

INDICTABLE OFFENSES

Rule 1. Scope of rules and definitions.

1. *Scope.* The rules in this section provide procedures applicable to indictable offenses.
2. *Definitions.*
 - a. “Committing magistrate” means judicial magistrates, district associate judges, and district judges.
 - b. “Judicial officer” means justices of the supreme court, judges of the court of appeals and committing magistrates.
 - c. “Unnecessary delay” is any unexcused delay longer than twenty-four hours, and consists of a shorter period whenever a magistrate is accessible and available.
 - d. “Mentally ill”, as used in these rules, describes the condition of a person who is suffering from a mental disease or disorder and who, by reason of that condition, lacks sufficient judgment to make responsible decisions regarding treatment and is reasonably likely to injure the person’s self or others who may come into contact with the person if the person is allowed to remain at liberty without treatment. [66GA, ch 1245(2), §1301; 67GA, ch 153, §2, 3; amendment 1981; 1984 Iowa Acts, ch 1323, §4]

Referred to in §602.6405

Rule 2. Proceedings before the magistrate.

1. *Initial appearance of defendant.* An officer making an arrest with or without a warrant shall take the arrested person without unnecessary delay before a committing magistrate as provided by Iowa Rule of Criminal Procedure 25. When a person arrested without a warrant is brought before a magistrate, a complaint shall be filed forthwith. If the defendant received a citation or was arrested without a warrant, the magistrate shall, prior to further proceedings in the case, make an initial, preliminary determination from the complaint, or from an affidavit or affidavits filed with the complaint or from an oral statement under oath or affirmation from the arresting officer or other person, whether there is probable cause to believe that an offense has been committed and that the defendant has committed it. The magistrate’s decision in this regard shall be entered in the magistrate’s record of the case.
2. *Statement by the magistrate.* The magistrate shall inform a defendant who appears before the magistrate after arrest, complaint, summons, or citation of the complaint against the defendant, of the defendant’s right to retain counsel, of the defendant’s right to request the appointment of counsel if the defendant is unable by reason of indigency to obtain counsel, of the general circumstances under which the defendant may secure pretrial release, of the defendant’s right to review of any conditions imposed on the defendant’s release and shall provide the defendant with a copy of the complaint. The magistrate shall also inform the defendant that he or she is not required to make a statement and that any statement made by the defendant may be used against him or her. The magistrate shall allow the defendant reasonable time and opportunity to consult counsel.
3. *Counsel for indigent.* The magistrate may appoint counsel to represent the defendant at public expense if the magistrate determines the defendant to be indigent in accordance with Iowa Code section 815.9.
4. *Preliminary hearing.* The defendant shall not be called upon to plead and the magistrate shall proceed as follows:

Referred to in R.Cr.P. 42; Tran. R. 7.12

a. Preliminary hearing. The magistrate shall inform the defendant that he or she is entitled to a preliminary hearing unless the defendant is indicted by a grand jury or a trial information is filed against the defendant or unless he or she waives the preliminary hearing in writing or on the record. If the defendant waives preliminary hearing, the magistrate shall order the defendant held to answer in further proceedings. If the defendant does not waive the preliminary hearing, the magistrate shall schedule a preliminary hearing and inform the defendant of the date of the preliminary hearing. Such hearing shall be held within a reasonable time but in any event not later than ten days following the initial appearance if the defendant is in custody and no later than 20 days if he or she is not in custody. Upon showing of good cause, the time limits specified in this paragraph may be extended by the magistrate.

b. Probable cause finding. If from the evidence it appears that there is probable cause to believe that an offense has been committed and that the defendant committed it, the magistrate shall order the defendant held to answer in further proceedings. The finding of probable cause shall be based upon substantial evidence, which may be hearsay in whole or in part, provided there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is a factual basis for the information furnished. The defendant may cross-examine witnesses against him or her and may introduce evidence in his or her own behalf.

c. Constitutional objections. Rules excluding evidence on the ground that it was acquired by unlawful means are not applicable. Motions to suppress must be made to the trial court as provided in R.Cr.P. 10(2).

d. Private hearing. Upon defendant's request and after making specific findings on the record that: (1) there is a substantial probability that the defendant's right to a fair trial will be prejudiced by publicity that closure would prevent and, (2) reasonable alternatives to closure cannot adequately protect the defendant's fair trial rights, the magistrate may exclude from the hearing all persons except the magistrate, the magistrate's clerk, the peace officer who has custody of the defendant, a court reporter, the attorney or attorneys representing the state, a peace officer selected by the attorney representing the state, the defendant, and the defendant's counsel.

e. Discharge of defendant. If from the evidence it appears that there is no probable cause to believe that an offense has been committed or that the defendant committed it, the magistrate shall dismiss the complaint and discharge the defendant. The discharge of the defendant shall not preclude the government from instituting a subsequent prosecution for the same offense.

f. Transmission of magistrate's record entries. After concluding the proceedings the magistrate shall transmit forthwith to the clerk of the district court all papers and recordings in the proceeding.

g. Preliminary hearing testimony preserved by stenographer or tape recorder; production prior to trial. Proceedings at the preliminary hearing shall be taken down by a court reporter or recording equipment and shall be made available on the following basis:

(1) On timely application to a magistrate, for good cause shown, and subject to the availability of facilities, the attorney for a defendant in a criminal case may be given the opportunity to have the recorded tape of the hearing on preliminary examination replayed for his or her information in connection with any further hearing or in connection with his or her preparation for trial.

(2) On application of a defendant addressed to a district judge, showing that the record of preliminary hearing, in whole or in part, should be made available to the defendant's counsel, an order may issue that the clerk make available a copy of the record, or of a portion thereof, to defense counsel. The order shall require prepayment of the costs of the record by the defendant. However, if the defendant is indigent the record shall be made at public expense. The prosecution may move also that a copy of the record, in whole or in part, be made available to it, for good cause shown, and an order may be entered granting such motion in whole or in part, on appropriate terms, except that the government need not prepay costs nor furnish security therefor.

(3) The copy of the record of such proceedings furnished pursuant to subparagraph (2) of this paragraph may consist of a tape of the recorded proceedings or a stenographic transcript of the proceedings.

If the record is ordered, the court shall specify in its order to the magistrate an appropriate method of making the record available. If, in any circumstance, a typewritten transcript is furnished counsel, a copy thereof shall be filed with the clerk of court. [66GA, ch 1245(2), §1301; 67GA, ch 153, §4 to 7; 69GA, ch 117, §1241; 1983 Iowa Acts, ch 186, §10143 and 10144; Report January 31, 1989, effective May 1, 1989; April 20, 1992, effective July 1, 1992]

Referred to in R.Cr.P. 42; §602.6405, 811.2; Tran. R. 7.12, 7.13

Rule 3. The grand jury.

1. *Drawing grand jurors.* At such times as prescribed by the chief judge of the district court in the public interest, the names of the twelve persons constituting the panel of the grand jury shall be placed by the clerk in a container, and after thoroughly mixing the same, in open court the clerk shall draw therefrom seven names, and the persons so drawn shall constitute the grand jury. Should any of the persons so drawn be excused by the court or fail to attend on the day designated for their appearance, the clerk shall draw additional names until the seven grand jurors are secured.

If the panel is insufficient to provide and maintain a grand jury of seven members, the panel shall be refilled from the jury box by the clerk of the court under direction of the court; additional grand jurors shall be selected until a grand jury of seven grand jurors is secured, and they shall be summoned in the manner as those originally drawn.

2. Challenge to grand jury.

a. Challenge to array. A defendant held to answer for a public offense may, before the grand jury is sworn, challenge the panel or the grand jury, only for the reason that it was not composed or drawn as prescribed by law. If the challenge be sustained, the court shall thereupon proceed to take remedial action to compose a proper grand jury panel or grand jury.

b. Challenge to individual jurors. A challenge to an individual grand juror may be made before the grand jury is sworn as follows:

(1) By the state or the defendant, because the grand juror does not possess the qualifications required by law.

(2) By the state only because:

(a) The juror is related either by affinity or consanguinity nearer than in the fifth degree, or stands in the relation of agent, clerk, servant, or employee, to any person held to answer for a public offense, whose case may come before the grand jury.

(b) The juror is bail for anyone held to answer for a public offense, whose case may come before the grand jury.

(c) The juror is defendant in a prosecution similar to any prosecution to be examined by the grand jury.

(d) The juror is, or within one 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, and for which the juror may be indicted by the grand jury.

(3) By the defendant only because:

(a) The juror is a complainant upon a charge against the defendant.

(b) The juror has formed or expressed such an opinion as to the guilt or innocence of the defendant as would prevent the juror from rendering a true indictment upon the evidence submitted.

c. Decision by court. Challenges to the panel or to an individual grand juror shall be decided by the court.

d. Motion to dismiss. A motion to dismiss the indictment may be based on challenges to the array or to an individual juror, if the grounds for challenge which are alleged in the motion of the defendant have not previously been determined pursuant to a challenge asserted by the defendant pursuant to paragraph "a" or paragraph "b" of this subsection.

3. *Discharging and summoning jurors.*

a. Discharge. A grand jury, on the completion of its business, shall be discharged by the court. The grand jury shall serve until discharged by the court, and the regular term of service by a grand juror should not exceed one calendar year. However, when an investigation which has been undertaken by the grand jury is incomplete, the court may by order extend the eligibility of a grand juror beyond one year, to the completion of the investigation.

b. Summoning jurors. Upon order of the court the clerk shall issue his precept or precepts to the sheriff, commanding the sheriff to summon the grand juror or jurors. Upon a failure of a grand juror to obey such summons without sufficient cause, he may be punished for contempt.

c. Excusing jurors. If the court excuses a juror, the court may impanel another person in place of the juror excused. If the grand jury has been reduced to a less number than seven by reason of challenges to individual jurors being allowed, or from any other cause, the additional jurors required to fill the panel shall be summoned, first, from such of the twelve jurors originally summoned which were not drawn on the grand jury as first impaneled, and if they are exhausted the additional number required shall be drawn from the grand jury list. If a challenge to the array is allowed, a new grand jury shall be impaneled to inquire into the charge against the defendant in whose behalf the challenge to the array has been allowed, and they shall be summoned in the manner prescribed in this rule.

4. *Oaths and procedure.*

a. Foreman. From the persons impaneled as grand jurors the court shall appoint a foreman, or when the foreman already appointed is discharged, excused, or from any cause becomes unable to act before the grand jury is finally discharged, an acting foreman may be appointed.

The foreman of the grand jury may administer the oath to all witnesses produced and examined before it.

b. Clerks and bailiffs. The court may appoint as clerk of the grand jury a competent person who is not a member thereof. In addition thereto the court may, if it deems it necessary, appoint assistant clerks of the grand jury. If no such appointments are made by the court, the grand jury shall appoint as its clerk one of its own number who is not its foreman. In like manner the court may appoint bailiffs for the grand jury to serve with the powers of a peace officer while so acting.

c. Oaths administered to grand jury, clerk, and bailiff. The following oath shall be administered to the grand jury: "Do each of you, as the grand jury, solemnly swear or affirm that you will diligently inquire and true presentment make of all public offenses against the people of this state, triable on indictment within this county, of which you have or can obtain legal evidence; you shall present no person through malice, hatred, or ill will, nor leave any unpresented through fear, favor, or affection, or for any reward, or the promise or hope thereof, but in all your presentments that you shall present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding?"

Any clerk, assistant clerk, or bailiff appointed by the court must be given the following oath: "Do you solemnly swear that you will faithfully and impartially perform the duties of your office, that you will not reveal to anyone its proceedings or the testimony given before it and will abstain from expressing any opinion upon any question before it, to or in the presence or hearing of the grand jury or any member thereof?"

d. Secrecy of proceedings. Every member of the grand jury, and its clerks and bailiffs, shall keep secret the proceedings of that body and the testimony given before it, except as provided in R.Cr.P. 13. No such person shall disclose the fact that an indictment has been found except when necessary for the issuance and execution of a warrant or summons, and such duty of nondisclosure shall continue until the indicted person has been arrested. The prosecuting attorney shall be allowed to appear before the grand jury on his or her own request for the purpose of giving information or for the purpose of examining witnesses, and the grand jury may at all reasonable times ask the advice of the prosecuting attorney or the court. However, neither the prosecuting attorney nor any other officer or person except the grand jury may be present when the grand jury is voting upon the finding of an indictment.

e. Securing witnesses and records. The clerk of the court must, when required by the foreman of the grand jury or prosecuting attorney, issue subpoenas including subpoenas duces tecum for witnesses to appear before the grand jury. The grand jury is entitled to free access at all reasonable times to county institutions and places of confinement, and to the examination without charge of all public records within the county.

f. Minutes. The clerk of the grand jury shall take and preserve minutes of the proceedings and of the evidence given before it, except the votes of its individual members on finding an indictment.

g. Evidence for defendant. The grand jury is not bound to hear evidence for the defendant, but may do so, and must weigh all the evidence submitted to it, and when it has reason to believe that other evidence within its reach will explain away the charge, it may order the same produced.

h. Refusal of witness to testify. When a witness under examination before the grand jury refuses to testify or to answer a question, it shall proceed with the witness before a district judge, and the foreman shall then distinctly state before a district judge the question and the refusal of the witness, and if upon hearing the witness the court decides that the witness is

bound to testify or answer the question propounded, the judge shall inquire of the witness if he or she persists in his or her refusal, and, if he or she does, shall proceed with the witness as in cases of similar refusal in open court.

i. Effect of refusal to indict. If, upon investigation, the grand jury refuses to find an indictment against one charged with a public offense, it shall return all papers to the clerk, with an endorsement thereon, signed by the foreman, to the effect that the charge is ignored. Thereupon, the district judge must order the discharge of the defendant from custody if in jail, and the exoneration of bail if bail be given. Upon good cause shown, the district judge may direct that the charge again be submitted to the grand jury. Such ignoring of the charge does not prevent the cause from being submitted to another grand jury as the court may direct; but without such direction, it cannot again be submitted.

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.

k. Appearance not required. A person under the age of ten years shall not be required to personally appear before a grand jury to testify against another person related to the person or another person who resided with the person at the time of the action which is the subject of the grand jury's investigation, unless there exists a special order of the court finding that the interests of justice require the person's appearance and that the person will not be disproportionately traumatized by the appearance. [66GA, ch 1245(2), §1301; 67GA, ch 153, §8 to 11, ch 1037, §11; amendment 1980; amendment 1983; 1985 Iowa Acts, ch 174, §12]

Referred to in §602.8102(136), 811.2, 815.2

Rule 4. Indictment.

1. *Defined.* An indictment is an accusation in writing, found and presented by a grand jury legally impaneled and sworn to the court in which it is impaneled, charging that the person named therein has committed an indictable public offense.

2. *Use of indictment.* Criminal offenses other than simple misdemeanors may be prosecuted to final judgment either on indictment or on information as provided in R.Cr.P. 5.

3. *Evidence to support.* An indictment should be found when all the evidence, taken together, is such as in the judgment of the grand jury, if unexplained, would warrant a conviction by the trial jury; otherwise it shall not. An indictment can be found only upon evidence given by witnesses produced, sworn, and examined before the grand jury, or furnished by legal documentary evidence, or upon the stenographic or taped record of evidence given by witnesses before a committing magistrate. If an indictment is found in whole or in part upon testimony taken before a committing magistrate, the clerk of the grand jury shall write out a brief minute of the substance of such evidence, and the same shall be returned to the court with the indictment.

4. *Vote necessary.* An indictment cannot be found without the concurrence of five grand jurors. Every indictment must be endorsed “a true bill” and the endorsement signed by the foreman of the grand jury.

5. *Presentation and filing.* An indictment, when found by the grand jury and properly endorsed, shall be presented to the court with the minutes of evidence of the witnesses relied on. The presentation shall be made by the foreman of the grand jury in the presence of the members of the grand jury. The indictment, minutes of evidence, and all exhibits relating thereto shall be transmitted to the clerk of the court and filed by the clerk.

6. *Minutes.*

a. A minute of evidence shall consist of a notice in writing stating the name, place of residence, and occupation of the witness upon whose testimony the indictment is found, and a full and fair statement of the witness’ testimony before the grand jury and a full and fair statement of additional expected testimony at trial.

Referred to in R.Cr.P. 18(2)

b. *Copy to defense.* Such minutes of evidence shall not be open for the inspection of any person except the judge of the court, the prosecuting attorney, or the defendant and his or her counsel. The clerk of the court must, on demand made, furnish the defendant or his or her counsel a copy thereof without charge.

c. *Minutes used again.* A grand jury may consider minutes of testimony previously heard by the same or another grand jury. In any case, a grand jury may take additional testimony.

7. *Contents of indictment.* An indictment is a plain, concise, and definite statement of the offense charged. The indictment shall be signed by the foreman of the grand jury. The names of all witnesses on whose evidence the indictment is found must be endorsed thereon. The indictment may be in the general indictment form set forth in the illustrative table of forms appended to the Iowa rules of criminal procedure. The indictment shall include the following:

a. The name of the accused, if known, and if not known, designation of the accused by any name by which the accused may be identified.

b. The name and if provided by law the degree of the offense, identifying by number the statutory provision or provisions alleged to have been violated.

c. Where the time or place is a material ingredient of the offense a brief statement of the time or place of the offense if known.

d. Where the means by which the offense is committed are necessary to charge an offense, a brief statement of the acts or omissions by which the offense is alleged to have been committed.

No indictment is invalid or insufficient, nor can the trial, judgment, or other proceeding thereon be affected by reason of any defect or imperfection in a matter of form which does not prejudice a substantial right of the defendant.

8. *Amendment.*

a. *Generally.* The court may, on motion of the state, either before or during the trial, order the indictment amended so as to correct errors or omissions in matters of form or substance. Amendment is not allowed if substantial rights of the defendant are prejudiced by the amendment, or if a wholly new and different offense is charged.

b. *Amendment before trial.* If the application for an amendment be made before the commencement of the trial, the application and a copy of the proposed amendment shall be served upon the defendant, or upon the defendant’s attorney of record, and an opportunity given the defendant to resist the same.

c. Amendment during trial. If the application be made during the trial, the application and the amendment may be dictated into the record in the presence of the defendant and the defendant's counsel, and such record shall constitute sufficient notice to the defendant.

d. Continuance. When an application for amendment is sustained, no continuance or delay in trial shall be granted because of such amendment unless it appears that defendant should have additional time to prepare because of such amendment.

e. Amendment of minutes. Minutes may be amended in the same manner and to the same extent that an indictment may be amended. [66GA, ch 1245(2), §1301; 67GA, ch 153, §12, 13; amendment 1979; amendment 1980; amendment 1999]

Referred to in R.Cr.P. 18(2), 30 (Form 10)

Rule 5. Information.

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 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.

2. *Endorsement.* An information shall be endorsed "a true information" and shall be signed by the prosecuting attorney.

3. *Witness names and minutes.* The prosecuting attorney shall, at the time of filing such information, also file the minutes of evidence of the witnesses 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.

Referred to in R.Cr.P. 18(2)

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. 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.

Referred to in R.Cr.P. 10(6)

5. *Indictment rules applicable.* The information shall be drawn and construed, in matters of substance, as indictments are required to be drawn and construed. The term "indictment" embraces the trial information, and all provisions of law applying to prosecutions on indictments apply also to informations, except where otherwise provided for by statute or in these rules, or when the context requires otherwise.

6. *Investigation by prosecuting attorney.* The clerk of the district court, on written application of the prosecuting attorney and the approval of the court, shall issue subpoenas including subpoenas duces tecum for such witnesses as the prosecuting attorney may require in investigating an offense, and in such subpoenas shall direct the appearance of said witnesses before the prosecuting attorney at a specified time and place. Such

application and judicial order of approval shall be maintained by the clerk in a confidential file until a charge is filed, in which event disclosure shall be made, unless the court in an in-camera hearing orders that it be kept confidential. The prosecuting attorney shall have the authority to administer oaths to said witnesses and shall have the services of the clerk of the grand jury in those counties in which such clerk is regularly employed. The rights and responsibilities of such witnesses and any penalties for violations thereof shall otherwise be the same as a witness subpoenaed to the grand jury. [66GA, ch 1245(2), §1301; 67GA, ch 153, §14, 15; Report 1978, effective July 1, 1979; amendment 1979; amendment 1982; amendment 1983; amended February 21, 1985, effective July 1, 1985]

Referred to in R.Cr.P. 4(2), 10(6), 13, 18(2); §602.6405, 602.8102(137), 815.3

Rule 6. Pleading special matters in indictments and informations—multiple offenses or defendants; pleading prior convictions; pleading statutes.

1. *Multiple offenses.* Two or more indictable public offenses which arise from the same transaction or occurrence or from two or more transactions or occurrences constituting parts of a common scheme or plan, when alleged and prosecuted contemporaneously, shall 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 a public offense 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.

COMMENT: This rule is not intended to eliminate a prosecutor's discretion not to charge certain offenses at the time other offenses growing out of the same transaction or that are part of a common scheme are being charged. Nor is it intended to prevent a later charge from being filed with respect to an offense that has not initially been included. The rule is only intended to require that all contemporaneous criminal filings in which the crimes charged grow out of the same transaction or are part of a common scheme be combined in a single indictment or information. The rule will facilitate uniformity in charging practices to assure the comparability of statistical data derived from case filings and will eliminate unnecessary multiple filings which place an unnecessary administrative burden on the court system.

2. *Prosecution and judgment.* Upon prosecution for a public offense, the defendant may be convicted of either the public offense charged or an included offense, but not both.

3. *Duty of court to instruct.* In cases where the public offense charged may include some lesser offense it is the duty of the trial court to instruct the jury, not only as to the public offense charged but as to all lesser offenses of which the accused might be found guilty under the indictment and upon the evidence adduced, even though such instructions have not been requested.

4. *Charging multiple defendants.*

a. *Multiple defendants.* Two or more defendants may be charged in the same indictment, information, or complaint if they are alleged to have participated in the same act or the same transaction or occurrence out of which the offense or offenses arose. Such defendants may be charged in one or more counts together or separately, and all the defendants need not be charged in each count.

b. *Prosecution and judgment.* When an indictment or information jointly charges two or more defendants, those defendants may be tried jointly if in the discretion of the court a joint trial will not result in prejudice to one or more of the parties. Otherwise, defendants shall be tried separately. When jointly tried, defendants shall be adjudged separately on each count.

5. *Allegations of prior convictions.* If the offense charged is one for which the defendant, if convicted, will be subject by reason of the Code, to an increased penalty because of prior convictions, the allegation of such convictions, if any, shall be contained in the indictment. A supplemental indictment shall be prepared for the purpose of trial of the facts of the current offense only, and shall satisfy all pertinent requirements of the Code, except that it shall make no mention, directly or indirectly, of the allegation of the prior convictions, and shall be the only indictment read or otherwise presented to the jury prior to conviction of the current offense. The effect of this subdivision shall be to alter the procedure for trying, in one criminal proceeding, the offenses appropriate to its provisions, and not to alter in any manner the basic elements of an offense as provided by law.

6. *Allegations of use of a dangerous weapon.* If the offense charged is one for which the defendant, if convicted, will be subject by reason of the Code* to a minimum sentence because of use of a dangerous weapon, the allegation of such use, if any, shall be contained in the indictment. If use of a dangerous weapon is alleged as provided by this rule, and if the allegation is supported by the evidence, the court shall submit to the jury a special interrogatory concerning this matter, as provided in R.Cr.P. 21(2). [Report 1980; amendment 1999]

*See §902.7

7. *Pleading statutes.* A pleading asserting any statute of another state, territory or jurisdiction of the United States, or a right derived therefrom, shall refer to such statute by plain designation and if such reference is made, the court shall judicially notice such statute. [66GA, ch 1245(2), §1301; 67GA, ch 153, §16; amendment 1980; amendment 1982; amendment 1983; January 24, 2000, effective March 1, 2000]

Rule 7. Proceedings after indictment or information.

1. *Issuance.* Upon the request of the prosecuting attorney the court shall issue a warrant for each defendant named in the indictment or information. The clerk shall issue a summons instead of a warrant upon the request of the prosecuting attorney or by direction of the court. The warrant or summons shall be delivered to a person authorized by law to execute or serve it. If a defendant fails to appear in response to the summons, a warrant shall issue.

2. Form.

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. The warrant may be substantially in the form described in the table of forms to the Iowa rules of criminal procedure. The warrant may be served in any county in the state.

b. Summons. The summons shall be in the form described in Iowa Code section 804.2, except that it shall be signed by the clerk. A summons to a corporation shall be in the form prescribed in Iowa Code section 807.5.

3. Execution, service, and return.

a. Execution or service. The warrant shall be executed or the summons served as provided in Iowa Code chapter 804. Upon the return of an indictment or upon the filing of trial information against a person confined in any penal institution, the court to which such indictment is returned may enter an order directing that such person be produced before it for trial. The sheriff shall execute such order by serving a copy thereof on the warden having such accused person in custody and thereupon such person shall be delivered to such sheriff and conveyed to the place of trial.

b. Return. The officer executing a warrant, or the person to whom a summons was delivered for service shall make return thereof to the court. [66GA, ch 1245(2), §1301; 67GA, ch 153, §17, 18; amendment 1983]

Referred to in §331.653(66), 602.6405, 602.8102(138)

Rule 8. Arraignment and plea.

1. *Conduct of arraignment.* Arraignment shall be conducted as soon as practicable. If the defendant appears for arraignment without counsel, the defendant must, before proceeding therewith, be informed by the court of the right thereto, and be asked if he or she desires counsel; and if he or she does, and is unable by reason of indigency

to employ any, the court must appoint defense counsel, who shall have free access to the defendant at all reasonable hours. Arraignment shall consist of reading the indictment to the defendant or stating to the defendant the substance of the charge and calling on the defendant to plead thereto. The defendant shall be given a copy of the indictment or information before he or she is called upon to plead.

The defendant must be informed that if the name by which he or she is indicted or informed against is not his or her true name, he or she must then declare what his or her true name is, or be proceeded against by the name in the indictment. If the defendant gives no other name or gives his or her 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 his or her 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.

Unless otherwise ordered by the court, a defendant represented by an attorney may waive the formal arraignment contemplated by this rule and enter a plea of not guilty by executing and filing a written arraignment form that substantially complies with form 10.1 included in the appendix to these rules. The arraignment form must assure the court that the defendant has been advised of, and is aware of, all the rights and matters specified in this rule and that the full purposes of an arraignment have been satisfied.

2. *Pleas to the indictment or information.*

a. *In general.* A defendant may plead guilty, 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.

b. *Pleas of guilty.* The court may refuse to accept a plea of guilty, and shall not accept a plea of guilty without first determining that the plea is made voluntarily and intelligently and has a factual basis. Before accepting a plea of guilty, the court must address the defendant personally in open court and inform the defendant of, and determine that the defendant understands, the following:

(1) The nature of the charge to which the plea is offered.

(2) The mandatory minimum punishment, if any, and the maximum possible punishment provided by the statute defining the offense to which the plea is offered.

(3) That the defendant has the right to be tried by a jury, and at trial has the right to assistance of counsel, the right to confront and cross-examine witnesses against the defendant, the right not to be compelled to incriminate oneself, and the right to present witnesses in the defendant's own behalf and to have compulsory process in securing their attendance.

(4) That if the defendant pleads guilty there will not be a further trial of any kind, so that by pleading guilty the defendant waives the right to a trial.

The court may, in its discretion and with the approval of the defendant, waive the above procedures in a plea of guilty to a serious or aggravated misdemeanor.

c. *Inquiry regarding plea agreement.* The court shall also inquire as to whether the defendant's willingness to plead guilty results from prior discussions between the attorney for the state and the defendant or the defendant's attorney. The terms of any plea agreement shall be disclosed of record as provided in R.Cr.P. 9(2).

d. Challenging pleas of guilty. The court shall inform the defendant that any challenges to a plea of guilty based on alleged defects in the plea proceedings must be raised in a motion in arrest of judgment and that failure to so raise such challenges shall preclude the right to assert them on appeal.

3. *Record of proceedings.* A verbatim record of the proceedings at which the defendant enters a plea shall be made. [66GA, ch 1245(2), §1301; 67GA, ch 153, §19 to 23; Report 1978, effective July 1, 1979; amendment 1979; amendment 1982; amendment 1983; 1984 Iowa Acts, ch 1321, §1; Report of April 20, 1992, effective July 1, 1992]

Referred to in R.Cr.P. 10(1.4), 27(2), 44; §602.6405

Rule 8.1. Trial assignments.

1. *Prompt assignment.* Within seven days after the entry of an oral plea of not guilty or the filing of a written plea of not guilty, the court or its designee shall set the date and time for trial in writing with copies to counsel and to the clerk for the court file.

2. *Firmness of trial date.* The date assigned for trial shall be considered firm. Motions for continuance are discouraged. A motion for continuance shall not be granted except upon a showing of good and compelling cause.

3. *Priority assignment.* Prosecutions for violations of Iowa Code sections 709.2, 709.3, 709.4 and 726.2 shall, as practicable, be given priority on a court's criminal docket. [Report 1982; 1985 Iowa Acts, ch 174, §13]

Referred to in R.Cr.P. 25(1), Form 10.1

Rule 9. Plea bargaining.

1. *In general.* The prosecuting attorney and the attorney for the defendant may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty to a charged offense or to a lesser or related offense, the prosecuting attorney will make a charging or sentencing concession.

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 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.

Referred to in R.Cr.P. 8(2)

3. *Acceptance of plea agreement.* When the plea agreement is conditioned upon the court's concurrence, 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 use of the presentence investigation, the right to file a motion in arrest of judgment, and time for entry of judgment, and proceed to judgment.

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 defendant's plea, and advise the defendant that if persistence in a guilty plea continues, the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement. If the defendant persists in the 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.

5. *Inadmissibility of plea discussions.* If a plea discussion does not result in a plea of guilty, or if a plea of guilty is not accepted or is withdrawn, or if judgment on a plea of guilty is reversed on direct or collateral review, neither the plea discussion nor any resulting agreement, plea, or judgment shall be admissible in any criminal or civil action or administrative proceeding. [66GA, ch 1245(2), §1301; 67GA, ch 153, §24; amendment 1979; Court Order April 10, 1997]

Referred to in R.Cr.P. 8(2); Iowa R. Evid. 410(3)

Rule 10. Motions and pleadings.

1. *Pleadings and motions.* Pleadings in criminal proceedings shall be the indictment and the information, and the pleas entered pursuant to R.Cr.P. 8. Demurrers, motions to quash, and motions to set aside are abolished, and defenses and objections raised before trial which heretofore could have been raised under them shall be raised by motion to dismiss, or a motion to grant appropriate relief, as the case may be.

2. *Pretrial motions.* Any defense, objection, or request which is capable of determination without the trial of the general issue may be raised before trial by motion. The following must be raised prior to trial:

a. Defenses and objections based on defects in the institution of the prosecution.

b. Defenses and objections based on defects in the indictment or information (other than that it fails to show jurisdiction in the court or to charge an offense which objections shall be noticed by the court at any time during the pendency of the proceeding).

c. Motions to suppress evidence on the ground that it was illegally obtained including, but not limited to, motions on any ground listed in R.Cr.P. 11.

d. Requests for discovery.

e. Requests for a severance of charges or defendants.

f. Motions for change of venue or change of judge.

g. Motion in limine.

Referred to in R.Cr.P. 2(4)

3. *Effect of failure to raise defenses or objections.* Failure of the defendant to timely raise defenses or objections or to make requests which must be made prior to trial under this rule shall constitute waiver thereof, but the court for good cause shown, may grant relief from such waiver.

Referred to in R.Cr.P. 11(1)

4. *Time of filing.* Motions hereunder, except motions in limine, shall be filed when the grounds therefor reasonably appear but no later than 40 days after arraignment. Motions in limine shall be filed when grounds therefor reasonably appear but no later than nine days before the trial date. If a written arraignment under R.Cr.P. 8(1) is used, the date of arraignment is the date the written arraignment is filed.

Referred to in R.Cr.P. 11(1)

5. *Bill of particulars.* When an indictment or information charges an offense in accordance with this rule, but fails to specify the particulars of the offense sufficiently to fairly enable the defendant to prepare a defense, the court may, on written motion of the defendant, require the prosecuting attorney to furnish the defendant with a bill of particulars containing such particulars as may be necessary for the preparation of the defense. A motion for a bill of particulars may be made any time prior to or within ten days after arraignment unless the time be extended by the court for good cause shown. A plea of not guilty at arraignment

does not waive the right to move for a bill of particulars if such motion is timely filed within this rule. The prosecuting attorney may furnish a bill of particulars on the prosecuting attorney's own motion, or the court may order a bill of particulars without motion. Supplemental bills of particulars may be likewise ordered by the court or voluntarily furnished, or a new bill may be substituted for a bill already furnished. At the trial the state's evidence shall be confined to the particulars of the bill or bills.

6. *Dismissing indictment or information.*

a. *In general.* If it appears from the indictment or information and the minutes of evidence that the particulars stated do not constitute the offense charged in the indictment or information, or that the defendant did not commit that offense or that a prosecution for that offense is barred by the statute of limitations, the court may and on motion of the defendant shall dismiss the indictment or information unless the prosecuting attorney shall furnish a bill of particulars which so states the particulars as to cure the defect.

b. *Indictment.* A motion to dismiss the indictment may be made on one or more of the following grounds:

(1) When the minutes of the evidence of witnesses examined before the grand jury are not returned therewith.

(2) When it has not been presented and marked "filed" as prescribed.

(3) When any person other than the grand jurors was present before the grand jury when the question was taken upon the finding of the indictment.

(4) When any person other than the grand jurors was present before the grand jury during the investigation of the charge, except as required or permitted by law.

(5) That the grand jury was not selected, drawn, summoned, impeached, or sworn as prescribed by law.

c. *Information.* A motion to dismiss the information may be made on one or more of the following grounds:

(1) When the minutes of evidence have not been filed with the information.

(2) When the information has not been filed in the manner required by law.

(3) When the information has not been approved as required under R.Cr.P. 5(4).

d. *Time of motion.* Entry of a plea of not guilty at arraignment does not waive the right to move to dismiss the indictment or information if such motion is timely filed within this rule.

7. *Effect of determination.* If the court grants a motion based on a defect in the institution of the prosecution or in the indictment or information, it may also order that the defendant be held in custody or that the defendant's bail be continued for a specified period pending the filing of a new indictment or information if the same was dismissed by the court, or the amendment of any such pleading if the defect is subject to correction by amendment. The new information or indictment must be filed within 20 days of the dismissal of the original indictment or information. The ninety-day period under R.Cr.P. 27(2) "b" for bringing a defendant to trial shall commence anew with the filing of the new indictment or information.

8. *Ruling on motion.* A pretrial motion shall be determined without unreasonable delay. Where factual issues are involved in determining a motion, the court shall state its essential findings on the record.

9. *Motion for change of judge.*

a. *Form of motion.* A motion for a change of judge shall be verified on information and belief by the movant.

b. Change of judge. If the court is satisfied from a motion for a change of judge and the evidence introduced in support of the motion that prejudice exists on the part of the judge, the chief judge shall name a new presiding judge. The location of the trial need not be changed.

(10). *Motion for change of venue.*

a. Form of motion. A motion for a change of venue shall be verified on information and belief by the movant.

b. Change of venue ordered. If the court is satisfied from a motion for a change of venue and the evidence introduced in support of the motion that such degree of prejudice exists in the county in which the trial is to be had that there is a substantial likelihood a fair and impartial trial cannot be preserved with a jury selected from that county, the court either shall order that the action be transferred to another county in which the offensive condition does not exist, as provided in paragraph “c;” or shall order that the trial jury be impaneled in and transferred from a county in which the offensive condition does not exist, as provided in paragraph “d.”

c. Transfer of action. When a transfer of the action to another county is ordered under paragraph “b” the clerk shall transmit to the clerk of the court of the county to which the proceeding is transferred all papers in the proceeding or duplicates of them and any bail taken, and the prosecution shall continue in that county. If the defendant is in custody, the court may order the defendant to be delivered to the sheriff of the receiving county, and upon receipt of a certified copy of the order, the sheriff shall receive and detain the defendant. All expenses attendant upon the change of venue and trial, including the costs of keeping the defendant, which shall be allowed by the court trying the case, may be recovered by the receiving county from the transferring county. The prosecuting attorney in the transferring county is responsible for prosecution in the receiving county.

d. Transfer of jury.

(1) This paragraph applies if the court orders under paragraph “b” that a jury be transferred from another county.

(2) Upon issuance of the order under paragraph “b,” the clerk of court shall immediately notify the chief judge of the judicial district that includes the county from which the trial jury is to be obtained. The chief judge shall schedule a day for the commencement of proceedings under subparagraph (5) and shall cause notice of the proceedings to be delivered to the trial judge, to the attorneys for the prosecution and the defense, and to the clerks of court of the two counties that are affected by the proceedings. The clerk of the trial court shall deliver to the trial judge all documents that must be present in court at the time trial is commenced under subparagraph (5).

(3) The trial judge shall issue orders as necessary to assure the presence of the defendant during proceedings under subparagraph (5). If the defendant is in custody, the sheriff of the trial county is responsible for transporting the defendant to and from the place of jury selection. The sheriff of the county from which the jury is to be obtained shall receive and maintain temporary custody of the defendant as ordered by the trial court.

(4) The trial court shall retain jurisdiction of the action, and all proceedings and records shall be maintained in the ordinary manner, except that the trial record shall contain pertinent information respecting the change of location for the proceedings under subparagraph (5) and the reason for the change.

(5) The commencement of the trial and the jury selection process shall take place in the county in which the jury is to be impaneled. The clerk of court of that county shall perform all of the trial duties of the clerk of court during proceedings that take place in that county. Once the jury has been sworn, the court shall adjourn for the period of time necessary to permit the transportation of the jury to the trial county. Upon reconvening, the trial shall continue in the usual manner.

(6) 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.

(7) The trial county shall provide transportation for the jurors to and from the place of trial, and shall provide the proper officers to take custody of the jurors after they are sworn and until they are discharged, as ordered by the trial court.

(8) The trial county shall pay all expenses incurred in connection with the jury, including but not necessarily limited to juror fees, the costs of transporting, housing, and feeding the jury, and the costs and expenses of officers assigned to take custody of the jury. The trial county shall pay the costs of transporting the defendant to and from the place of jury selection, if any. The county from which the jury is obtained may recover from the trial county any costs allowed by the trial court for maintaining custody of the defendant at the time of trial commencement and jury selection.

(9) Members of the trial jury and alternates shall each be paid the usual juror fee for service under this paragraph, but the fee shall be due for each calendar day they are under the direction of the court or its officers, commencing with the day they are sworn and ending with the day they are returned to the county of their residence after being discharged.

Referred to in R.Cr.P. 17(15), 27(3); §331.653(67)
See also Ct. R. 206

11. *Notices of defendant.*

a. Alibi. A defendant who intends to offer evidence of an alibi defense shall, within the time provided for the making of pretrial motions or at such later time as the court shall direct, file written notice of such intention. The notice shall state the specific place or places at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom the defendant intends to rely to establish such alibi. In the event that a defendant shall file such notice the prosecuting attorney shall file written notice of the names and addresses of the witnesses the state proposes to offer in rebuttal to discredit the defendant's alibi. Such notice shall be filed within ten days after filing of defendant's witness list, or within such other time as the court may direct.

b. Insanity and diminished responsibility.

(1) *Defense of insanity and diminished responsibility.* If a defendant intends to rely upon the defense of insanity or diminished responsibility at the time of the alleged crime, the defendant shall, within the time provided for the filing of pretrial motions, file written notice of such intention. The court may for good cause shown, allow late filing of the notice or grant additional time to the parties to prepare for trial or make other order as appropriate.

When the defendant has asserted a defense of insanity the burden of proof is on the defendant to prove insanity by a preponderance of the evidence as provided for in Iowa Code section 701.4.

(2) *State's right to expert examination.* Where a defendant has given notice of the use of the defense of insanity or diminished responsibility and intends to call an expert witness or witnesses on that issue at trial the defendant shall, within the time provided for the filing of pretrial motions, file written notice of the name

of each such witness. Upon such notice or as otherwise appropriate the court may upon application order the examination of the defendant by a state-named expert or experts whose names shall be disclosed to the defendant prior to examination.

c. Intoxication, entrapment, and self-defense. If defendant intends to rely upon the defense of intoxication by drugs or alcohol, entrapment, or self-defense, the defendant shall, within the time for filing pretrial motions, file written notice of such intention. The court may for good cause shown allow late filing of the notice or grant additional time to the parties to prepare for trial or make such other order as may be appropriate.

d. Failure to comply. If either party fails to abide by the time periods heretofore described, such party may not offer evidence on the issue of alibi, insanity, diminished responsibility, intoxication, entrapment, or self-defense without leave of court for good cause shown. In granting leave, the court may impose terms and conditions including a delay or continuance of trial. The right of a defendant to give evidence of alibi, insanity, diminished responsibility, intoxication, entrapment, or self-defense in his own testimony is not limited by this rule. [66GA, ch 1245(2), §1301; 67GA, ch 153, §25 to 36; amendment 1980; amendment 1981; 82 Acts, ch 1021, §1 to 3, effective July 1, 1983; amendment 1983; amendment 1984; 1984 Iowa Acts, ch 1320, §2; Report January 31, 1989, effective May 1, 1989; Report September 22, 1999; February 8, 2000]

Referred to in Tran. R. 2.4; R.Cr.P. 2(4), 11(1), 17(15), 18(9), 27(3), 46; §331.653(67), 602.8102(139), 803.2, 815.8

Rule 11. Suppression of evidence obtained by an unlawful search and seizure.

1. *Motion to suppress evidence.* A person aggrieved by an unlawful search and seizure may move to suppress for use as evidence anything so obtained on any of the following grounds:

- a.* The property was illegally seized without a warrant.
- b.* The warrant is insufficient on its face.
- c.* The property seized is not that described in the warrant.
- d.* There was not probable cause for believing the existence of the grounds on which the warrant was issued.
- e.* The warrant was illegally executed. The court shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be restored to its owner or legal custodian unless otherwise subject to lawful detention, and it shall not be admissible in evidence at any hearing or trial.

The motion shall be made pursuant to R.Cr.P. 10(3) and (4).

2. *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 review of the order in advance of trial. [66GA, ch 1245(2), §1301; 67GA, ch 153, §37; amendment 1979; amendment 1980]

Referred to in R.Cr.P. 10(2)
See also R.Cr.P. 51

Rule 12. Depositions.

1. *By defendant.* A defendant in a criminal case may depose all witnesses listed by the state on the indictment or information or notice of additional witnesses in the same manner and with like effect and with the same limitations as in civil actions except as otherwise provided by statute and these rules. Depositions before indictment or trial information is filed may only be taken with leave of court.

When the state receives notice that a deposition will be taken of a witness listed on the indictment, information or notice of additional witnesses, the state may object that the witness (a) is a foundation witness or (b) has been adequately examined on preliminary hearing. The court shall immediately determine whether discovery of the witness is necessary in the interest of justice and shall allow or disallow the deposition.

2. *Special circumstances.*

a. Whenever the interests of justice and the special circumstances of a case make necessary the taking of the testimony of a prospective witness not included in subsection 1 or 3 of this rule, for use at trial, the court may upon motion of a party and notice to the other parties order that the testimony of the witness be taken by deposition and that any designated book, paper, document, record, recording, or other material, not privileged, be produced at the same time and place. For purposes of this subsection, special circumstances shall be deemed to exist and the court shall order that depositions be taken only upon a showing of necessity arising from either of the following:

(1) The information sought by way of deposition cannot adequately be obtained by a bill of particulars or voluntary statements.

(2) Other just cause necessitating the taking of the deposition.

b. The court may upon motion of a party and notice to the other parties order that the testimony of a victim or witness who is a child, as defined in Iowa Code section 702.5, be taken by deposition for use at trial. Only the judge, parties, counsel, persons necessary to record the deposition, and any person whose presence, in the opinion of the court, would contribute to the welfare and well-being of the child may be present in the room with the child during the child's deposition.

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 child during the child's deposition, but does not allow the child to see or hear the party. However, if a party is so confined, the court shall take measures to ensure that the party and counsel can confer during the deposition and shall inform the child that the party can see and hear the child during deposition.

3. *By state.* At or before the time of the taking of a deposition by a defendant under subsection 1 or 2 of this rule, the defendant shall file a written list of the names and addresses of all witnesses expected to be called for the defense (except the defendant and surrebuttal witnesses), and the defendant shall have a continuing duty before and throughout trial promptly to disclose additional defense witnesses. Such witnesses shall be subject to being deposed by the state.

4. *Failure to comply.* If the defendant has taken depositions under subsection 1 of this rule and does not disclose to the prosecuting attorney all of the defense witnesses (except the defendant and surrebuttal witnesses) at least nine days before trial, the court may order the defendant to permit the discovery of such witnesses, grant a continuance, or enter such other order as it deems just under the circumstances. It may, if it finds that no less severe remedy is adequate to protect the state from undue prejudice, order the exclusion of the testimony of any such witnesses.

5. *Perpetuating testimony.* A person expecting to be a party to a criminal prosecution may perpetuate testimony in his or her favor in the same manner and with like effect as may be done in expectation of a civil action.

6. *Time of taking.* Depositions shall be taken within 30 days after arraignment unless the period for taking is extended by the court for good cause shown. [66GA, ch 1245(2), §1301; 67GA, ch 153, §38; amendment 1980; amendment 1981; amendment 1982; 1985 Iowa Acts, ch 174, §14]

Referred to in §910A.14

Rule 13. Discovery.

1. *Witnesses examined by the prosecuting attorney.* When a witness subpoenaed by the prosecuting attorney pursuant to R.Cr.P. 5 is summoned by the prosecuting attorney after complaint, indictment or information, the defendant shall have a right to be present and have the opportunity to cross-examine any witnesses whose appearance before the county attorney is required by this rule.

2. *Disclosure of evidence by the state upon defense motion or request.*

a. *Disclosure required upon request.*

(1) Upon a filed pretrial request by the defendant the attorney for the state shall permit the defendant to inspect and copy or photograph: Any relevant written or recorded statements made by the defendant or copies thereof, within the possession, custody or control of the state, unless same shall have been included with the minutes of evidence accompanying the indictment or information; the substance of any oral statement made by the defendant which the state intends to offer in evidence at the trial, including any voice recording of same; and the transcript or record of testimony of the defendant before a grand jury, whether or not the state intends to offer same in evidence upon trial.

(2) When two or more defendants are jointly charged, upon the filed request of any defendant the attorney for the state shall permit the defendant to inspect and copy or photograph any written or recorded statement of a codefendant which the state intends to offer in evidence at the trial, and the substance of any oral statement which the state intends to offer in evidence at the trial made by a codefendant whether before or after arrest in response to interrogation by any person known to the codefendant to be a state agent.

(3) Upon the filed request of the defendant, the state shall furnish to defendant such copy of the defendant's prior criminal record, if any, as is then available to the state.

b. *Discretionary discovery.*

(1) Upon motion of the defendant the court may order the attorney for the state to permit the defendant to inspect, and where appropriate, to subject to scientific tests, items seized by the state in connection with the alleged crime. The court may further allow the defendant to inspect and copy books, papers, documents, statements, photographs or tangible objects which are within the possession, custody or control of the state, and which are material to the preparation of his or her defense, or are intended for use by the state as evidence at the trial, or were obtained from or belong to the defendant.

(2) Upon motion of a defendant the court may order the attorney for the state to permit the defendant to inspect and copy or photograph any results or reports of physical or mental examinations, and of scientific tests or experiments, made in connection with the particular case, or copies thereof, within the possession, custody or control of the state.

3. *Disclosure of evidence by the defendant.*

a. *Documents and tangible objects.* If the court grants the relief sought by the defendant under subsection 2, paragraph "b," subparagraph (1), of this rule, the court may, upon motion of the state, order the defendant to permit the state to inspect and copy books, papers, documents, statements other than those of the accused, photographs or tangible objects which are not privileged and are within the possession, custody or control of the defendant and which the defendant intends to introduce in evidence at trial.

b. *Reports of examinations and tests.* If the court grants relief sought by the defendant under subsection 2, paragraph "b," subparagraph (2), of this rule, the court may, upon motion of the state, order the defendant to permit the state to inspect and copy the results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the defendant and which the defendant intends to introduce in evidence at the trial or which were prepared by a witness whom the defendant intends to call at the trial when such results or reports relate to his or her testimony.

c. *Time of motion.* A motion for the relief provided under subsection 3 of this rule shall be made, if at all, within five days after any order granting similar relief to the defendant.

4. *Failure to employ evidence.* When evidence intended for use and furnished under this rule is not actually employed at the trial, that fact shall not be commented upon at trial.

5. *Continuing duty to disclose.* If, subsequent to compliance with an order issued pursuant to this rule, either party discovers additional evidence, or decides to use evidence which is additional to that originally intended for use, and such additional evidence is subject to discovery under this rule, the party shall promptly file written notice of the existence of the additional evidence to allow the other party to make an appropriate motion for additional discovery.

6. *Regulation of discovery.*

a. *Protective orders.* Upon a sufficient showing the court may at any time order that the discovery or inspection be denied, restricted or deferred, or make such other order as is appropriate. In addition to any other grounds for issuing an order pursuant to this paragraph, the court may limit or deny discovery or inspection, or limit the number of depositions to be taken if the court determines that any of the following exist:

(1) That granting the motion will unfairly prejudice the nonmoving party and will deny that party a fair trial.

(2) That the motion is intended only as a fishing expedition and that granting the motion will unduly delay the trial and will result in unjustified expense.

(3) That the granting of the motion will result in the disclosure of privileged information.

b. *Time, place and manner of discovery and inspection.* An order of the court granting relief under this rule shall specify the time, place and manner of making the discovery and inspection permitted and may prescribe such terms and conditions as are just.