

CHAPTER 340

S.B. No. 572

AN ACT

relating to the creation of municipal courts of record in the City of Hurst.

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

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

SUBCHAPTER T. HURST

Sec. 30.721. APPLICATION. This subchapter applies to the City of Hurst.

Sec. 30.722. 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 shall give each court a numerical designation, beginning with "Municipal Court of Record No. 1."

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

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

Sec. 30.723. APPLICATION OF OTHER LAWS. The general law regarding municipal courts, 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. 30.724. JUDGE. (a) A municipal court of record is presided over by a municipal judge.

(b) If there is more than one municipal judge in the city, the governing body of the city shall appoint one of the judges to be the chief judge.

(c) A municipal judge, including the chief judge, is appointed by the governing body of the city for a term of two years.

(d) A municipal judge must be a licensed attorney in good standing in this state and must have two or more years of experience in the practice of law in this state. The judge must be a citizen of the United States and of this state. The judge shall devote as much time to the office as it requires.

(e) If there is more than one municipal court of record in the city, the judges may exchange benches and may sit and act for each other in any proceeding pending in the courts. An act performed by any of the judges is binding on all parties to the proceeding.

(f) A municipal judge is entitled to a salary from the city, the amount of which is determined by the governing body of the city and may not be diminished during the judge's term of office. The salary may not be based directly or indirectly on fines, fees, or costs collected by the court.

(g) A municipal judge may be removed from office by the governing body of the city at any time for incompetency, misconduct, malfeasance, or disability.

(h) A municipal judge shall take judicial notice of the city ordinances and the corporate limits of the city in a case tried before a municipal court of record. A municipal judge 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.

(i) The governing body of the city shall appoint a qualified person to fill a vacancy in the office of municipal judge.

(j) The governing body may appoint one or more qualified persons to be available to serve for a municipal judge who is temporarily absent due to illness, family death, continuing legal or judicial education programs, or for any other reason. The chief judge or the municipal judge if there is no chief judge shall select one of the persons appointed by the governing body to serve during an absence. An alternate judge, while serving, has all the powers and shall discharge all the duties of a municipal judge. An alternate judge must have the same qualifications as a municipal judge.

Sec. 30.725. CLERK; OTHER PERSONNEL. The city manager of the city shall appoint a clerk of the municipal court of record who may hire, direct, and remove the personnel authorized in the city's annual budget for the clerk's office. 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 courts 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, the city charter, and city ordinances.

Sec. 30.726. 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. The reporter shall be compensated by the city in the manner determined by the governing body of the city.

(b) The court reporter may use written notes, transcribing equipment, video or audio recording equipment, or a combination of those methods to record the proceedings of the court. The court reporter shall keep the record for the 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.

(c) The court reporter is not 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.

(d) The governing body may provide that, in lieu 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 governing body authorizes the electronic recording, the court reporter need not be present at trial to certify the statement of facts. The recording shall be kept and stored for the 20-day period beginning the day after the last day of the proceeding, trial, or denial of motion for new trial, whichever occurs last. The proceedings that are appealed shall be transcribed from the recording by an official court reporter.

Sec. 30.727. **PROSECUTIONS 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. 30.728. **JURY.** (a) A person who is brought before a municipal court of record and who is charged with an offense is entitled to be tried by a jury of six persons unless that right is waived according to law. The jury shall decide all questions of fact or credibility of witnesses. The court shall determine all matters of law and shall charge the jury on the law.

(b) A juror who serves in the municipal courts of record must meet the qualifications provided by Chapter 62.

Sec. 30.729. **APPEAL.** (a) A defendant has the right of appeal from a judgment or conviction in a municipal court of record as provided in this subchapter. The county criminal courts of Tarrant County have jurisdiction over an appeal. The state has no right to an appeal or to a new trial.

(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 with the municipal court clerk a written motion for new trial not later than the 10th day after the date on which judgment is rendered. The motion must set forth the points of error of which the defendant complains. The motion or an amended motion may be amended by leave of court at any time before action on the motion is taken but not later than the 20th day after the date on which the original or amended motion is filed. The court may for good cause extend the time for filing or amending, but the extension may not exceed 90 days from the original filing deadline. If the court does not act on the motion before the expiration of the 30 days allowed for determination of the motion, the original or amended motion is overruled by operation of law.

(d) To perfect an appeal, the defendant must also give notice of the appeal. If the defendant requests a hearing on the motion for new trial, the defendant may give the notice of appeal orally in open court on the overruling of the motion. If there is no hearing, the defendant must give written notice of appeal and must file the notice with the court not later than the 10th day after the date on which the motion is overruled. The court may for good cause extend that time period, but the extension may not exceed 90 days from the original filing deadline.

Sec. 30.730. **APPEAL BOND.** (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 the fine and costs adjudged against the defendant, whichever is greater. The bond must state that the defendant was convicted in the case and has appealed, must be payable to the state for the use and benefit of the city, and must be conditioned on the defendant's appearance in the court to which the appeal is taken.

Sec. 30.731. **RECORD ON APPEAL.** The record on appeal consists of a transcript and, if necessary to the appeal, a statement of facts. The court reporter shall prepare the record from the reporter's record or mechanical or videotape 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. 30.732. TRANSCRIPT. (a) On the written request of the defendant or the defendant's attorney, the municipal court clerk shall prepare under the clerk's hand and seal a transcript of the municipal court of record proceedings. The transcript must include copies of:

- (1) the complaint;
- (2) material docket entries made by the court;
- (3) the jury charge and verdict in a jury trial;
- (4) the judgment;
- (5) the motion for new trial;
- (6) the notice of appeal;
- (7) written motions and pleas;
- (8) written orders of the court;
- (9) any bills of exception filed with the court;
- (10) the appeal bond; and
- (11) exhibits admitted into evidence.

(b) The clerk may include in the transcript additional portions of the proceedings in the court prepared from mechanical or videotape recordings.

Sec. 30.733. BILLS OF EXCEPTION. Either party may include bills of exception in the transcript subject to the applicable provisions of the Code of Criminal Procedure. The bills of exception must be filed with the municipal court clerk not later than the 60th day after the date on which the notice of appeal is given or filed.

Sec. 30.734. STATEMENTS OF FACTS. A statement of facts included in the record on appeal must contain:

- (1) a transcript of all or part of the municipal court of record proceedings that are shown by the notes of the court reporter to have occurred before, during, or after the trial, if the transcript is requested by the defendant;
- (2) a brief statement of the facts of the case proven at trial as agreed to by the defendant and the prosecuting attorney;
- (3) a partial transcript and the agreed statement of the facts of the case; or
- (4) a transcript of all or part of the municipal court of record proceedings in the case that is prepared from mechanical or videotape recordings of the proceedings.

Sec. 30.735. COMPLETION, APPROVAL, AND TRANSFER OF RECORD. (a) Not later than the 60th day after the date on which the notice of appeal is given or filed, the parties must file with the municipal court clerk:

- (1) the statement of facts;
- (2) a written description of material to be included in the transcript in addition to the required material; and
- (3) any material to be included in the transcript that is not in the custody of the clerk.

(b) On completion of the record, the municipal judge shall approve the record in the manner provided for record completion, approval, and notification in the court of appeals.

(c) After the court approves the record, the clerk shall promptly send it to the appellate court clerk for filing. The appellate court clerk shall notify the defendant and the prosecuting attorney that the record has been filed.

Sec. 30.736. BRIEF ON APPEAL. (a) A defendant's brief on appeal from a municipal court of record must present points of error in the manner required by law for a brief on appeal to the court of appeals.

(b) The defendant must file the brief 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.

The defendant or the defendant's attorney must certify that the brief has been properly mailed to the prosecuting attorney.

(c) The prosecuting attorney must file the 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.

(d) On filing, each party shall deliver a copy of the brief to the opposing party and to the municipal judge.

Sec. 30.737. COURT RULES. (a) Except as modified by this subchapter, the Code of Criminal Procedure governs the trial of cases before the municipal court of record. The court may make and enforce all rules of practice and procedure necessary to expedite the trial of cases before the court that are not inconsistent with general law.

(b) The appellate courts may make and enforce all rules of practice and procedure that are not inconsistent with general law and that are necessary to expedite the dispatch of appeals from the municipal court of record.

Sec. 30.738. DISPOSITION ON APPEAL. (a) According to 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.*

(b) 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 before it was read to the jury.*

(c) 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 shall set forth the reasons for its 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. 30.739. 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 municipal court. The court clerk shall file the certificate with the papers in the case and note the certificate on the case docket. 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 capias for the defendant; or*
- (3) issue an execution against the defendant's property.*

Sec. 30.740. 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. 30.741. APPEAL TO COURT OF APPEALS. The defendant has the right to appeal to the court of appeals if the fine assessed against the defendant exceeds \$100 and if the judgment is affirmed by the appellate court. The provisions of the Code of Criminal Procedure relating to direct appeals from a county or a district court to the court of appeals apply to the appeal, except that:

- (1) the record and briefs on appeal in the appellate court constitute the record and briefs on appeal to the court of appeals unless the rules of the court of criminal appeals provide otherwise; and*
- (2) the record and briefs shall be filed directly with the court of appeals.*

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 the Senate on May 4, 1993: Yeas 31, Nays 0; passed the House on May 14, 1993, by a non-record vote.

Approved May 29, 1993.

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