

The 2020 Census: It's a BIG Deal

April 1, 2020, is Census Day. Mandated by the U.S. Constitution, the census is the single largest undertaking of the civilian government. And, like previous ones, the upcoming decennial survey faces several hurdles. The latest was a last-minute request by the U.S. Justice Department to add a question on the citizenship status of respondents to “allow the department to protect the right to vote and ensure free and fair elections,” the department said in a statement.

When the Census Bureau decided to include the question on March 26, it created a hurricane of controversy and uncertainty. Why all the uproar? Opponents worried that immigrants and their family members, documented or otherwise, would be afraid to complete and return the questionnaire, leading to an undercount.

Hours after the decision to include the question, California’s attorney general filed a lawsuit to block it. The next day, officials from New York and New Jersey announced plans to lead or participate in a multistate suit against it as well, and by April 3, the number of states had grown to 17. At press time, the future of the question was unknown since Congress has the final say.

The stakes are high, both politically and economically, for states to get an accurate count of their residents. Census data are used in congressional reapportionment (determining how many U.S. representatives each state will get) and in redistricting (how political districts will be drawn) at all levels of government. Funding of more than \$600 billion from the 16 largest federal agencies is distributed to states based on census figures.

In addition, businesses and nonprofits rely heavily on census data to plan and conduct their work. Business interests such as the National Association of Realtors and think tanks as politically divergent as the American Enterprise Institute and the Center on Budget and Policy Priorities also have stressed the importance of the census.

Compounding the situation, federal census funding has been well below that of previous years, a situation NCSL called “woefully inadequate” in a September 2017 letter to Congress. The latest package, which passed in late March, increased federal funding levels through September 2018. But that was too late to make up for lost planning and preparation efforts and to prevent the cancellation of two of the bureau’s three full-scale tests.

Other hurdles remain. The bureau has been without a director since last summer. Projects to integrate new technology into the process have been coming in late and overbudget. And the plan to save billions of dollars by allowing people to respond via the web is now uncertain because of concerns about cybersecurity and a lack of reliable internet service for many.

With Americans’ trust in government at historic lows, time is running out to garner support for the task of gathering data on what many people feel is private information—even when confidentiality is required by federal law.

State lawmakers who want to ensure their states receive appropriate federal funding and get fair congressional representation can create complete count committees and vote to fund outreach efforts to previously undercounted populations. For examples of legislation, answers to common questions and more on the census, go to the online magazine at www.ncsl.org/magazine.

—Patrick R. Potyondy



Limiting Gay, Trans ‘Panic’ Defenses

At least five states are considering bans on using so-called gay and transgender “panic” defenses in murder cases.

In jurisdictions that allow these defenses, a criminal defendant can argue that his violence was justified or excused by the shock of learning the victim was gay or transgender. Defendants’ claims that their panic negated the malice element, required for a murder conviction, have in some cases succeeded in reducing charges to manslaughter.

The only states with legislative bans on gay and trans panic defenses are California, which enacted its law in 2014, and Illinois, which did so last year. Similar measures have gained attention this year in the Minnesota, New Jersey, New York, Rhode Island and Washington legislatures, among others. The Florida Supreme Court barred the defenses in *Patrick v. State* in 2012.

Gay and trans panic defenses have been allowed in about half the states since the 1950s, including in the Matthew Shepard and “Jenny Jones Show” cases. Those who oppose eliminating the defenses are

concerned that a murder defendant could be denied the right to a complete, fair defense under the Constitution’s 14th Amendment.

No courts in the states that prohibit the defenses, however, have ruled that their elimination deprives defendants of their due process rights. Those who support the bans argue that a defendant doesn’t have a right to present any and all kinds of evidence. States typically have broad discretion in determining what evidence they will allow in criminal cases.

Opponents of the defenses say they reinforce harmful, antiquated stereotypes about the LGBT community, excuse hate crimes, promote the concealment of LGBT identity and sexuality, and devalue the lives of LGBT homicide victims.

The American Bar Association and other organizations have condemned the use of panic defenses. Lawmakers’ awareness of the concerns appears to be growing, making it likely that we will see more legislative efforts to ban these legal strategies.

—Whitney J. House

Shelter for Victims of Human Trafficking

Recognizing that human trafficking survivors often lack safe, affordable housing, at least 22 legislatures are using some of the funding they’ve set aside to fight trafficking to pay for housing and other services for victims.

Arkansas, which had a fund to pay for anti-trafficking training for law enforcement, created a new victim-support fund last year. The fund distributes grants to nonprofit, religious and other third-party organizations that secure housing and health and social services for trafficking victims.

Instead of creating a special fund, some states pay for specific services in line items of budget bills. In 2017, for example, Florida appropriated \$1.2 million for the Bridging Freedom Program to provide individualized, holistic, therapeutic safe homes for children who are sex-trafficking victims.

Nearly 75 percent of underage sex-trafficking survivors identified housing—whether emergency, transitional or long-term—as an area of need, according to a report prepared for the National Institute of Justice, part of the U.S. Department of Justice.

Domestic violence or youth shelters, faith-based homes, single apartments and group homes often serve as emergency or transitional housing, but there can be challenges with these arrangements. Not all domestic violence shelters, for example, are appropriate for men and older boys. And, some shelters may be unwilling to extend their services to trafficking victims due to safety



concerns, or because their programs don’t address specific needs. A shelter for domestic violence survivors may be hesitant to serve a labor-trafficking survivor, and youth shelters with age restrictions may have to turn away older survivors even if they have open beds.

Despite the challenges, innovative housing strategies are emerging. In Chicago, for example, a first-of-its-kind pilot program, approved by the Housing Authority in 2016, provides 60 so-called tenant-based vouchers over a three-year period. The vouchers let survivors of labor and sex trafficking choose and lease safe, affordable, privately owned rental housing.

—Anne Teigen

➔ Go to [ncsl.org/magazine](https://www.ncsl.org/magazine) for more information on human trafficking legislation.