

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

Do Not Mark In this Box

FILED

May 22 11 39 AM '95

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: Division of Corrections TITLE NUMBER: 90

AMENDMENT TO AN EXISTING RULE: YES , NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED:

TITLE OF RULE BEING AMENDED:

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

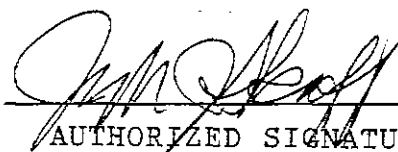
TITLE OF RULE BEING PROPOSED: Recording of Inmate Telephone
Calls

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) Senate Bill 88

SECTION 64-6-1(a), PASSED ON March 10, 1995

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: May 22, 1995


AUTHORIZED SIGNATURE

Major General Joseph J. Skaff
Secretary, Department of Military
Affairs & Public Safety

Division of Corrections

Legislative Rule

Title 90 Series 5

Promulgation History

The West Virginia Legislature created West Virginia Code § 25-1-17 in 1990 in an effort to deal with inmate abuse of telephones for the purpose of carrying out illegal activities. This rule creates the guidelines necessary to implement and operationalize the Code section.

TITLE 90
LEGISLATIVE RULE
DIVISION OF CORRECTIONS

SERIES 5
RECORDING OF INMATE TELEPHONE CALLS

§90- -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- -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- -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 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 inmates approved list, however, each attempted call will be stored and reported by the computer.

3.3.3 The institution 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, re-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- -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. 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.

§90- -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 inmates attorney shall be entered into the telephone computer system. The system will be programed to automatically disengage the monitoring equipment when an attorney's telephone number is dialed.

90-5
Bill-Corrections, Phone

HHIC
H. B. 2144

(By Delegates Gallagher, Douglas, Compton,
Linch, Faircloth and Riggs)
(Introduced January 23, 1995 ; referred to the
Committee on the Judiciary)

A BILL to amend and reenact section one, article six, chapter
sixty-four of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to authorizing the
division of corrections to promulgate legislative rules
relating to the recording of inmate telephone calls.

Be it enacted by the Legislature of West Virginia:

That section one, 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.

(a) The legislative rules filed in the state register on the
twentieth day of September, one thousand nine hundred
eighty-eight, modified by the commissioner of the department of

1 corrections to meet the objections of the legislative rule-making
2 review committee and refiled in the state register on the
3 thirteenth day of January, one thousand nine hundred eighty-nine,
4 relating to the commissioner of the department of corrections
5 (parole supervision), are authorized.

6 (b) The legislative rules filed in the state register on the
7 twentieth day of September, one thousand nine hundred
8 eighty-eight, modified by the commissioner of the department of
9 corrections to meet the objections of the legislative rule-making
10 review committee and refiled in the state register on the
11 thirteenth day of January, one thousand nine hundred eighty-nine,
12 relating to the commissioner of the department of corrections
13 (furlough programs for inmates under the custody and control of
14 the commissioner of the department of corrections), are
15 authorized.

16 (c) The legislative rules filed in the state register on the
17 sixteenth day of August, one thousand nine hundred ninety-three,
18 modified by the division of corrections to meet the objections
19 of the legislative rule-making review committee and refiled in
20 the state register on the sixteenth day of November, one thousand
21 nine hundred ninety-three, relating to the division of
22 corrections (parole supervision), are authorized.

23 (d) The legislative rules filed in the state register on the
24 fifth day of August, one thousand nine hundred ninety-four,
25 modified by the division of corrections to meet the objections of

1 the legislative rule-making review committee and refiled in the
2 state register on the twenty-second day of November, one thousand
3 nine hundred ninety-four, relating to the division of corrections
4 (recording of inmate telephone calls), are authorized.

5

6 NOTE: The purpose of this bill is to authorize the Division
7 of Corrections to promulgate legislative rules relating to the
8 recording of inmate telephone calls.

9

10 Strike-throughs indicate language that would be stricken from
11 the present law, and underscoring indicates new language that
12 would be added.

SENATE BILL NO. 38

(By Senators Manchin, Anderson, Boley, Grubb and
Macnaughtan)

[Introduced January 20, 1995; referred to the
Committee on the Judiciary]

90-5

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13 division of corrections to promulgate legislative rules
14 relating to the recording of inmate telephone calls.

15 Be it enacted by the Legislature of West Virginia:

16 That section one, article six, chapter sixty-four of the code
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19 ARTICLE 6. AUTHORIZATION FOR DEPARTMENT OF MILITARY AFFAIRS AND
20 PUBLIC SAFETY TO PROMULGATE LEGISLATIVE RULES.

21 §64-6-1. Division of corrections.

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24 eighty-eight, modified by the commissioner of the department of

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2 review committee and refiled in the state register on the
3 thirteenth day of January, one thousand nine hundred eighty-nine,
4 relating to the commissioner of the department of corrections
5 (parole supervision), are authorized.

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7 twentieth day of September, one thousand nine hundred
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KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
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WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

March 28, 1995

Rita A. Stuart
Corrections
112 California Ave., Rm. 300
Charleston, WV 25305

SB 88 authorizing, Title 90, Series 5, Recording of inmate telephone calls, passed the Legislature on **March 10, 1995**. It is was signed by the Governor on March 23, 1995.

You have sixty (60) days after the Governor signs SB 88, to final file the legislative rule with the Secretary of State's office. To final file your legislative rule, fill in the blanks on the enclosed form #6, the "Final Filing" form and file the form with our office with a promulgation history of the rule. Authorization for your legislative rule is cited in **SB 88** section 64-6-1(a). The agency may set the effective date of the legislative rule up to ninety (90) days from the date the legislative rule is final filed with the Secretary of State's office. Please have an authorized signature on the bottom line.

*****IMPORTANT: YOUR AGENCY MUST SUBMIT A CLEAN COPY OF THE LEGISLATIVE RULE ON DISK, WITH ALL UNDERLINING, STRIKE-THROUGHS AND HEADERS/FOOTERS TAKEN OUT, TO OUR OFFICE WHEN FINAL FILING THE RULE. THE DISK MUST BE ON A WORD PERFECT (5.1 OR 5.2 VERSION) OR WORD PERFECT COMPATIBLE COMPUTER SYSTEM 3 1/2" DOUBLE DENSITY DISK. STATE ON THE DISK THE FORMAT THE RULE IS IN AND THE TITLE IT IS FILED UNDER. THIS WILL ENABLE US TO ENTER YOUR RULES ON THE LEGISLATIVE DATA BASE. REMEMBER THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING, STRIKE-THROUGHS AND HEADERS/FOOTERS TAKEN OUT. AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE.**

After the final rule is entered into the legislative data base, the rule will be sent to the agency for review and proofing. Following confirmation or corrections, as the case may be, the Secretary of State shall submit to the agency a final version of the rule for their records.

If you have any questions or need any assistance, please do not hesitate to call our office.

Thank You
Administrative Law Division

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

STEPHEN N. REED
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

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STATE OF WEST VIRGINIA
SECRETARY OF STATE

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FILED

WILLIAM H. HARRINGTON
Chief of Staff

APR 19 1 47 PM '96
JUDY COOPER
Director, Administrative Law

PENNEY BARKER
Supervisor, Corporations
OFFICE OF WEST VIRGINIA
- SECRETARY OF STATE

(Plus all the volunteer
help we can get)

TO: Jill Jerabeck

AGENCY: Corrections

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: April 1, 1996

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 5 TITLE: 90 Corrections

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: William R. Waple

TITLE OF PERSON SIGNING: Deputy Commissioner - Operations

DATE: April 18, 1996

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.