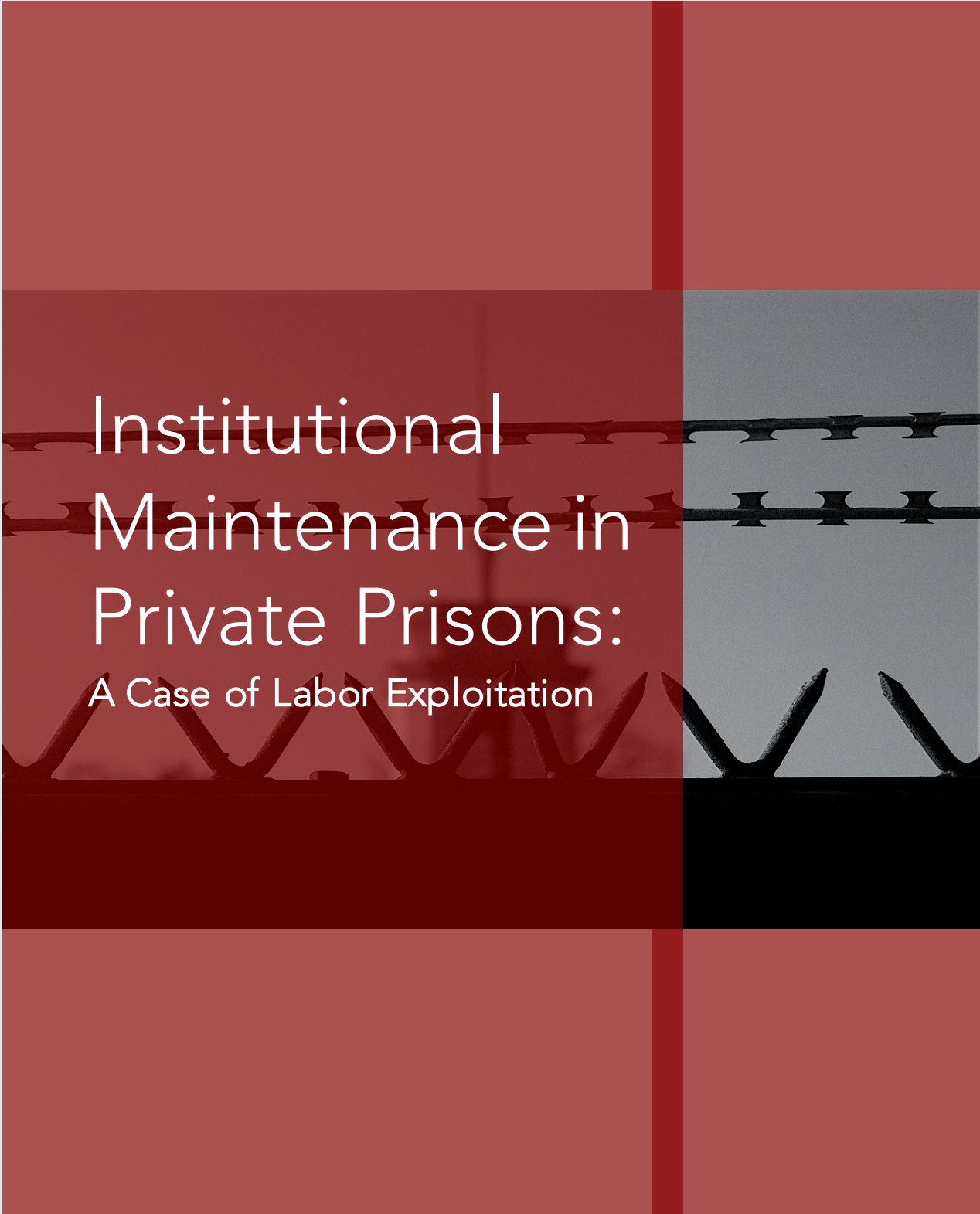




Institutional Maintenance in Private Prisons: A Case of Labor Exploitation

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Abstract

Within the debate of penal labor, one commonly ignored aspect is the use of labor in contract facilities, also known as private prisons. Private prisons account for eleven percent of federal inmates. Given the corporate nature of private prisons, questions arise regarding whether penal labor in private facilities is exploitative. This study examines the use of penal labor for institutional maintenance by federally contracted private facilities. Findings indicate that penal labor in contracted facilities operates in a similar fashion to labor in public prisons. The author argues that the nature of privatization and profit-driven incarceration in private facilities renders all forms of labor paid less than US minimum wage to be exploitative, thus classifying penal labor for institutional maintenance in contract facilities as labor exploitation. Findings also indicate that forced labor may be occurring as a result of penal labor policies in private facilities. Recommendations for the Bureau of Prisons, state departments of corrections, anti-trafficking practitioners, private companies and investors, and students are listed.

Introduction

The prison system in the United States is a complex web of public and privately contracted facilities, operating on federal and state levels. With the highest incarceration rate in the world, the efficacy of the US prison system is highly contested (Cabral and Saussier, 2012). One aspect that has been under particular scrutiny by scholars, activists, and journalists in recent years is the use of penal labor by prisons. Inmates are required, given they have the physical and mental capability, to work a minimum of seven hours a day. These “work programs”, most of which take form as institutional maintenance (work such as food service, groundskeeping, and housekeeping that contributes to the day-to-day operation of the institution), have ostensibly been established to reduce inmate idleness while allowing inmates to develop useful skills and work habits (US DOJ FBOP PS 5251.06, 2008). While seemingly beneficial to inmates, opponents of these work programs argue that they actually further marginalize and exploit inmates, given that the majority of prisoners are paid under \$2 a day.

While the debate is heated and complex, one commonly ignored aspect is the use of penal labor by private prisons. For-profit private prisons account for 6% of state prisons and 16% of federal prisons, housing approximately 8.4% of the prison population in the United States (ACLU, 2017). Unlike the public prison system, private prisons operate as a for-profit business and increase profits by cutting the cost of prisoner accommodation (Mason, 2012).

The corporate nature of the private prison system begs the question: what are the policies surrounding penal labor in private prisons and to what extent can this labor be defined as exploitative? This article examines the Federal Bureau of Prisons’ policies regarding the use of penal labor in federally contracted facilities for institutional maintenance and the exploitative nature of these policies. Hypothesis is that if private prisons pay inmates below minimum wage for institutional maintenance, given their profit-driven nature, they are effectively exploiting inmates.

Penal Labor and the US Prison System

The prison system in the US is a conglomeration of 102 federal and 1,719 state facilities, holding over 1.5 million inmates (Wagner and Rabuy, 2016). Despite having 5 percent of the world's population, the United States holds 25 percent of the world's prisoners (Eisen and Chettiar, 2015) and has the highest incarceration rate in the world, with 754 inmates per 100,000 individuals (Cabral and Saussier, 2012). According to a Center for Economic Policy and Research study, non-violent offenders make up nearly 60 percent of the prison and jail populations and, while the total number of violent crimes rose only 3 percent between 1980 and 2008, the prison and jail population increased by over 350 percent (Schmitt et al., 2010).

Across the country, inmates make up a sizeable workforce: over 870,000 individuals (Schwartzapfel, 2014). While the use of penal labor for institutional maintenance has always been a part of the fabric of the prison system in the US (UNICOR, 2017), Douglas Blackmon, author of *Slavery by Another Name*, traces the use of penal labor for corporate benefit back to convict-leasing during the Reconstruction era. Prison inmates, predominantly black individuals, were arrested and convicted of fabricated crimes such as "vagrancy,"¹ and sold to private companies to perform hard labor in return for the company paying off inmates' fines and fees (Blackmon, 2008). While convict-leasing was eventually outlawed and corporations were no longer allowed to use prison labor, reforms during the 1980's created programs to engage corporations with inmates (Hale, 2012).

There are several forms of penal labor utilized by federal prisons, all under the umbrella of "work programs" for inmates. The most popular is institutional maintenance.²

¹ According to Blackmon (2008), vagrancy was defined as an "offence of a person not being able to prove at a given moment that he or she is employed," (p.1) This and other inconsequential charges and violations of laws specifically written to intimidate black individuals – such as changing employers or engaging in sexual activity with white women – were reasons for arresting waves of people. The timing and surges of arrests corresponded to "rises and dips in the need for cheap labor," (p.7).

² Other "work programs" include the Federal Prison Industries (FPI, commonly known as UNICOR) and, beginning in 2013, the Prison Industry Enhancement Certification Program (PIECP). UNICOR describes itself as "a wholly-owned, self-sustaining Government corporation that sells market-priced services and quality goods made by inmates," (FBOP UNICOR, 2017). Inmates work in numerous sectors, including fabric/material products and services, electronics, metals, office supplies, vehicles, and wire, plastic, and wood work. Goods and services are sold back to the government, primarily to the Department of Defense, making the program a self-sustaining corporation. UNICOR utilized over 12,200 inmates in FY 2015, paying between \$0.23-\$1.15 per hour (FBOP Work Programs, 2017; Samuels and Mitchell, 2015). Although previously reserved for state and local facilities, UNICOR is now authorized to participate in the PIECP and currently (end of FY 2015) runs two programs at facilities in North and South Carolina (Samuels and Mitchell, 2015). The PIECP allows facilities to partner with private corporations (Herraiz, 2004). Inmates are paid a "prevailing wage" by corporations (UNICOR PIECP, 2017), and prisons deduct from these wages to pay for victim programs, room and board, and family support (Herraiz, 2004). Both of these work programs combined provide employment to a small percentage of inmates in prisons.

Approximately 700,000 prison inmates are utilized by facilities to work a wide array of jobs, such as food service, groundskeeping (e.g. mowing lawns), housekeeping (e.g. laundering uniforms and bed linens, mopping floors), warehouse, and administrative services (Schwartzapfel, 2014; FBOP Work Programs, 2017). According to the Bureau of Prisons, inmates make between \$0.12-\$0.40 per hour for these positions (Ibid., 2017).

The use of penal labor in prisons is highly contested. On the one hand proponents argue that penal labor is essential and beneficial for inmates, prisons, and society. According to the Bureau of Prisons, work programs reduce inmate idleness and provide individuals with job skills, improved work habits, and higher marketability (PS 5251.06, 2008). Numerous studies indicate that work programs reduce recidivism (Davis et al., 2013). Indeed, individuals who worked in UNICOR were 24 percent less likely to recidivate and 14 percent more likely to find post-release employment according to a study conducted by the FBOP (FBOP Then and Now, 2017). Additionally, working provides prisoners a safe place to be and provides them with some savings (Schwartzapfel, 2014). And despite cheap wages, prisoners line up to work. UNICOR alone has a waiting list of over 25,000 individuals (FBOP UNICOR, 2017). For prisons, work programs reduce crime and fighting within facilities, as it keeps prisoners preoccupied. And for both prisons and society, work programs decrease the amount spent on day-to-day operations within prison facilities and in turn save taxpayer dollars (Mason, 2012).

On the other hand, opponents argue that penal labor is exploitative. Prisoners work long hours for very little pay. They are often not given the right to refuse to work, and may be subject to punitive recourse, including solitary confinement, for refusing to work (Benns, 2015). Inmates are not legally considered “employees,” so they do not receive social security withholdings, sick time, overtime pay, or disability or worker’s compensation in situations where they are injured on the job (Schwartzapfel, 2014). Work conditions can be hazardous and prisoners have no way to report them besides the Occupational Safety and Health Administration (OSHA), which must warn prison facilities that it will be conducting a site visit or audit. Economists also argue that penal labor can skew the labor market by taking away jobs that would otherwise be worked by individuals for a minimum wage (Schwartzapfel, 2014). Sugie (2012) further argues that using penal labor actually increases taxpayer costs, given that families of prisoners are often forced to turn to social safety-net programs to compensate for missing income. The study finds that families with an incarcerated parent are twice as likely to use food stamps and 50 percent more likely to use Medicaid (Sugie, 2012). Additionally, numerous studies reject findings that penal labor reduces recidivism, finding no significant effect when controlling for other factors (Duwe, 2015; Richmond, 2014).

While the debate is inconclusive, one ignored aspect is the use of penal labor by contract facilities, also known as private prisons. On the federal level, contract facilities are currently (as of August 2017) responsible for 11 percent of inmates, or 19,225 individuals (FBOP Statistics, 2017). Due to overcrowding and increasing incarceration rates, the FBOP began contracting with private prisons in 1997. Today, the FBOP has contracts with eleven

privately operated facilities across the country, run by three corporations: CoreCivic (formerly the Corrections Corporation of America – CCA), Geo Group Inc., and Management and Training Corporation (FBOP Contract Facilities, 2017). The FBOP's annual expenditures on contract prisons totaled to \$639 million in FY 2014 (USDOJ, OIG, 2016).

In efforts to make a profit, private prisons are incentivized to increase demand for their services by increasing the number of inmates within the prison system, their sentences, and the types of inmates they receive (Justice Policy Institute, 2011). In their most basic form, private prisons receive a stipend from the FBOP to run a facility and make a profit by cutting the cost of prisoner accommodation, allowing them to increase their bottom line (Mason, 2012). However, studies find that private prisons leverage additional tactics to increase their gains. For example, since 1989, CoreCivic and the GEO Group spent over \$25 million in lobbying efforts for stricter sentences and higher incarceration rates and funneled over \$10 million to candidates (Cohen, 2015; Justice Policy Institute, 2011).³ Mukherjee (2016) examined practices at private prisons in Mississippi and found that contract facilities give out twice the infractions in comparison to state or federal-run facilities, leading to sentences 2-3 months longer.

These tactics also manifest as contractual provisions between the FBOP and private prison corporations, allowing them to make additional profits. One study finds that 65 percent of contracts require a minimum quota of inmates with an “occupancy guarantee” between 80 and 100 percent (In the Public Interest, 2013). Thus, even if prisons do not detain enough prisoners to meet the quota, they will still receive a guaranteed amount of money from the government based on the quota. Additionally, private prisons include health-related exemptions in their contracts to restrict the types of individuals who are transferred to their facilities. An open letter to CoreCivic published by the American Civil Liberties Union in 2014 cites 14 health-related exclusion criteria in CoreCivic contracts, including HIV-positive inmates, elderly or disabled prisoners, or any individual with “significant mental health or serious or significant physical problems,” (Petrella, 2014). This allows private facilities to effectively “cherry pick” the youngest, healthiest—and cheapest—prisoners, and therefore cut costs. Through lobbying and campaign funding efforts, giving out harsher infractions within prison facilities, and manipulating contracts, private prisons maintain demand for their services and increase their profit margins.

Private prisons argue that they “save taxpayers an average of five to 15 percent of costs [on prisons],” (CoreCivic, 2017). Indeed, one study,⁴ which was funded by three corrections

³ According to the Center for Responsive Politics (2017), in 2016 alone, CoreCivic lobbied eight bills in the House and Senate, including the Justice is Not for Sale Act of 2015 (H.R.3543; S.2054), Private Prison Information Act of 2015 (H.R.2470), Ending Tax Breaks for Private Prisons Act (S.3247), Department of Homeland Security Appropriations Act, 2017 (S.3001; H.R.5634) and the Commerce, Justice, Science, and Related Agencies Appropriations Act, 2017 (H.R.5393; S.2837).

⁴ This study has largely been discredited and is used here as a reference to arguments made by corrections corporations that their services are better quality while cutting taxpayer costs.

corporations, finds that contracted facilities significantly cut costs at equal or better levels of quality (Hakim and Blackstone, 2014).⁴ However, numerous studies yield the opposite result, indicating that private prisons cost just as much as public facilities and provide lesser quality services, especially on measures of activity such as work, treatment, and education (Makarios and Maahs, 2012; Lundahl et al., 2009; Pratt and Maahs, 1999).

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While many aspects of contract facilities have been examined by scholars, activists, and reporters, no study to date has examined the use of penal labor by these facilities, specifically, the use of prison labor for institutional maintenance. The use of penal labor for institutional maintenance—jobs that would otherwise be paid minimum wage in another corporation—raises questions regarding the exploitative nature of contracted facilities. Given the contradictions in policy decisions, understanding whether or not private prisons are exploitative is essential to creating cogent policy approaches to incarceration.

Methodology and Findings

Through a series of open records requests, the researcher obtained information regarding the specific pay grade used to pay inmates in private facilities, types of jobs worked by inmates in these facilities, and the prevailing wage that inmates would otherwise be paid for the jobs they work. The information was made available by the FBOP Public Affairs Office, FBOP Library, and US Department of Labor Bureau of Labor Statistics. Contacts at the three offices sent the following documents in response to the inquiries:

- FBOP Program Statement (PS) 5251.06: Inmate Work and Performance Pay
- Operations Memorandum (OM) 128-90: Inmate Performance Pay Hourly Rate
- Occupational Employment Statistics: May 2015 National Industry-specific Occupational Employment and Wage Estimates

For the purposes of this study, labor exploitation is defined as the extraction of surplus value (Marx, 1974; Lynch, 1988), in plainer terms, not paying for what labor is worth (Smith and Hattery, 2008). In the U.S., minimum wage marks the nominal worth of labor in the country. Any payment below \$7.25 per hour is therefore considered labor exploitation. Additionally, forced labor is defined as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily,” (ILO, 1930).

Using Penal Labor for Institutional Maintenance in Private Facilities

In contacting the FBOP Public Affairs Office and FBOP library with the inquiry of “data on institutional maintenance jobs in private prisons,” correspondents sent PS 5251.06 and OM 128-90, both of which outline guidelines and policies regarding payment for inmates in all FBOP facilities, including contracted ones. Thus, institutional maintenance policies and guidelines in private facilities are no different than those in federal, or public, prisons. These findings outline three forms of payment that inmates may receive depending on the circumstances of their facility and the nature of the work they are doing. In addition, the findings outline the types of jobs worked by prisoners, including the estimated prevailing wage of those occupations.

Performance Pay for Institutional Maintenance Jobs

According to Program Statement (PS) 5251.06, "Each physically and mentally able inmate will be assigned to a work program and perform a work activity that contributes to the orderly operation of the institution," (PS 5251.06 §545.20, 2008). Operations Memorandum (OM) 128-90, which went into effect on October 1, 1990, lists the pay grade for inmates (see Table 1). Known as "performance pay," inmates are paid between \$0.12-\$0.40 per hour for various occupations. The pay grade assigned to each occupation is decided by the "Institution Inmate Work and Performance Pay Committee," established by the Warden at each facility. PS 5251.06 indicates that due to "budget constraints," only a certain percentage of inmates are allowed to be assigned to a specific pay grade level.

Table 1: Inmate Performance Pay Hourly Rate and Percent of Work Assignments per Grade Wage

GRADE LEVEL	HOURLY WAGE (\$)	PERCENT (%) OF THE INSTITUTION'S ALLOTTED INMATE WORK ASSIGNMENTS
1	0.40	5
2	0.29	15
3	0.17	25
4	0.12	55

Maintenance Pay

Maintenance pay is primarily used to compensate inmates performing satisfactory work but who, due to crowded conditions, are assigned to jobs with an excessive number of inmates already working. Maintenance pay is a flat monthly rate, paid to individuals who work full-time for more than two weeks. According to OM 128-90, maintenance pay is \$5.25 per month. PS 5251.06 also mandates that inmates who are found to have committed a level 100 or 200 series drug- or alcohol-related prohibited act while in prison will be paid maintenance pay instead of performance pay.

Bonus Pay and Special Awards

Inmates may be recommended by their supervisor to receive bonus pay given their "exceptional accomplishments" in contributing to work assignments. Inmates working more than seven hours, for example, can qualify for bonus pay. In addition, PS 5251.06

outlines a number of actions that qualify inmates for a special award. These include:

- "An act of heroism;
- Voluntary acceptance and satisfactory performance of an unusually hazardous assignment;
- An act which protects the lives of employees or inmates, or the property of the United States (This does not apply to informants);
- Suggestions which result in substantial improvements or cost-savings in institutional programs or operations; and
- Other exceptionally meritorious or outstanding services consistent with the general character of the preceding cases."

Special awards are not to exceed \$150.

Types of Jobs Worked to Maintain Institutions

Institutional Maintenance jobs are defined as "a work assignment which contributes to the day-to-day operation of the institution." Table 2 lists various occupations that are commonly worked by inmates in prison facilities. Additionally, Table 2 lists the mean hourly wage and annual mean wage for each occupation, compiled by the US Department of Labor Bureau of Labor Statistics.

Table 2: Institutional Maintenance Occupations

OCCUPATION	MEAN HOURLY WAGE	ANNUAL MEAN WAGE
Carpentry	\$22.55 (Carpenters)	\$46,910
	\$14.06 (Help-Carpenters)	\$29,240
Plumbing	\$26.11 (Plumber)	\$54,300
	\$14.33 (Helpers-Plumbers)	\$29,810
Grounds Maintenance Workers (Groundskeeping)	\$15.76	\$32,780
Housekeeping	\$16.40	\$34,110
Laundering (uniforms and bed linens) (Laundry Workers)	\$10.98	\$22,850
Mopping Floors/Janitorial Duties	\$11.94	\$22,850
Food Services (Food Servers, non-restaurant)	\$11.22	\$23,330
Administrative Services (such as filing)	\$12.71 (file clerk)	\$26,450 (file clerk)
Dishwashing	\$9.75	\$20,280

Required Working Conditions

Inmates are required to work a minimum of seven hours a day. While on the job, inmates are not allowed to leave without permission. In addition, PS 5251.06 states, "An inmate, regardless of assignment, is expected to perform all assigned tasks diligently and conscientiously. Disciplinary action may be taken against an inmate who refuses to work." Although inmates may refuse to work a specific assignment, they may be punished for it.

Labor Exploitation and Forced Labor

Despite the fact that corrections corporations manipulate their contracts and consolidate political power to increase the number of individuals in prisons and keep them there longer, it is evident that they are also able to increase their bottom line through paying inmates low wages. Given that contract facilities are only required to pay inmates the same amount as public facilities for institutional maintenance, and given that the pay grade (both performance and maintenance pay) for inmates is below the federal minimum wage, contract facilities are effectively exploiting individuals for labor. In any other corporation, institutional maintenance would be required by law to be compensated a minimum wage of \$7.25 per hour. Although labor standards do not apply to federal inmates, through paying low wages, contract facilities increase their bottom line and generate profit. In that institutional maintenance is required by corrections corporations to operate and maintain their private, for-profit facilities, the FBOP should require that inmates be paid at least minimum wage, and preferably prevailing wage, for their work.

In addition, it is evident that the required working conditions outlined in PS 5251.06 violate international labor standards. The fact that individuals may face disciplinary action if they refuse to work a job indicates that forced labor is imminent. Journalist accounts have documented this in local facilities, indicating that inmates face considerable repercussions for rejecting a job assignment, including jobs that may be dangerous to them (Benns, 2015; Young, 2010). Whether or not this is occurring in contract facilities is unclear, but the fact that it is possible and is occurring in other facilities is alarming.

The FBOP defines itself as an agency designed to “protect public safety by ensuring that federal offenders serve their sentences of imprisonment in facilities that are safe, humane, cost-efficient, and appropriately secure, and provide reentry programming to ensure their successful return to the community,” (FBOP About Our Agency, 2017). By allowing labor exploitation and possible forced labor in contract facilities to go unchecked, the FBOP falls short of providing safe and humane facilities, effectively undermining public safety and victimizing inmates. CoreCivic, Geo Group Inc., and Management and Training Corporation must be held accountable for exploiting inmates to increase their bottom line and make millions of dollars in profit.

Recommendations

The Federal Bureau of Prisons and other stakeholders must take bold steps to eradicate labor exploitation and prevent forced labor in contract facilities. Below are a series of recommendations for the FBOP, State departments of corrections, anti-trafficking practitioners, students, and businesses and private investors.

Federal Bureau of Prisons

- The FBOP must mandate that private corrections corporations pay inmates minimum wage for the various occupations worked to maintain the institution.
- The FBOP should adjust the pay grades to reflect current income inflation (wages have not been changed since October 1990). The FBOP should also adjust maintenance pay to reflect these changes.
- The FBOP should revise required working conditions to eliminate the possibility of forced labor in private facilities. This revision should apply to public facilities as well.

State Departments of Corrections

- States contracting corporations for corrections must mandate that they pay inmates minimum wage for institutional maintenance.
- States should consider eliminating contracts with corrections corporations, as data, both from independent studies and the FBOP, overwhelmingly indicate that privatizing corrections decreases the quality of services for inmates and does not decrease cost.

Anti-trafficking Practitioners

- Practitioners should demand action by the FBOP and state departments of corrections to increase inmate salaries for institutional maintenance jobs to a prevailing wage.
- Practitioners need to advocate ending the use of contracted facilities.
- The US State Department Trafficking in Persons (TIP) Report needs to include inmate labor in private prisons, both in the US and around the world, when determining country rankings in future years.
- Practitioners should conduct additional research to examine the use of penal labor by private prisons for institutional maintenance in various states across the country.
- Practitioners must consider policy reforms regarding state contracted facilities when advocating for laws protecting exploited, forced or trafficked laborers.

Students

- Students should conduct research on the prison industrial complex and the private prison industry to learn about the issue and share it with their peers.
- Students need to demand that their colleges and universities divest from the prison industrial complex and private prison industry.
- Students who are part of anti-trafficking organizations must integrate advocacy and event-planning around prison reform and ethical labor practices in private (and public) facilities.

Private Companies and Investors

- Companies that may be concerned about the ethical or public relations implications of having prison labor in their supply chains (i.e. via goods that are manufactured in prisons or by contractors using prison labor) should find alternatives to prison labor, or at least ensure that their suppliers comply with minimum standards in terms of wages and working conditions for prison labor.
- Investors need to divest from the private prison industry and other industries that fuel the prison industrial complex.

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