

**Fifty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 9, 2001**

HOUSE BILL NO. 1044
(Legislative Council)
(Criminal Justice Committee)

AN ACT to amend and reenact sections 12-47-36 and 12-59-04 of the North Dakota Century Code, relating to open records and parole records of the department of corrections and rehabilitation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. The case history 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 are exempt records as defined in section 44-04-17.1. Upon application to the district court, with service of the application on the department of corrections and rehabilitation and opportunity for the department to submit a written response, the court may order the inspection of a case history record unless there is a showing by the department of corrections and rehabilitation that a proper and legitimate reason exists for denying inspection of the case history record. If the court issues an order allowing inspection, the court shall allow the department of corrections and rehabilitation to remove all identifying information that may create a risk of harm to property or to any person. As used in this section, "case history record" means any record of a person in the custody or under the supervision and management of the division of adult services of the department of corrections and rehabilitation except for medical, psychological, and treatment records and legal files. The term includes inmate disciplinary 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~~
 - g. The employees in the office of the attorney general and investigators, consultants, or experts retained by the state; ~~the~~
 - h. The risk management division of the office of management and budget for the purpose of investigating and defending actions or claims under chapter 32-12.2; ~~the state's attorney and~~
 - i. The district court of the county where the judgment of conviction was entered; ~~a~~
 - j. A state or federal court where a person in the custody or under the supervision and management of the adult services division of the department of corrections and rehabilitation has commenced litigation and the records are relevant to the litigation;
~~or municipal, county, state, or federal law enforcement agencies~~
 - k. A criminal justice agency as defined in section 44-04-18.7; or
 - l. The United States social security administration and veterans administration.
4. Records with respect to the person's identity, location, legal files except records under court seal, criminal convictions, or projected date of release, except for the records of a person who is under protective management, are open records.
5. Medical, psychological, or treatment records may be disclosed without prior application to the court to a public hospital or treatment facility, the department of human services, or to a licensed private medical or treatment facility, when necessary for the evaluation, treatment, or care of a person who is or who has been in the custody of, or is or who has been under the supervision and management of, the adult services division of the department of corrections and rehabilitation.
6. A criminal defendant's presentence investigation report, together with any attachment or addendum, is subject to rule 32 of the North Dakota Rules of Criminal Procedure and any amendments made thereto.
7. The parole board may permit the inspection of a person's preparole report, or parts of the report, prepared for the parole board. ~~The employment status of a person in the custody of or under the supervision and management of the department of corrections and rehabilitation may be disclosed to an agency or official charged with the enforcement of child support. Medical, psychological, or treatment records may be disclosed without prior application to the court to a public hospital or treatment facility, the department of human services, or to a licensed private medical or treatment facility, when necessary for the evaluation, treatment, or care of a person in the custody or under the supervision of the department of corrections and rehabilitation.~~
8. Any person, organization, or agency receiving exempt or confidential records under this section shall maintain the closed or confidential nature of the records and may not redisclose the records.

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

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

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

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

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-seventh Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1044 and that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 98 Nays 0 Absent 0

Speaker of the House

Chief Clerk of the House

This certifies that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 47 Nays 0 Absent 2

President of the Senate

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2001.

Approved at _____ M. on _____, 2001.

Governor

Filed in this office this _____ day of _____, 2001,
at _____ o'clock _____ M.

Secretary of State