

Federal Prison Oversight Act

[Public Law 118–71]

[This law has not been amended]

【Currency: This publication is a compilation of the text of Public Law 118–71. It was last amended by the public law listed in the As Amended Through note above and below at the bottom of each page of the pdf version and reflects current law through the date of the enactment of the public law listed at <https://www.govinfo.gov/app/collection/comps/>】

【Note: While this publication does not represent an official version of any Federal statute, substantial efforts have been made to ensure the accuracy of its contents. The official version of Federal law is found in the United States Statutes at Large and in the United States Code. The legal effect to be given to the Statutes at Large and the United States Code is established by statute (1 U.S.C. 112, 204).】

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. [5 U.S.C. 101 note] SHORT TITLE.

This Act may be cited as the “Federal Prison Oversight Act”.

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

(a) IN GENERAL.—Section 413 of title 5, United States Code, is amended by adding at the end the following:

“(e) INSPECTIONS REGIME.—

“(1) DEFINITIONS.—In this subsection:

“(A) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ‘appropriate congressional committees’ means—

“(i) the Committee on the Judiciary and the Committee on Homeland Security and Governmental Affairs of the Senate; and

“(ii) the Committee on the Judiciary and the Committee on Oversight and Accountability of the House of Representatives.

“(B) BUREAU.—The term ‘Bureau’ means the Bureau of Prisons.

“(C) COVERED FACILITY.—The term ‘covered facility’—

“(i) means a correctional facility operated by the Bureau; and

“(ii) does not include a post-incarceration residential re-entry center.

“(D) FAMILY ADVOCATE.—The term ‘family advocate’ includes—

“(i) a grandparent, parent, sibling, spouse or domestic partner, child, aunt, uncle, cousin, niece, neph-

ew, grandchild, or any other person related to an individual by blood, adoption, marriage, civil union, a romantic or fostering relationship; or

“(ii) a friend of—

“(I) the incarcerated person; or

“(II) the family of the incarcerated person.

“(E) INSPECTOR GENERAL.—The term ‘Inspector General’ means the Inspector General of the Department of Justice.

“(F) OMBUDSMAN.—The term ‘Ombudsman’ means the Ombudsman established under paragraph (3)(A).

“(G) REPRESENTATIVE OF AN INCARCERATED PERSON.—The term ‘representative of an incarcerated person’ includes paid or unpaid legal counsel or any other person or entity chosen by an incarcerated person to represent the interests of the incarcerated person.

“(H) SEXUAL ABUSE.—The term ‘sexual abuse’ has the meaning given that term in section 115.6 of title 28, Code of Federal Regulations (or any successor thereto).

“(I) STAFF.—The term ‘staff’ means employees and contractors of the Bureau.

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

“(A) ESTABLISHMENT OF INSPECTIONS REGIME.—

“(i) IN GENERAL.—The Inspector General shall conduct periodic inspections of covered facilities pursuant to the requirements of this subsection.

“(ii) ACCESS TO COVERED FACILITIES.—The Attorney General shall ensure that the Inspector General has access to—

“(I) any covered facility (including the incarcerated people, detainees, staff, bargaining unit representative organization) in accordance with paragraph (4); and

“(II) any other information that the Inspector General determines is necessary to carry out the provisions of this subsection.

“(iii) NOTICE OF INSPECTIONS.—An inspection of a covered facility under this subsection may be announced or unannounced.

“(iv) COMMUNITY INPUT.—In developing the inspections regime under this subsection, the Inspector General is encouraged to consult formerly incarcerated people, family or representatives of incarcerated people, and community advocates.

“(B) INSPECTION CRITERIA.—An inspection of a covered facility under this subsection may include an assessment of the following:

“(i) The policies, procedures, and administrative guidance of the facility.

“(ii) The conditions of confinement.

“(iii) Working conditions for staff.

“(iv) The availability of evidence-based recidivism reduction programs and productive activities, as such

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terms are defined in section 3635 of title 18, and the application of earned time credits pursuant to section 3632 of title 18.

“(v) The policies and procedures relating to visitation.

“(vi) The policies and practices relating to classification and housing.

“(vii) The policies and practices relating to the use of single-cell confinement, administrative segregation, and other forms of restrictive housing.

“(viii) The medical facilities and medical and mental health care, programs, procedures, and policies, including the number and qualifications of medical and mental health staff and the availability of sex-specific and trauma-responsive care for incarcerated people.

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

“(x) Lockdowns at the facility.

“(xi) Credible allegations of incidents involving excessive use of force, completed, attempted, or threatened violence, including sexual abuse, or misconduct committed against incarcerated people.

“(xii) Credible allegations of incidents involving completed, attempted, or threatened violence, including sexual violence or sexual abuse, committed against staff.

“(xiii) Adequacy of staffing at the covered facility, including the number and job assignments of staff, the ratio of staff to inmates at the facility, the staff position vacancy rate at the facility, and the use of overtime, mandatory overtime, and augmentation.

“(xiv) Deaths or serious injuries of incarcerated people or staff that occurred at the facility.

“(xv) The existence of contraband that jeopardizes the health or safety of incarcerated people or staff, including incident reports, referrals for criminal prosecution, and confirmed prosecutions.

“(xvi) Access of incarcerated people to—

“(I) legal counsel, including confidential meetings and communications;

“(II) discovery and other case-related legal materials; and

“(III) the law library at the covered facility.

“(xvii) Any aspect of the operation of the covered facility that the Inspector General determines to be necessary over the 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 reevaluate 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.

“(iii) A determination by the Inspector General that 1 or more of the criteria listed in subparagraph (B) should be inspected, with regard to a covered facility or group of covered facilities.

“(D) REPORT.—

“(i) IN GENERAL.—Not later than 6 months after the 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 submit a final copy of the report to the Attorney General, the appropriate congressional committees, employee representative organizations, and the public, that addresses 1 or more of the following topics:

“(I) A characterization of the conditions of confinement and working conditions, including a summary of the inspection criteria reviewed under clauses (ii) and (iii) of subparagraph (B).

“(II) Recommendations made to the covered facility to improve safety and conditions within the facility, including recommendations regarding staffing.

“(III) A recommended timeline for the next inspection and assessment, which shall not limit the authority of the Inspector General to perform additional inspections and assessments, announced or unannounced.

“(IV) Any other issues or matters identified during the inspection of the facility or facilities.

“(ii) CONSULTATION WITH STAKEHOLDERS.—In developing the recommendations described in clause (i), the Inspector General may consult with stakeholders, including employee representative organizations.

“(E) RISK SCORE.—Not later than 18 months after the date of enactment of the Federal Prison Oversight Act, the Inspector General shall establish methodology and protocols for determining the combined risk score of a covered facility, which—

“(i) shall be delivered to the appropriate congressional committees; and

“(ii) may be based on—

“(I) frequency and duration of lockdowns;

“(II) availability of programming;

“(III) staffing levels;

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

“(V) incidences of physical assault, neglect, or sexual abuse;

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

“(VII) adequacy of the nutrition provided;

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

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

“(X) access of incarcerated people to—

“(aa) legal counsel, including confidential meetings and communications;

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

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

“(XI) other factors as determined by the Inspector General.

“(F) BUREAU RESPONSE TO REPORT.—

“(i) IN GENERAL.—Not later than 60 days after the date on which the Inspector General issues a report under subparagraph (D), the Bureau shall respond in writing to the inspection report, which shall include a corrective action plan.

“(ii) PUBLIC AVAILABILITY.—Each response and action plan described in clause (i) shall be made available to the public on the website of the Inspector General.

“(iii) COMPLIANCE WITH CORRECTIVE ACTION PLAN.—The Inspector General may conduct additional inspections or investigations, announced or unannounced, to monitor the compliance of the Bureau with a corrective action plan described in clause (i).

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

“(3) OMBUDSMAN.—

“(A) IN GENERAL.—Not later than 1 year after the date of enactment of the Federal Prison Oversight Act, the Attorney General shall establish in the Department of Justice an Ombudsman who may—

“(i) receive a complaint from an incarcerated person, a family advocate, a representative of an incarcerated person, staff, a representative of staff, a Member of Congress, or a member of the judicial branch of the Federal Government regarding issues that may adversely affect the health, safety, welfare, or rights of incarcerated people or staff, including—

“(I) abuse or neglect;

“(II) the conditions of confinement, including the availability of health care;

“(III) working conditions of staff;

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

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

“(VI) policies, rules, or procedures of the Bureau, including gross mismanagement; and

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

“(ii) refer a complainant and others to appropriate resources or Federal agencies;

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

“(iv) decline to investigate or take any action with respect to any complaint and, in any case in which the Ombudsman declines to investigate or take any action, shall notify the complainant in writing of the decision not to investigate or take any action and the reasons for the decision.

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

“(i) may not investigate—

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

“(II) a complaint from staff that relates to the employment or contractual relationship of the staff member with the Bureau, unless the complaint is related to the health, safety, welfare, working conditions, gross mismanagement of a covered facility, or rehabilitation of incarcerated people; or

“(III) any allegation of criminal or administrative misconduct, as described in subsection (b)(2), and shall refer any matter covered by subsection (b)(2) to the Inspector General, who may, at the discretion of Inspector General, refer such allegations back to the Ombudsman or the internal affairs office of the appropriate component of the Department of Justice; and

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

“(C) DECISION ON THE MERITS OF A COMPLAINT.—At the conclusion of an investigation of a complaint, the Ombudsman shall—

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

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

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

“(I) consider the matter further;

“(II) modify or cancel any action;

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

“(IV) explain in detail the administrative action in question; or

“(V) rectify an omission.

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

“(i) REQUEST FOR INFORMATION ABOUT ACTIONS TAKEN.—If the Ombudsman so requests, the Bureau shall, within the time specified, respond to any inquiry or request for information from the Ombudsman and inform the Ombudsman about any action taken on the recommendations provided by the Ombudsman or the reasons for not complying with any request for information or recommendations.

“(ii) REPORTING OF CONTINUING ISSUES.—If the Ombudsman believes, based on an investigation conducted by the Ombudsman, that there has been or continues to be a significant health, safety, welfare, working conditions, or rehabilitation issue, the Ombudsman shall report the finding to the Attorney General and the appropriate congressional committees.

“(iii) MONITORING OF INTERNAL DISCIPLINARY ACTIONS OF THE BUREAU.—In the event that the Bureau conducts an internal disciplinary investigation or review of 1 or more staff members of the Bureau as a result of an investigation by the Ombudsman, the Ombudsman may monitor the internal disciplinary action to ensure a fair and objective process.

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

“(A) IN GENERAL.—

“(i) ACCESS TO BUREAU FACILITIES.—Except as provided in clause (ii), upon demand, in person or in writing and with or without prior notice, the Inspector General and the Ombudsman shall be granted access to all Bureau facilities, which shall include—

“(I) all areas that are used by incarcerated people, all areas that are accessible to incarcerated people, and access to programs for incarcerated people at any time of day; and

“(II) the opportunity to—

“(aa) conduct private and confidential interviews with any incarcerated person, staff, employee representative organization, or other person; and

“(bb) communicate privately and confidentially, both formally and informally, with incarcerated people or staff by telephone, mail, electronic communication, and in person,

which shall not be monitored or recorded by or conducted in the presence of staff.

“(ii) EXCEPTION.—Clause (i) shall not apply in situations where the head of the covered facility provides evidence to the Inspector General or the Ombudsman that there is risk of serious and immediate physical harm to visitors due to an ongoing event that requires restricting access to the facility.

“(B) PURPOSE OF VISITS.—Access to Bureau facilities under subparagraph (A) is for the purposes of—

“(i) conducting announced or unannounced inspections by the Inspector General as described in paragraph (2), including inspections to monitor the compliance of the Bureau with a corrective action plan described in paragraph (2)(F)(i);

“(ii) conducting an investigation or other activity by the Ombudsman as described in paragraph (3); and

“(iii) inspecting, viewing, photographing, and video recording all areas of the facility that are used by incarcerated people or are accessible to incarcerated people.

“(C) ACCESS TO DOCUMENTS.—

“(i) IN GENERAL.—The Inspector General and the Ombudsman have the right to access, inspect, and copy all relevant information, records, or documents in the possession or control of the Bureau that either the Inspector General or the Ombudsman considers necessary in an inspection, investigation, or other activity, and the Bureau shall assist the Inspector General and the Ombudsman in obtaining the necessary releases for those documents that are specifically restricted or privileged for use by the Bureau.

“(ii) PRODUCTION OF RECORDS.—Following notification from the Inspector General or the Ombudsman with a written demand for access to Bureau records, the Bureau shall provide access to the requested documentation in a manner consistent with section 552a (commonly known as the ‘Privacy Act of 1974’)—

“(I) not later than 30 business days after receipt of the written request; or

“(II) in the case of records pertaining to the death of an incarcerated person or staff, threats of bodily harm including sexual or physical assaults, or the denial or delay of necessary medical treatment, not later than 10 business days after receipt of the written request, unless the Inspector General or the Ombudsman consents to an extension of that time frame.

“(D) MINIMIZE DISRUPTION OF OPERATIONS.—The Inspector General and the Ombudsman shall—

“(i) develop procedures—

“(I) to ensure that the Inspector General has access to, and the right to review and investigate, any allegations received by the Ombudsman to en-

sure that the Inspector General may carry out the authorities provided to the Inspector General under this chapter; and

“(II) that may provide that the Inspector General and the Ombudsman will determine certain categories of allegations that are not necessary for the Inspector General to review prior to the Ombudsman proceeding;

“(ii) work with the Bureau to minimize disruption to the operations of the Bureau due to inspections, investigations, or other activity;

“(iii) comply with the security clearance processes of the Bureau, provided these processes do not impede the activities described in this subsection; and

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

“(I) the safety, security, or good order of a covered facility or the Bureau; or

“(II) public safety.

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

“(5) CONFIDENTIALITY.—

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

“(B) PROCEDURES.—Subject to subparagraph (C), the Inspector General and the Ombudsman shall establish confidentiality procedures for all information maintained by the respective office to ensure that, to the greatest extent practicable, before, during, or after an investigation—

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

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

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

“(6) FILING COMPLAINTS.—

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

“(i) ONLINE FORM.—The Ombudsman shall create a secure online form to be made available on the website of the Ombudsman where the family advocates and representatives of incarcerated people can submit complaints and inquiries on issues identified in paragraph (3)(A)(i) on behalf of an individual incarcerated at a covered facility.

“(ii) TELEPHONE HOTLINE.—The Ombudsman shall create a telephone hotline through which family advocates and representatives of incarcerated people can call to file complaints and inquiries on issues identified in paragraph (3)(A)(i) on behalf of an individual incarcerated at a covered facility.

“(B) FILING COMPLAINTS BY AN INCARCERATED INDIVIDUAL.—

“(i) INTERNAL PRIVATE SUBMISSION.—The Bureau shall provide multiple internal ways for incarcerated individuals in covered facilities to privately submit to the Ombudsman complaints and inquiries on issues identified in paragraph (3)(A)(i).

“(ii) SUBMISSION VIA INDEPENDENT ENTITY.—The Bureau shall also provide not less than 1 process for incarcerated individuals in covered facilities to submit complaints and inquiries on issues identified in paragraph (3)(A)(i) to a public or private entity or office that is not part of the Bureau and that is able to receive and immediately forward complaints and inquiries to the Ombudsman, allowing the incarcerated individual to remain anonymous 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) PUBLIC EDUCATION.—The Ombudsman shall coordinate with the Bureau to educate incarcerated people, representatives of incarcerated people, and the public about the existence and functions of the Ombudsman.

“(E) 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.—

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

“(B) INVESTIGATION.—Any alleged discharge of, retaliation against, or discrimination against a complainant, entity, or person because of a complaint, investigation, or inspection may be considered by the Ombudsman as an appropriate subject of an investigation or other activity.

“(8) DUE PROCESS PROTECTIONS.—

“(A) IN GENERAL.—The Attorney General and the Inspector General shall ensure that implementation of this subsection is consistent with section 552a (commonly known as the ‘Privacy Act of 1974’) and all other applicable laws, and respects appropriate due process protections for staff.

“(B) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to modify, supersede, or otherwise affect the authority of the Inspector General to access all records, reports, audits, reviews, documents, papers, recommendations, or other materials, as authorized by section 406(a).

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

(b) **[5 U.S.C. 413 note]** EFFECTIVE DATE.—This Act, and the amendments made by this Act, shall take effect on the date that is 90 days after the date on which appropriations are made available to the Inspector General of the Department of Justice and the Department of Justice for the specific purpose of carrying out the provisions of this Act and the amendments made by this Act.

(c) **[18 U.S.C. 4041 note]** AUGMENTATION.—On and after the effective date of this Act, the Bureau of Prisons shall implement the directive in the second sentence on the topic “Augmentation” in the matter under the heading “**SALARIES AND EXPENSES**” under the heading “**FEDERAL PRISON SYSTEM**” in the joint explanatory statement accompanying Public Law 117-328.