

PRISON

POLICY INITIATIVE

PRISON GERRYMANDERING IN INDIANA

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 Indiana on two levels:

- Indiana engages in prison gerrymandering for state legislative districts.
- State law¹ is commonly interpreted to require counties, municipalities, and school boards to engage in prison gerrymandering, and many do. But the cities of Terre Haute and Crown Point excluded prison populations anyway to avoid violating the principle of "one person, one vote."

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.

Indiana law considers incarcerated people to be residents of their home address. "A person who has a residence in a precinct retains residency in that precinct until the person abandons the residence by: (1) having the intent to abandon the residence; (2) having the intent to establish a new residence; and (3) acting as provided in this intent by establishing a residence in a new precinct." (Indiana Code §3-5-5-4.) Since nearly all 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 is inconsistent with Indiana's residence law.

Impact at the state level:

- Marion County (Indianapolis) is home to less than 14% of Indiana, but more than 29% of the state's prisoners are from Marion County, and 98% of the state's prison cells are located in other parts of the state.
- 5.7% of the population credited to House District 20 during the 2011 redistricting² was incarcerated. This gave every 94 people in District 20 as much influence as 100 people in every other House district.

Crediting all of Indiana's incarcerated people to a few locations enhances the political clout of the people who live near prisons, while diluting voting power of all other Hoosiers.

Impact at the county and municipal level

Because state law is read³ to require prison gerrymandering, Indiana provides dramatic examples of the problem:

- Michigan City and Madison City included prison populations in their current redistricting plans, resulting in districts that are about 40% and 30% incarcerated, respectively.

We have found only two examples of communities that successfully rejected the Census Bureau's prison counts:

- Terre Haute and Crown Point both excluded prison populations when redistricting. Terre Haute faced the prospect of creating a district that was more than 30% incarcerated. As a *Tribune Star* editorial concluded: "Though the situation

¹ Ind. Code § 1-1-3.5-3(b).

² We haven't had time to update this analysis for the 2011 redistricting.

³ Attorney General Advisory Letter 12-38

did not involve heated public debate, it needed to be addressed. One-person, one-vote should not just be a concept; it should be reality.”⁴

Past activity:

- In January 2011, Representative C. Brown introduced HB 1459, a bill that would have adjusted census data for redistricting purposes to count incarcerated people at their home addresses.

Strategy choices:

- Pass a bill that would count incarcerated people at home for state legislative, county and municipal redistricting purposes. (A model bill is available on our website at <http://www.prisonersofthecensus.org/models/example.html>.)
- Pass legislation to clarify the definition of population for use in county and municipal redistricting purposes, or convince state officials that they should interpret the current statute differently, in order to end prison gerrymandering at the county and municipal level.

In-state contacts:

- Professor Kelsey Kauffman, DePauw University

For more information, start with:

- Our 50 State report page for Indiana provides additional resources: <http://www.prisonersofthecensus.org/50states/IN.html>
- “Counting Matters: Prison inmates, population bases, and ‘one person, one vote’”, by Taren Stinebrickner-Kauffman 11 Va. J. Soc. Pol’y & L. 229, 303 (Winter 2004). (Includes the results of a survey of Indiana legislators that reveals that they do not consider the people incarcerated in their district to be their constituents, though they do consider people incarcerated elsewhere whose homes are in their districts to be district constituents.)

2/15/13

⁴ Correcting the prison imbalance: Council made right move on district, Editorial, Tribune Star (Terre Haute, Indiana), May 16, 2012. Available at <http://tribstar.com/opinion/x1221404313/EDITORIAL-Correcting-the-prison-imbalance>