

**House Bill 1048**  
**House Judiciary Committee**  
**Testimony Presented by Sara Behrens**  
**January 13, 2025**

Good morning Chairman Klemin, members of the committee. My name is Sara Behrens and I am a staff attorney with the State Court Administrator's Office. I am here today in opposition to House Bill 1166. I'll touch on a few concerns the court has with this bill.

This would put a large burden on court staff to seal all of the records. Not only would it require every criminal case going forward which results in an acquittal, a dismissal, or a pardon to be sealed, it would require the court to go back to any criminal case as far back as court records exist, and seal those cases as well. It should be noted, this bill does not cover just records which are in our online case management system, but paper records which are retained, some for up to 100 years. More than 28,000 cases are filed in North Dakota each year. Even limiting the scope to the past 10 years, the clerks would have to review 283,740 cases (pulling the numbers from the court's annual reports).

Many criminal cases contain multiple charges. The individual could be acquitted of one charge or have one charge dismissed. We are not able to seal just one charge.

The constitution provides that, unless otherwise provided by law, records are open to the public. The court has provided by law, in an extensive court rule governing access to court records, which records are closed to the public. The rule details the court's policy, modeled after the open records laws governing the executive branch, of having records that are public, open, and accessible for inspection. It includes a procedure for restricting access to cases which were dismissed or where the defendant was acquitted.

This bill would severely restrict the policy of openness and prohibit the public from knowing what goes on in the courts of this state including which types of cases are being dismissed and why. Although the cases would be sealed, the information would generally still be on the internet through other searches because these cases would be public until an acquittal, dismissal, or pardon.

“Sealing” under ch. 12-60.1 means “to prohibit the disclosure of the existence or contents of court or prosecution records unless authorized by court order.” In addition to prohibiting access to the public, this would also prohibit access by the subject of the record, the prosecution, and law enforcement. Many job and rental applications ask about charges or arrests and not just convictions. If these records were sealed, a court order would be required to verify that information. If documentation regarding a charge is discovered through an internet search, the individual could not point to the court record showing that the case was dismissed or they were acquitted or pardoned.

Finally, it should be recognized that public searches on the North Dakota Supreme Court website clearly shows on the search results page if a case was dismissed or the defendant found not guilty in the status column. Cases involving a pardon display as dismissed. To see that these cases were dismissed or the defendant found not guilty would not require clicking into the case.

Because of the administrative burden and the unintended consequences of this bill, we urge a do not pass.