

CHAPTER 811

H.B. No. 1879

AN ACT

relating to the creation of municipal courts of record in certain cities.

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

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

SUBCHAPTER P. GENERAL LAW FOR MUNICIPAL COURTS OF RECORD

Sec. 30.481. APPLICATION OF SUBCHAPTER. This subchapter does not apply to the cities of Austin, Dallas, El Paso, Fort Worth, Houston, Longview, Lubbock, Marshall, Midland, Odessa, San Antonio, Sweetwater, and Wichita Falls or to any other city covered by another subchapter of this chapter.

Sec. 30.482. CREATION OF MUNICIPAL COURTS OF RECORD; DEFINITION. (a) The governing body of a city may establish its municipal courts as municipal courts of record if the formation of municipal courts of record is necessary to provide a more efficient disposition of appeals from the municipal court.

(b) On creation of the initial municipal court of record, the governing body of the city shall call an election to determine the method of selection of the judges of the municipal courts of record. The qualified voters of the city shall vote on the question of electing or appointing the judges of the municipal courts of record. The election must be held on the first succeeding uniform election date for which sufficient time elapses for the holding of an election.

(c) In this subchapter, "city" means an incorporated municipality.

Sec. 30.483. CREATION OF ADDITIONAL MUNICIPAL COURTS OF RECORD. The governing body of the city may by ordinance create additional municipal courts of record if additional courts are necessary to dispose properly of the cases arising in the city. The ordinance must enumerate the number of additional courts that are necessary.

Sec. 30.484. ABOLITION OF COURT. If the governing body of the city finds after the establishment of an additional municipal court of record that the condition of the dockets of the other courts of the county does not require the existence of the court to dispose properly of the cases arising in the city, the governing body shall by ordinance declare the office of the municipal judge vacant at the end of the term for which the judge was last selected. Any cases then pending shall be transferred to a court with proper jurisdiction of the offense.

Sec. 30.485. JURISDICTION. (a) A municipal court of record has the jurisdiction provided by general law for municipal courts.

(b) The court has jurisdiction of criminal cases arising under ordinances authorized by Subdivision 19, Article 1175, Revised Statutes.

Sec. 30.486. JUDGE. (a) A municipal court of record is presided over by one or more municipal judges.

(b) The governing body of the city shall provide by charter or by ordinance for the term of office of its municipal judges. The term must be for a definite term of not less than two nor more than four years, the duration of which within these limits shall be determined by charter, ordinance, or the method prescribed by Article XI, Section 11, of the Texas Constitution. A municipal judge may continue in office after the end of the judge's term for not more than 90 days or until his successor is selected and qualified, whichever occurs first.

(c) *The judge shall take judicial notice of the ordinances of the city and of the territorial limits of the city. The judge may grant writs of mandamus, 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.*

(d) *If there is more than one municipal judge in the city, the governing body of the city shall appoint one of the judges as the presiding municipal judge.*

(e) *The presiding municipal judge shall:*

(1) *maintain a central docket for cases filed within the territorial limits of the city over which the courts have jurisdiction;*

(2) *provide for the distribution of cases from the central docket to the individual municipal judges to equalize the distribution of business in the courts;*

(3) *call the jury docket and request the jurors needed for cases that are set for trial by jury; and*

(4) *temporarily assign judges or relief judges to act for each other in a proceeding pending in a court if necessary for the expeditious disposition of business in the courts.*

(f) *The municipal judges or relief judges may 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.*

(g) *A municipal judge must be a licensed attorney in good standing or a judge who has served the previous five years on a municipal court bench in Texas, except that a municipality of less than 10,000 in population may appoint a person municipal judge who is not a licensed attorney. A person may not serve as a municipal judge while the person holds other office or employment with the city government.*

(h) *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 that the judge is required by law to collect during the term of office. The governing body shall set the salary of an appointed judge before his appointment, and shall set the salary of an elected judge no later than two weeks before the election filing deadline.*

Sec. 30.487. VACANCIES; TEMPORARY REPLACEMENT; REMOVAL. (a) If a vacancy occurs in the office of municipal judge of a court of record, 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. A relief judge must meet the qualifications prescribed for the regular judge. The governing body shall set the compensation of the relief judges. The presiding municipal judge may assign a relief judge to act for a municipal judge who is temporarily unable to act for any reason. A relief judge has all the powers and duties of the office while so acting.*

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

Sec. 30.488. CLERK; OTHER PERSONNEL. (a) The governing body of the city shall appoint a clerk of the municipal courts of record, who shall be known as the municipal clerk. The municipal clerk serves at the pleasure of the governing body. The clerk shall perform, as applicable, the duties prescribed by law for the county clerk of a county court at law and any other duty necessary to issue process and conduct business of the court. The clerk may administer oaths and affidavits and make certificates and affix the court's seal to those certificates. In addition, the clerk shall:

(1) *maintain central docket records for all cases filed in the municipal courts of record;*

(2) *keep permanently all public records of the courts and make them available for inspection at all reasonable times by any interested party;*

(3) *maintain an index of all court judgments in the same manner as county clerks are required by law to prepare for criminal cases arising in county courts; and*

(4) *if necessary for the proper functioning of the municipal courts of record, provide for the preservation of records by electronic means or by microfilming.*

(b) *With the consent of the governing body of the city, the clerk may appoint one or more deputy clerks to act for the clerk.*

(c) *The governing body of the city shall provide the courts with other municipal court personnel that the governing body determines necessary for the proper operation of the courts. Those persons shall perform their duties under the direction and control of the clerk or the municipal judge to whom assigned. The governing body shall determine the salaries of the court personnel.*

Sec. 30.489. COURT REPORTER. (a) *To preserve a record in cases tried before a municipal court of record, the governing body of the city shall provide an official court reporter. 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, recording equipment, or a combination of those methods to record the proceedings of the court.*

(c) *The court reporter is not required to record testimony in a trial unless the judge or one of the parties requests a record.*

Sec. 30.490. PROSECUTIONS BY CITY ATTORNEY. *All prosecutions in municipal courts of record must be conducted by the city attorney or an assistant or deputy city attorney.*

Sec. 30.491. FILING OF ORIGINAL PAPERS. (a) *The municipal clerk shall file the original complaint and the original of other papers in each case under the direction of the presiding municipal judge. The filed original papers constitute the records of the courts and a separate record book is not required.*

(b) *The clerk shall keep a separate folder for each case and shall note on the outside of the folder:*

(1) *the style of the case;*

(2) *the nature of the charged offense;*

(3) *the dates that the warrant was issued and returned;*

(4) *the date the examination or trial was held;*

(5) *whether trial was held by jury or before a judge;*

(6) *trial settings;*

(7) *any verdict of the jury;*

(8) *any judgment of the court;*

(9) *any motion for a new trial and the decision on the motion;*

(10) *whether an appeal was taken; and*

(11) *the date and the manner in which the judgment and sentence were enforced.*

Sec. 30.492. JURY. (a) *Each person charged with an offense is entitled to a trial by a jury of six persons unless the right is waived according to law.*

(b) *A majority of the municipal judges may adopt a plan for the selection of persons for jury service from the voter registration rolls of the counties in which the city is located. A plan adopted by the municipal courts is binding on each court and must:*

(1) *require the compilation of jurors from the voter registration lists of all voting precincts within the city and the registry of permanently exempt persons residing in the city maintained by the county tax collector as prescribed by Section 62.108;*

(2) require selection of jurors who are eligible to vote in the city and have the qualifications prescribed by Subchapter B, Chapter 62; and

(3) require the courts to establish a fair, impartial, and objective method of selecting persons for jury service.

(c) The municipal clerk shall be the official in charge of the selection process.

(d) Each juror is subject to the laws governing exemptions and excuses from jury service in other courts.

Sec. 30.493. APPEAL. (a) A defendant has the right of appeal from a judgment or conviction in a municipal court of record. The county courts at law in the county in which the city is located have jurisdiction of appeals from a municipal court of record. If there is no county court at law in the county, the county court has jurisdiction of an appeal. The city attorney or his assistants or deputies shall prosecute all appeals from the municipal courts of record.

(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 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 a 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. 30.494. 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 fines and costs adjudged against the defendant, whichever is greater. The bond must state that the defendant was convicted in the case and has appealed, and it must be conditioned on the defendant's immediate and daily personal appearance in the court to which the appeal is taken.

Sec. 30.495. 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. 30.496. TRANSCRIPT. (a) On the written request of the defendant or the defendant's attorney, the municipal clerk shall prepare under his 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; and*
- (10) *the appeal bond.*

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

Sec. 30.497. 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 clerk not later than the 60th day after the date on which the notice of appeal is given or filed.

Sec. 30.498. STATEMENT 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. 30.499. 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 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. 30.500. 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. 30.501. COURT RULES. (a) Except as modified by this subchapter, the Code of Criminal Procedure governs the trial of cases before the municipal courts of record. The courts may make and enforce all rules of practice and procedure necessary to expedite the trial of cases before the courts 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 courts of record.*

Sec. 30.502. 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. 30.503. 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 clerk. The municipal 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. 30.504. 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. 30.505. APPEALS 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.*

Sec. 30.506. SEAL. The governing body of the city shall provide each municipal court of record with a seal with a star of five points in the center and the words "Municipal Court of _____, Texas." The impress of the seal shall be attached to all papers, except subpoenas, issued out of the court and shall be used by each

municipal judge or the municipal clerk to authenticate all official acts of the clerk and the judge.

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 13, 1987, by a non-record vote. Passed by the Senate on May 23, 1987, by the following vote: Yeas 30, Nays 0.

Approved June 18, 1987.

Effective Aug. 31, 1987, 90 days after date of adjournment.