

RULES OF CRIMINAL PROCEDURE

CHAPTER 174

RULES OF CRIMINAL PROCEDURE

[See Sections 684.19 and 813.4 of the Code]

IN THE MATTER OF
RULES OF CRIMINAL PROCEDURE

}

REPORT OF THE
SUPREME COURT

TO THE 1979 REGULAR SESSION OF THE SIXTY-EIGHTH GENERAL ASSEMBLY OF THE STATE OF IOWA:

Pursuant to sections 684.18(1), 684.19, and 813.4, The Code, the Supreme Court of Iowa has prescribed and hereby reports to the General Assembly amendments in the Rules of Criminal Procedure as follows:

Rule 4(7)(c).

That rule 4(7)(c) be amended as follows:

"c. The Where the time and or place is a material ingredient of the offense as-definitely-as-can-be-done, a brief statement of the time or place of the offense if known."

Rule 5(1).

That rule 5(1) be amended as follows:

"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 except as herein provided or unless that authority is specifically granted to other prosecuting attorneys by statute.

The attorney general, unless otherwise authorized by law, shall have the authority to file such a trial information upon the request of the county attorney and the determination of the attorney general that a criminal prosecution is warranted."

Rule 5(3)

That rule 5(3) as amended by the Laws of the 1978 Regular Session of the 67th General Assembly, Chapter 1208, be amended as follows:

"3. WITNESS NAMES AND MINUTES. The prosecuting attorney shall, at the time of filing such information, endorse or cause to be endorsed thereon the names of the witnesses whose evidence the prosecuting attorney expects to introduce and use on the trial of the same, and shall also file with such information the minutes of evidence of such witness ~~as defined in rule 4(6)(a)~~ which shall consist of a notice in writing stating the name, place of residence and occupation of each witness upon whose expected testimony the information is based, and a full and fair statement of the witness' expected testimony."

Rule 8(2)(a)

That rule 8(2)(a) be amended as follows:

"a. IN GENERAL. A defendant may plead guilty, ~~or~~ not guilty, or former conviction or acquittal. 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 a not guilty plea substituted."

Rule 9(2).

That rule 9(2) be amended as follows:

"2. ADVISING COURT OF AGREEMENT. If a plea agreement has been reached by the parties the court shall require the disclosure of the agreement in open court at the time the plea is offered. Thereupon, if the agreement ~~requires~~ is conditioned upon concurrence of the court in the charging or sentencing concession made by the prosecuting attorney, the court may accept or reject the agreement, or may defer its decision as to acceptance or rejection until receipt of a presentence report."

Rule 9(3).

That rule 9(3) be amended as follows:

"3. ACCEPTANCE OF PLEA AGREEMENT. When the plea agreement is conditioned upon 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. In that event, the court may accept a waiver of the presentence investigation, the right to file a motion in arrest of judgment, and time for entry of judgment, and proceed to judgment."

Rule 9(4).

That rule 9(4) be amended as follows:

"4. REJECTION OF PLEA AGREEMENT. If, at the time the plea of guilty is tendered, the court refuses to be bound by or rejects the plea agreement, the court shall inform the parties of this fact, 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. If the defendant persists in his or her guilty plea and it is accepted by the court, the defendant shall not have the right subsequently to withdraw the plea except upon a showing that withdrawal is necessary to correct a manifest injustice."

Rule 11(2).

That rule 11(2) be amended as follows:

"2. APPEAL DISCRETIONARY REVIEW OF INTERLOCUTORY ORDER. Any party aggrieved by an interlocutory order affecting the validity of a search warrant or the suppression of evidence, except in simple misdemeanors, may apply for discretionary ~~a--writ--of--certiorari--to--the--supreme--court--or--any--justice--thereof--to~~ review of the order in advance of trial."

Rule 18.

That rule 18 as amended by the Laws of the 1978 Regular Session of the 67th General Assembly, Chapter 1208, be amended by renumbering subsections 1 through 9 as 3 through 11 and adding the following new subsections 1 and 2:

"1. TRIAL ASSIGNMENTS.

a. TRIALS. Upon entry of a plea of not guilty, every criminal case shall be assigned for trial.

b. APPEALS, WAIVER OF JURY. On each motion day, the clerk of court shall deliver to the presiding judge the file in each nonindictable criminal case in which an appeal was taken more than ten days previously. The judge shall assign the case for trial. Unless the defendant filed a written demand for jury within ten days after taking the appeal, he shall be deemed to have waived trial by jury.

2. CONTINUANCE OF TRIAL. The provisions of the rules of civil procedure relative to the continuances of the trial of civil causes shall apply to the continuance of criminal actions, but no judgment for costs shall be rendered against a defendant on account thereof, except as in this Code otherwise provided."

Rule 18(2).

That rule 18(2) as amended by the Laws of the 1978 Regular Session of the 67th General Assembly, Chapter 1208, be amended as follows:

"2 4. 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' evidence, as defined in rule 4(6)(a) or rule 5(3), at least ten days before the commencement of the trial."

Rule 23.1.

That the following new rule 23.1 be added:

"Rule 23.1. BILL OF EXCEPTIONS.

1. PURPOSE. The office of a bill of exceptions is to make the proceedings or evidence appear of record which would not otherwise so appear.

2. WHAT CONSTITUTES RECORD; EXCEPTIONS UNNECESSARY. All papers pertaining to the cause and filed with the clerk, and all entries made by him or her in the record book pertaining to them, and showing the action or decision of the court upon them or any part of them, and the judgment, are to be deemed parts of the record, and it is not necessary to except to any action or decision of the court so appearing of record.

3. GROUNDS FOR EXCEPTIONS. On the trial of an indictable offense, exceptions may be taken by the state or by the defendant to any decision of the court upon matters of law, in any of the following cases:

- a. In disallowing a challenge to an individual juror.
- b. In admitting or rejecting witnesses or evidence on the trial of any challenge to an individual juror.
- c. In admitting or rejecting witnesses or evidence.
- d. In deciding any matter of law, not purely discretionary on the trial of the issue.

Exceptions may also be taken to any action or decision of the court which affects any other material or substantial right of either party, whether before or after the trial of the indictment, or on the trial.

4. BILL BY JUDGE. Either party may take an exception to any decision or action of the court, in any stage of the proceedings, not required to be and not entered in the record book, and reduce the same to writing, and tender the same to the judge, who shall sign it if true, and if signed it shall be filed with the clerk and become part of the record of the cause.

5. BILL BY BYSTANDERS. If the judge refuses to sign it, such refusal must be stated at the end thereof, and it may then be signed by two or more attorneys or officers of the court or disinterested bystanders, and sworn to by them, and filed with the clerk, and it shall thereupon become a part of the record of the cause.

6. TIME TO APPROVE BILL. The judge shall be allowed one court day to examine the bill of exceptions, and the party excepting shall be allowed three court days thereafter to procure the signatures and file the same.

7. MODIFICATION OF BILL. If the judge and the party excepting can agree in modifying the bill of exceptions, it shall be modified accordingly.

8. TIME ALLOWED TO PREPARE BILL. Time must be given to prepare the bill of exceptions when it is necessary; if it can reasonably be done, it shall be settled at the time of taking the exception."

Rule 27(1).

That rule 27(1) be amended as follows:

"1. DISMISSAL GENERALLY; EFFECT. The court, upon its own motion or the application of the county prosecuting attorney, in the furtherance of justice, may order the dismissal of any pending criminal prosecution, the

reasons therefor being stated in the order and entered of record, and no such prosecution shall be discontinued or abandoned in any other manner. Such a dismissal is a bar to another prosecution for the same offense if it is a simple or serious misdemeanor; but it is not a bar if the offense charged be a felony or an aggravated misdemeanor."

Rule 27(2).

That rule 27(2) be amended as follows:

"2. SPEEDY TRIAL. It is the public policy of the state of Iowa that criminal prosecutions be concluded at the earliest possible time consistent with a fair trial to both parties. Applications for dismissals under this subsection may be made by the county prosecuting attorney or the defendant or by the court on its own motion."

Form 8, Appendix of Forms.

That Form 8, Appendix of Forms, as amended by the Laws of the 1978 Regular Session of the 67th General Assembly, Chapter 1208, be amended as follows:

"TRIAL INFORMATION

IN THE IOWA DISTRICT COURT FOR _____ COUNTY

THE STATE OF IOWA
vs.

_____, Defendant

TRIAL INFORMATION

No. _____

COMES NOW _____ as County Prosecuting Attorney of _____ County, Iowa, and in the name and by the authority of the State of Iowa accuses _____ of the crime of _____ committed as follows: The said _____ on or about the _____ day of _____, 19____, in the County of _____ and State of Iowa did unlawfully and willfully

in violation of _____ of The Iowa Criminal Code.

State-of-Iowa----->
-----County----->--ss-

I,-----, being first duly sworn, do depose and say that I have made--a--full--and--careful--investigation--of--the--facts--upon--which--the--above

~~charge-is-based-and-that-the-allegations-contained-in-the-above-and-foregoing
Trial-Information-are-true-as-I-verify-believe-~~

A TRUE INFORMATION

County Prosecuting Attorney

~~Subscribed-and-sworn-to-by-----
before-me,-the-undersigned,-on-----~~

~~(CLERK-OF-COURT)(NOTARY-PUBLIC)(JUDGE)~~

On _____ I find that the evidence contained in the within
Trial Information and minutes of evidence, if unexplained, would _____
warrant a conviction by the trial jury and being satisfied from the showing
made herein that this case should _____ be prosecuted by Trial
Information the same is _____ approved.

Defendant is released on:

- 1. personal recognizance _____
- 2. appearance bond \$ _____
 - a. unsecured _____
 - b. secured _____
- 3. other (specify) _____

JUDGE OF THE _____ JUDICIAL
DISTRICT OF THE STATE OF IOWA"

(Court file stamp)

"Form 8 (back side)

This Trial Information, together with the minutes of evidence relating
thereto, is duly filed in the District Court of Iowa for _____
County this _____ day of _____, 19__.

CLERK OF THE DISTRICT COURT OF IOWA
FOR _____ COUNTY

By: _____
Deputy Clerk

* * * * *

Names of Witnesses

A-PRVE-INFORMATION

Counly-Attorney

Names-of-Witnesses"

Rule 54(1).

That rule 54(1) be amended as follows:

"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 delivery 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 602.51 or 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~~ tried anew on the grounds the record is inadequate. If the original action was tried by a magistrate appointed under sections 602.50 or 602.58 of the Code, the district judge shall promptly ~~hear-the appeal-de-novo~~ try the case anew. 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 section 814.6 of the Code."

Respectfully submitted,
THE SUPREME COURT OF IOWA

/s/ W. W. Reynoldson
W. W. REYNOLDSON, Chief Justice

Des Moines, Iowa
January 26, 1979

ACKNOWLEDGMENT

I, the undersigned, Secretary of the Senate of the State of Iowa, hereby acknowledge delivery to me on the twenty-sixth day of January, 1979, of the foregoing report of the Supreme Court of Iowa pertaining to the Rules of Criminal Procedure.

/s/ Frank J. Stork
Secretary of the Senate, 1979
Regular Session of the Sixty-
Eighth General Assembly of the
State of Iowa

ACKNOWLEDGMENT

I, the undersigned, Chief Clerk of the House of Representatives of the State of Iowa, hereby acknowledge delivery to me on the twenty-sixth day of January, 1979, of the foregoing report of the Supreme Court of Iowa pertaining to the Rules of Criminal Procedure.

/s/ David L. Wray
Chief Clerk of the House of Repre-
sentatives, 1979 Regular Session
of the Sixty-Eighth General Assem-
bly of the State of Iowa

CERTIFICATE

I, Terry E. Branstad, do hereby certify that I am the President of the Senate of the 1979 Regular Session of the Sixty-eighth General Assembly of the State of Iowa; and I, Frank J. Stork, do hereby certify that I am the Secretary of the Senate of the 1979 Regular Session of the Sixty-eighth General Assembly of the State of Iowa, and we do hereby jointly certify that as such President and Secretary that on the twenty-sixth day of January, 1979, the Supreme Court of the State of Iowa reported to said Senate, and filed with it, the attached and foregoing Rules of Criminal Procedure;

THAT the date of making said report to the 1979 Regular Session of the Sixty-eighth General Assembly was within the twenty days subsequent to the convening of the 1979 Regular Session of the Sixty-eighth General Assembly;

THAT no other report pertaining to the Rules of Criminal Procedure was made or filed by said Supreme Court with said Senate;

THAT no changes, modifications, amendments, revisions or additions to the Rules of Criminal Procedure were made or enacted at such 1979 Regular Session of said Sixty-eighth General Assembly.

Signed this 11th day of May, 1979, being the last legislative day of the 1979 Regular Session of the Sixty-eighth General Assembly.

/s/ Terry E. Branstad

TERRY E. BRANSTAD

President of the Senate

/s/ Frank J. Stork

FRANK J. STORK

Secretary of the Senate, 1979
Regular Session of the Sixty-
eighth General Assembly of the
State of Iowa.

CERTIFICATE

I, Floyd H. Millen, do hereby certify that I am the Speaker of the House of Representatives of the 1979 Regular Session of the Sixty-eighth General Assembly of the State of Iowa; and I, David L. Wray, do hereby certify that I am the Chief Clerk of the House of Representatives of the 1979 Regular Session of the Sixty-eighth General Assembly of the State of Iowa, and we do hereby jointly certify that as such Speaker and Chief Clerk that on the twenty-sixth day of January, 1979, the Supreme Court of the State of Iowa reported to said House of Representatives, and filed with it, the attached and foregoing Rules of Criminal Procedure;

THAT the date of making said report to the 1979 Regular Session of the Sixty-eighth General Assembly was within the twenty days subsequent to the convening of the 1979 Regular Session of the Sixty-eighth General Assembly;

THAT no other report pertaining to the Rules of Criminal Procedure was made or filed by said Supreme Court with said House of Representatives;

THAT no changes, modifications, amendments, revisions or additions to the Rules of Criminal Procedure were made or enacted at such 1979 Regular Session of said Sixty-eighth General Assembly.

Signed this 11th day of May, 1979, being the last legislative day of the 1979 Regular Session of the Sixty-eighth General Assembly.

/s/ Floyd H. Millen

FLOYD H. MILLEN

Speaker of the House

/s/ David L. Wray

DAVID L. WRAY

Chief Clerk of the House of Representatives, 1979 Regular Session of the Sixty-eighth General Assembly of the State of Iowa.