

TESTIMONY IN SUPPORT OF HB 3216: No representation without population

February 28, 2023

Chair Fahey and Rules Committee Members,

I am Dr. Janet Lorenzen, an associate 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 3126.** HB 3126 asks the Department of Corrections to determine the last-known address of adults in custody, and submit that information to Secretary of State to adjust population data reported in the federal decennial census to reflect residence status of adults in custody before incarceration.

I became interested in the research methods of census data because I use it in my classes where I talk about everything from poverty to the gender wage gap. I am disappointed by the census bureau's decision to continue to count incarcerated people at prison facilities, but we can change that. **You 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. [Sixteen states have taken some action to address this including:](#) Washington State, Maryland, Delaware, New York, and California.

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

[\[https://www.prisonersofthecensus.org/problem/local.html\]](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.

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, a simple amendment is possible: “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. Advocates for prison policy reform are much more concerned about state and local districts, 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.)

CONSIDERATIONS FOR THE CURRENT BILL IN ORDER OF IMPORTANCE

1) How can the data be used and by whom? The bill should allow for county, municipal, and state use when apportioning the state into legislative districts. 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) 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 (or retabulation).

3) Clarify if counties and municipalities are mandated to use non-prison gerrymandered data 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 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

[\[https://www.prisonersofthecensus.org/models/example.html\]](https://www.prisonersofthecensus.org/models/example.html)

4) 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 Miscount: 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-acs.pdf>