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# IMPLEMENTING REFORM

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*How Maryland & New York  
Ended Prison Gerrymandering*

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*Dēmos is a public policy organization working for an America where we all have an equal say in our democracy and an equal chance in our economy.*

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## EXECUTIVE SUMMARY

In 2010 and 2011, Maryland and New York took bold steps to correct the problem known as prison gerrymandering, a problem resulting from the United States Census Bureau's practice of counting incarcerated individuals as residents of their prison cells rather than their home communities. When legislative districts are drawn based on the census numbers, incarcerated individuals become "ghost constituents" of districts that contain prisons. Although in forty-eight states incarcerated individuals cannot vote, have no ties to the local community, are often hundreds of miles from home, and spend an average of just three years in prison, they are allocated to legislative districts in a way that artificially inflates the political power of the districts where the prisons are located, while their home communities—often predominantly poor and minority—suffer the inverse effects of losing representation and voting strength for a decade.

Although the Census Bureau did not change its practice of counting incarcerated individuals in prison on a national level for the 2010 census, Maryland and New York took responsibility for correcting this injustice in their states. In doing so, these two states not only conducted an important experiment in policy innovation, but also demonstrated how various state and local agencies can work together to successfully implement new and important policy reforms to alleviate the problem of prison gerrymandering.

The efforts and coordination by state policymakers, corrections officials, data experts, technicians, planning personnel and lawyers was exemplary and should serve as an inspiration to those across the country who want to take a stand to end this injustice. As a result of their efforts and for the first time in history, the legislative and local districts in Maryland and New York are no longer distorted by prison gerrymandering.

This report provides detailed information about the specific steps Maryland and New York took to implement these new laws based on the 2010 census in conjunction with their redistricting schedules. It details the challenges each state faced as the first in the country to implement this reform—including legal disputes and data deficiencies—and the steps taken to meet and overcome those challenges. It also provides concrete recommendations, based on the experience and expertise of the actors in each state, to assist other jurisdictions in permanently ending prison gerrymandering.

# INTRODUCTION

## The Problem

Once every ten years, the United States conducts the decennial census to determine the country's population. The U.S. Constitution requires this enumeration in order to determine the apportionment for the U.S. House of Representatives, but today census data are used for wide ranging calculations, research and study, including determining apportionment for state legislative and congressional districts and local political races on the county, city and town level.

Planners of the first U.S. census in 1790 established the concept of “usual residency” to determine where people would be counted on “Census Day”—April 1 of the decennial year. Usual residence was defined as the place where the person lives and sleeps most of the time.<sup>1</sup> As a consequence of the usual residency rule, people who are incarcerated on Census Day are counted as residents of the correctional facility because the census has determined that is where they “live and sleep most of the time.”

Once the census is complete, states and localities use the data to draw legislative districts for Congress, the state legislature and local government. As local populations shift and move, congressional, state, county and municipal legislative districts must be redrawn to assure that each district has roughly equal population. This in turn protects the principle of “one person, one vote,” assuring that every voter has equal representation in our government.<sup>2</sup>

Because the census data count people in prison as residents of the prison, incarcerated individuals are grouped together with non-incarcerated individuals living in the surrounding community to form legislative districts. However, the vast majority of incarcerated individuals cannot vote while in prison and they have no ties to the local community beyond being sent there by the Department of Corrections.<sup>3</sup> Consequently, people in prison become “ghost constituents” to whom the legislator from the district has no connection or accountability, but whose presence in the prison allows the legislator's district to exist. The voting strength of the actual constituents who live adjacent to the prison is unfairly inflated simply because of their proximity to a correctional facility. This phenomenon is called “prison gerrymandering.”

Over the last four decades incarceration rates in our country have skyrocketed, increasing by 400% since 1970.<sup>4</sup> From 1925 to 1970, the incarceration rate remained remarkably stable, hovering around

110 per 100,000 of the population.<sup>5</sup> But beginning in the 1970s and increasing dramatically through the next few decades, the nation enacted stiffer sentencing and “tough-on-crime” laws. The result is that today there are approximately 1.6 million people in state and federal prison in the United States, eight times as many as there were in 1970.<sup>6</sup> The census applying the “usual residency” rule throughout this period results in more than a million incarcerated individuals in our country being deemed residents of their prison cells rather than their home communities to which most will return in less than three years.<sup>7</sup>

The inverse to this skew in the prison districts is the erosion of voting strength in the home communities—often located many miles away—to which most incarcerated individuals return. Every person counted in prison on Census Day is one fewer resident counted in the home community, which is often disproportionately urban, poor and minority. The result is fewer voices and fewer votes to demand accountability and representation by local officials. As the prison districts artificially inflate, the representation of home communities declines.

A similar imbalance occurs between neighboring districts. A district that contains a prison will have inflated voting strength compared to a neighboring district without a prison, creating inequalities between residents of neighboring communities.

Prison gerrymandering has other troubling implications. A legislator whose district depends on the people incarcerated in a correctional facility to meet its population requirement has every incentive to keep that prison not just open, but filled to capacity. This incentive may influence the legislator’s positions on criminal justice policies and sentencing laws. For example, two of the most vocal opponents to reforming New York’s stiff drug sentencing laws were Republican senators whose districts held more than 17% of the state’s incarcerated population;<sup>8</sup> nearly a third of the individuals in one of these districts were incarcerated on drug related offenses.<sup>9</sup>

## Two States Illustrating the Problem: Maryland and New York

### Maryland

The average number of people incarcerated in Maryland state correctional facilities is approximately 22,000.<sup>10</sup> Sixty-eight percent of incarcerated individuals come from Baltimore City, but approximately 85% of Maryland’s 28 correctional facilities are located in rural or suburban communities outside of Baltimore.<sup>11</sup> The average

distance of each facility from Baltimore is 60 miles, and five facilities are more than 100 miles away;<sup>12</sup> this in a state that is only 12,000 square miles. More than 98% of people incarcerated in Maryland will be released, and most after just a few years.<sup>13</sup> The average length of time served in Maryland state prisons is only 2.5 years.<sup>14</sup>

This prison geography creates a significant political imbalance. For example, in Somerset County, a large prison was 64% of the county's First Commission District, giving each resident in that district 2.7 times as much influence as residents in other county districts.<sup>15</sup> Similarly, 18% of state delegate District 2B in Washington County was incarcerated, giving every group of four state District 2B residents as much political influence as five residents elsewhere in the state.<sup>16</sup> Of the 5,268 African-Americans in state District 2B, 90% are incarcerated.<sup>17</sup>

## New York

For decades, the distortion created by prison gerrymandering was particularly severe in New York. Approximately three-quarters of New York's prisons are located more than 100 miles from New York City; in fact, more than 60% are located over 200 miles from the City, and over a third are located more than 300 miles from the City.<sup>18</sup> The Prison Policy Initiative's analysis of the 2000 redistricting cycle found that 66% of New York State's prisoners were from New York City,<sup>19</sup> but 91% were incarcerated upstate.<sup>20</sup> While the state's prison population was 77% African-American or Latino, 98% of the state's prison cells were located in disproportionately white state Senate districts.<sup>21</sup> Moreover, although the prisons themselves look permanent, the people confined there are quite temporary. According to New York corrections data, "the median time that an incarcerated person has been at his or her current facility is just over [seven] months."<sup>22</sup>

The policy of basing legislative districts on prison populations creates an imbalance not just between upstate and downstate communities, but also between upstate communities with prisons and upstate communities without prisons. A district that includes a prison has inflated voting strength compared to any other district without a prison, including one right next door.

For example, in the districts drawn after the 2000 census, New York Senate District 45 gained extra influence by using almost 13,000 incarcerated people to inflate its population, giving residents of the district more influence than residents of other districts, including neighboring rural District 43 which contained no state

prisons.<sup>23</sup> The small upstate city of Rome had a city council ward that was 50% incarcerated, giving the residents of that ward twice the influence over city affairs as residents in other parts of the city.<sup>24</sup>

During the 2000 redistricting cycle in New York, the New York Senate interpreted the redistricting formula provided by the New York State Constitution to require 62 senate districts, each of which should have held approximately 306,000 people.<sup>25</sup> According to the Supreme Court’s one-person-one-vote principle, each district should have equal population so that each resident will have the same electoral power as any other resident elsewhere in the state. A 10% total deviation from absolute population equality (plus or minus 5% for any individual district) is generally permissible for state legislative districts. But drawing the new senate districts based on Census Bureau data that allocate people in prison as “residents” of the prison location meant that several districts in New York were padded with individuals who were not considered legal residents for any other purpose, and who could not vote locally.<sup>26</sup> Indeed, while nominally within the permitted 10% deviation, seven New York state senate districts drawn after the 2000 census met minimum population requirements only by including incarcerated people who were residents of other communities.<sup>27</sup>

### New York Under-Populated Senate Districts after 2000 Redistricting<sup>28</sup>

Senate District	Senator	Type	Reported Population	Prisoners to remove	Corrected Population	Corrected Deviation
45	Ronald Stafford	Rural	299,603	12,989	286,614	-6.36%
47	Raymond Meier	Rural	291,303	3,563	287,740	-5.99%
48	James Wright	Rural	290,925	5,291	285,634	-6.68%
49	Nancy L. Hoffman	Rural	291,303	2,881	288,422	-5.77%
51	James Seward	Rural	291,482	3,108	288,374	-5.78%
54	Michael Nozzolio	Rural	291,303	3,551	287,752	-5.99%
59	Dale Volker	Rural	294,256	8,951	285,305	-6.79%

## The Solutions

### Solutions at the National Level

The most obvious solution to the inequity and imbalance caused by prison gerrymandering is for the Census Bureau to count people who are in prison as residents of their home communities, rather than where they are incarcerated. By allocating people in prison to their home communities, the Census Bureau would provide accurate population data that states and localities could use to design fair, accountable districts. Recently, more than 200 organizations signed a letter urging the Census Bureau to conduct the research necessary to ensure that the 2020 census counts incarcerated people at their home addresses.<sup>29</sup> In addition, the Census Bureau's Center for Survey Measurement released an ethnographic study of the 2010 count of the jail and prison group quarters population, which includes a recommendation that the Census Bureau create a self-enumeration pilot study to determine the utility of prison inmates completing their own census forms.<sup>30</sup>

In 2011, for the first time, the Census Bureau released the Advanced Group Quarters data to the states earlier in the redistricting cycle. Traditionally, the first counts of people in “group quarters”—which include prisons—were not available until the summer of the year after the census, too late to be useful for redistricting in most states. In 2000, even states that were aware of the problems caused by prison gerrymandering were unable to correct the data because they did not have access to the group quarters data at the time they were apportioning their residents for districts.

In response to requests by advocates and the Congressional Subcommittee on Information Policy, census and National Archives, the Census Bureau released its group quarters data in April 2011, significantly earlier than it had in previous decades. While this data did not include home address information, its earlier release allowed states and localities that were interested in adjusting the incarcerated population to have access to crucial data necessary to do so. The Census Bureau explained, “This decade we are releasing early counts of prisoners...so that states can leave the prisoners counted where the prisons are, delete them from the redistricting formulas, or assign them to some other locale.”<sup>31</sup>

## State Solutions

The early release of the Group Quarters data made it easier for more states and localities to avoid prison gerrymandering when redistricting. Legislation to end prison gerrymandering has been introduced in 17 states since the start of 2010,<sup>32</sup> and over 200 counties and municipalities now avoid padding local government districts with incarcerated populations.<sup>33</sup>

In the last few years, California, Delaware, Maryland and New York passed laws to reallocate people in prison back to their home communities.<sup>34</sup> California and Delaware will implement their new laws after the 2020 census, but Maryland and New York were able to implement their new laws in time for the 2010 redistricting cycle. Accordingly, the experience of Maryland and New York in implementing their reform laws after the 2010 census is examined in depth below.

### Summary Comparison of New York and Maryland Reform Laws<sup>35</sup>

	New York	Maryland
Applies to state legislative districts?	YES	YES
Applies to congressional districts?	NO	YES
Applies to local districts?	YES	YES
Applies to state prisons?	YES	YES
Applies to federal prisons?	YES for subtraction NO for reallocation	YES
Specifies implementing agency?	YES	NO
Directs correctional system to provide specific data?	YES	NO
Out-of-state and unknown addresses allocated?	NO—excluded from dataset	YES—allocated to correctional facility

## I. MARYLAND'S SOLUTION: THE NO REPRESENTATION WITHOUT POPULATION ACT

In April 2010, Maryland's governor signed into law the No Representation without Population Act, H.B. 496.<sup>36</sup> The No Representation without Population Act required that the population count used to create legislative districts for the General Assembly, counties and municipalities, as well as for the U.S. House of Representatives, not include individuals incarcerated in state or federal correctional facilities or those individuals who were not residents of the state before their incarceration.<sup>37</sup> The Act further required that incarcerated individuals be allocated to their last known residence before incarceration if the individuals were residents of the state. Maryland's law was broader than New York's law, in that it applied to both state and federal prisons and applied to congressional as well as state and local legislative districts.

### 1. Implementation of Maryland's Reform Law

#### a. State Redistricting Law

Under the Maryland Constitution, the governor must prepare a plan for state legislative districts and present it to the President of the Senate and the Speaker of the House of Delegates.<sup>38</sup> The president and the speaker must introduce the governor's plan as a joint resolution no later than the first day of the regular legislative session in the second year following the census.<sup>39</sup> If a redistricting plan is adopted by the 45th day after the opening of the legislative session, that plan becomes law.<sup>40</sup> If no plan is adopted by the 45th day, then the governor's plan becomes law.<sup>41</sup> Maryland law provides no specific guidance on the procedure for enacting a plan for congressional districts; the plan for congressional districts is introduced as a regular bill that must be passed by both houses and signed by the governor, subject to veto power.<sup>42</sup>

The Governor's Redistricting Advisory Committee (GRAC) reviews redistricting plans submitted by outside groups and makes district plan recommendations to the governor.<sup>43</sup> The Maryland Department of Planning (MDP) provides staff support to the governor's office and GRAC, preparing maps and data, producing statistical data reports, and providing communications and outreach needed to develop redistricting plans.<sup>44</sup>

## **b. Agency in Charge**

The first step in implementing Maryland’s No Representation without Population Act was to determine who would be responsible for the implementation since the legislation did not specify the agency that would be in charge of reallocating individuals to their home address. Because MDP had provided support for previous redistricting cycles and already employed a technical team of data and geocoding experts, it was determined that MDP, with the assistance of the Department of Legislative Services (DLS) and the Department of Public Safety and Correctional Services (DPSCS), would conduct the geocoding. There was also legal authority for MDP to act as the implementing agency: (1) the State Finance and Procurement Article of Maryland’s code designates MDP as the staff agency of the governor for planning matters;<sup>45</sup> and (2) MDP has a Memorandum of Understanding with the U.S. Census Bureau designating it as Maryland’s census agency.<sup>46</sup>

## **c. Regulations**

MDP proposed draft regulations that would provide additional guidance and details on how to implement the new law. For example, the law did not define “last known residence” or provide guidance on the steps necessary to geocode the data. “Geocoding” is the process of locating geographic coordinates from data such as a street address. Geocoding takes an address, matches it to a street and specific segment (usually a “block”), and then inserts the position of the address within that segment.<sup>47</sup> Once the geographic coordinates are located, the address can be mapped and entered into a Geographic Information System (GIS) to allow technical staff and policymakers to draw legislative districts.

The redistricting timeline did not allow MDP the approximately six months it usually takes to adopt regulations in Maryland, so it adopted regulations on an expedited basis to allow it to adjust the data in time for the state’s redistricting deadline. Although the regulations were adopted through an expedited schedule, MDP thoroughly vetted the regulations, seeking input from DLS, the Attorney General’s office, DPSCS, and MDP technical staff.

The regulations adopted by MDP filled in some additional detail to help the technical staff determine how to allocate incarcerated individuals. For example, the regulations clarified that “incarcerated individuals” included only those detained in state and federal correctional facilities, and not local (i.e., county or city) facilities, or those whose last known address was out of state.<sup>48</sup> They also

provided some additional guidance on how to geocode the last known residence of incarcerated individuals, requiring the department to make “reasonable efforts” to correct any last known address that was “ungeocodable”, including: verifying and correcting the zip code against the U.S. Postal Service zip code locator; correcting misspellings of city and street names; correcting or adding street suffixes against the postal service zip code locator, correcting street direction using the US postal service zip code locator, removing extra information from the address field, removing the apartment number and removing any decimal points in the address.<sup>49</sup>

The regulations further provided that if, after these reasonable efforts, MDP was still unable to geocode the last known address for an incarcerated individual by February 11, 2011, then the last known address “shall be the state or federal correctional facility where the individual is incarcerated.”<sup>50</sup> This created another difference between the Maryland and New York laws: in New York, a person with an unknown address was simply not allocated to any legislative district, while in Maryland the person would be allocated back to the district that contains the prison.

Finally, the regulations provide examples of “ungeocodable” addresses, including: no address or an address of “homeless,” address of a correctional facility, rural route address, post office box, address with no house number, addresses with multiple errors or no street suffix, and addresses that are incorrect or not included in the census bureau’s TIGER street centerline file used to geocode addresses.<sup>51</sup>

#### **d. Federal Prison Data**

Implementation of the statutory provision to reallocate people in federal correctional facilities met with some resistance from the Federal Bureau of Prisons (BOP). In July 2010, MDP requested from the BOP an electronic database containing a unique prisoner identifying number and the address of the last known residence before incarceration for every inmate housed in the one federal prison located in Maryland on April 1, 2010.<sup>52</sup> The BOP would not release the information, citing the Privacy Act of 1974,<sup>53</sup> and explaining that “the release of the requested information could constitute an unwarranted invasion of the individuals’ personal privacy.”<sup>54</sup> Despite two appeals, the BOP refused to release the information.

MDP determined the number of people in the federal prison by examining the 2010 census block level data for the facility and concluded that 1,514 federal prisoners were in these census blocks.<sup>55</sup> MDP also examined the weekly population report from the Federal

Bureau of Prisons available on the BOP’s website.<sup>56</sup> In accordance with the regulations, the federal inmates remained allocated to the census blocks where the correctional facility was located.<sup>57</sup>

#### **e. State Prison Data**

MDP and DLS reached out to the Maryland Department of Public Safety and Correctional Services (DPSCS) to request inmate address information after passage of the Act. DPSCS formed a team consisting of case managers at each facility as well as database technicians to work on collecting and organizing the necessary data.

To gather the data required by the No Representation without Population Act, DPSCS first consulted its own database—the Offender Based State Corrections Information System (OBSCIS)—that maintains demographic and other information concerning inmates confined in Maryland correctional facilities.<sup>58</sup> The OBSCIS system was used to determine which inmates were confined in Maryland correctional facilities on Census Day, April 1, 2010. The list of inmates was then separated into two additional lists: one for those listed as Maryland residents and one for those listed as out-of-state residents.<sup>59</sup> These lists were forwarded to the correctional facilities where the inmates were incarcerated so the data could be reviewed for accuracy and so that missing address fields could be completed and inaccurate fields could be corrected.<sup>60</sup> Each correctional facility then completed and corrected the missing and inaccurate address fields, relying on three sources: (1) an interview with the inmate and sometimes his or her family; (2) the pre-sentence investigation document; or (3) the correctional facility intake form.<sup>61</sup> The corrected information was then entered into one database that was provided to MDP.

On February 4, 2011, MDP received a computer database from DPSCS containing address records for 22,064 inmates who were under the supervision of the Division of Corrections on April 1, 2010, Census Day.<sup>62</sup> There were some inconsistencies in the way DPSCS categorized and recorded data regarding inmates’ race, and the categories used by the U.S. census. DPSCS collected only five categories of race: White, Black, American Indian, Asian and “unknown.”<sup>63</sup> Notably, the DPSCS data did not have a category for Hispanic or Latino, “two or more” races, Native Hawaiian/Pacific Islander, or the “other race category” as used in the census. Because of the inconsistency in the demographic categories, MDP analyzed the proposed districts with unadjusted numbers for Hispanics and certain racial groups. MDP concluded that because of the small

number of people involved, the inconsistency in data was not statistically significant.<sup>64</sup>

#### **f. Geocoding and Reallocation**

Once the address data were received, the implementation task was handed over to the MDP data experts for geocoding. The first task was to examine the data to assure that only addresses approved by the statute were used in the reallocation process. MDP examined the data and removed addresses for pretrial detainees, people in juvenile facilities and those serving home detention, none of which were “correctional facilities” under the statute. During this process, MDP also removed 1,321 out-of-state addresses that were clearly excluded by the statute, and missing or invalid addresses such as “homeless” or post office boxes. MDP staff labeled these entries “discarded addresses”—3,358 in total—and removed them from the database.<sup>65</sup>

Once the “discarded addresses” were removed, the geocoders were left with 18,706 “assumed geocodable” records.<sup>66</sup> MDP then conducted a second review of this remaining data to identify incomplete or incorrect address fields.<sup>67</sup> Staff first focused on easily correctable items, such as misspelled or abbreviated city names or incorrect abbreviations for extensions. They then turned to making other corrections, such as missing or incorrect zip codes and incorrect street names, which took a bit more research. To correct these fields, MDP consulted maps of municipal boundaries and zip codes, census TIGER files and MDiMap, an online mapping site maintained by the state of Maryland. In the end, only 12% (2,337) of the records required some type of correction.<sup>68</sup>

After making these corrections, MDP geocoded the remaining data using ESRI GIS software and the U.S. Census Bureau’s 2010 TIGER/line street file for Maryland as the basis for the address locator. The database produced 17,140 addresses geocoded to the person’s last known residence, representing 77.7% of the original 22,064 in the database of prisoners received from DPSCS.<sup>69</sup> A total of 6.0% of the original prisoners had been identified as out-of-state residents and successfully removed from the redistricting dataset under the statute, bringing the successful reallocation to 83.7%.<sup>70</sup>

#### **g. Adjustment**

In late February 2011, once MDP had completed its geocoding, it transferred the data to DLS. DLS had contracted with the Caliper Corporation, developer of Maptitude (a software program widely used to create legislative districts) to assign the geocoded incarcerat-

ed individuals to the appropriate census blocks. Using its Maptitude software, Caliper first removed the incarcerated individuals from the census blocks where the correctional facilities were located.<sup>71</sup> Caliper then assigned each geocoded address to its appropriate census block. Caliper generated tracts and blocks and determined the increase and decrease in population.<sup>72</sup> This process also served as an independent review of MDP's geocoding.

MDP's and DLS's timeframe for adjusting the census data was informed in large part by the City of Baltimore's early redistricting deadline. Under the City Charter, the Mayor must present a redistricting plan to the City Council not later than the first day of February of the first municipal election year following the census.<sup>73</sup> The Baltimore City Council then has sixty days to adopt or amend the plan.<sup>74</sup> Because Baltimore neighborhoods were so heavily impacted by prison gerrymandering, it was important for the adjusted data to be available for the city's redistricting. MDP released its final adjusted data on March 22, 2011, in time for Baltimore to redraw its City Council districts.

#### **h. Public Education**

Once the geocoding was complete and MDP had generated the adjusted data, MDP took affirmative steps to ensure that counties and municipalities used the adjusted data, not just the census PL 94-171 redistricting data they had used in the past. In order to get the word out across the state concerning the adjusted data, the Attorney General's Office participated in a Bar Association training for local and county attorneys, and MDP informed county and municipal planners. The MDP geocoding staff also did outreach to the local GIS community. MDP issued a press release when the adjusted data was certified and the adjusted data was posted to MDP's website for download.

## **2. A Legal Challenge: *Fletcher v. Lamone***

On November 10, 2011, a lawsuit financed by the Legacy Foundation,<sup>75</sup> a conservative Iowa-based advocacy group, was filed in U.S. District Court for Maryland.<sup>76</sup> Among other redistricting claims, the plaintiffs argued that Maryland's congressional districts violated the one-person-one-vote principle because they were based on the adjusted population data and not the numbers as they were reported by the U.S. census.<sup>77</sup> Plaintiffs also argued that the districts discriminated against racial minorities because the number of inmates who were identified as having a last known address outside the state of

Maryland, and thus were not reallocated to their home districts, were disproportionately African-American.<sup>78</sup> Specifically, plaintiffs argued that “omitting certain persons residing in state prisons whose last known addresses are from outside the State of Maryland and who are disproportionately minority” amounted to intentional racial discrimination in violation of the Fourteenth and Fifteenth Amendments.<sup>79</sup>

The state was represented by the Attorney General’s redistricting team which consisted of attorneys representing the General Assembly, MDP and the Civil Litigation Unit. In addition, a number of civil rights and voting rights groups appeared as *amici curiae* to defend the constitutionality of the new law, including Howard University Law School’s Civil Rights Clinic, the Maryland NAACP, the NAACP Legal Defense and Educational Fund, the Maryland ACLU, Demos and the Prison Policy Initiative.<sup>80</sup> *Amici* argued that the Maryland legislature determined that the new law was necessary to “correct the striking inequity that existed previously due to the crediting of incarcerated people to electoral districts where they cannot vote, where they have no community ties, and where they are not considered residents for any other purpose other than the census.”<sup>81</sup>

On December 23, 2011, a three-judge panel granted the state’s motion for summary judgment, finding the No Population without Representation law to be constitutional and MDP’s implementation of the law to be proper and nondiscriminatory.<sup>82</sup> In a lengthy opinion, the court carefully weighed all of plaintiffs’ arguments, examined MDP’s implementation of the law, and found that a state may choose to adjust census data, as long as the adjustment is thoroughly documented and “applied in a nonarbitrary fashion.”<sup>83</sup> The court also noted that Maryland’s adjustment of census data during redistricting did not conflict with the practices of the Census Bureau, explaining that according to the Bureau, “prisoners are counted where they are incarcerated for pragmatic and administrative reasons, not legal ones.”<sup>84</sup>

The court concluded that Maryland’s adjustment to the census data was made in the systematic manner demanded by the United States Supreme Court. Citing the regulations, the court noted that MDP “undertook and documented a multistep process” to identify the last known address of all individuals in Maryland’s prisons.<sup>85</sup> Finally, the court found no evidence to support plaintiffs’ claim that the adjustment resulted from intentional racial discrimination. The court was careful to explain: “Our review of the record reveals

no evidence that intentional racial classifications were the moving force behind the passage of this Act. In fact, the evidence before us points to precisely the opposite conclusion.”<sup>86</sup> Relying on the amicus briefs filed by civil and voting rights organizations, the court acknowledged that the act was “the product of years of work by groups dedicated to advancing the interests of minorities.”<sup>87</sup> The United States Supreme Court affirmed the judgment on June 25, 2012.<sup>88</sup> Consequently, Maryland’s law and the 2011 adjustment were upheld.

### Maryland Timeline

April 13, 2010	No Representation without Population Act signed into law
February 9, 2011	Census 2010 redistricting population counts (P.L. 94-171) received from U.S. Census Bureau
March 22, 2011	MDP releases adjusted population per No Representation without Population Act
May 2, 2011	Precinct population counts adjusted per No Representation without Population Act released
October 4, 2011	GRAC submits recommended congressional redistricting plan to governor
October 17, 2011	Special legislative session called to adopt congressional redistricting plan
October 20, 2011	Maryland 2011 congressional districts adopted
December 16, 2011	GRAC submits recommended state legislative redistricting plan to governor
December 23, 2011	<i>Fletcher v. Lamone</i> dismissed; No Representation without Population Act upheld by U.S. District Court
January 11, 2012	Governor submits state legislative redistricting plan to Senate President and Speaker of the House of Delegates
February 24, 2012	New state legislative district plan becomes law
November 6, 2012	Congressional district plan approved by ballot referendum

## II. NEW YORK'S SOLUTION: PART XX

On August 11, 2010, Part XX of Chapter 57 of the Laws of 2010 (Part XX) was signed into law to fix the skew created by allocating New York's prison populations to the districts where they are incarcerated. Part XX directed the New York State Legislative Task Force on Demographic Research and Reapportionment (LATFOR) to reallocate people in correctional facilities back to their home communities for purposes of drawing state and local districts.<sup>89</sup>

Part XX directed the New York State Department of Corrections and Community Supervision (DOCCS) to deliver to LATFOR by September 1 of the census year, the following information for each person in its custody on Census Day: (1) a unique identifier, not including the name; (2) the address of the correctional facility in which the person was incarcerated; (3) the residential address of the person prior to incarceration; and (4) any additional information specified by LATFOR.<sup>90</sup> Part XX also required LATFOR, upon receipt of this information from DOCCS, to determine the census block corresponding to the street address of each incarcerated person's residential address prior to incarceration and the census block corresponding to the address of the correctional facility.<sup>91</sup> The new law then directs LATFOR to create a database in which "all incarcerated persons shall be . . . allocated for redistricting purposes, such that each geographic unit reflects incarcerated populations at their respective residential addresses prior to incarceration rather than at the addresses of [the] correctional facilities."<sup>92</sup> Part XX requires LATFOR to maintain the amended population dataset and use the dataset to draw state assembly and senate districts.<sup>93</sup>

Part XX addressed the appropriate population base for local (county, city, town and village) redistricting by amending the Municipal Home Rule Law to clarify that for purposes of establishing the population base requirements for local redistricting plans, "no person shall be deemed to have gained or lost a residence, or to have become a resident of a local government . . . by reason of being subject to the jurisdiction of the department of corrections."<sup>94</sup> The new law also required LATFOR to make the adjusted dataset available to local governments.<sup>95</sup>

Under Part XX, all individuals with out-of-state or unknown pre-incarceration addresses, and all individuals incarcerated in federal correctional facilities are "counted at an address unknown" and not included in the redistricting dataset.<sup>96</sup> Effectively this means that these individuals would be "subtracted" from the prison district,

but not reallocated to a home district. The choice to not reallocate those in federal prisons reflected concerns about the privacy laws that govern federal facilities and the lack of state authority over those in federal custody. The Privacy Act of 1974 regulates what personal information the federal government can collect about private individuals and how that information can be used.<sup>97</sup> While there is concern that federal prisons may be restricted from disclosing personal records, even if the records do not include personally identifiable information, it is also clear that at least one state—Kansas—has a long history of successful cooperation between federal and state agencies. Kansas reallocates people living on military bases for redistricting, and the U.S. military has worked with the state to collect and share home residence data for people living on military bases in the state.<sup>98</sup>

### 1. A Legal Challenge: *Little v. LATFOR*

On April 4, 2011, a group of upstate Republican New York State senators—all of whom represented districts that included at least one New York state prison—and a handful of voters who lived in those districts, filed a lawsuit against LATFOR and DOCCS arguing that Part XX was unconstitutional and asking the court to enjoin LATFOR and DOCCS from implementing the new law.<sup>99</sup> Plaintiffs argued that the new law violated Article III, section 4 of the New York State Constitution which provides that the federal census “shall be controlling as to the number of inhabitants in the state or any part thereof for the purpose of apportionment of members of the assembly and adjustment or alteration of senate and assembly Districts.”<sup>100</sup> The Complaint alleged that Part XX “creat[ed] a structural change by an artificial realignment of political power in the State” in violation of Article III, section 4, which, plaintiffs claimed, required the census to be “controlling” for apportionment purposes.<sup>101</sup>

Numerous voting rights and civil rights groups that had advocated for the reforms in Part XX intervened on behalf of the state defendants, representing voters from both upstate and downstate communities. The voters who intervened represented different interests, including: (1) those who lived in districts with high numbers of incarcerated individuals; (2) those who lived in both upstate and downstate counties that did not contain a prison; and (3) those who lived in a county where a prison was located but whose vote would nevertheless be diluted if the lawsuit prevailed because their local

county legislative districts did not contain a prison.<sup>102</sup>

On December 1, 2011, on cross motions for summary judgment, the New York State Supreme Court in Albany County upheld Part XX.<sup>103</sup> Relying in part on the new census policy of releasing the Group Quarters data early, the court found that plaintiffs had not demonstrated that Part XX “rendered the data provided by the Census Bureau to be anything less than ‘controlling’ in the redistricting process.”<sup>104</sup> The court further explained that there was nothing in the record indicating that people in prison “have any actual permanency in these locations or have an intent to remain. . . . [P]laintiffs have not proffered evidence that inmates have substantial ties to the communities in which they are involuntarily and temporarily located.”<sup>105</sup>

Plaintiffs’ attempt to appeal directly to the New York Court of Appeals was denied, and they chose not to appeal the Supreme Court’s decision to the mid-level appellate court. As a result, New York’s law was upheld and successfully implemented in time for districts to be drawn before the 2012 state-wide elections, as required by the New York Constitution.

## **2. Implementation of New York’s Reform Law**

### **a. State Redistricting Law**

The New York legislature has primary responsibility for drawing the state’s congressional and state legislative district lines.<sup>106</sup> The New York State Legislative Task Force on Demographic Research and Reapportionment (LATFOR), a six-member advisory commission comprised of members appointed by the Senate and Assembly majority and minority leaders, provides technical assistance to the legislature.<sup>107</sup> While LATFOR recommends congressional and state legislative plans to the legislature, the legislature is free to amend or even ignore its proposals.<sup>108</sup> New York law does not impose a deadline for drawing district lines, but in practice districts must be final prior to the filing deadlines for the next primary election.

### **b. State Prison Data**

On August 26, 2010, the LATFOR co-chairs sent a letter to the New York Department of Corrections and Community Supervision (DOCCS) requesting the following information for each incarcerated person subject to DOCCS jurisdiction on April 1, 2010:

1. A unique identifier, not including the name, for each incarcerated person;
2. The street address of the correctional facility in which such persons were incarcerated at the time of the census;
3. The residential address of such persons prior to incarceration;
4. The race, Hispanic origin, age and gender of such persons; and
5. Any additional information as the task force may specify pursuant to law.<sup>109</sup>

DOCCS provided the data in September 2010. The data included a list of addresses for the people held in DOCCS custody on April 1, 2010. The spreadsheet included 58,237 rows, one per inmate, with each inmate denoted by a unique identification number.<sup>110</sup> Each column of the spreadsheet was devoted to a different category of personal information associated with each inmate, including the county of conviction and the correctional facility where the inmate was incarcerated on April 1, 2010.<sup>111</sup> The data included residential addresses prior to incarceration for each inmate including the legal residence address, address at the time of arrest, and addresses of parents, spouses and nearest relative.<sup>112</sup> The legal residence address was presented in four address fields: street, city, county and state.<sup>113</sup>

### **c. Voting Rights Act Preclearance**

Because Part XX constituted a change to voting laws and procedures, New York had to submit the law to the United States Department of Justice (DOJ) for “preclearance” under Section 5 of the Voting Rights Act. Because of past discrimination against language minorities, Bronx, Kings and New York counties were “covered jurisdictions” under Section 5 required to seek DOJ approval before implementing any changes to their voting laws or procedures.<sup>114</sup>

The New York Attorney General submitted the law for preclearance on March 8, 2011. The preclearance submission explained that Part XX would “directly benefit” minority voters protected by Section 5 because those incarcerated in New York state prisons “originate predominantly from urban districts . . . subject to § 5, and are incarcerated in non-covered jurisdictions.”<sup>115</sup> The submission

concluded that Part XX would “appropriately adjust the weight of the vote of members of protected classes in New York’s three § 5 counties . . . .” The DOJ granted preclearance on May 9, 2011, finding that the state had carried its burden of establishing that the reform law was free of any discriminatory effect or intent, and allowing New York to move forward with implementing the new law in time for the 2011 redistricting cycle.<sup>116</sup>

#### **d. Geocoding and Reallocation**

Part XX specifically directed LATFOR to reallocate incarcerated individuals back to their prior residential addresses for redistricting purposes; so unlike in Maryland, there was no question about which agency was in charge of implementing the new law. Nevertheless, because of the political nature of LATFOR and its composition consisting of members of the legislature, legislative staff and agency staff representing both political parties, there was some delay in coordinating implementation. New York State Assembly staff took the initial steps to analyze the data and implement the new law.

The first step in the adjustment process was to “subtract” the prison population from the districts where the prisons were located. There were 68 DOCCS facilities in operation on April 1, 2010 in addition to two federal correctional facilities.<sup>117</sup> The Census Bureau had assigned state and federal prisons to a total of 75 blocks in New York State.<sup>118</sup> LATFOR staff used the addresses of DOCCS facilities and the two federal facilities to identify the correctional facilities on the 75 blocks identified by the Census Bureau.<sup>119</sup> Staff then used the DOCCS dataset, which enumerated 58,237 inmates and the name of the facility in which each inmate was incarcerated, to calculate the total number of people incarcerated in each correctional facility on each census block.<sup>120</sup> The Task Force identified 2,471 inmates incarcerated in federal prisons located in New York on April 1, 2010, bringing the total prison population to 60,708.<sup>121</sup> The total inmate population was then deducted from the total group quarters adult correction population to arrive at the adjusted population totals for these census blocks.<sup>122</sup>

Next LATFOR staff sorted the DOCCS data to separate records with unambiguously identifiable legal residence addresses (32,276 records), those with out-of-state residences (2,433 records) and those with no usable address (1,276 records).<sup>123</sup> Records in these last categories, out-of-state and unusable addresses, were deleted from the dataset, leaving a balance of 22,252 records that required some correction or clarification.<sup>124</sup> Within this balance of 22,252 records,

staff identified 14,154 records that were easily corrected by fixing obvious spelling and spacing errors and replacing abbreviations with complete proper names.<sup>125</sup>

The remaining 8,098 legal residence addresses were incomplete or absent, prompting staff to supplement the legal residence address with information from the additional five addresses provided by DOCCS.<sup>126</sup> Staff developed strict protocols for clarifying the addresses provided.

**FIRST PROTOCOL:** Record all edits.<sup>127</sup> LATFOR staff preserved the original dataset in the form it was received from DOCCS. Staff created a copy of the dataset and all modifications were made in the copy, not in the original. This allowed for a clear comparison between the original data and the data that included changes.

**SECOND PROTOCOL:** Create numeric codes to capture the nature of each change.<sup>128</sup> The DOCCS data included a number of abbreviations, but the geocoding software required the full and correct spelling of all streets, directional prefixes, cities and states. Numeric codes were created to capture the complete and exact dimensions of these changes. For example, code (1) indicated a change to abbreviation and spelling and code (2) indicated a change in spacing.<sup>129</sup> A total of ten codes were developed to represent the different types of alterations made to any of the fields comprising the legal residence address.

**THIRD PROTOCOL:** Create a set of alphabetical codes to identify sources of supplemental information.<sup>130</sup> When the information included in the Legal Residence Address field was incomplete, LATFOR staff examined information provided in the other five addresses to determine if there was information that could be used to complete the Legal Residence Address. If the supplemental information was used to construct a “final” legal residence address, a code was assigned to indicate from which field the supplemental information was used. For example, code A indicated that information came from the “address at arrest” field; code B indicated that the information came from the “father’s address” field.<sup>131</sup>

Once LATFOR staff completed its work correcting and clarifying the inmate address records, each record was assigned latitude and longitude coordinates by the geocoding software MapMarker.<sup>132</sup> On the first pass, 30,932 addresses were matched.<sup>133</sup> For the records that were not matched, the geocoding software produced an explanation describing the error.

Next, LATFOR staff initiated the second phase, using Google Maps to enhance and clarify the ungeocoded addresses in order to provide additional information to allow geocoding with a higher level of certainty.<sup>134</sup> Examples of errors that were fixed in this phase include a misspelled city or street name, incorrect identification of the street type (“avenue” instead of “street”), or an incorrect or absent directional prefix. Following its previous model, staff created a new set of protocols and codes, ensuring that all edits were carefully noted and the source clearly identified.

Once these corrections were made, the data were once again passed through the geocoding software. The software was able to assign geographic coordinates for the addresses of 46,003 incarcerated individuals who could then be properly allocated back to their home communities.<sup>135</sup> The remainder of the addresses were for people who resided in other states (whom the statute required to be removed from the redistricting data), or individuals for whom the information on file wasn’t sufficiently detailed to allow them to be reallocated. New York State’s reallocation, while imperfect, was a marked step forward compared to the previous decade when all incarcerated people were allocated to the correctional facility where they were incarcerated on April 1 of the census year.

#### **e. Adjustment**

To adjust the census data, LATFOR staff created three statewide block-level files, which included the necessary demographic categories to accommodate the adjusted data and to make the DOCCS data compatible with the PL 94-171 census redistricting data. The first file included all of the geocoded prisoner home address and racial/ethnic information from DOCCS.<sup>136</sup> The second file included the block-level prison population and aggregated racial and ethnic information.<sup>137</sup> The third file included federal prisons using the census Advanced Group Quarters data.<sup>138</sup>

Using these files, the adjusted redistricting data were created by taking the total census redistricting data for the state, adding the geocoded home addresses for people in prison, then subtracting the total state and federal prison populations.<sup>139</sup> As required by the statute, any incarcerated individual whose home address was not geocodable, or was unknown, was not included in the redistricting data.<sup>140</sup>

The final adjusted population files, along with a detailed memorandum explaining the adjustment process, were made available to the public and local redistricting bodies through LATFOR’s website. There was no additional outreach or public education.

## New York Timeline

August 11, 2010	Part XX signed into law
December 1, 2011	<i>Little v. LATFOR</i> dismissed; New York Supreme Court upholds Part XX
March 23, 2011	Census 2010 Redistricting population counts (P.L. 94-171) received from U.S. Census Bureau
May 9, 2011	Part XX precleared by U.S. Department of Justice
January 4, 2012	LATFOR released final prison population files adjusted per Part XX
January 26, 2012	LATFOR released proposed Senate and Assembly districts
March 11, 2012	LATFOR introduced bill including final Senate and Assembly districts
March 15, 2012	State legislature passed new state legislative districts; signed into law by governor
March 19, 2012	Final congressional districts ordered by United States District Court
April 27, 2012	Senate districts precleared by U.S. Department of Justice
May 18, 2012	Assembly districts precleared by U.S. Department of Justice

### III. RECOMMENDATIONS

Passing and implementing Maryland’s No Population without Representation Act and New York’s Part XX involved multiple agencies and actors, including legislators and their staff, government agencies, the Attorneys General’s offices, private software companies and consultants, and outside advocacy organizations. The combined experiences of these various actors in implementing this reform revealed some common recommendations for implementing reforms.

#### 1. Change the Census

The most effective way to correct the inequity caused by prison gerrymandering laws is for the census to count people in prison as residents of their home communities rather than their prison cells. There is widespread support for this change among advocates, scholars, redistricting experts, members of congress, editorial boards, state legislators and the administrative agencies tasked with drawing legislative districts.<sup>141</sup> Those involved with implementing the new laws in Maryland and New York agreed that the prisoner reallocation would be streamlined if the Census Bureau tabulated incarcerated persons at their home addresses.<sup>142</sup>

Specifically, the Census Bureau should:

- Update the interpretation of the Usual Residency rule to ensure that incarcerated persons are allocated to their home residence rather than at the location of a correctional facility. The Bureau should consult with stakeholders, including redistricting experts, elections officials, corrections officials, criminal justice advocates, and others to develop the best strategies and data choices for meeting this goal.
- Consider using “self-enumeration” data wherever possible to tabulate incarcerated people. Allowing incarcerated individuals to complete and submit their own census forms would allow them to identify their race and ethnicity as well as enable them to directly list their current home address.
  - Conduct a self-enumeration pilot study in select correctional facilities to develop protocols and test the utility of inmate-completed forms, as suggested

- by the Bureau’s 2013 Ethnographic Study.
- Where administrative records are to be used to tabulate incarcerated people, rely on agency-level administrative records collected by the Federal Bureau of Prisons and state correctional agencies—as suggested by the Bureau’s 2013 Ethnographic Study—rather than collecting this data on the individual facility level.
  - Consult with the Bureau of Justice Statistics to identify best practices for designing effective systems for collecting accurate and reliable state corrections data.<sup>143</sup>
  - Assure that state correctional agencies are aware of the Office of Management and Budget’s (OMB) Standards for the Classification of Federal Data on Race and Ethnicity, and advise state correctional agencies on how data systems can be structured to facilitate data collection consistent with these standards. Encouraging states to use the OMB standards would eliminate inconsistencies in how race and ethnicity data are recorded.<sup>144</sup>
  - Conduct experiments using existing state corrections data to evaluate how these administrative records, in their current form, would impact Census Bureau workflow and quality standards, as well as to develop protocols for addresses that cannot be successfully geocoded.
  - Consider how to allocate persons in the limited circumstances where an individual’s home address is unknown or nonexistent. For example, the Bureau may have to tabulate a limited number of people at the correctional facility where there is insufficient home address information.
  - Explore whether the recommendation of the 2013 *Ethnographic Study of the Group Quarters Population in the 2010 census: Jails and Prisons* to establish “correctional specialists” to coordinate the Bureau’s enumeration of people confined in correctional facilities will improve efficiency and standardization.<sup>145</sup>

## 2. Change State Laws

The effects of prison gerrymandering can also be addressed at the state level, as it was in Maryland and New York. As with any legislative change, these reforms require careful research and planning, and building a broad coalition of support. But in addition to general legislative strategy, there are some specific recommendations based on the experiences of successful reform in New York and Maryland.

### a. Bill Drafting

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. For example, the Maryland legislation did not name the implementing agency. Maryland solved this problem smoothly because the same state agency had both census and redistricting experience and a data staff that could perform the required geocoding, but in other states it may be important for the legislation to identify the implementing entity.

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, Both MDP and DPSCS 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, LATFOR staff explained that the phrase “residential address prior to incarceration” did not provide enough guidance to decide between the various address fields provided by the DOCCS data. Including a definitions section and providing more specific wording would eliminate some of the guess work and allow for a smoother implementation.

It is also important to remember that prison gerrymandering reforms often have the greatest impact at the local government level in municipal and county districts. To assure that the new law has the most comprehensive effect, the legislation should require localities to use the adjusted data when drawing their local districts.

The Prison Policy Initiative has a model bill with sample language that provides helpful guidance to bill drafters on all of these issues.<sup>146</sup>

## **b. Stakeholders**

Early consultation with the technical staff that will be charged with implementing the 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.

## **c. Corrections Data**

Correctional facilities should strive to collect data that would be useful to the Census Bureau and redistricting officials. This data should include home residence information down to the street level (and, wherever possible, avoiding non-geographic addresses like post office boxes and rural route addresses). Standardized street dictionaries or master address files can be used to make sure street names, city names, and zip codes are all valid. Similarly, correctional facilities should collect race and ethnicity data on their population in a way that is consistent with the Office of Management and Budget’s “Standards for the Classification of Federal Data on Race and Ethnicity” and therefore also consistent with the Census Bureau’s redistricting data.<sup>147</sup> In all cases, correctional facilities should strive to have accurate, current, and complete data.

## **3. Plan for Implementation**

Implementation of these reforms involves various administrative agencies, and many states impose strict deadlines for finalizing legislative districts. Consequently, agencies and policymakers should allow plenty of time to plan and execute the implementation stages. Identifying redistricting deadlines far in advance and planning accordingly can help assure a smooth implementation.

### **a. Timing**

Creating, obtaining, adjusting and checking data can take significant amounts of time that must be expended in a specific order. Officials in both Maryland and New York advised others to start as early as possible.<sup>148</sup> Planning should begin long before Census

Day (at least two years in advance), and adjusting the corrections data should begin as soon as the census is taken, allowing nine to twelve months to understand and prepare the corrections data, and several additional months between the Census Bureau's publication of the redistricting data and an individual state's formal start of line drawing.

Implementing agencies should be aware that localities often have redistricting deadlines that are earlier than the state deadline. Consultation with local redistricting bodies and elected officials will help ensure that the adjusted data is available in time to be helpful to as many localities as possible. For example, Maryland accelerated the release of its adjusted data so that it could be used in Baltimore City's municipal redistricting. On the other hand, the New York legislation did not give a specific deadline for LATFOR to produce the adjusted dataset, which had the unintentional effect of some localities proceeding to redistrict before the adjusted data was available.

### **b. Transparency**

As with any democratic reform, creating a transparent implementation process will allow greater public participation and engagement. This is particularly important in redistricting; legislative lines can have a dramatic impact on local communities, so public participation is especially critical to creating fair and accurate districts.

There are various ways to assure transparency when implementing prison gerrymandering reforms. For example, drafting regulations allows an opportunity for public comment and provides a clear process for how the new laws will be implemented. MDP found it very helpful to draft regulations to implement the Maryland law. The regulations provided consistent guidance throughout the various stages of implementation, particularly in providing specific definitions of terms in the law, and the steps the department must take to correct any missing or incorrect address data. The regulations proved to have additional utility when the implementation was challenged in court. In upholding the law, the court cited the regulations as evidence that MDP followed a careful and consistent process in adjusting the census data. Maryland also published reports on how the new law was implemented. Sharing this information allowed the public, as well as policymakers and legislatures, to understand the impact of the new law and its effect on local districts. Both New York and Maryland published the adjusted data on their websites, so that local redistricting bodies as well as policymakers, researchers, and members of the public could access and examine it.<sup>149</sup>

### **c. Inter-Agency Collaboration**

Reforming prison gerrymandering requires agencies that do not usually work together to collaborate and communicate. The agencies may not be familiar with each other's policies, or share a common vocabulary. One of the biggest challenges identified in both Maryland and New York was the implementing agency's lack of familiarity with the structure of the corrections system, the different types of facilities, why those differences were significant, or how the facilities created and maintained data. To alleviate this confusion, the redistricting and corrections agencies should form an integrated team at the earliest stage of implementation to share information and educate each other about relevant policies and procedures as well as data standards, and to create a common understanding and language. Legal counsel should be included in these conversations to assist with statutory and regulatory interpretation.

## CONCLUSION

Officials in Maryland and New York were the first in the country to take on the challenge of correcting the distortions of democracy caused by prison gerrymandering. Their combined experiences demonstrate how diverse state and local agencies can work together to successfully implement new and important policy reforms, and provide a valuable resource for policymakers and advocates across the country seeking to implement similar reforms. Today there is renewed attention to addressing the injustice created by prison gerrymandering. The Census Bureau, in keeping with its goal of producing the most accurate census count possible, should continue re-evaluating its policy of how it enumerates the prison population, and ultimately issue new guidance for tabulating incarcerated persons at their home addresses. Meanwhile, states across the country should implement their own solutions for reallocating individuals back to their home communities, in order to create more equitable and representative districts. These reforms, together, will realize the principle of one person-one vote, and ensure that prison gerrymandering no longer distorts our democracy. ■

## ENDNOTES

1. *Residence Rule and Residence Situations for the 2010 census*, U.S. Census Bureau, [http://www.census.gov/population/www/cen2010/resid\\_rules/resid\\_rules.html](http://www.census.gov/population/www/cen2010/resid_rules/resid_rules.html) (last visited June 26, 2014).
2. See *Reynolds v. Sims*, 377 U.S. 533, 565-66 (1964). For congressional districts, states must make a good-faith effort to have mathematical equality for each district. See *Wesberry v. Sanders*, 376 U.S. 1, 7-8, (1964). For state legislative districts, there is more flexibility; they have to reflect “substantial equality of population.” *Reynolds*, 377 U.S. 533, 559 (1964). Generally, the population difference between the largest and smallest state legislative districts can be up to 10% of the average district population. *Id.* Disparities in Congressional district populations are governed by the Apportionment Clause, U.S. Const. art. I, § 2, while state legislative district population disparities are governed by the Equal Protection Clause, U.S. Const. amend. XIV, § 1. For a thorough and practical explanation of redistricting principles, see Justin Levitt, Brennan Center for Justice, *A Citizen’s Guide to Redistricting* (July 1, 2008), available at <http://www.brennancenter.org/publication/citizens-guide-redistricting>.
3. Only Maine and Vermont allow people to vote while in prison. See Erika Wood, Brennan Center for Justice, *Restoring the Right to Vote 3* (May 11, 2009), available at <http://www.brennancenter.org/publication/restoring-right-vote>. In those two states, incarcerated people maintain residency in their home communities for voting purposes and vote in their home district by absentee ballot; they do not vote in the district where they are incarcerated. See Vt. Stat. Ann. tit. 17, § 2122(a); Me. Rev. Stat. Ann. tit. 21-A, § 112(14).
4. Compare Bureau of Justice Statistics, Office of Justice Programs, U.S. Dep’t of Justice, *Prisoners 1925-81*, at 2 tbl.1 (Dec. 1982), available at <http://www.bjs.gov/content/pub/pdf/p2581.pdf> (listing the number of state and federal prisoners per 100,000 residential population at 96 in 1970), with E. Ann Carson & Daniela Golinelli, Bureau of Justice Statistics, Office of Justice Programs, U.S. Dep’t of Justice, *Prisoners in 2012: Trends in Admissions and Releases, 1991-2012*, at 25 tbl.18 (Dec. 2013), available at <http://www.bjs.gov/content/pub/pdf/p12tar9112.pdf> (listing the number of state and federal prisoners per 100,000 residential population at 480 in 2012).
5. Marc Mauer, *Race to Incarcerate* 18, 20 (2d ed. 2006).
6. Compare Bureau of Justice Statistics, Office of Justice Programs, U.S. Dep’t of Justice, *Prisoners 1925-81*, at 2 tbl.1 (Dec. 1982), available at <http://www.bjs.gov/content/pub/pdf/p2581.pdf> (listing the number of state and federal prisoners at 196,429 in 1970), with E. Ann Carson & Daniela Golinelli, Bureau of Justice Statistics, Office of Justice Programs, U.S. Dep’t of Justice, *Prisoners in 2012: Trends in Admissions and Releases, 1991-2012*, at 25 app’x tbl.6 (Dec. 2013), available at <http://www.bjs.gov/content/pub/pdf/p12tar9112.pdf> (listing the number of state and federal prisoners at 1,570,397 in 2012).
7. Erica Goode, *Average Prison Stay Grew 36 Percent in Two Decades*, N.Y. Times (June 6, 2012), available at <http://www.nytimes.com/2012/06/06/us/average-prison-stay-grew-36-percent-in-two-decades.html>.
8. Gabriel Sayegh, *New York Must Reform its Racist Drug Laws*, AlterNet (May 4, 2007), [http://www.alternet.org/story/51475/new\\_york\\_must\\_reform\\_its\\_racist\\_drug\\_laws](http://www.alternet.org/story/51475/new_york_must_reform_its_racist_drug_laws).
9. See Peter Wagner, Prison Policy Initiative, *Prison Town Legislators Represent Prisoners’ Interests? Not Quite.* (June 14, 2004), <http://www.prisonersofthecensus.org/news/2004/06/14/represent/>.
10. See Md. Dep’t of Pub. Safety & Corr. Servs., *Secretary’s End of Year Report 22* (2010), available at [http://www.dpssc.state.md.us/publicinfo/publications/pdfs/2010\\_DPSCS\\_End\\_of\\_Year\\_Report.pdf](http://www.dpssc.state.md.us/publicinfo/publications/pdfs/2010_DPSCS_End_of_Year_Report.pdf).
11. Peter Wagner & Olivia Cummings, Prison Policy Initiative, *Importing Constituents: Incarcerated People and Political Clout in Maryland* (Mar. 4, 2010), <http://www.prisonersofthecensus.org/md/report.html>.
12. See Md. Dep’t of Pub. Safety & Corr. Servs., *Correctional Facility Locator*, <http://www.dpssc.state.md.us/locations/prisons.shtml> (distances calculated using listed addresses of facilities) (last visited June 26, 2014).
13. Ashley Nellis & Ryan S. King, Sentencing Project, *No Exit: The Expanding Use of Life Sentences in America* 7 tbl.2 (July 2009), available at [http://www.sentencingproject.org/doc/publications/publications/inc\\_NoExitSept2009.pdf](http://www.sentencingproject.org/doc/publications/publications/inc_NoExitSept2009.pdf).
14. Guy G. Cherry & Claire E. Rossmark, Office of Policy Analysis, Md. Dep’t of Legislative Servs., *Maryland Diminution Credit System* 7 (Dec. 2011), available at [http://dls.state.md.us/data/polanasubare/polanasubare\\_coucrjrusncvmat/Diminution-Credits.pdf](http://dls.state.md.us/data/polanasubare/polanasubare_coucrjrusncvmat/Diminution-Credits.pdf).
15. Wagner & Cummings, *supra* note 11.
16. Prison Policy Initiative, *Ending Prison-Based Gerrymandering Would Aid the African-American Vote in Maryland* (Jan. 22, 2010), <http://www.prisonersofthecensus.org/factsheets/md/africanamericans.pdf>.
17. *Id.*
18. See N.Y. State Dep’t of Corr. & Cmty. Supervision, *Facility Listing*, <http://www.doccs.ny.gov/faclist.html> (distances calculated using listed addresses of facilities) (last visited June 26, 2014).
19. Peter Wagner, Prison Policy Initiative, *Importing Constituents: Prisoners and Political Clout in New York* n. 3 (Apr. 22, 2002), <http://www.prisonpolicy.org/importing/importing.html> (citing N.Y. State Dep’t of Corr. Servs., *Characteristics of New Commitments 1999*, at 74 (2000); N.Y. State Dep’t of Corr. Servs., *The Hub System: Profile of Inmates Under Custody on January 1, 2000*, at 8 (2000)).
20. Wagner, *supra* note 19, at fig. 1.
21. Affirmation of Peter Wagner in Support of Intervenors-Defendants’ Motion for Summary Judgment and in Opposition to Plaintiffs’ Motion for Summary Judgment dated Aug. 17, at ¶ 64, see *Little v. N.Y. State Task Force on Demographic Research & Reapportionment*, No. 2310-2011 (Sup. Ct. N.Y. Dec. 1, 2011), available at [http://www.prisonersofthecensus.org/little/Intervener-Defendants\\_SJ\\_motion.pdf](http://www.prisonersofthecensus.org/little/Intervener-Defendants_SJ_motion.pdf) (citing U.S. Census Bureau, *American FactFinder*, available at [http://factfinder.census.gov/home/saff/main.html?\\_lang=en](http://factfinder.census.gov/home/saff/main.html?_lang=en) (last visited Aug. 15, 2011, 6:25pm) (data for New York State); N.Y. State Dep’t of Corr. Servs., *The HUB System: Profiles of Inmates Under Custody on January 1, 2008*, at i (2008), available at [http://www.doccs.ny.gov/Research/Reports/2008/Hub\\_Report\\_2008.pdf](http://www.doccs.ny.gov/Research/Reports/2008/Hub_Report_2008.pdf)).
22. Memorandum in Support of Motion to Intervene dated May 17, 2011 (“Little Intervention Memo”) at 4-5, see *Little*, No. 2310-2011 (N.Y. Sup. Ct. Dec. 1, 2011), available at [http://www.prisonersofthecensus.org/little/Motion\\_to\\_Intervene\\_Package\\_\(for\\_service\).pdf](http://www.prisonersofthecensus.org/little/Motion_to_Intervene_Package_(for_service).pdf) (citing N.Y. State Dep’t of Corr. Servs., *supra* note 21, at ii).
23. Wagner, *supra* note 19, at fig. 3.
24. Jennifer Fusco, *1/2 of Rome Ward’s Residents Are Prisoners*, Utica Observer-Dispatch (updated Feb. 19, 2010, 7:00 PM), available at <http://www.uticaod.com/article/20100219/News/302199905>; Staff Report, *Our View: Don’t Count Prisoners With Voters*, Utica Observer-Dispatch (updated Feb. 26, 2010, 11:09 PM), available at <http://www.uticaod.com/x1694766272/Our-view-Don-t-count-prisoners-with-voters>.
25. N.Y. State Legis. Task Force on Demographic Research & Reapportionment, *2000 census Data by Senate District*, <http://www.latfor.state.ny.us/data/2000files/2000sen-prof.pdf> (last visited July 29, 2014); Memorandum from Michael A. Carvin to Sens. Joseph Bruno & Dean Skelos (Mar. 7, 2002), available at <http://www.latfor.state.ny.us/faqs/docs/2012senatesize.pdf>.
26. The New York Constitution provides that, “[f]or the purpose of voting, no person shall be deemed to have gained or lost a residence, by reason of his or her presence or absence . . . while confined in any public prison.”

- N.Y. Const. art. II, § 4; *see also* N.Y. Elec. Law § 5-104(1) (McKinney 2010).
27. Prison Policy Institute, *Gerrymandering and Relying on the Miscount of Prisoners Combine to Violate the U.S. Constitution in New York* (last visited June 30, 2014), <http://www.prisonersofthecensus.org/nygerrymander.html>.
  28. Wagner, *supra* note 19, at fig. 3.
  29. Letter from A Better Way Foundation et al. to Thomas Mesenbourg, Acting Director, U.S. Census Bureau (Feb. 14, 2013), available at <http://www.prisonersofthecensus.org/letters/feb2013.html>.
  30. Barbara Owen & Anna Chan, Ctr. for Survey Measurement, Research and Methodology Directorate, U.S. Census Bureau, *Ethnographic Study of the Group Quarters Population in the 2010 census: Jails and Prisons* 37-38 (Apr. 25, 2013), available at <http://www.census.gov/srd/papers/pdf/ssm2013-13.pdf>. The study's authors explain: "Given our knowledge about correctional populations and their potential for self-enumeration, a true self-enumeration pilot in one or more prisons could be conducted to determine the utility of inmate-completed forms." *Id.* The study presents a detailed analysis of how the 2010 census was conducted in two women's state prisons and in one county jail, with additional information from observations of the collection of American Community Survey data in a large male state prison and other facilities. It was not intended to be a review of the feasibility of enumerating incarcerated people at alternative addresses, but its review of existing practices and its suggestions for how those practices could be improved, make it a valuable first step.
  31. Robert Graves, U.S. Census Bureau, *So How Do You Handle Prisons?*, Director's Blog (Mar. 1, 2010), <http://directorsblog.blogs.census.gov/2010/03/01/so-how-do-you-handle-prisons/>.
  32. Bills have been introduced in: Arkansas, California, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Minnesota, New Jersey, New York, Oregon, Rhode Island, and Texas. Bill information is available at <http://www.prisonersofthecensus.org/legislation.html>.
  33. A list of local governments that avoid prison gerrymandering is available at <http://www.prisonersofthecensus.org/local/>.
  34. *See e.g.*, Assemb. B. 420, 2011-12 Leg., Reg. Sess. (Ca. 2011); H.B. 384, 145th Gen. Assemb., Reg. Sess. (Del. 2010); No Representation Without Population Act, H.B. 496, 2010 Leg., Reg. Sess. (Md. 2010); N.Y. Legis. Law § 83-m (McKinney 2011).
  35. Md. Code Regs. 34.05.01.04 (C) (2010).
  36. Md. Code Ann., State Gov't § 2-2A-01 (West 2010) (affecting legislative districts for the General Assembly); Md. Code Ann., Elec. Law § 8-701 (West 2010) (affecting districts for congressional Representatives); Md. Code Ann., Political Subdivisions—Miscellaneous Provisions art. 24§ 1-111 (West 2010) (affecting legislative districts for county and municipal corporations).
  37. Md. Code Ann., State Gov't § 2-2A-01 (West 2010) (affecting legislative districts for the General Assembly); Md. Code Ann., Elec. Law § 8-701 (West 2010) (affecting districts for congressional Representatives); Md. Code Ann., Political Subdivisions—Miscellaneous Provisions art. 24§ 1-111 (West 2010) (affecting legislative districts for county and municipal corporations).
  38. Md. Const. art. III, § 5.
  39. *Id.* (the deadline for the state legislative redistricting plan was January 11, 2012. *See* Md. Dep't of Planning, *Redistricting FAQs* (last updated Jan. 20, 2013), <http://planning.maryland.gov/redistricting/faq.shtml>).
  40. *Id.*
  41. *Id.*
  42. Md. Dep't of Planning, *supra* note 39.
  43. *Id.*
  44. *Id.*
  45. Md. Code Ann., State Fin. & Proc. § 5-301 (West 2000).
  46. Interview with Matthew Power, Deputy Sec'y, Md. Dep't of Planning (Dec. 19, 2012).
  47. For a helpful introduction to geocoding, see Daniel W. Goldberg, *A Geocoding Best Practice Guide* (Nov. 2008), available at [http://www.naacrr.org/LinkClick.aspx?fileticket=ZKekM8k\\_IQ0%3D&tabid=239&mid=699](http://www.naacrr.org/LinkClick.aspx?fileticket=ZKekM8k_IQ0%3D&tabid=239&mid=699)
  48. Md. Code Regs. 34.05.01.03 (B)(4)(a)-(b) (2010).
  49. *Id.* at 34.05.01.04 (B).
  50. *Id.* at 34.05.01.04 (C)(1).
  51. *Id.* at 34.05.01.04 (D).
  52. Letter from Richard E. Hall, Secretary, Md. Dep't of Planning & Karl Aro, Director, Md. Dep't of Legislative Servs., to Matthew Mellady, Fed. Bureau of Prisons, U.S. Dep't of Justice (July 22, 2010) (on file with author).
  53. 5 U.S.C. § 552a (1996).
  54. Letter from Alecia S. Sillah, Fed. Bureau of Prisons, U.S. Dep't of Justice, to Richard E. Hall, Md. Dep't of Planning (Oct. 7, 2010) (on file with author).
  55. Declaration of James Cannistra dated Dec. 1, 2011, (No. 8:11-cv-03220-RWT). ("Cannistra Decl.") at ¶ 12, available at [http://www.prisonersofthecensus.org/fletcher/AG\\_exhibit\\_2.pdf](http://www.prisonersofthecensus.org/fletcher/AG_exhibit_2.pdf); *see also* *Fletcher v. Lamone*, 831 F. Supp.2d 887 (D. Md. 2011).
  56. Cannistra Decl., *supra* note 55, at ¶ 12.
  57. *Id.*
  58. Affidavit of Kevin Combs dated Dec. 1, 2011 at ¶ 3, *see Fletcher*, 831 F. Supp.2d 887 (D. Md. 2011) (No. 8:11-cv-03220-RWT), available at [http://www.prisonersofthecensus.org/fletcher/AG\\_exhibit\\_3.pdf](http://www.prisonersofthecensus.org/fletcher/AG_exhibit_3.pdf).
  59. *Id.* at ¶ 4.
  60. *Id.*
  61. *Id.* at ¶ 6; Telephone Interview with Felicia Hinton, Assistant Comm'r, Md. Dep't of Pub. Safety & Corr. Servs. (March 15, 2013).
  62. Cannistra Decl., *supra* note 55, at ¶¶ 2,3.
  63. Caliper Corp., *Maryland 2010 census Prisoner Adjustment Final Report* 4 (March 23, 2011), available at [http://www.prisonersofthecensus.org/fletcher/AG\\_exhibit\\_4.pdf](http://www.prisonersofthecensus.org/fletcher/AG_exhibit_4.pdf).
  64. Defendants' Motion to Dismiss dated Dec. 2, 2011 at exh. 23, *see Fletcher*, 831 F. Supp.2d 887 (D. Md. 2011) (No. 8:11-cv-03220-RWT), available at [http://www.prisonersofthecensus.org/fletcher/AG\\_exhibit\\_23.pdf](http://www.prisonersofthecensus.org/fletcher/AG_exhibit_23.pdf).
  65. Cannistra Decl., *supra* note 55, at ¶ 6. The addresses that could not be geocoded broke down as follows:

Segregated Addresses	Number	Percent of Total
Correctional Facility	249	1.13%
Incomplete Address	111	0.50%
No Address or Homeless	1,635	7.41%
Out-of-State	1,326	6.01%

Post Office Box	20	0.09%
Rural Route Box	17	0.08%
Total	3,358	15.22%

66. *Id.* at ¶ 7.
67. *Id.* at ¶ 9.
68. *Id.* at ¶ 10.
69. *Id.* at ¶ 10.
70. After MDP re-categorized some special cases, 16,988 (77%) incarcerated individuals were assigned to their home addresses, 3755 (17%) were assigned to the correctional facilities, and 1321 (6%) were reallocated out of Maryland census data as out-of-state residents. *Id.* at ¶ 17.
71. Caliper Corp., *supra* note 63, at 14.
72. *Id.*
73. Balt., Md., Charter, art. III, § 7(b).
74. *Id.*
75. The Legacy Foundation's stated mission is "to advance individual liberty, free enterprise and limited, accountable government." Legacy Foundation, Mission Statement <http://legacyfoundation.us/why-the-legacy-foundation/> (last visited June 30, 2014). To access the Legacy Foundation's case filings, see Legacy Foundation, *Case Filings*, <http://legacyfoundation.us/case-filings/> (last visited June 30, 2014).
76. Annie Linskey, *Iowa Group to Fund Suit Against Maryland's Congressional Map*, Balt. Sun (Nov. 10, 2011), available at [http://www.baltimoresun.com/news/maryland/bs-md-redistricting-lawsuit-20111110\\_0,848688.story](http://www.baltimoresun.com/news/maryland/bs-md-redistricting-lawsuit-20111110_0,848688.story).
77. *Fletcher v. Lamone*, 831 F. Supp.2d 887, 894 (D. Md. 2011).
78. Complaint dated Nov. 10, 2011 at ¶¶ 49-54, see *Fletcher*, 831 F. Supp.2d 887 (D. Md. 2011) (No. 8:11-cv-03220-RWT), 2011 WL 9467560.
79. *Id.* at ¶ 70.
80. Brief for Howard Univ. Sch. of Law Civil Rights Clinic et al. as Amici Curiae Supporting Defendants dated Dec. 2, 2011, see *Fletcher*, 831 F. Supp.2d 887 (D. Md. 2011) (No. 8:11-cv-03220-RWT), available at [http://www.prisonersofthecensus.org/fletcher/Final\\_Fletcher\\_amicus\\_with\\_affidavit\\_and\\_service.pdf](http://www.prisonersofthecensus.org/fletcher/Final_Fletcher_amicus_with_affidavit_and_service.pdf).
81. *Id.* at 4-5.
82. *Fletcher*, 831 F. Supp.2d at 897.
83. *Id.* at 894-95 (relying on *Karcher v. Daggett*, 462 U.S. 725, 732 n. 4, 738 (1983)).
84. *Id.* at 895.
85. *Id.* at 896.
86. *Id.* at 897.
87. *Id.*
88. 133 S. Ct. 29 (2012).
89. New York law designates LATFOR as the body responsible for the "preparation and formulation of a reapportionment plan . . . and the utilization of census and other demographic and statistical data for policy analysis, program development and program evaluation purposes for the legislature." N.Y. Legis. Law § 83-m(3) (McKinney 2013). The task force is bipartisan and consists of six members, two of whom are appointed by the state senate president, two of whom are appointed by the speaker of the assembly and one each appointed by the minority leaders of the senate and assembly. *Id.* at § 83-m(2). Four task force members are members of the legislature and two are not. *Id.*
90. N.Y. Correct. Law § 71(8)(a) (McKinney 2011).
91. N.Y. Legis. Law § 83-m(13)(b) (McKinney 2011).
92. *Id.*
93. *Id.*
94. N.Y. Mun. Home Rule Law § 10 (1)(a)(13)(c) (McKinney 2011).
95. N.Y. Legis. Law § 83-m(13)(b) (McKinney 2011).
96. *Id.*
97. 5 U.S.C. § 552a (1996).
98. See Kris W. Kobach, *Adjustment to the 2010 U.S. Decennial census*, (July 26, 2011) available at <https://www.kssos.org/forms/elections/2010censusAdj.pdf>.
99. Complaint dated Apr. 4, 2011 at ¶ 2, see *Little*, No. 2310-2011 (N.Y. Sup. Ct. Dec. 1, 2011), available at <http://www.prisonersofthecensus.org/little/complaint.pdf>.
100. N.Y. Const. art. III, § 4.
101. Complaint dated Apr. 4, 2011, *supra* note 99, at ¶¶ 86-87.
102. Little Intervention Memo, *supra* note 22, at 2-3.
103. *Little*, No. 2310-2011 (N.Y. Sup. Ct. Dec. 1, 2011), available at [http://www.prisonersofthecensus.org/little/Decision\\_and\\_Order.pdf](http://www.prisonersofthecensus.org/little/Decision_and_Order.pdf).
104. *Id.* at 7.
105. *Id.*
106. N.Y. Const. art. III, § 4; N.Y. Legis. Law § 93 (McKinney 2013).
107. N.Y. Legis. Law § 83-m (McKinney 2011).
108. *Cf. id.* at § 83-m(5) ("The primary function of the task force shall be to compile and analyze data, conduct research for and make reports and recommendations to the legislature, legislative commissions and other legislative task forces.").
109. Letter from Sen. Martin Malavé Dilan & Assemb. Carl E. Heastie, Co-Chairs, N.Y. State Legis. Task Force on Demographic Research & Reapportionment, to Hon. Brian Fischer, Commissioner, Dep't of Corr. Servs. (sic.) (Aug. 26, 2010) (on file with author).
110. N.Y. Assemb., *Relocating Prisoners to Home Community Addresses 1* (Sept. 2011) ("N.Y. Assemb., *Relocating Prisoners*").
111. *Id.* (spreadsheet on file with author).
112. *Id.* at 1-2.
113. *Id.* at 2.
114. As a result of the 2013 Supreme Court ruling in *Shelby County v. Holder*, 133 S.Ct. 2612 (2013) striking down the Voting Rights Act's preclearance coverage formula, these counties are no longer required to pre-clear changes to their voting laws.
115. Letter from Joel Graber, Special Litig. Counsel, Office of the N.Y. Att'y Gen., to Christian Herren, Jr., Chief, Voting Section, U.S. Dep't of Justice (Mar. 7, 2011), available at <http://www.prisonersofthecensus.org/little/NYS-Sec5-partxx-submission.pdf>.
116. *Cf.* Letter from T. Christian Herren, Jr., Chief, Voting Section, U.S. Dep't of Justice, to Joel Graber, Special Litig.

- Counsel, Office of the N.Y. Att’y Gen. (May 9, 2011) (stating that the U.S. Attorney General raises no objections to the law), available at [http://www.prisonersofthecensus.org/little/doj\\_preclearance\\_letter.pdf](http://www.prisonersofthecensus.org/little/doj_preclearance_letter.pdf).
117. N.Y. Assemb., *Subtracting Prisoners from the Address of Incarceration* 5 (Sept. 2011) (“N.Y. Assemb., *Subtracting Prisoners*”).
  118. *Id.*
  119. *Id.*
  120. *Id.* at 5-6.
  121. Memorandum from Isaac Fefer, Senior Demographer, Bruce Ruiz, GIS Manager & Marisa Vallvé, Senior GIS Analyst, to Debra A. Levine & Lewis M. Hoppe, Co-Executive Directors, N.Y. State Legis. Task Force on Demographic Research & Reapportionment 3 (Jan. 5, 2012) (“LATFOR Adjustment Memo”), available at [http://www.latfor.state.ny.us/justice2012/assembly/007Joint%20Exhibit%207%20-%20Prisoner%20Allocation%20Documents/0\\_ReadMe.pdf](http://www.latfor.state.ny.us/justice2012/assembly/007Joint%20Exhibit%207%20-%20Prisoner%20Allocation%20Documents/0_ReadMe.pdf).
  122. N.Y. Assemb., *Subtracting Prisoners*, *supra* note 117, at 6.
  123. N.Y. Assemb., *Relocating Prisoners*, *supra* note 110, at 2. Note that this data included only state prison data, not federal.
  124. *Id.*
  125. *Id.*
  126. *Id.*
  127. *Id.* at 4.
  128. *Id.*
  129. *Id.*
  130. *Id.* at 5.
  131. *Id.*
  132. LATFOR Adjustment Memo, *supra* note 121, at 1.
  133. N.Y. Assemb., *Relocating Prisoners*, *supra* note 110, at 8.
  134. *Id.*
  135. LATFOR Adjustment Memo, *supra* note 121, at 1.
  136. *Id.* at 2.
  137. *Id.*
  138. *Id.*
  139. *Id.*
  140. N.Y. Legis. Law § 83-m(13)(b) (McKinney 2011).
  141. Last year, more than 200 organizations signed a letter urging the Census Bureau to conduct the research necessary to ensure that the 2020 census counts incarcerated people at their home addresses. Letter from A Better Way Foundation et al., *supra* note 29.
  142. Interview with Matthew Power, *supra* note 46; Telephone Interview with Felicia Hinton, *supra* note 61; Telephone Interview with Debra Levine & Lewis Hoppe, Co-Executive Directors, N.Y. State Legis. Task Force on Demographic Research & Reapportionment (Feb. 6, 2013).
  143. The Bureau of Justice Statistics conducted a survey of state correctional data systems in 1998, finding that the majority of state prison systems had mostly complete electronic records of home addresses. See Bureau of Justice Statistics et al., *State and Federal Corrections Information Systems: An Inventory of Data Elements and an Assessment of Reporting Capabilities*, Bureau of Justice Statistics (Aug. 1998), available at <http://www.bjs.gov/content/pub/pdf/sfcisq.pdf>. The Census Bureau should determine how these data collections have improved in the last sixteen years, and consider how the Bureau can help these systems continue to improve as 2020 approaches. Further, the Census Bureau may wish to explore the state of data collection in the nation’s largest jail systems; the fifty largest jail systems in the U.S. hold more than a third of the nation’s jail population.
  144. The OMB standards provide a common language to promote uniformity and comparability for data on race and ethnicity and were developed in cooperation with federal agencies, including the Census Bureau, to provide consistent data on race and ethnicity throughout the federal government. For an explanation of OMB standards, see Office of Mgmt. & Budget, *Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity* (Oct. 30, 1997), available at [http://www.whitehouse.gov/omb/fedreg\\_1997standards/](http://www.whitehouse.gov/omb/fedreg_1997standards/).
  145. Owen & Chan, *supra* note 30, at 37.
  146. Prison Policy Initiative, *Example Bill: Ending Prison-Based Gerrymandering in Your State* (last updated Feb. 26, 2014), available at <http://www.prisonersofthecensus.org/models/example.html>.
  147. Office of Mgmt. & Budget, *supra* note 144.
  148. Interview with Matthew Power, *supra* note 46; Telephone Interview with Debra Levine & Lewis Hoppe, *supra* note 142.
  149. Maryland continues to maintain all redistricting related information (legislation, adjusted data, maps, etc.) on MDP’s website at <http://planning.maryland.gov/Redistricting/>. New York maintains its data on the LATFOR website at <http://www.latfor.state.ny.us/data/>.

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