

HOUSE BILL NO. 1224

Introduced by

Representatives Drovdal, Kempenich, Klemin

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

- 1 supervision histories, job placements, education programs, inmate financial
2 accounts under 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~~ individuals in
5 the custody or under the supervision and management of the division of adult
6 services of the department of corrections and rehabilitation are confidential, and
7 may not be disclosed directly or indirectly to any person, ~~organization, or agency,~~
8 except as otherwise provided in this section. A district court may order the
9 inspection of medical, psychological, and treatment records, or parts of those
10 records, upon application to the court and a showing that there is a proper and
11 legitimate purpose for the inspection of the records, with service of the application
12 on the department of corrections and rehabilitation and opportunity for the
13 department of corrections 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~~ an individual under the legal custody of the department of
29 corrections 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~~ an individual in the custody or under
6 the supervision and management of the adult services division of the
7 department of corrections and rehabilitation has commenced litigation and the
8 records are 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~~ individual's identity, location, legal files except
12 records under court seal, criminal convictions, or projected date of release, except
13 for the records of ~~a person~~ an individual who is under protective management, are
14 open records.
- 15 5. Medical, psychological, or treatment records may be disclosed without prior
16 application to the court to a public hospital or treatment facility, the department of
17 human services, or to a licensed private medical or treatment facility, when
18 necessary for the evaluation, treatment, or care of ~~a person~~ an individual who is or
19 who has been in the custody of, or is or who has been under the supervision and
20 management of, the adult services division of the department of corrections and
21 rehabilitation.
- 22 6. A criminal defendant's presentence investigation report, together with any
23 attachment or addendum, is subject to rule 32 of the North Dakota Rules of
24 Criminal Procedure and any amendments made thereto.
- 25 7. The parole board may permit the inspection of ~~a person's~~ an individual's preparole
26 report, or parts of the report, prepared for the parole board.
- 27 8. Any person, ~~organization, or agency~~ receiving exempt or confidential records
28 under this section shall maintain the closed or confidential nature of the records
29 and may not redisclose the records.
- 30 9. The department of corrections and rehabilitation shall maintain the confidentiality of
31 witness protection program records and legal files under seal.

- 1 10. A case history record or a 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.