During the decennial census, the Census Bureau, state, and local governments have traditionally counted incarcerated individuals as residents of the areas where they are imprisoned, rather than in their home communities. This data is then used for redistricting—resulting in distorted local and state representation and hidden transfers of political power to communities that host prisons. By inflating the apparent size and therefore the political influence of areas with incarceration facilities, prison gerrymandering violates our constitutional right to equal political power based on population size. This problem is especially urgent and harmful in today’s era of mass incarceration and limits the voices and power of communities of color.

Despite advocacy to the change the practice, the 2020 Census will once again count prisoners where they are incarcerated. While the Census Bureau is best positioned to end prison gerrymandering permanently and on a national scale, state action is needed to address this problem in the meantime—particularly ahead of the next redistricting cycle.

As of January 2020, seven states had enacted legislation to prohibit prison gerrymandering and count incarcerated individuals at their last known home address in the state: California (2011), Delaware (2010), Maryland (2010), Nevada (2019), New Jersey (2020), New York (2010), and Washington (2019). Colorado, Michigan, Tennessee, and Virginia have addressed prison gerrymandering at the local level, either by barring or discouraging county and local governments from counting prison populations when drawing local districts (e.g., for town or school board elections).

State legislators have a crucial role in advancing accurate and equitable redistricting that strengthens the voices of marginalized black, white, and brown communities. To help end the harmful practice of prison gerrymandering, the State Innovation Exchange (SiX) and Prison Policy Initiative have put together the following brief with:
- messaging guidance,
- policy design considerations,
- practical lessons on bill drafting, coalition building, and implementation, and
- example legislation.

Source: Prisonersofthecensus.org, Prison Policy Initiative (January 2020)
When talking about prison gerrymandering, legislators should emphasize:

- our constitutional right to equal representation;
- the importance of accurate residency data for accurate redistricting;
- the dilution of political power in communities of color;
- the need for consistency with state definitions of “residency”;
- that this is about fair and accurate representation for all communities—rural, urban, and suburban—who do not happen to host incarceration facilities;
- that this change does **not take funding away** from communities; and
- the urgency of acting before the next redistricting cycle.

For example:

- The 2010 Census counted **more than 2 million people** in the wrong place. Counting incarcerated people at home is a crucial correction that will make redistricting in our state more accurate and equitable.

- Ending prison gerrymandering aligns our state’s redistricting data with our residency laws, legal precedent, and the Census Bureau’s own interpretation of residence. It’s about consistency, accuracy, and fairness. *(Confirm how your state defines “residence” here.)*

  - “The Census Bureau relies on family and community ties to count other people at home (e.g., truck drivers, boarding school students, Congress, military personnel), even when they are away for long periods of time but fails to apply the same rules to incarcerated people.” *(Prison Policy Initiative and Dēmos, Comment on the Census Bureau’s Proposed 2020 Residence Criteria and Residence Situations)*

- Prison gerrymandering deprives communities—especially communities of color—of their constitutional right to equal representation. Our discriminatory criminal justice system incarcerates Latinos and African Americans at **two and five times the rate** of white people, respectively. And, too often, incarcerated people of color are transferred to predominately white areas that bear **no resemblance to their home communities**. When incarcerated people of color are then counted as residents of prison communities for redistricting, it leads to artificial and arbitrary transfers of power that dilute the political influence of communities of color and inflate the power of predominately white, rural areas where prisons are often located.

- Ending prison gerrymandering will not affect the level of funding that communities receive from the federal government. This reform is about accurate redistricting and equal representation for all communities in our state—black, white, and brown.

- Voters across parties and geographies agree on the need to correct prison gerrymandering. A **2011 Quinnipiac University poll** found that 60 percent of New Yorkers favored counting prison inmates as residents of their home districts, including 55 percent of Republicans, 65 percent of Democrats, 56 percent of upstate voters, 64 percent of suburban voters, and 62 percent of New York City voters. *(Just 25 percent of voters overall favored counting incarcerated individuals in prison districts.)*
FREQUENTLY ASKED QUESTIONS

Legislators working on prison gerrymandering should be prepared to answer questions about funding for rural communities, implementation costs, “who suffers,” and “why now.” Review Prison Policy Initiative’s full FAQ list for more talking points.

When states adjust census population data for redistricting, is funding affected?

There is no effect on the distribution of federal or state funds, because all funding programs have their own data sources that do not rely on redistricting data.

If the Census Bureau were to count the nation’s 2 million incarcerated people at home, would funding be affected?

No. While population does play a role in lots of funding formulas, incarcerated populations rarely make a difference. The majority of federal funding is in the form of block grants to states, so it does not matter where in any given state an incarcerated person is counted. Most other funding programs are quite sophisticated, and the funding distributions are calculated in ways that directly or indirectly ignore prison populations. For example, federal funds intended for low-income schools are typically based not on the total population counted for the area but rather on the number of low-income children counted in the census or the number of students in a school’s discounted lunch program. Therefore, a large prison near a school would not increase funding to the school district.

How much would it cost to count incarcerated people at home?

The Maryland Department of Legislative Services estimates the cost of counting incarcerated people at their residential address to about $1.60 per person. Absent federal government action to end prison gerrymandering nationally, these costs would fall to states.

If incarcerated people could vote, would they vote at home or prison?

They would vote by absentee ballot cast in their home district. The two states that allow prisoners to vote (Maine and Vermont) require them to vote by absentee ballot. Most states also have constitutional provisions stating that incarceration does not add or change a residence for voting purposes. Additionally, people in jail often still have the right to vote, and people in jail are usually required to vote absentee using their residential address.

Since incarcerated people can’t vote, who suffers when districts are drawn based on prison populations?

Counting prison populations as if they were actual constituents of the prison location gives a few small communities more political power at the expense of everyone who does not live near a prison. In effect, everyone who does not live in a district that contains a prison has their vote diluted by these artificially inflated populations. In fact, prison gerrymandering is most dramatic in rural, low-population communities that host a prison; there the phantom prison population can account for most of the population of a local government district.

If the census has counted prisoners this way since 1790, why should the process change now?

The Census Bureau’s mission and American demographics have changed drastically in the 229 years since the first census, and the census has evolved in response to many of these changes. The census’s original mission was to count the number of people in each state for purposes of congressional apportionment. It only mattered how many people in each state for purposes of congressional apportionment. It only mattered how many people New York had compared to Pennsylvania, not whether the Census Bureau counted New Yorkers at Attica Prison or in the Bronx.

Times have changed. Not only has the incarceration rate quadrupled since 1980, the Census Bureau’s purpose has broadened considerably. A series of Supreme Court cases in the 1960s established the “one person, one vote” rule, which requires states and localities to redistrict at least once per decade to match evolving population patterns. The Bureau now provides state and local information suitable for use in local redistricting, as well as the data for all kinds of government planning.

Census policy is not fixed; instead it responds to changing needs. When evolving demographics meant more college students studying far from home and more Americans living overseas, census policy changed in order to more accurately reflect Americans’ diverse residences. Today, the growth in the prisoner population requires the census to update its methodology again. But in the absence of a nationwide census policy to count incarcerated people at home, it’s imperative that states fill the void so our redistricting process is fair and accurate.
Which political districts must be drawn using the corrected population data:

Bills should specify whether corrected data must be used for congressional, state legislative, and/or local government redistricting. Ideally, all political maps should derive from the same population dataset that counts incarcerated people at home—eliminating prison gerrymandering at all levels of government and for all district sizes. Local government districts are often the most impacted by prison gerrymandering and should be explicitly required to use adjusted data. (Over 200 counties and municipalities already adjust local redistricting data to avoid prison gerrymandering.)

Who is responsible for implementation:

The agency (or agencies) charged with collecting and adjusting population data will vary by state but should be named in bill language (e.g., Department of Corrections, Secretary of State). Based on early state lessons, experts recommend that legislation specify responsible agencies to avoid implementation delays and confusion. (See Dēmos’s report Implementing Reform: How Maryland & New York Ended Prison Gerrymandering, p. 26.)

How to handle unknown or incomplete addresses:

Legislation should address how to treat incarcerated individuals with unknown, incomplete, or unreported addresses. There are two primary approaches states can follow:

Option 1
An incarcerated person with an unknown address can be allocated to an at-large state unit rather than a specific geography, following the same procedure states often use to count overseas military and federal government personnel.

Option 2
An incarcerated person with an unusable residential address continues to count in the same geographic unit as their correctional facility.

How to maintain residency information on an ongoing basis:

Complete and accurate data is critical to addressing prison gerrymandering. Bills should ideally require the state correctional agency to collect and maintain electronic records of each incarcerated individual’s complete home addresses, race, ethnicity, and a marker if the person is over 18.

How to treat people incarcerated in federal and private facilities:

Legislation should address the existence of federal or private prisons located in-state and require the implementing agency to request data from such facilities. Policy should also specify how to handle incomplete or missing residency reports from prison facilities. (See recommendations on unknown addresses above.)
How to maintain the confidentiality of incarcerated individuals:

Policy should emphasize and offer guidance on collecting and sharing incarcerated individuals’ home address data in a confidential manner.

Census Bureau responds to states’ needs to adjust redistricting data to address prison gerrymandering.

As more states adjust census data to make it usable for drawing equal districts, the Census Bureau has taken some small but helpful steps. For the first time, the 2020 Census will include correctional population data within the main redistricting dataset (the PL 94-171 file).

Identifying the correctional facilities makes the data-crunching easier for states that end prison gerrymandering on their own and will be particularly useful for states with short redistricting deadlines, such as New Jersey. This data will give redistricting officials the census counts of people in correctional facilities at the location of the facility—enabling states to subtract incarcerated people from the prison location and, in conjunction with the state’s own home address data, reallocate them back home for that state’s redistricting.
Bill Drafting: Dēmos’s report, Implementing Reform: How Maryland & New York Ended Prison Gerrymandering, offers helpful guidance to legislators and administrators involved in bill drafting. They write:

“Drafting legislation to address prison gerrymandering can be complicated, because the legislation often has to include changes to the election law, the corrections law and sometimes the executive law. Because of these inherent complexities, it can be tempting to draft legislation that is short and simple as a way to make it easy to understand. But it is important not to omit key details and processes. ... In both New York and Maryland, staff members who implemented the reform laws identified places where the law could have provided more information to properly inform the decisions and judgments they had to make. For example, [staff] identified the phrase “last known residence” to be too vague and provide insufficient guidance on which address should be used. There was also some ambiguity about who was intended to be included in the category “prisoner”—whether it included pretrial detainees, residents of half-way houses and/or juvenile facilities. Similarly, in New York, [staff] explained that the phrase “residential address prior to incarceration” did not provide enough guidance to decide between the various address fields provided [in the correctional agency’s] data. Including a definitions section and providing more specific wording would eliminate some of the guess work and allow for a smoother implementation. [...]”

Early consultation with the technical staff that will be charged with implementing [prison gerrymandering] reform law can help avoid gaps, inconsistencies and unrealistic expectations in the final law. Bill drafters should speak with the technical staff to get a good understanding of what the implementing agency will need to know, and ensure that those who understand the geocoding and adjustment process can share information that will create a thorough and legally sound bill. As part of this early outreach, bill drafters should also contact the correctional agency to discuss its data collection practices and the content and structure of its database. Legislation could require the corrections agency to collect additional data, or maintain its data in a particular format in order to ease implementation later on.”

Coalition & Momentum Building: Designing, enacting, and implementing prison gerrymandering reform requires a strong coalition and buy-in from key stakeholders. Legislators and advocates advancing reform should seek support from a bipartisan coalition of legislators representing urban and rural areas, urban and rural residents, local governments, criminal justice and voting rights advocates, and the state Department of Corrections.

Framing prison gerrymandering as a bipartisan issue that does not seek to harm or disempower rural communities is crucial. Including a bill sponsor who represents a rural area can send a powerful message to that effect. Such coalitions form most easily when you keep in mind that even residents of districts with the large prison populations lose representation to the one district with the largest prison population. In Maryland, prison gerrymandering legislation passed with bipartisan, urban, and rural support. Delaware’s bill passed with bipartisan support in the Senate and unanimous support in the state House.

Implementation: We suggest reviewing Dēmos’s Implementation Report for detailed, technical lessons learned from Maryland and New York, including lessons on timing, data collection, treating unknown addresses, interagency cooperation, legal disputes, and more.
EXAMPLE LEGISLATION TO END PRISON GERRYMANDERING

Below is enacted legislation that ended prison gerrymandering statewide in New Jersey and California. Prison Policy Initiative also developed an annotated model bill on prison gerrymandering in collaboration with a coalition of civil rights, voting rights, and criminal justice organizations.

New Jersey’s legislation requires the state Department of Corrections to maintain an updated digital record of incarcerated individuals’ residential addresses and basic demographic data (beginning in February 2020). This data is de-identified to protect confidentiality and shared with the Secretary of State by May 1 of each census year (as long as the Census Bureau continues to count incarcerated people as residents of correctional facilities). The law also requires the Secretary of State to request residency data from federal correctional facilities in the state. The Secretary must provide corrected population data to the state’s Apportionment Commission by December 31 of each census year. Incarcerated individuals with unknown, unreported, or out-of-state addresses are counted as residents with unknown geographic locations and NOT as residents of prison communities. (Note: New Jersey follows an especially short redistricting timeline, which affected the data delivery deadlines established in this legislation.)

2018 New Jersey Senate Bill 758

AN ACT requiring the counting of an incarcerated individual at the individual’s residential address for legislative redistricting purposes and supplementing Title 52 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. The Department of Corrections shall collect and maintain an electronic record of the residential address of each individual entering its custody starting on the 30th day following the date of enactment of P.L., c. (pending before the Legislature as this bill). At a minimum, this record shall contain the last known complete street address of each such individual prior to incarceration, the individual’s race, whether the individual is of Hispanic or Latino origin, and whether the person is over the age of 18. To the degree possible, the record shall also permit an alternative residential address to be updated, as appropriate. For the purposes of P.L., c. (pending before the Legislature as this bill), the classification of an individual’s race, ethnic origin, and age shall be the same as used by the United States Bureau of the Census for the purposes of Pub.L.94-171 (13 U.S.C. s.141).

2. a. In each year in which the federal decennial census is taken and in which the United States Bureau of the Census enumerates incarcerated persons as residents of correctional facilities, the Department of Corrections shall, by May 1st of that year, deliver to the Secretary of State:

(1) a unique identifier, not including the name, for each incarcerated individual subject to the jurisdiction of the department on the date the bureau completes the federal decennial census for the State;

(2) the street address of the correctional facility in which the individual was incarcerated at the time of the report;

(3) the residential address of the individual prior to incarceration or alternative residential address, if known;

(4) the individual’s race, whether the individual is of Hispanic or Latino origin, and whether the individual is over the age of 18, if known; and

(5) any additional information the secretary may deem necessary.
b. The department shall provide the information specified in subsection a. of this section in such form as the secretary shall specify.

c. Notwithstanding any other provision of law, the information required to be provided under this section shall not include the name of any incarcerated individual and shall not allow for the identification of any such individual therefrom. The identity of each such individual shall be treated as confidential and shall not otherwise be disclosed except as aggregated by census block for purposes specified in section 5 of P.L. , c. (C.) (pending before the Legislature as this bill).

3. The secretary shall request of each agency that operates a federal facility in this State that incarcerates persons convicted of a criminal offense to provide the secretary with a report that includes the information specified in section 2 of P.L. , c. (C.) (pending before the Legislature as this bill).

4. a. For each individual included in a report received under sections 2 and 3 of P.L. , c. (C.) (pending before the Legislature as this bill), the secretary shall determine the geographic units for which population counts are reported in the federal decennial census that contain the address of the facility in which the individual was incarcerated and the residential address of the individual, as listed according to the report. No later than December 31st of each year in which the federal decennial census is taken and in which the United States Bureau of the Census enumerates incarcerated persons as residents of the geographic units in which the correctional facilities are located, the secretary shall report to the members of the Apportionment Commission, established pursuant to Article IV, Section III, paragraphs 1 through 3 of the New Jersey Constitution, that this determination has been completed.

b. For each individual included in a report received under sections 2 and 3 of P.L. , c. (C.) (pending before the Legislature as this bill), if the residential address of the individual is known and located in this State, the secretary shall:

   (1) re-allocate all relevant population counts reported in the census to reflect residential address, as determined under sections 2 and 3, on the date the Bureau of the Census completes the federal decennial census for the State; and

   (2) ensure that the individual is not represented in any applicable population counts reported in the federal decennial census for the geographic units that include the facility at which the person was incarcerated on the day the bureau completes the federal decennial census for this State.

c. For each individual included in a report received under sections 2 and 3 of P.L. , c. (C.) (pending before the Legislature as this bill), and for all persons reported in the census as residing in a federal correctional facility for whom a report was not provided, if the residential address of the individual is not known or not located in this State, the secretary shall:

   (1) re-allocate all relevant population counts reported in the census to reflect that the person resided at an unknown geographic location within the State on the day the bureau completes the federal decennial census for this State; and

   (2) ensure that the individual is not represented in any applicable population counts reported in the federal decennial census for the geographic units that include the facility at which the person was incarcerated on the day the bureau completes the federal decennial census for this State.

5. The Secretary of State shall report the data as determined under section 4 of P.L. , c. (C.) (pending before the Legislature as this bill) to the members of the Apportionment Commission, established pursuant to Article IV, Section III, paragraphs 1 through 3 of the
New Jersey Constitution, not later than the seventh day after the Governor receives the data provided pursuant to Pub.L.94-171 (13 U.S.C. s.141) for this State from the United States Bureau of the Census. The data prepared by the secretary under section 4 of P.L., c. (C.) (pending before the Legislature as this bill), together with data provided by the bureau pursuant to Pub.L.94-171 (13 U.S.C. s.141), shall be the basis of the legislative districts established by the Apportionment Commission. To the greatest extent practicable, districts shall be drawn so as to meet equal population requirements calculated under both data sets. Residences at unknown geographic locations within the State described in section 4 of P.L., c. (C.) (pending before the Legislature as this bill) shall not be used to determine the ideal population of any set of districts or wards.

6. This act shall take effect immediately.

California law directs the Department of Corrections and Rehabilitation to provide the state’s Citizens Redistricting Commission with the last known residential address of each inmate incarcerated in state and federal correctional facilities, except those inmates whose addresses cannot be found or whose last known address is outside of California. Data must be provided between April 1 and July 1 of each census year, beginning in 2020.

**California Election Code § 21003 (Enacted via 2011 CA AB 420 and 2012 CA AB 1986)**

(a) (1) Not sooner than April 1, 2020, and not later than July 1, 2020, the Department of Corrections and Rehabilitation shall furnish to the Legislature and the Citizens Redistricting Commission, in the form of a single electronic file for each database maintained by the Department, information regarding each inmate incarcerated in a state correctional facility on April 1, 2020. For purposes of this section, a “state correctional facility” means a facility under the control of the Department of Corrections and Rehabilitation.

(2) The information furnished by the Department of Corrections and Rehabilitation pursuant to paragraph (1) shall include the following for each inmate:

(A) A unique identifier, other than the inmate’s name or Department of Corrections and Rehabilitation number.

(B) Any information maintained by the Department of Corrections and Rehabilitation about the residential address or addresses at which the inmate was domiciled before the inmate’s most current term of incarceration, including any available information about the date on which each address was added to records maintained by the Department. If the Department of Corrections and Rehabilitation does not have any residential address information for an inmate, the information furnished by the Department shall state that fact.

(C) The inmate’s ethnicity, as identified by the inmate, and the inmate’s race, to the extent such information is maintained by the Department of Corrections and Rehabilitation.

(D) The address of the state correctional facility where the inmate is incarcerated on the decennial Census Day.

(3) In 2030 and in each year ending in the number zero thereafter, the Department of Corrections and Rehabilitation shall furnish, in the form of a single electronic file for each database maintained by the Department, the information specified in paragraphs (1) and (2) for each inmate incarcerated in a state correctional facility on the decennial Census Day to the Legislature and the Citizens Redistricting Commission not sooner than the decennial Census Day and not later than 90 days thereafter.
(4) The Department of Corrections and Rehabilitation shall exclude all inmates in federal custody in a facility within California from the information furnished pursuant to this section.

(b) In order to comply with its obligation to ensure that a complete and accurate computerized database is available for redistricting in accordance with subdivision (b) of Section 8253 of the Government Code, the Legislature, in coordination with the Citizens Redistricting Commission, shall ensure that the information provided by the Department of Corrections and Rehabilitation pursuant to subdivision (a) is included in that computerized database.

(c) Notwithstanding subdivision (b), and regardless of the form in which the information is furnished by the Department of Corrections and Rehabilitation, the Legislature or the Citizens Redistricting

d) Consistent with Section 2025, the Legislature hereby requests the Citizens Redistricting Commission to deem each incarcerated person as residing at his or her last known place of residence, rather than at the institution of his or her incarceration, and to use the information furnished to it pursuant to subdivision (a) in carrying out its redistricting responsibilities under Article XXI of the California Constitution. The Legislature also requests the Citizens Redistricting Commission to do all of the following when it uses information regarding inmates that is furnished pursuant to this section:

(1) Deem an inmate incarcerated in a state correctional facility for whom the last known place of residence is either outside California or cannot be determined, or an inmate in federal custody in a facility within California, to reside at an unknown geographical location in the state and exclude the inmate from the population count for any district, ward, or precinct.

(2) Adjust race and ethnicity data in districts, wards, and precincts that contain prisons in a manner that reflects reductions in the local population as inmates are included in the population count of the district, ward, or precinct of their last known place of residence and, to the extent practicable, those deemed to reside at an unknown geographic location.

(e) For purposes of this section, “last known place of residence” means the most recent residential address of an inmate before the inmate’s most current term of incarceration that is sufficiently specific to be assigned to a census block, as determined from information furnished by the Department of Corrections and Rehabilitation in accordance with this section. In the case of an inmate for whom residential address information is available but is not sufficiently specific to allow the address to be assigned to a census block, the “last known place of residence” means a randomly-determined census block located within the smallest geographical area that can be identified based on the residential address information furnished by the Department of Corrections and Rehabilitation.
ADDITIONAL RESOURCES

**Prison Gerrymandering Project Homepage (Prison Policy Initiative):** A landing page with the latest news on prison gerrymandering reform, an overview of state-level progress toward ending the practice, and links to resources.

**Prison Gerrymandering Resource Pathfinder (Prison Policy Initiative):** This page links to a series of resources for a variety of audiences, including: background information, legislative and policy resources, data and mapping files, implementation information, and legal resources.

**Legislation to End Prison Gerrymandering (Prison Policy Initiative):** This page offers a comprehensive list of enacted, live, and previous legislation to end prison gerrymandering from states across the country.

**Model Legislation (Prison Policy Initiative):** This is an annotated model bill, which emulates enacted legislation and lessons from early states to address prison gerrymandering (developed by Prison Policy Initiative in collaboration with a coalition of civil rights, voting rights, and criminal justice organizations).

**FAQ on Prison Populations and the Census (Prison Policy Initiative):** A comprehensive set of frequently asked questions legislators can review to get familiar with the nuances of prison gerrymandering.

**Prison Gerrymandering and Funding Impacts (Prison Policy Initiative):** These two resources ([here](#) and [here](#)) debunk common myths about prison gerrymandering and funding windfalls for communities.

**Implementing Reform: How Maryland & New York Ended Prison Gerrymandering (Dēmos):** A detailed review of implementation processes and lessons learned from two of the first states to end prison gerrymandering.
CONTACT

For questions or policy support, email SiX’s Democracy Team at democracy@stateinnovation.org and Prison Policy Initiative’s Legal Director, Aleks Kajstura, at akajstura@prisonpolicy.org.

The State Innovation Exchange (SiX) is a national resource and strategy center that collaborates with state legislators to improve people’s lives through transformative public policy. SiX provides legislators with on-the-ground support; creates tailored policy research, trainings, and communications guidance; and fosters collaboration between legislators—across chambers, across regions, and across state lines—and with grassroots movements.

Prison Policy Initiative is a nonprofit, nonpartisan research hub that equips advocates and policymakers with the data and analysis needed to counter mass criminalization and incarceration in the US. They produce analysis and shed light on exploitative and unjust practices within our correctional system. Exposing the problem of prison gerrymandering, and equipping reformers with resources, is one of Prison Policy Initiative’s major ongoing projects.