

Judiciary and Law Enforcement: Trucano, Chair; Rapp and Welsh.

amended per 5000-8 80 5022 11/7/82 3-1011

FILED MAR 20 1981

SENATE FILE

494

BY COMMITTEE ON JUDICIARY

(FORMERLY SSB 320)

Approved 3/26/81 (p. 990)

Passed Senate, Date 4-9-81 (p. 1186) Passed House, Date 2-5-82 (p. 262)

Vote: Ayes 43 Nays 0 Vote: Ayes 91 Nays 0

Approved March 2, 1982

Repassed Senate for House amendments 3-5077

3-10-82 (p. 355)
48-1

A BILL FOR

1 An Act relating to objections to the place of trial in a
2 criminal action.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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5005
Amended bill

1 Section 1. Section 803.2, Code 1981, is amended to read
2 as follows:

3 803.2 PLACE OF TRIAL--GENERAL. ~~Criminal-actions~~ A criminal
4 action shall be tried in the county in which the crime is
5 committed, except as otherwise provided by law. All objections
6 to place of trial are waived by a defendant unless the
7 defendant objects thereto ~~prior-to-trial~~ by pretrial motion
8 for change of venue.

9 EXPLANATION

10 This bill clarifies the Code as to the proper procedure
11 in a criminal action to change the place of trial.

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H-5005

1 Amend Senate File 494 as passed by the Senate by
2 striking everything after the enacting clause and
3 inserting in lieu thereof the following:

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

7 9. MOTION FOR CHANGE OF JUDGE.

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

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

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

20 NEW SUBSECTION. 10. MOTION FOR CHANGE OF VENUE.

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

24 b. CHANGE OF VENUE ORDERED. If the court is
25 satisfied from a motion for a change of venue and
26 the evidence introduced in support of the motion that
27 such degree of prejudice exists in the county in which
28 the trial is to be had that there is a substantial
29 likelihood a fair and impartial trial cannot be
30 preserved with a jury selected from that county, the
31 court either shall order that the action be transferred
32 to another county in which the offensive condition
33 does not exist, as provided in paragraph c, or shall
34 order that the trial jury be impaneled in and
35 transferred from a county in which the offensive
36 condition does not exist, as provided in paragraph
37 d.

38 c. TRANSFER OF ACTION. When a transfer of the
39 action to another county is ordered under paragraph
40 b the clerk shall transmit to the clerk of the court
41 of the county to which the proceeding is transferred
42 all papers in the proceeding or duplicates of them
43 and any bail taken, and the prosecution shall continue
44 in that county. If the defendant is in custody, the
45 court may order the defendant to be delivered to the
46 sheriff of the receiving county, and upon receipt
47 of a certified copy of the order, the sheriff shall
48 receive and detain the defendant. All expenses atten-
49 dant upon the change of venue and trial, including
50 the costs of keeping the defendant, which shall be

1 allowed by the court trying the case, may be recovered
2 by the receiving county from the transferring county.
3 The prosecuting attorney in the transferring county
4 is responsible for prosecution in the receiving county.

5 d. TRANSFER OF JURY.

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

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

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

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

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

48 (6) The jurors shall be kept together and in the
49 custody of the proper officers while traveling to
50 the place of trial and during the trial. The court

1 may issue orders respecting segregation of the jury
2 while traveling and during the trial as necessary
3 to preserve the integrity of the trial.

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

9 (8) The trial county shall pay all expenses
10 incurred in connection with the jury, including but
11 not necessarily limited to juror fees, the costs of
12 transporting, housing, and feeding the jury, and the
13 costs and expenses of officers assigned to take custody
14 of the jury. The trial county shall pay the costs
15 of transporting the defendant to and from the place
16 of jury selection, if any. The county from which
17 the jury is obtained may recover from the trial county
18 any costs allowed by the trial court for maintaining
19 custody of the defendant at the time of trial commence-
20 ment and jury selection.

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

28 Sec. 3. Rule of criminal procedure 10, subsection
29 10, Code 1981, is amended by renumbering that
30 subsection as subsection 11.

31 Sec. 4. Rule of criminal procedure 17, subsection
32 17, Code 1981, is amended by adding the following
33 new unnumbered paragraph:

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

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

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

1 takes place.

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

4 Rule 46. CHANGE OF VENUE. A change of place of
5 ~~trial venue~~ may be applied for and accomplished in
6 ~~the manner~~ either of the manners prescribed in R.Cr.P.
7 ~~10, and the papers transmitted in similar manner as~~
8 ~~described therein to the judicial officer or clerk~~
9 ~~of the court to which change is allowed.~~

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

12 803.2 PLACE OF TRIAL--GENERAL.

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

16 2. All objections to place of trial venue are
17 waived by a defendant unless the defendant objects
18 thereto ~~prior to trial~~ and secures a ruling by the
19 trial court on a pretrial motion for change of venue.

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

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

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

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

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

30 2. Appear for the state and the county in all
31 cases and proceedings in the courts of the county
32 to which the state or the county is a party, except
33 eases brought on actions or proceedings resulting
34 from a change of venue from another county, and appear
35 in the appellate courts in all cases in which the
36 county is a party, and appear in all cases actions
37 or proceedings which are transferred on a change of
38 venue to another county or which require the impaneling
39 of a jury from another county and in which the county
40 or the state is a party.

41 Sec. 11. Except as additionally provided in section
42 7, subsection 2 of this Act, the purpose of this Act
43 is to create an alternative to the transfer of criminal
44 trials in those cases where a change of venue is found
45 to be necessary, by providing a mechanism for securing
46 a jury from outside of the trial county. This Act
47 is not intended to limit in any manner the right of
48 a defendant to a fair trial. It is intended that
49 the courts shall exercise their rulemaking powers
50 to assure that fair trials are preserved under the

1 procedures contained in this Act.

2 Sec. 12.

3 1. This Act takes effect July 1, 1983.

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

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

19 a. Any action that is commenced on or after the
20 effective date of this Act as specified in subsection
21 1.

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

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

H-5005 FILED JANUARY 19, 1982

*Adopted as amended by 5068
2/5 (of 267)*

BY COMMITTEE ON JUDICIARY & LAW ENFOR
Conlon, Chairperson

SENATE FILE 494

5068

1 Amend amendment H-5005 to Senate File 494 as
2 passed by the Senate, as follows:

3 1. Page 3, line 44, by striking the word
4 "subsection" and inserting in lieu thereof the
5 word "subsections".

6 2. Page 4, by inserting after line 1 the
7 following:

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

14 3. Page 4, by inserting after line 15 the
15 following:

16 "2. The court, may on its own motion or on the
17 motion of any of the parties to the proceeding
18 reconsider and grant a pre-trial motion for change
19 of venue whenever it appears during jury
20 selection that sufficient grounds would exist for
21 granting the motion under the provisions of
22 R.Cr.P. 10."

23 4. Page 4, line 19, by inserting after the
24 period the words "However, if venue is changed
25 pursuant to subsection 2, all objections to
26 venue in the county to which the action is
27 transferred are waived by a defendant unless the
28 defendant objects by a motion for change of venue
29 filed within five days after entry of the order
30 transferring the action and secures a ruling by
31 the trial court on the motion before a jury has
32 been impaneled and sworn."

H-5068 FILED
FEBRUARY 5, 1982
Adopted 2/5 (p. 267)

BY RAPP of Black Hawk
CONLON of Muscatine
TRUCANO of Polk

SENATE FILE 494

H-5069

1 Amend Senate File 494, as follows:

2 1. Title page, by striking lines 1 and 2, and
3 inserting in lieu thereof the following:

4 "An Act relating to criminal procedure, by
5 amending the rules of criminal procedure relating
6 to change of judge, change of venue and place of
7 trial.

H-5069 FILED FEBRUARY 4, 1982 BY TRUCANO of Polk
ADOPTED BY UNANIMOUS CONSENT *(p. 267)*

HOUSE AMENDMENT TO SENATE FILE 494

S-5077

Amend Senate File 494 as passed by the Senate as follows:

3 By striking everything after the enacting clause
4 and inserting in lieu thereof the following:

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

8 9. MOTION FOR CHANGE OF JUDGE.

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

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

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

21 NEW SUBSECTION. 10. MOTION FOR CHANGE OF VENUE.

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

25 b. CHANGE OF VENUE ORDERED. If the court is
26 satisfied from a motion for a change of venue and
27 the evidence introduced in support of the motion that
28 such degree of prejudice exists in the county in which
29 the trial is to be had that there is a substantial
30 likelihood a fair and impartial trial cannot be
31 preserved with a jury selected from that county, the
32 court either shall order that the action be transferred
33 to another county in which the offensive condition
34 does not exist, as provided in paragraph c, or shall
35 order that the trial jury be impaneled in and
36 transferred from a county in which the offensive
37 condition does not exist, as provided in paragraph
38 d.

39 c. TRANSFER OF ACTION. When a transfer of the
40 action to another county is ordered under paragraph
41 b the clerk shall transmit to the clerk of the court
42 of the county to which the proceeding is transferred
43 all papers in the proceeding or duplicates of them
44 and any bail taken, and the prosecution shall continue
45 in that county. If the defendant is in custody, the
46 court may order the defendant to be delivered to the
47 sheriff of the receiving county, and upon receipt
48 of a certified copy of the order, the sheriff shall
49 receive and detain the defendant. All expenses atten-
dant upon the change of venue and trial, including

1 the costs of keeping the defendant, which shall be
2 allowed by the court trying the case, may be recovered
3 by the receiving county from the transferring county.
4 The prosecuting attorney in the transferring county
5 is responsible for prosecution in the receiving county.

6 d. TRANSFER OF JURY.

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

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

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

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

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

49 (6) The jurors shall be kept together and in the
50 custody of the proper officers while traveling to

1 the place of trial and during the trial. The court
2 may issue orders respecting segregation of the jury
3 while traveling and during the trial as necessary
4 to preserve the integrity of the trial.

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

10 (8) The trial county shall pay all expenses
11 incurred in connection with the jury, including but
12 not necessarily limited to juror fees, the costs of
13 transporting, housing, and feeding the jury, and the
14 costs and expenses of officers assigned to take custody
15 of the jury. The trial county shall pay the costs
16 of transporting the defendant to and from the place
17 of jury selection, if any. The county from which
18 the jury is obtained may recover from the trial county
19 any costs allowed by the trial court for maintaining
20 custody of the defendant at the time of trial commence-
21 ment and jury selection.

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

29 Sec. 3. Rule of criminal procedure 10, subsection
30 10, Code 1981, is amended by renumbering that
31 subsection as subsection 11.

32 Sec. 4. Rule of criminal procedure 17, subsection
33 17, Code 1981, is amended by adding the following
34 new unnumbered paragraph:

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

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

46 NEW SUBSECTION. JURY IMPANELED OUTSIDE OF COUNTY.
47 For purposes of this section, when a jury is to be
48 impaneled from outside the county under rule 10,
49 subsection 10, paragraph d, a defendant is deemed
50 to have been brought to trial as of the day when the

1 trial commences in the county in which jury selection
2 takes place.

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

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

11 Rule 46. CHANGE OF VENUE. A change of place-of
12 trial venue may be applied for and accomplished in
13 the-manner either of the manners prescribed in R.Cr.P.
14 10, and the papers transmitted in similar manner as
15 described therein to the judicial officer or clerk
16 of the court to which change is allowed.

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

19 803.2 PLACE OF TRIAL--GENERAL.

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

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

29 3. All objections to place-of-trial venue are
30 waived by a defendant unless the defendant objects
31 thereto prior to trial and secures a ruling by the
32 trial court on a pretrial motion for change of venue.
33 However, if venue is changed pursuant to subsection
34 2, all objections to venue in the county to which
35 the action is transferred are waived by a defendant
36 unless the defendant objects by a motion for change
37 of venue filed within five days after entry of the
38 order transferring the action and secures a ruling
39 by the trial court on the motion before a jury has
40 been impaneled and sworn.

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

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

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

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

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

1 2. Appear for the state and the county in all
2 cases and proceedings in the courts of the county
3 to which the state or the county is a party, except
4 ~~eases-brought-on~~ actions or proceedings resulting
5 from a change of venue from another county, and appear
6 in the appellate courts in all cases in which the
7 county is a party, and appear in all ~~eases~~ actions
8 or proceedings which are transferred on a change of
9 venue to another county or which require the impaneling
10 of a jury from another county and in which the county
11 or the state is a party.

12 Sec. 11. Except as additionally provided in section
13 7, subsection 2 of this Act, the purpose of this Act
14 is to create an alternative to the transfer of criminal
15 trials in those cases where a change of venue is found
16 to be necessary, by providing a mechanism for securing
17 a jury from outside of the trial county. This Act
18 is not intended to limit in any manner the right of
19 a defendant to a fair trial. It is intended that
20 the courts shall exercise their rulemaking powers
21 to assure that fair trials are preserved under the
22 procedures contained in this Act.

23 Sec. 12.

24 1. This Act takes effect July 1, 1983.

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

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

40 a. Any action that is commenced on or after the
41 effective date of this Act as specified in subsection
42 1.

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

48 4. Section 7, subsection 2 of this Act contains
49 a restatement of existing law as interpreted by the
50 Iowa supreme court in State v. Allen, and to that

SENATE 17

FEBRUARY 10, 1982

S-5077

Page 6

1 extent shall be deemed a continuation of prior law."

2 2. Title page, by striking lines 1 and 2, and

3 inserting in lieu thereof the following:

4 "An Act relating to criminal procedure, by amending

5 the rules of criminal procedure relating to change

6 of judge, change of venue and place of trial."

S-5077 FILED
FEBRUARY 9, 1982

RECEIVED FROM THE HOUSE

Senate concurred 2/10 (p. 355)

SENATE FILE 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 receiving 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 impaneling 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. 107-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.

TERRY E. BRANSTAD
President of the Senate

DELWYN STROMER
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 494, Sixty-ninth General Assembly.

K. MARIE THAYER
Secretary of the Senate

Approved March 2, 1982

ROBERT D. RAY
Governor