

SB 171

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1999



ENROLLED

SENATE BILL NO. 171

(By Senator Wooten, et al)



PASSED March 1, 1999

In Effect ninety days from Passage

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SENATE

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Senate Bill No. 171

(BY SENATORS WOOTON, BALL, DITTMAR, FANNING, HUNTER,
KESSLER, MINARD, REDD, ROSS, SCHOONOVER,
SNYDER AND MCKENZIE)

[Passed March 1, 1999; in effect ninety days from passage.]

AND ACT to amend and reenact section seventeen, article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section eighteen, all relating to the circumstances under which the contents of inmate's monitored telephone calls may be disclosed; authorizing the division of corrections to monitor and copy an inmate's mail under specified circumstances; setting forth the requisite conditions that justify monitoring of an inmate's outgoing mail; authorizing the disclosure of the contents of mail under certain circumstances; requiring that an inmate's outgoing mail be properly identified; excepting attorney-client correspondence; and requiring that the commissioner of corrections propose legislative rules setting forth procedures to effectuate the provisions of these sections.

Be it enacted by the Legislature of West Virginia:

That section seventeen, article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section eighteen, all to read as follows:

ARTICLE 1. ORGANIZATION AND INSTITUTIONS.

§25-1-17. Monitoring of inmate telephone calls; procedures and restrictions; calls to or from attorneys excepted.

1 (a) The commissioner of corrections or his or her
2 designee is authorized to monitor, intercept, record and
3 disclose telephone calls to or from adult inmates of state
4 correctional institutions in accordance with the following
5 provisions:

6 (1) All adult inmates of state correctional institutions
7 shall be notified in writing that their telephone conversa-
8 tions may be monitored, intercepted, recorded and dis-
9 closed;

10 (2) Only the commissioner and his or her designee shall
11 have access to recordings of inmates' telephone calls unless
12 disclosed pursuant to subdivision (4) of this subsection;

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

15 (4) The contents of inmates' telephone calls may be
16 disclosed to the appropriate law-enforcement agency only
17 if the disclosure is:

18 (A) Necessary to safeguard the orderly operation of the
19 correctional institution;

20 (B) Necessary for the investigation of a crime;

21 (C) Necessary for the prevention of a crime;

22 (D) Necessary for the prosecution of a crime;

23 (E) Required by an order of a court of competent juris-
24 diction; or

25 (F) Necessary to protect persons from physical harm or
26 the threat of physical harm;

27 (5) All recordings of telephone calls must be destroyed
28 within twelve months unless disclosed pursuant to subdivi-
29 vision (4) of this subsection; and

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

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

39 (c) The provisions of this section shall apply only to those
40 persons serving a sentence of incarceration in the custody
41 of the commissioner of corrections.

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

1 (a) The commissioner of corrections or his or her
2 designee is authorized to monitor, open, review, copy and
3 disclose mail to adult inmates of state correctional institu-
4 tions in accordance with the following provisions:

5 (1) All adult inmates of state correctional institutions
6 shall be notified in writing that their mail may be moni-
7 tored, opened, reviewed, copied and disclosed;

8 (2) Only the commissioner and his or her designee shall
9 have access to copies of inmates' mail unless disclosed
10 pursuant to subdivision (4) of this subsection;

11 (3) Notice that the mail may be monitored shall be
12 prominently placed on or immediately near every mail
13 receptacle or other designated area for the collection or
14 delivery of mail;

15 (4) The contents of inmates' mail may be disclosed to
16 appropriate law-enforcement authorities only if the
17 disclosure is:

18 (A) Necessary to safeguard the orderly operation of the
19 correctional institution;

20 (B) Necessary for the investigation of a crime;

21 (C) Necessary for the prevention of a crime;

22 (D) Necessary for the prosecution of a crime;

23 (E) Required by an order of a court of competent juris-
24 diction; or

25 (F) Necessary to protect persons from physical harm or
26 the threat of physical harm;

27 (5) All copies of mail must be destroyed within twelve
28 months unless disclosed pursuant to subdivision (4) of this
29 subsection;

30 (6) The inmate whose mail has been copied and disclosed
31 under this section shall be given a copy of all such mail.

32 (b) To safeguard the sanctity of the attorney-client
33 privilege, mail to or from an inmate's attorney shall not be
34 monitored, reviewed, copied or disclosed in any manner
35 unless required by an order of a court of competent
36 jurisdiction. However, such mail may be checked for
37 weapons, drugs and other contraband provided it is done
38 in the presence of the inmate and there is a reasonable
39 basis to believe that any weapon, drug or other contraband
40 exists in the mail.

41 (c) All inmates' outgoing mail must be clearly identified
42 as being sent from an inmate at a state correctional
43 institution and must include on the face of the envelope
44 the name and full address of the institution.

45 (d) The commissioner of corrections or his or her
46 designee is authorized to open, monitor, review, copy and
47 disclose an inmate's outgoing mail in accordance with the
48 following provisions:

49 (1) The inmate has previously sent mail that was threat-
50 ening to the recipient or that would facilitate physical
51 violence or other criminal activity; and

52 (2) Such correspondence has come to the attention of the
53 commissioner or corrections or the warden or administra-
54 tor of the correctional institution;

55 (3) The contents of any inmate's outgoing mail may be
56 copied and disclosed to appropriate law-enforcement
57 authorities where the commissioner or his or her designee
58 has reasonable cause to believe that it is necessary for the
59 prevention, investigation, or prosecution of a crime or
60 where necessary to protect persons from physical harm or
61 the threat of physical harm;

62 (4) Only the commissioner and his or her designee shall
63 have access to copies of inmates' outgoing mail unless
64 disclosed pursuant to subdivision three of this subsection;

65 (5) All copies of mail must be destroyed within twelve
66 months unless disclosed pursuant to subdivision three of
67 this subsection;

68 (6) The inmate whose mail has been copied and disclosed
69 under this section shall be given a copy of all such mail;
70 and

71 (7) The provisions of this subsection do not apply to mail
72 that an inmate sends to his or her attorney. Such mail may
73 only be monitored or checked according to subsection (b).

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

78 (f) The provisions of this section shall apply only to those
79 persons serving a sentence of incarceration in the custody
80 of the commissioner of corrections.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



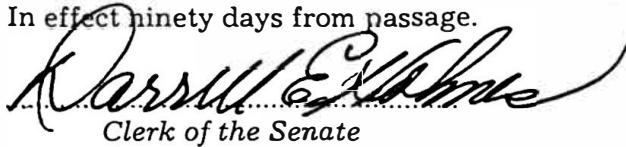
Chairman Senate Committee



Chairman House Committee

Originating in the Senate.

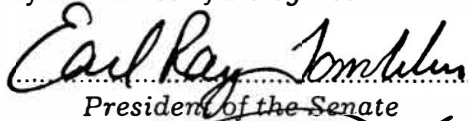
In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates



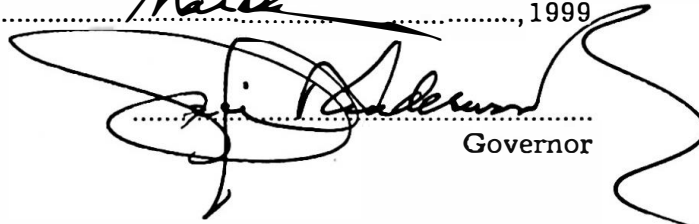
President of the Senate



Speaker House of Delegates

The within  this the 

Day of , 1999



Governor

PRESENTED TO THE

GOVERNOR

Date 3/5/99

Time 8:45 pm