

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

SENATE BILL 359

By: Morgan

AS INTRODUCED

An Act relating to cities and towns; amending 11 O.S. 1991, Sections 27-104, as amended by Section 1, Chapter 245, O.S.L. 1996, 27-116, 27-117, as amended by Section 6, Chapter 251, O.S.L. 1997, 27-117.1, as last amended by Section 7, Chapter 251, O.S.L. 1997, 27-122, 27-122.1, as amended by Section 2, Chapter 412, O.S.L. 1999, 27-126, as amended by Section 3, Chapter 412, O.S.L. 1999, 27-129, as last amended by Section 9, Chapter 251, O.S.L. 1997, 27-131 (11 O.S. Supp. 2000, Sections 27-104, 27-117, 27-117.1, 27-122.1, 27-126, 27-129), which relate to municipal judges; providing certain qualifications for municipal judge appointment; requiring filing of appointment; modifying certain requirements for municipal judge; deleting certain penalties; clarifying language; substituting authority; requiring certain membership certification; clarifying language; modifying enforcement of certain fines; clarifying certain definition; modifying certain costs; deleting certain required contents for certificate; authorizing certain assistance from the Administrative Office of the Courts; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 11 O.S. 1991, Section 27-104, as amended by Section 1, Chapter 245, O.S.L. 1996 (11 O.S. Supp. 2000, Section 27-104), is amended to read as follows:

Section 27-104. A. The number of judges for each municipal court shall be determined by the governing body of the municipality where the court is established. The judge of each municipal court shall be appointed by the mayor of the municipality where the court is established, with the consent of the municipal governing body. The judge of any municipal court shall be ~~licensed to practice law in Oklahoma, except as provided for in subsections B and C of this section~~ a member in good standing of the Oklahoma Municipal Judges

Association at the time the member is sworn into office and shall be certified according to rules and guidelines adopted by Oklahoma Municipal Judges Association. The appointment of any municipal judge shall be filed by the municipal clerk with the Administrative Director of the Courts. ~~He~~ The municipal judge shall serve for a term of two (2) years, said term expiring on a date fixed by ordinance, and until ~~his~~ a successor is appointed and qualified, unless removed by the vote of a majority of all members of the governing body for such cause as is provided for by law for the removal of public officers. Any appointment to fill a vacancy shall be for the unexpired term. Except in cities with a population of more than two hundred thousand (200,000), nothing in the provisions of this section shall be construed to prevent the judge from engaging in the practice of law in any other court during his tenure of office. The judge shall be paid a salary to be fixed by the municipal governing body. He shall be paid in the same manner as other municipal officials.

B. In any municipality ~~with a population of less than seven thousand five hundred (7,500),~~ the mayor, with the consent of the governing body of the municipality, may appoint as judge:

~~1. An attorney licensed to practice law in Oklahoma, who resides in the county in which the municipality is located or in an adjacent county; or~~

~~2. An attorney licensed to practice law in Oklahoma who maintains a permanent office in the municipality; or~~

~~3. Any a suitable person residing in the municipality or within ~~twenty (20)~~ twenty (20) fifty (50) miles of the boundaries of the municipality. The mayor may be designated as judge of the municipal court upon approval of the governing body of the municipality.~~

C. ~~In any municipality with a population of seven thousand five hundred (7,500) or more, if no attorney licensed to practice law in Oklahoma resides in the county or in an adjacent county in which the~~

~~municipality is located, who is at the time of appointment willing to accept the appointment as judge, the mayor, with the consent of the governing body of the municipality, may appoint any suitable and proper person as judge.~~

~~D. If the judge of the municipal court is not a licensed attorney, the trial shall be to the court, and the court may not impose a fine of more than Fifty Dollars (\$50.00), except as provided in subsection E of this section, and may not order the defendant imprisoned except for the nonpayment of fines or costs or both.~~

~~E. If the judge of the municipal court is not a licensed attorney but has complied with the requirements of subsection F of this section, the maximum fine that may be imposed shall be One Hundred Dollars (\$100.00).~~

~~F. In order to impose the fine authorized by subsection E of this section, a nonlawyer~~ C. A municipal judge must, within a period not to exceed the preceding reporting period in this state for mandatory continuing legal education, complete courses held for municipal judges which have been approved by the Oklahoma Bar Association Mandatory Legal Education Commission for at least six (6) hours of continuing legal education credit or attend at least one (1) day of a state judicial conference. In the case of attendance of a continuing legal education course, verification may be made by a statement of attendance signed by the course registration personnel. In the case of verification of attendance of a state judicial conference, a statement of attendance signed by the Administrative Director of the Courts or a designee shall be sufficient verification. Oklahoma Municipal Judges Association and be certified pursuant to rules and guidelines established by the Oklahoma Municipal Judges Association. The Oklahoma Municipal Judges Association shall annually, or more often as is necessary or required by law, certify to the Administrative Director of the

Courts the membership of all municipal judges and their certification by the organization.

SECTION 2. AMENDATORY 11 O.S. 1991, Section 27-116, is amended to read as follows:

Section 27-116. The arraignment shall be made by the court. The judge or the prosecuting attorney shall read the complaint to the defendant, inform him of his legal rights and of the consequences of conviction, and ask him whether he pleads guilty or not guilty. The municipal ~~governing body by ordinance~~ judge may prescribe a schedule of fines which the defendant may pay in lieu of his appearance before the municipal court and such payment shall constitute a final determination of the cause against the defendant.

SECTION 3. AMENDATORY 11 O.S. 1991, Section 27-117, as amended by Section 6, Chapter 251, O.S.L. 1997 (11 O.S. Supp. 2000, Section 27-117), is amended to read as follows:

Section 27-117. A. If a resident of a municipality served by a municipal court is arrested by a law enforcement officer for the violation of any traffic ordinance for which Section 27-117.1 of this title does not apply, or is arrested for the violation of a nontraffic ordinance, the officer shall immediately release said person if the person acknowledges receipt of a citation by signing it. Provided, however, the arresting officer need not release said person if it reasonably appears to the officer that the person may cause injury to himself or others or damage to property if released, that the person will not appear in response to the citation, or the person is arrested for an offense against a person or property. If said person fails to appear in response to the citation, a warrant shall be issued for his arrest and his appearance shall be compelled.

If the arrested resident is not released by being permitted to sign a citation as provided for in this subsection, he shall be admitted to bail either before or after arraignment, or shall be

released on personal recognizance. A ~~municipality~~ municipal judge may prescribe a fine for up to the maximum amount authorized by courts not of record for failure of a person to have a valid driver's license when charged with a traffic violation.

B. If a nonresident of a municipality served by a municipal court is arrested by a law enforcement officer for a violation of any ordinance for which Section 27-117.1 of this title does not apply, the defendant shall be eligible to be admitted to bail either before or after arraignment.

C. The amount and conditions of bail granted pursuant to the provisions of subsections A and B of this section shall be determined by the judge who shall prescribe rules for the receipt of bail and for the release on personal recognizance. The amount of bail for each offense shall not exceed the maximum fine plus court costs, unless the defendant has a previous history of failing to appear according to the terms or conditions of a bond, in which case the amount of bail shall not exceed One Thousand Dollars (\$1,000.00). In the event of arrests at night, emergencies, or when the judge is not available, a court official, the chief of police or his designated representative may be authorized by the judge, subject to such conditions as shall be prescribed by the judge, to accept a temporary cash bond in a sufficient amount to secure the appearance of the accused. The cash bond shall not exceed the maximum fine provided for by ordinance for each offense charged, unless the defendant has a previous history of failing to appear according to the terms or conditions of a bond, in which case the amount of the cash bond shall not exceed One Thousand Dollars (\$1,000.00). The court official, chief of police or his designated representative is authorized, subject to such conditions as shall be prescribed by the judge, to release a resident of the municipality on personal recognizance.

SECTION 4. AMENDATORY 11 O.S. 1991, Section 27-117.1, as last amended by Section 7, Chapter 251, O.S.L. 1997 (11 O.S. Supp. 2000, Section 27-117.1), is amended to read as follows:

Section 27-117.1 If a resident or nonresident of a municipality having a municipal court is arrested by a law enforcement officer solely for a misdemeanor violation of a traffic ordinance, other than an ordinance pertaining to a parking or standing traffic violation, and the arrested person is eligible to sign a written promise to appear and be released upon personal recognizance as provided for in Section 1115.1 of Title 22 of the Oklahoma Statutes, then the procedures provided for in the State and Municipal Traffic Bail Bond Procedure Act as applied to municipalities, shall govern. A ~~municipality, by ordinance,~~ municipal judge may prescribe a bail bond schedule for this purpose and may provide for bail to be used as payment of the fine and costs upon a plea of guilty or nolo contendere, as provided for in Section 1115.1 of Title 22 of the Oklahoma Statutes. ~~Absent such ordinance, the municipal court may prescribe a bail bond schedule for traffic offenses.~~ The amount of bail shall not exceed the maximum fine and costs provided by ordinance for each offense, unless the defendant has a previous history of failing to appear according to the terms or conditions of a bond, in which case the amount of bail shall not exceed One Thousand Dollars (\$1,000.00).

SECTION 5. AMENDATORY 11 O.S. 1991, Section 27-122, is amended to read as follows:

Section 27-122. A. If a defendant who is financially able refuses or neglects to pay a fine or costs or both, payment may be enforced:

1. by imprisonment until the same shall be satisfied at the rate of Five Dollars (\$5.00) per day or at a rate of Twenty-five Dollars (\$25.00) per day if the defendant performs labor for the municipality; or

2. in the same manner as is prescribed in subsection B of this section for a defendant who is without means to make such payment.

B. If the defendant is without means to pay the fine or costs, the municipal judge may direct the total amount due to be entered upon the court minutes and to be certified to the district court in the county where the situs of the municipal government is located, where it shall be entered upon the district court judgment docket and shall have the full force and effect of a district court judgment. Thereupon the same remedies shall be available for the enforcement of the judgment as are available to any other judgment creditor.

SECTION 6. AMENDATORY 11 O.S. 1991, Section 27-122.1, as amended by Section 2, Chapter 412, O.S.L. 1999 (11 O.S. Supp. 2000, Section 27-122.1), is amended to read as follows:

Section 27-122.1 A. All sentences of imprisonment shall be executed by the chief of police of the municipality, and any person convicted of a violation of any ordinance of the municipality and sentenced to imprisonment shall be confined in the jail, farm, or workhouse of the municipality, in the discretion of the court, for the time specified in the sentence; provided, however, the court may, in lieu of imprisonment, order the defendant to engage in a term of community service without compensation. If the defendant fails to perform the required community service or if the conditions of community service are violated, the judge may impose a sentence of imprisonment, not to exceed the maximum sentence allowable for the violation for which the defendant was convicted.

B. The judge of the municipal court imposing a judgment and sentence, at the judge's discretion, is empowered to modify, reduce, suspend, or defer the imposition of a sentence or any part thereof and to authorize probation for a period not to exceed six (6) months from the date of sentence under terms or conditions as the judge may specify. Procedures relating to suspension of the judgment or costs

or both shall be as provided in Section 27-123 of Title 11 of the Oklahoma Statutes. Upon completion of the terms of probation, the defendant shall be discharged without a court judgment of guilt, and the verdict, judgment of guilty, or plea of guilty shall be expunged from the record and the charge dismissed with prejudice to any further action. Upon a finding of the court that the conditions of probation have been violated, the municipal judge may enter a judgment of guilty.

C. The judge of the municipal court may continue or delay imposing a judgment and sentence for a period of time not to exceed six (6) months from the date of sentence. At the expiration of this period of time the judge may allow the municipal attorney to amend the charge to a lesser offense.

D. If a deferred sentence is imposed, an administrative fee in lieu of a fine not to exceed ~~Two Hundred Dollars (\$200.00)~~ the amount of fine which could have been imposed may be imposed as costs in the case.

E. For purposes of this section, "judge of the municipal court" means a municipal court judge who is ~~licensed to practice law in this state~~ certified pursuant to Section 11-27-104 of Title 11 of the Oklahoma Statutes.

SECTION 7. AMENDATORY 11 O.S. 1991, Section 27-126, as amended by Section 3, Chapter 412, O.S.L. 1999 (11 O.S. Supp. 2000, Section 27-126), is amended to read as follows:

Section 27-126. Subject to the provisions of subsection F of Section 14-111 of this title and other limitations or exceptions imposed by law, the municipal governing body shall determine by ordinance the costs that may be charged and collected by the clerk of the court, but these costs shall not exceed the sum of ~~Twenty-five Dollars (\$25.00)~~ Forty Dollars (\$40.00) plus the fees and mileage of jurors and witnesses.

SECTION 8. AMENDATORY 11 O.S. 1991, Section 27-129, as last amended by Section 9, Chapter 251, O.S.L. 1997 (11 O.S. Supp. 2000, Section 27-129), is amended to read as follows:

Section 27-129. A. An appeal may be taken from a final judgment of the municipal court by the defendant by filing in the district court in the county where the situs of the municipal government is located, within ten (10) days from the date of the final judgment, a notice of appeal and by filing a copy of the notice with the municipal court. In case of an appeal, a trial de novo shall be had, and there shall be a right to a jury trial if the sentence imposed for the offense was a fine of more than Two Hundred Dollars (\$200.00) and costs.

B. Upon conviction, at the request of the defendant, or upon notice of appeal being filed, the judge of the municipal court shall enter an order on his docket fixing an amount in which bond may be given by the defendant, in cash or sureties for cash in an amount of not less than One Hundred Dollars (\$100.00) nor more than Two Hundred Dollars (\$200.00); except that, if the conviction involved a fine only, the amount of the bond shall be no greater than twice the amount of such fine. Bond shall be taken by the clerk of the court wherein judgment was rendered. Any pledge of sureties must be approved by a judge of the court.

C. Upon appeal being filed the judge shall within ten (10) days thereafter certify to the clerk of the appellate court the original papers in the case. If the papers have not been certified to the appellate court, the prosecuting attorney shall take the necessary steps to have the papers certified to the appellate court within twenty (20) days of the filing of the notice of appeal, and failure to do so, except for good cause shown, shall be grounds for dismissal of the charge by the appellate court, the cost to be taxed to the municipality. ~~The certificate shall state whether or not the~~

~~municipal judge hearing the case was a licensed attorney in Oklahoma.~~

D. All proceedings necessary to carry the judgment into effect shall be had in the appellate court.

SECTION 9. AMENDATORY 11 O.S. 1991, Section 27-131, is amended to read as follows:

Section 27-131. The Supreme Court is authorized to issue orders of statewide application relative to procedures in and practices before the municipal courts and appeals therefrom, subject to the provisions of this article, and under its general superintending control of all inferior courts, shall have the power and authority by and through the Chief Justice of the Supreme Court, to call annual conferences of the judges of the municipal courts of Oklahoma to consider matters calculated to bring about a speedier and more efficient administration of justice. The Administrative Office of the Courts is authorized to aid and assist the Oklahoma Municipal Judges Association in the tracking of municipal judges and their certification and such other duties as may from time to time be necessary to the effectuation of this title.

SECTION 10. This act shall become effective November 1, 2001.

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