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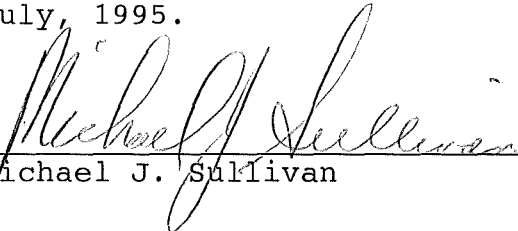
STATE OF WISCONSIN )  
 ) SS  
DEPARTMENT OF CORRECTIONS )

I, Michael J. Sullivan, Secretary, Department of Corrections and custodian of the official records, certify that the annexed rules, relating to monitoring and recording of inmate telephone calls, were duly approved and adopted by this Department on July 26, 1995.

I further certify that this copy has been compared by me with the original on file in this Department and that it is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department of Corrections 149 E. Wilson Street in the city of Madison, this 26th day of July, 1995.

SEAL

  
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Michael J. Sullivan



10-1-95

ORDER OF THE  
DEPARTMENT OF CORRECTIONS  
AMENDING, REPEALING AND RECREATING,  
CREATING RULES



The Wisconsin department of corrections adopts the rules included in this order to amend DOC 309.56 (1) and Notes, 309.56 (2) Notes, 309.56 (4) and Notes; to repeal and recreate DOC 309.56 (2); to create DOC 309.56 (6) to (10), and Notes, relating to monitoring and recording of inmate telephone calls.

Statutory authority: s. 227.11 (2) (a), Stats.  
Statutes interpreted: ss. 301.03 (1), (2) and (5), 301.045, 301.29 (2) and (3); 301.36; 302.04; and 302.07, Stats.

Analysis Prepared by the Department of Corrections

The department permits inmates to make one telephone call per month. The department encourages inmates to maintain contact with family and community and therefore allows more than one telephone call per month where resources are adequate. Some inmates have misused telephone lines and thereby abused this privilege. Inmate abuses have included telephone fraud, credit card fraud, and drug trafficking.

The department proposes these rules to better protect the security of the institution, the public, employees, and inmates. These rules, with one exception, permit corrections officers or supervisors to monitor and record an inmate's telephone call. The only telephone call which a corrections officer or supervisor is prohibited from monitoring and recording is a properly approved call to an attorney.

A corrections officer or supervisor may not knowingly monitor or record a telephone call placed to an attorney. These rules define "attorney". These rules provide that a telephone call to an attorney which is recorded shall be considered privileged to the extent provided under s. 905.03, Stats. and may not be disclosed under s. 19.35, Stats. These rules provide that the inmate and the attorney shall be notified that a call was monitored or recorded.

Data which may be recorded from a monitored telephone call includes the date, time, destination, number, duration of a call, and telephone conversation. These rules prohibit an inmate from billing or electronic transferring a call to a third party.

These rules permit a corrections officer or supervisor to disclose contents of a recording to a member of the adjustment committee,

the director of the office of offender classification, the warden, the administrator of the division of adult institutions, the secretary of the department, an investigative officer, and a law enforcement officer. These rules state that a recording of an inmate telephone call may be used for reasons such as discipline, transfer or placement, investigations of plans to escape or threats to the security of the correctional facility or threats to the safety, health, welfare of employees, the public or other inmates, or trafficking of drugs or other contraband, or any illegal activity, and as evidence in administrative and judicial proceedings.

These rules require an inmate to be informed during the assessment and evaluation process of the telephone monitoring and recording rule.

These rules require that written notice in English and Spanish be put on the telephone or posted near enough to the telephone used by an inmate that the inmate will be able to read the notice when the inmate uses the telephone. These rules provide that an inmate who does not speak English or Spanish shall be provided written notice in the inmate's native language or orally if the notice can not be translated. The notice shall inform an inmate that a call other than a properly approved call to an attorney may be monitored and recorded. The notice shall also inform an inmate that the use of the telephone constitutes consent to the monitoring and recording.

SECTION 1. DOC 309.56 (1) and Notes are amended to read:

DOC 309.56 (1) The department of ~~corrections~~ shall encourage communication between ~~inmates~~ an inmate and ~~their~~ an inmate's family, friends, government officials, courts, and people concerned with the welfare of ~~inmates~~ the inmate. Communication fosters reintegration into the community and the maintenance of family ties. It helps to motivate ~~inmates~~ the inmate and thus contributes to morale and to the security of ~~inmates~~ the inmate and staff. A telephone shall be used in a lawful manner.

Note: DOC 309.56 (1) Telephone calls are a desirable means for inmates to maintain meaningful contacts with persons outside correctional facilities. Although calls are desirable, the number must be limited due to the lack of resources available. But, subs. (1) and (3) make it clear that allowing more than one call per month is encouraged as sound correctional policy. The use of telephones is a privilege. The inmate is responsible for the use of telephones. Subsection (1) makes it clear that the inmate is to use the telephone in a lawful manner for the purpose of maintaining appropriate contact with persons outside correctional facilities.

SECTION 2. DOC 356 (2) is repealed and recreated to read:

DOC 309.56 (2) (a) The warden shall establish facilities for inmate telephone use.

(b) An inmate who wishes to use an institution telephone shall use a telephone provided for inmate telephone calls, shall comply with these rules, and shall comply with institution policies and procedures established under s. DOC 309.56 (10).

(c) An inmate may be permitted to phone individuals of the inmate's choice who are on the approved visiting list as provided under s. DOC 309.12 and others as provided in this chapter.

(d) An inmate may make a properly placed telephone call to an attorney. For the purposes of this section, "properly placed" means an inmate telephone call to an attorney placed in compliance with s. DOC 309.56, these rules, and the procedures of the institution.

Note: DOC 309.56 (2) Subsections (2) and (3) require the ~~division of corrections~~ department to permit at least one telephone call per month to someone on the approved visiting list, close family members, and others. Each institution is encouraged to allow more calls, but it is not required because some institutions do not have resources to accommodate larger numbers of calls. This reasoning also applies to the six-minute time limit under sub. (5).

SECTION 3. DOC 309.56 (4) and Notes are amended to read:

DOC 309.56 (4) ~~Long distance calls~~ All calls shall be made collect unless payment from the inmate's general account is approved. Third party billing or electronic transfer of an inmate's call to a third party is not permitted. The inmate is responsible for any misuse of the telephone subject to this section and the policies and procedures established by the administrator of the division of adult institutions or by the warden, relating to the use of telephones. The warden shall refer an incident of unlawful telephone use by an inmate to appropriate law enforcement authority.

Note: DOC 309.56 (4) Subsection (4) requires all calls to be collect unless payment from the inmate's account is approved. Allowing the inmate to pay for his or her own calls was left to the discretion of each institution because not all institutions ~~do not~~ allow it.

The resource problems associated with telephone calls in a correctional setting are numerous. Individual institution resources, institution programs, and phone configuration are some resource problems which impact on inmate telephone calls. Inmates must be supervised to some extent by staff while they are making calls and while they are being moved to an area where the calls are made. The large number of inmates in high security institutions requires a substantial commitment just to permit each inmate to make one telephone call each month. Inmates in institutions with lower security may not need close supervision, but these institutions also do not have the same level of staff.

Prohibiting third party billing or electronic transfer to a third party will minimize inmate telephone abuses. [See Note sub. (6).] Referring an incident of unlawful telephone use by an inmate to the appropriate law enforcement authority carries out the law enforcement role of the warden.

~~The policy on telephone calls, DOC 309.56 to 309.60, substantially conforms to the American Correctional Association's Manual of Standards for Adult Correctional Institutions (1977) (hereinafter "ACA), standard 4349.~~

SECTION 4. DOC 309.56 (6), (7), (8), (9), (10) and Notes are created to read:

DOC 309.56 (6) A corrections officer or supervisor may do all of the following:

(a) Monitor and record an inmate's phone call. A corrections officer or supervisor may not knowingly monitor or record a properly placed telephone call to an attorney. For the purpose of

this paragraph, "knowingly" means that the corrections officer or supervisor is aware that the inmate has obtained approval from the appropriate staff member for the telephone call to an attorney or the telephone number which the inmate calls is the inmate's attorney telephone number or that during a monitored telephone conversation the corrections officer or supervisor becomes aware that the call is a telephone call to an attorney. For the purpose of this paragraph, "attorney" means the inmate's lawyer of record or an attorney with whom the inmate has a client-attorney relationship or an attorney with whom the inmate seeks to establish a client-attorney relationship. A telephone call to an attorney which is recorded under this section shall be considered privileged to the extent provided under s. 905.03, Stats., and shall not be disclosable under s. 19.35, Stats. Upon learning that a telephone call to an attorney was monitored or recorded, the warden of the institution which monitored or recorded the telephone call shall notify the pertinent inmate and the attorney that the telephone call was monitored or recorded.

(b) Record the date, time, destination, number, duration of a call, and the conversation.

(c) Disclose the contents of a recording of an inmate's telephone conversation to any of the following:

1. A member of the adjustment committee.
2. The director of the office of offender classification.
3. The warden.
4. The administrator of the division of adult institutions.
5. The secretary of the department of corrections.
6. An investigative officer.
7. A law enforcement officer.

(d) Use the contents of a recording of an inmate's telephone conversation for any of the following reasons:

1. For disciplinary purposes.
2. In deciding placement or transfer of an inmate.
3. For investigations of an inmate's plans to escape.
4. For investigations of threats to the security of the correctional facility.
5. For investigations of threats to the safety, health or welfare of employees, the public, and other inmates.

6. For investigations of threats against witnesses.
7. For investigations of trafficking of drugs or other contraband.
8. For investigations of any illegal activity.
9. As evidence in administrative and judicial proceedings.

Note: DOC 309.56 (6) Abuses by inmates of their telephone privileges have led to the rule in sub. (6) to monitor and record telephone calls. Inmates have abused their telephone privileges by soliciting credit card numbers from the public, establishing outlets for their fraudulent purchases, and establishing and carrying out illegal drug activity, both inside and outside of prison. Inmates' acts have resulted in telephone fraud, credit card fraud, and drug trafficking.

Subsection (6) allows inmates' telephone calls to be monitored and recorded. A correctional officer or supervisor may not under any circumstance knowingly monitor or record a phone call placed to an attorney. Subsection (6) (a) defines an "attorney" as the inmate's lawyer of record or an attorney with whom the inmate has a client-attorney relationship or an attorney with whom the inmate seeks to establish an client-attorney relationship.

This rule is viewed as necessary to protect the security of institutions. Further this policy provides for the systematic interception and recording of inmate telephone calls.

There is a general prohibition in federal and Wisconsin law prohibiting the interception of telephone calls absent a court order. One exception to this prohibition is where a person to the communication has given prior consent to the interception. Consent to interception of a telephone call may be inferred from knowledge that the telephone call is being monitored. See U.S. v. Gomez, 900 F.2d 43 (5th Cir. 1990).

Notice is an important element of implied consent. In U.S. v. Amen, 831 F.2d 373 (2nd Cir. 1987), the court relied upon the fact that notice of the monitoring policy was published in the Code of Federal Regulations and inmates were informed of the monitoring and recording policy on admission to the penitentiary and after absences of 9 or more months.

By receiving notice of the inmate telephone call monitoring and recording policy at the time of reception by signing a receipt of notice, an inmate has no reasonable expectation of privacy in the inmate's telephone call. Since a correctional officer or supervisor

is not to knowingly monitor or record an inmate telephone call to an attorney, an inmate has a reasonable expectation of privacy in a telephone call to the inmate's attorney. To ensure that any unknowing recording of a confidential inmate-attorney communication does not prejudice the inmate in any way the rule specifies that it is a privileged communication and entitled to protection under the attorney-client privilege and the open records law.

Under both state and federal law, law enforcement officers may use telephone devices in the ordinary course of their business without engaging in illegal interceptions. See 18 U.S.C. s. 2510 (5) (a) (ii) and s. 968.27 (7) (1) (a) 2, Stats. Even those courts which have questioned the monitoring of inmate telephone calls on an implied consent theory, have upheld monitoring under these provisions when conducted by prison authorities as part of an institutionalized, ongoing policy at the prison. See *United States v. Feekes*, 879 F.2d 1562 (7th Cir. 1989); and *United States v. Sabubu*, 891 F.2d 1308 (7th Cir. 1989). Routine monitoring of inmate telephone calls provides prison authorities with an additional tool for insuring security within the institution and protecting the safety of the institution's inmates and employees and the public. See *In the Interest of JAL*, 162 Wis. 2d 940, 971 n. 8, 471 N.W. 2d 260 (Ct. App. 1990).

DOC 309.56 (7) A corrections officer or supervisor may use a recording of an inmate telephone call only for the purposes stated in s. DOC 309.56 (6) (d).

DOC 309.56 (8) During assessment and evaluation an inmate shall be given a notice written in English and Spanish which informs the inmate of the monitoring and recording of any calls. A non-English or non-Spanish speaking inmate shall be provided notice written in the inmate's native language or, if the notice can not be translated, provided orally in the inmate's native language. The inmate shall sign a receipt for the notice or the institution staff member shall note in writing the inmate's receipt of the notice if the inmate declines to sign the receipt.

Note: DOC 309.56 (8) Subsection (8) requires institution staff to inform inmates during their assessment and evaluation process that all telephone calls other than to attorneys will be monitored and recorded. In addition, it is expected that the inmate handbooks will inform the inmate that all telephone calls except attorney calls are monitored and recorded. The notice is to be in both English and Spanish. Notice to accommodate non-English or non-Spanish speaking inmates will be provided on a case-by-case basis.

DOC 309.56 (9) A written notice in English and Spanish shall be posted on the telephone or near enough to the telephone used by an inmate that the inmate will be able to read the notice when the inmate uses the telephone. The notice shall inform the inmate that



a call other than a properly approved call to an attorney shall be monitored and recorded and that the use of the telephone constitutes consent to the monitoring and recording.

Note: See discussion in subsection (6) Note. The rule on monitoring and recording telephone calls substantially conform to U.S. v. Amen, 831 F.2d 373 (2nd Cir. 1987).

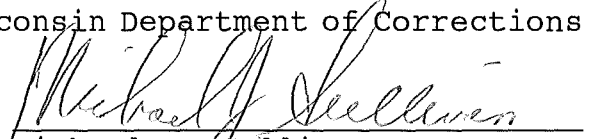
DOC 309.56 (10) In order to preserve the security and orderly management of the institution and to protect the public, the warden may establish policy or procedures subject to the approval of the administrator relating to the use of telephones.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

Wisconsin Department of Corrections

Dated: July 26, 1995

by:

  
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Michael J. Sullivan  
Secretary

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