

HB 3249 Strengthens Attorney-Client Confidentiality

Attorney-Client Confidentiality:

Like anyone who retains an attorney's services, those accused of crimes are afforded confidentiality for communications with their attorney. The right of confidentiality is closely related to the right of counsel¹, encourages "full and frank communications" for preparing a case,² and confidentiality extends to communications with all professionals assisting with a client's case.³

Right to Confidentiality Extends to a Client's Defense Team

- ✓ **Problem:** Professionals, such as investigators or psychologists, employed by lawyers to render legal services are sometimes provided less confidentiality protections because they are not attorneys, despite being an essential function of a client's defense and despite the fact that the law already requires it.
- ✓ **Solution:** HB 3249 codifies and clarifies that the right to confer privately and confidentially with one's lawyer extends to the lawyer's defense team and provides that any evidence derived in violation of this privilege cannot be used as evidence against the client in court.

Right to Confidentiality Applies to Visitor Logs

- ✓ **Problem:** All visitor logs are currently subject to public records law and often kept in plain view on check-in counters where they are frequently accessed by people outside the defense team. Ordinarily, the fact of a client's visit with an attorney, a psychologist, or an investigator would not be publicly accessible—that is not true if the client is in jail because they cannot afford bail.
- ✓ **Solution:** HB 3249 protects the client's right to confidentiality by creating a second log for legal visitors that cannot be informally reviewed, exempts the legal log from public records production, and provides that any evidence derived in violation of this privilege cannot be used as evidence against the client in court.

¹ *State v. Lile*, 267 Or. App. 712 (2014).

² *Upjohn Co. v. United States*, 449 U.S. 383, 389, 101 S Ct 677, 66 L Ed 2d 584 (1981).

³ O.R.S. 40.225(1)(d)(B).