



AN ACT GENERALLY REVISING THE LAWS GOVERNING MUNICIPAL COURTS AND JUSTICES' COURTS; REVISING THE QUALIFICATIONS AND TRAINING REQUIREMENTS FOR MUNICIPAL COURT JUDGES; ALLOWING A COUNTY TO ESTABLISH A JUSTICE'S COURT AS A COURT OF RECORD; PROVIDING THAT THE QUALIFICATIONS AND TRAINING REQUIREMENTS FOR A JUSTICE OF THE PEACE SERVING IN A JUSTICE'S COURT ESTABLISHED AS A COURT OF RECORD ARE THE SAME AS FOR A MUNICIPAL COURT JUDGE; PROVIDING THAT APPEALS FROM A JUSTICE'S COURT ESTABLISHED AS A COURT OF RECORD ARE ON THE RECORD AND NOT DE NOVO; AUTHORIZING A MUNICIPAL COURT JUDGE OR A JUSTICE OF THE PEACE FOR A JUSTICE'S COURT ESTABLISHED AS A COURT OF RECORD 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, 3-10-207, 25-33-301, AND 46-17-311, 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 justice's court established as a court of record, 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 by the city in which the judge holds or will hold court 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 justice's court established as a court of record provided for in 3-10-101, another municipal court judge, a retired justice of the peace for a justice's court established as a court of record, a retired municipal court judge, or some practicing an attorney of the county in which his ~~the~~ 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 -- justice's court established as court of record.** (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) A 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 justice's court established as a court of record and, in addition to the provisions of this chapter, is also subject to the provisions of [sections 8 through 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 justice's court established as a court of record 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 justice's court established as a court of record, provided for in 3-10-101, must meet the requirements provided for in [section 10]."

**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 justice's court established as a court of record may not exceed 90% of the salary of a district court judge determined as provided in 3-5-211."

**Section 8. Appeal to district court from justice's court established as court of record -- record on appeal.** (1) A party may appeal to district court from a justice's court established as a court of record 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 justice's court established as a court of record 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 justice's court established as a court of record to district court.

**Section 9. Disqualification of justice of peace for justice's court established as court of record -- judge pro tempore.** When a justice of the peace for a justice's court established as a court of record has been

disqualified or is sick or unable to act, the justice shall call in another justice of the peace for a justice's court established as a court of record, a municipal court judge, a retired justice of the peace for a justice's court established as a court of record, 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 justice's court established as a court of record.

**Section 10. Minimum judicial education requirements -- justice of peace for justice's court established as court of record.** (1) The commission on courts of limited jurisdiction shall issue a certificate, as required in 3-1-1502, prior to the justice of the peace for a justice's court established as a court of record 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 justice's court established as a court of record, 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 justice's court established as a court of record is entitled to reimbursement by the county in which the justice of the peace holds or will hold court 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 justice's court established as a court of record 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 justice's court established as a court of record 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) ~~All~~ 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~~ 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 court of record pursuant to 3-10-101 is on the record as provided in [section 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 court of record is governed by [section 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 justice's court established as a court of record, 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."

**Section 13. Grandfather clause.** An incumbent justice of the peace on [the effective date of this act], in a county in which a justice's court established as a court of record 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 justice's court established as a court of record in that county at the next and subsequent elections held for the justice of the

peace for the justice's court established as a court of record unless the justice of the peace has a break in service.

**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].

**Section 15. Codification instruction.** [Sections 8 through 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 8 through 10].

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

- END -



I hereby certify that the within bill,  
HB 0358, originated in the House.

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Chief Clerk of the House

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2019.

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2019.

HOUSE BILL NO. 358

INTRODUCED BY LANGE, NOENNIG, LASZLOFFY

AN ACT GENERALLY REVISING THE LAWS GOVERNING MUNICIPAL COURTS AND JUSTICES' COURTS; REVISING THE QUALIFICATIONS AND TRAINING REQUIREMENTS FOR MUNICIPAL COURT JUDGES; ALLOWING A COUNTY TO ESTABLISH A JUSTICE'S COURT AS A COURT OF RECORD; PROVIDING THAT THE QUALIFICATIONS AND TRAINING REQUIREMENTS FOR A JUSTICE OF THE PEACE SERVING IN A JUSTICE'S COURT ESTABLISHED AS A COURT OF RECORD ARE THE SAME AS FOR A MUNICIPAL COURT JUDGE; PROVIDING THAT APPEALS FROM A JUSTICE'S COURT ESTABLISHED AS A COURT OF RECORD ARE ON THE RECORD AND NOT DE NOVO; AUTHORIZING A MUNICIPAL COURT JUDGE OR A JUSTICE OF THE PEACE FOR A JUSTICE'S COURT ESTABLISHED AS A COURT OF RECORD 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, 3-10-207, 25-33-301, AND 46-17-311, MCA; AND PROVIDING AN EFFECTIVE DATE.