

AMERICAN BAR ASSOCIATION

**SECTION OF CIVIL RIGHTS AND SOCIAL JUSTICE
CRIMINAL JUSTICE SECTION
COALITION ON RACIAL AND ETHNIC JUSTICE
COMMISSION ON DISABILITY RIGHTS
HISPANIC NATIONAL BAR ASSOCIATION
LAW STUDENT DIVISION
NATIONAL BAR ASSOCIATION
SECTION OF STATE AND LOCAL GOVERNMENT LAW
STANDING COMMITTEE ON GUN VIOLENCE
STANDING COMMITTEE ON LEGAL AID AND INDIGENT DEFENSE**

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

RESOLVED, That the American Bar Association urges federal, state, local, territorial, and tribal jurisdictions to fully implement and timely report all deaths required to be reported by the Death in Custody Reporting Act;

FURTHER RESOLVED, That the American Bar Association urges the United States Department of Justice and its Office of Justice Programs to use all available measures to ensure that state departments of corrections, local jails, state and local law enforcement agencies, and tribal entities are providing timely quarterly reports to the appropriate State Administering Agencies and that those Agencies are in turn submitting timely quarterly reports to the Bureau of Justice Assistance;

FURTHER RESOLVED; that the American Bar Association urges the Centers for Disease Control and Prevention and the Department of Justice to include on the U.S. Standard Death Certificate a box to check when death occurred in a correctional institution or in the custody of law enforcement; and

FURTHER RESOLVED, That the American Bar Association urges state, local, territorial, and tribal jurisdictions to ensure that there is an independent investigation into the cause of any death that occurs in a correctional institution or in the custody of law enforcement.

REPORT

Introduction

Law enforcement in America kills more people than in Canada, Germany, Australia, New Zealand, England and Wales combined.¹ In-custody violence and death have been disproportionately concentrated among people of color, low-income neighborhoods, and those experiencing homelessness. And yet the crisis is felt not only on the streets of America but within our carceral facilities and detention centers, with many dying as wards of the state and often before trial. The federal Death in Custody Reporting Act (DCRA) is intended to collect data on the number and causes of deaths that occur among those in the custody of law enforcement and correctional institutions.² However, existing data on such deaths is incomplete, often inaccurate and, therefore, unreliable as a measure of the number and causes of deaths in custody.³

Access to information concerning these deaths is hindered by the lack of uniform reporting mandates and practices, variations in open record laws among the states, and law enforcement exemptions from public disclosure of death investigation records and related police investigation files. This lack of transparency creates opportunities for bias, undue influence from police and correctional institutions, and misclassifications during death investigations conducted by medical examiner-coroners. Not only is the United States home to some of the highest rates of in-custody death, but our system for investigating and disclosing these cases is broken.⁴ Full implementation of the DCRA and identification of deaths in custody in death certificates is essential to collect complete data. Improved investigations of such cases would enable more accurate data on the causes of such deaths. Both are need to develop and implement policies to protect the lives of those in custody.

Law enforcement-related death in America

Current data estimate that American police kill on average 1,200 people a year during arrest or while attempting to place them into custody.⁵ Even without complete mortality data across the United States, encounters with law enforcement are reliably correlated with adverse health outcomes and elevated rates of premature death, especially for

¹ Lartey, J., "By the numbers: US police kill more in days than other countries do in years", *The Guardian*, June 9, 2015, <https://www.theguardian.com/us-news/2015/jun/09/the-counted-police-killings-us-vs-other-countries>.

² Death in Custody Reporting Act of 2013, 113 P.L. 242 (Dec. 18, 2014). The 2013 Act reauthorized the Death in Custody Reporting Act of 2000, P.L. 106-297.

³ Congressional Research Service, Death in Custody Reporting Act: Background and Legislative Considerations, R74559 (May 17, 2023), <https://crsreports.congress.gov/product/pdf/R/R47559/2>.

⁴ Mitchell Jr., Roger A., Aronson, Jay D., "Death in Custody. How America Ignores the Truth and What We Can Do about It", (September 2023) available at <https://pinjnews.org/book-excerpt-death-in-custody-how-america-ignores-the-truth-and-what-we-can-do-about-it/>

⁵ Feldman, Justin M., Sofia Gruskin, Brent A. Coull, and Nancy Krieger. "Correction: Quantifying Underreporting of Law-Enforcement-Related Deaths in United States Vital Statistics and News-Media-Based Data Sources: A Capture-Recapture Analysis." *PLOS Medicine* 14, no. 10, Oct. 2017, e1002449, <https://doi.org/10.1371/journal.pmed.1002449>.

people of color, members of low-income communities, and unhoused individuals. Black Americans are 3.5 times more likely to be killed by law enforcement than their white counterparts, and nearly 60 percent of police-involved deaths of Black Americans went unreported to federal authorities between 1980 and 2019.⁶

Police violence is often gun violence; gun violence prevention requires acknowledging and addressing police shootings. Police in the United States shoot and kill at least 1,000 civilians every year. In 2023, as of November 16, police officers have killed 1,030 people.⁷ 1,008 of those people were shot and killed by police, and 22 were killed by other means. The research is clear: places that experience higher rates of police misconduct and violence toward civilians, suffer from higher rates of gun violence. The impacts of police shootings are far reaching and reverberate beyond the civilians whose lives are cut short. There is a strong link between police-community trust and firearm violence and police shootings understandably sever that trust. Once that trust is broken, people disengage, leading to decreased cooperation with police, crimes going unsolved, and potentially vigilante justice. This pattern has been called the “Jude Effect” based on the dramatic decline of 911 calls after off-duty police in Wisconsin brutally beat Frank Jude.⁸ The loss of trust and engagement with law enforcement that fuels vigilante violence from some of the most desperate, traumatized, or alienated members of that community, causes more fear, gun carrying, and retaliatory violence in turn. Community distrust in police also contributes to increases in firearm carriage, which directly leads to more gun-related deaths.

These harms are not evenly distributed. People of color—whether or not they are armed—are at a much greater risk of being shot by police. Researchers have estimated that on average, a Black *unarmed* person is at least as likely to be shot by police as someone who is white and *armed*. Black men comprise 6 percent of the U.S. population, but more than 32 percent of the unarmed people shot by police since 2015. Furthermore, a Black *unarmed* person is nearly five times more likely to be shot and killed by police than a white *unarmed* civilian.⁹ Therefore, it is not possible to talk meaningfully about the devastating impact of police gun violence without talking about racial inequity.

A series of widely publicized police killings between 2015 and 2020 stoked nationwide protests calling for the defunding of local police departments, investments in community-based and non-carceral solutions to violence and harm, and a permanent

⁶ Romero, M., “Law Enforcement As Disease Vector.” SSRN Scholarly Paper. Rochester, NY, Oct. 2020, <https://papers.ssrn.com/abstract=3617367>.

⁷ The Official Mapping Police Violence Database. Mapping Police Violence, Inc. Los Angeles, CA. Updated 16 Nov. 2023. <https://mappingpoliceviolence.squarespace.com/>.

⁸ Desmond, M., Papchristos, A., Kirk, D., “Police Violence and Citizen Crime Reporting in the Black Community”, *American Sociological Review*, 2016, 81 (5) 857-876, available at https://scholar.harvard.edu/files/mdesmond/files/american_sociological_review-2016-desmond-857-76.pdf.

⁹ Jennifer Jenkins, Monika Mathur, et. al., “Police Shootings Database”, *The Washington Post*, originally published 30 May, 2015, accessed 29 November, 2023, available at <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/>.

end to deaths during arrests. While this movement brought substantial attention to the crisis of fatal police encounters on the streets of U.S. cities, a similarly dire crisis of premature death inside jails and prisons has received comparatively less attention. This is not due to an infrequency of deaths behind bars. A recent study led by Terence Keel of the UCLA BioCritical Studies Lab analyzed a sample of 180 deaths in 10 city and county detention centers in Maryland between 2008 and 2019.¹⁰ These detention centers are distinct from state correctional facilities in that they primarily confine persons who are awaiting trial or arraignment. Keel and his research team found that the majority of these deaths were Black men and the average age for cases designated as “natural” was significantly lower than the life expectancy of the non-jailed population. Researchers also found that over 80% of the deaths in their sample occurred while the decedent was awaiting trial and in nearly half of the cases they studied the decedents died within the first 10 days of being in jail. This trend is important to note given that jurisdictions in Maryland such as Prince George’s County are taking longer than 10 days to even make the initial decision about whether to release a person after arrest. Individuals who die pretrial are presumptively innocent; they have not yet been convicted of anything. In this way, the nation’s pretrial detention crisis intersects with the epidemic of in-custody deaths. Without public witnesses, the events leading up to the deaths of wards of the state are almost exclusively narrated by their captors.

Death in Custody Reporting Act Requirements

The Death in Custody Reporting Act was enacted to ensure that all deaths in custody are reported to the United States Department of Justice. It requires states and federal law enforcement agencies to report to the Attorney General information regarding the death of any person who is detained, under arrest, or is in the process of being arrested, is en route to be incarcerated, or is incarcerated at any federal correctional or pre-trial detention facility or at a municipal or county jail, State prison, State-run boot camp prison, any State or local contract facility, or other local or State correctional facility (including any juvenile facility).¹¹ Such reports are to include not only such basics as the name, gender, race, ethnicity and age, and date, time and location of a death, but also the law enforcement agency with custody and a description of the circumstances surrounding the death.¹² State Administering Agencies (SAAs) are to collect data on a quarterly basis from local entities for submission to the Department of Justice’s Bureau of Justice Assistance.¹³ A state’s failure to report can result in a reduction of up to 10% of the state’s allocation of funding under the Crime Control Act.¹⁴

The data to be collected are intended to inform federal and state policies governing the protection of individuals in law enforcement custody and correctional facilities.¹⁵ The

¹⁰ Johnson, C., Keel, T., et al., “In-Custody Deaths in Ten Maryland Detention Centers, 2008-2009,” Aug. 2023, <https://ucla.app.box.com/s/z5wuokjrcegd2gvr2hk3f7tbi938k47>.

¹¹ Death in Custody Reporting Act, supra note 2, §§2 (a) and 3(a).

¹² Id. § 2(c).

¹³ The Bureau of Justice Assistance replaced the Bureau of Justice Statistics as the agency receiving submissions after 2014.

¹⁴ DCRA, supra note 2, § (c)(2).

DCRA also charged the Department of Justice with conducting a study of the data collected to reduce deaths in custody by the end of 2016.¹⁶

Implementation of the DCRA, however, has fallen short. Reliable data has not been collected and no study has been produced.¹⁷ At the time of this report, the last data-set available was completed in 2019.¹⁸ The General Accountability Office reviewed the available data collected and concluded that almost 1,000 deaths in police custody in 2021 were not reported.¹⁹ On September 20, 2022, the Senate Homeland Security and Governmental Affairs Permanent Subcommittee on Investigations held a hearing on the DOJ's failure to effectively implement DCRA.²⁰

Some states argue that they have insufficient resources to collect the required data, especially if they do not receive information from local agencies. That does not excuse them from reporting. However, the Department of Justice's Office of Justice Programs is charged with funding research and statistical programs and, if properly funded itself, could provide important financial support to enable more comprehensive reporting.²¹

Death Certificates Should Identify Deaths in Custody

Studies and analyses often rely on death certificates to identify the number of people and their sociodemographic characteristics who died from specific causes. Such studies are used to inform policy-making. The US Standard Death Certificate includes boxes to check if a death is related to tobacco, or if the manner of death was natural, accidental, suicide, homicide, pending investigation, or could not be determined, but there is no place to indicate that the death occurred in custody.²² According to the Centers for

15 Gannett Satellite Info. Network v. United States Dep't of Justice, U.S.D.C. D.C., 2023 WL 2682121, 2023 U.S. Dist. LEXIS 53367 (2023) ("That information-gathering spoke to Congress's desire to hold states and federal law enforcement entities accountable, to allow for congressional oversight of those entities' processes and outcomes, and to provide transparency in state and federal entities tasked with holding a person in custody and to draw back the curtain on the oftentimes controversial instances when those in law enforcement custody subsequently die.").

16 DCRA, supra note 2, §§ 2(f) and 3(a).

17 Jasmine Aguilera, "You Have Utterly Failed.' The Department of Justice Undercounted Nearly 1,000 Deaths in U.S. Prisons," Time, September 20, 2022,

18 Mitchell Jr., Roger A., Aronson, Jay D., "Death in Custody. How America Ignores the Truth and What We Can Do about It", Chapter 3. (September 2023) available at <https://pinjnews.org/book-excerpt-death-in-custody-how-america-ignores-the-truth-and-what-we-can-do-about-it/>.

19 GAO, DOJ Can Improve Publication of Use of Force Data and Oversight of Excessive Force Allegations, GAO-22-104456, December 2021, pp. 23-27 (hereafter GAO, DOJ Can Improve).

20 Uncounted Deaths in America's Prisons and Jails: How the Department of Justice Failed to Implement the Death in Custody Reporting Act: Hearing before the Senate Homeland Security and Governmental Affairs Permanent Subcommittee on Investigations, 117th Cong. (September 20, 2022) (statement of Chairman Jon Osso), https://www.hsgac.senate.gov/imo/media/doc/2022-09-20%20Chair%20Jon%20Osso_%20Opening%20Statement.pdf. (Hereafter Uncounted Deaths).

21 The DOJ's Office of Justice Programs includes the Department's criminal and juvenile justice-related science, statistics, and programmatic agencies. It provides funding, technical assistance, research, and statistics to develop justice system reforms, promote community safety, racial equity and justice for all. <https://www.ojp.gov/>. A grant program supports research and data collection.

22 <https://www.cdc.gov/nchs/data/dvs/death11-03final-acc.pdf>.

Disease Control, death inflicted by law enforcement agents constitutes a “legal intervention.” This designation is used in the reporting of such cases by police, medical examiners, and coroners to the National Violent Death Reporting System (NVDRS), established by Congress in 2002. However, these reporting practices are not adhered to rigorously.

Moreover, the category of “legal intervention” does not indicate where the death occurred or the actual cause of death. It is most likely to be checked in cases where the death occurred in public, such as during an arrest. In light of the underreporting of deaths in custody, the collection of accurate data could be improved if the Standard Death Certificate included a way to highlight where the death occurred, such as a box to check for “in law enforcement custody.” Including that information would give officials and researchers notice and opportunity to further investigate the actual cause of death and whether it is related to law enforcement action or inaction.

Gaps in Reporting Produce Incomplete and Unreliable Data on the Number and Causes of Death in Custody

Underreporting of deaths in custody obscures their prevalence and hampers the capacity of lawmakers and law enforcement officials to develop policies preventing threats to the population. Both government agencies and independent researchers have analyzed and critiqued underreporting and its consequences.²³ Recent studies have shown that between 1980 and 2018, nearly 55% of law enforcement related deaths were never reported and/or were misclassified by medical examiner-coroners who conduct these death investigations.²⁴ Currently, unofficial media-based methods provide more comprehensive information on police violence than do the limited official data.²⁵ As a result, without mandated enforcement of DCRA, there is currently no national data collection program that comprehensively describes all deaths that occur in law enforcement custody, and thus no realistic ability to effectively study any data collected in support of new policies or practices.²⁶

Much of the scholarly work that critiques the documentation practices for deaths due to legal intervention has utilized alternative sources to quantify the number of underreported or misclassified law enforcement related deaths. For example, in 2017, Feldman et al. and colleagues conducted a national study of legal interventions between

²³ Uncounted Death, supra note 20.; GAO, DOJ Can Improve, supra note 20; Feldman et al., supra note 7.

²⁴ GBD 2019 Police Violence US Subnational Collaborators. “Fatal police violence by race and state in the USA, 1980–2019: a network meta-regression.” *The Lancet*, October 2021, Volume 398, Issue 10307, P1239-1255, [https://doi.org/10.1016/S0140-6736\(21\)01609-3](https://doi.org/10.1016/S0140-6736(21)01609-3).

²⁵ Edwards, Frank, Lee, Hedwig, Esposito, Michael. “Risk of being killed by police use of Force in the United States by age, race–ethnicity, and sex.” *Proceedings of the National Academy of Sciences*, Aug 2019, 116 (34) 16793-16798; <https://doi.org/10.1073/pnas.1821204116>.

²⁶ Congressional Research Service, supra note 3; Banks, Duren, Michael G. Planty, et al., *Reducing Deaths in Law Enforcement Custody: Identifying High-Priority Needs for the Criminal Justice System*. Santa Monica, CA: RAND Corporation, 2022, https://www.rand.org/pubs/research_reports/RRA108-16.html.

2006 and 2007. Drawing upon crowd-sourced data they found that fewer than half of law enforcement-related killings were reported by the NVDRS during this one-year period.²⁷ They also discovered that police accountability for death in custody was effectively erased by law enforcement and medical examiners-coroners through the use of diagnostic codes that incorrectly labeled the cause of death as “natural,” “accidental,” or “undetermined.” Such mislabeling distorts the recorded frequency of law enforcement related death and creates legal barriers for families seeking retribution from county and state agencies. Moreover, Feldman and colleagues found that underreporting was most common in cases not involving firearms and occurs more frequently in counties with a large low-income population.

In 2021, the Global Burden of Disease 2019 Police Violence US Subnational Collaborators confirmed the conclusions of the Feldman study.²⁸ They also used a crowd-sourced data method to develop a rate of underreporting and misclassification to identify discrepancies in death reports sent to the NVDRS for any given year between 1980 and 2019. They estimated that more than half (55%) of law enforcement related deaths were improperly recorded by police.²⁹ Both the Feldman and the GBD 2019 Police Violence US Subnational Collaborators studies establish that far more people die in custody than what is actually reported, implicating misclassification of cause-of-death by medical examiner-corners as one mechanism that contributes to inaccurate estimates of police-involved deaths in the U.S.

In-custody deaths are inconsistently documented by officials at multiple levels of government. This makes it incredibly difficult to identify risk factors for death during detention or interaction with law enforcement, which in turn inhibits accountability, community input regarding solutions, intervention by elected officials, and social change. Enhancing internal and public reporting requirements related to in-custody deaths is a necessary but insufficient first step to addressing the present crisis of in-custody deaths in the short term. Hence, even the Government Accountability Office has concluded that, as a result of the incomplete data collection by the Department of Justice, and failure to report by state authorities, additional action is needed, particularly around state compliance.³⁰

The Need for Independent Investigations of Deaths in Custody

The medical examiner system in the United States plays an integral role in determining whether law enforcement are charged for deaths in their custody. Across the nation

²⁷ Feldman, Justin M., Sofia Gruskin, Brent A. Coull, and Nancy Krieger. “Correction: Quantifying Underreporting of Law-Enforcement-Related Deaths in United States Vital Statistics and News-Media-Based Data Sources: A Capture-Recapture Analysis.” *PLOS Medicine* 14, no. 10, Oct. 26, 2017, <https://doi.org/10.1371/journal.pmed.1002449>.

²⁸ Fatal police violence by race and state in the USA, 1980–2019: a network meta-regression, *Lancet*, Oct. 2, 2021, by GBD 2019 Police Violence US Subnational Collaborators, at [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(21\)01609-3/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(21)01609-3/fulltext).

²⁹ *Id.*

³⁰ GAO-22-106033, “Deaths in Custody: Additional Action Needed to Help Ensure Data Collected by DOJ Are Utilized,” <https://www.gao.gov/products/gao-22-106033>.

state law gives medical examiners-coroners the ability to conduct an investigation—and if necessary autopsy—into a violent, unexpected, and sudden death that occurs outside the care of an attending physician. Medical examination offices across the nation are public-facing scientific institutions that attempt to be politically neutral and distinct from prosecutorial authority and law enforcement. In practice, however, death investigators share a long and close connection with law enforcement. State law in the progressive state of California, for example, continues to allow the Sheriff's Department to oversee death investigations as the county coroner, effectively placing law enforcement in charge of investigating themselves when lives are lost in their custody. This conflict of interest is not limited to California, as state laws across the nation give law enforcement many privileges, which include being present during an autopsy for an in-custody death and the ability to place death investigation records on security hold. This creates an opportunity for misclassification within death reports and denies public transparency.

Medical examiners and coroners can also be an independent source of bias during death investigations. Death investigation in the United States is conducted by a small circle of experts and their findings are based on the practice of the autopsy, which is not governed by the standards of testability or a state-level peer review system like the medical review board.³¹ A recent study found that the context surrounding a death has a greater influence on investigators than the forensic information produced from autopsy and toxicology reports.³² For most in-custody death cases law enforcement provides the circumstances and context for how loss of life happened. Police have a vested interest in minimizing their responsibility for such deaths by painting a picture of the victim that places police in a favorable light, whether by omitting any lack of response to illness or injury or justifying the use of force. These depictions are then reproduced by death investigators who very often report the mental or physical health status of the victim as the primary cause of death.³³ Such conditions range from claims of drug addiction, heart disease, and even sickle cell anemia, as the *New York Times* recently uncovered.³⁴ This has the effect of producing coroner reports and death certificates that erase the actual encounter with law enforcement as the key causal factor for in-custody death—before the right to due process and too often in carceral spaces before being formally charged. Incomplete and erroneous reporting wrongly suggests that the bodies of many victims are failing, not the laws policing them.

ABA Goals

³¹ Timmermans, Stefan. *Postmortem: How Medical Examiners Explain Suspicious Deaths*. Chicago: University of Chicago Press, 2007.

³² Dror, I. E., Wolf, D. A., Phillips, G., Gao, S., Yang, Y., Drake, S. A. Contextual information in Medicolegal Death Investigation Decision-making: Manner of death determination for cases of a single gunshot wound. *Forensic Science International: Synergy*, Sept. 2022, <https://doi.org/10.1016/j.fsisyn.2022.100285>.

³³ See for example the official statements of the Hennepin County Medical Examiner Office, which was responsible for George Floyd's first autopsy. Accessed May 17, 2021, <https://www.hennepin.us/ME>.

³⁴ On the weaponization of sickle cell see: Michael LaForgia and Jennifer Valentino-DeVries, "How a Genetic Trait in Black People Can Give the Police Cover." *New York Times*, May 15, 2021, <https://www.nytimes.com/2021/05/15/us/african-americans-sickle-cell-police.html>.

507

ABA policy has long supported protecting equal rights for all Americans and ensuring adherence to the rule of law. This resolution directly supports two of the ABA's Goals, specifically Goal III to eliminate bias and enhance diversity and Goal IV to advance the rule of law. This resolution urges a straightforward step to improving the information needed to achieve both goals. The ABA can be proactive in highlighting gaps and bias existing within the criminal justice system, particularly regarding law enforcement and members of communities of color. Further, in order to sufficiently address these challenges, this resolution provides concrete and realistic remedies for ABA members to support and advance in their pursuit of justice for all Americans.

Conclusion

Despite federal legislative and oversight efforts, the crisis of deaths in custody continues to affect thousands of Americans each year. Underreporting and misclassification of in-custody deaths have perpetuated the crisis, which disproportionately affects people of color, low-income communities, and other marginalized groups. The ABA has long recognized the importance of police accountability and equal protection under the law. This Resolution empowers the Association to advocate for improved reporting of deaths in custody, data collection, and investigations to help advance accountability and justice on behalf of the thousands of Americans who die in law enforcement custody each year.

Respectfully submitted,

Robin R. Runge, Chair
Section of Civil Rights and Social Justice

February 2024

GENERAL INFORMATION FORM

Submitting Entity: Section of Civil Rights and Social Justice

Submitted By: Robin R. Runge, Chair

1. Summary of the Resolution(s).

This Resolution urges the full implementation and timely reporting of all deaths required to be reported by the Death in Custody Reporting Act, and urges the United States Department of Justice and its Office of Justice Programs to use all available measures to ensure that state departments of corrections, local jails, state and local law enforcement agencies, and tribal entities are providing timely quarterly reports to the appropriate State Administering Agencies and that those Agencies are in turn submitting timely quarterly reports to the Bureau of Justice Assistance. The Resolution also urges the Centers for Disease Control and Prevention and the Department of Justice to include on the U.S. Standard Death Certificate a box to check when death occurred in a correctional institution or in the custody of law enforcement. The Resolution further urges jurisdictions to ensure that there is an independent investigation into the cause of any death that occurs in a correctional institution or in the custody of law enforcement.

2. Indicate which of the ABA's Four goals the resolution seeks to advance (1-Serve our Members; 2-Improve our Profession; 3-Eliminate Bias and Enhance Diversity; 4-Advance the Rule of Law) and provide an explanation on how it accomplishes this.

This Resolution seeks to advance Goal 3 (Eliminate Bias and Enhance Diversity) by urging the implementation of reporting mechanisms for deaths in custody which disproportionately impact people of color and other marginalized groups, and Goal 4 (Advance the Rule of Law) by urging the adoption of policies and procedures to increase accountability and reduce deaths in custody in the United States.

3. Approval by Submitting Entity.

The Executive Committee of the Section of Civil Rights and Social Justice approved sponsorship of this resolution on November 13, 2023.

4. Has this or a similar resolution been submitted to the House or Board previously?

No.

5. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

The ABA has adopted a number of policies that are consistent with this Resolution. These include: 21A503 (African American mass incarceration), 09A111B (criminal justice national study), 21A604 (body worn cameras), 23A512 (discrimination in capital sentencing).

507

6. If this is a late report, what urgency exists which requires action at this meeting of the House?
None.
7. Status of Legislation. (If applicable)
None.
8. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.
The ABA will work with relevant stakeholders and the ABA Governmental Affairs Office to ensure implementation of the Resolution.
9. Cost to the Association. (Both direct and indirect costs)
None.
10. Disclosure of Interest. (If applicable)
None.
11. Referrals.
Center on Children and the Law
Center for Professional Responsibility
Center for Public Interest Law
Commission on Hispanic Legal Rights and Responsibilities
Commission on Racial and Ethnic Diversity in the Profession
Commission on Sexual Orientation and Gender Identity
Commission on Youth at Risk
Council on Diversity in the Educational Pipeline
Government and Public Sector Lawyers Division
Health Law Section
Judicial Division
Litigation Section
National Association of Criminal Defense Lawyers
National District Attorneys Association
National Legal Aid and Defender Association
Section of Family Law
Solo, Small Firm and General Practice Division
Young Lawyers Division
12. Name and Contact Information (Prior to the Meeting. Please include name, telephone number and e-mail address).
Paula Shapiro, Section Director
ABA Section of Civil Rights and Social Justice
Tel.: (860) 508-5550
Email: paula.shapiro@americanbar.org

Mark I. Schickman, CRSJ Section Delegate

507

Tel.: (501) 467-2909

Email: mark@schickmanlaw.com

Wendy K. Mariner, CRSJ Section Delegate

Tel.: (617) 460-2284

Email: wmariner@bu.edu

13. Name and Contact Information. (Who will present the Resolution with Report to the House?).

Mark I. Schickman, CRSJ Section Delegate

Tel.: (501) 467-2909

Email: mark@schickmanlaw.com

Wendy K. Mariner, CRSJ Section Delegate

Tel.: (617) 460-2284

Email: wmariner@bu.edu

EXECUTIVE SUMMARY

1. Summary of the Resolution.

This Resolution urges the full implementation and timely reporting of all deaths required to be reported by the Death in Custody Reporting Act, and urges the United States Department of Justice and its Office of Justice Programs to use all available measures to ensure that state departments of corrections, local jails, state and local law enforcement agencies, and tribal entities are providing timely quarterly reports to the appropriate State Administering Agencies and that those Agencies are in turn submitting timely quarterly reports to the Bureau of Justice Assistance. The Resolution also urges the Centers for Disease Control and Prevention and the Department of Justice to include on the U.S. Standard Death Certificate a box to check when death occurred in a correctional institution or in the custody of law enforcement. The Resolution further urges jurisdictions to ensure that there is an independent investigation into the cause of any death that occurs in a correctional institution or in the custody of law enforcement.

2. Summary of the issue that the resolution addresses.

This Resolution addresses the deaths in custody crisis impacting the United States. Law enforcement in America kills more people than in Canada, Germany, Australia, New Zealand, England and Wales combined. In-custody violence and death have been disproportionately concentrated among people of color, low-income neighborhoods, and those experiencing homelessness. The Death in Custody Reporting Act requires reports of all deaths in Custody to the United States Department of Justice for purposes of preventing such deaths. Under-reporting and inconsistencies in death report classifications have posed major barriers to addressing the deaths in custody crisis.

3. Please explain how the proposed policy position will address the issue.

The proposed policy will enable the Association to advocate for improved deaths in custody reporting mechanisms, which will help address barriers to resolving the ongoing deaths in custody crisis.

4. Summary of any minority views or opposition internal and/or external to the ABA which have been identified.

None.