

# House Bill 3249

Sponsored by Representatives WILLIAMSON, MCLANE; Representatives BYNUM, GORSEK, GREENLICK, PILUSO, POWER, SANCHEZ, STARK, Senators FAGAN, MONNES ANDERSON

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Provides that client has right to privately communicate with lawyer and representative of lawyer. Provides that evidence derived from confidential communication is inadmissible in certain proceedings if confidential communication was obtained or disclosed without consent of client.

Requires local correctional facilities and prisons to maintain one log for lawyers and representatives of lawyers visiting inmates and one log for all other persons visiting inmates. Requires all visitors to sign appropriate log. Provides that, unless exception applies, log for lawyers and representatives of lawyers is confidential, not subject to disclosure as public record and not subject to subpoena. Requires suppression of evidence derived from unlawful disclosure of log for lawyers and representatives of lawyers.

## A BILL FOR AN ACT

1  
2 Relating to communications with legal clients.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. (1) As used in this section, "client," "confidential communication,"**  
5 **"lawyer" and "representative of the lawyer" have the meanings given those terms in ORS**  
6 **40.225.**

7 **(2) A client has a right to privately communicate with the client's lawyer and represen-**  
8 **tatives of the lawyer.**

9 **(3) Any evidence derived from a confidential communication between a client and the**  
10 **client's lawyer or a representative of the lawyer is inadmissible in any proceeding to which**  
11 **the client is a party if the confidential communication was obtained or disclosed without the**  
12 **consent of the client.**

13 **SECTION 2. Section 3 of this 2019 Act is added to and made a part of ORS 169.005 to**  
14 **169.677.**

15 **SECTION 3. (1) As used in this section:**

16 **(a) "Lawyer" has the meaning given that term in ORS 40.225.**

17 **(b) "Representative of the lawyer" means:**

18 **(A) A person employed or retained to assist, or who is otherwise assisting, the lawyer in**  
19 **the rendition of professional legal services;**

20 **(B) Another lawyer, paralegal, legal assistant or other employee of the lawyer's law firm;**

21 **(C) A mental health professional or other consulting or testifying expert retained by the**  
22 **lawyer;**

23 **(D) A mitigation specialist;**

24 **(E) An investigator;**

25 **(F) An interpreter; or**

26 **(G) A translator.**

27 **(2) A local correctional facility shall maintain two separate logs reflecting all persons**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 who enter the facility to visit an inmate in the facility as follows:

2 (a) One log for recording the names of persons who are lawyers for or representatives  
3 of the lawyers for an inmate; and

4 (b) One log for recording the names of all other persons, including but not limited to:

5 (A) District attorneys or staff of a district attorney;

6 (B) Probation and parole officers;

7 (C) Police officers;

8 (D) Detectives;

9 (E) Caseworkers working on behalf of the state;

10 (F) County counsel or staff of a county counsel;

11 (G) Members of the media;

12 (H) Codefendants;

13 (I) Family or friends of an inmate; or

14 (J) Any other person who is not a lawyer or a representative of a lawyer.

15 (3)(a) All persons who enter the local correctional facility to visit an inmate shall sign  
16 the appropriate log in a legible manner.

17 (b) A person visiting an inmate in the person's professional capacity shall provide ap-  
18 propriate identification in order for the local correctional facility to ensure the person signs  
19 the appropriate log.

20 (4)(a) Except as provided in paragraph (b) of this subsection, the log described in sub-  
21 section (2)(a) of this section is confidential, is not subject to inspection or disclosure includ-  
22 ing as a public record under ORS 192.311 to 192.478 and is not subject to civil, criminal or  
23 administrative subpoena.

24 (b) The log described in subsection (2)(a) of this section may be inspected as follows:

25 (A) The staff of the local correctional facility may inspect the log when necessary for the  
26 operation of the facility.

27 (B) A law enforcement officer investigating the lawyer for or representative of the lawyer  
28 for an inmate for committing a crime against the inmate may inspect those portions of the  
29 log documenting visits by the lawyer or the representative of the lawyer to the inmate.

30 (C) A lawyer representing an inmate, or a representative of the lawyer, may inspect  
31 those portions of the log documenting visits to the inmate.

32 (D) A representative of the office of public defense services established under ORS 151.216  
33 may, as part of providing oversight over appointed counsel, inspect those portions of the log  
34 documenting visits by the appointed counsel or a representative of the appointed counsel.

35 (5) The local correctional facility shall keep the logs described in this section in a location  
36 that prevents unauthorized viewing.

37 (6) Any evidence derived from a log described in subsection (2)(a) of this section obtained  
38 or disclosed in violation of this section is not admissible in any subsequent criminal or civil  
39 proceeding to which the inmate is a party.

40 **SECTION 4. (1) As used in this section:**

41 (a) "Lawyer" has the meaning given that term in ORS 40.225.

42 (b) "Representative of the lawyer" means:

43 (A) A person employed or retained to assist, or who is otherwise assisting, the lawyer in  
44 the rendition of professional legal services;

45 (B) Another lawyer, paralegal, legal assistant or other employee of the lawyer's law firm;

1 (C) A mental health professional or other consulting or testifying expert retained by the  
2 lawyer;

3 (D) A mitigation specialist;

4 (E) An investigator;

5 (F) An interpreter; or

6 (G) A translator.

7 (2) A facility operated by the Department of Corrections shall maintain two separate logs  
8 reflecting all persons who enter the facility to visit an inmate in the facility as follows:

9 (a) One log for recording the names of persons who are lawyers for or representatives  
10 of the lawyers for an inmate; and

11 (b) One log for recording the names of all other persons, including but not limited to:

12 (A) District attorneys or staff of a district attorney;

13 (B) Probation and parole officers;

14 (C) Police officers;

15 (D) Detectives;

16 (E) Caseworkers working on behalf of the state;

17 (F) County counsel or staff of a county counsel;

18 (G) Members of the media;

19 (H) Codefendants;

20 (I) Family or friends of an inmate; or

21 (J) Any other person who is not a lawyer or a representative of a lawyer.

22 (3)(a) All persons who enter the facility to visit an inmate shall sign the appropriate log  
23 in a legible manner.

24 (b) A person visiting an inmate in the person's professional capacity shall provide ap-  
25 propriate identification in order for the facility to ensure the person signs the appropriate  
26 log.

27 (4)(a) Except as provided in paragraph (b) of this subsection, the log described in sub-  
28 section (2)(a) of this section is confidential, is not subject to inspection or disclosure includ-  
29 ing as a public record under ORS 192.311 to 192.478 and is not subject to civil, criminal or  
30 administrative subpoena.

31 (b) The log described in subsection (2)(a) of this section may be inspected as follows:

32 (A) The staff of the facility may inspect the log when necessary for the operation of the  
33 facility.

34 (B) A law enforcement officer investigating the lawyer for or representative of the lawyer  
35 for an inmate for committing a crime against the inmate may inspect those portions of the  
36 log documenting visits by the lawyer or the representative of the lawyer to the inmate.

37 (C) A lawyer representing an inmate, or a representative of the lawyer, may inspect  
38 those portions of the log documenting visits to the inmate.

39 (D) A representative of the office of public defense services established under ORS 151.216  
40 may, as part of providing oversight over appointed counsel, inspect those portions of the log  
41 documenting visits by the appointed counsel or a representative of the appointed counsel.

42 (5) The facility shall keep the logs described in this section in a location that prevents  
43 unauthorized viewing.

44 (6) Any evidence derived from a log described in subsection (2)(a) of this section obtained  
45 or disclosed in violation of this section is not admissible in any subsequent criminal or civil

1 **proceeding to which the inmate is a party.**

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