

By the Committee on Judiciary; and Senator Oelrich

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1 A bill to be entitled

2 An act relating to service of process; amending s. 48.021,
3 F.S.; allowing criminal witness subpoenas and criminal
4 summonses to be served by a special process server
5 appointed by the local sheriff or by a certified process
6 server; amending s. 48.27, F.S.; providing for the
7 selection of authorized certified process servers to serve
8 such subpoenas and summonses to conform to changes made by
9 the act; amending s. 56.041, F.S.; providing that all
10 unsatisfied executions held by the sheriff which were
11 docketed before October 1, 2001, or held after a specified
12 period may be returned to the issuing court; amending s.
13 56.21, F.S.; requiring the submission of an affidavit
14 before levying a judgment upon real property; requiring
15 the sheriff to furnish to the judgment debtor or the
16 debtor's attorney of record a copy of the notice of sale,
17 notice of levy, and affidavit within a specified period
18 before execution of a sale or levy; amending s. 56.27,
19 F.S.; requiring that priority of liens on real property be
20 based on the effective date of the judgment lien for a
21 specified purpose; requiring a levying creditor to deliver
22 the affidavit to the sheriff at the time of the levy
23 request setting forth certain information and
24 attestations; amending ss. 741.30 and 784.046, F.S.,
25 relating to service of process in cases of domestic
26 violence or sexual abuse; authorizing clerks of court to
27 transmit facsimile copies of previously certified
28 injunctions to sheriffs upon request; requiring sheriffs
29 to verify receipt of facsimile copies of injunctions with

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30 clerks of court before attempting service; authorizing law
31 enforcement officers to serve facsimile copies of
32 injunctions in the same manner as certified copies;
33 providing an effective date.
34

35 Be It Enacted by the Legislature of the State of Florida:
36

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

39 48.021 Process; by whom served.--

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

48 Section 2. Subsection (2) of section 48.27, Florida
49 Statutes, is amended to read:

50 48.27 Certified process servers.--

51 (2) (a) The addition of a person's name to the list
52 authorizes him or her to serve initial nonenforceable civil
53 process on a person found within the circuit where the process
54 server is certified when a civil action has been filed against
55 such person in the circuit court or in a county court in the
56 state. Upon filing an action in circuit or county court, a person
57 may select from the list for the circuit where the process is to
58 be served one or more certified process servers to serve initial

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59 nonenforceable civil process.

60 (b) The addition of a person's name to the list authorizes
61 him or her to serve criminal witness subpoenas and criminal
62 summonses on a person found within the circuit where the process
63 server is certified. The state in any proceeding or investigation
64 by a grand jury or any party in a criminal action, prosecution,
65 or proceeding may select from the list for the circuit where the
66 process is to be served one or more certified process servers to
67 serve the subpoena or summons.

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

70 56.041 Executions; collection and return.--

71 (2) All unsatisfied executions in the hands of the sheriff
72 docketed before October 1, 2001, or 20 years after the date of
73 issuance of final judgment upon which the execution was issued
74 ~~may be returned, to the court issuing the execution, 20 years~~
75 ~~after the date of issuance of final judgment upon which the~~
76 ~~execution was issued.~~ Upon such return, the clerk of the court of
77 issuance shall provide a receipt, to the sheriff submitting the
78 return, acknowledging the return of the unsatisfied execution.

79 Section 4. Section 56.21, Florida Statutes, is amended to
80 read:

81 56.21 Execution sales; notice.--Notice of all sales under
82 execution shall be given by advertisement once each week for 4
83 successive weeks in a newspaper published in the county in which
84 the sale is to take place. The time of such notice may be
85 shortened in the discretion of the court from which the execution
86 issued, upon affidavit that the property to be sold is subject to
87 decay and will not sell for its full value if held until date of

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88 sale. On or before the date of the first publication or posting
89 of the notice of sale, a copy of the notice of sale shall be
90 furnished by the sheriff by certified mail to the attorney of
91 record of the judgment debtor, or to the judgment debtor at the
92 judgment debtor's last known address if the judgment debtor does
93 not have an attorney of record. Such copy of the notice of sale
94 shall be mailed even though a default judgment was entered. When
95 levying upon real or personal property, a notice of such levy and
96 execution sale and a copy of the affidavit required by s.
97 56.27(4) shall be sent by the sheriff to the attorneys of record
98 of all judgment creditors, or to all judgment creditors who do
99 not have an attorney of record, who have acquired a judgment lien
100 as provided in s. 55.10(1) and (2), s. 55.202, or s. 55.204(3),
101 and whose liens have not lapsed at the time of levy, at the
102 address listed in the judgment lien certificate, or, if amended,
103 in any amendment to the judgment lien certificate, and to all
104 secured creditors who have filed financing statements as provided
105 in part V of chapter 679 in the name of the judgment debtor
106 reflecting a security interest in property of the kind to be sold
107 at the execution sale at the address listed in the financing
108 statement, or, if amended, in any amendment to the financing
109 statement. Such notice shall be made in the same manner as notice
110 is made to any judgment debtor under this section. When levying
111 upon real property, notice of such levy and execution sale and
112 affidavit required by s. 56.27(4) shall be made to the property
113 owner of record in the same manner as notice is made to any
114 judgment debtor pursuant to this section. When selling real or
115 personal property, the sale date shall not be earlier than 30
116 days after the date of the first advertisement.

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

119 56.27 Executions; payment of money collected.--

120 (1) All money received under executions shall be paid, in
121 the order prescribed, to the following: the sheriff, for costs;
122 the levying creditor in the amount of \$500 as liquidated
123 expenses; and if the levy is upon real property, the first
124 priority lienholder under s. 55.10(1) and (2), s. 55.10; and if
125 the levy is upon personal property, the first priority lienholder
126 under s. 55.202, s. 55.204(3), or s. 55.208(2), as set forth in
127 an affidavit required by subsection (4), or his or her attorney,
128 in satisfaction of the judgment lien, ~~if provided that~~ the
129 judgment lien has not lapsed at the time of the levy. The receipt
130 of the attorney shall be a release of the officer paying the
131 money to him or her. ~~If when~~ the name of more than one attorney
132 appears in the court file, the money shall be paid to the
133 attorney who originally commenced the action or who made the
134 original defense unless the file shows that another attorney has
135 been substituted.

136 (2) If when property sold under execution brings more than
137 the amount needed to satisfy the provisions of subsection (1),
138 the surplus shall be paid in the order of priority to any
139 judgment lienholders whose judgment liens have not lapsed. For
140 the purpose of the sheriff's distribution of the surplus to
141 lienholders under this subsection:

142 (a) Priority of liens on personal property shall be based
143 on the effective date of the judgment lien acquired under s.
144 55.202, s. 55.204(3), or s. 55.208(2), as set forth in an
145 affidavit required under subsection (4).

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146 (b) Priority of liens on real property shall be based on
147 the effective date of the judgment lien acquired under s.
148 55.10(1) and (2), as set forth in an affidavit required under
149 subsection (4).

150
151 If there is a surplus after all valid judgment liens and
152 execution liens have been satisfied, the surplus must be paid to
153 the owner of the property sold ~~defendant~~.

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

159 (a) For a personal property levy, an attestation by that
160 the levying creditor or the creditor's attorney of record that he
161 or she has reviewed the database or judgment lien records
162 established in accordance with ss. 55.201-55.209 and that the
163 information contained in the affidavit based on that review is
164 true and correct. For a real property levy in accordance with s.
165 55.10(1) and (2), an attestation by the levying creditor or his
166 or her attorney of record that he or she has reviewed the records
167 of the clerk of court of the county where the property is
168 situated, or that he or she has performed a title search, and
169 that the information contained in the affidavit based on that
170 review or title search is true and correct.†

171 (b) The information required under s. 55.203(1) and (2) for
172 each judgment lien certificate indexed under the name of the
173 judgment debtor as to each judgment creditor; the file number
174 assigned to the record of the original and, if any, the second

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175 judgment lien; and the date of filing for each judgment lien
176 certificate under s. 55.202 or s. 55.204(3). For real property,
177 the information contained in the certified copy of recordation of
178 lien pursuant to s. 55.10(1) and (2) for each lien recorded on
179 real property. ~~and~~

180 (c) A statement that the levying creditor either does not
181 have any other levy in process or, if another levy is in process,
182 the levying creditor believes in good faith that the total value
183 of the property under execution does not exceed the amount of
184 outstanding judgments.

185 Section 6. Paragraph (a) of subsection (8) of section
186 741.30, Florida Statutes, is amended to read:

187 741.30 Domestic violence; injunction; powers and duties of
188 court and clerk; petition; notice and hearing; temporary
189 injunction; issuance of injunction; statewide verification
190 system; enforcement.--

191 (8)(a)1. The clerk of the court shall furnish a copy of the
192 petition, financial affidavit, Uniform Child Custody Jurisdiction
193 and Enforcement Act affidavit, if any, notice of hearing, and
194 temporary injunction, if any, to the sheriff or a law enforcement
195 agency of the county where the respondent resides or can be
196 found, who shall serve it upon the respondent as soon thereafter
197 as possible on any day of the week and at any time of the day or
198 night. When requested by the sheriff, the clerk of court may
199 transmit a facsimile copy of an injunction that has been
200 certified by the clerk of court, and this facsimile copy may be
201 served in the same manner as a certified copy. Upon receiving
202 such a facsimile copy, the sheriff must verify receipt with the
203 sender before attempting to serve it upon the respondent. In

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204 addition, if the sheriff is in possession of an injunction for
205 protection that has been certified by the clerk of court, the
206 sheriff may transmit a facsimile copy of that injunction to a law
207 enforcement officer who shall serve it in the same manner as a
208 certified copy. The clerk of the court shall be responsible for
209 furnishing to the sheriff such information on the respondent's
210 physical description and location as is required by the
211 department to comply with the verification procedures set forth
212 in this section. Notwithstanding any other provision of law to
213 the contrary, the chief judge of each circuit, in consultation
214 with the appropriate sheriff, may authorize a law enforcement
215 agency within the jurisdiction to effect service. A law
216 enforcement agency serving injunctions pursuant to this section
217 shall use service and verification procedures consistent with
218 those of the sheriff.

219 2. When an injunction is issued, if the petitioner requests
220 the assistance of a law enforcement agency, the court may order
221 that an officer from the appropriate law enforcement agency
222 accompany the petitioner and assist in placing the petitioner in
223 possession of the dwelling or residence, or otherwise assist in
224 the execution or service of the injunction. A law enforcement
225 officer shall accept a copy of an injunction for protection
226 against domestic violence, certified by the clerk of the court,
227 from the petitioner and immediately serve it upon a respondent
228 who has been located but not yet served.

229 3. All orders issued, changed, continued, extended, or
230 vacated subsequent to the original service of documents
231 enumerated under subparagraph 1., shall be certified by the clerk
232 of the court and delivered to the parties at the time of the

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233 entry of the order. The parties may acknowledge receipt of such
234 order in writing on the face of the original order. In the event
235 a party fails or refuses to acknowledge the receipt of a
236 certified copy of an order, the clerk shall note on the original
237 order that service was effected. If delivery at the hearing is
238 not possible, the clerk shall mail certified copies of the order
239 to the parties at the last known address of each party. Service
240 by mail is complete upon mailing. When an order is served
241 pursuant to this subsection, the clerk shall prepare a written
242 certification to be placed in the court file specifying the time,
243 date, and method of service and shall notify the sheriff.

244
245 If the respondent has been served previously with the temporary
246 injunction and has failed to appear at the initial hearing on the
247 temporary injunction, any subsequent petition for injunction
248 seeking an extension of time may be served on the respondent by
249 the clerk of the court by certified mail in lieu of personal
250 service by a law enforcement officer.

251 Section 7. Paragraph (a) of subsection (8) of section
252 784.046, Florida Statutes, is amended to read:

253 784.046 Action by victim of repeat violence, sexual
254 violence, or dating violence for protective injunction; powers
255 and duties of court and clerk of court; filing and form of
256 petition; notice and hearing; temporary injunction; issuance;
257 statewide verification system; enforcement.--

258 (8) (a) 1. The clerk of the court shall furnish a copy of the
259 petition, notice of hearing, and temporary injunction, if any, to
260 the sheriff or a law enforcement agency of the county where the
261 respondent resides or can be found, who shall serve it upon the

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262 respondent as soon thereafter as possible on any day of the week
263 and at any time of the day or night. When requested by the
264 sheriff, the clerk of court may transmit a facsimile copy of an
265 injunction that has been certified by the clerk of court, and
266 this facsimile copy may be served in the same manner as a
267 certified copy. Upon receiving such a facsimile copy, the sheriff
268 must verify receipt with the sender before attempting to serve it
269 upon the respondent. In addition, if the sheriff is in possession
270 of an injunction for protection that has been certified by the
271 clerk of court, the sheriff may transmit a facsimile copy of that
272 injunction to a law enforcement officer who shall serve it in the
273 same manner as a certified copy. The clerk of the court shall be
274 responsible for furnishing to the sheriff such information on the
275 respondent's physical description and location as is required by
276 the department to comply with the verification procedures set
277 forth in this section. Notwithstanding any other provision of law
278 to the contrary, the chief judge of each circuit, in consultation
279 with the appropriate sheriff, may authorize a law enforcement
280 agency within the chief judge's jurisdiction to effect this type
281 of service and to receive a portion of the service fee. No person
282 shall be authorized or permitted to serve or execute an
283 injunction issued under this section unless the person is a law
284 enforcement officer as defined in chapter 943.

285 2. When an injunction is issued, if the petitioner requests
286 the assistance of a law enforcement agency, the court may order
287 that an officer from the appropriate law enforcement agency
288 accompany the petitioner and assist in the execution or service
289 of the injunction. A law enforcement officer shall accept a copy
290 of an injunction for protection against repeat violence, sexual

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291 | violence, or dating violence, certified by the clerk of the
292 | court, from the petitioner and immediately serve it upon a
293 | respondent who has been located but not yet served.

294 | Section 8. This act shall take effect October 1, 2008.