



**B Lab Controversial Issues Statement -
Companies Operating in or Selling to the Prison Industry (including Labor)
Updated as of September 2022**

B Lab's Approach to Controversial Issues and B Corp Certification

As for-profit companies that meet the most rigorous standards of overall social and environmental performance, accountability, and transparency, Certified B Corporations are leaders in the movement to use business as a force for good.

Whether through information a company provides in its [Disclosure Questionnaire](#), an issue raised by a third-party through B Lab's formal Public [Complaint Process](#), or public discourse on B Corp certification requirements and standards, difficult and complex questions regularly arise as to how controversial issues in the world of business should affect a company's eligibility for B Corp certification. Judgments on these issues are then determined by B Lab's independent [Standards Advisory Council](#) as part of a disclosure review process.

B Lab's Disclosure Questionnaire forms the basis of the disclosure review process, which covers sensitive industries, practices, outcomes, and penalties and is based on third party screenings and standards like the IFC Excluded Industries List and International Labor Organization Conventions. Recognizing that any list of sensitive issues may be incomplete, however, B Lab also reserves the right to conduct similar reviews on issues that are not currently featured in the Disclosure Questionnaire, but are deemed subject to material stakeholder concern and a potential violation of the B Corp movement's Declaration of Interdependence.

When new industries or issues where a decision making model has not already been developed arise, B Lab conducts research into the issue in order to guide the Standards Advisory Council's decision. Research is based on secondary sources compiled by B Lab staff, with the overall intent of identifying and understanding the different concerns related to the industry or issue and the different perspectives of stakeholders. This includes a review of press related to the industry and its impact, how the issue is covered by other standards, existing public policy and public policy recommendations from non-profit organizations and other topical experts, examples — potentially both good and bad — of actors within the industry, interviews with expert stakeholders and other public commentary and perspectives. This content is in turn used to develop the framework for Standards Advisory Council review, and determines the types of questions that individual companies are required to answer as part of their review.

Particularly when it comes to industries that are controversial, there is a natural and healthy tension between the inclination to exclude all companies in those industries from eligibility for B

Corp Certification, and *the need for leadership* that has the potential to transform the culture, behavior, and impact of those industries. While B Lab and its [Standards Advisory Council](#) may determine that an industry as a whole is ineligible for certification because of its negative impacts or practices, they also recognize that in controversial industries it may be possible for companies to be meaningfully managing those potential negative impacts or controversies. In these circumstances, the need may be greatest to distinguish between good and bad actors, as well as good, better, and best performance by using rigorous standards of verified social and environmental performance, legal accountability, and public transparency. All stakeholders are best served by the existence of credible and transparent standards that facilitate improved policy, investment, purchasing, and employment decisions.

Along with the recognition that there are many diverse and reasonable perspectives as to what contributes to a shared and durable prosperity for all, B Lab and its Standards Advisory Council will make determinations regarding eligibility for B Corp Certification and, if eligible, will require companies in controversial industries, with controversial policies, or engaged in controversial practices to be transparent about their practices and how they work to manage and mitigate concerns. B Lab will also document and share these positions publicly in order to enable all stakeholders, including citizens and policymakers, to make their own judgments about a company's performance, as well as further thoughtful, constructive public discussion about important issues. Existing B Lab statements and frameworks on controversial issues are available [here](#).

These frameworks, like B Lab's standards generally, are works in progress, and we look forward to improving upon them in the future. B Lab invites other perspectives as it continues to refine its views and, hopefully, contribute to a constructive conversation about the role of business in society.

Independent of eligibility for B Corp Certification, all companies in any industry are able to use the [B Impact Assessment](#) as an internal impact management tool to assess and improve their overall practices, and/or adopt a stakeholder governance legal structure (such as [benefit corporation](#)) appropriate to the company's current corporate structure and jurisdiction.

If you have questions or comments about B Lab's approach to the below issues, please email B Lab's Standards Management team at standardsmanagement@bcorporation.net.

Companies Operating in or Selling to the Prison Industry (including Labor) and B Corp Certification

Particularly in the United States, the growth of the number of individuals who are currently incarcerated or in detention, concerns about institutionalized oppression in the justice system, high rates of recidivism, and the privatization of prison facilities has created a great deal of controversy around the prison industry and those who are perceived to be directly or indirectly supporting or profiting from it.

In response to these controversies, B Lab, the independent Standards Advisory Council, and the Board of Directors have rendered the following decision regarding their eligibility for B Corp Certification:

For companies who manage / operate prisons:

Companies that are directly engaged in the operation of prisons or detention centers are ineligible for B Corp Certification on the basis that the negative issues and risks that are prevalent within a prison system can not be resolved solely by the actions of private companies, nor is it possible to sufficiently assess a company's overall performance within those systems. A broader systemic change is needed to address how prisoners are viewed and treated in society before, during, and after incarceration, and make concrete efforts to tackle the issues of intergenerational poverty, inequality, and the availability and quality of social welfare services. As these issues fall outside of scope of control of individual private companies, no prison operator is eligible for B Corp Certification until it can be demonstrated that such operators exist and contribute to a prison system that addresses the above and provides the necessary resources to prisoners.

For companies in the U.S. and Canada who serve or support prisons, including those who utilize prison labor:

Companies are placed under an indefinite certification moratorium and are not eligible for B Corp Certification.

For companies outside of the U.S. and Canada supplying to prisons/detention centers and/or utilizing prison/detention center labor are eligible for B Corp Certification if they meet the following requirements:

For companies supplying directly to prisons/detention centers as well as companies utilizing prison/detention center labor:

- Companies that contribute to the construction of new prisons or supply products and/or services designed to restrain or subdue people who are incarcerated, inflict harm or potentially used to inflict harm on people in prisons or other individuals, etc. are currently ineligible for B Corp Certification.
- Companies engaged in the following practices in the last five years, as demonstrated through company disclosures or through material, justified, and unresolved stakeholder concerns, are currently ineligible for B Corp Certification:
 - Companies engaged in any form of lobbying or policy advocacy that directly or indirectly support mass, or increasing rates of, incarceration or prevent reform attempts to reduce incarceration. This includes membership, Board involvement, or funding of industry associations that engage in such lobbying activities.
 - Companies with material, justified, and unresolved complaints about product quality, product price and/or work conditions for people in prisons.

- In order to be eligible, companies must be able to demonstrate that they have the following practices in place and disclose them on their B Corp Profile:
 - A transparent mechanism to measure the impact of its products, services, policies and/or activities on reducing recidivism and outcomes for people in prisons and proof of positive impact deemed rigorous as a result of, for example, third party assessment and/or existing primary research.
 - A public stance against mass, or increasing rates of, incarceration and other material issues related to the prison industry, approved by the highest level of governance (e.g., Board of Directors) within the company, and a commitment to making efforts towards collective action and/or engagement with stakeholders, focused on improving how people who are incarcerated are viewed and treated before, during and after incarceration.
 - Public disclosure detailing the company's approach to government affairs, inclusive of lobbying/advocacy and political activities. This should include disclosure of the material issues that the company lobbies/advocates for, their trade associations, and the controls they have in place in regards to political contributions, lobbying/advocacy on the company's behalf, revolving door policy, political contributions and donations.
 - Policies and practices to address the concerns of mass, or increasing rates of, incarceration and the prison industry in other aspects of its operations, including its charitable efforts, fair chance hiring practices, customer screenings, affected stakeholders incorporated in governance structure, etc.
 - Additional applicable requirements as described below:

For companies that supply directly to prisons/detention centers:

- The company can prove that its products/services reduce recidivism and/or produce positive outcomes for people during and/or after incarceration. For example,
 - The company delivers training/skills building services proven to increase rates of employment after incarceration, or
 - The company supplies products or services that meet the basic needs that can be proven to increase the health and wellbeing of people who are incarcerated while in prisons (e.g. food, clothing, healthcare, entertainment, maintenance, etc. that are better options than otherwise available).

For companies that charge people who are incarcerated and/or individuals acting on their behalf for products/services, the company can prove that its products/services are affordable for people in prison.

- For example, a basic version of the products or services (meeting basic quality and safety standards) are offered at a price proportionate to the income available to people who are incarcerated.
- For all other companies, the company can demonstrate that the quality and price of products/services are the same or better than what is available outside of prisons.

- The company maintains a transparent quality assurance system that includes direct and private feedback from affected people and where possible, takes action based on the feedback.

For companies utilizing prison/detention center labor:

Companies must demonstrate that employing individuals who are incarcerated or in detention is done for the positive benefit of the individuals involved (in the form of reduced recidivism, high post-release employment rates, etc) and not for cost benefits of the company. This is demonstrated by complying with the following requirements, which are aligned with and elaborated from [guidance provided by the International Labor Organization \(ILO\)](#), in order to ensure that such labor preserves the rights of workers, is in their best interests, and not exploitative. Compliance with such requirements requires a high level of best practice and verification and thus is expected to be rarely achieved by companies. *Unless otherwise stated, companies that are unable to comply with the requirements are currently ineligible for B Corp Certification, regardless of whether prevailing laws or practices for the prisons facilities allow for it:*

- Company conducts an application process where workers express interest in the specific work opportunity and each worker receives and signs a standardized consent form from the enterprise indicating that they agree to work. The form indicates the wages and conditions of work.
- The conditions of work the enterprise offers are similar to work outside the prison, namely:
 - Wages and any deductions are made transparent and are comparable to those of free workers with similar skills and experience in the relevant industry or occupation, taking into account factors such as productivity levels. *Costs the enterprise may incur for prison security supervision of the workers should not be borne by workers.*
 - Workers receive clear and detailed wage slips showing hours worked, wages earned and any deductions authorized by law for food and lodging. Wages are paid directly to workers, when possible. *In cases where local laws prohibit direct payment of wages, companies must have systems in place to guarantee that workers receive wages as intended.*
 - The daily working hours are in accordance with local law for free workers.
 - Safety and health measures respect local law for free workers.
 - Workers are included in the social security scheme for accident and health coverage.
- Workers obtain benefits such as learning new skills and the opportunity to work cooperatively in a controlled environment enabling them to develop team skills.
- Workers have the possibility of continuing work of the same type upon release and the company provides post-release benefits to workers, such as contributions to post-release savings accounts and employment support.

- Workers may withdraw their consent at any time, subject only to reasonable notice requirements.
- The company maintains a transparent quality assurance system that includes direct and private feedback from workers, and where possible, takes action based on the feedback.

Industry Overview

The growth of the number of individuals who are currently incarcerated or in detention, concerns about institutionalized oppression in the justice system, high rates of recidivism, and the privatization of prison facilities has created a great deal of controversy around the prison industry and those who are perceived to be directly or indirectly supporting or profiting from it. While this is true particularly in the U.S., there are global ramifications as well.

The U.S. has a higher incarceration rate than all other countries, with over two million people currently occupying prisons and jails. This number represents a 500% increase over the last 40 years, which is mostly explained by changes in sentencing law and policy rather than by changes in crime rates themselves.¹ Beyond the U.S., prisons and detention centers around the world present serious issues that negatively affect people who are incarcerated, their families, and overall societies in all locations due to a general desire to manage the costs of prisons (leading to low quality conditions) and the challenging philosophies regarding the purpose of prisons (for instance, punishment versus rehabilitation), among other reasons. It is estimated that more than 11 million people globally are in prisons, representing an 8% increase since 2010.²

Imprisonment disproportionately affects people living in poverty, minority groups and foreign nationals. In virtually every country in the world, minority groups are overrepresented in prisons. For example, in Australia, Aboriginal and Torres Strait Islanders make up 27% of the prison population despite the fact that they constitute only 2% of the adult population. In New Zealand, 15% of the country's population identify with Māori ethnic groups, but they account for almost 51% of the prison population with another 11.3% of people in prisons being Pacific People. Aboriginal people constitute only 3% of the adult population of Canada, but form 24% of those admitted to provincial and territorial correctional services and 20% of those sentenced to federal institutions. Thirteen percent of the U.S. national population is African-American/Black, whereas 37% of the male prison population comes from this group. In England and Wales, people of Black, Asian and minority races and ethnicities make up 14% of the national population, but account for over a quarter of all people in prisons.³ While the reason for these trends may vary by context, they point to systemic inequalities embedded in criminal justice policies and practices developed by dominant groups to suppress others.⁴

¹ [The Sentencing Project](#)

² [Penal Reform](#)

³ [Birkbeck Institutional Research](#)

⁴ [The Sentencing Project](#)

Prison overcrowding is a global challenge with an estimated 114 national prison systems operating at over 100% capacity, which limits the implementation of the United Nations' Standard Minimum Rules for the Treatment of Prisoners. Poor prison conditions are largely symptomatic of systemic deficiencies in countries' criminal justice systems and policies, including insufficient measures to prevent crime, excessive use of pre-trial detention, lack of access to legal advice and assistance, and punitive criminal justice policies and inappropriate use of imprisonment.⁵ As a result, while dialogues around mass incarceration and its link to systemic racism are more common in the U.S. because of the scale of the issue, underlying concerns about the impact of prisons and the potential role of the private sector in contributing or benefiting from those negative impacts, exists inherently to the prison industry globally, and is not unique to the U.S. even if the scale is different.

Criminal justice experts refer to the network of companies that profit from prisons and detention centers as the prison-industrial complex.⁶ This can include companies that not only operate prisons, but also those that supply to prisons and detention centers and/or employ prison labor, each defined as follows:

Prison Operators. The prison operator is the company that is legally and / or contractually responsible for the daily control and operations of the prison.

Suppliers to Prisons and Detention Centers. Prisons and detention centers purchase products and services from third-party suppliers in order to operate their facilities. Examples include the construction and maintenance of facilities, monitoring systems, "essential" products for people who are incarcerated (e.g., food, clothing), and consulting services. Prisons also have commissaries where people who are incarcerated can purchase products and services such as ready-made food, hygiene products, and telecommunications services.

Prison/Detention Center Labor. People who are incarcerated may work in prison labor programs. The most common type of work typically relates to prison operations such as custodial, maintenance, laundry, groundskeeping, and food service for the prisons themselves. Some incarcerated workers work in state-owned businesses or nonprofit agencies, while other workers who are incarcerated produce goods for private sector businesses, either on-site or through an off-site work release program. In the U.S., the prison labor industry is estimated to be a multi-billion dollar industry with 1.5 million workers who are incarcerated.⁷

Risks and Material Issues

B Lab can best summarize the concerns regarding for-profit companies involvement in the prison industry (and incarceration) as follows:

⁵ [Penal Reform](#), [United Nations Office on Drugs and Crime](#), [Prison Studies](#)

⁶ [Worth Rises](#)

⁷ [Corporate Accountability Lab](#), [National Public Radio](#)

Issues Specific to Prison Operators

Historically managed solely by the state, prisons have served as a foundational component of a country's justice system and have been designed in accordance with a country's overall approach to incarceration - whether it should be focused on reform and rehabilitation, or focused on the act of punishment and deterrence. In either case, the role of housing and managing individuals who have been deprived of their liberty, who are both inherently vulnerable as a result of their incarceration and are also likely coming from marginalized populations and challenging circumstances prior to their time in prison, poses inherent risks of negative impact on those individuals. A prison population reflects the wider national social problems that a country is facing such as intergenerational poverty, systemic racism, and lack of education and other social services.

The management of prison services is a complex task that requires many layers of responsibility including humane living conditions, rehabilitation services, and maintaining safety and security.⁸ The quality of prison conditions exist across a wide spectrum, and will vary substantially by country, prison type, and individual prison. While there are global frameworks and treaties such as the United Nations Standard Minimum Rules for the Treatment of Prisoners ([Nelson Mandela Rules](#)) which promote humane conditions for prisoners, and the Optional Protocol to the Convention against Torture ([OPCAT](#)) to prevent cruel and degrading punishment, they serve more as guidelines, and it is unclear whether enforcement and compliance with these treaties can be globally assured. Thus, assessing the overall quality of a prison is challenging, particularly globally.

First emerging in the 1980s in the United States, private prisons were presented as a solution to the increasing costs that government run public prisons were facing by outsourcing to private companies that could offer cost cutting measures and innovative practices. On the one hand, private prisons generally operate in newer buildings, embrace up to date technology and digitalization, and retain more staff at a senior level as high performing staff within the public system are often transferred to other institutions to implement improvements. On the other hand, the price incentives for private prisons have raised concerns around the transparency and quality of private prisons. In the US, private prisons, unlike public prisons, do not have to publicly disclose their expenditure and are often prevented from public scrutiny due to confidentiality clauses.⁹ This means that they are shielded from publicly reporting on issues relating to practices and costs such as overcrowding, security breaches and expenditures on quality of life services like food, training, and health and rehabilitation services. Critics have warned that privatization puts financial gain above the public interest of safety and rehabilitation, which when mixed with limited transparency can exacerbate the worst elements of the prison system.¹⁰

⁸ <https://papers.tinbergen.nl/17023.pdf>

⁹ https://www.researchgate.net/publication/269576672_The_Privatization_of_Prisons_and_its_Impact_on_Transparency_and_Accountability_in_Relation_to_Maladministration

¹⁰ https://www.researchgate.net/publication/269576672_The_Privatization_of_Prisons_and_its_Impact_on_Transparency_and_Accountability_in_Relation_to_Maladministration

Some studies have also shown that private prisons have disproportionately high levels of violence, including one study in England and Wales.¹¹ This has been attributed to several factors that can often be beyond the control of the company, such as their being more likely to house prisoners that are on remand or recently sentenced and awaiting transfer, which makes these individuals more at risk of violent behavior. Further studies have shown that prison officers in private prisons are often inexperienced, leading to allegations that prisoners in private prisons have more control than the prison officers and this exacerbates the availability of drugs and levels of violence.¹²

As mentioned above, prison quality will vary by country and by individual prison type, and as such there is variance in quality across both private and public prisons. Assessing that quality, however, remains a challenge, as is the broader system in which both inevitably operate in and thus conditions are not always in control of the prison itself. In the case of private prisons, however, there is also the inherent question about the ethics and impacts of having private companies play such a direct role in the incarceration of individuals, the ability to profit from it, and the inherent risks of negative impact that these companies take on when playing such a role.^{13, 14} While such concerns are more prevalent about private prison operators themselves, and the prison industrial complex more broadly, it is also worth acknowledging that there is growing questioning of the broader justice system and the role of prisons in general, with some critics asking whether imprisonment is the best solution for convicted criminals.¹⁵ Such “abolitionist” perspectives argue that the prison system is itself inherently problematic, and exploitative, and is failing to achieve what its ultimate goal should be of rehabilitating individuals and supporting a flourishing society.

There are also existing models of best practice prison systems, particularly the “Nordic model,” where there are currently no privately operated prisons. Norway’s stance is that prisoners should retain the same rights they had as free citizens and that losing one’s freedom is punishment enough. The nation’s focus is on rehabilitating prisoners to become ‘better neighbors.’¹⁶ Prisoners spend the majority of their day out of their cells engaging in work programmes or in house therapies and are encouraged to spend time with family, which is viewed as a key part of the rehabilitation process.¹⁷ Prison officers undergo between three and four years of training, which include studying law, negotiation, English, ethics, and criminology. Aside from providing security, prison officers have a key role in the rehabilitation process and are encouraged to build friendships with the prisoners and participate in activities with them. In addition to the inherent dignity and impact that such an approach creates for inmates, Norway has reduced their recidivism rate from 70% to 20% in twenty years.

¹¹ <https://www.theguardian.com/society/2019/may/13/private-jails-more-violent-than-public-prisons-england-wales-data-analysis>

¹² <https://www.prisonlegalnews.org/news/2018/may/8/major-wage-ratio-gap-between-executives-employees-private-prisons/>

¹³ <https://www.ft.com/content/6184ddb4-57c2-11e9-8b71-f5b0066105fe>

¹⁴ <https://www.theguardian.com/commentisfree/2019/may/13/the-guardian-view-on-private-jails-flaws-in-the-system>

¹⁵ <https://www.aclu.org/blog/smart-justice/fight-against-mass-incarceration-goes-global>

¹⁶ <https://www.bbc.com/news/stories-48885846>

¹⁷ <https://www.economist.com/britain/2019/08/03/what-britains-private-prisons-can-teach-public-ones>

For these reasons it has been acknowledged that the negative issues and risks that are prevalent within a prison system can not be resolved solely by the actions of private companies, nor is it possible to sufficiently assess a company's overall performance within those systems. A broader systemic change is needed to address how prisoners are viewed and treated in society before, during and after incarceration, and make concrete efforts to tackle the issues of intergenerational poverty, inequality, and the availability and quality of social welfare services.

Issues Specific to Supplying Prisons/Detention Centers and Prison Labor

Profiteering. Systematically, critics point to the growing trend of the privatization of the prison industry, as well as specific incentive structures that are designed to benefit, and even promote, mass (or the increase of) incarceration. One example of the latter includes contracts whereby prisons get paid more if there are empty beds, incentivizing governments to send more individuals to prison to save money. More broadly, there are general concerns that companies serving prisons inherently (and unjustly) benefit from the growth in prison populations, making them complicit in the problems of mass (or increasing) incarceration.

Recent movements have called on the private sector to divest from activities that fuel mass incarceration and pursue initiatives that work to reduce the number of people in prisons.¹⁸ In many circumstances, these concerns are broadly applied to any company that operates prisons, sells to prisons, or utilizes prison labor. Arguments for this approach can be rooted in the belief that any ability to profit off, or have a possible profit motive involved in the incarceration of people is inherently unethical, and thus any involvement by business is inherently exploitative, and helps contribute to the prison-industrial complex and mass incarceration (which, again, disproportionately affects people of color and minority groups).

More specifically, the potential for for-profit companies to profit from mass incarceration leads to concerns about the political influence of those companies. Recognizing that they profit when the prison population is larger, they may actively prevent attempts at policy reform to reduce the total prison population (even if that might be in the best interests of millions of citizens and of society), as well as actively promote political candidates and policies that increase the prison population, co-opting the political process for their own benefit.

Alternative arguments, on the other hand, do not consider providing services to prisons or utilizing prison labor as inherently problematic, but instead focus on specific practices that a company could engage in, either negative or positive. This is a perspective that, not surprisingly, is common among businesses who are involved in the space. While they frequently recognize the risks for negative impact, they also believe in the specific potential for positive impacts as well, either in providing products or services that could benefit those who are incarcerated, improve their quality of life while in prison, or provide income and career development opportunities for those who are in prison, regardless of whether the system that places these individuals was just or unjust.

¹⁸ [MarketWatch](#)

Issues Specific to Supplying Prisons/Detention Centers

Operating Costs Shifted to People Who Are Incarcerated. The sale of goods and services in prisons enables prison operators to shift the cost of incarceration to people who are incarcerated and their families, who are often disproportionately from low-income households. Prison commissaries are at the core of the prison retail market and offer products such as food, hygiene products, clothing, and stationary. Instead of addressing deficiencies in criminal justice systems and policies, governments cut budgets for the provision of these basic products, while maintaining incarceration rates, with the assumption that people in prisons and their loved ones will purchase items from commissaries in order to fill in where governments fall short.¹⁹

People who are incarcerated who receive wages from prison labor often spend their wages at commissaries, primarily on basic necessities (e.g., food, toilet paper, toothpaste). Moreover, when they do not have sufficient funds, they rely on family members and loved ones to transfer money to their accounts, and the transfers also incur fees. Those without wages or support from loved ones have to survive on what is otherwise available. This exploitation results in people who are incarcerated and their families, who are often disproportionately from lower income communities, effectively subsidizing the cost of prison systems or serving their time in meager conditions. Companies supplying products/services which are paid for by prisons operators/other entities mitigate the burden of incarceration costs for affected people.

Product Safety and Quality. Inclusive of both private prisons themselves as well as those that supply them, there are also concerns about the product and service quality, safety, and ability/intent to inflict harm, as well as the risk of exploitative pricing. Companies have the opportunity to provide lower quality or higher priced products to a literally 'captive audience' of people who are incarcerated or detained (e.g., concerns about food safety and quality and telecommunication services that are priced significantly higher for prison inmates than the broader market).

In addition, people who are incarcerated may experience customer service that is far different from what would be experienced outside of prison. Examples include the inability to receive a refund or replacement for a missing or inaccurate item and additional nonrefundable taxes and fees imposed by prison facilities. Given the additional risk to product safety, quality and pricing, companies should employ rigorous quality assurance measures to ensure that their consumers in prisons are as satisfied with their products as those in the broader market. Additional effort should be made to safely obtain and take action on feedback from consumers in prisons.

Affordability and Access to Basic Supplies. During meal times, incarcerated people may experience low quantities of food and/or low quality, potentially unsafe food. Furthermore, people that are incarcerated may not be given basic hygiene products nor clean clothes (including undergarments). For products on sale at commissaries, at first glance, some prices may seem

¹⁹ [Prison Policy Initiative](#)

comparable to free-world retailers. However, people in prisons, whose freedom have been taken away as a form of punishment, are normally unable to earn wages comparable to consumers outside of prisons, as people earning a wage in prison typically earn an hourly wage that is drastically below the local minimum wage. In addition, prison operators may add extra taxes or fees to the costs of purchases and transactions. A prison retailer's costs are structurally lower than that of a free-world retailer because they don't have expenses associated with maintaining a traditional retail presence such as leasing storefronts or advertising.

Consumers in prisons have few options when it comes to accessing basic supplies which may threaten their health and wellbeing and ability to "feel human," thus companies supplying prisons have the power to introduce options, or low cost versions of their products, in order to increase the accessibility of basic supplies for people in prisons (while maintaining safety and quality). In addition, given that companies are not able to control whether prison operators add extra taxes and fees to their products, impacting access and affordability, companies can also commit to making efforts focused on improving how people who are incarcerated are viewed and treated across the prison system in order to further mitigate this risk in the long-term.²⁰

Issues Specific to Prison Labor

While some stakeholders have indicated that prison labor is inherently unjust or coerced, others have highlighted the potential benefits of such programs, such as the potential to assist people who are incarcerated to reintegrate into society.²¹ To potentially distinguish exploitative prison labor arrangements, the ILO has guidance for prison labor to ensure that such labor preserves the rights of workers, is in their best interests, and not exploitative. The guidance covers risks and issues, such as coercion, wages, work conditions, health and safety and post-release benefits, and has historically been the basis in which B Corp Certification eligibility has been determined.

Coercion. People in prisons are restricted in their access to work opportunities and how they are allowed to spend their time. In addition, prison operators may coerce people who are incarcerated into working or participating in training programs by threatening their status as "good standing." Good standing means a person who is incarcerated is permitted rights and entitlements such as going to the commissary, going to the recreation area, and/or having visits from family and friends. One stakeholder spoke of being locked outside in a cage for not working.

The ILO guidance requires that companies disclose the details and wages associated with the work opportunities they are offering to people in prison, obtain their consent to participate in those programs, and allow workers to withdraw their consent at any time, subject only to reasonable notice requirements. In addition, given that companies are not able to control whether prison operators coerce people in prisons to work in general or whether people in prisons are punished for withdrawing their consent to work, companies can also commit to making efforts focused on

²⁰ [Prison Policy Initiative](#)

²¹ [World Bank](#)

improving how people who are incarcerated are viewed and treated across the prison system in order to mitigate the risk of coercion to work.²²

Unsafe Working Conditions. Incarcerated workers are typically not protected by labor and employment laws and thus are subject to unsafe working conditions. For example, in the U.S., courts interpret the Fair Labor Standards Act as excluding workers who are incarcerated, depriving them of adequate workplace protection and minimum wages (discussed further below). Although there is limited officially reported data, allegations about incarcerated workers' unsafe workplace conditions are commonplace. For example, an investigative journalist in California [reported](#) hundreds of injuries of incarcerated workers as a result of improper workplace safety regulations.

The ILO guidance requires that work hours and safety and health measures respect the law, which companies can interpret to mean that to mitigate risk for workers in prisons, companies utilizing prison labor should at the least comply with local labor laws regarding health and safety, regardless of whether those laws include people in prisons. In addition, the ILO guidance requires that workers are included in the social security scheme for accident and health coverage.²³

Low or No Pay. Incarcerated workers are frequently paid no or very low wages, which is seen as a form of exploitation. For example, in Rio de Janeiro in Brazil, incarcerated people are subject to an unpaid labor scheme disguised as "volunteer labor." In the U.S., incarcerated workers are not protected by minimum wage laws and are typically paid hourly wages of less than 1 USD.²⁴ The 13th amendment of the constitution prohibits slavery/involuntary servitude, except as punishment for a crime.²⁵ Incarcerated workers' limited ability to earn and save money negatively affects their chances of success after they are released. In addition, little to no income exacerbates the poor conditions and low quality of life for people in prisons, as they are unable to access basic needs or connect with their families while in prison.

The ILO guidance requires that wages for workers in prisons are comparable to those of free workers with similar skills and experience in the relevant industry or occupation, taking into account factors such as productivity levels and any costs the enterprise incurs for prison security supervision of the workers. People who are incarcerated may question the reason behind the costs and fees deducted from their wages given the other sources of funding (such as public taxes) for prison operations. The ILO guidance also requires that wages are paid directly to workers. In some contexts, local laws prohibit direct payment of wages.

Non-Transferable Skills and Post-Release Benefits. Although proponents of prison labor present it as an opportunity for workers who are incarcerated to develop skills, civil society stakeholders note that the available opportunities are often for low-skilled roles with limited skill transferability.

²² [Jacobin](#)

²³ [The Regulatory Review](#)

²⁴ [Prison Policy Initiative, Reuters](#)

²⁵ [U.S. Congress](#)

Furthermore, after workers who are incarcerated are released, the difficulty of finding employment with the stigma of a prison record outweighs any positive impact related to skills development.

The ILO guidance requires that workers in prison obtain benefits such as learning new skills and the opportunity to work cooperatively in a controlled environment enabling them to develop team skills and have the possibility of continuing work of the same type upon release. In addition, companies that utilize prison labor should provide benefits such as savings schemes during incarceration and post-release employment support programs to make sure that workers are set up for success once they are released from prison. Research conducted by B Lab shows that “setting people who are incarcerated up for success after release” is one of the most important things companies can do to use business as a force for good in the prison industry.

Rationale for the Standards Advisory Council Decision

Globally, millions of people are incarcerated in poor conditions largely due to systemic deficiencies in countries’ criminal justice systems and policies, including insufficient measures to prevent crime, excessive use of pre-trial detention, lack of access to legal advice and assistance, and punitive criminal justice policies and inappropriate use of imprisonment.²⁶ Article 10.3 of the [International Covenant on Civil and Political Rights](#) and Rule 4 of the [Nelson Mandela Rules](#) state that penitentiary systems should aim for reformation and social rehabilitation and emphasize the significance of preparing people in prison for their social reintegration in justifying imprisonment.

While these issues are prevalent globally, the dialogue around them, specific concerns and issues within the justice system, and perceptions of corporate involvement in contributing to, benefiting from, and potentially solving those challenges vary by context. This is particularly true in the U.S. and Canada, given the historic and ongoing legacy of racism in the justice system and the extreme mass incarceration that significantly and disproportionately affects people of color in that region.

The negative issues and risks that are prevalent within a prison system can not be resolved solely by the actions of private companies, nor is it possible to sufficiently assess a company’s overall performance as a prison operator within those systems. A broader systemic change is needed to address how prisoners are viewed and treated in society before, during, and after incarceration, and make concrete efforts to tackle the issues of intergenerational poverty, inequality, and the availability and quality of social welfare services. For this reason, prison operators are currently ineligible for B Corp Certification.

While the negative issues and risks that are prevalent within a prison/detention center system can not be resolved solely by the actions of private companies, stakeholder engagement with affected people suggests that companies that serve or support prisons have the potential to improve the quality of life of people who are incarcerated and those previously incarcerated in the near term while also using their resources and influence to contribute to broader systemic change to address how those in prisons are viewed and treated in society before, during and after incarceration.

²⁶ [Penal Reform, United Nations Office on Drugs and Crime, Prison Studies](#)

Although, generally speaking, expert stakeholders expressed that companies should only be involved in the prison industry in very rare circumstances, affected stakeholders made it clear that the quality of life for people currently in prison would diminish if there were no accessible goods or services and no ability to earn an income. Those who have experienced incarceration were less likely to consider any business involvement (or profit) inherently problematic, but rather were more focused on the specific practices of the company. Affected stakeholders were against companies exiting the prison industry and instead requested that companies introduce options which more people could afford, increase quality and responsiveness to feedback, provide job opportunities that are safe and set people up for the future through skills and savings, etc.

Aside from more generic products or services that might be sold to prisons or those who are incarcerated, some products or services may also be specifically designed to improve outcomes for those who are incarcerated. Such initiatives may include the provision of products/services proven to reduce recidivism and improve how people who are incarcerated are viewed and treated before, during and after incarceration.

Affected stakeholders also asked for companies to use their influence when possible for systemic change. This decision requires eligible companies to measure and make those outcomes public and includes best practices for mitigating the risks that are within a company's control. Additional requirements help address broader systemic issues that are not solely in the control of companies.

There is, however, a general acknowledgment that the negative practices are in fact quite commonplace and represent the industry norm. This in fact plays an important role in the arguments for a broader interpretation of the industry as problematic, where condemnations of the industry on the whole frequently cite specific negative practices in addition to broader arguments, including for instance predatory pricing or insufficient wages provided to laborers.

In addition to the perspectives of affected stakeholders, some expert stakeholders and racial justice advocates, particularly in the U.S. and Canada, indicated that companies with any involvement with prisons should be prohibited from achieving B Corp Certification. Given the lack of consensus among stakeholders and the unique legacy and dialogue on such topics in the U.S. and Canada specifically, it has been determined that an indefinite moratorium on certifying companies serving prisons or utilizing prison labor should be maintained.

While the decision does not imply that supplying prisons or utilizing prison labor is inherently wrong, it has been designed to create a high bar of practices (and proof) for any company involved in the space outside of the U.S. and Canada to be able to demonstrate they are in fact having a positive impact and therefore deserving of B Corp Certification, while also managing the particular and unique complexities and lack of consensus on such topics in the U.S. and Canada.

The decision of the Standards Advisory Council has been informed by independent research conducted by B Lab and stakeholder consultations including academic experts.

This statement is effective as of September 2022 until further judgment from the Standards Advisory Council.

Please send your feedback or questions to B Lab's Standards Management team at standardsmanagement@bcorporation.net.