

Sixty-first
Legislative Assembly
of North Dakota

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,

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

2. The medical, psychological, and treatment records of the department of corrections and rehabilitation or its divisions or departments relating to ~~persons~~ individuals 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. A district court may order the inspection of medical, psychological, and treatment records, or parts of 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, except for the confidentiality requirements of federal drug and alcohol treatment and rehabilitation laws, the following persons, ~~organizations, or agencies~~ without prior application to the court may inspect case history, medical, psychological, or treatment records:

- a. The governor;
- b. The pardon advisory board, if the governor has appointed a pardon advisory board;
- c. The parole board;
- d. Any division, department, official, or employee of the department of corrections and rehabilitation;
- e. Another state receiving a parolee or probationer under the provisions of chapter 12-65;
- f. A federal, state, regional, or county correctional facility receiving physical custody of ~~a person~~ an individual under the legal custody of the department of corrections and rehabilitation;
- g. The employees in the office of the attorney general and investigators, consultants, or experts retained by the state;

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