

Unofficial Draft Copy

As of: March 29, 2010 (2:03pm)

LC1j07

**** Bill No. ****

Introduced By *****

By Request of the Law and Justice Interim Committee

A Bill for an Act entitled: "An Act allowing a city to establish a city court of record; providing that appeals from a city court of record are on the record and not de novo; amending sections 3-1-102, 3-11-101, 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 3-1-102, MCA, is amended to read:

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

{*Internal References to 3-1-102: None.*}

Section 2. Section 3-11-101, MCA, is amended to read:

"3-11-101. City court established. (1) A city court is established in each city or town. A city judge shall establish regular sessions of the court. On judicial days, the court must be open for all business, civil and criminal. On nonjudicial days, as defined in 3-1-302, the court may transact criminal business only.

(2) A city may establish the city court as a court of

record. If the city court is established as a court of record, it must be known as a "city court of record". 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 city court of record may be established by a resolution of the city commissioners or pursuant to 7-5-131 through 7-5-137."

{Internal References to 3-11-101: None.}

NEW SECTION. **Section 3. Powers and duties of city court of record.** (1) Except as otherwise provided by Title 25, chapter 30, and this chapter, the judge in a city court of record has, in matters within its jurisdiction, all the powers and duties of district judges in like cases. The judge may make and alter rules for the conduct of its business and prescribe forms of process conformable to law.

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

NEW SECTION. **Section 4. Appeal to district court from city court of record -- record on appeal.** (1) A party may appeal to district court a judgment or order from a city 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

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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 city 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 city court of record.

Section 5. 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 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

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3-10-101 is on the record as provided in 3-10-115. The appeal from a city court of record pursuant to 3-11-101 is on the record as provided in [section 4]."

{Internal References to 25-33-301: None.}

Section 6. 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, and an appeal from a city court of record is governed by [section 4].

(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

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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, other than a city court of record, 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."

{Internal References to 46-17-311: None.}

NEW SECTION. **Section 7. {standard} 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 8. {standard} Codification instruction.** [Sections 3 and 4] are intended to be codified as an

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integral part of Title 3, chapter 11, part 1, and the provisions of Title 3, chapter 11, part 1, apply to [sections 3 and 4].

NEW SECTION. **Section 9. {standard} Effective date.** [This act] is effective July 1, 2011.

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