U.S. Department of Justice

Office of Justice Programs

Bureau of Justice Statistics

MEMORANDUM

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DATE: October 30, 2020

SUBJECT: BJS request for Generic Clearance to conduct data capacity interviews and pilot data collection from misdemeanor courts, under the generic clearance agreement OMB Number 1121-0339

In its report accompanying the FY 2020 appropriation for the Department of Justice, the House Appropriations Committee indicated that they were "concerned with the lack of reliable data from States and local jurisdictions on the processing of misdemeanor arrests. As the largest aspect of our criminal system, it is vitally important to ensure justice is being administered in a fair and equitable manner. In recognition of limited resources, the Committee therefore urges the BJS to collect demographic data from a select number of large metropolitan jurisdictions that includes information on the race, ethnicity, and gender, as well as key socioeconomic factors, of

each misdemeanor defendant, the type of offense charged, and the sentence imposed. The Committee also urges the Bureau to report on its progress within 180 days of enactment of this Act."[1]

The effort requested here aims to fulfill this request. The Bureau of Justice Statistics (BJS) is exploring the establishment of a new data collection to gain an understanding of the processing of misdemeanors in the criminal justice system. While BJS has active data collections devoted to the adjudication of those accused of felony offenses, little is known about the adjudication of misdemeanor offenses, and how the various court systems that process those offenses compare to those that process felony offenses. By all accounts, the number of misdemeanor offenses is much larger than the number of felony offenses. In the 33 states (and the District of Columbia) for which the National Center for State Courts has both felony and misdemeanor case counts, 9.7 million misdemeanor cases and 2.9 million felonies were filed in 2018.[2]

Before committing to a national data collection, BJS must first determine the feasibility of collecting data on the disposition of misdemeanor offenses. BJS requests clearance under its generic clearance (OMB Number 1121-0339) to conduct a series of data-availability interviews with court leaders and data analysts in courts that adjudicate misdemeanor offenses in a select number of large jurisdictions. Recognizing that most courts report at least some data to their state administrative office of the courts, BJS also requests clearance to conduct interviews with leaders at the state court administrative offices. Based on those interviews, BJS plans to select a subset of 10 jurisdictions from which to request data extracts. These extracts would include data on case attributes, including charging offense(s), disposition charge and type, key case-processing dates, and demographic characteristics of defendants (including age, race, ethnicity, and sex). Accordingly, BJS further seeks clearance to collect and analyze the quality, completeness, and comparability of data from these 10 jurisdictions.

This data collection is being designed to complement other collections of state court data BJS has recently launched, or re-launched. BJS is currently collecting data from general jurisdiction courts as part of its Criminal Cases in State Courts (CCSC, OMB Control Number 1121-0371). BJS will also re-launch its National Pretrial Reporting Program in 2021, known most recently as State Court Processing Statistics (SCPS, OMB Control Number 1121-0306). SCPS was conducted biennially from 1988 to 2006, with a final collection in 2009. SCPS collected data from 40 of the 75 largest county courts of general jurisdiction regarding felony case filings, and followed those cases from the date of filing for 2 years (homicides) or one year (all other cases), typically to disposition or sentencing.

BJS's intent is to identify, collect, standardize, and analyze easily extracted, publicly-available data from courts that process misdemeanors. Key to this effort is developing a definition of a misdemeanor offense that is consistent across jurisdictions. BJS will ask respondents how their jurisdictions distinguish misdemeanors from felonies, and will refine the definition based on those answers.

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[1] https://www.congress.gov/116/crpt/hrpt101/CRPT-116hrpt101.pdf, p. 68. Accessed October 5, 2020.
[2] http://www.courtstatistics.org/, accessed September 23, 2020.

State laws and local court rules affect not only what types of courts process misdemeanor offenses, but also access to court data – and there is no compendium of the rules governing access to court records in each state. BJS has some expertise on this topic based on interviews conducted as part of the development of the CCSC project, but that data collection did not include municipal courts, which are the primary source of misdemeanor case data for many jurisdictions.

BJS seeks OMB approval to contact court leaders in twenty-six large jurisdictions and conduct data-availability interviews with those leaders, or with subject-matter experts identified by the court. The twenty-six jurisdictions are from 21 different states. Twenty-two of the 26 jurisdictions have two-tiered court systems (e.g., a municipal court and a district court); consequently, these jurisdictions have two sets of court leaders. The detailed interviews will confirm basic characteristics of the misdemeanor system in each jurisdiction, identify what data are collected and the ease of accessing and extracting the information, and discuss the characteristics of the data, including data structure and data quality. See **Attachment A** for the proposed interview script. The interview will also ask data experts to provide codebooks or descriptions of any existing data extract(s).

If the court leader or data expert identifies another person to join in the conversation, staff of Abt Associates, who are conducting the interviews on behalf of BJS, will attempt to schedule a telephone interview with all relevant parties at one time. Because we do not know how often this will occur, BJS is budgeting time for separate interviews with two persons at this stage.

In addition, BJS is budgeting time for at least two follow-up contacts in each jurisdiction to address questions that may arise after the telephone interviews are completed. For example, if a jurisdiction provides data codebooks or descriptions of existing data extracts, questions may arise about the codebook or extract that would require a follow-up call with the data expert. Such additional contacts may not be necessary for all jurisdictions; however, they cannot be scripted ahead of time, as they are dependent upon information provided in the initial contact.

Summary of current request. BJS requests clearance under its generic clearance agreement (OMB Control Number 1121-0339) to (1) contact court leaders in 26 jurisdictions in 21 states to determine the availability, quality, and coverage of misdemeanor court data (e.g., what case types are available, what case elements are available in each case type); (2) determine if a data codebook exists, and whether other court staff will need to be interviewed about court data structure and availability; and (3) collect and assess data from 10 of those jurisdictions. Multiple contacts may be required in each jurisdiction. BJS is also requesting permission to follow-up with court leaders if needed, about information collected in the interviews or through documentation provided. This last contact is dependent on the interviews and the data codebooks or descriptions of extracts provided by the interview subjects.

In identifying a sample, BJS focused on the 53 metropolitan areas with populations of more than 1,000,000 residents in 2019. BJS sought to identify the "center city" in each metropolitan area; some (San Francisco-Oakland-Berkeley MSA) arguably have two center cities, while other MSAs (Riverside-San Bernardino-Ontario) arguably have none. BJS identified 53 cities that met the center city criterion. BJS then selected 26 cities for initial interviews by purposively

sampling on three criteria: city size, court complexity (using presence of municipal courts as a proxy for court complexity), and changes in misdemeanor arrests (using data on arrests for "other assaults" as a proxy). See **Attachment B** for a list of the sampled cities. If initial contact is unsuccessful with a given city, BJS will replace that city with another city not initially sampled. The goal is to conduct interviews in 26 cities, and, from the information collected, identify 10 reasonably-representative sites from which data may be efficiently requested.

BJS estimates an initial contact with a court leader, up to two contacts with court data experts, and up to two follow-up contacts for each jurisdiction. Twenty-two of the 26 jurisdictions have two-tiered court systems, so there would be two sets of interviews in those 22 jurisdictions. In addition, the 26 jurisdictions are in 21 different states, so there would be 21 sets of interviews with leaders at state administrative court offices.

BJS further estimates that five of the 10 sites will have two courts. For each of the 10 jurisdictions from which data are requested, an average of 20 hours per court will be needed to complete the following tasks: initiate contact, complete any memoranda of understanding or data use agreements, assemble and transfer the data, and answer any follow-up questions about the data. See **Attachment C** for a list of the data elements BJS will seek from each jurisdiction.

<u>**Burden Hours**</u>

The burden-hour estimates for the respondents are provided in **Table 1**. The project team expects the initial contact, including attempts to arrange the interview, will take up to 20 minutes for a court leader to answer the questions. The second contact (either a substantive interview with the court leader or with an identified data expert) will require up to a 60-minute telephone interview. The total burden time for all contacts under this request is 530 hours.

Table 1. Burden-Hour Estimates for Respondents

Task #	Task Description	Number of respondents	Estimated burden *(in minutes)*	Total burden *(in hours)*
1	Initial contact with court leader regarding data access	69[3]	20	23
2	Phone interview with court leader and/or data expert (up to 2)	138	60	138
3	Additional follow-up to clarify any access or data questions (up to 2)	138	30	69
4	Request data, complete paperwork, transfer data, and ask follow-up questions about the data	15	1,200	300
	Total burden			**530 hours**

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[3] Twenty-two of the 26 cities have two-tiered court systems and the 26 jurisdictions are in 21 different states, so the total number of respondents is 26 + 22 + 21 = 69.

Institutional Review Board

Abt Associates' Institutional Review Board (IRB) has determined the interviewing and pilot testing protocol to be compliant with informed consent and data confidentiality standards. See **Attachment D**.

Contact Information

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

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Attachments

Attachment A Interview Guide
Attachment B Sampled Cities
Attachment C Data Elements
Attachment D IRB Approval