Dear Michael Planty,

Amnesty International USA welcomes this opportunity to submit comments to the Bureau of Justice Statistics (“BJS”) related to the re-development of its Arrest-Related Deaths program as part of the reauthorization of the Deaths In Custody Reporting Act of 2013 (“DICRA”) in December 2014.

Reauthorization of DICRA in Congress occurred in light of the deaths of Michael Brown in Ferguson, MO and Eric Garner in New York City, NY and the protests that not only ensued in those cities but across the country in 2014. Amnesty International produced a report following the death of Michael Brown in Ferguson in 2014\(^1\) and a second on Use of Lethal Force statutes in 2015\(^2\) that highlighted the inadequacy of existing data by the government on the number of people killed each year during interactions with law enforcement.

International standards provide that law enforcement officers should only use force when there are no other means that are likely to achieve the legitimate objective and that the amount of force must be proportionate to the seriousness of the harm it is aiming to prevent, and designed to minimize damage and injury. Officers may use firearms only as a last resort when strictly necessary to protect themselves or others against the imminent threat of death or serious injury. The intentional lethal use of firearms is justified only when “strictly unavoidable in order to protect life.”\(^3\)

One of the state’s central obligations is to respect, protect and fulfil the right to life and to ensure that no one is arbitrarily deprived of their life. Article 6 of the International Covenant on Civil and Political Rights (“ICCPR”) places an obligation on states to ensure that
the right to life is protected by law. It must ensure that its own agents -- notably police -- respect this right, as well as protecting life when it is threatened by others. An essential step in securing the right to life is thus the establishment of an appropriate legal framework for the use of force by the police, which sets out the conditions under which force may be used in the name of the state and ensuring a system of responsibility where these limits are transgressed.\textsuperscript{iv} It should be noted that the failure of the State to properly investigate cases of death following the use of force is a violation of the right to life itself.\textsuperscript{v}

The UN Human Rights Committee is the expert body established under the ICCPR to monitor implementation of this core human rights treaty. The USA ratified the ICCPR in 1992. In its General Comment 6 on the right to life under the Covenant, the Committee stated that “The deprivation of life by the authorities of the State is a matter of the utmost gravity” and that states must take measures to prevent arbitrary killing by their own security forces. All states must ensure compliance with international law and standards including the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. In regards to incidents where officers use firearms, the UN Basic Principles state, in part:

\textbf{Basic Principles on the use of Force and Firearms by Law Enforcement Officials, Principle No. 6:}  
Where injury or death is caused by the use of force and firearms by law enforcement officials, they shall report the incident promptly to their superiors, in accordance with Principle 22.

\textbf{Basic Principles on the use of Force and Firearms by Law Enforcement Officials, Principle No. 7:}  
Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.
Basic Principles on the use of Force and Firearms by Law Enforcement Officials, Principle No. 11 (f):
Rules and regulations on the use of firearms by law enforcement officials should include guidelines that:

... Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.

Basic Principles on the use of Force and Firearms by Law Enforcement Officials, Principle No. 22:
Governments and law enforcement agencies shall establish effective reporting and review procedures for all incidents referred to in principles 6 and 11(f). For incidents reported pursuant to these principles, Governments and law enforcement agencies shall ensure that an effective review process is available and that independent administrative or prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances. In cases of death and serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control.”

For years, the monitoring of lethal force by police has been hampered by the failure of the Department of Justice (“DOJ”) to collect accurate, national data on police use of force, including the number of people killed by police. The DOJ has been required to ensure the collection and publication of nationwide statistics on police use of force (including all police fatal shootings) since the passage of the Violent Crime Control and Enforcement Act (1994); however, it has failed to do so. As you know, an estimate of the number of deaths caused by law enforcement officers used to be provided by the Bureau of Justice Statistics, which until March 2014 collected data about “arrest-related” deaths, defined as deaths that occur during law enforcement officers’ attempt to detain an individual. However, after an internal evaluation of the data’s reliability, the Bureau of Justice Statistics concluded that its figures likely did not capture all deaths and decided to suspend data collection until this most recent endeavor under DICRA.
Due to the failure of government agencies to collect reliable and complete data, a number of media outlets, such as The Counted platform on the Guardian website and the Washington Post, have tried to fill in the gaps related to the number of people who die in interactions with law enforcement each year. While the Guardian focuses on all uses of force and the Washington Post only documents deaths due to use of firearms, in 2015 they documented at least 1146 deaths and 991 deaths respectively. However, even looking at their documentation presents discrepancies, for instance the Guardian documented nearly 20 more incidents where an individual was killed by a law enforcement officer using a firearm as compared to the Washington Post (1018 compared to 991 respectively).

It is imperative that the government set up a system that tracks and reports on these incidents under its obligations under international law with respect to the use of lethal force. As mentioned, Amnesty International welcomes the news that the BJS will be undertaking the proposed initiative in response to the passage of DICRA, but we have concerns in regards to the implementation of that program.

First, the proposal is a departure from DICRA provisions that require states receiving federal funding to report deaths in custody to the federal government. The Department of Justice is attempting to shift the data collection and reporting requirements from the states to the Bureau of Justice Statistics by having BJS collect data on deaths in custody through its Arrest-Related Deaths program instead of states. States and law enforcement agencies, the entities closest to the data being sought, should be responsible for collecting and reporting deaths in custody to the federal government as mandated by law. It will be difficult for the DOJ to get an accurate picture of trends in custodial deaths if state and local law enforcement agencies are not held accountable for collecting data after a death occurs.

Second, with BJS assuming responsibility for states’ data collection and reporting, the proposal indicates that BJS will rely primarily upon publicly available information (“open-source review”) for its ARD program. Certain media outlets have been critical to understanding police-community encounters over the past year and have been essential to the work of Amnesty International on this issue, but it is unlikely that national media attention and resources will remain on policing indefinitely. Thus, relying on media
accounts and statistics is an inadequate method of collecting data to determine the circumstances under which people die while in law enforcement custody over a long period of time.

Moreover, the proposal does not indicate how federal law enforcement agencies will comply with DICRA. The law is clear in its application to federal law enforcement including immigration officials, so the guidance must detail how federal agencies, including Customs and Border Protection, U.S. Marshals, the Federal Bureau of Investigations ("FBI") among others, will comply with DICRA. Also, the proposal does not provide a clear definition for the term "custody," particularly instances where a fatal police shooting has occurred without an arrest.

Additionally, the proposal does not discuss penalties for noncompliance. DICRA gives the Attorney General the discretion to subject states that do not report deaths in custody to a ten percent reduction of Edward Byrne Memorial Justice Assistance Grant Program funds. The financial penalty is critical to successful implementation of DICRA as voluntary reporting programs on police-community encounters have failed. Reportedly, only 224 of the more than 18,000 law enforcement agencies reported approximately 444 fatal police shootings to the FBI in 2014, though media documentation over the past two years has demonstrated that the annual numbers of people killed by police is closer to 1,000.

Finally, we would like to reiterate our ask that the Office of Justice Programs require state and local law enforcement agencies that benefit from Department of Justice federal grants and programs to collect and report data on incidents of police use of force including incidents where officers’ use of firearms does not result in death, and other police-community encounters, such as pedestrian and traffic stops. The federal government awards close to $4 billion in such grants annually, and any discretionary grant should be conditioned upon providing data.

Any statutory or formula grant, including the Edward Byrne Memorial Justice Assistance Grant, should require data reporting as part of its existing performance metrics. To achieve complete and uniform data collection and reporting and to truly understand any trends or identify best practices, the federal government must solicit disaggregated data that is
reflective of all police community encounters, including age, race, ethnicity, religion, gender or gender identity, sexual orientation, and disability. The data collection should also be expanded to include whether an investigation was carried out by the law enforcement agency following the arrest-related death and the details/results of that investigation. As you may be aware, Amnesty International has tracked the number of deaths following the use of a Taser (or "conducted energy device"/"CED") in the United States and has documented more than 700 deaths since 2001. In order to properly track how these devices are used, the data collected by BJS on these deaths should include such information as the number of shocks administered, the duration of each shock, whether the person was restrained in any way either during the use of the Taser or immediately following, and include an examination of medical examiner reports concerning cause of death and whether the individual suffered from any underlying medical conditions, was under the influence of drugs or alcohol, or in a state of mental health crisis at the time of the incident in order to better understand the nature and causes of these deaths.

Much of this data can only be obtained by law enforcement agencies reporting and are often not included in media reports, again stressing the need for requiring agencies to document and report, and for imposing penalties when they fail to do so. Only with this type of data can we analyze whether there are trends in regards to a particular officer or agency, or the impact on specific communities, and whether we need to reevaluate the entire system under which officers are trained in the use of force.

A documentation program that includes all of the information and requirements contained within the above would help bring the United States more in line with its obligations under international law when it comes to accountability regarding the use of lethal force. We thank you again for this opportunity to submit these comments during the development of the documentation program and would welcome any opportunity to discuss the information contained in these comments further.
Sincerely,

Margaret Huang
Executive Director
Amnesty International USA

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vii Proposed Collection Comments, supra note 2 at 51490 (stating that the BJS “redesigned methodology includes a standardized mixed method, hybrid approach relying on open sources to identify eligible cases, followed by data requests from law enforcement and medical
examiner/coroner offices for incident-specific information about the decedent and circumstances surrounding the event.”).

