



**B Lab Controversial Issues Statement -
Companies Working In The Prison Industry
June 2019 Update**

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 [Complaints 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, 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 Director of Standards Dan Osusky at dosusky@bcorporation.net.

Companies Working In The Prison Industry And B Corp Certification

Particularly in the United States, the growth in recent decades 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 interest in B Corporation Certification from companies involved in the prison industry, B Lab, its independent [Standards Advisory Council](#), and Board of Directors have rendered the following decisions regarding eligibility for B Corp Certification:

In the United States (*updated as of June 2019*):

All companies in the United States who serve, support, or operate prisons, as well as those who utilize prison labor, are placed under a certification moratorium until the conclusion of an expert stakeholder engagement process to determine whether they may be eligible for the certification and, if so, what management practices must be in place.

For all companies operating outside of the United States:

For Companies who serve or support prisons: Companies whose business model indirectly serves or supports prisons or detention centers (e.g. providing food, clothing, or equipment for prison operators or incarcerated individuals) may be eligible for B Corp Certification after additional review by B Lab's Standards Advisory Council (described below) and, at minimum, incremental disclosure on their B Corp public profile that outlines the specific ways in which the company responds to and mitigates the material concerns related to the industry outlined below, particularly as they may contribute to or mitigate mass incarceration.

If the company is not sufficiently mitigating these concerns as determined by the Standards Advisory Council, then the company will be ineligible for Certification.

For Companies who manage / operate prisons: Companies that are directly engaged in the operation of prisons or detention centers, as in the case of privately operated prisons, have not been deemed eligible for B Corp Certification at this time. They would require additional review by the Standards Advisory Council prior to being deemed eligible for Certification.

For Companies who utilize prison labor: Companies utilizing prison labor are required to comply with [guidance provided by the International Labor Organization](#) in order to ensure that such labor preserves the rights of workers, is in their best interests, and not

exploitative. They are also required to disclose the use of prison labor on their B Corp public profile.¹ ILO Guidance includes requirements that:

- 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 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.
 - Wages are paid directly to workers. Workers receive clear and detailed wage slips showing hours worked, wages earned and any deductions authorized by law for food and lodging.
 - The daily working hours are in accordance with the law.
 - Safety and health measures respect the law.
 - 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.
- Workers may withdraw their consent at any time, subject only to reasonable notice requirements.

Recognizing the severity of mass incarceration in the United States and its links to systemic racism, the moratorium on certification has been placed specifically on companies in the United States while B Lab's overall position on the prison industry is re-evaluated. For all other companies, B Lab's previous position statement on the industry applies.

Prison Industry Issues:

Mass incarceration, particularly in the United States, is a significant social issue in the United States. The U.S. has a higher incarceration rate than all other countries, with over 2.2 million people currently occupying prisons and jails. This number represents a 500% increase over the last forty years, which is mostly explained by changes in sentencing law and policy rather than by changes in crime rates themselves. Furthermore, while people of color represent only 37%

¹This document and its following contents are particularly focused on the issues related to serving or operating prisons and detention centers themselves rather than the use of prison labor, a more common practice than one might expect. While interconnected, the use of prison labor occurs across industries and is therefore evaluated as a labor practice (and a matter of labor rights), rather than involvement in an industry itself.

of the U.S. population, they represent 67% of prisoners, with black men having a more than five times greater incarceration rate than white men.²

In keeping with the disclosure review process described above, B Lab has conducted research into the issues and impacts of the prison industry in order to inform the decision of the Standards Advisory Council. With the overarching issue of mass incarceration as a backdrop, B Lab can best summarize the concerns regarding for profit companies involvement in the prison industry (and mass incarceration) as follows:

Privatization and 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 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 incarceration.

Lobbying Efforts / Conflicts of Interest. More specifically, the potential of 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.

Product Safety, Quality and Pricing. Inclusive of both private prisons themselves as well as those who 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).

Standards Advisory Council Review and Disclosure:

All companies involved in the prison industry in the United States are required to wait until the moratorium is lifted to pursue B Corp Certification. All companies outside of the United States involved in the prison industry pursuing B Corp Certification will be required to submit information on how they are addressing these concerns, including their lobbying practices and any industry affiliations, and will also be subject to a background check.

² Source: <http://www.sentencingproject.org/criminal-justice-facts/>

This information will then be reviewed by the Standards Advisory Council to determine if the company is sufficiently mitigating the concerns highlighted above and proactively addressing challenges in the industry. This will include, at least, a judgment on the following issues:

1. Does the company have a public stance against mass incarceration and other material issues related to the prison industry?
2. Does the company pro-actively seek ways to reduce its reliance on incarceration by finding additional business opportunities or innovations?
3. To what extent does the company address the concerns of mass incarceration and the prison industry in other aspects of its operations, including its charitable efforts, hiring practices, customer screenings, etc?
4. Does the company engage in any political advocacy or lobbying that may support mass incarceration or prevent reform attempts to reduce mass incarceration?
5. Are there safety and or quality concerns about a company's products or services, or are they designed to inflict harm, or potentially used to inflict harm on prisoners or other individuals?
6. Does the company's products, pricing, contracts, or other sales methods create conflicts of interest with regard to mass incarceration or unfairly exploit or harm individuals who are currently incarcerated?

Companies that have not sufficiently managed these issues in the opinion of the Standards Advisory Council will not be eligible for B Corp Certification. Those companies that are, in the judgment of the Standards Advisory Council, actively mitigating the concerns of the industry and addressing issues like mass incarceration, will be eligible for B Corp Certification and will be required to disclose their specific industry-relevant management practices on their B Corp profile page.

This disclosure is intended to recognize that reasonable people may disagree with the position outlined by the Standards Advisory Council and should have the relevant information to make their own judgment regarding the company's social and environmental performance.

This statement is effective as of June 2019 until the results of the expert stakeholder engagement process and a final judgment from the Standards Advisory Council and Board of Directors. These results are expected to be finalized prior to June of 2020. Following the re-evaluation of the position mentioned above, certification requirements for companies outside of the United States may be adjusted as well.

In preparation for future revisits by the Standards Advisory Council on this issue and B Lab's continuous improvement of its standards, please send your feedback or questions to B Lab's Director of Standards Dan Osusky at dosusky@bcorporation.net.