

SUPPORTING STATEMENT

National Survey of Prosecutors, 2014

Overview

The Bureau of Justice Statistics (BJS) requests clearance to conduct the 2014 National Survey of Prosecutors (NSP-14). The 2014 survey will be a complete enumeration of prosecutor offices and builds on previous iterations conducted as either sample surveys (1990, 1992, 1994, 1996 and 2005) or censuses (2001 and 2007). Similar to previous NSP collections, the proposed 2014 project will focus on generating national estimates on the administration and operational characteristics of prosecutor offices that handle felony cases in criminal courts.

The NSP-14 proposes to conduct a complete enumeration of the estimated 2,330 prosecutor offices across the 50 states and the District of Columbia, instead of a sample survey. The collection of census data will allow BJS to update the national estimates, as well as develop an updated sample frame to implement more targeted sample surveys involving local prosecutor offices in subsequent years (e.g., a survey of prosecutor offices that serve tribal lands). The NSP statistical series is comprised of both core questions used in the past decade and several new or expanded supplemental topics to capture emerging justice issues. Through the NSP-14, BJS will measure staffing characteristics; budgets; overall caseloads and cases involving emerging and special offenses such as human trafficking and cyber-crimes; the use of DNA evidence in prosecution; the office's involvement in specialty courts; the handling of youths in criminal courts; and the office's work in Indian country. BJS will use the NSP-14 to describe the characteristics of both large and small prosecutor offices across the country. BJS plans to field the NSP-14 in January 2015 and end the data collection period no later than April 30, 2015.

A. Justification

1. Necessity of Information Collection

BJS seeks to implement a new iteration of the National Survey of Prosecutors (NSP-14) under its existing authorizing legislation to address the current need for updated statistical information. Under Title 42, United States Code, Section 3732 (Attachment A), the Bureau of Justice Statistics (BJS) may collect and analyze statistical information needed on the operation of the criminal justice system at the federal, state, and local levels. The state court prosecutor offices are an essential component of the American criminal justice system. The majority of local prosecutors are elected and represent the local government in deciding who is charged with a crime, the type and number of charges filed, whether or not to offer a plea, and the sentencing recommendations for those convicted of crimes.

The proposed 2014 National Survey of Prosecutors (NSP-14) will provide national level estimates on the administration and operation of prosecutor offices that handle felony cases in criminal courts. In addition to the core measures on staffing, budgets, and caseloads, the NSP will address many gaps in our understanding of the expanding role of the prosecutor; will examine their discretionary powers; will document the decentralization of offices and

specialization within; will identify policies on professional conduct and procedures; and will explore the emerging prevalence of cyber-crimes, human trafficking, and state jurisdiction on tribal lands. The use of a census will enable BJS to provide measures for many types of prosecutor offices.

Importance of prosecutor data for BJS to fill its mission

BJS mission is to collect, analyze, publish and disseminate information on crime, criminal offenders, victims of crime and the operation of justice systems at all levels of government. The NSP-14 data collection plays an important role in BJS being able to fulfill its mission to collect and disseminate information on crime and justice. Since 1990, BJS has sponsored national surveys or censuses of prosecutor offices to collect data on the resources, policies, and practices of this component of state court systems. The NSP has enabled BJS to answer key questions about the staffing and number of cases prosecuted annually in state courts. For example, in 2007, the NSP data revealed that an estimated 2,300 state court prosecutor offices across the U.S. employed about 25,000 prosecuting attorneys and closed an estimated 2.9 million felony cases.

The NSP-14 with its new sections, will provide expanded data utility for BJS and other Federal stakeholders on the subjects of victim services, cyber- and internet crimes, human trafficking and white collar crimes. Data gathered on multidisciplinary teams and victims services will help BJS better understand the type of programs and services provided to victims and the source of funding. In addition, the data on cyber-, white collar and human trafficking crimes will provide BJS local information on the prevalence of prosecution of these emerging crime types for comparison with districts across the U.S. This information is not easily collected or available from other data sources, and will enable BJS to determine the need for specialized targeted surveys in the future.

NSP data are a resource to federal policymakers in combating crime and ensuring that justice is both efficient and evenhanded. BJS plays a major role in measuring crime and providing information used by policymakers to allocate funding to fight crime. Through the NSP, BJS has been able to monitor the costs to operate local prosecutor offices. For example, the aggregated operating budgets allocated for the 2300 state prosecutor offices across the U.S. in 2007 was about \$5.8 billion, which also covered the employment of over 78,000 staff and prosecution work. The NSP-14 data will also be of great utility to federal policy makers that need relevant and accurate information for funding decisions for emerging issues like human trafficking, cyber- and internet related crimes and white collar crimes.

The NSP is also vital component of BJS' statistical portfolio covering the major criminal justice institutions. For instance, the NSP complements other BJS establishment surveys focusing on different aspects of the criminal justice system, such as the *Census of State and Local Law Enforcement Agencies* and the *Census of State and Federal Adult Correctional Facilities*, which capture the administrative and operational characteristics of these components. The NSP is the only recurring statistical collection on local prosecutor offices that addresses administrative and operational factors. The data collection informs the country about the growth and changes occurring in staffing, budgets, and capacity to deal with these matters. In addition, the data

gathered in the NSP-14 will provide insight on juvenile transfers and white-collar crime caseloads, and provide a sampling frame for a new BJS project, state and local justice agencies serving tribal lands.

These data have contributed to numerous statistical reports, national research studies, and advanced the understanding of important emerging operational, legal and social topics such as the prosecution of hate crimes;¹ community prosecution strategies;² prosecution of computer child pornography and hate crimes;³ and handling of juveniles prosecuted in criminal courts.⁴ Also, BJS has published the *Prosecutors in State Courts* report based on the 1990, 1992, 1994, 1996, 2001, 2005 and 2007 data. NSP data have also been used by BJS to release reports on *State Court Prosecutors in Large District*, *State Court Prosecutors in Small Districts*, *Juveniles Prosecuted in State Criminal Courts*, and *Reporting by Prosecutors' Offices to Repositories of Criminal History Records*.

Why a census of prosecutors' offices is necessary

BJS proposes to conduct the NSP-14 as a census, instead of a sample survey. During 1990, 1992, 1994, 1996 and, 2005, the NSP collected data from a nationally representative sample of prosecutor offices. In addition to the sample surveys, BJS has conducted two complete enumerations of local prosecutor offices. In 2001, BJS conducted the first census of all 2,300 prosecutor offices. In 2007, the second NSP census gathered information on the budget allocations, salaries for entry-level prosecutors, types of case information shared with criminal history repositories, types forensic laboratories used, emerging cyber and computer related crimes, identify theft crimes, and the handling of crimes committed on tribal lands.

Conducting NSP as a census will enable BJS to refresh its universe frame for future sample surveys and develop targeted surveys on special topics. For example, the NSP-14 census results will enable BJS to develop a sample frame for a targeted survey of prosecutor offices that serve tribal lands. BJS recently funded the 2014 *State and Local Justice Agencies Serving Tribal Lands* (SLJASTL) and plans to use questions on the NSP-14 to determine those offices to be selected in this special study.⁵

¹ Bryan D. Byers, Kiesha Warren-Gordon and James A. Jones. (2012) *Predictors of Hate Crime Prosecutions: An Analysis of Data From the National Prosecutors Survey and State-Level Bias Crime Laws*. Race and Justice, 203-219, SAGE Buzzell, Timothy. *The Effects of Organizational and Community Context on Local Prosecution of Computer Child Pornography Cases*. Criminal Justice Studies: A Critical Journal of Crime, Law and Society 20. 4 (Dec 2007): 391-405.

² Cunningham, WmScott; Renauer, Brian C; Khalifa, Christy. *Sharing the Keys to the Courthouse. Adoption of Community Prosecution by State Court Prosecutors*. Journal of Contemporary Criminal Justice 22. 3 (Aug 2006): 202-219.

³ Buzzell, Timothy. *The Effects of Organizational and Community Context on Local Prosecution of Computer Child Pornography Cases*. Criminal Justice Studies: A Critical Journal of Crime, Law and Society 20. 4 (Dec 2007): 391-405.

⁴ DeFrances, C. J., & Strom, K. J., *Juveniles Prosecuted in State Criminal Courts*. NCJ-164265. Washington, D.C.: United States Department of Justice, Bureau of Justice Statistics, May 1997.

⁵ See FY 2013 solicitation, *State and Local Justice Agencies Serving on Tribal Lands* (SLJASTL), http://www.bjs.gov/content/pub/pdf/sljustl_sol.pdf

Conducting NSP-14 as a census will allow BJS to explore the utility of merging NSP data collected with local level demographic, economic and other criminal justice and administrative data available at the county level. The majority of prosecutors' offices serve a single county, which makes a NSP census a good collection for merging with other justice agency information at county level. For example, the NSP data can be linked to the justice expenditure and employment data collected by the Census Bureau; law enforcement data reported to the FBI's UCR program; and corrections data at the state and local levels.

NSP-14 census data will also permit BJS to conduct comparative analyses of the indigent defense and public defender offices across the country, which would not be possible using a sample survey. For instance, the variation in indigent systems, either county based or state based, require a census to determine which prosecutor office data can be directly linked to the indigent systems.

Conducting a census will provide BJS an opportunity to explore the use the NSP data to develop a user friendly data analysis and presentation tool, which if feasible can broaden the use of the data. The ability to make data available for wider audiences or providing users the mechanism to tabulate and summarize the results based on variables of interest to them requires a complete enumeration of the respondents. Among the many requests BJS receives for NSP statistics, users are interested in information that impacts them, where they live or work. A census of prosecutor office will allow users to define their own comparisons and will enhance the NSP data's utility among the users.

Although BJS does not regularly conduct a census for the NSP, there are some short-term tradeoffs of not conducting a sample survey. The sample size for the small universe of 2,330 prosecutor offices would be relatively large (n=650) and the cost difference in doing a census versus a survey is relatively small. To convert from a sample to a census, the total project cost increased about \$152,000 to capture data from an additional 1,680 respondents versus just a sample of 650 offices. The total actual respondent burden hours for the NSP-14 will be 2,500 hours, due to the one-hour time to complete the census and any nonresponse follow-up.

The increases in financial and respondent burden costs of conducting a census are minor, when weighed against the greater benefits to fulfill BJS mission in the years to come. Moreover, the NSP-14 universe frame may be used to conduct sample surveys in 2015 and the results will inform other funded projects involving juvenile and white-collar crimes.

2. Needs and Uses

BJS needs to collect the NSP data on the estimated 2,330 local prosecutor offices in the U.S. in order to increase our understandings of the justice system's capacity to fight crime and ensure community safety at the state and local levels of government. Implementation of the NSP-14 responds to DOJ's need for current information about the nation's prosecutor offices. The administration and operational data from local prosecutor offices compliment the sequence of BJS statistical collections focusing on the key criminal justice measures and institutions. The prosecutors' decisions impact the public defenders and judge workloads from initial charges to

final court disposition, as well as the flow of cases into the correctional system on through the appeals courts.

The local prosecutor office data have contributed to several BJS statistical reports to further our understanding of the prosecution of hate crimes;⁶ adoption of community prosecution strategies;⁷ prosecution of computer child pornography and hate crimes;⁸ and handling of juveniles prosecuted in criminal courts.⁹ Since 1990, BJS has released a series of statistical bulletins based on the various NSP collections: *Prosecutor in State Courts* in 1990, 1992, 1994, 1996, 2001, 2005, and 2007. In addition, BJS released *State Court Prosecutors in Large Districts 2001*, *State Court Prosecutors in Small Districts 2001*, *Reporting by Prosecutor Offices to Repositories of Criminal History Records 2005*, and *Juveniles Prosecuted in State Criminal Courts* in 1997.

The NSP and the National Survey of Indigent Defense Systems (NSIDS) are the two primary data collections involving the courtroom work sponsored by BJS. NSP data will enable BJS to do comparisons of the administration and operational characteristics for these functions. For example, BJS will be able to examine the similarity and differences in staffing, budgets and caseloads handled by prosecutor and public defender offices.

In addition to fulfilling its organizational mission to measure the operations of the criminal justice system, the changes to the proposed NSP-14 will enhance the utility of the prosecutor's statistical data. In 2009, BJS requested the Committee on National Statistics (CNSTAT), of the National Academies, in cooperation with the Committee on Law and Justice, to review the full range of its statistical programs in an effort to improve their quality.¹⁰ The CNSTAT panel noted that BJS adjudication statistics were a reflection on the general difficulty of measurement of the stages within the justice system, especially where information systems and access to operations vary across states. The CNSTAT panel also found that: 1) data on the processing of juvenile transfers is limited, and 2) BJS portfolio of the criminal justice system is easily equated with the processing of violent crime only, excluding items like white collar and juvenile cases. Based on the CNSTAT observations, BJS has proposed adding new topics and questions to expand the collection to fill the gaps in data on the administrative processing of white collar crimes, juvenile transfers, office policies, and cyber-crimes.

⁶ Bryan D. Byers, Kiesha Warren-Gordon and James A. Jones. (2012) *Predictors of Hate Crime Prosecutions: An Analysis of Data From the National Prosecutors Survey and State-Level Bias Crime Laws*. *Race and Justice*, 203-219.

⁷ Cunningham, Wm Scott; Renauer, Brian C; Khalifa, Christy. *Sharing the Keys to the Courthouse. Adoption of Community Prosecution by State Court Prosecutors*. *Journal of Contemporary Criminal Justice* 22. 3 (Aug 2006): 202-219.

⁸ Buzzell, Timothy. *The Effects of Organizational and Community Context on Local Prosecution of Computer Child Pornography Cases*. *Criminal Justice Studies: A Critical Journal of Crime, Law and Society* 20. 4 (Dec 2007): 391-405.

⁹ DeFrances, C. J., & Strom, K. J., *Juveniles Prosecuted in State Criminal Courts*. NCJ-164265. Washington, D.C.: United States Department of Justice, Bureau of Justice Statistics, May 1997.

¹⁰ Robert M. Groves and Daniel L. Cork, Editors; *Panel to Review the Programs of the Bureau of Justice Statistics; National Research Council*. (2009) *Ensuring the Quality, Credibility, and Relevance of U.S. Justice Statistics*. See http://www.nap.edu/catalog.php?record_id=12671

The questions and topics proposed for the NSP-14 will inform other DOJ and OJP policies or programs, but also at the local level of government, where comparable national data are not produced by any other external agencies on a regular basis.

NSP-14 Core Topics

Staffing. Staffing questions in the NSP are directed at gathering accurate estimates on the total number and types of position employed. Staffing data are crucial to understanding the human resources available to address crime in local communities. BJS has routinely used this information to do comparisons of changes in prosecutor office staffing over time. For instance, in 2007, prosecutor offices employed an estimated 78,000 compared to more than 79,000 in 2001. The NSP staffing data have been used to develop estimates for the number of felony cases per prosecutor, a common workload measure. The other source of justice employment data comes from the Census Bureau, but these data aggregate all data for prosecutors, court offices, and judges under a judicial and legal category. The NSP data allows BJS to determine the prosecution office portion of the total judicial and legal employees reported elsewhere. In addition, NSP data will support a BJS comparison of prosecution and public defender staffs, as this information will help identify issues of fairness in the justice system regarding available resources.

Budget. The NSP has collected prosecutor office budget information for comparisons since 1990. The only national estimates of the operating costs for prosecution in local criminal courts are based on the NSP. In 2007, local prosecutor offices reported an estimated total operating budget of \$5.8 billion, with the average budget ranging from \$526,000 for offices serving less than 100,000 to \$49.3 million for those with 1 million or more residents. Based on NSP data, offices are funded through several mechanisms: county, state, and federal governments, and local special programs generate funds from fee for services and/or asset forfeitures.¹¹ BJS has used the data on budgets to conduct comparisons of the changes over time and develop estimates for average cost per case handled.

Caseloads. Prosecutor caseload statistics are important to trend analyses and comparisons among the various offices across the country. Prosecutors and the criminal justice field have struggled with the question of how many cases an individual prosecutor should handle in a year, in order to effectively allocate staff and resources.^{12, 13} In 2007, BJS estimated that State prosecutors closed 2.9 million cases charged as felonies (excluding misdemeanors) in state courts, averaging out to be about 94 cases for each prosecuting attorney on staff in full-time

¹¹ Understanding the comparison of budgets for prosecutors and budgets for public defense. http://www.nlada.net/library/article/na_understandingbudgetsforprosanddefs

¹² How Many Case Should A Prosecutor Handle? Results of the National Workload Assessment Project (2002). American Prosecutors Research Institute. Alexandria, VA <http://www.ndaa.org/pdf/How%20Many%20Cases.pdf>

¹³ Delayed justice: Local district attorney's office battles understaffing, big caseload. <http://www.weau.com/home/headlines/Delayed-justice-Local-district-attorney-office-battles-understaffing-big-caseload--186237212.html>

offices.¹⁴ The NSP-14 proposes to gather data on total felony cases closed and felony convictions, method of case closures, and office policies for case processing, case management systems, and use of state and local forensic databases. BJS will use the caseload information to document case trends and caseload variations across offices.

Contextual factors in prosecutor offices.

To improve the quality and on-going relevance of the prosecutor office data collection, the NSP-14 will expand to collect information on the contextual factors associated with prosecuting local crimes. Beyond the data on staffing, budgets and caseload, the NSP-14 will include several new questions that focus on contextual factors associated with case processing in prosecutor offices, such prosecutorial discretion in case processing, specialized units, and victims services.

Discretion in case processing. In the past, BJS has not collected information on the discretionary authority afforded the prosecutors, either through internal written policy or supervisory controls. Research has shown that prosecutorial discretion—decision making authority-- pervades all stages of the criminal justice system, but what is unclear is whether office policies or boundaries exist for the decisions made. Prosecutors' discretionary power to initiate or decline cases has been criticized for its potential for abuse and praised for the essential functions it serves in the administration of justice.¹⁵ Prosecutorial discretion is an and important part of our system of justice — in allocating sparse prosecutorial resources, providing the basis for plea-bargaining, and allowing for leniency in the criminal justice system.¹⁶ NSP-14 will document the contextual boundaries of some of the decisions made in the processing of criminal cases. NSP-14 proposes to determine if there is an office policy and whether the assistant prosecutors need approval for the type and number of charges filed, the dismissal and amendment of charges, pretrial release considerations, types of pleas offered, and sentencing recommendations.

Although, NSP-14 is not able to examine the details of similarly situated cases across the various stages of the criminal justice system, it does collect data on the formal and informal organizational mechanisms that constrain or regulate prosecutors' decision-making. The National Institute of Justice (NIJ) and the Bureau of Justice Assistance (BJA), within the Office of Justice Programs (OJP), collaborated with BJS to develop these new questions. NIJ and BJA have supported several important research projects over the years focused on prosecutor discretion and the results from the NSP-14 should provide data for additional in-depth research or program initiatives. The following are reports or studies funded by DOJ components focusing on prosecutor office policies and discretion in case processing:

- Frederick, Bruce and Don Stemen (2012). *The Anatomy of Discretion: An Analysis of Prosecutorial Decision Making – Technical Report*, Final Report to the National Institute of Justice. See, <https://www.ncjrs.gov/pdffiles1/nij/grants/240334.pdf>

¹⁴ Prosecutors in State Courts, 2007 - Statistical Tables <http://www.bjs.gov/content/pub/pdf/psc07st.pdf>

¹⁵ Lezak, Sidney I.; Leonard, Maureen. *The Prosecutor's Discretion: Out of the Closet - Not Out of Control*. 63 Oregon Law Review 247 (1984).

¹⁶ Brownstein, Rhonda. *Are There Limits to Prosecutorial Discretion?* Intelligence Report, Summer 2007, Issue Number: 126

- Devers, Lindsey (2011). Plea and Charge Bargaining. Final Report to the Bureau of Justice Assistance. See, <https://www.bja.gov/Publications/PleaBargainingResearchSummary.pdf>
- Spohn, Cassia C.; Dawn Beichner ; Erika Davis Frenzel; and David Holleran. (2002) *Prosecutors' Charging Decisions in Sexual Assault Cases: A Multi-Site Study*, Final Report to the National Institute of Justice. See, <https://www.ncjrs.gov/pdffiles1/nij/grants/197048.pdf>
- Candace McCoy and Patrick McManimon, Jr. *New Jersey's "No Early Release Act": It's Impact on Prosecution, Sentencing, Corrections, and Victim Satisfaction*. Final Report to the National Institute of Justice. See, <https://www.ncjrs.gov/pdffiles1/nij/grants/203977.pdf>
- Jacoby, Joan and Leonard Mellon, and Walter Smith (1982). *Policy and Prosecution*. Final Report to the National Institute of Justice. See, <http://www.jjjs.org/publications/prospubs/Pol&Pros.pdf>

In the past BJS has sporadically gathered data on the changes in the organizational environment and programs among prosecutor offices. In recent years, prosecutor offices have created special prosecution units or specifically assigned prosecutors to handle civil or criminal matters.¹⁷ Prosecutor offices often utilize a specialized team approach because of the specific issues often involved with certain types of crimes are complex and time consuming. For example, domestic violence, child abuse, gangs, financial crimes, cyber-crimes and drug cases require increased specialization. The NSP-14 will gather information on the types specialized units or designated prosecutors within the offices.

The NSP-14 will also document the prosecutor office use of community supervision and/or diversion programs. Prosecutor offices looking for resources to address budget constraints may be increasing their use of deferred prosecution programs for both felony and misdemeanor crimes.¹⁸ The NSP-14 will gather information of the diversion programs in each jurisdiction,, including 1) whether access to diversion programs are provided prior to formally charging a defendant, 2) types of defendants/crimes eligible for diversion, 3) assignment of prosecutors to handle diverted cases, and 4) whether prosecutor offices administered their own diversion programs.

Victim Services. Another organizational factor of considerable importance on which the NSP has not previously collected any data is victim services. In the past BJS has not collected any information on the victim services or programs available from or use by the prosecutor offices. The types of services available to victims may vary depending on the office, nature of the crime, location and size of the population served. The NSP-14 will ask whether prosecutor offices

¹⁷ Betsy Tsai. (2000). *The Trend Toward Specialized Domestic Violence Courts: Improvements on an Effective Innovation*. <http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=3628&context=flr>

¹⁸ Probation Pays Bills for Prosecutors, see article <http://online.wsj.com/article/SB10001424052970203750404577171031387548446.html>

provide direct services for child abuse, domestic violence, elder abuse, sexual assault, homicide, identity theft, gang violence, and immigration cases. Also, NSP-14 will collect information on funding sources for victim services.

The Office of Victims of Crime (OVC) has the responsibility for leading DOJ programs to support victims. Information on the type of resources available to prosecutor offices will directly help OVC in the development of program and technical assistance strategies that support victims. In 2012, the Attorney General issued revised guidelines for the treatment of victims of, and witnesses to, crime, *Attorney General Guidelines for Victim and Witness Assistance*.¹⁹ DOJ personnel and programs are encouraged to provide assistance to crime victims where appropriate and within available resources, as situations warrant. However, to ensure DOJ components meet the guidelines set forth, BJS and OVC need accurate information on the local level about the types of services prosecutor offices provide victims.

Cyber-crime and Identity Theft. The growing use of technology and social media has increased exponentially in the past decade, but so has the upward trend in criminal prosecutions associated with computers and the internet. NSP first gathered data on the prosecution of crime involving technology in 2001, at a time when mass use of cell phones, Facebook, twitter and other social media sites did not exist. For instance, in 2001, 42% of the prosecutor offices reported prosecuting computer related crimes under their State's computer statutes,²⁰ compared to 79% in 2007.

The NSP-14 has been expanded to include questions on crimes where the computer was the target or tool of a crime, including sabotage, unauthorized access, cyber stalking, unauthorized copying of information, and unauthorized filming via a webcam or cell phone. In addition, questions are added to focus on prosecution involving the use of a computer to target child victims, including transmission of pornography, production of child pornography, to solicit sex from a child, stalking of a minor, and harassing or bullying of a child. Limited prosecution data at the local level exists on cyber-crime directed at children and adults.

Identity theft is a crime that has evolved with societal growing reliance on technology. Since 2001, the NSP has collected information on prosecution of credit card fraud, identity document forgery, mortgage/loan fraud, insurance fraud, and checking/savings account fraud. The NSP-14 will continue to gather information on the prosecution of identity theft using of the computer. Identity theft has generally been defined as the use, or attempted use, of an account or identifying information without the owner's permission. To capture the dual nature in which identity theft can be perpetrated, BJS will include questions that distinguish identity theft cases committed against an individual or an organization.

In 2006, the President established the Identity Theft Task Force. The taskforce noted only limited statistical data are regularly collected on identity theft.²¹ Data from prosecutor offices

¹⁹ http://www.justice.gov/olp/pdf/ag_guidelines2012.pdf

²⁰ <http://bjsdata.ojp.usdoj.gov/content/pub/pdf/psc01.pdf>

²¹ Office of the Inspector General (2010), *The Department of Justice's Efforts to Combat Identity Theft*. See, <http://www.justice.gov/oig/reports/plus/a1021.pdf>

may assist DOJ and other law enforcement agencies to recognize trends and identify areas for enhanced enforcement operations.

OJP also has established several working groups focused on identity theft. In response, BJS has implemented a victim level supplement to the National Crime Victimization Survey (NCVS). The NSP-14 results will supplement information on identity theft reported by victims themselves, whether reported or not reported to the police. Unlike the NCVS, the NSP will provide information on the types of cases handled by prosecutor offices. The NSP results can also be used to do comparisons of the types of identity theft prosecuted by the various prosecutor offices. Other DOJ components, including OVC and BJA, can use the results from the NSP to inform their grant programs. For example, OVC may use this new information to develop targeted training or funding strategies. The data on cyber-crime and identity theft may be used by BJS to develop a universe of prosecutor offices to participate in a special in-depth targeted sample surveys in the future.

Evidence in Prosecution. The collection of information on the types of evidence used in criminal prosecution will help BJS better understand the contextual factors involved in the processing of cases at the local level. Since the NSP began in 1990, nearly all states and the federal government have instituted laws that require the collection of DNA evidence from convicted offenders.²² In 1994, 40% of prosecutors' offices reported the use of DNA evidence during plea negotiations or felony trials, compared to 75% in 2007. In recent years, through the use of DNA evidence, wrongfully accused or convicted persons have been exonerated after years and even decades of incarceration.²³ The NSP-14 will gather information on the types of crimes for which DNA evidence was used, problems encountered with DNA evidence, use of local convicted offender databases and unsolved cases profiles, and the backlog of sexual assault kits.

Human Trafficking. In the 2007 NSP census, about 4% of all the prosecutor offices reported prosecuting a felony human trafficking case, compared to 40% of the offices in districts serving a million or more persons. The Trafficking Victims Protection Act of 2000 (TVPA) enhanced the federal government's response to trafficking in the U.S. by affording increased protections and resources for victims; and creating new crime types and enhancing penalties for prosecuting trafficking offenders. OVC has supported the development and funding of programs designed to provide a comprehensive array of services to victims of human trafficking. BJS in collaboration with OVC developed a series of new questions that will measure the prevalence of human trafficking efforts at the local level and allow comparisons overtime. The NSP-14 will gather data on the total number of prosecuted human trafficking cases involving sex trafficking ; the total number of prosecuted human trafficking cases involving labor trafficking, and whether the prosecutor office staff participated on a federal, state and local human trafficking task force.

Indian country. BJS is expanding its efforts to understand the role of the local (i.e., non-tribal) prosecutors in providing justice on tribal lands. The Tribal Law and Order Act (TLOA), enacted in 2010, requires BJS to implement a tribal data collection system and support tribal participation

²² Making Sense of DNA Backlogs, 2010 — Myths vs. Reality. <https://www.ncjrs.gov/pdffiles1/nij/232197.pdf>

²³ Ex-prosecutor punished for withholding evidence in murder case. Ex-prosecutor punished for withholding evidence in murder case. <http://www.latimes.com/nation/la-na-texas-judge-20131109,0,6232637.story#ixzz2nOSfcPXy>

in national records and information systems. The BJS report, *American Indians and Crime*, led to the realization that extensive gaps exist in our understanding of crime and justice on tribal lands. For instance, there are limited criminal justice data on the crimes prosecuted by State and local prosecutor offices for offenses committed on tribal lands.

As part of its long term plan and to meet the mandate to develop a tribal collection system, the NSP-14 will include a section related to work performed by local prosecutors in Indian country. NSP-14 will collect data on prosecutor office jurisdiction on tribal lands, sources of the authority, type of defendants, whether prosecutors are specifically assigned, and types of felony cases prosecuted. This information will facilitate comparative analyses overtime and measure the changes in the types of cases handled and the nature of relationships between tribal and local governments. The universe frame obtained from the NSP-14 will be used by BJS to implement a more detailed survey in 2015 that will gather caseloads, attributes of the jurisdictional responsibility, and agreements between tribes and state and local governments.

3. Use of Information Technology

For the NSP-14, BJS will utilize a multi-mode collection design-mail, fax, email and the web- and respondents will be encouraged to use the web-based survey as the primary mode of data collection. For the online web-based survey, BJS will provide the respondents with the instructions and link for submitting their data via the web, a user ID and password. The web option will display the same OMB form number, contact information, directions and instructions, and burden statement as the paper version, as well as be formatted to have the same look and feel. The respondents will be able to start, save and return to the web based survey for completion.

BJS and its data collection agent will encourage respondents to utilize the web-based survey option for NSP-14. Respondents will be provided a user ID and password in the introductory letter sent prior to the mailing of the hardcopy survey. The advantages to using web-based surveying compared to other modes, including reduced costs for data entry by the data agent, error and missing item checking capability, incorporation of complex skip patterns, and the provision detailed pop-up instructions for additional guidance.²⁴ The respondent will also have the capability to stop the survey and resume at a later date.

4. Efforts to Identify Duplication

BJS staff has reviewed other surveys, other research data collections and programs, and academic literature to identify duplication. This review revealed no duplicative effort based on the programmatic nature of NSP-14 survey.

The data collected through the NSP-14 are also different from other surveys conducted by BJS that collect data on caseloads. For example, the State Court Processing Statistics (SCPS) project (OMB Control # 1121-0306) collected case-level information on felony cases filed in a sample

²⁴ Dillman, D.A. (2000). *Mail and Internet surveys: the tailored design methods*. Second edition. New York: John Wiley & Sons, Inc; Cobanoglu, C., Warde, B., & Moreo, P.J. (2001). See also, *A comparison of mail, fax, and Web-based survey methods*. *International Journal of Market Research*, 43(4), 441-452.

of 40 of the nation's 75 most populous counties, while the NSP-14 is a census. Although SCPS provided information on felony caseloads, it does not capture information on misdemeanor cases, staffing, budgets, and organizational characteristics of prosecutor offices.

During the planning of this project, BJS periodically met with senior program advisors from the National Institute of Justice (NIJ) and the Bureau of Justice Assistance (BJA) to identify any planned data collection projects involving prosecution or related topics. NIJ funds research studies on topics involve prosecution or prosecutor offices, but none directly collect data from the individual offices. BJA funds programs that provide for both research and training for prosecutor offices, but no efforts include collecting statistical data from prosecutor offices. Both BJA and NIJ staff reviewed preliminary drafts of the NSP-14 and provided input on questions that could be included, but neither office indicated they were funding or conducting any data collections involving prosecutors.

In conducting a literature review, BJS found that several one-time prosecutor surveys or studies have been conducted by external organizations on a specific issue or specific to a particular state. In 1995, the Institute for Law and Justice led a study on local prosecutor approaches to gang prosecution contacting 175 prosecutor offices that served a population greater than 250,000.²⁵ More recently, in 2013, prosecutor offices in New Hampshire were included in a qualitative study that asked open ended questions about the types of circumstances in which they would file charges in sexting cases involving minors.²⁶ Among these external sporadic surveys, none have been on-going to allow for detailed trend analyses on key policy relevant issues like budgets, staffing, caseloads, DNA evidence, victim services, cybercrime, or human trafficking. It is BJS conclusion that the data collected on the NSP-14 are not attainable from any other data source.

5. Minimizing Burden on Small Businesses

Not Applicable. No information will be gathered from any small businesses.

6. Consequences of Not Conducting or less Frequent Collection

Electing to not move forward with this collection will require DOJ, BJS and data users to rely on information that was collected in 2007. We expect there may have been changes to the budgets, staffing levels, caseloads and attributes of many offices. The NSP-14 will enable BJS to measure these administrative and operational changes to compare with NSP data from prosecutor offices in past collections.

BJS also plans to do more comparisons of staffing, budgets and caseloads between the prosecutor offices and the public defenders offices using the NSP-14. We are currently preparing the 2013 National Survey of Indigent Defense System (NSIDS) and to have both collections cover the same reference period. This will expand the utility of both data collections for report generation, analyses, and comparisons of key indicators.

²⁵ Johnson, Claire; Webster, Barbara; Connors, Edward (August 2000). *Prosecuting Gangs: A National Assessment*

²⁶ Sexting: When are State Prosecutors Deciding to Prosecute? The Third National Juvenile Online Victimization Study (NJOV-3), see http://www.unh.edu/ccrc/pdf/CV294_Walsh_Sexting%20&%20prosecution_2-6-13.pdf

The NSP-14 will be used to develop a universe frame for more targeted surveys. BJS recently funded a data collection, 2014 State and Local Justice Agencies Serving on Tribal Lands (SLJASTL), which is dependent upon the completion of the NSP-14 to identify the offices that will be incorporated that study.

7. Special Circumstances

These data will be collected in a manner consistent with the guidelines in 5CFR 1320.6.

8. Public Comments and Consultations

BJS has consulted with the Association of Prosecuting Attorneys (APA), National Institute of Justice (NIJ), Bureau of Justice Assistance (BJA), Office of Victims of Crime (OVC), SEARCH and with selected practitioners in the criminal justice field regarding the content, data availability, and the clarity of instructions.

BJS consulted with APA representatives via conference calls. As a consultant on the project, APA provided guidance on the questions and made recommendations on the pilot test sites. In addition, a draft of the NSP-14 was submitted to SEARCH, a technical assistance provider for BJS, to review and provide recommendations for improvement and clarity on questions related to disposition reporting and criminal justice databases.

Consultants included the following:

- (1) Steven Jansen
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Phone: 202-861-2480
- (2) Linda Truitt
National Institute of Justice
810 Seventh Street, NW
Washington, DC 20531
- (3) Kim Norris
Bureau of Justice Assistance
810 Seventh Street, NW
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- (4) Owen Greenspan
SEARCH
7311 Greenhaven Drive, Suite 270
Sacramento, California 95831
(916) 392-2550

- (5) Laura Ivkovich
Office of Victims of Crime
National Institute of Justice
810 Seventh Street, NW
Washington, DC 20531

- (6) Cassia Spohn, Ph.D.
Foundation Professor and Director of Doctoral Program
School of Criminology and Criminal Justice
Arizona State University
411 N. Central Ave., Suite 600
Phoenix, AZ 85004-0685

9. Provision of Payments or Gifts to Respondents

Not Applicable. The Bureau will not provide any payment or gift of any type to respondents. Respondents participate on a voluntarily basis.

10. Assurance of Confidentiality

The data will be obtained from public agencies and are, therefore, in the public domain and not legally subject to confidential guarantees. The data are edited to remove identifiable information prior to release to the public, such as the name of the person completing the form. In addition, respondents are informed that survey participation is voluntary.

11. Justification for Sensitive Questions

The 2014 National Survey of Prosecutors (NSP-14) focuses on publicly available agency level information, which is not considered sensitive.

12. Estimate of Respondent's Burden

In an effort to minimize respondent's burden, the NSP-14 uses the latest in form design and function, with the number of items on the questionnaire kept to a minimum. BJS has also attempted to minimize the complexity of questions and included definitions that will help facilitate their completion. BJS proposes a total of 1,282 respondent burden hours may be required to complete the NSP-14, including validation of incorrect information and nonresponse follow-up.

An estimated 2,330 prosecutor offices will take part in the NSP-14. Based on pilot testing, an average of 60 minutes per respondent was needed to complete form NSP-14, for a total burden of 2,330 hours to complete the form. The estimated range of respondent burden from the pilot test was between 30 minutes to 1.5 hours for completion, depending on the ready availability of the

requested information. As a result of the pilot test results and to help ensure minimal nonresponse, BJS subsequently reduce the number of questions on the NSP-14 by half.

The data collection agent subsequently submitted the NSP-14 to the Association of Prosecuting Attorneys (APA) to review the document to ensure the respondent burden was about 30 minutes per respondent for a total of 1,165 respondent burden hours. In addition to the estimated 30 minutes per respondent required to complete the NSP-14 form, BJS anticipates about 10% or 117 hours in additional burden will be needed for data validation and follow-up contact with the respondents for nonresponse, incorrect or missing information.

The following factors were considered when creating the total 1,282 burden estimate: the estimated total number of prosecutor offices, the ability of offices to access or gather the data, the case management systems capabilities generally found within the local prosecutor office, and an average of 1 in 10 respondents may require validation checks or follow-ups for missing items. Based on past experience, BJS estimates that nearly all of the approximately 2,330 respondents will fully complete the questionnaire.

13. Estimate of Cost Burden

We do not expect respondents to incur any costs other than that of their time to respond. The information requested is of the type and scope normally carried in their records and no special hardware or accounting software or system is necessary to provide information for this data collections. Respondents are not expected to incur any capital, start-up, or system maintenance costs in responding.

14. Cost to Federal Government

The total expected cost to the Federal Government for this data collection is \$658,351 all to be borne by the BJS (Table 3). Currently, the division of labor for a data collection cycle on the NSP-14 is as follows: The NORC at the University of Chicago will collect the data and prepare a dataset for BJS analysis, while BJS staff will analyze the data, prepare statistical tables, write reports based on these data, and archive the data for public use. A GS-Level 14 Statistician will be responsible for overseeing NORC’s work on this project, conducting the analyses and drafting the planned reports.

The estimated cost to the federal government for this data collection is based on the following:

Table 3. Estimated Costs for the 2014 National Survey Prosecutors	
BJS Costs	Costs
Staff salaries	
GS-14 Statistician (50%)	\$ 58,000

	GS-15 Supervisory Statistician (5%)	\$ 7,000
	GS-13 Editor (10%)	\$ 10,000
	Other Editorial Staff	\$ 5,000
	Front-Office Staff (GS-15 & Editors)	\$ 2,000
	Subtotal Salaries	\$ 82,000
	Fringe Benefits (28% of salaries)	\$ 22,960
	Subtotal: Salary & Fringe	\$ 104,960
	Other Administrative Costs of Salary and Fringe (15%)	\$ 13,824
	Subtotal BJS Costs	\$ 118,784
	Data Collection Agent Costs (NORC)	
	Personnel	\$ 180,659
	Fringe Benefits	\$ 70,957
	Travel	\$ 7,056
	Supplies	\$ 21,854
	Consultant/Contracts	\$ 25,002
	Other	\$ 52,723
	Total Indirect	\$ 181,280
	Subtotal Data Collection Agent Costs	\$ 539,531
	Total Estimated Costs	\$ 658,315

15. Reason for Change in Burden

The burden hours for the NSP-14 have increased from 1,165 in 2007 to an estimated 1,282 for the NSP-14 due to the overall increase in the average time for validation and nonresponse follow-up. The number of respondents remains the same as the last census. Compared with prior surveys, the NSP-14 involves the inclusion of additional questions focusing on topics beyond the typical staffing, caseloads, and budgets. However, to offset the addition of any new or revised questions, some items from previous NSP collections have been removed. The NSP-14 will expand upon organizational characteristics, office policies, services rendered, program participation, and types of crimes handled.

A summary of content changes to the NSP between 2007 and the current proposed 2014 data collection include:

- A. Subjects revised, expanded or added to the NSP-14 include:
 - 1. **Section A, Staffing, has been revised and/or expanded to include:**
 - a. Number of assistant prosecutor vacancies unfilled;
 - b. Type of direct victim services provided to victims and families of crimes;
 - c. Specialized units or prosecutors assigned to specific cases; and

- d. Consolidated many staffing questions to provide summary of major positions
2. **Section B, Budget, has been revised and/or expanded to include:**
 - a. Refined definition and instructions for reporting operating budget for recurring and fixed costs to manage offices, excluding capital outlays for building construction and major equipment purchases; and
 - b. Deleted several questions about the funding allocation to certain functions; and sources of income.
 3. **Section C, Caseloads, has been revised and/or expanded to include:**
 - a. Refined definition and instructions for case, as used for reporting case counts throughout the survey;
 - b. Method of disposition question has been revised and expanded to measure the total number of trial verdicts, plea deals, diverted or other alternative disposition; and
 4. **Section D, Special Offense Categories, has been revised and/or expanded to include:**
 - a. Revised definition of cyber-crime;
 - b. Targeted questions on the use of the computer as a target or tool to commit a crime;
 - c. Type of cybercrimes involving children or minors, as well as adults
 - d. Seizure of computers for forensic evidence;
 - e. Consolidated section on identity theft, to include computer crimes; and
 - f. Add questions on white collar crimes; and
 - g. Deleted questions about general in-person fraud to capture more data on the growing emergence of cyber fraud.
 5. **Section E, Evidence in Prosecution, has been revised and/or expanded to include:**
 - a. Add question on the types of crimes for which DNA evidence was used; and
 - b. Add questions on victim notification and sexual assault kits.
 6. **Section F, Human Trafficking, has been revised and/or expanded to include:**
 - a. Add new section and questions with definition of human trafficking-sex and labor; and
 - b. Add questions on the types of human trafficking and number of cases prosecuted.
 7. **Section G, Specialty Courts and Diversion Programs, has been revised and/or expanded to include:**
 - a. Added new section and questions about prosecutor participation in specialty courts;
 - b. Add questions about the types of specialty courts; and

8. **Section H, Youth in Criminal Courts, has been revised and/or expanded to include:**
 - a. Add question on guidelines for proceeding against juveniles in adult court; and
 - b. Add question of method of transferring juveniles and number completed.

9. **Section I, Indian Country, has been revised and/or expanded to include:**
 - a. Add revised definition and questions on jurisdiction on tribal lands;
 - b. Add question on prosecution of native and non-Indians on tribal lands;
 - c. Add question on prosecutors assigned to handle tribal lands; and
 - d. Add revised question on types cases prosecuted arising on tribal lands

16. Publication Plan and Schedule

The projected schedule for the NSP-14NSP-14 is planned as follows:

Table 4. NSIDS Project Tasks	Start Date	End Date
60 Days' Notice	March 2014	May 2014
30 Days' Notice and OMB Package Submission	June 2014	July2014
Data Collection Period	January 2015	April 2015
<ul style="list-style-type: none"> • Nonresponse follow-up by mail, e-mail, fax and telephone 	February 2015	May 2015
<ul style="list-style-type: none"> • Data editing, verification, and final callbacks 	February 2015	May 2015
NORC Data Processing	May 2015	June 2015
Data Analyses	May 2015	September 2015
Reports: <i>Prosecutors in State Court, 2014</i>	September 2015	November 2015
<i>Prosecution of Emerging Crimes in State Courts</i>	December 2015	March 2016
NSP data archived with NACJD		December 2015

Data collection is anticipated to begin after securing OMB approval. Data collection will involve a series of mailings and non-response follow-up activities that will begin in January 2015 and end in April 2015. Processing of the data, including editing, data entry and retrieval, will occur in tandem with the data collection period from January through May 2015. The final data imputation and processing will occur after all follow-up in completed in May 2015. Preliminary analyses of the data to ensure proper instrument skip patterns, range checks, and accurate reporting will begin shortly after the start of data collection and will continue throughout data collection. NORC anticipates a 4-month data collection period is needed to collect information from the 2,330 prosecutor offices. The final data set will be delivered to BJS in May 2015 (with possible revisions through June 2015) and analysis will begin no later than June 2015.

A full report, *Prosecutor in State Courts, 2014* will be published in 2015. This report will cover a variety of topics, including both descriptive analyses and comparative trends where possible. First, the Staffing and Services section of report will describe the number of and type of staff employed by the prosecutor offices, as well as the number of unfilled assistant prosecutor positions. The staffing totals will be used to highlight trending over the years. Next, in the report, BJS will describe the prosecutor office budgets and functions covered annually. The budget data will be used to conduct trend analyses with historical information available. Third, the report will provide descriptive statistics on the total cases closed, types of case, and the number of convictions and dismissals reported. Next, the report will discuss evidence in the prosecution of cases, including descriptive statistics on the use of DNA evidence by the type of crime, problems encountered with DNA evidence, prosecutor offices participation in various data bases. In addition, the report will discuss the training and office policies regarding the disclosure of Brady material. This information will be primarily descriptive since this will be the first time this type of information is collected. This section of the report will also highlight the types of offices policies regarding case processing, including written policies or supervisory approvals needed for the number and level of charges filed, dismissals, pre-trial release, plea agreements and sentencing recommendations. BJS will also describe the case management systems, the reporting of case disposition information to criminal justice repositories.

A second report, *Prosecution of Emerging Crimes in State Courts*, will be published in 2016 and will describe the special offenses categories, including cyber-crime, identity theft, white collar and financial, human trafficking, and Indian country crimes. For the cybercrime and identity theft results, BJS will do trending analyses, where historical NSP data is available. This report will describe the offices handling of white collar and human trafficking cases, including labor and sex trafficking. BJS will provide descriptive statistics on whether the office prosecuted a case and the number of cases. Next, the report will contain descriptive statistics on the types of specialty courts and diversion programs; juveniles in criminal court; and Indian country matters handled. The results will be primarily descriptive statistics since many of the items are new to the NSP-14 and will serve as screeners for in-depth sample surveys in the future. Finally, BJS will be able to explore any similarity and differences in prosecutor and public defender offices operational characteristics, if the BJS data is available in 2015.

The dataset, and supporting documentation, will be made available for download without charge at the National Archive of Criminal Justice Data at the Inter-University Consortium for Political and Social Research (ICPSR) and at Data.gov. It is expected the data will be available to the public for download in December 2015. Access to these data permits analysts to identify the specific responses of individual training academies and to conduct statistical analyses.

17. Display of Expiration Date

The expiration date for NSP-14 will be shown on the survey form.

18. Exception to the Certification Statement

None. There are no exceptions identified in Item 19, "Certification for Paperwork Reduction Act Submission," of OMB Form 83-I.