

Sixty-sixth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1256

Introduced by

Representatives Roers Jones, Beadle, Becker, Boschee, Brandenburg, Heinert

Senators Burckhard, Luick, Oban, J. Roers

1 A BILL for an Act to create and enact chapter 12-60.1 of the North Dakota Century Code,
2 relating to sealing of criminal records; and to amend and reenact subsection 1 of section
3 12.1-41-14, subsection 4 of section 50-09-32, and subdivision e of subsection 1 of section
4 62.1-04-03 of the North Dakota Century Code, relating to sealing of criminal records.

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

6 **SECTION 1.** Chapter 12-60.1 of the North Dakota Century Code is created and enacted as
7 follows:

8 **12-60.1-01. Definitions.**

9 As used in this chapter:

10 1. "Court record" includes:

11 a. Any document or information collected, received, or maintained by court
12 personnel in connection with a judicial proceeding;

13 b. Any index, calendar, docket, register of actions, official record of the proceedings,
14 order, decree, judgment, minute, and any information in a case management
15 system created or prepared by court personnel relating to a judicial proceeding;
16 and

17 c. Information maintained by court personnel pertaining to the administration of the
18 court or clerk of court office and not associated with a particular case.

19 2. "Criminal record" means court and prosecution records subject to sealing under this
20 chapter.

21 3. "Employee" has the same meaning as in section 14-02.4-02.

22 4. "Employer" has the same meaning as in section 14-02.4-02.

23 5. "Prosecutor" means the office or agency with jurisdiction over the offense for purposes
24 of postconviction proceedings.

6. "Seal" means to prohibit the disclosure of the existence or contents of court or prosecution records unless authorized by court order.

12-60.1-02. Grounds to file petition to seal criminal record.

1. An individual may file a petition to seal a criminal record if:

a. The individual pled guilty to or was found guilty of a misdemeanor offense and the individual has not been charged with a new crime for at least three years from the date of release from incarceration, parole, or probation; or

b. The individual pled guilty to or was found guilty of a felony offense and the individual has not been charged with a new crime for at least five years from the date of release from incarceration, parole, or probation.

2. This chapter does not apply to an offense for which an offender has been ordered to register under section 12.1-32-15.

12-60.1-03. Petition to seal criminal record.

1. A petition to seal a criminal record must be filed in the existing criminal case for the offense.

2. Subject to redaction requirements in rule 3.4 of the North Dakota Rules of Court, a petition must include:

a. The petitioner's full name and all other legal names or aliases the petitioner has used at any time;

b. The petitioner's addresses from the date of the offense until the date of the petition;

c. Reasons why the petition should be granted;

d. The petitioner's criminal history in this state and any other state, federal court, and foreign country, including:

(1) All prior and pending criminal charges;

(2) All prior and pending charges for which an imposition of sentence has been deferred or stayed, or which have been continued for dismissal; and

(3) All prior requests by the petitioner with authorities in this state or another state or federal forum for pardon, return of arrest records, expungement, or sealing of a criminal record, whether granted or not.

1 3. The petitioner shall file a proposed order when filing a petition to seal a criminal
2 record.

3 4. A petition filed under this section must be served upon the prosecuting official as
4 provided by rule 49 of the North Dakota Rules of Criminal Procedure.

5 **12-60.1-04. Hearing on petition.**

6 1. The court may grant a petition to seal a criminal record if the court determines by clear
7 and convincing evidence:

8 a. The petitioner has shown good cause for granting the petition;

9 b. The benefit to the petitioner outweighs the presumption of openness of the
10 criminal record;

11 c. The petitioner has completed all terms of imprisonment and probation for the
12 offense;

13 d. The petitioner has paid all restitution ordered by the court for commission of the
14 offense;

15 e. The petitioner has demonstrated reformation warranting relief; and

16 f. The petition complies with the requirements of this chapter.

17 2. In determining whether to grant a petition, the court shall consider:

18 a. The nature and severity of the underlying crime that would be sealed;

19 b. The risk the petitioner poses to society;

20 c. The length of time since the petitioner committed the offense;

21 d. The petitioner's rehabilitation since the offense;

22 e. Aggravating or mitigating factors relating to the underlying crime, including
23 factors outlined in section 12-32-04;

24 f. The petitioner's criminal record, employment history, and community involvement;

25 g. The recommendations of law enforcement, prosecutors, corrections officials, and
26 those familiar with the petitioner and the offense; and

27 h. The recommendations of victims of the offense.

28 3. A hearing on the petition may not be held earlier than forty-five days following the filing
29 of the petition.

4. To the extent practicable, upon receipt of a petition to seal a criminal record, the prosecutor shall notify and seek input from law enforcement, witnesses, victims, and correctional authorities familiar with the petitioner and the offense.
5. This section does not prohibit a prosecutor from stipulating to seal a criminal record without a hearing or more expeditiously than provided in this section.
6. An individual may not appeal a denial of a petition from a district judge or magistrate.
7. An individual aggrieved by denial of a petition in a municipal court may appeal the denial to the district court for de novo review without payment of a filing fee. A petition denied by the district court may not be appealed.
8. Except as provided in this section, if a petition is denied an individual may not file a subsequent petition to seal a criminal record for at least three years following the denial.

12-60.1-05. Effect of sealed criminal record.

1. Except as provided in section 12.1-33-02.1, an offense sealed by order under this chapter may not be used to disqualify a petitioner from any license, permit, certificate, or registration required from an agency, board, commission, department, or political subdivision of the state.
2. An employer may not refuse to hire an individual, discharge an employee, or cause an employee to suffer adverse or unequal treatment based solely upon information sealed by order under this chapter or based on the underlying sealed offense.
3. An individual may not be denied tenancy in housing based solely upon information sealed by order under this chapter or based on the underlying sealed offense.

SECTION 2. AMENDMENT. Subsection 1 of section 12.1-41-14 of the North Dakota Century Code is amended and reenacted as follows:

1. An individual convicted of prostitution or an offense listed in subsection 1 of section 12.1-41-12 which was committed as a direct result of being a victim may apply by motion to the court to vacate the conviction and ~~expunge~~seal the record of conviction. The court may grant the motion on a finding that the individual's participation in the offense was a direct result of being a victim.

SECTION 3. AMENDMENT. Subsection 4 of section 50-09-32 of the North Dakota Century Code is amended and reenacted as follows:

- 1 4. The state agency must develop and maintain a list of the names, addresses, and
2 amounts of past-due support owed by obligors who have been found in contempt of
3 court in this state for failure to comply with a child support order or who have been
4 found guilty of willful failure to pay child support under section 12.1-37-01.
5 Notwithstanding subsections 2 and 3, to the extent permitted by federal law, the state
6 agency must release the list upon request under section 44-04-18. The state agency
7 may remove from the list any obligor who no longer owes past-due support, any
8 obligor who is deceased or whose obligation is being enforced in another jurisdiction,
9 or any obligor whose conviction under section 12.1-37-01 has been ~~expunged~~sealed.

10 **SECTION 4. AMENDMENT.** Subdivision e of subsection 1 of section 62.1-04-03 of the
11 North Dakota Century Code is amended and reenacted as follows:

- 12 e. The applicant satisfactorily completes the bureau of criminal investigation
13 application form and has successfully passed the criminal history records check
14 conducted by the bureau of criminal investigation and the federal bureau of
15 investigation. The applicant shall provide all documentation relating to any
16 court-ordered treatment or commitment for mental health or alcohol or substance
17 abuse. The applicant shall provide the director of the bureau of criminal
18 investigation written authorizations for disclosure of the applicant's mental health
19 and alcohol or substance abuse evaluation and treatment records. The bureau
20 may deny approval for a license if the bureau has reasonable cause to believe
21 that the applicant or licenseholder has been or is a danger to self or others as
22 demonstrated by evidence, including past pattern of behavior involving unlawful
23 violence or threats of unlawful violence; past participation in incidents involving
24 unlawful violence or threats of unlawful violence; or conviction of a weapons
25 offense. In determining whether the applicant or licenseholder has been or is a
26 danger to self or others, the bureau may inspect ~~expunged~~ or sealed records of
27 arrests and convictions of adults and juvenile court records; and