

Codification Presentation

Introduction

Members of the Criminal Code Reorganization Committee:

Charge

Your Committee is charged with the duty of considering proposals for Criminal Code revisions, reorganization, and updates. Because the work of the Committee will have an impact on the work of the Iowa Code Office and the bill drafting unit of the Legislative Services Agency, I would like to take this opportunity to discuss a number of issues related to revision and codification of the statutory law, issues related to changes to criminal law, and finally issues relating to computerization and Code resources. I do have some suggestions and recommendations to make.

Criminal Code revisions, reorganization, and updates

The last major revision and reorganization of our criminal laws took place in 1976 when the Iowa General Assembly passed SF 85 that did two major things:

1. Most, though not all, of the provisions prohibiting certain conduct or activities and providing penalties were revised so that the crimes described followed certain patterns, used similar terminology, and were classified as a type of public offense with a consequential penalty or penalty range.

2. Many, though not all, of the crimes were grouped together and organized in a sequential fashion so that they could be more easily found. It may interest you to know that, at the time these changes were enacted, those Code chapters were not assigned chapter or section numbers by the General Assembly, because the practice at the time was for the Code Editor to assign chapters and section numbers to newly enacted legislation.

The 1976 changes were codified in 1978. Since 1978, codification of changes in the criminal law has mostly involved taking changes made by the general assembly and placing them within the chapter or chapters assigned, making changes to those provisions only on an as needed basis to correct manifest errors or inconsistencies or to update terminology or citations.

Codification defined

Codification by definition means:

1. Compiling all existing, currently effective, statutory law of this state of a general and permanent nature into a single publication.

My office accomplishes a "good codification" of an enactment when the final product accurately represents the work of the general assembly on a particular point of law, in a manner which is clear and simple enough to provide adequate notice to the public of the subject matter being regulated and the steps that must be followed or avoided under the regulation. If a penalty is part of the codification, it must be clear just what the penalty is and under what circumstances, against whom, and by whom it will be assessed.

2. Rearranging, revising, and rewriting portions of those compiled laws with the goals of simplifying, clarifying, and reducing the body of statute law into one harmonious whole, but without changing the meaning or eliminating any portions, unless expressly authorized.

That is to say we create a "good code", when the law found in our Code is organized in a logical and systematic manner that provides fair and reasonable notice of the contents of law and that allows the user to easily determine what the law is and how to locate it.

The point of codification, like many other aspects of our legislative process and structure, is to provide notice of and access to current law to the citizens in a timely manner. What the definition of codification demonstrates is that although the work of a Code Editor under Iowa Code section 2B.13 involves the assembling of the laws and simplifying, clarifying, and harmonizing the law, those duties do not involve the making of new policy, because they do not include "changing the meaning or eliminating any portion of the law" unless expressly authorized. This latter aspect of codification is important because it underscores the fact that the General Assembly is the body constitutionally authorized to make state law. So, it is hardly surprising that although my editorial duties involve making changes to the law, any recommendations for "amending, revising, codifying, and repealing portions of the statutes" have to be submitted in the form of a study bill to the general assembly under the terms of Iowa Code Section 2B.6(1).

Changes to Codification Work

The differences between how we do things now and how they were done in 1976, include the following:

1. We no longer assign chapter and section numbers to enacted legislation, those are done in the bills themselves.
2. The extent of and limits on the Editor's discretion is now more explicitly expressed in the Code (Code section 2B.13).
3. The Code is now been computerized. The Code is produced in a variety of forms and we have electronic search and bill drafting tools to assist us in legislative work. Desktop publishing of the Code is now done in-house--although the actual assembly of the Code database is still a largely manual process and the computer system used to produce the database is almost 25 years old.
4. The size of the Code has expanded from approximately 3800 text pages, including the Court Rules, to more than 7500 text pages.

Last Major Code Reorganization and Current Organization

The last major Code reorganization took place in 1993. For several years prior to that reorganization, the Code editor worked with members of the Iowa Bar to attempt to develop a logical plan for reorganization of the Code that would better organize subject matter without causing major disruption in the law. The result of that work, and what formed the basis of the Code we have today, was the organization of the subject matter found in the Code into the current 16 titles, which was further broken down, for the first time, into smaller subtitles, in an attempt to further categorize the information contained

in our law. Information relating to that reorganization is contained in the Appendix to these remarks. Those titles roughly not only outline the various major subject matters found in our law, but also generally reflect the organization and administrative authority of state and local government and the remedies available to persons seeking relief from those entities. Generally speaking, each title includes chapters organizing the state departments and agencies or local entities with administrative responsibilities or jurisdiction over the particular subject matter in question and chapters regarding the entities or activities which are either part of that subject matter and/or subject to the administrative authority of the governing bodies found in that title. Code chapter 124 is an example of a subject matter grouping (controlled substances regulation and remedies) where major administrative and criminal law remedies are combined with regulatory provisions affecting manufacturers and distributors. The Code text is also now broken into 6 volumes, each containing several whole titles. Volume VI contains the titles relating to the judicial branch and criminal law and procedure.

Title XVI is the location, of most of the general categories of crimes and the classification scheme established in the 1976 revisions, as amended by the General Assembly in 1977, 1978, and subsequent years. As a practical matter, although Title XVI is entitled "Criminal Law and Procedure," that is somewhat of a misnomer, since many, if not most of the chapters in the Iowa Code contain criminal penalties of one sort or another, making it virtually impossible to group all of the crimes and penalties together. Title XVI is also the location of many although not all of the procedural rules relating to criminal cases. Some of the procedural rules that apply to both civil and criminal cases, as a consequence, are located instead with the statutes governing civil trials.

Criminal Law and Criminal Law Principles

This particular point, together with the prior point about criminal penalties being scattered throughout the Code illustrates one of the biggest challenges that my office faces—how to logically and systematically organize the Code so that the contents are easily accessible to the user but without disrupting the law as it is understood and enacted. In addition, the principles relating to construction of criminal statutes and those that affect codification make the drafting of criminal statutes especially problematic.

Generally, the criminal law principles that affect codification work include:

1. Construction of criminal statutes against the state.
2. Prospective application of new or enhanced penalties.
3. Retroactive application of reduced penalties.
4. The general savings clause that preserves the meaning of a criminal law provision in any enactment that is a continuation of an old law.

In the Statutory compendium of the Appendix are examples of a variety of problems and questions that currently exist and affect criminal law and penalties, some of which existed even immediately after the 1976, 1977, and 1978 legislative revisions, and which illustrate why there is cause for concern.

Codifications of the criminal law that include revision or reorganization by the Iowa Code Editor run the risk of not only drawing legal challenges, if implemented, but also may very well constitute an improper exercise of authority by the Iowa Code Editor. This is because of:

1. The prohibition against the Code Editor making editorial changes which change the law.
2. The liberty interests and statutory construction issues inherent in criminal law principles that affect codification work.

To illustrate how these issues come into play, please see the examples of issues that come up in editorial transfer and other exercises of editorial discretion in Statutory Compendium portion of the Appendix.

Because challenges to changes in criminal law are routine, any revisions, especially comprehensive ones, even if meticulously researched and well drafted, may have some sort of error and inevitably be challenged. As a result, many if not most, major rewrites of existing law contain a delayed effective date and are followed by some sort of follow-up clean-up legislation, some of it also being significant in its scope and impact. The 1976 legislation is illustrative of this fact--that clean-up spawned several major clean-up bills, several in 1977 (see Acts chapters 147 through 157 of the 1977 Acts), and one in 1978 (Acts chapter 1029). For other examples of delayed codification of major legislation, see the History of Recent Major Codifications/Code Office portion of the Appendix.

In addition to these concerns, any recodification of state law has a downstream ripple effect. When the location of a statute changes, the administrative rules related to that statute almost always need to be updated. Forms used by state and local prosecutors, law enforcement, and the courts must often also change and any corresponding forms used by defense counsel will need to change. Municipal codes and ordinances also often use the state statutory citation to number their corresponding criminal offenses.

Computerization and Codification

As was stated previously, the systems used for bill drafting and codification are computerized and things are not the same as they were when the original Criminal Code reorganization was enacted. In 1976-everything was on paper, the Code was much smaller, and the public did not have access to the full Code as soon, and in as many forms as they do now. We currently also have several types of mechanisms to search and retrieve information at our disposal that were not available at that time. However, what most people probably don't realize about the current systems are the following:

1. The computer systems used to produce the final version of bill drafts and the Code, while stable, pretty robust, fairly unique, and basically sound, were initially developed in the 1980s and, as a consequence, are also fairly antique. And, until pretty recently, the systems were relatively unaltered.
2. With the exception of the migration of Code data and programming from the mainframe to a different type of server, the system used for codification is still a manual

production system and has changed very little, making Code compilation more and more problematic as the size of the Code has increased. Although we have much more control over the way in which we publish our information because of the experience we have in desktop publishing, in addition to producing our laws on paper, we produce electronic versions of the Code on CD-Rom, and on the Web, all of which must be checked.

3. While we are always upgrading and attempting to improve our current system for production and publication of the Code, there are quite a number of hurdles that remain to be dealt with.

a. Until recently, many of the process improvements that have been implemented have been add-ons to the old system, which tends to complicate our production processes rather than simplify them. Every time that Microsoft changes its programming, it tends to throw off our programming.

b. Because the data that makes up the Code base is complex, interconnected, and very large, although we now have search engines which make our work much more efficient, some of the connections between content are still not all that easy to find. Although bill drafting staff and my staff have been working hard to increase the level of concrete connections between content, through use of footnotes and numeric internal references, things such as staff turnover and other external factors can have a major impact on whether and how well those connections are made.

5. During the course of this most recent legislative session, steps were taken to put old electronic Acts data into our current CD ROM. The purpose of this effort was to make all of our old electronic data available for searches and to link that information to the sections of the Code to which they relate. What this means for the user is that all of our old Acts data can now be searched in one common search. What it also means is that that old Acts information will be readily available to persons who are reading the historical Acts information at the foot of a given Code section. They merely have to click on the citation and that Acts provision will be displayed. We think that this will provide useful information to persons who are researching our law.

7. Recently, the Legislative Services Agency began a multi-year process to overhaul of the existing systems. We not only hope to simplify the computer programming that underlies the existing Code language, but also to add content tagging to assist in locating "like" pieces of information. While this will not be an easy job to complete, we believe that by around 2009 or 2010, it will ultimately have the effect of making it easier to locate subject matter and subject matter issues within our Code and hopefully will also speed up and improve the processes used in codification.

Appendix

I. 1993 Code Reorganization Information

II. Statutory Issues/Compendium

III. History of Recent Major
Codifications/Code Office

IV. Mechanics of Codification

I. 1993 Code Reorganization Information

II. Statutory Issues/Compendium

Statutory issues

I would like to highlight some existing issues in our Code today that relate to or are the result of editorial transfers of Code sections and other exercises of editorial discretion. The point of these examples is that exercises of editorial discretion have their limitations. And no matter what problems are associated with legislative enactments, those enactments have the authority of law and all of the concurrent trappings associated with expressions of legislative intent.

Consider the following:

1. First Examples: The first examples relate to problems associated with transfers of Code provisions and editor discretion.

a. The anthrax statute.

708B.1 Anthrax.

1. Unlawful possession. Any person who knowingly possesses bacillus anthracis or any substance containing bacillus anthracis is guilty of a class "C" felony.

2. Unlawful distribution. Any person who knowingly distributes bacillus anthracis or any substance containing bacillus anthracis to any other person, which may or may not cause exposure to bacillus anthracis, is guilty of a class "B" felony.

3. Exceptions. This section shall not apply to a person who possesses or distributes bacillus anthracis or any substance containing bacillus anthracis which is being used solely for a purpose which is lawfully authorized under federal law.

2002 Acts, ch 1092, §1

C2003, §126.24

2003 Acts, ch 44, §115

CS2003, §708B.1

What is now Code section 708B.1, was originally enacted in 2002 as Code section 126.24, placing the provision within the Drugs, Devices, and Cosmetics chapter. Part of the reason this placement was chosen was that there were other provisions within that chapter relating to unlawful possession and distribution of a number of different substances that did not fall within the purview of the controlled substances chapter. However, the differences between this provision and the others included the fact that the other substances were more representative of what was intended within the defined terms "drug", "device", or "cosmetic", the fact that the other substances generally involved chemicals that affected the mental abilities and perceptions of the persons who ingested those substances, and that those substances would or could also affect a person's ability to operate a motor vehicle. The reason this last fact is important is that, upon conviction of a crime under the chapter, the following Code section applied:

126.26 Notice of conviction under chapter.

If a person enters a plea of guilty, or forfeits bail or collateral deposited to secure the person's appearance in court, and the forfeiture is not vacated, or if a person is found guilty upon an indictment or information alleging a violation of this chapter, a copy of the minutes attached to the indictment returned by the grand jury, or to the county attorney's information, a copy of the judgment and sentence, and a copy of the opinion of the judge if one is filed, shall be sent by the clerk of the district court or the judge to the state department of transportation.

93 Acts, ch 16, §2

The Code section 126.26 requirement of sending copies of the convictions to the department of transportation meant that the provision could not be transferred editorially. Because anthrax did not really fit within the group of substances or things thought to fall within the defined terms

mentioned and because it was generally agreed that the prohibitions against possession and distribution of anthrax were intended to combat terrorism, and not to motor vehicle operation or safety, the provision was moved to what is now 708B.1 in one of the 2003 Code Editor's bills.

b. Animal feeding operations transfers.

During the 2002 sessions, a major rewrite of the animal feeding operations provisions was drafted, passed, and enacted into law. In addition to making major changes to provisions in chapter 455B, 455I, and 455J, the rewrite directed the Iowa Code Editor to do the following:

**DIVISION II
DIRECTIONS TO CODE EDITOR,
CHANGE THE NAME OF TERMS AND
TRANSFER TO NEW TITLE**

Sec. 67. CHANGE OF NAME OF TERMS.

1. The Code editor is directed to change the term "animal feeding operation structure" or "an animal feeding operation structure" to "confinement feeding operation structure" or "a confinement feeding operation structure" wherever the term appears in section 455B.161A, subsection 2, Code 2001; section 455B.162, subsection 3, Code 2001; section 455B.163, subsection 3, paragraph "d", Code 2001; section 455B.165, subsection 3, paragraph "b", and subsections 6 and 8, Code 2001; section 455B.200B, subsection 2, Code 2001; and section 455B.202, subsection 2, paragraphs "c" and "d", Code 2001.

2. The Code editor is directed to change the term "animal feeding operation structures" to "confinement feeding operation structures" wherever the term appears in section 455B.161A, subsection 2, paragraph "c", Code 2001; section 455B.200B, subsection 2, Code 2001; and section 455B.162, unnumbered paragraph 1, Code 2001.

3. The Code editor is directed to change the term "animal feeding operation" or "an animal feeding operation" to "confinement feeding operation" or "a confinement feeding operation" wherever it appears in section 455B.163, unnumbered paragraph 1, Code 2001; section 455B.163, subsection 3, paragraph "c", Code 2001; section 455B.165, subsection 6, Code 2001; and section 455B.205, subsection 3, paragraph "b", Code 2001.

4. The Code editor is directed to change the phrase "confinement feeding operation structure or anaerobic lagoon which is part of a confinement feeding operation" to "confinement feeding operation structure" wherever the phrase appears in section 455B.191, subsection 7, Code 2001.

5. The Code editor is directed to change the phrase "an animal feeding operation structure which is part of a confinement feeding operation" to "a confinement feeding operation structure" wherever the phrase appears in section 455B.202, subsection 2, Code 2001.

6. The Code editor is directed to change the term "bovine" to "cattle" wherever the term appears in Code section 455B.162, Code 2001.

Sec. 68. DIRECTIONS TO THE CODE EDITOR.

1. The Code editor is directed to transfer and consolidate provisions concerning animal agriculture into new chapter 456D, consistent with this section and the authority of the Code editor pursuant to chapter 2B. As part of this transfer and consolidation, the Code editor shall divide the chapters into subchapters as follows:

a. Subchapter 1 shall include a new section stating the following: This chapter shall be known and may be cited as the "Animal Agriculture Compliance Act". Section 455B.161, as amended by this Act, shall be transferred to subchapter 1. Section 455B.171, subsections 7, 33, and 44, shall be transferred and consolidated into section 455B.161 as transferred to subchapter 1. Section 455J.1, subsections 4, 6, and 9, shall be transferred and consolidated into section 455B.161 as transferred to subchapter 1. Section 455B.200B, subsection 6, as enacted by this

Act, shall be consolidated into section 455B.161 as transferred to subchapter 1. Section 455B.200, as amended by this Act, shall also be transferred to subchapter 1.

b. Chapter 455B, division II, part 2, including sections amended or enacted by this Act, with the exception of section 455B.164, shall be transferred to new chapter 456D, as subchapter 2.

c. Chapter 455B, division III, part 1, subpart A, 15 as enacted in this Act, with the exception of section 455B.200, as amended by this Act, and section 455B.207, as enacted by this Act, shall be transferred to new chapter 456D, as subchapter 3.

d. Sections 455B.125 through 455B.127, as enacted by this Act, shall be transferred to new chapter 456D, as subchapter 4.

e. Chapter 455J, with the exception of section 455J.1, shall be transferred to new chapter 456D, as subchapter 5.

f. Section 455B.110, as amended by this Act, is transferred to new chapter 456D, as subchapter 6. Sections 455B.167, and 455B.207, as enacted by this Act; section 455B.191, subsection 7, Code 2001, and section 455B.191, subsection 8, as amended by this Act; and section 455B.104, subsection 2, are transferred as new sections to new subchapter 6.

2. The Code editor is directed to transfer chapter 455I to new chapter 456C. Subchapter 1 shall include section 455I.1, subsections 1 through 4 and 6 through 13, Code 2001. Subchapter 2 shall include a new section stating the following: As used in this subchapter, unless the context otherwise requires, "department" means the department of natural resources. Subchapter 2 shall include sections 455I.2 through 455I.7. Subchapter 3 shall include a new section stating the following: As used in this subchapter, unless the context otherwise requires, "department" means the department of agriculture and land stewardship. The Code editor is directed to transfer sections 159.28 through 159.29B, Code 2001, to new chapter 456C, subchapter 3.16

Sec. 69. Section 455B.164, Code 2001, is repealed

After a review of the recommended placement, it was determined that a better placement would be to a new Code chapter 459, instead of a new chapter 455D and assembly of the new chapter began. Some of the problems encountered included:

- ✓ Questions as to whether cites to the new chapter should include the entire chapter, because the original citations previously only referred to some, but not all, of the provisions of what was now new Code chapter 459.
- ✓ Missing language in the new definitions provision.
- ✓ Redundant language in the new definitions provision.
- ✓ Questions as to whether cites to chapter 455B should even refer to the new chapter 459 or should remain as references to chapter 455B or whether both chapters should now be cited.

In addition, because creation of the new definitions provision required extraction of portions of various Code sections and compiling those portions into a new whole, the ability to show the complete transfer of information from the original provisions to the new provision within the Code section history was not possible. The importance of these types of problems cannot be underestimated and, even to date, not all of the questions identified have been answered. The editing of that single bill took a month of the first editor's time, because of the number of internal references involved and the nature of the other ambiguities involved in the transfer. The review required at least two weeks as did the physical initial transfer of the provisions.

2. Example two. The second example is very old and relates to the prior practice of enacting new legislation without numerical designations, requiring the Code Editor to "find the best place" to locate the new enactments and number those appropriately. The reason this practice was problematic is because our Code is compiled, not "enacted" and adding new material to existing

chapters is always laden with minefields, but doubly so when legislative expression of intent is missing regarding just what existing Code provisions the new material belongs with.

600.1 Construction.

This chapter* shall be construed liberally. The best interest of the person to be adopted shall be the paramount consideration in interpreting this chapter. However, the interests of the adopting parents shall be given due consideration in this interpretation. However, in determining the best interest of the person to be adopted and the interests of the adopting parents, any evidence of interests relating to a period of time during which the person to be adopted is placed with prospective adoptive parents and during which the placement is not in compliance with the law, adoption procedures, or any action by the juvenile court or court, shall not be considered in the determination.

If a proceeding held under this chapter involves an Indian child as defined in section 232B.3 and the proceeding is subject to the Iowa Indian child welfare Act under chapter 232B, the proceeding and other actions taken in connection with the proceeding or this chapter shall comply with chapter 232B. In any proceeding held or action taken under this chapter involving an Indian child, the applicable requirements of the federal Adoption and Safe Families Act of 1999, Pub. L. No. 105–89, shall be applied to the proceeding or action in a manner that complies with chapter 232B and the federal Indian Child Welfare Act, Pub. L. No. 95–608.

[C77, 79, 81, §600.1]

94 Acts, ch 1174, §6, 22; 2000 Acts, ch 1145, §2; 2003 Acts, ch 153, §16

*Enacted as sections 600.1 to 600.16, Code 1977

Iowa Code section 600.1 is one that many judges and lawyers are familiar with. It is the provision relating to construction of the chapter relating to Adoption and contains the "best interest of the child" standard. Please note the footnote at the bottom of that section. (Show slide) That may not mean much to you at first, but what the Editor is stating here is that when that provision was enacted in 1976, it was part of a chapter that contained only what were then sections 600.1 through 600.16, and not anything else. The implications of that statement are actually stunning, if you think about it for very long. Until the legislative and editorial practices changed relating to the numbering of new provisions, there were no expressions of legislative intent to extend the principles contained in Code section 600.1 to subsequent new additions to that chapter.

3. Third Examples. The third examples relate to penalty issues and drafting of criminal provisions.

a. Many Code chapters consist of a number of provisions that establish requirements and provide prohibitions and then include a general statute establishing a penalty for a "violation of this chapter" making it nearly impossible to tell what conduct is intended to be criminalized. For example, see Code section 321.482, below..

321.482 Violations - simple misdemeanors unless otherwise provided.

It is a simple misdemeanor for a person to do an act forbidden or to fail to perform an act required by this chapter unless the violation is by this chapter or other law of this state declared to be a serious or aggravated misdemeanor or a felony. Chapter 232 has no application in the prosecution of offenses committed in violation of this chapter which are simple misdemeanors.

[S13, §1569, 1571-2a, -m21, -m22, -m26, -m27, -m29, 4808-b; SS15, §1571-m12a; C24, §4903, 5081, 5089, 13119; C27, §4903, 5055-b4, 5081, 5089, 13119; C31, §4686-c2, 4903, 5055-b4, 5079-d6, 5081, 5089, 13119; C35, §4686-c2, 4903, 4991-f5, 5024-e3, 5055-b4, 5067-

e2, 5079-d6, 5081, 5089, 13119; C39, §5036.01; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.482]

84 Acts, ch 1067, §33

Chapter 321, of course, is the chapter relating to all types of motor vehicles and establishes not only the laws of the road, but also provides for the licensing of motor vehicle operators. To complicate matters, many of the provisions found within chapter 321 are scheduled violations under chapter 805, although they don't always reference the specific provision in 805 in Code section text or list the penalty.

Recently, my office began the practice of listing the citation to the applicable scheduled fines in footnotes below the Code section containing the prohibition. We did this for several reasons:

- ✓ If you are using the printed Code, chapter 805 is contained in another volume of the Code and I wanted to assist the reader of the Code in locating the scheduled violation.
- ✓ If you read section 321.482, and didn't know about the scheduled violation, you probably would think that it applied.
- ✓ With the electronic versions of the Code, we now can link the scheduled violation provisions to the corresponding provisions elsewhere in the Code, thus better tying the provisions together.

b. Another issue within criminal statutes that I noted when I prepared background materials for a 1994 interim committee has to do with the practice in some Code chapters of associating criminalized conduct within that chapter with a type of crime found in the criminal law and procedure Code title. For an example, see Code section 147.84.

147.84 Forgeries.

Any person who shall file or attempt to file with the department any false or forged diploma, or certificate or affidavit of identification or qualification, shall be guilty of a fraudulent practice. [C97, §2580, 2595; S13, §2583-d; C24, 27, 31, 35, 39, §2520; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.84]

See chapter 715A

The language prohibiting the conduct does not specify whether the offense is a misdemeanor or felony. While this, in and of itself is not necessarily a problem, I question how "value", which is an essential element of fraudulent practice under chapter 715A, is to be established under this Code section 147.84. It is possible however, that instead of merely referencing the crime of fraudulent practice, the provision should cite to 715A.6A, which was enacted in 1996:

715A.6A Prohibitions relating to false academic degrees, grades, or honors.

1. As used in this section, "academic degree" means a diploma, certificate, license, transcript, or other document which signifies or purports to signify completion of the academic requirements of a secondary, postsecondary, professional, or governmental program of study.

2. A person commits a serious misdemeanor if the person, knowingly and willingly, does any of the following:

a. Falsely makes or alters, procures to be falsely made or altered, or assists in falsely making or altering, an academic degree.

b. Uses, offers, or presents as genuine, a falsely made or altered academic degree.

c. Sells, gives, purchases, or obtains, procures to be sold, given, purchased, or obtained, or assists in selling, giving, buying, or obtaining, a false academic degree.

d. Makes a false written representation relating to the person's academic grades, honors, or awards, or makes a false written representation that the person has received an academic degree

from a specific secondary, postsecondary, professional institution, or governmental program of study, in an application for any of the following:

- (1) Employment.
- (2) Admission to an educational program.
- (3) An award or other recognition.
- (4) The issuance of an academic degree to the person.

96 Acts, ch 1039, §1

c. In some statutes it may not always be clear just when a penalty is supposed to apply. An example of this may very well be within the language of current Code section 147.86.

147.86 Penalties.

Any person violating any provision of this or the following chapters of this subtitle, except insofar as the provisions apply or relate to or affect the practice of pharmacy, or where a specific penalty is otherwise provided, shall be guilty of a serious misdemeanor.

[C97, §2580, 2581, 2588, 2590, 2591, 2595; S13, §2575-a35, -a45, 2581, 2583-d, -r, 2589-d, 2600-o4; SS15, §2588; C24, 27, 31, 35, 39, §2522; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.86]

92 Acts, ch 1183, §6; 94 Acts, ch 1023, §12; 94 Acts, ch 1132, §25; 96 Acts, ch 1036, §24; 98 Acts, ch 1053, §22

Another example may be contained in Code section 155A.22

155A.22 General penalty.

A person who violates any of the provisions of this chapter or any chapter pertaining to or affecting the practice of pharmacy for which a specific penalty is not provided commits a simple misdemeanor.

87 Acts, ch 215, §22

Questions relating to lack of clarity combined with the basic precepts that crimes must be proven "beyond a reasonable doubt" and that criminal statutes are construed against the state, would seem to present a significant issue in this type of statute.

4. Example four. The third example relates Code reorganization. In 1993, the then Code Editor worked with the Bar association and others to accomplish a series of chapter transfers intended to better organize the titles and chapters of the Code.

CHAPTER 904
DEPARTMENT OF CORRECTIONS

This chapter not enacted as a part of this title;
transferred from chapter 246 in Code 1993
See §218.95 for provisions pertaining to construction of
synonymous terms

DIVISION I

ADMINISTRATION GENERALLY

- 904.101 Definitions.
- 904.102 Department established — institutions.
- 904.103 Responsibilities of department.
- 904.104 Board created.
- 904.105 Board — duties.
- 904.106 Meetings — expenses.
- 904.107 Director — appointment and qualifications.
- 904.108 Director — duties, powers.
- 904.109 Powers of governor — report of abuses.
- 904.110 Official seal.
- 904.111 Chapter 28E agreements.
- 904.112 Institutional receipts.
- 904.113 Gifts.
- 904.114 Travel expenses.
- 904.115 Report by department.
- 904.116 Institutional appropriations and expenditures — legislative oversight.
- 904.117 Interstate compact fund.
- 904.118 Iowa corrections offender network — fund.

DIVISION II

Chapter 904 is in Title XVI, entitled Criminal Law and Procedure, and is the chapter establishing the Department of Corrections. Please note the footnote below that chapter heading. As that footnote explains, this chapter was not enacted as part of title XVI. Instead, it was transferred editorially in 1993 and terms within that chapter may need to be construed in accordance with Iowa Code section §218.95. But what it may also mean is that terms or provisions within title XVI may not apply to chapter 904 unless that chapter is expressly referenced.

Another illustration of this issue can be found in Code chapter 135. That definitions provision of that chapter provides that the definitions apply for the purposes of Code chapter 155 and Title IV, subtitle 2, but exclude Code chapters 142B, 145B, and 146, because those Code chapters were not enacted as part of that subtitle.

135.1 Definitions.

For the purposes of chapter 155 and Title IV, subtitle 2, excluding chapters 142B, 145B, and 146, unless otherwise defined:

1. "Director" shall mean the director of public health.
2. "Health officer" shall mean the physician who is the health officer of the local board of health.
3. "Local board" shall mean the local board of health.
4. "Physician" means a person licensed to practice medicine and surgery, osteopathic medicine and surgery, osteopathy, chiropractic, podiatry, or optometry under the laws of this state; but a

person licensed as a physician and surgeon shall be designated as a "physician" or "surgeon", a person licensed as an osteopathic physician and surgeon shall be designated as an "osteopathic physician" or "osteopathic surgeon", a person licensed as an osteopath shall be designated as an "osteopathic physician", a person licensed as a chiropractor shall be designated as a "chiropractor", a person licensed as a podiatrist shall be designated as a "podiatric physician", and a person licensed as an optometrist shall be designated as an "optometrist". A definition or designation contained in this subsection shall not be interpreted to expand the scope of practice of such licensees.

5. "Rules" shall include regulations and orders.

6. "Sanitation officer" shall mean the police officer who is the permanent sanitation and quarantine officer and who is subject to the direction of the local board of health in the execution of health and quarantine regulations.

7. "State department" or "department" shall mean the Iowa department of public health.

[S13, §2583-b; C24, 27, 31, 35, 39, §2181; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135.1]

86 Acts, ch 1245, §1101; 88 Acts, ch 1199, §1; 94 Acts, ch 1023, §10; 95 Acts, ch 108, §2; 96 Acts, ch 1036, §1; 96 Acts, ch 1212, §15

Statutes not Covered in the 1976 Revisions

Listed below are two provisions that were not rewritten in 1976. Others exist, but some nonconforming provision were drafted after 1976--see, for example, Code sections 29A.48; 455B.146A(3) and (4);455B.417(2);502A.14

a. First, take a look at Code section 166.39.

166.39 Violations.

Any person who violates any provision of this chapter, or any rule of the department, or who shall hinder or attempt to hinder the department or any duly authorized agent or official thereof in the discharge of that person's duty, shall be fined in a sum not less than one hundred dollars nor more than five hundred dollars.

[S13, §2538-w7; C24, 27, 31, 35, 39, §2743; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §166.39]

Then, compare it with the immediately preceding section.

166.38 Compensation.

No licensed veterinarian shall receive, directly or indirectly, any compensation of any kind for the handling, sale, or use of any biological products, other than the veterinarian's charges for administering the same, unless the veterinarian makes known in writing the amount of such compensation, if requested to do so by the person using biological products. Any veterinarian violating this section shall be guilty of a simple misdemeanor.

[C24, 27, 31, 35, 39, §2742; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §166.38]

Revocation of license, §169.13

It is clear what is going on in Code section 166.38, but does Iowa Code 166.39 impose a criminal fine? Or is merely civil or administrative in nature?

b. Next, look at Code section 189A.19.

189A.19 Bribery.

Any person who gives, pays, or offers, directly or indirectly, to any officer or employee of this state authorized to perform any of the duties prescribed by this chapter or by the regulations of the secretary, any money or other thing of value, with intent to influence said officer or employee

in the discharge of any such duty, shall be deemed guilty of a felony and, upon conviction thereof, shall be punished by a fine not less than five thousand dollars nor more than ten thousand dollars and by imprisonment in the penitentiary not less than one year nor more than three years; and any officer or employee of this state authorized to perform any of the duties prescribed by this chapter who accepts any money, gift, or other thing of value from any person, given with intent to influence the officer's or employee's official action, or who receives or accepts from any person engaged in intrastate commerce any gift, money, or other thing of value given with any purpose or intent whatsoever, shall be deemed guilty of a felony and shall, upon conviction thereof, be summarily discharged from office and shall be punished by a fine not less than one thousand dollars nor more than ten thousand dollars and by imprisonment in the penitentiary not less than one year nor more than three years.

[C71, 73, 75, 77, 79, 81, §189A.19]

What type of felony is that?

5. Fifth Examples. The last series of examples are more miscellaneous in nature:

a. Code chapter 813, (shown below) entitled Iowa Rules of Criminal Procedure, although it hasn't changed much for quite a long time, is a good example of what happens sometimes when provisions are removed from a Code chapter. That chapter was probably quite large at one time, because all of the court rules have their origins in statute. In fact, prior to 1941, the "rules" governing trial practice and procedure were enacted by the legislature. In 1941, however, legislation was enacted that said that the Supreme Court had the power to prescribe rules of practice and that any laws in conflict were no longer in effect. The statutes that were retained became rules that migrated over time from their original locations to a separate part of the Code, and, in 1977, finally evolved into a separate publication. If you read what is left in chapter 813, you realize that most of what remains appears to have been rendered fairly irrelevant by the movement of the former Code provisions out of that Code chapter and into the Court Rules.

CHAPTER 813

IOWA RULES OF CRIMINAL PROCEDURE

813.1 Title.

813.2 Provisions relating to hearing and trial in indictable cases.

813.3 Trial of simple misdemeanors.

813.4 Additions to and amendment of rules.

813.1 Title.

These rules shall be known as the rules of criminal procedure. (R.Cr.P.)

[76 Acts, ch 1245(2), §1301, Rule 31; 77 Acts, ch 153, §106; C79, 81, §813.1]

813.2 Provisions relating to hearing and trial in indictable cases.

[The rules of criminal procedure are published in the compilation "Iowa Court Rules."]

813.3 Trial of simple misdemeanors.

[See § 813.2]

813.4 Additions to and amendment of rules.

The rules of criminal procedure may be amended, provisions deleted, and new rules added by the supreme court, subject to section 602.4202.

[C79, 81, §813.4]

83 Acts, ch 186, §10134, 10201

b. The second set of scenarios relate to the various ways that statutes are written and numbered in the Code, what can happen when they are amended, and why it might not be noticed in the bill that enacted the amendment. Consider the cases of Iowa Code sections 321.30 and 822.2:

(1) What happened to Code section 321.30 is an example of a problem that wasn't in the bill, it was in the Code. In 2005, Code section 321.30 read as follows:

321.30 Grounds for refusing registration or title.

The department or the county treasurer shall refuse registration and issuance of a certificate of title or any transfer of title and registration upon any of the following grounds:

1. That the application contains any false or fraudulent statement or that the applicant has failed to furnish required information or reasonable additional information requested by the department or that the applicant is not entitled to registration and issuance of a certificate of title of the vehicle under this chapter.
2. That the vehicle is mechanically unfit or unsafe to be operated or moved upon the highways, providing such condition is revealed by a member of this department, or any peace officer.
3. That the department or the county treasurer has reasonable ground to believe that the vehicle is a stolen or embezzled vehicle or that the granting of registration and issuance of a certificate of title would constitute a fraud against the rightful owner.
4. That the registration of the vehicle stands suspended or revoked for any reason as provided in the motor vehicle laws of this state.
5. That the required fee has not been paid except as provided in section 321.48.
6. That the required use tax has not been paid.
7. If application for registration and certificate of title for a new vehicle is not accompanied by a manufacturer's or importer's certificate duly assigned.
8. If application for a transfer of registration and issuance of a certificate of title for a used vehicle registered in this state is not accompanied by a certificate of title duly assigned.
9. If application and supporting documents are insufficient to authorize the issuance of a certificate of title as provided by this chapter, except that an initial registration or transfer of registration may be issued as provided in section 321.23.
10. In the case of a mobile home or manufactured home, that taxes are owing under chapter 435 for a previous year.
11. In the case of a mobile home or manufactured home converted from real estate, real estate taxes which are delinquent.
12. If a commercial motor vehicle has been assigned to be operated by a commercial motor carrier whose ability to operate has been terminated or denied by a federal agency.
13. The department or the county treasurer knows that an applicant for renewal of a registration has a delinquent account, charge, fee, loan, taxes, or other indebtedness owed to or being collected by the state, from information received pursuant to sections 8A.504 and 421.17. An applicant may contest this action by requesting a contested case proceeding from the agency that referred the debt for collection pursuant to section 8A.504. This subsection shall apply only to a renewal of registration and shall not apply to the issuance of an original registration or to the issuance of a certificate of title.
14. The department or the county treasurer shall refuse registration of a vehicle if the applicant is under the age of eighteen years, unless the applicant has an Iowa driver's license or the

application is being made by more than one applicant and one of the applicants is at least eighteen years of age.

The department or the county treasurer shall also refuse registration of a vehicle if the applicant for registration of the vehicle has failed to pay the required registration fees of any vehicle owned or previously owned when the registration fee was required to be paid by the applicant, and for which vehicle the registration was suspended or revoked under section 321.101, subsection 1, paragraph "d", or section 321.101A, until the fees are paid together with any accrued penalties.

[C39, §5001.14; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.30; 82 Acts, ch 1164, §1, ch 1251, §9]

85 Acts, ch 98, §3; 87 Acts, ch 108, §3 - 5; 95 Acts, ch 55, §4; 95 Acts, ch 194, §2, 12; 99 Acts, ch 188, §5; 2000 Acts, ch 1016, §4, 5; 2001 Acts, ch 153, §17; 2003 Acts, ch 145, §245

In 2006, the provision was amended by 2006 Acts, ch 1068, §10 and 41, to add in a new subsection. We were in the process of adding in the new subsection when we suddenly realized that we really didn't know where the new subsection should go. This is because the last subsections in the section didn't match the lead-in in the Code section--see first paragraph in section.

We did work with the department and various interest groups involved, redrafted the statute, and corrected this problem, but we have found and are continuing to find examples of this type of scenario all over the Code. The biggest problem is that there is no good systematic way to locate these issues.

(2) The issues in Code sections 822.2 and 29B.100 relate to problems connected to old drafting styles. In 2005, Code section 822.2 read as follows:

822.2 Situations where law applicable.

Any person who has been convicted of, or sentenced for, a public offense and who claims that:

1. The conviction or sentence was in violation of the Constitution of the United States or the Constitution or laws of this state;

2. The court was without jurisdiction to impose sentence;

3. The sentence exceeds the maximum authorized by law;

4. There exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;

5. The person's sentence has expired, or probation, parole, or conditional release has been unlawfully revoked, or the person is otherwise unlawfully held in custody or other restraint;

6. The person's reduction of sentence pursuant to sections 903A.1 through 903A.7 has been unlawfully forfeited and the person has exhausted the appeal procedure of section 903A.3, subsection 2; or

7. The conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error formerly available under any common law, statutory or other writ, motion, petition, proceeding, or remedy, except alleged error relating to restitution, court costs, or fees under section 904.702 or chapter 815 or 910;

may institute, without paying a filing fee, a proceeding under this chapter to secure relief.

This remedy is not a substitute for nor does it affect any remedy, incident to the proceedings in the trial court, or of direct review of the sentence or conviction. Except as otherwise provided in this chapter, it comprehends and takes the place of all other common law, statutory, or other remedies formerly available for challenging the validity of the conviction or sentence. It shall be used exclusively in place of them.

[C71, 73, 75, 77, 79, 81, §663A.2; 81 Acts, ch 198, §1, 2]

83 Acts, ch 147, §10, 14; 86 Acts, ch 1075, §3

C93, §822.2

Sometime in 2005, my office received a call asking me if we had inadvertently dropped a piece of the Code section. The reason was that the front end and the back end of the first paragraph of the statute appeared on different pages in the Code and the reader didn't realize that the end of the sentence/paragraph (begins with "may institute") was on the next page. The problem was due to an antique drafting style that made it very hard to read the Code section. The biggest problem with this type of section is that if, in this case, subsection 7 were to be amended, it would be very easy to really drop the language in question.

While correcting statutes such as Code section 822.2 is not necessarily difficult or even terribly controversial, sometimes the old drafting styles mask an internal glitch in statutory language. Take the example of Code section 29B.100 as it existed prior to the 2006 corrections.

29B.100 Captured or abandoned property.

All persons subject to this code shall secure all public property taken from the enemy for the service of the United States, and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody or control.

Any person subject to this code who:

1. Fails to carry out the duties prescribed herein;
2. Buys, sells, trades, or in any way deals in or disposes of captured or abandoned property, whereby the person receives or expects any profit, benefit or advantage to the person or another directly or indirectly connected with the person; and
3. Engages in looting or pillaging;

shall be punished as a court-martial may direct.

[C66, 71, 73, 75, 77, 79, 81, §29B.100]

Tell me, to be punished by a court martial, does a person have to do all of those prohibited acts, or just one of them?

III. History of Recent Major Codifications/Code Office

History of Recent Major Codifications/Code Office

- 1851--First Code published.
- 1851--1924--Periodic authorizing of New Codes. New editors appointed and Codes are enacted. Compilations of “supplements” done in between Codes.
- 1924--Position of editor of the Code is made permanent. Code publication changed to every 4 years. Editor appointed by Supreme Court. Editors compile Code provisions and prepare case law annotations.
- 1969--Iowa Constitution amended to require annual legislative sessions.
- 1970--Statutes amended to require Code publication every 2 years.
- 1972--Unified trial court legislation passes
- 1973--Implementation of unified trial court legislation
- 1976--Enactment of Criminal Code revisions.
- 1977--Initial computerization of Iowa Code and Code Index. Court Rules removed from Code and made separate publication.
- 1978--Code Editor Office moved from Courts to Legislative Council. Rewrite of Juvenile Justice provisions. Implementation of Criminal Code revisions.
- 1982--Publication of Code Supplement in alternate (odd) years begins and format for Code section histories changes.
- 1981--Enactment of County Home Rule provisions
- 1983--Court reorganization-- State assumes responsibility for all court employees and officers--is phased in over two years.
- 1985 through 1988—Development of in-house bill drafting and codification system.
- 1986--State government reorganization.
- 1991--Code Editor Office becomes division of Legislative Service Bureau.
- 1993--First CD-ROM publication of Iowa Code. Editorial reorganization of Code implemented.
- 1995--Code production deadlines changed to provide full Code text by beginning of legislative session.
- 1996--First INTERNET publication of Iowa Code.
- 2000--First in-house desktop publication of Iowa Code. Code Indexing moved from TIE to INDEXER programming.
- 2001--First in-house desktop publication of Code Supplement.
- 2003--Code division subsumed into the Legal Services Division.
- 2004--2005--First in-house production of Iowa Code CD-ROM.

IV. Mechanics of Codification

Codification Procedure--Mechanics

I. Here is an example of the mechanics involved in the simple amendment of a Code section:

A. Before an editor even sees any proposed changes:

1. The text of the enacted legislation is placed in a computer library and computerized runs are initiated which "apply" the changes contained in a piece of legislation to the Code section text as shown in the legislation and break the legislation down into the individual bill section components so that the raw changes are available for review and incorporation into the Code database.
2. The raw information is then compared to both the legislation as enacted and the Code to try to make sure that nothing was inadvertently dropped or added.
3. Format coding is also reviewed and updated, because the system used for bill drafting does not have all of the same format coding as is in the Code database, and any differences must be rectified. Because of current bill drafting style, certain Code text (usually Code subsection or paragraph designations and some headnotes) must also be added back in if it is missing.

B. An editor then reads the text of the amendment in light of the policy changes made in the piece of legislation as a whole, and considers whether any of the following changes need to be made as a result of the change:

1. Correction of manifest clerical errors.
2. Numbering, renumbering, and/or correction of internal references.
3. Substitution or deletion of specific text based on such things as item vetoes, references to effective dates, or terminology changes.
4. Harmonization of the existing amendment with any other amendments made during the current or prior sessions of the general assembly.
5. Addition or corrections to Title, subtitle, chapter, subchapter, section, or subsection headings.
6. Transfer, division, or combination of language within the statutory provision.

C. If the editor makes any of the changes, the editor must do all of the following:

1. Document those changes by making notations sometimes at the Code section itself and sometimes on one or more of a number of lists of editorial changes.
2. Provide instructions for other staff members who will actually mark and then implement those changes in the text of the law.

D. Whether or not the editor makes any editorial changes to a Code section, the editor must do all of the following:

1. Provide directions relating to disposition of the text amendment contained in the legislation.
2. Provide directions for adding or updating Code section history.
3. Add, delete, or update Code section footnotes.

E. All editorial work are reviewed by another editor, first by bill, and later in Code chapter and section order, and then manually marked on printouts of the Code database.

F. The changes are sent to text processing, which makes the changes in the electronic Code database, and then a printout of those changes is proofed against the editor's written work and the marked-up Code database printout.

G. The proofing is screened by a copyeditor to find any mistakes noted by the proofers and to double-check the proofing work and any mistakes found are documented.

H. The documentation of mistakes is returned to text processing for correction and then returned for proofing and screening by the copyeditor until no more mistakes are found.

I. Once the computer base changes are approved, the portions of the Code that are to be printed are pulled into the desktop publishing system and formatted to match the style and format of the Code.

J. The pages are proofed and re-proofed until they are deemed to be free of error and approved.

K. The approved pages are converted to .PDF and are electronically transmitted to an outside vendor for printing.

L. The vendor sends digital proofs for comparison against the .PDF pages and, if those proofs match the pages and are correct, they are bound according to certain specifications.

II. If an amendment includes a transfer of a Code provision, the editing and codification process listed in I. is modified to include:

- Instructions that provide for the deletion of text at the old Code location and notation of the transfer at the old Code location. (see attachment A, following)
- Instructions that provide for the addition of text at the new Code location and notation of the transfer at the new Code location. (see attachment B, following)
- Modification of Code section history at the new Code location to reflect both the old and new Code section numbering. (see attachment C, following)
- Inclusion of the transfer information on the list of renumbering changes and a search for internal references that must be changed/updated. (see attachment D, following) All corrections that can be made without changing the meaning of the law will be made. The balance will be included on the Code Editor bill list and corrected, if possible.
- Inclusion of a chart or other aids showing the transfer for use by editors, other Code Office staff, text processors, and proofreaders to alert those individuals that the Code text is to be transferred to the new location and not just deleted. (see attachments E, F, and G, following)

III. While this type of process may seem repetitious, you need to know that there is a significant risk of losing Code text when text is transferred, especially if the locations are not close to each other numerically. There is only one Code database. If the data is lost, although there is tape backup, it is gone until we can find that data on a backup tape, which can sometimes be difficult. In addition, all transfers are tracked and documented in tables relating to disposition of Acts, corresponding section, and internal references, so these types of aids are almost essential for proper completion of those tasks.