

Bill No. SB 1712

Barcode 740498

CHAMBER ACTION

Senate

House

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The Committee on Judiciary (Joyner) recommended the following amendment:

**Senate Amendment (with title amendment)**

On page 3, between lines 3 and 4,

insert:

Section 2. Subsection (1) of section 48.021, Florida Statutes, is amended to read:

48.021 Process; by whom served.--

(1) All process shall be served by the sheriff of the county where the person to be served is found, except initial nonenforceable civil process, criminal witness subpoenas, and criminal summonses may be served by a special process server appointed by the sheriff as provided for in this section or by a certified process server as provided for in ss. 48.25-48.31. Civil witness subpoenas may be served by any person authorized by rules of civil procedure.

Section 3. Subsection (2) of section 56.041, Florida Statutes, is amended to read:

56.041 Executions; collection and return.--

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1           (2) All unsatisfied executions in the hands of the  
2 sheriff docketed before October 1, 2001, or 20 years after the  
3 date of issuance of final judgment upon which the execution  
4 was issued may be returned, to the court issuing the  
5 execution, ~~20 years after the date of issuance of final~~  
6 ~~judgment upon which the execution was issued.~~ Upon such  
7 return, the clerk of the court of issuance shall provide a  
8 receipt, to the sheriff submitting the return, acknowledging  
9 the return of the unsatisfied execution.

10           Section 4. Section 56.21, Florida Statutes, is amended  
11 to read:

12           56.21 Execution sales; notice.--Notice of all sales  
13 under execution shall be given by advertisement once each week  
14 for 4 successive weeks in a newspaper published in the county  
15 in which the sale is to take place. The time of such notice  
16 may be shortened in the discretion of the court from which the  
17 execution issued, upon affidavit that the property to be sold  
18 is subject to decay and will not sell for its full value if  
19 held until date of sale. On or before the date of the first  
20 publication or posting of the notice of sale, a copy of the  
21 notice of sale shall be furnished by the sheriff by certified  
22 mail to the attorney of record of the judgment debtor, or to  
23 the judgment debtor at the judgment debtor's last known  
24 address if the judgment debtor does not have an attorney of  
25 record. Such copy of the notice of sale shall be mailed even  
26 though a default judgment was entered. When levying upon real  
27 or personal property, a notice of such levy and execution sale  
28 and a copy of the affidavit required by s. 56.27(4) shall be  
29 sent by the sheriff to the attorneys of record of all judgment  
30 creditors, or to all judgment creditors who do not have an  
31 attorney of record, who have acquired a judgment lien as

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1 provided in s. 55.10(1) and (2), s. 55.202, or s. 55.204(3),  
 2 and whose liens have not lapsed at the time of levy, at the  
 3 address listed in the judgment lien certificate, or, if  
 4 amended, in any amendment to the judgment lien certificate,  
 5 and to all secured creditors who have filed financing  
 6 statements as provided in part V of chapter 679 in the name of  
 7 the judgment debtor reflecting a security interest in property  
 8 of the kind to be sold at the execution sale at the address  
 9 listed in the financing statement, or, if amended, in any  
 10 amendment to the financing statement. Such notice shall be  
 11 made in the same manner as notice is made to any judgment  
 12 debtor under this section. When levying upon real property,  
 13 notice of such levy and execution sale and affidavit required  
 14 by s. 56.27(4) shall be made to the property owner of record  
 15 in the same manner as notice is made to any judgment debtor  
 16 pursuant to this section. When selling real or personal  
 17 property, the sale date shall not be earlier than 30 days  
 18 after the date of the first advertisement.

19 Section 5. Subsections (1), (2), and (4) of section  
 20 56.27, Florida Statutes, are amended to read:

21 56.27 Executions; payment of money collected.--

22 (1) All money received under executions shall be paid,  
 23 in the order prescribed, to the following: the sheriff, for  
 24 costs; the levying creditor in the amount of \$500 as  
 25 liquidated expenses; and if the levy is upon real property,  
 26 the first priority lienholder under s. 55.10(1) and (2), ~~s.~~  
 27 ~~55.10;~~ and if the levy is upon personal property, the first  
 28 ~~priority lienholder under~~ s. 55.202, s. 55.204(3), or s.  
 29 55.208(2), as set forth in an affidavit required by subsection  
 30 (4), or his or her attorney, in satisfaction of the judgment  
 31 lien, if ~~provided that~~ the judgment lien has not lapsed at the

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1 time of the levy. The receipt of the attorney shall be a  
 2 release of the officer paying the money to him or her. ~~If~~ ~~when~~  
 3 the name of more than one attorney appears in the court file,  
 4 the money shall be paid to the attorney who originally  
 5 commenced the action or who made the original defense unless  
 6 the file shows that another attorney has been substituted.

7 (2) ~~If~~ ~~when~~ property sold under execution brings more  
 8 than the amount needed to satisfy the provisions of subsection  
 9 (1), the surplus shall be paid in the order of priority to any  
 10 judgment lienholders whose judgment liens have not lapsed.  
 11 Priority of liens on personal property shall be based on the  
 12 effective date of the judgment lien acquired under s. 55.202,  
 13 s. 55.204(3), or s. 55.208(2), as set forth in an affidavit  
 14 required under subsection (4). Priority of liens on real  
 15 property shall be based on the effective date of the judgment  
 16 lien acquired under s. 55.10(1) and (2), as set forth in an  
 17 affidavit required under subsection (4). If there is a surplus  
 18 after all valid judgment liens and execution liens have been  
 19 satisfied, the surplus must be paid to the defendant.

20 (4) Before the date of the first publication or  
 21 posting of the notice of sale provided for under s. 56.21, at  
 22 the time of the levy request to the sheriff, the levying  
 23 creditor shall deliver to the sheriff an affidavit setting  
 24 forth all of the following as to the judgment debtor:

25 (a) For a personal property levy, an attestation by  
 26 ~~that~~ the levying creditor or the creditor's attorney of record  
 27 that he or she has reviewed the database or judgment lien  
 28 records established in accordance with ss. 55.201-55.209 and  
 29 that the information contained in the affidavit based on that  
 30 review is true and correct. For real property levy in  
 31 accordance with s. 55.10(1) and (2), an attestation by the

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1 levying creditor or his or her attorney of record that he or  
 2 she has reviewed the records of the clerk of court of the  
 3 county where the property is situated, or that he or she has  
 4 performed a title search, and that the information contained  
 5 in the affidavit based on that review or title search is true  
 6 and correct.†

7           (b) The information required under s. 55.203(1) and  
 8 (2) for each judgment lien certificate indexed under the name  
 9 of the judgment debtor as to each judgment creditor; the file  
 10 number assigned to the record of the original and, if any, the  
 11 second judgment lien; and the date of filing for each judgment  
 12 lien certificate under s. 55.202 or s. 55.204(3). For real  
 13 property, the information contained in the certified copy of  
 14 recordation of lien pursuant to s. 55.10(1) and (2) for each  
 15 lien recorded on real property.†~~and~~

16           (c) A statement that the levying creditor either does  
 17 not have any other levy in process or, if another levy is in  
 18 process, the levying creditor believes in good faith that the  
 19 total value of the property under execution does not exceed  
 20 the amount of outstanding judgments.

21           Section 6. Paragraph (a) of subsection (8) of section  
 22 741.30, Florida Statutes, is amended to read:

23           741.30 Domestic violence; injunction; powers and  
 24 duties of court and clerk; petition; notice and hearing;  
 25 temporary injunction; issuance of injunction; statewide  
 26 verification system; enforcement.--

27           (8)(a)1. The clerk of the court shall furnish a copy  
 28 of the petition, financial affidavit, Uniform Child Custody  
 29 Jurisdiction and Enforcement Act affidavit, if any, notice of  
 30 hearing, and temporary injunction, if any, to the sheriff or a  
 31 law enforcement agency of the county where the respondent

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1 resides or can be found, who shall serve it upon the  
2 respondent as soon thereafter as possible on any day of the  
3 week and at any time of the day or night. When requested by  
4 the sheriff, the clerk of court may transmit a facsimile copy  
5 of an injunction that has been certified by the clerk of  
6 court, and this facsimile copy may be served in the same  
7 manner as a certified copy. Upon receiving a facsimile copy,  
8 the sheriff must verify receipt with the sender before  
9 attempting to serve it upon the respondent. In addition, if  
10 the sheriff is in possession of an injunction for protection  
11 that has been certified by the clerk of court, the sheriff may  
12 transmit a facsimile copy of that injunction to a law  
13 enforcement officer who shall serve it in the same manner as a  
14 certified copy. The clerk of the court shall be responsible  
15 for furnishing to the sheriff such information on the  
16 respondent's physical description and location as is required  
17 by the department to comply with the verification procedures  
18 set forth in this section. Notwithstanding any other provision  
19 of law to the contrary, the chief judge of each circuit, in  
20 consultation with the appropriate sheriff, may authorize a law  
21 enforcement agency within the jurisdiction to effect service.  
22 A law enforcement agency serving injunctions pursuant to this  
23 section shall use service and verification procedures  
24 consistent with those of the sheriff.

25         2. When an injunction is issued, if the petitioner  
26 requests the assistance of a law enforcement agency, the court  
27 may order that an officer from the appropriate law enforcement  
28 agency accompany the petitioner and assist in placing the  
29 petitioner in possession of the dwelling or residence, or  
30 otherwise assist in the execution or service of the  
31 injunction. A law enforcement officer shall accept a copy of

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1 an injunction for protection against domestic violence,  
 2 certified by the clerk of the court, from the petitioner and  
 3 immediately serve it upon a respondent who has been located  
 4 but not yet served.

5           3. All orders issued, changed, continued, extended, or  
 6 vacated subsequent to the original service of documents  
 7 enumerated under subparagraph 1., shall be certified by the  
 8 clerk of the court and delivered to the parties at the time of  
 9 the entry of the order. The parties may acknowledge receipt  
 10 of such order in writing on the face of the original order.  
 11 In the event a party fails or refuses to acknowledge the  
 12 receipt of a certified copy of an order, the clerk shall note  
 13 on the original order that service was effected. If delivery  
 14 at the hearing is not possible, the clerk shall mail certified  
 15 copies of the order to the parties at the last known address  
 16 of each party. Service by mail is complete upon mailing.  
 17 When an order is served pursuant to this subsection, the clerk  
 18 shall prepare a written certification to be placed in the  
 19 court file specifying the time, date, and method of service  
 20 and shall notify the sheriff.

21  
 22 If the respondent has been served previously with the  
 23 temporary injunction and has failed to appear at the initial  
 24 hearing on the temporary injunction, any subsequent petition  
 25 for injunction seeking an extension of time may be served on  
 26 the respondent by the clerk of the court by certified mail in  
 27 lieu of personal service by a law enforcement officer.

28           Section 7. Paragraph (a) of subsection (8) of section  
 29 784.046, Florida Statutes, is amended to read:

30           784.046 Action by victim of repeat violence, sexual  
 31 violence, or dating violence for protective injunction; powers

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1 and duties of court and clerk of court; filing and form of  
2 petition; notice and hearing; temporary injunction; issuance;  
3 statewide verification system; enforcement.--

4 (8)(a)1. The clerk of the court shall furnish a copy  
5 of the petition, notice of hearing, and temporary injunction,  
6 if any, to the sheriff or a law enforcement agency of the  
7 county where the respondent resides or can be found, who shall  
8 serve it upon the respondent as soon thereafter as possible on  
9 any day of the week and at any time of the day or night. When  
10 requested by the sheriff, the clerk of court may transmit a  
11 facsimile copy of an injunction that has been certified by the  
12 clerk of court, and this facsimile copy may be served in the  
13 same manner as a certified copy. Upon receiving a facsimile  
14 copy, the sheriff must verify receipt with the sender before  
15 attempting to serve it upon the respondent. In addition, if  
16 the sheriff is in possession of an injunction for protection  
17 that has been certified by the clerk of court, the sheriff may  
18 transmit a facsimile copy of that injunction to a law  
19 enforcement officer who shall serve it in the same manner as a  
20 certified copy. The clerk of the court shall be responsible  
21 for furnishing to the sheriff such information on the  
22 respondent's physical description and location as is required  
23 by the department to comply with the verification procedures  
24 set forth in this section. Notwithstanding any other provision  
25 of law to the contrary, the chief judge of each circuit, in  
26 consultation with the appropriate sheriff, may authorize a law  
27 enforcement agency within the chief judge's jurisdiction to  
28 effect this type of service and to receive a portion of the  
29 service fee. No person shall be authorized or permitted to  
30 serve or execute an injunction issued under this section  
31 unless the person is a law enforcement officer as defined in



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1 chapter 943.

2           2. When an injunction is issued, if the petitioner  
3 requests the assistance of a law enforcement agency, the court  
4 may order that an officer from the appropriate law enforcement  
5 agency accompany the petitioner and assist in the execution or  
6 service of the injunction. A law enforcement officer shall  
7 accept a copy of an injunction for protection against repeat  
8 violence, sexual violence, or dating violence, certified by  
9 the clerk of the court, from the petitioner and immediately  
10 serve it upon a respondent who has been located but not yet  
11 served.

12  
13 (Redesignate subsequent sections.)

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16 ===== T I T L E   A M E N D M E N T =====

17 And the title is amended as follows:

18           On page 1, line 6, after the semicolon,

19  
20 insert:

21           amending s. 48.021, F.S.; providing that  
22           criminal witness subpoenas and criminal  
23           summonses may be served by a special process  
24           server appointed by the local sheriff or by a  
25           certified process server; amending s. 56.041,  
26           F.S.; providing that all unsatisfied executions  
27           in the possession of the sheriff docketed  
28           before October 1, 2001, may be returned to the  
29           issuing court; amending s. 56.21, F.S.;  
30           requiring the submission of an affidavit before  
31           levying a judgment upon real property;

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1 requiring the sheriff to furnish to the  
2 judgment debtor or the debtor's attorney of  
3 record a copy of the notice of sale, notice of  
4 levy, and affidavit within a specified period  
5 before execution of a sale or levy; amending s.  
6 56.27, F.S.; requiring that priority of liens  
7 on real property be based on the effective date  
8 of the judgment lien; requiring a levying  
9 creditor to deliver to the sheriff at the time  
10 of the levy request an affidavit setting forth  
11 certain information and attestations; amending  
12 ss. 741.30 and 784.046, F.S., relating to  
13 service of process in cases of domestic  
14 violence or sexual abuse; authorizing clerks of  
15 court to transmit facsimile copies of  
16 previously certified injunctions to sheriffs  
17 upon request; requiring sheriffs to verify  
18 receipt of facsimile copies of injunctions with  
19 clerks of court before attempting service;  
20 authorizing law enforcement officers to serve  
21 facsimile copies of injunctions in the same  
22 manner as certified copies;

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