

# Prison inmates at issue in redrawing political districts

Kenneth J. Cooper

The U.S. Census Bureau has always counted inmates where they are incarcerated, rather than where they last lived. But because the nation's prison population has swelled, states are being urged to abandon a practice that critics call "prison-based gerrymandering."

Lobbyists from public interest groups maintain that the common practice gives residents of legislative and local political districts where non-voting prisoners are housed more power at the polls than other voters, particularly those in the urban minority neighborhoods where inmates disproportionately come from.

Last year, New York, Maryland and Delaware passed laws to correct the possible violation of the one person, one vote principle and adjust census data, which the states are using in redrawing legislative districts based on the 2010 Census.

The NAACP-Legal Defense and Educational Fund, Common Cause and the American Civil Liberties Union have been involved in the national lobbying effort.

In Massachusetts, the Legislature cannot adopt similar legislation without amending the state constitution, the only one in the country that indisputably requires the census be used in state redistricting.

Still, activists have figured out creative strategies to limit the distortion of voting power and are lobbying the Special Joint Committee on Redistricting to embrace them.

The key to their strategies is the limited flexibility that the U.S. Supreme Court allows in how many people live in each district. That number can vary as much as 5 percent above or below what would be an exactly equal amount in every district.

Two activists have urged the redistricting committee to give legislative districts with prisons up to 5 percent more residents, and those districts where many prisoners last lived up to 5 percent

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fewer residents.

"That would eliminate the padding of prison districts," said Peter Wagner, executive director of the Prison Policy Initiative, which has an office in Easthampton.

As currently drawn, five Massachusetts House districts would have too few residents to meet the Supreme Court's standard — if inmates are not counted as living there, according to Brenda Wright of Demos, a public interest group with a Boston office. She testified before the committee in Dorchester last month.

The most imbalanced district is the 3rd Suffolk, which is represented by House Speaker Salvatore DiMasi. His district was drawn in 2002 to include about 1,550 inmates in the Suffolk County House Correction, Wagner said in separate testimony to the committee in Greenfield. Removing the inmates would leave the district slightly more than 8 percent below the ideal population of 39,682 residents.

Wright and Wagner said as a result every 92 residents of DiMasi's district have as much clout as 100 in other House districts. Prison populations in districts in Middlesex, Norfolk, Worcester and Hampden counties have a similar but less severe impact on voting power. Wright called the situation "Representation Without Population."

Massachusetts is losing one of its 10 congressional districts, which are also being redrawn. Activists have focused their lobbying against "prison-based gerrymandering" in legislative districts.

"The smaller the district size, the bigger effect it's going to have," said Dale Ho, assistant counsel at the NAACP-LDF in New York. "Congressional districts are so large it may not affect those districts substantially."

Until 2000, prisoners in Massachusetts were allowed to vote, and state law makes it clear that

their legal residences are their former homes, not the correctional facilities where they are housed, Wright said.

"A prison cell is not a residence," Wagner said.

Wright and Wagner pointed out that Gardner in 2001 stopped counting inmates in the state prison there when drawing city council districts so that the eastern side of the city, where MCI-Gardner is located, would not have undue clout.

Wagner said this year the towns of Lancaster and Harvard have requested special state legislation to make similar adjustments.

Without an amendment to the state constitution, the redistricting committee cannot add

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prison inmates to the legislative districts where they last lived, even if corrections officials could compile and sort their addresses in time.

Wright recommended the Legislature pass a resolution calling for the Census Bureau to change the way it counts prisoners, an adjustment that would come too late to affect the current round of redistricting. She also urged the Legislature to start the long process of amending the constitution in case the federal agency does not take action.

Wagner said it would be better for Massachusetts and the rest of the country if the Census Bureau did change its method of counting prisoners.

"I think the ideal place for a fix to happen is at the Census Bureau," Wagner said in an interview. "It would be easier on states and local governments if they did it."