

Chair Larson and committee members:

The North Dakota Newspaper Association does not oppose the overall nature of H.B. 1166 but wishes to offer an amendment regarding the automatic sealing of certain records.

Section 2 of this bill requires the court to automatically seal criminal records **within** 90 days after an order of dismissal is filed. This means the court could take action to seal the case the day the order is entered. Since this provision is automatic, we presume courts will take action sooner rather than later in order to comply with the law.

Our only concern pertains to cases where all criminal charges are dismissed. Charges are not ordinarily dismissed in an open courtroom; they are dismissed upon the motion of either party, whether that be the prosecutor or the defense. A judge then enters an order of dismissal within an unspecified time. The automatic sealing of these records raises concerns about transparency and the public's right to open records. For example, a journalist may be following a story about a criminal case with a trial set in four months. In the meantime, the prosecutor could move to dismiss the case, and the judge could grant the dismissal. All of this could be done quickly and without any notice to the public.

If a case is automatically sealed upon a dismissal, a journalist will have no way to accurately report the disposition of the case. The next time they check the court docket, the case will not appear. This may actually harm the defendant where a story was previously reported about criminal charges but no follow up story can be reported regarding the dismissal.

NDNA proposes an amendment to subsection 2 of Section 2, to state:

2. The court shall seal a criminal record under subsection 1 within ninety days after the judgment of acquittal, order to dismiss, or pardon was filed with the clerk of court but not prior to thirty days after entry of an order to dismiss. A record of a closed criminal case if there was no conviction may not be remotely accessed by a name search.

This amendment provides some time for the records of dismissed cases to stay public in order for a journalist or the general public to obtain information related to the final outcome prior to the record being sealed.

Thank you for your time and consideration.

NORTH DAKOTA NEWSPAPER ASSOCIATION



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