

## WEST VIRGINIA CODE: §15A-4-6

### §15A-4-6. Monitoring of inmate telephone calls; procedures and restrictions; calls to or from attorneys excepted.

(a) The commissioner, or his or her designee, is authorized to monitor, intercept, record, and disclose telephone calls to or from adult inmates of state institutions under his or her control, in accordance with the following provisions:

- (1) All adult inmates of state institutions shall be notified in writing that their telephone conversations may be monitored, intercepted, recorded, and disclosed;
- (2) Only the commissioner, superintendent, or their designee shall have access to recordings of inmates' telephone calls unless disclosed pursuant to §15A-4-6(a)(4) of this code;

(3) Notice shall be prominently placed on, or immediately near, every telephone that may be monitored;

(4) The contents of inmates' telephone calls may be disclosed to an appropriate law-enforcement agency, or the West Virginia Intelligence Fusion Center, 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 also be made in civil or administrative proceedings pursuant to an order of a court or 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;

(5) All recordings of telephone calls shall be retained for at least three years and maintained and destroyed in accordance with the record retention policy of the division adopted as required by §5A-8-1 et seq. of this code; or

(6) To safeguard the sanctity of the attorney-client privilege, a telephone line that is not monitored shall be made available for telephone calls to or from an attorney. These calls may not be monitored, intercepted, recorded, or disclosed in any matter.

(b) The commissioner shall promulgate a policy directive establishing a record-keeping procedure which requires retention of: (1) A copy of the contents of any inmate telephone conversation provided to law enforcement; and (2) the name of the law-enforcement officer and the law-enforcement agency to which the contents of the telephone conversation were provided. The records required to be retained pursuant to this subsection shall be retained in accordance with the record retention policy specified in §29B-1-4(a)(4) of this code. The

inmate's telephone conversation and the information regarding law enforcement are law-enforcement records under that subdivision.

(c) Should an inmate be charged with a crime based, in whole or in part, on the inmate's telephone conversation supplied to law enforcement, the inmate's attorney in the criminal matter shall be entitled to access to and copies of the inmate's telephone conversations in the custody of the commissioner which are not evidence in or the subject of another criminal investigation.

(d) The provisions of this section apply only to those persons in the physical custody of the commissioner.