

Fifty-seventh
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1044

Introduced by

Legislative Council

(Criminal Justice Committee)

1 A BILL for an Act to amend and reenact sections 12-47-36 and 12-59-04 of the North Dakota
2 Century Code, relating to open records and parole records of the department of corrections and
3 rehabilitation; and to declare an emergency.

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

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

7 **12-47-36. Records ~~confidential~~ exempt - Confidential - Exceptions.**

8 1. The case history records of the department of corrections and rehabilitation or its
9 divisions or departments relating to persons in the custody or under the supervision
10 and management of the division of adult services of the department of corrections
11 and rehabilitation are not public records subject to section 44-04-18 and section 5
12 of article XI of the Constitution of North Dakota and are exempt records as defined
13 in section 44-04-17.1. Upon application to the district court, the court shall order
14 the inspection of a case history record unless there is a showing by the department
15 of corrections and rehabilitation that a proper and legitimate reason exists for
16 denying inspection of the case history record. As used in this section, "case
17 history record" means any record of a person in the custody or under the
18 supervision and management of the division of adult services of the department of
19 corrections and rehabilitation except for medical, psychological, and treatment
20 records and court records not under seal. The term includes inmate disciplinary
21 proceedings, administrative and disciplinary segregation placements, institutional
22 and criminal investigation reports, supervision histories, job placements, education
23 programs, inmate financial accounts under section 12-48-15, protective

management cases, and federal witness protection placements where the identity of the inmate may not be disclosed.

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 are not public records subject to section 44-04-18 and section 5 of article XI of the Constitution of North Dakota, must be kept 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, ~~records may be inspected by or disclosed to~~ the following persons, organizations, or agencies without prior application to the court may inspect 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~~

- 1 g. The employees in the office of the attorney general and investigators,
- 2 consultants, or experts retained by the state; ~~the~~
- 3 h. The risk management division of the office of management and budget for the
- 4 purpose of investigating and defending actions or claims under chapter
- 5 32-12.2; ~~the~~
- 6 i. The state's attorney and district court of the county where the judgment of
- 7 conviction was entered; ~~a~~
- 8 j. A state or federal court where a person in the custody or under the
- 9 supervision and management of the adult services division of the department
- 10 of corrections and rehabilitation has commenced litigation and the records are
- 11 relevant to the litigation; ~~or municipal~~
- 12 k. Municipal, county, state, or federal law enforcement agencies; ~~or~~
- 13 l. The United States social security administration and veterans administration.
- 14 4. For purposes of this section, records with respect to the person's identity, location,
- 15 criminal convictions, or projected date of release, except for the records of a
- 16 person who is under protective management, are not case history, medical,
- 17 psychological, or treatment records.
- 18 5. Medical, psychological, or treatment records may be disclosed without prior
- 19 application to the court to a public hospital or treatment facility, the department of
- 20 human services, or to a licensed private medical or treatment facility, when
- 21 necessary for the evaluation, treatment, or care of a person who is or who has
- 22 been in the custody of, or is or who has been under the supervision and
- 23 management of, the adult services division of the department of corrections and
- 24 rehabilitation.
- 25 6. A criminal defendant's presentence investigation report, together with any
- 26 attachment or addendum, is subject to rule 32 of the North Dakota Rules of
- 27 Criminal Procedure and any amendments made thereto.
- 28 7. The parole board may permit the inspection of a person's preparole report, or parts
- 29 of the report, prepared for the parole board.
- 30 8. The employment status of a person in the custody of or under the supervision and
- 31 management of the department of corrections and rehabilitation may be disclosed

1 to an agency or official charged with the enforcement of child support. ~~Medical,~~
2 ~~psychological, or treatment records may be disclosed without prior application to~~
3 ~~the court to a public hospital or treatment facility, the department of human~~
4 ~~services, or to a licensed private medical or treatment facility, when necessary for~~
5 ~~the evaluation, treatment, or care of a person in the custody or under the~~
6 ~~supervision of the department of corrections and rehabilitation.~~

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

9 **12-59-04. ~~Records confidential~~ Parole records - Inspection.** All parole records of
10 the department of corrections and rehabilitation records, including preparole reports, and the
11 supervision history, obtained in the discharge of official duty by any member of the parole board
12 or employee of a division or department of the department of corrections and rehabilitation; on
13 behalf of the parole board are confidential and may not be disclosed except in the manner
14 provided under section 12-47-36. An application for parole and the decision of the parole board
15 on the application are open records subject to section 44-04-18 and section 5 of article XI of the
16 Constitution of North Dakota.

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