

**2019 HOUSE JUDICIARY**

**HB 1256**

# 2019 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Prairie Room, State Capitol

HB 1256  
1/15/2019  
30818

- Subcommittee  
 Conference Committee

Committee Clerk: DeLores D. Shimek

## Explanation or reason for introduction of bill/resolution:

Relating to sealing of criminal records.

## Minutes:

1

**Vice Chairman Karls:** Opened the hearing on HB 1256.

**Rep. Roers Jones:** Introduced the bill. I wanted to create a process by which people who have criminal convictions in their past so they have would have a process those records sealed. We can never truly expunge a record. It is always on the internet. The Legislative Counsel prefers the word record sealing. The process would allow someone who has a non-violent; non sex offense on their record to have a process where they have to take a proactive stand and go through the process where they could request the courts would seal off the excess to their state court records for three years after a misdemeanor conviction; five years after a felony conviction. This is not a result of Measure 3 or the workforce development report on how to improve job participation here in ND. It is relevant to each one of those things. Most landlords preform a background check. This bill is to provide a measure of confidence employers and landlords could use. Went through the bill. 3:58-7:40

**Rep. McWilliams:** Is there a physical note?

**Rep. Roers Jones:** We don't have an indication of what it would cost. I don't think it would be substantial. We want to make sure this isn't a burden on the court system so the courts can understand what might be coming up. Once we get past the first wave it could be more regular as people become eligible. It is hard to determine what the first cases might be.

**Chairman K. Koppelman:** Page 4, line 14 speaks to the bill we just heard. Would this conflict with the other boards?

**Rep. Roers Jones:** Some people may have an issue with the language may not be used to disqualify. I am hoping we can include something that talks about the intent. There is a lot of concern about the concealed records. When the case is sealed the court is saying we have looked at all the information that we can look at and this show reformation on the part of the petitioner.

**Chairman K. Koppelman:** There might be professions where a certain type of offense is bared with regard to that profession. An employer might say if you have committed crime x you can't do job B?

**Rep. Rick Becker:** In subsection of 1, 2 & 3 how would a landlord or employer or a licensing board come by way of the information that is sealed. If it is sealed is it routinely available? What is the benefit of it being sealed?

**Rep. Roers Jones:** This would serve to seal the court records so if you were to do a background check that information would not be available. If you do a more comprehensive search of the internet where we can't get rid of this information it is basically saying we would like employers and landlords and licensing boards to not use information about records that have been sealed as eliminating factors for employment, housing or licensing.

**Jackson Lofgren:** I have been involved with criminal cases for over ten years. I support HB 1256. Right now if someone gets a criminal conviction and that is later deferred and dismissed we do have mechanisms in place to seal those records. If a person has conviction for shop lifting or driving under suspension, we have no mechanism in place to seal those records once that conviction once it is done. People that have turned their lives around we have no mechanism in place to take that off. These records will always be available to law enforcement purposes and the government will always know about them. This bill takes steps to elevate that ability but your public searches through court records would not be available any longer. I urge a do pass.

**Representative Jones:** If they are sealed when they are doing the search would it show there is something there?

**Jackson Lofgren:** If a person has a sealed record and the court has ordered that sealing and the public runs it that generally pops up. Now the record doesn't generally popup when some one's name is run through the court system. As a public prosecutor I had an added access to the court records and what the public did.

**Rep. Paur:** Our agencies run thousands of background checks so these cases through the BCI so no they aren't going to show up?

**Jackson Lofgren:** I think they will still show up. Once a record is on the law enforcement data basis they are on there forever.

**Rep. Paur:** So this is for me being curious running one of those background checks on the internet, it might not show up on that. A lot of the job interviews they would still show up?

**Jackson Lofgren:** I think law enforcement they would still show up. You are not going to see it if someone runs a background soling on court records.

**Rep. McWilliams:** Is there a mechanism in this bill that would allow them to come back at a later time.

**Jackson Lofgren:** I think there would be an issue if you filed a petition and the court denied it and a week later they file it again. If they come back and refile later I think there could be an issue because the court has already decided. If their situation has changed that would be a different matter.

**Roers Jones:** On page 4, line 7, item 6-8 it just points out you may not appeal a denial from a district judge or magistrate but if you have a denial from a municipal court you can appeal to the district court for review without paying a filing fee. Item #8 says if your petition is denied then you have to wait three years to refile.

**Rep. Bob Paulson:** Employers and landlords would be more confident. Are you familiar with what your average landlord or employer would use as a background check as part of their process and how does that connect with law enforcement data basis?

**Jackson Lofgren:** If a person has a misdemeanor in Fargo they have a tough time finding housing. That landlord would go to the court records first and that would offer then some sort of protection.

**Chairman K. Koppelman:** You have a good sense of the court. Do you think the courts if this were law, would take these kinds of requests?

**Jackson Lofgren:** Right now there is a mechanism in place for sealing records in cases that have been dismissed. I think they are going to be very conservative in granting these things.

**Chairman K. Koppelman:** Have courts ever unsealed something?

**Jackson Lofgren:** That is a tough question. We have so few records sealed. When they become relative law enforcement or prosecutors have access to them. I have never had this come up.

**Chairman K. Koppelman:** Discussed unsealed records.

**Jackson Lofgren:** I think they would not go back and open the record, but they would take that into consideration on the new case.

**Chairman K. Koppelman:** Convictions; is there a process adequate for sealing's where you have been charged with something and acquitted but it still haunts you or should that be included in this bill?

**Jackson Lofgren:** They are similar now in this bill.

**Steve Harstad, Chief Agent with the Bureau of Criminal Investigation:** Attachment #1) We are in support of this bill. We have some technical concerns with the bill. Went over the concerns that were handed out. We would like to work with the committee to define some of the offenses that could be sealed.

**Representative Jones:** What would you recommend?

**Steve Harstad:** I think that is something we would have to determine. Maybe drug offenses should be clearer.

**Chairman K. Koppelman:** Could you confer with the prime sponsor of the bill to work on those amendments.

Opposition: None

Closed

# 2019 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Prairie Room, State Capitol

HB 1256  
1/16/2019  
30930

- Subcommittee  
 Conference Committee

Committee Clerk: DeLores D. Shimek

## Explanation or reason for introduction of bill/resolution:

Relating to sealing of criminal records.

## Minutes:

**Chairman K. Koppelman:** Opened the meeting on HB 1256. This was relating to the sealing of records.

**Rep. Magrum:** I did not like this bill because we do a lot of checking on our own. Is this moving toward getting information from a government agency down the road.

**Representative Jones:** I like the bill, but how will this actually help? Who can get the information and who can't and how much good will it do?

**Rep. Roers Jones:** The information will still be available to law enforcement. Nothing about federal or criminal records will change. Excess to the state criminal records; once they are sealed would be limited on the basic background checks. We are not talking about criminal records.

**Chairman K. Koppelman:** The availability of law enforcement information in the bill?

**Rep. Roers Jones:** It does not include law enforcement records.

**Chairman K. Koppelman:** Wants Rep. Roers Jones to check with AG.

**Rep. Rick Becker:** I like the bill. We don't need to separate violent but page 4, line 22 this subsection should be taken out. My concern is if you have knowledge; the fact that the state would say you cannot house this person or employ this person. I am not in favor of that. '

**Chairman K. Koppelman:** I think we have another bill we could deal with that issue.

**Rep. McWilliams:** I had a situation come up when hiring someone that the applicant had taken secrets and sold it to another company; I would not like that.

**Chairman K. Koppelman:** If someone would do an informal background check; they probably could not access this.

**Rep. Paur:** A few years ago I meet with HR and they do thousands of them, but they were handled on an individual basis.

**Rep. Roers Jones:** Yes when you do a BCI check you can do a portion for state and federal records. This would access any federal criminal records, but that is something we cannot change because it is a federal record. A court would be less inclined to seal a record if they have multiple offenses in multiple states.

**Vice Chairman Karls:** How does this differ from pass the trash? We are suppressing information someone might need. This is over broad.

**Representative Jones:** If it is sealed how does that work.

**Chairman K. Koppelman:** Maybe they know the person. This would disallow hiring John Doe based on the offense because it is sealed now.

**Rep. Roers Jones:** The term that has been used broadly about sponged records and explained the use of it.

**Chairman K. Koppelman:** I appreciate the intent of that because they have paid their debt to society. I have a concern if they don't do a paid background check but do an internet search, they are not even going to know if that record was sealed, yet this law will require that you cannot refuse to hire them on that record. What kind of trouble will they be in?

**Rep. Roers Jones:** I would be willing to amend that it would be willing to be used if necessary. If we have something that says that this action on a part of the court.

**Rep. Rick Becker:** The perspective employer or landlord because one of two things will happen; either the employer or landlord will do a search and mothering will come up and they won't have the knowledge and they will make their decision without the knowledge of the previous crime. They are not comforted by anything. The second possibility is the employer or landlord does a more exhausted search or they know a guy and they get the records or they look on the internet or they happen to live next door so by some means they come by the information and they are also not comforted so it comes down to either you know it or you don't. they state wanted you to feel more comfortable because you went through a process. I do not understand this.

**Chairman K. Koppelman:** Maybe there is something that could be done to say that someone who has been through this process may inform the employer that the court has chosen to seal their record because of their circumstance in an effort to help them get more protection for their future?

**Rep. Paur:** The AG would like us to exempt 12-20-64, which is 100 agencies; which includes the child care facilities.

**Rep. Roers Jones:** I have a couple comments I have made about their requests.

**Rep. McWilliams:** Discussed an employer-employee problem he had.

**Vice Chairman Karls:** The process they would have to go through sounds expensive?

**Rep. Roers Jones:** in a situation where it is clear that an amount of time has passed and a person has turned his life around; we want to have it tied to the existing case because it saves them another filing fee and it keeps their records all tied together. My objective is to keep it simple and not expensive without hiring an attorney. We are trying to keep this cost effective for the petitioner and the courts.

Closed.

# 2019 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Prairie Room, State Capitol

H B1256  
2/5/2019  
32236

- Subcommittee  
 Conference Committee

Committee Clerk: DeLores D. Shimek

## **Explanation or reason for introduction of bill/resolution:**

Relating to sealing of criminal records.

## **Minutes:**

1

**Chairman K. Koppelman:** Opened the meeting on HB 1256.

**Rep. Roers Jones:** (Attachment #1) Proposed amendments. Went over the amendment. I worked with BCI and DOOCR on this amendment and they had some concerns with the term criminal record. Concerns from the committee was just clarifying that law enforcement has excess to all records and that will continue to be the case. So the intent is to seal records for people who does not commit another offense within a window of time. It is sealed with the DUI offenses from public view. The excess will be limited to those who are doing a general background check. The definition of a criminal record is what we are changing on the top section on page 1, line 20 is the definition of a criminal record that BCI is satisfied with us using and then we are adding some language on page 4, line 12 we are taking out the sections that were concerning to the committee that had to do with how employers or landlords might use or might not use the criminal records.

## **Motion Made to amend HB 1256 by Rep. Roers Jones; Seconded by Rep. Vetter**

Discussion:

**Vice Chairman Karls:** So these people need to go through a petition process through the court to get this sealed. What does that do for a person who has no money to petition the court or hire an attorney?

**Rep. Roers Jones:** The petition process is currently available through the courts for some types of cases. The objective is to try and create something that is simple and inexpensive and I am hopeful there will be some self-help forms created on the Supreme Court website to make this something a person can do on their own.

Voice Vote Carried.

**Do Pass as Amended Motion Made by Rep. Vetter; Seconded by Rep. Roers Jones**

Discussion:

**Rep. Paur:** These bills are feel good.

**Rep. Roers Jones:** This is not something that wipes the internet clean and makes everything go away. There are processes that excess right now that are being used every day to do things like this that have the same effect, but were not used in the past. This will help people who have those older records get those things cleaned up.

**Representative Simons:** Is this bill still making it so that an employer doesn't have the power to hire who they may desire?

**Chairman K. Koppelman:** Many states have done this. It doesn't mean the public employer can't ask. It is not automatic.

**Rep. Roers Jones:** Measure 3 proposed to do something along these lines, but much more expansive to any crimes relating to marijuana. This is an opportunity to offer a solution to people affect by these crimes. I think this is a better intermediate step.

**Chairman K. Koppelman:** The judges make these decisions. Now there is nothing even the judge can do to get rid of that record once it is there.

**Vice Chairman Karls:** How does this differ from ban the box?

**Chairman K. Koppelman:** It has to do with the employment form. They have a box on the form. This would seal the record if the court agreed. On the top of page two it gives a framework and timeframe when you could do this.

**Roll Call Vote: 11 Yes 3 No 0 Absent Carrier: Rep. Hanson**

Closed.

February 5, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1256

Page 1, line 20, after the underscored period insert "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."

Page 4, replace lines 13 through 22 with:

"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, or may release the information when an entity has a statutory obligation to conduct a criminal history background check."

Renumber accordingly



**2019 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 HB   1256**

House   Judiciary   Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:    Adopt Amendment  
                           Do Pass    Do Not Pass    Without Committee Recommendation  
                           As Amended                            Rerefer to Appropriations  
                           Place on Consent Calendar

Other Actions:        Reconsider                            \_\_\_\_\_

Motion Made By   Rep. Vetter   Seconded By   Rep. Roers Jones  

<b>Representatives</b>	<b>Yes</b>	<b>No</b>	<b>Representatives</b>	<b>Yes</b>	<b>No</b>
Chairman Koppelman	X		Rep. Buffalo	X	
Vice Chairman Karls		X	Rep. Karla Rose Hanson	X	
Rep. Becker	X				
Rep. Terry Jones	X				
Rep. Magrum		X			
Rep. McWilliams	X				
Rep. B. Paulson	X				
Rep. Paur		X			
Rep. Roers Jones	X				
Rep. Satrom	X				
Rep. Simons	X				
Rep. Vetter	X				

Total   (Yes)   11                             No   3  

Absent   0  

Floor Assignment   Rep. Hanson  

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1256: Judiciary Committee (Rep. K. Koppelman, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1256 was placed on the Sixth order on the calendar.

Page 1, line 20, after the underscored period insert "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."

Page 4, replace lines 13 through 22 with:

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Renumber accordingly

**2019 SENATE JUDICIARY**

**HB 1256**

# 2019 SENATE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Fort Lincoln Room, State Capitol

HB 1256  
3/20/2019  
#34009 (45:30)

- Subcommittee  
 Conference Committee

Committee Clerk: Meghan Pegel/ Florence Mayer
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## Explanation or reason for introduction of bill/resolution:

A BILL for 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.

## Minutes:

4 Attachments
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**Chair Larson:** Opened the hearing on HB 1256. Roll call was taken, all members were present.

Before we open this hearing, Senator Dwyer has a point of personal privilege.

**Senator Dwyer:** Yesterday I had the privilege of introducing my sister that lives in New York. Today I have the privilege of introducing my sister that lives in Maddock, ND. Also with her is her son Will, who is a senior, accomplished quarterback, basketball player, student, among other things. Let me present my sister Barb from Maddock and her son Will.

**Chair Larson:** We will then open the hearing on HB 1256.

**Shannon Roers Jones, District 46 Representative:** Testified in favor of HB 1256. This is a bill to create a process for sealing of criminal records. Some people might know this by the term expunction of criminal records. I want to point out that Legislative Council prefers we discontinue using the word expungement and change to sealing. You will notice a couple typographical changes on the later pages. This bill creates a process where someone who has gotten into trouble with the law in the past, has a pathway to having that record sealed so it's not readily accessible. The most common examples would be for employment or rental properties. This allows someone to have access to greater opportunities for those cases, also professional licensing after they have rehabilitated their lives. I'd like to go through the bill starting on page 2, and go through how this could apply and the process a person would go through. A person who has been found guilty of a misdemeanor offense could use this process 3 years after they have been charged or convicted of a crime, as long as they haven't had any new encounters with law enforcement. You see that in lines 6-13 on page 2. After a

felony offense, you could do this after 5 years of having no new encounters with law enforcement. Line 2 is saying this chapter does not apply to sex offense crimes. I am going to pass out an amendment, which says this doesn't apply to a felony crime where you have your rights to firearms removed. This was something that was originally intended to be in the bill and was inadvertently omitted. **(See attachment #1.)** We don't want this to apply to all people who have criminal history. If they have a history of violent crimes, sex offenses, we don't necessarily want their records to be sealed from the public. However, other people who perhaps have low-level drug offenses, shoplifting, things of that nature, we want the opportunity for them to have a second change. A little background, this bill is something I started right after the last legislation session. The whole justice reinvestment theme came out of the last session. I worked with a number of people to draft this to make sure we had something not only well thought out, but was not overly burdensome for the courts or the individuals using it. We worked with Senator Kelly Armstrong, while he was still available to work on it, criminal defense attorneys, states attorneys, the Attorney General's office, and BCI. We wanted to make sure the process we were creating was something that would work for everybody, be simple and cost effective as possible. The petition of a person wishing to have their records sealed must go through is outlined on the bottom of page 2 and the top of page 3. They have to include their full name and any other names or aliases they have ever used, addresses from the time of the offense to the present. They need to state the reasons why the court should grant the petition and list out all of their criminal history from North Dakota and any other states. They have to indicate if they've ever requested this in the past. They have also have to include a copy of the proposed order they would like to have granted, so if the court does grant it they just have to sign off. The process is set up so this is served on the same prosecuting official as the original crime. It's going to keep all that information in the same jurisdiction. It will avoid things like form shopping, but also make it simple. The person dealing with the request to seal the records should be the same as the original crime. Lines 8-19 on page 3, we talk about the process. It says, "The court may grant a petition if they determine by clear and convincing evidence that the petitioner has shown good cause, the benefit to the petitioner outweighs the presumption of openness for the criminal record, the petition has to complete all of their terms of imprisonment and probation. They have to pay all restitution. They have to demonstrate reformation." If all of those things have been accomplished, then the court will also consider the nature and severity of the underlying crime, the risk the petitioner poses to society, and the length of time since committing the offense. The court will have the ability to look at the level of rehabilitation including any aggravating and mitigating factors, recommendations from law enforcement and people familiar with the petitioner. They will also take into consideration the recommendations of the victim. If all of these things occur, then the court can grant the petitioners request to have the record for that offense sealed. Nothing requires the court to do this. If the petition is denied, the individual may not appeal that decision. If they're going through a municipal court, they may appeal it to the district court level. If the petition is denied, they may not make another request for 3 years. That is the meat of the bill. The other pages following are regarding changing the word expunge to seal. I think the process will be perhaps not widely used, but will be very valuable for some people. After they've gone through the process of being convicted, potentially incarcerated, probation, parole, restitution, this gives them the opportunity in the future to show they really have turned their life around. I have some other people who will testify after me who have anecdotal information.

**(9:01) Chair Larson:** Hasn't there already been a mechanism to expunge records in the past through a court hearing?

**Representative Roers Jones:** There are some processes, but they're not available in all instances. The court will do things like deferred impositions. That is something becoming more popular because courts and society are recognizing that it doesn't benefit society to have these records hang over people's head forever. As for older criminal records, it doesn't benefit all people, in all circumstances. It doesn't apply to all crimes, but it will benefit more people.

**Senator Myrdal:** Is this complimentary to 'ban the box'? This seems to make it very open to the discretion of the judge. Does this leave enough discretion with the judge to grant this?

**Representative Roers Jones:** While this is somewhat complimentary to 'ban the box', I think it's better in the fact that there's more discretion. This gives employers and landlords a little higher confidence level. If everyone who would check a box, was now required to, then you don't know if they just had a crime or if it was years ago. You don't have the ability to ask that question and discern that. If you say do you have a criminal record, my choice would be that they say they had a criminal record but it was expunged. On page 4 lines 25-26, "if the court grants a petition, the court shall state in the order that the petitioner is sufficiently rehabilitated..." You can tell employers or landlords that you have had a criminal history, but you've had your records sealed. The court has gone through a process and determined you as rehabilitated. That gives an employer a much greater comfort level, then just not being able to ask.

**Vice Chairman Dwyer:** At the bottom of page 1, lines 20-22, the House added that amendment and it excluded 126016.1 and 5412 could you explain that?

**Representative Roers Jones:** That amendment came at the request of the Attorney General's office and BCI. They do different types of background checks. That section includes a list of people that have an enhanced criminal record search available to them. The criminal record search we're referring to is a general record search. It's saying that for people who have access to the enhanced criminal records search, these records would still be available for them to find.

**(14:15) Adam Martin, Founder and President F5 Project:** Testified in favor of HB 1256. I personally will not be able to participate from this House bill. I am a felon, and I have 5 felonies on my record. Since committing my crimes I have completed probation, along with everything the state has asked me to do. I have my kids back, I have a house, and I have created 2 companies. However, because one of my felonies is a violent felony called terrorizing, because I made a threatening gesture towards someone, I will not be able to participate in this. The reason I am here today is not for me. I am here because I have houses I started; filled with people who are trying to get their lives back. The felony stigma is a lifelong sentence. Even after, you've completed probation and parole. We have so many things with 'ban the box' and criminal justice reform. This is one of the best years I've seen for all people of North Dakota. This is one of the pieces that is missing. Imagine a sales person that doesn't have a commission. Imagine a business professional that has a cap. Imagine if we treated

all industries the same way we treat the justice community. Putting a carrot at the end of something gives someone more incentive and creates a performance-based attitude where they want to chase that down. We're not looking to seal records because we want to go back to court. We want to seal records to be full citizens again. To have that and use it as our community heart. I have 9 houses throughout North Dakota and two years ago, it was zero. I have seen people coming through every aspect of this that have turned their lives around and have to deal with the same stigma as me, when I have a violent felony and they do not. I do not think that we should be held to the same standard for very different crimes. There's a process even after probation and parole. We're still asking them to do more than the state has already. I believe in putting that little bit of carrot at the end. When people identify as citizens and not felons, they do more for their community. I'm here to speak for all felons that we would be able to have the same throughout the states. They're not adding murderers or rapists; these are people who may have a low-level drug offense. That is about 95% of people coming through the justice system in North Dakota, because of our drug epidemic. This is an avenue for reform and rehabilitation of the stigma a person carries around with them.

**(18:57) Samera Schneider, U-Mary Social Work student:** Testified in favor of HB 1256 (see attachment #2).

**(20:45) Aaron Birst, Association of Counties:** Testified in favor of HB 1256.

I am speaking for the states attorneys on this bill. I would like to commend Representative Roers Jones on her passion. This is a concept the states attorneys can get behind in terms of helping folks get back on their feet. The best day of a prosecutor is when something doesn't happen. We think this helps that. However, I do need to express a few concerns. Under the states attorney's reading of this, the only people that are excluded are sex offenders and child offenders. Therefore, violent offenders would have this option. If the amendment as is only includes domestic violence, it is open to any misdemeanor or felony. Is the sealed record no longer available for enhancement purposes? With the DUI instance we saw from Representative Johnson, the prosecutors supported that after the amendment was placed on there that said they could still use for enhancement purposes. That would happen if they got in trouble again.

**Chair Larson:** If they've committed a felony, weren't caught again for 5 years and had it sealed; if they were charged again, would the judge have access to the old record in a court hearing?

**Birst:** I don't know what the intent is. In theory, the BCI records are still available to the prosecutor. Is there now an argument that these records were sealed so they can't use them for enhancement? That's an open question. We would just like direction of what you're intending to do. I have full support of this. For the most part, even felony offenders are good folks that made a wrong choice. We want them back out, we want them working. However, there are some folks that we want to be able to do something with if they come to our attention again.

**(24:27) Josh Traiser, Assistant Cass County State's Attorney:** Testified in opposition to HB 1256 as written. At the heart of this bill is a great idea. People, who have sufficiently rehabilitated themselves, deserve the opportunity to prove that to a court and move away from the stigma. With that said, I think what we're doing here with creating an expungement;

we are creating a very powerful tool. You're empowering a court to say, "We no longer believe the public should be provided with this information". Because this is such a powerful tool, we need to be careful with the legislation. I support the bill with reservation. **(See attachment #3.)**

**(30:43) Chair Larson:** What proposed amendment are you talking about?

**Traiser:** The one referenced by Representative Roers Jones today. If we're looking closely, perhaps we should just say violence, we shouldn't treat them any differently. If there was some reference to misdemeanor crimes that would go a long way. If we went along that route, it would allow people convicted of thefts and embezzlements to submit the petition.

**Vice Chairman Dwyer:** You would like to see us do this amendment and others in addition?

**Traiser:** Correct, and I would be willing to work with anyone if I have the opportunity.

**Senator Myrdal:** On the amendment, if we changed subsection A to, "a felony or misdemeanor offense involving violence". Would that work?

**Traiser:** Or intimidation. I think that would go a long way. Then you would have to remove the reference to domestic violence, because that applies to felony crimes. With a little bit of tweaking this could be a very good bill.

**(33:15) Janelle Moos, CAWS ND (Domestic violence and sexual assault coalition):**

I support the amendment that would include the felony offense domestic violence. A number of crimes of domestic violence don't rise to the felony offense. Most crimes of domestic violence are B misdemeanors for first offenses and A misdemeanor for second offenses. We would have concerns about this. You received an email from a survivor from the Fargo area, whose offender will be released from prison soon. We would like to work on the amendments that include the misdemeanor offenses for domestic violence as well. Those do qualify under federal law, which you're not permitted to have a firearm. It's important to make sure victims are protected.

**Vice Chairman Dwyer:** We just passed a bill that separated domestic violence and increased the penalties. We left aggravated assault as separate. That would have to be included wouldn't it?

**Moos:** We were talking about that bill that does propose to move first offenses to an A misdemeanor and second offenses to a C felony. We need to think about both of those things in context. As it currently stands misdemeanor cases aren't included in that section. I support this amendment in addition to what is being proposed by the states attorneys as well.

**(35:50) JoDee Wiedmeier, Executive Director of the ND Board of Podiatric Medicine:** Testified in opposition to HB 1256 **(see attachment #4).**

**(37:55) Travis Finck, Deputy Director ND Commission on Legal Counsel for Indigents:** Testified neutral on HB 1256. I wasn't planning to testify, but based on comments made earlier I thought it would be appropriate. The commission hasn't taken a stance on this. I would caution the committee in watering this down to the point where it doesn't have an effect. Some comments earlier were that this would still apply to "loud parties and minors in possession". I can submit to the committee, having represented almost 5,000 individuals, those aren't the type of offenses keeping people from getting jobs. What we're trying to do with this bill, is get people who are reformed back on their feet. I never thought I'd be in the position to defend judges, but I think our judges do a pretty good job on making those determinations. These are the same people we leave discretion with for sentencing. These are the same people where there is a court rule. Some of this fear might be a little bit unfounded. My experience has been judges will be on the side of protecting the community. They do a good job of that. I would also caution when we say any crime, felony or misdemeanor involving violence. If you have a bar fight, which is a simple assault, which would be prohibited from this option. We need to be careful of lumping everything together.

**Senator Myrdal:** How would this legislation affect background checks? We have passed all kinds of legislation that certain agencies and entities have to do background checks. Can you answer that?

**Finck:** Our experience has been even when files are sealed; the BCI still has access to that information. It's the way it's translated, it doesn't say "no record found", it says something different. I know that through the court system that the judges still have access to that and we can see many documents and files that others can't. There are different levels of access that the courts have.

**Vice Chairman Dwyer:** Could you elaborate more, you're worried about watering it down. Did you say judges already could seal records?

**Finck:** There is a court rule where you can petition the court to take it off the public site. You can go into the Supreme Court public records search, type in anyone's name and it will show any records. That is at the discretion of the court. It's an administrative rule of the court.

**Vice Chairman Dwyer:** What would this bill do in addition to that court rule?

**Finck:** I think this bill will go that next step further, limit some access of those background checks. Sealing the record is different from removing it from public view.

**Vice Chairman Dwyer:** You said the fear is unfounded, so we shouldn't be afraid of sealing these records?

**Finck:** Correct. It leaves the discretion with the court. It's not as if you file this petition and then it's granted. It's going to be a hard sell in most cases. There's several factors they have to consider, such as the recommendations of the victim and all those other things. It's a fairly high burden they'll have to cross. If a victim comes forward and says they're concerned about something, the judge has the take that into context under the bill.

**Chair Larson:** How does Marsy's Law work with this if someone goes in for an expungement? Will anyone who has been impacted as a victim be notified of this court proceeding?

**Finck:** I would say that those are rights that have to be invoked by victims. If they would be invoked in the original prosecution, then they would have to be consulted again. Under this bill, it does require the recommendations of the victim. I know there was concern about whether the prosecutors would have resources to do some of this. I would venture that if it were something they were really worried about; law enforcement would be willing to track down the witnesses or victims to get their recommendations. While they may not have investigators in their office, they have a lot more resources to investigate than we do.

**Chair Larson:** Called for further testimony for HB 1256. Closed the hearing on HB 1256.

# 2019 SENATE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Fort Lincoln Room, State Capitol

HB 1256  
4/1/2019  
#34388 (14:51)

- Subcommittee  
 Conference Committee

Committee Clerk: Meghan Pegel
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## Explanation or reason for introduction of bill/resolution:

A BILL for 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.

## Minutes:

1 Attachment
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**Chair Larson** begins discussion on HB 1256.

**(see attachment #1)**

**Senator Bakke:** I have a Christmas version and the amendments. We had a lot of suggestions for amendments with this. I sat down with Legislative Council, and we went through all of the suggestions. We put in what we felt would clarify things. Page 2, line 15-18 says, "This chapter does not apply to a felony offense involving violence or intimidation during the period in which the offender is ineligible to possess a firearm under section a of subsection 1 of section 32.1-02-01". That was one of the main concerns that was voiced. They wanted the word "domestic" taken out. Originally it read, "a felony offense involving domestic violence". We didn't want it to just involve domestic violence but any kind of violence. Someone wanted a listing of what's a felony and a misdemeanor crime of violence. Legislative Council felt that didn't need to be in the bill. Page 3, line 29, the code was wrong; it should be 12.1-32-04. Then we wanted to change "or may" to "and shall". That's on page 4, line 20. Those were the changes.

**Senator Bakke: Motions to adopt amendment 19.0034.06002.**

**Senator Lemm: Seconds.**

**Senator Myrdal:** Page 2 relates to section different to the original. It says now, "This chapter does not apply to an offense for which an offender has been ordered to register under section 12". Now we're involving violence or intimidation during the period in which the offender is ineligible to possess a firearm under subdivision.

**Senator Bakke:** This was the suggestion that we had on an amendment that was given to us, 6001, by Representative Roers Jones. We used that same language, but removed domestic. That's all we did to her amendment. Other than that, it's exactly the amendments she put in.

**Vice Chairman Dwyer:** Was the testimony all in support?

**Chair Larson:** JoDee Wiedmeier was in opposition. Travis Finck was neutral

**Senator Myrdal:** Josh Traiser, the assistant Cass County state's attorney, had concerns. He felt it was too much. He said it's not unreasonable if it's restricted to non-violent misdemeanors; that it was unreasonable to anything else.

**Senator Luick:** The ones who spoke in favor were Adam Martin, Representative Jones, Samera Schneider, Aaron Birst, Josh Traiser and Janelle Moos. Against was JoDee Wiedmeier with the ND Board of Podiatric Medicine.

**Vice Chairman Dwyer:** Was Josh Traiser in opposition? He felt it was too broad.

**Chair Larson:** Right.

**Senator Bakke:** Adam Martin talked about the F5 project.

**Senator Myrdal:** I know with Representative Roers Jones and the intent of several bills sort of has to do with the ban the box initiative. I think the concern from the gentleman from Cass County was that it was too broad and left some serious crimes included. We have to recall that the courts still have access to this. It doesn't expunge, but rather seals.

**A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent. Amendment is adopted.**

**(9:10) Vice Chairman Dwyer:** I'm a little concerned about it too because how broad it is. I'm reluctant to do such a sweeping change. I probably won't vote for it.

**Chair Larson:** Josh Traiser said, "persons convicted of robbery, child neglect, burglary, aggravated assault, murder and other serious offenses will be able to petition to court to have their convictions sealed".

**Senator Myrdal:** If you look on page 3 with hearing on petition, it's pretty involved. You have to show good cause. The court has an enormous list of what they have to go through in order to grant this petition. It isn't just automatic. You can hardly overcome that list unless you're an angel. The intent is to give more leeway in judiciary discretion that if someone gets in a bar fight at age 23 and harm someone, they can get that sealed later if it was a one-time thing. It's strict who is eligible and who is not. In defense of the bill, it's pretty detailed.

**Senator Bakke:** Page 2, beginning at line 7 is basically the crux of who this bill is for. They may file a petition if they are guilty of a misdemeanor and have not had any other

misdemeanor in 3 years, or if they've pleaded guilty to a felony and have not been charged with a new crime for 5 years. This does not apply if they were involved in violence or intimidation during which the offender is ineligible to possess a firearm. They're saying those more violent crimes are not eligible. Then the rest of the bill is telling them how they file that petition.

**Chair Larson:** Yes. Some of what I was reading was taken care of in that amendment that we just put on page 2 with that additional language. It took care of that concern.

**Senator Myrdal:** It's substantial what the judge has to look at here. There's no perfection. We don't enforce the law, and we certainly hope the judiciary discretion will help case by case. I will support the bill.

**Senator Luick: Motions for a Do Pass as Amended.**

**Senator Myrdal: Seconds.**

**A Roll Call Vote Was Taken: 5 yeas, 1 nay, 0 absent. Motion carries.**

**Senator Luick** will carry the bill.

March 28, 2019

SK  
10/21  
4/1

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1256

Page 2, line 14, replace the first "an" with ":

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"

Page 3, line 26, replace "12-32-04" with "12.1-32-04"

Page 4, line 17, replace "or may" with "and shall"

Renumber accordingly

**2019 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1256**

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: 19.0034.06002

Recommendation:     Adopt Amendment  
                            Do Pass       Do Not Pass       Without Committee Recommendation  
                            As Amended                                     Rerefer to Appropriations  
                            Place on Consent Calendar  
 Other Actions:         Reconsider                                     \_\_\_\_\_

Motion Made By Senator Bakke                                    Seconded By Senator Lemm

Senators	Yes	No	Senators	Yes	No
Chair Larson	X		Senator Bakke	X	
Vice Chair Dwyer	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Lemm	X				

Total    (Yes) 6                                    No 0

Absent    0

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

**2019 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1256**

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar

Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Senator Luick Seconded By Senator Myrdal

Senators	Yes	No	Senators	Yes	No
Chair Larson	X		Senator Bakke	X	
Vice Chair Dwyer		X			
Senator Luick	X				
Senator Myrdal	X				
Senator Lemm	X				

Total (Yes) 5 No 1

Absent 0

Floor Assignment Senator Luick

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1256, as engrossed: Judiciary Committee (Sen. D. Larson, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1256 was placed on the Sixth order on the calendar.

Page 2, line 14, replace the first "an" with ":

- 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"

Page 3, line 26, replace "12-32-04" with "12.1-32-04"

Page 4, line 17, replace "or may" with "and shall"

Re-number accordingly

**2019 TESTIMONY**

**HB 1256**

#1  
HB1256  
1-15-19  
BJ1

## HB 1256

The Attorney General is in support of the idea of sealing records with a few recommendations to the bill.

- Page 1, line 19 - criminal record is defined as “court and prosecution records subject to sealing under this chapter.” NDCC § 12-60-16.1 defines criminal history record as “the compilation of criminal history record information of a person reported to the bureau in accordance with this chapter.” It is our recommendation to use this definition as established in NDCC § 12-60-16.1 to eliminate confusion.
- BCI currently does two types of criminal history record checks: general public and law enforcement/12-60-24. The public is restricted in the criminal history record information they receive while law enforcement and agencies under 12-60-24 receive a complete criminal history record. It is our recommendation to continue allowing law enforcement and agencies under 12-60-24 access to a complete criminal history record to make informed decisions regarding public safety.
- Page 2, lines 3-12 - the language of the bill requires a subject to petition the court to seal their record. It also allows an individual to file a petition for any offense, except registerable offenses. It is our recommendation to define what offenses would be sealed.
- Page 3, line 23 - it is our recommendation to remove the reference to section 12-32-04, as this section of the law has been repealed.
- Page 4, lines 14-17 references 12.1-33-02.1 which allows state agencies, boards, and commissions to deny licensure based on a conviction that has a direct bearing upon a person’s ability to serve the public in the specific occupation, trade, or profession. It is our recommendation to allow the state agencies, boards, and commissions to receive a complete criminal history record. BCI would not know the rules for each agency, board, or commission making it difficult to seal criminal history records appropriately for each agency, board, or commission and forcing it to become a manual process.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1256

#1  
HB1256  
2-5-19  
Pgi

Page 1, line 20. After the period, insert "A criminal record does not include criminal history record information as defined in subsection 5 of section 12-60-16.1 and criminal justice data information maintained in the criminal justice data information sharing system authorized in section 54-12-34."

Page 4, after line 12, insert:

9. If a court grants a petition to seal a criminal record, the court shall state in its order that the petitioner is sufficiently rehabilitated, but subject to the provisions of section 12.1-33-02.1 or when an entity has a statutory obligation to conduct a criminal history background check.

Page 4, remove lines 13 through 22.

Renumber accordingly

19.0034.06001  
Title.

Prepared by the Legislative Council staff for  
Representative Roers Jones  
March 18, 2019

#1  
HB 1256  
3.20.19

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1256

Page 2, line 14, replace the first "an" with ":

- a. A felony offense involving domestic 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"

Renumber accordingly

#2  
HB 1256  
3.20.19

**HB 1256**

**Senate Judiciary Committee**

**Testimony of Samera Schneider in support**

**March 20, 2019**

Chairman Larson and members of the Senate Judiciary Committee:

Thank you for the opportunity to speak here today. My name is Samera Schneider. I am a student in the University of Mary Social Work Program, and I am here to testify in favor of House Bill 1256, which will allow an individual to file a petition to seal his or her criminal record if the individual has been charged with a misdemeanor offense and has not been charged with a new crime for at least three years from the date of release, or if an individual has been charged with a felony offense and has not been charged with a new crime for at least five years from the date of release. This does not apply to individuals who have been ordered to register as child and/or sex offenders.

House Bill 1256 has the potential to help many North Dakotans— including my brother—secure good jobs despite mistakes made in the past. My brother was charged with driving under the influence (DUI) six years ago, and he has not committed any offenses since. Though he already paid the price for the mistake that he made, my brother still faces ramifications when filling out job applications. If passing House Bill 1256 has the potential to help my brother, it has the potential to help many people in similar situations.

Furthermore, as a future Social Worker, House Bill 1256 has the potential to improve the lives of my future clients. Passage of this bill will make it easier for my future clients (many of whom will have some sort of criminal record) to pass background checks for jobs and housing applications, which will aid them in getting back on their feet and becoming productive members of society.

I would again like to thank all of you for your time today. I stand for questions.

#3  
HB 1256  
3.20.19

North Dakota 66th Legislative Assembly  
SENATE JUDICIARY COMMITTEE  
Hon. Senator Diane Larson, Chair  
Hearing on March 19, 2019

Re: Testimony in Opposition to House Bill 1256

Chair Larson and members of the Committee, my name is Josh Traiser and I am an Assistant Cass County State's Attorney. I am here to express some concerns I have with House Bill 1256.

The most concerning aspect of this bill is its overbreadth. As written, only convictions which require registration under N.D.C.C. § 12.1-32-15 cannot be sealed. Meaning, persons convicted of robbery, child neglect, burglary, aggravated assault, murder, and other serious offenses will be able to petition the court to have their convictions sealed. No legitimate public interest is furthered by sealing a defendant's serious, violent criminal history. To the contrary, erasing such a criminal history will endanger the public. Employers, neighbors, and family members deserve to know if a person has been convicted of a serious crime in the past. The decision to disregard that serious and/or violent criminal history should be theirs to make.

To some extent, the bill anticipates the Court acting as a check on some of these public safety concerns by providing a mechanism for the Court to conduct a hearing and make detailed findings which justify the sealing of a case. However, this is an insufficient check because the Court's decision is practically unreviewable and will be based upon facts gathered by unqualified investigators.

12-60.1-04(4) directs prosecutors to "notify and seek input from law enforcement, witnesses, victims, and correctional authorities familiar with the petitioner and the offense." Our offices are not equipped to conduct this type of investigation. Some counties have victim witness coordinators who can try to gather input from victims, but most counties do not have an investigative team capable of reaching out to witnesses, law enforcement, and correctional officers for interviews prior to a hearing on a petition. Because of these limitations, many of these hearings will be supported by slipshod investigations which will result in uninformed decisions by the Court. For these reasons, hearings on petitions to seal serious and/or violent crimes will not adequately address the legitimate public concerns which accompany those crimes.

Many of my concerns could be addressed with a handful of changes. First, the bill should specify the types of a crimes a person can seal, rather than restricting the types of crimes a person cannot seal. If the bill is restricted to nonviolent drug crimes, many of the public safety concerns I've outlined will be significantly lessened. Second, the bill should contain language allowing prior convictions to be used in future cases. Third, 12-60.1-02(1) should be amended to provide that a person is eligible for filing a petition to seal after their, "release from incarceration, parole, or probation, whichever is latest." Finally, 12-60.1-04(2)(e) references a repealed statute.

# 3  
HB 1256  
3.20.19

I believe that many prosecutors could get behind a bill which expunges non-violent misdemeanor offenses after a period of time. The expungement process outlined in the bill is not unreasonable if it is restricted to non-violent misdemeanors. The length of time could be debated, but five crime-free years following a person's release from probation seems reasonable.

Senate Judiciary Committee

HB 1256

March 20, 2019

#4

HB 1256

3.20.19

Testimony of JoDee S. Wiedmeier, Executive Director  
North Dakota Board of Podiatric Medicine

Chairwoman Larson and members of the Senate Judiciary Committee, my name is JoDee Wiedmeier, Executive Director of the North Dakota Board of Podiatric Medicine. By statute, the Board is responsible for the licensing and regulation of the practice of podiatry in North Dakota. On behalf of the board, which is composed of four podiatrists, one physician, and one public member from throughout the state, I speak in opposition to HB 1256, as written.

Initially, the ND Board of Podiatric Medicine opposed this bill based upon concerns that it would not have access to criminal court records that it may need to properly and fully consider an application for podiatric medical licensure. However, after the amendments passed by the House, the board has only one concern with the engrossed version of this bill.

Subsection 9 on Page 4, Line 15 indicates that if the court grants the petition to seal a criminal record, the court shall state that the individual is sufficiently rehabilitated but is still subject to section 12.1-33-02.1, or the court **may** release the information when an entity has a statutory obligation to conduct a criminal history background check. The board's concern lies with the word "may" as this is subjective. It appears according to subsection 2, on page 1, line 19, that upon a criminal history background check, the board would be able to receive a report noting the criminal conviction. However, if the board determined further review of the court documents was necessary and requested a copy of the records, the court may or may not release them. Since the court would have this discretion, what procedure would the board have to go through in order to request the court documents and how long would it take before a decision to release the records was rendered? Workforce issues has made the timely issuance of licenses by professional and occupational boards an important topic this legislative session and such procedures could delay the issuance of a license significantly. Further, if the board cannot independently verify the facts related to a conviction, the board is left with relying on whatever information the applicant decides to share with the board which is also troublesome.

Therefore, in conclusion, the board would respectfully request the word 'may' on Page 4, Line 17, be amended to 'shall'. Thank you for your consideration.

Sixty-sixth  
Legislative Assembly  
of North Dakota

ENGROSSED 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~~:  
15      a. A felony offense involving violence or intimidation during the period in which the  
16      offender is ineligible to possess a firearm under subdivision a of subsection 1 of  
17      section 62.1-02-01; or  
18      b. An offense for which an offender has been ordered to register under section  
19      12.1-32-15.

20      **12-60.1-03. Petition to seal criminal record.**

- 21      1. A petition to seal a criminal record must be filed in the existing criminal case for the  
22      offense.  
23      2. Subject to redaction requirements in rule 3.4 of the North Dakota Rules of Court, a  
24      petition must include:  
25      a. The petitioner's full name and all other legal names or aliases the petitioner has  
26      used at any time;  
27      b. The petitioner's addresses from the date of the offense until the date of the  
28      petition;  
29      c. Reasons why the petition should be granted;  
30      d. The petitioner's criminal history in this state and any other state, federal court, and  
31      foreign country, including:

- 1           (1) All prior and pending criminal charges;
- 2           (2) All prior and pending charges for which an imposition of sentence has been
- 3                 deferred or stayed, or which have been continued for dismissal; and
- 4           (3) All prior requests by the petitioner with authorities in this state or another
- 5                 state or federal forum for pardon, return of arrest records, expungement, or
- 6                 sealing of a criminal record, whether granted or not.

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

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

11       **12-60.1-04. Hearing on petition.**

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

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

15       b. The benefit to the petitioner outweighs the presumption of openness of the  
16         criminal record;

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

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

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

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

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

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

25       b. The risk the petitioner poses to society;

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

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

28       e. Aggravating or mitigating factors relating to the underlying crime, including  
29         factors outlined in section ~~12-32-04~~12.1-32-04;

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

- 1           g. The recommendations of law enforcement, prosecutors, corrections officials, and  
2           those familiar with the petitioner and the offense; and
- 3           h. The recommendations of victims of the offense.
- 4        3. A hearing on the petition may not be held earlier than forty-five days following the filing  
5        of the petition.
- 6        4. To the extent practicable, upon receipt of a petition to seal a criminal record, the  
7        prosecutor shall notify and seek input from law enforcement, witnesses, victims, and  
8        correctional authorities familiar with the petitioner and the offense.
- 9        5. This section does not prohibit a prosecutor from stipulating to seal a criminal record  
10       without a hearing or more expeditiously than provided in this section.
- 11       6. An individual may not appeal a denial of a petition from a district judge or magistrate.
- 12       7. An individual aggrieved by denial of a petition in a municipal court may appeal the  
13       denial to the district court for de novo review without payment of a filing fee. A petition  
14       denied by the district court may not be appealed.
- 15       8. Except as provided in this section, if a petition is denied an individual may not file a  
16       subsequent petition to seal a criminal record for at least three years following the  
17       denial.
- 18       9. If a court grants a petition to seal a criminal record, the court shall state in the court  
19       order that the petitioner is sufficiently rehabilitated but is subject to the provisions of  
20       section 12.1-33-02.1, ~~or may~~ and shall release the information when an entity has a  
21       statutory obligation to conduct a criminal history background check.

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

- 24        1. An individual convicted of prostitution or an offense listed in subsection 1 of section  
25        12.1-41-12 which was committed as a direct result of being a victim may apply by  
26        motion to the court to vacate the conviction and ~~expunge~~ seal the record of conviction.  
27        The court may grant the motion on a finding that the individual's participation in the  
28        offense was a direct result of being a victim.

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

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

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

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

March 28, 2019

#1  
HB 1256  
4.1.19

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1256

Page 2, line 14, replace the first "an" with ":

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"

Page 3, line 26, replace "12-32-04" with "12.1-32-04"

Page 4, line 17, replace "or may" with "and shall"

Renumber accordingly