

Public Comment of

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Submitted to the
Montana Districting and Apportionment Commission
regarding
Avoiding Prison Gerrymandering in Montana

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Thank you, Presiding Officer Smith and members of the Commission for providing the opportunity to submit further public comment on the upcoming Montana redistricting process. This comment specifically elaborates upon a few aspects of the problem known as “prison gerrymandering” and the solutions that are available to fix it.

As you are already aware, prison gerrymandering arises from the Census Bureau’s practice of crediting incarcerated people to census blocks that contain prisons, rather than to the census blocks that contain their home addresses. This results in a significant increase in representation in districts with prisons, and consequently a dilution of representation for the residents of all other districts.

We are the Legal Director of and Policy Counsel for the Massachusetts-based Prison Policy Initiative. For nearly two decades, our organization has been leading the national effort to urge the Census Bureau to count incarcerated people as residents of their legal home addresses, rather than as residents of the correctional facilities where they are detained. At the same time, we work closely with state and local governments to develop interim solutions to the harmful distortion of democracy caused by the Census Bureau’s current approach to counting incarcerated people.

We wrote to the Redistricting Commission in May—addressing the problem of prison gerrymandering generally—and we now write to supplement and provide more information on issues and questions that have been raised since then.

Timing considerations:
Use reallocated population data for *state legislative* districts

We understand that—with redistricting deadlines drawing closer—the Commission is still searching for a suitable vendor to handle the technical aspects of reallocating incarcerated people to their home addresses. We believe the Commission now has several leads for this work, but nevertheless timing is getting tight for drawing Congressional districts. We therefore suggest a two-pronged approach for this redistricting cycle: if necessary, use the unadjusted PL 94-171 data for drawing the state’s *Congressional* lines and then use the adjusted PL 94-171 data to draw *state legislative* lines (and make that data available to local governments for their own redistricting efforts). Many states, including Connecticut, New Jersey, and New York, now take this “split” approach to redistricting.

Given the vast populations of congressional districts, the prison populations in Montana will have no practical impact on representational equality among districts. However, in contrast to its effect on *congressional* districts, prison gerrymandering has a significant impact on *state legislative* districts in Montana. For example, state House District 78 is 17% incarcerated, while two other districts (House Districts 18 and 49) are both more than 5% incarcerated.

Luckily, your timeline for redistricting the state legislative districts is much more relaxed and would allow you plenty of time to adjust the data to count incarcerated people at home.

Thus, if—once the Commission gets a better sense of the timeframes proposed by the data vendors—the Commission concludes that there is not enough time to have the data prepared before the Congressional lines need to be drawn, then the Commission should still reallocate incarcerated people for the state legislative districts.

Do what you can now, and then plan for the future

Our recommendations boil down to: Do best you can in 2020, and start preparing for 2030 now.

It is important to note that home address datasets produced by the Department of Corrections may be incomplete or imperfect (this may be especially likely in Montana, where Native American populations are disproportionately represented in the criminal justice system and may be less likely to report having a specific street address prior to becoming incarcerated). However, missing home address data should not foreclose adjustment of the Census data, and indeed all states that have adopted the reallocation approach have home address datasets in which addresses are missing for some percentage of people incarcerated in those states.

Thus, even if Montana can reallocate only a relatively low percent of incarcerated people this redistricting cycle, counting at least some people at home is better than counting everyone in the wrong place.

All the state can do right now is work with the data it has, but there is plenty of time to ensure that the state will be in an even better position to solve prison gerrymandering in 2030. Now is the time to start working with the Department of Corrections to make sure they start keeping better, more complete, and more comprehensive address records for all people in the custody of the Department of Corrections.

Ideally, the data collected by the Department of Corrections should include:

- (i) a unique identifier, not including the name, or SID (state offender ID) number, for each incarcerated person subject to the jurisdiction of the department on the date for which the decennial census reports population. The unique identifier should permit the Commission to address inquiries about specific address records to the Department of Corrections, without making it possible for anyone outside of the Department of Corrections to identify the inmate to whom the address record pertains;
- (ii) the street address of the correctional facility in which such person was incarcerated at the time of such report;
- (iii) the last known address of such person prior to incarceration or other legal residence (if known);
- (iv) the person's race, whether the person is of Hispanic or Latino origin, and whether the person is over the age of 18 (if known);

This information should *not* include the name of any incarcerated person or allow for the identification of any such person therefrom, except by the Department of Corrections. The information should be treated as confidential, and should not be disclosed by the Redistricting Commission except as redistricting data aggregated by census block.

Very few of the people incarcerated in Montana's prisons today will be incarcerated during the next Census; instead the population will have turned over

almost completely. Thus, if the Department of Corrections begins to acquire complete and accurate address records during intake now, and keeps that process going forward, it will have a comprehensive and usable dataset at the time of the 2030 Census.

Funding is not affected

We have heard concerns about the fact that prisons have some fiscal impact on the towns where they are located and therefore that those towns deserve to benefit from prison gerrymandering. These concerns usually center around increased traffic on local roads, and the needs for fire and ambulance services are often mentioned. To be sure, to whatever extent these towns are burdened by the state's correctional facilities, they should be compensated through PILOT (payment in lieu of taxes) funds, other funding schemes, or state aid.

However, it makes no sense to say that the state's use of land in the town should somehow translate to additional clout in the legislature. A prison does not warrant additional representation any more than the State Capitol or other government buildings do. All state facilities impose *some* impact on their surrounding communities, but that is a completely separate issue from redistricting – which is based on populations, not buildings. And of course, the people who are incarcerated in prison buildings remain legal residents of their home addresses. (*See Montana Annotated Code § 13-1-112(2).*)

With that in mind, adjusting redistricting data to count incarcerated people at their home address does not impact funding formulas. The procedures under consideration would result in the creation of a new dataset for use in state redistricting. Such a solution would simply ensure that the state's definition of residence for representative purposes lines up with where people are counted in redistricting. This adjusted redistricting dataset would not affect the distribution of federal or state funds simply because there is no federal or state funding formula that is distributed on the basis of redistricting data.

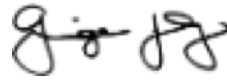
Conclusion

We hope that the Redistricting Commission will choose to count incarcerated people at home in redistricting – ensuring equal representation for Montanans.

Please do not hesitate to contact us if we can answer any questions or provide you with additional resources. We thank you for the opportunity to present this testimony.



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