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Re: Ensuring transparency and accurate data on hate crimes

First fielded in 1973, the National Crime Victimization Survey (NCVS) is “the main source of information on criminal victimization in the United States.”¹ In 2016, the Bureau of Justice Statistics (BJS) added questions on sexual orientation and gender identity (SOGI) to the NCVS, allowing researchers, policymakers, and advocates for LGBTQI+ issues to quantify for the first time the disproportionate victimization of LGBTQ people.²

The undersigned write to express our deep concern about BJS’s decision earlier this year to remove questions about gender identity and about hate crimes against transgender people from the NCVS³ in contradiction to the requirements in the Hate Crimes Statistics Act (HCSA). This decision deprives policymakers, researchers, program decision-makers, and other stakeholders of their ability to better understand and respond to the kind of violence that spurred the passage of the HCPA and contravenes the statute’s intention of enumerating sexual orientation and gender identity as protected bases.

Data collection on gender identity and violent crimes committed against transgender people is necessary for policy and program decision-making. In 2009, Congress passed the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009 (HCPA), which explicitly enumerates gender identity and sexual orientation as protected bases.⁴ In the decade before that bill was signed into law, more than 10,000 hate crimes against LGBTQ people were reported to police – with hundreds of thousands of additional hate crimes against LGBTQ people likely going unreported.⁵

¹ <https://bjs.ojp.gov/blogs/reflections-ncvs-50-and-why-it-still-matters>

² BUREAU OF JUSTICE STATISTICS, NCVS OMB SUPPORTING STATEMENT PART A at 9 (2021), https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202109-1121-002

³ https://url.us.m.mimecastprotect.com/s/pu_JCmZgWXSpR9rJu3F4fRVpnN?domain=sonicwall.url-protection.com

⁴ Matthew Shepard was a gay 21-year-old University of Wyoming student who was attacked, tied to a fence and pistol-whipped, and left to die in a field in Laramie, Wyoming. His story was one of thousands that inspired the 2009 revision to the HCPA.

<https://wcl.american.libguides.com/hatecrimes/shepardbyrdact#:~:text=Shepard's%20murder%20brought%20national%20and,the%20federal%20hate%20crimes%20legislation>

⁵ <https://www.propublica.org/article/why-america-fails-at-gathering-hate-crime-statistics>

To effectively implement the HCPA, the U.S. Department of Justice (DOJ) needed more information about the type and location of hate crimes committed against the LGBTQ community; the perpetrators of those crimes; reporting to police and police response; and the physical, mental, and economic costs of those crimes. To meet that need, BJS began collecting data on gender identity and about crimes committed against transgender people in the NCVS.

Data collected through the NCVS immediately identified significant differences in LGBTQ people's experience of violent crimes and hate crimes. Analyses of the data show:

- LGBTQ people are five times more likely than non-LGBTQ people to be victims of violent crime,
- LGBTQ people are nine times more likely to experience violent hate crimes than non-LGBTQ people,
- Transgender people are especially likely to experience hate violence, with 93.7 transgender people per 1,000 experiencing hate violence compared to 21.1 non-LGBTQ people per 1,000, and
- Black LGBTQ people have the highest rates of victimization – 205 Black LGBTQ people per 1000 persons were victims of violent crime compared to 23 per 1000 Black non-LGBTQ respondents and 21 per 1000 non-LGBTQ people overall.⁶

DOJ, state policymakers, and researchers immediately integrated NCVS data into their work. According to BJS:

“NCVS data serve a wide range of purposes and provide reliable statistics to inform various research, policy, and programmatic objectives. The information captured from survey respondents can be used to establish criminal justice policies and programs, inform the public about crime, and study crime’s impact on individuals and society. Since the first year of NCVS data collection in 1973, the survey has been cited more than 35,000 times in state and federal legislation, in state and federal court cases, in academic literature, and in the media. The NCVS is invaluable to students, lawmakers, policymakers, researchers, victim service providers, advocates, and society as a whole.”⁷

Collecting data on hate crimes committed against LGBTQ people is also legally required.

The Hate Crimes Statistics Act (HCSA), as amended, requires the Attorney General to “acquire data, for each calendar year, about crimes that manifest evidence of prejudice based on race, **gender and gender identity**, religion, disability, sexual orientation, or ethnicity...”⁸

⁶ <https://williamsinstitute.law.ucla.edu/publications/anti-lgbt-victimization-us/>

⁷ <https://bjs.ojp.gov/blogs/reflections-nevs-50-and-why-it-still-matters>

⁸Emphasis added.

<https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title34-section41305&num=0&edition=prelim>

In its 2021 report on Federal Data on Hate Crimes in the United States,⁹ the Congressional Research Service described how the Department of Justice (DOJ) meets its obligations under the HCSA. At the time, DOJ relied on the Federal Bureau of Investigation (FBI) Hate Crimes Statistics Program for direct reports of hate crimes; today, the FBI's National Incident Based Reporting System (NIBRS) also provides information about hate crimes reported to law enforcement officers. Then as now, DOJ supplements the information learned from the FBI's systems with data collected through the NCVS, which includes information about hate crimes whether or not they were reported to the police.

CRS notes that the difference in the number of hate crimes reported through DOJ's two systems is staggering: "For example, for 2019 (the most recent data available) the FBI reported that there were approximately 7,300 hate crime incidents that involved approximately 8,800 victims. In comparison, BJS reported that there were an estimated 198,000 hate crime victimizations in 2017." Progress in NIBRS reporting has marginally narrowed the gap between hate crime reports and hate crime statistics but is not intended to be a substitute for NCVS data. As CRS predicted in its report, "Implementing NIBRS does not address hate crime victims being reluctant to report an offense to the police, the need for training for law enforcement officers on how to identify potential hate crimes, or the need to improve law enforcement agencies processes for investigating potential hate crimes..."

In BJS's memo to OIRA explaining their desire to make changes to the NCVS, they describe the impact on victimization estimates as "negligible." As CRS's report makes clear, giving transgender people an opportunity to voluntarily provide information in privacy-protected survey dramatically increases the value and quality of data that DOJ uses to meet its statutorily mandated responsibilities to respond to hate violence.¹⁰ By ceasing to collect data on hate crimes committed against transgender people, DOJ will be unable to meet the objectives of the HCPA. In fact, the Office of Management and Budget (OMB) affirmed this finding in the Terms of Clearance for this survey earlier this year, stating, "BJS and Census should continue to work together to resolve the statutory requirement for BJS to collect information under the Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act of 2009."¹¹

Furthermore, BJS undertook these changes to NCVS collection of data on transgender people and anti-transgender hate crimes without following the requirements set out in the Paperwork Reduction Act (PRA). The PRA provides an opportunity for the public to provide input on proposed changes, and challenge data collections that are misaligned with science, public policy, or the law. Ending the collection of these data without following this process is likely a violation

⁹ <https://www.congress.gov/crs-product/R46318>; see also <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0281641>

¹⁰ The CRS report reaffirms data that the NCVS collects on self-reporting to law enforcement. Survey respondents say that they report only about half of the violence they experience to law enforcement. For a deeper discussion of this trend, see: <https://www.propublica.org/article/why-america-fails-at-gathering-hate-crime-statistics>

¹¹ OIRA's Notice of Action can be viewed here: https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202503-1121-001#

of the PRA. DOJ's departure from standard practice suggests that its leadership knows its decision could not withstand public scrutiny.

Given the legal requirements in the HCSA and HCPA, as well as the process requirements laid out in the PRA, we call upon, and expect that, BJS will reverse course on its decision to stop collecting data on gender identity and about hate crimes committed against transgender people. This would avoid the unnecessary costs and administrative labor required to implement the change and lower the risk of litigation or other liability for failure to comply with the law. An Executive Order grounded in politically-motivated bias is insufficient to release DOJ from its statutory requirement - and programmatic need - to collect these data.

We urge DOJ to immediately reinstate its collection of information about gender identity and about hate crimes committed against transgender people.

Sincerely,

[SIGN ON LIST]