

## 1 HOUSE BILL NO. 659

2 INTRODUCED BY A. OLSEN

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A SPECIALIZED COURT TO DETERMINE THE  
5 EXPUNGEMENT OR RESENTENCING OF MARIJUANA CONVICTIONS; PROVIDING FOR THE  
6 APPOINTMENT OF A JUDGE; PROVIDING FOR VENUE AND SCOPE OF AUTHORITY; PROVIDING  
7 DEFINITIONS; PROVIDING AN APPROPRIATION; AND AMENDING SECTIONS 3-5-113, 3-5-115, AND 16-  
8 12-113, MCA."

9

10 WHEREAS, Initiative 190 passed legalizing recreational marijuana and providing that certain prior  
11 marijuana convictions may be expunged; and

12 WHEREAS, it is in the interests of justice and judicial economy that the restoration of rights claims be  
13 adjudicated as quickly as possible without disruption of Montana district courts which are already very busy;  
14 and

15 WHEREAS, the large number of marijuana restoration of rights related claims will impede the ability of  
16 each district court judge in the Montana judicial districts to handle the normal case load of each court and may  
17 raise several potential conflicts of interest; and

18 WHEREAS, it is imperative that marijuana restoration of rights related claims be dealt with  
19 expeditiously in order to allow Montana citizens to receive a speedy resolution of their claims and be on their  
20 way to economic and civic productivity; and

21 WHEREAS, Article VII, section 1, of the Montana Constitution allows additional courts to be provided  
22 by law.

23

24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

25

26 NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 6], unless the context clearly  
27 indicates otherwise, the following definitions apply:

28 (1) "Decriminalized or resentenced marijuana conviction" means a marijuana conviction described in

1 16-12-113 that no longer constitutes a criminal act, or a marijuana conviction that must be resentenced.

2 (2) "Expungement or resentencing of marijuana conviction court" means the court, as provided in  
3 [sections 1 through 6], that is responsible for determining petitions for expungement and resentencing as  
4 provided in 16-12-113.

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

7  
8 **NEW SECTION. Section 2. Appointment of judge.** (1) A petition for expungement or resentencing  
9 of a marijuana conviction filed as provided in 16-12-113 may be determined by a judge pro tempore or special  
10 master, who must be a member of the bar of the state, agreed on in writing by the petitioner and the county  
11 attorney, appointed by the supreme court as provided in 3-5-115, and sworn to determine whether the petitioner  
12 meets the criteria for expungement or resentencing as provided in 16-12-113. On appointment, the individual  
13 must be designated as the decriminalized marijuana conviction expungement judge.

14 (2) A judge appointed under subsection (1) has the authority and power of an elected district court  
15 judge in the civil action involving petitions filed as provided in 16-12-113. All proceedings must be conducted in  
16 accordance with the rules of evidence and procedure governing district courts.

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

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

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

24  
25 **NEW SECTION. Section 3. Petition for expungement -- venue.** When the applicant requests a  
26 hearing, as provided in 16-12-113, the judge appointed as provided in [section 2] may hear the petition in any  
27 venue stipulated by the petitioner and the county attorney, as provided in 25-2-202, or in any venue otherwise  
28 determined by the judge in accordance with a stipulation of the petitioner and the county attorney. In stipulating

1 venue, the petitioner and the county attorney shall take into consideration the availability of courtroom facilities.  
2 The judge may prepare a list of available courtroom facilities for consideration.

3

4 **Section 4.** Section 3-5-113, MCA, is amended to read:

5 **"3-5-113. Judges pro tempore -- special masters -- scope of authority in criminal and civil**

6 **cases.** (1) (a) A civil action in the district court may be tried by a judge pro tempore or special master, who  
7 must be a member of the bar of the state, agreed upon in writing by the parties litigant or their attorneys of  
8 record, appointed by the court as provided in 3-5-115, ~~or 3-20-102,~~ or [section 2], and sworn to try the cause  
9 before entering upon the duties in trying the cause.

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

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

17 (2) (a) Preliminary, nondispositive proceedings in criminal actions in a district court may be  
18 conducted by a judge pro tempore or special master. The judge pro tempore or special master in a criminal  
19 case must be appointed by a district court judge or judges as provided in 3-5-122.

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

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

27 (d) Within 10 days after issuance of an order by a judge pro tempore or special master in a criminal  
28 case, a party may object to the order as provided by rules of court and a district court judge shall make a de

1 novo determination of that portion of the order to which objection is made. The district court judge may accept,  
2 reject, or modify the order in whole or in part. The district court judge may also receive further evidence or  
3 recommit the matter to the judge pro tempore or special master with instructions.

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

8

9 **Section 5.** Section 3-5-115, MCA, is amended to read:

10 **"3-5-115. Agreement, petition, and appointment of judge pro tempore -- waiver of jury trial. (1)**

11 Prior to trial and upon written agreement of all the parties to a civil action, the parties may petition for the  
12 appointment of a judge pro tempore. Except as provided in 3-20-102, if the district court judge having  
13 jurisdiction over the case where the action was filed finds that the appointment is in the best interest of the  
14 parties and serves justice, the district court judge may appoint the judge pro tempore nominated by the parties  
15 to preside over the whole action or any aspect of the action as if the regular district court judge were presiding.

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

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

19 (4) The supreme court shall appoint a judge to determine the expungement or resentencing of  
20 marijuana convictions as provided in [section 2]."

21

22 **Section 6.** Section 16-12-113, MCA, is amended to read:

23 **"16-12-113. Decriminalized acts -- petition for expungement or resentencing -- retroactive**

24 **application. (1)** A person currently serving a sentence for an act that is permitted under this chapter or is  
25 punishable by a lesser sentence under this chapter than the person was awarded may petition for an  
26 expungement of the conviction or resentencing.

27 (2) Upon receiving a petition under subsection (1), the expungement or resentencing of marijuana  
28 conviction court, as provided in [sections 1 through 3], shall presume the petitioner satisfies the criteria in

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

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

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

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

11 (i) expunge the conviction; or

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

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

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

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

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

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

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

