

# 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.