

JUSTICE COURT

CHAPTER 268

S. B. No. 275
(Wenstrom)

COUNTY JUSTICE AND COUNTY JUSTICE COURT

AN ACT

To abolish the office of justice of the peace and to confer the jurisdiction of such office elsewhere, and to amend and reenact sections 27-0820, 27-0702, 33-0108, 40-1801, 29-0114, 29-0706, 11-1002, 11-1006, 58-0502, 58-0507, 40-1501, 40-1401, 40-1803, 40-1807, 40-1808, 40-1810, 40-1811, 40-1813, 40-1814, 40-1816, 40-1817, 40-1818, 40-1819, 33-0312, 33-1212, 33-0123, 40-1806, and 40-1805 of the North Dakota Revised Code of 1943 and the 1957 Supplement thereto, relating to the jurisdiction and powers of police magistrate, county court, county court of increased jurisdiction, and creating a new chapter 27-18 of the North Dakota Revised Code of 1943, relating to the creation of the office of county justice and prescribing the compensation, jurisdiction and powers thereof, and providing for appeal, and amending and reenacting section 40-0708 of the North Dakota Revised Code of 1943 and the 1957 Supplement thereto, providing for the office of police magistrate in villages, and eliminating the office of justice of the peace conformable to section 1 of this Act, and repealing sections 40-1802 and 11-1003 of the North Dakota Revised Code of 1943, and providing for an effective date.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Office of Justice of the Peace Abolished.) The office of justice of the peace, as a separate office and as an office ex officio, is hereby abolished and the jurisdiction and powers thereof shall be conferred as provided in this Act, and wherever justices of the peace, or the justice court is referred to in the laws of this state, the same shall mean the county justice and the county justice court, as the case may be.

§ 2. Amendment.) Section 27-0820 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

27-0820. Jurisdiction of County Courts of Increased Jurisdiction.) A county court of any county of this state which, by an election, has been given increased jurisdiction, in addition to its prior jurisdiction, shall have concurrent jurisdiction with the district court in all civil actions where the amount in controversy does not exceed one thousand dollars and in all crim-

inal actions below the grade of felony. The jurisdiction and powers formerly vested in the justices of the peace are hereby conferred concurrently upon such county court.

§ 3. **Amendment.)** Section 27-0702 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

27-0702. Jurisdiction of County Courts.) The county court of each county shall have exclusive original jurisdiction in probate and testamentary matters, including the appointment of administrators, and guardians, the settlement of the accounts of executors, administrators, and guardians, and the sale of lands by executors, administrators, and guardians, and it shall have such other probate jurisdiction as may be conferred by law. In a county not having a county court of increased jurisdiction, the jurisdiction and powers formerly vested in the justices of the peace are hereby conferred concurrently upon the county court, unless and until a county justice is appointed.

§ 4. **Amendment.)** Section 40-1801 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

40-1801. Jurisdiction of Police Magistrate.) The police magistrate within a city or village shall have exclusive jurisdiction of, and shall hear, try, and determine, all offenses against the ordinances of the city or village, as the case may be. The criminal jurisdiction and related powers vested in the justices of the peace are hereby conferred concurrently upon the police magistrates of cities and villages.

§ 5. **New Chapter Created.)** There is hereby created a new chapter 27-18 of the North Dakota Revised Code of 1943 to read as follows:

CHAPTER 27-18

County Justice

Section

- 27-1801 Office of county justice; when created; how filled.
- 27-1802 Qualifications and tenure of county justice.
- 27-1803 Compensation of county justice; amount; payment.
- 27-1804 Jurisdiction of county justice.
- 27-1805 Appeal from county justice.

27-1801. Office of County Justice; When Created; How Filled.) The office of county justice may be created by resolution of the board of county commissioners in any county. The holder of such office shall be a qualified person and shall be elected by the electors of the county, or counties, for which he serves, in the same manner as other elective county offices.

In the event the office of county justice, when created, is not filled by election, the board of county commissioners shall have the power to appoint a qualified person to said office.

27-1802. Qualifications and Tenure of County Justice.) The county justice shall be licensed to practice law in this state but need not be an elector of the county for which he is elected or appointed, and shall hold office for a term of two years commencing at the same date as the term of the county judge. The county justice so elected or appointed may serve more than one county.

27-1803. Compensation of County Justice; Amount; Payment.) The county justice shall receive as full compensation for his services an annual salary not exceeding the sum of thirty-six hundred dollars, as may be determined from time to time by the board of county commissioners of the county for which he is elected or appointed. In addition thereto, the county justice shall be paid the reasonable travel expenses for mileage and subsistence necessarily incurred in the discharge of his official duties, in accordance with the amount allowed the district court reporter. The salary and travel expenses, as the case may be, shall be paid by the county for which he is elected or appointed or shall be equitably apportioned by the several boards of county commissioners among the several counties as are served by such county justice. Such compensation shall be paid monthly by the county treasurers of the respective counties upon properly verified claims as other claims against the county are allowed and paid.

27-1804. Jurisdiction of County Justice.) In addition to the jurisdiction and powers formerly vested in the justices of the peace and conferred upon the county justice, the county justice shall have jurisdiction to hear and determine all cases of misdemeanor arising from crimes committed in the county for which he is elected or appointed. The territorial jurisdiction of the county justice shall be coextensive with the county or counties for which he is elected or appointed.

27-1805. Appeal From County Justice.) The right of appeal from a county justice shall be preserved in the same manner and to the same extent as formerly authorized with respect to the justices of the peace.

§ 6. Amendment.) Section 29-0114 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

29-0114. Who Are Magistrates.) The following officers are magistrates:

1. The judges of the supreme court, with authority to act as such throughout the state;

2. The judges of the district courts, with authority to act as such throughout the judicial districts for which they respectively are elected; and
3. As limited by law directing the place of exercising their jurisdiction and authority, county justices, police magistrates and, when authorized by law, the judges of the county courts, including those with increased jurisdiction, with authority each to act as such throughout the county or the judicial subdivision in which the county, city, or municipality for which he is elected or appointed, is located.

§ 7. Amendment.) Section 29-0706 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

29-0706. Change of Place of Hearing; Procedure.) Whenever a person accused of a public offense is brought before a police magistrate for examination, and, at any time before such examination is commenced, he files with such police magistrate his affidavit stating that by reason of the bias or prejudice of said police magistrate he believes he cannot have a fair or impartial examination before him, such police magistrate must transfer said action, and all the papers therein, including a certified copy of his docket entries, to a county justice for the same county. The state's attorney, or his assistant, in the same manner and for the same reasons as the defendant, may obtain a transfer of such action from the police magistrate before whom the action was commenced, or from the county justice to whom it has been transferred on the application of the state, in which event it shall be transferred to the next nearest county justice. The place of examination cannot be changed more than once by each party under this section.

§ 8. Amendment.) Section 11-1002 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

11-1002. Number and Election of Officers.) Each organized county, unless it has adopted one of the optional forms of county government, provided by the Code, shall have the following officers:

1. One county auditor;
2. One register of deeds;
3. One clerk of the district court;
4. One state's attorney;
5. One sheriff;
6. One county judge;
7. One county treasurer;
8. One coroner;

9. One county superintendent of schools;
10. One county justice;
11. Four constables;
12. One public administrator; and
13. A board of county commissioners consisting of three or five members as provided in this title.

In counties having a population of more than six thousand and not more than fifteen thousand, the county judge shall be an ex officio clerk of the district court, and in counties having a population of six thousand or less, the register of deeds shall be ex officio clerk of the district court and county judge. The required officers shall be chosen by the qualified electors of the respective counties at the general election in each even numbered year, except the members of the board of county commissioners, who shall be chosen in the manner prescribed in section 11-1102, the public administrator, who shall be chosen in the manner prescribed in section 11-2101, the county justice, who shall be chosen in the manner prescribed in section 27-1801, the county coroner, who shall be chosen in the manner prescribed in section 11-19A03, and the constables, who shall be appointed by the board of county commissioners.

§ 9. Amendment.) Section 11-1006 of the 1957 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

11-1006. Bonds of County Officers.) Before entering upon the duties of their respective offices, the county officers herein named shall be bonded for the faithful discharge of their respective duties in the same manner as other civil officers are bonded and in the following amounts:

1. The county auditor, clerk of the district court, register of deeds, and sheriff, fifteen thousand dollars, except in counties having a population of less than ten thousand inhabitants, and in such counties, the amount shall be ten thousand dollars;
2. A county commissioner, two thousand dollars;
3. The county coroner, or a county constable, five hundred dollars;
4. The state's attorney, three thousand dollars;
5. The county surveyor, such amount, not to exceed two thousand dollars, as may be determined by the board of county commissioners;
6. The public administrator, not less than ten thousand dollars;
7. The county treasurer, an amount fixed by the board of county commissioners, which amount shall be not less than seventy-five thousand dollars, except in counties

having a population of less than ten thousand inhabitants, and in such counties, not less than forty thousand dollars. When the total amount of taxes to be collected by the county treasurer in any one year is less than the minimum amount of bond specified in this subsection, the bond shall be in a sum equal to the amount of taxes to be collected.

When the amount of any bond required under this section is dependent upon the population of a county, such population shall be determined as provided in section 11-1010.

§ 10. Amendment.) Section 58-0502 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

58-0502. Officers of a Township; Terms of Office.) The elected officers of a civil township shall be:

1. Three supervisors;
2. One township clerk;
3. One assessor;
4. One treasurer; and
5. Two constables.

One supervisor shall be elected at each annual township meeting and shall hold his office for a term of three years. The other elective officers shall be elected every two years and shall hold their respective offices for a term of two years. Each officer shall serve until his successor is elected and qualified.

§ 11. Amendment.) Section 58-0507 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

58-0507. Officers to Take Oath.) Each person elected or appointed to the office of supervisor, township clerk, assessor, treasurer, constable, or township overseer of highways, within ten days after he is notified of his election or appointment, shall take and subscribe the oath prescribed in section 211 of the North Dakota Constitution. If the oath shall be administered by the township clerk, no fee shall be charged therefor.

§ 12. Amendment.) Section 40-1501 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

40-1501. Officers To Be Elected in Commission Cities.) The following officers shall be elected in each city operating under the commission system of government:

1. A president of the board of city commissioners;
2. Four city commissioners; and
3. A police magistrate.

§ 13. Amendment.) Section 40-1401 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

40-1401. Officers To Be Elected in Council Cities.) The following officers shall be elected in each city operating under the council form of government:

1. A mayor;
2. The aldermen required under the provisions of section 40-0803 and 40-0804;
3. A city treasurer, but in cities having the city manager form of government the city treasurer shall be an appointive officer and the city manager shall have power to appoint the city treasurer and to remove such officer at will. The appointment and removal of the city treasurer, however, shall be confirmed by the city council. In any city which heretofore has adopted or which hereafter may adopt the provisions of chapter 44 of this title, the city treasurer shall be appointed as other full-time city employees and upon action of the city council may be included within and under the provisions of said civil service system; and
4. A police magistrate.

§ 14. Amendment.) Section 40-0708 of the 1957 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

40-0708. Officers of Village; When Elected; Combining Offices.) A village clerk, assessor, treasurer and police magistrate shall be elected at the first village election after incorporation and annually thereafter, and shall hold their respective offices until the third Tuesday in March following, or until their successors are elected and qualified. Any two or more of such offices may be held by one and the same person.

§ 15. Amendment.) Section 40-1803 of the 1957 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

40-1803. Vacancy in Office of Police Magistrate; Temporary Absence of Police Magistrate.) If a vacancy exists in the office of police magistrate by death, resignation, or otherwise, it shall be filled by appointment by the executive officer, subject to confirmation by the governing body of the city. An appointee shall qualify, and he shall hold office until the next city election, and until his successor is elected and qualified. During the temporary absence, interest, or disability of the police magistrate, any county justice designated by the executive

officer shall act as police magistrate until the police magistrate is available in the trial of causes triable before the police magistrate.

§ 16. **Amendment.)** Section 40-1805 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

40-1805. Police Magistrate Is Conservator of the Peace; Powers on Sunday Restricted.) The police magistrate within his city and within his village shall be a conservator of the peace, and he shall have power to bring persons before him forthwith for trial. His court shall be open every day except Sunday to hear and determine cases cognizable before him. He shall perform no official act on Sunday except that he may receive complaints, issue process, take bail, and receive verdicts.

§ 17. **Amendment.)** Section 40-1807 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

40-1807. Warrants of Arrest Issued by Magistrate; Service of Warrant.) Whenever any person competent to testify against the accused makes a complaint to a police magistrate upon oath or affirmation that an offense against a city ordinance or village ordinance or bylaw, as the case may be, has been committed, the magistrate shall issue a warrant for the arrest of the offender. The warrant shall be served by the chief of police, marshal, sheriff, any constable of the county, or by some person appointed specially by the magistrate for that purpose.

§ 18. **Amendment.)** Section 40-1808 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

40-1808. Warrants Issued by Magistrate to Run to Whom.) All warrants issued by a police magistrate for the violation of any general law of this state shall run to the sheriff, or any constable of the county or to the chief of police, marshal, or any policeman of the municipality.

§ 19. **Amendment.)** Section 40-1810 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

40-1810. Trials for Misdemeanors Before Police Magistrate Governed by Justice Court Procedure.) All trials before a police magistrate for misdemeanors arising under the laws of this state shall be governed by the criminal procedure applicable to justices' courts in like cases.

§ 20. **Amendment.**) Section 40-1811 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

40-1811. Proceedings in Criminal Cases Not Provided for in This Chapter To Be Governed How.) In all cases not specifically provided for in this chapter, the process and proceedings in the court of a police magistrate shall be governed by the provisions of the laws of this state regulating proceedings in justices' courts in criminal cases.

§ 21. **Amendment.**) Section 40-1813 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

40-1813. Suspension of Sentence.) A police magistrate may suspend any sentence imposed by him during the good behavior of the person so sentenced or for other reasonable cause.

§ 22. **Amendment.**) Section 40-1814 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

40-1814. Police Magistrate May Enforce Orders and Judgments.) A police magistrate shall have the power to enforce due obedience to his orders and judgments. He may fine or imprison for contempt offered to him while holding court, or to process issued, or orders made by him, in the same manner and to the same extent as is provided by the laws of this state in the case of a county justice.

***Note:** This bill as signed by the governor did not contain a section 23.

§ 24. **Amendment.**) Section 40-1816 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

40-1816. Procedure When Jury Demanded in Court of Police Magistrate.) When a jury has been demanded in accordance with the provisions of section 40-1815, the police magistrate shall prepare a list of the names of eighteen residents of the city or village having the qualifications of jurors in the district court. The defendant and the attorney for the city or the village, or the chief of police or the village marshal, if the city or village is not represented by an attorney, shall strike names from such list alternately until each has stricken three names therefrom. If the defendant shall refuse to strike names from such list, the police magistrate shall strike three names therefrom. The magistrate then shall issue his venire to the chief of police or to the village constable, as the case may be, commanding him to summon the twelve persons whose names remain upon the lists as jurors.

§ 25. **Amendment.**) Section 40-1817 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

40-1817. Challenges for Cause to Jurors in Court of Police Magistrate.) In all trials by the jury in a police magistrate's court, challenges shall be allowed in the same manner and for the same causes as in the district court in cases of misdemeanor, but no peremptory challenges shall be permitted. If either party objects to the competency of a juror, the question on the challenge shall be tried in a summary manner by the magistrate, who may examine the juror or other witnesses under oath. If the number of jurors is reduced below twelve by challenges for cause or because of the failure to appear of any juror named on the venire, the chief of police of the city or the village marshal shall summon a sufficient number of talesmen having the qualifications of jurors to complete the panel which, in all cases, shall consist of twelve jurors.

§ 26. Amendment.) Section 40-1818 of the 1957 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

40-1818. Fee of Juror in Court of Police Magistrate.) Each person summoned as a juror in any case in the court of a police magistrate shall be entitled to a fee of four dollars. If the defendant is convicted, the fees of all jurors shall be taxed against him as a part of the costs of the case.

§ 27. Amendment.) Section 40-1819 of the 1957 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

40-1819. Appeals From Determinations of Police Magistrate.) An appeal may be taken to the district court from any judgment in a police magistrate's court in the same form and manner as appeals are taken and perfected from a judgment of conviction of a defendant in justice court, and in accordance with sections 33-1234, 33-1235 and 33-1239, and shall be tried in the district court in accordance with sections 33-1240 and 33-1241, and bail shall be taken in accordance with sections 33-1236 and 33-1237, and witnesses may be placed under bond as provided for in section 33-1238, all sections of the North Dakota Revised Code of 1943, as amended. On all appeals from a determination in a police magistrate's court the district court shall take judicial notice of all of the ordinances of the city or of the village, as the case may be.

§ 28. Amendment.) Section 33-0108 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

33-0108. Criminal Jurisdiction of County Justice.) The jurisdiction and authority of justices of the peace to prevent the commission of public offenses, to institute searches and

seizures, to require the arrest and detention of persons charged with crime, to require and accept bail, and otherwise to act as magistrates in matters of crime, is prescribed by the title Judicial Procedure, Criminal. Each county justice has jurisdiction and authority coextensive with his county to hear, try, and determine every criminal action in which the offense charged is punishable by a fine of not more than five hundred dollars, or by imprisonment in the county jail for a period of not more than one year, or by both such fine and imprisonment, and every other criminal action in which jurisdiction is conferred specially by law.

§ 29. Amendment.) Section 33-0312 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

33-0312. Justice Court to Which Civil Action Transferable Upon Change of Venue; Number of Changes Allowable.) The place of trial of a civil action in a justice court may not be changed on motion of the same party more than once. When the court orders the place of trial to be changed, the action must be transferred for trial to a justice court the parties may agree upon, and if they do not so agree, then the next nearest county justice, the location of which has not been changed during the thirty days immediately preceding.

§ 30. Amendment.) Section 33-1212 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

33-1212. Change of Venue.) When the defendant in a criminal action in a justice court, or his attorney, or the state, by the state's attorney or any other attorney acting for the state, before the trial commences, files an affidavit in writing stating that he has reason to believe and does believe that a fair and impartial trial of the action cannot be had before the justice about to try the same, by reason of the bias or prejudice of such justice, the action must be transferred to a justice of the county agreed upon by or in behalf of the parties, or if there is no such agreement, to the next nearest county justice, and an order must be made transferring the same accordingly, but the place of trial cannot be changed more than once by each party under the provisions of this section.

§ 31. Amendment.) Section 33-0123 of the 1957 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

33-0123. Fees To Be Charged by Police Magistrate.) A police magistrate shall be entitled to charge and receive the following fees:

1. For issuing summons or warrant of arrest and all proceedings prior to trial, two dollars;
2. For entry of default judgment or sentence upon plea of guilty or order binding over on waiver, two dollars;
3. For trial of issue of fact or preliminary hearing, four dollars;
4. For issuing execution and all proceedings subsequent to entry of judgment, one dollar;
5. Performing marriage ceremony, three dollars; and
6. For taking affidavit or acknowledgment other than in pending proceedings, twenty-five cents.

§ 32. **Amendment.)** Section 40-1806 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

40-1806. Police Magistrate Who Is Paid Salary to Turn Fees Into City Treasury.) When the police magistrate is paid a salary by the city, he shall not receive fees of any kind or in any amount from the city. In all criminal actions and in all actions instituted under any ordinance of the city, however, he shall collect the same fees as are allowed by section 33-0123, and such fees shall be paid by him into the city treasury at the end of each month. At the end of each month, the magistrate shall make and file with the city auditor a written report under oath showing an account of all fees collected by him in such actions during the preceding month and showing the actions in which such fees were collected. His salary shall not be paid to him until he has complied with the provisions of this section.

§ 33. **Title Effective Date.)** This Act shall become effective July 1, 1961.

§ 34. **Repeal.)** Sections 40-1802 and 11-1003 of the North Dakota Revised Code of 1943 are hereby repealed.

Approved March 21, 1959.