

TITLE 19
CRIMINAL PROCEDURE

CHAPTER 18
REMOVAL OF ACTION BEFORE TRIAL

19-1801. GROUND FOR REMOVAL. A criminal action, prosecuted by indictment, may be removed from the court in which it is pending, on the application of the defendant, on the ground that a fair and impartial trial cannot be had in the county where the indictment is pending.

[(19-1801) Cr. Prac. 1864, sec. 305, p. 249; R.S., R.C., & C.L., sec. 7768; C.S., sec. 8888; I.C.A., sec. 19-1701.]

19-1802. FORM OF APPLICATION -- HEARING IN ABSENCE OF DEFENDANT. The application must be made in open court and in writing, verified by the affidavit of the defendant, a copy of which must be served upon the prosecuting attorney at least one (1) day before the application is made. Whenever the affidavit shows that the defendant can not safely appear in person to make the application, because the popular excitement against him is so great as to endanger his personal safety, and such statement is sustained by other testimony, the application may be made by counsel, and heard and determined in the absence of the defendant, though he is indicted for felony, and has not at the time of such application been arrested, or given bail, or been arraigned, or pleaded or demurred to the indictment.

[(19-1802) Cr. Prac. 1864, sec. 306, p. 249; R.S., R.C., & C.L., sec. 7769; C.S., sec. 8889; I.C.A., sec. 19-1702.]

19-1803. ORDER OF REMOVAL. If the court is satisfied that the representation of the defendant is true, an order must be made for the removal of the action to the proper court of a county free from a like objection.

[(19-1803) Cr. Prac. 1864, sec. 307, p. 249; R.S., R.C., & C.L., sec. 7770; C.S., sec. 8890; I.C.A., sec. 19-1703.]

19-1804. TRANSFER OF CAUSE. The order of removal must be entered upon the minutes, and the clerk must immediately make out and transmit to the court to which the action is removed a certified copy of the order of removal, record, pleadings and proceedings in the action, including the undertakings for the appearance of the defendant and of the witnesses.

[(19-1804) Cr. Prac. 1864, sec. 308, p. 250; R.S., R.C., & C.L., sec. 7771; C.S., sec. 8891; I.C.A., sec. 19-1704.]

19-1805. REMOVAL OF DEFENDANT. If the defendant is in custody, the order must direct his removal, and he must be forthwith removed by the sheriff of the county where he is imprisoned to the custody of the sheriff of the county to which the action is removed.

[(19-1805) Cr. Prac. 1864, sec. 309, p. 250; R.S., R.C., & C.L., sec. 7772; C.S., sec. 8892; I.C.A., sec. 19-1705.]

19-1806. PROCEEDINGS AFTER REMOVAL. The court to which the action is removed must proceed to trial and judgment therein as if the action had been commenced in such court. If it is necessary to have any of the original pleadings or other papers before such court, the court from which the action is removed must, at any time, upon application of the prosecuting attorney or the defendant, order such papers or pleadings to be transmitted by the clerk, a certified copy thereof being retained. The costs accruing upon such removal and trial are a charge against the county in which the indictment was found.

[(19-1806) Cr. Prac. 1864, secs. 310, 674, pp. 250 and 296; R.S., R.C., & C.L., sec. 7773; C.S., sec. 8893; I.C.A., sec. 19-1706.]

19-1807. CERTIFICATION OF COSTS. The clerk of the court in the county to which such action is, or may be, removed must certify the amount of said costs to the auditor of the proper county, which must be allowed and paid as other county charges.

[(19-1807) Cr. Prac. 1864, sec. 675, p. 297; R.S., R.C., & C.L., sec. 7774; C.S., sec. 8894; I.C.A., sec. 19-1707.]

19-1808. REMOVAL ON APPLICATION OF STATE. The district courts of this state, within their respective districts, are hereby empowered to change the place of trial in criminal cases, other than misdemeanors, upon the application of the state, on the relation of the county attorney of the county in which any indictment or information may be filed, or upon the relation of any attorney duly and especially appointed to prosecute said cause, such application to be sustained by the affidavits of at least two (2) resident taxpayers in the county where the offense is alleged to have been committed, on the ground that a fair and impartial trial cannot be had in the county where the criminal act is alleged to have been committed.

[(19-1808) 1907, p. 168, sec. 1; reen. R.C. & C.L., sec. 7775; C.S., sec. 8895; I.C.A., sec. 19-1708.]

19-1809. REMOVAL ON APPLICATION OF STATE -- FORM OF APPLICATION. Such application must be made in open court and in writing, verified by the affidavit of the relator, a copy of which must be served upon the defendant or his attorney at least one (1) day before the application is made.

[(19-1809) 1907, p. 168, sec. 2; reen. R.C. & C.L., sec. 7776; C.S., sec. 8896; I.C.A., sec. 19-1709.]

19-1810. REMOVAL ON APPLICATION OF STATE -- ORDER. If the court is satisfied, from the facts set forth in such application and affidavit, that a fair and impartial trial cannot be had, an order must be made for the removal of the action to the proper court of a county free from a like objection.

[(19-1810) 1907, p. 168, sec. 3; reen. R.C. & C.L., sec. 7777; C.S., sec. 8897; I.C.A., sec. 19-1710.]

19-1811. REMOVAL ON APPLICATION OF STATE -- TRANSFER OF CAUSE. The order of removal must be entered upon the minutes, and the clerk must immediately make out and transmit to the court to which the action is removed a cer-

tified copy of the order of removal, record, pleadings and proceedings in the action, including the undertakings for the appearance of the defendant and of the witnesses.

[(19-1811) 1907, p. 168, sec. 4; reen. R.C. & C.L., sec. 7778; C.S., sec. 8896; I.C.A., sec. 19-1711.]

19-1812. REMOVAL ON APPLICATION OF STATE -- REMOVAL OF DEFENDANT. If the defendant is in custody, the order must direct his removal, and he must be forthwith removed by the sheriff of the county where he is imprisoned to the custody of the sheriff of the county to which the action is removed.

[(19-1812) 1907, p. 168, sec. 5; reen. R.C. & C.L., sec. 7779; C.S., sec. 8899; I.C.A., sec. 19-1712.]

19-1813. REMOVAL ON APPLICATION OF STATE -- PROCEEDINGS AFTER TRANSFER. The court to which the action is removed must proceed to trial and judgment therein as if the action had been commenced in such court. If it is necessary to have any of the original pleadings or other papers before such court, the court from which the action is removed must, at any time, upon application of the county attorney or the relator, order such papers or pleadings to be transmitted by the clerk, a certified copy thereof being retained. The costs accruing upon such removal and trial are a charge against the county from which such criminal action was removed.

[(19-1813) 1907, p. 168, sec. 6; reen. R.S. & C.L., sec. 7779a; C.S., sec. 8900; I.C.A., sec. 19-1713.]

19-1814. REMOVAL ON APPLICATION OF STATE -- CERTIFICATE OF COSTS. The clerk of the court in the county to which said action is, or may be, removed must certify the amount of said costs to the auditor of the proper county, which must be allowed and paid as other county charges.

[(19-1814) 1907, p. 168, sec. 7; reen. R.C. & C.L., sec. 7779b; C.S., sec. 8901; I.C.A., sec. 19-1714.]

19-1815. REMOVAL ON APPLICATION OF STATE -- APPEAL FROM ORDER DENYING APPLICATION. The sufficiency, in both law and fact, of the application and supporting affidavits may be reviewed by the supreme court on appeal from an order of the district court denying such application, and such appeal may be taken by the state on the relation of the county attorney of the county in which such application is made, or of any other attorney duly appointed and acting in the prosecution of such cause, and the procedure governing such appeal shall be, as near as may be, the same as provided by law for appeals in other criminal cases.

[(19-1815) 1907, p. 168, sec. 8; reen. R.C. & C.L., sec. 7779c; C.S., sec. 8902; I.C.A., sec. 19-1715.]

19-1816. IMPANELING JURY FROM ANOTHER COUNTY. (a) As an alternative to entering the order of removal provided in the preceding sections of this chapter, the court may instead enter an order directing that jurors be impaneled from the county to which venue would otherwise have been transferred, if it finds:

1. That a fair and impartial jury cannot be impaneled in the county where the criminal complaint, information or indictment is filed;
2. That it would be more economical to transport the jury than to transfer the pending action; and
3. That justice will be served thereby.

(b) The jury shall be summoned and impaneled as if the trial were to take place in the county where the jury was summoned. Thereafter, the jury shall be transported for purpose of the trial to the county in which the complaint, information or indictment is filed.

(c) All court costs incurred under this section shall be paid by the county where the complaint, information or indictment is filed.

(d) The provisions of this section do not affect the power of the court to order a change of venue.

[19-1816, added 1983, ch. 17, sec. 1, p. 51.]