

116TH CONGRESS
2D SESSION

S. 4536

To report data on COVID–19 in Federal, State, and local correctional facilities, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 8, 2020

Ms. WARREN (for herself, Mrs. MURRAY, Mr. BOOKER, Mr. BLUMENTHAL, Mr. MARKEY, Mr. SANDERS, Mr. DURBIN, Ms. BALDWIN, Mr. CASEY, Mr. WYDEN, Mr. VAN HOLLEN, and Mr. MERKLEY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To report data on COVID–19 in Federal, State, and local correctional facilities, 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 “COVID–19 in Correc-
5 tions Data Transparency Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) COVID–19.—The term “COVID–19”
9 means Coronavirus Disease 2019.

1 (2) COVID-19 DIAGNOSTIC TEST.—The term
2 “COVID-19 diagnostic test” means a test—

3 (A) that is an in vitro diagnostic product
4 (as defined in section 809.3 of title 21, Code of
5 Federal Regulations, or any successor thereto)
6 for the detection of SARS-CoV-2 or the diag-
7 nosis of the virus that causes COVID-19; and

8 (B) the administration of which—

9 (i) is approved, cleared, or authorized
10 under section 510(k), 513, 515, or 564 of
11 the Federal Food, Drug, and Cosmetic Act
12 (21 U.S.C. 360(k), 360c, 360e, 360bbb-3);

13 (ii) the developer has requested, or in-
14 tends to request, emergency use authoriza-
15 tion under section 564 of the Federal
16 Food, Drug, and Cosmetic Act (21 U.S.C.
17 360bbb-3), unless and until the emergency
18 use authorization request under such sec-
19 tion 564 has been denied or the developer
20 of such test does not submit a request
21 under such section within a reasonable
22 timeframe;

23 (iii) is developed in and authorized by
24 a State that has notified the Secretary of
25 Health and Human Services of its inten-

tion to review tests intended to diagnose
COVID-19; or

(iv) is another test that the Secretary
determines appropriate in guidance.

(3) COVID-19 EMERGENCY DATA COLLECTION
PERIOD.—The term “COVID-19 emergency data
collection period” means the period beginning on the
date of enactment of this Act and ending on the
date that is 1 year after the date on which the pub-
lic health emergency declaration under section 319
of the Public Health Service Act (42 U.S.C. 247d),
with respect to COVID-19, terminates.

(4) STATE OR LOCAL CORRECTIONAL FACIL-
ITY.—The term “State or local correctional facil-
ity”—

(A) means a correctional facility within the
jurisdiction of a State or unit of local govern-
ment; and

(B) includes—

(i) a municipal, regional, or county
jail;

(ii) a State prison;

(iii) a State-run boot camp prison;

(iv) a boot camp prison that is con-
tracted out by the State;

- 1 (v) a State or local contract facility;
- 2 (vi) a juvenile detention facility;
- 3 (vii) a juvenile secure correctional fa-
- 4 cility; and
- 5 (viii) any other local or State correc-
- 6 tional facility, including any juvenile facil-
- 7 ity.

8 **SEC. 3. BUREAU OF PRISONS AND UNITED STATES MAR-**
9 **SHALS SERVICE DATA COLLECTION.**

10 (a) BUREAU OF PRISONS.—The Director of the Bu-
11 reau of Prisons shall—

12 (1) on a daily basis during the COVID–19
13 emergency data collection period, make available to
14 the public on the website of the Bureau of Prisons
15 a report on the information described in section 6,
16 with respect to incarcerated persons and staff; and

17 (2) not later than 14 days after the date on
18 which the Director of the Centers for Disease Con-
19 trol and Prevention publishes the guidance required
20 under section 5(a), but in no case later than 45 days
21 after the date of enactment of this Act, and not less
22 frequently than once every 7 days thereafter until
23 the date on which the COVID–19 emergency data
24 collection period ends, submit to the Director of the
25 Centers for Disease Control and Prevention every 7

1 days, a report on the information described in sec-
2 tion 6, with respect to incarcerated persons and
3 staff.

4 (b) UNITED STATES MARSHALS SERVICE.—The Di-
5 rector of the United States Marshals Service shall—

6 (1) on a daily basis during the COVID–19
7 emergency data collection period, make available to
8 the public on the website of the United States Mar-
9 shals Service a report on the information described
10 in section 6, with respect to incarcerated persons in
11 the custody of the United States Marshals Service,
12 including individuals held at or employed by a State
13 or local correctional facility contracted by Federal
14 entities; and

15 (2) not later than 14 days after the date on
16 which the Director of the Centers for Disease Con-
17 trol and Prevention publishes the guidance required
18 under section 5(a), but in no case later than 45 days
19 after the date of enactment of this Act, and not less
20 frequently than once every 7 days thereafter until
21 the date on which the COVID–19 emergency data
22 collection period ends, submit to the Director of the
23 Centers for Disease Control and Prevention every 7
24 days, a report on the information described in sec-

tion 6, with respect to incarcerated persons and staff.

**SEC. 4. STATE AND LOCAL CORRECTIONAL FACILITY DATA
COLLECTION.**

(a) STATE AND LOCAL REPORTS.—

(1) IN GENERAL.—Not later than 14 days after the date on which the Director of the Centers for Disease Control and Prevention publishes the guidance required under section 5(a), but in no case later than 45 days after the date of enactment of this Act, and not less frequently than once every 7 days thereafter until the date on which the COVID—19 emergency data collection period ends—

(A) the head of each State department of corrections and the head of each State juvenile justice agency shall make available to the public on the website of the department, and submit to the public health authority of the State, the data described in section 6, with respect to incarcerated persons and staff; and

(B) the head of each State or local correctional facility shall submit to the public health authority of the State or unit of local government, as the case may be, the data described in

1 section 6, with respect to incarcerated persons
2 and staff.

3 (2) SUBMISSION OF INFORMATION TO THE
4 CDC.—Not later than 24 hours after a State or local
5 public health authority receives data under para-
6 graph (1), the head of the public health authority
7 shall submit the data to the Director of the Centers
8 for Disease Control and Prevention.

9 (3) BYRNE GRANT AMOUNTS.—

10 (A) IN GENERAL.—If a State or jurisdic-
11 tion within a State fails to comply with the re-
12 quirements under paragraphs (1) and (2) in a
13 fiscal year, the amount the State would other-
14 wise be awarded in the following fiscal year
15 under subpart 1 of part E of title I of the Om-
16 nibus Crime Control and Safe Streets Act of
17 1968 (34 U.S.C. 10151 et seq.) shall be re-
18 duced by 10 percent.

19 (B) REPORT ON COMPLIANCE TO DOJ.—
20 For purposes of carrying out this paragraph,
21 the Director of the Centers for Disease Control
22 and Prevention shall, not later than 30 days
23 after the date on which the Director first re-
24 ceives data from a State or local public health
25 authority and once every 30 days thereafter,

1 submit to the Attorney General a report detail-
2 ing which States, if any, are not in compliance
3 with this Act.

4 (b) AUTHORIZATION OF APPROPRIATIONS.—There is
5 authorized to be appropriated to the Director of the Cen-
6 ters for Disease Control and Prevention such sums as are
7 necessary to carry out this section.

8 **SEC. 5. CDC REPORTS.**

9 (a) GUIDANCE.—Not later than 30 days after the
10 date of enactment of this Act, the Director of the Centers
11 for Disease Control and Prevention shall issue guidance
12 for Federal, State, and local correctional facilities on—

13 (1) the categories of data required to be re-
14 ported under this Act; and

15 (2) how the Director will determine whether a
16 State is in compliance with this Act.

17 (b) PUBLICATION ON WEBSITE.—Not later than 7
18 days after data is reported to the Centers for Disease Con-
19 trol and Prevention under section 3 or 4, the Director of
20 the Centers for Disease Control and Prevention shall make
21 the data available to the public on the website of the Cen-
22 ters for Disease Control and Prevention, including all data
23 reported by the Bureau of Prisons, the United States Mar-
24 shals Service, and State and local correctional facilities.

1 (c) REPORTS TO CONGRESS.—Not later than 60 days
 2 after the date of enactment of this Act, and every 30 days
 3 thereafter until the date on which the COVID–19 emer-
 4 gency data collection period ends, the Director of the Cen-
 5 ters for Disease Control and Prevention shall compile and
 6 submit to Congress, including the Committees on the Ju-
 7 diciary and Health, Education, Labor, and Pensions of the
 8 Senate and the Committees on the Judiciary and Energy
 9 and Commerce of the House of Representatives, a report
 10 on the information submitted by the Bureau of Prisons,
 11 the United States Marshals Service, and the head of each
 12 State department of corrections under sections 3 and 4,
 13 respectively.

14 **SEC. 6. COVID–19 DATA.**

15 (a) IN GENERAL.—The data described in this section
 16 is the following data for each Federal, State, or local cor-
 17 rectional facility within a State:

18 (1) TESTING NUMBERS.—COVID–19 diagnostic
 19 testing, including cumulative and new (since the pre-
 20 vious report) counts of—

21 (A) the number of incarcerated persons
 22 tested for COVID–19, disaggregated by first-
 23 time COVID–19 diagnostic tests and retests;

24 (B) the number of correctional facility
 25 staff tested for COVID–19, disaggregated by

1 first-time COVID–19 diagnostic tests and
2 retests; and

3 (C) the COVID–19 diagnostic test devel-
4 oper and test name for each COVID–19 diag-
5 nostic test conducted.

6 (2) TEST RESULTS.—COVID–19 diagnostic
7 testing outcomes, including cumulative and new
8 (since the previous report) counts of—

9 (A) the number of confirmed active cases
10 of COVID–19 among incarcerated persons,
11 disaggregated by first-time COVID–19 diag-
12 nostic tests and retests;

13 (B) the number of confirmed negative
14 cases of COVID–19 among incarcerated per-
15 sons, disaggregated by first-time COVID–19 di-
16 agnostic tests and retests;

17 (C) the number of confirmed active cases
18 of COVID–19 among correctional facility staff,
19 disaggregated by first-time COVID–19 diag-
20 nostic tests and retests;

21 (D) the number of confirmed negative
22 cases of COVID–19 among correctional facility
23 staff, disaggregated by first-time COVID–19 di-
24 agnostic tests and retests;

1 (E) the number of COVID–19 diagnostic
2 tests pending results, disaggregated by incarcer-
3 ated persons and correctional facility staff;

4 (F) the average time between testing an
5 incarcerated person for COVID–19 and receiv-
6 ing the results of the COVID–19 diagnostic
7 test; and

8 (G) the average time between testing a
9 correctional facility employee for COVID–19
10 and receiving the results of the COVID–19 di-
11 agnostic test.

12 (3) CASE OUTCOMES.—COVID–19 case out-
13 comes, including cumulative and new (since the pre-
14 vious report) counts of—

15 (A) the number of incarcerated persons
16 hospitalized for a case of COVID–19;

17 (B) the number of incarcerated persons
18 who have recovered from COVID–19;

19 (C) the number of incarcerated persons
20 currently in quarantine or medical isolation for
21 infection with or exposure to COVID–19;

22 (D) the number of incarcerated persons
23 who have completed quarantine or been released
24 from medical isolation;

1 (E) the number of incarcerated persons
2 who have died from a case of COVID-19;

3 (F) the number of correctional facility
4 staff hospitalized for a case of COVID-19;

5 (G) the number of correctional facility
6 staff who have recovered from COVID-19; and

7 (H) the number of correctional facility
8 staff who have died from a case of COVID-19.

9 (4) RELEASE OF INCARCERATED PERSONS.—In
10 the case of incarcerated persons, data related to the
11 release of such incarcerated persons, including indi-
12 viduals released to home confinement and pursuant
13 to compassionate release, as a result of the COVID-
14 19 public health emergency.

15 (5) DAILY POPULATION.—Average daily popu-
16 lation for the week preceding the COVID-19 emer-
17 gency data collection period and for all weeks during
18 this period.

19 (b) DISAGGREGATION OF DATA.—The data described
20 in this section shall be disaggregated by sex, sexual ori-
21 entation, gender identity, age, race, ethnicity, disability,
22 and geography (including county and State).

23 (c) INCARCERATED PERSONS DATA.—The data de-
24 scribed in this section with respect to incarcerated persons
25 who are serving a term of imprisonment and who are in-

1 fected with COVID–19 shall include, to the extent prac-
 2 ticable, the term of imprisonment imposed on such incar-
 3 cerated persons and the time served on such term of im-
 4 prisonment.

5 **SEC. 7. PRIVACY PROTECTIONS.**

6 Any data collected, stored, received, or published
 7 under this Act shall—

8 (1) be so collected, stored, received, or pub-
 9 lished in a manner that protects the privacy of indi-
 10 viduals whose information is included in such data;

11 (2) be de-identified or anonymized in a manner
 12 that protects the identity of all individuals whose in-
 13 formation is included in such data;

14 (3) comply with privacy protections provided
 15 under the regulations promulgated under section
 16 264(c) of the Health Insurance Portability and Ac-
 17 countability Act of 1996 (42 U.S.C. 1320d–2 note);
 18 and

19 (4) be limited in use for the purpose of public
 20 health and be protected from all other internal use
 21 by any entity that collects, stores, or receives the
 22 data, including use of such data in determinations of
 23 eligibility (or continued eligibility) in health plans,
 24 and from any other inappropriate uses.

