

Amendments to House Bill No. 701
2nd Reading Copy

Requested by Katie Zolnikov
For the (H) Committee of the Whole

Prepared by Jameson Walker
04/04/2021, 07:53:11

1. Title, line 12.

Following: "AUTHORITY;"

Insert: "PROVIDING FOR CRIMINAL CONVICTIONS RELATED TO MARIJUANA;"

Following: "SECTIONS"

Insert: "3-5-113, 3-5-115,"

2. Title, line 14.

Following: "16-12-112,"

Insert: "16-12-113,"

3. Page 28.

Following: line 5

Insert: "Section 29. Section 3-5-113, MCA, is amended to read:

"3-5-113. Judges pro tempore -- special masters -- scope of authority in criminal and civil cases. (1) (a) A civil action in the district court may be tried by a judge pro tempore or special master, who must be a member of the bar of the state, agreed upon in writing by the parties litigant or their attorneys of record, appointed by the court as provided in 3-5-115, ~~or~~ 3-20-102, or [section 102], and sworn to try the cause before entering upon the duties in trying the cause.

(b) The judge pro tempore or special master has the authority and power of an elected district court judge in the particular civil action tried in the manner provided for in this subsection (1). All proceedings before a judge pro tempore or special master must be conducted in accordance with the rules of evidence and procedure governing district courts.

(c) Any order, judgment, or decree made or rendered in a civil case by the judge pro tempore or special master has the same force and effect as if made or rendered by the district court with the regular judge presiding.

(2) (a) Preliminary, nondispositive proceedings in criminal actions in a district court may be conducted by a judge pro tempore or special master. The

judge pro tempore or special master in a criminal case must be appointed by a district court judge or judges as provided in 3-5-122.

(b) All proceedings before a judge pro tempore or special master in a criminal case must be conducted in accordance with the rules of evidence and procedure governing district courts.

(c) The judge pro tempore or special master in a criminal case has the authority and power of a district court judge to issue orders pursuant to Title 46, chapter 9, concerning bail and conditions of release or detention of persons pending trial, and to conduct arraignments, initial appearances on warrants, and initial appearances on probation revocations. An order made by the judge pro tempore or special master in a criminal case has the same force and effect as if made by a district court judge.

(d) Within 10 days after issuance of an order by a judge pro tempore or special master in a criminal case, a party may object to the order as provided by rules of court and a district court judge shall make a de novo determination of that portion of the order to which objection is made. The district court judge may accept, reject, or modify the order in whole or in part. The district court judge may also receive further evidence or recommit the matter to the judge pro tempore or special master with instructions.

(e) All proceedings before a judge pro tempore or special master in a criminal case must be conducted in a suitable room in the courthouse, subject to the provisions of Title 46 relating to the use of two-way electronic audio-video communication. All records must be filed and kept in accordance with the rules governing the district court." "

Insert: "Section 30. Section 3-5-115, MCA, is amended to read:

"3-5-115. Agreement, petition, and appointment of judge pro tempore -- waiver of jury trial. (1) Prior to trial and upon written agreement of all the parties to a civil action, the parties may petition for the appointment of a judge pro tempore. Except as provided in 3-20-102, if the district court judge having

jurisdiction over the case where the action was filed finds that the appointment is in the best interest of the parties and serves justice, the district court judge may appoint the judge pro tempore nominated by the parties to preside over the whole action or any aspect of the action as if the regular district court judge were presiding.

(2) Except as provided in 3-20-102, an appointment of a judge pro tempore constitutes a waiver of the right to trial by jury by any party having the right.

(3) The supreme court shall appoint the asbestos claims judge as provided in 3-20-102.

(4) The supreme court shall appoint a judge to determine the expungement or resentencing of marijuana convictions as provided in [section 102]."

Renumber: subsequent sections

4. Page 65.

Following: line 10

Insert: "**Section 52.** Section 16-12-113, MCA, is amended to read:

"16-12-113. Decriminalized acts -- petition for expungement or resentencing -- retroactive application. (1) A person currently serving a sentence for an act that is permitted under this chapter or is punishable by a lesser sentence under this chapter than the person was awarded may petition for an expungement of the conviction or resentencing.

(2) Upon receiving a petition under subsection (1), the expungement or resentencing of marijuana conviction court, as provided in [sections 101 through 103], shall presume the petitioner satisfies the criteria in subsection (1) unless the county attorney proves by clear and convincing evidence that the petitioner does not satisfy the criteria. If the petitioner satisfies the criteria in subsection (1), the court shall grant the petition unless the court determines that granting the petition would pose an unreasonable risk of danger to public safety.

(3) A person who is serving a sentence and is resentenced pursuant to

subsection (1) must be given credit for any time already served and may not be subject to supervision.

(4) Resentencing under this section may not result in the imposition of a term longer than the original sentence or the reinstatement of charges dismissed pursuant to a negotiated plea agreement.

(5) (a) A person who has completed a sentence for an act that is permitted under this chapter or is punishable by a lesser sentence under this chapter than the person was awarded may petition the sentencing court to:

(i) expunge the conviction; or

(ii) redesignate the conviction as a misdemeanor or civil infraction in accordance with this chapter.

(b) The petition must be served on the county attorney for the county where the petition is filed.

(6) Upon receiving a petition under subsection (5), the court shall presume the petitioner satisfies the criteria in subsection (5) unless the county attorney proves by clear and convincing evidence that the petitioner does not satisfy the criteria. Once the applicant satisfies the criteria in subsection (5), the court shall redesignate the conviction as a misdemeanor or civil infraction or expunge the conviction as legally invalid pursuant to this chapter.

(7) Unless requested by the applicant, no hearing is necessary to grant or deny an application filed under subsection (5).

(8) Any felony conviction that is recalled under subsection (1) or designated as a misdemeanor or civil infraction under subsection (5) must be considered a misdemeanor or civil infraction for all purposes. Any misdemeanor conviction that is recalled and resentenced under subsection (1) or designated as a civil infraction under subsection (5) must be considered a civil infraction for all purposes.

(9) Nothing in this section constitutes a waiver of any right or remedy otherwise available to the petitioner or applicant.

(10) Nothing in this chapter is intended to impact the finality of judgment in any case not falling within the purview of this chapter.

(11) The provisions of this section apply equally to juvenile cases if the juvenile would not have been guilty of an offense or would have been guilty of a lesser offense under this chapter."

Renumber: subsequent sections

5. Page 139.

Following: line 20

Insert: "NEW SECTION. Section 101. Definitions. As used in [sections 101 through 103], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Decriminalized or resentenced marijuana conviction" means a marijuana conviction described in 16-12-113 that no longer constitutes a criminal act, or a marijuana conviction that must be resentenced.

(2) "Expungement or resentencing of marijuana conviction court" means the court that is responsible for determining petitions for expungement and resentencing as provided in 16-12-113.

(3) "Petition for expungement or resentencing" means a petition filed pursuant to 16-12-113 seeking expungement or resentencing of a marijuana conviction."

Insert: "NEW SECTION. Section 102. Appointment of judge. (1) A petition for expungement or resentencing of a marijuana conviction filed as provided in 16-12-113 may be determined by a judge pro tempore or special master, who must be a member of the bar of the state, agreed on in writing by the petitioner and the county attorney, appointed by the supreme court as provided in 3-5-115, and sworn to determine whether the petitioner meets the criteria for expungement or resentencing as provided in 16-12-113. On appointment, the individual must be designated as the decriminalized marijuana conviction expungement judge.

(2) A judge appointed under subsection (1) has the authority and power of

an elected district court judge in the civil action involving petitions filed as provided in 16-12-113. All proceedings must be conducted in accordance with the rules of evidence and procedure governing district courts.

(3) Any determination rendered in a petition by the judge has the same force and effect as if determined by the district court with the regular judge presiding.

(4) A party stipulating to have a petition determined by the judge appointed under subsection (1) may not file a motion for substitution of the judge pursuant to 3-1-804.

(5) All filings relating to a petition filed as provided in 16-12-113 must be filed with the clerk of court in the judicial district in which the marijuana conviction took place. The applicant and the county attorney shall provide a copy of each filing to the judge appointed as provided in subsection (1)."

Insert: "NEW SECTION. Section 103. Petition for expungement -- venue. When the applicant requests a hearing, as provided in 16-12-113, the judge appointed as provided in [section 102] may hear the petition in any venue stipulated by the petitioner and the county attorney, as provided in 25-2-202, or in any venue otherwise determined by the judge in accordance with a stipulation of the petitioner and the county attorney. In stipulating venue, the petitioner and the county attorney shall take into consideration the availability of courtroom facilities. The judge may prepare a list of available courtroom facilities for consideration."

Renumber: subsequent sections

6. Page 143, line 23.

Following: "[section"

Strike: "60"

Insert: "63"

7. Page 143, line 27.

Following: "[Sections 1"

Insert: ", "

Strike: "through"

Following: "2"

Insert: ", and 101 through 103"

8. Page 144, line 1.
Following: "[sections 1"
Insert: ", "
Strike: "through"
Following: "2"
Insert: ", and 101 through 103"

9. Page 144, line 13.
Strike: "43(1) (a)"
Insert: "45(1) (a)"

10. Page 144, line 13.
Following: "(12);"
Strike: "83(2)"
Insert: "86(2)"

11. Page 144, line 13.
Strike: "84, 85, 101, 104"
Insert: "87, 88, 107, 110"

12. Page 144, line 15.
Strike: "48, 60, 82, 83(11), 86 through 88, 99, 100, and 102"
Insert: "50, 63, 85, 86(11), 89 through 91, 105, 106, and 108"

13. Page 144, line 18.
Following: "[Section"
Strike: "40(14) (b) (ii)"
Insert: "42(15) (b) (ii)"

- END -

Explanation - Note: Because the page and line numbers referred to in these amendment instructions are required to match the page and line numbers of the official bill version being amended, they will not necessarily match the page and line numbers shown in any related Amendments in Context document.