



B Lab Controversial Issues Statement - Companies Working In The Prison Industry April 2021 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 Standards Management at standardsmanagement@bcorporation.net.

Companies Working In The Prison Industry 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 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:

For Companies who manage / operate prisons (updated as of April 2021):

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 who serve or support prisons, including those who utilize prison labor, in the United States (updated as of June 2019):

Companies 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 companies who serve or support prisons 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 utilize prison labor outside of the United States:

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.

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.

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, but may be revised based on the stakeholder engagement process shared above.

Prison Industry Issues:

Mass incarceration, particularly in the United States, is a significant social issue. 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% 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.

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 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.

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).

Specific Issues and Context Related to Prison Operations

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.² 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.³ 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

² <https://papers.tinbergen.nl/17023.pdf>

³ https://www.researchgate.net/publication/269576672_The_Privatization_of_Prisons_and_its_Impact_on_Transparency_and_Accountability_in_Relation_to_Maladministration

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.⁴

Some studies have also shown that private prisons have disproportionately high levels of violence, including one study in England and Wales.⁵ 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.⁶

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.^{7, 8} 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.⁹ 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.”¹⁰ Prisoners spend the majority of their day out of their cells engaging in work

⁴https://www.researchgate.net/publication/269576672_The_Privatization_of_Prisons_and_its_Impact_on_Transparency_and_Accountability_in_Relation_to_Maladministration

⁵<https://www.theguardian.com/society/2019/may/13/private-jails-more-violent-than-public-prisons-england-wales-data-analysis>

⁶<https://www.prisonlegalnews.org/news/2018/may/8/major-wage-ratio-gap-between-executives-employees-private-prisons/>

⁷ <https://www.ft.com/content/6184ddb4-57c2-11e9-8b71-f5b0066105fe>

⁸<https://www.theguardian.com/commentisfree/2019/may/13/the-guardian-view-on-private-jails-flaws-in-the-system>

⁹ <https://www.aclu.org/blog/smart-justice/fight-against-mass-incarceration-goes-global>

¹⁰ <https://www.bbc.com/news/stories-48885846>

programmes or in house therapies and are encouraged to spend time with family, which is viewed as a key part of the rehabilitation process.¹¹ 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.

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.

Standards Advisory Council Review and Disclosure:

For companies who may be eligible for B Corp Certification based on the framework shared above (companies outside of the United States who may serve, support, or utilize prison labor), will be required to submit information on how they are addressing the concerns highlighted above, including their lobbying practices and any industry affiliations, and will also be subject to a background check.

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?

¹¹ <https://www.economist.com/britain/2019/08/03/what-britains-private-prisons-can-teach-public-ones>



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 April 2021 until the results of the expert stakeholder engagement process and a final judgment from the Standards Advisory Council and Board of Directors on companies who serve or support prisons, including those who utilize prison labor. These results are expected to be finalized in 2021. 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 revisions 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 Standards Management at standardsmanagement@bcorporation.net.