

117TH CONGRESS
2D SESSION

S. 4988

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

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 28, 2022

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

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 8E of the Inspector Gen-
9 eral Act of 1978 (5 U.S.C. App.) is amended by adding
10 at the end the following:

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, territorial, or private correctional
11 facility at which Federal prisoners are
12 housed under an agreement with the Bu-
13 reau.

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

21 “(D) INSPECTOR GENERAL.—The term
22 ‘Inspector General’ means the Inspector Gen-
23 eral of the Department of Justice.

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

4 “(F) REPRESENTATIVE OF AN INCARCER-
 5 ATED PERSON.—The term ‘representative of an
 6 incarcerated person’ includes paid or unpaid
 7 legal counsel or any other person or entity cho-
 8 sen by an incarcerated person to represent the
 9 interests of the incarcerated person.

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

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

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

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

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

1 other information that the Inspector Gen-
2 eral determines is necessary to carry out
3 the provisions of this subsection.

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

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

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

13 “(ii) The conditions of confinement.

14 “(iii) Working conditions for staff.

15 “(iv) The availability of evidence-
16 based recidivism reduction programs and
17 productive activities, as such terms are de-
18 fined in section 3635 of title 18, United
19 States Code, and the application of earned
20 time credits pursuant to section 3632 of
21 title 18, United States Code.

22 “(v) The policies and procedures re-
23 lating to visitation.

24 “(vi) The policies and practices relat-
25 ing to the use of single-cell confinement,

1 administrative segregation, and other
2 forms of restrictive housing.

3 “(vii) The medical facilities and med-
4 ical and mental health care, programs, pro-
5 cedures, and policies, including the number
6 and qualifications of medical and mental
7 health staff and the availability of gender-
8 appropriate and trauma-responsive care for
9 incarcerated people.

10 “(viii) Medical services and mental
11 health resources for staff.

12 “(ix) Lockdowns at the facility.

13 “(x) Credible allegations of incidents
14 involving excessive use of force, completed,
15 attempted, or threatened violence, includ-
16 ing sexual violence, or misconduct com-
17 mitted against incarcerated people.

18 “(xi) Credible allegations of incidents
19 involving completed, attempted, or threat-
20 ened violence, including sexual violence,
21 committed against staff.

22 “(xii) Adequacy of staffing at the cov-
23 ered facility, including the number and job
24 assignments of staff, the ratio of staff to
25 inmates at the facility, the staff position

1 vacancy rate at the facility, and the use of
2 overtime, mandatory overtime, and aug-
3 mentation.

4 “(xiii) Deaths or serious injuries of
5 incarcerated people or staff that occurred
6 at the facility.

7 “(xiv) The existence of contraband
8 that jeopardizes the health or safety of in-
9 carcerated people or staff, including inci-
10 dent reports, referrals for criminal pros-
11 ecution, and confirmed prosecutions.

12 “(xv) Access of incarcerated people
13 to—

14 “(I) legal counsel, including con-
15 fidential meetings and communica-
16 tions;

17 “(II) discovery and other case-re-
18 lated legal materials; and

19 “(III) the law library at the cov-
20 ered facility.

21 “(xvi) Any aspect of the operation of
22 the covered facility that the Inspector Gen-
23 eral determines to be necessary over the
24 course of an inspection.

“(C) INSPECTION SCHEDULE.—An inspection of a covered facility under this subsection shall be conducted on a schedule based on the combined risk score of the covered facility as described in subparagraph (E) and the following considerations:

“(i) Higher risk facilities shall receive more frequent inspections.

“(ii) The Inspector General shall re-evaluate the combined risk score methodology and inspection schedule periodically and may alter 1 or both to ensure that higher risk facilities are identified and receiving the appropriate frequency of inspection.

“(D) REPORT.—

“(i) IN GENERAL.—Upon completion of an inspection of a covered facility under this subsection, or a group of inspections that assess the same or similar issues at more than 1 facility, the Inspector General shall produce a report to be made available to the Attorney General, the Committee on the Judiciary of the Senate, the Committee on the Judiciary of the House of Rep-

1 representatives, employee representative orga-
2 nizations, and the public, that addresses 1
3 or more of the following topics:

4 “(I) A characterization of the
5 conditions of confinement and work-
6 ing conditions, including a summary
7 of the inspection criteria reviewed
8 under clauses (ii) and (iii) of subpara-
9 graph (B).

10 “(II) Recommendations made to
11 the covered facility to improve safety
12 and conditions within the facility, in-
13 cluding recommendations regarding
14 staffing.

15 “(III) A recommended timeline
16 for the next inspection and assess-
17 ment, which shall not limit the au-
18 thority of the Inspector General to
19 perform additional inspections and as-
20 sessments, announced or unan-
21 nounced.

22 “(IV) Any other issues or mat-
23 ters identified during the inspection of
24 the facility or facilities.

1 “(ii) CONSULTATION WITH STAKE-
2 HOLDERS.—In developing the rec-
3 ommendations described in clause (i), the
4 Inspector General may consult with stake-
5 holders, including employee representative
6 organizations.

7 “(E) RISK SCORE.—Not later than 18
8 months after the date of enactment of the Fed-
9 eral Prison Oversight Act, the Inspector Gen-
10 eral shall establish methodology and protocols
11 for determining the combined risk score of a
12 covered facility, which—

13 “(i) shall be delivered to the Com-
14 mittee on the Judiciary of the Senate and
15 the Committee on the Judiciary of the
16 House of Representatives; and

17 “(ii) may be based on—

18 “(I) frequency and duration of
19 lockdowns;

20 “(II) availability of program-
21 ming;

22 “(III) staffing levels;

23 “(IV) access to adequate physical
24 and mental health resources;

1 “(V) incidences of physical and
2 sexual assault or neglect;

3 “(VI) opportunity to maintain
4 family ties through phone calls, video
5 calls, mail, email, and visitation;

6 “(VII) adequacy of the nutrition
7 provided;

8 “(VIII) amount or frequency of
9 staff discipline cases;

10 “(IX) access of incarcerated peo-
11 ple to—

12 “(aa) legal counsel, includ-
13 ing confidential meetings and
14 communications;

15 “(bb) discovery and other
16 case-related legal materials; and

17 “(cc) the law library at the
18 covered facility; and

19 “(X) other factors as determined
20 by the Inspector General.

21 “(F) BUREAU RESPONSE TO REPORT.—

22 “(i) IN GENERAL.—Not later than 60
23 days after the date on which the Inspector
24 General issues a report under subpara-
25 graph (D), the Bureau shall respond in

1 writing to the inspection report, which
2 shall include a corrective action plan.

3 “(ii) PUBLIC AVAILABILITY.—Each
4 response and action plan described in
5 clause (i) shall be made available to the
6 public on the website of the Inspector Gen-
7 eral.

8 “(iii) COMPLIANCE WITH CORRECTIVE
9 ACTION PLAN.—The Inspector General
10 may conduct additional inspections or in-
11 vestigations, announced or unannounced,
12 to monitor the compliance of the Bureau
13 with a corrective action plan described in
14 clause (i).

15 “(3) OMBUDSMAN.—

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

21 “(i) receive a complaint from an in-
22 carcerated person, a family member, a rep-
23 resentative of an incarcerated person, staff,
24 or others regarding issues that may ad-
25 versely affect the health, safety, welfare, or

1 rights of incarcerated people or staff, in-
2 cluding—

3 “(I) abuse or neglect;

4 “(II) the conditions of confine-
5 ment;

6 “(III) working conditions of
7 staff;

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

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

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

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

1 “(ii) refer a complainant and others
2 to appropriate resources or Federal agen-
3 cies;

4 “(iii) make inquiries and recommend
5 actions to appropriate entities on behalf of
6 a complainant, the Ombudsman, or others;
7 and

8 “(iv) decline to investigate or take any
9 action with respect to any complaint and,
10 in any case in which the Ombudsman de-
11 clines to investigate or take any action,
12 shall notify the complainant in writing of
13 the decision not to investigate or take any
14 action and the reasons for the decision.

15 “(B) LIMITATIONS ON AUTHORITY.—The
16 Ombudsman—

17 “(i) may not investigate—

18 “(I) any complaints relating to
19 the underlying criminal conviction of
20 an incarcerated person;

21 “(II) a complaint from staff that
22 relates to the employment or contrac-
23 tual relationship of the staff member
24 with the Bureau, unless the complaint
25 is related to the health, safety, wel-

1 fare, working conditions, gross mis-
 2 management of a covered facility, or
 3 rehabilitation of incarcerated people;
 4 or

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

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

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

21 “(i) render a decision on the merits of
 22 each complaint;

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

1 “(iii) state the recommendations and
 2 reasoning of the Ombudsman if, in the
 3 opinion of the Ombudsman, the Bureau or
 4 any employee thereof should—

5 “(I) consider the matter further;

6 “(II) modify or cancel any action;

7 “(III) alter a rule, practice, or
 8 ruling;

9 “(IV) explain in detail the ad-
 10 ministrative action in question; or

11 “(V) rectify an omission.

12 “(D) ACTIONS FOLLOWING A DECISION BY
 13 THE OMBUDSMAN.—

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

1 “(ii) REPORTING OF CONTINUING
 2 ISSUES.—If the Ombudsman believes,
 3 based on an investigation conducted by the
 4 Ombudsman, that there has been or con-
 5 tinues to be a significant health, safety,
 6 welfare, working conditions, or rehabilita-
 7 tion issue, the Ombudsman shall report the
 8 finding to the Attorney General, the Com-
 9 mittee on the Judiciary of the Senate, and
 10 the Committee on the Judiciary of the
 11 House of Representatives.

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

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

23 “(A) IN GENERAL.—Upon demand, in per-
 24 son or in writing and with or without prior no-
 25 tice, the Inspector General and the Ombudsman

1 shall be granted access to all Bureau facilities,
2 which shall include—

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

8 “(ii) the opportunity to—

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

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

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

24 “(i) conducting announced or unan-
25 nounced inspections by the Inspector Gen-

1 eral as described in paragraph (2), includ-
2 ing inspections to monitor the compliance
3 of the Bureau with a corrective action plan
4 described in paragraph (2)(F)(i);

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

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

13 “(C) ACCESS TO DOCUMENTS.—

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

1 that are specifically restricted or privileged
2 for use by the Bureau.

3 “(ii) PRODUCTION OF RECORDS.—
4 Following notification from the Inspector
5 General or the Ombudsman with a written
6 demand for access to Bureau records, the
7 Bureau shall provide access to the re-
8 quested documentation—

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) COORDINATION TO MINIMIZE DISRUP-
24 TION OF OPERATIONS.—The Inspector General
25 and the Ombudsman shall—

1 “(i) work with the Bureau to mini-
2 mize disruption to the operations of the
3 Bureau due to inspections, investigations,
4 or other activity; and

5 “(ii) comply with the security clear-
6 ance processes of the Bureau, provided
7 these processes do not impede the activities
8 described in this subsection.

9 “(5) CONFIDENTIALITY.—

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

18 “(B) RULES AND PROCEDURES.—Subject
19 to subparagraph (C), the Inspector General and
20 the Ombudsman shall establish confidentiality
21 rules and procedures for all information main-
22 tained by the respective office to ensure that, to
23 the greatest extent practicable, before, during,
24 or after an investigation—

1 “(i) staff are not aware of the identity
2 of a complainant; and

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

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

10 “(6) FAMILY ADVOCACY AND SUPPORT SERV-
11 ICES.—

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

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

23 “(ii) TELEPHONE HOTLINE.—The
24 Ombudsman shall create a telephone hot-
25 line through which family members,

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

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

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

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

“(C) DETERMINATION.—

“(i) CONFIRMATION OF RECEIPT.—

Not later than 5 business days after submission of a complaint or inquiry under subparagraph (A) or (B), the Ombudsman shall confirm receipt.

“(ii) DETERMINATION.—Not later

than 15 business days after issuing the confirmation under clause (i), the Ombudsman shall make a determination as to whether any action is warranted and notify the complainant of the determination.

“(iii) STATEMENT REGARDING DECISION.—If the Ombudsman has determined

action is unwarranted under clause (ii), the Ombudsman shall provide a written statement explaining the decision to the complainant.

“(D) ADMINISTRATIVE EXHAUSTION.—

Nothing in this paragraph shall be construed as a necessary administrative remedy required for exhaustion under section 7(a) of the Civil Rights of Institutionalized Persons Act (42 U.S.C. 1997e(a)).

“(7) PROHIBITION ON RETALIATION.—

1 “(A) IN GENERAL.—The Bureau and staff
2 of the Bureau shall not discharge, retaliate
3 against, or in any manner discriminate against
4 any complainant or any person or entity that
5 has instituted or caused to be instituted any
6 proceeding, investigation, or inspection under or
7 related to this subsection.

8 “(B) INVESTIGATION.—Any alleged dis-
9 charge of, retaliation against, or discrimination
10 against a complainant, entity, or person be-
11 cause of a complaint, investigation, or inspec-
12 tion may be considered by the Ombudsman as
13 an appropriate subject of an investigation or
14 other activity.

15 “(8) DUE PROCESS PROTECTIONS.—

16 “(A) IN GENERAL.—The Attorney General
17 and the Inspector General shall ensure that im-
18 plementation of this subsection is consistent
19 with section 552a of title 5, United States Code
20 (commonly known as the ‘Privacy Act of 1974’)
21 and all other applicable laws, and respects ap-
22 propriate due process protections for staff.

23 “(B) RULE OF CONSTRUCTION.—Nothing
24 in this paragraph shall be construed to modify,
25 supersede, or otherwise affect the authority of

1 the Inspector General to access all records, re-
2 ports, audits, reviews, documents, papers, rec-
3 ommendations, or other materials, as author-
4 ized by section 6(a).

5 “(9) PERCENTAGE OF ANNUAL APPROPRIATION
6 FOR THE BUREAU OF PRISONS.—It is the sense of
7 Congress that the amount allocated to the Inspector
8 General and the Ombudsman to carry out the activi-
9 ties described in this subsection should equal an
10 amount between 0.2 percent and 0.5 percent of the
11 annual appropriation for the Bureau.”.

12 (b) EFFECTIVE DATE.—This Act, and the amend-
13 ments made by this Act, shall take effect on the date that
14 is 90 days after the date on which appropriations are
15 made available to the Inspector General of the Depart-
16 ment of Justice and the Department of Justice for the
17 specific purpose of carrying out the provisions of this Act
18 and the amendments made by this Act.

○