CHAPTER 153

RULES OF CRIMINAL PROCEDURE

S. F. 289

AN ACT to propose changes in the rules of criminal procedure.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Chapter one thousand two hundred forty-five (1245), Acts of the Sixty-sixth General Assembly, 1976 Session, chapter two (2), section one thousand three hundred one (1301), rules one (1) through twenty-six (26) and rules twenty-nine (29) and thirty-one (31) are amended by sections two (2) through eighty (80) of this Act as follows:

Sec. 2. Rule one (1), subsection one (1):

Rule 1. SCOPE OF RULES AND DEFINITIONS.

1. SCOPE. The rules in this section provide procedures ~~for indictable criminal cases~~ applicable to indictable offenses.

Sec. 3. Rule one (1), subsection two (2), paragraph b is amended to read as follows:

b. "Judicial officer" means justices of the supreme court, justices* of the court of appeals, and committing magistrates.

Sec. 4. Rule two (2), subsection two (2):

2. STATEMENT BY THE MAGISTRATE. The magistrate shall inform a defendant who appears before the magistrate after arrest, complaint, summons, or citation of the complaint against the defendant, of the defendant's right to retain counsel, of the defendant's right to request the ~~assignment~~ appointment of counsel if the defendant is unable by reason of indigency to obtain counsel, of the general circumstances under which the defendant may secure pretrial release, of the defendant's right to review of any conditions imposed on the defendant's release and shall provide the defendant with a copy of the complaint. The magistrate shall also inform the defendant that he or she is not required to make a statement and that any statement made by the defendant may

*See Code §684.34

be used against him or her. The magistrate shall allow the defendant reasonable time and opportunity to consult counsel.

Sec. 5. Rule two (2), subsection three (3):

3. COUNSEL. ~~From a list approved by the district court judge, the~~ The magistrate shall have authority to appoint counsel to represent the defendant in the event the defendant requests representation by counsel and is entitled to same. Counsel will be assigned to assist the defendant only upon a showing as required in section three hundred thirty-six A point four (336A.4) of the Code. Counsel so appointed may make application in the district court for compensation for such services.

Sec. 6. Rule two (2), subsection four (4), paragraph a:

a. PRELIMINARY HEARING. The magistrate shall inform the defendant that he or she is entitled to a preliminary hearing unless the defendant is indicted by a grand jury or a ~~true~~ trial information is filed against the defendant or unless he or she waives the preliminary hearing in writing or on the record. If the defendant waives preliminary hearing, the magistrate shall order the defendant held to answer in further proceedings. If the defendant does not waive the preliminary hearing, the magistrate shall schedule a preliminary hearing and inform the defendant of the date of the preliminary hearing. Such hearing shall be held within a reasonable time but in any event not later than ten days following the initial appearance if the defendant is in custody and no later than twenty days if he or she is not in custody. Upon showing of good cause, the time limits specified in this paragraph may be extended by the magistrate.

Sec. 7. Rule two (2), subsection four (4), paragraph c:

c. CONSTITUTIONAL OBJECTIONS. Rules excluding evidence on the ground that it was acquired by unlawful means are not applicable. Motions to suppress must be made to the trial court as provided in rule ~~eleven (11)~~ ten (10), subsection two (2).

Sec. 8. Rule three (3), subsection two (2), paragraph b, subparagraph three (3), part (a):

(a) The juror is a ~~prosecutor~~ complainant upon a charge against the defendant.

Sec. 9. Rule three (3), subsection two (2), paragraph b, subparagraph three (3), part (b); subsection four (4), paragraphs h and i; and subsection four (4), paragraph j, unnumbered paragraph one (1):

(b) The juror has formed or expressed such an opinion as to the guilt or innocence of the defendant as would prevent the juror from rendering a true ~~verdict~~ indictment upon the evidence submitted.

h. REFUSAL OF WITNESS TO TESTIFY. When a witness under examination before the grand jury refuses to testify or to answer a question ~~put-to-him-or-her~~, it shall proceed with the witness before a district ~~court~~ judge, and the foreman shall then distinctly state before a district ~~court~~ judge the question and the refusal of the witness, and if upon hearing the witness the court ~~shall-decide~~ decides that the witness is bound to testify or answer the question propounded, the judge shall inquire of the witness if he or she persists in his or her refusal, and, if he or she does, shall proceed with the witness as in cases of similar refusal in open court.

i. EFFECT OF REFUSAL TO INDICT. If, upon investigation, the grand jury refuses to find an indictment against one charged with a public offense, it shall return all papers to the clerk, with an endorsement thereon, signed by the foreman, to the effect that the charge is ignored. Thereupon, the district ~~court~~ judge must order the discharge of the defendant from custody if in jail, and the exoneration of bail if bail be given. Upon good cause shown, the district ~~court~~ judge may direct that the charge again be submitted to the grand jury. Such ignoring of the charge does not prevent the cause from being submitted to another grand jury as the court may direct; but without such direction, it cannot ~~be~~ again be submitted.

The grand jury shall inquire into all indictable offenses brought before it which may be tried within the county, and present them to the court by indictment. The grand jury shall meet at times specified by order of a district judge. In addition to those times, the grand jury shall meet at the request of the county attorney or upon the request of a majority of the grand jurors.

Sec. 10. Rule three (3), subsection four (4), paragraph d:

d. SECRECY OF PROCEEDINGS. Every member of the grand jury, and its clerks and bailiffs, shall keep secret the proceedings of that body and the testimony given before it, except as provided in rule thirteen (13). No such person shall disclose the fact that an indictment has been found except when necessary for the issuance and execution of a

warrant or summons, and such duty of nondisclosure shall continue until the indicted person has been arrested. The ~~county~~ prosecuting attorney shall be allowed to appear before the grand jury on his or her own request for the purpose of giving information or for the purpose of examining witnesses, and the grand jury may at all reasonable times ask the advice of the ~~county~~ prosecuting attorney or the court. However, neither the ~~county~~ prosecuting attorney nor any other officer or person except the grand jury may be present when the grand jury is voting upon the finding of an indictment.

Sec. 11. Rule three (3), subsection four (4), paragraph e:

e. SECURING WITNESSES AND RECORDS. The clerk of the court must, when required by the foreman of the grand jury or ~~county~~ prosecuting attorney, issue subpoenas for witnesses to appear before the grand jury. The grand jury is entitled to free access at all reasonable times to county institutions and places of confinement, and to the examination without charge of all public records within the county.

Sec. 12. Rule four (4), subsection six (6), paragraph b:

b. COPY TO DEFENSE. Such minutes of evidence shall not be open for the inspection of any person except the judge of the court, the ~~county~~ prosecuting attorney, or the defendant and his or her counsel. The clerk of the court must, on demand made, furnish the defendant or his or her counsel a copy thereof without charge.

Sec. 13. Rule four (4), subsection eight (8), paragraph d:

d. CONTINUANCE. ~~No~~ When an application for amendment is sustained, no continuance or delay in trial shall be granted because of such amendment unless it appears that defendant should have additional time to prepare because of such amendment.

Sec. 14. Rule five (5), subsection one (1) is amended by striking that subsection and inserting in lieu thereof the following:

1. PROSECUTION ON INFORMATION. All indictable offenses may be prosecuted by a trial information. An information charging a person with an indictable offense may be filed with the clerk of the district court at any time, whether or not the grand jury is in session. The county attorney shall have the sole authority to file such a trial information

unless that authority is specifically granted to other prosecuting attorneys by statute.

Sec. 15. Rule five (5), subsections two (2), four (4) and five (5):

2. ENDORSEMENT. An information shall be endorsed "a true information" and shall be signed by the prosecuting attorney ~~or in his or her name by an assistant prosecuting attorney~~.

4. APPROVAL BY JUDGE. Prior to the filing of the information, a district judge ~~or~~, district associate judge or magistrate having jurisdiction of the offense must approve the information by a finding that the evidence contained in the information and the minutes of testimony, if unexplained, would warrant a conviction by the trial jury. If not approved, the charge may be presented to the grand jury for consideration. At any time after judicial approval of an information, and prior to the commencement of trial, the court, on its own motion, may order said information set aside and said case submitted to the grand jury.

5. INDICTMENT RULES APPLICABLE. The information shall be drawn and construed, in matters of substance, as indictments are required to be drawn and construed. The term "indictment" embraces the trial information, and all provisions of law applying to prosecutions on indictments apply also to informations, except where otherwise provided for by statute or in these rules, or when the context requires otherwise.

Sec. 16. Rule six (6), subsections one (1), two (2), and three (3):

1. MULTIPLE OFFENSES. When the conduct of a defendant may establish the commission of more than one public offense arising out of the same transaction or occurrence, the defendant may be prosecuted for each of such offenses. Each of such offenses may be alleged and prosecuted as separate counts in a single complaint, information or indictment, unless, for good cause shown, the trial court in its discretion determines otherwise. Where the public offense which is alleged carries with it certain lesser included offenses, the latter should not be charged, and it is sufficient to charge that the accused committed the ~~public~~ major offense.

2. PROSECUTION AND JUDGMENT. Upon prosecution for a ~~crime~~ public offense, the defendant may be convicted of either the ~~crime~~ public offense charged or an included ~~crime~~ offense, but not both.

3. DUTY OF COURT TO INSTRUCT. In cases where the ~~crime~~ public offense charged may include some lesser ~~crime~~ offense it is the duty of the trial court to instruct the jury, not only as to the ~~crime~~ public offense charged but as to all lesser ~~crimes~~ offenses of which the accused might be found guilty under the indictment and upon the evidence adduced, even though such instructions have not been requested ~~or have been objected to~~.

Sec. 17. Rule seven (7), subsection two (2), paragraph b:

b. SUMMONS. The summons shall be in the form described in section four hundred two (402) of this chapter, except that it shall be signed by the clerk. A summons to a corporation shall be in the form prescribed in section seven hundred five (705) of this chapter.

Sec. 18. Rule seven (7), subsection three (3), paragraph a:

a. EXECUTION OR SERVICE. The warrant shall be executed or the summons served as provided in division four (IV) of this chapter. ~~A summons to a corporation shall be in the form prescribed in section seven hundred five (705) of this chapter.~~ Upon the return of an indictment or upon the filing of a trial information against a person confined in any penal institution, the court to which such indictment is returned may enter an order directing that such person be produced before it for trial. The sheriff shall execute such order by serving a copy thereof on the warden having such accused person in custody and thereupon such person shall be delivered to such sheriff and conveyed to the place of trial.

Sec. 19. Rule eight (8), subsection one (1), unnumbered paragraphs one (1) and two (2):

Arraignment shall be conducted in open court ~~without unnecessary delay~~ as soon as practicable. If the defendant appears for arraignment without counsel, the defendant must, before proceeding therewith, be informed by the court of ~~his or her~~ the right thereto, and be asked if he or she desires counsel; and if he or she does, and is unable by reason of indigency to employ any, the court must ~~assign the defendant~~ appoint defense counsel, who shall have free access to the defendant at all reasonable hours. ~~Where the defendant makes an informed waiver of counsel, the court in its discretion may assign standby counsel to assist the accused.~~ Arraignment shall consist of reading the indictment to the defendant or

stating to the defendant the substance of the charge and calling on ~~on~~ the defendant to plead thereto. The defendant shall be given a copy of the indictment or information before he or she is called upon to plead.

The defendant must be informed that if the name by which he or she is indicted or informed against is not his or her true name, he or she must then declare what his or her true name is, or be proceeded against by the name in the indictment~~, and asking the defendant what he or she answers to the indictment~~. If the defendant gives no other name or gives his or her true name, the defendant is thereafter precluded from objecting to the indictment or information upon the ground of being therein improperly named. If the defendant alleges that another name is his or her true name, the court must direct an entry thereof in the minutes of the arraignment, and the subsequent proceedings on the indictment shall be had against the defendant by that name, and the indictment amended accordingly.

Sec. 20. Rule eight (8), subsection two (2), paragraph a:

a. IN GENERAL. A defendant may plead guilty, or not guilty~~, not guilty by reason of insanity, not triable by reason of present insanity, or a former judgment of conviction or acquittal of the offense charged~~. If the defendant fails or refuses to plead at arraignment, or if the court refuses to accept a guilty plea, the court shall enter a plea of not guilty. At any time before judgment, the court may permit a guilty plea to be withdrawn and ~~other plea or pleas~~ a not guilty plea substituted. ~~A defendant who does not plead guilty may enter one or more of the other pleas.~~

Sec. 21. Rule eight (8), subsection two (2), paragraph b:

b. PLEAS OF GUILTY. The court may refuse to accept a plea of guilty, and shall not accept such plea without first addressing the defendant personally and determining that the plea is made voluntarily and intelligently and has a factual basis. ~~The defendant shall be informed of the following:~~

Before accepting a plea of guilty, the court must address the defendant personally in open court and inform the defendant of, and determine that the defendant understands, the following:

(1) The nature of the charge to which the plea is offered.

(2) The mandatory minimum punishment, if any, and the maximum possible punishment provided by the statute defining the offense to which the plea is offered.

(3) That the defendant has the right to ~~plead not guilty, or to persist in that plea if it has already been made, or to plead guilty~~ be tried by a jury, and at such trial has the right to assistance of counsel, the right to confront and cross-examine witnesses against him or her, and the right not to be compelled to incriminate himself or herself.

(4) That if the defendant pleads guilty there will not be a further trial of any kind, so that by pleading guilty ~~he~~ the defendant waives the right to a trial ~~by jury or otherwise and the right to be confronted with the witnesses against him or her.~~

~~The court shall accept the guilty plea only after determining that the defendant understands these matters, that the plea is voluntary, and that there is a factual basis for same.~~

Sec. 22. Rule eight (8), subsection two (2), by adding the following new paragraph:

c. INQUIRY REGARDING PLEA AGREEMENT. The court shall also inquire as to whether the defendant's willingness to plead guilty results from prior discussions between the attorney for the state and the defendant or the defendant's attorney. The terms of any plea agreement shall be disclosed of record as provided in rule nine (9), subsection two (2) of the rules of criminal procedure.

Sec. 23. Rule eight (8), subsection three (3):

3. RECORD OF PROCEEDINGS. A verbatim record of the proceedings at which the defendant enters a plea shall be made ~~and, if there is a plea of guilty, the record shall include, without limitation, the court's advice to the defendant, the inquiry into the voluntariness of the plea including any plea agreement.~~

Sec. 24. Rule nine (9), subsections one (1) through four (4):

1. IN GENERAL. The prosecuting attorney and the attorney for the defendant may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty to a charged offense or to a lesser or related offense, the prosecuting attorney will ~~move for dismissal of other charges, or will recommend or not oppose the imposition of~~

~~a particular sentence, or will do both~~ make a charging or sentencing concession.

2. ADVISING COURT OF AGREEMENT. If a plea agreement has been reached by the parties ~~which contemplates entry of a plea of guilty in the expectation that a specific sentence will be imposed or that other charges before the court will be dismissed,~~ the court shall require the disclosure of the agreement in open court at the time the plea is offered. Thereupon, if the agreement requires concurrence of the court, the court may accept or reject the agreement, or may defer its decision as to acceptance or rejection until receipt of a presentence report.

3. ACCEPTANCE OF PLEA AGREEMENT. ~~If~~ When the court's concurrence is required, and the court accepts the plea agreement, the court shall inform the defendant that it will embody in the judgment and sentence the disposition provided for in the plea agreement or another disposition more favorable to the defendant than that provided for in the plea agreement.

4. REJECTION OF PLEA AGREEMENT. If the court refuses to be bound by or rejects the plea agreement, the court shall inform the parties of this fact, ~~advise the defendant personally in open court that the court is not bound by the plea agreement,~~ afford the defendant the opportunity to then withdraw his or her plea, and advise the defendant that if he or she persists in his or her guilty plea the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

Sec. 25. Rule ten (10), subsection two (2), paragraph c:

c. Motions to suppress evidence on the ground that it was illegally obtained including, but not limited to, motions on any ground listed in rule eleven (11) of the rules of criminal procedure.

Sec. 26. Rule ten (10), subsection two (2), by adding the following new lettered paragraphs:

NEW PARAGRAPH. Motions for change of venue or change of judge.

NEW PARAGRAPH. Motion in limine.

Sec. 27. Rule ten (10), subsections three (3), four (4) and five (5):

3. EFFECT OF FAILURE TO RAISE DEFENSES OR OBJECTIONS. Failure of the defendant to timely raise defenses or objections or to make requests which must be made prior to trial under

this rule shall constitute waiver thereof, but the court for good cause shown, ~~upon-motion-supported-by-affidavit,~~ may grant relief from such waiver.

4. TIME OF FILING. Motions hereunder, except a motion for a bill of particulars ~~or-a-change-of-venue~~, shall be filed either within thirty days after arraignment or prior to the impaneling of the trial jury, whichever event occurs earlier, unless the period for filing is extended by the court for good cause shown.

5. BILL OF PARTICULARS. When an indictment or information charges an offense in accordance with this rule but fails to specify the particulars of the offense sufficiently to fairly enable the defendant to prepare his or her defense, the court may, on written motion of the defendant, require the ~~county~~ prosecuting attorney to furnish the defendant with a bill of particulars containing such particulars as may be necessary for the preparation of the defense. A motion for a bill of particulars may be made any time prior to or within ten days after arraignment unless the time be extended by the court for good cause shown. A plea of not guilty at arraignment does not waive the right to move for a bill of particulars if such motion is timely filed within this rule. The ~~county~~ prosecuting attorney may furnish a bill of particulars on the ~~county~~ prosecuting attorney's own motion, or the court may order a bill of particulars without motion. Supplemental bills of particulars may be likewise ordered by the court or voluntarily furnished, or a new bill may be substituted for a bill already furnished. At the trial the state's evidence shall be confined to the particulars of the bill or bills.

Sec. 28. Rule ten (10), subsection six (6), paragraph a:

6. DISMISSING INDICTMENT OR INFORMATION.

a. IN GENERAL. If it appears from the bill of particulars furnished pursuant to this rule that the particulars stated do not constitute the offense charged in the indictment or information, or that the defendant did not commit that offense or that a prosecution for that offense is barred by the statute of limitations, the court may and on motion of defendant shall dismiss the indictment or information unless the ~~county~~ prosecuting attorney shall furnish another bill of particulars which so states the particulars as to ~~show-that-the-particulars constitute-the-offense-charged-in-the-indictment-or-information~~

~~and-that-the-offense-was-committed-by-the-defendant-and-that it-is-not-barred-by-the-statute-of-limitations~~ cure the defect.

Sec. 29. Rule ten (10), subsection six (6), paragraph c, subparagraph three (3):

(3) When the information has not been approved as required under rule five (5), subsection four (4).

Sec. 30. Rule ten (10), subsections seven (7) and eight (8):

7. EFFECT OF DETERMINATION. If the court grants a motion based on a defect in the institution of the prosecution or in the indictment or information, it may also order that the defendant be held in custody or that the defendant's bail be continued for a specified period pending the filing of a new indictment or information if the same was dismissed by the court, or the amendment of any such pleading if the defect is subject to correction by amendment. The new information or indictment must be filed within ~~thirty~~ twenty days of the dismissal of the original indictment or information ~~and-the-defendant-must-be-brought-to-trial-within-the-time limits-specified-in-rule-twenty-seven-(27),-rules-of-criminal procedure~~. The ninety day period under rule twenty-seven (27), subsection two (2), paragraph b for bringing a defendant to trial shall commence anew with the filing of the new indictment or information.

8. RULING ON MOTION. A pretrial motion shall be determined ~~before-trial~~ without unreasonable delay. Where factual issues are involved in determining a motion, the court shall state its essential findings on the record.

Sec. 31. Rule ten (10), subsection nine (9), paragraphs a through c, by striking the subsection title and the paragraphs and inserting in lieu thereof the following:

9. MOTION FOR CHANGE OF VENUE OR CHANGE OF JUDGE.

a. FORM OF MOTION. A motion for change of venue or change of judge shall be verified on information and belief by the movant.

b. VENUE. If the court is satisfied from a motion for change of venue and evidence adduced in support thereof that such prejudice exists in the county in which the trial is to be had that there is a substantial likelihood a fair and impartial trial cannot be had there, the court shall transfer the proceeding to another county in which no such situation exists.

c. CHANGE OF JUDGE. If the court is satisfied from a motion for change of judge and evidence is adduced in support thereof that prejudice of the judge exists, the chief judge of the district shall name a new presiding judge. The trial need not be moved to a different county.

Sec. 32. Rule ten (10), subsection nine (9), paragraph d:

d. PROCEEDINGS ON TRANSFER. When a transfer of the case is ordered to another county the clerk shall transmit to the clerk of the court to which the proceeding is transferred all papers in the proceeding or duplicates thereof and any bail taken, and the prosecution shall continue in that county. If the defendant is in custody, the court may order the defendant to be delivered to the sheriff of the county to which transfer of the case is allowed, and upon such delivery with a certified copy of the order therefor, the sheriff last mentioned must receive and detain the defendant. All expenses attendant upon the change of venue and trial, including the costs of keeping the defendant, which shall be allowed by the court trying the case, may be recovered by the county to which the case is transferred from the county in which the prosecution was commenced. The ~~county~~ prosecuting attorney in the original county shall be responsible for the prosecution in such other county.

Sec. 33. Rule ten (10), subsection ten (10), paragraph a, subparagraph one (1):

(1) NOTICE. A defendant who intends to offer evidence of an alibi defense shall, within the time provided for the making of pretrial motions or at such later time as the court shall direct, ~~inform the attorney for the government of such intention and~~ file ~~such~~ written notice of such intention. The notice shall state the specific place or places at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom the defendant intends to rely to establish such alibi. In the event that a defendant shall file such notice the prosecuting attorney ~~for the government~~ shall file ~~and serve upon the defendant~~ written notice of the names and addresses of the witnesses the ~~government~~ state proposes to offer in rebuttal to discredit the defendant's alibi. Such ~~service~~ notice shall be ~~completed~~ filed not less than ~~five~~ ten days after ~~receipt~~ filing of defendant's witness list, or within such other time as the court may direct. ~~If either party~~

~~shall fail to abide by the time periods heretofore described, the proponent must move the court for leave to introduce such evidence, showing diligence supported by affidavit.~~

Sec. 34. Rule ten (10), subsection ten (10), paragraph a, subparagraph two (2), by striking the subparagraph and inserting in lieu thereof the following:

(2) FAILURE TO COMPLY. If either party shall fail to abide by the time periods heretofore described, such party may not offer evidence on the issue of alibi without leave of court for good cause shown. In granting leave, the court may impose terms and conditions including a delay or continuance of trial. The right of a defendant to give evidence of alibi in his own testimony is not limited by the provisions of this rule.

Sec. 35. Rule ten (10), subsection ten (10), paragraph b, subparagraphs one (1) and two (2), by amending the paragraph title and subparagraph one (1), and by striking subparagraph two (2):

b. INSANITY AND DIMINISHED RESPONSIBILITY.

(1) DEFENSE OF INSANITY AND DIMINISHED RESPONSIBILITY. If a defendant intends to rely upon the defense of insanity or diminished responsibility at the time of the alleged crime, the defendant shall, within the time provided for the filing of pretrial motions ~~or at such later time as the court may direct, inform the attorney for the government of such intention and file such notice~~ file written notice of such intention. The court may for good cause shown allow late filing of the notice or grant additional time to the parties to prepare for trial or make such other order as may be appropriate.

Sec. 36. Rule ten (10), subsection ten (10), paragraph b, subparagraph three (3), by striking the subparagraph and inserting in lieu thereof the following:

(3) STATE'S RIGHT TO EXPERT EXAMINATION. Where a defendant has given notice of the use of the defense of insanity or diminished responsibility and intends to call an expert witness or witnesses on that issue at trial the defendant shall within the time provided for the filing of pretrial motions file written notice of the name of each such witness. Upon such notice or as otherwise appropriate the court may upon application order the examination of the defendant by a state-named expert or experts whose names shall be disclosed to the defendant prior to examination.

Sec. 37. Rule eleven (11), headnote, is amended to read as follows:

Rule 11. SUPPRESSION OF EVIDENCE OBTAINED BY AN UNLAWFUL SEARCH AND SEIZURE.

Sec. 38. Rule twelve (12), subsection one (1), unnumbered paragraph one (1):

A defendant in a criminal case, ~~either after preliminary information, indictment, or information,~~ may examine all witnesses listed by the state on the indictment or information or notice of additional witnesses, conditionally or on notice or commission, in the same manner and with like effect and with the same limitations as in civil actions except as otherwise provided by statute and these rules. Depositions before indictment or trial information is filed may only be had with leave of court.

Sec. 39. Rule thirteen (13), subsections one (1), two (2), three (3), and four (4):

1. WITNESSES EXAMINED BY THE PROSECUTING ATTORNEY. When a witness subpoenaed by the prosecuting attorney pursuant to rule five (5) is summoned by the prosecuting attorney after complaint, indictment or information, the defendant shall have a right to be present and have the opportunity to cross-examine any witnesses whose appearance before the county attorney is required by this rule.

2. DISCLOSURE OF EVIDENCE BY THE ~~GOVERNMENT~~ STATE UPON DEFENSE MOTION OR REQUEST.

a. DISCLOSURE REQUIRED UPON REQUEST.

(1) Upon pretrial motion of a defendant the court shall order the attorney for the ~~government~~ state to permit the defendant to inspect and copy or photograph: Any relevant written or recorded statements made by the defendant or copies thereof, within the possession, custody or control of the ~~government~~ state, unless same shall have been included with the minutes of evidence accompanying the indictment or information; the substance of any oral statement made by the defendant which the ~~government~~ state intends to offer in evidence at the trial, including any voice recording of same; and the transcript or record of testimony of the defendant before a grand jury, whether or not the ~~government~~ state intends to offer same in evidence upon trial.

(2) When two or more defendants are jointly charged, upon motion of any defendant the court shall order the attorney for the ~~government~~ state to permit the defendant to inspect

and copy or photograph any written or recorded statement of a codefendant which the ~~government~~ state intends to offer in evidence at the trial, and the substance of any oral statement which the ~~government~~ state intends to offer in evidence at the trial made by a codefendant whether before or after arrest in response to interrogation by any person known to the codefendant to be a ~~government~~ state agent.

(3) Upon motion of the defendant, the court shall order the ~~government~~ state to furnish to defendant such copy of the defendant's prior criminal record, if any, as is then available to the ~~government~~ state.

b. DISCRETIONARY DISCOVERY.

(1) Upon motion of the defendant the court may order the attorney for the ~~government~~ state to permit the defendant to inspect, and where appropriate, to subject to scientific tests, items seized by the ~~government~~ state in connection with the alleged crime. The court may further allow the defendant to inspect and copy books, papers, documents, statements, photographs or tangible objects which are within the possession, custody or control of the ~~government~~ state, and which are material to the preparation of his or her defense, or are intended for use by the ~~government~~ state as evidence at the trial, or were obtained from or belong to the defendant.

(2) Upon motion of a defendant the court may order the attorney for the ~~government~~ state to permit the defendant to inspect and copy or photograph any results or reports of physical or mental examinations, and of scientific tests or experiments, made in connection with the particular case, or copies thereof, within the possession, custody or control of the ~~government~~ state.

3. DISCLOSURE OF EVIDENCE BY THE DEFENDANT.

a. DOCUMENTS AND TANGIBLE OBJECTS. If the court grants the relief sought by the defendant under ~~subdivision~~ subsection two (2), paragraph b, subparagraph one (1), of this rule, the court may, upon motion of the ~~government~~ state, order the defendant to permit the ~~government~~ state to inspect and copy books, papers, documents, statements other than those of the accused, photographs or tangible objects which are not privileged and are within the possession, custody or control of the defendant and which the defendant intends to introduce in evidence at trial.

b. REPORTS OF EXAMINATIONS AND TESTS. If the court grants relief sought by the defendant under ~~subdivision~~ subsection two (2), paragraph b, subparagraph one (1), of this rule, the court may, upon motion of the ~~government~~ state, order the defendant to permit the ~~government~~ state to inspect and copy the results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the defendant and which the defendant intends to introduce in evidence at the trial or which were prepared by a witness whom the defendant intends to call at the trial when such results or reports relate to his or her testimony.

c. TIME OF MOTION. A motion for the relief provided under ~~subdivision two (2)~~ subsection three (3) of this rule shall be made, if at all, within five days after any order granting similar relief to the defendant.

~~d~~ 4. FAILURE TO EMPLOY EVIDENCE. When evidence intended for use and furnished under this rule is not actually employed at the trial, that fact shall not be commented upon at trial.

~~4~~ 5. CONTINUING DUTY TO DISCLOSE. If, subsequent to compliance with an order issued pursuant to this rule, either party discovers additional evidence, or decides to use evidence which is additional to that originally intended for use, and such additional evidence is subject to discovery under this rule, the party shall promptly ~~notify the other party~~ file written notice of the existence of the additional evidence to allow the other party to make an appropriate motion for additional discovery.

Sec. 40. Rule thirteen (13), subsection five (5), paragraph a, subparagraph four (4), by striking the subparagraph.

Sec. 41. Rule thirteen (13), subsection five (5), paragraph c:

c. FAILURE TO COMPLY. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule or with an order issued pursuant to this rule, the court may upon timely application order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing any evidence not disclosed, or it may enter such other order as it deems just under the circumstances.

Sec. 42. Rule fourteen (14), subsections two (2) and three (3):

2. FOR PRODUCTION OF DOCUMENTS--DUCES TECUM. A subpoena may contain a clause directing the witness to bring with him or her any book, writing, or other thing under the witness' control which he or she is bound by law to produce as evidence. The court on motion may ~~quash~~ dismiss or modify the subpoena if compliance would be unreasonable or oppressive.

3. SERVICE. A subpoena may be served in any part of the state. It may be served by any adult person. A peace officer making service in a criminal case must serve without delay in his or her county~~,~~ or city~~,-or-town~~ any subpoena delivered to him or her for service and make a written return stating the time, place, and manner of service. When service is made by other than a peace officer, proof thereof shall be by affidavit. Service is made by showing the original to the witness and delivering a copy to him or her. ~~If-a-witness conceals-himself-or-herself-to-avoid-service-of-a-subpoena, the-officer-may-break-open-doors-or-windows-for-the-purpose of-making-service.~~

Sec. 43. Rule fifteen (15), subsection one (1):

1. WHEN HELD. Where a plea of ~~other-than~~ not guilty to an indictment or trial information is entered on behalf of the defendant, the court may order all parties to the action to appear before it for a conference to consider such matters as will promote a fair and expeditious trial.

Sec. 44. Rule sixteen (16):

Rule 16. TRIAL BY JURY OR COURT.

1. TRIAL BY COURT ALLOWED. Cases required to be tried by jury shall be so tried unless the defendant waives a jury trial ~~in-writing~~ in a reported proceeding in open court.

2. FINDINGS. In a case tried without a jury the court shall ~~make-a-general-finding.--Where-requested-by-any-party before-or-during-trial,-the-court-shall~~ find the facts specially and ~~in-writing~~ on the record, separately stating its conclusions of law and directing an appropriate judgment. ~~A-request-for-findings-is-not-a-condition-precedent-for-review of-the-judgment.~~

Sec. 45. Rule seventeen (17), subsection two (2), headnote:

2. ~~COMPLETION~~ DEPLETION OF PANEL.

Sec. 46. Rule seventeen (17), subsection five (5), paragraph m:

m. Because the juror is defendant in a similar indictment, or complainant ~~or-private-prosecutor~~ against the defendant or any other person indicted for a similar offense.

Sec. 47. Rule seventeen (17), subsection six (6):

6. EXAMINATION OF JURORS. Upon examination the jurors shall be sworn. If an individual juror is challenged, the juror may be examined as a witness to prove or disprove the challenge, and must answer every question pertinent to the inquiry thereon, but the juror's answer shall not afterwards be testimony against him or her. Other witnesses may also be examined on either side. The rules of evidence applicable to the trial of other issues shall govern the admission or exclusion of testimony on the trial of the challenge, and the court shall determine the law and the ~~fact~~ facts, and must allow or disallow the challenge.

Sec. 48. Rule seventeen (17), subsection ten (10):

10. PEREMPTORY CHALLENGES--NUMBER. If the offense charged in the indictment or information is ~~or may be punishable with imprisonment for life~~ a class A felony, the state and defendant shall each have the right to peremptorily challenge eight jurors and shall strike two jurors.

If the offense charged be ~~a~~ any other felony, the state and the defendant shall each have the right to peremptorily challenge four jurors and shall strike two jurors.

If the offense charged ~~be~~ is a misdemeanor, the state and the defendant shall each have the right to peremptorily challenge two jurors and shall strike two jurors.

Sec. 49. Rule seventeen (17), subsection twelve (12):

12. MULTIPLE DEFENDANTS. In a case where two or more ~~than one defendant is~~ defendants are tried, each defendant shall have one-half the number of challenges allowed in subdivision eleven (11) of this rule. The state shall be limited to the challenges and strikes specified in subdivision eleven (11). The defendants collectively shall be limited to two strikes.

Sec. 50. Rule eighteen (18), subsection one (1), paragraph a, subparagraph one (1):

(1) READING INDICTMENT AND PLEA. The clerk or prosecuting attorney must read the indictment or the supplemental indictment, as ~~required under the provision of the Code~~ appropriate, and state the defendant's plea to the jury.

Sec. 51. Rule eighteen (18), subsection one (1), paragraph b:

b. ORDER OF ARGUMENT--~~ARGUMENTS~~. When the evidence is concluded, unless the case is submitted to the jury on both sides without argument, the prosecuting attorney must commence,

the defendant follow by one or two counsel, at the defendant's option, unless the court permits the defendant to be heard by a larger number, and the prosecuting attorney conclude, confining himself to a response to the arguments of the defendant's counsel. Where two or more defendants are on trial for the same offense, they may be heard by one counsel each.

Sec. 52. Rule eighteen (18), subsections two (2), three (3) and four (4):

2. ADVANCE NOTICE OF EVIDENCE SUPPORTING INDICTMENTS OR INFORMATIONS. The prosecuting attorney, in offering trial evidence in support of an indictment, shall not be permitted to introduce any witness the minutes of whose testimony was not presented with the indictment to the court; in the case of informations, a witness may testify in support thereof if the witness' identity and a minute of the witness' evidence has been given pursuant to these rules. However, these provisions are subject to the following exception: Additional witnesses in support of the indictment or trial information may be presented by the prosecuting attorney if he or she has given the defendant's attorney of record, or the defendant if he or she has no attorney, a minute of such witness' testimony, at least ~~seven~~ ten days before the commencement of the trial.

3. FAILURE TO GIVE NOTICE. Whenever the prosecuting attorney desires to ~~introduce evidence~~ call witnesses to support the indictment, of which he or she shall not have given ~~seven~~ ten days' notice because of insufficient time therefor since the prosecutor learned said ~~evidence~~ testimony could be obtained, the prosecutor may move the court for leave to introduce such ~~evidence~~ testimony, giving the same particulars as in the former case, and showing diligence, supported by affidavit or other evidence. Except where the ~~evidence~~ testimony goes to merely formal matters, if the court sustains said motion, the defendant shall elect whether said cause shall be continued on his motion, or the witness shall then testify. If said defendant shall not elect to have said cause continued, the prosecuting attorney may examine said witness in the same manner and with the same effect as though ~~seven~~ ten days' notice had been given defendant or the defendant's attorney as hereinbefore provided, except the prosecuting attorney, in the examination of witnesses, shall

be strictly confined to the matters set out in his or her motion.

4. REPORTING OF TRIAL. All the provisions relating to mode and manner of the trial of civil actions, report thereof, translation of the shorthand reporter's notes, the making of such reports and translation of the record, and in all other respects, apply to the trial of criminal actions. Upon request of any party, final arguments shall be reported.

Sec. 53. Rule eighteen (18), subsection five (5), paragraphs a, d, f, and g:

a. VIEW.

(1) WHEN TAKEN. ~~When~~ Upon motion made, when the court is of the opinion that it is proper, the jury ~~should~~ may view the place ~~in which~~ where the offense is charged to have been committed, or ~~in which~~ where any other material fact occurred. ~~It~~ The court may order the jury to be conducted in a body, in the custody of proper officers, to the place, which shall be shown them by a person appointed by the court for that purpose.

(2) ATTENDING OFFICERS. The officers must be sworn to suffer no person to speak to or communicate with the jury on any subject connected with the trial, or to do so themselves, except the person appointed by the court for that purpose, and that only to show the place to be viewed, and to return them into court without ~~unnecessary~~ unreasonable delay at a specified time.

d. ADMONITION TO JURORS. The jury, whether permitted to separate or kept together in charge of sworn officers, must be admonished by the court that it is their duty not to permit any person to speak to or communicate with them on any subject connected with the trial, and that any and all attempts to do so should be immediately reported by them to the court, and that they should not converse among themselves on any subject connected with the trial, or form or express an opinion thereon, until the cause is finally submitted to them, that they should not make an unauthorized visit to the scene of the alleged offense, and that they should refrain from conducting any unauthorized experiments or tests relating to the alleged offense. Said admonition must be given or referred to by the court at each adjournment during the progress of the trial previous to the final submission of the cause to the jury.

f. INSTRUCTIONS. Upon the conclusion of the arguments, the court shall charge the jury in writing, without oral explanation or qualification, stating the law of the case. The rules relating to the instruction of juries in civil cases shall be applicable to the trial of criminal prosecutions. After hearing the charge, the jury ~~may either decide in court or~~ shall retire for deliberation.

g. REPORT FOR INFORMATION. After the jury has retired for deliberation, if there be any disagreement as to any part of the testimony, or if it desires to be informed on any point of law arising in the cause, it must require the officer to conduct it into court, and, upon its being brought in, the information required may be given, in the discretion of the trial court. Where further information as to the testimony which was given at trial is taken by the jury, this shall be accomplished by the court reporter or other appropriate official reading from the reporter's notes. Where the court gives the jury additional instructions, this shall appear of record. Provided, that the procedures described in this section shall take place in the presence of defendant and counsel for the defense and prosecution, ~~or after oral notice to the county attorney and defendant's counsel and provision of an opportunity to same to be present~~ unless such presence is waived.

Sec. 54. Rule eighteen (18), subsection six (6), paragraphs a, b and c:

a. ILLNESS OF JURORS AND OTHER CASES. The court may discharge a jury because of any accident or calamity requiring it, or by consent of all parties, or when on an amendment a continuance is ordered, or if they have deliberated until it satisfactorily appears that they cannot agree. The case shall be retried ~~immediately or at a future time, as the court directs~~ within ninety days unless good cause for further delay is shown.

b. LACK OF JURISDICTION; NO OFFENSE CHARGED. The court may also discharge the jury ~~where~~ when it appears that it has no jurisdiction of the offense, or that the facts as charged in the indictment do not constitute an offense punishable by law.

c. CRIME COMMITTED IN ANOTHER STATE. If the jury be discharged because the court ~~has not~~ lacks jurisdiction of the offense charged in the indictment, the offense being committed out of the jurisdiction of this state, the defendant must

be discharged, or ordered to be retained in custody a reasonable time until the prosecuting attorney shall have a reasonable opportunity to inform the chief executive of the state in which the offense was committed of the facts, and for said officer to require the delivery of the offender.

Sec. 55. Rule eighteen (18), subsection seven (7), paragraph c:

c. ADJOURNMENTS DECLARED BY TRIAL COURT. While the jury is absent, the court may adjourn from time to time ~~as to~~ for other business, but it shall be nevertheless deemed open for every purpose connected with the cause submitted to the jury until a verdict is rendered or the jury is discharged.

Sec. 56. Rule eighteen (18), subsection eight (8), paragraph a:

a. MOTION BEFORE SUBMISSION TO JURY. The court on motion of a defendant or ~~of~~ on its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the indictment after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses. If a defendant's motion for judgment of acquittal at the close of the evidence offered by the prosecuting attorney is not granted, the defendant may offer evidence without having waived his or her right to rely on such motion.

Sec. 57. Rule eighteen (18), subsection nine (9):

9. TRIAL OF QUESTIONS INVOLVING PRIOR CONVICTIONS. After conviction of the primary or current offense, but prior to pronouncement of sentence, if the indictment or information alleges one or more prior convictions which by the Code subjects the offender to an increased sentence, the offender shall have the opportunity in open court to affirm or deny that he or she is identical with the person previously convicted, or that he or she was not represented by counsel and did not waive counsel. If the offender denies he or she is the person previously convicted, sentence shall be postponed for such time as to permit a trial before a jury on the issue of the offender's identity with the person previously convicted. Other objections shall be heard and determined by the court, and these other objections shall be asserted prior to trial of the substantive offense in the manner presented in rule ten (10). On the issue of identity, the court may in its discretion reconvene the jury which heard the current offense or dismiss that jury and submit the issue

to another jury to be later impaneled. If the offender is found by the jury to be the person previously convicted, or if the offender acknowledged that he or she is such person, the offender shall be sentenced as prescribed in the Code.

Sec. 58. Rule nineteen (19), subsection three (3), paragraph a:

a. Before any witness shall be compelled to answer or to produce evidence in any judicial proceeding after having asserted that such answer or evidence would tend to render him or her criminally liable, incriminate him or her or violate his or her right to remain silent, the witness must knowingly waive his right or:*

Sec. 59. Rule nineteen (19), subsection three (3), paragraph a, subparagraph one (1), unnumbered part one (1):

A county attorney or the attorney general must file with a district ~~court~~ judge ~~or district associate judge~~ a verified application setting forth that:

Sec. 60. Rule nineteen (19), subsection three (3), paragraph b:

b. A complete verbatim transcript of testimony given pursuant to an order of immunity shall be made and filed with the application and the order of court. The application, order granting immunity and all transcripts filed shall be sealed upon motion of the defendant, county attorney, or attorney general and shall be opened only by order of the court. This section shall not bar the use of the transcript as evidence in any proceeding except the transcript shall not be used in any proceeding against the witness ~~himself~~ except for perjury or contempt.

Sec. 61. Rule twenty (20), subsection one (1):

1. RULES. The rules of evidence prescribed in civil procedure shall apply to criminal proceedings as far as applicable and not inconsistent with the provisions of ~~this rule~~ statutes and these rules.

Sec. 62. Rule twenty (20), by striking subsection five (5).

Sec. 63. Rule twenty (20), subsection six (6), unnumbered paragraphs one (1) and three (3):

6. EVIDENCE OF PAST SEXUAL CONDUCT IN TRIALS OF SEXUAL ABUSE. In prosecutions for the crime of sexual abuse, evidence of the prosecuting witness' previous sexual conduct shall not be admitted, nor reference made thereto in the presence of the jury, except as provided herein. Evidence of the

*No apparent change

prosecuting witness' previous sexual conduct shall be admissible upon appropriate order of the court if the defendant shall make application to the court ~~before or during the~~ not later than five days before trial.

In no event shall such evidence of previous sexual conduct of the prosecuting witness committed more than one year prior to the date of the alleged crime be admissible upon the trial, except previous sexual conduct with the defendant. Nothing in this ~~section~~ rule shall limit the right of either the state or the accused to impeach credibility by the showing of prior felony convictions which are otherwise admissible.

Sec. 64. Rule twenty-one (21), subsection one (1):

1. FORM OF VERDICTS. In open court the jury must render a verdict of "guilty", which imports a conviction, or "not guilty" or "not guilty by reason of insanity" or "not guilty by reason of diminished responsibility" which imports acquittal, on the material allegations in the charge~~, however, upon a plea of former conviction or acquittal of the same offense, it shall be "for the state" or "for the defendant"~~. The jury shall return a verdict determining the degree of guilt in cases submitted to determine the grade of the offense.

Sec. 65. Rule twenty-one (21), subsection eight (8):

8. ACQUITTAL ON GROUND OF ~~MENTAL ILLNESS~~ INSANITY OR DIMINISHED RESPONSIBILITY; COMMITMENT. If the defense is ~~mental illness~~ insanity or diminished responsibility of the defendant, the jury must be instructed, if it acquits the defendant on that ground, to state that fact in its verdict. Upon hearing, the court may thereupon, if the defendant is found to be dangerous to the public peace and safety, order the defendant committed to one of the mental health institutes or the Iowa security medical facility, or retained in custody, until he or she demonstrates good mental health and is considered no longer dangerous to the public peace and safety or to himself.

Sec. 66. Rule twenty-two (22), subsection three (3), paragraph d:

d. JUDGMENT ENTERED. If no sufficient cause is shown why judgment should not be pronounced, and none appears to the court upon the record, judgment shall be rendered. Prior to such rendition, counsel for the defendant, and the defendant personally, shall be allowed to address the court where either wishes to make a statement in mitigation of punishment. In every case the court shall include in the judgment entry the

number of the particular section of the Code under which the defendant is sentenced. The court shall state on the record its reason for selecting the particular sentence.

Sec. 67. Rule twenty-two (22), subsection three (3), paragraph e:

e. NOTIFICATION OF RIGHT TO APPEAL. After imposing sentence in a case, the court shall advise the defendant of his or her statutory right to appeal as provided in rule fifteen point one (15.1) of the rules of the supreme court.

Sec. 68. Rule twenty-two (22), subsection three (3), by striking paragraph g.

Sec. 69. Rule twenty-three (23), subsection two (2), paragraph b, subparagraphs one (1) and eight (8) and subsection four (4), paragraphs d and e:

(1) When the trial has been held in the absence of the defendant, in cases where such presence is required by law, except as provided in rule twenty-five (25) of the rules of criminal procedure.

(8) When the defendant has discovered important and material evidence in his or her favor since the verdict, which the defendant could not with reasonable diligence have discovered and produced at the trial. A motion based upon this ground ~~may~~ shall be made without unreasonable delay and, in any event, within two years after final judgment, but such motion may be considered thereafter upon a showing of good cause. When a motion for a new trial is made upon the ground of newly discovered evidence, the defendant must produce at the hearing, in support thereof, the affidavits or testimony of the witnesses by whom such evidence is expected to be given, and if time is required by the defendant to procure such affidavits or testimony, the court may postpone the hearing of the motion for such length of time as, under all circumstances of the case, may be reasonable.

d. CUSTODY PENDING APPELLATE DETERMINATION. Pending determination by the ~~supreme~~ appellate court of such appeal, the trial court shall determine whether the defendant shall remain in custody, or whether, if in custody, the defendant should be released on bail or his or her own recognizance. Where the trial court has arrested judgment and an appeal is taken by the state, and it further appears to the trial court that there is no evidence sufficient to charge the defendant with an offense, the defendant shall not be held in custody.

e. REINSTATEMENT OF VERDICT. In the event the ~~supreme~~ appellate court reverses the order of the trial court arresting judgment or granting a new trial, it shall order that the verdict be reinstated, unless the ~~supreme~~ appellate court finds other errors, in which event it may order that the verdict be set aside and a new trial be granted.

Sec. 70. Rule twenty-three (23), subsection two (2), paragraph d:

d. EFFECT OF A NEW TRIAL. ~~The granting of~~ Upon a new trial ~~places the parties in the same position as if no trial had been had; all the testimony must be produced anew and,~~ the former verdict cannot be used or referred to either in evidence or argument.

Sec. 71. Rule twenty-three (23), subsection four (4), paragraph a:

a. EXTENSIONS. The time for filing motions for new trial or in arrest of judgment may be extended to such further time as the court may fix ~~during the six-day period~~.

Sec. 72. Rule twenty-three (23), subsection four (4), paragraph e:

e. REINSTATEMENT OF VERDICT. In the event the supreme court reverses the order of the trial court arresting judgment or granting a new trial, it shall order that the verdict be reinstated, unless the supreme court finds other reversible errors, in which event it may ~~order that the verdict be set aside and a new trial be granted~~ enter an appropriate different order.

Sec. 73. Rule twenty-three (23), subsection five (5), paragraph a:

a. TIME WHEN CORRECTION OF SENTENCE MAY BE MADE. The court may correct an illegal sentence at any time ~~and may correct a sentence imposed in an illegal manner within one hundred twenty days after receipt by the court of a mandate issued upon affirmance of the judgment or dismissal of the appeal~~.

Sec. 74. Rule twenty-four (24), subsection one (1), paragraph e and subsection two (2), paragraph a:

e. EXECUTION IN OTHER CASES. When the judgment is for the abatement or removal of a nuisance, or for anything other than confinement or payment of money by the defendant, an execution consisting of a certified copy of the entry of such judgment, delivered to the sheriff of the proper county, shall authorize and require the sheriff to execute such ~~judgement~~

judgment, and he or she shall return the same, with the sheriff's doings under the same thereon endorsed, to the clerk of the court in which the judgment was rendered, within a time specified by the court but not exceeding seventy days after the date of the certificate of such certified copy.

a. CONFINEMENT. A sentence of confinement shall be stayed if an appeal is taken and the defendant is released pending disposition of appeal pursuant to chapter two (2), division fourteen (XIV) of this Act.

Sec. 75. Rule twenty-five (25), subsection four (4), by striking paragraph a, and by relettering the remaining paragraphs.

Sec. 76. Rule twenty-five (25), subsection four (4), paragraph c:

c. When a magistrate reasonably believes a person who is present in the courtroom ~~is supposed by a magistrate to have upon his or her person~~ has a weapon in his or her possession, the magistrate ~~or judge~~ may direct that such person be searched, and any weapon be retained subject to order of the court.

Sec. 77. Rule twenty-six (26):

Rule 26. RIGHT TO ~~ASSIGNED~~ APPOINTED COUNSEL.

1. REPRESENTATION. Every defendant who is an indigent as defined in section three hundred thirty-six A point four (336A.4) of the Code shall be entitled to have counsel ~~assigned~~ appointed to represent him or her at every stage of the proceedings from the defendant's initial appearance before the magistrate or the court through appeal, including probation and parole revocation hearings, unless the defendant waives such appointment.

2. COMPENSATION. When counsel is ~~assigned~~ appointed to represent an indigent defendant, ~~or to serve as standby counsel as provided in rule eight (8),~~ compensation shall be paid as directed in division fifteen (XV) of this chapter.

Sec. 78. Rule twenty-nine (29), by striking subsection one (1) and inserting in lieu thereof the following:

1. DISTRICT COURT PRACTICE RULES. The supreme court and district court shall have authority to adopt rules governing practice in the district court which are not inconsistent with these rules and applicable statutes.

Sec. 79. Section one thousand three hundred one (1301) is amended by striking rule thirty-one (31).

Sec. 80. Chapter one thousand two hundred forty-five (1245), Acts of the Sixty-sixth General Assembly, 1976 Session, chapter two (2), section one thousand three hundred two (1302), rules thirty-three (33), thirty-four (34), thirty-six (36), thirty-nine (39), forty-two (42), forty-eight (48), and fifty-three (53) through fifty-six (56) are amended by sections eighty-one (81) through ninety (90) of this Act as follows:

Sec. 81. Rule thirty-three (33):

Rule 33. APPLICABILITY OF ~~DISTRICT COURT RULES~~ INDICTABLE OFFENSE RULES. Procedures not provided for herein shall be governed by the provisions of these rules which are by their nature applicable relating to trial of indictable offenses, and by the statutes of the state of Iowa.

Sec. 82. Rule thirty-four (34):

Rule 34. TO WHOM TRIED. Judicial magistrates and district associate judges ~~must~~ may hear, try and determine ~~all~~ simple misdemeanors. District judges may transfer any simple misdemeanors pending before them to the nearest judicial magistrate or district associate judge.

Sec. 83. Rule thirty-six (36), subsection three (3):

3. A ~~brief and~~ concise statement of the act or acts constituting the offense, including the time and place of its commission as near as may be, and identifying by number the provision of law alleged to be violated.

Sec. 84. Rule thirty-nine (39):

Rule 39. ARREST. The officer who receives the warrant shall arrest the defendant and bring the defendant before the magistrate without unnecessary delay or serve ~~that~~ the citation in the manner provided in chapter two (2), division ~~five (5)~~ four (IV) of this Act.

Sec. 85. Rule forty-two (42), subsection three (3), unnumbered paragraph two (2):

In ~~appropriate~~ cases where the defendant faces the possibility of imprisonment, the court shall appoint counsel for an indigent defendant in accordance with procedures established under rule two (2), ~~subdivision~~ subsection three (3) of the rules of criminal procedure. The magistrate shall allow the defendant reasonable time and opportunity to consult with counsel, in the event the defendant expresses a desire to do so.

Sec. 86. Rule forty-eight (48), subsection nine (9):

9. RECORD. ~~Upon the trial, the judicial magistrate shall make minutes of the testimony of each witness and append the~~

~~exhibits or copies thereof.~~ The proceedings upon trial shall not be reported, unless a party provides a reporter at such party's expense. By agreement of the parties the magistrate may cause the proceedings upon trial to be reported electronically. If the proceedings are being electronically recorded both parties shall be notified in advance of that recording. If the defendant is indigent and requests that the proceedings upon trial be reported, the judicial magistrate shall cause them to be reported by a reporter, or electronically, at public expense. If the proceedings are not reported electronically, the judicial magistrate shall make minutes of the testimony of each witness and append the exhibits or copies thereof. If the proceedings have been reported electronically the recording shall be retained under the jurisdiction of the magistrate and upon request shall be transcribed only by a person designated by the court under the supervision of the magistrate. The transcription shall be provided anyone requesting ~~same~~ it upon payment of actual cost of transcription or to an indigent defendant as herein above provided.

Sec. 87. Rule fifty-four (54), subsection one (1):

1. NOTICE OF APPEAL. An appeal may be taken by the plaintiff only upon a finding of invalidity of an ordinance or statute. In all other cases, an appeal may only be taken by the defendant and only upon a judgment of conviction. Execution of the judgment shall be stayed upon the filing with the clerk of the district court an appeal bond with surety approved by the clerk, in the sum specified in the judgment. The defendant may take an appeal, by giving notice orally to the magistrate that he or she appeals, or by delivering to the magistrate not later than ten days thereafter, a written notice of the defendant's appeal, and in either case the magistrate must make an entry on its docket of the giving of such notice. Payment of fine or service of a sentence of imprisonment does not waive the right to appeal, nor render the appeal moot. When an appeal is taken, the magistrate shall forward to the appropriate district court clerk a copy of the docket entries in the magistrate's court, together with copies of the complaint, warrant, motions, pleadings, the magistrate's minutes of the witness' testimony and the exhibits or copies thereof and all other papers in the case. A district judge shall promptly hear the appeal upon the record thus filed without further evidence if the

original action was tried by a district judge, district associate judge, or magistrate appointed under sections six hundred two point fifty-one (602.51) or six hundred two point fifty-nine (602.59) of the Code unless the district court judge hearing the appeal either upon application of any party or on the district judge's own motion orders the appeal heard de novo on the grounds the record is inadequate. If the original action was tried by a magistrate appointed under sections six hundred two point fifty (602.50) or six hundred two point fifty-eight (602.58) of the Code, the district judge shall promptly hear the appeal de novo. Within ten days after an appeal is taken, unless extended by order of a district judge or by stipulation of the parties, any party may file with the clerk, as a part of the record, a transcript of the official report, if any, and, in the event the report was made electronically, the tape or other medium on which the proceedings were preserved. If the original action was tried before a district judge acting as a judicial magistrate, the appeal shall be to a different district judge. The judge shall decide the appeal without regard to technicalities or defects. Judgment shall be rendered as though the case were being originally tried. The right to further appeal is governed by division fourteen (XIV), section one thousand four hundred six (1406).

Sec. 88. Rule fifty-four (54), by striking subsection four (4).

Sec. 89. Rule fifty-five (55):

Rule 55. NEW TRIAL. The magistrate, on motion of a defendant, may grant a new trial pursuant to the grounds set forth in rule twenty-three (23) of the rules of criminal procedure, except that a motion for a new trial based on newly discovered evidence must be made within six months after the final judgment. ~~A motion for a new trial based on the ground of newly discovered evidence may be made only before or within thirty days after final judgment.~~ A motion for a new trial based on any other grounds shall be made within seven days after a finding of guilty or within such further time as the court may fix during the seven-day period.

Sec. 90. Rule fifty-six (56):

Rule 56. CORRECTION OR REDUCTION OF SENTENCE. The magistrate may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence. The

magistrate may reduce a sentence within ten days after the sentence is imposed or within ten days after the receipt by the magistrate of a mandate issued upon affirmance of the judgment or dismissal of the appeal, or within ten days after entry of any order or judgment of the ~~supreme~~ appellate court denying review of, or having the effect of upholding, a judgment of conviction. The court may also reduce a sentence upon revocation of ~~probtion~~ probation as provided by law.

Sec. 91. Chapter one thousand two hundred forty-five (1245), Acts of the Sixty-sixth General Assembly, 1976 Session, chapter two (2), forms one (1) through ten (10) and A through D are amended by sections ninety-two (92) through one hundred five (105) of this Act as follows:

Sec. 92. Form one (1), heading:

FORM 1

SEARCH WARRANT

State of Iowa

County of _____

Criminal Case No. _____

Sec. 93. Form two (2):

FORM 2

ARREST WARRANT ON A COMPLAINT

State of Iowa

County of _____

Criminal Case No. _____

To any peace officer of the state:

Complaint upon oath or affirmation having been this day filed with me, charging that the crime (naming it) has been committed and accusing A_____ B _____ thereof:

You are commanded forthwith to arrest the said A_____ _____ B_____ and bring such person before me at (naming the place), or, in case of my absence or inability to act, before the nearest or most accessible magistrate in this county, without unnecessary delay.

Dated at _____ this _____ day of _____, _____.

C_____ D_____

(with official title)

Sec. 94. Form three (3), heading:

FORM 3

ARREST WARRANT AFTER INDICTMENT OR INFORMATION

State of Iowa

County of _____

Criminal Case No. _____

Sec. 95. Form four (4), heading:

FORM 4

ARREST WARRANT WHEN DEFENDANT FAILS TO APPEAR FOR SENTENCING

State of Iowa

County of _____

Criminal Case No. _____

Sec. 96. Form five (5), heading:

FORM 5

BAIL BOND

State of Iowa

County of _____

Criminal Case No. _____

Sec. 97. Form six (6), heading:

FORM 6

ORDER FOR DISCHARGE OF DEFENDANT UPON BAIL

State of Iowa

County of _____

Criminal Case No. _____

Sec. 98. Form seven (7), heading:

FORM 7

ORDER FOR DISCHARGE OF DEFENDANT UPON BAIL: ANOTHER FORM

(For endorsement on warrant or order of commitment)

State of Iowa

County of _____

Criminal Case No. _____

Sec. 99. Form eight (8), heading:

FORM 8

TRIAL INFORMATION

(also designated County Attorney's Information)

IN THE DISTRICT COURT OF _____ COUNTY

STATE OF IOWA

vs. INFORMATION

A_____ B_____

Criminal Case No. _____

Sec. 100. Form nine (9), heading:

FORM 9

GENERAL INDICTMENT FORM

IN THE DISTRICT COURT OF IOWA IN AND FOR _____ COUNTY

STATE OF IOWA

vs. INDICTMENT

A_____ B_____

Criminal Case No._____

Sec. 101. Form ten (10), unnumbered paragraphs seventeen (17), thirty-one (31), thirty-five (35), forty-nine (49), fifty-one (51), and sixty-two (62):

Driving under suspension: A.B. operated a motor vehicle while his or her license was (under suspension) (revoked).

~~Homicide~~ Murder: A.B. committed ~~homicide~~ murder in the _____ degree, resulting in the death of C.D.

Indecent exposure: A.B. indecently exposed himself or herself to C.D.

Prostitution: A.B. committed prostitution by offering ~~his/her~~ his or her services for sale (or selling his or her services) as a partner in a sex act; A.B. purchased (or offered to purchase) C.D.'s services as a partner in a sex act.

~~Reckless endangerment: A.B. recklessly endangered human life or safety (thereby seriously injuring C.D.).~~

A similar short form indictment may be used for offenses not appearing in this table, provided it complies with the requirements of rule four (4), subsection seven (7) ~~Iowa Rules of Criminal Procedure~~ rules of criminal procedure.

Sec. 102. Form A:

FORM A

COMPLAINT

State of Iowa Before (Judge, Magistrate) _____

County of _____ ~~(insert name of lower court judge or magistrate)~~

Criminal Case No._____

State of Iowa

vs.

A_____ B_____, Defendant

The defendant is accused of the crime of (here name the offense and ~~provide numerical designation~~ code or ordinance section), in that the defendant on the _____ day of _____, _____, at the _____ (here locate the city, or township where the offense occurred),

in _____ county, did (state the acts or omissions constituting the offense).

/s/_____

Sec. 103. Form B:

FORM B

CONSENT TO FORFEITURE OF COLLATERAL

AS DISPOSITION OF MISDEMEANOR

State of Iowa

County of _____

Criminal Case No._____

I, the undersigned, agree to have the amount of $_____ forfeited as a fine and my case terminated. I do this with the following understanding:

1. I have been charged with the offense of _____ _____ (here name the offense and ~~provide numerical designation~~ code or ordinance section).

2. I understand my rights, including my right to trial before the court on such charge, and voluntarily waive same, understanding that forfeiture of the aforesaid amount terminates my right to a trial and constitutes a conviction of the offense charged.

_____

(Signature of defendant)

Sec. 104. Form C, heading:

FORM C

NOTICE OF APPEAL TO A DISTRICT COURT JUDGE

FROM A JUDGMENT OR ORDER

State of Iowa

County of _____

Criminal Case No._____

Sec. 105. Form D, heading:

FORM D

BAIL BOND ON APPEAL TO DISTRICT COURT

State of Iowa

County of _____

Criminal Case No._____

Sec. 106. Chapter two (2), division thirteen (XIII) is amended by adding the following new section before section one thousand three hundred one (1301):

NEW SECTION. TITLE. These rules shall be known as the rules of criminal procedure. (R. Cr. P.).

Approved July 10, 1977

CHAPTER 154

COMMUNITY-BASED CORRECTIONAL PROGRAM

S. F. 112

AN ACT relating to correction programs by providing work adjustment and training positions at the Riverview release center and requiring that each judicial district in this state develop and maintain a community-based correctional program, providing for the adminstration, support and content of those programs, extending the work release program, and repealing sections two hundred seventeen point twenty-four (217.24) through two hundred seventeen point twenty-nine (217.29) of the Code.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. As used in this Act, unless the context otherwise requires:

1. "Administrative agent" means the county selected by the district board to perform accounting, budgeting, personnel, facilities management, insurance, payroll and other supportive services on the behalf of the district board.

2. "Community-based correctional program" means correctional programs and services designed to supervise and assist individuals who are charged with or have been convicted of a felony, an aggravated misdemeanor or a serious misdemeanor, or who are on probation in lieu of or as a result of a sentence of incarceration imposed upon conviction of any of these offenses.

3. "Director" means the director of a judicial district department of correctional services.

4. "District board" means the board of directors of a judicial district department of correctional services.

5. "District department" means a judicial district department of correctional services, established as required by section two (2) of this Act.