

## CHAPTER 956.

## PLACE OF TRIAL.

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956.01 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 INFLICTED 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 s. 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) THEFT BY PERSON IN POSSESSION OF PROPERTY. Theft by a person in possession of the property may be prosecuted in any county where the person charged had possession of the property alleged to have been stolen.

(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 s. 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.

(11) CRIME COMMITTED ON TRAIN. When a crime is committed on a railroad train while in the course of its trip, the crime may be prosecuted in any county through which the train passed during the trip.

(12) TRANSFER OF ENCUMBERED PROPERTY. A person charged with a violation of s. 943.25 may be prosecuted either in the county where the lien is filed, the county from which the property was removed with intent to defraud, or the county in which the transfer took place.

(13) PLEA OF GUILTY TO OFFENSES COMMITTED IN SEVERAL COUNTIES. (a) *Application.* Any person who admits that he has committed felonies or violations of s. 943.24, or both, in the county in which he is in custody and also in another county in this state, may apply to the district attorney of the county in which he is in custody to be charged with those crimes so that he may plead guilty and be sentenced for them in the county of custody. The application shall contain a description of all admitted crimes and the name of the county in which each was committed.

(b) *Duty of district attorney.* Upon receipt of the application the district attorney shall prepare an information charging all the admitted crimes and naming in each county the county where each was committed. He shall send a copy of the information to the district attorney of each other county in which the defendant admits he committed crimes,

together with a statement that the defendant has applied to plead guilty in the county of custody. Upon receipt of the information and statement, the district attorney of the other county may execute a consent in writing allowing the defendant to enter a plea of guilty in the county of custody, to the crime charged in the information and committed in the other county, and send it to the district attorney who prepared the information.

(c) *Entering plea.* The district attorney shall file the information in any court of his county having jurisdiction to try or accept a plea of guilty to the most serious crime charged therein as to which, if alleged to have been committed in another county, the district attorney of that county has executed a consent as provided in par. (b). The defendant may then enter a plea of guilty to all offenses alleged to have been committed in the county where the court is located and to all offenses alleged to have been committed in other counties as to which the district attorney has executed a consent as provided in par. (b). Before entering his plea of guilty, the defendant shall waive in writing any right to be tried in the county where the crime was committed. The district attorney of the county where the crime was committed need not be present when the plea is made but his written consent shall be filed with the court.

(d) *Sentence.* The court shall thereupon enter such judgment as the law may provide in such cases, the same as though all the crimes charged were alleged to have been committed in the county where the court is located, whether or not the court has jurisdiction to try crimes of the grades of those to which the defendant has pleaded guilty under this subsection.

(e) *Costs; certificate of conviction.* The county where the plea is made shall pay the costs of prosecution if the defendant does not pay them, and is entitled to retain fees for receiving and paying to the state any fine which may be paid by the defendant. The clerk of court where the plea is made shall file a certificate of conviction substantially in the form prescribed in s. 959.03 with the clerk of circuit court in each county where a crime covered by the plea was committed. Upon the filing of this certificate the district attorney shall move to dismiss any charges covered by the plea of guilty, which are pending against the defendant in his county, and the same shall thereupon be dismissed.

**History:** 1955 c. 660; 1955 c. 696 s. 317, 318; 1957 c. 199.

In determining whether venue has been proved in a criminal case, the entire evidence, including that offered by the defendant, must be considered. Although direct proof of venue should be made, absence of it does not defeat conviction where inference of it may properly be drawn from circumstantial evidence. In a prosecution in

Kenosha county on charges of having received bribes in the city of Kenosha, the evidence, although not in the form of direct proof of venue, was sufficient to establish that both offenses of which the defendant was convicted were committed in the city of Kenosha and in Kenosha county. *State v. Coates*, 262 W 469, 55 NW (2d) 353.

**956.03 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 sub. (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.

**History:** 1955 c. 660.

A writ of mandamus is 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. Mathlew*, 19 W \*114, overruled.) *Meyerden v. State*, 253 W 628, 46 NW (2d) 836.

956.04 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.

**History:** 1955 c. 660.

956.05 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.

**History:** 1955 c. 660.

956.06 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.

**History:** 1955 c. 660.

956.09 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.

**History:** 1955 c. 660.