

WEST VIRGINIA CODE: §15A-4-8

§15A-4-8. Monitoring of inmate electronic correspondence; procedures and restrictions; to or from attorneys excepted.

(a) The commissioner, or his or her designee, is authorized to monitor, intercept, record, and disclose electronic communications 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 electronic communications may be monitored, intercepted, recorded, and disclosed;
- (2) Only the commissioner, superintendent, or their designees, shall have access to copies or recordings of inmates' electronic communications unless disclosed pursuant to §15A-4-8(a)(4) of this code;
- (3) Notice shall be prominently placed on, or immediately near, every electronic communications device that may be monitored;
- (4) The contents of inmates' electronic communications 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 or copies of electronic communications 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 method of electronic communications that is not monitored shall be made available for communications to or from an attorney. These communications shall 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 electronic communication provided to law enforcement; and (2) the name of the law-enforcement officer and the law-enforcement agency to which the contents of the communications were

provided. The records required to be retained pursuant to this subsection shall be retained in accordance with the record retention policy specified in §15A-4-8(a)(5) of this code. The inmate's electronic communication and the information regarding law enforcement are law-enforcement records under §29B-1-4(a)(4) of this code.

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

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