

CHAPTER 356.

VENUE IN CRIMINAL CASES.

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356.01 Where cases tried. All criminal cases shall be tried in the county where the offense was committed, except where otherwise provided by law, unless it shall appear to the satisfaction of the court, by affidavit, that a fair and impartial trial cannot be had in such county; in which case the court before whom the cause is pending, if the offense charged in the indictment or information be punished by imprisonment in the state prison, may direct the person accused to be tried in some adjoining county where a fair and impartial trial can be had; but the party accused shall be entitled to a change of venue but once, and no more.

Cross Reference: Venue as to offenses committed near county boundaries. See 353.10.

Note: Under sec. 7, art. I, Const., and this section, the prosecution of the commissioner of banking for violation of statutory duty, as to closing of a bank, is triable in the county of the commissioner's office, notwithstanding the bank was located in a different county. State ex rel. Schwenker v. District Court of Milwaukee County, 206 W 600, 240 NW 406. See note to 343.17, citing 28 Atty. Gen. 426.

356.02 For stealing property in transit. Any person who shall break and enter with the intent to commit the crime of larceny or who shall commit the crime of larceny in any ship, steamboat, vessel, railroad car or stagecoach by stealing the property of another from said ship, steamboat, vessel, railroad car or stagecoach while said property is in transit or being conveyed in said ship, steamboat, vessel, railroad car or stagecoach may be tried for said offense in any county through which said ship, steamboat, vessel, railroad car or stagecoach from which said larceny was committed shall pass.

356.03 Change for prejudice of judge; calling other judge. (1) Any defendant in an indictment found or information filed in any county may apply for a change of venue on account of the prejudice of the judge of the court, where such indictment is found or information filed in the manner provided by law for a change of venue in civil actions; and it shall be the duty of the judge or court to whom such application is made to award such change, but not more than one change of venue shall be awarded in any cause, and such change shall not be awarded after the next term succeeding that at which the accused shall have been arraigned, unless his affidavit states facts showing the existence of prejudice on the part of the judge unknown to the defendant at any term of the court prior to the making and filing of such affidavit; and in all cases after a trial shall have been had without a verdict the accused shall be entitled to one change of venue, on the ground of the prejudice of the judge if he desire it and make application therefor at the term at which such trial was had; provided, that where the judgment against a defendant shall be reversed by the supreme court and the cause remanded for a new trial such defendant may apply for a change of venue on account of the prejudice of the judge in the manner provided by this section at the first term when the cause shall be called for trial after such reversal.

(2) In lieu of granting a change of venue the court may, in its discretion, retain jurisdiction of the action and provide for a trial thereof by a judge of some other circuit in the manner provided by subsections (1), (3) and (4) of section 261.03, which subsections shall apply to criminal actions.

Note: The granting of a motion for a change of venue based on prejudice in the community is discretionary, and a denial thereof affords no ground for reversal unless it clearly appears that there was an abuse of discretion. Schroeder v. State, 222 W 251, 267 NW 899.

356.04 Trial and costs. When the venue is changed to another county in a criminal case the district attorney of the county where the indictment was found or information filed shall prosecute the case for the state; the trial shall be conducted in other respects as if the indictment had been found or the information filed in the county to which the venue is changed, and the costs accruing from a change of venue shall be paid by the county where the offense was committed.

356.05 Recognizance and custody of accused on change of venue. When the court has ordered a change of venue it shall require the accused, if the offense be bailable, to enter into a recognizance, with good and sufficient sureties, to be approved by the court or judge, in such sum as the court or judge shall direct, conditioned for his appearance in the court to which the venue is changed either during the pending term or at the first day of the next term thereof and to abide the order of such court; and in default of such recognizance a warrant shall be issued, directed to the sheriff, commanding him to convey the prisoner to the jail of the county where he is to be tried either forthwith or by the first day of the next term of the circuit court to be holden in such county, there to be safely kept by the jailer thereof until discharged by due course of law. But the judge of the court, in case no final trial is had during the pending term or the term next after such change of venue, may order the prisoner to be kept in the common jail of any county where it may be most safe and convenient, and may make all necessary orders for the prisoner's safe custody, bail and appearance for trial.

356.06 Time of trial on change of venue. When any defendant, in an indictment found, or information filed shall appear for trial during the pending term of the court where trial of the said defendant is to be had or when any defendant in an indictment found or information filed obtains a change of venue to another court and is ordered to appear during the pending term of the court held in the county to which the change of venue has been ordered, the defendant or the state may move to place the action for trial upon the calendar of the pending term and the court may, in its discretion, grant or deny said motion or order the same upon its own motion. If said motion is not made or is denied the court may order the defendant to appear for trial at the next regular term of said court. In case the petit jury for such pending term has been discharged the court may order them ressumoned in such manner as the court shall direct; and, in case no petit jury has been summoned for the pending term, the court may ressumon in such manner as the court shall direct the petit jury of the previous term and shall proceed with the trial of the said action in the same manner and with the same powers as though said petit jury had been regularly summoned for said pending term.

356.07 Witnesses to recognize. When a change of venue is allowed the court shall recognize the witnesses on the part of the state to appear before the court in which the prisoner is to be tried.

356.08 Change when judge has been attorney. In case the judge of the circuit court shall have acted as attorney or counsel for the defendant in any criminal cause or causes pending in such court the said judge shall order a change of venue to an adjoining circuit, and the judge of such circuit shall hear and determine said cause or causes.

356.09 Trial on change as to part of defendants. Whenever the change of the place of trial shall be awarded on application of one or more, but not all, of several defendants in an indictment or information, upon which a separate trial may properly be had, it shall not be necessary to transmit the original indictment or information or other papers in the case to the court to which the venue shall be so changed, but the clerk shall transmit a certified transcript of the docket entries in the case and certified copies of the indictment or information and such other papers as the court shall direct in lieu of the originals; and the court to which the venue shall be changed shall proceed to hear, try and determine the case in the same manner and with the same effect as if the original indictment or information and papers had been transmitted.

356.10 Same. Such change of venue shall not affect the proceedings as to the defendants not joining in the application therefor, but the court shall proceed to the trial of such defendants upon the indictment or information in like manner as if no change of venue had been awarded to their codefendants.