

117TH CONGRESS  
1ST SESSION

# S. 3164

To require non-Federal prison, correctional, and detention facilities holding Federal prisoners or detainees under a contract with the Federal Government to make the same information available to the public that Federal prisons and correctional facilities are required to make available.

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## IN THE SENATE OF THE UNITED STATES

NOVEMBER 4, 2021

Mr. CARDIN (for himself, Mr. LEAHY, Mr. BLUMENTHAL, Mrs. FEINSTEIN, Mr. VAN HOLLEN, Mr. BOOKER, Mr. CASEY, Ms. WARREN, Mr. MARKEY, Ms. SMITH, and Ms. KLOBUCHAR) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To require non-Federal prison, correctional, and detention facilities holding Federal prisoners or detainees under a contract with the Federal Government to make the same information available to the public that Federal prisons and correctional facilities are required to make available.

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 “Private Prison Infor-  
5 mation Act of 2021”.

1 **SEC. 2. DEFINITIONS.**

2 In this Act—

3 (1) the term “agency” has the meaning given  
4 the term in section 551 of title 5, United States  
5 Code;

6 (2) the term “applicable entity” means—

7 (A) a nongovernmental entity contracting  
8 with, or receiving funds directly or indirectly  
9 from, a covered agency to incarcerate or detain  
10 Federal prisoners or detainees in a non-Federal  
11 prison, correctional, or detention facility; or

12 (B) a State or local governmental entity  
13 with an intergovernmental agreement with a  
14 covered agency to incarcerate or detain Federal  
15 prisoners or detainees in a non-Federal prison,  
16 correctional, or detention facility;

17 (3) the term “covered agency” means an agency  
18 that contracts with, or provides funds to, an applica-  
19 ble entity to incarcerate or detain Federal prisoners  
20 or detainees in a non-Federal prison, correctional, or  
21 detention facility; and

22 (4) the term “non-Federal prison, correctional,  
23 or detention facility” means—

24 (A) a privately owned or privately operated  
25 prison, correctional, or detention facility; or

1 (B) a State or local prison, jail, or other  
2 correctional or detention facility.

3 **SEC. 3. FREEDOM OF INFORMATION ACT APPLICABLE FOR**  
4 **CONTRACT PRISONS.**

5 (a) IN GENERAL.—A record relating to a non-Fed-  
6 eral prison, correctional, or detention facility shall be—

7 (1) considered an agency record for purposes of  
8 section 552(f)(2) of title 5, United States Code,  
9 whether in the possession of an applicable entity or  
10 a covered agency; and

11 (2) subject to section 552 of title 5, United  
12 States Code (commonly known as the “Freedom of  
13 Information Act”), to the same extent as if the  
14 record was maintained by an agency operating a  
15 Federal prison, correctional, or detention facility.

16 (b) WITHHOLDING OF INFORMATION.—A covered  
17 agency may not withhold information that would otherwise  
18 be required to be disclosed under subsection (a) unless—

19 (1) the covered agency, based on the inde-  
20 pendent assessment of the covered agency, reason-  
21 ably foresees that disclosure of the information  
22 would cause specific identifiable harm to an interest  
23 protected by an exemption from disclosure under  
24 section 552(b) of title 5, United States Code; or

1           (2) disclosure of the information is prohibited  
2       by law.

3       (c) **FORMAT OF RECORDS.**—An applicable entity  
4 shall maintain records relating to a non-Federal prison,  
5 correctional, or detention facility in formats that are read-  
6 ily reproducible and reasonably searchable by the covered  
7 agency that contracts with or provides funds to the appli-  
8 cable entity to incarcerate or detain Federal prisoners or  
9 detainees in the non-Federal prison, correctional, or deten-  
10 tion facility.

11       (d) **REGULATIONS.**—

12           (1) **IN GENERAL.**—Not later than 180 days  
13 after the date of enactment of this Act, a covered  
14 agency shall promulgate regulations or guidance to  
15 ensure compliance with this section by the covered  
16 agency and an applicable entity that the covered  
17 agency contracts with or provides funds to incar-  
18 cerate or detain Federal prisoners or detainees in a  
19 non-Federal prison, correctional, or detention facil-  
20 ity.

21           (2) **COMPLIANCE BY APPLICABLE ENTITIES.**—

22           (A) **IN GENERAL.**—Compliance with this  
23 section by an applicable entity shall be included  
24 as a material term in any contract, agreement,  
25 or renewal of a contract or agreement with the

1 applicable entity regarding the incarceration or  
2 detention of Federal prisoners or detainees in a  
3 non-Federal prison, correctional, or detention  
4 facility.

5 (B) MODIFICATION OF CONTRACT OR  
6 AGREEMENT.—Not later than 1 year after the  
7 date of enactment of this Act, a covered agency  
8 shall secure a modification to include compli-  
9 ance with this section by an applicable entity as  
10 a material term in any contract or agreement  
11 described under subparagraph (A) that will not  
12 otherwise be renegotiated, renewed, or modified  
13 before the date that is 1 year after the date of  
14 enactment of this Act.

15 (e) RULE OF CONSTRUCTION.—Nothing in this Act  
16 shall be construed to limit or reduce the scope of State  
17 or local open records laws.

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