

# ***How to petition for expungement, resentencing, or redesignation of a marijuana-related conviction***

## Introduction

The Montana Marijuana Regulation and Taxation Act (MMRTA), enacted in 2021, has made some marijuana-related activities that were previously criminal acts legal and it has made others no longer criminal acts but civil infractions. Individuals who were convicted of acts that are now legal can petition to have their conviction expunged (if they have completed their sentence for the crime) or resentenced (if they are currently serving that sentence) or redesignated as a civil infraction if the previously criminal act is now a civil infraction.

The Office of the Court Administrator (OCA) has created forms to assist you in petitioning for expungement, resentencing, or redesignation. These instructions will assist you in filling out the appropriate form and filing your petition.

## Before You Begin

You will need the following information:

A copy of your criminal record. You can obtain this for a fee from the Montana Department of Justice. Its website provides information on how to obtain this information: <https://dojmt.gov/enforcement/background-checks/#cr-contact>

You will need to know the date or approximate date of your conviction, and in which Montana court this conviction occurred.

Next, choose the appropriate form. If you are currently serving a sentence and you want the court to expunge your condition, resentence a felony conviction as a misdemeanor, or resentence your conviction as a civil infraction instead of a criminal offense, use **FORM A**. If you have completed your sentence and you want the court to expunge your conviction, redesignate a felony conviction as a misdemeanor, or redesignate a criminal conviction as a civil infraction, use **FORM B**.

You must fill out a separate form for each conviction you wish to have expunged, resentenced, or redesignated, even if those convictions occurred at the same time.

You are responsible for filing fees and other costs that may be incurred in petitioning the court and in directing the Montana Department of Justice to expunge or redesignate your conviction if your petition is successful. If you cannot afford the filing fee and court costs, you may be eligible for a fee waiver. Find information on how to ask a court to waive your filing fees here: <https://www.montanalawhelp.org/resource/how-to-ask-the-court-to-waive-your-filing-fees>

### Filling out the form

1. Fill in your name, address, telephone number, and e-mail address (optional) in the upper left corner of the first page.
2. Select the court in which you were convicted. This is where you will file this petition. Fill in the blanks with the specific information of this court. If you are not sure of the name of the court, OCA's Court Locator web page may help:  
<https://courts.mt.gov/CourtLocator/>
3. Fill in your name in the blank provided for "Petitioner."
4. Leave "Case No." blank. The Clerk of Court will fill this in when you file your Petition.
5. Fill in the date of your conviction, and then check **one** box indicating the crime that is the subject of your petition.
6. If you are using FORM B to expunge or redesignate a conviction for which you completed your sentence, fill in the date or approximate date when you completed your sentence.
7. Briefly describe for the court why you believe your conviction is eligible for expungement, redesignation, or resentencing under the MMRTA.
8. Indicate whether you are requesting a hearing. You are entitled to a hearing if you wish, but it is not required for the court to consider your petition. (See § 16-12-113(7), MCA, which says, "Unless requested by the applicant, no hearing is necessary to grant or deny an application[.]")
9. Check the boxes indicating which documents you are filing with your petition. In order for the court to consider your petition, you **must** include a copy of your criminal record from the Montana Department of Justice. You must also serve a copy of your petition on the County Attorney for the county in which you are filing your petition and you must submit a signed Certificate of Service indicating that you did so.
10. Sign and date your petition and print your name below the signature. You must sign your petition for the court to consider it.
11. File your petition, along with the filing fee or a completed fee waiver request form, in the court in which you were convicted. In order for the court to accept your petition, you must follow all applicable filing rules, including local filing rules, and pay the filing fee or obtain a fee waiver. You can find contact information and local filing rules on OCA's Court Locator web page: <https://courts.mt.gov/CourtLocator/>

### What Happens Next

The County Attorney has 21 days to respond in opposition to your petition. After the County Attorney has responded, or the time for response has run, the court will consider your petition. If you have requested a hearing, the court will set a hearing. Otherwise, the court will issue its ruling.

If the court grants your petition, you must file an Expungement/Removal Request Form with the Montana Department of Justice along with a copy of the court order. You can find information about the Department of Justice Conviction Expungement Process here: <https://dojmt.gov/enforcement/conviction-expungement-process/>

The Department of Justice Expungement/Removal Request Form is available here: <https://media.dojmt.gov/wp-content/uploads/ExpungementRemovalRequestForm20210303.pdf>