

Fifty-seventh  
Legislative Assembly  
of North Dakota

## ENGROSSED HOUSE BILL NO. 1044

Introduced by

Legislative Council

(Criminal Justice Committee)

1 A BILL for an Act to amend and reenact sections 12-47-36 and 12-59-04 of the North Dakota  
2 Century Code, relating to open records and parole records of the department of corrections and  
3 rehabilitation; and to declare an emergency.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 12-47-36 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **12-47-36. Records ~~confidential~~ exempt - Confidential - Exceptions.**

8 1. The case history records of the department of corrections and rehabilitation or its  
9 divisions or departments relating to persons in the custody or under the  
10 supervision and management of the division of adult services of the department of  
11 corrections and rehabilitation are exempt records as defined in section 44-04-17.1.  
12 Upon application to the district court, with service of the application on the  
13 department of corrections and rehabilitation and opportunity for the department to  
14 submit a written response, the court may order the inspection of a case history  
15 record unless there is a showing by the department of corrections and  
16 rehabilitation that a proper and legitimate reason exists for denying inspection of  
17 the case history record. If the court issues an order allowing inspection, the court  
18 shall allow the department of corrections and rehabilitation to remove all identifying  
19 information that may create a risk of harm to property or to any person. As used in  
20 this section, "case history record" means any record of a person in the custody or  
21 under the supervision and management of the division of adult services of the  
22 department of corrections and rehabilitation except for medical, psychological, and  
23 treatment records and legal files. The term includes inmate disciplinary  
24 proceedings, administrative and disciplinary segregation placements, institutional

and criminal investigation reports, supervision histories, job placements, education programs, inmate financial accounts under section 12-48-15, and protective management cases.

2. The medical, psychological, and treatment, ~~or social~~ records of the department of corrections and rehabilitation or its divisions or departments relating to persons in the custody or under the supervision and management of the division of adult services of the department of corrections and rehabilitation ~~must be kept~~ are confidential, and may not be disclosed directly or indirectly to any person, organization, or agency, except as otherwise provided in this section. A district court may order the inspection of ~~such~~ medical, psychological, and treatment records, or parts of ~~such~~ those records, upon application to the court and a showing that there is a proper and legitimate purpose for the inspection of the records, with service of the application on the department of corrections and rehabilitation and opportunity for the department of corrections and rehabilitation to submit a written response.

3. Notwithstanding any other provisions of law relating to privilege or confidentiality, except for the confidentiality requirements of federal drug and alcohol treatment and rehabilitation laws, records may be inspected by or disclosed to the following persons, organizations, or agencies without prior application to the court may inspect case history, medical, psychological, or treatment records: the

a. The governor; ~~the~~

b. The pardon advisory board, if the governor has appointed a pardon advisory board; ~~the~~

c. The parole board; ~~any~~

d. Any division, department, official, or employee of the department of corrections and rehabilitation; ~~another~~

e. Another state receiving a parolee or probationer under the provisions of chapter 12-56 or 12-56.1; a

f. A federal, state, regional, or county correctional facility receiving physical custody of a person under the legal custody of the department of corrections and rehabilitation; ~~the~~

- 1           g. The employees in the office of the attorney general and investigators,
- 2           consultants, or experts retained by the state; ~~the~~
- 3           h. The risk management division of the office of management and budget for the
- 4           purpose of investigating and defending actions or claims under chapter
- 5           32-12.2; ~~the state's attorney and~~
- 6           i. The district court of the county where the judgment of conviction was entered;
- 7           a
- 8           j. A state or federal court where a person in the custody or under the
- 9           supervision and management of the adult services division of the department
- 10          of corrections and rehabilitation has commenced litigation and the records are
- 11          relevant to the litigation; ~~or municipal, county, state, or federal law~~
- 12          ~~enforcement agencies~~
- 13          k. A criminal justice agency as defined in section 44-04-18.7; or
- 14          l. The United States social security administration and veterans administration.
- 15      4. Records with respect to the person's identity, location, legal files except records
- 16      under court seal, criminal convictions, or projected date of release, except for the
- 17      records of a person who is under protective management, are open records.
- 18      5. Medical, psychological, or treatment records may be disclosed without prior
- 19      application to the court to a public hospital or treatment facility, the department of
- 20      human services, or to a licensed private medical or treatment facility, when
- 21      necessary for the evaluation, treatment, or care of a person who is or who has
- 22      been in the custody of, or is or who has been under the supervision and
- 23      management of, the adult services division of the department of corrections and
- 24      rehabilitation.
- 25      6. A criminal defendant's presentence investigation report, together with any
- 26      attachment or addendum, is subject to rule 32 of the North Dakota Rules of
- 27      Criminal Procedure and any amendments made thereto.
- 28      7. The parole board may permit the inspection of a person's preparole report, or parts
- 29      of the report, prepared for the parole board. ~~The employment status of a person in~~
- 30      ~~the custody of or under the supervision and management of the department of~~
- 31      ~~corrections and rehabilitation may be disclosed to an agency or official charged~~

1 ~~with the enforcement of child support. Medical, psychological, or treatment~~  
2 ~~records may be disclosed without prior application to the court to a public hospital~~  
3 ~~or treatment facility, the department of human services, or to a licensed private~~  
4 ~~medical or treatment facility, when necessary for the evaluation, treatment, or care~~  
5 ~~of a person in the custody or under the supervision of the department of~~  
6 ~~corrections and rehabilitation.~~

7 8. Any person, organization, or agency receiving exempt or confidential records  
8 under this section shall maintain the closed or confidential nature of the records  
9 and may not redisclose the records.

10 9. The department of corrections and rehabilitation shall maintain the confidentiality  
11 of witness protection program records and legal files under seal.

12 **SECTION 2. AMENDMENT.** Section 12-59-04 of the North Dakota Century Code is  
13 amended and reenacted as follows:

14 **12-59-04. ~~Records confidential~~ Parole records - Inspection.** All parole records of  
15 the department of corrections and rehabilitation records, including preparole reports, and the  
16 supervision history, obtained in the discharge of official duty by any member of the parole board  
17 or employee of a division or department of the department of corrections and rehabilitation, ~~are~~  
18 ~~confidential and~~ on behalf of the parole board may not be disclosed except in the manner  
19 provided under section 12-47-36. An application for parole and the decision of the parole board  
20 on the application are open records.

21 **SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.