

House BILL NO. 177

INTRODUCED BY

Dee Kottel Kolger R. Forbes Lamm
Hayes Anderson Mitchell

Spencer Rumm

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE RIGHT TO A TRIAL DE NOVO IN DISTRICT COURT WHEN A CRIMINAL CASE IS APPEALED FROM A JUSTICE'S COURT OR A CITY COURT; PROVIDING A MEANS FOR CREATING A RECORD IN JUSTICE'S COURT OR CITY COURT CRIMINAL CASES; REMOVING THE OPTION OF INITIATING POSTCONVICTION PETITIONS IN THE SUPREME COURT AND RESTRICTING THE TIME IN WHICH POSTCONVICTION PETITIONS MAY BE FILED RELATING TO JUSTICE'S, MUNICIPAL, AND CITY COURT SENTENCES; AND AMENDING SECTIONS 3-5-303, 3-11-301, 46-17-203, 46-17-311, 46-21-101, AND 46-21-102, MCA."

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

Section 1. Section 3-5-303, MCA, is amended to read:

"3-5-303. Appellate jurisdiction. ~~Except as provided in 46-17-203, the~~ The district court has appellate jurisdiction in cases arising in justices' courts and other courts of limited jurisdiction in their respective districts as may be prescribed by law and consistent with the constitution."

Section 2. Section 3-11-301, MCA, is amended to read:

"3-11-301. City attorney to prosecute. ~~Except as provided in 46-17-203, the~~ The city attorney ~~must~~ shall prosecute all cases for the violation of any ordinance and prosecute, conduct, and control all proceedings in cases mentioned in 3-11-103, both in the city court and on appeal from the city court to the district court."

Section 3. Section 46-17-203, MCA, is amended to read:

"46-17-203. Plea of guilty. ~~{}~~ Before or during trial, a plea of guilty may be accepted when:
~~{a}~~ (1) the defendant enters a plea of guilty in open court; and
~~{b}~~ (2) the court has informed the defendant of the consequences of ~~his~~ the plea and of the maximum penalty provided by law ~~which~~ that may be imposed upon acceptance of the plea and has questioned the defendant to ensure that the plea is entered voluntarily.

1 ~~(2) A plea of guilty in a justices' court, city court, or other court of limited jurisdiction waives the~~
2 ~~right of trial de novo in district court. A defendant must be informed of the waiver before the plea is~~
3 ~~accepted, and the justice or judge shall question the defendant to ensure that the plea and waiver are~~
4 ~~entered voluntarily."~~

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6 **Section 4.** Section 46-17-311, MCA, is amended to read:

7 **"46-17-311. Appeal from justices', municipal, and city courts.** (1) ~~Except for cases in which legal~~
8 ~~issues are preserved for appeal pursuant to 46-12-204, all cases on appeal from a justice's or city court~~
9 ~~must be tried anew in the district court and may be tried before a jury of six selected in the same manner~~
10 ~~as for other criminal cases. A party may appeal to district court from a justice's court or city court~~
11 judgment or order. The appeal is confined to review of the record and questions of law, subject to the
12 supreme court's rulemaking and supervisory authority. The scope of appeal is governed by the provisions
13 of 46-20-101 and 46-20-103 through 46-20-105. An appeal from a municipal court to the district court
14 is governed by 3-6-110.

15 (2) The defendant may appeal to the district court by filing written notice of intention to appeal
16 within 10 days after a judgment is rendered following trial. In the case of an appeal by the prosecution,
17 the notice must be filed within 10 days of the date on which the order complained of is given. ~~The~~
18 ~~prosecution may only appeal in the cases provided for in 46-20-103.~~

19 (3) Within 30 days of filing the notice of appeal, the court shall transfer the entire record of the
20 court of limited jurisdiction to the district court."

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22 **NEW SECTION. Section 5. Appeal to district court -- record on appeal.** The record on appeal to
23 district court consists of an electronic recording or stenographic transcription of a case tried, together with
24 all papers filed in the action, certified by the justice or judge to be accurate and complete. The justice or
25 judge shall forward the electronic recording or transcript of the stenographic record of the proceedings to
26 the district court. When the record is transferred to the clerk of the district court, the justice or judge shall
27 notify the parties in writing.

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29 **NEW SECTION. Section 6. Appeal to district court -- procedure on appeal.** (1) The district court
30 may hear the recording of the proceedings of the justice's court or city court, but in its discretion, it may

1 have parts or all of the recordings transcribed at the cost of the district court. If the proceedings were
2 stenographically taken, the notes must be transcribed in full or in designated parts as stipulated by the
3 parties. The cost of the transcription must be computed as prescribed by law.

4 (2) The district court may affirm, reverse, or amend any appealed order or judgment and direct the
5 proper order or judgment to be entered or direct that a new trial or further proceeding be had in the court
6 from which the appeal was taken.

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8 **Section 7.** Section 46-21-101, MCA, is amended to read:

9 **"46-21-101. When validity of sentence may be challenged.** (1) A person adjudged guilty of an
10 offense ~~in a court of record~~ who has no adequate remedy of appeal and who claims that a sentence was
11 imposed in violation of the constitution or the laws of this state or the constitution of the United States,
12 that the court was without jurisdiction to impose the sentence, that a suspended or deferred sentence was
13 improperly revoked, or that the sentence was in excess of the maximum authorized by law or is otherwise
14 subject to collateral attack upon any ground of alleged error available under a writ of habeas corpus, writ
15 of coram nobis, or other common law or statutory remedy may petition the court that imposed the sentence
16 ~~of the supreme court~~ to vacate, set aside, or correct the sentence or revocation order.

17 (2) If the sentence was imposed by a justice's, municipal, or city court, the petition must be filed
18 with the district court in the county where the lower court is located.

19 (3) If the person is in custody, the person may elect to file the petition directly with the supreme
20 court."

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22 **Section 8.** Section 46-21-102, MCA, is amended to read:

23 **"46-21-102. When petition may be filed.** A petition for the relief referred to in 46-21-101,
24 resulting from a sentence imposed by a district court, may be filed at any time within 5 years of the date
25 of the conviction. A petition resulting from a sentence imposed by a justice's court, municipal court, or
26 city court must be filed within 1 year of the date of the conviction."

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28 **NEW SECTION. Section 9. Codification instruction.** [Sections 5 and 6] are intended to be codified
29 as an integral part of Title 46, chapter 17, part 3, and the provisions of Title 46, chapter 17, part 3, apply
30 to [sections 5 and 6].

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0177, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act eliminating the right to a trial de novo in district court when a criminal case is appealed from a justice's court or a city court; providing a means for creating a record in justice's court or city court criminal cases.

ASSUMPTIONS:

1. The number of courts will remain constant.
2. District Judges will transport electronic equipment to different counties in their judicial district.

FISCAL IMPACT:

Passage of HB0177 will have no fiscal impact on state government.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

It is assumed that all courts of lower jurisdiction (165), and all district courts (25) will have to purchase at least one high quality recording device, estimated at \$2,000 each. Thus, an initial local government outlay of \$380,000 will be necessary.

Dave Lewis 1-18-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Deb Kottel
DEB KOTTEL, PRIMARY SPONSOR DATE
Fiscal Note for HB0177, as introduced

HB 177

STATE OF MONTANA - FISCAL NOTE

Revised Fiscal Note for HB0177, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act eliminating the right to a trial de novo in district court when a criminal case is appealed from a justice's court or a city court; providing a means for creating a record in justice's court or city court criminal cases.

ASSUMPTIONS:

1. The number of courts will remain constant.
2. Current courts of record (District - 56; and Municipal - 1) by definition, do not require a method of recording court proceedings.

FISCAL IMPACT:

Passage of HB0177 will have no fiscal impact on state government.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

There are 164 Justice and City courts in the State. Because they are not "courts of record", they may need the ability to record court proceedings. It is unknown whether or not they currently have adequate recording devices. If a recording device is needed, the Supreme Court recommends a high quality machine costing approximately \$2,000.

The original fiscal note stated a cost of \$380,000 to implement this bill. That amount would place a high quality machine in 165 courts and portable units for 25 district court judges. The Supreme Court Administrator feels that the cost is reasonable if high level recordings are demanded.

 1-24-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning


DEB KOTTEL, PRIMARY SPONSOR DATE

Revised Fiscal Note for HB0177, as introduced

Rev. HB 177-#2

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2 INTRODUCED BY KOTTEL, HALLIGAN, FORBES, LARSON, TUSS, HARPER, ANDERSON, BARTLETT,
3 HEAVY RUNNER
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6 COURT WHEN A CRIMINAL CASE IS APPEALED FROM A JUSTICE'S COURT OR A CITY COURT;
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9 AND RESTRICTING THE TIME IN WHICH POSTCONVICTION PETITIONS MAY BE FILED RELATING TO
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11 46-17-203, 46-17-311, 46-21-101, AND 46-21-102, MCA."
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13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
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20 **Section 2.** Section 3-11-301, MCA, is amended to read:

21 "**3-11-301. City attorney to prosecute.** ~~Except as provided in 46-17-203, the~~ The city attorney
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24 the district court."
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26 **Section 3.** Section 46-17-203, MCA, is amended to read:

27 "**46-17-203. Plea of guilty.** ~~(1)~~ Before or during trial, a plea of guilty may be accepted when:
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