

**Testimony of the New York Civil Liberties Union
before
The New York State Joint Legislative Budget Hearing
on Workforce Development
regarding
Private Sector Employment for Incarcerated Individuals
(Part BB of S.8005 / A.9005 & Proposed Constitutional
Amendment)**

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The New York Civil Liberties Union (NYCLU) appreciates the opportunity to testify regarding the Private Sector Employment for Incarcerated Individuals bills that are included in the proposed executive budget. The NYCLU, the New York state affiliate of the American Civil Liberties Union, is a not-for-profit, nonpartisan organization with eight offices across the state and over 180,000 members and supporters. The NYCLU defends and promotes the fundamental principles and values embodied in the Bill of Rights, the U.S. Constitution, and the New York Constitution, including the right of every New Yorker to enjoy life, liberty, and equal protection under law.

As the legislature embarks on the budget process, it must act to ensure that any new workforce programs, particularly those proposed to benefit our incarcerated workforce, avoid the unintended consequences that can lead to exploitation and other forms of harm. We believe there is a high likelihood that harm will result from the Governor's proposed measures regarding private sector employment for incarcerated individuals.

Over one hundred and twenty years ago we abolished contracting prison labor because it was inhumane and unfair. We agree that our current system is broken: it relies on the forced labor of human beings, it pays wages to incarcerated people that are shockingly low, and it creates unfair competition by producing goods with essentially free labor. The answer however is not to turn back the clock by reinstating the malignant system of prison contract labor.

We therefore call upon lawmakers to omit Part BB of S.8005/A.9005 from the budget, and not to adopt the Governor's proposed resolution amending Art. III, Sec. 24 of the state constitution.

The Current System of Prison Labor is Inhumane and Unjust

The labor of the people incarcerated in our state correctional facilities produces millions of dollars-worth of goods and services for the state.¹ Incarcerated people make furniture for SUNY schools, eyeglasses, trash cans and government office furniture – it is likely the very chairs you are sitting on today were made by prison labor.² In addition, the many jobs that keep the prison system running could not be done without the work of incarcerated people. Everything from food services, general cleaning, and library staffing to extremely dangerous jobs like asbestos and lead paint removal is done by individuals incarcerated by the state.³



It took the COVID-19 pandemic to finally pull back the curtain on the exploitive prison labor system that exists in New York. From the earliest days of the pandemic, incarcerated people labored to produce the hand sanitizer and other PPE needed by their fellow New Yorkers, even while they were prohibited access to these life-saving products themselves.⁴ So essential was the work of incarcerated people during the pandemic that they were forced to ramp up production of coffins from two hundred to fourteen hundred pine boxes a week.⁵

Yet the payment received for the work done by incarcerated individuals is so low it can only be called “slave wages.”⁶ The average hourly wages for prison labor in New York range from twenty-two cents an hour for non-industry jobs to sixty-two cents for jobs within the prison

¹ Corcraft, the industry run by the Department of Corrections that produces the goods made by incarcerated workers, collected \$53 million from the sale of its products in 2019. Office of the NYC Comptroller, *Fees, Fines and Fairness: How Monetary Charges Drive Inequity in New York City’s Criminal Justice System* (Sept. 2019) at p. 25, <https://comptroller.nyc.gov/wp-content/uploads/documents/Fees-and-Fines-in-the-Criminal-Justice-System.pdf>

² WGRZ Buffalo, *You Paid For It: “Extreme Senate Makeover”* (Sept. 20, 2016), <https://www.empirecenter.org/publications/you-paid-for-it-extreme-senate-makeover/>.

³ Office of the NYC Comptroller, *Fees, Fines and Fairness* at 25.

⁴ Samantha Michaels, *New York State Has Prisoners Making Hand sanitizer. It’s Unclear If Prisoners Can Use It*, Mother Jones (March 9, 2020), <https://www.motherjones.com/crime-justice/2020/03/new-york-state-has-prisoners-making-hand-sanitizer-its-unclear-if-prisoners-can-use-it/>.

⁵ Teri Weaver, *Coronavirus in NY: Prisoners Ramp up Production to 14,000 Pine Boxes a Week*, Syracuse.com (April 24, 2020), <https://www.syracuse.com/coronavirus/2020/04/coronavirus-in-ny-prisoners-ramp-up-coffin-production-to-1400-pine-boxes-a-week.html>.

⁶ JB Nicholas, *How NY Prison “Slave Labor” Powers a \$50 Million Manufacturing Enterprise*, Gothamist (Nov. 2, 2017), <https://gothamist.com/news/how-ny-prison-slave-labor-powers-a-50-million-manufacturing-enterprise>.



manufacturing industry.⁷ To add insult to injury, wages may be garnished by various fines and fees such as court fees, restitution, and even an incarceration surcharge ostensibly to cover the cost of room and board.

Perhaps the most degrading and dehumanizing part of the prison labor system is that both in law and in fact, the state is permitted to force people to work for these paltry wages. The New York corrections law expressly allows the state to require that every person who is physically able be employed six days a week.⁸ Incarcerated workers who refuse to work are in violation of prison rules and are often disciplined by harsh penalties like solitary confinement, loss of good-time credits and elimination of family visits.

Indeed, advocates and legislators are moving in a direction to end forced labor of all kinds in prisons and envision an entirely new system that would pay the minimum wage and provide meaningful pathways to employment post-release. As part of the 13th Forward coalition, we support S.308/A.3142 and S.416/A.3481-A.

The Use of Prison Labor by Private Entities was Abolished by the New York State Constitution Over One Hundred Years Ago and Must not be Revived

The prison labor system that existed in New York before 1894 was a harsh, blatantly exploitive system that utilized thousands of incarcerated people in factory-style workshops to fulfill quotas from private, third-party contractors. The system was opposed by prison reform advocates, unions and the Correctional Association of New York, the organization appointed by the legislature in 1844 to inspect prisons in the state and report finding and recommendations.⁹

Prison reformers cited the harsh conditions, meager wages and obvious conflict of interest that exists when private entities, incentivized by profits, are entitled to use a captive workforce and pay them nothing or next to nothing.¹⁰ In its 1885 report, the Correctional Association of New York found the prison labor conditions and wages so deplorable that

⁷ Wendy Sawyer, *How Much do Incarcerated People Earn in Each State*, Prison Policy Initiative (April 10, 2017), <https://www.prisonpolicy.org/blog/2017/04/10/wages/>.

⁸ N.Y. Correct. Law § 171.

⁹ James Berrigan, *Sing Sing as a Factory During the Nineteenth Century*, The NYC Criminal (Nov. 15, 2015), <https://nyccriminal.ace.fordham.edu/?p=72#more-72>.

¹⁰ *Id.*



they were tantamount to slavery.¹¹ Labor unions also voiced opposition as prison contract labor undercut free labor wages making competition difficult if not impossible.¹²

The combined pressure of the three groups finally paid off in 1894 when the New York Constitution explicitly outlawed the prison contract labor system. In relevant part it reads:

...no person in any such prison, penitentiary, jail or reformatory, shall be required or allowed to work, while under sentence thereto, at any trade, industry or occupation, wherein or whereby his or her work, or the product or profit of his or her work, shall be farmed out, contracted, given or sold to any person, firm, association or corporation...¹³

While New York was coming to terms with the need to abolish its system of prison contract labor, the 13th Amendment to the United States Constitution was ratified, making chattel slavery and involuntary servitude unconstitutional except “as punishment for a crime.”¹⁴ The fact that forced labor for meager wages still exists in every state prison system today, combined with prison statistics that reveal an overwhelmingly Black and Brown population, has led many to the obvious conclusion that the prison labor system is merely “slavery by another name.”¹⁵

The Executive Proposals Would Revive Outlawed Prison Contract Labor and Should be Omitted from the Budget

¹¹ *Id.*

¹² John P. Frey, *The Trade-Union Attitude Toward Prison Labor*, *The Annals Of American Academy of Political and Social Science* (March 1913), https://www.jstor.org/stable/pdf/1012381.pdf?refreqid=excelsior%3A7977edeeb16600262bc75c454110988c&ab_segments=&origin=.

¹³ N.Y. Const. art. III, § 24.

¹⁴ U.S. Const. amend. XIII.

¹⁵ See, e.g. Eric Foner, *We are Not Done with Abolition*, *New York Times* (Dec. 15, 2020), <https://www.nytimes.com/2020/12/15/opinion/abolition-prison-labor-amendment.html>; Equal Justice Initiative, *A Different Kind of Slavery*, *EJI History of Racial Injustice* (July 15, 2018), <https://eji.org/news/history-racial-injustice-different-kind-of-slavery/>; Whitney Benns, *American Slavery, Reinvented*, *The Atlantic* (Sept. 21, 2015), <https://www.theatlantic.com/business/archive/2015/09/prison-labor-in-america/406177/>.



The Governor’s budget proposals on “Private Sector Employment for Incarcerated Individuals” may be well-intended; however, they are misguided in that they would bring back to New York the very sort of prison contract labor system banned more than a century ago.

Part BB of S.8005/A.9005 would amend the corrections law to make it lawful once again for private corporations to enter into contracts with the department of corrections to employ incarcerated individuals. The additional language that would guarantee “fair and just” wages is a hollow promise: nowhere in the bill is the term “fair and just” defined. In addition, even if wages higher than the current twenty-six cents an hour were paid, the bill explicitly would allow them to be offset against back taxes, family support, restitution, and other obligations.

The questionable constitutionality of this legislative proposal is evidenced by the Executive’s companion proposal to reauthorize in our state constitution what was once deemed inescapably oppressive, unfair and illegal. The state constitution expressly prohibits work by incarcerated individuals that is given or sold to a person or a corporation, whether forced or voluntary; the proposed amendment would render this long-standing prohibition meaningless, adding an exception that would effectively swallow the rule and authorize employment by private sector entities. This veiled attempt to bring back prison contract labor must not be accepted.

New York must not take this giant step backward to a time where private corporations profited from the forced labor that exploited so many incarcerated people, a system described as akin to slavery. As a state we saw fit to abolish this very system in our 1894 state constitution. It is unconscionable that we would revive it in 2022.

The New York Civil Liberties Union urges lawmakers to omit Part BB of S.8005/A.9005 from the budget, and to reject the Governor’s proposed resolution amending Art. III, Sec. 24 of the state constitution. Instead, we call upon lawmakers and the Governor to support and pass S.308 (Myrie) / A.3142 (Epstein) and S.416 (Myrie) / A.3481-A (Epstein).