

RULES OF CRIMINAL PROCEDURE

CHAPTER 218
RULES OF CRIMINAL PROCEDURE

IN THE MATTER OF THE
RULES OF CRIMINAL PROCEDURE

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REPORT OF THE
SUPREME COURT

TO THE 1983 REGULAR SESSION OF THE SEVENTIETH GENERAL ASSEMBLY OF
THE STATE OF IOWA:

Pursuant to Iowa Code sections 813.4 and 684.19, the Supreme Court of Iowa has prescribed and hereby reports to the General Assembly changes in existing Rules of Criminal Procedure as follows:

Rule 3(4)(j).

That rule 3(4)(j) be amended as follows:

"j. Duty of Grand Jury. 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.

It is made the special duty of the grand jury to inquire into:

- (1) The case of every person imprisoned in the detention facilities of the county on a criminal charge and not indicted.
- (2) The condition and management of the public prisons, county institutions and places of detention within the county.
- (3) The unlawful misconduct in office in the county of public officers and employees.
- (4) ~~The detailed minutes and tape recordings sealed pursuant to section 28A.5.~~"

Rule 5(4).

That rule 5(4) be amended as follows:

"4. Approval by Judge. Prior to the filing of the information, it must be approved by a district judge, or a district associate judge or judicial magistrate having jurisdiction of the offense must approve the information by a finding. If the judge or magistrate finds that the evidence contained in the information and the minutes of evidence, if unexplained, would warrant a conviction by the trial jury, the judge or magistrate shall approve the information which shall be promptly filed. 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 the information set aside and the case submitted to the grand jury."

Rule 6(1).

That rule 6(1) be amended as follows:

"1. Multiple Offenses. When the conduct of a defendant may establish the commission of more than one public offense arising out of Two or more public offenses which arose from the same transaction or occurrence, the defendant may be prosecuted for each of such offenses. Each of such offenses or from two or more transactions or occurrences constituting parts of a common scheme or plan 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 a 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 major offense."

Rule 7(2)(a).

That rule 7(2)(a) be amended as follows:

"a. Warrant. The warrant shall be signed by the judge or clerk; it shall describe the offense charged in the indictment; and it shall command that the defendant shall be arrested and brought before the court. The amount of bail or other conditions of release may be fixed by the court and endorsed on the warrant."

Rule 8(2)(b)(3).

That rule 8(2)(b)(3) be amended as follows:

"(3) That the defendant has the right to 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, and the right to present witnesses in his or her own behalf and to have compulsory process in securing their attendance."

Rule 10(10)(d)(6).

That rule 10(10)(d)(6), as adopted by the 1982 Iowa Acts chapter 1021, section 2, be amended as follows:

"(6) The jurors shall be kept together and in the custody of the proper officers while traveling to the place of trial and during the trial. The court may issue orders respecting segregation of the jury while traveling and during the trial as necessary to preserve the integrity of the trial."

Rule 16(2).

That rule 16(2) be amended as follows:

"2. Findings. In a case tried without a jury the court shall find the facts specially and on the record, separately stating its conclusions of law and directing rendering an appropriate judgment verdict."

Rule 17.

That rule 17, as amended by 1982 Iowa Acts chapter 1021, section 4, be amended as follows:

"Rule 17. Juries.

1. Selection. The clerk shall prepare and deposit in a box separate ballots containing the names of all persons returned or added as jurors. At each jury trial the clerk shall select ~~six~~

teen jurors by closing and shaking the box to intermingle the ballots, and a number of prospective jurors equal to twelve plus the prescribed number of strikes, by drawing them ballots from the a box without seeing the names. The clerk shall list all jurors so drawn. Computer selection processes may be used instead of separate ballots to select jury panels. Before drawing begins, either party may require that the names of all jurors be called, and have an attachment for those absent who are not engaged in other trials; but the court may wait for its return or not, in its discretion.

2. Depletion of Panel. If for any reason the regular panel is exhausted without a jury being selected, it shall be completed in the manner provided in the chapters upon selecting, drawing, and summoning juries.

3. Challenges to the Panel. Before any juror is sworn for examination, either party may challenge the panel, in writing, distinctly specifying the grounds, which can be founded only on a material departure from the statutory requirements for drawing or returning the jury. On trial thereof, any officer, judicial or ministerial, whose irregularity is complained of, and any other persons, may be examined concerning the facts specified. If the court sustains the challenge it shall discharge the jury, no member of which can serve at the trial.

4. Challenges to Individual Juror. A challenge to an individual juror for cause is an objection which may be taken orally, and is either for cause or peremptory.

5. Challenges for Cause. A challenge for cause may be made by the state or defendant, and must distinctly specify the facts constituting the causes thereof. It may be made for any of the following causes:

- a. A previous conviction of the juror of a felony.
- b. A want of any of the qualifications prescribed by statute to render a person a competent juror.
- c. Unsoundness of mind, or such defects in the faculties of the mind or the organs of the body as render the juror incapable of performing the duties of a juror.
- d. Affinity or consanguinity, within the fourth degree, to the person alleged to be injured by the offense charged, or on whose complaint, or at whose instance, the prosecution was instituted, or to the defendant, to be computed according to the rule of the civil law.
- e. Standing in the relation of guardian and ward, attorney and client, employer and employee, or landlord and tenant, or being a member of the family of the defendant, or of the person alleged to be injured by the offense charged, or on whose complaint, or at whose instance, the prosecution was instituted, or in his or her employ on wages.
- f. Being a party adverse to the defendant in a civil action, or having been the prosecutor against or accused by the defendant in a criminal prosecution.
- g. Having served on the grand jury which found the indictment.
- h. Having served on a trial jury which has tried another defendant for the offense charged in the indictment.
- i. Having been on a jury formerly sworn to try the same indictment and whose verdict was set aside, or which was discharged without a verdict after the cause was submitted to it.
- j. Having served as a juror, in a civil action brought against the defendant, for the act charged as an offense.
- k. Having formed or expressed such an opinion as to the guilt or innocence of the prisoner as would prevent the juror from rendering a true verdict upon the evidence submitted on the trial.
- l. Because of the juror being bail for any defendant in the indictment.

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

n. Because the juror is, or within a year preceding has been, engaged or interested in carrying on any business, calling, or employment, the carrying on of which is a violation of law, where the defendant is indicted for a like offense.

o. Because the juror has been a witness, either for or against the defendant, on the preliminary hearing or before the grand jury.

p. Having requested, directly or indirectly, that his or her name be returned as a juror for the regular biennial period.

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 facts, and must allow or disallow the challenge.

7. Order of Challenges for Cause. The state shall first complete its challenge challenges for cause, and the defendant afterwards afterward, until sixteen jurors have a number of jurors equal to twelve plus the prescribed number of strikes has been obtained against whom no cause of challenge has been found to exist.

8. Order of Challenges in General. The challenges of either party need not be all taken at once, but separately, in the following order, including in each challenge all the causes of challenge belonging to the same class: To the panel; to an individual juror for cause; to an individual juror peremptorily. Vacancy Filled. After each challenge for cause which is sustained, another juror shall be called and examined before a further challenge is made; and any new juror thus called may be challenged for cause and shall be subject to being struck from the list as other jurors.

9. Peremptory Challenges. Peremptory challenges must be made before the jury is sworn to try the case. A juror peremptorily challenged must be excused without reasons being given. After all challenges for cause are completed, the state and defendant shall alternately make or waive their peremptory challenges by appropriate notations on the jury list.

10. Peremptory Challenges Strikes—Number. If the offense charged in the indictment or information is a class "A" felony, the state and defendant shall each have the right to peremptorily challenge eight jurors and shall strike two ten prospective jurors.

If the offense charged be any other is a felony other than a class "A" felony, the state and the defendant shall each have the right to peremptorily challenge four jurors and shall strike two six prospective jurors.

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

11 10. Multiple Charges. If the indictment charges different offenses in different counts, the state and the defendant shall each have that number of peremptory challenges strikes which they each would have if the highest grade of offense charged in the indictment were the only charge.

12 11. Multiple Defendants. In a case where two or more defendants are tried, each defendant shall have one-half the number of challenges strikes allowed in subdivision 11 9 of this rule. The state shall be limited to the challenges and have the number of strikes specified in subdivision 11 equal to the total number of strikes allotted to all defendants. The defendants

collectively shall be limited to two strikes. Subject to the court's approval, the parties may agree to a reduced number of strikes.

~~13~~ 12. Clerk to Prepare List—Procedure. The clerk shall prepare a list of jurors called; and, after all challenges for cause are exhausted or waived, the parties each side, commencing with the state, shall alternately challenge peremptorily or waive exercise its strikes by indicating any such challenge the strike upon the list opposite the name of the juror challenged, or by indicating the number of waiver elsewhere on the list.

14. Vacancy Filled. After each challenge, sustained for cause, or made peremptorily as indicated on the list, another juror shall be called and examined for challenge for cause before a further challenge is made; and any new juror thus called may be challenged for cause and shall be subject to peremptory challenge or to being struck from the list as other jurors.

~~15~~ 13. Reading of Names. After all challenges have thus been exercised or waived and four the required number of jurors have has been struck from the list the clerk shall read the names of the twelve jurors remaining who shall constitute the jury selected.

~~16~~ 14. Jurors Sworn. When twelve jurors are accepted they shall be sworn to try the issues.

~~17~~ 15. Alternate Jurors. The court may impanel require one or more alternate jurors to be selected whose qualifications, powers, functions, facilities, and privileges shall be the same as regular jurors. After the regular jury is selected, the clerk shall draw the names of three more persons if one alternate juror is desired, or four more persons if two alternate jurors are desired, and so on in like proportion, who are to serve under this rule, who shall be sworn and subject to examination and challenge for cause as provided in this rule. Each side must then strike off one such name, and the one or two or appropriate number remaining shall be sworn to try the case with the regular jury, and sit at the trial. Alternate jurors shall, in the order they were drawn, replace any juror who becomes unable to act, or is disqualified, before the jury retires, and if not so needed shall then be discharged.

If a jury is being selected for trial of an action outside of the county pursuant to rule 10, subsection 10, paragraph d, the court shall impanel require two alternate jurors to be selected, who shall be sworn with the regular jury to try the case, and who shall sit at the trial. These alternates shall be used or discharged as provided in unnumbered paragraph 1 in accordance with this rule. The court may require the impaneling of more than two alternates to be selected.

~~18~~ 16. Returning Ballots to Box. When a jury is sworn, the ballots containing the names of those absent or excused from the trial shall be immediately returned to the box. Those containing the names of jurors sworn shall be set aside, and returned to the box immediately on the discharge of that jury."

Rules 23(3)(d) and 23(3)(e).

That rules 23(3)(d) and 23(3)(e) be amended as follows:

"d. Effect of Order Arresting Judgment. The effect of an order arresting judgment on any ground other than a defect in a guilty plea proceeding is to place the defendant in the same situation in which he or she was immediately before the indictment was found or the information filed. The effect of an order arresting judgment on the ground the guilty plea proceeding was defective is to place the defendant in the same situation in which he or she was immediately after the indictment was found or the information filed; provided, however, that when the only ground upon which the guilty plea is found to be defective is failure to establish a factual basis for the charge, the court shall afford the state an opportunity to establish an adequate factual basis before ruling on the motion in arrest of judgment.

e. Proceedings After Order Arresting Judgment on any Ground Other than a Defect in a Guilty Plea Proceeding. If, from the evidence on the trial, there is reasonable ground to believe the defendant guilty, and a new indictment or information can be framed, the court may order the defendant to be recommitted to the officer of the proper county, or admitted to bail or otherwise released anew, to answer the new indictment. In such case the order arresting judgment shall not be a bar to another prosecution. But if the evidence upon trial appears to the trial court insufficient to charge the defendant with any offense, the defendant must, if in custody, be released; or, if admitted to bail, his or her bail be exonerated; or if money has been deposited instead of bail, it must be refunded to the defendant or to the person or persons found by the court to have deposited said money on behalf of said the defendant."

Respectfully submitted,
THE SUPREME COURT OF IOWA

/s/ W. W. Reynoldson

W. W. REYNOLDSON, CHIEF JUSTICE

Des Moines, Iowa
January 14, 1983

ACKNOWLEDGMENT

I, the undersigned, Secretary of the Senate of the State of Iowa, hereby acknowledge delivery to me on the fourteenth day of January, 1983, of the foregoing report of the Supreme Court of Iowa pertaining to the Rules of Criminal Procedure.

/s/ K. Marie Thayer

Secretary of the Senate, 1983 Regular
Session of the Seventieth 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 fourteenth day of January, 1983, of the foregoing report of the Supreme Court of Iowa pertaining to the Rules of Criminal Procedure.

/s/ Joseph O'Hern

Chief Clerk of the House of Representatives,
1983 Regular Session of the Seventieth
General Assembly of the State of Iowa

CERTIFICATE

I, Robert Anderson, do hereby certify that I am the President of the Senate of the 1983 Regular Session of the Seventieth General Assembly of the State of Iowa; and I, K. Marie Thayer, do hereby certify that I am the Secretary of the Senate of the 1983 Regular Session of the Seventieth General Assembly of the State of Iowa, and we do hereby jointly certify as President and Secretary that on the fourteenth day of January, 1983, the Supreme Court of the State of Iowa reported to the Senate, and filed with it, the attached and foregoing Rules of Criminal Procedure;

THAT the date of making that report to the 1983 Regular Session of the Seventieth General Assembly was within twenty days subsequent to the convening of the 1983 Regular Session of the Seventieth General Assembly;

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

THAT no changes, modifications, amendments, revisions or additions to the Rules of Criminal Procedure as reported by the Supreme Court were made or enacted at the 1983 Regular Session of the Seventieth General Assembly.

Signed this 14th day of May, 1983, being the sine die adjournment of the 1983 Regular Session of the Seventieth General Assembly.

/s/ Robert Anderson

ROBERT ANDERSON
President of the Senate

/s/ K. Marie Thayer

K. MARIE THAYER
Secretary of the Senate, 1983 Regular
Session of the Seventieth General Assembly
of the State of Iowa

CERTIFICATE

I, Donald Avenson, do hereby certify that I am the Speaker of the House of Representatives of the 1983 Regular Session of the Seventieth General Assembly of the State of Iowa; and I, Joseph O'Hern, do hereby certify that I am the Chief Clerk of the House of Representatives of the 1983 Regular Session of the Seventieth General Assembly of the State of Iowa, and we do hereby jointly certify as Speaker and Chief Clerk that on the fourteenth day of January, 1983, the Supreme Court of the State of Iowa reported to the House of Representatives, and filed with it, the attached and foregoing Rules of Criminal Procedure;

THAT the date of making that report to the 1983 Regular Session of the Seventieth General Assembly was within twenty days subsequent to the convening of the 1983 Regular Session of the Seventieth General Assembly;

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

THAT no changes, modifications, amendments, revisions or additions to the Rules of Criminal Procedure as reported by the Supreme Court were made or enacted at the 1983 Regular Session of the Seventieth General Assembly.

Signed this 14th day of May, 1983, being the sine die adjournment of the 1983 Regular Session of the Seventieth General Assembly.

/s/ Donald Avenson

DONALD AVENSON
Speaker of the House

/s/ Joseph O'Hern

JOSEPH O'HERN
Chief Clerk of the House of Representatives,
1983 Regular Session of the Seventieth
General Assembly of the State of Iowa