

Form #4

11-11-68

Nov 22 2 55 PM '94

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

AGENCY: Division of Corrections TITLE NUMBER: 90

CITE AUTHORITY W. Va. Code § 25-1-17

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 5

TITLE OF RULE BEING PROPOSED: _____ 90 _____

Recording of Inmate Telephone Calls


Authorized Signature

promulgate legislative rules relating to inmate telephone calls, as modified; authorizing the division of corrections to promulgate legislative rules relating to furlough programs for inmates under the custody and control of the commissioner of the division of corrections, as modified; authorizing the division of corrections to promulgate legislative rules relating to employment of displaced correctional employees, as modified; authorizing the jail and correctional facility standards commission to promulgate legislative rules relating to West Virginia minimum standards for construction, operation and maintenance of jails, as modified and amended; authorizing the state fire commission to promulgate legislative rules relating to the state fire code, as modified and amended; authorizing the fire commission to promulgate legislative rules relating to the state building code, as modified and amended; authorizing the division of public safety to promulgate legislative rules relating to the division of public safety's grievance procedure, as modified; and authorizing the division of public safety to promulgate legislative rules relating to cadet selection process, as modified.

Be it enacted by the Legislature of West Virginia:

That article six, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 6. AUTHORIZATION FOR DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY TO PROMULGATE LEGISLATIVE
RULES.

~~§64-6-1. Division of corrections.~~

90-5
amend.

1 (a) The legislative rules filed in the state register on the
2 fifth day of August, one thousand nine hundred
3 ninety-four, modified by the division of corrections to
4 meet the objections of the legislative rule-making review
5 committee and refiled in the state register on the
6 twenty-second day of November, one thousand nine
7 hundred ninety-four, relating to the division of correc-
8 tions (recording of inmate telephone calls, 90 CSR 5), are
9 authorized with the amendment set forth below:

10 On page two of the rule, section 3.2.2, after the period,
11 inserting the following sentences: "Except attorney-
12 client telephone calls which will not be recorded in any
13 way."

90-3 14 (b) The legislative rules filed in the state register on the
15 fifth day of August, one thousand nine hundred
16 ninety-four, modified by the division of corrections to
17 meet the objections of the legislative rule-making review
18 committee and refiled in the state register on the
19 twenty-second day of November, one thousand nine
20 hundred ninety-four, relating to the division of correc-
21 tions (furlough programs for inmates under the custody
22 and control of the commissioner of the division of
23 corrections, 90 CSR 3), are authorized.

90-4 24 (c) The legislative rules filed in the state register on the
25 twenty-seventh day of July, one thousand nine hundred
26 ninety-four, modified by the division of corrections to
27 meet the objections of the legislative rule-making review
28 committee and refiled in the state register on the
29 twenty-second day of November, one thousand nine
30 hundred ninety-four, relating to the division of correc-
31 tions (employment of displaced correctional employees,
32 90 CSR 4), are authorized.

§64-6-2. Jail and correctional facility standards commission.

95-1 1 The legislative rules filed in the state register on the
2 eleventh day of August, one thousand nine hundred
3 ninety-four, modified by the jail and correctional facility
Amend. 4 standards commission to meet the objections of the
5 legislative rule-making review committee and refiled in
6 the state register on the fourth day of November, one
7 thousand nine hundred ninety-four, relating to the jail
8 and correctional facility standards commission (West
9 Virginia minimum standards for construction, operation
10 and maintenance of jails, 95 CSR 1), are authorized with
11 the amendment set forth below:

12 On page forty, following section 17.18, by inserting a
13 new section 17.19, to read as follows:

TITLE 90
LEGISLATIVE RULE
DIVISION OF CORRECTIONS

SERIES 5
RECORDING OF INMATE TELEPHONE CALLS

§90-5-1. General.

- 1.1 Scope - this legislative rule establishes the policy and delineates guidelines for the recording of inmate telephone calls.
- 1.2 Authority - W.Va. Code §25-1-17
- 1.3 Filing Date -
- 1.4 Effective Date -

§90-5-2. Applicability.

- 2.1 All telephones on the inmate "pay phone" system shall be connected to a secure, automated, digital recording module not unlike that utilized with municipal "911 emergency systems." All inmate telephone calls will be automatically recorded, not live monitored, for record keeping purposes for potential investigations. 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. The 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 shall be automatically recorded.

3.3 Security.

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

3.3.2. Each inmate shall be assigned a personal identification number which must be used to access the computerized telephone system. Each inmate shall have an approved list of telephone numbers. The computer will not connect telephone calls to telephone numbers not on the inmate's approved list, however, each attempted call will be stored and reported by the computer.

3.3.3. Each correctional center shall block individual telephone numbers from the system whenever any person requests that their telephone number not be accessible by the inmate telephone system.

3.4 Access to Recordings.

3.4.1. Only the Commissioner of the Division of Corrections, and the Commissioner's designee(s), shall have access to recordings of inmate telephone calls.

3.4.2. Access shall be through a password secured computer terminal.

3.4.3. Individual telephone calls and the recorded conversation shall be accessed, listened to, recorded, or transcribed for investigative purposes only. The Commissioner or the Commissioner's designee(s) must approve or assign investigations.

3.4.4. A log shall be kept of all telephone call recordings that are accessed.

§90-5-4. Disclosure

- 4.1 The contents of a telephone conversation shall be disclosed to corrections and or law enforcement officials only if the disclosure is:
 - 4.4.1. Necessary to safeguard the orderly operation of the correctional institution;
 - 4.4.2. Necessary for the investigation of a crime;
 - 4.4.3. Necessary for the prevention of a crime;
 - 4.4.4. Necessary for the prosecution of a crime; or
 - 4.4.5. Required by an order of a court of competent jurisdiction.

§90-5-5. Period of Maintenance.

- 5.1 All recordings of telephone conversations, unless being disclosed in accordance with Section 4 of this rule, shall be destroyed within twelve months after the recording by the chief executive officer, or his designee(s) at the correctional center(s).

§90-5-6. Attorney - Inmate Telephone Calls.

- 6.1 Conversation between an inmate and an attorney shall not be monitored, intercepted, recorded or disclosed in any manner.
 - 6.1.1. The telephone numbers of each inmate's attorney shall be entered into the telephone computer system. The system will be programmed to automatically disengage the monitoring equipment when an attorney's telephone number is dialed.



West Virginia Legislature
Legislative Rule-Making Review Committee

Room M-152, State Capitol
Charleston, West Virginia 25305
(304) 340-3286

FILED

OCT 11 10 08 AM '94

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Senator Joe Manchin, III, Co-Chair
Delegate Brian A. Gallagher, Co-Chair

October 2, 1994

Debra A. Graham, Counsel
Marie Nickerson, Admr. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Major General Joseph Skaff
Secretary
Department of Public Safety
Capitol Complex
Charleston, WV 25305

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Division of Corrections-Recording of Inmate
Telephone Calls

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed
 - (b) as modified by the agency X
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. _____
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached. _____

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

cc: Rita Stuart, Counsel