
SPECIAL RULES AND TECHNIQUES OF DRAFTING

I. JOINT RULE 21.

Under Joint Rule No. 21 of the Senate and House of Representatives, all bills must be submitted to the Office of Legislative Legal Services before introduction for approval as to form.

In every bill amending existing law, Joint Rule No. 21 must be applied to show what specific changes in existing law are made in the bill by using capitalization and cancelled letter type. At the discretion of the Office, when amendments are so extensive or compliance with the method of showing changes is not feasible, the repeal or repeal and reenacting methods may be used rather than the capitalization and cancelled letter method. The requirement to show changes in existing law by using capitalization and cancelled letter type is also specified in section 24-70-204 (2), C.R.S. The pertinent parts of Joint Rule No. 21 provide:

- (a) Bills which would amend existing law shall show the specific changes to be made to existing law in the following manner:
 - (1) All new material shall be capitalized.
 - (2) All material which is to be omitted from existing law shall be shown in its proper place in cancelled letter type; such material, however, shall not be deemed a part of the bill.
 - (3) The bill as printed shall show the following explanation at the bottom of the first page: 1) "Capital letters indicate new material to be added to existing statute;" 2) "Dashes through words indicate deletions from existing statute."

The foregoing shall not apply to those bills or sections of bills which repeal or repeal and reenact existing law with amendments, if compliance is not feasible in the discretion of the Office of Legislative Legal Services.

A. Capitalization requirements.

NEW MATERIAL IS ALWAYS SHOWN IN CAPITAL LETTERS.

The text of new material, regardless of length and even if it comprises an entire

section, part, or article, is always indicated in capital letters. New material is not shown in lower case in any part of a bill. The repeal and reenactment, recreation and reenactment, and enactment of new titles, articles, parts, sections, subsections, and smaller provisions should always appear in capital letters.

Several examples of capitalization requirements under Joint Rule No. 21 follow:

1. *Amending existing law and showing changes by use of capitalization and cancelled letter type.*

SECTION 1. 10-16-129, Colorado Revised Statutes, is amended to read:

10-16-129. Costs of administration. Every corporation subject to the provisions of this article shall pay annually on March 1 to the commissioner to defray the cost of administering and implementing the rate review procedures established under sections 10-16-125 to 10-16-128 an amount equivalent to ~~five cents per person enrolled in~~ ONE-FIFTH OF ONE PERCENT OF THE PREMIUMS COLLECTED OR CONTRACTED FOR ON the health service plans of such corporation ~~on December 31 of~~ IN the prior CALENDAR year.

2. *Amending existing law by the addition of a new article, part, section, subsection, etc. - capitalization of new material is required.*

SECTION 2. 26-2-111, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

26-2-111. Eligibility for public assistance. (7) IN ACCORDANCE WITH DEPARTMENT RULES, MEDICAL CARE WITH THE SAME SCOPE OF BENEFITS AS THE MEDICAL CARE PROVIDED IN ARTICLE 4 OF THIS TITLE UNDER THE "COLORADO MEDICAL ASSISTANCE ACT" SHALL BE PROVIDED TO THOSE PERSONS ELIGIBLE FOR AID TO THE NEEDY DISABLED DUE TO A TEMPORARY DISABILITY AS DEFINED IN SECTION 26-2-103 (6) (a) AND DEPARTMENT RULES.

3. *Amending existing law by the addition of a new subdivision to a section, combined with amendments to other subdivisions of the same section - the new subdivision is shown in capital letters.*

SECTION 3. 39-26-102 (15), Colorado Revised Statutes, is amended, and the said 39-26-102 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

39-26-102. Definitions. (2.7) "DIRECT MAIL ADVERTISING MATERIALS" MEANS DISCOUNT COUPONS, ADVERTISING LEAFLETS, AND OTHER PRINTED ADVERTISING, INCLUDING, BUT NOT LIMITED TO, ACCOMPANYING ENVELOPES AND LABELS.

(15) "Tangible personal property" means corporeal personal property. The term shall not be construed to include newspapers, as legally defined by section 24-70-102, C.R.S., or preprinted newspaper supplements which become attached to or inserted in and distributed with such newspapers, OR DIRECT MAIL ADVERTISING MATERIALS WHICH ARE DISTRIBUTED IN COLORADO BY ANY PERSON ENGAGED SOLELY AND EXCLUSIVELY IN THE BUSINESS OF PROVIDING COOPERATIVE DIRECT MAIL ADVERTISING.

4. Recreating and reenacting old law - the text of the new material is shown in capital letters, regardless of length.

SECTION 4. 25-4-1410, Colorado Revised Statutes, is RECREATED AND REENACTED, WITH AMENDMENTS, to read:

25-4-1410. Repeal of part. THIS PART 14 IS REPEALED, EFFECTIVE JULY 1, 2000.

B. Repealing existing law.

The repeal of a portion of C.R.S. is indicated by cancelled letter type unless the material being repealed exceeds one page or one section, in which case the repeal is indicated by a straight repeal clause.

When existing law is being repealed, the repeal is indicated by showing the material to be repealed in cancelled letter type preceded by an amending clause. However, if the repealed material exceeds one page or one section in length, the repeal may be indicated by a straight repeal clause without showing the text of the repealed material.

1. Repeal without other amendments.

SECTION 1. Repeal. 25-4-1506, Colorado Revised Statutes, is repealed as follows:

25-4-1506. Repeal of part. ~~This part 15 is repealed, effective July 1, 1992.~~

2. *Repeal combined with other amendments to same section.*

SECTION 2. 18-9-201.5 (3) and (4), Colorado Revised Statutes, are amended to read:

18-9-201.5. Scope of part 2. (3) ~~Nothing in this part 2 shall affect animal care otherwise authorized by law.~~

(4) Nothing in this ~~part 2~~ ARTICLE shall affect facilities licensed under the provisions of the federal "Animal Welfare Act of 1970", 7 U.S.C. sec. 2131 et seq., as amended.

3. *Repeal of material exceeding one page or one section in length - straight repeal.*

SECTION 3. Repeal. Part 15 of article 4 of title 25, Colorado Revised Statutes, is repealed.

C. Repealing and reenacting existing law.

Existing law should not be repealed and reenacted unless the existing material exceeds one page or one section in length.

When existing law is completely rewritten, it should be amended by showing the text of the existing law in cancelled letter type followed by the text of the new law in capital letters. However, if the existing law exceeds one page or one section in length, the existing law may be repealed and reenacted in which case the text of the existing law is not shown and the new material is shown in capital letters.

1. *Existing law does not exceed one page or one section.*

SECTION 1. 35-9-102 (21), Colorado Revised Statutes, is amended to read:

35-9-102. Definitions. (21) "Pesticide" means

~~(a) Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, nematodes, fungi, weeds, or other forms of plant or animal life or viruses; and~~

~~(b) Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.~~ ANY SUBSTANCE OR MIXTURE OF

SUBSTANCES INTENDED FOR PREVENTING, DESTROYING, REPELLING, OR MITIGATING ANY PEST OR ANY SUBSTANCE OR MIXTURE OF SUBSTANCES INTENDED FOR USE AS A PLANT REGULATOR, DEFOLIANT, OR DESICCANT; EXCEPT THAT THE TERM "PESTICIDE" SHALL NOT INCLUDE ANY ARTICLE THAT IS A "NEW ANIMAL DRUG" AS DESIGNATED BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION.

2. Existing law exceeds one page or one section.

SECTION 2. 35-10-111, Colorado Revised Statutes, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

35-10-111. Record-keeping. EACH COMMERCIAL, LIMITED COMMERCIAL, AND PUBLIC APPLICATOR SHALL KEEP AND MAINTAIN RECORDS OF EACH PESTICIDE APPLICATION IN THE FORM AND MANNER DESIGNATED BY THE COMMISSIONER * * *

D. An amended provision should be shown in context whenever helpful to a clear understanding of the amendment - "user-friendly" drafting.

A primary consideration in preparing bills should be to present changes to the law in a manner that facilitates clear understanding. Therefore, the drafter should include as much of a statute as deemed necessary to put a proposed change in context. The practice of amending the smallest subdivision of a section and not showing related subdivisions or introductory portions should be discouraged since it is not as likely to show amendments in context. Use of entire sections or subsections is preferred except where the length of the section or subsection makes this impractical or inappropriate (such as where the length of the additional material exceeds one page).

Additionally, a short introductory portion of a statute should *always* be included in a bill even though it will not be amended when one or more of the provisions following that introductory portion are being amended.

1. Amended material shown in context.

SECTION 1. 22-20-105.5, Colorado Revised Statutes, is amended to read:

22-20-105.5. Statewide information and communication network.
 (1) The department shall establish a statewide information and communication network in order to promote excellence in education for all students in public

schools, including gifted children.

(2) This section is repealed, effective July 1, ~~1993~~ 1995, unless the general assembly acting by bill continues said section.

2. *Introductory portion shown.*

SECTION 2. 25-1-107 (1) (s), Colorado Revised Statutes, is amended to read:

25-1-107. Powers and duties of the department. (1) The department has, in addition to all other powers and duties imposed upon it by law, the following powers and duties:

(s) To establish and enforce standards for exposure to toxic materials ~~in the gaseous, liquid, or solid phase~~ that may be deemed necessary for the protection of public health;

E. Specific applications of Joint Rule No. 21.

1. *Capitalization always to follow cancelled letter type.*

In applying the rule, first show the cancelled letter type if new material is to be substituted for the omitted material and then follow with the capitalized new material.

a. Correct application:

"The permit fee shall be ~~two~~ FOUR dollars."

b. Incorrect application:

"The permit fee shall be FOUR ~~two~~ dollars."

2. *Addition to un subdivided section.*

In adding new material to a section that has no numbered subsections, designate the existing section as subsection (1) and then add the new material as a subsection (2) in capital letters. Numbered subsections, paragraphs, and so forth cannot be added if the existing statute to be amended does not already contain numbered subsections, paragraphs, etc. The

entire section must be amended and all the new material must be in capital letters. Example:

SECTION 1. 30-11-103, Colorado Revised Statutes, is amended to read:

30-11-103. Commissioners to exercise powers of county - property of county. (1) The powers of a county as a body politic and corporate shall be exercised by a board of county commissioners therefor.

(2) ANY REAL OR PERSONAL ESTATE CONVEYED TO ANY COUNTY SHALL BE DEEMED THE PROPERTY OF SUCH COUNTY.

[The existing law before amendment contained only the first part of the section headnote and no subsection number (1).]

3. *Changes or additions to section headnotes.*

The example shown in section E. 2. above also illustrates a point with respect to rewording or extending section headnotes. The headnote of section 30-11-103, C.R.S., before being amended, contained only the words "**Commissioners to exercise powers of county.**" When subsection (2) was added, the content of the section was extended, and the extension should be reflected in the section headnote by adding the words "**property of county.**" However, in changing or expanding a section headnote, Joint Rule No. 21 need not be applied since section headnotes are not part of the legislative text. Many times, even though a section is amended or extended, the section headnote is comprehensive enough not to require change. The drafter should make any changes in section headnotes as short as possible and as descriptive of the changes covered by the amendment as possible.

A section headnote may not be changed by amendment unless substantive amendments to the text of the section are also being made. If necessary, section headnotes may be changed editorially by the Revisor of Statutes.

4. *Punctuation changes.*

Joint Rule No. 21 need not be applied to changes in punctuation since one obviously cannot capitalize a period, comma, or semicolon or put any one of them in cancelled letter type.

a. Correct application:

The applicant shall pay a fee of two dollars. ~~and~~ Any such copy of the record

is prima facie evidence

Merely insert the period in place of the existing comma. When punctuation is contained in a series of words in cancelled letter type, the strike type will run through the punctuation as in this example: "The commission shall ~~receive, investigate, and pass upon~~ HEAR complaints."

b. Incorrect application:

The applicant shall pay a fee of two dollars; ~~and any~~ ANY such copy of the record is prima facie evidence

5. *Parts of words.*

Do not cancel through or capitalize part of a word. Cancel through the entire word and capitalize the new word:

a. Correct application:

The ~~commissioner~~ COMMISSIONERS have the power

b. Incorrect application:

The commissionerS have the power

6. *Proposed constitutional amendments.*

Proposed amendments to the constitution of the state of Colorado will be concurrent resolutions rather than bills (either Senate or House concurrent resolutions depending upon where introduced), and, under the following rules of the House and Senate, Joint Rule No. 21 is applied to show changes to be made by amendment:

Rules of the House of Representatives

26. Resolutions and Memorials

- (b) House concurrent resolutions as well as Senate concurrent resolutions shall be treated in all respects as bills * * *

Rules of the Senate

30. Resolutions and Memorials

- (a) (2) Senate concurrent resolutions as well as House concurrent resolutions, shall be treated in all respects as bills All other provisions of these rules or the joint rules applying to bills shall also apply to concurrent resolutions.

7. *Blue and red penciling.*

As a standard practice in submitting a rough copy to a legislative assistant, the drafter should indicate those parts of the statute that are to be capitalized by underlining with blue pencil and indicate those parts that are to be deleted in stricken letter type by underlining with red pencil.

8. *Approval as to form by Office of Legislative Legal Services.*

Joint Rule No. 21 provides in part as follows:

**Joint Rules of the Senate
and House of Representatives**

21. Bills Which Amend Existing Law

- (d) All bills before being introduced shall be submitted to the Office of Legislative Legal Services for approval as to form pursuant to the provisions of this rule.

Bills drafted by this Office are drafted in compliance with Joint Rule No. 21; however, bills drafted by outside sources very often do not comply with the rule or the rule is not correctly applied. When reviewing bills from outside sources, it is the duty of the drafter to apply the rule and to make other necessary changes as to form and as to citations, capitalization of words, and so forth.

II. SUBSECTIONS, PARAGRAPHS - DEFINITIONS SECTIONS.

Subsections, except for definitions, almost always consist of complete sentences. If a section is to consist of an introductory clause ending with a colon followed by a series of numbered or lettered subdivisions, use a numbered subsection with paragraphs as follows:

A. Correct application:

- 11-8-105. Pledge of assets.** (1) A state bank may pledge its assets to:
- (a) Enable it to act as agent for the sale of obligations of the United States;
 - (b) Secure borrowed funds;
 - (c) Secure deposits when the depositor is required to obtain such security by the laws of the United States, by the terms of any interstate compact, by the laws of any state, or by the order of a court of competent jurisdiction;
 - (d) Otherwise comply with the provisions of this code.

B. Incorrect application:

- 11-8-105. Pledge of assets.** A state bank may pledge its assets to:
- (1) Enable it to act as agent for the sale of obligations of the United States;
 - (2) Secure borrowed funds;
 - (3) Secure deposits when the depositor is required to obtain such security by the laws of the United States, by the terms of any interstate compact, by the laws of any state, or by the order of a court of competent jurisdiction;
 - (4) Otherwise comply with the provisions of this code.

Partial sentences contained in subdivisions following a colon end with a semicolon; complete sentences in these subdivisions are punctuated with a period (see section 11-7-106 (1) (d), C.R.S.).

Definitions sections are slightly different since the introductory portion is not designated as a subsection. Each definition is given a separate subsection number; each subsection ends with a period - not a semicolon; and definitions are alphabetized. Note the standard introductory language for a definitions section: "As used in this title [article, part, section], unless the context otherwise requires:". For a definitions section that includes many different examples, see section 25-7-103, C.R.S. New words are inserted in alphabetical order, and decimal points (.1 through .9) are used to provide an appropriate subsection number. If a new word must be inserted before the word that is defined in subsection (1), the first definition should be stricken with the cancelled type, the new language inserted in its place, and the original definition should be added as a new subsection or the first definition may be repealed and reenacted as a subsection between (1) and (2), for example (1.5). See Appendix C of this manual for examples.

No substantive law should be included in a definitions sections. Definitions should

be just that - definitions.

Part 4 of article 4 of title 2, C.R.S., contains definitions that apply to every statute. For example, it is not necessary to define "person" in a new act as section 2-4-401 (8), C.R.S., already defines "person" and the definition applies to every statute. If the drafter wants a different definition for "person", then it is appropriate to redefine "person" in the new act.

III. AMENDMENTS OR ADDITIONS TO THE SAME SECTION OR ARTICLE IN TWO OR MORE BILLS.

Sometimes a bill already drafted or introduced amends the same section or adds new material, identically numbered, as the bill being prepared. If the bills are intended to accomplish the same result, the drafter may notify the sponsor of the later bill once all issues of confidentiality have been resolved. The sponsor who requested the later bill may prefer to introduce an amendment to the bill already drafted or introduced. (Beware of title and single-subject questions in this regard.)

Each bill must be drafted according to the statutes as they exist and not in relation to any bill that has not yet been enacted even though introduced. Bills amending the same section or adding to the same statute, with identical numbers, are usually considered by a committee of reference to which all bills on the same subject are referred, and necessary amendments are made to readjust the sections amended. Further, the Revisor of Statutes notifies sponsors and committee chairmen of these conflicting bills so that appropriate amendments may be made. When two or more bills enacted at the same session amend the same section, the Revisor of Statutes attempts to harmonize the amendments when preparing the Colorado Revised Statutes. If the amendments are irreconcilable, section 2-4-206, C.R.S., governs which amendment prevails.

Sometimes it is necessary to amend a section that has been amended or enacted in a bill adopted earlier in a particular session. The following are examples of the amending clauses for such an amendment:

SECTION 1. 16-7-403 (1), Colorado Revised Statutes, as amended by House Bill No. 97-1254, enacted at the First Regular Session of the Sixty-first General Assembly, is amended to read:

SECTION 2. 17-22.5-304, Colorado Revised Statutes, as amended by House Bill No. 97-1320, enacted at the First Regular Session of the Sixty-first General Assembly, is amended to read:

SECTION 3. The introductory portion to 37-90-137 (8), Colorado

Revised Statutes, as enacted by Senate Bill No. 97-5, enacted at the First Regular Session of the Sixty-first General Assembly, is amended to read:

IV. RULES OF STATUTORY CONSTRUCTION.

Every drafter should read article 4 of title 2, C.R.S., for general rules of statutory construction. Part 1 explains construction of words and phrases; part 2 concerns construction of statutes; part 3 deals with amendatory statutes; and part 4 contains definitions. In addition, drafters should read section 2-5-113, C.R.S., concerning the effect of the enactment of Colorado Revised Statutes 1973 and the use of editorial material in construing statutes.

Drafters should become familiar with "Sutherland Statutory Construction". It is a good source of information and commentary concerning issues such as: Legislative Power, Legislative Organization and Procedure, Legislative Form and Mode, Legislative Ability, Statutory Interpretation, and Application of the Rules of Statutory Construction in Selected Areas of Substantive Law. A set of Sutherland's is kept in the conference room library.

V. INADVERTENT OMISSIONS FROM EXISTING LAW.

Even though language to be deleted must be put in cancelled letter type, many times in drafting or typing a bill a word or words, a sentence, or even entire subsections or paragraphs that the drafter does not want omitted are omitted by inadvertence. This presents a serious problem since, if challenged, any wording omitted from an existing statute that is being amended may be construed by a court to have been repealed. The omission is usually caught in proofreading the final bill for introduction, but it is still extremely important that the drafter check each draft against existing law before it is finally typed as to the inclusion or other disposition of all provisions of the law that is being amended. This is particularly important in checking over a bill prepared by outside sources. A drafter should never rely on a document prepared by an outside source as being an accurate record of existing law. The drafter should retrieve the existing law from the Office's computer database and the legislative assistant should proof the bill draft against the actual statute.

Inadvertent omissions of language can also occur if the amending clause is inaccurate. The amending clause must identify *specifically* the statute or part of the statute to be amended. The following example illustrates how easily this very serious error can be made:

SECTION 1. 33-6-129, Colorado Revised Statutes, is amended to read:

33-6-129. Duty of district attorneys. (1) It is the duty of the district

attorney of the judicial district wherein any ~~violation~~ VIOLATOR of the provisions of this title ~~occurs~~ RESIDES to prosecute such violation.

Section 33-6-129, C.R.S., in existing law has two subsections numbered (1) and (2). In the draft, only subsection (1) is amended and subsection (2) is omitted entirely, whereas the amending clause states that the entire section is to be amended. If this amendment was enacted as drafted, subsection (2) of the existing law could be lost entirely. The amending clause should have stated that 33-6-129 (1) was to be amended.

A drafter should not rely on those proofing a bill to find and correct these types of errors; instead, each drafter should be certain to identify specifically what statutory subdivision is being amended and to check the copy carefully to see that none of the existing law has been omitted.

VI. INTERNAL REFERENCES.

A. References to Colorado Revised Statutes.

In amending and repealing clauses, Colorado Revised Statutes should be cited as "Colorado Revised Statutes". In bill titles, Colorado Revised Statutes should be cited as "Colorado Revised Statutes".

When referring to Colorado Revised Statutes in the body of a statute, which is practically always in connection with a section or sections, its abbreviated form should be used, i.e., "C.R.S." When referring to a statutory section *not* located in the same title as the section containing the reference, the abbreviated "C.R.S." notation, which is always set off by commas, should be used; all references to sections in the same title as the section being drafted are complete without the "C.R.S." notation. References to other sections within the same title are made to "section 5-6-301". However, in an amending clause or in a bill title, the word "section" should be omitted. When referencing a title, article, or part of a statute, reference the statute as it exists at the time of the amendment as well as to sections added or amendments made at a later date.

When citing a Colorado statute by using its short title, include as part of the citation the appropriate part, article, and title of the statute. For example:

... the "Colorado Auto Accident Reparations Act", part 7 of article 4 of title 10, C.R.S.

B. References to C.R.S. section subdivisions.

When referencing a subsection, paragraph, subparagraph, or sub-subparagraph within the same C.R.S. section, the specific subsection, paragraph, subparagraph, or sub-subparagraph should be part of the citation. For example, in a subsection other than subsection (1), use "paragraph (a) of subsection (1) of this section". In any paragraph of subsection (1) other than paragraph (a), use "paragraph (a) of this subsection (1)". In any subsection other than subsection (1), use "subparagraph (I) of paragraph (e) of subsection (1) of this section". In any sub-subparagraph of subparagraph (I) other than sub-subparagraph (B), use "sub-subparagraph (B) of this subparagraph (I)".

When making references within a different C.R.S. section, cite the section in its entirety with the specific subsection, paragraph, subparagraph, or sub-subparagraph placed after the section number. For example: "section 39-3-101 (1) (a)", "section 39-3-101 (1) (e) (I)", or "section 39-3-101 (1) (g) (I) (B)".

C. References to federal law.

Consistent with references to short titles of Colorado acts, references to short titles of federal acts are placed in quotation marks and capitalized wherever the official short title includes capital letters, e.g., section 602 of the federal "Social Security Act", or section 4 of the "Federal Hazardous Substances Act". A federal act usually has the first letter of each word capitalized and it should be quoted if it is the proper title of the act. Whenever possible, include the citations for the federal act. The popular name table in the final index volume of U.S. Code Annotated is extremely useful in finding the exact short title to a federal act. The word "Title" as used in a reference to a federal act is also capitalized and its number appears in roman numerals, for example: "Title XIX of the federal "Social Security Act"". The word "section" is not capitalized. References to federal law found in the United States Code take the following form: "42 U.S.C. sec. 1315". References to federal public laws are written "Federal Public Law 92-603". If the sponsor's intention is to include future amendments to the federal law in the citation, the phrase "as amended" should be included and is preferable to the phrases "and amendments thereto" or "as from time to time amended". The drafter should use as many references to a short title, U.S.C.A., and statutes at large as are available and known to be accurate.

D. References to committees of reference.

When referring to a committee of reference in a bill or a resolution, the drafter should use the correct name of the committee followed by the phrase "or any successor committee". This is necessary to avoid inaccurate references in the statutes if the general assembly changes the name of the committee. For example, "The report shall be submitted to the business affairs and labor committee of the house of representatives, or any successor

committee, and the business, labor and technology committee of the senate, or any successor committee." If the committee of reference is a statutorily created committee like joint budget committee or legislative audit committee use the statutorily-given name and do not include the successor committee phrase.

VII. USE OF PLAIN LANGUAGE.

Under section 2-2-801, C.R.S., the staff of the Office of Legislative Legal Services and others are required to draft bills and amendments in plain, nontechnical language:

2-2-801. Plain language requirement in state laws. Any person, including members of the general assembly and employees of each house of the general assembly, the office of legislative legal services, the legislative council staff, and the staff of the joint budget committee, shall ensure that, to the extent possible, *all bills and amendments to bills prepared or proposed by such person are written in plain, nontechnical language and in a clear and coherent manner using words with common and everyday meaning which are understandable to the average reader.* Enactment of a bill by the general assembly shall create a presumption that such bill conforms to this section. (Emphasis added.)

In addition, section 1-40-105 (1), C.R.S., provides similar requirements for initiatives:

1-40-105. Filing procedure - review and comment - amendments - filing with secretary of state. (1) The original typewritten draft of every initiative petition for a proposed law or amendment to the state constitution to be enacted by the people, before it is signed by any elector, shall be submitted by the proponents of the petition to the directors of the legislative council and the office of legislative legal services for review and comment. *Proponents are encouraged to write such drafts in plain, nontechnical language and in a clear and coherent manner using words with common and everyday meaning which are understandable to the average reader.* Upon request, any agency in the executive department shall assist in reviewing and preparing comments on the petition. No later than two weeks after the date of submission of the original draft, unless it is withdrawn by the proponents, the directors of the legislative council and the office of legislative legal services, or their designees, shall render their comments to the proponents of the petition concerning the format or contents of the petition at a meeting open to the public. *Where appropriate, such comments shall also contain suggested editorial changes to promote compliance with the plain language provisions of this section.* Except with the permission of the proponents, the comments shall not be disclosed to any person other than the proponents prior to the

public meeting with the proponents of the petition. (Emphasis added.)

Guidelines for the use of plain language.

In drafting bills and amendments, drafters should consider the following guidelines to ensure that the written product is written in plain language:

1. *The meaning of statutes should be clear and easily understood.*

All of the concepts presented here are directed towards making the statutes clear in meaning and understandable to the public.

2. *Use proper grammar and follow the drafting manual requirements - use standard English.*

3. *Use simple sentences.*

4. *Be brief, but not to the extent that clarity is lost.*

5. *Use the active voice in your sentences.*

Passive voice: A notice *shall be mailed* by first class mail by the commission to the parties within fifteen days after issuance of an order.

Active voice: The *commission shall mail* a notice by first class mail to the parties within fifteen days after issuance of the order.

6. *Provisions should generally be stated in the present tense.*

Future tense: The penalty for any violation of this section *shall be* one hundred dollars.

Also note that this sentence uses "shall" to indicate a future occurrence. In the statutes, "shall" should be used to indicate a command. (See paragraph 20. a. below.)

Present tense: The penalty for any violation of this section *is* one hundred dollars.

7. *Provisions should generally be stated using the singular instead of the plural.*

See also, section 2-4-102, C.R.S., for construction of statutes.

8. Use base verbs.

Nominalization: The commission shall *make a determination* whether the application is approved within fifteen days of filing.

Base verb: The commission shall *determine* whether the application is approved within fifteen days of filing.

9. Use common words, avoiding technical terms or "legalese". However, terms of art should be used if they are appropriate.

10. Use the common meanings of words.

Strained meanings for words, even if precisely defined in the statutes, may lead to confusion or misinterpretation.

11. Avoid redundant phrases.

Examples: Null and void; full and complete; true and correct.

12. Use only necessary words.

Courts attempt to give meaning to all words in a statute. There shouldn't be any unneeded words.

13. Avoid the use of archaic terms.

14. Be consistent in the choice of words, both in the bill and throughout the law.

Check to see what terms are already used in the statutes, the constitution, or the rules.

Example: "Handicapped" is no longer used in the statutes. A "handicapped person" may now be described as a "person with a disability".

15. Do not use provisos.

Example: An application for a concealed weapon shall be approved *provided that* the applicant has not been convicted of more than five homicides.

Suggestion: An application for a concealed weapon shall be approved *if (so long as)* the applicant has not been convicted of more than five homicides.

16. *If possible, express provisions positively rather than negatively.*

Examples:

Negative: The commission *may not reject* a renewal application if the application is complete and the applicant has not been convicted of any crime specified in section 56-2-202.

Positive: The commission *shall approve* a renewal application if the application is complete and the applicant has not been convicted of any crime specified in section 56-2-202.

17. *Avoid gender-specific terms.* (See the section on gender-neutral language in the chapter of this manual titled "Grammar and Style".)

Attempt to use terms that are not gender specific. While it is not encouraged, the phrases "his or her" or "he or she" may sometimes be used to avoid lengthy repetition of a noun.

18. *Use the structure of the statutes to assist you.*

A sentence that is lengthy or difficult to follow may be made clear through the proper use of subdivisions in the statutes.

19. *Do not use multiple expressions of the same statutory requirement in the statutes.*

At times there are attempts to put the same statutory requirement in more than one place in the statutes rather than enacting the provision once and providing cross references when necessary. Multiple expressions of the same statutory requirements may cause confusion if the multiple provisions aren't worded exactly the same. In addition, there is the possibility that future legislation may inadvertently change some but not all of the provisions.

20. *Certain words should be used for specific purposes in the statutes:*

(a) "**Shall**" indicates a command. "**Will**" should not be used as a substitute for "shall".

A common problem in legislative drafting is that the word "shall" is often used to indicate a legal result rather than a command. This is known as a "false imperative". An example of this usage of "shall" is the following:

False imperative: The advisory committee *shall consist of* the director of the office of planning, the director of the personnel division, and the executive director of the

department.

Alternatives: The advisory committee *consists* of the director of the office of planning, the director of the personnel division, and the executive director of the department.

or

The *members of the advisory committee are* the director of the office of planning, the director of the personnel division, and the executive director of the department.

(b) Use "**may**" to grant discretion or authority.

(c) Use "**may not**" to prohibit.

(d) "**And/or**" should not be used in the statutes. The disjunctive "or" includes the conjunctive "and" and may be used. It is also acceptable to use a phrase such as the following: "The penalty for a conviction of any provision of this section is six months imprisonment, a five hundred dollar fine, *or both.*"

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