

PRISON GERRYMANDERING IN WINNEBAGO 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 Winnebago County uses Census data to draw its legislative districts, the Board of Commissioners district with the prison in it will have fewer actual Winnebago 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 Winnebago 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 Winnebago County Board of Commissioners counted 2,017 people incarcerated at the Oshkosh Correctional Institution as if they were residents of District 12. An additional 529 people incarcerated at the Drug Abuse Correctional Center and Wisconsin Resource Center were counted as if they were residents of District 14.
- People incarcerated at the Oshkosh Correctional Institution account for 43% of the population of District 12. That effectively gives each group of 57 actual residents in District 12 as much political clout as 100 people in the other districts.
- People incarcerated at the Drug Abuse Correctional Center and Wisconsin Resource Center account for 11% of the population of District 14. That effectively gives each group of 89 actual residents in District 14 as much political clout as 100 people in the other districts.

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."