

PRISON POLICY INITIATIVE

PRISON GERRYMANDERING IN WISCONSIN

Problems:

When legislators rely on the Census Bureau's prison counts to draw legislative districts, they unintentionally give extra representation to the districts that contain prisons and dilute the votes of everyone else. It's called "prison gerrymandering." It plays out in Wisconsin on two levels:

- Wisconsin engages in prison gerrymandering for state legislative districts.
- Wisconsin counties and cities provide some of the most dramatic instances of prison gerrymandering in the nation.

Prison gerrymandering violates the constitutional principle of "one person, one vote." The Supreme Court requires districts to be based on equal population in order to give each resident the same access to government. But a longstanding flaw in the Census counts incarcerated people as residents of the prison location, even though they cannot vote and are not a part of the surrounding community.

Wisconsin law considers incarcerated people to be residents of their home addresses: a person's residence is determined by "where the person's habitation is fixed, without any present intent to move, and to which, when absent, the person intends to return." (Wis. Stat. § 6.10) Since most incarcerated people intend to leave prison and do not intend to return, prison is not their residence. Using the Census Bureau's prison count data for redistricting purposes is inconsistent with Wisconsin's residence law.

Impact at the state level:

- In 2011, the legislature used 5,583 incarcerated people to pad out the population of District 53. Without the incarcerated populations, the district is 10% below the required size. This gives every 90 residents of the 53rd district the same influence as 100 residents of any other district in the state.
- District 53 purports to have a large African-American population, larger than 74 other districts. But of the 2,784 African-Americans in the district, all but 590 are incarcerated. The day the people incarcerated in the district are allowed to vote again, they will be on a bus, heading back to their home district. The 53rd District is claiming populations that are not a part of this district and never will be.

Crediting all of Wisconsin's incarcerated people to a few locations enhances the political clout of the people who live near prisons, while diluting the voting power of the residents of all other districts in the state.

Impact at the county and municipal level

Because state law¹ is read to require prison gerrymandering, Wisconsin provides many dramatic examples of the problem:

- 80% of a district in Juneau County is incarcerated. This gives every 20 residents of that district the same voting power as 100 residents of any other ward.
- 75% of District 2 in Waupun County is incarcerated.
- 62% of Adams County's Districts 13 and 5 are incarcerated.
- 53% of a district in Juneau City is incarcerated.
- 51% of Jackson County's District 12 is incarcerated.

¹ 70 Wis. Op. Atty. Gen. 80 (1981).

- We've also identified the vote dilutive problem of prison gerrymandering in 16 other Wisconsin cities and counties (Baraboo, Boscobel, Chippewa Falls, Elkhorn, Fitchburg, Franklin, and Racine cities and Chippewa, Columbia, Dodge, Fond du Lac, Racine, Sawyer, Sheboygan, Waushara, Winnebago counties).

Nevertheless, there are also a number of examples of communities successfully rejecting the Census Bureau's prison counts:

- Five cities and counties avoided prison gerrymandering: the cities of New Lisbon, Portage, Prairie du Chien, and Stanley, and Crawford county.

Past activity:

- In June 2009, the "Census Correction Amendment" (ALR-63) was introduced by Representatives Kessler, Black, Grigsby, Turner and A. Williams and co-sponsored by Senator Taylor.

Strategy choices:

- Pass a bill or constitutional amendment that would count incarcerated people at home for state legislative, county and municipal redistricting purposes. (We have a model bill on our website at <http://www.prisonersofthecensus.org/models/example.html>.)
- Pass a bill or constitutional amendment that would free counties and municipalities from the perceived requirement to engage in prison gerrymandering.

For more information, start with:

- Our Wisconsin campaign page is an actively maintained list of resources for the campaign to end prison in Wisconsin. It includes fact sheets and a district-by district report analyzing the redistricting after the 2000 Census: <http://www.prisonersofthecensus.org/wisconsin.html>
- Highlights of news coverage of prison gerrymandering in Wisconsin:
 - "Is the Census Bureau creating unfair politics in Wisconsin?", by Evan Solocheck, *Milwaukee Magazine* March 2008
 - "Lawmakers debate counting non-voting prisoners in census", by Shawn Johnson, *Wisconsin Public Radio* July 7, 2009