

Washington Law Review

Volume 23

Issue 4 *Annual Meeting*

11-1-1948

Report of Legislative Subcommittee on Justice Court Procedure

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Recommended Citation

John H. Neergaard, State Bar Journal, *Report of Legislative Subcommittee on Justice Court Procedure*, 23 Wash. L. Rev. & St. B.J. 316 (1948).

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lawyer of the state should have some financial interest in the Committee so as to assure sufficient funds for its operation. The Bar Association itself, being a corporation of the state, has no right or power to use its funds for this purpose.

If any member of the bar has any suggestions to make, they should be forwarded to the Committee so that they may be discussed at our November meeting. But, at the same time, any member of the bar offering new laws or amendments should draft the same before asking the Legislative Committee's consideration, as we do not have sufficient funds to hire anyone to do our briefing or drafting of the bills. It would likewise be appreciated that when any member of the bar does offer a new bill, amendment, or suggestion that they set forth their argument and transmit any briefs that they think may be material in considering the subject.

It is the hope and wish of the Legislative Committee that more members of the bar take an active interest and volunteer their assistance and cooperation in our effort.

Report of Legislative Subcommittee on Justice Court
Procedure, by John H. Neergaard

Last year your Subcommittee on Practice and Procedure of Justices of the Peace and Inferior Courts, following the failure of the state Legislature to provide funds for a study, accepted the responsibility of making a report this year. Contact was immediately established with the local bar associations in the state and the prosecuting attorneys of the state. Most of the counties have from one to seven justices of the peace. Lincoln, Whitman, Okanogan, Lewis, Grant, Snohomish, and Yakima have eight to seventeen. Pierce County has twenty-one and King County fifty-three. Eighteen counties reported that there were no justices of the peace who are attorneys in their counties. The other counties reported from one to sixteen in their counties. Following this survey, reports and suggestions were requested from designated members of the bar in different parts of the state and reports were requested of the presidents of the bar associations in the states. From the reports received and the suggestions made, the following is being presented as a preliminary report and matters for legislative improvements now under discussion by your Committee. A complete report, with recommendations, will be made before the Legislature meets next January

The judicial power of the state of Washington is vested in the

Supreme Court, Superior Courts, justices of the peace, and such inferior courts as the Legislature may provide.

A magistrate is an officer having power to issue a warrant for the arrest of a person charged with the commission of a crime. The following persons are magistrates:

1. Justices of the Supreme Court
2. Superior judges and justices of the peace
3. All municipal officers authorized to exercise the powers and perform the duties of a justice of the peace

The justices of the peace in the state of Washington are established by the Constitution, one or more for each city, town, and precinct. Their powers, duties, and jurisdiction shall be prescribed by the Legislature.

The Legislature is empowered to provide that any of the courts of this state, excepting justices of the peace, may be courts of record.

The Legislature shall prescribe by law the jurisdiction and powers of any of the inferior courts which may be established in pursuance of the Constitution.

As provided in the Constitution, each town or city and each precinct in the state is entitled to at least one justice of the peace. In our survey of the United States no state, though attempts have been made as high as two or three times in some states, has the position of justice of the peace been abolished. The reason for this is historical. In England, in the early fourteenth century, there was created the position of Conservator of the Peace. Later, because of labor troubles following the Black Plague, the position of Justice of Labor was created. By statute, in the year 1360, these two positions were consolidated and the first justices of the peace came into existence. Since that time, down through Colonial days into our statehoods, there has remained, without exception in every state, original jurisdiction of the justices of the peace. This position is an established part of our judicial system and has been for hundreds of years by common law and our state constitutions. In 1889, when the Constitution of the state of Washington was adopted, the framers of that constitution knew that a need for additional courts would arise and provided legislative power to create other inferior courts without abolishing justices of the peace. In this state we now have definitely established four Judicial Courts, the Supreme Court, the Superior Courts, city courts, and justices of the peace. The Constitution establishes this system under the judiciary and provides for all

the necessary corrections in procedure by legislative enactment rather than changing the system itself.

Our survey indicates that there should be the right of any community (precinct) to choose a citizen thereof to act as a local judge of minor offenses and problems if they so desire. Their jurisdiction should, however, be limited to their own community. Most of the criticism of justices of the peace and their court procedure has arisen from two types of cases in the United States. One is the practice of a justice of the peace becoming a collection agent and using his position in forcing collections or filing a complaint if necessary. This state has no problem with this type of case for the reason that in 1888 our Legislature enacted a law that no justice of the peace should have jurisdiction of any action brought to enforce or collect any claim or demand which said justice had in any manner attempted to collect as agent or otherwise. The other main complaint has been the handling of traffic cases. Separate studies are constantly being made throughout the United States, in which our bar association here has participated, on the procedure in traffic courts and the handling of traffic matters. This survey does not attempt to cover that specific problem. The Legislature in 1941 enacted a law providing that cities of the first class could provide by ordinance for one additional municipal judge, appointed by the mayor, to enjoy the same powers and perform the duties of police judge to expedite the handling of traffic offenses, such additional judge to be primarily responsible for the handling of city traffic cases.

The original statute establishing the position of justice of the peace in this state was enacted in 1854 and provided for one or more in each precinct. The position of justice of the peace in incorporated cities was enacted in 1888, and in 1899 the law provided that justices of the peace in first-class cities be attorneys.

Under authority of the Constitution, the Legislature has established municipal or police courts in all four classes of town and cities. In cities of the first class (population 20,000 or more) the police judge is appointed by the mayor from among the elected justices of the peace. In cities of the second class (population 10,000 to 20,000) the police judge is elected at the general municipal election, is not necessarily a justice of the peace, and must be an attorney. In cities of the third class (population 1,500 to 10,000) the police judge is appointed by the mayor from the regularly elected justices of the peace. In cities of the fourth class (population 300 to 1,500) the police judge is appointed by the mayor from the justices of the peace, the appointment to be con-

firmed by the city council with the additional provision that he is "subject to removal by the town council at any time for cause deemed sufficient."

From the foregoing analysis, there is ample legislative authority to make the necessary changes for the improvement of inferior court procedure and jurisdiction. A revision of our present laws applying to inferior court procedure must be approached with the view of making the necessary changes over a period of time rather than an over-all bill attempting to modernize the entire structure.

With this in mind the following changes are now under consideration and recommendations will be made as to specific bills to be introduced at the next session of the Legislature:

1. That municipal courts in cities of the first and second class be made courts of record.

2. That all municipal judges and police judges should be elected for a designated term by the voters in the municipal election.

3. Justices of the peace should be paid a set salary and the fee system abolished.

4. Rural justices of the peace should be limited to their precinct.

5. Jurisdiction of rural justices of the peace should be limited to misdemeanors and in civil cases not to exceed \$100.00.

6. Municipal judges, police judges, and justices of the peace in cities of the first and second class should be attorneys.

7. Magistrates should include only justices of the Supreme Court, Superior judges, municipal judges, police judges, and justices of the peace in cities of the first and second class.

8. Civil jurisdiction of justices of the peace in first and second-class cities should be county-wide and should extend to any matters not to exceed \$500.

9. Justices of the peace in first and second-class cities should have jurisdiction in unlawful detainer cases involving rentals of not more than \$40 a month.

10. Rules of procedure should be adopted for all justices of the peace and city or town municipal or police judges. The rules should be made by the Superior Court judges or the Supreme Court.

11. All criminal cases filed before justices of the peace, municipal or police judges should carry the right of trial by jury

12. In all criminal cases where trial is had before a jury the penalty imposed should be fixed by the justice of the peace, municipal, or police judge.

13. In cases where a defendant pleads guilty before a justice of the peace or a municipal or police judge, sworn testimony, unless required by the court itself, should not be a prerequisite to passing sentence.

14. There should be established procedure whereby justices of the peace, municipal judges, and police judges would have available trained personnel to establish a probationary system whereby proper contact and follow ups could be had in suspended or deferred sentences.

15. Justices of the peace in cities over 5,000 population and municipal and police judges in cities of the first and second class should have jurisdiction to impose fines not to exceed \$500 and/or six months in jail in criminal cases.

There is attached a brief summary of reports from the questionnaire sent to the prosecuting attorney of each county in the state and a brief summary of reports to date from the bar associations of each state in the Union.

Report of Committee on Divorce Laws, by Roberta Kaiser

In accordance with the recommendations of the Committee on Divorce Law, as submitted to the 1947 State Bar Convention at Bellingham, work is now going forward on the drafting of specific statutory provisions making certain changes in the law. It is contemplated that a bill will be ready for the coming Legislature incorporating the changes recommended by the Committee. It is also possible that certain additional changes may be made after the Committee has had an opportunity to study and confer on the proposed Uniform Divorce Law approved by the American Bar Association Committee.

The correction of the numerous unfortunate and unnecessary legal difficulties arising by reason of our present system of interlocutory period plus final decree is one of the primary purposes of the proposed changes. Section 988 is to be amended to provide that after filing of a complaint no divorce case can be heard or final judgment entered until after the complaint shall have been on file ninety days. Section 988-1 is to be eliminated. This procedure abolishes the interlocutory order and allows for the entry of only one decree which is final except for the right to appeal. It is expected that this will do much to correct the anomalous situation now existing as to property rights during the interlocutory period and the unsatisfactory situation resulting in the illegitimacy of children born of marriages contracted by parties who have not yet received a final decree in a previous divorce.