

Should we make violent prisoners fight forest fires? | The Avvo NakedLaw Blog

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Money, Rights

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Most people would rather not think about how prison inmates spend their days. Movie images of chain gangs and cartoon characters hammering rocks or license plates are as close to the truth as people like to get. But California residents were abruptly reminded of their prison population last summer when the state proposed expanding its inmate firefighter program to [include violent offenders](#).

A panicked public outcry squashed the proposal almost immediately, but the incident shed some light on a sector of the economy that is usually hidden and raised some serious ethical questions.

Is prison labor even legal?

Ironically, the 13th Amendment, which abolished slavery and involuntary servitude, is the legal basis for prison labor. It specifically excludes penal servitude from the ban by including the phrase “except as a punishment for crime whereof the party shall have been duly convicted.” Regardless of its legality, and the fact that most prison work programs are “voluntary,” it’s not hard to see that prison inmates are not in a strong bargaining position when it comes to labor issues.

Most people agree that letting prisoners “rot in jail” is not beneficial for anyone, inside or outside of the justice system. What’s more challenging is agreeing on *how* to implement prison’s dual purpose of retribution and rehabilitation.

Ethics or economics?

Although California’s firefighting program has operated successfully since 1946, the recent attempt to expand the program appears to have been driven by economics rather than any philosophical motive. Over a third of the wildland firefighters in California are [inmates](#). In an expensive trend fueled by climate change and drought, wildfire seasons are [longer and more intense](#) each year, driving a need for ever more firefighters. At the same time, states are moving away from mass incarceration, reducing the number of nonviolent offenders eligible for similar work programs.

Civilian wildland firefighters are state employees who receive full benefits. Prisoner firefighters make less than \$5 per day. For prisoners, the real compensation is the two days’ reduction in sentence for each 24-hour shift worked. For the cash-strapped state, it’s a huge savings—estimated at up to [\\$100 million](#) per year. At first glance, the system is a win-win. But it generates a significant financial incentive for the state to keep a sizable prison population of nonviolent offenders, the very people states are supposed to keep out of prison.

What about worker protections?

“Health and safety requirements for federal prison inmate-laborers are established by a combination of the Occupational Safety & Health Act’s (OSHA) worker-safety regulations and the Department of Corrections’ (DOC) own inmate-safety requirements,” says legal advisor [Rochelle Nelson](#), of Fisher and Phillips, LLP in Seattle. OSHA regulations govern cases where an inmate meets the definition of an employee for one of the contracting companies under the federal economic realities test. In all other cases, OSHA does not apply. California’s firefighting program is a partnership between two state agencies, and would be governed by the state’s occupational safety and health laws.

“In California, inmates must report any work-related injuries to the California DOC, which will in turn report to California’s Division of OSHA. The Division can then submit safety recommendations to the California DOC, but the DOC is not required to follow those recommendations,” says Nelson. It does not seem like a very robust system for protecting individuals who are performing very dangerous work. Although inmates who

volunteer for California’s program are given two weeks of intensive physical training followed by two weeks of firefighter [training](#), severe injuries do occur.

California is not unique

Most Western states have inmate firefighting programs, and other [inmate work programs](#) throughout the country include industrial, agricultural, and manufacturing work, as well as staff call centers. And they do it all without the protections enjoyed by civilian workers.

“To use Washington as an example, the Washington Industrial Safety and Health Act (WISHA) may apply to inmates, but it will only apply to those who are working outside of the prison. An inmate in a Class III work program (doing work inside the prison to assist in prison operations) is not considered an employee of the prison, and therefore, is not covered in WISHA’s jurisdiction. The inmate who works solely within the prison must raise safety complaints with the DOC directly instead,” says Nelson.

Worker protections may get forfeited along with the other rights a person convicted of a crime loses when they go to prison, but economic questions about prison labor remain. Considering the size of the incarcerated population in the United States—the [largest in the world](#)—prison labor could be viewed as a form of domestic offshoring, shifting living wage jobs away from regular workers to a lower-cost workforce.

Proponents of prison work programs claim that they serve a rehabilitative purpose, providing job training and life skills that help inmates prepare for life on the outside. This is most likely the case, but the economics of the prison labor system needs a closer look.

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