



## Sealing Criminal Records ([N.D.C.C. Ch. 12-60.1](#))

### A Research Guide for a North Dakota State Court Process

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

The information provided in this research guide **isn't** a complete statement of the law. This information is intended as a starting point for your research into sealing North Dakota criminal records using Chapter 12-60.1 of the North Dakota Century Code. The information provided in this research guide **isn't** intended for legal advice and **can't** replace the advice of a lawyer licensed to practice law in North Dakota.

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

- Section One. Overview of Sealing Criminal Records (Pages 2-5)**
- Section Two. Legal Research Guide for Sealing Criminal Records (Pages 6-8)**
- Section Three. Basic Court Process for Sealing Criminal Records (Pages 8-15)**
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### **No Assistance with Court Processes in Criminal Cases**

The ND Legal Self Help Center can provide information about the court process in **civil** cases in North Dakota state courts to people who represent themselves.

The ND Legal Self Help Center **can't** provide assistance with court process in **criminal cases** and **doesn't** have forms, procedures, or expertise available in this area.

If you represent yourself, you conduct your own legal research, determine the appropriate procedures, and create your own legal documents. You may also retain a lawyer to help you with all or part of your legal representation.

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

## Overview of Sealing North Dakota Criminal Records

### What is sealing criminal records?

Criminal records may be sealed under [Chapter 12-60.1 of the North Dakota Century Code \(N.D.C.C.\)](#).

If criminal records are sealed using the N.D.C.C. Chapter 12-60.1 process, records aren't deleted or destroyed. However, disclosure of the existence or content of the criminal records is prohibited.

**Important!** Certain criminal records reported to the North Dakota Bureau of Criminal Investigation (BCI) **can't** be sealed. Keep reading for more information.

### After criminal records are sealed, can they be un-sealed?

**Yes,** a court may order the disclosure of the sealed criminal records.

### Can I have my DUI criminal records sealed under N.D.C.C. Chapter 12-60.1?

**No,** DUI criminal records **can't** be sealed using the N.D.C.C. Chapter 12-60.1 process. This research guide **doesn't** include information about sealing DUI records.

To start your legal research into sealing DUI criminal records, see [N.D.C.C. Section 39-08-01.6](#).

### How is sealing criminal records different from expunging 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 only in limited circumstances.

See the [Expungement of Criminal Records](#) research guide for more information.

### Where do I file a Petition to seal my criminal records?

You file your petition in the existing criminal case for the offense.

**Important!** The existing criminal case **must** be either a North Dakota municipal court case or a North Dakota state district court case.

## How does N.D.C.C. Chapter 12-60.1 define criminal records?

[N.D.C.C. Chapter 12-60.1](#) states that criminal records include both **court records** and **prosecution records**.

Court records include:

- Any documents or information collected, received, or maintained by court personnel in connection with a judicial proceeding;
- Any index, calendar, docket, register of actions, official record of the proceedings, order, decree, judgment, minute, and any information in a case management system created or prepared by court personnel relating to a judicial proceeding; **and**
- Information maintained by court personnel pertaining to the administration of the court or clerk of court office and not associated with a particular case.

N.D.C.C. Chapter 12-60.1 doesn't specifically define the types of records considered to be prosecution records.

However, N.D.C.C. Chapter 12-60.1 does define **Prosecutor** to mean:

- The office or agency with jurisdiction over the offense for purposes of post-conviction proceedings.

## Certain criminal records reported to the North Dakota Bureau of Criminal Investigation (BCI) **can't** be sealed.

Under [N.D.C.C. Chapter 12-60.1](#), certain criminal records **can't** be sealed:

- Criminal history record information reported to the North Dakota Bureau of Criminal Investigation (BCI) **can't** be sealed, which includes:
  - Information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, information, or other criminal charges, any dispositions arising therefrom, sentencing, correctional supervision, and release.
- Criminal justice data information maintained in the Criminal Justice Data Information Sharing System **can't** be sealed. The Criminal Justice Data Information Sharing System is part of BCI.

## Who may file a Petition to have their criminal records sealed?

Under [N.D.C.C. Chapter 12-60.1](#), the following individuals may petition a North Dakota state court to seal their criminal records:

- An individual who pled guilty to or was found guilty of a **misdemeanor** offense and the individual hasn't been charged with a new crime for at least **three years** from the date of release from incarceration, parole, or probation.
- An individual who pled guilty to or was found guilty of a **felony** offense and the individual hasn't been charged with a new crime for at least **five years** from the date of release from incarceration, parole, or probation.

## Who **can't** file a Petition to have their criminal records sealed?

Under N.D.C.C. Chapter 12-60.1, the following **can't** petition a North Dakota state court to seal their criminal records:

- Individuals with felony offenses involving violence or intimidation during the period in which the individual is ineligible to possess a firearm under [N.D.C.C. Section 62.1-02-01\(1\)\(a\)](#):
  - Ten years after the date of conviction or the date of release from incarceration, parole, or probation, whichever is latest.
- Individuals with an offense for which the individual has been ordered to register under [N.D.C.C. Section 12.1-32-15](#):
  - Offenders against children and sexual offenders.

DUI criminal records **can't** be sealed using the N.D.C.C. Chapter 12-60.1 process. See [N.D.C.C. Section 39-08-01.6](#) for laws related to sealing DUI criminal records.

## What does the court consider when deciding whether to grant my Petition to seal my criminal records?

When deciding whether to seal your criminal records, the court **must** consider the following:

- The nature and severity of the underlying crime that would be sealed;
- The risk you pose to society;
- The length of time since you committed the offense;
- Your rehabilitation since the offense;

- Aggravating or mitigating factors relating to the underlying crime, including factors outlined in [N.D.C.C. Section 12.1-32-04](#) (factors considered in sentencing decisions);
- Your criminal record, employment history, and community involvement;
- The recommendations of law enforcement, prosecutors, corrections officials, and those familiar with the petitioner and the offense; and
- The recommendations of victims of the offense.

### **If the court denies my Petition to seal my criminal records, how long do I have to wait before I can petition the court again?**

If your petition to seal your criminal records is denied by the court, **you must wait three years** to file another Petition.

However, if you filed your Petition in a North Dakota municipal court, you may appeal the denial to a North Dakota state district court.

### **If the court denies my Petition to seal my criminal records, can I appeal the denial?**

**Maybe.** Appeal options are limited when a Petition to seal criminal records is denied.

Petitions denied by a North Dakota state district court judge or North Dakota state district court magistrate **may not** be appealed.

Only a denial by a North Dakota municipal court may be appealed to a North Dakota state district court.

- If the district court judge or magistrate **doesn't** reverse the municipal court's denial, the denial is final. **You must wait three years** before you can petition again.

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## Sealing Criminal Records Legal Research Resources

Following are legal research resources to get you started in your research into the requirements of sealing North Dakota criminal records under [Chapter 12-60.1 of the North Dakota Century Code \(N.D.C.C.\)](#).

The basic steps in the N.D.C.C. Chapter 12-60.1 process start on Page 8. The steps include the names and general descriptions of some of the legal documents you need to prepare.

### North Dakota Statutes Related to Sealing 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 and signed by the Governor.)*

#### [Chapter 12-60.1](#): Sealing Criminal Records.

#### [Chapter 12-60](#): Bureau of Criminal Investigation.

- See [Section 12-60-16.1](#) for records that aren't defined as criminal records under N.D.C.C. Chapter 12-60.1.

#### [Chapter 54-12](#): Attorney General.

- See [Section 54-12-34](#) for records that aren't defined as criminal records under N.D.C.C. Chapter 12-60.1.

#### [Section 39-08-01.6](#): Criminal Record - Seal - Exception.

- See Section 39-08-01.6 for laws related to sealing DUI criminal records. (DUI criminal records **can't** be sealed using the N.D.C.C. Chapter 12-60.1 process.)

### North Dakota Court Rules:

*([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 minimum, review the following:

- [North Dakota Rules of Criminal Procedure](#)
- [North Dakota Rules of Court](#)
- [North Dakota Rules of Evidence](#)

## **North Dakota Case Law:**

*(When the decision of a case is appealed from a North Dakota state 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.)*

One way to research case law related to sealing criminal records is to use the print version of the North Dakota Century Code to locate the short summaries of case law after each Section. Case law summaries are located directly after the text of the Century Code Section. To view the full text of the opinion, go to [ndcourts.gov](http://ndcourts.gov), click on “Supreme Court Opinions” and enter the case name.

You may also research case law by topic at [ndcourts.gov](http://ndcourts.gov). Click on “Supreme Court Opinions”. Use the “Topic” dropdown to narrow your search by topic.

## **Laws constantly change through legislation, court rules, administrative rules and rulings, and court decisions.**

To determine how a law or rule applies to your situation, review the applicable law or laws, court rules, administrative rules, and court decisions.

## **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. ([polaris.odinlibrary.org](http://polaris.odinlibrary.org))

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 a selection of library resources on ODIN that may be of interest to you:**

**A Short & Happy Guide to Evidence**, Sydney Beckman, West Academic Publishing, 2018.

**Courtroom Evidence Handbook: 2018-2019 Student Edition**, Steven Goode, Olin Wellborn III, West Academic Publishing, 2018.

**The Criminal Law Handbook: Know Your Rights, Survive the System**, Paul Bergman, Sara Berman, NOLO, 2018.

**Represent Yourself in Court: How to Prepare & Try a Winning Case**, Paul Bergman, Sara Berman, NOLO, 2016.

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

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

## Other Legal Research Resources

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

## Basic Court Process for Sealing Criminal Records ([N.D.C.C.12-60.1](#))

You **can't** use this process to ask a North Dakota municipal court, or a North Dakota state district court to seal your DUI criminal records. This research guide **doesn't** include information about how to seal DUI criminal records.

To start your legal research into how to seal your DUI criminal records, go to [N.D.C.C. Section 39-08-01.6](#) for laws related to sealing DUI criminal records.

## Parties in a Petition to Seal Criminal Records Under N.D.C.C. Chapter 12-60.1:

**Petitioner:** The self-represented individual who:

1. Pled guilty to or was found guilty of a **misdemeanor** offense and the individual hasn't been charged with a new crime for at least three years from the date of release from incarceration, parole, or probation; **Or**
2. Pled guilty to or was found guilty of a **felony** offense and the individual hasn't been charged with a new crime for at least five years from the date of release from incarceration, parole, or probation.

**Important!** The Petitioner **isn't** a self-represented individual with felony offenses involving violence or intimidation during the period in which the individual is ineligible to possess a firearm under [N.D.C.C. Section 62.1-02-01\(1\)\(a\)](#), **or** a self-represented individual with an offense for which the individual has been ordered to register under [N.D.C.C. Section 12.1-32-15](#).



**Respondent:** The office or agency with jurisdiction over the offense for purposes of post-conviction proceedings.

- For North Dakota municipal court cases, the office of the prosecuting official for the municipality.
- For North Dakota state district court cases, the office of the States Attorney for the county where the case is filed.

### **Documents to Start the Petition:**

In general, the following documents must be filed with the North Dakota municipal court or the North Dakota state district court:

- Petition to Seal Criminal Records Under N.D.C.C. Chapter 12-60.1;
- Proposed Order to Seal Criminal Records Under N.D.C.C. Chapter 12-60.1; **and**
  - (A proposed Order is the Order you want the judge to sign.)
- Proof of Service of the Petition and Proposed Order on the Respondent.

### **Petition Requirements:**

Refer to [North Dakota Century Code Section 12-60.1-03](#) to determine the requirements of what must be included in the petition to seal criminal records under N.D.C.C. Chapter 12-60.1.

At minimum, include the following:

- Your full name and all other legal names or aliases you've used at any time.
- Your addresses from the date of the offense until the date of the Petition.
- Reasons why your Petition should be granted.
- Your criminal history in North Dakota, any other state, federal court, and foreign country, including:
  - All prior and pending criminal charges;
  - All prior and pending charges for which an imposition of sentence has been deferred or stayed, or which have been continued for dismissal; and
  - All prior requests by you with authorities in North Dakota, or another state, or federal forum for pardon, return of arrest records, expungement, or sealing of a criminal record, whether granted or not.

## Proposed Order Requirements:

Refer to [North Dakota Century Code Section 12-60.1-04](#) to determine what must be included in an order of the court to seal criminal records under N.D.C.C. Chapter 12-60.1. **Your proposed order must reflect the requirements of N.D.C.C. Section 12-60.1-04.**

The court must find by clear and convincing evidence:

- You've shown good cause for the court to grant your petition.
- The benefit to you outweighs the presumption of openness of the criminal record.
- You completed all terms of imprisonment and probation for the offense.
- You paid all restitution ordered by the court for commission of the offense.
- You demonstrate reformation warranting relief.
- Your petition complies with the requirements of N.D.C.C. Chapter 12-60.1.

**Important!** The proposed Order must also state that the court finds the Petitioner (you) is sufficiently rehabilitated, but the Petitioner (you) is subject to the provisions of [N.D.C.C. Section 12.1-33-02.1](#) and shall release the information when an entity has a statutory obligation to conduct a criminal history background check.

The court **must** also consider the following when making the decision:

- The nature and severity of the underlying crime that would be sealed;
- The risk you pose to society;
- The length of time since you committed the offense;
- Your rehabilitation since the offense;
- Aggravating or mitigating factors relating to the underlying crime, including factors outlined in [N.D.C.C. Section 12.1-32-04](#) (factors considered in sentencing decisions);
- Your criminal record, employment history, and community involvement;
- The recommendations of law enforcement, prosecutors, corrections officials, and those familiar with the petitioner and the offense; and
- The recommendations of victims of the offense.

### **Serving Copies of the Completed Petition Documents:**

Serving (giving) copies of the following completed documents on the Respondent is an important step in the Petition process:

- Petition to Seal Criminal Records Under N.D.C.C. Chapter 12-60.1; and
- Proposed Order to Seal Criminal Records Under N.D.C.C. Chapter 12-60.1

[N.D.C.C. Section 12-60.1-03](#) requires the Petition documents to be served on the Respondent as required by [Rule 49 of the North Dakota Rules of Criminal Procedure](#).

Rule 49 of the North Dakota Rules of Criminal Procedure requires documents to be served as required by [Rule 5\(b\) of the North Dakota Rules of Civil Procedure](#).

- For information about service under Rule 5(b) and examples of proof of service documents, review the resources in the "[Service After a District Court Civil Action Has Started](#)" section.

Proof of service of copies of the following completed documents on the Respondent is required:

- Petition to Seal Criminal Records Under N.D.C.C. Chapter 12-60.1; and
- Proposed Order to Seal Criminal Records Under N.D.C.C. Chapter 12-60.1

An Affidavit, or Declaration, of Service is proof of service. However, if a sheriff served the documents, a Certificate of Service is proof of service.

### **The Prosecuting Official Must Notify and Seek Input from a Variety of Sources:**

After you arrange for the Respondent (Prosecuting Official) to be served a copy of the Petition and Proposed Order, the Prosecuting Official is required, to the extent possible, to notify and seek input from the following:

- Law enforcement;
- Witnesses;
- Victims; and
- Correctional authorities.

In general, the Prosecuting Official will notify and seek input from individuals familiar with you and the offense(s) you are petitioning the court to seal.

### **Filing the Original, Completed Petition Documents:**

File your Petition documents with the clerk of court of the existing criminal case for the offense. Make copies of all documents for your own records.

- Petition to Seal Criminal Records Under N.D.C.C. Chapter 12-60.1;
- Proposed Order to Seal Criminal Records Under N.D.C.C. Chapter 12-60.1; **and**
- Proof of Service of the Petition and Proposed Order on the Respondent.

**You may be required to pay a filing fee at the time of filing. Contact the clerk of court to confirm the amount, if any.**

### **A Hearing May Not Be Held Earlier than 45 Days After the Petition was Filed:**

If your Petition documents are accepted by the clerk of court for filing, **the earliest the court may hold a hearing is 45 days after the filing date.**

**Important!** Depending on the court's calendar, the hearing may be held much later than 45 days after the filing date.

After the hearing date is scheduled, the clerk of court may serve notice of the hearing, or you, the Petitioner, may be required to prepare and serve notice of the hearing.

### **Prepare Your Case:**

You must prove by clear and convincing evidence that:

- You have good cause for the court to grant your Petition.
- The benefit to you outweighs the presumption of openness of the criminal record.
- You completed all terms of imprisonment and probation for the offense.
- You paid all restitution ordered by the court for commission of the offense.
- You demonstrate reformation warranting relief.
- Your petition complies with the requirements of [N.D.C.C. Chapter 12-60.1](#).

The court **must** also consider the following when making the decision:

- The nature and severity of the underlying crime that would be sealed;
- The risk you pose to society;

- The length of time since you committed the offense;
- Your rehabilitation since the offense;
- Aggravating or mitigating factors relating to the underlying crime, including factors outlined in [N.D.C.C. Section 12.1-32-04](#) (factors considered in sentencing decisions);
- Your criminal record, employment history, and community involvement;
- The recommendations of law enforcement, prosecutors, corrections officials, and those familiar with the petitioner and the offense; and
- The recommendations of victims of the offense.

The Respondent may challenge your evidence and present their own evidence to disprove your evidence.

**Caution!** Preparing a case is often a complex and confusing process. You're held to the same requirements and responsibilities as a lawyer, even if you don't understand the rules or procedures. **You need to conduct additional research to prepare.**

At minimum, review and research the laws and rules listed in this research guide. You use the North Dakota Rules of Evidence, in particular, to present your evidence and object to the respondent's evidence.

Review pre-trial and trial guidebooks for self-represented litigants and lawyers. Your local public or academic library may have resources available.

### **Attend the Hearing:**

Organize the information, documents, etc. that you think you need for the hearing. At minimum, prepare an outline of your remarks and arguments.

If the hearing is scheduled in person at a courthouse, either party may ask the judge for permission to attend the hearing by telephone or by some other reliable electronic means.

The judge **isn't** required to grant this type of request. The judge may require the parties to appear at the hearing in person.

The "Appear by Phone or Other Electronic Means" form set is available at [ndcourts.gov/legal-self-help](https://ndcourts.gov/legal-self-help).

### **For an In-Person Hearing, Arrive Early to the Courthouse on the Date of the Hearing:**

If the hearing is held in-person at the courthouse, arrive early.

If you have a serious, unavoidable reason they can't get to the courthouse on the date and time scheduled for the hearing, call the Clerk of Court **immediately**.

### **For a Remote Hearing, Test the Connection to the Hearing Software (Zoom):**

If the hearing is held remotely, likely by Zoom, well before the hearing begins, test the connection to Zoom and your ability to function in Zoom.

Don't be late to the Zoom hearing. If you have a serious, unavoidable reason you can't attend the remote hearing on the date and time scheduled for the hearing, call the Clerk of Court **immediately**.

### **Conduct of the Hearing:**

The judge hears both sides and then issues a final order. Sometimes, the final order is issued at the end of the hearing. Often, the final order is issued at a later date.

In general, a hearing proceeds in the following order:

- Opening Statements
  - Each party gives an opening statement. Usually, the Petitioner goes first.
- You Present Witnesses and Evidence
  - You present your case first.
  - The Respondent may cross-examine witnesses and object to your evidence.
- Respondent Presents Witnesses and Evidence
  - The Respondent presents their case after you.
  - You may cross-examine witnesses and object to the Respondent's evidence.
- Closing Arguments
  - Each party gives a closing statement. Usually the Respondent goes first.

The judge decides if you proved the grounds for sealing your criminal records. If the judge decides you proved the grounds, the judge order seals the criminal records allowed to be sealed under N.D.C.C. Chapter 12-60.1.

## Before You Leave the Courthouse or the Remote Hearing:

Make sure you understand what happens next. Ask if you aren't sure what, if anything, you need to do next.

## Lawyer Resources

You aren't required to hire a lawyer to access the state court system. If you decide to represent yourself, you must follow all of the rules, laws and procedures that a lawyer is required to follow.

If you decide to find a lawyer to represent you, you may find the following options of interest.

- **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 [sband.org](http://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 [ndcourts.gov/Lawyers](http://ndcourts.gov/Lawyers). You can narrow your search by name or location.