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SENATE FILE 289

By COMMITTEE ON JUDICIARY
approved 3/28 (p. 83E)

Passed Senate, Date 3-31-77 (p. 860)

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Vote: Ayes 46 Nays 0

Vote: Ayes _____ Nays _____

Approved 7/10/77

Motion to reconsider (860) Passed 4/5 (p. 177)
Repassed Senate 4-5-77 (p. 710)
47-0

A BILL FOR

1 An Act to propose changes in the rules of criminal procedure.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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S.F. 289

1 Section 1. Chapter one thousand two hundred forty-five
2 (1245), Acts of the Sixty-sixth General Assembly, 1976 Session,
3 chapter two (2), section one thousand three hundred one (1301),
4 rules two (2) through twenty-three (23) and rules twenty-five
5 (25), twenty-six (26), and twenty-nine (29), are amended by
6 sections two (2) through seventy-two (72) of this Act as
7 follows:

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

9 2. STATEMENT BY THE MAGISTRATE. The magistrate shall
10 inform a defendant who appears before the magistrate after
11 arrest, complaint, summons, or citation of the complaint
12 against the defendant, of the defendant's right to retain
13 counsel, of the defendant's right to request the ~~assignment~~
14 appointment of counsel if the defendant is unable by reason
15 of indigency to obtain counsel, of the general circumstances
16 under which the defendant may secure pretrial release, of
17 the defendant's right to review of any conditions imposed
18 on the defendant's release and shall provide the defendant
19 with a copy of the complaint. The magistrate shall also
20 inform the defendant that he or she is not required to make
21 a statement and that any statement made by the defendant may
22 be used against him or her. The magistrate shall allow the
23 defendant reasonable time and opportunity to consult counsel.

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

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

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

35 a. PRELIMINARY HEARING. The magistrate shall inform the

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

16 Sec. 5. Rule two (2), subsection four (4), paragraph c:
17 c. CONSTITUTIONAL OBJECTIONS. Rules excluding evidence
18 on the ground that it was acquired by unlawful means are not
19 applicable. Motions to suppress must be made to the trial
20 court as provided in rule ~~eleven-(11)~~ ten (10), subsection
21 two (2).

22 Sec. 6. Rule three (3), subsection two (2), paragraph
23 b, subparagraph three (3), part (a):

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

26 Sec. 7. Rule three (3), subsection four (4), paragraph
27 d:

28 d. SECRECY OF PROCEEDINGS. Every member of the grand
29 jury, and its clerks and bailiffs, shall keep secret the
30 proceedings of that body and the testimony given before it,
31 except as provided in rule thirteen (13). No such person
32 shall disclose the fact that an indictment has been found
33 except when necessary for the issuance and execution of a
34 warrant or summons, and such duty of nondisclosure shall
35 continue until the indicted person has been arrested. The

1 county prosecuting attorney shall be allowed to appear before
2 the grand jury on his or her own request for the purpose of
3 giving information or for the purpose of examining witnesses,
4 and the grand jury may at all reasonable times ask the advice
5 of the county prosecuting attorney or the court. However,
6 neither the county prosecuting attorney nor any other officer
7 or person except the grand jury may be present when the grand
8 jury is voting upon the finding of an indictment.

9 Sec. 8. Rule three (3), subsection four (4), paragraph
10 e:

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

18 Sec. 9. Rule four (4), subsection six (6), paragraph b:

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

25 Sec. 10. Rule four (4), subsection eight (8), paragraph
26 d:

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

32 Sec. 11. Rule five (5), subsections one (1), two (2),
33 three (3), four (4) and five (5):

34 1. PROSECUTION ON INFORMATION. All indictable offenses
35 may be prosecuted by a trial information. The prosecuting

1 attorney may at any time, whether or not the grand jury is
2 in session, file an such information with a the clerk of the
3 district court ~~judge-or-district-associate-judge-charging~~
4 ~~a-person-with-an-indictable-offense.~~

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

8 3. WITNESS NAMES AND MINUTES. The prosecuting attorney
9 shall, at the time of filing such information, endorse or
10 cause to be endorsed thereon the names, occupations, and last
11 known addresses of the witnesses whose evidence the prosecuting
12 attorney expects to introduce and use on the trial of the
13 same, and shall also file with such information, of each
14 witness whose name is endorsed upon the information, a
15 ~~statement-sufficient-to-enable-the-defendant-to-prepare-his~~
16 defense minute of the evidence relating to the guilt of the
17 accused of the offense charged.

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

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

1 Sec. 12. Rule six (6), subsections one (1), two (2), and
2 three (3):

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

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

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

27 Sec. 13. Rule seven (7), subsection two (2), paragraph
28 b:

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

34 Sec. 14. Rule seven (7), subsection three (3), paragraph
35 a:

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

13 Sec. 15. Rule eight (8), subsection one (1), unnumbered
14 paragraph one (1):

15 Arraignment shall be conducted in open court ~~without~~
16 ~~unnecessary delay~~ as soon as practicable. If the defendant
17 appears for arraignment without counsel, the defendant must,
18 before proceeding therewith, be informed by the court of his
19 or her right thereto, and be asked if he or she desires
20 counsel; and if he or she does, and is unable by reason of
21 indigency to employ any, the court must ~~assign the defendant~~
22 appoint defense counsel, who shall have free access to the
23 defendant at all reasonable hours. ~~Where the defendant makes~~
24 ~~an informed waiver of counsel, the court in its discretion~~
25 ~~may assign standby counsel to assist the accused.~~ Arraignment
26 shall consist of reading the indictment to the defendant or
27 stating to the defendant the substance of the charge and
28 calling on on the defendant to plead thereto. The defendant
29 shall be given a copy of the indictment or information before
30 he or she is called upon to plead.

31 Sec. 16. Rule eight (8), subsection two (2), paragraph
32 a:

33 a. IN GENERAL. A defendant may plead guilty, or not
34 ~~guilty, not guilty by reason of insanity, not triable by~~
35 ~~reason of present insanity, or a former judgment of conviction~~

1 ~~or acquittal of the offense charged.~~ If the defendant fails
2 or refuses to plead at arraignment, or if the court refuses
3 to accept a guilty plea, the court shall enter a plea of not
4 guilty. At any time before judgment, the court may for good
5 cause shown permit a guilty plea to be withdrawn and ~~other~~
6 ~~plea or pleas~~ a not guilty substituted. ~~A defendant who does~~
7 ~~not plead guilty may enter one or more of the other pleas.~~

8 Sec. 17. Rule eight (8), subsection two (2), paragraph
9 b:

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

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

19 (1) The nature of the charge to which the plea is of-
20 fered.

21 (2) The mandatory minimum punishment, if any, and the
22 maximum possible punishment provided by the statute defin-
23 ing the offense to which the plea is offered.

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

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

35 ~~The court shall accept the guilty plea only after de-~~

1 ~~termining-that-the-defendant-understands-these-matters,-that~~
2 ~~the-plea-is-voluntary,-and-that-there-is-a-factual-basis-for~~
3 ~~same-~~

4 Sec. 18. Rule eight (8), subsection two (2), by adding
5 the following new paragraph:

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

13 Sec. 19. Rule eight (8), subsection three (3):

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

20 Sec. 20. Rule nine (9), subsections one (1) through four
21 (4):

22 1. IN GENERAL. The prosecuting attorney and the attorney
23 for the defendant may engage in discussions with a view toward
24 reaching an agreement that, upon the entering of a plea of
25 guilty to a charged offense or to a lesser or related offense,
26 the prosecuting attorney will ~~move-for-dismissal-of-other~~
27 ~~charges,-or-will-recommend-or-not-oppose-the-imposition-of~~
28 ~~a-particular-sentence,-or-will-do-both~~ make a charging or
29 sentencing concession.

30 2. ADVISING COURT OF AGREEMENT. If a plea agreement has
31 been reached by the parties ~~which-contemplates-entry-of-a~~
32 ~~plea-of-guilty-in-the-expectation-that-a-specific-sentence~~
33 ~~will-be-imposed-or-that-other-charges-before-the-court-will~~
34 ~~be-dismissed,~~ the court shall require the disclosure of the
35 agreement in open court at the time the plea is offered.

1 Thereupon, if the agreement requires concurrence of the court,
2 the court may accept or reject the agreement, or may defer
3 its decision as to acceptance or rejection until receipt of
4 a presentence report.

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

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

20 Sec. 21. Rule ten (10), subsection two (2), paragraph
21 c:

22 c. Motions to suppress evidence ~~on the ground that it~~
23 ~~was illegally obtained.~~

24 Sec. 22. Rule ten (10), subsection two (2), by adding
25 the following new lettered paragraphs:

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

28 NEW PARAGRAPH. Motion in limine.

29 Sec. 23. Rule ten (10), subsections three (3), four (4)
30 and five (5):

31 3. EFFECT OF FAILURE TO RAISE DEFENSES OR OBJECTIONS.
32 Failure of the defendant to timely raise defenses or objections
33 or to make requests which must be made prior to trial under
34 this rule shall constitute waiver thereof, but the court for
35 good cause shown, ~~upon motion supported by affidavit,~~ may

1 grant relief from such waiver.

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

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

29 Sec. 24. Rule ten (10), subsection six (6), paragraph
30 a:

31 6. DISMISSING INDICTMENT OR INFORMATION.

32 a. IN GENERAL. If it appears from the bill of particulars
33 furnished pursuant to this rule that the particulars stated
34 do not constitute the offense charged in the indictment or
35 information, or that the defendant did not commit that offense

1 or that a prosecution for that offense is barred by the statute
2 of limitations, the court may and on motion of defendant shall
3 dismiss the indictment or information unless the ~~county~~
4 prosecuting attorney shall furnish another bill of particulars
5 which so states the particulars as to ~~show that the particulars~~
6 ~~constitute the offense charged in the indictment or information~~
7 ~~and that the offense was committed by the defendant and that~~
8 ~~it is not barred by the statute of limitations~~ cure the defect.

9 Sec. 25. Rule ten (10), subsection six (6), paragraph
10 c, subparagraph three (3):

11 (3) When the information has not been approved as required
12 under rule ~~five-(5)~~ four (4).

13 Sec. 26. Rule ten (10), subsections seven (7) and eight
14 (8):

15 7. EFFECT OF DETERMINATION. If the court grants a motion
16 based on a defect in the institution of the prosecution or
17 in the indictment or information, it may also order that the
18 defendant be held in custody or that the defendant's bail
19 be continued for a specified period pending the filing of
20 a new indictment or information if the same was dismissed
21 by the court, or the amendment of any such pleading if the
22 defect is subject to correction by amendment. The new
23 information or indictment must be filed within ~~thirty~~ twenty
24 days of the dismissal of the original indictment or information
25 ~~and the defendant must be brought to trial within the time~~
26 ~~limits specified in rule twenty-seven-(27), rules of criminal~~
27 procedure. Such time shall not be included in the forty-five
28 day period allowed for filing an indictment under rule twenty-
29 seven (27), subsection two (2), paragraph a. Moreover, the
30 ninety day period under rule twenty-seven (27), subsection
31 two (2), paragraph b for bringing a defendant to trial shall
32 commence anew with the filing of the new indictment or
33 information.

34 8. RULING ON MOTION. A pretrial motion shall be determined
35 before trial without unreasonable delay. Where factual issues

1 are involved in determining a motion, the court shall state
2 its essential findings on the record.

3 Sec. 27. Rule ten (10), subsection nine (9), paragraphs
4 a through c, by striking the subsection title and the
5 paragraphs and inserting lieu thereof the following:

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

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

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

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

22 Sec. 28. Rule ten (10), subsection nine (9), paragraph
23 d:

24 d. PROCEEDINGS ON TRANSFER. When a transfer of the case
25 is ordered to another county the clerk shall transmit to the
26 clerk of the court to which the proceeding is transferred
27 all papers in the proceeding or duplicates thereof and any
28 bail taken, and the prosecution shall continue in that county.
29 If the defendant is in custody, the court may order the
30 defendant to be delivered to the sheriff of the county to
31 which transfer of the case is allowed, and upon such delivery
32 with a certified copy of the order therefor, the sheriff last
33 mentioned must receive and detain the defendant. All expenses
34 attendant upon the change of venue and trial, including the
35 costs of keeping the defendant, which shall be allowed by

1 the court trying the case, may be recovered by the county
2 to which the case is transferred from the county in which
3 the prosecution was commenced. The ~~county~~ prosecuting attorney
4 in the original county shall be responsible for the prosecution
5 in such other county.

6 Sec. 29. Rule ten (10), subsection ten (10), paragraph
7 a, subparagraph one (1):

8 (1) NOTICE. A defendant who intends to offer evidence
9 of an alibi defense shall, within the time provided for the
10 making of pretrial motions or at such later time as the court
11 shall direct, ~~inform-the-attorney-for-the-government-of-such~~
12 ~~intention-and~~ file such written notice of such intention.

13 The notice shall state the specific place or places at which
14 the defendant claims to have been at the time of the alleged
15 offense and the names and addresses of the witnesses upon
16 whom the defendant intends to rely to establish such alibi.
17 In the event that a defendant shall file such notice the
18 prosecuting attorney for-the-government shall file ~~and-serve~~
19 ~~upon-the-defendant~~ written notice of the names and addresses
20 of the witnesses the government state proposes to offer in
21 rebuttal to discredit the defendant's alibi. Such ~~service~~
22 notice shall be ~~completed~~ filed not less than five ten days
23 after ~~receipt~~ filing of defendant's witness list, or within
24 such other time as the court may direct. ~~If-either-party~~
25 ~~shall-fail-to-abide-by-the-time-periods-heretofore-described,~~
26 ~~the-preponent-must-move-the-court-for-leave-to-introduce-such~~
27 ~~evidence,-showing-diligence-supported-by-affidavit-~~

28 Sec. 30. Rule ten (10), subsection ten (10), paragraph
29 a, subparagraph two (2), by striking the subparagraph and
30 inserting in lieu thereof the following:

31 (2) FAILURE TO COMPLY. If either party shall fail to
32 abide by the time periods heretofore described, such party
33 may not offer evidence on the issue of alibi without leave
34 of court for good cause shown. In granting leave, the court
35 may impose terms and conditions including a delay or

1 continuance of trial. The right of a defendant to give
2 evidence of alibi in his own testimony is not limited by the
3 provisions of this rule.

4 Sec. 31. Rule ten (10), subsection ten (10), paragraph
5 b, subparagraphs one (1) and two (2), by amending the paragraph
6 title and subparagraph one (1), and by striking subparagraph
7 two (2):

8 b. INSANITY AND DIMINISHED RESPONSIBILITY.

9 (1) DEFENSE OF INSANITY AND DIMINISHED RESPONSIBILITY.

10 If a defendant intends to rely upon the defense of insanity
11 or diminished responsibility at the time of the alleged crime,
12 the defendant shall, within the time provided for the filing
13 of pretrial motions ~~or at such later time as the court may~~
14 ~~direct, inform the attorney for the government of such~~
15 ~~intention and file such notice~~ file written notice of such
16 intention. The court may for good cause shown allow late
17 filing of the notice or grant additional time to the parties
18 to prepare for trial or make such other order as may be
19 appropriate.

20 Sec. 32. Rule ten (10), subsection ten (10), paragraph
21 b, subparagraph three (3), by striking the subparagraph and
22 inserting in lieu thereof the following:

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

33 Sec. 33. Rule eleven (11), by striking the rule.

34 Sec. 34. Rule twelve (12), subsection one (1), unnumbered
35 paragraph one (1):

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

10 Sec. 35. Rule twelve (12), subsection two (2), by striking
11 unnumbered paragraph two (2) and paragraphs a and b.

12 Sec. 36. Rule twelve (12), subsection three (3), by
13 striking the subsection and inserting in lieu thereof the
14 following:

15 3. LISTING OF DEFENDANT'S WITNESSES. Within the time
16 provided for filing pretrial motions, the defendant shall
17 file a list of all witnesses, except the defendant, expected
18 to be called for the defense at trial. There shall be a
19 continuing duty to disclose additional defense witnesses.
20 All defense witnesses shall be subject to being deposed by
21 the state, in the same manner and subject to the same
22 limitations as govern depositions by the defendant.

23 Sec. 37. Rule thirteen (13), subsections one (1), two
24 (2), three (3), and four (4):

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

32 2. DISCLOSURE OF EVIDENCE BY THE GOVERNMENT UPON DEFENSE
33 MOTION OR REQUEST.

34 a. DISCLOSURE REQUIRED UPON REQUEST.

35 (1) Upon pretrial motion of a defendant the court shall

1 order the attorney for the government state to permit the
2 defendant to inspect and copy or photograph:--Any and, in
3 addition any relevant written or recorded statements made
4 by the defendant or copies thereof, within the possession,
5 custody or control of the government state, unless same shall
6 have been included with the minutes of evidence accompanying
7 the indictment or information; the substance of any oral
8 statement made by the defendant which the government state
9 intends to offer in evidence at the trial, including any voice
10 recording of same; and the transcript or record of testi-
11 mony of the defendant before a grand jury, whether or not
12 the government state intends to offer same in evidence upon
13 trial.

14 (2) When two or more defendants are jointly charged, upon
15 motion of any defendant the court shall order the attorney
16 for the government state to permit the defendant to inspect
17 and copy or photograph any written or recorded statement of
18 a codefendant which the government state intends to offer
19 in evidence at the trial, and the substance of any oral
20 statement which the government state intends to offer in
21 evidence at the trial made by a codefendant whether before
22 or after arrest in response to interrogation by any person
23 known to the codefendant to be a government state agent.

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

28 b. DISCRETIONARY DISCOVERY.

29 (1) Upon motion of the defendant the court may order the
30 attorney for the government to permit the defendant to inspect,
31 and where appropriate, to subject to scientific tests, items
32 seized by the government state in connection with the alleged
33 crime. The court may further allow the defendant to inspect
34 and copy books, papers, documents, statements, photographs
35 or tangible objects which are within the possession, custody

1 or control of the government state, and which are material
2 to the preparation of his or her defense, or are intended
3 for use by the government state as evidence at the trial,
4 or were obtained from or belong to the defendant.

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

12 3. DISCLOSURE OF EVIDENCE BY THE DEFENDANT.

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

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

35 c. TIME OF MOTION. A motion for the relief provided under

1 subdivision ~~two-(2)~~ three (3) of this rule shall be made,
2 if at all, within ~~five~~ ten days after ~~any order granting~~
3 ~~similar relief to the defendant~~ expiration of the period
4 provided for filing pretrial motions under rule ten (10),
5 subsection four (4) unless extended by the court for good
6 cause shown.

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

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

19 Sec. 38. Rule thirteen (13), subsection five (5), para-
20 graph a, subparagraph four (4), by striking the subparagraph.

21 Sec. 39. Rule thirteen (13), subsection five (5), para-
22 graph c:

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

31 Sec. 40. Rule fourteen (14), subsection three (3):

32 3. SERVICE. A subpoena may be served in any part of the
33 state. It may be served by any adult person. A peace officer
34 making service in a criminal case must serve without delay
35 in his or her county, city, or town any subpoena delivered

1 to him for service and make a written return stating the time,
2 place, and manner of service. When service is made by other
3 than a peace officer, proof thereof shall be by affidavit.
4 Service is made by showing the original to the witness and
5 delivering a copy to him or her. ~~If a witness conceals himself~~
6 ~~or herself to avoid service of a subpoena, the officer may~~
7 ~~break open doors or windows for the purpose of making service.~~

8 Sec. 41. Rule 15, subsections one (1) and three (3):

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

14 3. STIPULATIONS AND ORDERS. The court shall make an order
15 reciting any action taken at the conference which will control
16 the subsequent course of the action relative to matters it
17 includes, unless modified to prevent manifest injustice.
18 ~~A stipulation entered into at such conference shall bind the~~
19 ~~defendant at trial, on appeal, or in a post-conviction proceed-~~
20 ~~ing only if signed by both the defendant and the defendant's~~
21 ~~attorney and filed with the clerk.~~

22 Sec. 42. Rule sixteen (16):

23 Rule 16. TRIAL BY JURY OR COURT.

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

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

34 Sec. 43. Rule seventeen (17), subsection two (2), head-
35 note:

1 2. ~~COMPLETION~~ DEPLETION OF PANEL.

2 Sec. 44. Rule seventeen (17), subsection five (5), para-
3 graph m:

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

7 Sec. 45. Rule seventeen (17), subsection ten (10), un-
8 numbered paragraph two (2):

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

12 Sec. 46. Rule seventeen (17), subsection twelve (12):

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

20 Sec. 47. Rule eighteen (18), subsection one (1), paragraph
21 a, subparagraphs one (1) and three (3):

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

26 (3) STATEMENT OF DEFENDANT'S EVIDENCE. The attorney for
27 the defendant may then briefly state his or her defense, ~~or~~
28 ~~the-attorney-for-the-defendant-may-waive-the-making-of-such~~
29 ~~statement, the-attorney-for-the-defendant-may-reserve-the~~
30 ~~right-to-make-such-statement-to-a-time-immediately-prior-to~~
31 ~~presentation-of-defendant's-evidence.~~

32 Sec. 48. Rule eighteen (18), subsections two (2), three
33 (3) and four (4):

34 2. ADVANCE NOTICE OF EVIDENCE SUPPORTING INDICTMENTS OR
35 INFORMATIONS. The prosecuting attorney, in offering trial

1 evidence in support of an indictment, shall not be permitted
2 to introduce any witness the minutes of whose testimony was
3 not presented with the indictment to the court; in the case
4 of informations, a witness may testify in support thereof
5 if the witness' identity and a minute of the witness' evidence
6 has been given pursuant to these rules. However, these
7 provisions are subject to the following exception: Additional
8 witnesses in support of the indictment or trial information
9 may be presented by the prosecuting attorney if he or she
10 has given the defendant's attorney of record, or the defendant
11 if he or she has no attorney, a minute of such witness'
12 testimony, at least ~~seven~~ ten days before the commencement
13 of the trial.

14 3. FAILURE TO GIVE NOTICE. Whenever the prosecuting
15 attorney desires to ~~introduce-evidence~~ call witnesses to
16 support the indictment, of which he or she shall not have
17 given ~~seven~~ ten days' notice because of insufficient time
18 therefor since the prosecutor learned said evidence testimony
19 could be obtained, the prosecutor may move the court for leave
20 to introduce such evidence testimony, giving the same
21 particulars as in the former case, and showing diligence,
22 supported by affidavit or other evidence. Except where the
23 evidence testimony goes to merely formal matters, if the court
24 sustains said motion, the defendant shall elect whether said
25 cause shall be continued on his motion, or the witness shall
26 then testify. If said defendant shall not elect to have said
27 cause continued, the prosecuting attorney may examine said
28 witness in the same manner and with the same effect as though
29 ~~seven~~ ten days' notice had been given defendant or the
30 defendant's attorney as hereinbefore provided, except the
31 prosecuting attorney, in the examination of witnesses, shall
32 be strictly confined to the matters set out in his or her
33 motion.

34 4. REPORTING OF TRIAL. All the provisions relating to
35 mode and manner of the trial of civil actions, report thereof,

1 translation of the shorthand reporter's notes, the making
2 of such reports and translation of the record, and in all
3 other respects, apply to the trial of criminal actions. Upon
4 request of any party, final arguments shall be reported.

5 Sec. 49. Rule eighteen (18), subsection five (5), para-
6 graphs a, c, d, f, and g:

7 a. VIEW.

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

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

23 c. ALTERNATE JURORS; SEPARATION AND DELIBERATION OF JURORS.

24 ~~The court may impanel alternate jurors, which may replace~~
25 ~~jurors originally selected, in the manner provided in civil~~
26 ~~cases.~~ The jurors shall be kept together unless the court
27 permits the jurors to separate as in civil cases; and the
28 officers having charge of the jury shall suffer no person
29 to communicate with them except as provided for in civil
30 cases.

31 d. ADMONITION TO JURORS. The jury, whether permitted
32 to separate or kept together in charge of sworn officers,
33 must be admonished by the court that it is their duty not
34 to permit any person to speak to or communicate with them
35 on any subject connected with the trial, and that any and

1 all attempts to do so should be immediately reported by them
2 to the court, and that they should not converse among
3 themselves on any subject connected with the trial, or form
4 or express an opinion thereon, until the cause is finally
5 submitted to them, that they should not make an unauthorized
6 visit to the scene of the alleged offense, and that they
7 should refrain from conducting any unauthorized experiments
8 or tests relating to the alleged offense. Said admonition
9 must be given or referred to by the court at each adjournment
10 during the progress of the trial previous to the final submis-
11 sion of the cause to the jury.

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

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

1 Sec. 50. Rule eighteen (18), subsection six (6), para-
2 graphs a, b and c:

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

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

16 c. CRIME COMMITTED IN ANOTHER STATE. If the jury be dis-
17 charged because the court ~~has not~~ lacks jurisdiction of the
18 offense charged in the indictment, the offense being committed
19 out of the jurisdiction of this state, the defendant must
20 be discharged, or ordered to be retained in custody a
21 reasonable time until the prosecuting attorney shall have
22 a reasonable opportunity to inform the chief executive of
23 the state in which the offense was committed of the facts,
24 and for said officer to require the delivery of the offender.

25 Sec. 51. Rule eighteen (18), subsection seven (7),
26 paragraph c:

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

32 Sec. 52. Rule eighteen (18), subsection eight (8), para-
33 graph a:

34 a. MOTION BEFORE SUBMISSION TO JURY. The court on motion
35 of a defendant or ~~of~~ on its own motion shall order the entry

1 of judgment of acquittal of one or more offenses charged in
2 the indictment after the evidence on either side is closed
3 if the evidence is insufficient to sustain a conviction of
4 such offense or offenses. If a defendant's motion for judgment
5 of acquittal at the close of the evidence offered by the
6 prosecuting attorney is not granted, the defendant may offer
7 evidence without having waived his or her right to rely on
8 such motion.

9 Sec. 53. Rule eighteen (18), subsection nine (9):

10 9. TRIAL OF QUESTIONS INVOLVING PRIOR CONVICTIONS. After
11 conviction of the primary or current offense, but prior to
12 pronouncement of sentence, if the indictment or information
13 alleges one or more prior convictions which by the Code sub-
14 jects the offender to an increased sentence, the offender
15 shall have the opportunity in open court to affirm or deny
16 that he or she is identical with the person previously
17 convicted, or that he or she was not represented by counsel
18 and did not waive counsel. If the offender denies he or she
19 is the person previously convicted, sentence shall be postponed
20 for such time as to permit a trial before a jury on the issue
21 of the offender's identity with the person previously
22 convicted. Other objections shall be heard and determined
23 by the court, and these other objections shall be asserted
24 prior to trial of the substantive offense in the manner
25 presented in ~~rule-ten-(10)~~ these rules. On the issue of
26 identity, the court may in its discretion reconvene the jury
27 which heard the current offense or dismiss that jury and
28 submit the issue to another jury to be later impaneled. If
29 the offender is found by the jury to be the person previ-
30 ously convicted, or if the offender acknowledged that he or
31 she is such person, the offender shall be sentenced as
32 prescribed in the Code.

33 Sec. 54. Rule nineteen (19), subsection three (3), para-
34 graph a:

35 a. Before any witness shall be compelled to answer or

1 to produce evidence in any judicial proceeding after having
2 asserted established that such answer or evidence would tend
3 to render him or her criminally liable, incriminate him or
4 her or violate his or her right to remain silent, the witness
5 must knowingly waive his right or:

6 Sec. 55. Rule nineteen (19), subsection three (3), para-
7 graph a, subparagraph one (1), unnumbered part one (1):

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

11 Sec. 56. Rule nineteen (19), subsection three (3), para-
12 graph b:

13 b. A complete verbatim transcript of testimony given pur-
14 suant to an order of immunity shall be made and filed with
15 the application and the order of court. The application,
16 order granting immunity and all transcripts filed shall be
17 sealed upon motion of the defendant, county attorney, or
18 attorney general and shall be opened only by order of the
19 court. This section shall not bar the use of the transcript
20 as evidence in any proceeding except the transcript shall
21 not be used in any proceeding against the witness himself
22 except for perjury or contempt.

23 Sec. 57. Rule twenty (20), subsection one (1):

24 1. RULES. The rules of evidence prescribed in civil pro-
25 cedure shall apply to criminal proceedings as far as applicable
26 and not inconsistent with the provisions of ~~this-rule~~ statutes
27 and these rules.

28 Sec. 58. Rule twenty (20), by striking subsection five
29 (5).

30 Sec. 59. Rule twenty (20), subsection six (6), unnum-
31 bered paragraphs one (1) and three (3):

32 6. EVIDENCE OF PAST SEXUAL CONDUCT IN TRIALS OF SEXUAL
33 ABUSE. In prosecutions for the crime of sexual abuse, evidence
34 of the prosecuting witness' previous sexual conduct shall
35 not be admitted, nor reference made thereto in the presence

1 of the jury, except as provided herein. Evidence of the
2 prosecuting witness' previous sexual conduct shall be
3 admissible upon appropriate order of the court if the defendant
4 shall make application to the court ~~before-or-during-the~~ not
5 later than five days before trial.

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

13 Sec. 60. Rule twenty-one (21), subsection one (1):

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

23 Sec. 61. Rule twenty-one (21), subsection eight (8):

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

1 Sec. 62. Rule twenty-two (22), subsection three (3),
2 paragraph d:

3 d. JUDGMENT ENTERED. If no sufficient cause is shown
4 why judgment should not be pronounced, and none appears to
5 the court upon the record, judgment shall be rendered. Prior
6 to such rendition, counsel for the defendant, and the defendant
7 personally, shall be allowed to address the court where either
8 wishes to make a statement in mitigation of punishment. In
9 every case the court shall include in the judgment entry the
10 number of the particular section of the Code under which the
11 defendant is sentenced. The court shall state on the record
12 its reason for selecting the particular sentence.

13 Sec. 63. Rule twenty-two (22), subsection three (3),
14 paragraph e:

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

19 Sec. 64. Rule twenty-two (22), subsection three (3), by
20 striking paragraph g.

21 Sec. 65. Rule twenty-three (23), subsection two (2),
22 paragraph b, subparagraph eight (8):_

23 (8) When the defendant has discovered important and mate-
24 rial evidence in his or her favor since the verdict, which
25 the defendant could not with reasonable diligence have
26 discovered and produced at the trial. A motion based upon
27 this ground ~~may~~ shall be made without unreasonable delay and,
28 in any event, within two years after final judgment, but such
29 motion may be considered thereafter upon a showing of good
30 cause. When a motion for a new trial is made upon the ground
31 of newly discovered evidence, the defendant must produce at
32 the hearing, in support thereof, the affidavits or testimony
33 of the witnesses by whom such evidence is expected to be
34 given, and if time is required by the defendant to procure
35 such affidavits or testimony, the court may postpone the

1 hearing of the motion for such length of time as, under all
2 circumstances of the case, may be reasonable.

3 Sec. 66. Rule twenty-three (23), subsection two (2),
4 paragraph d:

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

10 Sec. 67. Rule twenty-three (23), subsection four (4),
11 paragraph a:

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

15 Sec. 68. Rule twenty-three (23), subsection four (4),
16 paragraph e:

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

24 Sec. 69. Rule twenty-three (23), subsection five (5),
25 paragraph a:

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

32 Sec. 70. Rule twenty-five (25), subsection four (4), by
33 striking paragraph a, and by relettering the remaining
34 paragraphs.

35 Sec. 71. Rule twenty-five (25), subsection four (4),

1 paragraph c:

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

8 Sec. 72. Rule twenty-six (26):

9 Rule 26. RIGHT TO ASSIGNED APPOINTED COUNSEL.

10 1. REPRESENTATION. Every defendant who is an indigent
11 as defined in section three hundred thirty-six A point four
12 (336A.4) of the Code shall be entitled to have counsel assigned
13 appointed to represent him or her at every stage of the
14 proceedings from the defendant's initial appearance before
15 the magistrate or the court through appeal, including probation
16 and parole revocation hearings, unless the defendant waives
17 such appointment.

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

22 Sec. 73. Rule twenty-nine (29), by striking subsection
23 one (1) and inserting in lieu thereof the following:

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

28 Sec. 74. Chapter one thousand two hundred forty-five
29 (1245), Acts of the Sixty-sixth General Assembly, 1976 Session,
30 chapter two (2), section one thousand three hundred two (1302),
31 rules thirty-three (33), thirty-four (34), fifty-four (54),
32 and fifty-five (55) are amended by sections seventy-four (74)
33 through seventy-eight (78) of this Act as follows:

34 Sec. 75. Rule thirty-three (33):

35 Rule 33. APPLICABILITY OF DISTRICT-COURT-RULES INDICTABLE

1 OFFENSE RULES. Procedures not provided for herein shall be
2 governed by the provisions of these rules which are by their
3 nature applicable relating to trial of indictable offenses,
4 and by the statutes of the state of Iowa.

5 Sec. 76. Rule thirty-four (34):

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

11 Sec. 77. Rule fifty-four (54), subsection one (1):

12 1. NOTICE OF APPEAL. An appeal may be taken by the
13 plaintiff only upon a finding of invalidity of an ordinance
14 or statute. In all other cases, an appeal may only be taken
15 by the defendant and only upon a judgment of conviction.
16 Execution of the judgment shall be stayed upon the filing
17 with the clerk of the district court an appeal bond with
18 surety approved by the clerk, in the sum specified in the
19 judgment. The defendant may take an appeal, by giving notice
20 orally to the magistrate that he or she appeals, or by
21 delivering to the magistrate not later than ten days
22 thereafter, a written notice of the defendant's appeal, and
23 in either case the magistrate must make an entry on its docket
24 of the giving of such notice. Payment of fine or service
25 of a sentence of imprisonment does not waive the right to
26 appeal, nor render the appeal moot. When an appeal is taken,
27 the magistrate shall forward to the appropriate district court
28 clerk a copy of the docket entries in the magistrate's court,
29 together with copies of the complaint, warrant, motions,
30 pleadings, the magistrate's minutes of the witness' testimony
31 and the exhibits or copies thereof and all other papers in
32 the case. A district judge shall promptly hear the appeal
33 upon the record thus filed without further evidence. Within
34 ten days after an appeal is taken, unless extended by order
35 of a district judge or by stipulation of the parties, any

1 party may file with the clerk, as a part of the record, a
2 transcript of the official report, if any, and, in the event
3 the report was made electronically, the tape or other medium
4 on which the proceedings were preserved. If the original
5 action was tried before a district judge acting as a judicial
6 magistrate, the appeal shall be to a different district judge.
7 The judge shall decide the appeal without regard to
8 technicalities or defects. Judgment shall be rendered as
9 though the case were being originally tried. The right to
10 further appeal is governed by section one thousand four hundred
11 six (1406) of this Act.

12 Sec. 78. Rule fifty-four (54), by striking subsection
13 four (4).

14 Sec. 79. Rule fifty-five (55):

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

26 Sec. 80. Chapter one thousand two hundred forty-five
27 (1245), Acts of the Sixty-sixth General Assembly, 1976 Ses-
28 sion, chapter two (2), forms one (1) through nine (9) and
29 A through D are amended by sections eighty (80) through ninety-
30 two (92) of this Act as follows:

31 Sec. 81. Form one (1), heading:

32 FORM 1
33 SEARCH WARRANT

34 State of Iowa
35 County of _____

1 Criminal Case No.

2 Sec. 82. Form two (2):

3 FORM 2

4 ARREST WARRANT ON A COMPLAINT

5 State of Iowa

6 County of _____

7 Criminal Case No.

8 To any peace officer of the state:

9 Complaint upon oath or affirmation having been this day
10 filed with me, charging that the crime (naming it) has been
11 committed and accusing A _____ B

12 _____ thereof:

13 You are commanded forthwith to arrest the said A _____
14 _____ B _____ and bring such
15 person before me at (naming the place), or, in case of my
16 absence or inability to act, before the nearest or most
17 accessible magistrate in this county, without unnecessary
18 delay.

19 Dated at _____ this _____ day of
20 _____, _____.

21 C _____ D _____
22 (with official title)

23 Sec. 83. Form three (3), heading:

24 FORM 3

25 ARREST WARRANT AFTER INDICTMENT OR INFORMATION

26 State of Iowa

27 County of _____

28 Criminal Case No.

29 Sec. 84. Form four (4), heading:

30 FORM 4

31 ARREST WARRANT WHEN DEFENDANT FAILS TO APPEAR FOR SENTENCING

32 State of Iowa

33 County of _____

34 Criminal Case No.

35 Sec. 85. Form five (5), heading:

1 FORM 5
2 BAIL BOND

3 State of Iowa
4 County of _____
5 Criminal Case No. _____

6 Sec. 86. Form six (6), heading:
7 FORM 6

8 ORDER FOR DISCHARGE OF DEFENDANT UPON BAIL
9 State of Iowa
10 County of _____
11 Criminal Case No. _____

12 Sec. 87. Form seven (7), heading:
13 FORM 7

14 ORDER FOR DISCHARGE OF DEFENDANT UPON BAIL: ANOTHER FORM
15 (For endorsement on warrant or order of commitment)

16 State of Iowa
17 County of _____
18 Criminal Case No. _____

19 Sec. 88. Form eight (8), heading:
20 FORM 8

21 TRIAL INFORMATION
22 (also designated County Attorney's Information)
23 IN THE DISTRICT COURT OF _____ COUNTY

24 STATE OF IOWA
25 vs. INFORMATION

26 A _____ B _____
27 Criminal Case No. _____

28 Sec. 89. Form nine (9), heading:
29 FORM 9

30 GENERAL INDICTMENT FORM
31 IN THE DISTRICT COURT OF IOWA IN AND FOR _____ COUNTY
32 STATE OF IOWA

33 vs. INDICTMENT

34 A _____ B _____
35 Criminal Case No. _____

S.F. 289 H.F. _____

1 Sec. 90. Form A:

2 FORM A

3 COMPLAINT

4 State of Iowa Before (Judge, Magistrate) _____

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

7 Criminal Case No. _____

8 State of Iowa

9 vs.

10 A _____ B _____, Defendant

11 The defendant is accused of the crime of (here name the
12 offense and ~~provide-numerical-designation~~ code or ordinance
13 section), in that the defendant on the _____ day of
14 _____, _____, at the _____ (here
15 locate the city, or township where the offense occurred),
16 in _____ county, did (state the acts or omissions
17 constituting the offense).

18 /s/ _____

19 Sec. 91. Form B:

20 FORM B

21 CONSENT TO FORFEITURE OF COLLATERAL

22 AS DISPOSITION OF MISDEMEANOR

23 State of Iowa

24 County of _____

25 Criminal Case No. _____

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

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

33 2. I understand my rights, including my right to trial
34 before the court on such charge, and voluntarily waive same,
35 understanding that forfeiture of the aforesaid amount ter-

1 minates my right to a trial and constitutes a conviction of
2 the offense charged.

3 _____
4 (Signature of defendant)

5 Sec. 92. Form C, heading:

6 FORM C
7 NOTICE OF APPEAL TO A DISTRICT COURT JUDGE
8 FROM A JUDGMENT OR ORDER

9 State of Iowa
10 County of _____
11 Criminal Case No. _____

12 Sec. 93. Form D, heading:

13 FORM D
14 BAIL BOND ON APPEAL TO DISTRICT COURT

15 State of Iowa
16 County of _____
17 Criminal Case No. _____

18 EXPLANATION

19 This bill contains proposed changes in the rules of criminal
20 procedure which the supreme court was authorized to prepare
21 by the provisions of chapter 1245, Acts of the Sixty-sixth
22 General Assembly, 1976 Session, chapter 4, section 530.
23 Sections 2 through 73 of the bill contain proposed amendments
24 to the rules for indictable proceedings, sections 75 through
25 79 contain proposed amendments to the rules for nonindictable
26 proceedings, and sections 81 through 93 contain proposed
27 changes in the appendices of forms for both types of
28 proceedings.

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LSB 885S
mr/rh/8A

S-3263

1 Amend Senate File 289 as follows:

2 1. Page 1, by inserting after line 7 the following:

3 "Sec. _____. Rule one (1), subsection one (1):

4 Rule 1. SCOPE OF RULES AND DEFINITIONS.

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

8 2. Page 2, by inserting after line 25 the
9 following:

10 "Sec. _____. Rule three (3), subsection two (2),
11 paragraph b, subparagraph three (3), part (b);
12 subsection four (4), paragraphs h and i; and subsection
13 four (4), paragraph j, unnumbered paragraph one (1):

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

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

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

46 The grand jury shall inquire into all indictable
47 offenses brought before it which may be tried within
48 the county, and present them to the court by
49 indictment. The grand jury shall meet at times
50 specified by order of a district judge. In addition

S-3263

Page 2

1 to those times, the grand jury shall meet at the
2 request of the county attorney or upon the request
3 of a majority of the grand jurors."

4 3. Page 6, line 6, by inserting after the word
5 "of" the word "a".

6 4. Page 6, by striking line 14 and inserting in
7 lieu thereof the words "paragraphs one (1) and two
8 (2):"

9 5. Page 6, line 18, by striking the word "his"
10 and inserting in lieu thereof the word "his".

11 6. Page 6, line 19, by striking the words "or
12 her" and inserting in lieu thereof the words "or-her
13 the".

14 7. Page 6, line 28, by striking the words "on
15 on" and inserting in lieu thereof the words "on en".

16 8. Page 6, by inserting after line 30 the
17 following:

18 "The defendant must be informed that if the name
19 by which he or she is indicted or informed against
20 is not his or her true name, he or she must then
21 declare what his or her true name is, or be proceeded
22 against by the name in the indictment, ~~and asking~~
23 ~~the defendant what he or she answers to the indictment.~~
24 If the defendant gives no other name or gives his
25 or her true name, the defendant is thereafter precluded
26 from objecting to the indictment or information upon
27 the ground of being therein improperly named. If
28 the defendant alleges that another name is his or
29 her true name, the court must direct an entry thereof
30 in the minutes of the arraignment, and the subsequent
31 proceedings on the indictment shall be had against
32 the defendant by that name, and the indictment amended
33 accordingly."

34 9. Page 18, line 31, by striking the word
35 "subsection" and inserting in lieu thereof the words
36 "subsections two (2) and".

37 10. Page 18, by inserting after line 31 the
38 following:

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

46 11. Page 18, line 35, by striking the words
47 "county, city, or town" and inserting in lieu thereof
48 the words "county, or city, ~~or town~~".

49 12. Page 19, line 1, by inserting after the word
50 "him" the words "or her".

1 13. Page 20, by inserting after line 6 the
2 following section:
3 "Sec. ____ . Rule seventeen (17), subsection six
4 (6):

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

18 14. Page 20, by striking lines 7 and 8 and
19 inserting in lieu thereof the following:
20 "Sec. ____ . Rule seventeen (17), subsection ten
21 (10):"

22 15. Page 20, by inserting after line 8 the
23 following:

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

30 16. Page 20, by inserting after line 11 the
31 following:

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

36 17. Page 20, by inserting after line 31 the
37 following section:

38 "Sec. ____ . Rule eighteen (18), subsection one
39 (1), paragraph b:

40 b. ORDER OF ARGUMENT--ARGUMENTS. When the evidence
41 is concluded, unless the case is submitted to the
42 jury on both sides without argument, the prosecuting
43 attorney must commence, the defendant follow by one
44 or two counsel, at the defendant's option, unless
45 the court permits the defendant to be heard by a
46 larger number, and the prosecuting attorney conclude,
47 confining himself to a response to the arguments of
48 the defendant's counsel. Where two or more defendants
49 are on trial for the same offense, they may be heard
50 by one counsel each."

1 18. Page 26, line 9, by striking the word "court"
2 and inserting in lieu thereof the word "court".

3 19. Page 27, line 10, by striking the word
4 "section" and inserting in lieu thereof the words
5 "section rule".

6 20. Page 28, by striking line 22 and inserting
7 in lieu thereof the words "paragraph b, subparagraphs
8 one (1) and eight (8) and subsection four (4),
9 paragraphs d and e:"

10 21. Page 28, by inserting after line 22 the
11 following:

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

16 22. Page 29, by inserting after line 2 the
17 following:

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

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

36 23. Page 29, by inserting after line 31 the
37 following section:

38 "Sec. ____ . Rule twenty-four (24), subsection one
39 (1), paragraph e and subsection two (2), paragraph
40 a:

41 e. EXECUTION IN OTHER CASES. When the judgment
42 is for the abatement or removal of a nuisance, or
43 for anything other than confinement or payment of
44 money by the defendant, an execution consisting of
45 a certified copy of the entry of such judgment,
46 delivered to the sheriff of the proper county, shall
47 authorize and require the sheriff to execute such
48 judgement judgment, and he or she shall return the
49 same, with the sheriff's doings under the same thereon
50 endorsed, to the clerk of the court in which the

1 judgment was rendered, within a time specified by
2 the court but not exceeding seventy days after the
3 date of the certificate of such certified copy.

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

9 24. Page 29, by inserting after line 34 the
10 following section:

11 "Sec. _____. Rule twenty-five (25), subsection four
12 (4), paragraph c:

13 c. When a person who is present in the courtroom
14 is supposed by a magistrate to have upon his or her
15 person a weapon, the magistrate ~~ex-judge~~ may direct
16 that such person be searched, and any weapon be
17 retained subject to order of the court."

18 25. Page 30, by inserting after line 27 the
19 following section:

20 "Sec. _____. Section one thousand three hundred
21 one (1301) is amended by striking rule thirty-one
22 (31)."

23 26. Page 31, by inserting after line 10 the
24 following sections:

25 "Sec. _____. Rule thirty-six (36), subsection three
26 (3):

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

32 Sec. _____. Rule thirty-nine (39):

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

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

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

50 Sec. _____. Rule forty-eight (48), subsection nine

1 (9):

2 9. ~~RECORD. Upon the trial, the judicial magistrate~~
3 ~~shall make minutes of the testimony of each witness~~
4 ~~and append the exhibits or copies thereof.~~ The
5 proceedings upon trial shall not be reported, unless
6 a party provides a reporter at such party's expense.
7 By agreement of the parties the magistrate may cause
8 the proceedings upon trial to be reported
9 electronically. If the proceedings are being
10 electronically recorded both parties shall be notified
11 in advance of that recording. If the defendant is
12 indigent and requests that the proceedings upon trial
13 be reported, the judicial magistrate shall cause them
14 to be reported by a reporter, or electronically, at
15 public expense. If the proceedings are not reported
16 electronically, the judicial magistrate shall make
17 minutes of the testimony of each witness and append
18 the exhibits or copies thereof. If the proceedings
19 have been reported electronically the recording shall
20 be retained under the jurisdiction of the magistrate
21 and upon request shall be transcribed only by a person
22 designated by the court under the supervision of the
23 magistrate. The transcription shall be provided
24 anyone requesting same it upon payment of actual cost
25 of transcription or to an indigent defendant as herein
26 above provided.

27 Sec. ____ . Rule fifty-three (53) is amended by
28 striking the rule and inserting in lieu thereof the
29 following:

30 Rule 53. FORFEITURE OF COLLATERAL IN LIEU OF
31 APPEARANCE. When authorized in the judicial district
32 as provided in this rule, a court may accept a
33 forfeiture of collateral security in lieu of appearance
34 as a proper disposition of a simple misdemeanor charge.
35 Prior to termination of the case by forfeiture under
36 this rule, the defendant must execute a written consent
37 to forfeiture as disposition of the action. Unless
38 vacated upon application within thirty days of the
39 forfeiture, such forfeiture shall constitute a
40 conviction of the charge and satisfaction of the
41 penalty.

42 Each judicial district, by action of a majority
43 of the district judges, may determine the simple
44 misdemeanor offenses which shall be subject to
45 disposition by forfeiture under this rule and shall
46 promulgate by court rule and disseminate a list of
47 those offenses to all magistrates in the district.
48 A copy of the rule shall be transmitted to the clerk
49 of the supreme court.

50 This rule shall not authorize, and a court shall

1 not accept, the forfeiture of collateral in lieu of
2 appearance in an action in which the defendant is
3 charged either with a nonscheduled traffic violation
4 or with a scheduled violation, including a scheduled
5 traffic violation, in which a court appearance is
6 required under chapter seven hundred fifty-three (753)
7 of the Code."

8 27. Page 32, line 17, by inserting after the words
9 "twenty-three (23)" the words "of the rules of criminal
10 procedure".

11 28. Page 32, by inserting after line 25 the
12 following section:

13 "Sec. ____ . Rule fifty-six (56):

14 Rule 56. CORRECTION OR REDUCTION OF SENTENCE.

15 The magistrate may correct an illegal sentence at
16 any time and may correct a sentence imposed in an
17 illegal manner within the time provided herein for
18 the reduction of sentence. The magistrate may reduce
19 a sentence within ten days after the sentence is
20 imposed or within ten days after the receipt by the
21 magistrate of a mandate issued upon affirmance of
22 the judgment or dismissal of the appeal, or within
23 ten days after entry of any order or judgment of the
24 supreme appellate court denying review of, or having
25 the effect of upholding, a judgment of conviction.
26 The court may also reduce a sentence upon revocation
27 of ~~probation~~ probation as provided by law."

28 29. Page 32, line 28, by striking the word and
29 figure "nine (9)" and inserting in lieu thereof the
30 word and figure "ten (10)".

31 30. Page 34, by inserting after line 35 the
32 following section:

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

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

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

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

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

48 ~~Reckless-endangerment: A.B. recklessly-endangered~~
49 ~~human-life-or-safety-(thereby-seriously-injuring~~
50 ~~E.B.)~~

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

6 31. Page 35, line 5, by striking the words "(insert
 7 name of lower court judge" and inserting in lieu
 8 thereof the words "~~insert-name-of-lower-court-judge~~".

9 32. Page 35, line 6, by striking the words "or
 10 magistrate)" and inserting in lieu thereof the words
 11 "~~or-magistrate)~~".

12 33. Page 36, by inserting after line 17 the
 13 following section:

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

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

19 34. By renumbering sections and by correcting
 20 internal references to conform with this amendment.

S-3263 FILED & ADOPTED (p. 860)
 MARCH 31, 1977

BY GENE W. GLENN

SENATE FILE 289

S-3262

1 Amend Senate File 289 as follows:

2 1. Page 11, line 12, by striking the words and DIV.A
 3 figures "~~five-(5)~~ four (4)" and inserting in lieu
 4 thereof the words and figures "five (5), subsection
 5 four (4)".

6 2. Page 22, line 23, by striking the words
 7 "ALTERNATE JURORS;" and inserting in lieu thereof
 8 the words "~~ALTERNATE-JURORS;~~".

9 3. Page 23, line 30, by striking the words DIV.B
 10 "record. Provided" and inserting in lieu thereof the
 11 words "~~---Provided~~ record; provided".

12 4. Page 32, line 10, by inserting after the word DIV.A
 13 "by" the words ", Division Fourteen (XIV),".

14 5. Page 32, line 11, by striking the words
 15 "of this Act".

S-3262 FILED
 MARCH 31, 1977

BY RICHARD R. RAMSEY

DIV. A - ADOPTED (p. 859)
 DIV. B - W/D (p. 859)

SENATE FILE 289

S-3252

1 Amend Senate File 289, page 31, line 33, by
 2 inserting after the word "evidence" the words "if
 3 the original action was tried by a district judge,
 4 district associate judge, or magistrate appointed
 5 under sections six hundred two point fifty-one (602.51)
 6 or six hundred two point fifty-nine (602.59) of the
 7 Code. If the original action was tried by a magistrate
 8 appointed under sections six hundred two point fifty
 9 (602.50) or six hundred two point fifty-eight (602.58)
 10 of the Code, the district judge shall promptly hear
 11 the appeal de novo".

S-3252 FILED - *Adopted as amended*
 MARCH 29, 1977 *by 3259 3/31 (p. 858)* BY GENE W. GLENN

SENATE FILE 289

S-3253

1 Amend Senate File 289, page 16, line 30, by
 2 inserting after the word "government" the word
 3 "state".

S-3253 FILED & ADOPTED (*p. 836*) BY RICHARD R. RAMSEY
 MARCH 29, 1977

SENATE FILE 289

S-3254

1 Amend Senate File 289, page 15, line 9, by
 2 inserting after the word "court" the words "for
 3 good cause shown".

S-3254 FILED & LOST (*p. 836*) BY RICHARD R. RAMSEY
 MARCH 29, 1977

SENATE FILE 289

S-3259

1 Amend the Glenn amendment, S-3252, to Senate
 2 File 289 as follows:
 3 1. Page 1, line 7, by inserting after the word
 4 "Code" the words "unless the district court judge
 5 hearing the appeal either upon application of any party
 6 or on the district judge's own motion orders the appeal
 7 heard de novo on the grounds the record is inadequate."

S-3259 FILED - *adopted 3/31 (p. 858)* BY JAMES M. REDMOND
 MARCH 30, 1977 LUCAS J. DE KOSTER

SENATE FILE 289

S-3255

- 1 Amend Senate File 289 as follows:
-
- 2 1. Page 7, by striking lines 8 through 35 and DIV.
 3 inserting in lieu thereof the following: A
 4 "Sec. 17. Rule eight (8), subsection two (2), W/D
 5 paragraph b:
 6 b. PLEAS OF GUILTY. The court may refuse to
 7 accept a plea of guilty, and shall not accept such
 8 plea without first addressing the defendant personally
 9 and determining that the plea is made voluntarily
 10 and intelligently and has a factual basis. The
 11 ~~defendant shall be informed of the following:~~
 12 Sec. 18. Rule eight (8), subsection two (2),
 13 paragraph b, subparagraphs one (1) through four (4),
 14 by striking the subparagraphs."
 15 2. Page 8, by striking lines 1 through 12.
-
- 16 3. Page 28, by striking lines 1 through 12. DIV. B
 17 4. By renumbering sections as necessary. DIV. C

S-3255 FILED

BY RICHARD R. RAMSEY

MARCH 29, 1977

DIV. A - W/D }
 DIV. B - LOST } (p. 835)
 DIV. C - W/D }

SENATE FILE 289

S-3256

- 1 Amend the Glenn amendment, S-3252, to Senate
 2 File 289 as follows:
 3 1. Page 1, line 7, by inserting after the word
 4 "Code" the words "unless the judge upon application
 5 or on the judges own motion and at the court's discretion
 6 orders a de novo appeal because the record is inadequate."

S-3256 FILED - *Withdrawn 2/31 (p. 858)* BY JAMES M. REDMOND
 MARCH 29, 1977

SENATE FILE 289

S-3257

- 1 Amend Senate File 289 as follows:
 2 1. Page 9, by striking from lines 9 and 10 the
 3 words "or another disposition more favorable to the
 4 defendant than that provided for in the plea
 5 agreement" and inserting in lieu thereof the words
 6 "or another disposition more favorable to the
 7 defendant than that provided for in the plea
 8 agreement".

S-3257 FILED - *Lost 3/31 (p. 858)* BY RICHARD R. RAMSEY
 MARCH 29, 1977

Motion to reconsider lost 4/5 (p. 919)

House Amendment to Senate File 289

S-3515

1 Amend Senate File 289 as follows:

2 1. Page 1, by striking lines 4 and 5 and inserting
3 in lieu thereof the words "rules one (1) through
4 twenty-six (26) and rules twenty-nine (29) and thirty-
5 one (31) are amended by".

6 2. Page 1, line 6, by striking the words "three
7 (3) through seventy-nine (79)" and inserting in lieu
8 thereof the words "two (2) through eighty (80)".

9 3. Page 1, by inserting after line 12 the
10 following:

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

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

16 4. Page 5, by inserting after line 6 the following
17 section:

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

21 1. PROSECUTION ON INFORMATION. All indictable
22 offenses may be prosecuted by a trial information.
23 An information charging a person with an indictable
24 offense may be filed with the clerk of the district
25 court at any time, whether or not the grand jury is
26 in session. The county attorney shall have the sole
27 authority to file such a trial information unless
28 that authority is specifically granted to other
29 prosecuting attorneys by statute."

30 5. Page 5, line 7, by striking the word "one
31 (1),".

32 6. Page 5, line 8, by striking the word and figure
33 "three (3)".

34 7. Page 5, by striking lines 9 through 14.

35 8. Page 5, by striking lines 18 through 27.

36 9. Page 6, line 21, by striking the words "~~lessor~~
37 necessarily" and inserting in lieu thereof the word
38 "lesser".

39 10. Page 6, line 27, by striking the words "~~an~~
40 a necessarily" and inserting in lieu thereof the word
41 "an".

42 11. Page 8, lines 28 and 29, by striking the words
43 "for good cause shown".

44 12. Page 8, line 30, by inserting after the word
45 "guilty" the word "plea".

46 13. Page 11, lines 11 and 12, by striking the
47 words "~~on-the-ground-that-it-was-illegally-obtained~~"
48 and inserting in lieu thereof the words "on the ground
49 that it was illegally obtained including, but not
50 limited to, motions on any ground listed in rule".

S-3515
PAGE 2

- 1 eleven (11) of the rules of criminal procedure".
2 14. Page 13, by striking lines 16 through 18 and
3 inserting in lieu thereof the words "procedure. The".
4 15. Page 16, by striking line 22 and inserting
5 in lieu thereof the following:
6 "Sec. 35. Rule eleven (11), headnote, is amended
7 to read as follows:
8 Rule 11. SUPPRESSION OF EVIDENCE OBTAINED BY AN
9 UNLAWFUL SEARCH AND SEIZURE."
10 16. Page 16, by striking lines 34 and 35.
11 17. Page 17, by striking lines 1 through 11.
12 18. Page 17, line 21, by striking the word
13 "GOVERNMENT" and inserting in lieu thereof the words
14 "GOVERNMENT STATE".
15 19. Page 17, lines 26 and 27, by striking the
16 words "photograph--Any and, in addition any" and
17 inserting in lieu thereof the words "photograph: Any".
18 20. Page 19, by striking lines 3 through 5 and
19 inserting in lieu thereof the following:
20 "a. DOCUMENTS AND TANGIBLE OBJECTS. If the court
21 grants the relief sought by the defendant under
22 subdivision subsection two (2), paragraph b,
23 subparagraph one (1), of this rule, the court".
24 21. Page 19, by striking lines 13 through 15 and
25 inserting in lieu thereof the following:
26 "b. REPORTS OF EXAMINATIONS AND TESTS. If the
27 court grants relief sought by the defendant under
28 subdivision subsection two (2), paragraph b,
29 subparagraph one (1), of this rule, the court".
30 22. Page 19, by striking lines 26 through 31 and
31 inserting in lieu thereof the following: "subdivision
32 two-(2) subsection three (3) of this rule shall be
33 made, if at all, within five days after any order
34 granting similar relief to the defendant."
35 23. Page 19, by striking lines 32 through 34 and
36 inserting in lieu thereof the following:
37 "4. FAILURE TO EMPLOY EVIDENCE. When evidence
38 intended for use and furnished under this rule is
39 not actually employed at the trial, that fact shall
40 not be commented upon at trial."
41 24. Page 21, by striking line 6 and inserting
42 in lieu thereof the words:
43 "Sec. 43. Rule 15, subsection one (1):".
44 25. Page 21, by striking lines 12 through 19.
45 26. Page 23, by striking line 3 and inserting
46 in lieu thereof the words "a, subparagraph one (1)".
47 27. Page 23, by striking lines 3 through 13.
48 28. Page 24, line 35, by striking the letter "c".
49 29. Page 25, by striking lines 17 through 24.
50 30. Page 28, line 19, by striking the words "rule

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PAGE 3

- 1 ~~ten-(10)~~ these rules" and inserting in lieu thereof
2 the words "rule ten (10)".
3 31. Page 28, line 31, by striking the words
4 "~~asserted~~ established" and inserting in lieu thereof
5 the word "asserted".
6 32. Page 30, line 28, by striking the word
7 "~~considered~~" and inserting in lieu thereof the word
8 "considered".
9 33. Page 31, line 12, by striking the words "~~rules~~
10 ~~of the~~" and inserting in lieu thereof the words "rules
11 of the".
12 34. Page 33, by striking lines 32 through page
13 34, line 3.
14 35. Page 34, line 9, by striking the words "or
15 judge" and inserting in lieu thereof the words "~~e~~
16 ~~judge~~".
17 36. Page 35, by striking lines 2 through 4 and
18 inserting in lieu thereof the following: "rules
19 thirty-three (33), thirty-four (34), thirty-six (36),
20 thirty-nine (39), forty-two (42), forty-eight (48),
21 and fifty-three (53) through fifty-six (56) are amended
22 by sections eighty-two (82) through ninety-two (92)
23 of this Act as follows:".
24 37. Page 35, line 13, by striking the word "all"
25 and inserting in lieu thereof the word "~~all~~".
26 38. Page 36, by striking lines 26 through 35.
27 39. Page 37, by striking lines 1 through 16.
28 40. Renumbering and by correcting internal
29 references as necessary.

S-3515 FILED
MAY 6, 1977

RECEIVED FROM THE HOUSE

Senate concurred 5/10 (p. 1431)

SENATE FILE 289

H-3719

- 1 Amend Senate File 289 as amended, passed and
 2 reprinted by the Senate as follows:
- 3 1. Page 1, by striking lines 4 and 5 and inserting
 4 in lieu thereof the words "rules one (1) through
 5 twenty-six (26) and rules twenty-nine (29) and thirty-
 6 one (31) are amended by".
- 7 2. Page 1, line 6, by striking the words "three
 8 (3) through seventy-nine (79)" and inserting in lieu
 9 thereof the words "two (2) through eighty (80)".
- 10 3. Page 1, by inserting after line 12 the B
 11 following:
- 12 "Sec. _____. Rule one (1), subsection two (2),
 13 paragraph b is amended to read as follows:
- 14 b. "Judicial officer" means justices of the supreme
 15 court, justices of the court of appeals, and committing
 16 magistrates."
- 17 4. Page 5, line 8, by striking the word and figure
 18 "three (3)".
- 19 5. Page 5, by striking lines 18 through 27.
- 20 6. Page 6, line 21, by striking the words "~~lesser~~
 21 necessarily" and inserting in lieu thereof the word
 22 "lesser".
- 23 7. Page 6, line 27, by striking the words "an
 24 a necessarily" and inserting in lieu thereof the word
 25 "an".
- 26 8. Page 7, lines 25 and 26, by striking the words
 27 "~~without-unnecessary-delay as soon as practicable~~" A
 28 and inserting in lieu thereof the words "without
 29 unnecessary delay".
- 30 9. Page 8, lines 28 and 29, by striking the words
 31 "for good cause shown".
- 32 10. Page 8, line 30, by inserting after the word
 33 "guilty" the word "plea".
- 34 11. Page 13, by striking lines 16 through 18 and
 35 inserting in lieu thereof the words "~~procedure. The~~".
- 36 12. Page 16, by striking line 22.
- 37 13. Page 16, by striking lines 34 and 35. B
- 38 14. Page 17, by striking lines 1 through 11.
- 39 15. Page 17, line 21, by striking the word
 40 "GOVERNMENT" and inserting in lieu thereof the words
 41 "GOVERNMENT STATE".
- 42 16. Page 17, lines 26 and 27, by striking the
 43 words "photograph~~-Any~~ and, in addition any" and
 44 inserting in lieu thereof the words "photograph:
 45 Any".
- 46 17. Page 19, by striking lines 3 through 5 and
 47 inserting in lieu thereof the following:
- 48 "a. DOCUMENTS AND TANGIBLE OBJECTS. If the court
 49 grants the relief sought by the defendant under
 50 subdivision subsection two (2), paragraph b,

1 subparagraph one (1), of this rule, the court".
 2 18. Page 19, by striking lines 13 through 15 and
 3 inserting in lieu thereof the following:
 4 "b. REPORTS OF EXAMINATIONS AND TESTS. If the
 5 court grants relief sought by the defendant under
 6 ~~subdivision~~ subsection two (2), paragraph b,
 7 subparagraph one (1), of this rule, the court".
 8 19. Page 19, by striking lines 26 through 31 and
 9 inserting in lieu thereof the following: "~~subdivision~~
 10 ~~two-(2)~~ subsection three (3) of this rule shall be
 11 made, if at all, within five days after any order
 12 granting similar relief to the defendant."
 13 20. Page 19, by striking lines 32 through 34 and
 14 inserting in lieu thereof the following:
 15 "4. FAILURE TO EMPLOY EVIDENCE. When evidence
 16 intended for use and furnished under this rule is
 17 not actually employed at the trial, that fact shall
 18 not be commented upon at trial."
 19 21. Page 21, by striking line 6 and inserting
 20 in lieu thereof the words:
 21 "Sec. 43. Rule 15, subsection one (1):".
 22 22. Page 21, by striking lines 12 through 19.
 23 23. Page 23, by striking line 3 and inserting
 24 in lieu thereof the words "a, subparagraph one (1)".
 25 24. Page 23, by striking lines 8 through 13.
 26 25. Page 24, line 35, by striking the letter "c,".
 27 26. Page 25, by striking lines 17 through 24.
 28 27. Page 28, line 19, by striking the words "~~rule~~
 29 ~~ten-(10)~~ these rules" and inserting in lieu thereof
 30 the words "rule ten (10)".
 31 28. Page 28, line 31, by striking the words
 32 "~~asserted~~ established" and inserting in lieu thereof
 33 the word "asserted".
 34 29. Page 30, line 28, by striking the word
 35 "~~considered~~" and inserting in lieu thereof the word
 36 "considered".
 37 30. Page 31, line 12, by striking the words "~~rules~~
 38 ~~of the~~" and inserting in lieu thereof the words "rules
 39 of the".
 40 31. Page 33, by striking lines 32 through page
 41 34, line 3.
 42 32. Page 34, line 9, by striking the words "or
 43 judge" and inserting in lieu thereof the words "or
 44 judge".
 45 33. Page 35, by striking lines 2 through 4 and
 46 inserting in lieu thereof the following: "rules
 47 thirty-three (33), thirty-four (34), thirty-six (36),
 48 thirty-nine (39), forty-two (42), forty-eight (48),
 49 and fifty-three (53) through fifty-six (56) are amended
 50 by sections eighty-two (82) through ninety-two (92)

1 of this Act as follows:".
 2 34. Page 35, line 13, by striking the word "all"
 3 and inserting in lieu thereof the word "all".
 4 35. By renumbering and by correcting internal
 5 references as necessary.

SENATE FILE 289

H-3854

- 1 Amend Senate File 289 as follows:
2 1. Page 5, by inserting after line 6 the following
3 section:
4 "Sec. _____. Rule five (5), subsection one (1) is
5 amended by striking that subsection and inserting in
6 lieu thereof the following:
7 "1. PROSECUTION ON INFORMATION. All indictable
8 offenses may be prosecuted by a trial information.
9 An information charging a person with an indictable
10 offense may be filed with the clerk of the district
11 court at any time, whether or not the grand jury is in
12 session. The county attorney shall have the sole
13 authority to file such a trial information unless that
14 authority is specifically granted to other prosecuting
15 attorneys by statute."
16 2. Page 5, line 7, by striking the words "one (1),".
17 3. Page 5, by striking lines 9 through 14.
18 4. By renumbering sections as necessary.

H-3854 FILED - *Adopted 4/29* BY BRANSTAD of Winnebago
APRIL 28, 1977 (*p. 1765*) JESSE of Polk

SENATE FILE 289

H-3886

- 1 Amend H-3719 to Senate File 289 as follows:
2 1. Page 1, by inserting after line 33 the following
3 section:
4 "_____. Page 11, lines 11 and 12, by striking the
5 words "~~en-the-ground-that-it-was-illegally-obtained~~"
6 and inserting in lieu thereof the words "on the ground
7 that it was illegally obtained including, but not
8 limited to, motions on any ground listed in rule
9 eleven (11) of the rules of criminal procedure."
10 2. Page 1, line 36, by inserting after the number
11 "22" the words "and inserting in lieu thereof the
12 following:
13 "Sec. 35. Rule eleven (11), headnote, is amended
14 to read as follows:
15 Rule 11. SUPPRESSION OF EVIDENCE OBTAINED BY AN
16 UNLAWFUL SEARCH AND SEIZURE."

H-3886 FILED - *Adopted 4/29* BY JESSE of Polk
APRIL 29, 1977 (*p. 1764*)

SENATE FILE 289

H-3887

- 1 Amend Senate File 289, as passed by the
2 Senate and reprinted, as follows:
3 1. Page 36, by striking lines 26 through 35.
4 2. Page 37, by striking lines 1 through 16.

H-3887 FILED, ADOPTED BY JESSE of Polk
BY UNANIMOUS CONSENT (*p. 1765*)
APRIL 29, 1977

1 Section 1. Chapter one thousand two hundred forty-five
2 (1245), Acts of the Sixty-sixth General Assembly, 1976 Session,
3 chapter two (2), section one thousand three hundred one (1301),
4 rules two (2) through twenty-three (23) and rules twenty-five
5 (25), twenty-six (26), and twenty-nine (29), are amended by
6 sections three (3) through seventy-nine (79) of this Act as
7 follows:

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

9 Rule 1. SCOPE OF RULES AND DEFINITIONS.

10 1. SCOPE. The rules in this section provide procedures
11 for-indictable-criminal-cases applicable to indictable
12 offenses.

13 Sec. 3. Rule two (2), subsection two (2):

14 2. STATEMENT BY THE MAGISTRATE. The magistrate shall
15 inform a defendant who appears before the magistrate after
16 arrest, complaint, summons, or citation of the complaint
17 against the defendant, of the defendant's right to retain
18 counsel, of the defendant's right to request the assignment
19 appointment of counsel if the defendant is unable by reason
20 of indigency to obtain counsel, of the general circumstances
21 under which the defendant may secure pretrial release, of
22 the defendant's right to review of any conditions imposed
23 on the defendant's release and shall provide the defendant
24 with a copy of the complaint. The magistrate shall also
25 inform the defendant that he or she is not required to make
26 a statement and that any statement made by the defendant may
27 be used against him or her. The magistrate shall allow the
28 defendant reasonable time and opportunity to consult counsel.

29 Sec. 4. Rule two (2), subsection three (3):

30 3. COUNSEL. ~~From-a-list-approved-by-the-district-court~~
31 ~~judge, the~~ The magistrate shall have authority to appoint
32 counsel to represent the defendant in the event the defendant
33 requests representation by counsel and is entitled to same.
34 Counsel will be assigned to assist the defendant only upon
35 a showing as required in section three hundred thirty-six

1 A point four (336A.4) of the Code. Counsel so appointed may
2 make application in the district court for compensation for
3 such services.

4 Sec. 5. Rule two (2), subsection four (4), paragraph a:

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

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

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

27 Sec. 7. Rule three (3), subsection two (2), paragraph
28 b, subparagraph three (3), part (a):

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

31 Sec. 8. Rule three (3), subsection two (2), paragraph
32 b, subparagraph three (3), part (b); subsection four (4),
33 paragraphs h and i; and subsection four (4), paragraph j,
34 unnumbered paragraph one (1):

35 (b) The juror has formed or expressed such an opinion

1 as to the guilt or innocence of the defendant as would prevent
2 the juror from rendering a true verdict indictment upon the
3 evidence submitted.

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

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

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

35 Sec. 9. Rule three (3), subsection four (4), paragraph

1 d:

2 d. SECRECY OF PROCEEDINGS. Every member of the grand
3 jury, and its clerks and bailiffs, shall keep secret the
4 proceedings of that body and the testimony given before it,
5 except as provided in rule thirteen (13). No such person
6 shall disclose the fact that an indictment has been found
7 except when necessary for the issuance and execution of a
8 warrant or summons, and such duty of nondisclosure shall
9 continue until the indicted person has been arrested. The
10 county prosecuting attorney shall be allowed to appear before
11 the grand jury on his or her own request for the purpose of
12 giving information or for the purpose of examining witnesses,
13 and the grand jury may at all reasonable times ask the advice
14 of the county prosecuting attorney or the court. However,
15 neither the county prosecuting attorney nor any other officer
16 or person except the grand jury may be present when the grand
17 jury is voting upon the finding of an indictment.

18 Sec. 10. Rule three (3), subsection four (4), paragraph
19 e:

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

27 Sec. 11. Rule four (4), subsection six (6), paragraph
28 b:

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

35 Sec. 12. Rule four (4), subsection eight (8), paragraph

1 d:

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

7 Sec. 13. Rule five (5), subsections one (1), two (2),
8 three (3), four (4) and five (5):

9 1. PROSECUTION ON INFORMATION. All indictable offenses
10 may be prosecuted by a trial information. The prosecuting
11 attorney may at any time, whether or not the grand jury is
12 in session, file ~~an~~ such information with ~~a~~ the clerk of the
13 district court judge-or-district-associate-judge-charging
14 a-person-with-an-indictable-offense.

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

18 3. WITNESS NAMES AND MINUTES. The prosecuting attorney
19 shall, at the time of filing such information, endorse or
20 cause to be endorsed thereon the names, occupations, and last
21 known addresses of the witnesses whose evidence the prosecuting
22 attorney expects to introduce and use on the trial of the
23 same, and shall also file with such information, of each
24 witness whose name is endorsed upon the information, a
25 ~~statement-sufficient-to-enable-the-defendant-to-prepare-his~~
26 defense minute of the evidence relating to the guilt of the
27 accused of the offense charged.

28 4. APPROVAL BY JUDGE. Prior to the filing of the
29 information, a district judge ~~or~~, district associate judge
30 or magistrate having jurisdiction of the offense must approve
31 the information by a finding that the evidence contained in
32 the information and the minutes of testimony, if unexplained,
33 would warrant a conviction by the trial jury. If not approved,
34 the charge may be presented to the grand jury for
35 consideration. At any time after judicial approval of an

1 information, and prior to the commencement of trial, the
2 court, on its own motion, may order said information set aside
3 and said case submitted to the grand jury.

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

11 Sec. 14. Rule six (6), subsections one (1), two (2), and
12 three (3):

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

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

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

1 ~~been-objected-to.~~

2 Sec. 15. Rule seven (7), subsection two (2), paragraph
3 b:

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

9 Sec. 16. Rule seven (7), subsection three (3), paragraph
10 a:

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

23 Sec. 17. Rule eight (8), subsection one (1), unnumbered
24 paragraphs one (1) and two (2):

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

1 shall consist of reading the indictment to the defendant or
 2 stating to the defendant the substance of the charge and
 3 calling on on the defendant to plead thereto. The defendant
 4 shall be given a copy of the indictment or information before
 5 he or she is called upon to plead.

6 The defendant must be informed that if the name by which
 7 he or she is indicted or informed against is not his or her
 8 true name, ne or she must then declare what nis or her true
 9 name is, or be proceeded against by the name in the indictment,
 10 and-asking-the-defendant-what-he-or-she-answers-to-the
 11 indictment. If the defendant gives no other name or gives
 12 nis or her true name, the defendant is thereafter precluded
 13 from objecting to the indictment or information upon the
 14 ground of being therein improperly named. If the defendant
 15 alleges that another name is his or her true name, the court
 16 must direct an entry thereof in the minutes of the arraignment,
 17 and the subsequent proceedings on the indictment shall be
 18 had against the defendant by that name, and the indictment
 19 amended accordingly.

20 Sec. 18. Rule eight (8), subsection two (2), paragraph
 21 a:

22 a. IN GENERAL. A defendant may plead guilty, or not
 23 guilty,-not-guilty-by-reason-of-insanity,-not-triable-by
 24 reason-of-present-insanity,-or-a-former-judgment-of-conviction
 25 or-acquittal-of-the-offense-charged. If the defendant fails
 26 or refuses to plead at arraignment, or if the court refuses
 27 to accept a guilty plea, the court shall enter a plea of not
 28 guilty. At any time before judgment, the court may for good
 29 cause shown permit a guilty plea to be withdrawn and other
 30 plea-or-pleas a not guilty substituted. A-defendant-who-does
 31 not-plead-guilty-may-enter-one-or-more-of-the-other-pleas.

32 Sec. 19. Rule eight (8), subsection two (2), paragraph
 33 b:

34 b. PLEAS OF GUILTY. The court may refuse to accept a
 35 plea of guilty, and shall not accept such plea without first

1 addressing the defendant personally and determining that the
2 plea is made voluntarily and intelligently and has a factual
3 basis. ~~The defendant shall be informed of the following:~~

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

8 (1) The nature of the charge to which the plea is of-
9 fered.

10 (2) The mandatory minimum punishment, if any, and the
11 maximum possible punishment provided by the statute defin-
12 ing the offense to which the plea is offered.

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

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

24 ~~The court shall accept the guilty plea only after de-~~
25 ~~termining that the defendant understands these matters, that~~
26 ~~the plea is voluntary, and that there is a factual basis for~~
27 ~~same.~~

28 Sec. 20. Rule eight (8), subsection two (2), by adding
29 the following new paragraph:

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

1 of the rules of criminal procedure.

2 Sec. 21. Rule eight (8), subsection three (3):

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

9 Sec. 22. Rule nine (9), subsections one (1) through four
10 (4):

11 1. IN GENERAL. The prosecuting attorney and the attorney
12 for the defendant may engage in discussions with a view toward
13 reaching an agreement that, upon the entering of a plea of
14 guilty to a charged offense or to a lesser or related offense,
15 the prosecuting attorney will ~~move for dismissal of other~~
16 ~~charges, or will recommend or not oppose the imposition of~~
17 ~~a particular sentence, or will do both~~ make a charging or
18 sentencing concession.

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

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

35 4. REJECTION OF PLEA AGREEMENT. If the court refuses

1 to be bound by or rejects the plea agreement, the court shall
2 inform the parties of this fact, ~~advise-the-defendant~~
3 ~~personally-in-open-court-that-the-court-is-not-bound-by-the~~
4 ~~plea-agreement~~, afford the defendant the opportunity to then
5 withdraw his or her plea, and advise the defendant that if
6 he or she persists in his or her guilty plea the disposition
7 of the case may be less favorable to the defendant than that
8 contemplated by the plea agreement.

9 Sec. 23. Rule ten (10), subsection two (2), paragraph
10 c:

11 c. Motions to suppress evidence ~~on-the-ground-that-it~~
12 ~~was-illegally-obtained~~.

13 Sec. 24. Rule ten (10), subsection two (2), by adding
14 the following new lettered paragraphs:

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

17 NEW PARAGRAPH. Motion in limine.

18 Sec. 25. Rule ten (10), subsections three (3), four (4)
19 and five (5):

20 3. EFFECT OF FAILURE TO RAISE DEFENSES OR OBJECTIONS.

21 Failure of the defendant to timely raise defenses or objections
22 or to make requests which must be made prior to trial under
23 this rule shall constitute waiver thereof, but the court for
24 good cause shown, upon-motion-supported-by-affidavit, may
25 grant relief from such waiver.

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

32 5. BILL OF PARTICULARS. When an indictment or information
33 charges an offense in accordance with this rule but fails
34 to specify the particulars of the offense sufficiently to
35 fairly enable the defendant to prepare his or her defense,

1 the court may, on written motion of the defendant, require
2 the county prosecuting attorney to furnish the defendant with
3 a bill of particulars containing such particulars as may be
4 necessary for the preparation of the defense. A motion for
5 a bill of particulars may be made any time prior to or within
6 ten days after arraignment unless the time be extended by
7 the court for good cause shown. A plea of not guilty at
8 arraignment does not waive the right to move for a bill of
9 particulars if such motion is timely filed within this rule.
10 The county prosecuting attorney may furnish a bill of
11 particulars on the county prosecuting attorney's own motion,
12 or the court may order a bill of particulars without motion.
13 Supplemental bills of particulars may be likewise ordered
14 by the court or voluntarily furnished, or a new bill may be
15 substituted for a bill already furnished. At the trial the
16 state's evidence shall be confined to the particulars of the
17 bill or bills.

18 Sec. 26. Rule ten (10), subsection six (6), paragraph
19 a:

20 6. DISMISSING INDICTMENT OR INFORMATION.

21 a. IN GENERAL. If it appears from the bill of particulars
22 furnished pursuant to this rule that the particulars stated
23 do not constitute the offense charged in the indictment or
24 information, or that the defendant did not commit that offense
25 or that a prosecution for that offense is barred by the statute
26 of limitations, the court may and on motion of defendant shall
27 dismiss the indictment or information unless the county
28 prosecuting attorney shall furnish another bill of particulars
29 which so states the particulars as to ~~show-that-the-particulars~~
30 ~~constitute-the-offense-charged-in-the-indictment-or-information~~
31 ~~and-that-the-offense-was-committed-by-the-defendant-and-that~~
32 ~~it-is-not-barred-by-the-statute-of-limitations~~ cure the defect.

33 Sec. 27. Rule ten (10), subsection six (6), paragraph
34 c, subparagraph three (3):

35 (3) When the information has not been approved as required

1 under rule five (5), subsection four (4).

2 Sec. 28. Rule ten (10), subsections seven (7) and eight
3 (8):

4 7. EFFECT OF DETERMINATION. If the court grants a motion
5 based on a defect in the institution of the prosecution or
6 in the indictment or information, it may also order that the
7 defendant be held in custody or that the defendant's bail
8 be continued for a specified period pending the filing of
9 a new indictment or information if the same was dismissed
10 by the court, or the amendment of any such pleading if the
11 defect is subject to correction by amendment. The new
12 information or indictment must be filed within thirty twenty
13 days of the dismissal of the original indictment or information
14 and-the-defendant-must-be-brought-to-trial-within-the-time
15 limits-specified-in-rule-twenty-seven-(27),-rules-of-criminal
16 procedure. Such time shall not be included in the forty-five
17 day period allowed for filing an indictment under rule twenty-
18 seven (27), subsection two (2), paragraph a. Moreover, the
19 ninety day period under rule twenty-seven (27), subsection
20 two (2), paragraph b for bringing a defendant to trial shall
21 commence anew with the filing of the new indictment or
22 information.

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

27 Sec. 29. Rule ten (10), subsection nine (9), paragraphs
28 a through c, by striking the subsection title and the
29 paragraphs and inserting lieu thereof the following:

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

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

34 b. VENUE. If the court is satisfied from a motion for
35 change of venue and evidence adduced in support thereof that

1 such prejudice exists in the county in which the trial is
2 to be had that there is a substantial likelihood a fair and
3 impartial trial cannot be had there, the court shall transfer
4 the proceeding to another county in which no such situation
5 exists.

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

11 Sec. 30. Rule ten (10), subsection nine (9), paragraph
12 d:

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

30 Sec. 31. Rule ten (10), subsection ten (10), paragraph
31 a, subparagraph one (1):

32 (1) NOTICE. A defendant who intends to offer evidence
33 of an alibi defense shall, within the time provided for the
34 making of pretrial motions or at such later time as the court
35 shall direct, ~~inform the attorney for the government of such~~

1 ~~intention-and~~ file such written notice of such intention.
2 The notice shall state the specific place or places at which
3 the defendant claims to have been at the time of the alleged
4 offense and the names and addresses of the witnesses upon
5 whom the defendant intends to rely to establish such alibi.
6 In the event that a defendant shall file such notice the
7 prosecuting attorney for-the-government shall file ~~and-serve~~
8 ~~upon-the-defendant~~ written notice of the names and addresses
9 of the witnesses the government state proposes to offer in
10 rebuttal to discredit the defendant's alibi. Such ~~service~~
11 notice shall be ~~completed~~ filed not less than ~~five~~ ten days
12 after ~~receipt~~ filing of defendant's witness list, or within
13 such other time as the court may direct. ~~If-either-party~~
14 ~~shall-fail-to-abide-by-the-time-periods-heretofore-described,~~
15 ~~the-proponent-must-move-the-court-for-leave-to-introduce-such~~
16 ~~evidence,-showing-diligence-supported-by-affidavit.~~

17 Sec. 32. Rule ten (10), subsection ten (10), paragraph
18 a, subparagraph two (2), by striking the subparagraph and
19 inserting in lieu thereof the following:

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

28 Sec. 33. Rule ten (10), subsection ten (10), paragraph
29 b, subparagraphs one (1) and two (2), by amending the paragraph
30 title and subparagraph one (1), and by striking subparagraph
31 two (2):

32 b. INSANITY AND DIMINISHED RESPONSIBILITY.

33 (1) DEFENSE OF INSANITY AND DIMINISHED RESPONSIBILITY.

34 If a defendant intends to rely upon the defense of insanity
35 or diminished responsibility at the time of the alleged crime,

1 the defendant shall, within the time provided for the filing
2 of pretrial motions ~~or-at-such-later-time-as-the-court-may~~
3 ~~direct,-inform-the-attorney-for-the-government-of-such~~
4 ~~intention-and-file-such-notice~~ file written notice of such
5 intention. The court may for good cause shown allow late
6 filing of the notice or grant additional time to the parties
7 to prepare for trial or make such other order as may be
8 appropriate.

9 Sec. 34. Rule ten (10), subsection ten (10), paragraph
10 b, subparagraph three (3), by striking the subparagraph and
11 inserting in lieu thereof the following:

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

22 Sec. 35. Rule eleven (11), by striking the rule.

23 Sec. 36. Rule twelve (12), subsection one (1), unnumbered
24 paragraph one (1):

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

34 Sec. 37. Rule twelve (12), subsection two (2), by striking
35 unnumbered paragraph two (2) and paragraphs a and b.

1 Sec. 38. Rule twelve (12), subsection three (3), by
2 striking the subsection and inserting in lieu thereof the
3 following:

4 3. LISTING OF DEFENDANT'S WITNESSES. Within the time
5 provided for filing pretrial motions, the defendant shall
6 file a list of all witnesses, except the defendant, expected
7 to be called for the defense at trial. There shall be a
8 continuing duty to disclose additional defense witnesses.
9 All defense witnesses shall be subject to being deposed by
10 the state, in the same manner and subject to the same
11 limitations as govern depositions by the defendant.

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

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

21 2. DISCLOSURE OF EVIDENCE BY THE GOVERNMENT UPON DEFENSE
22 MOTION OR REQUEST.

23 a. DISCLOSURE REQUIRED UPON REQUEST.

24 (1) Upon pretrial motion of a defendant the court shall
25 order the attorney for the government state to permit the
26 defendant to inspect and copy or photograph ~~---~~ Any and, in
27 addition any relevant written or recorded statements made
28 by the defendant or copies thereof, within the possession,
29 custody or control of the government state, unless same shall
30 have been included with the minutes of evidence accompanying
31 the indictment or information; the substance of any oral
32 statement made by the defendant which the government state
33 intends to offer in evidence at the trial, including any voice
34 recording of same; and the transcript or record of testi-
35 mony of the defendant before a grand jury, whether or not

1 the government state intends to offer same in evidence upon
2 trial.

3 (2) When two or more defendants are jointly charged, upon
4 motion of any defendant the court shall order the attorney
5 for the government state to permit the defendant to inspect
6 and copy or photograph any written or recorded statement of
7 a codefendant which the government state intends to offer
8 in evidence at the trial, and the substance of any oral
9 statement which the government state intends to offer in
10 evidence at the trial made by a codefendant whether before
11 or after arrest in response to interrogation by any person
12 known to the codefendant to be a government state agent.

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

17 b. DISCRETIONARY DISCOVERY.

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

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

1 of the government state.

2 3. DISCLOSURE OF EVIDENCE BY THE DEFENDANT.

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

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

25 c. TIME OF MOTION. A motion for the relief provided under
26 subdivision ~~two (2)~~ three (3) of this rule shall be made,
27 if at all, within five ten days after ~~any order granting~~
28 ~~similar relief to the defendant~~ expiration of the period
29 provided for filing pretrial motions under rule ten (10),
30 subsection four (4) unless extended by the court for good
31 cause shown.

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

35 4. CONTINUING DUTY TO DISCLOSE. If, subsequent to

1 compliance with an order issued pursuant to this rule, either
2 party discovers additional evidence, or decides to use evidence
3 which is additional to that originally intended for use, and
4 such additional evidence is subject to discovery under this
5 rule, the party shall promptly ~~notify-the-other-party~~ file
6 written notice of the existence of the additional evidence
7 to allow the other party to make an appropriate motion for
8 additional discovery.

9 Sec. 40. Rule thirteen (13), subsection five (5), para-
10 graph a, subparagraph four (4), by striking the subparagraph.

11 Sec. 41. Rule thirteen (13), subsection five (5), para-
12 graph c:

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

21 Sec. 42. Rule fourteen (14), subsections two (2) and three
22 (3):

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

29 3. SERVICE. A subpoena may be served in any part of the
30 state. It may be served by any adult person. A peace officer
31 making service in a criminal case must serve without delay
32 in his or her county, or city, ~~or town~~ any subpoena delivered
33 to him or her for service and make a written return stating
34 the time, place, and manner of service. When service is made
35 by other than a peace officer, proof thereof shall be by

1 affidavit. Service is made by showing the original to the
2 witness and delivering a copy to him or her. ~~If a witness~~
3 ~~conceals himself or herself to avoid service of a subpoena,~~
4 ~~the officer may break open doors or windows for the purpose~~
5 ~~of making service.~~

6 Sec. 43. Rule 15, subsections one (1) and three (3):

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

12 3. STIPULATIONS AND ORDERS. The court shall make an order
13 reciting any action taken at the conference which will control
14 the subsequent course of the action relative to matters it
15 includes, unless modified to prevent manifest injustice.
16 ~~A stipulation entered into at such conference shall bind the~~
17 ~~defendant at trial, on appeal, or in a post-conviction proceed-~~
18 ~~ing only if signed by both the defendant and the defendant's~~
19 ~~attorney and filed with the clerk.~~

20 Sec. 44. Rule sixteen (16):

21 Rule 16. TRIAL BY JURY OR COURT.

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

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

32 Sec. 45. Rule seventeen (17), subsection two (2), head-
33 note:

34 2. ~~COMPLETION~~ DEPLETION OF PANEL.

35 Sec. 46. Rule seventeen (17), subsection five (5), para-

1 graph m:

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

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

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

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

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

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

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

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

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

1 to two strikes.

2 Sec. 50. Rule eighteen (18), subsection one (1), paragraph
3 a, subparagraphs one (1) and three (3):

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

8 (3) STATEMENT OF DEFENDANT'S EVIDENCE. The attorney for
9 the defendant may then briefly state his or her defense, ~~or~~
10 ~~the attorney for the defendant may waive the making of such~~
11 ~~statement; the attorney for the defendant may reserve the~~
12 ~~right to make such statement to a time immediately prior to~~
13 ~~presentation of defendant's evidence.~~

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

16 b. ORDER OF ARGUMENT--ARGUMENTS. When the evidence is
17 concluded, unless the case is submitted to the jury on both
18 sides without argument, the prosecuting attorney must commence,
19 the defendant follow by one or two counsel, at the defendant's
20 option, unless the court permits the defendant to be heard
21 by a larger number, and the prosecuting attorney conclude,
22 confining himself to a response to the arguments of the
23 defendant's counsel. Where two or more defendants are on
24 trial for the same offense, they may be heard by one counsel
25 each.

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

28 2. ADVANCE NOTICE OF EVIDENCE SUPPORTING INDICTMENTS OR
29 INFORMATIONS. The prosecuting attorney, in offering trial
30 evidence in support of an indictment, shall not be permitted
31 to introduce any witness the minutes of whose testimony was
32 not presented with the indictment to the court; in the case
33 of informations, a witness may testify in support thereof
34 if the witness' identity and a minute of the witness' evidence
35 has been given pursuant to these rules. However, these

1 provisions are subject to the following exception: Additional
2 witnesses in support of the indictment or trial information
3 may be presented by the prosecuting attorney if he or she
4 has given the defendant's attorney of record, or the defendant
5 if he or she has no attorney, a minute of such witness'
6 testimony, at least ~~seven~~ ten days before the commencement
7 of the trial.

8 3. FAILURE TO GIVE NOTICE. Whenever the prosecuting
9 attorney desires to ~~introduce evidence~~ call witnesses to
10 support the indictment, of which he or she shall not have
11 given ~~seven~~ ten days' notice because of insufficient time
12 therefor since the prosecutor learned said ~~evidence~~ testimony
13 could be obtained, the prosecutor may move the court for leave
14 to introduce such ~~evidence~~ testimony, giving the same
15 particulars as in the former case, and showing diligence,
16 supported by affidavit or other evidence. Except where the
17 ~~evidence~~ testimony goes to merely formal matters, if the court
18 sustains said motion, the defendant shall elect whether said
19 cause shall be continued on his motion, or the witness shall
20 then testify. If said defendant shall not elect to have said
21 cause continued, the prosecuting attorney may examine said
22 witness in the same manner and with the same effect as though
23 ~~seven~~ ten days' notice had been given defendant or the
24 defendant's attorney as hereinbefore provided, except the
25 prosecuting attorney, in the examination of witnesses, shall
26 be strictly confined to the matters set out in his or her
27 motion.

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

34 Sec. 53. Rule eighteen (18), subsection five (5), para-
35 graphs a, c, d, f, and g:

1 a. VIEW.

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

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

17 c. ALTERNATE-JURORS; SEPARATION AND DELIBERATION OF JURORS.
18 ~~The court may impanel alternate jurors, which may replace~~
19 ~~jurors originally selected, in the manner provided in civil~~
20 ~~cases.~~ The jurors shall be kept together unless the court
21 permits the jurors to separate as in civil cases; and the
22 officers having charge of the jury shall suffer no person
23 to communicate with them except as provided for in civil
24 cases.

25 d. ADMONITION TO JURORS. The jury, whether permitted
26 to separate or kept together in charge of sworn officers,
27 must be admonished by the court that it is their duty not
28 to permit any person to speak to or communicate with them
29 on any subject connected with the trial, and that any and
30 all attempts to do so should be immediately reported by them
31 to the court, and that they should not converse among
32 themselves on any subject connected with the trial, or form
33 or express an opinion thereon, until the cause is finally
34 submitted to them, that they should not make an unauthorized
35 visit to the scene of the alleged offense, and that they

1 should refrain from conducting any unauthorized experiments
2 or tests relating to the alleged offense. Said admonition
3 must be given or referred to by the court at each adjournment
4 during the progress of the trial previous to the final submis-
5 sion of the cause to the jury.

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

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

30 Sec. 54. Rule eighteen (18), subsection six (6), para-
31 graphs a, b and c:

32 a. ILLNESS OF JURORS AND OTHER CASES. The court may dis-
33 charge a jury because of any accident or calamity requiring
34 it, or by consent of all parties, or when on an amendment
35 a continuance is ordered, or if they have deliberated until

1 it satisfactorily appears that they cannot agree. The case
2 shall be retried ~~immediately-or-at-a-future-time,-as-the-court~~
3 ~~directs~~ within ninety days unless good cause for further delay
4 is shown.

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

10 c. CRIME COMMITTED IN ANOTHER STATE. If the jury be dis-
11 charged because the court ~~has-not~~ lacks jurisdiction of the
12 offense charged in the indictment, the offense being committed
13 out of the jurisdiction of this state, the defendant must
14 be discharged, or ordered to be retained in custody a
15 reasonable time until the prosecuting attorney shall have
16 a reasonable opportunity to inform the chief executive of
17 the state in which the offense was committed of the facts,
18 and for said officer to require the delivery of the offender.

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

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

26 Sec. 56. Rule eighteen (18), subsection eight (8), para-
27 graph a:

28 a. MOTION BEFORE SUBMISSION TO JURY. The court on motion
29 of a defendant or ~~of~~ on its own motion shall order the entry
30 of judgment of acquittal of one or more offenses charged in
31 the indictment after the evidence on either side is closed
32 if the evidence is insufficient to sustain a conviction of
33 such offense or offenses. If a defendant's motion for judgment
34 of acquittal at the close of the evidence offered by the
35 prosecuting attorney is not granted, the defendant may offer

1 evidence without having waived his or her right to rely on
2 such motion.

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

4 9. TRIAL OF QUESTIONS INVOLVING PRIOR CONVICTIONS. After
5 conviction of the primary or current offense, but prior to
6 pronouncement of sentence, if the indictment or information
7 alleges one or more prior convictions which by the Code sub-
8 jects the offender to an increased sentence, the offender
9 shall have the opportunity in open court to affirm or deny
10 that he or she is identical with the person previously
11 convicted, or that he or she was not represented by counsel
12 and did not waive counsel. If the offender denies he or she
13 is the person previously convicted, sentence shall be postponed
14 for such time as to permit a trial before a jury on the issue
15 of the offender's identity with the person previously
16 convicted. Other objections shall be heard and determined
17 by the court, and these other objections shall be asserted
18 prior to trial of the substantive offense in the manner
19 presented in ~~rule-ten-(40)~~ these rules. On the issue of
20 identity, the court may in its discretion reconvene the jury
21 which heard the current offense or dismiss that jury and
22 submit the issue to another jury to be later impaneled. If
23 the offender is found by the jury to be the person previ-
24 ously convicted, or if the offender acknowledged that he or
25 she is such person, the offender shall be sentenced as
26 prescribed in the Code.

27 Sec. 58. Rule nineteen (19), subsection three (3), para-
28 graph a:

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

35 Sec. 59. Rule nineteen (19), subsection three (3), para-

1 graph a, subparagraph one (1), unnumbered part one (1):

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

5 Sec. 60. Rule nineteen (19), subsection three (3), para-
6 graph b:

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

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

18 1. RULES. The rules of evidence prescribed in civil pro-
19 cedure shall apply to criminal proceedings as far as applicable
20 and not inconsistent with the provisions of ~~this-rule~~ statutes
21 and these rules.

22 Sec. 62. Rule twenty (20), by striking subsection five
23 (5).

24 Sec. 63. Rule twenty (20), subsection six (6), unnum-
25 bered paragraphs one (1) and three (3):

26 6. EVIDENCE OF PAST SEXUAL CONDUCT IN TRIALS OF SEXUAL
27 ABUSE. In prosecutions for the crime of sexual abuse, evidence
28 of the prosecuting witness' previous sexual conduct shall
29 not be admitted, nor reference made thereto in the presence
30 of the jury, except as provided herein. Evidence of the
31 prosecuting witness' previous sexual conduct shall be
32 admissible upon appropriate order of the court if the defendant
33 shall make application to the court ~~before-or-during-the~~ not
34 later than five days before trial.

35 In no event shall such evidence of previous sexual conduct

1 of the prosecuting witness committed more than one year prior
2 to the date of the alleged crime be admissible upon the trial,
3 except previous sexual conduct with the defendant. Nothing
4 in this section rule shall limit the right of either the state
5 or the accused to impeach credibility by the showing of prior
6 felony convictions which are otherwise admissible.

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

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

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

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

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

32 d. JUDGMENT ENTERED. If no sufficient cause is shown
33 why judgment should not be pronounced, and none appears to
34 the court upon the record, judgment shall be rendered. Prior
35 to such rendition, counsel for the defendant, and the defendant

1 personally, shall be allowed to address the court where either
2 wishes to make a statement in mitigation of punishment. In
3 every case the court shall include in the judgment entry the
4 number of the particular section of the Code under which the
5 defendant is sentenced. The court shall state on the record
6 its reason for selecting the particular sentence.

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

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

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

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

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

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

1 circumstances of the case, may be reasonable.

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

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

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

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

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

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

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

32 e. REINSTATEMENT OF VERDICT. In the event the supreme
 33 court reverses the order of the trial court arresting judgment
 34 or granting a new trial, it shall order that the verdict be
 35 reinstated, unless the supreme court finds other reversible

1 errors, in which event it may ~~order that the verdict be set~~
2 ~~aside and a new trial be granted~~ enter an appropriate different
3 order.

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

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

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

14 e. EXECUTION IN OTHER CASES. When the judgment is for
15 the abatement or removal of a nuisance, or for anything other
16 than confinement or payment of money by the defendant, an
17 execution consisting of a certified copy of the entry of such
18 judgment, delivered to the sheriff of the proper county, shall
19 authorize and require the sheriff to execute such judgment
20 judgment, and he or she shall return the same, with the
21 sheriff's doings under the same thereon endorsed, to the clerk
22 of the court in which the judgment was rendered, within a
23 time specified by the court but not exceeding seventy days
24 after the date of the certificate of such certified copy.

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

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

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

34 c. When a person who is present in the courtroom is
35 supposed by a magistrate to have upon his or her person a

1 weapon, the magistrate or-judge may direct that such person
 2 be searched, and any weapon be retained subject to order of
 3 the court.

4 Sec. 77. Rule twenty-five (25), subsection four (4),
 5 paragraph c:

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

12 Sec. 78. Rule twenty-six (26):

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

14 1. REPRESENTATION. Every defendant who is an indigent
 15 as defined in section three hundred thirty-six A point four
 16 (336A.4) of the Code shall be entitled to have counsel ~~assigned~~
 17 appointed to represent him or her at every stage of the
 18 proceedings from the defendant's initial appearance before
 19 the magistrate or the court through appeal, including probation
 20 and parole revocation hearings, unless the defendant waives
 21 such appointment.

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

26 Sec. 79. Rule twenty-nine (29), by striking subsection
 27 one (1) and inserting in lieu thereof the following:

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

32 Sec. 80. Section one thousand three hundred one (1301)
 33 is amended by striking rule thirty-one (31).

34 Sec. 81. Chapter one thousand two hundred forty-five
 35 (1245), Acts of the Sixty-sixth General Assembly, 1976 Session,

1 chapter two (2), section one thousand three hundred two (1302),
2 rules thirty-three (33), thirty-four (34), fifty-four (54),
3 and fifty-five (55) are amended by sections eighty-two (82)
4 through ninety-one (91) of this Act as follows:

5 Sec. 82. Rule thirty-three (33):

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

11 Sec. 83. Rule thirty-four (34):

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

17 Sec. 84. Rule thirty-six (36), subsection three (3):

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

22 Sec. 85. Rule thirty-nine (39):

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

28 Sec. 86. Rule forty-two (42), subsection three (3),
29 unnumbered paragraph two (2):

30 In ~~appropriate~~ cases where the defendant faces the
31 possibility of imprisonment, the court shall appoint counsel
32 for an indigent defendant in accordance with procedures
33 established under rule two (2), ~~subdivision~~ subsection three
34 (3) of the rules of criminal procedure. The magistrate shall
35 allow the defendant reasonable time and opportunity to consult

1 with counsel, in the event the defendant expresses a desire
2 to do so.

3 Sec. 87. Rule forty-eight (48), subsection nine (9):

4 9. RECORD. Upon the trial, the judicial magistrate shall
5 make minutes of the testimony of each witness and append the
6 exhibits or copies thereof. The proceedings upon trial shall
7 not be reported, unless a party provides a reporter at such
8 party's expense. By agreement of the parties the magistrate
9 may cause the proceedings upon trial to be reported
10 electronically. If the proceedings are being electronically
11 recorded both parties shall be notified in advance of that
12 recording. If the defendant is indigent and requests that
13 the proceedings upon trial be reported, the judicial magistrate
14 shall cause them to be reported by a reporter, or
15 electronically, at public expense. If the proceedings are
16 not reported electronically, the judicial magistrate shall
17 make minutes of the testimony of each witness and append the
18 exhibits or copies thereof. If the proceedings have been
19 reported electronically the recording shall be retained under
20 the jurisdiction of the magistrate and upon request shall
21 be transcribed only by a person designated by the court under
22 the supervision of the magistrate. The transcription shall
23 be provided anyone requesting same it upon payment of actual
24 cost of transcription or to an indigent defendant as herein
25 above provided.

26 Sec. 88. Rule fifty-three (53) is amended by striking
27 the rule and inserting in lieu thereof the following:

28 Rule 53. FORFEITURE OF COLLATERAL IN LIEU OF APPEARANCE.
29 When authorized in the judicial district as provided in this
30 rule, a court may accept a forfeiture of collateral security
31 in lieu of appearance as a proper disposition of a simple
32 misdemeanor charge. Prior to termination of the case by
33 forfeiture under this rule, the defendant must execute a
34 written consent to forfeiture as disposition of the action.
35 Unless vacated upon application within thirty days of the

1 forfeiture, such forfeiture shall constitute a conviction
2 of the charge and satisfaction of the penalty.

3 Each judicial district, by action of a majority of the
4 district judges, may determine the simple misdemeanor offenses
5 which shall be subject to disposition by forfeiture under
6 this rule and shall promulgate by court rule and disseminate
7 a list of those offenses to all magistrates in the district.
8 A copy of the rule shall be transmitted to the clerk of the
9 supreme court.

10 This rule shall not authorize, and a court shall not accept,
11 the forfeiture of collateral in lieu of appearance in an
12 action in which the defendant is charged either with a
13 nonscheduled traffic violation or with a scheduled violation,
14 including a scheduled traffic violation, in which a court
15 appearance is required under chapter seven hundred fifty-three
16 (753) of the Code.

17 Sec. 89. Rule fifty-four (54), subsection one (1):

18 1. NOTICE OF APPEAL. An appeal may be taken by the
19 plaintiff only upon a finding of invalidity of an ordinance
20 or statute. In all other cases, an appeal may only be taken
21 by the defendant and only upon a judgment of conviction.
22 Execution of the judgment shall be stayed upon the filing
23 with the clerk of the district court an appeal bond with
24 surety approved by the clerk, in the sum specified in the
25 judgment. The defendant may take an appeal, by giving notice
26 orally to the magistrate that he or she appeals, or by
27 delivering to the magistrate not later than ten days
28 thereafter, a written notice of the defendant's appeal, and
29 in either case the magistrate must make an entry on its docket
30 of the giving of such notice. Payment of fine or service
31 of a sentence of imprisonment does not waive the right to
32 appeal, nor render the appeal moot. When an appeal is taken,
33 the magistrate shall forward to the appropriate district court
34 clerk a copy of the docket entries in the magistrate's court,
35 together with copies of the complaint, warrant, motions,

1 pleadings, the magistrate's minutes of the witness' testimony
2 and the exhibits or copies thereof and all other papers in
3 the case. A district judge shall promptly hear the appeal
4 upon the record thus filed without further evidence if the
5 original action was tried by a district judge, district
6 associate judge, or magistrate appointed under sections six
7 hundred two point fifty-one (602.51) or six hundred two point
8 fifty-nine (602.59) of the Code unless the district court
9 judge hearing the appeal either upon application of any party
10 or on the district judge's own motion orders the appeal heard
11 de novo on the grounds the record is inadequate. If the
12 original action was tried by a magistrate appointed under
13 sections six hundred two point fifty (602.50) or six hundred
14 two point fifty-eight (602.58) of the Code, the district judge
15 shall promptly hear the appeal de novo. Within ten days after
16 an appeal is taken, unless extended by order of a district
17 judge or by stipulation of the parties, any party may file
18 with the clerk, as a part of the record, a transcript of the
19 official report, if any, and, in the event the report was
20 made electronically, the tape or other medium on which the
21 proceedings were preserved. If the original action was tried
22 before a district judge acting as a judicial magistrate, the
23 appeal shall be to a different district judge. The judge
24 shall decide the appeal without regard to technicalities or
25 defects. Judgment shall be rendered as though the case were
26 being originally tried. The right to further appeal is
27 governed by Division Fourteen (XIV), section one thousand
* 28 four hundred six (1406).

29 Sec. 90. Rule fifty-four (54), by striking subsection
30 four (4).

31 Sec. 91. Rule fifty-five (55):

32 Rule 55. NEW TRIAL. The magistrate, on motion of a
33 defendant, may grant a new trial pursuant to the grounds set
34 forth in rule twenty-three (23) of the rules of criminal
35 procedure, except that a motion for a new trial based on newly

1 discovered evidence must be made within six months after the
2 final judgment. ~~A motion for a new trial based on the ground~~
3 ~~of newly discovered evidence may be made only before or within~~
4 ~~thirty days after final judgment.~~ A motion for a new trial
5 based on any other grounds shall be made within seven days
6 after a finding of guilty or within such further time as the
7 court may fix during the seven-day period.

8 Sec. 92. Rule fifty-six (56):

9 Rule 56. CORRECTION OR REDUCTION OF SENTENCE. The
10 magistrate may correct an illegal sentence at any time and
11 may correct a sentence imposed in an illegal manner within
12 the time provided herein for the reduction of sentence. The
13 magistrate may reduce a sentence within ten days after the
14 sentence is imposed or within ten days after the receipt by
15 the magistrate of a mandate issued upon affirmance of the
16 judgment or dismissal of the appeal, or within ten days after
17 entry of any order or judgment of the supreme appellate court
18 denying review of, or having the effect of upholding, a
19 judgment of conviction. The court may also reduce a sentence
20 upon revocation of ~~probition~~ probation as provided by law.

21 Sec. 93. Chapter one thousand two hundred forty-five
22 (1245), Acts of the Sixty-sixth General Assembly, 1976 Ses-
23 sion, chapter two (2), forms one (1) through ten (10) and
24 A through D are amended by sections ninety-four (94) through
25 one hundred seven (107) of this Act as follows:

26 Sec. 94. Form one (1), heading:

27 FORM 1
28 SEARCH WARRANT
29 State of Iowa
30 County of _____
31 Criminal Case No. _____

32 Sec. 95. Form two (2):

33 FORM 2
34 ARREST WARRANT ON A COMPLAINT
35 State of Iowa

1 County of _____

2 Criminal Case No. _____

3 To any peace officer of the state:

4 Complaint upon oath or affirmation having been this day
5 filed with me, charging that the crime (naming it) has been
6 committed and accusing A _____ B

7 _____ thereof:

8 You are commanded forthwith to arrest the said A _____
9 _____ B _____ and bring such
10 person before me at (naming the place), or, in case of my
11 absence or inability to act, before the nearest or most
12 accessible magistrate in this county, without unnecessary
13 delay.

14 Dated at _____ this _____ day of
15 _____, _____.

16 C _____ D _____
17 (with official title)

18 Sec. 96. Form three (3), heading:

19 FORM 3

20 ARREST WARRANT AFTER INDICTMENT OR INFORMATION

21 State of Iowa

22 County of _____

23 Criminal Case No. _____

24 Sec. 97. Form four (4), heading:

25 FORM 4

26 ARREST WARRANT WHEN DEFENDANT FAILS TO APPEAR FOR SENTENCING

27 State of Iowa

28 County of _____

29 Criminal Case No. _____

30 Sec. 98. Form five (5), heading:

31 FORM 5

32 BAIL BOND

33 State of Iowa

34 County of _____

35 Criminal Case No. _____

1 Sec. 99. Form six (6), heading:

2 FORM 6

3 ORDER FOR DISCHARGE OF DEFENDANT UPON BAIL

4 State of Iowa

5 County of _____

6 Criminal Case No.

7 Sec. 100. Form seven (7), heading:

8 FORM 7

9 ORDER FOR DISCHARGE OF DEFENDANT UPON BAIL: ANOTHER FORM

10 (For endorsement on warrant or order of commitment)

11 State of Iowa

12 County of _____

13 Criminal Case No.

14 Sec. 101. Form eight (8), heading:

15 FORM 8

16 TRIAL INFORMATION

17 (also designated County Attorney's Information)

18 IN THE DISTRICT COURT OF _____ COUNTY

19 STATE OF IOWA

20 vs. INFORMATION

21 A _____ B _____

22 Criminal Case No.

23 Sec. 102. Form nine (9), heading:

24 FORM 9

25 GENERAL INDICTMENT FORM

26 IN THE DISTRICT COURT OF IOWA IN AND FOR _____ COUNTY

27 STATE OF IOWA

28 vs. INDICTMENT

29 A _____ B _____

30 Criminal Case No.

31 Sec. 103. Form ten (10), unnumbered paragraphs seventeen

32 (17), thirty-one (31), thirty-five (35), forty-nine (49),

33 fifty-one (51), and sixty-two (62):

34 Driving under suspension: A.B. operated a motor vehicle

35 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. 104. 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. 105. Form B:

FORM B

CONSENT TO FORFEITURE OF COLLATERAL

AS DISPOSITION OF MISDEMEANOR

1
2 State of Iowa
3 County of _____
4 Criminal Case No. _____

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

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

12 2. I understand my rights, including my right to trial
13 before the court on such charge, and voluntarily waive same,
14 understanding that forfeiture of the aforesaid amount ter-
15 minates my right to a trial and constitutes a conviction of
16 the offense charged.

17 _____
18 (Signature of defendant)

19 Sec. 106. Form C, heading:

20 FORM C

21 NOTICE OF APPEAL TO A DISTRICT COURT JUDGE

22 FROM A JUDGMENT OR ORDER

23 State of Iowa
24 County of _____
25 Criminal Case No. _____

26 Sec. 107. Form D, heading:

27 FORM D

28 BAIL BOND ON APPEAL TO DISTRICT COURT

29 State of Iowa
30 County of _____
31 Criminal Case No. _____

32 Sec. 108. Chapter two (2), division thirteen
33 (XIII) is amended by adding the following new section
34 before section one thousand three hundred one (1301):

35 NEW SECTION. TITLE. These rules shall be known

1 as the rules of criminal procedure. (R. Cr. P.).

2 EXPLANATION

3 This bill contains proposed changes in the rules of criminal
4 procedure which the supreme court was authorized to prepare
5 by the provisions of chapter 1245, Acts of the Sixty-sixth
6 General Assembly, 1976 Session, chapter 4, section 530.
7 Sections 2 through 73 of the bill contain proposed amendments
8 to the rules for indictable proceedings, sections 75 through
9 79 contain proposed amendments to the rules for nonindictable
10 proceedings, and sections 81 through 93 contain proposed
11 changes in the appendices of forms for both types of
12 proceedings.

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SF 289
slc/26C

SENATE FILE 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

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-++~~ 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), head-note:

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-come-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 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 charges ~~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 judgment ~~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~~ 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 ~~probation~~ 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.).

ARTHUR A. NEU
President of the Senate

DALE M. COCHRAN
Speaker of the House

I hereby certify that this bill originated in the Senate and
is known as Senate File 289, Sixty-seventh General Assembly.

STEVEN C. CROSS
Secretary of the Senate

Approved 7/10/77, 1977

ROBERT D. RAY
Governor