

**Geographic Jurisdiction
Venue of a County
Conduct Outside The County
(CPL 20.40[2])**

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 SPECIFY 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] when, even though none of the conduct constituting the offense may have occurred within this county,

Select appropriate alternative:

* the offense committed was a "result offense," meaning that an element of the offense has a specific consequence. In this case, the People contend that there is venue in SPECIFY county because a result of (*name of the offense, e.g. murder*), namely, (*specify; e.g. death*), occurred in this county.³

* the offense committed was one of homicide and the victim's body or a part thereof was found in SPECIFY county.

* the conduct (1) had, or was likely to have, a particular effect upon SPECIFY county or a political subdivision or part thereof, and (2) was performed with intent that it would, or with knowledge that it was likely to, have such particular effect IN SPECIFY COUNTY.

Conduct has a "particular effect" upon a county when the conduct constituting an offense produces consequences which have a

materially harmful impact upon the governmental processes or community welfare of a particular jurisdiction, [or result in the defrauding of persons in such jurisdiction].⁴ The requirement that the conduct have a materially harmful impact requires a concrete and identifiable injury to either the county's governmental processes (that is, the executive, legislative or judicial branch of government) or the welfare of the county's community. Moreover, to be materially harmful, the impact must be more than minor or incidental, and the conduct must harm the well being of the community as a whole, not merely a particular individual.⁵

NOTE: Add one or more paragraphs as appropriate:

[Where oral or written statements are made by a person in one jurisdiction to a person in another jurisdiction by means of telecommunications, mail or any other method of communications they are deemed to be made in each jurisdiction.⁶]

[Where a person causes property to be transported from one jurisdiction to another by means of mail, common carrier or any other method, the person is deemed to have personally transported such property in each jurisdiction and if delivery is made in a second jurisdiction that person is deemed to have personally made the delivery in the second jurisdiction.⁷]

[Where a person causes by any means the use of a computer or computer service in one jurisdiction from another jurisdiction that person is deemed to have personally used the computer or computer service in each jurisdiction.⁸]

The People have the burden to prove by a preponderance of the evidence that (*specify*) county is the legally authorized venue for prosecution (*of the charged offense(s), or, of the charged offenses I have listed for you*).⁹

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 venue 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. CPL 20.10(3).

4. CPL 20.10(4).

5. *Taub v. Altman*, 3 N.Y.3d 30, 33-34 (2004).

6. CPL 20.60(1).

7. CPL 20.60(2).

8.CPL 20.60(3).

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