



**STATE OF VERMONT**  
HOUSE OF REPRESENTATIVES  
CLERK OF THE HOUSE

**MEMORANDUM**

To: Rep. Jill Krowinski, Speaker of the House  
From: BetsyAnn Wrask, Clerk of the House  
Date: May 4, 2023  
Subject: Information regarding impeachment

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*I. Introduction*

Pursuant to your request for information, this memo describes legislative procedure to conduct an impeachment of a State Executive or Judicial constitutional officer.

To summarize, a State Executive or Judicial constitutional officer enjoys the term of office prescribed by our State Constitution, and our founding document allows only one method of removal of such an officer: Impeachment ordered by the House of Representatives and a subsequent impeachment conviction in the Senate. Impeachment procedure is controlled by the Vermont Constitution, and the Legislative Branch fills in the details.

Impeachment is rare in Vermont history. Thankfully, we have the 1976 House impeachment and Senate acquittal of Sheriff Malcolm Mayo as a recent reference.<sup>1</sup> What follows is information on constitutional impeachment provisions and potential legislative procedure to administer those provisions.

*II. Impeachment is the Sole Method to Remove  
an Executive or Judicial Constitutional Officer*

Because a State Executive or Judicial constitutional officer enjoys a constitutionally defined term of office, such an officer can only be removed from office pursuant to constitutional procedure. Impeachment is that constitutional procedure.<sup>2</sup>

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<sup>1</sup> See this VPR article for more background information: <https://www.vermontpublic.org/programs/2018-02-02/who-oversees-vermonts-county-sheriffs>

<sup>2</sup> While Vermont does not have robust caselaw on the topic, courts in other states have held that where a constitution provides the method of removing an officer from office, that is the only method available. See *State v. Gravolet*, 168 La. 648, 650 (1929) (S. Ct. of LA) (“Where the Constitution provides a method of debarring or removing an officer from his office, such method is exclusive.”) and *In re Georges Township*

Impeachment is specifically provided for in [Vt. Const. Ch. II, § 58](#), which states that “every officer of State, whether judicial or executive, shall be liable to be impeached by the House of Representatives,” and that the Senate has the “sole power of trying and deciding upon all impeachments.”

The Supreme Court of Vermont described impeachment proceedings as “a constitutionally established procedure before the legislature, which has sole power in this respect.” [Mayo v. State](#), 138 Vt. 419, 420 (1980).

### *III. Impeachment is for Executive or Judicial “State Criminals”*

Aside from Vt. Const. Ch. II, § 58 limiting impeachment to Judicial or Executive officers of the State, [Vt. Const. Ch. II, § 14](#) seems to provide an additional parameter for an impeachment. This section provides the powers of the House, with one of those powers being to “impeach state criminals.”

But the Vermont Constitution does not define what constitutes a “state criminal.” It likely includes any offense the General Assembly has made a crime by law. However, because the General Assembly has the exclusive constitutional authority to impeach and because the Vermont Constitution does not define the term “state criminal,” it also seems possible that a constitutional officer may be impeached for conduct found by the General Assembly to violate the public trust or to undermine the operation of government, even if that conduct is not specifically covered by criminal law.

For example, while the U.S. House and Senate have the authority to impeach federal civil officers for “high Crimes and Misdemeanors,”<sup>3</sup> in practice, according to the Congressional Research Service, less than one-third of impeachments ordered by the U.S. House have specifically cited a criminal statute or used the term “crime.”<sup>4</sup> Using federal history as a guide,<sup>5</sup> it may be possible for the General Assembly to impeach a constitutional officer for conduct such as improperly exceeding or abusing the powers of office; behaving in a manner that is incompatible with the function and purpose of the office; or misusing the office for an improper purpose or for personal gain.

Moreover, it also appears clear that an adjudication of criminal guilt by the Judicial Branch is not required prior to a legislative impeachment. This is because Vt. Const. Ch. II, § 58 limits “[j]udgment in cases of impeachment” to “removal from office and disqualification to hold or enjoy any office of honor, or profit, or trust, under this State[,]” and further provides, “[b]ut the person convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment, according to law.” In other words, the penalty the General Assembly can impose on an impeached “state

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[School Directors](#), 286 Pa. 129, 133 (1926) (S. Ct. of PA) (“The constitutional method of removal must be resorted to, where applicable, for it is ‘exclusive and prohibitory of any other mode which the Legislature may deem better or more convenient.’”).

<sup>3</sup> U.S. Const. Art. II, § 4.

<sup>4</sup> [Congressional Research Service, “Impeachment and Removal.”](#) at page 9.

<sup>5</sup> [Id.](#) at pages 11-15.

criminal” is limited to restrictions on the ability to hold office,<sup>6</sup> and an impeachment does not prohibit criminal liability imposed by the Judicial Branch *after* an impeachment.

#### IV. General Constitutional Impeachment Procedure

The House begins impeachment proceedings by “ordering” an impeachment, which pursuant to [Vt. Const. Ch. II, § 57](#) requires a vote of “two-thirds of its members.” Therefore, at least 100 members of the House would need to vote in favor of impeachment.

Once the impeachment is ordered by the House, the proceedings then move to the Senate, which pursuant to Vt. Const. Ch. II, § 58 has the “sole power of trying and deciding upon all impeachments.” This section further provides that the Senate’s power requires “the concurrence of two-thirds of the members present.” This voting threshold assumes that at least a majority of the Senate is present to constitute a quorum in accordance with [Vt. Const. Ch. II, § 19](#).

Additionally, a person subject to impeachment should be afforded basic due process protections. For example, in the counterpart to impeachments for legislators—legislative *expulsions*—an Alabama District Court vacated an Alabama state senator’s expulsion in part because he did not receive adequate notice; there was not a formal charge made against him; and at the minimal hearing provided, he was not able to hear witnesses’ testimony or cross-examine them.<sup>7</sup> “Whenever a governmental body acts so as to injure an individual, the Constitution requires that the act be consonant with due process of law.”<sup>8</sup>

Finally, Vt. Const. Ch. II, § 58 provides that an Executive or Judicial officer of the State may be impeached “either when in office or after resignation or removal for maladministration.”<sup>9</sup> The ability to impeach after such an officer has resigned may be considered a measure of accountability, so that even if the officer tried to escape culpability by resigning, the General Assembly could still impeach the officer in order to disqualify them from holding another office in the State.

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<sup>6</sup> The Governor is prohibited from granting a reprieve or pardon of an impeachment pursuant to [Vt. Const. Ch. II, § 20](#), which further provides that there shall be no remission or mitigation of such punishment except by act of legislation.

<sup>7</sup> [McCarley v. Sanders](#), 309 F.Supp. 8, 11-12 (1970).

<sup>8</sup> [Id.](#) at 11 (other citations omitted).

<sup>9</sup> The reference to “removal for maladministration” is likely outdated language left over from the [1777 Vermont Constitution](#), which in Section XXVII allowed the General Assembly to remove county officers for maladministration. Since that constitutional authority no longer exists, our current constitution’s reference to it is likely no longer applicable to questions of impeachment.

### V. Potential Specific Legislative Impeachment Procedure

[Here is a link](#) to the Secretary of State’s webpage on the history of impeachment in Vermont.<sup>10</sup> There appear to have been very few impeachments ordered by the House. The number of officers who were both ordered to be impeached *and* convicted is even smaller, the last one apparently being in 1785.

However, we can turn to Sheriff Mayo’s 1976 impeachment proceedings, which were based on the following allegations against him: 1) falsification of reports and documents; 2) failure to perform the function of office; and 3) breach of duty as a peace officer. Here is an outline of the specific legislative procedure that could be used, based on that recent history, with references to the attached 1976 House and Senate journals:

1. **House votes on House Resolution authorizing a named House committee to investigate allegations**, including by providing it with subpoena power, and to make a recommendation on whether to impeach.
  - In 1976, the House Committee on Judiciary was the named committee. *See* 1<sup>st</sup> attachment. For reference, this resolution was adopted 1/16/1976.
2. **House committee investigation.**
3. If the House committee recommends impeachment, the committee or members thereof would introduce a **House Resolution that sets forth articles of impeachment**.
  - *See* 2<sup>nd</sup> attachment.
4. **House votes on the House Resolution containing the articles of impeachment.** In order to impeach (ie., charge), the House must adopt the resolution by at least 2/3 of members (ie., at least 100) via [Vt. Const. Ch. II, sec. 57](#).
  - *See* 2<sup>nd</sup> attachment. For reference, the House adopted these articles of impeachment on 3/10/1976.
5. **Speaker appoints three House members to be impeachment “managers,”** who would act as prosecutors in the trial in the Senate.
  - *See* 2<sup>nd</sup> attachment, last page.
6. **Senate adopts rules of the impeachment trial.**
  - *See* 3<sup>rd</sup> attachment. These were quite detailed; they were adopted on 3/25/1976.

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<sup>10</sup> Note that this page combines Executive and Judicial impeachment with Legislative expulsions and other discipline.

7. **Impeachment trial in the Senate.** House managers act as prosecutors, present evidence, and call witnesses. The person subject to impeachment—who may be represented by their own counsel—may cross-examine witnesses and present their own evidence. The Senate must convict by 2/3 of members present (ie., 2/3 of quorum, but assuming all are present, then at least 20) via [Vt. Const. Ch. II, sec. 58](#).
  - See 4<sup>th</sup> attachment. For reference, the Senate trial began on 5/17/1976 and ended on 6/2/1976.

#### *VI. Conclusion*

To summarize, an Executive or Judicial constitutional officer may only be removed from office pursuant to an impeachment that is ordered by the House of Representatives and a subsequent impeachment conviction by the Senate. The House’s authority to order impeachments is for “state criminals,” which likely includes statutory crimes, but which may also include conduct not covered by statutory criminal law. The House and Senate must act in accordance with constitutional vote requirements and should afford basic due process protections to a constitutional officer subject to impeachment.

Please do not hesitate to contact me to further discuss. Thank you.