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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.
- The supreme court appointed a task force in April 2018.

STATUS

- The Task Force started work in the summer of 2018.
- After numerous meetings, brainstorming sessions, and drafts, proposed revised criminal rules went out for public comment on March 30, 2020 (beginning of COVID). 24 separate public comments were received.
- Some additional revisions were then made based on the comments plus COVID experience.
- The final revised criminal rules were released by the supreme court on January 31, 2022. The plan was for them to go into effect on July 1, 2022.

STATUS - CONTINUED

- Pushback from some legislators and county attorneys.
- The supreme court agreed to withdraw the rules temporarily and work further on “problem areas.”
- The key problem areas appear to be:
 - Eligibility for juror service.
 - Defense subpoenas for investigative purposes.
 - Conditional guilty pleas.

STATUS - CONTINUED

- The supreme court and the Task Force plan to proceed as follows:
 - Wait for the end of the current legislative session to see what legislative action may be taken on subjects covered by the criminal rules.
 - Allow an additional public comment/hearing period for changes made since March 2020 only.
 - Re-release the final revised criminal rules with any needed changes.
 - It is unlikely the revised rules would go into effect at this point before January 1, 2023.

STATUS - CONTINUED

- SF 2297: This would provide that the following persons are ineligible for jury service:
 - (1) anyone convicted of a felony who is currently under supervision;
 - (2) anyone convicted of a felony which requires the person to register as a sex offender under chapter 692A or to serve a special sentence under chapter 903B.
- Has passed both Senate and House. But the House version includes legislation giving the legislature access to confidential materials of judicial nominating commissions.

STATUS - CONTINUED

- SF 2328: This would make a number of changes to the criminal laws. For example, all attorneys would be required to complete a minimum of one hour annually of CLE on victim's rights. Relating to the criminal rules, the bill would change the following:
 - Impose limits on defense ability to subpoena evidence or take depositions for discovery purposes.
 - Require the defense to file a witness list when they request discretionary discovery, when they take a deposition, or ten days before trial, whichever is earliest. The court must exclude defense witnesses not timely listed absent good cause shown.
 - No conditional guilty pleas.
- Passed the Senate but not the House. Parts of it may become law.

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 existing criminal rules to the Federal Rules of Criminal Procedure.
 - The revisions get rid of extraneous language and things like “motion for change of judge,” “bill of exceptions,” etc. They eliminate old rule provisions that involve moving paper around that aren’t really followed in the EDMS world.
 - We have achieved about a 20 percent reduction in word count, even while covering areas that weren’t previously covered in the rules.

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

- Partly to reflect case developments.
- Partly to reflect recent legislation—especially the 2019 omnibus criminal legislation, which among other things imposes limits on setting aside and appealing guilty pleas.

FILLING IN GAPS

- There was 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 a few **highlights**.
- Feel free to raise questions about these changes or anything else.

RULE 2.8 – ARRAIGNMENT AND PLEA

- Defense counsel may waive arraignment on defendant's behalf by executing and filing a form.
- The court may permit defense counsel to question the defendant as the guilty plea colloquy.
- The colloquy must include disclosure of the "elements of the offense."
- The colloquy must disclose surcharges and any other punitive consequences of the conviction. A more detailed standardized disclosure would be required for potential immigration consequences.
- A standardized written guilty plea form has been created.
- Written guilty pleas are permitted for class "D" felonies.

RULE 2.15 - SUBPOENAS

- The defendant may apply to the court for a pretrial subpoena under specific conditions. Notice to the prosecution and an opportunity for objection are required.
- The defendant may also seek a preservation order for evidence with notice to the prosecution.

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 State v. 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 (e.g., DVDs) 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 2.23 - 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.
- Written sentencing agreements are allowed, with court approval, for misdemeanors and class "D" felonies.

RULE 2.27 – PRESENCE OF DEFENDANT

- The court may allow the defendant to appear by video at any pretrial proceeding.
- The defendant may waive presence at a deposition with the prosecutor's consent.
- Defendants may appear at sentencing by video with consent of all parties.

RULE 2.64 – TRIAL (SIMPLE MISDEMEANORS)

- In a simple misdemeanor case, evidence to be offered as an exhibit at trial by any party--other than evidence solely for rebuttal or impeachment--shall be provided to all parties at least 7 days prior to trial.

QUESTIONS?

- Members of the Task Force:

- Judge Thomas Bitter
- Angela Campbell
- Mary Conroy
- Judge 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