

ICIS Charge Codes Issues

Simple Misdemeanors, Scheduled and Non- Scheduled Violations

This is a discussion of nomenclature of the Iowa Code. We have many scheduled violations defined by Chapter 805 of the Iowa Code. These cover most, but not all offenses under Iowa Code Chapters 321, 321G, 321L, 325A, 327B, 462A, 481A, 482, 483A, 484A. In addition, there are some "Miscellaneous scheduled violations" set up in 805.8(C).

In ICIS, we have a class code of SCHAT for these violations. We also created a class code of NSHT. This is intended to cover charges on Uniform Citation and Complaints that do not have fines set by 805. The alternative would be to classify all such offenses as simple misdemeanors.

We have a crime class of SMSM for all simple misdemeanors.

For those charges where the fine amount is not scheduled, we have to choose either NSHT or SMSM.

There is no guidance within the code.

We also have statutes which declare certain conduct to be a "Simple Misdemeanor", but punishable as a "scheduled violation". i.e. 321.216B and 321.216C.

It would be of benefit to the criminal justice system to clear all ambiguity by stating which offenses are simple misdemeanors, scheduled violations, or the hybrid we created called Non-scheduled violations.

In addition, we have places in the code where the penalty is set by statute without reference to Chapter 805. Should these be simple misdemeanors? Or can we consider them as "scheduled violations"?

For example, see 327G.32. The penalty section is 327.14, which in turn references 327C.5. There you find a 5 tier penalty section confusingly called "schedule violations" with fines ranging from \$100 to \$10,000. Another example is section 455B.191. Subsection 3 of that section sets forth a fine of not more than \$10,000; but no class of the offense is described. Normally, that would stand as a simple misdemeanor since no offense class is identified; however the amount of the fine is more than that allowed for a simple misdemeanor.

Overweight 321.463

Iowa code sets up a clumsy system to prosecute these violations. If the fine is less than \$1000, they are "scheduled violations", and magistrates have jurisdiction. If the fine is >\$1000, magistrates have jurisdiction if the offense is admitted to, but not upon a not guilty plea. If a person enters a not guilty plea, the case must proceed on indictment or information in the District Court.

Also, if the fine is > \$1000, the class code changes to either a serious misdemeanor or an aggravated misdemeanor depending on the amount of fine.

Issue #1 - Why not allow magistrates to hear all cases regardless of a plea of not guilty. (The trial issues are the same whether the offense has a fine of \$1 or \$10,000.) Prosecution by indictment trial information complicates the case for all parties without any substantive benefits to anyone.

Issue #2 – Why have multiple class codes for these offenses. An aggravated misdemeanor conviction for a motor vehicle weight violation seems a bit excessive.

Fraudulent Practice

There are several places with in the Iowa Code where certain conduct is a “Fraudulent Practice”. For example, 453A.37 (Cigarettes and Tobacco). We often get request to set up a charge code for these sections. Each request would add 5 codes to our index, 1st, 2nd 3rd, 4th and 5th degree offenses . I would propose that all existing and future provisions defining conduct as a “Fraudulent Practice” also state that the conduct be prosecuted under Chapter 714 of the code.

Multiple crimes within one unremunerated paragraph

In the perfect world, each law violation should have its’ own reference to a provision within the Iowa

Example Criminal Mischief: 716.3 Criminal Mischief 1st degree, 716.4 Criminal Mischief 2nd degree, 716.5 Criminal Mischief 3rd degree, 716.6 either Criminal Mischief 4th degree or Criminal Mischief 5th degree.

709.11 Assault with intent to commit sexual abuse: Can be a class C felony, a class D felony, or an aggravated misdemeanor, depending on the facts of the case.

455B.191 has three separate offenses all lumped together in one paragraph (also unnumbered).

Hate Crime enhancements

This is a similar problem to the multiple crime discussion above. One code section adds multiple penalties for prohibited conduct. Again, we end up with at least two charge codes under one code section. For example, Arson 712.9 enhances 7 crimes defined by 712.3 thru 712.8.

Second and Subsequent violations

Another variation on the issue above. No enumeration of enhanced penalties for additional violations.

See 728.15(1)

Another Enhancement Issue 481A.135

This well intended provision creates enhanced penalties for violations of wildlife, fishing and hunting regulations. In lieu of adding about 900 charge codes, we added three under this subsection. The tendency for prosecutors is to charge the underlying offense as an enhanced charge. A statement within this section that violators shall be prosecuted under this section would ease our administrative burden.

Redundancy 461A.36

This statute sets forth speeding violations within state parks and reserves. This is redundant to the other speeding violations in chapter 321. Since state parks and reserves (public lands) are all public highways/roadways, the speeding statutes already in place would apply. Why is there the need for separate ones? Doing so requires a minimum of 10 additional statutes to be added to the charging table process and would require the additional element at trial of proving the offense occurred within the boundary of the state park or preserve rather than just on a public roadway.

Persons under Legal Age 123.47

This is an often amended section, but illustrates a problem with enhancements of offenses.

A first offense charge is a "simple misdemeanor" but punishable as a scheduled violation. Scheduled violations are not reported as criminal convictions. Consequently, the enhancements for multiple violations will rarely be charged unless they occur within the same jurisdiction and the prosecutor or law enforcement catches it.

Assault and ever changing code section

This section illustrates issues associated with changing codes section on often used charge codes.

Assault was 708.2(4). The legislature enacted a new provision, 708.2(3A). The code editor changed this to 708.2(4), and made 708.2(5) Assault. Then, in 2003, the legislature created another law violation, 708.2(4A). Assault - Penetration of Genitalia or Anus with an Object. The code editor made this 708.2(5), making 708.2(6) our Assault.

Two issues: We are proactive in defining new law violations so that upon implementation, usually July 1 of each year, we have charge codes ready. We did set one up for 708.2(4A). After the code was revised we discovered the change and corrected our revisions.

The second issue relates to the dissemination of this information. After we changed our codes, we discovered that many County Attorneys were in the dark as well. Those people charged and convicted

with assault under 708.2(5), suddenly found they were convicted with Assault - Penetration of Genitalia or Anus with an Object.

Two suggestions: If the legislature defines the crime by a code section, leave it as they said it. If codes sections are undefined by the legislature, the new sub-section should be defined before implementation, a new charge code should be established, and information disseminated to County Attorneys encompassing all such changes.

321.236 and POWERS OF LOCAL AUTHORITIES

This code section allows local authorities to enact motor vehicle laws and parking regulations. However, local officers routinely write citations with this as the code for a particular violation. If we supported these request, we could have thousands of codes under this one section.

This section should specifically state that any local violations shall be prosecuted under the local ordinance promulgated by this authority.

Crime Classification

Once there were four levels of felonies, and three misdemeanors. ICIS was able to set up 7 crime classes.

Now we have new class codes creeping into the code. We have class B felonies, with terms not to exceed 50 years see 716.10(2)(a). We have 99 year sentences see 124.401D and 902.9.

I don't believe there is an immediate solution, but perhaps a review of all charge class codes is in order.

Crime Confusion

As new laws are enacted, we often have conflicting codes.

The legislature updated Iowa law to establish crimes for Operating a Boat while Intoxicated (462A.14) to parallel Chapter 321J. However, we still have a simple misdemeanor for similar conduct (462A.12). Similarly Chapters 321G and 321I have the same scenario for Snowmobiles and ATV's.

Chapter 322 penalties – fines range from \$250 to \$1500. How are these to be classified if the maximum fine for a simple misdemeanor is \$650?