

Montana



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The letter grades reflect Polaris' evaluation of existing laws designed to provide survivors of human trafficking with a realistic pathway to clear their criminal records. For more information on the criteria graded, please read [here](#) and examples of model legislation for each criteria can be found [here](#). If you have any questions or issues, please contact policy@polarisproject.org.

GOOD FOR SURVIVORS:

Hearing Requirement:

Attending a hearing can be traumatizing for survivors as well as expensive. Montana is silent on whether a hearing is required, potentially allowing for a petition for relief to be granted without a hearing. However, this language is not specific, meaning a hearing may be required. Ideally, survivors could apply for relief, and based on the evidence provided, the court could decide to grant relief without having a hearing.

Official Documentation Creates Presumption of Victim Status:

Official documentation is not required for criminal record relief; however, if a survivor provides official documentation, the presumption of victimization prevents them from sharing their experience repeatedly in different settings, which is emotionally challenging and can re-traumatize the survivor. Montana's statute includes this provision and is beneficial for survivors.

or if the survivor did not bring up their victimization as an affirmative defense they have to explain why in order to get criminal record relief. Trafficking victims who raise an affirmative defense and are still convicted and those who never raise an affirmative defense at their initial proceedings should not be required to explain these complicated legal processes in order to obtain record relief.

Offenses Covered:

The narrow scope of offenses currently covered by the criminal record relief statute in Montana is inadequate because relief only applies to non-violent offenses - yet the range of offenses for which survivors are arrested and prosecuted is much broader. Ideally, legislators in Montana would expand the statute to include all offenses so more survivors are eligible for relief.

Trafficking Nexus:

Survivors in Montana must prove the underlying offense and subsequent record was "proximately caused by" or "as a direct result of" being trafficked. Ideally, legislators in Montana would change the statute to utilize less restrictive statutory language like "as a result" of trafficking or "while they were a victim" of trafficking.

Burden of Proof:

Montana is silent on the issue of burden of proof. Montana should include a burden of proof in the statute, specifically "preponderance of the evidence," which is the most clear and most helpful to trafficking survivors.

NEEDS IMPROVEMENT:

Explanation of Why Affirmative Defense Was Not Raised in Initial Proceedings:

An affirmative defense allows a survivor facing criminal charges to raise a defense negating criminal liability because they are a victim of trafficking. In Montana, a survivor either is not eligible for criminal record relief if they brought up their trafficking victimization as an affirmative defense and were still convicted



Statute: [Mont. Code Ann. § 46-18-608](#).