



EXPUNGEMENT OF CRIMINAL RECORDS

A Research Guide for a North Dakota Court Process

The North Dakota Legal Self Help Center provides resources to people who represent themselves in civil matters in the North Dakota courts.

The information provided in this research guide is intended as a starting point for your research into expungement of North Dakota criminal records. The information provided in this research guide is not intended for legal advice and cannot replace the advice of competent legal counsel licensed in the state.

The self-represented individual must make all decisions about how to proceed.

References to non-ND Legal Self Help Center resources are included for your convenience only. Including these references does not mean the ND Legal Self Help Center endorses, warrants, or accepts responsibility for the content or uses of the resource. Use at your own risk.

(Please note: The ND Legal Self Help Center cannot provide assistance in criminal matters.)

OVERVIEW OF EXPUNGEMENT OF CRIMINAL RECORDS:

In general, expungement of criminal records is deletion and destruction of all record information. In North Dakota, expungement of criminal records is available in limited circumstances.

To determine if you can ask a North Dakota district court to expunge your North Dakota criminal records, you will need to research the laws related to the crime(s) and the laws related to expungement. You may wish to consult an attorney.

Currently, expungement of criminal records is limited to the following:

- 1. Records as a direct result of being a victim of human trafficking:** If convictions of prostitution, misdemeanor forgery, misdemeanor theft, insufficient funds or credit offenses, manufacture or possession of a controlled or counterfeit substances offenses, or drug paraphernalia offenses were committed as a direct result of being a victim of human trafficking, the defendant may make a motion to the court to vacate and expunge the record of conviction. (NDCC Section 12.1-41-14)
- 2. Records for possession of one ounce or less of marijuana:** If the conviction is a first time offense and the defendant does not have another conviction within two years, the defendant may make a motion to the court to expunge the records. (NDCC Section 19-03.1-23)

- 3. Records of juvenile court unruly/delinquency proceedings:** Delinquency records are retained for 10 years after the final order, or age 18, whichever is later. Unruly records are retained for 1 year after age 18 or the expiration of the final order, whichever is later. The records are destroyed and all agencies involved are notified. Upon inquiry about the records, the agencies reply that no records exist. (NDCC Section 27-20-54; Rule 19 of the North Dakota Rules of Juvenile Procedure)
- 4. Records of DNA profiles:** A defendant may petition the court to order the State Crime Laboratory to expunge the DNA profile from the database if the arrest that led to the addition of the defendant's DNA profile in the database 1) did not result in a felony charge within one year; 2) was resolved by a dismissal, acquittal, or misdemeanor conviction; 3) did not result in a felony conviction; or 4) the conviction on which the authority for including the DNA profile was based has been reversed or the case dismissed. (NDCC Section 31-13-07)
- 5. Records of unconstitutional arrests:** If the arrest was unconstitutional and the charges were dismissed or the conviction overturned, the defendant may petition the court to expunge the arrest records. (State v. Howe, 308 N.W.2d 743 (N.D. 1981))

In North Dakota, criminal record information is mainly found in the court records maintained by the North Dakota court system, and in the criminal history records maintained by the Bureau of Criminal Investigation (BCI).

The North Dakota court system maintains records of documents and evidence that were filed with the court during the criminal case. The North Dakota court system also maintains records generated during hearings or trials that occurred during the criminal case. Members of the public can search court records online at www.ndcourts.gov/public-access.

The Bureau of Criminal Investigation (BCI) is North Dakota's central repository for criminal history information. BCI compiles records of arrests and prosecutions of individual offenders for use by law enforcement, the courts, and the public. The criminal history information is submitted by local law enforcement agencies, state's attorneys, the courts, parole & probation, etc., to BCI. Information about BCI is found online at attorneygeneral.nd.gov.

You may wish to research pardons in North Dakota.

Pardon means the removal of punishment or custody imposed upon a person for the commission of an offense. A pardon does not remove the fact of that person's conviction or plea or finding of guilt for an offense unless specifically stated in the certificate of pardon.

Pardons are a function of the executive branch of North Dakota government.

The Pardon Advisory Board makes recommendations to the Governor. Recommendations are not official until signed by the Governor. Information about the Pardon Advisory Board process is found online at www.governor.nd.gov/boards.

NORTH DAKOTA STATUTES RELATED TO EXPUNGEMENT OF CRIMINAL RECORDS:

*(North Dakota statutes are found in the North Dakota Century Code (NDCC). The North Dakota Century Code contains the laws enacted by North Dakota Legislature. The NDCC is found online at www.legis.nd.gov/general-information/north-dakota-century-code. **These are not the full chapters and sections contained in the NDCC, please follow the links to view the laws in full.**)*

Chapter 12-55.1. Pardon Advisory Board. www.legis.nd.gov/cencode/t12c55-1.html

Chapter 12-60. Bureau of Criminal Investigation.
www.legis.nd.gov/cencode/t12c60.html

Chapter 12.1-41. Uniform Act on Prevention of and Remedies for Human Trafficking.
www.legis.nd.gov/cencode/t12-1c41.html

- See Section 12.1-41-14: Motion to vacate and expunge conviction.

Chapter 19-03.1. Uniform Controlled Substances Act. www.legis.nd.gov/cencode/t19c03-1.html

- See Section 19-03.1-23: Prohibited acts A - Mandatory terms of imprisonment and fines - Unclassified offenses - Penalties.
 - Subsection 19-03.1-23(9) contains requirements for sealing the court record of certain possession of marijuana convictions.

Chapter 27-20. Uniform Juvenile Court Act. www.legis.nd.gov/cencode/t27c20.html

- See Section 27-20-54: Destruction of juvenile court records.

Chapter 31-13. DNA Analysis www.legis.nd.gov/cencode/t31c13.html

- See Section 31-13-07: Removal of DNA profiles from database.

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NORTH DAKOTA CASE LAW RELATED TO EXPUNGEMENT OF CRIMINAL RECORDS:

(When the decision of a case is appealed from a North Dakota District Court to the North Dakota Supreme Court, the Supreme Court writes their opinion to explain how and why they interpreted the laws or rules to decide the appeal the way they did. The opinions are case law and are followed by North Dakota courts deciding later cases with similar facts and issues.)

Records of unconstitutional arrests:

The North Dakota Supreme Court decision, State v. Howe, 308 N.W.2d 743 (N.D. 1981), provides for expungement of records of unconstitutional arrests.

- State v. Howe is **not** available at www.ndcourts.gov.
- State v. Howe is published in print in the North Western Reporter 2nd Series in Volume 308 at page 743.
- The opinion may be available free of charge at Google Scholar (scholar.google.com), Justia (law.justia.com), and the Legal Information Institute (www.law.cornell.edu).
- The opinion may be available for a monthly subscription rate at VersusLaw (www.versuslaw.com) and Fastcase (www.fastcase.com).

Review the North Dakota Supreme Court opinions related to the crime(s) and laws related to expungement. One way to research case law related to the crime(s) and expungement of criminal records, is to use the print version of the North Dakota Century Code to find the short summaries of case law after each Section of the Century Code. The case law summaries are located directly following the text of the Century Code Section. To view the full text of the opinion, go to www.ndcourts.gov. Hover over the “Supreme Court” drop down menu and click on “Opinions” and enter the case name or case citation.

Another way to research case law related to the crime(s) and expungement of criminal records, is to search by topic at www.ndcourts.gov. Hover over the “Supreme Court” drop down menu and click on “Opinions.” Use the “Topic” drop down list to narrow your search to topics that correspond to expungement of criminal records.

NORTH DAKOTA COURT RULES RELATED TO EXPUNGEMENT OF CRIMINAL RECORDS:

(Court rules govern how a dispute makes its way to court and how the dispute is conducted. All of the court rules are found online at www.ndcourts.gov/legal-resources/rules.)

Rule 19 of the North Dakota Rules of Juvenile Procedure: Juvenile Records.

www.ndcourts.gov/legal-resources/rules/ndrijuvp/19

LAWS CONSTANTLY CHANGE THROUGH LEGISLATION, ADMINISTRATIVE RULES AND RULINGS, AND COURT DECISIONS.

To determine how a law applies to your situation, review the applicable law or laws, administrative rulings and court decisions. Notes of court decisions related to North Dakota law can be found in the print editions of the North Dakota Century Code. Print editions of the North Dakota Century Code and North Dakota court rules are found in many North Dakota public and academic libraries.

Only a lawyer licensed to practice in North Dakota who has agreed to represent you can give you legal advice. Legal advice includes interpreting how the laws and rules apply to your situation.

LIBRARY RESOURCES: (Not all legal resources are available online.)

ODIN is a shared library database of many North Dakota academic, public, state agency, and special libraries. Search ODIN for resources that may be available in a North Dakota library near you. (www.odin.nodak.edu)

If the book is available for interlibrary loan through ODIN, ask the librarian or library staff of your local North Dakota library how to request the book.

Following are library resources that may be of interest to you:

The Criminal Law Handbook: Know Your Rights, Survive the System, Paul Bergman, Sara J. Berman, NOLO, multiple editions.

North Dakota Century Code Annotated, Lexis Nexis, Creation Date c1959 – present.

North Dakota Court Rules Annotated, Lexis Nexis, Creation Date c1990 – present.

North Western Reporter 2nd Series, Thomson Reuters, Creation Date c1941 – present.

OTHER LEGAL RESEARCH RESOURCES:

How to Research a Legal Problem: A Guide for Non-Lawyers, American Association of Law Libraries. (www.aallnet.org)

PROCESS FOR PETITIONING FOR EXPUNGEMENT OF CRIMINAL RECORDS:

If you determine that you meet the requirements to ask the court to expunge records of an unconstitutional arrest or to order the State Crime Laboratory to expunge the DNA profile from the database, you will need to petition the court for expungement.

If you determine that the petition should be filed as a civil action, carefully review the “Starting a Civil Action” Section of the “Guide to District Court Civil Action”. This can be found at www.ndcourts.gov/legal-self-help in the “District Court Civil” Section.

The “Starting a Civil Action” Section provides the basic process for starting a civil action with a summons and complaint (or petition).

Caution! When you represent yourself, you are held to same requirements and responsibilities as a lawyer, even if you don’t understand the rules or procedures.

PROCESS FOR A MOTION IN AN EXISTING CRIMINAL CASE:

If you determine that you meet the requirements to ask the court to expunge records of a first-time conviction of possession of one ounce or less of marijuana, or to vacate and expunge conviction records of offenses committed as a direct result of being a victim of human trafficking, you will need to make a written motion to the court for expungement.

The motion is made in your existing criminal case.

The ND Legal Self Help Center cannot provide assistance in criminal matters and does not have forms or instructions available.

Rule 47 of the North Dakota Rules of Criminal Procedure contains rules related to making a motion, or request, to a court in a criminal matter. (www.ndcourts.gov/legal-resources/rules/ndrcrimp)

- Examples of some types of motion forms are available in the Appendix of Forms of the North Dakota Rules of Criminal Procedure.

Rule 49 of the North Dakota Rules of Criminal Procedure contains rules related to the requirements of serving the motion to all other parties in the criminal matter.

- Rule 49 states that service must be made by following Rule 5 of the North Dakota Rules of Civil Procedure. Information and instructions for service as required by Rule 5 of the North Dakota Rules of Civil Procedure are available at www.ndcourts.gov by clicking on the “Self Help” link. Scroll to the “District Court Civil” section.

FORMS RELATED TO RECORDS MAINTAINED BY THE COURT SYSTEM:

The ND Legal Self Help Center does not have forms or instructions available specifically for expungement of criminal records.

The ND Legal Self Help Center does have two sets of forms related to records maintained by the North Dakota state court system.

Early Destruction of Juvenile Records:

The ND Legal Self Help Center has forms and instructions for requesting that the juvenile court destroy the records early. The forms and instructions are found at www.ndcourts.gov/legal-self-help under "Juvenile Court".

Motion to Prohibit Public Internet Access to Criminal Court Records:

The ND Legal Self Help Center has forms and instructions for requesting the court prohibit public internet access to criminal court records at www.ndcourts.gov/legal-self-help in the "Miscellaneous" section.

*****This is not a motion to expunge criminal records.***** If the court grants your request to limit public internet access to your criminal court records, this only applies to requests for court records. This does not limit public access to court records that have been reported to law enforcement agencies or the Bureau of Criminal Investigation.

ATTORNEY RESOURCES:

You may wish to seek the advice of an attorney. The following options may be of interest to you.

The ND Commission on Legal Counsel for Indigents runs the appointed lawyer program in North Dakota. The phone number is (701) 845-8632, the address is P.O. Box 149, Valley City, ND 58072, and the website is www.nd.gov/indigents.

The State Bar Association provides a lawyer referral service to match paying clients in need of legal services with lawyers. The phone number is (866) 450-9579, the address is P.O. Box 2136, Bismarck, ND 58502-2136, and the website is www.sband.org.

For a list of all lawyers who are licensed to practice in North Dakota, go to the North Dakota Supreme Court website at www.ndcourts.gov/Lawyers. You can narrow your search by name or location.