

RPTS KESTERSON

DCMN HOFSTAD

MARKUP OF: H.R. 2189, THE "DEATH  
IN CUSTODY REPORTING ACT OF 2011"

Monday, August 1, 2011

House of Representatives,  
Committee on the Judiciary,  
Washington, D.C.

The committee met, pursuant to call, at 10:07 a.m., in Room 2141, Rayburn House Office Building, Hon. Lamar Smith [chairman of the committee] presiding.

Present: Representatives Smith, Coble, Chabot, King, Franks, Chaffetz, Gowdy, Adams, Nadler, Scott, Watt, Lofgren, Jackson Lee, and Waters.

Staff Present: Sean McLaughlin, Chief of Staff; Allison Halatei, Deputy Chief of Staff/Parliamentarian; Sarah Kish, Clerk; Perry Apelbaum, Minority Staff Director; and Joe Graupensperger, Minority Counsel.

Chairman Smith. The Judiciary Committee will come to order.

And the clerk will call the roll.

The Clerk. Mr. Smith?

Mr. Sensenbrenner?

Mr. Coble?

Mr. Gallegly?

Mr. Goodlatte?

Mr. Lungren?

Mr. Chabot?

Mr. Chabot. Present.

The Clerk. Mr. Issa?

Mr. Pence?

Mr. Forbes?

Mr. King?

Mr. Franks?

Mr. Gohmert?

Mr. Jordan?

Mr. Poe?

Mr. Chaffetz?

Mr. Chaffetz. Present.

The Clerk. Mr. Griffin?

Mr. Marino?

Mr. Gowdy?

Mr. Ross?

Ms. Adams?

Mr. Quayle?

Mr. Conyers?

Mr. Berman?

Mr. Nadler?

Mr. Scott?

Mr. Watt?

Ms. Lofgren?

Ms. Lofgren. Present.

The Clerk. Ms. Jackson Lee?

Ms. Waters?

Mr. Cohen?

Mr. Johnson?

Mr. Pierluisi?

Mr. Quigley?

Ms. Chu?

Mr. Deutch?

Ms. Sanchez?

Mr. Coble?

Ms. Waters?

Ms. Waters. Present.

The Clerk. Mr. Nadler?

Chairman Smith. Let me mention before we formally begin the markup that it is my intention to just take up one bill this morning, and that is H.R. 2189, the "Death in Custody Reporting Act of 2001," a bill by our colleague, Bobby Scott. And then we will adjourn after

we mark up that bill, which I believe is noncontroversial.

And we do need a couple more Members to arrive before we can proceed, but it should not be a long markup.

The Judiciary Committee will come to order.

And let me have Members' attention. I am told that we can proceed even if we don't have a reporting quorum present if there is unanimous consent to do so. And so, if there is no objection by any Member present, we will proceed to consider H.R. 2189, the "Death in Custody Reporting Act of 2011."

Pursuant to notice, I now call up H.R. 2189 for purposes of markup.

And the clerk will report the bill.

The Clerk. H.R. 2189, to encourage States to report to the Attorney General certain --

[The bill follows:]

\*\*\*\*\* INSERT 1-1 \*\*\*\*\*

Chairman Smith. Without objection, the bill will be considered as read.

And I will recognize myself for an opening statement and then go to the gentleman from Virginia, Mr. Scott, for his opening statement. In fact, we may start with the gentleman from Virginia because I may be able to associate myself with his opening statement and his comments. So the gentleman from Virginia, Mr. Scott, is recognized.

Mr. Scott. Thank you, Mr. Chairman.

This bill will require States and Federal law enforcement agencies to report to the Department of Justice information about deaths of individuals in their custody.

We have learned from history about how useful this information is. In the 1980s, there was an increased focus on conditions in State and local jails and prisons and the problem of prisoners dying in custody. The interest and oversight of this issue was generated partly because of the rising tide of wrongful-death cases brought against government agencies in relation to these deaths.

Press reports in the 1990s concerning prison abuses and deaths of those incarcerated being attributed to suicide led Congress to develop legislation in response to the problem. The "Deaths in Custody Reporting Act of 2000" was enacted for States to report quarterly to the Attorney General information regarding the death of any person in the process of arrest or who was otherwise in custody, including jail, prisons, and juvenile facilities.

The law technically expired in 2006, which led to the effort to

reauthorize substantially the same legislation and extend them to Federal agencies, as well, which is what H.R. 2189 would do.

With detailed statistical data, policymakers at State and local and Federal levels can make informed judgments about the appropriate treatment of prisoners and develop ways to lower prisoner death rates. In fact, since the focus on deaths in custody emerged in the 1980s and the enactment of the law in 2000, reports have shown significant declines in suicides and homicides of those in custody. This bill is an important reaffirmation of the importance of requiring States to submit that information and expands the commitment to Federal law enforcement, as well.

The one change in the law is that the sanction for failing to report used to be a loss of 10 percent of Byrne grants. This will make the loss of 10 percent permissible at the discretion of the Attorney General. Obviously, the expectation is that everyone will just do it and comply with a little cajoling by the Attorney General, rather than forfeiture of funds will be what will happen.

For those who view these reports as an administrative burden, I would respond that the only requirement is filling out essentially a half-page report about who, where, and how somebody died in custody. If so many people are dying in the custody of law enforcement that a half-page report becomes an administrative burden, then more the reason for the reports.

This bill has passed twice since it technically expired, and I would hope that we would pass it again so the Senate would actually

take some action.

I yield back.

[The statement of Mr. Scott follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

Chairman Smith. Thank you, Mr. Scott.

I agree with the comments by the gentleman from Virginia and recommend that my colleagues support this bill, as well.

Are there any amendments to the bill?

If not, a reporting quorum being present, the question is on reporting the bill favorably to the House.

Those in favor, say, "Aye."

Opposed, "No."

The ayes have it, and the bill is ordered reported favorably.

Without objection, the bill will be reported, and staff is authorized to make technical and conforming changes. Members will have 2 days to submit their views.

[The information follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

Chairman Smith. That concludes our markup today. We will look forward to seeing everybody back --

Mr. Watt. Mr. Chairman? Mr. Chairman?

Chairman Smith. -- in September to consider other legislation.

The gentleman from North Carolina is recognized.

Mr. Watt. Since some of us were not here when the quorum call was going on, I just wanted to record my presence.

Chairman Smith. Okay. I appreciate the presence and participation of the gentleman from North Carolina. And the gentlewoman from Texas is recognized as being present, as well.

The Judiciary Committee having no further business, we stand adjourned.

[Whereupon, at 10:27 a.m., the committee was adjourned.]