

Via email to James Steyee, Program Analyst (DCRA)  
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Re: Comment of Citizens for Responsibility and Ethics in Washington in response to Notice of Proposed Rule: Death in Custody Reporting Act (Public Law 113-242)([OMB Number 1121-0365])(July 11, 2024)

Citizens for Responsibility and Ethics in Washington (CREW) respectfully submits this comment in response to the notice of proposed rulemaking (NPRM) that the U.S. Office of Management and Budget (OMB) issued on May 13, 2024. To comply with the Death in Custody Reporting Act (Public Law 113-242), the Bureau of Justice Assistance (BJA) is seeking an extension for its Death in Custody Report Act (DCRA) data collection form. This form, implemented at the start of fiscal year 2020, mandates states to provide specific details on each reportable death within their jurisdiction to BJA.<sup>1</sup> CREW is a nonpartisan nonprofit organization focused on ethics, transparency and accountability, including data collection, and appreciates this opportunity to work with OMB.

CREW supports the proposed rule, particularly the initiative to expand data collection under the DCRA, highlighting the need for accurate and timely information. We submit this comment to convey our endorsement of the rule, emphasize the importance of timely data collection and transparency measures and urge OMB to promptly move forward with the rulemaking process.

### **1. Persistent deficiencies affect transparency in data collection**

The Death in Custody Reporting Act is a critical piece of legislation designed to ensure transparency and accountability regarding deaths in custody. The legislation mandates that states and territories receiving specified federal grants submit data on deaths in custody.<sup>2</sup> This data must be submitted to the DOJ, with non-compliant states potentially facing a penalty of up to a 10 percent reduction in their awards.<sup>3</sup> The Bureau of Justice Statistics (BJS) is responsible for gathering information on deaths in federal custody, while the BJA collects data on deaths in state and local custody. The Department of Justice (DOJ) then is required to submit a report to

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<sup>1</sup> Agency Information Collection Activities; Proposed eCollection eComments Requested Extension of a Previous Approved Collection; Death-in-Custody Reporting Act Program Collection, 89 Fed. Reg. 41471, 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#further-info>.

<sup>2</sup> Death in Custody Reporting Act of 2013, Pub. L. No. 113-242, § 2(a), 128 Stat. 2860 (2014), <https://www.govinfo.gov/content/pkg/PLAW-113publ242/pdf/PLAW-113publ242.pdf>. (*Every state, territory, and federal law enforcement agency collects and submit data on deaths occurring during detention, arrest, transit to, or while in custody of jails and correctional facilities.*)

<sup>3</sup> *Id.* § 2(b).

Congress analyzing the data, exploring strategies for reducing deaths in custody, and evaluating how different practices can contribute to or mitigate these incidents.<sup>4</sup>

Although the DCRA has enhanced our knowledge of deaths in custody, it has also demonstrated that there are significant gaps in data collection and reporting. For instance, the Government Accountability Office (GAO) recently revealed that state agencies underreported nearly 1,000 deaths in 2021, exposing systemic failures.<sup>5</sup> A report issued by the Attorney General on the DCRA's implementation and history identified serious data quality issues and noted that state data significantly underreported deaths during arrests, in jails and in prisons.<sup>6</sup> States reported about 80% of prison deaths identified through the National Prisoner Statistics program in 2020 and 2021. The remaining 20%, amounting to over 900 unreported deaths each year, went undisclosed.<sup>7</sup> Acknowledging the critical need for enhancing data collection practices, the GAO has emphasized that additional steps are required to ensure that the DOJ effectively utilizes the collected data.<sup>8</sup> When states fail to report accurately, it undermines the transparency and quality of the data, obstructing efforts to enhance accountability and address systemic problems within the justice system.

The Bureau of Justice Statistics has also produced delayed and generalized reports regarding federal data on deaths in custody, providing only basic aggregated data tables with minimal commentary. The first report, covering federal DCRA data for fiscal years 2016-2017, was issued in December 2020—three years after data collection.<sup>9</sup> Subsequent reports for 2018-2019 and 2020 were published in September 2021 and July 2022, respectively.<sup>10</sup> These reports, consisting mainly of data tables, offered only a basic overview of the number of deaths and obscured critical data points, especially regarding deaths caused by law enforcement. The reports issued in 2020 and 2021, covering data from 2016-2019, failed to distinguish

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<sup>4</sup> *Id.* § 2(f)(2).

<sup>5</sup> U.S. Gov't Accountability Off., GAO-22-106033, *Additional Action Needed to Help Ensure Data Collected by DOJ Are Utilized* (2022), <https://www.gao.gov/assets/d22106033.pdf>.

<sup>6</sup> U.S. Dep't of Justice, *FY 2023 Report to the Committees on Appropriations: Death in Custody Reporting Act Implementation 1* (2023), <https://www.bja.ojp.gov/doc/fy23-dcra-implementation-report.pdf>.

<sup>7</sup> *Id.* at 3.

<sup>8</sup> U.S. Gov't Accountability Off., GAO-22-106033, *Additional Action Needed to Help Ensure Data Collected by DOJ Are Utilized* (2022), <https://www.gao.gov/assets/d22106033high.pdf>.

<sup>9</sup> Connor Brooks, Kevin M. Scott, & Anthony Whyde, Bureau of Justice Statistics, U.S. Dep't of Justice, *Federal Deaths in Custody and During Arrest, 2016-2017 – Statistical Tables* (2020), <https://bjs.ojp.gov/content/pub/pdf/fdcda1617st.pdf>.

<sup>10</sup> Connor Brooks & Kevin M. Scott, Bureau of Justice Statistics, U.S. Dep't of Justice, *Federal Deaths in Custody and During Arrest, 2018-2019 – Statistical Tables* (2021), <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/fdcda1819st.pdf>; Connor Brooks & Sean E. Goodison, Bureau of Justice Statistics, U.S. Dep't of Justice, *Federal Deaths in Custody and During Arrest, 2020 – Statistical Tables* (2022), <https://bjs.ojp.gov/content/pub/pdf/fdcda20st.pdf>.

between killings by law enforcement and other forms of homicide.<sup>11</sup> More recent reports, though somewhat timelier, still suffer from a lack of detailed analysis, often providing only aggregated data tables with minimal information.<sup>12</sup>

True transparency in data collection requires detailed and timely information, and specifically comprehensive and accurate reporting of all relevant incidents. The proposed rule includes a Quarterly Summary form (DCR-1) requiring states to either (1) identify all known reportable deaths that occurred in their jurisdiction during the corresponding quarter or (2) affirm that no reportable deaths occurred during the reporting period.<sup>13</sup> In addition to the quarterly summary form, states must submit a required incident report (DCR-1A) for each reportable death, providing detailed information about the circumstances and characteristics of each case. This includes the decedent's personal details, the date, time and location of the death, the involved law enforcement or correctional agency and a description of the circumstances leading to the death.<sup>14</sup>

The suggested data collection efforts offer an opportunity to remedy these shortcomings and improve the precision and usefulness of the information gathered, enhancing transparency and enabling more effective oversight in addressing deaths in custody.

## **2. Improving data collection and oversight to shape effective policy solutions**

Improving data collection will refine the quality and clarity of information on deaths in custody, providing crucial details for deeper analysis of contributing factors. An often overlooked aspect of the DCRA is its requirement that the DOJ not only collect but also analyze data on deaths in custody, aiming to develop strategies for reducing such incidents.<sup>15</sup> But the ambiguity in the data collected by both state and federal agencies has made this more challenging. In 2022, the GAO highlighted that DOJ officials had not thoroughly examined state data related to deaths in custody, partly due to its incomplete nature, revealing that 70% of records submitted to the DOJ lacked at least one required component, with 28% missing two components and 4%

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<sup>11</sup> Connor Brooks, Kevin M. Scott, & Anthony Whyde, Bureau of Justice Statistics, U.S. Dep't of Justice, *Federal Deaths in Custody and During Arrest, 2016-2017 – Statistical Tables* (2020), <https://bjs.ojp.gov/content/pub/pdf/fdcda1617st.pdf>; Connor Brooks and Kevin M. Scott, Bureau of Justice Statistics, U.S. Dep't of Justice, *Federal Deaths in Custody and During Arrest, 2018-2019 – Statistical Tables* (2021), <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/fdcda1819st.pdf>.

<sup>12</sup> Connor Brooks & Sean E. Goodison, Bureau of Justice Statistics, U.S. Dep't of Justice, *Federal Deaths in Custody and During Arrest, 2021 - Statistical Tables* (2023), <https://bjs.ojp.gov/document/fdcda21st.pdf>. (report on 2021 released Nov. 2023, a two year delay).

<sup>13</sup> Agency Information Collection Activities; Proposed eCollection eComments Requested Extension of a Previous Approved Collection; Death-in-Custody Reporting Act Program Collection, 89 Fed. Reg. 41471, 41471 (May 13, 2024), <https://www.govinfo.gov/content/pkg/FR-2024-05-13/pdf/2024-10278.pdf>.

<sup>14</sup> *Id.* at 41472.

<sup>15</sup> Death in Custody Reporting Act of 2013, Pub. L. No. 113-242, § 2(f)(1)(a), 128 Stat. 2860 (2014), <https://www.govinfo.gov/content/pkg/PLAW-113publ242/pdf/PLAW-113publ242.pdf>.

missing three or more.<sup>16</sup> This failure is particularly harmful to marginalized communities, since the limited available data that does exist indicates that thousands of deaths occur in custody annually, disproportionately affecting people of color.<sup>17</sup> Notably, despite constituting only about 13% of the U.S. population, Black people accounted for 24.8% of deaths in local jails and 32.7% of deaths among state prisoners in 2018.<sup>18</sup>

Without prompt and specific data, policymakers, advocates, and researchers cannot fully understand the scale of the problem. Increasing oversight to help develop effective strategies to mitigate deaths in custody is crucial, as illustrated by the DOJ Office of the Inspector General's February 2024 report, which used federal records to uncover serious policy violations and operational deficiencies linked to inmate suicides.<sup>19</sup> Through thorough analysis of this data, the OIG identified specific recommendations for improvement and proposed targeted policy reforms. The report specified that the Bureau of Prisons' limited access to timely and detailed information impeded its ability to prevent future fatalities, demonstrating the importance of comprehensive data analysis for effective oversight and policy developments.<sup>20</sup>

The current system's lag diminishes efforts to address critical issues and ensure accountability within the criminal legal system. Enhancing the timeliness and comprehensiveness of data collection on deaths in custody is crucial for shaping effective policymaking and, importantly, facilitating oversight mechanisms geared at improving and reshaping confinement conditions.

### 3. Conclusion

OMB should adopt the proposed rule swiftly. We rely on quality data to investigate in-custody deaths and develop strategies to prevent them. Without effective implementation of the DCRA and improved data collection efforts, decision-makers will continue to lack the necessary information to shape policy, advocates will never

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<sup>16</sup> U.S. Gov't Accountability Off., GAO-22-106033, *Additional Action Needed to Help Ensure Data Collected by DOJ Are Utilized* (2022), <https://www.gao.gov/assets/d22106033high.pdf>.

<sup>17</sup> Ryan Gabrielson, Eric Sagara, & Ryann Grochowski Jones, *Deadly Force*, in *Black and White*, ProPublica (Oct. 10, 2014, 11:07 AM), <https://www.propublica.org/article/deadly-force-in-black-and-white>; Grant Duwe, Nat'l Ins. of Justice, U.S. Dep't of Justice, *Literature Review and Data Analysis on Deaths in Custody* 10 (2022), <https://www.ojp.gov/pdffiles1/nij/305802.pdf>.

<sup>18</sup> E. Ann. Carson, Bureau of Justice Statistics, U.S. Dep't of Justice, *Mortality in Local Jails, 2000-2018 - Statistical Tables* 10 (2021), <https://bjs.ojp.gov/content/pub/pdf/mlj0018st.pdf>; E. Ann Carson, Bureau of Justice Statistics, U.S. Dep't of Justice, *Mortality in State and Federal Prisons, 2001-2018 - Statistical Tables* 10 (2021), <https://bjs.ojp.gov/content/pub/pdf/msfp0118st.pdf>.

<sup>19</sup> Office of the Inspector Gen., U.S. Dep't of Justice, *Evaluation of Issues Surrounding Inmate Deaths in Federal Bureau of Prisons Institutions* 47 (2024), <https://oig.justice.gov/sites/default/files/reports/24-041.pdf>.

<sup>20</sup> *Id.* at 40.

fully understand the negative impact of the criminal legal system, and the Justice Department will not be able to conduct the oversight needed to reduce in-custody deaths. The proposed rule can strengthen data collection, bolster the department's capacity for research required by the DCRA, and foster greater transparency. CREW thanks OMB for its thoughtful approach to this critical issue and looks forward to working with you throughout the rulemaking process.

Kind regards,

*Diamond  
Brown*

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