

# Ethics Study

REVIEW OF 2025 PROCESS AND PROCESSES IN SIMILARLY SITUATED STATES

# Overview

I. Jurisdiction over legislators

II. Sources that shaped the 2025 investigation

III. Challenges during the 2025 investigation

IV. Processes in similarly situated states

# Who has jurisdiction over legislators?

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1. COPP for campaign practices; violations of code of ethics that are not legislative acts

2. Criminal justice system for crimes (but not for speech or debate, Article V, section 8)

3. The House or Senate to punish or expel for “good cause”

# COPP's jurisdiction over legislators

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## CODE OF ETHICS (NONLEGISLATIVE ACTS)

**2-2-136(1)(a):** A person alleging a violation of this part by a . . . legislator . . . may file a complaint with the commissioner of political practices. The commissioner does not have jurisdiction for a complaint concerning . . . a legislator if a legislative act is involved in the complaint.

## CAMPAIGN PRACTICES

**13-37-111(1):** Except as provided in this section, the commissioner is responsible for investigating all of the alleged violations of the election laws contained in chapter 35 of this title or this chapter and in conjunction with the county attorneys is responsible for enforcing these election laws.

# Criminal justice system

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**Article V, section 8. Immunity.** A member of the legislature is privileged from arrest during attendance at sessions of the legislature and in going to and returning therefrom, unless apprehended in the commission of a felony or a breach of the peace. He shall not be questioned in any other place for any speech or debate in the legislature.

Concurrent criminal and legislative investigations are permissible.  
See Rulings on Objections in Tab 1 for more details.

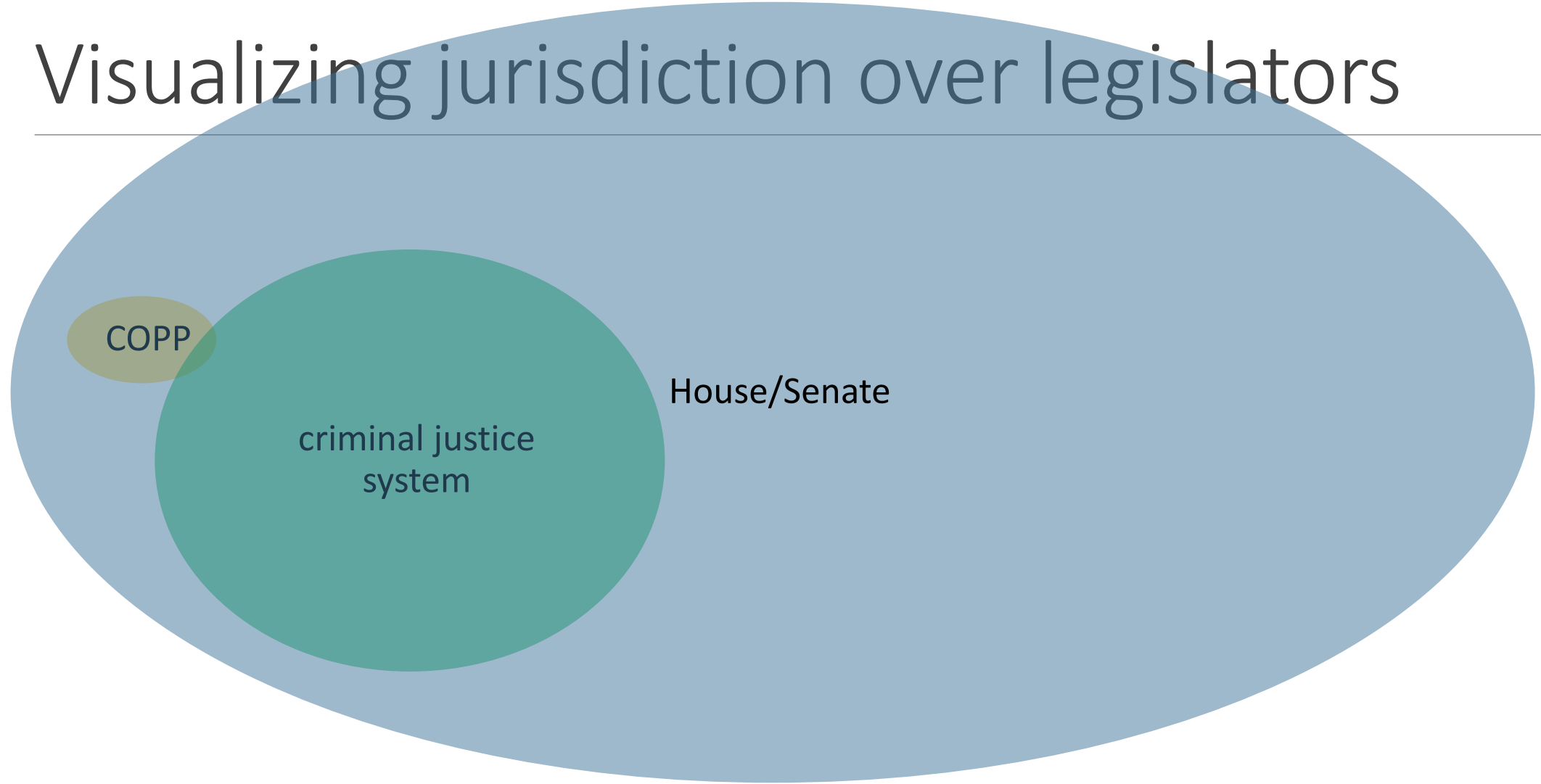
Legislature's  
jurisdiction over  
legislators

## **Article V, section 10(1).**

“ . . . Each house may expel or punish a member for good cause shown with the concurrence of two-thirds of all its members.”

# Visualizing jurisdiction over legislators

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## Jurisdiction questions

1. Should the legislature define what is a “legislative act” and what is a “nonlegislative act”?
2. Should the legislature provide itself guidance on what is “good cause”?
3. Should the legislature assert in rules its expansive and concurrent jurisdiction?



## Sources that shaped the investigation

1. Montana Constitution
2. Code of Ethics
3. Joint Rules
4. Senate Rules & Senate Motions
5. Mason's Manual of Legislative Procedure

Why did  
Mason's  
matter?

**JR60-20.** Mason's Manual of Legislative Procedure (2020) governs the proceedings of the Senate and the House of Representatives in all cases not covered by these rules.

**S60-20.** The most recent publication of Mason's Manual of Legislative Procedure governs the proceedings of the Senate in all cases not covered by these rules.

# Senate motion, January 27, 2025

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invoked  
Article V,  
section 10(1)

convened the  
ethics  
committee

contemplated  
punishment  
or expulsion

## Mason's on procedure

**562(4).** Adequate notice, formal charges, and a public hearing with the right to cross-examine witnesses have been held to be necessary components of procedural due process that must be afforded to a member prior to expulsion.

## MT Constitution

Article II, section 17:  
“No person shall be  
deprived of life,  
liberty, or property  
without due process  
of law.”

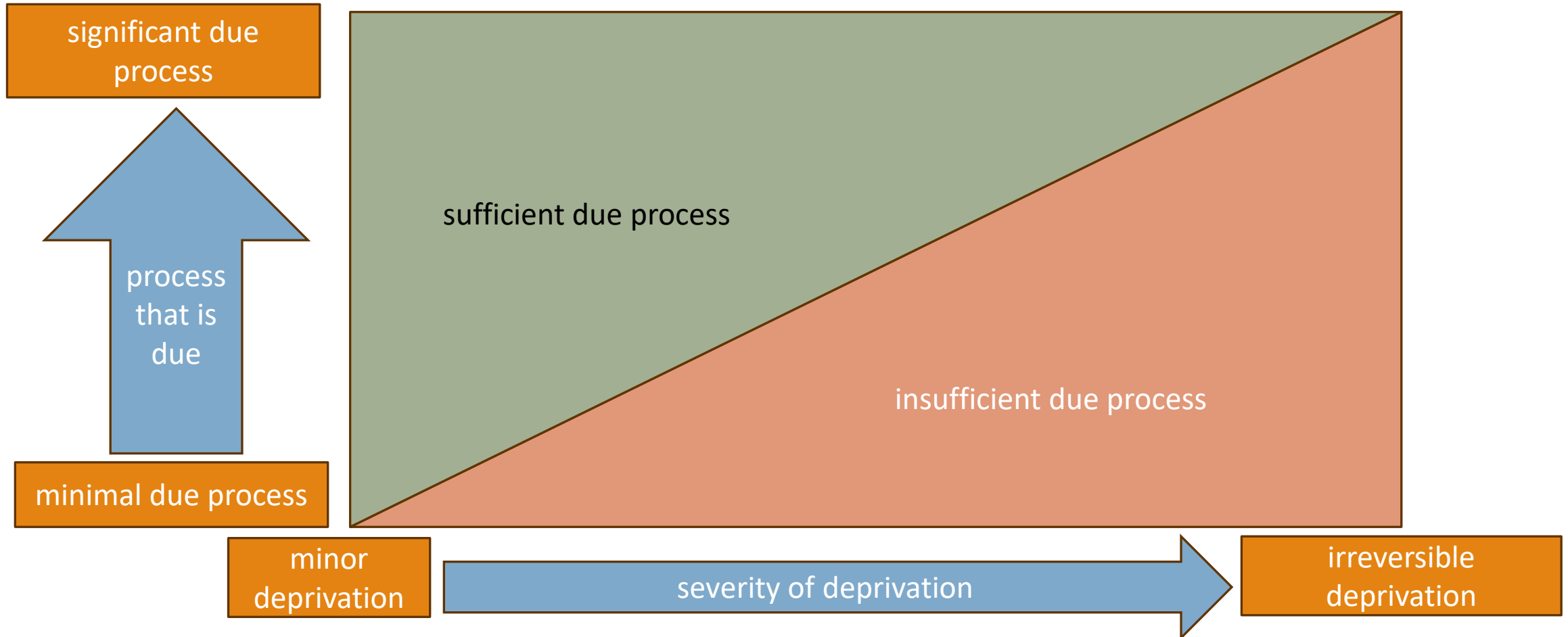
What is due  
process?

the procedure needed for the  
government to take a  
life/liberty/property interest

a flexible standard

see Tab 1 for due process memo  
generated during investigation

# Visualizing due process



## more Mason's statements on due process

**562(4).** Adequate notice, formal charges, and a public hearing with the right to cross-examine witnesses have been held to be necessary components of procedural due process that must be afforded to a member prior to expulsion.

**562(6).** Whether federal due process or equal protection considerations are applicable to an expulsion may depend upon whether the member of the body has a liberty or property interest in the office held.

**563(3).** An elected official has a property right in the office which cannot be taken away except by due process of law. An official takes office subject to the conditions imposed by the terms and nature of the political system in which the official operates. The overriding need for each house to protect its integrity through the exercise of the expulsion power, the requirement for a two-thirds vote to expel by itself satisfies procedural due process.



additional due process

required due process

# Due process provided in 2025

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notice

opportunity to be  
heard

formal charges

recognition of  
counsel

ability to suggest  
additional due  
process

public hearing  
with cross-  
examination of  
adverse witnesses

ability to present  
evidence

ability to ask  
committee to call  
witnesses

ability to request  
committee issue  
subpoenas

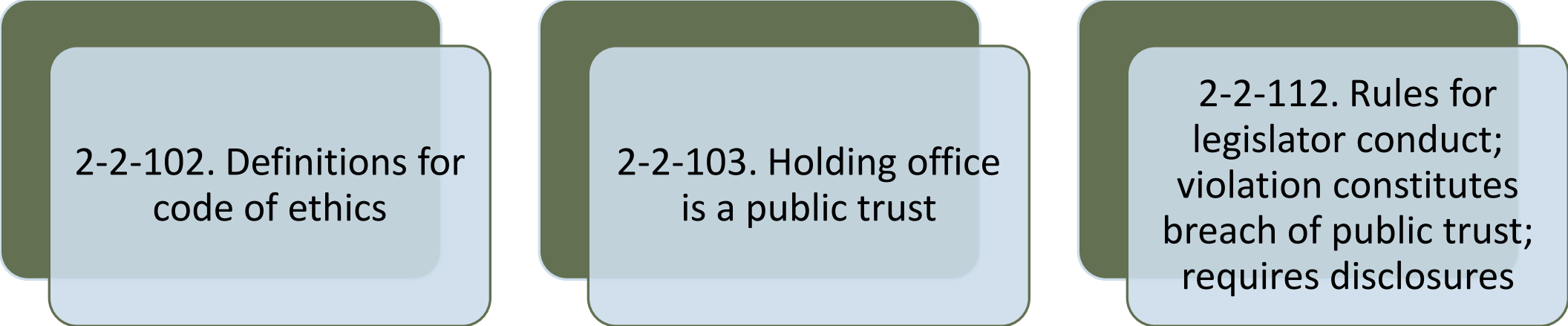
ability to make  
objections

articulation of  
good cause

two-thirds votes

# Code of Ethics

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2-2-102. Definitions for  
code of ethics

2-2-103. Holding office  
is a public trust

2-2-112. Rules for  
legislator conduct;  
violation constitutes  
breach of public trust;  
requires disclosures

## Questions on sources

1. What do you want to know more about?
2. should the house/senate adopt comprehensive rules of procedure?

## Challenges in the 2025 investigation

1. Lack of procedural rules

2. Lack of definitions

3. Scheduling

4. Trial-style procedure

# How to allow cross-examination?

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## WITHOUT COMMITTEE RULES

S30-80(3) The chair may order actions to maintain order in the committee meeting. During committee meetings, visitors may not speak unless called upon by the chair. Restrictions on time available for testimony may be announced.

## ADOPTED COMMITTEE RULES

E10-60(4). Each witness shall be subject to cross-examination by the party who did not call the witness or by that party's counsel.

(5) Following witness questioning and cross-examination, the members of the committee will be allowed to ask questions of the witness.

(6) Each witness may have counsel present . . .

E10-70(2). Rules of evidence may provide guidelines for this legislative procedure but are expressly not adopted and shall not be strictly applied.

(3) Objections by members of the committee and counsel shall be ruled on by the chair . . .

See Tab 1 for all rules adopted by the committee.

**562(3).** A house, in passing upon the question of expelling a member, has the power to adopt any procedure and to change it any time and without notice.

Mason's Manual creating procedure

# Undefined terms

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personal interest

2-2-112 talks about  
“personal or private  
interests”; 2-2-102 only  
defines “private interest”

good cause

Source of  
phrase  
“personal or  
private  
interest”?

**1889 Constitution, Article V,  
Section 44:** A member who has a  
personal or private interest in any  
measure or bill proposed or pending  
before the legislative assembly shall  
disclose the fact to the house of  
which he is a member, and shall not  
vote thereon.

2-2-112 was enacted in 1977, only a  
few years after this language  
became inoperative.



What is good  
cause?

term not defined in constitution

legislature has provided itself no  
guidance

Mason's says legislators must follow  
their consciences; in employment  
law good cause is "not no cause"

Idaho's constitution also requires  
good cause

## Mason's on “good cause”

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562(5). The oath of each individual member of a house, and that member's duty under it to act conscientiously for the general good, is the only safeguard to the fellow members against an unjust and causeless expulsion. . . .

## SCHEDULING

What should  
members miss?

MORNING COMMITTEE

LUNCH

FLOOR SESSION

AFTERNOON COMMITTEE

EVENING

SATURDAY

# Where should the committee meet?

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tiny  
conference  
room

another  
committee's  
room

floor

Mason's  
required cross-  
examination

Would a legislative-style procedure  
be better?

## Questions on 2025 challenges

1. Should “personal interest” be defined? or should 2-2-112 be amended?
2. Should the legislature provide itself guidance on “good cause”?
3. Should legislative rules be more comprehensive?
4. Where should the committee meet?
5. When should the committee meet?
6. Can a procedure allow for fewer meetings? (Texas example)
7. Should the procedure be more legislative and less judicial?

# Processes in similarly situated states

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BIENNIAL LEGISLATURES

Nevada (Tab 2)

North Dakota (Tab 3)

Texas (Tab 4)

“GOOD CAUSE” REQUIRED

Idaho (Tab 5)

# Nevada Constitution

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Nevada: Article IV, section 6 -- "Each house . . . may punish its members for disorderly conduct, and with the concurrence of two thirds of all the members elected, expel a member."



# Nevada Joint Rules

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articulated  
standards for  
legislative ethics  
(JR 37)

an assertion of  
jurisdiction  
(JR 39)

ability of leadership  
to require members  
attend ethics classes  
(JR 39)

# North Dakota Constitution

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North Dakota: Article IV, section 12 -- "Each house shall determine its rules of procedure, and may punish its members or other persons for contempt or disorderly behavior in its presence. With the concurrence of two-thirds of its elected members, either house may expel a member."

Article XIV makes legislators subject to investigation by an ethics commission.

# North Dakota Joint Rules

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legislature sets  
standards  
(Joint Rule 1002)

legislature directs  
members to  
relevant ethics laws  
(Joint Rule 1003)

legislature calls for  
ethics classes  
(Joint Rule 1004)

independent ethics  
commission  
investigates  
complaints

# Texas Constitution

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Texas: Article II, section 11 -- "Each House may determine the rules of its own proceedings, punish members for disorderly conduct, and, with the consent of two-thirds, expel a member . . ."

# Texas House Procedure

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independent  
investigation  
(possibly by  
retired judge) –  
9.03(f)

committee  
determines if  
investigation  
shows probable  
cause – 9.03(e)

committee holds  
a due process  
hearing – 9.03(e)

committee issues  
a report and  
recommendation  
– 9.03(h)

draws on Texas  
employment law  
– 9.03(b); (e)

# Idaho Constitution

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Idaho: Article III, section 11. Each house may, for good cause shown, with the concurrence of two-thirds of all the members, expel a member.

# Idaho House – what is needed for a complaint?

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conduct unbecoming a representative which is detrimental to the House as a legislative body

disclosure of information that is confidential under House rules

conduct constituting a felony

violation of conflict of interest requirements

violation of law or rule that constitutes breach of public trust

# Idaho Senate – what is needed for a complaint?

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substantial conduct  
unbecoming a senator

material violation of the  
rules of the Senate

violation of any state law  
relating to the use of  
public office for private  
pecuniary gain

violation of any state law  
relating to conflicts of  
interests

violation of any state law  
that brings discredit or  
embarrassment to the  
Senate or that constitutes  
a breach of public trust



## Questions on other states

1. What aspects of NV/ND/TX/ID processes do you like or dislike?
2. Do you want to know more about any of these states?
3. Should the house and senate start from a common set of rules?
4. Do you want an independent body to conduct investigations like ND?
5. Is Texas a model for reducing ethics meetings in an investigation?
6. Is Idaho a model for providing guidance on “good cause”?
7. Should more ethics training be provided to legislators?
8. Should ethics training be mandatory like ND?
9. Do you want to know about processes in any additional states?