

MEMORANDUM

MEMORANDUM TO: Robert Sivinski
Office of Statistical and Science Policy
Office of Management and Budget

THROUGH: Jeffrey H. Anderson
Director
Bureau of Justice Statistics

FROM: Suzanne M. Strong
Statistician, Prosecution and Judicial Statistics Unit
Bureau of Justice Statistics

DATE: June 28, 2018

SUBJECT: BJS request to conduct a pilot test for frame development for the Survey of Publicly Appointed Defense Attorneys (SPADA), under the OMB generic clearance agreement (OMB Number 1121-0339).

Introduction

The Bureau of Justice Statistics (BJS) is planning a new data collection effort to gain a better understanding of the experiences, workloads, roles, training needs, and quality of representation provided by publicly appointed defense attorneys through the Survey of Publicly Appointed Defense Attorneys (SPADA). The developmental work for SPADA includes developing a survey instrument, sampling strategy, nonresponse follow-up strategy, and developing the universe. In later development work, BJS plans to test the sampling and recruitment strategies, and, assuming successful outcomes, plans to fully implement the survey. The current development work for SPADA was awarded as a cooperative agreement to the Urban Institute, National Association for Public Defense (NAPD), and Indigent Defense Research Association (IDRA).

SPADA is a component of the BJS Indigent Defense Program. Within this program, BJS previously conducted the Census of Public Defender Offices (CPDO) in 2007 and the National Survey of Indigent Defense Systems (NSIDS) in 1999 and 2013 (all three surveys under OMB Control Number 1121-0095). Both the CPDO and NSIDS are administrative surveys that collect information from agencies about their provision of indigent defense services. These agency-level surveys collect information on the number of attorneys employed, the number and types of cases closed, the available training areas offered, the characteristics used to determine indigence, and the fees associated with representation. The SPADA is intended to collect information from the attorneys actually providing representation to those who qualify for indigent defense.

BJS, the project team, and the expert panel have designed a survey, cognitively tested the survey, and developed a proposed nonresponse follow-up strategy that will be tested in later

development work. The focus of this request is the development of the universe frame in order to develop a nationally representative sampling strategy.

There is no list of publicly appointed defense attorneys in the United States. Research conducted by BJS and the project team has determined that 28 states and the District of Columbia are able to provide statewide rosters of active publicly appointed defense attorneys (i.e., attorneys who have provided indigent defense services in the past year), this is Frame 1; see **Attachment A**. These states reported in the 2013 NSIDS that they have a centralized statewide indigent defense system and are able to generate lists of publicly appointed defense attorneys. While the completeness of these lists and the quality of the data that are available is unknown, BJS prefers to focus the attention on the states unable to generate lists before devoting further effort to Frame 1 states. Therefore, the states in Frame 1 will not be contacted for rosters until later in the development process.

The remaining 22 states, Frame 2, are organized at the local level, not centralized at the state level, and are unable to provide statewide lists of active publicly appointed defense attorneys (see **Attachment B**). In these states, 1,466 Primary Sampling Units (PSUs) were formed according to how public defense provision is organized at the local level. In 18 of the 22 states in Frame 2, the PSUs are defined exclusively as counties (n=1,334 counties), while in the other four states (Georgia, Florida, Kansas, and Tennessee), the PSUs are defined as clusters of counties (n=132) representing the organization of the criminal justice system in those states. BJS seeks OMB approval to contact a sample of these jurisdictions to determine their ability to provide lists and, for a subsample of those contacted, to collect the lists and assess the utility of those lists for universe development. After stratifying the PSUs by population size and urbanicity (i.e., whether the county or county cluster is urban or rural, according to U.S. Census designations for population density), the project team randomly selected 74 PSUs for the purpose of testing whether rosters can be compiled and obtained from local leaders, or if other methods of sampling are necessary (see **Attachment C** for the PSU leader contact scripts). In 16 of the 74 PSUs, BJS will request that the PSU leader(s) compile and deliver the list, so that the lists can be reviewed for completeness (see **Attachment D** for the data elements requested of the PSU leaders).

Summary of current request. BJS requests clearance under the generic clearance agreement (OMB Control Number 1121-0339) to determine the ability of PSUs in Frame 2 to compile complete lists of publicly appointed defense attorneys in order to develop a nationally representative sampling strategy for the full implementation of the future SPADA. For the 22 states in Frame 2 that are unable to provide statewide lists, BJS proposes to contact a sample of 74 PSUs randomly selected from a list of the 1,466 PSUs stratified by population size and urbanicity to determine the level of effort necessary for PSUs to compile and deliver a list of active publicly appointed defense attorneys. For 16 of the 74 PSUs, BJS proposes to request the list and evaluate the completeness of the rosters provided.

Request for Pilot Testing of Universe Generation

The ability to generate rosters in the 22 Frame 2 states is highly variable. These counties or county clusters may use multiple indigent defense delivery methods, making the compilation of the lists potentially challenging. One of the members of the project team is the National

Association for Public Defense (NAPD), a membership organization serving primarily public defenders, but also some assigned and contract counsel. NAPD has knowledge about the organization of public defense in the 22 decentralized, locally organized states and advises that there is variation in the ability of counties to provide a single list of all attorneys that provide indigent defense. Lists will likely have to be compiled by multiple sources, with sources having varying abilities to generate such lists. For example, a county could have a public defender office, an assigned counsel program, and a contract with a law firm to handle conflict cases. That county would likely have at least 2-3 people to contact to obtain three separate lists. However, of the three, the public defender might be the only office with the ability to generate a single list of active attorneys who represent indigent clients. If the county does not have a person who manages contracts or assigned counsel, such as the court administrator, then the assigned counsel lists are likely kept by each judge in the county. That could include contacts to each judge, who may or may not keep a computerized list, or who may be unwilling to share such a list. Even the law firm that handles contract cases may not be able to accurately identify which of their attorneys are responsible for handling the public defense cases.

BJS and the project team estimate that approximately 6 contacts per PSU will be necessary to generate the rosters. At one end of the spectrum is the PSU where the public defender manages the primary providers (defenders) and the conflict providers. At the other end of the spectrum is a PSU where each judge's chambers maintains its own list of appointed attorneys. Based on the knowledge and the experiences of the expert panel, the project team expects that most PSUs will have a primary contact person and an additional 2-5 contacts. BJS is planning for 6 contacts per PSU.

The project team and expert panel expect that rural jurisdictions will be the least able to compile and provide these lists. Rural jurisdictions are less likely to have adequate funding for computerized case management systems, are more likely to cover a wider jurisdiction (e.g., multiple counties may cluster together to provide indigent defense) that requires coordination across counties, and rural jurisdictions are more likely to be under-staffed. Thus, the project team used population size and urbanicity to stratify Frame 2 prior to generating PSUs.

A total of 1,466 PSUs made up of 1,334 counties (from 18 states) and 132 county-clusters (from four states). The population groups are shown below in **Table 1**. Population group 1 consists of the top 40 jurisdictional clusters (PSUs) in terms of population size, which collectively account for 40% of the total population of the states in Frame 2. Population group 2 consists of 60 PSUs, which collectively account for 20% of the total population of Frame 2. Population group 3 consists of 150 PSUs, which collectively account for 18% of the total U.S. population of Frame 2. Finally, population group 4 consists of 1,216 PSUs that collectively comprise 22% of the total population of Frame 2. The first three population groups contain PSUs that are all defined as urban (per U.S. Census designations), while the fourth population group contains both urban and rural areas.

Table 1. Frame 2 PSU development and selection

Population Group	Population Range	Number of PSUs	% of Frame 2 PSUs	% of Frame 2 Population	PSUs drawn	% of total PSUs Sampled	Margin Of Error ^a
1	>1,000,000	40	3%	40%	30	75%	9.06%
2	440,000-999,999	60	4%	20%	15	25%	22.10%
3	158,000-439,999	150	10%	18%	13	9%	26.06%
4	< 158,000	1,216	83%	22%	16	1%	24.35%

^aMargin of Error was calculated assuming a sample proportion of 50% (of contacted PSUs are able to generate rosters) with a 95% confidence interval. As margin of error decreases as the sample proportion approaches 0 or 1, this is the maximum margin of error that will accompany the sample proportions calculated from this pilot test.

Total Population (22 States) = 207,201,242

The objective of SPADA is to generate nationally representative statistics about publicly appointed defense attorneys. BJS focused on drawing a higher proportion of PSUs from the more populous counties (drawing larger samples in the more populous groups) because there are more attorneys located in those counties and BJS is seeking to maximize its understanding of its ability to generate national estimates given limited resources. Population group 4 represents 22% of the Frame 2 population. It is also the only population group that contains rural counties. Some of the smaller counties in population group 4 likely group together to provide indigent defense, so the number of PSUs in that group may be overstated. The level of effort to determine which of the 1,216 counties are combined would have exhausted much of the project team’s remaining time and resources for this project, and since the proportion of the population in stratum 4 is low, BJS and the project team determined that a smaller sample was justified.

Assuming a 95% confidence interval and that half of the PSUs contacted will be able to provide rosters (a sample proportion of 50%), the margin of error for PSUs representing 40% of the Frame 2 population is $\pm 9.06\%$ (with marked increases for subsequent strata). While BJS would certainly prefer more precision in its estimates of who is able to provide a list as a result of this development work, this margin of error will likely be sufficient to guide future universe development and inform BJS decisions about its ability to combine Frame 2 PSUs with Frame 1 states to generate national estimates.

Of the 74 PSUs drawn for the sampling test, BJS will inquire about the effort needed to generate the lists, as well as request full rosters from 16. The 16 PSUs were selected with a focus on the PSUs least able to provide rosters in population group 4. BJS and the project team, based on conversations with the expert panel, expect that larger PSUs likely have more resources, more staff, and are generally more able to generate lists than smaller PSUs. Within population group 4, BJS and the project team expect that rural jurisdictions would be less able than urban ones to generate lists of publicly appointed defense attorneys. Of the 16 counties, 7 are from stratum 4 (3 urban and 4 rural by Census definitions). The remaining nine were split evenly between population groups 1, 2, and 3 (3 PSUs in each) (see **Table 2** for the distribution of selected jurisdictions). The remaining 58 PSUs will be asked to describe the level of effort necessary to generate the rosters, but will not ask the county to complete that work.

Table 2. Sampling Frame 2 PSU selections where the roster will be requested

Population Group	Number of PSUs selected	Urban or rural
1	3	Urban
2	3	Urban
3	3	Urban
4	7	3 Urban/4 Rural

In order to identify the first contact, the team will consult internal sources (NAPD, IDRA) and external sources (the expert panel, internet searches) to determine if a public defender office exists in the PSU. The public defender is the most likely source of a list and knowledgeable about other potential sources of indigent defense providers. After contacting the public defender, or if there is no public defender, the protocol outlined in **Table 3** will be used to identify and contact other PSU leaders as needed. If the last contact (state bar association) is not successful, the project team will conduct further research to see if the PSU is part of a circuit or other shared indigent defense arrangement.

Table 3. Protocol for identifying PSU contacts

Contact attempt	Organization	Action if successful	Action if unsuccessful
1	Public defender office	Obtain additional contacts	Go to contact 2
2	Other centralized defender organization (e.g., managed counsel program, defense coordinator)	Obtain additional contacts	Go to contact 3
3	Court administrator	Obtain additional contacts	Go to contact 4
4	Local Bar Association	Obtain additional contacts	Go to contact 5
5	State Bar Association	Obtain additional contacts	Conduct further research on PSU

The initial PSU leaders will be contacted to determine the number of persons needed to generate a complete list of publicly appointed attorneys in each PSU. A second contact will be sent to all PSU leaders identified by the initial contact to inquire about the level of effort required to generate the list by each person. For those 16 PSUs where the roster has been selected to be provided, the project team will ask the PSU leader and additional contacts they identify to provide the roster. If the PSU leader or contacts indicate that a list can be provided but it would take too long, the project team will capture the level of effort required. Refusals will be recorded and not replaced. It is important for the final sampling effort to know how many potential refusals could occur in Frame 2.

Some jurisdictions may require agreements in order to provide the lists of attorney names and contact information. The project team will record the circumstances under which the list can be

obtained (e.g., preparation of a Memorandum of Understanding or PSU leaders will draw a sample of attorneys). If the PSU leaders cannot provide a list, the project team will explore if there are other methods for obtaining the list, documenting these processes and the levels of effort required to obtain the lists. For example, Andrew Davies, a member of the project team, is the Director of Research for the New York State Office of Indigent Legal Services. He expects that some county indigent defense leaders would be unable to generate lists of attorneys readily, but in those counties, there is a central budget office responsible for processing reimbursement for attorneys who represent indigent clients. The County budget offices could be able to provide the names of the attorneys and contact information, which is necessary for payments to be made, but Dr. Davies is unsure what other information those budget offices would be willing or able to provide. Other counties in other states may also have alternate sources to generate these lists of attorneys. Once the rosters are obtained, the project team will compare the lists to the requested data elements in **Attachment D** to assess the completeness of the lists. The remaining 58 jurisdictions will only be asked about the persons necessary to compile a roster, the level of effort and time needed, and the challenges of compiling the lists.

Even though public defenders and attorneys are likely to be listed in public directories, BJS and the project team will ensure that the rosters will be delivered securely. The Urban Institute has a secure FTP file delivery system. If this system is not convenient for PSU leaders, Urban Institute will instruct the PSU leader to password protect the file, email the file to Urban, and in a separate email, provide the password to the file.

Burden Hours

The burden hour estimates for the respondents are provided in **Table 4**. The project team expects that each PSU will require up to six persons to compile a list; therefore, BJS estimates that the burden on respondents will be approximately 260 hours. The time required to ask Frame 2 leaders about their ability to generate rosters will be approximately 20 minutes for each of the 58 PSUs, to include time to follow up with multiple contacts in counties with multiple delivery methods for indigent defense. BJS estimates that the 16 sampled PSUs will be able to generate lists with an average effort of 240 minutes.

Table 4. Burden Hour Estimates for Respondents

Task #	Task Description	Number of respondents	Estimated burden (in minutes)	Total burden (in hours)
1	Email (or call) to primary PSU leaders to asking them to identify additional contact persons	74	5	6.2
2	Email (or call) scheduling phone call with all leaders identified in PSU (may require more than one contact)	444 (74x6)	10	74
3	Follow-up phone call to the 58 PSUs not producing lists	232 (58x6)	20	116
4	Compile and share list of publicly appointed defense attorneys	16	240	64
	Total burden			260.2 hours

Institutional Review Board

The Urban Institute’s Institutional Review Board (IRB) determined the pilot testing protocol to be compliant with informed consent and data confidentiality standards (**Attachment E**).

Contact Information

Questions regarding any aspect of this project can be directed to:

Suzanne M. Strong
 Statistician
 Bureau of Justice Statistics
 U.S. Department of Justice
 810 7th Street, NW
 Washington, DC 20531
 Office Phone: (202) 616-3666
 E-mail: Suzanne.M.Strong@usdoj.gov

Attachments

- Attachment A: States Able to Provide Lists (Frame 1)
- Attachment B: States Not Able to Provide Lists (Frame 2)
- Attachment C: Frame Email and Phone Scripts
- Attachment D: Data elements requested of the 16 selected PSUs
- Attachment E: IRB Approval