

Senate Bill 587: Ending Prison-Based Gerrymandering in New Jersey

Senate Bill 587 would end the practice of giving extra representation to the people who live near prisons and diluting the votes of all other New Jersey residents.

Currently, New Jersey bases its legislative districts on U.S. Census Bureau data counts incarcerated people in the wrong place: in the census block that contains the prison instead of at their homes. People convicted of felonies in New Jersey can not vote while they are incarcerated, and those who are incarcerated for misdemeanors or awaiting trial vote absentee in their home districts.

This longstanding flaw in the Census undermines the legislature's constitutional duty to draw legislative districts on the basis of equal population. The unfortunate result of using prison populations to pad the legislative districts that contain prisons is to enhance the weight of votes cast in those districts while diluting every vote cast in districts without prisons.

The solution

Senate Bill 587 is a simple state-based solution to a problem that should have been corrected by the federal government. Ideally, the U.S. Census Bureau will change its policy and count incarcerated people as residents of their home addresses, but the state should be prepared to have its own solution in place.

New Jersey can remove the prison populations from the Census Bureau's redistricting data and, using its own administrative records, reassign incarcerated people to their home addresses before redistricting.

The benefits

- Every resident in the state would have the same access to the legislature regardless of whether she lived in a district that contained a prison.
- The state would be in compliance with the Supreme Court's "one person, one vote" rule which requires that all residents be given the same access to government regardless of where they live.
- Currently, legislators who represent districts where a disproportionate number of residents are incarcerated outside of the district are responsible for both their official district population and their incarcerated constituents. Basing districts on more accurate population data would allow these districts to be drawn more fairly.
- There would be no effect on the distribution of federal or state funds, because all funding programs have their own data sources that do not rely on redistricting data.

NJ law already prohibits prison-based gerrymandering in school boards

New Jersey law already requires school board districts to avoid prison-based gerrymandering by excluding prison populations when apportioning school boards that have 9 or more members. (N.J. Stat. Ann. § 18A:13-8; Board v. New Jersey, 372 N.J. Super. 341, 858 A.2d 576 (2004).)

Senate bill 587 will count incarcerated people at their home address, allowing the General Assembly's legislative districts to similarly avoid giving some voters extra influence just because they live next to a prison.

Bill Summary

The bill requires that incarcerated individuals be counted at the individual's residential address for legislative redistricting purposes. Under the bill, the State Department of Corrections is to collect and maintain an electronic record of the residential address of each individual entering its custody and to share that information with the Secretary of State. The Secretary of State is to request similar information from the Federal Bureau of Prisons for people incarcerated in federal prisons in New Jersey.

The Secretary of State then adjusts the redistricting data based on the address records kept by the Department of Corrections. The adjusted redistricting data is then given to the Apportionment Commission, who will use it when drawing state legislative districts.

Bill S587 extends the equal population provisions in the New Jersey Constitution (N.J. Const. Art. IV § 2, ¶1 & ¶3) to require that districts be drawn within a 5% population variation under both the adjusted dataset and the Census Bureau's PL94-171 data.

Precedent

Four states have already passed legislation ending prison-based gerrymandering. New York and Maryland have already passed and implemented similar laws to count people in prison at home for this round of redistricting, and both states' laws were successfully defended in court. Delaware and California passed legislation that will take effect after the next Census in 2020.