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Programs to Collect Data on Law Enforcement Activities: Overview and Issues

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The death of George Floyd in Minneapolis, MN, while he was in the custody of law enforcement, and several other recent high-profile deaths of African Americans at the hands of police, have generated interest in legislation to reform policing practices. Two major pieces of legislation that contain police reform proposals are before Congress: H.R. 7120, the George Floyd Justice in Policing Act of 2020—passed by the House on June 25, 2020—and S. 3985, the Just and Unifying Solutions to Invigorate Communities Everywhere (JUSTICE) Act.

Each bill would establish programs to collect data on a variety of policing activities, such as the use of force, racial profiling, the use of no-knock warrants, and in-custody deaths. In some cases, state and local law enforcement agencies would report these data directly to the Department of Justice (DOJ). In other instances, states would be required to establish systems for collecting required data and reporting them to DOJ. Both pieces of legislation would provide incentives for state and local governments to report data by attaching conditions to the Edward Byrne Memorial Justice Assistance Grant (JAG) or the Community Oriented Policing Services (COPS) programs.

DOJ currently operates programs to collect and report data on the use of force by police officers and in-custody deaths. For instance, the Federal Bureau of Investigation (FBI) collects data on use-of-force incidents that result in the death or serious bodily injury of a person, as well as when a police officer discharges a firearm at or in the direction of a person. DOJ also collects data on deaths of people who are temporarily detained, under arrest, in the process of being arrested, en route to be incarcerated, or incarcerated at a municipal or county jail, a state prison, a state-run boot camp prison, a boot camp prison that is contracted out by the state, any state or local contract facility, or any other local or state correctional facility (including juvenile facilities), per the requirement of the Death in Custody Reporting Act of 2013 (P.L. 113-242).

The data collection programs proposed by the House and Senate bills might raise the following questions that policymakers could consider:

- Could these programs require state and local governments to submit duplicative data to DOJ, and might the requirement to submit overlapping data to different components of DOJ decrease the quality of the data due to “reporting fatigue”?
- Is the purpose of collecting data on racial profiling to further knowledge about how the police might use an individual’s race or ethnicity in decisions about enforcing the law, or is it to serve as a potential deterrent to racial profiling?
- Could the requirement for states to collect data from local law enforcement agencies and then submit these data to DOJ—while possibly lessening the administrative burden on DOJ—result in less accurate and incomplete data? A local law enforcement agency may be more likely to recognize a reportable excessive use-of-force incident by one of its officers than a state official. State officials may be faced with the choice of accepting submissions at face value or putting in place a mechanism for auditing the data submitted to them by local law enforcement (similar to what the FBI uses to audit data submitted to the Uniform Crime Reporting Program).
- Could attaching conditions to JAG and COPS funding as a means of incentivizing state and local governments to report data prohibit agencies such as the FBI and the Bureau of Justice Statistics (BJS)—both of which have experience with managing large data collection programs—from collecting data for the programs? The entity that collects these data would be responsible for certifying that grant recipients are meeting the reporting requirements, but Office of Budget and Management guidance requires statistical agencies to operate separately from policymaking activities.
- Does the threat of reducing a local government’s JAG funding provide enough incentive for it to comply with data reporting requirements, especially if the costs of complying would exceed the amount of funding the local government would lose for noncompliance? JAG funding, though a large grant program at DOJ, most likely accounts for a relatively small portion of any local government’s policing budget.

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The death of George Floyd in Minneapolis, MN, while in the custody of law enforcement, along with several other high-profile deaths of African Americans at the hands of the police (including Michael Brown in Ferguson, MO, Eric Garner in Staten Island, NY, Philando Castile in Falcon Heights, MN, and Breonna Taylor in Louisville, KY), have served as catalysts for anti-police brutality protests in cities across the country. These deaths and the resulting protests have spurred congressional interest in policing reform legislation.

Two major pieces of legislation that contain police reform proposals are before Congress: H.R. 7120, the George Floyd Justice in Policing Act of 2020—passed by the House on June 25, 2020—and S. 3985, the Just and Unifying Solutions to Invigorate Communities Everywhere (JUSTICE) Act. Both bills would address a variety of topics—such as promoting better training for law enforcement officers, making the use of chokeholds a federal crime, prohibiting racial profiling, and changing how law enforcement officers use force. Both bill also would require state and local governments to submit to the federal government more data on police activities.

The 21st Century Policing Task Force, which President Obama established through executive order in the wake of the events in Ferguson, MO,¹ was charged with identifying best practices and offering recommendations on how policing practices can promote effective crime reduction while building public trust. In testimony before the task force, the Division of Policing of the American Society of Criminology noted that “the United States presently employs a broad array of social and economic indicators in order to gauge the overall ‘health’ of the nation, it has a much more limited set of indicators concerning the behavior of the police and the quality of law enforcement.”² The task force stated that more research and data collection are needed to know “what works and what does not work, which policing practices are effective and which ones have unintended consequences.”³ In its final report, the task force encouraged law enforcement agencies to adopt a culture of transparency by, among other things, making available to the public data on stops, summonses, arrests, reported crimes, and other law enforcement activities.⁴ The task force also recommended that law enforcement agencies’ use-of-force policies include a requirement for data on officer-involved shootings and in-custody deaths to be reported to the federal government.⁵

This report discusses the programs to collect data on state and local law enforcement activities that would be authorized by H.R. 7120 and S. 3985. It also provides an overview of existing Department of Justice (DOJ) programs to collect data on the use of force by law enforcement officers and in-custody deaths. The report concludes with a review of selected issues policymakers might consider when debating policing reform.

¹ Executive Order 13684, “Establishment of the President’s Task Force on 21st Century Policing,” 79 *Federal Register* 76865, December 23, 2014.

² President’s Task Force on 21st Century Policing, *Final Report of the President’s Task Force on 21st Century Policing*, U.S. Department of Justice, Office of Community Oriented Policing Services Office, May 2015, p. 19 (hereinafter President’s Task Force on 21st Century Policing Final Report, 2015).

³ President’s Task Force on 21st Century Policing Final Report, 2015, pp. 19-20.

⁴ President’s Task Force on 21st Century Policing Final Report, 2015, p. 13.

⁵ President’s Task Force on 21st Century Policing Final Report, 2015, p. 21.

Legislative Proposals to Collect Data on Law Enforcement Activities

Since the events in Ferguson, MO, in 2014, there have been numerous legislative proposals that would have established programs to collect data on law enforcement activities. Although DOJ collects data on certain federal law enforcement activities, comprehensive data regarding state and local practices are unavailable. This section of the report provides an overview of data collection programs that would be created by H.R. 7120 and S. 3985.⁶

H.R. 7120, the George Floyd Justice in Policing Act

H.R. 7120, the George Floyd Justice in Policing Act, would direct data collection on a variety of policing practices, including law enforcement use of force and racial profiling.

Data on Law Enforcement Practices

H.R. 7120 would require federal, state, tribal, and local law enforcement agencies to report data to DOJ on traffic violation stops, pedestrian stops, frisks and body searches, and the use of deadly force by a law enforcement officer. Reporting agencies would be required to include in these data the race, ethnicity, age, and gender of the officers and members of the public involved. In incidents involving the use of deadly force, agencies would also be required to provide

- a description of when and where law enforcement officers used deadly force and whether it resulted in death;
- a description of deadly force directed against an officer and whether it resulted in injury or death; and
- the law enforcement agency's justification for use of deadly force, if the agency determines it was justified.

States would be required to ensure to DOJ's satisfaction that the state and each local law enforcement agency in the state are in substantial compliance with the data reporting requirements. In the case of noncompliance, a state would not be allowed to receive funding under the Edward Byrne Memorial Justice Assistance Grant (JAG) program,⁷ the Community Oriented Policing Services (COPS) program,⁸ or any other DOJ law enforcement assistance program.

Data on Use of Force

H.R. 7120 would require states and Indian tribes receiving JAG funds to report to DOJ data on the use of force by any local or tribal law enforcement officers. States and tribes would be required to submit reports on

⁶ This report does not include a discussion of proposals in the two bills to expand law enforcement's access to records related to officer misconduct because these efforts are qualitatively different than the data collection proposals discussed in this report. For more information on proposals on access to information related to officer misconduct, see CRS In Focus IF11585, *Proposals for Systems of Records on "Wandering Officers"*.

⁷ For more information on the JAG program, see CRS In Focus IF10691, *The Edward Byrne Memorial Justice Assistance Grant (JAG) Program*.

⁸ For more information on the COPS program, see CRS In Focus IF10922, *Community Oriented Policing Services (COPS) Program*.

- incidents where a local or tribal law enforcement officer uses deadly force against a civilian;
- incidents where a civilian shoots a local or tribal law enforcement officer;
- incidents involving the death or arrest of a local or tribal law enforcement officer;
- any other incidents involving use of force by or against a local or tribal law enforcement officer that are not included in one of the above instances;
- deaths in custody; and
- use of force in arrests and bookings.

A report for each incident would be required to include the following information:

- the national origin, sex, race, ethnicity, age, disability, English language proficiency, and housing status of each civilian against whom a local or tribal law enforcement officer used force;
- the date, time, and location of the incident—including whether it was on school grounds—the zip code, and whether the jurisdiction in which the incident occurred allows for the open carry or concealed carry of a firearm;
- whether the civilian was armed, and if so, what type of weapon the civilian had;
- the type of force used against the officer, the civilian, or both, including the types of weapons used;
- the reason force was used;
- a description of any injuries sustained as a result of the incident;
- the number of civilians involved in the incident; and
- a brief description of the circumstances surrounding the incident, including the type of force used by all involved persons; the legitimate police objective necessitating the use of force; resistance encountered by each law enforcement officer involved in the incident; efforts by officers to de-escalate the situation and minimize the level of force used; and, if applicable, why efforts were not made to de-escalate the situation or minimize the use of force.

States and Indian tribes would be required to develop their own systems to ensure that all local and tribal law enforcement officers are reporting all applicable incidents, but would not be required to submit reports under this program for incidents that are reportable under the Death in Custody Reporting Act (see “Deaths in Custody Reporting Program”).

States and Indian tribes would be required to use open source data (e.g., media accounts) to verify information on incidents they report to DOJ. States and Indian tribes would be required to update the information they submit to DOJ to include any reportable incidents they discover through a search of open sources. Failure to search open source data would be considered noncompliance with the program’s conditions. States and Indian tribes that do not comply with the program’s requirements would be subject to a penalty of up to 10% of their JAG award. DOJ would be required to publish an annual report using the data collected under this program.

Data on Racial Profiling

H.R. 7120 would require DOJ, in consultation with stakeholders, to issue regulations regarding the collection of data to eliminate racial profiling by federal, state, and local law enforcement

agencies. The regulations would need to provide for data collection on all routine or spontaneous investigatory activities⁹ and for these data to

- be disaggregated by race, ethnicity, national origin, gender, disability, and religion;
- include the date, time, and location of such investigatory activities; and
- include detail sufficient to permit an analysis of whether a law enforcement agency is engaging in racial profiling.

These data would be submitted to DOJ's Civil Rights Division and the Bureau of Justice Statistics (BJS), and agencies would be prohibited from including any personally identifiable information in submitted data. BJS would be required to analyze the data for disparities in the percentage of drivers or pedestrians stopped relative to the proportion of the population passing through the neighborhood; hit rates (i.e., contraband was found during a search); and the frequency of searches performed on drivers who are people of color relative to white drivers.

BJS would be required to make a report of its findings available to Congress and the public. State, tribal, and local governments that apply for JAG or COPS funding would be required to certify that they have policies that require data collection in accordance with the regulations issued by DOJ.

S. 3985, the JUSTICE Act

S. 3985, the JUSTICE Act, among other things, would incentivize reporting to an existing data collection program on law enforcement use of force and would direct data collection on no-knock warrants.

Mandatory Participation in the Federal Bureau of Investigation's Use-of-Force Data Collection Program

S. 3985, the JUSTICE Act would require state, local, and tribal governments to submit data to the Federal Bureau of Investigation's (FBI) Use-of-Force Data Collection program (see "Use-of-Force Data Collection").

State and local governments that do not submit data to the FBI's Use-of-Force Data Collection program would be subject to a 20% penalty on their JAG allocation for the first year of noncompliance and up to a 25% penalty for each subsequent year of noncompliance.

Data on No-Knock Warrants

S. 3985 would require state and local governments to submit reports to DOJ on the use of no-knock warrants. They would be required to submit the following data on each instance where a law enforcement agency serves a no-knock warrant:

⁹ H.R. 7120 would define *routine or spontaneous investigatory activities* as interviews; traffic stops; pedestrian stops; frisks and other types of body searches; consensual or nonconsensual searches of the persons, property, or possessions (including vehicles) of individuals using any form of public or private transportation, including motorists and pedestrians; data collection and analysis, assessments, and predicated investigations; inspections and interviews of entrants into the United States that are more extensive than those customarily carried out; immigration-related workplace investigations; and such other types of law enforcement encounters compiled for or by the Federal Bureau of Investigation (FBI) or Bureau of Justice Statistics (BJS).

- the reason for which the warrant was issued, including each violation of law listed on the warrant;
- whether, in the course of carrying out the warrant, force was used that resulted in property damage, serious bodily injury, or death or whether any law enforcement officer, suspect, or bystander was injured or killed;
- the sex, race, ethnicity, and age of each person found at the location for which the no-knock warrant was issued;
- whether the location searched matched the location described in the warrant; and
- whether the warrant included the specific information required under the Fourth Amendment and any applicable federal, state, or local law related to the use of no-knock warrants.

States would be required to ensure that all units of local government in the state are submitting data on no-knock warrants. State and local governments that do not submit the required data would be subject to a 20% penalty on their JAG allocation for the first year of noncompliance and up to a 25% penalty for each subsequent year of noncompliance.

DOJ would be required to publish a report that includes the data submitted by federal, state, and local law enforcement agencies, along with information on the crime rate in local jurisdictions that submit data on no-knock warrants. Data on no-knock warrants related to investigations that are open as of the date the applicable data report is due would not be included.

Current Department of Justice Efforts to Collect Data on Law Enforcement Activities

DOJ currently has programs that seek to collect data on the use of force by the police. These programs include the FBI's Use-of-Force Data Collection program, which collects data on certain instances of the use of force by law enforcement officers, and data collected pursuant to the Death in Custody Reporting Act of 2013 (P.L. 113-242), which collects data on deaths that occur when someone is in the custody of law enforcement or corrections agencies.

Use-of-Force Data Collection Program

The FBI launched its Use-of-Force Data Collection program on January 1, 2019. The FBI notes,

law enforcement use of force has long been a topic of national discussion, but a number of high-profile cases involving law enforcement use of force have heightened awareness of these incidents in recent years. However, the opportunity to analyze information related to use-of-force incidents and to have an informed dialogue is hindered by the lack of nationwide statistics. To address the topic, representatives from major law enforcement organizations are working in collaboration with the FBI to develop the National Use-of-Force Data Collection.¹⁰

The program's stated goal is "not to offer insight into single use-of-force incidents but to provide an aggregate view of the incidents reported and the circumstances, subjects, and officers

¹⁰ U.S. Department of Justice, FBI, "National Use-of-Force Data Collection," at <https://www.fbi.gov/services/cjis/ucr/use-of-force> (hereinafter FBI's Use of Force Data website).

involved.”¹¹ The data collected are not intended to be used to assess whether the officers involved in use-of-force incidents acted lawfully or within the bounds of department policy.

The FBI’s program collects data on use-of-force incidents that result in the death or serious bodily injury¹² 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 circumstances surrounding the incident (e.g., date and time, number of officers who applied force, and reason for the initial contact between the officer and the subject); subject information (e.g., demographic information, injuries sustained, type of force used, and whether the subject was armed); and officer information (e.g., demographic information, whether the officer discharged a firearm, and whether the officer was injured).¹³ 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.¹⁴

Beginning in 2019, law enforcement agencies could submit use-of-force data to the FBI, and the FBI indicated that data would be released “on a regular basis of no less than two times a year.”¹⁵ However, the FBI has not yet released any use of force data. According to the FBI, approximately 40% of law enforcement agencies are submitting data, and the first tranche of data is expected to be available in summer 2020.¹⁶

Deaths in Custody Reporting Program

On behalf of DOJ, BJS started collecting data on arrest-related deaths in 2000, pursuant to the Death in Custody Reporting Act of 2000 (DCRA 2000; P.L. 106-297). The act required recipients of Violent Offender Incarceration/Truth-in-Sentencing Incentive grants¹⁷ to submit data to DOJ on the death of any person who is in the process of being arrested, en route to be incarcerated, or incarcerated at a municipal or county jail, state prison, or other local or state correctional facility (including juvenile facilities). The provisions of this act expired in 2006.¹⁸

Congress reauthorized the act by passing the Death in Custody Reporting Act of 2013 (DCRA 2013). The act requires states to submit data to DOJ regarding the death of any person who is

¹¹ FBI’s Use of Force Data website.

¹² 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.” FBI’s Use of Force Data website.

¹³ 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.

¹⁴ The Advisory Policy Board is responsible for reviewing policy and technical and operational issues related to Criminal Justice Information Services Division programs. It is comprised of 35 representatives from criminal justice agencies and national security agencies and organizations throughout the United States.

¹⁵ FBI’s Use of Force Data website.

¹⁶ Tom Jackman, “FBI Launched Database on Police Use of Force Last Year, but Only 40 Percent of Police Participated,” *Washington Post*, June 17, 2020.

¹⁷ The Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103-322) authorized funding for grants to states for building or expanding correctional facilities. To be eligible for funding under the program, a state had to demonstrate it had either increased the number of violent offenders who were arrested and sentenced to incarceration, along with increasing the average length of violent offenders’ sentences, or that the state had implemented truth-in-sentencing laws that would require violent offenders to serve at least 85% of their sentences.

¹⁸ H.Rept. 113-285.

detained, under arrest, in the process of being arrested, en route to be incarcerated, or incarcerated at a municipal or county jail, a state prison, a state-run boot camp prison, a boot camp prison that is contracted out by the state, any state or local contract facility, or any other local or state correctional facility (including juvenile facilities). States face up to a 10% reduction in their funding under the JAG program if they do not provide the data. The act extends the reporting requirement to federal agencies.

BJS established the Deaths in Custody Reporting Program (DCRP) as a way to collect the data required by DCRA 2000, and it continued to collect data after the initial authorization expired in 2006. BJS collected data on deaths that occurred in correctional institutions and arrest-related deaths (ARDs)—though BJS acknowledged problems with ARD data before suspending that data collection effort in 2014. In a report on ARDs for 2003-2009, BJS noted that “arrest-related deaths are under-reported” and that the data are “more representative of the nature of arrest-related deaths than the volume at which they occur.”¹⁹ An assessment of data collected by BJS from 2003 to 2009 and in 2011 indicated that the DCRP had captured about half of ARDs in this time frame.²⁰

BJS has since replaced the DCRP with the Mortality in Correctional Institutions (MCI) program, which collects data on deaths that occur while inmates are in the custody of local jails, state prisons (including inmates housed in private prisons), or the Bureau of Prisons. BJS notes that MCI collects “many, but not all, of the elements outlined in [DCRA 2013], but because MCI is collected for statistical purposes only, it cannot be used for DCRA enforcement.”²¹

Starting with FY2019 JAG awards, states are required to submit DCRA 2013 data to the Bureau of Justice Assistance (BJA) where it can be used for DCRA enforcement, not to BJS where it is used for statistical purposes. States are responsible for establishing their own policies and procedures to ensure they collect and submit complete data.²² DCRA 2013 does not require DOJ to publish data submitted by states pursuant to the act, and BJA has noted that it will maintain the information internally—though the data may be subject to Freedom of Information Act requests.²³

DOJ’s Office of the Inspector General (OIG) notes that data collected by BJA pursuant to DCRA 2013 is duplicative of data collected by BJS through the MCI program. Both agencies collect data on deaths in state and local correctional institutions through their respective programs. BJS plans to continue to collect data through the MCI program because it “compliments BJS’s overall correctional research.”²⁴

¹⁹ Andrea M. Burch, *Arrest-Related Deaths, 2003-2009—Statistical Tables*, U.S. Department of Justice, Office of Justice Programs (OJP), BJS, NCJ 235385, November 2011, p. 1 (hereinafter BJS, *Arrest-Related Deaths, 2003-2009*).

²⁰ U.S. Department of Justice, Office of the Inspector General (OIG), *Review of the Department of Justice’s Implementation of the Death in Custody Reporting Act of 2013*, December 2018, p. 3, at <https://oig.justice.gov/reports/2018/e1901.pdf> (hereinafter OIG’s report on DOJ’s implementation of the Death in Custody Reporting Act).

²¹ U.S. Department of Justice, OJP, BJS, “Mortality In Correctional Institutions (MCI) (Formerly Deaths In Custody Reporting Program (DCRP)),” at <https://www.bjs.gov/index.cfm?ty=tp&tid=19>.

²² U.S. Department of Justice, OJP, Bureau of Justice Assistance (BJA), *Death in Custody Reporting Act, Performance Measurement Tool, Frequently Asked Questions*, February 2020, p. 2, at https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/DCRA-FAQ_508.pdf (hereinafter BJA’s Death in Custody Reporting Act, Performance Measurement Tool FAQ).

²³ BJA’s Death in Custody Reporting Act, Performance Measurement Tool FAQ, p. 3.

²⁴ OIG’s report on DOJ’s implementation of the Death in Custody Reporting Act, p. 14.

Selected Issues

H.R. 7120 and S. 3985 would expand the amount of data the federal government collects on certain law enforcement activities. DOJ's experiences with implementing the requirements of the Death in Custody Reporting Act and the Sex Offender Registration and Notification Act (SORNA; P.L. 109-248)²⁵ may provide insight into some of the issues policymakers might consider when evaluating legislation to provide incentives for state and local governments to submit data to DOJ on law enforcement activities.

Potential Overlap Between Data Collection Programs in H.R. 7120 and S. 3985

In a 2018 report, DOJ's OIG raised concerns that DOJ collects duplicative data on the use of force by law enforcement officers and in-custody deaths.²⁶ Both the FBI's Use-of-Force Data Collection program and BJA's data collection pursuant to DCRA 2013 include data on deaths resulting from the use of force by police officers. In addition, data BJA collects pursuant to DCRA 2013 are duplicative of data collected by BJS through the MCI program; both collect data on deaths in state and local correctional institutions as of FY2019. The OIG noted that "duplicative reporting requirements can confuse respondents and increase the risk of respondent fatigue, which can diminish data quality."²⁷

Some of the proposed data collection programs in the House and Senate bills might partially duplicate existing DOJ data collection programs. H.R. 7120, for example, would require states to submit use-of-force data. These data would be similar to data collected by state and local governments for purposes of being submitted to the FBI's Use-of-Force Data Collection program. If H.R. 7120 were enacted, it is possible that local law enforcement agencies would be submitting data on officer-involved shootings to a state agency so the state agency could report those data to DOJ while also submitting similar data on officer-involved shootings to the FBI for its existing Use-of-Force Data Collection program. Local law enforcement agencies would have to submit somewhat different data to the state than what they send to the FBI, potentially complicating these data collection and reporting efforts.

Under H.R. 7120, local law enforcement agencies would be required to submit to the state data that includes the following: whether an individual in an officer-involved shooting had a disability; the individual's English proficiency; and whether the shooting occurred in a jurisdiction that allows open or concealed carry of a firearm. Local law enforcement agencies currently are not asked to submit these data to the FBI. However, local law enforcement agencies who participate in the FBI's Use-of-Force Data Collection program are required to submit data to the FBI that would not be included in any use-of-force data collection program that would be created by H.R. 7120. For example, participating law enforcement agencies must submit data to the FBI indicating whether the shooting occurred during an ambush situation, whether the officer approached the suspect, and the years of service for the officer(s) involved in the shooting.

²⁵ The Sex Offender Registration and Notification Act (SORNA; P.L. 109-248) provides a "comprehensive set of minimum standards for sex offender registration and notification in the United States." U.S. Department of Justice, OJP, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, "SORNA, Sex Offender Registration and Notification Act," at <https://smart.ojp.gov/sorna>.

²⁶ OIG's report on DOJ's implementation of the Death in Custody Reporting Act.

²⁷ OIG's report on DOJ's implementation of the Death in Custody Reporting Act, p. 14.

There might also be concern that in each of these two bills, state and local governments would be required to submit some of the same data to two different programs. For example, under H.R. 7120, the proposal for state, tribal, and local law enforcement agencies to collect data on law enforcement practices would require law enforcement agencies to submit data to DOJ on the race and ethnicity of people stopped by law enforcement officers for traffic violations, pedestrian stops, and frisks and body searches, along with the race and ethnicity of the officers involved in the stops. These data could overlap with data that state and local governments would be required to submit to DOJ's Civil Rights Division and BJS under H.R. 7120's proposed racial profiling data collection program (see "Data on Racial Profiling," above), which would also require state, tribal, and local law enforcement agencies to submit data on traffic stops, pedestrian stops, and frisks and body searches disaggregated by race and ethnicity. The bill's racial profiling data collection requirements, however, would require law enforcement agencies to collect data on a wider variety of law enforcement actions (e.g., interviews).

Similarly, under S. 3985, the proposal for law enforcement agencies to submit data to DOJ on the use of no-knock warrants (see "Data on No-Knock Warrants," above) might also contain some information that would be submitted to the FBI's existing Use-of-Force Data Collection program, particularly in instances where the use of no-knock warrants might involve serious bodily injury or death. However, the FBI's Use-of-Force Data Collection program does not collect specific information on instances when no-knock warrants are involved, and S. 3985's proposed data collection efforts on no-knock warrants would not capture all cases involving law enforcement use of force.

Scope of Racial Profiling Data in H.R. 7120

H.R. 7120 would require that DOJ issue regulations to collect data on potential racial profiling by law enforcement agencies around the country (see "Data on Racial Profiling," above).²⁸ Racial profiling data may include race, ethnicity, national origin, gender, disability, and religion, as well as sufficient information to determine if agencies are engaging in profiling.

Congress may consider debating which data should and should not be collected and submitted to DOJ for this program. For instance, H.R. 7120, would require submitted data to include the demographic information of individuals in police-involved incidents but would protect the identities of those individuals. Congress may also consider debating what might be accomplished by collecting these racial profiling data.

- **Understanding the Scope of Racial Profiling.** If all law enforcement agencies are consistent in submitting these data to DOJ, this could help provide insight into the scope of racial profiling around the country, indicate whether there are certain areas or agencies that appear to conduct more racial profiling than others, and inform opportunities for change. At a local level, these data could help agencies understand if individual officers are engaging in profiling.
- **Collecting Racial Profiling Data as a Potential Deterrent.** Some may question whether the collection of racial profiling data could act as a deterrent for agencies to engage in racial profiling. Under H.R. 7120, DOJ's report on racial profiling would be submitted to Congress and be made available the public. Policymakers and researchers may question whether the availability of this information could influence state and local practices.

²⁸ S. 3985 does not address the collection of data on racial profiling.

Structures for Collecting Data in H.R. 7120 and S. 3985

Both H.R. 7120 and S. 3985 would establish methods for state and local governments to submit required data to DOJ. In some cases, state and local governments would be required to report data directly to DOJ. In other cases, states would be required to collect data from the law enforcement agencies in the state and submit them to DOJ. DOJ's experience with collecting data on ARDs under its DCRP may illustrate some of the potential issues DOJ might experience if states are required to collect data from local governments.

As discussed in the "Deaths in Custody Reporting Program" section, BJS collected data on ARDs pursuant to DCRA 2000 but eventually stopped collecting these data because deaths were underreported. Under the DCRP, BJS relied on state criminal justice agencies to voluntarily report these data on behalf of all law enforcement agencies in the state.²⁹ DOJ's OIG noted that DOJ found during its implementation of DCRA 2013 that requiring states to collect data on and report ARDs can be a challenge because the effort requires states to report data they might not possess.³⁰ DOJ officials and state-level statistical analysis centers have noted that BJS's experience with the ARD program suggests that state-level reporting might not produce complete data because (1) state-level agencies are generally less aware of and less knowledgeable about deaths that occurred in their states than are the local jurisdictions where the deaths occurred, and (2) many state governments cannot compel subordinate levels of government to report crime data without state laws requiring such reporting.³¹

The issues with BJS's ARD program might raise questions about how DOJ would determine whether a local or state government is submitting all required data. Under H.R. 7120 and S. 3985, DOJ would be required to reduce a state or local government's JAG allocation if they were not in compliance with the conditions of the proposed legislation. However, unless DOJ or states periodically audit the data that local law enforcement agencies submit, it is difficult to know if participating law enforcement agencies are reporting all required data. Were these bills to become enacted, DOJ might consider having a mechanism that would certify that state and local governments were complying with the conditions of the legislation. For example, if state and local governments were to demonstrate that they have a system in place to collect and report the data required under the proposals, and then they were to either submit these data or affirm that they have no applicable incidents to report, DOJ might find such a mechanism useful. Some observers criticize the FBI's Hate Crimes Statistics program for similar reasons regarding uncertainty around the completeness of data collected by DOJ—more than 80% of law enforcement agencies report to this program that they have zero hate crimes in their jurisdictions for the year.³²

Agency Responsible for Overseeing Data Collection in H.R. 7120 and S. 3985

Both BJS and the FBI work with state and local entities to collect and report crime and policing data. BJS is DOJ's statistical agency and one of 13 principal statistical agencies in the federal

²⁹ OIG's report on DOJ's implementation of the Death in Custody Reporting Act, p. 3.

³⁰ OIG's report on DOJ's implementation of the Death in Custody Reporting Act, p. 17.

³¹ OIG's report on DOJ's implementation of the Death in Custody Reporting Act, p. 17.

³² For more information on the FBI's Hate Crime Statistics program, including information on zero-reporting agencies, see CRS Report R46318, *Federal Data on Hate Crimes in the United States*.

government.³³ BJS works with state and local agencies to collect criminal justice data, including from state and local law enforcement agencies, through its Law Enforcement Management and Administrative Statistics program and its Census of State and Local Law Enforcement Agencies. The FBI works with law enforcement agencies to collect crime data through its Uniform Crime Reporting Program. Both agencies would appear to be natural fits to manage the data collection programs that could be authorized by H.R. 7120 and S. 3985. Both proposals, however, would require state and local governments to submit the required data or face a penalty if they do not comply with the requirements. Therefore, BJA, which administers the JAG program, might be further considered for collecting these data because BJA would have to determine whether state and local governments are complying with the data submission requirements.

DOJ's OIG reported that in 2016, BJS participated in an effort initiated by a task force of state and local law enforcement organizations to develop and implement what would eventually become the FBI's Use-of-Force Data Collection program.³⁴ BJS recognized that there were similarities and overlap between the DCRP and the FBI's program, and BJS asked the FBI to manage a combined data collection effort. The task force ended up rejecting BJS's proposal, in part because they did not want the FBI making decisions about whether states were meeting the requirements of DCRA 2013. Members of the task force told the OIG that

because state and local law enforcement believed that the [Justice] Department may use DCRA data to punish law enforcement agencies, the task force decided that it should limit [the FBI's] data collection to only those specific elements needed for researchers to better understand events and behaviors that led to officer use of force.³⁵

DOJ's Office of Justice Programs (OJP) decided that BJS would not serve as the data collection agent for the DCRP because Office of Budget and Management guidance requires statistical agencies to operate separately from policymaking activities.³⁶ OJP considers administration of the DCRP to be a policymaking activity because of the authority under DCRA 2013 for DOJ to withhold up to 10% of a state's JAG funds if they do not submit the required data.³⁷ OJP also decided not to have BJS serve as the data collection agent for the program because

it would be inadvisable for BJS to collect state DCRA data on behalf of another entity that would perform the compliance assessment because even such limited involvement could undermine BJS's position as an objective statistical collection agency and could cause survey respondents to withhold future data.³⁸

OJP made BJA the data collection agent because BJA administers the JAG program and can engage in policymaking.

Congress could consider requiring DOJ to establish new programs to collect data on law enforcement activities such as the use of force, traffic stops, and no-knock warrants, and not condition JAG funding on submitting data to these programs. Removing the policymaking consideration from data submission could allow BJS or the FBI to manage these programs. However, some are concerned that the data might not be reported unless state and local governments are given a financial incentive to do so. The FBI's experience with the Use-of-Force

³³ OIG's report on DOJ's implementation of the Death in Custody Reporting Act, p. 2.

³⁴ OIG's report on DOJ's implementation of the Death in Custody Reporting Act, p. 10.

³⁵ OIG's report on DOJ's implementation of the Death in Custody Reporting Act, p. 10.

³⁶ OIG's report on DOJ's implementation of the Death in Custody Reporting Act, p. 11.

³⁷ OIG's report on DOJ's implementation of the Death in Custody Reporting Act, p. 11.

³⁸ OIG's report on DOJ's implementation of the Death in Custody Reporting Act, p. 11.

Data Collection program and the Uniform Crime Reporting Program provide two examples relevant to this discussion. The FBI started accepting data from law enforcement agencies for its Use-of-Force Data Collection program at the beginning of 2019; thus far, 40% of the law enforcement agencies are submitting use-of-force data to the FBI. In contrast, the Uniform Crime Reporting Summary Reporting System, which collects data on the number of homicides, rapes, robberies, aggravated assaults, burglaries, larcenies, motor vehicle thefts, and arsons reported to the police has wide participation even though law enforcement agencies are not required to submit these data to the FBI.³⁹ The FBI has been trying to replace the Summary Reporting System with the National Incident Based Reporting System (NIBRS), which has collected detailed data on a wider variety of crimes since 1988. Participation in NIBRS is voluntary; in 2018, 44% of law enforcement agencies reported NIBRS-compliant data to the FBI.⁴⁰

Conditions on JAG Funds in H.R. 7120 and S. 3985

Both H.R. 7120 and S. 3985 would require, in many cases, state and local governments to submit data to DOJ. If states do not comply with the reporting condition, they could face a penalty under the program, such as a reduction in their annual allocation. Depending on the costs of compliance (e.g., whether state and local governments would have to spend money to upgrade their information technology infrastructure or would have to increase staff to process data), there might be a question about whether the JAG program provides enough funding to encourage compliance.

The Urban Institute notes that “nearly all spending on both police and corrections was funded by state and local governments because federal grants account for a very small share of both expenditures.”⁴¹ Data on state and local finances show that in 2017, state governments spent \$15.426 billion on police services, and local governments spent \$99.078 billion.⁴² In comparison, for FY2019, BJA awarded a total of \$175 million to states and \$78 million to local governments under the JAG program. In addition, although every state receives an allocation under the JAG program, not all units of local government receive a direct allocation. In general, direct JAG awards are made to a state’s largest jurisdictions. For FY2019, BJA awarded a total of 873 grants to units of local government. Many local governments’ allocations are less than \$10,000, which is the threshold below which funds are included in the state’s allocation rather than allocated directly; and the state is required to award these funds to the units of local government or to a state enforcement agency that provides law enforcement services for these jurisdictions.

For these smaller jurisdictions, there might be a question about whether any of the proposed penalties under the JAG program would provide enough of an incentive for them to adopt the proposed data reporting requirements. For example, a local government whose JAG allocation is \$20,000 would lose \$5,000 if the penalty is 25%, which may not be more than it costs to comply with the reporting requirements. Also, depending on the text of the legislation that Congress considers, there might be a question about whether any potential penalties would apply to funds awarded to “less than \$10,000 jurisdictions” because they would not apply directly to BJA for

³⁹ In 2018, 18,585 law enforcement agencies serving jurisdictions that included 327,167,434 people reported summary data to the FBI. FBI, Uniform Crime Reporting Program, Crime in the United States, 2018, “About CIUS,” at <https://ucr.fbi.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018/topic-pages/about-cius> (hereinafter FBI, Crime in the United States, 2018).

⁴⁰ FBI, Crime in the United States, 2018.

⁴¹ Urban Institute, State and Local Finance Initiative, “Police and Corrections Expenditures,” at <https://www.urban.org/policy-centers/cross-center-initiatives/state-and-local-finance-initiative/state-and-local-backgrounders/police-and-corrections-expenditures>.

⁴² Data taken from <https://state-local-finance-data.taxpolicycenter.org/pages.cfm>.

funding—hence, they would not be considered *applicants* and instead may be considered *recipients* of JAG funds.

Policymakers may look to instances of states not complying with a condition Congress placed on the JAG program because states determined that the costs of complying were greater than what they would lose if they took the penalty. For example, SORNA mandated a 10% reduction in JAG funding for any jurisdictions that failed to substantially implement SORNA. The National Conference of State Legislatures found that many states did not comply with SORNA’s requirements because they “discovered it would be cheaper to take the financial hit than implement the policy.”⁴³ States noted that compliance was “labor intensive,” and it was “cheaper not to comply.”⁴⁴ As of 2019, the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking reports that 18 states are fully in compliance with SORNA.⁴⁵

The potential for many jurisdictions to face a relatively small penalty under the JAG program might raise a question about whether Congress could incentivize participation by offering these jurisdictions grants to help them comply with data reporting requirements. It is possible that for many of these smaller jurisdictions, the costs of compliance—which could include hiring new staff to manage data, upgrading information technology infrastructure, and training officers on data collection requirements—could require a significant increase in their operating budgets. Were the federal government to offset some of those expenses, it could have a positive effect on participation. The two policing reform bills have provisions that could address this issue. H.R. 7120 would authorize DOJ to make training and technical assistance grants to assist tribal and local law enforcement agencies that employ fewer than 100 officers with meeting the use-of-force data reporting requirements that would be established by the bill or to create a system that tracks use-of-force complaints against officers. S. 3985 would create a grant program to assist state and units local government with collecting data on the use of force and no-knock warrants.

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⁴³ Dylan Scott, “States Find SORNA Non-Compliance Cheaper,” *Governing*, November 7, 2011.

⁴⁴ *Ibid.*

⁴⁵ U.S. Department of Justice, OJP, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, *Sex Offender Registration and Notification Act (SORNA) State and Territory Implementation Progress Check*, June 10, 2019, at <https://smart.ojp.gov/sites/g/files/xyckuh231/files/media/document/sorna-progress-check.pdf>.

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