

PRISON POLICY INITIATIVE

**TESTIMONY OF
ALEKS KAJSTURA, LEGAL DIRECTOR
&
ANDREA FENSTER, STAFF ATTORNEY
PRISON POLICY INITIATIVE**

**BEFORE THE
RHODE ISLAND
REAPPORTIONMENT COMMISSION**

OCTOBER 21, 2021

RE: AVOIDING PRISON GERRYMANDERING

Thank you, members of the Reapportionment Commission, for providing the opportunity to submit testimony.

We are the Legal Director of and Staff Attorney for the Massachusetts-based Prison Policy Initiative. For two decades, the Prison Policy Initiative has been leading the national effort to urge the Census Bureau to count incarcerated people as residents of their legal home addresses. At the same time, we work closely with state and local governments to develop interim solutions to the harmful distortion of democracy caused by the Census Bureau's prison count.

The Commission is considering the processing of census data. We urge you to use data from the Census Bureau in conjunction with address information from the Rhode Island Department of Corrections to solve the problem of prison gerrymandering by counting incarcerated people at their home addresses to ensure equal representation.

By counting people at home, rather than at the correctional facility, Rhode Island would ensure that people who live in the state do not have their representation diluted relative to those who live near the

ACI. Counting people at home would allow Rhode Island to finally join the national trend towards solving this problem.

The problem

Currently, the Census Bureau counts incarcerated people in the census block that contains the prison, rather than the census blocks that contain their home addresses. When states redistrict based on this data without adjusting for incarcerated populations, this results in prison gerrymandering: a significant enhancement of representation in districts with prisons, and consequently a dilution of representation for all other residents in all other districts in the state.

In many states, prison gerrymandering affords a small number of districts with prisons 1%–5% more political influence than the residential populations of those districts actually warrant. Even in those states with this modest impact, prison gerrymandering is considered a serious ill that is to be avoided. By contrast, prison gerrymandering is a far larger problem in Rhode Island, where over 15% of House District 20 and 8% of House District 15 are made up of incarcerated people from other parts of the state.

The solution

People should be counted at their home address, where they have ties to their representatives, their community, and—whether or not they can vote—where their political interests are. By adjusting census data, in conjunction with data provided by the Rhode Island Department of Corrections, Rhode Island can follow the lead of California, Colorado, Connecticut, Delaware, Maryland, Montana, Nevada, New Jersey, New York, Pennsylvania, Virginia, and Washington State and end prison gerrymandering by tabulating incarcerated people at home for redistricting purposes. These states in turn had followed the lead of more than 200 counties and municipalities that adjust their own redistricting data to eliminate or reduce the effects of prison gerrymandering in their jurisdictions.

How to implement reform

The Census Bureau recognizes that many state and local governments are making—or wish to make—these types of adjustments. Accordingly, it is making additional data available within the 2020 redistricting data files. In fact, it has published extra data for the *express purpose* of making it easier for jurisdictions to adjust for correctional populations during redistricting processes. States need only combine this data with the home addresses of people incarcerated in the state to produce a redistricting dataset that counts everyone at home.

For the 2020 Census, the facility location and population data necessary to make such adjustments is found in a table (the “P5”) within the PL 94-171 redistricting data. The P5 table reports the number of people in correctional facilities in each block and shows how many were counted as part of the jurisdiction’s population. P5, in conjunction with the state’s own Department of Corrections address data, can be used to count incarcerated people at home.

Most GIS software can do this as an automated process. And the Census Bureau, acknowledging that many states are counting incarcerated people at their home addresses this decade, has instituted a new procedure for states to use the Bureau’s geocoder tool for large batches of addresses.¹

There is still time to adjust the data

By deciding to adjust the data as soon as possible, the Commission would allow time to ensure implementation in the current redistricting cycle. Maryland and New York both started the process well after census day in 2010, with enough time to implement the laws before the 2010 round of redistricting.² These two states’ experiences working under tight deadline pressure to successfully eliminate prison gerrymandering provide powerful

¹ Group Quarters Assistance - The Census Geocoder, Census Bureau (Nov. 4 2019), https://www.census.gov/programs-surveys/decennial-census/about/rdo/summary-files/2020/GQAssistance_CensusGeocoder.html

² Little v. NYS LATFOR, No. 2310-2011 slip op. (NY Sup Ct. Dec. 1, 2011); Fletcher v. Lamone, 133 S. Ct. 29, (June 25, 2012, No. 11-1178) affirming F.Supp.2d 887 (D. Md. 2011)).

evidence that adjustments can be accomplished in time for the 2021 redistricting.³

More recently, Pennsylvania's Legislative Reapportionment Commission voted to adjust census data to count people at home in late August 2021. Within three days of the DOC turning over data, Pennsylvania was able to have 85% of their 44,200 address entries successfully mapped.

Rhode Island is in a similar position of having a fairly good database to start with. In 2015, Kim Brace of Election Data Services mapped the state's home address data as part of his role as an expert witness in the *Davidson v. City of Cranston* case about that city's own prison gerrymandering problems. Even at that time, Brace achieved much better results than some states have after months of data cleanup.⁴ Rhode Island could likely expect similar results from updated data for this redistricting cycle.

Incomplete addresses are expected and not a bar to successful implementation

In the 2010 redistricting cycle, New York faced the problem of incomplete records head on. After several rounds of protocols, New York eventually found mappable addresses matches for 87% of the entries in the database provided to them.

However, the match rate does not need to be even as high as New York's in 2010. In the same cycle, the Maryland Department of Planning, again after months of effort, was able to map only 77% of the entries to addresses. A three-judge panel of the U.S. District Court for Maryland upheld Maryland's redistricting process in *Fletcher v. Lamone*, and found that Maryland had conducted the adjustment in a systematic manner that was documented and "applied in a nonarbitrary fashion."

³ See Erika Wood, *Implementing Reform: How Maryland & New York Ended Prison Gerrymandering*, Dēmos, August 2014 available at <http://www.demos.org/publication/implementing-reform-how-maryland-new-york-ended-prison-gerrymandering>

⁴ Declaration of Kimball W. Brace, para. 37-8 and Attachment H, ACI Inmate Table of Geocoding Results, *Davidson v. City of Cranston*, 837 F.3d 135 (1st Cir. 2016).

Rhode Island's data quality is comparable to Maryland's

Luckily, Brace's 2015 address mapping of the Department of Corrections' database shows that Rhode Island can expect results about as good as those achieved last decade in Maryland. In Rhode Island, Brace found that of roughly 3,700 entries, 2,800 were mappable, meaning that 76% of the addresses were successfully mapped. With updated data that the DOC currently has on hand, Rhode Island could likely achieve at least similar, if not better, results this decade. At worst, Rhode Island would still be using data that is more complete than other states, like Montana or Nevada, neither of which is likely to successfully map more than 60% of their addresses this redistricting cycle.

The redistricting timeline leaves time for ending prison gerrymandering

As we mentioned above, Rhode Island has already seen success with usable address data, and could expect results similar to those in 2015 when geocoding the addresses, the DOC currently has on hand.

Of course, if the Commission chooses to devote even more time and resources to improving Rhode Island's dataset, there is plenty of time left before the maps need to be finalized. The Commission could choose to work with the raw census data now while geocoding is completed and improvements are made in cleaning up incomplete addresses, thus increasing how many incarcerated people can be mapped back to their home communities. Then, once you conclude no more improvements can be made, all that would be left would be to adjust the draft maps in accordance with the completed data.

The least of these options would take only a few days of data processing, and any of these options would be an improvement on the status quo.

Conclusion

We urge the Commission to end prison gerrymandering by counting incarcerated people at home for redistricting purposes. While we should always strive for perfect data to achieve more perfect democracy, the fact is that Rhode Island still has the

opportunity to use imperfect data to make progress far ahead of that of other states. Any adjustments that the Commission makes to redistricting data to count people at home rather than the location of a correctional facility is an improvement over the current census data.

Put simply, we urge you count as many incarcerated people at home as possible in the 2020 redistricting cycle, but not to let the perfect be the enemy of the good.

Please do not hesitate to contact us if we can answer any questions or provide you with additional resources on the successful implementation of the comparable laws in Maryland and New York, or lessons learned from the other states similarly adjusting their data this decade. We thank you for the opportunity to present this testimony.

Sincerely,



Aleks Kajstura
Legal Director
Prison Policy Initiative
akajstura@prisonpolicy.org
(413) 203-9790



Andrea Fenster
Staff Attorney
Prison Policy Initiative
afenster@prisonpolicy.org
(413) 527-0845 ext. 311