

118TH CONGRESS
1ST SESSION

S. _____

To establish an inspections regime for the Bureau of Prisons, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. OSSOFF (for himself, Mr. BRAUN, and Mr. DURBIN) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To establish an inspections regime for the Bureau of Prisons, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Federal Prison Over-
5 sight Act”.

6 **SEC. 2. CREATION OF AN INSPECTIONS REGIME FOR THE**
7 **BUREAU OF PRISONS.**

8 (a) IN GENERAL.—Section 413 of title 5, United
9 States Code, is amended by adding at the end the fol-
10 lowing:

1 “(e) INSPECTIONS REGIME.—

2 “(1) DEFINITIONS.—In this subsection:

3 “(A) BUREAU.—The term ‘Bureau’ means
4 the Bureau of Prisons.

5 “(B) COVERED FACILITY.—The term ‘cov-
6 ered facility’—

7 “(i) means a correctional facility oper-
8 ated by the Bureau; and

9 “(ii) does not include a State, local,
10 Tribal, or territorial facility.

11 “(C) FAMILY MEMBER.—The term ‘family
12 member’ includes a grandparent, parent, sib-
13 ling, spouse or domestic partner, child, aunt,
14 uncle, cousin, niece, nephew, grandchild, or any
15 other person related to an individual by blood,
16 adoption, marriage, civil union, or a romantic
17 or fostering relationship.

18 “(D) INSPECTOR GENERAL.—The term
19 ‘Inspector General’ means the Inspector Gen-
20 eral of the Department of Justice.

21 “(E) OMBUDSMAN.—The term ‘Ombuds-
22 man’ means the Ombudsman established under
23 paragraph (3)(A).

24 “(F) REPRESENTATIVE OF AN INCARCER-
25 ATED PERSON.—The term ‘representative of an

1 incarcerated person’ includes paid or unpaid
2 legal counsel or any other person or entity cho-
3 sen by an incarcerated person to represent the
4 interests of the incarcerated person.

5 “(G) SEXUAL ABUSE.—The term ‘sexual
6 abuse’ has the meaning given that term in sec-
7 tion 115.6 of title 28, Code of Federal Regula-
8 tions (or any successor thereto).

9 “(H) STAFF.—The term ‘staff’ means em-
10 ployees and contractors of the Bureau.

11 “(2) INSPECTIONS OF COVERED FACILITIES BY
12 THE INSPECTOR GENERAL.—

13 “(A) ESTABLISHMENT OF INSPECTIONS
14 REGIME.—

15 “(i) IN GENERAL.—The Inspector
16 General shall conduct periodic inspections
17 of covered facilities pursuant to the re-
18 quirements of this subsection.

19 “(ii) ACCESS TO COVERED FACILI-
20 TIES.—The Attorney General shall ensure
21 that the Inspector General has access to
22 any covered facility, including the incarcer-
23 ated people, detainees, staff, bargaining
24 unit representative organization, and any
25 other information that the Inspector Gen-

1 eral determines is necessary to carry out
2 the provisions of this subsection.

3 “(iii) NOTICE OF INSPECTIONS.—An
4 inspection of a covered facility under this
5 subsection may be announced or unan-
6 nounced.

7 “(iv) COMMUNITY INPUT.—In devel-
8 oping the inspections regime under this
9 subsection, the Inspector General is en-
10 couraged to consult formerly incarcerated
11 people, family or representatives of incar-
12 cerated people, and community advocates.

13 “(B) INSPECTION CRITERIA.—An inspec-
14 tion of a covered facility under this subsection
15 may include an assessment of the following:

16 “(i) The policies, procedures, and ad-
17 ministrative guidance of the facility.

18 “(ii) The conditions of confinement.

19 “(iii) Working conditions for staff.

20 “(iv) The availability of evidence-
21 based recidivism reduction programs and
22 productive activities, as such terms are de-
23 fined in section 3635 of title 18, and the
24 application of earned time credits pursuant
25 to section 3632 of title 18.

1 “(v) The policies and procedures re-
2 relating to visitation.

3 “(vi) The policies and practices relat-
4 ing to classification and housing.

5 “(vii) The policies and practices relat-
6 ing to the use of single-cell confinement,
7 administrative segregation, and other
8 forms of restrictive housing.

9 “(viii) The medical facilities and med-
10 ical and mental health care, programs, pro-
11 cedures, and policies, including the number
12 and qualifications of medical and mental
13 health staff and the availability of gender-
14 appropriate and trauma-responsive care for
15 incarcerated people.

16 “(ix) Medical services and mental
17 health resources for staff.

18 “(x) Lockdowns at the facility.

19 “(xi) Credible allegations of incidents
20 involving excessive use of force, completed,
21 attempted, or threatened violence, includ-
22 ing sexual abuse, or misconduct committed
23 against incarcerated people.

24 “(xii) Credible allegations of incidents
25 involving completed, attempted, or threat-

1 ened violence, including sexual violence or
2 sexual abuse, committed against staff.

3 “(xiii) Adequacy of staffing at the
4 covered facility, including the number and
5 job assignments of staff, the ratio of staff
6 to inmates at the facility, the staff position
7 vacancy rate at the facility, and the use of
8 overtime, mandatory overtime, and aug-
9 mentation.

10 “(xiv) Deaths or serious injuries of in-
11 carcerated people or staff that occurred at
12 the facility.

13 “(xv) The existence of contraband
14 that jeopardizes the health or safety of in-
15 carcerated people or staff, including inci-
16 dent reports, referrals for criminal pros-
17 ecution, and confirmed prosecutions.

18 “(xvi) Access of incarcerated people
19 to—

20 “(I) legal counsel, including con-
21 fidential meetings and communica-
22 tions;

23 “(II) discovery and other case-re-
24 lated legal materials; and

1 spected, with regard to a covered facility or
2 group of covered facilities.

3 “(D) REPORT.—

4 “ (i) IN GENERAL.—Upon completion
5 of an inspection of a covered facility under
6 this subsection, or a group of inspections
7 that assess the same or similar issues at
8 more than 1 facility, the Inspector General
9 shall produce a report to be made available
10 to the Attorney General, the Committee on
11 the Judiciary of the Senate, the Committee
12 on the Judiciary of the House of Rep-
13 resentatives, employee representative orga-
14 nizations, and the public, that addresses 1
15 or more of the following topics:

16 “(I) A characterization of the
17 conditions of confinement and work-
18 ing conditions, including a summary
19 of the inspection criteria reviewed
20 under clauses (ii) and (iii) of subpara-
21 graph (B).

22 “(II) Recommendations made to
23 the covered facility to improve safety
24 and conditions within the facility, in-

1 cluding recommendations regarding
2 staffing.

3 “(III) A recommended timeline
4 for the next inspection and assess-
5 ment, which shall not limit the au-
6 thority of the Inspector General to
7 perform additional inspections and as-
8 sessments, announced or unan-
9 nounced.

10 “(IV) Any other issues or mat-
11 ters identified during the inspection of
12 the facility or facilities.

13 “(ii) CONSULTATION WITH STAKE-
14 HOLDERS.—In developing the rec-
15 ommendations described in clause (i), the
16 Inspector General may consult with stake-
17 holders, including employee representative
18 organizations.

19 “(E) RISK SCORE.—Not later than 18
20 months after the date of enactment of the Fed-
21 eral Prison Oversight Act, the Inspector Gen-
22 eral shall establish methodology and protocols
23 for determining the combined risk score of a
24 covered facility, which—

1 “(i) shall be delivered to the Com-
2 mittee on the Judiciary of the Senate and
3 the Committee on the Judiciary of the
4 House of Representatives; and

5 “(ii) may be based on—

6 “(I) frequency and duration of
7 lockdowns;

8 “(II) availability of program-
9 ming;

10 “(III) staffing levels;

11 “(IV) access to adequate physical
12 and mental health resources;

13 “(V) incidences of physical as-
14 sault, neglect, or sexual abuse;

15 “(VI) opportunity to maintain
16 family ties through phone calls, video
17 calls, mail, email, and visitation;

18 “(VII) adequacy of the nutrition
19 provided;

20 “(VIII) amount or frequency of
21 staff discipline cases;

22 “(IX) amount or frequency of
23 misconduct by people incarcerated at
24 the covered facility;

1 “(X) access of incarcerated peo-
2 ple to—

3 “(aa) legal counsel, includ-
4 ing confidential meetings and
5 communications;

6 “(bb) discovery and other
7 case-related legal materials; and

8 “(cc) the law library at the
9 covered facility; and

10 “(XI) other factors as deter-
11 mined by the Inspector General.

12 “(F) BUREAU RESPONSE TO REPORT.—

13 “(i) IN GENERAL.—Not later than 60
14 days after the date on which the Inspector
15 General issues a report under subpara-
16 graph (D), the Bureau shall respond in
17 writing to the inspection report, which
18 shall include a corrective action plan.

19 “(ii) PUBLIC AVAILABILITY.—Each
20 response and action plan described in
21 clause (i) shall be made available to the
22 public on the website of the Inspector Gen-
23 eral.

24 “(iii) COMPLIANCE WITH CORRECTIVE
25 ACTION PLAN.—The Inspector General

1 may conduct additional inspections or in-
2 vestigations, announced or unannounced,
3 to monitor the compliance of the Bureau
4 with a corrective action plan described in
5 clause (i).

6 “(G) RULE OF CONSTRUCTION.—The au-
7 thority in this paragraph is consistent with and
8 does not supersede, conflict with, or otherwise
9 alter the authority provided to the Inspector
10 General under section 406.

11 “(3) OMBUDSMAN.—

12 “(A) IN GENERAL.—Not later than 1 year
13 after the date of enactment of the Federal Pris-
14 on Oversight Act, the Attorney General shall es-
15 tablish in the Department of Justice an Om-
16 budsman who may—

17 “(i) receive a complaint from an in-
18 carcerated person, a family member, a rep-
19 resentative of an incarcerated person, staff,
20 or others regarding issues that may ad-
21 versely affect the health, safety, welfare, or
22 rights of incarcerated people or staff, in-
23 cluding—

24 “(I) abuse or neglect;

1 “(II) the conditions of confine-
2 ment, including the availability of
3 health care;

4 “(III) working conditions of
5 staff;

6 “(IV) decisions, administrative
7 actions, or guidance of the Bureau,
8 including those relating to prison
9 staffing;

10 “(V) inaction or omissions by the
11 Bureau, including failure to consider
12 or respond to complaints or grievances
13 by incarcerated people or staff
14 promptly or appropriately;

15 “(VI) policies, rules, or proce-
16 dures of the Bureau, including gross
17 mismanagement; and

18 “(VII) alleged violations of non-
19 criminal law by staff or incarcerated
20 people that may adversely affect the
21 health, safety, welfare, or rights of
22 any person;

23 “(ii) refer a complainant and others
24 to appropriate resources or Federal agen-
25 cies;

1 rehabilitation of incarcerated people;
2 or

3 “(III) any allegation of criminal
4 or administrative misconduct, as de-
5 scribed in subsection (b)(2), and shall
6 refer any matter covered by sub-
7 section (b)(2) to the Inspector Gen-
8 eral, who may, at the discretion of In-
9 spector General, refer such allegations
10 back to the Ombudsman or the inter-
11 nal affairs office of the appropriate
12 component of the Department of Jus-
13 tice; and

14 “(ii) may not levy any fees for the
15 submission or investigation of complaints.

16 “(C) DECISION ON THE MERITS OF A COM-
17 PLAINT.—At the conclusion of an investigation
18 of a complaint, the Ombudsman shall—

19 “(i) render a decision on the merits of
20 each complaint;

21 “(ii) communicate the decision to the
22 complainant, if any, and to the Bureau;
23 and

24 “(iii) state the recommendations and
25 reasoning of the Ombudsman if, in the

1 opinion of the Ombudsman, the Bureau or
2 any employee thereof should—

3 “(I) consider the matter further;

4 “(II) modify or cancel any action;

5 “(III) alter a rule, practice, or
6 ruling;

7 “(IV) explain in detail the ad-
8 ministrative action in question; or

9 “(V) rectify an omission.

10 “(D) ACTIONS FOLLOWING A DECISION BY
11 THE OMBUDSMAN.—

12 “(i) REQUEST FOR INFORMATION
13 ABOUT ACTIONS TAKEN.—If the Ombuds-
14 man so requests, the Bureau shall, within
15 the time specified, respond to any inquiry
16 or request for information from the Om-
17 budsman and inform the Ombudsman
18 about any action taken on the rec-
19 ommendations provided by the Ombuds-
20 man or the reasons for not complying with
21 any request for information or rec-
22 ommendations.

23 “(ii) REPORTING OF CONTINUING
24 ISSUES.—If the Ombudsman believes,
25 based on an investigation conducted by the

1 Ombudsman, that there has been or con-
2 tinues to be a significant health, safety,
3 welfare, working conditions, or rehabilita-
4 tion issue, the Ombudsman shall report the
5 finding to the Attorney General, the Com-
6 mittee on the Judiciary of the Senate, and
7 the Committee on the Judiciary of the
8 House of Representatives.

9 “(iii) MONITORING OF INTERNAL DIS-
10 CIPLINARY ACTIONS OF THE BUREAU.—In
11 the event that the Bureau conducts an in-
12 ternal disciplinary investigation or review
13 of 1 or more staff members of the Bureau
14 as a result of an investigation by the Om-
15 budsman, the Ombudsman may monitor
16 the internal disciplinary action to ensure a
17 fair and objective process.

18 “(4) INSPECTOR GENERAL AND OMBUDSMAN
19 ACCESS TO BUREAU OF PRISONS FACILITIES.—

20 “(A) IN GENERAL.—Upon demand, in per-
21 son or in writing and with or without prior no-
22 tice, the Inspector General and the Ombudsman
23 shall be granted access to all Bureau facilities,
24 which shall include—

1 “(i) all areas that are used by incar-
2 cerated people, all areas that are accessible
3 to incarcerated people, and access to pro-
4 grams for incarcerated people at any time
5 of day; and

6 “(ii) the opportunity to—

7 “(I) conduct private and con-
8 fidential interviews with any incarcer-
9 ated person, staff, employee represent-
10 ative organization, or other person;
11 and

12 “(II) communicate privately and
13 confidentially, both formally and in-
14 formally, with incarcerated people or
15 staff by telephone, mail, electronic
16 communication, and in person, which
17 shall not be monitored or recorded by
18 or conducted in the presence of staff.

19 “(B) PURPOSE OF VISITS.—Access to Bu-
20 reau facilities under subparagraph (A) is for
21 the purposes of—

22 “(i) conducting announced or unan-
23 nounced inspections by the Inspector Gen-
24 eral as described in paragraph (2), includ-
25 ing inspections to monitor the compliance

1 of the Bureau with a corrective action plan
2 described in paragraph (2)(F)(i);

3 “(ii) conducting an investigation or
4 other activity by the Ombudsman as de-
5 scribed in paragraph (3); and

6 “(iii) inspecting, viewing,
7 photographing, and video recording all
8 areas of the facility that are used by incar-
9 cerated people or are accessible to incarcer-
10 ated people.

11 “(C) ACCESS TO DOCUMENTS.—

12 “(i) IN GENERAL.—The Inspector
13 General and the Ombudsman have the
14 right to access, inspect, and copy all rel-
15 evant information, records, or documents
16 in the possession or control of the Bureau
17 that either the Inspector General or the
18 Ombudsman considers necessary in an in-
19 spection, investigation, or other activity,
20 and the Bureau shall assist the Inspector
21 General and the Ombudsman in obtaining
22 the necessary releases for those documents
23 that are specifically restricted or privileged
24 for use by the Bureau.

1 “(ii) PRODUCTION OF RECORDS.—
2 Following notification from the Inspector
3 General or the Ombudsman with a written
4 demand for access to Bureau records, the
5 Bureau shall provide access to the re-
6 quested documentation in a manner con-
7 sistent with section 552a (commonly
8 known as the ‘Privacy Act of 1974’)—

9 “(I) not later than 20 business
10 days after receipt of the written re-
11 quest; or

12 “(II) in the case of records per-
13 taining to the death of an incarcer-
14 ated person or staff, threats of bodily
15 harm including sexual or physical as-
16 saults, or the denial or delay of nec-
17 essary medical treatment, not later
18 than 5 business days after receipt of
19 the written request, unless the Inspec-
20 tor General or the Ombudsman con-
21 sents to an extension of that time
22 frame.

23 “(D) MINIMIZE DISRUPTION OF OPER-
24 ATIONS.—The Inspector General and the Om-
25 budsman shall—

1 “(i) develop procedures—

2 “(I) to ensure that the Inspector
3 General has access to, and the right
4 to review and investigate, any allega-
5 tions received by the Ombudsman to
6 ensure that the Inspector General
7 may carry out the authorities provided
8 to the Inspector General under this
9 chapter; and

10 “(II) that may provide that the
11 Inspector General and the Ombuds-
12 man will determine certain categories
13 of allegations that are not necessary
14 for the Inspector General to review
15 prior to the Ombudsman proceeding;

16 “(ii) work with the Bureau to mini-
17 mize disruption to the operations of the
18 Bureau due to inspections, investigations,
19 or other activity;

20 “(iii) comply with the security clear-
21 ance processes of the Bureau, provided
22 these processes do not impede the activities
23 described in this subsection; and

1 “(iv) limit the public release of any
2 photographs or video recordings that would
3 jeopardize—

4 “(I) the safety, security, or good
5 order of a covered facility or the Bu-
6 reau; or

7 “(II) public safety.

8 “(E) RULE OF CONSTRUCTION.—The au-
9 thority in this paragraph is consistent with and
10 does not supersede, conflict with, or otherwise
11 alter the authority provided to the Inspector
12 General under section 406.

13 “(5) CONFIDENTIALITY.—

14 “(A) IN GENERAL.—Correspondence and
15 communication with the Inspector General and
16 the Ombudsman, including communication re-
17 garding an issue described in section 4051 of
18 title 18 is confidential and shall be protected as
19 privileged correspondence in the same manner
20 as legal correspondence or communications.

21 “(B) PROCEDURES.—Subject to subpara-
22 graph (C), the Inspector General and the Om-
23 budsman shall establish confidentiality proce-
24 dures for all information maintained by the re-
25 spective office to ensure that, to the greatest

1 extent practicable, before, during, or after an
2 investigation—

3 “(i) staff are not aware of the identity
4 of a complainant; and

5 “(ii) other incarcerated people are not
6 aware of the identity of a complainant.

7 “(C) EXCEPTION.—The Inspector General
8 and the Ombudsman may disclose identifying
9 information for the sole purpose of carrying out
10 an investigation and as otherwise authorized
11 under section 407(b).

12 “(6) FILING COMPLAINTS.—

13 “(A) FILING COMPLAINTS ON BEHALF OF
14 AN INCARCERATED INDIVIDUAL.—

15 “(i) ONLINE FORM.—The Ombuds-
16 man shall create a secure online form to be
17 made available on the website of the Om-
18 budsman where the family members,
19 friends, and representatives of incarcerated
20 people can submit complaints and inquiries
21 on issues identified in paragraph (3)(A)(i)
22 on behalf of an individual incarcerated at
23 a covered facility.

24 “(ii) TELEPHONE HOTLINE.—The
25 Ombudsman shall create a telephone hot-

1 line through which family members,
2 friends, and representatives of incarcerated
3 people can call to file complaints and in-
4 quires on issues identified in paragraph
5 (3)(A)(i) on behalf of an individual incar-
6 cerated at a covered facility.

7 “(B) FILING COMPLAINTS BY AN INCAR-
8 CERATED INDIVIDUAL.—

9 “(i) INTERNAL PRIVATE SUBMIS-
10 SION.—The Bureau shall provide multiple
11 internal ways for incarcerated individuals
12 in covered facilities to privately submit to
13 the Ombudsman complaints and inquiries
14 on issues identified in paragraph (3)(A)(i).

15 “(ii) SUBMISSION VIA INDEPENDENT
16 ENTITY.—The Bureau shall also provide
17 not less than 1 process for incarcerated in-
18 dividuals in covered facilities to submit
19 complaints and inquiries on issues identi-
20 fied in paragraph (3)(A)(i) to a public or
21 private entity or office that is not part of
22 the Bureau and that is able to receive and
23 immediately forward complaints and in-
24 quires to the Ombudsman, allowing the in-

1 carcerated individual to remain anonymous
2 upon request.

3 “(C) DETERMINATION.—

4 “(i) CONFIRMATION OF RECEIPT.—
5 Not later than 5 business days after sub-
6 mission of a complaint or inquiry under
7 subparagraph (A) or (B), the Ombudsman
8 shall confirm receipt.

9 “(ii) DETERMINATION.—Not later
10 than 15 business days after issuing the
11 confirmation under clause (i), the Ombuds-
12 man shall make a determination as to
13 whether any action is warranted and notify
14 the complainant of the determination.

15 “(iii) STATEMENT REGARDING DECISION.—If the Ombudsman has determined
16 action is unwarranted under clause (ii), the
17 Ombudsman shall provide a written state-
18 ment explaining the decision to the com-
19 plainant.
20 plainant.

21 “(D) PUBLIC EDUCATION.—The Ombuds-
22 man shall coordinate with the Bureau to edu-
23 cate incarcerated people, representatives of in-
24 carcerated people, and the public about the ex-
25 istence and functions of the Ombudsman.

1 “(E) ADMINISTRATIVE EXHAUSTION.—
2 Nothing in this paragraph shall be construed as
3 a necessary administrative remedy required for
4 exhaustion under section 7(a) of the Civil
5 Rights of Institutionalized Persons Act (42
6 U.S.C. 1997e(a)).

7 “(7) PROHIBITION ON RETALIATION.—

8 “(A) IN GENERAL.—The Bureau and staff
9 of the Bureau shall not discharge, retaliate
10 against, or in any manner discriminate against
11 any complainant or any person or entity that
12 has instituted or caused to be instituted any
13 proceeding, investigation, or inspection under or
14 related to this subsection.

15 “(B) INVESTIGATION.—Any alleged dis-
16 charge of, retaliation against, or discrimination
17 against a complainant, entity, or person be-
18 cause of a complaint, investigation, or inspec-
19 tion may be considered by the Ombudsman as
20 an appropriate subject of an investigation or
21 other activity.

22 “(8) DUE PROCESS PROTECTIONS.—

23 “(A) IN GENERAL.—The Attorney General
24 and the Inspector General shall ensure that im-
25 plementation of this subsection is consistent

1 with section 552a (commonly known as the
2 ‘Privacy Act of 1974’) and all other applicable
3 laws, and respects appropriate due process pro-
4 tections for staff.

5 “(B) RULE OF CONSTRUCTION.—Nothing
6 in this paragraph shall be construed to modify,
7 supersede, or otherwise affect the authority of
8 the Inspector General to access all records, re-
9 ports, audits, reviews, documents, papers, rec-
10 ommendations, or other materials, as author-
11 ized by section 406(a).

12 “(9) PERCENTAGE OF ANNUAL APPROPRIATION
13 FOR THE BUREAU OF PRISONS.—It is the sense of
14 Congress that the amount allocated to the Inspector
15 General and the Ombudsman to carry out the activi-
16 ties described in this subsection should equal an
17 amount between 0.2 percent and 0.5 percent of the
18 annual appropriation for the Bureau.”.

19 (b) EFFECTIVE DATE.—This Act, and the amend-
20 ments made by this Act, shall take effect on the date that
21 is 90 days after the date on which appropriations are
22 made available to the Inspector General of the Depart-
23 ment of Justice and the Department of Justice for the
24 specific purpose of carrying out the provisions of this Act
25 and the amendments made by this Act.