



Report from the Chairs of the Special Joint Committee on Redistricting

Senator Stanley Rosenberg
Senate Chair

Representative Michael J. Moran
House Chair



COMMONWEALTH OF MASSACHUSETTS
Special Joint Committee on Redistricting
MASSACHUSETTS GENERAL COURT

STATE HOUSE, BOSTON 02133-1053

STANLEY C. ROSENBERG
Senate Chairman
Hampshire and Franklin District

MICHAEL J. MORAN
House Chairman
Eighteenth Suffolk District

December 12, 2012

Open Letter to the Citizens of Massachusetts:

It was our honor to serve as Chairs for the Special Joint Committee on Redistricting during the 187th General Court of the Commonwealth of Massachusetts. Throughout the course of our proceedings we were asked to produce a final report with our recommendations on several issues that came to light during this round of redistricting.

The following report includes a review of the Committee accomplishments, an analysis and recommendations on the method and timing for municipal reprecincting, a review on the enumeration of prisoners, and suggestions for the U.S. Census Bureau Redistricting Data Program.

We are thankful for the support and advice we received from our colleagues on the Committee, the members of both houses of the legislature, local elected officials and advocacy groups from across the Commonwealth. Most importantly, we want to thank the concerned citizens who offered testimony at hearings or offered their suggestions through our website.

We believe this collaborative efforts was the reason for the success of the redistricting process and produced new districts that reflect the many faces of Massachusetts.

Sincerely

A handwritten signature in cursive script that reads "Stan Rosenberg".

Senator Stanley Rosenberg
Senate Chair

A handwritten signature in cursive script that reads "Michael J. Moran".

Representative Michael J. Moran
House Chair

Table of Contents

Special Joint Committee on Redistricting.....	4
Committee Charge:	4
2010-2012 Membership	4
Senators	4
House of Representatives	4
Committee Accomplishments.....	6
Chairs Review of Reprecincting Concerns.....	7
Municipal Reprecincting and Redistricting	7
<i>Issue:</i> Municipalities Exempt from Reprecincting by Special Law	9
<i>Issue:</i> Changes to Reprecincting Requirements under Chapter 321 of the Acts of 2010	10
Town Population Reprecincting Exemption and the Drawing of House Districts	10
Precinct Populations and the Drawing of House Districts.....	11
<i>Issue:</i> Range of Precinct Populations for Nonexempt Municipalities.....	11
Range of Precinct Population Disparity within Counties	12
Range of Precinct Population Disparity for Select Adjacent Communities	12
Ideal District Sizes	13
<i>Issue:</i> Timing for Reprecincting.....	13
<i>Issue:</i> Effective Date of the New Precincts	14
Additional Areas Reviewed and Recommendations.....	15
Enumeration of Prisoners	15
Suggestions for the U.S. Census Redistricting Data Program	18
Summarization of Recommendations from the Chairs.....	18

Special Joint Committee on Redistricting

Committee Charge:

In accordance with the Senate order passed on January 29, 2009 and concurred with by the House of Representatives on March 5, 2009, the special Joint Committee on Redistricting shall study the division of the Commonwealth into (a) 9 Congressional districts under the United States Constitution, (b) 40 senatorial and 8 councillor districts and (c) 160 representative districts.

The charge of the Special Joint Committee on Redistricting is to develop legislation for the redistricting of congressional, state representative, state senatorial, and governor's councillor districts for the Commonwealth that meet all applicable constitutional and legal standards and to recommend plans for such districts to the Legislature in a timely fashion so as to permit deliberation and enactment by the Legislature in a timely manner for the 2012 state and federal elections.

The proposed districts submitted by the Committee to the Legislature for consideration shall be created to meet applicable constitutional and legal standards.

The districts within each plan shall be composed of contiguous territory. No town containing fewer than 2500 inhabitants shall be divided in the formation of representative districts. When creating districts, the Committee shall be mindful of federal and state redistricting case law, equal voting opportunities established by the Voting Rights Act, the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, the Massachusetts Constitution and traditional redistricting principles.

The Committee shall hold public hearings across the Commonwealth to solicit the views of interested parties.

2010-2012 Membership

Senators

Chair Stanley Rosenberg of Amherst
Vice-Chair Sonia Chang-Diaz of Boston
Senator Barry R. Finegold of Andover
Senator Karen E. Spilka of Ashland
Senator James E. Timilty of Walpole
Senator Daniel A. Wolf of Harwich
Senator Bruce E. Tarr of Gloucester

House of Representatives

Chair Michael J. Moran of Boston
Vice-Chair Cheryl Coakley-Rivera of Springfield
Representative Byron Rushing of Boston
Representative Antonio F.D. Cabral of New Bedford
Representative Joseph F. Wagner of Chicopee
Representative Stephen Kulik of Worthington

Representative Demetrius J. Atsalis of Barnstable
Representative Garrett J. Bradley of Hingham
Representative Patricia A. Haddad of Somerset
Representative Anne M. Gobi of Spencer
Representative Alice Hanlon Peisch of Wellesley
Representative John D. Keenan of Salem
Representative Linda Dorcena Forry of Boston
Representative Sean Garballey of Arlington
Representative Marcos A. Devers of Lawrence
Representative Bradley H. Jones, Jr. of North Reading
Representative Elizabeth A. Poirier of North Attleborough
Representative Bradford R. Hill of Ipswich
Representative Paul K. Frost of Auburn

Representative Vincent A. Pedone of Worcester and Representative Christopher Speranzo of Pittsfield also served on the committee for a portion of the 2010-2012 session.

Committee Accomplishments

The Special Joint Committee on Redistricting held thirteen public hearings across the Commonwealth attended by more than four thousand individuals. More than four hundred members of the public offered testimony, many others offered written submissions, and Committee members supplemented the public hearings with individual meetings with a wide array of civic organizations and elected officials throughout the Commonwealth. Moreover, for the first time, the Committee established a dedicated website for the benefit of all Massachusetts citizens. More than thirty-five thousand individuals visited the site and were able to learn about the redistricting process, view video recordings of every public hearing, offer their suggestions to the Committee, and even draw their own maps. The Committee expresses its thanks to all citizens, members of the General Court, and organizations that provided information and views to the Committee.

In preparing the redistricting plans, the Committee took care to comply with all constitutional and legal requirements and endeavored to balance numerous and often competing traditional redistricting principles, including population equality, equal electoral opportunity, compactness and contiguity, political continuity, and the preservation of county and municipal boundaries and of other communities of interest.

The 2010 Census revealed substantial shifts within the Commonwealth that affected the population of various legislative districts. The ideal size for each House district in 2000 was 39,682 residents, whereas today, the ideal size is 40,923 residents, an average growth of 1,241 residents. For the Senate, the ideal district grew from 158,727 residents to 163,691, a growth of 4,964 residents.

Massachusetts also lost a Congressional seat for the first time in twenty years, despite an increase in population of 198,532 residents since 2000. The Massachusetts delegation to the United States House of Representatives will now have nine members. The ideal Congressional District size for Massachusetts, which was 634,910 residents in 2000, now has an ideal size of 727,514 residents.

The Committee increased the electoral opportunities of minority voters living in the Commonwealth in accordance with the principles articulated by the United States Constitution, the Massachusetts Constitution, the Voting Rights Act, and the state and federal courts. These changes were the natural outgrowth of the demographic changes within the Commonwealth; the Committee did not unduly subordinate traditional redistricting principles for racial considerations, but rather gave due weight to all of the competing legitimate state interests. The Committee created twenty majority-minority House districts, an increase from the prior ten majority-minority districts. We created a third majority-minority Senate district in the Springfield area in addition to strengthening the two districts in metropolitan Boston. The

Committee also created the strongest majority-minority congressional district in the state's history. The new 7th Congressional District has a fifty-six percent minority population.

These positive developments are the direct result of the most extensive public outreach effort in the history of Massachusetts redistricting.

As Chairs, we believe the process developed by the Committee puts to rest the idea that the legislature should surrender its duty to create new districts to an independent commission. Article CI, as amended, of the Massachusetts Constitution¹ tasks the legislature with redrawing new districts based on the federal census. As demonstrated by the narrative above, the General Court took this roll very seriously. The idea that a commission can produce districts that are fairer or eliminate the expensive litigation to defend a plan is not supported by the facts of the last two redistricting cycles. States relying on a redistricting commission have had their plans challenged at a higher rate than legislatively produced plans. During the 2000 redistricting cycle, nearly three quarters of the states with commissions were challenged in court, whereas only half of legislative plans were challenged. To date, every state that used a redistricting commission as the primary method of creating districts for the 2012 elections² had plans legally challenged. If court challenges are to be used as one benchmark to determine a successful redistricting effort then commission produced plans come up short.

In Massachusetts, the work of redistricting is a legislative responsibility that was conducted responsibly. We created an open and inclusive process for any citizen to submit their opinion to the Committee for consideration. The dialogue is what created the new districts in the Commonwealth. This inclusiveness strengthened the plans and we are thankful for the overwhelming public participation in a process that created fair and legally defensible districts. There is no reason to believe this would not be the case in the future.

Our work on the Committee did uncover areas for discussion to improve future rounds of redistricting including the use of precincts and census blocks for drawing districts and that relationship to traditional redistricting principles, the timing for creating new precincts, the effective date for new precincts, and the enumeration of prisoners and group quarter counts. The following is a discussion of these matters and our recommendations.

Chairs Review of Reprecincting Concerns

Municipal Reprecincting and Redistricting

The process of creating new districts involves giving due consideration to many different factors that often compete - several are listed in the matrix below.

¹ Commonwealth of Massachusetts Constitution: <http://www.malegislature.gov/Laws/Constitution>

² Montana, the 10th state that uses a commission, has only one member of Congress and will not produce state legislative districts until 2013.

Issues to Consider for Redistricting

Contiguosness	Compactness	Communities of Interest
Voting Rights Act	Massachusetts Constitution	United States Constitution
U.S. Supreme Court Decisions	Massachusetts Case Law	Core Districts
Population Shifts	Preservation of Political Subdivisions	

Adhering to Section 2 of the Voting Rights Act may impact compactness and the preservation of political subdivisions such as municipalities or wards and precincts. Constitutional limits on the splitting of towns due to population sizes has a ripple effect on the configuration of adjoining districts. Population shifts within municipalities exempt from reprecincting create inequities in precinct population sizes that impact how neighboring districts are formed. The population disparity of precincts in general among municipalities can potentially shift multiple district boundaries to conform to legally acceptable limits on population deviation. These potentially competing interests lead us to review the role of reprecincting and the use of new precincts as the main building block for redistricting.

Historically, precincts have been used as the building blocks for creating new districts. There is no legal requirement to do so and in fact many states use census blocks or a combination of other political subdivisions to draw district lines. The Committee did employ a limited use of census blocks to achieve zero deviation in Congressional districts and moved several census blocks between two Representative districts in the City of Boston to create an additional majority-minority district.

As the process of drawing legally defensible districts was carried out, the traditional method of employing precincts as the primary tool to build districts coupled with the actual timing for drawing new precincts for use in redistricting caused some concerns for the Committee. These issues prompted an analysis of the reprecincting process and how it fits into the many considerations required for drawing new districts. To provide recommendations to assist future rounds of redistricting we reviewed special laws for municipal reprecincting exemptions and recent changes to Chapter 54 of the Massachusetts General Law that included town reprecincting exemptions based on total population, the population size of precincts, the lack of uniform precinct sizes between municipalities with particular attention to disparities for adjacent communities, and the timing for creating and effective date for new precincts.

Our conclusion, after using new precincts as building blocks for the last two rounds of redistricting, is that reprecincting be done after redistricting is completed. Future Committees can draw the districts then municipalities can create the precinct boundaries within those districts as they see fit. Several states that reprecinct in this manner allow a set period of time, such as ninety days after the new districts become law, to create new precincts. The mechanism for

changing and publishing any changes to the legal description of the districts could rest with the Local Election Districts Review Commission after reprecincting is completed. Reprecincting after redistricting could also reduce the creation of sub-precincts and thus lessen administrative burdens of conducting elections and any voter confusion over the district where they reside. For example, a sub-precinct of one census block in the Town of Andover was created for 9 residents who will vote in the new 6th Congressional District rather than re-assigning the census block to the adjoining precinct. If new precincts are created after the drawing of districts this type of issue could be minimized or eliminated.

Issue: Municipalities Exempt from Reprecincting by Special Law

Seven municipalities are exempt from drawing new precinct lines under Massachusetts General Laws chapter 54 sections 1, 2, and 6.³ These exemptions have the potential to negatively impact the creation of future district boundaries when applying traditional redistricting principles due to the unequal sizes of the exempt precincts within the borders of the city or town and also relative to precinct sizes of neighboring communities. The idea that communities are exempt from reprecincting in perpetuity runs counter to the legislative intent of creating relatively equal population standards for each precinct within a municipality. For example, the City of Boston has not gone through the reprecincting process in several decades and the city precincts now range in size from 535 to 8,557 people. Over that time the racial and ethnic make-up of those precincts has also changed; yet, the boundaries remain the same. This population disparity and static boundaries could potentially impact the ability of future sessions of the General Court to adequately balance federal and state redistricting case law, equal voting opportunities established by the Voting Rights Act, the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, the Massachusetts Constitution and traditional redistricting principles when creating new districts.

Reapportionment and redistricting is a response to a ten year change in population. Using building blocks that do not adjust to that change has the potential to adversely influence the entire process. Therefore, we believe that municipal reprecincting exemptions granted by special law for appropriate reasons should apply to only one redistricting cycle after careful deliberation by the General Court. We recommend a thorough study of existing exemptions to determine if there is a compelling reason why any municipalities should continue to be exempt from the reprecincting provisions of Chapter 54 of the Massachusetts General Laws.

³ Boston: <http://archives.lib.state.ma.us/actsResolves/1982/1982acts0605.pdf>,
Harvard: <http://www.malegislature.gov/Laws/SessionLaws/Acts/2011/Chapter42>,
Lancaster: <http://www.malegislature.gov/Laws/SessionLaws/Acts/2011/Chapter43>,
Middleton: <http://www.malegislature.gov/Laws/SessionLaws/Acts/2011/Chapter48>,
Nantucket: <http://www.malegislature.gov/Laws/SessionLaws/Acts/2001/Chapter49>,
Rockport: <http://archives.lib.state.ma.us/actsResolves/1994/1994acts0312.pdf>,
Shirley: <http://www.malegislature.gov/Laws/SessionLaws/Acts/2001/Chapter133>.

Issue: Changes to Reprecincting Requirements under Chapter 321 of the Acts of 2010⁴

Legislation signed into law by the Governor on August 10, 2010 enacted several changes to the laws governing reprecincting. These changes were intended to correct timing issues for local reprecincting which arose from the adoption by the people of an amendment to the Massachusetts Constitution in November, 2000 changing the time for completing redistricting for elections two years following the decennial census rather than four years. Chapter 321 of the Acts of 2010 allowed the Committee to utilize the new precinct lines to help build the new districts. Although it was generally agreed that changes were necessary to correct the concerns associated with the change to the Massachusetts Constitution, ancillary issues arose that can be addressed to assist with future rounds of redistricting.

Town Population Reprecincting Exemption and the Drawing of House Districts

One change that occurred with the legislation was to increase the minimum population requirement for reprecincting of towns from 6,000 to 6,200, a percentage increase slightly larger than the state population growth of 3.1%. Although article CI of the Massachusetts Constitution prohibits the dividing of towns of less than 2,500 residents, in practice, towns with less than 6,200 people are essentially exempt from being split into multiple legislative districts if precincts are used as the main building block since most municipalities of that size are comprised of one precinct⁵. In the Commonwealth, 128 towns fall into this category. Although this number represents 36.5% of all cities and towns in the state, the combined population for these towns is 351,983 or 5.38% of the total state population.

We firmly believe avoiding the splitting of smaller communities of interest such as lower population towns enhances their resident's ability to be heard at the State House. As stated above, the Massachusetts Constitution explicitly protects towns with a population of less than 2,500 from being divided. The effective minimum 6,200 population for reprecincting, while not a guarantee that a town will not be divided, acted as a guide for determining if a town would be split between districts. This guide, however, did prove problematic when creating districts in areas of the state that had a wide range in population density. Therefore, we would recommend no further increase in the minimum population requirement for a reprecincting exemption under Chapter 54. As with the special laws providing reprecincting exemptions to specific municipalities, any future effort to match the municipal reprecincting exemption to state wide population growth could potentially hamper the ability of a Redistricting Committee to be mindful of other redistricting principles for the other 94.62% of the population when creating fair and legally defensible House districts.

⁴ <http://www.malegislature.gov/Laws/SessionLaws/Acts/2010/Chapter321>

⁵ The town of Royalston with a population of 1,258 elected not to exercise the reprecincting exemption and is divided into two precincts. For the purposes of the precinct size analysis, Royalston is excluded so as not to overly skew the relative differences.

Precinct Populations and the Drawing of House Districts

The process of creating new legislative districts using precincts is complicated by the fact that precinct sizes for the various cities and towns are not uniform in size. As noted above, municipalities with a population in excess of 6,200 are required to divide into roughly equal voting districts that cannot exceed 4,000 people. This formula begins the ultimate disparity in precinct sizes throughout the Commonwealth. A town with a population of 6,201 people at a minimum needs to create precincts containing 3,200 residents. Compare those precinct sizes to a hypothetical town with 8,000 people. That town requires a minimum of 2 precincts of 4,000 residents. The difference of 800 people between the precinct sizes of the two towns can prove problematic in creating legal district sizes if the municipalities are in the same geographic area and the precincts are the only block of citizens used to build districts.

The concern over non-uniform precinct sizes is more pronounced with the smaller population House of Representative seats and knitting districts together within the permitted deviation of plus or minus 5% (2,046 people) of the ideal size of 40,923 residents. The predicament is that the larger the building block, the greater the ripple affect over several districts as population is added or subtracted. Excluding cities and towns that are exempt from reprecincting, there are 1,761 precincts in the Commonwealth. Of that number, only 66 precincts fall below the 5% deviation window of 2,046.

Issue: Range of Precinct Populations for Nonexempt Municipalities

	POP 1000 to 2046	POP 2047 to 3000	POP 3001 to 4000
# of Precincts	66	547	1148
% of Total	2.7%	32.1%	65.2%

Having the two potentially competing variables of municipality population size and maximum precinct population size compounds the difficulty of using larger unequal populations to create House districts of plus or minus 5% of the ideal district size while still being mindful of other redistricting principles. The shift of one precinct to form a district within the deviation potentially impacts several districts when solely using larger population non-uniform size precincts as the building blocks. The larger the discrepancy in precinct size within a geographic area, the more districts are effected as precincts are swapped to create defensible Representative districts. This scenario is not hypothetical. Several areas of the state required the re-assignment of multiple precincts between several Representative districts to meet the legally acceptable deviations in population.

The following tables show some of the population discrepancy between precincts. The first table highlights the discrepancy between the largest and smallest precincts within each county of the Commonwealth. The second table includes examples of average precinct population size differences for several adjacent communities. The assignment of precincts from these communities required shifts in populations over several House districts.

Range of Precinct Population Disparity within Counties

County*	Difference
Barnstable	981
Berkshire	1,725
Bristol	1,455
Essex	2,854
Franklin	2,586
Hampden	1,713
Hampshire	2,014
Middlesex	5,110
Norfolk	1,437
Plymouth	1,518
Suffolk	8,022
Worcester**	4,466

* Excludes Dukes County because no town is large enough to be split into precincts under MGL chapter 54 section 6 and the exempt Town of Nantucket in Nantucket County.

** Excludes the two precincts in the Town of Royalston (population: 1,258) because it cannot be divided under Article CI of the Massachusetts Constitution

Range of Precinct Population Disparity for Select Adjacent Communities

Adjacent Municipalities	Avg. Pct Size	Difference	% Difference
Methuen	3,938	1,039	35.84%
Haverhill	2,899		
Malden	3,716	1,788	92.78%
Melrose	1,927		
Falmouth	3,486	664	24.15%
Bourne	2,822		
Marlborough	2,750	1,046	38.02%
Framingham	3,795		
Longmeadow	3,157	773	24.49%
East Longmeadow	3,930		

The table below shows population deviation for various legislative districts. The disparity in the allowed population deviation highlights potential issues when relying primarily on larger building blocks such as precincts to create defensible districts. House districts are allowed a maximum population deviation of 4,092. The issues are less acute for Senate districts which can have a population deviation of 16,369. The problem becomes critical with Congressional districts which require the use of smaller census blocks to achieve zero deviation.

Ideal District Sizes

Total Population: 6,547,629

	Population per District		
	Rep.	Sen.	Congress
Number of Districts	160	40	9
Ideal Population	40,923	163,691	727,514
Minimum Population	38,877	155,506	727,514
Maximum Population	42,969	171,876	727,514
Allowed Deviation	4,092	16,369	0

A potential solution that could assist with the creation of House districts would be to lower the maximum precinct size from 4,000 to a number equal to or below the plus or minus 5% deviation figure of 2,046 people allowed for House districts. This, however, would necessitate creating over 1000 additional precincts within the Commonwealth and would dramatically increase associated costs for administering elections. And it would still not fully address the already discussed domino effect of adding large groups of residents to individual House districts or allay our concerns over the creation of subprecincts that may be necessary to accommodate Congressional districts with zero deviation.

Our conclusion is that creating smaller precinct sizes would not adequately address the issues encountered when crafting legislative districts coupled with the fact that census blocks would still need to be used to create legally defensible Congressional districts lead us to review the timing for when reprecincting occurs.

Issue: Timing for Reprecincting

The timeline for creating new precinct boundaries after the Census data was released created several challenges for the Committee. To use the new precinct lines, the Committee waited over five months for the Local Election Districts Review Commission to approve new precinct lines, collect and process the results of their work, and have the new precincts put into a format compatible with our software to draw new boundaries. While not fatal to the work of this Committee, this delay can potentially put future redistricting efforts at risk by compressing the working time available to create new districts.

Although the population of the Commonwealth increased by 198,532 citizens, the net result of reprecincting lowered the total amount of precincts from 2,158 to 2,151. In fact, the last round of reprecincting saw only minor shifts of precinct boundaries in most municipalities to create roughly equal precinct population sizes. Of the 351 Massachusetts cities and towns, only 45 had a change in the total number of precincts within their borders.

Of those 45 municipalities, eleven are represented by more than one State Representative. Only two, the Town of Wellesley and the City of Chicopee, have more than one Senator representing the municipality. The City of Chicopee is the only municipality that changed the number of

precincts that has multiple Senate and House districts within its borders. In short, only one municipality in this round of redistricting had the potential for boundary issues that may have required the creation of subprecincts to accommodate the state legislative district boundaries. Overlaying the various maps could easily identify potential precinct splits and adjustments made to align legislative boundaries to eliminate them. This methodology would then allow municipalities the flexibility to create precinct lines within the legislative boundaries after redistricting.

The salient question is whether the use of newly drawn precincts markedly improves the ability of the Committee to produce legally defensible districts. We see no evidence that adjusting precinct boundaries or changing the number of precincts within a municipality could not have been accomplished after new the legislative districts were drawn. The City of Chicopee decreased their total number of precincts from 22 to 18. We do not believe the ability to decrease the number of precincts would have been unduly diminished if done after redistricting. The Committee spent considerable effort to craft majority-minority House and Senate districts in that area of the state to address the rights of minority populations and to comply with Section 2 of the Voting Rights Act. For that reason, having the flexibility to shape boundaries and then have precincts created to follow those boundaries is imperative for creating defensible districts for future rounds of redistricting. As population shifts and growth in the population of protected classes continues this will become even more important as time goes on.

Using the existing precincts in combination with smaller census blocks could potentially give future Redistricting Committees more latitude in the drawing of new districts to better conform with other redistricting principles and not negatively impact the ability of a city or town to create precincts and subprecincts within the new legislative boundaries as they see fit. Therefore, we recommend further study by the legislature on the feasibility of amending the general laws to conduct reprecincting after new districts are drawn.

Issue: Effective Date of the New Precincts

An ancillary issue with reprecincting is that new precincts take effect a full year before the effective date for the new legislative boundaries. Because of this discrepancy, the potential to fill any House or Senate vacancy by special election creates numerous administrative and legal issues since the new precincts may not be entirely contained within the boundaries of the current legislative district. One rationale for having the earlier effective date is that the new precincts could be used in the Presidential primary and party elections also held during that primary would reflect the new Senate district boundaries. Understanding the desire to use the new boundaries does not lessen the issue of filling vacant representative districts if that is deemed appropriate. We think this point is reinforced by the fact that party elections occurring during a Presidential primary on a year when a Census is conducted will serve the last two years of their four year term under the old district boundaries.

So regardless of the timing for when reprecincting occurs, we recommend that the effective date for the new precincts be moved to a later date to allow for special elections to fill vacancies in the General Court if called by the Speaker of the House or Senate President.

Additional Areas Reviewed and Recommendations

Enumeration of Prisoners

We received a tremendous amount of testimony and advice on the issue of group quarters and the counting of prisoners at their last place of residence rather than where they are incarcerated. It was pointed out to the Committee that prisons are frequently located in areas geographically and demographically removed from the home communities of incarcerated persons. The main thrust of the argument is that counting prisoners by the U.S. Census at the usual place of residence rather than the legal address of the person prior to incarceration inflates the relative strength of votes by residents in that district at the expense of voters in all other districts in the Commonwealth.

The Committee appreciated the input by those advocating for a change in how prisoners are counted. However, the Committee charge, which guided us throughout the redistricting process, was clear:

The charge of the Special Joint Committee on Redistricting is to develop legislation for the redistricting of congressional, state representative, state senatorial, and governor's councillor districts for the Commonwealth that meet all applicable constitutional and legal standards and to recommend plans for such districts to the Legislature in a timely fashion so as to permit deliberation and enactment by the Legislature in a timely manner for the 2012 state and federal elections.

The proposed districts submitted by the Committee to the Legislature for consideration shall be created to meet applicable constitutional and legal standards.

The districts within each plan shall be composed of contiguous territory. No town containing fewer than 2500 inhabitants shall be divided in the formation of representative districts. When creating districts, the Committee shall be mindful of federal and state redistricting case law, equal voting opportunities established by the Voting Rights Act, the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, the Massachusetts Constitution and traditional redistricting principles.

In evaluating the testimony and arguments concerning counting prisoners, the Committee looked to Article CI, as amended, of the Massachusetts Constitution. This article as originally written

was approved by the people of the Commonwealth in 1975 and subsequently amended and approved three additional times. The most recent amendment, approved in the year 2000, dictates that the federal census shall be the basis for determining the representative, senatorial, and councillor districts for the ten year period beginning with the first Wednesday in the third January following the taking of said census. The U.S. Census uses the "usual place of residence" rather than a "legal residence" when counting prison populations. The distinction meant that prisoners were counted in their place of incarceration and therefore we were required under the Massachusetts Constitution to use that count in the 2010 redistricting cycle.

The question now is how the counting of prisoners can be handled in the future. While it is possible to again amend Article CI to address the issue, it is unclear at this time if that would be enough to produce a legally defensible plan. Four states have passed laws to adjust their census figures to move prison populations from the usual place of residence to their legal residence prior to incarceration.⁶ The two states where the change took effect following the 2010 U.S. Census, New York⁷ and Maryland⁸, have had plans challenged in court with the prisoner issue being a major point of contention in the complaints. The case in New York was appealed through the state court system. The Maryland case was appealed to the United States Supreme Court and may have a more practical application for this discussion as it relates to Massachusetts.

A three judge panel of the United States District Court for Maryland opined on December 23, 2011 that the counts 3, 4, and 6 dealing with the law correcting for the distortional effects census figures have on prison populations by the State of Maryland was not unconstitutional. Judge Niemeyer wrote: "Although the case law on this issue is sparse, the majority of the courts to consider the issue have similarly concluded that Karcher⁹ and Kirkpatrick¹⁰ do not bar the use of adjusted census data."¹¹ The plaintiffs appealed the ruling on these three counts to the U.S. Supreme Court in January 20, 2012. Although the Supreme Court affirmed the lower court ruling on June 25, 2012, the fact that case law on the issue is "sparse" in the opinion of Judge Neimeyer and that the Massachusetts Constitution as amended requires the use of the U.S. Census as the basis for redistricting leads us to conclude that the likelihood of continued uncertainty on the appropriate enumeration of prisoners may result in further litigation on this matter as long as states unilaterally attempt to tailor U.S. Census figures to meet local needs.

The subject has been researched extensively by the Census Bureau. The Bureau issued a report on February 21, 2006 after being directed by Congress to study the method for counting prisoners in a report accompanying the Science, State, Justice, Commerce, and Related Agencies

⁶ California and Delaware beginning with the 2020 Census. Maryland and New York beginning with the 2010 Census.

⁷ *Little v. NY LATFOR*, No. 2310-2011 (N.Y. Sup. Ct. (trial), Albany County)

⁸ *Fletcher et al v. Lamone*, No. RWT-11cv3220 (D.Md. Dec. 23, 2011)

⁹ *Karcher v. Daggett*, 462 U.S. 725 (1983)

¹⁰ *Kirkpatrick v. Preisler*, 394 U.S. 526, 530-31 (1969)

¹¹ *Fletcher et al v. Lamone*, No. RWT-11cv3220 (D.Md. Dec. 23, 2011)

Appropriations Act, 2006 (P.L. 109-108). The report, *Tabulating Prisoners at Their “Permanent Home of Record” Address*, concluded:

Counting prisoners at a “permanent home of record” address, rather than at their place of incarceration, would result in increased cost both to the decennial census program and to the Federal, State, and local correctional facilities that would be required to participate in data collection efforts. Our study raises concerns that this change would result in decreased accuracy for a possibly large proportion of millions of individuals confined on Census day. The completeness of the census count would be compromised for prisoners that cannot provide a valid address, and we have no method of determining how many individuals would fall into that category. Further, a fundamental shift for the enumeration of correctional facilities would likely have a negative impact on other Group Quarters enumerations.¹²

Congress did not pursue counting prisoners at their “permanent home of record” after release of the report.

The most expedient and streamlined avenue for changing the method for counting prison populations lies with Congressional action directing the U.S. Census Bureau to change their enumeration methodology. This would provide a systematic and consistent tabulation approach for calculating Congressional re-apportionment and one that is uniform for redistricting in all 50 states. Robert Groves, Director of the Census Bureau, wrote in his blog posted on March 1, 2010 that, “Counting members of all group quarters is complicated; we re-evaluate our “residence rules” after each census, to keep pace with changes in the society. We’ll do that again after the 2010 Census.”¹³ The tabulation of prisoners should be at the forefront of Bureau priorities in evaluating and adjusting how the 2020 U.S. Census will be conducted.

We agree that the way prisoners are currently counted does a disservice to the state and should be changed. Our recommendation is that the General Court adopt a resolution to be sent to the United States Congress and the Director of the U.S. Census Bureau expressing support for changing the residency classification for counting prisoners to their legal residence prior to incarceration. If the federal government fails to act, then the only recourse is to amend the Massachusetts Constitution. Such a change on the federal level however, will rectify the perceived inequalities in counting prisoners and eliminate costly litigation for states to defend redistricting plans based on adjusting prison populations.

¹² http://www.census.gov/newsroom/releases/pdf/2006-02-21_tabulating_prisoners.pdf

¹³ <http://blogs.census.gov/directorsblog/2010/03/so-how-do-you-handle-prisons.html>

Suggestions for the U.S. Census Redistricting Data Program

Phase 5 of the Census Redistricting Data Program being conducted through 2014 allows states to submit and have published their review documenting the success and failures of the Census Bureau in conducting the 2010 Census. We would urge the State Secretary, the official liaison to the Census Bureau for the Commonwealth, to include the recommendations of the Committee with regard to the enumeration of prisoners. We also urge the State Secretary to suggest that group quarter counts be limited to less than 2,000 residents for any one census block. If reprecincting were to occur after redistricting in 2022 then issues such as the 4,025 person census block containing dormitories at UMass Amherst that was split by the LEDRC during the reprecincting process would need to be addressed prior to the 2020 Census.

The Commonwealth had 157,510 census blocks after splits and block changes were performed by the LEDRC. Only 785 (0.5%) of those blocks have a count of over 500 residents. Of those 785 blocks, six had a population over 2,000 residents.

Population	Municipality	Block	Area	Disposition
4,025	Amherst	250158204001028	UMass Amherst Dormitories	Split into 2 blocks by the LEDRC
2,891	Cambridge	250173549002001	Fresh Pond Parkway Area	
2,671	Boston	250250008032005	Boston University Dormitories on West Campus (Babcock Street)	
2,458	Worcester	250277329021016	Holy Cross University Dormitories	
2,247	Boston	250250008031000	Harvard Business School Dormitories (Allston)	
2,145	Peabody	250092103002001	Brooksby Village Retirement Community	Subprecinct created by Chapter 19 of the Acts of 2012

Any effort to minimize the number of large size census block through the various phases of Census Bureau redistricting evaluation programs will undoubtedly enhance the ability of future sessions of the General Court to produce fair and legally sound districts and maps.

Summarization of Recommendations from the Chairs

- Pass a resolution by the General Court requesting that the U.S. Census Bureau change the residency classification for counting prisoners at their legal residence prior to incarceration. The Legislature could consider a constitutional amendment in the event the federal government does not act on our recommendations.

- Study existing reprecincting exemptions to determine if all municipalities should be subject to the provisions of Chapter 54 sections 2 and 6 of the Massachusetts General Laws.
- Study amending Chapter 54 sections 1, 2, and 6 to provide for reprecincting after new districts are drawn.
- Amend Chapter 43 sections 1, 2, and 6 so the effective date for the new precincts is changed to correspond with the primary preceding the next biennial to allow for special elections in the event of vacancies in the General Court.
- Urge the State Secretary, municipal officials, and public interest groups to use opportunities presented through various phases of the U.S. Census Bureau Redistricting Data Program to voice concerns over any census block boundary prior to the next decennial census and also request that group quarter counts be limited to blocks of less than 2,000 residents when possible.

We feel that a study of the recommendations presented will provide future Joint Committees on Redistricting the additional flexibility needed to balance the various principles employed for drawing fair and defensible districts that reflect the many faces of Massachusetts.