

Special Report

**West Virginia Prosecuting
Attorneys Institute**

**All Current and Former Employees of the
Prosecuting Attorneys Institute Should
Reimburse the Agency for Personal Charges
on State-Issued Wireless Telephones**

**State Government Needs a Wireless
Telephone Usage Policy for State-Issued
Wireless Telephones**



June 2005
PE 05-06-349

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John Sylvia
Director

June 12, 2005

The Honorable Edwin J. Bowman
State Senate
129 West Circle Drive
Weirton, West Virginia 26062

The Honorable J.D. Beans
House of Delegates
Building 1, Room E-213
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0470

Dear Chairs:

Pursuant to the West Virginia Sunset Law, we are transmitting a Special Report on the West Virginia Prosecuting Attorneys Institute, which will be presented to the Joint Committee on Government Operations on Sunday, June 12, 2005. The issues covered herein are "All Current and Former Employees of the Prosecuting Attorneys Institute Should Reimburse the Agency for Personal Charges on State-Issued Wireless Telephones;" and "State Government Needs a Wireless Telephone Usage Policy for State-Issued Wireless Telephones."

We transmitted a draft copy of the report to the West Virginia Prosecuting Attorneys Institute on June 1, 2005. We held an exit conference with the West Virginia Prosecuting Attorneys Institute on June 3, 2005. We received the agency response on June 8, 2005.

Let me know if you have any questions.

Sincerely,

Handwritten signature of John Sylvia in cursive script.
John Sylvia

JS/tlc

Joint Committee on Government and Finance

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Executive Summary

Issue 1: All Current and Former Employees of the Prosecuting Attorneys Institute Should Reimburse the Agency for Personal Charges on State-Issued Wireless Telephones.

In May of 2005, the Legislative Auditor presented a Special Report on the West Virginia Prosecuting Attorneys Institute. The report included an issue that analyzed the former Executive Director's state-issued wireless telephone records, and found significant abuse. Because of this demonstration of abuse of state resources, the Legislative Auditor deemed necessary the review of wireless phone records for all current and former employees at the Prosecuting Attorneys Institute. Wireless phone records were obtained for the months of September 2002 through March 2005 from the State Auditor's Office. From reviewing the wireless telephone records of the employees at the Prosecuting Attorneys Institute, the Legislative Auditor has found that there has been abuse of state resources due to the fact that state-issued wireless telephones were used for personal calls.

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For the months of September 2002 and March 2005, employees from the Prosecuting Attorneys Institute incurred \$1,035.24 in **personal** roaming, long distance, and plan minute overages. The Legislative Auditor was unable to determine the nature of an additional \$518.54 in charges associated with roaming and long distance, for the same employees.

Issue 2: State Government Needs a Wireless Telephone Usage Policy for State-issued Wireless Telephones.

The Legislative Auditor is concerned that the possible abuse of state-issued wireless telephone exists throughout state government. It is the opinion of the Legislative Auditor that any personal use of a state-issued wireless telephone is inappropriate, even if extra charges are not incurred. This is due to the fact that no matter what the extent of use is, there is personal gain due to one or all three of the following details. First, personal gain is achieved when employees receive a state-issued wireless telephone if it enables them to eliminate or not have to purchase a personal phone. Second, due to the issuance of the state-issued wireless telephone, it is possible that an individual could cancel his or her regular home land-line telephone. This could be made possible due to the fact that use of the wireless telephone during off-peak hours may be unlimited. Third, because long distance is sometimes included at no additional charge than local calls, employees with state-issued wireless telephones could conceivably not have long distance service on their home

The Legislative Auditor is concerned that the possible abuse of state-issued wireless telephone exists throughout state government. It is the opinion of the Legislative Auditor that any personal use of a state-issued wireless telephone is inappropriate, even if extra charges are not incurred.

land-line telephone service. State government would lose credibility with the public it serves if it became prevalent that the State pays for the personal telephone service for its employees.

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West Virginia does not currently have a statewide policy specific to state-issued wireless telephones. Some agencies of the State, such as the Bureau of Employment Programs, have adopted policies regarding the acceptable usage of state-issued wireless telephones. It is the opinion of the Legislative Auditor that the Legislature should consider requiring the Department of Administration's Information Services and Communications Division (IS&C) to develop and implement a statewide wireless telephone usage policy. The policy should address the issue of acceptable usage for personal calls. In addition to the new policy, the Legislature should consider requiring a centralized administration of wireless telephone plans and accounts either by IS&C or the Division of Purchasing.

Recommendations

1. *The Executive Council of the Prosecuting Attorneys Institute should consider requiring current employees and requesting former employees to reimburse the Institute for the charges associated with their personal use of the state-issued wireless telephones.*
2. *The Executive Director of the Prosecuting Attorneys Institute should reconsider the necessity of certain employees having state-issued wireless telephones.*
3. *The Executive Director of the Prosecuting Attorneys Institute should evaluate the wireless telephone plans and usage to determine the most cost effective plan for each employee.*
4. *The Executive Director of the Prosecuting Attorneys Institute should create an internal wireless telephone policy for Institute employees which addresses personal telephone calls.*
5. *The Legislature should consider requiring the Department of Administration's Information Services and Communications Division to develop, implement, and enforce a statewide wireless telephone usage policy.*
6. *The Legislature should consider requiring a centralized administration of wireless telephone plans by either the Department of Administration's Information Services and Communications Division or the Division of Purchasing.*

Review Objective, Scope and Methodology

This Special Report of the Prosecuting Attorneys Institute is required and authorized by the West Virginia Code §4-2-5 as amended. The report was initiated as a result of concerns brought to the attention of the Legislative Auditor through the findings of the May 2005 Special Report of the Prosecuting Attorneys Institute. That report revealed that the former Executive Director used his state-issued wireless telephone excessively and for personal calls at a significant cost to the State.

Objective

The objective of this review was to determine if current and former employees of the Prosecuting Attorneys Institute abused their state-issued wireless telephones by placing personal calls on the devices at cost to the State.

Scope

The scope of this report was from August 2002 - March 2005, which covers the period of time that employees of the Prosecuting Attorneys Institute were issued wireless telephones up to the time of invoice availability.

Methodology

Wireless telephone records were obtained, for each Prosecuting Attorneys Institute employee, from the State Auditor's Office. Each month was analyzed to determine the account costs exceeding the regular base-plan for the account. These additional costs included long distance charges, roaming charges, text message charges, and in a few cases charges for minutes exceeding the plan. The Legislative Auditor classified the telephone numbers called from the wireless units into three categories: personal, work-related, or indeterminable. This classification was achieved using Google™ for listed numbers and interviewing three current Prosecuting Attorneys Institute employees so that they could make the determination themselves. By determining the nature of the calls placed, the Legislative Auditor was able to determine the respective charge. In the relatively few instances where employees exceeded their plan minutes and incurred charges, the Legislative Auditor determined whether personal calls contributed to the overage of the planned minutes. Every aspect of this review complied with Generally Accepted Government Auditing Standards (GAGAS).

Issue 1

All Current and Former Employees of the Prosecuting Attorneys Institute Should Reimburse the Agency for Personal Charges on State-Issued Wireless Telephones.

In May of 2005, the Legislative Auditor presented a Special Report on the West Virginia Prosecuting Attorneys Institute. The report included an issue that analyzed the former Executive Director's state-issued wireless telephone records, and found significant abuse. According to that report, 60% of all calls placed on the wireless telephone were for personal use, while 28% of the calls were determined to be work related. The Legislative Auditor could not determine whether 12% of the calls were work related or personal. For the months reviewed, the Legislative Auditor found that the former Executive Director incurred \$1,082.75 beyond the base price of the wireless plan. Of that amount, \$345.43 were determined to be as a result of personal calls. Additionally the former Executive Director could have been responsible for another \$588.30 in calls that were indeterminable as to their nature. Of the \$1,082.75 in overcharges, only \$149.02 could be determined to be work related. As a result of the May 2005 report, the former Executive Director has reimbursed the Institute for \$933.73.

The Legislative Auditor deemed necessary the review of wireless phone records for all current and former employees at the Prosecuting Attorneys Institute.

Because of this demonstration of abuse of state resources, the Legislative Auditor deemed necessary the review of wireless phone records for all current and former employees at the Prosecuting Attorneys Institute. Wireless phone records were obtained for the months of September 2002 through March 2005 from the State Auditor's Office. For any given month, there were approximately five employees with state-issued wireless phones, each at base rate of approximately fifty dollars. In addition to the base rate, additional services charges have been accrued. This is due to employees having used the state-issued wireless phones by employing the devices for personal use.

Prosecuting Attorneys Institute Employees Made Personal Calls on Their State-Issued Wireless Telephone Which Exceeded Their Wireless Plan and Caused Unnecessary Charges to the State.

From reviewing the wireless telephone records of the employees at the Prosecuting Attorneys Institute, the Legislative Auditor has found that there has been abuse of state resources due to the fact that state-issued wireless telephones were used for personal calls.

Employees from the Prosecuting Attorneys Institute incurred \$1,035.24 in personal roaming, long distance, and plan minute overages.

As shown by Table 1, for the months of September 2002 and March 2005, employees from the Prosecuting Attorneys Institute incurred \$1,035.24 in personal roaming, long distance, and plan minute overages. The Legislative Auditor was unable to determine the nature of an additional \$518.54 in charges associated with roaming and long distance, for the same employees (see Table 1).

Table 1 Summary of Charges for Prosecuting Attorneys Institute Employees that Exceeded the Base-Plan for their State-Issued Wireless Telephones September 2002-March 2005*				
	Charges for Personal Use of State Issued Wireless Telephone	Charges as a Result of Calls That Were Indeterminable***	Text Message Charges	Totals
Current Database Administrator	\$30.41	\$112.96	\$23.30	\$166.67
Former Forensic Medical Fund Administrator	\$45.54	\$25.53	\$8.40	\$79.47
Former Drug and Violent Crime Assistant Prosecutor**	\$268.70	\$66.24	\$3.40	\$338.34
Former Drug and Violent Crime Assistant Prosecutor**	\$72.43	\$71.07	\$0.00	\$143.50
Current Paralegal	\$382.93	\$95.91	\$64.30	\$543.14
Current Executive Director	\$3.85	\$0.00	\$0.00	\$3.85
Current Traffic Safety Resource Assistant Prosecutor	\$231.38	\$70.24	\$0.00	\$301.62
Former HIDTA Prosecutor	\$0.00	\$76.59	\$0.00	\$76.59
Former Drug and Violent Crime Assistant Prosecutor**	\$0.00	\$0.00	\$0.30	\$0.30
Total	\$1,035.24	\$518.54	\$99.70	\$1,653.48
<p>* This table does not include employees that did not exceed their plan. ** The classifications above for the former Drug and Violent Crime Assistant Prosecutors represent three separate individuals. *** Indeterminable calls include incoming calls</p>				

The Prosecuting Attorneys Institute Should Evaluate the Usage of Wireless Telephones.

The overcharges, as shown in the above tables, should cause the Executive Council and Executive Director of the Prosecuting Attorneys Institute to evaluate the usage of wireless phones within the agency. It is the opinion of the Legislative Auditor that the Institute's state-issued wireless telephone plans are troublesome in two ways. First, the Legislative Auditor questions why some Institute employees have been issued wireless telephones in the first place. While it may be necessary for some employees to be assigned wireless telephones to conduct business out of the office, it is not clear why some employees have been issued these devices, who are mostly stationary. Second, the Legislative Auditor finds that some wireless plans appear to be inappropriate. For instance, if employees have been issued devices because they travel extensively, that plan should include a free roaming feature in order to avoid excessive charges associated with roaming. In addition, the Institute does not have a wireless telephone policy that addresses acceptable use of state-issued wireless telephones for personal use.

The Institute does not have a wireless telephone policy that addresses acceptable use of state-issued wireless telephones for personal use.

The Legislative Auditor's analysis shows that employees used the wireless telephones for many personal calls. These devices possibly eliminated employees' need to have their own wireless telephone, resulting in a personal gain. Three current Institute employees stated in writing that they gave up their personal wireless telephones after the former Executive Director told them that they did not need a personal wireless telephone.

Three current Institute employees stated in writing that they gave up their personal wireless telephones after the former Executive Director told them that they did not need a personal wireless telephone.

On September 4, 1997, the Ethics Commission issued Advisory Opinion No. 97-28 concerning the following question:

Is it a violation of the Ethics Act for a state employee to make personal phone calls on the State's long distance telephone system?

The Commission relied upon West Virginia Code 6B-2-5(b)(1), which states:

...a public official or public employees may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person.

The Commission reasoned that using the State's DAIN phone system for private long distance phone calls give agency personnel a financial benefit

since long distance calls using the DAIN system are billed at a rate significantly less than the cost to the general public for similar calls. Therefore, the Commission found that making personal long distance phone calls on the State's DAIN phone system to be a violation of West Virginia Code 6B-2-5(b)(1), even if the cost of the calls were reimbursed by the employee.

When contacted by the Legislative Auditor about an advisory opinion regarding personal wireless telephone usage by a state employee, the Executive Director for the Ethics Commission gave the following response:

The Ethics Commission only provides a formal Advisory Opinion in response to a written request from an affected public servant. As of this date [May 27, 2005], no public servant has requested an Advisory Opinion from the Commission relating to use of a government-provided cellular telephone.

The Executive Director further stated:

To the extent government-provided cellular telephone service resulted in an expense to the government from personal calls, it is my opinion that the precedent contained in that opinion [No. 97-28] would also apply.

Due to a limited amount of information that can be transmitted by these text messages, the Legislative Auditor has concern that such messages that have been sent by employees of the Prosecuting Attorneys Institute were of no official consequence to state business.

Also, as shown in Table 1, employees have used the text message feature of the wireless telephone. **At the rate of ten cents per outgoing text message transmission, the Legislative Auditor finds this to be an uneconomical use of funds.** The Legislative Auditor suspects that this feature is being used in lieu of more conventional and practical forms of communication such as the land-line telephone, email, and face-to-face exchange. As well, due to a limited amount of information that can be transmitted by these text messages, the Legislative Auditor has concern that such messages that have been sent by employees of the Prosecuting Attorneys Institute were of no official consequence to state business. In the May 2005 PERD report, it was noted that the former Executive Director incurred \$125 of charges using the text message feature. The vast majority of those messages appeared not to be work related, therefore causing unnecessary charges.

Recommendations

1. *The Executive Council of the Prosecuting Attorneys Institute should consider requiring current employees and requesting former employees to reimburse the Institute for the charges associated with their personal use of the state-issued wireless telephones.*

2. *The Executive Director of the Prosecuting Attorneys Institute should reconsider the necessity of certain employees having state-issued wireless telephones.*

3. *The Executive Director of the Prosecuting Attorneys Institute should evaluate the wireless telephone plans and usage to determine the most cost effective plan for each employee.*

4. *The Executive Director of the Prosecuting Attorneys Institute should create an internal wireless telephone policy for Institute employees which addresses personal telephone calls.*

Issue 2

State Government Needs a Wireless Telephone Usage Policy for State-Issued Wireless Telephones.

The Legislative Auditor is concerned that the possible abuse of state-issued wireless telephone exists throughout state government. It is the opinion of the Legislative Auditor that any personal use of a state-issued wireless telephone is inappropriate, even if extra charges are not incurred. This is due to the fact that no matter what the extent of use is, there is personal gain due to one or all three of the following details. First, personal gain is achieved when employees receive a state-issued wireless telephone if it enables them to eliminate or not have to purchase a personal phone. Second, due to the issuance of the state-issued wireless telephone, it is possible that an individual could cancel his or her regular home land-line telephone. This could be made possible due to the fact that use of the wireless telephone during off-peak hours may be unlimited. Third, because long distance is sometimes included at no additional charge than local calls, employees with state-issued wireless telephones could conceivably not have long distance service on their home land-line telephone service. Review of the employees wireless phone records at the Prosecuting Attorneys Institute indicated that employees were making late night long distance wireless telephone calls. Although there was no charge because the plan had free nights and weekends, the employees were clearly benefitting from the state-issued wireless telephone.

It is the opinion of the Legislative Auditor that any personal use of a state-issued wireless telephone is inappropriate, even if extra charges are not incurred.

West Virginia does not currently have a statewide policy specific to state-issued wireless telephones.

West Virginia does not currently have a statewide policy specific to state-issued wireless telephones. Some agencies of the State, such as the Bureau of Employment Programs, have adopted policies regarding the acceptable usage of state-issued wireless telephones. This particular policy disallows the personal use of such devices except in emergency or extenuating circumstances. Upon inquiry by the Legislative Auditor, the Director of the Department of Administration's Information Services and Communications Division reported that a statewide policy addressing the acceptable personal use of state-issued wireless telephones was not in place. It is the opinion of the Legislative Auditor that there should be a statewide policy that addresses acceptable use of state-issued wireless telephones.

State government would lose credibility with the public it serves if it became prevalent that the State pays for the personal telephone service for its employees.

The Ethics Commission has not issued an advisory opinion regarding the personal use of a state-issued wireless telephone. It remains unanswered as to what is officially considered acceptable and unacceptable. Until a specific statewide usage policy exists, employees will use their state-issued

wireless telephones in a manner that is inconsistent and according to their *own perception* of acceptable use.

It is the opinion of the Legislative Auditor that the Legislature should consider requiring the Department of Administration's Information Services and Communications Division (IS&C) to develop and implement a statewide wireless telephone usage policy. The policy should address the issue of acceptable usage for personal calls. In addition to the new policy, the Legislature should consider requiring a centralized administration of wireless telephone plans and accounts either by IS&C or the Division of Purchasing. Such a centralized authority could ensure that each state-issued wireless telephone was operated under the most appropriate service plan, considering the employee's unique usage needs. As well, a centralized authority could possibly hold better negotiating ability in securing the most economical wireless telephone service available to the State.

It is the opinion of the Legislative Auditor that the Legislature should consider requiring the Department of Administration's Information Services and Communications Division (IS&C) to develop and implement a statewide wireless telephone usage policy.

Recommendations

5. *The Legislature should consider requiring the Department of Administration's Information Services and Communications Division to develop, implement, and enforce a statewide wireless telephone usage policy.*

6. *The Legislature should consider requiring a centralized administration of wireless telephone plans by either the Department of Administration's Information Services and Communications Division or the Division of Purchasing.*

Appendix A: Transmittal Letter

WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

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John Sylvia
Director

June 1, 2005

Mr. Philip Morrison, II
Executive Director
West Virginia Prosecuting Attorneys Institute
90 MacCorkle Ave SW, Suite 202
South Charleston, WV 25303

Dear Mr. Morrison:

This is to transmit a draft copy of the Special Report of the Prosecuting Attorneys Institute. This report is scheduled to be presented at a future interim meeting of the Joint Committee on Government Operations. We will inform you of the exact time and location once the information becomes available. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions the committee may have.

We need to schedule an exit conference to discuss any concerns you may have with the report. Please notify us to schedule an exact time. We request that your personnel not disclose the report to anyone not affiliated with your agency. Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink that reads "Denny Rhodes".

Denny Rhodes
Research Manager

Enclosure

Joint Committee on Government and Finance

Appendix B: Agency Response



Joe Manchin, III
GOVERNOR

Robert W. Ferguson, Jr.
CABINET SECRETARY

Philip W. Morrison, II
EXECUTIVE DIRECTOR

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PERFORMANCE EVALUATION AND
RESEARCH DIVISION

June 8, 2005

West Virginia Prosecuting Attorneys Institute's responses to the
Recommendations of the Legislative Auditor
Regarding PERD Draft Special Report No. PE 05-06-349
Questions 1 through 4

Questions 5 & 6 remain unanswered by the Institute
because they exceed the scope of answering authority of both
the Institute Board of Directors and it's Executive Director

1. All Current Institute employees have reimbursed the agency for all call charges determined to be personal as well as those call charges labeled Indeterminable and not verified as work related. The Auditor's recommendations that the Executive Council request reimbursement from former employees will be presented to the Executive Council at the next regularly scheduled meeting for their consideration and it is anticipated that such a request will be made. The issue of text messaging charges will also be brought before the Executive Council at that meeting for consideration.

Although not directly the subject of this Special Report it should be noted that the former Executive Director has also reimbursed the Institute for the similar charges delineated in Special Report number 05-01-344

- 2.& 3. The Executive Director of the Prosecuting Attorneys Institute is currently engaged in considering the questions of which Institute employees show demonstrable need for the use of State Issued wireless telephones and, for those who do, optimal cost efficiency in wireless plan design. Restructuring of agency's

wireless plans is expected on or before June 30, 2005.

4. A comprehensive Acceptable Use Policy regarding all office equipment and services will be presented to the Executive Council at the next regularly scheduled meeting for their consideration and/or enactment. Personal use of office issued wireless phones will be addressed therein. Internal control for oversight of the Acceptable Use Policy, as it relates to the subject of this special report, will include quarterly internal review and required reimbursement if an employee is found to be out of compliance.

A handwritten signature in black ink, appearing to read "Philip W. Morrison, II". The signature is stylized and somewhat cursive, with a large initial "P" and "M".

Philip W. Morrison, II
Executive Director