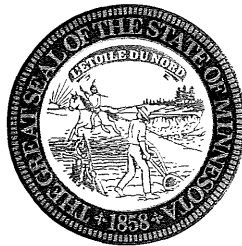


# Research Department

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# Minnesota House of Representatives

June 28, 2000

TO: House Ethics Committee Members

FROM: Deborah K. McKnight, Legislative Analyst (651-296-5056)

RE: Other States' Legislative Rules on Decorum in Debate

The committee is considering whether, and if so how, House rules on decorum in debate should be changed. As background for your discussion, I attempted to gather the pertinent rules on this subject from every state house and senate. While I was unable to get cooperation from every state, I did gather enough samples to provide options for you to consider.

The rules of 11 bodies that responded either do not address offensive speech or merely state that members must maintain proper decorum; the rules of these bodies do not include either a procedure or any sanction for responding to breaches. Rules that the committee are more likely to find useful include a procedure for responding to breaches of decorum and/or possible sanctions for breaches. This latter group of rules are described here.

## *Procedure*

Several bodies have a similar rule on the procedure for objecting to language in debate. Either a member or the presiding officer may call the offending member to order. The offender must sit down unless permitted to explain what was said. The Speaker or, if there is an appeal, the body decides the question without debate.<sup>1</sup>

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<sup>1</sup> For example, Alabama House, Arizona House, Arkansas House and Senate, California Assembly, Connecticut House and Senate, Idaho House, Illinois Senate, Indiana House and Senate, Iowa House, Maryland Senate, Mississippi House, Missouri Senate, Montana House, New Jersey General Assembly and Senate, New York Senate, North Dakota House and Senate, Ohio House, Pennsylvania House and Senate, Rhode Island House, and Wisconsin Assembly.

An issue that has been a concern in Minnesota involves the timing of the process for responding to offensive words. At least 13 bodies have a rule identical in substance to the current Minnesota House rule: that exception must be taken to words used in debate before another member speaks or other business takes place.<sup>2</sup>

Four bodies require that exception be taken before other business takes place.<sup>3</sup>

The Virginia Senate requires exception to be taken the same day an incident occurs.

### ***Sanctions***

The Virginia House imposes a penalty (censure) only for “frequent or repeated violations of order, especially if persisted in after admonition of the Speaker.”

Other bodies just provide for the following outcomes without specifying when they might be imposed:

- censure<sup>4</sup>
- censure or other punishment<sup>5</sup>
- reprimand for the first offense, up to \$100 fine for second offense, and possible expulsion if the member “continues to refuse to abide by the decision of the House” (applies to non-speech violation as well)<sup>6</sup>
- punishment or further proceedings<sup>7</sup>
- such action as the body deems necessary<sup>8</sup>

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<sup>2</sup> Arizona House, Arkansas Senate, Colorado Senate, Illinois Senate, Indiana House and Senate, Mississippi House, Missouri Senate, Nebraska unicameral, New Jersey General Assembly and Senate, Oregon Senate, and West Virginia House.

<sup>3</sup> California House, Utah House and Senate, and Washington Senate.

<sup>4</sup> Alabama House, Illinois Senate, Indiana House, Kentucky House, Oregon Senate, and Utah Senate.

<sup>5</sup> Arizona House, Indiana Senate, Mississippi House, and Texas House.

<sup>6</sup> Georgia House.

<sup>7</sup> South Carolina House.

<sup>8</sup> Virginia Senate.

As you recall from our hearing on a complaint last session, there are constitutional limits to the kinds of action or punishment a legislative body can impose on its members for pure speech. I enclose for your reference the memo I provided last session on case law that indicates it is likely there would be serious constitutional challenges to an attempt to impose any sanction beyond reprimand or censure. (For example, actions that would be valid responses to various unethical acts, such as (1) suspending or removing a member from office or from a committee or caucus position or (2) fining a member or denying per diem or salary would probably be unconstitutional if imposed for pure speech.)

### ***Link with a Committee Process***

Members discussed last session whether it is appropriate for complaints to be filed with the Ethics Committee for a violation of the House rule on decorum in debate. I found two states that provide for committee referrals of speech violations.

The Montana House allows for the majority or minority leader to refer to the Rules Committee a matter involving a member called to order for violating a House rule on speech or any other rule.

The Massachusetts House provides that its Ethics Committee has jurisdiction over breaches of the House ethics code. Item 8 of the code references violations of the House rule on decorum in debate. One option would be to follow Massachusetts on this point. Conversely, the Minnesota House may want to specify that the House rule on offensive speech in debate is the exclusive remedy for conduct on the floor.

Attached are the texts of some of the legislative rules described in this memo, arranged in alphabetical order by state. Where multiple states have very similar rules, to avoid repetition only one example is included.

DM/jf  
Enclosures

## Sample Legislative Rules

Alabama House Rule 50	If any member transgresses the rules, in speaking or otherwise, the Speaker shall, or any member may, call him to order, in which case the member called to order shall immediately sit down, unless he is allowed to explain; and the House shall, if appealed to, decide on the case without debate. If the decision be in favor of the member called to order, he shall be at liberty to proceed; if otherwise, and the case requires it, he shall be liable to censure.
Georgia House Rule 81	If any member, in speaking or otherwise, transgresses the rules of the House, the Speaker shall call such member to order, in which case the member shall immediately sit down unless permitted to explain. If appealed to, the House shall decide whether to confirm the Speaker's action. <i>If the transgressor refuses to submit to the decision of the House, the member shall be reprimanded for the first offense or fined in a sum not exceeding \$100.00 for the second offense. If the member continues to refuse to abide by the decision of the House such member may be expelled from the House by a two-thirds' vote of the members.</i> Such vote shall be taken by yeas and nays and recorded on the journal of the House.
Massachusetts House Rule 16 (excerpt)	The House committee on Ethics is empowered to investigate and evaluate, at the direction of the Speaker, by a sworn written complaint filed and delivered by a member, officer or employee to the chairman of the Ethics committee, or by a majority vote of the members appointed to the Ethics committee, any matters relative to alleged violations of the Code of Ethics (Rule 16A) by a member, officer or employee.
Massachusetts House Rule 16A (excerpt)	(8.) No member shall use profane, insulting, or abusive language in the course of public debate in the House Chamber or in testimony before any committee of the General Court.
Montana House Rule 20-90	<b>Violation of rules.</b> (1) If a member, in speaking or otherwise, violates the rules of the House, the Speaker shall, or the majority or minority floor leader may, call the member to order, in which case the member called to order must be seated immediately.

	<p>(2) The member called to order may move for an appeal to the House and if the motion is seconded by two members, the matter must be submitted to the House for determination by majority vote. The motion is nondebatable.</p> <p>(3) If the decision of the House is in favor of the member called to order, the member may proceed. If the decision is against the member, the member may not proceed.</p> <p><i>(4) If a member is called to order, the matter may be referred to the Rules Committee by the minority or majority leader. The Committee may recommend to the House that the member be censured or be subject to other action. The House shall act upon recommendation of the Committee.</i></p>
South Carolina House Rule 1.3	<p>If any member, in speaking or otherwise, transgresses the Rules of the House, the Speaker shall call him to order, or any member may call such transgressions to the attention of the Speaker who shall call the transgressor to order. If repeated cries of order are ineffective, the Speaker may call a member by name, and if the Speaker deems it necessary, he shall state the offense committed. The member may be heard in his exculpation and shall withdraw, and <i>the House shall consider his punishment or any further proceedings to be had.</i></p>
Utah Senate Rule 22.06	<p><b>Calling a Senator to Order for Conduct in Debate.</b> If a Senator is called to order for words spoken in debate, the Senator making the call shall repeat the words to which exception is taken and the words shall be recorded by the Minute Clerk. If called to order, the Senator shall sit down, unless granted permission to explain. <i>A Senator may not be called to order or censured for words spoken in debate if there has been intervening business.</i></p>
Virginia Senate Rule 40	<p>If words are spoken in debate that give offense, exception thereto shall be taken the same day, and be stated in writing; and in such case, if the words are decided by the presiding officer, or by the Senate, upon an appeal, to be offensive, and they are not explained or retracted by the Senator who uttered them, <i>he shall be subject to such action as the Senate may deem necessary.</i></p>

Virginia House Rule 58

If any member, in speaking, transgress the Rules of the House, the Speaker shall, or any member may, call him to order; in which case the member called to order shall immediately take his seat, unless permitted to explain. If there be no appeal, the decision of the Chair shall be final. If the decision be in favor of the member called to order, he shall be at liberty to proceed; otherwise, he shall not proceed, except by leave of the House. *For frequent or repeated violations of order, especially if persisted in after the admonition of the Speaker, a member shall be liable to the censure of the House.*