

Proposed finding and recommendation
Submitted to the Residence Rules in the Decennial Census Panel,
at the National Academy of Sciences, June 2, 2005

Prepared by

Peter Wagner <pwagner@prisonpolicy.org>, Prison Policy Initiative,
Eric Lotke, <elotke@yahoo.com>, Soros Senior Justice Fellow, and
Andrew Beveridge <andy@troll.soc.qc.edu>, Sociology, Queens College

Proposed Finding:

Traditionally, the Census Bureau has enumerated incarcerated people as residents of the Census block that contains the prison. The Census Bureau has long held that a fair and equitable Census count requires not just a complete count, but a count of the people in the right place. New uses of Census Bureau data and changing demographics require the periodic examination of the residence rules.

Since the 1980 Census, the percentage of Americans incarcerated in correctional facilities has increased four-fold. Recent research has shown that correctional facilities are frequently located in areas that are geographically and demographically far removed from the communities that most incarcerated people belong to. Counting prisoners as residents of the prison location causes unexpected distortions in Census data for rural communities and creates significant burdens on state legislative data users who rely on the Census for redistricting purposes.

As American society has become more complex, so too have the residence rules used to determine where to count the population. The original constitutional mandate of the Census was simple: to determine the population of each state for purposes of determining the relative population of each for purposes of Congressional apportionment. In 1790, the number of people incarcerated was quite low, and for the purposes of determining a state population, counting incarcerated people as residents of the correctional facility was perfectly appropriate.

Increasingly over the last century, Census data down to the local level has been used to guide social and governmental research and policy. Starting in the 1960s, the Supreme Court issued a series of "One Person One Vote" decisions that required state and local governments to redraw legislative district boundaries at least once per decade in order to ensure that districts were equally sized by population and that each resident had an equal stake in government. These cases created in state and local government a new class of data users who needed accurate demographic data down to the block level in order to draw legislative districts. Since 1975 and the passage by Congress of PL94-171, the Census Bureau has worked closely with local governments to make Census Bureau data useful for local redistricting by adjusting Census Bureau geography to follow local political boundaries. While the Census Bureau has been responsive to matching the shape of Census blocks and tracts to local boundaries, it has not been so responsive to counting only "local" residents within those boundaries.

Prisons present a significant distortion on local populations. Currently, there are more than 2 million people in prisons and jails.¹ Since the 1980 Census, the percentage of Americans incarcerated in correctional facilities has increased four-fold, with more than 0.7% of Americans currently incarcerated in a prison or jail.² For certain demographic groups, such as African-American men in their late 20s, more than 12% of the population is currently incarcerated.³

Recent research has shown that correctional facilities are increasingly located in areas that are geographically and demographically far removed from the communities that most incarcerated people belong to. According to Department of Agriculture Demographer Calvin Beale, although non-metro counties contain only 20% of the national population, they are the host for 60% of new prison construction.⁴ In the 1990s, an astonishing 30% of new residents of upstate New York were people being sent to prison.⁵

The result of counting large external populations of prisoners as local residents leads to misleading conclusions about the size and growth of communities. One study of incarcerated populations in the Census found 21 counties in the United States have at least 21% of their population in prison.⁶ Counties that see prisons close report that their populations declined when in fact they did not. Conversely, population growth reported by some counties is due to the importation of prisoners to a new correctional institution. If not for the construction of new prison cells, 56 counties the Census Bureau identified as growing during the 1990s would have reported declining populations.

Because Latinos and Blacks are incarcerated at three to seven times the rate of Whites⁷, where incarcerated people are counted has tremendous implications for how Black and Latino populations are reflected in the Census. For this reason, the African-American subcommittee of the Census Bureau's Race and Ethnicity Advisory Committee recommended that the Census Bureau count prisoners as residents of their pre-incarceration addresses.

¹ By mid-2004, there were 1.3 million prisoners under state jurisdiction, and 167,000 prisoners in federal prisons throughout the country. An additional 784,000 people were confined under the jurisdiction of local jails. Jail inmates are often incarcerated in their own county, although there are growing trends towards the construction of multi-county regional jails or the use of local jails to house state and federal prisons on a per-diem basis.

² M. Harrison and Allen J. Beck, Ph.D., *Prison and Jail Inmates at Midyear 2004*, Bureau of Justice Statistics, Table 1. Available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/pjim04.pdf>

³ *Ibid*, Table 14.

⁴ *Rural Prisons: An Update*, by Calvin Beale, *Rural Development Perspectives* Vol 11, No 2, 1996, available at <http://www.ers.usda.gov/publications/rdp/rdp296/rdp296d.pdf>

⁵ Rolf Pendall, *Upstate New York's Population Plateau*, The Brookings Institution (August 2003), available at http://www.brookings.edu/es/urban/publications/200308_Pendall.htm.

⁶ Rose Heyer and Peter Wagner, *Too big to ignore: How counting people in prisons distorted Census 2000*, April 2004, Prison Policy Initiative, available at <http://www.prisonersofthecensus.org/toobig/>

⁷ Prison Policy Initiative, *Incarceration Rates by Race 2003*, Available at <http://www.prisonpolicy.org/graphs/raceinc.shtml>

Unlike other group quarters populations, prisoners do not choose to be at the facility and are not considered a part of the surrounding community.⁸ Contrary to popular assumption, most prisoners are serving short sentences. The average state prison term served in the United States is 34 months⁹, which may consist of stays in several different prisons at the discretion of the custodial agency. When a prisoner's sentence is completed, he or she will not be allowed to stay in the facility and will most likely return to the community that he or she was removed from when the incarceration began. The 784,000 people in local jails on a given day are either awaiting trial or are serving sentences that are generally under one year. Reflecting the involuntary and short-term nature of incarceration, and a concern that including the residents of correctional facilities could distort the local democratic process, many state constitutions define residence for a prisoner as the place he or she resided prior to incarceration.¹⁰

While most state legislatures now rely on the Census Bureau for redistricting data because of its high quality and negligible cost, state data users are becoming concerned that the Census Bureau's method of counting prisoners is incompatible with how their own state constitutions define residence. To remedy this contradiction, legislators in Illinois and New York have proposed legislation that would create a special state census of prisoners' home addresses to be used to adjust the PL94-171 data published by the Census Bureau. The Census Bureau has traditionally sought to tailor its residence rules and other procedures to the needs of its most important data users.

Methodologically, the best place to physically enumerate incarcerated people remains at the facility, yet the Census Bureau need not continue to count these people as residents of the correctional facilities. To most fairly and accurately count incarcerated people, the Census Bureau should collect a home address outside of the correctional facility in addition to the address of the facility. In a system similar to the procedure designed for non-institutionalized group quarters¹¹, the Census Bureau should attempt to assign prisoners to these home addresses as members of a special incarcerated persons housing type. Only those incarcerated persons who do not provide a usual residence elsewhere -- or where the Census Bureau is unable to locate that address in the Master Address File -- should be assigned to the facility's address. Based on research conducted using correctional or court record systems, we expect that the majority of prisoners could be successfully assigned to a valid address outside of the correctional facility, and that more careful collection of this address data may mean an even higher success rate.

The Census Bureau would need to determine the optimal sources for collecting this home address data whether that be from administrative records, from prisoner self-enumeration or from a hybrid approach. The Census Bureau should also determine in testing developed in consultation with stakeholders and criminal justice experts the optimal language to elicit this information, be it the concept of "home address," "last address prior to incarceration," "the address to which you anticipate being released," or some other similar concept.

⁸ See Peter Wagner, Actual Constituents: Students and Political Clout in New York, Prison Policy Initiative, October 2004, available at <http://prisonersofthecensus.org/students/> and the letter from Daniel Jenkins, Mark Flack Wells, and Norman Gervais to the Census Bureau published as *Rural citizens call for change in how Census counts prisoners* at <http://www.prisonersofthecensus.org/news/fact-6-9-2004.shtml>

⁹ See Bureau of Justice Statistics, *Sourcebook of Criminal Justice Statistics, 2002*, Table 6.38. Felony jail sentences and misdemeanor jail sentences are significantly shorter.

¹⁰ See for example, New York State Const. Article 2, Section 4.

¹¹ U.S. Census Bureau, Plans and Rules for Taking the Census: Residence, available at http://www.census.gov/population/www/censusdata/resid_rules.html

We have in the past advised the Census Bureau to collect home address information from prisoners in order to assist with de-duplication and other data quality efforts.¹² We now believe the Census Bureau should collect this data as the actual enumerated residence of prisoners.

Recognizing that there may be uses of Census data that would benefit from knowing where prisoners are physically located (in the correctional facilities), the Census Bureau should determine whether it would prefer to follow the recommendation of redistricting expert Professor Nathaniel Persily and leave the question of where prisoners should be counted to the users of Census data. Under this proposal, the Census Bureau could release different versions of the Summary Files -- or just the PL94-171 redistricting data -- with different methods of counting prisoners.¹³

As the United States has grown and changed, so too have the uses of Census Bureau data and the ways that the Census Bureau has collected the data. The tremendous changes in the numbers of people incarcerated over the last 20 years, and the new importance in the last 40 years of geographically accurate data for redistricting has given a new relevance to the question of where the Census Bureau considers incarcerated people to reside.

Proposed Recommendation: For the 2010 Census, the Census Bureau should collect both incarcerated and pre-incarceration addresses from people in correctional facilities. To effectively implement a new counting method in the next Census, the Census Bureau should begin immediate testing in order to determine the optimal way to gather, tabulate and distribute this data.

Such testing should include consultations with different types of correctional facilities to determine whether the Census Bureau should attempt to gather this information from administrative records, from prisoner self-enumeration or from a hybrid approach. Finally, the Census Bureau should determine whether it would be operationally feasible to simultaneously create alternative data sets that allow data users, particularly the users of PL94-171 redistricting data, to determine how they wish incarcerated people to be counted. Should the Census Bureau consider the publication of alternative datasets not to be feasible, the Bureau should publish all of its data with incarcerated people enumerated as residents of a special incarcerated persons housing type in their pre-incarceration Census blocks.

¹² Constance F. Citro, Daniel L. Cork, and Janet L. Norwood, eds., *The 2000 Census: Counting Under Adversity*, National Research Council of the National Academies (Washington, 2004) p. 156 and Daniel L. Cork, Michael L. Cohen, and Benjamin F. King, eds., *Reengineering the 2010 Census: Risks and Challenges*, National Research Council of the National Academies (Washington, 2004) p. 153.

¹³ See Peter Wagner, *Census expert Prof. Persily suggests allowing data users to decide where prisoners should be counted*, Prison Policy Initiative, October 4, 2004, available at <http://www.prisonersofthecensus.org/news/fact-4-10-2004.shtml> and citing with permission from the conference draft of *The Law of the Census: How to Count, Whom to Count, and Where to Count Them*, to be published in a forthcoming volume by Russell Sage Press.