

## CHAPTER 356.

## PLACE OF TRIAL.

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**356.01 Place of trial.** (1) **GENERAL RULE.** Criminal actions shall be tried in the county where the crime was committed, except as otherwise provided in this section.

(2) **CRIME COMMITTED NEAR COUNTY LINE.** Crimes committed within 100 rods of the dividing line between counties may be prosecuted in either county, and the court of the county whose process is first served upon the defendant shall have priority of jurisdiction.

(3) **DEATH AND CAUSE OF DEATH IN DIFFERENT COUNTIES.** If a wound or other violence is inflicted or poison is administered in one county and causes death which ensues in another county, the crime may be prosecuted in either county.

(4) **DEATH RESULTING FROM CAUSE INFLECTED WITHOUT THE STATE.** If such wound or other violence is inflicted or poison is administered without this state and death ensues therefrom in this state, the crime may be prosecuted and sentence be imposed in the county where the death occurs.

(5) **STOLEN PROPERTY BROUGHT INTO THIS STATE BY THIEF.** If property is stolen outside of this state and brought into this state by the thief, he may be punished as though the theft had been committed in this state and the prosecution may be in any county in which he possessed the stolen property.

(6) **CRIMES ON BOUNDARY WATERS.** When a crime is committed on boundary waters at a place where 2 or more counties have common jurisdiction under sections 2.03 or 2.04 or under any other law, the prosecution may be in either county; the county whose process against the offender is first served shall be conclusively presumed to be the county in which the crime was committed.

(7) **PROPERTY STOLEN IN TRANSIT.** A person who steals or attempts to steal property which is in transit may be prosecuted in any county into or through which the property passed in transit.

(8) **EMBEZZLEMENT; LARCENY BY BAILEE.** Embezzlement and larceny by bailee may be prosecuted in any county where the person charged had possession of the property or thing alleged to have been embezzled or converted.

(9) **PRISON PRECINCTS.** The place of trial of crimes committed within the precincts of the state prison, the state reformatory or the home for women is governed by section 53.02.

(10) **CRIME COMMITTED PARTLY IN ONE COUNTY AND PARTLY IN ANOTHER COUNTY.** Where several acts are requisite to the commission of a crime, it may be prosecuted in any county in which any of such acts occurred.

**356.03 Change of venue or judge.** (1) **PREJUDICE OF JUDGE; ANOTHER JUDGE CALLED.** If the presiding judge has acted as attorney for the defendant or for the state in the pending action, or if the defendant moves within 20 days after his arraignment and before his case is called for trial and in the manner provided in civil actions, for a change of venue on account of the prejudice of the judge, another judge shall be called in the manner provided by law to try the action. The time of making such motion may be extended for cause but not more than 10 days. Only one such motion shall be allowed.

(2) **SECOND TRIAL.** If a jury fails to agree on a verdict or if a new trial is granted and if one defendant moves therefor within 20 days, a trial judge shall be called as provided in subsection (1).

(3) **COMMUNITY PREJUDICE.** If a defendant who is charged with a felony files his affidavit that an impartial trial cannot be had in the county, the court may change the venue of the action to an adjoining county. Only one change may be granted under this subsection.

A writ of mandamus issued by the supreme court directing a circuit judge to change the place of trial of the petitioner on a charge of murder to an adjoining circuit because of an affidavit of prejudice filed against such judge, where no other judge could hold court during the current or the next term of such court because of the refusal of such judge to assist other judges in other circuits, and no arrangement had been

made for a qualified judge to hear the matter at the next term, and where the court therefore lost jurisdiction of the matter on the expiration of the current term except for the purpose of transferring the place of trial to an adjoining circuit. Application of Alloway, 256 W 412, 41 NW (2d) 360.

Where the defendant in a criminal case filed an affidavit of prejudice against the judge of the circuit court, and such judge transferred the case to the county court before another judge, the defendant's remedy was exhausted and he was not entitled to another change of the place of trial on the

ground of prejudice of such other judge. When one has exhausted his right by filing the statutory affidavits of prejudice, he cannot thereafter interfere with the judicial process by continuing to file affidavits against succeeding judges who may be called in, but he should not be precluded where the same judge against whom a first affidavit of prejudice was filed has become the judge of the court to which the case was removed. (Heath v. Mathiew, 19 W \*114, overruled.) Mcverden v. State, 258 W 628, 46 NW (2d) 836.

**356.04 Trial and costs on change of venue.** When the place of trial is changed, the district attorney of the county of original venue shall prosecute. In other respects, the trial shall be conducted as if the crime had been committed in the trial county. The costs accruing upon a change of place of trial shall be paid by the county where the crime was committed.

**356.05 Bail and custody of defendant on change of venue.** If the venue is changed, the court shall require the defendant to give bail in such sum as the court or judge or justice directs conditioned for his appearance in the trial court. In default of bail, a warrant shall issue to the sheriff to convey the defendant to the jail of the county where he is to be tried in time for the trial, and there to be kept until discharged; but the judge of that court, in case no trial is had during the pending or next term of court after such change, may order the defendant kept in the jail of any county and may make necessary orders for the defendant's custody, bail and appearance for trial.

**356.06 Time of trial on change of venue.** On a change of venue either party may move for trial at the current term. If such motion is not made or is denied, the defendant shall appear for trial at the next term. If the jury for the term has been discharged, the court may order the jurors resummoned; and in case no jury has been summoned the court may summon the jurors of the previous term.

**356.09 Change of venue as to some defendants.** If the venue is changed as to some but not all of the defendants, the clerk shall transmit to the other court a certified transcript of the docket entries in the action and a certified copy of the indictment or information and such other papers as the court directs in lieu of the originals; and the other court shall proceed in the action the same as if the original indictment or information and papers had been transmitted.