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REVISING AND UPDATING THE IOWA CRIMINAL RULES

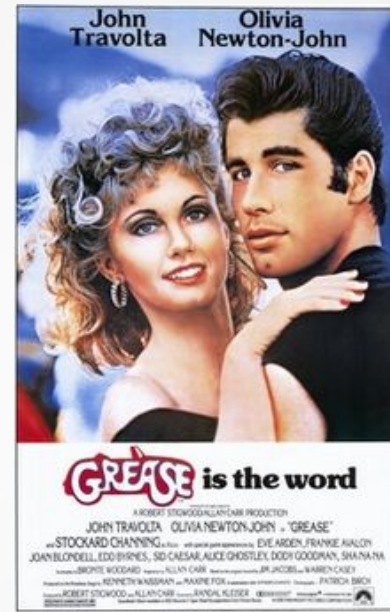
The Criminal Rules Revision Task Force

THE IOWA RULES OF CRIMINAL PROCEDURE

- The Iowa Rules of Criminal Procedure (chapter 2 of the Iowa Court Rules) have not undergone a comprehensive review and revision since their inauguration in 1978.



1978



IOWA RULES OF CRIMINAL PROCEDURE REVIEW TASK FORCE

- The task force was appointed April 2018.
- Members:
 - Judge Thomas Bitter
 - Angela Campbell
 - Mary Conroy
 - Meghan Corbin
 - David Denison
 - Judge Linda Fangman
 - Gerald Feuerhelm
 - Judge Myron Gookin
 - Aaron Hawbaker
 - Professor Emily Hughes
 - Jaki Livingston
 - Professor David McCord
 - Justice Ed Mansfield
 - Alan Ostergren
 - Judge David Porter
 - Darin Raymond
 - Aaron Rogers
 - Judge DeDra Schroeder
 - Al Willett

STATUS

- The task force has had eight full committee meetings and numerous subcommittee meetings.
- The task force presented a draft revision of the indictable offense rules (through rule 2.37) to the supreme court in November 2019.
- The task force made further revisions to that draft. Also, the task force prepared a draft revision of the simple misdemeanor rules (starting with rule 2.51).
- In March 2020, the court approved these proposed rule revisions *to be sent out for public comment*. This does not signify approval of the revisions themselves.
- The public comment period will be 90 days.

KEY ELEMENTS OF THE REVISION

1. Streamlining and simplifying.
2. Reorganizing.
3. Updating to reflect caselaw.
4. Filling in gaps.
5. Some substantive changes.

STREAMLINING AND SIMPLIFYING

- Elimination of archaisms, duplication, and wordiness.
 - Compare the length of our criminal rules to the Federal Rules of Criminal Procedure.
 - We have achieved a 20–25 percent reduction in word count, even while covering areas that weren't previously covered in the rules.

STREAMLINING AND SIMPLIFYING (CONT.)

- Examples:
 - “Bill of particulars” – 2.11(5) – removed.
 - “Motion for change of judge” – 2.11(9) – removed.
 - Change of venue where the jury is selected in the original venue and then hears the case in the new venue – 2.11(10)(d) – removed.
 - “Bill of exceptions” – removed.
 - “Audio visual closed circuit system” – dropped “closed circuit.”
 - The rules have lots of provisions that involve moving paper from one place to another. EDMS renders these obsolete.
 - “Indictment or information” is used throughout the rules, *even after* rule 2.5 explains that the term “indictment” embraces the trial information.

STREAMLINING AND SIMPLIFYING (CONT.)

- “The defendant must be informed that if the name by which the defendant is indicted or informed against is not the defendant's true name, the defendant must then declare what the defendant's true name is, or be proceeded against by the name in the indictment. If the defendant gives no other name or gives the defendant's 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 the defendant's 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.” – now rewritten

STREAMLINING AND SIMPLIFYING (CONT.)

- “The rules for determining the competency of witnesses in civil actions are, so far as they are in their nature applicable, extended also to criminal actions and proceedings, except as otherwise provided.”
- “The judge presiding at the trial shall not testify in that trial as a witness. If the judge is called to testify, no objection need be made in order to preserve the point.”
- “The court shall instruct the jury to mutilate and destroy any notes taken during the trial at the completion of the jury's deliberations.”
- “The rules of evidence prescribed in civil procedure shall apply to criminal proceedings as far as applicable and not inconsistent with the provisions of statutes and these rules.”
- All rewritten or removed.

STREAMLINING AND SIMPLIFYING (CONT.)

- “When a defendant engages in conduct seriously disruptive of judicial proceedings, one or more of the following steps may be employed to ensure decorum in the courtroom:

...
(3) Bind and gag the defendant, thereby keeping the defendant present.”
- “When a magistrate reasonably believes a person who is present in the courtroom has a weapon in the person's possession, the magistrate may direct that such person be searched, and any weapon be retained subject to order of the court.”
- “If no procedure is specifically prescribed by these rules or by statute, the court may proceed in any lawful manner not inconsistent therewith.”
- All rewritten or removed.

REORGANIZING

- We moved some provisions to the rule where they logically belonged.
- However, a tension exists here because we didn't want to change the basic numbering scheme too much. Lawyers and judges need to know where to look for things.
- So the indictable offense rules are generally not renumbered. Old rule numbers are usually retained.
- Because of their relative brevity, the simple misdemeanor rules *have* been renumbered.

UPDATING TO REFLECT RECENT CASELAW

- Need to reflect case developments, such as:
 - *State v. Jones*, 817 N.W.2d 11 (Iowa 2012) (requiring the verdict from a bench trial to be delivered in open court).
 - *State v. Fisher*, 877 N.W.2d 676 (Iowa 2016) (revocation of driver's license for drug possession is punitive and the defendant must therefore be informed of this consequence before pleading guilty).
 - *State v. Hill*, 878 N.W.2d 269 (Iowa 2016) (requiring the giving of reasons for consecutive sentences).
 - *State v. Harrington*, 893 N.W.2d 36 (Iowa 2017) (detailing the colloquy needed before a jury trial on prior convictions can be waived).
 - *State v. Williams*, 895 N.W.2d 856 (Iowa 2017) (clarifying the speedy trial calculation from arrest).
 - *Diaz v. State*, 896 N.W.2d 723 (Iowa 2017) (requiring counsel to advise on the immigration consequences of a plea).
 - *State v. Plain*, 898 N.W.2d 801 (Iowa 2017) (discussing challenges to jury pools).
 - *State v. Jonas*, 904 N.W.2d 566, 575 (Iowa 2017) (discussing the actual bias basis for disqualifying a juror for cause).
 - *State v. Weitzel*, 905 N.W.2d 397 (Iowa 2017) (requiring surcharges to be disclosed in the guilty plea colloquy).
 - *Jefferson v. Iowa District Court*, 926 N.W.2d 519 (Iowa 2019) (requiring appointment of counsel in illegal sentence proceedings).

UPDATING TO REFLECT RECENT CASELAW (CONT.)

- Also need to reflect recent legislation—specifically SF 589, which:
 - Imposes limits on setting aside and appealing guilty pleas.
 - Requires that victims be offered the last opportunity to speak at sentencing.

FILLING IN GAPS

- There is a perceived need to fill in gaps, such as the following:
 - Plea colloquies.
 - Trial on the minutes.
 - Waiver of jury instruction on lesser-included offenses.
 - Pleading and proof of facts enhancing the punishment.
 - Defining when the defendant's presence can and cannot be waived.
 - Sentencing procedure.
 - Defining an illegal sentence.

SUBSTANTIVE CHANGES

- Finally, the task force has proposed a *few* substantive changes and improvements, which will be covered (along with other significant aspects of the rule changes) in the following slides.
- The following slides show the **highlights** – i.e., what we believe is *most significant* in the rule changes as to indictable offenses.

RULE 2.2 – INITIAL APPEARANCE

- Replaces the requirement that an arrested person appear before a magistrate “without unnecessary delay” with “either personally or by interactive audiovisual system . . . within 24 hours unless no magistrate is available and in all events within 48 hours.”
- Initial appearance can be by interactive video.
- Initial appearance can be waived by filing a written waiver.

RULE 2.3 – GRAND JURY

- The grounds for challenging grand jury panels or individual grand jurors are generally aligned with the grounds for challenging petit juries/jurors.
- All grand jury proceedings must be reported by a court reporter or electronically recorded.
- Any three grand jurors may order evidence be brought before the grand jury.

RULE 2.4 - INDICTMENT

- The prosecutor prepares minutes to go along with the indictment in the same manner as they currently do for an information, aligning indictment practice and information practice as much as possible.

RULE 2.5 - INFORMATION

- If the district court approves/attempts to file the information but the filing is rejected by EDMS for some reason, the date of the corrected information relates back to the date of the court's original approval/attempted filing.

RULE 2.6 – MULTIPLE OFFENSES/DEFENDANTS; PLEADING SPECIAL MATTERS

- The language regarding the charging of multiple defendants in an indictment has been updated and defendants must now move the court for separate trials if they believe prejudice would result.
- All facts that could subject the defendant to a greater maximum or minimum sentence, if present, must be charged in the indictment/information, *including but not limited to* use of a dangerous weapon.

RULE 2.8 – ARRAIGNMENT AND PLEA

- Defendants pleading guilty must first be placed under oath.
- The court may permit counsel to question the defendant.
- The colloquy must include disclosure of the “elements of the offense.”
- The colloquy must include disclosure of surcharges and any other punitive consequences of the conviction. (See *Weitzel and Fisher*.)

RULE 2.8 – ARRAIGNMENT AND PLEA

- The colloquy is more detailed and now includes the following mandatory immigration advisory:

That a criminal conviction, deferred judgment, or deferred sentence may affect a defendant's status under federal immigration laws. The court shall inform the defendant that if the defendant is not a citizen of the United States, the effects may include deportation, inability to reenter the United States, mandatory detention in immigration custody, ineligibility for release on bond during immigration proceedings, and increased penalties for unauthorized reentry into the United States.

RULE 2.8 – ARRAIGNMENT AND PLEA

- More detail is provided on what has to be included in a *written* plea of guilty to an aggravated or serious misdemeanor.
- There is a fuller explanation that the defendant may— with the state’s agreement—waive the right to file a motion in arrest of judgment and the use of a PSI and move directly to sentencing.

RULE 2.9 – TRIAL ASSIGNMENTS

- Eliminated language that “motions for continuance are discouraged.”
- Expressly allows for flexibility in setting motion and deposition deadlines *where the defendant waives speedy trial.*
- Trial-setting priorities for certain kinds of criminal prosecutions are eliminated.

RULE 2.10 – PLEA BARGAINING

- Added definition of “plea agreement.”
- If the agreement is in writing, it must be made part of the plea record. Otherwise, terms must be disclosed and put on the record.
- An attempt is made to provide greater clarity on what happens when a plea agreement is conditioned on the court’s acceptance.

RULE 2.11 – PLEADINGS AND MOTIONS

- The motion for bill of particulars is eliminated.
- The available grounds for dismissing the indictment or information are expanded “—e.g., “the prosecution is barred by some other legal or constitutional ground.”
- The only permissible change of venue involves picking a jury in the new county; the “transfer of jury” from the original county has been eliminated.
- If any defense expert does an examination of the defendant (not just for insanity/diminished capacity), the prosecution must be told and has a right to have their expert examine the defendant.
- The defendant must give notice of *all* affirmative defenses, not just intoxication, entrapment, and self-defense.

RULE 2.12 – MOTIONS TO SUPPRESS

- The coverage of rule 2.12 is broadened to cover all types of “unlawfully obtained evidence”—e.g., confessions, lineups—not just unlawful searches.
- It is made clear that a timely motion to suppress must be filed to bar evidence on the grounds it was unlawfully obtained absent good cause shown.

RULE 2.13 - DEPOSITIONS

- The provision allowing county attorneys to take investigative depositions or serve investigative subpoenas for documents after charges have been filed with notice is retained. However, the provision has been moved from rule 2.14 to rule 2.13.
- A provision is added incorporating the procedure outlined in *State v. Folkers*, 703 N.W.2d 761 (Iowa 2005), allowing the defendant to be absent from the deposition during identity questioning.
- A more realistic timeframe for taking depositions is proposed (i.e., at least 30 days before trial if the defendant waives speedy trial).

RULE 2.14 - DISCOVERY

- Any grand jury testimony of any prosecution witness shall be provided by the state as part of discretionary discovery.
- The defendant's duty to provide reciprocal discovery is automatic once the defendant obtains the same type of discovery. No need for a court order.

RULE 2.15 - SUBPOENAS

- Subpoenas issued only by clerks, not magistrates.
- Allows electronic service of subpoenas.
- No service by a party allowed.

RULE 2.16 – PRETRIAL CONFERENCE

- With court approval, parties may enter into written stipulations without a hearing that govern the proceedings.

RULE 2.17 – TRIAL BY JURY OR COURT

- There is a brand new provision on trial on the minutes. That topic isn't even mentioned in the existing rules and is totally a creature of caselaw. A specific colloquy with the defendant is required. Our research indicated there is no standard colloquy that trial judges use.
- With a bench trial, the court must render its verdict in open court and on the record; however, the defendant may waive this (*see Jones*).

RULE 2.18 - JURIES

- Grounds for cause challenges have been updated to include, for example, “Where the circumstances indicate the juror would have an actual bias for or against a party.” (*See Jonas.*)
- A felony conviction is not grounds for disqualification if the juror’s voting rights have been restored *or* more than ten years have passed since the juror’s conviction or release from confinement, whichever is later.
- Express provision allowing individual jurors to be voir dired on sensitive subjects outside the courtroom.
- “When a potential juror expresses actual bias relevant to the case, including but not limited to bias based on age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability, the court may clarify the juror’s position but shall not attempt to rehabilitate the juror by its own questioning.” Okay for attorneys to try to rehabilitate.
- The alternate juror rule has been rewritten to provide that the identity of alternates won’t be revealed until deliberations, at which point all unused alternates are excused.

RULE 2.19 - TRIAL

- Reporting may not be waived, except for voir dire in misdemeanor cases.
- The admonition now includes warnings about social media.
- Exhibits that were received into evidence go to the jury room during deliberations except for (1) depositions and (2) exhibits that may present an issue of safety, security, or risk of loss.
- Clarifies that the defendant may, with the state's agreement, waive the submission of any lesser included offense.

RULE 2.19 - TRIAL

- Jury questions during deliberations must be in writing and a record must be made of the question and the response.
- A mistrial rule has been added with specific grounds stated including “an error resulting in the denial of a fair trial.” The existing rules talk about the concept of a mistrial but don’t use the term.
- Trial of questions involving prior convictions. A procedure and required colloquy are set forth based on *Harrington*.

RULE 2.20 - WITNESSES

- Consistent with caselaw, the 5th Amendment must be asserted “in good faith” before immunity is required to obtain the witness’s testimony.
- It is clarified that immunity (if granted) is both transactional and use immunity. *See Allen v. Iowa District Court*, 582 N.W.2d 506 (Iowa 1998).

RULE 2.21 - EVIDENCE

- Exhibits may not be disposed of until 60 days after the completion of sentence, and in no event if there is a pending PCR.

RULE 2.22 - VERDICT

- Answers to special interrogatories are required on accomplice issues (although the parties can waive) and on any fact that subjects the defendant to a greater maximum or minimum sentence.
- The court can send back inconsistent verdicts for reconsideration. *See State v. Mumford*, 338 N.W.2d 366 (Iowa 1983).
- Sealed verdicts are allowed with the agreement of the parties in any misdemeanor case, even if the defendant is in custody.

RULE 2.23 - JUDGMENT

- A roadmap for the sentencing is set forth:
 1. The judge must verify the defendant and the defendant's attorney have read and discussed the PSI.
 2. The defendant's attorney must be given an opportunity to speak.
 3. The defendant must be given an opportunity to speak.
 4. The prosecuting attorney must be given an opportunity to speak.
 5. Victims have an opportunity to be heard (per SF 589) and they get to go last.
- The court also has discretion to allow additional witnesses or evidence.

RULE 2.23 - JUDGMENT

- “The court shall ensure that the basis for the sentence imposed appears in the record” and “shall state on the record the basis for the sentence imposed.”
- Also, the court must particularly state the reason for the imposition of any consecutive sentence. (*See Hill.*)
- The trial court’s required disclosure to the defendant regarding appeal rights has been expanded, partly to take into account SF 589 changes (i.e., “good cause” requirement for appeals from guilty pleas).

RULE 2.24 – MOTIONS AFTER TRIAL

- There is an attempt to provide more precision on the grounds for a new trial.
- The requirement that the judge rule on the motion within 30 days is eliminated.
- SF 589 changes: No arrest of judgment allowed unless the defendant demonstrates it is more likely than not that the defendant would not have pled guilty.

RULE 2.24 – MOTIONS AFTER TRIAL

- Makes clear that the district court may correct an illegal sentence at any time with or without a motion. However, for anything other than a clerical error, notice to the parties and an opportunity to be heard are required.
- An “illegal sentence” is defined as a sentence that could not have been lawfully imposed for the defendant’s conviction or convictions. It doesn’t include challenges to the underlying convictions or claims that the sentencing court abused its discretion in imposing a sentence within legal limits. (See *Jefferson*.)

ELIMINATED RULES

- Rule 2.25 (Bill of exceptions); rule 2.34 (Motions, orders and other papers); and rule 2.35 (Rules of court) are eliminated as unnecessary.

RULE 2.27 – PRESENCE OF DEFENDANT

- Adds correction of a clerical error within a sentence as a situation where the defendant's presence is not required.
- The court may have *any* person in the courtroom searched for a weapon or other prohibited item. Not limited to weapons and no requirement of probable cause.

RULE 2.28 – RIGHT TO APPOINTED COUNSEL

- Clarified the right applies to anyone “who faces the possibility of incarceration.” *See State v. Young*, 863 N.W.2d 249 (Iowa 2015).
- Clarified the right applies to motions to correct illegal sentences. (*See Jefferson*.)
- Generally prohibits limited appearances where there is appointed counsel.

RULE 2.29 – WITHDRAWAL AND DUTY OF CONTINUING REPRESENTATION

- Combined with former rule 2.30. The substance is generally the same.
- Indicates that there is a right to counsel for a certiorari proceeding in the appellate courts if there was a right to counsel in the proceeding from which certiorari is sought.
- Removes language that “Defendant shall not have the right to select the attorney to be assigned; however, defendant’s request for particular counsel shall be given consideration by the trial court.”

RULE 2.33 – DISMISSAL OF PROSECUTIONS, SPEEDY TRIAL

- Eliminates the trial court's authority to dismiss a case sua sponte "in the furtherance of justice." Only the prosecutor can ask for this.
- The 45-day speedy indictment period runs from the initial appearance, not arrest. (*See Williams.*)
- The one-year speedy trial deadline can only be waived by "defendant personally and on the record or by the filing of a written waiver."