

**SUPPORTING STATEMENT**  
**Survey of Sexual Victimization, 2016 – 2018**

**A. Justification**

1. Necessity of Information Collection

On September 4, 2003, the Prison Rape Elimination Act of 2003 (PREA or the Act) was signed into law (Public Law 108-79, see Attachment 1). The Act requires the Bureau of Justice Statistics (BJS) to “carry out, for each calendar year, a comprehensive statistical review and analysis of the incidence and effects of prison rape.” The law was passed in part to overcome a shortage of available data on the incidence and prevalence of sexual victimization within correctional facilities.

To implement the Act, BJS developed the National Prison Rape Statistics Program (NPRSP), which includes four separate data collection efforts: the Survey of Sexual Victimization (SSV, formerly the Survey of Sexual Violence), the National Inmate Survey (NIS), the National Survey of Youth in Custody (NSYC), and the National Former Prisoner Survey (NFPS). Each of these collections is independent and, while not directly comparable, provides various measures of the prevalence and characteristics of sexual victimization in correctional facilities. The NIS (OMB No. 1121-0311), with data collection in 2007, 2008-09, and 2011-12, gathers allegations of sexual victimization self-reported from inmates in correctional facilities. The NSYC (OMB No. 1121-0319), with data collection in 2008-09, and 2012, collects allegations of sexual victimization self-reported by youth in juvenile facilities. The NFPS (OMB No. 1121-0316), a one-time collection in 2008-09, measured allegations of sexual victimization experienced during their last incarceration as reported by former inmates on active supervision.

The SSV series (OMB No. 1121-0292), in its 12<sup>th</sup> year, collects data concerning all allegations of sexual victimization reported to correctional authorities as well as those that are substantiated. Part of the NPRSP, SSV is an administrative records collection from all federal and state prison systems, all state operated juvenile systems, all military facilities, and a representative sample of local jails, private jails and prisons, local and privately operated juvenile facilities, facilities in Indian country, and facilities operated by Immigration and Customs Enforcement (ICE). The SSV is the only data collection based on administrative records that reports on the incidence and prevalence of sexual victimization. This collection provides system-level and facility-level estimates of sexual victimization for the 12-month period ending December 31 of each year. It fulfills part of the Act and allows BJS to report statistics to Congress each year, as required by the Act.

The survey received OMB approval in 2004, 2007, 2011, and 2014. BJS requests approval to extend the currently approved SSV collection for 3 years (July 1, 2017 – June 30, 2020).

The SSV Summary Forms (i.e., SSV-1, SSV-2, SSV-3, SSV-4, SSV-5, SSV-6, see Attachment 2) are used to collect aggregate counts of allegations of inmate-on-inmate (or youth-on-youth) and staff-on-inmate (or staff-on-youth) sexual victimization, including

how many were substantiated, unsubstantiated, unfounded, or pending investigation. An SSV Incident Form (i.e., SSV-IA, SSV-IJ, see Attachment 2) is completed for each substantiated incident of sexual victimization, and gathers incident-level information, including the characteristics of the victim(s) and perpetrator(s), where the incident took place, and any sanctions that were imposed on perpetrator(s).

The U.S. Census Bureau serves as the data collection agent for the SSV on behalf of BJS.

## 2. Needs and Uses

The SSV provides data on the incidence and prevalence of sexual victimization within correctional facilities as well as how those facilities record and respond to such incidents. The purposes of the Act include “*to develop and implement national standards for the detection, prevention, reduction, and punishment of prison rape,*” and “*increase the available data and information on the incidence of prison rape, consequently improving the management and administration of correctional facilities.*” The SSV helps BJS meet both goals, as it is the only national administrative data collection on sexual victimization in custody that uses standardized definitions. BJS publishes national-level and facility-level data based on the SSV results.

Data from the SSV have been published for the 2004-2012 collection years, and survey operations are nearly complete for the 2015 collection year (we are awaiting the data, final survey weights and documentation). The most recent reports are entitled *Sexual Victimization Reported by Juvenile Correctional Authorities, 2007–2012* (NCJ 249145, January 2016) and *Survey of Sexual Violence in Juvenile Correctional Facilities, 2007 – 12 - Statistical Tables* (NCJ 249143, January 2016).

Based on the 2011 SSV collection, there were an estimated 8,763 allegations of sexual victimization in correctional facilities holding state and federal prisoners, local jail inmates, and persons under the jurisdiction of Indian country, military, and ICE facilities. The rate of sexual victimization in these facilities was 3.90 allegations per 1,000 inmates in 2011, up from 2.83 in 2005. The allegations were nearly evenly split between allegations of inmate-on-inmate and staff-on-inmate sexual victimization, with roughly 4,463 incidents of inmate-on-inmate sexual victimization and 4,300 allegations of staff-on-inmate victimization. About 10% of allegations filed in 2011 were substantiated upon investigation (902).

The SSV provides a unique contribution to understanding sexual victimization. Unlike other PREA collections that rely on victim self-reports, the SSV provides detail on incidents that have been substantiated upon investigation. These data provide detail on the circumstances surrounding the victimization, extent and nature of injury, characteristics of perpetrators, sanctions imposed on perpetrators, nature of facility responses, and impact on victims. Such detail is not fully available from victims.

While reported incidents in the annual SSV collections are substantially fewer in number than those alleged by inmates in the NIS and NSYC collections, the SSV provides a basis for comparison with inmate self-reports in the aggregate. Such comparisons reveal

similar patterns in victimization, particularly incidents involving other inmates or youth. In the past they also revealed the selective reporting of staff misconduct to correctional administrators (i.e., incidents involving “no coercion” and which appear “voluntary” between male inmates and female staff members were significantly under-reported in the SSV data).

SSV data collections also provide important guidance to correctional authorities – in providing uniform definitions and reporting rules. Since the initial implementation of SSV in 2004, an increasing number of state departments of corrections have developed the capacity to distinguish nonconsensual sexual victimization (the most serious types of incidents involving penetration) from abusive sexual contacts (less serious, but unwanted, contacts involving touching, grabbing, groping, and other non-penetrative sexual contacts). In addition, correctional administrators have increasingly adapted their information systems to track incidents of staff sexual misconduct separately from staff sexual harassment. Compliance with BJS reporting standards has improved over time, and as a result, collection of SSV data elements have become part of the *National Standards to Prevent, Detect, and Respond to Prison Rape*, 28 C.F.R. Part 115. (See Attachment 3, Sec. 115.87 Data Collection.)

Data collected by the SSV and other NPRSP surveys are used by the U.S. Department of Justice, the Congress, state legislatures, researchers, and special interest groups. As the longest-running NPRSP survey, the SSV data serve as the basis for historical trend analyses. Since research efforts in sexual victimization within correctional facilities prior to the passage of PREA were limited to only a few facilities, the SSV collection has served as an invaluable resource to understand what incidents are reported to correctional administrators and the results of subsequent investigations. With the completion of the NIS and NSYC surveys, the SSV incident-level data provide context to inmate self-reports since it is the only survey that collects information about substantiated incidents of sexual victimization. The NIS and NSYC collect information about allegations only.

Users of these data include the following:

*U.S. Congress* – The Congress has received multiple reports on data collected under the SSV. Future reports will continue to provide a listing of systems and facilities and the number of allegations and substantiated incidents by type of incident.

*U.S. Department of Justice Review Panel on Prison Rape (Panel)* – solicits testimony from correctional administrators in facilities with the highest and lowest rates of sexual victimization as determined by data collected in the NIS and NSYC. The SSV provides context to the findings. For example, the NSYC 2012 found that nearly 90% of all youth reporting staff sexual misconduct were males having sexual contact with female staff. While the NSYC provided information about the staff sexual misconduct and its link to other inappropriate contact with youth, it provided little information about characteristics of the staff offenders. BJS used SSV data in its testimony to the Panel and was able to characterize female staff offenders as younger and newly hired staff.

*National Prison Rape Reduction Commission (NPREC)* – was created under PREA and given a mandate to “... carry out a comprehensive legal and factual study of the penal, physical, mental, social, and economic impacts of prison rape in the United States...” Duties performed by the Commission included a review of the procedures for reporting incidents of prison rape, an assessment of correctional staff training, and an evaluation of the safety and security of correctional facilities. The Commission considered SSV and other PREA data in the creation of their draft *Standards for the Prevention, Detection, Response, and Monitoring of Sexual Abuse in Adult Prisons and Jails*, issued in June 2009. While the work of NPREC has been completed, members of the Commission continue to be involved in issues of PREA implementation and rely on the SSV and other PREA data sets to inform their activities.

*National Institute of Corrections (NIC)* – is responsible for establishing a “national clearinghouse for the provision of information and assistance to federal, state, and local authorities responsible for the prevention, investigation, and punishment of instances of prison rape.” NIC will also develop periodic training and educational programs for “... authorities responsible for the prevention, investigation, and punishment of instances of prison rape.” BJS has presented SSV data at numerous NIC-sponsored conferences, including conferences on staff sexual misconduct, developing risk assessments for sexual victimization, and the victimization of women and girls in prison and jails.

*National Institute of Justice (NIJ)* – is responsible for studying characteristics of victims and perpetrators and identifying trends in sexual victimization within correctional settings. Data from the SSV informs research proposals for grant funding opportunities provided in the Act.

*Bureau of Justice Assistance (BJA)* – under a cooperative agreement funds the National PREA Resource Center (PRC). The PRC’s aim is to provide assistance to those responsible for state and local adult prisons and jails, juvenile facilities, community corrections, lockups, tribal organizations, and inmates and their families in their efforts to eliminate sexual abuse in confinement. The PRC serves as a central repository for the best research in the field on trends, prevention, and response strategies, and best practices in corrections. Findings from the SSV are made available through the PRC website to correctional administrators, management, line staff, sheriffs and officers, community corrections personnel, juvenile detention administrators, and staff.

*U.S. Department of Justice Civil Rights Division* – uses data from the SSV to understand the magnitude and scope of sexual victimization within correctional facilities as they relate to the violation of inmate civil rights.

*Federal, state, local corrections, and juvenile officials and administrators* – use data from the SSV to assess and compare trends in inmate-on-inmate, youth-on-youth, staff-on-inmate, and staff-on-youth sexual victimization. The SSV collections are especially important to administrators because of the common set of concepts, standard definitions, and counting rules that administrators need as a baseline for comparison.

*Advocacy groups, including Just Detention International (JDI, formerly known as Stop Prisoner Rape)* – have used the SSV results to identify critical deficiencies in the treatment of victims and sanctioning of staff perpetrators.

### 3. Use of Information Technology

The SSV is a mixed mode data collection. Until recently, paper forms had been sent by mail to each system or facility in the sample, along with an ID and password enabling respondents to complete the survey on the Web. Beginning in 2014 at the request of several respondents, BJS made the PDFs fillable, enabling the non-web respondents to keep a searchable electronic copy of their forms. Also, prior to mailing SSV 2015, BJS identified 447 respondents that submitted their SSVs via Web in 2013 or 2014. To reduce waste and cost, BJS modified the packets sent to these Web respondents by omitting the printed survey forms.

The number of respondents submitting their data online has increased over the years. For SSV 2008, 36% of respondents submitted data online. For SSV 2010, web responses comprised 42%. For SSV 2011 to 2015, about half of all respondents submitted their data online. BJS has found that a mixed mode of collection is vital because many jail and juvenile administrators (in particular, small local or privately operated facilities infrequently sampled each year in SSV) do not yet utilize the Web. Of the 1,328 local or private facilities sampled in 2015, slightly less than half (49%) used the Web for data submissions; 40% submitted paper forms by mail or Fax; the remainder provided data via telephone. In comparison, two-thirds of adult and juvenile state systems responded via Web, and the remaining one-third responded by paper (mail or Fax).

Web respondents have the ability to print and save their forms. Other benefits of online reporting include—

- reduced cost – paper forms are not printed and mailed to known web respondents, reducing printing and postage costs; respondents key their data directly into the web application, reducing data entry costs
- better data quality – data checks built into the web application alert respondents to inconsistent answers, reducing data errors.
- increased efficiency – data are entered once and automatically exported from the web application to the SSV database.

Planned improvements include the addition of a skip pattern in the substantiated incident form that takes respondents to the applicable perpetrator section (inmate or staff) depending on their response to item 17, type of incident.

Benefits of the fillable PDFs include the ability for the data collection agent to automatically import the data from the electronic form into the SSV database. SSV summary data and supporting documentation are in the process of being made freely available to the public through the National Archive of Criminal Justice Data (NACJD), one of the topical archives of the Inter-University Consortium for Political and Social

Research (ICPSR) at the University of Michigan. Access to these data permits analysts to identify the specific responses of individual agencies and to conduct statistical analyses. An online data tool is also being developed by BJS.

4. Efforts to Identify Duplication

The SSV is not duplicated by any other program or government agency. No other program employs uniform criteria and comparable definitions when collecting administrative sexual victimization data from federal and state prisons, local jails, and juvenile residential placement facilities. BJS is the only government agency that collects national data on the incidence and prevalence of sexual victimization within correctional settings.

5. Efforts to Minimize Burden

The SSV data collection includes definitions and counting rules for five types of sexual victimization. In 2012, the Department of Justice issued *National Standards to Prevent, Detect, and Respond to Prison Rape* (28 C.F.R. part 115). To be consistent with these Standards, *inmate-on-inmate sexual harassment* was added to the SSV in 2013. BJS has learned that these definitions have not only brought jurisdictions closer together in their data comparability, but they have also been very useful in aiding jurisdictions in shaping and streamlining their own mandated data collections on the incidence and prevalence of sexual victimization within their facilities.

The Census Bureau and BJS provide respondents with technical assistance as needed to minimize respondents' efforts in data collection and to improve data quality.

6. Consequences of Less Frequent Collection

The Bureau of Justice Statistics is required by law (P.L. 108-79, see Attachment 1) to collect data annually. The SSV data collection is the only PREA collection at BJS that meets this annual requirement. A less frequent collection would therefore not meet the requirements of the Act.

7. Special Circumstances

No special circumstances have been identified for this project.

8. Adherence to 5 CFR 1320.8(d) and Outside Consultations

The SSV collection is consistent with the guidelines in 5 CFR 1320.6. The 60-day notice for public commentary was published in the Federal Register, Volume 81, Number 234, pages 87957-87958 on December 6, 2016. We received no comments in response to the 60-day notice. The 30-day notice was published in the Federal Register, Volume 82, Number 34, pages 11370-11371 on February 22, 2017. We have received no comments in response to the 30-day notice to date.

In developing the 2013 SSV, 1BJS consulted with federal, state, and juvenile administrators as well as civil rights advocacy groups. These individuals provided valuable input regarding the development of the SSV questionnaire, definitions and counting rules, anticipated data analysis, and data presentation. The following experts were consulted:

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1After implementation of the changes in 2013, in depth discussions were held with respondents to solicit their feedback about the changes and other needs or issues. Those contacted include the following:

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409 West Colfax Avenue  
Denver, CO 80204  
720-865-4027

9621 Ridgehaven Court  
San Diego, CA 92123  
858-974-2667

Jeff Coonrod, Captain  
Greene County Sheriff's Office  
1010 Boonville Avenue  
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417-829-6241

Gequetta Murray-Key, PREA Auditor  
Albemarle-Charlottesville Regional Jail  
Accreditation Department  
160 Peregory Lane  
Charlottesville, VA 22902  
(434) 977-6981 ext 226

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503-844-6335

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Jovin Adamos, Sergeant  
San Diego Sheriff's Department  
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In designing the questionnaires in 2004, BJS had extensive consultation with correctional administrators, prisoner rights advocates, former inmates, specialists in prison rape research, practitioners, and survey methodologists. BJS convened two panels of experts: 1) a panel for adult prisons and jails, and 2) a panel for juvenile corrections. In the course of implementing the SSV after 2004, BJS and the Census Bureau continue to consult extensively with data providers.

Based on data collections since 2007, Census staff have learned about item-specific measurement concerns. Incident-level non-response generally occurs due to the absence of information in investigative records resulting from the extended period of time that can elapse between an incident, its report to correctional authorities, its investigation, and its final resolution through sanctions or other actions. Item non-response varies depending on the number of victims and perpetrators, with characteristics of the second victims and perpetrators less well reported. Overall, item non-response rates are within acceptable ranges, and do not impact survey estimates. (See Part B, table 4 for item-level nonresponse rates for 2013-14, the latest available years.)

Items previously approved for collection in 2010-12 and 2013-2015 will not change. See Part B, pages 5 - 11 for details of past changes.

Based on responses to SSV 2013 and 2014, as well as external consultations and contact with past data providers, BJS and Census have established that jurisdictions and facilities are able to respond to the revised SSV summary and incident forms.

9. Paying Respondents

There will be no payment or gifts made for responding to the survey to staff in state or federal systems, local jail jurisdictions, facilities operated by the U.S. military or Immigration and Customs Enforcement, Indian country facilities, private facilities or juvenile facilities.

10. Assurance of Confidentiality

BJS is authorized to conduct this data collection under 42 U.S.C. § 3732(c) and P.L. 108-79. BJS is dedicated to maintaining the confidentiality of personally identifiable information, and will protect it to the fullest extent under federal law. (See Attachment 4.) BJS, its employees, and its data collection agents will use the information provided for statistical or research purposes only, and will not disclose information in identifiable form without the respondent's consent to anyone outside of the BJS project team. All personally identifiable data collected under BJS's authority are protected under the confidentiality provisions of 42 U.S.C. § 3789g, and any person who violates these provisions may be punished by a fine up to \$10,000, in addition to any other penalties imposed by law. Further, per the Cybersecurity Enhancement Act of 2015 (6 U.S.C. §

151), federal information systems are protected from malicious activities through cybersecurity screening of transmitted data. For more information, go to [www.bjs.gov/content/pub/pdf/BJS\\_Data\\_Protection\\_Guidelines.pdf](http://www.bjs.gov/content/pub/pdf/BJS_Data_Protection_Guidelines.pdf). The Prison Rape Elimination Act requires that facility- and system-level counts and rates be reported to Congress and used by the Prison Rape Review Panel.

11. Justification for Sensitive Questions

The Act requires BJS to collect highly sensitive information. However, the collection is based on administrative records, and most counts are aggregated to the facility or system level. The substantiated incident form, which requires details of a specific incident, does not collect names of inmates, and characteristics of inmates and incidents are reported in the aggregate rather than by facility.

12. Estimate of Respondent Burden

In 2012, the Department of Justice issued *National Standards to Prevent, Detect, and Respond to Prison Rape* (28 C.F.R. part 115). In order to detect possible patterns and help prevent future incidents, these standards include the requirement for agencies<sup>1</sup> to collect and aggregate data regarding incidents of sexual abuse (§115.87 (a-b)). At a minimum, these data must include sufficient information to fully answer all questions in the Survey of Sexual Victimization (SSV) conducted by DOJ (§115.87 (c)). To be compliant with these standards, agencies are required to provide such data upon request for each calendar year they are selected in the SSV sample (§115.87 (f)).

BJS anticipates sending out 1,574 forms during report year 2016. There are six versions of the SSV summary form, one each for the Federal Bureau of Prisons (SSV-1), state prison systems (SSV-2), local jail jurisdictions (SSV-3), private, military, ICE, and tribal adult correctional facilities (SSV-4), state juvenile systems (SSV-5), and locally or privately operated juvenile facilities (SSV-6). Table 1 below contains a breakdown of forms by respondent type.

Based on prior administrations, the estimated average amount of time to complete the SSV-1, SSV-2, and SSV-5 (system-level summary forms) is 1 hour. The estimated average amount of time to complete the SSV-3, SSV-4, and SSV-6 (facility-level summary forms) is 30 minutes given that nearly half of facilities report no allegations of sexual victimization.

The SSV-IA and SSV-IJ incident forms are each estimated to take about 30 minutes to complete, with one form for each substantiated incident of sexual victimization. Estimates include supplying the information requested and documenting or explaining the

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<sup>1</sup> "Agencies" refers to all public and private correctional systems, jurisdictions, and facilities as described throughout this document.

data. Combining the completion of the summary and incident forms, the estimated total burden for respondents is 1,993 hours (see table 1 below).

**Table 1. Total estimated burden hours necessary to complete the SSV**

Reporting task	Total annual responses	Estimated burden hours per response	Total estimated respondent burden (person hours)
SSV-1	1	1	1
SSV-2	50	1	50
SSV-3	700	.5	350
SSV-4	223	.5	111
SSV-5	51	1	51
SSV-6	549	.5	275
SSV-IA	1,860	.5	930
SSV-IJ	450	.5	225
Total	1,574 respondents plus 2,310 IA/IJ forms		1,993

13. Estimate of Respondent’s Cost Burden

At an average of \$30.18 per hour,<sup>2</sup> the total annual cost for 1,993 hours of labor is \$60,149, or roughly \$38 per participating respondent.

14. Costs to Federal Government

The estimated costs for collection, processing, and dissemination of the SSV 2016 data in calendar year 2017 is \$720,800 including—

\$590,000 -- Census Bureau  
 \$340,000 for sample selection, data collection and program management  
 \$230,000 for questionnaire production, computer programming, data editing, and data entry  
 \$20,000 in miscellaneous charges -- costs related to postage, telephone calls, printing, etc.

\$130,200 -- Bureau of Justice Statistics  
 75% GS-13, Statistician (\$90,500)  
 5% SL, Senior Statistical Advisor (\$8,500)  
 Benefits (@ 20% = \$19,800)  
 Other administrative costs (\$12,000)

The estimated costs for collection, processing, and dissemination of the SSV 2017 data in calendar year 2018 is \$930,200 including—

\$800,000 -- Census Bureau

<sup>2</sup>Average salary for first-line supervisors/managers of correctional officers. Source: *May 2015 National Occupational Employment and Wage Estimates*, Bureau of Labor Statistics.

\$440,000 for sample selection, data collection and program management  
\$350,000 for questionnaire production, computer programming, data editing, and data entry  
\$10,000 in miscellaneous charges -- costs related to postage, telephone calls, printing, etc.

\$130,200 -- Bureau of Justice Statistics  
75% GS-13, Statistician (\$90,500)  
5% SL, Senior Statistical Advisor (\$8,500)  
Benefits (@ 20% = \$19,800)  
Other administrative costs (\$12,000)

BJS expects the costs at the Census Bureau to increase for SSV 2017 because of additional computer programming tasks and one additional statistician. Programming tasks include the creation of more checks for both the Web survey and the data entry module to ensure data quality. One additional staff member is needed to assist with mail-out, answering respondent inquiries, non-response follow-up, documentation of reporting problems and data quality issues, and furnishing tables to BJS. We expect a reduction in miscellaneous charges, primarily in the form of postage and printing costs. As the number of respondents using the Web survey increases, these costs will decrease. BJS expects all other costs to remain stable from year to year, subject to Cost of Living Adjustments (COLA).

15. Reason for Change in Burden

The current respondent burden is listed as 1,353 hours. We are requesting an increase to 1,993 to account for 36 additional respondents (from 187 private/special adult facilities to 223) and a revised estimate of the number of incident forms, from 1,064 to 2,310. The increase in number of respondents will provide greater precision for annual estimates of the number of allegations and substantiated incidents from privately operated adult facilities and locally or privately operated juvenile facilities. (See Attachment 2 for incident forms and Part B for discussion of sample design and precision.) The revised number of incident forms better reflects the increased number of substantiated incidents and the addition of the fifth type of sexual victimization, inmate-on-inmate sexual harassment, in 2013.

16. Project Schedule and Publication Plans

BJS plans to send the 2016 collection year forms to respondents beginning in May 2017. Respondents will be asked to return the forms by August 2017. Data collection, cleaning, and weighting are expected to be completed by December 15 of each collection year.

The Bureau of Justice Statistics (BJS) is responsible for the entire project and contracts the U.S. Census Bureau to collect the data. BJS will analyze the raw and tabular data

prior to publication in any form. The Act requires BJS to submit by June 30 an annual report to Congress regarding data collection activities related to the study of prison rape. BJS released juvenile SSV data in January 2016 through the publication of two reports. The summary report, *Sexual Victimization Reported by Juvenile Correctional Authorities, 2007-12*, includes summary data on allegations and substantiated incidents. A companion report, *Survey of Sexual Victimization in Juvenile Correctional Facilities, 2007-12 - Statistical Tables*, provides jurisdiction and facility detail and was released at the same time as the summary report.

Additional SSV reports are anticipated, including *Sexual Victimization Reported by Adult Correctional Authorities, 2012-14* and a companion statistical tables report in 2017 and *Sexual Victimization Reported by Juvenile Correctional Authorities, 2013-15* to be released in 2018. These reports need to include a minimum of 3 years of data to ensure sufficient numbers of substantiated incidents to provide accurate estimates of details of victim, perpetrator, and incident characteristics.

17. Display of Expiration Date

The OMB Control Number and the expiration date will be published on the SSV forms.

18. Exception to the Certificate Statement

Not applicable. The Collection is consistent with the guidelines in 5 CFR 1320.9.