

## SUPPORTING STATEMENT

### A. Justification

#### 1. Necessity of the Information Collection

The death penalty is the most severe sanction a person can receive for committing a crime. Unlike a sentence to life in prison, once carried out, a capital sentence cannot be reversed. Consequently, ensuring fairness in the administration of death sentences is of overriding importance. The annual collection of information by the Bureau of Justice Statistics on the laws authorizing the death penalty and characteristics and dispositions of persons who have been sentenced to death is critical to describing the administration of justice in this country and the use of its most severe sanctions.

The National Prisoner Statistics (NPS) Program was begun in 1926 by the U.S. Census Bureau in response to a Congressional mandate to obtain national measures of the population in correctional systems. The Census Bureau added the NPS-8 component to obtain annual counts of inmates executed under civil authority in 1930. In 1947, the program was transferred to the Federal Bureau of Prisons, U. S. Department of Justice, where it remained until 1971 when responsibility for the program was assigned to the Law Enforcement Assistance Administration, now the Bureau of Justice Statistics (BJS). Since 1973, the collection and analysis of these data, authorized by Title 42, United States Code, Section 3732, has been carried out by BJS, with the Census Bureau acting as the collecting agent.

The NPS-8 fits within the larger BJS portfolio of surveys that inform the nation on the nature and composition inmates sentenced to state and federal prisons. BJS' National Prisoner Statistics prison population reports (NPS-1A and -1B, OMB Control Number 1121-0102) provide aggregated annual counts and movements of sentenced inmates, while the National Corrections Reporting Program (OMB Control Number 1121-0065) provides individual-level data on offenses, sentence length, and the characteristics of persons admitted to state prison in selected states. While NPS-1 and NCRP describe prisoners and their characteristics, the NPS-8 allows us to examine not only the small subset of inmates who have been sentenced to death, but also to track changes in the laws that guide who may receive these most punitive sentences.

The Federal Government has collected and published statistics on executions for 79 consecutive years and has provided data on persons under sentence of death since 1953. Critical elements of the NPS-8 collection include state, sex, race and Hispanic origin, dates of birth and sentence, and means of removal from under sentence of death (including date of removal). In recent years, the NPS-8 collection has added information on the criminal history of death row inmates and tracked changes in statutes relating to the death penalty. Other entities<sup>1</sup> maintain rosters of persons under sentence of death and executed, but these rosters typically include only state, sex, and race of inmates. The extensive time-series data on inmates under sentence of death and State and Federal capital statutes collected through the NPS-8 are not available from any other source.

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<sup>1</sup>For example, the NAACP Legal Defense Fund, Inc. (<http://www.naacpldf.org/issues.aspx?issue=11>), the Death Penalty Information Center (<http://www.deathpenaltyinfo.org>), or the Death Penalty News & Updates website (<http://people.smu.edu/rhalperi/>).

BJS compiles data from NPS-8 to produce a report describing inmates under sentence of death in each State, the District of Columbia, and the Federal system at the end of each calendar year. The Capital Punishment series is designed to provide detailed information these prisoners.

As reported, in part, in *Capital Punishment 2008 – Statistical Tables*, 7,658 people have been held under sentence of death in the United States between 1977 and 2008, of whom 15% were executed, 5% died by causes other than execution, and 38% received other dispositions. The number of inmates executed has generally been declining since 1999. During 2008, 37 executions were carried out, which was 5 fewer than in 2007. Those executed during 2005 had been under sentence of death an average of 11 years and 7 months, 14 months less than the period for inmates executed in 2007. At yearend 2008, 3,207 prisoners were under sentence of death.

Thirty-six States and the Federal Government authorized the use of lethal injection in 2008, up from 20 in 1988 and 34 in 1998. In 2008, 36 of the 37 executions were by lethal injection. Since 1977, 965 of the 1,136 executions (85%) were by lethal injection. Thirteen States and the District of Columbia did not authorize capital punishment as of December 31, 2008.<sup>2</sup>

## 2. Needs and Uses

The NPS-8 data collection fulfills a wide variety of needs for the criminal justice and the broader research and public policy community, both in the U.S. and internationally.

The death penalty is the most severe sanction that can be imposed by courts. This leads to a high level of scrutiny by courts endeavoring to ensure that sentences are imposed fairly. This is evidenced by the fact that capital cases appear on the U.S. Supreme Court docket each term. BJS' capital punishment data have helped inform the courts regarding the ways in which death sentences are administered. BJS' capital punishment statistics have been cited in opinions issued by Supreme Court justices.<sup>3</sup>

The ability of courts to efficiently process cases and bring defendants to trial in a timely fashion has become an issue of concern for court administrators. Capital cases can have a profound impact on the court operations. Because of the finality of the death penalty, both the trial and appeals process for capital cases have become specialized relative to other types of court cases. The bifurcated trial, expert defense counsel, and automatic appeals unique to capital cases can absorb the limited resources of courts. A number of researchers have used NPS-8 data to study the impact of capital cases on the courts. Some researchers have studied the use of plea bargaining,<sup>4</sup> while others have examined the impact of capital appeals on the ability of state courts to effectively process cases.<sup>5</sup>

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<sup>2</sup>During 2009, New Mexico repealed its capital statute, effective for offenses committed after July 1, 2009. Two men remain subject to death sentences imposed prior to that date and one person is currently on trial with the state seeking the death penalty.

<sup>3</sup>See, for example, *Kennedy v. Louisiana*, 554 U.S. \_\_\_ (2008) (dissenting Opinion).

<sup>4</sup>Kuziemko, I. (2006). Does the threat of the death penalty affect plea bargaining in murder cases? Evidence from New York's 1995 reinstatement of capital punishment. *American Law and Economics Review*, 8(1), 116-142.

<sup>5</sup>Latzer, B. & Cauthen, J.N.G. (March 2007). Justice Delayed? Time Consumption in Capital Appeals: A Multistate Study. Final Report. National Institute of Justice, March. Grant #2004-IJ-CX-0005.

The frequency and manner in which the death penalty is used can greatly impact other areas of the criminal justice system. The ability to measure the flow of inmates sentenced to death, the length of stay of these inmates, and the disposition of their death sentences is critical to understanding how the criminal justice system operates. NPS-8 data makes it possible for users to investigate such important issues as the deterrent effects of the death penalty on crime,<sup>6</sup> the effects of length of stay on a state's correctional resources,<sup>7</sup> and cross-state comparisons of who gets sentenced to death.<sup>8</sup>

Following a court's determination that an inmate will be sentenced to death, execution is not the only possible outcome. A number of factors may affect the ultimate disposition of a death sentence. Researchers have used NPS-8 data to study the broad perspective of what happens after an inmate receives a death sentence.<sup>9</sup> Others have used the means of removal from NPS-8 to focus on specific outcomes, such as commutations<sup>10</sup> or executions.<sup>11</sup>

Interest in the death penalty and its impact on the operations of correctional systems is not limited to the United States. In April 2008, the State Department sponsored a delegation of correctional and justice system officials from Brazil. The program, entitled "Prison Administration," was designed to introduce the delegation to a variety of aspects of the U.S. prison system. At the specific request of the delegation, BJS provided statistics on the death penalty and capital punishment in the United States.

The United Nations has a number of committees to monitor issues in the international arena. The UN committees generate periodic country-specific reports assessing an individual country's record on various human rights matters. These reports rely on NPS-8 data to assess the record of the United States in areas such as racial discrimination<sup>12</sup> and executions.<sup>13</sup>

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<sup>6</sup>See, for example, Kovandzic, T.V., Vieraitis, L.M., & Boots, D.P. (2009). Does the death penalty save lives? New evidence from state panel data, 1977 to 2006. *Criminology and Public Policy*, 8(4), 803-843. Fagan, J., Zimring, F.E., & Geller, A. (2006). Capital punishment and capital murder: Market share and the deterrent effects of the death penalty. *Texas Law Review*, 84, 1803-1867. Fagan, J. (2006). Death and deterrence redux: Science, law, and causal reasoning on capital punishment. *Ohio State Journal of Criminal Law*, 4(1), 255-320.

<sup>7</sup>Dunlop, R.G. (2009, November 7). Kentucky's troubled death-penalty system lets cases languish for decades. *The Louisville Courier-Journal*. <http://www.courier-journal.com/article/2009911080316>. Spurr, S.J. (2002). The future of capital punishment: Determinants of the time from death sentence to execution. *International Review of Law and Economics*, 22(1), 1-23.

<sup>8</sup>Debro, J., Mury, K., Roebuck, J., & McCann, C. (1987). Death row inmates: A comparison of Georgia and Florida profiles. *Criminal Justice Review*, 12(1), 41-47.

<sup>9</sup>Argys, L.M. & Mocan, H.N. (2004). Who shall live and who shall die? An analysis of prisoners on death row in the United States. *Journal of Legal Studies*, 33(2), 255-282. Jacobs, D., Qian, Z., Carmichael, J.T., & Kent, S.L. (2007). Who survives on death row? An individual and contextual analysis. *American Sociological Review*, 72(4), 610-632.

<sup>10</sup>Heise, M. (2003). Mercy by the numbers: An empirical analysis of clemency and its structure. *Virginia Law Review*, 89(2), 239-310. Pridemore, W.A. (2000). An empirical examination of commutations and executions in post-Furman capital cases. *Justice Quarterly*, 17(1), 159-183.

<sup>11</sup>Kubik, J.D. & Moran, J.R. (2003). Lethal elections: Gubernatorial politics and the timing of executions. *Journal of Law and Economics*, 46(1), 1-25.

<sup>12</sup>Convention on the Elimination of Racial Discrimination. (2007). Periodic Report of the United States of America to the U.N. Committee on the Elimination of Racial Discrimination Concerning the International Convention on the Elimination of All Forms of Racial Discrimination. (<http://hrpujc.org/documents/USReporttoCERD.pdf>).

<sup>13</sup>Report of the Special Rapporteur on extrajudicial, summary, or arbitrary executions, Phillip Alston, on his mission to the United States of America. 2008.

([http://www.extrajudicialexecutions.org/application/media/11%20HRC%20Mission%20to%20US%20%28A\\_HRC\\_11\\_2\\_Add.5%29.pdf](http://www.extrajudicialexecutions.org/application/media/11%20HRC%20Mission%20to%20US%20%28A_HRC_11_2_Add.5%29.pdf)).

NPS-8 data have also been used in a number of textbooks. BJS' reports and statistics on capital punishment provide a foundation for discussions of legal and ethical considerations surrounding the use of the death penalty.<sup>14</sup> In addition, NPS-8 data have been used to develop interesting examples and exercises in a textbook on statistics and methodology.<sup>15</sup>

Data gathered in the NPS-8 collection form the basis for historical trend analysis and fulfill a wide variety of needs within BJS and for the broader research and public policy community. This brief review of some recent uses of NPS-8 data demonstrates the importance of these data to the national debate on capital punishment.

In addition, NPS-8 data are accessed by a wide-spectrum of users via public use files, reports and statistics available from the BJS website, and information requests made directly to BJS by phone and e-mail. Students, advocacy groups, attorneys, and employees of all branches and all levels of government use NPS-8 as a source of national and comparative data on capital punishment. The number of users accessing or sending queries through the BJS website for capital punishment statistics has made the NPS-8 one of the most requested BJS data collections. If these data were no longer collected, information seekers would no longer have the benefit of adequate historical and current facts on the subject.

### 3. Use of Information Technology

BJS and the Census Bureau have implemented an Internet-based collection method for both the inmate records (NPS-8/8A) and the status of death penalty laws (NPS-8B/8C). A web-based data collection for inmates under sentence of death was implemented during the 2008 data collection cycle for the NPS-8/8A portion of the collection. Respondents can access forms for each individual reported under sentence of death as of December 31 of the previous report year. Respondents can make revisions, as necessary, to each online form. They can also submit a new record for inmates who have been received under sentence of death during the current report year. BJS and the Census Bureau are continuing to explore alternative methods for submitting data electronically which may be more suitable for the capabilities and capacities of individual respondents (e.g. uploading of extracted data). A web-based reporting option was implemented during the 2009 data collection cycle for the NPS-8B/8C portion of the collection, an option that had been offered during 2000 and 2001 data collection cycles.

### 4. Efforts to Identify Duplication

No other governmental organization collects nationwide comprehensive information on inmates under sentence of death. Information such as statutory, demographic and criminal history data collected from the NPS-8, NPS-8A, NPS-8B, and NPS-8C is not attainable from any other data source. The Death Penalty Information Center (DPIC), in cooperation with opposingviews.com, maintains a database with individual-level information on inmates under sentence of death. Information available includes date of birth, gender, race, date of offense, date of sentence, "date received", and "county." According to the DPIC website (<http://www.deathpenaltyinfo.org/death-row-database>), "the database is largely user-generated," and many of the fields are blank. DPIC also maintains a database with information on persons executed. Data elements included in this database consist of execution date, state, age, sex, race, number and race of victims,

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<sup>14</sup>See, for example, Albanese, Jay S. (2008). *Criminal Justice* (4<sup>th</sup> ed.). Needham Heights, MA: Allyn and Bacon. Silverman, Ira J (2001). *Corrections: A Comprehensive View* (2<sup>nd</sup> ed.). Belmont, CA: Wadsworth Press.

<sup>15</sup>Weisburd, D, & Britt, C. (2007). *Statistics in Criminal Justice* (3<sup>rd</sup> ed.). New York, NY: Springer.

method of execution, and “other factors” such as whether the inmate waived appeals, was a foreign national, or whether there was “evidence of mental retardation.” Much of the other information available from this website (characteristics of death row inmates, time on death row, state death penalty laws, etc.) cites BJS’ data and reports.

BJs also conducted a search of the National Archives of Criminal Justice Data (NACJD) to identify other data collections with information on inmates under sentence of death and capital statutes. NACJD, which is sponsored by the research and grant-making bureaus in the Office of Justice Programs (BJs, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, and the Bureau of Justice Assistance), has a stated mission “to facilitate research in criminal justice and criminology, through the preservation, enhancement, and sharing of computerized data resources; through the production of original research based on archived data; and through specialized training workshops in quantitative analysis of crime and justice data.” NACJD maintains nearly 2,000 publicly-available criminal justice-related data collections and citations for more than 17,000 books, articles, conference proceedings, and other publications derived from these data collections. The search revealed no duplication with NPS-8. The information and comparisons available to users of the NPS-8 series are unique to this project.

5. Impact on Small Businesses

N/A. The information collection does not involve small businesses or other small entities. The respondents are State and Federal agencies (Departments of Correction personnel and Attorneys General staff).

6. Consequences of Less Frequent Collection

The NPS-8, NPS-8A, NPS-8B, and NPS-8C are completed once a year. Imposition of a death sentence is a rare event. In 2006, only 2% of sentences imposed on felons convicted in state courts for murder were death sentences.<sup>16</sup> The 3,207 inmates under sentence of death at yearend 2008 represented only 0.25% of all sentenced inmates in states with a valid capital statute at that time. Annual collection allows BJS and others to track annual changes in the capital statutes, which ultimately determine which offenders can be tried and sentenced to death.

Furthermore, the data maintained through the NPS-8 data collection records the flow of inmates in and out of death penalty status since 1973. Less frequent data collection would introduce gaps in the data series. This would impact users’ ability to track changes and their impacts on prison populations.

7. Special Circumstances Influencing Collection

N/A. The NPS-8 data collection is consistent with the guidelines in 5 CFR 1320.6.

8. Consultations Outside the Agency

The research under this clearance is consistent with the guidelines for 5 CFR 1320.6. The 60-day and 30-day notices for public commentary have been published in the Federal Register, on May 26, 2010, at 75 FR 29585-29586 and on August 2, 2010, at 75 FR 45156-45157, respectively.

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<sup>16</sup>See *Felony Sentences in State Courts, 2006 – Statistical Tables*, table 4.4.

BJIS and Census Bureau staff maintain frequent contact with data providers and data users in an effort to improve data collection, reporting procedures, data analysis, and data presentation. The individuals listed below have been consulted on such issues as instructions for completion of questionnaires, format and content of the questions, data collection methods, and design of data display:

Robert Johnson, Professor  
American University

Raymond Paternoster, Professor  
University of Maryland, College Park

Jeffrey A. Fagan, Professor of Law and Epidemiology  
Columbia Law School

Blythe Bowman, Assistant Professor  
Virginia Commonwealth University

William Delker  
Senior Assistant Attorney General  
New Hampshire Criminal Justice Bureau

Amy Zapp  
Chief Deputy Attorney General  
Office of the Attorney General, Commonwealth of Pennsylvania

Linden Appel  
Chief Legal Counsel  
Kansas Department of Corrections

Thomas Brunner  
Assistant Attorney General  
Utah Attorney General's Office

Lori Nolting  
Florida Department of Corrections

Karen Hall  
Texas Department of Criminal Justice

Delois Brown  
Georgia Department of Corrections

Sandy Schaeffer  
Mansfield Correctional Institute  
Ohio Department of Rehabilitation and Correction

Wayne Germain  
Pontiac Correctional Center  
Illinois Department of Corrections

CC2 Ebert  
San Quentin State Prison

California Department of Corrections

9. Payment other than Remuneration to Contractors

N/A. No payment other than remuneration is provided to contractors.

10. Assurance of Confidentiality

Respondents will be advised that data are collected according to the provisions of the Title 42 UCS, Sections 3735 and 3789g, which establish the allowable use of data collected by BJS. Under these sections (See Attachments 1 and 2), all information which can identify individuals is held to be confidential by BJS and “shall be used only for statistical or research purposes, and shall be gathered in a manner that precludes their use for law enforcement or any purpose relating to a particular individual other than statistical or research purposes” (Section 3735). As the collection agent for BJS, the Census Bureau collects these data with assurances pursuant to these sections.

All names and personal identifiers are removed from the data files prior to their submission to the National Archives of Criminal Justice Data, which serves as the public repository for all BJS datasets. Moreover, as required under these sections, any BJS report using these data will be only statistical in nature and will not identify individual subjects. Personal information provided by respondents regarding inmates under sentence of death is kept confidential and the identity of inmates is neither published nor released.

11. Justification for Sensitive Questions

N/A. There are no questions of a sensitive nature included on the NPS-8, 8A, 8B, or 8C.

12. Estimate of Respondent Burden

The NPS-8 is completed for each person who is sentenced to death during the report year. We estimate the average reporting time to be about 30 minutes per form. The NPS-8A is used to add or correct information for a person who was on death row at the end of the previous report year. We estimate an average reporting time of 30 minutes per form. The NPS-8 and NPS-8A forms are sent to 44 respondents in 37 States and the Federal Bureau of Prisons.

One NPS-8B is completed by a respondent in the Office of the Attorney General in each State that had no death penalty statute as of December 31 of the previous year, and one NPS-8C is completed by a respondent in the Office of the Attorney General of each State with a death penalty statute in force as of December 31 of the previous year. In total, 52 death penalty statute forms are completed per report year B one for each of the 50 States, the District of Columbia, and the Federal Bureau of Prisons, requiring 15 minutes.

The 44 respondents for the NPS-8/8A and the 52 respondents for NPS-8B/8C yields 96 respondents for this data collection.

During 2008, 117 NPS-8 forms, 3,215 NPS-8A forms, and 52 capital punishment statute forms (NPS-8B/8C) were completed. This totaled 1,679 burden hours. The respondent burden in future years is estimated to be 1,679 hours.

	<u>Number of Respondents</u>	<u>Number of Responses</u>	<u>Average Response Burden</u>	<u>Estimated Burden Hours</u>
NPS-8A			44 30 min	3,215 1,607.5
NPS-8				44 117 30 min 58.5
NPS-8B, NPS-8C	<u>52</u>	<u>52</u>	15 min	<u>13.0</u>
Total	96	3,384		1,679

Assuming an average salary of \$25 per hour for each respondent, we estimate a total annual cost to respondents of \$42,000.

13. Costs for reporting and recordkeeping

N/A. No costs other than the cost of the hour burden exist for this data collection.

14. Cost to the Federal Government

The collection, processing, and dissemination of capital punishment data in Fiscal Year 2010 cost approximately \$326,800. The cost included the following:

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***Estimated costs for the NPS-8 for FY 2010***

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BJS costs

Staff salaries	
GS-13 Statistician (25%)	\$22,300
GS-15 Supervisory Statistician (2%)	\$2,500
Fringe benefits (28% of salaries)	\$6,900
Subtotal: Salary & fringe	\$31,700
Other administrative costs of salary & fringe (30%)	\$9,500
Subtotal: BJS costs	<b>\$41,200</b>

Census Bureau costs (Collection agent)

Census costs (salaries, fringe benefits, forms design, printing, mailout, fax, email and phone follow-up, programming, web maintenance and updating, and Census overhead)	<b>\$285,600</b>
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**Total estimated costs** **\$326,800**

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15. Reason for Change in Burden

Fluctuations in the flow and the population of inmates under sentence of death from one year to the next will result in corresponding changes in the annual response burden.

The NPS-8 data collection is based primarily on individuals under sentence of death. During 2008, death row admissions dropped for the sixth consecutive year: the 111 persons admitted to prisons under sentence of death during 2008 was the lowest number since 1973, when 44 persons were put on death row. The number of persons on death row on December 31, 2008, was 3,207. This was the eighth consecutive year that the number of prisoners under a sentence of death declined. The number of person admitted to prisons under sentence of death has been declining gradually since 1999. At the same time, the number of persons removed from death row since 2001 has generally increased relative to the number removed in years prior to 2001. All of these factors have contributed to a decrease in the number of NPS-8 and NPS-8A forms which are completed each year and a corresponding decrease in the total response burden.

16. Project Schedule

In late November, the Census Bureau staff calls/e-mails each respondent from the prior year to verify their contact information. At that time, the NPS-8/8A respondents are asked if they have enough NPS-8 forms to report inmates received under sentence of death during the current year.

About December 28, forms are mailed out to all respondents. NPS-8B or NPS-8C forms are sent to staff in the Attorney General's office of each State. The NPS-8B/8C respondents are asked to submit their responses by mid-February. States that reported inmates under sentence of death on December 31 of the prior year are sent an NPS-8A form for each inmate. NPS-8 forms are sent, as needed, to respondents to report inmates received under sentence of death from January 1 to December 31 of the current report year. Most NPS-8/8A respondents are asked to return completed forms no later than March 31 of the year after the report year. Respondents with larger numbers of inmates under sentence of death are given a different completion date to allow sufficient time to review, update, and submit records.

As paper forms are received, (mid-January to late April), data are entered in the computer and reviewed. For respondents who submit data electronically, Census Bureau staff receive a notification of records that have been updated. Updates are incorporated into the database. Upon reviewing the changes, follow-up phone calls are made to the respondents, as necessary, and the data are completed and corrected as appropriate.

In the summer following the report year, the Census Bureau delivers two data files to BJS: one file contains information about persons under sentence of death at any time during the report year (active file); the other provides information about persons who were previously under sentence of death (historical file).

17. Request to Not Display Expiration Date

N/A. There are no exceptions to the certification.

18. Exceptions to Certification

There are no exceptions to the certification.

PAPERWORK CERTIFICATION

In submitting this request for OMB approval, I certify that the requirements of the Privacy Act and OMB directives have been complied with including paperwork regulations, statistical standards for directives, and any other information policy directives promulgated under the Paperwork Reduction Act of 1980.

Concurrence:

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Signature (Program Signatory)

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Date