

**Written Testimony of Aleks Kajstura,
Legal Director, Prison Policy Initiative**

**Joint Committee on Judiciary
of the Connecticut General Assembly**

**Hearing date
March 21, 2016**

Senate Bill 459

**Oppose S.B. 459 as currently drafted, but Support ending prison
gerrymandering – JFS suggested**

Thank you, Chairman Coleman, Chairman Tong, and members of the Committee for providing the opportunity for me to provide written testimony for the hearing of March 21. My name is Aleks Kajstura and I am an attorney and Legal Director of the Massachusetts-based non-profit, non-partisan Prison Policy Initiative.¹ For more than a decade, we've have been working to convince the Census Bureau to update their methodology and count incarcerated people as residents of their legal home addresses. Because the Census is slow to make changes, I have also been working very closely with state and local governments on creating interim solutions.

I am fully supportive of SB495's goal to end prison gerrymandering, but the bill's attempt to influence state and federal funding distribution is misguided. I know of no significant impact of prison populations on Connecticut's current funding formulas; the bill attempts to address a

¹ I am also the co-author of *Importing Constituents: Prisoners and Political Clout in Connecticut* (see <http://www.prisonersofthecensus.org/ct/>) and numerous factsheets and articles about the problem in Connecticut. A sampling is at <http://www.prisonersofthecensus.org/connecticut.html> .

problem that does not exist. Furthermore, even if counting incarcerated people in the wrong place had any significant impact on funding formulas, the way the bill is drafted is, at best, too vague to actually affect any funding distribution.

Importance of ending prison gerrymandering

Each decade, Connecticut redraws its state and local legislative districts on the basis of population to ensure that each district contains the same population as other districts. In this way, all residents are given the same access to representation and government. However, the Census Bureau's practice of counting incarcerated people as residents of the prison location, instead of their home communities, results in significant distortions in achieving fair representation.

The Census Bureau's rule for counting prison populations is in conflict with the law of Connecticut and that of most states, which says that prison is not a residence. A legal residence is the place where a person chooses to live and does not intend to leave. The Connecticut statute is explicit:

No person shall be deemed to have lost his residence in any town by reason of his absence therefrom in any institution maintained by the state.

(General Statutes of Connecticut § 9-14.)

The clearest illustration of this comes from how persons are treated for voting purposes. In Connecticut, some persons in prisons retain the right to vote – for example, if they are awaiting trial or are serving time for misdemeanors. For voting purposes, they are not permitted to claim residence in the prison, but must vote absentee in their home communities.² Yet when the state draws legislative districts, it credits the prison population to the prison community, in clear conflict with the treatment of incarcerated persons for voting.

² See Caroline Porter, "State Prisons Create Uneven Districts," Cheshire Record-Journal, November 8, 2005 (noting issuance of absentee ballots to eligible incarcerated persons in Cheshire).

Demographically, the problem of the Census Bureau's prison miscount and the prison gerrymandering that results is larger in Connecticut than in most states. Here, the population incarcerated in state prisons is almost large enough to be a state house district by itself. That population comes from all over the state, disproportionately the state's urban cities, but is then concentrated in the Census Bureau's data as if they were residents of just 16 Census blocks that contain prisons. As a result, almost 2/3rds of the state's prison population is credited to just 5 towns (Cheshire, East Lyme, Enfield, Somers and Suffield).

There is also a clear racial justice issue at stake: African-Americans are 9 times as likely to be incarcerated as White people in Connecticut, and Latinos 5 times as likely. But the Census Bureau counts the incarcerated population as residents of those mostly-white towns, and this creates a serious inequity at redistricting time.

The basic principle of our democracy is that representation is distributed on the basis of population. Crediting incarcerated people to the wrong location has the unfortunate and undemocratic result of creating a system of representation without population.

I applaud the Committee for tacking this important issue and working toward ensuring equal representation for all Connecticut residents, but I have significant reservations about the way SB459 is drafted, specifically that it attempts to address the unrelated issue of state grant funding.

SB 459's misdirected and flawed attempt to impact funding

As I am sure this committee is aware, funding formulas in Connecticut are generally complex and rely on a variety of factors to determine fund allocation, as is demonstrated by the Office of Fiscal Analysis' summary of the State's 181 grants.³ According to the most recent comprehensive

³ Although Connecticut law cannot supersede the funding formulas of the Federal Government of the United States, federal funds are often funneled through state formulas consistent with federal regulations regarding the grant money. Many Connecticut grants are at least partially funded through federal grants. Often the state also expands the funded programs beyond their intended federal reach by using other state funds. Any discussion of state grants in this

analysis published by the Office of Fiscal Analysis, most grants simply do not contain population as a factor.⁴ Some grants are discretionary, given on a case-by-case basis, or involve contractual obligations,⁵ but most grants are simply tailored to their target objective or subject.

In doing so, most grants are too precise to use population in any part of the formula. In those that do, population is just a small part of one of several factors that are considered in the often complex formula. Grants for transportation, for example, rely most heavily on how many miles of roads a town contains, and only then is any remainder in the fund distributed pro rata based on population.⁶

But assuming that the Committee intends to change the funding for that rather insignificant portion of the grants that are based on population, it is doubtful that this bill, as currently drafted will succeed in doing that.

For example, the population numbers for highway funding bill mentioned above are determined by the Department of Vital Statistics of the Connecticut Department of Public Health. It's unclear to what extent this bill – which adjusts redistricting data – intends to affect other uses of federal Census Bureau data, let alone the state's own population determinations.

Using redistricting data for distribution of state and federal funds is, quite frankly, unprecedented. And apart from Sec. 4 of SB 459 stating that the data “shall be the basis for ... the distribution of state or federal funds or other benefits”, SB 459 only adjusts redistricting data.

At best, SB 549 will throw confusion into population definitions throughout the State's statutes. At worst, it would rip down decades

memo should be read to apply to grants administered by the state, including those funded with federal grant money.

⁴ Summaries of Connecticut State Grants, Office of Fiscal Analysis, March 5, 2010. Available at https://www.cga.ct.gov/ofa/Documents/year/GS/2010GS-20100301_2010%20Summaries%20of%20Connecticut%20State%20Grants.pdf

⁵ Child Day care funding is discretionary, based on actual costs on a case-by-case basis and contracts. Conn. Gen. Stat. §8-210.

⁶ Conn. Gen. Stat. §13a-175b. Though *cf.* Conn. Gen. Stat. §13a-175i, which provides for a special smaller appropriation pro rata based on “population” with no indication of which population count to use.

worth of work of fine-tuning funding formulas and substitute an untested and crude population metric; setting aside the scalpel in favor of an axe.

This bill does not effectively change funding formulas, but instead inserts a red herring into the discussion of equal representation in the legislature.

Conclusion

To say that I support ending prison gerrymandering is an understatement, but I cannot support this bill while it contains the extraneous provision on funding distribution. I strongly urge the Committee to change the bill language in Sec.4 in a Joint Favorable Substitute thus:

Sec. 4. (NEW) (*Effective July 1, 2016*) The Secretary of the State shall prepare and publish such data adjusted pursuant to section 3 of this act not later than thirty days after the publication of the redistricting data for this state by the United States Census Bureau and such adjusted data shall be the basis for ~~(1) determining state assembly and senatorial districts and municipal redistricting, and (2) the distribution of state or federal funds or other benefits.~~ Residences at unknown geographic locations within the state under subdivision (1) or (2) of subsection (c) of section 3 of this act shall not be used to determine the average population of any set of districts. The Secretary shall notify each municipality that such data shall be used for the purposes of municipal redistricting.

The funding provision serves no purpose but to distract from the critical issues of representational equality.

I oppose SB 459 as currently drafted, but hope the effort to end prison gerrymandering survives, and would support a JFS bill with the changes suggested above. Thank you for your time and consideration.


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