

Impeachment in Arkansas

Bureau of Legislative Research

An Overview of Impeachment in Arkansas

- Constitutional provisions related to impeachment
- Statutory provisions governing impeachment
- Procedures established by the House of Representatives
- History of impeachment in Arkansas
- Brief look at recent impeachments by the United States and Illinois

Arkansas Constitution, Article 15 § 1. Officers subject to impeachment - Grounds

The Governor and all State officers, Judges of the Supreme and Circuit Courts, Chancellors and Prosecuting Attorneys, shall be liable to impeachment for high crimes and misdemeanors, and gross misconduct in office; but the judgment shall go no further than removal from office and disqualification to hold any office of honor, trust or profit under this State. An impeachment, whether successful or not, shall be no bar to an indictment.

Grounds for Impeachment – High Crimes and Misdemeanors

- The term “high crimes and misdemeanors” is not defined in Arkansas law, nor federal law.
- Legal scholars debate the definition of “high crimes and misdemeanors” and the scope of the phrase as it relates to impeachment. The only consensus is that the final determination of whether an action falls within the scope of “high crimes and misdemeanors” is within the discretion of the House of Representatives.
- The United States House Judiciary Committee made the following observation during the 2009 impeachment proceedings against United States Federal Judge Samuel Kent :
 - The House and Senate have both interpreted the phrase broadly finding that impeachable offenses need not be limited to criminal conduct. Congress has repeatedly defined “other high Crimes and Misdemeanors” to be serious violations of the public trust, not necessarily indictable offenses under criminal laws.

Grounds for Impeachment – Gross Misconduct

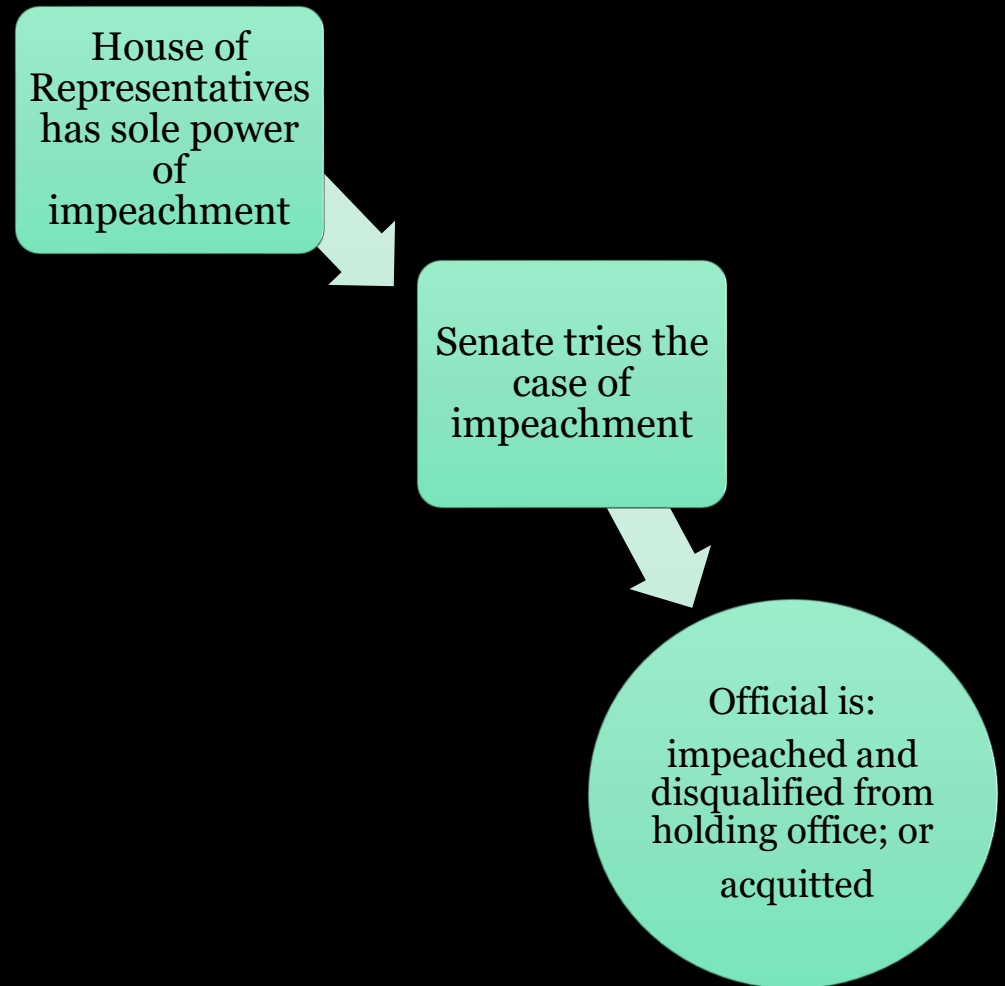
- Arkansas has not interpreted the term gross misconduct in an impeachment proceeding.
- Gross misconduct is not defined in Black's Law Dictionary, however the term "misconduct" is defined as "[a] dereliction of duty; unlawful, dishonest, or improper behavior, esp. by someone in a position of authority or trust." MISCONDUCT, Black's Law Dictionary (10th ed. 2014).
- Louisiana also allows for impeachment for "gross misconduct" and has addressed this phrase in the impeachment case, *Stanley v. Jones*, 197 L.A. 672, 2 So.2d 45 (1941).
- There is a difference in Louisiana's use of the term "gross misconduct" and the manner it is used in the Arkansas Constitution. The Arkansas Constitution uses the phrase "gross misconduct in office" as grounds for impeachment, while the Louisiana Constitution refers to "misdemeanors in office" and "gross misconduct" as separate grounds for impeachment.

Stanley v. Jones, 197 L.A. 672, 2 So.2d 45 (1941).

- This case was initiated under the special procedures set forth in Louisiana by Eugene Stanley, the Attorney General to remove Judge James W. Jones, Jr., from office. While this procedure did not involve a hearing in the Senate, the Court's interpretation of "gross misconduct" and "misconduct" is informative.
- The Court reasoned that "[i]t would seem to be almost too plain for argument that if the framers of the Constitution had intended that a public officer could be impeached and removed from office only for official misconduct, they would not have specified 'gross misconduct' as an additional cause for impeachment and removal." *Stanley*, 197 La. 627, 645-47, (1941).
- The Court also found:
 - "Misconduct and misdemeanor are synonymous terms. The phrase 'misconduct in office' is broad enough to embrace any willful malfeasance, misfeasance, or nonfeasance in office. It does not necessarily imply corruption or criminal intent. Any act involving moral turpitude which is contrary to justice, honesty, principles, or good morals, if performed by virtue or authority of office, constitutes 'misconduct in office.'" citations omitted, *Stanley*, 197 La. 627, 645-646.

What is the process for impeachment?

- **Arkansas Constitution, Article 15 § 2. Impeachment by House — Trial by Senate — Presiding officer.**
- The House of Representatives shall have the sole power of impeachment. All impeachments shall be tried by the Senate. When sitting for that purpose, the Senators shall be upon oath or affirmation; no person shall be convicted without the concurrence of two-thirds of the members thereof. The Chief Justice shall preside, unless he is impeached or otherwise disqualified, when the Senate shall select a presiding officer.



Impeachment in Arkansas

- Impeachment provisions have been present in all versions of the Arkansas Constitution, including our current Constitution adopted in 1874.
- The impeachment provisions in the Arkansas Constitution closely resemble the process established in the United States Constitution in Article 1, § 2.
- The House of Representatives has the exclusive power of impeachment and the Senate is the authorized body to try the case.
- The General Assembly has the authority to regulate the impeachment process through the adoption of statutes or rules. See *Rockefeller v. Hogue*, 244 Ark. 1029, 1040, 429 S.W.2d 85, 91-92 (1968).

Arkansas Constitution, Article 15 § 3. Officers removable by Governor upon address.

The governor, upon the joint address of two-thirds of all the members elected to each House of the General Assembly, for good cause, may remove the Auditor, Treasurer, Secretary of State, Attorney-General, Judges of the Supreme and Circuit Courts, Chancellors and Prosecuting Attorneys.

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- Article 15 § 3 of the Arkansas Constitution also allows an additional method of removal of certain officials by the Governor upon “joint address” of the General Assembly.
 - The process is a formal request by the governor to the General Assembly for good cause to remove one of the named offices.
 - The burden required for removal is “for good cause” as opposed to for “gross crimes and misdemeanors.”

21-12-201. Definitions.

In this subchapter:

(1) “Articles of impeachment” means the written accusation of the officer, drawn up and approved by the House of Representatives. The articles shall state with reasonable certainty the misdemeanors in office for which the officer is impeached, and, if there is more than one (1), the misdemeanors shall be stated separately and distinctly; and

(2) “Impeachment” means the prosecution, by the House of Representatives before the Senate, of the Governor or other civil officer for misdemeanor in office.

21-12-202. Suspension of impeached officer.

(a) When any officer shall be impeached, he or she is declared to be suspended from exercising his or her office, after he or she shall be notified thereof, until he or she is acquitted.

(b) If the President of the Senate be impeached, notice shall be immediately given by the House of Representatives to the Senate, that another President of the Senate may be appointed.

(c) In all cases of impeachment of any officer of this state, the Governor is authorized to appoint some suitable person to perform the functions of the office from which the officer is suspended until the case of impeachment is disposed of by trial or otherwise, according to law. The person so appointed shall receive the same salary and emoluments as the officer impeached.

21-12-203. Initiation of proceedings.

(a) When articles of impeachment have been approved by the House of Representatives and impeachment ordered, a committee shall be appointed to prosecute the impeachment, whose chair, within five (5) days, shall bring the same before the Senate.

(b) The Senate shall appoint a day for hearing the impeachment.

(c)(1) The accused shall be summoned by a precept issued by the Secretary of State to appear on that day.

(2) The precept shall be served by delivering a copy of the precept and of the articles of impeachment to the accused in person, if to be found, or by leaving the copies at his or her residence with some member of his or her family over sixteen (16) years of age.

(d)(1) Upon the appearance of the accused, he or she shall have reasonable time to answer the impeachment, and when the answer shall be filed, the committee may reply thereto.

(2) When issue shall be joined on any such impeachment, the Senate shall appoint a time for the trial.

(e) If the accused shall not appear after being notified, or after appearing shall fail to answer, the Senate may proceed ex parte.

Statutory Provisions

- The Articles of Impeachment:
 - The House of Representatives are responsible for writing and approving each Article of Impeachment.
 - Each article must address a single accusation or misdemeanor of the accused officer.
 - When the Article(s) are approved by the House, impeachment is ordered.
 - When impeached, an officer is suspended from exercising their office until acquitted.
 - When articles of impeachment are approved, the House must appoint a committee to prosecute the impeachment and the committee chair must bring the articles before the Senate within five (5) days.
 - The Senate must appoint a day for hearing the impeachment.
 - The Secretary of State must summon the accused.
 - The accused shall appear and have a reasonable time to answer the impeachment. If there is no appearance, the Senate may proceed ex parte.
 - The House committee prosecuting the impeachment may reply to the filed Answer of the accused.
 - The Senate shall appoint a time for the trial.

Statutory Provisions

21-12-204. Attendance of witnesses.

(a) The Senate shall have power of coercing the attendance of witnesses and of compelling them to testify and of coercing the production of books and papers, by fine and imprisonment to such extent as shall be necessary.

(b)(1) The Secretary of the Senate, at the request of the chair of the committee prosecuting the impeachment, or of the accused, shall issue process for summoning witnesses and for producing books and papers.

(2) In case of disobedience of the process, the Senate shall order the clerk to issue process for arresting the witnesses and seizing the books and papers, which process may be executed by the peace officers of the counties or by officers especially appointed for that purpose by the Senate.

(c) Witnesses shall have the same compensation for travel and attendance, and the same exemption in going, remaining, and returning, as witnesses in the circuit courts.

(d) Officers executing the process and orders of the Senate shall have like fees for their services.

21-12-205. Depositions of witnesses.

(a) The President of the Senate, on the application of the accused, or any of his or her counsel, or of the chair of the committee prosecuting the impeachment, shall issue commissions to take depositions where the witness is unable to attend from sickness or other infirmity or where the witness is without the limits of the state.

(b) Depositions shall be taken in the same manner, and the same notice shall be given, as where depositions are to be taken in the circuit court.

- The Senate may require the attendance of witnesses and production of books and papers.
- The Secretary of the Senate shall issue the witness summons on behalf of both the House committee and the accused.
- If a witness is unable to attend due to sickness, other infirmity, or is out of state, testimony may be taken by deposition in the same manner as in circuit court.

21-12-206. Trial.

(a) Before the Senate proceeds to try the impeachment, the President of the Senate and every senator present shall take the following oath or affirmation: "I do solemnly swear or affirm that I will faithfully and impartially try the impeachment against A. B., and give my decision according to the law and evidence."

(b)(1) The members being sworn, the Senate shall proceed to hear, try, and determine the impeachment and may adjourn the trial to any other time.

(2) The Senate shall determine questions of law arising during the trial, upon the admissibility of evidence, the competency of witnesses, and otherwise.

(3) The Senate may punish any person for contempt committed toward the Senate or for obstructing the administration of justice on the trial, in as full a manner as any court of record could do for a like contempt toward the court.

(c) In all impeachment trials, the accused shall have a right to be heard by himself or herself and his or her counsel.

(d)(1) All votes on any question whatever shall be given viva voce and entered on the journals.

(2) No judgment or sentence of conviction shall be given against any person upon any impeachment without the concurrence of two-thirds (2/3) of the senators elected.

(3) The Senate shall determine what amount of absence of a senator during the trial shall exclude the senator from voting in the final decision.

Statutory Provisions

- Prior to a trial before the Senate, each Senator must take an oath or affirmation.
- During the trial, the Senate:
 - Shall hear, try, and determine the impeachment;
 - May adjourn the trial to any other time;
 - Shall determine questions of law such as admissibility of evidence, competency of witnesses, and other matters arising during the trial; and
 - May punish a person for contempt or for obstruction of justice.
- The accused shall have a right to be heard and may have counsel.
- All votes on any question shall be given viva voce and entered on the journals.
- A concurrence of two-thirds (2/3) of the senators elected is required for impeachment

21-12-207. Transcript of proceedings.

The Secretary of the Senate shall make out a transcript of the proceedings on impeachment and of the judgment of the Senate, whether of conviction or acquittal, which shall be signed by the officer presiding at the trial, attested by the Secretary of the Senate and deposited in the office of the Secretary of State.

21-12-209. Allocation of costs.

(a)(1) If the accused is acquitted, he or she shall be entitled to his or her costs, to be taxed by the Secretary of the Senate and paid by the Treasurer of State.

(2) If convicted, the accused shall pay the costs, to be taxed by the Secretary of the Senate, and recovered upon a motion by the Attorney General in the Pulaski County Circuit Court, at the first term thereof, without notice, or afterward on notice.

(b)(1) If the impeachment is prosecuted on the petition of some citizen of the state, whose name is set at the foot of the articles of impeachment, the petitioner shall be liable for the costs of the accused if he or she is acquitted and also for the costs of prosecuting the impeachment, and, in that case, the state shall not be liable to pay any part of the costs.

(2)(A) If the accused is convicted, the petitioner shall be entitled to recover from the accused the costs of the impeachment, for which the accused is liable.

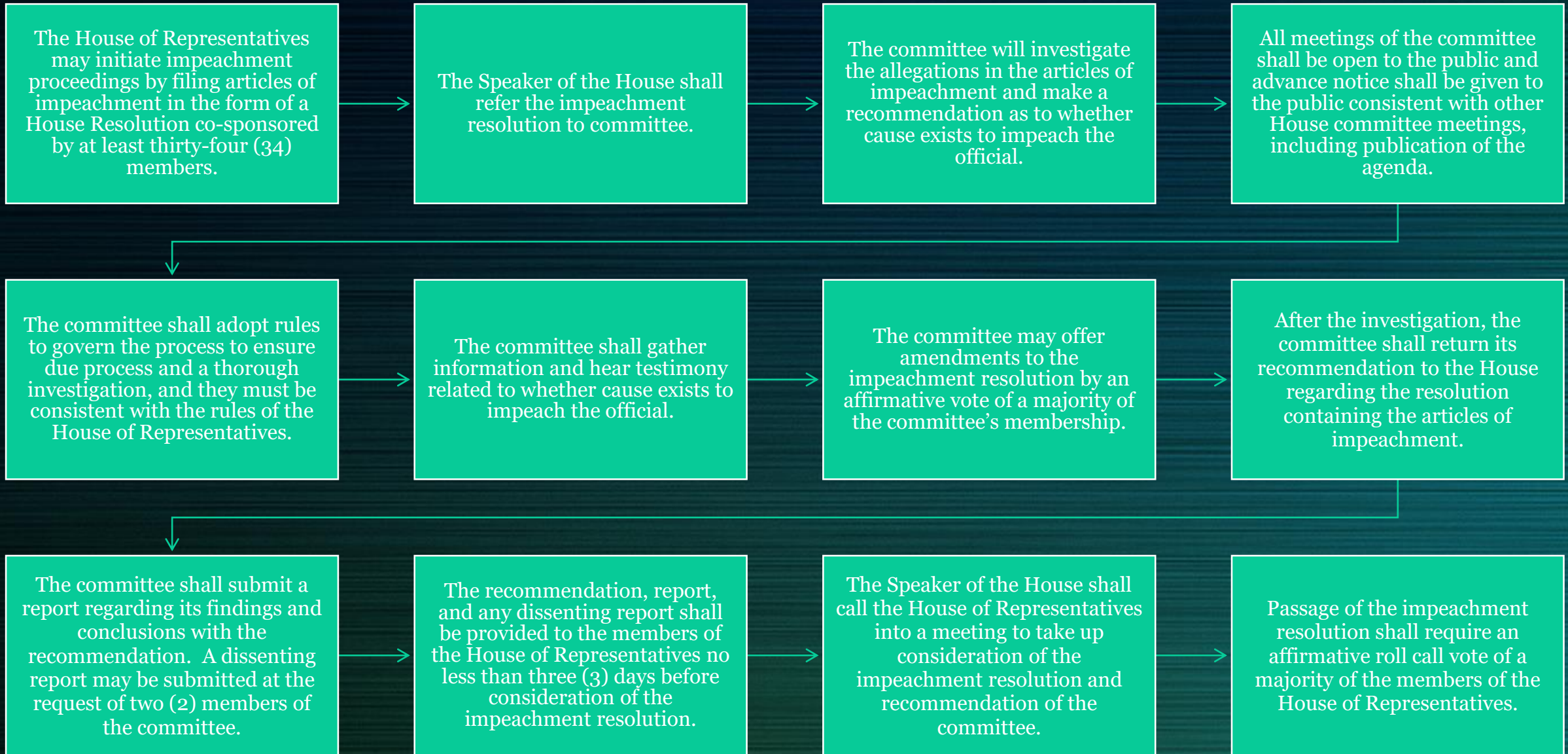
(B) The costs shall be taxed by the Secretary of the Senate and recovered by suit in a court of competent jurisdiction.

Statutory Provisions

- The Secretary of the Senate shall make a transcript of the proceedings on impeachments and the judgment of the Senate.
- The costs of the impeachment proceeding will be based on the final determination.

House of Representatives House Resolution HR 1001

In 2017, the House of Representatives adopted HR1001 which amended the rules of the House of Representatives to include a section regarding the procedure for consideration of articles of impeachment.



Impeachment Proceedings in Arkansas

- Arkansas has a limited impeachment history.
- The majority of the impeachment proceedings occurred between 1832 and 1874 under previous versions of the Arkansas Constitution.
- Chief Justice John McClure was impeached in 1873 and is a well recorded impeachment proceeding from this time. This impeachment did not take place under the current Arkansas Constitution, but the impeachment provisions were substantially the same and it may provide a procedural framework to examine the impeachment process.
- The Arkansas Senate does not have rules in place that address the manner in which an impeachment trial would proceed.

Impeachments under the United States Constitution and in other states

- Impeachment remains a rare proceeding.
- Two of the most recent federal impeachments were of federal court judges.
 - U.S. District Judge Samuel Kent of the U.S. District Court for the Southern District of Texas was impeached by the United States House of Representatives on June 19, 2009. The trial before the Senate was dismissed after Judge Kent resigned from office.
 - Judge G. Thomas Porteous, Jr. from the Eastern District of Louisiana was impeached for high crimes and misdemeanors on March 11, 2010 by the United States House of Representatives. He was convicted by the United States Senate on all four articles of impeachment brought against him on December 8, 2010 and subsequently removed from office.
- The most recent matter in another state to go through a full impeachment hearing is the impeachment of Illinois Governor Rod Blagojevich in 2009. This matter proceeded through a full trial by the Illinois Senate and the matter is very well documented. Governor Blagojevich was convicted, impeached, and subsequently convicted of federal charges. The rules adopted for the trial in the Illinois Senate are detailed and provide a clear mechanism for the actual process of a Senate Impeachment trial.

Judicial Discipline and Disability Commission

- Established by Arkansas Constitution, Amendment 66 in 1988, the Commission is charged with investigating complaints concerning misconduct of all justices and judges.
- The Commission may recommend sanctions for violations of the professional and ethical standards governing judicial officers to the Supreme Court.
- Amendment 66 specifically addresses impeachment, stating that this amendment is an alternative to, and in conjunction with, impeachment and address authorized by the Arkansas Constitution.
- The General Assembly has the authority to address the grounds for judicial removal.
 - Ark. Code Ann. § 16-10-410 states that a judge may be removed from office for:
 - (1) Conviction of any offense punishable as a felony;
 - (2) Conviction of a criminal act that reflects adversely on the judge's honesty, trustworthiness, or fitness as a judge in other respects;
 - (3) Conduct involving dishonesty, fraud, deceit, or misrepresentation;
 - (4) Conduct that is prejudicial to the administration of justice;
 - (5) Willful violation of the Arkansas Code of Judicial Conduct or the Model Rules of Professional Conduct;
 - (6) Willful and persistent failure to perform the duties of office; or
 - (7) Habitual intemperance in the use of alcohol or other drugs.
- The Supreme Court may take action based on the recommendation of the Commission after a hearing.