

SENATE No. 1548

The Commonwealth of Massachusetts

PRESENTED BY:

Liz Miranda

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act establishing a correctional inspector general office.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Liz Miranda</i>	<i>Second Suffolk</i>	
<i>William N. Brownsberger</i>	<i>Suffolk and Middlesex</i>	<i>1/24/2023</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>3/6/2023</i>
<i>Erika Uytterhoeven</i>	<i>27th Middlesex</i>	<i>5/15/2023</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>6/20/2023</i>
<i>John J. Cronin</i>	<i>Worcester and Middlesex</i>	<i>1/17/2024</i>

SENATE No. 1548

By Ms. Miranda, a petition (accompanied by bill, Senate, No. 1548) of Liz Miranda, William N. Brownsberger and Patricia D. Jehlen for legislation to establish a correctional inspector general office. Public Safety and Homeland Security.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act establishing a correctional inspector general office.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Clause twenty-six of section 7 of chapter 4 of the general laws is hereby
2 amended by inserting after subclause (v) the following subclause:

3 (w) information and records acquired under chapter XX by the office of the corrections
4 inspector general.

5 SECTION 2. The General Laws are hereby amended by inserting after chapter XX the
6 following chapter:-

7 CHAPTER XX

8 CORRECTIONAL TRANSPARENCY AND ACCOUNTABILITY

9 Section 1. Definitions

10 As used in this chapter, unless the context otherwise requires, the following words shall
11 have the following meanings:

12 “correctional facility”, any building, enclosure, space, structure, or vehicle used for the
13 custody, control and rehabilitation of committed offenders or of such other persons as may be
14 placed in custody therein in accordance with law regardless of whether the facility is owned,
15 operated, or controlled by a county sheriff or by the department of correction; provided however,
16 this shall not include the facilities operated by the department of youth services;

17 “department”, the department of correction;

18 “division”, the division of the correctional ombuds, as established by section 7;

19 “incarcerated person”, a committed offender or such other person as is placed in custody
20 in a correctional facility in accordance with law;

21 “office”, the office of corrections inspector general, as established by section 2;

22 “underrepresented population”, groups who traditionally, or historically, have not had
23 equal access to opportunities because of discrimination or other societal barriers. This may
24 include race, gender, gender identity, ethnicity, sexual orientation, or disability.

25 Section 2. Establishment of office; appointment and removal of corrections inspector
26 general

27 There is hereby established an office of the corrections inspector general, hereinafter
28 called the office. There shall be in said office a corrections inspector general, who shall be the
29 administrative head of said office and shall devote full-time to the duties of the office. The
30 corrections inspector general shall be appointed by a majority vote of the attorney general, the

31 state auditor and the treasurer from a list of 3 nominees submitted by a nominating committee to
32 recommend a corrections inspector general. The nominating committee shall consist of: the
33 secretary of the executive office of public safety and security; the secretary of health and human
34 services; the commissioner of the department of corrections; the executive director of the
35 Massachusetts Sheriff's Association; the commissioner of mental health; the commissioner of
36 public health; an attorney who shall be designated by Prisoner's Legal Services; a representative
37 who shall be designated by Families for Justice as Healing; an attorney who shall be designated
38 by the Committee for Public Counsel Services; a representative who shall be designated by the
39 Disability Law Center; a representative who shall be designated by the Massachusetts Bar
40 Association; a person with experience in the criminal justice system who shall be designated by
41 the chief justice of the trial court; and a representative who shall be designated by the
42 Massachusetts Correction Officers Federated Union. The work of the nominating committee
43 shall be coordinated by the executive office of public safety and security.

44 Any person appointed to the position of corrections inspector general shall be selected
45 without regard to political affiliation and solely on the basis of integrity and knowledge of
46 correctional law, policy and practice. Any person so appointed shall be a civilian and shall not
47 have been or have any immediate family members who were previously employed in the
48 department of correction, employed in any county sheriff office, or served as a sheriff. Any
49 person so appointed shall be a resident of the commonwealth within 90 days of appointment and
50 shall not: (i) hold, or be a candidate for, federal, state or local elected office; (ii) hold an
51 appointed office in a federal, state, or local government; or (iii) serve as an official in a political
52 party.

53 The correctional inspector general shall serve for a term of five years. In case of a
54 vacancy in the position of correctional inspector general their successor shall be appointed in the
55 same manner for the unexpired term. No person shall be appointed for more than two five-year
56 terms.

57 Appointing authorities shall make due efforts to assure that underrepresented populations
58 have notice when the corrections inspector general position is vacant.

59 The person so appointed may be removed from office, but only for just cause, by a
60 majority vote of the attorney general, the state auditor, and the treasurer. Such cause may include
61 substantial neglect of duty, gross misconduct or conviction of a crime. The reasons for removal
62 of the correctional inspector general shall be stated in writing. Such writing shall be sent to the
63 clerk of the senate, the clerk of the house of representatives and to the governor at the time of the
64 removal and shall be deemed to be a public document.

65 Section 3. Advisory board.

66 There shall be a corrections inspector general advisory board. The governor shall appoint
67 three members, one of whom shall serve as chair of the board, the president of the Senate shall
68 appoint three members, and the speaker of the House of Representatives shall appoint three
69 members. The advisory board may designate up to ten additional members to supplement its
70 expertise. At least one additional member of the advisory board shall be an immediate family
71 member as defined in section 1 of chapter 268A of an incarcerated person serving in a
72 Massachusetts correctional facility at the time of their appointment. At least one additional
73 member shall be a formerly incarcerated person who served in a department correctional facility
74 within the last five years at the time of their appointment. At least one additional member shall

75 be a formerly incarcerated person who served in a county correctional facility within the last five
76 years at the time of their appointment. At least one additional member shall be an individual
77 from an underrepresented population. Appointing authorities shall make due efforts to assure that
78 underrepresented populations have notice when advisory board positions are vacant.

79 The advisory board members shall serve for a term of three years and shall be
80 compensated for work performed for the corrections inspector general advisory board at such
81 rate as the secretary of administration shall determine and shall be reimbursed for expenses
82 necessarily incurred in the performance of their duties. The corrections inspector general shall
83 meet with the corrections inspector general advisory board at least quarterly and may consult or
84 request the assistance of members of the corrections inspector general advisory board with
85 respect to the duties and responsibilities of the office.

86 Section 4. Duties

87 (a) The office shall act to protect the welfare of incarcerated persons and all who work in
88 corrections by assuring accountability and transparency within the department and each county.

89 (b) The corrections inspector general may inspect, examine, or assess any aspect of a
90 facility's or system's operations or conditions including, but not limited to:

91 (1) staff recruitment, training, supervision, and discipline;

92 (2) death of, injury to, or harassment of incarcerated persons;

93 (3) incidents of assault, battery, or sexual misconduct;

94 (4) medical or mental health care, including care provided to incarcerated persons by
95 third parties;

- 96 (5) violence among incarcerated persons;
- 97 (6) conditions of confinement;
- 98 (7) incarcerated person disciplinary processes;
- 99 (8) incarcerated person grievance processes;
- 100 (9) substance use disorder treatment;
- 101 (10) educational, vocational, and other programming;
- 102 (11) family visitation and communication practices; and
- 103 (12) rehabilitation, reentry, and integration practices.
- 104 (c) The corrections inspector general shall gather public input into the office’s activities
105 and priorities, which shall include at a minimum quarterly public meetings.
- 106 (d) The corrections inspector general shall monitor department and county compliance
107 with applicable federal, state, and local laws, rules, regulations, and policies as related to the
108 health, safety, welfare, and rehabilitation of incarcerated persons.
- 109 (e) The corrections inspector general shall utilize a range of methods to gather and
110 substantiate facts, including observations, interviews with incarcerated persons, surveys of
111 incarcerated persons, document and record reviews, reports, statistics, and performance-based
112 outcome measures.
- 113 (f) The corrections inspector general may, at their sole discretion, use findings from other
114 reports to avoid redundant inspections.

115 (g) The corrections inspector general shall maintain, monitor, and provide a system of
116 response for a statewide toll-free telephone number, a collect telephone number, a website, and a
117 mailing address for the receipt of complaints and inquiries.

118 (h) The corrections inspector general shall provide information, as appropriate, to
119 incarcerated persons, family members, representatives of incarcerated persons, department or
120 county employees, and others regarding the rights of incarcerated persons.

121 (i) The corrections inspector general shall establish a statewide uniform database to
122 collect and analyze data related to complaints received by the corrections inspector general.

123 (j) Department and county officials and employees shall be authorized and required to
124 cooperate fully and promptly with the corrections inspector general. To the greatest extent
125 possible and consistent with the corrections inspector general's duties and responsibilities in this
126 chapter, the corrections inspector general shall collaboratively and constructively work with
127 administrators, legislators, and other appropriate persons.

128 (k) The corrections inspector general may identify ways in which management
129 information and data collection can be improved.

130 (l) The corrections inspector general shall conduct regular inspections of all facilities.

131 Section 5. Powers

132 (a) The office shall be independent of any supervision or control by any executive
133 agency.

134 (b) The office shall have all powers necessary or convenient to carry out and effectuate
135 its purposes, including, but not limited to, the power to:

136 (1) initiate investigations of any matter pertaining to a correctional facility on its own
137 initiative or based on information from any source;

138 (2) examine the health, safety, welfare, rehabilitation, care and services that the
139 department and each county correctional facility provides incarcerated persons;

140 (3) identify systemic issues and responses upon which the Governor and Legislature may
141 act;

142 (4) identify non-compliance with relevant statutes, rules, regulations, and policies
143 concerning corrections facilities, services, and treatment of incarcerated persons under the
144 jurisdiction of the department and within each county;

145 (5) hire and employ staff to perform duties and exercise the same powers as the
146 corrections inspector general;

147 (6) enter into agreements or other transactions with a person, including, but not limited
148 to, a public entity or other governmental instrumentality or authority in connection with its
149 powers and duties under this chapter;

150 (7) execute all instruments necessary or convenient for accomplishing the purposes of
151 this chapter;

152 (8) appear on its own behalf before boards, commissions, departments or other agencies
153 of municipal, state or federal government;

154 (9) apply for and accept subventions, grants, loans, advances and contributions of money,
155 property, labor or other things of value from any source, to be held, used and applied for its
156 purposes; and

157 (10) provide and pay for advisory services and technical assistance as may be necessary
158 in its judgment to carry out this chapter and fix the compensation of persons providing such
159 services or assistance.

160 (c) The corrections inspector general shall be authorized to hold public hearings, to
161 subpoena witnesses and documents, and to require that witnesses testify under oath.

162 (d) The corrections inspector general may make referrals to any other civil or criminal
163 enforcement authority as it may see fit.

164 Section 6. Access to facilities, incarcerated persons, records

165 (a) The corrections inspector general shall have access to correctional facilities at all
166 times. This access includes, but is not limited to:

167 (1) Access, with or without advance notice, to any part or all of any correctional facility
168 at any time. The corrections inspector general shall adopt procedures to ensure that unannounced
169 inspections are conducted in a reasonable manner.

170 (2) Access to meet and communicate privately and confidentially with incarcerated
171 persons, and department and county employees, both formally and informally, in person, by
172 telephone, by video conference, and by mail.

173 (3) Access to provide information about individual rights and the services available from
174 the office, including the name, address, and telephone number of the office.

175 (4) Access to photograph, or video record any areas of any facility which are used by
176 incarcerated persons or are accessible to incarcerated persons.

177 (5) Access to office space to conduct administrative tasks related to the facility visit.

178 (b) The corrections inspector general has the right to access, inspect, and copy any
179 information, records, documents, or video or audio recordings in the possession or control of the
180 department or county that the corrections inspector general considers necessary. No claim of
181 restriction or privilege under state law shall limit the corrections inspector general's rights under
182 this paragraph. The department or county shall assist the corrections inspector general in
183 obtaining any necessary releases for those documents which are restricted or privileged under
184 federal law.

185 (c) Following a written demand from the corrections inspector general pursuant to section
186 (b), the department or county shall provide the requested material within twenty days unless the
187 corrections inspector general consents to an extension of that time frame. Where the material
188 requested by the corrections inspector general pertain to an incarcerated person's death, threats
189 of bodily harm including, but not limited to, sexual or physical assaults, or the denial of
190 necessary medical treatment, the material shall be provided within five days unless the
191 corrections inspector general consents to an extension of that time frame.

192 (d) Upon notice and request by the corrections inspector general, a state, county, or
193 municipal government agency, other than the department or a county sheriff, that has
194 information, records, documents, or video or audio recordings relevant to a complaint or an
195 investigation conducted by the corrections inspector general shall provide the corrections
196 inspector general with access to the material not later than twenty days unless the corrections
197 inspector general consents to an extension of that time frame.

198 (e) The corrections inspector general shall work with the department or county to
199 minimize disruption to the department's or county's operations due to corrections inspector
200 general activities and shall comply with the department's or county's security clearance
201 processes, provided those processes do not, in the sole judgment of the corrections inspector
202 general, impede the corrections inspector general from carrying out the responsibilities set forth
203 in this chapter.

204 Section 7. Division of the corrections ombuds.

205 (a) There shall be within the office a division of the corrections ombuds, which is
206 responsible for receiving and reviewing individual complaints.

207 (b) The division shall remain neutral and impartial and shall not act as an advocate for the
208 complainant or for the department or county.

209 (c) The division may receive complaints from incarcerated persons, family members of
210 incarcerated persons, representatives of incarcerated persons, department or county employees,
211 or any other source, regarding any matter that may adversely affect the health, safety, welfare, or
212 rights of incarcerated persons or correctional employees.

213 (d) Prior to filing a complaint with the division, a person shall have reasonably pursued
214 resolution of the complaint through the internal grievance, administrative, or appellate
215 procedures with the department or county. However, in no event may an incarcerated person be
216 prevented from filing a complaint more than ninety business days after filing an internal
217 grievance, regardless of whether the department or county has completed the grievance process.
218 This subsection does not apply to complaints related to threats of bodily harm including, but not
219 limited to, sexual or physical assaults or the denial of necessary medical treatment.

220 (e) The division, in its discretion, may decline to investigate any complaint.

221 (f) If the division declines to investigate a complaint, the division shall notify the
222 complainant in writing of the decision not to investigate and the reasons for the decision.

223 (g) If the division decides to investigate a complaint, the division shall communicate in
224 writing the outcome to the incarcerated person or complainant, if any, and to the department or
225 county.

226 (h) The division may not investigate any complaints relating to an incarcerated person's
227 underlying criminal conviction.

228 (i) The division may not investigate a complaint from a department or county employee
229 that relates to the employee's employment relationship with the department or county, unless the
230 complaint is related to the health, safety, welfare, and rehabilitation of incarcerated persons.

231 (j) The division may refer complainants and others to appropriate resources, agencies, or
232 departments, including to appropriate law enforcement authorities.

233 (k) The division may not levy any fees for the submission or investigation of complaints.

234 (l) The division shall monthly publish an anonymized report summarizing each complaint
235 received and the resolution of the complaint. The report shall include the facility to which each
236 complaint pertained.

237 (m) The department and each county shall report all internal complaints received through
238 its internal grievance process to the division on a weekly basis.

239 Section 8. Public disclosure following an investigation or inspection.

240 (a) At the conclusion of an investigation or inspection, the corrections inspector general
241 shall produce a public report on the outcome of the investigation, which shall include any
242 recommendations to the department or county deemed necessary by the correctional inspector
243 general, except that the documents supporting the report are subject to the confidentiality
244 provisions of section 10.

245 (b) If the corrections inspector general believes that there has been or continues to be a
246 significant threat to the health, safety, welfare, or rehabilitation of incarcerated persons, the
247 corrections inspector general shall promptly report the finding to the governor and the
248 appropriate committees of the legislature.

249 (c) Before announcing a conclusion or recommendation that expressly, or by implication,
250 criticizes a person, the department, or a county, the corrections inspector general shall consult
251 with that person, the department, or the county. The corrections inspector general may request to
252 be notified by the department, within a specified time, of any action taken on any
253 recommendation presented.

254 (d) Facility administrators may be provided an opportunity to review reports and provide
255 feedback about them to the corrections inspector general before their dissemination to the public;
256 provided, however that the release of the reports is not subject to approval from any entity or
257 person outside the office nor it is contingent of the review of the report by the facility.

258 (e) Reports shall apply legal requirements, best correctional practices, and other criteria
259 to objectively and accurately review and assess a facility's policies, procedures, programs, and
260 practices; identify systemic problems and the reasons for them; and recommend possible
261 solutions to those problems.

262 (f) The correctional inspector general may redact a report for public release if, after
263 consultation with the department or county, such redaction may be necessary to protect the safety
264 or privacy of persons or the safe, secure, and orderly operation of correctional facilities.

265 (g) Except as provided in paragraph (f), the corrections inspector general's reports shall
266 be public, accessible through the Internet, and distributed to the media, legislature, attorney
267 general, and governor.

268 (h) The department or county shall, within thirty days, respond in writing about any
269 action taken on the recommendation or any additional action the department or county will take.
270 This written response shall include timelines for implementation. If the department or county
271 disputes the findings or recommendation, the department or county shall, within thirty days,
272 respond in writing with the reasons for not complying with the recommendation. This written
273 response shall be public, accessible through the Internet, and distributed to the media, legislature,
274 attorney general, and governor.

275 (i) The corrections inspector general shall continue to assess and report on previously
276 identified problems and the progress made in resolving them until the problems are resolved.
277 These reports shall be public and accessible through the Internet.

278 Section 9. Annual and Interim Reports.

279 (a) The office shall submit annually to the governor's office, the house and senate
280 committees on ways and means, the executive office for administration and finance, the chairs of
281 the joint committee on the judiciary, and the chairs of the joint committee on public safety and
282 homeland security, and in document form and downloadable spreadsheet form on the website of

283 the office by November 1st of each year, a report that includes, at a minimum, the following
284 information:

285 (1) The budget and expenditures of the corrections inspector general for the prior fiscal
286 year;

287 (2) The number of complaints received and resolved by the division for the prior four
288 quarters;

289 (3) A description of significant systemic or individual investigations or outcomes
290 achieved by the corrections inspector general during the prior four quarters;

291 (4) Any outstanding or unresolved concerns or recommendations of the corrections
292 inspector general; and

293 (5) Input and comments from the public regarding the corrections inspector general's
294 activities during the prior four quarters.

295 (b) The office shall submit a report to the governor, the chairs of the joint committee on
296 the judiciary, and the chairs of the joint committee on public safety and homeland security,
297 within ten days if the department or a county is not in compliance with section 6 or subsection
298 (h) of section 8 of this chapter.

299 Section 10. Confidentiality of correspondence, communications, investigations

300 (a) Correspondence and communication with the office is confidential and shall be
301 confidential and protected as privileged correspondence in the same manner as legal
302 correspondence or communication.

303 (b) The office shall establish confidentiality rules and procedures for all information
304 maintained by the office.

305 (c) The corrections inspector general shall treat all matters under investigation, including
306 the identities of complainants, and individuals from whom information is acquired, as
307 confidential, except as far as disclosures may be necessary to enable the corrections inspector
308 general to perform the duties of the office and to support any recommendations resulting from an
309 investigation. Upon receipt of information that by law is confidential or privileged, the
310 corrections inspector general shall maintain the confidentiality of such information and shall not
311 further disclose or disseminate the information except as provided by applicable state or federal
312 law or as authorized by this section. All records exchanged and communications between the
313 office and the department or county to include the investigative record are confidential and are
314 exempt from public disclosure.

315 (d) To the extent the corrections inspector general reasonably believes necessary, the
316 corrections inspector general:

317 (1) Shall reveal information obtained in the course of providing corrections inspector
318 general services to prevent reasonably certain death or substantial bodily harm; and

319 (2) May reveal information obtained in the course of providing corrections inspector
320 general services to prevent the commission of a crime.

321 (e) If the corrections inspector general believes it is necessary to reveal investigative
322 records for any of the reasons outlined in subsection (d), the corrections inspector general shall
323 provide a copy of what they intend to disclose to the department or county. If the corrections
324 inspector general receives personally identifying information about individual corrections staff

325 during the course of an investigation that the corrections inspector general determines is
326 unrelated or unnecessary to the subject of the investigation or recommendation for action, the
327 corrections inspector general will not further disclose such information. If the corrections
328 inspector general determines that such disclosure is necessary to an investigation or
329 recommendation, the corrections inspector general will contact the staff member as well as the
330 bargaining unit representative before any disclosure.

331 Section 11. Civil immunity and retaliatory actions

332 (a) A civil action may not be brought against any employee of the office for good faith
333 performance of responsibilities under this chapter.

334 (b) No discriminatory, disciplinary, or retaliatory action may be taken against a
335 department or county employee, subcontractor, or volunteer, an incarcerated person, or a family
336 member or representative of an incarcerated person for any communication made, or information
337 given or disclosed, to aid the office in carrying out its responsibilities, unless the communication
338 or information is made, given, or disclosed maliciously or without good faith.

339 (c) This section is not intended to infringe on the rights of an employer to supervise,
340 discipline, or terminate an employee for other reasons.