

SUPPORTING STATEMENT FOR CENSUS OF PUBLIC DEFENDER OFFICES

A. JUSTIFICATION

Overview

The Bureau of Justice Statistics (BJS), through a cooperative agreement (15PBJS-22-GK-01500-BJSB) with its data collection agents, NORC at the University of Chicago (NORC), the Urban Institute, the National Association for Public Defense (NAPD), and Dr. Andrew Davies and Heather Hall (as consultants) request clearance to conduct the 2024 Census of Public Defender Offices (CPDO). The 2024 CPDO is the latest in a series of BJS-sponsored research efforts dedicated to the study of public defense systems and providers. In its second iteration, the CPDO will enhance a growing BJS Public Defense statistics program by generating a complete census of all public defense offices which will serve as the foundation for administering future surveys capturing key aspects of public defense administration nationwide.

Comprised of two components, the 2024 CPDO BJS aims to build a current frame of public defender offices and administer a survey (**Attachment 1**) to all identified offices (an overview may be found in **Attachment 2**). An earlier generic clearance addressed the frame building portion of the project (OMB #1121-0339; see **Attachment 3** for clearance). The CPDO survey was developed in consultation with public defense leaders to collect important information on general office operations including expenditures, staffing, caseloads, eligibility standards, and office resources.

Definition

For purposes of the 2024 CPDO, a public defender office:

- (1) provides public defense representation for adults or juveniles who are accused of a crime or delinquency or accused in a trial court of violating conditions of a sentence;
- (2) is funded partially or fully by public funds;
- (3) has a dedicated space; and
- (4) has at least one attorney working for it who is a W-2 wage-earning employee.

Offices that only have attorneys working for them who are independent contractors (1099s), tribal public defense offices, and federal public defense offices are beyond the scope of this survey data collection and are not included in this definition. Public defender offices include specialty public defender offices, such as conflict defense offices (those that take cases where the public defender office has a conflict of interest, such as representing co-defendants accused of the same crime), appellate or post-conviction offices, and capital case public defender offices. Non-profit 501(c)(3) organizations that provide public defense through a contract with a state or local government employing W-2 wage-earners would also be considered public defense offices.

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

Title 34, United States Code, Section 10132 of the Justice Systems Improvement Act of 1979, authorizes BJS to collect and analyze statistical information concerning the operation of the criminal justice system at the federal, state, and local levels. This includes information on the administration of justice in the nation's criminal courts (see **Attachment 4**).

In 1963, the United States Supreme Court established in *Gideon v. Wainwright* that the Sixth Amendment's right to counsel applies to state courts through the Due Process Clause of the Fourteenth Amendment. This decision mandates legal representation at public expense for individuals unable to afford an attorney in criminal cases with potential jail or imprisonment sentences. However, despite this constitutional mandate, the variable methods of delivering this service in the thousands of courts throughout our country leaves defendants at risk of inadequate defense counsel provision.

In the 60 years after *Gideon*, there remains a lack of information about how representation is provided to most indigent defendants in America. Public defense systems continue to face significant challenges in data collection, analysis, and policy formation, often prioritizing direct client services due to limited resources and increasing caseloads. Many jurisdictions, particularly in smaller and rural areas, lack the capacity to collect essential data, hindering informed decision-making within the criminal justice system. The scarcity of data on public defense availability in these remote pockets of the country underscores the need for a full enumeration and survey of public defense offices nationwide.

Over the past four decades, BJS has engaged in filling some of the gaps in available data on public defense administration. Since shortly after it was formed and continuing through today, BJS has maintained a program in which it periodically gathers and reports statistics on indigent defense systems. In 1982, BJS conducted the National Criminal Defense Systems Survey, the first examination of criminal defense systems. This survey gathered information on the types and characteristics of criminal defense systems from a national sample of jurisdictions. Specifically, it collected information on the capacities of defense services to deliver early representation, as well as support and investigative services; and it provided a database that would be useful to criminal justice researchers and for future censuses of public defender organizations. A similar survey of indigent defense systems was again conducted by BJS in 1986.

In 1999, BJS renewed its research in indigent defense services through the administration of the National Survey of Indigent Defense Systems (OMB Control # 1121-0095). This effort attempted to survey all forms of indigent systems including public defenders, assigned counsel, and contract attorneys in (1) states that entirely funded and administered their indigent defense services at the state-level and (2) the nation's 100 most populous counties. BJS produced two reports from this survey and although these reports led to a renewed focus on the delivery of indigent defense services, the data were still incomplete in terms of surveying the provision of

indigent defense for the entire country and especially in less populous regions.¹

In 2007, BJS conducted the first iteration of CPDO (OMB Control # 1121-0095), a census of all public defender offices in 49 states and the District of Columbia.² BJS summarized the responses of the 957 public defender offices in two separate reports: *State Public Defender Programs, 2007* and *County Based and Local Public Defender Offices, 2007*. These reports provided, for the first time, extensive nationwide information about the provision of trial-level indigent defense services by public defender office systems throughout the country.³ Some of the key findings from these surveys and reports included:

- Information about public defender offices for states with centralized indigent defense systems –
 - In 2007, 15 of the 19 reporting state-based public defender programs reported exceeding the maximum recommended number of felony and misdemeanor cases per attorney.
 - State public defender programs in 2007 employed nearly 3,000 support staff—such as clerical and administrative staff, paralegals, investigators, social workers, indigent screeners, and interns—to provide case assistance for public defenders. States employed a median of 85 support staff in 2007.
 - Between 1999 and 2007, criminal caseloads increased by 20% while the number of public defenders employed in state programs increased by only 4%.
- Information about public defender offices operating in states that administer and fund their public defense systems at the county level –
 - In 2007, county-based public defender offices received a median of approximately 2,500 cases and 27% of these offices reported a sufficient number of attorneys to handle the number of cases received in their office according to standards established by the National Advisory Commission.
 - In 2007, 40% of all county-based public defender offices had no investigators on staff to provide case investigation.
 - The county-based public defender offices spent nearly \$1.5 billion (65%) of the \$2.3 billion spent in 2007 providing public defender representation nationwide. County-based public defender offices served a median population of about 117,000 residents with a median operating budget of about \$708,000 in 2007.

Following the inception of CPDO in 2007, BJS administered the 2013 National Survey of Indigent Defense Systems (NSIDS, OMB Control Number 1121-0095, expired 5/31/2017) which broadened the scope from CPDO's exclusive focus on public defender offices to include other

¹ DeFrances, C. (2001). *State-Funded Indigent Defense Services, 1999*. Bureau of Justice Statistics, Washington, DC. DeFrances, C. & Litras, M. (2000). *Indigent Defense Services in Large Counties, 1999*. Bureau of Justice Statistics, Washington, DC.

² Maine did not have public defender offices in 2007.

³ Langton, L. & Farole, D. (2010) *State Funded Public Defender Programs, 2007*. Bureau of Justice Statistics, Washington, DC. Farole, D. & Langton, L. (2010). *County-based and Local Public Defender Offices, 2007*. Bureau of Justice Statistics, Washington, DC.

common indigent defense delivery systems such as contract and assigned counsel. Of note, the response rate for the county-based systems did not meet the BJS publication threshold and data were not reported. However, the response rate relating to state-funded public defense delivery systems in the 2013 NSIDS contributed to the public defense portfolio by yielding findings including –

- 28 states and the District of Columbia administered public defense at the state level.
- Of the 29 statewide systems administering public defense, two systems received 100% of their funding from the federal government, while five systems received the entirety of their funding from the state. Additionally, two systems were funded exclusively by client application fees.
- Twenty-two of the 29 statewide systems used established federal poverty guidelines for determining eligibility for indigency status and 20 of the 29 statewide systems considered the nature of the charge in determining eligibility for indigency status.

BJS sponsored the Survey of Publicly Appointed Defense Attorneys: Design Study (SPADADS) through BJS’s generic clearance (OMB Control Number 1121-0339, expired 4/30/2019) to expand the indigent defense portfolio beyond office-level data collections.⁴ As the first federally funded study focused on directly surveying public defenders, contract, and appointed defense counsel, SPADADS identified pertinent topics where historical administrative data collections had fallen short, such as attorney workload and client characteristics. The survey instrument addressed the essential areas of concern expressed by stakeholders while maintaining flexibility to accommodate the widespread diversity in public defense administration practices. SPADADS also detailed key elements to an effective research design for sampling defenders directly such as:

- Balancing the sample on defender type, centralized or decentralized systems, urbanicity, size of indigent defense system, and geographic region to ensure a representative sample;
- Stratifying both frames to further support the goal of a balanced sample; and,
- Employing a dual-frame design to accommodate the centralized and decentralized public defense structures across the country.

Following the SPADADS project, BJS sponsored the Survey of Public Defenders (SPD) pilot study through BJS’s generic clearance (OMB Control number 1121-0339, expired 4/30/2022).⁵ Recommendations from SPADADS helped inform the SPD pilot project which focused on testing the instrument and contact strategies with only public defenders as respondents. Administered in 2021, the SPD pilot project tested the SPADADS dual frame sampling design and instrument as well as different outreach strategies to determine which would yield the highest response rate. Administering the SPD pilot revealed the need for an updated, comprehensive frame of public defender offices from which to sample for future BJS public

⁴ Details of results from the SPADADS project may be found in: Hussemann, J., Adams, W., Davies, A., Hall, H., Lyon, J., and Hu, C., 2021. *Survey of Publicly Appointed Defense Attorneys: Design Study*, Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics. Accessed on 11/19/2024 at <https://www.ojp.gov/pdffiles1/bjs/grants/252676.pdf>

⁵ Details of results from the SPD pilot may be found in: Adams, W., Hussemann, J., Hall, H., Lyon, J., Davies, A., Freiss, K., Scott, K., and Strong, S. 2024. *Survey of Public Defenders (SPD) Pilot Report*, Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics. Accessed on 11/19/2024 at <https://bjs.ojp.gov/document/spdpr.pdf>.

defense research, resulting in the 2024 CPDO.

The 2024 CPDO is a direct response to the need revealed by the SPD pilot for an updated roster of all public defender offices and counts of public defense attorneys in the nation. Employing a census methodology will not only allow for a full enumeration of public defense offices, but it will also promote a complete understanding of the variability and availability of public defense across the nation. The proposed 2024 CPDO will address the critical information gap that has formed since the 2007 CPDO on the current operations of public defender offices. The instrument is designed to capture specifics on general office information, staffing, caseloads, client eligibility requirements, and office resources. Given the seventeen years that have elapsed since the last iteration of the CPDO, BJS had to update the frame of public defender offices, which was accomplished under an earlier generic clearance request (insert OMB #1121-0339).

Some of the key data yielded by the 2024 CPDO can be measured against the 2007 CPDO. For instance, operating expenditures and public defender salary ranges (after adjustment for inflation), funding sources, number of public defenders and offices nationwide, attorney attrition rates, as well as caseloads and types can be compared to the 2007 collection. The 2024 CPDO will provide information about eligibility standards for indigency status, presence of oversight boards or commissions as well as the availability of support staff to assist public defenders. The 2024 CPDO will continue to measure the prevalence of office policies and practices pertaining to staff training, representation structure (vertical or horizontal) and initial client engagement. With the data resulting from this survey, policymakers at the county, state, and national levels will be enabled to make data-driven, fair, and fiscally sound criminal justice decisions.

Additionally, the 2024 instrument will broadly capture the volume of digital/electronic evidence processed by offices in one year as well as the ability of an office's information technology infrastructure to meet its case-processing needs. At the recommendation of an expert panel, the 2024 CPDO diverges from the 2007 survey by omitting questions specific to death penalty case expenditures due to concerns about disaggregating expenditure data. Questions addressing how an office handles conflict cases have also been removed to limit burden on office chiefs while preserving the critical information of interest to stakeholders.

This survey fits within a larger BJS portfolio of establishment surveys and administrative data collections that, together, cover all components of the administration of justice in the nation's criminal courts. The other components include BJS's National Survey of Prosecutors (OMB Control # 1121-0149) series that provides information on the administration, governance, staffing, budgets, and caseloads of the nation's state prosecutors offices. Similar to CPDO, BJS's recently awarded Census of Prosecutor Offices will update the frame of prosecutor offices and collect information on key staffing and operation information on the more than 2,330 prosecutor offices in the U.S. BJS's Census of State Courts (OMB Control number forthcoming) will examine the organization, governance, funding, staffing, and budgets of the nation's state and local trial and appellate courts. Last, Criminal Cases in State Courts (OMB Control #1121-0371) and the National Pretrial Reporting Program (OMB Control #1121-0375) are administrative data collections focusing on felony criminal case processing in the U.S. These collections, combined,

provide an organizational overview of courts, prosecutors, and public defenders responsible for adjudicating criminal cases in state courts.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

BJS Uses:

The CPDO will contribute new information to BJS's established portfolio of public defense research by generating a complete, updated census of all public defense offices and, through survey administration, capture key aspects of office operations nationwide. There is no other national source of data that can offer a complete picture of public defense administration and the diversity of public defense office profiles.

(1) Validating the national frame of public defender offices:

BJS will use the 2024 CPDO to create a current national frame of public defender offices that meet the established criteria defining a public defender office. The project team has identified approximately 2000 offices that will likely meet the criteria. Based on the 2007 CPDO, BJS estimates approximately 6% of those offices will not meet one or more criteria for inclusion.

(2) Using the 2024 CPDO as a sampling frame for future public defense surveys:

Compiling a comprehensive frame identifying all public defense offices in the U.S. will allow BJS to pursue full implementation of the SPD which relies on statistically sound sampling strategies. By gathering attorney demographic information and office geographic coverage, the CPDO will support the creation of an SPD sample that accounts for jurisdiction urbanicity, population size, attorney demographics and employment type (part time versus full time).

(3) Using the 2024 CPDO data to develop a current empirical knowledge base about public defense:

Information gathered through the 2024 CPDO will be a valuable and unique source of knowledge about public defense offices that can be used to fill major gaps in knowledge about parity of resources for public defenders and prosecutors, particularly when aligned with other data collection efforts such as the Census of Prosecutor Offices. Below are examples of the pressing policy, practice, and research questions that can be addressed with data collected through the 2024 CPDO:

- *How many public defender offices are there in the U.S.?*
- *How many public defenders are there in the U.S.?*
- *What are the demographics of the chief public defender population?*
- *How many support staff are employed nationwide in public defender offices?*
- *What are the salary ranges for supervisory and nonsupervisory attorneys?*
- *What are the common criteria to determine indigency eligibility status?*
- *How much digital evidence are offices receiving annually?*
- *What is the role and prevalence of advisory boards or commissions?*

BJS proposes to publish these data similarly to the 2007 CPDO. The 2007 CPDO resulted in two reports: *State Public Defender Programs, 2007* and *County Based and Local Public Defender Offices, 2007*. Specifics on reports produced from the 2024 CPDO are provided in Part A Question 16.

Other Uses:

BJS will make the 2024 CPDO data available to the public at the National Archive of Criminal Justice Data (NACJD). The 2007 CPDO data have been downloaded over 300 times in the past three years.

Examples of users and uses of the data include—

National Institute of Justice (NIJ) – NIJ uses BJS data in formulating their research agendas and in their funded reports. A recent example is *Gideon at 60: A Snapshot of State Public Defense Systems and Paths to System Reform (2023)* funded by NIJ and the White House Office of Access to Justice, which cited data from the 2007 CPDO and the 2013 NSIDS.

RAND – *National Public Defense Workload Study (2023)* cited data about insufficient public defender staffing relative to caseloads from the 2007 CPDO.

Supreme Court – cited findings pertaining to the insufficient number of public defenders to meet the established caseload recommendations from the 2007 CPDO in its 2016 *Luis vs. United States* ruling on the restraint of untainted funds intended for the purpose of financing a defendant’s criminal defense.⁶

Office for Access to Justice (OATJ) – The U.S. Department of Justice’s OATJ supports BJS’s data collection efforts in public defense. One of OATJ’s guiding principles is to support public defense.

Academia and Independent Researchers – Below is a sample of publications using data from the 2007 CPDO.

- Gottlieb, A. and Arnold, K. 2021. “The effect of public defender and support staff caseloads on incarceration outcomes for felony defendants.” *Journal of the Society for Social Work and Research*, 12(3): 569-89.
- Gottlieb, A. 2023. “Making Gideon Count? Public Defender Resources and Felony Case Outcomes for Black, White, and Latinx Individuals.” *Race and Justice*, 13(4): 506–29. <https://doi.org/10.1177/21533687211006456.1>
- Hashimoto, E. 2012. “Abandoning misdemeanor defendants.” *Federal Sentencing Reporter*, 25(2): 103-105.
- Hashimoto, E. 2013. “The Problem with Misdemeanor Representation.” *Washington and Lee Law Review*, 70(2): 1019–47.
- Labriola, M., O’Sullivan, C., Frank, P., and Rempel, M. 2010. “Court Responses to Batterer Program Noncompliance: A National Survey.” *Judicature*, 94(2): 81–90.

⁶ *Luis v. United States*, 578 U.S. 5 (2016)

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also, describe any consideration of using information technology to reduce burden.

The 2024 CPDO instrument (**Attachment 1**) and the procedures to collect, clean, and analyze the data were developed based on technological advances that enhance data quality and minimize burden to survey participants. While the survey is offered through two modes, including a paper version administered by mail, the primary mode of data collection is a web-based, self-administered survey instrument (see welcome screen presented in **Attachment 5**). In the 2021 SPD pilot, the majority (91%) of public defenders completed the survey online suggesting a likely majority of responses submitted online for CPDO. Additionally, if the respondent prefers to complete the survey by phone, NORC or Urban will enter the data into the web-based instrument on behalf of the respondent.

The web survey will provide a high-quality user experience that reduces respondent burden and ensures complete and accurate data. All web transactions will be secured through SSL encryption, and chief public defenders will gain access via unique logins. The CPDO instrument has been designed for online data collection using the Voxco survey software.

In addition, the web survey has a user-friendly interface and skip patterns that hide non-relevant questions. The web survey also conducts real-time, automated checking of responses for numeric range and logic error(s) and protects against data entry errors. The web survey will be programmed to include several value-add features such as (1) the capability to resume work, allowing respondents to stop responding to the instrument and return to the point of break-off at a later time without losing previously entered data; (2) embedded links within the web instrument that make it easy for respondents to submit requests for support using email; (3) the ability to print a copy of responses to keep on file once the web survey is complete; and (4) the ability to share the unique link with more knowledgeable staff members for assistance with specific sections of the survey. In addition, staff will monitor the completion of surveys and, for those who time out or leave the survey early, be able to email a link to the partially completed survey asking the chief public defender to complete the survey.

Although the web will be emphasized as the preferred mode of survey completion, experience from the SPD pilot suggests that some chief public defenders will likely respond via paper survey. A small portion (9%) of respondents completed the SPD survey in hard-copy. Data collected via mail or over the phone will be entered into the electronic data file as they are received, noting the date and method of submission.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item A.2 above.

In the 17 years that have elapsed since the 2007 CPDO, public defense research has been narrower in scope, focusing on public defense delivery models, practices (such as the effects of counsel at first appearance), workload studies, methods for producing effective caseload limits or on specific geographic regions. Given that the extant research is not a national census of all public defender offices, the 2024 CPDO remains unduplicated.

The 2024 CPDO will obtain current information about geographic jurisdictional coverage, operating expenditures, funding streams, breakdown of staffing roles (attorney and non-attorney), attorney demographics, numbers and types of cases handled, routine attorney-client engagement practices, financial and other considerations used in eligibility determination, as well as office technological capabilities commensurate with case management and evidentiary processing needs.

In a 2023 collaboration between OATJ and NIJ, researchers conducted a national scan of public defense models and shared their results in *Gideon at 60: A Snapshot of State Public Defense Systems and Paths to System Reform*. Notably, the report was based on a convenience sample of 17 interviews with subject matter experts and extant materials that were publicly available. Furthermore, the report specifically leaves space for a systematic assessment of public defender offices noting its intent to complement “more rigorous statistical surveys and program evaluations.” Also, in the absence of more current available national estimates, *Gideon at 60* cites caseload statistics from the 2007 CPDO.

In 2023, RAND released the National Public Defense Workload Study (NPDWS) to update the standards established by the U.S. Department of Justice's *National Advisory Commission* (NAC) back in 1973. This initiative aimed to modernize guidelines for mounting adequate defenses across various case types. Through expert panels comprised of public defense attorneys, researchers refined estimates of the time required for effective defense strategies. Subsequently, case weights were developed to help jurisdictions accurately assess and anticipate staffing needs to meet public defense demands. While the NPDWS case weights are intended for jurisdictions lacking resources to conduct their own workload studies, the research was not intended to provide a comprehensive list of public defense offices nationwide or a complete census of their operations. Much like the *Gideon at 60* report, the NPDWS referenced findings from the 2007 CPDO highlighting deficiencies in staffing levels at county-based offices compared to NAC standards.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

Small public defender offices may experience the burden of the survey to a greater extent. The small, rural offices are much more likely to only have one public defender, which makes finding time to complete the survey challenging. Respondents in offices comprised of very few attorneys may shoulder more responsibilities than those in larger offices with additional support staff and attorneys. Respondents in these small offices, however, may not need to share the link with anyone else on their staff as they manage all aspects of the office’s operations. In cognitive

testing, the team observed a more generalist role of the chief public defender tasked with multiple diverse responsibilities among the smallest offices (see cognitive testing report in **Attachment 6**).

Use of an online survey minimizes burden for small offices as programmed skips will automatically route offices to questions that only apply to their office. The survey can be accessed by any device and responses to questions are saved as they are entered. This allows respondents to complete the survey as they are able to. The online survey also has data entry checks which will reduce the likelihood of data quality follow-up.

In an effort to further reduce burden, questions requesting specific numbers such as attorney counts and office expenditures include a box for respondents to indicate that their response is an estimate. This allows respondents to give an answer even if they are unable to look up the specific information.

To minimize burden on the respondent while completing the CPDO, NORC will operate a helpdesk to provide assistance by phone (toll-free) and email to all respondents during normal business hours (Eastern Time). Contact information for the project principal investigator will be provided to respondents.

6. Describe the consequence to federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

If the 2024 CPDO is not conducted, essential empirical data vital for understanding the landscape of public defense provision across the nation will remain unavailable. Basic inquiries such as the number and locations of public defender offices, the size of their staff, and the sources and levels of funding they receive will go unanswered. The absence of updated information is concerning, particularly given that the last CPDO was conducted 17 years ago whereas the most recent survey of prosecutors by BJS dates to 2020. Without a comprehensive national-level survey specifically focused on public defenders, there is a significant gap in understanding the current state of public defense and how it compares to prosecution. This lack of data impedes efforts to accurately assess the parity of resources available to prosecutor and public defense offices.

Additionally, without benchmarking against similar public defender offices nationwide, offices lack crucial insights into their funding and staffing levels. Policymakers, practitioners, and researchers rely on such data for strategic planning, funding allocation, and policy development, especially considering the substantial federal investment in public defense each year. Therefore, the urgent need for the 2024 CPDO cannot be overstated.

The ongoing call for empirical data regarding public defense has been reinforced by the White House's *Access to Justice (ATJ)* initiative,⁷ which coincides with the 2024 CPDO. With a mission

⁷ “Memorandum on Restoring the Department of Justice’s Access-to-Justice Function and Reinvigorating the White

focused on removing barriers to equal justice under the law, *ATJ* can leverage insights from CPDO to pinpoint crucial demographics or regions requiring increased funding or resources for adequate legal representation. The presidential memorandum also recognizes the Department of Justice's pivotal role in enhancing justice delivery for individuals unable to afford legal representation. A national-level data collection effort targeting all public defender offices aligns with the President's initiatives and is timely in its support.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- **requiring respondents to report information to the agency more often than quarterly;**
- **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- **requiring respondents to submit more than an original and two copies of any document;**
- **requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;**
- **in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- **requiring the use of statistical data classification that has not been reviewed and approved by OMB;**
- **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- **requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

BJS is requesting an exception from using the detailed race categories required by 2024 Statistical Policy 15 (SPD 15). CPDO is an establishment survey that is seeking to collect aggregate counts of employees working in public defender offices. The instrument includes a question asking for the race and ethnicity of full-time and part-time attorneys (B3). The 2024 SPD 15 guidance is geared toward individual level surveys and there is a lack of guidance on how to best capture aggregate personnel counts by race and ethnicity from establishments. CPDO relies on the reporting of data already collected within public defender offices. These offices will need to implement changes in their systems on how race and ethnicity are captured.

BJS is proposing to use a modified approach to [2024 SPD 15 Figure 3](#) on CPDO for item B3. The CPDO instrument will capture the minimum categories, including Middle Eastern or North

House Legal Aid Interagency Roundtable”, May 18, 2021. Accessed on 11/18/2024 at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/05/18/memorandum-on-restoring-the-department-of-justices-access-to-justice-function-and-reinvigorating-the-white-house-legal-aid-interagency-roundtable/>

African. However, each race and ethnicity category includes “alone” (e.g., White Alone) and BJS included one option to capture counts of persons of two or more races and ethnicities (i.e., Multiracial and/or Multiethnic). There are three primary reasons for this request. Findings from the SPD pilot and CPDO cognitive testing show that respondents’ information systems have not yet adopted multiple race and ethnicity categories compatible with SPD 15. Additionally, there is not guidance on how to collect aggregate counts via proxy on establishment surveys for agencies that do allow “mark all that apply” for race and ethnicity collection. Lastly, including multiple combination options for aggregate reporting would result in over 100 possible combinations with seven race and ethnicity categories, which would be overly burdensome for aggregate reporting. We also have included a “Not Known” category. In the SPD pilot and during CPDO cognitive testing, BJS found that public defender offices had difficulty providing race and ethnicity for their attorneys so including a Not Known category is essential.

Collecting detailed race and ethnicity data in aggregate form will not be possible with public defender offices due to their small size. Additionally, since public defender offices have a difficult time reporting on the minimum categories, it is highly unlikely they will have personnel records that contain detailed race and ethnicity information. Asking them to provide these data would increase burden and result in poor data quality.

BJS continues to explore ways to collect race and ethnicity on establishment surveys using proxy reporting and is also consulting with other agencies on how best to capture SPD 15 data on establishment surveys and administrative data collections. BJS will use these findings to inform a the next CPDO collection.

CPDO also includes a question asking for the race and ethnicity of the chief public defender (B16). Since this item is about an individual -- the respondent responsible for filling in the survey -- the CPDO uses [2024 SPD 15 Figure 3](#) minimum categories. Since the question is directed at the respondent, we removed the “not known” response. In addition, since the respondent may select more than one option, we removed the option for multiple races and/or ethnicities. Capturing detailed race and ethnicity data could be a risk to individual attorney’s privacy or confidentiality.

8. If applicable, provide a copy and identify the date and page number of publication in the *Federal Register* of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

The research under this clearance is consistent with the guidelines in 5 CFR 1320.8(d). The 60-day notice was published in the Federal Register, Volume 89, Number 175, pages 73448 on September 10, 2024. The comment period ended on November 12, 2024. BJS received two comments. They are summarized below, along with BJS's response:

1. **(Attachment 18)** A letter from the National Association of Counsel for Children recommending refining or adding questions dealing with aspects of youth defense. The recommendations were:
 - a. In section C (question C1): "Do attorneys that represent children in child protection cases also represent those children in delinquency cases?"
 - i. BJS response: There are two responses. One, the draft survey currently asks about an office handling juvenile delinquency cases (C1n, and "juvenile delinquency" and "child delinquency" are synonyms) and child protection cases (C1s and C1u). Two, the proposed question asks about their intersection. Capturing this is better handled in the individual defense attorney Survey of Public Defenders (SPD) instrument, and will be considered there. An office policy does not necessarily indicate that the same attorneys handle both types of cases
 - b. In section C: "In your office, what percentage of an attorney's caseload is dedicated to child protection legal representation – for parents? for children?"
 - i. BJS response: The draft survey currently asks about an office handling child protection services for parents (C1u) and children (C1s). However, computation of the percentage of cases would likely add a large amount of burden and result in a large amount of error. Child protection cases are difficult to count because they can last an indefinite or very long amount of time (e.g., an entire childhood). Due to their difficulty, they are not likely to be accurate.
 - c. In section E: "Does your office access federal Title IV-E funding for legal representation?"
 - i. BJS response: While A13 addresses operating expenditures from different sources included federal funds. Asking about a breakdown of those federal funds could add considerable burden and introduce significant error. Title IV-E has most frequently been used for child protection services, with only recent additions to be used for parental representation. Unless an office specializes in parental representation, it is unlikely that an office would be able to identify their receipt of Title IV-E funds for defense purposes.
 - d. In section E: "Does your office require specialized training for attorneys providing legal representation in child protection matters?"
 - i. BJS response: Training questions are likely better asked of individual attorneys, as office requirements do not necessarily indicate that specific individuals have attended training. In the SPD instrument, Q15 will ask about training in the past year for "adolescent development", "education law", and "representing juvenile clients."
2. **(Attachment 19)** An email from Partners for Justice recommending that questions be

added about “the scope of client resources that a public defender provides outside of their immediate criminal legal matter” such as referrals to outside legal or social services. The comment recommends the following question be added: “Does your office deploy staff to address a client’s civil and social service needs that are not directly related to the criminal legal case?”

- a. BJS response: The question addresses an office-level activity that is not currently captured in the draft CPDO survey instrument and is framed as a yes/no question that is likely low burden. To accommodate this request we will add the following item to question E1 as response “s”:

“Attorneys referring a client to outside organizations to help meet their civil or social service needs”

We chose this question to address the response for two reasons: (1) The phrase “deploys staff” may be seen as problematic to some consumers of the survey, as it implies there are staff that are performing services other than legal representation; and (2) The phrase “civil and social service needs” needs a more precise definition, since particularly in smaller offices, staff routinely will provide additional personal help (e.g., calling a defendant’s family member to ensure child care) to their clients during their legal representation.

The 30-day notice was published in the Federal Register, Volume 89, Number 228, page 93351, on November 26, 2024.

Hosted by the Salt Lake Legal Defender Association, a panel of subject matter experts (SMEs), convened on July 25th, 2023, in Salt Lake City, UT. Made up of public defense practitioners with diverse portfolios of responsibilities, the meeting included an overview of the 2007 CPDO, proposed changes and discussed key issues related to the development of the frame and instrument for the 2024 CPDO. Specifically, the panel focused on defining a public defender office by identifying the precise population of interest for the CPDO. The diversity of offices represented by the SMEs fostered a thorough discussion on the advantages and disadvantages of adopting various public defender office definitions. This allowed the project team to make an informed decision on which public defense providers to include. The panel spent additional time considering the relevance of specific questions from the 2007 CPDO and identifying emerging areas of concern and burden in the field. The SME panel included:

- Ibukun Adepoju, District Defender, Law Office of the Public Defender, NM
- Jon Bartelson, Chief Information Officer, Committee for Public Counsel Services, MA
- Deepak Budwani, Assistant Department Leader/Chief Financial & Administrative Officer, Santa Barbara County Public Defender’s Office, CA
- Alex Bunin, Chief Public Defender, Harris County, TX
- Mary Fox, State Public Defender Director, MO
- Keisha Hudson, Chief Defender, Defender Association of Philadelphia, PA
- Galit Lipa, State Public Defender, Office of the State Public Defender, CA
- Carlos Martinez, Public Defender, 11th Judicial Circuit of Florida, FL

- Elizabeth Miller, State Public Defender, Office of the Ohio Public Defender, OH
- Marcie Ryba, Executive Director, Nevada Department of Indigent Defense Services, NV
- Jonathan Sacks, Director of State Appellate Defender Office and Criminal Defense Resource Center, MI
- Erik Stilling, Information and Technology Management Officer, LA

Between February and June of 2024 the project team conducted a pretest of the CPDO on a sample of 12 public defender offices and a cognitive interview of 11 of those offices⁸ (**Attachment 6**). There were diverse office types based upon geographic coverage (e.g., single or multiple counties; urbanicity), types of defendants, funding types, and whether a public defender was appointed or elected. The cognitive interview covered the survey mode, response time, burden, details about sections of the survey and individual questions. Revisions to the survey were made in response to feedback from the cognitive interview.

9. Explain any decision to provide any payments or gifts to respondents, other than remuneration of contractors or grantees.

No government funds will be used as payment or for gifts to respondents. Chief public defenders will participate voluntarily and will not receive payment.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

BJS, its employees, and its data collection agents will only use the information gathered in this data collection for statistical or research purposes pursuant to 34 U.S.C. §§ 10231 and 10134. The data collected through the CPDO represent characteristics of public defender offices, not information specific to individual persons. Respondents' participation in the survey is voluntary and participants will be informed prior to starting the survey that the information they provide about their office will be available to the public.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

Not applicable: there are no questions of a sensitive nature.

⁸ The pretest of the survey and the cognitive interview were done at two separate times. One of the respondents ended their employment after performing the pretest of the survey but before scheduling and completing the cognitive interview.

12. Provide estimates of the hour burden of the collection of information. The statement should:

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. General, estimates should not include burden hours for customary and usual business practices.**
- **If this request for approval covers more than one form, provide separate hour burden estimates for each form.**
- **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14.**

BJS estimates the respondent burden for the CPDO at 2,423 hours. This estimate was calculated based on the total number of public defender offices (2,000) and guided by the participants' time to complete the survey during cognitive testing. Although high-level criteria were used to establish the frame, it is likely that some offices will screen out due to ineligibility. Based on rough estimates from the 2007 CPDO, it is estimated that about 6% of the 2,000 public defender offices on the current roster will not be eligible because they:

1. are not fully or partially supported by public funds,
2. do not have at least one W-2 earning attorney,
3. do not provide public defense representation to adult or juvenile clients accused of a crime or delinquency or of violating conditions of a sentence,
4. do not have a dedicated physical space
5. will no longer be in operation,
6. are a private or for-profit law firm,
7. provide representation solely relying on an assigned counsel system; or,
8. are a tribal defender.

For those 120 out-of-scope entities, the burden will be less than 5 minutes. For the 1,880 public defender offices that meet the established criteria, outreach and data quality follow-up is estimated to take 15 minute per office and results from the cognitive testing suggest public defender offices will take approximately 62 minutes to complete the survey per office. See Table 2 for calculations (assuming a chief or designee to complete the CPDO).

Table 2. 2024 CPDO Estimated Annualized Respondent Cost and Hour Burden

	Total annual responses	Participation time (min)	Total burden (hours)	Hourly rate*	Monetized value of respondent time
Outreach (ineligible offices)	120	5	10	\$63.60	\$636
Outreach and data quality follow-up (eligible offices)	1,880	15	470	\$63.60	\$29,892
Data collection (eligible offices)	1,880	62	1,943	\$63.60	\$123,575
Total	2,000	--	2,423	--	\$154,103

*Hourly rate for respondents obtained from the Bureau of Labor Statistics May 2023 estimates for Local Government Lawyers

13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).

- **The cost estimate should be split into two components: (a) a total capital and start up cost component (annualized over its expected useful life); and (b) a total operation and maintenance and purchase of service component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.**
- **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis**

associated with the rulemaking containing the information collection, as appropriate.

- **Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.**

There are no anticipated costs to respondents beyond the employee time expended in gathering information or completing the instrument. Respondents are not being asked to purchase anything or maintain any services as part of this data collection.

14. Provide estimates of the annualized cost to the Federal Government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 into a single table.

The total cost to the Federal government for the CPDO data collection is \$1,434,681, paid by BJS. BJS personnel costs are calculated based on the Office of Personnel Management’s salary table effective January 2024. BJS awarded \$999,979 to NORC, Urban, and NAPD through a cooperative agreement. This cost is associated with conducting the CPDO with a roster of 2,000 offices, analyzing the data, and producing BJS reports of the findings. The contractor and subcontractors’ costs include the amount spent on outreach efforts, project management, data monitoring and processing, and data documentation. The project is expected to take about three years, beginning in FY 2023 and ending in FY 2026. See Table 4 for a detailed breakdown of costs to the Federal government.

Table 4. Estimated BJS and Contractor Costs for the 2024 CPDO

Items	Costs	Total
BJS Personnel		
GS-14 Statistician (step 1: \$139,395), 40%	\$55,758	
GS-15 Supervisory Statistician (step 2: \$169,429), 15%	\$25,414	
GS-13 Editor, (step 5: \$133,692), 10%	\$13,369	
Salaries Subtotal:	\$94,541	
Fringe benefits (30% of salaries)	\$28,362	
Salary & Fringe Subtotal:	\$122,903	
Other administrative costs of salary and fringe (15%)	\$18,435	
Total staff costs	\$141,338 x 3 years, 2.5% raise escalation in years 2 and 3	\$434,702
NORC/Urban/NAPD cooperative agreement	\$999,979	\$999,979

Total Estimated Costs	\$1,434,681
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15. Explain the reasons for any program changes or adjustments.

The increase in respondent burden from 1,400 hours in 2007 to 2,423 hours in 2024 is attributed to an increase in the total number of public defender offices that are expected to be in the final frame and including the outreach activities in the burden estimate. The total number of public defender offices is estimated based on the frame building conducted in the summer and fall of 2023. In 2007, BJS estimated burden based on 1,400 public defender offices compared to 2,000 public defender offices in 2024.

16. For collections of information whose results will be published, outline plans for tabulations, and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

BJS plans to release one or more statistical reports summarizing the characteristics of public defender offices across the nation. The first release of the data will estimate national counts of all public defenders and offices meeting the established criteria for inclusion in the census and describe the characteristics of these public defense providers, including:

- a. Number and types of CPDOs in the United States (e.g., statewide and county-based)
- b. Number of public defenders in the United States
- c. Proportion of CPDOs receiving federal, state and/or local funding
- d. Proportion of CPDOs providing specific types of defense services (e.g., post-conviction or appellate, capital defense, juvenile defense, conflict cases, etc.)
- e. Proportion of CPDOs with different support resources for attorneys and clients (e.g., investigators, paralegals, social workers, etc.)

The CPDO data will be archived in a public use file at the National Archive for Criminal Justice Data (NACJD) at the Inter-University Consortium for Political and Social Research (ICPSR). These public use data files and supporting documentation will be fully available for download at no charge once the BJS report is published and the data are processed by NACJD. To make it possible for other researchers, practitioners, policymakers, and citizens to access and analyze the information, the data will be available in multiple formats such as Excel, SPSS, and/or SAS. Access to these data permits analysts to identify the specific responses of individual facilities and to conduct their own statistical analyses. For example, office total operating expenditures can be analyzed in the context of staffing numbers, caseloads, and availability of adequate case management systems that meet office needs. Similarly, policies governing initial attorney-client interactions can be analyzed to determine how many offices adhere to those policies for detained clients compared to released clients.

In addition, BJS will develop a dashboard to disseminate CPDO information through one of its web tools. This dashboard will include interactive maps using the 2024 CPDO data and county-level data from the U.S. Census Bureau. These maps will show geographic coverage of public

defender offices, the rate of public defenders per 1,000 county residents, and the number of cases handled by public defender offices. All BJS publications and products will be available on the BJS website.

Pending OMB approval, the CPDO data collection is scheduled to begin on January 1, 2025, and be in the field through October 1st, 2025 (10 months). The data collection agent, NORC, will clean and verify data on a continual basis over the course of data collection, and final data cleaning will take place in fall of 2025. The data will be delivered to BJS by the winter of 2026.

The schedule is as follows:

February - June, 2024	Cognitive Testing
January, 2025	Data collection begins
October 1, 2025	Data collection ends
December 2025	Data delivery to BJS
January – April 2026	Data analysis
June 2026	First BJS report release/data file and documentation published

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

BJS is not requesting an exemption. The expiration date will be displayed on the survey form.

18. Explain each exception to the certification statement.

The CPDO collection does not include any exceptions to the certification statement.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS.

This collection contains statistical data.

Attachments:

Attachment 1: 2024 CPDO survey instrument

Attachment 2: CPDO Overview

Attachment 3: Generic OMB approval for CPDO frame construction

Attachment 4: Title 34, United States Code, Section 10132 of the Justice Systems Improvement Act of 1979

Attachment 5: Welcome screen for online instrument

Attachment 6: 2024 CPDO Cognitive Testing Report

Attachment 7: BJS Pre-notification letter

Attachment 8: Invitation email

Attachment 9: Ad hoc survey link/delegation request

Attachment 10: Reminder emails

Attachment 11: Reminder letter and hardcopy survey mailing

Attachment 12: Reminder script - telephone

Attachment 13: Reminder letter and hardcopy survey mailing

Attachment 14: Reminder letter

Attachment 15: NAPD Reminder script – telephone

Attachment 16: Last chance postcard

Attachment 17: Thank you email

Attachment 18: 60-day notice public comment from the National Association of Counsel for Children

Attachment 19: 60-day notice public comment from Partners for Justice