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Death in Custody Reporting Act: Background and Legislative Considerations

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Death in Custody Reporting Act: Background and Legislative Considerations

There are no comprehensive statistics on how many people die in the custody of law enforcement and correctional agencies, and the circumstances surrounding their deaths. Congress sought to address this issue by passing the Death in Custody Reporting Act of 2000 (DCRA 2000; P.L. 106-297), which was subsequently amended and reauthorized by the Death in Custody Reporting Act of 2013 (DCRA 2013; P.L. 113-242). DCRA 2013 provides an incentive for states to report in-custody death data by allowing the Department of Justice (DOJ) to reduce a state's allocation under the Edward Byrne Memorial Justice Assistance Grant (JAG) program by up to 10% if they do not comply with reporting requirements.

DOJ's implementation of the requirements of DCRA 2013 has been a fraught exercise. DOJ was required to collect in-custody death data and publish a report using those data by December 2016. However, DOJ did not start collecting in-custody death data as required by DCRA 2013 until the beginning of FY2019 and it has yet to release the data it has collected from the states. In addition to this delay, critiques of efforts to collect the data required under DCRA 2013 have focused on DOJ issuing three different plans for how it could collect these data, DOJ's decision to move responsibility for collecting DCRA 2013 data from the Bureau of Justice Statistics (BJS) to the Bureau of Justice Assistance (BJA) (DOJ maintains it had to do this because BJS, as a federal statistical agency, is not allowed to engage in policymaking), and DOJ's decision not to release the data on in-custody deaths it has collected from the states pursuant to DCRA 2013.

BJS, the Government Accountability Office (GAO), and DOJ each completed assessments of the quality of in-custody death data collected by BJA. All three assessments found that states are underreporting in-custody deaths to BJA. BJS found that during the last three months of 2019, when both BJS and BJA were collecting data on deaths in state prisons and jails, state prisons and local jails reported 1,264 in-custody deaths to BJS and 744 in-custody deaths to BJA, meaning that about 40% of the deaths reported to BJS were not reported to BJA. GAO conducted a review of documents on government websites and the *Mapping Police Violence* database and identified nearly 1,000 deaths that occurred while in police custody during FY2021 that states did not report in response to DCRA. DOJ found that, among other things, states reported to BJA approximately 80% of in-prison deaths that BJS was able to identify through its National Prisoner Statistics program.

If Congress decides to address issues that have arisen related to DOJ's implementation of DCRA 2013, it may consider legislative options that include the following:

- modifying the JAG penalty under DCRA 2013 to apply it to local governments in addition to states;
- increasing overall funding for JAG so that more local governments are eligible for an allocation and would be subject to reporting requirements;
- removing the JAG penalty, which may allow DOJ to move data collection back to BJS;
- providing a bonus allocation to states that enact laws requiring local governments to report in-custody death data to the state;
- amending DCRA 2013 to require DOJ to make public the data collected pursuant to the act;
- codifying procedures for how DOJ collects in-custody death data, such as requiring it to verify a state's reported data against open-source information; or
- authorizing grants to aid states in establishing systems to collect data required by DCRA 2013.

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In 2014, Congress passed, and President Obama signed into law, the Death in Custody Reporting Act of 2013 (DCRA 2013; P.L. 113-242). The legislation—which reauthorized the Death in Custody Reporting Act of 2000 (DCRA 2000; P.L. 106-297)—provides incentives for states to report data on in-custody deaths to the Department of Justice (DOJ). Over the past few years, Members of Congress have raised concerns about how DOJ has implemented the requirements of DCRA 2013.¹ In response to the enactment of DCRA 2013, DOJ transferred responsibility for collecting state in-custody death data from the Bureau of Justice Statistics (BJS) to the Bureau of Justice Assistance (BJA). BJS was responsible for collecting these same data under DCRA 2000. DOJ determined that BJA would become responsible for collecting the data due to a requirement in DCRA 2013 that ties reporting data on in-custody deaths to states receiving their full allotment under the Edward Byrne Memorial Justice Assistance Grant (JAG) program.² Policymakers have raised concerns about how DOJ’s decision affected the department’s ability to collect these data.

This report reviews DOJ’s efforts to collect data on in-custody deaths, both under DCRA 2000 and DCRA 2013. It provides discussion of critiques of DOJ’s implementation of the requirements of DCRA 2013 and reviews the completeness of the data DOJ has collected thus far under DCRA 2013. The report concludes with an overview of potential policy options Congress could consider if it takes up legislation to address issues regarding how DOJ has implemented DCRA 2013.

DOJ Efforts to Collect Data on In-Custody Deaths

Death in Custody Reporting Act of 2000

DCRA 2000 required states that received Truth-in-Sentencing (TIS) grants to certify that they would follow guidelines established by DOJ on reporting in-custody deaths.³ Under the act, states were required to submit quarterly data to DOJ on any deaths that occurred while a person was being arrested; en route to being incarcerated; or incarcerated at a local jail, state prison, or other local or state correctional facility (including any juvenile facility). At a minimum, states were required to submit data on the name, gender, race, ethnicity, and age of the deceased; the date, time, and location of death; and a brief description of the circumstances surrounding the death.

¹ Letter from Robert C. “Bobby” Scott, Representative, to William Barr, Attorney General, June 9, 2020, <https://bobbyscott.house.gov/sites/evo-subsites/bobbyscott-evo.house.gov/files/2020-6-9%20Death%20in%20Custody%20Reporting%20Act%20Letter.pdf>; Letter from Dianne Feinstein, Senator, and Richard Blumenthal, Senator, to William Barr, Attorney General, July 7, 2020, <https://www.judiciary.senate.gov/press/dem/releases/senators-request-full-implementation-enforcement-of-the-death-in-custody-reporting-act>; and U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigations, *Uncounted Deaths in America’s Prisons and Jails: How the Department of Justice Failed to Implement the Death in Custody Reporting Act*, hearing, 117th Cong., 2nd sess., September 20, 2022.

² JAG is a formula grant program that provides funding to state and local governments for a variety of state and local criminal justice initiatives. For more information on JAG, see CRS In Focus IF10691, *The Edward Byrne Memorial Justice Assistance Grant (JAG) Program*.

³ Violent Offender Incarceration/Truth-in-Sentencing was a formula grant program that provided funding to states to help build or expand correctional facilities to increase the capacity for the confinement of persons convicted of Part 1 violent crimes (i.e., murder, rape, robbery, or aggravated assault) and to encourage states to implement *truth-in-sentencing* laws that would require people convicted of Part 1 violent crimes to serve at least 85% of the sentence imposed for those offenses. The program received funding from FY1996 to FY2001. Half of the funding available each fiscal year was for Violent Offender Incarceration grants and the other half was available for Truth-in-Sentencing grants.

In response to DCRA 2000, BJS started the Death in Custody Reporting Program (DCRP), which would later be known as the Mortality in Correctional Institutions (MCI) program.⁴ The program collected data on people who died while they were incarcerated in state prisons and local jails. BJS started to collect data on in-custody deaths directly from local jails in 2000 and state prisons in 2001. DOJ reported that BJS was able to obtain an average annual response rate of 98% for local jails and 100% for state prisons.⁵ BJS continued to collect these data even after the requirements of DCRA 2000 expired in 2006.⁶

In 2003, BJS started the Arrest-Related Deaths (ARD) program to implement the requirements of DCRA 2000 pertaining to deaths that occurred when someone was in the process of being arrested.⁷ The ARD program relied on state coordinators to identify and report all eligible arrest-related deaths.⁸ These coordinators used a variety of methods—such as consulting law enforcement sources, medical examiners, and open sources (e.g., news reports)—to collect information on reportable deaths.⁹ BJS discontinued the ARD program in 2014 over concerns about data quality and coverage issues. An assessment conducted by BJS concluded that the ARD program captured about half of the estimated number of arrest-related deaths that occurred in the United States from 2003 to 2011.¹⁰ BJS concluded that underestimation problems with the ARD program were attributable, in part, to “the reliance on centralized state-level reporters who lacked standardized modes for data collection, definitions, scope, participation, and available resources.”¹¹

BJS’s Redesign of the ARD Collection Methodology

In 2015, after BJS discontinued the ARD program, the agency conducted a pilot study to evaluate how reviewing open-source data could help BJS identify more arrest-related deaths.¹² The goal of the pilot program was to increase the reliability, validity, and comprehensiveness of data collected through the ARD program.¹³ First, BJS conducted a broad, but standardized, review of media articles to try to identify any potential arrest-related deaths. Next, BJS contacted law enforcement agencies, medical examiners’ offices, and coroners’ offices and asked them to confirm the arrest-related deaths identified through the media search, provide information on the circumstances of any identified arrest-related death, and identify any arrest-related deaths not found through the media review. BJS also surveyed a sample of law enforcement agencies, medical examiners’ offices, and coroners’ offices with concurrent jurisdiction in communities that did not have any media-identified deaths to inquire if they had any arrest-related deaths to report.

BJS found that most of the arrest-related deaths captured in the pilot study were identified through BJS’s media search (89%). The remaining 11% (forty-eight of the 424 arrest-related deaths) were reported by agencies, and of those, five came from the sample of agencies that did not have a media-identified death. BJS concluded that the

⁴ U.S. Department of Justice (DOJ), *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*, September 16, 2022, p. 2 (hereinafter, “DOJ report on DCRA 2013 implementation”).

⁵ DOJ report on DCRA 2013 implementation, p. 2.

⁶ Under 34 U.S.C. §10132(c), BJS is authorized to “collect and analyze statistical information, concerning the operations of the criminal justice system at the Federal, State, tribal, and local levels.”

⁷ DOJ report on DCRA 2013 implementation, p. 2.

⁸ DOJ report on DCRA 2013 implementation, p. 3.

⁹ DOJ report on DCRA 2013 implementation, p. 3.

¹⁰ DOJ report on DCRA 2013 implementation, p. 3.

¹¹ DOJ report on DCRA 2013 implementation, p. 3.

¹² DOJ, Office of the Inspector General (OIG), *Review of the Department of Justice’s Implementation of the Death in Custody Reporting Act of 2013*, Washington, DC, December 2018, p. 3 (hereinafter, “DOJ OIG report on DCRA 2013 implementation”).

¹³ DOJ, Office of Justice Programs (OJP), Bureau of Justice Statistics (BJS), *Arrest-Related Deaths Program: Pilot Study of Redesigned Survey Methodology*, NCJ 252675, Washington, DC, July 2019.

revised methodology showed promise for identifying and collecting information on arrest-related deaths. BJS also noted that the revised methodology is resource intensive and if it were to be deployed on a larger scale there would have to be consideration of the means necessary to do so.

Death in Custody Reporting Act of 2013

DCRA 2013, by and large, required states to submit the same in-custody death data as DCRA 2000, but DCRA 2013 also expanded upon the prior act. DCRA 2013 made in-custody death reporting mandatory for federal law enforcement agencies,¹⁴ and authorized DOJ to impose up to a 10% penalty on state grants under the JAG program if states did not comply with the act's reporting requirements. The act also required DOJ to conduct a study to determine how data collected pursuant to DCRA 2013 can be used to reduce the number of in-custody deaths, and to examine the relationship, if any, between the actions of prison and jail management and in-custody deaths.

DOJ's implementation of the requirements of DCRA 2013 was delayed. DOJ continued to collect data on in-custody deaths in prisons and jails through the MCI program, but its efforts to collect data from states on arrest-related deaths after BJS discontinued the ARD program were held up as it considered different proposals on how to implement the act's requirements.

DOJ Proposals to Implement DCRA 2013 Data Collection

In January 2016, BJS participated, in concert with a task force of state and local law enforcement agencies, in an effort to collect data on use of force incidents by law enforcement officers and arrest-related deaths.¹⁵ The task force asked the Federal Bureau of Investigation (FBI) to assist in the development of, and subsequently manage, the data collection program. BJS proposed that the FBI manage a joint data program that would collect statistics on use of force incidents and arrest-related deaths.¹⁶ However, in August 2016, after six months of discussion and consideration, the members of the task force rejected BJS's proposal.¹⁷

DOJ's Office of the Inspector General reported that it was told by representatives from the FBI and the task force that the proposal was rejected because (1) members of the task force were not familiar with the requirements of DCRA 2013 and BJS did not clearly communicate those requirements to them, and (2) members of the task force were concerned that DOJ would "punish" law enforcement agencies that had DCRA data, so the program should be limited to collecting data that would provide insight into why law enforcement officers use force.¹⁸ Subsequently, the FBI continued its efforts to develop a use of force data collection program and BJS continued to develop a state DCRA data collection program.

In August 2016, BJS announced that it would use the methodology developed in its redesign of the ARD program to collect DCRA data.¹⁹ Specifically, BJS proposed contacting law enforcement agencies as well as medical examiners' offices and coroner's offices quarterly to confirm arrest-related deaths identified through open-source reviews and to identify any additional arrest-related deaths that BJS did not identify through its review. BJS proposed asking law enforcement agencies, medical examiners' offices, and coroner's offices to submit data on the characteristics of the decedent(s) and circumstances surrounding arrest-related deaths.

The Office of Justice Programs (OJP) concluded that BJA, the agency that administers the JAG program, would be responsible for collecting data required by DCRA 2013.²⁰ In December 2016, BJA announced a proposal to collect

¹⁴ For a list of federal law enforcement agencies that are required to submit in-custody death data to DOJ, see Appendix 3 in DOJ OIG report on DCRA 2013 implementation.

¹⁵ DOJ OIG report on DCRA 2013 implementation, p. 10.

¹⁶ DOJ OIG report on DCRA 2013 implementation, p. 10.

¹⁷ DOJ OIG report on DCRA 2013 implementation, p. 10.

¹⁸ DOJ OIG report on DCRA 2013 implementation, p. 10.

¹⁹ DOJ, BJS, "Agency Information Collection Activities; Proposed Collection Comments Requested; New Collection: Arrest-Related Deaths Program," 81 *Federal Register* 51489-51490, August 4, 2016.

²⁰ DOJ report on DCRA 2013 implementation, p. 4.

DCRA data, which was similar to BJS's proposal.²¹ The December 2016 proposal still utilized a search of open-source data to collect information on potentially unreported in-custody deaths, but rather than directly contacting law enforcement agencies, medical examiners' offices, and coroner's offices, BJA proposed contacting states quarterly and asking them to report data on all in-custody deaths that occurred in their jurisdiction and to confirm the accuracy of the deaths identified through its open-source review. BJA proposed requiring states to report data on all in-custody deaths, not just arrest-related deaths. BJA also proposed requiring each state to submit a data collection plan each fiscal year, or to update an existing plan, that specified how the state would collect data on in-custody deaths that "achieves maximum timeliness, accuracy, and completeness."²² Under the plan, a noncompliant state would have been allowed to dedicate a portion of its JAG award (5% for the first two years of noncompliance, 10% for all subsequent years) toward improving data collection in lieu of DOJ imposing the 10% penalty.

OJP's incoming leadership under the Trump Administration considered the BJA December 2016 proposal but declined to adopt it because they felt that it required states to collect and submit data not required by DCRA 2013.²³ In June 2018, BJA announced a change to the way it would collect in-custody death data.²⁴ The June 2018 plan required states to report data quarterly on the number of in-custody deaths that occurred in their jurisdictions as well as demographic data for the decedent(s) and the circumstances surrounding their deaths, though the 2018 plan does not require states to submit as much data regarding the circumstances of the death as the December 2016 proposal.²⁵ Under the June 2018 plan, BJA does not conduct open-source review to identify potential unreported in-custody deaths and states are not required to submit a data collection plan.

In March 2023, DOJ reported that it is developing a compliance plan for states regarding the completeness, quality, and coverage of in-custody death data they are required to submit under DCRA 2013.²⁶ DOJ stated it has also reconsidered some of the changes it made when it declined to adopt the December 2016 plan. Starting with FY2023 JAG grants, DOJ will require states to submit a DCRA data implementation plan, and failure to do so will be considered failure to comply with DCRA 2013. DOJ will also use open-source data and other federal datasets to assess the completeness of state reported data. However, assessments will be conducted annually, not quarterly, as proposed in the December 2016 plan.²⁷ DOJ will also allow noncompliant states to dedicate a portion of their JAG award towards improving compliance. DOJ noted that it is considering requiring states to submit data beyond what is required by DCRA 2013 in order to collect "sufficient information to adequately understand the circumstances around deaths in custody and develop knowledge and recommendations for reducing preventable deaths."²⁸ However, DOJ acknowledges that this might increase states' reporting burden, thus DOJ is "considering steps for expanding the data elements that it collects under DCRA with an eye toward balancing concerns about burden on reporters with concerns about collecting complete information that meets the spirit and purposes of the DCRA statute."²⁹ Notably, DOJ has not committed to publicly releasing DCRA data.³⁰

²¹ DOJ, BJA, "Agency Information Collection Activities; Proposed Collection Comments Requested; New Collection: Death in Custody Reporting Act Collection," 81 *Federal Register* 91948-91952, December 19, 2016 (hereinafter, "December 19, 2016, *Federal Register*").

²² December 19, 2016, *Federal Register*, p. 91949.

²³ DOJ report on DCRA 2013 implementation, p. 5.

²⁴ DOJ, BJA, "Agency Information Collection Activities; Proposed eCollection eComments Requested; New Collection: Death in Custody Reporting Act Collection," 83 *Federal Register* 27023-27024, June 11, 2018.

²⁵ The December 2016 proposal would have required states to submit data on precipitating events and reasons for a law enforcement agency's initial contact with the decedent, the decedent's behavior during the incident, and law enforcement actions during the incident.

²⁶ DOJ expects the compliance plan to be finalized and released in May 2023. DOJ, OJP, *FY2023 Report to the Committees on Appropriations, Death in Custody Reporting Act Implementation*, p. 5, <https://bja.ojp.gov/doc/fy23-dcra-implementation-report.pdf> (hereinafter, "DOJ DCRA implementation report to the Appropriations Committees").

²⁷ According to DOJ, "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." DOJ DCRA implementation report to the Appropriations Committees, p. 6.

²⁸ DOJ DCRA implementation report to the Appropriations Committees, p. 7.

²⁹ DOJ DCRA implementation report to the Appropriations Committees, p. 7.

³⁰ According to DOJ, "OJP is assessing transparency options given applicable privacy and confidentiality laws, as well (continued...)"

States were required to submit in-custody death data to BJA starting with the first quarter of FY2020 (i.e., October 2019 through December 2019). DCRA reporting is considered a performance measure for the JAG grant award and states submit their DCRA data through BJA’s Performance Measurement Tool.³¹ States are required to submit data to BJA quarterly. BJS stopped collecting data through the MCI program because the Office of Management and Budget (OMB) determined that there was significant overlap between the data collected through MCI and BJA’s DCRA program and reporting to both programs would have been burdensome to states.³² BJA has not made any of the data it has collected through the DCRA program publicly available.

Table I. Timeline of DOJ’s Program to Collect In-Custody Deaths Data
Select Events

Year	Event
2000	October 13: DCRA 2000 becomes law. BJS establishes the MCI program and begins collecting mortality data from jails.
2001	BJS’s MCI program begins collecting mortality data from state prisons.
2003	BJS begins the ARD program—collecting data on persons who died either during the process of arrest or while in the custody of a state or local law enforcement agency.
2006	DCRA 2000 expires; BJS continues collecting ARD and MCI data.
2014	December 18: DCRA 2013 becomes law. BJS suspends the ARD program due to concerns about data quality.
2015	January–May: ARD Assessment and Pilot Study: BJS launches a two-phase pilot study designed to test how a review of public sources could help identify the full scope of arrest-related deaths. DCRA-required data collection and reporting is supposed to begin (for FY2016)—it does not.
2016	May: ARD Assessment and Pilot Study concludes. August: OJP starts the process of transferring DCRA data collection responsibility from BJS to BJA. August 4: BJS announces plan for DCRA collection including mixed-method approach for arrest-related deaths. December 18: Statutorily specified date for DOJ to submit its DCRA Data Collection Study to Congress. DOJ did not submit the reports. December 19: BJA announces its first proposal to collect state DCRA data. BJA would require states to collect data from local jurisdictions in their state and report data as part of JAG performance reporting.
2018	January–June: OJP considers alternative BJA proposals. June 11: BJA posts a 60-day notice in the <i>Federal Register</i> with a revised collection plan. A significant difference between this proposal and prior proposals is that its described methodology would now require BJA to routinely validate open-source data with state-reported data. Further, the new proposal substantially decreases the amount of information that state agencies must submit, which, according to OJP, would also minimize the DCRA data collection’s burden on states. June–October: BJA develops state DCRA data collection plan.
2019	April 12: BJA’s data collection plan is submitted to the Office of Information and Regulatory Affairs (OIRA).

as the expected impact of the options on DOJ’s ability to collect accurate, timely, and complete data in this and other areas.” DOJ DCRA implementation report to the Appropriations Committees, pp. 8-9.

³¹ DOJ report on DCRA 2013 implementation, p. 5.

³² Memorandum from E. Ann Carson, Statistician, Bureau of Justice Statistics, to Robert Sivinski, Office of Statistical and Science Policy, Office of Management and Budget, *Report Comparing Bureau of Justice Statistics and Bureau of Justice Assistance Mortality Death Collections, to Fulfill Terms of Clearance for OMB Control Number 1121-0249*, May 11, 2021 (hereinafter, “BJS memo to OMB re: DCRA 2013”).

Year	Event
	June 19: OIRA concludes review of data collection plan. Clearance is granted with approval to collect data for two years.
	October 1: BJA starts state DCRA data collection connected with JAG performance reporting.
2020	BJA collects first full year of DCRA data.
2021	March 31: BJS formally closes the MCI program.
	June 30: Original OIRA clearance expires.
	September 19: BJA's DCRA data collection plan is resubmitted to OIRA (approved for 36 months).

Source: Adapted from Appendix B in U.S. Department of Justice, *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*, September 16, 2022.

Assessments of DOJ's Implementation of DCRA 2013

The decisions DOJ made regarding implementation of the requirements of DCRA 2013 have generated scrutiny. The Senate Permanent Subcommittee on Investigations (hereinafter, Subcommittee on Investigations) raised concerns about the effects that DOJ's decisions had on efforts to collect data on in-custody deaths. Other observers questioned DOJ's interpretation. For instance, the Project on Government Oversight (POGO),³³ a nonprofit organization that characterizes itself as an independent watchdog, questioned how DOJ interpreted the scope of its authority to collect in-custody death data from states.

In September 2022, the Subcommittee on Investigations released a report on its investigation of DOJ's implementation of the requirements of DCRA 2013.³⁴ In the report, the subcommittee stated that DOJ's decision to move data collection from BJS to BJA interrupted a successful effort by BJS to collect data on deaths that occurred in prisons and jails, the data collected by BJA did not include potentially reportable deaths and many of the records for deaths that were reported to BJA were incomplete.³⁵ In addition to issues with the quality of in-custody death data collected by BJA, the subcommittee noted that DOJ had yet to release either of the studies required by DCRA 2013³⁶ or, failing that, an assessment of whether the in-custody death data were good enough to conduct the analyses required by the act. The subcommittee also asserted that "DOJ failed to properly manage the transition of DCRA 2013 data collection from BJS to BJA.... To the extent that DOJ sought to assign DCRA 2013 responsibilities to BJA, it should have done more to

³³ POGO is a nonpartisan nonprofit organization that investigates waste, corruption, and abuse of power in government.

³⁴ Senate Committee on Homeland Security and Government Affairs, Permanent Subcommittee on Investigations, *Uncounted Deaths in America's Prisons and Jails: How the Department of Justice Failed to Implement the Death in Custody Reporting Act*, report released in conjunction with the Permanent Subcommittee on Investigations September 20, 2022 hearing (hereinafter, "*Uncounted Deaths in America's Prisons and Jails*").

³⁵ For a discussion of the completeness of in-custody death data submitted to BJA, see the "Reviews of DCRA Data" section in this report.

³⁶ DCRA 2013 requires DOJ to use data collected pursuant to the act to (1) "determine means by which such information can be used to reduce the number of such deaths;" and (2) "examine the relationship, if any, between the number of such deaths and the actions of management of such jails, prisons, and other specified facilities relating to such deaths."

equip it with the resources and strategies it already knew to be successful so that DOJ could meet its statutory obligations.”³⁷

Status of Reports Required by DCRA 2013

DOJ submitted the first report required by DCRA 2013 to Congress in January 2023.³⁸ The study reviews existing research and data on the prevalence, patterns, and contexts of in-custody deaths, and discusses their limitations. The report presents findings from an analysis of data on mortality in correctional institutions, which links decedent data to information about facility characteristics and practices. The study also discusses implications of the findings and opportunities to improve collection and analysis of data on in-custody deaths.

DOJ reported that it anticipates that the second report will be completed in the fall of 2024.³⁹ The second report will provide a national-level review and analysis of policies, practices, and available data addressing in-custody deaths, along with case studies of multiple correctional facilities and agency types. According to DOJ, a contractor is working on drafting an interim report that will provide preliminary findings and recommendations from this study. The interim report will discuss the prevalence and correlates of deaths that occur in law enforcement custody, jails, and prisons, and the management practices and policies that may be associated with or are designed to reduce in-custody deaths. The report will also provide “findings from [a] 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.”⁴⁰

POGO released an analysis asserting that DOJ narrowly interpreted the scope of DCRA 2013 and could continue to collect in-custody death data in the same manner it did under DCRA 2000.⁴¹ POGO argued that DCRA 2013 does not require DOJ to rely on states to collect in-custody death data from local governments and submit them on their behalf, though DOJ has disagreed, asserting that DCRA 2013 required the department to collect data from states.⁴²

POGO also questioned DOJ’s determination that it had to move data collection responsibilities to BJA because of the JAG noncompliance penalty in DCRA 2013. POGO noted that DCRA 2000 tied reporting in-custody death data to DOJ to TIS grants, but this did not prevent BJS from collecting data from state and local governments.

BJS Collected In-Custody Death Data in the Past. Why Not Now?

One of the more contentious moves DOJ made when establishing its program to collect data required by DCRA 2013 was the decision to move responsibility for collecting these data from BJS to BJA. DOJ concluded that BJS could not be involved in collecting DCRA data from states because the JAG enforcement and reporting requirements established by DCRA 2013 are incompatible with BJS’s authorizing statutes as a federal statistical agency.⁴³ Specifically, 34 U.S.C. §10134 states that data collected by BJS can only be used for “statistical or research purposes, and shall be gathered in a manner that precludes their use for law enforcement or any purpose relating to a private person or public agency other than statistical or research purposes.” DOJ also asserts that the JAG enforcement provisions of DCRA 2013 conflict with an OMB directive stating that federal statistical agencies “must function in an environment that is clearly separate and autonomous from the other administrative,

³⁷ *Uncounted Deaths in America’s Prisons and Jails*, pp. 5-6.

³⁸ Grant Duwe, *Literature Review and Data Analysis on Deaths In Custody: Report to Congress*, DOJ, OJP, National Institute of Justice, Washington, DC, December 2022, <https://www.ojp.gov/pdffiles1/nij/305802.pdf>.

³⁹ DOJ DCRA implementation report to the Appropriations Committees, p. 8.

⁴⁰ DOJ DCRA implementation report to the Appropriations Committees, p. 8.

⁴¹ David Janovsky, “DOJ Can and Must Improve Data on Deaths in Custody,” October 3, 2022, <https://www.pogo.org/analysis/2022/10/doj-can-must-improve-data-on-deaths-in-custody> (hereinafter, “Janovsky, ‘DOJ Can and Must Improve Data on Deaths in Custody’”).

⁴² DOJ, *Report of the Attorney General to Congress Pursuant to the Death in Custody Reporting Act*, December 12, 2016, p. 2 (hereinafter, “DOJ report to Congress pursuant to DCRA 2013”).

⁴³ DOJ report on DCRA 2013 implementation, p. 4.

regulatory, law enforcement, or policy-making activities within their respective Departments.”⁴⁴ The National Academies of Sciences, Engineering, and Medicine also note in their most recent edition of *Principles and Practices for Federal Statistical Agencies* that “statistical agencies and the statistical data they produce can play a key role in informing policy makers, but they are not and should not be responsible for *developing or implementing policy*” [emphasis original].⁴⁵

While BJS collected data on in-custody deaths pursuant to DCRA 2000, there are some subtle differences in the enforcement mechanisms in DCRA 2000 and DCRA 2013 that might explain DOJ’s determination that BJS should no longer be responsible for collecting the data. DCRA 2000 required states to “provide assurances that it will follow guidelines established by the Attorney General” regarding submitting data on in-custody deaths in order to be eligible for a TIS grant. The act did not require DOJ to use data submitted by states to make a determination about whether states were complying with the law or to assess a penalty for noncompliance. In contrast, DCRA 2013 grants DOJ the authority to assess up to a 10% penalty on a state’s JAG allocation if it determines that a state “fails to comply” with the act’s data reporting requirements. In the case of DCRA 2013, DOJ is required to use data submitted by states to determine whether they are complying with the law.

Duplication with Existing DOJ Data Collection Programs

The Government Accountability Office (GAO), in a December 2021 report, found that DCRA data collected by BJA overlaps with efforts by the FBI to collect data on law enforcement officers’ use of force.⁴⁶ GAO reports that BJA’s DCRA program and the FBI’s Use-of-Force Data Collection program both “collect information on the number and demographic characteristics (i.e., age, sex, race, or ethnicity) of individuals who died in arrest-related incidents involving state and local law enforcement agencies.”⁴⁷ Efforts by multiple agencies to collect duplicative data from state and local governments can “confuse respondents and increase the risk of respondent fatigue, which can diminish data quality.”⁴⁸ Although in-custody deaths might be reportable under both programs, DOJ officials have asserted that the overlap between BJA’s and FBI’s data collection efforts is minimal because the majority of deaths that meet the definition of occurring while in law enforcement’s custody are not caused by the use of force.⁴⁹

FBI’s Use-of-Force Data Collection Program

The FBI’s Use-of-Force Data Collection program includes use-of-force incidents that result in the death or serious bodily injury⁵⁰ of a person or any incident when a law enforcement officer discharges a firearm at or in the direction of a person. For each incident, the FBI collects data on the surrounding circumstances (e.g., date and

⁴⁴ OMB, “Statistical Policy Directive No. 1: Fundamental Responsibilities of Federal Statistical Agencies and Recognized Statistical Units,” 79 *Federal Register* 71615, December 2, 2014.

⁴⁵ National Academies of Sciences, Engineering, and Medicine, *Principles and Practices for Federal Statistical Agencies*, ed. Brian A. Harris-Kojetin and Constance F. Citro, 7th ed. (Washington, DC: The National Academies Press, 2021), p. 39.

⁴⁶ GAO, *DOJ Can Improve Publication of Use of Force Data and Oversight of Excessive Force Allegations*, GAO-22-104456, December 2021, pp. 23-27 (hereinafter, “GAO report on DOJ use-of-force data”).

⁴⁷ GAO report on DOJ use-of-force data, p. 24.

⁴⁸ DOJ OIG report on DCRA 2013 implementation, p. 14.

⁴⁹ GAO report on DOJ use-of-force data, p. 26.

⁵⁰ The FBI defines *serious bodily injury* as “bodily injury that involves a substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.” DOJ, FBI, “National Use-of-Force Data Collection,” <https://www.fbi.gov/services/cjis/ucr/use-of-force>.

time, number of officers who applied force, reason for the initial contact between the officer and the subject), subject information (e.g., demographic information, injuries sustained, type of force used, whether the subject was armed), and officer information (e.g., demographic information, whether the officer discharged a firearm, whether the officer was injured).⁵¹ Federal, state, tribal, and local law enforcement agencies are responsible for submitting use-of-force data to the FBI. Although participation is voluntary, law enforcement agencies are encouraged to participate. The FBI works with major law enforcement organizations and the FBI's Criminal Justice Information Services' Advisory Policy Board to develop support for participation.⁵²

GAO reported that BJA and the FBI have taken steps to coordinate data collection efforts related to law enforcement's use of force, including signing a memorandum that outlines the responsibilities of each agency and the terms of data sharing.⁵³ The memorandum outlines strategies to analyze and compare BJA's DCRA data to data from the FBI's National Use-of-Force Data Collection program.

Reviews of DCRA Data Collected by DOJ

BJS and GAO evaluated the data BJA has collected from states under its DCRA data collection program. Both agencies concluded that states have not submitted data on all potentially reportable in-custody deaths and that records for reportable deaths that were submitted were frequently incomplete.

Bureau of Justice Statistics Review

BJS collected data on in-custody deaths that occurred during calendar year 2019 through its MCI program, while BJA started collecting data through its DCRA data collection program at the beginning of FY2019. This means that there were three months (October through December 2019) where MCI and DCRA data overlapped. Per a requirement from OMB, BJS assessed the "overlap and quality of data collected by [BJA] when it began collecting data of deaths in prisons and jails in response to the Deaths [sic] in Custody Reporting Act of 2013."⁵⁴

BJS found that during the last three months of 2019, state prisons and local jails reported 1,264 in-custody deaths to BJS and 744 in-custody deaths to BJA, meaning that 41% of the deaths reported through the MCI program were not reported to BJA through the DCRA data collection program. BJS also found that a greater proportion of in-custody deaths in state prisons, compared to local jails, were reported to BJA. State prisons reported 945 in-custody deaths to BJS and 627 to BJA while local jails reported 301 in-custody deaths to BJS and 117 deaths to BJA.

BJS reported that six states had not accepted their JAG awards as of September 2020 and did not report any in-custody deaths to BJA (they were not required to do so since they had not accepted JAG funding), but they reported 169 in-custody deaths to BJS. Eleven other states reported 0 in-custody deaths (a *zero report*)⁵⁵ in state prisons to BJA, but these states reported a total of 152 in-custody prison deaths to BJS. Further, 12 states and the District of Columbia reported 0 in-

⁵¹ More information on the specific data the FBI collects on each use-of-force incident can be found on the FBI's Use of Force Data website, <https://www.fbi.gov/services/cjis/ucr/use-of-force>.

⁵² The Advisory Policy Board is responsible for reviewing policy and technical and operational issues related to Criminal Justice Information Services Division programs. It is composed of 35 representatives from criminal justice agencies and national security agencies and organizations throughout the United States.

⁵³ GAO report on DOJ use-of-force data, p. 25.

⁵⁴ BJS memo to OMB re: DCRA 2013, p. 1.

⁵⁵ A zero report is different than not reporting. States that submit a zero report are reporting to BJA, but they are indicating that there were not any reportable deaths.

custody jail deaths to BJA, but these states and the District of Columbia reported 87 in-custody jail deaths to BJS.

BJS's analysis also indicated that states frequently submitted records with missing data. Of the 892 unique records submitted by states to BJA,⁵⁶ 42% did not contain information on the date of arrest or admission to a correctional facility, 24% did not contain a description of the circumstances of the death, 14% did not contain information on the cause of death, 20% did not contain information on the decedent's ethnicity, 10% did not contain information on the decedent's race, 9% did not contain information on the name of the facility where the death occurred or the arresting agency, and 8% did not contain information on the location of the death.

Government Accountability Office Review

GAO analyzed DCRA data collected by BJA in FY2021 and found that 70% of the records of in-custody deaths were missing at least one data element that was required by DCRA 2013.⁵⁷ More specifically, 38% were missing one required element, 28% were missing two elements, and 4% were missing three or more elements.⁵⁸ GAO found that of the 47 states that reported in-custody deaths in FY2021, 45 submitted at least one incomplete record for a reportable death, and among these, 7 did not submit any records that were complete.⁵⁹ State officials interviewed by GAO noted that records might be incomplete because an agency reporting to the state may not have provided all of the required information or an investigation into the death might still have been ongoing at the time the state was required to submit data to BJA, so not all of the required data were available (e.g., an autopsy to determine the cause of death might still have been pending).⁶⁰

GAO also conducted a review of documents on government websites and the *Mapping Police Violence* database⁶¹ and identified “nearly 1,000 deaths that occurred during fiscal year 2021 that states did not report in response DCRA.”⁶² GAO noted that the number of unreported deaths identified by its review might be an undercount because data on arrest-related deaths in the *Mapping Police Violence* database rely on open-source data, so if an arrest-related death was not made public then data on that death would not be in the database.⁶³

Department of Justice Review

The joint explanatory statement to accompany the FY2023 Commerce, Justice, Science, and Related Agencies Appropriations Act (Division B of P.L. 117-328) required DOJ to report on, among other things, “the quality of DCRA data collected to date.”⁶⁴ In response to this

⁵⁶ The total number of records submitted by states to BJA exceed the number of in-custody deaths because states also submitted records on arrest-related deaths to BJA, but an analysis of arrest-related deaths was not part of BJS's mandate from OMB because MCI does not include data on arrest-related deaths.

⁵⁷ Testimony of Gretta L. Goodwin, p. 9.

⁵⁸ Testimony of Gretta L. Goodwin, p. 9.

⁵⁹ Testimony of Gretta L. Goodwin, p. 10.

⁶⁰ Testimony of Gretta L. Goodwin, p. 10.

⁶¹ The *Mapping Policing Violence* database uses media accounts and other open-source information to collect data on deaths that occurred during the course of an arrest.

⁶² Testimony of Gretta L. Goodwin, p. 10.

⁶³ Testimony of Gretta L. Goodwin, p. 10.

⁶⁴ Explanatory Statement Submitted by Mr. Leahy, Chair of the Senate Committee on Appropriations, Regarding H.R. 2617, the Consolidated Appropriation Act, 2023, *Congressional Record*, vol. 168 (December 20, 2022), p. S7919.

requirement, DOJ submitted a report to the House and the Senate Committees on Appropriations that assessed the quality of DCRA data it received from states in FY2022.

DOJ reported that 40 states submitted arrest-related death data in FY2022.⁶⁵ DOJ compared arrest-related deaths reported by states to deaths recorded in the *Mapping Police Violence* database and the Washington Post's *Fatal Force* database.⁶⁶ DOJ found that of the 1,450 arrest-related deaths identified in these databases, 605 (42%) were reported by states to BJA.

DOJ reported that 40 states also submitted data on deaths that occurred in jails in FY2022. While there is not a database like *Mapping Policing Violence* or *Fatal Force* that can be used as a source to compare the completeness of state-reported data, DOJ noted that the 875 jail-based deaths reported by states in FY2022 were below the annual five-year average number of in-jail deaths (1,122) identified by BJS when it collected these data through the MCI program.

Finally, 48 states reported data to BJA on in-prison deaths in FY2022. DOJ compared the number of in-prison deaths reported to BJA to the number of deaths of prisoners in state prisons who were sentenced to more than one year reported to BJS through its National Prisoner Statistics (NPS) program.⁶⁷ The analysis found that states reported approximately 80% of the in-prison deaths identified through the NPS program.

Legislative Considerations

Concerns about several states having not yet submitted in-custody death data to DOJ, and the inconsistent quality of data submitted by the states that do participate, might lead policymakers to consider ways to amend DCRA 2013 to facilitate better data collection. This section of the report discusses some options policymakers could consider if Congress takes up legislation to modify how the requirements of DCRA 2013 are implemented.

Modify the JAG Penalty

One of the critiques of the JAG penalty in DCRA 2013 is that it only applies to states and not to local governments that receive JAG funding and that might have better knowledge of deaths in jails and arrest-related deaths. In a September 2022 report, DOJ noted that it has yet to impose a JAG penalty on noncompliant states because states might not have a mechanism to require local governments to report in-custody deaths, and local governments might be more knowledgeable about certain in-custody deaths, such as deaths that occur in law enforcement custody.⁶⁸

Policymakers could consider amending DCRA 2013 so that local governments that receive JAG funds would be required to report DCRA data to BJA or face a penalty. If Congress were to expand the penalty under DCRA 2013 in this manner, one issue might be how it would apply to jurisdictions that are certified as disparate under 34 U.S.C. §10155(d)(4), which tends to include

⁶⁵ DOJ DCRA implementation report to the Appropriations Committees, p. 2.

⁶⁶ The Washington Post's *Fatal Force* database uses media accounts and other open-source information to collect data on fatal police-involved shootings.

⁶⁷ As a part of its NPS program, BJS asks state and federal correctional authorities for data on the number of prisoners who were released from prison each year, which includes a question about the number of prisoners who died during the past year. Correctional authorities are only required to report data on prisoners who were sentenced to more than a year of incarceration. It excludes prisoners who have not been sentenced or who have sentences of a year or less. DOJ DCRA implementation report to the Appropriations Committees, p. 2.

⁶⁸ DOJ report on DCRA 2013 implementation, p. 11.

counties and cities in metropolitan areas.⁶⁹ Another issue policymakers might consider is how a penalty might apply to jurisdictions that do not receive a direct award from BJA.⁷⁰

Congress could also consider amending DCRA 2013 to either remove DOJ's discretion to apply the penalty to noncompliant states or increase the amount of the penalty in order to provide a greater incentive for states to comply with reporting requirements.

Increase JAG Funding

Congress could consider increasing annual funding for JAG as a way to increase the number of local governments that are eligible for direct awards. A general critique of placing conditions on JAG funding as a means of getting state and local governments to enact a policy change is that the program funds too few law enforcement agencies and the grant amounts are generally too small to provide enough incentive for them to change, especially if the cost of compliance exceeds the amount of the penalty.⁷¹ Increasing overall funding for JAG, however, might also create a situation where a state or local government might be better off, even if they do not comply with reporting requirements, so an increase in JAG funding might need to be paired with an increase in the JAG penalty in order to provide a sufficient incentive for a state or local government to report in-custody death data.⁷²

Remove the JAG Penalty

One concern that was raised about how DOJ implemented the requirements of DCRA 2013 was its determination that BJS could not be involved in collecting DCRA data because it is a federal statistical agency. Removing the JAG noncompliance penalty from DCRA 2013 could allow DOJ to shift responsibility for collecting DCRA data from BJA back to BJS. Removing the JAG penalty could, alternatively, allow DOJ to utilize other avenues as well. For example, DOJ could employ a strategy of relying on the FBI's Use-of-Force Data Collection Program to collect data on arrest-related deaths that would be compliant with DCRA. Removing the noncompliance penalty could allow the FBI to utilize the experience it has developed collecting data from local law enforcement agencies through its Uniform Crime Reporting (UCR) program, allowing BJS to

⁶⁹ In some instances, a city or multiple cities are required to collaborate on a single joint award with the county. This happens when BJA certifies that there is a *disparate allocation*, meaning that one city qualifies for an amount that is one-and-a-half times more than the amount for the county with concurrent jurisdiction, or when the total amount for which cities in a single county qualify is four-times more than the amount for the county. The city's (or cities') and county's representatives must sign and submit a memorandum of understanding stating that they all agree on how the joint award, which is the sum of all the individual awards, will be allocated and used.

⁷⁰ Under 34 U.S.C. §10156(e)(2), allocations to units of local government that are less than \$10,000 are included in the state's award and the state is responsible for administering these funds. The state can award these funds to the state police department, if it provides services for the less-than-\$10,000 jurisdictions, or the funds can be awarded to units of local government that were not eligible to receive a direct award from BJA. In addition, under 34 U.S.C. §10155(c), each state is required to pass through to units of local government a certain percentage of the funds directly awarded to the state. The pass-through percentage is calculated using data on criminal justice expenditures collected by BJS; it is the ratio, for the most recent fiscal year, of the total amount of state expenditures on criminal justice to the total amount of expenditures on criminal justice by both the state and all units of local government.

⁷¹ National Criminal Justice Association, *Byrne JAG and Policing Reform: Why Penalties Will Not Incentivize Compliance*, https://www.ncja.org/_files/ugd/cda224_68882d5542d644908b5a3d682c69b7e2.pdf.

⁷² For example, if a state received \$5 million and had the 10% penalty applied to their award, the state would end up receiving \$4.5 million. If overall funding for JAG increased and the same state's allocation increased to \$7 million, the amount of the penalty would increase from \$500,000 to \$700,000, but the state would end up receiving a larger allocation (\$6.3 million).

focus on collecting data on deaths that occur in state prisons and local jails through its MCI program.⁷³

Provide a Bonus Allocation

DOJ reported that one of the issues with relying on states to collect and report in-custody death data is that it requires them to report data that might not be in their possession (e.g., data on deaths that occurred while in the custody of local law enforcement) and many states do not have laws that compel local governments to report in-custody deaths to the state.⁷⁴ Policymakers could consider providing an incentive, in the form of a bonus allocation under the JAG program, for states to enact laws that would require local governments to report in-custody deaths to the state. For example, under the Rape Survivor Child Custody Act (P.L. 114-22) and the Law Enforcement Consent Loophole Act of 2022 (P.L. 117-103), Congress established programs that allow for bonus allocations to be made to states that enacted specified law.

Require DOJ to Report DCRA Data Publicly

DCRA 2013 does not require DOJ to make public the in-custody death data it collects from states. The act requires DOJ to conduct a study using the data reported by states to “determine means by which such information can be used to reduce the number of such deaths” and “examine the relationship, if any, between the number of such deaths and the actions of management of such jails, prisons, and other specified facilities relating to such deaths.” DOJ was required to submit these studies to Congress within two years of enactment of DCRA 2013, but it has yet to do so.⁷⁵ DOJ does not have to submit any additional studies to Congress after it completes the two required by the act.

GAO reported that DOJ officials informed it that DCRA 2013 does not require DOJ to publish data the department collects from states and there are no plans to do so.⁷⁶ DOJ appears to be reluctant to release DCRA data due to concerns about their completeness.⁷⁷

Policymakers might consider whether to amend DCRA 2013 to require DOJ to publish the data they collect from states on in-custody deaths. Requiring DOJ to do so could address the restriction under Section 10231(a) where DOJ can only publish data for the purposes for which they were obtained.

Codify Data Collection Procedures

Although DCRA 2013 sets a floor for the data states must submit about each in-custody death, DOJ’s efforts to establish the data collection procedures for DCRA 2013 demonstrates that the amount of data and how those data are collected are subject to each administration’s policy objectives (see the text box on “DOJ Proposals to Implement DCRA 2013 Data Collection,” above). Policymakers might consider whether to amend DCRA 2013 to codify elements of past data collection proposals—such as conducting reviews of open-source information to identify

⁷³ For more background on the UCR program, see CRS Report R46668, *The National Incident-Based Reporting System (NIBRS): Benefits and Issues*.

⁷⁴ DOJ report to Congress pursuant to DCRA 2013, p. 8; DOJ report on DCRA 2013 implementation, p. 11.

⁷⁵ DOJ reported that the National Institute of Justice has commissioned two studies that would fulfill the requirements of DCRA 2013; see DOJ report on DCRA 2013 implementation, p. 7.

⁷⁶ Testimony of Gretta L. Goodwin, p. 7.

⁷⁷ Testimony of Gretta L. Goodwin, pp. 7-8.

potentially unreported deaths in state reports or a requirement for states to submit a data collection plan—so that the parameters of the data collected by DOJ under the DCRA program do not change with a new administration. However, policymakers might consider the administrative burdens that limiting DOJ’s ability to shape the scope of data collected under DCRA 2013 might have on DOJ and states. DOJ has raised concerns that BJA does not have the technical expertise to conduct open-source searches and it appears that states are having a difficult time collecting and reporting the data currently required by the act.

Authorize Grants for Data Collection Assistance

While DCRA 2013 creates an incentive for states to report in-custody deaths to DOJ by authorizing DOJ to impose a penalty on states they find to be noncompliant, the act does not authorize funding for DOJ to award grants to help states implement programs to collect and report data on in-custody deaths.

Currently, funds available from BJS for state justice statistics programs at state statistical analysis centers (SACs)⁷⁸ can be used to establish data exchanges that provide SACs with data on in-custody deaths, among other things.⁷⁹ While funding through this program can help facilitate collecting in-custody death data, the funding is only available to SACs and not other state agencies or local governments that might need assistance with training or establishing systems to collect and report in-custody death data. Also, SACs are not required to use funding to increase their capacity to collect in-custody death data.

Congress could authorize a grant program that would provide funding to states to help them implement data collection systems and provide training and technical assistance to local governments on which in-custody deaths need to be reported to the state and how to collect and correctly report on necessary information related to reportable deaths. Policymakers could also consider allowing these funds to be used by states to establish systems that would conduct searches of open-source data and hire staff to reconcile the results of these searches with data reported to the state by local governments as a way of verifying that local governments are reporting applicable deaths.

Concluding Thoughts

While this report focuses on the issues surrounding DCRA’s implementation and ways that policymakers might address those problems, DOJ’s experience with collecting data on in-custody deaths illuminates dynamics policymakers might consider if they move forward with legislation to require DOJ to collect other data. Several pieces of legislation have been introduced since George Floyd’s murder that would tie access to law enforcement-related funding, such as the JAG program, to state and/or local governments reporting data on law enforcement operations and

⁷⁸ SACs are organizations supported by BJS that are currently located in each state (except Texas), the District of Columbia, and the U.S. Virgin Islands. SACs “collect, analyze, and report statistics on crime and justice to Federal, state, and local levels of government, and to share state-level information nationally.” Justice Research and Statistics Association, Statistical Analysis Centers (SACs), <https://www.jrsa.org/sac/>.

⁷⁹ DOJ, OJP, BJS, FY 2023 State Justice Statistics Program for Statistical Analysis Centers, grant solicitation, released on February 24, 2023, pp. 8-9, https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/sjsac23_sol.pdf. BJS cites its authority under 34 U.S.C. §10132(c)(13) to “provide for the development of justice information systems programs and assistance to the States, Indian tribes, and units of local government relating to collection, analysis, or dissemination of justice statistics” as the authorization for this program. Funding for this program comes from overall funding provided for BJS’s operations in the Research, Evaluation, and Statistics account in the annual Commerce, Justice, Science, and Related Agencies Appropriations Act.

actions to DOJ.⁸⁰ The issues DOJ has had with collecting data on arrest-related deaths suggests that state and local governments might need an incentive and/or capacity building to provide data on law enforcement operations and actions to DOJ. However, using conditions on federal funding to provide an incentive for state and local governments to report these data, under DOJ's current interpretation, might mean that BJS would be prevented from collecting them.

If policymakers move forward with considering legislation that requires state and/or local governments to report data to DOJ in order to access federal funding, Congress might also consider whether this would necessitate enhancing BJA's statistical capabilities. If so, it might raise questions about whether this would duplicate capacities currently found in BJS.

While policymakers might have an interest in more complete data on how law enforcement officers operate and interact with the public as a means of informing policy choices, one of the key issues before Congress will be how to balance the effects that policy choices might have on DOJ's ability to collect comprehensive data.

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⁸⁰ For examples of potential data reporting requirements, see CRS Report R46443, *Programs to Collect Data on Law Enforcement Activities: Overview and Issues*.