

CHAPTER 694

S.B. No. 1362

AN ACT

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

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

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

*SUBCHAPTER Q. AMARILLO*

*Sec. 30.521. APPLICATION. This subchapter applies to the City of Amarillo.*

*Sec. 30.522. CREATION. (a) The governing body of the city may by ordinance create municipal courts of record, if it determines that the formation of courts of record is necessary to provide a more efficient disposition of cases arising in the city. The governing body shall give each court a numerical designation beginning with "Municipal Court No. 1."*

*(b) A municipal court of record may not exist concurrently with a municipal court that is not a court of record in the city.*

*(c) A municipal court of record has no terms and may sit at any time.*

*Sec. 30.523. JURISDICTION. (a) A municipal court of record has the jurisdiction provided by general law for municipal courts.*

*(b) A municipal court of record has jurisdiction over cases arising outside the territorial limits of the city under ordinances authorized by Subdivision 19, Article 1175, Revised Statutes.*

(c) A municipal court of record may issue administrative search warrants on probable cause.

(d) A municipal court of record may issue subpoenas, summonses, and writs in aid of its jurisdiction.

Sec. 30.524. **JUDGE.** (a) A municipal court of record is presided over by a municipal judge who must be a licensed attorney in good standing in this state and a citizen of the United States and of this state. The judge need not be a resident of the city at the time of appointment but must maintain residence in the city during the term of office. The judge shall devote full time to the duties of that office and may not engage in the private practice of law while in office.

(b) The governing body of the city shall appoint a municipal judge for a definite term of office that is concurrent with the city's fiscal year.

(c) 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.

(d) A municipal judge is entitled to receive a salary 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.

(e) The governing body of the city shall appoint a judge to be the presiding municipal judge who shall:

- (1) maintain a central docket for all cases filed in the municipal courts;
- (2) assign cases among the judges;
- (3) request the jurors necessary 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.

Sec. 30.525. **VACANCIES; TEMPORARY REPLACEMENTS; REMOVAL.** (a) If a municipal judge is temporarily unable to act for any reason, the governing body of the city may appoint a qualified person to sit for the regular municipal judge. The appointee has all the powers and duties of the office, unless otherwise provided by this subchapter, and while serving is entitled to the same compensation for each day served as the regular municipal judge.

(b) A municipal judge may be removed from office by the governing body of the city for incompetence, misconduct, malfeasance, or disability.

Sec. 30.526. **COURT FACILITIES.** The governing body of the city shall provide courtrooms, jury rooms, offices, office furniture, libraries, legal books and materials, and other supplies and facilities that the governing body determines are necessary for the proper operation of the municipal courts of record.

Sec. 30.527. **CLERK; OTHER PERSONNEL.** The city manager of the city shall provide for the appointment of a municipal court clerk to serve as clerk of the municipal courts of record. The municipal court clerk shall perform the duties prescribed by ordinance and by applicable law and may hire, direct, and remove the personnel authorized in the annual budget for the clerk's office.

Sec. 30.528. **SEAL.** The seal of the municipal courts of record must include a star of five points in the center and the words "Municipal Court of Amarillo, Texas." The impression of the seal must be attached to all papers, except subpoenas, issued out of the court and shall be used by each municipal judge or the municipal court clerk to authenticate official acts of the municipal court clerk or a municipal judge.

Sec. 30.529. **COURT REPORTER.** (a) For the purpose of preserving a record in cases tried before the municipal court, the city manager shall provide an official court reporter who has the qualifications provided by law for official court reporters.

(b) The record of proceedings may be preserved by written notes, audio or visual recording equipment, or any combination of these methods. A court reporter is not

required to take or record testimony in cases where neither the defendant, the prosecutor, nor the municipal judge demands it.

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

Sec. 30.530. COMPLAINT; PROSECUTION; 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." It may also conclude "contrary to said ordinance."

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

(c) Prosecutions must be conducted by the city attorney or by an assistant city attorney.

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

Sec. 30.531. 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 registered voter of the city.

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

Sec. 30.532. 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 as 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 that 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. 30.533. APPEAL. (a) In this subchapter, "appellate courts" mean the county courts at law in any of the counties in which the City of Amarillo lies.

(b) A defendant has the right of appeal from a judgment or conviction in a municipal court of record as provided by this subchapter. The appellate courts have jurisdiction over the appeals from the municipal courts of record. Appeals shall be prosecuted by the city attorney or that person's assistants. The state has no right to an appeal or to a new trial.

(c) The appellate courts 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 a new trial and that are presented in the transcript and statement of facts prepared from the proceedings leading to the conviction. An appeal may not be by trial de novo.

(d) To perfect an appeal, the defendant must file with the municipal court clerk a written motion for a new trial not later than the 10th day after the date on which judgment is rendered. 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 extend the time for filing or amending for good cause, but the extension may not exceed 60 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. The motion for new trial must set forth the points of error of which the defendant complains.*

*(e) To perfect an appeal, the defendant must give timely notice of appeal not later than the 10th day after the date on which the motion for new trial is overruled.*

*Sec. 30.534. APPEAL BOND. (a) If the defendant is not in custody, the defendant may not take an appeal until the defendant files the required appeal bond with the municipal court clerk. 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 must be committed to jail unless the defendant posts the required appeal bond.*

*(b) The appeal bond must be in the amount of \$100 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 immediate and daily personal appearance in the court to which the appeal is taken.*

*Sec. 30.535. 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 after hearing that the defendant is unable to pay or give security for the record on appeal 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. 30.536. TRANSCRIPT. (a) On the written request of the defendant or the defendant's attorney, the municipal court clerk shall prepare under his hand and seal a transcript of the municipal court of record proceedings for transmission to the appellate court. 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 trial by jury;*
- (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) any other part of the record as designated by either party.*

*(b) The municipal court clerk may include in the transcript additional portions of the proceedings in the municipal court of record prepared by audio or videotape recordings.*

*Sec. 30.537. 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. 30.538. STATEMENT OF FACTS. (a) 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 transcription is required 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 transcription and the agreed statement of the facts of the case; or

(4) a transcription of all or part of the municipal court of record proceedings in the case that is prepared from audio or videotape recordings of the proceedings.

(b) The party requesting the statement of facts, other than the state or city, shall pay the cost of preparation of the statement of facts.

**Sec. 30.539. 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, notification, and approval in the court of appeals.

(c) After court approval, the municipal court clerk shall promptly forward the record 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. 30.540. BRIEF ON APPEAL.** (a) A 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 a court of appeals.

(b) The defendant shall file the brief with the clerk of the appellate court 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 shall file a brief with the clerk of the appellate court not later than the 15th day after the date on which the defendant's brief is filed and deliver a copy to the defendant or his attorney.

**Sec. 30.541. DISPOSITION ON APPEAL.** (a) 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 or 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 and cite the authority for its decision. The clerk of the appellate court shall mail copies of the decision to the parties and to the municipal court clerk as soon as the decision is rendered.

**Sec. 30.542. CERTIFICATE OF APPELLATE PROCEEDINGS.** When the judgment of the appellate court becomes final, the clerk of the appellate court shall certify the proceedings and the judgment and shall mail the certificate to the clerk of the municipal court of record. The municipal 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. 30.543. EFFECT OF REMAND FOR 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. 30.544. APPEAL TO COURT OF APPEALS. An appeal to the court of appeals is governed by the provisions of the Code of Criminal Procedure relating to direct appeals from a county or a district court to the court of appeals 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. This Act takes effect September 1, 1987.

SECTION 3. 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.

Passed the Senate on April 15, 1987, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 20, 1987, by a viva-voce vote.

Passed the House, with amendment, on May 15, 1987, by a non-record vote.

Approved June 19, 1987.

Effective Sept. 1, 1987.