



North Dakota Association for Justice
PO Box 365
Mandan, ND 58554
The Trial Lawyers of North Dakota

Jaclyn Hall, Executive Director
jaclyn@ndaj.org

Madam Chair Larson and members of the Senate Judiciary Committee, my name is Jaclyn Hall, I am the Executive Director of the North Dakota Association for Justice. I am here today in support of HB1166 and are requesting amendments be reinstated to support the original intent of the bill.

After the last biennium, the ND Supreme Court made changes to Administrative Rule 41, removing the following sentence:

A record of a closed criminal case for which there is no conviction may not be remotely accessed through a name search except by an attorney granted remote access to the Odyssey system

The removal of this language had a retroactive effect and opened all dismissed and not guilty court records previously not available on the Supreme Court's criminal record search to be viewed by the public for continued scrutiny. These records had been previously removed from the criminal search by the Administrative Rule. These records had been removed by the public search since 2017.

As a result, these records can only be removed now by petitioning the court.

The Constitution says we are innocent until proven guilty. When a jury finds someone not guilty, the prosecutor determined the charges should be dismissed or they have reformed their life and received a pardon, why should their records be open for anyone to view?

These individuals have gone through so much emotional and financial strain during cases like these. After the due diligence has been completed, should they continue to have others search their name and wonder what they did?

Even though these individuals are found not guilty, the arrest and charges may still appear in background checks, create social stigmas and negative perceptions and result in damage to someone's reputation.

Sealing criminal records is not new. Currently a guilty verdict resulting in a deferred sentence is automatically sealed after 61 days - but a non conviction needs a court order. This does not make sense. Currently, there is also a statute to seal other criminal records in Chapter 12-60.1.

The original legislation contained a retroactive clause, because we felt prior cases that were inadvertently opened by the Administrative Rule change should not have to go through the time and cost of another petition to the court. We are asking the retroactive clause be returned.

There is also an emergency clause on this legislation to help those who are impacted start the process to remove their non conviction from the website.

Finding housing, getting a job or promotion or even professional relicensing has been impacted by this change.

Below is the current process under Administrative Rule 41. Even though you cannot see what their charges were, this record could have a detrimental impact on their personal and professional life.

[illegible]



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Second, is a photo of a redacted court record. As you can see, this individual was not guilty of conspiracy, but their record remains open for anyone to see on the court search. Having this criminal record is not fair to the person who was found not guilty.

Criminal Case Records Search Results

[Skip to Main Content](#) [Logout](#) [My Account](#) [Search Menu](#) [New Criminal Search](#) [Refine Search](#)

Location : State of North Dakota Hel

Record Count: 3

Search By: Defendant Exact Name: on Party Search Mode: Name Last Name: First Name: All All Sort By: Filed Date

Case Number	Citation Number	Defendant Info	Filed/Location/Judicial Officer	Type/Status	Charge(s)
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
09-20 [REDACTED]	0	[REDACTED]	[REDACTED]	Misdemeanor Closed Not Guilty	Conspiracy [REDACTED]

As for pardons, the criminal record on the records search remains and you must go into each record to see that the charges were dismissed, and they received a pardon. These individuals have worked hard to rebuild their life, and their charges should be removed from any public searches.

The legislation also was amended for the removal to commence before 90 days. In previous testimony, the newspaper association requested 61 days, the same as the deferred sentence. This change is also reflected in the amended version.

During the House discussion, we had numerous meetings and discussions with the court to determine if a consensus could be made on the retro activity or the petition to the court for non convictions to make it just a form to file with the court.

The court responded that they do not think a form is something they could support and they don't have a form to file, just the petition. Today, I am asking this committee to reinstate the retro activity or at least our compromise of seven years - when the removal of the ability to search was first granted by the administrative rule.

When the Administrative Rule was established in 2017, it retroactively removed all non convictions from the criminal search. The court did indicate it could make a retroactive change but are moving to an updated software and they are unsure how this new software functions.



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We understand the court's concern but believe that the impact these searches have on North Dakotans outweigh the concern of the court. I do not believe the intention of the AR 41 change was to have these affects on individuals but we need to make a change now to restore their life.

Individuals have lost their gaming licenses, been unable to renew their passports and have been turned down for promotions, housing and other job positions.

In conclusion, even when charges are dismissed by the court or a person is found not guilty, the public perception of 'being found guilty' has a detrimental impact on their life. This legislation will remove these records from a public search to provide some protection to their personal and professional life.

We ask for a Do Pass on HB1166 with the reinstated amendments.

Thank you, and I will stand for questions.