

**U.S. Department of Justice
Office of Justice Programs
FY 2023 Report to the Committees on Appropriations
Death in Custody Reporting Act Implementation**

The Department of Justice (Department or DOJ) provides this report on its implementation of the Death in Custody Reporting Act (DCRA) consonant with the Joint Explanatory Statement accompanying the Consolidated Appropriations Act, 2023 (Public Law 117-328). Specifically, this language states:

“The Attorney General shall report not later than 90 days after the date of enactment of this act on DCRA implementation plans, the quality of DCRA data collected to date, how DOJ could improve the quality and transparency of future data, including implementation of its proposed 2016 collection plan, and a timeline for publishing the required DCRA report.”

The Attorney General issued a comprehensive report on DOJ implementation of DCRA in September 2022 (hereinafter, September 2022 report).¹ This report described the requirements of the DCRA statute; the history of DOJ implementation of DCRA, including the proposed 2016 plan; issues with DCRA data quality, completeness, and underreporting; a strategy for completing the DCRA study requirement; and next steps for implementing DCRA with a focus on improving the quality and completeness of DCRA data. In the sections below, this report provides updates since the September 2022 report.

Currently, the Office of Justice Programs (OJP) administers DCRA through its components, the Bureau of Justice Assistance (BJA) and the National Institute of Justice (NIJ).

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. 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. The Department is working urgently to fulfill its obligations and accomplish the spirit of the DCRA statute.

DCRA Data Quality and Completeness

The September 2022 report provides a detailed assessment of the quality and completeness of DCRA data reported by states in fiscal years (FYs) 2020 and 2021. The assessment concluded

¹ 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: <https://bja.ojp.gov/doc/DOJ-Implementation-of-DCRA-of-2013.pdf>

that BJA received underreports of deaths in custody in all three categories of reporting (i.e., deaths during arrest, deaths in jails, and deaths in prisons). The report documented that this underreporting by states was widespread, and not the result of a small number of lagging or uncooperative states. The states experience considerable challenges collecting and reporting data from local jurisdictions. The Department is taking steps to better understand and improve the quality and completeness of DCRA reporting from states.

In recent months, BJA has extended its assessment of DCRA reporting by states to include a review of FY 2022 reports and open-source analyses. BJA also coordinated with the Bureau of Justice Statistics (BJS), strictly for statistical purposes, to conduct further analysis of reporting in previous FYs using new sources of comparison. State reporting in FY 2022 was similar to FY2020 and FY 2021 in that many states did not report deaths from all three sources (arrest, jails, prisons). The numbers of states² that reported deaths in all three categories improved from 22 in FY 2020, to 30 in FY 2021, and 31 in FY 2022. However, the completeness of data reported by these states and others is variable and much lower than it should be.

State Reporting of Arrest-Related Deaths

Forty states reported arrest-related deaths in FY 2022. As it did for its assessment of DCRA reporting in previous FYs, BJA compared FY 2022 arrest-related reporting by states with the findings from two open-source, non-governmental databases, whose data also come with known limitations. The Mapping Police Violence (MPV) and Washington Post Fatal Force (WaPo) datasets track similar information and provide useful comparisons.³ FY 2022 DCRA reports accounted for 605 of the 1,450 (42%) arrest-related deaths that were identified in the MPV and WaPo datasets.

² For the purposes of the Edward Byrne Memorial Justice Assistance Grant Program, under which grant recipients report DCRA data, the term “states” includes the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the U.S. Virgin Islands, Guam, and American Samoa.

³ 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, crowdsourced 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.

State Reporting of Deaths in Local Jails

Forty states reported deaths in jails in FY 2022.⁴ Unfortunately, there is not another data source that offers a direct comparison for state reports of deaths in jails. However, the total number of 875 jail-based deaths reported by states in FY 2022 is well below (78%) the annual five-year average of 1,122 deaths in jails identified by BJS when it collected data directly from local jurisdictions over calendar years 2015 through 2019.

State Reporting of Deaths in State Prisons

Forty-eight states reported deaths in prisons in FY 2022. BJS worked with BJA to carry out a new statistical analysis of DCRA reporting as it relates to prison deaths. BJS used calendar year (CY) data from 2020 and 2021 to compare DCRA reports of deaths in prisons to BJS data collected on deaths of persons sentenced to more than one year in state prison through the National Prisoner Statistics (NPS) program. This analysis revealed that states are reporting approximately 80% of the prison deaths identified through the NPS program.⁵ However, the approximately 20% of prison deaths that were not reported by states in CY 2020 and CY 2021 amounted to over 900 unreported deaths in each year.

Quality of DCRA Data Collected to Date

The Department's assessment of FY 2022 DCRA reporting and further analysis of reporting in prior years finds that states continue to underreport across all three categories of deaths in custody. States also continue to submit reports with missing data in many of the response fields for reports that states are providing. These findings echo the conclusions reached in the September 2022 report and inform DOJ strategies for improving collection and reporting in the future.

Plans to Improve Quality and Transparency of DCRA Reporting

As stated in the September 2022 report, DOJ's top priority for implementing DCRA is improving the quality and completeness of state reporting, including improving the reporting from state and local agencies to State Administering Agencies (SAAs). OJP is committed to enhancing efforts on multiple fronts to substantially and urgently improve DCRA data collection.

⁴ The total number of deaths in local jails excludes deaths in the combined jail and prison systems in Alaska, Connecticut, Delaware, Hawaii, Rhode Island, and Vermont. Deaths in these states are counted in the prison death totals.

⁵ As part of its question on type of release from prison for persons sentenced to serve more than one year under state or federal correctional authority, NPS obtains the annual aggregate count of persons who die while in prison. The NPS release counts exclude persons who were unsentenced or sentenced to one year or less. This could particularly affect the counts of deaths in the six states that have combined prison/jail systems, which combine persons who are yet to be sentenced or who have received shorter sentences with those serving longer sentences. Persons incarcerated in these states (Alaska, Connecticut, Delaware, Hawaii, Rhode Island, and Vermont) have traditionally been counted as "prisoners" by BJS.

To do this, BJA is increasing engagement with the field, launching a new DCRA training and technical assistance (TTA) center, establishing new DCRA reporting compliance criteria for states, and requiring states to submit DCRA implementation plans. BJA is working closely with states to identify each missing data element and working with them to complete the record. BJA is also increasing its own staffing resources dedicated to this collection, by adding a career senior program analyst and two new analyst contractors. BJA is also collaborating closely with BJS, NIJ, and OJP leadership around opportunities to strengthen DCRA. OJP is also establishing a priority consideration for discretionary grants to law enforcement agencies that report deaths in custody. To receive priority consideration, applicants will need to include in their program narratives explanations of how their agency currently supports DCRA reporting or is working to do so.

Engagement with the Field

On December 1, 2022, BJA hosted a full-day in-person/virtual hybrid meeting on DCRA with 118 participants representing government agencies from 38 states and four territories, and 10 non-profit/professional member organizations. BJA used this meeting to emphasize the importance of and requirements for DCRA reporting, highlight states who shared promising strategies for DCRA reporting, and to provide an opportunity for candid discussions about implementation challenges.

Meeting participants expressed widespread commitment to reducing deaths in custody, but also noted significant challenges to data collection and reporting. These challenges included lack of funding to support the work of state and local agencies to do rigorous collection and reporting, and lack of state agency authority to compel reporting from local agencies. Participants noted that imposing the 10% penalty to Edward Byrne Memorial Justice Assistance Grant (JAG) Program funding will not incentivize improved participation because it would have no effect on non-compliant units of government that do not otherwise receive passthrough JAG funding, or those that receive such small amounts of JAG funding that the penalty would be negligible. Participants provided other useful feedback and suggestions that BJA is considering as it continues to develop technical assistance, tools, and resources to improve reporting. BJA is planning additional engagements with the field in the months ahead.

DCRA TTA Center

BJA has awarded a cooperative agreement⁶ to the Justice Research and Statistics Association (JRSA) to stand up a new DCRA TTA Center which will deliver online, virtual, and onsite TTA to support states with developing and implementing sound data collection practices to enable them to collect and report to BJA complete and accurate DCRA data. JRSA is uniquely qualified for this role because it brings decades of experience working closely with SAAs and state-level Statistical Analysis Centers (SACs) to facilitate the exchange of criminal justice information and the use of research in policy decisions. In this role, JRSA enhances BJA's ability to engage with the relevant organizations and individuals in the field, identify best practices, develop tools,

⁶ BJA made a \$2 million award to the Justice Research Statistics Association with a 3-year project period to operate the DCRA TTA Center.

identify and assist states that are facing challenges, help assess and improve state implementation plans, expand opportunities for peer-to-peer learning, and carry out site visits to deliver intensive TTA where needed.

DCRA Compliance Plan

BJA is developing a plan outlining standards for determining state compliance with DCRA requirements consistent with the recommendation made by the Government Accountability Office in its report released in September 2022. This plan, which BJA expects to be final and made public in May 2023, will include standards for timeliness of reporting, coverage of required reporting by all eligible agencies of relevant deaths, and data quality in terms of both completeness and accuracy. Compliance standards will address missing data issues and will make use of comparisons between state reported deaths and deaths identified through other sources (e.g., open sources). States will receive feedback on completeness, quality, and coverage to help fill gaps on missing data elements and missing cases, and to help inform improvements in state-level data collection and reporting systems. Starting in FY 2023, states will be required to submit DCRA implementation plans as part of the compliance process. Compliance assessments by BJA will be used to inform TTA and other corrective actions as necessary and will include metrics that will be used to measure progress towards full compliance by states.

State Implementation Plans

DCRA's requirement for centralized state reporting necessitates the development and implementation of 56 unique data collection approaches, distributed across the states and territories. States and territories have idiosyncratic structures, resources, and constraints that affect their approaches to collecting and reporting data from the thousands of state and local agencies across the country. Participants at the December 2022 convening hosted by BJA emphasized the considerable and varied challenges that states experience in implementing DCRA's data collection and reporting requirements.

As part of the FY 2023 JAG application, BJA will require each state and territory to prepare and submit a DCRA implementation plan that describes procedures for collecting and reporting data to BJA. BJA and JRSA will provide formal guidance and TTA to assist states in developing and describing their data collection infrastructure, data collection methods, and data reporting methods. These plans will describe for each state and territory the universe of reporting agencies within their boundaries, data collection and reporting technology, agreements to accomplish data collection and reporting, policies and procedures, relevant state laws, resource and reporting gaps, and methods for state-level transparency.

Comparison to the Department's Proposed 2016 Plan

In December 2016, the Department published a report to Congress and BJA concurrently published a Federal Register Notice that included a proposed plan for collecting DCRA data

(hereinafter, the 2016 plan).^{7,8} As described in the September 2022 report, in 2018 the Department decided not to implement the 2016 plan out of concerns about the burden it would place on state respondents. The Department is revisiting these decisions and has already taken steps to implement several elements of the 2016 plan.

The 2016 plan described a process where the Department would conduct an independent open-source review of deaths in custody and compare this information to the quarterly reports submitted by states. It goes on to state that any deaths identified through open sources and not reported by states would be communicated back to the states with the requirement that states provide required information on those previously unreported deaths by the next quarter. As noted above, BJA is using open-source data and other available federal datasets to assess state reporting on an annual basis. The Department is committed to continuing this approach and it has been helpful in identifying previously unreported deaths. BJA will continue to use this information to inform TTA to states and ensure that they are aware of unreported deaths identified through open sources so that they can fill gaps in reporting.

However, the feasibility of the 2016 plan for using open-source data for quarterly reviews is uncertain as it would necessitate near-real-time collection of open-source data on deaths in custody and immediate assessment and feedback to 56 reporting states and territories to allow them to make corrections in their next quarterly report. The 2016 Attorney General's report at the time expressed concerns about the significant costs of the proposal for quarterly open-source reviews and indicated that the proposed strategy would miss the majority of deaths that occur in jails and prisons (p. 9). Open-source data has many limitations in terms of covering the range of reportable deaths under DCRA. For example, while media sources may be likely to publish information about individual deaths involving law enforcement use of force during arrest, they are much less likely to publish information about individual health-related deaths in jail or prison, which make up the largest portion of reportable deaths under DCRA. In addition, many in-custody deaths require autopsies, which can take many months to complete and results of which are not often covered in open-source data.

The 2016 plan described a requirement for each state to submit a plan for collecting and reporting DCRA data. As described above, BJA is beginning to implement a similar requirement that will begin with FY 2023 applications for JAG funding and be required annually thereafter. As described in the 2016 plan, a state's failure to submit its data collection plan to BJA will constitute a failure to comply with DCRA.

The 2016 plan indicated that BJA would assess a state's compliance on a FY basis. As noted above, BJA's new compliance plan is not yet finalized, but it anticipates an annual BJA assessment of state compliance on a FY basis. The DCRA statute does not require a state's JAG award to be reduced for the state's failure to comply but makes such an award reduction subject

⁷ Report of the Attorney General to Congress Pursuant to the Death in Custody Reporting Act: <https://www.justice.gov/archives/page/file/918846/download>

⁸ Agency Information Collection Activities; Proposed Collection Comments Request; New Collection: Death in Custody Reporting Act Collection, 81 Fed. Reg. 91,948 (Dec. 19, 2016).

to the discretion of the Attorney General. The 2016 plan proposed to offer noncomplying states the opportunity to dedicate up to 10% of its JAG award for the following FY to take measures necessary to achieve compliance with DCRA reporting. Going forward, in cases where the Department elects to impose the award reduction on noncomplying states, it will offer the same opportunity identified in the 2016 plan for states to direct 10% of its subsequent JAG award to improving compliance. However, as noted in the September 2022 report, the Department continues to be concerned about implementing this penalty on states when reporting by other state and local agencies may be outside of their ability to control or compel and funding reductions will detract from other criminal justice priorities.

The 2016 plan described information requirements for states to include for each reportable death in their quarterly DCRA reports. The plan would have directed states to report the minimal fields identified in the DCRA statute,⁹ and additional fields on the circumstances of the death and characteristics of the decedent. These included precipitating events and the reason for law enforcement's initial contact with the decedent, the decedent's behavior during the incident, and law enforcement actions during the incident. As noted in the September 2022 report, the Department revised its plan in 2018 and committed to its current approach of collecting only those fields explicitly described in the DCRA statute.¹⁰ Although this approach of collecting only the minimum information required by the DCRA statute addresses concerns about reducing burdens on state and local reporters, it raises other concerns about collecting sufficient information to adequately understand the circumstances around deaths in custody and develop knowledge and recommendations for reducing preventable deaths. Therefore, the Department is revisiting and considering steps for expanding the data elements that it collects under DCRA with an eye towards balancing concerns about burden on reporters with concerns about collecting complete information that meets the spirit and purposes of the DCRA statute.

The 2016 plan included the following text regarding transparency:

“The Department will publicly release data collected pursuant to the DCRA, including the State plans, the number of deaths reported for each agency and facility, and data on the circumstances surrounding those deaths. The release will exclude personally identifiable information and will be consistent with any applicable Department policies and federal laws, including federal privacy laws” (p. 8).

The Department is committed to being as transparent as possible. OJP is assessing the transparency options given applicable privacy and confidentiality laws, as well as the expected

⁹ The DCRA statute requires that reports of deaths in custody contain at minimum the name, gender, race, ethnicity, and age of the decedent; date, time, and location of death; the law enforcement agency that detained, arrested, or was in the process of arresting the decedent; and a brief description of the circumstances surrounding the death.

¹⁰ Bureau of Justice Assistance Death in Custody Reporting Act Performance Measures Questionnaire: https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/DCRA-Performance-Measure-Questionnaire_508.pdf

impact of these options on DOJ's ability to collect accurate, timely, and complete data in this and other areas.

The 2016 plan proposed making public state DCRA data collection and reporting implementation plans. As noted above, the Department will collect state implementation plans in FY 2023, and DOJ will make those plans public.

DCRA Study Requirement

As noted in the Department's September 2022 report, NIJ has commissioned two studies to accomplish the purposes of the DCRA study requirement. The first of these studies was published and transmitted to Congress in early-January 2023.¹¹ The study reviews existing research and data focused on the prevalence, patterns, and contexts of deaths in custody, discusses their limitations, and presents findings from a new exploratory analysis of data on mortality in correctional institutions, linking decedent data to information about facility characteristics and practices. The study discusses implications of the findings and opportunities for improving the future collection and analysis of data on deaths in custody.

The second study, launched in late 2021, is a multi-year effort involving a national-level review and analysis of policies, practices (including management practices), and available data addressing deaths in custody, along with in-depth case studies of multiple sites and agency types. NIJ anticipates that the study will be completed by fall-2024, at which time a final research report will be submitted for departmental review. An NIJ contractor is currently drafting an interim research report to share preliminary findings and recommendations from this study, with an expected public release date in spring-2023. This interim research report will explore the prevalence and correlates of mortality in law enforcement custody, jails, and prisons, and for each context describe selected management practices and policies that may be associated with or are designed to reduce these deaths. The report details findings from secondary analysis of existing mortality data and an environmental scan of the literature in each setting with recommendations drawn from those sources on promising practices to reduce deaths.

Additional Plans for DCRA Implementation

As described in the Department's 2016 plan and the September 2022 report, the reauthorization of the DCRA statute in 2014 had the unintended consequence of conflicting with the authorizing statute and statistical directives of BJS. This led the Department to transfer DCRA data collection away from BJS, DOJ's primary statistical agency, to BJA, whose mission is focused on grant administration and criminal justice policy development to support state, local, and tribal justice strategies. DOJ believes that the most effective and efficient approach for collecting and reporting DCRA data in the future is to modify and strengthen the DCRA statute to allow BJS to

¹¹ Literature Review and Data Analysis on Deaths in Custody: Report to Congress: <https://www.ojp.gov/pdffiles1/nij/305802.pdf>

collect information on deaths in custody directly from state and local agencies, as well as other sources, as necessary. Prior to the reauthorization of the DCRA statute, BJS collected and reported death in custody data over many years and demonstrated its capacity to apply sophisticated approaches and carry out complete and accurate data collection and reporting. The Department continues to work with Congress to consider legislation to modify and improve the DCRA statute.