



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

October 3, 2016

Michael Planty
Deputy Director
Bureau of Justice Statistics
810 Seventh Street, NW
Washington DC 20531

Re: Agency Information Collection Activities; Proposed Collection Comments Requested; New collection: Arrest-Related Deaths Program, OMB # 1121-NEW

Dear Mr. Planty:

The undersigned members of the Consortium for Citizens with Disabilities (CCD) Rights Task Force submit these comments in response to the above-captioned information collection proposal. CCD is the largest coalition of national organizations working together to advocate for Federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society.

Representing the interests of millions of Americans with disabilities, we are committed to public policies and enforcement efforts that deter and reduce the high number of unnecessary deaths and injuries of individuals with disabilities – and particularly people of color with disabilities – that occur during encounters with law enforcement. We are also committed to reducing the prevalence of these encounters in the first place.

Existing data indicate that, nationwide, hundreds of people with disabilities are killed every year during police interactions – as many as half of all such deaths. Media accounts describe fatal outcomes when autistic people, people with intellectual disabilities or psychiatric disabilities, epilepsy, including those actively experiencing epileptic seizures or post-seizure confusion, diabetic shock, or those who are deaf or hard of hearing, are unable to immediately follow police directions due to their disabilities. In addition, media stories commonly report situations where people with such disabilities die later while in jail for any of a variety of reasons, including failure to receive needed medication or treatment. These incidents appear to more frequently involve people of color, but can affect anyone. Very recent examples include Keith Lamont Scott in Charlotte, North Carolina, and Alfred Olango in El Cajon, California, but unfortunately a review of newspaper reports demonstrates many more in the last five years.

Recent U.S. Department of Justice Investigation of the Baltimore City Police Department.

The recent Department of Justice findings letter concerning the conduct of the Baltimore Police Department (BPD) highlighted the need for accurate and comprehensive data collection to create the foundation for appropriate solutions to prevent and improve encounters between people with disabilities and law enforcement. The Justice Department found that the BPD engages in systemic violations of the Americans with Disabilities Act and the Constitution in its interactions with people with disabilities.

- Due to inadequate policies, oversight, and training, the BPD routinely uses excessive force against individuals with mental health disabilities or intellectual disabilities, resulting in needlessly violent confrontations with these individuals.¹
- The BPD fails to provide training to all officers concerning how to interact with individuals with disabilities or in crisis, and fails to ensure that trained officers are dispatched in response to crisis calls.²
- Frequently the individuals have committed no crime, but police dispatched to effectuate a civil commitment resort to unnecessary force.³
- “In some cases, officers resort to arresting individuals with mental health disabilities or in crisis in situations where treatment—instead of jail—would more effectively serve the goals of public safety and welfare and could prevent the need for unnecessary force.”⁴
- Without adequate policies, procedures, and training, officers “have escalated interactions that did not initially involve criminal behavior, resulting in the arrest of, or use of force against, individuals in crisis, or with mental health disabilities or I/DD, or unnecessary hospitalization of the person with mental health disabilities or I/DD.”⁵
- The BPD fails to collect and analyze data about use of force.⁶

These findings concerning Baltimore Police Department practices are just one example of systemic problems that must be addressed. Similar practices involving police interactions with individuals with a variety of mental and physical disabilities occur across the country.

Data Collection is Critical to Securing Needed Reforms of Policies and Practices to Achieve Equally Safe Policing for People with Disabilities.

As advocates, we seek the implementation of policies and practices by public entities to achieve equally safe policing for people with disabilities, including people of color with disabilities, as required by the Constitution and the Americans with Disabilities Act (ADA). These include: use of force policies that prioritize de-escalation and the preservation of life over “compliance;” leadership committed to safer policing for people with disabilities and people of color; and accountability – transparency, community oversight, and direct consequences for officers and

¹ U.S. Dep’t of Justice, Civil Rights Division, *Investigation of the Baltimore City Police Department* (Aug. 10, 2016) 8, 80, at <https://www.justice.gov/opa/file/883366/download>.

² *Id.* at 80.

³ *Id.*

⁴ *Id.* at 85.

⁵ *Id.* at 109-110 & n.112.

⁶ *Id.* at

supervisors who fall short.⁷ We also seek policies and practices that will ensure that police divert individuals with disabilities to appropriate resources rather than arresting them in circumstances such as when the person is in the midst of a medical event or mental health crisis, and that will prevent needless police encounters to begin with.

Gaining an understanding of the circumstances surrounding arrest-related deaths of people with disabilities provides valuable information needed to shape strategies to prevent deaths and injuries at the hands of law enforcement. It also offers insight into strategies to prevent law enforcement encounters from occurring – for example, by revealing the scope of unmet need for community mental health services (such as mobile crisis, supported housing, and peer support services) that would dramatically reduce the number of encounters between people with disabilities and law enforcement. The end goals are to prevent confrontations between armed officers and people with disabilities, and to resolve them safely when they do occur.

The collection of relevant and reasonably reliable data is an essential component of this advocacy. Without concrete data to quantify the problem, target solutions and assess results, it is difficult for stakeholders to effectively address the tragedy of preventable police killings. For this reason, we view data collections such as the Bureau of Justice Statistics' (BJS's) arrest-related death collection to be critical to the implementation of the ADA in the area of policing.

The Proposed Data Collection Will Aid in Understanding the Role of Disability in Arrest-Related Deaths.

We are encouraged by BJS's proposal to pursue a hybrid data collection approach that depends both on open source data about arrest-related deaths, but also on confirmation from law enforcement agencies and medical examiners of whether the incident was an arrest-related death, identification from these agencies of additional arrest-related deaths not identified by BJS, and collection of additional information about the decedent and the circumstances surrounding the incident for all identified arrest-related deaths. We do think it is important to ensure that, consistent with the plain language of the Death in Custody Reporting Act, the states themselves are also required to collect and report the data to the U.S. Department of Justice (DOJ) in the first instance, rather than simply confirming data provided by DOJ.

Upon the complete and accurate reporting of data by the states to the DOJ, we endorse the proposal of the Bureau of Justice Statistics (BJS) to incorporate additional sources of information into arrest-related death collection, including open-source data and coroners' and medical examiners' reports. Critical disability-related information about fatal police encounters is often found in these sources.

The BJS Should Require Data Collection from Additional Sources.

We further urge the BJS to seek out and incorporate information available from additional sources that are not mentioned in the proposal. For example, the BJS should incorporate data

⁷ Although a number of Departments have implemented programs to train officers on how to respond effectively and compassionately to people with disabilities, many more have not implemented these programs and people with a variety of mental and physical disabilities are therefore frequently at risk.

made available as a result of the investigations, monitoring, and/or settlements of Civil Rights Division of the DOJ. *See, e.g.*, Agreement in Principle Between The United States and the City of Baltimore Regarding the Baltimore City Police Department (Aug. 9, 2016) 3, 6, at <https://www.justice.gov/opa/file/883376/download>. There are a number of databases that may prove very useful in identifying victims with disabilities. For example, Medicaid claims data maintained by states could be used to determine whether a victim received services indicating that he or she had a particular type of disability. In addition, the Social Security Administration’s database may be used to determine when a victim was receiving SSA benefits as a result of a disability. While BJS would need to enter data sharing and confidentiality arrangements with state and federal agencies in order to access this data, we believe that this data may provide extremely valuable information for purposes of understanding and addressing needless harms to individuals with disabilities resulting from encounters with law enforcement.

The BJS should also consult with the protection and advocacy (P&A) agencies in each state, and should seek information held by community-based disability organizations, such as the national and state and local affiliate groups of the Autistic Self Advocacy Network, the National Alliance on Mental Illness, Mental Health America, the Arc of the United States, the Epilepsy Foundation, the American Diabetes Association, the National Association of the Deaf, American Council of the Blind, National Federation of the Blind, National Council on Independent Living, Easterseals, and the Depression and Bipolar Support Alliance. Finally, where the circumstances suggest that disability played a role in an arrest-related death, the BJS should reach out to the decedent’s next of kin.

The BJS should also require data on the use of the stun gun—usually a “Taser”—in arrest-related deaths. Such devices are explicitly contraindicated for use by the manufacturer in certain circumstances, are known to be more dangerous for those with pre-existing health conditions, including seizure disorders and other disabilities that may affect the heart, the brain, or other organs, and are known to put people with disabilities at higher risk of death.

We appreciate the opportunity to comment and would be happy to provide further information upon request of BJS.

Sincerely,

CCD Rights Task Force Members:

American Foundation for the Blind

The Arc of the United States

Autistic Self Advocacy Network

Bazelon Center for Mental Health Law

Disability Rights Education and Defense Fund

Epilepsy Foundation

National Alliance on Mental Illness

National Council on Independent Living

National Disability Rights Network

Allies of CCD:

American Civil Liberties Union