



July 12, 2024

Mr. James Steyee
Program Analyst (DCRA)
Bureau of Justice Assistance
810 7th St. NW
Washington, DC 20531

Via email: james.d.steyee@usdoj.gov

Subject: Death-in-Custody Reporting Act Program Collection, OMB Number 1121-0365

Dear Mr. Steyee:

The Project On Government Oversight (POGO) is submitting this comment regarding the Death in Custody Reporting Act (DCRA) collection notice published on May 13, 2024.¹

POGO is a nonpartisan independent watchdog that investigates and exposes waste, corruption, abuse of power, and when the government fails to serve the public or silences those who report wrongdoing. We champion reforms to achieve a more effective, ethical, and accountable federal government that safeguards constitutional principles.

This comment focuses on questions one and three in the Federal Register notice: “whether the information will have practical utility” and “whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced.” As we have communicated to the Department of Justice on many occasions in recent years, including in a comment in 2021 and a letter in March 2024, we remain concerned that content of the Bureau of Justice Assistance’s data collection form will not allow the department to fulfill its statutory mandate under DCRA, namely to collect information of sufficient quality and detail to inform efforts to prevent deaths in custody.²

We recognize and appreciate that the department has implemented several improvements over the past two years that should result in better compliance by states in reporting death data from state and local law enforcement agencies. However, without further improvements, even perfect compliance is unlikely to yield adequate data. Accordingly, we once again recommend that the Justice Department add

¹ Bureau of Justice Assistance, “Agency Information Collection Activities; Proposed eCollection eComments; Requested Extension of a Previously Approved Collection; Death-in-Custody Reporting Act Program Collection,” 89 Fed. Reg. 41471 (May 13, 2024), <https://www.federalregister.gov/documents/2024/05/13/2024-10278/agency-information-collection-activities-proposed-ecollection-ecomments-requested-extension-of-a>.

² Brandon Brockmyer and David Janovsky, Comment Letter Death in Custody Reporting Act Collection (August 27, 2021), <https://s3.amazonaws.com/docs.pogo.org/letter/2021/DCRA-open-comment-letter.pdf>; Letter from Maya Wiley and Danielle Brian to Assistant Attorney General Amy Solomon regarding DCRA reforms, March 8, 2024, <https://www.pogo.org/policy-letters/recommendations-for-doj-to-improve-death-in-custody-reporting>.

questions to the form that elicit more details about deaths in custody and that do so in a more standardized manner to make the data easier to analyze by the department, Congress, researchers, and the public. We further recommend that any changes to the form be made in consultation not only with reporting agencies but also with people and organizations with expertise in death in custody data, and who represent communities who disproportionately die in custody and relatives of those who have died in custody.³

Current Data Form Is Insufficient

The department's current data collection form will not capture enough relevant information to allow for a meaningful analysis of deaths in custody. This is because the form provides too few options for answers on multiple-choice and fill-in fields and relies too much on an open-ended text field to elicit most of the substantive information about deaths.

Inadequate Options on Existing Multiple-Choice Fields

The current collection form, the DCRA Performance Measures Questionnaire, contains several multiple-choice fields that offer improper or too few response options to ensure accurate and complete data.⁴

- Question 2, regarding “decendent information” including name and demographic information:
 - Questions 2(C) and (D) about race and ethnicity, respectively, do not appear to meet the standards of the Office of Management and Budget’s Statistical Policy Directive No. 15, which sets minimum standards for the collection of race and ethnicity data. The current questions split race and ethnicity into two separate fields, and do not include a category for Middle Eastern or North African.⁵
 - Question 2(E) has a field for birth year only, rather than a complete date of birth, making it impossible to accurately aggregate decendent information by age. The form should ask for a full date of birth.
- Question 3(D), regarding the type of facility where a person died, if applicable:
 - The list of possible answers seems to cover most if not all relevant carceral facilities. However, the options should be expanded to cover medical facilities, to make clearer that the death of a person in custody who is transferred to a hospital is reportable under DCRA.
- Question 4, regarding the agency “that detained, arrested, or was in the process of arresting” the person who died:
 - The answer field appears to account for the presence of only a single agency at a fatal incident, failing to account for a multi-agency response. The latter scenario may be particularly relevant during a pre-detention use-of-force death (for instance, when a task force is executing a warrant). It also may obscure the contributory role in a death by an agency that then passed custody on to another agency. The form should ask for each

³ During this comment period, we wish to particularly encourage careful attention to a comment submitted by relatives of people who died in custody, as well a comment submitted by the Leadership Conference On Civil and Human Rights.

⁴ Bureau of Justice Assistance, “DCRA: Performance Measures Questionnaire,” OMB#1121-0365 (January 2022), <https://bja.ojp.gov/funding/performance-measures/dcra-measures-questionnaire.pdf>.

⁵ Office of Management and Budget, “Revisions to OMB’s Statistical Policy Directive No. 15: Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity,” 89 Fed. Reg. 22,182, 22184-5 (March 29, 2024), <https://www.federalregister.gov/documents/2024/03/29/2024-06469/revisions-to-ombs-statistical-policy-directive-no-15-standards-for-maintaining-collecting-and>.

agency present at a fatal incident, and for each agency that had custody of a person over a set period prior to the individual's death.

- Question 5, regarding the “manner of death”:
 - This question provides eight possible answer fields and stipulates that only one may be selected. However, the provided answer fields for manner of death may be perceived by respondents as overlapping, and yet also fail to specifically account for common circumstances of death of those in custody. For instance, it is unclear from the form how a death by unintentional overdose should be logged. Of the current options, it might be classified as an accident or “other,” or conceivably miscategorized as “natural causes” if the respondent focuses on the immediate cause of death such as cardiac arrest rather than the overdose that caused the cardiac arrest. Conversely, the “natural causes” category is so broad as to obscure important details.⁶ For the purposes of preventing future deaths, a “natural” death that is the result of old age or a genuinely untreatable chronic condition is not the same as an acute, treatable medical emergency that did not receive proper medical attention.

At minimum, the form should make “overdose” a separate answer option and contain subfields to elicit more detail about deaths classified as from “natural causes.” Question 5 should also elicit information about who or what entity determined the cause of death.

Overreliance on the Open-Ended Question

Currently, only four of the six questions on the data form elicit specific, substantive responses. Those questions address the name, age, gender, race, and ethnicity of a person who has died; the location of the death and whether the death occurred in one of several types of carceral facilities; the agency that had custody; and the general cause of death. These fields, while crucial, are not sufficient to facilitate the type of analysis required by DCRA.

The only field that can capture any additional information is Question 6, which prompts a respondent to “Provide a brief description of the circumstances leading to the death (e.g., details surrounding an event that may have led to the death, the number and affiliation of any parties involved in the incident, the location and characteristics of the incident, other context related to the death, etc.)” While having an open-ended question is important to ensure relevant information is not left out, relying so heavily on this question fails to ensure that essential information is reported.

As we have conveyed to the department since 2021, relying solely on an open-ended text-entry field for information about the circumstances of a death leaves too much discretion to the agency responsible for filling out the form and introduces another source of potential bias and inaccuracy into the analysis. Different people may have different interpretations of what details are important, and agencies that may wish to hide or gloss over information can use the discretion inherent in the text field to do so. Even if the information provided is complete, text-based data is much harder to analyze; in order to compare different events and determine trends, department staff will have to sort the text information into

⁶ Tirzah Christopher, “There is little scrutiny of ‘natural’ deaths behind bars,” NPR, January 2, 2024, <https://www.npr.org/2024/01/02/1219667393/there-is-little-scrutiny-of-natural-deaths-behind-bars#:~:text=The%20CDC%20says%20natural%20deaths,under%20the%20age%20of%2065.>

categories that can be analyzed. In addition, a method using an expansive text field is also likely more time consuming for those filling out the forms.

A full list of questions that should be added is beyond the scope of this comment, but even examples are illustrative. Among the information that the form does not, but should, specifically ask about are:

- the reasons for law enforcement contact with the individual;
- medical treatment (or lack of treatment);
- decedent's potential disabilities or mental health issues;
- the justification for and type of force officers used;
- whether there were attempts at de-escalation;
- any use of solitary confinement or other segregated housing; and
- whether there are reliable sources of documentation of what transpired, including the existence of body- or dashboard camera footage or an autopsy.

Changes Should Be Informed by Broad Community Engagement

We recognize that a Paperwork Reduction Act review is necessarily concerned with gathering feedback from the users of a government form — in this case, the state administering agencies that report data pursuant to DCRA. However, the department must not lose sight of the fact that the true stakeholders for DCRA are people who are incarcerated or who may come into contact with the criminal legal system, and especially those who the limited extant research shows are particularly at risk of dying or being killed. This includes, but is by no means limited to, Black, Native Hawaiian and Pacific Islander, Hispanic, and Native American people; people with disabilities; and people experiencing mental health issues.⁷ Changes to the DCRA data form must be made with input from individuals and organizations from these communities, as well as from experts in the study and prevention of deaths in custody. DCRA is not simply a data law; it is a civil and human rights law.

This year marks a decade since DCRA was reauthorized. The Department of Justice must take concrete steps to ensure the data it solicits and receives is of the highest possible quality, is in the most readily useable form, and facilitates DCRA's goal: the prevention of deaths in custody.

If you have any questions or wish to discuss these recommendations further, please do not hesitate to contact David Janovsky (djanovsky@pogo.org).

Sincerely,



David Janovsky
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Project On Government Oversight

⁷ "Mapping Police Violence," Campaign Zero, updated June 21, 2024, <https://mappingpoliceviolence.org/>; "Disability," Prison Policy Initiative, <https://www.prisonpolicy.org/research/disability/>.