

**REPORT OF THE
DEPARTMENT OF CORRECTIONS**

**Studying the Use of
Wiretaps in the Virginia
Correctional System**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



Senate Document No. 10

**COMMONWEALTH OF VIRGINIA
RICHMOND
1987**



COMMONWEALTH of VIRGINIA

Department of Corrections

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December 19, 1986

MEMORANDUM:

TO: Mr. J. T. Shropshire
Clerk of the Senate

FROM: Edward W. Murray *E.W.M.*
Director

SUBJ: Senate Joint Resolution No. 48

Attached is our report regarding the study conducted on the use of wiretaps in the Virginia Correctional system as requested by Senate Joint Resolution #48.

Please let me know if you need any additional information or clarification.

EWM/hs

CC: Ms. Vivian E. Watts, Secretary
of Transportation and Public Safety
Mr. Ed Morris, Deputy Director

Attachment

PROPOSAL FOR SENATE JOINT RESOLUTION #48

SENATE JOINT RESOLUTION NO. 48

**Requesting the
Department of Corrections
to Study the use of
Wiretaps in the
Virginia Correctional System**

MANDATE OF THE STUDY

By virtue of Senate Joint Resolution No. 48, the Department of Corrections, with the assistance of the Office of the Attorney General, was requested to study the issue of intercepting telephone communications of inmates incarcerated in the correctional facilities of the Commonwealth and to recommend procedures for implementing such monitoring consistent with the constitutional rights of inmates. (Attachment A)

OVERVIEW OF THE DEPARTMENT OF CORRECTIONS

The Virginia Department of Corrections, Division of Adult Institutions, supervises approximately eleven thousand adult inmates; approximately eight thousand are held in its fifteen major correctional centers and the remainder in twenty-eight field units. The Department has approximately eight thousand employees.

The Division of Adult Institutions is divided into four administrative regions. All regions report that currently all general population inmates (at both major centers and field units) have unrestricted access to telephones. Individual institutions usually have specific times allocated for

phone use, but the telephone equipment and subsequent conversations are not generally controlled. Most institutions have the capability to disconnect a particular telephone call if an inmate is abusing the privilege or other inmates are waiting to use the telephone.

While the type of telephone equipment being used in the institutions will vary somewhat from one location to another, they all have been modified so that they will not accept incoming calls and all outgoing calls must be made collect through an outside operator.

The Department currently has no in-house facilities or equipment to monitor inmate telephone calls.

PROBLEM IDENTIFICATION

The investigative function for the Department is vested with the Internal Affairs Unit, Office of the Inspector General.

A review of investigative files reveals numerous criminal incidents where inmates have taken advantage of the telephone system for the purpose of conducting criminal activities. These activities include credit card fraud, larceny, drug delivery or sale, escape, threats, etc. The institutional telephones have become the common denominator for a number of criminal conspiracies. For example, Internal Affairs has a

series of taped conversations between an inmate at a major institution and a cocaine dealer in Virginia. The inmate, working as an agent for the state, regularly used the institution's telephone to establish a cocaine connection with the civilian third party. Another recent example involves an inmate using the telephone system to order five hundred dollars (\$500) worth of merchandise from an Illinois firm through the use of a fraudulent credit card number and then charging the bill to a prominent Commonwealth Attorney at his residence.

The Code of Virginia and the Federal statute relating to wiretapping do not specifically provide for the interception of inmate telephone communications. To preserve the security of a penal institution against criminal activity from within on a twenty-four hour basis, it is essential to have access to as much information as possible.

NATIONWIDE SURVEY AND RESULTS

In 1985, the Department conducted a nationwide survey of all fifty (50) states and the District of Columbia to identify the procedures in other jurisdictions regarding the interception of inmate telephone communications. This survey revealed that fourteen (14) states and the District of Columbia have various procedures in place to monitor the telephone conversations of inmates. The authority to conduct the interceptions ranged from statutory authority to court orders.

The Federal Bureau of Prisons routinely monitors inmate phone calls for institutional security and public safety purposes. Their authority to do so has been consistently upheld by the federal courts. These courts have recognized an exception to the "interceptions" prohibited under the federal wiretapping statute, 18 U.S.C. §§ 2510-2520. Where there is a bona fide security purpose, as stated in the federal monitoring regulations [28 C.F.R. § 540.100-105 (1983)], the federal courts have held that inmate monitoring is within prison officials' course of duty or course of business, and thus not a prohibited "interception" under the federal statute.

The Virginia wiretapping statute was modeled on the federal statute. The provisions in the Virginia statute, authorizing the course of duty and course of business exceptions [§ 19.2-61 (3) (4) (a)], are identical to provisions in federal statute. Therefore, it is the opinion of the Attorney General's office that the Virginia statute would also permit the Department of Corrections to monitor inmate phone calls in order to preserve institutional security.

The procedures (Attachment B) the Bureau follows are as stated below:

- When an inmate first enters an institution, during the orientation, he/she is advised that all inmate telephone calls are subject to monitoring.

- The procedure to be used to call an attorney is explained. This is designed to protect attorney-client communications.
- The inmate is required to sign a form indicating that he/she has been advised of these procedures and understands them.
- A sign is placed at each telephone indicating that all calls are subject to monitoring.

The telephone equipment that has been placed in the Federal institutions for inmates' use is essentially the same as found in Virginia correctional institutions; inmates place their own calls, but they must be placed through an outside operator. The telephone equipment belongs to the telephone company and is maintained by them.

The Federal Bureau of Prisons routinely records all telephone calls made by inmates except previously authorized calls to attorneys. For example, the Federal institution at Petersburg, Virginia currently has the capability to simultaneously record conversations on twenty telephones. They are in the process of updating that equipment to permit the monitoring of an additional eighteen telephone lines.

The recordings made are retained for an indefinite period of time and are reviewed by institutional personnel as time permits or when a particular need arises. Their equipment is such that they are able to select a particular telephone line or telephone call for review when necessary.

All recordings are not listened to in their entirety, but are randomly reviewed by an employee assigned that responsibility unless there is a special need to monitor a particular call. In addition, a weekly report of the results of the monitoring is prepared. Information obtained from such monitoring has frequently been used in administrative or criminal proceedings and has not been successfully challenged in court.

RECOMMENDATION

It is recommended that the Department explore the feasibility of establishing procedures similar to those followed by the Federal Bureau of Prisons to monitor inmate telephone calls. Since the equipment necessary to effect such monitoring is expensive and the subsequent review and evaluation of the recorded conversations is labor intensive, the cost could be significant. It must be determined, therefore, whether or not the expense would justify the anticipated results. If funds and staff time are available, the Department should consider a pilot project at a selected major institution to determine the value, cost, and effectiveness of implementing such a system on a statewide basis.

SENATE JOINT RESOLUTION NO. 48

Requesting the Department of Corrections to study the use of wiretaps in the Virgin Correctional System.

Agreed to by the Senate, March 3, 1986

Agreed to by the House of Delegates, February 27, 1986

WHEREAS, there have been a number of instances where inmates incarcerated in state correctional facilities have used outside telephone lines to plan escapes and make arrangements for support and shelter following these escapes; and

WHEREAS, some inmates have used telephone communications to conduct criminal enterprises and plan criminal activities; and

WHEREAS, it is desirable to monitor these communications in order to protect the citizens of the Commonwealth from such criminal activities and from the dangers inherent in having fugitives from justice at large; and

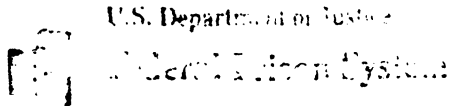
WHEREAS, current statutory provisions and restrictions governing the interception of wire or oral communications are impractical and of limited use when dealing with inmates incarcerated in prisons or other correctional facilities; and

WHEREAS, the constitutional ramifications of monitoring the communications of inmates are unclear; now, therefore, be it

RESOLVED, by the House of Delegates, the Senate concurring, That the Department of Corrections, with the assistance of the Office of the Attorney General, is requested to study all implications of intercepting communications of inmates incarcerated in the correctional facilities of the Commonwealth and to recommend procedures for implementing such monitoring consistent with assuring the constitutional rights of inmates.

The Department shall complete its work prior to November 15, 1986, and report its findings soon thereafter.

A. Williams



U.S. Department of Justice

Federal Prison System

Washington, D.C. 20534

OPI : CORR
Number : 501.3
Date : May 31, 1983
Subject : TELEPHONE REGULATIONS FOR INMATES

Program Statement

REPEALED 501.3 1983 EFFECTIVE DATE: July 5, 1983

1. PURPOSE AND SCOPE §540.100. An inmate may call a person of his choice outside the institution on a telephone provided for that purpose. Inmate telephone use is subject to limitations and restrictions which the Warden determines are necessary to insure the security, good order, and discipline of the institution and to protect the public. The Warden shall establish procedures and facilities for inmate telephone use. The Warden shall permit an inmate who has not been restricted from telephone use under §540.103 to make at least one telephone call each three months. Ordinarily, an inmate is allowed at least three minutes for each call.]

Contact with the community, particularly with family members, is a valuable tool in the overall correctional process. At the same time, basic controls must be exercised.

The size and complexity of each institution, the degree of sophistication of inmates confined, and other variables such as total phone use, location of switchboards, location of housing units, etc., will determine the degree of flexibility that is possible.

The responsibility for implementing and maintaining the program rests with the Warden of the facility or the Warden's authorized representatives. Each institution will develop local procedures regarding the use of telephones which assure that the phone system does not take the place of correspondence. The Warden shall give the local procedures wide and complete distribution to staff and inmates.

2. DIRECTIVE RESCINDED.

P. S. 5264.2, Telephone Regulations for Inmates (7/16/79).

3. DIRECTIVES REFERENCED.

- a. P. S. 5270.5, Inmate Discipline and Special Housing Units (8/12/82).
- b. P. S. 7331.2, Pre-Trial Inmates (11/10/80).
- c. Rules cited in this Program Statement are contained in 28 CFR 540.100-105.

4. STANDARDS REFERENCED.

- a. Commission on Accreditation for Corrections, Standards for Adult Correctional Institutions - (2nd Edition) 2-4379, 2-4228, and 2-4229, are referenced.
- b. Department of Justice Federal Standards for Prisons and Jails - 11.09, 11.12, and 12.10.

Bracketed Italics - Rules
Regular Type - Implementing Information

ATTACHMENT B

5. MONITORING OF INMATE TELEPHONE CALLS §540.101. The Warden shall establish procedures that enable monitoring of telephone conversations on any telephone located within the institution, said monitoring to be done to preserve the security and orderly management of the institution and to protect the public. The Warden must provide notice to the inmate of the potential for monitoring. Staff may not monitor an inmate's properly placed call to an attorney. The Warden shall notify an inmate of the proper procedures to have an unmonitored telephone conversation with an attorney.]

Staff members are also to be advised of the potential for monitoring of their telephone calls.

6. INMATE TELEPHONE CALLS TO ATTORNEYS §540.102. The Warden may not apply frequency limitations on inmate telephone calls to attorneys when the inmate demonstrates that communication with attorneys by correspondence, visiting, or normal telephone use is not adequate.

7. RESPONSIBILITY FOR INMATE MISUSE OF TELEPHONES §540.103. The inmate is responsible for any misuse of the telephone. The Warden shall refer incidents of unlawful inmate telephone use to law enforcement authorities. The Warden shall advise an inmate that violation of the institution's telephone regulations may result in institutional disciplinary action (See Part 541, Subpart B)].

Part 541, Subpart B refers to P.S. 5270.5, Inmate Discipline and Special Housing Units.

The Bureau of Prisons or its institutions will not assume responsibility for any calls that violate the applicable statutes.


The telephone privilege is accorded inmates who demonstrate a willingness to accept this privilege in a responsible manner. Evidence that an inmate is violating the privilege of telephone use may cause the individual to be placed on the restricted telephone use list for such time as the Institution Discipline Committee or Unit Team deems appropriate. Specific care must be given during the orientation period and thereafter in helping inmates understand their responsibility for use of the phone.

8. EXPENSES OF INMATE TELEPHONE USE §540.104. An inmate is responsible for the expenses of inmate telephone use. Inmate calls shall ordinarily be made collect to the party called. Third party billing and electronic transfer of a call to a third party are not permitted. The Warden may direct the government to bear the expense of inmate telephone use under compelling circumstances such as when an inmate has lost contact with his family or has a family emergency. Another example is where the inmate experiences a lack of visits over an extended period of time. This is particularly true where there are no financial resources available either from the inmate or his family.]

9. TELEPHONE CALLS FOR INMATES IN ADMISSION, HOLDOVER, SEGREGATION, OR PRE-TRIAL STATUS §540.105. The Warden shall establish procedures for allowing inmates in admission, holdover or segregation status to make phone calls as provided in §540.100. Pre-trial inmates may make phone calls as provided in Part 551, Subpart J. Staff may not withhold phone privileges as a disciplinary measure except where the infraction for which disciplinary action is taken involves abuse, or a clear potential for abuse, of phone privileges.]

Part 551, Subpart J refers to P. S. 7331.2, Pre-Trial Inmates.

10. MODIFICATION OF INMATE PHONE CALL PROGRAM. During an institutional emergency it may be necessary to modify the inmate phone call program. Local telephone company officials and technicians may be consulted from time to time and apprised of problems which have been encountered.


NORMAN A. CARLSON
Director

