

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

**INDICTABLE OFFENSES**

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**Rule 2.13 Depositions.**

**2.13(1)** *By defendant.*

~~a.~~ A defendant in a criminal case may depose all witnesses listed by the state in the minutes of testimony in the same manner, with the same effect, and with the same limitations, as in civil actions except as otherwise provided by statute and these rules.

~~b. Before indictment, depositions may be taken only with leave of court.~~

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**2.13(5)** *Presence of defendant.* Subject to rule 2.13(6)(c) and rule 2.27(1)(c), the defendant is required to be personally present at all depositions. If the identity of the defendant is at issue and the defendant makes a timely motion, the court may allow the defendant to be absent during the part of the deposition when the parties question an eyewitness concerning the identity of the perpetrator of the crime. In that event, all parties shall complete their examination of the eyewitness regarding identity before the defendant is required to be present.

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

*a. Perpetuation of testimony where a witness will be unavailable at trial.* Whenever the interests of justice make necessary the taking of the deposition of a prospective witness for use at trial, the court may, upon motion of a party and notice to the other parties, order that the deposition be taken and that any designated materials, not privileged, be produced at the same time and place. This provision is available even if the moving party is the only party intending to call the prospective witness at trial.

*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, 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.* The court shall, upon motion of a minor complaining witness or the state on behalf of the minor, order that an interview or deposition of a minor be taken outside the personal presence of the defendant as follows:

(1) There shall be an audiovisual connection or other method allowing the defendant to see and hear the interview or deposition.

(2) The manner of taking of the interview or deposition shall ensure that the defendant shall not have contact with the minor.

(3) The defendant shall be allowed to communicate with the defendant's attorney in the room where the minor is being interviewed or deposed by an appropriate electronic method.

~~2.13(7) *Perpetuating testimony.* 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 2.18 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:

(1) ~~the~~The juror's rights of citizenship have been restored.

(2) The juror is not currently under the supervision of the department of corrections, a judicial district department of correctional services, or the board of parole.

(3) The juror is not currently registered as a sex offender under chapter 692A or required to serve a special sentence under chapter 903B.

b. Failure to meet any of the qualifications prescribed by Iowa Code chapter 607A to render a person a competent juror.

*c.* A physical or mental condition that would reasonably render the juror incapable of performing the duties of a juror.

*d.* Affinity or consanguinity, within the fourth degree, to an alleged victim, complaining witness, or defendant.

*e.* Standing in the relation of guardian and ward, attorney and client, employer and employee, or landlord and tenant with an alleged victim, complaining witness, or defendant.

*f.* Having been adverse to the defendant in a prior civil action or criminal prosecution.

*g.* Having served on a grand jury that heard evidence of the case.

*h.* Having served on a trial jury that heard evidence of the case in a trial of another defendant.

*i.* Having been on a jury previously sworn to try the same indictment.

*j.* Having served as a juror in a civil action that heard evidence of the case.

*k.* Having 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 upon the evidence submitted on the trial.

*l.* Having provided bail for any defendant in the indictment.

*m.* Having been a defendant in a similar indictment or the victim of a similar offense within the preceding year.

*n.* Having been a witness either for or against the defendant at the preliminary hearing or before the grand jury.

*o.* Where the circumstances indicate the juror would have an actual bias for or against a party.

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**Rule 2.27 Presence of the defendant; regulation of conduct by the court.**

**2.27(1) Defendant's appearance.** The defendant is required to appear as follows:

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c. *Depositions.* With the consent of the prosecuting attorney, the defendant may waive presence at a deposition. The defendant's attorney shall make a record of the waiver at the deposition. Otherwise, the defendant is required to be present subject to rule 2.13(5) and rule 2.13(6)(c).

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