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4 MARKUP OF H.R. 3627, THE KILAH DAVENPORT CHILD PROTECTION

5 ACT OF 2013, AND

6 H.R. 1447, THE DEATH IN CUSTODY REPORTING ACT OF 2013

7 Wednesday, December 4, 2013

8 House of Representatives

9 Committee on the Judiciary

10 Washington, D.C.

11 The committee met, pursuant to call, at 2:50 p.m., in
12 Room 2141, Rayburn House Office Building, Hon. Bob Goodlatte
13 [chairman of the committee] presiding.

14 Present: Representatives Goodlatte, Coble, Smith of
15 Texas, Chabot, Bachus, Issa, Franks, Gohmert, Jordan, Poe,
16 Chaffetz, Marino, Amodei, Labrador, Farenthold, Holding,

17 Collins, DeSantis, Smith of Missouri, Conyers, Scott, Watt,
18 Lofgren, Jackson Lee, Bass, DelBene, Garcia, and Jeffries.

19 Staff Present: Shelley Husband, Majority Staff
20 Director; Branden Ritchie, Majority Deputy Staff
21 Director/Chief Counsel; Allison Halataei, Majority
22 Parliamentarian; Kelsey Deterding, Clerk; Sarah Allen,
23 Majority Counsel; Anthony Angeli, Majority Counsel; Perry
24 Apelbaum, Minority Staff Director; Danielle Brown, Minority
25 Parliamentarian; Ashley McDonald, Minority Counsel; and
26 Joseph Graupensperger, Minority Counsel.

27

28 Chairman Goodlatte. Good afternoon. The Judiciary
29 Committee will come to order.

30 And without objection, the chair is authorized to
31 declare a recess at any time.

32 Pursuant to notice, I now call up H.R. 3627 for purposes
33 of markup and move that the committee report the bill
34 favorably to the House. The clerk will report the bill.

35 Ms. Deterding. H.R. 3627, to require the Attorney
36 General to report on State law penalties for certain child -
37 -

38 Chairman Goodlatte. Without objection, the bill is
39 considered as read and open for amendment at any point.

40 [The information follows:]

41

42 Chairman Goodlatte. And I will begin by recognizing
43 myself for an opening statement.

44 H.R. 3627, the Kilah Davenport Child Protection Act of
45 2013, is named after a 3-year-old girl from North Carolina
46 who was brutally beaten by her stepfather in May 2012.
47 Kilah was put into a coma and suffered a broken collarbone,
48 a fractured skull, brain damage, and paralysis. Her
49 stepfather was charged with felony child abuse and is
50 awaiting trial.

51 Sadly, Kilah's story is not unique. Approximately 3.5
52 million cases of child abuse involving 6 million children
53 are reported every year in the United States. Children
54 under the age of 1 are most likely to be victimized, and the
55 vast majority of this abuse, an estimated 80 percent, is
56 committed by parents, the very people who should be
57 protecting these children from harm.

58 The picture is even worse in Indian Country, where
59 Indian children experience child abuse at significantly
60 higher rates than the rest of the population. One study
61 estimates that 14 Indian children per 1,000 are victims of
62 abuse, as compared to 9 per 1,000 non-Indian children.

63 H.R. 3627, introduced by Mr. Pittenger of North
64 Carolina, would help to highlight how child abuse cases are
65 handled across the country by requiring the Justice
66 Department to issue a report on the criminal penalties for
67 child abuse in the 50 States, the District of Columbia, and
68 the U.S. territories. The bill specifically requires the
69 Justice Department to look at whether the States,
70 territories, and D.C. provide enhanced penalties when the
71 victim, like Kilah, has suffered serious bodily injury or
72 permanent or protracted loss or impairment of any function.

73 This report focuses on State statutes because the
74 majority of child abuse cases are handled and should be
75 handled at the State level. There are parts of the country,
76 however, where the Federal Government has an increased role
77 to play in enforcing justice, primarily in Indian Country
78 and special maritime and territorial jurisdiction.

79 H.R. 3627 helps to strengthen the Federal response to
80 child abuse and all forms of domestic abuse in these areas
81 by amending 18 U.S.C. Section 117 to allow prior convictions
82 for the abuse of a child to trigger the offense of domestic
83 assault by a habitual offender. This is a common sense

84 technical change in an existing statute that could help to
85 prosecute and convict repeat offenders of child abuse.

86 The Kilah Davenport Child Protection Act, unfortunately,
87 will not stop the scourge of child abuse in this country,
88 but it does take meaningful steps toward reducing the
89 instances of this terrible crime, and I encourage my
90 colleagues to support the legislation.

91 The ranking member is not present. Does the ranking
92 member of the subcommittee have a statement?

93 Mr. Scott. Yes, Mr. Chairman.

94 Chairman Goodlatte. The chair is pleased to recognize
95 the gentleman from Virginia for his opening statement.

96 Mr. Scott. Thank you, Mr. Chairman.

97 Mr. Chairman, we all agree that child abuse is a
98 horrific problem, and the abuse of Kilah Davenport is a
99 tragedy. We must take all appropriate steps to prevent such
100 future tragedies.

101 Child abuse is a widespread problem. In 2011,
102 approximately 681,000 children were victims of maltreatment,
103 and approximately 3.3 million children received preventive
104 services from Child Protective Services agencies in the

105 United States. Furthermore, nearly 5 children die every day
106 in America from abuse and neglect, and more than 78 percent
107 of reported child fatalities as a result of abuse and
108 neglect were caused by one or more of the child victim's
109 parents.

110 In addition to harming children directly, child abuse
111 contributes to future crime. Children who experience child
112 abuse and neglect are about nine times more likely to become
113 involved in criminal activity. We should, therefore, get
114 serious about reducing child abuse by enacting the type of
115 meaningful legislation proven to actually reduce child abuse
116 and save money in the process, like nurse-family
117 partnerships.

118 Nurse-family partnerships are evidence-based community
119 health programs that provide home visits from registered
120 nurses to low-income, first-time moms from pregnancy until
121 the child turns 2 years old. In medical and scientific
122 journals, nurse-family partnerships are most often cited as
123 the most effective intervention to reduce and prevent child
124 abuse and neglect.

125 The approach in H.R. 3627, on the other hand, is to

126 allow sentences of up to 10 years -- to increase sentences
127 by up to 10 years for those convicted for the third time for
128 domestic abuse, which, with this bill, will include child
129 abuse. But it only applies to those offenses committed on
130 national parks, military bases, Indian Country, and other
131 Federal land.

132 So of all the cases of child abuse committed nationally,
133 this bill only -- unfortunately reaches only a negligible
134 portion of those cases, those committed on Federal land by
135 people with two prior offenses. I am, therefore, concerned
136 that by increasing penalties for third offenses, this bill
137 implies that judges don't know what to do with a defendant
138 convicted for the third time of this heinous offense.

139 As I have described, child abuse is a serious problem,
140 and in order to determine the appropriateness of expanding
141 Federal laws, we should have had a hearing on this issue,
142 which we did not. We received no evidence suggesting that
143 Federal judges impose such lenient sentences on these three-
144 time offenders that the offenders keep getting out and doing
145 it again.

146 The reason the bill before us can only apply on Federal

147 lands is because we do not have jurisdiction over local
148 crimes. This issue is traditionally a matter for the
149 States, and therefore, the issue might have been best first
150 considered by the Over-Criminalization Task Force.

151 But if our goal is to actually reduce the ravages of
152 child abuse, we should not limit our efforts to the
153 negligible number of prosecutable cases involving third
154 offenses on Federal lands. And I say "prosecutable" because
155 most child abuse isn't even reported at all. Most that are
156 reported are difficult to prosecute because family members
157 are often unwilling to testify against one another.

158 In fact, there is no evidence that the bill would even
159 apply to the Kilah Davenport case. It does not appear that
160 it occurred on Federal land, nor does it appear to be
161 committed by someone with two prior offenses.

162 So if our goal is to actually reduce child abuse cases,
163 we need to focus our efforts on supporting programs which
164 will prevent these cases from happening in the first place.
165 H.R. 3627 does, however, include a worthwhile provision that
166 requires the Attorney General to issue a report outlining
167 the child abuse laws in the 50 States. The States can then

168 review their statutes to see how they can compare to other
169 States and then decide whether or not their laws need to be
170 amended.

171 I agree that we need to do to protect our children from
172 tragic victimization, and we should work together to reduce
173 child abuse. However, I think there are better ways to do
174 it than this bill.

175 Thank you. And I yield back.

176 Chairman Goodlatte. Are there any amendments?

177 Mr. Scott. I have an amendment at the desk.

178 Chairman Goodlatte. The clerk will report the
179 amendment.

180 Ms. Deterding. Amendment to H.R. 3627, offered by Mr.
181 Scott. Page 2, strike line 9 and all that follows through
182 line 14.

183 [The amendment of Mr. Scott follows:]

184

185 Chairman Goodlatte. The gentleman from Virginia is
186 recognized for 5 minutes on his amendment.

187 Mr. Scott. Mr. Chairman, not to belabor the point, but
188 this would strike the criminal penalties from the bill,
189 which was the target of most of my complaint about the bill.

190 And I yield back.

191 Chairman Goodlatte. The chair thanks the gentleman and
192 recognizes himself in opposition to the amendment.

193 This amendment would strike H.R. 3627's modest change to
194 an existing criminal provision. The underlying bill simply
195 makes a technical change to 18 U.S.C. Section 117 to ensure
196 that prior convictions for the abuse of a child can trigger
197 the habitual domestic violence offense.

198 I agree that most child abuse cases are handled and
199 should be handled at the State level. Section 117, however,
200 only covers cases in a very narrow subset of Federal
201 jurisdiction -- most importantly, Indian Country, where the
202 rate of abuse against minors is appalling.

203 One study found that the rate of abuse against Indian
204 children is 50 percent more than for non-Indian children in
205 other areas. And those statistics only capture the reported

206 cases. H.R. 3627 makes a small, but important change to
207 existing law, and I urge my colleagues to oppose this
208 amendment.

209 The question occurs on the amendment offered by the
210 gentleman from Virginia.

211 Those in favor will say aye.

212 Those opposed, no.

213 In the opinion of the chair, the noes have it, and the
214 amendment is not agreed to.

215 Are there any other amendments?

216 [No response.]

217 Chairman Goodlatte. We are still two or three Members
218 short of a reporting quorum. So we will move on to the
219 gentleman from Virginia's bill and revisit this bill when we
220 have a reporting quorum.

221 And before we do that, I want to call attention to all
222 of the Members that this is the final markup for Tony
223 Angeli, the distinguished gentleman sitting immediately to
224 my right, our detailee from the Drug Enforcement
225 Administration.

226 Tony is a supervisory special agent with the DEA, an

227 attorney and former prosecutor, and has been detailed to the
228 Crime Subcommittee for over 2 years. During that time,
229 Tony's contributions to the subcommittee have been
230 invaluable.

231 His expertise in criminal investigations and drug
232 enforcement has greatly benefited the subcommittee staff and
233 members in their legislative and oversight work. Tony was
234 instrumental in the passage of a number of important pieces
235 of legislation, including legislation to curb synthetic
236 drugs, to prohibit the construction of border tunnels, to
237 address counterfeit drug trafficking, to establish a blue
238 alert system for fallen officers, and to reauthorize the
239 Death in Custody Reporting Program, the bill before the
240 subcommittee today.

241 Tony's detail to the subcommittee will end later this
242 month. We thank you very much for your service to the
243 committee, and we wish you the very best in the future, and
244 we hope to see you here around the committee anytime you
245 want.

246 Thank you very much.

247 [Applause.]

248 Chairman Goodlatte. And we are going to miss Tony for
249 other reasons, too, because while we were applauding him, we
250 achieved a reporting quorum.

251 [Laughter.]

252 Chairman Goodlatte. And we are now going to go back to
253 H.R. 3627. A reporting quorum being present, the question
254 is on the motion to report the bill H.R. 3627 favorably to
255 the House.

256 Those in favor will say aye.

257 Those opposed, no.

258 In the opinion of the chair, the ayes have it, and the
259 bill is ordered reported favorably.

260 Members will have 2 days to submit views, without
261 objection. That is it.

262 Pursuant to notice, I now call up H.R. 1447 for purposes
263 of markup and move that the committee report the bill
264 favorably to the House.

265 The clerk will report the bill.

266 Ms. Deterding. H.R. 1447, to encourage States to report
267 to the Attorney General certain information regarding the
268 deaths of individuals in the custody of law --

269 Chairman Goodlatte. Without objection, the bill is
270 considered as read and open for amendment at any point.

271 [The information follows:]

272

273 Chairman Goodlatte. And I will begin by recognizing
274 myself for an opening statement.

275 The Death in Custody Reporting Act of 2000 directed the
276 Bureau of Justice Statistics within the Department of
277 Justice to collect data on deaths that occur at two
278 important stages of the criminal justice system. First,
279 deaths that occur in the process of arrest or during
280 transfer after arrest. And second, deaths that occur in
281 jails and prisons. The provisions of that act expired in
282 December 2006.

283 According to the Bureau of Justice Statistics, 885
284 inmates died in the custody of local jails in 2011. This is
285 the lowest number of jail inmate deaths in the 12-year
286 history of the Death in Custody Reporting Program.

287 Nearly 9 out of every 10 State prison deaths were the
288 result of natural causes, the leading reasons being cancer
289 and heart disease. Although ill-related deaths have
290 increased slightly in recent years, the homicide and suicide
291 rates in State prisons have dramatically decreased over the
292 last 25 years.

293 H.R. 1447 reauthorizes this data collection program and

294 directs the Attorney General not only to collect the data,
295 but also to study the data to determine how to reduce deaths
296 in custody in the future. The legislation extends the
297 reporting requirements to deaths that occur in Federal
298 custody.

299 Although the Death in Custody Reporting Act expired in
300 2006, the Bureau of Justice Statistics has continued to
301 collect this data. They provide a national resource for
302 understanding mortality in the criminal justice system.

303 The collection of this data will help Federal, State,
304 and local governments examine the relationship between
305 deaths in custody and the proper management of jail and
306 prison facilities. It will also provide important
307 information to Congress on any need to improve Federal
308 custody procedures.

309 Because the Bureau of Justice Statistics has continued
310 to collect the information even though the prior law has
311 expired, this bill will not impose any new cost on the
312 agency. Congress passed similar legislation in the last
313 three Congresses with overwhelming bipartisan support. I
314 would like to thank Congressman Scott for introducing this

315 legislation, and I urge my colleagues to support it.

316 At this time, the chair recognizes the ranking member of
317 the committee, the gentleman from Michigan, for his opening
318 statement.

319 Mr. Conyers. Thank you, Chairman.

320 I join with you in thanking our colleague, the ranking
321 member of the Subcommittee on Crime, Bobby Scott. And it is
322 important that we consider the greatest power of any
323 government, any unit of government, is to take away the
324 freedom of a citizen. Sometimes it is the role of the
325 government to do that, as long as there is due process and
326 justice so requires.

327 However, government maintains an important obligation to
328 treat those in its custody in a fair way and to refrain from
329 doing them harm, and it is our role and in the interest of
330 all our citizens that we maintain transparency with respect
331 to the treatment of prisoners and others held in government
332 custody. And that is what this bill is really all about,
333 making sure we have the information we need to conduct
334 oversight concerning the treatment of those incarcerated or
335 otherwise in government custody.

336 A similar proposal turned into a law was sponsored by
337 our former colleague from Arkansas Asa Hutchinson and was
338 enacted in the year 2000. But the grant program with which
339 it was associated expired in 2006, and therefore, we need to
340 reestablish this reporting requirement for the States and
341 extend it to Federal law enforcement agencies as well.

342 And so, I urge my colleagues to support this measure and
343 return the balance of my time.

344 Chairman Goodlatte. The chair thanks the gentleman and
345 recognizes the gentleman from Virginia, the ranking member
346 of the Crime, Terrorism, and Homeland Security and
347 Investigations Subcommittee, and the author of the
348 legislation for 5 minutes.

349 Mr. Scott. Thank you, Mr. Chairman.

350 I would ask unanimous consent to introduce my statement
351 into the record. I think you and the ranking member have
352 adequately described the bill.

353 Chairman Goodlatte. A man of few words is very popular
354 here in the committee today.

355 [Laughter.]

356 Mr. Conyers. But only for today, though.

357 [The statement of Mr. Scott follows:]

358

359 Chairman Goodlatte. Are there any amendments to H.R.
360 1447?

361 [No response.]

362 Chairman Goodlatte. There being none, the question is
363 on reporting the bill favorably to the House.

364 All those in favor will respond by saying aye.

365 Those opposed, no.

366 The ayes have it, and the bill is ordered reported
367 favorably to the House.

368 Members will have 2 days to submit views.

369 The chair is now pleased to recognize the ranking member
370 of the committee.

371 Mr. Conyers. Thank you, Mr. Chairman.

372 I will be very brief, but this may be the last markup in
373 Judiciary Committee that we will be enjoying the company of
374 the distinguished gentleman from North Carolina Mel Watt.

375 And I wanted to say on behalf of all of us, Mel, that your
376 presence here -- and I am not trying to predict what is
377 going to happen in the future, but it looks like this may be
378 the last markup that you will be attending with Judiciary.

379 And it is with fondness that we reflect upon the work

380 that you have collaborated on with all the Members, and we
381 wish you well in all your future activities.

382 Chairman Goodlatte. Would the gentleman yield?

383 Mr. Conyers. With pleasure.

384 Chairman Goodlatte. I thank the gentleman.

385 And first, I want to say I know the long and arduous
386 process that he has followed in the Senate. I hope we are
387 not jinxing him because we don't need that to happen.

388 But I do want to say that I have had the honor and the
389 privilege of serving on this committee with Mel for the
390 entire 21 years that I have served on the committee. And he
391 is a great voice for civil liberties, for common sense. And
392 while we definitely don't agree on every matter that has
393 come before the committee, it has been a pleasure to work
394 with him, and he has made substantial contributions to most
395 every piece of legislation of major import that we have
396 taken up in the committee.

397 And I thank him for his service.

398 Mr. Coble. Mr. Chairman?

399 Chairman Goodlatte. The gentleman from North Carolina
400 seeks recognition.

401 Mr. Coble. I want to say on behalf of the committee to
402 send Mel our best wishes.

403 Chairman Goodlatte. The gentleman from Alabama?

404 Mr. Bachus. One thing I would like to commend Mel on is
405 his choice of a wife, Eulada. She is -- both of them are
406 very intelligent, informed individuals, and I think both of
407 your children, have they graduated from Yale? Is that
408 correct? So I think that is something we would all aspire
409 to.

410 So congratulations on whatever your future holds, Mel.

411 Chairman Goodlatte. The gentleman from Virginia?

412 Mr. Scott. Thank you, Mr. Chairman.

413 It is with mixed feelings that I -- I have been sitting
414 besides Mel for the better part of 21 years, and often, we
415 find ourselves, it is not unusual to find ourselves on the
416 short end of a 35 to 2 split. So it is going to be lonely
417 sometimes being the only one.

418 But you have done a fine job, kept to your principles,
419 and that is what we need more of in this Congress.

420 Thank you very much.

421 Chairman Goodlatte. The gentleman from Texas?

422 Mr. Smith of Texas. Mr. Chairman, I, too, just want to
423 add similar sentiments to those that have been voiced by
424 others and say that I will miss Mel Watt on the committee.
425 He has been particularly thoughtful and articulate and have
426 enjoyed working with him on many occasions on many pieces of
427 legislation.

428 I would only say that he would get even more adulation
429 today if he were to endorse the bill that is on the House
430 floor tomorrow.

431 [Laughter.]

432 Mr. Smith of Texas. But certainly he will be missed,
433 and Mel, I hope you keep in touch with us.

434 Chairman Goodlatte. The gentlewoman from Texas?

435 Ms. Jackson Lee. Thank you, Mr. Chairman.

436 Mr. Chairman -- congratulations. We don't want to jinx
437 him, but we do want to acknowledge that Mel was on the
438 Immigration Subcommittee before I served as the ranking
439 member, and he captures positively and effectively a lot of
440 issue that come through this committee, which I still
441 believe has the greatest jurisdiction of any committee in
442 the House.

443 And I want to congratulate him for that service because
444 he has helped a lot of people as a member of this committee.

445 So, again, congratulations to you, Mel, and best wishes
446 onward. And we will always have a spot for you on this
447 committee.

448 I yield back.

449 Chairman Goodlatte. And the chair now recognizes the
450 gentleman from North Carolina, but not with the hope of the
451 gentleman from Texas that his final speech in the House is
452 going to be in support of the Innovation Act. But we do
453 thank him for the contributions that he made even to that
454 legislation.

455 So the gentleman from North Carolina?

456 Mr. Watt. Thank you, Mr. Chairman.

457 I am going to jump in for fear that somebody else is
458 going to seize the mike. And I should have jumped in
459 earlier and tried to cut off all the nice things that were
460 being said.

461 But I definitely appreciate it. Appreciate all of the
462 wonderful comments. My service on the Judiciary Committee
463 and on the Financial Services Committee has been 21 --

464 approaching 21 years of service now. And I have kind of
465 gone back and forth in my allegiances depending on which
466 committee I was ranking member or sometimes chair of a
467 subcommittee on, but it has been interesting throughout.

468 And I appreciate especially Spencer's comments about my
469 wife. She is far and away the highlight of our family, and
470 his nice comments about my children, both of whom have done
471 very well, and I am very proud of them.

472 I guess it is fitting, as some people made note of
473 yesterday at the Rules Committee, that I would be going out
474 standing on beliefs, since they noted that the White House
475 yesterday issued a statement in support of your Innovation
476 Act. And notwithstanding the fact that I am their nominee,
477 I not only was an adversary of the chair, but I was an
478 adversary of the White House yesterday. And it looks like
479 if this plays itself out appropriately, the same may happen
480 tomorrow.

481 Again, the rumors of my demise may be greatly
482 exaggerated because the Senate has not yet acted, and they
483 have not given me any indication of when that is to occur.
484 But I am hopeful, as I have been throughout this process,

485 that that process will run its course, and it perhaps can
486 happen over the next 2 or 3 weeks. And if this the last
487 markup for this year, it is possible that it could be my
488 last markup in the Judiciary Committee.

489 So I have enjoyed it immensely. I tack it on to 3 years
490 of law school, 22 years of the practice of law, and 21 years
491 of practice on this committee. And I guess that is why they
492 called it the "practice of law" because you never get it
493 right. I continue to practice, and I hope we all continue
494 to do so and strive for the appropriate result. And that is
495 what I have tried to do over the years, and I hope that is
496 what I will be remembered for.

497 Thank you so much, and thank all of you for your
498 kindnesses and for the kind comments today.

499 Chairman Goodlatte. Well, I thank the gentleman, and I
500 know I speak on behalf of all the members of the committee
501 when we wish you Godspeed and a bright future in the Obama
502 administration, and we will smooth over any difficulties
503 with --

504 Mr. Watt. Well, I have to correct you. This is not
505 necessarily in the Obama administration. This is actually

506 an independent agency. So I may yet get to fight both
507 Congress and the White House on a continuing basis.

508 So we will try to do what is right throughout the
509 process, and I guess I demonstrated at the Rules Committee
510 yesterday that at least the rumors that the Senate was
511 putting out that I would be a tool of the administration
512 probably weren't all that accurate. So --

513 Chairman Goodlatte. Well, on that note, this concludes
514 our business for today, and I thank all the Members for
515 attending.

516 And the meeting is adjourned.

517 [Whereupon, at 3:18 p.m., the committee was adjourned.]