

---

## SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair  
2021 - 2022 Regular Session

---

### ACA 3 (Kamlager) - Involuntary servitude

**Version:** December 18, 2020

**Urgency:**

**Hearing Date:** June 16, 2022

**Policy Vote:** PUB. S. 5 - 0, E. & C.A. 4 - 0

**Mandate:** No

**Consultant:** Matthew Fleming

**Bill Summary:** ACA 3 would amend the California Constitution to prohibit all forms of involuntary servitude, including when it is used as punishment for a crime.

#### Fiscal Impact:

- **CDCR/CalPIA:** Unknown, potentially significant costs to the Department of Corrections and Rehabilitation (CDCR) and the California Prison Authority (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.\*
- **DOJ:** The Department of Justice 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 measure (Trial Court Trust Fund, General Fund).\*
- **Ballot Costs:** One-time Secretary of State (SOS) 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).\*

\*See Staff Comments

#### Background

- **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.

Prison Labor and Wages: 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. 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 Labor and Wages: 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. Current pay rates for most jobs are as follows:

<u>Skill Level</u>	<u>Hourly (Min/Max)</u>	<u>Monthly (Min/Max)</u>
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

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 by \$1 per hour.

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.

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. 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.

**Proposed Law:** Amends the California Constitution by prohibiting involuntary servitude even when it is used as punishment for a crime.

**Related Legislation:** SB 1371 (Bradford, 2022) would require CDCR to adopt a 5-year implementation plan to increase inmate wages. SB 1371 is pending in the Assembly Public Safety Committee.

**Staff Comments:** It is unclear what effect this constitutional amendment will have on prison labor. The Supreme Court of the United States has defined involuntary servitude as "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," but that definition does not give any indication as to whether or how much compensation must be offered in order for the labor not to be "forced." *United States v. Kozminksi* (1988) 487 U.S. 931.) As noted above, if California is required to pay minimum wage for inmate labor (\$15.00 per hour for employers with more than 26 employees), then the costs of this bill would exceed \$1 billion annually. If some lesser amount per hour suffices to either escape the definition of involuntary servitude altogether, or to entice enough inmates to voluntarily work, then the costs of this measure could be significantly less.

With regard to potential legal challenges that could result from this bill, DOJ reports that the Correctional Law Section (CLS), within the Civil Law Division, anticipates an increase in litigation as a result of this constitutional amendment. They posit that prison inmate jobs would become more coveted due to the higher pay, and since there are not

enough paying jobs for the eligible prison population, more job-related lawsuits, such as claims of discrimination, ADA violations, and retaliation, may arise. Additionally, CLS anticipates additional litigation if jobs are moved out of the prisons. To address the increase in workload, the DOJ reports that CLS will require 2.0 Deputy Attorneys General (DAG) and the legal complement of 1.0 Legal Secretary (LS). Although litigation costs are speculative, at least one other state that has eliminated involuntary servitude to punish crime has seen class action lawsuits as a result. Although these costs would impact the Legal Services Revolving Fund, they would be reimbursed by client agencies, such as CDCR.

The litigation generated by this bill could also result in cost pressures on the General Fund. While the superior courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to increase the amount appropriated to backfill for trial court operations. The proposed 2022-2023 budget would appropriate \$138.5 million from the General Fund to backfill continued reduction in fine and fee revenue for trial court operations. Increased court workload results in additional pressure to increase the backfill amount appropriated from the General Fund for trial court operations.

Staff notes that printing and mailing costs associated with placing a measure on the statewide ballot were estimated to be approximately \$91,000 per page in 2021, depending on the length of the ballot. The fiscal estimates noted above reflect the addition of 6-8 pages in the Voter Information Guide. Actual costs would depend upon the length of the title and summary, analysis by the Legislative Analyst's Office, proponent and opponent arguments, and text of the proposal.

**-- END --**