

**Geographic Jurisdiction
Venue of a County
Offense on Common Carrier
(CPL 20.40[4][f])**

Members of the jury, before you begin your deliberations on whether the People have proven the defendant guilty beyond a reasonable doubt of a charged offense, you must first determine whether (*specify*) county is the proper venue, that is, the legally authorized county, to prosecute (*the charged offense(s), or, if venue for some but not all the submitted counts is in issue, specify the count and name of each offense for which venue is in issue*).¹

Under our law, a person may be convicted in this county of an offense committed by that person's own conduct [or by the conduct of another with whom he/she was acting in concert²] even though none of the conduct constituting that offense may have occurred within this county.

That is so because under our law, an offense committed on board a railroad train, aircraft or omnibus operating as a common carrier may be prosecuted in any county through or over which that common carrier passed during the particular trip, or in any county in which such trip terminated or was scheduled to terminate.

It does not matter that the offense may have in fact been committed in a particular county, other than (*specify* prosecuting county), through or over which that common carrier passed during the particular trip.³

The People have the burden to prove the venue of the county by a preponderance of the evidence.⁴

A preponderance of the evidence means the greater part of the believable and reliable evidence, not in terms of the number of witnesses or the length of time taken to present the evidence, but in terms of its quality and the weight and convincing effect it has upon you. For venue of the county to be proved by a preponderance of the evidence, the evidence that supports the venue must be of such convincing quality as

to outweigh any evidence to the contrary.

If after considering all the evidence you decide that (*specify*) county is not the proper venue for prosecution of a charged offense [or offenses], you must not proceed to deliberate as to that/those charged offense(s) and you will not of course therefore enter a verdict as to that/those charge(s).

If after considering all the evidence you decide that (*specify*) county is the proper venue to prosecute a particular charged offense [or offenses], then you must proceed to consider whether or not the People have proven the defendant guilty of that/those crime(s) beyond a reasonable doubt.

You will report your findings with respect to jurisdiction on the verdict sheet I will provide you.

1.CPL 20.40(1). In the rare instance where a motion for a change of venue has been granted, the court should conform the charge as appropriate.

2.The statute provides “conduct of another for which he is legally accountable pursuant to section 20.00 of the penal law.” This charge assumes that the CJI2d charge on accessorial liability defining the term “acting in concert” has already been given to the jury. *See* CJI2d [NY] Accessorial Liability.

3. *People v. Greenberg*, 89 N.Y.2d 553 (1997).

4.*People v. Moore*, 46 NY2d 1, 6 (1978).