

SENATE BILL NO. 39—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE DEPARTMENT OF
INDIGENT DEFENSE SERVICES)

PREFILED NOVEMBER 16, 2022

Referred to Committee on Judiciary

SUMMARY—Provides that certain records received, obtained and compiled by the Board on Indigent Defense Services in the Department of Indigent Defense Services and the Department are confidential under certain circumstances. (BDR 14-215)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to indigent services; providing that certain records received by the Board on Indigent Defense Services in the Department of Indigent Defense Services or the Department which are protected by the attorney-client privilege are confidential; providing that certain records received by the Board or the Department relating to the conduct of an attorney are confidential under certain circumstances; providing that certain records which are voluntarily disclosed to the Department remain protected by the attorney-client privilege under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law: (1) creates the Board on Indigent Defense Services and the
2 Department of Indigent Defense Services; and (2) requires the Board and the
3 Department to perform certain duties related to the oversight of indigent defense
4 services in this State. (NRS 180.300, 180.320, 180.400, 180.410)

5 **Section 1** of this bill provides, with certain exceptions, that all records received
6 by the Board, the Department or a designee of the Department that are protected by
7 the attorney-client privilege are confidential. **Section 1** also provides that all
8 records obtained or compiled during or after an investigation arising from a



9 complaint related to the conduct of an attorney are confidential, unless releasing
10 such records is necessary for the performance of the oversight functions or duties of
11 the Board or Department. Additionally, **section 1** clarifies that the Board and
12 Department may, at their discretion, communicate or cooperate with, or provide
13 records to, any professional licensing board or any other governmental agency that
14 is investigating a complaint against an attorney pertaining to the representation of
15 an indigent client by the attorney.

16 Existing law establishes a privilege for confidential communication between a
17 client and the client's attorney. (NRS 49.035-49.115) However, existing law also
18 provides that the privilege is waived if a person who holds the privilege voluntarily
19 discloses or consents to disclosure of any significant part of the matter, unless the
20 disclosure is itself a privileged communication or made to an interpreter employed
21 merely to facilitate communications. (NRS 49.385) **Section 2** of this bill provides
22 that the privilege is additionally not waived if a disclosure is made to the
23 Department or its designee for the purpose of: (1) requesting prior approval of a
24 claim for compensation for certain legal expenses; (2) submitting a claim for
25 compensation of certain legal fees or expenses reasonably incurred by an attorney
26 providing indigent defense services; or (3) submitting a complaint against an
27 attorney providing indigent defense services.

28 **Section 3** of this bill makes a conforming change to reflect that certain records
29 are confidential pursuant to **section 1**.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 180 of NRS is hereby amended by adding
2 thereto a new section to read as follows:

3 *1. Except as otherwise provided in this section and NRS*
4 *239.0115, all records received by the Board, the Department or a*
5 *designee of the Department that are protected by the attorney-*
6 *client privilege are confidential.*

7 *2. Except as otherwise provided in this section and NRS*
8 *239.0115, all records obtained or compiled during or after an*
9 *investigation arising from a complaint received by the Board or*
10 *the Department that are related to the conduct of an attorney are*
11 *confidential, unless releasing such records is determined to be*
12 *necessary for the oversight functions or duties of the Board or*
13 *Department.*

14 *3. The provisions of this section do not prohibit the Board or*
15 *the Department, at its discretion, from communicating or*
16 *cooperating with, or providing any records to, any professional*
17 *licensing board or any other governmental agency that is*
18 *investigating a complaint against an attorney pertaining to the*
19 *representation of an indigent client by the attorney.*

20 *4. As used in this section, "records" means any records, files,*
21 *books, documents, papers, information or data that is inscribed on*
22 *a tangible medium or that is stored in an electronic or other*
23 *medium and is retrievable in perceivable form.*



1 **Sec. 2.** NRS 49.385 is hereby amended to read as follows:
2 49.385 1. A person upon whom these rules confer a privilege
3 against disclosure of a confidential matter waives the privilege if the
4 person or the person's predecessor while holder of the privilege
5 voluntarily discloses or consents to disclosure of any significant part
6 of the matter.

7 2. This section does not apply if the disclosure is:

8 (a) Itself a privileged communication; ~~or~~

9 (b) Made to an interpreter employed merely to facilitate
10 communications ~~or~~; *or*

11 (c) *Made to the Department of Indigent Defense Services or a*
12 *designee of the Department for the purpose of:*

13 (1) *Requesting prior approval of a claim pursuant to*
14 *paragraph (a) of subsection 1 of NRS 7.135;*

15 (2) *Submitting a claim for compensation or expenses*
16 *pursuant to NRS 7.125 or 7.135; or*

17 (3) *Submitting a complaint against an attorney providing*
18 *indigent defense services pursuant to NRS 180.320.*

19 **Sec. 3.** NRS 239.010 is hereby amended to read as follows:

20 239.010 1. Except as otherwise provided in this section and
21 NRS 1.4683, 1.4687, 1A.110, 3.2203, 41.0397, 41.071, 49.095,
22 49.293, 62D.420, 62D.440, 62E.516, 62E.620, 62H.025, 62H.030,
23 62H.170, 62H.220, 62H.320, 75A.100, 75A.150, 76.160, 78.152,
24 80.113, 81.850, 82.183, 86.246, 86.54615, 87.515, 87.5413,
25 87A.200, 87A.580, 87A.640, 88.3355, 88.5927, 88.6067, 88A.345,
26 88A.7345, 89.045, 89.251, 90.730, 91.160, 116.757, 116A.270,
27 116B.880, 118B.026, 119.260, 119.265, 119.267, 119.280,
28 119A.280, 119A.653, 119A.677, 119B.370, 119B.382, 120A.640,
29 120A.690, 125.130, 125B.140, 126.141, 126.161, 126.163, 126.730,
30 127.007, 127.057, 127.130, 127.140, 127.2817, 128.090, 130.312,
31 130.712, 136.050, 159.044, 159A.044, 172.075, 172.245, 176.015,
32 176.0625, 176.09129, 176.156, 176A.630, 178.39801, 178.4715,
33 178.5691, 179.495, 179A.070, 179A.165, 179D.160, 200.3771,
34 200.3772, 200.5095, 200.604, 202.3662, 205.4651, 209.392,
35 209.3923, 209.3925, 209.419, 209.429, 209.521, 211A.140,
36 213.010, 213.040, 213.095, 213.131, 217.105, 217.110, 217.464,
37 217.475, 218A.350, 218E.625, 218F.150, 218G.130, 218G.240,
38 218G.350, 224.240, 226.300, 228.270, 228.450, 228.495, 228.570,
39 231.069, 231.1473, 232.1369, 233.190, 237.300, 239.0105,
40 239.0113, 239.014, 239B.026, 239B.030, 239B.040, 239B.050,
41 239C.140, 239C.210, 239C.230, 239C.250, 239C.270, 239C.420,
42 240.007, 241.020, 241.030, 241.039, 242.105, 244.264, 244.335,
43 247.540, 247.550, 247.560, 250.087, 250.130, 250.140, 250.150,
44 268.095, 268.0978, 268.490, 268.910, 269.174, 271A.105, 281.195,
45 281.805, 281A.350, 281A.680, 281A.685, 281A.750, 281A.755,



1 281A.780, 284.4068, 284.4086, 286.110, 286.118, 287.0438,
2 289.025, 289.080, 289.387, 289.830, 293.4855, 293.5002, 293.503,
3 293.504, 293.558, 293.5757, 293.870, 293.906, 293.908, 293.910,
4 293B.135, 293D.510, 331.110, 332.061, 332.351, 333.333, 333.335,
5 338.070, 338.1379, 338.1593, 338.1725, 338.1727, 348.420,
6 349.597, 349.775, 353.205, 353A.049, 353A.085, 353A.100,
7 353C.240, 360.240, 360.247, 360.255, 360.755, 361.044, 361.2242,
8 361.610, 365.138, 366.160, 368A.180, 370.257, 370.327, 372A.080,
9 378.290, 378.300, 379.0075, 379.008, 379.1495, 385A.830,
10 385B.100, 387.626, 387.631, 388.1455, 388.259, 388.501, 388.503,
11 388.513, 388.750, 388A.247, 388A.249, 391.033, 391.035,
12 391.0365, 391.120, 391.925, 392.029, 392.147, 392.264, 392.271,
13 392.315, 392.317, 392.325, 392.327, 392.335, 392.850, 393.045,
14 394.167, 394.16975, 394.1698, 394.447, 394.460, 394.465,
15 396.1415, 396.1425, 396.143, 396.159, 396.3295, 396.405, 396.525,
16 396.535, 396.9685, 398A.115, 408.3885, 408.3886, 408.3888,
17 408.5484, 412.153, 414.280, 416.070, 422.2749, 422.305,
18 422A.342, 422A.350, 425.400, 427A.1236, 427A.872, 432.028,
19 432.205, 432B.175, 432B.280, 432B.290, 432B.4018, 432B.407,
20 432B.430, 432B.560, 432B.5902, 432C.140, 432C.150, 433.534,
21 433A.360, 439.4941, 439.4988, 439.840, 439.914, 439A.116,
22 439A.124, 439B.420, 439B.754, 439B.760, 439B.845, 440.170,
23 441A.195, 441A.220, 441A.230, 442.330, 442.395, 442.735,
24 442.774, 445A.665, 445B.570, 445B.7773, 447.345, 449.209,
25 449.245, 449.4315, 449A.112, 450.140, 450B.188, 450B.805,
26 453.164, 453.720, 458.055, 458.280, 459.050, 459.3866, 459.555,
27 459.7056, 459.846, 463.120, 463.15993, 463.240, 463.3403,
28 463.3407, 463.790, 467.1005, 480.535, 480.545, 480.935, 480.940,
29 481.063, 481.091, 481.093, 482.170, 482.368, 482.5536, 483.340,
30 483.363, 483.575, 483.659, 483.800, 484A.469, 484B.830,
31 484B.833, 484E.070, 485.316, 501.344, 503.452, 522.040,
32 534A.031, 561.285, 571.160, 584.655, 587.877, 598.0964, 598.098,
33 598A.110, 598A.420, 599B.090, 603.070, 603A.210, 604A.303,
34 604A.710, 612.265, 616B.012, 616B.015, 616B.315, 616B.350,
35 618.341, 618.425, 622.238, 622.310, 623.131, 623A.137, 624.110,
36 624.265, 624.327, 625.425, 625A.185, 628.418, 628B.230,
37 628B.760, 629.047, 629.069, 630.133, 630.2671, 630.2672,
38 630.2673, 630.30665, 630.336, 630A.327, 630A.555, 631.332,
39 631.368, 632.121, 632.125, 632.3415, 632.3423, 632.405, 633.283,
40 633.301, 633.4715, 633.4716, 633.4717, 633.524, 634.055,
41 634.1303, 634.214, 634A.169, 634A.185, 635.111, 635.158,
42 636.262, 636.342, 637.085, 637.145, 637B.192, 637B.288, 638.087,
43 638.089, 639.183, 639.2485, 639.570, 640.075, 640.152, 640A.185,
44 640A.220, 640B.405, 640B.730, 640C.580, 640C.600, 640C.620,
45 640C.745, 640C.760, 640D.135, 640D.190, 640E.225, 640E.340,



1 641.090, 641.221, 641.2215, 641.325, 641A.191, 641A.217,
2 641A.262, 641B.170, 641B.281, 641B.282, 641C.455, 641C.760,
3 641D.260, 641D.320, 642.524, 643.189, 644A.870, 645.180,
4 645.625, 645A.050, 645A.082, 645B.060, 645B.092, 645C.220,
5 645C.225, 645D.130, 645D.135, 645G.510, 645H.320, 645H.330,
6 647.0945, 647.0947, 648.033, 648.197, 649.065, 649.067, 652.126,
7 652.228, 653.900, 654.110, 656.105, 657A.510, 661.115, 665.130,
8 665.133, 669.275, 669.285, 669A.310, 671.170, 673.450, 673.480,
9 675.380, 676A.340, 676A.370, 677.243, 678A.470, 678C.710,
10 678C.800, 679B.122, 679B.124, 679B.152, 679B.159, 679B.190,
11 679B.285, 679B.690, 680A.270, 681A.440, 681B.260, 681B.410,
12 681B.540, 683A.0873, 685A.077, 686A.289, 686B.170, 686C.306,
13 687A.060, 687A.115, 687B.404, 687C.010, 688C.230, 688C.480,
14 688C.490, 689A.696, 692A.117, 692C.190, 692C.3507, 692C.3536,
15 692C.3538, 692C.354, 692C.420, 693A.480, 693A.615, 696B.550,
16 696C.120, 703.196, 704B.325, 706.1725, 706A.230, 710.159,
17 711.600, *and section 1 of this act*, sections 35, 38 and 41 of chapter
18 478, Statutes of Nevada 2011 and section 2 of chapter 391, Statutes
19 of Nevada 2013 and unless otherwise declared by law to be
20 confidential, all public books and public records of a governmental
21 entity must be open at all times during office hours to inspection by
22 any person, and may be fully copied or an abstract or memorandum
23 may be prepared from those public books and public records. Any
24 such copies, abstracts or memoranda may be used to supply the
25 general public with copies, abstracts or memoranda of the records or
26 may be used in any other way to the advantage of the governmental
27 entity or of the general public. This section does not supersede or in
28 any manner affect the federal laws governing copyrights or enlarge,
29 diminish or affect in any other manner the rights of a person in any
30 written book or record which is copyrighted pursuant to federal law.

31 2. A governmental entity may not reject a book or record
32 which is copyrighted solely because it is copyrighted.

33 3. A governmental entity that has legal custody or control of a
34 public book or record shall not deny a request made pursuant to
35 subsection 1 to inspect or copy or receive a copy of a public book or
36 record on the basis that the requested public book or record contains
37 information that is confidential if the governmental entity can
38 redact, delete, conceal or separate, including, without limitation,
39 electronically, the confidential information from the information
40 included in the public book or record that is not otherwise
41 confidential.

42 4. If requested, a governmental entity shall provide a copy of a
43 public record in an electronic format by means of an electronic
44 medium. Nothing in this subsection requires a governmental entity



1 to provide a copy of a public record in an electronic format or by
2 means of an electronic medium if:

3 (a) The public record:

4 (1) Was not created or prepared in an electronic format; and

5 (2) Is not available in an electronic format; or

6 (b) Providing the public record in an electronic format or by
7 means of an electronic medium would:

8 (1) Give access to proprietary software; or

9 (2) Require the production of information that is confidential
10 and that cannot be redacted, deleted, concealed or separated from
11 information that is not otherwise confidential.

12 5. An officer, employee or agent of a governmental entity who
13 has legal custody or control of a public record:

14 (a) Shall not refuse to provide a copy of that public record in the
15 medium that is requested because the officer, employee or agent has
16 already prepared or would prefer to provide the copy in a different
17 medium.

18 (b) Except as otherwise provided in NRS 239.030, shall, upon
19 request, prepare the copy of the public record and shall not require
20 the person who has requested the copy to prepare the copy himself
21 or herself.

22 **Sec. 4.** This act becomes effective upon passage and approval.

