

CHAPTER 5 RESEARCHING LEGISLATIVE HISTORY

TABLE OF CONTENTS

[Getting Started](#)
[Researching Federal Legislative History](#)
[Researching Maryland Legislative History](#)

GETTING STARTED

Deciding on research goals

Searching for legislative history on either the federal or state level can be a time consuming task. It is an activity that most researchers do not undertake routinely. However, in the many areas in which statutes are involved, the question of what the legislature intended is often raised.

At the federal level, legislative history was regularly cited in opinions of the Supreme Court and Courts of Appeals through the 1980s. In more recent years, the late Justice Scalia and Justice Kennedy have been vocal opponents of its use, and citations to legislative history by the Supreme Court are not as pervasive as in the past. However, there are still many such references in current opinions. In Maryland, availability has always been an issue, although an enhanced General Assembly website and recent efforts to maintain bill files in a systematic fashion have improved the situation.

The first step in this process is to determine the purpose of the research and to decide whether a cursory or an in-depth search is necessary.

Gathering information

In traditional legal research, gathering references to cases and statutes and reading the actual text are often not discrete steps. A researcher finds a cite to a statute that appears relevant and proceeds to read it, coming back to the index or to the initial online source later to make sure that all important sources have been found.

To do efficient legislative history research, however, it is essential to spend time at the beginning gathering information. While the code is the logical starting point, many of the documents are accessible only by bill number or other references that are not included in the current code. It is critical to understand that legislative history research is of a session law or laws, rather than a section of the code, which may be the product of several session laws. Information that should be determined at the outset includes, at a minimum:

- Session law number (e.g., for federal statutes, the public law number)

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- Bill number(s)

The session law information can be found at the end of the relevant code section(s). The bill number is usually noted with the session law and sometimes in tables published with a jurisdiction's legislative materials.

Compiled federal legislative histories

To learn the legislative history process, it is important to use the various sources to see how to compile a legislative history. Sometimes, however, it is possible to find federal legislative histories that others have compiled:

- *Sources of Compiled Legislative Histories* by Nancy Johnson (Ref. KF42.2.J69) covers laws beginning with the 1st Congress. Also available in HeinOnline <http://heinonline.org/HOL/Welcome>.
- *Union List of Legislative Histories* (7th ed.) by the Law Librarians' Society of Washington, D.C. (Ref. KF 4.U644) lists legislative histories, both compiled in-house and acquired from published sources, that are held by Washington area libraries. They also have an online [Legislative Source Book](#) with compiled legislative histories.
- For recent Congresses, most of the material in a federal legislative history will be available electronically on [Congress.gov](#), [FDsys](#) or commercial services.
- Searching the online catalog by the name of the statute.

The next sections deal specifically with federal and Maryland legislative history research. For legislative history of laws of other states it is best to consult a librarian. The Thurgood Marshall Law Library does not generally carry legislative history materials for states other than Maryland, and it may be necessary in some cases to either contact the state's legislative library or visit a law or legislative library in that state. It is also possible to find more recent materials on the internet.

RESEARCHING FEDERAL LEGISLATIVE HISTORY

General Information

While all legislative history materials have only persuasive legal authority, certain types of legislative history documents are considered by the courts to be more persuasive than others. Although documents of each type have been cited in court opinions, and relied upon as evidence of legislative intent, normally the highest persuasive value is assigned to the reports of the congressional committees that considered the proposed legislation and recommended its enactment. Other documents generated prior to enactment include statements made on the floor of Congress in legislative debate, statements or testimony at committee hearings, and earlier or alternative versions of the bill. Statements made and reports written after enactment are usually found to be less persuasive.

On the federal level, therefore, if one has a limited amount of time, reviewing the committee reports selected for publication in the United States Code Congressional and

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Administrative News (U.S.C.C.A.N.) can be a reasonable strategy. If a more in-depth search is necessary, other sources that will be covered below should be consulted to locate other types of documents.

ProQuest Congressional and ProQuest Legislative Insight are both subscription databases available to the University of Maryland Francis King Carey School of Law community and are incredibly useful for legislative history research. They are referenced a number of times in the following pages as a source for many types of Congressional information.

United States Code Congressional and Administrative News (U.S.C.C.A.N.)

While the issue is not always clear-cut, most commentators agree that committee reports are the most persuasive documents in legislative history. An easy way to find committee reports for federal bills that have become law is to use the United States Code Congressional and Administrative News (U.S.C.C.A.N.). In addition to an unofficial version of the federal session laws, U.S.C.C.A.N. contains reprints of selected committee reports and other information. It has been published since 1941; legislative history coverage began in 1948. Access is by public law number. An online version is available on Westlaw. Contents include: text of session law; *United States Statutes at Large* citation; bill number; names of committees and committee report numbers; and dates of consideration and passage in the House and Senate. Note that there are both "Legislative History" volumes and "Laws" volumes.

Congressional Information Service (C.I.S.) Index/Abstracts/Legislative Histories

Published since 1970, this index contains the most complete summary of federal legislative history information. The main index is by subject, although you can also search by bill number, public law number, or title. From 1970 to 1983, two bound volumes were issued for each year - an Index volume and an Abstracts volume. The Abstracts volume contained a section with legislative histories of enacted laws. Since 1984, this information has appeared in a separate annual "Legislative Histories" volume. The Thurgood Marshall Law Library has the print volumes only through 2010. CIS also publishes a companion set of microfiche containing the text of the documents that are indexed. The Thurgood Marshall Law Library does not subscribe to the microfiche set. It is necessary to record the report number or Superintendent of Documents number (for hearings) also given in CIS to locate the actual documents. Contents include: bill numbers; references to hearings (including hearings on related bills from prior sessions); references to committee reports; dates of consideration in the *Congressional Record*; and references to presidential documents.

CIS Index and Abstracts are also available online through ProQuest Legislative Insight, which organizes all of the documents associated with the law by type and links to the full text when available.

United States Statutes at Large

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Access is by Statutes at Large citation. Since 1975, a legislative history summary has been included at the end of the text of each public law; from 1963 to 1974, this information appears in a table called "Guide to Legislative History" at the end of each volume. Contents include: text of session law; bill number; cites to House and Senate Reports; dates of consideration in the *Congressional Record*; and dates of presidential statements in the *Weekly Compilation of Presidential Documents*.

Legislative History Documents

Bills

Frequently, before the final version of a bill is reported to the floor, a committee will consider alternative versions or proposed amendments. Comparisons of enacted language with that found in earlier versions of the bill or in amendments that were not accepted can sometimes be used to infer the intent of the final version.

Bills introduced in each Congress are numbered consecutively in separate series for the House and Senate and are cited as:

S. 21, 98th Cong. (1983).

H.R. 1471, 94th Cong. (1976).

Bill number sequences continue through both sessions of a two-year Congress. Bills that do not pass "die" at the end of a Congress. They can be re-introduced, but will be given a new number. H.R. or S. is the prefix of a bill depending on whether it originates in the House of Representatives or Senate.

Locating the text of federal bills

- **Microform**
Congressional Bills and Resolutions; The Thurgood Marshall Law Library has from the 96th Congress (1980) through the 106th Congress (2000) in the microform cabinets on level 1; It is necessary to use the black binder on the shelves next to the cabinets to translate a bill number into a microfiche number.
- **Online**
 - Congress.gov (HTML and PDF): 1989 – date
 - [FDsys](http://FDsys.gov): 1993 – date
 - **Lexis** (1989 – date)
 - **Westlaw** (1995 – date)
 - **Bloomberg Law** (1993 – date)
 - **ProQuest Legislative Insight**

Hearings

Statements made in testimony before the committee considering the proposed legislation or by committee members have also been accepted by the courts as evidence of

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legislative intent. Their usefulness is limited by the large amount of testimony pro and con on many bills and the difficulty in establishing a connection between particular remarks made at the hearing and the final language of the bill. Hearings are not held on all pieces of federal legislation, and even if held may not be published. Those which are published are cited as follows (Note that *Bluebook* form does not include the Superintendent of Documents (SuDocs) classification number necessary to locate published hearings in most government documents collections.):

Guns versus Butter: How the Military Budget Affects Aging Americans: Hearings Before the Subcomm. on Retirement Income & Employment of the House Select Comm. on Aging, 97th Cong., 1st Sess. (1981).

Hearings may be held in Congress prior to introduction of a bill, either during the session in which the bill is introduced or in an earlier session. Each committee decides which of its hearings are to be published. The National Archives has the transcripts of unpublished hearings. Senate hearings generally remain closed for 20 years, and House hearings remain closed for 30 years. Hearings that contain classified or sensitive material generally remain closed for 50 years.

Locating transcripts of testimony before Congressional committees

- **Print**
Hearings are published by the Government Publishing Office in paper form.
- **Microform**
Selected hearings from 1980 arranged by SuDoc number are available in microfiche in the Microform Cabinets on Level 1.
- **Online**
Congress.gov (HTML and PDF): 1989 – date
FDsys (PDF): 1985 – date
- **Lexis & Westlaw**
(unofficial transcripts – contain only the witnesses’ prepared statements, and not the actual transcript of the hearing): mid 1980s – date
- **ProQuest Congressional**
Published Hearings: (PDF): 1824 – date
- **ProQuest Legislative Insight**
- **HeinOnline**
Covington & Burling’s collection of Congressional Hearings (1927 – 1994)

Committee Reports

Each bill is assigned to a committee and bills that are reported out of committee are accompanied by a committee report. These reports are published in separate numerical sequence for each Congressional session. If a conference committee is convened to reconcile differences between House and Senate versions, a conference committee report is issued.

Thurgood Marshall Law Library Guide to Legal Research: 2017 - 2018

Usually the most useful sources of legislative history are these written reports that accompany a bill from committee to consideration on the floor of the House or Senate. Their importance stems from being written for purposes of explaining the proposal and its likely effects by the legislators who looked at the bill most closely.

Normally, there are separate House and Senate reports available for each enacted law, as well as a conference report if the final language was developed by a conference committee. There are separate numbered series of House and Senate reports for each two-year Congress. Conference reports are numbered within either the House or Senate series. The documents are commonly referred to by a number including that of Congress, e.g., "H. Rep. No. 97-857." *Bluebook* citation form is as follows:

S. Rep. No. 84-2 (1955).

H.R. Rep. No. 97-857 (1982).

Locating the text of Congressional committee reports

- **Print**
Published as separate pamphlets; eventually published in the bound *Congressional Serial Set/Reports & Documents*; Library has 1967 and subsequent years. *United States Code Congressional and Administrative News* selectively publishes the text of committee reports for public laws.
- **Lexis** (1990 – date)
- **Westlaw**
Contains the full text of all committee reports from January 1990; from 1948 - 1989 committee reports that were reprinted in USCCAN are included.
- **ProQuest Congressional:**
PDF (1817 – date)
- **ProQuest Legislative Insight**
- **Online**
[FDsys](#) (PDF): (1995 – date)
[Congress.gov](#) (1995 – date)
[Library of Congress American Memory Site](#) (1823 – 1873)

Committee Prints

Many committee studies and reports are published under the general classification “committee prints” and often contain statistics and other background information. Although not widely distributed in hard copy, access to the post-1970 prints is through the general *CIS* indexes.

Like committee reports, these are assigned consecutive numbers in a series for either a House or Senate session.

Locating the text of federal committee prints

Thurgood Marshall Law Library Guide to Legal Research: 2017 - 2018

- **Print**
Published as separate pamphlets and organized by Su Docs number.
- **Microform**
Since 1980, prints are available on microfiche on Level 1 in the Micro Cabinets, also arranged by Su Docs number.
- **Online**
[FDsys](#) (PDF): (1995 – date)
- **Lexis & Westlaw**
Select committee prints from the mid 1980's to present
- **ProQuest Congressional**
PDF and HTML (1830 – date)
- **ProQuest Legislative Insight**

Floor Debates

Floor debate usually occurs after a bill has been reported out of committee and includes comments made about the bill by sponsors and other legislators during consideration or a bill on the floor. The *Congressional Record* has been the official source for Congressional floor debates since 1873. Members have always had the ability to correct or revise remarks prior to publication. Differing systems (bullet symbols or variations in typeface) have been in use since 1978 to indicate material inserted or substituted after the fact. The *Congressional Record* is published in both a daily edition and, after about five years, a permanent edition. The two editions are paginated differently.

Predecessors to the Congressional Record are the Journals of the Continental Congress (1774 to 1789), Annals of Congress (1789 to 1824), Register of Debates (1824 to 1837), and the Congressional Globe (1833 to 1873). These are all available in the Library of Congress' internet collection, A Century of Lawmaking, ProQuest Congressional, and HeinOnline.

Locating Congressional floor debates

- **Microform**
The *Congressional Record*, Permanent Edition is available on microfilm from 1873 through 1975 and on microfiche from 1985 through 2012. The *Congressional Record*, Daily Edition is available on microfiche from 1993 through 2012.
- **Online**
[Congress.gov](#): (1995 – date)
[FDsys](#) (PDF): (1994 – date)
- **Lexis**
Has the complete *Congressional Record* and its predecessors
- **Westlaw**
Has the daily edition of the *Congressional Record* since January 1985
- **Bloomberg Law**
Has the complete Congressional Record since 1933

Thurgood Marshall Law Library Guide to Legal Research: 2017 - 2018

- **HeinOnline**
Permanent and the Daily Edition (1873 – date)
- **ProQuest Congressional**
- **ProQuest Legislative Insight**

Presidential Statements

Presidential statements can sometimes be used in legislative history to indicate the President's opinion about the purpose of a law. The *Weekly Compilation of Presidential Documents*, which was published from 1965 to 2009, and the *Daily Compilation of Presidential Documents*, which has been published since 2009, are the most complete sources for current speeches, orders, proclamations and other documents. *Public Papers of the President* cumulates material from the *Weekly/Daily Compilation of Presidential Documents* into bound format. Prior to the Carter presidency, materials were included in the bound volumes only on a selective basis.

Locating statements issued by the President

- **Print**
The *Public Papers of the President* is available in print in the Thurgood Marshall Law Library. The *Weekly Compilation of Presidential Documents* is available on microfiche from 1992 to 2009. Messages relating to proposed or enacted legislation may also be found in the *Congressional Record* or are sometimes printed as Congressional Documents.
- **Lexis**
Has U.S./Executive Branch Materials/Presidential Documents contains presidential documents from March 24, 1979 (documents are included about a month after publication.)
- **Westlaw**
Has the text of the *Weekly/Daily Compilation of Presidential Documents* from January 1, 1995; and documents released by the White House Office of Communications from January 20, 1993 to the present.
- **Online**
[FDsys](#) has the *Weekly/Daily Compilation of Presidential Documents* from 1993 to the present.
- **HeinOnline**
Has various Presidential documents, signing statements, vetoes, etc.
- **ProQuest Legislative Insight**

RESEARCHING MARYLAND LEGISLATIVE HISTORY

General Information

Researching the legislative history of a Maryland session law can be a time consuming undertaking that ultimately results in little new insight into the thinking behind a particular legislative enactment. Nonetheless, there is often information of some value to

Thurgood Marshall Law Library Guide to Legal Research: 2017 - 2018

be found and the following is an overview of both the sources to use and some tips on how to use them effectively.

Much of the information that follows is taken from an article by Michael S. Miller and Judith C. Levinson entitled *Ghost Hunting: Searching for Maryland Legislative History*. The full article, which provides much more background and detail about the sources, is available and updated [online](#). Mr. Miller served as the Director of the Maryland State Law Library from 1977 to 2005.

Maryland Code superseded volumes

The Thurgood Marshall Law Library maintains a nearly comprehensive collection of superseded volumes of the Maryland Code. In addition to providing a snapshot of how the code stood at a particular point in the past, these volumes can be a significant part of legislative history research.

From 1974 to 2016 the edition of the code first published in 1957, organized by numbered articles, was gradually replaced by a new and reformatted edition, organized by named articles. The first time a volume appears in the new format it includes Revisor's Notes, which explain in some detail the editorial and substantive changes that were made in recompiling from the format of the 1957 edition. Unfortunately, these Revisor's Notes are only included in this first publication and not in any subsequent republications of the volume. If a "Replacement Volume" is the current volume, then reference must be made back to the superseded volume that first introduced the named subject article to locate the Revisor's Notes.

In addition, the new edition of the Maryland Code uses the 1957 edition of the code as a "platform" for session law information. Reference must be made to a superseded volume of the 1957 edition to find earlier session laws that have contributed to the section of the code as it currently stands. There are many instances where these session laws go back to the eighteenth century.

Session Laws

Maryland session laws, as enacted by the legislature and signed by the governor, are published chronologically in the *Laws of Maryland*. They are arranged by chapter number, which is a sequential number assigned as enacted legislation is signed into law. A new sequence of chapter numbers begins with each session of the legislature. Going to the session law is by far the most efficient way to determine the number of the bill that was enacted. Knowing the bill number is critical to using all additional legislative history sources.

Bills

Bill number sequences span only one year's legislative session. HB (House Bill) or SB (Senate Bill) is the prefix depending on the chamber of origin. The Maryland

Thurgood Marshall Law Library Guide to Legal Research: 2017 - 2018

Constitution requires three readings on the floor for all enacted bills. The First Reading takes place before referral to a committee. The Second Reading occurs at the time of action on the floor. At this reading, the bill is open to amendments. The Third Reading occurs when the vote is taken. Amendments are not allowed at the time of the Third Reading. Pre-filed bills are filed before the session begins and are read on opening day.

Locating the text of Maryland bills

- **Print**
Each version of a bill is printed first as a separate pamphlet
- Maryland General Assembly website
<http://mgaleg.maryland.gov/webmga/frmlst.aspx?tab=home>
Contains the full text of all available bills- introduced, amended and enacted versions (1996 – present).
- **Westlaw**
Contains the full text of all available bills - introduced, amended and enacted versions - for the current legislative session
- **Lexis**
Full-Text Bills (full text of bills from the current legislative session)

Hearings

There is no systematic publication of hearings at the state level. Transcripts of testimony are occasionally found in bill files (see below under *Maryland Legislative History of Bills*). Committees sometimes record testimony.

Committee Reports

Beginning in 1982, section-by-section analyses and floor reports provided by the committees are contained in the bill files (see below under *Maryland Legislative History of Bills*.)

Committee Prints

While there is no comparable publication to federal committee prints, bill files often contain information such as the fiscal note that must accompany each Maryland bill, study commission reports and miscellaneous notes.

Floor Action

The Maryland House and Senate journals are available in the library beginning with the 1927 volumes. Access to the journals is by bill number and subject in an index that is published in the last volume of every year. The contents of the journals include the committee to which the bill was referred, subsequent amendments, the vote on amendments, and the final roll call vote. However, the results of searching in these

Thurgood Marshall Law Library Guide to Legal Research: 2017 - 2018

volumes are often less than the researcher might expect, as much of the information provided is purely procedural.

Maryland General Assembly floor debates are not published. Since 1992, debates of floor sessions in the Senate of Maryland have been audio taped. The Legislative Services Library in Annapolis provides access to these tapes for interested researchers. Additionally, the audio portions of Senate and House floor proceedings are available on the General Assembly website for the current session only.

Maryland Legislative Bill files

Published on microfilm from 1976 through 2002 and since 2003 on CD-ROMs, these are the bill files that were maintained by the various standing committees of the General Assembly. Recently the set has been produced with a lag time of about twelve years. More recent bill files are available in the Maryland Legislative Reference Library in Annapolis. Although coverage varies by year and by bill, most bill files contain some of the following materials:

- Bill drafting data such as who requested the bill, who drafted it, the purpose statement, various amending steps
- Copy of the bill as first submitted and subsequent readers
- Fiscal note that must accompany every bill
- Witness lists, copies of written testimony submitted at Committee hearings, and, occasionally, notes on oral testimony
- Amendments prepared for a bill, whether or not submitted to a vote
- Committee votes
- Miscellaneous notes, including any study commission reports
- Floor votes on the bill, if any
- Attorney General's bill-review letter for every bill reaching the Governor's desk for signing
- Reference to bill(s) in previous sessions on same topic

General Assembly Website

The Maryland General Assembly website <http://mgaleg.maryland.gov/webmga/frmlst.aspx?tab=home> includes information about bills introduced in the current legislative session. Access is by subject, bill number, sponsor, committee or statutory section affected. The contents include sponsor, bill synopsis, current legislative history, and text of each bill version.

Governor's Messages and Vetoes

The Governor's messages can provide insight into the administration's proposed legislation. The traditional State-of-the-State message of the Governor appears in the House and Senate Journals. All executive orders and proclamations are reprinted and indexed in the Journal volumes and session laws and some also appear in the Annotated

Thurgood Marshall Law Library Guide to Legal Research: 2017 - 2018

Code of Maryland, the Maryland Register, and COMAR. Executive veto messages generally appear in the Maryland House and Senate Journals (usually at the beginning of the session) and the Laws of Maryland.

Further Information

Serious legislative history research may require a trip to the Legislative Reference Library in Annapolis. Bill files that are too recent to be covered in the microform collection are available there. As noted above, for a more detailed discussion of sources available, see *Ghost Hunting: Searching for Maryland Legislative History*.