

1 \_\_\_\_\_ BILL NO. \_\_\_\_\_

2 INTRODUCED BY \_\_\_\_\_  
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING AUTOMATIC EXPUNGEMENT OF CONVICTIONS  
5 FOR POSSESSION OF MARIJUANA REGARDING MISDEMEANOR CRIMES THAT ARE NO LONGER  
6 ILLEGAL; AND AMENDING SECTION 16-12-113, MCA."

7  
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9  
10 **Section 1.** Section 16-12-113, MCA, is amended to read:

11 **"16-12-113. Decriminalized acts -- petition for expungement or resentencing -- retroactive**  
12 **application.** (1) A person currently serving a sentence for an act that is permitted under this chapter ~~or shall~~  
13 have their conviction expunged.

14 (a) (i) Within 1 year of [the effective date of this act], the department of justice shall provide notice to  
15 the appropriate district court for each conviction described in this subsection (1); and

16 (ii) on receiving notification from the department of justice, the district court shall, on its own motion,  
17 expunge the person's conviction for any acts that are permitted under this chapter.

18 (b) When the court expunges a conviction under this section, the court shall:

19 (i) send a copy of the order expunging the conviction to the prosecutor and the department of justice;  
20 and

21 (ii) order the expungement of all records of arrest, investigation, and detention, and any court  
22 proceedings that may be held by the court, the investigating law enforcement agency, or the department of  
23 justice related to the conviction.

24 (c) The prosecutor and the department of justice shall inform the person whose conviction has been  
25 expunged under this section that the conviction is expunged.

26 (2) A person currently serving a sentence for an act that is punishable by a lesser sentence under this  
27 chapter than the person was awarded may petition for an expungement of the conviction or resentencing.

28 ~~(2)~~(3) Upon receiving a petition under subsection (1), the court shall presume the petitioner satisfies

1 the criteria in subsection (1) unless the county attorney proves by clear and convincing evidence that the  
2 petitioner does not satisfy the criteria. If the petitioner satisfies the criteria in subsection (1), the court shall grant  
3 the petition unless the court determines that granting the petition would pose an unreasonable risk of danger to  
4 public safety.

5 ~~(3)~~(4) A person who is serving a sentence and is resentenced pursuant to subsection (1) must be  
6 given credit for any time already served and may not be subject to supervision.

7 ~~(4)~~(5) Resentencing under this section may not result in the imposition of a term longer than the  
8 original sentence or the reinstatement of charges dismissed pursuant to a negotiated plea agreement.

9 ~~(5)~~(6) (a) A person who has completed a sentence for an act that is permitted under this chapter ~~or~~  
10 shall have their conviction expunged as provided in subsection (1).

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

- 13 (i) expunge the conviction; or
- 14 (ii) redesignate the conviction as a misdemeanor or civil infraction in accordance with this chapter.

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

16 ~~(6)~~(7) Upon receiving a petition under subsection ~~(5)~~ (6), the court shall presume the petitioner  
17 satisfies the criteria in subsection ~~(5)~~ (6) unless the county attorney proves by clear and convincing evidence  
18 that the petitioner does not satisfy the criteria. Once the applicant satisfies the criteria in subsection ~~(5)~~ (6), the  
19 court shall redesignate the conviction as a misdemeanor or civil infraction or expunge the conviction as legally  
20 invalid pursuant to this chapter.

21 ~~(7)~~(8) Unless requested by the applicant, no hearing is necessary to grant or deny an application filed  
22 under subsection ~~(5)~~ (6).

23 ~~(8)~~(9) Any felony conviction that is recalled under subsection (1) or designated as a misdemeanor or  
24 civil infraction under subsection ~~(5)~~ (6) must be considered a misdemeanor or civil infraction for all purposes.  
25 Any misdemeanor conviction that is recalled and resentenced under subsection ~~(4)~~ (2) or designated as a civil  
26 infraction under subsection ~~(5)~~ (6) must be considered a civil infraction for all purposes.

27 ~~(9)~~(10) Nothing in this section constitutes a waiver of any right or remedy otherwise available to the  
28 petitioner or applicant.

