

Form #6

~~OFFICE OF WEST VIRGINIA
SECRETARY OF STATE~~

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FILED

90CSR7

APR 5 11 04 AM '00

TITLE 90
LEGISLATIVE RULE
DIVISION OF CORRECTIONS

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 7
MONITORING INMATE MAIL

§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 WV Division of Corrections.*

1.2 *Authority --WV Code § 25-1-18*

1.3 *Filing date--*

1.4 *Effective date--*

§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 Applicable

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.*

3.3 *Only those staff persons selected and assigned by the Commissioner, Warden, Administrator or their designee 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.*

§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.*

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.*

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.*



WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

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October 18, 1999

Joseph A. Altizer, Associate Counsel
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NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Loita Butcher
Division of Corrections
Capitol Complex
Building 4, Room 300

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Monitoring Inmate Mail, 90CSR7**

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
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.

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ANALYSIS OF PROPOSED LEGISLATIVE RULES

Oct 5 2 00 PM '99

Staff Counsel: Rita A. Pauley
Date: October 4, 1999
Agency: West Virginia Division of Corrections
Subject: Monitoring Inmate Mail, 90 CSR 7

OFFICE OF THE ATTORNEY GENERAL
STATE OF WEST VIRGINIA

PERTINENT DATES

Filed for public comment: June 11, 1999
Public comment period ended: July 23, 1999
Filed following public comment period: August 5, 1999
Filed LRMRC: August 5, 1999
Filed as emergency: N/A

Fiscal Impact: None

ABSTRACT

The purpose of this new legislative rule is to establish the procedures by which the Division of Corrections can monitor, search, read, copy and, in some instances, disclose the contents of mail to or from adult inmates.

The proposed rule is new. The following is a section by section synopsis of the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 establishes the applicability of the rule. Counsel has suggested that a new section 2 containing definitions be added to the rule and section 3 on applicability be renumbered as section 3. All incoming and outgoing mail except for correspondence between an inmate and his or her attorney, may be searched, monitored, read, copied and under some circumstances, disclosed to third parties. Correspondence between an inmate and his or her attorney can only be inspected for contraband. This inspection

must be conducted in the presence of the inmate to whom the mail belongs. Only the Commissioner of Corrections, the warden of each institution or persons designated by the commissioner or warden are authorized to read, copy, search or monitor inmate mail.

Section 3 establishes notification procedures for monitoring inmate mail. It also provides that under certain circumstances the contents of inmate mail may be disclosed to third parties. Rather than listing the circumstances the rule refers back to the original code section. All copies of inmate mail must be destroyed within 12 months of their receipt by the institution unless the contents of the mail has been disclosed pursuant to this rule.

AUTHORITY

Statutory authority: W.Va. Code, §25-1-18, which provides, in part, as follows:

§25-1-18. Monitoring inmate mail; procedures and restrictions; identifying mail from a state correctional institution; mail to or from attorneys excepted.

(e) The commissioner shall propose legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to effectuate the provisions of this section.

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT,

EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has suggested technical modifications.

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4286

§§64-6-1. Division of corrections.

The legislative rule filed in the state register on the fifth day of August, one thousand nine hundred ninety-nine, under the authority of section eighteen, article one, chapter twenty-five of this code, modified by the division of corrections to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first day of October, one thousand nine hundred ninety-nine, relating to the division of corrections (monitoring of inmate mail, 90 CSR 7), is authorized.

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