

REVISED MOTION BY SUPERVISORS LINDSEY P. HORVATH November 7, 2023

AND HOLLY J. MITCHELL

Support for S.J.Res.33 (Merkley), H.J.Res.72 (Williams), ACA 8 (Wilson): Prohibit the Use of Slavery and Involuntary Servitude as a Punishment for a Crime

In 1863, President Abraham Lincoln issued the Emancipation Proclamation declaring “all persons held as slaves within any State, or designated part of a State, the people whereof shall then be in rebellion against the United States, shall be then, thenceforward, and forever free¹.” While the intent of the Proclamation was notable, its effect languished – it did not end slavery in the nation since it only applied to areas of the Confederacy in a state of rebellion. Lincoln recognized that the Emancipation Proclamation would have to be followed by a constitutional amendment to guarantee the abolishment of slavery.

On February 1, 1865, President Lincoln approved the Joint Resolution of Congress submitting the proposed amendment to the state legislatures. Nearly a year later, eight months after the end of the Civil War, on December 6, 1865, the necessary number of

¹ “Emancipation Proclamation (1863).” *National Archives and Records Administration*, National Archives and Records Administration, 2022, www.archives.gov/milestone-documents/emancipation-proclamation.

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states ratified the 13th Amendment to the United States Constitution, providing 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 jurisdiction².”

After the ratification of the 13th Amendment, southern jurisdictions targeted Black Americans under “Black Codes,” arresting people for minor crimes like loitering or vagrancy. The “exception clause,” was then used by sheriffs who would lease out imprisoned individuals to work in fields — sometimes the very plantations where prisoners had been previously enslaved. By 1898, this practice had become so widespread that 73 percent of Alabama’s state revenue came from the forced rental labor of imprisoned Black Americans³.

Over 150 years later, the “exception clause” has paved the way for governments across the United States to use forced labor as a form of punishment. Nearly 20 states have constitutions that include language permitting slavery and involuntary servitude as criminal punishments⁴. Louisiana’s failed attempt to remove slavery and indentured servitude as punishment for a crime from the state’s constitution garnered national attention in 2022. And closer to home, California Assembly Constitutional Amendment (ACA) 8 (Wilson), which would “prohibit slavery in any form, including forced labor

² “13th Amendment to the U.S. Constitution: Abolition of Slavery (1865).” *National Archives and Records Administration*, National Archives and Records Administration, 2022, www.archives.gov/milestone-documents/13th-amendment

³ Daniels, C. M. (2022, November 21). Changing America. Retrieved from The Hill: <https://thehill.com/changing-america/3743060-lawmakers-seek-to-end-slavery-for-the-incarcerated-which-is-legal-in-most-states/>

⁴ Kruesi, K. (2022, October 22). Associated Press. Retrieved from <https://apnews.com/article/2022-midterms-13th-amendment-slavery-4a0341cf82fa33942bda6a5d17ac4348>

compelled by the use or threat of physical or legal coercion⁵ has faced significant hurdles.

Today, according to a national study conducted by Pew Research, as of 2022, Black people were admitted to jail at more than four times the rate of white people and stayed in jail for 12 more days on average⁶. And despite prison workers producing more than \$2 billion in goods and more than \$9 billion in services to maintain the prisons where they are incarcerated, incarcerated workers earn, on average, between 13 cents and 52 cents an hour, and governments take up to 80 percent of those wages for room and board, court costs, restitution and other fees for building and sustaining prisons⁷.

Senator Jeff Merkley of Oregon and Representative Nikema Williams of Georgia have introduced joint resolutions – Senate Joint Resolution (S.J.Res.33) and House Joint Resolution (H.J.Res.72) - that would remove the 13th Amendment’s “exception clause,” or language that exempted convicted prisoners from the ban on slavery and involuntary servitude. Similarly, Assembly Constitutional Amendment (ACA) 8 introduced by Assemblymember Lori Wilson proposes a constitutional amendment that, if approved by voters, would prohibit slavery in any form, including forced labor compelled by the use or threat of physical or legal coercion. Work opportunities for incarcerated individuals can be rehabilitative, but work should be accompanied by better wages and skills training to prepare individuals for release.

WE, THEREFORE, MOVE that the Board of Supervisors direct the following:

⁵ (2023, October 3). Retrieved from California Legislative Information:

https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202320240ACA8

⁶ Pew Charitable Trusts. (2023, May 16). Racial Disparities Persist in Many U.S. Jails. Retrieved from Pew:

<https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2023/05/racial-disparities-persist-in-many-us-jails#:~:text=As%20of%202022%2C%20Black%20people,population%20observed%20for%20Black%20individuals.>

⁷ Daniels, C. M. (2022, November 21). Changing America. Retrieved from The Hill: <https://thehill.com/changing-america/3743060-lawmakers-seek-to-end-slavery-for-the-incarcerated-which-is-legal-in-most-states/>

1. Instruct the Chief Executive Office - Legislative Affairs and Intergovernmental Relations Branch (CEO-LAIR) to support S.J.Res.33 (Merkley), H.J.Res.72 (Williams), ACA 8 (Wilson), which would prohibit the use of slavery and involuntary servitude as a punishment for a crime.
2. Direct CEO-LAIR to take the appropriate legislative advocacy actions to advance this effort, including opportunities to not only increase labor standards and job training opportunities for incarcerated individuals, but also to transform mandatory community service into economic opportunities rather than forced labor.
3. Direct the Department of Economic Opportunity and the Justice Care and Opportunities Department, in coordination with the Sheriff and the Probation Department and any relevant county departments, to report back to the Board in 180 days with a written landscape analysis of the workforce within the Los Angeles County Jails and those on Probation, as well as in-reach job training and education programs. The report back should include:
 - a. Work performed by incarcerated individuals, and the wages earned, if applicable;
 - b. All job training programs currently offered and their outcomes;
 - c. All educational programs currently offered and their outcomes; and
 - d. Accounting of mandatory or voluntary community service programs and their requirements.

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