

§ 3. Violations of Statutes

The Constitution provides that a Member is to be privileged from arrest during sessions except for “Treason, Felony, and Breach of the Peace.”⁽¹²⁾ However, with respect to the application of criminal statutes, the Members of Congress, unless immunized by the Speech or Debate Clause of the Constitution,⁽¹³⁾ are subject to the same penalties under the criminal laws as are all citizens.⁽¹⁴⁾ Indeed, the Members are specifically or impliedly referred to in a number

provide standards of conduct for Members, officers, and employees of the Senate].

Parliamentarian’s Note: In 1967 (90th Cong. 1st Sess.) the Senate select committee investigated allegations of misuse for personal purposes of campaign and testimonial funds by Senator Thomas J. Dodd (Conn.). It reported a resolution of censure against the Senator which was adopted. See § 16.3, *infra*.

12. U.S. Const. art. I, §6. Generally see Ch. 7, *supra*.
13. U.S. Const. art. I, §6, clause 1. See *U.S. v Brewster*, 408 U.S. 501 (1972); *Gravel v U.S.*, 408 U.S. 606 (1972); *Powell v McCormack*, 395 U.S. 486 (1969); *U.S. v Johnson*, 383 U.S. 169 (1966); *Doe v McMillan*, 412 U.S. 306 (1973). See Ch. 7, *supra*, for immunities generally.
14. See *U.S. v Johnson*, 337 F2d 180 (C.A. Md., 1964), affirmed 383 U.S. 169, certiorari denied, 385 U.S. 846.

of penal statutes, the enforcement of which rests in the executive and judicial branches. The statutes below are cited by way of example:

2 USC §441—Failure to file federal campaign financing reports.

18 USC §201(c)—Soliciting or receiving a bribe.

18 USC §201(g)—Soliciting or receiving anything of value for or because of any official act performed or to be performed.

18 USC §203(a)—Soliciting or receiving any outside compensation for particular services.

18 USC §204—Practice in the Court of Claims.

18 USC §211—Acceptance or solicitation of anything of value for promising to obtain appointive public office for any person.

18 USC §287—False, fictitious, or fraudulent claims against the United States.

18 USC §371—Conspiracy to commit an offense against the United States.

18 USC §§431, 433—Prohibits contracts with the government by Members of Congress, with certain exceptions.

18 USC §599—Promise of appointment to office by a candidate.

18 USC §600—Promise of employment or other benefit for political activity.

18 USC §601—Deprivation of employment or other benefit for political activity.

18 USC §602—Solicitation of political contributions from U.S. officers or employees, or persons receiving salary

or compensation for services from money derived from the U.S. Treasury.

18 USC §612—Publication or distribution of political statements without names of persons and organizations responsible for same.

18 USC §613—Solicitation of political contributions from foreign nationals.

18 USC §1001—False or fraudulent statements or entries in any matter within the jurisdiction of any department or agency of the U.S.

31 USC §231—Liability of persons making false claims against the government.

The statutes cited above are also expressly or by implication applicable in many instances to the officers and employees of the House. Again, the enforcement thereof is not left to internal means in either House (although each House could impose internal sanctions), but rests in the executive and judicial branches.

The House rules authorize the Committee on Standards of Official Conduct to report to the appropriate federal or state authorities, with approval of the House, any substantial evidence of a violation of an applicable law by a Member, officer, or employee of the House, which may have been disclosed in a committee investigation.⁽¹⁵⁾

15. Rule XI clause 19(e), *House Rules and Manual* §720 (1973).

Criminal Conduct; Privilege From Arrest

§ 3.1 The privilege of the Member from arrest does not apply to situations where the Member himself is charged with a crime referred to in the Constitution.

The United States Supreme Court,⁽¹⁶⁾ in construing article I, section 6, clause 1, “they [the Senators and Representatives] shall in all cases except treason, felony, and breach of the peace, be privileged from arrest . . .” has declared that the terms of the provision exclude from the operation of the privilege all criminal offenses. Thus, it may be concluded that the privilege only applies in the case of civil arrest.⁽¹⁷⁾

See also the proceedings on Nov. 17, 1941,⁽¹⁸⁾ wherein Mr. Hatton W. Sumners, of Texas, in discussing a resolution granting permission of the House to a Member to appear before a grand jury in response to a summons, referred to the power of the House to refuse to yield to a court summons “except as the Constitution

16. See *Williamson v United States*, 207 U.S. 425 (1908).

17. See *Long v Ansell*, 293 U.S. 76 (1934).

18. 87 CONG. REC. 8956, 77th Cong. 1st Sess.

provided with reference to crimes.”

Similarly, in earlier remarks, Mr. Sumners had stated:

It is important that the House of Representatives control the matter of the attendance of Members of the House upon the business of the House. It ought not to control, of course, when the Member commits a crime, and it has no power to control.⁽¹⁹⁾

19. *Id.* at p. 8954.

See also H. REPT. NO. 30, 45th Cong. 2d Sess., 1878 (House Committee on the Judiciary), and 3 Hinds' Precedents §2673, as to whether there had been any invasion of the rights and privileges of the House in the alleged arrest and imprisonment of Representative Robert Smalls (S.C.). The report concluded:

“Upon principle, therefore, as well as in view of the precedents, your committee are clearly of the opinion that the arrest of Mr. Smalls, upon the charge (of having accepted a bribe while a state officer of South Carolina) and under the circumstances hereinbefore set forth, was in no sense an invasion of any of the rights or privileges of the House of Representatives; and that, so far as any supposed breach of privilege is concerned, his detention by the authorities of South Carolina for an alleged violation of the criminal law of that State was legal and justifiable; and having arrived at that conclusion they have deemed it not only unnecessary but improper for them to make any suggestion here as to what course the House should have pursued had the arrest been a violation of its privileges.”

§ 4. Violations of House Rules

As shown in the summary below, many of the rules of the House contain provisions under which a Member may be disciplined or penalized for certain acts or conduct:

HOUSE RULES

Rule I clause 2—Speaker shall preserve order and decorum.

Rule VIII clause 1—Disqualification from voting on floor on question where Member has a direct personal and pecuniary interest.

Rule XIV clause 1—Obtaining the floor, and method of address (“confine himself to the question under debate, avoiding personality”).

Rule XIV clause 4—Call to order of Member on his transgressing the rules during sessions.

Rule XIV clause 5—Words taken down if Member is called to order.

Rule XIV clause 7—Prohibition on exiting while Speaker is putting the question; prohibition on passing between a Member who has the floor, and the Chair, while the Member is speaking; prohibition against wearing a hat or smoking while on the floor.

Rule XIV clause 8—Prohibition against introducing persons in the galleries to the House or calling the attention of the House, during a session, to people in the galleries.

Requiring a Member to withdraw where he has persisted despite re-

See Ch. 7, *supra*, on arrest and immunity of Members.