

## 1 HOUSE BILL NO. 276

2 INTRODUCED BY K. PETERSON

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS GOVERNING MUNICIPAL  
5 COURTS AND JUSTICES' COURTS; REVISING THE QUALIFICATIONS AND TRAINING REQUIREMENTS  
6 FOR MUNICIPAL COURT JUDGES; ALLOWING FIRST-CLASS COUNTIES TO ESTABLISH JUSTICES'  
7 COURTS AS COURTS OF RECORD TO BE KNOWN AS COUNTY COURTS; PROVIDING THAT THE  
8 QUALIFICATIONS AND TRAINING REQUIREMENTS FOR A JUSTICE OF THE PEACE SERVING IN A  
9 COUNTY COURT ARE THE SAME AS FOR A MUNICIPAL COURT JUDGE; PROVIDING THAT APPEALS  
10 FROM A COUNTY COURT ARE ON THE RECORD AND NOT DE NOVO; PROVIDING FOR THE RETENTION  
11 OF CERTAIN MONEY BY THE COUNTY TO ASSIST IN FUNDING A COUNTY COURT; AUTHORIZING A  
12 MUNICIPAL COURT JUDGE OR A JUSTICE OF THE PEACE FOR A COUNTY COURT TO ACT AS A JUDGE  
13 PRO TEMPORE IN A DISTRICT COURT; PROVIDING A GRANDFATHER CLAUSE FOR EXISTING JUSTICES  
14 OF THE PEACE; AMENDING SECTIONS 3-5-114, 3-6-202, 3-6-204, 3-10-101, 3-10-203, 3-10-204,  
15 3-10-207, 3-10-601, 25-33-301, AND 46-17-311, MCA; AND PROVIDING AN EFFECTIVE DATE."

16

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

18

19 **Section 1.** Section 3-5-114, MCA, is amended to read:20 **"3-5-114. Qualifications.** Any of the following individuals may act as a judge pro tempore:21 (1) a member of the bar of the state who meets the qualifications for judge of the district court  
22 as provided in 3-5-202;

23 (2) a retired judge of the district court;

24 (3) a justice of the peace for a county court, provided for in 3-10-101;25 (4) a municipal court judge; or26 ~~(3)~~(5) a retired justice of the supreme court."

27

28 **Section 2.** Section 3-6-202, MCA, is amended to read:29 **"3-6-202. Qualifications -- certification -- training.** (1) A municipal court judge must have the same  
30 qualifications as a judge of a district court, as set forth in Article VII, section 9, of the 1972 Montana

1 constitution, except that a municipal court judge need only be admitted to the practice of law in Montana  
2 for at least ~~2~~ 3 years prior to the date of appointment or election.

3 (2) A municipal court judge ~~must be a resident and voter in the city in which he is elected at the~~  
4 ~~time of his election~~ shall reside in the county in which the court is located and shall meet the residency  
5 requirements provided in 3-10-204.

6 (3) ~~A municipal court judge must be certified as provided in 3-1-1502 or 3-1-1503 prior to~~  
7 ~~assuming office.~~

8 ~~———— (4) There must be two mandatory annual training sessions supervised by the supreme court for~~  
9 ~~all elected and appointed municipal court judges. One of the training sessions may be held in conjunction~~  
10 ~~with the Montana magistrates' association convention. Actual and necessary travel expenses, as defined~~  
11 ~~and provided for in 2-18-501 through 2-18-503, and the costs of registration and books and other~~  
12 ~~materials must be paid to the elected or appointed municipal court judge for attending the sessions by the~~  
13 ~~city in which he holds or will hold court and must be charged against that city.~~

14 ~~———— (5) Each municipal court judge shall attend the training sessions provided for in subsection (4).~~  
15 ~~Failure to attend disqualifies a judge from office and creates a vacancy in the office. However, the supreme~~  
16 ~~court may excuse a municipal court judge from attendance because of illness, a death in the family, or any~~  
17 ~~other good cause.~~

18 (3) The commission on courts of limited jurisdiction, upon finding compliance with subsections  
19 (1) and (2), shall issue a certificate, as required in 3-1-1502, prior to the municipal judge assuming office.  
20 The certificate must be conditioned upon continued compliance with the minimum judicial education  
21 requirements provided for in this section. The certificate must be filed with the clerk and recorder as  
22 provided in 3-1-1502.

23 (4) A municipal court judge shall complete a minimum of 15 hours of continuing judicial education  
24 requirements each year or a greater number established by the supreme court. Attendance at the two  
25 annual training sessions under 3-10-203 may fulfill the requirement provided for in this subsection.

26 (5) Completion of a course approved for continuing judicial or legal education hours applies to the  
27 judicial education requirements under subsection (4).

28 (6) A municipal court judge is entitled to reimbursement for all actual and necessary expenses and  
29 costs incurred in attending a continuing judicial or legal education course.

30 (7) On or before December 31 of each year, a municipal court judge shall file an affidavit of

1 compliance with the continuing judicial education requirements established in this section with the  
 2 commission on courts of limited jurisdiction. The supreme court may sanction a municipal court judge or  
 3 declare a vacancy in the office of the judge for failure to meet the training requirements established in this  
 4 section."

5

6 **Section 3.** Section 3-6-204, MCA, is amended to read:

7 **"3-6-204. Disqualification -- judge pro tempore.** When a judge of a municipal court has been  
 8 disqualified or is sick or unable to act, ~~he~~ the judge shall call in a justice of the peace for a county court  
 9 provided for in 3-10-101, another municipal court judge, a retired justice of the peace for a county court,  
 10 a retired municipal court judge, or some practicing an attorney of the county in which ~~his~~ the court is  
 11 located, ~~who shall be to act as a judge pro tempore.~~ The judge pro tempore with has the same powers  
 12 ~~for the purposes of the cause~~ power and authority as the municipal court judge of the court."

13

14 **Section 4.** Section 3-10-101, MCA, is amended to read:

15 **"3-10-101. Number and location of justices' courts -- authorization to combine with city court --**  
 16 **county court.** (1) There must be at least one justice's court in each county of the state, which must be  
 17 located at the county seat. The board of county commissioners shall designate the number of justices in  
 18 each justice's court.

19 (2) The board of county commissioners of each county of the state may establish:

20 (a) one additional justice's court located anywhere in the county; and

21 (b) one additional justice's court located in each city having a population of over 5,000, as  
 22 provided in subsection (3).

23 (3) A city having a population of over 5,000 may, by resolution, request the board of county  
 24 commissioners to constitute a justice's court in the city. A justice's court must be established in the city  
 25 if the board of county commissioners approves the request by resolution.

26 (4) A justice of the peace of a court established pursuant to subsection (3) may act as the city  
 27 judge upon passage of a city ordinance authorizing the action and upon approval of the ordinance by  
 28 resolution of the board of county commissioners. If the ordinance and resolution are passed, the city and  
 29 the county shall enter into an agreement for proportionate payment of the justice's salary, as established  
 30 under 3-10-207 and 3-11-202, and for proportionate reimbursement for the use of facilities.

1           (5) In a county of the first class, as provided in 7-1-2111, the county may establish the justice's  
 2 court as a court of record. If the justice's court is established as a court of record, it must be known as  
 3 a county court and, in addition to the provisions of parts 1 through 7 and 10 of this chapter, is also subject  
 4 to the provisions of [sections 9 through 11 ]. A county court may be established by a resolution of the  
 5 county commissioners or pursuant to 7-5-131 through 7-5-137."

6

7           **Section 5.** Section 3-10-203, MCA, is amended to read:

8           **"3-10-203. Orientation course -- annual training.** (1) Under the supervision of the supreme court,  
 9 a course of study must be presented as soon as is practical following each general election. Actual and  
 10 necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, and the costs of  
 11 registration and books and other materials ~~shall~~ must be paid to the elected or appointed justice of the  
 12 peace for attending the course by the county in which ~~he~~ the justice of the peace holds or will hold court  
 13 and ~~shall~~ must be charged against that county.

14           (2) ~~There shall~~ Subject to subsection (4), there must be two mandatory annual training sessions  
 15 supervised by the supreme court for all elected and appointed justices of the peace. One of the training  
 16 sessions may be held in conjunction with the Montana magistrates' association convention. Actual and  
 17 necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, and the costs of  
 18 registration and books and other materials ~~shall~~ must be paid to the elected or appointed justice of the  
 19 peace for attending the sessions by the county in which ~~he~~ the justice of the peace holds or will hold court  
 20 and ~~shall~~ must be charged against that county.

21           (3) ~~Each~~ Except as provided in subsection (4), each justice of the peace shall attend the training  
 22 sessions provided for in subsection (2). Failure to attend disqualifies ~~him~~ the justice of the peace from  
 23 office and creates a vacancy in the office. However, the supreme court may excuse a justice of the peace  
 24 from attendance because of illness, a death in the family, or any other good cause.

25           (4) A justice of the peace for a county court, provided for in 3-10-101, must meet the  
 26 requirements provided for in [section 11]."

27

28           **Section 6.** Section 3-10-204, MCA, is amended to read:

29           **"3-10-204. Residence requirements -- qualification for county court justice.** (1) ~~Every~~ Each justice  
 30 of the peace ~~must~~ shall reside in the county in which ~~his~~ the justice's court is held.

1           (2) ~~No~~ A person is not eligible ~~to~~ for the office of justice of the peace unless ~~he shall have~~ the  
 2 person has been a citizen of the United States and a resident of the county in which ~~he~~ the person is to  
 3 serve for 1 year ~~next~~ preceding ~~his~~ the person's election or appointment.

4           (3) Subject to [section 14], the justice of the peace for a county court, provided for in 3-10-101,  
 5 must have the same qualifications as a judge of a district court, as set forth in Article VII, section 9, of  
 6 the Montana constitution, except that a justice of the peace for a county court need only be admitted to  
 7 the practice of law in Montana for at least 3 years prior to the date of election or appointment."

8

9           **Section 7.** Section 3-10-207, MCA, is amended to read:

10           **"3-10-207. Salaries.** (1) The board of county commissioners shall set salaries for justices of the  
 11 peace by resolution and may, subject to subsections (5) and (6), for all or the remainder of each fiscal  
 12 year, in conjunction with setting salaries for other officers as provided in 7-4-2504(1), set their salaries  
 13 at the prior fiscal year level if that does not result in a reduction in salary. Salaries must meet the minimum  
 14 requirements established by this section.

15           (2) If the salary of the justice of the peace was determined on a fee basis for the years 1971 and  
 16 1972, ~~he~~ the justice of the peace shall must receive a monthly salary of not less than one-eighteenth of  
 17 the total fees, civil and criminal, collected by the justice or ~~his~~ the justice's predecessor in office during  
 18 the 2 years 1971 and 1972.

19           (3) If the salary of the justice of the peace was determined on a nonfee basis for the years 1971  
 20 and 1972, the justice ~~shall~~ must be paid not less than the highest salary earned by the justice or ~~his~~ the  
 21 justice's predecessor for the years 1971 and 1972.

22           (4) ~~The~~ Except as provided in subsections (1) and (5) and subject to subsection (6), the salary of  
 23 the justice of the peace may not be less than the salary for the district clerk of the court in that county;  
 24 ~~except as provided for in subsections (1) and (5).~~

25           (5) ~~In the event his~~ If the court is not open for business full time, the justice's salary ~~shall~~ must  
 26 be commensurate to the workload and office hours of the court.

27           (6) The salary of the justice of the peace for a county court may not be less than 90% of the  
 28 salary of a district court judge determined as provided in 3-5-211."

29

30           **Section 8.** Section 3-10-601, MCA, is amended to read:

1           **"3-10-601. Collection and disposition of fines, penalties, forfeitures, and fees.** (1) Each justice of  
2 the peace shall collect the fees prescribed by law for justices' courts and shall pay them into the county  
3 treasury of the county in which the justice of the peace holds office, on or before the 10th day of each  
4 month, to be credited to the general fund of the county.

5           (2) All fines, penalties, and forfeitures that are required to be imposed, collected, or paid in a  
6 justice's court must, for each calendar month, be paid by the justice's court on or before the 5th day of  
7 the following month to the treasurer of the county in which the justice's court is situated, except that they  
8 may be distributed as provided in 44-12-206 if imposed, collected, or paid for a violation of Title 45,  
9 chapter 9 or 10.

10           (3) ~~(a) The~~ Except as provided in subsection (3)(b), the county treasurer shall, in the manner  
11 provided in 15-1-504, distribute money received under subsection (2) as follows:

12           ~~(a)(i)~~ 50% to the state treasurer for deposit in the state general fund; and

13           ~~(b)(ii)~~ 50% to the county general fund.

14           **(b) If the county has established a county court as provided in 3-10-101, then the expenses of**  
15 **the county court provided for in 3-10-103, the salaries of the justices of the peace for the county court**  
16 **as provided for in 3-10-207, and the expenses provided for in 3-10-209 must be deducted by the county**  
17 **treasure before making the distributions provided for in subsection (3)(a).**"

18

19           **NEW SECTION. Section 9. Appeal to district court from county court -- record on appeal.** (1) A  
20 party may appeal to district court from a county court judgment or order. The appeal is confined to review  
21 of the record and questions of law, subject to the supreme court's rulemaking and supervisory authority.

22           (2) The record on appeal to district court consists of an electronic recording or stenographic  
23 transcription of a case tried, together with all papers filed in the action.

24           (3) The district court may affirm, reverse, or amend any appealed order or judgment and may  
25 direct the proper order or judgment to be entered or direct that a new trial or further proceeding be had  
26 in the court from which the appeal was taken.

27           (4) Unless the supreme court establishes rules for appeal from a county court to the district court,  
28 the Montana Uniform Municipal Court Rules of Appeal to District Court codified in Title 25, chapter 30,  
29 apply to appeals from the county court to district court.

30

1            NEW SECTION. **Section 10. Disqualification of justice of peace for county court -- judge pro**  
 2 **tempore.** When a justice of the peace for a county court has been disqualified or is sick or unable to act,  
 3 the justice shall call in a justice for a county court, a municipal court judge, a retired justice for a county  
 4 court, a retired municipal court judge, or an attorney of the county in which the court is located to act as  
 5 a judge pro tempore. The judge pro tempore has the same power and authority as the justice for the  
 6 county court.

7

8            NEW SECTION. **Section 11. Minimum judicial education requirements -- justice of peace for**  
 9 **county court.** (1) The commission on courts of limited jurisdiction, upon finding compliance with  
 10 3-10-204(3), shall issue a certificate, as required in 3-1-1502, prior to the justice of the peace for a county  
 11 court assuming office. The certificate must be conditioned upon continued compliance with the minimum  
 12 judicial education requirements provided for in this section. The certificate must be filed with the clerk and  
 13 recorder as provided in 3-1-1502.

14            (2) A justice of the peace for a county court, provided for in 3-10-101, shall complete a minimum  
 15 of 15 hours of continuing judicial education requirements each year or a greater number established by the  
 16 supreme court. Attendance at the two annual training sessions under 3-10-203 may fulfill the requirement  
 17 provided for in this subsection.

18            (3) Completion of a course approved for continuing judicial or legal education hours applies to the  
 19 judicial education requirements under subsection (2).

20            (4) A justice of the peace for a county court is entitled to reimbursement for all actual and  
 21 necessary expenses and costs incurred in attending a continuing judicial or legal education course.

22            (5) On or before December 31 of each year, a justice of the peace for a county court shall file an  
 23 affidavit of compliance with the continuing judicial education requirements established in this section with  
 24 the commission on courts of limited jurisdiction. The supreme court may sanction a justice of the peace  
 25 for a county court or declare a vacancy in the office of the justice of the peace for failure to meet the  
 26 training requirements established in this section.

27

28            **Section 12.** Section 25-33-301, MCA, is amended to read:

29            **"25-33-301. Trial de novo -- pleadings; -- conduct of trial.** (1) ~~##~~ Except as provided in subsection  
 30 (3), all appeals from justices' or city courts must be tried anew in the district court on the papers filed in

1 the justice's or city court unless the court, for good cause shown and on ~~such terms as may be~~ that are  
 2 just, ~~allow~~ allows other or amended pleadings to be filed in ~~such the~~ action. The court may order new or  
 3 amended pleadings to be filed. Each party has the benefit of all legal objections made in the justice's or  
 4 city court.

5 (2) When the action is tried anew on appeal, the trial must be conducted in all respects as other  
 6 trials in the district court. The provisions of this code as to trials in the district courts are applicable to  
 7 trials on appeal in the district court.

8 (3) The appeal from a justice's court established as a county court pursuant to 3-10-101 is on the  
 9 record as provided in [section 9]."

10

11 **Section 13.** Section 46-17-311, MCA, is amended to read:

12 **"46-17-311. Appeal from justices', municipal, and city courts.** (1) Except as provided in  
 13 subsection (4) and except for cases in which legal issues are preserved for appeal pursuant to 46-12-204,  
 14 all cases on appeal from a justice's or city court must be tried anew in the district court and may be tried  
 15 before a jury of six selected in the same manner as for other criminal cases. An appeal from a municipal  
 16 court to the district court is governed by 3-6-110, and an appeal from a justice's court established as a  
 17 county court is governed by [section 9].

18 (2) The defendant may appeal to the district court by filing written notice of intention to appeal  
 19 within 10 days after a judgment is rendered following trial. In the case of an appeal by the prosecution,  
 20 the notice must be filed within 10 days of the date that the order complained of is given. The prosecution  
 21 may appeal only in the cases provided for in 46-20-103.

22 (3) Within 30 days of filing the notice of appeal, the court shall transfer the entire record of the  
 23 court of limited jurisdiction to the district court.

24 (4) A defendant may appeal a justice's court, other than a county court, or city court revocation  
 25 of a suspended sentence to the district court. The district court judge shall determine whether the  
 26 suspended sentence will be revoked. A jury trial is not available in a sentence revocation procedure."

27

28 NEW SECTION. **Section 14. Grandfather clause.** An incumbent justice of the peace on [the  
 29 effective date of this act], in a county in which a county court is established, who meets the minimum  
 30 education requirements for a justice of the peace is eligible to run for the justice of the peace for a county

1 court in that county at the next and subsequent elections held for the justice of the peace for the county  
2 court unless the justice of the peace has a break in service.

3

4 NEW SECTION. **Section 15. Saving clause.** [This act] does not affect rights and duties that  
5 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this  
6 act].

7

8 NEW SECTION. **Section 16. Codification instruction.** [Sections 9 through 11] are intended to be  
9 codified as an integral part of Title 3, chapter 10, and the provisions of Title 3, chapter 10, apply to  
10 [sections 9 through 11].

11

12 NEW SECTION. **Section 17. Effective date.** [This act] is effective July 1, 2001.

13

- END -