



Office of the Inspector General
U.S. Department of Justice

OVERSIGHT ★ INTEGRITY ★ GUIDANCE



Review of the Department of
Justice's Implementation of the
***Death in Custody Reporting Act of
2013***



Executive Summary

Review of the Department of Justice's Implementation of the Death in Custody Reporting Act of 2013

Introduction

Congress enacted the *Death in Custody Reporting Act of 2013* (DCRA) to address the lack of reliable information about law enforcement-related deaths and deaths in correctional institutions. DCRA requires state and federal law enforcement agencies to report to the Attorney General information regarding the death of any person who is (1) detained by law enforcement, (2) under arrest, (3) in the process of being arrested, (4) en route to be incarcerated or detained, or (5) incarcerated at any correctional facility. To encourage state reporting, DCRA authorizes the Attorney General to withhold up to 10 percent of Edward Byrne Memorial Justice Assistance Grant Program funds from states that do not comply with DCRA reporting requirements.

The Office of the Inspector General (OIG) conducted this review to evaluate the U.S. **Department of Justice's** (Department, DOJ) progress in implementing DCRA. We **assessed the Department's** management of the federal DCRA data collection, as well as its preparations for collecting state-level DCRA data, **from the law's** enactment in December 2014 through July 2018.

Results in Brief

We found that the Department has made progress in collecting DCRA data from federal law enforcement agencies; however, not all of these agencies have submitted DCRA reports. We also found that the **Department's state DCRA data collection** has been delayed. Further, if implemented as planned, the state DCRA data collection will duplicate other Department efforts, which is an inefficient use of resources, creates confusion, and may yield incomplete data. Without complete information about deaths in custody, the Department will be unable to achieve **DCRA's** primary purpose—to examine how DCRA data can be used to help reduce the number of deaths in custody.

Many, but Not All, Federal Law Enforcement Agencies Have Been Submitting DCRA Reports

We found that the DOJ Bureau of Justice Statistics (BJS) has facilitated the submission of DCRA reports from 104 federal agencies. A senior BJS official told us that these agencies are likely responsible for the vast majority of DCRA reportable deaths. However, BJS does not have a full accounting of all federal law enforcement agencies and therefore is unable to determine whether all agencies required to submit DCRA reports are doing so. We also found that all DOJ law enforcement components are submitting required DCRA reports; however, at the time of our review, the Federal Bureau of Prisons had not been providing the time of death for decedents, a data element required by DCRA.

The Department Has Not Yet Collected State Arrest-Related Death Data Despite DCRA's Requirement to Do So by Fiscal Year 2016

We found that, despite the DCRA requirement to collect and report state arrest-related death data by fiscal year (FY) 2016, the Department does not expect to begin its collection of this data until the beginning of FY 2020. This is largely due to the Department having considered, and abandoned, three different data collection proposals since 2016.

If Implemented as Planned, DOJ's State DCRA Collection Will Be Duplicative of Other Department Efforts and May Not Result in Complete Data Collection

We cannot **assess the effectiveness of the Department's** state DCRA data collection because it has not begun; however, we found that **the Department's current** state DCRA data collection plan will duplicate two other Department efforts. As a result, we are concerned that this collection plan may not produce high-quality data; duplicative reporting can fatigue respondents, who in turn may submit data of limited quality. In particular, we found that **DCRA's** scope overlaps that of the **Department's ongoing Mortality in Correctional Institutions Program** and the Federal Bureau of Investigation's planned Use of Force Program.

We are also concerned that **the Department's** state DCRA implementation plan may not produce reliable data because the DOJ Bureau of Justice Assistance (BJA) plans to implement a data collection methodology that will not fully leverage open sources to validate traditional data collection methods, a promising technique that BJS previously piloted for a similar collection. Further, at the time of our review BJA planned to collect data from state-level agencies, rather than from local agencies that may have more specific knowledge about deaths in custody.

The Department Does Not Currently Have Plans to Issue a DCRA-Required Report to Congress

Lastly, we found that the Department does not have plans to submit a required report that details results of a study on DCRA data. DCRA required that such a report be submitted to Congress no later than 2 years after December 18, 2014.

Recommendations

We make four recommendations to ensure that the Department is able to efficiently and effectively manage the DCRA data collection and gather complete data about deaths in custody.

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INTRODUCTION

In December 2014, following several high-profile police shootings, including a shooting in Ferguson, Missouri, Congress enacted the *Death in Custody Reporting Act of 2013* (DCRA). DCRA requires states and federal law enforcement agencies to report to the U.S. Department of Justice (Department, DOJ) deaths that occur during arrest and required these entities to report deaths of inmates, detainees, or arrested individuals in the custody of law enforcement or correctional institutions.

The DOJ Office of the Inspector General (OIG) identified “Building Trust and Improving Police-Community Relationships” as among the Department’s Top Management Challenges for 2015, noting that a major impediment to Department initiatives for improving police-community relations was the lack of complete and accurate data. OIG has reiterated these concerns in its discussion of DOJ management challenges through subsequent years and has highlighted the significant role of DCRA in addressing the need for this data. Given the importance of collecting reliable information about deaths in custody, OIG initiated this review to assess the **Department’s progress to date in implementing DCRA.**

The Federal Government’s Ongoing Effort to Collect Death in Custody Data

DCRA, which restored and expanded on the provisions of an earlier law passed in 2000, is part of the federal **government’s ongoing effort to track deaths** occurring in a variety of interactions with law enforcement and in the custody of corrections officials throughout the United States. The agencies that have initiated and managed data collections that include some aspect of DCRA-reportable data are the Bureau of Justice Statistics (BJS) within the DOJ Office of Justice Programs (OJP), the Federal Bureau of Investigation (FBI), and the Department of Health and **Human Services’ Centers for Disease Control** and Prevention (CDC). In the sections that follow, we explain the main provisions of the current law as well as the related data collections that these agencies manage.

The Death in Custody Reporting Act of 2013

DCRA requires states and federal law enforcement agencies to report to the Attorney General information regarding the death of any person who is: (1) detained by law enforcement; (2) under arrest; (3) in the process of being arrested; (4) en route to being incarcerated or detained; or (5) incarcerated at any correctional facility, including contract facilities (which we term “**deaths in a correctional institution**”). Collectively, we refer to all five of these circumstances as “**deaths in custody.**” We also refer to any of the first four circumstances of death as “**arrest-related deaths.**”

The *Death in Custody Reporting Act of 2000*, which collected similar data from states, expired in 2006. The current DCRA, enacted in 2014, builds on the expired law and requires that states report quarterly, and federal agencies report annually, the name, gender, race, ethnicity, and age of the deceased person, as well as the date and time of the death, the location of the death, and the circumstances surrounding the death. States must also report the law enforcement

agency that detained, arrested, or was in the process of arresting the deceased. DCRA required that state and federal agencies begin reporting in fiscal year (FY) 2016.¹

Two additional provisions of DCRA are relevant to our review. First, to encourage states to report deaths in custody, DCRA also authorizes the Attorney General to withhold up to 10 percent of Edward Byrne Memorial Justice Assistance Grant (JAG) Program funds from states that do not comply with DCRA reporting requirements. Second, DCRA required the Attorney General to conduct a study and issue a report within **2 years of the law's enactment** examining how DCRA data can be used to help reduce the number of deaths in custody and the relationship between management actions and the number of deaths.

BJS Data Collections

BJS is **one of the federal government's 13 official** statistical agencies, and its mission is to collect, analyze, publish, and disseminate information about criminal justice issues on behalf of the Department. In response to the *Death in Custody Reporting Act of 2000*, which required states to submit information on deaths in correctional institutions and deaths related to arrests, BJS established two data collections: the Mortality in Correctional Institutions (MCI) Program and the Arrest-Related Death (ARD) Program.² Through the MCI Program, which BJS continued even after the *Death in Custody Reporting Act of 2000* expired in 2006, BJS has collected data on persons who died in the physical custody of the approximately 2,800 local adult jail jurisdictions nationwide since 2000, and the 50 state departments of corrections since 2001.³ BJS uses this data to track national trends in the number and causes of deaths occurring in correctional institutions, and it has published annual reports on mortality in jails and state prisons.⁴

In 2003, through its ARD Program, BJS began collecting data on persons who died either during the process of arrest or while in the custody of a state or local law enforcement agency. Eligible deaths included those caused by law enforcement's use of force and those not directly related to the actions of law

¹ While the statute did not require it, the Department required states and federal law enforcement agencies to submit a DCRA report, even if they had zero deaths in a fiscal year, to assist in ensuring the completeness of the data.

² **These two data collections were previously part of BJS's now-defunct Death in Custody Reporting Program.**

³ In 2015 the Federal Bureau of Prisons (BOP) also began providing to BJS detailed data about each inmate death. BOP policy requires institution staff to report to BOP headquarters an inmate death and its apparent cause within 24 hours regardless of whether the death was a result of suicide, homicide, or natural causes.

⁴ See, for example, DOJ BJS, *Mortality in Local Jails, 2000–2014 Statistical Tables*, NCJ 250169 (December 2016), and DOJ BJS, *Mortality in State Prisons, 2001–2014 Statistical Tables*, NCJ 250150 (December 2016). In these two reports, which are the most recent reports on deaths in prisons and jails that BJS has issued, BJS found that in 2014 there were 444 deaths in federal prisons; 1,053 deaths in local jails; and 3,483 deaths in state prisons.

enforcement, such as deaths occurring at the time of arrest or while in custody that were attributed to suicide, accident, or natural causes. BJS generally relied on state criminal justice agencies to report data voluntarily on behalf of all law enforcement agencies within a state. In 2014 BJS suspended the ARD Program due to concerns about data quality for FYs 2012 and 2013. Contract statistical experts later assessed the historical data quality of the ARD Program for the years in which it had reliable data, 2003–2009 and 2011, and discovered that the program captured only about 50 percent of the estimated law enforcement homicides during this time frame.⁵

In 2015 BJS launched a two-phase pilot study that sought to test how a review of open sources could help BJS identify the full scope of arrest-related deaths identified in DCRA. During the first phase of the ARD Program Redesign Study, BJS identified potential arrest-related deaths through a review of open sources, including news outlets, official agency documents, and other publicly available information. During the second phase, BJS surveyed state and local law enforcement agencies, as well as **Medical Examiner's** and **Coroner's** offices, with jurisdiction over the potential arrest-related deaths identified during the first phase. Each survey respondent was asked to validate each potential arrest-related death identified through the open-source review and identify any other deaths that met the ARD Program's scope.⁶ Based on information collected during these two phases, BJS issued a report, which estimated that approximately 1,900 arrest-related deaths occurred in the United States from June 2015 through May 2016. **By contrast, BJS's prior counts of annual arrest-related deaths from 2003 through 2009, based solely on information voluntarily reported by police agencies, had ranged from 627 to 745 each year.** BJS officials and contract statistical experts told us that by implementing the pilot methodology, which validates open-source data using traditional data collection methods, the ARD Program could produce a more complete accounting of arrest-related deaths than it had previously.⁷

FBI Data Collections

FBI has long collected data on homicides and is currently in the process of partnering with state and local law enforcement organizations to implement a national database on police use of force. Since the 1930s, FBI has collected major

⁵ BJS did not receive enough data for deaths occurring in FY 2010 and FY 2012–FY 2014 to include these deaths in its analysis. According to BJS officials and BJS contract statistical experts, the **lack of sufficient data contributed to BJS's** decision to suspend the ARD Program. The ARD Program data quality assessment also did not examine the coverage of other deaths the ARD Program was designed to capture, including those due to suicides, accidents, drug overdoses, and natural causes. Duren Banks et al., *Arrest-Related Deaths Program Assessment Technical Report*, NCJ 248543 (March 2015), 13.

⁶ The ARD Program Redesign Study also included a survey of law enforcement agencies and **Medical Examiner's and Coroner's offices that did not have potential arrest-related deaths** identified through an open source. This survey concluded in July 2016.

⁷ BJS, *Arrest-Related Deaths Program Redesign Study 2015–16: Preliminary Findings*, NCJ 250112 (December 2016).

crime data from federal, state, and local law enforcement agencies as part of its Uniform Crime Reporting Program (UCR). Agencies voluntarily submit data about homicides to UCR, but they do not differentiate between homicides that are a result of officer use of force and all other homicides.⁸ A representative of the Association of State Criminal Investigative Agencies told us that following a series of high-profile officer use-of-force incidents, organizations representing state and local law enforcement agencies recognized the need to provide greater transparency about deaths and other injuries caused by officer use of force. According to this representative, in 2015 he and representatives from other law enforcement organizations formed a task force to improve nationwide officer use-of-force data collection and from that effort FBI and the task force developed what would become the Use of Force data collection.⁹ Use of Force seeks to collect information about any use-of-force incident that results in the death or serious bodily injury of a person, as well as any time a law enforcement officer discharges a firearm at or in the direction of any person.¹⁰

According to the Use of Force data collection plan that FBI and the task force created, agencies will provide specific information about the incident and non-personally identifiable information about the subject(s) and officer(s) involved. Unlike DCRA, Use of Force does not include information about incidents in which law enforcement involvement was a contributing factor but not the proximate cause of a suicide, accident, or death by natural causes.¹¹ An FBI official responsible for Use of Force's development told us that as of May 2018, 2,400 of what FBI estimates to be the **nation's** approximately 18,000 law enforcement agencies were prepared to submit data when the Use of Force data collection officially begins, which the FBI estimates will occur by the end of calendar year 2018.

CDC Data Collections

CDC manages two data collections, the National Vital Statistics System (NVSS) and the National Violent Death Reporting System, both of which maintain data similar to that which is collected under DCRA. NVSS gathers information recorded on state and local birth and death certificates. Death certificates describe

⁸ The Department requires that all shooting incidents involving its employees be reported, documented, and investigated. DOJ Policy Statement on Reporting and Review of Shooting Incidents (Resolution 13), September 21, 1995.

⁹ The task force includes, but is not limited to, representatives from the Association of State Criminal Investigative Agencies, Hualapai Nation Police Department, International Association of Chiefs of Police, Major Cities Chiefs Association, Major County Sheriffs' Association, National Organization of Black Law Enforcement Executives, National Sheriffs' Association, and Police Executive Research Forum.

¹⁰ The Use of Force data collection bases its definition of serious bodily injury on 18 U.S.C. § 2246(4), which defines serious bodily injury as "bodily injury that involves a substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty."

¹¹ If, for example, an individual commits suicide during the course of a standoff with law enforcement or dies of a heart attack immediately after arrest, the death would be reportable under DCRA but not under Use of Force.

the decedent's race, ethnicity, cause of death, nature of injuries, and Medical Examiner's or Coroner's findings on homicides. CDC uses NVSS data to publish a series of annual Fatal Injury Reports. The National Violent Death Reporting System, in contrast to NVSS, collects specific information about homicides, including information about the person who allegedly committed the homicide. Additionally, while NVSS is a nationwide data collection, the National Violent Death Reporting System covers only 40 states, the District of Columbia, and Puerto Rico.

Bureau of Justice Assistance and DCRA

The Bureau of Justice Assistance (BJA), within OJP, is a DOJ agency responsible for distributing and managing criminal justice assistance grants, including the JAG, made to state and local law enforcement agencies. DCRA gives the Attorney General the authority to withhold up to 10 percent of JAG Program funds from states that do not submit required data. In the fall of 2016, OJP determined that the responsibility for collecting state DCRA data should be assigned to BJA, which also administers the JAG Program.

Purpose, Scope, and Methodology of OIG's Review

OIG assessed the Department's progress in implementing DCRA, including its management of related federal data collection efforts and preparations for collecting state-level data. We also assessed whether the Department's law enforcement components—the Bureau of Alcohol, Tobacco, Firearms and Explosives; Drug Enforcement Administration; FBI; Federal Bureau of Prisons; and U.S. Marshals Service—internally collected and submitted data as required by DCRA.¹²

During the course of the review we interviewed Department, state, and non-governmental managers and staff; reviewed relevant laws, guidelines, reports, memoranda, and policies; and reviewed DCRA data submitted by the DOJ law enforcement components. Additionally, following a June 2018 briefing of our preliminary findings to Office of the Deputy Attorney General (ODAG), BJA, and BJS officials, we requested that ODAG provide a written response to a series of questions pertaining to the topics discussed during the briefing. OJP responded to these questions on behalf of ODAG on August 2, 2018, and we incorporated the responses into this report. OIG's review covered the period from the law's enactment in December 2014 through July 2018. We include a detailed description of our methodology in [Appendix 1](#) and the text of the *Death in Custody Reporting Act of 2013* in [Appendix 2](#).

As an additional methodological note, although we had access to and reviewed BJS federal DCRA reports during our review, in this report we do not provide information about the number of deaths federal agencies reported to BJS or the circumstances surrounding those deaths. This is because BJS has not yet

¹² For the purposes of this review, we consider BOP a law enforcement agency since it is required to submit DCRA reports. DOJ OIG also has law enforcement authority but did not have any DCRA reportable deaths in either FY 2016 or FY 2017. OIG submitted to BJS the required zero-deaths reports for both fiscal years.

finalized the results of the FY 2016 and FY 2017 federal DCRA data collections and because the primary purpose of this report is to assess the process by which the Department is collecting or plans to collect DCRA data from state and federal law enforcement agencies.

RESULTS OF THE REVIEW

Many, but Not All, Federal Law Enforcement Agencies Have Been Submitting *Death in Custody Reporting Act* Reports

Although the Bureau of Justice Statistics (BJS) has facilitated the submission of *Death in Custody Reporting Act of 2013* (DCRA) reports from 104 federal law enforcement agencies, we found that not all federal law enforcement agencies have submitted these reports.¹³ In addition, we found that BJS and the Department do not have a full accounting of the number of federal agencies that have law enforcement authority, making it impossible for the Department or its OIG to fully assess DCRA compliance for the whole of the federal government. While the BJS Principal Deputy Director said that she believed that those federal agencies that have been submitting reports are likely accountable for the majority of DCRA-reportable deaths, until BJS collects complete reports from all federal agencies, the Department will be unable to determine the total number of individuals who died in federal custody and which agency had custodial responsibility at the time of death. We also found that, while all of the **Department's law enforcement** components submitted FY 2016 and FY 2017 DCRA reports, the Federal Bureau of Prisons (BOP) has not included time of death, a statutorily required data element that can help BJS assess the factors that contributed to deaths in correctional institutions.¹⁴

BJS Believes that the Majority of Federal Law Enforcement Agencies Have Submitted DCRA Reports, but BJS Has Not Identified the Entire Universe of Federal Law Enforcement Agencies

DCRA requires reporting for the purpose of better understanding deaths in custody so that they may occur less often. We found that while BJS believes that the majority of federal agencies required to submit DCRA reports are doing so, and that these agencies account for most deaths in custody, not all federal law enforcement agencies have been submitting DCRA reports. Further, BJS has not identified the entire universe of agencies that are required to submit DCRA reports. Unless the Department and BJS take additional steps to (1) identify the universe of agencies that have law enforcement authority, which are therefore required to report DCRA data, and (2) collect DCRA reports from these agencies, the Department will be unable to provide complete and accurate data about deaths in custody.

Based on our review of BJS records, we found that 104 unique agencies submitted DCRA reports for at least 1 year of the data collection. The agencies that have reported include all of the DOJ law enforcement components and major U.S. Department of Homeland Security law enforcement agencies such as Customs and Border Protection and Immigration and Customs Enforcement. A senior BJS official

¹³ This number represents the total number of agencies that have submitted DCRA reports, not the total number of agencies that have had DCRA-reportable deaths.

¹⁴ By DOJ law enforcement components, we mean specifically the Bureau of Alcohol, Tobacco, Firearms and Explosives; BOP; the Drug Enforcement Administration; the Federal Bureau of Investigation (FBI); and the U.S. Marshals Service (USMS).

told us that she believes that the 104 agencies that have submitted DCRA reports are likely the agencies that are accountable for the vast majority of deaths in custody.

However, not all agencies that BJS believes to have law enforcement authority have submitted the required reports. To date, a BJS official responsible for the federal data collection said that he can affirmatively identify 107 federal agencies with law enforcement authority and that he believes that another 10 agencies that have not yet responded to BJS inquiries may also have law enforcement authority. Additionally, and perhaps more concerning, we found that BJS and the Department do not know whether there are additional federal agencies with law enforcement authority.¹⁵ Given that BJS has collected DCRA reports from 104 agencies, this could mean that at least 3 to 13 agencies have not yet submitted DCRA reports. According to the BJS Principal Deputy Director, it is difficult for BJS to determine whether a small federal agency has law enforcement authority because such authority can be granted or rescinded in any piece of legislation at any time.

Since DCRA was enacted, the Department and BJS have taken several steps to inform federal agencies of their reporting responsibilities and to identify the universe of agencies required to report. On October 5, 2016, former Attorney General Loretta Lynch sent a memorandum (Attorney General Memorandum) to the heads of federal agencies outlining DCRA reporting procedures and explaining that agencies were to retroactively report each death in custody since FY 2016 to BJS through a web portal, and then continue to submit reports for deaths occurring in future fiscal years.¹⁶ The Attorney General Memorandum also included a list of agencies that the Department believed to have law enforcement authority, requested that each agency provide a point of contact for reporting DCRA data, and requested assistance from recipients to inform BJS of any federal law enforcement agencies with law enforcement authority that did not appear on the list.¹⁷

BJS officials responsible for the data collection told us that since the Attorney General Memorandum was issued they have also sought to increase awareness of

¹⁵ According to a BJS official, when a new data collection begins, it can take a few years for all respondents to provide data. As a result, BJS is still collecting FY 2016 and FY 2017 DCRA reports from agencies that have yet to provide data for either one or both years and is continuing to reach out to additional agencies to identify the full universe of federal law enforcement agencies.

¹⁶ In addition to the heads of executive departments and agencies, the former Attorney General also addressed the memorandum to judicial and legislative branch entities with law enforcement authority. Agencies that do not have any deaths to report still must submit a summary form certifying that there were zero deaths during the fiscal year. Agencies have the option either to submit records of deaths as deaths occur throughout the fiscal year or submit all records at the end of the fiscal year. Loretta Lynch, Attorney General, U.S. Department of Justice, memorandum for Heads [of] Executive Departments and Agencies; the Marshals of the United States Supreme Court; Chief of Police, U.S. Capitol Police; the Public Printer of the United States; Chair, Executive Committee, Judicial Conference of the United States, Death in Custody Reporting Act, October 5, 2016. See [Appendix 3](#) for the full memorandum.

¹⁷ The Attorney General Memorandum included a list of 124 federal agencies that the Department believed to have law enforcement authority. Although BJS officials told us that they could not definitively state the number of federal law enforcement agencies, they were able to determine that 23 of the 124 on the list did not have law enforcement authority.

DCRA's reporting requirements and identify the universe of agencies required to report by emailing and calling federal agencies believed to have law enforcement authority. However, despite the Attorney General Memorandum and these additional efforts, BJS officials told us that some agencies BJS identified as having law enforcement authority have not submitted DCRA reports as required. For example, one BJS official told us that he had reached out multiple times to an Intelligence Community agency with its own police force but that the agency has never responded. This official told us that because BJS has no formal authority over such agencies, he believed that these outreach efforts were the most he could do to generate more complete reporting. This official also said that in addition to those non-reporting law enforcement agencies of which BJS is aware, there may be additional federal agencies with law enforcement authority of which BJS is not aware.

Given that during the period of our review BJS did not yet have a full listing of federal agencies with law enforcement authority, we cannot determine the extent to which the DCRA data collection from federal agencies was complete. In an August 2, 2018, response to questions asked during **OIG's June 2018** briefing, the Office of the Deputy Attorney General (ODAG) and the Office of Justice Programs (OJP) reported to us that ODAG will assist BJS in identifying any remaining federal law enforcement agencies and contact those agencies that have not responded to BJS's requests for data. We believe that this is a necessary step to ensure that BJS's data collection of all federal deaths in custody is complete and accurate.

DOJ Law Enforcement Components Have Been Generally Compliant with DCRA, but BOP Has Not Been Providing a Statutorily Required Data Element

We reviewed BJS and DOJ law enforcement component records and determined that all DOJ law enforcement components submitted FY 2016 and FY 2017 DCRA reports. However, we found that BOP did not provide time of death, a required data element, in its DCRA reports.¹⁸ According to the BJS Principal Deputy Director, it is important that agencies complete every required field because complete data allows BJS to analyze a greater number of variables that may provide insight into the causes of deaths in custody.¹⁹ She stated that, for example, time of death data could allow BJS to test the hypothesis that there are more deaths at night, when a correctional institution may have fewer correctional or medical staff on duty.

In a written response to OIG, BOP headquarters officials stated that BOP has not consistently collected time of death data because, unless an inmate died under a **doctor's observation**, BOP could report only the time a BOP official discovered an inmate death, not the exact time of **the inmate's** death. Because BOP believed that

¹⁸ The data elements on the reports differ slightly if the death is reported by an arresting agency, such as FBI, or a detention/corrections agency such as USMS or BOP. Refer to the [Introduction](#) of this report for the full list of required DCRA data fields.

¹⁹ The BJS Principal Deputy Director added that not all variables reveal a correlation to the number of deaths in custody: however, BJS collected data fields beyond those required by DCRA because these fields may provide additional explanatory value about deaths in custody.

time of discovery of death would be an ambiguous data element, BOP did not record it in any of its databases. **Following OIG's issuance of** a working draft of this report to BOP in October 2018, BOP came to an agreement with BJS to submit data on inmate time of death moving forward.

The Department Has Not Yet Collected State Arrest-Related Death Data Despite **DCRA's** Requirement to Do So by FY 2016

We found that despite DCRA's requirement to begin collecting state arrest-related death data by FY 2016, the Department has not done so, and it does not anticipate implementing its proposed data collection until the beginning of FY 2020 at the earliest. Through interviews and review of documents, we compiled a timeline of the **Department's efforts, to date, to implement the state DCRA collection, which we found entailed a series of strategies and approaches collectively spanning several years.** In this section, we describe these efforts and **how they have evolved into the Department's current state DCRA collection plan.**

From the time that DCRA was passed in December 2014 until the fall of 2016, BJS worked on several initiatives to implement the state DCRA collection. First, BJS began to design a new methodology to improve reporting of arrest-related deaths after an assessment of its historical Arrest-Related Death (ARD) Program indicated that BJS had been collecting only about 50 percent of all law enforcement homicides for its 2003–2009 and 2011 collections. After completing the assessment, BJS spent 11 months (June 2015 through May 2016) conducting its ARD Program Redesign Study, which piloted an alternative arrest-related death data collection methodology.

In January 2016, while finishing the ARD Program Redesign Study, BJS participated in an effort, initiated by a task force composed of state and local law enforcement organizations, to develop and implement a program to collect data about police use of force incidents in the United States. The task force members asked the Federal Bureau of Investigation (FBI) to assist in the development of and to subsequently manage what would become the Use of Force Program. BJS officials told us that given the similarities and overlap in the information and types of incidents that would be reported in the Use of Force and DCRA data collections, BJS proposed that FBI manage a combined data collection. However, after 6 months of discussions and consideration, in August 2016 state and local law enforcement representatives rejected BJS's proposal. An FBI official and a task force representative both told us that task force members rejected the proposal, in part because they were unfamiliar with DCRA and BJS had not clearly communicated DCRA's requirements. The task force representative also told us that, because state and local law enforcement believed that the Department may use DCRA data to punish law enforcement agencies, the task force decided that it should limit data collection to only those specific elements needed for researchers to better understand events and behaviors that led to officer use of force. As a result of this decision, the task force and FBI continued to develop a Use of Force implementation plan while separately BJS continued to develop a state DCRA implementation plan.

In August 2016, BJS announced a new proposal to collect state DCRA data using what the BJS Principal Deputy Director described as a “promising” methodology piloted during **BJS’s ARD Program Redesign Study**.²⁰ This methodology would use both open-source and local agency-reported data in an effort to increase the capture of reportable deaths. According to BJS contract statistical experts, this approach, when used during the pilot study, increased BJS **coverage of the nation’s deaths in custody**.²¹

BJS officials did not implement this methodology to collect DCRA data, however, because a few months after BJS announced this proposal OJP determined that BJS would not be assigned to serve as the state DCRA data collection agent. The OJP Counsel told us that OJP made this determination because U.S. Office of Management and Budget guidance requires statistical agencies to operate separately from policy-making activities. According to OJP Counsel, OJP considers the administration of DCRA to be a policy-making activity because DCRA gives the Attorney General the authority to withhold up to 10 percent of Edward Byrne Memorial Justice Assistance Grant (JAG) Program funds from states that do not submit required data. The BJS Principal Deputy Director corroborated the OJP **Counsel’s assessment that BJS is not the appropriate agency to implement and manage DCRA**. She further stated that it would be inadvisable for BJS to collect state DCRA data on behalf of another entity that would perform the compliance assessment because even such limited involvement **could undermine BJS’s position** as an objective statistical collection agency and could cause survey respondents to withhold future data. Further, OJP stated in its written response to questions asked during **OIG’s** June 2018 briefing that assigning to BJS the responsibility of implementing DCRA would trigger data use restrictions and potentially limit the **Department’s ability to use DCRA information** for law enforcement purposes.

In the fall of 2016, with BJS unable to serve as the state DCRA data collection agent, OJP transferred responsibility for collecting information about state arrest-related deaths and deaths in correctional institutions to another agency within OJP, the Bureau of Justice Assistance (BJA). OJP officials explained that because BJA manages the JAG Program, and because DCRA is tied to the administration of that program, it was logical for BJA to serve as the state DCRA data collection agent.

²⁰ Arrest-Related Deaths Program, Notice for Collection Comments Requested, 81 Fed. Reg. 150, 51489 (Aug. 4, 2016). When federal agencies intend to collect data from state or local governments, they must publish a notice in the *Federal Register*. Within 60 days of **the notice’s** publication, interested parties may submit comments to the agency either in support of or in opposition to all or part of the notice. Based on these comments, the federal agency will submit a final collection plan to **the Office of Management and Budget’s Office of Information and Regulatory Affairs**, which determines whether the collection complies with the *Paperwork Reduction Act of 1995* and is therefore not overly burdensome on respondents. Only after **that office’s** approval can the agency begin to implement the collection. To date, the Department has not submitted any state DCRA data collection plans to the Office of Information and Regulatory Affairs for review.

²¹ The ARD Program Redesign Study’s methodology is described in the [Introduction](#) of this report.

In December 2016, BJA announced its first proposal to collect state DCRA data.²² This initial **proposal was similar to BJS's** previous proposal, with the main difference being that the BJA proposal would require state-level agencies to report data instead of local law enforcement agencies. During an interview with senior OJP officials, the BJA Deputy Director said that incoming OJP leadership considered this proposal but did not approve it because they were concerned that the proposal might overly burden states and they believed that it would require states to submit information beyond what DCRA explicitly requires. For example, this proposal asked state officials to develop, for every year of the collection, a data collection plan that would require BJA approval, which DCRA does not require. The BJA Deputy Director also told us that incoming OJP leadership were delayed in approving any new state DCRA collection proposal as it took them some time to understand the requirements of DCRA and the related resources necessary to fulfill those requirements.

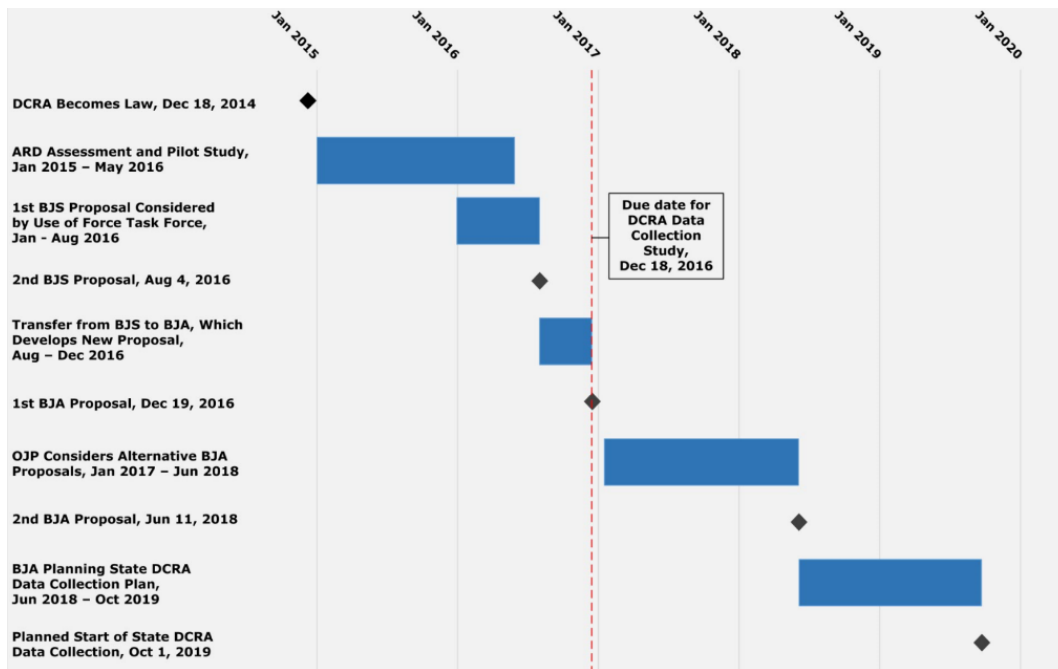
BJA posted a 60-day notice in the *Federal Register* on June 11, 2018, with a revised collection plan.²³ A significant difference between this proposal and prior proposals is that its described methodology would not require BJA to routinely validate open-source data with state-reported data. As a result, during our review period BJA's **plans** relied primarily on state agencies to report DCRA data. Further, the June 11, 2018, plan substantially decreased the amount of information that state agencies must submit, which, according to OJP, would also minimize the **DCRA data collection's** burden on state agencies. If, following a public comment period, the proposal receives final approval from the Department and the Office of Management and Budget, BJA anticipated that the DCRA data collection would begin on October 1, 2019, and it expected to receive quarterly reports beginning in January 2020. The figure below shows how these ongoing deliberations have delayed DCRA's implementation.

²² Agency Information Collection Activities; Proposed Collection Comments Request; New Collection: Death in Custody Reporting Act Collection, 81 Fed. Reg. 243, 91949 (Dec. 19, 2016).

²³ Death in Custody Reporting Act Collection, Notice for Proposed eCollection and eComments, 83 Fed. Reg. 102, 27023 (Jun. 11, 2018).

Figure

Timeline of State DCRA Data Collection Events and Decisions



Sources: BJS, BJA, and FBI

In the following sections, we expand on the Department’s decision-making process and further describe our concerns that the Department’s current proposal may result in a duplicative and incomplete DCRA data collection.

If Implemented as Planned, DOJ’s State DCRA Data Collection Will Be Duplicative of Other Department Efforts and May Not Result in Complete Data Collection

We found that the Department’s state DCRA data collection plan that BJA proposed in June 2018 may not produce the quality of data about deaths in custody necessary to achieve the intent of the law for two reasons. First, the plan would duplicate other data collections because it would require respondents to submit similar information about deaths in custody to multiple DOJ entities. This is concerning because BJS, BJA, and FBI officials told us that duplication in data collection efforts can confuse and fatigue data respondents, who in turn may submit low-quality data. Second, in the past when the Department used a methodology that, similar to its current proposal, did not fully leverage open sources to establish an initial population of law enforcement homicides, the Department captured only about 50 percent of these incidents.²⁴ Consequently, we are concerned that the Department will not be able to achieve DCRA’s primary purpose—to collect

²⁴ Duren Banks et al., *Arrest-Related Deaths Program Assessment Technical Report*, NCJ 248543 (March 2015), 13.

complete and accurate death in custody data to examine how DCRA data can be used to help reduce the number of deaths in custody.

The Planned DCRA Data Collection Is Duplicative of Two Other Data Collections

We found that the planned scope of the DCRA collection overlaps with the scope of **BJS's** Mortality in Correctional Institutions (MCI) collection and **FBI's Use of Force** collection. This is concerning because when multiple agencies manage similar collections, it results in an inefficient use of resources. Further, duplicative reporting requirements can confuse respondents and increase the risk of respondent fatigue, which can diminish data quality.

If DCRA is implemented in October 2019 as planned, BJA will begin collecting data about deaths in state and local correctional institutions even though BJS will continue collecting a limited amount of data about these deaths through its ongoing MCI collection. BJS officials told us that BJS will continue the MCI collection because it complements **BJS's** overall correctional research, which includes a broader analysis of the nationwide prison population. This broader analysis includes supplementing the MCI collection with Centers for Disease Control and Prevention data compiled from death certificates. In its August 2, 2018, written response to questions asked during **OIG's** June 2018 briefing, OJP stated that it believed **that BJS's MCI collection should continue** as planned. In addition to **supporting BJS's general statistical research**, the inclusion of the additional data from death certificates would provide richer details on deaths in custody than past MCI collections have done or the planned DCRA collection would do.

We identified a **second area of duplication related to the Department's** collection of data about state arrest-related deaths. To comply with DCRA, BJA will begin to collect specific information about state arrest-related deaths at the same time as **FBI's planned** Use of Force data collection will also collect information about **many of the same deaths**. **FBI's planned** Use of Force collection is broader in some respects than DCRA because it also collects data about officer non-lethal use of force. In other respects, **FBI's plan** is more restricted since it does not collect data about arrest-related deaths resulting from suicide, accidental death, or natural causes. However, the two planned collections overlap with respect to arrest-related deaths caused by officer use of force and the data to be collected by Use of Force in this category will also satisfy most DCRA requirements. For example, DCRA and Use of Force will both collect data to determine the gender, race, ethnicity, and age of the deceased person, as well as the date and time of death, location of death, and circumstances surrounding the death. The main difference is that the Use of Force collection does **not request the decedent's name, whereas this** will be a required data element under DCRA.²⁵ See the table for a comparison of the types of death that each of the three collections described in this section will capture.

²⁵ In its August 2, 2018, written response to questions **asked during OIG's June 2018 briefing**, OJP stated that the Department does not view the DCRA and Use of Force collections as duplicative because the two collections have different underlying purposes. For example, the DCRA collection would be structured to accommodate mandatory reporting, while the Use of Force collection would

Table
Types of Death Captured by FBI, BJA, and BJS Data Collections

Collection	Primary Reporting Agencies	Death During Arrest ^a	Non Fatal Officer Use of Force	Death Result of Suicide, Accident, or Natural Causes	Death in Detention/ Correctional Facility
<i>FBI Collection</i>					
Use of Force	Federal, state, and local law enforcement	✓	✓		
<i>BJA Collection</i>					
State DCRA	State JAG Program administering agencies	✓		✓	✓
<i>BJS Collection</i>					
MCI	State and local correctional facilities			✓	✓

^a We consider deaths during arrest to include those that occurred when an individual was detained by law enforcement, in the process of being arrested, under arrest, or in the custody of the arresting agency while en route to be incarcerated or detained.

Source: OIG analysis

We found that competing perspectives of federal and non-federal stakeholders involved in the development of the Use of Force and DCRA collections prevented the Department from consolidating the collections. Beginning in early 2016, at the behest of a task force composed of representatives of state and local **law enforcement organizations, FBI’s Criminal Justice Information Services Division** hosted a series of meetings to determine how best to develop and implement a data collection of use-of-force incidents in the United States. Initially, BJS proposed that FBI manage a collection that would satisfy DCRA’s requirements while also collecting additional Use of Force data elements. The FBI official responsible for implementing the Use of Force collection told us that FBI was open to this approach; however, she further explained that because the state and local law enforcement task force representatives initiated this **effort, with FBI’s role** being to facilitate development of the collection, FBI deferred major decisions, such as whether the collections should be consolidated and managed by FBI, to the task force members.²⁶

facilitate voluntary reporting. OJP conceded that there might be some overlap between the two collections, but OJP anticipated that fewer events would be reportable under both collections than would be reportable under only one collection. As we discuss later in the report, we believe the sooner BJA begins its state DCRA collection the sooner it will be able to assess data quality and work with FBI to minimize duplicative data collection.

²⁶ **The Criminal Justice Information Services Division’s Advisory Policy Board is responsible for** reviewing appropriate policy, technical, and operational issues related to Criminal Justice Information Services Division programs. Subsequent to its review, the Advisory Policy Board makes recommendations to the FBI Director. According to the minutes of the task force meetings, the recommendations from the task force were not to be submitted to the Advisory Policy Board for a vote; they would instead be sent directly to the Director for consideration.

A Criminal Justice Information Services Division official and a state law enforcement task force representative told us that, ultimately, the state and local law enforcement task force members decided that the collections should be managed separately, at least at first. They believed that many in the law enforcement community were unfamiliar with DCRA and would be confused by a new collection with slightly different data submission requirements. Additionally, OJP noted in its written response **to questions asked during OIG's** June 2018 briefing that, during task force meetings, law enforcement community representatives had expressed concerns about conflating all deaths in custody with deaths connected to police use of force. Both officials we interviewed also said that they believed that law enforcement agencies would be less willing to participate in a combined collection if the collection required agencies to submit data about deaths that were not directly caused by law enforcement's use of force, such as deaths from suicide, accident, or natural causes that occurred during the course of arrest or while an individual was incarcerated.

While we recognize the importance of buy-in from state and local law enforcement agencies to ensure a successful Use of Force collection, we are concerned that keeping these collections separate will be an inefficient use of resources, could create confusion by requiring responses with similar information to multiple Department entities, and could compromise the quality of the state DCRA collection. The FBI, BJS, and BJA officials all explained that if respondents had to submit data about the same death multiple times, or were asked to submit information too frequently, they may experience respondent fatigue, which can undermine the completeness and quality of submissions.²⁷

The Department's State DCRA Implementation Plan May Not Produce Complete Death in Custody Data

Although we cannot assess the effectiveness of **the Department's** state DCRA data collection because it has not yet begun, we believe that if the Department implements its current plan it may not produce complete data about deaths in custody. This is because BJA plans to implement a data collection methodology that, similar to the historical BJS ARD Program data collection methodology, which captured only about 50 percent of law enforcement homicides, would not fully

²⁷ Respondent fatigue occurs when survey participants become tired of the survey task and the quality of the data they provide begins to deteriorate. It **occurs when survey participants' attention and motivation decrease** in later sections of a questionnaire. Tired or bored respondents may more often **answer "don't know"; engage in "straight-line" responding (i.e., choosing answers from the same column on a page); give more perfunctory answers; or give up answering the questionnaire altogether.** Paul Lavrakas, "Respondent Fatigue," in *Encyclopedia of Survey Research Methods* (Thousand Oaks, Calif.: Sage Publications, 2008), <http://methods.sagepub.com/reference/encyclopedia-of-survey-research-methods/n480.xml> (accessed December 4, 2018).

OJP acknowledged to OIG that respondent fatigue was a cause for concern but stated that, in its view, such concerns did not outweigh the potential risks of consolidating the collections. These risks included further delays and lost trust among Use of Force Program partners. OJP also stated that, once both programs had collected initial datasets, the Department would be better situated to evaluate whether consolidation would be warranted and feasible.

leverage open sources to establish an initial population of law enforcement homicides or other deaths in custody. **Additionally, we found that like BJS's** historical ARD Program data collection, BJA is planning to collect data from state-level agencies instead of from local agencies that may have more specific knowledge about deaths in custody.

The Attorney General's December 16, 2016, report to Congress on DCRA identified as a challenge for state-level reporting that DCRA requires states to report information they did not necessarily possess.²⁸ This concern was reiterated by BJS, BJA, and state statistical analysis center officials who told us that, when BJS managed the ARD Program, relying on state reporting did not result in complete data because (1) state-level agencies are generally less aware of and less knowledgeable about deaths that occurred in their states than are the local jurisdictions where the deaths occurred and (2) many state governments cannot compel subordinate levels of government to report crime data without state laws that require it.²⁹ For example, one state law enforcement official explained to us that he expected his state's **involvement in DCRA to be minimal because there** was no law in his state that required **any type of reporting from the state's** hundreds of separate law enforcement agencies to a central state agency.

During our review, we learned that when BJS conducted the ARD Program Redesign study it made several methodological changes to mitigate the effects of incomplete state reporting. First, BJS developed and used a web-based open-source search application to generate a universe of potential deaths in custody. Second, after generating the universe, BJS directly surveyed local law enforcement agencies to confirm the deaths and report any additional deaths.³⁰ BJS also contacted a sample of agencies **for which BJS's open-**source review had not identified any deaths to verify that those agencies were not involved in any arrest-related deaths. During interviews, the BJS Principal Deputy Director described this **data collection methodology as "promising."** BJS contract statistical experts told us that using this new methodology BJS was able to collect more data about deaths in custody than it had previously collected. Specifically, while **BJS's historical data** collection identified 627 to 745 arrest-related deaths throughout the United States each year between 2003 and 2011, **BJS's pilot methodology** allowed BJS to project that there were approximately 1,900 arrest-related deaths in 2015.

The BJA Deputy Director told us that despite the potential benefits of using a web-based open-source search application to generate leads about potential deaths

²⁸ DOJ, *Report of the Attorney General to Congress Pursuant to the Death in Custody Reporting Act* (December 2016), 8.

²⁹ Some states, including California, Texas, Maryland, and Tennessee, have passed legislation that required local law enforcement agencies to centrally report data similar to that required by DCRA. For example, California law requires all facts concerning the death of a person in custody of any law enforcement agency or correctional facility be reported to the California Attorney General within 10 days of the death. California Government Code, Section 12525 (January 1, 1993).

³⁰ During its ARD Program Redesign Study, BJS also surveyed local Medical Examiners and Coroners in an attempt to capture more data.

in custody and validating them with local agency reporting, as BJS did, BJA does not plan to include either of these steps in its methodology. She said that BJA lacks the financial resources to develop and manage such an open-source search application and that BJA's open-source review will likely be limited to staff conducting random manual reviews of open-source information to verify information about deaths in custody.³¹ The BJA Deputy Director said that she had not yet determined how frequently these spot check reviews would occur.³² Additionally, the Deputy Director told us that BJA will collect death in custody data from states instead of local agencies because DCRA specifically requires states to submit data. Further, she explained that BJA did not plan to contact local agencies directly because DCRA does not require it.

We also determined that, based on OJP's interpretation of another DCRA provision, BJA's collection plan may have an unintended, negative consequence if the plan includes use of an enforcement mechanism included in DCRA. We describe this provision and its possible implications in the text box below.

³¹ BJS spent more than \$4 million managing death in custody data collections between FYs 2014 and 2017. As a part of this broader effort, BJS contract statisticians developed the open-source search application and reconciled the application's search results with local jurisdictions. **This application, which was designed to meet the specific requirements of BJS's pilot study, is the intellectual property of the contractor.** For BJA to employ this type of tool, it would have to separately acquire a tool that would be developed to address the specific requirements of the DCRA data collection. Further, BJA would also have to pay the ongoing costs associated with statisticians reconciling the results with state DCRA reports.

³² One advantage that BJS staff had in managing the collection of arrest-related death data is that they are statisticians with expertise in crime data collection. **In OJP's August 2, 2018, written response to questions asked during OIG's June 2018 briefing, OJP stated that there is "no reason to believe that BJA lacks the expertise to collect the data under DCRA."** However, in a previous interview, the BJA Deputy Director acknowledged that BJA staff are "not experts" in crime data collection and told us that she did not know whether her staff would be able to determine whether states are submitting complete and accurate information.

DCRA Provision That May Have an Unintended Negative Consequence

Prior to DCRA's passage, senior Department officials said that DCRA's enforcement mechanism—withholding 10 percent of state JAG Program funds—would have limited effectiveness in increasing reporting and could unfairly punish certain police agencies that do submit DCRA data. **This is because DCRA's enforcement mechanism allows only the withholding of funds from an** entire state, rather than targeting the individual state and local agencies that fail to submit DCRA data. In some states, only a fraction of state and local police agencies receive JAG Program funds. For example, an official from the Missouri JAG Program state administering agency told us that only about 155 **of the state's** more than 600 law enforcement agencies receive JAG Program funds. An official with the Alaska JAG Program state administering agency told us that only 12 of the 41 law enforcement agencies in the state receive these funds. State and local agencies that do not receive JAG Program funds would not be affected if the state saw a reduction in funding, while agencies that do receive JAG Program funds could have their funding reduced even if they submitted DCRA reports as required.

However, it is unclear whether the Department will implement the penalty provision because DCRA gives the Attorney General discretion about whether to apply it. Rather than definitively **stating that it would or would not apply the provision, the Department's** August 2, 2018, written response to questions asked during **OIG's** June 2018 briefing stated that it **would "explore ways to apply the provision to promote data reporting."**

Sources: **OIG analysis of discussions with state grant administering agencies and OJP's August 2, 2018, written response to questions asked during OIG's June 2018 briefing**

Although we are concerned that BJA's current data collection plan may not produce complete death in custody data, we believe that BJA should begin collecting state DCRA data as soon as possible for two reasons. First, the collection is already significantly delayed and even if it results in limited data in the first few years of the collection, such data can help the Department better understand the scope and causes of deaths in custody. Second, BJS and BJA officials told us that it can take multiple years to educate respondents about their reporting responsibilities and make necessary adjustments to any data collection. Further, in its August 2, 2018, response **to questions asked during OIG's** June 2018 briefing, OJP stated that once data collection is underway the Department will be better positioned to determine whether the concerns identified by **OIG and the Attorney General's December 2016 report to Congress will negatively affect states' reporting.** We believe that the sooner BJA begins the state data collection, the sooner it will be able to assess data quality, refine its collection methodology, and work with FBI and BJS to implement collective best practices to minimize duplicative data collection. Until these agencies begin collecting data, the Department will be unable to examine how DCRA data can be used to help reduce the number of deaths in custody.

The Department Does Not Currently Have Plans to Issue a DCRA-Required Report to Congress

We found that during the time of our review the Department did not plan to submit a required report to Congress to detail the results of a study on DCRA data submitted from state and federal law enforcement agencies. DCRA requires the Attorney General to conduct a study to (1) examine how DCRA data can be used to help reduce the number of deaths in custody and (2) examine the relationship, if

any, between the number of deaths and the management of correctional facilities. Additionally, DCRA required the Attorney General to issue a report detailing the findings of this study no later than 2 years after December 18, 2014.

With little progress in the data collection effort in the 2 years following **DCRA's passage**, on December 16, 2016, then-Attorney General Lynch submitted to Congress a report that detailed the Department's **plan to** implement DCRA. In the report, the Department stated that because it had not yet begun the federal or state DCRA collections it would conduct the required study once the data was available.³³ The Department further stated in the report that it would **"work with Congress to ensure that the study can be completed" and that it intended to "conduct this study periodically and to submit subsequent reports to Congress."**³⁴

OJP's August 2, 2018, written response to questions asked during OIG's June 2018 briefing referenced the December 2016 report from Lynch as fulfilling **DCRA's** requirement to complete a study and report on it to Congress. OJP stated that **there was "no plan to produce another report"** and that OJP also had no plans to report state data collected under DCRA. Instead, OJP stated that **"Once data collection has begun the Department will assess what kinds of reporting would be appropriate based on the available data."** However, we do not believe that the December 2016 report fulfilled **DCRA's** requirement to complete and report on a study of DCRA data because it did not contain DCRA data. Further, we believe that not releasing DCRA data and analysis limits the utility of the data collection effort and the Department's **ability** to use the data to increase public transparency about deaths in custody and take steps to reduce their number.

³³ DOJ, *Report of the Attorney General*, 10.

³⁴ DOJ, *Report of the Attorney General*, 11.

CONCLUSION AND RECOMMENDATIONS

Conclusion

Congress intended for the *Death in Custody Reporting Act of 2013* (DCRA) to help the Department better analyze death in custody data to determine how the Department can use the data to reduce the number of individuals who die in law enforcement custody or in correctional institutions. We found that while the Department has facilitated reporting from a significant number of federal agencies, additional steps are needed to accomplish complete reporting of deaths in federal custody. We also **found that the Department's state DCRA collection has not yet begun and that it will be delayed until at least FY 2020.** Additionally, we are concerned that, if the Department implements the state DCRA collection as currently planned, it will be duplicative of other similar data collections and may not result in a complete record of all reportable death in custody incidents. Lastly, we found that the Department has no plans to complete a required study of DCRA data **and report to Congress on the study's results.**

For DCRA to achieve its primary purpose—to assist the Department and state and local law enforcement to better understand the causes of deaths in custody and take actions to reduce their number—we believe that the Department should consider the issues we identified in our report as it continues to collect federal DCRA data and finalizes its state DCRA data collection plan.

Recommendations

To improve the Department's implementation of the federal DCRA data collection, we recommend that the Office of Justice Programs (OJP) and the Office of the Deputy Attorney General pursue their plan to:

1. Maintain and regularly update a list of federal agencies with law enforcement authority and reach out to those agencies that have not provided reports pursuant to the *Death in Custody Reporting Act of 2013*.

To ensure reporting of all legislatively mandated DCRA data elements and **enhance the Department's ability to evaluate the factors that may contribute to deaths in custody,** we recommend that the Federal Bureau of Prisons:

2. Implement its plans to provide a time of death on all *Death in Custody Reporting Act of 2013* reports.

To ensure that when implemented the **Department's state DCRA data collection is successful,** we recommend that the Federal Bureau of Investigation and OJP:

3. Work together to identify and implement death in custody data collection best practices and reduce duplicative data collection efforts.

To ensure that **the Department fulfills DCRA's requirements,** we recommend that the Department:

4. Conduct a study on data collected under the *Death in Custody Reporting Act of 2013* as described in the statute and submit a report on the study to Congress as soon as practicable.

PURPOSE, SCOPE, AND METHODOLOGY

For this review, OIG assessed the Department of Justice’s (Department, DOJ) progress in implementing the *Death in Custody Reporting Act of 2013* (DCRA), including its preparations to collect state-level data and its management of federal data collection efforts. We also assessed whether the Department’s law enforcement agencies internally collected and submitted data as required under DCRA. The review covered the period from DCRA’s enactment in December 2014 through July 2018.

Standards

OIG conducted this review in accordance with the Council of the Inspectors **General on Integrity and Efficiency’s** *Quality Standards for Inspections and Evaluation* (January 2012).

Interviews

We conducted 29 in-person and telephonic interviews with more than 50 subject matter experts representing federal and non-federal agencies and organizations. Specifically, we interviewed current and former DOJ officials responsible for implementing DCRA from the Office of Justice Programs (OJP) and its Bureau of Justice Assistance (BJA) and Bureau of Justice Statistics (BJS); the Office of Legal Policy; the Office of Legislative Affairs; and the Office of the Deputy Attorney General (ODAG). Additionally, we spoke with representatives from RTI International, a consulting firm that provides data collection support to OJP.

We also interviewed DOJ law enforcement component officials responsible for collecting and reporting DCRA data from the Bureau of Alcohol, Tobacco, Firearms and Explosives; the Drug Enforcement Administration; the Federal Bureau of Investigation (FBI); the Federal Bureau of Prisons (BOP); and the U.S. Marshals Service (USMS). In addition, **we interviewed an official from FBI’s Criminal Justice Information Services Division**, as well as a Use of Force task force member representing the Association of State Criminal Investigative Agencies. Finally, we interviewed Edward Byrne Justice Assistance Grant (JAG) Program grant administrators and state criminal justice statistical agency officials from Alaska, California, Missouri, North Dakota, Texas, and Puerto Rico. We chose to contact officials from these five states and one U.S. territory based on a series of factors, including state JAG award amount, state violent crime rate, and involvement in previous BJS Arrest-Related Death data collections.

Additionally, following a June 2018 briefing of our preliminary findings to ODAG, BJA, and BJS officials, we requested that ODAG provide a written response to a series of questions pertaining to the topics discussed during the briefing. OJP responded to these questions on behalf of ODAG on August 2, 2018, and we incorporated the responses into this report.

Data Analysis

To assess how many federal law enforcement agencies had submitted DCRA reports, we obtained from BJS records of all FY 2016 and FY 2017 DCRA reports submitted by federal agencies. To ensure that BJS records represented the full universe of deaths that DOJ law enforcement components identified as DCRA eligible deaths, we also separately obtained and examined FY 2016 and FY 2017 internal records of DCRA deaths from the Bureau of Alcohol, Tobacco, Firearms and Explosives; FBI; USMS; and BOP. We also identified instances in which multiple agencies reported the death of the same individual. For example, if a USMS detainee were to die in a BOP facility while awaiting trial, both USMS and BOP may submit a DCRA report. In instances in which multiple agencies submitted a DCRA report, we found that BJS removed duplicate entries and, after additional analysis of the records, assigned the death to a single agency.

We also identified four FBI reports of death that were included in FBI internal records but not in BJS records. After alerting BJS about this issue, BJS reached out to FBI and has subsequently included these deaths in its records. BJS could not definitively determine whether FBI had initially submitted these records or, if it had, why these records were not recorded in the BJS database. However, as this was an isolated issue that occurred early in the collection period, we do not consider it **serious enough for us to question the integrity of BJS's** collection process.

Although we had access to and reviewed BJS federal DCRA reports, we did not provide any information about the number of deaths federal agencies reported to BJS or the circumstances surrounding those deaths. This is because BJS had not yet finalized the results of the FY 2016 and FY 2017 federal DCRA data collections and because the primary purpose of this report is to assess the process by which the Department has collected or plans to collect DCRA data from state and federal law enforcement agencies. Additionally, while we discussed with DOJ law enforcement component officials the processes by which components internally report and collect death in custody information and reviewed policies detailing these processes, we did not test the internal controls of these processes.

Policy and Document Review

We reviewed the DCRA legislation, **as well as the Department's and OJP's** opinions on and interpretation of the legislation. Additionally, we reviewed DOJ and OJP documentation related to DCRA policy development and communication, **including the former Attorney General's October 2016 memorandum, the Attorney General's December 2016 DCRA implementation status report to Congress,** historical *Federal Register* notices detailing the Department's plans to collect state DCRA data, reports assessing the efficacy of historical BJS arrest-related death data collections, a DCRA data sharing memorandum of understanding between BOP and BJS, and DCRA and FBI Use of Force data dictionaries. Finally, we reviewed additional FBI Use of Force data collection documentation, including Use of Force task force meeting minutes, a Use of Force pilot study report, and U.S. Office of Management and Budget comments on the pilot study report.

DEATH IN CUSTODY REPORTING ACT OF 2013, Pub. L. No. 113-242

128 STAT. 2860

PUBLIC LAW 113-242—DEC. 18, 2014

Public Law 113-242
113th Congress

An Act

Dec. 18, 2014
(H.R. 1447)

To encourage States to report to the Attorney General certain information regarding the deaths of individuals in the custody of law enforcement agencies, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Death in Custody
Reporting Act
of 2013
42 USC 13701
note.**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Death in Custody Reporting Act of 2013".

42 USC 13727

SEC. 2. STATE INFORMATION REGARDING INDIVIDUALS WHO DIE IN THE CUSTODY OF LAW ENFORCEMENT.

(a) **IN GENERAL.**—For each fiscal year after the expiration of the period specified in subsection (c)(1) in which a State receives funds for a program referred to in subsection (c)(2), the State shall report to the Attorney General, on a quarterly basis and pursuant to guidelines established by the Attorney General, information regarding the death of any person who is detained, under arrest, or is in the process of being arrested, is en route to be incarcerated, or is incarcerated at a municipal or county jail, State prison, State-run boot camp prison, boot camp prison that is contracted out by the State, any State or local contract facility, or other local or State correctional facility (including any juvenile facility).

(b) **INFORMATION REQUIRED.**—The report required by this section shall contain information that, at a minimum, includes—

- (1) the name, gender, race, ethnicity, and age of the deceased;
- (2) the date, time, and location of death;
- (3) the law enforcement agency that detained, arrested, or was in the process of arresting the deceased; and
- (4) a brief description of the circumstances surrounding the death.

(c) **COMPLIANCE AND INELIGIBILITY.**—

(1) **COMPLIANCE DATE.**—Each State shall have not more than 120 days from the date of enactment of this Act to comply with subsection (a), except that—

(A) the Attorney General may grant an additional 120 days to a State that is making good faith efforts to comply with such subsection; and

(B) the Attorney General shall waive the requirements of subsection (a) if compliance with such subsection by a State would be unconstitutional under the constitution of such State.

Waiver authority.

(2) **INELIGIBILITY FOR FUNDS.**—For any fiscal year after the expiration of the period specified in paragraph (1), a State that fails to comply with subsection (a), shall, at the discretion of the Attorney General, be subject to not more than a 10-percent reduction of the funds that would otherwise be allocated for that fiscal year to the State under subpart 1 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3750 et seq.), whether characterized as the Edward Byrne Memorial State and Local Law Enforcement Assistance Programs, the Local Government Law Enforcement Block Grants Program, the Edward Byrne Memorial Justice Assistance Grant Program, or otherwise.

(d) **REALLOCATION.**—Amounts not allocated under a program referred to in subsection (c)(2) to a State for failure to fully comply with subsection (a) shall be reallocated under that program to States that have not failed to comply with such subsection.

(e) **DEFINITIONS.**—In this section the terms “boot camp prison” and “State” have the meaning given those terms, respectively, in section 901(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3791(a)).

(f) **STUDY AND REPORT OF INFORMATION RELATING TO DEATHS IN CUSTODY.**—

(1) **STUDY REQUIRED.**—The Attorney General shall carry out a study of the information reported under subsection (b) and section 3(a) to—

(A) determine means by which such information can be used to reduce the number of such deaths; and

(B) examine the relationship, if any, between the number of such deaths and the actions of management of such jails, prisons, and other specified facilities relating to such deaths.

(2) **REPORT.**—Not later than 2 years after the date of the enactment of this Act, the Attorney General shall prepare and submit to Congress a report that contains the findings of the study required by paragraph (1).

SEC. 3. FEDERAL LAW ENFORCEMENT DEATH IN CUSTODY REPORTING REQUIREMENT. 42 USC 10727a

(a) **IN GENERAL.**—For each fiscal year (beginning after the date that is 120 days after the date of the enactment of this Act), the head of each Federal law enforcement agency shall submit to the Attorney General a report (in such form and manner specified by the Attorney General) that contains information regarding the death of any person who is— Effective date

(1) detained, under arrest, or is in the process of being arrested by any officer of such Federal law enforcement agency (or by any State or local law enforcement officer while participating in and for purposes of a Federal law enforcement operation, task force, or any other Federal law enforcement capacity carried out by such Federal law enforcement agency); or

(2) en route to be incarcerated or detained, or is incarcerated or detained at—

(A) any facility (including any immigration or juvenile facility) pursuant to a contract with such Federal law enforcement agency;

(B) any State or local government facility used by such Federal law enforcement agency; or

(C) any Federal correctional facility or Federal pre-trial detention facility located within the United States.

(b) INFORMATION REQUIRED.—Each report required by this section shall include, at a minimum, the information required by section 2(b).

(c) STUDY AND REPORT.—Information reported under subsection (a) shall be analyzed and included in the study and report required by section 2(f).

Approved December 18, 2014.

LEGISLATIVE HISTORY—H.R. 1447:

HOUSE REPORTS: No. 113-285 (Comm. on the Judiciary).
CONGRESSIONAL RECORD:

Vol. 150 (2013): Dec. 12, considered and passed House.
Vol. 160 (2014): Dec. 10, considered and passed Senate.

□

THE **ATTORNEY GENERAL'S** OCTOBER 2016 MEMORANDUM ON
THE *DEATH IN CUSTODY REPORTING ACT*



Office of the Attorney General
Washington, D. C. 20530

October 5, 2016

MEMORANDUM FOR HEADS EXECUTIVE DEPARTMENTS AND AGENCIES
THE MARSHALS OF THE UNITED STATES SUPREME COURT
CHIEF OF POLICE, U.S. CAPITOL POLICE
THE PUBLIC PRINTER OF THE UNITED STATES
CHAIR, EXECUTIVE COMMITTEE, JUDICIAL CONFERENCE OF
THE UNITED STATES

FROM: THE ATTORNEY GENERAL *Shirley E. Dyer*

SUBJECT: Death in Custody Reporting Act

When used effectively, criminal justice data can significantly improve the way law enforcement operates and simultaneously build community trust in law enforcement. The range of benefits that proper data collection and analysis provides—from increasing transparency to improving law enforcement/community relations—is vast and multi-faceted. The Death in Custody Reporting Act, which President Obama signed into law on December 18, 2014, is an important step in collecting better criminal justice data, improving law enforcement and building community trust.

The Act requires the head of each federal law enforcement agency to report certain data annually to the Attorney General regarding the death of any person occurring during interactions with law enforcement officers or in their custody.¹ Pursuant to Section 3 of the Act, this memorandum specifies the form and manner in which each federal law enforcement agency shall report the required information to the Attorney General. 42 U.S.C. § 13727a(a) (requiring the head of each Federal law enforcement agency to submit to the Attorney General a report “in such form and manner specified by the Attorney General”).

¹ The Appendix to this memorandum includes a list of many federal law enforcement agencies. If you are aware of a federal law enforcement agency that does not appear on this list, please contact the Bureau of Justice Statistics.

I. Required Information

The Act requires the head of each federal law enforcement agency to submit to the Attorney General a report that contains information regarding the death of any person who is:

- (1) detained, under arrest, or is in the process of being arrested by any officer of such Federal law enforcement agency (or by any State or local law enforcement officer while participating in and for purposes of a Federal law enforcement operation, task force, or any other Federal law enforcement capacity carried out by such Federal law enforcement agency); or
- (2) en route to be incarcerated or detained, or is incarcerated or detained at—
 - (A) any facility (including any immigration or juvenile facility) pursuant to a contract with such Federal law enforcement agency;
 - (B) any State or local government facility used by such Federal law enforcement agency; or
 - (C) any Federal correctional facility or Federal pre-trial detention facility located within the United States.

42 U.S.C. § 13727a(a).

Each report shall include the following specific information:

- (1) the name, gender, race, ethnicity, and age of the deceased;
- (2) the date, time, and location of death;
- (3) the law enforcement agency that detained, arrested, or was in the process of arresting the deceased; and
- (4) a brief description of the circumstances surrounding the death.

Id. § 13727a(b).

II. Form and Manner of Reporting

The Act requires reporting for each fiscal year, beginning with Fiscal Year 2016, which runs from October 1, 2015, through September 30, 2016. The Bureau of Justice Statistics (BJS) of the Department of Justice has created two online survey instruments to receive each federal law enforcement agency's required report: one survey instrument for arrest-related deaths and one for deaths that occur while the person is detained or incarcerated at a facility. Federal law enforcement agencies will submit the required data for each reportable death through one of these two survey instruments, depending on whether the agencies have arrest authority, detention authority, or both.

By October 20, 2016, please submit to the U.S. Department of Justice the following information for each law enforcement agency under your purview:

- The name, phone number, and email address of an individual or office that will be responsible for submitting the required report to the Attorney General; and
- Whether each agency has arrest authority, detention authority, or both.

Please submit this information, and direct any questions about the reporting requirements, to Deputy Director Michael Planty (Michael.Planty@usdoj.gov).

Shortly after the end of the current fiscal year, the Department of Justice will e-mail a link for the relevant online survey instrument to each federal law enforcement agency's individual or office responsible for reporting the required information. Agencies must then report the required information for Fiscal Year 2016 through the BJS survey instruments. Agencies must complete the report even if no deaths occurred during the reporting period. Further guidance on the reporting procedures and what information agencies are required to report will be available from BJS.

I sincerely appreciate your partnership and that of the federal law enforcement agencies under your purview as we work to ensure our compliance with this important legislation.

Appendix

The Death in Custody Reporting Act requires the head of "each Federal law enforcement agency" to report the required information to the Attorney General, 42 U.S.C. § 13727a(a). The Department of Justice has identified the following "Federal law enforcement agencies," all of which are subject to the Act's reporting requirement. This list is intended to aid in the identification of federal law enforcement agencies. It is not intended to, and does not, modify any federal law enforcement *agency's* obligations under the Act. If a federal law enforcement agency does not appear on this list, it is still obligated to comply with the Act. Please contact the Bureau of Justice Statistics if a particular federal law enforcement agency does not appear on this list.

Federal Law Enforcement Agencies

Executive Departments

Department of Agriculture

- U.S. Forest Service Law Enforcement and Investigations
- Office of the Inspector General

Department of Commerce

- Bureau of Industry & Security Office of Export Enforcement
- National Institute of Standards and Technology Police
- National Oceanic and Atmospheric Administration Office of Law Enforcement
- Office of the Inspector General

Department of Defense

- Air Force Office of Special Investigations
- Army Criminal Investigation Command
- Defense Criminal Investigative Service
- Marine Corps Criminal Investigation Division
- Marine Corps Civilian Police
- Naval Criminal Investigative Service
- Office of the Inspector General
- Pentagon Force Protection Agency

Department of Education

- Office of the Inspector General

Department of Energy

- Office of the Inspector General

Department of Health and Human Services

- Food and Drug Administration
- National Institute of Health Police

- Office of the Inspector General

Department of Homeland Security

- Federal Protective Service
- United States Coast Guard
- United States Customs and Border Protection
- United States Immigration and Customs Enforcement
- United States Secret Service
- Transportation Security Administration
- Office of the Inspector General

Department of Housing and Urban Development

- Office of the Inspector General

Department of the Interior

- Bureau of Indian Affairs
- Bureau of Land Management
- Bureau of Reclamation
- Fish and Wildlife Service
- National Park Service United States Park Police
- Office of the Inspector General

Department of Justice

- Bureau of Alcohol, Tobacco, Firearms, and Explosives
- United States Drug Enforcement Administration
- Federal Bureau of Investigation
- Federal Bureau of Prisons
- United States Marshals Service
- Office of the Inspector General

Department of Labor

- Office of the Inspector General

Department of State

- United States Diplomatic Security Service
- Office of the Inspector General

Department of Transportation

- Federal Railroad Administration
- Federal Aviation Administration
- Merchant Marine Department of Public Safety
- Office of Odometer Fraud Investigation
- Office of the Inspector General

Department of the Treasury

- Bureau of Engraving and Printing Police
- Internal Revenue Service Criminal Investigation Division
- Treasury Inspector General for Tax Administration
- United States Mint Police
- Office of the Inspector General

Department of Veteran Affairs

- Veterans Affairs Police Office of Inspector General
- Office of the Inspector General

Other Federal Law Enforcement Agencies

Agency for International Development

- Office of the Inspector General

Amtrak

- Amtrak, Office of Inspector General
- Amtrak Office of Security Strategy and Special Operations
- Amtrak Police

Appalachian Regional Commission

- Office of the Inspector General

Architect of the Capitol

- Office of the Inspector General

Board of Governors of the Federal Reserve System/Consumer Financial Protection Bureau

- Office of the Inspector General

Central Intelligence Agency

- Central Intelligence Agency Security Protective Service
- Office of the Inspector General

Commodity Futures Trading Commission

- Office of the Inspector General

Consumer Product Safety Commission

- Office of the Inspector General

Corporation for National and Community Service

- Office of the Inspector General

Corporation for Public Broadcasting

- Office of the Inspector General

Defense Intelligence Agency

- Office of the Inspector General

Denali Commission

- Office of the Inspector General

Election Assistance Commission, U.S.

- Office of the Inspector General

Environmental Protection Agency

- Criminal Investigation Division
- Office of the Inspector General

Equal Employment Opportunity Commission

- Office of the Inspector General

Export-Import Bank of the United States

- Office of the Inspector General

Farm Credit Administration

- Office of the Inspector General

Federal Communications Commission

- Office of the Inspector General

Federal Deposit Insurance Corporation

- Office of the Inspector General

Federal Election Commission

- Office of the Inspector General

Federal Housing Finance Agency

- Office of the Inspector General

Federal Labor Relations Authority

- Office of the Inspector General

Federal Maritime Commission

- Office of the Inspector General

Federal Reserve Bank

- Federal Reserve Police

Federal Trade Commission

- Office of the Inspector General

General Services Administration

- Office of the Inspector General

Government Accountability Office

- Office of the Inspector General

Government Publishing Office

- GPO Uniformed Police
- Office of the Inspector General

Legal Services Corporation

- Office of the Inspector General

Library of Congress

- Office of the Inspector General

National Aeronautics and Space Administration

- Office of the Inspector General
- NASA Protective Services

National Archives

- Office of the Inspector General

National Credit Union Administration

- Office of the Inspector General

National Endowment for the Arts

- Office of the Inspector General

National Endowment for the Humanities

- Office of the Inspector General

National Geospatial-Intelligence Agency

- Office of the Inspector General

National Labor Relations Board

- Office of the Inspector General

National Reconnaissance Office

- Office of the Inspector General

National Science Foundation

- Office of the Inspector General

National Security Agency

- Office of the Inspector General

Nuclear Regulatory Commission

- Office of the Inspector General

Office of the Inspector General of the Intelligence Community

- Office of the Inspector General

Office of Personnel Management

- Office of the Inspector General

Peace Corps

- Office of the Inspector General

Pension Benefit Guaranty Corporation

- Office of the Inspector General

Postal Regulatory Commission

- Office of the Inspector General

Railroad Retirement Board

- Office of the Inspector General

Securities and Exchange Commission

- Office of the Inspector General

Small Business Administration

- Office of the Inspector General

Smithsonian Institute

- Office of Protection Services
- National Zoological Park Police
- Office of the Inspector General

Social Security Administration

- Office of Inspector General

Special Inspector General for Afghanistan Reconstruction

- Office of the Inspector General

Special Inspector General for the Troubled Asset Relief Program

- Office of the Inspector General

The Supreme Court of the United States Police

Tennessee Valley Authority

- TVA Police
- Office of the Inspector General

Treasury Inspector General for Tax Administration

- Office of the Inspector General

U.S. Capitol Police

U.S. International Trade Commission

- Office of the Inspector General

U.S. Postal Service

- Postal Inspection Service
- U.S. Postal Police
- Office of the Inspector General

U.S. Probation and Pretrial Services

THE FEDERAL BUREAU OF PRISONS' RESPONSE TO THE DRAFT REPORT



U.S. Department of Justice

Federal Bureau of Prisons

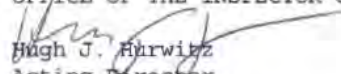
Office of the Director

Washington, D.C. 20534

November 27, 2018

MEMORANDUM FOR NINA S. PELLETIER
ASSISTANT INSPECTOR GENERAL
OFFICE OF THE INSPECTOR GENERAL

FROM:


Hugh J. Ehrwitz
Acting Director

SUBJECT:

Response to the Office of Inspector General's (OIG) Formal Draft Report: Review of the Department of Justice's Implementation of the Death in Custody Reporting Act of 2013.

The Bureau of Prisons (BOP) appreciates the opportunity to provide a response to the Office of the Inspector General's above referenced report. Therefore, please find the BOP's response to the recommendation below:

Recommendation: To ensure reporting of all legislative mandated DCRA data elements and enhance the Department's ability to evaluate the factors that may contribute to deaths in custody, we recommend that the Federal Bureau of Prisons:

2. Implement its plans to provide a time of death on all Death in Custody Reporting Act reports.

Initial Response: The BOP agrees with this recommendation. The BOP will implement its plans to provide a time of death on all Death in Custody Reporting Act reports. More specifically, the BOP will adjust its DCRA reporting as follows. First, for persons where an exact time of death is known, the BOP will report exact time of death. Second, for persons who died but only the general time of death is known, the BOP will report the

approximate hour of death and indicate to BJS that the time provided is "Estimated." Third, for the small number of cases (including for those on community corrections) for whom the time of death is completely unknown to the BOP, the BOP will report a missing value to BJS.

If you have any questions regarding this response, please contact David Shinn, Assistant Director, Program Review Division, at (202) 307-1076.

OIG ANALYSIS OF **THE FEDERAL BUREAU OF PRISONS'** RESPONSE

OIG provided a draft of this report to the Federal Bureau of Prisons (BOP) for its comment. **BOP's response is included in Appendix 4 to this report.** **OIG's analysis of BOP's response and the actions necessary to close the recommendation** are discussed below.

Recommendation 2: Implement its plans to provide a time of death on all *Death in Custody Reporting Act of 2013* reports.

Status: Resolved.

BOP Response: BOP concurred with the recommendation and stated that it will implement plans to provide time of death on all *Death in Custody Reporting Act of 2013* (DCRA) reports.

OIG Analysis: **BOP's planned actions are responsive to our** recommendation. On or before June 30, 2019, please provide a sample of DCRA report records that include time of death as a data element.

THE FEDERAL BUREAU OF INVESTIGATION'S RESPONSE TO THE
DRAFT REPORT



U.S. Department of Justice
Federal Bureau of Investigation

Washington, D. C. 20535-0001

November 28, 2018

The Honorable Michael E. Horowitz
Inspector General
Office of the Inspector General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Dear Mr. Horowitz:

The Federal Bureau of Investigation (FBI) appreciates the opportunity to review and respond to your office's report entitled, *Review of the Department of Justice's Implementation of the Death in Custody Reporting Act of 2013*.

We agree that it is important for the FBI to work together with the Office of Justice Programs to identify and implement death in custody data collection best practices. In that regard, we concur with your one recommendation for the FBI.

Should you have any questions, feel free to contact me. We greatly appreciate the professionalism of your audit staff throughout this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Suzanne Turner".

Suzanne Turner
Section Chief
External Audit and Compliance Section
Inspection Division

Enclosure

**The Federal Bureau of Investigation's (FBI) Response to the
Office of the Inspector General's Review of the Department of Justice's
Implementation of the *Death in Custody Reporting Act of 2013***

To ensure that when implemented the Department's state DCRA data collection is successful, we recommend that the Federal Bureau of Investigation and OJP:

Recommendation #3: Work together to identify and implement death in custody data collection best practices and reduce duplicative data collection efforts.

FBI Response to Recommendation #3: Concur. The FBI will coordinate with BJA to share best practices on information collection, collaborate on potential shared reporting fields, and seek to reduce any data duplication, if applicable. The FBI and BJA have already had initial discussions on this issue and will continue these efforts as data reporting begins.

OIG ANALYSIS OF **THE FEDERAL BUREAU OF INVESTIGATION'S** RESPONSE

OIG provided a draft of this report to the Federal Bureau of Investigation (FBI) for its comment. **FBI's response** is included in Appendix 6 to this report. **OIG's analysis of FBI's response and the actions necessary to close the recommendation** are discussed below.

Recommendation 3: Work together [with the Office of Justice Programs (OJP)] to identify and implement death in custody data collection best practices and reduce duplicative data collection efforts.

Status: Resolved (On Hold/Pending).

FBI Response: FBI concurred with the recommendation and stated that it will coordinate with the Bureau of Justice Assistance (BJA) to share best practices on information collection; collaborate on potential shared reporting fields; and seek to reduce any data duplication, if applicable. FBI also stated that it has already had initial discussions on this issue with BJA and will continue these efforts as data reporting begins.

OIG Analysis: **FBI's planned actions are responsive to our** recommendation. However, because OJP currently does not plan to begin the *Death in Custody Reporting Act* state collection until FY 2020, neither FBI nor OJP can currently take all actions necessary to close this recommendation. As a result, this recommendation is on hold until June 30, 2020, at which time FBI should provide documentation that details the frequency and outcome of its collaboration with OJP on death in custody data collections.

THE OFFICE OF JUSTICE PROGRAMS' RESPONSE TO THE DRAFT REPORT



U.S. Department of Justice

Office of Justice Programs


Office of the Assistant Attorney General

Washington, D.C. 20531

NOV 29 2018

MEMORANDUM TO: Michael E. Horowitz
Inspector General
United States Department of Justice

THROUGH: Nina S. Pelletier
Assistant Inspector General
Evaluation and Inspections
Office of the Inspector General
United States Department of Justice

FROM: Matt M. Dummermuth 
Principal Deputy Assistant Attorney General

SUBJECT: Response to the Office of the Inspector General's Draft Report,
"Review of the Department of Justice's Implementation of the
Death in Custody Reporting Act of 2013"

This memorandum provides a response to the Office of the Inspector General's (OIG) October 31, 2018, draft report entitled, "Review of the Department of Justice's Implementation of the *Death in Custody Reporting Act of 2013*." The Office of Justice Programs (OJP) appreciates the opportunity to review and comment on the draft report. The Office of the Deputy Attorney General (ODAG) has reviewed, and concurs with, OJP's responses provided in this memorandum.

In December 2014, Congress enacted the *Death in Custody Reporting Act of 2013* (DCRA). DCRA requires state and federal law enforcement agencies to report to the Department of Justice (DOJ) the death of any person who is detained, under arrest, in the process of being arrested, en route to be incarcerated, or incarcerated by law enforcement or correctional institutions. DCRA restored and expanded on an earlier law passed in 2000.

The draft report contains four recommendations, of which Recommendations 1, 3, and 4 pertain to OJP¹. Recommendation 1 is directed to OJP and ODAG. Recommendation 3 is directed to OJP and the Federal Bureau of Investigation (FBI). Recommendation 4 is directed to the Department, with OJP providing the response. For ease of review, the recommendations pertaining to OJP are summarized below and followed by OJP's responses.

¹ Recommendation 2 is directed to the Department's Bureau of Prisons.

1. **To improve the Department’s implementation of the federal DCRA data collection, we recommend that the Office of Justice Programs (OJP) and the Office of the Deputy Attorney General pursue their plan to: maintain and regularly update a list of federal agencies with law enforcement authority and reach out to those agencies that have not provided reports pursuant to the *Death in Custody Reporting Act of 2013*.**

The Office of Justice Programs agrees with this recommendation. In 2016, BJS worked with the Department’s Office of Legal Policy (OLP) to create an initial list of federal agencies with law enforcement authority and determined, based on that list, which agencies were in scope for DCRA reporting. Through its annual data collection and its ongoing Census of Federal Law Enforcement Officers, BJS will regularly update both the list of eligible agencies and points of contact within those agencies. By March 31, 2019, BJS will provide ODAG with a list of agencies that have not responded to the survey and will reach out to those agencies that have not provided reports pursuant to the Death in Custody Reporting Act of 2013.

The Office of Justice Programs considers this recommendation resolved and requests written acceptance of this action from your office.

3. **To ensure that when implemented the Department’s state DCRA data collection is successful, we recommend that the Federal Bureau of Investigation and OJP: work together to identify and implement death in custody data collection best practices and reduce duplicative data collection efforts.**

The Office of Justice Programs agrees with this recommendation. As OJP indicated in a response submitted to OIG on August 2, 2018, the Department does not view the DCRA collection and the FBI’s Use of Force Data Collection (UOF) as necessarily duplicative. The two collections have different purposes and reporting procedures.

In any case, however, the Department agrees with OIG’s conclusion in the draft report that once the state DCRA data collection is underway, the Department will be better “able to assess data quality, refine its collection methodology, and work with the FBI...to implement collective best practices to minimize duplicative data collection” to the extent the collections do overlap.

To that end, and once BJA begins receiving DCRA data in January 2020, BJA will coordinate with the FBI Criminal Justice Information Services (CJIS) Division to share best practices on information collection, collaborate on potential shared reporting fields, and seek to reduce any data duplication, if applicable. BJA has already had initial discussions with CJIS on this issue and will continue these efforts as data reporting begins.

The Office of Justice Programs considers this recommendation resolved and requests written acceptance of this action from your office.

4. **To ensure that the Department fulfills DCRA's requirements, we recommend that the Department: conduct a study on data collected under DCRA as described in the statute and submit a report on the study to Congress as soon as practicable.**

The Office of Justice Programs agrees with this recommendation as described below. While the Department may well question whether a study is required in light of the "Report of the Attorney General to Congress Pursuant to the Death in Custody Reporting Act" submitted on December 16, 2016, OJP nonetheless acknowledges that a study on data collected under DCRA, once state data is collected in early Calendar Year 2020, is warranted. At that time, the Department will assess what type of reporting would be appropriate based on the available data and amount of funding available to conduct such a study and report.

Accordingly, the Office of Justice Programs requests closure of this recommendation and requests written acceptance of this action from your office.

Thank you for the opportunity to respond to this draft report. If you have any questions regarding this response, please contact Ralph E. Martin, Director, Office of Audit, Assessment, and Management, at (202) 305-1802.

cc: Maureen A. Henneberg
Deputy Assistant Attorney General

Jon Adler
Director
Bureau of Justice Assistance

Jeffrey Anderson
Director
Bureau of Justice Statistics

Ralph E. Martin
Director
Office of Audit, Assessment, and Management

Leigh Benda
Chief Financial Officer

Rafael A. Madan
General Counsel

Robert Davis
Acting Director
Office of Communications

cc: Bradley Weinsheimer
Associate Deputy Attorney General
Office of the Deputy Attorney General

Matthew Sheehan
Counsel to the Deputy Attorney General
Office of the Deputy Attorney General

Christopher Catizone
Counsel to the Deputy Attorney General
Office of the Deputy Attorney General

Richard P. Theis
Director, Audit Liaison Group
Internal Review and Evaluation Office
Justice Management Division

OJP Executive Secretariat
Control Title IT20181101070919

OIG ANALYSIS OF **THE OFFICE OF JUSTICE PROGRAMS'** RESPONSE

OIG provided a draft of this report to the Office of Justice Programs (OJP) for its comment. **OJP's response is included in Appendix 8 to this report.** **OIG's analysis of OJP's response and the actions necessary to close the recommendations** are discussed below.

Recommendation 1: [In collaboration with the Office of the Deputy Attorney General (ODAG)] Maintain and regularly update a list of federal agencies with law enforcement authority and reach out to those agencies that have not provided reports pursuant to the *Death in Custody Reporting Act of 2013*.

Status: Resolved.

OJP Response: OJP concurred with this recommendation and stated that through its annual *Death in Custody Reporting Act of 2013* (DCRA) federal data collection and Census of Federal Law Enforcement Officers, it will regularly update both the list of eligible agencies and points of contact within those agencies. OJP stated that by March 31, 2019, the Bureau of Justice Statistics will provide ODAG with a list of agencies that have not responded to the data collections and will reach out to those agencies.

OIG Analysis: **OJP's planned actions are responsive to our** recommendation. On or before June 30, 2019, please provide the updated list of eligible agencies and points of contact within those agencies. Additionally, please provide the list of agencies that have not responded to the DCRA federal data collection and a summary of actions the Department of Justice has taken to reach out to those agencies.

Recommendation 3: Work together [with the Federal Bureau of Investigation (FBI)] to identify and implement death in custody data collection best practices and reduce duplicative data collection efforts.

Status: Resolved (On Hold/Pending).

OJP Response: OJP concurred with this recommendation and stated that once its Bureau of Justice Assistance (BJA) begins receiving DCRA state collection data in January of 2020, BJA will coordinate with FBI to share best practices on information collection; collaborate on potential shared reporting fields; and seek to reduce any data duplication, if applicable. OJP also stated that it has already had initial discussions on this issue with FBI and will continue these efforts as data reporting begins.

OIG Analysis: **OJP's planned actions are responsive to our** recommendation. However, because OJP does not plan to begin the DCRA state collection until FY 2020, neither OJP nor FBI can currently take all actions necessary to close this recommendation. As a result, this recommendation is on hold until

June 30, 2020, at which time OJP should provide documentation that details the frequency and outcome of its collaboration with FBI on death in custody data collections.

Recommendation 4: Conduct a study on data collected under the *Death in Custody Reporting Act of 2013* as described in the statute and submit a report on the study to Congress as soon as practicable.

Status: Resolved (On Hold/Pending).

OJP Response: OJP concurred with the this recommendation and stated that, once state data is collected, a study under DCRA is warranted. At that time, OJP stated, the Department will assess what type of reporting would be appropriate based on the available data and amount of funding available to conduct such a study and report.

OIG Analysis: **OJP's planned actions are responsive to our** recommendation. However, because OJP does not plan to begin the DCRA state collection until FY 2020, OJP cannot currently take all actions necessary to close this recommendation. As a result, this recommendation is on hold until June 30, 2020, at which time OJP should provide OIG with a status update as to its plan for conducting a study and report that details the results of its DCRA data collections.



The Department of Justice Office of the Inspector General (DOJ OIG) is a statutorily created independent entity whose mission is to detect and deter waste, fraud, abuse, and misconduct in the Department of Justice, and to promote economy and efficiency in the Department's operations.

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