

SENATE BILL NO. 217

1/22 Introduced
1/23 Referred to Judiciary
1/25 Fiscal Note Requested
1/31 Hearing
2/07 Fiscal Note Received
2/22 Committee Report-Bill Pass As Amended
2/25 2nd Reading Pass As Amended
2/27 3rd Reading Do Not Pass
2/27 Bill Killed

Senate BILL NO. 217
 INTRODUCED BY Sen. Marguerite Newman
Van Valkenburg Revised Norman Bob Bill

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 4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT
 5 MUNICIPAL COURTS BE ESTABLISHED IN CITIES WITH POPULATIONS
 6 OF 10,000 OR MORE; EXPANDING THE JURISDICTION OF MUNICIPAL
 7 COURTS; PROVIDING STATE FUNDING FOR MUNICIPAL COURT
 8 EXPENSES; REQUIRING CITIES TO REMIT TO THE STATE A PORTION
 9 OF THE FINES, FORFEITURES, AND FEES COLLECTED IN MUNICIPAL
 10 COURTS; AMENDING SECTIONS 3-6-101 THROUGH 3-6-103, 3-6-105,
 11 3-6-201, 3-6-203, 3-6-204, 25-30-101, 25-30-102, 27-31-101
 12 THROUGH 27-31-103, 40-1-213, 40-4-104, 40-4-206, 40-4-211,
 13 40-4-222, 40-7-104, 40-8-103, 40-8-107, 40-8-109, 40-8-127,
 14 45-8-317, 45-8-319, AND 46-17-402, MCA; REPEALING SECTIONS
 15 3-6-301, 25-30-108, AND 46-17-404, MCA; AND PROVIDING A
 16 DELAYED EFFECTIVE DATE."

17
 18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 19 Section 1. Section 3-6-101, MCA, is amended to read:
 20 "3-6-101. Establishment of the court. (1) ~~All~~
 21 Effective January 1, 1986, all cities in the state of
 22 Montana with a population of 10,000 or more, according to
 23 the last federal census, ~~may~~ must have a court known as the
 24 municipal court of the city of (designating the name of the
 25 city) of the state of Montana. The court shall be a court of

1 record.
 2 (2) ~~The provisions of this chapter apply only after~~
 3 ~~the governing body of the city has elected by a two-thirds~~
 4 ~~majority vote to adopt them by ordinance and in the~~
 5 ~~ordinance, has provided the manner in which and time when~~
 6 ~~the municipal court is to be established and~~ The municipal
 7 court shall assume continuing jurisdiction over all pending
 8 city court cases pending on January 1, 1986, for the city
 9 where the municipal court is located. The ordinance must be
 10 consistent with the provisions of this chapter."

11 Section 2. Section 3-6-102, MCA, is amended to read:
 12 "3-6-102. Abolition of city court. (1) In cities in
 13 which a municipal court is established, the office of city
 14 judge is hereby abolished.

15 (2) A city judge whose office is abolished shall serve
 16 as municipal court judge for the remainder of his term in
 17 the same city as he served as city judge. Upon completion of
 18 his term, the office of municipal court judge must be filled
 19 by election as provided in 3-6-201 and 3-6-202."

20 Section 3. Section 3-6-103, MCA, is amended to read:
 21 "3-6-103. Jurisdiction Exclusive jurisdiction. (1)
 22 Said Subject to the territorial limits provided for in
 23 subsection (2), the municipal court shall have jurisdiction
 24 coordinate and coextensive with the justices' courts of the
 25 county wherein said city is located and shall, in addition



1 ~~thereof~~ have has exclusive original jurisdiction of all in:

2 (a) actions and proceedings, both civil and criminal,
3 mentioned--and provided for in 3-11-103;--Such municipal
4 courts shall also have concurrent jurisdiction with the
5 district court within their respective counties in forcible
6 entry and unlawful detainer;

7 (b) proceedings requiring judicial approval for
8 issuance of a marriage license and a marriage certificate
9 form under 40-1-213;

10 (c) proceedings for a concealed weapon permit under
11 45-8-319;

12 (d) name change proceedings under Title 27, chapter
13 31; and

14 (e) misdemeanors punishable by a fine exceeding \$500
15 or imprisonment exceeding 6 months, or both, as provided by
16 law.

17 (2) The jurisdiction of the municipal court under
18 subsection (1)(a) extends to the limits of the city in which
19 the municipal court is located. The jurisdiction of the
20 municipal court under subsections (1)(b) through (1)(e)
21 extends to the limits of the judicial district in which the
22 municipal court is located."

23 NEW SECTION. Section 4. Concurrent jurisdiction. The
24 municipal court has concurrent jurisdiction with:

25 (1) a city court for a city with a population of less

1 than 10,000 located within the same judicial district as the
2 municipal court in actions and proceedings provided for in
3 3-11-103;

4 (2) a justice's court located within the same judicial
5 district as the municipal court in:

6 (a) civil actions when the amount in controversy does
7 not exceed \$3,500 exclusive of court costs;

8 (b) misdemeanors punishable by a fine not exceeding
9 \$500 or imprisonment not exceeding 6 months, or both; and

10 (c) acting as an examining and committing court for
11 the purpose of conducting preliminary hearings and
12 arraignments in felony cases;

13 (3) a district court for a county located within the
14 same judicial district as the municipal court in:

15 (a) civil actions when the amount in controversy is
16 more than \$3,500 but less than \$10,000;

17 (b) proceedings regarding marriage and child custody
18 under Title 40, chapter 4; and

19 (c) adoption proceedings under Title 40, chapter 8.

20 NEW SECTION. Section 5. Removal to district court.
21 The supreme court shall adopt rules for the removal from
22 municipal court to district court of any action or
23 proceeding provided for in [section 4(3)].

24 NEW SECTION. Section 6. Appeal to district court.
25 There is a right of appeal to district court from any final

1 order or judgment of a municipal court. The appeal must be
2 confined to the record of the proceeding created in
3 municipal court as prescribed in court rules provided for in
4 3-6-104.

5 Section 7. Section 3-6-105, MCA, is amended to read:
6 "3-6-105. ~~Courtroom--and--suppites~~ Municipal court
7 facilities. A--room-for-the-municipal-court,-with-necessary
8 furniture,-fixtures,-and-supplies,-shall-be-provided-by--the
9 The city wherein the municipal court is located shall
10 provide and maintain an adequate courtroom, office, and
11 other court facilities, including janitorial services, for
12 the municipal court. The supreme court may by rule adopt
13 standards for court facilities for municipal courts."

14 Section 8. Section 3-6-201, MCA, is amended to read:
15 "3-6-201. Election Number of judges -- election --
16 term of office. (1) There must be one judge for each
17 municipal court established. However, the legislature may
18 create additional offices of municipal court judge within a
19 municipal court upon recommendation of the supreme court.

20 ~~{1}~~(2) One The judge of each a municipal court shall
21 be elected by the qualified voters of the city wherein the
22 municipal court is located at the general city election
23 provided for in 13-1-104(2). The judge's term shall commence
24 on the first Monday in January following the election. The
25 judge shall hold office for the term of 4 years and until

1 his successor is elected and qualified.

2 ~~{2}~~(3) All elections of municipal judges are governed
3 by the laws applicable to the election of nonpartisan city
4 officials."

5 Section 9. Section 3-6-203, MCA, is amended to read:
6 "3-6-203. Salary. The salary of the municipal court
7 judge ~~shall--be-set-by-city-ordinance-and-shall-be~~ is equal
8 to 75% of the annual salary of a district judge and is
9 payable monthly by the city--treasurer supreme court
10 administrator. Actual and necessary expenses for the
11 municipal court judge shall be the travel expenses, as
12 defined and provided in 2-18-501 through 2-18-503, incurred
13 in the performance of his official duties."

14 Section 10. Section 3-6-204, MCA, is amended to read:
15 "3-6-204. Disqualification -- judge pro tem. When a
16 judge of a municipal court has been disqualified or is sick
17 or unable to act, he shall call in some practicing attorney
18 of the county in which his court is located, who shall be
19 judge pro tem with the same powers for the purposes of the
20 cause as the judge of the court. The judge pro tem is
21 entitled to reasonable compensation for his services paid by
22 the supreme court administrator."

23 NEW SECTION. Section 11. Appointment of court
24 personnel -- classification plan. (1) A municipal court
25 judge shall appoint a clerk of court and may appoint other

1 personnel subject to the approval of the supreme court.

2 (2) The supreme court shall by rule establish a
3 personnel classification plan for municipal court employees.

4 The plan must include:

5 (a) a basic compensation plan of pay ranges to which
6 classes of positions are assigned and may be reassigned;

7 (b) the qualifications for each position or class of
8 positions, including education, experience, special skills,
9 and legal knowledge;

10 (c) the procedures and guidelines for the appointment,
11 demotion, and discharge of employees; and

12 (d) the procedures and regulations governing the
13 transfer of personnel.

14 NEW SECTION. Section 12. State funding of court
15 expenses. (1) Except as provided in 3-6-105 and subject to
16 provisions of [section 13], the state shall fund, through a
17 general fund appropriation to the supreme court, the
18 operational expenses of the municipal courts, including the
19 salaries, benefits, and travel expenses of municipal court
20 judges and other court personnel.

21 (2) The supreme court administrator, under the
22 direction of the supreme court and in consultation with the
23 municipal court judges, shall include within the supreme
24 court's biennial budget request to the legislature a request
25 for funding the expenses listed in subsection (1).

1 NEW SECTION. Section 13. Deposit of fines,
2 forfeitures, and fees -- payment to supreme court
3 administrator. (1) The clerk of court shall deposit all
4 fines, forfeitures, and fees collected in municipal court
5 into a municipal court account within the city general fund.

6 (2) Except as provided in subsection (3), at the
7 beginning of each fiscal year, the clerk shall remit to the
8 supreme court administrator for deposit into the state
9 general fund a warrant drawn from the municipal court
10 account for an amount equal to 70% of the total operational
11 expenses of the municipal court for the previous fiscal year
12 as determined by the supreme court administrator.

13 (3) The supreme court may waive payment of all or a
14 portion of the amount to be paid to the supreme court
15 administrator under subsection (2) if the supreme court
16 determines that the total operational expenses of the
17 municipal court for the previous fiscal year exceed the
18 amount of fines, forfeitures, and fees collected.

19 Section 14. Section 25-0-101, MCA, is amended to
20 read:

21 "25-30-101. Applicability of district court and
22 justice's court rules. (1) The provisions of 3-10-222,
23 ~~3-10-231--through--3-10-234~~, 3-10-305, and 3-10-306,~~--and~~
24 ~~3-10-704--through--3-10-706~~; 25-31-102(2), 25-31-114 through
25 25-31-116, 25-31-304, 25-31-402(2), 25-31-405, parts 7

1 through 11 of chapter 31 of this title (except 25-31-915,
 2 25-31-1002, 25-31-1004, and 25-31-1005), and chapter 33 of
 3 this title (except 25-33-301 and 25-33-302); and chapter 9,
 4 part 10 of chapter 16, chapter 17, and part 15 of chapter 18
 5 of Title 27 are applicable to municipal courts except when
 6 they are inconsistent with the provisions of this chapter
 7 and chapter 6 of Title 3, the words "municipal court" being
 8 substituted for justice's court and "judge" for justice of
 9 the peace.

10 (2) Except as otherwise provided by this chapter,
 11 chapter 6 of Title 3, and the supreme court's rules on
 12 disqualification of judges, the proceedings and practice in
 13 municipal court shall be the same as in district court."

14 Section 15. Section 25-30-102, MCA, is amended to
 15 read:

16 "25-30-102. Fees and fines. The fees and fines in
 17 municipal court shall be the same as the fees and fines
 18 provided by law or ordinance, and all fees and fines
 19 collected by the court shall be paid into a municipal court
 20 account within the city treasury general fund."

21 Section 16. Section 27-31-101, MCA, is amended to
 22 read:

23 "27-31-101. Petition for change of name of natural
 24 person. All (1) Except as provided in subsection (2), all
 25 applications for change of names must be made to the

1 district court of the county where the person whose name is
 2 proposed to be changed resides, by petition signed by such
 3 person and, if such person is under 18 years of age, by one
 4 of the parents, if living, or if both be dead, then by the
 5 guardian, and if there be no guardian, then by some near
 6 relative or friend. The petition must specify the place of
 7 birth and residence of such person, his or her present name,
 8 the name proposed, and the reason for such change of name
 9 and must, if neither parent of such person be living, name
 10 as far as known to the petitioner the near relatives of such
 11 person and their place of residence.

12 (2) An application for change of name must be made to
 13 municipal court if a municipal court is located within the
 14 judicial district where the person whose name is proposed to
 15 be changed resides. The application must be by petition as
 16 prescribed in subsection (1)."

17 Section 17. Section 27-31-102, MCA, is amended to
 18 read:

19 "27-31-102. Petition for change of name of nonprofit
 20 corporation. Any (1) Except as provided in subsection (2),
 21 any religious, benevolent, literary, or scientific
 22 corporation or any corporation bearing or using or being
 23 known by the name of any benevolent or charitable order or
 24 society may by petition apply to the district court of the
 25 county in which its articles of incorporation were

1 originally filed or in which its property is situated for a
 2 change of its corporate name. Such petition must be signed
 3 by a majority of the directors or trustees of the
 4 corporation and must specify the date of the formation of
 5 the corporation, the name proposed, and the reason for the
 6 change of name. Upon the filing of the petition, the same
 7 procedure shall be followed as upon applications for changes
 8 of names of natural persons.

9 (2) A corporation described in subsection (1) must
 10 apply for a change of name to the municipal court if a
 11 municipal court is located within the judicial district
 12 where its articles of incorporation were originally filed or
 13 where its property is situated. The application must be by
 14 petition as prescribed in subsection (1)."

15 Section 18. Section 27-31-103, MCA, is amended to
 16 read:

17 "27-31-103. District court jurisdiction. Applications
 18 for change of names must be heard and determined by the
 19 district court or by the municipal court as provided in
 20 27-31-101(2) and 27-31-102(2)."

21 Section 19. Section 40-1-213, MCA, is amended to read:

22 "40-1-213. Judicial approval. (1) The Except as
 23 provided in subsection (4), the district court may order the
 24 clerk of the district court to issue a marriage license and
 25 a marriage certificate form to a party aged 16 or 17 years

1 who has no parent capable of consenting to his marriage or
 2 has the consent of both parents or of the parent having the
 3 actual care, custody, and control to his marriage, if
 4 capable of giving consent, or of his guardian. The court
 5 must require both parties to participate in a period of
 6 marriage counseling involving at least two separate
 7 counseling sessions not less than 10 days apart with a
 8 designated counselor as a condition of the order for
 9 issuance of a marriage license and a marriage certificate
 10 form under this section.

11 (2) A marriage license and a marriage certificate form
 12 may be issued under this section only if the court finds
 13 that the underaged party is capable of assuming the
 14 responsibilities of marriage and the marriage will serve his
 15 best interest. Pregnancy alone does not establish that the
 16 best interest of the party will be served.

17 (3) The district or municipal court shall authorize
 18 performance of a marriage by proxy upon the showing required
 19 by the provisions on solemnization.

20 (4) If the parties seek judicial approval for issuance
 21 of a marriage license and a marriage certificate form in
 22 county located in a judicial district where a municipal
 23 court is located, they must seek judicial approval in the
 24 manner prescribed in this section from the municipal court."

25 Section 20. Section 40-4-104, MCA, is amended to read:

1 "40-4-104. Dissolution of marriage -- legal
2 separation. (1) The district or municipal court shall enter
3 a decree of dissolution of marriage if:

4 (a) the court finds that one of the parties, at the
5 time the action was commenced, was domiciled in this state
6 or was stationed in this state while a member of the armed
7 services and that the domicile or military presence has been
8 maintained for 90 days next preceding the making of the
9 findings;

10 (b) the court finds that the marriage is irretrievably
11 broken, which findings shall be supported by evidence:

12 (i) that the parties have lived separate and apart for
13 a period of more than 180 days next preceding the
14 commencement of this proceeding; or

15 (ii) that there is serious marital discord which
16 adversely affects the attitude of one or both of the parties
17 towards the marriage;

18 (c) the court finds that the conciliation provisions
19 of the Montana Conciliation Law and of 40-4-107 either do
20 not apply or have been met; and

21 (d) to the extent it has jurisdiction to do so, the
22 court has considered, approved, or made provision for child
23 custody, the support of any child entitled to support, the
24 maintenance of either spouse, and the disposition of
25 property or provided for a separate, later hearing to

1 complete these matters.

2 (2) If a party requests a decree of legal separation
3 rather than a decree of dissolution of marriage, the court
4 shall grant the decree in that form unless the other party
5 objects."

6 Section 21. Section 40-4-206, MCA, is amended to read:

7 "40-4-206. Payment of maintenance or support to court.

8 (1) Upon its own motion or upon motion of either party, the
9 court may order at any time that maintenance or support
10 payments be made to the clerk of the district or municipal
11 court as trustee for remittance to the person entitled to
12 receive the payments.

13 (2) The clerk of the district or municipal court shall
14 maintain records listing the amount of payments, the date
15 payments are required to be made, and the names and
16 addresses of the parties affected by the order.

17 (3) The parties affected by the order shall inform the
18 clerk of the district or municipal court of any change of
19 address or of other condition that may affect the
20 administration of the order."

21 Section 22. Section 40-4-211, MCA, is amended to read:

22 "40-4-211. Child custody jurisdiction -- commencement
23 of proceedings. (1) A court of this state competent to
24 decide child custody matters has jurisdiction to make a
25 child custody determination by initial or modification

1 decree if:

2 (a) this state:

3 (i) is the home state of the child at the time of
4 commencement of the proceedings; or

5 (ii) had been the child's home state within 6 months
6 before commencement of the proceeding and the child is
7 absent from this state because of his removal or retention
8 by a person claiming his custody or for other reason and a
9 parent or person acting as parent continues to live in this
10 state; or

11 (b) it is in the best interest of the child that a
12 court of this state assume jurisdiction because:

13 (i) the child and his parents or the child and at
14 least one contestant have a significant connection with this
15 state; and

16 (ii) there is available in this state substantial
17 evidence concerning the child's present or future care,
18 protection, training, and personal relationships; or

19 (c) the child is physically present in this state and:

20 (i) has been abandoned; or

21 (ii) it is necessary in an emergency to protect him
22 because he has been subjected to or threatened with
23 mistreatment or abuse or is neglected or dependent; or

24 (d) (i) no other state has jurisdiction under
25 prerequisites substantially in accordance with subsection.

1 (1)(a), (1)(b), or (1)(c) of this section or another state
2 has declined to exercise jurisdiction on the ground that
3 this state is the more appropriate forum to determine
4 custody of the child; and

5 (ii) it is in his best interest that the court assume
6 jurisdiction.

7 (2) Except under subsections (1)(c) and (1)(d) of this
8 section, physical presence in this state of the child or of
9 the child and one of the contestants is not alone sufficient
10 to confer jurisdiction on a court of this state to make a
11 child custody determination.

12 (3) Physical presence of the child, while desirable,
13 is not a prerequisite for jurisdiction to determine his
14 custody.

15 (4) A child custody proceeding is commenced in the
16 district or municipal court:

17 (a) by a parent, by filing a petition:

18 (i) for dissolution or legal separation; or

19 (ii) for custody of the child in the county in which he
20 is permanently resident or found; or

21 (b) by a person other than a parent, by filing a
22 petition for custody of the child in the county in which he
23 is permanently resident or found, but only if he is not in
24 the physical custody of one of his parents.

25 (5) Notice of a child custody proceeding shall be

1 given to the child's parent, guardian, custodian, those
 2 persons having physical custody of the child, and all other
 3 contestants, who may appear, be heard, and file a responsive
 4 pleading. The court, upon a showing of good cause, may
 5 permit intervention of other interested parties."

6 Section 23. Section 40-4-222, MCA, is amended to read:
 7 "40-4-222. Declaration of legislative intent -- joint
 8 custody. The legislature of the state of Montana finds and
 9 declares that it is the public policy of this state to
 10 assure minor children frequent and continuing contact with
 11 both parents after the parents have separated or dissolved
 12 their marriage and to encourage parents to share the rights
 13 and responsibilities of child rearing in order to effect
 14 this policy. The legislature believes that the district and
 15 municipal courts of the state of Montana have the authority
 16 to award joint custody if the court finds joint custody in
 17 the best interests of the children in the case then before
 18 the court. The intent of 40-4-222 through 40-4-225 is to
 19 establish certain guidelines for resolution of custody
 20 disputes."

21 Section 24. Section 40-7-104, MCA, is amended to read:
 22 "40-7-104. Jurisdiction. The jurisdictional provisions
 23 of 40-4-211 as they relate to district courts apply to this
 24 chapter."

25 Section 25. Section 40-8-103, MCA, is amended to read:

1 "40-8-103. Definitions. As used in this chapter,
 2 unless the context otherwise requires the following
 3 definitions apply:

4 (1) "Adoption" means the act of creating the legal
 5 relationship between parent and child when it does not exist
 6 genetically.

7 (2) "Adoptive parent" means an adult who has become
 8 the mother or father of a child through the legal process of
 9 adoption.

10 (3) "Agency" means a public or voluntary agency
 11 licensed by any jurisdiction within the United States and
 12 expressly empowered to place children as a preliminary to a
 13 possible adoption.

14 (4) "Birth parent" means the mother or father of
 15 genetic origin of a child but does not include a putative
 16 father of a child.

17 (5) "Child" means any person under 18 years of age.

18 (6) "Court" means a Montana district or municipal
 19 court or a tribal court of any Montana Indian reservation.

20 (7) "Department" means the department of social and
 21 rehabilitation services, as established and provided for in
 22 Title 2, chapter 15, part 22.

23 (8) "Extended family member" means an adult who is the
 24 child's grandparent, aunt or uncle, brother or sister, niece
 25 or nephew, or first cousin.

1 (9) "Parent" means the birth or adoptive mother or the
2 birth, adoptive, or legal father whose parental rights have
3 not been terminated.

4 (10) "Placement for adoption" means the transfer of
5 physical custody of a child with respect to whom all
6 parental rights have been terminated and who is otherwise
7 legally free for adoption to a person who intends to adopt
8 the child.

9 (11) "Relinquishment" means the informed and voluntary
10 release in writing of all parental rights with respect to a
11 child by a parent to an agency or individual pursuant to
12 40-6-135 or 40-8-109, whichever is applicable."

13 Section 26. Section 40-8-107, MCA, is amended to read:

14 "40-8-107. Venue. Proceedings (1) Except as provided
15 in subsection (2), proceedings for adoption must be brought
16 in the district court of the county where the petitioners
17 reside.

18 (2) Proceedings for adoption may be brought in
19 municipal court if the petitioners reside in a judicial
20 district in which a municipal court is located."

21 Section 27. Section 40-8-109, MCA, is amended to read:

22 "40-8-109. Placement for adoption by parents. (1) (a)
23 No Except as provided in subsection (1)(b), no parent may
24 make a placement of a child for adoption with an individual
25 who is not a stepparent or a member of the child's extended

1 family unless the parent files with the district court for
2 the county in which the prospective adoptive parent or the
3 parent making the placement resides:

4 ~~(a)~~(i) a notice of parental placement; and

5 ~~(b)~~(ii) a relinquishment of parental rights to the
6 prospective adoptive parents executed voluntarily and in
7 accordance with 40-6-135(2) through (4).

8 (b) A parent may file such notice of parental
9 placement and a relinquishment with the municipal court if
10 the prospective adoptive parent or the parent making the
11 placement resides in a judicial district where a municipal
12 court is located.

13 (2) The notice of parental placement and the
14 relinquishment shall be filed prior to a parent's placement
15 of the child with an individual who intends to adopt the
16 child. The notice of parental placement shall contain the
17 following information:

18 (a) the name and address of each birth parent, if
19 known, and if unknown, the steps taken to ascertain the
20 whereabouts of the parent or parents;

21 (b) the name and address of each prospective adoptive
22 parent;

23 (c) the name and address or expected date and place of
24 birth of the child; and

25 (d) the name and address of counsel, guardian ad

1 litem, or other representative, if any, for each of the
2 parties in (a) through (c) of subsection (2).

3 (3) Upon receipt of a notice of parental placement and
4 a relinquishment, the court shall require that the
5 department examine the child and conduct interviews with the
6 birth parents and prospective adoptive parents and report to
7 the court within 30 days but not earlier than 5 days after
8 the birth of the child. The report must state whether the
9 following requirements for placement have been met:

10 (a) that the decision to place was voluntarily made by
11 the birth parents;

12 (b) that the department has no temporary authority to
13 investigate or provide protective services to the family
14 under 41-3-402;

15 (c) that the birth parents, the prospective adoptive
16 parents, and their representatives have agreed in writing to
17 provide the court with sworn affidavits containing itemized
18 statements of all fees charged or to be charged, expenses
19 incurred or to be incurred, and payments received or to be
20 received in connection with the proposed adoptive placement;

21 (d) that the prospective adoptive parents have been
22 provided a medical and social history of the child and birth
23 parents; and

24 (e) that the proposed placement is in the child's best
25 interest.

1 (4) Within 45 days of filing of the notice of parental
2 placement and the relinquishment, the court shall schedule a
3 hearing to consider the proposed placement.

4 (5) (a) At least 5 days' notice of the time and place
5 of the hearing must be given to the birth parents, the
6 prospective adoptive parents, any named guardian ad litem,
7 and the agency or person who conducted the investigation
8 under subsection (3).

9 (b) The hearing shall be closed to all persons except
10 those persons entitled to notice and their representatives
11 or counsel.

12 (6) If the court finds that all requirements for
13 placement have been met, the court may issue an order or
14 schedule a hearing for the purpose of terminating parental
15 rights and granting temporary custody to the prospective
16 adoptive parents. The prospective adoptive parents must file
17 their petition to adopt within 30 days of the order.

18 (7) If the court finds that all requirements for the
19 adoptive placement have not been met, the court may issue
20 any order appropriate to protect the child."

21 Section 28. Section 40-8-127, MCA, is amended to read:
22 "40-8-127. Appeal. An appeal may be taken from any
23 final order, judgment, or decree rendered hereunder in the
24 district or municipal court by any person aggrieved thereby,
25 in the manner provided for appeals from the court in other

1 civil matters."

2 Section 29. Section 45-8-317, MCA, is amended to read:
3 "45-8-317. Exceptions. Section 45-8-316 does not apply
4 to:

- 5 (1) any peace officer of the state of Montana;
6 (2) any officer of the United States government
7 authorized to carry a concealed weapon;
8 (3) a person in actual service as a national
9 guardsman;
10 (4) a person summoned to the aid of any of the persons
11 named in subsections (1) through (3);
12 (5) a civil officer or his deputy engaged in the
13 discharge of official business;
14 (6) a person authorized by a judge of a district or
15 municipal court of this state to carry a weapon as provided
16 in 45-8-319; or
17 (7) the carrying of arms on one's own premises or at
18 one's home or place of business."

19 Section 30. Section 45-8-319, MCA, is amended to read:
20 "45-8-319. Permits to carry concealed weapons --
21 records -- revocation. (1) (a) Any Except as provided in
22 subsection (1)(b), a judge of a district court of this state
23 may grant permission to carry or bear, concealed or
24 otherwise, a pistol or revolver for a term not exceeding 1
25 year.

1 (b) If a person chooses to apply for permission to
2 carry a concealed weapon in a county located within a
3 judicial district in which a municipal court is located, he
4 must apply to the municipal court.

5 (2) All applications for such permission must be made
6 by petition filed with the clerk of the district or
7 municipal court. No charge may be made for the filing of the
8 petition.

9 (3) The applicant shall, if personally unknown to the
10 judge, furnish proof by a credible witness of his good moral
11 character and peaceable disposition.

12 (4) No such permission shall be granted any person
13 who is not a citizen of the United States and who has not
14 been an actual bona fide resident of the state of Montana
15 for 6 months immediately next preceding the date of such
16 application.

17 (5) A record of permission granted shall be kept by
18 the clerk of the court. The record shall state the date of
19 the application, the date of the permission, the name of the
20 person to whom permission is granted, the name of the judge
21 granting the permission, and the name of the person, if any,
22 by whom good moral character and peaceable disposition are
23 proved. The record must be signed by the person who is
24 granted such permission.

25 (6) The clerk shall thereupon issue ~~under-his-hand-and~~

1 ~~the--seal--of--the-court~~ a certificate, in a convenient card
2 form so that the same may be carried in the pocket, stating:

3 "Permission to authorizing him to carry or bear,
4 concealed or otherwise, a pistol or revolver for the period
5 of from the date hereof has been granted by, a
6 judge of the district [municipal] court of the judicial
7 district [city of] of the state of Montana, in and for
8 the county of

9 ~~Witness-the-hand-of~~ Signed and sealed by the clerk and
10 ~~the-seal-of-said-court~~ this day of, 19...

11
12 Clerk"

13 (7) The date of the certificate shall be the date of
14 the granting of such permission. The certificate shall bear
15 upon its face the signature of the person receiving the
16 same.

17 (8) Upon good cause shown the judge granting such
18 permission may, in his discretion without notice to the
19 person receiving such permission, revoke the same. The date
20 of the revocation shall be noted by the clerk upon the
21 record kept by him.

22 (9) All permissions to carry or bear concealed weapons
23 granted before March 3, 1919, are hereby revoked."

24 Section 31. Section 46-17-402, MCA, is amended to
25 read:

1 "46-17-402. Fees and fines. The fees and fines in
2 municipal court shall be the same as the fees and fines
3 provided by law or ordinance, and all fees and fines
4 collected by the court shall be paid into a municipal court
5 account within the city treasury general fund."

6 NEW SECTION. Section 32. Repealer. Sections 3-6-301,
7 25-30-108, and 46-17-404, MCA, are repealed.

8 NEW SECTION. Section 33. Effective date. This act is
9 effective January 1, 1986.

-End-

STATE OF MONTANA

REQUEST NO. FNN 234-85

FISCAL NOTE

Form BD-15

In compliance with a written request received January 25, 19 85, there is hereby submitted a Fiscal Note for Senate Bill 217 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

Senate Bill 217 is an act requiring that Municipal Courts be established in cities with populations of 10,000 or more; expanding the jurisdiction of Municipal Courts; providing state funding for Municipal Court expenses; requiring cities to remit to the state a portion of the fines, forfeitures and fees collected in Municipal Courts; and providing an effective date.

ASSUMPTIONS:

1. There are eight cities impacted by this legislation.
2. Current costs will inflate by 4% for FY86 and FY87.
3. The costs of increasing the jurisdiction of city courts is approximately 20% more than current costs.
4. Excluding new revenue for increased jurisdiction, the current level revenue will increase 10% per year for fiscal years 85,86 and 87.
5. All cities except Missoula will remit 70% of their total operational expense to the state general fund from the courts revenue.

FISCAL IMPACT:

	<u>FY 86</u>	<u>FY87</u>	<u>Biennium Total</u>
General Fund Appropriations	\$897,900	\$928,100	\$1,826,000
General Fund Revenue	\$528,600	\$546,200	\$1,074,800
Net Cost To General Fund	\$369,300	\$381,900	\$ 751,200

David L. Hunter

BUDGET DIRECTOR
Office of Budget and Program Planning

Date: Feb 2, 1985

SB 217

APPROVED BY COMMITTEE
ON JUDICIARY

SENATE BILL NO. 217

INTRODUCED BY TOWE, MAZUREK, NEUMAN, CRIPPEN,
VAN VALKENBURG, PINSONEAULT, NORMAN, B. BROWN

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING PROVIDING
THAT MUNICIPAL COURTS MAY BE ESTABLISHED IN CITIES WITH
POPULATIONS OF ~~10,000~~ 20,000 OR MORE; EXPANDING THE
JURISDICTION OF MUNICIPAL COURTS; PROVIDING STATE FUNDING
FOR MUNICIPAL COURT EXPENSES; REQUIRING CITIES TO REMIT TO
THE STATE A PORTION OF THE FINES, FORFEITURES, AND FEES
COLLECTED IN MUNICIPAL COURTS; AMENDING SECTIONS 3-6-101
THROUGH 3-6-103, 3-6-105, 3-6-201, 3-6-203, 3-6-204,
25-30-101, 25-30-102, 27-31-101 THROUGH 27-31-103, 40-1-213,
40-4-104, 40-4-206, 40-4-211, 40-4-222, 40-7-104, 40-8-103,
40-8-107, 40-8-109, 40-8-127, 45-8-317, 45-8-319, AND
46-17-402, MCA; REPEALING SECTIONS 3-6-301, 25-30-108, AND
46-17-404, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

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

Section 1. Section 3-6-101, MCA, is amended to read:

"3-6-101. Establishment of the court. (1) All
Effective January 1, 1986, all cities in the state of
Montana with a population of ~~10,000~~ 20,000 or more,
according to the last federal census, may must MAY have a
court known as the municipal court of the city of

(designating the name of the city) of the state of Montana.
The court shall be a court of record.

~~(2) The provisions of this chapter apply only after
the governing body of the city has elected by a two-thirds
majority vote to adopt them by ordinance and, in the
ordinance, has provided the manner in which and time when
the municipal court is to be established and The municipal
court shall assume continuing jurisdiction over all pending
city court cases pending on January 1, 1986, for the city
where the municipal court is located. The ordinance must be
consistent with the provisions of this chapter."~~

Section 2. Section 3-6-102, MCA, is amended to read:

"3-6-102. Abolition of city court. (1) In cities in
which a municipal court is established, the office of city
judge is hereby abolished.

(2) A city judge whose office is abolished shall serve
as municipal court judge for the remainder of his term in
the same city as he served as city judge. Upon completion of
his term, the office of municipal court judge must be filled
by election as provided in 3-6-201 and 3-6-202."

Section 3. Section 3-6-103, MCA, is amended to read:

"3-6-103. Jurisdiction Exclusive jurisdiction. (1)
Said Subject to the territorial limits provided for in
subsection (2), the municipal court shall have jurisdiction
~~coordinate and coextensive with the justices' courts of the~~

~~county--wherein--said-city-is-located-and-shall, in addition~~
~~thereto, have~~ has ~~exclusive original jurisdiction of all in:~~

~~(a) actions and proceedings, both civil and criminal,~~
~~mentioned--and provided for in 3-11-103--Such municipal~~
~~courts shall also have concurrent jurisdiction with the~~
~~district--court within their respective counties in forcible~~
~~entry and unlawful detainer;~~

~~(b) proceedings requiring judicial approval for~~
~~issuance of a marriage license and a marriage certificate~~
~~form under 40-1-213;~~

~~(c) proceedings for a concealed weapon permit under~~
~~45-8-319;~~

~~(d) name change proceedings under Title 27, chapter~~
~~31; and~~

~~(e) misdemeanors punishable by a fine exceeding \$500~~
~~or imprisonment exceeding 6 months, or both, as provided by~~
~~law.~~

(2) The jurisdiction of the municipal court under
subsection (1)(a) extends to the limits of the city in which
the municipal court is located. The jurisdiction of the
municipal court under subsections (1)(b) through (1)(e)
extends to the limits of the judicial district in which the
municipal court is located."

NEW SECTION. Section 4. Concurrent jurisdiction. The
municipal court has concurrent jurisdiction with:

(1) a city court for a city with a population of less
than 10,000 located within the same judicial district as the
municipal court in actions and proceedings provided for in
3-11-103;

(2) a justice's court located within the same judicial
district as the municipal court in:

(a) civil actions when the amount in controversy does
not exceed \$3,500 exclusive of court costs;

(b) misdemeanors punishable by a fine not exceeding
\$500 or imprisonment not exceeding 6 months, or both; and

(c) acting as an examining and committing court for
the purpose of conducting preliminary hearings and
~~arraignments in felony cases;~~

(3) a district court for a county located within the
same judicial district as the municipal court in:

(a) civil actions when the amount in controversy is
more than \$3,500 but less than \$10,000;

(b) proceedings regarding marriage and child custody
under Title 40, chapter 4; and

(c) adoption proceedings under Title 40, chapter 8.

NEW SECTION. Section 5. Removal to district court.
The supreme court shall adopt rules for the removal from
municipal court to district court of any action or
proceeding provided for in [section 4(3)].

NEW SECTION. Section 6. Appeal to district court.

1 There is a right of appeal to district court from any final
 2 order or judgment of a municipal court. The appeal must be
 3 confined to the record of the proceeding created in
 4 municipal court as prescribed in court rules provided for in
 5 3-6-104.

6 Section 7. Section 3-6-105, MCA, is amended to read:

7 "3-6-105. ~~Courtroom--and--supplies~~ Municipal court
 8 facilities. A--room--for--the--municipal--court--with--necessary
 9 furniture--fixtures--and--supplies--shall--be--provided--by--the
 10 The city wherein the municipal court is located shall
 11 provide and maintain an adequate courtroom, office, and
 12 other court facilities, including janitorial services, for
 13 the municipal court. The supreme court may by rule adopt
 14 standards for court facilities for municipal courts."

15 Section 8. Section 3-6-201, MCA, is amended to read:

16 "3-6-201. ~~Election Number of judges -- election --~~
 17 term of office. (1) There must be one judge for each
 18 municipal court established. However, the legislature may
 19 create additional offices of municipal court judge within a
 20 municipal court upon recommendation of the supreme court.

21 ~~(1)(2)~~ One The judge of each a municipal court shall
 22 be elected by the qualified voters of the city wherein the
 23 municipal court is located at the general city election
 24 provided for in 13-1-104(2). The judge's term shall commence
 25 on the first Monday in January following the election. The

1 judge shall hold office for the term of 4 years and until
 2 his successor is elected and qualified.

3 ~~(2)(3)~~ All elections of municipal judges are governed
 4 by the laws applicable to the election of nonpartisan city
 5 officials."

6 Section 9. Section 3-6-203, MCA, is amended to read:

7 "3-6-203. Salary. The salary of the municipal court
 8 judge ~~shall--be--set--by--city--ordinance--and--shall--be--is--equal~~
 9 ~~to--75%--of--the--annual--salary--of--a--district--judge~~ SHALL BE SET
 10 BY CITY ORDINANCE and is payable monthly by the city
 11 treasurer supreme court administrator. Actual and necessary
 12 expenses for the municipal court judge shall be the travel
 13 expenses, as defined and provided in 2-18-501 through
 14 2-18-503, incurred in the performance of his official
 15 duties."

16 Section 10. Section 3-6-204, MCA, is amended to read:

17 "3-6-204. Disqualification -- judge pro tem. When a
 18 judge of a municipal court has been disqualified or is sick
 19 or unable to act, he shall call in some practicing attorney
 20 of the county in which his court is located, who shall be
 21 judge pro tem with the same powers for the purposes of the
 22 cause as the judge of the court. The judge pro tem is
 23 entitled to reasonable compensation for his services paid by
 24 the supreme court administrator."

25 NEW SECTION. Section 11. Appointment of court

1 personnel -- classification plan. (1) A municipal court
2 judge shall appoint a clerk of court and may appoint other
3 personnel subject to the approval of the supreme court.

4 (2) The supreme court shall by rule establish a
5 personnel classification plan for municipal court employees.
6 The plan must include:

7 ~~(a) -- a basic compensation plan of pay ranges -- to -- which~~
8 ~~classes of positions are assigned and may be reassigned;~~

9 ~~(b)~~ (A) the qualifications for each position or class
10 of positions, including education, experience, special
11 skills, and legal knowledge;

12 ~~(c)~~ (B) the procedures and guidelines for the
13 appointment, demotion, and discharge of employees; and

14 ~~(d)~~ (C) the procedures and regulations governing the
15 transfer of personnel.

16 NEW SECTION. Section 12. State funding of court
17 expenses. (1) Except as provided in 3-6-105 and subject to
18 provisions of [section 13], the state shall fund, through a
19 general fund appropriation to the supreme court, the
20 operational expenses of the municipal courts, including the
21 salaries, benefits, and travel expenses of municipal court
22 judges and other court personnel.

23 (2) The supreme court administrator, under the
24 direction of the supreme court and in consultation with the
25 municipal court judges, shall include within the supreme

1 court's biennial budget request to the legislature a request
2 for funding the expenses listed in subsection (1).

3 NEW SECTION. Section 13. Deposit of fines,
4 forfeitures, and fees -- payment to supreme court
5 administrator. (1) The clerk of court shall deposit all
6 fines, forfeitures, and fees collected in municipal court
7 into a municipal court account within the city general fund.

8 (2) Except as provided in subsection (3), at the
9 beginning of each fiscal year, the clerk shall remit to the
10 supreme court administrator for deposit into the state
11 general fund a warrant drawn from the municipal court
12 account for an amount equal to ~~70%~~ 100% of the total
13 operational expenses of the municipal court for the previous
14 fiscal year as determined by the supreme court
15 administrator.

16 (3) The supreme court may waive payment of all or a
17 portion of the amount to be paid to the supreme court
18 administrator under subsection (2) if the supreme court
19 determines that the total operational expenses of the
20 municipal court for the previous fiscal year exceed the
21 amount of fines, forfeitures, and fees collected.

22 (4) AFTER THE PAYMENT REQUIRED BY SUBSECTION (2), THE
23 CLERK OF COURT SHALL DISTRIBUTE 40% OF ANY AMOUNT REMAINING
24 IN THE MUNICIPAL COURT ACCOUNT TO THE COUNTIES COMPRISING
25 THE JUDICIAL DISTRICT IN WHICH THE MUNICIPAL COURT IS

1 LOCATED, BASED UPON THE RATIO OF EACH COUNTY'S POPULATION TO
 2 THE TOTAL POPULATION OF THE COUNTIES COMPRISING THE JUDICIAL
 3 DISTRICT.

4 Section 14. Section 25-30-101, MCA, is amended to
 5 read:

6 "25-30-101. Applicability of district court and
 7 justice's court rules. (1) The provisions of 3-10-222,
 8 ~~3-10-231--through--3-10-234,~~ 3-10-305, and 3-10-306,~~--and~~
 9 ~~3-10-704--through--3-10-706;~~ 25-31-102(2), 25-31-114 through
 10 25-31-116, 25-31-304, 25-31-402(2), 25-31-405, parts 7
 11 through 11 of chapter 31 of this title (except 25-31-915,
 12 25-31-1002, 25-31-1004, and 25-31-1005), and chapter 33 of
 13 this title (except 25-33-301 and 25-33-302); and chapter 9,
 14 part 10 of chapter 16, chapter 17, and part 15 of chapter 18
 15 of Title 27 are applicable to municipal courts except when
 16 they are inconsistent with the provisions of this chapter
 17 and chapter 6 of Title 3, the words "municipal court" being
 18 substituted for justice's court and "judge" for justice of
 19 the peace.

20 (2) Except as otherwise provided by this chapter,
 21 chapter 6 of Title 3, and the supreme court's rules on
 22 disqualification of judges, the proceedings and practice in
 23 municipal court shall be the same as in district court."

24 Section 15. Section 25-30-102, MCA, is amended to
 25 read:

1 "25-30-102. Fees and fines. The fees and fines in
 2 municipal court shall be the same as the fees and fines
 3 provided by law or ordinance, and all fees and fines
 4 collected by the court shall be paid into a municipal court
 5 account within the city treasury general fund."

6 Section 16. Section 27-31-101, MCA, is amended to
 7 read:

8 "27-31-101. Petition for change of name of natural
 9 person. ~~All~~ (1) Except as provided in subsection (2), all
 10 applications for change of names must be made to the
 11 district court of the county where the person whose name is
 12 proposed to be changed resides, by petition signed by such
 13 person and, if such person is under 18 years of age, by one
 14 of the parents, if living, or if both be dead, then by the
 15 guardian, and if there be no guardian, then by some near
 16 relative or friend. The petition must specify the place of
 17 birth and residence of such person, his or her present name,
 18 the name proposed, and the reason for such change of name
 19 and must, if neither parent of such person be living, name
 20 as far as known to the petitioner the near relatives of such
 21 person and their place of residence.

22 (2) An application for change of name must be made to
 23 municipal court if a municipal court is located within the
 24 judicial district where the person whose name is proposed to
 25 be changed resides. The application must be by petition as

1 prescribed in subsection (1)."

2 Section 17. Section 27-31-102, MCA, is amended to
3 read:

4 "27-31-102. Petition for change of name of nonprofit
5 corporation. Any (1) Except as provided in subsection (2),
6 any religious, benevolent, literary, or scientific
7 corporation or any corporation bearing or using or being
8 known by the name of any benevolent or charitable order or
9 society may by petition apply to the district court of the
10 county in which its articles of incorporation were
11 originally filed or in which its property is situated for a
12 change of its corporate name. Such petition must be signed
13 by a majority of the directors or trustees of the
14 corporation and must specify the date of the formation of
15 the corporation, the name proposed, and the reason for the
16 change of name. Upon the filing of the petition, the same
17 procedure shall be followed as upon applications for changes
18 of names of natural persons.

19 (2) A corporation described in subsection (1) must
20 apply for a change of name to the municipal court if a
21 municipal court is located within the judicial district
22 where its articles of incorporation were originally filed or
23 where its property is situated. The application must be by
24 petition as prescribed in subsection (1)."

25 Section 18. Section 27-31-103, MCA, is amended to

1 read:

2 "27-31-103. District court jurisdiction. Applications
3 for change of names must be heard and determined by the
4 district court or by the municipal court as provided in
5 27-31-101(2) and 27-31-102(2)."

6 Section 19. Section 40-1-213, MCA, is amended to read:

7 "40-1-213. Judicial approval. (1) The Except as
8 provided in subsection (4), the district court may order the
9 clerk of the district court to issue a marriage license and
10 a marriage certificate form to a party aged 16 or 17 years
11 who has no parent capable of consenting to his marriage or
12 has the consent of both parents or of the parent having the
13 actual care, custody, and control to his marriage, if
14 capable of giving consent, or of his guardian. The court
15 must require both parties to participate in a period of
16 marriage counseling involving at least two separate
17 counseling sessions not less than 10 days apart with a
18 designated counselor as a condition of the order for
19 issuance of a marriage license and a marriage certificate
20 form under this section.

21 (2) A marriage license and a marriage certificate form
22 may be issued under this section only if the court finds
23 that the underaged party is capable of assuming the
24 responsibilities of marriage and the marriage will serve his
25 best interest. Pregnancy alone does not establish that the

1 best interest of the party will be served.

2 (3) The district or municipal court shall authorize
3 performance of a marriage by proxy upon the showing required
4 by the provisions on solemnization.

5 (4) If the parties seek judicial approval for issuance
6 of a marriage license and a marriage certificate form in a
7 county located in a judicial district where a municipal
8 court is located, they must seek judicial approval in the
9 manner prescribed in this section from the municipal court."

10 Section 20. Section 40-4-104, MCA, is amended to read:

11 "40-4-104. Dissolution of marriage -- legal
12 separation. (1) The district or municipal court shall enter
13 a decree of dissolution of marriage if:

14 (a) the court finds that one of the parties, at the
15 time the action was commenced, was domiciled in this state
16 or was stationed in this state while a member of the armed
17 services and that the domicile or military presence has been
18 maintained for 90 days next preceding the making of the
19 findings;

20 (b) the court finds that the marriage is irretrievably
21 broken, which findings shall be supported by evidence:

22 (i) that the parties have lived separate and apart for
23 a period of more than 180 days next preceding the
24 commencement of this proceeding; or

25 (ii) that there is serious marital discord which

1 adversely affects the attitude of one or both of the parties
2 towards the marriage;

3 (c) the court finds that the conciliation provisions
4 of the Montana Conciliation Law and of 40-4-107 either do
5 not apply or have been met; and

6 (d) to the extent it has jurisdiction to do so, the
7 court has considered, approved, or made provision for child
8 custody, the support of any child entitled to support, the
9 maintenance of either spouse, and the disposition of
10 property or provided for a separate, later hearing to
11 complete these matters.

12 (2) If a party requests a decree of legal separation
13 rather than a decree of dissolution of marriage, the court
14 shall grant the decree in that form unless the other party
15 objects."

16 Section 21. Section 40-4-206, MCA, is amended to read:

17 "40-4-206. Payment of maintenance or support to court.

18 (1) Upon its own motion or upon motion of either party, the
19 court may order at any time that maintenance or support
20 payments be made to the clerk of the district or municipal
21 court as trustee for remittance to the person entitled to
22 receive the payments.

23 (2) The clerk of the district or municipal court shall
24 maintain records listing the amount of payments, the date
25 payments are required to be made, and the names and

1 addresses of the parties affected by the order.

2 (3) The parties affected by the order shall inform the
3 clerk of the district or municipal court of any change of
4 address or of other condition that may affect the
5 administration of the order."

6 Section 22. Section 40-4-211, MCA, is amended to read:

7 "40-4-211. Child custody jurisdiction -- commencement
8 of proceedings. (1) A court of this state competent to
9 decide child custody matters has jurisdiction to make a
10 child custody determination by initial or modification
11 decree if:

12 (a) this state:

13 (i) is the home state of the child at the time of
14 commencement of the proceedings; or

15 (ii) had been the child's home state within 6 months
16 before commencement of the proceeding and the child is
17 absent from this state because of his removal or retention
18 by a person claiming his custody or for other reason and a
19 parent or person acting as parent continues to live in this
20 state; or

21 (b) it is in the best interest of the child that a
22 court of this state assume jurisdiction because:

23 (i) the child and his parents or the child and at
24 least one contestant have a significant connection with this
25 state; and

1 (ii) there is available in this state substantial
2 evidence concerning the child's present or future care,
3 protection, training, and personal relationships; or

4 (c) the child is physically present in this state and:

5 (i) has been abandoned; or

6 (ii) it is necessary in an emergency to protect him
7 because he has been subjected to or threatened with
8 mistreatment or abuse or is neglected or dependent; or

9 (d) (i) no other state has jurisdiction under
10 prerequisites substantially in accordance with subsections
11 (1)(a), (1)(b), or (1)(c) of this section or another state
12 has declined to exercise jurisdiction on the ground that
13 this state is the more appropriate forum to determine
14 custody of the child; and

15 (ii) it is in his best interest that the court assume
16 jurisdiction.

17 (2) Except under subsections (1)(c) and (1)(d) of this
18 section, physical presence in this state of the child or of
19 the child and one of the contestants is not alone sufficient
20 to confer jurisdiction on a court of this state to make a
21 child custody determination.

22 (3) Physical presence of the child, while desirable,
23 is not a prerequisite for jurisdiction to determine his
24 custody.

25 (4) A child custody proceeding is commenced in the

1 district or municipal court:

2 (a) by a parent, by filing a petition:

3 (i) for dissolution or legal separation; or

4 (ii) for custody of the child in the county in which he
5 is permanently resident or found; or

6 (b) by a person other than a parent, by filing a
7 petition for custody of the child in the county in which he
8 is permanently resident or found, but only if he is not in
9 the physical custody of one of his parents.

10 (5) Notice of a child custody proceeding shall be
11 given to the child's parent, guardian, custodian, those
12 persons having physical custody of the child, and all other
13 contestants, who may appear, be heard, and file a responsive
14 pleading. The court, upon a showing of good cause, may
15 permit intervention of other interested parties."

16 Section 23. Section 40-4-222, MCA, is amended to read:

17 "40-4-222. Declaration of legislative intent -- joint
18 custody. The legislature of the state of Montana finds and
19 declares that it is the public policy of this state to
20 assure minor children frequent and continuing contact with
21 both parents after the parents have separated or dissolved
22 their marriage and to encourage parents to share the rights
23 and responsibilities of child rearing in order to effect
24 this policy. The legislature believes that the district and
25 municipal courts of the state of Montana have the authority

1 to award joint custody if the court finds joint custody in
2 the best interests of the children in the case then before
3 the court. The intent of 40-4-222 through 40-4-225 is to
4 establish certain guidelines for resolution of custody
5 disputes."

6 Section 24. Section 40-7-104, MCA, is amended to read:

7 "40-7-104. Jurisdiction. The jurisdictional provisions
8 of 40-4-211 as they relate to district courts apply to this
9 chapter."

10 Section 25. Section 40-8-103, MCA, is amended to read:

11 "40-8-103. Definitions. As used in this chapter,
12 unless the context otherwise requires the following
13 definitions apply:

14 (1) "Adoption" means the act of creating the legal
15 relationship between parent and child when it does not exist
16 genetically.

17 (2) "Adoptive parent" means an adult who has become
18 the mother or father of a child through the legal process of
19 adoption.

20 (3) "Agency" means a public or voluntary agency
21 licensed by any jurisdiction within the United States and
22 expressly empowered to place children as a preliminary to a
23 possible adoption.

24 (4) "Birth parent" means the mother or father of
25 genetic origin of a child but does not include a putative

1 father of a child.

2 (5) "Child" means any person under 18 years of age.

3 (6) "Court" means a Montana district or municipal
4 court or a tribal court of any Montana Indian reservation.

5 (7) "Department" means the department of social and
6 rehabilitation services, as established and provided for in
7 Title 2, chapter 15, part 22.

8 (8) "Extended family member" means an adult who is the
9 child's grandparent, aunt or uncle, brother or sister, niece
10 or nephew, or first cousin.

11 (9) "Parent" means the birth or adoptive mother or the
12 birth, adoptive, or legal father whose parental rights have
13 not been terminated.

14 (10) "Placement for adoption" means the transfer of
15 physical custody of a child with respect to whom all
16 parental rights have been terminated and who is otherwise
17 legally free for adoption to a person who intends to adopt
18 the child.

19 (11) "Relinquishment" means the informed and voluntary
20 release in writing of all parental rights with respect to a
21 child by a parent to an agency or individual pursuant to
22 40-6-135 or 40-8-109, whichever is applicable."

23 Section 26. Section 40-8-107, MCA, is amended to read:

24 "40-8-107. Venue. Proceedings (1) Except as provided
25 in subsection (2), proceedings for adoption must be brought

1 in the district court of the county where the petitioners
2 reside.

3 (2) Proceedings for adoption may be brought in
4 municipal court if the petitioners reside in a judicial
5 district in which a municipal court is located."

6 Section 27. Section 40-8-109, MCA, is amended to read:

7 "40-8-109. Placement for adoption by parents. (1) (a)
8 No Except as provided in subsection (1)(b), no parent may
9 make a placement of a child for adoption with an individual
10 who is not a stepparent or a member of the child's extended
11 family unless the parent files with the district court for
12 the county in which the prospective adoptive parent or the
13 parent making the placement resides:

14 (a)(i) a notice of parental placement; and

15 (b)(ii) a relinquishment of parental rights to the
16 prospective adoptive parents executed voluntarily and in
17 accordance with 40-6-135(2) through (4).

18 (b) A parent may file such notice of parental
19 placement and a relinquishment with the municipal court if
20 the prospective adoptive parent or the parent making the
21 placement resides in a judicial district where a municipal
22 court is located.

23 (2) The notice of parental placement and the
24 relinquishment shall be filed prior to a parent's placement
25 of the child with an individual who intends to adopt the

1 child. The notice of parental placement shall contain the
2 following information:

3 (a) the name and address of each birth parent, if
4 known, and if unknown, the steps taken to ascertain the
5 whereabouts of the parent or parents;

6 (b) the name and address of each prospective adoptive
7 parent;

8 (c) the name and address or expected date and place of
9 birth of the child; and

10 (d) the name and address of counsel, guardian ad
11 litem, or other representative, if any, for each of the
12 parties in (a) through (c) of subsection (2).

13 (3) Upon receipt of a notice of parental placement and
14 a relinquishment, the court shall require that the
15 department examine the child and conduct interviews with the
16 birth parents and prospective adoptive parents and report to
17 the court within 30 days but not earlier than 5 days after
18 the birth of the child. The report must state whether the
19 following requirements for placement have been met:

20 (a) that the decision to place was voluntarily made by
21 the birth parents;

22 (b) that the department has no temporary authority to
23 investigate or provide protective services to the family
24 under 41-3-402;

25 (c) that the birth parents, the prospective adoptive

1 parents, and their representatives have agreed in writing to
2 provide the court with sworn affidavits containing itemized
3 statements of all fees charged or to be charged, expenses
4 incurred or to be incurred, and payments received or to be
5 received in connection with the proposed adoptive placement;

6 (d) that the prospective adoptive parents have been
7 provided a medical and social history of the child and birth
8 parents; and

9 (e) that the proposed placement is in the child's best
10 interest.

11 (4) Within 45 days of filing of the notice of parental
12 placement and the relinquishment, the court shall schedule a
13 hearing to consider the proposed placement.

14 (5) (a) At least 5 days' notice of the time and place
15 of the hearing must be given to the birth parents, the
16 prospective adoptive parents, any named guardian ad litem,
17 and the agency or person who conducted the investigation
18 under subsection (3).

19 (b) The hearing shall be closed to all persons except
20 those persons entitled to notice and their representatives
21 or counsel.

22 (6) If the court finds that all requirements for
23 placement have been met, the court may issue an order or
24 schedule a hearing for the purpose of terminating parental
25 rights and granting temporary custody to the prospective

1 adoptive parents. The prospective adoptive parents must file
2 their petition to adopt within 30 days of the order.

3 (7) If the court finds that all requirements for the
4 adoptive placement have not been met, the court may issue
5 any order appropriate to protect the child."

6 Section 28. Section 40-8-127, MCA, is amended to read:

7 "40-8-127. Appeal. An appeal may be taken from any
8 final order, judgment, or decree rendered hereunder in the
9 district or municipal court by any person aggrieved thereby,
10 in the manner provided for appeals from the court in other
11 civil matters."

12 Section 29. Section 45-8-317, MCA, is amended to read:

13 "45-8-317. Exceptions. Section 45-8-316 does not apply
14 to:

15 (1) any peace officer of the state of Montana;

16 (2) any officer of the United States government
17 authorized to carry a concealed weapon;

18 (3) a person in actual service as a national
19 guardsman;

20 (4) a person summoned to the aid of any of the persons
21 named in subsections (1) through (3);

22 (5) a civil officer or his deputy engaged in the
23 discharge of official business;

24 (6) a person authorized by a judge of a district or
25 municipal court of this state to carry a weapon as provided

1 in 45-8-319; or

2 (7) the carrying of arms on one's own premises or at
3 one's home or place of business."

4 Section 30. Section 45-8-319, MCA, is amended to read:

5 "45-8-319. Permits to carry concealed weapons --
6 records -- revocation. (1) (a) Any Except as provided in
7 subsection (1)(b), a judge of a district court of this state
8 may grant permission to carry or bear, concealed or
9 otherwise, a pistol or revolver for a term not exceeding 1
10 year.

11 (b) If a person chooses to apply for permission to
12 carry a concealed weapon in a county located within a
13 judicial district in which a municipal court is located, he
14 must apply to the municipal court.

15 (2) All applications for such permission must be made
16 by petition filed with the clerk of the district or
17 municipal court. No charge may be made for the filing of the
18 petition.

19 (3) The applicant shall, if personally unknown to the
20 judge, furnish proof by a credible witness of his good moral
21 character and peaceable disposition.

22 (4) No such permission shall be granted any person
23 who is not a citizen of the United States and who has not
24 been an actual bona fide resident of the state of Montana
25 for 6 months immediately next preceding the date of such

1 application.

2 (5) A record of permission granted shall be kept by
 3 the clerk of the court. The record shall state the date of
 4 the application, the date of the permission, the name of the
 5 person to whom permission is granted, the name of the judge
 6 granting the permission, and the name of the person, if any,
 7 by whom good moral character and peaceable disposition are
 8 proved. The record must be signed by the person who is
 9 granted such permission.

10 (6) The clerk shall thereupon issue ~~under-his-hand-and~~
 11 ~~the-seal-of-the-court~~ a certificate, in a convenient card
 12 form so that the same may be carried in the pocket, stating:

13 "Permission to authorizing him to carry or bear,
 14 concealed or otherwise, a pistol or revolver for the period
 15 of from the date hereof has been granted by, a
 16 judge of the district [municipal] court of the judicial
 17 district [city of] of the state of Montana, in and for
 18 the county of

19 ~~Witness--the-hand-of~~ Signed and sealed by the clerk and
 20 ~~the-seal-of-said-court~~ this day of, 19...

21

22 Clerk"

23 (7) The date of the certificate shall be the date of
 24 the granting of such permission. The certificate shall bear
 25 upon its face the signature of the person receiving the

1 same.

2 (8) Upon good cause shown the judge granting such
 3 permission may, in his discretion without notice to the
 4 person receiving such permission, revoke the same. The date
 5 of the revocation shall be noted by the clerk upon the
 6 record kept by him.

7 (9) All permissions to carry or bear concealed weapons
 8 granted before March 3, 1919, are hereby revoked."

9 Section 31. Section 46-17-402, MCA, is amended to
 10 read:

11 "46-17-402. Fees and fines. The fees and fines in
 12 municipal court shall be the same as the fees and fines
 13 provided by law or ordinance, and all fees and fines
 14 collected by the court shall be paid into a municipal court
 15 account within the city treasury general fund."

16 NEW SECTION. Section 32. Repealer. Sections 3-6-301,
 17 25-30-108, and 46-17-404, MCA, are repealed.

18 NEW SECTION. Section 33. Effective date. This act is
 19 effective January 1, 1986.

-End-

1 SENATE BILL NO. 217

2 INTRODUCED BY TOWE, MAZUREK, NEUMAN, CRIPPEN,
3 VAN VALKENBURG, PINSONEAULT, NORMAN, B. BROWN

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING PROVIDING
6 THAT MUNICIPAL COURTS MAY BE ESTABLISHED IN CITIES WITH
7 POPULATIONS OF ~~10,000~~ 20,000 OR MORE; EXPANDING THE
8 JURISDICTION OF MUNICIPAL COURTS; PROVIDING STATE FUNDING
9 FOR MUNICIPAL COURT EXPENSES; REQUIRING CITIES TO REMIT TO
10 THE STATE A PORTION OF THE FINES, FORFEITURES, AND FEES
11 COLLECTED IN MUNICIPAL COURTS; AMENDING SECTIONS 3-6-101
12 THROUGH 3-6-103, 3-6-105, 3-6-201, 3-6-203, 3-6-204,
13 25-30-101, 25-30-102, 27-31-101 THROUGH 27-31-103, 40-1-213,
14 40-4-104, 40-4-206, 40-4-211, 40-4-222, 40-7-104, 40-8-103,
15 40-8-107, 40-8-109, 40-8-127, 45-8-317, 45-8-319, AND
16 46-17-402, MCA; REPEALING SECTIONS 3-6-301, 25-30-108, AND
17 46-17-404, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

18
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

20 Section 1. Section 3-6-101, MCA, is amended to read:

21 "3-6-101. Establishment of the court. (1) All
22 Effective January 1, 1986, all cities in the state of
23 Montana with a population of ~~10,000~~ 20,000 or more,
24 according to the last federal census, may must MAY have a
25 court known as the municipal court of the city of

1 (designating the name of the city) of the state of Montana.
2 The court shall be a court of record.

3 ~~(2) The provisions of this chapter apply only after~~
4 ~~the governing body of the city has elected by a two-thirds~~
5 ~~majority vote to adopt them by ordinance and in the~~
6 ~~ordinance has provided the manner in which and time when~~
7 ~~the municipal court is to be established and~~ The municipal
8 court shall assume continuing jurisdiction over all pending
9 city court cases pending on January 1, 1986, for the city
10 where the municipal court is located. The ordinance must be
11 consistent with the provisions of this chapter."

12 Section 2. Section 3-6-102, MCA, is amended to read:

13 "3-6-102. Abolition of city court. (1) In cities in
14 which a municipal court is established, the office of city
15 judge is hereby abolished.

16 (2) A city judge whose office is abolished shall serve
17 as municipal court judge for the remainder of his term in
18 the same city as he served as city judge. Upon completion of
19 his term, the office of municipal court judge must be filled
20 by election as provided in 3-6-201 and 3-6-202."

21 Section 3. Section 3-6-103, MCA, is amended to read:

22 "3-6-103. Jurisdiction Exclusive jurisdiction. (1)
23 Said Subject to the territorial limits provided for in
24 subsection (2), the municipal court shall have jurisdiction
25 coordinate and coextensive with the justices' courts of the

THIRD READING

1 county--wherein--said-city-is-located-and-shall,-in-addition
 2 thereto,-have has exclusive original jurisdiction of-all in:

3 (a) actions and proceedings, both civil and criminal,
 4 mentioned--and provided for in 3-11-103;--Such-municipal
 5 courts-shall-also--have--concurrent--jurisdiction--with--the
 6 district--court-within-their-respective-counties-in-forcible
 7 entry-and-unlawful-detainer;;

8 (b) proceedings requiring judicial approval for
 9 issuance of a marriage license and a marriage certificate
 10 form under 40-1-213;

11 (c) proceedings for a concealed weapon permit under
 12 45-8-319;

13 (d) name change proceedings under Title 27, chapter
 14 31; and

15 (e) misdemeanors punishable by a fine exceeding \$500
 16 or imprisonment exceeding 6 months, or both, as provided by
 17 law.

18 (2) The jurisdiction of the municipal court under
 19 subsection (1)(a) extends to the limits of the city in which
 20 the municipal court is located. The jurisdiction of the
 21 municipal court under subsections (1)(b) through (1)(e)
 22 extends to the limits of the judicial district in which the
 23 municipal court is located."

24 NEW SECTION. Section 4. Concurrent jurisdiction. The
 25 municipal court has concurrent jurisdiction with:

1 (1) a city court for a city with a population of less
 2 than ~~10,000~~ 20,000 located within the same judicial district
 3 as the municipal court in actions and proceedings provided
 4 for in 3-11-103;

5 (2) a justice's court located within the same judicial
 6 district as the municipal court in:

7 (a) civil actions when the amount in controversy does
 8 not exceed \$3,500 exclusive of court costs;

9 (b) misdemeanors punishable by a fine not exceeding
 10 \$500 or imprisonment not exceeding 6 months, or both; and

11 (c) acting as an examining and committing court for
 12 the purpose of conducting preliminary hearings and
 13 arraignments-in-felony-cases;

14 (3) a district court for a county located within the
 15 same judicial district as the municipal court in:

16 (a) civil actions when the amount in controversy is
 17 more than \$3,500 but less than \$10,000;

18 (b) proceedings regarding marriage and child custody
 19 under Title 40, chapter 4; and

20 (c) adoption proceedings under Title 40, chapter 8.

21 NEW SECTION. Section 5. Removal to district court.
 22 The supreme court shall adopt rules for the removal from
 23 municipal court to district court of any action or
 24 proceeding provided for in [section 4(3)]. REMOVAL TO
 25 DISTRICT COURT IS A RIGHT WHICH CANNOT BE DENIED.

1 NEW SECTION. Section 6. Appeal to district court.
 2 There is a right of appeal to district court from any final
 3 order or judgment of a municipal court. The appeal must be
 4 confined to the record of the proceeding created in
 5 municipal court as prescribed in court rules provided for in
 6 3-6-104.

7 Section 7. Section 3-6-105, MCA, is amended to read:

8 "3-6-105. ~~Courtroom---and---supplies~~ Municipal court
 9 facilities. A room for the municipal court, with necessary
 10 furniture, fixtures, and supplies, shall be provided by the
 11 The city wherein the municipal court is located shall
 12 provide and maintain an adequate courtroom, office, and
 13 other court facilities, including janitorial services, for
 14 the municipal court. The supreme court may by rule adopt
 15 standards for court facilities for municipal courts."

16 Section 8. Section 3-6-201, MCA, is amended to read:

17 "3-6-201. Election Number of judges -- election --
 18 term of office. (1) There must be one judge for each
 19 municipal court established. However, the legislature may
 20 create additional offices of municipal court judge within a
 21 municipal court upon recommendation of the supreme court.

22 ~~(1)(2)~~ One The judge of each a municipal court shall
 23 be elected by the qualified voters of the city wherein the
 24 municipal court is located at the general city election
 25 provided for in 13-1-104(2). The judge's term shall commence

1 on the first Monday in January following the election. The
 2 judge shall hold office for the term of 4 years and until
 3 his successor is elected and qualified.

4 ~~(2)(3)~~ All elections of municipal judges are governed
 5 by the laws applicable to the election of nonpartisan city
 6 officials."

7 Section 9. Section 3-6-203, MCA, is amended to read:

8 "3-6-203. Salary. The salary of the municipal court
 9 ~~judge shall be set by city ordinance and shall be is equal~~
 10 ~~to 75% of the annual salary of a district judge~~ SHALL BE SET
 11 BY CITY ORDINANCE and is payable monthly by the city
 12 ~~treasurer~~ supreme court administrator. Actual and necessary
 13 expenses for the municipal court judge shall be the travel
 14 expenses, as defined and provided in 2-18-501 through
 15 2-18-503, incurred in the performance of his official
 16 duties."

17 Section 10. Section 3-6-204, MCA, is amended to read:

18 "3-6-204. Disqualification -- judge pro tem. When a
 19 judge of a municipal court has been disqualified or is sick
 20 or unable to act, he shall call in some practicing attorney
 21 of the county in which his court is located, who shall be
 22 judge pro tem with the same powers for the purposes of the
 23 cause as the judge of the court. The judge pro tem is
 24 entitled to reasonable compensation for his services paid by
 25 the supreme court administrator."

1 NEW SECTION. Section 11. Appointment of court
2 personnel -- classification plan. (1) A municipal court
3 judge shall appoint a clerk of court and may appoint other
4 personnel subject to the approval of the supreme court.

5 (2) The supreme court shall by rule establish a
6 personnel classification plan for municipal court employees.
7 The plan must include:

8 ~~(a) a basic compensation plan of pay ranges to which~~
9 ~~classes of positions are assigned and may be reassigned;~~

10 (b)(A) the qualifications for each position or class
11 of positions, including education, experience, special
12 skills, and legal knowledge;

13 (c)(B) the procedures and guidelines for the
14 appointment, demotion, and discharge of employees; and

15 (d)(C) the procedures and regulations governing the
16 transfer of personnel.

17 NEW SECTION. Section 12. State funding of court
18 expenses. (1) Except as provided in 3-6-105 and subject to
19 provisions of [section 13], the state shall fund, through a
20 general fund appropriation to the supreme court, the
21 operational expenses of the municipal courts, including the
22 salaries, benefits, and travel expenses of municipal court
23 judges and other court personnel.

24 (2) The supreme court administrator, under the
25 direction of the supreme court and in consultation with the

1 municipal court judges, shall include within the supreme
2 court's biennial budget request to the legislature a request
3 for funding the expenses listed in subsection (1).

4 NEW SECTION. Section 13. Deposit of fines,
5 forfeitures, and fees -- payment to supreme court
6 administrator. (1) The clerk of court shall deposit all
7 fines, forfeitures, and fees collected in municipal court
8 into a municipal court account within the city general fund.
9 PROVIDED, HOWEVER, THE ADDITIONAL FILING FEES FOR FILING A
10 PETITION FOR DISSOLUTION OF MARRIAGE PROVIDED IN 25-1-201(4)
11 SHALL APPLY IF THE ACTION FOR DISSOLUTION IS FILED IN THE
12 MUNICIPAL COURT AND THE ADDITIONAL FEE MUST BE DEPOSITED IN
13 THE STATE GENERAL FUND IN THE SAME MANNER AS IF THE ACTION
14 WERE FILED IN DISTRICT COURT.

15 (2) Except as provided in subsection (3), at the
16 beginning of each fiscal year, the clerk shall remit to the
17 supreme court administrator for deposit into the state
18 general fund a warrant drawn from the municipal court
19 account for an amount equal to 70% 100% of the total
20 operational expenses of the municipal court for the previous
21 fiscal year as determined by the supreme court
22 administrator.

23 (3) The supreme court may waive payment of all or a
24 portion of the amount to be paid to the supreme court
25 administrator under subsection (2) if the supreme court

determines that the total operational expenses of the municipal court for the previous fiscal year exceed the amount of fines, forfeitures, and fees collected.

(4) AFTER THE PAYMENT REQUIRED BY SUBSECTION (2), THE CLERK OF COURT SHALL DISTRIBUTE 40% OF ANY AMOUNT REMAINING IN THE MUNICIPAL COURT ACCOUNT TO THE COUNTIES COMPRISING THE JUDICIAL DISTRICT IN WHICH THE MUNICIPAL COURT IS LOCATED, BASED UPON THE RATIO OF EACH COUNTY'S POPULATION TO THE TOTAL POPULATION OF THE COUNTIES COMPRISING THE JUDICIAL DISTRICT.

Section 14. Section 25-30-101, MCA, is amended to read:

"25-30-101. Applicability of district court and justice's court rules. (1) The provisions of 3-10-222, ~~3-10-231--through--3-10-234~~, 3-10-305, and 3-10-3067--and ~~3-10-704-through-3-10-706~~; 25-31-102(2), 25-31-114 through 25-31-116, 25-31-304, 25-31-402(2), 25-31-405, parts 7 through 11 of chapter 31 of this title (except 25-31-915, 25-31-1002, 25-31-1004, and 25-31-1005), and chapter 33 of this title (except 25-33-301 and 25-33-302); and chapter 9, part 10 of chapter 16, chapter 17, and part 15 of chapter 18 of Title 27 are applicable to municipal courts except when they are inconsistent with the provisions of this chapter and chapter 6 of Title 3, the words "municipal court" being substituted for justice's court and "judge" for justice of

the peace.

(2) Except as otherwise provided by this chapter, chapter 6 of Title 3, and the supreme court's rules on disqualification of judges, the proceedings and practice in municipal court shall be the same as in district court."

Section 15. Section 25-30-102, MCA, is amended to read:

"25-30-102. Fees and fines. The fees and fines in municipal court shall be the same as the fees and fines provided by law or ordinance, and all fees and fines collected by the court shall be paid into a municipal court account within the city treasury general fund."

Section 16. Section 27-31-101, MCA, is amended to read:

"27-31-101. Petition for change of name of natural person. ~~All~~ (1) Except as provided in subsection (2), all applications for change of names must be made to the district court of the county where the person whose name is proposed to be changed resides, by petition signed by such person and, if such person is under 18 years of age, by one of the parents, if living, or if both be dead, then by the guardian, and if there be no guardian, then by some near relative or friend. The petition must specify the place of birth and residence of such person, his or her present name, the name proposed, and the reason for such change of name

1 and must, if neither parent of such person be living, name
2 as far as known to the petitioner the near relatives of such
3 person and their place of residence.

4 (2) An application for change of name must be made to
5 municipal court if a municipal court is located within the
6 judicial district where the person whose name is proposed to
7 be changed resides. The application must be by petition as
8 prescribed in subsection (1)."

9 Section 17. Section 27-31-102, MCA, is amended to
10 read:

11 "27-31-102. Petition for change of name of nonprofit
12 corporation. Any (1) Except as provided in subsection (2),
13 any religious, benevolent, literary, or scientific
14 corporation or any corporation bearing or using or being
15 known by the name of any benevolent or charitable order or
16 society may by petition apply to the district court of the
17 county in which its articles of incorporation were
18 originally filed or in which its property is situated for a
19 change of its corporate name. Such petition must be signed
20 by a majority of the directors or trustees of the
21 corporation and must specify the date of the formation of
22 the corporation, the name proposed, and the reason for the
23 change of name. Upon the filing of the petition, the same
24 procedure shall be followed as upon applications for changes
25 of names of natural persons.

1 (2) A corporation described in subsection (1) must
2 apply for a change of name to the municipal court if a
3 municipal court is located within the judicial district
4 where its articles of incorporation were originally filed or
5 where its property is situated. The application must be by
6 petition as prescribed in subsection (1)."

7 Section 18. Section 27-31-103, MCA, is amended to
8 read:

9 "27-31-103. District court jurisdiction. Applications
10 for change of names must be heard and determined by the
11 district court or by the municipal court as provided in
12 27-31-101(2) and 27-31-102(2)."

13 Section 19. Section 40-1-213, MCA, is amended to read:

14 "40-1-213. Judicial approval. (1) The Except as
15 provided in subsection (4), the district court may order the
16 clerk of the district court to issue a marriage license and
17 a marriage certificate form to a party aged 16 or 17 years
18 who has no parent capable of consenting to his marriage or
19 has the consent of both parents or of the parent having the
20 actual care, custody, and control to his marriage, if
21 capable of giving consent, or of his guardian. The court
22 must require both parties to participate in a period of
23 marriage counseling involving at least two separate
24 counseling sessions not less than 10 days apart with a
25 designated counselor as a condition of the order for

1 issuance of a marriage license and a marriage certificate
2 form under this section.

3 (2) A marriage license and a marriage certificate form
4 may be issued under this section only if the court finds
5 that the underaged party is capable of assuming the
6 responsibilities of marriage and the marriage will serve his
7 best interest. Pregnancy alone does not establish that the
8 best interest of the party will be served.

9 (3) The district or municipal court shall authorize
10 performance of a marriage by proxy upon the showing required
11 by the provisions on solemnization.

12 (4) If the parties seek judicial approval for issuance
13 of a marriage license and a marriage certificate form in a
14 county located in a judicial district where a municipal
15 court is located, they must seek judicial approval in the
16 manner prescribed in this section from the municipal court."

17 Section 20. Section 40-4-104, MCA, is amended to read:
18 "40-4-104. Dissolution of marriage -- legal
19 separation. (1) The district or municipal court shall enter
20 a decree of dissolution of marriage if:

21 (a) the court finds that one of the parties, at the
22 time the action was commenced, was domiciled in this state
23 or was stationed in this state while a member of the armed
24 services and that the domicile or military presence has been
25 maintained for 90 days next preceding the making of the

1 findings;

2 (b) the court finds that the marriage is irretrievably
3 broken, which findings shall be supported by evidence:

4 (i) that the parties have lived separate and apart for
5 a period of more than 180 days next preceding the
6 commencement of this proceeding; or

7 (ii) that there is serious marital discord which
8 adversely affects the attitude of one or both of the parties
9 towards the marriage;

10 (c) the court finds that the conciliation provisions
11 of the Montana Conciliation Law and of 40-4-107 either do
12 not apply or have been met; and

13 (d) to the extent it has jurisdiction to do so, the
14 court has considered, approved, or made provision for child
15 custody, the support of any child entitled to support, the
16 maintenance of either spouse, and the disposition of
17 property or provided for a separate, later hearing to
18 complete these matters.

19 (2) If a party requests a decree of legal separation
20 rather than a decree of dissolution of marriage, the court
21 shall grant the decree in that form unless the other party
22 objects."

23 Section 21. Section 40-4-206, MCA, is amended to read:

24 "40-4-206. Payment of maintenance or support to court.

25 (1) Upon its own motion or upon motion of either party, the

1 court may order at any time that maintenance or support
2 payments be made to the clerk of the district or municipal
3 court as trustee for remittance to the person entitled to
4 receive the payments.

5 (2) The clerk of the district or municipal court shall
6 maintain records listing the amount of payments, the date
7 payments are required to be made, and the names and
8 addresses of the parties affected by the order.

9 (3) The parties affected by the order shall inform the
10 clerk of the district or municipal court of any change of
11 address or of other condition that may affect the
12 administration of the order."

13 Section 22. Section 40-4-211, MCA, is amended to read:

14 "40-4-211. Child custody jurisdiction -- commencement
15 of proceedings. (1) A court of this state competent to
16 decide child custody matters has jurisdiction to make a
17 child custody determination by initial or modification
18 decree if:

19 (a) this state:

20 (i) is the home state of the child at the time of
21 commencement of the proceedings; or

22 (ii) had been the child's home state within 6 months
23 before commencement of the proceeding and the child is
24 absent from this state because of his removal or retention
25 by a person claiming his custody or for other reason and a

1 parent or person acting as parent continues to live in this
2 state; or

3 (b) it is in the best interest of the child that a
4 court of this state assume jurisdiction because:

5 (i) the child and his parents or the child and at
6 least one contestant have a significant connection with this
7 state; and

8 (ii) there is available in this state substantial
9 evidence concerning the child's present or future care,
10 protection, training, and personal relationships; or

11 (c) the child is physically present in this state and:

12 (i) has been abandoned; or

13 (ii) it is necessary in an emergency to protect him
14 because he has been subjected to or threatened with
15 mistreatment or abuse or is neglected or dependent; or

16 (d) (i) no other state has jurisdiction under
17 prerequisites substantially in accordance with subsections
18 (1)(a), (1)(b), or (1)(c) of this section or another state
19 has declined to exercise jurisdiction on the ground that
20 this state is the more appropriate forum to determine
21 custody of the child; and

22 (ii) it is in his best interest that the court assume
23 jurisdiction.

24 (2) Except under subsections (1)(c) and (1)(d) of this
25 section, physical presence in this state of the child or of

1 the child and one of the contestants is not alone sufficient
2 to confer jurisdiction on a court of this state to make a
3 child custody determination.

4 (3) Physical presence of the child, while desirable,
5 is not a prerequisite for jurisdiction to determine his
6 custody.

7 (4) A child custody proceeding is commenced in the
8 district or municipal court:

9 (a) by a parent, by filing a petition:

10 (i) for dissolution or legal separation; or

11 (ii) for custody of the child in the county in which he
12 is permanently resident or found; or

13 (b) by a person other than a parent, by filing a
14 petition for custody of the child in the county in which he
15 is permanently resident or found, but only if he is not in
16 the physical custody of one of his parents.

17 (5) Notice of a child custody proceeding shall be
18 given to the child's parent, guardian, custodian, those
19 persons having physical custody of the child, and all other
20 contestants, who may appear, be heard, and file a responsive
21 pleading. The court, upon a showing of good cause, may
22 permit intervention of other interested parties."

23 Section 23. Section 40-4-222, MCA, is amended to read:

24 "40-4-222. Declaration of legislative intent -- joint
25 custody. The legislature of the state of Montana finds and

1 declares that it is the public policy of this state to
2 assure minor children frequent and continuing contact with
3 both parents after the parents have separated or dissolved
4 their marriage and to encourage parents to share the rights
5 and responsibilities of child rearing in order to effect
6 this policy. The legislature believes that the district and
7 municipal courts of the state of Montana have the authority
8 to award joint custody if the court finds joint custody in
9 the best interests of the children in the case then before
10 the court. The intent of 40-4-222 through 40-4-225 is to
11 establish certain guidelines for resolution of custody
12 disputes."

13 Section 24. Section 40-7-104, MCA, is amended to read:

14 "40-7-104. Jurisdiction. The jurisdictional provisions
15 of 40-4-211 as they relate to district courts apply to this
16 chapter."

17 Section 25. Section 40-8-103, MCA, is amended to read:

18 "40-8-103. Definitions. As used in this chapter,
19 unless the context otherwise requires the following
20 definitions apply:

21 (1) "Adoption" means the act of creating the legal
22 relationship between parent and child when it does not exist
23 genetically.

24 (2) "Adoptive parent" means an adult who has become
25 the mother or father of a child through the legal process of

1 adoption.

2 (3) "Agency" means a public or voluntary agency
3 licensed by any jurisdiction within the United States and
4 expressly empowered to place children as a preliminary to a
5 possible adoption.

6 (4) "Birth parent" means the mother or father of
7 genetic origin of a child but does not include a putative
8 father of a child.

9 (5) "Child" means any person under 18 years of age.

10 (6) "Court" means a Montana district or municipal
11 court or a tribal court of any Montana Indian reservation.

12 (7) "Department" means the department of social and
13 rehabilitation services, as established and provided for in
14 Title 2, chapter 15, part 22.

15 (8) "Extended family member" means an adult who is the
16 child's grandparent, aunt or uncle, brother or sister, niece
17 or nephew, or first cousin.

18 (9) "Parent" means the birth or adoptive mother or the
19 birth, adoptive, or legal father whose parental rights have
20 not been terminated.

21 (10) "Placement for adoption" means the transfer of
22 physical custody of a child with respect to whom all
23 parental rights have been terminated and who is otherwise
24 legally free for adoption to a person who intends to adopt
25 the child.

1 (11) "Relinquishment" means the informed and voluntary
2 release in writing of all parental rights with respect to a
3 child by a parent to an agency or individual pursuant to
4 40-6-135 or 40-8-109, whichever is applicable."

5 Section 26. Section 40-8-107, MCA, is amended to read:
6 "40-8-107. Venue. Proceedings (1) Except as provided
7 in subsection (2), proceedings for adoption must be brought
8 in the district court of the county where the petitioners
9 reside.

10 (2) Proceedings for adoption may be brought in
11 municipal court if the petitioners reside in a judicial
12 district in which a municipal court is located."

13 Section 27. Section 40-8-109, MCA, is amended to read:
14 "40-8-109. Placement for adoption by parents. (1) (a)
15 No Except as provided in subsection (1)(b), no parent may
16 make a placement of a child for adoption with an individual
17 who is not a stepparent or a member of the child's extended
18 family unless the parent files with the district court for
19 the county in which the prospective adoptive parent or the
20 parent making the placement resides:

21 (a)(i) a notice of parental placement; and
22 (b)(ii) a relinquishment of parental rights to the
23 prospective adoptive parents executed voluntarily and in
24 accordance with 40-6-135(2) through (4).

25 (b) A parent may file such notice of parental

1 placement and a relinquishment with the municipal court if
 2 the prospective adoptive parent or the parent making the
 3 placement resides in a judicial district where a municipal
 4 court is located.

5 (2) The notice of parental placement and the
 6 relinquishment shall be filed prior to a parent's placement
 7 of the child with an individual who intends to adopt the
 8 child. The notice of parental placement shall contain the
 9 following information:

10 (a) the name and address of each birth parent, if
 11 known, and if unknown, the steps taken to ascertain the
 12 whereabouts of the parent or parents;

13 (b) the name and address of each prospective adoptive
 14 parent;

15 (c) the name and address or expected date and place of
 16 birth of the child; and

17 (d) the name and address of counsel, guardian ad
 18 litem, or other representative, if any, for each of the
 19 parties in (a) through (c) of subsection (2).

20 (3) Upon receipt of a notice of parental placement and
 21 a relinquishment, the court shall require that the
 22 department examine the child and conduct interviews with the
 23 birth parents and prospective adoptive parents and report to
 24 the court within 30 days but not earlier than 5 days after
 25 the birth of the child. The report must state whether the

1 following requirements for placement have been met:

2 (a) that the decision to place was voluntarily made by
 3 the birth parents;

4 (b) that the department has no temporary authority to
 5 investigate or provide protective services to the family
 6 under 41-3-402;

7 (c) that the birth parents, the prospective adoptive
 8 parents, and their representatives have agreed in writing to
 9 provide the court with sworn affidavits containing itemized
 10 statements of all fees charged or to be charged, expenses
 11 incurred or to be incurred, and payments received or to be
 12 received in connection with the proposed adoptive placement;

13 (d) that the prospective adoptive parents have been
 14 provided a medical and social history of the child and birth
 15 parents; and

16 (e) that the proposed placement is in the child's best
 17 interest.

18 (4) Within 45 days of filing of the notice of parental
 19 placement and the relinquishment, the court shall schedule a
 20 hearing to consider the proposed placement.

21 (5) (a) At least 5 days' notice of the time and place
 22 of the hearing must be given to the birth parents, the
 23 prospective adoptive parents, any named guardian ad litem,
 24 and the agency or person who conducted the investigation
 25 under subsection (3).

1 (b) The hearing shall be closed to all persons except
2 those persons entitled to notice and their representatives
3 or counsel.

4 (6) If the court finds that all requirements for
5 placement have been met, the court may issue an order or
6 schedule a hearing for the purpose of terminating parental
7 rights and granting temporary custody to the prospective
8 adoptive parents. The prospective adoptive parents must file
9 their petition to adopt within 30 days of the order.

10 (7) If the court finds that all requirements for the
11 adoptive placement have not been met, the court may issue
12 any order appropriate to protect the child."

13 Section 28. Section 40-8-127, MCA, is amended to read:

14 "40-8-127. Appeal. An appeal may be taken from any
15 final order, judgment, or decree rendered hereunder in the
16 district or municipal court by any person aggrieved thereby,
17 in the manner provided for appeals from the court in other
18 civil matters."

19 Section 29. Section 45-8-317, MCA, is amended to read:

20 "45-8-317. Exceptions. Section 45-8-316 does not apply
21 to:

- 22 (1) any peace officer of the state of Montana;
23 (2) any officer of the United States government
24 authorized to carry a concealed weapon;
25 (3) a person in actual service as a national

1 guardsman;

2 (4) a person summoned to the aid of any of the persons
3 named in subsections (1) through (3);

4 (5) a civil officer or his deputy engaged in the
5 discharge of official business;

6 (6) a person authorized by a judge of a district or
7 municipal court of this state to carry a weapon as provided
8 in 45-8-319; or

9 (7) the carrying of arms on one's own premises or at
10 one's home or place of business."

11 Section 30. Section 45-8-319, MCA, is amended to read:

12 "45-8-319. Permits to carry concealed weapons --
13 records -- revocation. (1) (a) Any Except as provided in
14 subsection (1)(b), a judge of a district court of this state
15 may grant permission to carry or bear, concealed or
16 otherwise, a pistol or revolver for a term not exceeding 1
17 year.

18 (b) If a person chooses to apply for permission to
19 carry a concealed weapon in a county located within a
20 judicial district in which a municipal court is located, he
21 must apply to the municipal court.

22 (2) All applications for such permission must be made
23 by petition filed with the clerk of the district or
24 municipal court. No charge may be made for the filing of the
25 petition.

1 (3) The applicant shall, if personally unknown to the
2 judge, furnish proof by a credible witness of his good moral
3 character and peaceable disposition.

4 (4) No such permission shall be granted any person
5 who is not a citizen of the United States and who has not
6 been an actual bona fide resident of the state of Montana
7 for 6 months immediately next preceding the date of such
8 application.

9 (5) A record of permission granted shall be kept by
10 the clerk of the court. The record shall state the date of
11 the application, the date of the permission, the name of the
12 person to whom permission is granted, the name of the judge
13 granting the permission, and the name of the person, if any,
14 by whom good moral character and peaceable disposition are
15 proved. The record must be signed by the person who is
16 granted such permission.

17 (6) The clerk shall thereupon issue ~~under his hand and~~
18 ~~the seal of the court~~ a certificate, in a convenient card
19 form so that the same may be carried in the pocket, stating:

20 "Permission to authorizing him to carry or bear,
21 concealed or otherwise, a pistol or revolver for the period
22 of from the date hereof has been granted by, a
23 judge of the district [municipal] court of the judicial
24 district [city of] of the state of Montana, in and for
25 the county of

1 Witness--~~the hand of~~ Signed and sealed by the clerk and
2 ~~the seal of said court~~ this day of, 19...

3
4 Clerk"

5 (7) The date of the certificate shall be the date of
6 the granting of such permission. The certificate shall bear
7 upon its face the signature of the person receiving the
8 same.

9 (8) Upon good cause shown the judge granting such
10 permission may, in his discretion without notice to the
11 person receiving such permission, revoke the same. The date
12 of the revocation shall be noted by the clerk upon the
13 record kept by him.

14 (9) All permissions to carry or bear concealed weapons
15 granted before March 3, 1919, are hereby revoked."

16 Section 31. Section 46-17-402, MCA, is amended to
17 read:

18 "46-17-402. Fees and fines. The fees and fines in
19 municipal court shall be the same as the fees and fines
20 provided by law or ordinance, and all fees and fines
21 collected by the court shall be paid into a municipal court
22 account within the city treasury general fund."

23 NEW SECTION. Section 32. Repealer. Sections 3-6-301,
24 25-30-108, and 46-17-404, MCA, are repealed.

25 NEW SECTION. Section 33. Effective date. This act is

SB 0217/03

1 effective January 1, 1986.

-End-