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The Truth About Private Prison Control in New Mexico

Vanessa Brimhall

I. INTRODUCTION

Private prisons directly profit off the incarceration of human beings.¹ Specifically, the private prison system impacts society's financial and moral compasses, and it also perpetuates the disproportionate exploitation of people from minority communities for cheap labor.² According to the Bureau of Justice Statistics, 35% of state prisoners are white, while 59% are Black or Hispanic.³ Those statistics are even more problematic when taking into account that 62% of the overall national population is white, while only 30% is Black or Hispanic.⁴

Furthermore, private prisons in many states are neither required nor expected to follow all of the laws and practices that are required of government-owned prisons;⁵ this has led to an increase in (1) labor exploitation, (2) poor and harsh living conditions, and (3) lack of proper healthcare.⁶ Though existing studies and data, such as those previously mentioned, demonstrate the harsh conditions that exist in private prisons, there are still states with no current or proposed legislation for a ban on the facilities.

¹ See Lan Cao, *Made in the USA: Race, Trade, and Prison Labor*, 43 N.Y.U. REV. L. & SOC. CHANGE 1, 4 (2019).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ Andrea Castillo, *Judge largely upholds California ban on private prisons in tentative ruling*, L.A. TIMES (July 16, 2020, 6:51 PM), <https://www.latimes.com/california/story/2020-07-16/california-private-prisons-immigrant-detention-centers-ban-lawsuit> [<https://perma.cc/V54F-XFY9>].

⁶ See *id.*

In 2017, Shoaib Ahmed, a twenty-four-year-old incarcerated immigrant from Bangladesh, encouraged his fellow incarcerated coworkers to stop working.⁷ Though Ahmed was aware that this omission of labor would come with severe consequences, he persisted because those incarcerated at the Stewart Immigration Detention Center in Lumpkin, Georgia, are forced to work under horrific and unfair conditions.⁸ Ahmed, along with some of his coworkers, was paid only fifty cents per hour to work within the detention facility.⁹ Therefore, when Ahmed was told that his \$20 paycheck had been delayed—something that seemed to happen on a regular basis—he became upset, leading to his call for a work strike.¹⁰ The “crime” of encouraging his fellow coworkers does not match the punishment that Ahmed received. Ahmed was placed in solitary confinement for ten days—a commonly used punishment in the facility that consists of “a cell with no access to other workers, only an hour of out-of-cell time per day and showers only three times per week.”¹¹ Ahmed eventually spoke out about the impact that this severe isolation was having on his mental health: “I think the segregation will kill me.”¹²

It is no secret to society that prisons use solitary confinement for various reasons. However, many people do not agree with the harsh and crippling effects that the practice of solitary confinement has been proven to have on a person, even when that person has committed a violent crime. So, it is difficult to comprehend that a private prison used solitary confinement as a punishment for a prisoner who committed no harm against another person; rather, Ahmed’s only crime was speaking out and taking nonviolent action

⁷ Azadeh Shahshahani, *Why are for-profit US prisons subjecting detainees to forced labor?*, THE GUARDIAN (May 17, 2018, 6:00 AM), <https://www.theguardian.com/commentisfree/2018/may/17/us-private-prisons-forced-labour-detainees-modern-slavery> [https://perma.cc/9MZP-LRZD].

⁸ *See id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

against the inhumane treatment and conditions found within the money-making venture that he was forced to take part in—private prison labor—as well as encouraging his fellow incarcerated coworkers to do the same.

Ahmed is likely not the first or last incarcerated person who will endure the torture of solitary confinement.¹³ In fact, Ahmed and two other prisoners at the Stewart Immigration Detention Center filed a class action suit against the private detention facility’s owner and operator, CoreCivic, for violating the forced-labor prohibition in the Trafficking Victims Protection Act (TVPA)¹⁴ as well as Georgia State law.¹⁵ More specifically, they alleged that the “voluntary” work program was in fact not at all voluntary since CoreCivic coerces the prisoners “to perform labor at Stewart by, inter alia, the use or threatened use of serious harm, criminal prosecution, solitary confinement, and the withholding of basic necessities.”¹⁶ This abuse and exploitation of prisoners’ labor as part of the facility’s profit-making schemes constitute a contemporary form of slavery.¹⁷

New Mexico heavily utilizes private prisons¹⁸ yet has no current or proposed legislation for a pathway to any kind of ban. The New Mexico Legislature should pass a bill forbidding the renewal or creation of government contracts with private, for-profit prisons to remedy the injustices against the human beings who have been and continue to be incarcerated in those facilities. Specifically, the bill should create a timeline for the eradication of private prison use to eliminate the opportunity for the private sector to directly facilitate and profit from prison labor and those incarcerated.

¹³ See *id.*

¹⁴ 18 U.S.C. §§ 1589, 1594–95.

¹⁵ *Barrientos v. CoreCivic, Inc.*, 951 F.3d 1269, 1271 (11th Cir. 2020).

¹⁶ *Id.*

¹⁷ See Shahshahani, *supra* note 7.

¹⁸ Casey Leins, *New Mexico’s Private Prison Use Far Exceeds Every Other State*, U.S. NEWS & WORLD REP. (Jan. 23, 2020, 10:41 AM), <https://www.usnews.com/news/best-states/articles/2020-01-23/why-new-mexico-uses-private-prisons-more-than-any-other-state> (last visited Jan. 7, 2022).

II. ROADMAP

This comment will demonstrate New Mexico's current private prison situation and why a statewide ban on private prisons is needed. Section III, Subsection A will introduce general background information on private prisons in the United States; Subsection B will introduce information found on current private prison practice in the United States. Section IV will propose a solution to address the lack of legislation in New Mexico regarding private prisons; Subsection A will examine California's legislation regarding a private prison ban; Subsection B will examine Washington's legislation regarding a private prison ban; and Subsection C will examine and propose legislation regarding a private prison ban in New Mexico using a hybrid model of the language used in the legislation from California and Washington. Section V will conclude this comment.

III. BACKGROUND

A. A History of Private Prisons in the United States

The inception of the private prison as an institution in the United States dates back to pre-seventeenth century England, specifically pre-colonization of the Americas.¹⁹ England originally sought to cut costs relating to crime and punishment, and by doing so, paved the way for private jailer contracts and the modern-day private prison.²⁰ The British Crown transported thousands of criminals to work off their debts to society on cotton and tobacco plantations—a practice believed to be economically advantageous while simultaneously reducing crime in England by removing the criminals and taking them elsewhere.²¹ This particular practice of criminal punishment, often seen as indentured servitude, became so popular that it was eventually

¹⁹ Ryan S. Marion, *Prisoners for Sale: Making the Thirteenth Amendment Case Against State Private Prison Contracts*, 18 WM. & MARY B. RTS. J. 213, 216 (2009).

²⁰ *Id.*

²¹ *Id.*

established in the American colonies as well.²² In fact, the colony of Georgia was originally established as a penal colony for England's prisoners and poor debtors based on the popularity of indentured servitude used by the British Crown.²³

Following the American Revolution in the late eighteenth century, the new Commonwealth of Pennsylvania continued to build upon these ideas of indentured servitude by building the first "penitentiary."²⁴ The creation of the penitentiary was considered a major and much needed act of reform for community punishment.²⁵ Lawmakers believed idleness was a contributing factor to criminal behavior, so the newly implemented labor requirement for penitentiaries was adopted in hopes of attacking this idleness.²⁶ Although it was this idea of indentured servitude that contributed to the adoption of the penitentiary's new work method, the driving force behind the work method was supposed to be rehabilitative rather than punitive.²⁷ Therefore, under this new system, "work was imposed to further the state's police power objective of enforcing public morals rather than create a private profit motive."²⁸

After the Pennsylvania model for penitentiary work became increasingly popular, a competing model, known as the Auburn or Congregate system, was developed in New York.²⁹ The Auburn model emphasized a "collective, factorylike" form of labor.³⁰ In comparison, Pennsylvania-style prisons could produce only small amounts of household goods while Auburn-style prisons were able to produce everything from "factory-quality shoes to furniture."³¹ During the nineteenth century, more states began adopting the Auburn model

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 217.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *See id.*

²⁸ *Id.*

²⁹ *Id.* at 218.

³⁰ *Id.*

³¹ *Id.*

as they recognized the vast potential for economic gains.³² The Auburn model turned “prison officers into factory managers whose main goal was to make the prison a self-sustaining entity via profit.”³³ However, even with the Auburn system’s more businesslike model, private entities were still discouraged from replacing the state in its role as the controller of prison labor.³⁴

The first real instance of complete private control over incarcerated people and their labor was “convict leasing,” or when a state prison would provide “convicts” for labor to private contractors in return for a fee, as well as housing, food, and complete control over the incarcerated people whom did not receive any payment in return for their labor.³⁵ Southern legislatures justified convict leasing by using the Pennsylvania and Auburn prison models;³⁶ however, these models should have been deemed unconstitutional by the Thirteenth Amendment.³⁷ The Thirteenth Amendment was intended to outlaw slavery and involuntary servitude, such as convict leasing, but the Punishment Clause was a loophole that allowed involuntary servitude “as a punishment for crime whereof the party shall have been duly convicted.”³⁸ Since the ratification of the Thirteenth Amendment and the post-Civil War devastation to the Southern economy, Southern legislatures were unable to bear the costs of prison upkeep and the prisoners were an accessible source of cheap labor.³⁹ Southern legislatures passed laws allowing prisons to contract out the labor of their prisoners to plantation owners and other private

³² *Id.* at 218–19.

³³ *Id.*

³⁴ *Id.* at 219.

³⁵ Neveen Hammad, *Shackled to Economic Appeal: How Prison Labor Facilitates Modern Slavery While Perpetuating Poverty in Black Communities*, 26 VA. J. SOC. POL’Y & L. 65, 68 (2019).

³⁶ Marion, *supra* note 19, at 222–24.

³⁷ *Id.*

³⁸ *Id.*; U.S. CONST. amend. XIII.

³⁹ Marion, *supra* note 19, at 224–25.

entities as long as they fulfilled their contractual obligations.⁴⁰ By 1885, 138 prisons had leased over 53,000 prisoners who produced goods valued at \$28.8 million in that year alone.⁴¹

Since legislatures created no effective avenues to successfully stop convict leasing, it was in “full swing by the twentieth century.”⁴² However, by the 1920s, the system of convict leasing was failing due to white paid laborers in the general population feeling as if they were “losing valuable opportunities to the cheap labor provided largely by [B]lack inmates.”⁴³ To address this problem, Congress passed the Hawes-Cooper Act of 1929, which allowed states to ban the importation of prisoner-made goods from other states.⁴⁴ Congress also passed the Ashurst-Sumners Act in 1935, which banned prisoner-made goods and deemed interstate importation of those goods a federal crime.⁴⁵ Except for some Southern states, convict leasing and private prison operation eventually faded away at both the state and federal levels after the passing of the above-mentioned laws.⁴⁶ As a result, from the early 1940s until the early 1980s, there was “virtually no private sector involvement in correctional services,”⁴⁷ making it so that the operations and administration of prisons were largely “delegated to governmental agencies, authorized by statute, staffed by government employees, and funded solely by the government” at both levels.⁴⁸

Nevertheless, in the 1970s, businesses began to lobby to relax the regulations regarding the use of prison labor for private business.⁴⁹ The lobbying for the relaxation of the regulations on private prison labor use was

⁴⁰ *Id.* at 225.

⁴¹ Cao, *supra* note 1, at 10.

⁴² Marion, *supra* note 19, at 229.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Cao, *supra* note 1, at 15.

pushed by groups, such as the American Legislative Exchange Council (ALEC), through the Prison Industries Act and Prison Industries Enhancement (PIE) certification.⁵⁰ Through PIE certification, correctional departments were exempt from the interstate commerce restrictions on the sale of prisoner-made goods and were even permitted to sell prisoner-made goods to the federal government.⁵¹

In the 1980s, during the Reagan Administration, private prison labor began to increase.⁵² The general direction of society following President Reagan's announcement of the "War on Drugs" and increased advocacy for stricter federal criminal laws against the production, possession, and distribution of narcotics, was leaning toward increased private prison use.⁵³ President Reagan's announcement and advocacy led to the passage of the Comprehensive Crime Control Act and the Sentencing Reform Act in 1984.⁵⁴ The Comprehensive Crime Control Act and the Sentencing Reform Act eliminated federal parole and established mandatory minimum sentences for drug-related crimes.⁵⁵ By the end of the 1980s, the prison population of the United States had increased by 115%.⁵⁶

As a response to the quickly increasing prison population, states and localities were advised to enter into contracts with private corrections construction and management firms.⁵⁷ With this response in mind, two prominent Tennessee politicians, Tom Beasley and Doc Crants, founded Corrections Corporation of America (CCA).⁵⁸ By the mid-1990s, CCA and its primary competitor, Wackenhut Corrections, controlled 75% of the

⁵⁰ *Id.*

⁵¹ *See id.*

⁵² Marion, *supra* note 19, at 232.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.* at 213.

⁵⁸ *Id.* at 232.

private prison market.⁵⁹ These companies were publicly traded and existed solely for the purpose of making profits from prison contracts with local, state, and federal authorities.⁶⁰

B. Recent Information on Private Prisons in the United States

More recently, the government's dismissal of the root causes of prison overcrowding has led to another surge in prison privatization.⁶¹ The drastic rise in incarceration rates can be attributed not to an increase in criminal activity—as seen by statistics demonstrating that crime rates have generally fallen since the early 1970s—but rather to an increase in the use of “get tough” legislation that has been prominent since the Reagan era.⁶² Complementing the issue of overcrowding, private prison growth is dependent upon rising incarceration rates and stricter criminal sentencing laws.⁶³ In order for private prisons to generate profits, they need a continual supply of new “clients” (first-time prisoners) and a base of “frequent, dependable clients” (recidivist prisoners).⁶⁴ Additionally, private prisons “make a profit by charging the contracting state or federal government a daily rate, per person incarcerated, to cover investment and operation costs.”⁶⁵ Now, several private prison companies, including CCA and The Geo Group, Inc. (GEO), profit off prisoners' labor under that same method.⁶⁶

The history of private prison use in the United States has cultivated the modern-day private prison establishment process:

⁵⁹ *Id.*

⁶⁰ *Id.* at 213.

⁶¹ Lucas Anderson, *Kicking the National Habit: The Legal and Policy Arguments for Abolishing Private Prison Contracts*, 39 PUB. CONT. L. J. 113, 119 (2009).

⁶² *Id.*

⁶³ *Id.* at 127.

⁶⁴ *Id.*

⁶⁵ Patrice A. Fulcher, *Hustle and Flow: Prison Privatization Fueling the Prison Industrial Complex*, 51 WASHBURN L. J. 589, 601 (2012).

⁶⁶ *Id.* at 601–02.

First, a state or locality, either by statute or decree, approves a new prison and solicits bids from private prison companies. Once a prison company secures a contract, it builds the type of correctional facility requested and operates it for the government. The latter task requires the prison company to hire personnel (e.g., prison guards, wardens, and psychologists) and provide the same services as a state-owned prison.⁶⁷

Furthermore, incarceration rates in the United States continue to soar. As of 2019, the United States accounts for 25% of the world's total prison population while only accounting for 5% of the overall world population.⁶⁸ Private prisons continue to reap the benefits of cheap prison labor provided by those soaring incarceration rates.⁶⁹ CCA, GEO, and other private prison companies are able to reap these benefits by promising to run their private prisons in such a way (focus placed on cost-effectiveness and safety) that will result in both government and taxpayer savings in return for governments and municipalities to continue turning the warehousing of prisoners over to private interests.⁷⁰

IV. PROPOSED SOLUTION

“We should not be profiting off our most vulnerable communities. Locking people up should not be a moneymaking venture.”⁷¹

Few states have current or proposed legislation banning private prisons, and many states have not even addressed the regulation of their existing private prisons—New Mexico falls under both of these categories.⁷² At this point, it would be more effective for New Mexico to focus on legislation

⁶⁷ Marion, *supra* note 19, at 214.

⁶⁸ Cao, *supra* note 1, at 3.

⁶⁹ See André Douglas Pond Cummings & Adam Lamparello, *Private Prisons and the New Marketplace for Crime*, 6 WAKE FOREST J. L. & POL'Y 407, 415 (2016).

⁷⁰ *Id.*

⁷¹ Lilly Fowler, *Washington could become the next state to ban private prisons*, CROSSCUT (Jan. 23, 2020), <https://crosscut.com/2020/01/washington-could-become-next-state-ban-private-prisons> [<https://perma.cc/6RMC-DRGZ>].

⁷² Leins, *supra* note 18.

banning private prisons rather than on legislation regulating private prisons since the potential benefits of private prisons do not outweigh their costs.⁷³ Once New Mexico passes legislation for a statewide ban on private prisons, the focus should shift to legislation that protects those currently incarcerated in private prisons by requiring better practices be put in place as the ban process commences.

Both California and Washington enacted legislation banning private prisons.⁷⁴ New Mexico may benefit from a hybrid model of California's and Washington's legislation since New Mexico does not already have proposed legislation in place. By creating a hybrid model, New Mexico would not be forced to start legislation from scratch, but rather could take the existing legislation and mold it to fit the state's particular needs. Furthermore, California's and Washington's legislation would allow New Mexico to start with a framework that not only includes the eradication and restriction of current contracts, but also puts limitations on government contracting with out-of-state private facilities and building any additional in-state private prisons in the future. The hybrid model will save time and energy, making the entire process more efficient for lawmakers.

A. The California Bill

California passed legislation in 2019 that restricts the state from entering into or renewing government contracts with private prisons.⁷⁵ Additionally, the bill creates a timeline that requires California to completely transition out of private prison use by 2028.⁷⁶ The relevant part of the California statute for purposes of this comment is Section 5003.1:

⁷³ *Infra* Section IV(A), (B), & (C).

⁷⁴ Assemb. B. 32, 2019 Leg., Reg. Sess. (Cal. 2019).

⁷⁵ *Id.*

⁷⁶ *Id.*

(a) On or after January 1, 2020, the department shall not enter into a contract with a private, for-profit prison facility located in or outside of the state to provide housing for state prison inmates.

(b) On or after January 1, 2020, the department shall not renew an existing contract with a private, for-profit prison facility located in or outside of the state to incarcerate state prison inmates.

(c) After January 1, 2028, a state prison inmate or other person under the jurisdiction of the department shall not be incarcerated in a private, for-profit prison facility.⁷⁷

The current Governor of California, Gavin Newsom, strongly believes that private prisons—specifically those that house California prisoners and detain immigrants and asylum seekers—contribute to over-incarceration.⁷⁸ To combat the over-incarceration, Governor Newsom prioritized passing this legislation to limit private prisons.⁷⁹ In addition, other supporters of the bill regulating private prisons argued that “private prisons are driven to maximize shareholder profits, lack proper oversight or incentives to rehabilitate inmates and have contributed to a culture of mass incarceration by making it cheaper to lock up people.”⁸⁰

In an attempt to defend the private prison business model that is commonly used within its facilities, the companies who own the private prisons stated that “they provided vital extra space when detentions in California’s prisons swelled to more than double the system’s capacity, sparking lawsuits that led to court-ordered cuts to inmate populations.”⁸¹ A representative of CoreCivic

⁷⁷ *Id.*

⁷⁸ Veronica Stracqualursi, *California to shut down private prisons and immigrant detention centers*, CNN (Oct. 12, 2019, 12:46 PM), <https://www.cnn.com/2019/10/12/politics/california-law-ban-private-for-profit-prisons/index.html> [https://perma.cc/S3WP-32XK].

⁷⁹ *Id.*

⁸⁰ Steve Gorman, *California bans private prisons and immigration detention centers*, REUTERS (Oct. 11, 2019, 2:40 PM), <https://www.reuters.com/article/us-california-prisons/california-bans-private-prisons-and-immigration-detention-centers-idUSKBN1WQ2Q9> [https://perma.cc/4DTB-ZAQ3].

⁸¹ *Id.*

also stated that “for 10 years, [they] provided safe, secure housing and life-changing re-entry programming for inmates that had faced extreme overcrowding.”⁸² While attempting to defend the private prison business model further, GEO cited to its record of being “an innovator in the field of rehabilitative services” and stated that “the bill worked against the state’s goal of lowering inmate recidivism.”⁸³

Contrary to GEO’s claim, common programs in government facilities—such as substance addiction treatment, vocational education, and sentence credits for good behavior—are largely nonexistent in private prisons.⁸⁴ The absence of those programs is due to the lack of (mostly economical) incentives for private prison owners and their need for constant “clientele.”⁸⁵ Therefore, it is largely unknown whether GEO is truly a leader in rehabilitative services without the data to back up their statement.

However, CoreCivic and the other private prison companies may still make a valid argument regarding overcrowding since private prison contracts are usually intended (and believed) to alleviate prison overcrowding and reduce corrections expenditures within local, state, and federal facilities.⁸⁶ “However, experience has demonstrated ‘that the number of jailed criminals typically rises to fill whatever space is available,’” and privatization has failed to assist in prison overcrowding thus far.⁸⁷ Assistance is likely failing because private prisons and overcrowding thrive only when increasing together.⁸⁸ To clarify, private prisons need human bodies to accrue revenue and overcrowding feeds that need. Private prisons, therefore, have no incentive to stop overcrowding. Instead, the consistent demand for new

⁸² *Id.*

⁸³ *Id.*

⁸⁴ Anderson, *supra* note 61, at 130.

⁸⁵ *Id.*

⁸⁶ *Id.* at 115.

⁸⁷ *Id.* (quoting Ira P. Robbins, *Privatization of Corrections: A Violation of U.S. Domestic Law, International Human Rights, and Good Sense*, 13 HUM. RTS. BRIEF 12 (2006)).

⁸⁸ *Id.*

prisons and jails has facilitated an increase in governmental spending, corrections budgets, and the prison population⁸⁹—all of which only benefit the companies that own the private prisons.

Separately, there is an issue with legitimacy regarding the private prison system. Private companies currently assume responsibility for the punishment and rehabilitation of prisoners, but they are not equipped to perform this inherently public discretionary function since they can only successfully fulfill this role at the expense of prisoners' fundamental liberty interests.⁹⁰ In other words, a money-making machine like a private prison is not the right entity to administer punishment nor the rehabilitation of those incarcerated. The free-market model that private prison companies commonly use cultivates competition which, in turn, forces better performance at a comparatively low cost.⁹¹ However, this effect is often undetectable and renders the humanitarian problems that arise under its schemes invalid.⁹² Lastly, a study done by the Department of Justice found that there are 65% more inmate-on-inmate assaults and 49% more inmate-on-staff assaults in private facilities in comparison to their government-operated counterparts.⁹³

CoreCivic and GEO have been able to take over the private prison industry with their multimillion-dollar contracts from federal, state, and local governments.⁹⁴ Unfortunately, this means they have been successful in generating revenue for their shareholders at the public's expense.⁹⁵ Though government distribution of public funds to prison privatization may have initially appeared to be a cost-saving measure, research has shown that the

⁸⁹ *Id.*

⁹⁰ *Id.* at 115–16.

⁹¹ *Id.* at 116.

⁹² *Id.*

⁹³ *Id.* at 126–27.

⁹⁴ Fulcher, *supra* note 65, at 603.

⁹⁵ *See id.*

effects have been determined to be increasingly negative and inefficient.⁹⁶ CoreCivic and GEO “monopolize[d] and manipulate[d] the market” through the incentivization of incarceration.⁹⁷ This manipulation proves that private prison companies are profiting not only off of the incarceration of people but also off of the government entities that are supposed to provide protection for those same incarcerated people.

While California’s bill has strengths that New Mexico should draw from, it has some loopholes that could enable private prison companies to skirt regulation. For example, the California bill prohibited the Department of Corrections from entering into or renewing a contract with a private, for-profit prison to incarcerate state prisoners beginning January 1, 2020, but it does not prohibit the department from renewing or extending a contract to house state prisoners to comply with any court-ordered population cap.⁹⁸ Although the intention behind this bill is to abolish private prisons by 2028 and stop the department from entering into or renewing any contracts with private prisons during the ban process, a loophole exists that allows the renewal or extension of contracts so long as it is for housing state prisoners in order to avoid exceeding the population cap.⁹⁹ The bill also does not apply to privately owned prisons operated and staffed by the state corrections agency, creating yet another loophole.¹⁰⁰ Loopholes, no matter how minuscule they may seem, can still perpetuate the private prison system on a massive scale.

GEO stated that “if AB 32 forces [them] to close its facilities in California, it would lose an average of \$250 million a year in revenue over the next 15 years, plus the \$300 million invested in acquiring and setting up those buildings.”¹⁰¹ These potential losses could be a massive detriment to the

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ CAL. PENAL CODE § 5003.1 (2021).

⁹⁹ *See id.*

¹⁰⁰ Gorman, *supra* note 80.

¹⁰¹ Castillo, *supra* note 5.

California economy. And, the potential foreseeable rippling effects will likely affect almost every family, business, and person in the state, along with any entities that they may be in business with.¹⁰² Additionally, GEO employees and their families will experience devastating effects of loss of income if GEO loses that revenue. Alternatively, potential positive outcomes that could come from the state closing private prisons and the DOC operating them include an assurance of prisoner regulation and administration of rehabilitation as well as potential job market growth.

Overall, it seems that “AB 32 sent a powerful message that California opposes the practice of profiteering off the backs of Californians in custody”¹⁰³—a belief that the nation as a whole would benefit from if implementation was required and enforced.

B. The Washington Bill

Currently, Washington only has one private detention facility.¹⁰⁴ That facility is in Tacoma, Washington, and is operated by U.S. Immigration and Customs Enforcement (I.C.E.).¹⁰⁵ However, the facility should close at the end of its contract due to Washington Senate Bill 6442, which prohibits the operation of a private detention facility in the state and restricts contracting with any out-of-state private prison.¹⁰⁶ The relevant part of the Washington statute for the purposes of this comment is as follows:

PROHIBITION ON PRIVATE INCARCERATION. (1) Except as provided in subsection (2) of this section and RCW 72.68.010 (2),

¹⁰² *See id.*

¹⁰³ Winston Gieseke, *California ban on private prisons, immigration centers is 'largely Constitutional'*, USA TODAY (Oct. 9, 2020, 8:38 PM), <https://www.usatoday.com/story/news/nation/2020/10/09/state-ban-private-prisons-immigration-centers-largely-constitutional-and-elected-officials-back-cali/5941714002/> [<https://perma.cc/S7WD-HE8F>].

¹⁰⁴ Fowler, *supra* note 71.

¹⁰⁵ *Id.*

¹⁰⁶ *See* Wash. S.B. 6442.

the secretary is prohibited from utilizing a contract with a private correctional entity for the transfer or placement of offenders.¹⁰⁷

According to the bill, “there are numerous documented abuses of people held in private detention facilities in Washington state and elsewhere.”¹⁰⁸ Additionally, “incarcerating persons in private detention facilities leads to cutting operational costs, which is dangerous and detrimental to Washingtonians.”¹⁰⁹ Therefore, an added benefit of a statewide ban on private prison use is the avoidance of private prisons’ cost-cutting.

The main, overarching issue is that private prisons are first and foremost profit-seeking entities that are constantly trying to reduce costs in whatever way possible at whomever else’s expense.¹¹⁰ Because there is a heavy reliance on profit as their primary motive, private prison companies are encouraged to disregard prisoner rehabilitation and criminal deterrence.¹¹¹ Both rehabilitation and criminal deterrence (or “treatments”) require that the private prison companies put a significant amount of money into them to make headway on the proven beneficial effects.¹¹² Unfortunately, there is no incentive for these companies to front the money needed for these programs to be effective when all that is required of them is to keep their contractual agreement (i.e., basic housing, food, etc.).¹¹³ As previously mentioned, private prisons need new and returning “clients” to accrue revenue, and top-of-the-line rehabilitation treatments would not promote recidivism.¹¹⁴ Additionally, states believe that when private prisons provide contract money and do not have to worry about salaries for prison guards or maintenance, they provide large savings to treasuries and accommodate the increasing

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ Anderson, *supra* note 61, at 116.

¹¹¹ *Id.*

¹¹² *See id.*

¹¹³ *See id.*

¹¹⁴ *See id.*

number of people who are incarcerated.¹¹⁵ However, it is incorrect to think of private prisons as money-saving entities because private prisons not only profit from their prisoners but also from government and taxpayer funds.¹¹⁶ Lastly, private prisons are perceived as more efficient in constructing and operating these facilities than their government-owned counterparts.¹¹⁷ For example, private prisons tend to be considered “cleaner and safer than their state-run counterparts.”¹¹⁸ Private prisons may seem more efficient in their operations, but that is likely because they generally severely lack rehabilitation programs and extracurriculars, which makes it easier for the private prisons to force prisoners to spend their free time performing “cheap labor.”¹¹⁹ To summarize, the common cost-cutting practices that private prisons may abide by allows a portion of the money that should be used for extracurriculars and rehabilitation programs to go toward facility operations instead.

Furthermore, those incarcerated in private prison facilities are required to perform menial tasks for little to no pay; therefore, they are “directly contribut[ing] to the profit-making function of the corporation” that harms them.¹²⁰ In other words, “if the state is characterized as contracting out inmate labor to these corporations who subsequently aid the prison in earning corporate revenue, the system begins to resemble a modern day form of slavery.”¹²¹ In fact, private companies have complete control over those incarcerated in their private detention facilities, and then those same companies use the incarcerated people to improve the facilities and increase

¹¹⁵ Marion, *supra* note 19, at 233.

¹¹⁶ *See id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *See id.* at 243.

¹²⁰ *Id.* at 214.

¹²¹ *Id.*

profits. This practice benefits these companies' shareholders and no one else.¹²²

"Privatization critics note that the profit-based business model used by the private prison system encourages private prison operators to minimize expenditures for inmate services and prison staffing, thereby impairing safety and undermining prisoners' basic human rights."¹²³ Compared to their government counterparts, guards in private prisons have a higher turnover rate since they tend to receive lower pay and fewer benefits.¹²⁴ In other words, "at any given time there are more guards in private prisons who are new to their facility or to the field of corrections in general, than in public prisons."¹²⁵ That, coupled with the fact that private prison guards receive 35% fewer service training hours on average than public prison employees, could lead to major safety concerns.¹²⁶ Additionally, private prisons operate with the idea that a higher ratio of incarcerated persons per correctional officer lowers the prison's operating costs¹²⁷—which, once again, enables unsafe situations. Private prisons tend to "employ 15[%] fewer guards per prisoner than public prisons."¹²⁸

The private prison system exploits unpaid labor that the Thirteenth Amendment sought to abolish.¹²⁹ Despite Thirteenth Amendment concerns, eliminating a billion-dollar industry is unrealistic and potentially harmful considering it supposedly brings economic investment and jobs to "poverty stricken rural areas."¹³⁰ However, there is an argument to be made that those are the exact reasons why there should be complete eradication of private, for-profit prisons. A billion-dollar industry created on the backs of human

¹²² *Id.* at 215.

¹²³ Anderson, *supra* note 61, at 120.

¹²⁴ *Id.* at 125.

¹²⁵ *Id.* at 125–26.

¹²⁶ *Id.* at 126.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.* at 244–45.

beings who are mistreated should neither exist nor be accepted as commonplace. The eradication of private prisons would require a more humane and just strategy to bring the much-needed economic investment and jobs to poverty-stricken rural areas.

C. New Legislation for New Mexico

New Mexico should adopt legislation to ban the use and existence of private prisons statewide. This legislation should be drafted using a hybrid model of California's and Washington's legislative language used to ban private prisons. The proposed legislation for New Mexico should read as follows:

(a) On or after January 1, 20__, the department shall not enter into a contract with a private, for-profit prison facility located in or outside of the state to provide housing for state prison inmates.

(b) On or after January 1, 20__, the department shall not renew an existing contract with a private, for-profit prison facility located in or outside of the state to incarcerate state prison inmates.

(c) After January 1, 20__, a state prison inmate or other person under the jurisdiction of the department shall not be incarcerated in a private, for-profit prison facility.

(d) Effective immediately, the secretary is prohibited from utilizing a contract with a private correctional entity for the transfer or placement of offenders that have not already been placed in the contracted facility.¹³¹

(e) Effective immediately, all current construction of private, for-profit prison facilities shall be terminated, and all future construction of private, for-profit prison facilities shall be prohibited.¹³²

¹³¹ See Wash. S.B. 6442; see also Cal. Assemb. B. 32.

¹³² Section (e) of the recommended proposed legislation for New Mexico is my own words; this language is not found in Washington or California legislation.

New Mexico holds the highest proportion (42%) of prisoners in for-profit facilities of any state.¹³³ The shift to private, for-profit prisons was pioneered by Governor Gary Johnson between 1995–2003.¹³⁴ Governor Johnson asserted that private prisons could “offer the same services and goods as the public prison services at two-thirds the cost,”¹³⁵ which led to his proposal to completely privatize the state’s prison system. He even campaigned on the idea that prisoners should serve “every stinking minute” of their sentences.¹³⁶ To further show Governor Johnson’s impact, 42% of New Mexico’s prison population was incarcerated in a private facility by the time he had left office in 2003.¹³⁷ In addition, “from 2000 to 2016, New Mexico witnessed steady growth in its for-profit prisons, increasing the population by 41[%].”¹³⁸ Then, in 2017, New Mexico once again had around 50% of its inmate population in private prisons.¹³⁹ New Mexico also continued to “top the nation at four times the national average of other states that relied on private prisons (twenty-eight states total) and seven times the national average (fifty states total)” in 2017.¹⁴⁰

In New Mexico, citizens are calling for the state to “divest from private prisons not only because they help fuel a system of mass incarceration that has decimated families, deepened racial disparities, and failed to make [their] communities safer, but also because these corporations are notorious for abuse and neglect.”¹⁴¹ New Mexico’s reliance on private prisons has

¹³³ Jonathon Booth, *Ending Forced Labor in Ice Detention Centers: A New Approach*, 34 GEO. IMMIGR. L. J. 573, 582 (2020).

¹³⁴ NATHAN CRAIG, ADVOC. VISITORS WITH IMMIGRS. IN DET. (AVID) IN THE CHIHUAHUAN DESERT, A SYNTHESIS OF NEW MEXICO LEGISLATIVE FINANCE COMMITTEE DOCUMENTS RELATED TO PRIVATE PRISONS 1 (2020) (on file with author).

¹³⁵ *Id.* at 2.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ KARA GOTSCH & VINAY BASTI, CAPITALIZING ON MASS INCARCERATION: U.S. GROWTH IN PRIVATE PRISONS 17 (The Sentencing Project, 2018).

¹³⁹ CRAIG, *supra* note 134, at 3.

¹⁴⁰ *Id.*

¹⁴¹ Leins, *supra* note 18.

increased greatly in the last couple decades.¹⁴² In fact, New Mexico’s incarceration rates are higher than the national average, with one in every 100 people in the state being incarcerated.¹⁴³ A study done by the Prison Policy Initiative found a definite correlation between poverty levels and increased incarceration rates which has led to “the American prison system bursting at the seams with people who have been shut out of the economy and who had neither a quality education nor access to good jobs.”¹⁴⁴ It is the corporations that own the private prisons—such as CoreCivic and GEO—who continue to push the narrative that private prisons are necessary for New Mexico to cultivate economic stimulus, specifically in rural communities, and meet the supply and demand rates for incarceration;¹⁴⁵ however, education and jobs contribute more to dropping incarceration rates and strengthening New Mexico’s economy and general community than the existence of private prisons.¹⁴⁶ Therefore, “it makes sense to divest from these [private prison] companies—who ultimately lobby to put more people in jail—and instead [New Mexico] must invest in [its] communities’ education and economic development opportunities.”¹⁴⁷

A broad issue to consider when dealing with private prisons is that even if private prisons were abolished, there would still be a problem with mass incarceration and unconstitutional conditions in government-run prisons.¹⁴⁸ The abolishment of private prisons is not going to fix all the problems seen in the general prison system; however, private prisons are inherently inhumane and should be dealt with immediately.

¹⁴² Uriel Rosales, Opinion, *Private prisons are not the way forward for New Mexico*, LAS CRUCES SUN NEWS (July 30, 2019), <https://www.lcsun-news.com/story/opinion/2019/07/30/private-prisons-are-not-the-way-forward-for-new-mexico/1862089001/> [<https://perma.cc/G6VK-D3DK>].

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ Leins, *supra* note 18.

Private prison facilities are also “linked with quality and safety concerns resulting from the fact that they have to reduce costs below that of publicly-run facilities while also generating a profit for shareholders.”¹⁴⁹ A private prison may control its spending by paying staff less, which leads to improper job training, staff abuse, and lower socio-economic statuses.¹⁵⁰ For example, private prison facilities in New Mexico pay their corrections officers less than those in public prisons.¹⁵¹ Private prison operators also tend to hire fewer officers than their government-owned counterparts.¹⁵² For example, private prisons report an average of one officer per 6.9 prisoners compared to public facilities who report one officer per 4.9 prisoners.¹⁵³ The private prisons in New Mexico that have those lower officer to inmate ratios have been associated with more dangerous conditions such as higher numbers of assaults and the presence of illicit weapons.¹⁵⁴ In other words, these cost-cutting strategies lead to significant safety and turnover concerns.¹⁵⁵ Furthermore, private prisons in New Mexico struggle to maintain a full staff¹⁵⁶ on top of the fact that they already hire less staff than government-owned prisons.¹⁵⁷ For these reasons, New Mexico’s private prisons are repeatedly fined in excess of \$1 million for failing to maintain their required staffing levels,¹⁵⁸ which is in direct opposition to the idea that private prisons are money-savers.

Another major issue with private prisons and prisoner labor is that a rule has been put in place prohibiting prisoners from ever being considered an

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ CRAIG, *supra* note 134, at 7.

¹⁵² Robert Craig & Andre Douglas Pond Cummings, *Abolishing Private Prisons: A Constitutional and Moral Imperative*, 49 U. BALT. L. REV. 261, 272–73 (2020).

¹⁵³ *Id.*

¹⁵⁴ CRAIG, *supra* note 134, at 7.

¹⁵⁵ See Leins, *supra* note 18.

¹⁵⁶ See CRAIG, *supra* note 134, at 7.

¹⁵⁷ See Craig & Pond Cummings, *supra* note 152, at 272–73.

¹⁵⁸ See CRAIG, *supra* note 134, at 1.

employee of their prison since it is believed that “[p]eople are not imprisoned for the purpose of enabling them to earn a living”;¹⁵⁹ thus, with the state’s permission, private prisons are exploiting their prisoners to make a profit.¹⁶⁰

The use of prison labor is beneficial for private prison companies’ profits since the companies are allowed to pay prisoners low wages or no wages at all.¹⁶¹ Private prison companies defend the use of low to no wage prison labor by claiming that the work provides moral, psychological, and economic benefits to those incarcerated;¹⁶² as mentioned in Section II of this comment, working in prisons has historically been assumed to cure idleness, teach specific skills, and provide the incarcerated person with a solid work ethic.¹⁶³ Furthermore, there is a common misconception that the experience of working should be considered a redemptive end in itself for prisoners, regardless of their working conditions or whether they are paid a fair wage.¹⁶⁴ For comparison, “incarcerated workers in state prisons earn an average of \$0.93 to \$4.73 per hour, federal prisons pay from \$0 to \$4.73 per day, and private prisons pay from \$0.16 to \$0.50 per hour.”¹⁶⁵ These numbers go to show that all prisons, including private prisons, are exploiting prisoners for their labor, especially in a billion-dollar industry.

It is becoming increasingly common to see labels that read “Made in USA,” when purchasing items in the United States.¹⁶⁶ Unfortunately, many consumers are unaware that this labelling is used as a form of recasting by the private prison industry.¹⁶⁷ The private prison industry uses recasting in order to characterize the “patriotic return of American manufacturing jobs from overseas” while not being required to inform the general public at all

¹⁵⁹ Marion, *supra* note 19, at 243.

¹⁶⁰ *Id.*

¹⁶¹ See Cao, *supra* note 1.

¹⁶² Cao, *supra* note 1.

¹⁶³ *Id.* at 4–6.

¹⁶⁴ *Id.* at 5.

¹⁶⁵ *Id.* at 21.

¹⁶⁶ See *id.* at 5.

¹⁶⁷ *Id.* at 5–6.

that the “American . . . jobs” they are referring to include the exploitation of prisoner labor.¹⁶⁸ Either way, exploiting low-wage foreign workers or incarcerated people that work for little to no pay creates monumental moral and humanitarian issues.¹⁶⁹ The United States has very publicly and very strongly denounced the use of prison labor in other countries, even going as far as banning the importation of goods made by foreign prisoners, yet it has simultaneously allowed domestic companies to substitute overseas labor and “normal” domestic labor with low- to no-wage U.S. prison labor.¹⁷⁰

The general argument made by those in favor of utilizing prison labor over foreign labor is that “prison labor programs offer companies the competitive edge they need to repatriate or keep jobs in the U.S., because they can guarantee companies a cheap and dependable workforce [at the cost of inmates].”¹⁷¹ In other words, “in addition to rehabilitation and preparation for life after prison, bringing jobs back to the United States from overseas provides a further justification for the exploitation of prison labor and the proliferation of prison industries.”¹⁷² However, the jobs that are supposedly being brought back from overseas should not be considered “American . . . jobs”¹⁷³ since they are not jobs in the free market.

Private prison companies may also earn profit by receiving per diem payments from government and municipality contracts, and by receiving contract payments in exchange for the labor of prisoners.¹⁷⁴ Therefore, the private prison industry is a transfer mechanism of funds for contracted labor with very little to no economic transfer into laborer-prisoner accounts.¹⁷⁵ This process emphasizes, once again, that these private prison companies are

¹⁶⁸ *Id.* at 5.

¹⁶⁹ *See id.*

¹⁷⁰ *Id.* at 6.

¹⁷¹ *Id.* at 13.

¹⁷² *Id.* at 5.

¹⁷³ *Id.*

¹⁷⁴ André Douglas Pond Cummings & Adam Lamparello, *Private Prisons and the New Marketplace for Crime*, 6 WAKE FOREST J. L. & POL’Y 407, 419 (2016).

¹⁷⁵ *Id.*

exploiting their prisoners' labor while simultaneously generating revenue from the government. In addition, the potential for generating such high revenues from the prison industry creates perverse incentives that contribute to the high U.S. incarceration rates.¹⁷⁶

Aside from the immediate financial concerns previously mentioned, lawmakers should also consider the long-term indirect financial costs that arise out of prison privatization.¹⁷⁷ One of the largest financial costs of privatization (typically hidden) is increased criminal recidivism among prisoners in private prison facilities.¹⁷⁸ In other words, the more repeat offenders that go back to private prisons, the more costly it becomes for the government. As of 2018, New Mexico prisoners' recidivism rate was around 50%; specifically for incarceration, each increase in percentage point of recidivism costs New Mexico \$1.5 million per year.¹⁷⁹ In response to the increasing recidivism rates in New Mexico, the Legislative Finance Committee suggested "legislation that requires the most funding for community-based corrections programs be used to fund evidence-based programs" in order to decrease the prison population growth rate; however, no such legislation was ever established.¹⁸⁰

Another example of recidivism rates in New Mexico includes the Bayer and Pozen study, which compared private and public juvenile facilities to find that a "cost-benefit analysis implie[d] that the short-run savings offered by for-profit facilities over nonprofit facilities are reversed in the long run due to increased recidivism rates."¹⁸¹ The same conclusion holds even when the noneconomic harms associated with high recidivism rates are ignored and direct financial costs are the only type of costs accounted for.¹⁸² In addition,

¹⁷⁶ Cao, *supra* note 1, at 21.

¹⁷⁷ Anderson, *supra* note 61, at 131.

¹⁷⁸ *Id.*

¹⁷⁹ CRAIG, *supra* note 134, at 6.

¹⁸⁰ *Id.*

¹⁸¹ Anderson, *supra* note 61, at 131.

¹⁸² *Id.*

“over-classification,” or placing a prisoner in a higher than necessary custody level which private prisons are known for doing, costs New Mexico millions in excess custody costs while also limiting prisoners’ access to the programs designed to reduce recidivism.¹⁸³

The largest U.S. private prison companies have spent millions of dollars lobbying both state and federal elected officials for harsh legislation that increases the number of individuals sentenced to prison because “private prisons make money from putting people behind bars.”¹⁸⁴ Therefore, private prison lobbyists seek to influence lawmakers to implement unforgiving incarceration policies¹⁸⁵ since the private prison companies would benefit from them by incarcerating people more easily, for longer periods of time, and more often. In reality, the private prison industry is seeking to profit from increasing the number of bodies that can be locked in cages in the United States.¹⁸⁶ For those same reasons, New Mexico also has a history of detaining release-eligible prisoners.¹⁸⁷ In 2019, there were 156 prisoners eligible for release and, at current average state incarceration rates, their imprisonment costs the state of New Mexico \$19,344 per day.¹⁸⁸ Generally, these release-eligible prisoners who remain in custody are overwhelmingly in private prisons, and both GEO group and CoreCivic have been repeatedly fined for detaining them.¹⁸⁹

Several criminal justice scholars and legal professionals have commented on the benefits of privatization, arguing that competition among firms results in better facilities for prisoners as well as lower costs to taxpayers.¹⁹⁰ However, this general commentary is incorrect, as outlined throughout this

¹⁸³ CRAIG, *supra* note 134, at 4.

¹⁸⁴ Craig & Pond Cummings, *supra* note 152, at 269.

¹⁸⁵ *Id.* at 269–70.

¹⁸⁶ *Id.* at 268–69.

¹⁸⁷ CRAIG, *supra* note 134, at 5.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ Marion, *supra* note 19, at 214.

comment. Furthermore, the survival of private prison companies is dependent upon the transfer of resources from federal, state, and local governments to private entities in order to make a profit;¹⁹¹ ironically, these companies' survival relies entirely upon the role of those they incarcerate (the revenue-generators).¹⁹² In addition, private corporations are not bound by governmental rules and continue to claim that they are able to get funds quickly from private investors or lenders.¹⁹³ For the aforementioned reasons, private prisons should theoretically be cheaper in every aspect than prisons funded and operated by the government,¹⁹⁴ though research has found that private prisons increasingly cost the contracting governments more money rather than less.¹⁹⁵ For example, private prison companies have a history of charging New Mexico with higher than normal prisoner per diem rates,¹⁹⁶ a study on New Mexico showed that a city was paying more than twice the price of a private competitor's service.¹⁹⁷

Another example of greater costs brought by private prisons includes how the Johnson administration overlooked an estimated \$18 million in fines, something that may happen more often than realized in today's society.¹⁹⁸ Research has found that private prisons are less safe and less economical.¹⁹⁹ More specifically, in New Mexico, incarceration costs are in excess of \$100 per day, whereas alternatives to incarceration cost on average \$4 per day;²⁰⁰ the alternatives would also be more appropriate for the 25% of the prison population made up of nonviolent drug offenders.²⁰¹ In general, when

¹⁹¹ Fulcher, *supra* note 65, at 599.

¹⁹² *Id.*

¹⁹³ *Id.* at 597.

¹⁹⁴ *See id.*

¹⁹⁵ Craig & Pond Cummings, *supra* note 152, at 265.

¹⁹⁶ CRAIG, *supra* note 134, at 1.

¹⁹⁷ James F. Blumstein et al., *Do Government Agencies Respond to Market Pressures? Evidence from Private Prisons*, 15 VA. J. OF SOC. POL'Y & L. 446, 453 (2008).

¹⁹⁸ CRAIG, *supra* note 134, at 1.

¹⁹⁹ Craig & Pond Cummings, *supra* note 152, at 265.

²⁰⁰ CRAIG, *supra* note 134, at 9.

²⁰¹ *Id.*

comparing incarceration costs at equivalent custody levels, private prisons cost on average \$7,994 more per person.²⁰² Accordingly, New Mexico would save \$26 million a year if it transitioned its 3,258 state private prison beds to lower-cost public facilities.²⁰³ Therefore, there is no real reason as to why private prisons are still being used and preferred over prisons owned and operated by the government.

V. CONCLUSION

New Mexico, the state leading the nation in private prison use, should implement a private prison ban.²⁰⁴ Private prison companies directly profit from the exploitative nature of private prison labor,²⁰⁵ and prisoners have little to no say in how they are treated or paid in both the work programs and the private prisons themselves.²⁰⁶ Studies show that private prisons do not run more efficiently or effectively in comparison to government owned and operated prisons, and it is more costly for the government in the long-term to rely on private prison facilities.²⁰⁷ Considering New Mexico is one of the leading states for the use of private prisons,²⁰⁸ a statewide ban is vital. The eradication of private prisons will eliminate the continued exploitation of private prison labor within the state, and the most effective way to put an end to this is through legislation in New Mexico that not only bans private prisons entirely, but also paves a path to their eradication that helps to minimize the potentially detrimental economic impacts it may have on the communities.

²⁰² *Id.* at 3.

²⁰³ *Id.*

²⁰⁴ *Id.* at 2.

²⁰⁵ See Cao, *supra* note 1, at 4.

²⁰⁶ See generally Rosales, *supra* note 142.

²⁰⁷ See Craig & Pond Cummings, *supra* note 152, at 265.

²⁰⁸ Booth, *supra* note 133, at 582.

