

## CHAPTER 389

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**GOVERNMENT - STATE**

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## HOUSE BILL 21-1201

BY REPRESENTATIVE(S) Gonzales-Gutierrez and Tipper, Amabile, Bacon, Benavidez, Bernett, Bird, Boesenecker, Caraveo, Cutter, Daugherty, Duran, Esgar, Exum, Herod, Hooton, Jackson, Kennedy, Kipp, Lontine, McCluskie, Michaelson Jenet, Mullica, Ortiz, Ricks, Sirota, Valdez A., Weissman, Williams, Woodrow;  
also SENATOR(S) Gonzales, Bridges, Buckner, Donovan, Hansen, Jaquez Lewis, Kolker, Lee, Moreno, Pettersen, Winter.

## AN ACT

CONCERNING TRANSPARENCY OF PENAL COMMUNICATIONS SERVICE PROVIDERS IN CORRECTIONAL FACILITIES, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** In Colorado Revised Statutes, **amend** 17-42-103 as follows:

**17-42-103. Policies concerning inmates' use of telephones - excessive rates prohibited - transparency of communications services in correctional facilities - report - definitions.** (1) In administering the use of telephones by inmates in any state or private prison facility, the department shall not receive any commission from the ~~phone~~ PENAL COMMUNICATIONS SERVICE provider except as much as is necessary to pay for calling costs and the direct and indirect costs incurred by the department in managing the calling system. For the purposes of this ~~provision~~ SUBSECTION (1), "direct and indirect costs incurred by the department in managing the calling system" includes costs related to the provision of security and monitoring systems by either the department or the ~~phone~~ PENAL COMMUNICATIONS SERVICE provider.

(2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "COMMISSION" MEANS ANY FORM OF MONETARY PAYMENT, THING OF VALUE, IN-KIND PAYMENT, GIFT, EXCHANGE OF SERVICES OR GOODS, FEE OTHER THAN FOR DIRECT COST RECOVERY, OR TECHNOLOGY ALLOWANCE PAID TO A CORRECTIONAL FACILITY OR OTHER GOVERNMENT ENTITY BY A PENAL COMMUNICATIONS SERVICE PROVIDER.

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*Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.*

(b) "CORRECTIONAL FACILITY" MEANS ANY BUILDING, STRUCTURE, ENCLOSURE, INSTITUTION, OR PLACE, WHETHER PERMANENT OR TEMPORARY, FIXED OR MOBILE, WHERE PERSONS ARE OR MAY BE LAWFULLY HELD IN CUSTODY OR CONFINED AND THAT IS OPERATED BY A CITY, COUNTY, CITY AND COUNTY, STATE GOVERNMENT, OR PRIVATE ENTITY, INCLUDING BUT NOT LIMITED TO A JAIL OR PRISON.

(c) "FEE" MEANS ANY AMOUNT OF MONEY CHARGED TO A PERSON FOR THE USE OF PENAL COMMUNICATIONS SERVICES IN ADDITION TO RATES. A FEE INCLUDES EXTRA CHARGES FOR INITIATING A CALL, OPENING AN ACCOUNT, HAVING AN ACCOUNT, FUNDING AN ACCOUNT, INACTIVITY, CLOSING AN ACCOUNT, GETTING A REFUND, OR RECEIVING A PAPER BILL.

(d) "PENAL COMMUNICATIONS SERVICE PROVIDER" MEANS A PERSON OR COMPANY THAT PROVIDES PENAL COMMUNICATIONS SERVICES.

(e) "PENAL COMMUNICATIONS SERVICES" MEANS COMMUNICATIONS SERVICES, INCLUDING TELEPHONE SERVICES PROVIDED TO A CORRECTIONAL FACILITY FOR USE BY END USERS.

(f) "QUARTER" MEANS THE PERIOD OF TIME BETWEEN THE REPORTING DATES OF JANUARY 1, APRIL 1, JULY 1, AND OCTOBER 1 OF EACH YEAR.

(g) "RATE" MEANS ANY PREDETERMINED PER-MINUTE COST SET BY THE PENAL COMMUNICATIONS SERVICE PROVIDER FOR THE USE OF PENAL COMMUNICATIONS SERVICES.

(h) "REVENUE" MEANS THE MONEY COLLECTED FROM USERS OF COMMUNICATIONS SERVICES.

(i) "UNDERLYING CARRIER" MEANS A COMMUNICATIONS SERVICE PROVIDER THAT CONTRACTS WITH A PENAL COMMUNICATIONS SERVICE PROVIDER THAT HAS ENTERED INTO A CONTRACT TO PROVIDE COMMUNICATIONS SERVICES TO A CORRECTIONAL FACILITY.

(3)(a) EACH PENAL TELECOMMUNICATIONS SERVICE PROVIDER SHALL MAINTAIN THE RECORDS AND DATA SPECIFIED IN THIS SUBSECTION (3)(a) FOR EACH CORRECTIONAL FACILITY TO WHICH IT PROVIDES PENAL COMMUNICATIONS SERVICES. A COMMUNICATIONS SERVICE PROVIDER THAT SERVES AS AN UNDERLYING CARRIER IS NOT REQUIRED TO MAINTAIN OR PRODUCE THE RECORDS AND DATA SPECIFIED IN THIS SUBSECTION (3)(a). ON OR BEFORE JANUARY 1, 2022, EACH PENAL COMMUNICATIONS SERVICE PROVIDER SHALL SUBMIT SUCH RECORDS AND DATA IN A REPORT TO THE PUBLIC UTILITIES COMMISSION WITHIN FOURTEEN DAYS AFTER THE END OF EACH QUARTER. EXCEPT AS PROVIDED IN SUBSECTION (3)(b) OF THIS SECTION, THE QUARTERLY REPORTS SUBMITTED PURSUANT TO THIS SUBSECTION (3)(a) MUST INCLUDE:

(I) A COPY OF THE EXISTING CONTRACT BETWEEN THE PENAL COMMUNICATIONS SERVICE PROVIDER AND THE GOVERNMENT ENTITY TO PROVIDE PENAL COMMUNICATIONS SERVICES TO PERSONS IN CUSTODY IN A CORRECTIONAL FACILITY;

(II) THE TOTAL NUMBER OF CALLS MADE FROM THE CORRECTIONAL FACILITY

USING THE SERVICE;

(III) THE TOTAL MINUTES FOR CALLS MADE FROM THE CORRECTIONAL FACILITY USING THE SERVICE;

(IV) THE REVENUE COLLECTED BY THE PENAL COMMUNICATIONS SERVICE PROVIDER FOR PROVIDING THE SERVICES;

(V) A SUMMARY OF ALL COMMISSIONS PAID TO THE CORRECTIONAL FACILITY OR ANY OTHER GOVERNMENT ENTITY BY THE PENAL COMMUNICATIONS SERVICE PROVIDER;

(VI) A COPY OF THE PENAL COMMUNICATIONS SERVICE PROVIDER'S UNCLAIMED FUNDS POLICY;

(VII) THE RATES CHARGED BY THE PENAL COMMUNICATIONS SERVICE PROVIDER TO PERSONS IN CUSTODY MAKING TELEPHONE CALLS TO PERSONS NOT IN CUSTODY, INCLUDING ANY RATES CHARGED FOR:

(A) THE FIRST MINUTE OF AN IN-STATE CALL;

(B) MINUTES SUBSEQUENT TO THE FIRST MINUTE OF AN IN-STATE CALL;

(C) THE FIRST MINUTE OF AN OUT-OF-STATE CALL; AND

(D) MINUTES SUBSEQUENT TO THE FIRST MINUTE OF AN OUT-OF-STATE CALL;

(VIII) ALL FEES CHARGED TO PERSONS IN CUSTODY MAKING TELEPHONE CALLS TO PERSONS NOT IN CUSTODY, INCLUDING FEES CHARGED TO:

(A) INITIATE A CALL;

(B) DEPOSIT MONEY INTO THE INCARCERATED PERSON'S ACCOUNT FOR COMMUNICATIONS SERVICES;

(C) OPEN, MAINTAIN, FUND, OR CLOSE AN ACCOUNT WITH A PENAL COMMUNICATIONS SERVICE PROVIDER;

(D) RECEIVE A REFUND FROM A PENAL COMMUNICATIONS SERVICE PROVIDER;

(E) RECEIVE A PAPER BILL FROM A PENAL COMMUNICATIONS SERVICE PROVIDER;  
AND

(F) MAKE PAYMENTS TO THE PENAL COMMUNICATIONS SERVICE PROVIDER THROUGH A THIRD-PARTY COMPANY; AND

(IX) THE TOTAL NUMBER OF CONSUMER COMPLAINTS RELATED TO VIDEO QUALITY.

(b) A PENAL COMMUNICATIONS SERVICE PROVIDER IS NOT OBLIGATED TO PROVIDE THE PUBLIC UTILITIES COMMISSION WITH EACH SPECIFIC RECORD OR DATA REQUIRED

BY SUBSECTION (3)(a) OF THIS SECTION IF THE SPECIFIC RECORD OR DATA HAS NOT CHANGED SINCE THE REPORT WAS SUBMITTED IN THE PREVIOUS QUARTER.

(4) NO LATER THAN THIRTY DAYS AFTER RECEIPT OF THE INFORMATION REQUIRED BY SUBSECTION (3) OF THIS SECTION, THE PUBLIC UTILITIES COMMISSION SHALL PUBLISH SUCH INFORMATION ON ITS WEBSITE IN A FORMAT THAT IS ACCESSIBLE BY THE PUBLIC.

(5)(a) STARTING ON JANUARY 1, 2022, RATE CAPS ESTABLISHED BY THE FEDERAL COMMUNICATIONS COMMISSION APPLY TO ALL IN-STATE DEBIT, PREPAID, AND COLLECT CALLS TO OR FROM A CORRECTIONAL FACILITY.

(b) TO ENSURE ACCOUNTABILITY FOR POTENTIAL PREDATORY PRACTICES BY PENAL COMMUNICATIONS SERVICE PROVIDERS AND TO DETERMINE THE QUALITY OF CALLS TO AND FROM CORRECTIONAL FACILITIES, THE PUBLIC UTILITIES COMMISSION SHALL CONDUCT TRIAL TESTS ON A STATISTICALLY VALID SAMPLE OF PENAL COMMUNICATIONS SERVICES, DOCUMENT THE TEST RESULTS AND ANY SUBSEQUENT REMEDIAL ACTIONS TAKEN BY THE PUBLIC UTILITIES COMMISSION OR THE PENAL COMMUNICATIONS SERVICE PROVIDERS, AND CONSOLIDATE THE INFORMATION INTO AN ANNUAL WRITTEN REPORT PUBLISHED ON ITS WEBSITE IN A FORMAT THAT IS ACCESSIBLE BY THE PUBLIC.

(c) THE PUBLIC UTILITIES COMMISSION SHALL COMPLY WITH THE FOLLOWING STEPS WHEN CONDUCTING TRIAL TESTS OF PENAL COMMUNICATIONS SERVICES:

(I) TESTS MUST INCLUDE TRIAL TELEPHONE CALLS TO STAFF PHONE NUMBERS NOT ALREADY IN THE PROVIDER'S SYSTEM;

(II) TESTS MUST BE CONDUCTED BIANNUALLY TO MONITOR THE COST AND QUALITY OF CALLS, INCLUDING HOW THE PENAL COMMUNICATIONS SERVICE PROVIDER IS CHARGING AND ADDRESSING CONSUMER COMPLAINTS REGARDING POOR QUALITY CALLS, INCLUDING DROPPED CALLS; AND

(III) TESTS MAY BE CONDUCTED REMOTELY. ALL CORRECTIONAL FACILITIES SHALL COOPERATE WITH THE PUBLIC UTILITIES COMMISSION IN CONDUCTING TESTS OF PENAL COMMUNICATIONS SERVICES.

(d) PENAL COMMUNICATIONS SERVICE PROVIDERS SHALL INCLUDE THE FOLLOWING LANGUAGE PROMINENTLY ON THEIR WEBSITE: "THE PUBLIC UTILITIES COMMISSION (PUC) GIVES CONSUMERS THE OPPORTUNITY TO FILE INFORMAL COMPLAINTS ABOUT PROBLEMS WITH THE COMMUNICATIONS SERVICES THAT THE PUC REGULATES. COMPLAINTS CAN BE FILED THROUGH WWW.PUC.COLORADO.GOV".

(e) NOTHING IN THIS SUBSECTION (5) LIMITS OR RESTRICTS THE PUBLIC UTILITIES COMMISSION'S AUTHORITY TO REGULATE RATES AND CHARGES, CORRECT ABUSES, OR PREVENT UNJUST DISCRIMINATION.

**SECTION 2.** In Colorado Revised Statutes, 40-1-103, **amend** (1)(b) introductory portion; and **repeal** (1)(b)(VI) as follows:

**40-1-103. Public utility defined.** (1) (b) Nothing in articles 1 to 7 of this ~~title~~

~~shall be construed to~~ TITLE 40 apply to:

~~(VI) Providers of telephone or telecommunications service from inmates at penal institutions.~~

**SECTION 3.** In Colorado Revised Statutes, **amend** 40-2-113 as follows:

**40-2-113. Collection of fees - limitation.** On or before June 15 of each year, the department of revenue shall notify each public utility subject to this ~~article~~ ARTICLE 2 of the amount of its fee for the ensuing fiscal year beginning July 1, computed by multiplying its gross intrastate utility operating revenues for the preceding calendar year, as set forth in its return filed for that purpose, by the percentage determined in accordance with section 40-2-112; but the department of revenue shall not require a public utility that is a telephone corporation to pay a fee in excess of one-fifth of one percent of its gross intrastate utility operating revenues for the preceding calendar year and shall not require any other public utility to pay a fee in excess of one-quarter of one percent of its gross intrastate utility operating revenues for the preceding calendar year. Each public utility, INCLUDING PENAL COMMUNICATIONS SERVICE PROVIDERS, AS DEFINED IN SECTION 17-42-103 (2), shall pay the fee assessed against it to the department of revenue in equal quarterly installments on or before July 15, October 15, January 15, and April 15 in each fiscal year. If a public utility does not make a payment by one of the quarterly deadlines, the department of revenue shall charge the public utility a penalty of ten percent of the installment due, together with interest at the rate of one percent per month on the amount of the unpaid installment until the full amount of the installment, penalty, and interest has been paid. Upon failure, refusal, or neglect of any public utility to pay the fee, or any penalty or interest, the attorney general shall bring suit in the name of the state to collect the amount due.

**SECTION 4.** In Colorado Revised Statutes, 40-15-102, **amend** (19.5) and (20.6) as follows:

**40-15-102. Definitions.** As used in this article 15, unless the context otherwise requires:

(19.5) "Nonoptional operator services" means operator services requiring an operator for individualized call processing or specialized or alternative billing, including, without limitation, credit card calls, calls billed to a third number, collect calls, and person-to-person calls, OR OPERATOR SERVICES TO PROVIDE TELEPHONE SERVICES TO INMATES AT CORRECTIONAL FACILITIES, AS DEFINED IN SECTION 17-42-103 (2).

(20.6) "Optional operator services" means operator services not defined in subsection (19.5) or (20.3) of this section, including, without limitation, operator services provided in connection with conference calling, foreign language translation, ~~operator services to provide telephone service to inmates at penal institutions~~, and voice messaging.

**SECTION 5.** In Colorado Revised Statutes, 40-15-107, **repeal** (3) as follows:

**40-15-107. Powers of commission - inspection of books and documents -**

**confidentiality of information obtained through audit.** (3) ~~The commission shall have no authority to regulate telephone or telecommunications service from inmates at penal institutions.~~

**SECTION 6. Appropriation.** (1) For the 2021-22 state fiscal year, \$259,251 is appropriated to the department of regulatory agencies for use by the public utilities commission. This appropriation is from the telecommunications utility fund created in section 40-2-114 (b)(I), C.R.S. To implement this act, the division may use this appropriation as follows:

(a) \$232,101 for personal services, which amount is based on an assumption that the division will require an additional 3.0 FTE; and

(b) \$27,150 for operating expenses.

**SECTION 7. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: June 30, 2021