

Sixty-first
Legislative Assembly
of North Dakota

HOUSE BILL NO.

Introduced by

Representatives Drovdal, Klemin, Kempenich

Senator Bowman

1 A BILL for an Act to amend and reenact section 12-47-36 of the North Dakota Century Code,
2 relating to records of the department of corrections and rehabilitation.

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

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

6 **12-47-36. Records exempt - Confidential - Exceptions.**

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

1 histories, job placements, education programs, inmate financial accounts under
2 section 12-48-15, and protective management cases.

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

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

- 19 a. The governor;
20 b. The pardon advisory board, if the governor has appointed a pardon advisory
21 board;
22 c. The parole board;
23 d. Any division, department, official, or employee of the department of
24 corrections and rehabilitation;
25 e. Another state receiving a parolee or probationer under the provisions of
26 chapter 12-65;
27 f. A federal, state, regional, or county correctional facility receiving physical
28 custody of a person under the legal custody of the department of corrections
29 and rehabilitation;
30 g. The employees in the office of the attorney general and investigators,
31 consultants, or experts retained by the state;

- 1 h. The risk management division of the office of management and budget for the
- 2 purpose of investigating and defending actions or claims under chapter
- 3 32-12.2;
- 4 i. The district court of the county where the judgment of conviction was entered;
- 5 j. A state or federal court where a person in the custody or under the
- 6 supervision and management of the adult services division of the department
- 7 of corrections and rehabilitation has commenced litigation and the records are
- 8 relevant to the litigation;
- 9 k. A criminal justice agency as defined in section 44-04-18.7; or
- 10 l. The United States social security administration and veterans administration.
- 11 4. Records with respect to the person's identity, location, legal files except records
- 12 under court seal, criminal convictions, or projected date of release, except for the
- 13 records of a person who is under protective management, are open records.
- 14 5. Medical, psychological, or treatment records may be disclosed without prior
- 15 application to the court to a public hospital or treatment facility, the department of
- 16 human services, or to a licensed private medical or treatment facility, when
- 17 necessary for the evaluation, treatment, or care of a person who is or who has
- 18 been in the custody of, or is or who has been under the supervision and
- 19 management of, the adult services division of the department of corrections and
- 20 rehabilitation.
- 21 6. A criminal defendant's presentence investigation report, together with any
- 22 attachment or addendum, is subject to rule 32 of the North Dakota Rules of
- 23 Criminal Procedure and any amendments made thereto.
- 24 7. The parole board may permit the inspection of a person's preparole report, or parts
- 25 of the report, prepared for the parole board.
- 26 8. Any person, organization, or agency receiving exempt or confidential records under
- 27 this section shall maintain the closed or confidential nature of the records and may
- 28 not redisclose the records.
- 29 9. The department of corrections and rehabilitation shall maintain the confidentiality of
- 30 witness protection program records and legal files under seal.

- 1 10. Any case history record or medical, psychological, or treatment record of the
2 department of corrections and rehabilitation is an open record seventy-five years
3 from the date the record was created or produced.