

Opening Statement of Chair Jon Ossoff
“Uncounted Deaths in America’s Prisons and Jails: How the Department of Justice Failed to Implement the Death in Custody Reporting Act”
U.S. Senate Permanent Subcommittee on Investigations
Homeland Security and Governmental Affairs Committee
September 20, 2022

The Permanent Subcommittee on Investigations will come to order.

Today, the Subcommittee continues our bipartisan work investigating conditions in prisons, jails, and detention centers across the United States. I thank the Ranking Member for his cooperation.

In July, we released findings of corruption, abuse, and misconduct in the federal prison system, and questioned the now-former Director of the Federal Bureau of Prisons.

Today, after a 10-month bipartisan investigation, we can reveal that despite a clear charge from Congress to determine who is dying in prisons and jails across the country, where they are dying, and why they are dying, the Department of Justice is failing to do so. This failure undermines efforts to address the urgent humanitarian crisis ongoing behind bars across the country.

Our investigation has revealed that last year alone, according to GAO analysis that I requested, the Department of Justice failed to identify at least 990 deaths in custody. Nearly one thousand uncounted deaths, and the true number is likely much higher.

We will hear today from Belinda Maley and Vanessa Fano, whose loved ones died preventably while in custody — in both cases, sons and brothers who died while they were pretrial detainees, having been convicted of no crime. We will hear their grief and anger, a grief and anger shared by many thousands of Americans whose loved ones needlessly suffered and died while incarcerated.

We will hear from Professor Andrea Armstrong of Loyola University to understand why and how DOJ’s failure to oversee prisons and jails undermines Americans’ civil rights.

We will hear from Dr. Gretta Goodwin of the Government Accountability Office, a legislative branch agency that provides investigative services to Congress, which analyzed at my request the death in custody data that DOJ collected in 2021, and who will publicly report those findings today for the first time.

And we will question Ms. Maureen Henneberg, Deputy Assistant Attorney General, about the Department’s failure since 2019 to implement the Death in Custody Reporting Act — a failure that has undermined Federal oversight of conditions in prisons and jails nationwide, and therefore, undermined Americans’ human and Constitutional rights.

Members of Congress swear to ‘support and defend the Constitution of the United States’ — to defend the Constitutional rights of all Americans, in my state and every state, including the rights of those who are incarcerated.

We are here today because what the United States is allowing to happen on our watch in prisons, jails, and detention centers nationwide is a moral disgrace.

As federal legislators serving on the nation's pre-eminent investigative panel, it is our obligation to investigate the federal government's complicity in this disgrace.

Therefore, it's our obligation to ask, what tools the Department of Justice is using to protect the Constitutional rights of the incarcerated — to hold DOJ accountable when it fails to use those tools — and to furnish better, more powerful tools with which the Department can defend civil rights and civil liberties.

There are some bright spots. For example, I was encouraged when Assistant Attorney General Kristen Clarke announced a DOJ investigation of conditions in Georgia's horrific state prisons almost one year ago today.

But it has become clear in the course of this investigation that the Department is failing in its responsibility to implement the Death in Custody Reporting Act — that is, the Department is failing to determine who is dying behind bars, where they are dying, and why they are dying — and therefore failing to determine where and which interventions are most urgently needed to save lives.

In 2000, and then again in 2014, Congress passed the Death in Custody Reporting Act, also known as DCRA, tasking DOJ with the collection and analysis of custodial death data nationwide.

DOJ itself describes this law as, quote, 'an opportunity to improve understanding of why deaths occur in custody and develop solutions to prevent avoidable deaths.'

For nearly twenty years, DOJ collected and published this data — an invaluable resource for the Department, for the Congress, and for the public.

Then, abruptly, that publication stopped, and our investigation followed.

We found that in recent years, and over multiple Administrations, the Department's implementation of this law has failed, despite clear internal warnings from DOJ's own Inspector General and DOJ's Bureau of Justice Statistics.

For example:

- In the first quarter of FY 20, the Department of Justice did not capture any state prison deaths in 11 states or any jail deaths in 12 states and the District of Columbia.
- In FY 21 alone, according to GAO analysis produced at our request, the Department failed identify nearly 1,000 deaths, and my assessment is the true number is likely much higher. Of those records that were collected, 70% were incomplete, and 40% of records failed to capture the circumstances of death.

The Department of Justice has:

- Failed to collect complete or accurate state and local death data for the past two years; and
- Failed to report to Congress how data about deaths in custody can be used to save lives — a report required by law that is now six years past due and, and we recently learned, is not expected to be produced for another two years.
- PSI’s investigation also found that the Department has no plans to make state and local death data public again — despite the obvious public interest in this transparency.

Now today’s hearing may dive at times into arcane discussions of administrative regulations or the close parsing of legislative text.

And those discussions are relevant. They are relevant.

If the Department has concluded in 2022, eight years after this law was reauthorized, that it is incapable of successfully implementing it, I am surely willing to work with them to help fix that.

But this hearing is about something more fundamental.

Americans are needlessly dying, and are being killed, while in the custody of their own government.

In our July hearing focused on the federal prison system, we revealed that federal pretrial detainees have been denied proper nutrition, hygiene, and medical care; endured months of lockdowns with limited or no access to the outdoors or basic services; and had rats and roaches infested their cells.

We revealed that federal inmates killed themselves while the basic practices of suicide prevention and wellness checks were neglected — abusive and unconstitutional practices by the Federal government that likely led to loss of life in federal facilities.

We revealed that the Bureau of Prisons, an agency of the Department of Justice, was warned for years by its own investigators of corruption and misconduct in its own facility, of a ‘lack of regard for human life’ by its own personnel.

Today, we will hear about the experiences of Americans in state and local prisons and jails, Americans entitled to Constitutional rights no matter whether they are incarcerated—no matter whether they are incarcerated. And we’ll hear about Americans who died in custody, many of whose deaths and causes of death are not being counted by the federal government— As the federal government is bound to count them. The same federal government obligated to defend their constitutional rights

Before I yield to the Ranking Member, and with Ms. Maley's permission, I'm going to share an audio clip of the last phone call that she shared with her son while he was jailed — a pretrial detainee who was never convicted of any crime.

I want to want those who are tuned in across the country that this is a disturbing clip. And while this audio plays, ask how we might feel on either end of this call. Please play the audio.

[AUDIO PLAYS]:

Mother: Matthew?

Loflin: Hey.

Mother: Okay, listen I found out everything I can. I'm gonna try to get... um, I'm having lawyers and the sheriff and all this other kind of shit trying to make it so I can come in there and see you. I am trying also to get you out of there and get you . . .

Loflin: I need to go to the hospital.

Mother: I know...

Loflin: I'm gonna die in here.

Mother: I know you are Matthew. I am doing everything I can to get you out, and so I can see you. Hello?

Loflin: Yeah.

Maley: They're doing everything they can.

PHONE: There are 15 seconds remaining.

Loflin: I've been coughing up blood and my feet are swollen. It hurts, Mom.

Mother: I know Matthew, I know what is wrong with you. I told you this would happen. I love you, Matthew. They are going to cut us off...

Loflin: I love you too. I'm gonna die in here...

The crisis in America's prisons, jails, and detention centers is ongoing and unconscionable. The Department of Justice and the Congress must treat this as the emergency to Constitutional rights that it is.

Senator Johnson, I yield to you.