

Primer for reporters on redistricting & prison gerrymandering

Who should use this primer: Reporters covering county or municipal redistricting in jurisdictions that contain prisons.

What's at stake: Counties and cities that contain large prisons must decide if the people who live immediately adjacent to a prison should receive more political influence than everyone else. Prisoners are counted by the Census as residents of the prison location even though they aren't county residents. Luckily, more than 200 counties and cities across the country refuse to allow prison counts to distort their districts; but many others fail to notice or avoid the problem.

Will your local government allow an obscure Census Bureau practice to change the outcome of all future legislative decisions?

By Aleks Kajstura

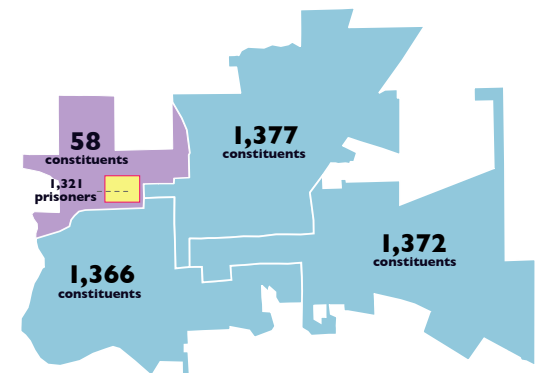
Right now is the time when counties and other local governments must engage in the once-per-decade redistricting process in order to ensure that all districts contains equal populations. Redistricting ensures that each resident will have the same access to government, regardless of where she lives.

But sometimes the population data used to draw the districts does not accurately reflect the population in the county, and democracy suffers as a result. The Census Bureau's policy of counting people in prison as residents of the prison location creates serious problems for democracy in rural areas.¹

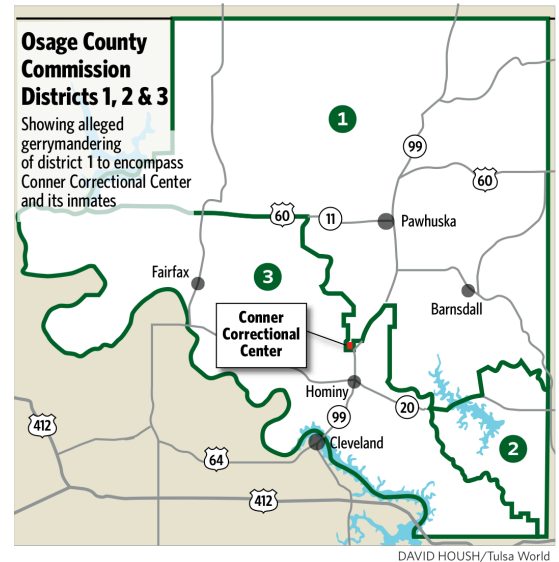
Prison gerrymandering is the practice of counting incarcerated persons as "residents" of a prison when drawing legislative districts in order to give extra influence to the districts that contain the prisons. The U.S. Constitution requires that election districts be roughly equal in size, so that everyone is represented equally in the political process. But prison gerrymandering distorts our democracy by artificially inflating the population numbers — and thus, the political clout — of districts with prisons, while diluting the political power of all other residents in the county or municipality.

With redistricting underway, communities with correctional facilities must choose between correcting the redistricting data received from the Census Bureau or diluting the votes of their own constituents. While the national media tends to focus on prison gerrymandering at the state level, the problem is actually most dramatic at the county and municipal level, where a single prison can make up the majority of a district.

City Council Wards in Anamosa, Iowa, 2002



Ward 2 is almost entirely incarcerated so the actual residents of the ward receive 25 times the political influence of the other wards' residents.



District 1 in Osage County Oklahoma goes out of its way to include a large prison. The prisoners come from all over Oklahoma, but the prison itself is technically within Hominy City limits in District 3.

¹ This primer uses the generic words "commissioner", "district", "legislature", "board" and "county" but the principles here apply to all population-based electoral systems, including weighted voting and multi-member districts for counties, cities, towns, school boards, etc. See some examples: <http://www.prisonersofthecensus.org/toolkit/section1.html> and don't hesitate to contact us for help.

Many local officials are not aware that:

- Most state constitutions or state election law statutes declare that a person in prison remains a resident of their pre-incarceration address.
- When prisoners are allowed to vote, they are generally required to do so by absentee ballot at their home address.
- Adjusting Census data is common, and it is legally permissible under federal law.
- More than 200 rural counties and municipalities that contain prisons already exclude the prison population from their local districts. And 11 states have passed legislation requiring that state legislative districts be based on redistricting data adjusted to count incarcerated people at their home address.
- In 2020, the Census Bureau will publish prison population data in each state's redistricting data file to make these adjustments easier to do than ever before.
- Federal or state funding is not affected by how counties draw their local districts.

Most communities that engaged in prison gerrymandering after the last Census did not do so deliberately.

Questions about local redistricting:

- Is the county or city planning to include the prison population when redistricting?
- Is the local government aware that the Census Bureau will publish a "Group Quarters" table in each state's redistricting data file, which will contain prison populations, so that counties can more easily identify the prison populations in the redistricting data?
- Does the county intend to draw one or more districts to allow minority voters to elect the candidate of their choice? And if so, is the county making sure not to confuse the actual and incarcerated populations?

Why this matters: In 1986, Somerset County Maryland agreed to create a majority African-American district to settle a Voting Rights lawsuit, but for two decades, the district was unable to elect an African-American because the district included the non-resident prison population which could not vote in the district. An effective African-American district could have been drawn if the prison population had not been included in the population count.

- If the local government cites a state law that requires them to use the prison population when redistricting, do other jurisdictions in the state disregard that law?

"I don't know that I represent [the prisoners].... No one's called me about a pothole."

—Sumter County Florida Commissioner Randy Mask, whose district includes a large federal prison complex. *Daily Commercial*, March 2, 2011



"Persons incarcerated in state and federal correctional institutions live in a separate environment, do not participate in the life of Essex County and do not affect the social and economic character of the towns.... The inclusion of these federal and state correctional facility inmates unfairly dilutes the votes or voting weight of persons residing in other towns within Essex County...."

Essex County New York Local Law Number 1 of 2003



"The study found ... 59 percent of Dodge [County, Wisconsin's] 31st District ... are prisoners. In these districts, constituents get double the electoral power of other voters. James Layman, the Dodge 31st supervisor, who describes himself as a conservative-leaning independent, says the inequality should be addressed. **'I think that's a false presentation because I don't represent those people,'** he says of the prisoners."

—"Fuzzy Math: Is the Census Bureau creating unfair politics in Wisconsin?", by Evan Solochek, *Milwaukee Magazine* March 2008



Things to be aware of:

- When the Census Bureau releases each state's redistricting data files, it will include a Group Quarters population table (prisonersofthecensus.org/technicalolutions2020.html) that contains the number of people in correctional facilities for each census block. Within a few days of each state's file release, we'll make that data easier to use, with a Google maps interface and ESRI shapefiles, at prisonersofthecensus.org/data.
- As of June 2021, 11 states had passed legislation requiring the adjustment of redistricting data to count incarcerated people at their home addresses for purposes of state-level redistricting.
- Typically, where a state has passed such state-level legislation, counties and municipalities can use that same dataset for drawing their own local government districts.
- Either through legislation or Attorney General guidance, at least ten states (California, Colorado, Connecticut, Maryland, Michigan, Mississippi, New Jersey, New York, Tennessee, and Virginia) also encourage or require local governments to make these adjustments as well.
- In a handful of states, there are state constitutional provisions, statutes, or attorney general opinions that require or appear to require counties to include prison populations when redistricting. These authorities are in conflict with federal standards of equal representation.

Resources:

- Guide to ending prison gerrymandering, written primarily for state legislators, but addresses local governments as well: prisonersofthecensus.org/news/2020/03/05/six-brief/
- List of counties and municipalities known to have excluded prison populations after the last Census: prisonersofthecensus.org/local/
- The Prison Policy Initiative has written county commissioners and city councilors in hundreds of counties and cities to tell them about the problem of prison gerrymandering and the solutions. Copies of the letters are available on request.
- **Preventing Prison-Based Gerrymandering in Redistricting: What to Watch For** is a guide for redistricting advocates, shadow commissions, and the media on avoiding prison gerrymandering. Written for the 2010 redistricting cycle, it remains a good starting point for the larger historical context of prison gerrymandering in local redistricting. prisonersofthecensus.org/news/2011/02/23/preventing/
- **Fixing Prison Gerrymandering After the 2010**

“... [N]o person shall be deemed to have gained or lost a residence, by reason of his or her presence or absence ... while confined in any public prison.”

New York State Constitution Article II §4. British common law and virtually all states define residence as the place a person chooses to be without a current intention to go elsewhere. Most states (Alabama, Arizona, California, Colorado, Connecticut, District of Columbia, Hawaii, Idaho, Maine, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Mexico, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Vermont, and Washington) have explicit constitutional clauses or statutes similar to that in New York.



“[C]ounting prisoners as residents of the towns in which they are incarcerated is counterproductive....”

Rep. Jennifer Benson D-37th Middlesex, Massachusetts. Her district contains more incarcerated people than any other in the state.



“The Tombs [Prison] is not a place of residence. It is not constructed or maintained for that purpose. It is a place of confinement for all except the keeper and his family, and a person cannot under the guise of a commitment, or even without any commitment, go there as a prisoner, having a right to be there only as a prisoner, and gain a residence there.”

New York State's highest court in the 1894 case of *People v. Cady* 143 N.Y. 100.

Census: A 50 State Guide provides information on how each state defines residence for incarcerated people and how the prison miscount harms state/local democracy in each state. prisonersofthecensus.org/50states/

- For a detailed discussion of other redistricting issues and the merits of various reform proposals **A Citizen's Guide to Redistricting** by the Brennan Center for Justice is also helpful. brennancenter.org/sites/default/files/2019-08/Report_CGR-2010-edition.pdf
- Website and blog for more information: prisonersofthecensus.org
- Occasional newsletter about prison gerrymandering: prisonersofthecensus.org/subscribe

For more information

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“Inmates under the jurisdiction of the Mississippi Department of Corrections ... are not deemed ‘residents’ of that county or locality, as incarceration cannot be viewed as a voluntary abandonment of residency in one locale in favor of residency in the facility or jail. For purposes of the Census, these individuals should have been counted in their actual place of residence. Such inmates should not be used in determining the population of county supervisor districts for redistricting purposes by virtue of their temporary presence in a detention facility or jail in the county, unless their actual place of residence is also in the county.”

[Mississippi Attorney General in Opinion No. 2002-0060 \(2002\).](#)