How can states address prison gerrymandering?

There are multiple options for states seeking to avoid or mitigate the problem.

PRISON POLICY INITIATIVE

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. This happens 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 districts distorted by correctional facilities; this "prison gerrymandering" skews representation in favor of districts with prisons and other correctional facilities.

Reallocating people to their home addresses

Ideally, states wishing to address the issue of prison gerrymandering will adjust their redistricting data by reallocating incarcerated people back to their home addresses. The Census Bureau has recognized that many jurisdictions now make (or wish to make) such adjustments, so this cycle it will be publishing a special table (the P5) within the PL 94-171 redistricting data; this table reports the number of people in correctional facilities in each Census block. A state wishing to reallocate incarcerated people to their home addresses can use the P5 table alongside home address data from its Department of Corrections to count incarcerated people as residents of their home communities. Importantly, states that reallocate people to their home addresses in this way can amplify the impact of their solution by making the adjusted data available to any local jurisdictions wishing to take the same approach.

So far, eleven states — Maryland, New York, Delaware, California, Washington, Nevada, New Jersey, Colorado, Virginia, Illinois, and Connecticut — have adopted this solution to ensure that districts are drawn with data that counts incarcerated people at home. It should also be noted that modifying the redistricting data in this way does not alter the data kept by the Census or alter the data used by the state, the federal government, or any agency to determine funding to states or local governments.

Using permissible deviations to equalize constituent populations

Where reallocating incarcerated people to their home communities is not feasible, states seeking to address prison gerrymandering sometimes utilize permissible deviations to equalize districts' constituent populations. This approach involves "overpopulating" districts that have correctional facilities in them, and "underpopulating" the districts from which a disproportionate number of incarcerated people come (within traditionally accepted population deviations — typically +/- 5% of the ideal district size). Doing so helps to ensure that the people elected to represent districts that contain correctional facilities actually represent the same number of residents as do the people elected to represent the districts that contain the home addresses of incarcerated people.

Distributing correctional facilities among multiple districts

Alternatively, states that are not able to reallocate incarcerated people back into their home communities can mitigate the harms of prison gerrymandering by distributing correctional populations among many districts, rather than just a few. This can be done by using data from the Census to identify correctional populations and then simply making sure that no district has more than the fewest possible correctional facilities within its boundaries. Massachusetts, for example, has adopted this approach; its legislature has also called on the Census Bureau to implement a more holistic and universal solution.

Only the Census Bureau can provide a permanent national solution

This cycle, the Census Bureau has made an important, if subtle, change to the way it shares the data relevant here: it will publish prison-population data earlier than it has in the past, in order to help states and counties with reallocating or accounting for incarcerated populations during the 2020 redistricting process. The Group Quarters Table will now be included *with* the traditional (PL 94-171) redistricting data, rather than becoming available later. Ideally, the Bureau will go even further in the future by actually counting incarcerated people as residents of their legal home addresses and not as correctional facilities residents. As the Bureau plans for the 2030 Census, it should do everything it can to move toward that solution. 6/28/21