DEPARTMENT of SOCIOLOGY and CRIMINOLOGY

Rhode Island Reapportionment Commission
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Thank you for the opportunity to submit testimony on the practice of counting incarcerated people as residents of the districts where they are incarcerated, known as prison gerrymandering. As social scientists studying the impact of this practice across the country, we appreciate this opportunity to discuss this problem and how to address it during this redistricting cycle with you.

The Pennsylvania Legislative Redistricting Commission recently cited our PA findings as rationale for reallocating incarcerated individuals to their home communities in the current round of redistricting, which have been published in a leading peer reviewed journal (Remster and Kramer 2018). Our model identifies (1) which districts benefit from prison gerrymandering and (2) which districts suffer and would gain constituents if incarcerated persons were instead counted at their previous addresses (i.e., reallocated).

We are currently analyzing the impact of prison gerrymandering in proposed state maps for this redistricting cycle and have completed studies of Idaho, Michigan, Nebraska, New Mexico, and Texas. We would like to analyze the impact in Rhode Island but have been unable to obtain the necessary address data from the RI DOC so far. As our colleagues at the Prison Policy Initiative noted in their testimony, RI DOC addresses have been successfully used before for a prison gerrymandering case at the local level (*Davidson v. City of Cranston 2016*). Indeed, the DOC's address quality is impressive relative to other states' we are working with. Since we cannot (yet) use our model to examine the impact of prison gerrymandering in Rhode Island, we draw on our findings from Pennsylvania to explain why equal representation Rhode Island likely hinges on reallocating incarcerated persons.

We chose to study Pennsylvania because it represents an average test case. It is similar to the overall U.S. overall in its racial demographics, urbanicity and rurality, average district size (~60k), and incarceration rate. In brief, we find that prison gerrymandering affects districts across the state of Pennsylvania, it shifts representation in a racially unequal manner, it is neither partisan, nor a simple urban versus rural divide, and it is relatively easy to reallocate state prison populations without significantly delaying the Commission's redistricting timeline.

In our research, we assessed the extent to which representation in Pennsylvania State House districts would be impacted if incarcerated persons were reallocated under the current maps. We removed individuals incarcerated in state, federal, and county facilities, and reallocated those who were in state and county facilities. We did not reallocate individuals in federal facilities since most are from out of state. We are happy to detail our methods for interested parties. Before turning to our findings, we emphasize that our analyses provide conservative estimates of the effect on incarceration on representation. Why? Because we did not have access to confidential pre-incarceration address data. If we had had access to that data, we are confident that prison gerrymandering would have an even larger impact on PA House districts. In other words, our estimates are likely underreporting the significant impacts

on specific communities across the state. Fortunately for this Commission, pre-incarceration address data are available for your use in redistricting, allowing you to avoid such estimation techniques and simplify reallocation.

We found that, for Pennsylvania as a whole, if—all else equal—incarcerated people were reallocated, *four districts became legally too small* using the standard 5% cut-off for district size established by the courts to define equal representation. For example, District 150 lost over 5,000 individuals in our hypothetical scenario because it contains a state prison and county jail: that's nearly 10% of its population. Without those facilities, the district is too small to be a district.

Those four districts are the few "winners" of prison gerrymandering—each contains a large prison and/or jail, which artificially inflates their size with people who are not from that area and would not be there if they were not imprisoned there on Census Day. These districts also appear more racially diverse than the reality, because Black and Latinx Americans are disproportionately incarcerated. Overall, we found five PA districts where more than half of their non-white population were only there because they were incarcerated.

On the other hand, we found that *four districts would grow to be legally too large* to qualify as of equal size using that same threshold. Together, those 4 districts contain roughly 264,000 Pennsylvanians, which means that *at least* 264,000 residents are legally underrepresented because of prison gerrymandering today. Of those 264,000, over 100,000 are Black and live in Philadelphia in three districts—that's approximately 20% of Philadelphia's Black population, who live in districts that only met the district size cut-off during redistricting because many residents were counted elsewhere at the time.

One other major takeaway was that ending prison gerrymandering did not disproportionately hurt one political party over another under PA's current maps. Two of the four House districts we identified as too big are represented by Democrats and two by Republicans. There also wasn't a clear urban versus rural divide in our analyses.

Although the four districts which became too big are generally located in more urban areas, they also include areas with smaller cities and towns that have high rates of incarceration. And District 150 that I mentioned a moment ago as becoming too small, is in a suburban area. In fact, overall, urban areas did not always gain population from rural districts. Many rural districts without a prison actually gained representation from other rural districts that happened to have a prison. This is because most people, including residents of rural areas, do not live near a prison; there are only 20 some state prisons and 203 districts. **As you know, Rhode Island has far fewer facilities. Without addressing prison gerrymandering, residents of the district which contains the Cranston facilities will likely have more political power than the rest of Rhode Islanders. That inflated power is at the expense of others'.**

Overall, prison gerrymandering distorts representation by strengthening the political voices of Pennsylvanians who live near a prison while simultaneously weakening the voices of residents who live near high crime areas. Counting incarcerated people where they are imprisoned affects entire communities and towns from which large numbers of people are being incarcerated. And with patterns of residential segregation, prison gerrymandering does so in a racially unequal way in Pennsylvania.

You might be wondering why most of us only recently heard of prison gerrymandering. While the problem has always existed, how incarcerated people were counted only recently began to impact political representation for two reasons. It was not until the 1960s that the concept of one person, one vote was codified into our redistricting process and then the extraordinary growth of the American penal system only began in earnest in the 1980s—previously the incarcerated population was far smaller—peaking in the early or mid-2010s, depending on the state.

The Census Bureau's administrative policy of counting people in prison (i.e., the usual residence rule) was implemented over two hundred some years ago. The U.S. population has changed a lot since then. For instance, very few people attended college or served in the military overseas during the first few censuses, relative to today, and the Census responded accordingly by changing how those populations are counted. However, the Census offers to reallocate incarcerated people for states, for a fee if states supply pre-prison addresses, which might be of interest to future commissions.

As social scientists, we see no reason to delay tackling the problem. Thirteen states have either already addressed prison gerrymandering or are in the process of doing so with the 2020 census and one has decided to delay until 2030, including via state redistricting commissions in Montana and Pennsylvania. California's Commission voted itself to proceed with reallocation after the legislature encouraged but did not require it.
Though the reallocation process varies a bit by state, these states have all reallocated incarcerated people for representation purposes only (not funding). Most funding formulas are too specific to be impacted by a change to total population counts and prison facilities are generally self-sustaining (i.e., they don't use local services). If inequality exists in who pays for resources that a state prison consumes, such as road maintenance, then cost-sharing adjustments should occur. American representation is based on total population, not how/who pays for services.

In closing, the Rhode Island DOC's addresses are *far superior* to counting individuals where they are incarcerated. Making data adjustments to census aggregation is part of every redistricting cycle and this is no different. The actual adjustment is a straightforward task that would not risk any individual's privacy in doing so, nor significantly delay the Commission's timeline. We strongly encourage the Commission to consider solving the inequities in representation that counting incarcerated people in prisons instead of their home addresses causes. We would be happy to discuss our data, methods, and findings further with the Commission, as well as reallocation strategies using existing DOC address data.

Respectfully,

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Appendix: Reallocation Overview

The first step in reallocating incarcerated people involves determining how to address imperfections in the DOC's addresses. Note: imperfections in some people's previous addresses do not justify continuing to misallocate others—that's something the state can work to improve for future redistricting cycles. This was Maryland and New York's approach during the last redistricting cycle (2011), which the Prison Policy Initiative also recommends. Many address errors are due to simple data entry errors which can be resolved by consulting, for instance, the U.S. Postal Service zip code locator, maps of municipal boundaries and zip codes, and Census files. Each of these checks should be documented and done systematically.

For people with missing addresses, other data sources can be consulted such as pre-sentence investigation reports or other court records. Afterward, people with unusable addresses such as post-office boxes, the facility address, out of state addresses, or no address could either be (1) removed from the count where they are incarcerated and counted as state residents with no geographic affiliation (e.g., Connecticut), similar to how the Census counts military personnel stationed abroad at their home state of record, or (2) counted where they are incarcerated. Maryland and New York's already-in-use protocols serve as valuable examples for commissions, mappers, and contractors to consider while making this series of technical decisions.

After that protocol is executed, the pre-incarceration addresses are then matched with their corresponding census blocks, by sending one line of code to a Census Application Programming Interface (API) that the Census offers free of charge and then a second line of code to merge that data with the reapportionment dataset from the Census. Before releasing that data for redistricting, the staff/contractors/consultants should then check that it worked correctly. The only part of this process that should take more than a few hours is the previous address data correction step. Even excluding that step entirely, and reallocating individuals as is, would be a significant improvement in the accuracy of the population data used for redistricting and lessen the impact of incarceration on representation.

Ideally, we would reallocate individuals in county, state, and federal facilities at the same time. However, most people incarcerated in county jails are from that county; county facilities on their own were not enough to substantively affect representation in our analyses of PA. Because most people are incarcerated in state facilities, and because county facilities often do not lead to allocating incarcerated people across district lines, reallocating state facility populations would mitigate the majority of the problem and we would hope that future redistricting commissions would proactively manage the problem before any data is even collected by the Census. States have followed a variety of approaches with regard to reallocating federal and county prison populations, and we would be happy to discuss the options further.