

Part 6 Extraordinary Writs

78B-6-601 Penalty for wrongful refusal to allow writ of habeas corpus.

Any judge, whether acting individually or as a member of a court, who wrongfully and willfully refuses to allow a writ of habeas corpus whenever proper application has been made shall forfeit and pay a sum not exceeding \$5,000 to the aggrieved party.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-602 Recombitment.

- (1) In all cases where it is claimed that a person is illegally or wrongfully restrained or deprived of his liberty, where restraint or imprisonment is for a criminal offense and there is not sufficient cause for release, even though the commitment may have been informally made or without due authority, or the process may have been executed by a person not duly authorized, the court or judge may make a new commitment, or allow the party to post bail, if the case is bailable.
- (2) All material witnesses shall be required to appear at the same time and place and not depart without leave. All documents shall be filed in the clerk's office.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-603 Recombitment after discharge forbidden -- Exceptions.

A person who has been discharged by order of the court or judge upon habeas corpus may not be imprisoned again, restrained, or kept in custody for the same cause, except in the following cases:

- (1) if the person has been discharged from custody on a criminal charge and is afterward committed for the same offense by legal order or process; or
- (2) if, after discharge for defect of proof or for any defect of the process, warrant or commitment in a criminal case, the prisoner is again arrested on sufficient proof and committed by legal process for the same offense.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-604 Refusing to exhibit authority for detention -- Penalty.

A person who refuses to deliver a copy of the legal process by which the person detains the plaintiff in custody to anyone who demands a copy for the purpose of filing a writ of habeas corpus is liable to the plaintiff in an amount not to exceed \$200.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-605 Penalties for wrongful acts of defendant.

- (1) A defendant, officer, or other person is guilty of a class B misdemeanor and liable to the injured party in an amount not to exceed \$5,000 if:
 - (a) the defendant attempts to evade the service of the writ of habeas corpus; or
 - (b) an officer or other person willfully fails to comply with the legal duties imposed upon him or disobeys an order to release a person in custody.

(2) Any person knowingly aiding in or abetting invalidation of this section is subject to the same punishment and forfeiture.

Enacted by Chapter 3, 2008 General Session

78B-6-606 Judgment of removal -- Costs -- Penalty by fine where state is party.

If a defendant is found guilty of usurping, intruding into or unlawfully holding or exercising an office, franchise, or privilege, the court shall order the defendant removed from the office, and that the relator recover the costs of pursuing the action. The court may also, in its discretion, in actions to which the state is a party impose upon the defendant a fine not exceeding \$5,000, to be paid to the state treasury.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-607 Judgment against director of corporation -- Of induction in favor of person entitled.

When the action is against a director of a corporation, and the court finds that, at the election, either illegal votes were received or legal votes were rejected, or both, sufficient to change the result, the court may order the defendant removed, and judgment of induction entered in favor of the person who was entitled to be declared elected at the election.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-608 Action for damages because of usurpation -- Limitation of action.

A person may, at any time within one year after the date of an order for removal, bring an action against the party removed under the provisions of Section 78B-6-606 or 78B-6-607 and recover the damages sustained by the usurpation.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-609 Mandamus and prohibition -- Judgment.

In any proceeding to obtain a writ of mandate or prohibition, if judgment is given for the applicant, he may recover the damages which were sustained, as found by the jury, or determined by the court, or referees upon a reference, ordered together with costs. For damages and costs an execution may issue, and a peremptory mandate shall be awarded without delay.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-610 Disobedience of writ -- Punishment.

When a peremptory writ of mandate or writ of prohibition has been issued and directed to an inferior tribunal, corporation, board, or person, and the court determines that any member of the tribunal, corporation, board, or person upon whom the writ was personally served has, without just excuse, refused or neglected to obey the writ, the court may, upon motion, impose a fine not exceeding \$500. In cases of persistence in a refusal of obedience, the court may order the party to be imprisoned until the writ is obeyed, and may make any orders necessary and proper for enforcement of the writ.

Renumbered and Amended by Chapter 3, 2008 General Session

