

PRELIMINARY DRAFT

TEXAS LEGISLATIVE COUNCIL
Code of Criminal Procedure
Chapter 31A
12/6/21

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22 CHAPTER 31A. CHANGE OF VENUE

23 SUBCHAPTER A. AUTHORITY TO CHANGE VENUE

24 Revised Law

25 Art. 31A.001. CHANGE OF VENUE ON JUDGE'S OWN MOTION. (a)

26 In a felony or misdemeanor case punishable by confinement, if the

27 judge is satisfied that a fair and impartial trial cannot be held

1 for any reason in the county in which the case is pending, the judge
2 may on the judge's own motion, after providing reasonable notice to
3 the defendant and the state and hearing evidence on the motion,
4 order a change of venue to:

5 (1) any county in the same judicial district as the
6 county in which the case is pending or in an adjoining judicial
7 district; or

8 (2) any county not described by Subdivision (1), after
9 10 days' notice is provided.

10 (b) An order changing venue under Subsection (a) must state
11 the grounds for the change of venue.

12 (c) An order changing venue under Subsection (a)(2) is
13 grounds for reversal if, on timely contest by the defendant, the
14 record of the contest affirmatively shows that any county described
15 by Subsection (a)(1) is not subject to the same conditions that
16 required the change of venue. (Code Crim. Proc., Art. 31.01.)

17 Source Law

18 Art. 31.01. ON COURT'S OWN MOTION. Whenever in
19 any case of felony or misdemeanor punishable by
20 confinement, the judge presiding shall be satisfied
21 that a trial, alike fair and impartial to the accused
22 and to the State, cannot, from any cause, be had in the
23 county in which the case is pending, he may, upon his
24 own motion, after due notice to accused and the State,
25 and after hearing evidence thereon, order a change of
26 venue to any county in the judicial district in which
27 such county is located or in an adjoining district,
28 stating in his order the grounds for such change of
29 venue. The judge, upon his own motion, after ten days
30 notice to the parties or their counsel, may order a
31 change of venue to any county beyond an adjoining
32 district; provided, however, an order changing venue
33 to a county beyond an adjoining district shall be
34 grounds for reversal if, upon timely contest by the
35 defendant, the record of the contest affirmatively
36 shows that any county in his own and the adjoining
37 district is not subject to the same conditions which
38 required the transfer.

39 Revisor's Note

40 (1) Article 31.01, Code of Criminal Procedure,
41 provides that notice must be provided to the "accused
42 and the State" and a hearing held, before a judge may,
43 on the judge's own motion, order a change of venue to
44 certain counties. The article further provides that

1 for the judge to order on the judge's own motion a
2 change of venue to a county beyond those counties, 10
3 days' notice to "the parties or their counsel" must be
4 provided. Throughout this chapter, the revised law
5 substitutes "defendant" for "accused" because, in this
6 context, the terms are synonymous and the former is
7 more commonly used in the Code of Criminal Procedure.
8 The revised law also omits the reference to "the
9 parties or their counsel" because it is included in the
10 meaning of "accused and the State."

11 (2) Article 31.01, Code of Criminal Procedure,
12 authorizes the judge in certain criminal cases to
13 transfer the case to any county in the same judicial
14 district as the county in which the case is pending, in
15 an "adjoining district," or beyond an "adjoining
16 district." For clarity and the convenience of the
17 reader, throughout this chapter the revised law
18 substitutes "adjoining judicial district" for
19 "adjoining district" because it is clear from the
20 context that an "adjoining district" means an
21 "adjoining judicial district."

22 (3) Article 31.01, Code of Criminal Procedure,
23 requires that the grounds for an order changing venue
24 on the judge's own motion to any county in the same
25 judicial district as the county in which the case is
26 pending or in an adjoining judicial district be stated
27 in the order. Although this requirement appears to
28 apply only to an order changing venue to one of the
29 counties specified above, it is clear from the context
30 that this requirement applies to all orders changing
31 venue on the judge's own motion regardless of the
32 county to which venue is changed. The first sentence of
33 the article, while facially limited to orders changing
34 venue to a county in the same judicial district as the

1 county in which the case is pending or in an adjoining
2 judicial district, contains all the provisions
3 regarding when a change of venue on the judge's own
4 motion is proper: (1) the types of cases to which the
5 article applies (felony or misdemeanor cases
6 punishable by confinement); (2) the conditions that
7 may justify a change of venue on the judge's own motion
8 (if a fair and impartial trial cannot be held for any
9 reason in the county in which the case is pending); (3)
10 the prerequisites that must be satisfied before an
11 order changing venue on the judge's own motion may be
12 entered (notice and a hearing); and (4) the
13 requirement for such an order to state the grounds for
14 the change of venue. The second sentence of the
15 article, by contrast, does not restate any of these
16 provisions but provides for a change of venue on the
17 judge's own motion to a county other than the counties
18 specified in the first sentence with a heightened
19 notice requirement (10 days' notice) and mandates the
20 reversal of such an order if it is shown that any of the
21 counties specified in the first sentence are "not
22 subject to the same conditions which required the
23 transfer." If the general provisions in the first
24 sentence did not apply to the second sentence,
25 however, there would be no requirement that any
26 "conditions" exist to require the change of venue to a
27 county other than the counties specified in the first
28 sentence. Further, under that interpretation, the
29 provisions in the first sentence regarding the scope
30 of the article and the prerequisites for entering an
31 order would not apply to orders made under the second
32 sentence either. Because the structure of the article
33 clearly contemplates that the general provisions in
34 the first sentence apply to orders changing venue as

1 provided under the second sentence, the revised law is
2 drafted accordingly.

3 Revised Law

4 Art. 31A.002. COURT REQUIRED TO CHANGE VENUE IN CERTAIN
5 SEXUAL ASSAULT CASES. In a sexual assault case, a district court
6 shall order a change of venue when necessary to secure a speedy
7 trial. (Code Crim. Proc., Art. 13.15 (part).)

8 Source Law

9 Art. 13.15. SEXUAL ASSAULT. [Sexual assault
10 may be prosecuted in the county in which it is
11 committed, in the county in which the victim is
12 abducted, or in any county through or into which the
13 victim is transported in the course of the abduction
14 and sexual assault.] . . . The district courts are
15 authorized and directed to change the venue in such
16 cases whenever it shall be necessary to secure a speedy
17 trial.

18 Revisor's Note

19 Article 13.15, Code of Criminal Procedure,
20 requires a district court to "change the venue" when
21 necessary to secure a speedy trial. For clarity and
22 consistency in terminology used in this chapter, the
23 revised law substitutes "order a change of venue" for
24 the quoted language. Chapter 31, Code of Criminal
25 Procedure, revised in this chapter, governs change of
26 venue in criminal cases. That chapter consistently
27 refers to a judge ordering a change of venue and to an
28 order changing venue. It is clear from the context that
29 to change venue, a judge must order the change. The
30 revised law is drafted accordingly.

31 Revised Law

32 Art. 31A.003. CHANGE OF VENUE ON STATE'S MOTION. (a) In a
33 felony or misdemeanor case punishable by confinement, the attorney
34 representing the state may file a written motion requesting a
35 change of venue on the basis that:

36 (1) a fair and impartial trial cannot be safely and
37 speedily held because of:

38 (A) existing combinations or influences in favor

1 of the defendant; or

2 (B) the lawless condition of affairs in the
3 county; or

4 (2) the life of the prisoner or of any witness would be
5 jeopardized by a trial in the county in which the case is pending.

6 (b) On receipt of a motion filed under Subsection (a), the
7 judge shall:

8 (1) hear evidence on the motion; and

9 (2) if the judge is satisfied that the motion is
10 sufficiently supported and that justice will be served by granting
11 the motion, order a change of venue to any county in the judicial
12 district in which the case is pending or in an adjoining judicial
13 district. (Code Crim. Proc., Art. 31.02.)

14 Source Law

15 Art. 31.02. STATE MAY HAVE. Whenever the
16 district or county attorney shall represent in writing
17 to the court before which any felony or misdemeanor
18 case punishable by confinement, is pending, that, by
19 reason of existing combinations or influences in favor
20 of the accused, or on account of the lawless condition
21 of affairs in the county, a fair and impartial trial as
22 between the accused and the State cannot be safely and
23 speedily had; or whenever he shall represent that the
24 life of the prisoner, or of any witness, would be
25 jeopardized by a trial in the county in which the case
26 is pending, the judge shall hear proof in relation
27 thereto, and if satisfied that such representation is
28 well-founded and that the ends of public justice will
29 be subserved thereby, he shall order a change of venue
30 to any county in the judicial district in which such
31 county is located or in an adjoining district.

32 Revisor's Note

33 (1) Article 31.02, Code of Criminal Procedure,
34 authorizes a change of venue in certain cases when "the
35 district or county attorney shall represent in writing
36 to the court before which [the case] is pending" that
37 certain conditions exist in the county in which the
38 case is pending. For consistency in terminology, the
39 revised law substitutes "attorney representing the
40 state" for "district or county attorney" because
41 "attorney representing the state" is more commonly
42 used in the Code of Criminal Procedure. Additionally,

1 the revised law substitutes "file a written motion"
2 for "represent in writing to the court" because, in
3 this context, the phrases have the same meaning and the
4 former is more consistent with modern usage. The
5 revised law also omits "to the court before which [the
6 case] is pending" as unnecessary because a motion must
7 be submitted to the court before which the case is
8 pending and may only be submitted while the case is
9 pending.

10 (2) Article 31.02, Code of Criminal Procedure,
11 requires a judge to hear "proof" on a motion to change
12 venue filed by the attorney representing the state.
13 The revised law substitutes "evidence" for "proof"
14 because, in this context, the terms are synonymous and
15 the former is more commonly used in the Code of
16 Criminal Procedure.

17 Revised Law

18 Art. 31A.004. CHANGE OF VENUE ON DEFENDANT'S MOTION. (a)
19 In a felony or misdemeanor case punishable by confinement, the
20 court may grant a change of venue on the written motion of the
21 defendant, supported by the defendant's affidavit and the affidavit
22 of at least two credible persons who are residents of the county in
23 which the prosecution is commenced, if the court determines that
24 the defendant cannot obtain a fair and impartial trial in the county
25 in which the prosecution is commenced as a result of:

26 (1) a prejudice against the defendant in the county;
27 or

28 (2) a dangerous combination against the defendant in
29 the county instigated by influential persons.

30 (b) An order changing venue under Subsection (a) to a county
31 other than a county in the same judicial district as the county in
32 which the case is pending or in an adjoining judicial district is
33 grounds for reversal, if on timely contest by the defendant, the
34 record of the contest affirmatively shows that any county in the

1 judicial district in which the case is pending or in the adjoining
2 judicial district is not subject to the same conditions that
3 required the change of venue.

4 (c) On the defendant's motion and with the consent of the
5 attorney representing the state, the court may transfer the case to
6 another judicial district:

7 (1) for the convenience of the parties and witnesses
8 and in the interest of justice; or

9 (2) if the defendant stipulates that the defendant
10 will enter a plea of guilty. (Code Crim. Proc., Art. 31.03.)

11 Source Law

12 Art. 31.03. GRANTED ON MOTION OF DEFENDANT. (a)
13 A change of venue may be granted in any felony or
14 misdemeanor case punishable by confinement on the
15 written motion of the defendant, supported by his own
16 affidavit and the affidavit of at least two credible
17 persons, residents of the county where the prosecution
18 is instituted, for either of the following causes, the
19 truth and sufficiency of which the court shall
20 determine:

21 1. That there exists in the county where the
22 prosecution is commenced so great a prejudice against
23 him that he cannot obtain a fair and impartial trial;
24 and

25 2. That there is a dangerous combination against
26 him instigated by influential persons, by reason of
27 which he cannot expect a fair trial.

28 An order changing venue to a county beyond an
29 adjoining district shall be grounds for reversal, if
30 upon timely contest by defendant, the record of the
31 contest affirmatively shows that any county in his own
32 and the adjoining district is not subject to the same
33 conditions which required the transfer.

34 (b) For the convenience of parties and
35 witnesses, and in the interest of justice, the court
36 upon motion of the defendant and with the consent of
37 the attorney for the state may transfer the proceeding
38 as to him to another district.

39 (c) The court upon motion of the defendant and
40 with the consent of the attorney for the state may
41 transfer the proceedings to another district in those
42 cases wherein the defendant stipulates that a plea of
43 guilty will be entered.

44 Revisor's Note

45 (1) Article 31.03(a), Code of Criminal
46 Procedure, requires the court to determine "the truth
47 and sufficiency" of the defendant's asserted grounds
48 for changing venue. The revised law omits "truth and
49 sufficiency" as unnecessary because, in this context,

1 assessing the truth and sufficiency of a ground
2 asserted in a motion for change of venue is included
3 within the meaning of "determine."

4 (2) Article 31.03(a), Code of Criminal
5 Procedure, authorizes a court to grant a change of
6 venue on the defendant's motion if, as a result of a
7 dangerous combination against the defendant
8 instigated by influential persons, the defendant
9 cannot "expect a fair trial" in the county. The
10 revised law substitutes "obtain a fair and impartial
11 trial" for the quoted language for consistency in
12 terminology in the article and because the phrases
13 have the same meaning.

14 (3) Article 31.03(a), Code of Criminal
15 Procedure, provides that an order changing venue to a
16 county "beyond an adjoining district" is grounds for
17 reversal if the record affirmatively shows that any
18 county "in his own and the adjoining district" is not
19 subject to the same conditions which required the
20 transfer. For clarity and consistency in terminology
21 used in this chapter, the revised law substitutes
22 "other than a county in the same judicial district as
23 the county in which the case is pending or in an
24 adjoining judicial district" for "beyond an adjoining
25 district" because, in this context, the phrases have
26 the same meaning. The language used in this article
27 regarding an order changing venue to a county beyond an
28 adjoining district is identical to the language used
29 in Article 31.01, Code of Criminal Procedure, revised
30 as Article 31A.001 of this chapter, which contains
31 additional language clearly indicating that a county
32 beyond an adjoining district is a county other than a
33 county in the same judicial district as the county in
34 which the case is pending or in an adjoining judicial

1 district. The revised law is drafted accordingly.

2 (4) Articles 31.03(b) and (c), Code of Criminal
3 Procedure, refer to the "attorney for the state." For
4 consistency in terminology, the revised law
5 substitutes "attorney representing the state" for
6 "attorney for the state" because "attorney
7 representing the state" is more commonly used in the
8 Code of Criminal Procedure.

9 (5) Articles 31.03(b) and (c), Code of Criminal
10 Procedure, provide that a court may transfer the
11 "proceeding" or "proceedings" to another judicial
12 district in certain circumstances. For consistency in
13 terminology in the article, the revised law
14 substitutes "case" for the quoted language because, in
15 this context, the terms are synonymous.

16 (6) Articles 31.03(b) and (c), Code of Criminal
17 Procedure, grant authority for a court to order a
18 change of venue to another "district" in certain
19 circumstances. For clarity and the convenience of the
20 reader, the revised law substitutes "judicial
21 district" for "district" because it is clear from the
22 context that a "district" means a judicial district.

23 Revised Law

24 Art. 31A.005. CONTESTING MOTION TO CHANGE VENUE; HEARING.

25 (a) The credibility or the means of knowledge of a person making an
26 affidavit for change of venue may be attacked by the affidavit of a
27 credible person.

28 (b) If an affidavit is filed to contest an affidavit for
29 change of venue as provided by Subsection (a), the judge shall hold
30 a hearing on the issue and grant or refuse the motion based on the
31 law and facts in the case. (Code Crim. Proc., Art. 31.04.)

32 Source Law

33 Art. 31.04. MOTION MAY BE CONTROVERTED. The
34 credibility of the persons making affidavit for change
35 of venue, or their means of knowledge, may be attacked

1 by the affidavit of a credible person. The issue thus
2 formed shall be tried by the judge, and the motion
3 granted or refused, as the law and facts shall warrant.

4 Revisor's Note

5 Article 31.04, Code of Criminal Procedure,
6 provides that if a motion for change of venue is
7 contested, the issue shall "be tried" by the judge.
8 The revised law substitutes "hold a hearing" for "be
9 tried" because, in this context, the phrases have the
10 same meaning and the former is more commonly used in
11 the Code of Criminal Procedure. See also *Henley v.*
12 *State*, 576 S.W.2d 66, 72 (Tex. Crim. App.
13 1978)(holding that Article 31.04 mandates a pretrial
14 evidentiary hearing).

15 SUBCHAPTER B. ON CHANGE OF VENUE

16 Revised Law

17 Art. 31A.051. CLERK'S DUTIES ON CHANGE OF VENUE. If a court
18 orders a change of venue in a criminal case, the clerk of the court
19 in which the prosecution is pending shall prepare and transmit to
20 the clerk of the court to which the venue is changed:

21 (1) a certified copy of the court's order directing the
22 change of venue;

23 (2) a certified copy of the defendant's bail bond or
24 personal bond, if any;

25 (3) the original papers in the case; and

26 (4) a certificate of the transmitting clerk under that
27 clerk's official seal that the papers described by Subdivision (3)
28 are all the papers on file in the case in the court in which the
29 prosecution is pending. (Code Crim. Proc., Art. 31.05.)

30 Source Law

31 Art. 31.05. CLERK'S DUTIES ON CHANGE OF VENUE.
32 Where an order for a change of venue of any court in any
33 criminal cause in this State has been made the clerk of
34 the court where the prosecution is pending shall make
35 out a certified copy of the court's order directing
36 such change of venue, together with a certified copy of
37 the defendant's bail bond or personal bond, together
38 with all the original papers in said cause and also a
39 certificate of the said clerk under his official seal
40 that such papers are the papers and all the papers on

1 file in said court in said cause; and he shall
2 transmit the same to the clerk of the court to which
3 the venue has been changed.

4 Revisor's Note

5 Article 31.05, Code of Criminal Procedure, refers
6 to a criminal "cause." For consistency in
7 terminology, throughout this chapter the revised law
8 substitutes "case" for "cause" because, in this
9 context, the terms are synonymous and the former is
10 more consistent with modern usage.

11 Revised Law

12 Art. 31A.052. USE OF SERVICES OF ORIGINAL VENUE. (a) A
13 judge ordering a change of venue under this chapter may, with the
14 written consent of the defendant, the defendant's attorney, and the
15 attorney representing the state:

16 (1) maintain the original case number on the court's
17 docket;

18 (2) preside over the case; and

19 (3) use the services of the court reporter, the court
20 coordinator, and the clerk of the court of original venue.

21 (b) If a judge takes the actions described by Subsection
22 (a):

23 (1) the court shall use the courtroom facilities and
24 any other services or facilities of the judicial district or county
25 to which venue is changed;

26 (2) the jury, if required, must consist of residents
27 of the judicial district or county to which venue is changed; and

28 (3) notwithstanding Article 31A.051, the clerk of the
29 court of original venue shall:

30 (A) maintain the original papers of the case,
31 including the defendant's bail bond or personal bond, if any;

32 (B) make the papers described by Paragraph (A)
33 available for trial; and

34 (C) act as the clerk in the case. (Code Crim.
35 Proc., Art. 31.09.)

1 Source Law

2 Art. 31.09. CHANGE OF VENUE; USE OF EXISTING
3 SERVICES. (a) If a change of venue in a criminal case
4 is ordered under this chapter, the judge ordering the
5 change of venue may, with the written consent of the
6 prosecuting attorney, the defense attorney, and the
7 defendant, maintain the original case number on its
8 own docket, preside over the case, and use the services
9 of the court reporter, the court coordinator, and the
10 clerk of the court of original venue. The court shall
11 use the courtroom facilities and any other services or
12 facilities of the district or county to which venue is
13 changed. A jury, if required, must consist of
14 residents of the district or county to which venue is
15 changed.

16 (b) Notwithstanding Article 31.05, the clerk of
17 the court of original venue shall:

18 (1) maintain the original papers of the
19 case, including the defendant's bail bond or personal
20 bond;

21 (2) make the papers available for trial;
22 and

23 (3) act as the clerk in the case.

24 Revisor's Note

25 (1) Article 31.09(a), Code of Criminal
26 Procedure, refers to the "prosecuting attorney." For
27 consistency in terminology, the revised law
28 substitutes "attorney representing the state" for
29 "prosecuting attorney" because "attorney representing
30 the state" is more commonly used in the Code of
31 Criminal Procedure.

32 (2) Article 31.09(a), Code of Criminal
33 Procedure, authorizes a court ordering a change of
34 venue to continue to preside over the case under
35 certain circumstances. Subsection (b) of that article
36 requires the clerk of the court of original venue to
37 perform certain duties with respect to "the case." The
38 revised law clarifies that the duties imposed on the
39 clerk of the court of original venue under Subsection
40 (b) are conditioned on the court exercising the
41 authority granted under Subsection (a) because it is
42 clear from the context that those duties apply only if
43 the court has exercised that authority.

1 Revised Law

2 Art. 31A.053. REMOVAL OF DEFENDANT IN CUSTODY. If the
3 defendant is in custody when venue is changed in a criminal case:

4 (1) an order shall be entered for:

5 (A) the defendant's removal to the county to
6 which the venue is changed; and

7 (B) the defendant's delivery to the sheriff of
8 the county to which the venue is changed before the next succeeding
9 term of the court of that county; and

10 (2) the sheriff with custody of the defendant shall
11 deliver the defendant as directed in the order described by
12 Subdivision (1). (Code Crim. Proc., Art. 31.06.)

13 Source Law

14 Art. 31.06. IF DEFENDANT BE IN CUSTODY. When
15 the venue is changed in any criminal action if the
16 defendant be in custody, an order shall be made for his
17 removal to the proper county, and his delivery to the
18 sheriff thereof before the next succeeding term of the
19 court of the county to which the case is to be taken,
20 and he shall be delivered by the sheriff as directed in
21 the order.

22 Revisor's Note

23 (1) Article 31.06, Code of Criminal Procedure,
24 refers to a criminal "action." For consistency in
25 terminology, throughout this chapter the revised law
26 substitutes "case" for "action" because, in this
27 context, the terms are synonymous and the former is
28 more commonly used in the Code of Criminal Procedure.

29 (2) Article 31.06, Code of Criminal Procedure,
30 requires, if the defendant is in custody when venue is
31 changed, an order be made for the defendant's removal
32 to the "proper county" and the defendant's delivery to
33 the sheriff of that county by "the sheriff." For
34 clarity, the revised law substitutes "county to which
35 venue is changed" for "proper county" because it is
36 clear from the context that the "proper" county is the
37 county to which venue is changed. The revised law also

1 substitutes "the sheriff with custody of the
2 defendant" for "the sheriff" because it is clear from
3 the context that only the sheriff with custody of the
4 defendant has the duty to remove and deliver the
5 defendant to the sheriff of the county to which venue
6 is changed.

7 Revised Law

8 Art. 31A.054. NO EFFECT ON SUBPOENA, ATTACHMENT, OR BAIL OF
9 WITNESSES. When venue is changed in a criminal case, any witness
10 who has been subpoenaed, attached, or bailed to appear and testify
11 in the case:

12 (1) is not required to be again subpoenaed, attached,
13 or bailed; and

14 (2) shall appear before the court to which venue has
15 been changed as if there had been no change of venue. (Code Crim.
16 Proc., Art. 31.07.)

17 Source Law

18 Art. 31.07. WITNESS NEED NOT AGAIN BE SUMMONED.
19 When the venue in a criminal action has been changed,
20 it shall not be necessary to have the witnesses therein
21 again subpoenaed, attached or bailed, but all the
22 witnesses who have been subpoenaed, attached or bailed
23 to appear and testify in the cause shall be held bound
24 to appear before the court to which the cause has been
25 transferred, as if there had been no such transfer.

26 SUBCHAPTER C. RETURNING VENUE AFTER TRIAL

27 Revised Law

28 Art. 31A.151. RETURN TO COUNTY IN WHICH INDICTMENT OR
29 INFORMATION FILED; SUBSEQUENT PROCEEDINGS. (a) On the completion
30 of a trial in which a change of venue has been ordered and, if
31 applicable, after the jury has been discharged, the court, with the
32 consent of counsel for the state and the defendant, may return the
33 case to the county in which the indictment or information was filed.
34 Except as provided by Subsection (b), all subsequent and ancillary
35 proceedings, including the pronouncement of sentence after appeals
36 have been exhausted, must be heard in the county in which the
37 indictment or information was filed.

1 (b) A motion for new trial alleging jury misconduct must be
2 heard in the county in which the case was tried. The county in which
3 the indictment or information was filed must pay the costs of the
4 prosecution of the motion.

5 (c) Except for the review of a death sentence under Section
6 2(h), Article 37.071, or under Section 2(h), Article 37.072, an
7 appeal taken in a case returned under this article to the county in
8 which the indictment or information was filed must be docketed in
9 the appellate district in which that county is located. (Code Crim.
10 Proc., Art. 31.08, Secs. 1, 3.)

11 Source Law

12 Art. 31.08. RETURN TO COUNTY OF ORIGINAL VENUE.

13 Sec. 1. (a) On the completion of a trial in
14 which a change of venue has been ordered and after the
15 jury has been discharged, the court, with the consent
16 of counsel for the state and the defendant, may return
17 the cause to the original county in which the
18 indictment or information was filed. Except as
19 provided by Subsection (b) of this section, all
20 subsequent and ancillary proceedings, including the
21 pronouncement of sentence after appeals have been
22 exhausted, must be heard in the county in which the
23 indictment or information was filed.

24 (b) A motion for new trial alleging jury
25 misconduct must be heard in the county in which the
26 cause was tried. The county in which the indictment or
27 information was filed must pay the costs of the
28 prosecution of the motion for new trial.

29 Sec. 3. Except for the review of a death
30 sentence under Section 2(h), Article 37.071, or under
31 Section 2(h), Article 37.072, an appeal taken in a
32 cause returned to the original county under this
33 article must be docketed in the appellate district in
34 which the county of original venue is located.

35 Revisor's Note

36 (1) Section 1(a), Article 31.08, Code of
37 Criminal Procedure, refers to the "original" county in
38 which the indictment or information was filed.
39 Throughout this chapter, the revised law omits
40 "original" as unnecessary in this context because it
41 does not add to the clear meaning of the law.

42 (2) Section 3, Article 31.08, Code of Criminal
43 Procedure, refers to the "original county" and the
44 "county of original venue." For clarity and

1 consistency in terminology in the article, the revised
2 law substitutes "the county in which the indictment or
3 information was filed" for the quoted phrases because
4 it is clear from the context that the county in which
5 venue originated is the county in which the indictment
6 or information was filed.

7 Revised Law

8 Art. 31A.152. CLERK'S DUTIES ON RETURN TO COUNTY IN WHICH
9 INDICTMENT OR INFORMATION FILED. (a) Except as provided by
10 Subsection (b), on an order returning a case to the county in which
11 the indictment or information was filed as provided by Article
12 31A.151, the clerk of the county in which the case was tried shall:

13 (1) make a certified copy of:

14 (A) the court's order directing the return; and

15 (B) the defendant's bail bond, personal bond, or
16 appeal bond, if any;

17 (2) gather the original papers in the case and certify
18 under official seal that the papers are all the original papers on
19 file in the court in which the case was tried; and

20 (3) transmit the items described by Subdivisions (1)
21 and (2) to the clerk of the court in which the indictment or
22 information was filed.

23 (b) This article does not apply to a proceeding in which the
24 clerk of the court in which the indictment or information was filed
25 was present and performed the duties as clerk for the court under
26 Article 31A.052. (Code Crim. Proc., Art. 31.08, Sec. 2.)

27 Source Law

28 Sec. 2. (a) Except as provided by Subsection
29 (b), on an order returning venue to the original county
30 in which the indictment or information was filed, the
31 clerk of the county in which the cause was tried shall:

32 (1) make a certified copy of the court's
33 order directing the return to the original county;

34 (2) make a certified copy of the
35 defendant's bail bond, personal bond, or appeal bond;

36 (3) gather all the original papers in the
37 cause and certify under official seal that the papers
38 are all the original papers on file in the court; and

39 (4) transmit the items listed in this
40 section to the clerk of the court of original venue.

1 (b) This article does not apply to a proceeding
2 in which the clerk of the court of original venue was
3 present and performed the duties as clerk for the court
4 under Article 31.09.

5 Revisor's Note

6 (1) Section 2(a), Article 31.08, Code of
7 Criminal Procedure, requires the clerk of the county
8 in which a case was tried to perform certain duties on
9 "an order returning venue." The revised law
10 substitutes "an order returning a case" for the quoted
11 language for clarity and consistency in the
12 terminology used in this chapter and because the
13 phrases are synonymous. In addition, because the
14 provisions authorizing an order returning venue are in
15 Section 1, Article 31.08, Code of Criminal Procedure,
16 revised in Article 31A.151, the revised law adds a
17 cross-reference to that article for the convenience of
18 the reader.

19 (2) Sections 2(a)(4) and (b), Article 31.08,
20 Code of Criminal Procedure, refer to the "court of
21 original venue." For clarity and consistency in
22 terminology in the article, the revised law
23 substitutes "court in which the indictment or
24 information was filed" for the quoted phrases because
25 it is clear from the context that the court in which
26 venue originated is the court in which the indictment
27 or information was filed.

28 (3) Section 2(b), Article 31.08, Code of
29 Criminal Procedure, provides that "[t]his article"
30 does not apply to a proceeding in which the clerk of
31 the court in which the indictment or information was
32 filed performed the duties as clerk for the court under
33 Article 31.09, Code of Criminal Procedure. The
34 reference to "[t]his article" is a drafting error
35 because Article 31.08, Code of Criminal Procedure, is
36 further divided into sections, and it is clear from the

1 context that the exception applies only to Section 2 of
2 that article. The intention of the exception in
3 Section 2(b), Article 31.08, Code of Criminal
4 Procedure, is clearly to avoid unnecessarily requiring
5 the clerk of the county in which the case was tried to
6 perform the duties under Subsection (a) of that
7 section when the clerk of the county acted as the clerk
8 in the case under Article 31.09, Code of Criminal
9 Procedure. The revised law is drafted accordingly.