

2021 HOUSE JUDICIARY

HB 1196

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary
Room JW327B, State Capitol

HB 1196
1/25/2021

Relating to sealing criminal records.
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Chairman Klemin called the hearing to order at 2:30 PM.

Present: Representatives Klemin, Karls, Becker, Christensen, Cory, K Hanson, Jones, Magrum, Paulson, Paur, Roers Jones, Satrom, and Vetter. Absent Rep. Buffalo.

Rep. Roers Jones: Introduced the bill. Testimony #3110 2:30 PM.

Discussion Topics:

- Proposed amendments
- To allow someone to find a job when they have a criminal record

Jesse Walstad, ND Association of Criminal Defense Lawyers: Testimony #2911

Adam Martin: F5 Project: 3:00 PM

Representatives	Vote
Chairman Klemin	
Vice Chairman Karls	
Rep Becker	
Rep. Christensen	
Rep. Cory	
Rep T. Jones	
Rep Magrum	
Rep Paulson	
Rep Paur	
Rep Roers Jones	
Rep B. Satrom	
Rep Vetter	
Rep Buffalo	
Rep K. Hanson	

Additional written testimony: #2622

Chairman Klemin closed the hearing at 3:06.

DeLores D. Shimek
Committee Clerk

21.0212.01001

Sixty-seventh
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1196

Introduced by

Representatives Roers Jones, Heinert, Ista, Keiser, Mock, O'Brien

Senator Dwyer

1 A BILL for an Act to amend and reenact sections 12-60.1-01 and 12-60.1-02 and subsection 8
2 of section 12-60.1-04 of the North Dakota Century Code, relating to sealing criminal records.

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

4 **SECTION 1. AMENDMENT.** Section 12-60.1-01 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **12-60.1-01. Definitions.**

7 As used in this chapter:

- 8 1. "Court record" includes:
 - 9 a. Any document or information collected, received, or maintained by court
 - 10 personnel in connection with a judicial proceeding;
 - 11 b. Any index, calendar, docket, register of actions, official record of the proceedings,
 - 12 order, decree, judgment, minute, and any information in a case management
 - 13 system created or prepared by court personnel relating to a judicial proceeding;
 - 14 and
 - 15 c. Information maintained by court personnel pertaining to the administration of the
 - 16 court or clerk of court office and not associated with a particular case.
- 17 2. "Criminal record" means court and prosecution records subject to sealing under this
- 18 chapter. A criminal record does not include criminal history record information as
- 19 defined in subsection 5 of section 12-60-16.1 or criminal justice data information
- 20 maintained in the criminal justice data information sharing system under section
- 21 54-12-34.
- 22 3. ~~"Employee" has the same meaning as in section 14-02.4-02.~~
- 23 4. ~~"Employer" has the same meaning as in section 14-02.4-02.~~

1 5. "Prosecutor" means the office or agency with jurisdiction over the offense for purposes
2 of postconviction proceedings.

3 ~~6.4.~~ "Seal" means to prohibit the disclosure of the existence or contents of court or
4 prosecution records unless authorized by court order.

5 **SECTION 2. AMENDMENT.** Section 12-60.1-02 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **12-60.1-02. Grounds to file petition to seal criminal record.**

8 1. An individual may file a petition to seal a criminal record if:

9 a. The individual pled guilty to or was found guilty of a misdemeanor offense and
10 the individual has not been ~~charged with~~convicted of a new crime for at least
11 three years from the date of release from incarceration, parole, or probation
12 ~~before filing the petition~~; or

13 b. The individual pled guilty to or was found guilty of a felony offense and the
14 individual has not been ~~charged with~~convicted of a new crime for at least five
15 years from the date of release from incarceration, parole, or probation~~before filing~~
16 the petition.

17 2. This chapter does not apply to:

18 a. A felony offense involving violence or intimidation during the period in which the
19 offender is ineligible to possess a firearm under subdivision a of subsection 1 of
20 section 62.1-02-01; or

21 b. An offense for which an offender has been ordered to register under section
22 12.1-32-15.

23 3. A petition under this section may not be granted to an individual with pending criminal
24 charges.

25 **SECTION 3. AMENDMENT.** Subsection 8 of section 12-60.1-04 of the North Dakota
26 Century Code is amended and reenacted as follows:

27 8. Except as provided in this section and if good cause is shown, ~~if a petition is denied an~~
28 ~~individual a district court denying a petition may not file~~prohibit a petitioner from filing a
29 subsequent petition to seal a criminal record for at least up to three years following the
30 denial. The order denying the petition must provide the reasons establishing good
31 cause for prohibiting the petition.

January 24, 2021

Testimony to the **House Judiciary Committee**

Submitted By: Jesse Walstad on behalf of the ND Association of Criminal Defense Lawyers

Testimony **in Support of H.B. 1196**

Chairmen and Members of the House Judiciary Committee:

My name is Jesse Walstad and I represent the ND Association of Criminal Defense Lawyers. The NDACDL is made up of lawyers throughout our state who dedicate a portion of their practice to criminal defense. The mission of the NDACDL is “to promote justice and due process” and to “promote the proper and fair administration of criminal justice within the State of North Dakota.” With that mission in mind, the NDACDL **supports H.B. 1196** and recommends a **DO PASS** from the House Judiciary Committee.

Criminal records severely impair a person’s access to employment, education, housing, public assistance, and civic engagement. The overwhelming majority of employers, colleges, landlords and lenders employ background screening checks specifically to determine whether a person has prior convictions. Chapter 12-60.1, N.D.C.C., offers a ray of hope and a powerful rehabilitative incentive to those who have been convicted of applicable offenses. State and local governments across the county have recognized the profound and long lasting negative impacts stale criminal records have on individuals, families, and society. They have also acknowledged the disproportionately negative effect stale criminal records have on minorities and disadvantaged socioeconomic groups. Thankfully, North Dakota has been among the majority of state governments to expand record sealing remedies to address these legitimate concerns.

The record sealing provision of Chapter 12-60.1, N.D.C.C., as passed by the Legislative Assembly only two years ago, recognizes and rewards rehabilitation by helping to alleviate the taint of stale convictions after the individual has demonstrated the requisite period of law abiding behavior. It implicitly recognizes society’s interest in maintaining an easily accessible record of conviction while simultaneously acknowledging that after an individual has paid their debt to society and demonstrated a lengthy period of rehabilitation the value of maintaining a public record is outweighed by the stigma and collateral consequences of a stale conviction. Since the statute took effect in August 2019, my colleagues and I have routinely advised our clients of the statute’s record sealing provision including the requirement that they must remain law abiding for the requisite period of years and demonstrate reformation warranting relief. I genuinely believe it provides an achievable goal and the vast majority of my clients take it very seriously and strive to earn this relief.

H.B. 1196 is common sense legislation that would add necessary clarity to Chapter 12-60.1, N.D.C.C. Specifically, H.B. 1196 would amend Section 12-60.1-02 to clarify that a subsequent “conviction” rather than a mere “charge” within the requisite period would preclude the record sealing benefit of the statute. This is a critical distinction particularly because the main thrust of the sealing provision is a demonstration of reformation warranting relief. Guilt does not attach to a defendant until they are convicted, whereas charges may be filed on information wholly incapable of sustaining a conviction or proving guilt. Most importantly, the defendant is innocent until proven guilty. Amending “charged with” to “convicted of” implicitly acknowledges the defendant’s innocence at the charging stage, recognizes that our justice system makes mistakes in the charging stage, and comports with the statute’s overall goal of rewarding reformation.

H.B. 1196 would also remove “from the date of release from incarceration, parole, or probation” and insert “before filing the petition” as the triggering mechanism initiating the three or five year period. The inherent flaw in the current language is clearly demonstrated in State of North Dakota, v. M.J.W., 2020 WL 5232263 (N.D.)(Aug. 27, 2020). In that case, an individual plead guilty to misdemeanor offenses in 2000, 2001, 2003, and 2004. The individual did not have any other convictions and lived an otherwise law abiding life for the next fifteen years. After Chapter 12-60.1, N.D.C.C., took effect on August 1,

2019, the individual petitioned to have the stale records sealed, arguing that they had remained law abiding for fifteen years and warranted relief. The District Court found the statute to be ambiguous and granted the petition to seal the records in all five prior cases. The State appealed arguing that, due to the close temporal proximity of the convictions between 2000 and 2004, the individual had been charged with subsequent crimes during the period beginning “from the date of release from incarceration, parole, or probation.” The Supreme Court concluded that while the individual remained law abiding for the fifteen years preceding the petition, they had been charged with offenses within the period following the triggering “from” date so the statute did not afford them relief on its face. The sealing orders were reversed. The proposed amendment in H.B. 1196 would prevent similar situations from occurring by requiring a three or five year look back period from the date the petition is filed. Thus a person, such as the individual in State v. M.J.W., would no longer be defined by a brief troubled period buried deep in their past but by the recent law abiding conduct of the reformed petitioner standing before the court.

H.B. 1196 would also amend Section 12-60.1-04 to clarify the manner in which a petition would be denied and limit the period in which a person would be prohibited from bring a subsequent petition. In its present form, the statute prevents a subsequent petition following denial for “at least” three years. H.B. 1196 would amend this language to state “up to” three years. The current language is ambiguous and make no clear distinction regarding when a subsequent petition must be considered by the court. It is clear that no subsequent petition would be considered within three years, but it leaves open the question of whether a subsequent petition would have to be considered at all. The proposed amendment would allow a subsequent petition to be filed with the three years at the discretion of a District Court, but would guarantee a subsequent petition would be considered after three years at the latest.

The proposed amendment to Section 12-60.1-04 would also require the district court to provide it’s rational when denying a petition. This common sense change would require the court to insert into the record the reasons for denial, thereby giving the petitioner clear guidance for those areas of concern that require additional rehabilitative efforts before the court would grant the requested relief. In essence, it would ensure a clear record and give the individual a better understanding of areas of improvement and increased attention to work on before submitting a subsequent petition, eliminating confusion and charting a clear course to success for the determined reforming petitioner.

For the forgoing reasons, the NDACDL urges a **DO PASS** on H.B. 1196.

Respectfully,



Jesse Walstad

Ladies and Gentlemen of North Dakota's 67th Legislative Assembly,

I believe the proposed changes in House Bill No. 1196 need to be approved and implemented into North Dakota Century Code. I have friends and family who I've witnessed turn their lives around and make positive changes for themselves after incarceration. There is no reason why their non-violent past should continue to haunt them; preventing them from creating a brighter future for themselves and their families.

Individuals released from the correctional institution seemingly have the deck stacked against them. Barriers such as housing and employment, which both routinely perform criminal background checks, can appear insurmountable with criminal charges on one's record. We as a society collectively tell the formerly incarcerated to get their life together. But how do you continue to get your life together when you have the continual dark cloud of a criminal record hanging over your head?

I've witnessed the resiliency of one man who has been convicted of a non violent felony. He served his incarceration time and successfully completed his probation. He has done well for himself as an entrepreneur. At one point he and I attempted buying into a franchise but we were denied by the company because of the criminal conviction on his record. It's these types of scenarios where you as a legislator have the opportunity to make a difference in the lives of people who are trying their best to improve their circumstances. Words matter. Choosing to replace the words "charged with" and replace them with "convicted of" will undoubtedly positively impact lives. We all know that mistakes happen, people get falsely accused, charges get dropped and dismissed regularly. On top of all that we as citizens have a right to due process and are supposed to be presumed innocent until proven guilty. If that really is the standard then making the proposed changes is the only moral option.

Respectfully,

Skyler Dutton

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary
Room JW327B, State Capitol

HB 1196 PM
2/2/2021

Relating to sealing criminal records.
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Chairman Klemin called the meeting to order 4:43 PM.

Present: Representatives Klemin, Becker, Christensen, Cory, K Hanson, Jones, Magrum, Paulson, Paur, Roers Jones, Satrom, and Vetter. Absent Rep. Karls

Representative Satrom moved a **Do Pass** on HB 1196.

Representative Hanson seconded the motion.

Representatives	Vote
Chairman Klemin	Y
Vice Chairman Karls	A
Rep Becker	Y
Rep. Christensen	Y
Rep. Cory	Y
Rep T. Jones	Y
Rep Magrum	N
Rep Paulson	Y
Rep Paur	N
Rep Roers Jones	Y
Rep B. Satrom	Y
Rep Vetter	Y
Rep Buffalo	Y
Rep K. Hanson	Y

The motion passed 11-2-1-

Representative Roers Jones will be the carrier.

Chairman Klemin closed the hearing at 4:47 PM.

DeLores D. Shimek by Marge Conley
Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1196: Judiciary Committee (Rep. Klemin, Chairman) recommends **DO PASS** (11 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HB 1196 was placed on the Eleventh order on the calendar.

2021 SENATE JUDICIARY

HB 1196

2021 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

HB 1196
3/8/2021

A BILL for an Act to amend and reenact sections 12-60.1-01 and 12-60.1-02 and subsection 8 of section 12-60.1-04 of the North Dakota Century Code, relating to sealing criminal records.
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Hearing called to order Senators Present: **Myrdal, Luick, Bakke, Fors, Heitkamp, Larson.**

Discussion Topics:

- Supreme Court Interpretations
- Grace period to petition for the removal of charge

Rep. Shannon Roers Jones, provided oral testimony in favor [3:02]

Chad Henningsguard, Jamestown, ND, provided oral testimony in favor [3:15]

Senator Myrdal Moved a DO PASS
Senator Luick Seconded the motion
Vote Passed 6-0-1
Senator Bakke Carried the Bill

DO PASS ON HB 1196	Vote
Senator Diane Larson	Y
Senator Michael Dwyer	A
Senator JoNell A. Bakke	Y
Senator Robert O. Fors	Y
Senator Jason G. Heitkamp	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Additional written testimony:

Krista Andrews, North Dakota Apartment Association provided testimony in opposition #7947

Hearing Adjourned [3:33]

Jamal Omar, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1196: Judiciary Committee (Sen. Larson, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1196 was placed on the Fourteenth order on the calendar.

North Dakota Apartment Association's Testimony
On House Bill 1196

My name is Krista Andrews, and I appear today on behalf of the North Dakota Apartment Association (NDAA) in opposition to House Bill 1196.

The proposed House Bill 1196 will prevent housing providers from accessing critical criminal background information to determine the safety of the applicant for the other tenants as well as the property.

Within appropriate parameters, criminal background checks are an important component of tenant screening, to ensure that the potential tenant does not present potential safety issues to other tenants and the property.

The U.S. Department of Housing and Urban Development has provided guidance to housing providers regarding their use of criminal history to deny a rental application. To ensure a criminal record is not used to shield discriminatory intent, a housing provider bears the burden of proof that any discriminatory effect caused by the review practice is justified.

The NDAA opposes House Bill's 1196 timeframe for having the criminal records sealed. Housing providers would be unable to give thoughtful and thorough review to the applications that could create detrimental impacts for the other residents and the property. Should this bill pass with the currently listed timeframe, NDAA strongly recommends an exception be included for housing providers to have access to this information when conducting background checks.

Thank you for your consideration. I would be happy to address any questions.