

# PRISON POLICY INITIATIVE

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The way the Census Bureau counts incarcerated people in the decennial census unintentionally undermines the constitutional principle of equal representation. The Bureau tabulates incarcerated people as if they were residents of the locations where they are confined, even though they remain legal residents of their homes.

Counting incarcerated people as if they were residents of prison locations leads to a dramatic distortion of representation at local and state levels, allowing fewer people to wield power in districts that contain prisons and diluting access to representation for everyone else. This “prison gerrymandering” also creates an inaccurate picture of community populations generally.

Although prison gerrymandering remains a serious issue in most parts of the U.S., significant progress toward reform has been made at the Census Bureau and at all levels of government across the country. Nearly half of US residents now live in a state, county, or municipality that has formally rejected prison-based gerrymandering:



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- Beginning of the end for ‘prison-based gerrymandering’, by Peter Wagner, *Washington Post*, July 15, 2012
- Prisoners lack vote, yet they shape vote, by Jonathan Tilove, *Austin American-Statesman*, December 1, 2013
- Time to end prison gerrymandering in Connecticut, by Scot X. Esdaile, *Hartford Courant*, March 6, 2020

### Resolutions and model legislation

- Example Bill: model legislation for ending prison gerrymandering in your state  
(<http://www.prisonersofthecensus.org/models/example.html>)
- Resolutions: List of resolutions adopted by organizations and municipalities  
(<http://www.prisonersofthecensus.org/resolutions/>)
- Resolution: NAACP’s 2010 resolution, *End “Prison-Based Gerrymandering”*

For more information on prison gerrymandering, including past and current legislative efforts, state-by-state district analyses, fact sheets, and data, see

<http://www.prisonersofthecensus.org/>

# Ending prison gerrymandering

*The Census, states, and local governments all have tools to fix the problem*

## PrisonersOfTheCensus.org

Population equality among legislative districts enables everyone to have equal representation from elected officials. However, the Census frustrates this goal by counting more than 2 million incarcerated people as residents of the places in which they are detained instead of at their home addresses. The Bureau does this even though (1) people in prison typically lack a constituent relationship with the elected officials serving prison districts, and (2) most incarcerated people remain legal residents of their home addresses while imprisoned and return home upon release. The resulting Census data lead to the creation of state and local districts that are distorted by correctional facilities; this “prison gerrymandering” skews representation in favor of districts with prisons and other correctional facilities.

## The problem at the state level

Crediting all of a state’s incarcerated persons to a small number of districts that contain large prisons enhances the representation of those districts and dilutes representation for everyone else in the state, distorting policy decisions statewide. In addition, using incarcerated populations — which are disproportionately Black and Latinx — to pad the populations of other districts dilutes minority voting strength.

## The problem at the local level

Because county and municipal districts are typically smaller than state legislative districts, prison gerrymandering can create even larger problems at the local level. For example:

- **Dysfunctional local districts.** In Anamosa, Iowa, a person won a city council seat with only two write-in votes, neither of which he cast. No candidates ran because 96% of his district was incarcerated in a large prison. This gave the handful of actual residents in the district 25 times as much influence on the city council as residents elsewhere in the city.
- **“Majority-minority” in name only.** Prison gerrymandering prevented African-American voters in Somerset County, Maryland from electing a candidate of their choice, even though a district had been drawn for that purpose to settle a Voting Rights Act lawsuit.

## States and localities are seeking more accurate data

So far, eleven states — Maryland, New York, Delaware, California, Washington, Nevada, New Jersey, Colorado, Virginia, Illinois, and Connecticut — have passed legislation to use state correctional data to ensure that districts are drawn with data that counts incarcerated people at home. The laws in Maryland and New York were first implemented after the 2010 Census and upheld by the courts; the U.S. Supreme Court affirmed Maryland’s law in 2012.

Further, additional states’ legislative or executive branches (Michigan, Mississippi) require or encourage local governments to modify the Bureau’s redistricting data in order to avoid padding districts with prison populations. In addition, more than 200 counties and municipalities independently adjust their redistricting data to avoid prison gerrymandering.

## Only the Census Bureau can provide a permanent national solution

The Census Bureau has already made an important, if subtle, change. The Census Bureau now publishes prison count data earlier than in the past, in order to assist states and counties with reallocating or removing incarcerated populations during the redistricting process. This “Group Quarters Table” is now included with the traditional (PL 94-171) redistricting data for every state.

Ideally, the U.S. Census Bureau will count incarcerated people as residents of their legal home addresses and not as residents of the correctional facilities. The Census Bureau should, as part of their research and planning agenda for the 2030 Census, determine the best and most economical way to properly count incarcerated people as residents of their home communities.

## THE CENSUS BUREAU'S PRISON MISCOUNT: IT'S ABOUT REPRESENTATION, NOT FUNDING

### Most funding formulas are too sophisticated to be fooled by the prison miscount

It is important that the Census counts everyone. Census populations determine how legislative districts are drawn and play a major role in how federal funds are distributed. **But where incarcerated people are counted<sup>1</sup> has less impact on funding flows than people assume.**

Every decade, the Census Bureau encourages participation in the Census by pointing out that the population counts will be used to distribute funding. It advertises that Census data “help determine how billions of dollars in federal funding flow into states and communities each year.”<sup>2</sup> While it's true that a lot of funding depends in some way on Census data, this funding isn't a lump sum that can be converted to a dollar amount per head.

#### **Surprised? It's understandable.**

So how did we come to think that funding is distributed as a set amount of money per person? It's mostly the result of well-intentioned over-generalizations and simplification in an effort to have everyone counted. Desperate not to lose any population in the decennial count, governments often resort to putting a price tag on each person's failure to respond. For example, as officials in one Georgia community tried to ensure their residents were counted, the local paper made claims such as: “If only one person is counted in a house with four people, it will mean \$69,000 less in local coffers over a decade.”<sup>3</sup> It's a statement that may motivate action, but comes at the expense of the truth.

#### **“Per-head” is an oversimplification.**

A brief by Andrew Reamer, Research Professor at the George Washington Institute of Public Policy, gives a detailed walkthrough of the types of population data used to distribute funding. Reamer's brief makes it clear that accurate Census counts are important to proper funding distribution, but per-head calculations are misleading; declaring that one “cannot draw a straight line between the number of people counted in the census and the dollars a state receives for all census-guided program.”<sup>4</sup>

That conclusion is supported by the Federal Funds Information for States analysis of funding distributions among states, which shows that some states receive about 4 times as much funding per resident as others<sup>5</sup> — providing further proof that funding is not based on a simple headcount. Individual state-level analyses reach the same conclusion.<sup>6</sup>

#### **Funding factors.**

Although the specifics of funding distribution change over the years, they are generally distributed based on complex formulas that strive to match funds to the needs. To the extent that these rely on population totals, it is just one of many components taken into consideration. As you might expect, poverty measures play an important role in funding allocation, but federal poverty data does not include incarcerated people.<sup>7</sup> For example, Title I funds are distributed to local schools under 4 different grants, each based on a different formula that aims to measure student need.<sup>8</sup> Only one of those grants even looks at adult populations to compare community wealth, but even there, incarcerated people are excluded from that income data, showing once again, prison locations do not impact funding distributions.

#### **State reforms don't impact funding.**

Further, **state legislation ending prison gerrymandering could never affect funding distributions** because no federal or state funding formula is distributed on the basis of state or local redistricting data. This analysis has been confirmed by decades of experience of hundreds of local governments that have excluded prison populations when drawing local districts without any effect on the funding they receive.

*Flip over for endnotes. For more information contact Aleks Kajstura, Legal Director of the Prison Policy Initiative at <http://www.prisonpolicy.org/contact.html>*



## Endnotes & References

<sup>1</sup> The Census Bureau counts incarcerated people as if they were residents of prison cells rather than their home communities. This causes prison gerrymandering when states use those Census counts to draw legislative districts. Prison gerrymandering unfairly gives people who live closest to prisons a louder voice in government, to the detriment of everyone else.

<sup>2</sup> Census Bureau talking points about the importance of counting everyone are available at <https://www.census.gov/library/video/2019/getting-an-accurate-count.html>

<sup>3</sup> This is an example of media over-generalizing the relationship between funding and population counts, available at [https://thebrunswicknews.com/news/local\\_news/low-census-response-could-cost-region-millions/article\\_6957825f-bfb5-5ca4-8f1c-3f4f5d438981.html](https://thebrunswicknews.com/news/local_news/low-census-response-could-cost-region-millions/article_6957825f-bfb5-5ca4-8f1c-3f4f5d438981.html)

<sup>4</sup> Summary available on page 1 at <https://gwipp.gwu.edu/sites/g/files/zaxdzs2181/f/downloads/GWIPP%20Reamer%20Fiscal%20Impacts%20of%20Census%20Undercount%20on%20FMAP-based%20Programs%2003-19-18.pdf>  
This report is part of a larger series that explores the impact of Census counts on the distribution of federal funds. Although this series of reports does not address incarcerated populations directly, it serves as a great introduction to the ways that federal funding is tied to Census data. The entire series is available at <https://gwipp.gwu.edu/counting-dollars-2020-role-decennial-census-geographic-distribution-federal-funds>

<sup>5</sup> The FFIS analysis provides a national overview of funding allocation among states, and is available at <https://ffis.org/sites/default/files/public/publications/2020/percapita2019/sa20-01.pdf>

<sup>6</sup> For one example of a state perspective, see the Massachusetts Secretary of State's Census 2020, Explained: How It Works and What's at Stake for Massachusetts has a section on the Census's funding impact, which notes that some programs "may hardly be affected at all by Census counts." The explainer focuses on a potential undercount (that is, the Census failing to count some people), and uses several examples to show how Census data could impact the state's funding allocations is available at <https://www.sec.state.ma.us/census2020/img/pdf/Census-2020-Explained-Full-Version.pdf>

<sup>7</sup> Surveys usually used for poverty data, the ACS, CPS, SIPP, and SAIPE, all exclude incarcerated people from their poverty measures. The differences between the four surveys are summarized in a chart at <https://www.census.gov/topics/income-poverty/poverty/guidance/survey-data-collection.html>.

- American Community Survey (ACS): "Institutional group quarter respondents as well as those living in college dormitories or military barracks are not included in the poverty universe"
- Annual Social and Economic Supplement of the Current Population Survey (CPS ASEC), conducted in partnership between the Census and Labor Statistics Bureaus, includes "Civilian non-institutionalized population of the United States, includes all housing units and non-institutionalized group quarters", and "People in institutions, such as prisons, long-term care facilities, and nursing homes, are ineligible for the CPS." (page 3) <https://www2.census.gov/programs-surveys/cps/methodology/CPS-Tech-Paper-77.pdf>
- Survey of Income and Program Participation (SIPP) is also limited to "Civilian non-institutionalized population of the United States, includes all housing units and non-institutionalized group quarters"
- Small Area Income and Poverty Estimates (SAIPE) uses the same population definitions as the ACS, above.

<sup>8</sup> A summary of the factors taken into consideration in the Title I funding formulas is available at <https://www2.ed.gov/programs/titleiparta/index.html>

## Federal Judges uphold Maryland law ending prison-based gerrymandering

by Peter Wagner, December 27, 2011

On Friday, Dec 23, a federal three-judge panel rejected a lawsuit seeking to overturn Maryland's landmark "No Representation Without Population Act," which counts incarcerated people as residents of their legal home addresses for redistricting purposes.

The Maryland law addressed a long-standing problem in the federal Census that counts incarcerated people as residents of the prison location, even though they cannot vote and retain their pre-incarcerated residences. For decades, using unadjusted Census data diluted the vote of every Maryland resident who did not live near the prison complex in western Maryland, and had a particularly negative effect on African-American communities that experience disproportionate rates of incarceration.

The Judges note that the No Representation Without Population Act they upheld was an important Maryland civil rights victory: "As the amicus brief ... makes clear, the Act was the product of years of work by groups dedicated to advancing the interests of minorities." (p. 20)

Other versions of Maryland's law have since passed in New York, Delaware and California. Maryland was the only state to apply its law to congressional redistricting, and the first state to complete the process after passing a law. The Judges' ruling that the law was properly passed and fairly implemented will encourage other states to pass similar laws and will hopefully encourage the Census Bureau to make their own changes in where incarcerated people are counted.

The Court issued its ruling late on the Friday before closing for the Christmas weekend, and just three days after a hearing on the evidence and oral arguments on Tuesday. The Court had promised a decision by the end of January, but quickly concluded that the lawsuit was without merit. The case, *Fletcher v. Lamone*, was a Republican-backed lawsuit that challenged the congressional plan proposed by the Democratic governor of Maryland. The suit raised claims of partisan gerrymandering and racial discrimination against African-Americans. Three of the claims attacked the No Representation Without Population Act as part of that otherwise unrelated lawsuit.

The Prison Policy Initiative, along with our colleagues at the Howard University School of Law Civil Rights Clinic, the ACLU of Maryland, the Maryland State Conference of NAACP Branches, Somerset County Branch of the NAACP, the NAACP Legal Defense and Education Fund, and Dēmos submitted a friend of the court brief to make it clear to the court that the No Representation Without Population Act was protective of minority voting rights. (Our brief did not address the other claims in the lawsuit.) Judge Williams, in his concurring opinion, called our brief "particularly impressive and persuasive." (p. 49)

The Court upheld the state's congressional districting plan on all counts. While most of the 55-page opinion concerned other claims, considerable treatment was given to the No Representation Without Population Act.

### The Court explained the law and its rationale:

- ▶ Quoting the state's summary, "the Act is intended to 'correct for the distortional effects of the Census Bureau's practice of counting prisoners as residents of their place of incarceration.'" The court then goes on to explain:

"These distortional effects stem from the fact that while the majority of the state's prisoners come from African-American areas, the state's prisons are located primarily in the majority white First and Sixth Districts. As a result, residents of districts with prisons are systematically 'overrepresented' compared to other districts. In other words, residents of districts with prisons are able to elect the same number of representatives despite in reality having comparatively fewer voting-eligible members of their community." (p. 9)

- ▶ The Court noted the critical importance of ending prison-based gerrymandering in local redistricting where the impact of a single prison can be the majority of a district. The Court discussed the infamous Somerset County example where a county commission district intended to be majority African-American was unable to elect an African-American for decades because the district contained a large prison and the African-American voting population of the district was too small to elect a candidate of African-American voters' choice. (p. 9)

## The Court explained that states are not required to blindly use the Census for redistricting purposes:

- ▶ Federal law requires Congressional districts to be exactly equal in population, but does not prohibit states from making improvements to the federal census data in establishing that population base. Federal case law allows adjustments to the data used for congressional districts. Although Census data is presumed to be a good starting point, the data can be adjusted to correct for flaws. These adjustments, however, may not be done in “a haphazard, inconsistent, or conjectural manner.” (pp. 12-13)
- ▶ The Court found that The No Representation Without Population Act and its implementation by the Maryland Planning Department meets the standard, writing:

“The question remains whether Maryland’s adjustments to census data were made in the systematic manner demanded by *Karcher*. It seems clear to us that they were. As required by the regulations implementing the Act, ... [the Maryland Department of Planning] undertook and documented a multistep process by which it attempted to identify the last known address of all individuals in Maryland’s prisons.... This process is a far cry from the ‘haphazard, inconsistent, or conjectural’ alterations the Supreme Court rejected in *Karcher*.” (pp. 16-17)
- ▶ Because the No Representation Without Population Act was found to satisfy even the stricter standards applicable to congressional districts, the opinion bodes well for the constitutionality of similar laws that apply to state legislative and local redistricting, where governmental discretion to make adjustments in Census data is even clearer.

### UPDATE:

**On June 26, 2012, the U.S. Supreme Court summarily affirmed the opinion of this three-judge panel!**

## The Court addressed several other issues that come up frequently in discussions about ending prison-based gerrymandering:

- ▶ Improving how incarcerated people are counted does not necessitate improving how other groups are counted. Plaintiffs criticized the state for reallocating incarcerated people to their homes, but not doing the same for members of the military or students in dorms. The Court called the assumption that these populations are all similarly situated to be “questionable at best.” The court explains:

“College students and members of the military are eligible to vote, while incarcerated persons are not. In addition, college students and military personnel have the liberty to interact with members of the surrounding community and to engage fully in civic life. In this sense, both groups have a much more substantial connection to, and effect on, the communities where they reside than do prisoners.” (p. 18)
- ▶ States should improve redistricting data where possible, even if it cannot be made perfect. For example, plaintiffs criticized the state’s reallocation because not all incarcerated people return to their exact prior address. The Court ruled:

“Because some correction is better than no correction, the State’s adjusted data will likewise be more accurate than the information contained in the initial census reports, which does not take prisoners’ community ties into account at all.” (pp.18-19)
- ▶ The Court found that “although the Census Bureau was not itself willing to undertake the steps required to count prisoners at their home addresses, it has supported efforts by States to do so,” quoting the Census Bureau Director’s explanation that the new Advance Group Quarters data would

“enable states ‘to leave the prisoners counted where the prisons are, delete them from redistricting formulas, or assign them to some other locale.’” (p. 16)
- ▶ The Court also addressed the main impetus for our brief, namely the plaintiff’s bizarre implication that a law passed with the intent of improving African-American voting rights somehow diluted African-American votes:

“Our review of the record reveals no evidence that intentional racial classifications were the moving force behind the passage of the Act. In fact, the evidence before us points to precisely the opposite conclusion.” (p.19)

## Select national organizations that support ending prison gerrymandering

Advancement Project  
American Civil Liberties Union  
Black Leadership Forum  
Brennan Center for Justice  
Common Cause  
CURE International  
Dēmos  
Drug Policy Alliance  
Fair Elections Legal Network (FELN)  
FairVote  
Grassroots Leadership  
Human Rights Defense Center  
Justice Policy Institute  
LatinoJustice PRLDEF  
League of Women Voters of the United States  
MALDEF  
NAACP  
NAACP Legal Defense Fund  
NAACP National Voter Fund  
National Urban League  
Nonprofit VOTE  
Prison Policy Initiative  
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## Prison-Based Gerrymandering

The Census Bureau has steadfastly resisted calls to end the practice of counting inmates as “residents” of their prisons instead of the cities and towns where they lived and to which they typically return. The bureau’s new director, John Thompson, seems at least open to ending this wrongful practice.

Counting inmates at their correctional institutions encourages prison-based gerrymandering, by which state lawmakers draw legislative districts that consist partly or even mainly of prison populations, even though inmates are denied the right to vote in all but two states. This enhances the political power of the mainly rural districts where prisons are built and undercuts the influence of the urban districts where many inmates came from.

Four states and about 200 municipalities have acted against prison gerrymandering in recent years because the prison count had warped the political landscape. Maryland, for example, required inmates to be counted in their home communities after learning that inmates were

nearly a fifth of the “residents” in one legislative district and 64 percent of the population of one county commission district. But state and local laws that require inmates to be counted in their hometowns often require piecemeal adjustments to the census data. That’s why members of Congress are pushing the Census Bureau to solve this problem.

Earlier this spring, for example, 18 House Democrats signed a letter asking the bureau develop “a standardized national solution to the problem of redistricting distortion” that would make it easier to draw honest legislative districts. At a Congressional hearing earlier this month, Mr. Thompson said that the Census Bureau had not yet decided on the rules for the 2020 census and would do so after consultations with interested parties.

They should reform the current system. It distorts the political process and raises concerns about the fairness of the census process itself. That’s reason enough for the bureau to solve this problem now.

Voice of the Rocky Mountain Empire

# THE DENVER POST

THURSDAY, FEBRUARY 27, 2020



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## Why we're about to end prison gerrymandering in Colo.

By **Kerry Tipper**  
and **James Coleman**  
*Guest Commentary*

Our bill to end prison gerrymandering in Colorado is just one step from becoming law. This month, the House voted to pass HB 1010, and now the Senate has done the same. If it is signed by the governor, as we expect it to be, this bill will ensure that our state has fair electoral maps, a stronger democracy and a more just political representation.

Prison gerrymandering is the practice of counting incarcerated individuals as residents of the prison cells they have been placed in. There are several important problems here. First, the Colorado Constitution plainly declares that a prison cell is not a residence, meaning that people in prison are not legal constituents of the area where they have been incarcerated. And they're

definitely not treated as such.

While digging into this issue and drafting this bill, we spoke to several elected officials who represented large populations of incarcerated people and asked whether they had ever held a town hall in a correctional facility. No one knew how many inmates were in their district, and only one had ever met with incarcerated individuals in their district.

So how can we improve this system? Our bill would ensure that inmates are, for purposes of state redistricting, counted as residents of their last known address during the census. The result would be that a prisoner's political representation will be tied to the community they are rooted in and not the temporary prison cell where they are serving time. Because the average prisoner in Colorado is incarcerated for three years and the census happens every 10, this is es-

pecially important.

This bill is about fairness, plain and simple. With the 2020 census coming to Colorado in the next month or so, we want to ensure that Colorado has accurate and fair representation in the next decade and beyond. While we certainly set out to do right by the 19,000 or so incarcerated individuals in Colorado, our bill is about much more than just them. More accurate district maps, a fairer count of Coloradans and better population data means a stronger democracy.

This bill will make a difference for everyone who wants to ensure their districts have the most accurate representation possible.

As informed readers will know, census counts are about more than just redistricting and political representation — the distribution of federal funds are tied to census counts. Rest assured, this bill will not affect how state or federal funding is allocated. It

may alter the shape of some legislative districts, but this won't impact funding for any district's infrastructure, public safety or other services.

This is because no funding agency, in any state, ever relies on redistricting data to determine grant amounts. Furthermore, the bill will have a zero-dollar fiscal impact. The Department of Corrections already has the data required by the bill, and the Census Bureau will even aid in correcting the redistricting data.

As we begin this census year and as a nation undertake the massive enterprise of counting each person living here, it is imperative that we do it in the most accurate and just way possible. What's more, Coloradans have already agreed that we want fair district maps — that's why in 2018, more than 60% of voters supported bipartisan Amendments Y and Z, which created

two new independent redistricting commissions.

We're proud that our House and Senate colleagues joined us in passing HB 1010, and we're excited to see Gov. Jared Polis sign it into law. Our state's democracy will be better for it.

*Kerry Tipper is the state representative for House District 28, where she represents Lakewood and a small part of Littleton. She sits on the House Judiciary Committee and the House Health and Insurance Committee. James Coleman is the representative for*



*House District 7 in Denver. He is the co-whip of the Democratic Caucus and sits on the House*



*Appropriations, Education, and Business Affairs and Labor Committees.*



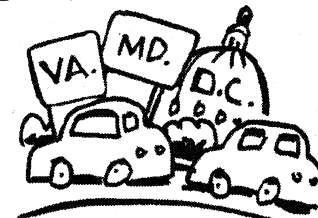
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PETER WAGNER

## Beginning of the end for ‘prison-based gerrymandering’

Sandwiched between its controversial immigration, campaign finance and health-care rulings last month, the Supreme Court issued a little-noticed decision in a Maryland case that gave the green light to states to eliminate the repugnant practice of “prison-based gerrymandering.”

States are now unquestionably free to correct for an ancient flaw in the U.S. Census that counts incarcerated people as residents not of their homes but of the places where their prisons are located. When the prison population was small, the problem was little more than statistical trivia. Today, however, the census counts more than 2 million people as though they were residents of places where they have no community ties.

In a June 25 summary disposi-

tion of the case *Fletcher v. Lamone*, the court upheld Maryland’s landmark 2010 “No Representation Without Population Act,” which does what the Census Bureau would not: count incarcerated people at home for redistricting purposes. Maryland was the first state to recognize that the bureau’s method of counting people in prison resulted in a systematic transfer of political clout that undermined the constitutional principle of “one person, one vote.”

As a 2010 report I presented to the Legislative Black Caucus of Maryland showed, after the 2000 Census Maryland drew one state legislative district that was 18 percent incarcerated. The result was to give every four people who lived near the cluster of prisons in Hagerstown the same representa-

tion in Annapolis as five from any other district in the state. While urban and African American communities bore the brunt of the harm, prison-based gerrymandering diluted the votes of residents of communities across the state.

Each level of government experiences this problem differently. Local governments often provide the most dramatic examples. Somerset County, on Maryland’s Eastern Shore, has a sizable African American voting population, but until 2010 it had never elected an African American to county office. In the 1980s, the county settled a Voting Rights Act lawsuit by agreeing to create a district in which African Americans had the numbers to elect a candidate of their choice, but census counts that included the prisons created problems. Padding one district

with a largely African American and entirely nonvoting prison population created what we call a “false majority-minority district,” which did not contain enough African American voters to carry an election. Prison-based gerrymandering split the African American voting population between multiple districts, and for decades the county commission remained entirely white.

Maryland’s law now requires the state to determine the home addresses of incarcerated people and perform a simple adjustment to the federal census data prior to redistricting. Lead sponsors Sen. Catherine Pugh (D-Baltimore) and Del. Joseline A. Peña-Melnyk (D-Prince George’s) had large prisons in their districts, took a principled stand for fair redistricting and won bipartisan, urban and

rural support for their bill. They made it clear that their bill would not affect funding but would ensure equal representation for all.

Three other states quickly followed suit. New York’s version was successfully implemented for this decade’s redistricting, and Delaware and California’s laws require incarcerated people to be counted at home for the redistricting cycle in 2020. Several other states, from Rhode Island and New Jersey to Illinois to Oregon, are considering similar legislation.

Of course, the best place to improve on federal Census Bureau data is at the bureau itself. The Supreme Court’s ruling will accelerate states’ demand for the tools and data needed to end prison-based gerrymandering. Thankfully, census policy is not set in stone. As the country has

changed, the rules for counting many groups has necessarily evolved as well. As former Census Bureau director Kenneth Prewitt has explained: “Current census residency rules ignore the reality of prison life. . . . Counting people in prison as residents of their home communities offers a more accurate picture of the size, demographics and needs of our nation’s communities.”

The next census is years away, but the planning for it is already underway. The bureau should figure out how to count incarcerated people at home in the next census, or all states should follow Maryland’s lead and, with the blessing of the Supreme Court, improve the census themselves.

The writer is executive director of the Prison Policy Initiative.

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**TEXAS POLITICS**  
REDISTRICTING

## Prisoners lack vote, yet they shape vote

Inmates clustered in rural Texas profoundly if subtly affect politics.

**By Jonathan Tilove**  
[jtilove@statesman.com](mailto:jtilove@statesman.com)

According to the 2010 census, 2,097 of the 36,273 inhabitants of Hale County are in prison. That's no reflection on Hale or its county seat – the little city of Plainview, located just north of Lubbock. It's just an artifact of what might be the most common publicly funded enterprise dotting the rural Texas landscape – a correctional institution, or in the case of Hale, two side-by-side state jails, the Wheeler and Formby units, the former named for a local banker and the latter for a radio pioneer who served a term in the Texas Senate.

Playing host to those doing time for crimes mostly committed in the state's big cities provides places like Hale County a welcome economic lift. But when it comes time to draw lines for the four precincts that each elect a coun-

**Prisoners** continued on **A8**

# TEXAS POLITICS: REDISTRICTING

## Prisoners

continued from A1

ty commissioner, it can present a conundrum: If you count the prisoners where they bunk, as the U.S. census does, they can end up representing a significant, and occasionally overwhelming, percentage of a precinct's population, even though they probably never drew a free breath in that community, and even though, as felons, they cannot vote until they have completed their punishment.

So Hale County, on the advice of its redistricting consultants, Allison Bass & Associates of Austin, came up with a simple solution – it didn't count the inmate population in its redistricting.

"It didn't seem fair to me to include that population in any precinct because their residence was not established voluntarily, and, since they are convicted felons, they don't have the right to vote," said Bill Coleman, the Hale County judge. "If your altruistic goal is to try to make each precinct have an equal number of at least potential voters, and a significant chunk of your population is not allowed to vote, aren't you sort of undermining the whole purpose of this thing?"

Coleman said he wasn't alone in that view.

"Nobody was for counting the prison population," he said.

According to a report being issued this week by the Prison Policy Initiative, based in Northampton, Mass., Coleman's view has become the common wisdom of local officialdom across Texas and Louisiana, two of the most incarcerating states in the nation. It is an important finding because it means that local officials in the many smaller communities that are home to correctional facilities all across Texas have come to view the question very differently from their representatives in Austin, who, while they tend not to talk about it, or return reporters' phone calls on the question, have come to depend on counting prisoners back home as their own.

"We found that most of the areas that gain additional political clout from prison gerrymandering on the state level reject the prison counts when they draw local districts," said Peter Wagner, executive director of the Prison Policy Initiative, which he founded as a student at Western New England College School of Law more than a decade ago. "Our research confirms that faced with the absurd prospect of drawing a city or county district that is mostly – or even entirely – incarcerated, local governments are leading the way in rejecting prison gerrymandering."

At its most absurd, had Garza County, population 6,461, not excluded the 1,995 residents of the Giles W. Dalby Correctional Facility from

## COUNTIES WITH BIGGEST PROPORTION OF PRISONERS

There are 40 Texas counties, and a few cities, with proportionally larger – sometimes far larger – prison populations than Hale County. Here is a list of counties in which prisoners are more than 20 percent of the population.

	TOTAL POPULATION	INCARCERATED POPULATION	PERCENT INCARCERATED
Concho County	4,087	1,556	38%
Garza County	6,461	1,995	31%
Mitchell County	9,403	2,296	24%
Jones County	20,202	4,807	24%
La Salle County	6,886	1,583	23%
Bee County	31,861	7,196	23%
Anderson County	58,458	13,163	23%
Reeves County	13,783	3,034	22%
Hartley County	6,062	1,333	22%
Karnes County	14,824	3,159	21%

SOURCE: PRISON POLICY INITIATIVE



**'It didn't seem fair to me to include that population in any precinct because their residence was not established voluntarily, and, since they are convicted felons, they don't have the right to vote.'**

Bill Coleman, Hale County judge

Read more about Texas politics at [statesman.com/virtualcapitol](http://statesman.com/virtualcapitol).



its redistricting, an entire precinct would have been made up of "criminal aliens" awaiting deportation, with not a voter among them.

The Prison Policy Initiative's inventory listed 64 Texas cities and counties with what the report calls the greatest "potential distortion" – a measure of how much of a potential district could be populated by prisoners. All but nine have chosen to exclude that population in redistricting.

Yet in drawing state legislative districts there remains a strong rural rooting interest in maintaining the census practice of counting prisoners – just like college students, barbed stateside military personnel, and migrant workers – where they find them to be mostly living and sleeping on Census Day, and then including them in that count when drawing state House, state Senate and U.S. House district lines.

Why? Because those prisoners pad the population of sparsely settled rural districts, sustaining a House or Senate seat with far fewer eligible voters than other districts, undermining the principle of one-man, one-vote, and potentially someday affecting the balance of power in the Legislature because, in Texas, seven of the nine House districts with the largest prison populations are represented by Republicans.

The imbalance is compounded because almost invariably, across the nation, the rural electorate that benefits is mostly white, a benefit they derive because a disproportionately black and brown prison population happens to be confined close by.

In a 2007 letter asking the Census Bureau to collect the home addresses of all incarcerated persons, a group of mostly New York lawmakers,

joined by state Rep. Harold Dutton, D-Houston, noted that, "65 percent of state prisoners in New York are from New York City, and 45 percent of state prisoners in Illinois are from Chicago, yet virtually all of these state prisoners are incarcerated in far-flung rural areas."

There is also the further peril that the prison population could be used to help create what state Rep. Poncho Nevárez of Eagle Pass – one of the two Democrats with a large prison population in his district – described as an "illusory" minority-opportunity district, a possibility that Coleman duly noted.

"We were required to have a precinct that has a majority of minority citizens in it; that would have been really easy for us to do," Coleman said. Sixty-five percent of the inmates at the Wheeler and Formby units are either black or Hispanic.

"We could stoke up our minority numbers by using the prison population," said Coleman. "Well, nothing about that seemed right."

That so many small cities and counties chose to exclude prisoners is all the more remarkable because the path of least resistance would be to simply accept the census redistricting file as is.

Craig Tounget, executive director of the committee drawing Austin's new City Council districts, said the panel never considered whether or not to count the 1,105 inmates at the Travis State Jail when drawing the district lines. The jail population was simply part of the 2010 census count and that's what they went by.

As it happens, the 76 percent combined black and Hispanic inmate population at the state jail, located on FM 969 in East Austin, augmented the 71 percent minority population of District 1 – itself a minority-opportunity district – if only ever-so-slightly.

"It's not enough to skew things," said David Richards, general counsel to the committee. The jail's inmates constitute

## EXPERT REPORTING

Jonathan Tilove, the American-Statesman's chief political writer, has written extensively about demographics and political power.

only 1.4 percent of the 76,711 residents of District 1. "It's infinitesimal."

It was the way that mass incarceration was redistributing power from urban to rural districts that first drew Wagner's interest to an unexplored issue. But over time, he became as focused on how profoundly it could pervert the purposes of redistricting at the most grass-roots level.

After the census released its redistricting file in 2011, Prison Policy Initiative sent some 3,000 letters to most of the county commissioners and city council members in the nation elected by district in jurisdictions with large prisons, informing them of a new census data file that would enable them to easily identify census blocks with correctional institutions and remove them from calculations.

Wagner would like the Census Bureau to settle this matter by simply counting prisoners in 2020 as residents of their last addresses and not their prison cells.

The new census director, John Thompson, has indicated he is willing to listen to all sides.

Two states – New York and Maryland – passed laws requiring that incarcerated people be count-

ed in the 2010 round of redistricting based on their legal home addresses. Two other states – Delaware and California – have passed laws imposing that requirement for the 2020 round. The Supreme Court last year upheld the constitutionality of the Maryland law.

The template for this effort comes from Texas, where Dutton first filed similar legislation in 2001 to try to reclaim for Houston the population lost to prisons in the 2000 census count, a loss that was going to cost the Harris County area its 26th state House seat. He has refilled the legislation in subsequent sessions, to no avail.

In 2011, he filed suit claiming that counting inmates for redistricting violated the Texas state election code, which specifies that prisoners don't "acquire residence" at the place of their confinement, and unconstitutionally inflated the size of rural districts at the expense of urban districts. Richards, who represented Dutton, said the federal court in San Antonio dismissed the claim.

Eric Opiela, a Republican redistricting expert who is running for agriculture commissioner, contends that inmates have to be counted somewhere, and, "ultimately the location of arrest is not any indication of where they will end up released, if ever. We don't accurately have a way to place them other than where they slept on April 1, 2010, so we don't try to move them."

The argument has also been advanced that the elected representatives of prison communities actually do provide constituent services for inmates in their districts.

Dutton, who has a staffer solely dedicated to requests from inmates – and their families – who call Houston home but are currently strewn hither and yon serving time, scoffs at that.

"Most do absolutely zero, zilch," he said.

In Hale County, Coleman also dismisses the idea that county commissioners consider inmates at Wheeler or Formby as anything like true constituents.

"They're not going to be calling you on the phone or showing up at commission meetings," Coleman said. "If they do, then you have a real problem."

Contact Jonathan Tilove at 512-445-3572.

# Time to end prison gerrymandering in Connecticut

By SCOT X. ESDAILE  
SPECIAL TO HARTFORD COURANT | MAR 06, 2020



Osborn Correctional Institution in Somers.(Courant File Photo)

Connecticut proudly calls itself the Constitution State. But the state’s stubborn reliance on “prison gerrymandering” unfairly robs urban communities of political power and denies voters — especially black and brown voters — the constitutional guarantee of “one person, one vote.”

Connecticut draws its state legislative districts using “prison gerrymandering,” counting incarcerated people as residents of the districts where they are incarcerated, rather than in their home districts. It means an area such as north central Connecticut, where many

prisons are located, would have an extra House district or two compared to if those incarcerated people were counted in Hartford, which would then have those districts and their representatives.

As a result, residents of Connecticut's predominantly white, rural districts — where most of the state's prisons are concentrated — have greater representation in the Connecticut legislature than black and brown residents of urban districts.

To take one troubling example, a New Haven resident's vote for state offices in the 2020 election will count for only 85% of the vote of a resident in Enfield or Somers. Why? Because for every 85 residents of House District 59 (Enfield), there are over 100 in House District 97 (New Haven).

To ignore the civil rights implications of prison gerrymandering is morally wrong.

Connecticut has the fifth highest rate of incarcerated black men in the country. Despite comprising only about a quarter of the state's overall population, African Americans and Latinos in Connecticut prisons outnumber incarcerated whites 2-to-1. Yet by counting black and Latino inmates as though they are residents of rural districts, the system operates under a deceitful fiction that elected officials from these almost all-white districts will adequately represent them.

In reality, the vast majority of incarcerated people have no meaningful connection with the towns in which they are held. They do not use the roads, parks or public services in these towns. They do not send their children to local schools. And they don't vote in these areas. Representatives of these districts do not even act like they care about the needs and interests of the incarcerated population, neglecting a sizable portion of their so-called constituency.

Because virtually all incarcerated people are barred from voting, they exist purely as "invisible residents," able to be counted but denied a voice.

Unfortunately, this is not the first time the bodies of people of color in America have been used to inflate white political power. From the earliest days of the republic, the Three-Fifths Clause of the Constitution allowed for the partial counting of slaves in determining a state's delegation in the House of Representatives while denying the

franchise to all blacks, free and enslaved. While we have progressed from that painful chapter of America's history, the question still remains: Has our country learned from our wicked past? Prison gerrymandering exploits black and brown bodies to amplify white voices. That practice was wrong 200 years ago, and it is wrong today.

The unjustness and absurdity of prison gerrymandering is clear, which is why Connecticut law already mandates that the few incarcerated people who retain the right to vote must do so in their pre-incarceration districts, not in the prison towns where the Department of Correction happens to hold them.

As we race toward another round of redistricting following the 2020 census, we need to ensure that every vote in Connecticut counts equally. [Senate Bill 368](#) would prohibit the practice of prison gerrymandering in all future redistricting efforts, ensuring that the state meets its obligation to apportion representation fairly across Connecticut. If passed, the bill would place Connecticut among seven other states that have enacted laws banning prison gerrymandering and advancing democratic integrity. Legislative maps adopted after the next round of redistricting in 2021 would justly reflect the actual populations in various parts of the state.

Opponents to ending prison gerrymandering contend that their concerns are purely fiscal. These arguments ring hollow and call to mind the fiscal arguments of those who opposed the end of slavery in America. Then, and now, such assertions are a red herring meant to scare the state out of doing what is right. The federal government only uses census figures to apportion funding among the 50 states; that funding is not tied to any particular region.

To further ease concerns, the bill under consideration explicitly limits the population realignment resulting from the end of prison gerrymandering to purposes related to legislative apportionment. The new population data cannot be used to recalculate state funding to municipalities and will not affect current or future revenue streams.

#### LATEST OP-EDS

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Make no mistake about it: The fight about prison gerrymandering is not about money. It's about white, rural districts holding onto power by using



Why early releases from prison will help fight the coronavirus crisis

black and brown bodies to inflate their numbers.

Denise Merrill: It's time to allow voting by mail

The denial of equal political representation to residents of Connecticut's urban centers is insult and injury to essential democratic

values. For as long as Connecticut continues to use prison gerrymandering in its apportionment of political representation, it will treat urban voters as second class citizens.

The righteous path forward is the one that ends prison gerrymandering and counts every person equally.

*Scot X. Esdaile is the president of the NAACP-Connecticut Conference.*

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# PRISON GERRYMANDERING PROJECT

from the Prison Policy Initiative

## **Example Bill: Ending prison-based gerrymandering in your state.**

*This model legislation requires the state prison system to collect home residence data and the Secretary of State to merge that data with the federal census prior to redistricting. This legislation was prepared by a coalition of civil rights, voting rights, and criminal justice organizations based on the lessons of the states that have already successfully passed and implemented legislation ending prison gerrymandering. The comments offer guidance on adapting the model bill to the specifics of your state. If the Prison Policy Initiative's experience on this issue would be of assistance, don't hesitate to reach out.*

—Aleks Kajstura

*last updated Jan. 8, 2020*

## Purpose of Legislation

This bill provides for adjusting population data used in redistricting to conform to the [Oregon] Constitution. The Census Bureau allocates incarcerated persons as if they were residents of their places of incarceration rather than of their home addresses. Article IV of Section 4, however, states that for “the purpose of voting, no person shall be deemed to have gained, or lost a residence... while confined in any public prison.”

## Bill

*Section 1.* The legislature notes that section 4 of article IV of the [Oregon] constitution provides in pertinent part as follows: “For the purpose of voting, no person shall be deemed to have gained, or lost a residence... while confined in any public prison.” Investigation has shown that, despite these provisions, the Census classifies incarcerated persons as residents of their places of incarceration rather than of their home addresses. The provisions of this act are necessary to provide procedures and duties to correct this discrepancy.

*Section 2.* The election law is amended by adding a new section 188.020 to read as follows:

1. Electronic record. The Department of Corrections shall, starting within 6 months of the effective date of this statute, collect and maintain an electronic record of the legal residence, presumptively outside of the facility, and other demographic data, for any person entering its custody. At a minimum, this record shall contain the last known complete street address prior to incarceration, the person's race, whether the person is of Hispanic or Latino origin, and whether the person is over the age of 18. To the degree possible, the Department of Corrections shall also allow the legal residence to be updated as appropriate.

2. Reports to the Secretary of State.

This section cites the Oregon constitution, but most states have similar constitutional or statutory provisions defining residence. See [our 50 state guide](#) for the law in each state.

This section requires that the Department of Corrections start keeping records of residence for people entering its custody. Because most prison sentences are short, starting the data collection process for people entering custody would produce a nearly complete data set for redistricting following the 2020 Census.

States may wish to consider whether the nature of the corrections system in their state necessitates expanding the scope of the bill to [other kinds of correctional facilities](#).

This section requires reporting to the Oregon Secretary of State because the Oregon Secretary of State has an active role in redistricting. In other states, other agencies or redistricting

(a) In each year in which the federal decennial census is taken but in which the United States Bureau of the Census allocates incarcerated persons as residents of correctional facilities, the Department of Corrections shall by May 1st of that same year deliver to the Secretary of State:

(i) a unique identifier, not including the name, or SID (state offender ID) number, for each incarcerated person subject to the jurisdiction of the department on the date for which the decennial census reports population. The unique identifier shall enable the Secretary of State to address inquiries about specific address records to the Department of Corrections, without making it possible for anyone outside of the Department of Corrections to identify the inmate to whom the address record pertains;

(ii) the street address of the correctional facility in which such person was incarcerated at the time of such report;

(iii) the last known address of such person prior to incarceration or other legal residence (if known);

(iv) the person's race, whether the person is of Hispanic or Latino origin, and whether the person is over the age of 18 (if known);

(v) any additional information as the Secretary of State may request pursuant to law.

(b) The department shall provide the information specified in paragraph (a) of this

authorities may be more appropriate to handle the adjustment.

This section requires the Department of Corrections to provide the Secretary of State with the residence, race, ethnicity, and age information for each person in custody at Census time. The section also contains a sunset provision that terminates the reporting and data adjustment when the Census Bureau counts incarcerated people at home.

This section is a privacy provision that prevents public disclosure of individual address information. Note that other states have their own unique equivalents to the Oregon SID numbers.

subdivision in such form as the Secretary of State shall specify.

(c) Notwithstanding any other provision of law, the information required to be provided to the Secretary of State pursuant to this subdivision shall not include the name of any incarcerated person and shall not allow for the identification of any such person therefrom, except to the Department of Corrections. The information shall be treated as confidential, and shall not be disclosed by the Secretary of State except as redistricting data aggregated by census block for purposes specified in Section 4.

3. Federal facilities. The Secretary of State shall request each agency that operates a federal facility in this State that incarcerates persons convicted of a criminal offense to provide the Secretary of State with a report including the information listed in subsection (a) of Section 2.

This section requests federal cooperation. While the state cannot require the federal government to participate in a state redistricting effort, there is no reason why the federal government would not respond to reasonable requests for cooperation given sufficient time and support.

4. The Secretary of State shall prepare redistricting population data to reflect incarcerated persons at their residential address, pursuant to Section 5. The data prepared by the Secretary of State pursuant to Section 5 shall be the basis of state house of representative districts, state senate districts, and all local government districts that are based on population. Incarcerated populations residing at unknown geographic locations within the State, as determined under subsection (c)(ii) of Section 5 shall not be used to determine the ideal population of any set of districts, wards, or precincts.

This section tasks the Secretary of State with performing the data adjustment. It requires state, county and other local governments to use the adjusted data, and it clarifies how the count of people at unknown geographic locations within the state is to be used.

5. Determinations and data publication by the Secretary of State.

(a) For each person included in a report received under Sections 2 and 3, the Secretary of State shall determine the geographic units for which population counts are reported in the federal decennial census that contain the facility of incarceration and the legal residence as listed according to the report.

This section requires the Secretary of State to re-allocate the redistricting data to reflect incarcerated persons at their residential addresses.

(b) For each person included in a report received under Sections 2 and 3, if the legal residence is known and in this State, the Secretary of State shall:

(i) Ensure that the person is not represented in any population counts reported by the Secretary of State for the geographic units that include the facility at which the person was incarcerated, unless that geographic unit also includes the person's legal residence.

(ii) Ensure that any population counts reported by the Secretary of State reflect the persons' residential address as reported under Sections 2 and 3.

(c) For each person included in a report received under Sections 2 and 3 for whom a legal residence is unknown or not in this State, and for all persons reported in the census as residing in a federal correctional facility for whom a report was not provided, the Secretary of State shall:

(i) Ensure that the person is not represented in any population counts reported by the Secretary of State for the geographic units that include the facility at which the person was incarcerated.

(ii) Allocate the person to a state unit not tied to a specific determined geography, as other state residents with unknown state addresses are allocated, including but not limited to military and federal government personnel stationed overseas.

(d) The data prepared by the Secretary of State pursuant to this section shall be completed and published no later than 30 days from the date that federal decennial PL94-171 data is published for the State.

This section directs the Secretary of State on how to process missing or incomplete data.

The Census Bureau's redistricting data will become available between January and March 2021, but the Secretary of State will receive the report from the prison systems about a year earlier, by May 2020. Depending on state *and* local redistricting deadlines, some states may be able to give the Secretary of



(e) The Secretary of State shall notify local governments that Section 4 requires local governments to use the data prepared by the Secretary pursuant to this Section for redistricting purposes.

6. The data prepared by the Secretary of State in Section 5 shall not be used in the distribution of any state or federal aid.

7. If any provision of this Act or the application of any provision of this Act to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are severable.

State more time for completing the new dataset, and some states may have to give less time.

We've often see local governments—or their redistricting consultants—be unaware of state legislative changes like this, so we propose this notification mechanism. In some states the Secretary of State already has a pass-through role for local redistricting data that makes the office particularly well-suited to educate local governments on the data requirements of Section 4. In other states, other agencies may be more appropriate.

This section explicitly states that the bill would not effect the distribution of federal or state funds. Since the bill only changes the redistricting data, and no federal or state funds are distributed on the basis of state or local redistricting data, some states may consider this provision unnecessary. On the other hand, advocates in some states have found it helpful to clarify this bill would not reduce the funding received by communities that host prisons.

## Resolutions

Organizations and legislative bodies can make their views on the Census Bureau's prison count and the practice of prison-based gerrymandering known through formal resolutions and recommendations. On this page, we provide some [sample](#) resolutions and links to [adopted](#) resolutions.

### Samples

- Resolution prepared for [Massachusetts](#) calling on the Census Bureau to change where it counts people in prison
- Resolution prepared for [an urban county in California](#) calling on the state to eliminate prison-based gerrymandering
- Resolution prepared for [Jackson Mississippi](#) calling on the state to eliminate prison-based gerrymandering
- Although technically not a resolution, [Essex County Local Law Number 1 of 2003](#) offers a detailed declaration of why a rural county would not want to consider prison populations a part of their community or their electoral system.

### Adopted resolutions

- [Counting Prisoners, City Club of Portland redistricting study committee](#), February, 2012.

Our committee concluded that including prison populations in the district where the prison is located distorts the one-man, one-vote principle, giving communities with prison populations more influence than their population of permanent residents would justify.

Our committee recommends that the Legislature reconsider Senate Bill 720 and

pass it in the next session. Passage of such a bill would create greater clarity on how prisoners should be counted, thus removing a potential source of discord from the redistricting process. It would also correct the situation in which certain districts have unwarranted advantage in political representation because of large prison populations.

- Recommendation 2: Residence Rule, **African-American subcommittee of the Census Bureau's Race and Ethnic Advisory Committee**, October 2011.

“The Committee recommends that the Census Bureau prioritize conducting research as part of their 2020 Census planning to describe a process and the feasibility of implementing changes to the "usual residence" rule to provide a count in the 2020 Census of incarcerated persons at the pre-incarceration addresses, including identifying the best means of gathering such information and incorporating it into Census counts nationwide.

- Make Redistricting Fair – End Prison Based Gerrymandering, **Boston Workers Alliance**, July, 2011.
- Reform of prison-based census counting, **National Black Caucus of State Legislators**, December 2010:

“... THEREFORE BE IT RESOLVED, that the National Black Caucus of State Legislators (NBCSL) believes that the Census Bureau should count incarcerated individuals at their addresses of residence, rather than the address of the prison during the 2020 and all future decennial Censuses;

“BE IT FURTHER RESOLVED, that until the Census Bureau counts incarcerated

individuals at their actual residential addresses, the NBCSL encourages states to enact legislation modeled after the Delaware, Maryland, and New York laws....”

- Recommendation 3 — Research on Alternative Methods of Counting Prisoners, **Joint Resolution of the Hispanic and Asian-American subcommittees of the Census Bureau’s Race and Ethnic Advisory Committee**, October 8, 2010

“The Hispanic Advisory Committee (HAC) recommends that the Census Bureau conduct research as part of their 2020 Census planning to describe a process and the feasibility of implementing changes to the ‘usual residence’ rule to provide a count in the 2020 Census of incarcerated persons at the pre-incarceration addresses, including identifying the best means of gathering such information and incorporating it into Census counts nationwide....”

- End Prison-Based Gerrymandering NAACP, 101st Convention, July 13, 2010:

“THEREFORE, BE IT RESOLVED, that the NAACP reaffirms the 2009 resolution on ending prison-based gerrymandering; and

“BE IT FURTHER RESOLVED, the NAACP will continue to advocate to the United States Congress, the United States Department of Commerce and to the public that the Census count incarcerated people as residents of their last home address; and [...]

“BE IT FURTHER RESOLVED, that the NAACP concludes that until the Census Bureau counts incarcerated people as residents of their homes, the fundamental principle of one person one vote" would be best satisfied if redistricting committees

refused to use prison counts to mask population shortfalls in districts that contain prisons; and

“BE IT FINALLY RESOLVED, that the NAACP advocate that the prison population census count not be used in any legislative district at the local, state and federal level.”

- Support of Illinois House Bill 4650, creating Prisoner Census Adjustment Act **Chicago City Council**, May 12, 2010
- Recommendations focused on 2020, **African-American subcommittee of the Census Bureau’s Race and Ethnic Advisory Committee**, October 2009.

“The AA REAC recommends the Census Bureau allows prison inmates to fill out individual census forms giving their own preference as to place of residence, rather than continuing the current practice of having the prisoners counted as group quarter’s population where they are incarcerated.

The AA REAC recommends the Census Bureau provides an opportunity to discuss the topic of prisoners... and political representation in the communities from which they came.”

- Resolution calling on the New York State Legislature to amend the Election Law so that prisoners are counted as residents fo the county in which they reside prior to incarceration, rather than as residents of the county in which they are detained, 0190-2006, **New York City Council**, December 21, 2009
- Resolution calling upon the United States Census Bureau to enforce a decennial census enumeration policy in which incarcerated juveniles and adults are counted in the keeping

with the “one person, one vote” principle inherent in the Fourteenth Amendment of the Constitution, to insure that on the New York State Legislature to amend the Election Law so that prisoners are counted as residents fo the county in which they reside prior to incarceration, rather than as residents of the county in which they are detained, 2261-2009, **New York City Council**, December 21, 2009

- Resolution, **NAACP**, 100th Convention, July 14, 2009:

“... THEREFORE, BE IT RESOLVED, that the NAACP, on principle, decries the enumeration of prisoners as local residents as violation of our nation’s fundamental one person one vote ethos of representational democracy, harkening back to the disgraceful three fifths era of constitutionally sanctioned slavery; and

“BE IT FURTHER RESOLVED, that the NAACP calls on the U.S. Department of Commerce Bureau of the Census to enumerate prisoners within census blocks where domiciled at their time of arrest; and

“BE IT FINALLY RESOLVED, that NAACP units call upon their Congressional representatives to effect such a permanent change to the Census Bureau enumeration procedures.”

- Resolution, **NAACP**, 99th Convention, July, 2008:

“... BE IT FINALLY RESOLVED, that the NAACP will advocate that the U.S. Congress and the U.S. Department of Commerce Bureau of the Census, that for the purposes of the 2010 census, that all prisoners he enumerated as residents of the census tract wherein they were domiciled at the time of their arrest and/or conviction.”



- **Recommendation 7.2 National Research Council of the National Academies, *Once, Only Once, and in the Right Place: Residence Rules in the Decennial Census* , 2006, p. 243:**

“A research and testing program, including experimentation as part of the 2010 census, should be initiated by the Census Bureau to evaluate the feasibility and cost of assigning incarcerated and institutionalized individuals, who have another address, to the other location.”

- **Recommendation 10, Census Advisory Committee of the African-American population, October 1-3, 2003:**

“We recommend that prisoners, including those housed outside their states, be counted as residents of their pre-incarceration addresses...”

## **End "Prison-Based Gerrymandering"**

*Ratified by the NAACP at the 101st Convention, on July 13, 2010. We scanned in the text of the resolution, below, from a delegate packet distributed at the convention. The resolution was submitted by Crossroads Correctional Center (MO) Branch and San Jose/Silicon Valley (CA) Branch.*

WHEREAS, the U.S. Census Bureau counts people in prison as residents of the community that contains the prison, not the community that they are legal residents of; and

WHEREAS, census data is the basis for legislative districts, counting incarcerated people as residents of the prison community enhances the weight of a vote cast in a district with a prison while diluting the weight of votes in all other districts; and

WHEREAS, this practice, which has come to be known as "prison-based gerrymandering", violates the United States Supreme Court's rule of "one person one vote" which requires that each person have the same access to government regardless of where they live; and

WHEREAS, African Americans are incarcerated at a rate 6 times higher than whites; and

WHEREAS, the majority of state and federal prisons are built in disproportionately white rural areas; and [...]

WHEREAS, counting incarcerated people as residents of the prison community has particularly negative effect on the voting strength of African American communities; and

WHEREAS, in 2003, the African American subcommittee of the Census Bureau's Race and Ethnic Advisory Committee recommended that the Census Bureau count prisoners as residents of their pre-incarceration addresses; and

WHEREAS, in 2006, the Census Bureau's own advisors at the National Research Council called on the Bureau to begin collecting the home addresses of incarcerated people and to study the best way to use those addresses; and

WHEREAS in 2008, the NAACP convention in Cincinnati called on the Census Bureau to count incarcerated people as residents of their home addresses; and

WHEREAS, in 2009, Hilary O. Shelton, Director of the NAACP Washington Bureau, told the Washington Post that, "where incarcerated people are counted in the Census is a long-standing concern of the NAACP"; and

WHEREAS, in 2009, the NAACP Convention in New York reaffirmed its earlier resolution calling for the Census Bureau to change where prisoners were counted and decried the "enumeration of prisoners as local residents as violation of our nations' fundamental 'one person one vote' ethos of representational democracy, harkening back to the disgraceful three-fifths era of constitutionally sanctioned slavery"; and

WHEREAS, in December 2009, a dozen African American leaders including representatives of the NAACP, Legal Defense Fund, National Urban League, Rainbow/Push Coalition, and the National Coalition on Black Civic Participation met with Commerce Department Secretary Gary Locke to ask for a change in how incarcerated people are counted in the Census; and

WHEREAS, the United States Census Bureau ignored all of these recommendations, and in April 2010, again counted more than 2 million incarcerated citizens as residents of the prison wherein they were imprisoned; and

WHEREAS, Congressman William Lacy Clay (D) of Missouri, Chairman of the House Subcommittee on Information Policy, Census and National Archives, recognized that the Bureau had squandered the planning time necessary to change where prisoners are counted, negotiated a groundbreaking agreement to change how census counts of prisoners are reported to state and local governments; and

WHEREAS, the Census Bureau has agreed, for the first time, to release data on prison populations to states in time for redistricting; and

WHEREAS, Congressman Clay and voting rights advocates have urged states and local governments to take advantage of this more

timely data to cease the practice of inflating the representation awarded to districts that contain prisons; and

WHEREAS Peter Wagner, Executive Director of the Prison Policy initiative, said in congressional testimony that a national change in where incarcerated people are counted in the Census must wait until 2011 when planning begins for the next Census, but that eliminating prison-based gerrymandering; and

WHEREAS, the impact of prison-based gerrymandering would be greatly reduced if state and county legislatures refused to credit prison districts with the incarcerated population.

THEREFORE, BE IT RESOLVED, that the NAACP reaffirms the 2009 resolution on ending prison-based gerrymandering; and

BE IT FURTHER RESOLVED, the NAACP will continue to advocate to the United States Congress, the United States Department of Commerce and to the public that the Census count incarcerated people as residents of their last home address; and [...]

BE IT FURTHER RESOLVED, that the NAACP concludes that until the Census Bureau counts incarcerated people as residents of their homes, the fundamental principle of one person one vote" would be best satisfied if redistricting committees refused to use prison counts to mask population shortfalls in districts that contain prisons; and

BE IT FINALLY RESOLVED, that the NAACP advocate that the prison population census count not be used in any legislative district at the local, state and federal level.