

HB 1173 with HCA 1 -- CRIMINAL PROCEEDINGS

SPONSOR: Cornejo

COMMITTEE ACTION: Voted "Do Pass with Amendments" by the Standing Committee on Civil and Criminal Proceedings by a vote of 9 to 3.

This bill changes the laws regarding criminal proceedings. The bill specifies that in preliminary hearings, the findings by the court must be based on the testimony of witnesses, written reports of expert witnesses, unpredicated documentary evidence for which there is a substantial basis to believe that a predicate for its admission will be available at trial, or hearsay if there is a substantial basis for believing that the hearsay is credible.

The bill changes the procedure for a change of venue. Currently, the defendant may be granted a change of venue automatically in a county with a population of 75,000 or less or in a case where the moving party can show substantial prejudice. The bill specifies that upon written application by the defendant within 30 days after arraignment, a change of venue may be ordered in any felony proceeding if the inhabitants of the county are prejudiced against the defendant or the state has an undue influence over the residents of the county. The bill also allows the court to secure a jury from another county.

HCA 1: Specifies that the defendant has 30 days from the date he or she enters a plea at arraignment to file an application for a change of venue

PROPOSERS: Supporters say that the need to provide only non-hearsay testimony is out of sync with Missouri's charging and grand jury system. Requiring only non-hearsay witnesses in a case involving a child forces the prosecutor to put on a child witness, which can be harmful to the child. Defense attorneys currently exploit procedural loopholes in the change of venue statute to inconvenience and harass prosecutors in order to obtain better plea bargains.

Testifying for the bill were Representative Cornejo and Christopher Wilson, Missouri Association Of Prosecuting Attorneys.

OPPOSERS: Those who oppose the bill say that the current provisions give the defendant and the state an equal procedural playing field. Allowing the use of hearsay testimony in a preliminary hearing will lead to a deluge of cases which are evidentially deficient and therefore will waste scarce judicial resources. Exceptions can be made for cases involving children, which are a tiny portion of criminal cases.

Testifying against the bill was Dan Viets.