



LAWYERS' COMMITTEE  
FOR CIVIL RIGHTS AND  
ECONOMIC JUSTICE  
*Serving Greater Boston Since 1968*



Karen Humes  
Chief, Population Division  
U.S. Census Bureau, Room 5H174,  
Washington, DC 20233[  
[POP.2020.Residence.Rule@census.gov](mailto:POP.2020.Residence.Rule@census.gov)

Dear Ms. Humes,

As a coalition of groups involved with the 2011 Massachusetts Redistricting process, we submit this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 81 FR 42577 (June 30, 2016). The Bureau's proposal to continue counting incarcerated people at the particular facility that they happen to be located at on Census day ignores the transient and temporary nature of incarceration. If made final, this proposal will mean another decade of decisions based on a Census that counts incarcerated people in the wrong place.

The need for change in the "usual residence" rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the number of incarcerated people has more than quadrupled, to over two million people behind bars. The manner in which this population is counted now has huge implications for the accuracy of the Census and for the voting strength of certain communities.

By designating a prison cell as a residence in the 2010 Census, the Census Bureau concentrated a population that is disproportionately male, urban, and African-American or Latino into just 5,393 Census blocks, which are located far from the actual homes of incarcerated people. Just two examples of specific impacts in Massachusetts include:

- Without using prison populations as padding, 5 Massachusetts House districts drawn after the 2000 Census did not meet constitutional population requirements. For example, while each House district in Massachusetts should have had 39,682 residents, the 3rd Suffolk District, which claimed the population of the Suffolk County House of Corrections, had only 36,428 actual residents. This means that the actual population of the district was 8.2% smaller than the average district in the state.
- When the city of Gardner last updated their districts in 2001, they were faced with the prospect of giving the residents on the eastern side of the city, near the state prison, extra influence over city affairs, or rejecting the flawed Census counts. The City Council ruled to reject the Census counts because doing otherwise would have given each group of 8 people who live near the prison as much say over city affairs as every group of 10 residents elsewhere in the city.

In 2011, advocates like us asked the Massachusetts Joint Committee on Redistricting to reverse the "usual residence" policy like Gardner did and to count persons at their legal address prior to incarceration, rather than in prison for state districts. The Committee agreed with us that the way prisoners are counted does a disservice to the state and should be changed. However, the Committee and legal counsel thought that the Massachusetts state Constitution, which dictates that the federal census be the basis for determining the representative, senatorial, and councillor districts, would prevent Massachusetts from unilaterally changing this rule for these districts. Instead, the Committee recommended to the General Court that it adopt a resolution

calling for such a change to send to Congress and to the Census Bureau. Such a resolution was passed on August 14, 2014 (attached).

In fact, currently four states (California, Delaware, Maryland, and New York) are taking a state-wide approach to adjust the Census' population totals to count incarcerated people at home, and over 200 counties and municipalities all individually adjust population data to avoid prison gerrymandering when drawing their local government districts. But as we have seen, this is not an approach that is unilaterally applicable.

For these reasons, we urge you to change Census Bureau policy to count incarcerated people as residents of their home address, rather than at the place of their incarceration. Thank you for this opportunity to comment on the Residence Rule and Residence Situations.

Sincerely,

Pam Wilmot, Executive Director  
Common Cause Massachusetts

Jean Cherdack, President  
League of Women Voters of Massachusetts

Cheryl Clyburn Crawford, Executive Director  
MassVOTE

Iván Espinoza-Madrigal, Executive Director  
Lawyers Committee for Civil Rights and Economic Justice