

SB 263

FILED

2009 APR 11 PM 3: 01

WEST VIRGINIA LEGISLATURE

OFFICE OF THE CLERK  
WEST VIRGINIA STATE

SEVENTY-NINTH LEGISLATURE  
REGULAR SESSION, 2009



ENROLLED  
COMMITTEE SUBSTITUTE  
FOR

**Senate Bill No. 263**

(SENATORS GREEN, WHITE AND  
PALUMBO, *original sponsors*)

[Passed April 6, 2009; in effect ninety days from passage.]

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SECRETARY OF STATE

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AN ACT to amend and reenact §25-1-17 and §25-1-18 of the Code of West Virginia, 1931, as amended, all relating to monitoring of inmate telephone calls and mail; procedures and restrictions; authorizing disclosure under certain circumstances; and providing for retention, maintenance and destruction of telephone recordings and mail.

*Be it enacted by the Legislature of West Virginia:*

That §25-1-17 and §25-1-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 1. ORGANIZATION AND INSTITUTIONS AND CORRECTIONS  
MANAGEMENT.**

**§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, warden, administrator or  
11 their designee shall have access to recordings of inmates'  
12 telephone calls unless disclosed pursuant to subdivision (4)  
13 of this subsection;

14 (3) Notice shall be prominently placed on or immedi-  
15 ately near every telephone that may be monitored;

16 (4) The contents of inmates' telephone calls may be  
17 disclosed to an appropriate law-enforcement agency  
18 pursuant to an order of a court or administrative tribunal  
19 when disclosure is necessary for the investigation, preven-  
20 tion or prosecution of a crime or to safeguard the orderly  
21 operation of the correctional institution. Disclosure may  
22 be made in civil or administrative proceedings pursuant to  
23 an order of a court or an administrative tribunal when the  
24 disclosure is:

25 (A) Necessary to safeguard and protect the orderly  
26 operation of the correctional institution; or

27 (B) Necessary to protect persons from physical harm or  
28 the threat of physical harm;

29 (5) All recordings of telephone calls shall be retained for  
30 at least three years and maintained and destroyed in

31 accordance with the record retention policy of the Division  
32 of Corrections adopted pursuant to section one, article  
33 eight, chapter five-a of this code, *et seq.*; or

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

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

43 (c) The provisions of this section shall apply only to  
44 those persons serving a sentence of incarceration in the  
45 custody of the Commissioner of Corrections.

**§25-1-18. Monitoring inmate mail; procedures and restrictions;  
identifying mail from a state correctional insti-  
tution; 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 sent to adult inmates of state correctional  
4 institutions 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 an  
16 appropriate law-enforcement agency pursuant to an order  
17 of a court or administrative tribunal when disclosure is  
18 necessary for the investigation, prevention or prosecution  
19 of a crime or to safeguard the orderly operation of the  
20 correctional institution. Disclosure may be made in civil  
21 or administrative proceedings pursuant to an order of a  
22 court or administrative tribunal when the disclosure is:

23 (A) Necessary to safeguard and protect the orderly  
24 operation of the correctional institution; or

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

27 (5) All copies of mail shall be retained for at least three  
28 years and maintained and destroyed in accordance with  
29 the records retention policy of the Division of Corrections  
30 adopted pursuant to section one, article eight, chapter  
31 five-a of this code, *et seq.*; or

32 (6) The inmate whose mail has been copied and dis-  
33 closed under this section shall be given a copy of all such  
34 mail when it is determined by the commissioner, warden  
35 or administrator not to jeopardize the safe and secure  
36 operation of the facility or to be detrimental to an ongoing  
37 investigation or administrative action.

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

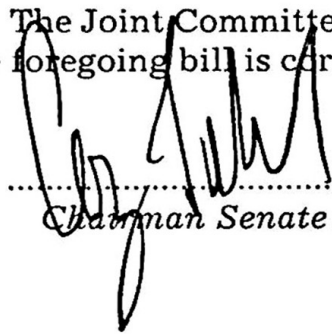
47 (c) All inmates' outgoing mail must be clearly identified  
48 as being sent from an inmate at a state correctional  
49 institution and must include on the face of the envelope  
50 the name and full address of the institution.

51 (d) The Commissioner of Corrections or his or her  
52 designee is authorized to open, monitor, review, copy and  
53 disclose an inmate's outgoing mail in accordance with the  
54 provisions of subsection (a) of this section.

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

59 (f) The provisions of this section shall apply only to  
60 those persons serving a sentence of incarceration in the  
61 custody of the Commissioner of Corrections.

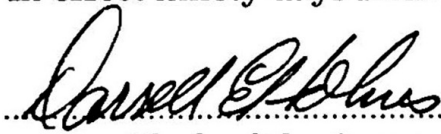
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
.....  
Chairman Senate Committee

  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

  
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Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker House of Delegates

The within is approved ..... this the 11<sup>th</sup> .....  
Day of April ....., 2009.

  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

APR 9 2009

Time 2:50 pm