

such officer is hereby made conclusive evidence that such officer was duly qualified to make such certificate of acknowledgment.

8. Any instrument affecting real estate executed before ~~1960~~ 1970 by an attorney in fact for the grantor where a duly executed and sufficient power of attorney was on file in the county where the land was situated, although the instrument was executed and acknowledged in the form of "A, attorney in fact for B", instead of "B, by A, his attorney in fact"; or if such instrument is duly recorded and there is no record in the county where the land is situated of a power of attorney authorizing the attorney in fact to so act.

9. Any written instrument and the recording thereof, recorded prior to ~~1960~~ 1970 in the office of the recorder of the proper county, although there is attached to the instrument a defective certificate of acknowledgment.

Approved March 2, 1982

CHAPTER 1021
CRIMINAL PROCEDURE RULES AMENDED
S.F. 494

AN ACT relating to criminal procedure, by amending the rules of criminal procedure relating to change of judge, change of venue and place of trial.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Rule of criminal procedure 10, subsection 9, Code 1981, is amended by striking the subsection and inserting in lieu thereof the following:

9. MOTION FOR CHANGE OF JUDGE.

a. **FORM OF MOTION.** A motion for a change of judge shall be verified on information and belief by the movant.

b. **CHANGE OF JUDGE.** If the court is satisfied from a motion for a change of judge and the evidence introduced in support of the motion that prejudice exists on the part of the judge, the chief judge shall name a new presiding judge. The location of the trial need not be changed.

Sec. 2. Rule of criminal procedure 10, Code 1981, is amended by adding the following new subsection as subsection 10:

NEW SUBSECTION. 10. MOTION FOR CHANGE OF VENUE.

a. **FORM OF MOTION.** A motion for a change of venue shall be verified on information and belief by the movant.

b. **CHANGE OF VENUE ORDERED.** If the court is satisfied from a motion for a change of venue and the evidence introduced in support of the motion that such degree of prejudice exists in the county in which the trial is to be had that there is a substantial likelihood a fair and impartial trial cannot be preserved with a jury selected from that county, the court either shall order that the action be transferred to another county in which the offensive condition does not exist, as provided in paragraph c, or shall order that the trial jury be impaneled in and

transferred from a county in which the offensive condition does not exist, as provided in paragraph d.

c. **TRANSFER OF ACTION.** When a transfer of the action to another county is ordered under paragraph b the clerk shall transmit to the clerk of the court of the county to which the proceeding is transferred all papers in the proceeding or duplicates of them and any bail taken, and the prosecution shall continue in that county. If the defendant is in custody, the court may order the defendant to be delivered to the sheriff of the receiving county, and upon receipt of a certified copy of the order, the sheriff shall receive and detain the defendant. All expenses attendant upon the change of venue and trial, including the costs of keeping the defendant, which shall be allowed by the court trying the case, may be recovered by the receiving county from the transferring county. The prosecuting attorney in the transferring county is responsible for prosecution in the receiving county.

d. **TRANSFER OF JURY.**

(1) This paragraph applies if the court orders under paragraph b that a jury be transferred from another county.

(2) Upon issuance of the order under paragraph b, the clerk of court shall immediately notify the chief judge of the judicial district that includes the county from which the trial jury is to be obtained. The chief judge shall schedule a day for the commencement of proceedings under subparagraph (5) and shall cause notice of the proceedings to be delivered to the trial judge, to the attorneys for the prosecution and the defense, and to the clerks of court of the two counties that are affected by the proceedings. The clerk of the trial court shall deliver to the trial judge all documents that must be present in court at the time trial is commenced under subparagraph (5).

(3) The trial judge shall issue orders as necessary to assure the presence of the defendant during proceedings under subparagraph (5). If the defendant is in custody, the sheriff of the trial county is responsible for transporting the defendant to and from the place of jury selection. The sheriff of the county from which the jury is to be obtained shall receive and maintain temporary custody of the defendant as ordered by the trial court.

(4) The trial court shall retain jurisdiction of the action, and all proceedings and records shall be maintained in the ordinary manner, except that the trial record shall contain pertinent information respecting the change of location for the proceedings under subparagraph (5) and the reason for the change.

(5) The commencement of the trial and the jury selection process shall take place in the county in which the jury is to be impaneled. The clerk of court of that county shall perform all of the trial duties of the clerk of court during proceedings that take place in that county. Once the jury has been sworn, the court shall adjourn for the period of time necessary to permit the transportation of the jury to the trial county. Upon reconvening, the trial shall continue in the usual manner.

(6) The jurors shall be kept together and in the custody of the proper officers while traveling to the place of trial and during the trial. The court may issue orders respecting segregation of the jury while traveling and during the trial as necessary to preserve the integrity of the trial.

(7) The trial county shall provide transportation for the jurors to and from the place of trial, and shall provide the proper officers to take custody of the jurors after they are sworn and until they are discharged, as ordered by the trial court.

(8) The trial county shall pay all expenses incurred in connection with the jury, including but not necessarily limited to juror fees, the costs of transporting, housing, and feeding the jury, and the costs and expenses of officers assigned to take custody of the jury. The trial county shall pay the costs of transporting the defendant to and from the place of jury selection, if any. The county from which the jury is obtained may recover from the trial county any costs allowed by the trial court for maintaining custody of the defendant at the time of trial commencement and jury selection.

(9) Members of the trial jury and alternates shall each be paid the usual juror fee for service under this paragraph, but the fee shall be due for each calendar day they are under the direction of the court or its officers, commencing with the day they are sworn and ending with the day they are returned to the county of their residence after being discharged.

Sec. 3. Rule of criminal procedure 10, subsection 10, Code 1981, is amended by renumbering that subsection as subsection 11.

Sec. 4. Rule of criminal procedure 17, subsection 17, Code 1981, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. If a jury is being selected for trial of an action outside of the county pursuant to rule 10, subsection 10, paragraph d, the court shall impanel two alternate jurors, who shall be sworn with the regular jury to try the case, and who shall sit at the trial. These alternates shall be used or discharged as provided in unnumbered paragraph 1. The court may require the paneling of more than two alternates.

Sec. 5. Rule of criminal procedure 27, Code 1981, is amended by adding the following new subsections:

NEW SUBSECTION. JURY IMPANELED OUTSIDE OF COUNTY. For purposes of this section, when a jury is to be impaneled from outside the county under rule 10, subsection 10, paragraph d, a defendant is deemed to have been brought to trial as of the day when the trial commences in the county in which jury selection takes place.

NEW SUBSECTION. CHANGE OF VENUE AFTER JURY SELECTION COMMENCED. Whenever a change of venue is granted pursuant to section 803.2, the defendant may be brought to trial within thirty days of the grant of the change of venue, notwithstanding subsection 2, paragraph b, of this rule.

Sec. 6. Rule of criminal procedure 46, Code 1981, is amended to read as follows:

Rule 46. **CHANGE OF VENUE.** A change of place of trial venue may be applied for and accomplished in the manner either of the manners prescribed in R.Cr.P. 10, and the papers transmitted in similar manner as described therein to the judicial officer or clerk of the court to which change is allowed.

Sec. 7. Section 803.2, Code 1981, is amended to read as follows:

803.2 **PLACE OF TRIAL—GENERAL.**

1. ~~Criminal actions~~ A criminal action shall be tried in the county in which the crime is committed, except as otherwise provided by law.

2. The court, may on its own motion or on the motion of any of the parties to the proceeding reconsider and grant a pretrial motion for change of venue whenever it appears during jury selection that sufficient grounds would exist for granting the motion under the provisions of R.Cr.P. 10.

3. All objections to place of trial venue are waived by a defendant unless the defendant objects thereto prior to trial and secures a ruling by the trial court on a pretrial motion for change of venue. However, if venue is changed pursuant to subsection 2, all objections to venue in the county to which the action is transferred are waived by a defendant unless the defendant objects by a motion for change of venue filed within five days after entry of the order transferring the action and secures a ruling by the trial court on the motion before a jury has been impaneled and sworn.

Sec. 8. Section 814.5, subsection 2, paragraph c, Code 1981, is amended to read as follows:

c. An order granting or denying a motion for a change of venue.

Sec. 9. Section 814.6, subsection 2, paragraph b, Code 1981, is amended to read as follows:

b. An order granting or denying a motion for a change of venue.

Sec. 10. Section 331.756, subsection 2, Code 1981 Supplement, is amended to read as follows:

2. Appear for the state and the county in all cases and proceedings in the courts of the county to which the state or the county is a party, except cases brought on actions or proceedings resulting from a change of venue from another county, and appear in the appellate courts in all cases in which the county is a party, and appear in all cases actions or proceedings which are transferred on a change of venue to another county or which require the impaneling of a jury from another county and in which the county or the state is a party.

Sec. 11. Except as additionally provided in section 7, subsection 2 of this Act, the purpose of this Act is to create an alternative to the transfer of criminal trials in those cases where a change of venue is found to be necessary, by providing a mechanism for securing a jury from outside of the trial county. This Act is not intended to limit in any manner the right of a defendant to a fair trial. It is intended that the courts shall exercise their rule-making powers to assure that fair trials are preserved under the procedures contained in this Act.

Sec. 12.

1. This Act takes effect July 1, 1983.

2. The supreme court may, prior to the effective date of this Act as specified in subsection 1, submit additional amendments to any of the rules of criminal procedure amended by this Act. Proposals shall be submitted in the manner prescribed in section 684.19 for the amendment of rules of civil procedure. Any amendments that are proposed by the supreme court during the 1983 legislative session and adopted in the manner prescribed in section 684.19 take effect on July 1, 1983, and supersede conflicting amendments contained in this Act.

3. Except as stated in subsection 4, the procedures established by this Act, as modified by any superseding amendments adopted under subsection 2, apply to the following:

a. Any action that is commenced on or after the effective date of this Act as specified in subsection 1.

b. Any retrial of an action that begins on or after the effective date of this Act as specified in subsection 1, irrespective of either the date or the nature of the judicial decision that led to the new trial.

4. Section 7, subsection 2 of this Act contains a restatement of existing law as interpreted by the Iowa supreme court in *State v. Allen*, and to that extent shall be deemed a continuation of prior law.

Approved March 2, 1982

CHAPTER 1022
REMITTING STATE TAXES
S.F. 2080

AN ACT relating to the time for the depositing or remitting of, or filing a return on state income tax withheld, sales and services tax collected, or use tax collected or owed, providing penalties, and making certain provisions effective April 1, 1982 after publication and other provisions effective January 1, 1983.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 422.16, subsection 2, Code 1981, is amended by striking the subsection and inserting in lieu thereof the following:

2. A withholding agent required to deduct and withhold tax under subsections 1 and 12, except those required to deposit on a semi-monthly basis, shall deposit for each calendar quarterly period, on or before the last day of the month following the close of the quarterly period, on a quarterly deposit form as prescribed by the director and shall pay to the department, in the form of remittances made payable to "Treasurer, State of Iowa", the tax required to be withheld, or the tax actually withheld, whichever is greater, under subsections 1 and 12. However, a withholding agent who withholds more than fifty dollars in any one month, except those required to deposit on a semi-monthly basis, shall deposit with the department the amount withheld, with a monthly deposit form as prescribed by the director. The monthly deposit form is due on or before the fifteenth day of the month following the month of withholding, except that a deposit is not required for the amount withheld in the third month of the quarter but the total amount of withholding for the quarter shall be computed and the amount by which the deposits for that quarter fail to equal the total quarterly liability is due with the filing of the quarterly deposit form. The quarterly deposit form is due within the month following the end of the quarter. A withholding agent who withholds more than eight thousand dollars in a semi-monthly period shall deposit with the department the amount withheld, with a semi-monthly deposit form as prescribed by the director. The first semi-