

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>

HB 701 – Changes to legal status of enumerated activities

Things that are now legal	Things that are civil infractions	Things that remain illegal
Possession of 1 oz or less of marijuana if 21 or older	Cultivating or storing marijuana outside of a locked space	Operating or being in physical control of motorized transport while under the influence of marijuana
Gifting 1 oz or less of marijuana to someone 21 or older	Smoking marijuana in a public place	Consuming marijuana while operating motorized transport
Possessing up to 2 mature plants and 2 seedlings at a private residence	Possessing 1 oz or less of marijuana if under 21	Smoking or consuming marijuana while a passenger in an enclosed motorized transport
Possessing paraphernalia if 18 or older	Possessing paraphernalia if under 18	Delivering marijuana to a person under 21
Selling or gifting paraphernalia to someone 18 or older	Possessing more than 1 oz but less than 2 oz of marijuana if over 21	Consumption of marijuana if under 21
	Possessing with the intent to deliver more than 1 oz but less than 2 oz of marijuana if age 21 or older	Transporting marijuana if under 21 and not an employee of a licensed marijuana business
	Gifting more than 1 oz or less than 2 oz of marijuana if age 21 or older	Possessing or consuming marijuana on school property
		Possessing or consuming marijuana on public transportation
		Possessing or consuming marijuana in a health care facility
		Possessing or consuming marijuana in a hotel room
		Using marijuana where tobacco is prohibited
		Consuming marijuana in a public place
		"Conduct that endangers others"
		Cultivating marijuana where it is visible from the street or public area

HB 701 – Effect of Amendments to Criminal Statutes

Statute	Title	What was previously illegal	Eligible for Expungement	Eligible for Redesignation	No eligibility / still illegal
45-9-101	Criminal distribution of dangerous drugs	Giving away up to 60g to a person age 21 or older	If 1 oz or less is gifted to a person age 21 or older	If more than 1 oz but less than 2 oz is gifted to a person age 21 or older	If more than 2 oz but less than 2.116 oz is gifted
		Selling up to 60g			Selling up to 60g (2.116 oz)
					Giving away or selling to a person under age 21
45-9-102	Criminal possession of dangerous drugs	Possessing any quantity of marijuana (misdemeanor for 60g or less / felony for over 60g)	Possessing 1 oz or less if age 21 or older	Possessing more than 1 oz but less than 2 oz	Possessing more than 2 oz
45-9-103	Criminal possession with intent to distribute	Possessing with intent to distribute any quantity of marijuana	If intent was to gift 1 oz or less to a person age 21 or older	If intent was to gift more than 1 oz but less than 2 oz to a person age 21 or older	If intent was to sell, barter, etc., any quantity of marijuana
					If intent was to gift more than 2 oz to a person age 21 or older
45-9-110	Criminal production or manufacture of dangerous drugs	Growing marijuana	Possessing, planting or cultivating up to 2 mature plants and 2 seedlings in or on the grounds of a private residence if the defendant owns the residence or has written permission from the owner		Possessing, planting or cultivating more than 2 mature plants and 2 seedlings
					Growing or storing the plants in a place other than a private residence
					Growing without permission from the residence's owner

45-10-103	Criminal possession of drug paraphernalia	Possession of anything constituting paraphernalia	Possession of anything constituting marijuana paraphernalia if age 18 or older	Possession of anything constituting marijuana paraphernalia if under 18	
45-10-104	Manufacture or delivery of drug paraphernalia	Manufacturing or delivering, or possessing with intent to deliver, anything constituting paraphernalia	Manufacturing or delivering, or possessing with intent to deliver, anything constituting marijuana paraphernalia to a person age 18 or older		Manufacturing or delivering, or possessing with intent to deliver, anything constituting marijuana paraphernalia to a person under age 18

MONTANA _____ JUDICIAL DISTRICT COURT, _____ COUNTY

IN THE JUSTICE COURT OF _____ COUNTY, STATE OF MONTANA

IN THE MUNICIPAL OR CITY COURT OF _____, MONTANA

IN RE THE EXPUNGEMENT OR REDESIGNATION OF THE MARIJUANA-RELATED CONVICTION OF: _____, PETITIONER.	Case No: _____ ORDER GRANTING PETITION FOR MISDEMEANOR EXPUNGEMENT UNDER SEAL
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The Petitioner requests expungement of criminal conviction(s) pursuant to Montana Marijuana Regulation and Taxation Act (MMRTA). Based on the Petition submitted, the Court concludes that the Petition should be granted.

IT IS HEREBY ORDERED as follows:

1. The _____ (name of court) conviction against Petitioner on _____, for the crime of _____ (name of crime) is expunged.

2. For each offense being expunged, Petitioner shall send a copy of this Order to the arresting law enforcement agency, the prosecutor's office that prosecuted the offense, the Clerk of the Court in which Petitioner was sentenced, and the Department of Justice, along with a form prepared by the Department of Justice that contains identifying information about the Petitioner.

3. The Montana Department of Justice, upon receipt of this expungement order, shall, within existing Department resources, expunge all records of arrest, investigation, detention, and court proceedings related to the person's offenses addressed by this order.

4. The arresting law enforcement agency, prosecutor's office, and Clerk of Court in which Petitioner was sentenced, shall permanently seal all records of the arrest, investigation, detention, if any, and any court proceedings that may have been held in the case in the possession of the recipient of this Order within existing resources.

Dated this _____ day of _____, 20____.

Hon. _____

__ District Court Judge

Justice of the Peace

__ Municipal Judge

cc:

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the foregoing document were, this day, served upon the following individuals by U.S. Mail and/or e-mail and addressed as follows:

Name of County Attorney

Mailing Address

Mailing Address

City State Zip Code

Phone Number

E-mail Address (optional)

Dated this _____ day of _____, 20____.
(date) (month) (year)

(your signature)

(print your name)

Name

Mailing Address

City State Zip Code

Phone Number

E-mail Address (optional)

FORM A:
Use this form for Expungement
or Resentencing if you are
currently serving your sentence

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

In re the Expungement or Resentencing of
the Marijuana-Related Conviction of

_____,
Petitioner.

Case No: _____

Petition for Expungement or
Resentencing of Conviction

I hereby petition this Court for resentencing or redesignation of the following conviction in accordance with the Montana Marijuana Regulation and Taxation Act (MMRTA).

Venue for this Petition is proper in this Court because this is the Court in which I was sentenced for this offense.

On or about _____ (date), I was convicted of the following offense that I believe is eligible for resentencing or redesignation under the MMRTA:

- Criminal Distribution of Dangerous Drugs (marijuana),
in violation of § 45-9-101, MCA;
- Criminal Possession of Dangerous Drugs (marijuana),
in violation of § 45-9-102, MCA;
- Criminal Possession with Intent to Distribute (marijuana),
in violation of § 45-9-103, MCA;
- Criminal Production or Manufacture of Dangerous Drugs (marijuana),
in violation of § 45-9-110, MCA;
- Criminal Possession of Drug Paraphernalia (marijuana),
in violation of § 45-10-103, MCA;
- Manufacture or Delivery of Drug Paraphernalia (marijuana),
in violation of § 45-10-104, MCA;
- _____ (specify offense)

I am currently serving my sentence for this conviction.

I believe this conviction is eligible for expungement / resentencing as a misdemeanor / resentencing as a civil infraction because _____

I am / am not requesting a hearing on this Petition.

I have filed the following documents along with this Petition:

- A copy of my criminal record from the Montana Department of Justice. *(required)*
- My Certificate of Service that indicates how I served copies of these documents upon the County Attorney for the County in which I am filing this Petition. *(required)*
- A copy of the Judgment or Sentencing Order for this conviction. *(recommended)*
- A proposed Order granting this Petition.
- Other: _____

Dated this _____ day of _____, 20____.
(date) (month) (year)

(your signature)

(print your name)

Name

Mailing Address

City State Zip Code

Phone Number

E-mail Address (optional)

FORM B:
Use this form for
Expungement or
Redesignation where
Sentence has been served

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

In re the Expungement or Redesignation of
the Marijuana-Related Conviction of

_____,
Petitioner.

Case No: _____

Petition for Expungement or
Redesignation of Conviction

I hereby petition this Court for expungement or redesignation of the following conviction in accordance with the Montana Marijuana Regulation and Taxation Act (MMRTA).

Venue for this Petition is proper in this Court because this is the Court in which I was sentenced for this offense.

On or about _____ (date), I was convicted of the following offense that I believe is eligible for expungement or redesignation under the MMRTA:

- Criminal Distribution of Dangerous Drugs (marijuana),
in violation of § 45-9-101, MCA;
- Criminal Possession of Dangerous Drugs (marijuana),
in violation of § 45-9-102, MCA;
- Criminal Possession with Intent to Distribute (marijuana),
in violation of § 45-9-103, MCA;
- Criminal Production or Manufacture of Dangerous Drugs (marijuana),
in violation of § 45-9-110, MCA;
- Criminal Possession of Drug Paraphernalia (marijuana),
in violation of § 45-10-103, MCA;
- Manufacture or Delivery of Drug Paraphernalia (marijuana),
in violation of § 45-10-104, MCA;
- _____ (specify offense)

I completed my sentence for this conviction on or about _____.

I believe this conviction is eligible for expungement / redesignation as a misdemeanor / redesignation as a civil infraction because _____

I am / am not requesting a hearing on this Petition.

I have filed the following documents along with this Petition:

- A copy of my criminal record from the Montana Department of Justice. *(required)*
- My Certificate of Service that indicates how I served copies of these documents upon the County Attorney for the County in which I am filing this Petition. *(required)*
- A copy of the Judgment or Sentencing Order for this conviction. *(recommended)*
- A proposed Order granting this Petition.
- Other: _____

Dated this _____ day of _____, 20____.

(date) (month) (year)

(your signature)

(print your name)