

# THE YALE LAW JOURNAL

GRACE E. HART

## State Legislative Drafting Manuals and Statutory Interpretation

**ABSTRACT.** Although legislation has become a central feature of our legal system, relatively little is known about how statutes are drafted, particularly at the state level. This Note addresses this gap by surveying drafting manuals used by bill drafters in state legislatures. These manuals describe state legislatures' bill drafting offices and outline conventions for statutory formatting, grammar, and style. These documents are valuable tools in statutory interpretation as information about drafting offices provides context for analyzing legislative history, and drafting conventions can illuminate statutory meaning. This Note offers normative justifications for using drafting manuals in statutory interpretation as well as principles to guide state courts in considering drafting manuals in their jurisprudence.

**AUTHOR.** Yale Law School, J.D. 2016; Dartmouth College, B.A. 2013. I am especially grateful for the direction and advice I received on this project from Professor Nicholas Parrillo. For their careful editing and thoughtful feedback, I thank Hilary Ledwell, Urja Mittal, Jacobus van der Ven, and the editors of the *Yale Law Journal*.



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## INTRODUCTION

Scholars agree that the main feature of the modern American legal system has become legislation.<sup>1</sup> In our “Republic of Statutes,”<sup>2</sup> the drafting and enactment of legislation deeply affects our public and private lives in areas ranging from tax and monetary and financial policies to rules that protect consumers from unsafe products.<sup>3</sup> When legislatures enact statutes, their members typically intend the words in those statutes to convey particular meanings,<sup>4</sup> yet the task of interpreting and applying statutes frequently falls to courts. That is, judges often face the task of determining the meaning of a statute and how it applies in different contexts.<sup>5</sup> Judges use a familiar arsenal of interpretive tools for pinpointing the meaning of statutes—text, structure, purpose, legislative intent, and legislative history—and scholars and jurists have developed widely known theories and doctrines about if, when, and how interpreters should consider these features in construing statutes.<sup>6</sup> These approaches to statutory interpretation, however, largely consider sources produced during the later stages of the legislative process—namely, *after* a bill has already been drafted and introduced in the legislature. But how are statutes actually drafted? Relatively little is known about how legislatures draft bills.<sup>7</sup> As a result, the legislative drafting process is largely unaccounted for in mainstream statutory interpretation theory.<sup>8</sup>

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1. See, e.g., GUIDO CALABRESI, *A COMMON LAW FOR THE AGE OF STATUTES* 1 (1982); Ganesh Sitaraman, *The Origins of Legislation*, 91 NOTRE DAME L. REV. 79, 80 (2015).
  2. WILLIAM N. ESKRIDGE JR. & JOHN FEREJOHN, *A REPUBLIC OF STATUTES: THE NEW AMERICAN CONSTITUTION* (2010).
  3. Sitaraman, *supra* note 1, at 80.
  4. See Jacob Scott, *Codified Canons and the Common Law of Interpretation*, 98 GEO. L.J. 341, 343 (2010).
  5. See CALABRESI, *supra* note 1.
  6. See Cass R. Sunstein, *Interpreting Statutes in the Regulatory State*, 103 HARV. L. REV. 405, 411-13 (1989).
  7. See Sitaraman, *supra* note 1, at 81; see also Robert A. Katzmann, *Statutes*, 87 N.Y.U. L. REV. 637, 645 (2012) (“[T]here has been scant consideration given to what I think is critical as courts discharge their interpretive task—an appreciation of how Congress actually functions . . . .”); Victoria F. Nourse & Jane S. Schacter, *The Politics of Legislative Drafting: A Congressional Case Study*, 77 N.Y.U. L. REV. 575, 576 (2002) (“Articles about statutory interpretation fill the pages of law reviews, but the vast majority of this scholarship focuses on courts. If the scholarship looks at legislatures at all, it does so from an external perspective, looking at Congress through a judicial lens. Little has been written from the legislative end of the telescope.”).
  8. See Katzmann, *supra* note 7, at 660 (“[Interpretive debates have] taken place in a vacuum, largely removed from the reality of how Congress actually functions.”).

However, an emerging literature has begun to examine Congress's practices and procedures and contemplate the extent to which courts should consider those realities in interpreting statutes.<sup>9</sup> Jarrod Shobe has written about the realities and complexities of the legislative process based on his experience working as a professional drafter in the Office of the Legislative Counsel in the House of Representatives.<sup>10</sup> Two major empirical studies have looked further at the process by which Congress drafts legislation<sup>11</sup>: Victoria Nourse and Jane Schacter published a case study of legislative drafting in the Senate Judiciary Committee,<sup>12</sup> and Abbe Gluck and Lisa Bressman followed up with a comprehensive survey of 137 congressional staffers on legislative drafting.<sup>13</sup>

Scholars, however, have not yet accounted for state legislatures and state courts. Apart from a handful of studies conducted a generation ago,<sup>14</sup> there is scant literature on the legislative process at the state level—a significant omission since ninety-eight percent of cases in the United States are heard in state courts, and the vast majority of the state court caseload is statutory.<sup>15</sup> And yet, while scholars debate whether and how judges should consider the legislative drafting process in statutory interpretation, some state courts have already begun to do so in actual cases.

State courts routinely consider a set of sources that have been little noticed by the academy and largely ignored by the federal judiciary, but that provide key information about the bill-drafting process: state legislative drafting manuals. Every state legislature has a legislative services office comprised of profes-

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9. See, e.g., Sitaraman, *supra* note 1, at 82-83.

10. Jarrod Shobe, *Intertemporal Statutory Interpretation and the Evolution of Legislative Drafting*, 114 COLUM. L. REV. 807 (2014).

11. In addition to these comprehensive empirical studies that examine the legislative process at a general level, certain case studies have focused on the drafting of particular pieces of legislation. See, e.g., Edward L. Rubin, *Legislative Methodology: Some Lessons from the Truth-in-Lending Act*, 80 GEO. L.J. 233, 242-81 (1991).

12. Nourse & Schacter, *supra* note 7.

13. Lisa Schultz Bressman & Abbe R. Gluck, *Statutory Interpretation from the Inside—An Empirical Study of Congressional Drafting, Delegation, and the Canons: Part I*, 65 STAN. L. REV. 901 (2013) [hereinafter Bressman & Gluck, *Statutory Interpretation from the Inside Part I*]; Lisa Schultz Bressman & Abbe R. Gluck, *Statutory Interpretation from the Inside—An Empirical Study of Congressional Drafting, Delegation, and the Canons: Part II*, 66 STAN. L. REV. 725 (2014) [hereinafter Bressman & Gluck, *Statutory Interpretation from the Inside Part II*].

14. See, e.g., JEFFERSON B. FORDHAM, *THE STATE LEGISLATIVE INSTITUTION* (1959); Alan Rosenthal, *The State of State Legislators: An Overview*, 11 HOFSTRA L. REV. 1185 (1983); Harry W. Jones, Comment, *Bill-Drafting Services in Congress and the State Legislatures*, 65 HARV. L. REV. 441 (1952).

15. Abbe R. Gluck, *The States as Laboratories of Statutory Interpretation: Methodological Consensus and the New Modified Textualism*, 119 YALE L.J. 1750, 1753 & n.4 (2010).

sional, nonpartisan drafters who assist legislators in preparing bills. Thirty-seven states' offices publish bill drafting manuals that are available to the public and contain a prescribed set of drafting instructions on formatting, grammar, word choice, and style. Although the legislative drafting offices in the U.S. Senate and House of Representatives both publish drafting manuals,<sup>16</sup> these manuals have played little role in the federal courts' statutory interpretation jurisprudence.<sup>17</sup> By contrast, several state courts have cited drafting manuals to assist in resolving statutory questions. The manuals enable courts to construe statutes in light of the drafters' shared understandings of the legislation and the intended meanings of particular words and phrases.<sup>18</sup> These developments are key to the emerging debate about the role of the legislative drafting process in statutory interpretation theories and doctrines.<sup>19</sup>

This Note is the first to offer a comprehensive and detailed examination of the bill drafting manuals and to consider how they should be used in statutory interpretation.<sup>20</sup> This Note's objectives are twofold. First, the Note seeks to introduce these sources to the literature by providing an overview of the drafting instructions and guidance in the state bill drafting manuals. Because there has been little scholarly consideration of the state bill drafting manuals, I discuss their contents in detail in an effort to improve their circulation among scholars and future litigants, and to foster greater awareness of their potential utility in statutory interpretation. Second, the Note offers normative justifications for using drafting manuals in statutory interpretation as well as principles to guide state courts in considering drafting manuals in their jurisprudence.

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16. See BJ Ard, Comment, *Interpreting by the Book: Legislative Drafting Manuals and Statutory Interpretation*, 120 YALE L.J. 185 (2010).
17. As of 2014, only three U.S. Supreme Court cases and six federal appellate cases cited to the congressional legislative drafting manuals. Bressman & Gluck, *Statutory Interpretation from the Inside Part II*, *supra* note 13, at 751.
18. See *infra* Section III.A.
19. To date, no general study has analyzed all state bill drafting manuals. Tamara Herrera recently published a study of the bill drafting manual published by Arizona's Legislative Council and analyzed how Arizona courts have used this manual in statutory interpretation. Tamara Herrera, *Getting the Arizona Courts and Arizona Legislature on the Same (Drafting) Page*, 47 ARIZ. ST. L.J. 367 (2015). However, Herrera's analysis and conclusions about the use of the manual in statutory interpretation are specific to the Arizona context. Brian Christopher Jones recently surveyed state drafting manuals and analyzed their provisions on short bill titles, but his study neither provides a general overview of the manuals nor discusses how they could be used in statutory interpretation. Brian Christopher Jones, *Drafting Proper Short Bill Titles: Do States Have the Answer?*, 23 STAN. L. & POL'Y REV. 455 (2012).
20. While BJ Ard examined the drafting manuals used by the drafting offices in Congress, Ard, *supra* note 16, Herrera is the only scholar to analyze a state drafting manual in depth, see Herrera, *supra* note 19.

This Note proceeds in four Parts. Part I provides background on state legislatures as institutions, focusing in particular on legislative drafting offices. Part II then examines the contents of the drafting manuals published by these offices and how these manuals guide drafters. Part III surveys cases in which state courts have considered and cited legislative drafting manuals and illustrates how these cases and manuals reveal an ongoing interbranch dialogue between state courts and legislatures. The conventions and instructions in the drafting manuals aim not only to align drafting practices horizontally within the legislative drafting offices but also to reflect the state judiciaries' interpretive practices. State courts' reliance on drafting manual provisions in statutory interpretation establishes vertical alignment between the legislative and judicial branches.

Part IV draws on these findings to propose a normative framework to guide state courts' use of drafting manuals in statutory interpretation. Courts should use the drafting manuals in two ways: to employ the manuals' context about drafting offices to analyze legislative history, and to examine the manuals' drafting conventions in order to ascertain the meaning of the statutory text. Given the diversity of state legislatures and drafting offices, the context and circumstances of a particular state should guide the particulars of the analysis. The Note concludes with factors to help state courts determine how to use drafting manuals and how much weight to accord the manuals in statutory interpretation.

## I. BILL DRAFTING IN THE STATE LEGISLATURES

The drafting manuals are both a product and practice of state legislatures. Although a majority of state legislatures use these manuals, it is difficult to speak of "state legislatures" as a whole because they are marked by tremendous diversity. This diversity manifests in a range of institutional characteristics. According to 2013 data, Alaska has the smallest state senate with twenty senators and Minnesota has the largest with sixty-seven senators.<sup>21</sup> There is even greater variation in the size of the lower houses: Alaska has the smallest house of representatives with forty members, while New Hampshire has the largest with four hundred members.<sup>22</sup> In some states, such as California, Pennsylvania, and New York, the occupation of state legislator is the time equivalent of at least eighty percent of a full-time job, and legislators are paid enough to make a liv-

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21. *Number of Legislators and Length of Terms in Years*, NAT'L CONF. ST. LEGISLATURES (Mar. 11, 2013), <http://www.ncsl.org/research/about-state-legislatures/number-of-legislators-and-length-of-terms.aspx> [<http://perma.cc/8U93-FCYK>].

22. *Id.*

ing without outside income.<sup>23</sup> In contrast, in other states, such as Montana, New Hampshire, and North Dakota, legislators spend about half of the time of a full-time job doing legislative work, and receive minimal compensation.<sup>24</sup> Half of all state legislatures fall somewhere in between: legislators typically spend more than two-thirds of a full-time job doing legislative work and receive substantial compensation but usually not enough to make a living without another source of income.<sup>25</sup> Moreover, the size of legislative staffs varies significantly across the country: as of 2015, the Vermont legislature had the smallest staff, with ninety-two permanent and session legislative staff, and the New York legislature had the largest, with 2,865 permanent and session legislative staff.<sup>26</sup>

State legislatures differ not only in size and structure, but also in the volume of their output. The number of bills introduced in the 2013 legislative term ranged from 308 in the Alaska legislature to 14,174 in the New York legislature.<sup>27</sup> In similarly stark contrast, the number of bills enacted varied from forty-five in the Wisconsin legislature to 2,381 in the Illinois legislature.<sup>28</sup>

Despite these differences, every state legislature shares one key institutional feature: legislative drafting offices. These offices are staffed by professional, nonpartisan bill drafters who assist legislators in preparing legislation.<sup>29</sup> Furthermore, a number of states have pre-filing requirements, which mandate that all proposed legislation be submitted to the state's drafting office for review and processing before it is introduced in the legislature.<sup>30</sup> Although the specifics of

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23. *Full- and Part-Time Legislatures*, NAT'L CONF. ST. LEGISLATURES (June 1, 2014), <http://www.ncsl.org/research/about-state-legislatures/full-and-part-time-legislatures.aspx> [<http://perma.cc/YB84-3JUW>].

24. *Id.*

25. *Id.*

26. *Size of State Legislative Staff*, NAT'L CONF. ST. LEGISLATURES (July 2016), <http://www.ncsl.org/research/about-state-legislatures/staff-change-chart-1979-1988-1996-2003-2009.aspx> [<http://perma.cc/EN3N-QDKR>].

27. *Book of the States 2014*, COUNCIL ST. GOV'TS 102 tbl.3.19 (2014), <http://knowledgecenter.csg.org/kc/system/files/3.19%202014.pdf> [<http://perma.cc/332G-XG4M>].

28. *Id.*

29. *See generally Legislative Staff Services: Profiles of the 50 States and Territories*, NAT'L CONF. ST. LEGISLATURES (2006) [hereinafter *Legislative Staff Services*], [http://www.ncsl.org/print/legismgt/2006\\_Legis\\_Staff\\_Profiles.pdf](http://www.ncsl.org/print/legismgt/2006_Legis_Staff_Profiles.pdf) [<http://perma.cc/AZ7E-M4AK>] (reporting a state-by-state survey of legislative support offices).

30. *See, e.g.*, Bureau of Legislative Research, *Legislative Drafting Manual*, ARK. ST. LEGISLATURE 8-10 (2010) [hereinafter *Arkansas Drafting Manual*], <http://www.arkleg.state.ar.us/bureau/legal/Publications/2010%20Legislative%20Drafting%20Manual.pdf> [<http://perma.cc/CYK2-RSYX>]; Research & Legislation, Legislative Servs. Office, *Legislation Drafting Manual: Concise Version*, IDAHO ST. LEGISLATURE 4 (2015) [hereinafter *Idaho*



these pre-filing requirements differ by state, most stipulate that the drafting office should review the proposed legislation for elements such as format,<sup>31</sup> technical correctness,<sup>32</sup> and/or style.<sup>33</sup>

These legislative drafting offices vary in structure and capacity. Many of the offices offer not only bill-drafting services but also related legislative services — providing research on request to members of the state legislature,<sup>34</sup> performing fiscal analyses of proposed bills,<sup>35</sup> maintaining a legislative reference library,<sup>36</sup> and preparing and arranging statutes for publication.<sup>37</sup> While most state legislatures have one office that is responsible for bill drafting, two states in this study, Florida<sup>38</sup> and Louisiana,<sup>39</sup> have separate offices for the House of Repre-

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*Drafting Manual*], <http://legislature.idaho.gov/about/draftingmanual.pdf> [<http://perma.cc/U893-P47V>]; Office of Legal Servs., *2015 Legislative Drafting Guide*, TENN. GEN. ASSEMBLY 2 (2015) [hereinafter *Tennessee Drafting Manual*], <http://www.capitol.tn.gov/joint/staff/legal/2015%20Drafting%20Guide.pdf> [<http://perma.cc/CQ84-M79A>].

31. See, e.g., Eighty-Ninth Gen. Assembly, *Parliamentary Manual of the Senate*, ST. ARK. § 18(A)(1), at viii (2013), <http://www.arkansas.gov/senate/docs/2013-SenateRules.pdf> [<http://perma.cc/RZW8-EWRU>]; Office of the Clerk of the Senate, *Senate Rules*, 189TH GEN. CT. COMMONWEALTH MASS. ¶ 17 (Jan. 21, 2015), <http://malegislature.gov/People/ClerksOffice/Senate/Rules> [<http://perma.cc/Z459-CYAG>].
32. See, e.g., One Hundred Eighteenth Ind. Gen. Assembly, *2013-2014 Standing Rules and Orders*, IND. ST. SENATE ¶ 40, at 35 (2013), <http://www.in.gov/legislative/session/senate1.pdf> [<http://perma.cc/J3QK-LQ65>].
33. See, e.g., TENN. CODE ANN. § 3-12-101(5) (West 2016); *Eighty-Eighth Legislative Session: Joint Rules*, S.D. LEGISLATURE ¶ 6A-5 (2013), <http://legis.sd.gov/docs/legsession/2013/joinrules.pdf> [<http://perma.cc/Z7WF-2SUH>].
34. See, e.g., ALASKA STAT. ANN. § 24.20.100 (West 2016); OR. REV. STAT. § 173.130(4) (2015).
35. See, e.g., IND. CODE § 2-5-1.1-7(e) (2015); MD. CODE ANN., STATE GOV'T § 2-1207(1) (West 2016); N.J. STAT. ANN. § 52:11-58(b)(1) (West 2016).
36. See, e.g., HAW. REV. STAT. § 23G-3(6) (West 2016); KY. REV. STAT. ANN. § 7.100(1) (West 2016).
37. See, e.g., MONT. CODE ANN. § 5-11-112(1)(a)(i-v) (2015); NEB. REV. STAT. § 49-702(4) (West 2016).
38. See House Bill Drafting, *Guidelines for Bill Drafting*, FLA. HOUSE REPRESENTATIVES 6 (2011) [hereinafter *Florida House Drafting Manual*], [http://www.myfloridahouse.gov/FileStores/Web/HouseContent/Approved/Public%20Guide/Uploads/Documents/bill-drafting-guidelines/full\\_document.pdf](http://www.myfloridahouse.gov/FileStores/Web/HouseContent/Approved/Public%20Guide/Uploads/Documents/bill-drafting-guidelines/full_document.pdf) [<http://perma.cc/HP7H-FE9Q>]; Office of Bill Drafting Servs., *Manual for Drafting Legislation*, FLA. SENATE 3 (2009) [hereinafter *Florida Senate Drafting Manual*], [http://www.flsenate.gov/PublishedContent/ADMINISTRATIVE\\_PUBLICATIONS/Manual-for-Drafting%20-Final.pdf](http://www.flsenate.gov/PublishedContent/ADMINISTRATIVE_PUBLICATIONS/Manual-for-Drafting%20-Final.pdf) [<http://perma.cc/WJX6-EV7T>].
39. See House Legislative Servs., *Legal Division*, LA. HOUSE REPRESENTATIVES, [http://house.louisiana.gov/H\\_Staff/HLS\\_LEGALDIV.aspx](http://house.louisiana.gov/H_Staff/HLS_LEGALDIV.aspx) [<http://perma.cc/BQ9N-X7KA>]; LA. SENATE LEGISLATIVE SERVS., *DRAFTING MANUAL* (2007) [hereinafter *Louisiana Senate Drafting Manual*]. In Louisiana, the drafting manual is specific to the Senate. Although the Louisiana House may have its own drafting manual, a recent version does not appear to be publicly available. Therefore, this Note surveys only the Senate manual.

sentatives and the Senate. In addition, the Minnesota Revisor of Statutes provides bill-drafting services to both houses of the legislature and state agencies and departments,<sup>40</sup> but both the Minnesota House and Senate also have their own offices that provide legal and research services.<sup>41</sup> Legislative drafting offices vary not only in structure but also in size and capacity. Some offices have a small number of attorneys and support staff, such as the Montana Legislative Service Division, which has about fifty-five staff members.<sup>42</sup> By contrast, other bureaus, such as New Jersey's Office of Legislative Services, have more than 300 staff members.<sup>43</sup>

While every state has a legislative drafting office, the professional drafters in these offices do not write each and every bill introduced in the legislatures. Rather, statutory language may come from a variety of sources. In most states, drafters outside the drafting office may prepare bills. Wisconsin is the exception, since its state law requires that all legislation be prepared by the state's Legislative Reference Bureau.<sup>44</sup> Moreover, some state legislatures have partisan bill-drafting services for legislators in the Democratic or Republican Party. For example, Hawaii has separate research offices for the majority and minority of the House and Senate that provide legal research and drafting services to members of their respective political parties.<sup>45</sup> Furthermore, professional bill drafters do not always draft legislation wholesale. Because similar issues often concern multiple states, bill drafters may borrow from statutes or bills of other states.<sup>46</sup> In addition, bill drafters look to model acts, prepared by groups such

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40. *Office Information*, OFF. REVISOR STATUTES, <http://www.revisor.mn.gov> [<http://perma.cc/LB7D-5FEC>].
41. *About House Research Department*, MINN. HOUSE REPRESENTATIVES, <http://www.house.leg.state.mn.us/hrd/about.aspx> [<http://perma.cc/TG7R-CJYS>]; *Minnesota Senate Offices: Senate Counsel, Research and Fiscal Analysis*, MINN. SENATE, [http://www.senate.leg.state.mn.us/departments/office\\_bio.php?office\\_id=1007](http://www.senate.leg.state.mn.us/departments/office_bio.php?office_id=1007) [<http://perma.cc/T9MN-SPY7>].
42. *Legislative Services Division Staff*, MONT. LEGISLATURE, <http://leg.mt.gov/css/Services%20Division/LSD%20staff.asp> [<http://perma.cc/3PP2-3RXN>].
43. *OLS Employee Index*, N.J. ST. LEGISLATURE, <http://www.njleg.state.nj.us/legislativepub/olsemployeeindex.asp> [<http://perma.cc/Y6GX-6UZZ>].
44. WIS. STAT. ANN. § 13.92(1)(b)(1) (West 2016).
45. *Legislative Staff Services*, *supra* note 29, at 41-43.
46. See, e.g., Office of Legislative Legal Servs., *Colorado Legislative Drafting Manual*, COL. GEN. ASSEMBLY § 1.3.6 (2014) [hereinafter *Colorado Drafting Manual*], [http://tornado.state.co.us/gov\\_dir/leg\\_dir/olls/LDM/OLLS\\_Drafting\\_Manual.pdf](http://tornado.state.co.us/gov_dir/leg_dir/olls/LDM/OLLS_Drafting_Manual.pdf) [<http://perma.cc/A9NZ-3AF9>] (specifying that the “drafter should ask the bill’s sponsor if similar legislation has been adopted by other states or check the codes of other states that may have enacted laws addressing the same issue”); Office of the Revisor of Statutes, *Maine Legislative Drafting Manual*, ME. ST. LEGISLATURE 9 (2009) [hereinafter *Maine Drafting Manual*], <http://www.maine.gov/legis/ros/manual/Draftman2009.pdf> [<http://perma.cc/G69K-943V>] (noting that a drafter may look to other states to find “legislation similar to the request being draft-

as the American Law Institute (ALI), and uniform laws proposed by the National Conference of Commissioners on Uniform State Laws (NCCUSL).<sup>47</sup> Each state's professional bill drafters play an important role, however, in adapting the "borrowed" statute—whether adopted from the law of another state, a model bill, or a uniform law—to conform to that state's law, drafting practice, and style.<sup>48</sup>

Furthermore, some bills are prepared by drafters who are entirely outside the state legislature, known as "outside drafters." For example, private law-making groups, known as Interested Private Lawmakers (IPL), which serve as the legislative arms of interest groups, draft model bills for state legislators to introduce.<sup>49</sup> The American Legislative Exchange Council (ALEC) is one of the most dominant IPLs, and describes itself as a "non-profit, nonpartisan association of over two thousand state legislators that works to promote principles of free markets, limited government and federalism throughout the states."<sup>50</sup> ALEC has written hundreds of model bills on a variety of issues. About one thousand bills based on ALEC model legislation are introduced annually in state legislatures across the country and, on average, twenty percent of these bills are enacted.<sup>51</sup>

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ed"); Mont. Legislative Servs. Div., *Bill Drafting Manual 2014*, MONT. LEGISLATURE 9 (2014) [hereinafter *Montana Drafting Manual*], <http://leg.mt.gov/content/Publications/2014%20bill%20drafting%20manual.pdf> [<http://perma.cc/RKC5-QNKM>] (noting that the "[e]xamination of laws from other states on the same subject is usually very beneficial").

47. The ALI is a private law-reform group comprised of approximately four thousand lawyers, judges and academics that proposes restatements of various areas of law and promulgates the Uniform Commercial Code. See Barak Orbach, *Invisible Lawmaking*, 79 U. CHI. L. REV. DIALOGUE 1, 2 (2012); *Institute Projects*, AM. L. INST., <http://www.ali.org/about-ali/institute-projects> [<http://perma.cc/E6QC-H5PX>]. The NCCUSL is comprised of "commissioners," who are lawyers, judges, and academics from across the country, and creates uniform laws that it proposes to state legislatures. Alan Schwartz & Robert E. Scott, *The Political Economy of Private Legislatures*, 143 U. PA. L. REV. 595, 601-02 (1995). Both the ALI and the NCCUSL purport to use legal expertise to deal with technical issues, rather than "matters whose resolution requires controversial value choices or would be aided by social science or philosophical skills," and prefer nationally uniform solutions. *Id.* at 603.

48. See, e.g., Dep't of Legislative Servs., *Legislative Drafting Manual 2016*, MD. GEN. ASSEMBLY 26 (2015) [hereinafter *Maryland Drafting Manual*], [http://dls.state.md.us/data/legandana/legandana\\_bildra/legandana\\_bildra\\_bildraman/Drafting-Manual.pdf](http://dls.state.md.us/data/legandana/legandana_bildra/legandana_bildra_bildraman/Drafting-Manual.pdf) [<http://perma.cc/TH34-NWDJ>] ("When using prior introductions, statutes from other states, or other source materials in drafting a bill, consider adapting and improving, rather than simply copying the material."); *Montana Drafting Manual*, *supra* note 46, at 9 ("When using a law from another state, the drafter must be very careful to make the bill language conform to Montana law and to Montana drafting practice and style.").

49. Orbach, *supra* note 47, at 2-3.

50. *Id.* at 3.

51. *Id.*

The scant literature on the legislative process at the state level has not comprehensively assessed the number of bills in state legislatures authored by professional bill drafters as compared to outside drafters; resolving this issue is beyond the scope of this study, and these numbers likely vary across states and over time. However, it appears likely that state legislative drafting offices prepare many, but not all, of the bills introduced in state legislatures.

## II. THE LEGISLATIVE DRAFTING MANUALS

Equipped with an understanding of the institutions that produce legislation at the state level, this Part turns to the sources of statutory meaning at the heart of this Note: the state bill drafting manuals. Many state legislatures have bill drafting manuals to assist in drafting legislation, and forty manuals from thirty-seven states<sup>52</sup> are publicly available.<sup>53</sup> This Part provides an overview of

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52. Of the remaining thirteen state legislatures, some do not have drafting manuals, while others have drafting manuals that are not available to the public. See *Bill Drafting Manuals*, NAT'L CONF. ST. LEGISLATURES (2014), <http://www.ncsl.org/legislators-staff/legislative-staff/legal-services/bill-drafting-manuals.aspx> [<http://perma.cc/3RJJ-XHNT>].
53. Legislative Reference Serv., *Drafting Style Manual*, ALA. ST. LEGISLATURE [hereinafter *Alabama Drafting Manual*] [http://lrs.state.al.us/style\\_manual/style\\_manual.html](http://lrs.state.al.us/style_manual/style_manual.html) [<http://perma.cc/A5J3-27B8>]; Legislative Affairs Agency, *Manual of Legislative Drafting*, ALASKA ST. LEGISLATURE (2015) [hereinafter *Alaska Drafting Manual*], <http://w3.legis.state.ak.us/docs/pdf/DraftingManual.pdf> [<http://perma.cc/U8KF-3Y4H>]; Ariz. Legislative Council, *The Arizona Legislative Bill Drafting Manual, 2015-2016*, ARIZ. ST. LEGISLATURE (2015) [hereinafter *Arizona Drafting Manual*], [http://www.azleg.gov/alisPDFs/council/2015-2016\\_bill\\_drafting\\_manual.pdf](http://www.azleg.gov/alisPDFs/council/2015-2016_bill_drafting_manual.pdf) [<http://perma.cc/BK8Q-6NMJ>]; *Arkansas Drafting Manual*, *supra* note 30; *Colorado Drafting Manual*, *supra* note 46; Legislative Comm'rs' Office, *Attorney's Drafting Manual: 2015 Edition*, CONN. GEN. ASSEMBLY (2015) [hereinafter *Connecticut Drafting Manual*] (on file with author); Legislative Council Div. of Research, *Delaware Legislative Drafting Manual*, DEL. ST. LEGISLATURE (2016) [hereinafter *Delaware Drafting Manual*], [http://legis.delaware.gov/Legislature.nsf/Legislative%20Drafting%20Manual%20\(modified\).pdf](http://legis.delaware.gov/Legislature.nsf/Legislative%20Drafting%20Manual%20(modified).pdf) [<http://perma.cc/XP2D-QASV>]; *Florida House Drafting Manual*, *supra* note 38; *Florida Senate Drafting Manual*, *supra* note 38; Legislative Reference Bureau, *Hawaii Legislative Drafting Manual*, ST. HAW. (2012) [hereinafter *Hawaii Drafting Manual*], <http://lrbhawaii.info/reports/legrpts/lrb/2012/legdftman12.pdf> [<http://perma.cc/65QE-5GJ9>]; *Idaho Drafting Manual*, *supra* note 30; Legislative Reference Bureau, *Illinois Bill Drafting Manual*, ILL. GEN. ASSEMBLY (2012) [hereinafter *Illinois Drafting Manual*], <http://www.ilga.gov/commission/lrb/manual.pdf> [<http://perma.cc/HT49-66A8>]; Ind. Code Revision Comm'n, *Drafting Manual for the Indiana General Assembly*, IND. GEN. ASSEMBLY (2012) [hereinafter *Indiana Drafting Manual*], [http://iga.in.gov/legislative/2014/publications/bill\\_drafting\\_manual/#document-ae6c0119](http://iga.in.gov/legislative/2014/publications/bill_drafting_manual/#document-ae6c0119) [<http://perma.cc/WTU5-RMST>]; Iowa Legislative Servs. Agency, *Iowa Bill Drafting Guide and Style Manual*, IOWA LEGISLATURE (2015) [hereinafter *Iowa Drafting Manual*] (on file with author); Legislative Research Comm'n, *Bill Drafting Manual*, KY. GEN. ASSEMBLY (2011) [hereinafter *Kentucky Drafting Manual*], <http://www.lrc.ky.gov/lrcpubs/ib117.pdf> [<http://perma.cc/9RWY-FKWX>]; *Louisiana Senate Drafting Manual*, *supra* note 39; *Maine Drafting Manual*, *supra* note 46; *Maryland Drafting Manual*, *supra* note

the types of drafting instructions and guidance in the drafting manuals in an effort to build greater awareness of the manuals among scholars and future litigants.

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48; Dep't of Legislative Servs., *Maryland Style Manual for Statutory Law*, MD. GEN. ASSEMBLY (2008) [hereinafter *Maryland Style Manual*], [http://dls.state.md.us/data%5Clegandana%5Clegandana\\_bildra%5Clegandana\\_bildra\\_marstyman%5CMdStyleManual\\_2008.pdf](http://dls.state.md.us/data%5Clegandana%5Clegandana_bildra%5Clegandana_bildra_marstyman%5CMdStyleManual_2008.pdf) [<http://perma.cc/6NE4-Y2LX>]; *Legislative Research and Drafting Manual*, MASS. GEN. CT. (2010) [hereinafter *Massachusetts Drafting Manual*], <http://malegislature.gov/Content/Documents/General/LegislativeDraftingManual.pdf> [<http://perma.cc/FE3R-VREB>]; Legislative Council, State of Mich., *Legislative Drafting Manual* (Sept. 2009) [hereinafter *Michigan Drafting Manual*] (on file with author); *Minnesota Revisor's Manual with Style and Forms*, OFF. REVISOR STATUTES (2013) [hereinafter *Minnesota Drafting Manual*], <http://www.revisor.mn.gov/office/2013-Revisor-Manual.pdf> [<http://perma.cc/K22C-KR22>]; Comm. on Legislative Research, *The Essentials of Bill Drafting in the Missouri General Assembly*, MO. GEN. ASSEMBLY (2011) [hereinafter *Missouri Drafting Manual*], <http://www.moga.mo.gov/rsmopdfs/BillDraftManual2011.pdf> [<http://perma.cc/GBU7-5BXQ>]; *Montana Drafting Manual*, *supra* note 46; Office of the Revisor of Statutes, *2015 Nebraska Bill Drafting Office Manual* [hereinafter *Nebraska Drafting Manual*] (on file with author); Legislative Council Serv., *Legislative Drafting Manual*, N.M. LEGISLATURE (2015) [hereinafter *New Mexico Drafting Manual*], <http://www.nmlegis.gov/lcs/lcsdocs/draftman.pdf> [<http://perma.cc/SR6D-WMZL>]; N.J. Office of Legislative Servs., *Bill Drafting Manual 2013* [hereinafter *New Jersey Drafting Manual*] (on file with author); State of N.Y. Legislative Bill Drafting Comm'n, *Bill Drafting Manual* (2005) [hereinafter *New York Drafting Manual*] (on file with author); Legislative Council, *North Dakota Legislative Drafting Manual*, N.D. LEGIS. BRANCH (2015) [hereinafter *North Dakota Drafting Manual*], <http://www.legis.nd.gov/legislative-drafting-manual> [<http://perma.cc/SJC3-NBLC>]; Legislative Counsel Comm., *Bill Drafting Manual*, OR. ST. LEGISLATURE (2014) [hereinafter *Oregon Drafting Manual*], <http://www.oregonlegislature.gov/lc/PDFs/draftingmanual.pdf> [<http://perma.cc/4GK5-4VJR>]; Off. of Legislative Counsel, *Form and Style Manual for Legislative Measures*, OR. LEGIS. ASSEMBLY (2015-2016) [hereinafter *Oregon Form and Style Manual*], <http://www.oregonlegislature.gov/lc/PDFs/form-stylemanual.pdf> [<http://perma.cc/3QUQ-N3T3>]; 101 PA. CONS. STAT. ch. 13 [hereinafter *Pennsylvania Drafting Manual*]; *Drafting Manual*, S.D. LEGISLATURE [hereinafter *South Dakota Drafting Manual*], <http://legis.sd.gov/docs/referencematerials/draftingmanual.pdf> [<http://perma.cc/VY8X-VBEZ>]; *Tennessee Drafting Manual*, *supra* note 30; *Texas Legislative Council Drafting Manual*, TEX. LEGIS. COUNCIL (2015) [hereinafter *Texas Drafting Manual*], <http://www.tlc.state.tx.us/legal/dm/draftingmanual.pdf> [<http://perma.cc/YCS2-PCZN>]; *Drafting Manual*, UTAH ST. LEGISLATURE (2014) [hereinafter *Utah Drafting Manual*], <http://le.utah.gov/documents/LDM/draftingManual.html> [<http://perma.cc/AE3H-EWJQ>]; Va. Div. of Legislative Servs., *Drafting Manual* [hereinafter *Virginia Drafting Manual*] (on file with author); Office of the Code Reviser, *Bill Drafting Guide 2015*, WASH. ST. LEGISLATURE [hereinafter *Washington Drafting Manual*], [http://leg.wa.gov/CodeReviser/Pages/bill\\_drafting\\_guide.aspx](http://leg.wa.gov/CodeReviser/Pages/bill_drafting_guide.aspx) [<http://perma.cc/SJV5-XQVE>]; Legislative Servs., *West Virginia Legislature Bill Drafting Manual*, W. VA. LEGISLATURE (2006) [hereinafter *West Virginia Drafting Manual*], [http://www.legis.state.wv.us/Join/Bill\\_Drafting/Drafting\\_Manual.pdf](http://www.legis.state.wv.us/Join/Bill_Drafting/Drafting_Manual.pdf) [<http://perma.cc/J8QG-UPDZ>]; *Bill Drafting Manual*, WIS. ST. LEGISLATURE (2011-12) [hereinafter *Wisconsin Drafting Manual*], [http://docs.legis.wisconsin.gov/statutes/drafting\\_manual](http://docs.legis.wisconsin.gov/statutes/drafting_manual) [<http://perma.cc/2TZW-6GDJ>].

These manuals seek to help drafters prepare clear and uniform legislation.<sup>54</sup> The drafting manuals establish conventions concerning language, style, and format to guide the bill-drafting process.<sup>55</sup> As one manual explains, a drafting manual “serve[s] as a guide to the creation of an accurate, clear, and uniform legislative product” by establishing a shared legislative language and style.<sup>56</sup> Such shared conventions are particularly useful for ensuring consistency “in instances where more than one style is considered correct or where the unique characteristics of legislative documents require a deviation from the generally accepted standards.”<sup>57</sup> Furthermore, shared language and style not only impose order on the bill-drafting process, but also help ensure that new statutes are consistent with the existing statutes in the code.<sup>58</sup> In this way, the manuals horizontally align drafting practices within drafting offices and legislatures.

Despite this common purpose, the scope and substance of the drafting manuals vary broadly. Most of these manuals are published by bill drafting offices; one, the Pennsylvania manual, is part of the state’s code.<sup>59</sup> Almost all state legislatures have only one publicly available manual used to draft bills for both houses of the legislature; in two states, Florida and Louisiana, the drafting manuals are specific to each house of the legislature.<sup>60</sup> Two other states, Maryland and Oregon, have more than one manual, with each manual addressing different aspects of drafting and the legislative process.<sup>61</sup>

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54. E.g., *Maryland Drafting Manual*, *supra* note 48, at iii; *Nebraska Drafting Manual*, *supra* note 53, at 7; *Oregon Drafting Manual*, *supra* note 53, at iii.
55. See, e.g., *Nebraska Drafting Manual*, *supra* note 53, at 7 (“It is very important to follow standard practices and guidelines when drafting bills in order to provide a consistent bill drafting product. This manual is intended to . . . promote uniformity among bill drafters with respect to word usage, punctuation, standard language, and other technical aspects.”).
56. *Delaware Drafting Manual*, *supra* note 53, at 1.
57. *Texas Drafting Manual*, *supra* note 53, at 89.
58. E.g., *Delaware Drafting Manual*, *supra* note 53, at 77 (“The purpose of the rules is to promote accuracy, clarity, and uniformity, with the goal being the best possible legislative product that is in harmony with the existing Code.”); *Maine Drafting Manual*, *supra* note 46, at 66 (“This Part sets forth the conventions of style and grammar applied by the Officer of the Revisor of Statutes to help ensure consistency throughout the statutes and other Maine laws . . . . The goals of a standardized legislative style are to ensure that later revisions are internally consistent with earlier documents . . . .”).
59. See *Pennsylvania Drafting Manual*, *supra* note 53.
60. See *supra* notes 38-39 and accompanying text.
61. The Oregon Office of the Legislative Counsel publishes the *Bill Drafting Manual*, which includes general information about the legislative process and drafting conventions, and the *Form and Style Manual*, which contains detailed instructions about legislative style. Parts of the *Bill Drafting Manual* are derived from the *Form and Style Manual*. See *Oregon Drafting Manual & Oregon Form and Style Manual*, *supra* note 53. Similarly, the Maryland Department of Legislative Services publishes the *Legislative Drafting Manual*, which provides an overview

The manuals differ considerably in length and level of detail offered to bill drafters. For example, the Tennessee drafting manual is only forty-eight pages long, while the Colorado manual has 598 pages. These manuals also have different audiences; some manuals serve as internal documents and are intended primarily for the professional drafters in the drafting offices,<sup>62</sup> while other manuals are meant to guide anyone who helps prepare bills for the state legislature.<sup>63</sup> Although all of the manuals include directions for professional bill drafters in the states' legislative drafting offices, some manuals also include instructions specifically intended for outside drafters.<sup>64</sup>

Functional distinctions aside, the manuals are often substantively similar in the types of guidance that they offer to bill drafters. In particular, the drafting manuals' provisions concerning background information for bill drafters, bill format and structure, and substantive drafting conventions overlap considerably. The survey that follows is not intended to be an exhaustive inventory of all of the information in the drafting manuals; rather, it focuses on common sections in the manuals in order to illustrate the types of guidance these manuals offer drafters. This Part describes provisions that are both typically included in the manuals and potentially relevant to courts and litigants interpreting statutes.<sup>65</sup> Although each manual is unique, an examination of common manual provisions highlights the potential usefulness of these manuals to courts, scholars, and litigants faced with questions of state statutory interpretation.<sup>66</sup>

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of the legislative and drafting processes and includes general considerations for bill drafters, see *Maryland Drafting Manual*, *supra* note 48, and the *Style Manual for Statutory Law*, which contains more specific conventions for statutory drafting, see *Maryland Style Manual*, *supra* note 53.

62. *E.g.*, *Colorado Drafting Manual*, *supra* note 46, at 0-1; *Michigan Drafting Manual*, *supra* note 53, at preface; *Oregon Drafting Manual*, *supra* note 53, at iii.

63. *E.g.*, *Iowa Drafting Manual*, *supra* note 53, at 2; *New Mexico Drafting Manual*, *supra* note 53, at i.

64. *E.g.*, *Delaware Drafting Manual*, *supra* note 53, at 2; *Tennessee Drafting Manual*, *supra* note 30, at 2, 4, 5.

65. The manuals include other information and guidance for drafters that are excluded from this study because they appear to be tangential or unrelated to state statutory interpretation. For example, many manuals discuss the procedures and requirements for ratifying amendments to the U.S. Constitution and state constitutions that would be of only passing interest to courts and attorneys interpreting statutes. See, *e.g.*, *New York Drafting Manual*, *supra* note 53, at 55-60. In addition, while this study is limited to bills, many manuals also include information about drafting other legislative measures and documents, such as legislative memorials and referenda. See, *e.g.*, *Arizona Drafting Manual*, *supra* note 53, at 21-26.

66. See *infra* Part IV.

### A. Background Information About the Legislative Drafting Offices

Many of the drafting manuals include background information about legislative drafting offices and bill-drafting processes.<sup>67</sup> These sections have the potential to be relevant in statutory interpretation when it comes to contextualizing legislative history.<sup>68</sup> They typically explain that the process begins when a legislator contacts the drafting office to request a draft of a bill addressing a particular topic.<sup>69</sup> The professional drafters have an ethical obligation to keep these bill requests confidential.<sup>70</sup> Furthermore, professional drafters often must refrain from partisan or political activity and remain neutral with regard to the policies involved in legislative work requests.<sup>71</sup>

Many manuals also explain that the role of the professional drafter is to convert the legislator's request into statutory language in proper style and form to carry out the objectives of the bill's sponsor.<sup>72</sup> To ensure that a bill achieves such objectives, many manuals encourage drafters to discuss the bill with the sponsor during the drafting process.<sup>73</sup> For drafting ideas, several manuals recommend that drafters consider other bills, including uniform laws, model acts, and the laws of other states.<sup>74</sup> Most of these manuals stipulate, however, that in using these sources, drafters should conform the bill to the state's own drafting style and form.<sup>75</sup>

### B. Bill Format and Structure

In addition to providing background information about legislative drafting offices, almost all of the manuals instruct drafters how to format and structure

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67. See *infra* Table 1.

68. See *infra* Section IV.B.1.a.

69. E.g., *Alaska Drafting Manual*, *supra* note 53, at 4-5; *Arkansas Drafting Manual*, *supra* note 30, at 7; *Maryland Drafting Manual*, *supra* note 48, at 13-15.

70. E.g., *Kentucky Drafting Manual*, *supra* note 53, at 1-2; *Maine Drafting Manual*, *supra* note 46, at 4-5; *Missouri Drafting Manual*, *supra* note 53, at 1.

71. E.g., *Alaska Drafting Manual*, *supra* note 53, at 5; *Kentucky Drafting Manual*, *supra* note 53, at 2-3; *Oregon Drafting Manual*, *supra* note 53, §§ 1.1-1.2.

72. E.g., *Arizona Drafting Manual*, *supra* note 53, at 3; *Idaho Drafting Manual*, *supra* note 30, at 4; *Montana Drafting Manual*, *supra* note 46, at 1.

73. E.g., *Colorado Drafting Manual*, *supra* note 46, § 1.2.1; *Maine Drafting Manual*, *supra* note 46, at 3-4; *Nebraska Drafting Manual*, *supra* note 53, at 14-15.

74. See *infra* Table 2.

75. E.g., *Colorado Drafting Manual*, *supra* note 46, §§ 1.3.7, 12.1; *Montana Drafting Manual*, *supra* note 46, at 9; *New Mexico Drafting Manual*, *supra* note 53, at 107.



bills.<sup>76</sup> In particular, many manuals define the subunits of statutes, such as paragraphs, subsections, and subparagraphs, and explain how to reference these subunits.<sup>77</sup> For example, the Maryland drafting manual describes the proper order of subdivision within a section in a statute (section, subsection, paragraph, subparagraph, subparagraph) and the proper numbering for each in order to ensure that a statute's internal references are clear.<sup>78</sup> These instructions may help interpreters understand statutory provisions that reference other subunits of the statute by clarifying the drafter's understanding of what each particular subunit encompasses.<sup>79</sup> For example, if a provision indicates that its applicability is limited to a specific paragraph, subdivision, or chapter, the drafters' understanding of those terms would help determine the scope and reach of the statutory provision.

The vast majority of the manuals also include descriptions of the requisite elements of a bill, such as titles, short titles,<sup>80</sup> and the enacting clause.<sup>81</sup> Some manuals also establish clerical requirements for bills, instructing drafters of the proper paper and margins,<sup>82</sup> font,<sup>83</sup> spacing,<sup>84</sup> and bill covers.<sup>85</sup> While necessary, these instructions covering the mechanics of legislative boilerplate may only be relevant for statutory interpretation on the rare occasion.

### C. Substantive Drafting Conventions

All of the drafting manuals surveyed in this study include substantive provisions directing the drafter to employ certain conventions in style, grammar, and word usage. These conventions are particularly relevant in statutory interpretation because they offer insight into the intended meaning of particular words and phrases in statutes. The substantive drafting conventions in the manuals include both (1) canons of construction, which are "a set of back-

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76. See *infra* Table 3.

77. E.g., *Arkansas Drafting Manual*, *supra* note 30, at 19-26; *Maryland Drafting Manual*, *supra* note 48, at 100-02; *Wisconsin Drafting Manual*, *supra* note 53, at 59-60.

78. *Maryland Drafting Manual*, *supra* note 48, at 100-02.

79. See *infra* Sections III.A, IV.B.1.b.

80. E.g., *Maryland Drafting Manual*, *supra* note 48, at 39-40; *Minnesota Drafting Manual*, *supra* note 53, at 11-15; *Montana Drafting Manual*, *supra* note 46, at 51-57.

81. E.g., *Arizona Drafting Manual*, *supra* note 53, at 12; *Idaho Drafting Manual*, *supra* note 30, at 6; *Maine Drafting Manual*, *supra* note 46, at 16.

82. E.g., *New Mexico Drafting Manual*, *supra* note 53, at 154-55.

83. E.g., *Alaska Drafting Manual*, *supra* note 53, at 83.

84. E.g., *New York Drafting Manual*, *supra* note 53, at 5.

85. E.g., *Pennsylvania Drafting Manual*, *supra* note 53, §§ 13.41-13.47.

ground norms and conventions” that “serve as rules of thumb or presumptions that help extract substantive meaning from, among other things, the language, context, structure, and subject matter of a statute”;<sup>86</sup> and (2) linguistic and stylistic conventions.

The following discussion is not intended to be a comprehensive list of all of the drafting conventions in the manuals, but rather, focuses on commonly included conventions to illustrate the type of guidance the manuals provide. Many of the manuals broadly address the same recurring legislative drafting issues, and while the drafting conventions for addressing these issues largely overlap, states have adopted different approaches to certain issues. As a result, although the manuals include many of the same conventions—such as the use of present tense, active voice, and gender-neutral language—the substance of the conventions in the manuals of different states occasionally conflicts. In addition to different drafting conventions, the manuals also include different canons of construction, reflecting variation in the rules of statutory construction across states.<sup>87</sup>

#### 1. *Direct References to Canons, Precedent, and Code*

In instructing bill drafters in style, grammar, and word usage, almost all of the manuals contain direct references to canons of construction, judicial precedents related to statutory interpretation, and legislated codes of construction. Thirty-eight of the manuals in this study discuss at least one canon, and these references are often supported by citations to codified rules of construction or precedent; Virginia is the only state whose manual does not reference such interpretive principles. These thirty-eight manuals vary significantly in the number of canons discussed. Some manuals include only one or two interpretive canons, and the discussion of these canons plays a minor role in the manuals’ guidance on drafting conventions. For example, the Alabama drafting manual only makes a brief reference to one canon.<sup>88</sup> In contrast, other manuals include detailed discussion of a number of canons. Some of these manuals have sepa-

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86. Scott, *supra* note 4, at 344.

87. For example, legislative codification of interpretive rules varies considerably across states, as some states have codified canons that other state codes either do not address or explicitly reject. See, e.g., *id.* at 350-51 (demonstrating that state legislatures have codified various, often inconsistent, interpretive canons).

88. *Alabama Drafting Manual*, *supra* note 53, at r. 6. Other manuals discuss only a handful of canons. See *Missouri Drafting Manual*, *supra* note 53, at 31-32, 45; *New Jersey Drafting Manual*, *supra* note 53, at 66-67, 108; *South Dakota Drafting Manual*, *supra* note 53, at 14, 27.

rate sections listing canons used in that state,<sup>89</sup> while others integrate the canons into a more general discussion of guidance for style and form.<sup>90</sup>

Through these references to canons of construction, the manuals are self-consciously “written in anticipation of judicial interpretation” and instruct drafters “on how courts are likely to interpret certain language.”<sup>91</sup> The manual provisions citing the canons “reflect an awareness of statutory language as the object of the courts’ attention.”<sup>92</sup> Furthermore, the manuals often advise drafters to prepare bills with these interpretive rules in mind. For example, the Florida Senate drafting manual recommends that drafters familiarize themselves “with the basic principles of statutory construction” in order “[t]o ensure that a law will be applied as the Legislature intends,” as “they predict how a court will interpret an act of the Legislature.”<sup>93</sup> The Colorado drafting manual goes further, explaining that the legislature’s code of statutory construction is comprised of the sections of the Colorado code “that have the greatest effect on bill drafting.”<sup>94</sup> These provisions reveal that drafters not only are aware of specific conventions of statutory interpretation, but are actually advised to prepare bills with these principles in mind.<sup>95</sup>

The following section describes some of the canons that are commonly included in the drafting manuals. In my analysis, I use the basic classification developed by William Eskridge, Philip Frickey, and Elizabeth Garrett: (i) textual canons, which include linguistic inferences, grammar and syntax rules, and textual integrity canons; (ii) substantive canons; and (iii) extrinsic source canons.<sup>96</sup> Figure 1 encapsulates different states’ inclusion and exclusion of these three types of canons in their drafting manuals.

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89. *E.g.*, *Delaware Drafting Manual*, *supra* note 53, app. F at 193-95; *Florida Senate Drafting Manual*, *supra* note 38, at 113-26; *Iowa Drafting Manual*, *supra* note 53, at 35-43; *Minnesota Drafting Manual*, *supra* note 53, at 275-98.

90. *E.g.*, *Arkansas Drafting Manual*, *supra* note 30, at 52-55; *New Jersey Drafting Manual*, *supra* note 53, at 108-09.

91. Ard, *supra* note 16, at 189. In Louisiana, the courts “presume[] the Legislature acts with full knowledge of well-settled principles of statutory construction.” *Louisiana Senate Drafting Manual*, *supra* note 39, at 26 (citing *State v. Bedford*, 838 So. 2d 758 (La. 2003)).

92. Ard, *supra* note 16, at 189.

93. *Florida Senate Drafting Manual*, *supra* note 38, at 113; *see also Iowa Drafting Manual*, *supra* note 53, at 29 (“Knowledge of the rules of statutory construction will help the bill drafter to properly frame the contents of a bill and express the intent of the legislation in a clear and uniform manner.”).

94. *Colorado Drafting Manual*, *supra* note 46, § 1.2.5.

95. *See, e.g., id.*

96. WILLIAM N. ESKRIDGE, PHILIP P. FRICKEY & ELIZABETH GARRETT, *CASES AND MATERIALS ON LEGISLATION: STATUTES AND THE CREATION OF PUBLIC POLICY* app. B (4th ed. 2007) (com-

**FIGURE 1.**  
**CANONS OF CONSTRUCTION IN THE DRAFTING MANUALS**

<b>Textual Canons</b>	<p><i>Included in the manuals of thirty-one states:</i>            AL, AK, AZ, AR, CO, CT, DE, FL, HI, IL, IA, KY, LA, ME, MI, MN, MT, NE, NJ, NM, NY, ND, OR, PA, SD, TN, TX, UT, WA, WV, WI</p>
<b>Substantive Canons</b>	<p><i>Included in the manuals of thirty-one states:</i>            AK, AZ, AR, CO, CT, DE, FL, HI, ID, IL, IN, IA, KY, LA, ME, MD, MA, MI, MN, MO, MT, NJ, ND, OR, PA, SD, TN, TX, UT, WA, WV</p>
<b>Extrinsic Source Canons</b>	<p><i>Included in the manuals of twelve states:</i>            CO, CT, FL, IA, LA, MN, ND, OR, TN, TX, WV, WI</p>

*a. Textual Canons*

Thirty-one of the manuals surveyed discuss textual canons. Textual canons are discrete inferences “drawn from the drafter’s choice of words, their grammatical placement . . . and their relationship to other parts of the statute.”<sup>97</sup> The textual canons discussed in the manuals include linguistic inferences, grammar and syntax rules, and textual integrity canons. Figure 2 summarizes the range of textual canons included in the manuals of the thirty-seven states.

The first category of textual canons, known as linguistic inferences, is included in nineteen manuals. Linguistic inferences attempt to provide “guidelines about what the legislature likely meant, given its choice of some words and not others.”<sup>98</sup> The most commonly cited linguistic inference canon is the plain meaning rule, which directs courts to follow the plain meaning of the statutory text<sup>99</sup> and is referenced in sixteen manuals.<sup>100</sup> The manuals also dis-

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piling an extensive list of canons employed by the Supreme Court from the 1986 through 2006 Terms).

97. *Id.* at 848.

98. Scott, *supra* note 4, at 352.

99. 2A NORMAN J. SINGER & J.D. SHAMBIE SINGER, SUTHERLAND STATUTES & STATUTORY CONSTRUCTION 137-51 (7th ed. 2015).

100. See *infra* Table 4.

cuss other inferential rules: eight manuals cite *ejusdem generis*,<sup>101</sup> three manuals cite *noscitur a sociis*,<sup>102</sup> and ten manuals cite *expressio unius*.<sup>103</sup>

In addition to linguistic inference canons, twenty-six manuals discuss canons related to grammar and syntax.<sup>104</sup> These canons constitute presumptions that the legislature knows and follows certain “basic conventions of grammar and syntax.”<sup>105</sup> For example, twenty manuals<sup>106</sup> cite the singular/plural rule, which directs interpreters to construe “words importing the singular [to] include and apply to several persons, parties, or things,” and vice versa.<sup>107</sup> Furthermore, fifteen manuals<sup>108</sup> discuss the gender rule, which provides that masculine pronouns should be interpreted to include the feminine.<sup>109</sup> In addition to grammar rules, a handful of manuals cite syntactical rules relating to referential and qualifying words. Six manuals,<sup>110</sup> for example, refer to the rule of the last antecedent, which provides that “[r]eferential [or] qualifying words or phrases refer only to the last [word or phrase], unless contrary to the apparent legislative intent derived from the sense of the entire enactment.”<sup>111</sup>

The textual integrity canons are the last category of textual canons included in the manuals. These canons, referenced in twenty manuals, “clarify [statutory] meaning by focusing on the context of statutory language.”<sup>112</sup> For example, the rule of consistent usage, which is cited in five manuals,<sup>113</sup> provides that the same or similar terms in statutes should generally be construed in the same

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101. *Ejusdem generis*, meaning “of the same kind,” instructs that “where general words follow specific words . . . the general words [should] be construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words.” SINGER & SINGER, *supra* note 99, at 357-60; see also *infra* Table 4 (listing the eight manuals citing *ejusdem generis*).

102. *Noscitur a sociis*, meaning “it is known from its associates,” directs interpreters to construe ambiguous terms in a list in reference to other terms on the list. SINGER & SINGER, *supra* note 99, at 352; see *infra* Table 4 (listing the three manuals that reference this canon).

103. The *expressio unius* canon is a presumption of negative implication that the enumeration of certain items in a statute reflects legislative intent to exclude items not expressly listed. SINGER & SINGER, *supra* note 99, at 398-412; see *infra* Table 4 (listing the ten manuals citing the *expressio unius* canon).

104. See *infra* Table 5.

105. ESKRIDGE, FRICKEY & GARRETT, *supra* note 96, at 856.

106. See *infra* Table 5.

107. ESKRIDGE, FRICKEY & GARRETT, *supra* note 96, at 860 (quoting 1 U.S.C. § 1).

108. See *infra* Table 5.

109. SINGER & SINGER, *supra* note 99, at 486.

110. See *infra* Table 5.

111. ESKRIDGE, FRICKEY & GARRETT, *supra* note 96, at 857.

112. Scott, *supra* note 4, at 361.

113. See *infra* Table 6.

way.<sup>114</sup> Seven manuals reference the rule against surplusage, another broad coherence-based canon.<sup>115</sup> This canon provides that interpreters should avoid interpretations of statutes that would render provisions of an act superfluous or unnecessary.<sup>116</sup> A second type of textual integrity canon defines which parts of the published code are relevant to interpreters. For example, seven manuals discuss interpretive rules addressing whether interpreters may consider section headings in the construction of a statute.<sup>117</sup> The Colorado and Pennsylvania drafting manuals advise drafters that under each state's interpretive rules, courts may consider section headings in construing a statute.<sup>118</sup> Five other manuals, however, indicate that section headings are not part of the statute and may not be considered in statutory construction.<sup>119</sup> Another textual integrity canon concerns whether interpreters may consider a statute's statement of purpose and preamble in discerning statutory meaning: thirteen manuals indicate interpreters may consider the statement of purpose and preamble, while the manual of one state, Kentucky, stipulates that the statute's statement of purpose and preamble are not considered part of the act.<sup>120</sup>

**FIGURE 2.**  
**TEXTUAL CANONS IN THE DRAFTING MANUALS**

<b>Linguistic Inferences</b>	<i>Included in the manuals of nineteen states:</i> AK, AZ, CO, CT, DE, FL, IL, IA, LA, MI, MN, MT, OR, PA, TN, TX, UT, WV, WI
<b>Grammar and Syntax</b>	<i>Included in the manuals of twenty-six states:</i> AR, CO, DE, FL, HI, IL, IA, KY, LA, ME, MI, MN, NE, NJ, NM, NY, ND, OR, PA, SD, TN, TX, UT, WA, WV, WI
<b>Textual Integrity Canons</b>	<i>Included in the manuals of twenty states:</i> AL, AK, CO, CT, DE, FL, IL, IA, KY, LA, MI, MN, MT, NY, ND, OR, PA, UT, WV, WI

114. ESKRIDGE, FRICKEY & GARRETT, *supra* note 96, at 866-67.

115. See *infra* Table 6.

116. SINGER & SINGER, *supra* note 99, at 230-44.

117. See *infra* Table 6.

118. *Colorado Drafting Manual*, *supra* note 46, § 2.5.3; *Pennsylvania Drafting Manual*, *supra* note 53, § 13.122.

119. See *infra* Table 6.

120. See *infra* Table 6.

b. *Substantive Canons*

While the textual canons provide interpretive inferences based on the words, phrases, and structures of the statutory text itself, the substantive canons instruct interpreters to consider larger public values and policies in interpreting statutes.<sup>121</sup> The drafting manuals of thirty-one states discuss at least one substantive canon.<sup>122</sup> By far the most common substantive canon included in the manuals is the severability canon, which is a presumption in favor of severing unconstitutional provisions and leaving the valid parts of the statute in force. Twenty-nine manuals from twenty-eight states reference this canon.<sup>123</sup> Moreover, most state codes codify severability,<sup>124</sup> and twenty-two manuals refer to the state code's general severability clause.<sup>125</sup> Not all states, however, follow this approach. The Utah drafting manual notes that the Utah Code does not have a general severability clause addressing whether a statutory provision is to be severed if a court finds a portion of the law unconstitutional or invalid.<sup>126</sup> Apart from legislated severability provisions, ten manuals also discuss the judicial presumption in favor of severability.<sup>127</sup>

In addition to the severability canon, seventeen manuals discuss state retroactivity rules, which address when a statute can be applied retroactively to past

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121. ESKRIDGE, FRICKEY & GARRETT, *supra* note 96, at 848.

122. *See infra* Table 7.

123. *See infra* Table 7.

124. Scott, *supra* note 4, at 385-87.

125. *Alaska Drafting Manual*, *supra* note 53, at 31-32; *Arkansas Drafting Manual*, *supra* note 30, at 79; *Colorado Drafting Manual*, *supra* note 46, § 2.6.2; *Delaware Drafting Manual*, *supra* note 53, at 30-31, 195; *Illinois Drafting Manual*, *supra* note 53, at 47-48; *Indiana Drafting Manual*, *supra* note 53, at 79; *Iowa Drafting Manual*, *supra* note 53, at 93; *Kentucky Drafting Manual*, *supra* note 53, at 27-28; *Louisiana Senate Drafting Manual*, *supra* note 39, at 16-17; *Maine Drafting Manual*, *supra* note 46, at 21; *Maryland Drafting Manual*, *supra* note 48, at 117-18; *Massachusetts Drafting Manual*, *supra* note 53, at pt. 3(d)(4); *Michigan Drafting Manual*, *supra* note 53, at 32-33; *Minnesota Drafting Manual*, *supra* note 53, at 40-41; *Missouri Drafting Manual*, *supra* note 53, at 31-32; *New Jersey Drafting Manual*, *supra* note 53, at 66-67; *North Dakota Drafting Manual*, *supra* note 53, at 8; *Oregon Form and Style Manual*, *supra* note 53, at 52; *Pennsylvania Drafting Manual*, *supra* note 53, § 13.123; *South Dakota Drafting Manual*, *supra* note 53, at 14; *Texas Drafting Manual*, *supra* note 53, at 46-47, 224; *West Virginia Drafting Manual*, *supra* note 53, at 32.

126. *Utah Drafting Manual*, *supra* note 53, at ch. 2, pt. 5.

127. *Arizona Drafting Manual*, *supra* note 53, at 52-53; *Colorado Drafting Manual*, *supra* note 46, § 2.6.2; *Delaware Drafting Manual*, *supra* note 53, at 30-31, 195; *Florida House Drafting Manual*, *supra* note 38, at 47-48; *Florida Senate Drafting Manual*, *supra* note 38, at 60, 126; *Hawaii Drafting Manual*, *supra* note 53, at 13; *Illinois Drafting Manual*, *supra* note 53, at 47-48; *Montana Drafting Manual*, *supra* note 46, at 74-75; *South Dakota Drafting Manual*, *supra* note 53, at 14; *Washington Drafting Manual*, *supra* note 53, at pt. II(11)(w).

conditions.<sup>128</sup> These states have slightly different formulations of the retroactivity rule: the rules cited in six manuals stipulate that no statute is retroactive unless expressly declared therein, while the other eleven manuals cite rules indicating that a statute will not apply retroactively absent contrary legislative intent.<sup>129</sup>

Although the severability and retroactivity canons are the most frequently cited substantive canons, some manuals cite other substantive canons relating to constitutional considerations. For example, six manuals cite the constitutional avoidance canon,<sup>130</sup> and six manuals reference the rule of lenity, which requires that ambiguity in penal statutes be resolved in favor of the defendant.<sup>131</sup>

### c. *Extrinsic Source Canons*

The final category of canons in the manuals is the extrinsic source canons. These rules of interpretation address how and when to consult sources outside the text of the statute itself to discern statutory meaning.<sup>132</sup> For example, some extrinsic source canons explain how interpreters should construe statutes in reference to the common law.<sup>133</sup> One manual cites precedent indicating that statutes are presumed not to alter the common law; two manuals explain that statutes in derogation of the common law are narrowly construed; and two manuals reject the derogation of common law canon.<sup>134</sup> In addition to the common law, some of the extrinsic source canons included in the manuals direct interpreters to construe statutes in light of other statutes.<sup>135</sup> For example, seven manuals<sup>136</sup> discuss the *in pari materia* canon, which instructs interpreters to interpret statutes employing the same terminology or pertaining to the same subject matter similarly.<sup>137</sup>

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128. See *infra* Table 7.

129. See *infra* Table 7.

130. Five of these manuals describe the canon as a presumption that statutes enacted by the legislature are constitutional. However, the avoidance canon cited in one manual calls for liberal construction of a statute to avoid making it constitutionally invalid. See *infra* Table 7.

131. See *infra* Table 7.

132. See ESKRIDGE, FRICKEY & GARRETT, *supra* note 96, at 955.

133. See *id.* at 956-57.

134. See *infra* Table 8.

135. See ESKRIDGE, FRICKEY & GARRETT, *supra* note 96, at 1066.

136. See *infra* Table 8.

137. See ESKRIDGE, FRICKEY & GARRETT, *supra* note 96, at 1066. This canon is related to the presumption of consistent usage, discussed *supra* note 114 and accompanying text, as both can-



Some of the manuals also include extrinsic source canons concerning when interpreters can consider legislative context, including legislative history and statutory history.<sup>138</sup> The substance of the canons cited varies across states, depending on the interpretive rules adopted by each state's legislature and judiciary. For example, five manuals indicate that courts can consider legislative history if the statute is ambiguous; two manuals provide that courts can consider legislative history whether or not the statute is ambiguous; and one manual explains that courts ordinarily should not consider legislative history, except as support for conclusions following from established rules of statutory construction.<sup>139</sup> Other canons encourage interpreters to consider judicial readings of the statute at issue. For example, the reenactment rule, cited in five manuals,<sup>140</sup> stipulates that when a statute is amended, the judicial construction previously placed upon the statute is deemed approved to the extent that the provision remains unchanged.<sup>141</sup> One manual cites a related canon, the acquiescence rule, which provides that legislative inaction after judicial interpretation of a statute may indicate legislative approval of that interpretation;<sup>142</sup> this manual, however, cites precedent indicating that legislative inaction is a "weak reed" to rely on in determining legislative intent.<sup>143</sup>

## 2. *Implied and Restated Conventions*

All of the manuals surveyed direct drafters to employ certain conventions in the language and structure of a bill. Compared to the provisions discussed in Section II.C.1, these provisions describe substantive drafting conventions without naming canons or specific interpretive rules. These conventions aim to promote accurate, clear, and uniform legislation by establishing a shared language and style to impose order on the drafting process.<sup>144</sup>

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ons are premised on an "interpreter's examination of the context of a particular term and what sort of meaning that term has acquired in other statutes." Scott, *supra* note 4, at 376. The distinction between the two is in the scope of the context: while the presumption of consistent usage restricts the context-based inquiry to the same statute, the *in pari materia* canon directs interpreters to look beyond the statute at issue. *See id.*

138. See ESKRIDGE, FRICKEY & GARRETT, *supra* note 96, at 971-72.

139. *See infra* Table 8.

140. *See infra* Table 8.

141. 2B NORMAN J. SINGER & J.D. SHAMBLE SINGER, SUTHERLAND STATUTES & STATUTORY CONSTRUCTION 110-14 (7th ed. 2015).

142. *Oregon Drafting Manual*, *supra* note 53, § 20.15.

143. *Id.* (citing *Berry v. Branner*, 421 P.2d 996, 998 (Or. 1966)).

144. *See, e.g., Maine Drafting Manual*, *supra* note 46, at 67 ("A good statutory style requires consistency, coherence and clarity.").

a. *Style and Grammar*

All of the manuals surveyed include conventions with general style and grammar instructions to minimize ambiguity in statutory language and to ensure consistency across statutes in the code. Almost all of the manuals direct drafters to write bills in a simple and clear style; in particular, the manuals instruct drafters to use plain language, simple sentence structure, and concise provisions.<sup>145</sup> For example, the Montana drafting manual explains that “[g]ood drafting requires concise wording that is understandable by a person who has no special knowledge of the subject.”<sup>146</sup>

Some of these style and grammar conventions restate the canons and interpretive rules used by courts in construing statutes. For example, thirty-six manuals from thirty-five states advise drafters to be consistent in their use of language throughout the bill.<sup>147</sup> The Alaska drafting manual is typical. It cautions drafters, “Do not use the same word or phrase to denote different things or different words or phrases to denote the same things. Be consistent.”<sup>148</sup> This convention essentially rearticulates the core principle underlying the rule of consistent usage without saying as much.

Other style and grammar conventions are related to, but not identical to, the canons. For example, thirty-two manuals from thirty-one states instruct drafters on whether to draft bill provisions in the singular or the plural.<sup>149</sup> Many of these manuals advise drafters to use the singular instead of the plural when possible.<sup>150</sup> The Delaware drafting manual justifies its preference for the singular by explaining that “the singular is clearer than the plural” and that “[a] statute is intended to speak to each person who is subject to it and should be drafted that way.”<sup>151</sup> Although some of these provisions also cite the interpretive rule that the singular includes the plural,<sup>152</sup> these rules differ because they offer affirmative instructions that drafters should follow in preparing bills. Other discrete style and grammar conventions are part of almost all of the manuals surveyed, such as instructions concerning the use of gender-based

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145. Twenty-seven manuals from twenty-six states include this convention. See *infra* Table 9.

146. *Montana Drafting Manual*, *supra* note 46, at 13.

147. See, e.g., *id.* at 22.

148. *Alaska Drafting Manual*, *supra* note 53, at 64.

149. See *infra* Table 9.

150. See, e.g., *Montana Drafting Manual*, *supra* note 46, at 17; *North Dakota Drafting Manual*, *supra* note 53, at 90.

151. *Delaware Drafting Manual*, *supra* note 53, at 80.

152. See, e.g., *Hawaii Drafting Manual*, *supra* note 53, at 23; *Illinois Drafting Manual*, *supra* note 53, at 209; *Minnesota Drafting Manual*, *supra* note 53, at 277.

pronouns and gender-neutral language,<sup>153</sup> capitalization rules,<sup>154</sup> punctuation rules,<sup>155</sup> the active voice,<sup>156</sup> and the present tense.<sup>157</sup>

In addition to conventions focusing on discrete style issues, the manuals also include instructions concerning broader grammatical and structural issues. For example, twenty-nine manuals from twenty-eight states instruct drafters on how to structure exceptions or limitations to the applicability of statutory provisions.<sup>158</sup> Most manuals direct drafters on the appropriate language used to introduce exceptions; many stipulate that drafters should avoid the use of provisos, such as subclauses beginning with “provided that.”<sup>159</sup> Many also instruct drafters on where to place exceptions within subsections and individual sentences.<sup>160</sup> The Indiana drafting manual is typical of the type of advice the manuals provide drafters concerning exceptions and limitations. It indicates that

[L]imitations or exceptions to the coverage of a legislative measure or conditions placed on its application should be described in the first part of the legislative measure . . . . If the limitations, conditions, or exceptions are numerous, notice of their existence should be given in the first part of the legislative measure, and they should be stated separately later in the legislative measure.<sup>161</sup>

The manual further indicates that “[i]f a provision is limited in its application or is subject to an exception or condition, it generally promotes clarity to

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153. Thirty-four manuals from thirty-three states instruct bill drafters on the use of gender-neutral language and when, if ever, it is appropriate to use gender-specific terms. *See infra* Table 9. For example, the Colorado Drafting Manual advises drafters to avoid gender-specific terms in bill provisions. The manual instructs drafters, “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.” *Colorado Drafting Manual, supra* note 46, § 5.7.1(37).

154. Thirty-six manuals from thirty-five states contain capitalization rules. *See infra* Table 9.

155. Thirty-four manuals from thirty-two states offer guidance to bill drafters on punctuation rules. *See infra* Table 9.

156. Thirty-three manuals contain rules stipulating when drafters should use the active and passive voice. *See infra* Table 9.

157. Thirty-one manuals from thirty states include instructions on drafting bills in the present tense. *See infra* Table 9.

158. *See infra* Table 9.

159. *See, e.g., Arkansas Drafting Manual, supra* note 30, at 60; *Maine Drafting Manual, supra* note 46, at 70-71; *Montana Drafting Manual, supra* note 46, at 22-23.

160. *See, e.g., Alabama Drafting Manual, supra* note 53, at r. 14(a); *Delaware Drafting Manual, supra* note 53, at 109-10; *Missouri Drafting Manual, supra* note 53, at 47-48.

161. *Indiana Drafting Manual, supra* note 53, at 17.

begin the provision with a statement of the limitation, exception, or condition or with a notice of its existence.”<sup>162</sup> Finally, the manual instructs drafters on the proper phrases to express limitations and explains the different uses of “if,” “when,” and “whenever.”<sup>163</sup>

About half of the manuals also include guidance on the use of modifiers.<sup>164</sup> Most of these manuals explain that misplaced modifiers often lead to ambiguity in statutory provisions; the Texas drafting manual even notes that “[p]oor placement of modifiers is probably the main contributor to ambiguity in statutes.”<sup>165</sup> These manuals typically instruct drafters on the proper placement of modifiers in sentences,<sup>166</sup> cautioning drafters to be careful that they modify only the words that they intend to modify.<sup>167</sup>

*b. Use of Particular Words*

Almost all of the manuals include conventions relating not only to style and grammar but also to the use of particular words. These provisions seek to impose order by promoting consistency and uniformity in how certain words are used in statutes. As the Colorado drafting manual notes, “[w]hen a word takes on too many meanings, it becomes useless to the drafter.”<sup>168</sup>

For example, thirty-three manuals from thirty-two states advise drafters on the use of “shall” as opposed to “may”: the former indicates that something is mandatory while the latter is permissive and confers a privilege or power.<sup>169</sup> The Arizona drafting manual explains why drafters must pay close attention to the use of these terms: “A prime drafting concern is to preserve the distinction between mandatory and permissive directives. The inconsistent or inaccurate use of ‘shall’ and ‘may’ has occasionally allowed judicial selection rather than legislative direction to determine the applicable verb form in laws.”<sup>170</sup> Several

<sup>162.</sup> *Id.*

<sup>163.</sup> *Id.*

<sup>164.</sup> Eighteen manuals from seventeen states contain instructions on the use of modifiers in statutory provisions. See *infra* Table 9.

<sup>165.</sup> *Texas Drafting Manual*, *supra* note 53, at 110.

<sup>166.</sup> See, e.g., *Arizona Drafting Manual*, *supra* note 53, at 94; *Delaware Drafting Manual*, *supra* note 53, at 95; *Hawaii Drafting Manual*, *supra* note 53, at 29-30; *Maine Drafting Manual*, *supra* note 46, at 81-83.

<sup>167.</sup> See, e.g., *Arkansas Drafting Manual*, *supra* note 30, at 35; *Idaho Drafting Manual*, *supra* note 30, at 22; *Iowa Drafting Manual*, *supra* note 53, at 57; *Wisconsin Drafting Manual*, *supra* note 53, at 51-52.

<sup>168.</sup> *Colorado Drafting Manual*, *supra* note 46, § 5.7.1(8).

<sup>169.</sup> See *infra* Table 10.

<sup>170.</sup> *Arizona Drafting Manual*, *supra* note 53, at 98.

manuals further explain how drafters can prohibit an act through the use of “shall not” and “may not.”<sup>171</sup> Others explain when the use of other similar terms, such as “must,” is appropriate.<sup>172</sup>

In addition to “shall” and “may,” many manuals explain the distinction between “that” and “which” and when it is appropriate to use each term.<sup>173</sup> The Colorado drafting manual is typical: “‘That’ indicates a *restrictive clause* that restricts and defines the word modified and that is necessary to identify the word modified. A restrictive word, clause, or phrase is necessary to the meaning of a sentence and is *not* set off by commas.”<sup>174</sup> In contrast, the Colorado manual explains, “‘Which’ indicates a *nonrestrictive clause* that does not restrict the word modified and that provides additional or descriptive information about the word modified. A nonrestrictive word, clause, or phrase is not essential to the meaning of a sentence and is set off by commas.”<sup>175</sup> Thirteen manuals also include conventions for expressing conditions, in particular through the use of words such as “if,” “when,” “where,” and “whenever.”<sup>176</sup> For example, the North Dakota drafting manual directs drafters to use “if” to designate “a condition that may never occur”; “when” for “a condition that is certain to occur”; “whenever” for a condition that “may occur more than once”; and “‘where’ only regarding place.”<sup>177</sup>

#### D. Key Takeaways

In sum, there is considerable overlap in the type of guidance included in the publicly available drafting manuals. Most of the manuals provide information about the bill-drafting process and the role of the professional drafter in that process. Furthermore, almost all of the manuals include instructions concerning bill format and structure, and all of the manuals surveyed contain conventions for style, grammar, and the use of particular words. The manuals include

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171. See, e.g., *Arkansas Drafting Manual*, *supra* note 30, at 56-57; *Colorado Drafting Manual*, *supra* note 46, § 5.7.1(8); *Delaware Drafting Manual*, *supra* note 53, at 91; *Idaho Drafting Manual*, *supra* note 30, at 25-26; *North Dakota Drafting Manual*, *supra* note 53, at 90-91; *Utah Drafting Manual*, *supra* note 53, at ch. 3, pt. 4(c)(xxviii).

172. E.g., *Colorado Drafting Manual*, *supra* note 46, § 5.7.1(8); *New Jersey Drafting Manual*, *supra* note 53, at 118; *Minnesota Drafting Manual*, *supra* note 53, at 282; *Utah Drafting Manual*, *supra* note 53, at ch. 3, pt. 4(c)(xxviii).

173. Nineteen manuals discuss the use of “that” and “which” in statutory provisions. See *infra* Table 10.

174. *Colorado Drafting Manual*, *supra* note 46, § 5.7.1(36).

175. See *id.*

176. See *infra* Table 10.

177. *North Dakota Drafting Manual*, *supra* note 53, at 91-92.

these drafting conventions in an effort to create a shared language and style for legislation.<sup>178</sup> Moreover, the institutionalization of bill-drafting practices in drafting manuals suggests that legislatures are attempting to cement certain patterns and practices to last over time—regardless of who is in power and their attitudes toward statutory interpretation and legislative drafting. Accordingly, the conventions reflect a key goal and function of the drafting manuals: to impose order on the drafting process to ensure that legislation within the state’s code is clear and uniform.<sup>179</sup>

The frequent inclusion of the canons of construction in the drafting manuals has significant implications for bill drafting as well. Of the manuals surveyed, thirty-eight discuss at least one canon of construction.<sup>180</sup> A wide variety of canons are included in the drafting manuals, and most of the manuals surveyed discuss both substantive and textual canons.<sup>181</sup> In most state legislatures, there is an effort to inform bill drafters of some of the interpretive principles used by the state’s judiciary so that the drafters can prepare legislation with those principles in mind.<sup>182</sup> This finding deflects common scholarly skepticism about the utility of canons and, particularly, frequent doubts about canons’ significance, at least at the federal level.<sup>183</sup> Indeed, the survey suggests that the canons may serve a different—and more salient—role at the state level in both drafting and interpretation.

Drafting manuals serve as mechanisms for the legislatures to promote clarity and uniformity in anticipation of judicial interpretation. In so doing, they comprise half of an interbranch dialogue. As the next Part demonstrates, state courts’ use of these manuals in the process of statutory construction leads to a two-way conversation between legislatures and the courts.

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178. See *supra* notes 54-58 and accompanying text.

179. See, e.g., *Delaware Drafting Manual*, *supra* note 53, at 1 (“Above all, for both the novice and the veteran, this manual is intended to serve as a guide to the creation of an accurate, clear, and uniform legislative product. The alternative is inaccurate or careless drafting, which can produce bad laws or lead to legislation being invalidated, frustrating legislative intent.”).

180. See *infra* Tables 4-7.

181. See *infra* Tables 4-7.

182. See *supra* notes 91-95 and accompanying text.

183. Many scholars have argued that the canons of construction do not actually reflect how Congress drafts legislation. See, e.g., RICHARD A. POSNER, *THE FEDERAL COURTS: CRISIS AND REFORM* 277-86 (1985) (arguing that the canons of construction are premised on “wholly unrealistic conceptions of the legislative process”). Moreover, recent empirical work demonstrates that congressional drafters are not aware of many canons and consciously reject some of the canons of which they are aware. See Bressman & Gluck, *Statutory Interpretation from the Inside Part I*, *supra* note 13, at 926-39.

### III. LEGISLATIVE DRAFTING MANUALS IN THE STATE COURTS

By offering insights into the legislative process and drafting norms, these manuals help courts understand the intended meaning, purpose, and text of any given bill. And state courts have, in fact, turned to drafting manuals when faced with difficult questions of statutory interpretation.

The drafting manuals are a unique source for statutory interpretation. They are an extrinsic aid for interpretation as they are “sources outside the text of the statute being interpreted.”<sup>184</sup> Some of the most well-known types of extrinsic sources are the common law, legislative history, and other statutes,<sup>185</sup> but the drafting manuals bear obvious differences from these sources. They are neither sources of law nor prepared with reference to any particular statute. Instead, the drafting manuals are akin to other general reference sources that are used in statutory interpretation, such as dictionaries and grammar books, because they contain guidelines for the use of language and grammar in writing.<sup>186</sup> Therefore, the drafting manuals could assist interpreters in “ascertaining the ‘common and accepted meaning’ of words and phrases” in a state’s code.<sup>187</sup>

Unlike dictionaries and grammar books, however, the drafting manuals are sources produced by the legislatures themselves. As a result, they shed light on the shared understandings of the bill drafters. The manuals’ discussion of drafting conventions concerning style, grammar, and the use of particular words “reveal[] the standards and definitions relied on by those who choose and arrange the words, phrases and punctuation” found in statutes.<sup>188</sup> Moreover, the inclusion of canons of construction in the drafting manuals indicates how drafters expect the words and phrases in their bills to be interpreted by courts. Unlike dictionaries and grammar books, the drafting manuals are not merely sources for discrete rules and conventions concerning grammar and style. Because the manuals also discuss the rules, practices, and procedures governing legislative drafting offices, they offer insight into how these offices function as institutions.

In this Part, I survey cases in which state courts have used the drafting manuals in statutory interpretation. These cases demonstrate an interbranch dialogue between state courts and legislatures: not only are the manuals writ-

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184. ESKRIDGE, FRICKEY & GARRETT, *supra* note 96, at 955.

185. *See id.*

186. *See generally* Ard, *supra* note 16, at 195-200 (comparing drafting manuals with other extrinsic sources).

187. *State v. Powers*, 687 N.W.2d 50, 57 n.8 (Wis. Ct. App. 2004) (quoting *State ex rel. Kalal v. Circuit Court*, 681 N.W.2d 110, 126 (Wis. 2004)).

188. *Id.*

ten self-consciously “in anticipation of judicial interpretation,”<sup>189</sup> referring to the judiciary’s precedent and canons of interpretation, but the courts also cite the manuals to ascertain statutory meaning. Not only do the drafting manuals strive to align drafting horizontally by establishing shared conventions for bill drafters, but with the aid of the judiciary, the manuals also create shared vertical conventions. That is, the drafting manuals incorporate judicial practice, and by referencing the manuals, the courts take into account the legislative process. As Part IV discusses, this interbranch dialogue furthers democratic and rule-of-law values, and thus legitimizes the courts’ use of the canons of interpretation and drafting conventions in the manuals.

#### A. Current State Court Practices

All of the drafting manuals surveyed instruct drafters to employ certain conventions in language, style, and grammar,<sup>190</sup> and several state courts have referred to these conventions to help determine statutory meaning. For example, in *Johnson v. Johnson*,<sup>191</sup> the Supreme Court of Iowa consulted a provision in the Iowa drafting manual concerning the use of the singular and plural. The relevant statute provided that “[t]he owner and operator of an all-terrain vehicle . . . is liable for any injury or damage occasioned by the negligent operation of the all-terrain vehicle.”<sup>192</sup> The main issue in the case was whether the statute could impose liability on both the vehicle owner and its operator. The trial court reasoned that it would be grammatically incorrect to use “is liable” rather than “are liable” when referring to both owners and operators, so the statute was ambiguous and should be construed to impose liability only on the vehicle operator.<sup>193</sup> In its analysis, the Supreme Court of Iowa relied on the Iowa drafting manual to reverse the trial court. After consulting the manual’s guidance that “the singular incorporates the plural, and the plural incorporates the singular,” the court concluded the statute was not ambiguous and imposed liability on both the vehicle owner and the operator.<sup>194</sup> The reasoning in this case is significant because the Iowa Supreme Court drew from a convention employed by the legislature—as evidenced by the citation to the drafting manual—to reverse what would otherwise have been a reasonable interpretation of text, and thus helped to save the statute from an interpretation that would have been

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189. Ard, *supra* note 16, at 189.

190. See *supra* Section II.C.2.

191. 564 N.W.2d 414 (Iowa 1997).

192. *Id.* at 417 (quoting IOWA CODE § 321G.18 (1993)).

193. *Id.*

194. *Id.* at 418 (quoting *Iowa Drafting Manual*, *supra* note 53, at 44).



contrary to legislative intent. In other cases, state courts have relied upon manual provisions concerning style and grammar, such as instructions concerning the placement of modifiers,<sup>195</sup> consistency in the use of language throughout a bill,<sup>196</sup> superfluous statutory definitions,<sup>197</sup> and punctuation.<sup>198</sup>

Courts have also referenced the manuals' instructions concerning the use of particular words to help determine statutory meaning. In *State v. Powers*, the Wisconsin Court of Appeals referenced the Wisconsin drafting manual's conventions concerning the use of "means" and "includes."<sup>199</sup> The statute at issue covered sexual assault committed by an employee of an "inpatient health care facility," and the court was tasked with determining whether the statutory definition of that term was exhaustive.<sup>200</sup> According to the relevant statutory provision, inpatient health care facility "means any hospital nursing home, county home, county mental hospital or other place licensed or approved by the department."<sup>201</sup> The court consulted the Wisconsin drafting manual, which directed bill drafters to employ the term "means," rather than "includes," whenever enumerated items in a definition are intended to render the definition complete, and concluded that "inpatient health care facilities" are limited to the facilities specifically identified in the statutory definition.<sup>202</sup> By referring to and citing the state's drafting manual, the Wisconsin Court of Appeals self-consciously drew from a convention employed by the legislature to ensure that its interpretation of the statutory definition was consistent with the legislature's intended meaning. In other cases, state courts have also referred to manual conventions for the distinction between permissive and mandatory terms,<sup>203</sup>

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195. See, e.g., *State v. Powers*, 687 N.W.2d 50, 58 (Wis. Ct. App. 2004).

196. See, e.g., *State v. Carter*, 794 N.W.2d 213, 228 & n.19 (Wis. 2010).

197. See, e.g., *Bernard v. Metro. Gov't*, No. M2009-00812-COA-R3-CV, 2010 WL 3033798, at \*6 n.6 (Tenn. Ct. App. Aug. 3, 2010).

198. See, e.g., *Estate of Braden ex rel. Gabaldon v. State*, 266 P.3d 349, 352 & n.3 (Ariz. 2011).

199. *Powers*, 687 N.W.2d at 57-58.

200. *Id.* at 53-55.

201. *Id.* at 53 (quoting WIS. STAT. § 50.135(1) (2001-02)).

202. *Id.* at 57-58.

203. See, e.g., *Harris v. Smartt*, 57 P.3d 58, 72 (Mont. 2002); *George v. George*, 856 N.W.2d 769, 772-73 (N.D. 2014); *Midthun v. N.D. Workforce Safety & Ins.*, 761 N.W.2d 572, 577 (N.D. 2009); *Hieb v. Hieb*, 568 N.W.2d 598, 602 (N.D. 1997); *SIF Energy, L.L.C. v. State*, 365 P.3d 664, 668-69 (Or. Ct. App. 2015).

conjunctive and disjunctive terms,<sup>204</sup> in addition to the distinction between “means” and “includes.”<sup>205</sup>

In addition to conventions concerning language and grammar, state courts have also considered instructions from drafting manuals as to how to format and structure bills. As Section II.B described, almost all of the drafting manuals contain instructions for bill format and structure, which help interpreters understand statutory provisions that reference other subunits of the statute. For example, in *Nichols v. Progressive Northern Insurance Co.*, the Supreme Court of Wisconsin used the state’s drafting manual to interpret a statute that prohibits an adult from “knowingly permit[ing] or fail[ing] to take action to prevent the illegal consumption of alcohol beverages by an underage person on premises owned by the adult or under the adult’s control.”<sup>206</sup> The statute further stipulated that “[t]his subdivision does not apply to alcohol beverages used exclusively as part of a religious service.”<sup>207</sup> In addressing which parts of the statute were included in the “subdivision,” the court relied on the definition of the term in the Wisconsin drafting manual.<sup>208</sup> The Wisconsin Supreme Court thus relied on the state drafting manual to interpret the statute in light of the drafter’s understanding of what the particular subunit at issue would encompass. In addition to the Supreme Court of Wisconsin,<sup>209</sup> courts in Ohio<sup>210</sup> and Maryland<sup>211</sup> have also looked to manual provisions concerning bill format to construe the meaning of internal statutory references.

A handful of other state courts have cited the other types of manual provisions discussed in Part II, namely, background about the legislative drafting offices and the canons of construction. Most of the drafting manuals include sections with background information about the legislative drafting office and bill-drafting process; these manual provisions typically explain the role of the

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204. See, e.g., *Murphy v. State*, 414 N.E.2d 322, 324-25 (Ind. Ct. App. 1980); *Jacob v. Kippax*, 10 A.3d 1159, 1165-66 (Me. 2011); *State v. McClary*, 679 N.W.2d 455, 463 (N.D. 2004); *Burke v. State ex rel. Dep’t of Land Conservation & Dev.*, 290 P.3d 790, 794 (Or. 2012).

205. See, e.g., *Hackley v. State*, 885 A.2d 816, 819 (Md. 2005); *State v. Fox*, 324 P.3d 608, 614 (Or. Ct. App. 2014); *In re Chezron M.*, 698 N.W.2d 95, 102 (Wis. 2005).

206. 746 N.W.2d 220, 234-35 (Wis. 2008) (Abrahamson, C.J., concurring) (quoting WIS. STAT. § 125.07(1)(a)(4) (2003-04)).

207. *Id.*

208. *Id.* at 235 n.4.

209. *Paul v. Skemp*, 625 N.W.2d 860, 874 (Wis. 2001), is another case in which the Wisconsin Supreme Court cited the drafting manual’s provisions concerning bill format and structure.

210. See, e.g., *Reed v. Tracy*, No. 96APH02-159, 1996 WL 388529, at \*2 (Ohio Ct. App. July 9, 1996).

211. See, e.g., *Norris v. United Cerebral Palsy of Cent. Md.*, 587 A.2d 557, 560 (Md. Ct. Spec. App. 1991).

professional drafter in preparing the bill and the relationship between the bill drafter and the sponsoring legislator.<sup>212</sup> If a court resolving a statutory question is interpreting legislative history from the bill-drafting process, such context about the drafting office can help the interpreter understand the legislative history. For example, in *In re Termination of Parental Rights to Quianna M.M.*, the Wisconsin Court of Appeals was tasked with determining whether a statute that established “parenthood as a result of sexual assault” as grounds for involuntary termination of parental rights applied to all parents or fathers only.<sup>213</sup> The Wisconsin Court of Appeals examined a memorandum from the bill’s sponsor to a drafter in the Legislative Council staff directing the drafter to amend the grounds for involuntary termination created in the bill “to make them apply to fathers only.”<sup>214</sup> In analyzing this part of the legislative history, the court cited the Wisconsin Legislative Reference Bureau’s (LRB) drafting manual’s directive that drafters “should not and cannot make the basic policy decision for the requester.”<sup>215</sup> The court reasoned that because the statutory language was based on a request from a legislator and “would not have been [the drafter’s] idea,” the provision in question applied to fathers only.<sup>216</sup> The court thus used the drafting manual’s rules concerning the function of the professional drafter to interpret the statute’s legislative history by distinguishing the role of the sponsor from that of the drafter.

State courts have also cited to the final category of manual provisions: the canons of construction. Two judicial opinions from Maine have cited the Maine drafting manual’s discussion of the retroactivity canon in justifying their use of that canon as a reasonable approximation of legislative intent.<sup>217</sup> For example, in *Greenvall v. Maine Mutual Fire Insurance Co.*, the legislature had amended the relevant statute to increase the amount recoverable, but only after the cause of action accrued, and the court had to determine whether to give this amendment retroactive effect.<sup>218</sup> To make this determination, the court relied on the retroactivity canon and in its analysis, referenced the Maine drafting manual to explain that the judicial presumption against implied retroactivity “reasonably assumes that the Legislature is capable of making clear its intent that a statute

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212. See *supra* Section II.A.

213. No. 011723, 2001 WL 1046974, at \*1 (Wis. Ct. App. Sept. 13, 2001).

214. *Id.* at \*3.

215. *Id.* at \*4.

216. *Id.*

217. *Sinclair v. Sinclair*, 654 A.2d 438, 442 (Me. 1995) (Lipez, J., dissenting); *Greenvall v. Me. Mut. Fire Ins. Co.*, No. CV-97-070, 2001 WL 1715979, at \*3 (Me. Super. Ct. June 6, 2001).

218. 2001 WL 1715979, at \*3.

be applied retroactively.”<sup>219</sup> The court thus used the fact that the state drafting manual included the retroactivity canon to bolster its own reliance on the canon.

These cases in which state courts reference legislative drafting manuals are significant because they demonstrate interplay and dialogue between state courts and legislatures. As discussed in Part II, the drafting manuals aim to create a shared language and style for bill drafters, thus establishing horizontal alignment of bill drafting within the state legislative drafting offices. The cases in which courts reference the drafting manuals, however, indicate that the manuals can also serve as a vehicle for vertical alignment between the state legislature and judiciary.

### *B. Interplay Between State Courts and State Legislatures*

By using drafting manuals, these courts aim to construe statutes in accordance with how legislatures actually draft – both in terms of the rules and procedures of the drafting offices as well as the drafters’ shared conventions concerning style, grammar, and bill format. Furthermore, at least some courts have considered the drafters’ awareness of a particular canon of construction in determining whether to employ that canon in resolving the statutory question at issue.

The legislative drafting offices are active participants in this dialogue. The drafting manuals indicate that shared drafting conventions are formulated in light of the judiciary’s interpretive practices. The inclusion of the judiciary’s interpretive principles in the manuals reflects an awareness of statutes as the subject of judicial interpretation.<sup>220</sup> The manuals thus instruct drafters to prepare legislation with the basic principles of statutory construction in mind “[t]o ensure that a law will be applied as the Legislature intends” since these principles “predict how a court will interpret an act of the Legislature.”<sup>221</sup>

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<sup>219</sup>. *Id.*

<sup>220</sup>. See *supra* Section II.C.1.

<sup>221</sup>. *Florida Senate Drafting Manual*, *supra* note 38, at 113; see also, e.g., *Colorado Drafting Manual*, *supra* note 46, § 1.2.5 (instructing drafters to prepare bills with conventions of statutory interpretation in mind as they “have the greatest effect on bill drafting”); *Iowa Drafting Manual*, *supra* note 53, at 29 (“Knowledge of the rules of statutory construction will help the bill drafter to properly frame the contents of a bill and express the intent of the legislation in a clear and uniform manner.”).

#### IV. GUIDING PRINCIPLES FOR THE USE OF DRAFTING MANUALS IN STATUTORY INTERPRETATION

Yet this dialogue remains largely unseen. While several state courts have illustrated just how these drafting manuals could be used in questions of statutory interpretation, these manuals are not yet a part of standard judicial practice. Indeed, even if courts were to recognize the interpretive power of these manuals, they would lack a theory of how these manuals should be incorporated into the project of statutory interpretation.

As this Part argues, because the drafting manuals facilitate interbranch dialogue between state courts and legislatures, judicial reliance on the drafting manuals is normatively desirable. When courts construe statutes in light of manual provisions that reveal drafting practices, courts can better align their interpretive principles with how the legislature actually drafts bills. As a result, this practice helps an interpreting court serve as the “faithful agent” of the enacting legislature and promotes democratic legitimacy. From a rule-of-law perspective, the drafting manuals can serve as devices for the legislature and judiciary to coordinate their practices such that courts will apply legislation uniformly and predictably.

This Part then offers a framework to guide courts in operationalizing these broad benefits of using drafting manuals in statutory interpretation. I suggest the types of guidance from the manual provisions described in Part II would be most valuable to courts and when and how courts should use these provisions. Specifically, courts should use information about the drafting offices’ practices and procedures to help analyze the legislative history of statutes that originate in those offices. Courts should also employ the drafting manuals to help ascertain the meaning of particular words and phrases in statutes. Three types of guidance in the manuals can assist interpreters in this second task: (i) provisions for the format and structure of bills; (ii) conventions concerning style, language, and the use of particular words; and (iii) the canons of construction. Due to the tremendous diversity in state legislatures and legislative drafting offices, however, the weight a state court accords to a drafting manual should depend on the context of that particular state. I conclude with state-specific considerations to direct courts as they assess how to use the drafting manuals in statutory interpretation.

##### *A. Normative Justifications*

The judicial use of drafting manuals in statutory interpretation serves two important values: democratic legitimacy and rule of law. Because the drafting manuals offer insight into how legislatures actually operate and the intended

meaning of certain words and phrases, judges can use the manuals to align their interpretive principles with drafting practices. Interpretive alignment reinforces the role of judges as the “faithful agents” of enacting legislatures. Moreover, because the drafting manuals represent coordinating devices that help state courts and legislatures align their practices, the manuals help ensure that legislation will be applied in a uniform and predictable manner.

### 1. *Democratic Legitimacy*

In a representative democracy, the people participate in day-to-day governance only indirectly, by electing representatives who enact laws that reflect their preferences, and this notion of representative democracy is integral to the legitimacy of our statutes.<sup>222</sup> Because these elected representatives are the political actors tasked with enacting statutes, and these statutes are thought to reflect the public’s preferences, legislatures have a strong claim to democratic legitimacy, and courts interpreting statutes should serve as the “faithful agent” of the enacting legislature by striving to implement the legislature’s intent.<sup>223</sup> Accordingly, if courts employ principles of interpretation that “faithfully reflect the preferences of those representatives (and, indirectly, of the citizenry as well), those rules have a strong claim to legitimacy on the basis of the democratic values they serve.”<sup>224</sup> This “faithful agent” model is the guiding paradigm of many mainstream statutory interpretation theories and doctrines.<sup>225</sup> Indeed, as one scholar noted, “[t]he view that federal courts function as the faithful agents of Congress is a conventional one,” and even as scholars and jurists have debated theories of statutory interpretation, the disputes focus on how best to implement the “faithful agent” paradigm, rather than the propriety of the paradigm itself.<sup>226</sup>

A state legislature’s drafting manual provides a relatively reliable source of information about how the enacting legislature prepared the statute. The offices responsible for drafting legislation actually produce these manuals, which describe the procedures and rules governing those offices. Moreover, the drafting manuals instruct drafters on specific conventions about style, grammar, and the use of certain words, and thus offer insight into the intended meaning of

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222. William N. Eskridge, Jr., *Norms, Empiricism, and Canons in Statutory Interpretation*, 66 U. CHI. L. REV. 671, 675 (1999).

223. William N. Eskridge, Jr., *Spinning Legislative Supremacy*, 78 GEO. L.J. 319, 322-23 (1989).

224. Eskridge, *supra* note 222, at 675.

225. See Amy Coney Barrett, *Substantive Canons and Faithful Agency*, 90 B.U. L. REV. 109, 112-13 (2010).

226. *Id.*

particular words and phrases. Professional drafters write and consult these manuals to guide the bill-drafting process and to ensure that legislation is drafted with a uniform style and form,<sup>227</sup> so they offer a reliable source for the drafters' shared conventions. The drafting manuals can also reinforce the courts' use of the canons, many of which are based on assumptions about how the legislature drafts.<sup>228</sup> Accordingly, drafting manuals can help interpreters understand whether these presumptions align with actual practices because the inclusion of a canon in a manual suggests that the drafters were aware of that interpretive rule and drafted with it in mind.

Interpreting statutes in light of the preferences and guidelines used by the bill drafters can help align statutory interpretation with the actual practices of legislative drafting and is desirable from a democratic legitimacy perspective. The use of the drafting manuals is particularly appealing given that judges are usually uncomfortable admitting to "lawmaking" in the statutory context.<sup>229</sup> If interpreters subscribe to the ideal of legislative supremacy and believe that courts should not single-handedly establish interpretive doctrines, taking account of the drafting manuals ensures that courts' interpretive presumptions do no more than reflect what the legislature actually does. While the legislative process is too complex to be fully reflected in statutory interpretation doctrines,<sup>230</sup> using the manuals enables courts to align the practice of statutory interpretation with the functioning of state legislatures in a relatively efficient manner. Scholars have contended that the use of empiricism about legislative practices in statutory interpretation poses significant challenges—namely, that the relevant empirical questions are "unanswerable . . . at an acceptable cost or within a useful period of time."<sup>231</sup> The manuals help courts cross this hurdle by providing first-hand information about the drafting process in a form that is readily available to courts and litigants.

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227. Cf. *Delaware Drafting Manual*, *supra* note 53, at 1 ("[F]or both the novice and the veteran, this manual is intended to serve as a guide to the creation of an accurate, clear, and uniform legislative product. The alternative is inaccurate or careless drafting, which can produce bad laws or lead to legislation being invalidated, frustrating legislative intent."); *Idaho Drafting Manual*, *supra* note 30, at 4 ("This manual is designed to assist those who prepare initial drafts of legislation in order to provide a uniformity of style and format.").

228. REED DICKERSON, *THE INTERPRETATION AND APPLICATION OF STATUTES* 228 (1975) (asserting that some canons simply "consist of rebuttable presumptions . . . that reflect the probabilities generated by normal usage or legislative behavior"). For a more in-depth discussion, see *infra* notes 245-251 and accompanying text.

229. Bressman & Gluck, *Statutory Interpretation from the Inside Part I*, *supra* note 13, at 1018-19.

230. Bressman & Gluck, *Statutory Interpretation from the Inside Part II*, *supra* note 13, at 730.

231. Adrian Vermeule, *Interpretation, Empiricism, and the Closure Problem*, 66 U. CHI. L. REV. 698, 701 (1999).

A potential counterargument to the use of drafting manuals in statutory interpretation is uncertainty as to whether these manuals inform actual drafting in practice. Although empirical research has yet to uncover the extent to which state bill drafters actually rely on the manuals in preparing legislation, a number of indicators suggest that manuals play an active role in bill drafting in the state legislatures. For example, some states require, either by statute or legislative rule, that all bills and resolutions be in the form and style prescribed by the state's drafting manual.<sup>232</sup> Similarly, several state legislatures require that all proposed legislation be submitted to the legislature's drafting office for review of format, technical correctness, and/or style.<sup>233</sup> In addition, many of the drafting manuals are updated annually,<sup>234</sup> which suggests they are documents that are actively used by drafters.

At a broader level, however, the drafting manuals and the principles contained therein are important regardless of the empirical question of whether most bills are drafted with them in mind. The drafting manuals are institutionally significant as they aim to set forth a set of shared conventions in an attempt to standardize legislative style.<sup>235</sup> From this perspective, the manuals seek to constrain the practices of bill drafters and provide notice of the general drafting principles and conventions to which they are expected to conform. The manuals may also establish the bounds of judicial interpretation by giving courts a sense of the rules that the legislatures have set for themselves when it comes to drafting bills.

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232. See, e.g., ALASKA STAT. ANN. § 24.08.060(a) (West 2016); *North Dakota Drafting Manual*, *supra* note 53, at 1-2 (citing North Dakota House and Senate Rules 404(5)); *Senate and House Legislative Manual, 2015-16*, N.D. 64TH LEGIS. ASSEMBLY 40, 56 (2015), <http://www.legis.nd.gov/files/resource/legislative-rules/rules15a.pdf> [<http://perma.cc/R92T-SZ64>]. In other states, all bills prepared by the legislative drafting office must typically be in accordance with the office's drafting manual. See, e.g., MD. CODE ANN., STATE GOV'T § 2-1238(3) (West 2016).

233. See *supra* notes 30-33 and accompanying text.

234. See, e.g., *Arizona Drafting Manual*, *supra* note 53, at iv ("Changes in the 2015-2016 Arizona Legislative Bill Drafting Manual"); *Delaware Drafting Manual*, *supra* note 53, at v ("This edition of the Delaware Legislative Drafting Manual includes the following changes[.]"); *Maryland Drafting Manual*, *supra* note 48, at iii ("The *Legislative Drafting Manual* is published each year by the Department of Legislative Services . . ."). Other manuals are updated every few years. See, e.g., *Maine Drafting Manual*, *supra* note 46, at tit. p. (listing revisions to the manual).

235. See *supra* notes 54-58 and accompanying text.



## 2. Rule-of-Law Values

The use of drafting manuals to decipher statutory meaning also furthers rule-of-law values. From a rule-of-law perspective, statutes should “be applied in an objective, consistent, and transparent way to citizens and others subject to the state’s authority” so that they will be able to predict how statutes will be applied.<sup>236</sup> Theorists have long debated whether doctrines of statutory interpretation—particularly the canons of construction—generate greater objectivity and predictability in statutory interpretation.<sup>237</sup> Critics argue that the canons do not promote rule-of-law values because the canons are internally inconsistent and fail to constrain the discretion of judges interpreting statutes.<sup>238</sup> Furthermore, because courts do not use the canons in a predictable and consistent manner, scholars contend, they do not force legislatures to draft statutes with care and clarity.<sup>239</sup>

The drafting manuals mitigate the urgency of these concerns by highlighting one reason for using the canons and traditional doctrines of interpretation: because legislatures do so. Insofar as interpretation is the practice of divining what legislatures *actually* did, there is no better guide than these manuals. Indeed, these manuals promote interbranch dialogue between the legislature and the judiciary and thereby improve coordination, uniformity, and predictability. The publication of the drafting manuals reflects an effort to make the bill-drafting process more transparent. Courts should take this opportunity to align their interpretive practices with the conventions actually employed in legislative drafting, as doing so would promote predictability and uniformity in both the application and interpretation of statutes. Moreover, the drafting manuals strive to make style and form uniform throughout a state’s code. Interpreting statutes in light of these drafting conventions would further this goal. In addition, the inclusion of canons in the manuals indicates that bill drafters are try-

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236. Eskridge, *supra* note 222, at 678.

237. See *id.* at 679 (“Few would object to the overall goal of making the law more predictable, objective, and so forth. The debate has been whether the canons actually constrain judges and, in turn, make statutory application more predictable.”).

238. For the seminal work advancing this argument, see Karl N. Llewellyn, *Remarks on the Theory of Appellate Decision and the Rules or Canons About How Statutes Are To Be Construed*, 3 VAND. L. REV. 395 (1950). Llewellyn argues that there are two opposing canons on almost every major proposition in statutory interpretation. To demonstrate these internal inconsistencies, Llewellyn lists twenty-eight canons and identifies a counter-canon for each. *Id.* at 401-06. For example, he compares the rule that “[e]very word and clause must be given effect” with the presumption that if words are “inadvertently inserted or . . . repugnant to the rest of the statute, they may be rejected as surplusage.” *Id.* at 404.

239. See Richard A. Posner, *Statutory Interpretation—in the Classroom and in the Courtroom*, 50 U. CHI. L. REV. 800, 807 (1983).

ing to prepare statutes in light of the interpretive practices of the state's judiciary; the drafting offices in at least thirty-seven states have tried to guide drafters to prepare legislation with the judiciary's interpretive principles in mind. From this perspective, the manuals can be viewed as coordinating devices that are attempting to put the legislatures and courts on the same page.

A rule-of-law-based critique of using the drafting manuals in statutory interpretation might claim that it is "unlikely that legislators or the general public consult them in order to understand a bill."<sup>240</sup> However, as discussed earlier,<sup>241</sup> there are several indicia that the manuals retain an active role in the process of bill drafting. Moreover, the majority of state legislative drafting offices have made their drafting manuals available to the public, and efforts are underway to foster greater awareness of the manuals. In the world of practice, the National Conference of State Legislatures links to many of the drafting manuals on its website.<sup>242</sup> In the realm of scholarship, Tamara Herrera recently published an article examining the Arizona Legislative Council's drafting manual,<sup>243</sup> and this Note sheds light on the remaining state drafting manuals.

#### *B. Framework for State Courts in Considering Legislative Drafting Manuals*

Having considered the general advantages of using the drafting manuals in statutory interpretation, I turn to specific principles that can guide state courts as they consider how to use drafting manuals in interpretation. I begin by examining specific types of provisions in the drafting manuals that could aid interpreters in resolving statutory questions. Because state legislatures and drafting offices vary tremendously, however, the weight a state court accords to a particular drafting manual provision should depend on the context of that particular state. I conclude with key considerations to guide this analysis.

##### *1. Potential Uses of the Manuals*

Courts can use the drafting manuals for two broad purposes: (a) offering guidance on the meaning of particular words and phrases in statutes, and (b) providing context about the legislative drafting offices to understand legislative history.

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<sup>240</sup>. Ard, *supra* note 16, at 198.

<sup>241</sup>. See *supra* notes 232-234 and accompanying text.

<sup>242</sup>. *Bill Drafting Manuals*, *supra* note 52.

<sup>243</sup>. Herrera, *supra* note 19.

a. *Ascertaining Statutory Meaning*

First, state courts should use the drafting manuals to ascertain statutory meaning. Provisions in drafting manuals guiding drafters on how to format and structure bills are valuable because statutes frequently include internal cross-references to other subunits of the same statute. As illustrated in *Paul v. Skemp* and the other cases discussed in Section III.A, these manual provisions can clarify the significance of these internal cross-references for interpreters. In addition, courts should reference the conventions in drafting manuals concerning grammar and style. These manual provisions are valuable tools for statutory interpretation, offering insight into the shared understandings of those who draft legislation. As a result, these conventions can illuminate the intended meaning of a seemingly ambiguous statutory provision. A number of state courts have already used the drafting manuals in these two ways, and in light of the normative justifications for these uses, discussed in Section IV.A, courts across the country should continue and expand these practices.

Despite the fact that state courts do not yet frequently cite the manuals' discussion of canons,<sup>244</sup> they should. In light of the interbranch dialogue, the existence of a canon in a manual provides a reliable indication of intended statutory meaning. Many of these interpretive principles are based on presumptions about how the enacting legislatures draft statutes.<sup>245</sup> For example, the textual canons are meant to reflect legislative practices,<sup>246</sup> such as the presumption that legislatures use the same term consistently throughout a statute.<sup>247</sup> Moreover, some extrinsic sources and substantive canons have traditionally been thought of as assumptions about legislative practices. For example, "[t]he reenactment rule assumes that if a legislature reenacts a statute without making any material changes in its wording, the legislature intends to incorporate authoritative agency and judicial interpretations of th[at] language into the reenacted stat-

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244. See *supra* notes 217-219 and accompanying text.

245. DICKERSON, *supra* note 228, at 228 (asserting that one group of canons "consists of rebuttable presumptions . . . that reflect the probabilities generated by normal usage or legislative behavior").

246. See James J. Brudney & Corey Ditslear, *Canons of Construction and the Elusive Quest for Neutral Reasoning*, 58 VAND. L. REV. 1, 12 (2005) ("Language canons consist of predictive guidelines as to what the legislature likely meant based on its choice of certain words rather than others, or its grammatical configuration of those words in a given sentence, or the relationship between those words and text found in other parts of the same statute or in similar statutes. These canons . . . purport . . . to give effect to 'ordinary' or 'common' meaning of the language enacted by the legislature, which in turn is understood to promote the actual or constructive intent of the legislature that enacted such language.").

247. Scott, *supra* note 4, at 365.

ute.”<sup>248</sup> The constitutional avoidance canon presumes that the legislature does not intend to draft unconstitutional statutes.<sup>249</sup> In turn, the drafting manuals reference the canons to instruct drafters on how courts are likely to interpret certain language so that drafters can prepare bills with these principles in mind.<sup>250</sup> The inclusion of a canon in the drafting manual used by the drafter thus indicates that the bill was actually prepared with an awareness of that principle.<sup>251</sup> Citing to a canon in a drafting manual is not merely lip service—it reflects the idea that the presumptions underlying the canons are in line with actual practices. The inclusion of a canon in a drafting manual reinforces the legitimacy of a court’s use of that canon.

A related issue is how courts should treat the absence of a canon of construction from the drafting manual: if a drafting manual lists only some canons, should courts employ a canon not included in the manual? The exclusion of a canon casts doubt on whether the court should use that canon as a presumption of legislative practice, since there may be little evidence that the bill was drafted with that principle in mind. This seems particularly likely if the manual has a comprehensive list of the state’s interpretive principles.<sup>252</sup> Courts may still wish to employ these canons of interpretation for other reasons. For example, the courts could use a canon to send a signal to the legislature<sup>253</sup> or to advance a public value or norm.<sup>254</sup> However, judges should acknowledge the source and function of their interpretive principles when the evidence from the drafting manuals indicate they are not coming from the actual legislative process.<sup>255</sup>

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248. *Id.* at 375.

249. Neal Kumar Katyal & Thomas P. Schmidt, *Active Avoidance: The Modern Supreme Court and Legal Change*, 128 HARV. L. REV. 2109, 2126-27 & n.68 (2015); see also *Connecticut Drafting Manual*, *supra* note 53, at 6 (“It is to be presumed that legislatures do not deliberately enact . . . unconstitutional laws.” (quoting *Amsel v. Brooks*, 106 A.2d 152, 156 (Conn. 1954))). More recently, however, scholars have questioned whether the canons actually reflect legislative practices and have argued that the canons, particularly the substantive canons, instead serve to advance underlying normative values. See, e.g., William N. Eskridge, Jr., *Public Values in Statutory Interpretation*, 137 U. PA. L. REV. 1007, 1018 & n.38 (1989).

250. See *supra* notes 91-95 and accompanying text.

251. However, courts should cite to a drafting manual’s legislative history canon cautiously; most legislative history materials are prepared after a bill has already been introduced, so the professional bill drafters are no longer involved in the process at that stage.

252. See *supra* note 89 for examples of such manuals.

253. See, e.g., David L. Shapiro, *Continuity and Change in Statutory Interpretation*, 67 N.Y.U. L. REV. 921, 943-45 (1992).

254. See, e.g., Eskridge, *supra* note 249; see also Bressman & Gluck, *Statutory Interpretation from the Inside Part I*, *supra* note 13, at 959.

255. Cf. Bressman & Gluck, *Statutory Interpretation from the Inside Part I*, *supra* note 13, at 1017-20.

Another relevant inquiry is how a state court should consider the canons included in the state's drafting manual in light of that state's legislated code of interpretation. Every state legislature has enacted statutes that set forth rules of construction to govern how courts in that state resolve questions of statutory interpretation.<sup>256</sup> In some respects, the drafting manuals are similar to these legislated rules of construction: both the manuals and the codes of construction demonstrate legislative awareness and approval of certain interpretive principles employed by the judiciary. However, the codes of construction and the drafting manuals are aimed at different audiences. The legislated codes of construction are intended for use by the state courts, and each indicates how the state legislature intends the judiciary to interpret its statutes.<sup>257</sup> These codes thus represent an effort to guide and direct the judiciary's interpretive doctrines. In contrast, the drafting manuals are published by the legislative drafting offices and intended for use by the professional bill drafters within those offices. The drafting manuals include canons of construction in an effort to instruct drafters about principles employed by the state's judiciary so they can draft legislation more effectively.<sup>258</sup> The manuals reflect the dialectic between the two branches. An interpreting court should consider both sources in determining whether to apply a particular canon in a statutory case. If a canon has been codified by the state legislature *and* is discussed in the state's drafting manual, the inclusion in the manual reinforces the use of this canon because it indicates the statute was actually drafted with this principle in mind. If a canon is not part of a state's code of construction, but is included in that state's drafting manual, then it is still relevant for a state court to consider that canon because it is part of the enacting legislature's drafting practices.

b. *Providing Context About Legislative Drafting Offices*

Interpreters should also use the information in the drafting manuals to better understand a bill's legislative history.<sup>259</sup> This is an extension of Victoria Nourse's decision theory of statutory interpretation.<sup>260</sup> Nourse posits that interpreters should understand and analyze legislative history in light of Congress's own rules. She argues, "Just as no one would try to understand the

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256. See Scott, *supra* note 4, at 350.

257. *Id.* at 344.

258. See *supra* notes 91-95 and accompanying text.

259. One state court—the Court of Appeals of Wisconsin—has already used a drafting manual in this way, see *supra* notes 199-219 and accompanying text, and other courts should follow suit.

260. See Victoria F. Nourse, *A Decision Theory of Statutory Interpretation: Legislative History by the Rules*, 122 YALE L.J. 70 (2012).

meaning of a trial transcript without understanding the rules of evidence or civil procedure, no one should try to understand legislative history without understanding Congress's own rules."<sup>261</sup> For example, Nourse describes the "conference rule," which stipulates that conference committees cannot change the text of a bill when both the House and Senate have agreed to the same language.<sup>262</sup> As a result, if a conference committee changes the text, interpreters should resolve doubts about the meaning of the statutory text in favor of the text that both houses passed.<sup>263</sup> While Nourse focuses on the rules governing the legislative process after a bill has been introduced, the drafting manuals bring to fore the procedures and practices governing the bill-drafting process. The information in the drafting manuals about the operation of the drafting offices could thus help interpreters understand legislative history materials from the bill-drafting stage.

A limitation on this use of the drafting manuals is that courts may not know the extent to which the practices in the manuals are read and followed. Some of the practices described in the manuals, such as the drafters' confidentiality and neutrality obligations, are prescribed by statute<sup>264</sup> so it is likely that these are followed in practice. Other practices are not specifically mandated by statute but are key to the function and role of the drafting offices and are thus likely followed. For example, in *In re Termination of Parental Rights to Quianna M.M.*, the Wisconsin Court of Appeals cited the Wisconsin LRB's drafting manual's directive that drafters "should not and cannot make the basic policy decision for the requester."<sup>265</sup> While this manual provision concerning the role of the drafter is not included in the LRB's authorizing statute, it is central to the office's ability to fulfill its statutory mandate to provide "drafting services equally and impartially."<sup>266</sup> It seems plain that the LRB could not fulfill this mission unless it adhered to the basic policy decisions of the legislator sponsoring the bill; if, instead, the drafters could make basic policy decisions, LRB would not be providing its drafting services "equally and impartially" as required by statute.

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<sup>261</sup> *Id.* at 91.

<sup>262</sup> *Id.* at 94-95.

<sup>263</sup> *Id.* at 96.

<sup>264</sup> For example, the Alaska drafting manual explains that members of the professional drafting staff must provide nonpartisan and confidential services, as required by statute. *Alaska Drafting Manual*, *supra* note 53, at 5 (quoting ALASKA STAT. § 24.20.050 (2015) and citing ALASKA STAT. § 24.20.100 (2015)).

<sup>265</sup> No. 011723, 2001 WL 1046974, at \*4 (Wis. Ct. App. Sept. 13, 2001); *see also supra* notes 213-216 and accompanying text.

<sup>266</sup> WIS. STAT. ANN. § 13.92(1)(b) (West 2016).

Other conventions described in the manuals appear to be more informal and, as a result, may not reflect actual practices. Therefore, an interpreter's reliance on these manual provisions may be more problematic. For example, in his dissent in *Monroe County v. Jennifer V.*, Judge Dykman of the Wisconsin Court of Appeals referred to the foreword to the Wisconsin drafting manual, which instructs bill drafters to communicate with the requesting legislator to ensure that both are using terms in the same way.<sup>267</sup> Judge Dykman used this provision to support his plain meaning analysis. He reasoned that because legislative bill drafters are "trained to ask questions to ensure that legislation is clear," it is "hard for me to accept that both a legislator and a bill drafting attorney would use the common, dictionary meaning for the word 'conviction' if they intended something different," such as an unusual definition of the word.<sup>268</sup> While the LRB cannot fulfill its statutory mission without adhering to the sponsor's basic policy decisions, it is plausible that the drafters could nevertheless provide drafting services without consultation about the use of all terms in the bill. As a result, it seems problematic for an interpreter to rely on this provision in the Wisconsin manual to conclude that both the drafter and legislator had the same plain meaning understanding of a statutory term.

Provisions in the drafting manuals concerning the operation of the drafting offices should be read with this limitation in mind, and the weight they are given should depend on the content of the provision. Interpreters should give more weight to manual provisions describing practices mandated by statute<sup>269</sup> than to those provisions explaining more informal practices that may not be followed in practice.

## 2. *State-Specific Considerations To Guide Courts*

Although the drafting manuals are valuable sources in statutory interpretation, the diversity of state legislatures and drafting offices makes it difficult to draw blanket conclusions about the use of drafting manuals. In most states, the legislative drafting office is not responsible for all bill drafting in the state,<sup>270</sup> and outside bill drafters may not adhere to the conventions in the manuals. Furthermore, multiple drafting offices within a state legislature may have sepa-

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267. 548 N.W.2d 837, 844-45 (Wis. Ct. App. 1996) (Dykman, J., dissenting) (quoting LEGISLATIVE REFERENCE BUREAU, *Foreword* to WISCONSIN BILL DRAFTING MANUAL (1983-84)).

268. *Id.*

269. It is, of course, possible that members of the legislative drafting offices disregard statutory requirements. However, rule-of-law values counsel that interpreters should still construe statutes with the presumption that the drafting offices operate within, rather than beyond, their statutorily mandated powers.

270. See *supra* Part I.

rate drafting manuals, as in Florida and Louisiana.<sup>271</sup> At a broad level, there is tremendous diversity in the structure of state legislatures, and each legislature and drafting office has a unique institutional context.

A state court should incorporate the unique context of each particular state in deciding how much weight to accord a drafting manual in resolving a statutory question. The normative justifications for using drafting manuals in statutory interpretation should guide this analysis. As Section IV.A explained, the use of drafting manuals in statutory interpretation is desirable insofar as it can align interpreting courts with the actual practices of the enacting legislature and thereby promote democratic legitimacy and rule-of-law values. Accordingly, where there is strong evidence that a state's bill drafters consider and rely upon the state's drafting manual—either generally or in drafting a particular statute—the court should give more weight to the manual in its statutory analysis.

One of the key considerations is whether the legislative drafting office is responsible for all bill drafting in the state. Some state legislatures have multiple drafting offices that prepare bills,<sup>272</sup> but in other states, such as Wisconsin, all bills introduced in the legislature must originate in the legislative drafting office.<sup>273</sup> Moreover, even in states where outside drafters may prepare bills, if the legislative history of the statute in question indicates that it originated in the drafting office, then it is legitimate for the court to interpret the statute using that office's drafting manual and more weight should be given to the manual. In contrast, if an outside drafter prepared the bill, it may be unclear whether the drafter consulted the drafting manual and the manual may be accorded less of a role in the court's interpretation. Some argue that bills drafted by private organizations outside the legislature and its drafting offices lack a certain level of democratic legitimacy.<sup>274</sup> While this may be debated—since those bills may gain democratic legitimacy by virtue of legislators approving of them and voting them into law—one way in which external drafting detracts from democratic legitimacy is by making it somewhat more difficult for the interbranch dialogue to take place: courts lack the same guides to reading these bills that they have when the drafting offices use their own manuals.

Another relevant factor is whether the state has any requirements for bills to be in the form and style prescribed by the state's drafting manual. In some

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271. See *supra* notes 38-39 and accompanying text.

272. See *supra* notes 38-41 and accompanying text.

273. WIS. STAT. ANN. § 13.92(1)(b)(1) (West 2016).

274. See, e.g., Anthony Kammer, *Privatizing the Safeguards of Federalism*, 29 J.L. & POL. 69, 97-119 (2013). For instance, Kammer points out that ALEC's "multistate issue campaigns help illustrate [how] states have simply become another level at which private interests can pursue a national policy agenda." *Id.* at 109.



states, statutes and legislative rules require that all bills introduced in the legislature conform to the form and style prescribed by the state's drafting manual.<sup>275</sup> In other states, all bills prepared by the legislative drafting office must be in accordance with the office's drafting manual, unless the requesting legislator specifies otherwise.<sup>276</sup> These requirements indicate that bill drafters must consult the state's drafting manual, which supports the inference that the manual reflects drafting practices. A related consideration is whether the state legislature has pre-filing requirements such that the legislature's drafting office reviews bills for format, technical correctness, and/or style.<sup>277</sup> These requirements demonstrate that the legislative drafting office plays a role in preparing all proposed legislation, even if also prepared by outside drafters, and further suggests that the manuals reflect drafting practices. Courts in states with such requirements should accordingly rely on drafting manuals as a reliable indicator of the intended statutory meaning.

A third factor to consider is whether there are multiple drafting manuals in the state that are potentially conflicting.<sup>278</sup> For example, the Florida and Louisiana legislatures have separate manuals for the House and Senate drafting offices, so for bills that pass both chambers and become law, it is unclear which manual a given drafter was following.<sup>279</sup> Courts in these states should hesitate before relying heavily on these drafting manuals, unless the relevant provision appears in both manuals or there is some indication in the legislative history of which manual was consulted during the drafting process. Most state legislatures, however, have only one published drafting manual; in these states, courts can safely give greater weight to these manuals as a source of guidance in statutory interpretation.

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275. See, e.g., ALASKA STAT. ANN. § 24.08.060(a) (West 2016); *Senate and House Legislative Manual, 2015-2016*, *supra* note 232.

276. See, e.g., MD. CODE ANN., STATE GOV'T § 2-1238(3) (West 2016).

277. See *supra* notes 30-33 and accompanying text.

278. Some states, such as Maryland and Oregon, have multiple drafting manuals that are meant to be used in conjunction with one another, so it is unlikely that they contain conflicting advice. See *supra* note 61 and accompanying text.

279. There are no reported decisions from Florida courts citing to the state's drafting manuals, so it appears that Florida courts have not attempted to address this issue. There is one reported decision in which a Louisiana court cites to the Louisiana Senate's drafting manual, see *Kelly v. State Farm Fire & Cas. Co.*, 169 So. 3d 328, 343 (La. 2015), but the court in that case did not address the possibility that the bill was drafted in accordance with the House—rather than the Senate—drafting manual.

## CONCLUSION

This Note introduces the state legislative drafting manuals into the literature and analyzes how state courts have been using—and should use—the manuals in statutory interpretation. This analysis not only highlights a new source of interpretive guidance for courts and litigants in statutory interpretation cases, but also adds a state-level perspective to the emerging scholarly debate on the role of the legislative process (in actual practice) in statutory interpretation. Remedying the short shrift often given to states when it comes to questions of statutory interpretation is one of the central goals of this Note.

Shifting the focus in statutory interpretation theory to include the states reveals that in state courts and legislatures, efforts are underway to use legislative drafting manuals to foster an interbranch interpretive relationship. Indeed, the branches are engaged in a dialogue about interpretation that only occurs rarely at the federal level.<sup>280</sup> Looking at the state drafting manuals and the state court opinions citing to those manuals reveals that many state legislatures and courts are attempting to communicate and align their practices: as the professional bill drafters in the state legislatures draft statutes with the judiciary's interpretive principles in mind, state courts seek to interpret the meaning of statutory provisions in light of the drafters' conventions and practices.

This Note seeks to begin a broader conversation about the ways in which the legislature and judiciary communicate with each other about how statutes should be interpreted. Given the scarce investigation into state legislative processes, this Note looks first to the most readily available primary sources that could be accessed by future litigants and jurists: the official guides published by legislative drafting offices. In so doing, this Note lays the groundwork for future research into the drafting process of the state legislatures that is needed to further illuminate the contours of these interbranch interpretive relationships.

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<sup>280</sup>. See Bressman & Gluck, *Statutory Interpretation from the Inside Part II*, *supra* note 13, at 751 (noting that as of 2014, only three U.S. Supreme Court cases and six federal appellate cases cite to the congressional legislative drafting manuals).

## APPENDIX

**TABLE 1.**  
**BACKGROUND ABOUT THE DRAFTING OFFICE AND THE DRAFTING PROCESS**

Alaska Drafting Manual 4-5	Arizona Drafting Manual 3-4	Arkansas Drafting Manual 6-13
Colorado Drafting Manual §§ 1.1-1.2.1	Connecticut Drafting Manual 228-29	Delaware Drafting Manual 3-4
Florida House Drafting Manual 56-58	Florida Senate Drafting Manual 1-4	Idaho Drafting Manual 4
Illinois Drafting Manual 1-5	Kentucky Drafting Manual 1-4	Louisiana Senate Drafting Manual 1-8, 36-39
Maine Drafting Manual 3-7	Maryland Drafting Manual 13-17	Missouri Drafting Manual 1-2
Montana Drafting Manual 1	Nebraska Drafting Manual 7-20	New Jersey Drafting Manual 33-36
Oregon Drafting Manual §§ 2.1-3	Virginia Drafting Manual 1-4	Washington Drafting Manual pt. I

**TABLE 2.**  
**RECOMMENDED SOURCES FOR BILL DRAFTING**

## Uniform Laws

Arizona Drafting Manual 71	Colorado Drafting Manual § 1.3.7	Connecticut Drafting Manual 221
Idaho Drafting Manual 5	Illinois Drafting Manual 170-73	Iowa Drafting Manual 53
Kentucky Drafting Manual 3	Maine Drafting Manual 9, 144	Maryland Drafting Manual 28
Montana Drafting Manual 9, 81-82	Nebraska Drafting Manual 66-69	New Jersey Drafting Manual 32
New Mexico Drafting Manual 107	Oregon Drafting Manual § 2.6(f)	Pennsylvania Drafting Manual § 13.26

## Model Acts

Arizona Drafting Manual 71	Colorado Drafting Manual § 1.3.7	Connecticut Drafting Manual 221
Idaho Drafting Manual 5	Iowa Drafting Manual 53	Maryland Drafting Manual 28
Montana Drafting Manual 9, 81-82	Nebraska Drafting Manual 69	New Jersey Drafting Manual 32
New Mexico Drafting Manual 107	Oregon Drafting Manual § 2.6(f)	

**Laws of Other States**

Colorado Drafting Manual § 1.3.6	Connecticut Drafting Manual 221	Florida Senate Drafting Manual 3
Idaho Drafting Manual 5	Iowa Drafting Manual 53	Kentucky Drafting Manual 3
Maine Drafting Manual 9	Maryland Drafting Manual 25	Minnesota Drafting Manual 335
Montana Drafting Manual 9	New Mexico Drafting Manual 83	Oregon Drafting Manual § 2.6(d)
Pennsylvania Drafting Manual § 13.24		

**TABLE 3.****INSTRUCTIONS ON BILL FORMAT AND STRUCTURE**

Alaska Drafting Manual 7-68, 81-91	Arizona Drafting Manual 5-19, 72-101	Arkansas Drafting Manual 14-18, 32-64
Colorado Drafting Manual §§ 2.1-2.7, 5.12-5.13	Connecticut Drafting Manual 22, 129-31, 191-95	Delaware Drafting Manual 11-35, 73-140
Florida House Drafting Manual 27-55, 84-98	Florida Senate Drafting Manual 9-74	Hawaii Drafting Manual 5-14, 21-40
Idaho Drafting Manual 17, 20-33	Illinois Drafting Manual 6-26, 206-39	Indiana Drafting Manual 7-62
Iowa Drafting Manual 44-58	Kentucky Drafting Manual 5-38	Louisiana Senate Drafting Manual 45-85, 89-109
Maine Drafting Manual 12-34	Maryland Drafting Manual 28-98	Massachusetts Drafting Manual pt. 2(A)
Michigan Drafting Manual 1-11, 73-79	Minnesota Drafting Manual 9-65, 299-320	Missouri Drafting Manual 3-20
Montana Drafting Manual 13-79	Nebraska Drafting Manual 29-51, 71-115	New Jersey Drafting Manual 41-86, 99-128
New Mexico Drafting Manual 20-52	New York Drafting Manual 5-23	North Dakota Drafting Manual 11-20, 89-106
Oregon Form and Style Manual 21-56	Pennsylvania Drafting Manual §§ 13.31-13.35	South Dakota Drafting Manual 7-16, 21-32
Tennessee Drafting Manual 4-32	Texas Drafting Manual 5-55, 89-103	Virginia Drafting Manual 34-37
Washington Drafting Manual pt. II	West Virginia Drafting Manual 2-11, 22-24	

**TABLE 4.**  
**TEXTUAL CANONS: LINGUISTIC INFERENCE CANONS**

**Plain Meaning Rule/Absurd Results Exception:** Follow the plain meaning of the statutory text, except when textual plain meaning requires an absurd result or suggests a scrivener's error<sup>281</sup>

Arizona Drafting Manual 37	Colorado Drafting Manual app. J-8	Connecticut Drafting Manual 6
Delaware Drafting Manual 77	Florida Senate Drafting Manual 121	Iowa Drafting Manual 39, 44
Louisiana Senate Drafting Manual 9, 25, 30	Michigan Drafting Manual 12	Minnesota Drafting Manual 268-69
Montana Drafting Manual 4	Oregon Drafting Manual §§ 20.1(a)(3), 20.2(c)(1)	Pennsylvania Drafting Manual § 13.101
Tennessee Drafting Manual 41	Texas Drafting Manual §312.002	West Virginia Drafting Manual 31
Wisconsin Drafting Manual 38-39		

**Ejusdem Generis:** Interpret a general term to reflect the class of objects reflected in more specific terms accompanying it

Alaska Drafting Manual 10	Delaware Drafting Manual 116	Florida Senate Drafting Manual 123
Illinois Drafting Manual 39	Iowa Drafting Manual 41-42	Minnesota Drafting Manual 276
Oregon Drafting Manual § 20.5(b)(2)	West Virginia Drafting Manual 33	

**Noscitur a Sociis:** Interpret a general term to be similar to more specific terms in a series

Alaska Drafting Manual 10	Minnesota Drafting Manual 276	Oregon Drafting Manual § 20.2(b)(1)
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**Expressio Unius Est Exclusio Alterius:** Expression of one thing suggests the exclusion of others

Alaska Drafting Manual 10	Delaware Drafting Manual 115	Florida Senate Drafting Manual 122-23
Iowa Drafting Manual 40	Louisiana Senate Drafting Manual 27	Minnesota Drafting Manual 276
Oregon Drafting Manual §§ 4.10(a), 20.2(b)(3)	Utah Drafting Manual ch. 2, pt. 3(f)	West Virginia Drafting Manual 33
Wisconsin Drafting Manual 39		

<sup>281</sup> Note: Some manuals include the plain meaning rule implicitly by referring to its absurd results exception.

**TABLE 5.**  
**TEXTUAL CANONS: GRAMMAR AND SYNTAX CANONS**

**Rule of the Last Antecedent:** Referential and qualifying words or phrases refer only to the last antecedent, unless contrary to the apparent legislative intent derived from the sense of the entire enactment

Colorado Drafting Manual § 5.7.1(39)	Florida Senate Drafting Manual 120	Illinois Drafting Manual 233-34
Minnesota Drafting Manual 276	Oregon Drafting Manual § 3.11	Washington Drafting Manual, pt. II(12)(v)

**Singular/Plural:** Singular includes plural

Delaware Drafting Manual 80, 195	Florida Senate Drafting Manual 115	Hawaii Drafting Manual 23
Iowa Drafting Manual 31, 41	Kentucky Drafting Manual 36	Louisiana Senate Drafting Manual 10, 19
Maine Drafting Manual 80	Michigan Drafting Manual 82	Minnesota Drafting Manual 270
Nebraska Drafting Manual 62	New Jersey Drafting Manual 108	New York Drafting Manual 20
Oregon Drafting Manual § 20.2(c)(4)	Pennsylvania Drafting Manual § 13.102	South Dakota Drafting Manual 27
Tennessee Drafting Manual 23	Texas Drafting Manual 218, 223	Utah Drafting Manual ch.1, pt. 2(c)(i)
West Virginia Drafting Manual 33	Wisconsin Drafting Manual 49	

**Gender Rule:** Masculine pronouns are interpreted to include the feminine

Arkansas Drafting Manual 52	Delaware Drafting Manual 195	Florida Senate Drafting Manual 115
Hawaii Drafting Manual 23	Iowa Drafting Manual 31	Kentucky Drafting Manual 25
Louisiana Senate Drafting Manual 10	Michigan Drafting Manual 83	Minnesota Drafting Manual 270
New Jersey Drafting Manual 108	New Mexico Drafting Manual 178	New York Drafting Manual 20
North Dakota Drafting Manual 90	Pennsylvania Drafting Manual § 13.102	Texas Drafting Manual 105 n.2

**TABLE 6.**  
**TEXTUAL CANONS: TEXTUAL INTEGRITY CANONS**

**Presumption of Consistent Usage/Meaningful Variation:** Interpret the same or similar terms in a statute or statutes the same way

New York Drafting Manual 4	Oregon Drafting Manual § 20.2(c)(3)	Utah Drafting Manual ch. 1, pt. 1(b)(ii)
West Virginia Drafting Manual 33	Wisconsin Drafting Manual 50	

**Rule Against Surplusage:** Avoid interpreting a provision in a way that would render other provisions of the act superfluous or unnecessary

Alabama Drafting Manual r. 6	Colorado Drafting Manual app. J-8 to J-9	Connecticut Drafting Manual 6
Louisiana Senate Drafting Manual 26-27	Minnesota Drafting Manual 268	West Virginia Drafting Manual 31
Wisconsin Drafting Manual 62		

**Section headings may be considered in the construction of a statute**

Colorado Drafting Manual § 2.5.3	Pennsylvania Drafting Manual § 13.122
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**Section headings are not part of the statute and may not be considered**

Delaware Drafting Manual 195	Iowa Drafting Manual 38	Louisiana Senate Drafting Manual 11, 19
Michigan Drafting Manual 79	North Dakota Drafting Manual 8	

**Statute's statement of purpose and preamble may provide clues to statutory meaning**

Alaska Drafting Manual 14	Colorado Drafting Manual app. F-37 to -46	Connecticut Drafting Manual 110
Delaware Drafting Manual 16	Florida Senate Drafting Manual 121	Illinois Drafting Manual 34-35
Michigan Drafting Manual 9-10	Minnesota Drafting Manual 33-34	Montana Drafting Manual 58
North Dakota Drafting Manual 8	Oregon Drafting Manual § 20.2(a)(2)	Pennsylvania Drafting Manual § 13.122
Utah Drafting Manual ch. 2, pt. 2		

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**Statute’s statement of purpose and preamble are not considered part of the act**

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Kentucky Drafting Manual 7

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**TABLE 7.**  
**SUBSTANTIVE CANONS**

**Rule of Lenity:** Rule against applying punitive sanctions if there is ambiguity as to the underlying criminal liability or criminal penalty

Florida Senate Drafting Manual 117	Iowa Drafting Manual 41	Louisiana Senate Drafting Manual 31
Michigan Drafting Manual 20-21	Minnesota Drafting Manual 270	West Virginia Drafting Manual 32

**Constitutional Avoidance:** Presumption that statutes enacted by the legislature are constitutional

Connecticut Drafting Manual 6	Florida Senate Drafting Manual 113-14	Iowa Drafting Manual 35
Louisiana Senate Drafting Manual 32-36	Tennessee Drafting Manual 42	

**Constitutional Avoidance:** Construe a statute liberally to avoid making it constitutionally invalid

Arizona Drafting Manual 51

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**Severability:** Presumption favoring severability of unconstitutional provisions

Alaska Drafting Manual 31-32	Arizona Drafting Manual 52-53	Arkansas Drafting Manual 79
Colorado Drafting Manual § 2.6.2	Delaware Drafting Manual 30-31, 195	Florida House Drafting Manual 47-48
Florida Senate Drafting Manual 60, 126	Hawaii Drafting Manual 13	Illinois Drafting Manual 47-48
Indiana Drafting Manual 79	Iowa Drafting Manual 93	Kentucky Drafting Manual 27-28
Louisiana Senate Drafting Manual 16-17	Maine Drafting Manual 21	Maryland Drafting Manual 117-18
Massachusetts Drafting Manual pt. 3(D)(4)	Michigan Drafting Manual 32-33	Minnesota Drafting Manual 40-41
Missouri Drafting Manual 31-32	Montana Drafting Manual 74-75	New Jersey Drafting Manual 66-67



North Dakota Drafting Manual 8	Oregon Form and Style Manual 52	Pennsylvania Drafting Manual § 13.123
South Dakota Drafting Manual 14	Texas Drafting Manual 46-47	Utah Drafting Manual ch. 2, pt. 5
Washington Drafting Manual pt. II(11)(w)	West Virginia Drafting Manual 10, 32	

**Retroactivity:** No statute is retroactive unless expressly declared therein

Arizona Drafting Manual 43	Florida Senate Drafting Manual 68-69	Idaho Drafting Manual 9
Louisiana Senate Drafting Manual 9, 15	Montana Drafting Manual 77	West Virginia Drafting Manual 34

**Retroactivity:** A statute will not apply retroactively absent contrary legislative intent

Alaska Drafting Manual 33-34	Connecticut Drafting Manual 106-07	Illinois Drafting Manual 101-02
Iowa Drafting Manual 33, 39-40	Maine Drafting Manual 23	Michigan Drafting Manual 44-45
Minnesota Drafting Manual 53-54	North Dakota Drafting Manual 8	Oregon Drafting Manual § 20.2(e)
Pennsylvania Drafting Manual § 13.124	Washington Drafting Manual pt. II(s)	

**TABLE 8.**  
**EXTRINSIC SOURCE CANONS**

**Derogation of Common Law:**

*Statutes in derogation of the common law should be strictly construed*

Florida Senate Drafting Manual 117	West Virginia Drafting Manual 32
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*Statutes are presumed not to alter the common law absent legislative intent to the contrary*

Minnesota Drafting Manual 270
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*Statutes in derogation of the common law should not be strictly construed*

Iowa Drafting Manual 33	Oregon Drafting Manual § 20.1(b)(3)
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**Legislative History:**

***Court can consider legislative history if the statute is ambiguous***

Connecticut Drafting Manual 6	Iowa Drafting Manual 34, 39	Minnesota Drafting Manual 271-72
North Dakota Drafting Manual 8	Tennessee Drafting Manual 41	

***Court can consider legislative history whether or not the statute is ambiguous***

Oregon Drafting Manual § 20.2(a)(2)	Texas Drafting Manual 219
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***Court ordinarily should not consider legislative history except as support for conclusions following from established rules of statutory construction***

Florida Senate Drafting Manual 122
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**Acquiescence rule:** Legislative inaction for many years after judicial interpretation of a statute may create a presumption of legislative acquiescence in the decision

Oregon Drafting Manual § 20.4(e)
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**Reenactment rule:** When a statute is enacted or amended, the legislature is presumed to have created the statute in light of judicial constructions of existing law involving the same subject matter

Colorado Drafting Manual § 1.2.4	Louisiana Senate Drafting Manual 14	Minnesota Drafting Manual 268
West Virginia Drafting Manual 34	Wisconsin Drafting Manual 64	

**In Pari Materia:** Similar statutes should be interpreted similarly

Florida Senate Drafting Manual 121	Iowa Drafting Manual 41	Louisiana Senate Drafting Manual 16, 26-27
Minnesota Drafting Manual 273	Oregon Drafting Manual § 20.3(b)	Tennessee Drafting Manual 42
West Virginia Drafting Manual 31		

**TABLE 9.**  
**RESTATED AND IMPLIED CONVENTIONS: STYLE AND GRAMMAR**

**Drafter should aim to write a bill that is concise, clear, and/or easy to understand**

Arkansas Drafting Manual 32	Colorado Drafting Manual § 5.7.1	Connecticut Drafting Manual 228-29
Delaware Drafting Manual 77-78, 84	Florida House Drafting Manual 59	Florida Senate Drafting Manual 9-10, 13-14

Hawaii Drafting Manual 23	Indiana Drafting Manual 9-10	Iowa Drafting Manual 44-45
Kentucky Drafting Manual 23	Louisiana Senate Drafting Manual 105-06	Maine Drafting Manual 67-68
Maryland Drafting Manual 28-29	Massachusetts Drafting Manual pts. 2(B)(1), 2(B)(2), 2(B)(5)	Minnesota Drafting Manual 275-76, 284, 294-95
Montana Drafting Manual 13	Nebraska Drafting Manual 48	New Mexico Drafting Manual 26-28
New York Drafting Manual 20-21	North Dakota Drafting Manual 98	Pennsylvania Drafting Manual § 13.12
South Dakota Drafting Manual 1, 11, 23, 29	Tennessee Drafting Manual 13-15	Texas Drafting Manual 104-05, 108
Utah Drafting Manual ch. 1, pt. 1(b)(i)	West Virginia Drafting Manual 22-24	Wisconsin Drafting Manual 37-38

### Avoid gender-based pronouns when possible

Alabama Drafting Manual r. 4	Alaska Drafting Manual 64-65	Arizona Drafting Manual 91-92
Arkansas Drafting Manual 52	Colorado Drafting Manual § 5.7.1(37)	Connecticut Drafting Manual 219
Delaware Drafting Manual 83	Florida Senate Drafting Manual 13	Hawaii Drafting Manual 23-24, 37-39
Idaho Drafting Manual 32	Illinois Drafting Manual 211-12	Indiana Drafting Manual 10
Iowa Drafting Manual 51	Kentucky Drafting Manual 25	Louisiana Senate Drafting Manual 106 (legislation can be written with gender-neutral pronouns)
Maine Drafting Manual 83-89	Maryland Style Manual 37-38	Massachusetts Drafting Manual pt. 3(A)(2)
Michigan Drafting Manual 83	Minnesota Drafting Manual 297-98	Montana Drafting Manual 18-22
Nebraska Drafting Manual 58	New Jersey Drafting Manual 108-09	New Mexico Drafting Manual 28, 178-79
North Dakota Drafting Manual 90	Oregon Drafting Manual § 3.7	Oregon Form and Style Manual 7
South Dakota Drafting Manual 23	Tennessee Drafting Manual 23	Texas Drafting Manual 105-06
Utah Drafting Manual ch. 1, pt. 2(e)	Washington Drafting Manual pt. II(12)(g)	West Virginia Drafting Manual 23 (drafters should include both masculine and feminine gender pronouns)
Wisconsin Drafting Manual 52		

**Drafter should be consistent in the use of language throughout the bill**

Alabama Drafting Manual r. 5	Alaska Drafting Manual 64	Arizona Drafting Manual 86
Arkansas Drafting Manual 32	Colorado Drafting Manual §§ 5.7.1(16)-(18)	Connecticut Drafting Manual 229
Delaware Drafting Manual 78-79	Florida House Drafting Manual 59	Florida Senate Drafting Manual 14
Hawaii Drafting Manual 23	Idaho Drafting Manual 29, 33	Illinois Drafting Manual 208
Indiana Drafting Manual 10	Iowa Drafting Manual 44	Kentucky Drafting Manual 24
Louisiana Senate Drafting Manual 105	Maine Drafting Manual 68	Maryland Style Manual 21-22
Massachusetts Drafting Manual pt. 2(B)(3)	Michigan Drafting Manual 75-76	Minnesota Drafting Manual 292-93
Missouri Drafting Manual 45	Montana Drafting Manual 22	Nebraska Drafting Manual 58
New Jersey Drafting Manual 122	New Mexico Drafting Manual 27	New York Drafting Manual 20
North Dakota Drafting Manual 90	Oregon Drafting Manual § 3.2	South Dakota Drafting Manual 23
Texas Drafting Manual 105	Utah Drafting Manual ch. 1, pt. 1(b)(ii)	Virginia Drafting Manual 70-71
Washington Drafting Manual pt. II(11)(h)	West Virginia Drafting Manual 22	Wisconsin Drafting Manual 50-51

**Capitalization rules**

Alabama Drafting Manual r. 13	Alaska Drafting Manual 60	Arizona Drafting Manual 76
Arkansas Drafting Manual 35-39	Colorado Drafting Manual §§ 5.1.1-5.1.4	Connecticut Drafting Manual 191-97
Delaware Drafting Manual 96	Florida House Drafting Manual 84-87	Florida Senate Drafting Manual 28-29
Hawaii Drafting Manual 31	Idaho Drafting Manual 21-22	Illinois Drafting Manual 214-15
Indiana Drafting Manual 18-21	Iowa Drafting Manual 98	Kentucky Drafting Manual 29-30
Louisiana Senate Drafting Manual 97-100	Maine Drafting Manual 108-12	Maryland Style Manual 7-10
Massachusetts Drafting Manual pt. 3(A)(3)	Michigan Drafting Manual 96-97	Minnesota Drafting Manual 303-05
Missouri Drafting Manual 49	Montana Drafting Manual 35-36	Nebraska Drafting Manual 50-51
New Jersey Drafting Manual 109-10	New Mexico Drafting Manual 187-90	New York Drafting Manual 14-15

North Dakota Drafting Manual 100-02	Oregon Form and Style Manual 3-4	South Dakota Drafting Manual 22
Tennessee Drafting Manual 16-17	Texas Drafting Manual 90-94	Utah Drafting Manual ch. 3, pt. 2
Washington Drafting Manual pt. IV(3)	West Virginia Drafting Manual 14-17	Wisconsin Drafting Manual 57-59

**Bill should be in active voice and drafter should avoid the use of passive voice**

Alabama Drafting Manual r. 3(a)	Alaska Drafting Manual 66	Arizona Drafting Manual 91
Arkansas Drafting Manual 32-33	Colorado Drafting Manual § 5-7.1(6)	Connecticut Drafting Manual 226
Delaware Drafting Manual 80, 82	Florida Senate Drafting Manual 12-13	Hawaii Drafting Manual 23
Idaho Drafting Manual 21	Illinois Drafting Manual 209	Indiana Drafting Manual 10
Iowa Drafting Manual 133	Kentucky Drafting Manual 24	Louisiana Senate Drafting Manual 107
Maine Drafting Manual 77-78	Maryland Style Manual 75	Massachusetts Drafting Manual pt. 2(C)(3)(b)
Michigan Drafting Manual 75	Minnesota Drafting Manual 278-79	Montana Drafting Manual 17
Nebraska Drafting Manual 48	New Jersey Drafting Manual 116	New Mexico Drafting Manual 178
North Dakota Drafting Manual 90	Oregon Drafting Manual § 3.6	South Dakota Drafting Manual 28
Tennessee Drafting Manual 15	Texas Drafting Manual 104	Utah Drafting Manual ch. 1, pt. 2(b)(i)
Washington Drafting Manual pt. IV(1)(h)(iii)	West Virginia Drafting Manual 23	Wisconsin Drafting Manual 49

**Punctuation rules**

Alabama Drafting Manual r. 11	Alaska Drafting Manual 66-67	Arizona Drafting Manual 84-85
Arkansas Drafting Manual 43-49	Colorado Drafting Manual § 5.9	Delaware Drafting Manual 100-02
Florida House Drafting Manual 87	Florida Senate Drafting Manual 22-24	Hawaii Drafting Manual 30
Idaho Drafting Manual 24	Illinois Drafting Manual 229-38	Indiana Drafting Manual 21-24
Iowa Drafting Manual 99	Kentucky Drafting Manual 25-26	Louisiana Senate Drafting Manual 89-94
Maine Drafting Manual 113-18	Maryland Style Manual 61-64	Massachusetts Drafting Manual pt. 3(A)(5)
Michigan Drafting Manual 97-98	Minnesota Drafting Manual 299-319	Montana Drafting Manual 36-40

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Nebraska Drafting Manual 62-63	New Jersey Drafting Manual 112-13	New Mexico Drafting Manual 190-96
North Dakota Drafting Manual 106	Oregon Drafting Manual § 3.11	Oregon Form and Style Manual 2-5
South Dakota Drafting Manual 26	Tennessee Drafting Manual 19-21	Texas Drafting Manual 99-101
Utah Drafting Manual ch. 3, pt. 1	Washington Drafting Manual pts. IV(1)(a), IV(1)(b), IV(1)(c), IV(1)(f)	West Virginia Drafting Manual 21
Wisconsin Drafting Manual 60-61		

**Use of modifiers**

Arizona Drafting Manual 94	Arkansas Drafting Manual 33-35	Delaware Drafting Manual 95
Florida Senate Drafting Manual 15	Hawaii Drafting Manual 29-30	Idaho Drafting Manual 22
Illinois Drafting Manual 211, 224, 233	Iowa Drafting Manual 57, 133	Maine Drafting Manual 81-83
Maryland Style Manual 41-43	Massachusetts Drafting Manual pt. 2(C)(6)	Minnesota Drafting Manual 287-88
New York Drafting Manual 21	Oregon Drafting Manual §§ 3.17, 4.12	Oregon Form and Style Manual 3
Texas Drafting Manual 110-12	Utah Drafting Manual ch. 1, pt. 2(d)(ii)	Wisconsin Drafting Manual 52

**Singular vs. Plural**

Alabama Drafting Manual r. 3	Alaska Drafting Manual 68	Arizona Drafting Manual 74
Arkansas Drafting Manual 33	Colorado Drafting Manual § 5.7.1(9)	Connecticut Drafting Manual 218, 226
Delaware Drafting Manual 80	Florida House Drafting Manual 96	Florida Senate Drafting Manual 13
Hawaii Drafting Manual 23	Idaho Drafting Manual 23	Illinois Drafting Manual 209
Indiana Drafting Manual 10	Iowa Drafting Manual 31	Louisiana Senate Drafting Manual 106
Maine Drafting Manual 79-80	Maryland Style Manual 82	Massachusetts Drafting Manual pt. 2(C)(3)(c)
Michigan Drafting Manual 82	Minnesota Drafting Manual 277-78	Montana Drafting Manual 17
Nebraska Drafting Manual 62	New Jersey Drafting Manual 108	New Mexico Drafting Manual 178
North Dakota Drafting Manual 90	Oregon Drafting Manual § 3.7	South Dakota Drafting Manual 27

Tennessee Drafting Manual 23	Texas Drafting Manual 113	Utah Drafting Manual ch. 3, pt. 3(a)(iii)
West Virginia Drafting Manual 23	Wisconsin Drafting Manual 49	

### Guidelines for structuring provisos and exceptions

Alabama Drafting Manual r. 14	Alaska Drafting Manual 64	Arizona Drafting Manual 96
Arkansas Drafting Manual 60	Colorado Drafting Manual § 5.7.1(19)	Connecticut Drafting Manual 198-99
Delaware Drafting Manual 109-10	Florida House Drafting Manual 63	Florida Senate Drafting Manual 20
Hawaii Drafting Manual 33	Idaho Drafting Manual 22	Illinois Drafting Manual 212
Indiana Drafting Manual 17-18	Kentucky Drafting Manual 26-27	Maine Drafting Manual 70-71
Maryland Style Manual 35-36	Massachusetts Drafting Manual pt. 2(C)(7)	Michigan Drafting Manual 76-77
Minnesota Drafting Manual 289-90	Missouri Drafting Manual 47-48	Montana Drafting Manual 22-23
Nebraska Drafting Manual 49	New Jersey Drafting Manual 121	Oregon Drafting Manual §§ 3.4(e), 4.11
Utah Drafting Manual ch. 1, pt. 1(b)(i), ch. 3, pt. 4(a)(v)	Virginia Drafting Manual 75	Washington Drafting Manual pt. II(12)(i)
West Virginia Drafting Manual 22, 42	Wisconsin Drafting Manual 47	

### Draft bills in the present tense

Alabama Drafting Manual r. 3	Alaska Drafting Manual 68	Arizona Drafting Manual 90-91
Arkansas Drafting Manual 32	Colorado Drafting Manual § 5.7.1(7)	Connecticut Drafting Manual 218
Delaware Drafting Manual 80	Florida House Drafting Manual 95-96	Florida Senate Drafting Manual 13
Hawaii Drafting Manual 23	Idaho Drafting Manual 23	Illinois Drafting Manual 208
Indiana Drafting Manual 9	Iowa Drafting Manual 133	Kentucky Drafting Manual 24
Maine Drafting Manual 78-79	Maryland Style Manual 75	Massachusetts Drafting Manual pt. 2(C)(3)
Michigan Drafting Manual 73	Montana Drafting Manual 14	Nebraska Drafting Manual 66
New Jersey Drafting Manual 115	New Mexico Drafting Manual 178	New York Drafting Manual 18
Oregon Drafting Manual § 3.5	South Dakota Drafting Manual 24	Texas Drafting Manual 113-14

Utah Drafting Manual ch. 1 pt. 2(a)(i) Wisconsin Drafting Manual 46	Washington Drafting Manual pt. IV(1)(h)(i)	West Virginia Drafting Manual 22
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**TABLE 10.**  
**RESTATED AND IMPLIED CONVENTIONS: USE OF PARTICULAR WORDS**

**“Shall” vs. “May”**

Alabama Drafting Manual r. 8	Alaska Drafting Manual 65	Arizona Drafting Manual 97- 98
Arkansas Drafting Manual 56-57	Colorado Drafting Manual § 5-7.1(8)	Connecticut Drafting Manual 206
Delaware Drafting Manual 88-91	Florida House Drafting Manual 90	Florida Senate Drafting Manual 17-18
Hawaii Drafting Manual 23	Idaho Drafting Manual 25-26	Indiana Drafting Manual 11- 12
Iowa Drafting Manual 32	Kentucky Drafting Manual 23	Louisiana Senate Drafting Manual 9
Maine Drafting Manual 90- 92	Maryland Style Manual 57-58	Massachusetts Drafting Manual pt. 3(C)(3)
Minnesota Drafting Manual 279-83	Missouri Drafting Manual 45	Montana Drafting Manual 14-16
Nebraska Drafting Manual 66	New Jersey Drafting Manual 118	New Mexico Drafting Manual 180
North Dakota Drafting Manual 90-91	Oregon Style and Form Drafting Manual 5	South Dakota Drafting Manual 24
Tennessee Drafting Manual 22	Texas Drafting Manual 109- 10	Utah Drafting Manual ch. 3, pt. 4(c)(xviii)
Washington Drafting Manual pt. IV(1)(g)	West Virginia Drafting Manual 23	Wisconsin Drafting Manual 46

**“That” vs. “Which”**

Alabama Drafting Manual r. 9	Arizona Drafting Manual 98	Colorado Drafting Manual § 5-7.1(36)
Connecticut Drafting Manual 219	Delaware Drafting Manual 92-93	Florida Senate Drafting Manual 19
Hawaii Drafting Manual 26- 28	Idaho Drafting Manual 31	Illinois Drafting Manual 227
Indiana Drafting Manual 14- 15	Maine Drafting Manual 98- 99	Maryland Style Manual 59, 65
Massachusetts Drafting Manual pt. 3(C)(4)	Minnesota Drafting Manual 286, 318-19	Montana Drafting Manual 23-24
North Dakota Drafting Manual 91	Texas Drafting Manual 114- 15	Utah Drafting Manual ch. 3, pt. 4(c)(xxxi)
Wisconsin Drafting Manual 50		



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**“If,” “Where,” “When,” “Wherever”**

Alabama Drafting Manual r. 14(c)	Arizona Drafting Manual 96	Delaware Drafting Manual 94
Kentucky Drafting Manual 26	Maryland Style Manual 35-36	Missouri Drafting Manual 47-48
Montana Drafting Manual 24	Nebraska Drafting Manual 69	New Jersey Drafting Manual 119
North Dakota Drafting Manual 91-92	Utah Drafting Manual ch. 3, pt. 4(c)(xvi)	Washington Drafting Manu- al pt. II(12)(s)(iii)
Wisconsin Drafting Manual 51		