

## MEMORANDUM

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**SUBJECT:** Federal Bureau of Investigation (FBI) Request for Office of Management and Budget (OMB) Clearance for developmental activities including a focus group and follow-on discussion for a new data collection on officer-involved shootings under the OMB generic clearance agreement (OMB Number 1110-0057).

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Over the past year, there have been police-involved shootings that have called attention to the need for information on these types of encounters. The FBI Uniform Crime Reporting (UCR) Program remains one of the most often cited source for national data on justifiable homicide. As such, the UCR Program has seen a dramatic increase in the requests for information on justifiable homicide involving law enforcement from the Supplementary Homicide Report (SHR) and the National Incident-Based Reporting System (NIBRS) in an effort to understand the dynamics of these events. In addition to the data in the UCR Program, statistics on homicide by legal intervention are collected through the National Vital Statistics System, which is managed by the Centers for Disease Control and Prevention. While these are the only national, annual collections on police use of force, these are not the only data that have been collected in order to explore the dimensions of these encounters between the police and the public.

The *Violent Crime Control and Law Enforcement Act of 1994* established a requirement that, “[t]he Attorney General shall, through appropriate means, acquire data about the use of excessive force by law enforcement officers.”<sup>1</sup> After that time, the DOJ and its constituent parts made a concerted effort to augment existing data collections to include information on the use of force by law enforcement officers. These included the addition of questions on citizen complaints on use of force on the Law Enforcement Management and Administrative Survey and the creation of a supplement on police-public contacts to the National Crime Victimization Survey. Both of these collections are managed by the Bureau of Justice Statistics and are collected every three to four years. In response to subsequent legislation (*Death in Custody Reporting Act of 2000* and *Death in Custody Reporting Act of 2013*), the Bureau of Justice Statistics also created the Arrest-Related Deaths system that provided a mechanism for states to report their deaths in custody. This collection was suspended in March 2014 just prior to the passage of the *Death in Custody Reporting Act of 2013*, which reinstated the mandate for this collection.

An additional effort to create a national database on law enforcement use of force involved the partnership of the Bureau of Justice Statistics and the National Institute of Justice with the International Association of Chiefs of Police. This database was piloted through 2003. However, it was discontinued due to a lack of funding. In general, many of these efforts lost momentum and funding after the events of September 11, 2001 shifted focus towards concerns of homeland security efforts by law enforcement. Given recent events, there is renewed interest in ensuring that the UCR Program is able to provide a more complete picture of police-involved shootings—both those that result in fatalities and those that do not. It is within this context that the UCR Program is seeking to expand the collection of law enforcement use of force information to include all police-involved shootings.

#### *Scope and Quality of Justifiable Homicide Collection in the UCR Program*

The UCR Program defines justifiable homicide as, “the killing of a felon by a peace officer in the line of duty or the killing of a felon, during the commission of a felony, by a private citizen.” Justifiable homicides by law enforcement and private citizens are reported to the UCR Program through the SHR, which is an additional component of the UCR Program separate from the monthly reports of offenses and NIBRS. The SHR provides for the collection of additional details on all homicides to include information on the victim, offender, and circumstances related to the homicide. It is within the details of the circumstances that a homicide incident can be identified as a justifiable homicide by law enforcement. As is the case with the UCR Program in general, law enforcement participation in the SHR collection is voluntary.

For the years 2011 to 2013, the number of justifiable homicides by law enforcement reported by UCR contributors was 1,261. However, it is difficult to know what proportion of justifiable homicides are being reported by law enforcement to the UCR Program. The SHR is only reported in the instance of a homicide occurring within an agency’s jurisdiction. While it is possible for there to be an amount of

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<sup>1</sup> Violent Crime Control and Law Enforcement Act of 1994, §210402. Data on Use of Excessive Force.

reconciliation between the number of SHR homicide reports submitted by an agency with its own offense counts for murder and nonnegligent manslaughter, justifiable homicide is not a considered a crime by UCR Program policy. There is currently no mechanism for agencies to indicate with certainty<sup>2</sup> that no justifiable homicides occurred within that jurisdiction.

The current request for approval, under the FBI UCR Generic Clearance (1110-0057) is for activities involved in the development of a new data collection on officer-involved shootings to supplement existing UCR data on justifiable homicide. These activities will require 20 burden hours.

## **Purpose of the Research**

The purpose of the research is to establish a definition of officer-involved shootings for use in a new data collection in the UCR Program. The definition will clearly identify what kinds of events will be considered within the scope of the new collection and what would not be in scope. In addition, the research will guide the UCR Program in the decisions regarding the content of the collection and identify potential areas that may be problematic for law enforcement to report. This will aid the UCR Program in its efforts to increase the overall validity and reliability of its data collections.

## **Background Research**

The UCR Program submitted a paper during the Spring 2015 Advisory Policy Board (APB) Meetings in order to receive guidance on whether to expand the current collection of justifiable homicide by law enforcement to include nonfatal officer-involved shootings. All five regional Working Groups approved the recommendation to expand the current collection. On April 22, 2015, the UCR Subcommittee concurred with the recommendations of the regional Working Groups and passed the following motion with the modification to include fatal shootings by law enforcement as well:

The Uniform Crime Reporting Program develops a method to collect information on nonfatal/fatal shootings by law enforcement in the line-of-duty.

On June 3, 2015, the APB received the recommendation to approve the data collection and passed the following amended motion:

The UCR Program to develop a method to collect information on nonfatal/fatal shootings by law enforcement in the line-of-duty. The UCR Program will work with local law enforcement agencies and the five major national law enforcement organizations to develop what information to collect and the best method to do so and bring the topic back through the APB Process.

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<sup>2</sup> The current policy on the reporting of justifiable homicides on the Monthly Return of Offense Known to the Police ("Return A") is to indicate the report of a homicide, to "unfound" it in the same instance. However, there are other instances where a homicide might be subject to unounding by law enforcement. Therefore, it is not possible to know with certainty that the homicide being unfounded was a justifiable homicide.

### *Analysis of current information available*

In an effort to maintain progress on the development of this data collection, the Criminal Justice Information Services (CJIS) Division requested examples of either state laws or data collections related to officer-involved shootings and examples of local data collections maintained by primary law enforcement agencies. The CJIS Division received responses from 23 states, with a total of 31 examples. In addition, the CJIS Division was able to include 12 examples of officer-involved shooting or use-of-force data released as a part of the White House's Open Data Initiative with law enforcement bringing the example total to 43.

There was some variation in the examples provided either by the state or local agency for this analysis. Sixteen of the examples involved either a form, report, or a summary of the fields in a form or report. Two examples were publications released by the state or agency that demonstrated the type of data collected on officer-involved shootings. On five occasions, the examples were the agency's use-of-force policy or laws connected to use-of-force. Finally, three examples were more stated positions on the initiative rather than information on type of data collected. The remaining five examples forwarded from the states were still pending additional information or had no information to provide.

Only four states reported having any state-level collection as part of their state UCR Program or some other state mandate—one of which was recent legislation that had passed since January 2015. Based upon the twenty-three examples that provided specific information on data fields or objects, approximately half or more had some information on officer and subject demographics, details on the force used, the presence of other individuals during the event, the circumstances at the scene of the event, location, date and time. In addition to these details of the event itself, the majority of the data collections or publications included information on procedural outcomes. These include the arrest charges filed against the officer or subject, District Attorney or Grand Jury disposition, or internal discipline among others.

### *Focus group to determine preliminary content for new data collection*

A focus group met at the CJIS Division facilities on June 30, 2015. The purpose of the focus group was develop a preliminary definition for the term, *officer-involved shooting*, and propose the initial content for the new data collection. Focus group participants were selected based upon their law enforcement experience and their subject-matter expertise on use of force by law enforcement. In addition, the UCR Program ensured that the group had broad regional representation with at least one participant from each of the four regions of the United States, representation from both municipal police departments and sheriffs' offices, and finally variation in the size of communities served.

The general schedule of questions is provided as an attachment to this memorandum. However, the day consisted of a series of two focus groups with a final "wrap-up" session to handle remaining questions and discussions regarding the difficulties surrounding the collection of this data. The focus of the two-hour session in the morning concentrated on the definition of officer-involved shootings. The goal was to produce a proposed definition for officer-involved shootings that will clearly delineate what events are within scope of the data collection and what are not. The focus group reconvened in the

afternoon for a two-hour session to discuss the potential content of the data collection. The day concluded with a brief opportunity to address any lingering questions for follow-up. The focus group participants will be asked to review basic notes from the day's discussion approximately one week from the focus group event in order to provide any necessary clarification or input. These basic notes will serve as the input for a preliminary report.

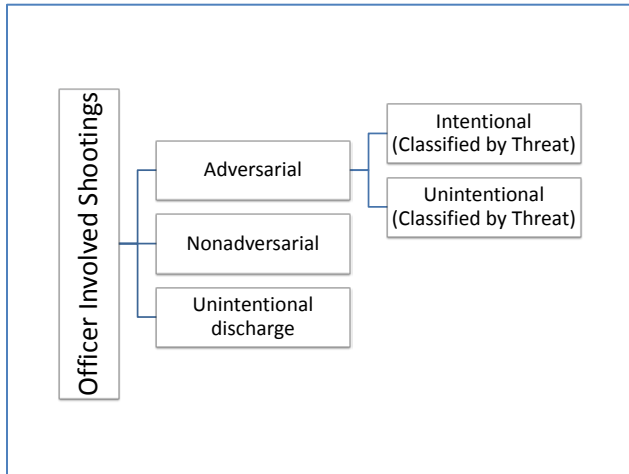
In general, there were three main suggestions for the data collection from the focus group. The first is a preliminary definition for officer-involved shootings, which is:

Any incident where an officer, as defined by the Law Enforcement Officers Killed and Assaulted (LEOKA) Program, discharges a firearm at or in the direction of another individual.

The LEOKA Program uses the following criteria for inclusion and exclusion for data collection purposes:

- Victim officers who meet all of the following criteria:
  - Wear/carry a badge (ordinarily)
  - Carry a firearm (ordinarily)
  - Are duly sworn and have full arrest powers
  - Be a member of a public governmental law enforcement agency and be paid from government funds set aside specifically for payment to sworn law enforcement
  - Are acting in an official capacity, whether on or off duty, at the time of incident
  - If killed, death is directly related to the injury(ies) received during the incident
- Exception to LEOKA Program criteria – As of 01/01/2015, the following exception to LEOKA Program criteria became effective:
  - Include individuals serving in the capacity of a law enforcement officer at the request of a law enforcement agency whose officers meet the current collection criteria. The individual must be under the supervision of a certified law enforcement officer from the requesting agency at the time of incident, but is not required to be in the physical presence of the officer while he/she is working the assigned duty. Examples include, but are not limited to, reserve officers, correctional officers, certain campus officers who would not already meet the current criteria requirements, etc. This exception will allow for the inclusion of those officers who do not meet all of the LEOKA criteria, but are acting in the capacity of a law enforcement officer who does.
- Examples of job positions not included in the FBI's LEOKA Program's data collection:
  - corrections/correctional officers
  - bailiffs
  - parole/probation officers
  - military personnel/police
  - Federal judges
  - U.S. and Assistant U.S. Attorneys
  - Bureau of Prison officers

The incident would be further classified in the following manner:



Secondly, the focus group proposed a collection system that would occur at two stages. The first stage would collect information from law enforcement agencies that could be readily ascertained at the scene of the incident. The group agreed that law enforcement agencies should be comfortable providing this initial information on a monthly basis. Additional detail would be added after there was sufficient time to allow for the investigative process to conclude in order to avoid questions about whether the information provided was prejudicial in nature to the investigative process. Finally, the focus group appeared to recommend a system of collection that would not be tied to the UCR collection on criminal offenses and incidents in preference of a stand-alone collection on justifiable homicide and officer-involved shootings.

There was additional discussion about the content of each stage of the collection that could serve as a preliminary framework. The first stage would be primarily used for enumeration of these incidents and provide basic characteristics that could be ascertained from an initial incident report and unlikely to change as the investigation progresses. Examples include: date/time, officer(s) demographics, subject(s) demographics, years of service by officer(s), location type, injuries sustained by officer(s) and subject(s), weapons/threat involved, type of assignment by officer(s), the type of call that the officer(s) were responding to, and the type of incident on the scene. The second stage of the collection would provide additional details that may require further investigation to be ascertained or, because of potential litigation, could only be disclosed once the matter was closed. Examples include: whether the officer(s) were involved in prior shootings; whether officer(s) training were current; details about the shift worked; additional environmental conditions; cause and manner of death; criminal history of subject(s); history of drug abuse, alcohol abuse, or mental illness on the part of the subject(s); military experience for officer(s) and subject(s); the actions of the officer(s) and subject(s) prior and during the incident; additional details about the shots fired (number, ammunition type, location of wounds, and distance between subject and officer); and how the matter was resolved by local officials (for example, ruled justifiable use of force).

While the focus group was able to provide guidance on the definition and content of the officer-involved shooting data collection, there are areas that require additional input to further refine or provide definition for the final data collection. Those areas are described in the section on Follow-Up Developmental Research Procedures.

## **Selection of Participants in Follow-up Developmental Research**

Participants for the follow-up developmental research from the focus group will continue to provide the same level of representation as was available in the focus group.

## **Follow-up Developmental Research Procedures**

Based upon the initial framework is produced from the focus group, there will be additional input regarding the proposed scope and content of the officer-involved shooting data collection from a representative group of approximately 20 individuals from law enforcement, academia, and other subject-matter experts. In general, themes identified during the focus group will be the basis for a series of open-ended questions using nominal group techniques provided to these participants on two separate occasions in order to achieve saturation on the conceptual questions surrounding the data collection. The questions will be targeted to provide some validation on areas of consensus achieved by the focus group, as well as provide more input into areas that emerge from the focus group with less agreement among the participants. The findings of these developmental activities will provide input to the UCR Program in the creation of a new data collection on officer-involved shootings.

An initial group of ten participants in the follow-up development research will be provided a brief overview of the background research, including the recommendations of the focus group via email. They will be given the opportunity to respond to its content in general. However, there will be some guidance on particular areas that need more input. Specifically, the participants will be asked to provide input in the following areas:

- Do you agree that the collection of justifiable homicide and officer-involved shootings should be treated separately from the rest of the UCR collections on criminal incidents and offenses?
- Is the definition provided by the focus group sufficient to identify incidents that should be in the scope of the data collection? If not, how should it be modified?
- Does the classification schema of *adversarial*, *non-adversarial*, and *unintentional* cover all potential situations given the definition of an officer-involved shooting? Should these categories be mutually exclusive at the incident level, or are there situations where multiple categories may apply?
- The definition does not clearly identify incidents between officers that take place in a training environment. Does that need to be included in the final definition or classification scheme of officer-involved shooting?
- Is the definition of a *law enforcement officer* sufficient for the proposed data collection? If not, what groups should be included?

- While more work would need to be done to identify appropriate categories that reflect the circumstances of the use of force by law enforcement, would you like to see a brief list of broad categories (6 to 15 as seen in the current Bureau of Justice Statistics' Arrest Related Death collection) or significant detail regarding the events (up to 60 different circumstance codes for multiple points in time such as in the LEOKA collection)?
- The proposed collection is focused on only officer-involved shootings. Is there a benefit to include questions on the additional types of force used by the officer(s) just prior to using their firearm, even if this means the collection is increased in length?
- Should agencies be asked to provide a written narrative of the incident as part of the second stage of the collection?

The responses from the initial group of ten participants will be used to further refine the proposed definition and content for the new data collection. The UCR Program will then send the revised report via email to an additional ten participants to respond to questions related to areas of refinement and validation on the definition and scope of the data collection in the same manner as the first round.

## Language

The focus group and all follow-on developmental activities will be conducted in English.

## Burden Hours for Developmental Activities

As the number of participants in the focus group does not exceed ten, we are not requesting any burden hours associated with the focus group. However, the follow-on development work would involve 20 additional individuals to review and respond to the findings of the focus group. Therefore, we are requesting 20 burden hours for additional developmental activities as described above (60 minutes per respondent).

## Analysis Plan

Data collection during the focus group relied upon two sources—the assistant moderator will take notes during the day's discussions and record both verbal and nonverbal response and audio from the discussions will be recorded for further analysis. The notes from the day were compiled into a single report that was provided to the focus group participants for a simple review to ensure that all the impressions from the questions have been correctly recorded. After the review by the participants, the report will be anonymized to remove references to personal identity or agency to create a version of the report for external dissemination. The preliminary report will identify themes that will serve as the basis for the additional research from the nominal group.

After the production of a preliminary report based upon the notes from the assistant moderator, the recordings of the focus group discussions will be reviewed by the moderator and the assistant moderator to record the individual responses into a spreadsheet for further coding and analysis. These



more complete responses will be combined with the results of the initial content analysis and the results of the nominal group technique to provide a basis for a definition of officer-involved shootings and the content of the data collection associated with officer-involved shootings.

### **Informed Consent, Data Confidentiality and Data Security**

Participation is voluntary in the follow-up developmental activities. Any identifying data will be removed from reports before disseminated outside of the FBI and is addressed in the Informed Consent. A copy of the Informed Consent form is attached. Data files will be housed on internal FBI computer-system and is subject to its data security policies.