

Introduced by

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 - Exceptions.**

8 1. The medical, psychological, and treatment, ~~or social~~ records of the department of
9 corrections and rehabilitation or its divisions or departments relating to persons in
10 the custody or under the supervision and management of the division of adult
11 services of the department of corrections and rehabilitation are not public records
12 subject to section 44-04-18 and section 5 of article XI of the Constitution of North
13 Dakota, must be kept confidential and may not be disclosed directly or indirectly to
14 any person, organization, or agency, except as otherwise provided in this section.
15 A district court may order the inspection of ~~such~~ medical, psychological, and
16 treatment records, or parts of ~~such~~ those records, upon application to the court and
17 a showing that there is a proper and legitimate purpose for the inspection of the
18 records, with service of the application on the department of corrections and
19 rehabilitation and opportunity for the department of corrections and rehabilitation to
20 submit a written response. Case history records of the department of corrections
21 and rehabilitation or its divisions or departments relating to persons in the custody
22 or under the supervision and management of the division of adult services of the
23 department of corrections and rehabilitation are not public records subject to
24 section 44-04-18 and section 5 of article XI of the Constitution of North Dakota and

are exempt records as defined in section 44-04-17.1. As used in this section, a case history record means any record of a person in the custody or under the supervision and management of the division of adult services of the department of corrections and rehabilitation except for medical, psychological, and treatment records, or court records not under seal, and includes inmate disciplinary proceedings, administrative and disciplinary segregation placements, institutional and criminal investigation reports, supervision histories, job placements, education 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. 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: ~~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~~
 - g. The employees in the office of the attorney general and investigators, consultants, or experts retained by the state; ~~the~~
 - 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; ~~the~~
 - i. A state's attorney and district court of the county where the judgment of conviction was entered; ~~a~~

j. A state or federal court where a person 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; or municipal

k. Municipal, county, state, or federal law enforcement agencies; or

l. The United States social security administration and veterans administration.

3. 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.

4. The parole board may permit the inspection of a person's preparole report, or parts of the report, prepared for the parole board.

5. The employment status of a person in the custody of or under the supervision and management of the department of corrections and rehabilitation may be disclosed to an agency or official charged with the enforcement of child support.

6. 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 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.

7. For purposes of this section, records with respect to the person's identity, location, criminal convictions, or projected date of release, except for the records of a person who is under protective management, are subject to section 44-04-18 and section 5 of article XI of the Constitution of North Dakota.

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

12-59-04. ~~Records confidential~~ Parole records - Inspection. All parole records of the department of corrections and rehabilitation records, including preparole reports, and the supervision history, obtained in the discharge of official duty by any member of the parole board or employee of a division or department of the department of corrections and rehabilitation; on

1 behalf of the parole board are confidential and may not be disclosed except in the manner
2 provided under section 12-47-36. An application for parole and the decision of the parole board
3 on the application are open records subject to section 44-04-18 and section 5 of article XI of the
4 Constitution of North Dakota.

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