

Independent Citizens Redistricting Commission
July 15, 2021 Meeting Public Comment

Date of Submission: Wednesday, July 14, 2021 7:40 AM

Method of Submission: Email To <Redistricting@Michigan.gov>

Name: Virginia Preuss

Subject: Resources to help end Prison Gerrymandering in time for this redistricting cycle

Attachments at end of document

Dear MICRC Commissioners,

We are writing on behalf of our organization, Voting Access for All Coalition (VAAC), with key information related to actions that should be taken to correct for the unjust prison gerrymandering that occurs in our state, in time for this redistricting cycle. All three of us spoke to the commission on this topic, as did many others. We are hopeful that you will find the material provided here helpful in your process.

Please find attached

- Map data provided with comments made at June 24 public hearing in Warren.
- Campaign Legal Center paper on why Michigan should end Prison Gerrymandering
- Prison Policy Initiative recommended options for states to address prison gerrymandering.

Please reach out to us with any questions or comments.

We understand members of the commission are interested in taking on this reform, and that there is a need to move quickly as the deadlines draw closer. Many states find themselves in a similar position at this time and we by no means feel it is too late. We would be happy to meet or connect you with people who have technical expertise on the issue of implementing these adjustments.

Sincerely

Danny Jones, VAAC chairman [REDACTED]

Kathi Harris, VAAC vice-chairman [REDACTED]

Ginny Preuss VAAC Secretary [REDACTED]

Sent from Mail for Windows 10

Date of Submission: Sunday, July 11, 2021 2:05 AM

Method of Submission: Email To <Redistricting@Michigan.gov>

Name: johan cawood

Subject: Fair and competitive

Dear commissioners,

You are running out of time to draw maps.

You can use AI to do this for you in seconds. It can produce “fair” maps where you decide which metrics to employ. You would have to commit to a process very soon.

Please check it out.

[Algorithmic Redistricting: Elections made-to-order](#)

Johannes Cawood
Farmington Hills, MI 48336

Date of Submission: Friday, July 9, 2021 3:35 PM
Method of Submission: Email To <Redistricting@Michigan.gov>
Name: Marcia Koppa
Subject: On Redistricting Commissioner Attendance and Responsibilities

Dear MICRC and Staff,

Since last fall, I have been a regular follower of the MICRC. It is apparent that the commission has been attentive, thoughtful and well-guided by their able staff. Meetings and hearings are readily available to the public, offering regular opportunities for them to comment. It is exciting to experience a democratic system at work and doing so well.

However, the last two meetings, at a critical stage in the process, the commission had more than the usual number of members missing. Today they had to suddenly stop the meeting because a commissioner left, causing a lack of quorum. This against the backdrop of the Michigan Supreme Court declining the MICRC's wish to extend its deadline to finish their work. We need ALL the commissioners fully engaged and working together to get this done!

And to the commissioner who opted to do community outreach during the Friday meetings. I did not hear the discussion on this so don't know what the commissioners agreed to do here. But my way of thinking is if something is good for one person to do, then it's good for all. What if all the commissioners decided that they would not attend Friday meetings for 3 weeks? What affect would that have in their progress? And furthermore, is it fair to all? Aren't all commissioners getting paid the same?

Thank you and keep up the great work that you are doing. You are making Michigan proud!

Marcia Koppa



Prison Gerrymandering in Michigan Why Michigan Should End This Practice Now

BACKGROUND

For the purposes of redistricting in all state-level elections, Michigan counts incarcerated people at their place of confinement rather than in their home communities. This counting method is known as prison gerrymandering, and it distorts democracy.

Because prisons are often located far away from the home communities of incarcerated people, prison gerrymandering creates a system where prisoners are “represented” by officials who have no ties to them, their communities, or their interests, and who they cannot vote for. Prison gerrymandering also artificially inflates the voting strength of those who live in districts with prisons, while disempowering communities where the incarcerated individuals are from. This system not only directly hurts the 64,000 state residents who are incarcerated across Michigan,¹ it also disfigures every political district in the state and creates inaccurate population data for research and planning purposes. When one district has its numbers artificially inflated, other districts suffer. This distortion often disproportionately affects urban communities and communities of color. And, because districts are drawn decennially, these skewed population counts are locked in place for the next decade. While Michigan has addressed this problem at a local level through legislative reform, the legislature has not addressed this issue in state and federal legislative redistricting.

This year, Michigan’s Independent Redistricting Commission has an unprecedented opportunity to address this issue. Under Michigan’s new redistricting process, the Commission will be able to not only mitigate the harms of prison gerrymandering, but abolish it entirely in state-level elections in 2021 and beyond.

The Commission is also bound to consider feedback from the public as it draws its maps. This memorandum is intended to provide you with the information you need to engage in the public comment process to urge the Commission to abolish prison gerrymandering in Michigan. Please do not hesitate to reach out to us if you have questions or if we could be of any further assistance.

THE KEY TAKEAWAYS

I. Michigan’s new Independent Redistricting can take action to end prison gerrymandering in state-level elections during 2021 redistricting.

Michigan’s state-level legislative redistricting process will be managed by Michigan’s Independent Redistricting Commission for the first time this year. This development not only provides Michigan with

¹ *Michigan Profile*, Prison Policy Initiative (2018), <https://www.prisonpolicy.org/profiles/MI.html>.

an opportunity to end partisan gerrymandering, but to end *prison* gerrymandering in these elections as well.

The Commission must use the decennial Census data it receives from the U.S. Census Bureau as its starting point for its legislative redistricting.² That said, in addition to the decennial Census data, the Commission also has the discretion to consider other data as it drafts its maps,³ including decennial Census data that has been adjusted to correct for the distortions of prison gerrymandering that are built into the U.S. Census Bureau’s decennial Census data product (“corrected decennial census data”). Election Data Services, the consultants retained by the Commission for redistricting and line drawing technical support, stated that the “preparation and quality control of Census Data including addressing necessary population changes as related to [] prison facilities” was within the scope of the services they would provide.⁴ The Commission also can make its own rules of procedure, which could include mandates to consider the impact of prison malapportionment on any draft maps or to make corrected decennial census data available to each commissioner, should they want to use it.

Using corrected decennial census data that does not engage in prison gerrymandering also directly supports one of the criteria that the Commission must abide by in proposing and adopting its maps, specifically that the “[d]istricts shall reflect the state’s . . . communities of interest,” which “may include, but shall not be limited to, populations that share cultural or historical characteristics or economic interests.”⁵ One of the primary problems with prison gerrymandering is that it removes imprisoned people—who are disproportionately people of color and from urban areas—from their communities of interest and places them in the whiter, more rural districts where prisons are most often located. By drawing maps using corrected decennial Census data, the Commission will be able to take a meaningful step towards protecting the representational interests of these two distinct communities.

II. If Michigan fails to act now, the harm will be severe and long-lasting.

If Michigan does not change this system before 2021 redistricting is complete, about 64,000 incarcerated Michigan residents will be counted in the wrong place, distorting state and local democracy for the next decade.

Prison gerrymandering also disproportionately harms communities of color in Michigan. There are significant racial disparities in Michigan’s prisons: Black people make up 46% percent of Michigan’s incarcerated population, even though they comprise only 14% percent of the total state population.⁶ As a result, prison gerrymandering in Michigan denies many communities of color, where these individuals are from, fair representation.

² Petition for Relief *In re* Independent Citizens Redistricting Commission for State Legislative and Congressional District’s duty to redraw districts by November 1, 2021 (April 20, 2021). https://content.govdelivery.com/attachments/MISOS/2021/04/21/file_attachments/1762471/Petition%20for%20Relief%5B38124%5D.pdf

³ Mich. Const. Art. 4, § 6 (requiring that, before drafting any plan, the Commission “shall receive for consideration written submissions of proposed redistricting plans and any supporting materials, including underlying data” and, after drafting a plan, publish with it “any data and supporting materials used to develop that plan”).

⁴ Election Data Services, *Proposal to the State of Michigan to Provide Redistricting and Line Drawing Technical Support Services* 11 (June 8, 2020) https://www.michigan.gov/documents/sos/MICRC_Election_Data_Services_717054_7.pdf.

⁵ Mich. Const. Art. 4, § 6 (13)(c)

⁶ *Id.* (compiled from 2010 Census, Summary File 1).

III. Abolishing prison gerrymandering has broad popular support.

Michigan has an opportunity to join the national movement to abolish prison gerrymandering before the 2021 redistricting cycle is complete. Since 2010, Maryland, California, Colorado, Delaware, Nevada, New Jersey, New York, Virginia, and Washington State have adopted laws that eliminate prison gerrymandering.⁷ Earlier this month the Connecticut legislature passed legislation that would make Connecticut the eleventh state in the nation to abolish the practice.⁸ And hundreds of county and municipal governments across the country have also rejected prison gerrymandering.⁹

This movement is rooted in broad-based popular support. Just recently, for instance, over 99% of the comments from the public on the 2020 Census supported counting prisoners at their last known residence: “Of the 77,887 comments pertaining to [where] prisoners [are to be counted], 77,863 suggested that prisoners should be counted at their home or pre-incarceration address.”¹⁰ Michigan should enact this popular reform.

IV. This reform is administrable, low-cost, and lawful.

Eliminating prison gerrymandering is administrable and low-cost. Approximately a dozen states have already affected this reform, including Maryland and New York, which effectively implemented it during the 2011 redistricting cycle.¹¹ These states can all provide Michigan with best practices and clear procedures to follow as it considers how best to correct for prison malapportionment in its own decennial Census data.

Enacting such a system should be especially easy in this case because Michigan has already successfully passed and implemented legislation to prevent local governments from engaging in state prison gerrymandering.¹² These laws prevent counties and municipalities from including anyone in a state institution who is not a resident of the city or county in the population count for redistricting.¹³ That means that corrective residential data—i.e. data that compiles the free-world residences of people incarcerated in each state prison—already exists, so election officials merely need to put it to use in the context of ending prison gerrymandering statewide.

This process would be even less complicated for statewide (as opposed to local) elections. A statewide agency—the Michigan Department of Corrections—runs the state prisons that collect the data necessary to count incarcerated individuals at their last address and could easily provide this information to

⁷ *Momentum Is Building to End Prison-Based Gerrymandering*, Prison Policy Initiative (2020),

<https://www.prisonpolicy.org/graphs/momentum.html>.

⁸ Connecticut S.B. 753 (2021),

https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill_num=SB00753&which_year=2021.

⁹ *Local Governments that Avoid Prison-Based Gerrymandering*, Prison Policy Initiative (Jan. 7, 2019),

<https://www.prisonersofthecensus.org/local/>.

¹⁰ Final 2020 Census Residence Criteria and Residence Situations, 85 Fed. Reg. 5,526 (Feb. 8, 2018),

<https://www.federalregister.gov/documents/2018/02/08/2018-02370/final-2020-census-residence-criteria-and-residence-situations>.

¹¹ See Erika L. Wood, *One Significant Step: How Reforms to Prison Districts Begin to Address Political Inequality*, 49 U. MICH. J. L. REFORM 179, 193, 198-99 (2015) (citing *Correctional Facility Locator*, Md. Dep’t of Pub. Safety & Corr. Servs., <http://www.dpscs.state.md.us/locations/prisons.shtml>).

¹² *Michigan Spares Most Counties and Municipalities from Prison-based Gerrymandering*, Prison Policy Initiative (Sept. 26, 2011), <https://www.prisonersofthecensus.org/news/2011/09/26/michigan-laws/>.

¹³ Mich. Comp. Laws §§ 46.404(g), 117.27a(5). This corrective approach is not comprehensive because it does not address the more than 5,000 individuals who are incarcerated in federal prisons. While addressing federal prisons can require a slightly different approach, other states have developed straightforward ways of including those facilities in corrected redistricting data that Michigan could rely on in its own efforts.

Michigan's Independent Redistricting Commission to correct the census data used for redistricting. And, as noted above, the Independent Redistricting Commission has already retained a redistricting and line drawing technical support consultant who has the expertise required to make the necessary corrections in the decennial census data.

This system would also benefit the Michigan counties and cities that are already barred from engaging in prison gerrymandering by statute. Having the Independent Redistricting Commission take on responsibility for creating a data product that corrects for the distortions of prison gerrymandering at the state level means that localities will also have easier access to accurate, adjusted data they can rely on for their own redistricting processes.

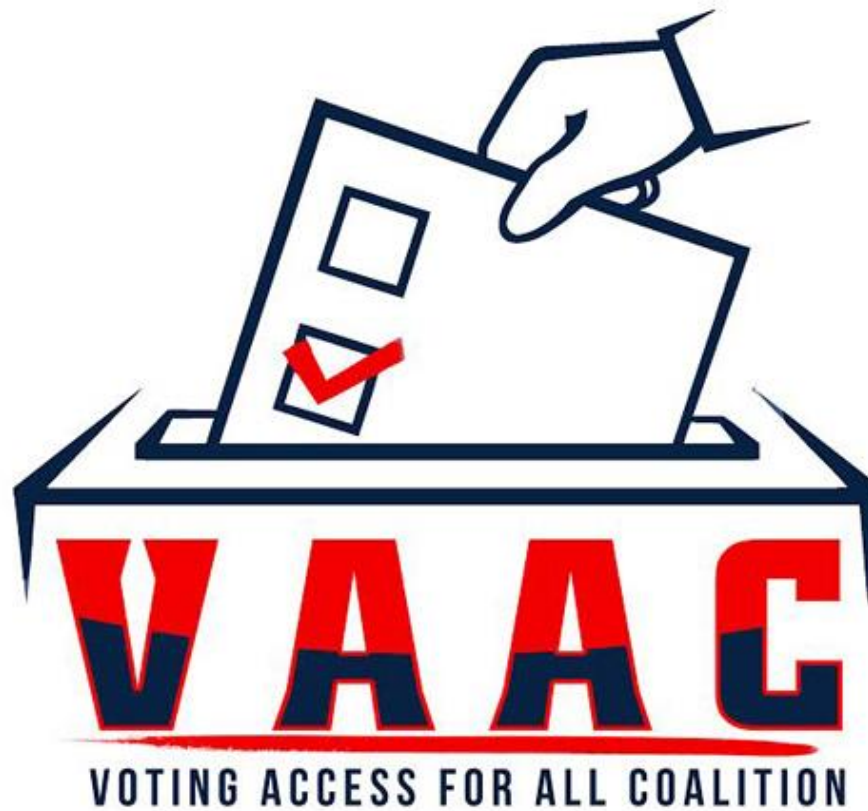
This reform is also on strong legal footing. The statutes that abolished prison gerrymandering in states that have already implemented this reform have been upheld both in state¹⁴ and federal courts, including the U.S. Supreme Court.¹⁵

* * *

For more information, contact Dana Paikowsky (dpaikowsky@campaignlegalcenter.org) or Jade Ford (jford@campaignlegalcenter.org) at the Campaign Legal Center.

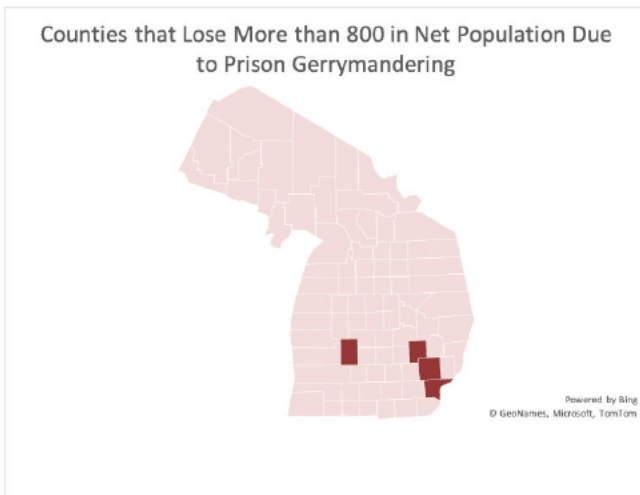
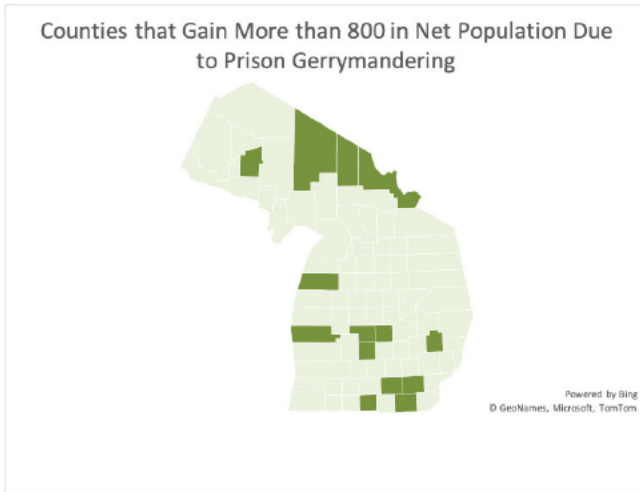
¹⁴ Little v. LATFOR, No. 2310-2011 (N.Y. Sup. Ct. Apr. 4, 2011); Little v. LATFOR, SSD 3 (N.Y. Ct. App. Feb. 14, 2012) (denying plaintiffs' direct appeal to the New York Court of Appeals, the highest state court in New York).

¹⁵ Fletcher v. Lamone, 831 F. Supp. 2d 887, 891 (D. Md. 2011), *aff'd*, 567 U.S. 930 (2012).



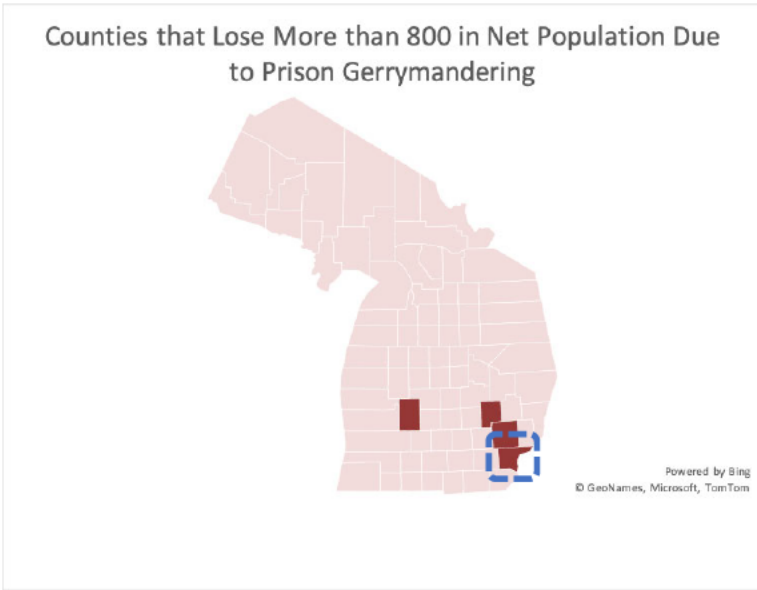
June 24, 2021 Testimony to
Michigan Independent Citizens Redistricting Commission
At MRCC Banquet Center in Warren Michigan

Prison Gerrymandering Will Distort Michigan's 2021 Redistricting

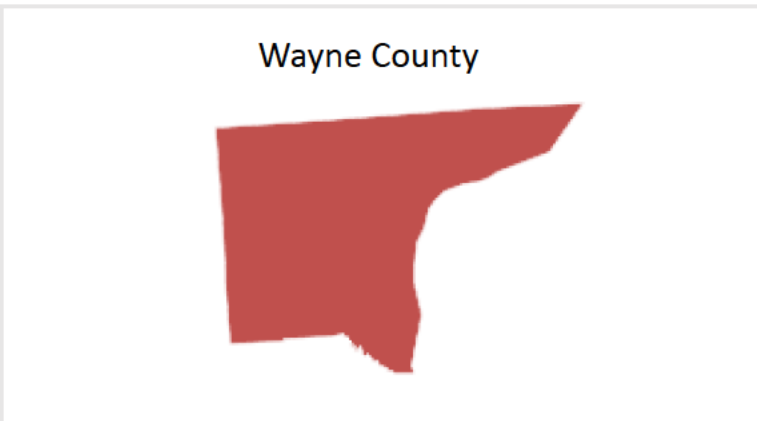


- Prison gerrymandering artificially inflates the voting power of counties with prisons while disempowering counties where incarcerated individuals are from.
- This is because in a system with prison gerrymandering the state counts incarcerated people at their place of confinement rather than in their home communities for the purposes of redistricting.
- Prison gerrymandering creates a system where prisoners are “represented” by officials who have no ties to them, their communities, or their interests, and who they cannot vote for.
- In Michigan, prison gerrymandering not only directly hurts the 40,000 state residents who are incarcerated in state prisons; it also distorts every political district across the state.
- Based on the best publicly available data, there are 10 counties with materially artificially inflated population counts, and 4 counties with materially artificially diminished population counts.

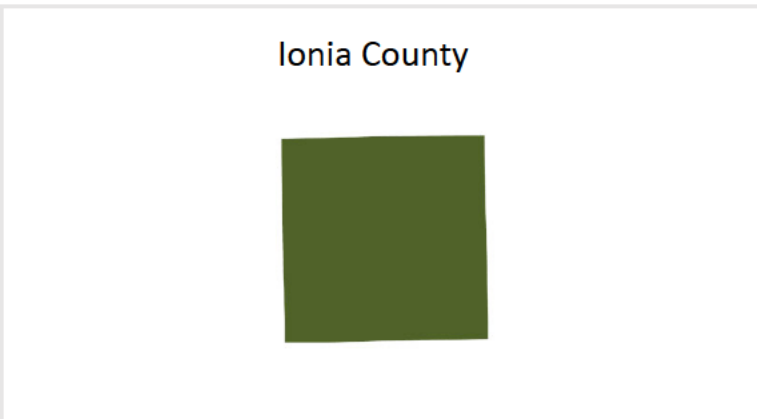
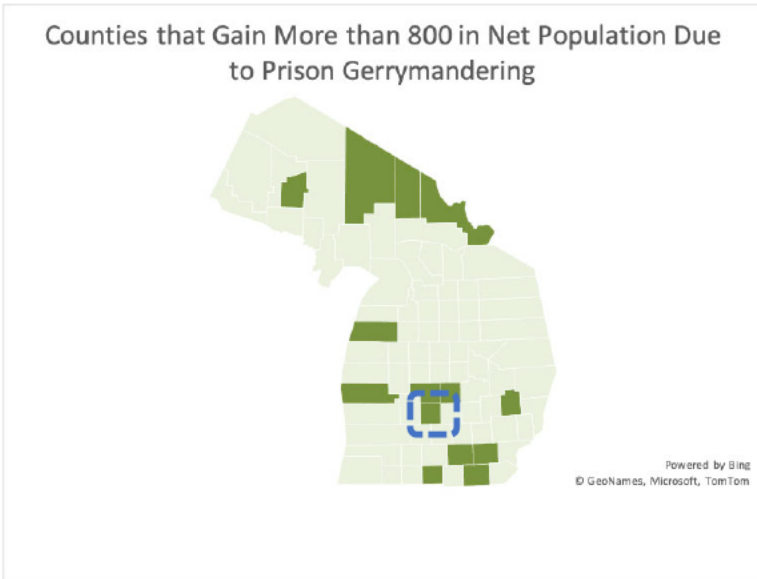
Prison Gerrymandering Harms Communities of Color in Michigan



- Wayne County is one of the counties hardest hit by prison gerrymandering in Michigan.
- Nearly one third of the people incarcerated in Michigan come from Wayne County, even though it only makes up 17% of the state's population.
- Wayne County's population is 38.7% Black, 6.1% Hispanic or Latino, 3.5% Asian, and 2.6% multiracial.



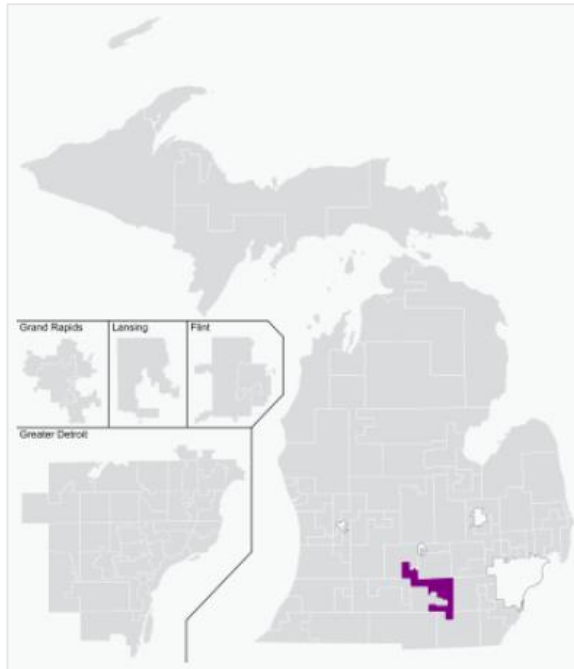
Prison Gerrymandering Inflates the Voting Power of Districts with Prisons, Which Are Often Rural, Predominantly White Areas



- Counties with prisons in Michigan are often rural, predominantly white areas.
- Ionia County has a population of approximately 64,700 people. 92% of the population is white.
- Over 7% of the population of Ionia County is incarcerated in the four state prisons in the county.
- Of the incarcerated population in Ionia County, over 90% are not from Ionia, and the majority are people of color.
- This means that the population of Ionia County is artificially inflated by counting incarcerated individuals (who are majority people of color) where they are incarcerated, rather than in their home communities.

Prison Gerrymandering Inflates the Population of State House of Representative Districts with Prisons

Michigan's 65th State House of Representatives District



- District 65, which includes four state prisons, has a significant incarcerated population: 6,130 people.
- The incarcerated population makes up 6.5% of the total population of the district.
- District 65 is majority white (89%).
- Of the non-white population in the district, nearly 30% are incarcerated in the four state prisons in the district.
- This means that District 65 benefits from an artificially inflated population count due to people of color incarcerated in the district who are not actually from the district and cannot vote there.

Some districts are underpopulated, and the prisons help them meet their constitutional one person one vote requirement.

For example, district 70 is underpopulated and benefits from the fact that 7% its population count comes from state prisons.

Appendix

Data Sources

- Michigan Department of Corrections 2019 Statistical Report, section C. https://www.michigan.gov/documents/corrections/MDOC_2019_Statistical_Report_717026_7.pdf
- United States Census Bureau, Annual County Resident Population Estimates by Age, Sex, Race, and Hispanic Origin: April 1, 2010 to July 1, 2019. Michigan 2019 Data. <https://www.census.gov/data/tables/time-series/demo/popest/2010s-counties-detail.html>
- Pre-Incarceration Home County data was for the prisoner population as of May 2021, received from Senator Jeff Irwin's office.

VAAC Contact Information

- <https://votingaccessforall.org/>
- votingaccessforall@gmail.com

Speakers from VAAC

- Danny Jones, VAAC co-chair, [REDACTED]
- Ginny Preuss, VAAC secretary, [REDACTED]

How can states address prison gerrymandering?

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

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.