

Attachment 1



Arizona House of Representatives
Phoenix, Arizona 85007

January 14, 2012

TO WHOM IT MAY CONCERN:

I HEREBY CERTIFY that the attached are true and accurate copies of the original documents on file in the office of the Chief Clerk, Arizona House of Representatives.

Minutes: Committee on Judiciary, February 2nd, 2012

Pages 1 - 10


Justin Yates
House Index Clerk

3/6/12

ARIZONA HOUSE OF REPRESENTATIVES
Fiftieth Legislature – Second Regular Session

COMMITTEE ON JUDICIARY

Minutes of Meeting
Thursday, February 2, 2012
House Hearing Room 4 -- 9:00 a.m.

Chairman Farnsworth called the meeting to order at 9:08 a.m. and attendance was noted by the secretary.

Members Present

Mr. Ash	Mr. Hale	Mr. Vogt
Mr. Chabin	Mr. Harper	Mr. Smith D, Vice-Chairman
Mrs. Goodale	Mrs. Tovar	Mr. Farnsworth, Chairman

Members Absent

None

Committee Action

HB2319 - DP (9-0-0-0)	HB2479 - DP (9-0-0-0)
HB2371 - DP (6-3-0-0)	HB2544 - DP (9-0-0-0)
HB2373 - DP (7-2-0-0)	HB2549 - DPA (8-0-0-1)
HB2374 - DP (8-0-0-1)	HB2558 - DP (8-0-0-1)
HB2379 - DPA (8-0-0-1)	

CONSIDERATION OF BILLS:

HB2379 - comprehensive election law amendments - DO PASS AMENDED

Magdalena Jorquez, Majority Research Analyst, reviewed the multiple changes to the laws governing electors and elections (Attachment 1):

- registration rolls
- presidential preference elections (PPE)
- filling vacancy caused by death/incapacity v. voluntary withdrawal
- polling place procedures
- recognition of new parties
- campaign finance reports
- ballot abuse
- legal counsel

Ms. Jorquez explained that the Farnsworth five-page amendment dated 2/1/12 makes the following revisions (Attachment 2):

- reinserts the March 1st voter registration report in which the counties are required to count each voter
- adds the nomination petition requirements to the PPE's nomination process
- requires the county to file nomination petitions signed by 1,000 qualified electors who are qualified to vote for the candidate
- in lieu of the new nomination petition requirement, allows nomination to the PPE of candidates who either have been qualified for matching federal campaign funds or have been qualified to appear on the PPE ballot in at least 20 other states
- changes the dates for the Governor's proclamation, changing the date of the PPE as well as candidate filing dates and party recognition dates
- adds a clarification to the committee registration section relating to the \$500 threshold exemption statement committees
- establishes four additional campaign finance filing requirements for statewide legislative special elections

Ms. Jorquez explained the decision of the 9th Circuit Court of Appeals case, *Arizona Right to Life Political Action Committee v. Bayless*, in response to Mr. Harper's query referencing language on page 27 of the bill, section 16-917, relating to corporations, limited liability companies and labor organizations providing copies of the independent expenditure report.

Ken Bennett, Arizona Secretary of State, in support of HB2379, offered to answer questions on why changes are being proposed to the laws governing electors and elections. He advised that these changes are technical and conforming. He noted that the policy changes on presidential preference elections requiring some signatures on the ballot may be controversial; other changes are technical and conforming.

Vice-Chairman Smith announced the names of those who signed up in support of HB2379 but did not speak:

Helen Purcell, Maricopa County Recorder

Karen Osborne, Maricopa County Elections Director

Trey Williams, Legislative Liaison, Arizona Association of Counties

Jim Drake, Assistant Secretary of State, Arizona Secretary of State's Office

Amy Chan, State Election Director, Arizona Secretary of State's Office

Jen Sweeney, Government Affairs Director, Arizona Association of Counties

Vice-Chairman Smith announced the names of those who signed up as neutral on HB2379 but did not speak:

Seth Apfel, representing self

Vice-Chairman Smith moved that HB2379 do pass.

Vice-Chairman Smith moved that the Farnsworth five-page amendment dated 2/1/12 be adopted (Attachment 2). The motion carried.

Vice-Chairman Smith moved that HB2379 as amended do pass. The motion carried by a roll call vote of 8-0-0-1 (Attachment 3).

HB2373 - sentencing; first, second degree murder - DO PASS

MJ Bildner, Majority Assistant Research Analyst, reviewed the provisions of HB2373 which modify the sentencing statutes relating to death penalty and life sentences (Attachment 4). The bill also makes technical and conforming changes.

Bill Montgomery, Maricopa County Attorney, in support of HB2373, advised that HB2373 addresses the right to a speedy trial or disposition, and prompt and final conclusion of the case after the conviction and sentence. This bill honors that right by removing an avenue for release of a murderer, and shields surviving family members from reliving the horror of losing a loved one and having to revisit that loss years later. The bill does not preclude a 25-year-to-life sentence if the defendant was under 18 years of age or if the conviction was the result of a felony murder charge. He said this bill is focused; its aim is justice and its goal is to fulfill a constitutional right. He answered questions about increasing the 25-year sentence to 29 years, the enhanced sentence for killing an unborn child, and input by victims on sentencing recommendations.

Donna Hamm, Executive Director, Middle Ground Prison Reform, spoke in opposition to all of the provisions of HB2373 which eliminate the 25-year-to-life sentence as an option for the court and provides for no exceptions. She noted that the 25-year-to-life sentence is a flat-time sentence that is served day for day; there is no exception for earned release credits, no eligibility for commutation of sentence, and no possibility for any type of early release. She advised that many people who have been released after a 25-year sentence have the lowest recidivism rate and continue to atone for their crimes in a constructive and positive way in the community. Middle Ground also opposes any increase in the sentencing range for second degree murder which also carries a flat-time sentence. She stated that Arizona has one of the harshest sentencing codes in the country and she does not see any reason to increase the already harsh and stringent penalties.

John Gillis, Division Chief, Victim Services Division, Maricopa County Attorney's Office, testified in support of HB2373. He spoke of the impact that sentencing has on crime victims and the community. Many victims fear for their lives when violent offenders are released after serving their sentence for murder. He stated that victims want finality to the endless hearings and proceedings; they are retraumatized every time there is a legal proceeding where the offender is being considered for release. This legislation is an opportunity to ensure that victims do not have to relive their traumas over and over. He answered questions on notification of victims when offenders are released.

Vice-Chairman Smith announced the names of those who signed up in support of HB2373 but did not speak:

Kimberly MacEachern, Staff Attorney, Arizona Prosecuting Attorneys' Advisory Council
Ray Churay, Deputy Director, Maricopa County Sheriff's Office
Jen Sweeney, Government Affairs Director, Arizona Association of Counties
Art Harding, Legislative Affairs Director, Attorney General's Office

Vice-Chairman Smith announced the names of those who signed up in opposition to HB2373 but did not speak:

Seth Apfel, representing self

Caroline Isaacs, Program Director, American Friends Service Committee
Vice-Chairman Smith announced the names of those who signed up as neutral on HB2373 but did not speak
Beth Rosenberg, Lobbyist, Children's Action Alliance

Mr. Ash asked the Chairman, as sponsor, whether any members of the defense bar were consulted on the drafting of this bill. Chairman Farnsworth replied in the negative; he does not know whether the County Attorney's Office worked with anyone.

Vice-Chairman Smith moved that HB2373 do pass. The motion carried by a roll call vote of 7-2-0-0 (Attachment 5).

HB2374 - deferred prosecution program; conditions - DO PASS

MJ Bildner, Majority Assistant Research Analyst, stated that HB2374 broadens the county attorney's ability to defer prosecution and narrows the offenses that would prohibit a deferred prosecution (Attachment 6).

Bill Montgomery, Maricopa County Attorney, in favor of HB2374, advised that this bill attempts to address an inconsistency in how offenders are dealt with for drug use. The bill allows prosecutors the flexibility to offer diversion and treatment programs, even if the offender already has one drug possession conviction. The bill recognizes addictive behavior and gives substance-abuse offenders a second chance.

Mr. Chabin asked Mr. Montgomery whether he would be in favor of legislation that allows an arresting officer to note whether an offense involves drugs, alcohol abuse or mental illness. Mr. Montgomery advised that a lot of that information is already available in the criminal justice system. Mr. Chabin opined that information should be documented at the time of arrest.

Penelope Pestle, American Friends Service Committee, testified in support of HB2374 which considers more people for diversion programs. She said she believes it could be very beneficial if diversion can be expanded to include mental health issues. Broadening diversion programs reduces the number of people in prison and helps reduce the crime rate.

Vice-Chairman Smith announced the names of those who signed up in support of HB2374 but did not speak:

David Wells, representing self
Kimberly MacEachern, Staff Attorney, Arizona Prosecuting Attorneys' Advisory Council
Trey Williams, Legislative Liaison, Arizona Association of Counties
Ray Churay, Deputy Director, Maricopa County Sheriff's Office
Jen Sweeney, Government Affairs Director, Arizona Association of Counties
Caroline Isaacs, Program Director, American Friends Service Committee
Donna Hamm, Executive Director, Middle Ground Prison Reform

Vice-Chairman Smith announced the names of those who signed up in opposition to HB2374 but did not speak:

Seth Apfel, representing self

In response to questions about Arizona's crime rate decreasing faster than the national average and about prison population, Mr. Montgomery answered that the trend toward addressing the crime problem is improving; however, this bill will not reduce the prison population because substance abuse offenders do not go to prison now.

Vice-Chairman Smith moved that HB2374 do pass. The motion carried by a roll call vote of 8-0-0-1 (Attachment 7).

HB2371 - disposal of unclaimed property - DO PASS

Yijee Jeong, Majority Intern, summarized the provisions of HB2371 which make changes to the requirements of the disposal of unclaimed property (Attachment 8):

- reduces the period within which reasonable efforts must be made to locate and notify the owner of unclaimed property from 90 to 30 days; thereafter the agency may proceed to dispose of it in the manner provided in statute
- changes the custody of unclaimed property from a state, county, city or town officer to a state, county, city or town agency
- removes the provision that allows for items valued at \$25 or less to be given to an appropriate charity
- mandates that a record of all transactions shall be maintained for at least 24 months
- makes technical and conforming changes

Discussion ensued on notification.

Mr. Chabin wondered how the owner of unclaimed property is notified under today's law.

Chairman Farnsworth advised that this is an attempt to update the statute. He is not aware of any opposition to the bill other than the provision on notice. The bill provides the option for the agency to either publish in a newspaper of general circulation or post the notice on its website.

Mr. Chabin brought up the fact that newspapers historically have published notices. Mandating that a source independent of government do the posting brings transparency to the process. Chairman Farnsworth advised that the trend is moving toward technology. He pointed out that the option is being left up to the individual agency.

Mr. Hale noted that technology is limited on Indian Reservations. He expressed the need to mandate that notification on the Reservation be made in newspapers because it is more effective than internet notification. Chairman Farnsworth reiterated that this legislation does not prohibit placing notices in the newspapers. Under this bill, the agency has the option to do what is most effective to notify the population it serves.

Mr. Ash noted that the currency is placed in the General Fund. He said he wants to ensure that the finders of that property are able to get the currency back, provided it is not contraband.

Mrs. Tovar stated that the change in notice from 90 days to 30 days may prohibit some people from getting notice. Chairman Farnsworth said that can be looked at further.

Vice-Chairman Smith announced the names of those who signed up in support of HB2371 but did not speak:

John Thomas, Arizona Association of Chiefs of Police
Robert Reddington, Evidence Custodian, representing self
Roy Casto, Property Supervisor, representing self
Ray Churay, Deputy Director, Maricopa County Sheriff's Office

Vice-Chairman Smith announced the names of those who signed up in opposition to HB2371 but did not speak:

Paula Casey, representing self
Pam Miller, Publisher/CEO, Verde Valley Newspapers, Inc.
Chris Moeser, Attorney, Phoenix Newspapers, Inc.
Michael Preston Green, Lobbyist, Arizona Capitol Times
John Moody, Attorney, Arizona Newspapers Association

Vice-Chairman Smith announced the names of those who signed up as neutral on HB2371 but did not speak:

Seth Apfel, representing self

Vice-Chairman Smith moved that HB2371 do pass. The motion carried by a roll call vote of 6-3-0-0 (Attachment 9).

HB2479 - eminent domain; improvements; assessing value - DO PASS

Yijee Jeong, Majority Intern, said that HB2479 requires that the court or jury shall ascertain and assess the full dollar value of any improvements made to the property sought to be condemned (Attachment 10).

Representative Carl Seel, sponsor, testified that fair market value may not reflect the true value of the property in a condemnation. Many people invest in improvements to their property and realize they may not recoup the total value of the improvements; however, it is a different situation when eminent domain is involved because those improvements may not be considered, only *reasonable compensation*. This legislation provides that when evaluating the condemned property, the added improvements shall be considered.

Mr. Harper questioned whether this will have a fiscal impact on the General Fund. Representative Seel answered that it could impact the General Fund; he believes the amount will be negligible. He stated that it is the duty of government to justly compensate people for their property.

Vice-Chairman Smith announced the names of those who signed up in support of HB2479 but did not speak:

Eric Emmert, Arizona Planning Association
Seth Apfel, representing self

Vice-Chairman Smith announced the names of those who signed up in opposition to HB2479 but did not speak:

Michael Vargas, Government Affairs Representative, APS

Mr. Ash asked whether the proposal includes emotional value. Representative Seel responded that the bill does not take that into consideration.

Vice-Chairman Smith moved that HB2479 do pass. The motion carried by a roll call vote of 9-0-0-0 (Attachment 11).

HB2544 - recovery of attorney fees - DO PASS

Magdalena Jorquez, Majority Research Analyst, advised that HB2544 removes the section of statute that requires the court to award reasonable attorney fees in any action that, by clear and convincing evidence, demonstrates the claim or defense constitutes harassment, is groundless and is not made in good faith (Attachment 12). The bill contains a delayed effective date of December 31, 2012.

Mr. Vogt, sponsor, stated that this legislation makes it easier to be awarded attorney fees for groundless lawsuits. He referenced two sections of law on harassment lawsuits and lawsuits not made in good faith; this bill simply removes duplicative efforts.

Marcus Osborn, Manager of Government and Public Affairs, Arizona Manufacturers Council, expressed support of HB2544. He stated that this proposal is the result of lengthy stakeholder meetings to consolidate and refine the statutes on frivolous lawsuits.

Vice-Chairman Smith announced the names of those who signed up in support of HB2544 but did not speak:

Heather Bernacki, Government Relations Associate, East Valley Chambers of Commerce Alliance

Janice Goldstein, Arizona Trial Lawyers Association

Art Harding, Legislative Affairs Director, Attorney General's Office

Ken Quartermain, Arizona Technology Council who asked that the following statement be read into the record:

“This is a great bill and the Arizona Technology Council, and its 600 member firms, 100,000 employees, see this bill as a positive change to the tort system in Arizona, and will be an effective economic development tool to attract new businesses.

Vice-Chairman Smith announced the names of those who signed up in opposition to HB2544 but did not speak:

Seth Apfel, representing self

Vice-Chairman Smith announced the names of those who signed up as neutral on HB2544 but did not speak

J. Michael Low, Attorney, Allstate Insurance, American Family Insurance, American International Group, MetLife Insurance, Mutual Insurance Company of Arizona

Vice-Chairman Smith moved that HB2544 do pass. The motion carried by a roll call vote of 9-0-0-0 (Attachment 13).

HB2319 - notice; claim; private property rights - DO PASS

Magdalena Jorquez, Majority Research Analyst, stated that HB2319 exempts claims made for just compensation pursuant to the Private Property Protection Act from the pre-suit requirements relating to actions against public entities (Attachment 14).

Vice-Chairman Smith, sponsor, advised that this bill requires that a demand letter be written before filing a suit against a public entity.

Christina Sandefur, Attorney, Goldwater Institute, testified in support of HB2319. She said that property owners are at risk because of a judicial error that denies property owners their day in court. Prop 207, passed by the voters in 2006, protects property rights. When the government takes property away from the owner, it must pay the owner; the law requires that the owner send the government a notice, which includes the value of the property. The government can then restore the property rights or pay for taking the rights away. If it refuses to do either, the person can file a claim and go to court. One court in Flagstaff imposed a new procedure that is very confusing on how to file a Prop 207 claim. This bill restores to property owners the protections that the voters wanted when they passed Prop 207.

Vice-Chairman Smith announced the names of those who signed up in support of HB2319 but did not speak:

Seth Apfel, representing self

Vice-Chairman Smith moved that HB2319 do pass. The motion carried by a roll call vote of 9-0-0-0 (Attachment 15).

HB2549 - electronic; digital devices; stalking; threatening - DO PASS AMENDED

Yijee Jeong, Majority Intern, stated that HB2549 updates current statute to make unlawful any misuse of electronic or digital devices to terrify, intimidate, threaten, harass, annoy, offend or in the course of conduct of stalking (Attachment 16). The Vogt four-line amendment dated 2/1/12 clarifies that the course of conduct is using any electronic, digital or global positioning device to surveil a specific person or a specific person's internet or wireless activity continuously for 12 hours or more, or on two or more occasions over a period of time, however short (Attachment 17).

Mr. Vogt, sponsor, advised that this legislation updates current statute. The scope of the bill is narrowly crafted to exclude constitutionally-protected activities. Chairman Farnsworth asked about parents who are trying to surveil their children. Mr. Vogt replied that there has to be the intent to terrify or harass.

Kathleen Mayer, Deputy Pima County Attorney, Pima County Attorney's Office, testified in support of HB2549. She related that under the stalking statute, the person is using these devices with the intent to frighten someone to fear for their personal safety, be it physical injury or death.

Vice-Chairman Smith announced the names of those who signed up in support of HB2549 but did not speak:

Ryan Harper, Triadvocates LLC, Verizon Wireless

Kimberly MacEachern, Staff Attorney, Arizona Prosecuting Attorneys' Advisory Council
Trey Williams, Legislative Liaison, Arizona Association of Counties
Jen Sweeney, Government Affairs Director, Arizona Association of Counties
Rebecca Baker, Deputy County Attorney, Maricopa County Attorney's Office
Lindsay Simmons, Systems Advocacy Coordinator, Arizona Coalition Against Domestic Violence

Vice-Chairman Smith announced the names of those who signed up in opposition to HB2549 but did not speak:

Seth Apfel, representing self

Vice-Chairman Smith moved that HB2549 do pass.

Vice-Chairman Smith moved that the Vogt four-line amendment dated 2/1/12 be adopted (Attachment 17). The motion carried.

Vice-Chairman Smith moved that HB2549 as amended do pass. The motion carried by a roll call vote of 8-0-0-1 (Attachment 18).

HB2558 - victim restitution; civil actions - DO PASS

MJ Bildner, Majority Assistant Research Analyst, stated that HB2558 clarifies that a person may bring a civil action for damages in excess of the restitution order actually paid by the defendant (Attachment 19).

Mr. Vogt, sponsor, explained that the intent of restitution orders is to compensate victims for their economic damages. Because defendants have limited resources, victims generally recover a limited amount of money. This proposal provides that regardless of what the defendant actually pays, the plaintiff can file a separate civil lawsuit to go after the remaining amount of money they have lost, whether it is insurance or a judgment against the defendant. He answered questions about double jeopardy.

Art Harding, Legislative Affairs Director, Attorney General's Office, expressed support of HB2558. He introduced Dan Levey, the Director of the Office of Victims Services.

Dan Levey, Director, Office of Victim Services, Attorney General's Office, testified in support of HB2558. In reply to Mr. Harper, he said that victims have a constitutional right to be compensated for their loss and the civil process is a valid remedy to get that restitution. He advised that in his experience, very few defendants pay restitution, and, if they do, they do not pay it in full.

Vice-Chairman Smith explained that a restitution order does not cover pain and suffering; it only covers economic loss. Compensation for pain and suffering can only be recouped in civil court.

Mr. Vogt related that the courts have concern about the calculation of interest; therefore, he will offer an amendment on the Floor to cover a minor technical change.

Vice-Chairman Smith announced the names of those who signed up in support of HB2558 but did not speak:

Kimberly MacEachern, Staff Attorney, Arizona Prosecuting Attorneys' Advisory Council

Lindsay Simmons, Systems Advocacy Coordinator, Arizona Coalition Against Domestic Violence

Vice-Chairman Smith moved that HB2558 do pass. The motion carried by a roll call vote of 8-0-0-1 (Attachment 20).

Without objection, the meeting adjourned at 11:41 a.m.


Joanne Bell, Committee Secretary
February 9, 2012

(Original minutes, attachments and audio on file in the Chief Clerk's Office; video archives available at <http://www.azleg.gov>)

16-905. Contribution limitations; civil penalty; complaint

A. For an election other than for a statewide office, a contributor shall not give and an exploratory committee, a candidate or a candidate's campaign committee shall not accept contributions of more than:

1. For an election for a legislative office, four hundred eighty-eight dollars from an individual.
2. For an election other than for a legislative office, three hundred ninety dollars from an individual.
3. For an election for a legislative office, four hundred eighty-eight dollars from a single political committee, excluding a political party, not certified under subsection G of this section to make contributions at the higher limits prescribed by paragraph 5 of this subsection and subsection B, paragraph 3 of this section.
4. For an election other than for a legislative office, three hundred ninety dollars from a single political committee, excluding a political party, not certified under subsection G of this section to make contributions at the higher limits prescribed by subsection B, paragraph 3 of this section.
5. Two thousand dollars from a single political committee, excluding a political party, certified pursuant to subsection G of this section.

B. For an election for a statewide office, a contributor shall not give and an exploratory committee, a candidate or a candidate's committee shall not accept contributions of more than:

1. One thousand ten dollars from an individual.
2. One thousand ten dollars from a single political committee, excluding a political party, not certified under subsection G of this section to make contributions at the higher limits prescribed by subsection A, paragraph 5 of this section and paragraph 3 of this subsection.
3. Five thousand ten dollars from a single political committee excluding political parties certified pursuant to subsection G of this section.

C. A candidate shall not accept contributions from all political committees, excluding political parties, combined totaling more than:

1. For an election for a legislative office, sixteen thousand one hundred fifty dollars.
2. For an office other than a legislative office or a statewide office, ten thousand twenty dollars.
3. For a statewide office, one hundred thousand one hundred ten dollars.

D. A nominee of a political party shall not accept contributions from all political parties or political organizations combined totaling more than ten thousand twenty dollars for an election for an office other than a statewide office, and one hundred thousand one hundred ten dollars for an election for a statewide office.

E. An individual shall not make contributions totaling more than five thousand six hundred ten dollars in a calendar year to state and local candidates and political committees contributing to state or local candidates. Contributions to political parties and contributions to independent expenditure committees are exempt from the limitations of this subsection.

F. A candidate's campaign committee or an individual's exploratory committee shall not make a loan and shall not transfer or contribute money to any other campaign or exploratory committee that is designated pursuant to this chapter or 2 United States Code section 431 except as follows:

1. An exploratory committee may transfer monies to a subsequent candidate's campaign committee of the individual designating the exploratory committee, subject to the limits of subsection B of this section.
2. A candidate's campaign committee may transfer or contribute monies to another campaign committee designated by the same candidate as follows:
 - (a) Subject to the contribution limits of this section, transfer or contribute monies from one committee to another if both committees have been designated for an election in the same year.
 - (b) Without application of the contribution limits of this section, transfer or contribute monies from one committee to another designated for an election in a subsequent year.

G. Only political committees that received monies from five hundred or more individuals in amounts of ten dollars or more in the one year period immediately

before application to the secretary of state for qualification as a political committee pursuant to this section may make contributions to candidates under subsection A, paragraph 5 of this section and subsection B, paragraph 3 of this section. The secretary of state shall obtain information necessary to make the determination that a committee meets the requirements of this subsection and shall provide written certification of the fact to the committee. A political committee certification is valid for two years. A candidate's campaign committee shall not accept a contribution pursuant to this subsection unless it is accompanied by a copy of the certification. All political committees that do not meet the requirements of this subsection are subject to the individual campaign contribution limits of subsection A, paragraphs 1 and 2 of this section and subsection B, paragraph 1 of this section.

H. The secretary of state biennially shall adjust to the nearest ten dollars the amounts in subsections A through E of this section by the percentage change in the consumer price index and publish the new amounts for distribution to election officials, candidates and campaign committees. For the purposes of this subsection, "consumer price index" means the consumer price index for all urban consumers, United States city average, that is published by the United States department of labor, bureau of labor statistics.

I. The following specific limitations and procedures apply:

1. The limits of subsections A through E of this section apply to each election for any office or offices which the candidate seeks.

2. The limits of subsections A, B and C of this section apply to the total contributions from all separate segregated funds established, as provided in section 16-920, by a corporation, labor organization, trade association, cooperative or corporation without capital stock.

3. A contribution by an unemancipated minor child shall be treated as a contribution by the child's custodial parent or parents for determining compliance with subsection A, paragraphs 1 and 2, subsection B, paragraph 1 and subsection E of this section.

4. A contribution by an individual or a single political committee to two or more candidates in connection with a joint fund-raising effort shall be divided among the candidates in direct proportion to each candidate campaign committee's share of the expenses for the fund-raising effort.

5. A candidate shall sign and file with the candidate's nomination paper a statement that the candidate has read all applicable laws relating to campaign financing and reporting.

6. An individual or political committee shall not use economic influence to induce members of an organization to make contributions to a candidate, collect contributions from members of an organization for transmittal to a candidate, make payments to candidates for public appearances or services which are ordinarily uncompensated or use any similar device to circumvent any of the limitations of this section.

J. A person who violates this section is subject to a civil penalty imposed as prescribed in section 16-924 of three times the amount of money that has been received, expended or promised in violation of this section or three times the value in money for an equivalent of money or other things of value that have been received, expended or promised in violation of this section.

K. Any qualified elector may file a sworn complaint with the attorney general or the county attorney of the county in which a violation of this section is believed to have occurred, and the attorney general or the county attorney shall investigate the complaint for possible action.

L. If the filing officer, attorney general or county attorney fails to institute an action within forty-five working days after receiving a complaint under subsection K of this section, the individual filing the complaint may bring a civil action in the individual's own name and at the individual's own expense, with the same effect as if brought by the filing officer, attorney general or county attorney. The individual shall execute a bond payable to the defendant if the individual fails to prosecute the action successfully. The court shall award to the prevailing party costs and reasonable attorney fees.

M. If a provision of this section or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

N. The use of a candidate's personal monies, or the use of personal monies by an individual who designates an exploratory committee, is not subject to the limitations of this section.

ARS TITLE PAGE	NEXT DOCUMENT	PREVIOUS DOCUMENT
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16-924. Civil penalties; attorney general; county, city or town attorney

A. Unless another penalty is specifically prescribed in this title, if the filing officer for campaign finance reports designated pursuant to section 16-916, subsection A has reasonable cause to believe that a person is violating any provision of this title, except for violations of chapter 6, article 2, the secretary of state shall notify the attorney general for a violation regarding a statewide office or the legislature, the county officer in charge of elections shall notify the county attorney for that county for a violation regarding a county office or the city or town clerk shall notify the city or town attorney for a violation regarding a city or town office. The attorney general, county attorney or city or town attorney, as appropriate, may serve on the person an order requiring compliance with that provision. The order shall state with reasonable particularity the nature of the violation and shall require compliance within twenty days from the date of issuance of the order. The alleged violator has twenty days from the date of issuance of the order to request a hearing pursuant to title 41, chapter 6.

B. If a person fails to take corrective action within the time specified in the compliance order issued pursuant to subsection A, the attorney general, county attorney or city or town attorney, as appropriate, shall issue an order assessing a civil penalty of not more than one thousand dollars. The person alleged to have violated the compliance order has thirty days from the date of issuance of the order assessing the civil penalty to request a hearing pursuant to title 41, chapter 6.

C. Any party aggrieved by an order or decision of the attorney general, county attorney or city or town attorney, as appropriate, may appeal to the superior court as provided in title 12, chapter 7, article 6.

D. For the purposes of this section, failure to comply with a compliance order issued by the attorney general, county attorney or city or town attorney, as appropriate, as prescribed in subsection A is deemed an intentional act.

WestlawNext

Hadley v. Ryan
 Official Image of 345 Ill.App.3d 297 (PDF)
 Appellate Court of Illinois, Fourth District. November 18, 2003 345 Ill.App.3d 297 280 Ill.Dec. 818 (Approx. 11 pages)
 345 Ill.App.3d 297

Appellate Court of Illinois,
 Fourth District.

Willie B. HADLEY, Jr., Plaintiff–Appellant,

v.

Jim RYAN, Attorney General of the State of Illinois, Donald N. Snyder Jr., Director of the Illinois Department of Corrections; and Guy Pierce, Warden, Pinckneyville Correctional Center, Defendants–Appellees.

No. 4–02–0421. Nov. 18, 2003.

Synopsis

Background: Inmate filed a pro se mandamus complaint alleging Attorney General, Director of Department of Corrections, and correctional center warden violated inmate's rights and the Freedom of Information Act. The Circuit Court of Sangamon County, Robert J. Eggers, J., dismissed the complaint for failure to state a claim, and inmate appealed.

Holdings: The Appellate Court, Myerscough, J., held that:

- 1 mandamus would not be issued to compel State Attorney General to prosecute criminal complaint submitted by inmate charging correctional officers with misconduct;
- 2 defendants were prejudiced by delay of inmate in bringing action, for purposes of determining whether inmate's action was barred by laches;
- 3 inmate suffered no prejudice by failure of trial court to rule on his motion to strike appearance of Attorney General on ground of conflict of interest; and
- 4 trial court did not abuse its discretion by denying inmate's motion to amend his complaint.

Affirmed.

West Headnotes (17)

Change View

1 Pretrial Procedure

Assertion that the affirmative defense of laches bars a claim can be made in a motion to dismiss a complaint if from the pleadings: (1) an unreasonable delay appears; (2) no sufficient excuse for the delay is pleaded; and (3) the motion alleges there is a defect. S.H.A. 735 ILCS 5/2–615.

3 Cases that cite this headnote



- 307A Pretrial Procedure
- 307AIII Dismissal
- 307AIII(B) Involuntary Dismissal
- 307AIII(B)2 Grounds in General
- 307AK561 Affirmative Defenses, Raising by Motion to Dismiss
- 307AK562 Particular defenses

2 Mandamus

Mandamus relief is an extraordinary remedy used to direct a public official or body to perform a ministerial duty that does not involve the exercise of judgment or discretion. S.H.A. 735 ILCS 5/14–101 to 14–109.

3 Cases that cite this headnote



- 250 Mandamus
- 250I Nature and Grounds in General
- 250k1 Nature and scope of remedy in general
- 250 Mandamus
- 250II Subjects and Purposes of Relief
- 250II(B) Acts and Proceedings of Public Officers and Boards and Municipalities
- 250k72 Matters of discretion

3 Mandamus

Mandamus is appropriate relief only where a petitioner can demonstrate a clear right to the requested relief, the respondent's clear duty to act, and the respondent's clear authority to comply with the terms of the writ. S.H.A. 735 ILCS 5/14–101 to 14–109.



- 250 Mandamus
- 250I Nature and Grounds in General
- 250k10 Nature and existence of rights to be protected or enforced (Formerly 250k1)



RELATED TOPICS









Mandamus

Jurisdiction, Proceedings, and Relief
 Attorney General and United States Attorneys









Jurisdiction, Proceedings, and Relief
 Public Employee Mandamus Action

Amended and Supplemental Pleadings and Repleader

Allowance of Belated Amendments of Pleadings

<p>3 Cases that cite this headnote</p>	<p>250 250I 250k12</p>	<p>Mandamus Nature and Grounds in General Nature of acts to be commanded (Formerly 250k1)</p>
<p>4 Mandamus Mandamus cannot be used to direct a public official or body to reach a particular decision or to exercise its discretion in a particular manner, even if the judgment or discretion has been erroneously exercised. S.H.A. 735 ILCS 5/14-101 to 14-109.</p> <p>2 Cases that cite this headnote</p>	<p> 250 250II 250II(B) 250k72</p>	<p>Mandamus Subjects and Purposes of Relief Acts and Proceedings of Public Officers and Boards and Municipalities Matters of discretion</p>
<p>5 Statutes Usually the legislature's use of the word "may" is regarded as indicating a permissive or directory reading, while the use of the word "shall" is considered to express a mandatory reading.</p>	<p> 361 361VI 361VI(A) 361k227</p>	<p>Statutes Construction and Operation General Rules of Construction Construction as mandatory or directory</p>
<p>6 Mandamus Mandamus would not be issued to compel State Attorney General to prosecute criminal complaint submitted by inmate charging correctional officers with financial exploitation of a disabled person, deceptive practices, forgery and official misconduct for improperly transferring five dollars from inmate's trust account for cracked room key, as Attorney General had discretion in choosing what actions to prosecute. S.H.A. 15 ILCS 205/4; 735 ILCS 5/14-101 to 14-109.</p> <p>1 Case that cites this headnote</p>	<p> 250 250II 250II(B) 250k73 250k73(1)</p>	<p>Mandamus Subjects and Purposes of Relief Acts and Proceedings of Public Officers and Boards and Municipalities Specific Acts In general</p>
<p>7 Mandamus A complaint for mandamus must be brought within six months, unless there is a reasonable explanation for further delay. S.H.A. 735 ILCS 5/14-101 to 14-109.</p>	<p> 250 250III 250k143 250k143(1)</p>	<p>Mandamus Jurisdiction, Proceedings, and Relief Time to Sue, Limitations, and Laches In general</p>
<p>8 Mandamus The mere passage of time itself does not bar mandamus relief, and a defendant must show that he has been materially prejudiced by the delay. S.H.A. 735 ILCS 5/14-101 to 14-109.</p> <p>1 Case that cites this headnote</p>	<p> 250 250III 250k143 250k143(2)</p>	<p>Mandamus Jurisdiction, Proceedings, and Relief Time to Sue, Limitations, and Laches Laches</p>
<p>9 Mandamus Facts constituting laches in a complaint for mandamus depend on the particular circumstances of each case, and the determination of the existence of the defense is left to the sound discretion of the trial court, whose decision ought not to be overturned unless there is a clear showing of an abuse of discretion. S.H.A. 735 ILCS 5/14-101 to 14-109.</p>	<p> 250 250III 250k143 250k143(2)  250 250III 250k187 250k187.9 250k187.9(5)</p>	<p>Mandamus Jurisdiction, Proceedings, and Relief Time to Sue, Limitations, and Laches Laches Mandamus Jurisdiction, Proceedings, and Relief Appeal and Error Review Discretion of lower court</p>
<p>10 Mandamus For purposes of determining whether laches barred inmate's mandamus complaint, Director of Department of Corrections and correctional center warden were prejudiced by failure of inmate to file mandamus complaint within six months of events in which Director allegedly violated Freedom of Information Act regarding inmate's request for warehouse expenditures and invoices and warden allegedly refused to comply with Department rules</p>	<p> 250 250III 250k143 250k143(2)</p>	<p>Mandamus Jurisdiction, Proceedings, and Relief Time to Sue, Limitations, and Laches Laches</p>

relating to morning cell searches, as inmates who could serve as witnesses might no longer be in the same prison or incarcerated at all, employees who were involved could have transferred, quit, or been unable to recall the events, and possible records may have been disposed. S.H.A. 735 ILCS 5/14-101 to 14-109.

<p>11 Motions A failure to rule on a motion is not the equivalent to denying it.</p>	 267 267k40	<p>Motions Determination</p>
<p>12 Mandamus Inmate suffered no prejudice by failure of trial court to rule on his motion to strike appearance of Attorney General on ground of conflict of interest, in mandamus action brought by inmate alleging Attorney General, Director of Department of Corrections and correctional center warden violated inmate's rights and the Freedom of Information Act, as there was no conflict of interest; employees sued as a result of an act or omission occurring within the scope of employment were entitled to be represented by the Attorney General, and Attorney General did not represent private individuals. S.H.A. 5 ILCS 350/2(a); 15 ILCS 205/4; 735 ILCS 5/14-101 to 14-109.</p>	 250 250III 250k150 250k151 250k151(2)	<p>Mandamus Jurisdiction, Proceedings, and Relief Parties Defendant or Respondents In General Public officers and boards and municipalities</p>
<p>2 Cases that cite this headnote</p>		
<p>13 Pleading Litigants have no absolute right to amend their complaint.</p>	 302 302VI 302k229	<p>Pleading Amended and Supplemental Pleadings and Repleader Right to amend pleadings in general</p>
<p>1 Case that cites this headnote</p>		
<p>14 Pleading A circuit court should consider several factors in determining whether to allow an amendment, including whether the amendment would cure a defect in the pleadings, whether the other party would be prejudiced or surprised by the proposed amendment, the timeliness of the proposed amendment, and whether there were previous opportunities to amend the pleadings.</p>	 302 302VI 302k233 302k233.1  302 302VI 302k241	<p>Pleading Amended and Supplemental Pleadings and Repleader Leave of Court to Amend In general Pleading Amended and Supplemental Pleadings and Repleader Form and sufficiency of amended pleading in general</p>
<p>15 Appeal and Error Pleading Decision whether to allow an amendment to a pleading rests within the circuit court's discretion and will not be disturbed on review absent an abuse of discretion.</p>	 30 30XVI 30XVI(H) 30k959 30k959(1)  302 302VI 302k233 302k236 302k236(1)	<p>Appeal and Error Review Discretion of Lower Court Amended and Supplemental Pleadings In general Pleading Amended and Supplemental Pleadings and Repleader Leave of Court to Amend Discretion of Court In general</p>
<p>16 Appeal and Error The test to determine whether a trial court properly exercised its discretion on a motion to amend a pleading is whether allowance of the amendment furthers the ends of justice.</p>	 30 30XVI 30XVI(H)	<p>Appeal and Error Review Discretion of Lower Court</p>

