

Form #3

OFFICE WEST VIRGINIA
SECRETARY OF STATE


Authorized Signature

90CSR7

TITLE 90

LEGISLATIVE RULE

DIVISION OF CORRECTIONS

SERIES 7

MONITORING INMATE MAIL

SUMMARY

This legislative rule establishes the policy and delineates guidelines for the monitoring, reading and copying both incoming and outgoing mail in the adult correctional facilities under the jurisdiction of the Commissioner of the West Virginia Division of Corrections.

**TITLE 90
LEGISLATIVE RULES
DIVISION OF CORRECTIONS**

**SERIES 7
MONITORING INMATE MAIL**

FILED

2009 JUN 16 PM 1:49

OFFICE WEST VIRGINIA
SECRETARY OF STATE**§90-7-1. General.**

1.1. Scope. -- This legislative rule establishes the policy and delineates guidelines for the monitoring, reading and copying both incoming and outgoing mail in the adult correctional facilities under the jurisdiction of the Commissioner of the West Virginia Division of Corrections.

1.2. Authority. -- W. Va. Code §25-1-18.

1.3. Filing Date. -- April 5, 2000 May 6, 2009

1.4. Effective Date. -- April 5, 2000 May 6, 2009.

§90-7-2. Definitions.

2.1. "Attorney" means a person admitted and licensed to practice law in the State of West Virginia or a law student currently enrolled in an accredited law school and working under the direct supervision of an attorney licensed to practice law in the State of West Virginia.

2.2. "Attorney/client" mail means that correspondence between an attorney retained or appointed to represent an adult felon in the custody of the Division of Corrections.

2.3. "Inmate" means those persons serving a sentence of incarceration in the custody of the Commissioner of Corrections.

§90-7-3. Applicability.

3.1 All incoming and outgoing mail except privileged attorney/client mail will be searched and inspected for contraband as defined by Division of Corrections policy and operating procedures at each institution.

3.2. ~~All incoming and outgoing privileged attorney-client mail shall be inspected only for~~

~~illegal contraband in the presence of the inmate who is the recipient or sender of the mail. Mail to or from an inmate's attorney shall not be monitored, reviewed, copied or disclosed in any manner unless required by an order of a court of competent jurisdiction. However, such mail may be checked for weapons, drugs and other contraband provided it is done in the presence of the inmate and there is a reasonable basis to believe that any weapon, drug or other contraband exists in the mail.~~

3.3. Only those staff persons selected by the Commissioner, Warden, Administrator or their designees who are authorized to read, monitor and/or copy any mail except attorney/client mail as defined herein.

3.4. ~~All inmate outgoing mail shall have a return address that clearly indicates what correctional facility the letter or package is being mailed from. All inmate's outgoing mail must be clearly identified as being sent from an inmate at a state correctional institution and must include on the face of the envelope the name and full address of the institution.~~

§90-7-4. Procedure.**4.1. Notification.**

4.1.1. Each correctional facility shall notify each inmate that his or her incoming and outgoing mail is subject to being searched, monitored, read and/or copied. The notification shall be done in writing by memorandum to current inmates and contained in the orientation package for all future inmates as well as by posting signs at each mail collection point in the facility.

4.1.2. The contents of inmate mail may be disclosed ~~only when it is~~ (A) Necessary to safeguard the orderly operation of the correctional institution; (B) Necessary for the investigation of a crime; (C) Necessary for the prevention of a crime; (D) Necessary for the

~~prosecution of a crime; (E) Required by an order of a court of competent jurisdiction; or (F) Necessary to protect persons from physical harm or the threat of physical harm; 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. Disclosure may be made in civil or administrative proceedings pursuant to an order of a court or 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.~~

~~4.1.3. All copies of inmate mail must be destroyed within 12 months of the date it was copied unless it has been disclosed pursuant to section 4.1.2. All copies of mail shall be retained for at least three (3) years and maintained and destroyed in accordance with the records retention policy of the Division of Corrections.~~

4.1.4. The provisions of this section shall apply only to those persons serving a sentence of incarceration in the custody of the Commissioner of Corrections.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Monitoring Inmate Mail

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: Monitoring Inmate Mail

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

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: June 16, 2009

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Division of Corrections
112 California Avenue, Building 4 Room 300
Charleston, WV 25305
Attention: Loita Butcher

LEGISLATIVE RULE TITLE: Monitoring Inmate Mail

1. Authorizing statute(s) citation WV Code 25-1-18

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

May 6, 2009

b. What other notice, including advertising, did you give of the hearing?

None.

c. Date of Public Hearing(s) *or* Public Comment Period ended:

June 4, 2009 at 9:00 a.m.

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received X

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

June 16, 2009

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Loita Butcher, Executive Assistant
WV Division of Corrections
112 California Avenue, Building 4, Room 300
Charleston, WV 25305
(304) 558-2036 Ext. 32
(304) 558-5367 (fax)
butchl@mail.wvnet.edu

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

b. Date of hearing or comment period:

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached
