



# MONICA MONTGOMERY STEPPE

SUPERVISOR, FOURTH DISTRICT  
SAN DIEGO COUNTY BOARD OF SUPERVISORS

## AGENDA ITEM

**DATE:** October 8, 2024

**15**

**TO:** Board of Supervisors

### SUBJECT

**A RESOLUTION IN SUPPORT OF PROPOSITION 6 TO AMEND ARTICLE 1, SECTION 6 OF THE CALIFORNIA CONSTITUTION (DISTRICTS: ALL)**

### OVERVIEW

Prison labor has a long history in the United States penal system. In California, incarcerated people are paid little for performing difficult labor under threat of punishment. The California Penal Code currently “require[s] 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 Director of Corrections.” Cal. Penal Code § 2700. Incarcerated persons who refuse to work sometimes face consequences such as losing the ability to make regular phone calls and the loss of good time credits, among other punitive measures. Proposition 6 would explicitly end this practice in California.

Article 1, Section 6 of the California Constitution states: “Slavery is prohibited. Involuntary servitude is prohibited *except to punish crime*.” Proposition 6 would amend this section and replace it with the following:

- (a) Slavery and involuntary servitude is prohibited.
- (b) The Department of Corrections and Rehabilitation shall not discipline any incarcerated person for refusing a work assignment.
- (c) Nothing in this section shall prohibit the Department of Corrections and Rehabilitation from awarding credits to an incarcerated person who voluntarily accepts a work assignment.
- (d) Amendments made to this section by the measure adding the subdivision shall become operative January 1, 2025.

The exploitation of prison labor is one example of the systemic issues that plague correctional facilities. California law currently allows incarcerated individuals to be subjected to inhumane treatment and abusive interactions resulting in trauma and impeding rehabilitation. Forced prison labor is one form of this. Black individuals make up a disproportionate share of California’s prison population—28% of men and 23% of women in California prisons are Black compared to 6% of California’s population overall. Passage of Proposition 6 would be a small but significant step toward fixing the abusive carceral system that disproportionately affects Black Californians and

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would eliminate a vestige of slavery that has remained codified in the California Constitution from 1849 through today.

Today, California is one of sixteen states with a penal exception loophole in its state constitution. In recent years, several states have taken action to remove penal exceptions from their state constitutions. In 2018, Colorado voters approved an initiative to remove a penal exception from their state constitution. Nebraska and Utah followed in 2020. In 2022, 76% of Alabama voters supported amending their state constitution to remove the penal exception. Voters in Oregon, Tennessee and Vermont did the same.

This Board Letter requests the San Diego County Board of Supervisors approve a resolution in support of Proposition 6 to amend Article 1, Section 6 of the California Constitution.

**RECOMMENDATION(S)  
SUPERVISOR MONICA MONTGOMERY STEPPE**

1. Adopt the resolution entitled: A RESOLUTION IN SUPPORT OF PROPOSITION 6 TO AMEND ARTICLE 1, SECTION 6 OF THE CALIFORNIA CONSTITUTION

**EQUITY IMPACT STATEMENT**

Removing the penal exception clause from the California Constitution eliminates a vestige of slavery from the California Constitution and bans forced labor in state prisons. The County of San Diego's support of Proposition 6 demonstrates a commitment to promoting equity, justice, and inclusivity.

**SUSTAINABILITY IMPACT STATEMENT**

Supporting Proposition 6 will further the County of San Diego's commitment to promoting justice for all San Diegans.

**FISCAL IMPACT**

There is no fiscal impact associated with this action. There will be no change in net General Fund cost and no additional staff years.

**BUSINESS IMPACT STATEMENT**

N/A

**ADVISORY BOARD STATEMENT**

N/A

**BACKGROUND**

Article 1, Section 6 of the California Constitution states: "Slavery is prohibited. Involuntary servitude is prohibited except to punish crime." Cal. Const. art. I, § 6. This provision of the California Constitution dates to California's first constitution adopted in 1849 right before its admission as a state. The 1849 Constitution stated: "Neither slavery, nor involuntary servitude, unless for the punishment of crimes, shall ever be tolerated in this state." Cal. Const. of 1849

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(English) art. I, § 18.<sup>1</sup> This language was largely maintained in California’s revised constitution of 1879,<sup>2</sup> and into the present constitution adopted in 1974.

Since 1849, the antislavery provision in the California Constitution contained a loophole explicitly permitting “slavery” or “involuntary servitude” as punishment for crimes. This loophole, known as the “Punishment Clause,” mirrors the antislavery provision contained in the Northwest Ordinance of 1787, which prohibited slavery in the “new western territories of the United States” with an exception for “punishment of crimes whereof the party shall have been duly convicted.” Northwest Ordinance art. 6 (1787).<sup>3</sup> The Thirteenth Amendment to the United States Constitution was ratified in 1865 and banned slavery nationwide. It stated: “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 jurisdiction. Congress shall have power to enforce this article by appropriate legislation.” U.S. Const. art. XIII. Like the California Constitution, the Thirteenth Amendment also included a Punishment Clause loophole mirroring the language in the Northwest Ordinance. *See Michele Goodwin, The Thirteenth Amendment’s Punishment Clause: A Spectacle of Slavery Unwilling to Die*, 57 Harv. C.R.-C.L. L. Rev. 47, 54 (2022).

The Punishment Clause loophole effectively permitted states to maintain a form of slavery. Professor Michele Goodwin argues the Punishment Clause loophole demonstrated an intent to maintain slavery, because former slave states established exploitative prison labor practices in anticipation of the Thirteenth Amendment’s ratification. Goodwin at 80. Southern lawmakers “aggressively legislated, creating new criminal laws specifically targeting Black people newly freed from bondage,” such as making it a crime to stand at a street corner accompanied by others. *Id.* at 80–81. If “offenders” could not afford the fines imposed as penalties for such “crimes,” they faced incarceration. *Id.* at 82. Incarcerated Black persons were then “rented and leased by the government to plantations, coal mines, railroads, and any other business ready for cheap labor,” a practice known as “convict leasing.” *Id.* at 82.<sup>4</sup> Convict leasing was practiced in California as well, dating back to 1851. *See Ward M. McAfee, A History of Convict Labor in California*, Southern California Quarterly, vol. 1, 19–40 (1990).

Article 1 section 6 of the California Constitution states “Slavery is prohibited. Involuntary servitude is prohibited except to punish crime.” If passed, Proposition 6 would replace this provision with the following:

- (a) Slavery and involuntary servitude is prohibited.
- (b) The Department of Corrections and Rehabilitation shall not discipline any incarcerated person for refusing a work assignment.

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<sup>1</sup> The California Constitution of 1849 was bilingual and official versions were adopted in both in English and Spanish. This quoted portion is from the English-language version.

<sup>2</sup> “Neither slavery nor involuntary servitude, unless for the punishment of a crime, shall ever be tolerated in this State.” Cal. Const. of 1879 art. I, § 18.

<sup>3</sup> “It will be seen upon comparison, how similar in substance is the language of [the Northwest Ordinance] and that of the Constitution of this State.” *In re Archy*, 9 Cal. 147, 170–71 (1853) (California Supreme Court case interpreting the antislavery provision in California’s first constitution).

<sup>4</sup> *See also* William Warren Rogers & Robert David Ward, *The Convict Lease System in Alabama*, in *The Role of Convict Labor in the Industrial Development of Birmingham*, at 1 (1998).

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(c) Nothing in this section shall prohibit the Department of Corrections and Rehabilitation from awarding credits to an incarcerated person who voluntarily accepts a work assignment.

(d) Amendments made to this section by the measure adding the subdivision shall become operative January 1, 2025.

Today, California is one of sixteen states with a Punishment Clause loophole in its state constitution. In recent years, several states have taken action to remove Punishment Clause exceptions from their state constitutions. In 2018, Colorado voters approved an initiative to remove a penal exception from their state constitution. Nebraska and Utah followed in 2020. In 2022, voters in Alabama, Oregon, Tennessee and Vermont did the same.

While most prison labor in California today is compensated, the nature of the labor relationship is not always voluntary. Incarcerated persons in California can be required to work. Cal. Penal Code § 2700. Most are paid less than \$1 per hour.<sup>5</sup> Incarcerated persons who refuse to work sometimes face consequences “such as losing the ability to make regular phone calls,” among other punitive measures. Proposition 6 would explicitly end this practice in California.

**LINKAGE TO THE COUNTY OF SAN DIEGO STRATEGIC PLAN**

Today’s proposed action aligns with the Equity and Empower Strategic Initiatives in the County of San Diego’s 2024-2029 Strategic Plan. While Proposition 6 would enact a change in state law, it can serve as a valuable framework to foster greater equity and inclusion for San Diego County to integrate into its Strategic Plan.

Respectfully submitted,



MONICA MONTGOMERY STEPPE  
Supervisor, Fourth District

**ATTACHMENT(S)**

**ATTACHMENT A: A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN DIEGO IN SUPPORT OF PROPOSITION 6 TO AMEND ARTICLE 1, SECTION 6 OF THE CALIFORNIA CONSTITUTION**

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<sup>5</sup> See Proposition 6: Eliminates Constitutional Provision Allowing Involuntary Servitude for Incarcerated Persons, California Legislative Analyst’s Office, available at <https://lao.ca.gov/BallotAnalysis/Proposition?number=6&year=2024> (last accessed Sep. 26, 2024).