

MEMORANDUM

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

THROUGH: Jeri M. Mulrow
Principal Deputy Director
Bureau of Justice Statistics

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FROM: Suzanne M. Strong
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DATE: November 5, 2018

SUBJECT: BJS request to contact state court leaders for frame development for the Analysis of Publicly Available Court Data (APACD), under the OMB generic clearance agreement (OMB Number 1121-0339).

Introduction

The Bureau of Justice Statistics (BJS) is planning a new effort to collect court data from state courts through the Analysis of Publicly Available Court Data (APACD) project. The developmental work for APACD includes outreach to the states and the District of Columbia to determine what is considered “public data.” BJS expects to conduct additional testing of contact and data collection strategies and will request approval under a separate generic clearance. The APACD was awarded as a cooperative agreement to the Urban Institute, with a subaward to the National Center for State Courts (NCSC) in October 2018.

The APACD is being designed to be the primary component of the BJS State Courts Data Collection Program. Within this program, BJS previously conducted the National Judicial Reporting Program (NJRP, OMB Control Number 1121-0130) biennially from 1986-2006, the State Court Processing Statistics (SCPS, OMB Control Number 1121-0306) biennially from 1988-2006 with a final collection in 2009, and the Civil Justice Survey of State Courts (CJSSC, OMB Control Number 1121-0326) in 1992, 1996, 2001, and 2005. The NJRP collected data from a representative sample of three hundred state courts of general jurisdiction regarding felony convictions and the sentences associated with those cases. The SCPS collected data from forty of the seventy-five largest county courts of general jurisdiction regarding felony case filings, and followed those cases from the date of filing for two years (homicides) or one year (all

other cases), typically to disposition or sentencing. The CJSSC used a stratified sample selecting all courts of general jurisdiction in the seventy-five counties with the largest population and a sample of eighty-one other counties with the intent of producing national estimates. The CJSSC collected data on general civil cases (tort, contract, and real property cases) that concluded by jury or bench trial. All three of these collections were suspended due to concerns over the costs of collecting the data and the representativeness of the sampling methodology for the SCPS and CJSSC.

BJS's intent in pursuing the APACD is to collect easily extracted, public data from state courts that, at minimum, reproduces the *Felony Sentences in State Courts* reports derived from the NJRP.¹ BJS expects that the APACD has the potential to collect more data than was collected under the NJRP at a lower cost with lower burden. Most notably, the NJRP only included felony cases that resulted in convictions, while the APACD could potentially collect data for felony and misdemeanor cases and include all cases, not just those that resulted in convictions. At this time, the planned scope covers courts of limited and general jurisdiction, and includes all criminal cases and the potential for general civil cases and traffic cases. BJS will further refine the scope of the APACD after the proposed interviews with state court leaders.

State laws and local court rules affect access to court data, and there is no compendium of the rules outlining access to court records in each state. The NCSC is completing a legal research review of state court websites and state laws regarding data access. Some states may be able to provide statewide data, while others do not have systems capable of providing data at the state-level. After completion of the legal research, NCSC will need to confirm their findings with state court leaders. This outreach is necessary to begin to develop the scope of and potential sampling strategies for the APACD.

BJS seeks OMB approval to contact court leaders in all fifty states, the District of Columbia, and Puerto Rico in two stages. The first stage is an email contact to a state court leader identified by NCSC to verify the legal research done by NCSC and to further determine 1) state or local rules regarding court records access, 2) types of access to court records (e.g., whether records are available in bulk and if there is remote access), 3) whether there is a reporting requirement to the state, and 4) a court data expert contact for the data inquiry (see **Attachment A** for the email script).

The second contact will be a telephone interview with the court data expert identified in the first contact to determine 1) if there are any other contacts necessary to describe court data (i.e., a potential third contact), 2) what levels of court have data that are available to be accessed and extracted (i.e., limited jurisdiction, general jurisdiction, or appellate courts), 3) whether the data are available for the entire state, 4) whether the data are standardized, and 5) the preferred method for BJS to access the data (see **Attachment B** for the proposed interview script). The interview will also ask state data experts to provide codebooks or descriptions of any pre-existing state court data extract.

¹ The most recent *Felony Sentences in State Courts, 2006: Statistical Tables* report can be found here: <https://www.bjs.gov/content/pub/pdf/fssc06st.pdf>

If the data expert identifies another person to join in the conversation, NCSC will attempt to schedule a telephone interview with all interested parties at one time. However, there may be instances where a separate third interview will be necessary. Because we do not have any clear estimation as to how often this will occur, BJS is budgeting time for separate interviews with two persons at this stage of contact.

NCSC will conduct the outreach for this portion of the project, with assistance from the Urban Institute for the telephone outreach. NCSC is an independent, nonprofit court improvement organization founded at the request of the Chief Justice of the Supreme Court in 1971. NCSC works in coordination with the Conference of Chief Justices and Conference of State Court Administrators. As such, NCSC has developed contacts with court leaders in every state and territory.

Additional questions may arise after the emailed survey and telephone interviews are complete. For example, the state court leader may say that there are no state laws governing court record access in the email response. Later, the data expert might identify local court rules regarding records requests during the data interview. NCSC would then reach back out to the first contact to clarify the contradictory findings. Another example for a repeated contact could occur for states that provide data codebooks or descriptions of existing data extracts. NCSC or Urban may have questions about the codebook or extract that would require follow-up with the data expert. These potential fourth and fifth contacts would not be necessary for all states, and cannot be scripted ahead of time as they are dependent upon information provided in the first and second contacts. BJS is budgeting time for at least two follow-up contacts in each state.

Summary of current request. BJS requests clearance under its generic clearance agreement (OMB Control Number 1121-0339) to (1) email state court leaders to determine what limited and general jurisdiction court data are considered public data in the 50 states, the District of Columbia, and Puerto Rico, whether the state requires counties to report any data, and how best to access those data in each state given any laws or rules regarding access, and (2) interview data experts in each state to clarify the availability and coverage of the data (e.g., what case types are available, what case elements are available in each case type), if there exists a data codebook, and whether other state leaders will need to be interviewed about court data. Multiple contacts may be required in each state. BJS is also requesting permission to follow up with court leaders if there is contradictory information in the research, email response, or interview response. This last contact is dependent on the research and interviews done by NCSC and the data codebooks or descriptions of extracts provided to NCSC by the states.

Request to Contact State Court Leaders

BJS recently concluded a Survey of Juveniles Charged in Adult Criminal Courts (SJCACC, OMB clearance number 1121-0349, expired 11/30/2017). This court data collection asked state courts of general jurisdiction about their processing of youth under the age of 18 in adult criminal courts. The data collection spanned from 2015 to 2016, so BJS has some knowledge about the potential of states to provide statewide data. This information is at least two years old, so while it provides a starting point, it does not provide the current picture of state court data availability.

State court information can be coordinated statewide, where each court submits its data to one to three state entities, such as a state court administrator, data archive, or sentencing commission, or it can be coordinated at the jurisdiction level (typically, but not always, a county) without any state reporting requirements. From the SJCACC, we know that thirty-four states have some general jurisdiction criminal court data available statewide, though the data source could be an archive or other reporting entity rather than the state courts. At least twenty-seven states have statewide court information systems. Twenty-six state courts of general jurisdiction and the District of Columbia provided partial or complete statewide criminal court records in response to the SJCACC. BJS has not collected data from courts of limited jurisdiction² and does not have any information about data availability for these courts. The proposed interviews will gather that information.

BJS is estimating an initial contact with a state court leader, up to two contacts with state court data experts, and up to two follow-up contacts in each state. If additional contact becomes necessary, particularly if a state requires individual counties to approve the release of data, BJS will develop a contact plan and submit another generic clearance request. The contact strategy for the initial interviews for the APACD is summarized in **Table 1**.

Table 1. Protocol for identifying state court data contacts

Contact attempt	Organization	Action if successful	Action if unsuccessful
1	State court leader	Obtain additional contacts	Go to contact 2
2	Data expert (up to 2)	Obtain additional contacts	Go to contact 3
3	Additional contact to clarify contradictory information or data codebooks (up to 2)	Clarify information	Note the discrepancies to address in future outreach

Burden Hours

The burden hour estimates for the respondents are provided in **Table 2**. The project team expects that each email survey will take up to twenty minutes for a state court leader to answer the questions. The second interview will require up to a sixty minute telephone interview with the data expert identified in the first contact, and any additional persons identified in the initial contact. The total burden time for all contacts under this request is 182 hours.

² A limited jurisdiction court has jurisdiction over a restricted range of cases, primarily lesser civil and criminal matters, including misdemeanors, small claims, traffic, parking, or civil infractions. These courts may also handle preliminary hearings in criminal cases. A general jurisdiction court, or major trial courts, have primary jurisdiction on all issues not delegated to lower courts, most often hearing serious criminal and civil cases. They may also act as an intermediate appellate court for cases appealed from a limited jurisdiction court. See <https://www.bjs.gov/content/pub/pdf/sco11.pdf>

Table 2. Burden Hour Estimates for Respondents

Task #	Task Description	Number of respondents	Estimated burden (in minutes)	Total burden (in hours)
1	Email to state court leaders regarding data access	52	20	17.3
2	Email or call to set up interview with data expert identified in first email contact (up to 2)	104 (52x2)	5	8.7
3	Phone interview with state court data experts (up to 2)	104	60	104
4	Additional follow-up to clarify any access or data questions (up to 2)	104	30	52
	Total burden			182 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 C**).

Contact Information

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

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Attachments

Attachment A: State court leader email script
 Attachment B: State court data expert interview script
 Attachment C: IRB approval