

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 993 Service of Process

**SPONSOR(S):** Killebrew

**TIED BILLS:** IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee	13 Y, 0 N	Tuszynski	Bond
2) Judiciary Committee			

### SUMMARY ANALYSIS

The term "service of process" refers to the due process requirement to serve notice on a person to inform him or her of a pending court action or to summon the person as a witness to a court proceeding.

Service of process is outlined in statute, which details who may serve process and how to serve process generally, as well as on specific individuals and entities. Currently, all process must be served by the sheriff of the county where the person to be served is found, except initial non-enforceable civil process, criminal summonses, and criminal witness subpoenas, which may be served by a special process server appointed by the sheriff or a certified process server as approved by the chief judge of the circuit court. Any person authorized by the Florida Rules of Civil Procedure may also serve civil witness subpoenas.

HB 993 updates service of process laws to:

- Remove the requirement that a party request service upon their spouse before the spouse can be served for that party, and provides that such service on a spouse is allowed in any county, not just the county of residence;
- Allow out-of-state service to be effectuated by any person authorized by that state, not just a state officer;
- Remove the requirement that the local sheriff authorize use of electronic signatures on a private return of service; and
- Expand the authority of certified process servers to serve *any* non-enforceable civil process, not just *initial* non-enforceable civil process.

The bill does not appear to have a fiscal impact on state government. There may be an indeterminate impact on county sheriffs.

The bill is effective July 1, 2018.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Service of Process**

"Process" refers to a legal document that commands a person to do or not to do an act.<sup>1</sup> Original process normally consists of a summons to appear in court, and thus is the first notice to a party of a lawsuit.<sup>2</sup> "Service of process" is the formal delivery of a writ, summons, or other legal process or notice and may be classified as actual or substituted.<sup>3</sup> Substituted service means any method of service allowed by law in place of actual service, such as service on another person, service by mail, or service by publication.<sup>4</sup>

Service of process is outlined in ch. 48, F.S. The chapter details who may serve process,<sup>5</sup> how to serve process generally<sup>6</sup> as well as on specific individuals and entities, such as minors,<sup>7</sup> state prisoners,<sup>8</sup> limited liability companies,<sup>9</sup> and the state.<sup>10</sup> Service of process may be categorized as enforceable or non-enforceable. "Enforceable service of process involves a court order requiring the sheriff to take action (i.e., eviction, seizure of property)" and "[n]on-enforceable service of process is designed to place another party on notice that he or she must take action (i.e., civil complaint, summons to appear, or witness subpoena)."<sup>11</sup>

##### Current Situation - Special and Certified Process Servers

Traditionally, only the sheriff could serve process. Under current law, all process must still be served by the sheriff, except that private special process servers appointed by the sheriff and private certified process servers approved by the chief judge of the circuit court may serve the following:

- Initial non-enforceable civil process;
- Criminal summonses;
- Criminal witness subpoenas;<sup>12</sup>

Furthermore, any person authorized by the Florida Rules of Civil Procedure may serve civil witness subpoenas.<sup>13</sup>

##### *Effect of Bill - Certified Process Servers*

HB 993 expands the authority of certified process servers approved by circuit court judges to serve *any* non-enforceable civil process, not just *initial* non-enforceable civil process.

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<sup>1</sup> 41A Fla. Jur.2d Process s. 1; "The term 'process' is not limited to 'summons.' In its broadest sense[,] it is equivalent to, or synonymous with, 'procedure,' or 'proceeding.'" Black's Law Dictionary (10th ed. 2014).

<sup>2</sup> 41A Fla. Jur.2d Process s. 1

<sup>3</sup> Id.

<sup>4</sup> Black's Law Dictionary (10th ed. 2014), service.; This may also be termed "Constructive service"

<sup>5</sup> s. 48.021, F.S.

<sup>6</sup> s. 48.031, F.S.

<sup>7</sup> s. 48.041, F.S.

<sup>8</sup> s. 48.051, F.S.

<sup>9</sup> s. 48.062, F.S.

<sup>10</sup> s. 48.121, F.S.

<sup>11</sup> Florida Senate, Committee on Justice Appropriations, *Sheriff Costs – Service of Process*, Interim Project Report 2006-144, (August 2005).

<sup>12</sup> S. 48.021(1), F.S.; s. 48.29, F.S.

<sup>13</sup> Section 48.021(1), F.S. Rule 1.070, Florida Rules of Civil Procedure, provides that service of process may be made by a person appointed by court order, known as an elisor.

## Substituted Service

Current law allows substituted service on the spouse of a person to be served at any place in the county if the spouse requests such service, the cause of action is not adversarial between the spouse and the person to be served, and the spouse and the person being served reside together in the same dwelling.<sup>14</sup>

The law allows substituted service on a person by leaving a copy of the process with the person in charge of a private mailbox, virtual office,<sup>15</sup> or an executive office or mini suite<sup>16</sup> if the only discoverable address for a person to be served is a private mailbox, virtual office, or executive office or mini suite.<sup>17</sup> Current law also allows substituted service, pursuant to s. 48.031, F.S., on the registered agent of a corporation in these same locations.<sup>18</sup> The law only allows substituted service of a limited liability company at a residence or private mailbox.<sup>19</sup>

### *Effect of Bill - Substituted Service*

HB 993 updates service of process laws to remove the requirement that a party to be served must request substituted service upon their spouse and allows substituted service on a spouse in any county, not just the county of residence.

The bill also adds "virtual office and "executive office or mini suite" to the list of locations that a registered agent may receive substituted service of process for a limited liability company. This aligns service on a registered agent of a limited liability company with the service of a person and service on the registered agent of a corporation.

## Return of Execution of Process

Once service of process has been performed by a process server, that process server must note on a return-of-service form<sup>20</sup> the date and time the process was served, the manner of service, the name of the person to whom it was served, and if the person served is in a representative capacity, the position occupied by that person.<sup>21</sup> The return-of-service form must list all pleadings served and be signed by the person who performs the service of process.<sup>22</sup> Currently, only persons employed by a sheriff are authorized to sign a return-of-process form using an electronic signature certified by the sheriff.<sup>23</sup>

### *Effect of Bill - Return of Execution of Process*

HB 993 removes requirement that only a person employed by a sheriff is authorized to use electronic signatures on return of service forms, thereby allowing all process servers to use electronic signatures. The bill also removes the requirement for the sheriff's certification of such signature.

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<sup>14</sup> s. 48.031(2)(a), F.S.

<sup>15</sup> "Virtual office" means an office that provides communications services, such as telephone or facsimile services, and address services without providing dedicated office space and all communication is routed through a common receptionist (s. 48.031(6)(b), F.S.).

<sup>16</sup> "Executive Office or mini suite" means an office that provides communications services, such as telephone and facsimile services, a dedicated office space, and other support services and all communications is routed through a common receptionist (s. 48.031(6)(b), F.S.).

<sup>17</sup> s. 48.031(6)(a), F.S.

<sup>18</sup> s. 48.081(3)(b), F.S.

<sup>19</sup> s. 48.062(4), F.S.

<sup>20</sup> s. 48.29(6), F.S.; This subsection does not create a standardized return of service form but requires all return of service be made on a form which has been reviewed and approved by the court. For example, the First Judicial Circuit (<https://www.firstjudicialcircuit.org/document-library/process-server-return-service-form>).

<sup>21</sup> s. 48.21(1), F.S.

<sup>22</sup> Id.

<sup>23</sup> Id.

## Personal Service Outside State

To serve process on persons outside of Florida, the service must be made in the same manner as within Florida, by only an "officer" authorized to serve process in the state where the person is served. An affidavit of the officer who served process must be filed, stating the time, manner, and place of service.<sup>24</sup> By use of the term "officer", out-of-state private process servers are not authorized to serve process and only local sheriffs and police may serve process.

### *Effect of Bill - Personal Service Out of State*

HB 993 allows service in another state by any person authorized to serve process by that state, not just an officer of that state. The bill also removes the requirement to file an affidavit, allowing a court to consider the return-of-service form or any other competent evidence in determining whether proper service was made.

The bill also makes conforming and non-substantive changes to grammar and style.

The bill is effective July 1, 2018.

#### B. SECTION DIRECTORY:

- Section 1:** Amends s. 48.021, F.S., relating to process, by whom served.
- Section 2:** Amends s. 48.031, F.S., relating to service of process generally; service of witness subpoenas.
- Section 3:** Amends s. 48.062, F.S., relating to service on a limited liability company.
- Section 4:** Amends s. 48.194, F.S., relating to personal service outside state.
- Section 5:** Amends s. 48.21, F.S., relating to return of execution of process.
- Section 6:** Amends s. 48.27, F.S., relating to certified process servers.
- Section 7:** Provides an effective date of July 1, 2018.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

There may be an indeterminate negative fiscal impact on local sheriff's office revenue as certified process servers may now serve more non-enforceable civil process.

2. Expenditures:

There may be an indeterminate positive fiscal impact on local sheriff's office expenditures to the extent fewer duties are required of the sheriff's office as certified process servers serve more non-enforceable civil process.

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<sup>24</sup> s. 48.194, F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**