

1. *Please clarify to whom any payment is made – is it the individual employee or an entity/organization?*

In the State Court Processing Statistics (SCPS) project, both individual employees and organizations are compensated. The method of data submission ultimately determines whether payment is sent to an individual or organization. If a county submits all their information electronically, payment is made to the entity providing us with the SCPS data. Organizations are also compensated if they allow their staff to collect and submit the requested SCPS data during regular business hours. For counties where individual employees of either a court or pretrial agency collect the SCPS data and that effort does not occur as part of an employee's regular duties, the individual employee is compensated for their efforts.

- a. *If an employee, how will BJS confirm that this is payment for otherwise uncompensated time?*

The Regional Justice Information Service (REJIS), which is the data collection agent for this project, contracts directly with individual employees of local courts or pretrial agencies to collect the SCPS data. In the contract, there is language explicitly stating that the data collection agent will not be compensated for work performed during regular business hours. The exact language prohibiting compensation for work performed during regular business hours states "REJIS will not pay COLLECTOR for any work that is performed during time for which COLLECTOR is eligible to be paid by another entity."

- b. *What is the rate/payment amount that BJS anticipates making?*

If an individual employee of a local court or pretrial agency participates in the data collection, that individual is compensated \$11 per case coded. In the supporting statement, we estimate that the time to complete each data collection form was about one hour; hence, the coders are being compensated about \$11 an hour to complete data collection for the SCPS project. In counties where an organization or entity provides us with all the data electronically, the payment amount is \$5 per submitted case.

- c. *Is there an agreement or other document specifying responsibilities in exchange for the payment?*

The Regional Justice Information Service (REJIS) contracts directly with individual employees of local agencies to collect the SCPS data. The contractual language provides information on the SCPS project background, scope of work, specific tasks of the data collector, materials and support provided by REJIS, periods of performance, compensation for performance, and relationship between the data collector and REJIS. The contract also contains language pertaining to best efforts by the data collector to ensure that the work product submitted meets certain quality and timeliness standards. In addition, the contract states that the data collector will complete all work within 5 months after contract ratification and that extensions must be approved in writing by REJIS. In addition, the contract contains language related to terms of modification and to any potential breach of contractual goods and services. For specific

information pertaining to the contract between REJIS and the data collector, please see attached contract (attachment 1).

- d. *Why isn't the payment mentioned in the advance letter? Where are those details provided?*

The advance letter has been modified and resubmitted to reflect the fact that data collectors are compensated for their efforts (see attachment 2). Although the advance letter will mention payment for services rendered, specific details about payment are provided in the contract between REJIS and the data collector. The contractual language contains specific language regarding terms of payment and the procedures for submitting documentation to receive payment for work performed.

2. Confidentiality

- a. *Please clarify whether BJS plans to make data available by any sub-national geography or by specific courts.*

BJS provides information on the county where the defendant's case was filed and disposed. For example, the BJS reports utilizing SCPS data provide information on the types of felony charges, pretrial release and misconduct, and adjudication and sentencing outcomes for the 40 counties participating in the SCPS project. A copy of the SCPS report titled "Felony Defendants in Large Urban Counties, 2006" is provided for further reference. Please see appendix tables 15 through 22 for further information on the types of county level information being provided in the SCPS report (see attachment 3).

- b. *Related, please clarify how the confidentiality statute is being applied. Is it the case that confidentiality is being offered to courts for data about individual defendants (only)?*

The confidentiality statute is being applied to individual defendants tracked in SCPS and to the legal professionals (e.g., judges, prosecutors, and defense attorneys) presiding over the case. The identities of the defendants, judges, prosecutors, and defense attorneys are kept confidential by removing any information related to defendant, attorney, or judicial names, case numbers, social security identifiers, or FBI fingerprint numbers. The only individual level information provided in SCPS relates to the defendant's gender, age, and race/ethnicity, information which is largely available to the public through various online accessible court systems.

The confidentiality statute is not being applied to the courts participating in the SCPS survey. Although individual courts are not identified, the county where the felony case was filed and disposed is identified in the SCPS dataset. Since most counties in SCPS have one courthouse with jurisdiction over felony cases, it will be possible to identify the courthouse where the case was filed and adjudicated. The SCPS courts, however, are very large and contain multiple judges, defense attorneys and prosecutors. For example, Baltimore County, which is one of the smaller counties in the SCPS dataset, has 17 full time judges and 6 full time masters with authority to hear and dispose of felony cases. Given the volume and number of persons serving

in the surveyed courts, it's highly unlikely that a particular judge, defense attorney, or prosecutor will be identified through the SCPS project.

- c. *Is it literally true that no researchers (or anyone other than "staff and consultants of SCPS") will see identifiable data as the pledge in the advance letter implies?*

BJS, through collaboration with REJIS, will take all precautions to ensure that no outside parties will be able to access the SCPS data with identifiable information. First, REJIS has several safeguards in place to maintain confidentiality of the defendants and legal professionals involved in the surveyed felony cases. These include the utilization of firewalls, virus protection software, and security login checks to safeguard the confidential data collected for this project. REJIS will also store any paper data collection forms submitted in a locked file. Before submitting the final dataset to BJS, REJIS will remove any information that could be used to identify individual defendants or legal professionals involved in the SCPS case. When REJIS submits the SCPS data file to BJS, the data will be submitted through encrypted software.

Although the SCPS data analyzed at BJS and archived at ICPSR will not contain identifiable information, it's always possible that a university researcher or professor could petition BJS/ICPSR to obtain the dataset with information that could be used to identify individuals. BJS/ICPSR has put into place an extensive set of protocols for any applicant requesting this level of information. The researcher would have to justify their need for this information, submit evidence that their proposal has gone through an Internal Review Board approval process, and provide guarantees that the data received would be stored in a protected and safeguarded manner. The process of reviewing requests to obtain confidential SCPS information is very stringent and, as of this date, BJS has never released a SCPS data file with identifiable information.

3. *Please note that A16 of the supporting statement should include not only project schedule but analysis and publication plans. Please supply a paragraph that could be included there for each of the two collections that are part of this OMB submission.*

The SCPS dataset should be submitted to BJS by March 2011. From March through July 2011, BJS will engage in a series of procedures to clean the data file and prepare it for analysis. After the data cleaning process is complete, data from the SCPS 2009 project will be used in the production of the next *Felony Defendants in Large Urban Counties* report. This report will examine the processing of felony defendants from arrest through adjudication and sentencing in state courts. Some of topics covered in this report will include the types of felony charges that brought these defendants into the court system; the release or pre-trial detention of these felony defendants; the mechanism (e.g., commercial bail bonds, release on recognizance) in which these defendants are released pre-trial; and the rate that released defendants commit pre-trial misconduct including failing to make a court appearance, being re-arrested for additional criminal misconduct, or committing a technical violation. The felony defendants report will be published sometime in late 2011 or early 2012 and a copy of the 2006 report is attached for additional reference.

In addition to the felony defendants report, BJS will consider using the SCPS 2009 data to publish several topically driven reports on felony case processing in state courts. These reports

could include examinations of the pretrial release phase of criminal case processing in state courts or the role of defense counsel in state court felony cases.

Data obtained from the county profile part of the SCPS 2009 data collection will not be published in any official BJS reports. These data will be used for internal purposes related to sampling efficiency and the collection of more detail information on the pretrial release of criminal case processing.

4. Related, what level of disclosure avoidance is applied to files that are made available via ICPSR?

Before the SCPS data file is submitted to ICPSR, BJS engages in several procedures to further ensure the confidentiality of individual defendants and legal professionals. These include removing the exact dates of key case events such as the arrest, filing, pretrial release, adjudication, and sentencing dates. The defendant's date of birth is also removed from the data file before submission to ICPSR. Rather than provide exact dates, BJS calculates various time variables including number of days from arrest through adjudication or the defendant's age - in years - at the time of arrest.

ICPSR also has in place several safeguards to ensure confidentiality. ICPSR conducts a disclosure risk review of every dataset to determine whether any data items could be used to identify individual respondents. ICPSR ensures respondent confidentiality by removing, masking, or collapsing variables within public-use versions of the datasets.

5. Please clarify how the respondents within each court are identified and to whom the advance letter is sent.

Typically, the advance letter is sent to the chief administrative official of the local court or pretrial diversion program. Sometimes these chief administrative officials have authority to decide on county participation; in other instances, initial requests are sent to the chief trial court judge who then determines whether the county will participate. Once the chief justice or administrative court/pretrial official offers approval, we are given contact information for the individual collector or systems administrator who provides direct assistance to this project. Respondents were identified from a list of participants who assisted in the 2006 SCPS data collection.

6. Why does BJS combine the "Asian" and "Native Hawaiian or Other Pacific Islander" categories in its user guide and collection instrument?

The data collection instrument and user guide have been revised to reflect the following coding scheme for defendant race: American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and White. Please see the revised data collection instrument and user guide which has been changed to be in compliance with OMB guidelines on the coding of race/ethnicity (see attachments 4 and 5).

7. *When does BJS next plan to conduct this collection? When will it have available the results of the survey on automation? When might those results reasonably be expected to result in additional changes to the sampling and data collection procedures?*

BJS will not initiate another SCPS data collection until 2012 at the earliest. Since we intend to have information from the county profile survey available by mid-2011, we should be able to utilize this information for the purposes of informing subsequent iterations of the SCPS project. The county profile survey will be used to explore the feasibility of more nationally representative sampling approaches and alternative data collection methods for the next SCPS project. In addition, the profile survey will explore county capacity to provide more specific details about factors that influence pretrial release decisions and pretrial misconduct that have traditionally not been collected in SCPS because of cost and time constraints. It is anticipated that subsequent SCPS iterations should be able to identify and collect more detail pretrial information on a subset of SCPS cases processed in the sampled counties.