

Chairman Klemin and committee members:

The North Dakota Newspaper Association does not oppose the overall nature of House Bill 1166 but wishes to offer its perspective on issues related to automatically sealing criminal records.

Section 2 of this bill requires the court to automatically seal criminal records **within** 61 days after a judgment of acquittal, order of dismissal, or pardon is filed. This means the court could take action to seal the case the day the final disposition is entered. Since this provision is automatic, we presume courts will take action sooner rather than later since this does not require a further motion by the defendant.

Occasionally, a case that would be sealed under this bill is a case that journalists have followed and reported on. An automatic sealing of records raises concerns about transparency and the public's right to open records<sup>1</sup>. For example, a journalist may be following a story about a criminal case with a trial set in two months. However, if the prosecutor moves to dismiss the case and the judge signs the order and automatically seals the case today, the 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.

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

2. The court shall seal a criminal record under subsection 1 ~~within~~after sixty-one days after the judgment of acquittal, order to dismiss, or pardon was filed with the clerk of court.

This amendment provides some time for the record to stay public in order for a journalist or the general public to obtain information related to final outcome of the case prior to the record being sealed. We believe this is wholly beneficial to the individual charged with the crime.

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<sup>1</sup> The North Dakota Constitution requires that all governmental records be public, open, and accessible. N.D.Const. art. XI, §6. The North Dakota Court System has a procedure in place wherein parties can limit access to information or seal records. N.D.Sup.Ct.Admin.R. 41.

As an additional note, Section 2 of HB 1166 raises concerns of confusion on what records, if any, can be sealed in a case involving multiple criminal charges. An individual may initially have several criminal charges in one case. Over the course of the case, some, but not all, of the charges may be dismissed. Likewise, a jury may acquit an individual on some, but not all, of the charges. The partial sealing of records within a case causes transparency concerns as a journalist may not be able to accurately report on a case involving multiple charges.

Thank you for your time and consideration.

NORTH DAKOTA NEWSPAPER ASSOCIATION

A handwritten signature in blue ink that reads "Katie L. Winbauer". The signature is written in a cursive style.

Katie L. Winbauer  
Lobbyist and Attorney