The Legal Intelligencer

THE OLDEST LAW JOURNAL IN THE UNITED STATES 1843-2009

PHILADELPHIA, FRIDAY, JUNE 26, 2009 VOL 239 • NO. 123 $3.00 An incisivemedia publication

Report: Census Prisoner Count Dilutes Urban Political Clout

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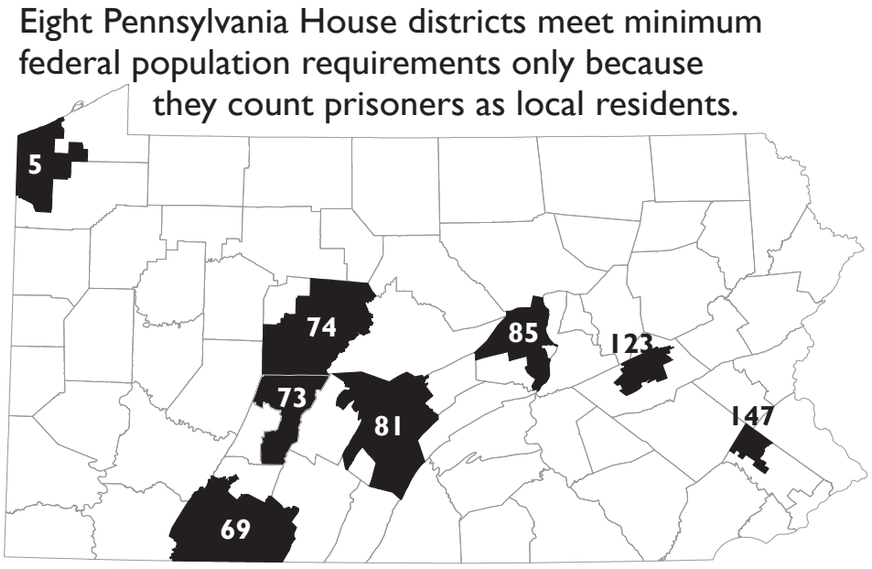

Graphic courtesy Prison Policy Initiative

The voting power of Philadelphians is diluted on the state level because state and federal prisoners are counted by the U.S. Census Bureau where they are incarcerated, instead of the prisoners' home communities in which they lived before they were incarcerated, an advocacy group has concluded.

Eight state House of Representatives districts would not meet federal "one-person, one-vote" standards if nonvoting state prisoners did not count as district residents for purposes of drawing up legislative districts, according to an analysis conducted by Prison Policy Initiative, an advocacy group based in Northampton, Mass.

PPI is pushing for the U.S. Census to change where it counts prisoners. The group has analyzed the effect of counting prisoners on state legislative districting from New York to Nevada. The PPI planned to release its first Pennsylvania-based report, "Importing Constituents: Prisoners and Political Clout in Pennsylvania," today.

Because of the nation's burgeoning prison population, counting prisoners where they are incarcerated is having a greater impact on the equitable division of legislative districts than ever before, the report said.

Because prisoners can't vote, residents who have a right to vote in districts that have a state or federal prison within their borders benefit from greater legislative clout than voting residents in districts without a state prison, the report argued.

The issue may be of great relevance to Philadelphians because more Philadelphians are incarcerated than residents of any other part of the state. The residents of Philadelphia are three times more likely to be incarcerated than other residents of the state, the report said. And 40 percent of the state prisoners are from Philadelphia, while nearly all of the state's prison beds are outside of the city, the report said.

House Districts 147 in Montgomery County, 5 in Crawford and Erie counties, 69 in Somerset and Bedford counties, 73 in Cambria County, 74 in Clearfield County, 81 in Blair, Huntingdon and Mifflin counties, 85 in Union and Snyder counties and 123 in Schuylkill County would not meet federal minimum requirements without the inclusion of prisoners, according to PPI's analysis. House Districts must have 60,498 people, plus or minus 3,025 people, the report said.

Prisoners make up 5.5 percent to 7.5 percent of the eight districts that wouldn't otherwise meet federal population requirements, according to the PPI.

"Eight legislative districts lack sufficient population to meet accepted one-person, one-vote standards without counting disenfranchised prisoners as part of their population base," the report said. "At the same time, heavily minority urban districts would in all likelihood be entitled to additional representation if prisoners were counted as residents of their home communities for purposes of redistricting."

The federal decennial census data is used to reapportion Pennsylvania's legislative districts every 10 years by the Legislative Reapportionment Commission made up of the majority and minority leaders of both the Senate and the House of Representatives and a chairman or chairwoman selected by the four members.

STATE STATUTE VIOLATION?

PPI argues that Pennsylvania should adjust where prisoners are counted prior to redistricting to prevent unfair political clout being given to some districts over others.

Peter Wagner, executive director of PPI, said where prisoners are counted is an issue of fair representation for constituents in urban areas from which more prisoners hail.

But Wagner said the issue also should be a matter of democratic concern for constituents in any Pennsylvania legislative district that doesn't have prisoners counting toward the district's population base to meet the minimum population requirements.

Wagner also argues that Pennsylvania's use of Census Bureau data that counts prisoners where they are incarcerated violates the state's voter registration statute.

The statute states: "No individual who is confined in a penal institution shall be deemed a resident of the election district where the institution is located. The individual shall be deemed to reside where the individual was last registered before being confined in the penal institution, or if there was no registration prior to confinement, the individual shall be deemed to reside at the last known address before confinement."

The issue has drawn the interest of at least one state legislator.

State Sen. Anthony H. Williams, D-Phila., said he has been "activated" to look into legislative remedies to the issue because it might have implications for drawing up district lines and the distribution of government monies that are based on population.

Williams, who is the minority chairman of the State Government Committee, said he would consider legislative options and he would converse about the issue with legislative leaders.

"Sometimes problems are solved with conversations," Williams said.

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State Rep. Mark B. Cohen, D-Phila., majority caucus chairman, said it's in the city's interest to include prisoners who come from Philadelphia as legal residents in Philadelphia's legislative districts. But Cohen said he thought it was a federal issue that can't be changed on the state level.

Wagner said changing where inmates are counted in the census would affect legislative districting, but he said it shouldn't affect the distribution of government grants because most government grants involve complex formulas that tailor programs to the needs of a specific population.

COUNTING HEADS

Legislators whose districts were cited in the PPI report said the issue of where prisoners are counted for purposes of drawing legislative district lines wasn't one that had been brought to their attention before.

Two of the legislators reached for interviews were of the opinion that inmates should be counted where they are currently living, and two were of the opinion that it didn't really matter to them.

"If you're counting heads you're counting the heads that are there," said state Rep. Gary Haluska, D-Cambria, of District 73. Haluska said inmates may not be able to vote, but there are plenty of other people counted in the U.S. Census who can't vote like children or don't vote like adults who don't register to vote.

When asked if they provided constituent service to inmates incarcerated in their district, the legislators said they typically didn't receive such queries from inmates incarcerated in their districts.

State Rep. Bob Mensch, R-Montgomery, of District 147 said he has never gotten a call from a prisoner at the State Correctional Institution at Graterford in the three years he has been a legislator.

But Mensch said that he has had to spend time on issues related to the prison.

And the legislator wondered if prisoners were not counted in the U.S. Census for purposes of drawing up legislative districts if it would be fair for him to spend as much time as he does on issues related to SCI Graterford.

"If they are not counted in my base, who would do that work?" Mensch asked. "Am I still supposed to do that work?"

Mensch also said inmates deserve legislative representation.

"They just don't have the same issues other property owners and other residents in the district have," he said.

State Rep. Russell H. Fairchild, R-Union, of District 85 said it doesn't matter to him one way or the other where prisoners are counted. But he wondered how practical it would be to ascertain a prisoner's home district in order to count him or her in that home district when some inmates moved around a lot before being incarcerated.

Fairchild also said he got more correspondence from constituents who are imprisoned in other parts of the state than from prisoners imprisoned within his district.

State Rep. Camille "Bud" George, D-Clearfield, of District 74 said having a prison population within a district wasn't necessarily helpful. George, who has been a legislator for 35 years, said that having a prison within his district could mean losing a part of the district that was favorable to voting for him.

State Rep. John R. Evans, R-Crawford, of the 5th District, state Rep. Carl Walker Metzgar, R-Somerset, of the 69th District, state Rep. Mike Fleck, R-Blair, of the 81st District, and state Rep. Neal P. Goodman, D-Schuylkill, of the 123rd District, could not be reached for comment.

POLICY FIX?

Wagner said it would be fairer for the U.S. Census to count prisoners as residents in the place they lived before they entered custody.

Pennsylvania also could adjust the census data on its own and remove prison populations prior to conducting redistricting, Wagner said. He said the Census Bureau could publish a special version of its redistricting data file with block-level counts of prison populations that would assist the state in identifying and removing prison populations.

Nathaniel Persily, a national election law expert and Columbia Law School professor, Gregory Harvey, an election law expert with Montgomery McCracken Walker & Rhoads and G. Terry Madonna, director of the Center for Politics and Public Affairs at Franklin & Marshall College, said it might not be fair to count prisoners where they are incarcerated. But they said it would be difficult to track where all of the state and federal prisoners lived before they were incarcerated, especially because many didn't have stable addresses prior to incarceration.

Harvey called it a "virtually impractical, bordering on impossible task to redo the census to that degree to establish which census tracks in Philadelphia should be adjusted to take into account prisoners."

Persily and Wagner said the U.S. Census Bureau won't change where it counts prisoners for the next census.

Monica Davis, a U.S. Census Bureau spokeswoman, said the bureau must count prisoners in their place of "usual residence," not their legal or voting residence, because the "usual residence" is where inmates "live and sleep most of the time." Davis said the U.S. Census has used the guiding principle of "usual residence" to conduct censuses since 1790.

Davis said the Census Bureau has studied the feasibility of counting prisoners at their permanent homes of record, but the study found that counting inmates at their permanent home addresses would increase costs to correctional facilities because of the demands of data collection efforts and that collecting such addresses might violate Title 13 protections for personal identification information.

States, however, could easily subtract the inmate population out of the data used to draw legislative districts, Persily said. That is Persily's preferred policy fix because it wouldn't cost the Census Bureau anything and because prisoners would still be captured in census data like health statistics.

PPI couldn't determine from available Department of Corrections data which legislative districts Pennsylvania's prisoners come from. But PPI does say that much of the state's prison population should be credited to urban and black communities instead of white, rural communities in Pennsylvania that are typical home to state prisons.

"The nature of the problem is primarily a moral one," Persily said.

Angus Love, executive director of the Pennsylvania Institutional Law Project, said legislative districts should be defined by eligible voters, and that inmates shouldn't be counted in the configuration of legislative districts, either in the districts that inmates are imprisoned in or in their home communities.

Madonna said the issue of where prisoners are counted has built up steam over the last five years on the federal level and might become a political debate. •

The Prison Policy Initiative report,
Importing Constituents: Prisoners and Political Clout in Pennsylvania,
by Peter Wagner and Elena Lavarreda, is available online at
http://www.prisonersofthecensus.org/pennsylvania/