



March 8, 2024

Deputy Attorney General Lisa Monaco
U.S. Department of Justice
950 Pennsylvania Ave. NW
Washington, DC 20530

Acting Associate Attorney General Benjamin Mizer
U.S. Department of Justice
950 Pennsylvania Ave. NW
Washington, DC 20530

Assistant Attorney General Amy Solomon
Office of Justice Programs
U.S. Department of Justice
810 Seventh St. NW
Washington, DC 20531

Dear Deputy Attorney General Monaco, Acting Associate Attorney General Mizer, and Assistant Attorney General Solomon:

This year marks a decade since the reauthorization of the Death in Custody Reporting Act (DCRA). We write to urge the Department of Justice to take two concrete actions this year to ensure that data collected under DCRA is as accessible and useful as possible. Specifically, the department should revise its data collection forms to include more detailed information about the circumstances of in-custody deaths and commit to making the data publicly available in a format that enables meaningful analysis. These actions are essential to ensure DCRA can fulfill its fundamental goal: to ensure accountability and inform efforts to prevent deaths in custody.

Spurred to action in the wake of nationwide protests over police violence after the killings of Eric Garner and Michael Brown, Congress reauthorized DCRA to ensure there would be comprehensive data about the number and causes of deaths in government custody.

A decade later, the Justice Department has yet to fulfill DCRA's mandate. There remains no comprehensive, authoritative data about how many people have died in the government's custody. This is both a moral and a practical failure. The government has an obligation to ensure the well-being of people in its custody, and when it fails to do so it is essential to document what went wrong to ensure preventable deaths are avoided in the future.

While they have come long after the statute’s deadline, we recognize and appreciate that the department has taken concrete steps to improve DCRA implementation over the past year, many of which align with recommendations that have been communicated to the department.¹ In particular, we believe that the Bureau of Justice Assistance’s efforts to engage with state administering agencies to provide technical assistance, communicate expectations for compliance, and require states to document how they will comply with DCRA represent important progress.

However, we remain concerned that even if state and federal agencies fully comply with the current DCRA requirements, the program will still not meaningfully contribute to the effort to prevent deaths in custody. The Justice Department is not collecting sufficiently detailed information about deaths and is obscuring much of what it does collect in its limited public releases.

The Department Should Revise and Expand Data Collection Forms

DOJ currently solicits DCRA data from states through the Performance Measures Questionnaire and from federal agencies via Bureau of Justice Statistics forms CJ-13A and CJ-13B. For DCRA data to be useful for studying and preventing deaths, these forms must be revised to include more specific and detailed questions. We urge you to make these revisions in consultation with stakeholders with particular expertise in the causes of deaths in custody. This year is an especially opportune time to make revisions because the Performance Measures Questionnaire is due for recertification by the Office of Management and Budget this summer.

State Data

The Performance Measures Questionnaire has six questions. The first five questions cover identity and demographic information about the decedent; the location, time, and manner of the death; and the agency that had custody of the decedent. The sixth question is a text field that asks for “a brief description of the circumstances leading to the death.”² While the department has recently provided more guidance on appropriate responses,³ this open-ended approach leaves too much to the discretion of the person filling out the form. This discretion increases the likelihood that key information, such as medical treatment (or lack of treatment), decedents’ potential disabilities or mental health issues, or the use of solitary confinement or other segregated housing, is not captured.

Federal Data

The federal data forms have more specific and detailed questions than the Performance Measures Questionnaire.⁴ However, the current versions of the forms are far less detailed than they were several

¹ See The Leadership Conference Education Fund and Project On Government Oversight, *A Matter of Life and Death: The Importance of the Death in Custody Reporting Act*, February 2023, https://docs.pogo.org/report/2023/A-Matter-of-Life-and-Death-the-Importance-of-the-Death-in-Custody-Reporting-Act_2023.pdf.

² Bureau of Justice Assistance, “DCRA: Performance Measures Questionnaire,” OMB#1121-0365 (January 2022), <https://bja.ojp.gov/funding/performance-measures/dkra-measures-questionnaire.pdf>.

³ Bureau of Justice Assistance, “Death in Custody Reporting Act: Reporting Guidance and Frequently Asked Questions,” revised October 2023, <https://bja.ojp.gov/funding/performance-measures/DCRA-Reporting-Guidance-FAQs.pdf>.

⁴ Bureau of Justice Statistics, “Arrest-Related Death Incident Report,” Form CJ-13A (2023), https://doj-dcra.org/pdfs/FDCRP_CJ-13A_fillable%20PDF%20FY2023_final.pdf?pdf=FDCRP_CJ-13A_fillable%20PDF%20FY2023_final; Bureau of Justice Statistics, “Detention or Incarceration Death Incident Report,” Form CJ-13B (2023), https://doj-dcra.org/pdfs/FDCRP_CJ-13B_fillable%20PDF%20FY2023_final.pdf?pdf=FDCRP_CJ-13B_fillable%20PDF%20FY2023_final.

years ago, meaning important data are no longer being collected.⁵ Among the information that once was, but is no longer, collected is the number of officers who responded to a scene or fired shots; the identity of the person who completed the death certificate; and details about medical histories and treatment. Even the earlier, more detailed forms failed to gather detailed information about factors such as disability status and accommodation or previous solitary confinement.

The Department Should Increase Transparency

In order for DCRA data to be truly useful as a tool to help prevent deaths in custody, the data must be meaningfully available to the public. Currently, the Bureau of Justice Statistics publishes federal data in a highly aggregated form, typically two to three years after the data is collected.⁶ These reports do not allow readers to compare variables. For instance, while these reports contain demographic information and details such as the reason for law enforcement contact, it is impossible to break down the reasons for such contact by demographics.

To date, there has been no regular, proactive release of state and local DCRA data. The department announced in 2016 that it intended to publish data at the facility and agency level, but those plans were abandoned during the Trump administration and have yet to be revived.⁷ In fact, the department has vigorously contested efforts to obtain data under the Freedom of Information Act from the Mortality in Correctional Institutions program, which preceded the current DCRA programs, and has aggressively redacted data it has been ordered to release — going so far as to redact not only many facility names but even the states in which some individuals died, as well as basic details such as some causes of death.⁸ While we recognize that some DCRA data may be sensitive and implicate privacy interests, the department’s current approach fundamentally fails to recognize the significant public interest in this data: to prevent future deaths.

The purpose of DCRA is not merely to collect data for data’s sake. It is to ensure that policymakers and the public have the best information possible to ensure that preventable deaths in custody are in fact prevented. Taking action to improve the detail and transparency of this data will move the department’s DCRA programs significantly closer to achieving that purpose.

We appreciate your attention to this vital matter and are available to assist in any way we can. If you have questions or would like to discuss further, please contact Bree Spencer, Senior Program Director, Justice at The Leadership Conference (spencer@civilrights.org) or David Janovsky, Senior Policy Analyst at POGO (david.janovsky@pogo.org).

⁵ The Leadership Conference Education Fund and Project On Government Oversight, *A Matter of Life and Death: The Importance of the Death in Custody Reporting Act*, February 2023, 28-29, https://docs.pogo.org/report/2023/A-Matter-of-Life-and-Death-the-Importance-of-the-Death-in-Custody-Reporting-Act_2023.pdf.

⁶ For example, Bureau of Justice Statistics, *Federal Deaths in Custody and During Arrest, 2021 – Statistical Tables*, NCJ 307033 (November 2023), <https://bjs.ojp.gov/document/fdcda21st.pdf>.

⁷ Bureau of Justice Assistance, “New Collection: Death in Custody Reporting Act Collection,” 81 Fed. Reg. 91948 (December 19, 2016), <https://www.federalregister.gov/documents/2016/12/19/2016-30396/agency-information-collection-activities-proposed-collection-comments-requested-new-collection-death>.

⁸ See Memorandum of Points and Authorities in Support of Defendant’s Motion for Summary Judgment, *Gannett Satellite Information Network v. DOJ*, No. 22-cv-475 (June 30, 2022) (claiming categorical exemption from disclosure for MCI data), <https://www.courtlistener.com/docket/63110129/12/1/gannett-satellite-information-network-llc-v-us-department-of-justice/>; “Mortality in Correctional Institutions State Data (October 1, 2015 – December 31, 2019) (Redacted),” <https://www.ojp.gov/program/ojp-freedom-information-act/ojp-reading-room>.

Sincerely,

Handwritten signature of Maya Wiley in black ink.

Maya Wiley
President and CEO
The Leadership Conference

Handwritten signature of Danielle Brian in black ink.

Danielle Brian
Executive Director and President
Project On Government Oversight

Cc:

Director Karhlton Moore, Bureau of Justice Assistance
Acting Director Kevin Scott, Bureau of Justice Statistics