

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.

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



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

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

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

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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. Such records may include,*  
7 *without limitation, any records relating to the case file of a client*  
8 *or a claim for compensation or expenses made by an attorney*  
9 *pursuant to NRS 7.125 or 7.135.*

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

16 *3. The provisions of this section do not prohibit the Board or*  
17 *the Department, at its discretion, from communicating or*  
18 *cooperating with, or providing any records to, any professional*  
19 *licensing board or any other governmental agency that is*  
20 *investigating a person, except to the extent that such records are*  
21 *protected by the attorney-client privilege.*

22 *4. As used in this section, "records" means any records, files,*  
23 *books, documents, papers, information or data that is inscribed on*



1 *a tangible medium or that is stored in an electronic or other*  
2 *medium and is retrievable in perceivable form.*

3 **Sec. 2.** NRS 49.385 is hereby amended to read as follows:

4 49.385 1. A person upon whom these rules confer a privilege  
5 against disclosure of a confidential matter waives the privilege if the  
6 person or the person's predecessor while holder of the privilege  
7 voluntarily discloses or consents to disclosure of any significant part  
8 of the matter.

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

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

11 (b) Made to an interpreter employed merely to facilitate  
12 communications ~~H~~; or

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

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

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

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

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

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



1 268.095, 268.0978, 268.490, 268.910, 269.174, 271A.105, 281.195,  
2 281.805, 281A.350, 281A.680, 281A.685, 281A.750, 281A.755,  
3 281A.780, 284.4068, 284.4086, 286.110, 286.118, 287.0438,  
4 289.025, 289.080, 289.387, 289.830, 293.4855, 293.5002, 293.503,  
5 293.504, 293.558, 293.5757, 293.870, 293.906, 293.908, 293.910,  
6 293B.135, 293D.510, 331.110, 332.061, 332.351, 333.333, 333.335,  
7 338.070, 338.1379, 338.1593, 338.1725, 338.1727, 348.420,  
8 349.597, 349.775, 353.205, 353A.049, 353A.085, 353A.100,  
9 353C.240, 360.240, 360.247, 360.255, 360.755, 361.044, 361.2242,  
10 361.610, 365.138, 366.160, 368A.180, 370.257, 370.327, 372A.080,  
11 378.290, 378.300, 379.0075, 379.008, 379.1495, 385A.830,  
12 385B.100, 387.626, 387.631, 388.1455, 388.259, 388.501, 388.503,  
13 388.513, 388.750, 388A.247, 388A.249, 391.033, 391.035,  
14 391.0365, 391.120, 391.925, 392.029, 392.147, 392.264, 392.271,  
15 392.315, 392.317, 392.325, 392.327, 392.335, 392.850, 393.045,  
16 394.167, 394.16975, 394.1698, 394.447, 394.460, 394.465,  
17 396.1415, 396.1425, 396.143, 396.159, 396.3295, 396.405, 396.525,  
18 396.535, 396.9685, 398A.115, 408.3885, 408.3886, 408.3888,  
19 408.5484, 412.153, 414.280, 416.070, 422.2749, 422.305,  
20 422A.342, 422A.350, 425.400, 427A.1236, 427A.872, 432.028,  
21 432.205, 432B.175, 432B.280, 432B.290, 432B.4018, 432B.407,  
22 432B.430, 432B.560, 432B.5902, 432C.140, 432C.150, 433.534,  
23 433A.360, 439.4941, 439.4988, 439.840, 439.914, 439A.116,  
24 439A.124, 439B.420, 439B.754, 439B.760, 439B.845, 440.170,  
25 441A.195, 441A.220, 441A.230, 442.330, 442.395, 442.735,  
26 442.774, 445A.665, 445B.570, 445B.7773, 447.345, 449.209,  
27 449.245, 449.4315, 449A.112, 450.140, 450B.188, 450B.805,  
28 453.164, 453.720, 458.055, 458.280, 459.050, 459.3866, 459.555,  
29 459.7056, 459.846, 463.120, 463.15993, 463.240, 463.3403,  
30 463.3407, 463.790, 467.1005, 480.535, 480.545, 480.935, 480.940,  
31 481.063, 481.091, 481.093, 482.170, 482.368, 482.5536, 483.340,  
32 483.363, 483.575, 483.659, 483.800, 484A.469, 484B.830,  
33 484B.833, 484E.070, 485.316, 501.344, 503.452, 522.040,  
34 534A.031, 561.285, 571.160, 584.655, 587.877, 598.0964, 598.098,  
35 598A.110, 598A.420, 599B.090, 603.070, 603A.210, 604A.303,  
36 604A.710, 612.265, 616B.012, 616B.015, 616B.315, 616B.350,  
37 618.341, 618.425, 622.238, 622.310, 623.131, 623A.137, 624.110,  
38 624.265, 624.327, 625.425, 625A.185, 628.418, 628B.230,  
39 628B.760, 629.047, 629.069, 630.133, 630.2671, 630.2672,  
40 630.2673, 630.30665, 630.336, 630A.327, 630A.555, 631.332,  
41 631.368, 632.121, 632.125, 632.3415, 632.3423, 632.405, 633.283,  
42 633.301, 633.4715, 633.4716, 633.4717, 633.524, 634.055,  
43 634.1303, 634.214, 634A.169, 634A.185, 635.111, 635.158,  
44 636.262, 636.342, 637.085, 637.145, 637B.192, 637B.288, 638.087,  
45 638.089, 639.183, 639.2485, 639.570, 640.075, 640.152, 640A.185,



1 640A.220, 640B.405, 640B.730, 640C.580, 640C.600, 640C.620,  
2 640C.745, 640C.760, 640D.135, 640D.190, 640E.225, 640E.340,  
3 641.090, 641.221, 641.2215, 641.325, 641A.191, 641A.217,  
4 641A.262, 641B.170, 641B.281, 641B.282, 641C.455, 641C.760,  
5 641D.260, 641D.320, 642.524, 643.189, 644A.870, 645.180,  
6 645.625, 645A.050, 645A.082, 645B.060, 645B.092, 645C.220,  
7 645C.225, 645D.130, 645D.135, 645G.510, 645H.320, 645H.330,  
8 647.0945, 647.0947, 648.033, 648.197, 649.065, 649.067, 652.126,  
9 652.228, 653.900, 654.110, 656.105, 657A.510, 661.115, 665.130,  
10 665.133, 669.275, 669.285, 669A.310, 671.170, 673.450, 673.480,  
11 675.380, 676A.340, 676A.370, 677.243, 678A.470, 678C.710,  
12 678C.800, 679B.122, 679B.124, 679B.152, 679B.159, 679B.190,  
13 679B.285, 679B.690, 680A.270, 681A.440, 681B.260, 681B.410,  
14 681B.540, 683A.0873, 685A.077, 686A.289, 686B.170, 686C.306,  
15 687A.060, 687A.115, 687B.404, 687C.010, 688C.230, 688C.480,  
16 688C.490, 689A.696, 692A.117, 692C.190, 692C.3507, 692C.3536,  
17 692C.3538, 692C.354, 692C.420, 693A.480, 693A.615, 696B.550,  
18 696C.120, 703.196, 704B.325, 706.1725, 706A.230, 710.159,  
19 711.600, **and section 1 of this act**, sections 35, 38 and 41 of chapter  
20 478, Statutes of Nevada 2011 and section 2 of chapter 391, Statutes  
21 of Nevada 2013 and unless otherwise declared by law to be  
22 confidential, all public books and public records of a governmental  
23 entity must be open at all times during office hours to inspection by  
24 any person, and may be fully copied or an abstract or memorandum  
25 may be prepared from those public books and public records. Any  
26 such copies, abstracts or memoranda may be used to supply the  
27 general public with copies, abstracts or memoranda of the records or  
28 may be used in any other way to the advantage of the governmental  
29 entity or of the general public. This section does not supersede or in  
30 any manner affect the federal laws governing copyrights or enlarge,  
31 diminish or affect in any other manner the rights of a person in any  
32 written book or record which is copyrighted pursuant to federal law.  
33 2. A governmental entity may not reject a book or record  
34 which is copyrighted solely because it is copyrighted.  
35 3. A governmental entity that has legal custody or control of a  
36 public book or record shall not deny a request made pursuant to  
37 subsection 1 to inspect or copy or receive a copy of a public book or  
38 record on the basis that the requested public book or record contains  
39 information that is confidential if the governmental entity can  
40 redact, delete, conceal or separate, including, without limitation,  
41 electronically, the confidential information from the information  
42 included in the public book or record that is not otherwise  
43 confidential.  
44 4. If requested, a governmental entity shall provide a copy of a  
45 public record in an electronic format by means of an electronic



1 medium. Nothing in this subsection requires a governmental entity  
2 to provide a copy of a public record in an electronic format or by  
3 means of an electronic medium if:

4 (a) The public record:

- 5 (1) Was not created or prepared in an electronic format; and
- 6 (2) Is not available in an electronic format; or

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

- 9 (1) Give access to proprietary software; or
- 10 (2) Require the production of information that is confidential  
11 and that cannot be redacted, deleted, concealed or separated from  
12 information that is not otherwise confidential.

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

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

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

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





