

TESTIMONY IN SUPPORT OF HB 2492 (SB 331): No representation without population

April 17, 2019

Chair Holvey and Rules Committee Members,

I am Dr. Janet Lorenzen, a professor of sociology at Willamette University and I live in Salem. Thank you for hearing testimony on the topic of prison gerrymandering. I am here in favor of HB 2492.

I use census data in my classes on social problems where I talk about everything from poverty to the gender wage gap. In the summer of 2018 I became interested in the 2020 census count due to (1) concern over the citizenship question which could depress the response rate. And (2) the decision, by the census bureau, to continue to count incarcerated people at prison facilities. I am waiting, like everyone, to hear what the supreme court has to say about the citizenship question at the end of June, but I can act now to do something about making redistricting data more accurate and fair.

According to the NAACP's Legal Defense and Education Fund "This practice [of prison gerrymandering] distorts our democratic process by artificially inflating the population count—and thus, the political influence—of the districts where prisons and jails are located. As a result, the voting power of everyone living outside of those districts is weakened." By reforming this system and counting incarcerated people at their last known address for the purposes of redistricting, we get closer to the ideal of one person, one vote.

BACKGROUND

The research ethics of the census bureau, in relation to how they count incarcerated people, has been in question for years. In 2016 Oregon Senators Jeff Merkley and Ron Wyden, and 11 other U.S. Senators, wrote a letter to the U.S. Census Bureau asking them to change their practices and count prisoners in their pre-incarceration residences for the 2020 census. [See the letter here: <https://www.prisonersofthecensus.org/letters/2016/13senators2016.pdf>] In February 2018 the U.S. Census Bureau announced that for the 2020 census they plan to ignore recommendations (from politicians, civil rights advocates, and voting rights advocates) and continue the unpopular practice of counting prisoners in their places of confinement. As of now Maryland, Delaware, New York, and California have gone ahead and addressed the problem by passed bills to end prison gerrymandering. And New Jersey is discussing it as well (a bill just passed in the state senate with bipartisan support).

PROBLEM

To be more specific, the definition of “residency” as where one is living on census day (April 1st, 2020) is under dispute for several reasons:

- 1) The definition conflicts with the Oregon state constitution (and many other state constitutions) which states: “For the purpose of voting, no person shall be deemed to have gained, or lost a residence...while confined in any public prison” (Oregon Const. Art IV § 4).
- 2) Why count incarcerated people as residents of the prison every 10 years when the average time served in many states is far less? The average prison sentence in Oregon is 3 years, in Maryland it is 2.5 years, and the average time served in New York is 7 months.
- 3) Also, the decision for defining residency on one particular day is a practical solution (it may, for example, prevent children of divorced parents from being counted twice), but it is not a legal precedent and can be altered for people who live in large groups (like military bases and prisons).
- 4) Counting incarcerated people at prison facilities does not take into account skyrocketing incarceration rates that disproportionately affect low-income communities of color. When the data are used for redistricting, it pulls political power away from low-income neighborhoods and inflates the representation of places like Salem and Pendleton [<https://www.prisonersofthecensus.org/problem/local.html>].

The two most serious outliers in Oregon, when it comes to the percent of incarcerated people who make up a district, include Salem (2 Wards that are 12% incarcerated people) and a city council district in Pendleton (28% incarcerated people). In order to evaluate these outliers, it’s important to keep the “10% Rule” in mind. One of the goals of drawing districts is to make them the same size with a roughly equal number of people in each district. There are, however, some good reasons to deviate from this ideal; for example, keeping cities, counties, or regions together or keeping communities of interest together. A district that is gaining or losing population can also keep that trend in mind and purposely undercount or overcount the population. Even with these exceptions, districts are expected to follow the “10% Rule” which is usually interpreted as +/-5% of the population of comparable districts.

This table (New York, below) shows an example of a state with 6% deviations for state senate districts. At the local level, the problem becomes more pronounced, with Rome, New York having 49% incarcerated people in one city council district. New York ended prison gerrymandering in 2010. In comparison, some Oregon districts are 2 or 3 times more inflated and, according to one lawyer I consulted, any district that goes over 10% is clearly wrong. So while the problem isn’t extensive in Oregon, it is intensive.

New York Under-Populated Senate Districts after 2000 Redistricting²⁸

Senate District	Senator	Type	Reported Population	Prisoners to remove	Corrected Population	Corrected Deviation
45	Ronald Stafford	Rural	299,603	12,989	286,614	-6.36%
47	Raymond Meier	Rural	291,303	3,563	287,740	-5.99%
48	James Wright	Rural	290,925	5,291	285,634	-6.68%
49	Nancy L. Hoffman	Rural	291,303	2,881	288,422	-5.77%
51	James Seward	Rural	291,482	3,108	288,374	-5.78%
54	Michael Nozzolio	Rural	291,303	3,551	287,752	-5.99%
59	Dale Volker	Rural	294,256	8,951	285,305	-6.79%

(Source: Wood, Erika. "Implementing Reform: How Maryland & New York Ended Prison Gerrymandering." See link at the end of this document.)

WHY ACT NOW?

I am testifying today because the census bureau has offered to help states avoid prison gerrymandering. When the census data are delivered to the states, the census bureau will assist states in adjusting the data so that incarcerated people can be counted at their home addresses for redistricting. This tweak to the census data would not affect the original counts, but it would ensure a more even distribution of political power and representation in Oregon. The 2019 session is the last opportunity the legislature has to make this happen. Here is what the timeline would look like.

TIMELINE

June 2019: HB 2492/SB 331 passes and goes into effect immediately (amendment needed). Department of Corrections is notified that Federal and State prisons have 10 months to supply existing data (on last known address, race/ethnicity, and date of birth) to the Secretary of State.
Note: The bill only asks for existing data and does not ask the DOC to collect new data.

March/April 2020: Census begins collecting information from households and conducts "group enumerations" of people who are incarcerated.
Note: Data is collected as usual, states cannot intervene in this part of the process. This is the data used for federal funding like block grants to the state.

May 2020: Department of Corrections delivers data on incarcerated people to Secretary of State including: last known address, race/ethnicity, and date of birth. Secretary of State's staff has 10 months to look over the data for typos, try to find missing data, and make sure addresses are mappable.

February - March 2021: Census delivers data from original counts to states.
[For the last 2 decennial census counts, data was delivered on March 15 and Feb 23]

March 2021: [HB 2492/SB 331 indicates 14 days after census data is delivered] Deadline for the Secretary of State to prepare data on incarcerated people with correct addresses. Data is sent to census.

April 2021: Census staff map last known address for incarcerated people (called geocoding). When map is returned to the Secretary of State, the data set from the original census count and the new map are reconciled into one redistricting data set (census block tables are adjusted).

Note: This procedure does not affect data published by the census bureau which is based on unaltered, original counts. Federal funding is also based on unaltered, original counts.

April - July 1st 2021: Redistricting finalized by July 1st in Oregon

To reiterate, tweaking the data like this does not affect federal funding to states and it also does not affect the distribution of funding within states. In order to underline this point, I suggest a simple amendment: “The data prepared by the Secretary of State shall not be used in the distribution of any state or federal aid.” [A sample bill available here includes this provision: <https://www.prisonersofthecensus.org/models/example.html>]

WHAT HAVE OTHER STATES DONE?

New York and Maryland have good examples of bills that have ended prison gerrymandering (see table below).

- Both bills include federal and state prisons in their collection of data.
- Both bills mandate that state and local districts use census data that has been adjusted to avoid prison gerrymandering.

The Oregon bill has more in common with the New York bill in this table. You’ll notice that the New York and Maryland bills disagree about congressional districts. Because congressional districts are so large prison gerrymandering has a much smaller effect on them. Currently the Oregon bill does not include congressional districts. Advocates for prison policy reform are much more concerned about state and local districts, so they are not weighing in on that component of the bill, although I think it would be logical to use the same data for all population-based redistricting.

One other difference in the bills is how they count incarcerated people without home addresses or who are from out of state. In most states this is 1-2% of the incarcerated population. The Oregon bill is like the New York bill, and for the purposes of redistricting prisoners are counted “at-large” which means that they are considered in the state, but not in any particular geographic location. Which means that they are not included in any voting districts (that is why the table states “excluded from dataset”). In contrast, in Maryland, people

without addresses or who are from out of state are still counted as residents of the prison facility. So Maryland defaults to the standard census methodology of a group count and includes them in redistricting data. I think it would be most consistent to keep the Oregon bill the way it is and leave this small group out of redistricting.

Summary Comparison of New York and Maryland Reform Laws³⁵

	New York	Maryland
Applies to state legislative districts?	YES	YES
Applies to congressional districts?	NO	YES
Applies to local districts?	YES	YES
Applies to state prisons?	YES	YES
Applies to federal prisons?	YES for subtraction NO for reallocation	YES
Specifies implementing agency?	YES	NO
Directs correctional system to provide specific data?	YES	NO
Out-of-state and unknown addresses allocated?	NO—excluded from dataset	YES—allocated to correctional facility

(Source: Wood, Erika. “Implementing Reform: How Maryland & New York Ended Prison Gerrymandering.” See link at the end of this document.)

AMENDMENTS TO THE CURRENT BILL IN ORDER OF IMPORTANCE

1) The most important amendment to the bill involves how the data may be used. The current language is too broad; the bill states that data “may not be used for any other purpose” (in section 3.2). It is important that redistricting data, in the form of anonymous, adjusted census block populations, be made available to the public. For example, Portland State University does many redistricting projects after each census for cities, community colleges, and school districts. Local districts will be able to easily access the data if it is public. The block-level data also needs to be public to ensure accountability in redistricting.

2) Section 2(5) - This section allows the SOS to seek help from the Census Bureau in doing the data adjustment. The only part of the process that the Census Bureau has said they would help with is mapping out the home addresses of incarcerated people. The State would have to provide a list of addresses to the Bureau, the Bureau would then plot them on a map and give that information back to the State. The Bureau will have no part in the actual data adjustment (“retabulation”, as it is called in the bill).

3) Section 3(2) - The way this is worded it seems to make Section 3 incompatible with Section 2. Section 2 provides that the SOS will create a new data set to be used in redistricting state

districts. Section 3(1) provides that the same data set be used for county and municipal redistricting. But then Section 3(2) states that the adjusted population data "shall be used only when apportioning the state into legislative districts and as described in subsection (1) of this section, and may not be used for any other purpose." That "as described in subsection (1)" refers to the county and municipal districts. So that on its face seems to limit the data to county and municipal use and prohibit state use as described in Section 2. I would recommend amending the Section 3(2) language to "...shall be used only when apportioning the state into legislative districts and as described in Section 2 and subsection (1) of this section, and may not be used for any other purpose."

4) Clarify if counties and municipalities are mandated to use non-prison gerrymandered data (language in the bill is "shall be...data used") or would local governments have to write their own rules to adopt it? There are many local districts in Oregon that elect Board members from proportionally representative districts, including of course cities and counties, but also school districts, community college districts, and even Metro, the Portland area MPO. One way to clarify this would be to use language from the model bill [<https://www.prisonersofthecensus.org/models/example.html>]

5) Add notification to local governments - see model bill section 5e (link above). Essentially, the Secretary of State shall notify local governments to use the data prepared by the Secretary for redistricting purposes.

In conclusion, I want the census to have the most ethical research standards possible. I do not want the census to be a mechanism for the unequal distribution of political power in the state. And whoever ends up on the redistricting committee should have access to the best, and most fair, data possible.

Please do not hesitate to contact me for more information. I can be reached at jlorenze@willamette.edu.

Sincerely,



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Experts consulted:

Professor Charles Rynerson, Portland State University, Population Research Center
Aleks Kajstura, JD, Legal Director for the Prison Policy Initiative

Links:

1. Wood, Erika. "Implementing Reform: How Maryland & New York Ended Prison Gerrymandering." Report authored for Demos public policy organization.

<https://www.demos.org/research/implementing-reform-how-maryland-new-york-ended-prison-gerrymandering>

2. Sample bill on ending prison-based gerrymandering. Authored by the Prison Policy Initiative.
<https://www.prisonersofthecensus.org/models/example.html>
3. Census 2020 Timeline
<https://www.census.gov/library/visualizations/2018/comm/2020-timeline.html>
4. Prison Policy Initiative - fact sheet “The Census Bureau’s Prison Miscalculation: It’s about Political Power, not Funding”
https://www.prisonersofthecensus.org/factsheets/ny/political_power_not_money.pdf
5. Report - “Questions Planned for the 2020 Census”
<https://www2.census.gov/library/publications/decennial/2020/operations/planned-questions-2020-acr.pdf>