

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In This Box

FILED

2009 MAY -6 PM 2:11

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Division of Corrections TITLE NUMBER: 90

RULE TYPE: Legislative CITE AUTHORITY: WV Code 25-1-17

AMENDMENT TO AN EXISTING RULE: YES ☒ NO ☐

IF YES, SERIES NUMBER OF RULE BEING AMENDED: Series 5

TITLE OF RULE BEING AMENDED: Recording of inmate telephone calls

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON May 25, 2009 AT 9:00 a.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

West Virginia Division of Corrections

Attention: Loita Butcher

112 California Avenue

Building 4, Room 300

Charleston, WV 25305

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

90CSR5

TITLE 90

LEGISLATIVE RULE

DIVISION OF CORRECTIONS

SERIES 5

RECORDING OF INMATE TELEPHONE CALLS

SUMMARY

This legislative rule establishes the policy and delineates guidelines for the monitoring, recording, record keeping and disclosure of inmate telephone calls under the jurisdiction of the Commissioner of the West Virginia Division of Corrections.

TITLE 90
LEGISLATIVE RULES
DIVISION OF CORRECTIONS

FILED

2009 MAY -6 PM 2:12

SERIES 5
RECORDING OF INMATE TELEPHONE CALLS

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§90-5-1. General.

1.1. Scope. -- This legislative rule establishes the policy and delineates guidelines for the monitoring, recording, record keeping and disclosure of inmate telephone calls.

1.2. Authority. -- W. Va. Code §25-1-17.

1.3. Filing Date. -- ~~May 22, 1995~~ May 6, 2009

1.4. Effective Date. -- ~~May 22, 1995~~ May 6, 2009.

§90-5-2. Applicability.

2.1 All telephones for use by inmates ~~on the inmate "pay phone" system~~ shall be connected to a secure, automated, digital recording module which shall be capable of identifying the inmate making the call, the number called and disabling recording during calls to the inmate's attorney. ~~Such system may be similar to those not unlike that utilized with municipal "911 emergency systems". Except for calls from an inmate to his attorney, all~~ All inmate telephone calls may be monitored and will be automatically recorded; not live monitored. All recordings shall be retained for at least three (3) years and may only be disclosed as set forth herein, for record keeping purposes for potential investigations;

2.2 The computerized telephone system shall generate a report of the telephone usage a minimum of once a month;

§90-5-3. Procedure.

3.1 Notification.

3.1.1. Division of Corrections will notify all inmates in writing that their telephone conversations may be recorded and disclosed in accordance with this rule;

3.1.2. Each correctional center shall prominently place a notice on, or immediately near, any telephone on which recording may take place;

3.2 Recording Method.

3.2.1. An automated digital recording device, similar in concept and design to those used on "911 emergency systems", shall be installed in a secure, limited access location, and connected to the inmate telephone lines.

3.2.2. All inmate telephone calls, except those made to the inmate's attorney, shall be automatically recorded.

3.2.3. The warden of each institution shall designate an individual or individuals who shall be charged with monitoring the telephone system and reviewing recorded calls.

3.2.4. The contents of inmates' telephone calls may be disclosed to an appropriate law-enforcement agency pursuant to an order of a court or administrative tribunal when disclosure is necessary for the investigation, prevention or prosecution of a crime or to safeguard the orderly operation of the correctional institution.

3.2.5. Disclosure may be made in civil or administrative proceedings pursuant to an order of a court of an administrative tribunal when the disclosure is: (A) Necessary to safeguard and protect the orderly operation of the correctional institution; or (B) Necessary to protect persons from physical harm or the threat of physical harm.

3.3 Security.

3.3.1. The general public shall, to the extent possible, be protected from unwanted inmate calls.

APPENDIX B
FISCAL NOTE FOR PROPOSED RULES

Rule Title: Recording Inmate Telephone Calls

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: West Virginia Division of Corrections

Address: 112 California Avenue
Building 4, Room 300
Charleston, WV 25305

Phone Number: (304) 558-2036 ext. 32 Email: butchl@mail.wvnet.edu

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure
will have on costs and revenues of state government.

There is no additional funding necessary for the implementation of this legislation.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of
Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues			

Rule Title: _____

Rule Title: Recording Inmate Telephone Calls

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: May 4, 2009

Signature of Agency Head or Authorized Representative
