

PRISON

POLICY INITIATIVE

BACKGROUND MATERIAL FOR SIGNERS OF FEBRUARY 2013 LETTER TO THE CENSUS BUREAU

The Census Bureau counts incarcerated people at the facilities where they are confined, rather than at their home addresses. When state and local governments use this data to redraw their legislative districts, they grant additional clout to the voters who live near a prison, and dilute the votes cast by everyone else. This phenomenon is called prison gerrymandering. The Census Bureau is currently planning the 2020 census, and has the power to end prison gerrymandering nationwide by changing its “home residence rule” to count incarcerated people at home. The Bureau needs to hear from stakeholders like you that it’s time to put the research in place to make the 2010 Census the last time that more than two million people are counted outside their home communities.

Helpful facts for letter signers:

- 48 states bar people in prison from voting.
- In states where incarcerated people can vote, they must vote via absentee ballot, at home.
- Most states have constitutional clauses or election law statutes that explicitly declare that a prison cell is not a residence.
- People in prison disproportionately come from urban communities of color, but the Census Bureau counts them where prisons tend to be built: rural areas that are geographically and demographically quite distinct.
- Life sentences are rare. The average time served in prison is only about 35 months,¹ after which time the vast majority of people return to their home communities. Jail sentences are even shorter than prison terms. Time served in jail typically ranges from hours to under a year.
- Prisons look permanent from the outside, but the people confined there are quite transitory. In New York State, for example, the median length of time a person is confined at a particular prison is 7.1 months.
- The Census Bureau defines its own residency rules. As the United States’ demographics have changed, the Bureau has changed how other special populations have been counted to respond to evolving data needs.²
- Four states have passed legislation to count incarcerated people at their home addresses for redistricting purposes. The laws in New York and Maryland applied to the new 2012 districts, and the Maryland law was upheld by the U.S. Supreme Court.³
- Four states and more than 200 counties and municipalities have rejected prison gerrymandering. That’s 68,913,691 people who live in a state, county or municipality that has formally rejected prison-based gerrymandering.

Why should I sign this now?

Each once-per-decade Census takes more than a decade of planning. Right now, the Bureau is conducting research on the best way to conduct the 2020 Census so it can develop operational plans later in the decade. In order to ensure that incarcerated people are counted at home in the 2020 Census, we need to influence this planning process now.

¹ Pew Center on the States, “Time Served: The High Cost, Low Return of Longer Prison Terms” (Washington DC: The Pew Charitable Trusts, 2012), 13.

² Peter Wagner, “Usual residence rules has been modified for other special populations and can be changed for prisoners too,” Prisoners of the Census blog, November 3, 2003. Accessed on December 17, 2012 at: <http://www.prisonersofthecensus.org/news/2003/11/03/modified/>.

³ Fletcher v. Lamone, ___ U.S. ___, 2012 WL 1030482 (June 25, 2012).

Prison gerrymandering harms...

- **criminal justice reform**, by giving undue weight to the prison lobby and providing politicians with perverse incentives to support prison expansion. For example, efforts to repeal New York's harsh drug laws were delayed for years, if not decades, because the state senate districts with the largest prisons had an outsized influence in the legislature.⁴
- **civil rights**, by systematically transferring political clout away from communities that experience disproportionate incarceration rates, and by confounding attempts to draw effective majority-minority districts. For example, Somerset County, Maryland settled a Voting Rights Act lawsuit by agreeing to draw a district where African-Americans would be able to elect a candidate of their choice. But for more than two decades, no African-Americans were elected because the district contained a large prison. An effective African-American district could have been drawn if the prison population had not been included in the redistricting count.⁵
- **state and local democracy**, by inflating the influence of areas that contain prisons at the expense of areas that don't. Until Anamosa, Iowa changed their entire form of government to eliminate the problem, the city was the most dramatic example of prison gerrymandering in the nation. There, a man won a city council election with two votes, neither of them his. The handful of people who lived near the prison were given more than 25 times the political influence of each group of 1,400 people who lived in the other city districts.⁶
- **electoral outcomes**, because it allows prisons to be used as inert ballast to control elections via bizarre gerrymanders. In Wyoming, for example, a Senate district snakes around an incumbent's house and then follows the Nebraska border for 17 miles just to snag a prison. The initial proposed districts had the two incumbents facing each other for re-election, but using the prison to pad one district avoided the electoral competition by shifting one of the incumbents into a separate district.⁷
- **your right to vote**, unless you live right next to the largest prison in your state. When prison populations are included in redistricting data, the residents of districts containing a prison get undue additional political clout, and the votes cast by all other residents are diluted.

What are people doing to eliminate or minimize the harm of prison gerrymandering?

- Four states have passed legislation to count incarcerated people at their home addresses for redistricting purposes, and other states are considering similar legislation.
 - The laws in New York and Maryland were passed in time to be implanted after the 2010 Census. New York's law was upheld by the New York state courts, and Maryland's law was upheld by the U.S. Supreme Court.
 - Delaware and California both passed laws that apply to the next round of redistricting.
- More than 200 rural counties and municipalities that contain prisons independently chose to manually exclude incarcerated populations for redistricting purposes following the 2010 Census.
- Several states, such as Colorado, Michigan and Virginia, have laws that require or encourage all local governments within the state to exclude prison populations and avoid prison gerrymandering when redistricting.
- Following the 2010 Census, for the first time, the Census Bureau released data containing correctional facility counts in time for redistricting. This "Advanced Group Quarters" data series was created for the explicit purpose of allowing state and local governments to make adjustments for redistricting purposes.
- One in five Americans—a combined 68,913,691 people—live in a state, county or municipality that has formally rejected prison-based gerrymandering. The following map shows national progress towards ending prison gerrymandering, indicating that it's time for the Census Bureau to step in and implement a complete and efficient national solution.

⁴ *New York Times* Editorial Board, "Full-Employment Prisons," *New York Times*, August 23, 2001.

⁵ Leah Sakala, "Maryland Law brings long-awaited racial justice to Somerset County," Prisoners of the Census blog, August 16, 2012. Accessed on December 17, 2012 from: <http://www.prisonersofthecensus.org/news/2012/08/16/somerset-herald/>

⁶ Sam Roberts, "Census Bureau's Counting of Prisoners Benefits Some Rural Voting Districts," *New York Times*, October 24, 2008

⁷ Peter Wagner, "Intentional Prison-based Gerrymandering Found in Wyoming," Prisoners of the Census blog, March 4, 2012. Accessed on December 17, 2012 at: <http://www.prisonersofthecensus.org/news/2012/03/04/wyoming/>

MOMENTUM IS BUILDING

No longer hidden, the problem of prison-based gerrymandering is on the national agenda.

- State law prohibits prison-based gerrymandering in state and local governments. Law implemented and upheld.
- State law prohibits prison-based gerrymandering in state government. To be implemented after 2020 Census.
- Counties and cities confirmed to have avoided prison-based gerrymandering.
- State law prohibits or discourages local governments from engaging in prison-based gerrymandering.
- States have introduced legislation abolishing prison-based gerrymandering.
- States considering resolution calling on Census Bureau to change where incarcerated people are counted.



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Research in progress.
Last update Nov 26, 2012

Most current version is at:
<http://www.prisonpolicy.org/atlas/momentum.html>

Who else has called on the Census Bureau to change how incarcerated people are tabulated? (partial list)

- Editorial boards across the country, including the *New York Times*, the *Baltimore Sun*, and the *Hartford Courant*.
- Many organizations and legislative bodies have passed resolutions or issued statements, including:⁸
 - The African-American, Asian-American, and Hispanic subcommittees of the Census Bureau's Race and Ethnic Advisory Committee
 - The National Research Council of the National Academies
 - The National Black Caucus of State Legislators
 - The National Association for the Advancement of Colored People
 - The Co-Chairs of the Massachusetts Special Joint Committee on Redistricting
 - The New York City Council
 - The Boston Workers Alliance

Why doesn't the letter talk about funding?

Census data is used in a variety of federal and state grant programs, but the question of where incarcerated people are tabulated has very little effect on these formulas. Most federal programs are block grants to states (and most people in prison do not cross state lines), or are very sophisticated formulas that directly or indirectly remove prison populations. Similarly, most large state grant programs are tailored to meet specific needs and are too sophisticated to be skewed by the Census Bureau's prison count methods. Finally, this letter concerns only the decennial census, and an increasing number of grant programs rely on a different Census Bureau product, the American Community Survey.

The real problem of the Census Bureau's prison count is its impact on the political redistricting process.

⁸ For details, please see: <http://www.prisonersofthecensus.org/resolutions/>

Additional information

- More information on all aspects of the campaign to end prison gerrymandering is available at <http://www.prisonersofthecensus.org/>
- A state-by-state summary report on prison gerrymandering in state legislative districts and local governments: <http://www.prisonersofthecensus.org/50states/>
- A comprehensive law review article in the how the problem of prison gerrymandering and best practices to fix it: “Breaking the Census: Redistricting in an Era of Mass Incarceration” by Peter Wagner, William Mitchell Law Review: <http://tinyurl.com/c52lwyq>
- An article detailing how the Census Bureau’s prison count complicates local government redistricting: “Prison populations create complications at redistricting time,” by Peter Wagner, Missouri Municipal Review, January, 2012: <http://tinyurl.com/bqwywys>
- And some helpful resource lists:
 - A list of local governments that avoid prison gerrymandering when drawing their own local districts: <http://www.prisonersofthecensus.org/local/>
 - An overview of prison gerrymandering including local governments, including a list of where residents’ votes are skewed by prison gerrymandering: <http://www.prisonersofthecensus.org/problem/local.html>
 - Campaign pages for states that have active state-level campaigns to end prison gerrymandering: <http://www.prisonersofthecensus.org/action.html>
 - The state of progress on prison gerrymandering in the US: <http://www.prisonpolicy.org/atlas/momentum.html>
 - Enacted and pending legislation in individual states: <http://www.prisonersofthecensus.org/legislation.html>

Organizational points of contact:

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