

2021 SENATE JUDICIARY

SB 2108

2021 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

SB 2108
1/11/2021

A BILL for an Act to amend and reenact subsection 3 of section 12-47-36 of the North Dakota Century Code, relating to exceptions to exempt and confidential records.
--

Chairwoman Larson called the hearing into order at 10:48am and took the roll.
Senators present: Larson, Dwyer, Bakker, Fors, Heitkamp, Luick, Myrdal

Discussion Topics:

- Confidential Records as they apply to ND Departments
- Exceptions applicable to certain records

Michelle Linster, [10:48] records coordinator for the ND Department of Corrections and Rehabilitation, testified in favor #374

Senator Dwyer moved for a DO PASS
Senator Heitkamp seconded the motion

Roll Call Vote

Motion Passes 7-0-0

Senator Dwyer will carry the bill

Senators	Vote
Senator Diane Larson	Y
Senator Michael Dwyer	Y
Senator JoNell A. Bakke	Y
Senator Robert O. Fors	Y
Senator Jason G. Heitkamp	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Chairwoman Larson adjourned the hearing at 11:06am

Jamal Omar, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2108: Judiciary Committee (Sen. Larson, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2108 was placed on the Eleventh order on the calendar.

**SENATE JUDICIARY COMMITTEE
SENATOR DIANE LARSON, CHAIRMAN
JANUARY 11, 2021**

**MICHELLE LINSTER, RECORDS COORDINATOR
NORTH DAKOTA DEPARTMENT OF CORRECTIONS & REHABILITATION
PRESENTING TESTIMONY SENATE BILL 2108**

Madam Chairman Larson and members of the Judiciary Committee, my name is Michelle Linster, and I am the Records Coordinator for the North Dakota Department of Corrections and Rehabilitation (DOCR). Today I am here to testify on behalf of the department in support of Senate Bill 2108, which amends Subsection 3 of Section 12-47-36 of the North Dakota Century Code.

Section 12-47-36 outlines which DOCR division of adult services records are exempt and which are confidential and provides several circumstances under which otherwise confidential records may be shared. Subsection 2 of Section 12-47-36 provides “all [DOCR] medical, psychological, and treatment records...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 **confidential** and may not be disclosed directly or indirectly to any person, organization, or agency, except as otherwise provided in this section.” Subsection 3 of Section 12-47-36 provides the exceptions to record confidentiality that allow otherwise confidential information to be shared. Senate Bill 2108 expands one exception in Subsection (3)(j) and creates an additional subsection—Subsection (3)(m).

Without the proposed expansion in Senate Bill 2108, Subsection 12-47-36(3)(j) allows the release of relevant confidential records to a state or federal court in which an adult in custody or adult under supervision of the DOCR files a lawsuit against the DOCR. However, today, even when there is an otherwise valid discovery request, the attorney representing the DOCR must get a court order to disclose the relevant documents to the parties of the case and their counsel and representatives. This is an extra, unnecessary step and creates a liability for the state if it is not followed correctly. Because the confidential records addressed by Section 12-47-36 are sensitive medical, psychological, and treatment records, Senate Bill 2108 also includes the requirement that the subject of the records sign an authorization before disclosure. Typically, the plaintiff in the lawsuit is the subject of the relevant, confidential records requested in discovery, and so the authorization requirement will not be a barrier. In cases in which the plaintiff requests the sensitive records of other adults in custody and adults under supervision, the authorization requirement provides protection of the relevant records. If the third party who is the subject of relevant confidential records refuses to sign the authorization, the court may still order disclosure of the confidential record through the longer process used today, if appropriate.

The addition of Subsection 12-47-36(3)(m) in Senate Bill 2108 relates to sharing confidential medical, psychological, and treatment records with state, federal, or tribal agencies that evaluate sex offenders for civil commitment or assess sex offender risk levels for registration. All states operate a group that assesses sex offenders risk levels and registration requirements, similar to the Sex Offender Risk Assessment Committee (SORAC) in North Dakota. Sometimes this group is part of a criminal justice agency and

sometimes it is part of a government agency that is not technically a criminal justice agency. The medical, psychological, and treatment records of adults in custody and adults under supervision who are sex offenders are relevant to the important and impactful determinations made by these groups. Currently, Section 12-47-36 does not include an explicit exception to address sharing these records with these groups. If the group meets the definition of a criminal justice agency Subsection 12-47-36(3)(k), the records can be shared with the group. However, if the group does not meet that definition, the records cannot be shared without a North Dakota court order. One example of such an agency is the Minnesota Attorney General's Office of which the assessment group in Minnesota is a part; since the agency is not a criminal justice agency, the needed records cannot be shared without a court order. It is very cumbersome for other states to get a North Dakota court order in these situations.

Madam Chairman Larson and members of the Judiciary Committee, I ask that you support Senate Bill 2108. I will now stand for questions.

2021 HOUSE JUDICIARY

SB 2108

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary

Room JW327B, State Capitol

SB 2108

3/10/2021

Relating to exceptions to exempt and confidential records.
--

Chairman Klemin called the hearing to order at 9:00 AM.

Present: Representatives Klemin, Karls, Becker, Buffalo, Christensen, Cory, K Hanson, Jones, Magrum, Paulson, Paur, Roers Jones, Satrom, and Vetter.

Discussion Topics:

- Records duplication
- Confidentiality

Michelle Linster, Records Coordinator, DOCR: Testimony #8329 9:00

Chairman Klemin closed the hearing at 9:09

Rep. T. Jones: Do Pass Motion

Rep. Magrum: Seconded

Roll Call Vote:

Representatives	Vote
Chairman Klemin	Y
Vice Chairman Karls	Y
Rep Becker	Y
Rep. Christensen	Y
Rep. Cory	Y
Rep T. Jones	Y
Rep Magrum	Y
Rep Paulson	Y
Rep Paur	Y
Rep Roers Jones	A
Rep B. Satrom	A
Rep Vetter	Y
Rep Buffalo	Y
Rep K. Hanson	Y

12-0-2 Motion Carried Carrier: Rep. T. Jones

Stopped 9:13

DeLores D. Shimek
Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2108: Judiciary Committee (Rep. Klemin, Chairman) recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2108 was placed on the Fourteenth order on the calendar.

HOUSE JUDICIARY COMMITTEE
REPRESENTATIVE LAWRENCE KLEMIN, CHAIRMAN
MARCH 10, 2021

MICHELLE LINSTER, RECORDS COORDINATOR
NORTH DAKOTA DEPARTMENT OF CORRECTIONS & REHABILITATION
PRESENTING TESTIMONY SENATE BILL 2108

Chairman Klemin and members of the Judiciary Committee, my name is Michelle Linster, and I am the Records Coordinator for the North Dakota Department of Corrections and Rehabilitation (DOCR). Today I am here to testify on behalf of the department in support of Senate Bill 2108, which amends Subsection 3 of Section 12-47-36 of the North Dakota Century Code.

Section 12-47-36 outlines which DOCR division of adult services records are exempt and which are confidential and provides several circumstances under which otherwise confidential records may be shared. Subsection 2 of Section 12-47-36 provides “all [DOCR] medical, psychological, and treatment records...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 **confidential** and may not be disclosed directly or indirectly to any person, organization, or agency, except as otherwise provided in this section.” Subsection 3 of Section 12-47-36 provides the exceptions to record confidentiality that allow otherwise confidential information to be shared. Senate Bill 2108 expands one exception in Subsection (3)(j) and creates an additional subsection—Subsection (3)(m).

Without the proposed expansion in Senate Bill 2108, Subsection 12-47-36(3)(j) allows the release of relevant confidential records to a state or federal court in which an adult in custody or adult under supervision of the DOCR files a lawsuit against the DOCR. However, today, even when there is an otherwise valid discovery request, the attorney representing the DOCR must get a court order to disclose the relevant documents to the parties of the case and their counsel and representatives. This is an extra, unnecessary step and creates a liability for the state if it is not followed correctly. Because the confidential records addressed by Section 12-47-36 are sensitive medical, psychological, and treatment records, Senate Bill 2108 also includes the requirement that the subject of the records sign an authorization before disclosure. Typically, the plaintiff in the lawsuit is the subject of the relevant, confidential records requested in discovery, and so the authorization requirement will not be a barrier. In cases in which the plaintiff requests the sensitive records of other adults in custody and adults under supervision, the authorization requirement provides protection of the relevant records. If the third party who is the subject of relevant confidential records refuses to sign the authorization, the court may still order disclosure of the confidential record through the longer process used today, if appropriate.

The addition of Subsection 12-47-36(3)(m) in Senate Bill 2108 relates to sharing confidential medical, psychological, and treatment records with state, federal, or tribal agencies that evaluate sex offenders for civil commitment or assess sex offender risk levels for registration. All states operate a group that assesses sex offenders risk levels and registration requirements, similar to the Sex Offender Risk Assessment Committee (SORAC) in North Dakota. Sometimes this group is part of a criminal justice agency and

sometimes it is part of a government agency that is not technically a criminal justice agency. The medical, psychological, and treatment records of adults in custody and adults under supervision who are sex offenders are relevant to the important and impactful determinations made by these groups. Currently, Section 12-47-36 does not include an explicit exception to address sharing these records with these groups. If the group meets the definition of a criminal justice agency Subsection 12-47-36(3)(k), the records can be shared with the group. However, if the group does not meet that definition, the records cannot be shared without a North Dakota court order. One example of such an agency is the Minnesota Attorney General's Office of which the assessment group in Minnesota is a part; since the agency is not a criminal justice agency, the needed records cannot be shared without a court order. It is very cumbersome for other states to get a North Dakota court order in these situations.

Chairman Klemin and members of the Judiciary Committee, I ask that you support Senate Bill 2108. I will now stand for questions.