SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2017 - 2018 Regular

Bill No:	AB 2172	**Hearing Date:**	June 26, 2018
Author:	Weber		
Version:	June 12, 2018		
Urgency:	No	**Fiscal:**	Yes
Consultant:	SJ		

Subject: ***Redistricting: Inmates***

HISTORY

Source: Author

Prior Legislation: AB 1986 (Davis), Ch. 318, Stats. of 2012
AB 420 (Davis), Ch. 548, Stats. of 2011
Proposition 20, as approved by the voters on November 2, 2010
Proposition 11, as approved by the voters on November 4, 2008

Support: Unknown

Opposition: None known

Assembly Floor Vote: 47 - 24

PURPOSE

The purpose of this bill is to require the California Department of Corrections and Rehabilitation (CDCR) to provide the Legislature with information regarding the race and ethnicity as well as information regarding the last known place of residence of each inmate in a facility under the CDCR's control for purposes of redistricting.

Existing law creates the California Citizens Redistricting Commission (CCRC) and makes it responsible for adjusting the boundary lines of congressional, State Senate, Assembly, and Board of Equalization (BOE) districts in the year following the year in which the national census is taken at the beginning of each decade, as specified. (Cal. Const., art. XXI, §§ 1, 2(a).)

Existing law requires CDCR, not sooner than April 1, 2020, and not later than July 1, 2020, to furnish information to the CCRC regarding the last known place of residence of each inmate incarcerated in a state adult correctional facility, except an inmate whose last known place of residence is outside of California. Additionally, in 2030 and each year ending in the number zero thereafter, requires this information be furnished not sooner than the decennial census day and not later than 90 days thereafter. (Elec. Code, § 21003, subd. (a)(1) & (3).)

Existing law requires the information provided from CDCR to the CCRC to include the following information for each inmate:

1) A unique identifier other than the inmate's name or CDCR number.

2) Information about the inmate's last known place of residence. (Elec. Code, § 21003, subd. (a)(2)(A) & (B).)

Existing law requires, if the Statewide Offender Management System (SOMS) is fully operational on or before April 1, 2020, that the residence information be sufficiently specific to determine the congressional, Senate, Assembly, or State BOE district in which the inmate's last known place of residence is located and provides that the information may include census block information or street address information from which a census block can be derived. (Elec. Code, § 21003, subd. (a)(2)(B).)

Existing law requires, if SOMS is not fully operational on or before April 1, 2020, that the place of residence information be as specific as feasible under the CDCR's database system and from which a census block can be derived. (Elec. Code, § 21003, subd. (a)(2)(C).)

Existing law requires CDCR to exclude inmates in state custody for whom a last known place of residence within California cannot be determined, and all inmates in federal custody in a facility within California, from the information furnished to the CCRC. (Elec. Code, § 21003, subd. (a)(5).)

Existing law requests the CCRC to deem each incarcerated person as residing at his or her last known place of residence, rather than at the institution of his or her incarceration, using the information provided by CDCR. Additionally, requests the CCRC to do all of the following when using the information provided by the CDCR:

1) Refrain from publishing information regarding a specific inmate's last known place of residence.

2) Deem an inmate in state custody in a facility within California for whom the last known place of residence is either outside California or cannot be determined, or an inmate in federal custody in a facility within California, to reside at an unknown geographical location in the state and exclude the inmate from the population count for any district, ward, or precinct.

3) Adjust race and ethnicity data in districts, wards, and precincts that contain prisons in a manner that reflects reductions in the local population as inmates are included in the population count of the district, ward, or precinct of their last known place of residence. (Elec. Code, § 21003, subd. (b)(1)-(3).)

Existing law defines "last known place of residence," for the purposes of the provisions detailed above, as the address at which the inmate was last domiciled before his or her current term of incarceration, as determined from the court records of the county in which the inmate was sentenced to his or her current term of incarceration. (Elec. Code, § 21003, subd. (c).)

This bill requires that the information provided from CDCR to the CCRC be additionally provided to the Legislature regarding each inmate incarcerated in a state correctional facility. Requires the information submitted be in the form of a single electronic file for each database maintained by CDCR.

This bill requires the information provided to reflect the inmates that are in facilities under the control of CDCR on April 1, 2020 and on every decennial Census Day beginning in 2030.

This bill defines "state correctional facility" as a facility under the control of CDCR.

This bill deletes provisions of law pertaining to SOMS not being operational before April 1, 2020.

This bill provides that the information from CDCR to the Legislature and the CCRC, in addition to information already provided, include any information maintained by CDCR about the residential address or addresses at which the inmate was domiciled before the inmate's more current term of incarceration, including any available information about the date on which each address was added to records maintained by CDCR.

This bill provides that if CDCR does not have any residential address information for an inmate, then the information provided by CDCR states that fact.

This bill requires CDCR to provide information about the ethnicity, as identified by the inmate, and any information about the race of the inmate to the extent such information is maintained by CDCR.

This bill requires CDCR to provide the address of the correctional facility where an inmate is incarcerated on the decennial census day.

This bill requires the Legislature, in coordination with the CCRC, to ensure that the information provided by CDCR is included in the computerized database that is used for redistricting.

This bill requires the Legislature to refrain from publishing information regarding the race, ethnicity, or last known place of residence of specific inmates.

This bill defines "last known place of residence" to mean the most recent residential address of an inmate before the inmate's most current term of incarceration that is sufficiently specific to be assigned to a census block, as determined from the information provided by CDCR. Provides that in the case of an inmate for whom residential address information is available but is not sufficiently specific to allow the address to be assigned to a census block, the "last known place of residence" means a randomly-determined census block located within the smallest geographical area that can be identified based on the residential address information provided by CDCR.

COMMENTS

1. Need for This Bill

According to the author:

> Assembly Bill 2172 cleans up the Election Code Section 21003 to facilitate changes to the 2020 Census for counting inmates adopted by AB 420 (Davis, 2011). AB 420 requires that, sometime between April 1, 2020 and July 1, 2020, the California Department of Corrections (CDCR) share a list of the last known residences for inmates who are incarcerated in a state facility to the Citizen's

Redistricting Commission (CRC) and the legislature. It also requests that the CRC use that information to consider incarcerated persons as residing at their last known place of residence from the Census for the purposes of statewide redistricting instead of as residing at the state facility. While that bill set the policy precedent describing how to count inmates for the 2020 Census, it warrants a few technical clarifications.

This bill specifies that the data—including an anonymous identifier, inmates' last known address, race/ethnicity, and facility where they are incarcerated—CDCR provides to the CRC must reflect the prison statewide population on April 1, 2020 (and on each decennial Census day thereafter) in order to comport with the Census data. It also cleans up the code by redacting the conditional language specifying how to proceed if the Statewide Offender Management System did not become operational by 2020. As that system is now operational, that part of the law is extraneous. These technical changes will clarify existing code and facilitate a smoother process of reallocating prison inmates to their place of last known residence.

2. Census Bureau Policy Regarding Prison Inmates

According to information from the United States Census Bureau (Bureau), planners of the first decennial census in 1790 established the concept of a "usual residence" to determine where people would be counted. A person's "usual residence" is the place where the person lives and sleeps most of the time. As a result of the "usual residence" rule, a person who is on vacation on census day (April 1 of each year ending in "0") is not counted as living at the place where he or she is vacationing, but rather where that person usually lives. The "usual residence" policy has been used for every decennial census since the first census, including the 2010 census.

While it is easy to determine the "usual residence" of most people, the determination of the "usual residence" for people living in non-traditional living situations can be more complex. For example, the Bureau announced earlier this year that it was changing its policy for determining the "usual residence" for certain US military personnel. For the 2010 Census, the Bureau counted all military personnel who were deployed or stationed overseas as residing in the state of the person's "home of record" (generally, the home of the person at the time he or she enlisted or reenlisted in the Armed Forces) for the purposes of the apportionment of congressional seats only. For the 2020 Census, however, the Bureau has announced that it will distinguish between military personnel who are deployed overseas and those who are stationed overseas. Those who are stationed overseas (generally those who are overseas on a longer-term basis) will continue to be recorded as residing in the state of their "home of record" for apportionment purposes only. However, military personnel who are deployed overseas on a short-term basis will be counted for Census purposes as having a usual residence at the location where they are stationed in the US.

The Bureau's policy for counting people in correctional facilities on Census Day is that those individuals are to be counted at the facility of incarceration. This is true for individuals incarcerated in federal prisons or detention centers, state prisons, and local jails or confinement facilities. Although the Bureau received a large number of comments encouraging it to change the residence criteria for incarcerated individuals for the 2020 census, it announced earlier this year that it would continue to count prisoners at the correctional facility at which they are incarcerated on Census Day. (https://www.federalregister.gov/documents/2018/02/08/2018-02370/final-2020-census-residence-criteria-and-residence-situations.) However, following the

2020 census, the Bureau announced that it would offer a new product in order to assist states that decided to reallocate prisoner population counts.

California uses population data from the Bureau for redistricting purposes. As a result, individuals who are incarcerated in California traditionally have been counted at the place of incarceration when district lines are drawn for the state Legislature, Congress, and the BOE.

Due to the Bureau's policy for counting people in correctional facilities on Census Day at their facilities of incarceration following the 2010 census, the Legislature approved and the Governor signed AB 420 (Davis), Chapter 548, Statutes of 2011. AB 420 requested the CCRC, when adjusting district boundaries for state Legislature, Congress, and the BOE, to deem an incarcerated person as residing at his or her last known residence, rather than the institution of his or her incarceration. AB 420 was intended to end the practice whereby incarcerated individuals are counted as residing at the prison in which they are incarcerated, instead of at the locations where they last resided prior to incarceration for redistricting purposes. Critics of counting incarcerated individuals at the prison where they are incarcerated argue that it artificially inflates the political influence of districts where prisons are located, at the expense of other voters. The following year, the Legislature approved and the Governor signed AB 1986 (Davis), Chapter 318, Statutes of 2012, which made a number of changes to the provisions of AB 420 in an attempt to allow for that bill to be more effectively implemented.

As the 2020 census and the 2021 redistricting process nears, some modifications to state law are required in order to implement AB 420 and AB 1986 as originally envisioned. While state law requires CDCR to provide information about the last known residence of incarcerated individuals during a specified window of time, it does not specify the date that the information should reflect. If census data is to be adjusted for redistricting purposes, it is important that the information provided by CDCR reflect those individuals who were incarcerated in state correctional facilities on Census Day. Additionally, while AB 420 and AB 1986 call for race and ethnicity data to be adjusted based on the information provided by CDCR, existing law does not explicitly require CDCR to provide information about the race and ethnicity of inmates. In addition, while existing law requires the Legislature to prepare and maintain the database that is used for redistricting purposes in coordination with the CCRC, AB 420 and AB 1986 did not provide for the relevant information from CDCR to be provided to the Legislature for that purpose. Finally, at the time that AB 420 and AB 1986 were enacted, CDCR was in the process of developing a new system for tracking and managing inmates under the jurisdiction of CDCR, also known as SOMS. At the time, it was uncertain whether SOMS would be deployed in time for the 2020 census and AB 420 and AB 1986 included contingency language for how CDCR was to provide information if the SOMS was not yet in use. Since the passage of both bills, CDCR has fully implemented SOMS and that contingency language is now unnecessary.

AB 2172 makes various changes to existing law to address the issues detailed above to ensure that AB 420 and AB 1986 can be enacted in a manner consistent with the original legislative intent. Additionally, this bill makes various other minor, technical, and clarifying changes to facilitate the implementation of AB 420 and AB 1986.

3. Redistricting in California

a) California Citizens Redistricting Commission

In November 2008, California voters passed Proposition 11 and authorized the creation of the CCRC. The commission consisted of 14 registered voters and is tasked with establishing district lines for the Assembly, Senate, and BOE. In 2010, voters passed Proposition 20 which, among other things, gave the commission the responsibility of establishing lines for California's congressional districts and made other changes to the procedures and criteria to be used by the CCRC.

Since Propositions 11 and 20 established the CCRC in the California Constitution and gave it the independent authority to draw district lines for Assembly, Senate, Congress, and BOE, it is unclear whether the Legislature can require the CCRC to use adjusted census figures for redistricting purposes. Accordingly, AB 420 and AB 1986 did not require the CCRC to use adjusted census figures, but rather requested that it do so.

b) Legislature's Role in Maintaining the Redistricting Dataset

Since 1993, the University of California (UC) system has housed the Statewide Database, which is the official redistricting database for California. According to information from the Statewide Database, it originally emerged from a database that was created by the Assembly for the 1981 redistricting process. In 1993, the state budget included funding to the UC system for the purpose of transferring the Assembly's redistricting database to the Institute of Governmental Studies (IGS) at UC Berkeley, and for maintaining that database. The Statewide Database subsequently has moved and is now housed at the UC Berkeley School of Law.

Since voting to house the Statewide Database in the UC system, the Legislature has played an ongoing role in ensuring that the state's redistricting database remains complete and accurate. Section 21000 of the Elections Code requires county elections officials to make relevant information available to the Legislature for use in redrawing legislative and congressional districts, including precinct maps and election returns. The Legislature regularly works with the Secretary of State and county elections officials to collect that information and to ensure that it is provided to the Statewide Database for inclusion in the redistricting dataset.

AB 2172 requires CDCR to provide information about inmates in facilities under the control of CDCR to the Legislature, in addition to providing the information to the CCRC. This will ensure that information from CDCR is provided to the staff of the Statewide Database promptly, and that the redistricting data files provided by the Bureau can be adjusted in a timely manner, in order for the adjusted data to be available to the new members of the CCRC selected in 2021. AB 2172 will continue to give the CCRC the authority to decide whether to use the adjusted data for redistricting purposes.

4. Treatment of Inmates for Redistricting Purposes in Other States

During the 2011 redistricting process, Maryland and New York adjusted their census data so that incarcerated individuals were reallocated to their last known place of residence for redistricting purposes, rather than being counted as residing at the prison in which they were incarcerated on Census Day. (https://www.nytimes.com/2011/09/30/us/for-redistricting-texas-counts-prisoners-where-they-sleep.html?mtrref=www.google.com.) In New York, the adjusted data was used for

drawing state legislative districts. In Maryland, the adjusted data was used both for congressional and legislative districts.

In both states, lawsuits were filed challenging the reallocation of incarcerated individuals from the prisons at which they were incarcerated to the last known addresses of those individuals. In Maryland, the challenge was filed in federal court. In New York, the challenge was filed in state court. In both cases, the lawsuits were unsuccessful.

In addition to Maryland and New York, in 2010, Delaware enacted a law to require census data to be adjusted so that prisoners were reallocated to their last known address for redistricting purposes. (https://www.brennancenter.org/analysis/us-census-and-incarceration.) However, Delaware delayed the implementation of that law until the 2021 redistricting process. California is the only other state that has enacted legislation to adjust census data so that inmates may be reallocated to their last known addresses for the purpose of redistricting of state legislative districts. According to the Prison Gerrymandering Project, a project of the Prison Policy Initiative, legislation was introduced in at least three states (Illinois, Louisiana, and Rhode Island) during the current legislative sessions to enact similar policies.

-- END --