

**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. A criminal record does not include criminal history record information as  
21 defined in subsection 5 of section 12-60-16.1 or criminal justice data information  
22 maintained in the criminal justice data information sharing system under section  
23 54-12-34.

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

- 1       4. "Employer" has the same meaning as in section 14-02.4-02.  
2       5. "Prosecutor" means the office or agency with jurisdiction over the offense for purposes  
3       of postconviction proceedings.  
4       6. "Seal" means to prohibit the disclosure of the existence or contents of court or  
5       prosecution records unless authorized by court order.

6       **12-60.1-02. Grounds to file petition to seal criminal record.**

- 7       1. An individual may file a petition to seal a criminal record if:  
8       a. The individual pled guilty to or was found guilty of a misdemeanor offense and  
9       the individual has not been charged with a new crime for at least three years from  
10      the date of release from incarceration, parole, or probation; or  
11      b. The individual pled guilty to or was found guilty of a felony offense and the  
12      individual has not been charged with a new crime for at least five years from the  
13      date of release from incarceration, parole, or probation.  
14      2. This chapter does not apply to an offense for which an offender has been ordered to  
15      register under section 12.1-32-15.

16      **12-60.1-03. Petition to seal criminal record.**

- 17      1. A petition to seal a criminal record must be filed in the existing criminal case for the  
18      offense.  
19      2. Subject to redaction requirements in rule 3.4 of the North Dakota Rules of Court, a  
20      petition must include:  
21      a. The petitioner's full name and all other legal names or aliases the petitioner has  
22      used at any time;  
23      b. The petitioner's addresses from the date of the offense until the date of the  
24      petition;  
25      c. Reasons why the petition should be granted;  
26      d. The petitioner's criminal history in this state and any other state, federal court, and  
27      foreign country, including:  
28      (1) All prior and pending criminal charges;  
29      (2) All prior and pending charges for which an imposition of sentence has been  
30      deferred or stayed, or which have been continued for dismissal; and

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

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

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

8       **12-60.1-04. Hearing on petition.**

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

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

12       b. The benefit to the petitioner outweighs the presumption of openness of the  
13       criminal record;

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

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

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

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

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

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

22       b. The risk the petitioner poses to society;

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

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

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

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

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

30       h. The recommendations of victims of the offense.

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

15     ~~**12-60.1-05. Effect of sealed criminal record.**~~

- 16     ~~1. Except as provided in section 12.1-33-02.1, an offense sealed by order under this~~
- 17           ~~chapter may not be used to disqualify a petitioner from any license, permit, certificate,~~
- 18           ~~or registration required from an agency, board, commission, department, or political~~
- 19           ~~subdivision of the state.~~
- 20     ~~2. An employer may not refuse to hire an individual, discharge an employee, or cause an~~
- 21           ~~employee to suffer adverse or unequal treatment based solely upon information~~
- 22           ~~sealed by order under this chapter or based on the underlying sealed offense.~~
- 23     ~~3. An individual may not be denied tenancy in housing based solely upon information~~
- 24           ~~sealed by order under this chapter or based on the underlying sealed offense.~~
- 25     9. If a court grants a petition to seal a criminal record, the court shall state in the court
- 26           order that the petitioner is sufficiently rehabilitated but is subject to the provisions of
- 27           section 12.1-33-02.1, or may release the information when an entity has a statutory
- 28           obligation to conduct a criminal history background check.

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

- 1           1.    An individual convicted of prostitution or an offense listed in subsection 1 of section  
2                   12.1-41-12 which was committed as a direct result of being a victim may apply by  
3                   motion to the court to vacate the conviction and ~~expunge~~seal the record of conviction.  
4                   The court may grant the motion on a finding that the individual's participation in the  
5                   offense was a direct result of being a victim.

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

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

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

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

1 offense. In determining whether the applicant or licenseholder has been or is a  
2 danger to self or others, the bureau may inspect expunged or sealed records of  
3 arrests and convictions of adults and juvenile court records; and