

The Connecticut General Assembly

Legislative Commissioners' Office

Edwin J. Maley, Jr.
Commissioner
William A. Hamzy
Commissioner

Larry G. J. Shapiro
Director



Legislative Office Building
Suite 5500
Hartford, Connecticut
06106-1591
(860) 240-8410
fax (860) 240-8414
e-mail: lco@cga.ct.gov
<http://www.cga.ct.gov/lco>

BASIC CONSIDERATIONS IN DRAFTING LEGISLATION

Prepared by the
Legislative Commissioners' Office

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Table of Contents

Page

1	Considerations in Drafting
3	Usage and Style
3	Order of Sections
4	Prefatory Language
5	Effective Dates
5	Changing an Existing Statute: Deleting Old Language and Adding New
6	Basic Drafting Conventions
6	Designation of Divisions of a Section
7	Definitions
8	Shall and May
8	Use Active Verbs, Present Tense, Singular, Gender Neutral Language
8	Use the Present Tense
9	Punctuation and Quotation Marks
9	Numbers
10	And/Or
10	Exceptions, Provisos, "Notwithstanding" Clauses
11	Miscellaneous
12	Clarity and Accuracy

CONSIDERATIONS IN DRAFTING

All official legislation at the Connecticut General Assembly is drafted by or processed through the Legislative Commissioners' Office (more commonly known as LCO), the General Assembly's legislative drafting office, which employs nonpartisan attorneys and support staff.

This guide is intended for people who do not draft legislation on a regular basis but want to either submit legislative requests or legislation to legislators in a more formally drafted manner or to understand some of the reasons that their submitted proposal was drafted the way it was by LCO.

Every statute, and therefore every bill, should state who has to do what, who may do what or who is prohibited from doing what. It should state this clearly and precisely. There are four main errors people make when drafting legislation: 1) They try to make it sound "legal"; 2) they don't use terms consistently throughout the bill; 3) they know the subject matter so well that what's clear to them is not necessarily clear to others; and 4) the bill was drafted by a group that was more concerned about coming to a consensus and finding language everyone in the group could agree on than they were with finding clear language and a well-organized structure.

The most important aspect of good drafting is thinking the bill through. Will it be clear to a reader who isn't an expert in the field? What are the ramifications? For example, if a law reads, "All citizens shall have access to free medical care in times of national or state emergencies", who is supposed to provide the free medical care? Will private medical personnel be reimbursed for providing the care, and if so, by whom? May a medical provider decline and is there a penalty for doing so? Who would impose the penalty and enforce the law? What constitutes a national or state emergency? What types of medical care would be covered? These are but a few of the questions the drafter should ask.

There are many resources for information about bills, the General Assembly and the political process.

These resources include:

- "How a Bill Becomes a Law" flowchart under the "Citizen Guide" section of the General Assembly web site
(www.cga.ct.gov/html/bill.pdf)
- "Abbreviations and Acronyms" list under the "Legislative References" section of the General Assembly web site
(<http://cga.ct.gov/asp/menu/Acronyms.asp>)
- "Terms and Definitions" list under the "Legislative References" section of the General Assembly web site
(<http://cga.ct.gov/asp/content/Terms.asp>)
- The Office of Legislative Management web site
(<http://cga.ct.gov/olm/>)
- The Legislative Commissioners' Office web site
(<http://cga.ct.gov/lco/>)
- The Office of Legislative Research web site
(<http://cga.ct.gov/olr/>)
- The Office of Fiscal Analysis web site
(<http://cga.ct.gov/ofa/>).

Specific bills can be tracked during the legislative session through the General Assembly web site at www.cga.ct.gov.

USAGE AND STYLE

Although the goal in drafting is clarity and accuracy, the drafter is restricted by certain considerations. One is that some statutes, although being amended today, have been around for fifty or one hundred years or more. If the drafter suddenly uses modern language with different style conventions in the middle of an older statute, the reader (and often a court) is left to guess whether the change was merely an attempt to "clean up" the language or whether the legislature intended some substantive change. Thus, a drafter may have to write the bill to conform to the style and language used in an existing statute.

Another consideration is that some bills may become new statutes that will be around fifty or a hundred years in the future and what is plain language today may not be so in the future. Because of this, drafters should not abandon style and usage conventions too readily.

Yet another consideration in usage and style arises when a model act or model language is used as the basis of a bill. Frequently, changes must be made to the model language in order to match the statutory style and usage conventions of the General Statutes or to merge such act or language into existing statutes. Similarly, when a federal statute or a statute from other states is used as the basis of a bill, changes must also be made to the language of such statute to match the statutory style and usage conventions of the General Statutes.

ORDER OF SECTIONS

The order of sections, like deciding where to break things into sections, is mostly a matter of common sense. For example, a section establishing an agency should come before a section spelling out the agency's duties and a section making something illegal should come before the penalty section.

The general order of sections is as follows:

- 1) Definitions
- 2) Most significant rules and provisions
- 3) Secondary rules and provisions and important exceptions
- 4) Housekeeping provisions (*e.g.*, updating references to statutes within the bill - this is usually something that can be left to the LCO)
- 5) Penalties
- 6) Appropriations

- 7) Repealer section, *i.e.*, the outright repeal (as opposed to modification) of a statute

This order may be varied to fit the needs of a particular situation (*e.g.*, #2 and #3 above may be combined in many instances), and few bills will have all the types of sections in this list.

PREFATORY LANGUAGE

The prefatory language of a bill tells the reader whether the bill is creating new law or amending existing law (see section following for Effective Dates).

If new, the prefatory language will be simply the word "new" in capital letters and in parentheses, followed by the effective date of the section.

Example:

Section 1. (NEW) (*Effective October 1, 2015*) The dinosaur footprint of Eubrontes is the state fossil.

Sec. 2. (NEW) (*Effective October 1, 2015*) Each person who excavates a site designated a prehistoric site shall....

If the bill is not creating an entirely new law but is instead changing (amending) an existing statute, the drafter uses standard prefatory language to inform the reader what statute is being changed (but note that the existing law is not really "repealed", merely amended).

Example:

Sec. 8. Subsection (a) of section 51-165 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

In even-year sessions, the drafter might be amending a statute that was newly enacted or amended in the preceding year. In such a case, the drafter cites in the prefatory language the section of the even-year supplement to the General Statutes.

Example:

Sec. 5. Section 54-86l of the 2014 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

Note: The entire General Statutes are republished biennially, near the start of each odd-year session. Near the start of each even-year session, a supplement to the General Statutes is

published. The supplement only includes new statutes enacted during the preceding odd-year session or previously existing statutes that were amended during the preceding odd-year session.

To find out if a statute has been amended in the preceding odd-year session, look in the reference table of *General Statutes Amended or Repealed* or in the even-year supplement to the General Statutes for that year.

Occasionally, there are statutes with double sections, *i.e.*, existing statutes with amendments that will go into effect in the future. Such occurrences are rare and beyond the scope of this document; if the drafter is faced with such a circumstance, the LCO may be contacted for guidance.

EFFECTIVE DATES

The effective date of each section is enclosed in brackets at the end of the prefatory language of the section and italicized.

Example:

Sec. 8. Subsection (a) of section 51-165 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

The default effective date is **October 1**, although budget-related bills and bills containing appropriations are usually given effective dates of **July 1**, the start of the state's fiscal year.

Public acts may be **effective from passage** in compelling circumstances, with consideration given to fairness in providing people with adequate advanced notice of the new law. There are potential due process problems with acts that are effective upon passage; also, care should be taken that a section that is effective from passage does not "jump the gun" (*e.g.*, a section authorizing a commissioner to adopt regulations pertaining to a new law is effective upon passage but the actual new law section has an effective date of October 1).

Bills that are effective from passage take effect on the date the Governor signs the bill, *not* on the date the bill passes both houses.

CHANGING AN EXISTING STATUTE: DELETING OLD LANGUAGE AND ADDING NEW

When drafting legislation to amend an existing statute, proposed deletions are indicated by bold brackets and new language by underscoring. Remember to delete, then add (*i.e.*, the bracketed language that will be deleted should come

before the new underlined language). However, punctuation doesn't stand alone, so it must be deleted along with deleted wording and, if still needed, added back in as "new" punctuation.

Example:

Violators [shall] may be fined not more than [three] thirty dollars. [and fifty cents.]

Note: If an entire section is new (see section on Prefatory Language earlier in this document), the language in the section should not be underscored.

BASIC DRAFTING CONVENTIONS

Designation of Divisions of a Section

The usual division of a section and the name of each division is as follows:

Section

- (a) Subsection
- (1) Subdivision
- (A) Subparagraph
- (i) Clause
- (I) Subclause

A subsection is usually the smallest independent unit used in drafting bills, although subsections, subdivisions and subparagraphs may be separate paragraphs. There are no rules on when to further divide a subsection other than clarity and ease of reading, but if there is only one subsection, no designation is needed (*i.e.*, if there is no "(b)", there is no need to label the lone subsection as "(a)").

Subsections are like paragraphs in formal English: each paragraph should contain a central thought, with all the sentences contributing to that thought. The creation of each subsection informs the reader that the bill has reached a new step in the subject's development.

When citing a subunit of a section, the current convention is to reference each unit from the smallest to the largest, keeping in mind that the **subparagraph ((A), (B), etc.) is the smallest unit that is cited.**

Example:

Subdivision (2) of subsection (d) of section 38a-760b of the general statutes (NOT: section 38a-760b(d)(2)).

Example:

Subparagraph (B)(v) of subdivision (2) of subsection (a) of section 38a-92m of the general statutes (NOT: subclause (v) of subparagraph (B) of subdivision...).

Example:

Subparagraph (A)(i)(I) of subdivision (3) of this subsection.

Subdivisions ((1), (2), (3), etc.) should be used in a definitions section, and may be used even if there is no previous subsection division (*i.e.*, even if there is no "(a)").

Example:

Section 1. (NEW) (*Effective October 1, 2015*) As used in sections 1 to 4, inclusive, of this act:

- (1) "Commissioner" means the Commissioner of Public Health;
- (2) "License" means any license, certification or permit issued pursuant to section 20-13a of the general statutes; and
- (3) "Practitioner" has the same meaning as provided in subsection (a) of section 14-92 of the general statutes.

Parts of a section may also be numbered when subsection designators ((a), (b), (c), etc.) have not been used, if the numbered provisions are part of a single sentence.

Example:

Sec. 2. (NEW) (*Effective October 1, 2015*) In order to qualify as a practitioner, a person shall (1) notify the commissioner, in writing, not later than thirty days before commencing practice, (2) obtain a license, and (3) pay a fee of five dollars.

Definitions

When drafting a definition, the phrase to use is "'____' means ____". Or, if referencing a definition elsewhere in the statutes, the phrase used is "'____' has the same meaning as provided in sub____ of section ____ of the general statutes".

Use definitions sparingly. They should be included when a word is used in a specific way or if a term has a technical meaning peculiar to the bill, *e.g.*, "alcohol" may need to be defined depending on whether the context is drinking, storage of flammable liquids or fuel additives. Do not provide the commonly understood meaning of a common word.

Do not include a definition if the term is not used in the rest of the bill.

Definitions may be used to simplify and avoid repetition. If a bill needs to make frequent reference to the Department of Mental Health and Addiction Services, defining the term once (" "Department" means the Department of Mental Health and Addiction Services") allows the use of "department" thereafter (assuming the bill applies to only one department).

Do *not* include substantive law in a definition, *e.g.*, a provision that imposes a condition (bolded in example below).

Example:

"Alcohol" means any series of hydroxyl compounds used as a motor vehicle fuel additive **and no motor vehicle fuel containing alcohol shall be sold unless clearly labeled as containing alcohol.**

Shall and May

A requirement is indicated by the use of "shall" -- do not use "must".
Permission or authority is indicated by the use of "may".

Sometimes "shall" is used to authorize an action; the drafter should consider whether "shall" in this case really means "may".

Example:

The phrase, "The commissioner shall be authorized to issue..." is not a requirement; it confers discretion to the commissioner to take some action. In the interest of clarity and simplicity, this is better worded as "The commissioner may issue...".

Use Active Verbs, Present Tense, Singular, Gender Neutral Language

When drafting, use active verbs, not passive.

Example:

The Governor shall appoint a committee (NOT: A committee shall be appointed by the Governor).

Use the Present Tense.

Example:

Any person who fails to... (NOT: Any person who shall have failed to...).

Use the singular unless the plural is required. Subsection (f) of section 1-1 of the general statutes allows the singular to be construed as the plural and the plural as singular when appropriate. When the words may be singular or plural, do not use "(s)".

Avoid personal pronouns and never use "he/she". "A nurse may administer a controlled substance if the nurse is registered with the department...." or "A nurse, if registered with the department, may administer a controlled substance...." is preferable to "A nurse may administer a controlled substance if she is registered with the department...".

Punctuation and Quotation Marks

Punctuation marks that follow quotation marks are placed outside the quotation marks, not inside, unless part of the quoted material itself.

Example:

For the purposes of this section, "insurance-support organization" does not include "consumer reporting agency".

Example:

Such acknowledgment may be transmitted by facsimile or by e-mail and shall read as follows: "I am aware of my right to choose the licensed repair shop where the damage to the motor vehicle will be repaired."

The statutes do not use a final comma in a series; however, if the series is enumerated, use a final comma.

Example:

Apples, pears and oranges (NOT: Apples, pears, and oranges).

Example:

(1) apples, (2) pears, and (3) oranges.

Numbers

Use words, not figures, to express numbers.

Do not follow a number with a numerical figure in parentheses.

Do not write "two hundred and fifty dollars"; write "two hundred fifty dollars".

Example:

Each organization shall pay a late fee of one hundred dollars per day (NOT: ...one hundred dollars (\$100) per day).

Write out all numbers except section numbers, citations and *full* dates.

Example:

"July first" and "July 1, 2015" are both proper.

And/Or

Never use "and/or". Sometimes adding "or both" will convey the meaning of "and/or" but usually just "or" will do.

Example:

To qualify for the exemption, a person shall be over sixty-five years of age, have an annual income of less than thirty thousand dollars, or both (NOT: ...shall be over sixty-five years of age and/or have an annual income...).

Note: simply inserting "or" between the age and income requirements is sufficient (the "or both" becomes unnecessary).

Exceptions, Provisos, "Notwithstanding" Clauses

An exception is used when the general application of a law does not apply. An exception should be limited in application and narrowly and precisely stated. Do not use an exception if it would be clearer to use "but" or "if".

Example:

Sec. 5. (a) Except as provided in subsections (b) and (c) of this section, a person is justified...

Example:

The members shall receive no compensation for their services, ~~except that~~ *but* the towns applying for withdrawal or dissolution shall pay members' expenses.

A proviso is introduced by "provided". It should be used sparingly and *only* to mean "on the condition that".

Example:

(a) A drawer negotiating a check who knows that payment of such check will be refused by the drawee bank is liable to the payee for damages, *provided* the payee has presented such check for payment, the check is dishonored and the drawer fails to pay the face amount of such check within thirty days.

Sometimes, what appears to be a proviso would be better as a separate sentence or even a separate subsection.

Example:

Section 1. (NEW) (*Effective October 1, 2015*) Wherever the term "health officer" is used in any special act, the legislative body of the municipality affected may, by ordinance, substitute the term "director of health", provided the clerk of such municipality shall notify the Secretary of the State of the effect of such ordinance not later than ten days after its adoption.

Can be reworded as follows:

Section 1. (NEW) (*Effective October 1, 2015*) (a) Wherever the term "health officer" is used in any special act, the legislative body of the municipality affected may, by ordinance, substitute the term "director of health".

(b) The clerk of a municipality making any change authorized by subsection (a) of this section shall notify the Secretary of the State of the effect of such ordinance not later than ten days after its adoption.

Notwithstanding" means "despite" or "in spite of". Sometimes it is necessary to "notwithstanding" contrary or conflicting provisions of existing law wherever they may appear. Since the reader of the contrary or conflicting law may not know of the new, superseding provision, such sweeping "notwithstanding" clauses should be used as seldom as possible.

Example:

Notwithstanding sections 16-19 and 16-19a of the general statutes, for the period from July 1, 2015, until December 31, 2016, the base rates paid to an electric company by any customer in the state for electric services shall not exceed the base rates that have been approved by the Public Utilities Regulatory Authority....

Miscellaneous

Do not use "etc." or any abbreviations.

Do not use words such as aforesaid, hereunder, beforementioned, hereby, herein, hereinafter.

Do not use pairs of words having the same effect, *e.g.*, each and every, order and direct, unless and until, sole and exclusive, over and above.

Do not use an obscure word when a simple and familiar one will suffice.

CLARITY AND ACCURACY

The drafter should review the language of the bill to check that it is clear and conveys what the drafter intends. If a bill states, "Each operator licensed on or after October 1, 2015, shall inform the department of such operator's telephone number", does that include operators who hold current licenses issued prior to that date or does it apply only to operators who are granted a license on or after that date?

Be careful not to create ambiguity. For example, "A nurse may administer a controlled substance if registered with the department..." raises the question as to whether it is the nurse or the controlled substance that must be registered.

The drafter should use terminology consistently throughout the bill. If the term "organization" is used in the beginning, the drafter should avoid using synonymous terms such as "company", "group", "association", etc. While used comparably in the real world, the use of different terms in a bill to mean the same thing can confuse the reader and a court. Use the same term consistently throughout a bill, especially if the term is defined.