

CHAPTER 161

S.B. No. 536

AN ACT

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

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

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

SUBCHAPTER O. GARLAND

Sec. 30.451. APPLICATION. This subchapter applies to the City of Garland.

Sec. 30.452. 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 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. 30.453. JURISDICTION. A municipal court of record has the jurisdiction provided by general law for municipal courts. A municipal court of record also has jurisdiction over cases arising outside the territorial limits of the city under the ordinances authorized by Subdivision 19, Article 1175, Revised Statutes.

Sec. 30.454. JUDGE. (a) Each municipal court of record is presided over by a judge who shall be known as the "city judge" or the "municipal judge." The judge must be an attorney licensed to practice law in this state. The governing body of the city shall appoint each municipal judge for a term of one year.

(b) A municipal judge is entitled to a salary set by the governing body of the city.

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

(d) *The governing body of the city may appoint alternate city judges and may designate the order of their priority to act for a municipal judge if the municipal judge is unavailable or fails to act for any reason or if there is a vacancy in the office of municipal judge.*

Sec. 30.455. CLERK. The city manager, with the consent of the governing body of the city, shall appoint a clerk of the municipal courts of record. 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 a 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. 30.456. COURT REPORTER. (a) For the purpose of preserving a record in all cases tried before the municipal courts, the governing body of the city shall provide an official court reporter. The official court reporter must have the qualifications required by general law for official court reporters.

(b) *The court reporter may use written notes, transcribing equipment, recording equipment, or a combination of these methods to prepare a transcript of the proceedings of the court.*

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

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

Sec. 30.457. COURT FACILITIES; SALARIES. (a) The governing body of the city shall designate places in the city at which court shall be held and shall provide suitable courtrooms and office space for the municipal courts of record. The governing body shall pay all costs incident to the provision of courtroom and office space.

(b) *The governing body shall pay the salaries of the judges, clerks, court reporters, and other employees of the municipal courts of record.*

Sec. 30.458. COMPLAINT; PROSECUTION; PLEADING. (a) A proceeding in a municipal court of record commences with a complaint. The 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." If the offense is covered by an ordinance, it may also conclude "Contrary to said ordinance."

(b) *A complaint before a municipal court of record may be sworn to before an officer authorized to administer oaths or before the municipal judge, clerk, city secretary, or city attorney or the assistant or deputy of the judge, clerk, city secretary, or city attorney, each of whom may administer oaths for that purpose.*

(c) *A complaint must be in writing and must state:*

- (1) *the name of the accused, if known;*
- (2) *an accurate description of the accused, if the name is unknown;*
- (3) *in plain, intelligible words, the offense with which the accused is charged;*
- (4) *facts showing the place where the offense was committed, which must appear to be within the jurisdiction of the court; and*
- (5) *facts showing the date on which the offense was committed, which must show that the offense is not barred by limitations.*

(d) *A prosecution in a municipal court of record shall be conducted by the city attorney or an assistant city attorney.*

(e) *All pleadings in a municipal court of record must be in writing and must be filed with the clerk.*

Sec. 30.459. 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. The jury shall decide all questions of fact and the credibility of witnesses. The court shall determine all matters of law and shall charge the jury on the law.

(b) *a juror in a municipal court of record must have the same qualifications as jurors in other courts of Dallas County as provided by Subchapter B, Chapter 62, and must be a registered voter in the City of Garland. Jurors in the municipal court of record are subject to the law governing exemption and excuse from jury service as are jurors in other courts in Dallas County.*

Sec. 30.460. TRIAL. (a) Except as modified by this subchapter, the Code of Criminal Procedure, as applied to county courts, governs the trial of cases before a municipal court of record.

(b) *A bond taken in a proceeding in the court 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) *Testimony, exhibits, or evidence given by a witness in a proceeding in the court is solely for that proceeding or its appeal. In any civil proceeding that material is privileged and inadmissible.*

(d) *A policeman of the city or any peace officer may serve a process issued by a municipal court of record under the provisions applicable to service of county court process by a sheriff or constable.*

(e) *If the defendant is convicted of the offense, the judgment and sentence shall be in the name of the state and shall recover from the defendant the fine and costs 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.*

(f) *All fines, fees, costs, and case bonds shall be paid to the clerk, who shall deposit them directly into the city general fund.*

Sec. 30.461. 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 no right to an appeal or to a new trial. The county criminal courts of appeal of Dallas County have jurisdiction of appeals from a municipal court of record.

(b) *To perfect an appeal, the defendant must file a motion for new trial not later than the fifth 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 courts of record. The motion constitutes the assignments of error on appeal. A ground of error not set forth in the motion is waived.*

(c) *After an order overruling a motion for new trial, the defendant may give notice of appeal by paying the \$10 transcript preparation fee not later than the 10th day after the date on which the motion is overruled. 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.*

Sec. 30.462. 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 \$100 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 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. 30.463. TRANSCRIPT. (a) The clerk of the municipal courts 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 preparation fee under Section 30.461. The clerk shall prepare the transcript under written instructions from the defendant or the defendant's attorney. The transcript shall be in accordance with uniform rules established by the appellate court.

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

(c) The city attorney may file a written direction to the clerk to include additional portions of the trial proceedings in the transcript.

Sec. 30.464. STATEMENT OF FACTS. (a) The statement of facts consists of a transcription of the testimony of witnesses and bills of exception. The court reporter shall prepare a statement of facts at the request of the court or of any party and shall immediately notify all parties in writing if a request is made. The reporter shall provide each party with a copy of the statement and shall file one copy with the clerk of the municipal courts of record for immediate transmission to the appellate court clerk. The transcription shall be in narrative form unless a party gives written objection to the use of narrative form not later than the fifth day after receiving notice of the request for a statement of facts.

(b) The court reporter shall omit from the statement of facts matters that are not essential to the decision or the questions presented in the motion for new trial. The reporter may abridge any document by omitting or abbreviating a formal portion of the document and shall exclude formal parts of exhibits and more than one copy of any document.

(c) The judge does not need to approve the statement of facts if it is agreed to by the defendant or the defendant's attorney and the city attorney or assistant city attorney.

(d) The party requesting a statement of facts, other than the state or city, shall pay the cost of preparation of the statement of facts. The defendant recovers the costs he paid for the statement of facts if the case is overturned or dismissed on appeal.

(e) The defendant or the defendant's attorney and the city attorney or assistant city attorney may agree on a brief statement of the case and the facts proven at trial for use by the appellate court. That statement must be included in the transcript instead of the proceedings at trial.

Sec. 30.465. TRANSFER OF RECORD; FEE. The parties must file the transcript and the statement of facts with the clerk of the municipal courts 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. 30.466. 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, except that the points are confined to those set forth in the motion for new trial.

(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 clerk shall notify the prosecuting attorney of the filing.

(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) Each party, on filing the party's brief with the appellate court clerk, shall deliver a copy of the brief to the opposing party.

Sec. 30.467. PROCEDURE; DISPOSITION ON APPEAL. (a) The appellate court shall hear appeals from the municipal courts 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 parties may submit the case 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 does not need to 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. 30.468. 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 courts of record. When the clerk of the municipal courts 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 *capias* for the defendant; or
- (3) issue an execution against the defendant's property.

Sec. 30.469. 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. 30.470. APPEAL TO 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 with 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. If any provision of this Act or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

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, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on April 2, 1987, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 12, 1987, by the following vote: Yeas 30, Nays 0. Passed the House, with amendment, on May 8, 1987, by the following vote: Yeas 134, Nays 0, one present not voting.

Approved May 25, 1987.

Effective May 25, 1987.