

Amendment No. 533

Senate Amendment to Senate Bill No. 39	(BDR 14-215)
Proposed by: Senator Scheible	
Amends: Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

BAW



Date: 4/25/2023

S.B. No. 39—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)



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:

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

Section 1 of this bill provides , with certain exceptions, that all records received by the Board, the Department or a designee of the Department that are protected by the attorney-client privilege are confidential. **Section 1** also provides that all records obtained or compiled during or after an investigation arising from a complaint related to the conduct of an attorney are confidential, unless releasing such records is necessary for the performance of the oversight functions or duties of the Board or Department. Additionally, **section 1** clarifies that the Board and Department may, at their discretion, communicate or cooperate with, or provide records to, any professional licensing board or any other governmental agency that is investigating a ~~person, except to the extent that such records are protected by the attorney-client privilege.~~ complaint against an attorney pertaining to the representation of an indigent client by the attorney.

Existing law establishes a privilege for confidential communication between a client and the client’s attorney. (NRS 49.035-49.115) However, existing law also provides that the

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18 privilege is waived if a person who holds the privilege voluntarily discloses or consents to
 19 disclosure of any significant part of the matter, unless the disclosure is itself a privileged
 20 communication or made to an interpreter employed merely to facilitate communications.
 21 (NRS 49.385) **Section 2** of this bill provides that the privilege is additionally not waived if a
 22 disclosure is made to the Department or its designee for the purpose of: (1) requesting prior
 23 approval of a 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 providing
 25 indigent defense services; or (3) submitting a complaint against an attorney providing indigent
 26 defense services.

27 **Section 3** of this bill makes a conforming change to reflect that certain records are
 28 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 thereto a new
 2 section to read as follows:

3 *1. Except as otherwise provided in this section and NRS 239.0115, all*
 4 *records received by the Board, the Department or a designee of the Department*
 5 *that are protected by the attorney-client privilege are confidential. ~~[Such records~~*
 6 *may include, without limitation, any records relating to the case file of a client or*
 7 *a claim for compensation or expenses made by an attorney pursuant to NRS*
 8 *7.125 or 7.135.]*

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

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

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

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

26 49.385 1. A person upon whom these rules confer a privilege against
 27 disclosure of a confidential matter waives the privilege if the person or the person's
 28 predecessor while holder of the privilege voluntarily discloses or consents to
 29 disclosure of any significant part of the matter.

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

- 31 (a) Itself a privileged communication; ~~☒~~
 32 (b) Made to an interpreter employed merely to facilitate communications ~~☒~~ ;
 33 *or*

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

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

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

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

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

6 239.010 1. Except as otherwise provided in this section and NRS 1.4683,
7 1.4687, 1A.110, 3.2203, 41.0397, 41.071, 49.095, 49.293, 62D.420, 62D.440,
8 62E.516, 62E.620, 62H.025, 62H.030, 62H.170, 62H.220, 62H.320, 75A.100,
9 75A.150, 76.160, 78.152, 80.113, 81.850, 82.183, 86.246, 86.54615, 87.515,
10 87.5413, 87A.200, 87A.580, 87A.640, 88.3355, 88.5927, 88.6067, 88A.345,
11 88A.7345, 89.045, 89.251, 90.730, 91.160, 116.757, 116A.270, 116B.880,
12 118B.026, 119.260, 119.265, 119.267, 119.280, 119A.280, 119A.653, 119A.677,
13 119B.370, 119B.382, 120A.640, 120A.690, 125.130, 125B.140, 126.141, 126.161,
14 126.163, 126.730, 127.007, 127.057, 127.130, 127.140, 127.2817, 128.090,
15 130.312, 130.712, 136.050, 159.044, 159A.044, 172.075, 172.245, 176.015,
16 176.0625, 176.09129, 176.156, 176A.630, 178.39801, 178.4715, 178.5691,
17 179.495, 179A.070, 179A.165, 179D.160, 200.3771, 200.3772, 200.5095, 206.604,
18 202.3662, 205.4651, 209.392, 209.3923, 209.3925, 209.419, 209.429, 209.521,
19 211A.140, 213.010, 213.040, 213.095, 213.131, 217.105, 217.110, 217.464,
20 217.475, 218A.350, 218E.625, 218F.150, 218G.130, 218G.240, 218G.350,
21 224.240, 226.300, 228.270, 228.450, 228.495, 228.570, 231.069, 231.1473,
22 232.1369, 233.190, 237.300, 239.0105, 239.0113, 239.014, 239B.026, 239B.030,
23 239B.040, 239B.050, 239C.140, 239C.210, 239C.230, 239C.250, 239C.270,
24 239C.420, 240.007, 241.020, 241.030, 241.039, 242.105, 244.264, 244.335,
25 247.540, 247.550, 247.560, 250.087, 250.130, 250.140, 250.150, 268.095,
26 268.0978, 268.490, 268.910, 269.174, 271A.105, 281.195, 281.805, 281A.350,
27 281A.680, 281A.685, 281A.750, 281A.755, 281A.780, 284.4068, 284.4086,
28 286.110, 286.118, 287.0438, 289.025, 289.080, 289.387, 289.830, 293.4855,
29 293.5002, 293.503, 293.504, 293.558, 293.5757, 293.870, 293.906, 293.908,
30 293.910, 293B.135, 293D.510, 331.110, 332.061, 332.351, 333.333, 333.335,
31 338.070, 338.1379, 338.1593, 338.1725, 338.1727, 348.420, 349.597, 349.775,
32 353.205, 353A.049, 353A.085, 353A.100, 353C.240, 360.240, 360.247, 360.255,
33 360.755, 361.044, 361.2242, 361.610, 365.138, 366.160, 368A.180, 370.257,
34 370.327, 372A.080, 378.290, 378.300, 379.0075, 379.008, 379.1495, 385A.830,
35 385B.100, 387.626, 387.631, 388.1455, 388.259, 388.501, 388.503, 388.513,
36 388.750, 388A.247, 388A.249, 391.033, 391.035, 391.0365, 391.120, 391.925,
37 392.029, 392.147, 392.264, 392.271, 392.315, 392.317, 392.325, 392.327, 392.335,
38 392.850, 393.045, 394.167, 394.16975, 394.1698, 394.447, 394.460, 394.465,
39 396.1415, 396.1425, 396.143, 396.159, 396.3295, 396.405, 396.525, 396.535,
40 396.9685, 398A.115, 408.3885, 408.3886, 408.3888, 408.5484, 412.153, 414.280,
41 416.070, 422.2749, 422.305, 422A.342, 422A.350, 425.400, 427A.1236, 427A.872,
42 432.028, 432.205, 432B.175, 432B.280, 432B.290, 432B.4018, 432B.402,
43 432B.430, 432B.560, 432B.5902, 432C.140, 432C.150, 433.534, 433A.360,
44 439.4941, 439.4988, 439.840, 439.914, 439A.116, 439A.124, 439B.420, 439B.754,
45 439B.760, 439B.845, 440.170, 441A.195, 441A.220, 441A.230, 442.330, 442.395,
46 442.735, 442.774, 445A.665, 445B.570, 445B.7773, 447.345, 449.209, 449.245,
47 449.4315, 449A.112, 450.140, 450B.188, 450B.805, 453.164, 453.720, 458.055,
48 458.280, 459.050, 459.3866, 459.555, 459.7056, 459.846, 463.120, 463.15993,
49 463.240, 463.3403, 463.3407, 463.790, 467.1005, 480.535, 480.545, 480.935,
50 480.940, 481.063, 481.091, 481.093, 482.170, 482.368, 482.5536, 483.340,
51 483.363, 483.575, 483.659, 483.800, 484A.469, 484B.830, 484B.833, 484E.070,
52 485.316, 501.344, 503.452, 522.040, 534A.031, 561.285, 571.160, 584.655,
53 587.877, 598.0964, 598.098, 598A.110, 598A.420, 599B.090, 603.070, 603A.210,

1 604A.303, 604A.710, 612.265, 616B.012, 616B.015, 616B.315, 616B.350,
2 618.341, 618.425, 622.238, 622.310, 623.131, 623A.137, 624.110, 624.265,
3 624.327, 625.425, 625A.185, 628.418, 628B.230, 628B.760, 629.047, 629.069,
4 630.133, 630.2671, 630.2672, 630.2673, 630.30665, 630.336, 630A.327,
5 630A.555, 631.332, 631.368, 632.121, 632.125, 632.3415, 632.3423, 632.405,
6 633.283, 633.301, 633.4715, 633.4716, 633.4717, 633.524, 634.055, 634.1303,
7 634.214, 634A.169, 634A.185, 635.111, 635.158, 636.262, 636.342, 637.085,
8 637.145, 637B.192, 637B.288, 638.087, 638.089, 639.183, 639.2485, 639.570,
9 640.075, 640.152, 640A.185, 640A.220, 640B.405, 640B.730, 640C.580,
10 640C.600, 640C.620, 640C.745, 640C.760, 640D.135, 640D.190, 640E.225,
11 640E.340, 641.090, 641.221, 641.2215, 641.325, 641A.191, 641A.217, 641A.262,
12 641B.170, 641B.281, 641B.282, 641C.455, 641C.760, 641D.260, 641D.320,
13 642.524, 643.189, 644A.870, 645.180, 645.625, 645A.050, 645A.082, 645B.060,
14 645B.092, 645C.220, 645C.225, 645D.130, 645D.135, 645G.510, 645H.320,
15 645H.330, 647.0945, 647.0947, 648.033, 648.197, 649.065, 649.067, 652.126,
16 652.228, 653.900, 654.110, 656.105, 657A.510, 661.115, 665.130, 665.133,
17 669.275, 669.285, 669A.310, 671.170, 673.450, 673.480, 675.380, 676A.340,
18 676A.370, 677.243, 678A.470, 678C.710, 678C.800, 679B.122, 679B.124,
19 679B.152, 679B.159, 679B.190, 679B.285, 679B.690, 680A.270, 681A.440,
20 681B.260, 681B.410, 681B.540, 683A.0873, 685A.077, 686A.289, 686B.170,
21 686C.306, 687A.060, 687A.115, 687B.404, 687C.010, 688C.230, 688C.480,
22 688C.490, 689A.696, 692A.117, 692C.190, 692C.3507, 692C.3536, 692C.3538,
23 692C.354, 692C.420, 693A.480, 693A.615, 696B.550, 696C.120, 703.196,
24 704B.325, 706.1725, 706A.230, 710.159, 711.600, *and section 1 of this act*,
25 sections 35, 38 and 41 of chapter 478, Statutes of Nevada 2011 and section 2 of
26 chapter 391, Statutes of Nevada 2013 and unless otherwise declared by law to be
27 confidential, all public books and public records of a governmental entity must be
28 open at all times during office hours to inspection by any person, and may be fully
29 copied or an abstract or memorandum may be prepared from those public books
30 and public records. Any such copies, abstracts or memoranda may be used to
31 supply the general public with copies, abstracts or memoranda of the records or
32 may be used in any other way to the advantage of the governmental entity or of the
33 general public. This section does not supersede or in any manner affect the federal
34 laws governing copyrights or enlarge, diminish or affect in any other manner the
35 rights of a person in any written book or record which is copyrighted pursuant to
36 federal law.

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

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

46 4. If requested, a governmental entity shall provide a copy of a public record
47 in an electronic format by means of an electronic medium. Nothing in this
48 subsection requires a governmental entity to provide a copy of a public record in an
49 electronic format or by means of an electronic medium if:

50 (a) The public record:

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

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

3 (1) Give access to proprietary software; or

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

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

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

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

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