



Power to the *(prison)* People

Tens of thousands of inmates in mostly rural prisons are counted as local residents, which could mean less voting power – and less tax revenue – for urban parts of Phoenix. The practice may be unconstitutional.

Still think your vote counts?

BY AMANDA J. CRAWFORD

Florence could be “Prison City.” Really. Pete Rios, a former state representative who now serves on the Pinal County Board of Supervisors, remembers the proposal. As the mining and agricultural jobs went away in this area between Chandler and Tucson, prisons became a key source of economic development for the town. The mayor proposed changing the city’s name. That didn’t happen. But Pinal County changed.

Today, the town and its neighbor, Eloy, are Arizona’s major prison towns. There are two large state prisons and eight private prisons in the area that, together, house more than 24,000 prisoners. They are bused in from the Valley and throughout Arizona or imported from other states, including Hawaii and Alaska.

Those prisoners aren’t really Eloy or Florence residents or constituents of Pinal County in any sense of the words. They can’t vote, and they may never step foot in the county beyond the prison walls. Most of them will be released in a few years and will return to homes elsewhere. But when the U.S. Census Bureau counted Arizona’s population last year, all those prisoners were counted as if Pinal County were home. That means millions of dollars in additional tax revenue sent from the state to governments in Pinal County. It also could mean a louder voice for local residents in state elections.

This year Arizona and every other state will redraw political boundaries. The redistricting process is tedious but hugely important. It occurs every 10 years and guarantees the fundamental principle of “one person, one vote” in our representative democracy.

But as that process kicks off, some experts are warning that the sheer abundance of prisoners in Pinal County and in large prisons throughout the state could impact the basic tenet of equal representation. How prisoners behind the walls are counted when Arizona redraws the lines could distort political power in the state, enhance the clout of the controversial private-prison industry and dilute the voice of Phoenix residents in state politics in favor of other areas with prison “residents” who aren’t really residents at all.

“It’s a big deal,” warns Peter Wagner, executive director of the Massachusetts-based Prison Policy Initiative, which helped push recent reforms in New York, Maryland and Delaware. He says the impact of prisoners on Arizona’s political landscape could be among the most dramatic anywhere in the nation. “We have enough people in prison in this country and enough people in prison in Arizona to change how our democracy works, to change the decisions that the Legislature makes.”

The statewide redistricting process kicks off in the next few weeks when the U.S. Census Bureau releases population figures for each state. The Arizona Independent Redistricting Commission then begins the long process of redrawing the lines for Arizona to create districts of equal population for state legislative and federal Congressional districts – a reform passed by voters in 2000 to take the process out of the hands of state legislators who too often drew districts aimed at protecting their own seats or political allies.

This is the second time that the commission – which consists of a newly appointed group of two Democrats, two Republicans and one Independent – has been in charge of creating the state’s political map. The last time, after the 2000 census, groups who believed, among other things, that the commission did not live up to its requirement to create districts that were competitive for both major political parties, challenged the commission’s plan all the way to the Arizona Supreme Court.

The commissioners are supposed to start with a grid-like map of the state that they then alter to create districts that contain an equal number of residents. They also must adhere to requirements of the federal Voting Rights Act, which protects the influence of minority voters through the creation of some “majority minority” districts. Additionally, the commission is supposed to strive to respect geographical boundaries and so-called “communities of interest,” such as towns, school districts and American Indian reservations. Where possible, the commission is also supposed to create districts where electoral victory is not a virtual guarantee to nominees of one party or another due to voter registration. (Still, only four of the state’s 30 legislative districts were considered competitive after the last redistricting process. Many districts’ representation is decided in the primary election, sometimes without any opposition by the other major party in the general election.)

The process will determine the political landscape until 2021, when the process will happen again.

“It sets the rules of the game that we play for the next 10 years,”

says Jennifer Steen, an assistant professor of political science at Arizona State University and a fellow at the Morrison Institute for Public Policy, which will hold ongoing training sessions to help members of the public understand and participate in the redistricting process.

The last redistricting commission briefly discussed the impact prisons could have on political districts. Steve Lynn, who chaired that commission, says members realized they should not load up a district with prisons if they could help it. But the U.S. Census data that the commission used included the prisons, and the commission looked no further than that.

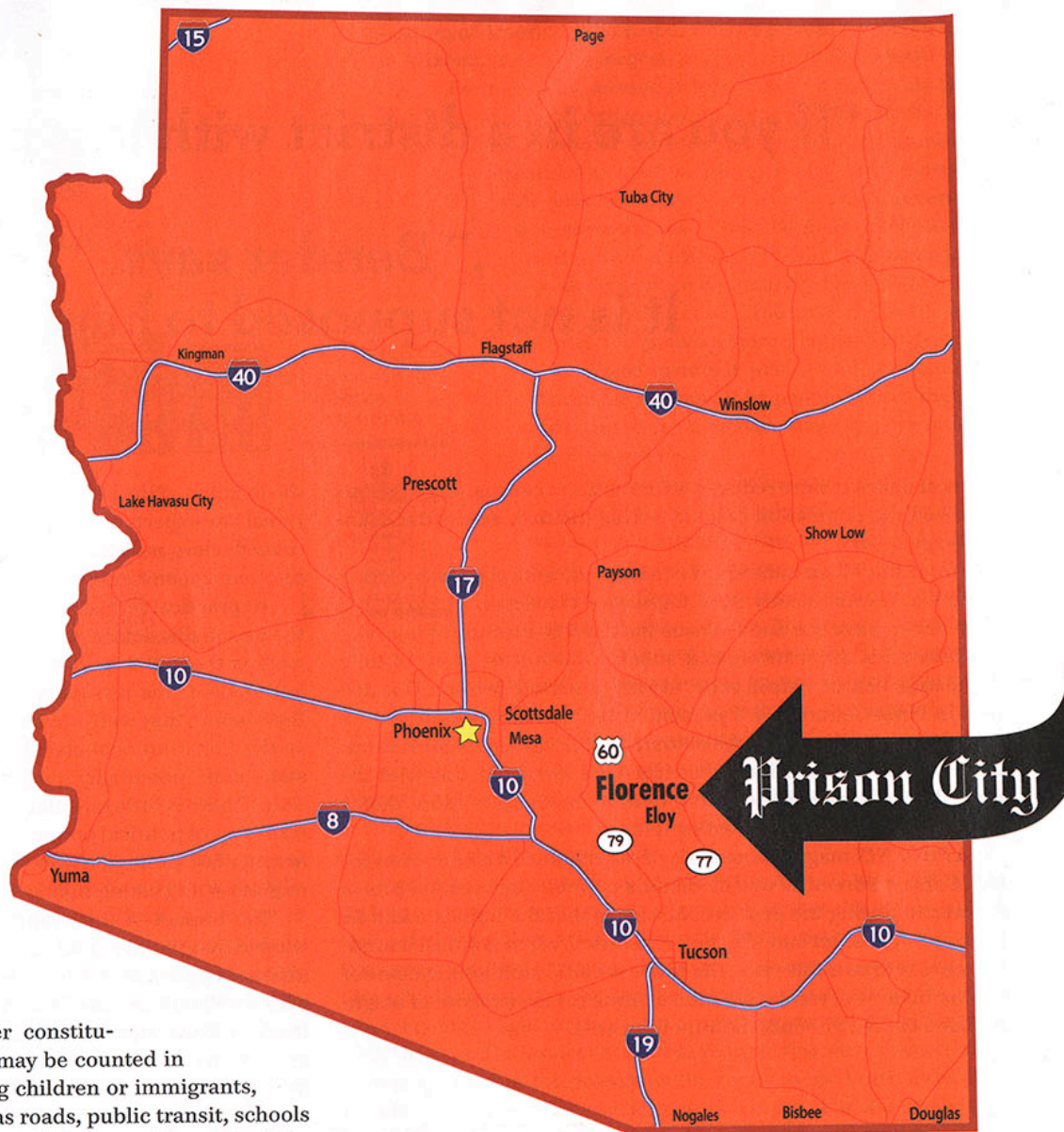
In Arizona and most states, felons cannot vote while they are incarcerated. So when political boundaries are drawn, prisons can distort the process by inserting large blocks of non-voters into districts.

The inmates are not like other constituents. Unlike other non-voters who may be counted in the population of an area, including children or immigrants, they do not use local services such as roads, public transit, schools or libraries. They are unlikely to consider themselves part of the community or have any ties there whatsoever. In most cases, their homes are many miles away, usually in a different county or, if they are in a private prison, in a completely different state.

The prisoners and their home communities also are likely to be very different – demographically and politically – from the area around the prison. But when political power is apportioned in the redistricting process or tax dollars are distributed to local governments based on census counts, the presence of a prison can pad the population of the surrounding district or jurisdiction.

When a prison is included in a voting district, a weird numbers game starts to play out. It results in the district having fewer actual residents – residents whose influence in the system is now inflated and whose priorities can get more attention, says Wagner, the prison researcher. Paul Bender, a constitutional expert and law professor at ASU who applied to serve as the Independent member of the Independent Redistricting Commission this year, agrees: “If you are in a district with less people in it, the people in that district have more political power,” Bender says. “That’s wrong. It is not supposed to happen.”

Wagner often illustrates the potential impact of a prison on the electoral process with the extreme example of the 2005 City Council election in Anamosa, Iowa. A man who didn’t even vote in the election won the City Council seat in his district with just two write-



in votes, from his wife and his neighbor. While each city district was supposed to have about 1,400 residents, his district was almost entirely made up of residents in the state prison who had no say in the process. It is a scenario that could have played out locally: In 2007, city officials in Buckeye, who were redrawing the boundaries of the Buckeye City Council districts in the wake of rapid population growth, realized that if they did not exclude Lewis Prison from their maps, the 4,000 state prisoners would have made up a City Council district almost entirely on their own. (The town of Florence and Pinal County also exclude prisons when drawing political boundaries for city council and county supervisor districts, respectively.)

When prison populations were small, the impact on larger state legislative districts and even bigger federal Congressional districts was less significant. But the escalation of the war on drugs and tougher criminal sentencing policies nationwide sent the prison population soaring in the 1980s and the 1990s, quadrupling the number of people incarcerated in the U.S. A rural prison construction boom accompanied the growth, with former agriculture and mining towns in Arizona and throughout the country finding new economic development opportunities in public and private prison complexes stocked with inmates mostly from urban areas. When

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political districts were redrawn after the 2000 census, large prisons distorted the population of many voting districts across the country, Wagner says.

According to an analysis of census data from the Prison Policy Initiative, several mostly rural legislative districts in Arizona that were drawn after the 2000 census included thousands of non-voting prisoners. Six districts had about 2 percent or more of their population behind bars in state, federal or private prisons. One district in Pinal County had 8 percent of its population in prison – a percentage that is double the amount that triggered major reforms in New York. Congressional districts were impacted, too, with the rural district that includes Pinal County made up of more than 3 percent incarcerated, non-voting felons.

A *PHOENIX* magazine analysis of population estimates from the U.S. Census Bureau as well as records of public and private prison expansion during the past decade shows that the impact could be far more significant and affect more districts when political boundaries are redrawn this year. The process could shift political power further in favor of rural towns and counties at the expense of neighborhoods in the Phoenix-metropolitan area.

C rime is urban. Prisons are rural. It is one of the great economic exchanges and population shifts of the modern age, and it is one of the reasons why some experts are sounding the alarm about the effect prisons have on the redistricting process.

Most prisoners nationwide come from urban areas but end up being housed in prisons in rural areas and small towns, beefing up the populations of those areas. In Arizona, more than 65 percent of the 40,000 inmates in state prisons come from Maricopa County, but only 23 percent of state prisoners are housed in prisons within the county. Plus, most of the private prisons are in rural areas, too. This means that counting prisoners in the rural areas "dilutes Maricopa County's representation, because you have people who are Maricopa County residents under one definition being counted as residents of whatever county they are imprisoned in," Steen says.

It also impacts the distribution of political power within the county. The largest prisons in Maricopa County, Lewis and Perryville, are on the outskirts beyond Buckeye and Goodyear – in different political districts and far from the urban areas that most of the inmates called home.

The Arizona State Constitution includes a clause that says, "For the purpose of voting, no person shall be deemed to have gained or lost a residence... while confined in any public jail or prison." This appears to dictate that prisoners be counted at home – not at

the location of the prisons. Wagner, Bender and two other constitutional law experts consulted for this story say this means the courts *could* declare redistricting maps that count prisoners in the prison districts unconstitutional.

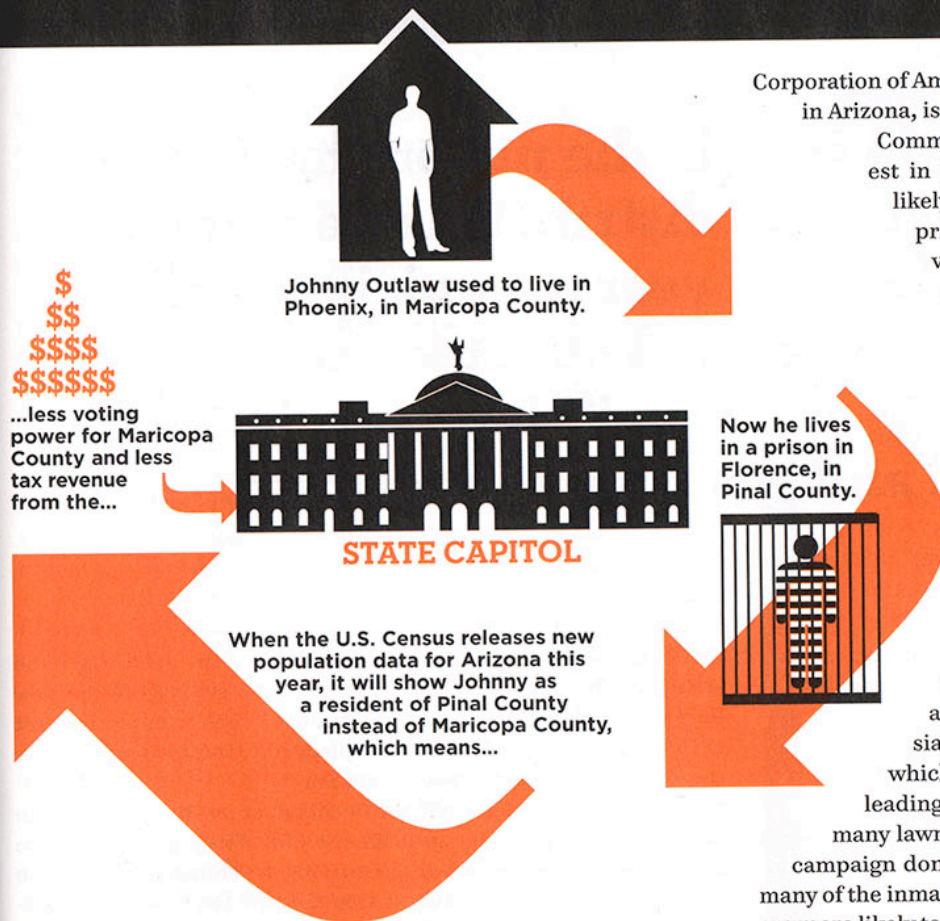
In practical terms, since inmates cannot vote, being counted in the prison districts instead of their home districts has no direct impact on them. But it does impact their families, friends and neighborhoods: If the prisoners were counted in the areas where they lived before they were arrested and are likely to return after release, as the Constitutional clause appears to direct, those parts of the state could potentially qualify for additional political representation. "There is little question that it is a transfer – a largely arbitrary transfer – of political power," says Gabriel Jack Chin, a University of Arizona law professor who focuses on criminal justice issues, immigration and voting rights.

The impact of this transfer of power is even more insidious when demographics are taken into account: It usually comes at the expense of poor, minority areas in favor of rural, white areas around prisons. Plus, it can skew the demographic profile of the prison districts, making them appear to have more minority residents than actually live in those communities. In a redistricting guide released in the fall, civil rights groups including the National Association for the Advancement of Colored People (NAACP) Legal Defense and Education Fund and the Mexican American Legal Defense and Education Fund (MALDEF) blasted so-called "prison-based gerrymandering," which they say has "tremendous implications" on how Latinos and African-American communities are impacted in the redistricting process.

In Arizona, Latinos, African-Americans and American Indians are incarcerated at rates disproportionately higher than their percent of the state's population. About 42 percent of state prisoners are Hispanic, compared to only about 31 percent of the state population, according to prison statistics and 2009 population estimates. (Both figures include citizens and illegal immigrants.) African-Americans are even more likely to be incarcerated. The state's population is only about 4 percent African-American, but the prison population is 13 percent African-American.

They are also more likely to hail from urban areas. Complete data on the home addresses of Arizona's state prisoners is not available to determine which areas of the state lost population because of the way prisoners were counted in the redistricting process. However, a 2005 study of prison admissions found that most of the ZIP codes with the highest rates of prison admissions were in Phoenix, with the highest number of admissions in ZIP codes in south and west Phoenix – areas that are heavily Latino and African-American, and where voters tend to vote Democratic.

On the other hand, the rural areas surrounding most prisons are



Corporation of America, which operates six private prison facilities in Arizona, is now the largest employer in Pinal County.)

Communities around prisons have an economic interest in prison expansion and, therefore, may be more likely to support policies that increase the number of prisoners or lead to the construction of more private prisons. Communities with high incarceration rates, however, may be more likely to support criminal justice reforms, such as changes to drug laws or community-based crime prevention programs. "You take the votes away from the places where people pay the price for these criminal justice policies, and we transfer the power to people where they get rewarded for extensive mass incarceration," Chin explains.

The potential influence of the private-prison industry on public policy in Arizona got nationwide attention this fall when a National Public Radio investigation alleged that two private prison firms were instrumental in drafting and pushing state Senate Bill 1070, a controversial immigration-reform measure. The measure, which could increase profits for private prison firms by leading to more immigrant detainees, was sponsored by many lawmakers who represent prison districts or received campaign donations from private-prison executives. Ironically, many of the inmates counted in the prison districts are Latinos who are more likely to oppose measures like SB 1070 that disproportionately impact their communities.

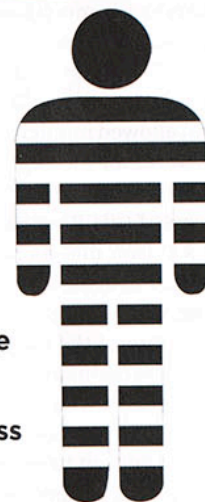
Rios, who represented the prison-heavy Pinal County district in the Legislature for many years, acknowledges that the prison industry has helped his county and that officials in prison districts are apt to support industry interests. "If you're a legislator representing that type of a district where you see these entities are creating jobs, yeah, you are going to fight for them, you are going to want them in your district," he says. The issue of prisons in redistricting wasn't raised when he was involved in the process in the 1990s in the Legislature, Rios says. But he says he believes it is important to count prisoners and that it could be difficult to count them anywhere other than the prisons. "They should be counted somehow or some way - whether you reas-

predominantly white and more conservative. James Gardner, who teaches election law at the State University of New York in Buffalo, says the practice of counting inmates in the prison communities may undermine the Voting Rights Act protections for minorities. "It is true that the benefit of enhanced voice and control that is now enjoyed by a rural white district would be enjoyed by a majority-minority district, in an urban district" if prisoners were counted at their home addresses, Gardner notes.

The way prisoners are counted could also impact public policy decisions in the state by amplifying prison interests. Chin notes that people in communities around prisons are more likely to have ties to prisons through employment than incarceration. (Correctional

Arizona's Prison Stats

- >> The number of inmates in state, federal and private prisons in Arizona **has grown at twice the rate** of the general population over the last decade.
- >> There are **twice as many private prisons** in the state as there were in 2000.
- >> One legislative district in Pinal County was **8 percent incarcerated** after the last redistricting - twice as high as the most impacted legislative district in New York, where major reforms were passed last year.
- >> If prisoners are again counted the same way in the redistricting process this year, Arizona could have at least one legislative district that is more than **11 percent incarcerated**.



Arizona is the only state in the nation that mostly relies on census figures to distribute large amounts of money to localities. Last year... municipalities and county governments received about \$300 from the state for every resident – even if those residents are incarcerated and never set foot in town.

sign them back to the city or town they are from when they are sent, which would take a lot of work, or count them in the prison they are located. You should count them,” he says.

It is hard to generalize or quantify if there is any actual impact on public policy decisions in Arizona or other states based on how prisoners are counted when political districts are drawn. “It undermines equal representation, but I am not sure if it undermines it significantly,” Steen says, about the makeup of current districts.

What is easier to quantify is the distribution of tax dollars. Prisons don’t just increase the political influence of rural areas and prison communities: They also help them financially. Wagner says Arizona is the only state in the nation that primarily relies on census figures to distribute a large amount of money to localities. Last year, the state distributed nearly \$2 billion in state-shared revenue, including income tax, sales tax and highway funds. According to budget figures from the Joint Legislative Budget Committee, municipalities and county governments received about \$300 from the state for every resident – even if those residents are incarcerated and never set foot in town. Tom Belshe, deputy director of the League of Arizona Cities and Towns, acknowledges that prisoners’ use of local services is much less than other residents since they are incarcerated, but he says prisons do add an extra burden to local roads, sewer and water systems.

Before the 2000 census, Republican Governor Jane Hull signed legislation that allowed municipalities to annex prisons within 15 miles of their boundaries for the express purpose of getting a bigger chunk of state-shared revenue. The legislation set off an annexation fight between the towns of Gila Bend and Buckeye over which one would get to bring Lewis Prison into its boundaries – and therefore qualify for more than \$1 million in additional state-shared revenue each year.

Alan Ecker, who was the legislative liaison for the state Department of Corrections at the time, says the agency chose Buckeye because the town was open for growth, and officials were hoping workers at the state prison would be drawn to live in the town. “What’s in it for the city is state-shared revenue,” Ecker says. “What’s in it for the prison is they get to rely on city services,” including fire and police services, should there be an emergency at the facility.

According to news reports at the time of the annexation, Buckeye’s mayor assured residents that the additional money the town would get from the state would more than cover any potential costs

that could be incurred by having the prison in the town. Since the state already paid for the prison and all the services to the new Buckeye residents incarcerated there, the largess went to the rest of the town’s residents: The mayor pledged to improve services for the town’s non-incarcerated population.

The town of Buckeye refused to comment on the impact of the state prison, which makes up about one-fifth of its population, or the town’s portion of state-shared revenue. But Jess Knudson, a Florence Town Hall spokesman, acknowledges that the town benefits greatly by having two state, one federal and three private prisons within the town limits. He says the town has a population of about 29,000 – 12,000 residents and 17,000 prisoners. Knudson notes that there are drawbacks to having prisons in the town, but the state helps to alleviate the burden of hosting those facilities by giving the town extra tax dollars – even if the prisoners are out-of-state inmates housed in for-profit private prison facilities. Each year, Florence gets about \$5 million extra from the state because of its prisoners. Knudson says the city offers more services for residents than most towns its size – parks, a senior center, after-school programs for kids. The extra money allows the town to “maintain services we wouldn’t otherwise be able to maintain,” he says.

Statewide, about \$18 million in tax revenue is distributed from the state to counties and municipalities based on their prison population each year – including more than \$4 million from the state that supplements the operations of private prisons stocked with out-of-state residents.

Over the last decade, the number of inmates in state, federal and private prisons in Arizona has grown at twice the rate of the general population, according to a *PHOENIX* magazine analysis of census population estimates and available prison data. There are twice as many private prisons in Pinal County as there were before the 2000 census, as well as a large, new, state-contracted private prison in Kingman. So the impact of prisons on the redistricting process this year is greater than ever before.

When statewide districts were drawn after the 2000 census, Legislative District 23 in Pinal County included Florence and Eloy and all the prisoners in public and private facilities – nearly 14,000 prisoners at the time. The prisoners comprised about 8 percent of the total population of that legislative district.

The impact from the prisons on the larger Congressional Dis-

trict was also significant. Congressional District 1 was not only drawn to include Florence and Eloy and all their prisoners, it also included Winslow and Safford, which are in Legislative District 5 and have sizable populations of state and federal prisoners, too. The Congressional district included more than 19,000 prisoners, about 3 percent of its total population.

It is nearly impossible to guess how districts will be drawn by the new commission, which is supposed to start by mapping out the districts from scratch and will also be charged with adding a whole new Congressional district to the plan.

However, a *PHOENIX* magazine analysis of population estimates shows that if a legislative district is drawn to again include Florence and Eloy, then 11 percent or more of the district would be incarcerated (and many of those "residents" would be private-prison inmates from other states). That means that every 89 actual residents of that district would have the same voice in the political process as 100 residents in Phoenix or other areas of the state. If the larger Congressional district includes both towns, the Florence and Eloy prisons would equal more than 3 percent of the total population. If it also includes Winslow and Safford, as Congressional District 1 does now, the district would be more than 4 percent incarcerated. If the lines are drawn so that there are more prisons than in existing districts, the impact of the inmates could be even greater.

"If Florence and Eloy prisons are kept in the same district, Arizona will have one of the most extreme examples of prison-based gerrymandering and using prisoners to enhance the power of some voters over others," Wagner says.

New York, which had one assembly district that was more than 4 percent incarcerated, passed a measure last year requiring that inmates in prisons be counted at home addresses instead of the location of the prison during the redistricting process. Maryland and Delaware passed similar laws and several other states have considered similar measures. After New York Governor David Paterson signed the measure into law this August, a *New York Times* editorial said that the governor "took a stand for electoral fairness," adding New York's action "deserves to be emulated all across the country."

States do not have much leeway to alter the census numbers used in determining Congressional districts, since there must be consistency across the country, Gardner, the New York law professor, says. Still, states can decide to minimize the impact of prisons by being aware of the prison locations as they draw the lines. When it comes to state and local redistricting, though, states have much more latitude. Wagner says he believes states can address the issue in three ways: Count prisoners at their home addresses, split up prison communities so the impact is spread over multiple districts or decide not to count prisoners at all.

As the issue of prison-based gerrymandering percolated over the last decade, the U.S. Census Bureau studied whether they should change how they count prisoners in their tallies. The agency decided against changing its methodology, in part because of cost, but it did agree to release data on prisons earlier this year so that states and local governments could decide what to do with prisons during the redistricting process.

"The redistricting commissions need to stop doing that and counting the prisoners as being in (prison) districts," ASU's Bender says. "It both increases the power of the district where they are sent and decreases the power from where they came from. Both of them are wrong."

—Amanda J. Crawford is a Soros Justice Fellow with the Open Society Institute and editor of the drug war blog *CrawfordOnDrugs.com*. Reach her at phxmag@citieswestpub.com.

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Political Districts



This year, the Arizona Independent Redistricting Commission will create new political voting districts for the state that will last until 2021. Try your hand at their daunting task.

Step 1

Start with a grid-like map of the state.

Step 2

Redraw the lines of the map to create districts that contain an equal number of residents.

CAUTION! Prisons can distort the process. If counted, they make it seem like there are more residents in the district than there really are.

Step 3

Make sure you adhere to requirements of the federal Voting Rights Acts, which protects the influence of minority voters through the creation of some "majority minority" districts.

CAUTION! Since a large portion of prisoners are minorities, it can make a district look more diverse than it really is.

Step 4

Respect geographical boundaries and so-called "communities of interest," such as towns, school districts and American Indian reservations, by keeping them intact.

Step 5

Where possible, make sure not to create districts where electoral victory is virtually guaranteed to nominees of a particular party due to voter registration.