

Delaware’s Methodology for Meeting Reporting Requirements Under the Death in Custody Reporting Act of 2013 (DCRA 2013)

Introduction

The Death in Custody Reporting Act of 2013 (P.L. 113-242):

“... requires states and federal law enforcement agencies to report to the Attorney General information regarding the death of any person who is: (1) detained by law enforcement; (2) under arrest; (3) in the process of being arrested; (4) en route to being incarcerated or detained; or (5) incarcerated at any correctional facility, including contract facilities (which we term “deaths in a correctional institution”). Collectively, we refer to all five of these circumstances as “deaths in custody.” We also refer to any of the first four circumstances of death as “arrest-related deaths.””

The act also requires states receiving certain grant funding from the United States Department of Justice to participate in data collection or face a reduction in grant funds. The goal is to collect data for all qualifying deaths.

The Delaware Criminal Justice Council (CJC) is the state agency responsible for ensuring Delaware’s participation in the required data collection. The Delaware Statistical Analysis Center (SAC) has agreed to serve as CJC’s agent in coordinating and managing the logistics of data collection.

Data collection is based on the federal fiscal year (October 1st – September 30th)

As the Statistical Analysis Center does not own the incident data covered under DCRA, and that some of the data elements involve sensitive information relevant to on-going investigations and/or potential or active litigation, it is the position of the Statistical Analysis Center that the originators of the data (Delaware’s law enforcement agencies, the Delaware Department of Correction, and the Delaware Division of Youth Rehabilitative Services) are the ones that must provide the data that will be submitted by the SAC to meet the reporting requirements under the Act.

The SAC's Role:

As the logistics coordinator, the SAC has the following responsibilities while acting on behalf of the Delaware Criminal Justice Council:

- 1) Keep the affected Delaware agencies apprised of reporting program requirements and any changes to these.
- 2) Coordinate the participation of all affected Delaware agencies in the program. This includes communicating general information about the program and the mechanics of participating; providing data collection forms, answering questions and providing technical assistance related to reporting qualifying deaths to the SAC.
- 3) Conduct a multi-method monitoring program to detect qualifying deaths that have not yet been reported to the SAC and reach out to the corresponding agencies as appropriate.
- 4) Quality-check submitted forms, seek corrections/updates, and enter completed forms into the federal reporting system.
- 5) Keep the Criminal Justice Council, as the State Administering Agency, apprised of progress on Delaware's implementation of the DCRA reporting requirements.

It remains the responsibility of the Criminal Justice Council, as the State Administering Agency, to address the questions and concerns of effected agencies that are outside the scope of the SAC's role, including issues that affect Delaware's compliance with the requirements of the DCRA act.

The SAC's Approach to Data Collection

To help the data collection process proceed as smoothly as possible, the SAC has developed the following procedures.

Request for Agency Point of Contact (POC):

To ease data collection management and communication with agencies, the SAC is requesting that each agency identify a single Point of Contact for all logistical matters related to DCRA data collection.

This need not be the person who completes the DCRA data forms for your agency.

Reportable Incidents Under DCRA 2013

As BJA's expertise with implementing aspects of the Act continues to evolve, the SAC expects that the range of reportable incidents may continue to evolve as well.

BJA has provided an FAQ on reportable incidents (attached, also available at: <https://bjj.ojp.gov/funding/performance-measures/DCRA-Reporting-Guidance-FAQs.pdf>) The SAC will update its two FAQ documents (one for LEAs and one for correctional agencies) based on updates to this document and its previous communications with BJA regarding what constitutes a reportable death. **The most recent versions of these three documents will serve as Delaware's official documents for determining whether an incident is reportable or not.** For each new incident, agencies are asked to consult the appropriate FAQ before determining whether an incident qualifies as reportable.

Please note: there will be gray-area cases where BJA will need to review incident details before determining whether an incident should be reported. The SAC's position as a result: if, after consulting the appropriate FAQ document, there is any uncertainty about whether an incident is reportable, please contact us to discuss further.

Submitting Data to the SAC

The Process: There are two forms for this data collection: one for each qualifying incident, and a quarterly affirmation form.

Individual Incidents: This form needs to be completed for each qualifying death. The data fields for this form are listed in Table 1 in the appendix. The Word form for individual incidents is fillable. You may complete it electronically or by hand. If information is unknown or pending at the time the form is being completed (the timing of data submission is addressed later), simply note that in the appropriate places. **Per BJA, fields with unknown or pending values will eventually need to be updated, once those data become available.**

We prefer to receive submissions via email to DE-DCRA@delaware.gov; just be sure to use appropriate encryption features within email since the data contain Personally Identifiable Information and other sensitive information. For state email users, attaching documents with Egress will be sufficient. You may also mail the form to:

Delaware SAC
 Attn: Jim Salt--DCRA
 410 Federal St. Suite 6
 Dover, DE 19901

PLEASE DO **NOT** FAX ANY FORMS WITHOUT MAKING ADVANCED ARRANGEMENTS! We **cannot** maintain confidentiality of documents faxed outside of normal business hours.

For some agencies, submitting multiple incidents in a single electronic file will be a more efficient way to report data. The SAC has created an Excel template for that purpose, but other approaches may be used as long as all required data elements are included.

Quarterly Affirmation: Because the Act seeks 100% participation among affected agencies, BJA expects that we affirm that an agency experienced no reportable deaths each quarter.

If there have been no deaths, all that's required is to fill out the "Data Supplied by" section, answer a single question, and complete the certification.

If there have been deaths in that quarter that were not previously reported, some brief information will need to be listed in Section 2. The SAC will then follow-up to get a completed incident form(s).

When to Submit Data:

For each incident: BJA's expectation is to report deaths as they are discovered/learned of. To strike a balance between BJA's information needs and the demands some incidents will place on agencies, **the SAC's expectation is for initial incident forms to be submitted within fifteen business days following the incident.** In the event that the SAC discovers a qualifying incident not yet reported to us, the fifteen-day reporting window would begin once we've established affirmative contact with the agency about that incident.

BJA recognizes that it may be some months before the remaining data for an incident are available, and provides a mechanism for updating the original data submission. **BJA's expectation is that outstanding data elements (e.g., COD, incident description) will not remain "Investigation Pending" indefinitely.** As a result, please submit an updated or amended form once the remaining information is available.

To help the SAC manage the data collection process, we would like to request that, as practical, you contact us within five business days after a death occurs to provide the subject's name, the date of the death/incident, and the complaint number. This will allow us to create a tracking record in our data base.

For quarterly affirmations: The SAC must complete all its data entry work by the end of the month following the close of each reporting quarter. As a result, **we will need all quarterly affirmations submitted to us by close of business on the 15th of the month after a quarter closes (or the Friday before if the 15th occurs on the weekend).**

The federal fiscal year quarters close on December 31st, March 31st, June 30th, and September 30th.

What to Expect After Submitting Data

Submission Acknowledgement: The SAC will acknowledge the receipt of all data submissions within two business days (vacations permitting).

Error Checking and Follow-up: If we have questions, or if there are any apparent errors (mistakes, missing data that would appear to be available) in a data submission, we will note these in our acknowledgement. Our goal is to resolve all questions or issues with the initial data submission within five business days.

Follow-up on “Investigation Pending” Items: Every 90 calendar days after a data submission, the SAC will touch base about any items noted as “Investigation Pending” until data are available for those items or until an updated/amended form is submitted.

Special Concerns

How will BJA protect the incident data submitted?

From the BJA DCRA FAQ:

“Will OJP/BJA treat this information as confidential or as public information?”

Data submitted to OJP/BJA to comply with DCRA are subject to 34 U.S.C. §10231(a), which protects from disclosure any research or statistical information that is identifiable to any private person. Accordingly, OJP/BJA does not release identifiable DCRA data to the public.”

In addition, in early 2020, the Delaware DOJ’s State Solicitor issued statement related to potential FOIA requests and legal consideration associated with participating in the DCRA data collection:

Regarding FOIA requests:

“OJP will maintain this information internally; however, some data may be subject to federal FOIA through requests to OJP. Because federal FOIA does not apply to SAC, determinations about the application of federal FOIA will be made at the sole discretion of OJP. With respect to State of Delaware FOIA requests to SAC, requesting parties are advised that information provided to SAC is likely derived entirely from other sources of information which are independently exempt from the State of Delaware FOIA’s definition of “public record” or may be derived entirely from data sources that are not within the possession, custody, and control of SAC. Each State of Delaware FOIA request to SAC is independently reviewed to determine whether the request seeks public records capable of disclosure.”

Regarding general or legal considerations:

“Non-State of Delaware Law Enforcement Agencies are advised to consult with their legal counsel. State of Delaware Law Enforcement Agencies should contact their assigned legal counsel at the State of Delaware Department of Justice to discuss general concerns. The State Solicitor at the Department of Justice remains available to discuss compliance questions from legal counsel for non-State agencies.”

APPENDIX

Table 1: Data Elements Required for Each Death

Category	Data Element	Notes
Decedent Information	Name	first, last, MI
	Sex	
	Birth Year	
	Ethnic Origin	Hispanic/Latino
	Race	check all that apply
Death Time and Location	Date of Death	
	Time of Death	
	Event Location	refers to address of location of event where death occurred
	Location category	
	<i>For DOC & YRS Deaths</i>	
	--Facility Type	
Incident Characteristics	<i>For arrests</i>	
	--Detaining/Arresting Agency	Includes attempting to arrest
	Circumstances Around Death	check box: accident, use of force, homicide, natural causes, suicide, pending
	Brief Narrative	basically, the who, what, why, where, when, how
Supplying Agency Info	Agency Name	
	Individual's Name	Including title
	Individual's Contact Info	

Table 2: Data Elements Required for Quarterly Form

Category	Data Element	Notes
Supplying Agency Info	Agency	
	Individual's Name	including title
	Individual's Contact Info	
Section A	Any reportable deaths since last submission this quarter?	Yes (triggers a SAC follow up, if needed) No: nothing else is needed
	If there were no reportable deaths at this quarter, please sign the certification statement	
Incident Information	Date of Death	
	Name of Decedent	