



June 9, 2021

Hon. Rob Bonta
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Anabel Renteria
Initiative Coordinator

Dear Attorney General Bonta:

Pursuant to Elections Code 9005, we have reviewed the proposed constitutional initiative related to involuntary servitude (A.G. File No. 21-0003).

Background

Punishment for Crime. State law specifies punishments for crimes based on various factors, such as the nature of the crime. Judges determine what punishments people found to have committed crimes receive in accordance with state law. Such punishments include (1) incarceration in state prison, county jail, or a county juvenile detention facility; (2) supervision in the community by a county probation officer; (3) payment of fines; or (4) some combination of the three.

People in the Criminal Justice System Do Various Forms of Work. People found to have committed crimes often do various forms of work while they are in the criminal justice system, including the following:

- ***Inmate Jobs.*** Some people have jobs while they are incarcerated in state prison or county jail. Generally, these workers support the operation of the facility, such as by doing laundry, preparing food, or cleaning. Some facilities pay workers for these jobs to encourage people to take them. However, pay for these jobs is often less than \$1 per hour, significantly below the minimum wage under state law, which is currently \$13 to \$14 per hour, depending on the size of the business. Facilities often provide other incentives for people to take these jobs, including eligibility to earn time off of their terms of incarceration and access to certain privileges (such as additional phone calls).
- ***Community Service.*** Depending on the crime committed, judges may require people to perform a certain number of hours of community service, often in lieu of paying a fine or being incarcerated. Community service is unpaid work that is intended to benefit the community as a whole. For example, a person convicted of speeding might be required to collect litter on the side of the highway.
- ***Work as a Condition of Community Supervision.*** People placed under supervision in the community are often required to follow certain rules, referred to as the terms of their supervision. These terms may include a requirement that people work and earn money to support their dependents and pay fines, court fees, and/or restitution to victims.

Legislative Analyst's Office
California Legislature
Gabriel Petek, Legislative Analyst
925 L Street, Suite 1000, Sacramento, CA 95814
(916) 445-4656

Involuntary Servitude. The State Constitution specifies that, “Involuntary servitude is prohibited except to punish crime.” However, the State Constitution does not define involuntary servitude.

Proposal

This measure amends the State Constitution to make involuntary servitude prohibited in all cases, including as a punishment for crime. The measure does not define involuntary servitude.

Fiscal Effects

Given that the measure does not define involuntary servitude, there is uncertainty about how the measure would be interpreted and implemented. This is because it is unclear whether any of the forms of work currently done by people in the criminal justice system would be considered involuntary servitude under the measure. As such, the fiscal effects of the measure on state and local governments are uncertain.

If the measure is interpreted to allow all forms of work currently performed by people in the criminal justice system, it would have no direct fiscal effect on state or local governments. However, if the measure is interpreted to prohibit some or all forms of such work, it could result in an increase in state and local costs, with such costs potentially being significant. For example, if it is determined that paying people with inmate jobs less than the state’s minimum wage constitutes involuntary servitude, the state and local governments would be required to raise most inmate wages significantly and/or hire additional staff to perform the work instead of inmates. This would result in increased state and local government costs that could exceed \$1 billion annually if facilities use the same amount of labor they do currently. We also note that to the extent inmates are paid a higher wage, the measure could have other unknown effects on state and local government programs. For example, it could reduce the need people in the criminal justice system have for government services, such as subsidized housing.

Summary of Fiscal Effects. We estimate that the measure would have the following fiscal effects:

- Fiscal effects on state and local government could range from no effect to a significant increase in state and local costs, depending on how the measure is interpreted and implemented.

Sincerely,

for Gabriel Petek
Legislative Analyst

Keely Martin Bosler
Director of Finance