

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 262

BY SENATOR BLAIR, *original sponsor*

[Passed March 12, 2016; in effect 90 days from passage]

1 An ACT to amend and reenact §25-1-17 and §25-1-18 of the Code of West Virginia, 1931, all
2 relating to law enforcement not needing to obtain court orders prior to receiving recordings
3 of inmate phone calls and inmate mail for investigative purposes; eliminating requirement
4 for promulgation of legislative rules relating to monitoring of inmate telephone
5 conversations and mail; requiring commissioner to promulgate policy directive
6 establishing record-keeping procedure to memorialize telephone conversations and mail
7 provided to law enforcement for investigation; requiring records to be retained in
8 accordance with Division of Correction's record retention policy; allowing an inmate's
9 attorney access to telephone conversations and inmate mail supplied to law enforcement
10 and exceptions thereto; clarifying that inmate mail and telephone provisions apply only to
11 inmates in physical custody of commissioner; and clarifying that information supplied to
12 law enforcement is not subject to disclosure under the Freedom of Information Act.

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
2 amended 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 when disclosure is necessary for the investigation, prevention or prosecution
13 of a crime or to safeguard the orderly operation of the correctional institution. Disclosure may be
14 made in civil or administrative proceedings pursuant to an order of a court or an administrative
15 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 promulgate a policy directive establishing a record-keeping
26 procedure which requires retention of: (1) A copy of the contents of any inmate telephone
27 conversation provided to law enforcement; and (2) the name of the law-enforcement officer and
28 the law-enforcement agency to which the contents of the telephone conversation were provided.
29 The records required to be retained pursuant to this subsection shall be retained in accordance
30 with the record retention policy specified in subdivision (5), subsection (a) of this section. The
31 inmate's telephone conversation and the information regarding law enforcement are law-
32 enforcement records under subdivision (4), subsection (a), section four, article one, chapter
33 twenty-nine-b of this code.

34 (c) Should an inmate be charged with a crime based in whole or in part on the inmate's
35 telephone conversation supplied to law enforcement, the inmate's attorney in said criminal matter
36 shall be entitled to access to and copies of the inmate's telephone conversations in the custody
37 of the commissioner which are not evidence in or the subject of another criminal investigation.

38 (d) The provisions of this section shall apply only to those persons serving a sentence of
39 incarceration in the physical 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,
2 open, 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 when disclosure is necessary for the investigation, prevention or prosecution of a crime
12 or to safeguard the orderly operation of the correctional institution. Disclosure may be made in
13 civil or administrative proceedings pursuant to an order of a court or administrative tribunal when
14 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 promulgate a policy directive establishing a record-keeping
37 procedure which requires retention of: (1) All inmate mail provided to law enforcement; and (2)
38 the name of the law-enforcement officer and the law-enforcement agency to which the inmate
39 mail was provided. The records required to be retained pursuant to this subsection shall be
40 retained in accordance with the record retention policy specified in subdivision (5), subsection (a)
41 of this section. The inmate mail and the information regarding law enforcement are law-
42 enforcement records under subdivision (4), subsection (a), section four, article one, chapter
43 twenty-nine-b of this code.

44 (f) Should an inmate be charged with a criminal offense based in whole or in part on the
45 inmate's mail supplied to law enforcement, the inmate's attorney in said criminal matter shall be
46 entitled to access to and copies of the inmate's mail in the custody of the commissioner which are
47 not evidence in or the subject of another criminal investigation.

48 (g) The provisions of this section shall apply only to those persons serving a sentence of
49 incarceration in the physical custody of the Commissioner of Corrections.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

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Day of, 2016.

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Governor