

**The Report of the Attorney General  
Pursuant to Section 6(e) of Executive Order 14074:**

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



# Department of Justice Implementation of the Death in Custody Reporting Act of 2013

## I. Introduction

This report responds to Section 6(e) of Executive Order 14074, which calls for the Attorney General to publish a report on the steps the Department of Justice (Department or DOJ) has taken and plans to take to fully implement the Death in Custody Reporting Act of 2013.<sup>1</sup>

The Death in Custody Reporting Act (DCRA) requires states and territories that receive funding under the Edward Byrne Memorial Justice Assistance Grant (JAG) Program to report to the Attorney General certain 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).” Federal law enforcement agencies are likewise required under DCRA to report to the Attorney General “the death of any person who is 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 pretrial detention facility located within the United States.”

DCRA reporting requirements apply to all deaths that occur in federal, state, or local custody. DCRA directs the Attorney General to conduct a study to determine how this information can be used to reduce the number of deaths in custody, and more specifically, to examine the relationship, if any, between the number of such deaths and the actions of management of relevant jails, prisons, and other specified facilities.

DCRA addresses a profoundly important issue, which is of great consequence to the legitimacy and integrity of the criminal and juvenile justice systems, to the lives of the people who come into contact with those systems, and to the family members and loved ones of those who have died in custody. Growing awareness of deaths in custody has increased demands for criminal and juvenile justice reform. The Department recognizes the importance of collecting complete and accurate data to inform strategies for reducing deaths in custody. Such data are essential for producing appropriate findings and drawing meaningful conclusions about factors that may contribute to deaths in custody and promising practices and policies that may reduce deaths in custody.

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<sup>1</sup> Exec. Order No. 14074, Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety, 87 Fed. Reg. 32,945 (May 25, 2022).

This report describes the Department’s implementation of DCRA, originally passed in 2000, including changes that occurred with the enactment of the Death in Custody Reporting Act of 2013. It explains the roles of the Bureau of Justice Statistics (BJS), Bureau of Justice Assistance (BJA), and National Institute of Justice (NIJ), all sub-components of the Department’s Office of Justice Programs (OJP), in implementing aspects of DCRA. It also details federal reporting of deaths in custody, which is provided by multiple agencies, including the following Department components: the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF); Bureau of Prisons (BOP); Drug Enforcement Administration (DEA); Federal Bureau of Investigation (FBI); and U.S. Marshals Service (USMS).

Analyses of DCRA reporting over time, and particularly reporting by centralized state-level entities, support the Department’s assessment that some of DCRA’s statutory requirements have the unintended consequence of degrading the quality and completeness of DCRA reporting. As required by Executive Order 14074, this report describes steps the Department has taken and plans to take to fully implement DCRA.

## **II. Implementation of the Death in Custody Reporting Act**

### **A. Death in Custody Reporting Act of 2000**

The first DCRA statute (P.L. 106-297) (hereinafter, DCRA of 2000) passed into law on October 13, 2000, as an amendment to the Violent Crime Control and Law Enforcement Act of 1994. DCRA of 2000 required states to provide assurances to follow Attorney General guidelines for reporting, on a quarterly basis, information regarding “the death of any person who is in the process of arrest, is en route to be incarcerated, or is incarcerated at a municipal or county jail, State prison, or other local or State correctional facility (including any juvenile facility).” Under the law, covered states were required to report the name, gender, race, ethnicity, and age of the deceased; the date, time, and location of death; and a brief description of the circumstances surrounding the death.

With the enactment of DCRA of 2000, BJS<sup>2</sup> launched the Deaths in Custody Reporting Program (DCRP), later known as the Mortality in Correctional Institutions (MCI) Program. That program obtained national-, state-, and incident-level data on adults who died while in the physical custody of state departments of corrections or local jail jurisdictions nationwide. Through that program, starting in 2000, BJS collected annual data directly from the approximately 2,800 jail jurisdictions in the United States and maintained an average annual response rate of 98%. Starting in 2001, BJS collected annual data directly from state prison systems and maintained a 100% response rate throughout 19 years of data collection. When DCRA of 2000 expired in 2006, BJS decided that mortality of individuals within the criminal justice system was of great importance and made MCI one of its standard annual data collections on correctional institutions. MCI collected data through 2019.

BJS established the Arrest-Related Deaths (ARD) Program in 2003 to implement the provisions of DCRA of 2000 that pertained to deaths during the process of arrest. ARD was designed to

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<sup>2</sup> BJS is DOJ’s primary statistical agency. As one of 13 principal federal statistical agencies throughout the Executive Branch, the activities of BJS focus on the collection, compilation, processing, and analysis of information for statistical purposes. In 2000, the Attorney General tasked BJS with the collection of mortality data in support of DCRA.

quantify and describe the circumstances surrounding civilian deaths that take place during an arrest or while in the custody of law enforcement. ARD relied on state reporting coordinators (SRCs) in each of the 50 states and the District of Columbia to identify and report on all eligible cases of arrest-related deaths. SRCs used a variety of strategies for identifying arrest-related deaths through law enforcement sources, medical examiners, and open sources, such as news reports.

BJS decided to discontinue ARD in 2014 based on concerns about data completeness and coverage. In order to assess the completeness of coverage, BJS launched an assessment of the program's ability to capture all relevant incidents. The assessment found that ARD captured only about half of the estimated number of all arrest-related deaths that result from use of force by law enforcement officers in the United States from 2003 through 2011. BJS determined that the significant underestimation—both of deaths that result from use of force by law enforcement officers and of other types of civilian deaths during arrest—were attributable in part to the reliance on centralized state-level reporters who lacked standardized modes for data collection, definitions, scope, participation, and available resources.<sup>3</sup>

In sum, in the years prior to the Death in Custody Reporting Act of 2013, BJS successfully collected and reported on deaths that occurred in the custody of local jails and state prisons, but continued to experience challenges in the collection of complete and accurate data on deaths that occurred in the process of arrest. Between 2005 and 2015, BJS published 20 reports on mortality in local jails and state prisons and on arrest-related deaths (see Appendix A for a full list of BJS publications related to DCRA). These reports provided a wide variety of statistics and tables related to cause of death, decedent characteristics, and facility characteristics.

#### B. Death in Custody Reporting Act of 2013

As noted above, DCRA of 2000 expired in 2006, but BJS continued to carry out annual data collections through the MCI program despite the law's expiration. An updated DCRA bill became law on December 18, 2014 (hereinafter, DCRA of 2013). DCRA of 2013 (P.L. 113-242) is similar to its predecessor in calling for information on deaths in custody that occur in local jails and state prisons or during the process of arrest. It also is similar in calling for information about the decedent and circumstances of the death. But the 2013 version of the law expanded on DCRA of 2000 in important ways, including adding requirements for reporting by federal law enforcement agencies and a study requirement focused on using DCRA reporting to identify ways to reduce deaths in custody. DCRA of 2013 also provided the Attorney General with the discretion to reduce JAG funding by up to 10% for states that did not comply with reporting requirements.

The following sections describe the Department's implementation of state reporting requirements and implications for grant funding, federal reporting requirements, and the study requirement.

##### i. DCRA of 2013: State Reporting and the Role of BJS and BJA

After DCRA of 2013 was enacted, BJS continued to collect information on deaths in custody directly from local jails and state prisons, as it had previously done under the MCI program. This

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<sup>3</sup> Arrest-Related Deaths Program: Data Quality Profile: <https://bjs.ojp.gov/content/pub/pdf/ardpdqp.pdf>.

continued until the end of calendar year 2019, when the MCI program was discontinued to prevent duplication with state reporting as required by DCRA of 2013.

From the time that DCRA of 2013 was enacted (end of year 2014) until the fall of 2016, BJS continued its efforts to implement and improve reporting of arrest-related deaths. Following the assessment of the ARD program, BJS spent 11 months conducting an ARD program redesign study, which piloted an alternative data collection methodology for arrest-related deaths. Based on its findings, BJS endorsed a mixed-method approach for collecting data on arrest-related deaths using open sources (*e.g.*, media sources) combined with data collection directly from state and local law enforcement agencies and medical examiners' or coroners' offices.<sup>4</sup> BJS announced its plan for the redesigned methodology in August of 2016.<sup>5</sup> This plan included requirements for reporting a set of incident-level data elements that expanded on the minimum required elements described in DCRA of 2013 (*e.g.*, precipitating events, decedent behavior during the incident, law enforcement actions during the incident, whether an autopsy was performed, cause of death). However, the Department ultimately did not implement this plan and began pursuing an alternate direction to address the implementation of the new provisions in DCRA of 2013.

In December 2016, the Department determined that the connection between reporting requirements under DCRA of 2013 and administration of grant funding under the JAG program precluded the involvement of BJS in data collection from states and local agencies because the additional JAG enforcement and reporting compliance requirements under DCRA of 2013 are incompatible with BJS's authorizing statute as a federal statistical agency. Specifically, 34 U.S.C. § 10134 states that "data collected by the Bureau shall be used only for statistical or research purposes and shall be gathered in a manner that precludes their use for law enforcement or any purpose relating to a private person or public agency other than statistical or research purposes." In 2016, the Department determined that the JAG enforcement and reporting compliance requirements under DCRA of 2013 also conflict with statistical directives stating that BJS "must function in an environment that is clearly separate and autonomous from the other administrative, regulatory, law enforcement, or policy-making activities" of the Department.<sup>6</sup> As a result, the Department announced that states would report DCRA data to BJA,<sup>7</sup> the agency that administers the JAG program. On December 16, 2016, the Department issued the Report of the

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<sup>4</sup> Arrest-Related Deaths Program, Redesign Study, 2015–16: Preliminary Findings:

<https://bjs.ojp.gov/content/pub/pdf/ardprs1516pf.pdf>;

Arrest-Related Deaths Program, Pilot Study of Redesigned Survey Methodology:

<https://bjs.ojp.gov/content/pub/pdf/ardpprsrm.pdf>.

<sup>5</sup> Arrest-Related Deaths Program, Agency Information Collection Activities; Proposed Collection Comments Requested; New Collection: Arrest-Related Deaths Program, 81 Fed. Reg. 51,489 (Aug. 4, 2016).

<sup>6</sup> Office of Management and Budget, Statistical Policy Directive No. 1: Fundamental Responsibilities of Federal Statistical Agencies and Recognized Statistical Units, 79 Fed. Reg. 71,610, 71,615 (Dec. 2, 2014).

<sup>7</sup> BJA's mission is to provide leadership and services in grant administration and criminal justice policy development to support state, local, and tribal justice strategies to achieve safer communities. BJA focuses its programmatic and policy efforts on providing a wide range of resources, including training and technical assistance, to law enforcement, courts, corrections, treatment, reentry, justice information sharing, and community-based partners to address chronic and emerging criminal justice challenges nationwide.

Attorney General to Congress Pursuant to the Death in Custody Reporting Act (2016 Report to Congress), which described plans for implementing DCRA of 2013 and some of the challenges involved, including the need to move the administration of DCRA state reporting requirements from BJS to BJA.<sup>8</sup>

On December 19, 2016, BJA published a plan focused on centralized state-level reporting of DCRA information.<sup>9</sup> This strategy operationalized methods for states to submit quarterly reports, confirm deaths identified through a DOJ open-source review process, and submit or update annual state-level data collection plans. This plan did not include reporting by local agencies. As was the case with the BJS plan before it, though not to the same extent, the BJA plan also expanded on the minimal incident-level data required by DCRA of 2013. BJA proposed to collect information on the reason for law enforcement contact with the decedent, the decedent's behavior during the incident, and law enforcement actions. The BJA plan further described compliance determinations, potential penalties under the JAG program, and intentions to release information on the circumstances surrounding deaths reported for each agency and facility on an annual basis.

After initial delays, however, the Department decided not to implement BJA's 2016 plan out of concerns that it would overly burden state respondents and require them to submit information beyond what DCRA of 2013 explicitly requires. Similarly, it was determined that there would be no effort to collect data from local agencies because DCRA specifically requires states to submit data and there is no requirement to contact local agencies. On June 11, 2018, BJA released another plan,<sup>10</sup> focused on "provisions specifically required by the statute." As with the previous BJA plan, this new plan required state-level reporting only, but it also limited the incident-level reporting to those fields explicitly described in DCRA of 2013 and excluded any efforts related to open-source data confirmation or provision of state data collection plans.

The new BJA plan went into effect in the first quarter of FY 2020. JAG program state grantees started mandatory DCRA reporting for the October 2019 to December 2019 reporting period, to align with their FY 2020 JAG progress reports. Under this model, DCRA reporting is considered a performance measure for the JAG award. State Administering Agencies<sup>11</sup> that receive JAG awards are required to submit through the BJA Performance Measurement Tool quarterly reports that respond to questions based on the requirements of the DCRA statute. BJA and the JAG Training and Technical Assistance (TTA) provider, the National Criminal Justice Association (NCJA), have provided, and continue to provide, DCRA-related TTA to all 56 states and territories. TTA takes various forms, including virtual trainings, assistance through the BJA Performance Measurement Tool Helpdesk, and one-on-one coaching. BJA has developed and

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<sup>8</sup> <https://www.justice.gov/archives/page/file/918846/download>.

<sup>9</sup> Agency Information Collection Activities; Proposed Collection Comments Request; New Collection: Death in Custody Reporting Act Collection, 81 Fed. Reg. 91,948 (Dec. 19, 2016).

<sup>10</sup> Death in Custody Reporting Act Collection, Notice for Proposed eCollection and eComments, 83 Fed. Reg. 27,023 (June 11, 2018).

<sup>11</sup> State Administering Agencies are the agencies that states designate to set priorities and allocate federal formula grant funds within that state.

continues to update reporting guidance and answers to frequently asked questions.<sup>12</sup> This guidance aligns with the information requirements set forth in DCRA of 2013, including for example, the requirement to report data regarding deaths that occur in juvenile facilities. Two recent trainings in January and May of 2022 drew 76 and 44 attendees, respectively.

Over the 10 reporting periods from October 2019 to March 2022, all 50 states and two territories have reported over 14,300 non-duplicate deaths to BJA. Forty-six states and one territory reported deaths occurring in a prison, 43 states and 2 territories reported deaths occurring in a local jail, and 35 states and 2 territories reported arrest-related deaths from law enforcement (see below for discussion of DCRA data quality and completeness).

ii. DCRA of 2013: Quarterly Reporting of State Data

DCRA of 2013 required states to report deaths on a quarterly schedule, so that all deaths occurring during the prior three months would be entered into the BJA performance measurement system the following quarter. For cases in which information about the cause of death or other details were missing, states were asked to “cure” older records by adding data once it became available. DCRA of 2000 also had a quarterly reporting requirement, but BJS found implementation of quarterly MCI reporting problematic. For deaths that require an official autopsy or medical investigation of death, details on cause of death and contributing conditions (e.g., environmental factors, presence of drugs or alcohol in the decedent’s system) are often not immediately available, and can take up to 12 months before these data can be officially reported. To address this, BJS ultimately constructed a two-phase data collection: an annual summary form that asked agencies to report the total count of deaths by sex, and an “always on” data collection web portal for MCI respondents to submit detailed death reports for each decedent as the data became available.

iii. DCRA of 2013: Federal Reporting

On October 5, 2016, the Attorney General issued a 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<sup>13</sup> through a web portal, and then continue to submit reports for deaths occurring in future fiscal years.

Through the Federal Deaths in Custody Reporting Program (FDCRP) administered by BJS, the Department has received reporting on all data fields identified in the DCRA statute on an annual basis since 2016. BJS has released three publications focusing on federal deaths in custody and during arrest covering the period from 2016 to 2020.<sup>14</sup> Response rates have ranged from a low of

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<sup>12</sup> <https://bja.ojp.gov/funding/performance-measures/DCRA-Reporting-Guidance-FAQs.pdf>.

<sup>13</sup> The prohibition on the role of BJS is specific to reporting by states because DCRA of 2013 ties state reporting to JAG grant program administration. BJS is able to receive reports by federal agencies because they are for statistical or research purposes only and unrelated to program administration or compliance requirements.

<sup>14</sup> Federal Deaths in Custody and During Arrest, 2016–2017 – Statistical Tables: <https://bjs.ojp.gov/content/pub/pdf/fdcda1617st.pdf>;  
Federal Deaths in Custody and During Arrest, 2018–2019 – Statistical Tables: <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/fdcda1819st.pdf>;  
Federal Deaths in Custody and During Arrest, 2020 – Statistical Tables: <https://bjs.ojp.gov/content/pub/pdf/fdcda20st.pdf>.

92% in 2017 to 99% in 2020 and include responses from agencies within the Departments of Defense, Homeland Security, Justice, Interior, and Veterans Affairs. All of the applicable DOJ agencies provide death in custody information to BJS (*i.e.*, ATF, BOP, DEA, FBI, and USMS). BJS has released multiple reports that address mortality in state and federal prisons, the most recent of which covers the period from 2001 to 2019.<sup>15</sup> BJS plans to publish FY 2021 data in the coming months and plans to start data collection for FY 2022 arrest and detention deaths later this year.

The arrest-related death FDRCP data provide a detailed accounting of the manner of death, the initial reason for contact with the decedent, the decedent's most serious alleged crime, the exact location of the death, and the physical and mental condition of the decedent as reported by law enforcement. The data also include actions and type of weapons (if applicable) used by both the decedent and the law enforcement officers during the incident that led to the death.

The FDCRP detention-related death data included information on manner, location, and time of death for persons who died in federal detention facilities, as well as sentencing, time-served, and offense characteristics of the decedents.

#### iv. DCRA of 2013: Study Requirement

DCRA of 2013 requires the Department to submit to Congress a report that examines how DCRA data could be used to help reduce the number of deaths in custody and evaluates the relationship, if any, between the number of deaths and the management of jails, prisons, and other specified facilities. The study requirement calls for the Department to use DCRA data that was not collected by BJA until FY 2020. In 2021, NIJ<sup>16</sup> commissioned two studies to accomplish the purposes of that study requirement. The first of these studies is a review of the literature focused on the prevalence, patterns, and contexts of deaths in custody and an exploratory analysis linking data on mortality in correctional institutions to other data collections that include information about facility characteristics and practices. The final report from this first study is planned for publication in late 2022.

The second study requires rigorous research to build credible and reliable knowledge about the potential influence of management activities in correctional facilities and the deaths that occur in those facilities. Among other things, this research involves additional data collection—beyond the data elements that are gathered through the DCRA statute, which alone are insufficient to address the research questions identified in the statutory study requirement. Specifically, the study will collect information on policies, practices, and standards in jails, prisons, and other specified facilities. In September 2021, NIJ awarded a contract for a three-year study involving a national-level review and analysis of policies, practices (including management practices), and available data addressing deaths in custody, as well as in-depth case studies in multiple sites and agency types. The goal of this effort is to generate significant advances in the knowledge and understanding of deaths in custody, resulting in recommendations with the potential to support efforts to prevent and reduce such deaths. Researchers will examine all types of death—including “natural” or illness deaths that represent a large percentage of deaths in both state and

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<sup>15</sup> Mortality in State and Federal Prisons, 2001–2019 – Statistical Tables: <https://bjs.ojp.gov/content/pub/pdf/msfp0119st.pdf>.

<sup>16</sup> NIJ is DOJ's research, development, and evaluation agency.



federal prisons and local jails. The resulting report from that second study will develop recommendations for reducing deaths in custody and guidance for future practice and implementation. The report from this study is anticipated to be delivered to the Department by September 2024.

### **III. DCRA Data Quality and Completeness**

This section focuses on the quality and completeness of state reporting under DCRA of 2013, which encompasses deaths that occur in local jails and state prisons, and during the process of arrest by state and local law enforcement agencies.

The enactment of DCRA of 2013 had several unintended consequences that have degraded and hindered the Department's ability to produce complete and accurate information. Prior to DCRA of 2013, BJS achieved near 100% response rates and was producing accurate and complete statistical information regarding deaths in local jails and state prisons. BJS collected arrest-related deaths, was transparent about shortcomings in this area (which related to completeness), and proposed mixed-method solutions for improvements. BJS also produced many statistical reports on deaths in custody (see Appendix A). With the JAG-related penalty requirements under DCRA of 2013, the Department can no longer engage BJS to collect information on state and local prison, jail, and arrest-related deaths. The Department also is unable to collect data directly from local agencies that possess that information because any such collection beyond the state reporting called for under DCRA of 2013 would be duplicative. That is, if the Department implemented a separate collection of deaths in custody directly from state prisons, local jails, and law enforcement agencies, on top of the DCRA of 2013 requirement that the Department collect reports from state JAG grantees who seek the same information from applicable agencies in their states, the responding agencies would be asked to report the same information twice in order to comply with the one statutory purpose. Duplicative reporting requirements such as this would be impermissible under the Paperwork Reduction Act.

DCRA of 2013 requires the Department to rely on the reports from the 56 state and territory JAG grant recipients that collect data using varied strategies and collectively have proven to be ineffective in producing complete and accurate information. As detailed below, the Department has determined that discretionary use of the enforcement mechanism under DCRA of 2013 would unfairly penalize state and territorial agencies, as well as units of local government, that are properly reporting DCRA data.

#### **A. Direct Comparison of Reporting to BJA and BJS**

The BJS collection of data on deaths in prisons and jails under the MCI program was carried out by *calendar* year. State DCRA reporting to BJA aligns with JAG program progress reporting, which is linked to the *fiscal* year. This created a brief, three-month period of overlap between the two collections in the final months of 2019. The Office of Management and Budget issued terms of clearance under the authority of the Paperwork Reduction Act that required BJS to assess the quality of data collected by BJA during this period of direct overlap—noting that BJS collected data directly from state corrections departments and local jails, while BJA collected reports only from State Administering Agencies.

During the three-month-overlap period, BJA received reports for 744 deaths in local jails and state prisons, which was approximately 60% of the 1,246 deaths identified by BJS.<sup>17</sup> That included only 39% of the local jail deaths identified by BJS (117 compared to 301), and only 66% of the state prison deaths (627 compared to 945). DCRA reporting to BJA did not include any state prison deaths in 11 states or any local jail deaths in 12 states and one territory, all of which were reported to BJS. State DCRA reporting to BJA also suffered from high rates of missing data on key elements.

The Department is now in a position to assess a much larger body of state DCRA reporting to BJA over FYs 2020 and 2021, although it no longer has the MCI collection for comparison. That said, the overall reporting rates to BJA for those two years are quite similar to those from the three-month-overlap period. Only 29 states reported numbers from all three reportable sources: prisons, jails, and law enforcement. Based on current reporting strategies, which vary across the 56 states and territories receiving JAG funding, the Department is unable to determine how many local jails and local police departments are not reporting DCRA information to the states—which, in turn, leads to incomplete reports by states to BJA.

#### B. Survey of State Administering Agencies

In coordination with BJA, NCJA surveyed State Administering Agencies about their efforts to collect DCRA data. Of the 27 reporting agencies that responded, the majority (53%) reported that less than half of the agencies in their state are participating in the data collection. In this same survey, the top two challenges identified to collecting DCRA data were (1) lack of state leverage on stakeholder organizations to comply (reported by 67% of respondents), and (2) lack of state incentives to encourage stakeholder organizations to comply (reported by 50% of respondents). These findings and others suggest that apparent data anomalies are due at least in part to reporting issues, including that some localities may not be reporting to the state.

#### C. State Reporting of Arrest-Related Deaths

BJA used two external, open-source databases to assess state reporting of deaths occurring during the process of arrest, including use of force, suicide, and accidental deaths (*e.g.*, overdoses, car accidents during pursuit). Specifically, BJA compared DCRA reports from FYs 2020 and 2021 to two open-source databases that track similar information: the Mapping Police Violence (MPV) and Washington Post Fatal Force (WaPo) datasets.<sup>18</sup> In FY 2020, state

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<sup>17</sup> Report Comparing Bureau of Justice Statistics and Bureau of Justice Assistance Mortality Death Collections: <https://omb.report/icr/202105-1121-001/doc/111526800>.

<sup>18</sup> The MPV and WaPo datasets were chosen because they met certain criteria (*e.g.*, data collection is ongoing, data is up-to-date, longstanding, or had been studied and found to be comprehensive by a third-party researcher). The MPV dataset includes all incidents of police-involved killings, whereas the WaPo dataset only includes deaths resulting from police shootings. The MPV researchers aggregate data from the three largest, crowd-sourced databases on arrest-related deaths: FatalEncounters.org, the U.S. Police Shootings Database, and KilledbyPolice.net. To complete their database, MPV researchers gather additional data on each incident by searching social media, obituaries, criminal records databases, police reports, and other sources. The WaPo dataset aggregates data from local news sources, law enforcement websites, social media, and other independent databases to identify incidents. In addition, WaPo researchers make open-records requests with local departments to gather additional details.

DCRA reporting matched only 29% of the MPV deaths and only 36% of the WaPo deaths. In FY 2021, state DCRA reporting matched 36% of the MPV deaths and 38% of the WaPo deaths.

In FY 2020, 22 states reported zero deaths occurring during the process of arrest to BJA, but reportable incidents were found in all of these states by MPV and WaPo. In FY 2021, 18 states reported zero arrest-related deaths to BJA, but again, reportable incidents were found in all of them by MPV and WaPo. In FY 2021, only 13 states reported to BJA at least 70% of the universe of those decedents identified by MPV and WaPo.

### State DCRA Reporting Compared to Open-Source Data on Arrest-related Deaths

	FY 2020	FY 2021
Percentage of State DCRA Reports that Matched Open-Source Incidents Identified by MPV	29%	36%
Percentage of State DCRA Reports that Matched Open-Source Incidents Identified by WaPo	36%	38%
Number of States Reporting Zero Arrest-Related Deaths Where Reportable Deaths Were Found in MPV or WaPo	22	18

#### D. State Reporting of Deaths in Local Jails

With regard to deaths in local jails, state DCRA reporting identified significantly fewer deaths in local jails than had been previously reported by local jurisdictions directly to BJS. In FY 2021, states reported 689 jail deaths to BJA. Over calendar years 2015 through 2019, BJS identified an annual average of 1,122 deaths in jails. Thus, the states produced reports to BJA for only 61% of the annual five-year average produced when BJS collected data directly from local jurisdictions.<sup>19</sup>

This comparison also does not take into account the increase in local jail deaths during 2020 and 2021 due to COVID-19. In the first six months of the pandemic (January to June 2020), BJS found 43 deaths confirmed or suspected to be COVID-related in the 841 jails surveyed on an annual basis for the separate Annual Survey of Jails.<sup>20</sup>

#### E. State Reporting of Deaths in State Prisons

Reporting of state prison deaths also declined dramatically with the introduction of state reporting, as required by DCRA of 2013. In FY 2021, states reported 3,160 state prison deaths to

<sup>19</sup> BJS organized data by calendar year. Data from calendar years 2015 to 2019 are the last available BJS published data: Mortality in Local Jails, 2000–2019 – Statistical Tables, table 19: <https://bjs.ojp.gov/content/pub/pdf/mlj0019st.pdf>.

<sup>20</sup> Impact of COVID-19 on the Local Jail Population, January–June 2020: <https://bjs.ojp.gov/content/pub/pdf/icljpij20.pdf>.

BJA under DCRA of 2013, compared to an annual national average of 3,877 deaths reported under MCI to BJS (or about 82% of the annual five-year average).<sup>21</sup>

However, as was the case in local jails, deaths in calendar year 2020 increased due to COVID-19. From January to December 2020, BJS estimated that there were about 1,700 additional deaths of persons sentenced to more than one year under the jurisdiction of state correctional authorities.<sup>22</sup> From March 1, 2020, to February 28, 2021, 2,278 confirmed or suspected COVID-19 deaths occurred of persons in the custody of state prisons (including private facilities).<sup>23</sup> It appears that many of these deaths, estimated by BJS based on responses directly from correctional facilities, are not captured in the BJA collection, which relies on reporting from State Administering Agencies.

#### F. State Under-Reporting

These findings indicate that, under the requirements of DCRA of 2013, BJA is receiving underreports of deaths in custody in all three categories of reporting. This underreporting is widespread, and not the result of a small number of lagging or uncooperative states. The pattern of underreporting is more pronounced in some areas (*e.g.*, arrest-related deaths) than others (*e.g.*, prison deaths). But even where it is less pronounced, the degradation of data quality and completeness, as compared to previously available data collection methods, is considerable.

#### G. The JAG Program Penalty

DCRA of 2013 provided the authority for the Department, at the discretion of the Attorney General, to enact a 10% penalty to JAG program funding to states that do not comply with the DCRA reporting requirements. The Department has not implemented this penalty to date. The Department is concerned that implementing the JAG penalty may have unintended, negative consequences.

In general, state-level agencies are less aware of and knowledgeable about deaths that occurred in their states than are the local jurisdictions where the deaths occurred. Most states do not have laws requiring local agencies to report deaths in custody to state governments. Without such laws, state governments cannot compel local governmental agencies to report to them. As noted above, State Administering Agencies have identified this lack of leverage over local jails and law enforcement agencies as their top concern regarding compliance with DCRA reporting requirements.

DCRA contemplates that the penalty could be applied to a state, even when that state may be fully reporting to BJA what it has received from local agencies and where the lack of reporting is occurring only at the local level. And the penalty might be applied even when that state is attempting diligently to collect the required data from its units of local government. Such a state, if penalized under DCRA, would have a reduced JAG award and thus have smaller amounts

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<sup>21</sup> 2015–2019 BJS published data: Mortality in State and Federal Prisons, 2001–2019 – Statistical Tables, table 14: <https://bjs.ojp.gov/content/pub/pdf/msfp0119st.pdf>.

<sup>22</sup> Prisoners in 2020 – Statistical Tables: <https://bjs.ojp.gov/content/pub/pdf/p20st.pdf>.

<sup>23</sup> Impact of COVID-19 on State and Federal Prisons, March 2020–February 2021: <https://bjs.ojp.gov/content/pub/pdf/icsfp2021.pdf>.

available for its own law enforcement activities and for its subawards to units of local government within the state, some of which may be in full compliance with the DCRA reporting requirements, and notably would have smaller amounts of funds available to improve DCRA reporting. Meanwhile, the reduction in JAG funding would have no influence on non-compliant units of government that do not otherwise receive passthrough JAG funding (they would have no JAG funding in the first place to have reduced). Furthermore, the amount of JAG funding that reaches many agencies (*e.g.*, smaller agencies) is relatively small and may be viewed as an insufficient incentive or deterrent to compel compliance from those local agencies.

#### **IV. Next Steps for Implementing DCRA and Reducing Deaths in Custody**

DOJ's top priority for continuing to implement DCRA of 2013 is to improve the quality and completeness of state reporting, including improving the reporting from state and local agencies to State Administering Agencies.

- BJA is developing and will implement a plan to determine state compliance with DCRA requirements, including necessary documentation and metrics, and establish procedures for taking corrective action when states are out of compliance.
- BJA will continue to provide TTA to states and provide a variety of online, virtual, and in-person resources and opportunities to improve reporting. This will include a convening in fall of 2022 with DCRA stakeholders, including State Administering Agencies and professional organizations, to continue to build awareness and support for DCRA and to share best practices regarding state-level data collection strategies.
- BJA will continue to assess the quality and completeness of DCRA reporting, including by comparisons with open-source data (*e.g.*, media reports), and communicate these findings to State Administering Agencies in a manner that may contribute to improved reporting.
- BJA will require FY 2022 JAG award recipients to submit state data collection plans, and BJA will assess these plans to identify opportunities for strengthening data collection practices within the states.

##### **A. Legislative Proposal to Strengthen DCRA of 2013**

To further the important goals of DCRA, Congress should consider legislation that would modify and strengthen the law in the following ways:

- Permit BJS to design and implement effective methods to collect and report on accurate and comprehensive data on deaths that occur in custody.
- Eliminate the requirement for centralized state reporting, thus permitting the Department to collect information directly from state and local correctional and law enforcement agencies, open sources, and other public sources.
- Continue the current requirements for reporting by federal law enforcement agencies.
- Eliminate the requirement for quarterly reporting, allowing state and local respondents to report deaths when they have substantially all of the information on the decedent.

- Replace the current discretionary JAG grant penalty with a mandatory penalty that would affect state and local JAG recipients in a more targeted and effective manner. For example, it would prohibit JAG program recipients from making subawards to any entity that does not certify that it will, throughout the period of the subaward, provide BJS with accurate information regarding deaths in custody that occur in its jurisdiction.
- Authorize the Department to issue additional grants and provide training or technical assistance to states, units of local government, territories, tribal governments, or other public or private entities to assist in the building of infrastructure or capacity for the collection and reporting of information on deaths in custody.
- Authorize NIJ to expand its research portfolio on subjects relating to deaths in custody.
- Require that BJS regularly publish comprehensive reports on deaths in custody.
- Appropriate funding for BJS and NIJ to carry out statistical collections, analysis, reporting, and research on deaths in custody.

## **V. Conclusion**

It is critically important for the Department to collect and analyze accurate and complete information about deaths that occur when a person is in the custody of prisons or jails or during the process of arrest. Current reporting strategies dictated by DCRA of 2013 have the unintended consequence of limiting the Department's capacity to collect accurate and complete information. The Department will continue to administer DCRA of 2013, with an emphasis on providing technical support, resources, and assistance to improve state reporting. The Department will simultaneously seek opportunities to work with Congress to strengthen the DCRA statute by improving the quality, completeness, and quantity of information reported to the Department. This, in turn, will facilitate advances in knowledge and practice for the purpose of reducing the number of these deaths.

## Appendix A

<b>Bureau of Justice Statistics Publications Using DCRA Data</b>	<b>Publication Date</b>
<a href="#">Federal Deaths in Custody and During Arrest, 2020 – Statistical Tables</a>	7/26/2022
<a href="#">HIV in Prisons, 2020 – Statistical Tables</a>	5/26/2022
<a href="#">Mortality in State and Federal Prisons, 2001–2019 – Statistical Tables</a>	12/1/2021
<a href="#">Mortality in Local Jails, 2000–2019 – Statistical Tables</a>	12/1/2021
<a href="#">Suicide in Local Jails, State and Federal Prisons, 2000–2019 – Statistical Tables</a>	10/7/2021
<a href="#">Federal Deaths in Custody and During Arrest, 2018–2019 – Statistical Tables</a>	9/16/2021
<a href="#">Correctional Populations in the United States, 2019 – Statistical Tables</a>	7/22/2021
<a href="#">Mortality in Local Jails, 2000–2018 – Statistical Tables</a>	4/29/2021
<a href="#">Mortality in State and Federal Prisons, 2001–2018 – Statistical Tables</a>	4/29/2021
<a href="#">Federal Deaths in Custody and During Arrest, 2016–2017 – Statistical Tables</a>	12/29/2020
<a href="#">Correctional Populations in the United States, 2017–2018</a>	8/27/2020
<a href="#">Mortality in Local Jails, 2000–2016 – Statistical Tables</a>	2/12/2020
<a href="#">Mortality in State and Federal Prisons, 2001–2016 – Statistical Tables</a>	2/12/2020
<a href="#">Arrest-Related Deaths Program: Pilot Study of Redesigned Survey Methodology</a>	7/30/2019
<a href="#">Correctional Populations in the United States, 2016</a>	4/26/2018
<a href="#">HIV in Prisons, 2015 – Statistical Tables</a>	8/24/2017
<a href="#">Correctional Populations in the United States, 2015</a>	12/29/2016
<a href="#">Arrest-Related Deaths Program Redesign Study, 2015–16: Preliminary Findings</a>	12/15/2016
<a href="#">Mortality in Local Jails, 2000–2014 – Statistical Tables</a>	12/15/2016
<a href="#">Mortality in State Prisons, 2001–2014 – Statistical Tables</a>	12/15/2016
<a href="#">Assessing Inmate Cause of Death: Deaths in Custody Reporting Program and National Death Index</a>	4/21/2016
<a href="#">Correctional Populations in the United States, 2014</a>	12/29/2015
<a href="#">Assessment of Coverage in the Arrest-Related Deaths Program</a>	10/8/2015
<a href="#">Mortality in Local Jails and State Prisons, 2000–2013 – Statistical Tables</a>	8/4/2015
<a href="#">Arrest-Related Deaths Program: Data Quality Profile</a>	3/3/2015
<a href="#">Correctional Populations in the United States, 2013</a>	12/19/2014
<a href="#">Mortality in Local Jails and State Prisons, 2000–2012 – Statistical Tables</a>	10/9/2014
<a href="#">Correctional Populations in the United States, 2012</a>	12/19/2013
<a href="#">Mortality in Local Jails and State Prisons, 2000–2011 – Statistical Tables</a>	8/13/2013
<a href="#">Mortality in Local Jails and State Prisons, 2000–2010 – Statistical Tables</a>	12/13/2012
<a href="#">Correctional Populations in the United States, 2011</a>	11/29/2012
<a href="#">HIV in Prisons, 2001–2010 – Revised</a>	9/13/2012
<a href="#">Correctional Populations in the United States, 2010</a>	12/15/2011
<a href="#">Prison and Jail Deaths in Custody, 2000–2009 – Statistical Tables</a>	12/14/2011

<a href="#">Correctional Populations in the United States, 2009</a>	12/21/2010
<a href="#">Deaths in Custody: Local Jail Deaths, 2000–2007 – Statistical Tables</a>	10/28/2010
<a href="#">Deaths in Custody: State Prison Deaths, 2001–2007 – Statistical Tables</a>	10/28/2010
<a href="#">Mortality in Local Jails, 2000–2007 – Revised</a>	7/7/2010
<a href="#">Deaths in Custody: State and Local Law Enforcement Arrest-Related Deaths, 2003–2006 – Statistical Tables</a>	6/16/2009
<a href="#">Deaths in Custody: State Prison Deaths, 2001–2007 – Statistical Tables</a>	10/31/2007
<a href="#">Medical Causes of Death in State Prisons, 2001–2004</a>	1/21/2007
<a href="#">HIV in Prisons, 2004</a>	11/19/2006
<a href="#">HIV in Prisons, 2003</a>	9/1/2005
<a href="#">Suicide and Homicide in State Prisons and Local Jails</a>	8/21/2005



## Appendix B – DCRA Timeline

