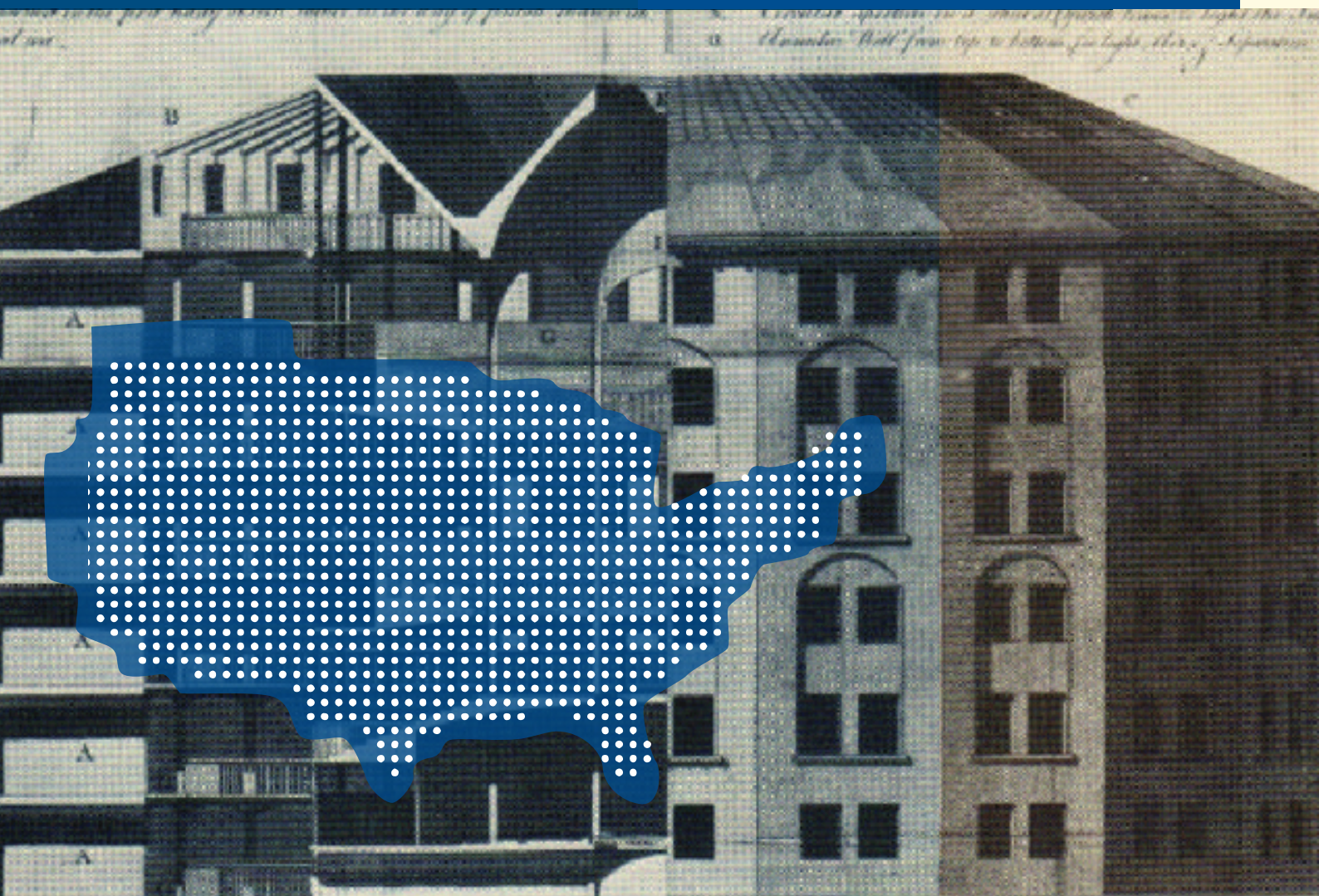


# WORKING PRISONERS IN THE USA: LAWS, POLICIES, AND PRACTICAL REALITIES

## BRIEFING PAPER

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September 2024



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## Executive summary

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This briefing examines the law, policy, and practice of prison work in the United States, with a particular focus on three states: Arizona, California and Texas. Its purpose is to provide policymakers, businesses and civil society groups with a comprehensive understanding of how work and employment training opportunities for prisoners are currently constituted in those states, what their aims are, and where there are currently gaps in knowledge.

The analysis comes at a time of heightened scrutiny of prison work practices in the US, driven by concerns over racial inequalities in the justice system and debates about the ethics of compulsory, low-paid (or unpaid) work in prisons. By offering a detailed look at both national trends and state-specific approaches, the briefing aims to inform evidence-based policy decisions and stimulate discussion on potential reforms.

To ensure consistency across the different jurisdictions covered by this project,<sup>1</sup> we define 'prison work' and 'prison labour' specifically. 'Prison work' is used to mean structured activities, done by sentenced prisoners within or outside prison facilities, in which participation is secured using penalties or incentives including remuneration. 'Prison labour' is used for a subset of these activities, which seek to realise economic value from prisoners' labour by producing goods or services for use beyond the facility. The latter might involve outside organisations providing work or training; the former generally does not.

Section 1 outlines recent trends in US prison populations. While the national prison population has declined since peaking in 2009, there are significant variations between states. Arizona peaked later and has declined less than California or Texas, reflecting differences between sentencing frameworks in the three states, as well as their recent histories of criminal justice reform. The section also explores how different levels of custodial security affect prisoners' access to work opportunities, with those in higher security generally having more limited options. This context is crucial for understanding the landscape in which prisoners work and the constraints shaping work programmes.

Section 2 provides an overview of the legal framework governing prison work in the US. It notes that the US Constitution permits compulsory labour as punishment, setting the tone for most state-level approaches. The section delves into relevant international law, highlighting that while the US has ratified some conventions against forced labour, it has not fully implemented the protections for prisoners stipulated by international normative frameworks. It also notes that federal employment protections generally do not apply to prisoners, leaving regulation largely to individual states. Relevant case law is outlined, highlighting courts' general reluctance to extend employment rights to prisoners, even (in some cases) when they work for private companies. State laws in Arizona, California, and Texas are examined, revealing that work is mandatory for most prisoners, wages are very low or non-existent, and legal protections against unfair, unsafe, or exploitative working conditions are limited. This legal landscape underlines the largely unprotected status of prison work, and the challenges encountered by efforts to reform it.

Recent policy developments are explored in Section 3, which seeks to link the three states' use of prison work to their penal cultures and to the recent prison population developments described in Section 1. It notes that a strong post-pandemic economy has created more favourable economic

conditions for released prisoners seeking employment, but also that there are persistent barriers to successful reintegration, including licence restrictions and employer hesitancy.

The section then details policy shifts in each focus state. Arizona has sought to generate revenues from prison labour through partnerships with private businesses, attracting some criticism. California's decarceration policies have altered its prison population demographics, leading to changes in work programme availability. Texas has implemented 'justice reinvestment' reforms aimed at reducing recidivism, which have had modest impacts on the state prison population without achieving the degree of decarceration evident in some other states, including California.

Section 4 examines the realities of prison work across the US and in the three focus states. It notes that most prisoners perform tasks to support prison operations. It highlights academic research showing how prison work has become increasingly stratified over time, with some higher-quality assignments appearing to be used to incentivise compliance. This shift reflects changes in penal philosophy and management approaches, which are in turn associated with the scale and nature of US mass incarceration. State-specific analysis reveals variable practices and data availability. The section details the types of work available in each state, describes wage structures, and explores the challenges involved in assessing working conditions and safety protections for imprisoned workers.

The briefing's key insights include the observation that prison work in the US primarily functions to subsidise state institutions rather than to enable exploitation by private interests, since most US prison work involves maintaining prison operations or producing goods for public sector use. Despite low labour costs, many prison industries struggle for economic viability. Efforts to involve private sector partners have had limited impact, with such partnerships accounting for a tiny fraction of prison work opportunities. Recent activism has challenged the legitimacy of compulsory prison work, noting unmistakable resonances with the US's history of racial inequality, chattel slavery, and exploitation of convict labour for private interests. However, as the briefing suggests, this framing may oversimplify matters. Much low-paid or unpaid prison work functions to reduce the operating expenses of the US's enormous penal system, so that public institutions benefit more than private ones.

The briefing highlights a lack of reliable, comprehensive data on the extent and nature of prison work, hindering thorough analysis and informed policymaking. We point to several areas requiring further research. There is a pressing need for better data on the specifics of 'prison housework', whereby people in prison are required to perform tasks sustaining prison functioning. More analysis is also required to understand the long-term outcomes of prison work and the implications of penal policy shifts. Future research could explore innovative models for prison work that balance the interests of prisoners, state institutions, and potential employers.

In conclusion, this briefing reveals a complex system of prison work, shaped by historical, legal, and economic factors. It underlines the need for evidence-based policy reforms that can improve outcomes for prisoners while addressing broader societal concerns about justice and rehabilitation. By highlighting both the challenges and potential opportunities in this area, the briefing aims to contribute to an informed and productive dialogue on the future of prison work in the United States.

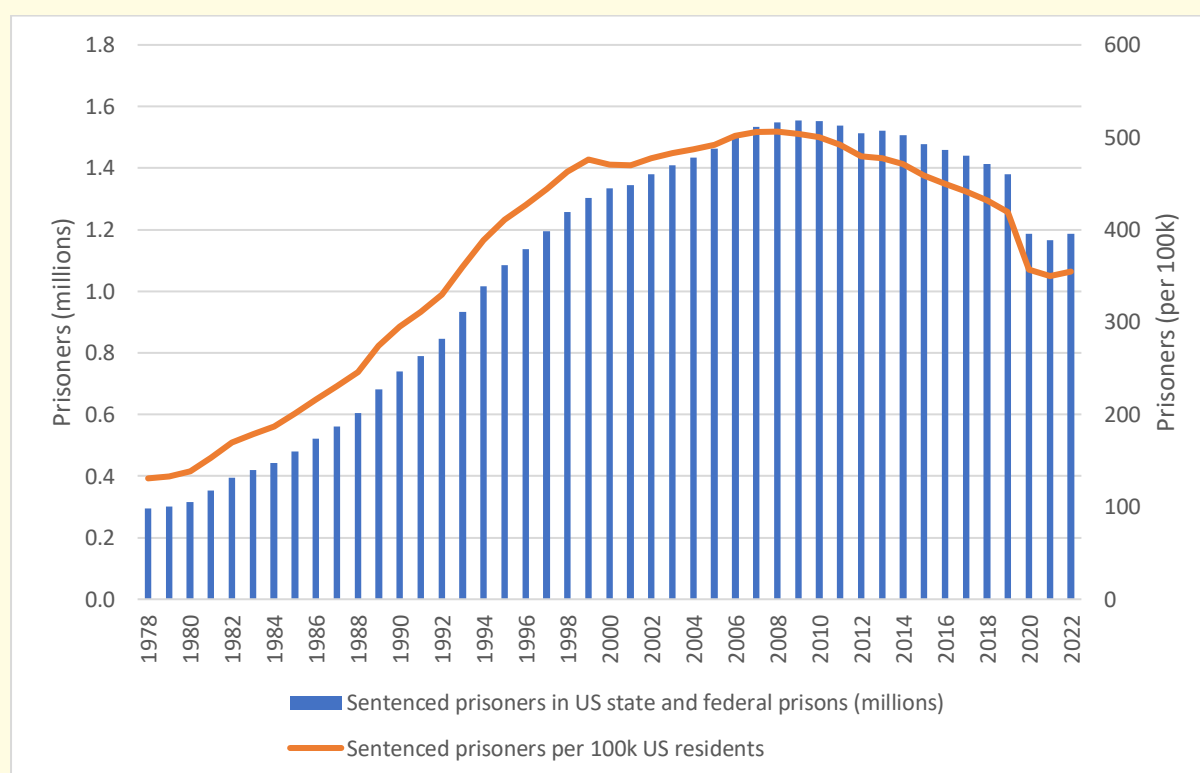
# 1 Prison population

## 1.1 Number of prisoners

After decades of relentless growth, the number of people held in federal and state prisons in the United States declined steadily between 2010 and 2020,<sup>2</sup> and rapidly during the Covid-19 pandemic. The emergency measures temporarily brought about a 17% decline in the number of incarcerated people in the US.<sup>3</sup> There has been a slight rebound since the pandemic, although its extent is unclear, partly because there is a lag in availability of data across all states.

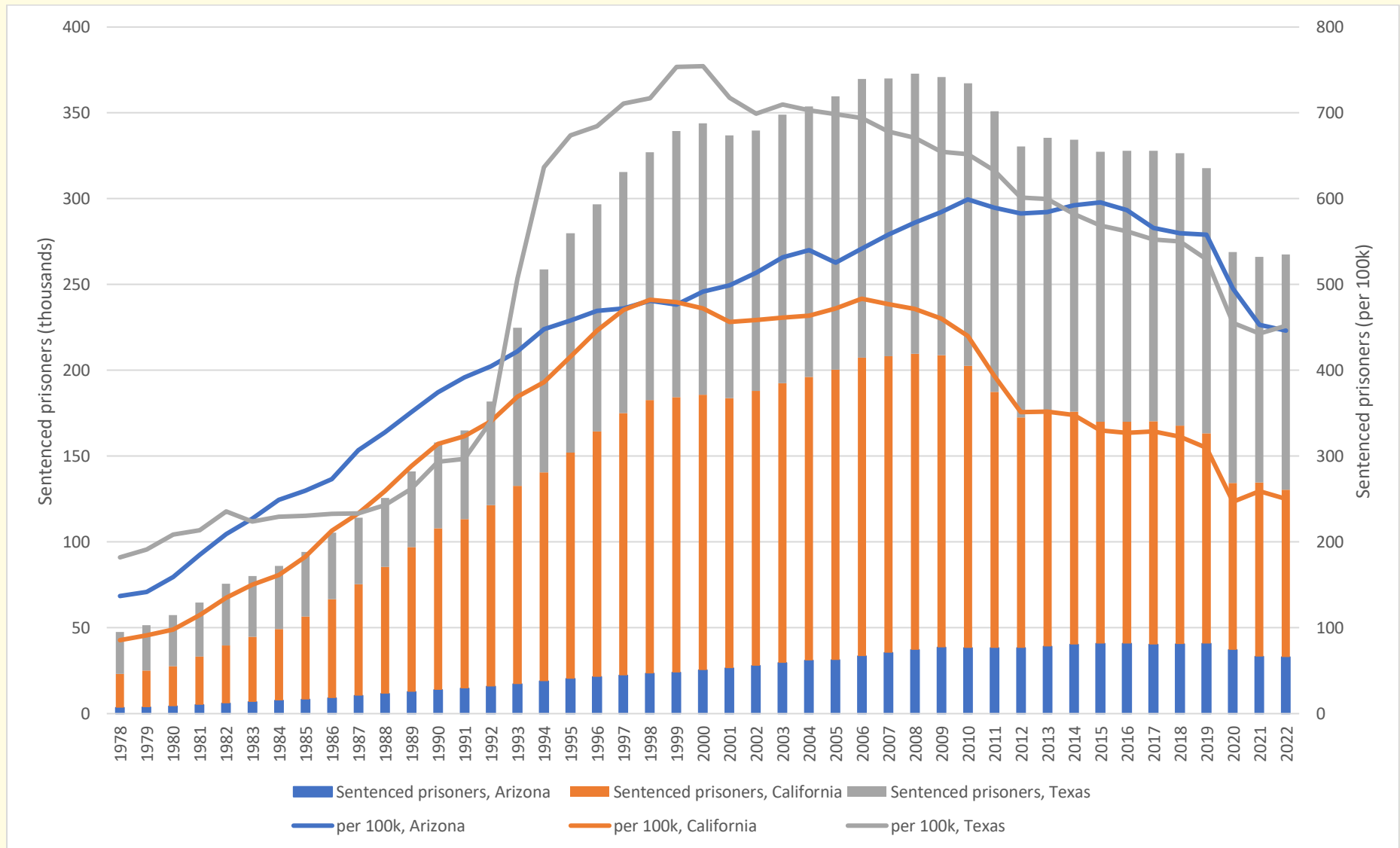
By 2021 the US sentenced prison population had declined 25% from its 2009 peak.<sup>4</sup> Figure 1 plots the figures starting in 1978, making the long-term trends clear.

Figure 1: Long-term trends in the total US sentenced prison population, 1978-2022<sup>5</sup>



However, neither increases nor reductions have been evenly distributed, and there is significant variation between states. This briefing focuses on the policy and law surrounding work for prisoners in three contrasting states: Arizona, California and Texas.<sup>6</sup> Because prison population trends in each state are relevant in shaping policies around prison work, we briefly describe the longer-term trends in each state. Figure 2 shows long-term trends in the prison populations and imprisonment rates of these states.

Figure 2: Sentenced prison population and imprisonment rates per 100k residents, in Arizona, California, and Texas, 1978-2022<sup>7</sup>



While the US prison population (shown in Figure 1) peaked in 2009, California's peaked earlier (in 2006), and Texas's and Arizona's later (in 2010 and 2015 respectively).<sup>8</sup> The size of the declines, from each state's respective peak years to 2022, also varies. The Arizona prison population declined by 19% after peaking in 2015, but almost all of this happened during and since the pandemic. In California, meanwhile, the prison population fell steadily by 44% from its peak in 2006 to 2022, with the pandemic simply accelerating a well-established trend. Finally, the Texas prison population peaked in 2010, declining by 17% to 2022; there, the change has followed a step-like pattern, whereby a major policy change (described further in section 3) and then the pandemic brought about reductions in the use of prison, but without these setting in as a continuous trend. As section 3 makes clear, this variability between states reflects different lawmaking and policy agendas in each state, and in turn shapes the provision of work opportunities to prisoners.

## 1.2 Types of prisons

Prisoners in the US are held in various types of facility. According to the Prison Policy Initiative, there are 1,566 state prisons, 98 federal prisons, 3,116 local jails, 1,323 juvenile correctional facilities, 142 immigration detention facilities and 80 jails in Indian country.<sup>9</sup> Together, these facilities have a capacity of around 2,160,000.<sup>10</sup>

From this total, 411 adult state and federal correctional facilities are privately operated, holding 90,873 prisoners, or 8% of the total prison population.<sup>11</sup> However, the use of private prisons differs across our states of interest. Arizona housed 9,738 people (29% of the prison population) in private prisons in 2021, nearly a sixfold increase from 2000.<sup>12</sup> California, by contrast, held 4,547 people in private prisons in 2000, but the figure was zero by 2021, as the state no longer contracts out state prisons.<sup>13</sup> In Texas, the 13,985 people held in private prisons in 2021 were 8% of the prison population, exactly matching the US national average and representing a drop of 21% from 2000.<sup>14</sup>

## 1.3 Prison regimes and sentence types

In Arizona, prisoners are classified into four custody levels according to assessed risk. Prisoners in Maximum Custody are those assessed as posing the highest risk to the public and staff. They have limited work opportunities, are generally only permitted to work within their units, and are subject to frequent monitoring. Those held in Close Custody are also considered high risk and are not allocated work outside the perimeter of the institution. Prisoners in Medium Custody are assessed as posing a moderate risk to the public and staff, and are also not allocated work outside the perimeter, though they are generally freer to move around within facilities and may be assigned work other than on their units. Only those in Minimum Custody are considered to represent a low risk, and consequently permitted to work outside the perimeter, including on community work crews. Prisoners are held at the custody level assigned and the initial classification for at least three months, and thereafter their classification can be reviewed.<sup>15</sup>

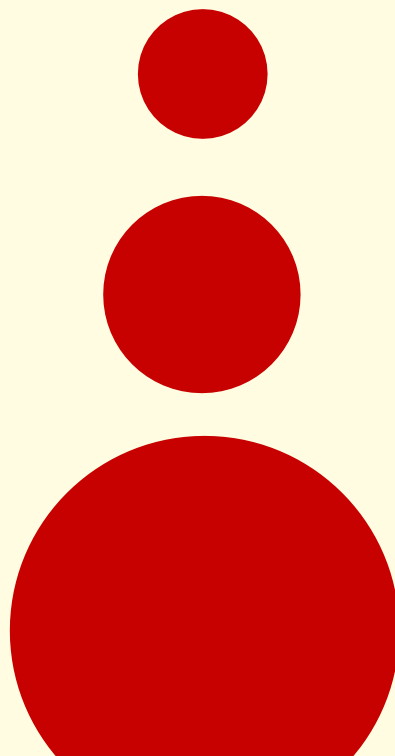
Similarly, in California, prisoners are assigned a security level determining the type of facility in which they may be held, and receive a custody designation determining where they are permitted to be during the day and what level of supervision they require. Prisoners assigned to the lowest custody designation may work off prison grounds with minimal supervision, while those with the highest



custody designation can only work in the building where they are housed and must always be supervised. California operates some Minimum Support Facilities, located on prison grounds but outside the main perimeter. Prisoners housed in them provide operational support to the main prison, for example groundskeeping or fire protection. They are also deployed when needed to provide temporary cover when movements are restricted in the main prison, for example during security lockdowns. Finally, the state has for many years operated conservation camps, often in remote areas, where prisoners at the lowest security level work for higher wages performing conservation work on state-owned land, most notably fighting wildfires.<sup>16</sup>

Finally, in Texas, prisoners are classified into five custody levels. Those in level 5 and level 4 are usually held in cells and generally may only work or move outside their residential units under supervision of armed staff. Level 3 prisoners may live in dorms or cells, and are generally assigned to field force assignments (which involve agricultural labour) or secure jobs inside the perimeter. As such, they are permitted to work outside the perimeter, under armed supervision. Level 2 prisoners live in dorms or cells and may also work outside the perimeter under armed supervision, while level 1 prisoners are allowed to live in dorms outside the security fence. Texas also designates some prisoners who have good prison records as “outside trusties”. They live and work with relatively little supervision in unfenced accommodation, and may work outside facilities under periodic, unarmed supervision.<sup>17</sup>

The common factor in each case is that the prison population is divided, between those held in higher-security conditions for whom the forms of work available are more restricted, and those held in lower-security conditions for whom they are less restrictive.



## 2 Working prisoners and the law

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### 2.1 International law

The USA is one of just six UN member states not to have ratified the Forced Labour Convention (ILO Convention number 29 of 1930).<sup>18</sup> The Convention prohibits prisoners from being compelled to perform work for “private individuals, companies, or associations”.<sup>19</sup> The federal government has, since 1988, followed a policy of not ratifying any ILO convention unless US federal and state law and practice are already in conformity with its provisions. When it considered ratification of the 1930 Convention in 1991, the US Senate concluded that it would conflict with “the trend at the state level to subcontract the operation of prison facilities to the private sector”.<sup>20</sup> This appears still to be settled policy.

The US has, however, ratified the Abolition of Forced Labour Convention (ILO Convention number 105 of 1957). Whereas the 1930 Convention outlaws all compulsory prison labour performed for any private interest, the 1957 Convention is more specific, requiring ratifying states to abolish any form of forced or compulsory labour imposed for any of five specified reasons.<sup>21</sup> From this, it might appear that the US is bound to eliminate compulsory prison labour only in these circumstances, but ILO guidance makes clear that as a result of its ratification of the 1957 Convention and other ILO instruments, the US is also expected to abide by the general principles in the 1930 Convention.<sup>22</sup>

Other international normative frameworks relevant to prisoners and prison work apply to the US, though as ‘soft law’, these are not binding. They include the UN Basic Principles for the Treatment of Prisoners, and the UN Standard Rules for the Treatment of Prisoners (the Nelson Mandela Rules), which between them make clear that prisoners should be enabled to perform “meaningful remunerated employment” facilitating integration to the labour market after release,<sup>23</sup> and also make clear that work should be voluntary, should serve the overall aim of reintegration, and should not be ‘afflictive’ by adding to the suffering inherent in imprisonment.<sup>24</sup>

In sum, the US’s international law commitments require prison work within the US to be voluntary, remunerated, and to promote social reintegration. But these normative requirements are not fully implemented in US federal and state law.

### 2.2 Federal law

#### 2.2.1 Constitutional law

In practice, US domestic law plays a much more important role than international law in the governance of prison work. Since criminal justice is mostly legislated at the state and local levels, federal law relating to work in prison is limited, and the governance of prison work varies somewhat by state.

In most US states, and despite the international normative requirements about the resocialising aims of prison work, work can be imposed expressly as a punishment. This is because of the Thirteenth Amendment to the US Constitution, which states:

Neither slavery nor involuntary servitude, *except as a punishment for crime whereof the party shall have been duly convicted*, shall exist within the United States, or any place subject to their jurisdiction.<sup>25</sup>

The Eighth Amendment to the US Constitution further requires that punishment should not be ‘cruel and unusual’, though generally the courts have been reluctant to apply this provision to prison work (see Section 2.2.3).

Between 2018 and 2024, seven states expressly removed the Thirteenth Amendment exception, by amending their constitutions to abolish *all* forms of slavery and involuntary servitude. In all others, compulsory labour can legally be imposed *as a punishment*.<sup>26</sup> This runs against the consensus, in relevant international human rights law, that work in prison should be resocialising and not afflictive.

Unlike international human rights law, therefore, US federal law therefore makes no normative prescriptions about the *purposes* and *aims* of prison work. The Thirteenth Amendment permits compulsory work to be used as a punishment (see above); the Eighth Amendment requires only that it not be ‘cruel and unusual’.

## 2.2.2 Federal statutes

US federal law also says very little specifically about prisoners’ working conditions. Federal employment law, by contrast, creates numerous rights for workers, including the right to a minimum wage of \$7.25 per hour,<sup>27</sup> the right to a 40-hour working week (with overtime paid above this limit),<sup>28</sup> the right to associate and form trade unions,<sup>29</sup> the right to decline dangerous work,<sup>30</sup> and an entitlement to various protections relating to unsafe and hazardous working conditions.<sup>31</sup> Prisoners are also expressly excluded from Title VII of the Civil Rights Act of 1964, which protects workers from workplace discrimination.<sup>32</sup>

Courts have been asked on many occasions to consider whether these provisions apply to prison work. In cases brought by working prisoners seeking the minimum wage for prison work, courts have generally determined that it is not payable because prisoners are not employees (see Section 2.2.3), and hence are not protected by the relevant federal legislation.

This determination also generally excludes them from protection under the federal Occupational Safety and Health Act of 1970, which, again, does not expressly exempt prisoners from its protection, but does exempt state sector employees. As such, it has generally been interpreted as excluding prison workers: even if prisoners were deemed to be employees, they would be employees of the state—and hence not covered. As a result, except where states have expressly legislated to extend health and safety protections to imprisoned workers, these protections do not apply.<sup>33</sup>

In practice, there is also no legal obligation to pay prisoners for their work. In seven US states, almost no prisoners receive wages for prison work.<sup>34</sup> Elsewhere, prison work is paid far below the federal or local minimum wage: research by the American Civil Liberties Union (ACLU) published in 2022 found that hourly rates average between \$0.13 and \$0.52 for work which supports the functioning of the prison, and between \$0.30 and \$1.30 for prison industries work.<sup>35</sup> Most prison wages have not changed since the early 2000s (so that their real value has declined).

Federal law regulates prison labour practices more firmly when the labour is for commercial use, though there has been a recent trend towards deregulation. The underlying federal legislation, the Ashurst-Sumners Act, dates from 1935.<sup>36</sup> It criminalised interstate and foreign commerce in prison-made goods and services, making some exemptions, among which the two most significant cover trade in agricultural commodities, and transactions in which the purchaser is the federal government, a state government, an agency or subdivision of either, or a not-for-profit organisation. The effect of the Act was to create an effective government monopoly over both the production and sale of prison-made goods and services: governments' requirements for goods and services could be met using prison labour, but those goods and services could not be commercialised for profit.<sup>37</sup> This legislation left a loophole for commercial use where commerce in the goods and services produced by prison labour was *within* the state in question. Thus, prison industries programmes *can* sell prisoner-made goods and services to private companies, and sell labour contracts to private companies, provided all the activities covered are within a given state.

The provisions of the Ashurst-Sumners Act have since been relaxed, primarily to try to stimulate private-sector involvement in prison industries. 1979's Justice System Improvement Act created a certification scheme, the Prison Industries Enhancement Certification Programme (PIECP), by which companies could use prison labour and trade in prison-made goods, if the resulting operations met several standards: to demonstrate that the prisoners worked voluntarily; to pay the prevailing minimum wage (with prisons empowered to make deductions for room and board, family support, taxes, and victim restitution); to demonstrate that their use of prison labour was not displacing free workers; and to consult relevant trade unions.<sup>38</sup> Enforcement of these requirements was relaxed in 1995 after oversight of the regulations passed from the federal government to an industry body,<sup>39</sup> and since then, the private use of prison labour has in practice become "largely deregulated",<sup>40</sup> with its scale now constrained more by market forces than by the law. However, the 1979 federal certification scheme remains in force.

Summing up, people in prison are largely unprotected from labour conditions which would, in other circumstances, be clearly illegal. Except in a few states, work for sentenced prisoners is not voluntary, and refusal to work may result in sanctions. Moreover, it is generally low-paid, and sometimes entirely unpaid. There is also no federal legislation setting clear expectations for what the aims of prison work (or imprisonment generally) should be, meaning that prison administrations have considerable discretion to organise work activities with aims of their own choosing. In the federal prison system, the federal Bureau of Prisons (BOP) requires all prisoners to work unless they are exempt for security or educational reasons. Working days are usually limited to seven hours, and 'work' can include a range of activities. Some protections exist: imprisoned workers who are injured at work can seek compensation from an in-house scheme, but the ability to do so does not derive from employment law and the protections are not the same as those applicable outside prisons.<sup>41</sup>

### 2.2.3 Case law

As noted in section 2.2.1, the US Constitution abolishes involuntary servitude *except* when it is imposed as punishment for a crime. Yet, at the same time, the federal Fair Labour Standards Act (FLSA) of 1938 entitles all workers to a minimum wage.<sup>42</sup> Although some categories of worker are expressly excluded from this entitlement, prisoners are not, meaning that there is no definitive federal statute by which they are excluded from the right to a minimum wage.

It has therefore been left to courts to determine whether the minimum wage is payable for prison work.<sup>43</sup> The issue has never been considered by the US Supreme Court, and federal circuit courts have taken inconsistent positions with varied reasoning. However, they have generally declined to find that prisoners were entitled to a minimum wage under the FLSA.

In doing so, courts have taken two main approaches to the issue.<sup>44</sup> Some rule that prisoners who work are simply not part of the economy: their labour is done in a separate sphere.<sup>45</sup> Such work is held to be not economic/contractual, as in the case of work done for wages, which involves mutual obligation. Instead, it is framed more in correctional and penal terms: the prisoner is in state custody, and the compulsoriness of the work is justified by claiming that it will reform or rehabilitate the prisoner. As such, courts have held that prisoners are simply not 'employees' as defined by the FLSA; on this basis, they have denied its protections to working prisoners. This interpretation is most consistently (though not exclusively) applied to prison work which supports the functioning of prisons (e.g. cleaning, catering, administrative support), since these functions do not generate revenue and thus the non-economical features of the work are more evident.<sup>46</sup>

Courts have tended to take a more complex position, where prisoners' work contributes to an economic surplus. Such work opportunities are generally less common: prisoners usually engage in them more voluntarily, and hence the claim the work is compulsory is harder to sustain. Revenue generation also undermines the claim that prison work exists beyond the wider economy. Some litigants seeking wages from federal courts have argued that being selected to perform prison industries work (and consenting) means that they are, in effect, employees in a quasi-contractual relationship with the prison. Courts have rejected this argument, with one finding in 1996 that:

The consensual nature of a particular work assignment in a hard-labor state does not remove the penological purpose from the work relationship [...] [this] does not create an oasis of contractually "bargained-for exchange" in the midst of a desert of compelled labor.<sup>47</sup>

In other cases involving outside entities which use prison labour, courts have applied an "economic reality test", considering a range of factors including whether the enterprise in question: a) hires and fires prisoners individually (rather than contracting with the prison for non-specific prisoner labourers); b) controls their schedules and working conditions; c) determines how prisoners they are paid; and d) keeps records of which prisoners performed the work. Where these tests are met, courts have sometimes held the relationship involved to be economic, and hence contractual, and have ordered the minimum wage to be paid.

However, such rulings have been rare, and courts have much more commonly found that prison industries work is ineligible for the minimum wage, even when these tests are satisfied. This opposite finding is typically explained by reference to other sections of the FLSA, for example by courts stating that, in framing the legislation, the US Congress never intended that it be applied to prisoners,<sup>48</sup> or by maintaining that prison labour aims to rehabilitate, so that even programmes which generate profits for prison authorities are non-economical and need not pay the minimum wage.<sup>49</sup>

In short, the tests courts have applied to decide whether working prisoners are employees are "convoluted and contradictory",<sup>50</sup> but their decisions are generally consistent, in declining to entitle



prisoners to a minimum wage for prison work, except where (as with the PIECP) the law expressly mandates it.<sup>51</sup>

There is less case law relating to health and safety and occupational injuries because (as noted in section 2.2 above) the relevant federal laws have generally been held not to cover prison workers. Prisoners are not usually seen by the courts as ‘employees’, and even if they were, the relevant federal law does not protect state employees.<sup>52</sup> As a result, protections for working prisoners in federal law derive not from labour law but ultimately the Eighth Amendment’s proscription of “cruel and unusual punishment”. However, courts have generally declined to apply this proscription to prison work conditions except in the most egregious cases. There are numerous barriers to litigation, and an extremely steep legal test whereby the litigant must show that prison authorities were “deliberately indifferent” to the risk of injury.<sup>53</sup> The result is that working prisoners are generally protected against unsafe or dangerous working conditions only to the extent that state law expressly provides such protection.

## 2.3 State law

Standards and protections for working prisoners at the state level are determined by state law. They vary, but in general and in most states leave imprisoned workers largely without employment rights or workplace protections. Most state employment laws, like the federal statutes described above, also exclude imprisoned workers. For instance, many workplace health and safety statutes at the state level make this exclusion, and imprisoned workers in most states are generally not covered by workers’ compensation schemes if they are injured or killed on the job.

This briefing concentrates on three states in particular—Arizona, California, and Texas. Although the *policies* governing prison work, and its aims, appear to vary substantially between the three states, the underlying *laws* are broadly consistent, varying most in relation to wages and protections against occupational injury.

### 2.3.1 The requirement to work

Legally, work is mandatory for prisoners in all three states we examine: a failure to work can result in sanctions. Both California and Texas have recently seen legislative initiatives which have sought to remove this requirement and place prison work onto a voluntary basis, but neither has succeeded.<sup>54</sup>

In Arizona, the director of the Arizona Department for Corrections, Rehabilitation, and Reentry (ADCRR) can “require any able-bodied prisoner to engage in hard labor for not less than 40 hours per week”.<sup>55</sup> As noted in section 2.3.3, this term is defined as “compulsory physical activity for the attainment of some object other than recreation or amusement but [not including] physical activity that is not within the ability of an individual prisoner”. Refusing to perform such work is a Class B disciplinary violation, and ‘malingering’ to avoid work a Class C violation.<sup>56</sup> As such, they carry penalties including loss of privileges, the assignment of additional work duties, fines, the loss of up to 120 days of previously earned sentence remission credits, and the temporary forfeiture of parole eligibility.<sup>57</sup>

In California, the law states that the California Department for Corrections and Rehabilitation (CDCR) “shall require of every able-bodied prisoner imprisoned in any state prison as many hours of faithful labor [...] as shall be prescribed by the rules and regulations of the Director of Corrections”.<sup>58</sup>

Prisoners who refuse to accept or perform a work assignment may receive a range of penalties, including losing access to family visits and contact and recreational activities. They may also be confined to cells for up to ten days, and (if repeated) the refusal may lead these measures to be applied over a longer period, or permanently. For those serving parole-release sentences, refusal can also impact their eligibility for parole.<sup>59</sup>

Similarly, Texas law requires “each inmate and each defendant or releasee housed in a facility operated by or under contract with the [Texas] department [of Criminal Justice (TDCJ)]” is required “to work in an agricultural, industrial, or other work program to the extent that [they are] physically and mentally capable”.<sup>60</sup> Prisoners who refuse to work can be confined to their cells, stripped of personal property, lose previously earned sentence remission credits, and lose access to various opportunities including commissary, recreation, family visits, and personal telephone calls.<sup>61</sup>

As these extracts indicate, a limited exception is made by each state for prisoners who are unable to work. This aside, the requirement to perform work in prison is broad, unambiguous, and backed with a range of sanctions, ranging from the loss of incentives and privileges to periods of solitary confinement.<sup>62</sup>

### 2.3.2 Remuneration and incentives

The three states take different approaches to prisoner pay, though they all offer incentives to some working prisoners in the form of sentence remission.

Prisoners in Arizona and California state prisons are paid,<sup>63</sup> albeit at rates far below the states’ respective minimum wages.<sup>64</sup> In Arizona, the law specifies that prison work *must* be paid. The ADCRR determines its own rates, but the law stipulates a minimum of \$2 per hour for any work associated with a contract made with private individuals or firms.<sup>65</sup> In California, pay for prison work in California is not a legal entitlement. Nonetheless, many prison work assignments organised by the CDCR are, in fact, paid, again at rates far below the prevailing minimum.

In both states, pay is among a range of incentives used to secure prisoners’ compliance. Wage rates are not linked only to the work done or the skill involved. In both California and Arizona, they are cross-referenced against incentive scheme classifications. Deductions from prisoner pay are legally permitted in both states.<sup>66</sup> The result is that two people doing the same work might receive different pay. In Arizona, for example all prison jobs receive an \$0.05 per hour increase in wages if the prisoner has completed a high-school-equivalent education, and a further \$0.05 per hour for positive “evaluation ratings” from staff over a 6-month period. Those whose evaluation ratings are less positive, or who decline to participate or are removed from work programmes, can be returned to lower rates of pay.<sup>67</sup> Similar arrangements are in place in California.<sup>68</sup>

In Texas, by contrast, the law *permits* the TDCJ to pay prisoners for working, but it generally does not do so, and the vast majority of prison work in the state is entirely unpaid. The state’s Labor Code

expressly exempts employers from the duty to pay minimum wage to any person detained in jails or prisons in the state.<sup>69</sup>

In all three states, a minor exception to the arrangements described above may be found in PIECP-certified prison industries enterprises regulated by the relevant federal laws. Prisoners in these enterprises receive at least the state's hourly minimum wage—\$7.25 in Texas, \$14.35 in Arizona, and \$16.00 in California, at the time of writing—with deductions. The numbers involved are minuscule (see section 4 for details), but it is worth noting that in Texas, the 80 or so people working in PIE programmes are the only people in state prisons who are paid for prison work at all.<sup>70</sup>

Given the low or non-existent wages for prison work in US state prisons, the main incentive for working, in many cases, is likely to be credits, which award remission of part of the sentence to some working prisoners in all three states. The underpinning laws and policies differ, but they generally offer remission for engagement in a range of programmes including work. Generally, credits are awarded at different rates,<sup>71</sup> are discretionary and defined as a privilege not a right,<sup>72</sup> can be suspended, withdrawn, and restored in part or in full for a range of reasons,<sup>73</sup> are often conditional on satisfactory evaluations from prison staff,<sup>74</sup> and are generally *not* available to prisoners convicted of violent and sexual offences,<sup>75</sup> or those serving life sentences.<sup>76</sup> Although they act as a significant incentive (because they can reduce the overall length of a prison sentence), their discretionary and conditional nature turns their withholding into a potential punishment. As noted in section 2.3.1 above, these credits are also routinely denied to prisoners who refuse to perform the work they have been assigned. This feature calls into further question the degree to which any prison work in these states can be said to be truly 'voluntary'.

In sum, the incentives for working in all three states are highly structured for use as an instrument of power and control over prisoners. Prison 'wages', where paid, do not resemble or (in the ILO's parlance) 'approximate' those offered in ordinary labour markets; and they are low and subject to withholding and a range of deductions. Sentence remission is an additional—or in Texas, the only—incentive, but its accrual and retention are discretionary, and hence dependent on prisoners' performance.

The effect, in all three states, is to create a tiered system of work, in which better rewarded forms of work are used as an incentive to produce compliance and prison order.

### 2.3.3 Working hours and working conditions

State law in all three states is, generally, non-prescriptive about working hours and working conditions, leaving the regulation of both to correctional authorities.

The law in Arizona authorises the director of the ADCRR to "require that each able-bodied prisoner [...] engage in hard labor for not less than forty hours per week", defining "hard labor" as "compulsory physical activity for the attainment of some object other than recreation or amusement but [not including] physical activity that is not within the ability of an individual prisoner".<sup>77</sup> Up to twenty hours may be occupied by educational, training, or treatment programmes as prescribed. ADCRR policy stipulates, further, that the total of both work and other programming assignments "shall not normally exceed 60 hours per week".<sup>78</sup> There appear to be no provisions defining a purpose or objectives for

prison work, and no state laws regulating working conditions;<sup>79</sup> the law requires only that prisoners should not be required to do work which threatens their safety, that of the public, or that of the correctional institution where they work. Protections extended to employees by the state's Labor Code expressly exclude "inmate[s] of a custodial or penal institution",<sup>80</sup> and the broader entitlements to compensation in the case of injury at work also exclude prisoners.<sup>81</sup>

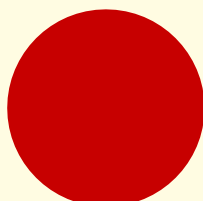
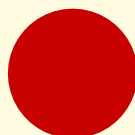
In California, primary legislation does not make any explicit provision about prisoners' working hours, stipulating only that they be "as many [...] as shall be prescribed by the rules and regulations of the Director of Corrections".<sup>82</sup> These regulations appear to make a 40-hour working week the norm: full-time training and work assignments are defined as "normally mean[ing] eight hours per day on a five day per week basis", and full-time assignments further described as featuring "not less than 30 hours of work participation".<sup>83</sup> California's Labor Code *includes* prisoners within its definition of "employees" for the purposes of its provisions on injury compensation, but they are excluded from this definition for the purpose of minimum wage entitlements and unemployment benefits.<sup>84</sup> Thus, prisoners in California are entitled to compensation if they are injured while doing prison work, and the state is obliged to report accidents and injuries for imprisoned workers.

Texas law does not specify maximum working hours for prisoners, and the TDCJ does not appear to publish its policies on the matter.<sup>85</sup> The state's Labor Code explicitly excludes prisoners from all its provisions, including on working hours, unemployment protection, and compensation for injury.<sup>86</sup>

## 2.4 Summary

US constitutional law permits compulsory labour to be imposed as a punishment. This sets the tone for prison work in most states, in tandem with the fact that courts have generally not applied federal employment law protections to prison work. As a result, there are no strong protections against compulsory prison labour being imposed without pay, and even the protections mandated by international law (such as the requirements that health and safety protections should be equivalent to those available to free labourers) are not consistently available to working prisoners.

Instead, regulating working conditions is mostly a matter for individual states, something they tend to leave to the discretion of correctional agencies. A few states (including Texas) pay prisoners for working only in exceptional circumstances, and expressly exclude them from any form of protection under employment law. Most (including Arizona and California) pay prison work at rates far below the minimum wage, and offer them at most limited indemnification against occupational injury. Although some prisoners have attempted to bring litigation to establish an entitlement to minimum wages and employee protections under federal law, the courts have generally shown themselves unwilling to extend these rights to workers in prison.



## 3 Recent policy developments

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### 3.1 Policy context

Since the Covid-19 pandemic, the US economy overall has made a strong recovery, with high levels of investment, strong economic growth, and a historically low unemployment rate, particularly in the logistics, warehousing, and service sectors. There has been strong wage growth, with high demand for workers in many sectors.

These appear promising circumstances for the half million or so people who are released annually from state prisons.<sup>87</sup> Research indicates that employment is a key factor in desistance from crime, but that the relationship is complex. People who participate in employability programmes in custody are more likely to seek and find work after release,<sup>88</sup> but barriers remain, and positive outcomes are not always sustained over long periods, since the transition from prison to post-release employment in a what is a highly unequal economy can be challenging.<sup>89</sup>

Some barriers to employment are administrative and bureaucratic: most states operate licensing schemes for various occupations, and many bar people with felony convictions from these schemes. All of this makes establishing a consistent work record after release challenging, with some lines of career development closed off entirely.<sup>90</sup> State authorities have often promoted initiatives aiming to remove unnecessary administrative barriers to ex-prisoner employment, such as 'ban the box' criminal records disclosure initiatives which seek to ensure that disclosure requirements kick in only after a job offer has been made.

Other barriers to employment are structural. Many formerly imprisoned people were deeply excluded from labour markets before imprisonment, and lack employable skills. Even those who gain such skills in prison may face continued exclusion post-release, because of employer hesitancy about hiring them.<sup>91</sup> This means that many are pushed towards the least skilled, least remunerated end of the labour market, which is associated with distinctive difficulties. The quality of a job significantly influences long-term outcomes: low-paid, precarious, or unpredictable jobs are more associated with rearrest and return to prison, and may even produce worse outcomes than unemployment;<sup>92</sup> whereas jobs which are fulfilling, and which pay a living wage, appear more strongly linked with reduced reoffending.

Successful reintegration after a prison sentence is therefore not simply about employment *per se*, but about finding *fulfilling* employment offering a stable income.<sup>93</sup> Many prison leavers face considerable financial insecurity. Those whose parole conditions mandate them to find and keep employment of any kind, may effectively be coerced into accepting low-quality work which harms their longer-term outcomes.<sup>94</sup>

Overall, there is not a straightforward causal link between work in prison and reduced reoffending, but there are nonetheless good reasons to provide work opportunities to people in custody, and good reasons to expect that those who participate may have better post-release employment outcomes. But state prison and parole authorities are accountable for, and must prioritise, public safety. They are also required to make best use of rehabilitative resources. As a result, more favoured work



opportunities in prisons—those in prison industries, typically involving higher pay, skill, and (sometimes) vocational training—are generally available only to a small minority, and it is logical for prisons to make them available preferentially to those prisoners whose record of compliance in custody indicates that they stand to benefit. Imprisoned people are recast as the consumers of rehabilitative services, and incentivised to compete for access to the best opportunities.<sup>95</sup>

## 3.2 Arizona

As Section 0 noted, Arizona's state prison population peaked in 2015, but the national trend of declining prison numbers was not evident in the state until the Covid-19 pandemic, which saw very sharp declines. Though the state's prison population is far smaller than those of California or Texas, it grew by 60% between 2000 and 2020, driven largely by two features of the state's sentencing law: a continued reliance on imprisonment in response to non-violent offences; and through sentences longer than the US average.<sup>96</sup> For example, of the ten offences resulting in the largest number of prison admissions in 2017, eight were offences not involving violence; admission rates for drug offences were growing faster than for any other category of offence; and sentence length for some kinds of drug offence was around double the US average.<sup>97</sup>

The state's corrections budget had grown to \$1.1 billion annually by 2021, outstripping those for other state functions, including education and public health. Throughout, efforts to reduce the cost of imprisonment largely focused not on decarceration, but on aggressive cost-cutting and 'tough and cheap' prison conditions, a long-standing trend within the state's penal policymaking.<sup>98</sup> These measures have de-emphasised rehabilitative programming, prioritised work, sought to maximise revenues, and (where possible) transferred costs onto prisoners through privatisation and by the levying of fees for services such as healthcare. For example, prisoners in the state are required to pay \$4 via medical 'co-pays' towards the cost of any medical appointment, but may earn as little as \$0.15 an hour for prison work. By the late 2010s, Arizona was, increasingly, an outlier, with the fourth-highest imprisonment rate among fifty US states.<sup>99</sup>

The state's prison regimes have been notable for their strong emphasis on work. State law mandates a 40-hour working week, and a striking innovation in this context has been the reorganisation of Arizona Correctional Industries (ACI), the state-owned prison industries corporation, around the goal of increased revenue generation. Previously, prisoners working for ACI were, like those in correctional industries elsewhere in the US, typically engaged in manufacturing work on contracts for other state and municipal agencies. ACI still conducts such activities, but began from around 2010 to hire prisoners out to private businesses headquartered in the state.

Private businesses which partner with ACI pay it the state's minimum wage, but prisoners receive only a portion of this, down to a minimum of \$2 a day. Typically, wages under these contracts still exceed ordinary prison wages, so that participation is incentivised. ACI retains the difference between the wages it receives and the wages it pays, meaning that its revenues more than doubled because of these arrangements.<sup>100</sup>

As well as hiring prisoners' labour to private companies, the state also has substantial numbers of prisoners working for state and municipal bodies under similar contracting arrangements dubbed Inter-Governmental Agreements. These public sector bodies can also reduce their labour costs by

using prisoner labour; ACI, in turn, reduces its direct costs, and invests less in equipment and prisoner training.

Latterly, the state has also come under considerable pressure from litigation, which has sought to force reforms in Arizona's prisons. Federal judges ruling on the litigation determined that prison healthcare and the use of solitary confinement in the state were unconstitutional,<sup>101</sup> and mandated reforms under judicial supervision. Since a change of political leadership in 2022 (via a narrow victory for the Democratic Party Governor Katie Hobbs),<sup>102</sup> a wave of reform initiatives have begun. These have included new leadership for ADCRR,<sup>103</sup> and the creation of an independent oversight commission for the state's prisons.

However, political deadlock in the state's legislature has meant reform efforts have generally had to concentrate on measures not requiring legislation. The ADCRR's current strategic plan makes no mention of prison work,<sup>104</sup> with the improvement of basic prison conditions appearing a higher priority for the department. There are some signs of a shift in emphasis towards education, with the document calling for partnerships with colleges and schools to deliver technical qualifications,<sup>105</sup> but this does not mean the end of the labour leasing practices that have developed recently.

### 3.3 California

As noted in section 0, California's state prison population peaked earlier and has declined more than in either of the other states we consider. Decarceration measures were forced on the state by the *Brown v. Plata* lawsuit, in which a federal court ruled that overcrowding in Californian prisons violated litigants' constitutional rights, and ordered judicially supervised reductions in the prison population.

Changes to achieve this objective were structured by the Criminal Justice Realignment Act of 2011.<sup>106</sup> This compromise achieved prison downsizing neither via large-scale releases nor prison-building. Instead, it transferred responsibility for two groups of prisoners from the state to the county level: the "non-non-nons"—people convicted of non-serious, non-violent, and non-sexual offences—and those imprisoned for violating parole.<sup>107</sup> As a consequence, "non-non-nons" now serve sentences in county jails, often with some portion of the sentence under community supervision. Other measures have also been used to bring down the state prison population, including an expansion of sentence remission 'credits' (see section 2.3.2), and reforms to community services which have aimed to reduce the rates at which parole violations result in a return to prison.<sup>108</sup> Correspondingly, *jail* populations have increased, but the *prison* population has dropped, with three prison closures approved by the state's governor, Gavin Newsom, since 2019.

One consequence of this realignment has been a rebalancing of the state prison population. Prisons in California now disproportionately hold people serving long and life sentences and sentences involving conditional release on parole.<sup>109</sup> Although these groups generally reoffend at far lower rates than those with shorter sentences, many (especially those with LWOP sentences and those who will be elderly by the time of their release) might not be reintegrated to the workforce in future. Many will also have more complicated release conditions, making their access to employment difficult.

California legislators have, since 2020, repeatedly tabled attempts to abolish slavery in the state's constitution, so that compulsory prison work would become illegal. The 2020 attempt foundered and

did not pass the state's Senate, after estimates were published showing that the measure's provision to pay prisoners the prevailing minimum wage would require an annual budget increase of around \$1.5bn.<sup>110</sup> More recent attempts to reintroduce the amendment by removing the requirement to work *without* establishing pay parity have taken place in a different fiscal context, amid severe deficits in the state's annual budget.<sup>111</sup> As this briefing was being prepared for publication, the state Senate confirmed that the constitutional amendment measure will be the subject of a ballot by Californian voters in the November 2024 elections.<sup>112</sup>

California has generally permitted the involvement of private companies in prison labour only on a small scale. The state was among the first in the US to ban convict leasing (in 1879), and partnerships with private companies only became legal in 1990.<sup>113</sup> Joint Venture Programs between private companies and the California Prison Industries Authority (CALPIA, the state's prison industries corporation) must conform to federal PIECP guidelines, and thus pay at least the prevailing minimum wage. However, they have a patchy record and now operate only on a small scale: one such venture resulted in imprisoned workers being awarded nearly \$1m in unpaid wages and damages after a court found there had been irregularities in the administration of the program.<sup>114</sup> The lawsuit also resulted in stricter enforcement of non-competition statutes, adding barriers to further private sector involvement.

Consequently, joint ventures for profit are now a tiny proportion of all prison work in California, with only four such ventures operating in Californian prisons in July 2023.<sup>115</sup> Some joint ventures with non-profit organisations have been pursued, with one such partnership, The Last Mile (TLM), beginning at San Quentin State Prison in 2016, and developing over time into a vocational training programme operating in several states. However, most prison labour in California is used by public authorities, to lower the costs of providing various public services (including imprisonment). California's prison industries corporation, CALPIA, is the largest in the US by sales,<sup>116</sup> producing goods for use by prisons themselves, and in state agencies more generally.

Overall, policy reforms relating to prison work in California lately have led to some shifts of emphasis, particularly in relation to policies which emphasise vocational training and re-entry for relatively small numbers of prisoners, and in relation to reforming prison wages so that the headline rate of pay is higher. However, the state's sizeable budget deficits appear likely to constrain further reform.<sup>117</sup>

## 3.4 Texas

Section 0 above showed that Texas's prison population peaked at 164,652 in 2010, then declined to 154,479 in 2019.<sup>118</sup> There was a further, rapid but short-lived, drop during the Covid-19 pandemic (to 131,734 in 2021) but there has since been a rebound, to 137,035 in 2022.<sup>119</sup> Texas's imprisonment rate has fallen more steadily from a peak of 754 per 100,000 adult residents in 2000, to 452 per 100,000 adult residents in 2022,<sup>120</sup> but much of this decline can be attributed to population growth. Texas—with the largest prison population of any US state—remains an outlier nationally and globally, with an imprisonment rate still among the top jurisdictions in the US, and the top incarcerators in the world.<sup>121</sup>

Headline figures showing a modest decline since the mid-2000s therefore exist against a more complex backdrop of policy change. Within the US, Texas was a leader in pioneering and promoting 'justice reinvestment'. Justice reinvestment reforms in Texas began in 2007; having built 103,000 new

prison places since 1989, the state's legislature voted in that year to reduce criminal justice budgets overall, and to divert funds previously earmarked for prison construction into 'smart on crime' reforms centred on reducing recidivism. These included the diversion of some people formerly held in state prisons to a range of alternative measures, including community rehabilitative programmes and mandatory substance misuse treatment facilities. As in California, there was also a degree of 'bifurcation', with people serving sentences for non-serious, non-violent, and non-sexual offences handled via jails, which (in Texas's case) include jails operated by the TDCJ but serving local jurisdictions.<sup>122</sup>

Such changes allowed the TDCJ to close or mothball 16 of its prisons,<sup>123</sup> but often by substituting prison places for alternative secure accommodation.<sup>124</sup> Staffing issues have been a persistent and widespread problem across the entire Texas prison estate, with one in three correctional officers leaving the TDCJ's employment annually by 2019.<sup>125</sup>

The legacy of the justice reinvestment initiatives is therefore contested. Their proponents have celebrated the reforms as a decarceration success, and solicited national and international attention for them,<sup>126</sup> citing headline metrics such as the gradual decline in prison population figures, and drops in reconviction rates for some types of offence.<sup>127</sup> However, the reforms have also attracted criticism, for leaving untouched serious issues relating to prison conditions.<sup>128</sup> Where envisaged population reductions were not achieved, the state has pursued equivalent cost savings by operating "leaner and meaner" prisons, involving "maximum control at minimal cost with little outside oversight".<sup>129</sup>

State prisons, as in California, also increasingly hold an ageing and long-sentenced population whose release dates are unclear. As of 2021, one in ten prisoners in Texas was serving a life or virtual life sentence; their release depended on the discretion of parole boards, with less than 5% of applications being granted. The average age of Texas prisoners in 2020 was 52 (up from 35 in the mid-2000s).<sup>130</sup>

Texas has therefore seen modest reductions in the imprisonment rate and some improvements to rehabilitative provision. But its prison conditions and sentences still rank as among the toughest in the US. Justice reinvestment policies encountered some success but have failed to realise reductions in the state prison population on the scale seen by some other states, including California. Political opposition to the state's crime and justice policies has, like in California, focused in particular on prison work in the state. Texas is among a handful of states which pays nothing for prison work. In 2019, a draft bill was presented to the legislature proposing to force the TDCJ to pay prisoners who worked at least \$1 a day. The bill failed, in part because the TDCJ estimated that its implementation would cost an additional \$31m annually, although activists pointed out that the profits generated annually by TCI (the state's correctional industries corporation) far exceeded this amount.<sup>131</sup> Further ballots have been attempted in the years since but as yet, have not succeeded.<sup>132</sup>

## 4 Prison work in reality

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Lately, prison labour has become a prominent focus for civil society activism, leading to significant research on its extent and nature.

To avoid ambiguity, we use the terms ‘prison work’ and ‘prison labour’ in this briefing consistently with how they are used in our wider research project. These terms are sometimes treated interchangeably in the wider US research and civil society literature on the subject, but are here defined as follows. By ‘prison work’, we mean structured activities, done by sentenced prisoners within or outside prison facilities, in which participation is secured using penalties or incentives (including remuneration) offered by the prison authorities. By ‘prison labour’, we mean a subset of prison work activities, fitting the above definition but seeking to realise economic value from prisoners’ labour by producing goods or services for use beyond the facility, and which might involve outside organisations providing work or training. We exclude from both definitions activities otherwise fitting these descriptions but with purely educational aims, or which aim to address the individual-level causes of offending behaviour (e.g. substance misuse or anger management courses).

This section begins by reviewing that research to describe the kinds of work done by prisoners, and summarising key national-level estimates, before focusing in depth on the realities of prison work in each of our three states of interest. As we show, data is unevenly available: Arizona and California publish more than Texas, but generally systematic data on prison work and prison labour are lacking.<sup>133</sup>

### 4.1 Types of work and existing estimates

#### 4.1.1 How many people perform what kinds of prison work?

A 2022 report by the American Civil Liberties Union (ACLU) used nationally representative prisoner survey data from 2016<sup>134</sup> to estimate that at least 65% of people imprisoned in state and federal prisons worked. If the estimate held for 2022, the most recent year for which national data are available, this would equate to around 770,000 people working in US prisons.<sup>135</sup>

A large majority of imprisoned workers—at least 80%, according to the ACLU—perform tasks sustaining the institutions where they are held, including a wide range of activities from catering, cleaning, laundry, and janitorial functions, to maintenance tasks requiring more training (for example, electrical or vehicle maintenance), to administrative and clerical support provided to staff (for example, working in a prison library or supervising work done by other prisoners). Support tasks of this kind are, generally, lower-paid (between \$0.13 and \$0.52 per hour, according to the ACLU), and vary in the degree to which they resemble ‘real’ working conditions in the outside world.

The next largest category—workers in public works assignments—also supports the functioning of public sector institutions, in this case those outside prison walls. One well-documented example is that of prisoner firefighters in California, with at least fourteen other states using prison labour for wildland firefighting. However, the range of tasks involved varies and includes some emergency functions (such as responding to natural disasters) but also some routine functions (such as groundskeeping on state and municipal property). Prisoners in these roles appear always to be paid at



lower wages than free workers, but their wages are often higher than those paid for work within prisons, meaning that there are incentives to participate. They also require a low security classification, meaning that, in effect, this kind of work is offered only to those who are trusted.

The remaining categories are mostly prison industries assignments, in which prisoners produce goods and services sold outside the prison. The ACLU estimates that these account for 7% of all prison work. They are generally slightly better paid, often involve higher levels of skill, and may be more demanding than institutional support work. Most of these assignments (~6.5% of the 7%) are done for state-owned correctional industries corporations, in which prisoners earn, on average, \$0.30 to \$1.30 per hour.<sup>136</sup> Prison industries assignments for private companies comprise 0.6% of all prison work. Such assignments should be paid at the prevailing minimum wage for free workers where the partnership is covered by the PIECP, but some states do not follow its requirements.

Finally, some states, particularly those in the south of the US, also operate major agricultural enterprises, often producing goods for public-sector customers. These tasks are often physically demanding and (especially in southern states) unpaid. Finally, around 2% of prison work is performed because it is mandated by prisoners' sentence requirements, for example because a court has ordered that they should work at the end of a sentence.

*Table 1: Types of work done in US prisons, according to the American Civil Liberties Union.<sup>137</sup> Not all figures can be estimated with equal precision, and the figures do not sum to 100%.*

Type of work	Description	Estimated proportion of all prison workers
<b>Maintenance and institutional support</b>	Tasks supporting the day-to-day operation of the prison, or sustaining the daily needs of their populations	Over 80%
<b>Public works assignments</b>	Tasks for public sector bodies outside prison boundaries	8.0%
<b>State-owned prison industries</b>	Tasks for state-owned enterprises, producing goods and services for sale usually to other public sector bodies	6.5%
<b>Agriculture</b>	Tasks performed in state-owned correctional agribusiness enterprises	2.2%
<b>Mandated work release</b>	Work performed outside prison for various parties as a specific requirement of the sentence <sup>138</sup>	2.0%
<b>Private prison industries</b>	Tasks for private enterprises selling goods and services on the open market	0.6%

In brief, the overwhelming majority of US prison work is low-paid or unpaid and supports the operation of prisons and other public sector agencies. That is, it provides cheap labour which sustains prisons or other state agencies which use prison labour. The work varies, but is always paid at wage rates far below those which would be payable to free workers.

### 4.1.2 How have these numbers changed over time?

The numbers described in section 4.1.1 are impressively large in absolute terms. But they reflect the sheer scale of US imprisonment, and a more complex picture emerges if the figures are considered in a longer-term context. The data reveal how the role played by work in prison regimes has changed, mirroring wider changes in the employment market and the economy since the 1970s.

The sociologist Adam Reich<sup>139</sup> has analysed seven waves of data drawn from the same national prisoner survey used by the ACLU. His analysis indicates that an increasing proportion of work in state prisons has shifted to part-time hours since the 1970s, and that prison work, on average, made reduced demands on prisoners' time. At the same time, growing inequality became evident between different *kinds* of prison work. Between 1974 and 2004, what Reich labels "prison housework"—the largest category of work in Table 1—became pre-eminent,<sup>140</sup> growing from 49% of reported assignments in 1974, to 67% in 2004. Prison industries assignments shrank during the same period, from 13% to 5%.<sup>141</sup> Meanwhile, the hours and wages for each kind of work diverged, with industries assignments becoming longer-hours, and better-paid, while 'prison housework' assignments came to involve shorter hours and less pay.

Reich's analysis suggests that these shifts were accompanied by a corresponding shift in penal philosophies. He supports this using data from interviews with prison managers, showing that prisons, rather than seeking to provide worthwhile work opportunities for more prisoners, have used the scarcity of 'high-quality' work assignments to create steep incentive structures, in which 'better' assignments attract higher rewards, but also harder to obtain and more demanding. Access to them is conditional upon compliance and satisfactory performance, and is tied to wider behavioural incentive schemes which act as an instrument of control over prisoners. This, Reich suggests, represents "a new morality of prison work",<sup>142</sup> in which motivation and a willingness to compete with other prisoners is valorised. There is also evidence from ethnographic research that this stratification of work also reduces the solidarity prisoners feel towards one another, because those in the most favoured work roles judge other prisoners as 'lazy'.<sup>143</sup> Thus in some respects, steep differentials between the 'best' and 'worst' work assignments help secure prison order, by breaking down solidarity between some prisoners, and associated resistance.

Thus far, this section has noted several points about the US in general: first, that prison work takes different forms; second, that the headline number of imprisoned workers is very large; third, that this work is highly stratified, both in terms of pay and the demands involved; and fourth, that nearly all of it remains extremely low-paid compared to equivalent work done by a free worker outside prison.

The following sections review published information on the distinctive features of prison work in each of the three states we focus on.

## 4.2 Arizona

### 4.2.1 Types of work described in published data

The Arizona Department of Corrections, Rehabilitation and Re-entry (ADCRR) publishes monthly statistics, 'Corrections at a Glance', which include figures on their work programs.<sup>144</sup> The figures report separately on four categories of activity, defined below:

ACI Labour Contracts	Prison labour hired to private employers
ACI Owned & Operated	Prison labour for Arizona Correctional Industries, producing goods or services for sale within the state
Intergovernmental Agreements	Prison labour hired to state or municipal authorities
Work Incentive Pay Program	All other forms of prison work

### 4.2.2 Work supporting the functioning of prisons

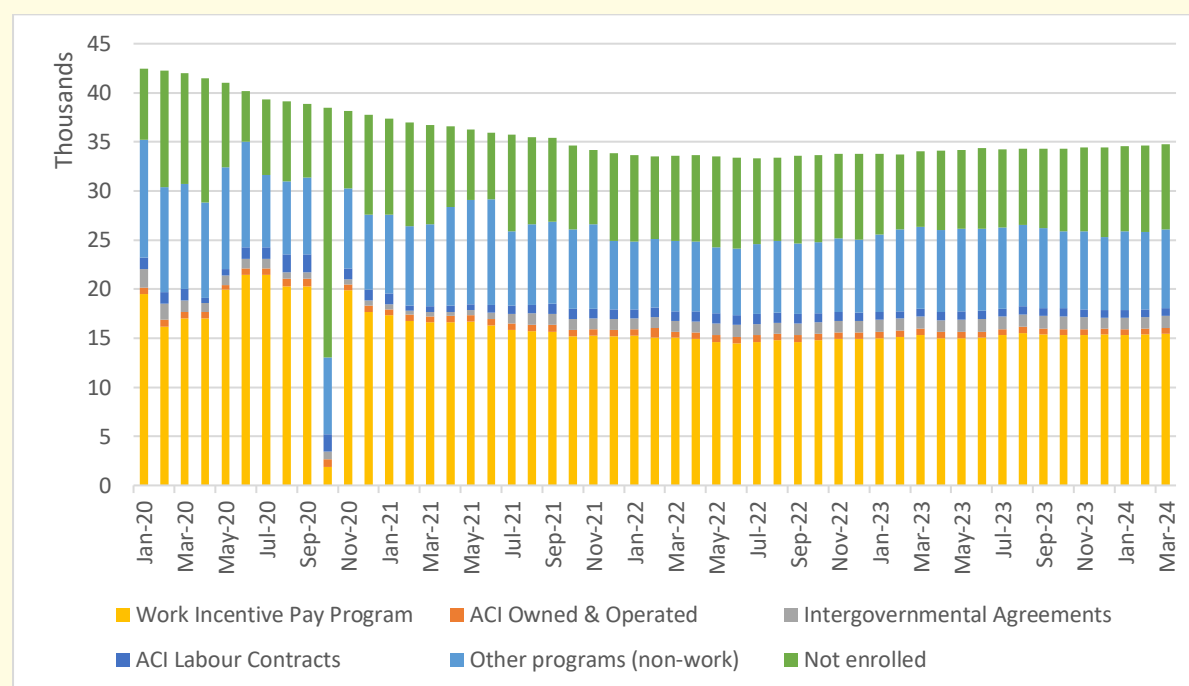
The Corrections at a Glance figures allow a high-level overview of the numbers of people working in Arizona state prisons between 2020 and early 2024, the years covered by data publications. They are summarised in Figure 3.

The figures describe the numbers of prisoners enrolled in all programmes, including ones falling outside the scope of this project (such as educational and substance misuse programmes), and therefore need to be read carefully to identify the numbers of prisoners working. The first point to note is the comparatively high number of prisoners who are *not* working—either because they were enrolled in non-work programmes (light blue bars), or because they are not enrolled in any programme at all (green bars). Averaged across the whole period, they comprised 48% of the monthly prison population across this period. This means that, on average, just over half (52%) of prisoners were in work programmes during this period, with a large majority of these—85% of all work assignments—in the Work Incentive Pay Programme performing tasks supporting the functioning of the system itself.<sup>145</sup>

### 4.2.3 Work for Arizona Correctional Industries and under external contracts

Prison labour, performed for Arizona Correctional Industries (ACI, the state's state-owned prison industries corporation), makes up the other 15% of prison work assignments in Arizona, averaged over the period shown in Figure 3. It divides evenly between work performed directly for ACI, work done on labour contracts, and work done for other governmental organisations. The numbers in each subcategory fluctuated but accounted for an average of 5% of work assignments each, across this period.

Figure 3: Program enrolments in Arizona prisons, Jan 2020-Mar 2024, calculated from figures published by the ADCRR<sup>146</sup>



ACI's 'owned and operated' activities produce goods and services including office furniture, printing and signage, metal and wood fabrication, upholstery and furniture refurbishment, vehicle wraps, COVID mitigation products, building block manufacturing, and wild horse training.<sup>147</sup> These are sold, overwhelmingly, to public sector agencies.

However, labour contracts—under which ACI sells prisoners' labour to external partners—are a striking and distinctive feature of prison work in the state.<sup>148</sup> With Intergovernmental Agreements, the partner organisations are state and municipal governments within Arizona, which use imprisoned workers for diverse tasks such as groundskeeping and janitorial work. These contracts permit towns and local governments to reduce their costs.<sup>149</sup> Their pay rates are set per-contract, but generally exceed the normal ACI wage while remaining far below the state's minimum wage. ACI retains a proportion of the wage for itself, before making statutory deductions and paying the remainder to the prisoner.<sup>150</sup>

ACI's website also lists 16 case studies describing further 'workforce development partnerships' with a range of private sector employers,<sup>151</sup> under which a monthly average of 954 prisoners worked in industries including construction, call centres, aircraft salvage, agriculture, heavy vehicle repair, and trailer manufacture. Most are with companies headquartered and trading within the state of Arizona, and/or operating in economic sectors not covered by PIECP regulations. Investigative journalists in Arizona used public records requests to obtain emails demonstrating that ACI officials knew that some companies they negotiated labour contracts with were engaged in interstate commerce. Nevertheless, they did not conclude these contracts under the PIECP, as required by law.<sup>152</sup>

Thus, in these private sector partnerships, as with intergovernmental agreements, wages again exceed those paid for most prison work, but still usually fall well below the minimum wage. Only two ACI partnerships, employing around 44 prison workers in total, are certified under the PIECP, and thus only

these prisoners earn the state minimum wage (with deductions). Many of these case studies claim high rates of employment secured by participants after their release.<sup>153</sup>

#### 4.2.4 Working conditions, pay, and incentives

As described in section 2.2.3, imprisoned workers in Arizona are not protected from dangerous working conditions or from unfair working practices under the state's employment law. Indeed, ACI markets prisoners' labour to private businesses on precisely this basis, highlighting that its prisoners are "[m]otivated workers that can be relied upon to be at work on time, no paid vacation, no paid sick leave, and prepared to work".<sup>154</sup>

The ADCRR's policies show wages to be highly structured, and highly stratified.<sup>155</sup> \$0.10 per hour is paid to all prisoners who have not passed a functional literacy test. Those who have are paid by cross-referencing the skill level of their work assignment against their classification in a behavioural incentive scheme. Further hourly bonuses of \$0.05 are available for those who attain a high-school equivalent qualification. Individual wages are also subject to regular review, making them sensitive to evaluations by staff supervisors. The effect is that in most work assignments, pay is between \$0.15 and \$0.45 per hour. Separate scales apply for work done in ACI assignments, where the hourly base rate for unskilled work is between \$0.23 and \$0.29, rising to between \$0.90 and \$1.00 for the most skilled jobs.

Deductions from prisoner wages are considerable<sup>156</sup> and are made for a variety of reasons. 25% of wages are deducted until there is \$250 in a dedicated discharge grant account—the balance of which is payable to the prisoner on release. A further 20% is deducted from the wages of prisoners who bring legal action against the ADCRR, towards court fees. 5% of wages are deducted from those convicted of driving under the influence, to fund a programme established for victims of this kind of offence. Up to a further 30% can be deducted if a court has ordered the prisoner to make contributions towards his or her dependents. Prisoners who are earning more than \$2.00 an hour have an additional 30% deducted towards the ADCRR's costs of housing and feeding them. These deductions are mandatory, and can add up to a maximum of 80% of wages for those in WIPP jobs, or up to 110% of wages for those in ACI jobs.

In addition to monetary pay, credits are also used as an incentive for good behaviour. People convicted of minor drugs offences receive three days' credit for every seven days served; all others receive one day's credit for every six days served, depending on a range of factors including their incentive scheme classification and their original conviction. Credits do not reduce the overall length of the sentence, but instead bring forward the date at which release from prison to community supervision becomes possible. They are entirely at the discretion of the ADCRR, can be forfeited if the individual receives negative behavioural evaluations, and are statutorily defined as depending on the prisoner's "continual willingness to volunteer for or successfully participate in a work, educational, treatment or training program".<sup>157</sup> They are unavailable to people serving life sentences.

#### 4.2.5 Summary

Overall, Arizona's published figures are more comprehensive than in the other two states. They allow a fuller description of prison work in the state, although there are still major gaps including in accident and injury reporting. The extent and development of Arizona's prison labour leasing programmes is a



striking and distinctive feature, as is the fact that all work is paid. Nevertheless, most prison work in the state is still done either on behalf of the prison system itself—85% of all work program assignments—or on behalf of ACI and its intergovernmental clients—around 40% of ACI assignments. Even given Arizona’s considerable emphasis on private sector involvement, it is striking that the majority of prison work assignments benefit the public sector in some way.

## 4.3 California

### 4.3.1 Types of work described in existing data

Data on prison work is not collated into a single series, as in Arizona, but some figures are available, with the fullest figures covering work assignments in the state’s prison industries programmes.

A starting point can be found in the CDCR’s estimates to the state’s legislature, provided while the latter was considering amendments to the state’s constitution and to its policies on prisoner pay (see section 3.3).<sup>158</sup> The estimates were provided in 2021; Table 2 summarises the figures. They do not state how many people do *not* work while incarcerated, but this can be extrapolated from other sources: California’s prison population stood at 96,472 in December 2021,<sup>159</sup> and around 30,000 from this number are unaccounted for in Table 2.<sup>160</sup>

*Table 2: Numbers of people working in California prisons, 2021. Figures taken from estimates provided to the California Senate, except where otherwise indicated<sup>161</sup>*

Kind of work	Number of workers	Wages
Maintenance and institutional support	Approx. 58,000	5 pay bands. Hourly pay ranging from \$0.08 to \$0.13 (lowest), to \$0.32 to \$0.37 (highest)
State-owned prison industries	Approx. 7,000	5 pay bands. Hourly pay ranging from \$0.35 to \$0.45 (lowest), to \$0.80 to \$1.00 (highest)
Joint venture programs <sup>162</sup>	23	Hourly pay ranging from \$14 to \$15.42, though with additional deductions up to 80%
Public works <sup>163</sup>	Not stated in legislature documents, but stated elsewhere as 1,669 in August 2022 <sup>164</sup>	Daily pay between \$1.45 and \$3.90; \$1 per hour while actively fighting fires

Conservatively, then, this would suggest that between 25% and 30% of California’s prisoners do not have prison work assignments. Of those who do, around 60% are assigned work sustaining prison functions,<sup>165</sup> around 7% are assigned work in one of over 100 manufacturing and service operations run by CALPIA,<sup>166</sup> fewer than 25 work in joint venture programs with private companies, and slightly less than 2% work in public works projects, as firefighters.

### 4.3.2 Work supporting the functioning of the state

As in Arizona, it is probable that the vast majority of prison work in California supports the functioning of California’s prisons. It is also probable that work in this category is highly variable, in skill and responsibility levels and by pay levels. However, it is also much less well-documented. Evidence from

expert interviews conducted for this project suggests that catering, cleaning and janitorial work predominates, and that significant numbers of prisoners work to provide services (for example in libraries) to other prisoners, but as with most other countries, we have found no published numbers permitting an overview. As a consequence, it is difficult from published data to sketch an overview of how many people perform what kinds of work in this category.

### 4.3.3 Work for CALPIA and on external assignments

However, figures on prison industries are more readily available. The 2021 Senate estimate suggested that around 7,000 prisoners work for California's prison industries corporation, CALPIA. CALPIA's own figures go into greater detail; their report to the California Legislature for 2020/21 gives the average monthly number of filled industries assignments as 6,974, a figure that had declined to 5,744 by the 2022/23 report.<sup>167</sup> In 2022/23, 2,259 of these assignments (39%) were in manufacturing (e.g. fabric products, furniture-making, metalworking); 2,776 or 48% were providing a range of services to public sector organisations (e.g. signage, printing, baking, facilities maintenance), and the remainder worked either in agriculture (142 assignments or 2%) or in sales and administration roles (567 or 10%).<sup>168</sup>

CALPIA's sales revenues—exclusively to customers in the public sector—totalled \$258.5m in 2022/23, with a net profit of \$3.8m.<sup>169</sup> Assignments vary widely in terms of the qualifications and skills available, but are typically paid better than most prison work, as well as requiring a more substantial time commitment. Research carried out for CALPIA reports that those who work in these roles are less likely to reoffend compared to a comparison group on the waiting list for industries assignments, but who did not complete them.<sup>170</sup>

It is clear from the available data that most prison work is done on behalf of the state of California itself, with private prison industries programmes forming a small fraction of all prison jobs. Privately owned prison industries have never been a major feature of prison work in the state, whereas prison labour has been used for public works: for example, prisoners worked in large numbers on the state's highway system between 1915 and 1975.<sup>171</sup> The state itself is the major beneficiary of prison labour.

This is perhaps nowhere more clear than in the state's use of prisoners as wildland firefighters, an assignment which goes back many years but which has an uncertain future. There has been considerable research and media interest in this example, and it is unusually well-documented in comparison to some forms of prison work. Imprisoned firefighters work alongside free workers. They must be in the lowest security classification, and must volunteer for the role. This means that for many, the work is chosen, and preferable to working within prison walls; some research suggests that prisoners apply for the role for complex reasons, including a wish to be outside in nature, and a desire to 'make good' and consolidate a positive, prosocial identity.<sup>172</sup> It is also paid more than any other prison work. Yet firefighting is also dangerous and difficult. Prisoners who perform it are paid far less than their free counterparts, they work longer shifts, they do not receive pension rights or employee benefits such as health insurance, they are more likely to suffer injuries, and there have been documented deaths of imprisoned firefighters, both during active firefighting duties and in training exercises.<sup>173</sup> They were also, until 2020, banned from continuing to work as firefighters following their release.<sup>174</sup>

The future of prison firefighting is uncertain, with the realignment initiatives described in section 3.3 having reduced the available pool of low-security prisoners eligible for the role, and the state having closed many of its conservation camps as a result.<sup>175</sup> But the number of prisoners involved in firefighting has declined steadily from a peak in 2008. In part, this is because the role is voluntary, and in part because the pool of available Level One prisoners (i.e. those with low risk assessments, considered suitable for these roles) has shrunk along with the prison population.<sup>176</sup> The state closed eight fire camps between 2020 and 2022 with further closures expected.<sup>177</sup>

#### 4.3.4 Working conditions, pay, and incentives

Low prison wages have been a consistent subject of criticism in California. Prisoners there not only receive very low pay, but are also charged prices for commissary goods and services such as phone credits. Court-ordered restitution fines are common, and other fees and charges are imposed by the state. It is not clear how many imprisoned people are released with *unpaid* restitution payments, but the CDCR states that 55% of prison wages go towards such payments,<sup>178</sup> and the state's Senate heard in 2022 that the number with outstanding debts on release is substantial, leading to calls for increased prisoner wages.<sup>179</sup>

The CDCR responded, in 2023, with a proposal to double prisoner wages for assignments in prison maintenance roles. The proposal would not raise wages to parity with the free world, nor increase the wages paid to prison industries workers. However, amid wider pressures on the state's budget, the proposal to double prison wages is accompanied by a proposal to reduce the hours for most roles covered by the increase; it is unclear whether this will represent a real increase for most.<sup>180</sup>

In general, most assignments are low-paid, particularly for maintenance roles. Industries assignments offer more realistic working conditions and higher pay, but usually also make greater demands.

Working prisoners in California are somewhat better protected against injury than in other states, but an assessment of their working conditions is difficult, and they are not subject to the safety protections and reporting requirements which apply to ordinary employers. There is some anecdotal evidence of preventable injuries attributable to inadequate training and insufficient safety equipment, both in industries assignments and among firefighters, but the CDCR does not compile figures.<sup>181</sup> Those who are injured can claim compensation under California law, but not before they are released from prison, no matter how serious the injury.

#### 4.3.5 Summary

Overall, California's published figures on prison work are less comprehensive than Arizona's, but more comprehensive than Texas's. Estimates provided to the state legislature suggest that between 25% and 30% of prisoners do not work, that around 60% perform prison maintenance tasks of different kinds, and that around 7% work for the state's public sector prison industries corporation, with a tiny handful working in PIECP-certified schemes with private sector involvement. This means that, overall, prison work in California is largely organised within and for the benefit of the public sector, by lowering labour costs for the functioning of prisons. The absence of private sector involvement is a striking contrast with Arizona, as is the comparatively uncertain future of public works assignments in the state.

## 4.4 Texas

### 4.4.1 Types of work described in published data

Generally, the Texas Department of Criminal Justice's (TDCJ) public policy pronouncements give the impression that work is absolutely central to the prisoner experience in the state. The department's website claims that "[e]very inmate who is physically able has a job in the prison system".<sup>182</sup>

Despite this, the TDCJ appears not to routinely publish detailed statistics on prison work in the state. As in all prisons, however, there will be a broad division between three loose and overlapping categories: work which sustains the functioning of the prison, work with some economic purpose, and work aiming to prepare prisoners for employment after release. It is likely that most work opportunities provided by the prison will consist of tasks in the first category, some will consist of tasks in the second, and a few will consist of tasks in the final category.

Estimating the numbers who perform different activities requires inferences and guesses from piecemeal information. What is available offers at best a dated snapshot. In April 2019, the TDCJ provided an estimate of the number of all prisoner workers to the Texas legislature (which was, at that time, considering a legislative proposal to pay a minimum of \$1 a day to all imprisoned workers in the state). The estimate stated that at that time, 121,167 prisoners were "assigned duties related to agriculture, industry, maintenance, food services, laundry, and other forms of unit and agency support".<sup>183</sup> Set against the TDCJ's figures on the prison population at that time, this estimate would suggest that around 85% of the prison population in Texas performed some kind of work in prison.

### 4.4.2 Work supporting the functioning of prisons

As well as the normal range of catering, cleaning, maintenance, laundry, and other 'prison housework' roles (about which we have been able to obtain no figures), a range of other activities organised on a large scale by the TDCJ are explicitly framed as supporting the functioning of Texan prisons more generally. The nature and scale of these activities is obscure, though it is likely to be a majority of prison work.

Agricultural work features strongly. Land that the state purchased in the 1880s for prison agriculture remains in use today,<sup>184</sup> and is used to grow cotton and other crops, and to rear livestock. The aim is to reduce the cost of feeding and clothing prisoners.<sup>185</sup> Some of these activities are carried out on former slave plantations.<sup>186</sup> Other researchers have suggested that agricultural (or 'field force') assignments are used as aversive, deterrent assignments which workers are assigned to early in their sentence and may only move on from if they show a good record of compliance.<sup>187</sup> Field work is sometimes done without mechanisation, and involves groups of prisoners working in the sun under armed guard supervision.

### 4.4.3 Work in prison industries

Non-prison-housework activities are directed by the TDCJ's Manufacturing, Agribusiness and Logistics Division (MAL). MAL also operates a range of enterprises selling goods and services within the TDCJ: for example, food production, transport, prison uniforms (manufactured from cotton grown by the TDCJ) as well as activities including agribusiness, land and mineral operations, prisoner transport, warehousing, and freight transport.<sup>188</sup>

Whereas correctional industries corporations in some states are self-governing and quasi-independent from the state department of corrections, Texas Correctional Industries (TCI) is a department within MAL, and markets its goods and services to public-sector customers within the state, including city, county, and state agencies, schools, universities, and public hospitals. Its statutory purposes are to reduce the TDCJ's costs, and to prepare prisoners for their release by offering "marketable job skills to reduce recidivism".<sup>189</sup>

A leaflet dated 2020 gives a numerical overview of MAL's activities. It lists 7,838 work spaces, among which around 33% are listed as being engaged in garment manufacturing, 27% in agriculture, and the remainder in activities including furniture manufacturing, graphic design and signage, metalworking, warehousing and transportation. The MAL leaflet also lists opening hours for most of its facilities, which, if accurate, suggest that Texas prisoners working in these roles work a 40-hour week on average.<sup>190</sup> It is not clear whether the figures in the leaflet include those prisoners working for TCI.

Not all MAL activities are economical. Auditors have found, for example, that even with prisoners' free labour, some goods such as cotton cost more than they would on the open market; indeed, by some estimates around half of the TDCJ's agricultural lines are loss-making.<sup>191</sup> The TDCJ has responded that it operates prison industries for reasons other than their cost-effectiveness, including to promote prison order. It also uses profitable activities such as meat production to cross-subsidise others which make losses.<sup>192</sup>

If the MAL figures accurately represent the number of prisoners in the state who work in industries assignments, it appears that around 6% of prisoners in Texas perform this kind of work, producing goods and services for use in the public sector. However, this can only represent a rough and dated estimate.

### 4.4.4 Working conditions, pay, and incentives

Working conditions vary widely but are known to be particularly harsh in agricultural assignments. If they are organised with the aim of providing aversive conditions to deter non-compliance, this would appear to breach the norm—enshrined in international human rights law—that prison work should not aggravate the suffering inherent in the deprivation of liberty, but should instead, wherever possible, prepare prisoners for release.

In general, it appears both that the requirement to work is stronger, and more strongly emphasised in Texas than in our other focus states. Texas also goes further than some other states in ensuring that imprisoned workers do not receive specific legal protections at work: prisoners are explicitly included from *all* employment rights under the state's Labor Code, including the right to compensation if

injured. This is also evident from the fact that there are no material incentives for working in the vast majority of cases.

Texas pays prisoners nothing for most prison work, with only around 80 work assignments under two PIECP programmes receiving wages of any kind. The primary financial beneficiary of prison work and prison labour in Texas is therefore the state itself, which uses prisoner labour explicitly to reduce its own costs and those of other state agencies.

## 4.5 Conclusion

The numbers presented above present a complex view of work in prisons in the three states. Two distinctive points about prison work and prison labour are clear from these examples, however.

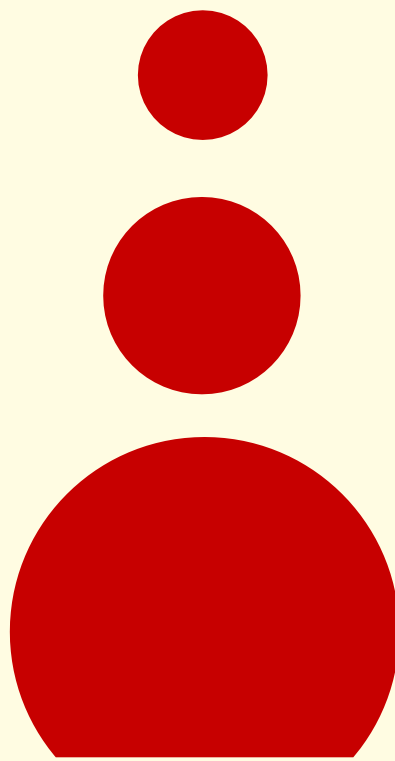
First, prison work lacks clearly stated aims. In fact, it functions most importantly as a kind of subsidy to state institutions, and not as an extraction of value from prisoners' labour by private profit-making interests. This is most obvious in the persistence of prison industries corporations using prison labour to provide low-cost products and services to other public-sector organisations (though it appears that the scale of such activities is shrinking), and in the use of prisoner labour for extramural public works projects (the scale of which is more difficult to estimate, but which are a striking feature of prison work in some states including those we examine).<sup>193</sup> But it is also evident from the much larger scale on which prisoners work to maintain and sustain the functioning of the institutions where they are held. Large-scale manufacturing enterprises, producing goods like prison uniforms and foodstuffs, remain a feature. It is difficult to avoid the conclusion that this follows from the normative cover offered by the US constitution to the idea of compulsory prison work.

Second, however, assignments such as those in prison industries, which produce economic value for the public sector *while also* (arguably) upskilling prisoners and replicating 'real' work conditions, in fact comprise a very small (and shrinking) share of prison work overall, relative to other forms. They are also available only to select groups.<sup>194</sup> Despite low labour costs, their operations are often uneconomical, and periodic efforts to revitalise such activities by involving outside partners have had limited impact. Meanwhile, PIECP partnerships with the private sector account for only a minuscule fraction of all prison work in the states we have considered. Efforts by Arizona to revitalise the practice of prisoner leasing by sending prisoners to work outside prisons are inherently limited in scope, because they can only make use of people nearing the ends of their sentences and/or suitably risk-assessed to undertake such work. In states which have pursued bifurcated sentencing reforms, the available pool of state prisoners for such opportunities is shrinking. Those left in state prisons are, increasingly, older, both currently and at release, with uncertain prospects of rejoining labour markets after prison.

Third, it is clear that non-industries roles comprise the vast majority of all prison work. They encompass a range of activities servicing either the functioning of the prison system itself, or (less commonly) the functioning of the public sector more broadly. But reliable figures on the extent and nature of these tasks are lacking. Arizona's publications make clear that around half of all prisoners, and around 85% of working prisoners, perform tasks of this kind. In California, the equivalent figure appears to be around 60% of all prisoners, or 90% of working prisoners. And in Texas, the equivalent figures are very unclear. In every case, the underlying data offer limited, dated, and/or incomplete

snapshots, with only anecdotal and poorly integrated data available to offer a more granular insight into the wider numbers. Estimates by activist organisations and the availability of nationally representative prisoner survey data go some way to bridging the gap, but the overall picture is unclear. In particular, this is because they have often relied on prisoner surveys by the federal Bureau of Justice Statistics. Its decision to simplify the data recording on prison work has reduced the detail which will be available in future estimates, since it will no longer be possible to disaggregate public works assignments from prison industries assignments. Meanwhile, very little detailed information is available on 'prison housework', though academic research has offered rich descriptions relating to particular sites.<sup>195</sup>

Finally, and uniquely for the three countries we have examined, the legitimacy of compulsory work as a feature of prison regimes has become a topic of significant civil society activism in recent years. Some of this, it appears, has been driven by the racial dimensions and inequalities of US imprisonment, and the resonance between low- and unpaid work by disproportionately black prisoners, and the chattel slavery of the past. Nonetheless, the impression this creates of ruthless exploitation for profit is misleading, since it is public authorities (and therefore American taxpayers) which are largely benefitting, whether directly through sales revenues or indirectly through cost reduction, from the labour of prisoners.





## Notes

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<sup>1</sup> The briefing is part of ICPR's project examining prison work and prison labour in the UK, the US, and Brazil. For more information see <<https://www.icpr.org.uk/unlocking-potential>> accessed 18 July 2024.

<sup>2</sup> Our scope is limited to state prisons, not jails and other forms of local and pre-trial custody.

<sup>3</sup> The decline was not evenly distributed by race, meaning that the Covid-19 pandemic exacerbated the overrepresentation of people of colour in the US prison population. See Brennan Klein and others, 'COVID-19 Amplified Racial Disparities in the US Criminal Legal System' (2023) 617 Nature 344 <<https://www.nature.com/articles/s41586-023-05980-2>> accessed 11 April 2024. This figure includes jail populations.

<sup>4</sup> Nazgol Ghandnoosh, 'Ending 50 Years of Mass Incarceration: Urgent Reform Needed to Protect Future Generations' (*The Sentencing Project*, 8 February 2023) <<https://www.sentencingproject.org/policy-brief/ending-50-years-of-mass-incarceration-urgent-reform-needed-to-protect-future-generations/>> accessed 9 February 2023.

<sup>5</sup> Imprisonment rates as shown here are calculated against the population of US adults. The prison population figures show prisoners sentenced to one year or more in state or federal prisons. See E Ann Carson and Rich Kluckow, 'Prisoners in 2022' (Bureau of Justice Statistics 2023) NCJ 307149 <<https://bjs.ojp.gov/library/publications/prisoners-2022-statistical-tables>> accessed 19 March 2024; E Ann Carson, 'Prisoners in 2021' (2022) NCJ 305125 <<https://bjs.ojp.gov/library/publications/prisoners-2021-statistical-tables>> accessed 10 April 2024; E Ann Carson, 'Prisoners in 2020' (Bureau of Justice Statistics 2021) NCJ 302776 <<https://bjs.ojp.gov/content/pub/pdf/p20st.pdf>> accessed 19 March 2024; E Ann Carson, 'Prisoners in 2019' (Bureau of Justice Statistics 2020) NCJ 255115 <<https://bjs.ojp.gov/content/pub/pdf/p19.pdf>> accessed 19 March 2024.

<sup>6</sup> These states were selected to reflect their contrasting prison populations and policies on prison work.

<sup>7</sup> Bureau of Justice Statistics. Sentenced prisoners under the jurisdiction of state or federal correctional authorities, December 31, 1978-2019. Generated using the Corrections Statistical Analysis Tool at [www.bjs.gov](http://www.bjs.gov). Supplemented from Table 4 and Table 7 in Carson, 'Prisoners in 2020' (n 5); Carson, 'Prisoners in 2021' (n 5); Carson and Kluckow (n 5).

<sup>8</sup> Some of the decline in imprisonment rates is explained by population increases in these states, particularly Texas, where imprisonment rates have fallen even while the prison population remained relatively stable.

<sup>9</sup> Wendy Sawyer and Peter Wagner, 'Mass Incarceration: The Whole Pie 2024' (Prison Policy Initiative 2024) <<https://www.prisonpolicy.org/reports/pie2024.html>> accessed 14 March 2024.

<sup>10</sup> Carson, 'Prisoners in 2020' (n 5); 'Jail Inmates in 2019 | Bureau of Justice Statistics' <<https://bjs.ojp.gov/library/publications/jail-inmates-2019>> accessed 18 July 2024.

<sup>11</sup> Kristen M Budd, 'Private Prisons in the United States' (The Sentencing Project 2024) tbl 1 <<https://www.sentencingproject.org/reports/private-prisons-in-the-united-states/>> accessed 17 July 2024.

<sup>12</sup> Only in three states (Montana, Hawaii, and New Mexico) was the percentage of state prisoners held in private facilities in 2021 higher than in Arizona..

<sup>13</sup> Carson and Kluckow (n 5) tbls 4, 14.

<sup>14</sup> *ibid.*

<sup>15</sup> Arizona Department of Corrections, Rehabilitation & Reentry, 'Department Order 801 - Inmate Classification' <<https://corrections.az.gov/sites/default/files/documents/policies/800/DO%20801%20-%20Eff.%2012-1-23.pdf>> accessed 10 April 2024.

<sup>16</sup> Gabriel Petek, 'Improving California's Prison Inmate Classification System' (Legal Analyst's Office 2019) <<https://lao.ca.gov/reports/2019/4023/inmate-classification-050219.pdf>> accessed 3 April 2024.

<sup>17</sup> Texas Department of Criminal Justice, 'Offender Orientation Handbook' <[https://www.tdcj.texas.gov/documents/Offender\\_Orientation\\_Handbook\\_English.pdf](https://www.tdcj.texas.gov/documents/Offender_Orientation_Handbook_English.pdf)>.

<sup>18</sup> See Ben Jarman and Catherine Heard, 'Labouring behind Bars: Assessing International Law on Working Prisoners' (Institute for Crime & Justice Policy Research 2023) Briefing paper 18–19

<[https://www.prisonstudies.org/sites/default/files/resources/downloads/labouring\\_behind\\_bars\\_appendix\\_web\\_final.pdf](https://www.prisonstudies.org/sites/default/files/resources/downloads/labouring_behind_bars_appendix_web_final.pdf)> accessed 9 November 2023. The other non-ratifying states are Afghanistan, the Marshall Islands, Palau, Tonga, and Tuvalu..

<sup>19</sup> International Labour Organisation, 'Convention C029 - Forced Labour Convention, 1930 (No. 29)' art 2(2)(c) <[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C029](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029)> accessed 24 August 2022.

<sup>20</sup> US Council for International Business, 'Issue Analysis: U.S. Ratification of ILO Core Labor Standards' <[https://www.uscib.org/docs/US\\_Ratification\\_of\\_ILO\\_Core\\_Conventions.pdf](https://www.uscib.org/docs/US_Ratification_of_ILO_Core_Conventions.pdf)> accessed 26 April 2023.

<sup>21</sup> International Labour Organisation, 'Convention C105 - Abolition of Forced Labour Convention, 1957 (No. 105)' art 1 <[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100::NO:12100:P12100\\_ILO\\_CODE:C105:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100::NO:12100:P12100_ILO_CODE:C105:NO)> accessed 24 August 2022. The five categories of forced labour expressly forbidden are those imposed: i] as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social, or economic system; ii) as a method of mobilising and using labour for purposes of economic development; iii] as a means of labour discipline; iv) as a punishment for having participated in strikes; or v] as a means of racial, social, national, or religious discrimination.

<sup>22</sup> Generally, the international law on working prisoners is a complex area. Readers wanting a fuller exploration are referred to our earlier briefing in this series; Jarman and Heard (n 18); see also; Ben Jarman and Catherine Heard, 'Labouring behind Bars: Assessing International Law on Working Prisoners (Appendix)' (Institute for Crime & Justice Policy Research 2023) Briefing paper <[https://www.prisonstudies.org/sites/default/files/resources/downloads/labouring\\_behind\\_bars\\_appendix\\_web\\_final.pdf](https://www.prisonstudies.org/sites/default/files/resources/downloads/labouring_behind_bars_appendix_web_final.pdf)> accessed 9 November 2023.

<sup>23</sup> United Nations General Assembly, 'Basic Principles for the Treatment of Prisoners' <<https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-treatment-prisoners>> accessed 19 September 2023.

<sup>24</sup> United Nations General Assembly, *The United Nations Standard Minimum Rules for the Treatment of Prisoners* ('*The Nelson Mandela Rules*') (United Nations 2015) <[http://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E\\_ebook.pdf](http://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf)> accessed 23 August 2022.

<sup>25</sup> United States Congress (ed), *The Constitution of the United States of America as Amended* (US GPO 2007).

<sup>26</sup> Between 2018 and March 2024, seven states (Alabama, Colorado, Nebraska, Oregon, Tennessee, Utah, and Vermont) have amended their state constitutions to abolish slavery and involuntary servitude without exception. Rhode Island took this step in 1842 but no further amendments occurred until Colorado in 2018. The remaining states listed above have amended their constitutions since 2018. The constitutions of twenty-five more states (Arkansas, California, Georgia, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nevada, North Carolina, North Dakota, Ohio, and Wisconsin) contain language to the effect that slavery and/or involuntary servitude are abolished *except* as punishment for a crime. The remaining seventeen state constitutions contain no specific provisions on slavery or involuntary servitude, and in effect defer to the US Constitution's Thirteenth Amendment. The state legislatures of Nevada and California passed bills to ballot voters on the issue in November 2024. Such bills are a prerequisite before the proposed constitutional amendments may be put to voters; if passed, the ballots amend state constitutions to end slavery and forced labour without exception. In thirteen additional states—to our knowledge, Arkansas, Florida, Georgia, Iowa, Kentucky, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Texas, and Wisconsin (as well as the District of Columbia)—civil society groups are pursuing ongoing campaigns to amend their constitutions and adopt anti-slavery provisions. Similar initiatives have previously failed to pass the legislatures elsewhere, including in California, Louisiana, and (most recently) New Hampshire.

<sup>27</sup> U.S. Department of Labor, 'Wages and the Fair Labor Standards Act' (*U.S. Department of Labor*, no date) <<https://www.dol.gov/agencies/whd/flsa>> accessed 5 October 2022. The federal minimum wage set by the Fair Labour Standards Act (FLSA) is a rate which is unchanged since 2009 and which has declined significantly in real value since then. See ; 'Real and Nominal Value of the Minimum Wage U.S. 2023' (*Statista*) <<https://www.statista.com/statistics/1065466/real-nominal-value-minimum-wage-us/>> accessed 11 March 2024. Local and state minimums mean that across the US, the effective minimum wage varies from this baseline, with average minimum-waged workers across the US earning around \$11.80 hourly in 2019. See ; Stacey Vanek Smith and Cardiff Garcia, 'The Real Minimum Wage' *NPR* (16 May 2019) <<https://www.npr.org/2019/05/16/723947780/the-real-minimum-wage>> accessed 20 October 2022.

<sup>28</sup> U.S. Department of Labor, 'Minimum Wage' (*DOL*) <<http://www.dol.gov/agencies/whd/minimum-wage>> accessed 12 March 2024; U.S. Department of Labor, 'Overtime Pay' (*DOL*) <<http://www.dol.gov/agencies/whd/overtime>> accessed 12 March 2024;

U.S. Department of Labor, 'Fact Sheet #22: Hours Worked Under the Fair Labor Standards Act (FLSA)' (DOL)  
<<http://www.dol.gov/agencies/whd/fact-sheets/22-flsa-hours-worked>> accessed 12 March 2024.

<sup>29</sup> 'What's the Law? | National Labor Relations Board' <<https://www.nlr.gov/about-nlr/rights-we-protect/whats-law>> accessed 12 March 2024.

<sup>30</sup> 'Workers' Right to Refuse Dangerous Work | Occupational Safety and Health Administration'  
<<https://www.osha.gov/workers/right-to-refuse>> accessed 12 February 2024.

<sup>31</sup> 'OSHA Worker Rights and Protections | Occupational Safety and Health Administration' <<https://www.osha.gov/workers>>  
accessed 12 March 2024.

<sup>32</sup> 42 U.S.C.

<sup>33</sup> Occupational Safety and Health Administration, 'Standard Interpretation: OSHA Does Not Have Jurisdiction over State Employees or Inmates' (*United States Department of Labor | Occupational Safety and Health Administration*, 16 December 1992)  
<<https://www.osha.gov/laws-regs/standardinterpretations/1992-12-16-1>> accessed 5 October 2022.

<sup>34</sup> Alabama, Arkansas, Florida, Georgia, Mississippi, South Carolina, Texas.

<sup>35</sup> American Civil Liberties Union, 'Captive Labor: Exploitation of Incarcerated Workers' (American Civil Liberties Union 2022)  
<[https://www.aclu.org/sites/default/files/field\\_document/2022-06-15-captivelaborresearchreport.pdf](https://www.aclu.org/sites/default/files/field_document/2022-06-15-captivelaborresearchreport.pdf)> accessed 19 July 2022.

<sup>36</sup> 18 U.S.C. §§1761-62. See also Matthew Pehl, 'Between the Market and the State: The Problem of Prison Labor in the New Deal' 77 <<https://doi.org/10.1215/15476715-7323746>> accessed 12 September 2022.

<sup>37</sup> This means, in practice, inter-state and international trade.

<sup>38</sup> Ray Marshall, 'Industrial Relations and Inmate Labor' 339 341.

<sup>39</sup> Mike Elk and Bob Sloan, 'The Hidden History of ALEC and Prison Labor' [2011] *The Nation*  
<<https://www.thenation.com/article/archive/hidden-history-alec-and-prison-labor/>> accessed 16 September 2022.

<sup>40</sup> Marshall (n 38) 341-2.

<sup>41</sup> Federal Bureau of Prisons, 'Legal Resource Guide to the Federal Bureau of Prisons'  
<[https://www.bop.gov/resources/pdfs/legal\\_guide\\_march\\_2019.pdf](https://www.bop.gov/resources/pdfs/legal_guide_march_2019.pdf)> accessed 5 October 2022.

<sup>42</sup> 29 U.S.C. § 203

<sup>43</sup> Ruben J Garcia, 'The Thirteenth Amendment and Minimum Wage Laws' (2018) 19 Nevada Law Journal 479  
<<https://heinonline.org/HOL/P?h=hein.journals/nevlj19&i=479>> accessed 29 September 2022; Matthew J Lang, 'The Search for a Workable Standard for When Fair Labor Standards Act Coverage Should Be Extended to Prisoner Workers' (2002) 5 University of Pennsylvania Journal of Labor and Employment Law 191 <<https://heinonline.org/HOL/P?h=hein.journals/upjlel5&i=199>> accessed 25 March 2024.

<sup>44</sup> Lang (n 43); Patrice A Fulcher, 'Emancipate the FLSA: Transform the Harsh Economic Reality of Working Inmates' (2015) 27 Journal of Civil Rights and Economic Development 679 <<https://scholarship.law.stjohns.edu/jcred/vol27/iss4/4>> accessed 19 July 2022.

<sup>45</sup> Noah D Zatz, 'Working at the Boundaries of Markets: Prison Labor and the Economic Dimension of Employment Relationships' 857 885-892 <<https://heinonline.org/HOL/P?h=hein.journals/vanlr61&i=869>> accessed 13 September 2022. A key precedent taking this line is 'Vanskike v. Peters, 974 F.2d 806 | Casetext Search + Citor' <<https://casetext.com/case/vanskike-v-peters>> accessed 18 March 2024.

<sup>46</sup> See also 'Morgan v. MacDonald, 41 F.3d 1291 | Casetext Search + Citor' <<https://casetext.com/case/morgan-v-macdonald>> accessed 18 March 2024.

<sup>47</sup> 'Burleson v. State of California, 83 F.3d 311 | Casetext Search + Citor' <<https://casetext.com/case/burleson-v-state-of-california>> accessed 18 March 2024.

<sup>48</sup> e.g. 'Hale v. Arizona, 993 F.2d 1387 | Casetext Search + Citor' <<https://casetext.com/case/hale-v-state-of-ariz>> accessed 18 March 2024.

<sup>49</sup> e.g. 'George v. SC Data Center, Inc., 884 F. Supp. 329 | Casetext Search + Citator' <<https://casetext.com/case/george-v-sc-data-center-inc>> accessed 18 March 2024; 'Scott v. Balt. Cnty., Civil SAG-21-00034 | Casetext Search + Citator' <<https://casetext.com/case/scott-v-balt-ctny>> accessed 18 March 2024. In the latter case, the Court held that: 'Despite Plaintiffs' evidence of the County's economic motivations, the program provided structure to inmates' days, provided inmates with work experience, provided pay (albeit very little) to inmates, and provided other benefits, such as institutional credits for time served-all of which demonstrate a rehabilitative purpose. Thus, even taking Plaintiffs' evidence as true and crediting the County's economic incentives, the uncontroverted record nonetheless reflects some rehabilitative purpose for the work detail program.'

<sup>50</sup> Megan Hauptman, 'The Health and Safety of Incarcerated Workers: OSHA's Applicability in the Prison Context' (2023) 37 ABA Journal of Labor & Employment Law 71, 83 <[https://www.americanbar.org/content/dam/aba/publications/aba\\_journal\\_of\\_labor\\_employment\\_law/v37/no-1/jlel-37-1-5.pdf](https://www.americanbar.org/content/dam/aba/publications/aba_journal_of_labor_employment_law/v37/no-1/jlel-37-1-5.pdf)> accessed 18 March 2024.

<sup>51</sup> Zatz (n 45); Lang (n 43); Fulcher (n 44).

<sup>52</sup> Hauptman (n 50) pt IV.

<sup>53</sup> Colleen Dougherty, 'The Cruel and Unusual Irony of Prisoner Work Related Injuries in the United States' (2008) 10 University of Pennsylvania Journal of Business and Employment Law 483 <<https://scholarship.law.upenn.edu/jbl/vol10/iss2/7>>; American Civil Liberties Union (n 35) 48–49, 67–68; Human Rights Watch, 'No Equal Justice: The Prison Litigation Reform Act in the United States' (Human Rights Watch 2009) <<https://www.hrw.org/report/2009/06/16/no-equal-justice/prison-litigation-reform-act-united-states>> accessed 25 March 2024; David C Fathi, 'The Prison Litigation Reform Act: A Threat to Civil Rights' (2011) 24 Federal Sentencing Reporter 260 <<https://heinonline.org/HOL/P?h=hein.journals/fedsen24&i=260>> accessed 24 April 2023; Easha Anand, Emily Clark and Daniel Greenfield, 'How The Prison Litigation Reform Act Has Failed For 25 Years' (*The Lab by the Appeal*, 26 April 2021) <<https://theappeal.org/the-lab/explainers/how-the-prison-litigation-reform-act-has-failed-for-25-years/>> accessed 3 November 2022.

<sup>54</sup> Sangita Menon, 'Bill Seeks To Amend Texas Constitution To Ban Slavery' (*KUT Radio, Austin's NPR Station*, 8 May 2021) <<https://www.kut.org/crime-justice/2021-05-08/bill-seeks-to-amend-texas-constitution-to-ban-slavery>> accessed 21 February 2023; Sophie Austin and Gabe Stern, 'California and Nevada May Ban Slavery, Forced Prison Labor' *The Independent* (London, 16 February 2023) <<https://www.independent.co.uk/news/world/americas/us-politics/california-ap-nevada-sacramento-slavery-b2283264.html>> accessed 16 February 2023.

<sup>55</sup> AZ Rev Stat § 31-251 (2022)

<sup>56</sup> Arizona Department of Corrections, Rehabilitation & Reentry, 'Department Order 803: Inmate Disciplinary Procedure' 27, 31 <<https://corrections.az.gov/sites/default/files/documents/policies/800/0803.pdf>> accessed 21 February 2023. 'Malingering' is defined as "feigning illness or injury to avoid work [or other] assignments".

<sup>57</sup> *ibid* 32.

<sup>58</sup> CA Penal Code § 2700 (2022)

<sup>59</sup> 15 CA Code of Regulations §§ 2281, 2402, 2422, 2432, 3044, 3315, 3331.

<sup>60</sup> TX Govt Code § 497.099 (2022)

<sup>61</sup> *ibid*. See also Texas Department of Criminal Justice, 'Department Order 803 – Inmate Disciplinary Procedure' <[https://www.tdcj.texas.gov/documents/cid/Disciplinary\\_Rules\\_and\\_Procedures\\_for\\_Offenders\\_English.pdf](https://www.tdcj.texas.gov/documents/cid/Disciplinary_Rules_and_Procedures_for_Offenders_English.pdf)> accessed 21 February 2023.

<sup>62</sup> Arizona Department of Corrections, Rehabilitation & Reentry, 'Department Order 803: Inmate Disciplinary Procedure' (n 56) s 9; California Department of Corrections & Rehabilitation, 'CDCR Operations Manual' 401–409 <[https://www.cdcr.ca.gov/regulations/wp-content/uploads/sites/171/2022/03/CDCR-DOM\\_2022.pdf](https://www.cdcr.ca.gov/regulations/wp-content/uploads/sites/171/2022/03/CDCR-DOM_2022.pdf)> accessed 21 February 2023; Texas Department of Criminal Justice, 'Department Order 803 – Inmate Disciplinary Procedure' (n 61) para VIII.A.

<sup>63</sup> California Department of Corrections & Rehabilitation (n 62) 350–362; Arizona Department of Corrections, Rehabilitation & Reentry, 'Department Order 903: Inmate Work Activities' s 1

<<https://corrections.az.gov/sites/default/files/documents/policies/900/0903.pdf>> accessed 21 February 2023; cf. AZ Rev Stat § 31-254 (2022).

<sup>64</sup> Emmanuel Elone, 'Arizona Minimum Wage Rising to \$14.35 Effective Jan. 1, 2024' (17 October 2023) <<https://news.bloombergtax.com/payroll/arizona-minimum-wage-rising-to-14-35-effective-jan-1-2024>> accessed 13 March 2024; Division of Labor Standards Enforcement, 'Minimum Wage' (*California Department of Industrial Relations*, March 2024) <[https://www.dir.ca.gov/dlse/minimum\\_wage.htm](https://www.dir.ca.gov/dlse/minimum_wage.htm)> accessed 13 March 2024.

<sup>65</sup> AZ Rev Stat § 31-254 (2022)

<sup>66</sup> Arizona Department of Corrections, Rehabilitation & Reentry, 'Department Order 903: Inmate Work Activities' (n 63) 25–6; California Department of Corrections & Rehabilitation (n 62) art 12. See also 15 CA Code of Regulations §§ 3041.2 and 8006.

<sup>67</sup> Arizona Department of Corrections, Rehabilitation & Reentry, 'Department Order 903: Inmate Work Activities' (n 63) 24–5.

<sup>68</sup> 15 CA Code of Regulations § 3041.2 (2022), see also 15 CA Code of Regulations § 8006 (2022).

<sup>69</sup> TX Labor Code § 62.156

<sup>70</sup> American Civil Liberties Union (n 35) 100; Texas Correctional Industries, 'Annual Wage Scale 2023' <<https://tci.tdcj.texas.gov/programs/pie/contracts/2021WageScale.pdf>> accessed 24 February 2023; Texas Workforce Commission, 'Texas Minimum Wage Law | Texas Workforce Commission' (*Texas Workforce Commission*, 2 March 2023) <<https://www.twc.texas.gov/jobseekers/texas-minimum-wage-law>> accessed 27 February 2023.

<sup>71</sup> California Department of Corrections & Rehabilitation (n 62) 423–439; see also TX Govt Code § 498.003 (2022).

<sup>72</sup> AZ Rev Stat § 41-1604.06; CA Penal Code § 2933; TX Govt Code § 497.003 (2022)

<sup>73</sup> California Department of Corrections & Rehabilitation (n 62) 423–431.

<sup>74</sup> Arizona Rev Stat § 41-1604.07, subsection D (2023)

<sup>75</sup> CA Penal Code § 2933-2934 (2022); Arizona Rev Stat §§ 13-706; 41-1604.07, subsection B1c.

<sup>76</sup> California Department of Corrections & Rehabilitation (n 62) s 53130.3.

<sup>77</sup> AZ Rev Stat § 31-251 (2021).

<sup>78</sup> Arizona Department of Corrections, Rehabilitation & Reentry, 'Department Order 903: Inmate Work Activities' (n 63) para 1.2.7.

<sup>79</sup> These are instead left to departmental policy within the ADCRR.

<sup>80</sup> AZ Rev Stat § 23-615(B6) (2022); see also AZ Rev Stat § 31-251(E) (2022)

<sup>81</sup> AZ Rev Stat § 23-1031 (2022)

<sup>82</sup> CA Penal Code § 2700 (2022)

<sup>83</sup> 15 CA Code of Regs 3044(a-b)

<sup>84</sup> CA Labor Code § 3351 (2022)

<sup>85</sup> The TDCJ's website states that the working day in Texas prisons begins at 6am, see Texas Department of Criminal Justice, 'Frequently Asked Questions - Correctional Institutions Division' (*Texas Department of Criminal Justice*, -) <<https://www.tdcj.texas.gov/faq/cid.html#work>> accessed 20 February 2023.

<sup>86</sup> TX Labor Code §§ 62.156, 201.074, 501.024.

<sup>87</sup> Leah Wang, 'Since You Asked: How Many Women and Men Are Released from Each State's Prisons and Jails Every Year?' (*Prison Policy Initiative*, 28 February 2024) <<https://www.prisonpolicy.org/blog/2024/02/28/releases-sex-state/>> accessed 9 April 2024.

<sup>88</sup> Catriona Connell and others, 'Effectiveness of Interventions to Improve Employment for People Released from Prison: Systematic Review and Meta-Analysis' (2023) 11 Health & Justice 17 <<https://healthandjusticejournal.biomedcentral.com/articles/10.1186/s40352-023-00217-w>> accessed 12 April 2023.

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- <sup>104</sup> Arizona Department of Corrections, Rehabilitation & Reentry, 'Fiscal Year 2024 Strategic Plan 2-Pager' <<https://corrections.az.gov/sites/default/files/documents/2024%20Mission%20and%20Vision/ADCRR%202-Pager%208-15-23.pdf>> accessed 22 April 2024.
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- <sup>106</sup> California Assembly Bill 109 (2011).
- <sup>107</sup> Keramet Reiter and Natalie Pifer, 'Brown v. Plata' in Oxford Handbooks Editorial Board (ed), *Oxford Handbook Topics in Criminology and Criminal Justice* (Oxford University Press 2012) <<https://doi.org/10.1093/oxfordhb/9780199935383.013.113>> accessed 6 June 2023.
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<sup>116</sup> American Civil Liberties Union (n 35) 40.

<sup>117</sup> Dan Walters, 'How California's Bursting Budget Morphed into a \$45 Billion Deficit in Just Two Years' *CalMatters* (16 May 2024) <<http://calmatters.org/commentary/2024/05/california-budget-surplus-became-deficit/>> accessed 25 June 2024.

<sup>118</sup> Texas and the US federal government's Bureau of Justice Statistics (BJS) differ in how they report Texas's prison population. The Texas Department of Criminal Justice (TDCJ) does not count several categories of person within the prison population, including people held in mandatory and secure substance misuse facilities, those held in state-run county jails, or those held in 'intermediate sanction facilities' for those held after parole violations. These counting rules have enabled the state to report progress against the key political goal of reducing the prison population, but also mean that these reports need to be interpreted cautiously, since by other counting methods the reductions in prison populations have been less dramatic. See Marie Gottschalk, 'No Star State: What's Right and Wrong about Criminal Justice Reform in Texas' (2021) 19 *Seattle Journal for Social Justice* 927, 932–936 <<https://heinonline.org/HOL/P?h=hein.journals/sjsj19&i=961>> accessed 3 June 2024. In this document, we cite the federal statistics unless otherwise indicated.

<sup>119</sup> Carson and Kluckow (n 5) tbl 4.

<sup>120</sup> *ibid* 7.; Bureau of Justice Statistics. Imprisonment rate of sentenced prisoners under the jurisdiction of state or federal correctional authorities per 100,000 U.S. residents, December 31, 1978–2019. Generated using the Corrections Statistical Analysis Tool at [www.bjs.gov](http://www.bjs.gov).

<sup>121</sup> Gottschalk (n 118); see also Institute for Crime & Justice Policy Research, 'United States of America' (*World Prison Brief*) <<https://www.prisonstudies.org/country/united-states-america>> accessed 7 October 2022.

<sup>122</sup> The Associated Press, 'Texas Criminal Justice Reforms Offer Lessons for Oklahoma' *AP News* (25 August 2018) <<https://apnews.com/general-news-a41d52a1e8c54cdf94ce5f3bd52529ff>> accessed 4 June 2024; Gottschalk (n 118).

<sup>123</sup> Council of State Governments Justice Center, 'Justice Reinvestment in Texas' (*CSG Justice Center*) <<https://csgjusticecenter.org/projects/justice-reinvestment/past-states/texas/>> accessed 4 June 2024.

<sup>124</sup> Gottschalk (n 118) 932.

<sup>125</sup> Keri Blakinger, "'It's a Crisis": Nearly One in Three Guards Left the Texas Prison System Last Year' *Houston Chronicle* (Houston, TX, 25 January 2019) <<https://www.chron.com/news/houston-texas/houston/article/lt-s-a-crisis-nearly-one-in-three-guards-13562752.php>> accessed 4 June 2024.

<sup>126</sup> Hannah Wiley, 'Trump Administration Looks to Texas as It Pushes a Criminal Justice Reform Bill' *The Texas Tribune* (3 December 2018) <<https://www.texastribune.org/2018/12/03/first-step-act-prison-reform-texas-criminal-justice/>> accessed 4 June 2024; Rob Allen, 'Justice Reinvestment: Empty Slogan or Sustainable Future for Penal Policy?' (Transform Justice 2014) <<https://www.transformjustice.org.uk/publication/justice-reinvestment-empty-slogan-or-sustainable-future-for-penal-policy/>>.

<sup>127</sup> Council of State Governments Justice Center, 'Reducing Recidivism: States Deliver Results' (The Council of State Governments 2017) <<https://csgjusticecenter.org/publications/reducing-recidivism-states-deliver-results-2017/>> accessed 4 June 2024.

<sup>128</sup> Michele Deitch, 'But Who Oversees the Overseers?: The Status of Prison and Jail Oversight in the United States' (2020) 47 *American Journal of Criminal Law* 207; Hannah Wiley, 'Advocates Say the Timing Is Right for Independent Oversight of Texas Prisons' *The Texas Tribune* (26 November 2018) <<https://www.texastribune.org/2018/11/26/advocates-say-time-right-independent-oversight-texas-prisons/>> accessed 4 June 2024.

<sup>129</sup> Gottschalk (n 118) 930, 978, 1017.

<sup>130</sup> *ibid* 980.

<sup>131</sup> Vicky Camarillo, "'The Penal System Today Is Slavery": Lawmakers Finally Start to Talk About Unpaid Labor in Texas Prisons' [2019] *The Texas Observer* <<https://www.texasobserver.org/penal-system-slavery-unpaid-labor-texas/>> accessed 30 January 2023.

<sup>132</sup> Marsha Mercer, 'Yes, Slavery Is on the Ballot in These States' (*Pew Trusts*, 22 August 2022) <<https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2022/08/22/yes-slavery-is-on-the-ballot-in-these-states>> accessed 4 October 2022.

<sup>133</sup> American Civil Liberties Union (n 35) 21–2.

<sup>134</sup> United States. Bureau Of Justice Statistics, 'Survey of Prison Inmates, United States, 2016: Version 4' <<https://www.icpsr.umich.edu/web/NACJD/studies/37692/versions/V4>> accessed 2 November 2022.

<sup>135</sup> These numbers do not include people incarcerated in jails (a further 663,100 people in 2022), see Zhen Zeng, 'Jail Inmates in 2022' (Bureau of Justice Statistics 2022) NCJ 307086 <<https://bjs.ojp.gov/document/ji22st.pdf>> accessed 19 March 2024. Thus the true number working in any form of custody will far exceed this estimate.

<sup>136</sup> American Civil Liberties Union (n 35) 97–103.

<sup>137</sup> *ibid* 27.

<sup>138</sup> Usually, in US prisons, because they are approaching the end of a sentence and are allowed to leave the prison to perform work, usually waged, for an outside employer. For further details, see *ibid* 31–32.

<sup>139</sup> Reich (n 95). Although the most recent wave of data collection took place in 2016, the survey questions changed for the 2016 wave of data collection, and many of Reich's analyses can only be made up to 2004; our quotations from this work reflect this.

<sup>140</sup> That is, work which does not generate products or services for sale, but instead sustains the prison as an institution.

<sup>141</sup> Reich (n 95) 143. Although the proportion of prisoners working in prison industries grew somewhat to an estimated 6.5% by 2016, this occurred in a wider context of prison population decline, with the number of workers employed continuing to shrink. See American Civil Liberties Union (n 35) 29, 114.

<sup>142</sup> Reich (n 95) 127.

<sup>143</sup> Michael Gibson-Light, 'Sandpiles of Dignity: Labor Status and Boundary-Making in the Contemporary American Prison' (2020) 6 RSF: The Russell Sage Foundation Journal of the Social Sciences 198 <<https://www.jstor.org/stable/10.7758/rsf.2020.6.1.09>> accessed 15 August 2022; Gibson-Light (n 95).

<sup>144</sup> These figures are published as part of the ADCRR's *Corrections at a Glance* series. See 'Corrections at a Glance | Arizona Department of Corrections, Rehabilitation & Reentry' <<https://corrections.az.gov/reports/corrections-glance>> accessed 22 April 2024.

<sup>145</sup> It should be noted that these figures record assignments and not necessarily whether work was taking place; it is unlikely that prison regimes operated as normal throughout the Covid pandemic.

<sup>146</sup> 'Corrections at a Glance | Arizona Department of Corrections, Rehabilitation & Reentry' (n 144). The anomalous month of October 2020 appears not to be an error, but is unexplained in the figures.

<sup>147</sup> 'Capabilities Page | Arizona Correctional Industries' <<https://aci.az.gov/capabilities/>> accessed 7 June 2024.

<sup>148</sup> See, for example, Jaafari and others (n 100); American Civil Liberties Union (n 35).

<sup>149</sup> Joseph Darius Jaafari and others, 'This Arizona City Is Built on Prison Labor. That Keeps Taxes Low. But What's the Real Cost?' *Arizona Republic* (Phoenix, AZ, 18 July 2022) <<https://www.azcentral.com/in-depth/news/local/arizona-investigations/2022/07/18/prisoners-help-arizona-city-live-beyond-its-means/9724223002/>> accessed 4 October 2022.

<sup>150</sup> *ibid*.

<sup>151</sup> 'Partnerships | Arizona Correctional Industries' <<https://aci.az.gov/labor-partnerships/>> accessed 7 June 2024.

<sup>152</sup> Jaafari and others (n 100).

<sup>153</sup> 'Partnerships | Arizona Correctional Industries' (n 151).

<sup>154</sup> 'Construction | Arizona Correctional Industries' <<https://aci.az.gov/labor-partnerships/construction/>> accessed 7 June 2024.

<sup>155</sup> Unless otherwise indicated, details cited in this paragraph are taken from Arizona Department of Corrections, Rehabilitation & Reentry, 'Department Order 903: Inmate Work Activities' (n 63).

<sup>156</sup> All details in this paragraph are from AZ Revised Statutes § 31-254 (2023)

<sup>157</sup> Arizona Revised Statutes § 41-1604.07, subsection D (2023)

<sup>158</sup> Beam and Thompson (n 110); Lyons (n 110).

- <sup>159</sup> California Department of Corrections, 'Monthly Total Population Report (TPOP4) Archive' (*Office of Research*) <[https://www.cdcr.ca.gov/research/all\\_years\\_monthly-total-population-report-tpop4-archive/](https://www.cdcr.ca.gov/research/all_years_monthly-total-population-report-tpop4-archive/)> accessed 31 May 2024.
- <sup>160</sup> It is unclear how many from this number are unable to work, are allocated to non-work activities, or have declined to work..
- <sup>161</sup> California Senate, '2021/2022 ACA3: 06/28/22- Senate Floor Analyses' <[https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill\\_id=202120220ACA3#](https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220ACA3#)> accessed 15 February 2023.
- <sup>162</sup> i.e. privately-owned prison industries, compliant with PIECP certification requirements.
- <sup>163</sup> i.e. firefighting in conservation camps.
- <sup>164</sup> California Department of Corrections, 'Conservation (Fire) Camps' (*California Department of Corrections and Rehabilitation*) <<https://www.cdcr.ca.gov/facility-locator/conservation-camps/>> accessed 16 February 2023.
- <sup>165</sup> e.g. in food service, clerical work, maintenance and custodial work, or construction, see California Senate, '2021/2022 ACA3: 06/11/22- Senate Public Safety' <[https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill\\_id=202120220ACA3#](https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220ACA3#)> accessed 15 February 2023.
- <sup>166</sup> *ibid* 4–5. These include optical labs, clothing manufacture, carpentry, custodial services, and the production of car registration plates.
- <sup>167</sup> CALPIA, 'Report to the Legislature FY 2020–21' (California Prison Industries Authority 2021) Annual report 31–32 <[https://www.calpia.ca.gov/wp-content/uploads/calpia/news/Reports\\_and\\_Publications/FY2020-21LegislatureReport.pdf](https://www.calpia.ca.gov/wp-content/uploads/calpia/news/Reports_and_Publications/FY2020-21LegislatureReport.pdf)> accessed 28 June 2024; CALPIA, 'Report to the Legislature FY 2022–23' (California Prison Industries Authority 2023) Annual report 28–29 <[https://www.calpia.ca.gov/wp-content/uploads/calpia/news/Reports\\_and\\_Publications/Report%20To%20The%20Legislature%20FY%202022-23%20APPROVED-PIA.pdf](https://www.calpia.ca.gov/wp-content/uploads/calpia/news/Reports_and_Publications/Report%20To%20The%20Legislature%20FY%202022-23%20APPROVED-PIA.pdf)> accessed 28 June 2024.
- <sup>168</sup> CALPIA, 'Report to the Legislature FY 2022–23' (n 167) 27–29.
- <sup>169</sup> *ibid* 25–26.
- <sup>170</sup> James Hess and Susan F Turner, 'The Effect of Prison Industry on Recidivism: An Evaluation of California Prison Industry Authority (CALPIA)' (California Prison Industries Authority 2021) Evaluation report <[https://www.calpia.ca.gov/wp-content/uploads/calpia/news/Reports\\_and\\_Publications/CALPIARecidivism.pdf](https://www.calpia.ca.gov/wp-content/uploads/calpia/news/Reports_and_Publications/CALPIARecidivism.pdf)> accessed 28 June 2024.
- <sup>171</sup> Baker (n 113).
- <sup>172</sup> Philip Goodman, 'Hero and Inmate: Work, Prisons, and Punishment in California's Fire Camps' (2012) 15 *WorkingUSA* 353 <<http://onlinelibrary.wiley.com/doi/abs/10.1111/j.1743-4580.2012.00398.x>> accessed 21 September 2022.
- <sup>173</sup> Abby Vesoulis, 'Inmates Fighting California Wildfires Are More Likely to Get Hurt, Records Show' [2018] *TIME* <<https://time.com/5457637/inmate-firefighters-injuries-death/>> accessed 29 May 2024; Annika Neklason, 'California Is Running Out of Inmates to Fight Its Fires' [2017] *The Atlantic* <<https://www.theatlantic.com/politics/archive/2017/12/how-much-longer-will-inmates-fight-californias-wildfires/547628/>> accessed 29 May 2024.
- <sup>174</sup> Brock, 'As California Wildfires Raged, Incarcerated Exploited for Labor' *USA Today* (11 November 2020) <<https://www.usatoday.com/story/opinion/policing/2020/11/11/california-wildfires-raged-incarcerated-exploited-labor-column/6249201002/>> accessed 2 March 2023.
- <sup>175</sup> Abby Cunniff, 'California Is Dependent on Prison Labor for Fighting Fires. This Must End.' (*Truthout*, 23 September 2022) <<https://truthout.org/articles/california-is-dependent-on-prison-labor-for-fighting-fires-this-must-end/>> accessed 4 October 2022.
- <sup>176</sup> Neklason (n 173).
- <sup>177</sup> Cunniff (n 175).
- <sup>178</sup> Office for Victim and Survivor Rights & Services, 'Restitution Responsibilities, Information for Adult Offenders' (*California Department of Corrections and Rehabilitation*) <<https://www.cdcr.ca.gov/victim-services/restitution-responsibilities/>> accessed 18 March 2024.

<sup>179</sup> California Senate (n 165) s 4.

<sup>180</sup> Anabel Sosa, 'California Prisoners Could Get Higher Wages under New Plan — but Still Less than \$1 an Hour' *Los Angeles Times* (Los Angeles, CA, 26 November 2023) <<https://www.latimes.com/california/story/2023-11-26/california-prisons-double-wages-inmates-work-labor-involuntary-servitude>> accessed 27 November 2023.

<sup>181</sup> Vesoulis (n 173); Spencer Woodman, 'California Blames Incarcerated Workers for Unsafe Conditions and Amputations' (*The Intercept*, 28 December 2016) <<https://theintercept.com/2016/12/28/california-blames-incarcerated-workers-for-unsafe-conditions-and-amputations/>> accessed 5 October 2022.

<sup>182</sup> Texas Department of Criminal Justice, 'Frequently Asked Questions - Correctional Institutions Division', Texas Department of Criminal Justice, -, <https://www.tdcj.texas.gov/faq/cid.html#work>.

<sup>183</sup> Coverage of the legislative debates can be found in Camarillo, "'The Penal System Today Is Slavery'"; The estimate can be found in Legislative Budget Board, 'Fiscal Note, 86th Legislative Regular Session, In Re: HB3720' (Texas Legislature, 19 April 2019), <https://capitol.texas.gov/tlodocs/86R/fiscalnotes/pdf/HB03720I.pdf>; both sources are quoted in ; American Civil Liberties Union, 'Captive Labor', 96.

<sup>184</sup> Robert Perkinson, *Texas Tough: The Rise of America's Prison Empire* (Picador 2010) ch 3; American Civil Liberties Union (n 35) 30.

<sup>185</sup> Lisa R Collier, 'An Audit Report on Agribusiness at the Department of Criminal Justice' (Texas State Auditor's Office 2021) Audit report 21–016 <<https://sao.texas.gov/Reports/Main/21-016.pdf>> accessed 20 February 2023; American Civil Liberties Union (n 35).

<sup>186</sup> American Civil Liberties Union (n 35).

<sup>187</sup> Beth Schwartzapfel, 'Taking Freedom: Modern-Day Slavery in America's Prison Workforce' [2018] *Pacific Standard* <<https://psmag.com/social-justice/taking-freedom-modern-day-slavery>> accessed 7 October 2022. Ex-prisoners we have interviewed for this project concur on this point.

<sup>188</sup> Texas Department of Criminal Justice, 'Annual Review Fiscal Year 2022' (Texas Department of Criminal Justice 2023) Annual report 25 <[https://www.tdcj.texas.gov/documents/Annual\\_Review\\_2021.pdf](https://www.tdcj.texas.gov/documents/Annual_Review_2021.pdf)> accessed 17 January 2023.

<sup>189</sup> Texas Government Code §497.002

<sup>190</sup> Figures calculated by ICPR using information from Texas Department of Criminal Justice, 'Manufacturing, Agribusiness and Logistics Division | Facilities and Operations' (*Texas Department of Criminal Justice*, -) <[https://www.tdcj.texas.gov/divisions/mal/fac\\_oper.html#tci](https://www.tdcj.texas.gov/divisions/mal/fac_oper.html#tci)> accessed 30 January 2023.

<sup>191</sup> Keri Blakinger, 'Some Prison Labor Programs Lose Money — Even When Prisoners Work for Pennies' (*The Marshall Project*, 2 September 2021) <<https://www.themarshallproject.org/2021/09/02/some-prison-labor-programs-lose-money-even-when-prisoners-work-for-pennies>> accessed 4 October 2022; Collier (n 185); Robin McDowell and Margie Mason, 'Prisoners in the US Are Part of a Hidden Workforce Linked to Hundreds of Popular Food Brands' *AP News* (29 January 2024) <<https://apnews.com/article/prison-to-plate-inmate-labor-investigation-c6f0eb4747963283316e494eadf08c4e>> accessed 5 February 2024.

<sup>192</sup> McDowell and Mason (n 191).

<sup>193</sup> American Civil Liberties Union (n 35).

<sup>194</sup> Reich (n 95).

<sup>195</sup> Gibson-Light (n 95).



