

SUPPORTING STATEMENT
Death in Custody Reporting Act
April 2019

A. Justification

- 1. Circumstances Necessitating Data Collection:** The Department of Justice (DOJ), Bureau of Justice Assistance (BJA) is submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

The Death in Custody Reporting Act (DCRA) of 2013 requires states and federal law enforcement and correctional agencies to report certain information to the Attorney General regarding the death of any person occurring during interactions with law enforcement officers or while in custody. See 34 U.S.C. § 60105(a) & (b). It further requires the Attorney General and the Department of Justice (Department) to collect the information, establish guidelines on how it should be reported, annually determine whether each state has complied with the reporting requirements, and address any state's noncompliance.

- 2. How, by Whom and For What Purpose the Information is to be Used:** The Bureau of Justice Statistics (BJS) began the predecessor the Death in Custody Reporting Program in 2000 in response to the Death in Custody Reporting Act of 2000 (P.L. 106-297), and continued to collect these data when the law expired in 2006. The legislation was motivated by a concern about conditions in prisons and local jails and increased public and Congressional interest in oversight, in light of wrongful death lawsuits and national media attention on deaths in custody.

DICRA was reauthorized in 2013, and the Department of Justice (DOJ) has recently placed more emphasis on the compliance part of the law. While the original 2000 DICRA did not include an explicit compliance condition, the 2013 DICRA specified than non-reporting states would forfeit up to 10% of the JAG federal grant funds at the discretion of the AG. As a federal statistical agency, BJS data may not to be used for enforcement purposes, and BJS feels that penalizing non-respondents to the MCI would have adverse effects on response rates for other BJS data collections. DOJ therefore determined that the Bureau of Justice Assistance (BJA), as opposed to BJS, should manage collection of the data pursuant to the law, since that agency is not under similar requirements to collect data for statistical purposes only.

BJA has requested that BJS continue to collect MCI data on deaths of prison and jail inmates that occur in the 2018 and 2019 calendar years, to allow for the continuity of the collection and to provide at least one year of comparison data (2019). Once BJA fully implements its DCRA information collection, BJS will discuss with OMB future mortality data collection by BJS. DOJ and OMB will work together to ensure that

unnecessary duplication is eliminated while ensuring that DOJ can continue to provide accurate national and state-level estimates of deaths in prisons and local jails and begin to collect data that can be used in a timely manner for compliance oversight. BJA will use the data collected under this approval to monitor compliance with DICRA, and has no plans to publicly release individual responses or aggregate statistics. BJA will provide the information collected under this approval to BJS to enable them to continue statistical reporting on mortality in custody.

3. **Use of Technology to Reduce Burden:** The Bureau of Justice Assistance will collect all information electronically in the Office of Justice Programs (OJP) Performance Management Tool (PMT), an existing reporting system. BJA has been authorized to collect this information by the Attorney General under the Deaths in Custody Reporting Act of 2013. No additional systems will be implemented. The State Administering Agencies (SAA) representing all respondents currently have access to this system and report into it quarterly. The SAA staff reports on their progress as grantees to BJA as required under their funding via the Edward Byrne Memorial Justice Assistance Grant (JAG) which is provided by BJA. Respondents are already required to report quarterly for their JAG grants, so no additional systems would be put into place.
4. **Efforts to Identify Duplication:** There are several federal, state, and private collections that partially overlap the proposed collection. Currently, the Bureau of Justice Statistics (BJS) collects annual individual-level data on deaths that occur in prisons and jails. As described in this collection request and in the pending BJS request for the Mortality in Correctional Institutions Survey (OMB Control No. 1121-0249), BJA is working closely with BJS to develop plans and processes to share data across agencies in order to eliminate any unnecessary duplication.

Other national collection systems that capture death data are the NCHS's National Death Index (NDI), the National Violent Death Reporting System (NVDRS), and the Social Security Administration's (SSA) Death Master File (DMF). The NDI is a subcomponent of the National Vital Statistics System, and has total coverage of known deaths in the United States. The NDI is based on death certificates submitted by the states. However, with a few locality-based exceptions, such as Washington, D.C., death certificates do not indicate whether the deceased had been in correctional custody and in turn, the NDI is unable to independently identify persons who were in custody at the time of their death. BJS has had discussions with both NCHS and NAME about the possibility of adding such an identifier to the U.S. Standard Death Certificate, and while states may plan to incorporate such a flag on an ad hoc basis, any proposed national changes have to be approved by the World Health Organization, which proposes and votes on changes on a decennial schedule. Per NCHS, the next opportunity will not present itself for several years.

SSA collects information on deaths through the DMF to remove decedents from the Social Security benefits rolls, but these data do not include either a cause of death (COD) or an indicator of criminal justice involvement.

The Center for Disease Control and Prevention's NVDRS tracks homicides and suicides in 40 states and the District of Columbia. The NVDRS is a state-based surveillance system that triangulates data from death certificates, medical examiner/coroner reports and police reports to create a database on violent deaths. The NVDRS excludes deaths by suicide or homicide in correctional settings in its reporting, but even if these deaths were included, they would not capture the majority of deaths in prisons or jails, since 51% of jail deaths and 88% of prison deaths are due to illness.

Several states require collection of prison, jail, and LE agency deaths (California, Texas, and Washington) that will make BJA's collection easier, most states do not mandate the centralization of custody death data. Finally, in recent years, media outlets including the Washington Post and the Guardian newspapers have begun compiling arrest-related death data based on open source techniques. While these can be used to confirm completeness of the BJA collection, they can by definition only capture death information that is available to the public.

While the Federal Bureau of Investigation has their own SHR dataset, and explain why it does not duplicate BJA's collection, it is far broader and assesses a much larger audience while not addressing the granular data that the DCRA collection will capture.

5. **Methods to Minimize Burden on Small Businesses:** The collection of information does not impact businesses.
6. **Consequence of Less Frequent Data Collection:** The statute requires quarterly collection, so less frequent reporting would place respondents in a state of non-compliance with the law based on the plain reading of the statute.
7. **Special Circumstances for Data Collection:** There are no special circumstances identified at this time.
8. **Consultation Outside the Agency:** The public comment requirement of the Paperwork Reduction Act will be satisfied when the rule is published in the *Federal Register*. Ongoing consultation with the appropriate representatives will occur at least once every three years as required by PRA. The Federal Register Notices were published on 6/9/2018 and 8/29/2018.

148 separate comments were submitted to BJA regarding this collection. Of those comments received; 141 comments requested that BJA implement the collection consistent with a previous Federal Register Notice (FR Doc. 2016-30396) published in 2016 that proposed collecting several additional variables related to deaths in custody. In order to minimize burden on respondents and prioritize key information needed by BJA, BJS, and the Office of the Attorney General, DOJ has decided not to collect the additional variables at this time. 4 comments were to request copies of the data collection forms. These were submitted by 1 Congressional Office and 3 State Administering

Agencies. 2 were questions to clarify which agencies would be responsible for collection of data and both were submitted by State Administering Agencies. Finally, 1 question requested clarification of which electronic data collection system would be used and this was also requested by a State Administering Agency.

- 9. Payment of Gifts to Respondents:** No gifts or remunerations are provided to respondents.
- 10. Confidentiality Assurances:** The system used for submitting information is only accessible to the respondent and the Federal Government. BJA provides no assurance of confidentiality to the respondents.
- 11. Additional Justification for Sensitive Questions:** There are no questions on the application which could be considered by the responding agency to be of a sensitive nature. While social security numbers will be collected, their purpose is to allow for the cross-agency partnering and data analysis between BJA and BJS. BJS will use name, SSN, and dates of birth and death to link death records to the National Death Index (NDI) to obtain a more complete cause of death.
- 12. Estimated of the Burden of Data Collection:** A total of 13,756 hours are expected total across all parties that contribute to the data that is submitted to the government.

DCR-1A entries for State Corrections Agencies are estimated to total 4,640.49 hours annually. This is estimated for 56 State Corrections Incident Reports with an estimated 88 responses. Each response is estimated to take 15 minutes for the agency to complete for a total of. Jail inputs are estimated at 600 responders entering an estimated 2 responses at 45 minutes each totaling approximately 790 hours. Prison inputs are estimated at 50 responders with an estimated 70 responses at 45 minutes each totaling 2,612.25 hours.

State Law Enforcement Agency Incident Reports would take an annual total of 1,900 hours based on an estimate of 56 agencies with 34 responses taking 15 minutes each for a total of 475 hours along with state LEA input of approximately 1,060 respondents providing 88 responses at 15 minutes per response for an estimated 1,425 hours.

The State Quarterly Summary would take approximately 7,216 hours annually across 56 states and territories. As an individual agency, this is estimated to be 4 responses annually taking approximately 20 hours per response to complete. With 56 responding agencies this totals 4,480 hours broken out as 1,696 hours for LEA entries (1,060 entries x 4 quarters x .40 hours), 960 for jail entries (600 entries x 4 quarters x .40 hours) and 80 hours for prison entries (50 entries x 4 quarters x .40 hours).

For purposes of this burden calculation, it is estimated that for each fiscal year there will be a total of 1900 reportable deaths by 1,060 LEAs, 1,053 reportable deaths by 600 jails, and 3,483 reportable deaths by prisons.

- 13. Estimated Costs to Respondents:** The costs to respondents incurred as a result of

participating in this data collection are costs that would be incurred in the normal course of daily operations. Assuming a pay rate approximately equivalent to the GS-12 / 01 level (\$72,168 per year), the estimated agency cost of employee time would be approximately \$34.58 per hour. The total cost is therefore estimated at \$475, 582 ($34.58 * 13,756$).

14. Estimates of Annualized Costs to the Federal Government:

Cost \$126,464 -- Bureau of Justice Statistics
60% GS-13, Statistician (\$60,000)
3% GS-15, Supervisory Statistician (\$4,000)
5% GS-13 Editor (\$5,000)
Other editorial staff (\$5,000)
Front office staff (GS-15, SES, Director) (\$2,000)
Fringe benefits (@28% of salaries -- \$21,280)
Other administrative costs (@30% of salary & fringe \$29,184)

15. Changes in Burden: This new information collection is a program change resulting from agency action pursuant to the Death in Custody Reporting Act of 2013 (H.R. 1447). Previously this collection was housed at BJS and collected according to their MCI guidelines. With the shift to BJA, the data collection will be included in a previously existing system that all required respondents currently use. BJA is currently unable to estimate the effect this collection will have on the burden imposed by BJS through their overlapping collections. In the next round of clearance for this collection, BJA and BJS will coordinate scheduling of their data to minimize burden on the responding agencies. As a quarterly collection versus the annual responses for MCI, BJA hopes to improve the data quality for both agencies. While the collection will be more frequent, the data being reported will simply be broken up over four collections instead of one single entry per responding agency.

16. Publication of Results: This information will not be published by BJA. However, the data will provided to BJS for statistical analysis and BJS will release results that comply with their standards for statistical rigor and disclosure limitations.

17. OMB Expiration Date: OJP will display the OMB Control Number and expiration date on the application/collection form.

18. Exceptions to OMB Form 83-I: There are no exceptions identified in Item 19, Certification for Paperwork Reduction Act Submissions, of OMB Form 83-I.