



SEALING CRIMINAL RECORDS (NDCC 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 IS NOT 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. This information is not intended for legal advice and cannot replace the advice of competent legal counsel licensed to practice law in the state of North Dakota.

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.

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)

NO ASSISTANCE WITH COURT PROCESS 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 cannot provide assistance with court process in criminal cases and does not have forms, procedures, or expertise available in this area.

If you represent yourself, you will need to conduct your own legal research, determine the appropriate procedures, and create your own legal documents. You may also retain an attorney to assist you with all or part of your legal representation.

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 will need to create and prepare.

OVERVIEW OF SEALING NORTH DAKOTA CRIMINAL RECORDS

What is sealing criminal records?

The Sixty-sixth Legislative Assembly of North Dakota (2019-2020) enacted new laws related to sealing North Dakota criminal records. The new laws were signed by the Governor and became effective August 1, 2019.

The new laws are found in [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, 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) cannot be sealed. Keep reading for more information.

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

No, DUI criminal records cannot be sealed using the N.D.C.C. Chapter 12-60.1 process. This research guide does not 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 at www.ndcourts.gov/legal-self-help for more information. Scroll to the "Miscellaneous" section.

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 does not specifically define the types of records that are considered 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) cannot be sealed

Under N.D.C.C. Chapter 12-60.1, certain criminal records cannot be sealed:

- Criminal history record information reported to the North Dakota Bureau of Criminal Investigation (BCI) cannot 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 cannot be sealed. The Criminal Justice Data Information Sharing System is part of BCI.

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

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

Who may file a petition to have their criminal records sealed?

Under N.D.C.C. Chapter 12-60.1, the following 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 has not 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 has not been charged with a new crime for at least five years from the date of release from incarceration, parole, or probation.

Who cannot file a petition to have their criminal records sealed?

Under N.D.C.C. Chapter 12-60.1, the following cannot 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 cannot 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 does not 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

NORTH DAKOTA STATUTES:

(North Dakota statutes are found in the North Dakota Century Code (NDCC). The North Dakota Century Code contains the laws enacted by the North Dakota Legislature. The NDCC is found online at www.legis.nd.gov/general-information/north-dakota-century-code.)

Chapter 12-60.1: Sealing Criminal Records.

www.legis.nd.gov/cencode/t12c60-1.html

Chapter 12-60: Bureau of Criminal Investigation.

www.legis.nd.gov/cencode/t12c60.html

See Section 12-60-16.1 for records that are not defined as criminal records under N.D.C.C. Chapter 12-60.1.

Chapter 54-12: Attorney General.

www.legis.nd.gov/cencode/t54c12.html

See Section 54-12-34 for records that are not defined as criminal records under N.D.C.C. Chapter 12-60.1.

Section 39-08-01.6: Criminal Record - Seal - Exception.

www.legis.nd.gov/cencode/t39c08.pdf#nameddest=39-08-01p6

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

NORTH DAKOTA CASE LAW:

(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.)

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 directly follow the text of the Century Code Section. To view the full text of the opinion, go to www.ndcourts.gov, click on the "Supreme Court Opinions" link and enter the case name or case citation.

You may also research case law by topic at www.ndcourts.gov. Click on the "Supreme Court Opinions" link, and then on the "Topic" link.

NORTH DAKOTA COURT RULES:

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

At minimum, review the following:

North Dakota Rules of Criminal Procedure: www.ndcourts.gov/legal-resources/rules/ndrcrimp.

North Dakota Rules of Court: www.ndcourts.gov/legal-resources/rules/ndrct.

North Dakota Rules of Evidence: www.ndcourts.gov/legal-resources/rules/ndrev.

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 rules and rulings, and case law.

Legal advice can only be given by a lawyer licensed to practice in North Dakota who has agreed to represent you. Legal advice includes interpreting how the laws and rules apply to your circumstances.

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 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.

[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. (www.aallnet.org)

BASIC COURT PROCESS FOR SEALING CRIMINAL RECORDS (NDCC Ch. 12-60.1)

You **cannot** 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 **does not** 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 has not 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 has not been charged with a new crime for at least five years from the date of release from incarceration, parole, or probation.

IMPORTANT! The Petitioner is not 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 would like 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 have 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 have shown good cause for the court to grant your petition.
- The benefit to you outweighs the presumption of openness of the criminal record.

- You have completed all terms of imprisonment and probation for the offense.
- You have paid all restitution ordered by the court for commission of the offense.
- You have demonstrated 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 Petition Documents:

Serving (giving) copies of the following 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.

- Rule 5(b) of the North Dakota Rules of Civil Procedure is available at www.ndcourts.gov/legal-resources/rules/ndrcivp/5.
 - For information about service under Rule 5(b) and examples of proof of service documents, go to www.ndcourts.gov/legal-self-help/service-in-a-civil-action and review the resources in the “Service After a District Court Civil Action Has Started” section.

Proof of service of the following 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 of service is the proof of service. However, if a sheriff served the documents, a certificate of service is the 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, at 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 have completed all terms of imprisonment and probation for the offense.
- You have paid all restitution ordered by the court for commission of the offense.
- You have demonstrated 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 are held to the same requirements and responsibilities as a lawyer, even if you don't understand the rules or procedures. You will need to conduct additional research to prepare.

At minimum, review and research the laws and rules listed above. You will 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 will need for the hearing. At minimum, prepare an outline of your remarks and arguments.

Arrive Early to the Courthouse on the Date of the Hearing:

Do not miss your hearing date and time. If you have a serious, unavoidable reason you cannot get to court on the date and time scheduled for trial, call the courthouse as soon as you can.

Conduct of the Hearing:

The judge hears both sides and then issues a final judgment. Sometimes, the final judgment is issued at the end of the hearing. Often, the final judgment 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 will decide if you proved the grounds for sealing your criminal records. If the judge decides you proved the grounds, the judge will order that the criminal records allowed to be sealed under N.D.C.C. Chapter 12-60.1 be sealed.

Before You Leave the Courthouse:

Make sure you understand what happens next. Ask if you are not sure what, if anything, you need to do next.

ATTORNEY RESOURCES AND LIMITED LEGAL REPRESENTATION

You are not required to hire an attorney to access the state court system. If you decide to represent yourself, you must follow all of the rules, laws and procedures that an attorney is required to follow.

Attorney Resources

If you decide to find an attorney to represent you, you may find the following options of interest.

- Legal Services of North Dakota is a non-profit organization, providing free legal assistance to North Dakota residents in a variety of matters based on income. Legal Services of North Dakota can also determine whether an applicant meets the income requirements for the Volunteer Lawyers program that offers low-cost legal assistance based on income. The phone number is (800) 634-5263 and the website is www.legalassist.org.
- 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 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.

Limited Legal Representation

Attorneys licensed to practice in North Dakota may provide Limited Legal Representation in civil actions. Limited Legal Representation (sometimes called “unbundling”) is a way that an attorney can help you with part of your case while you do the rest of your case. You pay for the part of the case the attorney handled.

For example:

- You may want an attorney to give you an expert opinion about your options, or your legal rights and responsibilities;
- You can consult with an attorney to prepare or review your paperwork, but attend hearings yourself;
- You can represent yourself through the whole case, and periodically consult with an attorney who can coach you on the law, procedures and strategy;
- You can do the preparation yourself and hire an attorney just to make the court appearance for you.

You and the attorney must agree in writing to Limited Legal Representation.