom*, 484 F. Supp. 3d 808 (N.D. Cal. 2020). 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.

Paying people for their work will cost more than using their forced labor, but it will not bankrupt

California, which this year has a proposed budget of \$286 billion. In the long run, reductions in recidivism and decreases in sentence lengths from not punishing people who refuse assignments will save money. Last year, Gov. Gavin Newsom took advantage of a declining prison population to close a prison that CDCR reports cost \$182 million annually to operate.

Passing ACA 3 is a necessary first step toward reforming California's broken prison system. We also need a statutory and regulatory framework that would comply with the amended constitutional language. The governor should immediately appoint a commission to develop that framework so California is ready when ACA 3 passes. We already have provisions in the Labor Code and the Wage Orders that balance affordability and dignity for jobs such as care-givers who live and eat with their employers, or workers in true apprenticeship programs. Similar programs can be crafted for prisons.

Slavery and involuntary servitude are wrong; we must do better. Call or write your legislators to let them know you support passage of ACA 3 to close the loophole.