**HOUSE JUDICIARY COMMITTEE**
**REPRESENTATIVE KLEMIN, CHAIR**
**March 15, 2023**

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**NORTH DAKOTA DEPARTMENT OF CORRECTIONS AND REHABILITATION**
**PRESENTING TESTIMONY IN SUPPORT OF SENATE BILL 2091**

Chairman Klemin and members of the House Judiciary Committee, the North Dakota Department of Corrections and Rehabilitation (DOCR) submits this written testimony in support of Senate Bill 2091 to create new exceptions to confidential medical, psychological, and treatment records.

There are four exceptions to the confidentiality of DOCR medical, psychological, and treatment records included in this bill. First, disclosure to emergency contacts and next of kin; second, disclosure to guardians, conservators, or individuals with a medical power of attorney; third, if an adult in custody signs a release, disclosure to a broad range of organizations acting for the benefit of the adult in custody; and lastly, disclosure to the courts.

The first exception, which is in Subdivision a, allows the DOCR to share medical records with the emergency contact or next of kin of an adult in custody who has a serious or terminal medical condition. Currently, the DOCR is not able to provide updates to external parties who could help an adult in custody decide how to address a medical condition or those external parties who may be responsible for medical decisions if an adult in custody becomes incapacitated or incompetent. Therefore, DOCR medical doctors must wait and allow a hospital to speak directly with these contacts because federal law not applicable to the DOCR allows the hospitals to make these disclosures. In some cases, it would be beneficial for the DOCR to have these discussions outside of hospitals, such as before an adult in custody is hospitalized for an ongoing medical condition or during recovery from a bad stroke.

End of life decisions are particularly hard for adults in custody and their families. The DOCR would benefit from the ability to facilitate these discussions and include family members in appropriate circumstances to understand family members' wishes and reduce legal liability.

It would not be beneficial to require the DOCR to make disclosures as there are circumstances in which they may not be appropriate. Language that requires disclosure could encourage an emergency contact to call repeatedly to insist on receiving medical records when the situation is not serious or terminal. Another concern is that the emergency contact still listed from a previous incarceration may not currently be an appropriate emergency contact; for example, that individual could now be a victim.

The second exception, which is in Subdivision b, allows the DOCR to share information with guardians, conservators, or those with a medical power of attorney. Earlier in this biennium, the DOCR had a case with a guardian and an adult in custody with complicated medical and psychological conditions. Navigating decisions without the ability to communicate information from medical, psychological, and treatment records freely with the guardian was cumbersome. It would have been more efficient for the DOCR to speak openly directly with the guardian and would have reduced the potential for miscommunication.

The third exception, which is in Subdivision c, allows the DOCR to share medical, psychological, and treatment records with an individual, organization, or entity assisting the adult in custody or former adult in custody with social services, housing, behavioral health or medical services, employment, education, childcare, or transportation, if the adult in custody or former adult in custody provides written authorization. There are many types of non-profit, for-profit, and governmental organizations providing services to make an adult in custody's transition to the community more successful. The DOCR tried last session to capture needed exceptions in a prior amendment to this section that added more types of entities, which the Legislature thankfully passed. This change addressed several information sharing challenges this biennium. Unfortunately, the DOCR was not able to predict all entity types to add as

exceptions. Therefore, this bill focuses on the purpose of the disclosure rather than the type of entity to which the disclosure is made. If an adult in custody consents in writing and the DOCR approves, it makes sense for the DOCR to make disclosures to help with reentry and reduce the risk of a return to prison. It is fiscally responsible and contributes to community safety. These disclosures should not be mandatory, as the DOCR needs the ability to deny these requests if, for example, there is evidence the organization may not be credible or if the requests cause an undue burden on DOCR team members. If implemented appropriately, this exception will allow DOCR case managers and other team members to do their jobs more efficiently.

The fourth exception, which is in Subdivision d, allows the DOCR to share information with the courts. Currently, there is an exception allowing the DOCR to share information with the courts for litigation. However, there are other situations in which disclosure of medical, psychological, and treatment records to the courts is needed, including to show treatment requirements were completed or to provide information needed for a former adult in custody's license to be reinstated. These communications help adults in custody transition to the community more successfully, which reduces recidivism. Communications between the DOCR and the courts also allow DOCR treatment providers and other team members to do their jobs more efficiently.

Chairman Klemin and members of the House Judiciary Committee, on behalf of the DOCR, I ask that you support Senate Bill 2091. I will now stand for any questions.