

Misdemeanor Expungement in Montana

This Packet Contains:

- Instructions
- Petition for Expungement of Misdemeanor Records
- Order Expunging Misdemeanor Records and Sealing Record of this Proceeding
- Statement of Inability to Pay Court Costs and Fees
- Order Regarding Statement of Inability to Pay Court Costs

Introduction

Expungement is a legal process that allows you to seal and remove past convictions from your criminal record. Clearing your record can provide a fresh start, improving your chances for employment, housing, and other opportunities. Congratulations on taking this important step toward a brighter future!

This packet includes step-by-step instructions and the forms you need to request that the court expunge your past Montana misdemeanor convictions from your criminal record. The laws governing misdemeanor expungement in Montana can be found in Title 46, chapter 18, part 11 of the Montana Code Annotated. Please note that this packet specifically addresses the expungement of misdemeanor convictions in Montana; it does not cover felony convictions, marijuana-related convictions, or convictions from out-of-state or Tribal courts. Additionally, this packet does not cover the removal or sealing of non-conviction records.

Who Qualifies?

You should complete this packet if you meet all five of the following:

- You have been convicted of one or more misdemeanors in a Montana state court.
- You have paid all court fines and completed any court-ordered jail time, treatment, or probation.

- Five years have passed since you completed your sentences for the convictions.*
- You are not currently being held in jail for a new offense and do not have any charges pending or open criminal cases against you.
- You have not previously successfully petitioned for expungement. Montana limits expungement to once in a lifetime.

*If you have applied to a United States military academy, have applied to enlist in the armed forces or national guard, or are currently serving in the armed forces and are prohibited from enlisting or holding a certain position due to a prior conviction, the timing requirement may be waived.

Step-by-Step Instructions

1. Identify each conviction in your criminal history.

- Request a copy of your criminal background check from Montana Department of Justice, Division of Criminal Investigation - Criminal Records and Identification Services Section (MT DOJ CRISS):
 - MT DOJ CRISS is the state agency that tracks criminal history information. They offer several ways to request a copy of your criminal record (online, by mail, or in person): <https://dojmt.gov/dci-home/background-checks/>.
 - Estimated Fee: \$10-\$30.
- Search for your name on the Montana Public Access Portals:
 - Some misdemeanor convictions may not be listed on the MT DOJ CRISS background check, so it is best to also search the public access portals: <https://courts.mt.gov/Courts/portals>
 - Note that there are separate links for District Courts and Courts of Limited Jurisdiction (Justice and Municipal/City Courts). You may want to search each area where you believe you have a conviction.
 - Choose the court from the drop-down menu.

- Navigate to SEARCHES → Case Searches → By Party.
- Enter in your last and first name and click “Search.”

2. Obtain a copy of your judgments from the original courts.

- A judgment is the document in a criminal case that records your final convictions. You will need this at the end of the process if you receive a successful expungement order.
- Contact the clerk of the court where you were convicted to request a copy of your final judgments. There may be a small fee for document requests.

3. Fill out the Petition for Expungement of Misdemeanor Records.

- Fill out your name, address, phone number, and e-mail address in the top left of the first page (you are the petitioner).
- Write the correct court at the top of the petition. You need to file this petition with a District Court in a judicial district where at least one of your convictions occurred. For example, if you were convicted of theft in Missoula Municipal Court and trespassing in Yellowstone County Justice Court, then you could file to expunge your entire record in either the Fourth Judicial District Court in Missoula or the Thirteenth Judicial District Court in Billings. This website may help: <https://courts.mt.gov/CourtLocator/>.
- Write your name above “Petitioner.”
- Leave the case number blank, the clerk will fill that in.
- In the “Past Convictions” section, fill in the information for the convictions you want expunged. It is best to list every conviction on your record because you can only petition for expungement once. If you have more than five convictions, indicate that you have additional convictions and type them up on a blank page to attach to the petition.
- Check all boxes that apply to your situation. If you are trying to expunge convictions in the “not presumed” category, check the last box, read the instructions, and provide your answers in the space provided.
- In the “Request for Relief” section, print your name, write the date, and sign.

4. Fill out the Certificate of Service.

- Fill out the information for all county attorney and city attorney offices that prosecuted your cases. If you need to notify more than two offices, write their information on an additional page. You can find the contact details for each office online.
- Write the date, print your name, and sign your name.

5. Fill out the Order Expunging Misdemeanor Records and Sealing Record of this Proceeding

- This is a proposed order that you provide to the court, indicating how you would like the judge to rule.
- Write the same court name as on the petition and write your name above "Petitioner." Leave the case number blank, the clerk will fill that in.
- Relist the convictions you are asking to be expunged. If you have more than five convictions, you should list each one out, and you may need to reformat the proposed order to include them all.
- Leave the date and signature blank for the judge to complete.

6. If you cannot afford the filing fee, you may be eligible for a fee waiver. To request a fee waiver, fill out the Statement of Inability to Pay Court Costs and Fees.

- Fill in your name, mailing address, phone number, and email address.
- Check the "Petitioner/Plaintiff" box.
- Check the box next to the District Court line and specify the court.
- Write your name for "Petitioner/Plaintiff" and "State of Montana" for "Respondent/Defendant."
- Follow the instructions on the form. If you receive any of the government benefits listed on the first page, you do not need to fill out the remainder of the form. Simply check the boxes for the benefits you receive and skip to the end of the form to sign. If you do not receive any of those benefits, you must complete the entire form, including detailed financial information.

- Be sure to date, sign, and provide the city and state in Part V.
- Complete the Order Regarding Statement of Inability to Pay Court Costs. This is a proposed order you submit to the court. Again, check the box next to the District Court line and specify the court. Write your name for “Petitioner/Plaintiff” and “State of Montana” for “Respondent/Defendant.” Leave the rest blank for the clerk and judge to complete.

7. File and serve your documents.

- File the following items with the District Court Clerk:
 - o Petition for Expungement of Misdemeanor Records
 - o Certificate of Service
 - o Order Expunging Misdemeanor Records and Sealing Record of this Proceeding
 - o Statement of Inability to Pay Court Costs and Fees and Order Regarding Statement of Inability to Pay Court Costs
- Make copies of each document with the file-stamp for your records.
- Mail or deliver a copy of the file-stamped Petition for Expungement of Misdemeanor Records to each prosecuting agency listed in the Certificate of Service.

8. The prosecutor’s office must attempt to notify any victims of your offenses within 14 days of receiving your petition (note: not all convictions have victims, but some convictions like theft and assault do).

- The notice will include that the victim has the right to respond to your expungement request. The victim will be informed of any dates scheduled for court hearings.

9. The court may set a hearing.

- If your expungement petition is not contested, the court may grant it without a hearing. You will receive a copy of the court’s order from the court clerk.

- If your expungement petition is contested by the prosecutor's office or a victim, the court may set a hearing to hear more from you and anyone opposed to the expungement.
- At a hearing, you should bring supportive evidence of your rehabilitation and the low likelihood of you reoffending. This may include your own testimony about your life and situation. You can ask supportive people in your life to join you at the hearing and speak in favor of your record being expunged. The usual rules of evidence do not apply, so you are able to bring in things like letters from family, friends, employers, clergy, and sponsors. You could also bring evidence of stable housing, income, and your participation in your community.
- The hearing is not about trying to re-litigate the conviction. The court wants you to acknowledge that you were convicted. The hearing is instead about whether the court should clear the conviction from your record given the length of time since the conviction, your rehabilitation, and any possible effect of expunging your record on community safety.

10. If the court grants your order, take the following steps to ensure your record is sealed and expunged from the criminal history database.

- Provide a copy of the order to the relevant law enforcement agencies, courts, and county and city attorneys so that they know to seal your criminal file.
- Fill out the MT DOJ CRISS expungement form, which is available on their website: <https://dojmt.gov/dci-home/conviction-expungement-process/>. Mail that form, along with the following documents to MT DOJ CRISS, P.O. Box 201403, Helena, MT 59620:
 - Blue Applicant Fingerprint Card (FD-258). These cards are available for free at Montana Department of Justice, Criminal Records & Identification Services (MT DOJ CRISS). There is usually a fee for getting fingerprinted. You can get the fingerprinting done by local law enforcement or a private company.
 - Copies of your original judgments.

- A copy of the court order expunging your record.
- MT DOJ CRISS will verify your identity using the fingerprint card and will verify that you have not previously expunged your record.
- MT DOJ CRISS will then remove your arrest and conviction data from their state criminal history database. They will send you a confirmation letter when they have done so.

11. Check the Montana Public Access Portals to ensure that courts have complied with the order to seal your cases. If they have, nothing should show up for the cases that were expunged.

- See Step 1 for a description of how to search the Montana Public Access Portals.

Questions?

These resources are available to assist you.

The Court Help Program. The Court Help Program helps people representing themselves in court. There are self-help law centers located throughout the state to assist you on a walk-in basis and travelling appointments to other courthouses. Self-help staff are not lawyers and cannot provide legal advice. Staff are informed about the court process and can answer many questions as well as review your forms for completeness. Find the Court Help services near you: www.courts.mt.gov/selfhelp.

Montana Legal Services Association. MLSA provides free civil legal help to low-income people. To find out if you qualify for services from MLSA, call (800) 666-6899 or apply online at <https://montanalawhelp.org/>.

Montana Department of Justice, Division of Criminal Investigation - Criminal Records & Identification Services Section. The Montana Department of Justice is not able to assist potential applicants with their expungement application but may be able to answer questions you have about what is currently on your record and what to do once you have an expungement order from the court. You can read more on their website (<https://dojmt.gov/dci-home/conviction-expungement-process/>) and contact them at (406) 444-3874 or contactdci@mt.gov.

Name

Mailing Address

City, State, and Zip Code

Phone Number

Email Address

MONTANA _____ **JUDICIAL DISTRICT COURT,** _____ **COUNTY**

In re Expungement of Misdemeanor
Records of:

_____,
Petitioner

Case No. _____

**Petition for Expungement of
Misdemeanor Records**

I, _____ (your name), ask the court to order that all records of arrest, investigation, detention, and court proceedings related to my misdemeanor convictions in the state of Montana be expunged pursuant to Title 46, chapter 18, part 11, MCA.

Venue

I was convicted of at least one misdemeanor conviction in this judicial district, which makes this judicial district an appropriate venue for my petition. Section 46-18-1105, MCA.

Past Convictions

I was convicted of the following misdemeanor offenses in Montana:

1. Crime: _____
Case Number: _____
Conviction Date: _____
Court: _____

2. Crime: _____
Case Number: _____
Conviction Date: _____
Court: _____

3. Crime: _____
Case Number: _____
Conviction Date: _____
Court: _____

4. Crime: _____
Case Number: _____
Conviction Date: _____
Court: _____

5. Crime: _____
Case Number: _____
Conviction Date: _____
Court: _____

☐ I have additional misdemeanor convictions in Montana that are listed on an attached page.

Legal Claims

Montana law allows a person convicted of one or more misdemeanor offenses to petition a district court for “an order requiring the expungement of all records of arrest, investigation, and detention, if any, and any court proceedings that may have been held related to the misdemeanor offense or offenses.” Section 46-18-1104(1), MCA.

Expungement is presumed if:

the person requesting expungement is not currently being detained for the commission of an offense, is not charged with the commission of an offense, and does not have charges pending for the commission of a new offense, as verified by the prosecution office responsible for a conviction for which expungement is being requested, and:

(1) the person has not been convicted of any offense in this state, another state, or federal court for a period of 5 years since the person completed the sentencing terms for the offense or offenses for which expungement is being requested, including payment of any financial obligations or successful completion of court-ordered treatment; or

(2) the person has applied to a United States military academy, has applied to enlist in the armed forces or national guard, or is currently serving in the armed forces or national guard and is being held back in any way from enlisting or holding a certain position due to prior conviction.

Section 46-18-1107, MCA.

Expungement may not be presumed if:

the person seeking expungement has one or more convictions for assault under 45-5-201, partner or family member assault under 45-5-206, stalking under 45-5-220, sexual assault under 45-5-502, a violation of a protective order under 45-5-626, or driving under the influence of alcohol or drugs, however named, under Title 61, chapter 8, part 10, or any offense that carries a statutorily enhanced penalty as a result of the offender driving under the influence of alcohol or drugs.

(2) In making the determination of whether expungement should be granted, the district court shall consider:

- (a) the age of the petitioner at the time the offense was committed;
- (b) the length of time between the offense and the request;
- (c) the rehabilitation of the petitioner;
- (d) the likelihood that the person will reoffend; and
- (e) any other factor the court considers relevant.

Section 46-18-1108, MCA.

I qualify for expungement for the following reasons (mark only those that apply):

- ☐ I have completed all sentencing terms for my misdemeanor convictions, including any jail time, probation, treatment, and payment of court-ordered fines and fees.
- ☐ I am not currently detained or under investigation for any offense.
- ☐ I do not have any new charges pending in any state.
- ☐ I have not successfully petitioned for expungement before.
- ☐ It has been _____ years since my last conviction.
- ☐ I have applied to a United States military academy, applied to enlist in the armed forces or national guard, or am currently serving in the armed forces or national

guard and am being held back in any way from enlisting or holding a certain position due to my prior conviction.

- ☐ If my expungement order is granted by this court, I will be fingerprinted for purposes of validating my identity with the Montana Department of Justice, per § 46-18-1104(3), MCA.
- ☐ Public safety will not be impacted by expunging my record (§ 46-18-1109(2), MCA) because:

- ☐ I have been convicted of a misdemeanor listed in § 46-18-1108, MCA (assault, partner or family member assault, stalking, sexual assault, violation of a protective order, or driving under the influence) or otherwise do not meet the presumption of expungement, and ask that the court still grant my expungement for the following reasons (address your age at the time of the offense, the length of time since the offense, your rehabilitation, the likelihood that you will reoffend, and any other factor you'd like the court to consider):

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Request for Relief

I ask this court to order that the misdemeanors on my record be expunged from the criminal history record information system maintained by the Montana Department of Justice. Sections 46-18-1103(1); -1110(3), MCA. I further ask this court to direct the relevant arresting law enforcement agencies, prosecutors' offices, and clerks of court to permanently seal all records in their possession of the arrest, investigation, and detention, and any court proceedings that may have been held in the cases. Section 46-18-1110(2)(a), MCA. Finally, I request this court to order the clerk of court to seal the record of this civil expungement matter once an expungement order has been issued.

Declaration

I declare under penalty of perjury and under the laws of the state of Montana that the foregoing is true and correct.

Date: _____

Name: _____

Signature: _____
Petitioner

Signed in: _____
City, State

Certificate of Service

Montana law requires that a person seeking expungement “serve a copy of the petition for expungement to every prosecution office that prosecuted an offense for which expungement is being requested.” Section 46-18-1106, MCA. Accordingly, I, _____ (your name), served the following prosecutors’ offices with a copy of this petition on _____ (date) by ☐ mailing, ☐ hand-delivering, and/or ☐ emailing a copy to the following addresses:

Prosecutor’s Office: _____

Mailing Address: _____

City, State, Zip Code: _____

Email: _____

Prosecutor’s Office: _____

Mailing Address: _____

City, State, Zip Code: _____

Email: _____

- ☐ More than two prosecutor’s offices were involved, and I have notified them at the addresses on the attached page (attach page of typed addresses).

Date: _____

Name: _____

Signature: _____

Petitioner

In re Expungement of Misdemeanor
Records of:

_____,
Petitioner

Case No. _____

**Order Expunging Misdemeanor
Records and Sealing Record of this
Proceeding**

The court has considered the request to expunge petitioner's misdemeanor record and finds good cause under Title 46, chapter 18, part 11, MCA, to grant the expungement.

IT IS ORDERED that Petitioner's request for expungement of the following convictions is GRANTED:

1. Crime: _____

Case Number: _____

Conviction Date: _____

Court: _____

2. Crime: _____

Case Number: _____

Conviction Date: _____

Court: _____

3. Crime: _____

Case Number: _____

Conviction Date: _____

Court: _____

4. Crime: _____

Case Number: _____

Conviction Date: _____

Court: _____

5. Crime: _____

Case Number: _____

Conviction Date: _____

Court: _____

IT IS FURTHER ORDERED that Montana DOJ shall permanently destroy, delete, or erase the records of all misdemeanor convictions listed above from its criminal history record information system.

IT IS FURTHER ORDERED that all law enforcement agencies, prosecutors' offices, and courts involved in the cases listed above shall permanently seal all records in their possession of the related arrests, investigations, detentions, and court proceedings. Section 46-18-1110(2)(a), MCA.

IT IS FURTHER ORDERED that Petitioner shall be responsible for sending a copy of this order to the appropriate agencies and offices. When sending a copy to the Montana DOJ, Petitioner shall include a copy of fingerprints for purposes of identification and the form

prepared by the DOJ, per § 46-18-1110(2)(b). The DOJ's form can be found at:

<https://dojmt.gov/dci-home/conviction-expungement-process/>.

IT IS FURTHER ORDERED that the clerk of this district court shall seal the record of this case after sending this order to Petitioner.

Date: _____

Presiding Judge

[or electronic date and signature below]

Name

Mailing Address

City State Zip Code

Phone Number

E-mail Address (optional)

☐ Petitioner/Plaintiff ☐ Respondent/Defendant

☐ MONTANA _____ JUDICIAL DISTRICT COURT, _____ COUNTY

☐ IN THE JUSTICE COURT OF _____ COUNTY, STATE OF MONTANA

☐ IN THE MUNICIPAL OR CITY COURT OF _____, MONTANA

Petitioner / Plaintiff,

and

Respondent / Defendant.

Case No: _____
(leave blank, the clerk will write in)

Statement of Inability to Pay Court Costs and
Fees

I have a good cause of action or defense but am unable to pay filing or other court fees. I request the court waive the costs and fees. I provide the following information.

My full legal name is: _____. I was born in this month _____ and this year _____.

☐ I am represented by an entity that provides free legal services to low-income persons.

Or

☐ I am represented by a volunteer/pro bono attorney, and am financially eligible for free legal services. (Attach a certificate of eligibility from legal aid organization to this form.)

Or

☐ I receive one or more of these benefits: (Check the box for each benefit you receive.)

☐ SNAP ☐ TANF ☐ SSI ☐ Medicaid ☐ WIC ☐ LIEAP

If you checked any one of the three boxes above, skip to the end of this form, and sign the declaration on page 3. You don't need to fill out the remainder of the form.

If you did not check a box above, you may still qualify for a fee waiver. Please continue to fill out pages 2 and 3 of this form so the court has the information it needs to decide if you qualify for the fee waiver.

I. INCOME *(Complete this Section to the best of your ability.)*

What do you do for work? _____ Who is your employer? _____

What is your household's annual income, before taxes? _____ How many people are in your household? ____
(The tables below will help you answer these questions, if you are not sure what to put in the blanks.)

If you are unemployed, when were you last employed (Month, Year)? _____ Your job? _____

Are you married? ☐ Yes ☐ No ☐ Separated ☐ Getting Divorced **NOTE:** If you are not married, if you and your spouse are separated, or if one of you is filing for dissolution of marriage, you do not need to provide your spouse's income below.*Fill in the chart below with the income received by you, and by your spouse, if applicable. Put a "0" in each blank if you or your spouse don't receive the income listed.*

| Income Sources | Amount YOU receive per month before taxes | Amount YOUR SPOUSE receives per month before taxes |
|---|--|---|
| Employment | \$ | \$ |
| Retirement/Pension | \$ | \$ |
| Workers' Compensation | \$ | \$ |
| Social Security | \$ | \$ |
| Unemployment | \$ | \$ |
| Government Benefits | \$ | \$ |
| Child Support Received | \$ | \$ |
| A person or agency pays my rent or other monthly expenses and the amount is: _____ | \$ | \$ |
| Other Income—e.g., rental income, stocks, investments, etc.—describe: _____ | \$ | \$ |
| Total here: | \$ | \$ |

What is your household size? How many persons, if any, depend on you financially? If none, then write "N/A" below. Attach another page if needed and check here to tell the court you attached another page: ☐

| Dependents (Initials Only) | Age | Relationship to You |
|-----------------------------------|------------|----------------------------|
| 1. | | |
| 2. | | |
| 3. | | |
| 4. | | |
| 5. | | |

II. ASSETS *(Complete this Section to the best of your ability.)*

What property do you and your spouse own? Include your spouse's property if you are married and not separated and not filing for dissolution. Fill in the chart below, only listing items that you could sell for \$600 or more. If you don't own an item listed, write "N/A" in the "Value" column for that item. "Value" means the total amount the item(s) identified in a column would sell for, minus the amount you still owe on the item(s), if anything.

| Asset | Value |
|--|-------|
| Cash (This includes the money in your savings and checking accounts) | \$ |
| Vehicle 1: provide year, make and model _____ | \$ |
| Vehicle 2: provide year, make and model _____ | \$ |
| Home where you live now | \$ |
| Real estate or other homes/mobile homes (Not including the home you are living in now) | \$ |
| Recreational vehicle(s) such as snowmobile, ATV, camper/RV, boat, motorcycle, etc. | \$ |
| Guns or other collections | \$ |
| Other Item(s) worth more than \$600—describe: _____ | \$ |

III. DEBTS AND EXTRAORDINARY EXPENSES *(Complete this Section to the best of your ability.)*

What bills do you and your spouse pay each month? Fill in the chart below.

| Monthly Expenses | Value |
|---|-------|
| Housing Expense: Mortgage or Rent | \$ |
| General Household Expenses: Utilities, Phone/Internet/Cable, etc. | \$ |
| Insurance Expenses, Healthcare Costs and/or Medical Debt(s) | \$ |
| Childcare Expenses | \$ |
| Other Extraordinary Expenses: e.g., Collection actions, Student Loans—describe: _____ | \$ |

IV. ADDITIONAL INFORMATION *(This Section is optional.)*

If you have additional information that you want the court to consider about your inability to pay court costs, write that information under your signature below or attach an extra page. Check here if you attached another page: ☐

V. DECLARATION *(This Section is Required.)*

I declare under penalty of perjury and under the laws of the State of Montana that the information in this document is true and correct. I understand that it is a crime to give false information in this document.

Date: _____ City: _____ State: _____

YOUR Signature _____

Court Use Only

☐ MONTANA _____ JUDICIAL DISTRICT COURT, _____ COUNTY
☐ IN THE JUSTICE COURT OF _____ COUNTY, STATE OF MONTANA
☐ IN THE MUNICIPAL OR CITY COURT OF _____, MONTANA

| | |
|--|---|
| <hr/> Petitioner / Plaintiff, and Respondent / Defendant. | Case No: _____ (leave blank, the clerk will write in) Order Regarding Statement of Inability to Pay Court Costs |
|--|---|

***Warning! Read carefully the section checked below.
It is a court order.***

- ☐ Waiver of court costs is **Granted**. Declarant shall proceed without payment of court fees or costs.
- ☐ Temporary Waiver of court costs is **Granted**. Declarant may file without payment of court fees or costs, but the Court may determine at a later time that the declarant has the ability to pay all fees or costs and will require declarant to do so.
- ☐ Temporary Waiver of fees is **Granted**. Declarant may file without payment of court fees or costs, but must appear before the Court at _____ a.m/p.m. on the _____ day of _____ and show cause why the declarant lacks the ability to pay all fees or costs.

Warning! If this third box is checked, you must come to court on the date ordered above. If you don't come, the judge will deny your request to waive court costs, and you will have to pay the court costs.

- ☐ Waiver of Fees and costs is **Denied**. Waiver is denied based on the following:

Ordered this _____ day of _____, 20____.

Presiding Judge