

1 HOUSE BILL NO. 467

2 INTRODUCED BY F. WILMER

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING JUSTICES OF THE PEACE AND CITY JUDGES
5 PRESIDING OVER COURTS OF RECORD TO HAVE THE SAME QUALIFICATIONS AS MUNICIPAL COURT
6 JUDGES; AND AMENDING SECTIONS 3-10-101, 3-10-116, 3-10-231, 3-11-101, 3-11-203, AND 3-11-205,
7 MCA."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10
11 **Section 1.** Section 3-10-101, MCA, is amended to read:
12 **"3-10-101. Number and location of justices' courts -- authorization to combine with city court --**
13 **justice's court of record.** (1) There must be at least one justice's court in each county of the state, which must
14 be located at the county seat. The board of county commissioners shall designate the number of justices in each
15 justice's court.

16 (2) The board of county commissioners of each county of the state may establish:
17 (a) one additional justice's court located anywhere in the county; and
18 (b) one additional justice's court located in each city having a population of over 5,000, as provided in
19 subsection (3).

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

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

28 (5) (a) A county may establish the justice's court as a court of record.
29 (b) If the justice's court is established as a court of record, it must be known as a "justice's court of
30 record" and, in addition to the provisions of this chapter, is also subject to the provisions of 3-10-115 and

1 3-10-116.

2 (c) If the justice's court is established as a court of record, a justice of the peace must meet the same
3 qualifications as a municipal court judge as provided in 3-6-202.

4 (d) The court's proceedings must be recorded by electronic recording or stenographic transcription and
5 all papers filed in a proceeding must be included in the record.

6 (6) A justice's court of record may be established by a resolution of the county commissioners or
7 pursuant to 7-5-131 through 7-5-137."

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9 **Section 2.** Section 3-10-116, MCA, is amended to read:

10 **"3-10-116. Disqualification of justice of peace for justice's court of record -- judge pro tempore.**

11 (1) When a justice of the peace for a justice's court of record has been disqualified or is sick or unable to act, the
12 justice shall call in another justice of the peace for a justice's court of record, another justice of the peace for a
13 justice's court not of record, a municipal court judge, a retired justice of the peace for a justice's court of record,
14 a retired municipal court judge, an attorney, or the clerk of the justice's court of record to act as a judge pro
15 tempore. Except for a clerk acting as a judge pro tempore as provided in subsection (2)(b), the judge pro tempore
16 must meet the same qualifications as a municipal court judge as provided in 3-6-202.

17 (2) (a) Except as provided in subsection (2)(b), the judge pro tempore has the same power and authority
18 as the justice of the peace for the justice's court of record.

19 (b) A clerk of a justice's court of record acting as a judge pro tempore may not preside over a trial but
20 may preside over an initial appearance."

21

22 **Section 3.** Section 3-10-231, MCA, is amended to read:

23 **"3-10-231. Circumstances in which acting justice called in -- by whom.** (1) Whenever a justice of
24 the peace is disqualified from acting in any action because of the application of the supreme court's rules on
25 disqualification and substitution of judges, 3-1-803 and 3-1-805, the justice of the peace shall either transfer the
26 action to another justice's court in the same county or call a justice from a neighboring county to preside. If the
27 justice's court is established as a court of record, a substitute justice of the peace must meet the same
28 qualifications as a municipal court judge as provided in 3-6-202.

29 (2) (a) The following requirements must be met to qualify a substitute for a justice of the peace:

30 (i) Within 30 days of taking office, a justice of the peace shall provide a list of persons who are qualified

1 to hold court in the justice's place during a temporary absence when another justice or city judge is not available.
2 The persons listed must be of good moral character and have community support, a sense of community
3 standards, and a basic knowledge of court procedure.

4 (ii) The sitting justice of the peace shall request and obtain from the commission on courts of limited
5 jurisdiction established by the supreme court a waiver of training for the substitutes.

6 (iii) Each person on the list, provided for in subsection (2)(a)(i), shall subscribe to the written oath of office
7 as soon as possible after the person has received a waiver of training from the supreme court. The oath may be
8 subscribed before any member of the board of county commissioners or before any other officer authorized to
9 administer oaths.

10 (iv) If the justice's court is established as a court of record, each person on the list must meet the same
11 qualifications as a municipal court judge as provided in 3-6-202.

12 (b) The list of qualified substitutes, the written oath, and the commission's written approval and waiver
13 of training for those substitutes, pursuant to subsection (2)(a)(ii), must be filed with the county clerk as provided
14 in 3-10-202.

15 (c) A county clerk may provide a current list of qualified and sworn substitutes to local law enforcement
16 officers.

17 (3) Whenever a justice is sick, disabled, or absent, the justice may call in another justice, if there is one
18 readily available, or a city judge or a person from the list provided for in subsection (2) to hold court for the absent
19 justice until the absent justice's return. If the justice is unable to call in a substitute, the county commissioners
20 shall call in another justice, a city judge, or a person from the list provided for in subsection (2).

21 (4) During the time when a justice of the peace is on vacation or attending a training session, another
22 justice of the peace of the same county is authorized to handle matters that otherwise would be handled by the
23 absent justice. When there is no other justice of the peace in the county, the justice of the peace may designate
24 another person in the same manner as if the justice were sick or absent.

25 (5) A justice of the peace of any county may hold the court of any other justice of the peace at that
26 justice's request."
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28 **Section 4.** Section 3-11-101, MCA, is amended to read:

29 **"3-11-101. City court established -- city court of record.** (1) A city court is established in each city
30 or town. A city judge shall establish regular sessions of the court. On judicial days, the court must be open for

1 all business, civil and criminal. On nonjudicial days, as defined in 3-1-302, the court may transact criminal
2 business only.

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

4 (b) If the city court is established as a court of record, it must be known as a "city court of record".

5 (c) If the city court is established as a court of record then a city judge must meet the same qualifications
6 as a municipal court judge as provided in 3-6-202.

7 (d) The court's proceedings must be recorded by electronic recording or stenographic transcription, and
8 all papers filed in a proceeding must be included in the record.

9 (3) A city court of record may be established by a resolution of the city commissioners or pursuant to
10 7-5-131 through 7-5-137."
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12 **Section 5.** Section 3-11-203, MCA, is amended to read:

13 **"3-11-203. When substitute for judge called in.** (1) The city judge or mayor may call in a city judge,
14 a justice of the peace, or some qualified person to act in the judge's place whenever the judge is:

15 (a) a party in a case;

16 (b) interested in a case;

17 (c) the spouse of or related to either party in a case by consanguinity or affinity within the sixth degree;

18 or

19 (d) sick, absent, or unable to act.

20 (2) The city judge may call in a city judge, justice of the peace, or some qualified person to act in the city
21 judge's place when a disqualifying affidavit is filed against the judge pursuant to the supreme court's rules on
22 disqualification and substitution of judges.

23 (3) A city judge of any city or a justice of the peace of any county may sit as city judge at the city judge's
24 request.

25 (4) If the city court is established as a court of record, a substitute city judge must meet the same
26 qualifications as a municipal court judge as provided in 3-6-202."
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28 **Section 6.** Section 3-11-205, MCA, is amended to read:

29 **"3-11-205. Justice of the peace or judge of another city as city judge.** (1) In a town or third-class
30 city, the council may designate a justice of the peace or the city judge of another city or town to act as city judge.

1 The justice of the peace or city judge must reside in the county in which the town or city is situated. The city or
2 town may by ordinance fix the funding for the judge and enter into an agreement with the county, the other city
3 or town, or the justice of the peace or the judge for payment of salaries and training expenses. The justice of the
4 peace or other city judge shall, after agreeing to the designation and after approval by the board of county
5 commissioners or governing body of the city or town, act in that capacity and is the city judge in all cases arising
6 out of violations of statutes or ordinances. If the justice of the peace or city judge of another city or town is
7 required to travel from the justice's or judge's place of residence to hold court, the justice or judge must be paid
8 the actual and necessary travel expenses, as provided in 2-18-501 through 2-18-503, by the town or city in which
9 the court is held.

10 (2) The offices of city judge and justice of the peace may be combined if a justice of the peace is
11 authorized in a city pursuant to 3-10-101.

12 (3) If the city court is established as a court of record, the justice of the peace or city judge of another
13 city or town must meet the same qualifications as a municipal court judge as provided in 3-6-202 in order to serve
14 as a city judge."

15
16 NEW SECTION. Section 7. Transition. If a city judge or justice of the peace of a city court or justice's
17 court established as a court of record does not meet the qualifications provided in 3-6-202, the city judge or
18 justice of the peace may serve the remainder of the term but may not run for reelection or begin another term
19 unless:

20 (1) the city judge or justice of the peace meets the qualifications provided in 3-6-202; or

21 (2) the city court or justice's court where the judge serves is reestablished as a court without record.

22 - END -