

FIRST ENGROSSMENT

ENGROSSED HOUSE BILL NO. 1263

Introduced by

Representatives Christianson, Hendrix, Holle, D. Johnston

Senator Cory

1 A BILL for an Act to amend and reenact section 12-60.1-04 of the North Dakota Century Code,
2 relating to hearings on petitions to seal a criminal record.

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

4 **SECTION 1. AMENDMENT.** Section 12-60.1-04 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **12-60.1-04. Hearing on petition.**

- 7 1. The court may grant a petition to seal a criminal record if the court determines by clear
8 and convincing evidence:
- 9 a. The petitioner has shown good cause for granting the petition;
 - 10 b. The benefit to the petitioner outweighs the presumption of openness of the
11 criminal record;
 - 12 c. The petitioner has completed all terms of imprisonment and probation for the
13 offense;
 - 14 d. The petitioner has paid all restitution ordered by the court for commission of the
15 offense;
 - 16 e. The petitioner has demonstrated reformation warranting relief; and
 - 17 f. The petition complies with the requirements of this chapter.
- 18 2. In determining whether to grant a petition, the court shall consider:
- 19 a. The nature and severity of the underlying crime that would be sealed;
 - 20 b. The risk the petitioner poses to society;
 - 21 c. The length of time since the petitioner committed the offense;
 - 22 d. The petitioner's rehabilitation since the offense;

- 1 e. Aggravating or mitigating factors relating to the underlying crime, including
2 factors outlined in section 12.1-32-04;
- 3 f. The petitioner's criminal record, employment history, and community involvement;
- 4 g. The recommendations of law enforcement, prosecutors, corrections officials, and
5 those familiar with the petitioner and the offense; and
- 6 h. The recommendations of victims of the offense.
- 7 3. A hearing on the petition may not be held earlier than forty-five days following the filing
8 of the petition.
- 9 4. To the extent practicable, upon receipt of a petition to seal a criminal record, the
10 prosecutor shall notify and seek input from law enforcement, witnesses, victims, and
11 correctional authorities familiar with the petitioner and the offense.
- 12 5. This section does not prohibit a prosecutor from stipulating to seal a criminal record
13 without a hearing or more expeditiously than provided in this section.
- 14 ~~6. An individual may not appeal a denial of a petition from a district judge or magistrate.~~
- 15 ~~7.~~ 7. An individual aggrieved by denial of a petition in a municipal court may appeal the
16 denial to the district court for de novo review without payment of a filing fee. A petition
17 denied by the district court may not be appealed.
- 18 ~~8-7.~~ 8-7. Except as provided in this section and if good cause is shown, a district court denying
19 a petition may prohibit a petitioner from filing a subsequent petition to seal a criminal
20 record for up to ~~three years~~one year following the denial. The order denying the
21 petition must provide the reasons establishing good cause for prohibiting the petition.
- 22 ~~9-8.~~ 9-8. If a court grants a petition to seal a criminal record, the court shall state in the court
23 order that the petitioner is sufficiently rehabilitated but is subject to the provisions of
24 section 12.1-33-02.1, and shall release the information when an entity has a statutory
25 obligation to conduct a criminal history background check.