

Legislative Reapportionment Commission Testimony
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Thank you for the invitation to speak here today about the issue of prison gerrymandering. My colleague and I are here as social scientists who have studied the impact of counting incarcerated people as residents of the districts where they are incarcerated on political representation—commonly known as prison gerrymandering. We greatly appreciate the opportunity to discuss this problem and how to address it during this redistricting cycle with you. We draw on our findings from Pennsylvania’s current maps, which have been published in a leading peer reviewed journal (see attached: Remster and Kramer 2018). In brief, prison gerrymandering affects dozens of districts across the state, it shifts representation in a racially unequal manner, it is neither partisan nor a simple urban versus rural divide, and it is easy to reallocate state prison populations without delaying the Legislative Reapportionment Commission’s (LRC) timeline.

We assessed the impact of prison gerrymandering on PA State House districts in three ways: We estimated the average district size change if incarcerated persons were removed from the district population counts where they were imprisoned and reallocated to their home district and whether any districts violated population size requirements in this scenario, as well as whether of prison gerrymandering varied by race and ethnicity (i.e. if some racial groups were affected more than others). To do so, we used publicly available data from the Census, the LRC, and the Department of Corrections (DOC). We began by matching demographic data from the Census to PA’s 203 House districts.¹ Then we removed individuals incarcerated in local, state, and federal correctional facilities from district population counts at the census block level.² Our next step was to allocate those individuals back to their home districts, based on facility type.

As with the U.S. overall, most individuals incarcerated in PA are held in state facilities.³ To return these individuals, we used information on state prisoners’ county of origin from the *Pennsylvania Department of Corrections 2010 Annual Report*, the smallest geography for which that data is publicly available. Most individuals held in Pennsylvania state prisons are released on parole, meaning they are legally required to return to their county of origin (PA DOC 2015). But where in each county should they go? We used information on state prisoners’ race and ethnicity from the same annual DOC report (we commend the accuracy and effort of the DOC data staff for computing and publishing this information) and national estimates of educational

¹ Using a spatial join in the mapping software ArcGIS 10.1, every Census block was assigned to its corresponding 2010 PA House district

² For a handful of facilities, the Census and local facility address disagreed on the exact location of a facility by one or two blocks. We used Google Maps to identify which data source was correct.

³ Nearly 60% of individuals incarcerated in PA in 2018 were held in state facilities.

attainment for incarcerated people by race and ethnicity combined with their county of origin to allocate state prisoners to a census block with similar demographic characteristics. We do not wish to bog the Commission down with the minutiae of our reallocation strategy at the moment, given that the LRC would be able to avoid such estimation techniques to reallocate individuals because the Department of Corrections has much more precise address data.

We should be clear: our analyses were estimates of the effects on incarceration on representation. Our estimates are likely underreporting the significant impacts on specific communities across the state. Importantly, the more detail we included in our estimation procedure about where incarcerated people lived beforehand, the stronger our results became. For instance, preliminary analyses excluding educational attainment data produced similar results to our final ones that incorporated education but including the education data achieved greater precision by providing more information. In other words, our findings are conservative. If we had had access to private Department of Correction data with specific addresses, we are confident that prison gerrymandering would have an even larger impact on State House districts. Fortunately for this Commission, we have been told that that data is available for your use in redistricting.

We also reallocated individuals held in county facilities. Unlike state prisons, the pre-incarceration address for people in county facilities may not be readily available to the LRC in time for this redistricting cycle. As of 2018, nearly 60% of incarcerated individuals were in state prisons, and given recent efforts to reduce jail populations, which PA terms county prisons, that percentage likely grew somewhat since. Among individuals held in county facilities in 2020, almost 20% were in Philadelphia or Allegheny's facilities. Most county prisons though are small; excluding Philly and Pittsburgh, the average local facility contains roughly 400 people (most county jails have less than 300 beds) and the overwhelming majority of individuals in these facilities reside in that same county and often in that same district, as most counties are either wholly within one district or split into only a small number of districts. Although we strongly believe individuals incarcerated local facilities should also be reallocated, our analyses show that state facilities are the primary driver of prison gerrymandering in Pennsylvania.

Pennsylvania is also home to ten federal correctional facilities, but since the bulk of individuals in these facilities are from out of state, we removed the less than 9000 individuals in federal facilities from district population counts but did not return them. Overall, they represent a small portion of the incarcerated population in PA, and nationally.

Turning to our results, this map shows the 34 House districts that experienced the most change in our hypothetical scenario of reallocating incarcerated people under the current maps. The districts highlighted in grey are districts which *lost at least 837 residents* after we adjusted where incarcerated people were counted. In statistical terms, 837 residents is one standard deviation above or below the average district population change across all 203 districts. As you can see, these districts are mostly located in rural central and western Pennsylvania. These districts are the few “winners” of prison gerrymandering—these districts contain large prison and/or jail facilities, which artificially inflate their size with people who are not from that area and would not be there if they were not imprisoned there.

In contrast, the districts highlighted in black on the map are districts which would *gain at least*

837 residents if—all else equal—incarcerated people were counted in their home communities. Although these districts are generally more urban, they also include areas with smaller cities and towns but high rates of incarceration. Yes, Philadelphia and Pittsburgh are harmed by prison gerrymandering, however, it is far from an isolated issue of urban versus rural areas. This is in part because most Pennsylvanians don't live near a state prison; there are only 20 some state prisons and 203 districts. But did any districts change enough to violate district size requirements in our hypothetical scenario?

For the state as a whole: *four districts became legally too small* using the standard 5% cut-off for district size established by the courts to define equal representation. Take, for example, current District 150 which is a suburban and rural district in Montgomery County. It contains over 5,000 incarcerated individuals across State Correctional Institute-Phoenix and Montgomery County Prison, that's nearly 10% of its population.

On the other hand, we found that *four districts would grow to be legally too large* to qualify as of equal size using that same threshold. Together, those 4 districts contain roughly 264,000 Pennsylvanians, which means that at least 264,000 residents are legally underrepresented because of prison gerrymandering today. Of those 264,000, over 100,000 are Black and live in Philadelphia in three districts—that's approximately 20% of Philadelphia's Black population, who live in districts that only met the district size cut-off during redistricting because many residents were counted elsewhere at the time. The other district that became legally too big is centered around Johnstown. Further, counting individuals where they are incarcerated makes districts that contain a prison appear more racially diverse than the reality. We found five districts where more than half of their non-white population were only there because they were incarcerated at the time of the census.

Beyond diversity, prison gerrymandering distorts representation by strengthening the political voices of Pennsylvanians who live near a prison while simultaneously weakening the voices of residents who live near high crime areas. Counting incarcerated people where they are imprisoned affects entire communities and towns from which large numbers of people are being incarcerated. And with patterns of residential segregation, prison gerrymandering does so in a racially unequal way.

Overall, we found that the average white Pennsylvanian lives in a district that benefits from prison gerrymandering. White residents gain representation thanks to the location of prison facilities in districts that are disproportionately white and because whites are less likely to live in districts with large numbers of residents sent elsewhere via incarceration. In contrast, the average Black or Latinx Pennsylvanian lives in a district that has less of a voice because more than three hundred residents of their communities were counted elsewhere and because Black and Latinx residents are less likely to live in districts where incarcerated persons inflate the district's population count. In short, prison gerrymandering dilutes Black and Latinx representation and amplifies whites.

One other major takeaway from our analysis was that ending prison gerrymandering did not disproportionately hurt one political party over another. Counting incarcerated people as living in correctional facilities is different from other forms of partisan gerrymandering. Two of the four

House districts we identified as too big are currently represented by Democrats and two by Republicans. Nor was it the case that urban districts always lost population to rural districts—district 19 in Pittsburgh, for example, lost enough population to be legally too small because it included a (now closed) prison, and many rural districts without a prison gained representation from other rural districts that happened to have a prison.

You might be wondering why most of us only recently heard of prison gerrymandering. While the problem has always existed, how incarcerated people were counted only recently began to impact political representation for two reasons. It wasn't until the 1960s that the concept of one person, one vote was codified into our redistricting process and then the extraordinary growth of the American penal system only began in earnest in the 1980s—previously the incarcerated population was far smaller—peaking in the early or mid-2010s, depending on the state. In PA, the incarcerated population in 2000 was on the cusp of being large enough to skew districts but had not quite reached that threshold in our analyses using estimations to reallocate incarcerated persons.

While PA's prison population has declined somewhat in recent years, unfortunately that decline is not enough for prison gerrymandering to fix itself. On March 30, 2020 (the Census uses April 1 of each census year for its count of incarcerated individuals), there were 45,654 people in state facilities (PA DOC). While that is lower than 2010, it is only a difference of about 3,000 people and in 2000 there were less than 37,000 people incarcerated in PA state prisons. Yet even if the number of incarcerated people did dramatically drop, it does not mean that prison gerrymandering does not exist, just that it did not lead to the potential constitutional problems like those we found in the 2010 maps.

As social scientists, we see no reason to avoid tackling the problem now. Ten states have either already addressed prison gerrymandering or will to do so starting with the 2020 Census and one has decided to delay that until 2030. We know of at least three additional state redistricting commissions that are working through how to do so via the redistricting process as we speak here today. California's Commission voted itself to proceed with reallocation after the legislature encouraged it but did not require it.

The PA DOC has an impressive data and research program, which is part of why we were able to analyze the impact of prison gerrymandering in PA to begin with, and has precise pre-incarceration addresses for individuals held in state facilities. Those addresses are far superior to counting individuals where they are incarcerated. For some individuals, that address may be where they were paroled to before being reincarcerated for a parole violation. Those addresses are equally useable, in fact, they are more accurate than counting them where they are incarcerated. This holds even if an incarcerated person or their household has since moved elsewhere, because that is true of everybody. Were you or I to have moved after completing the 2020 Census forms ourselves, we too would be counted at our "prior address" in the exact same manner; the fundamental difference is that we made that decision ourselves. If there are people with missing or inaccurate addresses, they should either be removed from the count or kept in place. Imperfections in one person's address data do not justify continuing to misallocate others, that's something that the state can work to improve for future redistricting cycles.

The DOC address data can be used to reallocate individuals in state facilities in a short amount of time (several days maximum) without busting the budget. We appreciate the tight timelines that redistricting commissions face, especially in 2021 due to the delay in the release of Census data to states as well as concerns about costly vendor contracts. Fortunately, because the DOC has such a strong data and research system, the reallocation process would require sending one line of code to a Census API that the Census offers free of charge and then a second line of code to merge that data with the reapportionment dataset from the Census. It would take us half a day to complete this and check that it worked correctly if the addresses are accurate. It may take an additional day or two to fix data entry errors and triple check the results.

Ideally, we would solve both prison and jail gerrymandering at the same time, as county prisons contain over 30,000 Pennsylvanians. However, the overwhelming majority of people incarcerated in county facilities are from that county and outside of Philadelphia; county facilities on their own were not enough to substantively affect representation in our analyses. Because roughly 60% of people incarcerated in PA are in state facilities, and because county facilities often do not lead to allocating incarcerated people across district lines, reallocating state facility populations would mitigate the majority of the problem and we would hope that future redistricting commissions would proactively manage the problem before any data is even collected by the Census. States have followed a variety of approaches with regard to reallocating federal and county prison populations, and we'd be happy to discuss the options later.

Making data adjustments to census aggregation is part of every redistricting cycle and this is no different. The actual adjustment is a simple, straightforward task that can be easily done and would not risk any individual's privacy in doing so.

We thank you for your time and are happy to answer questions and assist in any way we can.

Attachments:

Remster and Kramer 2018

PowerPoint Slides

Kramer vita

Remster vita