

HOUSE BILL NO. 722  
INTRODUCED BY J. JAYNE

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING JUSTICES' COURTS TO BE COURTS OF RECORD; AND AMENDING SECTIONS 3-1-102, 3-5-114, 3-10-101, 3-10-115, 3-10-116, 3-10-118, 3-10-207, 25-33-301, AND 46-17-311, MCA."

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

**Section 1.** Section 3-1-102, MCA, is amended to read:

**"3-1-102. Courts of record.** The court of impeachment, the supreme court, the district courts, the municipal courts, and the justices' courts ~~of record~~ are courts of record."

**Section 2.** 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 of record, provided for in 3-10-101;~~
- (4) a municipal court judge; or
- (5) a retired justice of the supreme court."

**Section 3.** 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 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 of record" and, in addition to the provisions of this chapter, is also subject to the provisions of 3-10-115 and 3-10-116. The~~ A justice's 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 of record may be established by a resolution of the county commissioners or pursuant to 7-5-131 through 7-5-137.

**Section 4.** Section 3-10-115, MCA, is amended to read:

**"3-10-115. Appeal to district court from justice's court ~~of record~~ -- record on appeal.** (1) A party may appeal to district court a judgment or order from a justice's court ~~of record~~. 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 ~~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 to district court from the justice's court ~~of record~~."

**Section 5.** Section 3-10-116, MCA, is amended to read:

**"3-10-116. Disqualification of justice of peace for justice's court ~~of record~~ -- judge pro tempore.** When a justice of the peace ~~for a justice's 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 of record~~, a municipal court judge, a retired justice of the peace ~~for a justice's 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 of record.~~"

**Section 6.** Section 3-10-118, MCA, is amended to read:

**"3-10-118. Powers and duties of justice's court of record.** ~~(1)~~ Except as otherwise provided by Title 25, chapter 30, and this chapter, the justice of the peace in a justice's court ~~of record~~ has, in matters within its jurisdiction, all the powers and duties of district judges in like cases. The justice of the peace may make and alter rules for the conduct of ~~its~~ the business of the court and prescribe forms of process conformable to law.

~~(2) The justice's court of record shall establish rules for appeal to district court. The rules are subject to the supreme court's rulemaking and supervisory authority."~~

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

**"3-10-207. Salaries.** (1) Subject to subsections (2) ~~through (4)~~ and (3), 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.

(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 of record may not exceed 90% of the salary of a district court judge determined as provided in 3-5-211."~~

**Section 8.** Section 25-33-301, MCA, is amended to read:

**"25-33-301. Trial de novo -- pleadings -- conduct of trial.** (1) ~~Except as provided in subsection (3),~~ ~~all~~ 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 terms that are just, allows other or amended pleadings to be filed in 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 of record pursuant to 3-10-101 is on the record as provided in 3-10-115."~~

**Section 9.** Section 46-17-311, MCA, is amended to read:

**"46-17-311. Appeal from justices', municipal, and city courts.** (1) Except as provided in 46-17-203(2)(b) or subsection (4) of this section 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 of record is governed by 3-10-115.~~

(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 or the denial of the motion to withdraw a plea as provided in 46-17-203(2)(b). 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 timely filing the notice of appeal, the court shall transfer the entire record of the court of limited jurisdiction to the district court. The court of limited jurisdiction has no duty to transmit the record if the notice of appeal is not timely filed. The defendant may petition the district court to order the record transmitted upon a showing of good cause for failure to timely file the notice of appeal.

(4) A defendant may appeal a justice's court, ~~other than a justice's 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.

(5) If, on appeal to the district court, the defendant fails to appear for a scheduled court date or meet a court deadline, the court may, except for good cause shown, dismiss the appeal on the court's own initiative or on motion by the prosecution and the right to a jury trial is considered waived by the defendant. Upon dismissal, the appealed judgment is reinstated and becomes the operative judgment."

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