

**Sixty-sixth Legislative Assembly of North Dakota
In Regular Session Commencing Thursday, January 3, 2019**

HOUSE BILL NO. 1256
(Representatives Roers Jones, Beadle, Becker, Boschee, Brandenburg, Heinert)
(Senators Burckhard, Luick, Oban, J. Roers)

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

12-60.1-01. Definitions.

As used in this chapter:

1. "Court record" includes:
 - a. Any document or information collected, received, or maintained by court personnel in connection with a judicial proceeding;
 - b. Any index, calendar, docket, register of actions, official record of the proceedings, order, decree, judgment, minute, and any information in a case management system created or prepared by court personnel relating to a judicial proceeding; and
 - c. Information maintained by court personnel pertaining to the administration of the court or clerk of court office and not associated with a particular case.
2. "Criminal record" means court and prosecution records subject to sealing under this chapter. A criminal record does not include criminal history record information as defined in subsection 5 of section 12-60-16.1 or criminal justice data information maintained in the criminal justice data information sharing system under section 54-12-34.
3. "Employee" has the same meaning as in section 14-02.4-02.
4. "Employer" has the same meaning as in section 14-02.4-02.
5. "Prosecutor" means the office or agency with jurisdiction over the offense for purposes 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:
 - a. A felony offense involving violence or intimidation during the period in which the offender is ineligible to possess a firearm under subdivision a of subsection 1 of section 62.1-02-01; or
 - b. 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.
3. The petitioner shall file a proposed order when filing a petition to seal a criminal record.
4. A petition filed under this section must be served upon the prosecuting official as provided by rule 49 of the North Dakota Rules of Criminal Procedure.

12-60.1-04. Hearing on petition.

1. The court may grant a petition to seal a criminal record if the court determines by clear and convincing evidence:
 - a. The petitioner has shown good cause for granting the petition;
 - b. The benefit to the petitioner outweighs the presumption of openness of the criminal record;
 - c. The petitioner has completed all terms of imprisonment and probation for the offense;
 - d. The petitioner has paid all restitution ordered by the court for commission of the offense;
 - e. The petitioner has demonstrated reformation warranting relief; and
 - f. The petition complies with the requirements of this chapter.
2. In determining whether to grant a petition, the court shall consider:
 - a. The nature and severity of the underlying crime that would be sealed;

- b. The risk the petitioner poses to society;
 - c. The length of time since the petitioner committed the offense;
 - d. The petitioner's rehabilitation since the offense;
 - e. Aggravating or mitigating factors relating to the underlying crime, including factors outlined in section 12.1-32-04;
 - f. The petitioner's criminal record, employment history, and community involvement;
 - g. The recommendations of law enforcement, prosecutors, corrections officials, and those familiar with the petitioner and the offense; and
 - h. The recommendations of victims of the offense.
3. A hearing on the petition may not be held earlier than forty-five days following the filing 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.
 9. If a court grants a petition to seal a criminal record, the court shall state in the court order that the petitioner is sufficiently rehabilitated but is subject to the provisions of section 12.1-33-02.1, and shall release the information when an entity has a statutory obligation to conduct a criminal history background check.

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:

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

another jurisdiction, or any obligor whose conviction under section 12.1-37-01 has been expungedsealed.

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

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

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-sixth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1256.

House Vote: Yeas 77 Nays 8 Absent 9

Senate Vote: Yeas 40 Nays 7 Absent 0

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2019.

Approved at _____ M. on _____, 2019.

Governor

Filed in this office this _____ day of _____, 2019,

at _____ o'clock _____ M.

Secretary of State