

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Criminal Justice Committee

BILL: CS/CS/SB 1712

INTRODUCER: Criminal Justice Committee, Judiciary Committee, and Senator Crist

SUBJECT: Service of Process

DATE: April 10, 2007 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Merlin</u>	<u>Maclure</u>	<u>JU</u>	<u>Fav/CS</u>
2.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
3.	_____	_____	<u>JA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill increases certain fees charged by a sheriff in connection with docketing and service of process in civil cases to \$40 from \$20. The State of Florida or its agencies are exempted from the increase in fees. The bill also deletes the provision of law that prohibits additional fees to be charged by the sheriff for successive attempts at service,¹ thereby allowing such fees to be charged. In addition, the bill:

- permits special process servers and certified process servers to serve criminal witness subpoenas and criminal summonses;
- permits sheriffs to purge unserved writs that have been on a docket prior to October 1, 2001;
- requires a creditor to identify on an affidavit provided to a sheriff the liens recorded on real property subject to an execution sale;
- clarifies that the priority of judgment liens on real property is based on the date the lien was acquired; and
- permits sheriffs to serve facsimile copies of protective injunctions instead of a certified copy of a protective injunction.

¹ According to survey data from sheriffs' offices around the state, a process server makes an average of four attempts to perfect service. See Florida Senate, Committee on Justice Appropriations, *Sheriff Costs – Service of Process*, Interim Project Report 2006-144, at 5 (August 2005) [hereinafter "Interim Project Report"]. The bill refers to successive attempts at service of process as "alias" and "pluries" documents and summonses, which are the Latin terms for second and subsequent writs, respectively. *Id.* at 1.

This bill amends the following sections of the Florida Statutes: 30.231, 48.021, 56.041, 56.21, 56.27, 741.30, and 784.046.

II. Present Situation:

Overview

Service of process is the formal delivery of a writ, summons, or other legal process or notice.² As a general rule, “statutes governing service of process are to be strictly construed to insure that a defendant receives notice of the proceedings.”³ In addition, “[a]ll process [must] be served by the sheriff of the county where the person to be served is found, except initial nonenforceable process[, which may be served by a special or certified process server.]”⁴ Currently, Florida law “establishes three categories of persons by whom process may be served in Florida.”⁵ “These persons include a sheriff, a person appointed by the sheriff in the sheriff’s county (known as a special process server) and a certified process server appointed by the chief judge of the circuit court.”⁶ Any person authorized by the rules of procedure may also serve witness subpoenas.⁷ However, at present, there is no statutory authority or rule of procedure that allows anyone other than a sheriff or a sheriff’s deputy to serve criminal subpoenas.

Process Fees and Price Level Data

Under Florida law, county sheriffs of the state must charge fixed, nonrefundable fees for the service of process in civil actions as established by a statutory schedule.⁸ All fees collected under the statutory provisions for sheriffs’ fees for service of process are to be paid monthly into the county’s fine and forfeiture fund.⁹

In addition, a special process server may charge any reasonable fee for services, which can be more or less than the statutorily set fee for sheriffs.¹⁰ Section 30.231, F.S., provides that the sheriff must charge \$20 for service of summons or writs except for executions and \$20 for each witness to be served.¹¹ Executions are court orders directing a sheriff or other officer to enforce a judgment, usually by seizing and selling the judgment debtor’s property.¹² The sheriff’s office must keep files and index these orders. For executions, the sheriff must charge \$20 for docketing

² “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 (8th ed. 2004). Thus, service of process may trigger the constitutional issue of procedural due process, which requires notice and the opportunity to be heard. *See, e.g.,* Minda v. Ponce, 918 So. 2d 417, 422 (Fla. 2d DCA 2006) (citing Schnicke v. Schnicke, 533 So. 2d 337, 337-38 (Fla. 5th DCA 1988)).
³ *Abbate v. Provident Nat’l Bank*, 631 So. 2d 312, 313 (Fla. 5th DCA 1994) (citing *Henzel v. Noel*, 598 So. 2d 220, 221 (Fla. 5th DCA 1992)).

⁴ Section 48.021(1), F.S. “There are two types of service of process, enforceable and nonenforceable.” Interim Project Report, *supra* note 1, at 1. “Enforceable service of process involves a court order requiring the sheriff to take action (i.e., eviction, seizure of property).” *Id.* On the other hand, “[n]onenforceable service of process is designed to place another party on notice that he or she must take action (i.e., summons to appear, witness subpoena).” *Id.*

⁵ *Abbate*, 631 So. 2d at 313 (citing s. 48.021(1), F.S.).

⁶ *Id.*

⁷ 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.

⁸ Section 30.231, F.S.

⁹ Section 30.231(5), F.S.

¹⁰ *See* s. 48.021, F.S.; *see also* ss. 48.27 and 48.29, F.S.

¹¹ Section 30.231(1)(a) and (c), F.S.

¹² BLACK’S LAW DICTIONARY (8th ed. 2004).

and indexing each writ of execution, \$20 for advertisement of the sale of property under process, \$20 for each sale under process, and \$20 for each deed, bill of sale, or satisfaction of judgment.¹³ However, if an execution is unsatisfied, a sheriff may return the writ “to the court issuing the execution, 20 years after the date of issuance of final judgment upon which the execution was issued.”¹⁴

Execution Sales and Payment of Lienholders

Under existing law, “[n]otice of all sales under execution [must] be given by advertisement once each week for 4 successive weeks in a newspaper published in the county in which the sale is to take place.”¹⁵ When personal property is levied upon, notice of such levy and execution sale and a copy of an affidavit required by statute must be sent by the sheriff to all judgment creditors.¹⁶ When real property is levied upon, “notice of such levy and execution sale [must] be made to the property owner of record in the same manner as notice is made to any judgment debtor”¹⁷

Florida law also specifies the order of payment when money is received by execution in the following manner:

the sheriff, for costs; the levying creditor in the amount of \$500 as liquidated expenses; if the levy is upon real property, the first priority lienholder under s. 55.10; and if the levy is upon personal property, the first priority lienholder under s. 55.202, s. 55.204(3), or s. 55.208(2), as set forth in an affidavit required by subsection (4), or his or her attorney, in satisfaction of the judgment lien, provided that the judgment lien has not lapsed at the time of the levy.¹⁸

Further, Florida law specifies the order of payment for lienholders when personal property that is sold under execution results in a surplus. Under the law, “the surplus shall be paid in the order of priority to any judgment lienholders whose judgment liens have not lapsed.”¹⁹ Florida law also requires a levying creditor to deliver an affidavit to the sheriff with information about a judgment debtor and property lien before the first publication or posting of notice of the sale.²⁰

Service of Process in Domestic Violence and Sexual Violence Cases²¹

In domestic violence cases, a county clerk is required to furnish:

a copy of the petition, financial affidavit, Uniform Child Custody Jurisdiction and Enforcement Act affidavit, if any, notice of hearing, and temporary injunction, if any, to the sheriff or a law enforcement agency of the county where the respondent resides or can be found, who shall serve it upon the

¹³ Section 30.231(1)(d), F.S.

¹⁴ Section 56.041(2), F.S.

¹⁵ Section 56.21, F.S.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Section 56.27(1), F.S.

¹⁹ Section 56.27(2), F.S.

²⁰ Section 56.27(4), F.S.

²¹ Sections 741.30 and 784.046, F.S.

respondent as soon thereafter as possible on any day of the week and at any time of the day or night.²²

Further, the clerk of the court is responsible for furnishing the sheriff with information on the respondent's physical description and location.²³ In a similar fashion, the sexual violence statute requires the clerk to furnish a sheriff or county law enforcement agency with "a copy of the petition, notice of hearing, and temporary injunction, if any, to the sheriff [who must] serve it upon the respondent as soon thereafter as possible on any day of the week and at any time of the day or night."²⁴ The clerk must also furnish the sheriff information on the respondent's physical description and location.²⁵

Fee Adjustments for Inflation

Service of process was the subject of a Senate Interim Project Report by the Committee on Justice Appropriations in 2005. The report noted that the fees for service of process, summons, and executions had not been addressed by the Legislature since 1994.²⁶ The report considered the fees using, among other indicators, the Consumer Price Index (CPI), which measures the average change over time in prices paid for consumer goods and services. For example, after adjusting for inflation, \$20 in 1994 is worth \$28 today.²⁷ Survey data of county sheriffs' offices prepared by the Florida Senate Committee on Justice Appropriations indicates that sheriffs acting as process servers require an average of four attempts to serve a party for an average cost of \$37.²⁸

When service of process for a defendant is returned not effected, or returned improperly executed, the party issuing it is entitled to such additional process against the unserved party as is required to effect service.²⁹ Currently, Florida law prohibits sheriffs from charging additional fees for second or third attempts at service "when service was not effected on the original document in that county by that sheriff."³⁰

III. Effect of Proposed Changes:

This bill amends s. 30.231, F.S., to increase sheriff's fees to \$40 from \$20 for service of the following:

- Summons or writs except executions; and
- Witness subpoenas.

²² Section 741.30(8)(a)1., F.S.

²³ *Id.*

²⁴ Section 784.046(8)(a)1., F.S.

²⁵ *Id.*

²⁶ Interim Project Report, *supra* note 1, at 1. The "[b]asic data relating to increases in the consumer price index, gasoline prices, and wages for deputy sheriffs since 1994 indicate the probability that sheriff's costs to serve process have risen substantially." *Id.* at 6.

²⁷ Figure rounded up to the nearest whole dollar amount based on the CPI. Conversation with staff of the Office of Economic and Demographic Research, March 2007. When labor costs and benefits were taken into consideration, the cost increased from \$28 to \$31. *Id.*

²⁸ See Interim Project Report, *supra* note 1, at 5. The \$37 figure accounts for things such as increased fuel costs.

²⁹ See generally s. 30.231, F.S.

³⁰ Section 30.231(4), F.S.

In addition, the bill increases the fees to \$40 from \$20 to:

- Docket and index each writ of execution;
- Advertise sales under process;
- Conduct each sale under process; and
- Prepare each deed, bill of sale, or satisfaction of judgment.

The bill exempts the State of Florida or its agencies from the additional fees, when appearing as appellant or petitioner.

The bill also removes the provision that prohibits the sheriff from charging additional fees for subsequent attempts at service when it was not accomplished on the first attempt. The effect of the removal of this provision in the bill is that sheriffs will now be able to charge the party requesting service for each additional attempt at service, if the sheriff is unable to serve the requisite party.

The bill amends s. 48.021, F.S., allowing criminal witness subpoenas and criminal summonses to be served by special process servers and certified process servers in addition to a sheriff. Currently, there is no statute or rule that allows anyone other than a sheriff or deputy to serve criminal witness subpoenas and criminal summonses.

The bill amends s. 56.041, F.S., allowing sheriffs to purge unserved writs that have been on a docket prior to October 1, 2001.

The bill revises s. 56.21, F.S., requiring creditors attempting to levy on real property to supply an affidavit to the sheriff similar to the affidavit required for levying on personal property, and requiring notice of such affidavit to be made to the property owner.

Section 56.27, F.S., is revised to require the affidavit, used in connection with the levy on real property, to state that the creditor has reviewed the property and lien records for real property subject to the execution sale. The affidavit must also identify the liens recorded on the real property subject an execution sale. The bill further revises s. 56.27, F.S., clarifying that the priority of judgment liens on real property is based on the date the lien was acquired.

The bill amends ss. 741.30 and 784.046, F.S., allowing sheriffs to serve a facsimile copy of protective injunctions instead of a certified copy of a protective injunction in domestic violence and sexual violence cases. Thus, the bill may provide faster service of process in such cases.

The bill provides an effective date of July 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

This bill will increase the amount of money that is collected by sheriffs for carrying out service of process, thereby increasing county revenues. On March 24, the Revenue Estimating Conference concluded that this bill would result in a recurring local government revenue increase of approximately \$25.2 million for fiscal year 2007-08.

B. Private Sector Impact:

This bill may increase the cost to persons paying a sheriff or certified process server for service of process to \$40 from \$20. If certified process servers increase their fees as a result of this bill, they will see increased revenues because parties who are requesting their service will pay the higher costs. If, however, certified process servers do not match the fee increase, then sheriffs may see a decrease in requests for service of process, which may lead to a decrease in revenues.

C. Government Sector Impact:

The bill may increase the fees that are collected by sheriffs for carrying out service of process, which may increase county revenues.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
