

**CHAPTER 2**  
**RULES OF CRIMINAL PROCEDURE**

**INDICTABLE OFFENSES**

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**Rule 2.8 Arraignment and plea.**

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**2.8(2)** *Pleas to the indictment.*

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*b. Pleas of guilty.* The court may refuse to accept a guilty plea. The court shall not accept a guilty plea without establishing that the plea is made voluntarily and intelligently and has a factual basis; and addressing the defendant personally in open court and informing the defendant of, and establishing that the defendant understands, the following:

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(9) *Conditional Plea.* With the consent of the court and the prosecuting attorney, a defendant may enter a conditional plea of guilty, reserving in writing the right to have an appellate court review an adverse determination of a specified pretrial motion. ~~When a conditional guilty plea is approved by the court, this constitutes good cause for the defendant to appeal the ruling on the specified pretrial motion.~~ A defendant who prevails on appeal may then withdraw the plea.

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**Rule 2.13 Depositions.**

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**2.13(6)** *Special circumstances.*

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*b. Continuation of the prosecuting attorney's investigation.* After a complaint or indictment has been filed, the prosecuting attorney may continue to subpoena witnesses and utilize subpoenas duces tecum, as provided in rule 2.5(6). However, the defendant shall receive notice ~~through the judicial branch electronic filing system~~, and if a witness appears pursuant to a subpoena, the defendant shall have the opportunity to appear, cross-examine the witness, and review materials produced by the witness.

~~c. *Minors.* To protect a minor from trauma caused by testifying in the physical presence of the defendant where it would impair the minor's ability to communicate, the court may, upon motion of a party and notice to the other parties, order that the deposition of the minor be taken as follows:~~

~~(1) Only the judge, parties, parties' attorneys, persons necessary to record the deposition, and any person whose presence, in the opinion of the court, would contribute to the welfare and wellbeing of the minor, may be present in the room with the minor during the minor's deposition.~~

~~(2) The court may require a party be confined to an adjacent room or behind a screen or mirror that permits the party to see and hear the minor during the minor's deposition, but does not allow the minor to see or hear the party. However, if a party is so confined, the court shall take measures to ensure that the party and the party's attorney can confer during the deposition and shall inform the minor that the party can see and hear the minor during deposition.~~

~~(3) As an alternative to (2), the court may require a party to attend the deposition by a live audiovisual connection. In such case, the court shall likewise take measures to ensure that the party and the party's attorney can confer during the deposition and shall inform the minor that the party can see and hear the minor during deposition.~~

**2.13(7) *Perpetuating testimony*** ~~*before a case is filed.*~~ A person expecting to be a party to a criminal prosecution may perpetuate testimony in the person's favor in the same manner and with like effect as may be done in expectation of a civil action. See Iowa Rs. Civ. P. 1.721–1.728.

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## **Rule 2.15 Subpoenas.**

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### **2.15(3) *Special circumstances.***

#### ~~*a. Subpoenas.*~~

~~(1) The defendant may make application to the court for the issuance of subpoenas for the purpose of investigation. Notice shall be given to the state and any codefendants when making this application.~~

~~(2) Any objection to the defendant's application by the state or any codefendant must be filed within 10 days.~~

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~~1. Any objection shall be in writing and include the basis for the objection and a request for hearing.~~

~~2. Permissible bases for objections to evidence sought by a defendant subpoena include:~~

~~(a) The evidence could be obtained in another manner.~~

~~(b) The defendant did not first request that the state obtain the evidence.~~

~~(c) The evidence would not be admissible at trial.~~

**Comment:** ~~After receiving any objections, the court, through the exercise of its discretion, should regulate any defense requests for investigative subpoenas.~~

~~(3) The defendant shall disclose any materials obtained by the subpoena to the state and any codefendants within 15 days of the request.~~

~~(4) If any such evidence obtained is intended for use at trial, it shall be disclosed to the state at least 10 days prior to trial or at such time set by a pretrial conference, scheduling, or status conference order.~~

*a. Defense Subpoenas.*

(1) After an indictment or trial information is filed, the defendant may apply to the court, with notice to the state, to issue a subpoena for the purposes of investigation. The application must include a list of all other reasonable efforts made by the defendant to obtain the material sought and must establish in detail and in good faith all of the following:

1. The material sought contains exculpatory information.

2. The material sought does not include private information concerning a crime victim in the case.

3. The material sought is not otherwise protected from disclosure by a separate rule of criminal procedure, rule of evidence, or federal or state statute.

4. The information is not available from any other source.

(2) If the court concludes that the defendant's application does not meet the requirements of rule 2.15(3)(a)(1), the court shall return or reject the defendant's application and deny any hearing.

(3) If the court concludes that the defendant's application has made the showing required by rule 2.15(3)(a)(1) by a preponderance of the evidence, it shall order the defendant to notify any person or entity affected by the defendant's application. Any objections, motions to quash or modify the subpoena, or motions for protective orders by the state or nonparties must be filed with the court within 14 days of receiving the notice from the defendant and must include the basis for the objection or motion and may include a request for a hearing.

(4) The court may limit the scope of any subpoena issued under rule 2.15(3) and enter any protective order as necessary in the interests of justice, including a requirement of in camera review of the materials obtained before disclosure to the parties.

(5) The defendant is responsible for service of any subpoenas permitted by the court under rule 2.15(3) and service must be made pursuant to rule 2.15(4). The defendant is responsible for any costs associated with the production of the requested materials.

(6) The defendant must produce any materials obtained by a subpoena issued under rule 2.15(3) to the state and any codefendants within 7 days of receipt of the materials or at least 10 days prior to trial, whichever is earlier.

(7) Rule 2.15(3)(a) is the exclusive procedure by which a criminal defendant may subpoena documents or other evidence before trial, except that a request for documents may be included with a rule 2.15(1) trial subpoena or a rule 2.15(2) deposition notice. Failure to comply with this rule may result in sanctions from the court, such as contempt or a finding that the evidence obtained is inadmissible at trial.

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## **Rule 2.18 Juries.**

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**2.18(5)** *Challenges to individual jurors for cause.* A challenge for cause of an individual juror may be made orally by the state or the defendant and must distinctly specify the facts constituting the cause. A challenge may be made on an individual juror for any of the following causes:

*a.* A previous conviction of the juror of a felony unless it can be established through the juror's testimony or otherwise that either the juror's rights of citizenship have been restored ~~or more than 10 years have passed since the juror's conviction or release from confinement for that felony, whichever is later.~~

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