U.S. Department of Justice

Office of Justice Programs

Bureau of Justice Statistics

Washington, D.C. 20531

November 19, 2015

Ms. Stephanie Happold
JISC Data Dissemination Committee
C/O Data Dissemination Administrator
PO Box 41170
Olympia, WA 98504-1170

Dear Ms. Happold:

I am writing to request that the JISC Data Dissemination Committee ("**the Committee**") permit a modification to the Data Share Agreement between the State of Washington Administrative Office of the Courts and the Bureau of Justice Statistics ("**BJS**"). The agreement is to provide the terms and conditions under which BJS will receive Washington State court data from the AOC for the Survey of Juveniles Charged in Adult Criminal Court (SJCACC) ("**DSA16225"**).

Specifically, I am requesting modifications to Sections 6 and 14 as described below. Further, based upon our General Counsel's review, we cannot agree to Section 19.5, also as described below.

A. Regarding Section 6, which reads:

   ***6**. The Researchers further agree that the AOC shall have the right, upon reasonable notice, to monitor, audit, and/or review the activities and policies of the Researchers (or any person or entity granted access to information and/or data under Paragraph 5, above) in order to assure compliance with this Agreement.*

   I request a modification of this section that limits the AOC's monitoring, audit, and other review activities to the data provided by the AOC. This is necessary because BJS will be obtaining data from other States as part of the Survey of Juveniles Convicted in Adult Criminal Court (SJCACC) project, and based upon BJS's agreements with other States and based on BJS's standards for assuring the protection of personally-identifiable information in their data, and in order to meet its requirements under law and regulation, BJS cannot provide the AOC with access to the data it receives from other States.

B. Regarding Section 14, which requests AOC review of reports prior to publication and reads:

   ***14.** Researchers will provide the AOC with a copy of any report generated from this research project 60 days prior to publication with the opportunity for the AOC to object*

to the use of its data in the report; however, any objection must be reasonable and rationally based. If such objection is made the data shall be removed from the report.

BJS cannot agree to Section 14 of DSA16225, if the objections to the use of AOC data extend to the statistical content of any report that BJS may produce from the data. As a principal Federal Statistical Agency, BJS must abide by principles of credibility and a strong position of independence from political influences on the content of its reports. Credibility requires that BJS produce data with reliable methods and that the findings that obtain from the analysis of the data are not altered or modified in ways that will violate methodological rigor. The position of independence requires that the statistics that BJS chooses to publish are not determined by political influences. A failure on BJS's part to follow these principles would tarnish its reputation as an honest broker and trusted source of statistical information about the operations of criminal justice systems.

However, as part of its efforts to produce credible statistics, BJS welcomes AOC's review of its methods and use of AOC's data in its reports. To that end, BJS can and will provide the Washington AOC with a copy of any report it produces that is based on AOC data prior to publication for the purposes of determining whether BJS accurately represented the AOC data. As BJS's current publication plans provide for generating national estimates of juveniles convicted in adult criminal courts and not state-specific estimates, it would be impossible for AOC to determine whether BJS accurately represented its data when the AOC data were combined with those from other states; however, to assist AOC, BJS would provide it with separate tabulations based on AOC data alone that show how it handled the AOC data in its report. These tabulations will show national totals and separate totals based on AOC data. BJS would welcome any AOC comments on BJS's methodology and the accuracy of its representation of AOC data.

C. Regarding Section 19.5, which reads:

19.5 GOVERNING LAW: *This Agreement shall be governed in all respects by the laws and statutes of the State of Washington. The venue of any action hereunder shall be in the U.S. District Court for the Western District of Washington.*

Section 19.5 of the current agreement is worded in such a way that it would have the Department of Justice agree to be bound "by the laws and statutes of the State of Washington," which is a provision to which we cannot agree. The venue(s) in which the Department of Justice will bring a legal action or defend a legal action are determined by the Department's litigating divisions after a complete examination of the facts and legal issues. As such, the venue cannot be determined by an agreement signed by a federal statistical agency. BJS is required to execute its responsibilities with all applicable federal statutes and regulations, and wherever a conflict might exist between federal laws and the State of Washington, BJS would be legally bound to adhere to the former, thus rendering the section 19.5 agreement null and void.

Thank you for considering these points. If you have questions about them or want to discuss them, please feel free to contact me at 202-514-1062 (or by email at William.Sabol@usdoj.gov),

or you or your staff may also contact Dr. Howard Snyder who is directly responsible for this project by phone or email at 202-616-8305 or Howard.Snyder@ojp.usdoj.gov.

I look forward to receiving your decision in this matter.

Sincerely,

William J. Sabol
Director

cc: Paula Thompson, Westat
Melissa Sickmund, NCJJ
Peter Brien, Office of the General Counsel of the Office of Justice Programs
Suzanne Strong, BJS
Howard Snyder, BJS