



GOVERNMENT INFORMATION WATCH

Tracking Openness and Accountability in Government

Mr. Chris Casto
Senior Advisor
Bureau of Justice Assistance
810 Seventh Street, NW
Washington, DC 20531

Re: Death in Custody Reporting Act Collection, 83 Fed. Reg. 27023 (June 11, 2018)
Comments submitted via DICRAComments@usdoj.gov

Dear Mr. Casto:

On behalf of Government Information Watch, I am writing in response to the Department of Justice's (DOJ) request for comment on proposed DOJ Bureau of Justice Assistance (BJA) implementation of the Death in Custody Reporting Act (DCRA). Government Information Watch is focused on open and accountable government. Our mission is to monitor access to information about government policy, process, and practice and to ensure and preserve open, accountable government through advocacy. We urge DOJ to immediately adopt the near-final compliance guidelines for DCRA that were published in the Federal Register on December 19, 2016 and to proceed with implementing DCRA as set forth therein.

To enable and ensure that the government could account for the number of arrest-related deaths and other deaths in custody occurring in the United States, DCRA was enacted as a result of bipartisan efforts on December 18, 2014, so. Nearly four years later, however, DCRA has not been implemented and the public continues to rely on media outlets for the number of people killed by police each year, which is estimated at 1,000. While the media are an important source for public information about such deaths in police custody, the government has the mandate and the responsibility to compile and report accurate, consistent, and comprehensive data.

The near-final compliance guidelines for DCRA that were published in the Federal Register on December 19, 2016 reflect extensive review and public engagement by DOJ around DCRA implementation through two comments periods, the first initiated on August 4, 2016, and a second initiated on December 19, 2016. Under the last set of guidelines published by DOJ in December 2016, states were to begin reporting arrest-related deaths in April of 2017, with reporting on all deaths in custody to begin in October 2017. DOJ must proceed with implementing DCRA in accord with the proposed December 2016 guidelines and as described below:

- A. States must proactively report all deaths in custody to DOJ and DOJ must verify the state data with open source research and data.

States should be required to initially report all deaths in custody to DOJ as required by DCRA. DOJ should then use media reports and other open source information to identify deaths in custody for purposes of comparison and supplementation. This hybrid methodology recognizes state obligations to proactively report deaths in custody to the federal government, allowing states to develop dedicated programs and resources to ensure compliance with DCRA. A hybrid approach also helps ensure the most accurate, reliable, and complete method of securing national data.

- B. DOJ must further define what deaths are reportable under DCRA to ensure standardized and full compliance by states.

DCRA requires states and federal law enforcement agencies to report information about the death of anyone who is “detained, under arrest, or is in the process of being arrested, is in route to be incarcerated, or is incarcerated.” DOJ’s latest proposal for DCRA compliance defines “reportable death” to broadly include “deaths that occurred during interactions with law enforcement personnel or while the decedent was in their custody or in the custody, under the supervision, or under the jurisdiction of a state or local law enforcement or correctional agency, such as a jail or prison.” To ensure compliance and reduce variation among state reporting, DOJ should provide a list of broad, yet specific, circumstances that qualify as reportable deaths. For example, DOJ should specify that a reportable death includes any death “due to any use of force by law enforcement personnel.” It is critical that any law enforcement action that results in a civilian death be reported.

- C. DOJ must require reporting on any disability of those who die in custody.

DOJ must require states to report disability-related data for deaths in custody. It is estimated that a quarter to half of fatal police encounters involve a person with a disability. These disabilities include physical, intellectual, and psychiatric disabilities. To ensure comprehensive data on deaths in custody, a decedent’s disability should be reported just as race, gender, and other characteristics are to be reported. BJS should consult with the nationwide network of disability protection and advocacy (P&A) agencies in each state, as well as seek information from community-based disability organizations, to ensure that disability is properly captured in deaths in custody reporting.

- D. States must adopt compliance plans.

Each state should be required to submit a detailed data collection plan to DOJ that summarizes how it will comply with DCRA. States should indicate how they will meet DCRA’s quarterly reporting requirements in a timely, accurate, and complete manner. These state compliance plans would facilitate data collection from local police departments to the states, which would then report to DOJ. Plans should also provide for audits of state reporting to ensure full compliance.

E. Federal grants must be used to ensure state compliance.

States that do not comply with DCRA should have federal funding reduced until compliance is met as permitted by the statute. DCRA gives the Attorney General the power to subject noncompliant states to a 10 percent reduction of Edward Byrne Memorial Justice Assistance Grant Program (Byrne JAG) funds. After years of inadequate reporting, Congress included this provision in its reauthorization of DCRA to ensure compliance. DOJ must provide states with details on how and when Byrne JAG funds will be reduced for DCRA noncompliance.

Thank you for your attention to this matter. If you have any questions, please contact Patrice McDermott at pmcdermott@govinfowatch.net

Sincerely,
Patrice McDermott, Director
Government Information Watch