April 10, 2023

Dear Chairman Rogers, Ranking Member Cartwright, Chair Shaheen, and Ranking Member Moran:

The Project On Government Oversight (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. POGO champions reforms to achieve a more effective, ethical, and accountable federal government that safeguards constitutional principles.

To further strengthen Congress’s efforts to promote government accountability and civil rights, we suggest several modest reforms, all of which could be addressed in either bill text or report language accompanying the Commerce, Justice, Science, and Related Agencies appropriations bill.

- Improve Death in Custody Reporting Act implementation.
- Improve use of force reporting.
- Prohibit unrestricted purchase of location data protected by the Fourth Amendment.

POGO submits the enclosed requests for language to be included in the fiscal year 2024 Commerce, Justice, Science, and Related Agencies appropriations bill and report.
Thank you for your consideration of these proposals to strengthen government accountability and oversight. For more information, please have your staff contact me at david.janovskypogo.org

Sincerely,

David Janovsky
Policy Analyst

Enclosures: 3

cc: The Honorable Kay Granger, Chairwoman, House Committee on Appropriations
The Honorable Patty Murray, Chair, Senate Committee on Appropriations
The Honorable Rosa DeLauro, Ranking Member, House Committee on Appropriations
The Honorable Susan Collins, Vice Chair, Senate Committee on Appropriations
Improve Death in Custody Reporting Act Implementation

**Appropriations Committee**: Commerce, Justice, Science, and Related Agencies  
**Agency**: Department of Justice  
**Account**: General Administration — Salaries and Expenses  
**Type of request**: Report Language

**Background:**
Congress reauthorized the Death in Custody Reporting Act (DCRA) in 2014, directing the Department of Justice to collect data on deaths that occur in the custody of local, state, and federal law enforcement and corrections agencies. DCRA also instructed the Attorney General to submit, within two years, a report to Congress analyzing that data and proposing ways to reduce deaths in custody, and it allows the Attorney General to reduce the Byrne Justice Assistance Grant allocations to noncompliant states.

In September 2022, the Government Accountability Office found that the Justice Department’s Fiscal Year 2021 data on state deaths was missing nearly 1,000 deaths that were reported in public sources, and that over two-thirds of all records collected under DCRA were missing required information. That month, the Department reported that it would commit to auditing state data for accuracy and develop a plan to determine, for the first time, whether states were in compliance with the law. However, the Department also indicated that it would not release state data to the public, despite its commitment to do so in 2016. Congress should require the Justice Department to continue to keep it apprised of progress on fully implementing the law.

**Proposed Report Language:**
Within 90 days of the enactment of this Act, the Attorney General shall submit a report to appropriators on its progress toward implementing the Death in Custody Reporting Act (DCRA). The report shall also be released to the public on the Justice Department’s website. The report shall describe, at minimum, what steps the Department is taking to ensure the accuracy of data reported by state and federal agencies; the number of states in full or partial compliance with the reporting requirements; and the Department’s efforts to make data available to the public. It is the sense of the Committees that the statutory penalty provision, which the Department has yet to utilize, has the potential to incentivize compliance.

---

Improve Use of Force Reporting

**Appropriations Committee:** Commerce, Justice, Science, and Related Agencies  
**Agency:** Department of Justice  
**Account:** General Administration — Salaries and Expenses  
**Type of request:** Report Language

**Background:**
In Executive Order 14074, President Biden directed the Attorney General and United States Chief Technology Officer to work with state, tribal, local, and territorial law enforcement agencies to facilitate those agencies’ participation in the FBI use of force database. The President also directed all federal law enforcement agencies to report use of force information to the FBI on a monthly basis.

**Proposed Report Language:**
Within 180 days of passage of this Act, the Attorney General shall report to the Committees on the status of the Department’s efforts to increase state, tribal, local, and territorial law enforcement agencies’ participation in the FBI use of force data program. The report shall detail any obstacles to participation identified; plans to overcome those obstacles; and the number of such agencies currently participating. The report shall also include information on federal agency compliance with the reporting requirement.

---

Prohibit Unrestricted Purchase of Location Data Protected by the Fourth Amendment

**Appropriations Committee:** Commerce, Justice, Science, and Related Agencies  
**Agency:** Department of Justice  
**Type of Request:** Bill Text

**Background:**  
Location data is highly sensitive, revealing our most intimate activities and interactions: personal relationships, political and religious views, and medical histories. Protecting this information from undue interference can be especially important for people of color, government dissidents, and other marginalized communities.

In the normal context, if law enforcement officers want to access cell phone location data, they need a warrant. But a glaring loophole in current law allows law enforcement to circumvent this process by paying third party data brokers to access private, sensitive cell phone location data.

Government agencies including the FBI, DHS, ICE, IRS, and DEA purchase the personal cell phone location data of American citizens from data brokers, without any court oversight or probable cause requirements. When Congress funds federal law enforcement agencies, it shouldn’t allow that money to be used to skirt Fourth Amendment requirements. It’s critical that funding include a rule preventing purchase of data that would otherwise require a warrant and suspicion of wrongdoing to obtain.

Notably, such a rule would in no way prohibit law enforcement from accessing and using location data to track down a suspect in a criminal investigation or otherwise protect public safety. It would simply hold law enforcement to the same legal standard, regardless of the means they are using to access our information.

**Proposed Bill Text:**  
None of the funds made available by this Act may be used to purchase records or information if the compelled production of such information or records would require a warrant for law enforcement purposes.