

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

HOUSE BILL HB2606:

Peterson (Ron)

AS INTRODUCED

An Act relating to cities and towns; amending 11 O.S. 2001, Section 14-111, as amended by Section 5, Chapter 120, O.S.L. 2002 (11 O.S. Supp. 2003, Section 14-111), which relates violations to municipal ordinances; increasing certain monetary amount to satisfy certain costs; providing option of a deferral fee; amending 11 O.S. 2001, Sections 27-104, 27-122, 27-122.1 and 27-129, which relate to municipal courts; modifying residency requirement for certain municipal judges; modifying requirements for a municipal judge to impose certain fines; modifying verification of attendance requirement; increasing certain monetary amount for satisfaction of certain fines or costs; increasing certain administrative fee; deleting definition; increasing maximum amount for certain bonds; amending 47 O.S. 2001, Section 18-101, as amended by Section 7, Chapter 86, O.S.L. 2002 (47 O.S. Supp. 2003, Section 18-101), which relates to record of traffic cases; modifying continuing education requirements for judges; modifying verification of attendance requirement; and providing an effective date.

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

SECTION 1. AMENDATORY 11 O.S. 2001, Section 14-111, as amended by Section 5, Chapter 120, O.S.L. 2002 (11 O.S. Supp. 2003, Section 14-111), is amended to read as follows:

Section 14-111. A. The governing body of a municipality may provide for enforcement of its ordinances and establish fines, penalties, or imprisonment, as authorized by subsections B through D of this section, for any offense in violation of its ordinances, which shall be recoverable together with costs of suit. The governing body may provide that any person fined for violation of a municipal ordinance who is financially able but refuses or neglects to pay the fine or costs may be compelled to satisfy the amount owed by working on the streets, alleys, avenues, areas, and public

grounds of the municipality, subject to the direction of the street commissioner or other proper officer, at a rate per day as the governing body may prescribe by ordinance, but not less than ~~Five Dollars (\$5.00)~~ Twenty-five Dollars (\$25.00) per day for useful labor, until the fine or costs are satisfied.

B. 1. Except for municipal ordinances related to prostitution, cities having a municipal criminal court of record may enact ordinances prescribing maximum fines of One Thousand Two Hundred Dollars (\$1,200.00) and costs or imprisonment not exceeding six (6) months or both the fine and imprisonment, but shall not have authority to enact any ordinance making unlawful an act or omission declared by state statute to be punishable as a felony; provided, that cities having a municipal criminal court of record may enact ordinances prescribing maximum fines of One Thousand Dollars (\$1,000.00) and costs or imprisonment not exceeding six (6) months or both such fine and imprisonment for violations of municipal ordinances regulating the pretreatment of wastewater and regulating stormwater discharges.

2. For violations of municipal ordinances relating to prostitution, including but not limited to engaging in prostitution or soliciting or procuring prostitution, a municipal criminal court of record may enact ordinances prescribing an imprisonment not to exceed six (6) months, and fines as follows: a fine not to exceed Two Thousand Five Hundred Dollars (\$2,500.00) upon the first conviction for violation of any such ordinances, a fine of not more than Five Thousand Dollars (\$5,000.00) upon the second conviction for violation of any of such ordinances, and a fine of not more than Seven Thousand Five Hundred Dollars (\$7,500.00) upon the third or subsequent convictions for violation of any of such ordinances, or both such fine and imprisonment as well as a term of community service of not less than forty (40) nor more than eighty (80) hours.

C. Municipalities having a municipal court not of record may enact ordinances prescribing maximum fines pursuant to the provisions of this subsection. A municipal ordinance may not impose a penalty, including fine or deferral fee in lieu of a fine and costs, which is greater than that established by statute for the same offense. The maximum fine or deferral fee in lieu of a fine for traffic-related offenses relating to speeding or parking shall not exceed Two Hundred Dollars (\$200.00). For all other offenses, the maximum fine or deferral fee in lieu of a fine shall not exceed Five Hundred Dollars (\$500.00). The ordinances may prescribe costs pursuant to the provisions of Section 27-126 of this title or imprisonment not exceeding sixty (60) days or both the fine and imprisonment; provided, that municipalities having only a municipal court not of record shall not have authority to enact any ordinance making unlawful any act or omission declared by state statute to be punishable as a felony; provided further, that municipalities having a municipal court not of record may enact ordinances prescribing maximum fines of One Thousand Dollars (\$1,000.00) and costs or imprisonment not exceeding ninety (90) days or both such fine and imprisonment for violations of municipal ordinances regulating the pretreatment of wastewater and regulating stormwater discharges.

D. Municipalities having both municipal criminal courts of record and municipal courts not of record may enact ordinances, within the authority of this section, for each court.

E. No municipality may levy a fine or deferral fee in lieu of a fine of over Fifty Dollars (\$50.00) until it has compiled and published its penal ordinances as required in Sections 14-109 and 14-110 of this title.

F. No municipality may levy a fine of more than Ten Dollars (\$10.00) nor court costs of more than Fifteen Dollars (\$15.00) for exceeding the posted speed limit by no more than ten (10) miles per hour upon any portion of the National System of Interstate and

Defense Highways, federal-aid primary highways, and the state highway system which are located on the outskirts of any municipality as determined in Section 2-117 of Title 47 of the Oklahoma Statutes.

SECTION 2. AMENDATORY 11 O.S. 2001, 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. He shall serve for a term of two (2) years, said term expiring on a date fixed by ordinance, and until his 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 suitable person ~~residing~~ who resides in the county in which the municipality is located or ~~within twenty (20) miles of the boundaries of the municipality~~ in an adjacent county.

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~~ has not complied with the judicial education requirements pursuant to subsection F of this section and the judicial education requirements pursuant to Section 18-101 of Title 47 of the Oklahoma Statutes, 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 judicial education requirements of subsection F of this section and the judicial education requirements pursuant to Section 18-101 of Title 47 of the Oklahoma Statutes, the maximum fine that may be imposed shall be ~~One Hundred Dollars (\$100.00)~~ Five Hundred Dollars (\$500.00).

F. In order to impose the fine authorized by subsection E of this section, a nonlawyer 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 judicial 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~~ 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.~~

SECTION 3. AMENDATORY 11 O.S. 2001, 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~~ By imprisonment until the same shall be satisfied at the rate of ~~Five Dollars (\$5.00)~~ Twenty-five Dollars (\$25.00) per day; or

2. ~~in~~ 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~~ The same remedies shall be available for the enforcement of the judgment as are available to any other judgment creditor.

SECTION 4. AMENDATORY 11 O.S. 2001, 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 not to exceed ~~Two Hundred Dollars (\$200.00)~~ Five Hundred Dollars (\$500.00) may be imposed as costs in the case, in addition to any deferral fee otherwise authorized by law.

~~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.~~

SECTION 5. AMENDATORY 11 O.S. 2001, 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)~~ Five Hundred Dollars (\$500.00); except that, if the conviction involved other than a fine only, the amount of the bond ~~shall~~ may be ~~no greater than~~ twice the maximum 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 6. AMENDATORY 47 O.S. 2001, Section 18-101, as amended by Section 7, Chapter 86, O.S.L. 2002 (47 O.S. Supp. 2003, Section 18-101), is amended to read as follows:

Section 18-101. A. Every magistrate or judge of a court shall keep or cause to be kept a record of every traffic complaint, traffic citation, or other legal form of traffic charge deposited with or presented to the court or its traffic-violations bureau, and shall keep a record of every official action by the court or its traffic-violations bureau, including, but not limited to, a record of every conviction, forfeiture of bail, judgment of acquittal, and the amount of fine or forfeiture resulting from every traffic complaint, citation or other legal form of traffic charge deposited with or presented to the court or traffic-violations bureau.

B. Within ten (10) days after the conviction or forfeiture of bail of a person upon a charge of violating any law regulating the operation of vehicles on highways every magistrate of the court or clerk of the court of record, in which the conviction was had or bail was forfeited, shall prepare and immediately forward to the Department of Public Safety an abstract of the record covering the

case in which the person was convicted or forfeited bail, which shall be certified by the person required to prepare the abstract to be true and correct. A report shall not be made of any conviction:

1. Involving the illegal parking or standing of a vehicle;
2. Involving speeding if the speed limit is not exceeded by more than ten (10) miles per hour; or
3. Rendered by a nonlawyer judge, unless, within a period not to exceed the preceding reporting period for Mandatory Continuing Legal Education, the judge has completed 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~~ judicial education credit ~~or attendance of at least one (1) day of a state judicial conference,~~ and the Department of Public Safety receives verification of such attendance, from the judge. In the case of attendance of a continuing ~~legal~~ judicial 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.~~

C. The abstract shall be made upon a form furnished by the Department and shall include:

1. The name, address, sex, and date of birth of the person charged;
2. The traffic citation number;
3. The driver license number, if any, of the person charged, and the state or jurisdiction from which the license is issued;
4. The license plate number, make, and model of the vehicle involved;
5. The nature and date of the offense, the date of hearing, the plea, the judgment, or, if bail was forfeited, the amount of the fine or forfeiture; and

6. The name of the court and whether it is a municipal or district court.

D. Every court of record shall also forward a like report to the Department upon the conviction of any person of manslaughter or other felony in the commission of which a vehicle was used.

E. The failure, refusal or neglect of any judicial officer to comply with any of the requirements of this section shall constitute misconduct in office and shall be ground for removal.

SECTION 7. This act shall become effective November 1, 2004.

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