

LONG-TERM INCARCERATED PEOPLE NEED RETIREMENT BENEFITS

BY ROMARILYN RALSTON with GINNY OSHIRO and FIDELIA SANTOS-AMINY



Drop LWOP rally. 2018. Photograph. Source: Drop LWOP Coalition.

Most people who work for 20 or more years look forward to retirement. In fact, they have earned it! Unfortunately, this is not the case for incarcerated and formerly incarcerated workers. As the number of long-term sentences increase in California, more and more people work for decades behind bars, only to find themselves released later in life with no Social Security benefits to show for it. A 2017 report by Ashley Nellis of the Sentencing Project notes that California has approximately 40,691 people serving life, life without the possibility of parole, or “virtual life” sentences—more than any other state.¹ Lifers and people serving long-term sentences are eligible for parole and/or may apply to have their sentences commuted by the Governor. Even those sentenced to death—either death by execution or death by incarceration (i.e., life without the possibility

of parole)—are technically eligible for release via gubernatorial clemency powers. During Governor Jerry Brown’s 2011-2018 term, there were 152 commutations and 6,412 parole grants.² When people with indeterminate or long-term sentences are released, they may have worked for decades and be close to or above the average retirement age, but would not be eligible for Social Security benefits.

BACKGROUND AND PROBLEM DESCRIPTION

INDIVIDUALS SENTENCED to prison do not earn Social Security retirement benefits, even though they are required to work while incarcerated unless they have a medical condition that exempts them. California Penal Code Section 2700 states, “The Department of Corrections shall require 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.”³ This requirement also applies to those sentenced to death, with a few exceptions.⁴

Incarcerated people must work; it is not optional. For those serving life sentences, life without the possibility for parole, and virtual life sentences, working in prison may give meaning and purpose to their lives. It also puts a small amount of money in their pockets to purchase much needed personal care items and food, or help to support their families. In fact, lifers and long-termers are one of the most cooperative groups in prison. They often provide mentorship and structure to other incarcerated people, and provide a constant supply of highly skilled labor. It is unfortunate that the skilled labor and loyalty of long-termers is so unvalued by the carceral state. Prison wages are a reminder that once a per-

son enters the corrections system, they are in essence a state-sanctioned slave.

When someone sentenced to life is granted parole, or has their prison sentence commuted and is released from prison, they often face close to insurmountable barriers to finding employment, housing, medical care, education, and other social services, which makes reentry difficult. Without proper financial stability, these returning community members may encounter challenges with rebuilding their lives or successfully completing parole.

The Social Security Administration (SSA) offers some benefits to formerly incarcerated people after release. Much of what is available supports individuals with disabilities, and is designed to help with reentry services and applying for resources such as cash benefits, health care, food, and housing.⁵ The SSA also states, “An individual released from incarceration may be eligible for Social Security retirement, survivors, or disability benefits *if they have worked or paid into Social Security enough years*. An individual released from incarceration may be eligible for Supplemental Security Income benefits *if they are 65 or older, are blind, or have a disability and have little or no income and resources*” (emphasis added)⁶. SSA’s guide, *What Prisoners Need to Know*, explains that Social Security pays retirement benefits to people age 62 or older who have worked and paid Social Security taxes for 10 years.⁷ Unfortunately, in my experience, many long-term incarcerated people are sentenced as juveniles or young adults, and have not paid Social Security taxes for 10 years prior to their incarceration. Many have never held legitimate employment outside of the work they have done for the California Department of Corrections and Rehabilitation (CDCR). Prison labor may be the only work experience many incarcerat-

CDCR Pay Rate	Hourly, Min/Max	Monthly, Min/Max
Level 1, DOT 9 Lead Person	\$0.32 - \$0.37	\$48 - \$56
Level 2, DOT 7-8 Special Skill	\$0.19 - \$0.32	\$29 - \$48
Level 3, DOT 5-6 Technician	\$0.15 - \$0.24	\$23 - \$36
Level 4, DOT 3-4 Semi-Skilled	\$0.11 - \$0.18	\$17 - \$27
Level 5, DOT 1-2 Laborer	\$0.08 - \$0.13	\$12 - \$20

Table 1. Inmate Pay Rates, Schedule, and Exceptions. (Source: Barclays Official California Code of Regulations)¹⁰

ed people have, and prison wages their only earned income.

While the meagerness of the wages and forced compliance distinguish working behind bars from working outside prison walls, certain similarities exist. Since the CDCR requires all able-bodied incarcerated people to labor, they have established a compensation plan that includes a pay scale, timekeeping procedure, hourly and monthly pay schedule, and accounting procedure. Similar to hiring practices elsewhere, incarcerated people must undergo the equivalent of a job interview. They must appear before a “classification committee” at their institution of hire. They must meet a skills requirement; demonstrate a good record of behavior and attitude; have a history of good work habits; and be able to read, write, and speak effectively. The CDCR requires that “institutions/facilities shall establish an application/resume process for selection of skilled workers.”⁸ CDCR’s classification and hiring processes for incarcerated people thus mirrors human resources practices and procedures elsewhere.

CDCR regulations and statutory limitations on pay for incarcerated individuals limit pay to no higher than half of the minimum wage.⁹ Under such authority, “pay schedules” are set by institutions/facilities, as shown above in Table 1.

In addition to the unconscionably low wages paid to incarcerated people, the prison labor system is all the more exploitative because this work is not eligible for Social Security benefits.

The only exception to this extremely low pay scale is the CalPIA “Joint Venture Program” (JVP), established by Proposition 139 in 1991.¹¹ A select group of incarcerated individuals at a limited number of prisons are eligible to earn minimum wage through the JVP. Among programs offered by the CDCR, the JVP comes closest to allowing incarcerated individuals to earn tax credits and to pay state and federal taxes.¹² The JVP private industry partnership hires incarcerated people at minimum wage in state or county facilities to produce goods and services that may be sold to the public. Accord-

Year	Number of Hearings Scheduled	Number of Parole Grants
1978	1	1
1988	1, 017	28
1998	2, 172	27
2008	6, 883	293
2018	5, 226	1, 136

Table 2. CDCR Board of Parole Hearings Statistical Data. (Source: California Department of Corrections and Rehabilitation)¹⁴

ing to their website, “The Joint Venture Program (JVP) provides vocational training opportunities to inmates within California’s correctional settings and it offers businesses attractive benefits for employing them.”¹³ However, incarcerated people sentenced to life and to life without the possibility of parole, and those sentenced to long terms, are excluded from participation in JVP. Thus, people with long-term sentences cannot participate in the sole CDCR program that pays minimum wage and contributes to Social Security.

The issue of Social Security eligibility for formerly incarcerated people has become particularly important as long-term sentencing and, subsequently, the number of parole hearings and grants have increased over the past 40 years in California. The CDCR’s Statistical Data (Table 2) shows a remarkable increase since 1978. In 1978, there was one parole hearing scheduled and one parole granted. In each decade that followed, parole suitability hearings increased by 1000 percent. For decades, the gubernatorial and legislative mission of the state focused on “tough-on-crime” policies, mandatory minimum sentences, and three strikes law, which greatly increased the number of long-term and indeterminate sentences. In recent years, a shift from “no parole”

policies towards rehabilitation and decarceration has triggered the release of more individuals with long-term sentences.

RECOMMENDATIONS

Allowing individuals who are serving long-term sentences the opportunity to earn retirement credits by applying a Social Security retirement tax to prison wages and other sources of income would give them a pathway toward securing adequate Social Security retirement benefits in their senior years.

CDCR should increase prison wages to the state minimum wage, and allow long-term incarcerated individuals the right to claim their prison wages and other income sources (e.g. handicraft sales) as income that pays into Social Security. An existing model is provided by CalPIA’s JVP, which uses IRS “Form 1099-NEC Nonemployee Compensation” to determine the taxable amount, verify earned income, and contribute to Social Security.



ROMARILYN RALSTON is the Program Director of Project Rebound at the California State University-Fullerton (CSUF), which provides formerly incarcerated students with tools and opportunities to

help them thrive as scholars. She is also an organizer with the California Coalition for Women Prisoners and an alumna of California’s Women’s Policy Institute. Ralston holds a BA with honors in Gender and Feminist Studies from Pitzer College and an MA in Liberal Arts from Washington University.

GINNY OSHIRO is currently completing a BA in Criminal Justice (minor in Ethnic Studies) at CSUF. She currently serves as the Chief of Staff for Project Rebound and is a Women’s Policy Institute Fellow on the Criminal Justice Reform Team.

FIDELIA “LIA” SANTOS-AMINY has served as the Government Relations Intern for Project Rebound at CSUF. In an effort to further understand incarceration and Social Security retirement benefits, she was asked to assist in the initial research. Santos-Aminy is a substitute teacher at an elementary school in Orange County and applying to graduate schools.

NOTES

1. Virtual life sentences are terms that exceed a person’s natural life expectancy. “Still Life: America’s Increasing Use of Life and Long-term Sentences,” The Sentencing Project, accessed May 13, 2020, <https://www.sentencingproject.org/publications/still-life-americas-increasing-use-life-long-term-sentences/>.
2. Egelko, Bob, “Gov. Jerry Brown sets record pardons, commutations in California,” *San Francisco Chronicle*, December 24, 2018, <https://www.sfchronicle.com/politics/article/Gov-Jerry-Brown-sets-record-for-pardons-13487741.php>.
Suitability Hearing Summary CY 1978 through CY 2019, California Department of Corrections and Rehabilitation, <https://www.cdcr.ca.gov/bph/2020/01/09/suitability-hearing-summary-cy-1978-through-cy-2018/>.
3. California Penal Code, Part 3, Title1, Chapter 5, Article 1 Employment of Prisoners Generally [2700-2717], https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN§ionNum=2700.
4. California Penal Code.

5. “Benefits after Incarceration: What You Need To Know,” Social Security Administration, accessed May 15, 2020, <https://www.ssa.gov/reentry/benefits.htm>.

6. “Benefits after Incarceration.”

7. *What Prisoners Need To Know*, Social Security Administration, 1, <https://www.ssa.gov/pubs/EN-05-10133.pdf>.

8. *Operations Manual*, California Department of Corrections and Rehabilitation, Adult Institutions, Programs, and Parole, January 1, 2020, CDCR 2020 Departmental Manual, Hiring Criteria, Section 51120.5.1.

9. Prisoners: wages, SCR-69. California Legislature 2019-2020 Regular Session, https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SCR69.

10. Barclays Official California Code of Regulations, Title 15, Division 3, Chapter 1, Article 3, §3041.2, Inmate Pay Rates, Schedule and Exceptions, [https://govt.westlaw.com/calregs/Document/I0EF28DA093EF11E2A237FC86163F81CD?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Document/I0EF28DA093EF11E2A237FC86163F81CD?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)).

11. “CALPIA - Joint Venture Program,” California Business Incentives Gateway, accessed May 15, 2020, <https://cbig.ca.gov/Government-Partners/CALPIA-Joint-Venture-Program>.

12. Proposition 139 was codified as California Penal Code § 2717.1 et seq.

13. “CALPIA - Joint Venture Program,” California Business Incentives Gateway, accessed May 15, 2020, <https://cbig.ca.gov/Government-Partners/CALPIA-Joint-Venture-Program>.

14. *Suitability Hearing Summary CY 1978 through CY 2019*, California Department of Corrections and Rehabilitation, <https://www.cdcr.ca.gov/bph/2020/01/09/suitability-hearing-summary-cy-1978-through-cy-2018/>.