

CHAPTER 1 – Courts of Limited Jurisdiction

I. Jurisdiction

The Montana Constitution grants justice courts jurisdiction over certain criminal actions. The statutes further define or limit the justice court's jurisdiction and set the jurisdiction of the municipal and city court.

Clients who appear in a court of limited jurisdiction are those charged with misdemeanors, traffic violations, and crimes not amounting to a felony. However, felony defendants may appear before a JP for the sole purpose of an initial appearance. Thereafter, that case is transferred to District Court.

District Courts are courts of general jurisdiction.

Jurisdiction over the subject matter. Municipal, city, and justice courts are courts of limited jurisdiction and therefore have only those powers specifically granted by the constitution or by statute.

- these powers cannot be enlarged by any agreement of the parties involved.
- lack of jurisdiction of a court cannot be waived.

Jurisdiction over the person. . Jurisdiction over a person can be acquired in any of the following ways:

1. By the defendant's arrest upon a warrant;
2. By summons served on the defendant; or
3. By the defendant voluntarily appearing in court and thereby consenting to the court taking jurisdiction.

If a defendant appears before the court to answer a charge, consent has been given and the court acquires jurisdiction. This is somewhat different from acquiring jurisdiction in a civil case.

II. What Kinds of Cases Will You See as an attorney practicing in a CLJ?

- 1) first and second PFMA
 - a. unless combined with more serious felony offense
- 2) DUI and associated driving offenses
- 3) Misdemeanors

- 4) Fish and game violations (except felony)
- 5) Misdemeanor sexual assault
- 6) Misdemeanor theft offenses
 - a. i.e. shoplifting

III. Local Rules, Statutes, and other relevant written CLJ authority

It is important for you to understand the courts within your particular jurisdiction.

MCA 45-1-201. Classification of offenses.

MCA 45-1-205. General time limitations.

MCA 45-1-206. Periods excluded from limitation.
Criminal Jurisdiction

MCA 46-2-202. Jurisdiction of justice's courts. The justice's courts have criminal jurisdiction as authorized by 3-10-303.

MCA 3-10-303. Criminal jurisdiction.

MCA 16-6-201. Jurisdiction of courts. As to misdemeanor actions, the district courts of this state shall have concurrent jurisdiction with justice of the peace courts in all prosecutions under this code.

MCA 46-2-102. Concurrent Jurisdiction. (1) The city court has concurrent jurisdiction with the justice's court of all misdemeanors and proceedings mentioned and provided for under chapter 10, part 3, of this title.

Exclusive jurisdiction. Except as provided in 3-11-104, the city court has exclusive jurisdiction over matters listed in MCA 3-11-103.

MCA 3-6-103. Jurisdiction (1) The municipal court has jurisdiction coordinate and coextensive with the justices' courts of the county where the city is located and has exclusive original jurisdiction of all civil and criminal actions and proceedings provided for in 3-11-103.

IV. Appearances and Initial Proceedings in CLJ

MCA 46-3-111. Place of trial. (1) The place of trial must be in the county where the charge is filed unless otherwise provided by law. (2) All objections that a charge is filed in the improper county are waived by a defendant unless made before the first witness is sworn at the time of trial. If an objection is made, a hearing must be held and the proper county in which to file the charge must be established before further proceedings may take place.

Art II, Sec. 20, Mont. Const. Initiation of proceedings:

- (1) Criminal offenses within the jurisdiction of any court inferior to the district court shall be prosecuted by complaint....

The face of each citation or complaint must contain a definite statement describing the offenses charged. Citing only the section number and the title of section is NOT sufficient

MCA 46-6-201. Issuance of arrest warrant upon complaint. If it appears from the contents of the complaint and the examination of the complainant and from the examination of other witnesses or affidavits, if any, that there is probably cause to believe that the person against whom the complaint was made has committed an offense, a warrant shall be issued by the court for the arrest of the person complained against. The court, in its discretion, may issue a summons instead of a warrant. More than one warrant or summons may issue on the same complaint.

The charge must be a plain, concise, and definite statement of the offense charged, including the name of the offense, whether the offense is a misdemeanor or felony, the name of the person charged, and the time and place of the offense as definitely as can be determined. . . .

- (2) If the charge is by information or indictment, it must include endorsed on the information or indictment the names of the witnesses for the prosecution if known.
- (3) If the charge is by complaint, it must be signed by a sworn peace officer, under oath by a person having knowledge of the facts, or by the prosecutor.
- (4) If the charge is by information, it must be signed by the prosecutor. IF the charge is by indictment, it must be signed by the foreman of the grand jury.

MCA-46-310. Notice to appear. (1) Whenever a peace officer is authorized to arrest a person without a warrant, the officer may instead issue the person a notice to appear.

(2) The notice must:

- (a) be in writing;
- (b) state the person's name and address, if known;
- (c) set forth the nature of the offense;
- (d) be signed by the issuing officer;
- (e) direct the person to appear before a court at a certain time and place; and
- (f) state that failure to appear may result in the suspension of the person's driver's license.

When an arrested person is brought into the court, the defendant must be informed of the crime or violation that is being charged. The judge will then conduct an initial appearance hearing.

MCA 46-7-101. Appearance of arrested person – use of two way electronic audio-video communication.

In larger jurisdictions your clients may likely wish to appear via video conferencing.

Initial Appearance.

MCA 46-7-102. Duty of court.

The mental condition of the defendant, the level of intoxication, or an inability to understand the English language are examples of problems that may be presented. Complete the initial appearance, if possible, and consider the defendant's incapacity as soon as possible. If the defendant speaks a different language or has a hearing impairment, translators are usually available, and should be used. It is imperative that the defendant understands the charge and all proceedings.

Right to Counsel.

46-8-101. Right to counsel. (1) During the initial appearance before the court every defendant must be informed of the right to have counsel and must be asked if the aid of counsel is desired.

If the defendant waives the right to an attorney, have the defendant sign a waiver form and file the waiver in the docket and case file.

MCA 46-8-102. Waiver of counsel. A defendant may waive the right to counsel when the court ascertains that the waiver is made knowingly, voluntarily, and intelligently.

A defendant is not entitled to counsel if the JP cannot impose jail time for the offense charged.