

FIRST READING

MISSING

Approved by Committee
on Judiciary

HOUSE BILL NO. 228

INTRODUCED BY JAMES MOORE, FINLEY

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND UPDATE MONTANA STATUTES THAT AFFECT JUSTICE COURTS RELATING TO FEES, ALLOWANCES, TRAINING, JURISDICTIONAL LIMITS, HOLIDAYS, CALLING OF OTHER JUSTICES, CONCURRENT JURISDICTION, VENUE AND FORMATION OF TRIAL JURY; AMENDING SECTIONS 11-727, 11-1604, 25-301, 25-307, 25-310, 25-311, 25-403, 25-410, 93-401, 93-403, 93-408, 93-409, 93-410, 93-507, 93-6811, 93-6802.2, 93-7704, 95-1910, 95-2003, 95-2005, R.C.M. 1947, AND REPEALING SECTIONS 93-6802, 93-6804, 93-6807 AND 93-6808, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 11-727, R.C.M. 1947, is amended to read as follows:

"11-727. Compensation of justices of the peace acting as police judge. In towns, the council may designate a justice of the peace of the county in which the town is situated to act as police judge, and may by ordinance fix his compensation for his services, ~~net-exceeding-one-hundred dollars--(\$100)~~ per-annum, and the justices of the peace so designated ~~must~~ MAY act as a police judge in all cases arising out of a violation of ordinances where the town is a

party. Where the justice of the peace must travel from his town of residence to hold court, he shall be paid per diem and mileage as provided in section 59-801 by the town in which court is held."

Section 2. Section 11-1604, R.C.M. 1947, is amended to read as follows:

"11-1604. When judge cannot act. In all cases in which the judge is a party, or in which he is interested, or when he is related to either party by consanguinity or affinity within the sixth degree, and in case of his sickness, absence, or inability to act, the police judge or mayor may call in a justice of the peace, ~~residing--in~~ or some qualified resident of the city or town, to act in his place and stead."

Section 3. Section 25-301, R.C.M. 1947, is amended to read as follows:

"25-301. ~~Fees--of--justices-of-the-peace~~ Justice court fees in civil actions. The following is the schedule of fees which ~~must shall~~ be collected-by-justices-of-the-peace paid in every civil action ~~introduced~~ in a justice court:

Three dollars and fifty cents (\$3.50) ~~when-summons-is issued~~ when complaint is filed, to be paid by the plaintiff.

Three dollars and fifty cents (\$3.50) ~~when--issue--is joined~~ when the defendant appears, to be paid by the defendant.

1 Three dollars and fifty cents (\$3.50) ~~of by~~ the
 2 prevailing party when judgment is rendered. In cases where
 3 judgment is entered by default, no charge except the three
 4 dollars and fifty cents (\$3.50) for the ~~issuance-of-summons~~
 5 filing of the complaint shall be made for any services,
 6 including issuing and return of execution.

7 Three dollars and fifty cents (\$3.50) for all services
 8 in an action where judgment is rendered by confession.

9 Three dollars and fifty cents (\$3.50) for filing notice
 10 of appeal and transcript on appeal, justifying and approving
 11 undertaking on appeal, and transmitting papers to the
 12 district court with certificate."

13 Section 4. Section 25-307, R.C.M. 1947, is amended to
 14 read as follows:

15 "25-307. Collection and disposition of ~~fees--itemized~~
 16 statement. Justices of the peace shall collect the fees
 17 prescribed by law for ~~justices-of-the-peace~~ justice courts
 18 and shall pay the same into the county treasury of the
 19 county wherein they hold office, on ~~the-first~~ OR BEFORE THE
 20 TENTH day of each month, to be credited to the ~~contingent~~
 21 GENERAL fund of the county; and shall also file an itemized
 22 statement showing all fees received during the preceding
 23 month in ~~connection-with-his-office~~ the justice court; said
 24 statement shall also state that all fees required by law to
 25 be paid in connection with matters pending before ~~him--as--a~~

1 ~~justice~~ the court during the preceding month have been paid
 2 ~~to-him,-and-by-him-paid~~ into the county treasury, and listed
 3 in said itemized statement, and that he has not received or
 4 been promised, nor has any one else received or been
 5 promised for him, any other moneys, emolument, or thing
 6 whatsoever by virtue of or in connection with his office;
 7 and said statement shall be subscribed and sworn to by the
 8 justice. This section, however, shall not apply to
 9 "miscellaneous fees" excepted by section 25-304, supra."

10 Section 5. Section 25-310, R.C.M. 1947, is amended to
 11 read as follows:

12 "~~25-310. Fees--of--justices--of--the-peace-in-criminal~~
 13 actions Justice court costs in criminal actions. The
 14 following ~~fees~~ court costs shall be ~~collected~~ withheld by
 15 justices of the peace ~~which-shall-be--collected~~ from fines
 16 and forfeitures ~~received--by--justices--of--the--peace~~ in
 17 applicable criminal actions.

18 (1) for ~~all~~ each ~~services-rendered~~ action filed where
 19 ~~there--is--a--piec--of--guilty,-or-forfeiture-of-a-bond,-not~~
 20 vacated, seven dollars and fifty cents (\$7.50);

21 (2) ~~for-all-services-rendered~~ where there is a trial,
 22 ~~fifteen--dollars--(\$15)~~ an additional seven dollars and fifty
 23 cents (\$7.50)."

24 Section 6. Section 25-311, R.C.M. 1947, is amended to
 25 read as follows:

1 "25-311. Remittance and retention of ~~fees-by-justices~~
 2 ~~of-the-peace~~ justice court fees. The justices of the peace
 3 shall remit to the county treasurer the fees as set forth in
 4 section 25-310; provided however, that in all cases justices
 5 of the peace may retain the miscellaneous fees provided for
 6 in section 25-304."

7 Section 7. Section 25-409, R.C.M. 1947, is amended to
 8 read as follows:

9 "25-409. Witnesses in courts not of record. Witnesses
 10 in courts not of record in civil actions and proceedings
 11 shall receive three dollars (\$3) for each day's actual
 12 attendance, and ~~seven-cents-(\$-.07)~~ mileage as provided in
 13 section 59-801 for each mile actually traveled in going from
 14 his residence by the usual traveled route to the said court
 15 and return."

16 Section 8. Section 25-410, R.C.M. 1947, is amended to
 17 read as follows:

18 "25-410. Witnesses in criminal actions or coroner's
 19 inquests. Witnesses in courts not of record in criminal
 20 actions and on coroner's inquests shall receive three
 21 dollars (\$3) per day for actual attendance, and ~~seven--cents~~
 22 ~~(\$-.07)--per--mile~~ mileage as provided in section 59-801 for
 23 each mile actually and necessarily traveled from his place
 24 of residence to the said court and return."

25 Section 9. Section 93-401, R.C.M. 1947, is amended to

1 read as follows:

2 "93-401. Justices' courts and justices of the peace.

3 (1) There must be at least one (1) justice court in each
 4 county of the state. The board of county commissioners of
 5 each county of the state shall have authority to constitute
 6 one (1) additional justice court in their respective
 7 counties as the board deems necessary. One (1) justice court
 8 in each county must be located at the county seat and the
 9 board of county commissioners shall determine the location
 10 of the other justice court in their respective counties.
 11 Each justice of the peace must be elected by the qualified
 12 electors of the county at the general state election next
 13 preceding the expiration of the term of office of his
 14 predecessor.

15 (2) A justice of the peace shall be nominated and
 16 elected on the non-partisan judicial ballot in the same
 17 manner as are judges of the district court. Each judicial
 18 office shall be a separate and independent office for
 19 election purposes and each office shall be numbered by the
 20 county commissioners and each candidate for justice of the
 21 peace shall specify the number of the office for which he
 22 seeks to be elected. A candidate may not file for more than
 23 one (1) office. Section 23-4511 prohibiting political party
 24 endorsement for judicial officers shall also apply to
 25 justices of the peace.

1 (3) Each justice of the peace, elected or appointed,
 2 after he has received his certificate of election or
 3 appointment, shall, before entering upon the duties of his
 4 office take the constitutional oath of office, which must be
 5 filed with the county clerk.

6 (4) Before the county clerk may file the oath the
 7 elected or appointed justice must satisfy the clerk that he
 8 is either:

9 (a) an attorney at law authorized to practice law in
 10 the state of Montana, or

11 (b) a person who has held the office of justice of the
 12 peace within the preceding five (5) years, or

13 (c) a person who has completed the orientation course
 14 of study held under the direction of the university of
 15 Montana law school; or if a person is appointed after the
 16 course is offered he must agree to take the course at the
 17 next offering and failure to do so will disqualify him.

18 (5) The university of Montana law school shall present
 19 a course of study as soon as is practical following each
 20 general election. Mileage and per diem shall be paid the
 21 elected or appointed justice of the peace for attending the
 22 course and shall be a proper charge against the county
 23 wherein the justice of the peace will hold court.

24 (6) There shall be an annual training session for all
 25 elected and appointed justices of the peace. This training

1 session, which may be held in conjunction with the Montana
 2 magistrates' association convention, shall be supervised by
 3 the supreme court. Mileage and per diem shall be paid the
 4 elected or appointed justice of the peace for attending the
 5 course and shall be a proper charge against the county
 6 wherein the justice holds court."

7 Section 10. Section 93-403, R.C.M. 1947, is amended to
 8 read as follows:

9 "93-403. Holding court for another justice ~~within~~
 10 ~~county~~. A justice of the peace of any county may hold the
 11 court of any other justice of the peace ~~of the same county~~
 12 at his request, and while so acting is vested with the power
 13 of the justice for whom he so holds court, in which case the
 14 proper entry of the proceedings before the attending
 15 justice, subscribed by him, must be made in the docket of
 16 the justice for whom he so holds the court. The visiting
 17 justice of the peace shall be paid all necessary and actual
 18 expenses including mileage by the county where court is
 19 held."

20 Section 11. Section 93-408, R.C.M. 1947, is amended to
 21 read as follows:

22 "93-408. Jurisdiction of justices' courts. The justice
 23 courts have jurisdiction:

24 1. In actions arising on contract for the recovery of
 25 money only, if the sum claimed does not exceed ~~three~~ fifteen

1 hundred dollars (\$1500) exclusive of court costs;
 2 2. In actions for damages not exceeding three fifteen
 3 hundred dollars (\$1500) exclusive of courts costs for
 4 taking, detaining, or injuring personal property, or for
 5 injury to real property where no issue is raised by the
 6 verified answer of defendant involving the title to or
 7 possession of the same; in actions for damages not exceeding
 8 three fifteen hundred dollars (\$1500) exclusive of court
 9 costs for injury to the person; provided, that in actions
 10 for false imprisonment, libel, slander, criminal
 11 conversation, seduction, malicious prosecution, bastardy,
 12 abduction, and alienation of affections, the justice of the
 13 peace shall not have jurisdiction;
 14 3. In actions to recover the possession of personal
 15 property, if the value of such property does not exceed
 16 three fifteen hundred dollars (\$1500);
 17 4. In actions for a fine, penalty, or forfeiture, not
 18 exceeding three fifteen hundred dollars (\$1500), given by
 19 statute, or the ordinance of an incorporated city or town,
 20 where no issue is raised by the answer involving the
 21 legality of any tax, impost, assessment, toll, or municipal
 22 fine;
 23 5. In actions upon bonds or undertakings conditioned
 24 for the payment of money, if the sum claimed does not exceed
 25 three fifteen hundred dollars (\$1500), though the penalty

1 may exceed that sum;
 2 6. To take and enter judgment for the recovery of money
 3 on the confession of a defendant, when the amount confessed
 4 does not exceed three fifteen hundred dollars (\$1500)
 5 exclusive of court costs."
 6 Section 12. Section 93-409, R.C.M. 1947, is amended to
 7 read as follows:
 8 "93-409. Concurrent jurisdiction. The justices' courts
 9 have concurrent jurisdiction with the district courts within
 10 their respective ~~townships~~ counties in actions of forcible
 11 entry and unlawful detainer."
 12 Section 13. Section 93-410, R.C.M. 1947, is amended to
 13 read as follows:
 14 "93-410. Criminal jurisdiction. The justices' courts
 15 have jurisdiction of the following public offenses committed
 16 within the respective counties in which such courts are
 17 established:
 18 1. ~~Petit--larceny~~ Theft of property not exceeding one
 19 hundred fifty dollars (\$150) in value.
 20 2. ~~Assault in-the-third-degree, as defined--in--section~~
 21 ~~94-603, as defined in section 94-5-201.~~
 22 3. Breaches of peace, riots, routs, affrays, committing
 23 a willful injury to property, and all misdemeanors
 24 punishable by fine not exceeding five hundred dollars, or
 25 imprisonment not exceeding six months, or by both such fine

1 and imprisonment."

2 Section 14. Section 93-507, R.C.M. 1947, is amended to
3 read as follows:

4 "93-507. Nonjudicial days. No court ~~must~~ may be open,
5 nor ~~must may~~ any judicial business be transacted, ~~on-Sunday,~~
6 ~~on--the--first--day--of-January,~~ ~~on-the-twenty-second-day-of~~
7 ~~February,~~ ~~on-the-thirtieth-day-of-May,~~ ~~on-the-fourth-day--of~~
8 ~~July,~~ ~~on-the-first-Monday-of-September,~~ ~~on-the-twenty-fifth~~
9 ~~day-of-December,~~ ~~on-a-day--on--which--an--election--is--held~~
10 ~~throughout--the--state,~~ on legal holidays as provided for in
11 section 19-107 and on a day appointed by the president of
12 the United States, or by the governor of this state, for a
13 public fast, thanksgiving, or holiday, except for the
14 following purposes:

- 15 1. To give, upon their request, instructions to a jury
- 16 when deliberating on their verdict.
- 17 2. To receive a verdict, or discharge a jury.
- 18 3. For the exercise of the powers of a magistrate in a
- 19 criminal action, or in a proceeding of a criminal nature;
- 20 but injunctions, writs of prohibition, and habeas corpus may
- 21 be issued and served on any day."

22 Section 15. Section 93-6811, R.C.M. 1947, is amended
23 to read as follows:

24 "93-6811. Answer ~~or--demurrer~~ to amended pleadings.
25 When a pleading is amended, the adverse party may answer ~~or~~

1 ~~demur-te~~ it within such time, not exceeding two days, as the
2 court may allow."

3 Section 16. Section 93-6802.2, R.C.M. 1947, is amended
4 to read as follows:

5 "93-6802.2. Demurrers ~~and-pieas~~ abolished. Demurrers,
6 ~~pieas~~ and exceptions for insufficiency of a pleading shall
7 not be used."

8 Section 17. Section 93-7704, R.C.M. 1947, is amended
9 to read as follows:

10 "93-7704. ~~In-case-of-disability--of--justice,~~ ~~another~~
11 ~~justice--may--attend-on-his-behalf.~~ Calling another justice,
12 when, by whom. ~~In-case-of-the-sickness-or-other--disability,~~
13 ~~or-necessary-absence-of-a-justice,~~ ~~on-a-return-of-a-summons,~~
14 ~~or-at-the-time-appointed-for-a-trial,~~ ~~another-justice-of-the~~
15 ~~same-county,~~ ~~or-adjoining-county-may,~~ ~~at-his-request,~~ ~~attend~~
16 ~~in--his--behalf,~~ ~~and-thereupon-is-vested-with-the-power,~~ ~~for~~
17 ~~the-time-being,~~ ~~of-the-justice-before-whom-the--summons--was~~
18 ~~returnable,~~ ~~---In---that---case,~~ ~~the--proper--entry--of--the~~
19 ~~proceedings-before-the-attending-justice,~~ ~~subscribed-by-him,~~
20 ~~must-be-made-in-the-docket-of-the-justice--before--whom--the~~
21 ~~summons--was--returnable,~~ ~~---if--the--case--is--adjourned,~~ ~~the~~
22 ~~justice-before-whom-the-summons-was--returnable--may--resume~~
23 ~~jurisdiction.~~

24 (1) Disqualification. When a justice of the peace is
25 disqualified from acting on any action because of the

1 application of subsection (1), (2), or (3) of section
 2 93-901, he shall either transfer the action to another
 3 justice court in the same county or call a justice from a
 4 neighboring county to preside in his behalf, who while so
 5 acting is vested with the power of the justice for whom he
 6 so holds court.

7 (2) Illness or absence. In case of sickness,
 8 disability, or absence of a justice for such a period of
 9 time that the county commissioners of the county find that
 10 there is a delay in the proper administration of justice or
 11 upon the written request of the county attorney, another
 12 justice, if there is one readily available, or a police
 13 judge or some other qualified person shall be called to hold
 14 court for the absent justice until the return of the absent
 15 justice, and when so called and so acting that person is
 16 vested with the power of the justice for whom he so holds
 17 court.

18 (3) Vacation. During the time, when a justice of the
 19 peace is on vacation or attending a training session,
 20 another justice of the peace of the same county shall be
 21 authorized to handle matters that otherwise would be handled
 22 by the absent justice. When there is no other justice of
 23 the peace in the county, the county commissioners shall
 24 handle the situation in the same manner as if the justice
 25 were sick or absent.

1 (4) Necessary expenses. Whenever a justice of the
 2 peace or other person is called to preside over the court of
 3 a justice who is disqualified, sick, or absent, that
 4 visiting justice of the peace or other person shall be paid
 5 all necessary and actual expenses including mileage and if
 6 that acting justice is not a justice of the peace receiving
 7 a salary then that acting justice shall receive such
 8 compensation as is proper for the time involved. Such
 9 expenses shall be a proper charge against the county where
 10 the court is held.

11 (5) Court docket entries. When another justice, or
 12 any other qualified person is called to preside in a justice
 13 court proper entries of all proceedings must be made in the
 14 docket of the justice for whom the visiting justice or
 15 person holds court. When the appointment is made by order
 16 of the county commissioners the order shall be placed in the
 17 court docket.

18 (6) Jurisdiction of called in person. When called to
 19 preside over a justice court as above provided the visiting
 20 justice of the peace or other qualified person while acting
 21 as justice of the peace is vested with all the power of the
 22 justice for whom he so holds court."

23 Section 18. Section 95-1910, R.C.M. 1947, is amended
 24 to read as follows:

25 "95-1910. Order of trial. (a) The court may instruct

1 the jury as to its duties. Such general instructions must be
2 settled in the same manner as provided for the settlement of
3 special instructions in subsection (d) of this section.

4 (b) The county attorney must state the case and offer
5 evidence in support of the prosecution. The defendant may
6 make his opening statement prior to the state's offer of
7 evidence, or may state his defense and then offer evidence
8 in support thereof after the state rests.

9 (c) The parties may then respectively offer rebutting
10 testimony only, unless the court, for good cause, permits
11 them to offer evidence upon their original case.

12 (d) When the evidence is concluded, if either party
13 desires special instructions to be given to the jury, such
14 instructions shall be reduced to writing, numbered, and
15 signed by the party, or his attorney, and delivered to the
16 court. The instructions shall be settled by the court,
17 without the presence of the jury, at which settlement
18 counsel for the parties, or the defendant if he is without
19 counsel, shall be allowed reasonable opportunity to examine
20 the instructions requested and proposed to be given by the
21 court, and to present and argue to the court objections to
22 the adoption or rejection of any instruction offered by
23 counsel or proposed to be given to the jury by the court. On
24 such settlement of instructions, the respective counsel, or
25 the parties, shall specify and state the particular ground

1 on which an instruction is objected to, and it shall not be
2 sufficient to object generally that the instruction does not
3 state the law, or is against the law, but the objection must
4 specify particularly wherein the instruction is
5 insufficient, or does not state the law, or what particular
6 clause therein is objected to.

7 The court shall pass upon the objections to the
8 instructions and shall either give each instruction as
9 requested or proposed or positively refuse to do so, or give
10 the instruction with modification, and shall mark or endorse
11 upon each instruction in such a manner that it shall
12 distinctly appear what instructions were given in whole or
13 in part, and in like manner those refused or modified, and
14 if modified, wherein and how modified. All instructions must
15 be filed as a part of the record of the cause. No exceptions
16 are necessary to the rulings of the court on the settlement
17 of instructions.

18 The court reporter shall be present at such settlement
19 and shall take down all the objections to any or all of the
20 instructions given or refused by the court, together with
21 modifications made therein, and the ruling of the court
22 thereon.

23 (e) When the instructions have been passed upon and
24 settled by the court, and before the arguments to the jury
25 have begun, the court shall charge the jury in writing,

1 giving in such charge only such instructions as have been
 2 passed upon and settled. In charging the jury, the court
 3 shall give them all matters of law which it thinks necessary
 4 for the jury's information in rendering a verdict.

5 (f) When the jury has been charged, unless the case is
 6 submitted to the jury on either side or on both sides
 7 without argument, the county attorney must commence and may
 8 conclude the argument. If several defendants having several
 9 defenses appear by different counsel, the court must
 10 determine their relative order in evidence and argument.
 11 Counsel, in arguing the case to the judge or jury, may argue
 12 and comment upon the law of the case as given in the
 13 instructions of the court, as well as upon the evidence of
 14 the case."

15 Section 19. Section 95-2003, R.C.M. 1947, is amended
 16 to read as follows:

17 "95-2003. Change of place of trial. (a) The defendant
 18 or prosecution, before trial, may move for a change of place
 19 of trial on the ground that there exists in the township
 20 county in which the charge is pending such prejudice that a
 21 fair trial cannot be had in such township county.

22 (b) The motion shall be in writing and supported by
 23 affidavit which shall state facts showing the nature of the
 24 prejudice alleged. The defendant or the state may file
 25 counteraffidavits. The court shall conduct a hearing and

1 determine the merits of the motion.

2 (c) If the court determines that there exists in the
 3 township county where the prosecution is pending such
 4 prejudice that a fair trial cannot be had it shall transfer
 5 the cause to any other court of competent jurisdiction in
 6 any township county where a fair trial may be had."

7 Section 20. Section 95-2005, R.C.M. 1947, is amended
 8 to read as follows:

9 "95-2005. Formation of trial jury. (a) Number of
 10 jurors. A jury in justice or police court shall consist of
 11 six (6) persons, but the parties may agree to a number less
 12 than six (6).

13 (b) Formation of trial jury. The county jury
 14 commission, at the time of preparing the district court jury
 15 list, shall prepare a jury list for each justice and police
 16 court within the county. Each list shall consist of
 17 residents of the appropriate township county, city or town.
 18 Such list shall be selected in any reasonable manner which
 19 shall ensure fairness, and it shall include a number of
 20 names sufficient to meet the annual jury requirements of the
 21 respective court. Additional lists may be prepared if
 22 required. The list shall be filed in the office of the clerk
 23 of the district court and the appropriate list shall be
 24 posted in a public place in each such township county, city
 25 or town, and such list shall comprise the trial jury list

1 for the ensuing year for such ~~township~~ county, city or town.

2 Trial jurors shall be summoned from the jury list by
3 notifying each orally that he is summoned and of the time
4 and place at which his attendance is required.

5 The prosecuting attorney and the defendant or his
6 attorney shall conduct the examination of prospective
7 jurors. The court may conduct an additional examination. The
8 court may limit the examination by the defendant, his
9 attorney or the prosecuting attorney if the court believes
10 such examination to be improper.

11 Each party may challenge jurors for cause, and each
12 challenge must be tried by the court. The challenge may be
13 for any cause enumerated in section 95-1909(d) (2) of this
14 code. Each defendant shall be allowed three (3) peremptory
15 challenges and the state shall be allowed the same number of
16 peremptory challenges as all of the defendants."

17 Section 21. Repealer. Sections 93-6802, 93-6804,
18 93-6807 and 93-6808, R.C.M. 1947, are repealed.

-End-

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 18 and shall pay the same into the county treasury of the
 19 county wherein they hold office, on ~~the-first~~ OR BEFORE THE
 20 TENTH day of each month, to be credited to the ~~contingent~~
 21 GENERAL fund of the county; and shall also file an itemized
 22 statement showing all fees received during the preceding
 23 month in ~~connection-with-his-office~~ the justice court; said
 24 statement shall also state that all fees required by law to
 25 be paid in connection with matters pending before ~~him--as--a~~

1 ~~justice~~ the court during the preceding month have been paid
 2 ~~to-him,-and-by-him-paid~~ into the county treasury, and listed
 3 in said itemized statement, and that he has not received or
 4 been promised, nor has any one else received or been
 5 promised for him, any other moneys, emolument, or thing
 6 whatsoever by virtue of or in connection with his office;
 7 and said statement shall be subscribed and sworn to by the
 8 justice. This section, however, shall not apply to
 9 "miscellaneous fees" excepted by section 25-304, supra."

10 Section 5. Section 25-310, R.C.M. 1947, is amended to
 11 read as follows:

12 "~~25-310. Fees--of--justices--of--the-peace-in-criminal~~
 13 ~~actions~~ Justice court costs in criminal actions. The
 14 following ~~fees~~ court costs shall be ~~collected~~ withheld by
 15 justices of the peace ~~which-shall-be--collected~~ from fines
 16 and forfeitures ~~received--by--justices--of--the--peace~~ in
 17 applicable criminal actions.

18 (1) for ~~all~~ each services-rendered action filed where
 19 ~~there--is--a--plea--of--guilty,-or-forfeiture-of-a-bond,-not~~
 20 ~~vacated,~~ seven dollars and fifty cents (\$7.50);

21 (2) ~~for-all-services-rendered~~ where there is a trial,
 22 ~~fifteen--dollars--(+\$15)~~ an additional seven dollars and fifty
 23 cents (\$7.50)."

24 Section 6. Section 25-311, R.C.M. 1947, is amended to
 25 read as follows:

1 "25-311. Remittance and retention of ~~fees-by-justices~~
 2 ~~of-the-peace justice court fees~~. The justices of the peace
 3 shall remit to the county treasurer the fees as set forth in
 4 section 25-310; provided however, that in all cases justices
 5 of the peace may retain the miscellaneous fees provided for
 6 in section 25-304."

7 Section 7. Section 25-409, R.C.M. 1947, is amended to
 8 read as follows:

9 "25-409. Witnesses in courts not of record. Witnesses
 10 in courts not of record in civil actions and proceedings
 11 shall receive three dollars (\$3) for each day's actual
 12 attendance, and ~~seven-cents-(\$07)~~ mileage as provided in
 13 section 59-801 for each mile actually traveled in going from
 14 his residence by the usual traveled route to the said court
 15 and return."

16 Section 8. Section 25-410, R.C.M. 1947, is amended to
 17 read as follows:

18 "25-410. Witnesses in criminal actions or coroner's
 19 inquests. Witnesses in courts not of record in criminal
 20 actions and on coroner's inquests shall receive three
 21 dollars (\$3) per day for actual attendance, and ~~seven--cents~~
 22 ~~(\$07)--per--mile~~ mileage as provided in section 59-801 for
 23 each mile actually and necessarily traveled from his place
 24 of residence to the said court and return."

25 Section 9. Section 93-401, R.C.M. 1947, is amended to

1 read as follows:

2 "93-401. Justices' courts and justices of the peace.
 3 (1) There must be at least one (1) justice court in each
 4 county of the state. The board of county commissioners of
 5 each county of the state shall have authority to constitute
 6 one (1) additional justice court in their respective
 7 counties as the board deems necessary. One (1) justice court
 8 in each county must be located at the county seat and the
 9 board of county commissioners shall determine the location
 10 of the other justice court in their respective counties.
 11 Each justice of the peace must be elected by the qualified
 12 electors of the county at the general state election next
 13 preceding the expiration of the term of office of his
 14 predecessor.

15 (2) A justice of the peace shall be nominated and
 16 elected on the non-partisan judicial ballot in the same
 17 manner as are judges of the district court. Each judicial
 18 office shall be a separate and independent office for
 19 election purposes and each office shall be numbered by the
 20 county commissioners and each candidate for justice of the
 21 peace shall specify the number of the office for which he
 22 seeks to be elected. A candidate may not file for more than
 23 one (1) office. Section 23-4511 prohibiting political party
 24 endorsement for judicial officers shall also apply to
 25 justices of the peace.

1 (3) Each justice of the peace, elected or appointed,
 2 after he has received his certificate of election or
 3 appointment, shall, before entering upon the duties of his
 4 office take the constitutional oath of office, which must be
 5 filed with the county clerk.

6 (4) Before the county clerk may file the oath the
 7 elected or appointed justice must satisfy the clerk that he
 8 is either:

9 (a) an attorney at law authorized to practice law in
 10 the state of Montana, or

11 (b) a person who has held the office of justice of the
 12 peace within the preceding five (5) years, or

13 (c) a person who has completed the orientation course
 14 of study held under the direction of the university of
 15 Montana law school; or if a person is appointed after the
 16 course is offered he must agree to take the course at the
 17 next offering and failure to do so will disqualify him.

18 (5) The university of Montana law school shall present
 19 a course of study as soon as is practical following each
 20 general election. Mileage and per diem shall be paid the
 21 elected or appointed justice of the peace for attending the
 22 course and shall be a proper charge against the county
 23 wherein the justice of the peace will hold court.

24 (6) There shall be an annual training session for all
 25 elected and appointed justices of the peace. This training

1 session, which may be held in conjunction with the Montana
 2 magistrates' association convention, shall be supervised by
 3 the supreme court. Mileage and per diem shall be paid the
 4 elected or appointed justice of the peace for attending the
 5 course and shall be a proper charge against the county
 6 wherein the justice holds court."

7 Section 10. Section 93-403, R.C.M. 1947, is amended to
 8 read as follows:

9 "93-403. Holding court for another justice within
 10 county. A justice of the peace of any county may hold the
 11 court of any other justice of the peace ~~of the same county~~
 12 at his request, and while so acting is vested with the power
 13 of the justice for whom he so holds court, in which case the
 14 proper entry of the proceedings before the attending
 15 justice, subscribed by him, must be made in the docket of
 16 the justice for whom he so holds the court. The visiting
 17 justice of the peace shall be paid all necessary and actual
 18 expenses including mileage by the county where court is
 19 held."

20 Section 11. Section 93-408, R.C.M. 1947, is amended to
 21 read as follows:

22 "93-408. Jurisdiction of justices' courts. The justice
 23 courts have jurisdiction:

24 1. In actions arising on contract for the recovery of
 25 money only, if the sum claimed does not exceed three fifteen

1 hundred dollars (\$1500) exclusive of court costs;
 2 2. In actions for damages not exceeding three fifteen
 3 hundred dollars (\$1500) exclusive of courts costs for
 4 taking, detaining, or injuring personal property, or for
 5 injury to real property where no issue is raised by the
 6 verified answer of defendant involving the title to or
 7 possession of the same; in actions for damages not exceeding
 8 three fifteen hundred dollars (\$1500) exclusive of court
 9 costs for injury to the person; provided, that in actions
 10 for false imprisonment, libel, slander, criminal
 11 conversation, seduction, malicious prosecution, bastardy,
 12 abduction, and alienation of affections, the justice of the
 13 peace shall not have jurisdiction;
 14 3. In actions to recover the possession of personal
 15 property, if the value of such property does not exceed
 16 three fifteen hundred dollars (\$1500);
 17 4. In actions for a fine, penalty, or forfeiture, not
 18 exceeding three fifteen hundred dollars (\$1500), given by
 19 statute, or the ordinance of an incorporated city or town,
 20 where no issue is raised by the answer involving the
 21 legality of any tax, impost, assessment, toll, or municipal
 22 fine;
 23 5. In actions upon bonds or undertakings conditioned
 24 for the payment of money, if the sum claimed does not exceed
 25 three fifteen hundred dollars (\$1500), though the penalty

1 may exceed that sum;
 2 6. To take and enter judgment for the recovery of money
 3 on the confession of a defendant, when the amount confessed
 4 does not exceed three fifteen hundred dollars (\$1500)
 5 exclusive of court costs."
 6 Section 12. Section 93-409, R.C.M. 1947, is amended to
 7 read as follows:
 8 "93-409. Concurrent jurisdiction. The justices' courts
 9 have concurrent jurisdiction with the district courts within
 10 their respective ~~townships~~ counties in actions of forcible
 11 entry and unlawful detainer."
 12 Section 13. Section 93-410, R.C.M. 1947, is amended to
 13 read as follows:
 14 "93-410. Criminal jurisdiction. The justices' courts
 15 have jurisdiction of the following public offenses committed
 16 within the respective counties in which such courts are
 17 established:
 18 1. ~~Petit--larceny~~ Theft of property not exceeding one
 19 hundred fifty dollars (\$150) in value.
 20 2. ~~Assault in-the-third-degree,-as-defined--in--section~~
 21 94-603, as defined in section 94-5-201.
 22 3. Breaches of peace, riots, routs, affrays, committing
 23 a willful injury to property, and all misdemeanors
 24 punishable by fine not exceeding five hundred dollars, or
 25 imprisonment not exceeding six months, or by both such fine

1 and imprisonment."

2 Section 14. Section 93-507, R.C.M. 1947, is amended to
3 read as follows:

4 "93-507. Nonjudicial days. No court ~~must~~ may be open,
5 nor ~~must~~ may any judicial business be transacted, ~~on Sunday,~~
6 ~~on the first day of January, on the twenty-second day of~~
7 ~~February, on the thirtieth day of May, on the fourth day of~~
8 ~~July, on the first Monday of September, on the twenty-fifth~~
9 ~~day of December, on a day on which an election is held~~
10 ~~throughout the state,~~ on legal holidays as provided for in
11 section 19-107 and on a day appointed by the president of
12 the United States, or by the governor of this state, for a
13 public fast, thanksgiving, or holiday, except for the
14 following purposes:

15 1. To give, upon their request, instructions to a jury
16 when deliberating on their verdict.

17 2. To receive a verdict, or discharge a jury.

18 3. For the exercise of the powers of a magistrate in a
19 criminal action, or in a proceeding of a criminal nature;
20 but injunctions, writs of prohibition, and habeas corpus may
21 be issued and served on any day."

22 Section 15. Section 93-6811, R.C.M. 1947, is amended
23 to read as follows:

24 "93-6811. Answer ~~or demurrer~~ to amended pleadings.
25 When a pleading is amended, the adverse party may answer ~~or~~

1 demur ~~to~~ it within such time, not exceeding two days, as the
2 court may allow."

3 Section 16. Section 93-6802.2, R.C.M. 1947, is amended
4 to read as follows:

5 "93-6802.2. Demurrers ~~and pleas~~ abolished. Demurrers,
6 ~~pleas~~ and exceptions for insufficiency of a pleading shall
7 not be used."

8 Section 17. Section 93-7704, R.C.M. 1947, is amended
9 to read as follows:

10 "93-7704. ~~In case of disability of justice, another~~
11 ~~justice may attend on his behalf. Calling another justice,~~
12 ~~when, by whom. In case of the sickness or other disability,~~
13 ~~or necessary absence of a justice, on a return of a summons,~~
14 ~~or at the time appointed for a trial, another justice of the~~
15 ~~same county, or adjoining county may, at his request, attend~~
16 ~~in his behalf, and thereupon is vested with the power, for~~
17 ~~the time being, of the justice before whom the summons was~~
18 ~~returnable in that case, the proper entry of the~~
19 ~~proceedings before the attending justice, subscribed by him,~~
20 ~~must be made in the docket of the justice before whom the~~
21 ~~summons was returnable. If the case is adjourned, the~~
22 ~~justice before whom the summons was returnable may resume~~
23 ~~jurisdiction.~~

24 (1) Disqualification. When a justice of the peace is
25 disqualified from acting on any action because of the

1 application of subsection (1), (2), or (3) of section
 2 93-901, he shall either transfer the action to another
 3 justice court in the same county or call a justice from a
 4 neighboring county to preside in his behalf, who while so
 5 acting is vested with the power of the justice for whom he
 6 so holds court.

7 (2) Illness or absence. In case of sickness,
 8 disability, or absence of a justice for such a period of
 9 time that the county commissioners of the county find that
 10 there is a delay in the proper administration of justice or
 11 upon the written request of the county attorney, another
 12 justice, if there is one readily available, or a police
 13 judge or some other qualified person shall be called to hold
 14 court for the absent justice until the return of the absent
 15 justice, and when so called and so acting that person is
 16 vested with the power of the justice for whom he so holds
 17 court.

18 (3) Vacation. During the time, when a justice of the
 19 peace is on vacation or attending a training session,
 20 another justice of the peace of the same county shall be
 21 authorized to handle matters that otherwise would be handled
 22 by the absent justice. When there is no other justice of
 23 the peace in the county, the county commissioners shall
 24 handle the situation in the same manner as if the justice
 25 were sick or absent.

1 (4) Necessary expenses. Whenever a justice of the
 2 peace or other person is called to preside over the court of
 3 a justice who is disqualified, sick, or absent, that
 4 visiting justice of the peace or other person shall be paid
 5 all necessary and actual expenses including mileage and if
 6 that acting justice is not a justice of the peace receiving
 7 a salary then that acting justice shall receive such
 8 compensation as is proper for the time involved. Such
 9 expenses shall be a proper charge against the county where
 10 the court is held.

11 (5) Court docket entries. When another justice, or
 12 any other qualified person is called to preside in a justice
 13 court proper entries of all proceedings must be made in the
 14 docket of the justice for whom the visiting justice or
 15 person holds court. When the appointment is made by order
 16 of the county commissioners the order shall be placed in the
 17 court docket.

18 (6) Jurisdiction of called in person. When called to
 19 preside over a justice court as above provided the visiting
 20 justice of the peace or other qualified person while acting
 21 as justice of the peace is vested with all the power of the
 22 justice for whom he so holds court."

23 Section 18. Section 95-1910, R.C.M. 1947, is amended
 24 to read as follows:

25 "95-1910. Order of trial. (a) The court may instruct

1 the jury as to its duties. Such general instructions must be
2 settled in the same manner as provided for the settlement of
3 special instructions in subsection (d) of this section.

4 (b) The county attorney must state the case and offer
5 evidence in support of the prosecution. The defendant may
6 make his opening statement prior to the state's offer of
7 evidence, or may state his defense and then offer evidence
8 in support thereof after the state rests.

9 (c) The parties may then respectively offer rebutting
10 testimony only, unless the court, for good cause, permits
11 them to offer evidence upon their original case.

12 (d) When the evidence is concluded, if either party
13 desires special instructions to be given to the jury, such
14 instructions shall be reduced to writing, numbered, and
15 signed by the party, or his attorney, and delivered to the
16 court. The instructions shall be settled by the court,
17 without the presence of the jury, at which settlement
18 counsel for the parties, or the defendant if he is without
19 counsel, shall be allowed reasonable opportunity to examine
20 the instructions requested and proposed to be given by the
21 court, and to present and argue to the court objections to
22 the adoption or rejection of any instruction offered by
23 counsel or proposed to be given to the jury by the court. On
24 such settlement of instructions, the respective counsel, or
25 the parties, shall specify and state the particular ground

1 on which an instruction is objected to, and it shall not be
2 sufficient to object generally that the instruction does not
3 state the law, or is against the law, but the objection must
4 specify particularly wherein the instruction is
5 insufficient, or does not state the law, or what particular
6 clause therein is objected to.

7 The court shall pass upon the objections to the
8 instructions and shall either give each instruction as
9 requested or proposed or positively refuse to do so, or give
10 the instruction with modification, and shall mark or endorse
11 upon each instruction in such a manner that it shall
12 distinctly appear what instructions were given in whole or
13 in part, and in like manner those refused or modified, and
14 if modified, wherein and how modified. All instructions must
15 be filed as a part of the record of the cause. No exceptions
16 are necessary to the rulings of the court on the settlement
17 of instructions.

18 The court reporter shall be present at such settlement
19 and shall take down all the objections to any or all of the
20 instructions given or refused by the court, together with
21 modifications made therein, and the ruling of the court
22 thereon.

23 (e) When the instructions have been passed upon and
24 settled by the court, and before the arguments to the jury
25 have begun, the court shall charge the jury in writing,

1 giving in such charge only such instructions as have been
 2 passed upon and settled. In charging the jury, the court
 3 shall give them all matters of law which it thinks necessary
 4 for the jury's information in rendering a verdict.

5 (f) When the jury has been charged, unless the case is
 6 submitted to the jury on either side or on both sides
 7 without argument, the county attorney must commence and may
 8 conclude the argument. If several defendants having several
 9 defenses appear by different counsel, the court must
 10 determine their relative order in evidence and argument.
 11 Counsel, in arguing the case to the judge or jury, may argue
 12 and comment upon the law of the case as given in the
 13 instructions of the court, as well as upon the evidence of
 14 the case."

15 Section 19. Section 95-2003, R.C.M. 1947, is amended
 16 to read as follows:

17 "95-2003. Change of place of trial. (a) The defendant
 18 or prosecution, before trial, may move for a change of place
 19 of trial on the ground that there exists in the township
 20 county in which the charge is pending such prejudice that a
 21 fair trial cannot be had in such township county.

22 (b) The motion shall be in writing and supported by
 23 affidavit which shall state facts showing the nature of the
 24 prejudice alleged. The defendant or the state may file
 25 counteraffidavits. The court shall conduct a hearing and

1 determine the merits of the motion.

2 (c) If the court determines that there exists in the
 3 township county where the prosecution is pending such
 4 prejudice that a fair trial cannot be had it shall transfer
 5 the cause to any other court of competent jurisdiction in
 6 any township county where a fair trial may be had."

7 Section 20. Section 95-2005, R.C.M. 1947, is amended
 8 to read as follows:

9 "95-2005. Formation of trial jury. (a) Number of
 10 jurors. A jury in justice or police court shall consist of
 11 six (6) persons, but the parties may agree to a number less
 12 than six (6).

13 (b) Formation of trial jury. The county jury
 14 commission, at the time of preparing the district court jury
 15 list, shall prepare a jury list for each justice and police
 16 court within the county. Each list shall consist of
 17 residents of the appropriate township county, city or town.
 18 Such list shall be selected in any reasonable manner which
 19 shall ensure fairness, and it shall include a number of
 20 names sufficient to meet the annual jury requirements of the
 21 respective court. Additional lists may be prepared if
 22 required. The list shall be filed in the office of the clerk
 23 of the district court and the appropriate list shall be
 24 posted in a public place in each such township county, city
 25 or town, and such list shall comprise the trial jury list

1 for the ensuing year for such ~~township~~ county, city or town.

2 Trial jurors shall be summoned from the jury list by
3 notifying each orally that he is summoned and of the time
4 and place at which his attendance is required.

5 The prosecuting attorney and the defendant or his
6 attorney shall conduct the examination of prospective
7 jurors. The court may conduct an additional examination. The
8 court may limit the examination by the defendant, his
9 attorney or the prosecuting attorney if the court believes
10 such examination to be improper.

11 Each party may challenge jurors for cause, and each
12 challenge must be tried by the court. The challenge may be
13 for any cause enumerated in section 95-1909(d) (2) of this
14 code. Each defendant shall be allowed three (3) peremptory
15 challenges and the state shall be allowed the same number of
16 peremptory challenges as all of the defendants."

17 Section 21. Repealer. Sections 93-6802, 93-6804,
18 93-6807 and 93-6808, R.C.M. 1947, are repealed.

-End-

March 13, 1975

SENATE COMMITTEE ON JUDICIARY
AMENDMENTS TO HOUSE BILL NO. 228

That House Bill No. 228, third reading, be amended as follows:

1. Amend page 11, section 14, line 4.
Following: "must"
Strike: "may"
Insert: "must"

2. Amend page 11, section 14, line 5.
Following: "must"
Strike: "may"
Insert: "must"

1 HOUSE BILL NO. 228

2 INTRODUCED BY JAMES MOORE, FINLEY

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
5 UPDATE MONTANA STATUTES THAT AFFECT JUSTICE COURTS RELATING
6 TO FEES, ALLOWANCES, TRAINING, JURISDICTIONAL LIMITS,
7 HOLIDAYS, CALLING OF OTHER JUSTICES, CONCURRENT
8 JURISDICTION, VENUE AND FORMATION OF TRIAL JURY; AMENDING
9 SECTIONS 11-727, 11-1604, 25-301, 25-307, 25-310, 25-311,
10 25-409, 25-410, 93-401, 93-403, 93-408, 93-409, 93-410,
11 93-507, 93-6811, 93-6802.2, 93-7704, 95-1910, 95-2003,
12 95-2005, R.C.M. 1947, AND REPEALING SECTIONS 93-6802,
13 93-6804, 93-6807 AND 93-6808, R.C.M. 1947."

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:16 Section 1. Section 11-727, R.C.M. 1947, is amended to
17 read as follows:

18 "11-727. Compensation of justices of the peace acting
19 as police judge. In towns, the council may designate a
20 justice of the peace of the county in which the town is
21 situated to act as police judge, and may by ordinance fix
22 his compensation for his services, ~~not-exceeding-one-hundred~~
23 ~~dollars--(\$100)~~ per-annum, and the justices of the peace so
24 designated ~~must~~ MAY act as a police judge in all cases
25 arising out of a violation of ordinances where the town is a

1 party. Where the justice of the peace must travel from his
2 town of residence to hold court, he shall be paid per diem
3 and mileage as provided in section 59-801 by the town in
4 which court is held."

5 Section 2. Section 11-1604, R.C.M. 1947, is amended to
6 read as follows:

7 "11-1604. When judge cannot act. In all cases in which
8 the judge is a party, or in which he is interested, or when
9 he is related to either party by consanguinity or affinity
10 within the sixth degree, and in case of his sickness,
11 absence, or inability to act, the police judge or mayor may
12 call in a justice of the peace, ~~residing--in~~ or some
13 qualified resident of the city or town, to act in his place
14 and stead."

15 Section 3. Section 25-301, R.C.M. 1947, is amended to
16 read as follows:

17 "25-301. ~~Fees-of-justices-of-the-peace~~ Justice court
18 fees in civil actions. The following is the schedule of fees
19 which ~~must shall~~ be collected-by-justices-of-the-peace paid
20 in every civil action ~~introduced~~ in a justice court:

21 Three dollars and fifty cents (\$3.50) ~~when--summons--is~~
22 issued when complaint is filed, to be paid by the plaintiff.23 Three dollars and fifty cents (\$3.50) ~~when-issue-is~~
24 joined when the defendant appears, to be paid by the
25 defendant.

1 Three dollars and fifty cents (\$3.50) ~~of by~~ the
 2 prevailing party when judgment is rendered. In cases where
 3 judgment is entered by default, no charge except the three
 4 dollars and fifty cents (\$3.50) for the ~~issuance-of-summons~~
 5 filing of the complaint shall be made for any services,
 6 including issuing and return of execution.

7 Three dollars and fifty cents (\$3.50) for all services
 8 in an action where judgment is rendered by confession.

9 Three dollars and fifty cents (\$3.50) for filing notice
 10 of appeal and transcript on appeal, justifying and approving
 11 undertaking on appeal, and transmitting papers to the
 12 district court with certificate."

13 Section 4. Section 25-307, R.C.M. 1947, is amended to
 14 read as follows:

15 "25-307. Collection and disposition of fees--itemized
 16 statement. Justices of the peace shall collect the fees
 17 prescribed by law for ~~justices-of-the-peace~~ justice courts
 18 and shall pay the same into the county treasury of the
 19 county wherein they hold office, ~~on the-first~~ OR BEFORE THE
 20 TENTH day of each month, to be credited to the ~~contingent~~
 21 GENERAL fund of the county; and shall also file an itemized
 22 statement showing all fees received during the preceding
 23 month in ~~connection-with-his-office~~ the justice court; said
 24 statement shall also state that all fees required by law to
 25 be paid in connection with matters pending before ~~him--as--a~~

1 ~~justice~~ the court during the preceding month have been paid
 2 ~~to-him-and-by-him-paid~~ into the county treasury, and listed
 3 in said itemized statement, and that he has not received or
 4 been promised, nor has any one else received or been
 5 promised for him, any other moneys, emolument, or thing
 6 whatsoever by virtue of or in connection with his office;
 7 and said statement shall be subscribed and sworn to by the
 8 justice. This section, however, shall not apply to
 9 "miscellaneous fees" excepted by section 25-304, supra."

10 Section 5. Section 25-310, R.C.M. 1947, is amended to
 11 read as follows:

12 "~~25-310. Fees--of--justices--of--the-peace-in-criminal~~
 13 actions Justice court costs in criminal actions. The
 14 following ~~fees~~ court costs shall be ~~collected withheld~~ by
 15 justices of the peace ~~which-shall-be--collected~~ from fines
 16 and forfeitures ~~received--by--justices--of--the--peace~~ in
 17 applicable criminal actions.

18 (1) for ~~all~~ each services-rendered action filed where
 19 ~~there--is--a--plea--of--guilty,--or--forfeiture--of--a--bond,--not~~
 20 ~~vacated,~~ seven dollars and fifty cents (\$7.50);

21 (2) ~~for-all-services-rendered~~ where there is a trial,
 22 ~~fifteen--dollars--(\$15)~~ an additional seven dollars and fifty
 23 cents (\$7.50)."

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 11 shall receive three dollars (\$3) for each day's actual
 12 attendance, and ~~seven-cents-(\$-07)~~ mileage as provided in
 13 section 59-801 for each mile actually traveled in going from
 14 his residence by the usual traveled route to the said court
 15 and return."

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 6 one (1) additional justice court in their respective
 7 counties as the board deems necessary. One (1) justice court
 8 in each county must be located at the county seat and the
 9 board of county commissioners shall determine the location
 10 of the other justice court in their respective counties.
 11 Each justice of the peace must be elected by the qualified
 12 electors of the county at the general state election next
 13 preceding the expiration of the term of office of his
 14 predecessor.

15 (2) A justice of the peace shall be nominated and
 16 elected on the non-partisan judicial ballot in the same
 17 manner as are judges of the district court. Each judicial
 18 office shall be a separate and independent office for
 19 election purposes and each office shall be numbered by the
 20 county commissioners and each candidate for justice of the
 21 peace shall specify the number of the office for which he
 22 seeks to be elected. A candidate may not file for more than
 23 one (1) office. Section 23-4511 prohibiting political party
 24 endorsement for judicial officers shall also apply to
 25 justices of the peace.

1 (3) Each justice of the peace, elected or appointed,
 2 after he has received his certificate of election or
 3 appointment, shall, before entering upon the duties of his
 4 office take the constitutional oath of office, which must be
 5 filed with the county clerk.

6 (4) Before the county clerk may file the oath the
 7 elected or appointed justice must satisfy the clerk that he
 8 is either:

9 (a) an attorney at law authorized to practice law in
 10 the state of Montana, or

11 (b) a person who has held the office of justice of the
 12 peace within the preceding five (5) years, or

13 (c) a person who has completed the orientation course
 14 of study held under the direction of the university of
 15 Montana law school; or if a person is appointed after the
 16 course is offered he must agree to take the course at the
 17 next offering and failure to do so will disqualify him.

18 (5) The university of Montana law school shall present
 19 a course of study as soon as is practical following each
 20 general election. Mileage and per diem shall be paid the
 21 elected or appointed justice of the peace for attending the
 22 course and shall be a proper charge against the county
 23 wherein the justice of the peace will hold court.

24 (6) There shall be an annual training session for all
 25 elected and appointed justices of the peace. This training

1 session, which may be held in conjunction with the Montana
 2 magistrates' association convention, shall be supervised by
 3 the supreme court. Mileage and per diem shall be paid the
 4 elected or appointed justice of the peace for attending the
 5 course and shall be a proper charge against the county
 6 wherein the justice holds court."

7 Section 10. Section 93-403, R.C.M. 1947, is amended to
 8 read as follows:

9 "93-403. Holding court for another justice ~~within~~
 10 ~~county~~. A justice of the peace of any county may hold the
 11 court of any other justice of the peace ~~of-the--same--county~~
 12 at his request, and while so acting is vested with the power
 13 of the justice for whom he so holds court, in which case the
 14 proper entry of the proceedings before the attending
 15 justice, subscribed by him, must be made in the docket of
 16 the justice for whom he so holds the court. The visiting
 17 justice of the peace shall be paid all necessary and actual
 18 expenses including mileage by the county where court is
 19 held."

20 Section 11. Section 93-408, R.C.M. 1947, is amended to
 21 read as follows:

22 "93-408. Jurisdiction of justices' courts. The justice
 23 courts have jurisdiction:

24 1. In actions arising on contract for the recovery of
 25 money only, if the sum claimed does not exceed ~~three~~ fifteen

1 hundred dollars (\$1500) exclusive of court costs;

2 2. In actions for damages not exceeding three fifteen
3 hundred dollars (\$1500) exclusive of courts costs for
4 taking, detaining, or injuring personal property, or for
5 injury to real property where no issue is raised by the
6 verified answer of defendant involving the title to or
7 possession of the same; in actions for damages not exceeding
8 three fifteen hundred dollars (\$1500) exclusive of court
9 costs for injury to the person; provided, that in actions
10 for false imprisonment, libel, slander, criminal
11 conversation, seduction, malicious prosecution, bastardy,
12 abduction, and alienation of affections, the justice of the
13 peace shall not have jurisdiction;

14 3. In actions to recover the possession of personal
15 property, if the value of such property does not exceed
16 three fifteen hundred dollars (\$1500);

17 4. In actions for a fine, penalty, or forfeiture, not
18 exceeding three fifteen hundred dollars (\$1500), given by
19 statute, or the ordinance of an incorporated city or town,
20 where no issue is raised by the answer involving the
21 legality of any tax, impost, assessment, toll, or municipal
22 fine;

23 5. In actions upon bonds or undertakings conditioned
24 for the payment of money, if the sum claimed does not exceed
25 three fifteen hundred dollars (\$1500), though the penalty

1 may exceed that sum;

2 6. To take and enter judgment for the recovery of money
3 on the confession of a defendant, when the amount confessed
4 does not exceed three fifteen hundred dollars (\$1500)
5 exclusive of court costs."

6 Section 12. Section 93-409, R.C.M. 1947, is amended to
7 read as follows:

8 "93-409. Concurrent jurisdiction. The justices' courts
9 have concurrent jurisdiction with the district courts within
10 their respective ~~townships~~ counties in actions of forcible
11 entry and unlawful detainer."

12 Section 13. Section 93-410, R.C.M. 1947, is amended to
13 read as follows:

14 "93-410. Criminal jurisdiction. The justices' courts
15 have jurisdiction of the following public offenses committed
16 within the respective counties in which such courts are
17 established:

18 1. ~~Petit--larceny~~ Theft of property not exceeding one
19 hundred fifty dollars (\$150) in value.

20 2. ~~Assault in-the-third-degree, as-defined-in--section~~
21 ~~94-603~~, as defined in section 94-5-201.

22 3. Breaches of peace, riots, routs, affrays, committing
23 a willful injury to property, and all misdemeanors
24 punishable by fine not exceeding five hundred dollars, or
25 imprisonment not exceeding six months, or by both such fine

1 and imprisonment."

2 Section 14. Section 93-507, R.C.M. 1947, is amended to
3 read as follows:

4 "93-507. Nonjudicial days. No court ~~must~~ may MUST be
5 open, nor ~~must~~ may MUST any judicial business be transacted,
6 ~~on-Sunday, on-the-first-day-of-January, on-the-twenty-second~~
7 ~~day--of-February, on-the-thirtieth-day-of-May, on-the-fourth~~
8 ~~day-of-July, on--the--first--Monday--of--September,--on--the~~
9 ~~twenty-fifth--day-of-December, on-a-day-on-which-an-election~~
10 ~~is-held-throughout-the-state, on legal holidays as provided~~
11 for in section 19-107 and on a day appointed by the
12 president of the United States, or by the governor of this
13 state, for a public fast, thanksgiving, or holiday, except
14 for the following purposes:

15 1. To give, upon their request, instructions to a jury
16 when deliberating on their verdict.

17 2. To receive a verdict, or discharge a jury.

18 3. For the exercise of the powers of a magistrate in a
19 criminal action, or in a proceeding of a criminal nature;
20 but injunctions, writs of prohibition, and habeas corpus may
21 be issued and served on any day."

22 Section 15. Section 93-6811, R.C.M. 1947, is amended
23 to read as follows:

24 "93-6811. Answer ~~or--demurrer~~ to amended pleadings.
25 When a pleading is amended, the adverse party may answer ~~or~~

1 ~~demur-to~~ it within such time, not exceeding two days, as the
2 court may allow."

3 Section 16. Section 93-6802.2, R.C.M. 1947, is amended
4 to read as follows:

5 "93-6802.2. Demurrers ~~and-pieas~~ abolished. Demurrers,
6 ~~pieas~~ and exceptions for insufficiency of a pleading shall
7 not be used."

8 Section 17. Section 93-7704, R.C.M. 1947, is amended
9 to read as follows:

10 "93-7704. ~~In--case--of--disability-of-justice, another~~
11 ~~justice-may-attend-on-his-behalf, Calling another justice,~~
12 ~~when, by whom. In-case-of-the-sickness-or-other-disability,~~
13 ~~or-necessary-absence-of-a-justice, on-a-return-of-a-summons,~~
14 ~~or-at-the-time-appointed-for-a-trial, another-justice-of-the~~
15 ~~same-county, or-adjoining-county-may, at-his-request, attend~~
16 ~~in-his-behalf, and-therupon-is-vested-with-the--power,--for~~
17 ~~the--time--being, of-the-justice-before-whom-the-summons-was~~
18 ~~returnable,--In--that--case,--the--proper--entry--of--the~~
19 ~~proceedings-before-the-attending-justice, subscribed-by-him,~~
20 ~~must--be--made--in-the-docket-of-the-justice-before-whom-the~~
21 ~~summons-was--returnable,--If--the--case--is--adjourned,--the~~
22 ~~justice--before--whom--the-summons-was-returnable-may-resume~~
23 ~~jurisdiction.~~

24 (1) Disqualification. When a justice of the peace is
25 disqualified from acting on any action because of the

1 application of subsection (1), (2), or (3) of section
 2 93-901, he shall either transfer the action to another
 3 justice court in the same county or call a justice from a
 4 neighboring county to preside in his behalf, who while so
 5 acting is vested with the power of the justice for whom he
 6 so holds court.

7 (2) Illness or absence. In case of sickness,
 8 disability, or absence of a justice for such a period of
 9 time that the county commissioners of the county find that
 10 there is a delay in the proper administration of justice or
 11 upon the written request of the county attorney, another
 12 justice, if there is one readily available, or a police
 13 judge or some other qualified person shall be called to hold
 14 court for the absent justice until the return of the absent
 15 justice, and when so called and so acting that person is
 16 vested with the power of the justice for whom he so holds
 17 court.

18 (3) Vacation. During the time, when a justice of the
 19 peace is on vacation or attending a training session,
 20 another justice of the peace of the same county shall be
 21 authorized to handle matters that otherwise would be handled
 22 by the absent justice. When there is no other justice of
 23 the peace in the county, the county commissioners shall
 24 handle the situation in the same manner as if the justice
 25 were sick or absent.

1 (4) Necessary expenses. Whenever a justice of the
 2 peace or other person is called to preside over the court of
 3 a justice who is disqualified, sick, or absent, that
 4 visiting justice of the peace or other person shall be paid
 5 all necessary and actual expenses including mileage and if
 6 that acting justice is not a justice of the peace receiving
 7 a salary then that acting justice shall receive such
 8 compensation as is proper for the time involved. Such
 9 expenses shall be a proper charge against the county where
 10 the court is held.

11 (5) Court docket entries. When another justice, or
 12 any other qualified person is called to preside in a justice
 13 court proper entries of all proceedings must be made in the
 14 docket of the justice for whom the visiting justice or
 15 person holds court. When the appointment is made by order
 16 of the county commissioners the order shall be placed in the
 17 court docket.

18 (6) Jurisdiction of called in person. When called to
 19 preside over a justice court as above provided the visiting
 20 justice of the peace or other qualified person while acting
 21 as justice of the peace is vested with all the power of the
 22 justice for whom he so holds court."

23 Section 18. Section 95-1910, R.C.M. 1947, is amended
 24 to read as follows:

25 "95-1910. Order of trial. (a) The court may instruct

1 the jury as to its duties. Such general instructions must be
2 settled in the same manner as provided for the settlement of
3 special instructions in subsection (d) of this section.

4 (b) The county attorney must state the case and offer
5 evidence in support of the prosecution. The defendant may
6 make his opening statement prior to the state's offer of
7 evidence, or may state his defense and then offer evidence
8 in support thereof after the state rests.

9 (c) The parties may then respectively offer rebutting
10 testimony only, unless the court, for good cause, permits
11 them to offer evidence upon their original case.

12 (d) When the evidence is concluded, if either party
13 desires special instructions to be given to the jury, such
14 instructions shall be reduced to writing, numbered, and
15 signed by the party, or his attorney, and delivered to the
16 court. The instructions shall be settled by the court,
17 without the presence of the jury, at which settlement
18 counsel for the parties, or the defendant if he is without
19 counsel, shall be allowed reasonable opportunity to examine
20 the instructions requested and proposed to be given by the
21 court, and to present and argue to the court objections to
22 the adoption or rejection of any instruction offered by
23 counsel or proposed to be given to the jury by the court. On
24 such settlement of instructions, the respective counsel, or
25 the parties, shall specify and state the particular ground

1 on which an instruction is objected to, and it shall not be
2 sufficient to object generally that the instruction does not
3 state the law, or is against the law, but the objection must
4 specify particularly wherein the instruction is
5 insufficient, or does not state the law, or what particular
6 clause therein is objected to.

7 The court shall pass upon the objections to the
8 instructions and shall either give each instruction as
9 requested or proposed or positively refuse to do so, or give
10 the instruction with modification, and shall mark or endorse
11 upon each instruction in such a manner that it shall
12 distinctly appear what instructions were given in whole or
13 in part, and in like manner those refused or modified, and
14 if modified, wherein and how modified. All instructions must
15 be filed as a part of the record of the cause. No exceptions
16 are necessary to the rulings of the court on the settlement
17 of instructions.

18 The court reporter shall be present at such settlement
19 and shall take down all the objections to any or all of the
20 instructions given or refused by the court, together with
21 modifications made therein, and the ruling of the court
22 thereon.

23 (e) When the instructions have been passed upon and
24 settled by the court, and before the arguments to the jury
25 have begun, the court shall charge the jury in writing,

1 giving in such charge only such instructions as have been
 2 passed upon and settled. In charging the jury, the court
 3 shall give them all matters of law which it thinks necessary
 4 for the jury's information in rendering a verdict.

5 (f) When the jury has been charged, unless the case is
 6 submitted to the jury on either side or on both sides
 7 without argument, the county attorney must commence and may
 8 conclude the argument. If several defendants having several
 9 defenses appear by different counsel, the court must
 10 determine their relative order in evidence and argument.
 11 Counsel, in arguing the case to the judge or jury, may argue
 12 and comment upon the law of the case as given in the
 13 instructions of the court, as well as upon the evidence of
 14 the case."

15 Section 19. Section 95-2003, R.C.M. 1947, is amended
 16 to read as follows:

17 "95-2003. Change of place of trial. (a) The defendant
 18 or prosecution, before trial, may move for a change of place
 19 of trial on the ground that there exists in the township
 20 county in which the charge is pending such prejudice that a
 21 fair trial cannot be had in such township county.

22 (b) The motion shall be in writing and supported by
 23 affidavit which shall state facts showing the nature of the
 24 prejudice alleged. The defendant or the state may file
 25 counteraffidavits. The court shall conduct a hearing and

1 determine the merits of the motion.

2 (c) If the court determines that there exists in the
 3 township county where the prosecution is pending such
 4 prejudice that a fair trial cannot be had it shall transfer
 5 the cause to any other court of competent jurisdiction in
 6 any township county where a fair trial may be had."

7 Section 20. Section 95-2005, R.C.M. 1947, is amended
 8 to read as follows:

9 "95-2005. Formation of trial jury. (a) Number of
 10 jurors. A jury in justice or police court shall consist of
 11 six (6) persons, but the parties may agree to a number less
 12 than six (6).

13 (b) Formation of trial jury. The county jury
 14 commission, at the time of preparing the district court jury
 15 list, shall prepare a jury list for each justice and police
 16 court within the county. Each list shall consist of
 17 residents of the appropriate township county, city or town.
 18 Such list shall be selected in any reasonable manner which
 19 shall ensure fairness, and it shall include a number of
 20 names sufficient to meet the annual jury requirements of the
 21 respective court. Additional lists may be prepared if
 22 required. The list shall be filed in the office of the clerk
 23 of the district court and the appropriate list shall be
 24 posted in a public place in each such township county, city
 25 or town, and such list shall comprise the trial jury list

1 for the ensuing year for such ~~township~~ county, city or town.

2 Trial jurors shall be summoned from the jury list by
3 notifying each orally that he is summoned and of the time
4 and place at which his attendance is required.

5 The prosecuting attorney and the defendant or his
6 attorney shall conduct the examination of prospective
7 jurors. The court may conduct an additional examination. The
8 court may limit the examination by the defendant, his
9 attorney or the prosecuting attorney if the court believes
10 such examination to be improper.

11 Each party may challenge jurors for cause, and each
12 challenge must be tried by the court. The challenge may be
13 for any cause enumerated in section 95-1909(d) (2) of this
14 code. Each defendant shall be allowed three (3) peremptory
15 challenges and the state shall be allowed the same number of
16 peremptory challenges as all of the defendants."

17 Section 21. Repealer. Sections 93-6802, 93-6804,
18 93-6807 and 93-6808, R.C.M. 1947, are repealed.

-End-