

ADJUSTING THE CENSUS TO AVOID PRISON GERRYMANDERING IS QUITE COMMON...

Maryland and **New York** have both passed and implemented legislation to end prison gerrymandering, and the laws of both states have been upheld. The New York law (A9710D/S6610C)¹ ended prison gerrymandering in state legislative, county and municipal districts, and the Maryland law (HB496/SB400) went further and also applied to Congressional districts. Both laws were challenged in court but were upheld. (*Little v LATFOR*² and *Fletcher v Lamone*³) The constitutionality of Maryland's law was unanimously upheld by a three judge panel, and then summarily affirmed by the US Supreme Court.

California passed legislation (AB 420) to end prison gerrymandering starting with the 2021 round of redistricting. California has an independent redistricting commission, so the California law directs the prison system to share the home addresses of incarcerated people with the Commission and then requests the Commission to use the data when redistricting.

Delaware passed legislation (HB 384) to end prison gerrymandering in state legislative districts starting with the 2021 round of redistricting.

Colorado requires counties to exclude prison populations when redistricting local county board of commissioner districts (SB 02-007).

Michigan requires counties (Mich. Comp. Laws § 46.404(g)) and cities (Mich. Comp. Laws § 117.27a (5)) to exclude prison populations when redistricting local county commissioner and city government districts.

In 2012, **Virginia** unanimously passed legislation (HB 13) that changed state law to give even more counties in that state the option to avoid prison gerrymandering.⁴

New Jersey requires some school boards to exclude prison populations when redistricting (N.J.S.A. 18A:13-8).

More than 200 other counties and cities across the nation, including 7 in Kentucky, exclude prison populations when redistricting without an explicit state mandate.⁵

...AND DOES NOT AFFECT FUNDING

While Census data, in some form, plays a part in the distribution of billions of federal and state aid, most federal and state funding formulas are too sophisticated to be skewed by the prison miscount. Instead of relying on "total population," most formulas use more targeted factors that directly or indirectly exclude incarcerated populations, like the number of school age children, or the portion of families in poverty.

Further, the state and county-based adjustments to the redistricting data have zero impact on funding for the simple reason that not a single government aid formula relies on redistricting data.

¹ Nation-wide survey of legislation ending prison gerrymandering is available at <http://www.prisonersofthecensus.org/legislation.html>

² *Little v. N.Y. State Task Force on Demographic Research & Reapportionment*, No. 2310-2311 (N.Y. Sup. Ct. Dec. 1, 2011), with documents available at <http://www.prisonersofthecensus.org/little/>

³ *Fletcher v. Lamone*, No. RWT-11cv3220, 2011 WL 6740169 (D. Md. Dec. 23, 2011), aff'd, No. 11-1178 (U.S. Sup. Ct., Order List, June 25, 2012), with documents available at <http://www.prisonersofthecensus.org/fletcher/>

⁴ An explanation of the Virginia HB 13 is available at <http://www.prisonersofthecensus.org/news/2011/12/21/va-bill/>

⁵ A list of the local governments our research so far has identified as excluding prison populations in local redistricting efforts is available at: <http://www.prisonersofthecensus.org/local/>

PRISON GERRYMANDERING IN KENTUCKY COUNTIES

The problem

This practice of including prisons in local districting plans leads to serious distortions of political power in Kentucky county governments.

The Supreme Court requires counties to update their magisterial districts once per decade, ensuring that each district contains the same population and each resident has equal representation in county government. But the Census Bureau counts incarcerated people where they are imprisoned, not where they legally live. When prisoners — who aren't allowed to vote and are legal residents of other counties — are included in districting population counts, the political clout of the real residents in districts with prisons is artificially inflated at the expense of the people residing in all other districts.

For example:

- In Clay County, District 2 is 40% prisoners from FCI Manchester and Clay County Detention Center. This means that every 3 residents in District 2 have as much political power as 5 residents in the other districts.
- Six other counties — Lyon, Fulton, Boyd, Henderson, Franklin, and Shelby — similarly used Census Bureau prison counts when drawing magisterial districts and thereby gave county residents who lived near correctional facilities extra clout in county government.

Kentucky law says a prison cell is not a residence:

“A voter shall not lose his or her residence by absence for temporary purposes merely; nor shall he or she obtain a residence by being in a county or precinct for such temporary purposes, without the intention of making that county or precinct his or her home.” —Kentucky Annotated Revised Statute §116.035 (2).

“[A] person’s domicile is not changed by his involuntary confinement in a penitentiary or other prison.” —*Ferguson v. Ferguson*, 255 Ky. 230, 73 S.W.2d 31 (Ky. App. 1934)

Oldham County has a solution

Oldham County is no stranger to grappling with the Census Bureau’s miscount, and after the 2010 Census it finally found a way to entirely avoid prison gerrymandering. After the 2000 Census, Oldham County was faced with drawing a district that would have been 60% incarcerated, so the county split the prison complex between two districts, each of which was 30% incarcerated.

In 2011, the county used the Census Bureau’s Advance Group Quarters Summary File and simply removed the prison population for its redistricting. All Oldham County residents — regardless of whether they live near the prison — now have the same access to the county Fiscal Court.

Other Kentucky counties — Casey, Elliot, Lee, Marion, McCreary, Morgan — took similar remedial measures to avoid prison gerrymandering after the 2010 Census.



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Proposal could dramatically alter district boundaries

BY MARION TAYLOR
INTERN, THE OLDHAM ERA

A recommendation to move district boundaries for the next election could lead one magistrate into another official's territory.

Every 10 years, the county is required to appoint a committee to evaluate district boundaries based on Census figures.

According to the Census Bureau, in 2010 the population of Oldham County was 56,186, excluding 4,130 residents incarcerated in La Grange.

In the past, the Census Bureau has counted incarcerated people as residents of the prison location.

But including the prison population within the total population causes problems when dividing the county into magisterial districts.

According to the Prison Policy Initiative, districts that include prisons are unjustly given extra representation in the legisla-

ture.

However, the Census Bureau now releases data that identifies prison populations so governments can make their own adjustments for state and local redistricting.

Big changes could be in the works for district boundaries beginning in 2014.

A three-member board is examining population equality for Oldham County Fiscal Court's eight magisterial districts. Board chair Albert Harrison of La Grange presented the group's findings to members of fiscal court on June 21.

Harrison said removing the prison population would greatly decrease the population of District 2 and District 3, represented by Wayne Theiss and Bob Leslie, respectively.

District 2 gains about 3,000 people in population from the prison, and District 3 gains about 1,000.

"Mathematically they greatly distort the voters' influence within those two districts," Harrison said, more in District 2 than in District 3.

Without the prison population, Districts 2 and 3 must be extended to ensure equal representation within five percent of the population of other districts.

Harrison said board

members took into consideration the location of each magistrate's home and are sensitive to decisions that could affect them. However, the board's recommendation to alter district boundaries would leave District 1 Magistrate Brent Likins' home in District 2.

Likins said, "Now they're going way different from what the district has ever looked like before."

"It seems there ought to be some way in the reapportionment that the city magistrates could remain in their district where they've been elected by the people of that district," Theiss said.

Magistrate Steve Greenwell is pleased with the board's recommendation, and the proposed boundaries of his district make more sense.

"Not everybody is going to be happy," Greenwell said.

District lines are required to follow a permanent feature that is identifiable on a map, including roads, railroads, rivers, creeks, etc.

Officials have three years to adjust to new boundaries, as new district lines would go into effect for the 2014 election cycle.

"Really nothing changes for another three years," Harrison said.

Fiscal court has 60 days to adopt or amend the recommendation.

E-mail us about this story at: mtaylor@oldhamera.com.

LAW, JUSTICE, AND ETHICS
Resolution LJE-11-03

REFORM OF PRISON-BASED CENSUS COUNTING

WHEREAS, obtaining an accurate count of the population is so vital to representative democracy that the framers of the United States Constitution addressed the issue of the census and apportionment in the opening paragraphs of this governing document;

WHEREAS, the United States Supreme Court requires state and local government to redraw legislative districts each decade on the basis of population, so as to ensure each resident the same access to government;

WHEREAS, the United States Census Bureau (Census Bureau) currently has a policy of counting incarcerated individuals at the address of the correctional institution, rather than their residential address;

WHEREAS, African Americans are incarcerated at a rate six times higher than whites;

WHEREAS, the majority of state and federal prisons are built disproportionately in white, rural areas;

WHEREAS, counting incarcerated individuals as residents of the prison community has a particularly negative effect on the ability of African American communities to elect their candidates of choice and receive appropriate and adequate political representation;

WHEREAS, in 2003, the African American subcommittee of the Census Bureau's Race and Ethnic Advisory Committee recommended that the Census Bureau count prisoners as residents of their pre-incarceration addresses;

WHEREAS, in 2006, the Census Bureau's own advisors at the National Research Council called on the Bureau to begin collecting the home addresses of incarcerated individuals and to study the best way to use those addresses;

WHEREAS, the Census Bureau recognized the demand from states and counties for data that better reflect their actual populations, and has agreed to release data on prison populations to states in time for redistricting, enabling each state to individually adjust the population data used for redistricting; and

WHEREAS, Delaware, Maryland, and New York State recognized the need for equal representation based on the concept of "one person, one vote" and swiftly passed state laws requiring legislative districts to be drawn based on population data adjusted to reflect the actual residence of incarcerated individuals.

THEREFORE BE IT RESOLVED, that the National Black Caucus of State Legislators (NBCSL) believes that the Census Bureau should count incarcerated individuals at their addresses of residence, rather than the address of the prison during the 2020 and all future decennial Censuses;

LAW, JUSTICE, AND ETHICS

Resolution LJE-11-03

BE IT FURTHER RESOLVED, that until the Census Bureau counts incarcerated individuals at their actual residential addresses, the NBCSL encourages states to enact legislation modeled after the Delaware, Maryland, and New York laws;

BE IT FURTHER RESOLVED, that a copy of this resolution be sent to the chair of each state legislative Black Caucus, the presidents of the National Conference of State Legislatures and the Council of State Governments, the director of the United States Census Bureau, and the presiding officers of all 50 state legislatures; and

BE IT FINALLY RESOLVED, that a copy of this resolution be transmitted to the President of the United States, the Vice President of the United States, members of the United States House of Representatives and the United States Senate, and other federal and state government officials as appropriate.

SPONSOR(S): Senator Catherine E. Pugh (MD) and Delegate Joseline Pena-Melnyk (MD)

Committee of Jurisdiction: Law, Justice, and Ethics Policy Committee

Certified by Committee Chair: Senator Thelma Harper (TN)

Ratified in Plenary Session: Ratification Date is December 3, 2010

Ratification is certified by: Representative Calvin Smyre (GA), President