



February 16, 2017

Chris Casto
Bureau of Justice Assistance
810 7th Street, NW
Washington, DC 20531

Re: OMB Number 1121

Dear Mr. Casto:

Thank you for the opportunity to comment on the Department of Justice proposed regulation on reporting under the Death in Custody Reporting Act (DCRA). I write on behalf of members of the National Criminal Justice Association (NCJA), the state and territorial criminal justice planning agencies, also known as the State Administering Agencies (SAAs). The SAAs are the entities responsible for reporting under the proposed regulation. They also administer the federal Byrne Justice Assistance Grant (Byrne JAG) program funds, which will be withheld if the Attorney General exercises his statutory discretion to impose a penalty for noncompliance with DCRA. The SAAs, therefore, have a central role in the administration and success of DCRA. NCJA members applaud the goals of DCRA to collect accurate and useful information on deaths occurring in custody. However, we want to bring to your attention several important concerns.

1. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used

The State Administering Agencies and/or Statistical Analysis Centers (SAC) collect law enforcement incident based crime data in many states. The Uniform Crime Reporting (UCR) program was developed in the late 1920s by the Committee on Uniform Crime Records of the International Association of Chiefs of Police. The UCR program is overseen by the Federal Bureau of Investigation (FBI). In February 2016, FBI Director Comey directed that the FBI UCR Program will transition to a NIBRS-only data collection system by January 1, 2021.

NIBRS data reporting and collection is an automated function; utilizing data exchanges between the SAA/SAC and local records management systems. Data standards are established nationally by the FBI and adopted by local law enforcement agencies and their corresponding vendor supported records management systems. The data standards defined under NIBRS criteria include clear guidance and definitions for many relevant and related fields as they apply to the proposed DCRA reporting requirements. Further, the FBI has launched a new data collection initiative aimed at building a repository for use-of-force information. Following a progression of events from incident, to use of force and possible arrest related/death in custody, it is appropriate that these data collection efforts be coordinated and build upon existing data collection resources.

Common data elements across all programs (NIBRS, Use of Force and DCRA) include:

Administrative Segment:

- Incident number, date and time

Offense Segment:

- Offense code, location type, weapon used

Victim Segment:

- Homicide criminal activity, age, sex, race, ethnicity, injury type

Offender Segment:

- Age, sex, race, ethnicity

Specifically, when referencing draft form “CJ-11A – Arrest Related Death Incident Report,” a number of proposed data elements are currently collected in existing records management systems. Use of the established data elements, as defined by NIBRS standards, would enable automated information exchange and minimize redundant data collection and reporting efforts.

PL 113-242 the Death in Custody Reporting Act of 2013 has a very limited and specific scope of data to be reported to include:

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.

Information requested in the draft Arrest Related Death Incident Report – form CJ-11A far exceeds these minimal data elements and the reason for this additional data reporting is unclear. Potential risks, as noted throughout this document, may be lessened by reducing the data collection to only that which is minimally required under the act and as enumerated above.

For those data elements necessary to satisfy the requirements of the law, it is requested that the data reporting align with published NIBRS data standards and updated annually as appropriate. Specific examples of this application of consistent data collection are noted below and include the corresponding NIBRS data fields:

Question 1: Location - use latitude and longitude or a physical location

Question 2: Location type - use of NIBRS data standards as follows:

- 01 = Air/Bus/Train Terminal (airports; bus, boat, ferry, or train stations and terminals)
- 02 = Bank/Savings and Loan (other financial institutions, whether in a separate building or inside of another store, Note: This data value does not include payday lender type businesses.)
- 03 = Bar/Night Club (establishments primarily for entertainment, dancing, and the consumption of beverages)
- 04 = Church/Synagogue/Temple/Mosque (buildings for public religious activities, meetings, or worship)
- 05 = Commercial/Office Building (establishments that pertain to commerce and trade)
- 06 = Construction Site (all buildings/locations that are under some type of construction)
- 07 = Convenience Store (establishments primarily for convenience shopping, e.g., stores that include the sale of other items as well as gasoline)
- 08 = Department/Discount Store (establishments that are considered department stores and that sell a wide range of goods; Target, Wal-Mart, etc., Note: This data value does not include shopping malls.)
- 09 = Drug Store/Doctor's Office/Hospital (medical supply companies and buildings; stores that are primarily considered pharmacies; veterinary practices, veterinary hospitals, and medical practices)
- 10 = Field/Woods (areas that are primarily open fields or wooded areas, Note: This data value does not include parks.)
- 11 = Government/Public Building (buildings primarily used for local, state, or federal offices or public businesses)

- 12 = Grocery/Supermarket (establishments primarily used for buying/selling food items, etc.)
- 13 = Highway/Road/Alley/Street/Sidewalk (open public ways for the passage of vehicles, people, and animals)
- 14 = Hotel/Motel/Etc. (other temporary lodgings, Note: This data value does not include campgrounds or recreational vehicle parks.)
- 15 = Jail/Prison/Penitentiary/Corrections Facility (places for the confinement of persons in lawful detention or awaiting trial)
- 16 = Lake/Waterway/Beach (shorelines, lakes, streams, canals, or bodies of water other than swimming pools)
- 17 = Liquor Store (establishments primarily used for buying/selling alcoholic beverages)
- 18 = Parking Lot/Drop Lot/Garage (areas primarily used for parking motorized vehicles that are commercial in nature)
- 19 = Rental Storage Facility (any mini-storage and/or self-storage buildings)
- 20 = Residence/Home (apartments, condominiums, townhouses, nursing homes, driveways, residential yards; extended/continuous care facilities, Note: This data value refers to permanent residences.)
- 21 = Restaurant (any commercial establishments that serve meals or refreshments; cafeterias)
- 23 = Service/Gas Station (establishments where motor vehicles are serviced and gasoline, oil, etc., are sold)
- 24 = Specialty Store (fur stores, jewelry stores, television stores, dress shops, and clothing stores, etc.; payday lender type businesses)
- 25 = Other/Unknown (any location that does not fit in one of the other defined DVs or when the location of the incident is unknown)
- 37 = Abandoned/Condemned Structure (buildings or structures which are completed but have been abandoned by the owner and are no longer being used, Note: This data value does not include vacant rental property. Law enforcement should use the data value that best describes the property in question, e.g., vacant rental house should be classified as 20 = Residence/Home, vacant convenience store that is for rent should be classified as 07 = Convenience Store, etc.)
- 38 = Amusement Park (indoor or outdoor, permanent or temporary, commercial enterprises that offer rides, games, and other entertainment)
- 39 = Arena/Stadium/Fairgrounds/Coliseum (open-air or enclosed amphitheater-type areas designed and used for the presentation of sporting events, concerts, assemblies, etc.)
- 40 = ATM Machine Separate from Bank (machines that provide the ability to make deposits and/or withdrawals using a bank card; ATM machines located inside a mall or store, Note: Law enforcement should use 02 = Bank/Savings and Loan if the ATM is located at a banking facility.)
- 41 = Auto Dealership New/Used (businesses specifically designed for selling new and used motor vehicles, Note: This data value also includes the parking lots and garages of these facilities.)
- 42 = Camp/Campground (areas used for setting up camps, including tent and recreational vehicle campsites)
- 44 = Daycare Facility (facilities that provide short-term supervision, recreation, and/or meals for adults or children during the daytime or at night; respite care facilities for seniors or for physically or mentally challenged individuals)
- 45 = Dock/Wharf/Freight/Modal Terminal (separate facility with platforms at which trucks, ships, or trains load or unload cargo, Note: This data value does not include cargo bays attached to a department store or shopping mall. Law enforcement should classify these as 08 = Department/Discount Store or 55 = Shopping Mall, respectively.)

- 46 = Farm Facility (facilities designed for agricultural production or devoted to the raising and breeding of animals, areas of water devoted to aquaculture, and/or all building or storage structures located there; grain bins, Note: LEAs should classify the house on a farm as 20 = Residence/Home.)
- 47 = Gambling Facility/Casino/Race Track (indoor or outdoor facilities used to legally bet on the uncertain outcome of games of chance, contests, and/or races)
- 48 = Industrial Site (active manufacturing locations, factories, mills, plants, etc., specifically designed for the manufacturing of goods, Note: This data value does not include abandoned facilities. Law enforcement should classify these as 37 = Abandoned/Condemned Structure.)
- 49 = Military Installation (locations specifically designed and used for military operations)
- 50 = Park/Playground (areas of land set aside for public use usually maintained for recreational or ornamental purposes; soccer fields, baseball fields)
- 51 = Rest Area (designated areas, usually along a highway, where motorists can stop)
- 52 = School - College/University (institutions for the higher education of individuals, which gives instruction in specialized fields; community colleges; trade schools)
- 53 = School - Elementary/Secondary (institutions for the instruction of children from preschool through 12th grade)
- 54 = Shelter - Mission/Homeless (establishments that provide temporary housing for homeless individuals and/or families; venues set up as temporary shelters, i.e., a shelter set up in a church or school during a storm)
- 55 = Shopping Mall (indoor or outdoor shopping areas and/or centers with multiple (two or more) stores and/or businesses; strip malls, Note: Law enforcement should use the data value that best describes the location in question.)
- 56 = Tribal Lands (Native American reservations, communities, and/or trust lands, Note: The MBCC intends that non-tribal LEAs will primarily use this data value. Tribal agencies should use the data value that best describes the location in question.)
- 57 = Community Center (public locations where members of a community gather for group activities, social activities, public information, and other purposes; they may sometimes be open for the whole community or for a specialized group within the greater community; Christian community center; Islamic community center; Jewish community center; youth clubs, etc.)
- 58 = Cyberspace (A virtual or Internet-based network of two or more computers in separate locations, which communicate either through wireless or wire connections.)

Questions 3, 5 & 6: Demographics – use NIBRS data standards for sex, ethnicity and race.

Question 4: Age – use NIBRS data standards

Question 7: Officer activity or circumstances – the following data elements are used in the event that a law enforcement officer is assaulted or killed in the line of duty. The menu only appears under this circumstance, but a duplicate list may be used to collect the data for question 7. NIBRS data standards as follows:

- 01 = Responding to disturbance (family quarrels, person with firearm, etc.)
- 02 = Burglary in progress or in pursuit of burglary suspects
- 03 = Robbery in progress or in pursuit of robbery suspects
- 04 = Attempting other arrest
- 05 = Civil Disorder (riot, mass disturbance)
- 06 = Handling, transporting, custody of prisoners

- 07 = Investigating suspicious persons or circumstances
- 08 = Ambush, no warning
- 09 = Mentally deranged assailant
- 10 = Traffic pursuits and stops
- 11 = All other

Question 8: redundant data entry to question #7

Question 9: Offense Codes – use Group A and Group B offense codes as standardized in NIBRS

Question 10: data collection can be consolidated with question 11

Question 11: NIBRS data standards exist for offender suspected of using alcohol or drugs/narcotics. Additional data collection would be required to determine suicidal ideation or exhibition of mental health problem; though this may be challenging for law enforcement officers to discern as different from symptoms of substance impairment

Question 12: NIBRS data standards exist for type of weapon/force involved or used within specific offense categories. A consistent data collection menu would be applicable to this question.

Question 13: NIBRS data standards define Justifiable Homicide circumstances for attempts to injure officers or others as follows:

- A = Criminal Attacked Police Officer and That Officer Killed Criminal
- B = Criminal Attacked Police Officer and Criminal Killed by Another Police Officer
- C = Criminal Attacked a Civilian
- D = Criminal Attempted Flight from a Crime
- E = Criminal Killed in Commission of Crime
- F = Criminal Resisted Arrest
- G = Unable to Determine/Not Enough Information

Question 18: Law enforcement agencies are identified in NIBRS reporting using NCIC Originating Agency Identifier (ORI) numbers. Recommend consistent practice to avoid variations in data due to open text data entry. Use of the ORI would then identify if the agency is federal, state, local, or tribal.

NOTE: The remaining questions (14 – 17 and 19 – 21) will necessitate separate data collection outside the scope of existing records management systems. Reducing the paperwork required to facilitate this data collection to the remaining seven questions will streamline the process and facilitate better compliance from local agencies that have no incentive to cooperate.

2. Evaluate whether the proposed collection will result in the collection of timely, accurate, complete and reliable information

NIBRS data collection and reporting standards require routine submission of incident based crime data. Agencies that modify an incident, or any segment of an incident, must resubmit the entire incident in the next reporting period. To facilitate timely, accurate, complete and reliable information the reporting cycles under DCRA should align with reporting requirements for NIBRS and Use of Force.

A challenge exists when an agency submits the required data collection within the specified timeframe, with limited information available, and then subsequently submits a revised or updated incident. Consideration of the

timing of the release of this data should be given to prevent publication of incorrect or misleading data that may further fuel negative public perceptions of law enforcement and public safety professionals.

3. Evaluate the extent to which the information to be collected should be made publicly available:

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Publication of criminal justice information that may be part of an ongoing investigation poses challenges. The draft rule stipulates that if a state responds to a question with "Unavailable/Pending investigation" then the state is obligated to identify the type of investigation, the agency conducting the investigation and when the investigation is expected to be completed. Collection of this information at the federal level would then be subject to potential media requests; potentially interfering with the investigation. Information on resolution of the case is not available within existing data collection methodologies, nor is there an existing electronic information exchange between NIBRS and court data so verification of case status would be a manual process for each incident.

Risk exists in publishing data on officer-involved arrest-related death without significant attention to context. The general public may lack an understanding of appropriate threat response by law enforcement, security measures, exigent public safety concerns or other mitigating circumstances. Releasing raw data too early can have the effect of spreading misinformation and fueling an anti-law enforcement narrative which, ultimately, places officers in danger and disserves the public.

It is reasonable to assume that all data collected under DCRA would be accessible under FOIA so limitations on the data collected should be carefully considered. In small, largely rural or frontier communities and states, the release of specific details about age, race, gender, circumstances and location of incident is akin to releasing the name of the individuals involved and poses a risk to release of personal information. Should officers be subject to ongoing review, discipline or other actions related to the arrest related death or death in custody; preemptive release of information to the public would render it nearly impossible to offer a fair and impartial proceeding.

Additionally, release of aggregate totals or specific incident data without the relevant context of the total number of incidents an agency responds to may further skew public perception. For example, two separate states may report 10 arrest related deaths for a calendar year; one state has responded to 1,000 incidents and the other has responded to 100,000 incidents. The denominator is a relevant factor but is not a measure that is currently collected or reported.

Release of open source data in aggregate or consolidated form may be problematic if media coverage is later updated, corrected or refuted. Inaccurate information, once in the public domain, is difficult to correct.

Further, many states publish and release to the public crime data or statistics 6-8 months following the end of the year, i.e. calendar year 2016 data will be available to the public in the fall of 2017. This is to give local agencies time to provide updates or corrections to incidents, to verify data through quality assurance reviews, and to provide time for analysis and application of context before publishing. A similar delay in publication of DCRA data would be appropriate.

4. Evaluate whether the burden of the collection of information on those who are to respond can be minimized and if so, how, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

For all DCRA reporting, data elements should be defined as consistent with existing, published and adopted NIBRS data standards and flow forward in a coordinated and cumulative reporting process from incident, through Use of Force if applicable, to arrest related/death in custody. Development or creation of new or amended data fields, to facilitate electronic data exchange, is costly and time consuming as most local agencies use vendor supported records management systems. These vendors charge significant fees to revise or amend databases and capabilities. This is particularly problematic because the proposed rule identifies penalties to the state for non-compliance, but offers no incentive to states or agencies to implement the tools necessary to achieve compliance.

Thank you for considering our views on this important matter. If you have any questions, please feel free to contact me at any time at casplen@ncja.org or 202-628-8550.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Asplen", written in a cursive style.

Chris Asplen
Executive Director