

## HOUSE BILL NO. 358

INTRODUCED BY LANGE, NOENNIG, LASZLOFFY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS GOVERNING MUNICIPAL COURTS AND JUSTICES' COURTS; REVISING THE QUALIFICATIONS AND TRAINING REQUIREMENTS FOR MUNICIPAL COURT JUDGES; ALLOWING FIRST-CLASS COUNTIES WITH A POPULATION EXCEEDING 20,000 TO ESTABLISH JUSTICES' COURTS AS COURTS OF RECORD TO BE KNOWN AS COUNTY COURTS; PROVIDING THAT THE QUALIFICATIONS AND TRAINING REQUIREMENTS FOR A JUSTICE OF THE PEACE SERVING IN A COUNTY COURT ARE THE SAME AS FOR A MUNICIPAL COURT JUDGE; PROVIDING THAT APPEALS FROM A COUNTY COURT ARE ON THE RECORD AND NOT DE NOVO; ~~PROVIDING FOR THE RETENTION OF CERTAIN MONEY BY THE COUNTY TO ASSIST IN FUNDING A COUNTY COURT;~~ AUTHORIZING A MUNICIPAL COURT JUDGE OR A JUSTICE OF THE PEACE FOR A COUNTY COURT TO ACT AS A JUDGE PRO TEMPORE IN A DISTRICT COURT; PROVIDING A GRANDFATHER CLAUSE FOR EXISTING JUSTICES OF THE PEACE; AMENDING SECTIONS 3-5-114, 3-6-102, 3-6-202, 3-6-204, 3-10-101, 3-10-203, ~~3-10-204~~, 3-10-207, ~~3-10-601~~, 25-33-301, 46-17-311, AND MCA; AND PROVIDING AN EFFECTIVE DATE."

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

**Section 1.** Section 3-5-114, MCA, is amended to read:

**"3-5-114. Qualifications.** Any of the following individuals may act as a judge pro tempore:

- (1) a member of the bar of the state who meets the qualifications for judge of the district court as provided in 3-5-202;
- (2) a retired judge of the district court;
- (3) a justice of the peace for a county court, provided for in 3-10-101;
- (4) a municipal court judge; or
- ~~(3)~~(5) a retired justice of the supreme court."

**Section 2.** Section 3-6-102, MCA, is amended to read:

**"3-6-102. Abolition of city court.** (1) In cities in which a municipal court is established, the office of city judge is abolished.

(2) Except as provided in 3-6-101(2), a city judge whose office is abolished shall serve as a municipal court judge in the same city in which ~~he~~ the judge served as city judge for the remainder of ~~his~~ the judge's term and until the office of municipal court judge is filled by election, as provided under 3-6-201 ~~and 3-6-202.~~"

**Section 3.** Section 3-6-202, MCA, is amended to read:

**"3-6-202. Qualifications -- certification -- training.** (1) A municipal court judge must have the same qualifications as a judge of a district court, as set forth in Article VII, section 9, of the ~~1972~~ Montana constitution, except that a municipal court judge need only be admitted to the practice of law in Montana for at least ~~2~~ 3 years prior to the date of appointment or election.

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

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

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

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

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

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

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

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

(7) On or before December 31 of each year, a municipal court judge shall file an affidavit of compliance with the continuing judicial education requirements established in this section with the commission on courts of limited jurisdiction. The supreme court may sanction a municipal court judge or declare a vacancy in the office of the judge for failure to meet the training requirements established in this section."

**Section 4.** Section 3-6-204, MCA, is amended to read:

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

**Section 5.** Section 3-10-101, MCA, is amended to read:

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

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

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

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

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

(4) A justice of the peace of a court established pursuant to subsection (3) may act as the city judge upon passage of a city ordinance authorizing the action and upon approval of the ordinance by resolution of the board

of county commissioners. If the ordinance and resolution are passed, the city and the county shall enter into an agreement for proportionate payment of the justice's salary, as established under 3-10-207 and 3-11-202, and for proportionate reimbursement for the use of facilities.

(5) In a county of the first class, as provided in 7-1-2111, WITH A POPULATION EXCEEDING 20,000 the county may establish the justice's court as a court of record. If the justice's court is established as a court of record, it must be known as a county court and, in addition to the provisions of this chapter, is also subject to the provisions of [sections 40 8 through 42 10]. THE COURT'S PROCEEDINGS MUST BE RECORDED BY ELECTRONIC RECORDING OR STENOGRAPHIC TRANSCRIPTION AND ALL PAPERS FILED IN A PROCEEDING MUST BE INCLUDED IN THE RECORD. A county court may be established by a resolution of the county commissioners or pursuant to 7-5-131 through 7-5-137."

**Section 6.** Section 3-10-203, MCA, is amended to read:

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

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

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

(4) A justice of the peace for a county court, provided for in 3-10-101, must meet the requirements provided for in [section 42 10]."

~~Section 7.~~ Section 3-10-204, MCA, is amended to read:

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

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

(3) ~~Subject to [section 15], the justice of the peace for a county court, provided for in 3-10-101, must have the same qualifications as a judge of a district court, as set forth in Article VII, section 9, of the Montana constitution, except that a justice of the peace for a county court need only be admitted to the practice of law in Montana for at least 3 years prior to the date of election or appointment."~~

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

**"3-10-207. Salaries.** (1) ~~The~~ Subject to subsections (2) through (4), the board of county commissioners shall set salaries for justices of the peace by resolution and in conjunction with setting salaries for other officers as provided in 7-4-2504(1).

(2) The salary of the justice of the peace may not be less than the salary for the district clerk of the court in that county.

(3) If the justice's court is not open for business full time, the justice's salary must be commensurate to the workload and office hours of the court. The salary of a justice of the peace may not be reduced during the justice's term of office.

(4) The salary of the justice of the peace for a county court may not exceed 90% of the salary of a district court judge determined as provided in 3-5-211."

~~Section 9.~~ Section 3-10-601, MCA, is amended to read:

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

(2) ~~Except as provided in subsection (4), all fines, penalties, and forfeitures that are required to be imposed, collected, or paid in a justice's court must, for each calendar month, be paid by the justice's court on~~

or before the 5th day of the following month to the treasurer of the county in which the justice's court is situated, except that they may be distributed as provided in 44-12-206 if imposed, collected, or paid for a violation of Title 45, chapter 9 or 10:

~~———— (3) (a) Except as provided in 46-18-236(7) and subsection (3)(b) of this section, the county treasurer shall, as provided in 15-1-504, distribute money received under subsection (2) as follows:~~

~~———— (a)(i) 50% to the department of revenue for deposit in the state general fund; and~~

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

~~———— (b) If the county has established a county court as provided in 3-10-101, then the expenses of the county court provided for in 3-10-103, the salaries of the justices of the peace for the county court as provided for in 3-10-207, and the expenses provided for in 3-10-209 must be deducted by the county treasurer before making the distributions provided for in subsection (3)(a):~~

~~———— (4) (a) The justice's court may contract with a private person or entity for the collection of any final judgment that requires a payment to the justice's court.~~

~~———— (b) In the event that a private person or entity is retained to collect a judgment, the justice's court may assign the judgment to the private person or entity and the private person or entity may, as an assignee, institute a suit or other lawful collection procedure and other postjudgment remedies in its own name:~~

~~———— (c) The justice's court may pay the private person or entity a reasonable fee for collecting the judgment."~~

**NEW SECTION. Section 8. Appeal to district court from county court -- record on appeal.** (1) A party may appeal to district court from a county court judgment or order. The appeal is confined to review of the record and questions of law, subject to the supreme court's rulemaking and supervisory authority.

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

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

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

**NEW SECTION. Section 9. Disqualification of justice of peace for county court -- judge pro**

**tempore.** When a justice of the peace for a county court has been disqualified or is sick or unable to act, the justice shall call in another justice of the peace for a county court, a municipal court judge, a retired justice of the peace for a county court, a retired municipal court judge, or an attorney of the county in which the court is located to act as a judge pro tempore. The judge pro tempore has the same power and authority as the justice of the peace for the county court.

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

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

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

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

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

**Section 11.** Section 25-33-301, MCA, is amended to read:

**"25-33-301. Trial de novo -- pleadings; -- conduct of trial.** (1) ~~At~~ Except as provided in subsection (3), all appeals from justices' or city courts must be tried anew in the district court on the papers filed in the justice's or city court unless the court, for good cause shown and on ~~such terms as may be~~ that are just, allow ~~allows~~ other or amended pleadings to be filed in ~~such~~ the action. The court may order new or amended pleadings

to be filed. Each party has the benefit of all legal objections made in the justice's or city court.

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

(3) The appeal from a justice's court established as a county court pursuant to 3-10-101 is on the record as provided in [section 40 8]."

**Section 12.** Section 46-17-311, MCA, is amended to read:

**"46-17-311. Appeal from justices', municipal, and city courts.** (1) Except as provided in subsection (4) and except for cases in which legal issues are preserved for appeal pursuant to 46-12-204, all cases on appeal from a justice's or city court must be tried anew in the district court and may be tried before a jury of six selected in the same manner as for other criminal cases. An appeal from a municipal court to the district court is governed by 3-6-110, and an appeal from a justice's court established as a county court is governed by [section 40 8].

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

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

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

NEW SECTION. **Section 13. Grandfather clause.** An incumbent justice of the peace on [the effective date of this act], in a county in which a county court is established, who meets the minimum education requirements for a justice of the peace is eligible to run for the justice of the peace for a county court in that county at the next and subsequent elections held for the justice of the peace for the county court unless the justice of the peace has a break in service.

NEW SECTION. **Section 14. Saving clause.** [This act] does not affect rights and duties that matured,



penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 15. Codification instruction.** [Sections ~~40 8~~ through ~~42 10~~] are intended to be codified as an integral part of Title 3, chapter 10, and the provisions of Title 3, chapter 10, apply to [sections ~~40 8~~ through ~~42 10~~].

NEW SECTION. **Section 16. Effective date.** [This act] is effective July 1, 2003.

- END -

