

Date of Hearing: April 25, 2018

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

AB 2172 (Weber) – As Amended April 18, 2018

**SUBJECT:** Redistricting: inmates.

**SUMMARY:** Makes various changes to provisions of state law regarding the determination of where individuals who are in the custody of the California Department of Corrections and Rehabilitation (CDCR) are counted for the purposes of drawing district lines for Congress, the State Legislature, and the State Board of Equalization (BOE). Specifically, **this bill:**

- 1) Requires CDCR, in addition to providing information to the Citizens Redistricting Commission (CRC) regarding the last known place of residence of each inmate who is in a facility that is under CDCR's control, as specified, to furnish that information to the Legislature. Requires the information provided to reflect the inmates that are in facilities under the control of CDCR on the federal decennial census day.
- 2) Deletes obsolete provisions of law that provided flexibility in the information to be provided if CDCR's Statewide Offender Management System (SOMS) was not operational before April 1, 2020. That system is now operational.
- 3) Permits CDCR to provide a description of the location from which a census block can be derived of an inmate's last known place of residence, if CDCR does not have street address information or census block information for that inmate's last known place of residence.
- 4) Provides that if an inmate's last known place of residence is outside California, the information provided by CDCR shall indicate that fact and is not required to provide more detailed information about the last known place of residence for the inmate.
- 5) Requires CDCR to provide information about the ethnicity of each inmate, as identified by the inmate, and any information that CDCR has about the race of the inmate.
- 6) Requires CDCR to provide the address of the correctional facility where an inmate is incarcerated on the decennial census day.
- 7) Requires the Legislature, in coordination with the CRC, to ensure that the information provided by CDCR is included in the computerized database that is used for redistricting. Requires the Legislature to refrain from publishing information regarding the race, ethnicity, or last known place of residence of specific inmates.
- 8) Updates terminology to more accurately describe those inmates who are in facilities under the control of CDCR, and makes other technical, corresponding, and clarifying changes.

**EXISTING LAW:**

- 1) Requires CDCR, not sooner than April 1, 2020, and not later than July 1, 2020, to furnish information to the CRC 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. Requires, in 2030 and each year ending in the number zero

thereafter, that this information be furnished not sooner than the decennial census day and not later than 90 days thereafter.

- 2) Requires the information provided from CDCR to the CRC to include the following information for each inmate:
  - a) A unique identifier other than the inmate's name or CDCR number; and,
  - b) Information about the inmate's last known place of residence.
    - i) Requires, if 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.
    - ii) 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.
- 3) 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 CRC.
- 4) Requests the CRC 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 to it by CDCR. Requests the CRC to do all of the following when using the information provided by the CDCR:
  - a) Refrain from publishing information regarding a specific inmate's last known place of residence;
  - b) 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; and,
  - c) 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.
- 5) 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.
- 6) Creates the CRC and makes it responsible for adjusting the boundary lines of congressional, State Senate, Assembly, and BOE districts in the year following the year in which the national census is taken at the beginning of each decade, as specified.

- 7) Requires the Legislature to take all steps necessary to ensure that a complete and accurate computerized database is available for redistricting, and that procedures are in place to provide the public ready access to redistricting data and computer software for drawing maps. Requires the Legislature to coordinate these efforts with the CRC, as specified.

**FISCAL EFFECT:** None. This bill is keyed non-fiscal by the Legislative Counsel.

**COMMENTS:**

- 1) **Purpose of the Bill:** According to the author:

In 2011, Governor Brown signed AB 420. This bill required that, sometime between April 1, 2020 and July 1, 2020, the CDCR share a list noting the last known residences for inmates who are incarcerated in a state facility to the CRC. It also requested that the CRC use that information to consider incarcerated persons as residing in their last known place of residence during the 2020 Census for the purposes of statewide redistricting instead of as residing at the state facility as the Federal Census Bureau currently regards them.

Assembly Bill 2172 updates Elections Code section 21003 to better facilitate the changes to the 2020 Census for counting inmates. It cleans-up conditional language regarding the Statewide Offender Management System and specifies that [CDCR] must give the [CRC] data reflecting the prison population on April 1, 2020. Ultimately, this bill will ensure the smooth implementation of AB 420 for the 2020 Census.

- 2) **Census Bureau Policy Regarding Prison Inmates:** According to information from the United States (US) 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. Because 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. Military personnel who are *deployed* overseas on a short-term basis, however, 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 adults and juveniles and is true for people who are incarcerated in federal prisons or detention centers, state prisons, and local jails and 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. The Bureau also announced, however, that it would offer a new product following the 2020 Census in order to assist states that decided to reallocate prisoner population counts.

Because the state uses population data from the Bureau for redistricting purposes, 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.

- 3) **Previous Legislation:** In light of the Bureau's policy for counting people in correctional facilities on census day at their facilities of incarceration, after the 2010 census, the Legislature approved and the Governor signed AB 420 (Davis), Chapter 548, Statutes of 2011. AB 420 requested the CRC, 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, for redistricting purposes, as residing at the prison in which they are incarcerated, instead of at the locations where they last resided prior to incarceration. Critics of that practice 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 approach, it has become apparent that some modifications are required to state law in order to implement AB 420 and AB 1986 as originally envisioned. Notably, 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 that it has about the race and ethnicity of inmates. Furthermore, while existing law requires the Legislature to prepare and maintain the database that is used for redistricting purposes in coordination with the CRC, 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 SOMS—a new system for tracking and managing inmates under the jurisdiction of CDCR. Because it was uncertain whether SOMS would be deployed in time for the 2020 census, AB 420 and AB 1986 included contingency language for how CDCR was to provide information if the SOMS was not yet in use. CDCR has fully implemented SOMS, so that contingency language is now unnecessary.

This bill makes various changes to existing law, as enacted by AB 420 and AB 1986, to address these issues detailed above, in order to ensure that those bills 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 those bills.

- 4) **Citizens Redistricting Commission:** Proposition 11, which was approved by the voters at the 2008 statewide general election, created the CRC, and gave it the responsibility for establishing district lines for Assembly, Senate, and the BOE. Proposition 11 also modified the criteria to be used when drawing district lines. Proposition 20, which was approved by the voters at the 2010 statewide general election, gave the CRC the responsibility for establishing lines for California's congressional districts, and made other changes to the procedures and criteria to be used by the CRC.

Because Propositions 11 and 20 established the CRC in the 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 CRC to use adjusted census figures for redistricting purposes. Accordingly, AB 420 and AB 1986 did not *require* the CRC to use adjusted census figures, but rather *requested* that it do so.

- 5) **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.

According to the Statewide Database, when the Legislature decided to house the database permanently in a nonpartisan environment, it chose IGS for three primary reasons. First, the Associate Director of IGS at the time was an expert on California redistricting and was willing to handle the project. Second, the IGS library had an extensive collection of materials on California policy and politics, including redistricting maps. Finally, by housing the database at the UC system, it was believed that the database would benefit from academic input and would be openly accessible to the public.

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.

Additionally, even as Propositions 11 and 20 eliminated the Legislature's authority to establish the boundaries for legislative, congressional, and BOE districts, Proposition 11 also required the Legislature to continue its role in preparing and maintaining the database that is used for redistricting purposes, and further required the Legislature to provide ready access to

redistricting data and computer software for drawing maps. Under Proposition 11, those efforts are required to be coordinated with the CRC.

In light of the Legislature's responsibility for maintaining the redistricting database, this bill 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 CRC. This will allow the Legislature to fulfill its responsibilities under Proposition 11 by ensuring 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, so that the adjusted data is available to the new members of the CRC who are selected to adopt new legislative, congressional, and BOE districts in 2021. As is the case under existing law, this bill will continue to give the CRC the authority to decide whether to use the adjusted data for redistricting purposes.

- 6) **Other States:** During the 2011 redistricting process, two states—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. 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 while in New York, the challenge was filed in state court. In both cases, the lawsuits were unsuccessful.

In addition to Maryland and New York, Delaware enacted a law in 2010 to require census data to be adjusted so that prisoners were reallocated to their last known address for redistricting purposes, though Delaware subsequently 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 prisoners are 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.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

League of Women Voters of California (prior version)

### **Opposition**

None on file.

**Analysis Prepared by:** Ethan Jones / E. & R. / (916) 319-2094