



THE CHARGING INFORMATION AND CITATIONS TO THE INDIANA CODE

December 11, 2016

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Introduction. This information paper discusses how the Indiana Prosecuting Attorneys Case Management System (INPCMS) can be used to best specify the section of the Indiana Code being charged. It is important to consider this in some detail in light of the Indiana Supreme Court's mandate requiring that all cases use electronic filing and the requirement that criminal cases be fully initiated through the Indiana Electronic Filing System (IEFS) beginning March 1, 2019.

The Requirement. Indiana Code § 35-34-1-2(a)(3) requires that "[t]he indictment or information shall be in writing and allege the commission of an offense by . . . citing the statutory provision alleged to have been violated." Thus, the citation to the statute violated is an integral part of the information, a document whose "purpose . . . is to give the defendant notice of the crime for which he is charged, so that he is able to prepare a defense." *Salary v. State*, 523 N.E.2d 764, 766 (Ind. Ct. App. 1988) citing *Myers v. State* (1987), Ind., 510 N.E.2d 1360, 1366 (Ind. 1987). On the other hand, "any failure to include . . . [the statutory] citation or any error in such citation does not constitute grounds for reversal of a conviction where the defendant was not otherwise misled as to the nature of the charges against the defendant." I.C. § 35-34-1-2(a)(3).

The Indiana Code and the INPCMS. The Indiana Code's criminal provisions are usually written along the following lines. First, a statute will set forth the elements of the offense and its penalty in one sub-section. Another subsection will often add additional elements that aggravate the offense and raise the penalty. The battery statute is a prime example. Indiana Code § 35-42-2-1(c)(1) sets out the first of two basic, B misdemeanor offenses by saying "a person who knowingly or intentionally . . . touches another person in a rude, insolent, or angry manner . . . commits battery." Pursuant to I.C. § 35-42-2-1(e)(1), the offense becomes a level 6 felony if it "results in moderate bodily injury to any other person."

There are at least three possible ways to meet the I.C. § 35-34-1-2(a)(3) requirement when battery is elevated because the victim has suffered moderate bodily injury. First, the citation could simply be to the basic offense – i.e., I.C. § 35-42-2-1(c)(1). Next, the citation could be to the enhancing subsection – i.e., I.C. § 35-42-2-1(e)(1). Finally, the citation could list both subsections. Although any of these methods would be legally sufficient, the third is the best practice as there can be no doubt that the defendant has been given "notice of the crime for which he is charged." This is also helpful to the judge. The information's caption would look much like this:

STATE OF INDIANA)
) SS:
COUNTY OF GNAW BONE)

IN THE GNAW BONE CIRCUIT COURT
CAUSE NUMBER: 93C01-1510-L6-

STATE OF INDIANA

INFORMATION FOR:

VS

Battery with Moderate Bodily Injury
I.C. 35-42-2-1(c)(1) and I.C. 35-42-2-1(e)(1)
a Level 6 Felony

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Given that I.C. § 35-34-1-2(a)(3) would not require reversal in a case where the citation was incorrect, but not misleading, it would be possible to cite to the enhanced offense as I.C. § 35-42-2-1(c)(1)(e)(1). Such a citation would not be in conformance with the Uniform System of Citation or with citation rules promulgated by the Indiana Supreme Court. A citation such as this is not recommended.

In the INPCMS, the B misdemeanor battery offense is Offense 6661 and the offense of battery with moderate bodily injury is Offense 6664. When offenses are programmed into the INPCMS, a code provision must be entered. If the offense is elevated, the subsection containing the offense's basic elements is entered into a field called the "Statute." The subsection containing the enhancing elements is entered into the system in a field called "Penalty Statute." When a charging information is created in the INPCMS, the default is for only the subsection with the basic elements to populate the form. It is possible, however, to have the form populated with the basic subsection and with the subsection containing the enhancing language – i.e., the penalty statute.

Electronic Filing. The offenses available for a prosecutor to use in the INPCMS are the same offenses in use by the primary criminal and juvenile court case management systems – i.e., Odyssey, JTS, and Quest. When the offenses are mapped between the systems, one piece that does not get adopted by the other systems is the INPCMS Penalty Statute. Thus, when a case is electronically filed, the clerk only receives a citation to the basic subsection and not to the penalty statute.

Indiana Rule of Trial Procedure 86(C) mandates that "[a]n action must be commenced . . . by using the Indiana E-Filing System unless exempted by these rules . . . and . . . by filing a paper complaint and furnishing to the clerk the requisite number of copies of all documents in accordance with Trial Rule 3 within three (3) business days of initiating the case electronically." It is currently possible for prosecutors to file the charges electronically and to receive the cause number. From there it is also possible to generate and file the information. A problem that has come up concerns when the prosecutor does not fully initiate the case through the INPCMS and the INEFS and instead elects to print, sign and scan the information with the caption on the paper copy reflecting only the penalty statute. Clerks have been rejecting the filing when that occurs. A paper copy of an information that does not have a citation to the code that matches the one entered in electronically is a non-conforming document.

A recent amendment to Ind. T.R. 86(L) partially remedies this problem. The rule now specifies that “[t]he clerk may reject an e-filing only when: (a) the applicable filing fee has not been paid; or (b) the filer selected an incorrect case management system; or (c) the filer requests rejection.” However, the rule goes on to indicate that the judge can “strike the non-conforming document.”

Conclusion. As electronic filing moves forward, prosecutors are encouraged to use the citation to the basic statutory provision along with a citation to the penalty provision.

Those who need assistance in doing this should contact the INPCMS Helpdesk or the IPAC.