

October 20, 2021

Attn: Erika Harrell, Statistician
Bureau of Justice Statistics
U.S. Department of Justice
810 Seventh Street NW
Washington, DC 20531
Submitted via *reginfo.gov*

RE: Agency Information Collection Activities: Proposed eCollection eComments Requested; Extension of a Currently Approved Collection; Comments Requested: National Crime Victimization Survey (NCVS) [OMB No. 1121-0111]

To Whom It May Concern,

We are grateful for the opportunity to provide comments to the Bureau of Justice Statistics (the “Bureau”) on its above-captioned notice proposing modifications to the National Crime Victimization Survey information collection (“NCVS”). *See* 86 Fed. Reg. 52,207 (Sept. 20, 2021).

The undersigned are scholars affiliated with the Williams Institute at the UCLA School of Law. The Williams Institute is dedicated to conducting rigorous and independent research on sexual orientation and gender identity (“SOGI”), including on violence facing lesbian, gay, bisexual, and transgender (“LGBT”) people. The Williams Institute collects and analyzes original data, as well as analyzes governmental and private data, and has long worked with federal agencies to improve data collection on the U.S. population. These efforts include producing widely cited best practices for the collection of SOGI information on population-based surveys.¹

We write to commend the Bureau for its proposal that questions on the NCVS measuring SOGI “be reinstated and administered to the original universe of all persons age 16 or older . . . [and as part of the] first, third, fifth, and seventh interviews to measure changes in these demographic characteristics over time.”²

¹ *See, e.g.*, GENDER IDENTITY IN U.S. SURVEILLANCE (GENIUSS) GROUP, WILLIAMS INST., BEST PRACTICES FOR ASKING QUESTIONS TO IDENTIFY TRANSGENDER AND OTHER GENDER MINORITY RESPONDENTS ON POPULATION-BASED SURVEYS (2014), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Survey-Measures-Trans-GenIUSS-Sep-2014.pdf>; SEXUAL MINORITY ASSESSMENT RESEARCH TEAM (SMART), WILLIAMS INST., BEST PRACTICES FOR ASKING QUESTIONS ABOUT SEXUAL ORIENTATION ON SURVEYS (2009), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Best-Practices-SO-Surveys-Nov-2009.pdf>.

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.

The NCVS “is the nation’s primary source of information on criminal victimization.”³ Data collected through the NCVS are used to inform policies related to hate violence, sexual and other forms of assault, robbery, property crimes, intimate partner violence, experiences with the criminal legal system, and other related subjects.⁴ Within the federal statistical system, the Bureau has been a leader on the implementation of SOGI measures, with the NCVS having been the first population-based federal survey to measure transgender status and one of the first such surveys to measure sexual orientation. The NCVS has included SOGI measures as of July 2016, when they were implemented for all respondents age 16 and over.⁵ But, beginning in July 2019, the Bureau changed this to include SOGI measures only among victims age 16 and up; the use frequency for these measures was reduced then as well, now being asked at only one point in time while the respondent is in the sample, rather than at four interviews.⁶ The 2019 modification has continued to allow for the identification of LGBT victims in the sample, but it has made it impossible for researchers to calculate the prevalence of violent crime victimization in the LGBT population, and to track this important statistic over time.

In justifying the proposed return to its original implementation of SOGI measures within the NCVS, the Bureau notes its “data quality measures continue to indicate no performance issues” in the collection of SOGI data, including that item nonresponse rates for these measures remained low and consistent over time.⁷ Additionally, the Bureau notes that the percentage of respondents who stopped answering the survey questions measuring SOGI “remained very low as well.”⁸ This is consistent with existing research indicating that data on SOGI can be reliably collected, including that respondents are unlikely to consider SOGI information to be particularly sensitive and would therefore provide it if asked,⁹ and that LGB people are not a population that is difficult to survey.¹⁰ Notably, the federal government has long supported research on best practices for measuring SOGI, including through a federal interagency working group organized by the Federal Committee on Statistical Methodology¹¹ and by funding the research of an ad hoc panel formed by the National Academies of Sciences, Engineering, and Medicine (the “National Academies”) focused on SOGI-related methodological issues.¹²

³ *National Crime Victimization Survey (NCVS)*, BUREAU OF JUSTICE STATISTICS, <https://bjs.ojp.gov/data-collection/ncvs> (last visited Oct. 11, 2021).

⁴ *Id.*

⁵ BUREAU OF JUSTICE STATISTICS, *supra* note 2, at 7.

⁶ *Id.* at 8.

⁷ *Id.* Specifically, for sexual orientation, “the percentage of persons who refused to answer ranged from 2% to 2.5% from 2017 to 2019. For the gender identity items (sex at birth and current gender identity), the percentage who refused to answer was under 1% during the same time period.” *Id.*

⁸ *Id.*

⁹ See, e.g., Sean Cahill et al., *Do Ask, Do Tell: High Levels of Acceptability by Patients of Routine Collection of Sexual Orientation and Gender Identity Data in Four Diverse American Community Health Centers*, 9 PLOS ONE 1 (2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4157837/pdf/pone.0107104.pdf>.

¹⁰ See, e.g., Nancy Bates et al., *Are Sexual Minorities Hard-to-Survey? Insights from the 2020 Census Barriers, Attitudes, and Motivators Study (CBAMS) Survey*, 35 J. OFFICIAL STATS. 709 (2019), <https://sciendo.com/article/10.2478/jos-2019-0030>.

¹¹ See generally *Measuring Sexual Orientation and Gender Identity Research Group*, FED. COMM. STAT. METHODOLOGY (2018), <https://nces.ed.gov/FCSM/SOGL.asp>.

¹² *Measuring Sex, Gender Identity, and Sexual Orientation for the National Institutes of Health*, NAT’L ACADEMIES OF SCIENCES, ENGINEERING, & MED., <https://www.nationalacademies.org/our-work/measuring-sex-gender-identity-and-sexual-orientation-for-the-national-institutes-of-health> (last visited Oct. 11, 2021).

In a recent consensus study, a separate committee convened by the National Academies to research well-being among LGBT people notes that “[e]ffectively addressing disparities related to sexual orientation, gender identity, and intersex status will require collaborative and coordinated efforts among federal, state, and private stakeholders.”¹³ That committee continues, specifically naming the Bureau among the stakeholders it “considers . . . central to implementing [its] recommendations[.]”¹⁴ And indeed, while the need to address the violent victimization of LGBT people is clear,¹⁵ crucial gaps in knowledge about the causes and consequences of the violence that they experience remain.

The NCVS data collected when SOGI measures were asked of all respondents have been an invaluable source of information in this regard. Our own research has demonstrated the utility and significance of data collected by NCVS prior to the implementation of the 2019 change. Our analysis of these data—collected by the Bureau in 2017 and released to the public in 2019—shows that sexual and gender minorities (“SGMs”) were disproportionately victimized across a variety of violent crimes.¹⁶ The rate of violent victimization for SGMs was 71.1 victimizations per 1000 people, compared with 19.2 victimizations per 1000 people for those who were not SGMs.¹⁷ SGMs were 2.7 times more likely to be a victim of violent crime than non-SGMs.¹⁸ In a separate analysis of the NCVS, we pooled data from 2017 and 2018 to estimate the prevalence of violence against gender minorities (e.g., transgender individuals).¹⁹ We found that transgender people experienced 86.2 victimizations per 1000 persons, compared with cisgender people’s 21.7 victimizations per 1000 persons.²⁰ Additionally, households that had a transgender person reported higher rates of property victimization (214.1 per 1000 households) than households with only cisgender people (108 per 1000 households).²¹ These findings raised the

¹³ COMMITTEE ON UNDERSTANDING THE WELL-BEING OF SEXUAL AND GENDER DIVERSE POPULATIONS, NAT’L ACADEMIES OF SCIENCES, ENGINEERING, & MED., UNDERSTANDING THE WELL-BEING OF LGBTQI+ POPULATIONS 398 (2020), <https://www.nap.edu/read/25877/chapter/20#398>.

¹⁴ *Id.* at 400.

¹⁵ See generally CHRISTY MALLORY, BRAD SEARS & LUIS A. VASQUEZ, WILLIAMS INST., BANNING THE USE OF GAY AND TRANS PANIC DEFENSES (2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Gay-Trans-Panic-Apr-2021.pdf> (summarizing research indicating that LGBT people experience disproportionate levels of violence, including intimate partner violence and hate crimes). For examples of federal data on violence experienced by LGBT people collected outside of the NCVS, see generally OFFICE OF JUSTICE PROGRAMS, U.S. DEP’T OF JUSTICE, VIOLENT HATE CRIMES WERE MOST COMMONLY MOTIVATED BY BIAS AGAINST RACE, ETHNICITY OR NATIONAL ORIGIN 1 (2021), https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/hcv0519_hcrle1019_pr_1.pdf (“During the 5-year period of 2015–19 . . . [i]n nearly a quarter of violent hate crime victimizations, victims believed they were targeted because of bias against their gender (24%) or against their sexual orientation (20%).”); *FBI Releases 2020 Hate Crime Statistics*, JUSTICE.GOV, <https://www.justice.gov/hatecrimes/hate-crime-statistics> (reporting that, in 2020, 20.5% of all hate crime victims were targeted because of their sexual orientation and 2.5% were targeted because of their gender identity) (last visited Oct. 11, 2021).

¹⁶ Andrew R. Flores, Lynn Langston, Ilan H. Meyer & Adam P. Romero, *Victimization Rates and Traits of Sexual and Gender Minorities in the United States: Results from the National Crime Victimization Survey, 2017*, 6 SCIENCE ADVANCES (2020), <https://doi.org/10.1126/sciadv.aba6910>.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Andrew R. Flores, Ilan H. Meyer, Lynn Langston, & Jody L. Herman, *Gender Identity Disparities in Criminal Victimization: National Crime Victimization Survey, 2017-2018*, 111 AM. J. PUB. HEALTH 726 (2021), <https://doi.org/10.2105/AJPH.2020.306099>.

²⁰ Odds Ratio = 4.24; 90% Confidence Interval = 1.49, 7.00. *Id.*

²¹ Odds Ratio = 2.25; 90% Confidence Interval = 1.19, 3.31. *Id.*

importance of considering SOGI in the context of violent victimization, and in planning interventions to reduce such crimes.

The Bureau's removal of SOGI measures for all respondents, and reduction in the number of times victims are asked about their SOGI, has limited researchers and policymakers in their ability to fully understand trends and other valuable information related to the violence facing LGBT people. Given the importance of data collected through the NCVS, this may have stymied the development of, for example, targeted violence prevention programs and related enforcement activities.²² We therefore commend the Bureau for its proposal here.

Thank you for your consideration. Please direct any correspondence to meyer@law.ucla.edu.

Respectfully Submitted,

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²² See, e.g., Letter from California, Illinois, Iowa, Maryland, Massachusetts, New Jersey, New Mexico, Oregon, Virginia, and Washington Attorneys General to the Bureau of Justice Statistics (May 11, 2018), <https://nj.gov/oag/newsreleases18/LGBT-data-states-comment-letter.pdf> (noting the opinion of ten states' Attorneys General that the NCVS "is a vital source of national data on violence against LGBTQ youth and a critical tool in combating such violence and reversing these trends, both as a law enforcement matter and on a policy level[]" and that "depriving us of relevant data [through the ultimately implemented 2019 proposal] will unnecessarily constrain our efforts to [protect LGBTQ youth].").

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