

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Committee Substitute

for

Senate Bill Number 262

BY SENATOR BLAIR

[Originating in the Committee on the Judiciary;
reported on January 25, 2016.]

1 A BILL 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 of such transfers be
8 maintained for three years; allowing an inmate's attorney access to telephone
9 conversations and inmate mail supplied to law enforcement and exceptions thereto;
10 clarifying that inmate mail and telephone provisions apply only to inmates in physical
11 custody of commissioner; and clarifying that information supplied to law enforcement is
12 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 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.~~ The
27 commissioner shall promulgate a policy directive establishing a record-keeping procedure which
28 requires retention of a copy of the contents of any inmate telephone conversation provided to law
29 enforcement as well as the name of the law-enforcement officer and the law-enforcement agency
30 to which the contents of the telephone conversation were provided. The contents of the telephone
31 conversation and the information regarding law enforcement shall be retained for a period of not
32 less than three years from the date of delivery to law enforcement. The inmate's telephone
33 conversation and the information regarding law enforcement are law-enforcement records under
34 subdivision (4), subsection (a), section four, article one, chapter twenty-nine-b of this code.

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

39 ~~(c)~~(d) The provisions of this section shall apply only to those persons serving a sentence
40 of 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, 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: (A) Necessary to safeguard
15 and protect the orderly operation of the correctional institution; or

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

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

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

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

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

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

35 ~~(e) The commissioner shall propose legislative rules in accordance with the provisions of~~
36 ~~article three, chapter twenty-nine-a of this code to effectuate the provisions of this section. The~~
37 ~~commissioner shall promulgate a policy directive establishing a record-keeping procedure which~~
38 ~~requires retention of all inmate mail provided to law enforcement as well as the name of the law-~~
39 ~~enforcement officer and the law-enforcement agency to which the inmate mail was provided. The~~
40 ~~inmate mail and the information regarding law enforcement shall be retained in a period not less~~
41 ~~than three years from the date of delivery to law enforcement. The inmate mail and the information~~
42 ~~regarding law enforcement are law-enforcement records under subdivision (4), subsection (a),~~
43 ~~section four, article one, chapter 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.