



Testimony

Before the Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, U.S. Senate

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DEATHS IN CUSTODY

Additional Action Needed to Help Ensure Data Collected by DOJ Are Utilized

Statement of Gretta L. Goodwin, Director,
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GAO Highlights

Highlights of [GAO-22-106033](#), a testimony before the Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, U.S. Senate

Why GAO Did This Study

According to DOJ, individuals incarcerated in prisons and jails are at higher risk of dying by suicide and homicide while in custody. DCRA was enacted in 2014 to encourage the study and reporting of deaths in custody. The act requires states receiving certain federal grants—as well as federal law enforcement agencies—to report information on deaths in custody to the DOJ. The act also requires DOJ to study these data and report its findings to Congress.

This statement discusses (1) actions DOJ has taken to address the data collection and reporting requirements in DCRA, and (2) the extent to which DOJ has studied and used data collected from states to help reduce deaths in custody.

This statement is based on GAO's December 2021 report on DOJ's efforts to collect and publish data on law enforcement's use of force ([GAO-22-104456](#)) as well as additional audit work conducted from May 2022 through September 2022. To conduct the prior work, GAO reviewed laws and relevant DOJ documents, and interviewed DOJ officials. For the additional audit work, GAO reviewed DOJ documentation, interviewed DOJ officials, and assessed the reliability of data that DOJ collected from states.

What GAO Recommends

GAO recommends Congress consider requiring DOJ to utilize any future state data for recurring study and reporting to Congress and the public. In addition, GAO is making one recommendation to DOJ to develop an implementation plan to determine state compliance with DCRA.

View [GAO-22-106033](#). For more information, contact Gretta L. Goodwin at (202) 512-8777 or goodwin@gao.gov.

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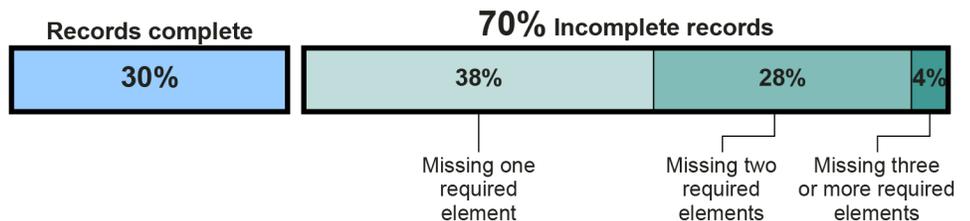
Additional Action Needed to Help Ensure Data Collected by DOJ Are Utilized

What GAO Found

The Department of Justice (DOJ) has taken some actions to address the data collection and reporting requirements in the Death in Custody Reporting Act of 2013 (DCRA). For example, DOJ has collected and published data on deaths in federal law enforcement custody and collected similar data from states.

While states across the U.S. and DOJ have undertaken multi-year efforts to collect death in custody data, DOJ told us it has not studied these data for the purposes of addressing the study and reporting requirement in DCRA. Specifically, DOJ officials told GAO in September 2022 that they had not studied the state data, in part, because the data were incomplete. GAO compared fiscal year 2021 records that states submitted to DOJ to publicly available data and identified nearly 1,000 deaths that potentially should have been reported to DOJ but were not. Also, GAO found that 70 percent of the records provided by states were missing at least one element required by DCRA, such as a description of the circumstances surrounding the individual's death or the age of the individual (see figure).

Percentage of State Death in Custody Records That Were Complete or Missing Required Elements, Fiscal Year 2021



Source: GAO analysis of state death in custody data collected by the Department of Justice. | [GAO-22-106033](#)

DOJ has taken some steps to assess the quality of the data states submitted. However, as of August 2022, DOJ had not finished assessing the quality of the data collected from states, and had not determined whether states complied with DCRA. Further, DOJ has not developed a detailed implementation plan that includes metrics and corresponding performance targets for determining state compliance, or roles and responsibilities for taking corrective action. DOJ has previously acknowledged that determining compliance could help improve the quality of state death in custody data. Developing an implementation plan would better position DOJ to meet this goal, or take corrective actions if its current approach does not fully succeed.

Finally, even if these data were of sufficient quality, DOJ is not required by DCRA to publish state death in custody data and, as of September 2022, had no plans to do so. Absent congressional direction to help ensure that any future state data collected are utilized beyond the required study, DOJ and states may continue to use resources to compile a national dataset that may not be used to help inform practices to reduce deaths in custody.

Chair Ossoff, Ranking Member Johnson, and Members of the Subcommittee:

I am pleased to be here today to provide insight as you examine the Department of Justice's (DOJ) efforts to help reduce the number of deaths in law enforcement custody. According to DOJ, 1.5 million individuals were incarcerated in state prisons and local jails across the U.S. at the end of 2020.¹ DOJ also has found that individuals in these facilities are at higher risk of dying by suicide and homicide.² National data on deaths in custody, including those that occur during the course of an arrest, have been published in the past and individual accounts continue to be reported by the media and other sources. In 2019, two juveniles—a 17-year-old and a 13-year-old—died by suicide at one youth detention center in a three-day timespan.³ In June 2022, 25-year-old Jayland Walker was shot and killed by police during the course of an arrest in Akron, Ohio.

To encourage the study and reporting of such deaths, the Death in Custody Reporting Act of 2013 (DCRA) was enacted on December 18, 2014.⁴ The act requires states that receive certain federal funding—as well as federal law enforcement agencies—to report to the Attorney General information on the deaths of individuals in the custody of state

¹Department of Justice, Bureau of Justice Statistics, *Correctional Populations in the United States, 2020 – Statistical Tables*, (Washington, D.C.: March 2022).

²*Mortality in State and Federal Prisons, 2001-2019 – Statistical Tables* (Washington, D.C.: Dec. 2021), and *Mortality in Local Jails, 2001-2019 – Statistical Tables* (Washington, D.C.: Dec. 2021).

³Jamie Ostroff, “3 Investigates changes at Ware Youth Center following two suicides,” (Shreveport, LA: KTBS, Feb, 6 2020), accessed August 3, 2022, https://www.ktbs.com/news/3investigates/3-investigates-changes-at-ware-youth-center-following-two-suicides/article_bdbc0ef2-444a-11ea-a9ee-2fc7052dac43.html.

⁴Pub. L. No. 113-242, 128 Stat. 2860 (2014).

and local law enforcement agencies.⁵ The act further calls upon the Attorney General to study these data and report its findings to Congress.⁶

My statement today will focus on (1) actions DOJ has taken to address the data collection and reporting requirements in DCRA, and (2) the extent to which DOJ has studied and used the data collected from states to help reduce deaths in custody. This statement is based on findings from our December 2021 report on law enforcement's use of force, as well as additional audit work we conducted from May 2022 through September 2022.⁷ For the 2021 report, we reviewed laws, congressional directives, and relevant DOJ documents, and interviewed DOJ officials. Additional information on our scope and methodology is available in that report. For the additional audit work we conducted in 2022, we reviewed DOJ documentation, including guidance DOJ developed to manage DCRA data collection from states. We also interviewed DOJ officials to further understand the department's actions to address DCRA and its use of data collected from states to help reduce deaths in custody.

We also analyzed death in custody data DOJ collected from states for fiscal year 2021.⁸ We assessed the reliability of these data by analyzing the completeness of records on deaths submitted by states as of November 16, 2021. We further compared the state data to other sources of publicly available information on deaths in custody.⁹ Additionally, we used *Mapping Police Violence*, a database developed by a civil rights

⁵Pub. L. No. 113-242, 128 Stat. 2860. See 34 U.S.C. § 60105 (related to state information regarding individuals who die in the custody of law enforcement). See 18 U.S.C. § 4001 note (related to the federal law enforcement death in custody reporting requirement).

⁶In particular, DCRA requires the Attorney General to carry out a study of the information reported under the act to determine means by which the information can be used to reduce the number of deaths in custody; and to 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. See 34 U.S.C. § 60105(f).

⁷GAO, *Law Enforcement: DOJ Can Improve Publication of Use of Force Data and Oversight of Excessive Force Allegations*, [GAO-22-104456](#) (Washington D.C.: December 7, 2021).

⁸Fiscal year 2021 was the last full year for which DOJ had collected DCRA data from states at the time we began our additional audit work.

⁹To identify deaths in prisons in fiscal year 2021, we reviewed state correctional statistical and annual reports as well as state government press releases on inmate deaths available on state government web sites. Not all states made such information available and therefore, the number of deaths we identified may be narrower than the universe of deaths that occurred in state prisons for fiscal year 2021.

organization, to identify deaths that occurred during the course of an arrest.¹⁰ We also interviewed and obtained written responses from state officials responsible for submitting these data.¹¹ Our findings on the reliability of these data are discussed later in this statement. Finally, we compared DOJ's efforts to the requirements of DCRA. We also compared these efforts to standards promulgated by the Project Management Institute as well as principles found in *Standards for Internal Control in the Federal Government* related to documentation, monitoring, and corrective actions.¹²

We conducted the work on which this statement is based in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

DCRA generally requires the head of each federal law enforcement agency and states receiving certain federal funds to submit to the Attorney General reports that contain information regarding the death of any person who is in the custody of a law enforcement agency.¹³ The

¹⁰"Mapping Police Violence," Campaign Zero, accessed July 13, 2022, <https://mappingpoliceviolence.org/>. Mapping Police Violence is an online database that catalogs media accounts and other open-source information on incidents in which a law enforcement officer (off-duty or on-duty) uses lethal force. We limited our review of these records to incidents involving on-duty state and local law enforcement.

¹¹We held telephone interviews with four randomly-selected states. We then contacted the remaining states and territories by emailing officials responsible for submitting DCRA data. We requested written responses and asked the officials about any obstacles they may have faced in collecting information on deaths in custody, and the extent to which their state submitted accurate and complete information on deaths in custody, among other things. In total, including our phone interviews, 31 of 56 state and territorial officials provided perspectives on DCRA data collection.

¹²Project Management Institute, Inc., *The Standard for Program Management – Fourth Edition (2017)*; and *A Guide to the Project Management Body of Knowledge (PMBOK® Guide) – Sixth Edition (2017)*. PMBOK is a trademark of Project Management Institute, Inc. GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014).

¹³Pub. L. No. 113-242, 128 Stat. 2860.

Attorney General is also required to carry out a study of the reported information and prepare and submit to Congress a report on its findings.¹⁴

Federal and state data. As mentioned above, DCRA requires federal law enforcement agencies to report to DOJ data on the deaths of individuals in their custody.¹⁵ In addition, states that receive federal grants from the Edward Byrne Memorial Justice Assistance Grant (JAG) Program are also generally required to report certain information related to the death of any person who is in the custody of a state or local law enforcement agency.¹⁶ Reportable deaths generally include those that occurred while a person was in the process of being arrested, or incarcerated or detained at facilities such as prisons, jails, and juvenile facilities.¹⁷ Pursuant to

¹⁴34 U.S.C. § 60105(f).

¹⁵Pub. L. No. 113-242, § 3, 128 Stat. 2860, 2861-62. See 18 U.S.C. § 4001 Note. The head of each Federal law enforcement agency shall submit to the Attorney General a report that contains information regarding the death of any person who is—“(1) detained, under arrest, or is in the process of being arrested by any officer of such Federal law enforcement agency (or by any State or local law enforcement officer while participating in and for purposes of a Federal law enforcement operation, task force, or any other Federal law enforcement capacity carried out by such Federal law enforcement agency); or (2) en route to be incarcerated or detained, or is incarcerated or detained at—(A) any facility (including any immigration or juvenile facility) pursuant to a contract with such Federal law enforcement agency; (B) any State or local government facility used by such Federal law enforcement agency; or (C) any Federal correctional facility or Federal pre-trial detention facility located within the United States.”

¹⁶Pub. L. No. 113-242, § 2, 128 Stat. 2860, 2860-61 (codified at 34 U.S.C. § 60105). Pursuant to 34 U.S.C. § 60105, States receiving certain federal funds are to report to the Attorney General information regarding the death of any person who is detained, under arrest, or is in the process of being arrested, is en route to be incarcerated, or is incarcerated at a municipal or county jail, State prison, State-run boot camp prison, boot camp prison that is contracted out by the State, any State or local contract facility, or other local or State correctional facility (including any juvenile facility). JAG Program grants are provided to states, territories, tribes, and local governments to support a range of criminal justice purposes. Generally, grantees can use JAG funds for a wide range of purchases and costs, including personnel, equipment, supplies, contractual support, training, technical assistance, and information systems for criminal justice. See 34 U.S.C. §§ 10151-10158. Pursuant to 34 U.S.C. § 10251(a)(2), “State” means “any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.”

¹⁷Pub. L. No. 113-242, 128 Stat. 2860. See 34 U.S.C. § 60105 (related to state information regarding individuals who die in the custody of law enforcement). See 18 U.S.C. § 4001 note (related to the federal law enforcement death in custody reporting requirement).

DCRA, the required reports from states are to contain information that, at a minimum, include:

- the gender, race, ethnicity, and age of the deceased;
- the date, time, and location of death;
- the law enforcement agency that detained, arrested, or was in the process of arresting the deceased; and
- a brief description of the circumstances surrounding the death.¹⁸

States that do not submit such data may receive up to a 10 percent reduction in JAG funds, at the discretion of the Attorney General.¹⁹ Within DOJ, the Bureau of Justice Statistics (BJS) oversees the collection of the federal data, and the Bureau of Justice Assistance (BJA) oversees the collection of the state data.²⁰

Study and report to Congress. DCRA also required DOJ to conduct a study on the federal and state data and submit a report on its findings to the Congress within 2 years of the enactment of the law—by December 2016. Generally, DOJ was required to carry out a study of the reported information to (1) determine means by which death in custody data can be used to reduce the number of such deaths; and (2) examine the relationship, if any, between the number of deaths and the actions of management of jails, prisons, and other specified facilities relating to such deaths.²¹

¹⁸34 U.S.C. § 60105(b).

¹⁹34 U.S.C. § 60105(c)(2).

²⁰BJS, DOJ's primary statistical agency, is authorized to collect, analyze, publish, and disseminate information on crime, criminal offenders, victims of crime, and the operation of criminal justice systems at all levels of government, pursuant to 34 U.S.C. § 10132. BJA is authorized to provide grants, training and technical assistance to address criminal justice issues nationwide, pursuant to 34 U.S.C. §§ 10141-10142.

²¹Pub. L. No. 113-242, § 2, 128 Stat. 2860, 2860-61. See 34 U.S.C. § 60105(f).

DOJ Has Taken Some Steps to Address Requirements in the Death in Custody Reporting Act

Federal data collection and publication. In December 2016, BJS began collecting data on the deaths of individuals in the custody of federal law enforcement agencies in response to DCRA. Four years later, in December 2020, BJS began publishing reports on deaths in federal custody. As of August 2022, BJS had published reports on deaths in federal custody for fiscal years 2016 through 2020.²² The reports include information on the number of such deaths as well as on the manner of death, weapon causing death (if applicable), and demographic information of the deceased. From fiscal years 2016 through 2020, roughly 2,700 individuals died in federal custody, according to the reports. DOJ officials said they intend to publish reports on deaths in federal custody on an ongoing basis.

State data collection. In fiscal year 2020, BJA began collecting data from states on the deaths of individuals in the custody of state and local law enforcement agencies, in response to DCRA. DCRA required states receiving JAG Program grants to report deaths in custody to DOJ beginning in fiscal year 2016. However, BJA did not begin to collect these data until 4 years later, so states did not provide death in custody reports to DOJ for fiscal years 2016 through 2019. According to the DOJ Office of Inspector General, this delay was largely due to DOJ considering—and then abandoning—three different data collection proposals from 2016 through 2018.²³ As of August 2022, BJA had collected data from states for fiscal years 2020, 2021, and the first three quarters of fiscal year 2022. According to DOJ officials, they plan to continue collecting state data in future years, as required by DCRA.

Study and report to Congress. DOJ has taken steps to address the DCRA requirement to study deaths in custody. The study and related report to Congress were due in December 2016. However, as we noted in our December 2021 report, DOJ was not positioned to conduct the study until DCRA data collection efforts were underway. Our 2021 report also noted that DOJ awarded a contract to a consultant in March 2021 to

²²Bureau of Justice Statistics, *Federal Deaths in Custody and During Arrest, 2016-2017 - Statistical Tables*, (Washington, D.C.: December 2020); *Federal Deaths in Custody and During Arrest, 2018-2019 - Statistical Tables*, (Washington, D.C.: September 2021); *Federal Deaths in Custody and During Arrest, 2020 - Statistical Tables*, (Washington, D.C.: July 2022).

²³For more information, see Department of Justice, Office of Inspector General, *Review of the Department of Justice's Implementation of the Death in Custody Reporting Act of 2013*, (Washington, D.C.: December 2018).

complete the first part of the DCRA study requirement—that is, determine means by which death in custody data collected under DCRA can be used to reduce the number of such deaths.²⁴ In September 2022, DOJ officials told us the consultant had produced a draft report, which considered federal DCRA data. Officials said the department was finalizing the report and planned to submit it to Congress by December 2022. The extent to which the study and report will use state DCRA data is discussed later in this statement.

DOJ awarded a contract to a consultant in September 2021 to address the second part of the study requirement—to examine the relationship, if any, between the number of deaths and the actions of management of jails, prisons, and other specified facilities relating to such deaths.²⁵ DOJ expects this part of the study to be complete in 2024 and plans to submit the related findings to Congress thereafter.

DOJ Has Not Studied State Death in Custody Data or Determined States' Compliance with DCRA

While states across the U.S. and DOJ have undertaken multi-year efforts to gather death in custody data, the department has not yet studied the state data for purposes of the report required by DCRA. DOJ officials told us in September 2022 that they had not studied the data to determine the means by which the information could be used to reduce deaths in custody, in part, because the data provided by states were incomplete or missing.²⁶ By law, the Attorney General may impose a penalty on states that fail to comply with DCRA reporting requirements (i.e., do not provide data on deaths in custody as required).²⁷ However, DOJ's efforts to determine states' compliance with DCRA have been delayed and DOJ has not yet made such determinations. In addition, even if these data were of sufficient quality, DOJ officials indicated the department is not required to publish these data pursuant to DCRA and, as of September 2022, has no plans to do so.

²⁴See 34 U.S.C. § 60105(f)(1)(A).

²⁵See 34 U.S.C. § 60105(f)(1)(B).

²⁶DOJ officials noted that they had begun to assess the quality of the state data submission, which we discuss below.

²⁷34 U.S.C. § 60105(c)(2).

DOJ Has Not Studied State Death in Custody Data Because the Data Are Incomplete

DOJ has taken steps to address the study and report required by DCRA. However, DOJ officials told us the consultant did not analyze the state DCRA data as part of the first report—despite that being a requirement of the law—because the data were incomplete. Instead, DOJ instructed the consultant to use other, older state and local data collected by BJS to meet the first part of the DCRA study and report requirement.²⁸ In addition, DOJ officials have not committed to using the state DCRA data as part of its second report to address DCRA.²⁹

In June 2019, the Office of Management and Budget tasked BJS with reviewing the quality of state death in custody data collected by BJA for DCRA.³⁰ In response, BJS completed a review of state death in custody data for the first quarter of fiscal year 2020. BJS characterized the state data as having a high rate of incomplete records. In particular, BJS noted that a description of the death was missing from 24 percent of records; a cause of death was missing from 14 percent of records and the individual's year of birth was missing from 6 percent of records. In addition, BJS found that a number of deaths had not been reported at all. Specifically, the DCRA data collected from states did not capture any deaths in state prisons for 11 states or deaths in local jails for 12 states, despite evidence that such deaths occurred while individuals were in custody. BJS noted that these issues limited the statistical analyses that could be performed with the data.

²⁸DOJ instructed the consultant to focus the analysis on BJS collections including the Mortality in Correctional Institutions program and the Arrest Related Deaths program. BJS last published statistics from the Mortality in Correctional Institutions program for calendar year 2019, and last published statistics from the Arrest-Related Deaths Program for calendar year 2012.

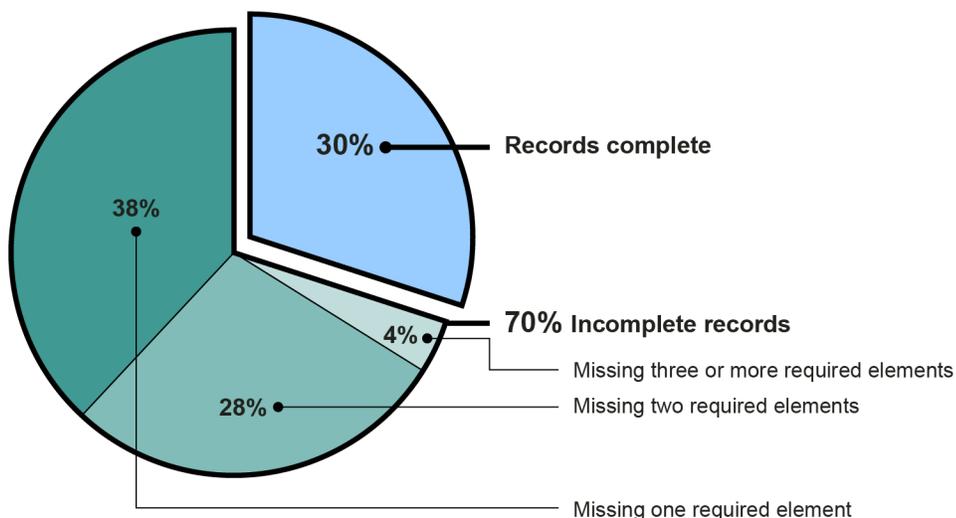
²⁹The scope of work agreed to with the consultant for the second study states that the consultant may use these data but does not require it. DOJ officials told us they continue to consider the suitability of these data to meet the second reporting requirement but have not made a determination as of August 2022.

³⁰Specifically, the Office of Management and Budget tasked BJS with studying the quality of death in custody data collected by BJA and the potential overlap between the DCRA and Mortality in Corrections program data.

We analyzed data that DOJ collected from states in fiscal year 2021 and found many of the same issues observed by BJS in the prior year's collection.³¹ Below is a summary of our findings.

Incomplete records. We found that 70 percent of records on deaths in custody provided by states in fiscal year 2021 were missing at least one element required by law.³² For example, roughly 40 percent of the records states provided on deaths in custody did not include a description of the circumstances surrounding the death. In addition, 32 percent of records were missing more than one element, see figure 1.

Figure 1: Percentage of State Death in Custody Records That Were Complete or Missing Required Elements, Fiscal Year 2021



Source: GAO analysis of state death in custody data collected by the Department of Justice. | GAO-22-106033

Note: We analyzed fiscal year 2021 data the Department of Justice collected from states in response to the Death in Custody Reporting Act, as of November 16, 2021. Required elements include biographical information on the deceased, as well as the date, time, and location of death; the law enforcement agency that detained, arrested, or was in the process of arresting the deceased; and a brief description of the circumstances surrounding the death.

³¹We analyzed the data as of November 16, 2021. According to DOJ officials, states can update the data previously provided, and thus, the data can change over time.

³²As discussed earlier, states are required to report certain biographical information on the deceased, as well as the date, time, and location of death; the law enforcement agency that detained, arrested, or was in the process of arresting the deceased; and a brief description of the circumstances surrounding the death. 34 U.S.C. § 60105(b).

Most state submissions contained incomplete records. Of the 47 states that submitted data, we found that two states had provided 100 percent of records with all the required elements. In contrast, seven states did not report any records with all of the required elements. State officials we spoke with provided reasons that they may submit incomplete records. For example, a state or local law enforcement agency may not provide all required information to the state officials responsible for reporting death in custody data to DOJ. In addition, investigations into deaths may be ongoing, and therefore not all information about a death in custody will be available at the time state officials report the data to DOJ.

Unreported deaths. Some states did not accurately account for all deaths in custody that occurred in fiscal year 2021. By reviewing documentation available on state government web sites and public databases on arrest-related deaths, we identified nearly 1,000 deaths that occurred during fiscal year 2021 that states did not report in response to DCRA.³³ For example, four states that accepted JAG awards did not report any deaths in custody in their state—even though reporting this information is a requirement of receiving the grant funding and deaths occurred in their state during this time period.³⁴

³³We identified 341 deaths that occurred in prisons in seven states that were potentially reportable to DOJ as part of DCRA but were not reported. Not all states made data on deaths in correctional facilities available at the time we conducted our audit work and therefore, we were unable to test the completeness of all states' submissions. As a result, the number of prison deaths we identified may be narrower than the universe of prison deaths not reported to DOJ for fiscal year 2021. We are relying on states' disclosures of deaths in custody and did not independently verify that these deaths occurred in custody and therefore refer to these deaths as potentially reportable. Additionally, we used the *Mapping Police Violence* database to identify deaths that occurred during the course of an arrest and identified 649 arrest-related deaths that were not reported as part of DCRA. *Mapping Police Violence* uses media accounts and other open-source information to collect information on deaths. Therefore, if an arrest-related death was not made public, it would not be included in this database and we could not determine if it was captured in DCRA data or not. As a result, the number of arrest-related deaths we identified may be narrower than the universe of arrest-related deaths not reported to DOJ.

³⁴In particular, 56 states accepted JAG awards for fiscal year 2021 and 47 states reported deaths in custody to DOJ. Of the nine states that did not report any deaths in custody for fiscal year 2021, we were able to identify 124 deaths in custody in four of those states. As noted earlier, we are including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands as states consistent with 34 U.S.C. § 10251(a)(2).

DOJ Has Not Determined Whether States Complied with the Death in Custody Reporting Act

DOJ officials noted that they have taken some steps to assist states in reporting deaths in custody data. For example, DOJ officials told us it held training webinars on DCRA with states officials responsible for submitting the data. In addition, DOJ officials told us they reviewed the results of a survey of state officials responsible for submitting DCRA data to better understand the challenges associated with the program.

However, DOJ has not determined whether states have complied with DCRA. Specifically, DOJ guidance outlines how it will determine states' compliance with DCRA and DOJ officials have begun to assess the quality of the state data, as an initial step towards determining compliance. However, these assessments have been delayed and are not finalized for fiscal years 2020 and 2021. As a result, DOJ officials have not yet determined whether states complied with DCRA for these fiscal years.

DOJ developed internal guidance—the DCRA Procedures and Methods document—to manage data collection from states. Among other things, this documentation outlines how staff are to assess the quality of state death in custody data and ultimately determine state compliance with DCRA. The document outlines compliance scenarios such as:

- DOJ will consider states that report complete and accurate information on deaths in custody as compliant with DCRA.
- States that report incomplete data will be considered compliant with DCRA if the state makes a 'good faith effort' to obtain and report the missing data after being alerted by DOJ about data issues.

DOJ officials told us they have begun efforts to assess the quality of the state data. For instance, DOJ reviewed state data to identify missing elements. In addition, the department compared data provided by states to publicly available databases on deaths in custody and therefore have some awareness of when states have under-reported deaths in custody.³⁵

However, DOJ efforts to finalize these data quality assessments and determine compliance have been delayed multiple times. Thus, DOJ has not communicated to states whether they have complied with DCRA. In a 2016 report to Congress on the implementation of DCRA, DOJ said it had

³⁵These include the FBI's Use of Force Database as well as non-governmental efforts, such as the Washington Post's database on fatal force used by law enforcement and the *Mapping Police Violence* database.

planned to determine state compliance with DCRA in February 2019 based upon data collected for fiscal year 2018. However, as previously discussed, DOJ did not begin collecting data until fiscal year 2020, and thus was not positioned to make compliance determinations for fiscal years 2018 and 2019. As described in our December 2021 report, DOJ officials told us that they had begun to assess the quality of the fiscal year 2020 state data and planned to complete a review of these data by October 2021.³⁶ However, when we followed up with DOJ in July 2022, agency officials said they had not finalized the review. DOJ officials told us they plan to complete the assessment by October 2022. DOJ officials also said they had not completed an assessment of fiscal year 2021 data.

Consensus-based standards for program and project management, such as those disseminated by the Project Management Institute, indicate that once implementation efforts are underway, organizations should oversee those efforts on an ongoing basis to ensure their consistent execution.³⁷ Those standards further indicate that organizations should document roles and responsibilities, the metrics they will use to assess their implementation efforts, and the performance targets against which those metrics are measured to determine success.³⁸ Similarly, *Standards for Internal Control in the Federal Government* states that agencies should document policies and procedures for program management and oversight, monitor program performance and progress, ensure that corrective actions are identified and assigned to the appropriate parties on a timely basis, and ensure that corrective actions are tracked until the desired outcomes are achieved.³⁹

DOJ has developed a framework for determining states' compliance. However, it has not developed a detailed implementation plan that includes metrics and corresponding performance targets for determining state compliance, or roles and responsibilities for taking corrective action should these efforts not fully succeed. Specifically, DOJ documentation identifies criteria for determining compliance and actions it could take to increase compliance. However, DOJ does not have specific metrics and

³⁶[GAO-21-104456](#).

³⁷Project Management Institute, Inc., *The Standard for Program Management – Fourth Edition* (2017).

³⁸Project Management Institute, Inc., *A Guide to the Project Management Body of Knowledge (PMBOK® Guide) – Sixth Edition* (2017).

³⁹[GAO-14-704G](#).

performance targets on, for example, the number of states it expects to achieve full compliance, or by when it expects this to occur. Further, DOJ has not identified roles and responsibilities for taking corrective actions.

DOJ has previously acknowledged that determining compliance could help improve the quality of state DCRA data. In its 2016 report to Congress, DOJ noted that possible short-comings of state DCRA data could be mitigated by, among other efforts, determining compliance and has also noted its goal to help ensure states comply with DCRA. Until DOJ completes its assessments, states will have limited information about whether they are complying with DCRA and whether they will be potentially subject to a penalty. Further, states may be unaware of the full extent of data quality issues within their submissions, and thus, fail to take action to correct the submissions.⁴⁰ Developing an implementation plan that includes documentation of metrics and corresponding performance targets, and identifies roles and responsibilities for taking corrective action, would better position DOJ to support states in achieving compliance, or take corrective actions as needed.

DOJ Is Not Required to Publish State Death in Custody Data and Has No Plans to Do So

DCRA requires the ongoing collection of state death in custody data, as discussed earlier. However, DCRA does not require publication of these data, and as of September 2022, officials told us they had no current plans to do so. As such, in future years, DOJ and states may use their respective resources to continue collecting data without plans for DOJ to publish or otherwise use the data to inform practices to help reduce deaths in custody.

DCRA does not require the publication of state data collected under the act. Further, DOJ officials stated that they could only publish such data if two conditions were met pursuant to 34 U.S.C. § 10231(a). According to 34 U.S.C. § 10231(a), generally, no officer or employee of the federal government, and no recipient of assistance of certain federal funds shall use or reveal any research or statistical information furnished by any person and identifiable to any specific private person for any purpose

⁴⁰DOJ officials told us that states may continuously update their data even after the reporting period has passed.

other than the purpose for which it was obtained.⁴¹ Therefore, DOJ stated that the following two conditions need to be met to publish information related to the collected data under DCRA. First, to publish any research or statistical information collected under DCRA, the information could not be identifiable to any specific private person, which includes information identifiable to a private person that either is “labelled by name or other personal identifiers” or could “by virtue of sample size or other factors, be reasonably interpreted as referring to a particular private person.” Second, information collected under DCRA would need to be published for the purpose of enabling the Attorney General’s statutorily authorized study of that information 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 related to such deaths.”

However, as noted earlier, DOJ officials told us they did not use state DCRA data as part of its first report and have not committed to using the state DCRA data as part of its second report to address the DCRA study requirement. In addition, DOJ is not required to conduct any additional studies of the state data, and had no current plans to conduct more studies as of September 2022.

Importantly, after DOJ’s DCRA data collection efforts began, it discontinued a long-standing program that collected and published data on deaths of individuals in state and local correctional institutions, the

⁴¹According to DOJ, 34 U.S.C. § 10231(a), in the first instance, expressly prohibits the disclosure of any state DCRA data that is “identifiable to any specific private person,” which includes information identifiable to a private person which either “(1) Is labelled by name or other personal identifiers, or (2) Can, by virtue of sample size or other factors, be reasonably interpreted as referring to a particular private person” pursuant to 28 C.F.R. § 22.2(e). In the second instance, DOJ indicated that 34 U.S.C. § 10231(a), expressly prohibits the disclosure of any state DCRA data “for any purpose other than the purpose for which it was obtained.” According to DOJ officials, DCRA specifies that the statistical information provided by the states is to be collected for the purpose of enabling the Attorney General to carry out the study required under DCRA.

Mortality in Correctional Institutions program.⁴² In the past, DOJ has used data collected by this program to publish reports and statistical information on deaths in correctional institutions. The published information allowed Congress, researchers, and others in the public to view and study the data to help address such deaths. However, after DOJ began collecting DCRA data from states, it halted the Mortality in Correctional Institutions program and thus stopped publishing the data. However, whereas Mortality in Correctional Institutions resulted in ongoing data available to the public, DCRA may not.

In the House committee report accompanying DCRA, the committee noted that state and local death in custody statistics previously collected by DOJ represent a unique national resource for understanding mortality in the criminal justice system.⁴³ Further, some state representatives we spoke with noted that their states have limited staff and resources, but had nonetheless invested in training and developing systems to report the death in custody data to DOJ. DOJ officials responsible for the program also noted that their office had finite resources with which to manage the DCRA program. Absent congressional direction to help ensure that any future state data collected under the act are utilized for recurring study and reporting to Congress and the public, DOJ and states may continue to use resources to compile a national dataset that may not be used to help inform practices to reduce deaths in custody.

Conclusions

In the intervening eight years since DCRA was enacted in 2014, DOJ has made some progress toward addressing what it has called a profoundly important issue, but significant work remains. DOJ has begun collecting and publishing data on deaths in federal custody and began collecting data from states. However, it has not finalized assessments regarding the quality of state data and as a result, has not determined whether states are complying with DCRA data requirements. Developing an implementation plan could better position DOJ to determine whether current efforts to achieve states' compliance with DCRA have been

⁴²This program, which was initiated in 2000, annually collected data on individuals who died in custody from 50 state departments of corrections, approximately 2,800 local jail jurisdictions, and the Bureau of Prisons. Specifically, the data that BJS collected through Mortality in Correctional Institutions included deceased individuals' demographic characteristics and criminal background (i.e., legal status, offense type, and time served). BJS also collected data on the circumstances surrounding individuals' deaths, including the date, time, location, and cause of death, as well as information on the autopsy and medical treatment provided.

⁴³H.R., Rep. No. 113-285 (2013).

successful or need modification. In addition, DOJ is not required to publish state data collected under DCRA and has no current plans to do so. Absent Congressional action, states and DOJ may continue to expend resources to gather data under DCRA that may not be studied or published, potentially missing an opportunity to inform practices to help reduce deaths in custody.

Matter for Congressional Consideration

Congress should consider the extent to which DCRA should be amended to help ensure that any future state data provided under the act are utilized for recurring study and reporting by DOJ to Congress and the public. (Matter for Consideration 1)

Recommendation for Executive Action

The Assistant Attorney General for the Office of Justice Programs should develop a DOJ implementation plan—that includes documentation of metrics and corresponding performance targets, and identifies roles and responsibilities for taking corrective action—to determine state compliance with DCRA. (Recommendation 1)

Agency Comments

We requested comments on the contents of this statement, including our recommendations, from DOJ. The department provided technical comments, which we incorporated as appropriate.

Chair Ossoff, Ranking Member Johnson, and Members of the Subcommittee, this concludes my prepared remarks. I would be pleased to respond to any questions that you may have at this time.

GAO Contact and Staff Acknowledgements

If you or your staff have any questions about this testimony, please contact Gretta L. Goodwin, Director, Homeland Security and Justice at (202) 512-8777 or GoodwinG@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report.

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