

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2891

FISCAL
NOTE

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[Introduced March 9, 2017; 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, all
 2 relating to including electronic communications to and from inmates with the types of
 3 communications that the Division of Corrections currently monitors and may record, retain
 4 and, for certain law-enforcement purposes, disclose.

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, all to read as follows:

ARTICLE 1. ORGANIZATION, INSTITUTIONS AND CORRECTIONS MANAGEMENT.

**§25-1-17. Monitoring of inmate telephone calls and electronic communications;
 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 and electronic communications to or from adult
 3 inmates of state correctional 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 or electronic communications may be monitored, intercepted, recorded
 6 and disclosed;

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

10 (3) Notice shall be prominently placed on or immediately near every telephone or
 11 electronic communications device that may be monitored;

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

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

18 or

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

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

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

28 (b) The commissioner shall promulgate a policy directive establishing a record-keeping
29 procedure which requires retention of: (1) A copy of the contents of any inmate telephone
30 conversation or electronic communication provided to law-enforcement; and (2) the name of the
31 law-enforcement officer and the law-enforcement agency to which the contents of the telephone
32 conversation or electronic communication were provided. The records required to be retained
33 pursuant to this subsection shall be retained in accordance with the record retention policy
34 specified in subdivision (5), subsection (a) of this section. The inmate's telephone conversation
35 and the information regarding law enforcement are law-enforcement records under subdivision
36 (4), subsection (a), section four, article one, chapter twenty-nine-b of this code.

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

42 (d) The provisions of this section shall apply only to those persons serving a sentence of

43 incarceration in the physical custody of the Commissioner of Corrections.

44 (e) For purposes of this section, “electronic communication” shall mean any transfer to or
45 from an inmate of writings, images, sounds, or data of any nature transmitted, in whole or in part,
46 by an electronic system.

**§25-1-18. Monitoring inmate mail or electronic communications; procedures and
restrictions; identifying mail or electronic communications from a state correctional
institution; mail or electronic communications 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 or electronic communications sent to adult inmates of state
3 correctional institutions in accordance with the following provisions:

4 (1) All adult inmates of state correctional institutions shall be notified in writing that their
5 mail or electronic communications 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 or electronic communications unless disclosed pursuant to subdivision (4) of this subsection;

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

11 (4) The contents of inmates’ mail or electronic communications may be disclosed to an
12 appropriate law-enforcement agency when disclosure is necessary for the investigation,
13 prevention or prosecution of a crime or to safeguard the orderly operation of the correctional
14 institution. Disclosure may be made in civil or administrative proceedings pursuant to an order of
15 a court or 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 copies of mail shall be retained for at least three years and maintained and

20 destroyed in accordance with the records retention policy of the Division of Corrections adopted
21 pursuant to ~~section one~~, the provisions of article eight, chapter five-a of this code, ~~et seq.~~; or

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

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

32 (c) All inmates' outgoing mail or electronic communications must be clearly identified as
33 being sent from an inmate at a state correctional institution and must include on the face of the
34 envelope the name and full address of the institution.

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

38 (e) The commissioner shall promulgate a policy directive establishing a record-keeping
39 procedure which requires retention of: (1) All inmate mail or electronic communications provided
40 to law enforcement; and (2) the name of the law-enforcement officer and the law-enforcement
41 agency to which the inmate mail or electronic communication was provided. The records required
42 to be retained pursuant to this subsection shall be retained in accordance with the record retention
43 policy specified in subdivision (5), subsection (a) of this section. The inmate mail or electronic
44 communications and the information regarding law enforcement are law-enforcement records
45 under subdivision (4), subsection (a), section four, article one, chapter twenty-nine-b of this code.

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

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

53 (h) For purposes of this section, "electronic communication" shall mean any transfer to or
54 from an inmate of writings, images, sounds, or data of any nature transmitted in whole or in part
55 by an electronic system.

NOTE: The purpose of this bill is to add electronic communications to the Division of Corrections existing ability to monitor inmate communications.

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