

 ORIGINAL

FILED

03/16/2022

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: AF 22-0129

IN THE SUPREME COURT OF THE STATE OF MONTANA

AF 22-0129

FILED

MAR 15 2022

Bowen Greenwood
Clerk of Supreme Court
State of Montana

ORDER

IN RE THE ADOPTION OF TEMPORARY
RULES FOR EXPUNGEMENT,
RESENTENCING, OR REDESIGNATION
OF A CONVICTION UNDER THE MONTANA
MARIJUANA REGULATION AND
TAXATION ACT

Pursuant to its jurisdiction over all other courts under Article VII, section 2, of the Montana Constitution, and in furtherance of and pursuant to §§ 16-12-113 through 16-12-116, MCA, the Montana Supreme Court hereby enacts the attached Temporary Rules for Expungement, Resentencing, or Redesignation of a Conviction under the Montana Marijuana Regulation and Taxation Act.

IT IS THEREFORE ORDERED that the Temporary Rules for Expungement, Resentencing, or Redesignation of a Conviction under the Montana Marijuana Regulation and Taxation Act are approved and adopted. These Rules are effective immediately.

This Order and the attached rules shall be posted on the Court's website. In addition, the Clerk is directed to provide copies of this Order and the attachment to the State Law Library, to Todd Everts, Shana Harrington, and Karl Krempel at Montana Legislative Services, to Bethany Ahrens at Thomson Reuters, to Patti Glueckert and the Statute Legislation department at LexisNexis, and to the State Bar of Montana, with the request that the State Bar provide notice of the revised Rule on its website and in the next available issue of the *Montana Lawyer*.

DATED this 15 day of March, 2022.



Chief Justice

Augustus Hand

Oct 11 1814

James M. Rice

Justice

James M. Rice

James M. Rice

Justices

Temporary Rules for Expungement, Resentencing, or Redesignation of a Conviction under the Montana Marijuana Regulation and Taxation Act

Rule 1. Purpose. These temporary rules establish the procedure by which individuals who were convicted of a marijuana-related offense prior to the enactment of the Montana Marijuana Regulation and Taxation Act (MMRTA) may seek expungement, resentencing, or redesignation of that conviction via the expungement or resentencing.

Rule 2. Applicability. The Montana Rules of Civil Procedure apply to all expungement, resentencing, or redesignation proceedings under the MMRTA unless otherwise specified within these temporary rules.

Rule 3. Definitions.

- (A) "Expungement" is as defined in § 46-18-1103(1), MCA.
- (B) "Record" is as defined in § 46-18-1103(2), MCA.
- (C) "Redesignation" means to change the type of infraction recorded from:
 - (1) a felony to a misdemeanor;
 - (2) a felony to a civil infraction; or
 - (3) a misdemeanor to a civil infraction.

Rule 4. Manner of Service and Filing. The petitioner and respondent, if any, shall serve and file all documents in accordance with Rule 5 of the Montana Rules of Civil Procedure and in accordance with all rules applicable to the sentencing court, including local rules.

Rule 5. Acceptance for Filing. Upon presentation of a petition for expungement, resentencing, or redesignation under the MMRTA, along with any necessary fees or a completed fee waiver request, the clerk of the sentencing court shall accept the document for filing in the same manner as any other petition.

Rule 6. Petitions for Expungement, Resentencing, or Redesignation.

(A) A petition for expungement or resentencing may be filed while the petitioner is currently serving a sentence for an act that is permitted or is punishable by a lesser sentence. A petition for expungement or redesignation may be filed at any time after the petitioner has completed the sentence.

(B) Petitioners may use the petition forms created and maintained by the Office of Court Administration. (These forms may be found on the Judicial Branch website courts.mt.gov or at any Court Help Center location.) A petition for expungement, resentencing, or redesignation must contain: the petitioner's name, address, and telephone number; the offense and the approximate date of conviction for that offense; and a brief explanation as to why the petitioner believes the offense is eligible for expungement, resentencing, or redesignation under the MMRTA. If the petitioner desires a hearing on the petition, the petitioner must so state in the petition.

(C) A copy of the petitioner's criminal record from the Montana Department of Justice must accompany any petition for expungement, resentencing, or redesignation.

(D) Petitioners must file a separate petition for each conviction for which the petitioner seeks expungement, resentencing or redesignation. A petitioner may file multiple petitions concurrently. Filing fees and other costs will apply to each petition.

Rule 7. Responses to Petitions for Expungement, Resentencing, or Redesignation. A county attorney or city attorney may respond to a petition for expungement, resentencing, or redesignation within 21 days after service of the petition. If the county or city attorney does not respond within the time designated, it is presumed that the county or city attorney does not object to the relief requested in the petition.

Rule 8. Appointment of Judge. After the county or city attorney responds to the petition or when such time for response has expired, the judge of the court in which the petition was filed shall hold a hearing, if requested by the petitioner, and shall then rule upon the petition unless a judge pro tempore or special master is appointed in accordance with § 16-12-115, MCA.

Rule 9. Disposition.

(A) In determining whether to grant a petition for expungement, resentencing, or redesignation, the judge, judge pro tempore, or settlement master may request additional evidence, briefing, and/or oral argument to the extent necessary for ruling upon the petition.

(B) The judge, judge pro tempore, or special master shall issue a written order of disposition. If the petition is granted, the order shall so state and shall further state the specific relief granted. If the petition is denied, the order shall provide the reason for such denial.

Rule 10. Appeals. Orders granting or denying petitions for expungement, resentencing, or redesignation may be appealed in the same manner as any other appeal from a final order.

Rule 11. Expunging or Redesignating a Conviction. If a petition for expungement or redesignation is granted, the petitioner bears the responsibility for paying any associated fees and for submitting the necessary paperwork to the Department of Justice to effectuate the expungement or redesignation.

Rule 12. Enactment. These Temporary Rules are effective upon approval and adoption by the Montana Supreme Court. These Temporary Rules shall remain in effect until a marijuana conviction court is created as authorized by the MMRTA.