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TEXAS POLITICS
REDISTRICTING

Prisoners lack vote, yet they shape vote

Inmates clustered in rural Texas profoundly if subtly affect politics.

By Jonathan Tilove
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According to the 2010 census, 2,097 of the 36,273 inhabitants of Hale County are in prison. That's no reflection on Hale or its county seat – the little city of Plainview, located just north of Lubbock. It's just an artifact of what might be the most common publicly funded enterprise dotting the rural Texas landscape – a correctional institution, or in the case of Hale, two side-by-side state jails, the Wheeler and Formby units, the former named for a local banker and the latter for a radio pioneer who served a term in the Texas Senate.

Playing host to those doing time for crimes mostly committed in the state's big cities provides places like Hale County a welcome economic lift. But when it comes time to draw lines for the four precincts that each elect a coun-

Prisoners continued on **A8**

Prisoners

continued from A1

ty commissioner, it can present a conundrum: If you count the prisoners where they bunk, as the U.S. census does, they can end up representing a significant, and occasionally overwhelming, percentage of a precinct's population, even though they probably never drew a free breath in that community, and even though, as felons, they cannot vote until they have completed their punishment.

So Hale County, on the advice of its redistricting consultants, Allison, Bass & Associates of Austin, came up with a simple solution – it didn't count the inmate population in its redistricting.

"It didn't seem fair to me to include that population in any precinct because their residence was not established voluntarily, and, since they are convicted felons, they don't have the right to vote," said Bill Coleman, the Hale County judge. "If your altruistic goal is to try to make each precinct have an equal number of at least potential voters, and a significant chunk of your population is not allowed to vote, aren't you sort of undermining the whole purpose of this thing?"

Coleman said he wasn't alone in that view.

"Nobody was for counting the prison population," he said.

According to a report being issued this week by the Prison Policy Initiative, based in Northampton, Mass., Coleman's view has become the common wisdom of local officialdom across Texas and Louisiana, two of the most incarcerating states in the nation. It is an important finding because it means that local officials in the many smaller communities that are home to correctional facilities all across Texas have come to view the question very differently from their representatives in Austin, who, while they tend not to talk about it, or return reporters' phone calls on the question, have come to depend on counting prisoners back home as their own.

"We found that most of the areas that gain additional political clout from prison gerrymandering on the state level reject the prison counts when they draw local districts," said Peter Wagner, executive director of the Prison Policy Initiative, which he founded as a student at Western New England College School of Law more than a decade ago. "Our research confirms that faced with the absurd prospect of drawing a city or county district that is mostly – or even entirely – incarcerated, local governments are leading the way in rejecting prison gerrymandering."

At its most absurd, had Garza County, population 6,461, not excluded the 1,995 residents of the Giles W. Dalby Correctional Facility from its redistricting, an entire precinct would have been made up of "criminal aliens" awaiting deportation, with not a voter among them.

The Prison Policy Initiative's inventory listed 64 Texas cities and counties with what the report calls the greatest "potential distortion" – a measure of how much of a potential district could be populated by prisoners. All but nine have chosen to exclude that population in redistricting.

Yet in drawing state legislative districts there remains a strong rural rooting interest in maintaining the census practice of counting prisoners – just like college students, barracked stateside military personnel, and migrant workers – where they find them to be mostly living and sleeping on Census Day, and then including them in that count when drawing state House, state Senate and U.S. House district lines.

Why? Because those prisoners pad the population of sparsely settled rural districts, sustaining a House or Senate seat with far fewer eligible voters than other districts, undermining the principle of one-man, one-vote, and potentially someday affecting the balance of power in the Legislature because, in Texas, seven of the nine House districts with the largest prison populations are represented by Republicans.

The imbalance is compounded because almost invariably, across the nation, the rural electorate that benefits is mostly white, a benefit they derive because a disproportionately black and brown prison population happens to be confined close by.

In a 2007 letter asking the Census Bureau to collect the home addresses of all incarcerated persons, a group of mostly New York lawmakers, joined by state Rep. Harold Dutton, D-Houston, noted that, "65 percent of state prisoners in New York are from New York City, and 45 percent of state prisoners in Illinois are from Chicago, yet virtually all of these state prisoners are incarcerated in far-flung rural areas."

There is also the further peril that the prison population could be used to help create what state Rep. Poncho Nevárez of Eagle Pass – one of the two Democrats with a large prison population in his district – described as an "illusory" minority-opportunity district, a possibility that Coleman duly noted.

"We were required to have a precinct that has a majority of minority citizens in it; that would have been really easy for us to do," Coleman said. Sixty-five percent of the inmates at the Wheeler and Formby units are either black or Hispanic.

"We could stoke up our minority numbers by using the prison population," said Coleman. "Well, nothing about that seemed right."

That so many small cities and counties chose to exclude prisoners is all the more remarkable because the path of least resistance would be to simply accept the census redistricting file as is.

Craig Tounget, executive director of the committee drawing Austin's new City Council districts, said the panel never considered whether or not to count the 1,105 inmates at the Travis State Jail when drawing the district lines. The jail population was simply part of the 2010 census count and that's what they went by.

As it happens, the 76 percent combined black and Hispanic inmate population at the state jail, located on FM 969 in East Austin, augmented the 71 percent minority population of District 1 – itself a minority-opportunity district – if only ever-so-slightly.

"It's not enough to skew things," said David Richards, general counsel to the committee. The jail's inmates constitute only 1.4 percent of the 76,711 residents of District 1. "It's infinitesimal."

It was the way that mass incarceration was redistributing power from urban to rural districts that first drew Wagner's interest to an unexplored issue. But over time, he became as focused on how profoundly it could pervert the purposes of redistricting at the most grass-roots level.

After the census released its redistricting file in 2011, Prison Policy Initiative sent some 3,000 letters to most of the county commissioners and city council members in the nation elected by district in jurisdictions with large prisons, informing them of a new census data file that would enable them to easily identify census blocks with correctional institutions and remove them from calculations.

Wagner would like the Census Bureau to settle this matter by simply counting prisoners in 2020 as residents of their last addresses and not their prison cells. The new census director, John Thompson, has indicated he is willing to listen to all sides.

Two states – New York and Maryland – passed laws requiring that incarcerated people be counted in the 2010 round of redistricting based on their legal home addresses. Two other states – Delaware and California – have passed laws imposing that requirement for the 2020 round. The Supreme Court last year upheld the constitutionality of the Maryland law.

The template for this effort comes from Texas, where Dutton first filed similar legislation in 2001 to try to reclaim for Houston the population lost to prisons in the 2000 census count, a loss that was going to cost the Harris County area its 26th state House seat. He has refiled the legislation in subsequent sessions, to no avail.

In 2011, he filed suit claiming that counting inmates for redistricting violated the Texas state election code, which specifies that prisoners don't "acquire residence" at the place of their confinement, and unconstitutionally inflated the size of rural districts at the expense of urban districts. Richards, who represented Dutton, said the federal court in San Antonio dismissed the claim.

Eric Opiela, a Republican redistricting expert who is running for agriculture commissioner, contends that inmates have to be counted somewhere, and, "ultimately the location of arrest is not any indication of where they will end up released, if ever. We don't accurately have a way to place them other than where they slept on April 1, 2010, so we don't try to move them."

The argument has also been advanced that the elected representatives of prison communities actually do provide constituent services for inmates in their districts.

Dutton, who has a staffer solely dedicated to requests from inmates – and their families – who call Houston home but are currently strewn hither and yon serving time, scoffs at that.

"Most do absolutely zero, zilch," he said.

In Hale County, Coleman also dismisses the idea that county commissioners consider inmates at Wheeler or Formby as anything like true constituents.

"They're not going to be calling you on the phone or showing up at commission meetings," Coleman said. "If they do, then you have a real problem."

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COUNTIES WITH BIGGEST PROPORTION OF PRISONERS

There are 40 Texas counties, and a few cities, with proportionally larger – sometimes far larger – prison populations than Hale County. Here is a list of counties in which prisoners are more than 20 percent of the population.

	TOTAL POPULATION	INCARCERATED POPULATION	PERCENT INCARCERATED
Concho County	4,087	1,556	38%
Garza County	6,461	1,995	31%
Mitchell County	9,403	2,296	24%
Jones County	20,202	4,807	24%
La Salle County	6,886	1,583	23%
Bee County	31,861	7,196	23%
Anderson County	58,458	13,163	23%
Reeves County	13,783	3,034	22%
Hartley County	6,062	1,333	22%
Karnes County	14,824	3,159	21%

SOURCE: PRISON POLICY INITIATIVE

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EXPERT REPORTING

Jonathan Tilove, the American-Statesman's chief political writer, has written extensively about demographics and political power.