

## Chapter 131

### Preliminary Provisions; Limitations; Jurisdiction; Venue

#### 131.010

ATTY. GEN. OPINIONS: Proceedings against drunken drivers by indictment, 1940-42, p 28.

LAW REVIEW CITATIONS: 3 OLR 290.

#### 131.020

##### NOTES OF DECISIONS

A writ of review of a judgment from a justice's court is not a criminal action within the meaning of this section. *Davenport v. Justice's Court*, (1921) 101 Or 507, 199 P 621.

#### 131.030

##### NOTES OF DECISIONS

Dismissal of a prospective juror in the absence of the defendant was irregular but not reversible error. *State v. Savan*, (1934) 148 Or 423, 36 P2d 594, 96 ALR 497.

FURTHER CITATIONS: *State v. Walton*, (1907) 50 Or 142, 91 P 490, 13 LRA(NS) 811; *State v. Merlo*, (1919) 92 Or 678, 173 P 317, 182 P 153; *Alexander v. Gladden*, (1955) 205 Or 375, 288 P2d 219.

ATTY. GEN. OPINIONS: Use of presentence report prepared by State Board of Parole and Probation, 1954-56, p 208.

#### 131.110 to 131.130

LAW REVIEW CITATIONS: 49 OLR 22.

#### 131.110

##### NOTES OF DECISIONS

In a prosecution for statutory rape proof of exact date of commission is immaterial if proved it was within the statutory period. *State v. Birchard*, (1899) 35 Or 484, 59 P 468; *State v. Goddard*, (1914) 69 Or 73, 133 P 90, 138 P 243; *State v. Poole*, (1939) 161 Or 481, 90 P2d 472.

This section does not apply to a disbarment proceeding. *State v. Woerndle*, (1923) 109 Or 461, 209 P 604, 220 P 744; *State v. Mannix*, (1930) 133 Or 329, 288 P 507, 290 P 745.

Where, in a prosecution for conspiracy, federal and not state statutes applied, the federal statute of limitations ran from the date of the last overt act. *Jones v. United States*, (1908) 162 Fed 417.

In a prosecution for a misdemeanor the state is required to prove the offense occurred within the statutory period. *State v. Terry*, (1938) 160 Or 308, 311, 85 P2d 354.

Where the crime of embezzlement is a continuing one, the state will prevail by proving its commission at any time within the statutory period. *State v. German*, (1940) 163 Or 342, 96 P2d 1085.

Statute of limitations applicable to violations of gambling laws does not provide a period in which district attorney can decline to perform his duties before he may be found

guilty of nonfeasance for failure to enforce the gambling laws. *State v. Langley*, (1958) 214 Or 445, 315 P2d 580, 323 P2d 301, cert. denied, 358 US 826, 79 S Ct 45, 3 L Ed 2d 66.

Excluding murder or manslaughter, unless a felony indictment is returned and filed within three years, no prosecution may be had for the offense. *State v. Silver*, (1965) 239 Or 459, 398 P2d 178.

Filing an information tolls the statute. *State v. Miller*, (1969) 254 Or 244, 458 P2d 1017.

FURTHER CITATIONS: *Baldwin Co. v. Savage*, (1916) 81 Or 79, 159 P 80; *Kohler & Chase Co. v. Savage*, (1917) 86 Or 639, 167 P 789; *State v. Dormitzer*, (1927) 123 Or 165, 261 P 426; *Heider v. Unicume*, (1933) 142 Or 410, 14 P2d 456, 20 P2d 384; *State v. Cahill*, (1956) 208 Or 538, 293 P2d 169, 298 P2d 214; *State v. Gibbons*, (1961) 228 Or 238, 364 P2d 611; *State v. Hedrick*, (1962) 233 Or 76, 377 P2d 23.

ATTY. GEN. OPINIONS: When period begins for larceny, 1936-38, p 350; limitation on prosecution of welfare fraud, 1962-64, p 58.

LAW REVIEW CITATIONS: 2 EL 200.

#### 131.130

##### NOTES OF DECISIONS

A person is not a defendant until an action is commenced against him under this section. *United States v. Brown*, (1871) 24 Fed Cas 1273, Fed Cas No. 14,671.

A criminal action is commenced when an indictment is found and filed with the clerk. *Union County v. Hyde*, (1894) 26 Or 24, 28, 37 P 76.

Filing an information is a substitute proceeding for an indictment and this section applies when an information is filed. *State v. Miller*, (1969) 254 Or 244, 458 P2d 1017.

FURTHER CITATIONS: *State v. Silver*, (1965) 239 Or 459, 398 P2d 178.

ATTY. GEN. OPINIONS: Right to a preliminary examination when charged with a misdemeanor in a minor court, (1971) Vol 35, p 764.

#### 131.210 to 131.470

ATTY. GEN. OPINIONS: Venue for prosecution of escapee from forest work camp, (1969) Vol 34, p 540.

#### 131.210

##### NOTES OF DECISIONS

State court shall have original jurisdiction to determine whether or not larceny of federal property is within the exception to this section. *Frach v. Mass*, (1939) 162 F2d 820.

Under Public Law 280 of the 83rd Congress, Oregon had criminal jurisdiction over a murder committed by an Indian

on the Klamath Indian Reservation. *Anderson v. Britton*, (1957) 212 Or 1, 318 P2d 291.

Upon relinquishment of federal criminal jurisdiction of offenses by or against Indians, whether the state courts had jurisdiction under then existing state law to try Indians for criminal offenses is a state question. *Anderson v. Gladden*, (1961) 293 F2d 463, cert. denied, 368 US 949, 82 S Ct 390, 7 L Ed 2d 344.

ATTY. GEN. OPINIONS: Jurisdiction over crimes committed by non-Indian on Indian reservation, 1960-62, p 11.

## 131.220

## NOTES OF DECISIONS

Where property stolen outside the state is brought and converted to the defendant's use in this state, larceny is committed in this state. *State v. Barnett*, (1887) 15 Or 77, 14 P 737.

This section makes it a crime for one outside the state to aid and abet another in the state in commission of an offense. *State v. Owen*, (1926) 119 Or 15, 244 P 516.

Where defendant drew a check in California upon an Oregon bank in which he had no funds, the crime was committed in the latter state. *Id.*

Where defendant was brought into the state by extradition proceedings, he was "found" within the meaning of this section. *Id.*

## 131.240

ATTY. GEN. OPINIONS: Prosecution for obtaining money by false pretenses from Illinois resident, 1944-46, p 355.

## 131.310 to 131.390

LAW REVIEW CITATIONS: 49 OLR 22.

## 131.310

## NOTES OF DECISIONS

The place where a crime was committed is a material and jurisdictional allegation in an indictment. *State v. Casey*, (1923) 108 Or 386, 213 P 771, 217 P 632; *Holmes v. Ore. & Calif. R. Co.*, (1881) 7 Sawy 380, 9 Fed 229, 238.

The preliminary examination of a person charged with a crime must be in the county where the crime was committed. *In re Kelly*, (1890) 46 Fed 653, 659.

In so far as this section may be construed as denying the right of an accused person to secure a fair and impartial trial by a change of venue in an action for a misdemeanor, it is unconstitutional and void under Ore. Const. Art., §11. *State v. Biggs*, (1953) 198 Or 413, 255 P2d 1055, 38 ALR2d 720. Overruling *State v. Swanson*, (1926) 119 Or 522, 525, 250 P 216.

Venue may be established by circumstantial evidence and inferred by the jury from all facts of the case. *State v. Lindsey*, (1970) 2 Or App 503, 468 P2d 897, Sup Ct review denied.

The burden of the state to prove venue was not sustained by substantial evidence. *State v. Oster*, (1962) 232 Or 396, 376 P2d 87.

Court's jury instruction was sufficient proof of venue. *State v. Rutherford*, (1970) 1 Or App 599, 465 P2d 243, Sup Ct review denied.

There was sufficient evidence of venue. *State v. Winslow*, (1970) 3 Or App 140, 472 P2d 852.

FURTHER CITATIONS: *State v. Locke*, (1915) 77 Or 492, 151 P 717.

ATTY. GEN. OPINIONS: Prosecution for violation of game

law, 1928-30, p 245; prosecution for failure to pay statutory fee, 1940-42, p 419.

LAW REVIEW CITATIONS: 34 OLR 190; 36 OLR 47.

## 131.340

## NOTES OF DECISIONS

This statute was not unconstitutional as denying the defendant the right to trial in the county in which the offense was committed under Ore. Const. Art. I, §11. *State v. Anderson*, (1930) 133 Or 632, 290 P 1094.

Venue on retrial after reversal on appeal derives from the original indictment. *State v. Parker*, (1963) 235 Or 366, 384 P2d 986.

Venue may be established by circumstantial evidence. *State v. Bowling*, (1966) 243 Or 344, 413 P2d 421.

Escapee, who was on work release, can be tried in the county where he was physically or constructively in custody. *Kneefe v. Sullivan*, (1970) 2 Or App 152, 465 P2d 741, Sup Ct review denied.

Where a person caused another to be sent out of the state against his will, the crime was committed in the county where the representations were made. *In re Kelly*, (1890) 46 Fed 658.

The evidence warranted the jury finding that one or more acts or effects thereof constituting or requisite to the commission of the crime occurred in the county where the case was tried. *State v. Bowling*, (1966) 243 Or 344, 413 P2d 421.

Venue was properly laid in the county where a bribe was solicited and the services were to be performed although the bribe money was actually received in another county. *State v. Johnson*, (1971) 92 Or App Adv Sh 1679, 487 P2d 115, Sup Ct review denied.

FURTHER CITATIONS: *State v. Freeman*, (1971) 4 Or App 627, 481 P2d 638.

ATTY. GEN. OPINIONS: Venue over brand inspection law violations where livestock removed from one county to another, 1938-40, p 633; prosecution for failure to pay statutory fee, 1940-42, p 419; prosecution for obtaining money by false pretenses from Illinois resident, 1944-46, p 355.

## 131.350

## NOTES OF DECISIONS

Where property stolen without this state is brought and converted to the defendant's use in this state, the defendant may be prosecuted in the county into which the property was brought. *State v. Barnett*, (1887) 15 Or 77, 14 P 737.

## 131.360

## NOTES OF DECISIONS

In the crime of nonsupport venue is properly laid in the county where the support should have been rendered. *State v. Anderson*, (1930) 133 Or 632, 290 P 1094; *State v. LaFollett*, (1930) 134 Or 218, 292 P 98.

## 131.370

## NOTES OF DECISIONS

In determining venue, the court may take judicial notice of the boundaries of the county. *State v. Casey*, (1923) 108 Or 386, 213 P 771, 217 P 632; *State v. Eppers*, (1932) 138 Or 340, 3 P2d 989, 6 P2d 1086.

This section was not unconstitutional as denying the defendant the right to trial in the county in which the offense was committed under Ore. Const. Art I, §11. *State v. Lehman*, (1929) 130 Or 132, 279 P 283.

Under this section, there was no variance between an

indictment for commission of an offense in the county of prosecution and the proof that the offense was committed 900 feet outside the boundary line of such county. Id.

LAW REVIEW CITATIONS: 9 OLR 395.

**131.420**

**NOTES OF DECISIONS**

**1. Constitutionality**

In so far as this section may be construed as denying the right of an accused person to secure a fair and impartial trial by a change of venue in an action for a misdemeanor, it is unconstitutional and void under Ore. Const. Art. I, §11. State v. Biggs, (1953) 198 Or 413, 255 P2d 1055, 38 ALR2d 720. Overruling State v. Swanson, (1926) 119 Or 522, 525, 250 P 216.

**2. Change of venue**

An affidavit for a change of venue need not state that application is not made for the purpose of delay, but is sufficient if the facts set forth show this. Packwood v. State, (1893) 24 Or 261, 33 P 674; State v. Savage, (1899) 36 Or 191, 60 P 610, 61 P 1128.

Granting the motion for change of venue is within the discretion of the court and is reversed only upon a showing of abuse of discretion. State v. Pomeroy, (1896) 30 Or 16, 46 P 797; State v. Savage, (1900) 36 Or 191, 60 P 610; State v. Humphreys, (1902) 43 Or 44, 70 P 824; State v. Armstrong, (1903) 43 Or 207, 73 P 1022; State v. Smith, (1905) 47 Or 485, 83 P 865; State v. Mizis, (1906) 48 Or 165, 85 P 611, 86 P 361; State v. Caseday, (1911) 58 Or 429, 115 P 287; State v. Estabrook, (1939) 162 Or 476, 91 P2d 838; State v. Little, (1967) 249 Or 297, 431 P2d 810, cert. denied, 390 US 955.

This section does not apply to misdemeanors. Packwood v. State, (1893) 24 Or 261, 33 P 674.

Defendant may waive his right to have a trial in county

where offense was committed by a proper application under this statute. State v. Black, (1929) 131 Or 218, 282 P 228.

Where defendant feared he would not receive an impartial trial, the proper motion was for change of venue and not for postponement. State v. Hawkins, (1890) 18 Or 476, 479, 23 P 275.

Where defendant's motion for change of venue was denied, it was error, after the jury had disagreed and were discharged, to grant the motion over the defendant's objection. State v. Black, (1929) 131 Or 218, 282 P 228.

FURTHER CITATIONS: State v. Olds, (1890) 19 Or 397, 427, 24 P 394; State v. Kline, (1907) 50 Or 426, 93 P 237.

ATTY. GEN. OPINIONS: Change of venue to nearest justice, 1920-22, p 222.

LAW REVIEW CITATIONS: 34 OLR 190; 48 OLR 373.

**131.430**

CASE CITATIONS: State v. Anderson, (1956) 207 Or 675, 298 P2d 195.

**131.440**

**NOTES OF DECISIONS**

On change of venue to another county it is the duty of the district attorney of the county where the offense was committed to prosecute the cause in the place of change. State v. Anderson, (1956) 207 Or 675, 298 P2d 195.

**131.450**

CASE CITATIONS: State v. Anderson, (1956) 207 Or 675, 298 P2d 195.

ATTY. GEN. OPINIONS: Cost of furnishing extra janitor service and fuel, 1930-32, p 635.