

## MEMORANDUM

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**DATE:** November 22, 2016

**SUBJECT:** FBI Request for OMB Clearance for developmental activities including a canvass of state and domain points-of-contact on a new data collection on law enforcement use of force under the OMB generic clearance agreement (OMB Number 1110-0057).

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Since the shooting of Michael Brown in Ferguson, Missouri, in 2014, law enforcement uses of force have called public attention to the need for more information on these types of encounters. To provide a better understanding of the incidents of use of force by law enforcement, the Uniform Crime Reporting (UCR) Program is proposing a new data collection to include information on incidents where a use of force by a law enforcement officer as defined by the Law Enforcement Officers Killed and Assaulted (LEOKA) Program has led to the death or serious bodily injury of a person, as well as when a law enforcement officer discharges a firearm at or in the direction of a person. The definition of *serious bodily injury* will be based, in part, on 18 United States Code (USC) Section 2246 (4), to mean “bodily injury that involves a substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.”

## **Goal of the Proposed Data Collection on Law Enforcement Use of Force**

The goal of the FBI's data collection on law enforcement officer use of force is to produce a national picture of the trends and characteristics of use of force by a law enforcement officer as defined by the LEOKA Program to the FBI. The collection and reporting would include use of force that results in the death or serious bodily injury of a person, as well as when a law enforcement officer discharges a firearm at or in the direction of a person. The data collected by the UCR Program would include information on circumstances surrounding the incident itself, the subjects, and the officers. The data collection would focus on information that is readily known and obtainable by law enforcement with the initial investigation following an incident rather than any assessment of whether the officer acted lawfully or within the bounds of department policies. Publications and releases from the data collection will provide for the enumeration of fatalities, nonfatal encounters that result in serious bodily injury, and firearm discharges at or in the direction of a person by law enforcement. In addition, targeted analyses could potentially identify those law enforcement agencies with "best practices" in comparison with their peers as an option for further study.

This FBI data collection will facilitate important conversations with communities regarding law enforcement actions in relation to decisions to use force and works in concert with recommendations from the President's Task Force on 21<sup>st</sup> Century Policing. Given a growing desire among law enforcement organizations to increase their own transparency and embrace principles of procedural justice, this collection will expand the measure to a broader scope of incidents of use of force to include nonfatal instances as well.

## **Purpose of the Research**

The purpose of the research is to record information that relates to the management of the collection of use-of-force data by state and domain managers. The information collected in the survey will be used by the FBI to develop implementation plans that will maximize participation by the law enforcement community and to select state or domain participants in the pilot study.

## **Background Research**

### **Criminal Justice Information Services (CJIS) Advisory Policy Board (APB)— Spring 2015**

The FBI's initial proposal was to pursue the addition of nonfatal officer-involved shootings to the existing information on justifiable homicide. Beginning in March 2015, the FBI CJIS Division worked with its APB to consider the question of whether to pursue the collection.

The CJIS APB is a committee comprised of representatives from the law enforcement and criminal justice communities who advise the FBI Director on matters related to the criminal justice information systems the CJIS Division manages. The APB meets semiannually and provides recommended actions on policy and technical issues, to include the UCR Program. While this body does not have the expertise to provide advice on matters of statistical methodology, the APB does provide two important functions.

First, its membership is a geographically diverse group of experts on criminal justice records maintained by law enforcement agencies at all levels of government: local, state, tribal, and federal. These representatives can provide important feedback on the potential impact of any change or addition to UCR data collections on the law enforcement community. Secondly, the APB represents the community from which UCR data are collected. Through the APB process, the FBI is able to engage in critical discussions that inform decisions about content and scope of law enforcement statistics.

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.”

### Meeting of Major Law Enforcement Organizations

Based upon the direction of the CJIS APB, the FBI also began efforts to solicit input from the major law enforcement organizations. Representatives from the major law enforcement organizations including the International Association of Chiefs of Police (IACP), the Major Cities Chiefs Association (MCCA), the National Sheriffs’ Association (NSA), the Major County Sheriffs’ Association (MCSA), the Association of State Criminal Investigative Agencies (ASCIA), and the Police Executive Research Forum (PERF) met with representatives from the CJIS APB, the FBI, and the Department of Justice (DOJ) to discuss the next steps regarding the creation of the new data collection on officer-involved shootings. The result of the meeting was a unanimous endorsement of a data collection system, to include the following definition and content.

The participants at the meeting on September 18, 2015, proposed the following definition:

“Law Enforcement Officer’s as defined by the Law Enforcement Officer Killed and Assaulted (LEOKA) Program Use of Force (LEOUF) that results in the death or serious physical injury to a person, or when the law enforcement officer discharges a firearm at or in the direction of a person.”

The effects of this definition were threefold. First, it expanded the collection to include the use of force that results in serious physical injury, rather than the original focus of officer-involved shootings. Secondly, the inclusion of the definition of law enforcement as set by the LEOKA Program would allow for some flexibility to expand the scope of the use of force collection in parallel with the LEOKA data collection. Finally, the definition does not require a law enforcement agency to determine that the use of force was justified.

In addition to the proposed definition for the types of incidents eligible for reporting in the UCR use-of-force collection, the representatives from the major law enforcement organizations proposed content to be collected on every incident that meets the criteria of the definition. The proposed data elements

included basic information on any officers involved, the subjects of the use of force, and circumstances related to the use of force, which served as the basis for the final recommendation approved by the CJIS APB. These data elements should be collected by the FBI as a part of its UCR Program, but collected separately from the rest of the criminal incident and offense information the FBI currently maintains. These proposals were brought to the CJIS APB for consideration.

## CJIS APB—Fall 2015

After the meeting with the law enforcement representatives in September 2015, the FBI introduced a topic to address the question of whether a new data collection on law enforcement officer use of force would be recommended to the FBI Director. On December 3, 2015, the CJIS APB approved four motions that effectively established the scope and minimum content of the new data collection.

The scope of the data collection was defined in the following language:

“The APB recommends the collection and reporting of use of force by a law enforcement officer (as defined by LEOKA) to the FBI. The collection and reporting would include use of force that results in the death or serious bodily injury of a person, as well as when a law enforcement officer discharges a firearm at or in the direction of a person. The definition of serious bodily injury will be based, in part, upon 18 USC Section 2246 (4). The term ‘serious bodily injury’ means bodily injury that involves a substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.”

The minimum content was identified to include basic information on the characteristics of the incident, demographics and actions of the subject, and demographics and actions of the officer. In addition to delineating the minimum content, the APB moved to establish a Use of Force Task Force that would review this information and provide recommendations for changes or additions to the data elements.

## Task Force

As specified in the CJIS APB Recommendations, the FBI moved to establish a Use of Force Task Force to make the decision on the additional content of the new data collection in January 2016. The Use of Force Task Force is comprised of representatives from major law enforcement organizations and local, tribal, and federal law enforcement representatives. Specifically, the following organizations are represented on the Use of Force Task Force:

- IACP
- NSA
- MCCA
- MCSA
- PERF
- ASCIA
- National Organization of Black Law Enforcement Executives
- Association of State UCR Programs

In addition to representatives from these major organizations, the Task Force welcomed observers from the Office of the Deputy Attorney General, the Community Oriented Policing Services Office, the DOJ, and the Bureau of Justice Statistics (BJS).

The Task Force met on four occasions (January 27, 2016; March 17, 2016; May 4-5, 2016; and August 3, 2016). The final set of data elements recommended by the Use of Force Task Force was based upon discussions from these four meetings and, importantly, the input of the BJS on their experiences and research that formed the basis of the Arrest-Related Death (ARD) Collection. Many of the data elements and concepts in the National Use-of-Force Data Collection were mirrored from the BJS's ARD Collection. Because the ARD Collection has been through significant testing, this particular cognitive test focuses upon areas that are new (such as in the case of interpreting the concept of serious bodily injury) or is captured in a different fashion than the ARD (e.g., the concept of active aggression).

## Data Elements of the National Use-of-Force Data Collection

### Incident Information

- Date and time of the incident
- Total number of officers who applied actual force during time of incident
- Number of officers from your agency who applied actual force during time of incident
- Location of the incident [physical location acceptable through address or latitude and longitude]
- Location type of the incident [location codes from the National Incident-Based Reporting System (NIBRS)]
- Did the officer(s) approach the subject[s]? [Yes/No/Pending/Unknown]
- Was this an ambush incident? [Yes/No/Pending/Unknown]
- Was a supervisor or a senior officer acting in a supervisory capacity present or consulted at any point during the incident? [Yes/No/Pending/Unknown]
- Reason for initial contact between subject and officer [response to unlawful or suspicious activity/medical, mental health, or welfare assistance/routine patrol other than traffic stop/traffic stop/warrant service/service of a court order/mass demonstration/follow up investigation/ other/unknown]
  - If this was due to “unlawful or criminal activity,” what were the most serious reported offenses committed by the subject prior to or at the time of the incident? [NIBRS offense codes drop down, 3 boxes]
  - If applicable, NIBRS (or local) incident number of report detailing criminal incident information on subject or assault or homicide of law enforcement officer.
- If the incident involved multiple law enforcement agencies, case numbers for the local “use of force reports” at the other agencies.

## Subject Information

- Age, sex, race, ethnicity, height, and weight (with range of values) of the subject(s)
- Injury/Death of subject(s) [gunshot wound/apparent broken bones/possible internal injury/severe laceration/loss of teeth/other major injury/unconsciousness/death/pending/unknown]
- Type(s) of force used connected to serious bodily injury or death [firearm/electronic control weapon (Taser)/explosive device/pepper or OC (oleoresin capsicum) spray/baton/impact projectile/blunt instrument/hands-fists-feet/canine/other/pending/unknown]
- Subject(s) resisted? [Yes/No/Pending/Unknown]
- Was the threat by the subject(s) directed to the officer or to another party? [Officer/Other party/Pending/Unknown]
- Type(s) of subject resistance/weapon involvement [threatened officer/threatened others/threatened self/active aggression/edged weapon/firearm/vehicle/chemical/electronic/verbal/passive resistance/resist being handcuffed or arrested/attempt to escape or flee from custody/none]
- Apparent or known impairment/physical conditions of subject? [Yes/No/Pending/Unknown]
  - If Yes, indicate which [mental health/alcohol/drugs/unknown]
  - At any time during the incident, was the subject(s) armed or believed to be armed with a weapon? [Yes/No/Pending/Unknown]

## Officer Information

- Age, sex, race, ethnicity, height, and weight of the officer(s)
- Officer's years of service as a law enforcement officer (total tenure) [Number of years]
- Full-time? [Yes/No]
- Was the officer readily identifiable? [Yes/No]
- Was the officer on duty at the time of the incident? (Yes/No)
- Did the officer discharge a firearm? [Yes/No]
- Officer(s) injured [Yes/No]
- Officer injury type [gunshot wound/apparent broken bones/possible internal injury/severe laceration/loss of teeth/other major injury/unconsciousness/death]

## Background Research on Survey Instrument

The survey was constructed with input from various entities both within and outside the FBI which are involved with various aspects of UCR data management—including the Association of State UCR Programs and the CJIS APB. Based upon this input, there were six primary areas that were seen to have a potential to influence on participation in the National Use-of-Force Data Collection. These areas were

also identified as most likely to affect levels of participation in the National Use-of-Force Data Collection and subsequent data completeness and quality based upon past experience of FBI personnel and early communications with potential data contributors.

The areas covered in the survey include the following:

- How management of the National Use-of-Force Data Collection will be organized (2 questions)
- Technical capabilities with state or domain systems (9 questions)
- State statutes regarding UCR or Use-of-Force data collection (4 questions)
- Data quality, training, and auditing capabilities of state or domain systems (7 questions)
- Publication of use-of-force data by the state or domain (4 questions)
- Use of the Law Enforcement Enterprise Portal by personnel with the state or domain program (6 questions)

The purpose of the survey is to document the current capabilities and plans of the state and domain UCR programs in regards to the National Use-of-Force Data Collection.

## **Methodological Plan and Selection of Participants**

The survey will be distributed to state and domain points-of-contact. These individuals are usually described as program managers or Criminal Justice Information Services Systems Officers (CSOs). The FBI relies upon these individuals to be the main conduit for the collection of UCR data. This would include all fifty states and territories, as well as tribal and federal domain managers. This is not a sample-based survey and could have up to 104 participants based upon two points-of-contact per state and one per territory. The federal domains will also be given the option of completing the survey to include the four Department of Justice law enforcement entities, the Bureau of Indian Affairs, and other federal law enforcement agencies.

The distribution will be sent via email to a list of state and domain UCR Program Managers and CSOs maintained by the FBI CJIS Division on Business Day 1. After the initial distribution, the FBI will monitor the response rate of the survey to provide follow-up reminders to nonrespondents. The FBI will send at least two reminder notices to encourage participation in order to maximize the response rate. These reminders will be sent only to nonrespondents. The first reminder will be sent on Business Day 3 after the initial solicitation for responses. The second reminder will be sent on Business Day 7. After the two initial reminders, the FBI will assess the need for additional reminders by either email or phone.

## **Developmental Activity Procedures Language**

The survey will be conducted in English.

## **Burden Hours for Developmental Activities**

The FBI is requesting 29.4 burden hours for this activity based upon approximately 104 nonfederal participants to complete a survey lasting 0.28 hours for each administration. This time was estimated based upon a timed completion of the survey by six volunteers.

## **Analysis Plan**

The responses from the survey will be analyzed to identify areas that the FBI needs to address to ensure that the data submissions to the National Use-of-Force Data Collection have a high level of completeness and quality. In addition, the possible state participants in the pilot study will be identified based upon the responses to primarily two variables. The pilot states would need to be both managing their collection of use-of-force data and also using the FBI-constructed collection application on LEEP.

The analysis of the responses will involve descriptive statistics. Since the variables measured on the survey are mostly categorical in nature, these statistics will involve frequency distributions and cross-tabulations. This survey does not rely upon a statistical sample or seek to test any hypotheses, so there is no need for statistical tests of significance. An internal report will be completed with the results of the analysis and shared with the participants of the survey and others upon request.

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

Participation is voluntary for participants in the survey. Any potential participant who does not wish to participate would be free to refrain from participating as stated in the introductory paragraph on the survey instrument. Any identifying information requested from the participants on the instrument will be kept confidential to the fullest extent that the law allows. Data files will be housed on an internal FBI computer system and are subject to its data security policies.