

SUPPORTING STATEMENT

A. Justification

1. Necessity of the Information Collection

The National Prisoner Statistics Program (NPS) was initiated by the Bureau of the Census in 1926 in response to a Congressional mandate to obtain national measures of inmates in state and federal correctional institutions. The Census Bureau collected state-specific information on persons admitted to and released from prisons and the number present at year-end through the NPS-1 data collections. The Census Bureau added a new component to the NPS series, the NPS-8, to obtain annual counts of inmates executed under civil authority in 1930.

In 1947, the program was transferred to the Federal Bureau of Prisons (BOP), U. S. Department of Justice. BOP expanded NPS-8 to include counts of persons received and removed from under sentence of death as well as one-day counts and characteristics of those under sentence of death.

In 1971, responsibility for the program was assigned to the Law Enforcement Assistance Administration, now the Bureau of Justice Statistics (BJS). Since 1973, the collection and analysis of these data, authorized by The Omnibus Crime Control and Safe Streets Act, as amended (Title 34, United States Code, Section 10132), has been carried out by BJS, with the Census Bureau acting as the collection agent. Under Title 34 of the United States Code, § 10231, BJS collects NPS-8 data for statistical purposes only, does not release data pertaining to specific individuals in the NPS-8, and has in place procedures to guard against disclosure of personally identifiable information. NPS-8 data are maintained under the security provisions outlined in U.S. Department of Justice regulation 28 CFR §22.23, which can be reviewed at: <http://bjs.ojp.usdoj.gov/content/pub/pdf/bjsmpc.pdf>.

NPS-8 covers all persons held in a state or federal correctional facility under sentence of death at any time during the calendar year. The coverage includes capital prisoners transferred from death row to non-correctional institutions such as mental hospitals and prisoners who may have escaped custody. Excluded are capital prisoners who for any reason remain in local correctional institutions outside the jurisdiction of state or federal correctional authorities from whom data are collected for this series. NPS-8 also excludes persons who were convicted and sentenced to death under the Uniform Code of Military Justice.

The death penalty is the most severe sanction a person can receive for committing a crime. Unlike a sentence to life in prison, once carried out, a capital sentence cannot be reversed. Consequently, ensuring fairness in the administration of death sentences is of overriding importance. The annual NPS-8 collection includes information on the laws authorizing the death penalty and characteristics and dispositions of persons who have been sentenced to death. This information is critical to describing the administration of justice in the United States and the use of its most severe sanction.

The NPS-8 fits within the larger BJS portfolio of data collections that inform the nation on the nature and composition of inmates sentenced to state and federal prisons. BJS's National Prisoner Statistics prison population reports (NPS-1, OMB Control Number 1121-0102) provide aggregated annual counts and movements of sentenced inmates, while the National Corrections Reporting Program (NCRP, OMB Control Number 1121-0065) provides individual-level data on offenses, sentence length, and the characteristics of persons admitted to, released from, and in the custody of state prison in most states. While NPS-1 and NCRP describe all prisoners and their characteristics, the NPS-8 allows BJS to examine not only the small subset of inmates who have been sentenced to death, but also to

track changes in the laws that guide who may receive the most punitive sentences.

The Federal Government has collected and published statistics on executions for 90 consecutive years and has provided data on persons under sentence of death since 1953. Critical elements of the NPS-8 collection include state, sex, race and Hispanic origin, dates of birth and sentence, and means of removal from under sentence of death (including date of removal). In recent years, the NPS-8 collection has added information on the criminal history of death row inmates and tracked changes in statutes relating to the death penalty. Other entities¹ maintain rosters of persons under sentence of death or executed, but these rosters typically include only state, sex, and race of inmates. The extensive time-series data combining inmates under sentence of death and state and federal capital statutes, which are collected through the NPS-8, are not available from any other source.

BJS uses data from NPS-8 to produce an annual report describing capital statutes and inmates under sentence of death in each state, the District of Columbia, and the federal system at the end of each calendar year. The Capital Punishment series is designed to provide detailed information about these prisoners (available on the BJS website at <https://www.bjs.gov/index.cfm?ty=tp&tid=18>).

As reported in *Capital Punishment, 2018 – Statistical Tables* (<https://www.bjs.gov/index.cfm?ty=pbdetail&iid=7066>), 34 states and the federal government authorized capital punishment. As of December 31, 2018, a total of 30 states and the Federal Bureau of Prisons held 2,628 prisoners under sentence of death. The number of inmates executed has generally declined since 1999. During 2018, 25 executions were carried out, which was 2 more than in 2017. Those executed during 2018 had been under sentence of death an average of 19 years and 10 months, which was a decrease of 5 months compared to 2017. Of the 25 prisoners executed in 2018, a total of 11 (44%) had been sentenced in 1998 or earlier.

The information collected through the NPS-8 represents a long-standing effort to provide national and state-level statistics about the jurisdictions that authorized the death penalty and the population of inmates under sentence of death, including changes in the movement and characteristics of these prisoners over time. While other professional associations and interest groups have conducted periodic collections of similar data, the NPS-8 is the only ongoing annual collection that uses comparable reporting and standardized definitions across jurisdictions and has made the effort to present consistent data across years and jurisdictions. The burden involved in collecting the NPS-8 data is warranted by the fact that the NPS-8 data are widely used by the components of the U.S. Department of Justice, Congress, journalists, researchers, students, and the individual states as a source of national and comparative data on the population of inmates under sentence of death and the outcomes of those sentences (see examples of this in the *Needs and Uses* section below).

If these data were no longer collected, the data users would be forced to gather information from multiple entities that maintain different population measurement standards and definitions. Legislative, judicial, and executive government decision-makers would lose a source of valuable information for criminal justice planning and policy formulation and researchers would lose a trusted source of trend data on the practices and policies pertaining to capital punishment and the characteristics of the death row population if the NPS-8 data series was discontinued.

¹For example, the NAACP Legal Defense Fund, Inc. (<https://www.naacpldf.org/our-impact/criminal-justice/capital-punishment/>), the Death Penalty Information Center (<http://www.deathpenaltyinfo.org>), or the Death Penalty News & Updates website (<http://people.smu.edu/rhalperi/>).

2. Needs and Uses

The NPS-8 data collection fulfills a wide variety of needs for the criminal justice and the broader research and public policy communities, in the U.S. and internationally.

The death penalty is the most severe sanction that can be imposed by courts, which leads to increased scrutiny to ensure that these sentences are imposed fairly. This is evidenced by the fact that capital cases appear on the U.S. Supreme Court docket each term. BJS's capital punishment data have helped inform the courts regarding the ways in which death sentences are administered. BJS's capital punishment statistics have been cited in opinions issued by Supreme Court justices.²

The ability of courts to efficiently process cases, to bring defendants to trial, and to handle appeals in a timely fashion has become an issue of concern for criminal justice administrators. Capital cases can have a profound impact on court operations. Because of the finality of the death penalty, both the trial and appeals process for capital cases have become specialized relative to other types of court cases. The bifurcated trial (the first stage is held to determine guilt and the second to decide the sentence), defense counsel trained and experienced in the handling of capital cases, and automatic appeals unique to capital cases can absorb the limited resources of not only courts, but also of legislatures and correctional systems. Researchers have used NPS-8 data to conduct comparative analyses of matters such as reversal rates in capital cases,³ legislative policy issues,⁴ and the impact on state financial resources⁵.

The NPS-8 has been a key resource for researchers to track the status of the death penalty, which has become increasingly complicated since 2008. At that time, 37 states and the federal government had capital statutes, while 13 states and the District of Columbia did not authorize the death penalty.⁶ By December 31, 2018, the number of states with valid capital statutes had declined to 34, with several restricting the application of the death penalty.

Following a court's determination that an inmate will be sentenced to death, execution is not the only possible outcome. A number of factors may affect the ultimate disposition of a death sentence. Researchers have used the means of removal variable from NPS-8 to focus on specific outcomes, such as death by means other than execution⁷ or commutation.⁸ Still others use NPS-8 data as a foundation to consider the systemic and cultural issues

²See, for example, *Davila v. Davis*, 137 S.Ct. 2058 (2017) (dissenting Opinion) or *Glossip v. Gross*, 576 U.S. ___ (2015).

³Baumgartner, F. and Lyman, T. (2016). Louisiana Death Sentenced Cases and Their Reversals, 1976-2015. *The Southern University Law Center Journal of Race, Gender, and Poverty*, 7, 58-75.

⁴Widgery, A. (2019). The State of Capital Punishment. National Conference of State Legislatures (retrieved from http://www.ncsl.org/Portals/1/Documents/cj/State-of-Capital-Punishment_v04.pdf, 30 October 2019).

⁵See, for example, McFarland, T. (2016). The Death Penalty vs. Life Incarceration: A Financial Analysis. *Susquehanna University Political Review*, 7(4), 46-87. Johnson, C. and Quigley, W.P. (2019). An Analysis of the Economic Cost of Maintaining a Capital Punishment System in the Pelican State (Retrieved from <http://law.loyno.edu/sites/law.loyno.edu/files/images/Economic%20Cost%20Paper%20LA%205.1.2019.pdf>, 30 October 2019).

⁶See *Capital Punishment, 2008*, NCJ 228662, <https://www.bjs.gov/content/pub/pdf/cp08st.pdf>.

⁷Williams, J.J., and Murry, C.L. (2016). Dying on Death Row (Other Than by Execution). *Corrections Today*, 78(4), 40-44. Heise, M. (2015). Suicide on Death Row. *Journal of Forensic Sciences* 61(6), 1656-1659.

⁸Tartaro, C. and Lester, D. (2016). The Death of Death Row Clemency and the Evolving Politics of Unequal Grace. *Alabama Law Review*, 65(5), 949-987.

surrounding the death penalty⁹ and to study the fairness of the application of the death penalty.¹⁰

Interest in the death penalty is not limited to the United States. The United Nations has a number of committees to monitor issues in the international arena and these committees generate periodic country-specific reports assessing an individual country's record on various human rights matters. These reports rely on NPS-8 data to assess the record of the United States in areas such as human rights.¹¹

Data gathered in the NPS-8 collection allow for historical trend analysis and fulfill a wide variety of needs within BJS and for the broader research and public policy communities.¹² This brief review of some recent uses of NPS-8 data demonstrates the importance of these data to the national debate on capital punishment.

In addition, NPS-8 data are accessed by a wide-spectrum of users via public use files, reports and statistics available from the BJS website, and information requests made directly to BJS by phone and e-mail.

Students, teachers, advocacy groups, attorneys, and employees of all branches and all levels of government use NPS-8 as a source of national and comparative data on capital punishment. The number of users accessing or sending queries through the BJS website for capital punishment statistics has made the NPS-8 one of the most requested BJS data collections. If these data were no longer collected, information seekers would no longer have the benefit of adequate historical and current data on the subject.

3. Use of Information Technology

BJS first implemented a web-based data collection for inmate records (NPS-8/8A) during the 2008 data collection cycle. A similar web-based reporting option for death penalty laws (NPS-8B/8C) was implemented during the 2009 data collection cycle (see *Estimate of Respondent Burden* section below for a more detailed description of the forms used for NPS-8).

The web-based data collection tools for these forms were then revamped for the 2011 data collection cycle. The current web interface allows respondents reporting on inmates under sentence of death (NPS-8A) to access a form for each individual who was reported as being under sentence of death on December 31 of the previous reference year. Respondents can revise data to each online form, as necessary. Respondents can also submit a new record for any inmates newly received under sentence of death since the previous year's

9McLeod, M.S. (2016). Does the death penalty require death row? The harm of legislative silence. *Ohio State Law Journal* 77(3), 525-592. LaChance, D. (2016). *Executing Freedom: The Cultural Life of Capital Punishment in the United States*. Chicago, IL: University of Chicago Press.

10Beckett, K. and Evans, H. (2016). Race, Death, and Justice: Capital Sentencing in Washington State, 1981-2014. *Columbia Journal of Race and Law*, 6(2), 77-114. Malcom, J.G. (2018). Capital Punishment: A One-Sided Contribution to a Complex Debate. *Federalist Society Review*, 19, 202-205.

11International Covenant on Civil and Political Rights. (2012). Periodic Report of the United States of America to the U.N. Committee on Human Rights.

(<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/429/66/PDF/G1242966.pdf>) . United Nations Office on Drugs and Crime (2019). Tenth survey on capital punishment and the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, covering the period 2014-2018 (https://www.unodc.org/documents/justice-and-prison-reform/Reports/Death_Penalty_2020/Questionnaire_cp_EN.pdf)

12See, for example, Dieter, R.C. (2015). The future of the death penalty in the United States. *University of Richmond Law Review* 49(3), 921-938. Tabak, R.J. (2016). Capital punishment. In M.E. Wojcik (Ed.), *The State of Criminal Justice 2016* (pp. 237-317). American Bar Association. Baker, D.V. (2016). *Women and Capital Punishment in the United States: An Analytical History*. Jefferson, NC: McFarland and Company.

submission (NPS-8), as needed. Appendix 1 shows screenshots from the 2019 electronic questionnaires.

A separate electronic web tool was designed for respondents reporting changes to the death penalty laws in their jurisdictions (NPS-8B/8C). The web-based interface allows respondents to fill out the forms as well as submit supplemental materials documenting the content of capital statutes and legislative changes to those statutes. Appendix 2 shows screenshots from the 2019 electronic questionnaires.

Percent of Respondents Who Submitted Electronically

	2016	2017	2018	2019
NPS-8/8A Respondents	98%	95%	99%	100%
NPS-8B/8C Respondents	73%	88%	73%	100%

Percent of Forms Submitted Electronically

	2016	2017	2018	2019
NPS-8 Forms	87%	100%	100%	100%
NPS-8A Forms	95%	95%	99%	100%
NPS-8B Forms	50%	82%	71%	100%
NPS-8C Forms	83%	94%	74%	100%

The web-based data collection tools for both the inmate records (NPS-8/8A) and the status of death penalty laws (NPS-8B/8C) are designed to promote efficiency and reduce the reporting burden. Skip patterns are built in; as such, a respondent’s answer to a previous question is used to determine which subsequent questions are applicable. BJS and the Census Bureau can make revisions based on input from users regarding alternative methods for submitting data electronically, which may be more suitable for the capabilities and capacities of individual respondents (e.g. uploading of extracted data in spreadsheets).

4. Efforts to Identify Duplication

No other governmental organization collects nationwide comprehensive information on inmates under sentence of death. Information such as statutory, demographic, and criminal history data collected from the NPS-8, NPS-8A, NPS-8B, and NPS-8C is not attainable from any other single data source. The Death Penalty Information Center (DPIC) maintains a searchable database with individual-level information on inmates executed between 1977 and 2020 (<http://www.deathpenaltyinfo.org/views-executions>). Data elements included in the DPIC database consist of execution date, state and county of conviction; offender age, sex, and race; sex and race of victims; method of execution; and other case factors such as whether the inmate waived appeals, was a foreign national, or was a juvenile at the time of the capital offense. Much of the other information available from this website (such as characteristics of death row inmates, time on death row, state death penalty laws, etc.) cites the source as BJS’s NPS-8 data and reports. BJS’s data collection represents official statistics reported by the state and federal governmental agencies responsible for overseeing death row inmates and capital cases in each jurisdiction. Unlike the NPS-8 data, DPIC data on persons under sentence of death is not a database of individual-level records that can be used for independent analysis.

BJS also conducted a search of the National Archives of Criminal Justice Data (NACJD) to identify other data collections with information on inmates under sentence of death and capital statutes. NACJD, which is sponsored by the research and grant-making bureaus in the Office of Justice Programs (BJS, the National Institute of Justice, the Office of Juvenile

Justice and Delinquency Prevention, and the Bureau of Justice Assistance), has a stated mission “to facilitate research in criminal justice and criminology, through the preservation, enhancement, and sharing of computerized data resources; through the production of original research based on archived data; and through specialized training workshops in quantitative analysis of crime and justice data.” NACJD maintains nearly 3,000 publicly-available criminal justice-related data collections and citations for more than 13,000 books, articles, conference proceedings, and other publications derived from these data collections. The search revealed no duplication with NPS-8. The information and comparisons available to users of the NPS-8 data series are unique to this project.

5. Impact on Small Businesses

N/A. This information collection does not involve small businesses or other small entities. The respondents are state and federal agencies (Departments of Correction (DOC) personnel and Attorneys General staff).

6. Consequences of Less Frequent Collection

The NPS-8, NPS-8A, NPS-8B, and NPS-8C are completed once a year. Imposition of a death sentence is a rare event. In 2006, only 2% of sentences imposed on felons convicted in state courts for murder were death sentences.¹³ The 2,628 inmates under sentence of death on December 31, 2018, represented only 0.22% of all sentenced inmates in jurisdictions with a valid capital statute at that time. Collecting data annually allows BJS and others to track annual changes in the capital statutes, which ultimately determine which offenders can be tried and sentenced to death.

Furthermore, the data maintained through the NPS-8 collection records the flow of inmates in and out of death penalty status annually since 1973. Recent events make annual data collection more critical than ever. Between 2007 and 2020, capital statutes in 10 states have been either repealed by the legislature or invalidated (in part or in their entirety) by court rulings. In addition, the recent COVID-19 outbreaks have impacted the death row population by delaying court proceedings and executions and causing deaths due to infection. Annual data collection helps to document and explain changes in the population of inmates under sentence of death, while a less frequent collection would obscure the annual impact of such changes.

Reducing the frequency of or suspending data collection would introduce the first break in series since the inception of the NPS-8 in 1930. Gaps in the data series would adversely impact users’ ability to measure changes in the population of inmates under sentence of death and to track the decline that began in 2001.

7. Special Circumstances Influencing Collection

N/A. The NPS-8 is a voluntary data collection and imposes no penalty for those who choose not to participate. The NPS-8 collection is consistent with the public protection guidelines as specified in 5 CFR 1320.6.

8. Consultations Outside the Agency

¹³See *Felony Sentences in State Courts, 2006 – Statistical Tables*, table 4.4.

The research under this clearance is consistent with the guidelines for 5 CFR 1320.6. The 60-day and 30-day notices for public commentary have been published in the Federal Register, on October 15, 2020, at 85 FR 65427 and on December 1, 2020, at 85 FR 77250-77251, respectively. BJS advertised these notices on its webpage and social media feeds. Following the publication of the 60-day notice, BJS received three requests for the NPS-8 questionnaires. BJS also received substantive comments from the legal director of the Criminal Justice Legal Foundation. The commenter suggested the addition of multiple items related to the capital offense and criminal history of inmates who are sentenced to death.

The first suggestion involves adding to the information collected on capital offense the specific elements of the crime which made the offense(s) eligible for the death penalty (aggravating factors). The commenter would include the specific statutory citation(s) for each of these elements that were found to be present in the case of each person sentenced to death. The commenter states that “[t]hese are the circumstances chosen by the legislative authority to distinguish those cases where the death penalty might be appropriate from those where it cannot even be considered.” BJS recognizes that this information could be a useful element in analyses of who gets the death penalty; however the ability of the respondents to provide such information is questionable and poses unduly high cost and burden.

BJS collects data on individuals under sentence of death from the staff at state DOCs and the Federal BOP. Based on our extensive experience collecting data from these respondents, BJS believes that the DOCs would have difficulty reporting the information as detailed in the comment.

The commenter states that this information would enable researchers to determine “whether punishment is meted out fairly and proportionately to the offense.” While this information would be useful in assessing the consistency of sentencing, it would not be sufficient by itself. In assessing the fairness of sentencing, researchers would also need access to the same information on cases that were eligible for the capital sentencing but for which the death penalty was not pursued. Furthermore, without similar information on persons for whom a jury opted for a lesser sentence, the utility of the information would be severely limited. This information is outside the scope of this data collection and is not currently collected in any of BJS’s data collections.

Finally, if BJS were to include aggravating factors in the data collection, consideration should also be given to collecting data on mitigating factors since the final judgment by a jury rests on the aggravating factors outweighing the mitigating factors. While some mitigating factors are specified by law, many statutes allow for an open-ended list of factors that may be considered in mitigation.

The second suggestion submitted by the commenter involves expanding collection of information on prior felony convictions to include all prior felony convictions (not just prior homicide convictions as is currently collected) and to include the actual statutes under which death row inmates had been previously convicted.

BJS acknowledges the potential utility of this information to users of this data collection; however, we have a number of concerns regarding this suggestion. As discussed in regard to collection of aggravating circumstances, BJS has doubts that the DOCs would be able to report the statutory information.

The commenter states that “[t]here are not that many admissions to death row in a state each year,” suggesting that the burden for collecting this information would be minimal. In spite of this assertion, the front-end effort of collecting information would have to be done for all inmates currently under sentence of death. For maximum utility of the items we

would ideally collect this information not just for the inmates currently under sentence of death, but also for those inmates who were previously sentenced and have been subsequently removed. Each of these components would substantially increase respondent burden, especially for states with larger death row current and/or historical death row populations.

In considering whether to make this suggested change to felony convictions information already collected, BJS should also consider the impact of the following issues on burden, data collection cost, and data quality. First, given the potentially extensive criminal histories of inmates, the newly-constructed item would have to account for multiple prior offenses. Secondly, BJS should consider ability, willingness, and added burden to the respondents of providing criminal history information for convictions outside of their own state.

BJS will engage with our DOC respondents to assess the feasibility of providing more detailed information regarding prior felony convictions.

BJS and Census Bureau staffs maintain frequent contact with data providers and data users in an effort to improve data collection, reporting procedures, data analysis, and presentation. Respondents are queried regularly to ascertain the presence of issues that may need to be addressed.

In the spring of 2019, BJS consulted eight current NPS-8 data respondents on such issues as instructions for completion of questionnaires and burden estimates, format and content of the questions, data collection methods, and design of data display.

9. Payment other than Remuneration to Contractors

N/A. No payment other than remuneration is provided to contractors.

10. Assurance of Confidentiality

Respondents are advised that data are collected according to the provisions of the Title 34 USC, Sections 10134 and 10231, which establish the allowable use of data collected by BJS. Under these sections, all information which can identify individuals is held confidential by BJS and “shall be used only for statistical or research purposes, and shall be gathered in a manner that precludes their use for law enforcement or any purpose relating to a particular individual other than statistical or research purposes” (Section 10134). As the collection agent for BJS, the Census Bureau collects these data with assurances pursuant to these sections.

All names and personal identifiers are removed from the data files prior to their submission to the NACJD, which serves as the public repository for all BJS datasets. Moreover, as required under these sections, any BJS report using these data will only be statistical in nature and will not identify individual subjects. Personal information provided by respondents regarding inmates under sentence of death is kept confidential and the identity of inmates is neither published nor released. NPS-8 data are maintained under the security provisions outlined in U.S. Department of Justice regulation 28 CFR §22.23, which can be reviewed at: <http://bjs.ojp.usdoj.gov/content/pub/pdf/bjsmpc.pdf>.

11. Justification for Sensitive Questions

N/A. There are no questions of a sensitive nature included on the NPS-8, 8A, 8B, or 8C.

12. Estimate of Respondent Burden

The NPS-8 and NPS-8A forms are sent to 35 respondents in the departments of correction in the 34 states with death penalty statutes and the Federal Bureau of Prisons (see Appendices 3 and 4). The NPS-8 is completed for each person who is reported as newly received under sentence of death by the DOCs or BOP during the reference year. The average reporting time for the NPS-8 form is estimated to be about 30 minutes per form. The NPS-8A is used to add or correct information for a person who was on death row at the end of the previous reference year. The average reporting time for the NPS-8A is estimated to be about 30 minutes per form.

One NPS-8B (Appendix 5) is completed by a respondent in the Office of the Attorney General in each state that had no death penalty statute as of December 31 of the previous reference year and the U.S. Attorney for the District of Columbia. One NPS-8C (Appendix 6) is completed by a respondent in BOP and the Office of the Attorney General of each state with a death penalty statute in force as of December 31 of the previous reference year. In total, 52 death penalty statute forms are completed per reference year: one for each of the 50 states, the District of Columbia, and the BOP, each requiring 15 minutes.

The 35 respondents for the NPS-8/8A and the 52 respondents for the NPS-8B/8C result in a total of 87 respondents for this data collection.

During the 2019 data collection, 35 NPS-8 forms, 2,625 NPS-8A forms, and 52 capital punishment statute forms (NPS-8B/8C) were completed by respondents. This totaled 1,343 burden hours. Assuming the response burden remains about the same, the burden in future years is estimated to be 1,343 hours.

NPS-8 2019 Responses

	Number of Respondents	Average Number of Responses	Estimated Response Burden	Burden Hours
NPS-8A	35	2,625	30 min	1,312.5
NPS-8	35	35	30 min	17.5
NPS-8B, NPS-8C	<u>52</u>	<u>52</u>	15 min	<u>13</u>
Total	87	2,712		1,343

Respondents incur costs associated with their time to respond to the NPS-8. BJS estimates an average salary of \$32 per hour for each NPS-8/8A respondent (based on Bureau of Labor Statistics averages for statisticians employed by state governments) and an average salary of \$43 per hour for each NPS-8B/8C respondent (based on Bureau of Labor Statistics averages for attorneys employed by state governments). The estimated total annual cost for all 87 respondents of the NPS-8 collection is \$43,119.

13. Costs for reporting and recordkeeping

N/A. No costs other than the cost of the hour burden exist for this data collection.

14. Cost to the Federal Government

The collection, processing, and dissemination of capital punishment data in Fiscal Year 2020 cost approximately \$414,900. The cost included the following:

Estimated costs for the NPS-8 for FY 2020

BJS costs	
Staff salaries	
GS-13 Statistician (25%)	\$33,400
GS-15 Supervisory Statistician (2%)	\$3,200
Fringe benefits (28% of salaries)	\$10,200
Subtotal: Salary & fringe	\$46,800
Other administrative costs of salary & fringe (30%)	\$14,000
Subtotal: BJS costs	\$60,800
Census Bureau costs (Collection agent)	
Census costs (salaries, fringe benefits, forms design, printing, mailout, fax, email and phone follow-up, programming, web maintenance, data collection, table production, and Census overhead)	\$354,100
Total estimated costs	\$414,900

15. Reason for Change in Burden

Fluctuations in the flow and the population of inmates under sentence of death from one year to the next will result in corresponding changes in the annual response burden.

The NPS-8 data collection is based primarily on individuals under sentence of death. The number of death-row admissions has generally been declining since 1999: the cohort of 38 admitted to prisons under sentence of death during 2018 was one of the smallest number since 1973, when 44 persons were put on death row. The number of persons removed from death row since 2001 has outpaced the number of admissions, resulting in a continuous decline in the number of persons under sentence of death. On December 31, 2018, 2,628 persons were under sentence of death, a decrease of 75 compared to year-end 2017. This was the eighteenth consecutive year that the number of prisoners under sentence of death declined. Between 2007 and 2020, capital statutes in 10 states have been either repealed by the legislature or invalidated (in part or in their entirety) by court rulings. All of these factors have contributed to a decrease in the number of NPS-8 and NPS-8A forms completed each year and a corresponding decrease in the total response burden (from 1,389 burden hours in the current OMB inventory for NPS-8 to an estimated 1,343 requested burden hours.).

16. Project Schedule and Publication Plans

The project schedule for the 2019 reference year was delayed for multiple reasons. There were delays in submitting the materials to OMB due to prioritization of efforts at BJS to address critical tasks. In addition, state and federal offices experienced staff and resource obstacles related to COVID-19 in spring 2020. As a result, the 2019 data collection was not launched until mid-March 2020, about two and a half months later than normal. Despite the delay in fielding the 2019 collection, data collection was completed in early July and preliminary data files were delivered to BJS in late August, only about a month behind our

target schedule (outlined below). BJS will release *Capital Punishment, 2019* in the first quarter of calendar year 2021.

Sample Project Schedule (using 2020 collection as an example)

Task	Start	End
Data collection	February 2021*	May 2021
Notification of impending due dates, nonresponse follow-up	February 2021*	May 2021
Data editing, verification, final callbacks	February 2021*	June 2021
Preliminary data file delivered to BJS, BJS review of data	June 2021	July 2021
Final data file delivery and BJS analysis for report	July 2021	August 2021
Report writing and production (<i>Capital Punishment in the United States</i>)	July 2021	November 2021
Press release and final reports released	December 2021	December 2021

*Example is for 2020 assuming OMB approves a 2020 collection for NPS-8. In subsequent years, these tasks would start in January. For more detail on the project schedule, see Part B of the Supporting Statement.

Information Dissemination from the Capital Punishment data

BJS has typically disseminated an annual report of statistical tables in the fourth quarter of the calendar year. The statistical tables consist of a summary of current state and federal capital statutes as well as a summary of the statutory changes that became effective in the reference year. Tables show annual movement of the population of inmates under sentence of death, characteristics of persons under sentence of death at year-end, and information about executions. Also included are summary tables showing death sentences handed down by year of sentence and the outcomes of those sentences.

BJS released *Capital Punishment, 2018 – Statistical Tables* in September 2020. To address concerns regarding the abridged content of recent capital punishment reports, BJS included tables in the 2018 report that have not been published since 2013. While BJS has fallen behind in releasing capital punishment data in recent years, BJS is committed to returning to releasing full reports in the fourth quarter of the year following the reference period. While actual publication dates can change at times due to competing BJS priorities, including Congressionally mandated reports, BJS has taken several steps to minimize the impact of such competing demands. BJS has added a task to the Interagency Agreement (IAA) to have the Census Bureau conduct the initial analyses on the data and produce a standard set of tables to be delivered to BJS. As part of this work, the Census Bureau is re-designing the inmate database behind the electronic data collection tool. The redesign will streamline the tasks of data collection, editing, and production of the final data file and publication tables. In addition, BJS recently hired a permanent chief for the Corrections Unit, a position which has been filled by a series of acting unit chiefs for the last five years. The new unit chief will make it a priority to coordinate the production of unit reports with the publications unit. Assuming BJS is able to minimize the delays experienced when fielding the 2019 collection, these actions will assist BJS in restoring the previously established release schedule for the 2020 collection.

BJS anticipates producing 3 reports from this collection starting with reference year 2020:

- *Capital Punishment, 2020* (report to be released by year-end 2021)
- *Capital Punishment, 2021* (report to be released by year-end 2022)
- *Capital Punishment, 2022* (report to be released by year-end 2023)

In addition, BJS and the Census Bureau have been investigating the use of interactive graphics to be placed on the BJS website. These graphics would provide the public with an

interface to generate trend statistics (e.g. executions for 1977-2019) for multiple states in a user-friendly easy-to-use, compact format.

BJS has typically archived the NPS-8 data annually at the NACJD (<https://www.icpsr.umich.edu/icpsrweb/NACJD/series/10>). NACJD has also experienced a drastic reduction in staffing over the past 3 years, so fewer datasets have been processed in a timely manner. BJS has been actively working with NACJD to eliminate delays. BJS is developing a plan to communicate anticipated publication schedules and priorities to NACJD so that NACJD can release public use files in a timely manner. To allow maximum time for public use files to be prepared by NACJD staff, BJS will submit data to NACJD upon completion of a draft of the annual report. The 2017 and 2018 public use files were released in November 2020. With improved communication and planning, BJS expects that NACJD will release public use files at the same time the annual reports are released.

17. Request to Not Display Expiration Date

N/A. There are no exceptions to the certification.

18. Exceptions to Certification

There are no exceptions to the certification.