

THE PROBLEM

At present, incarcerated individuals are counted for Census purposes as residents of the towns where they are incarcerated rather than as residents of their home communities. In many states, and particularly those with one or two prominent urban centers, people are often incarcerated in rural locations, far from their home communities. Coupled with the nation's rising incarceration rate¹ and pattern of building prisons in rural areas, this policy has in recent years produced increasingly harmful results. Nationwide, more than 650,000 people leave prison every year, virtually always returning to the neighborhood in which they lived before their incarceration. In Census 2000, the Bureau's counting method inflated the size of rural populations across the country and diminished the size of urban communities, often communities of color, from which many incarcerated people come. The approach also skewed demographic characteristics in both types of locale.

When the Census tallies incarcerated people at prison locations far from home, its picture of the American civic community is distorted, with profound ramifications for our democracy. Redistricting, for example, is driven primarily by the Census tally. Public officials in prison districts now have an incentive to build their districts on the backs of "ghost voters," packing in prisoners who count toward the district size but who, with few exceptions, are not permitted to vote.² This, in turn, gives the officials who profit from the prison economy an outsized voice in incarceration policy, and severely weakens the voting strength of the prisoners' home communities.

Illustrative Examples:

New York

- 91% of prisoners from New York City are housed outside the city.
- 66% of New York State's prisoners are from New York City.
- The following NYC neighborhoods lost more than 15 % of their adult male residents to upstate prisons: Harlem (25.7% of adult males admitted to prison), East Harlem (19.8% of adult males admitted to prison), the Crotona Park neighborhood of the Bronx (19.2% of adult males admitted to prison), Hunts Point (17.4% of adult males admitted to prison), and Mott Haven (16.8% of adult males admitted to prison).
- If prisoners were excluded from the population counts, seven current state congressional districts would be too underpopulated to qualify as districts at all.

¹ Nationally, the number of people in state and federal prison has grown more than fourfold – from 329,821 to 1,598,316 – since 1980. Including local jails, that number jumps to over 2.3 million people. Heather C. West & William J. Sabol, *Prisoners in 2007* (Bureau of Justice Statistics, 2009) available at <http://ojp.usdoj.gov/bjs/pub/pdf/p07.pdf>.

² Every state but Maine and Vermont denies the right to vote to people in prison. See Erika Wood, *Restoring the Right to Vote* (2008) available at http://www.brennancenter.org/content/resource/restoring_the_right_to_vote. In Maine and Vermont, prisoners vote in their home districts by absentee ballot.

Tennessee

- In Lake County, 88% of the reported population of one County Commissioner district resides in a local correctional facility. As a result, every 3 residents in this district have the same political clout as 25 residents elsewhere.
- In three other state legislative districts with correctional facilities, 21, 31, and 41 residents, respectively, have as much electoral sway as 100 residents of the communities without prisons.

Michigan

- Wayne County, which includes the city of Detroit, is the county with the greatest number of residents incarcerated in another county. In 2000, the Census Bureau counted nearly 10,000 incarcerated Wayne County residents in other counties.
- In some rural counties up to 13% of the resident population are incarcerated individuals who come from communities in other parts of the state.

Changing the rules to count prisoners at home would eliminate the skew. Under this new policy, legislative districts would accurately reflect the voice of the home neighborhoods. Furthermore, federal and state block grants keyed to the Census would flow more readily to those home communities, which are overwhelmingly concentrations of poor and minority citizens.

Applying the residency rules in this way is nothing new to the Bureau. It counts other temporarily absent populations, like military personnel stationed on ships, as residents of their home states, and counts boarding school students as residents of their parent's addresses.

Immediate action can help to correct the existing skew without jeopardizing Census operations. At this late date, we do not aim to change any of the procedures used to collect information in the 2010 Census. Two proposals outlined below would aim to change the information collected by future Censuses, but planning for that change requires action now. At the same time, even with existing information, a simple change in the way redistricting information is provided would yield immediate impact in the states when district lines are redrawn in 2011 and 2012.

PROPOSED SOLUTIONS

The Brennan Center believes that incarcerated individuals should be enumerated in their home communities. Because there are some legitimate complexities in determining the appropriate home address, however, it is impractical to achieve this goal nationwide in the 2010 Census, which is only one year away. The Brennan Center proposes the following measures which would lay the necessary groundwork for counting prisoners at home in the 2020 Census.

September 2009 - Survey collection of prison population address information by correctional information systems. Over half of correctional facilities used administrative records as the basis for their enumeration of prisoners in the 2000 Census. In September, the Census Bureau will conduct the Group Quarters Advance Visit (GQAV) in which Census Bureau crew leaders will meet with a designated contact person from every group quarters, including correctional facilities, to verify name,

address, population count, and other information to help plan for enumeration at the group quarters facility. The Census Bureau should use the Group Quarters Advance Visit as a means to survey the state of electronically-maintained prison and jail administrative records containing home address information. A survey of state correctional information systems has not been conducted since 1998, and of federal correctional information systems since 2005. For the Census Bureau to meaningfully consider best practices and methods for implementing a change to the residence where prisoners are counted, it must know whether jail and prison administrative records contain reliable home address information.

April 2011 – Publish a version of the PL94-171 redistricting data file identifying prison populations.

There are two injustices in the way the Census currently counts prison populations: counting incarcerated individuals where they are imprisoned, and refusing to count them in their home communities. Even if it is not immediately possible to determine the home addresses where incarcerated individuals *should* be counted, it is possible to eliminate half of the political and economic skew by ensuring that people are counted as state residents, but *not* where they are incarcerated. At present, the PL94-171 redistricting data file provided by the Census Bureau lumps incarcerated individuals with those who are not imprisoned, without distinction. States, in turn, are dependent on that data, with limited capacity to gather the information necessary to effect their own internal adjustment. If the Census Bureau made no change other than the timely reporting of how many of a census block's inhabitants were incarcerated, states would have the opportunity to adjust its internal population counts in keeping with the state's preferred policy. The Census Bureau should accept the recommendation of the National Research Council and publish a supplement to the PL94-171 data that provides tract- or block-level counts of prisoner populations.³ This data set should be published together with, or immediately following, the publication of the standard PL94-171 data file so that states can use the information in their internal redistricting processes, as they choose.

Late 2011 -- Evaluate new CPEX question.

The Census Bureau should also analyze responses to a new question that will be asked as part of the 2010 Census Program for Evaluations and Experiments or "CPEX," the Census Bureau's major testing program for the upcoming census. An experimental test question included in the 2010 census will ask individuals in a housing unit to indicate whether anyone who lives in the unit has an alternative address. One of the choices specifically offered is that an individual is "in jail or prison," and many families may therefore provide information that an individual in the household is incarcerated. The evaluation of this test question should include an assessment of the utility of using this question as a way to ensure the accuracy of home addresses information for incarcerated individuals.

³ See Daniel L. Cork and Paul R. Voss, Ed., *Once, Only Once, and in the Right Place, Residence Rules in the Decennial Census*, National Research Council of the National Academies, at pp. 246 -248 (2006) available at http://www.nap.edu/catalog.php?record_id=11727.