

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **Senate Bill 262**

BY SENATOR BLAIR

[Introduced January 13, 2016;

Referred to the Committee on the Judiciary.]

1 A BILL to amend and reenact §25-1-17 and §25-1-18 of the Code of West Virginia, 1931, as  
 2 amended, all relating to law enforcement not needing to obtain court orders prior to  
 3 receiving recordings of inmate phone calls and inmate mail under certain circumstances.

*Be it enacted by the Legislature of West Virginia:*

1 That §25-1-17 and §25-1-18 of the Code of West Virginia, 1931, as amended, be amended  
 2 and reenacted to read as follows:

**ARTICLE 1. ORGANIZATION, INSTITUTIONS AND CORRECTIONS MANAGEMENT.**

**§25-1-17. Monitoring of inmate telephone calls; procedures and restrictions; calls to or from attorneys excepted.**

1 (a) The Commissioner of Corrections or his or her designee is authorized to monitor,  
 2 intercept, record and disclose telephone calls to or from adult inmates of state correctional  
 3 institutions in accordance with the following provisions:

4 (1) All adult inmates of state correctional institutions shall be notified in writing that their  
 5 telephone conversations may be monitored, intercepted, recorded and disclosed;

6 (2) Only the commissioner, warden, administrator or their designee shall have access to  
 7 recordings of inmates= telephone calls unless disclosed pursuant to subdivision (4) of this  
 8 subsection;

9 (3) Notice shall be prominently placed on or immediately near every telephone that may  
 10 be monitored;

11 (4) The contents of inmates= telephone calls may be disclosed to an appropriate law-  
 12 enforcement agency ~~pursuant to an order of a court or administrative tribunal~~ when disclosure is  
 13 necessary for the investigation, prevention or prosecution of a crime or to safeguard the orderly  
 14 operation of the correctional institution. Disclosure may be made in civil or administrative  
 15 proceedings pursuant to an order of a court or an administrative tribunal when the disclosure is:

16 (A) Necessary to safeguard and protect the orderly operation of the correctional institution;

17 or

18 (B) Necessary to protect persons from physical harm or the threat of physical harm;

19 (5) All recordings of telephone calls shall be retained for at least three years and  
20 maintained and destroyed in accordance with the record retention policy of the Division of  
21 Corrections adopted pursuant to section one, article eight, chapter five-a of this code, *et seq.*; or

22 (6) To safeguard the sanctity of the attorney-client privilege, a telephone line that is not  
23 monitored shall be made available for telephone calls to or from an attorney. These calls shall not  
24 be monitored, intercepted, recorded or disclosed in any matter.

25 ~~(b) The commissioner shall propose legislative rules in accordance with the provisions of~~  
26 ~~article three, chapter twenty-nine-a of this code to effectuate the provisions of this section.~~

27 ~~(e)~~ (b) The provisions of this section shall apply only to those persons serving a sentence  
28 of incarceration in the custody of the Commissioner of Corrections.

**§25-1-18. Monitoring inmate mail; procedures and restrictions; identifying mail from a state  
correctional institution; mail to or from attorneys excepted.**

1 (a) The Commissioner of Corrections or his or her designee is authorized to monitor, open,  
2 review, copy and disclose mail sent to adult inmates of state correctional institutions in  
3 accordance with the following provisions:

4 (1) All adult inmates of state correctional institutions shall be notified in writing that their  
5 mail may be monitored, opened, reviewed, copied and disclosed;

6 (2) Only the commissioner and his or her designee shall have access to copies of inmates=  
7 mail unless disclosed pursuant to subdivision (4) of this subsection;

8 (3) Notice that the mail may be monitored shall be prominently placed on or immediately  
9 near every mail receptacle or other designated area for the collection or delivery of mail;

10 (4) The contents of inmates= mail may be disclosed to an appropriate law-enforcement  
11 agency ~~pursuant to an order of a court or administrative tribunal~~ when disclosure is necessary for

12 the investigation, prevention or prosecution of a crime or to safeguard the orderly operation of the  
13 correctional institution. Disclosure may be made in civil or administrative proceedings pursuant to  
14 an order of a court or administrative tribunal when the disclosure is:

15 (A) Necessary to safeguard and protect the orderly operation of the correctional institution;

16 or

17 (B) Necessary to protect persons from physical harm or the threat of physical harm;

18 (5) All copies of mail shall be retained for at least three years and maintained and  
19 destroyed in accordance with the records retention policy of the Division of Corrections adopted  
20 pursuant to section one, article eight, chapter five-a of this code, *et seq.*; or

21 (6) The inmate whose mail has been copied and disclosed under this section shall be  
22 given a copy of all such mail when it is determined by the commissioner, warden or administrator  
23 not to jeopardize the safe and secure operation of the facility or to be detrimental to an ongoing  
24 investigation or administrative action.

25 (b) To safeguard the sanctity of the attorney-client privilege, mail to or from an inmate=s  
26 attorney shall not be monitored, reviewed, copied or disclosed in any manner unless required by  
27 an order of a court of competent jurisdiction. However, such mail may be checked for weapons,  
28 drugs and other contraband provided it is done in the presence of the inmate and there is a  
29 reasonable basis to believe that any weapon, drug or other contraband exists in the mail.

30 (c) All inmates= outgoing mail must be clearly identified as being sent from an inmate at a  
31 state correctional institution and must include on the face of the envelope the name and full  
32 address of the institution.

33 (d) The Commissioner of Corrections or his or her designee is authorized to open, monitor,  
34 review, copy and disclose an inmate=s outgoing mail in accordance with the provisions of  
35 subsection (a) of this section.

36 ~~(e) The commissioner shall propose legislative rules in accordance with the provisions of~~

37 ~~article three, chapter twenty-nine-a of this code to effectuate the provisions of this section.~~

38           (f) (e) The provisions of this section shall apply only to those persons serving a sentence  
39 of incarceration in the custody of the Commissioner of Corrections.

NOTE: The purpose of this bill is to eliminate the need for law enforcement to obtain a court order prior to having access to inmate mail and phone recordings under certain circumstances.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.