

HOW TO FILE FOR IN FORMA PAUPERIS (IFP) STATUS





Justice & Accountability Center of Louisiana

We help people recover from the criminal legal system

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This appendix will provide you with information on what IFP status is and how to apply for it. You should only complete this step after you know you are eligible to have your expungement granted and before you file your expungement motion with the court.

WHAT IS IFP STATUS?

When you apply for IFP status, you are asking the court to recognize that you cannot afford to pay the filing fees for your expungement motion. If the court grants your application for IFP status, you can file your expungement motion without charge. If your expungement motion is then granted, you should never have to pay the filing fees. However, if your expungement motion is denied, you may be ordered to pay these fees (which can be as high as \$550 or \$600, depending on the type of expungement). For this reason, you should make sure your charges are eligible for expungement at the time you file your motion, and that your expungement paperwork is filled out correctly.

WHO IS ELIGIBLE FOR AN IFP?

In order to have your IFP application granted, the judge must determine that you cannot afford to pay the expungement filing fees. The judge has to consider all of your income and expenses to decide if you have enough money left over in a month to pay the filing fees. If you receive government benefits such as Food Stamps or Social Security Disability, you are presumed eligible for IFP status. If you are working, but not able to save money each month, the court looks at all your income and bills to decide. There is no maximum amount of income that will disqualify you - the judge must decide based on YOUR specific situation.

The judge has “discretion” in granting IFP status. This means the judge has a lot of leeway in deciding whether you can afford to pay filing fees. In making this decision, the judge can only consider the facts in your affidavit and any information you provide at the hearing. The judge cannot tell you to sell or mortgage your family home or car, to get a better paying job, or to ask your family to help you come up with the money to pay the filing fees.

HOW DO I APPLY FOR IFP STATUS?

First, you must fill out the IFP affidavit located on the Supreme Court's website (<https://www.lasc.org/rules/dist.ct/COURTRULESAPPENDIX8.0.pdf>). This affidavit lists all of your current income, expenses and assets (property and bank accounts). This form is a sworn statement to the court, so you must make sure all the information is true and accurate. You can fill out the information on the first 2 pages of the affidavit yourself with your income and expense paperwork. It is also a good idea to attach proof of your income and expenses (like pay stubs, benefits award letter, bills) to your affidavit. If you have questions, you can take the form to a notary or attorney to help you complete the form. You can also use JAC's IFP App to fill out this affidavit:



Second, you must find a witness who is 18 or older and who knows about your financial situation. This can be a family member, friend, neighbor or anyone else who can provide a sworn statement that you cannot afford the filing fees. You and your witness must take the IFP affidavit, along with your drivers' licenses or state ID cards, to a notary to finalize your forms with everyone's signatures. The notary will explain that you are signing a sworn statement to be given to the court. Everything must be true, accurate, and correct on the forms before you sign them. Do not sign your forms until you are with the notary.

STEPS FOR FILING IFP APPLICATION & EXPUNGEMENT MOTION

- 1. Double-check your expungement packet.** Make sure that your charges are eligible for expungement: (1) that enough time has passed since you ended supervision (incarceration, probation, or parole); (2) that your expungement motion is filled out correctly; and (3) that you have all the required documents. You can ask the Clerk of Court what documents they require for an expungement motion. If you have questions about eligibility, you can use the Expungement App available on JAC's website (<https://www.jaclouisiana.org/expungement-app>), come to one of JAC's expungement clinics (<https://www.jaclouisiana.org/events>), or consult a private attorney (<https://www.lsba.org/Public/FindLegalHelp/ModestMeans.aspx>).
- 2. Double-check your IFP affidavit.** When you have your IFP affidavit notarized, you are swearing under oath that the information it contains is correct. Gather as much documentation as you can for your income and expenses (e.g., check stubs, benefit award letters, utility bills) and attach copies to your IFP affidavit.
- 3. Dress for court.** If you don't have a suit and tie, wear slacks/khakis and a sweater, button-up or shirt with a collar. For women, a skirt or dress with a hemline that falls just above the knees or lower, a pantsuit or slacks/khakis and a blouse are all fine choices. If all you have is jeans and a t-shirt, make sure they are clean and without rips if possible. Wear minimal jewelry and makeup. Avoid shorts or short skirts/dresses, shirts with graphic designs or without sleeves, slippers/flip-flops, hats and sunglasses.
- 4. Know before you go.** The process for filing IFP applications may be slightly different from parish to parish. In some parishes, you will need to leave your IFP affidavit with the Clerk of Court, who will then forward it to the judge. In other parishes, you will be asked to give your affidavit directly to the judge. Call the Clerk of Court to ask about the process for the parish your case is in, including the number of copies you should bring of both your IFP application and your expungement packet.
 - A.** If you have cases in more than one court, or in more than one section/division of the same court, you will need a separate copy of your IFP application for each case. Consider filing one IFP first and waiting to see whether it will be granted before filing in the other cases
 - B.** If you have more than one case in front of the same judge, call the Clerk of Court and ask if they want separate copies for each case or just one copy with all the case numbers on it. Each parish handles this differently.

STEPS FOR FILING IFP APPLICATION & EXPUNGEMENT MOTION

5. Parishes where the Clerk of Court forwards IFP applications to the judge:

- A. Arrive as close as possible to the time the clerk's office opens.
- B. Bring the number of copies that the clerk told you to bring, plus an extra one for yourself. Ask the clerk to "clock in" (stamp with the date and time) each copy and give you one copy back (so that you will have proof of filing).
- C. Ask when the hearing date will be
 - I. If the clerk gives you a hearing date, write it down and make plans to attend; if you will not be able to attend on that date, let the clerk know right away and ask for a different date
 - II. If the clerk says the hearing date will not be set right away, make sure to call the clerk's office back in one or two days to find out the hearing date.

6. In parishes where you must bring the IFP application to the judge yourself:

- A. Do your best to arrive before court begins. If court is already in session, wait for a break. Approach the minute clerk, who will be sitting in the front below the bench where the judge sits, facing the audience. If you are unsure who the minute clerk is, ask the officer in the court or one of the attorneys sitting at the tables near the front. Tell the minute clerk your name and let them know you have an in forma pauperis motion to present to the judge.
 - I. If there is room on the "docket" (the list of matters to be heard) for that day, you will be told to wait in the audience until your case is called.
 - II. If the docket is full, you may be asked to come back and present your IFP affidavit on a different day. If this happens, ask that your matter be set for a new date as soon as possible. Write down the date and make plans to attend. If you will not be able to make that date, tell the minute clerk right away and ask for a different date.

STEPS FOR FILING IFP APPLICATION & EXPUNGEMENT MOTION

7. **If you were told to wait in the audience (or at your hearing date):**

A. When your name is called, go to the podium and state your name. Tell the judge you are a pro se filer requesting in forma pauperis status to file your expungement motion. The judge may have you sworn in so they can ask questions about the income, household expenses, and other information you provided in the affidavit, so be prepared to discuss these things. If you have expungement motions to file in more than one case, tell the judge the total amount of filing fees (e.g., two separate motions = \$1,100; three separate motions = \$1,650; etc.)

- I. If the judge grants your application, take the signed order back to the clerk's office for filing, along with the correct number of copies of your expungement motion. Confirm with the minute clerk in the section and/or the Clerk of Court that they will make copies of the new IFP order to be included in each packet. Since you have been granted IFP status, they should not charge you for making copies.
- II. If the judge sets the matter for a hearing, write down the date and make plans to attend. If you will not be able to make that date, let the judge know right away and ask for a different date. If you later need to reschedule for any reason, speak with staff in the judge's chambers or go back to court before the scheduled date to get a new date set.
- III. If the judge denies your application, ask when the written order will be issued. Write down that date. Then call JAC at 504-273-1091.

8. **File your expungement motion with the Clerk of Court, along with the IFP order signed by the judge.** Some judges will schedule a hearing about 60 days later. If you do not receive notice of an objection or "motion to traverse" that sets an earlier hearing date (see Troubleshooting Issues, below), you should go to court on that date so your motion can be granted. If the hearing date is much more than 60 days away, you can ask the court to set a hearing closer to the 60-day timeframe provided in the statute (article 980(F) of the Louisiana Code of Criminal Procedure). If you do not receive notice of a hearing, call the clerk's office and ask for a 60-day hearing to be set. Attend the expungement hearing. If no one challenges your IFP or objects to your expungement motion, your expungement should be granted. Make sure you hear the judge say that the "expungement is granted" and that it is recorded by the minute clerk. If you are not sure, ask the judge to confirm that you are getting a court order for your expungement. This is important because if your expungement is granted, you should never have to pay the filing fees.

TROUBLESHOOTING ISSUES THAT MAY ARISE

The Clerk of Court refuses to clock In your IFP affidavit or accept it for filing

Some clerks may not be aware that IFP applications can be filed in support of motions for expungement. Refer the clerk to article 983(L) of the Louisiana Code of Criminal Procedure (“Notwithstanding any provision of law to the contrary, an applicant for the expungement of a record, other than as provided in Paragraphs F and G of this Article, may proceed in forma pauperis in accordance with the provisions of Code of Civil Procedure Article 5181 et seq.”).

If the clerk of court continues to refuse, call JAC at 504-273-1091.

The Clerk of Court tells you that you must file your expungement motion at the same time that you file your IFP affidavit

Some clerks may require you to submit your expungement motion at the same time as your application for IFP status. In such cases, confirm with the clerk that your expungement motion will not actually be filed and served until your IFP application is granted, and that you will not be charged anything if your IFP application is denied. Ask that the clerk wait to file and serve your expungement motion until you return with a signed IFP order, or that you be given notice of the denial and an opportunity to withdraw your expungement motion.

The judge says that your IFP application cannot be considered until the DA, the Louisiana State Police and/or local law enforcement has been given notice

While notice to other parties is required for most filings, this is not true of IFP applications. You should explain to the judge that, under article 5183(A) of the Louisiana Code of Civil Procedure, IFP applications may be filed “ex-parte” (without notice to, or participation by, any other parties). Make sure to also mention that according to article 5184(A), these agencies and the Clerk of Court may “traverse” (object to) your IFP status only after the judge grants your application and your expungement motion has been filed.

TROUBLESHOOTING ISSUES THAT MAY ARISE

The Clerk of Court, DA, State Police or local law enforcement files a motion to traverse your IFP status or objects to your motion for expungement

After your IFP is granted and you file your expungement motion, there is a 60-day waiting period during which the DA, the Louisiana State Police and local law enforcement may oppose your expungement motion. These agencies, along with the Clerk of Court, may also “traverse” (object to) your IFP status during this 60-day timeframe. If anyone opposes your expungement motion or moves to traverse your IFP, you should receive notice and a copy of the objection before you need to go to court about it. Pay attention to the hearing date listed on any notice you receive, as a hearing may be scheduled for a sooner date than the standard 60-day hearing that may have been set when you filed your motion.

1. Motions to traverse IFP status

If one of the agencies challenges your IFP status, you will need to go to court to prove that your income and bills have not changed and that you still cannot afford the filing fees. If you have additional documentation of income and expenses that was not attached to the IFP affidavit (recent pay stubs, bills, etc.), you should bring these to court on the day of the hearing.

2. Objections to the expungement motion. Reasons for objection may include:

- A. Another party says you still owe money.** The Louisiana State Police, Sheriff, DA, or Clerk of Court may oppose your expungement because they did not receive their required filing fee. If this happens go to the Clerk of Court and confirm that the signed IFP affidavit was sent or served on all the parties with your expungement motion. If it was not sent, ask that it be forwarded to the agency and go to the hearing to explain to the judge that an agency cannot oppose your motion based only on money not being paid.
- B. Conviction not eligible for expungement.** In this case, the judge will not grant your motion, and you will likely have to pay the \$550 filing fee even if you were granted an IFP. For this reason, it is important to double-check your expungement eligibility before filing your motion!

TROUBLESHOOTING ISSUES THAT MAY ARISE

- C. Conviction not expungable yet.** Unless you 1) pled guilty under Code of Criminal Procedure articles 893 or 894, successfully completed probation and had a Motion to Set Aside granted by the judge, or 2) received a First Offender Pardon, you most likely need to wait 5 years (misdemeanors) or 10 years (felonies) before your conviction is eligible for expungement. If you file too early, the judge will not grant your motion, but you can ask the court not to assign costs, and to allow you to renew your motion when enough time has passed. If the judge does not agree to your request, you may be required to pay the \$550 filing fee even if your expungement has not been granted.
- D. Expungement motion was not filled out correctly.** Your expungement motion should list every charge that ever appeared on paper for this case. Sometimes a person is given one charge by the police, given a different charge by the DA, and then pleads guilty to an even different charge. If you forget to list a charge in your motion, that charge may remain on your record. If one of the agencies notices that your motion is missing a charge or has some other incorrect information, they may object for that reason. If this happens, you should request a chance to fix (or “amend”) your paperwork to include the missing charge.
- E. Invalid objections.** Sometimes, an agency may make an objection that does not have a basis in the law. In other words, the reason given for the objection is not a good one, and the judge should still grant your motion. For example, an agency might object to your expungement because you have “too many” convictions or because your convictions were “too close together,” neither of which are valid objections under the law. If you receive an objection for a reason other than those explained above, you may want to consult a private attorney. You can also call JAC at 504-273-1091.

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