

Testimony

**To the Civil Rights Committee of the New York City
Council**

**Hearing on
Resolution 190-2006**

**By New York State Senator Eric T. Schneiderman
Chair, Senate Codes Committee**

**Thursday, November 19th
250 Broadway, Hearing Room 16th Floor**

My name is Eric Schneiderman and I am the New York State Senator for the 31st District and the Chair of the Senate Codes Committee.

I would like to thank the Chair of the Civil Rights Committee, Councilmember Larry Seabrook and the other members of the Committee, Councilmembers Mathieu Eugene, Julissa Ferreras, Darlene Mealy and Michael C. Nelson for inviting me to submit testimony at this hearing to discuss the importance of counting incarcerated people in New York State as residents of the county in which they reside prior to incarceration, rather than as residents of the county in which they are detained.

I very much appreciate the Committee holding this hearing as Resolution 190-2006 calls on the State Legislature to pass a bill that I introduced in the New York State Senate (S.1633) that would bring the state's practice into compliance with the state constitution. The bill, sponsored by Assemblymember Espaillat in the Assembly, would require New York to correct the inaccurate population data that results from the Census Bureau's practice of counting prisoners as residents of prison communities. Thirteen counties in New York State already correct the data, but many other counties are unaware of the democratic distortion or the fact that they are permitted to alter Census data.

Last session, I was proud to take the lead on the floor debate and in negotiations with the Assembly and Governor's office on the passage of the historic reforms to the Rockefeller Drug Laws. Undeniably, we took a significant step away from the ineffective war on drugs that has over-incarcerated and under-treated tens of thousands of people with substance abuse issues in New York State. But Rockefeller Reform must be a beginning and not an end to reforming our criminal justice system. Passing this resolution through the New York City Council will impact tremendously our ability to move this bill at the State level and further address inequities created by the confluence of our criminal justice system and redistricting.

According to a report conducted by the Prison Policy Initiative, Importing Constituents: Prisoners and Political Clout in New York, seven New York state senatorial districts met minimum population size requirements only because they included large prisons in the population total. The actual voting residents in these seven districts have inequitably inflated voting power relative to the inhabitants of the rest of the state.

This practice creates a perverse incentive for those elected officials who represent those prison districts to support the mandatory minimum sentences and harsh drug laws that have kept prisons full and devastated urban communities. In the meantime, the voting power of the people in the largely poor and minority communities those prisoners come from is diluted, making it more difficult for those communities to advocate for the resources and services all everyone needs to better their lives and end the cycle of poverty and crime.

Counting prisoners at their pre-incarceration address is essential for compliance with the "One Person, One Vote" rulings of the Supreme Court, which require that legislative districts at every level of government contain equal numbers of residents in order to ensure fair and equal representation for all.

Currently, the Census Bureau includes everyone housed in federal, state, and local prisons in its count of the general population of the Census block that contains the prison. State law, however, defines residence as the place where one voluntarily lives. Many states also have constitutional clauses or election law statutes that explicitly declare that incarceration does not change a residence. Prisoners therefore remain legal residents of their pre-incarceration addresses, and in situations where they retain voting rights, they send absentee ballots to their home districts. Unfortunately, the current census methodology disregards this, instead counting a significant proportion of our national population in the wrong place. Crediting the population of prisoners to the Census block where they are temporarily and involuntarily held creates electoral inequities at all levels of government.

For example, 65% of state prisoners in New York are from New York City, yet virtually all of these state prisoners are incarcerated in far-flung rural areas. Many rural communities have their local votes diluted as well. Most counties, cities, and towns use federal census data to draw their local legislative district and ward boundaries. St. Lawrence County, in northern New York, drew legislative districts with Census 2000 data that included more than 3,000 people in three correctional facilities as if they were actual residents of two small towns, Ogdensburg and Gouverneur. The increased voting power of Ogdensburg and Gouverneur residents diluted the votes of the many St. Lawrence County residents who do not live near those prisons. This inequity created a long-running and disruptive controversy in St. Lawrence, and a petition opposing the unequal representation gathered more than 2,000 signatures.

In neighboring Franklin County, to ensure equal representation and avoid creating a legislative district consisting mostly of prisoners, legislators subtracted the prison population from the official count. Franklin and other rural counties would be spared time, expense, and painstaking work if the federal census identified prisoners as residents of their legal pre-incarceration communities.

Every decade, states use federal census data to update their legislative district boundaries. The goal is to ensure that each district contains the same population, as required by the federal constitution's "one-person, one-vote" rule. The Census Bureau counts people in prison where their bodies are located on census day, not where they come from and where they will return, on average, 34 months later. The Bureau's current practice made sense before prison populations became large enough to distort democracy. However, more people now live in prison than our three least populous states combined, and African Americans are imprisoned at 7 times the rate of whites. Today, this Census practice undermines the rule of law.

In order to correct this practice before redistricting in 2011, we need to sign into law, as early as possible in the 2010 session, the bill Assemblymember Espaillat and I introduced.

Thank you for shedding light on this critical issue, and for advancing this resolution. I look forward to working with you to advance this issue. Please do not hesitate to contact me should you have any further questions.