

## **Chapter 19**

### **I. ENSLAVEMENT**

This chapter details policy proposals to address harms set forth in Chapter Two, Enslavement.

- Enact a Legal Resolution Affirming the State’s Protection of Descendants of Enslaved People and Guaranteeing Protection of the Civil, Political, and Socio-Cultural Rights of Descendants of Enslaved People
- Amend the California Constitution to Prohibit Involuntary Servitude
- Payment of Fair Market Value for Labor Provided by Incarcerated Persons (Whether in Jail or Prison)
- Emphasize the “Rehabilitation” in the California Department of Corrections and Rehabilitation (CDCR)
- Abolish the Death Penalty
- Prohibit Private Prisons from Benefiting from Contracts with CDCR to Provide Reentry Services to Incarcerated or Paroled Individuals

#### **A. Enact a Legal Resolution Affirming the State’s Protection of Descendants of Enslaved People and Guaranteeing Protection of the Civil, Political, and Socio-cultural Rights of Descendants of Enslaved People**

According to the international legal framework laid out in the UN Principles on Reparation, full and effective reparations must include, among other things, restitution, satisfaction, and a guarantee of non-repetition. To satisfy these requirements, the Task Force recommends the Legislature issue a legal resolution affirming the State’s protection of Descendants. The resolution should also guarantee the protection of the civil, political, and socio-cultural rights of Descendants.

#### **B. Amend the California Constitution to Prohibit Involuntary Servitude**

As discussed in Chapter Two, Enslavement, not only does the legacy of slavery persist in its impact on the Descendant community, but the actual fact of state-sanctioned slavery continues to exist in California. Though the California Constitution prohibits slavery, it still permits involuntary servitude as a form of criminal punishment.<sup>1</sup> Article I, section 6 of the California Constitution states: “Slavery is prohibited. Involuntary servitude is prohibited except to punish crime.”<sup>2</sup> This “exception” is particularly disturbing given that this constitutional allowance for slavery is applied disproportionately to African Americans because they have been

<sup>1</sup> See Cal. Const. art. I, § 6; Cal. Penal Code § 2700.

<sup>2</sup> Cal. Const. art. I, § 6.

disproportionately targeted for enforcement and subjected to a criminal justice system that has historically been used for the very purpose of re-enslavement.<sup>3</sup>

The persistence of state-sanctioned slavery is a reality for tens of thousands of incarcerated individuals throughout California. Overall, approximately 58,000 incarcerated persons are assigned jobs in the state's prisons, and they work an average of 6.5 hours per day or a total of approximately 32 hours per week.<sup>4</sup> An additional 7,000 work for the California Prison Industry Authority, which creates products and provides services to state entities.<sup>5</sup> These individuals work in various industries, including food service, clerical work, custodial work, and construction.<sup>6</sup> With the exception of firefighters, these incarcerated individuals are typically paid less than \$1.00 per hour.<sup>7</sup>

The Task Force recommends the Legislature amend the California Constitution to end involuntary servitude, thus dissolving a remnant of slavery and a continued cause of racial inequality. Former State Senator Sydney Kamlager introduced Assembly Constitutional Amendment Three, which would have defined slavery to include involuntary servitude and forced labor compelled by the use or threat of physical or legal coercion.<sup>8</sup> Amendment 3 did not pass,<sup>9</sup> however, leaving California as a state that continues to sanction, impose, and profit from involuntary servitude. This must end.

### **C. Payment of Fair Market Value for Labor Provided by Incarcerated Persons (Whether in Jail or Prison)**

According to a recent report, 1.2 million people are incarcerated and nearly 800,000 people are forced to work against their will while being paid pennies on the dollar.<sup>10</sup> Incarcerated workers generate \$2 billion in goods and \$9 billion worth of prison maintenance services, yet are only paid, on average, between 0.13 and 0.52 cents per hour.<sup>11</sup> The Task Force recommends the Legislature provide payment of the fair market value for the labor provided by incarcerated persons, whether they are in jail or prison. State Senator Steven Bradford introduced a similar proposal, Senate Bill (SB) 1371,<sup>12</sup> which would have required the Secretary of the CDCR to adopt a 5-year implementation schedule to increase the compensation for incarcerated individuals working under CDCR's jurisdiction.<sup>13</sup>

<sup>3</sup> See Imai, [Analysis of 2020 California Correctional Health Care Services Inmate Mortality Reviews](#) (Dec. 22, 2021) Cal. Prison Receivership at p. 5 (as of Apr. 6, 2023); See generally Chapter 11, An Unjust Legal System, *supra*; See generally Chapter 10, Stolen Labor and Hindered Opportunity, *supra*.

<sup>4</sup> Senate Com. on Appropriations, [Rep. on Assem. Const. Amend. No. 3](#) (2021-2022 Reg. Sess.) at pp. 2-3 (as of March 14, 2023).

<sup>5</sup> *Id.* at p. 3.

<sup>6</sup> *Id.* at p. 2.

<sup>7</sup> *Id.* at pp. 2-3.

<sup>8</sup> *Ibid.*

<sup>9</sup> Assem. Const. Amend. No. 3 (2021—2022 Reg. Sess.).

<sup>10</sup> ACLU, [Captive Labor: Exploitation of Incarcerated Workers](#) (2022) (as of Jan. 20, 2023).

<sup>11</sup> *Ibid.*

<sup>12</sup> Sen. Bill No. 1371 (2021-2022 Reg. Sess.).

<sup>13</sup> *Ibid.*

#### D. Emphasize the “Rehabilitation” in the California Department of Corrections and Rehabilitation (CDCR)

As discussed in Chapter 11, An Unjust Legal System, mass incarceration has been used to reinforce the subjugation of African Americans in California, including Descendants.<sup>14</sup> Approximately two-thirds of formerly incarcerated people recidivate, meaning they will return to prison within three years, either through new offenses or parole violations.<sup>15</sup> Most prison jobs do not prepare incarcerated persons to get jobs once released.<sup>16</sup> According to a recent report, most of the jobs incarcerated people are required to work are jobs that have no real-life application outside of prison.<sup>17</sup> And a Legislative Analyst’s Office report showed that less than 3.5 percent of the money spent on incarcerating a person goes towards rehabilitative services.<sup>18</sup>

To undo these harms that disproportionately affect African Americans and Descendants in California, the Task Force recommends the Legislature pass a law requiring the CDCR to prioritize education, job training, substance use and mental health treatment, and other rehabilitative programs, for incarcerated people. Rehabilitation programs have proven to be effective in reducing recidivism.<sup>19</sup> One federal prison study found that, “on average, inmates who participated in correctional education programs had 43 percent lower odds of recidivating than inmates who did not.”<sup>20</sup>

#### E. Abolish the Death Penalty

Nearly thirty years ago, then-U.S. Supreme Court Justice Harry Blackmun urged the country to no longer “tinker with the machinery of death.”<sup>21</sup> Despite once supporting the existence of the death penalty, he felt “morally and intellectually obligated simply to concede that the death penalty experiment has failed. It is virtually self-evident . . . now that no combination of procedural rules or substantive regulations ever can save the death penalty from its inherent constitutional deficiencies. . . . the inevitability of factual, legal, and moral error gives us a system that we know must wrongly kill some defendants.”<sup>22</sup> And it is a system that has unjustly, and disproportionately, killed African Americans and Descendants.<sup>23</sup>

<sup>14</sup> See generally Chapter 11, An Unjust Legal System, *supra*.

<sup>15</sup> Duara, [Prison Rehab: Can California Learn Anything from Norway?](#), CalMatters (Jun. 10, 2022) (as of Jan. 20, 2023).

<sup>16</sup> *Ibid.*

<sup>17</sup> ACLU, *supra*.

<sup>18</sup> California Legislative Analyst’s Office, [How Much Does It Cost to Incarcerate an Inmate?](#) (2021-2022) (as of Jan. 20, 2023).

<sup>19</sup> Jensen, [Community Reentry Program for Prisoners Reduces Recidivism](#), CalMatters (Sept. 23, 2021) (as of Jan. 20, 2023).

<sup>20</sup> Davis et al., [Evaluating the Effectiveness of Correctional Education: A Meta-Analysis of Programs That Provide Education to Incarcerated Adults](#) The RAND Corporation (2013) (as of Jan. 20, 2023).

<sup>21</sup> *Callins v. Collins* (1994) 510 U.S. 1141, 1145-1146 (dis. opn., of Blackmun, J. from cert. den.).

<sup>22</sup> *Ibid.*

<sup>23</sup> Death Penalty Representation Project, [California Adopts Report Recommending Death Penalty Abolition](#) Committee on Revision of the Penal Code (June 16, 2021) (as of Jan. 20, 2023).

The Task Force recommends the Legislature amend the California Constitution to abolish the death penalty in all cases. In 2021, the California Committee on Revision of the Penal Code issued a report recommending abolishing the death penalty.<sup>24</sup> The Committee found that the death penalty in California has not only become too costly—it has been imposed arbitrarily and discriminatorily, particularly against African Americans.<sup>25</sup> The Committee also found that no matter what safeguards, innocent people are far too often sentenced to death.<sup>26</sup> In 2019, Governor Newsom declared a moratorium on executions in California.<sup>27</sup> In 2020, Assemblymembers David Chiu and Marc Levine introduced Assembly Constitutional Amendment Two, which would have abolished the death penalty, but the bill died in committee.<sup>28</sup> At the time of this report, 23 states have abolished the death penalty and three states, including California, have moratoriums on its use.<sup>29</sup>

#### **F. Prohibit Private Prisons from Benefiting from Contracts with CDCR to Provide Reentry Services to Incarcerated or Paroled Individuals**

Despite the steps California has taken to get out of the private prison business, the State remains heavily invested in backing for-profit correctional services, including facilities that closely resemble the private prisons the State has sought to move away from funding.<sup>30</sup> The Task Force recommends the Legislature eliminate one major state funding stream to private prison companies by barring state-funded contracts with for-profit correctional companies for the provision of reentry services.

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<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*

<sup>27</sup> Governor's Exec. Order No. N-09-19 (March 13, 2019).

<sup>28</sup> Assem. Const. Amend. No. 2 (2021—2022 Reg. Sess.).

<sup>29</sup> Death Penalty Information Center, [States With and Without the Death Penalty – 2023](#) (2023) (as of Jan. 20, 2023).

<sup>30</sup> Soriano, [Private Prison Firms Make Big Money in California](#), Capitol Weekly (Dec. 13, 2021) (as of Jan. 24, 2023).