

1 A bill to be entitled
2 An act relating to service of process; amending s. 30.231,
3 F.S.; increasing the fees charged by the sheriff in civil
4 cases for service of process; deleting prohibition on
5 additional fees for certain documents; amending s. 48.021,
6 F.S.; providing that criminal witness subpoenas and
7 criminal summonses may be served by a special process
8 server appointed by the local sheriff or by a certified
9 process server; amending s. 56.041, F.S.; providing that
10 all unsatisfied executions in the possession of the
11 sheriff docketed before October 1, 2001, may be returned
12 to the issuing court; amending s. 56.21, F.S.; requiring
13 the submission of an affidavit before levying a judgment
14 upon real property; requiring the sheriff to furnish to
15 the judgment debtor or the debtor's attorney of record a
16 copy of the notice of sale, notice of levy, and affidavit
17 within a specified period before execution of a sale or
18 levy; amending s. 56.27, F.S.; requiring that priority of
19 liens on real property be based on the effective date of
20 the judgment lien; requiring a levying creditor to deliver
21 to the sheriff at the time of the levy request an
22 affidavit setting forth certain information and
23 attestations; amending ss. 741.30 and 784.046, F.S.,
24 relating to service of process in cases of domestic
25 violence or sexual abuse; authorizing clerks of court to
26 transmit facsimile copies of previously certified
27 injunctions to sheriffs upon request; requiring sheriffs
28 to verify receipt of facsimile copies of injunctions with

29 | clerks of court before attempting service; authorizing law
 30 | enforcement officers to serve facsimile copies of
 31 | injunctions in the same manner as certified copies;
 32 | providing an appropriation; providing an effective date.

33 |

34 | Be It Enacted by the Legislature of the State of Florida:

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36 | Section 1. Subsections (1) and (4) of section 30.231,
 37 | Florida Statutes, are amended to read:

38 | 30.231 Sheriffs' fees for service of summons, subpoenas,
 39 | and executions.--

40 | (1) The sheriffs of all counties of the state in civil
 41 | cases shall charge fixed, nonrefundable fees for docketing and
 42 | service of process, according to the following schedule:

43 | (a) All summons or writs except executions: \$40 ~~\$20~~ for
 44 | each summons or writ to be served, except when more than one
 45 | summons or writ is issued at the same time out of the same cause
 46 | of action to be served upon one person or defendant at the same
 47 | time, in which case the sheriff shall be entitled to one fee.

48 | (b) All writs except executions requiring a levy or
 49 | seizure of property: \$50 in addition to the \$40 ~~\$20~~ fee as
 50 | stated in paragraph (a).

51 | (c) Witness subpoenas: \$40 ~~\$20~~ for each witness to be
 52 | served.

53 | (d) Executions:

54 | 1. Forty ~~Twenty~~ dollars for docketing and indexing each
 55 | writ of execution, regardless of the number of persons involved.

56 | 2. Fifty dollars for each levy.

57 a. A levy is considered made when any property or any
 58 portion of the property listed or unlisted in the instructions
 59 for levy is seized, or upon demand of the sheriff the writ is
 60 satisfied by the defendant in lieu of seizure. Seizure requires
 61 that the sheriff take actual possession, if practicable, or,
 62 alternatively, constructive possession of the property by order
 63 of the court.

64 b. When the instructions are for levy upon real property,
 65 a levy fee is required for each parcel described in the
 66 instructions.

67 c. When the instructions are for levy based upon personal
 68 property, one fee is allowed, unless the property is seized at
 69 different locations, conditional upon all of the items being
 70 advertised collectively and the sale being held at a single
 71 location. However, if the property seized cannot be sold at one
 72 location during the same sale as advertised, but requires
 73 separate sales at different locations, the sheriff is then
 74 authorized to impose a levy fee for the property and sale at
 75 each location.

76 3. Forty ~~Twenty~~ dollars for advertisement of sale under
 77 process.

78 4. Forty ~~Twenty~~ dollars for each sale under process.

79 5. Forty ~~Twenty~~ dollars for each deed, bill of sale, or
 80 satisfaction of judgment.

81 (4) All fees collected under paragraphs (1)(a), (b), (c),
 82 and (d) shall be nonrefundable and shall be earned when each
 83 original request or service of process is made, ~~and no~~
 84 ~~additional fees shall be required for alias and pluries~~

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85 ~~documents when service was not effected on the original document~~
 86 ~~in that county by that sheriff.~~

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

89 48.021 Process; by whom served.--

90 (1) All process shall be served by the sheriff of the
 91 county where the person to be served is found, except that
 92 initial nonenforceable civil process, criminal witness
 93 subpoenas, and criminal summonses may be served by a special
 94 process server appointed by the sheriff as provided for in this
 95 section or by a certified process server as provided for in ss.
 96 48.25-48.31. Civil witness subpoenas may be served by any person
 97 authorized by rules of civil procedure.

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

100 56.041 Executions; collection and return.--

101 (2) All unsatisfied executions in the hands of the sheriff
 102 docketed before October 1, 2001, or 20 years after the date of
 103 issuance of final judgment upon which the execution was issued
 104 ~~may be returned, to the court issuing the execution, 20 years~~
 105 ~~after the date of issuance of final judgment upon which the~~
 106 ~~execution was issued.~~ Upon such return, the clerk of the court
 107 of issuance shall provide a receipt, to the sheriff submitting
 108 the return, acknowledging the return of the unsatisfied
 109 execution.

110 Section 4. Section 56.21, Florida Statutes, is amended to
 111 read:

112 56.21 Execution sales; notice.--Notice of all sales under

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113 execution shall be given by advertisement once each week for 4
114 successive weeks in a newspaper published in the county in which
115 the sale is to take place. The time of such notice may be
116 shortened in the discretion of the court from which the
117 execution issued, upon affidavit that the property to be sold is
118 subject to decay and will not sell for its full value if held
119 until date of sale. On or before the date of the first
120 publication or posting of the notice of sale, a copy of the
121 notice of sale shall be furnished by the sheriff by certified
122 mail to the attorney of record of the judgment debtor, or to the
123 judgment debtor at the judgment debtor's last known address if
124 the judgment debtor does not have an attorney of record. Such
125 copy of the notice of sale shall be mailed even though a default
126 judgment was entered. When levying upon real or personal
127 property, a notice of such levy and execution sale and a copy of
128 the affidavit required by s. 56.27(4) shall be sent by the
129 sheriff to the attorneys of record of all judgment creditors, or
130 to all judgment creditors who do not have an attorney of record,
131 who have acquired a judgment lien as provided in s. 55.10(1) and
132 (2), s. 55.202, or s. 55.204(3), and whose liens have not lapsed
133 at the time of levy, at the address listed in the judgment lien
134 certificate, or, if amended, in any amendment to the judgment
135 lien certificate, and to all secured creditors who have filed
136 financing statements as provided in part V of chapter 679 in the
137 name of the judgment debtor reflecting a security interest in
138 property of the kind to be sold at the execution sale at the
139 address listed in the financing statement, or, if amended, in
140 any amendment to the financing statement. Such notice shall be

141 made in the same manner as notice is made to any judgment debtor
 142 under this section. When levying upon real property, notice of
 143 such levy and execution sale and affidavit required by s.
 144 56.27(4) shall be made to the property owner of record in the
 145 same manner as notice is made to any judgment debtor pursuant to
 146 this section. When selling real or personal property, the sale
 147 date shall not be earlier than 30 days after the date of the
 148 first advertisement.

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

151 56.27 Executions; payment of money collected.--

152 (1) All money received under executions shall be paid, in
 153 the order prescribed, to the following: the sheriff, for costs;
 154 the levying creditor in the amount of \$500 as liquidated
 155 expenses; and ~~if the levy is upon real property, the first~~
 156 ~~priority lienholder under s. 55.10(1) and (2), 55.10; and if the~~
 157 ~~levy is upon personal property, the first priority lienholder~~
 158 ~~under~~ s. 55.202, s. 55.204(3), or s. 55.208(2), as set forth in
 159 an affidavit required by subsection (4), or his or her attorney,
 160 in satisfaction of the judgment lien, if ~~provided that~~ the
 161 judgment lien has not lapsed at the time of the levy. The
 162 receipt of the attorney shall be a release of the officer paying
 163 the money to him or her. If ~~When~~ the name of more than one
 164 attorney appears in the court file, the money shall be paid to
 165 the attorney who originally commenced the action or who made the
 166 original defense unless the file shows that another attorney has
 167 been substituted.

168 (2) If ~~When~~ property sold under execution brings more than

169 the amount needed to satisfy the provisions of subsection (1),
 170 the surplus shall be paid in the order of priority to any
 171 judgment lienholders whose judgment liens have not lapsed.
 172 Priority of liens on personal property shall be based on the
 173 effective date of the judgment lien acquired under s. 55.202, s.
 174 55.204(3), or s. 55.208(2), as set forth in an affidavit
 175 required under subsection (4). Priority of liens on real
 176 property shall be based on the effective date of the judgment
 177 lien acquired under s. 55.10(1) and (2), as set forth in an
 178 affidavit required under subsection (4). If there is a surplus
 179 after all valid judgment liens and execution liens have been
 180 satisfied, the surplus must be paid to the defendant.

181 (4) Before the date of the first publication or posting of
 182 the notice of sale provided for under s. 56.21, at the time of
 183 the levy request to the sheriff, the levying creditor shall
 184 deliver to the sheriff an affidavit setting forth the following
 185 as to the judgment debtor:

186 (a) For a personal property levy, an attestation by that
 187 the levying creditor or the creditor's attorney of record that
 188 he or she has reviewed the database or judgment lien records
 189 established in accordance with ss. 55.201-55.209 and that the
 190 information contained in the affidavit based on that review is
 191 true and correct. For a real property levy in accordance with s.
 192 55.10(1) and (2), an attestation by the levying creditor or his
 193 or her attorney of record that he or she has reviewed the
 194 records of the clerk of court of the county where the property
 195 is situated, or that he or she has performed a title search, and
 196 that the information contained in the affidavit based on that

197 review or title search is true and correct.†

198 (b) The information required under s. 55.203(1) and (2)
 199 for each judgment lien certificate indexed under the name of the
 200 judgment debtor as to each judgment creditor; the file number
 201 assigned to the record of the original and, if any, the second
 202 judgment lien; and the date of filing for each judgment lien
 203 certificate under s. 55.202 or s. 55.204(3). For real property,
 204 the information contained in the certified copy of recordation
 205 of lien pursuant to s. 55.10(1) and (2) for each lien recorded
 206 on real property.†~~and~~

207 (c) A statement that the levying creditor either does not
 208 have any other levy in process or, if another levy is in
 209 process, the levying creditor believes in good faith that the
 210 total value of the property under execution does not exceed the
 211 amount of outstanding judgments.

212 Section 6. Paragraph (a) of subsection (8) of section
 213 741.30, Florida Statutes, is amended to read:

214 741.30 Domestic violence; injunction; powers and duties of
 215 court and clerk; petition; notice and hearing; temporary
 216 injunction; issuance of injunction; statewide verification
 217 system; enforcement.--

218 (8)(a)1. The clerk of the court shall furnish a copy of
 219 the petition, financial affidavit, Uniform Child Custody
 220 Jurisdiction and Enforcement Act affidavit, if any, notice of
 221 hearing, and temporary injunction, if any, to the sheriff or a
 222 law enforcement agency of the county where the respondent
 223 resides or can be found, who shall serve it upon the respondent
 224 as soon thereafter as possible on any day of the week and at any

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225 | time of the day or night. When requested by the sheriff, the
226 | clerk of court may transmit a facsimile copy of an injunction
227 | that has been certified by the clerk of court, and this
228 | facsimile copy may be served in the same manner as a certified
229 | copy. Upon receiving a facsimile copy, the sheriff must verify
230 | receipt with the sender before attempting to serve it upon the
231 | respondent. In addition, if the sheriff is in possession of an
232 | injunction for protection that has been certified by the clerk
233 | of court, the sheriff may transmit a facsimile copy of that
234 | injunction to a law enforcement officer who shall serve it in
235 | the same manner as a certified copy. The clerk of the court
236 | shall be responsible for furnishing to the sheriff such
237 | information on the respondent's physical description and
238 | location as is required by the department to comply with the
239 | verification procedures set forth in this section.
240 | Notwithstanding any other provision of law to the contrary, the
241 | chief judge of each circuit, in consultation with the
242 | appropriate sheriff, may authorize a law enforcement agency
243 | within the jurisdiction to effect service. A law enforcement
244 | agency serving injunctions pursuant to this section shall use
245 | service and verification procedures consistent with those of the
246 | sheriff.

247 | 2. When an injunction is issued, if the petitioner
248 | requests the assistance of a law enforcement agency, the court
249 | may order that an officer from the appropriate law enforcement
250 | agency accompany the petitioner and assist in placing the
251 | petitioner in possession of the dwelling or residence, or
252 | otherwise assist in the execution or service of the injunction.

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253 A law enforcement officer shall accept a copy of an injunction
254 for protection against domestic violence, certified by the clerk
255 of the court, from the petitioner and immediately serve it upon
256 a respondent who has been located but not yet served.

257 3. All orders issued, changed, continued, extended, or
258 vacated subsequent to the original service of documents
259 enumerated under subparagraph 1., shall be certified by the
260 clerk of the court and delivered to the parties at the time of
261 the entry of the order. The parties may acknowledge receipt of
262 such order in writing on the face of the original order. In the
263 event a party fails or refuses to acknowledge the receipt of a
264 certified copy of an order, the clerk shall note on the original
265 order that service was effected. If delivery at the hearing is
266 not possible, the clerk shall mail certified copies of the order
267 to the parties at the last known address of each party. Service
268 by mail is complete upon mailing. When an order is served
269 pursuant to this subsection, the clerk shall prepare a written
270 certification to be placed in the court file specifying the
271 time, date, and method of service and shall notify the sheriff.

272
273 If the respondent has been served previously with the temporary
274 injunction and has failed to appear at the initial hearing on
275 the temporary injunction, any subsequent petition for injunction
276 seeking an extension of time may be served on the respondent by
277 the clerk of the court by certified mail in lieu of personal
278 service by a law enforcement officer.

279 Section 7. Paragraph (a) of subsection (8) of section
280 784.046, Florida Statutes, is amended to read:

281 784.046 Action by victim of repeat violence, sexual
282 violence, or dating violence for protective injunction; powers
283 and duties of court and clerk of court; filing and form of
284 petition; notice and hearing; temporary injunction; issuance;
285 statewide verification system; enforcement.--

286 (8) (a)1. The clerk of the court shall furnish a copy of
287 the petition, notice of hearing, and temporary injunction, if
288 any, to the sheriff or a law enforcement agency of the county
289 where the respondent resides or can be found, who shall serve it
290 upon the respondent as soon thereafter as possible on any day of
291 the week and at any time of the day or night. When requested by
292 the sheriff, the clerk of court may transmit a facsimile copy of
293 an injunction that has been certified by the clerk of court, and
294 this facsimile copy may be served in the same manner as a
295 certified copy. Upon receiving a facsimile copy, the sheriff
296 must verify receipt with the sender before attempting to serve
297 it upon the respondent. In addition, if the sheriff is in
298 possession of an injunction for protection that has been
299 certified by the clerk of court, the sheriff may transmit a
300 facsimile copy of that injunction to a law enforcement officer
301 who shall serve it in the same manner as a certified copy. The
302 clerk of the court shall be responsible for furnishing to the
303 sheriff such information on the respondent's physical
304 description and location as is required by the department to
305 comply with the verification procedures set forth in this
306 section. Notwithstanding any other provision of law to the
307 contrary, the chief judge of each circuit, in consultation with
308 the appropriate sheriff, may authorize a law enforcement agency

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309 within the chief judge's jurisdiction to effect this type of
310 service and to receive a portion of the service fee. No person
311 shall be authorized or permitted to serve or execute an
312 injunction issued under this section unless the person is a law
313 enforcement officer as defined in chapter 943.

314 2. When an injunction is issued, if the petitioner
315 requests the assistance of a law enforcement agency, the court
316 may order that an officer from the appropriate law enforcement
317 agency accompany the petitioner and assist in the execution or
318 service of the injunction. A law enforcement officer shall
319 accept a copy of an injunction for protection against repeat
320 violence, sexual violence, or dating violence, certified by the
321 clerk of the court, from the petitioner and immediately serve it
322 upon a respondent who has been located but not yet served.

323 Section 8. There is hereby appropriated \$2,285,925 in
324 recurring funds from the Grants and Donations Trust Fund of the
325 Department of Revenue to implement the increased cost for
326 service of process in Title IV-D child support cases.

327 Section 9. This act shall take effect July 1, 2007.