

PRISON GERRYMANDERING IN DODGE COUNTY, WI

The Supreme Court requires local governments to update their legislative districts once per decade so that each district contains the same population, giving each resident equal representation. For most local governments this redistricting process relies on U.S. Census data and is straight forward. For communities that host large prisons, however, the process can be more complex because the U.S. Census Bureau counts incarcerated people where they are confined, even though a prison is not a residence under Wisconsin residence law.

Problem

The Census Bureau counts people incarcerated at a correctional facility as residents of the prison, so when Dodge County uses Census data to draw its legislative districts, the Board of Commissioners district with the prison in it will have fewer actual Dodge County residents than the other districts. This means that the county is — albeit unintentionally — giving people who live near the prison more representation on the Dodge County Board of Commissioners, in violation of the constitutional principle of equal representation.

State statute says prison is not a residence

Wisconsin law considers incarcerated people to be residents of their home addresses: a person's residence is determined by "where the person's habitation is fixed, without any present intent to move, and to which, when absent, the person intends to return." (Wis. Stat. § 6.10)

- After the 2010 Census, the Dodge County Board of Commissioners counted 4,390 people incarcerated at the Fox Lake Correctional Institution, Dodge Correctional Institution, John C Burke Correctional Institution, and the Waupun Correctional Institution as if they were residents of Districts 1, 2, 3, 25, 26, 27.
- The harm of prison gerrymandering would have been even larger had the county not split the prison population among multiple districts. Even so, the impact on representational equality between different Dodge County districts is quite large.
- The 3,037 people incarcerated at the Dodge County Correctional Institution, the John C. Burke Correctional Institution, and Waupun Correctional Institution are split among districts 25, 26, and 27. But the incarcerated population still accounts for 41% of District 26 and 35% of District 25 and 30% of District 27. That effectively gives each group of 59 actual residents in District 26 as much political clout as 100 people who live in the districts that do not contain prisons. (The residents of Districts 25 and 27 have their votes similarly inflated, but even their votes count for less than those of anyone residing in District 26.)
- The 1,353 people incarcerated at the Fox Lake Correctional Institution were counted in one spot by the Census, but the County split that population among Districts 1, 2, and 3 with the largest portion in District 2, making up 34% of the district. That effectively gives each group of 66 actual

residents in District 2 as much political clout as 100 people who live in the districts that do not contain prisons.

Solutions

In most states, the solution would be simple: use redistricting data that complies with the state's definition of residence. In our research, we've discovered more than 200 county and municipal governments that removed the prison population prior to redistricting. Most of these local governments do so by choice, and a few states even require or encourage this outcome.

In 1981, however, Wisconsin's Attorney General recommended that local governments take the Census' data at face value and not make any adjustments to account for the prison miscount (70 Wis. Op. Atty. Gen. 80 (1981)). Nevertheless, after the 2010 Census, six Wisconsin cities and counties — Crawford County and the cities of New Lisbon, Portage, Prairie du Chien, and Stanley — avoided prison gerrymandering.

For 2020, these local efforts will be easier than ever before because the Census Bureau is including additional detail within its redistricting data. The Census Bureau will be, for the first time, publishing counts of incarcerated people in a special table in the PL94-171 redistricting data file — specifically to help, in the Census Bureau's words, “those in the redistricting community who must consider whether to include or exclude certain populations when redrawing boundaries.”

Last decade Dodge County lessened the impact of prison gerrymandering by splitting the correctional facilities between different districts, ensuring that no single district contained all of the extra population. This decade you can take it one step further: Dodge County can use the Census Bureau's official redistricting data to draw districts based on actual resident populations and ensure equal representation for its residents.