WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1999

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ENROLLED

SENATE BILL NO. 171

(By Senator Morton, et al)

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PASSED March 1, 1999

In Effect Ninety Days from Passage
ENROLLED

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.

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

(1) All adult inmates of state correctional institutions shall be notified in writing that their telephone conversations may be monitored, intercepted, recorded and disclosed;

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

(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 the appropriate law-enforcement agency only if the disclosure 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;

(5) All recordings of telephone calls must be destroyed within twelve months unless disclosed pursuant to subdivision (4) of this subsection; and

(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. Such calls shall not be monitored, intercepted, recorded or disclosed in any matter.

(b) 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.

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

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

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

(1) All adult inmates of state correctional institutions shall be notified in writing that their mail may be monitored, opened, reviewed, copied and disclosed;

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

(3) Notice that the mail may be monitored shall be prominently placed on or immediately near every mail receptacle or other designated area for the collection or delivery of mail;
(4) The contents of inmates' mail may be disclosed to appropriate law-enforcement authorities only if the disclosure 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;

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

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

(b) To safeguard the sanctity of the attorney-client privilege, 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.

(c) All inmates' 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.

(d) The commissioner of corrections or his or her designee is authorized to open, monitor, review, copy and disclose an inmate's outgoing mail in accordance with the following provisions:
(1) The inmate has previously sent mail that was threatening to the recipient or that would facilitate physical violence or other criminal activity; and

(2) Such correspondence has come to the attention of the commissioner or corrections or the warden or administrator of the correctional institution;

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

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

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

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

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

(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.

(f) The provisions of this section shall apply only to those persons serving a sentence of incarceration in the custody 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................. approved............ this the 9th

Day of ........................................, 1999

Governor