

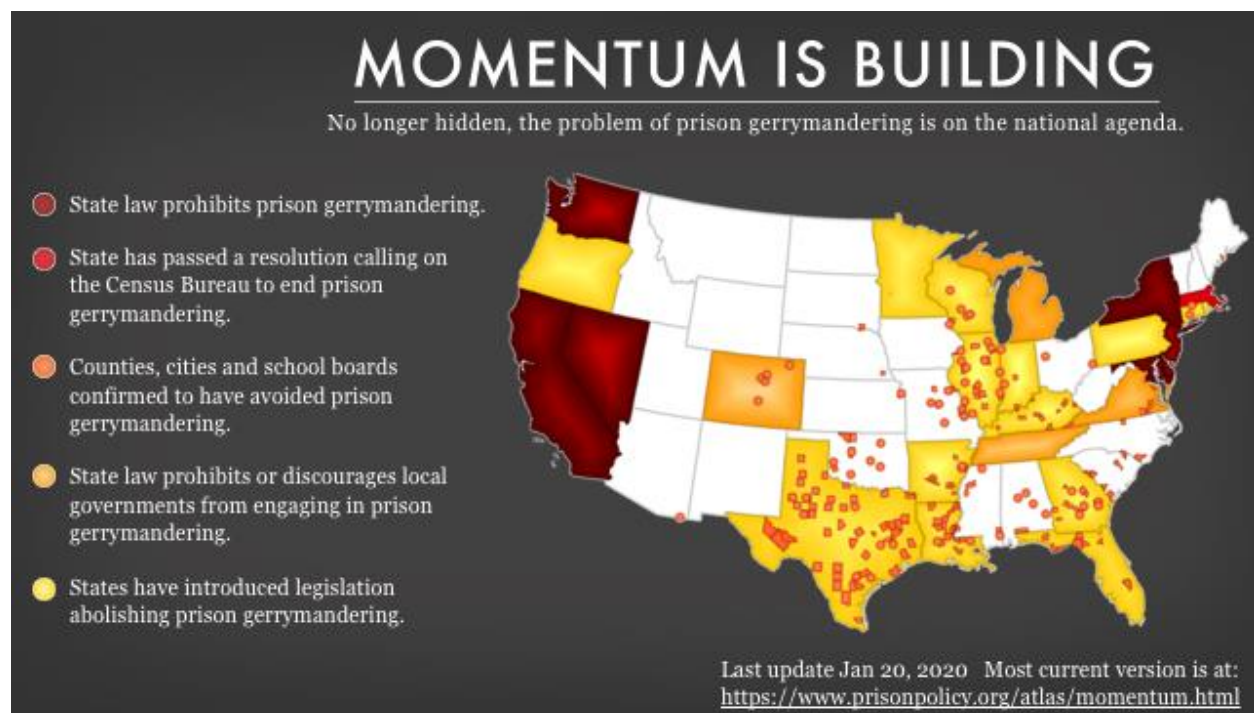
PRISON POLICY INITIATIVE

Introduction to Prison Gerrymandering and Table of Contents

The way the Census Bureau counts incarcerated people in the decennial census unintentionally undermines the constitutional principle of “one person, one vote”. The Bureau tabulates incarcerated people as if they were residents of the locations where they are confined, even though they remain legal residents of their home.

When states, counties, and cities use that data to draw districts they create dramatic distortion of representation. This “prison gerrymandering” enhances the representation of people who live in districts that contain prisons and dilutes representation for everyone else.

Although prison gerrymandering remains a serious issue in most parts of the U.S., significant progress toward reform has been made at the Census Bureau and at all levels of government across the country. Over 25% of US residents now live in a state, county or municipality that has formally rejected prison-based gerrymandering:



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Model legislation

- Example Bill: model legislation for ending prison gerrymandering in your state
(<http://www.prisonersofthecensus.org/models/example.html>)

News clipping

- Effort To End 'Prison Gerrymandering' Would Alter Oregon’s Political Map, by the *Oregon Public Broadcasting*, May 1, 2019

For more information on prison gerrymandering, including past and current legislative efforts, state-by-state district analyses, fact sheets, and data, see
<http://www.prisonersofthecensus.org/>

Ending prison gerrymandering

Improving democracy requires changing the Census Bureau's prison count methodology

PRISON
POLICY INITIATIVE

PrisonersOfTheCensus.org

The Supreme Court's "one person, one vote" principle requires state and local electoral districts to be redrawn each decade so that each district contains the same number of people, giving each resident the equal access to government. A long-standing flaw in the decennial census, however, counts more than two million incarcerated people in the wrong place, undermining the "one person, one vote" principle. Although incarcerated people cannot vote at correctional facility locations and remain residents of their home addresses, the Census Bureau tabulates people in prison as residents of their prison cells, not their homes. This leads state and local governments to engage in "prison gerrymandering" by drawing skewed districts that dilute the votes cast by everyone who does not live near a prison.

The problem at the state level

Crediting all of a state's incarcerated persons to a small number of districts that contain large prisons enhances the representation of those districts and dilutes representation of everyone else in the state, distorting policy decisions statewide. In addition, using incarcerated populations — which are disproportionately Black and Latino — to pad the populations of other districts dilutes minority voting strength.

The problem at the local level

Because rural county and municipal districts are smaller than state legislative districts, prison gerrymandering can create even larger problems on the local level. For example:

- **Dysfunctional local districts.** In Anamosa Iowa, a person won a city council seat with two write-in votes, neither of which he cast. No candidates ran because 96% of his district was incarcerated in a large prison. This gave the handful of actual residents in the district 25 times as much influence on the city council as residents elsewhere in the city.
- **"Majority-minority" in name only.** Prison gerrymandering prevented African-American voters in Somerset County Maryland from electing a candidate of their choice, even though a district had been drawn for that purpose to settle a Voting Rights Act lawsuit.

States and localities are seeking more accurate data

So far, six states — Maryland, New York, Delaware, California, Washington, and Nevada — have passed legislation to use state correctional data to ensure that districts are drawn with data that counts incarcerated people at home. The laws in Maryland and New York have already been implemented and upheld by the courts; the U.S. Supreme court affirmed Maryland's law in 2012.

Further, the legislative or executive branches in several states (such as Colorado, Michigan, Mississippi, New Jersey and Virginia) require or encourage local governments to refuse to use prison populations as padding by modifying the Bureau's redistricting data. In addition, more than 200 counties and municipalities independently adjust the redistricting data to avoid prison gerrymandering.

Only the Census Bureau can provide a permanent national solution

The Census Bureau has already made an important, if subtle, change. The Census Bureau agreed to publish prison count data earlier than in the past, in order to assist states and counties with reallocating or removing incarcerated populations during the 2010 redistricting process, and for 2020 will release the data even earlier, bundling the prison count with the traditional (PL 94-171) redistricting data.

Ideally, the U.S. Census Bureau will count incarcerated people as residents of their legal home addresses and not as residents of the correctional facilities. The Census Bureau should, as part of their research and planning agenda for the 2030 Census, determine the best and most economical way to properly count incarcerated people as residents of their home communities.

THE CENSUS BUREAU'S PRISON MISCOUNT: IT'S ABOUT POLITICAL POWER, NOT FUNDING

Most funding formulas are too sophisticated to be fooled by the prison miscount

It is important that the Census counts everyone. Census population determines how legislative districts are drawn and places a major role in how federal funds are distributed. But where incarcerated people are counted has very little effect on those funding distributions for two reasons:

First, the majority of federal funding is in the form of block grants to states, so it does not matter where in any given state an incarcerated person is counted.

Second, most other funding programs are quite sophisticated and the funding distributions are calculated in ways that directly or indirectly ignore prison populations. For example, federal funds intended for low-income schools are based not on the total population counted for the area but rather on the number of low-income children counted in the Census or the number of students in a school's discounted lunch program. Therefore, a large prison near a school would not increase funding to the school district.

The rare funding programs that are skewed by prison populations tend to be very small, and focused solely on distributions within particular regions. For example, total population plays a minor part in the grants distributed by the Appalachian Regional Commission in a way that gives communities with a prison a slightly larger share of the available funds, and similarly situated rural communities without prisons receive less. Communities that are outside the eligible Appalachian counties are entirely unaffected.

Further, **state legislation ending prison gerrymandering could never affect funding** distributions because no federal or state funding formula is distributed on the basis of redistricting data. This analysis has been confirmed by decades of experience of hundreds of local governments that have excluded prison populations when drawing local districts without any effect on the funding they receive. Moreover, our model bill, and some recent proposed legislation in Illinois (HB62 2013) and Rhode Island (SB516 2013) explicitly say "The data ... shall not be used in the distribution of any state or federal aid."

To recap, the prison miscount has a severe impact on elections, but the impact on funding in rural prison-hosting areas tends to be minor, and the funding impact is nonexistent in urban high-incarceration communities.

Surprised? It's understandable.

News articles often spread the common misconception that there is a direct connection between the prison miscount and the formula grants received, but none of these claims have ever withstood scrutiny.

These stories about an impact which does not exist threaten the longstanding rural-urban coalition for Census reform.

For more information and references, contact Peter Wagner, Executive Director of the Prison Policy Initiative at <http://www.prisonpolicy.org/contact.html>

Federal Judges uphold Maryland law ending prison-based gerrymandering

by Peter Wagner, December 27, 2011

On Friday, Dec 23, a federal three-judge panel rejected a lawsuit seeking to overturn Maryland's landmark "No Representation Without Population Act," which counts incarcerated people as residents of their legal home addresses for redistricting purposes.

The Maryland law addressed a long-standing problem in the federal Census that counts incarcerated people as residents of the prison location, even though they cannot vote and retain their pre-incarcerated residences. For decades, using unadjusted Census data diluted the vote of every Maryland resident who did not live near the prison complex in western Maryland, and had a particularly negative effect on African-American communities that experience disproportionate rates of incarceration.

The Judges note that the No Representation Without Population Act they upheld was an important Maryland civil rights victory: "As the amicus brief ... makes clear, the Act was the product of years of work by groups dedicated to advancing the interests of minorities." (p. 20)

Other versions of Maryland's law have since passed in New York, Delaware and California. Maryland was the only state to apply its law to congressional redistricting, and the first state to complete the process after passing a law. The Judges' ruling that the law was properly passed and fairly implemented will encourage other states to pass similar laws and will hopefully encourage the Census Bureau to make their own changes in where incarcerated people are counted.

The Court issued its ruling late on the Friday before closing for the Christmas weekend, and just three days after a hearing on the evidence and oral arguments on Tuesday. The Court had promised a decision by the end of January, but quickly concluded that the lawsuit was without merit. The case, *Fletcher v. Lamone*, was a Republican-backed lawsuit that challenged the congressional plan proposed by the Democratic governor of Maryland. The suit raised claims of partisan gerrymandering and racial discrimination against African-Americans. Three of the claims attacked the No Representation Without Population Act as part of that otherwise unrelated lawsuit.

The Prison Policy Initiative, along with our colleagues at the Howard University School of Law Civil Rights Clinic, the ACLU of Maryland, the Maryland State Conference of NAACP Branches, Somerset County Branch of the NAACP, the NAACP Legal Defense and Education Fund, and Dēmos submitted a friend of the court brief to make it clear to the court that the No Representation Without Population Act was protective of minority voting rights. (Our brief did not address the other claims in the lawsuit.) Judge Williams, in his concurring opinion, called our brief "particularly impressive and persuasive." (p. 49)

The Court upheld the state's congressional districting plan on all counts. While most of the 55-page opinion concerned other claims, considerable treatment was given to the No Representation Without Population Act.

The Court explained the law and its rationale:

- ▶ Quoting the state's summary, "the Act is intended to 'correct for the distortional effects of the Census Bureau's practice of counting prisoners as residents of their place of incarceration.'" The court then goes on to explain:

"These distortional effects stem from the fact that while the majority of the state's prisoners come from African-American areas, the state's prisons are located primarily in the majority white First and Sixth Districts. As a result, residents of districts with prisons are systematically 'overrepresented' compared to other districts. In other words, residents of districts with prisons are able to elect the same number of representatives despite in reality having comparatively fewer voting-eligible members of their community." (p. 9)

- ▶ The Court noted the critical importance of ending prison-based gerrymandering in local redistricting where the impact of a single prison can be the majority of a district. The Court discussed the infamous Somerset County example where a county commission district intended to be majority African-American was unable to elect an African-American for decades because the district contained a large prison and the African-American voting population of the district was too small to elect a candidate of African-American voters' choice. (p. 9)

The Court explained that states are not required to blindly use the Census for redistricting purposes:

- ▶ Federal law requires Congressional districts to be exactly equal in population, but does not prohibit states from making improvements to the federal census data in establishing that population base. Federal case law allows adjustments to the data used for congressional districts. Although Census data is presumed to be a good starting point, the data can be adjusted to correct for flaws. These adjustments, however, may not be done in “a haphazard, inconsistent, or conjectural manner.” (pp. 12-13)
- ▶ The Court found that The No Representation Without Population Act and its implementation by the Maryland Planning Department meets the standard, writing:

“The question remains whether Maryland’s adjustments to census data were made in the systematic manner demanded by *Karcher*. It seems clear to us that they were. As required by the regulations implementing the Act, ... [the Maryland Department of Planning] undertook and documented a multistep process by which it attempted to identify the last known address of all individuals in Maryland’s prisons.... This process is a far cry from the ‘haphazard, inconsistent, or conjectural’ alterations the Supreme Court rejected in *Karcher*.” (pp. 16-17)
- ▶ Because the No Representation Without Population Act was found to satisfy even the stricter standards applicable to congressional districts, the opinion bodes well for the constitutionality of similar laws that apply to state legislative and local redistricting, where governmental discretion to make adjustments in Census data is even clearer.

UPDATE:

On June 26, 2012, the U.S. Supreme Court summarily affirmed the opinion of this three-judge panel!

The Court addressed several other issues that come up frequently in discussions about ending prison-based gerrymandering:

- ▶ Improving how incarcerated people are counted does not necessitate improving how other groups are counted. Plaintiffs criticized the state for reallocating incarcerated people to their homes, but not doing the same for members of the military or students in dorms. The Court called the assumption that these populations are all similarly situated to be “questionable at best.” The court explains:

“College students and members of the military are eligible to vote, while incarcerated persons are not. In addition, college students and military personnel have the liberty to interact with members of the surrounding community and to engage fully in civic life. In this sense, both groups have a much more substantial connection to, and effect on, the communities where they reside than do prisoners.” (p. 18)
- ▶ States should improve redistricting data where possible, even if it cannot be made perfect. For example, plaintiffs criticized the state’s reallocation because not all incarcerated people return to their exact prior address. The Court ruled:

“Because some correction is better than no correction, the State’s adjusted data will likewise be more accurate than the information contained in the initial census reports, which does not take prisoners’ community ties into account at all.” (pp. 18-19)
- ▶ The Court found that “although the Census Bureau was not itself willing to undertake the steps required to count prisoners at their home addresses, it has supported efforts by States to do so,” quoting the Census Bureau Director’s explanation that the new Advance Group Quarters data would

“enable states ‘to leave the prisoners counted where the prisons are, delete them from redistricting formulas, or assign them to some other locale.’” (p. 16)
- ▶ The Court also addressed the main impetus for our brief, namely the plaintiff’s bizarre implication that a law passed with the intent of improving African-American voting rights somehow diluted African-American votes:

“Our review of the record reveals no evidence that intentional racial classifications were the moving force behind the passage of the Act. In fact, the evidence before us points to precisely the opposite conclusion.” (p. 19)

Select national organizations that support ending prison gerrymandering

Advancement Project
American Civil Liberties Union
Black Leadership Forum
Brennan Center for Justice
Common Cause
CURE International
Dēmos
Drug Policy Alliance
Fair Elections Legal Network (FELN)
FairVote
Grassroots Leadership
Human Rights Defense Center
Justice Policy Institute
LatinoJustice PRLDEF
League of Women Voters of the United States
MALDEF
NAACP
NAACP Legal Defense Fund
NAACP National Voter Fund
National Urban League
Nonprofit VOTE
Prison Policy Initiative
Southern Center for Human Rights
The Leadership Conference on Civil and Human Rights
The Sentencing Project
U.S. Conference of Mayors

PRISON GERRYMANDERING PROJECT

from the Prison Policy Initiative

Example Bill: Ending prison-based gerrymandering in your state.

This model legislation requires the state prison system to collect home residence data and the Secretary of State to merge that data with the federal census prior to redistricting. This legislation was prepared by a coalition of civil rights, voting rights, and criminal justice organizations based on the lessons of the states that have already successfully passed and implemented legislation ending prison gerrymandering. The comments offer guidance on adapting the model bill to the specifics of your state. If the Prison Policy Initiative's experience on this issue would be of assistance, don't hesitate to reach out.

—Aleks Kajstura

last updated Jan. 8, 2020

Purpose of Legislation

This bill provides for adjusting population data used in redistricting to conform to the [Oregon] Constitution. The Census Bureau allocates incarcerated persons as if they were residents of their places of incarceration rather than of their home addresses. Article IV of Section 4, however, states that for “the purpose of voting, no person shall be deemed to have gained, or lost a residence... while confined in any public prison.”

Bill

Section 1. The legislature notes that section 4 of article IV of the [Oregon] constitution provides in pertinent part as follows: “For the purpose of voting, no person shall be deemed to have gained, or lost a residence... while confined in any public prison.” Investigation has shown that, despite these provisions, the Census classifies incarcerated persons as residents of their places of incarceration rather than of their home addresses. The provisions of this act are necessary to provide procedures and duties to correct this discrepancy.

Section 2. The election law is amended by adding a new section 188.020 to read as follows:

1. Electronic record. The Department of Corrections shall, starting within 6 months of the effective date of this statute, collect and maintain an electronic record of the legal residence, presumptively outside of the facility, and other demographic data, for any person entering its custody. At a minimum, this record shall contain the last known complete street address prior to incarceration, the person's race, whether the person is of Hispanic or Latino origin, and whether the person is over the age of 18. To the degree possible, the Department of Corrections shall also allow the legal residence to be updated as appropriate.

2. Reports to the Secretary of State.

This section cites the Oregon constitution, but most states have similar constitutional or statutory provisions defining residence. See [our 50 state guide](#) for the law in each state.

This section requires that the Department of Corrections start keeping records of residence for people entering its custody. Because most prison sentences are short, starting the data collection process for people entering custody would produce a nearly complete data set for redistricting following the 2020 Census.

States may wish to consider whether the nature of the corrections system in their state necessitates expanding the scope of the bill to [other kinds of correctional facilities](#).

This section requires reporting to the Oregon Secretary of State because the Oregon Secretary of State has an active role in redistricting. In other states, other agencies or redistricting

(a) In each year in which the federal decennial census is taken but in which the United States Bureau of the Census allocates incarcerated persons as residents of correctional facilities, the Department of Corrections shall by May 1st of that same year deliver to the Secretary of State:

(i) a unique identifier, not including the name, or SID (state offender ID) number, for each incarcerated person subject to the jurisdiction of the department on the date for which the decennial census reports population. The unique identifier shall enable the Secretary of State to address inquiries about specific address records to the Department of Corrections, without making it possible for anyone outside of the Department of Corrections to identify the inmate to whom the address record pertains;

(ii) the street address of the correctional facility in which such person was incarcerated at the time of such report;

(iii) the last known address of such person prior to incarceration or other legal residence (if known);

(iv) the person's race, whether the person is of Hispanic or Latino origin, and whether the person is over the age of 18 (if known);

(v) any additional information as the Secretary of State may request pursuant to law.

(b) The department shall provide the information specified in paragraph (a) of this

authorities may be more appropriate to handle the adjustment.

This section requires the Department of Corrections to provide the Secretary of State with the residence, race, ethnicity, and age information for each person in custody at Census time. The section also contains a sunset provision that terminates the reporting and data adjustment when the Census Bureau counts incarcerated people at home.

This section is a privacy provision that prevents public disclosure of individual address information. Note that other states have their own unique equivalents to the Oregon SID numbers.

subdivision in such form as the Secretary of State shall specify.

(c) Notwithstanding any other provision of law, the information required to be provided to the Secretary of State pursuant to this subdivision shall not include the name of any incarcerated person and shall not allow for the identification of any such person therefrom, except to the Department of Corrections. The information shall be treated as confidential, and shall not be disclosed by the Secretary of State except as redistricting data aggregated by census block for purposes specified in Section 4.

3. Federal facilities. The Secretary of State shall request each agency that operates a federal facility in this State that incarcerates persons convicted of a criminal offense to provide the Secretary of State with a report including the information listed in subsection (a) of Section 2.

This section requests federal cooperation. While the state cannot require the federal government to participate in a state redistricting effort, there is no reason why the federal government would not respond to reasonable requests for cooperation given sufficient time and support.

4. The Secretary of State shall prepare redistricting population data to reflect incarcerated persons at their residential address, pursuant to Section 5. The data prepared by the Secretary of State pursuant to Section 5 shall be the basis of state house of representative districts, state senate districts, and all local government districts that are based on population. Incarcerated populations residing at unknown geographic locations within the State, as determined under subsection (c)(ii) of Section 5 shall not be used to determine the ideal population of any set of districts, wards, or precincts.

This section tasks the Secretary of State with performing the data adjustment. It requires state, county and other local governments to use the adjusted data, and it clarifies how the count of people at unknown geographic locations within the state is to be used.

5. Determinations and data publication by the Secretary of State.

(a) For each person included in a report received under Sections 2 and 3, the Secretary of State shall determine the geographic units for which population counts are reported in the federal decennial census that contain the facility of incarceration and the legal residence as listed according to the report.

This section requires the Secretary of State to re-allocate the redistricting data to reflect incarcerated persons at their residential addresses.

(b) For each person included in a report received under Sections 2 and 3, if the legal residence is known and in this State, the Secretary of State shall:

(i) Ensure that the person is not represented in any population counts reported by the Secretary of State for the geographic units that include the facility at which the person was incarcerated, unless that geographic unit also includes the person's legal residence.

(ii) Ensure that any population counts reported by the Secretary of State reflect the persons' residential address as reported under Sections 2 and 3.

(c) For each person included in a report received under Sections 2 and 3 for whom a legal residence is unknown or not in this State, and for all persons reported in the census as residing in a federal correctional facility for whom a report was not provided, the Secretary of State shall:

This section directs the Secretary of State on how to process missing or incomplete data.

(i) Ensure that the person is not represented in any population counts reported by the Secretary of State for the geographic units that include the facility at which the person was incarcerated.

(ii) Allocate the person to a state unit not tied to a specific determined geography, as other state residents with unknown state addresses are allocated, including but not limited to military and federal government personnel stationed overseas.

(d) The data prepared by the Secretary of State pursuant to this section shall be completed and published no later than 30 days from the date that federal decennial PL94-171 data is published for the State.

The Census Bureau's redistricting data will become available between January and March 2021, but the Secretary of State will receive the report from the prison systems about a year earlier, by May 2020. Depending on state *and* local redistricting deadlines, some states may be able to give the Secretary of

(e) The Secretary of State shall notify local governments that Section 4 requires local governments to use the data prepared by the Secretary pursuant to this Section for redistricting purposes.

6. The data prepared by the Secretary of State in Section 5 shall not be used in the distribution of any state or federal aid.

7. If any provision of this Act or the application of any provision of this Act to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are severable.

State more time for completing the new dataset, and some states may have to give less time.

We've often see local governments—or their redistricting consultants—be unaware of state legislative changes like this, so we propose this notification mechanism. In some states the Secretary of State already has a pass-through role for local redistricting data that makes the office particularly well-suited to educate local governments on the data requirements of Section 4. In other states, other agencies may be more appropriate.

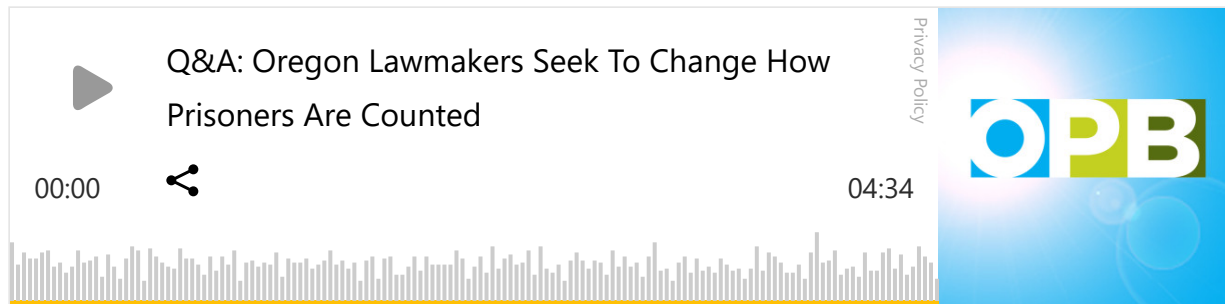
This section explicitly states that the bill would not effect the distribution of federal or state funds. Since the bill only changes the redistricting data, and no federal or state funds are distributed on the basis of state or local redistricting data, some states may consider this provision unnecessary. On the other hand, advocates in some states have found it helpful to clarify this bill would not reduce the funding received by communities that host prisons.

News

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Effort To End 'Prison Gerrymandering' Would Alter Oregon's Political Map

by **Dirk VanderHart** [Follow](#) OPB May 1, 2019 11:45 a.m. | Updated: May 1, 2019 4:36 p.m. | Salem, Ore.



For a state representative, Lynn Findley wields influence over a massive amount of ground.

Findley's sparsely populated district includes all or part of five expansive counties, engulfing Southeast Oregon within its messy, vaguely rectangular bounds.



State Rep. Lynn Findley, R-Vale, introduces legislation on the House floor as the public gallery looks on at the Capitol in Salem, Ore., Tuesday, April 2, 2019.

Bradley W. Parks/OPB

The district, House District 60, is [Oregon's largest](#) by square mileage, but it stands out in another way: Nearly 5 percent of Findley's constituents don't necessarily live there by choice and couldn't vote for him even if they wanted to.

They're state prisoners, and according to some, they're being used to help pervert democracy.

"It is a loss of power," said Mireya Rosas Barajas, a Willamette University senior. "For me, it comes down to people not being counted in their communities."

A bill Rosas Barajas and others at Willamette University have revived this session would shake up how prisoners such as those in Findley's district are considered on Oregon's political map. It would ensure inmates aren't counted as residents of a prison when legislative districts are redrawn in 2021. Instead, they'd be counted as residents of the place they lived before incarceration.

The bill, [House Bill 2492](#), is part of a larger movement against what some call "prison gerrymandering," the act of bunching large groups of prisoners, who can't vote, into

legislative districts far from their actual homes — and theoretically giving voters in those districts somewhat outsized power in the process.

“People aren’t being accounted for in the area that they come from, and their families then lose that power,” Rosas Barajas said.

Findley’s sprawling district is the best example in Oregon, though not remotely the only one. It includes two prisons: the massive Snake River Correctional Institution, which [holds nearly 3,000](#) of the state’s roughly 15,000 inmates; and the Powder River Correctional Institution, which has an additional 350 prisoners.



Snake River Correctional Institution holds nearly 3,000 of the state’s roughly 15,000 inmates.

John Rosman/OPB

Oregon House districts are [drawn to contain nearly 64,000 residents](#). Findley’s comes up a bit short of that, with just under 63,000 people — and around one in 20 is a prisoner. Advocates such as Rosas Barajas say this means the 60,000 people remaining have the same political representation as people in districts without prisons, giving them marginally more power.

As one 2017 paper on the issue put it: “When elections occur, prison-holding districts with smaller voting populations have the same opportunity to elect a representative as

neighboring districts without prisons, and with many more voters, thereby granting certain communities more electoral power than they should rightfully have.”

The argument may seem academic, but states around the country are moving to end the practice.

Most recently, Washington’s Legislature [passed a bill](#) to ensure prisoners are counted at their home addresses when the state redraws legislative districts. If Gov. Jay Inslee signs it, Washington [will join](#) Maryland, New York, California and Delaware in tweaking such policies. Eight other states are considering similar bills this year, according to the Massachusetts-based Prison Policy Initiative, an advocacy group that has tracked the issue for years.

Aleks Kajstura, the legal director at PPI, says counting inmates as residents of the prisons where they’re serving time can have a variety of impacts — including shifting power to more rural districts and incentivizing prison-district lawmakers to support tough-on-crime policies.

“If, like 10 percent of a district is incarcerated, they only have to represent 90 percent of the people,” Kajstura said. “It’s easier to represent a district where you don’t have a full constituency. It becomes easier to win elections and hold onto power.”

Oregon and other states have an understandable reason for counting inmates as residents of their prisons: That’s how the U.S. Census Bureau counts them during its decennial census. Oregon uses federal data when redrawing district maps every 10 years, an exercise that will next occur in 2021.

Under HB 2492, Oregon would instead use modified census numbers. By tracking prisoners’ addresses before they were incarcerated, the state would ask census officials to provide updated maps specifically for the purpose of drawing state and local political districts.

The Oregon Department of Corrections has taken a neutral stance on the bill — but also warned it would come at a cost.

“Currently, there’s no process in place for gathering someone’s last known address,” DOC assistant director Heidi Stewart told lawmakers in an April 17 hearing. “If we needed to verify that information, that would be a substantial workload increase for our staff.”

To help offset those concerns, legislators have considered asking DOC to count inmates as residing at the courthouse where they were convicted for purposes of the next census, then move to tracking actual addresses for subsequent counts.

“We just want to bring the districts into a real parity, or close to parity, so that people have even amounts of political power,” said Janet Lorenzen, a Willamette University sociology professor.

Lorenzen and her students are a chief reason why the redistricting issue is up for discussion this session. They’ve testified before lawmakers and met individually with legislators and their staffs on the issue.

Oregon has considered modifying how it counts prisoners before. In 2015, then-Sen. Chip Shields introduced [essentially the same bill](#) lawmakers are currently considering. That bill passed out of committee on a unanimous vote, but was never called up for a vote in the Senate.

This year is potentially the last chance for lawmakers to act before Oregon redraws districts in 2021. But proponents face a steep climb.



Rep. Paul Holvey, D-Eugene, (right) speaks with Rep. Nancy Nathanson, D-Eugene, in the House Chamber on April 30, 2019, in Salem, Ore.

“Certainly we have to convince those legislators that have these prisons in their districts that this isn’t going to be harmful to them,” said state Rep. Paul Holvey, D-Eugene, a primary sponsor of the bill. “There’s no gamesmanship going on here.”

Some of the state’s most powerful lawmakers represent districts with prisons.

Senate President Peter Courtney’s district in Salem includes the Oregon State Penitentiary, the state’s second-largest prison with a capacity of more than 2,250. House Speaker Tina Kotek’s Portland district includes the Columbia River Correctional Institution, which holds nearly 600 inmates.

HB 2492 could impact the boundaries of both districts. Courtney, who presided over the Senate when the 2015 bill died there, declined comment on the proposal. Kotek’s office said she is supportive.

Other legislators expressed skepticism the proposal was worth lawmakers’ time.

“There’s way bigger stuff that I’m looking at right now,” said state Rep. Denyc Boles, R-Salem, whose district encompasses three prisons, accounting for roughly 2.6 percent of its population. “This, in my opinion, is just something that not average people are talking about.”

Like Boles, Findley had never considered how prisoners were counted until the bill emerged this year. He says he doesn’t see the issue rising to the top at a time when lawmakers are taking up business taxes, a new cap-and-trade system, and other weighty measures.

“In the grand scheme of things, should we worry about it and should we spend a lot of time and effort on it?” Findley said. “I’m thinking not.”



Sen. Cliff Bentz, R-Ontario, asks questions during the Senate Judiciary Committee work session for House Bill 2625 on April 30, 2019.

Kaylee Domzalski/OPB

Not everyone is so sanguine. State Sen. Cliff Bentz, R-Ontario, represents a large Eastern Oregon district that includes three prisons. Back in 2015, he represented the House district Findley currently holds. And he supported the change.

“In my district, only 61,000 people are able to vote,” Bentz testified at the time. “The other 3,000 are in prison. They’re counted, but they don’t vote. Seems odd.”

These days, Bentz says he still thinks the issue is worth talking about, though he’s not sure a change would make much of a difference.

“I don’t want to say it doesn’t matter. That would not be true,” Bentz said. “If someone finds something that’s not fair, then you need to fix it.”

Bentz and other prison-district lawmakers also stressed one point when asked about the issue: They consider prisoners in their districts as constituents.

“I represent every person within the district boundary,” said Findley. “Will I have a town hall in the prison? I don’t know that. Do I have conversations with the prison and the

superintendent? Yes, I do.”

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