

**30 years down the road:  
Have piecemeal revisions degraded  
Iowa's Criminal Code?**

**Criminal Appeals Division  
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Attorneys in the Criminal Appeals Division of the Iowa Attorney General's Office examined the criminal provisions of the 2007 Iowa Code with the following questions in mind. The questions were gleaned from a law review article by professors Paul Robinson and Michael Cahill, *Accelerating Degradation of American Criminal Codes*, 56 Hastings L.J. 633 (2005).

1. Is there any case law that points to problems with a particular code section?
2. Do the prohibitions in this chapter duplicate or overlap with crimes set out elsewhere in the code?
3. Do the code sections use plain language? Do they effectively communicate to a lay person what conduct is prohibited?
4. Is the **criminal intent** required to prove each crime clear and consistent?
5. Have any newer provisions jumped ahead of older crimes in the grading of the offenses?
6. Do any provisions criminalize trivial and non-dangerous conduct?
7. Are any critical terms undefined or defined inconsistently with the rest of the criminal code?
8. How do the definitions compare to ALI's Model Penal Code?
9. Does the organizational structure of the chapter make sense, *i.e.*, its location in the criminal code and the internal organization (most serious to least serious)?
10. Are there any case law definitions or explanatory language that should be incorporated into the statute itself?

The following 56 chapters were reviewed:

Chapter 123 (alcohol)	Chapter 717 (injury to livestock)
Chapter 124 (drugs)	Chapter 717A (ag offenses)
Chapter 155A (prohibited acts)	Chapter 717B (animal abuse)
Chapter 321J (OWI)	Chapter 717C (bestiality)
Chapter 453B (drug tax stamp)	Chapter 717D (animal contests)
Chapter 692A (sex offenders)	Chapter 717E (pets as prizes)
Chapters 701, 702 (definitions)	Chapter 718 (offense agnst gov't)
Chapter 703 (parties to crime)	Chapter 718A (flag desecration)
Chapter 704 (justification)	Chapter 719 (obstructing justice)
Chapter 705 (solicitation)	Chapter 720 (perjury)
Chapter 706 (conspiracy)	Chapter 721 (official misconduct)
Chapter 707 (homicide)	Chapter 722 (bribery)
Chapter 708 (assault)	Chapter 723 (riot)
Chapter 708A (terrorism)	Chapter 723A (street gangs)
Chapter 708B (biological agents)	Chapter 724 (weapons)
Chapter 709 (sexual abuse)	Chapter 725 (vice)
Chapter 709A (contributing to delinquency of minor)	Chapter 726 (family protection)
Chapter 710(kidnapping)	Chapter 727 (health & safety)
Chapter 710A (human trafficking)	Chapter 728 (obscenity)
Chapter 711 (robbery)	Chapter 729 (individual rights)
Chapter 712 (arson)	Chapter 729A (hate crimes)
Chapter 713 (Burglary)	Chapter 730 (employment)
Chapter 714 (theft)	Chapter 731 (unions)
Chapter 714A (pay-per-call service)	Chapter 732 (labor boycotts)
Chapter 714B (prize promotions)	Other felonies scattered around Code
Chapter 714D (telecom fraud)	
Chapter 715 (computer spyware)	
Chapter 715A (forgery)	
Chapter 716 (trespass)	
Chapter 716A (e-mail crimes)	
Chapter 716B (hazardous waste)	

The following are a few representative examples of what our attorneys found when reviewing the existing code with the above questions in mind.

### **1. Case law pointing to problems with a particular code section**

Iowa's recent case law points to some difficulty with the assault definition at Iowa Code § 708.1 For two decades, the Iowa courts interpreted these definitions of assault as general intent crimes. *See State v. Brown*, 376 N.W.2d 910, 913 (Iowa Ct. App. 1985), citing K. Dunahoo, *The New Iowa Criminal Code*, 29 Drake L.Rev. 237, 301-02 (1979-80) for the proposition that the statute's use of the word "intent" does not mean it is a specific intent crime.

The Iowa Supreme Court shifted gears in *State v. Heard*, 636 N.W.2d 227, 231 (Iowa 2001) and held that assault was a specific intent crime. The concurrence in *Heard* predicted that “permitting voluntary intoxication and diminished responsibility to be raised as defenses to domestic abuse assault will substantially undermine the protective purpose of our domestic abuse statutes, thereby contravening clear legislative intent.”

The legislature amended section 708 in 2002 to state the following: “An assault as defined in this section is a general intent crime.”

Despite this amendment, in *State v. Keeton*, 710 N.W.2d 531 (Iowa 2006), the Court declined to “revisit the issue whether assault is a general- or specific-intent crime.” Noting, “[r]egardless of which label is attached to the offense, the State was still required to prove Keeton possessed the *mens rea* required by the statute.” Interestingly, the *Keeton* court cites to a law review article, Scott Anderegg, *The Voluntary Intoxication Defense in Iowa*, 73 Iowa L. Rev. 935, 935 (1988), which noted that the general/specific intent is an area of Iowa law with “a long history of illogical decisions and confusion.”

## **2. Duplicative or overlapping offenses**

Sometimes code sections in different chapters cover essentially the same conduct, but carry different penalties. For instance, Iowa Code section 712.7 criminalizes “false reports” in the arson chapter as a class “D” felony, while a similar offense of “false reports” to public safety entities in the Offenses Against the Government chapter is a simple or serious misdemeanor.

Another example of overlapping offenses is the “conspire with” language contained in section 124.401 dealing with controlled substances and the independent conspiracy definition in chapter 706. See *State v. Corsi*, 686 N.W.2d 215 (Iowa 2004).

Yet another example is neglect of a dependent which overlaps with two subsections of child endangerment. See *State v. Caskey*, 539 N.W.2d 176 (Iowa 1995).

In addition, section 727.1 which prohibits the distribution of dangerous substances largely is supplanted by chapter 124 governing controlled substances.

## **3. Need for plain language and better organization**

One of the problems with the current code is that many of the definitions are contained in a separate chapter from the crime itself. For instance, section 702.12 defines, in a very cumbersome manner, an “occupied structure” which is only relevant to a burglary prosecution under chapter 713.

## **4. Inconsistent references to criminal intent**

Chapter 724 – which deals with weapons offenses – is a good example of lack of consistency in the use of the term “knowingly.” Section 724.3 refers to “knowingly possesses;” in section 724.4 some prohibited actions require proof of knowledge and others do not; sections 724.4B and 724.22 make no reference to knowledge. Case law establishes that to unlawfully carry or go armed with a weapon, the person must know of

the presence of the weapon. The statutes would be more clear if the knowledge requirement were included in the language of the statutes and if that language were used consistently throughout the chapter.

Another example is Chapter 726 – addressing child endangerment – which contains several confusing or superfluous *mens rea*. For instance, section 726.3 prohibits “knowingly *or* recklessly” exposing a dependent person to a hazard; if one is a lesser grade of intent, then the other is superfluous. Likewise, section 726.6(1) states it is child endangerment to knowingly create a risk of substantial harm or to intentionally torture; arguably the former subsumes the latter. Also, “Wanton neglect” under section 726.7 and 726.8 contain a “knowing” *mens rea*. Finally, the courts have had to devote considerable attention to the meaning of “knowingly” under Iowa Code section 726.6(1)(a), which defines child endangerment to include one who “knowingly acts in a manner that creates a substantial risk to a child or minor’s physical, mental, or emotional health or safety.” *See, e.g., State v. James*, 693 N.W.2d 353 (Iowa 2005).

#### **5. Newer provisions bypassing older crimes in grading of offense**

It might be worth examining the equities of the various punishments ascribed to certain enhanced assaults in chapter 708. For instance, an assault committed upon one’s wife with the intent to inflict a serious injury is an aggravated misdemeanor (§ 708.2A(2)(c)), but an assault with the same intent committed on an employee of the department of revenue is a class “D” felony (§ 708.3A(1)).

#### **6. Provisions which criminalize trivial or non-dangerous conduct**

Chapter 727 – entitled Health, Safety and Welfare – contains many minor, outdated and anachronistic offenses which may deserve a closer look. For instance, the chapter criminalizes exhibiting persons, abandoning refrigerators and exposing persons to x-rays.

#### **7. Critical terms undefined or defined inconsistently**

A “sex act” for purposes of chapter 709 is defined in 702.17. However, “sex act” is defined differently in section 717C, criminalizing bestiality. Abuse of a corpse, under 709.18, requires a person to “knowingly and intentionally” engages in a sex act with a human corpse.

#### **8. Comparison to ALI’s Model Penal Code**

Many Iowa crimes appear to originate with Model Penal Code language, but then veer away to add, delete or redefine terms. For instance, Iowa’s criminal mischief statute, chapter 716, requires *intentional* damage, defacing, alteration, or destruction to property. By contrast, the Model Penal Code criminalizes reckless and negligent damage to property as well as intentional.

Iowa Code section 710.1 is reasonably close to the Model Penal Code definition of kidnapping, see ALI Model Penal Code, section 212.1. However, it diverges on a couple of points. The Model Penal Code provides that kidnapping is a felony in the first degree “unless the actor voluntarily releases the victim alive and in a safe place prior to trial,” in which case the offense is reduced to a second-degree felony. The Model Penal Code also defines kidnapping more broadly than does Iowa in one respect. Subsection 3 of section 710.1 refers to an “intent to inflict serious injury” to the victim or to subject the victim to “sexual abuse.” The Model Penal Code includes an intent to “facilitate commission of any felony or flight thereafter.”

The Model Penal Code does not serve as a good model in all areas. For example, Iowa’s sexual abuse chapter contains laws that are gender-neutral and progressive. The Model Penal Code’s treatment of sex crimes, on the other hand, has been criticized. See Gerald Lynch, *Revising the Model Penal Code: Keeping It Real*, 1 Ohio St. J. Crim. L. 219, 223, 230-31 (2003); Deborah Denno, *Why the Model Penal Code’s Sexual Offense Provisions Should Be Pulled and Replaced*, 1 Ohio St. Crim. L. 207, 209-18 (2003). Both the original 1962 MPC and its 1980 Commentaries are considered outdated, defining rape as heterosexual penetration, providing lesser penalties for sexual abuse committed by a “voluntary social companion,” requiring corroboration of the victim’s testimony, and in some subsections, examining the “promiscuity “ of the victim.

## **9. Organizational structure of chapters**

Chapter 724 is an example of a chapter set out in no logical order. The chapter progresses through the offenses of bigamy, incest, neglect of dependent persons, witnesses, nonsupport, and endangerment before returning to the subjects of neglect of healthcare facility residents and neglect or nonsupport of dependent adults.

## **10. Case law definitions that should be incorporated into statutes**

Joint criminal conduct, defined at section 703.2, could be revised to incorporate the explanatory language in *State v. Smith*, 739 N.W.2d 289 (Iowa 2007). Similarly, the definition of “reasonable force” may need to be updated with language from various appellate decisions such as *State v. Stallings*, 541 N.W.2d 855 (Iowa 1995).