

## CHAPTER 884

H.B. No. 2851

## AN ACT

relating to the creation of municipal courts of record in Denton.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Chapter 30, Government Code, is amended by adding Subchapter Y to read as follows:

## SUBCHAPTER Y. DENTON

Sec. 30.981. *APPLICATION. This subchapter applies to the city of Denton.*

Sec. 30.982. *CREATION. (a) The governing body of the city may by ordinance create a municipal court of record if it determines that the formation of the court is necessary to provide a more efficient disposition of cases arising in the city. The governing body may by ordinance determine the number of municipal courts of record that are required to dispose of the cases and may establish as many as are needed. The ordinance establishing the courts must give each court a numerical designation, beginning with "Municipal Court No. 1."*

*(b) On creation of the initial municipal court of record, the governing body of the city shall determine the method of selecting the judge of a municipal court of record by:*

*(1) adopting an ordinance that provides for the appointment of a municipal judge by the governing body of the city;*

*(2) adopting an ordinance that provides for the election of a municipal judge by the qualified voters of the city; or*

*(3) ordering an election in which the qualified voters of the city determine whether a municipal judge is appointed by the governing body of the city or elected.*

*(c) A municipal court of record may not exist concurrently with municipal courts that are not courts of record in the city.*

(d) A municipal court of record has no terms and may sit at any time for the transaction of business of the court.

**Sec. 30.983. JURISDICTION.** (a) A municipal court of record created under this subchapter has jurisdiction within the territorial limits of the city in all criminal cases arising under the ordinances of the city.

(b) The court has concurrent jurisdiction with a justice of the peace in any precinct in which the city is located in criminal cases within the justice court jurisdiction that:

- (1) arise within the territorial limits of the city; and
- (2) are punishable by fine only.

(c) The court has jurisdiction over cases arising outside the territorial limits of the city under ordinances authorized by Section 215.072, 217.042, 341.903, or 401.002, Local Government Code.

**Sec. 30.984. WRIT POWER.** The judge of a municipal court of record created under this subchapter may grant writs of mandamus, injunction, attachment, and other writs necessary to the enforcement of the jurisdiction of the court and may issue writs of habeas corpus in cases in which the offense charged is within the jurisdiction of the court.

**Sec. 30.985. APPLICATION OF OTHER LAWS.** The general law regarding municipal courts of record, the general law regarding justice courts on matters not covered by the law regarding municipal courts, and any charter provision or ordinance of the city relating to the municipal court apply to a municipal court of record unless the law, charter provision, or ordinance is in conflict or inconsistent with this subchapter.

**Sec. 30.986. JUDGE.** (a) A municipal court of record is presided over by a municipal judge. The municipal judge must be a licensed attorney in good standing in this state. The judge must be a citizen of the United States and resident of this state but need not be a resident of the city. The municipal judge shall devote full time to the duties of the office as necessary.

(b) If more than one municipal court of record is created, judges of each municipal court of record may at any time exchange benches and sit and act for each other in any pending case, matter, or proceeding.

(c) A municipal judge is entitled to receive a salary and other benefits set by the governing body of the city. The judge's salary may not be diminished during the term of office. The salary may not be based directly or indirectly on fines, fees, or other costs that the municipal judge is required by law to collect during a term of office.

**Sec. 30.987. VACANCIES; TEMPORARY REPLACEMENT; REMOVAL.** (a) If a vacancy occurs in the office of municipal judge, the governing body of the city shall appoint a qualified person to fill the office for the remainder of the unexpired term.

(b) The governing body of the city may appoint persons as relief municipal judges, who shall be known as "assistant municipal judges." An assistant judge must meet the qualifications prescribed for the municipal judge. The governing body shall set the compensation of the assistant judges. The municipal judge may assign an assistant judge to act for a municipal judge who is temporarily unable to act for any reason. An assistant judge has all the powers and duties of the office while acting for the municipal judge.

(c) A municipal judge or assistant municipal judge may be removed from office in the manner prescribed for removal of a county court at law judge.

**Sec. 30.988. CLERK; OTHER PERSONNEL.** (a) The city manager shall appoint a clerk of the municipal court of record who shall be known as the "municipal court clerk."

(b) The clerk or the clerk's deputies shall keep the records of the municipal courts of record, issue process, and generally perform the duties for the court that a clerk of the county court exercising criminal jurisdiction is required by law to perform for that court. The clerk shall perform the duties in accordance with statutes, city charter, and city ordinances.

(c) The clerk may hire, direct, and remove the personnel authorized in the city's annual budget for the clerk's office.

**Sec. 30.989. COURT REPORTER.** (a) The city shall provide a court reporter for the purpose of preserving a record in cases tried before the municipal court of record. The clerk

of the court shall appoint the court reporter, who must meet the qualifications provided by law for official court reporters.

(b) The clerk may provide that, instead of providing a court reporter at trial, proceedings in a municipal court of record may be recorded by a good quality electronic recording device. If the recording device is used, the court reporter need not be present at the trial to record the proceedings. The proceedings that are appealed shall be transcribed from the recording by an official court reporter.

(c) The court clerk may provide for the use of written notes, transcribing equipment, recording equipment, or a combination of those methods to record the proceedings of the court. The court reporter shall keep the record for a 20-day period beginning the day after the last day of the court proceeding, trial, or denial of motion for new trial, whichever occurs last.

(d) No one is required to record testimony in a case unless the judge or one of the parties requests a record. A party's request for a record must be in writing and filed with the court before trial.

(e) The court reporter shall certify the official record.

**Sec. 30.990. PROSECUTION BY CITY ATTORNEY.** All prosecutions in the municipal court of record must be conducted by the city attorney or an assistant or deputy city attorney.

**Sec. 30.991. COMPLAINT, PLEADING.** (a) A proceeding in a municipal court of record commences with the filing of a complaint. A complaint must begin "In the name and by authority of the State of Texas" and must conclude "Against the peace and dignity of the State."

(b) Complaints must comply with Article 45.17, Code of Criminal Procedure.

(c) Pleadings must be in writing and filed with the municipal court clerk.

**Sec. 30.992. JURY.** (a) A person brought before the municipal court and charged with an offense is entitled to be tried by a jury of six persons, unless that right is waived according to law.

(b) A juror for the municipal court must have the qualifications required of jurors by law and must be a resident of the city.

(c) A juror is entitled to receive the compensation for each day and each fraction of the day in attendance on a municipal court of record jury as provided by Chapter 61.

(d) The municipal court clerk shall establish a fair, impartial, and objective juror selection process.

**Sec. 30.993. COURT RULES.** (a) Except as modified by this subchapter, the Code of Criminal Procedure as applied to county courts at law governs the trial of cases before municipal courts of record.

(b) Bonds must be payable to the state for the use and benefit of the city. The court may not assess court costs other than warrant fees, capias fees, and other fees authorized for municipal courts.

(c) A peace officer may serve a process issued by a municipal court of record.

(d) On conviction, judgment and sentence are in the name of the state, and the state recovers from the defendant the fine and fees for the use and benefit of the city. The court may require that the defendant remain in the custody of the chief of police until the fines and costs are paid and shall order the execution issue to collect the fines and penalties.

(e) Fines, fees, costs, and bonds shall be paid to the municipal court clerk, who shall deposit them in the city general fund.

**Sec. 30.994. APPEAL.** (a) A defendant has the right of appeal from a judgment of conviction in a municipal court of record as provided by this subchapter. The state has the right to an appeal as provided by Article 44.01, Code of Criminal Procedure. The Denton County courts at law shall be the initial courts for appellate review of cases from the municipal court of record and shall hear all appeals except in cases in which the county courts do not have jurisdiction of an appeal from a justice court, in which case the appeal shall be heard by the court that has jurisdiction of an appeal from the justice court.

(b) *The appellate court shall determine each appeal from a municipal court of record conviction on the basis of the errors that are set forth in the defendant's motion for new trial and that are presented in the transcript and statement of facts prepared from the proceedings leading to the conviction. An appeal from the municipal court of record may not be by trial de novo.*

(c) *To perfect an appeal, the defendant must file a motion for new trial not later than the 10th day after the date on which the judgment and sentence are rendered. The motion must be in writing and must be filed with the clerk of the municipal court of record. The motion constitutes the assignments of error on appeal. A ground or error not set forth in the motion is waived. If the court does not act on the motion before the expiration of 30 days after it is filed with the clerk, the motion is overruled by operation of law.*

(d) *After an order overruling a motion for new trial, the defendant shall give written notice of appeal and pay the transcript preparation fee not later than the 10th day after the date on which the motion is overruled. The governing body shall set a reasonable transcript preparation fee not to exceed \$25. The clerk shall note the payment of the fee on the docket of the court. If the case is reversed on appeal, the fee shall be refunded to the defendant.*

(e) *The city attorney or the assistant or deputy city attorney shall prosecute all appeals from the municipal courts of record.*

**Sec. 30.995. APPEAL BOND; RECORD ON APPEAL.** (a) *If the defendant is not in custody, the defendant may not take an appeal until the defendant files an appeal bond with the municipal court of record. The bond must be approved by the court and must be filed not later than the 10th day after the date on which the motion for new trial is overruled. If the defendant is in custody, the defendant shall be committed to jail unless the defendant posts the appeal bond.*

(b) *The appeal bond must be in the amount of \$50 or double the amount of fines and costs adjudged against the defendant, whichever is greater. The bond must be payable to the state for the use and benefit of the city and must be conditioned on the defendant's immediate and daily personal appearance in the court to which the appeal is taken.*

(c) *The record on appeal consists of a transcript and, if necessary to appeal, a statement of facts. The court reporter shall prepare the record from the reporter's record or mechanical recordings of the proceedings. The defendant shall pay for the cost of the transcription. If the court finds that the defendant is unable to pay or give security for the record on appeal after a hearing in response to an affidavit by the defendant, the court shall order the reporter to prepare the record without charge to the defendant. If the case is reversed on appeal, the court shall promptly refund the cost to the defendant.*

**Sec. 30.996. TRANSCRIPT.** (a) *The clerk of the municipal court of record shall prepare under his hand and the seal of the court a transcript of the proceedings in the municipal court of record after payment of the transcript preparation fee under Section 30.994. The clerk shall prepare the transcript under written instructions from the defendant or the defendant's attorney. Unless otherwise agreed by the parties in writing, the transcript must include a copy of:*

- (1) *the complaint;*
- (2) *court orders on any motions or exceptions;*
- (3) *the judgment;*
- (4) *the verdict of the jury;*
- (5) *any findings of fact or conclusions of law made by the court;*
- (6) *the motion for new trial and the order of the court on the motion;*
- (7) *the notice of appeal;*
- (8) *any statement of the parties regarding material to be included in the record;*
- (9) *the appeal bond;*
- (10) *any statement of facts; and*
- (11) *any signed paper designated as material by either party.*

(b) *The defendant or the defendant's attorney shall file a copy of the written instructions with the clerk and shall deliver a copy to the city attorney.*

(c) *The city attorney shall file a written direction to the clerk if additional portions of the trial proceedings in the transcript are to be included.*

**Sec. 30.997. STATEMENT OF FACTS.** (a) *A statement of facts included in the record on appeal must contain:*

(1) *a transcription of all or any part of the municipal court of record proceedings in the case as recorded on the electronic recording device or shown by the notes of the court reporter recorded or taken before, during, or after the trial, if the transcription is requested by a party, a party's attorney, or the municipal judge;*

(2) *a brief statement of the facts of the case proven at the trial as agreed to by the defendant or the defendant's attorney and the prosecuting attorney; or*

(3) *a partial transcription and the agreed statement of the facts of the case.*

(b) *The court reporter shall transcribe in duplicate any portion of the recorded proceedings or the notes of the court proceedings in the case at the request of either party or the municipal judge. The defendant shall pay for the transcription unless the court finds, after hearing in response to an affidavit by the defendant, that the defendant is unable to pay or give security for the transcriptions. On certification by the court that the court reporter has rendered the service without charge to the defendant, the court reporter shall be paid for the services by the city.*

**Sec. 30.998. TRANSFER OF RECORD; FEE.** *The parties must file the transcript and the statement of facts with the clerk of the municipal court of record not later than the 60th day after the date on which the transcript preparation fee was paid. The clerk shall promptly forward them to the appellate court clerk.*

**Sec. 30.999. BRIEF ON APPEAL.** (a) *The defendant must file a brief on appeal with the appellate court clerk not later than the 15th day after the date on which the transcript and statement of facts are filed with that clerk.*

(b) *The city attorney must file appellee's brief with the appellate court clerk not later than the 15th day after the date on which the defendant's brief is filed.*

(c) *To avoid unnecessary delay, the record and briefs on appeal shall be limited as far as possible to the questions relied on for reversal.*

(d) *On filing, each party shall deliver a copy of the brief to the opposing counsel.*

**Sec. 30.9991. PROCEDURE; DISPOSITION ON APPEAL.** (a) *The appellate court shall hear appeals from the municipal court of record at the earliest possible time with due regard to the rights of the parties and the proper administration of justice. The court may determine the rules for oral argument. The case may be submitted on the record and briefs without oral argument.*

(b) *According to the law and the nature of the case, the appellate court may:*

(1) *affirm the judgment of the municipal court of record;*

(2) *reverse and remand for a new trial;*

(3) *reverse and dismiss the case; or*

(4) *reform and correct the judgment.*

(c) *Unless the matter was made an issue in the trial court or it affirmatively appears to the contrary from the transcript or the statement of facts, the appellate court shall presume that:*

(1) *venue was proven in the trial court;*

(2) *the jury, if any, was properly impaneled and sworn;*

(3) *the defendant was arraigned and pleaded to the complaint; and*

(4) *the municipal judge certified the charge and the clerk filed the charge before it was read to the jury.*

(d) *In each case decided by the appellate court, the court shall deliver a written opinion or order either sustaining or overruling each assignment of error presented. The court need*

*not give a reason for overruling an assignment of error, but it may cite the cases on which it relied. If an assignment of error is sustained, the court shall set forth the reasons for the decision. The appellate court clerk shall mail copies of the decision to the parties and to the municipal judge as soon as the decision is rendered.*

*Sec. 30.9992. CERTIFICATE OF APPELLATE PROCEEDINGS. When the judgment of the appellate court becomes final, the clerk of that court shall certify the proceedings and the judgment and shall mail the certificate to the clerk of the municipal court of record. When the clerk of the municipal court of record receives the record, the clerk shall file the record with the papers in the case and note the filing on the docket of the municipal court of record. If the municipal court of record judgment is affirmed, further action to enforce the judgment is not necessary except to:*

- (1) forfeit the bond of the defendant;*
- (2) issue a writ of *habeas corpus* of the defendant; or*
- (3) issue an execution against the defendant's property.*

*Sec. 30.9993. EFFECT OF ORDER OF NEW TRIAL. If the appellate court awards a new trial to the defendant, the case stands as if a new trial had been granted by the municipal court of record.*

*Sec. 30.9994. APPEAL TO THE COURT OF APPEALS. An appeal of the appellate court decision to the court of appeals is governed by the Code of Criminal Procedure, except that the transcript, briefs, and statement of facts filed in the appellate court constitute the transcript, briefs, and statement of facts on appeal to the court of appeals unless the rules of the court of criminal appeals provide otherwise.*

**SECTION 2.** The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on May 11, 1993, by a non-record vote; passed by the Senate on May 29, 1993: Yeas 31, Nays 0.

Approved June 18, 1993.

Effective Aug. 30, 1993, 90 days after date of adjournment.