

SJ 31: EXPUNGEMENT COURT ANALYSIS

BACKGROUND

Section 16-12-115, MCA, (Appointment of judge) is a new section of law created to establish a marijuana expungement court and provide for the appointment of a judge pro tempore or special master to preside over the expungement court.

16-12-115. 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*. (emphasis added)

(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.* (emphasis added)

(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 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). (emphasis added)

According to the Court Administrator's Office, based on the number of expungement requests seen to date, this separate court may not be necessary, in which case, there is no need for reference to this court in statute.

ANALYSIS

At the April 20 meeting, the committee suggested amending 16-12-115, MCA, to follow the temporary rules of district judges ruling on expungement petitions.

The Montana Supreme Court's temporary order dated March 15, 2022, generally provides that a person seeking expungement could submit their request to the court where they were originally sentenced. Stakeholders have indicated that the temporary order provides a concise process that removes the need to create a marijuana conviction resentencing court by using existing courts and that this process has not been unduly burdensome to the courts. That notwithstanding, stakeholders note that the resentencing of marijuana conviction court statutes, 16-12-114 through 16-4-116, MCA, may nevertheless provide flexibility in the event the courts receive a large number of future requests.

RECOMMENDATION

Leave the statutes as they currently stand to allow flexibility in the courts should the need arise.

COMMITTEE OPTIONS

Option A: Repeal 16-12-115, MCA.

Option B: Amend 16-12-115, MCA.

Option C: Leave as is.