

SUPPORTING STATEMENT

National Prisoner Statistics program – Coronavirus Pandemic survey (NPS-CPan)

The Bureau of Justice Statistics (BJS) requests clearance from the Office of Management and Budget (OMB) to field a one-time survey of state departments of corrections (DOCs) and the federal Bureau of Prisons (BOP) on the effects of the coronavirus (refers to both the disease COVID-19 and the virus causing the disease, *severe acute respiratory syndrome, coronavirus 2 (SARS-CoV-2)*) in the prison setting. As the coronavirus began to affect the United States in early 2020, public health experts identified prisons as potential outbreak hotspots due to the communal and often crowded nature of these facilities, as well as the demographic and health profile of prisoners. While some information was collected and disseminated during the pandemic by the state DOCs and BOP, and by not-for-profit and academic organizations, these data are not standardized across state systems, making comparisons difficult. Further, researchers and other members of the public have specifically called for information on age, race, and Hispanic origin of prisoners affected by the coronavirus.

BJS proposes to collect a retrospective picture of the pandemic covering a 1-year period (March 1, 2020 – February 28, 2021) that standardizes the measures of interest, describes the policy and operational changes enacted to mitigate the pandemic, and provides an understanding not only of the number of positive coronavirus cases and deaths among prisoners and staff, but also changes to the size and composition of the overall prison population (see Appendix A for survey instrument). This survey will be fielded as a one-time supplement to the National Prisoner Statistics program survey (NPS-1B; OMB control number 1121-0102), but will be sent to respondents approximately four months after the NPS-1B collection and will cover a different reference period. For the NPS-CPan collection, BJS requests a one-year clearance period, and the establishment of a new OMB control number.

A. Justification

1. Necessity of Information Collection

Before coronavirus was documented in the U.S., public health experts identified state and federal prisons as potential outbreak hotspots based on the spread of the disease in correctional facilities in Asia, South America, and Europe. By virtue of their design, prisons in the U.S. offer little opportunity for social distancing and the majority of states prisons are operating near full capacity, or are rated as being overcrowded. In 2019, 7 states and the federal Bureau of Prisons (BOP) exceeded the maximum capacity of their facilities, and an additional 19 states were operating at between 90% and 99% capacity¹.

In the general population, the coronavirus has disproportionately affected persons who are older, male, non-white, and have preexisting medical conditions². Persons with these risk

¹ Carson EA. 2020. *Prisoners in 2019*. BJS Web NCJ 255115.

² Centers for Disease Control and Prevention webpage “Coronavirus Disease (COVID-19) People at Increase Risk”,

factors are more likely to develop serious cases if infected, and more likely to die of coronavirus. The characteristics of state and federal prisoners for these variables of interest are as follows: 92% of prisoners in 2019 were male, almost 70% of persons sentenced to more than one year under state or federal jurisdiction in 2019 were non-white³, almost 30% of prisoners were obese⁴ and studies have shown that prisoners have higher rates of chronic disease than the general U.S. population (43% of prisoners reported a chronic condition in 2012, compared to 31% of non-incarcerated persons)⁵. This would suggest that state and federal prisoners are at a higher risk for serious cases of coronavirus.

Throughout 2020, the coronavirus has significantly impacted all correctional operations in the U.S., but in different ways. BJS found that the number of persons incarcerated in local jails on June 30, 2020 had declined dramatically from the number in custody one year earlier. In early 2020, DOC directors and governors, judges, and legislatures in multiple states declared that they would try to trim the prison populations, allowing offenders to be released early into home confinement or other community correctional programs, or slowing the number of new admissions and revocations⁶. Many states and the BOP, however, used a case-by-case approach to determine which prisoners were eligible for expedited releases, slowing the process down considerably. States such as New Jersey, which chose to release whole groups of prisoners, used the legislative process to do so, meaning that there was a long lag period between the proposal of population reduction, and an actual decrease after the legislation became law. In general, it appears that prison populations across states and the BOP are down on average by 10%-15% from their levels in January 2020, but recent statistics posted by the states suggest this decline is slowing.

State DOCs, the BOP, and academic and not-for-profit advocacy organizations have posted counts of positive coronavirus tests and deaths among prisoners and prison staff to the web on a daily or weekly basis, but comparability across prison systems is limited due to differences in how DOCs define which facilities are included, whether they use serology or viral tests, whether they count unique individuals or total positive tests, and how they determine that a death is caused by coronavirus (see Part A, section 4 for these information websites). As the federal government's criminal justice statistical agency, BJS is in the best position to conduct a national survey with clear counting rules and standardized definitions, allowing for comparisons across states.

Researchers and the media have repeatedly stressed that both the general and imprisoned population data provide limited information on the breakdown of coronavirus cases and deaths by race and Hispanic origin. BJS's survey will fill that gap in knowledge by requesting that DOCs

<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/index.html>, accessed August 1, 2020.

³ Carson EA. 2020. *Prisoners in 2019*. BJS Web NCJ 255115.

⁴ Maruschak LM, Berzofsky M. 2015. *Medical problems of state and federal prisons and jail inmates, 2011-2012*. BJS Web NCJ 248491.

⁵ Maruschak LM, Berzofsky M. 2015. *Medical problems of state and federal prisons and jail inmates, 2011-2012*. BJS Web NCJ 248491.

⁶ Prison Policy Initiative, <https://www.prisonpolicy.org/virus/virusresponse.html#state>, accessed 12/30/2020.

and the BOP provide aggregate counts of prisoners testing positive for coronavirus, and those that died because of the disease, disaggregated by race and Hispanic origin. An age breakdown of these counts will also be requested. Importantly, the NPS-CPan attempts to look at the effects of the pandemic on the prison systems themselves. These agencies have had to contend with the policy and practical implications of keeping prisoners and staff safe, including expedited release of some offenders, promotion of social distancing, quarantine of persons with coronavirus symptoms where possible, and shortages in staffing as correctional officers were absent due to illness. Additionally, DOCs have experienced large financial burdens due to testing and increased health care costs.

BJs proposes to administer the National Prisoner Statistics - Coronavirus Pandemic (NPS-CPan) survey over two months, from mid-April, 2021 to mid-June, 2021. This collection will have a reference period of March 1, 2020 through February 28, 2021, and will collect information on changes in population, admissions, and releases throughout the year, as well as counts and demographic distributions of prisoners testing positive for, and dying of, coronavirus. Questions also allow DOCs and the BOP to describe policies and practices on expedited prisoner releases because of the coronavirus pandemic, transmission mitigation techniques, and vaccination prioritization.

The Omnibus Crime Control and Safe Street Act of 1968 (see Appendix B), as amended (34 U.S.C. § 10132) authorizes BJS to compile data on the movement and characteristics of state and federal prison populations. Under Title 34 of the United States Code, § 10231, BJS will collect NPS-CPan data for statistical purposes only, does not release data pertaining to specific individuals, and has in place procedures to guard against disclosure of personally identifiable information. NPS-CPan data will be 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>.

2. Needs and Uses

BJs will conduct the NPS-CPan to provide information to the public on the effects of coronavirus in state and federal prisons. By providing DOCs and the BOP with clear and well-defined population parameters and concept definitions by which to count coronavirus tests and deaths, BJS intends for the survey to provide standardized data that can be compared across states. The NPS-CPan data will be archived for public use upon publication of a report by BJS. BJS will ask DOC and BOP respondents to limit their reporting to prisoners held in state- or federally operated and private prison facilities, to include secure prison campuses, boot camps, halfway houses, treatment centers, and medical facilities. BJS will instruct respondents to exclude prisoners under the legal authority of state or federal governments, but serving time in the custody of local jails, since these individuals will be counted in BJS's Annual Survey of Jails (OMB control number 1121-0094).

BJs is cognizant that DOCs and the BOP have received numerous requests for similar information over the past few months. Throughout the design of NPS-CPan, BJS concentrated on two goals: (1) collecting high-quality, comparable data on topics concerning the effects of the coronavirus in state and federal prison systems, and (2) placing the least burden possible on respondents so that the survey could achieve a 100% response rate. While BJS understands that researchers and other users seek more detailed information on preexisting conditions among prisoners who were hospitalized or died, demographic characteristics of staff who died, or the age or racial distribution of prisoners who were

given antibody tests for the coronavirus, each of these pieces of information would require significant additional response time and the involvement of the DOC medical staff. This would have deleterious effects on item and unit response rates.

The following table lists each question BJS proposes to ask on NPS-CPan, provides a justification for requesting the information, identifies any known issues with the concept, and explains the statistics BJS plans to publish based on the responses. The table also summarizes the results of the cognitive tests, to demonstrate that DOCs will be able to submit these data to BJS. The NPS-CPan survey instrument is in Appendix A.

Table 1. Justifications for questions included on the National Prisoner Statistics program - Coronavirus Pandemic (NPS-CPan) data collection

Question 1 - Monthly counts of prison custody population and total admissions from January 1, 2020 to February 28, 2021
<i>Justification for asking this question</i>
States and the BOP have publicly stated a willingness to reduce prison populations if possible to limit transmission of the coronavirus. This question will allow BJS to examine the change in populations on a monthly level to determine both the magnitude and timing of any decreases.
<i>Question design considerations and/or limitations</i>
<p>Prison populations decrease through a reduction in the number of admissions, an increase in the number of releases (generally by reducing the amount of time a person serves in prison), or both. BJS is interested in documenting if a jurisdiction’s prison population was reduced before and during the coronavirus pandemic, how this reduction took place (admissions or releases), and the timing of the change relative to other jurisdictions.</p> <p>BJS requests a monthly accounting starting in January 2020 because it will serve as a baseline. During our cognitive test, BJS discovered that state governments began discussing possibly reducing prison populations in late February 2020 in response to the coronavirus, and officially put some of these proposals into effect in March 2020. However, as was demonstrated in 2011, in the months leading up to the actual enactment of California’s Public Safety Realignment, the California Department of Corrections and Rehabilitation (CDCR) significantly reduced its prison population in preparation for the new law⁷. Prior to formal adoption of expedited release policies due to the coronavirus, some DOCs may have increased releases in February as states prepared to react to the coronavirus. In addition, many state and the federal court systems drastically curtailed legal proceedings during the spring and summer of 2020, reducing the number of admissions to prison.</p>
<i>Proposed statistics obtained from this question</i>
<ul style="list-style-type: none"> • Monthly custody population counts at the national, state total, and federal levels • Monthly admission counts at the national, state total, and federal levels • Monthly percent change in prison population size

⁷ Public Policy Institute of California website, “How California Reduced Its Prison Population”, <https://www.ppic.org/blog/how-california-reduced-its-prison-population/>, accessed August 5, 2020.

<ul style="list-style-type: none"> • Monthly percent change in number of admissions • Number of monthly releases (obtained by taking the difference of Month 2 custody population and (Month 1 custody population + Admissions)) • Monthly percent change in number of releases
<i>Evidence that DOCs can answer this question</i>
Custody population counts and admission totals per month are standard metrics created for tracking purposes by all DOCs. All seven states that took part in the cognitive test of the instrument concurred that provision of these data would require no additional analysis.
Question 2 - Total releases between January 1, 2020 and February 28, 2021, and the total number of releases that were expedited due to the coronavirus
<i>Justification for asking this question</i>
To quantify the proportion of all releases over the 14-month period that were a direct result of state or federal policies to reduce the prison population because of the coronavirus. Obtaining the total number of all releases will serve as a check on the calculated number of monthly releases collected in Question 1.
<i>Question design considerations and/or limitations</i>
BJS does not feel that a monthly accounting of expedited releases would justify the additional burden that would be placed on respondents. In the cognitive test, all states responded that they could report the combined total.
<i>Proposed statistics obtained from this question</i>
<ul style="list-style-type: none"> • Total number of expedited releases at the national, state total, and federal levels • Percent of total prison releases that were expedited because of the coronavirus
<i>Evidence that DOCs can answer this question</i>
<p>States said that they would have no issues reporting total releases, although the respondent from the combined prison/jail state asked whether they should include unsentenced prisoners. BJS added this clarification to the form after the cognitive test. Respondents from states with private prisons said they would have no issues including releases from those facilities in their counts.</p> <p>Two of the respondents reported that their states had not enacted a policy of expedited releases. The remaining respondents could either tell BJS the count of persons released early because of the coronavirus, or wanted more clarification in what constituted an expedited release. BJS added clarifying language to the question after the cognitive test to indicate prisoners should be counted before their scheduled or anticipated release date, or before their eligibility date for parole/probation, even it was only a day ahead of those landmarks. BJS asked for unsentenced prisoners to be counted.</p>
Question 3 - Checkbox of criteria used by the DOC to make decisions on expedited releases
<i>Justification for asking this question</i>
This question will allow for the public to compare criteria used in expedited release decisions across states and the federal BOP, and relate this to the counts obtained in Question 2.
<i>Question design considerations and/or limitations</i>
BJS reviewed published state and federal policies for expedited release and included the

most common criteria in the checkbox. It is important to note that these criteria may have changed over time, and does not represent a complete list of criteria used by DOCs to identify persons eligible for expedited release.

Proposed statistics obtained from this question

- Count of states employing specific criteria (age, time left on sentence, etc.) in expedited release decisions

Evidence that DOCs can answer this question

All respondents said that they understood all of the criteria and could answer each, but as in question 2, two repeated that their state did not have an expedited release policy.

One respondent told BJS that we needed to clarify who made the decisions for early release: in the initial version, we asked “...what were the criteria used by your state...”. In some states, local judges, not the governor, make release decisions. BJS modified the question to read “...what were the criteria used by authorities in your state...” to allow for this interstate variation.

Question 4 - Between March 1, 2020 and February 28, 2021, the total number of viral coronavirus tests given to prisoners in custody, the total number of viral coronavirus positive tests, the number of unique prisoners to have at least one positive viral coronavirus test, and the sex and race/Hispanic origin distribution of unique prisoners to have at least one positive viral coronavirus test

Justification for asking this question

Testing for the coronavirus, and the number of both overall positive tests and the number of unique prisoners testing positive are primary measurements for how the coronavirus has affected prison systems. This question will contribute to the understanding of the burden testing and having the disease placed on DOCs, and the demographic characteristics of those prisoners who tested positive, particularly the race/Hispanic origin distribution.

Question design considerations and/or limitations

Viral testing for the coronavirus is a costly endeavor, in terms of money and staff time, which was not foreseen by most DOCs when they calculated their 2020 budgets and staffing needs. By collecting the total number of tests performed, BJS can estimate the monetary cost to DOCs and the BOP for testing, based on the average cost of viral tests.

It is important to note that testing was only sporadically available to states and DOCs throughout the spring of 2020, so BJS does not expect that a monthly count of tests would be informative. Indeed, a monthly measure would only show access to testing kits, which was (and remains) dependent on a number of factors often out of the control of the DOC. The first documented positive test of a prisoner was in mid-March 2020, so BJS has adjusted the reference period to reflect tests performed between March 2020 and February 2021.

Viral testing is considered the gold standard for determining whether a person has the coronavirus. For that reason, BJS intends to separate counts of these tests from those of antibody or serology tests if possible. BJS also recognizes that prisoners may have multiple tests, both positive and negative. This question therefore attempts to count the number of unique individuals who tested positive at least once, and then ask for demographic information on those prisoners. As previously stated, the race and Hispanic origin of prisoners who test positive is of particular interest to the public, and has not been widely measured or reported.

In its initial version of the NPS-CPan instrument, BJS also requested the age distribution of unique prisoners testing positive for coronavirus. During review, BJS decided that obtaining this information could prove especially burdensome for respondents, and removed the question in the interest of reducing burden. The age distribution of persons who died as a result of coronavirus (Question 5) was retained as it would be easier to collect from death records.

During the public comment period, two members of the Johns Hopkins School of Medicine Department of Gynecology and Obstetrics requested BJS consider adding a question about pregnant females imprisoned and their exposure to coronavirus. Pregnancies in correctional custody is a topic of interest to both Congress and the public, as evidenced by the House of Representatives report on the fiscal year 2021 appropriations law, which requires BJS to produce a report on pregnant females in the custody of prisons and jails in June, 2021. Currently, BJS does not collect information on the number of pregnant females in custody through any of its annual surveys. Initially, BJS added two questions on pregnant females to the NPS-CPan instrument: the total count of pregnant females in state and federal prison over the reference period, and the number of pregnant females who tested positive for coronavirus. As with the age distribution question, BJS determined that it would be overly burdensome for DOCs to determine how many of the positive tests over the one-year reference period belonged to pregnant females. BJS removed the question on positive coronavirus tests for pregnant women, and moved the total count of pregnant females item to Question 5, where it precedes the question on the count of pregnant female prisoners who died of coronavirus.

Proposed statistics obtained from this question

- Total count of viral tests for the coronavirus performed by DOCs, which can be related back to cost burden
- Total number of positive tests documented in state and federal prisoners
- Positivity rate of the coronavirus tests for prisoners
- Number of unique prisoners to test positive
- Sex and race/Hispanic origin distributions of prisoners who tested positive

Evidence that DOCs can answer this question

All of the participants in the cognitive test reported that their state used viral tests only, or could separately report the count of viral tests from serology or antibody tests. They could all report the total number of tests, the total number of positive tests, and the number of

unique prisoners who tested positive. Several states indicated that they would need to request additional information from their medical branch to obtain the demographic breakdown of unique prisoners testing positive, which might cause a delay in delivering the completed responses. Respondents from states with private prisons reported that they would have no issues including counts from those facilities.

Question 5 - Number of total coronavirus-caused deaths of prisoners by sex, age, and race/Hispanic origin, the number of prisoner deaths based on a medical examiner or coroner report, the number of deaths of pregnant female prisoners, and the total number of pregnant females in custody between March 1, 2020 and February 28, 2021.

Justification for asking this question

The count of prisoner deaths from the coronavirus is an important metric both alone and as a percentage of all positive viral tests. As previously stated, data on the race/Hispanic origin and age distribution of prisoner coronavirus deaths is unavailable from other sources.

Question design considerations and/or limitations

The counting of coronavirus deaths in the general population has been given a good deal of attention, as doctors and even the CDC assume the numbers published are undercounts. Particularly in the early months of the pandemic in the U.S., when viral tests were not widely available, a number of deaths occurred that could likely be attributed to complications from the coronavirus, but did not have an associated positive viral test to confirm this conclusion. States vary in what they report to the CDC: some only track deaths with positive tests, others report a mix of confirmed and suspected coronavirus deaths.

BJS considered that a similar scenario may be occurring in prisons, and designed the survey accordingly. During cognitive testing, BJS asked respondents to differentiate between deaths due to the coronavirus that were “confirmed” by a positive viral test before or after death, and deaths for which the coronavirus was the “suspected” cause of death due to observed symptoms but the decedent did not have a positive viral test. Two of the seven states participating in the cognitive test had not yet experienced a coronavirus-related prisoner death, and the remaining states reported that they only tracked deaths associated with a positive viral test.

As a result, BJS decided to request the total number of deaths, regardless of whether coronavirus had been confirmed by a positive viral test, or if the DOC suspected that coronavirus was a contributing factor to the death. This acknowledges the likelihood that some states will report a mixture of confirmed and suspected deaths, and has precedent: in BJS’s Mortality in Correction Institutions collection (MCI; OMB Control number 1121-0249), natural deaths of prisoners and jail inmates who are HIV+ or have AIDS are classified as AIDS-related deaths, even if the primary cause was some other natural event.

During the review of BJS’s Annual Survey of Jails collection (OMB control number 1121-0094), on which several coronavirus-related questions were added for 2020, OMB requested that BJS include a question to collect the number of deaths of jail inmates that were based on an evaluation by a medical examiner or coroner. BJS has added that question to the prison survey.

At least one pregnant female prisoner died of coronavirus in the custody of the BOP between March 1, 2020 and February 28, 2021, so adding a question on deaths will yield information for those interested in the effects of the pandemic on pregnant women. The total count of pregnant females in state and federal prison over the reference period will provide a denominator to calculate the rate of pregnant females who died from coronavirus, and will allow BJS to report information back to Congress in a timely manner while determining the best way to capture this information in the future.

Proposed statistics obtained from this question

- Total number of prisoner deaths
- Number of deaths where the coronavirus was the suspected cause of death or one of several factors resulting in the deaths of prisoners
- Prisoner death rate as a percentage of total prisoner positive tests
- Sex, age, and race/Hispanic origin distributions of suspected prisoner deaths
- Total number and percentage of deaths where a medical examiner or coroner performed an autopsy, postmortem, or reviewed medical records to confirm cause of death.
- Total number of pregnant female prisoners confirmed to have died of coronavirus
- Total number of pregnant female prisoners in custody
- Mortality rate for coronavirus among pregnant female prisoners

Evidence that DOCs can answer this question

Data on coronavirus deaths among prisoners are readily available according to the five states that participated in the cognitive test and had experienced a prisoner death. These are statistics that are requested on a daily basis by the DOC director, state legislature, governor, media, and the general public. Respondents reported that the disaggregation of deaths by sex, age, and race/Hispanic origin would add some response time, but in general, could be performed using their standard offender management system software. Deaths of pregnant female prisoners are a rare event, and would be obvious on the DOC death records.

BJS anticipates that DOCs will be able to answer questions on the total number of pregnant females in custody over the reference period, because these prisoners already receive prenatal medical care in prison.

Question 6 - Checkbox of coronavirus spread mitigation techniques employed by DOCs at any time between March 1, 2020 and February 28, 2021 in their facilities.

Justification for asking this question

As guidance from the CDC and state health authorities evolved over the spring and summer of 2020, state DOCs tried a number of mitigation tactics to stop the spread of the coronavirus. This question identifies the most common techniques, as mentioned in news articles and on DOC and advocacy organization websites.

Question design considerations and/or limitations

Responses to this question are not meant to be interpreted in light of counts of positive test results or deaths as representing successful or unsuccessful mitigation techniques. Nor does it attempt to collect all mitigation techniques such as

increased cleaning or use of particular areas that are facility-specific. Rather, BJS is interested in enumerating techniques that caused an alteration in the normal operation of prison facilities, and could be applied to all facilities in the corrections system. The measure of “in no facilities”, “in some facilities”, and “in all facilities” is imprecise, but as previously established, it is not reasonable for BJS to burden DOCs with a facility-level survey during a pandemic.

Proposed statistics obtained from this question

- Count of states employing specific mitigation tactics in none, some, or all facilities to limit the spread of coronavirus

Evidence that DOCs can answer this question

All respondents said that they understood and could answer these questions, both for state-operated and private prison facilities in their systems. Several offered additional techniques (contact tracing, change in mode of delivery for programs, restriction of staff movement) that BJS adopted in the final form.

Question 7 - On what date did your department of corrections first administer a vaccine for coronavirus to prisoners or staff in your state-operated or private correctional facilities?

Justification for asking this question

The first coronavirus vaccine was approved by the U.S. Food and Drug Administration (FDA) on December 11, 2020. By this time, it was well documented that prisoners had higher rates of infection and death from coronavirus compared to all but a few other subpopulations in the U.S. (nursing home residents, essential workers). In preparation for distribution, the CDC and states developed plans to get the vaccine to people who were most at risk for infection. In a number of states, prison staff and prisoners were recommended to be part of the first group of people to receive vaccination after health care workers and nursing home residents. These policies, however, were highly debated given the huge demand for and limited supply of vaccines in December, 2020 and January, 2021. Question 8 identifies the first date of vaccination within the prison system, either of staff or prisoners.

Question design considerations and/or limitations

As with coronavirus test kits in the spring of 2020, the supply of coronavirus vaccines was extremely limited in the first few months after FDA approval. Federal distribution of the vaccine was based initially on state population size, but because of supply chain issues and additional vaccine approvals, the actual number of vaccine doses received by the states varied widely. States were responsible for developing rules governing prioritization of residents to receive the vaccine.

Question 8 will establish a baseline date, to be used with questions 9 and 10 to understand the delivery process of the vaccine to prison staff and prisoners. It is possible that some states will not have vaccinated any staff or prisoners before the survey is fielded. In that case, respondents will check the box indicating this, and are instructed to answer 0 for question 9, and leave question 10 unanswered.

Proposed statistics obtained from this question

- Combined with responses to questions 8 and 9, the rate of vaccination of staff and prisoners over the time of vaccine availability
- Combined with responses to question 10a, the percent of DOC staff in facilities that have received the vaccine through their place of employment

Evidence that DOCs can answer this question

This question was not developed in time for the cognitive test in the summer of 2020. BJS contacted three additional DOC respondents to request information about their plans for vaccinations, and all agreed they would be able to identify the date of first vaccination because of its novelty.

Question 8 – By February 28, 2021, how many staff or prisoners had received at least one dose of the coronavirus vaccine?

Justification for asking this question

This will show how widespread vaccination of staff and prisoners is in each state, given the different start dates measured in question 8.

Question design considerations and/or limitations

As described in question 8, vaccine availability varied widely across states, as did the vaccination process. Responses to question 8 should not be compared between states except standardized as a rate over the number of days since the first vaccination, or as a percent of prisoners or staff to receive the vaccine.

After review, BJS stipulated that staff should be counted only if they received their vaccinations through vaccine supplies sent to the DOCs, to ensure that vaccination was work-related.

Proposed statistics obtained from this question

- Combined with responses to questions 7 and 9, the rate of vaccination of staff and prisoners over the time of vaccine availability
- Combined with responses to question 10a, the percent of DOC staff in facilities that have received the vaccine through their place of employment

Evidence that DOCs can answer this question

Vaccine questions were not developed in time for the cognitive test in the summer of 2020. BJS contacted three additional DOC respondents to request information about their plans for vaccinations, and all agreed they would be able to identify the number of vaccinations administered to staff and prisoners.

Question 9 – Checkbox of vaccine administration policies used by the DOCs

Justification for asking this question

As previously stated, states were responsible for prioritizing groups of residents to receive the limited supply of vaccine. BJS is interested in learning which policies were actually practiced, and so sets up several statements to gauge whether one group (staff, older prisoners, newly admitted prisoners, etc.) received the vaccine earlier than another group (prisoners, younger prisoners, prisoners already in custody, etc.). These policies were adapted from a Kaiser Family Foundation summary of published state prioritizations (<https://www.kff.org/policy-watch/how-are-states-prioritizing-who-will-get-the-covid-19-vaccine-first/>). BJS is also interested in whether DOCs are mandating vaccination for staff and prisoners.

Question design considerations and/or limitations

BJS tried to make the policy comparison statements clear but generalizable (“older prisoners” instead of stipulating a specific age). The goal is to determine whether policies were actually practiced in the delivery of the vaccine. Obviously, exceptions will occur, but BJS wants to get a sense for how states apportioned the vaccine to their staff and prisoners.

<p><i>Proposed statistics obtained from this question</i></p> <ul style="list-style-type: none"> • Number of states with mandatory vaccinations of staff or prisoners • Number of states that prioritized vaccination of certain subpopulations of prisoners • Number of states that vaccinated staff before prisoners
<p><i>Evidence that DOCs can answer this question</i></p> <p>This question was not developed in time for the cognitive test in the summer of 2020. BJS contacted three additional DOC respondents to request information about their plans for vaccinations, and all agreed they would be able to answer questions about prioritization, since these policies had been developed before the vaccine became available.</p>
<p>Question 10 - On February 28, 2021, how many unique staff members worked inside one of your state-operated or private correctional facilities?</p>
<p><i>Justification for asking this question</i></p> <p>In order to calculate infection and mortality rates for prison staff, BJS needs a count of all staff at risk to use as a denominator.</p>
<p><i>Question design considerations and/or limitations</i></p> <p>When NPS-CPan was first conceived, BJS planned to field it in the fall of 2020 and use the total count of staff collected during the 2019 Census of State and Federal Correctional Facilities as a denominator to calculate rates of infection and death. With the postponement of the survey, BJS decided it needed a more proximate count of staff at risk for coronavirus infection and death.</p> <p>In the instructions for this question, BJS asks respondents to only count staff members who had direct contact with prisoners or who worked inside a correctional facility, but to exclude DOC staff who did not work inside facilities. While staff at administrative headquarters could easily contract coronavirus, they are not in the same risk pool as prisoners and those staff members who work inside the facilities.</p>
<p><i>Proposed statistics obtained from this question</i></p> <ul style="list-style-type: none"> • Combined with responses to question 11a, the rate of coronavirus infection among staff working in correctional facilities. • Combined with responses to question 11b, the rate of death due to coronavirus among staff working in correctional facilities. • Total number of staff working inside correctional facilities.
<p><i>Evidence that DOCs can answer this question</i></p> <p>BJS asked a very similar question on the 2019 Census of State and Federal Correctional Facilities, and observed 0.2% item missingness. Similar missingness rates were observed when BJS asked a follow-up question that required DOCs to separate out security staff, indicating that DOC staff can be disaggregated by job type. During the summer 2020 cognitive test, BJS included several states that utilized both state-operated and private facilities, and all indicated that they could give counts for both facility types.</p>
<p>Question 11 - - Between March 1, 2020 and February 28, 2021, the number of prison staff working in state-operated or private correctional facilities who had at least one positive viral coronavirus test and number of staff deaths.</p>
<p><i>Justification for asking this question</i></p> <p>Prison staff are at a similar or greater level of risk of coronavirus infection as prisoners while they are working, by virtue of their movement between different</p>

<p>areas of the facilities that are not always accessible to prisoners. In addition, they are forced at times to be in close contact with prisoners, increasing their risk of transmission. Corrections officers, however, also have the possibility of spreading the virus between the prison system and the community when they go back and forth from work, regardless of where they first contracted coronavirus.</p> <p>Staff who have contracted the coronavirus also place an additional burden on the DOC, since that person obviously must recover in quarantine and is therefore not available to do their normal job. It is vital that we collect the number of staff in each state who were identified to have a positive viral test and those who died, since this will affect normal operations in prison facilities.</p>
<p><i>Question design considerations and/or limitations</i></p>
<p>BJS recognizes that prison staff could have been infected with coronavirus in places other than correctional facilities, and the data collected in this question should not be interpreted as representing the number of staff who were infected because of their job. Instead, this question refers to the burden placed on the DOC in terms of ill staff members</p>
<p><i>Proposed statistics obtained from this question</i></p>
<ul style="list-style-type: none"> • Count of staff testing positive for coronavirus • Count of staff who died from coronavirus • Using state staff data from question 10, calculate rates of coronavirus infection and mortality among prison staff.
<p><i>Evidence that DOCs can answer this question</i></p>
<p>BJS tested a version of the instrument that included asking respondents to differentiate between suspected and confirmed staff coronavirus deaths, and whether or not the death had been confirmed by a medical examiner or coroner. Since correctional facility staff who died from coronavirus likely did so in the community (at home or in a non-correctional medical care setting), several of the respondents were not sure they would know if the person's death had been verified by a postmortem exam or coroner's report. They would, however, be able to give the total number of staff who tested positive, and the count of those who had died.</p>

3. Use of Technology

BJS will allow for multiple modes of data submission to maximize response to the NPS-CPan. DOCs and the BOP will be sent a fillable PDF form, which respondents can also fill out by hand or over the phone with the BJS program manager or BJS's NPS-CPan data collection agent, Abt Associates. Forms can be emailed, faxed, or mailed back to the data collection agent. Once received, data will be entered into a database and reviewed for data entry errors.

4. Efforts to Identify Duplication

A number of not-for-profit and prison advocacy organizations and law schools have been tracking positive cases of the coronavirus and deaths in nearly real time, as reported by state DOCs and the BOP on their websites. These include the Marshall Project (<https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons>), Prison Policy Initiative (<https://www.prisonpolicy.org/virus/>), the American Civil Liberties Union

(<https://www.aclu.org/news/topic/covid-19-pandemic-response/>), UCLA Prison Law and Policy Program (<https://law.ucla.edu/academics/centers/criminal-justice-program/ucla-covid-19-behind-bars-data-project>), and Duke Law School (<https://sites.law.duke.edu/csj-blog/2020/04/15/state-prison-responses-to-covid-19/>). It appears that all of these sites are based on publicly-released data or direct requests for total counts, and not on standardized surveys sent to individual DOCs or the BOP.

While these sites provide more timely counts of cases and deaths, there is a lack of standardization in how these data are collected and how certain concepts are defined. Some DOCs are reporting cases and deaths of prisoners under their legal authority who are in the custody of private prisons, halfway houses, or boot camps, while others are not. As is the case in the general population, defining coronavirus “cases” may differ across states and over time. Particularly at the beginning of the pandemic in the U.S., when the availability of viral tests was limited, state departments of health counted persons with coronavirus symptoms as “probable cases,” and included these counts in their reports to the CDC. Similarly, deaths can be attributed to the coronavirus with or without the confirmation of a positive viral test.

The agencies reporting data pulled from the DOCs websites are doing little to resolve or note the differences that can affect comparability across jurisdictions. By standardizing the population and concepts, BJS’s rapid survey will allow for valid comparisons. Similarly, much of the data currently available on positive coronavirus cases and deaths in prisons do not include a breakdown by race or Hispanic origin. BJS’s survey specifically collects these data.

Coronavirus cases and deaths are reported to the federal government by state departments of health at the county level, but distinguishing prisoners from the general population in these counts is impossible. Death certificates submitted by states to the CDC do not have a special indicator that the person was incarcerated at time of death.

BJS no longer collects the Mortality in Correctional Institutions data (OMB control number 1121-0094), so coronavirus deaths cannot be identified through this collection. While the Bureau of Justice Assistance (BJA) has taken over this effort (OMB control number 1121-0365), initial analysis of the completeness of these data suggests that not all states are reporting at this time.

5. Impact on Small Business

Not applicable. The NPS-CPan survey does not involve small businesses or other small entities. The respondents are state DOCs and the BOP.

6. Consequences of Less Frequent Collection

Not applicable. BJS does not plan to collect these data after 2021.

7. Special Circumstances Influencing Collection

Not applicable. The NPS-CPan survey is consistent with the guidelines in 5 CFR 1320.6

8. Federal Register Publication and Outside Consultation

The NPS-CPan survey is consistent with the guidelines in 5 CFR 1320.6. BJS published a 60-day notice for public commentary in the Federal Register on December 8, 2020 (FR Volume 85, Number 236, page 79036, see Appendix C). One individual requested a copy of the survey instrument, but once this was provided, he did not follow up with BJS to provide comments on the collection. A second individual, the president-elect of the American College of Correctional Physicians, wrote to strongly support the collection of data on the coronavirus pandemic in prisons, saying that the collection would be “a travesty of justice and humanity if discontinued” (see Appendix D).

Two faculty members from the Johns Hopkins School of Medicine’s Department of Gynecology and Obstetrics wrote that they also strongly supported the NPS-CPan data collection, but asked if BJS would consider adding questions on the number of female prisoners who tested positive for, and died from, coronavirus, as well as a total count of pregnant women for the year, and the number of pregnant female staff members who tested positive or who died of coronavirus. BJS determined that the questions regarding female prisoners who died of coronavirus while pregnant would only add a small burden to the overall survey because this information would be noted in the DOC death records, and would be a rare event. BJS included a question on deaths of pregnant females on the survey instrument. The count of pregnant females who tested positive for coronavirus, however, was deemed to be more burdensome. Collecting these data would require respondents to go through the medical records of all female prisoners testing positive over the reference period. As with the age distribution of prisoners testing positive for coronavirus, BJS decided against adding this question to reduce respondent burden.

BJS also added a question on the total number of pregnant females in custody from March 1, 2020 to February 28, 2021 to obtain a denominator for calculation of the mortality rate of pregnant prisoners. Additionally, the U.S. House of Representatives requested BJS collect data on pregnant females in custody as part of the appropriations committee’s report on the FY 2021 appropriations law. Since BJS does not currently request this information as part of its annual NPS collection, obtaining the count of pregnant females during the NPS-CPan reference period would allow BJS to report the information to Congress, in addition to its use in calculating the rate of pregnant prisoners who tested positive for coronavirus while in custody.

During the cognitive tests for the NPS-CPan, several states reported that to obtain any information beyond total counts of staff who tested positive or who died of coronavirus, they would need to consult the DOC human resource office, which again, would add appreciable burden. For this reason, BJS did not include a question on pregnant staff on the NPS-CPan instrument.

Two faculty members from the John Jay College/City University of New York’s Department of Economics submitted a request that BJS add questions on prisoners’ application for, and receipt of, federal government stimulus payments related to the coronavirus pandemic. These included the number of prisoners submitting 1040 forms to obtain stimulus payments, and the ultimate disposition and average amount of the monies (in prisoner commissary accounts, to prisoners’ families, and whether prisoner restitution and other fees were discharged first), if the application were accepted.

Federal government stimulus payments to prisoners were the subject of litigation between the Internal Revenue Service (IRS) and various groups representing prisoners during the fall of 2020 as the IRS sought

to limit payments, and claw back those that had already been released. Ultimately, the courts determined that stimulus payments to prisoners were allowed under the Congressional CARES Act. BJS contacted two DOC respondents to determine whether they would have information on applications for, and receipt of, stimulus payments by prisoners, and how much additional burden would be added to the NPS-CPan survey by asking these questions. Both said that while the information could be assembled, it would require the involvement of another DOC office and up to an additional hour of burden. BJS deemed this too burdensome, and so did not add the questions.

BJS published the 30-day notice for public commentary in the Federal Register on February 9, 2021 (see Appendix E).

Other outside consultation

In the development of this survey, BJS consulted members of the corrections task force at the Department of Health and Human Services' Centers for Disease Control and Prevention (CDC), who were also interested in collecting data on the coronavirus in prisons. BJS explored the possibility of working with the CDC to test and ultimately field a joint survey, but several issues dissuaded BJS from this approach. Most importantly, the goals of the CDC and BJS surveys differed. The CDC wanted an immediate snapshot of the condition in prisons to publish in their *Morbidity and Mortality Weekly Report* within a few weeks. To accomplish this, the CDC group was willing to accept high item and unit non-response rates. BJS felt it was more important to collect non-missing data from as many states as possible and publish a retrospective, as opposed to current, view of the coronavirus in prisons. This requires a slower data collection with more follow-up.

The CDC was also initially interested in sending the survey to each prison facility, instead of measuring the coronavirus at the system level. BJS cautioned that, based on our recent experience with the Census of State and Federal Adult Correctional Facilities (OMB control number 1121-0147), rapid data collection from facilities would be almost impossible because of the sheer number of prison facilities (in 2019, there were approximately 1,700 prison facilities). Ultimately, BJS offered to provide comments on the CDC's survey and advice on how to best collect data from DOCs.

BJS also conducted a cognitive test of the NPS-CPan survey with seven state DOC respondents in July, 2020. Additional results from this test are described in Part B of this package. Finally, BJS emailed three additional NPS DOC respondents in December, 2020 to ask whether they would be able to answer questions regarding the vaccination process.

9. Payment or Gift to Respondents

Not applicable. No payments or gifts are offered to respondents of the NPS-CPan survey.

10. Assurance of Confidentiality

Under Title 34 of the United States Code, Section 10231, BJS will collect the data from the prison coronavirus survey for statistical purposes only, will not release data pertaining to specific individuals in the survey, and has in place procedures to guard against disclosure of personally identifiable information. The data from the prison coronavirus survey will be maintained under the security provisions outlined in U.S. Department of Justice regulation 28 CFR §22.23, which can be reviewed in Appendix E or at https://www.bjs.gov/content/pub/pdf/BJS_Data_Protection_Guidelines.pdf. All staff from BJS's data collection agent working on the BJS prison coronavirus survey must sign the following privacy certificate each year: <http://bjs.ojp.usdoj.gov/content/pub/pdf/bjsmpc.pdf>.

In addition, NPS-CPan data will be collected at an aggregate level, ensuring that individuals cannot be identified in the dataset.

11. Justification for Sensitive Questions

Not applicable. There are no sensitive questions on the NPS-CPan questionnaire.

12. Estimate Respondent Burden

Based on the cognitive test of the survey with seven state DOC respondents, the process of assembling the data and answering the questions for the NPS-CPan collection are estimated to take an average of 2.5 hours per DOC. This will result in a total number of 127.5 burden hours for the 50 DOCs and the BOP.

13. Estimate of Cost Burden

The costs to respondents incurred as a result of participating in the NPS-CPan data collection are costs that would be incurred in the normal course of daily operations. Assuming a pay rate approximately equivalent to the GS-12/05 level (\$74,991 per year without locality pay adjustment), the estimated agency cost of employee time would be approximately \$36 per hour. Fifty-one agencies will be asked to participate in this activity for four hours each, therefore the total cost is estimated at \$7,344, or \$144 per agency.

14. Estimated Cost to Federal Government

The estimated costs for collection, processing, and dissemination of the NPS-CPan collection on coronavirus in 2021 is \$143,424 including –

\$30,000 -- Abt Associates, Inc. (data collection agent) for data collection, data processing, and program management. Please note that these monies were originally appropriated by BJS for the NPS collection and are being repurposed. No additional monies are being awarded for the collection and processing of these data.

\$113,424-- Bureau of Justice Statistics

30% GS-14, Statistician (\$36,395)
5% GS-15, Supervisory Statistician (\$7,135)
2% GS-15 Chief Editor (\$2,854)
5% GS-13 Editor (\$5,133)
2% GS-12 Designer (\$1,727)
Information technology staff (GS-12, GS-14) (\$9,719)
Senior BJS Management (GS-15, SES, Director) (\$5,200)
Fringe benefits (@28% of salaries -- \$19,086)
Other administrative costs (@30% of salary & fringe -- \$26,175)

15. Reasons for Change in Burden

Not applicable. This is a new collection.

16. Project Schedule and Publication Plan

BJS will send the survey (Appendix A) and a letter (Appendix F) requesting participation to directors of the state DOCs and the BOP upon OMB clearance or April 15, 2021 (whichever date is later), with a requested submission date of June 14, 2021. BJS will send a reminder email to non-responding jurisdictions on June 1, 2021 (Appendix G), and will commence telephone and email non-response follow-up after the due date, with data collection ending no later than July 14, 2021.

BJS plans to analyze the data and publish a limited set of statistical tables in the fall or early winter of 2021. Concurrent with submission of the reports to the BJS Publications Unit, the dataset will be submitted to the National Archives of Criminal Justice Data (NACJD) to begin processing. These data will be fully available to the public once the BJS report is published and the data are processed by NACJD.

17. Expiration Date Approval

The OMB Control Number and the expiration date will be published on the NPS-CPan questionnaire provided to all respondents.

18. Exceptions to the Certification Statement

There are no exceptions to the Certification Statement. The NPS-CPan collection is consistent with all the guidelines set forth in 5 CFR 1320.9.