

# **WEST VIRGINIA LEGISLATURE**

**2017 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 429**

BY SENATORS BLAIR, MARONEY AND TRUMP

[Originating in the Committee on the Judiciary;

reported on March 1, 2017]

1 A BILL to amend and reenact §25-1-17 and §25-1-18 of the Code of West Virginia, 1931, both  
2 relating to monitoring inmate communications, generally; adding electronic  
3 communications to types of communications for which monitoring is authorized; defining  
4 terms; and authorizing law enforcement to receive inmate communications without a court  
5 order under certain circumstance.

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

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

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

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

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

4 (1) All adult inmates of state correctional institutions shall be notified in writing that their  
5 telephone conversations or electronic communications may be monitored, intercepted, recorded,  
6 copied and disclosed; For purposes of this section, "electronic communication" shall mean any  
7 transfer to or from an inmate of writings, images, sounds or data of any nature transmitted in  
8 whole or in part by an electronic system;

9 (2) Only the commissioner, warden, administrator or their designee shall have access to  
10 recordings or copies of inmates' telephone calls or electronic communications unless disclosed  
11 pursuant to subdivision (4) of this subsection;

12 (3) Notice shall be prominently placed on or immediately near every telephone or  
13 electronic communications device that may be monitored;

14 (4) The contents of inmates' telephone calls or electronic communications may be

15 disclosed to an appropriate law-enforcement agency when disclosure is necessary for the  
16 investigation, prevention or prosecution of a crime or to safeguard the orderly operation of the  
17 correctional institution. Disclosure may be made in civil or administrative proceedings pursuant to  
18 an order of a court or an administrative tribunal when the disclosure is:

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

20 or

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

22 (5) All recordings or copies of telephone calls or electronic communications shall be  
23 retained for at least three years and maintained and destroyed in accordance with the record  
24 retention policy of the Division of Corrections adopted pursuant to section one, article eight,  
25 chapter five-a of this code, *et seq.*; or

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

30 (b) The commissioner shall promulgate a policy directive establishing a recordkeeping  
31 procedure which requires retention of: (1) A copy of the contents of any inmate telephone  
32 conversation or electronic communication provided to law enforcement; and (2) the name of the  
33 law-enforcement officer and the law-enforcement agency to which the contents of the telephone  
34 conversation or electronic communication were provided. The records required to be retained  
35 pursuant to this subsection shall be retained in accordance with the record retention policy  
36 specified in subdivision (5), subsection (a) of this section. The inmate's telephone conversation  
37 or electronic communication and the information regarding law enforcement are law-enforcement  
38 records under subdivision (4), subsection (a), section four, article one, chapter twenty-nine-b of  
39 this code.

40 (c) Should an inmate be charged with a crime based in whole or in part on the inmate's

41 telephone conversation or electronic communication supplied to law enforcement, the inmate's  
42 attorney in said criminal matter shall be entitled to access to, and copies of, the inmate's telephone  
43 conversations or electronic communication in the custody of the commissioner which are not  
44 evidence in, or the subject of, another criminal investigation.

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

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

1 (a) The Commissioner of Corrections or his or her designee is authorized to monitor, open,  
2 review, copy and disclose mail or electronic communications sent to adult inmates of state  
3 correctional institutions in accordance with the following provisions:

4 (1) All adult inmates of state correctional institutions shall be notified in writing that their  
5 mail or electronic communications may be monitored, opened, reviewed, copied and disclosed;  
6 For purposes of this section, "electronic communication" means any transfer to or from an inmate  
7 of writings, images, sounds or data of any nature transmitted in whole or in part by an electronic  
8 system;

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

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

14 (4) The contents of inmates' mail or electronic communications may be disclosed to an  
15 appropriate law-enforcement agency when disclosure is necessary for the investigation,  
16 prevention or prosecution of a crime or to safeguard the orderly operation of the correctional  
17 institution. Disclosure may be made in civil or administrative proceedings pursuant to an order of

18 a court or administrative tribunal when the disclosure is:

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

20 or

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

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

25 (6) The inmate whose mail or electronic communication has been copied and disclosed  
26 under this section shall be given a copy of all such mail or electronic communication when it is  
27 determined by the commissioner, warden or administrator not to jeopardize the safe and secure  
28 operation of the facility or to be detrimental to an ongoing investigation or administrative action.

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

35 (c) All inmates' outgoing mail or electronic communications must be clearly identified as  
36 being sent from an inmate at a state correctional institution and must include on the face of the  
37 envelope the name and full address of the institution.

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

41 (e) The commissioner shall promulgate a policy directive establishing a recordkeeping  
42 procedure which requires retention of: (1) All inmate mail or electronic communications provided  
43 to law enforcement; and (2) the name of the law-enforcement officer and the law-enforcement

44 agency to which the inmate mail or electronic communication was provided. The records required  
45 to be retained pursuant to this subsection shall be retained in accordance with the record retention  
46 policy specified in subdivision (5), subsection (a) of this section. The inmate mail or electronic  
47 communications and the information regarding law enforcement are law-enforcement records  
48 under subdivision (4), subsection (a), section four, article one, chapter twenty-nine-b of this code.

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

54 (g) The provisions of this section shall apply only to those persons serving a sentence of  
55 incarceration in the physical custody of the Commissioner of Corrections.