

By the Committees on Criminal Justice; Judiciary; and Senator
Oelrich

591-07898-08

20081730c2

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
16 lienholder or the debtor's or lienholder's attorney of
17 record a copy of the notice of sale, notice of levy, and
18 affidavit within a specified period before execution of a
19 sale or levy; amending s. 56.27, F.S.; requiring that
20 priority of liens on real property be based on the
21 effective date of the judgment lien for a specified
22 purpose, unless an affidavit discloses that the property
23 is subject to a recorded mortgage, financing statement,
24 tax warrant or other lien that is junior in priority to
25 the judgment lien; requiring a levying creditor to deliver
26 the affidavit to the sheriff at the time of the levy
27 request setting forth certain information and
28 attestations; amending ss. 741.30 and 784.046, F.S.,
29 relating to service of process in cases of domestic

591-07898-08

20081730c2

30 violence or sexual abuse; authorizing clerks of court to
31 transmit facsimile or electronic copies of previously
32 certified injunctions to sheriffs upon request; requiring
33 sheriffs to verify receipt of facsimile or electronic
34 copies of injunctions with clerks of court before
35 attempting service; authorizing law enforcement officers
36 to serve facsimile or electronic copies of injunctions in
37 the same manner as certified copies; providing an
38 effective date.

39
40 Be It Enacted by the Legislature of the State of Florida:

41
42 Section 1. Subsection (1) of section 48.021, Florida
43 Statutes, is amended to read:

44 48.021 Process; by whom served.--

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

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

55 48.27 Certified process servers.--

56 (2) (a) The addition of a person's name to the list
57 authorizes him or her to serve initial nonenforceable civil
58 process on a person found within the circuit where the process

591-07898-08

20081730c2

59 server is certified when a civil action has been filed against
60 such person in the circuit court or in a county court in the
61 state. Upon filing an action in circuit or county court, a person
62 may select from the list for the circuit where the process is to
63 be served one or more certified process servers to serve initial
64 nonenforceable civil process.

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

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

75 56.041 Executions; collection and return.--

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

84 Section 4. Section 56.21, Florida Statutes, is amended to
85 read:

86 56.21 Execution sales; notice.--Notice of all sales under
87 execution shall be given by advertisement once each week for 4

591-07898-08

20081730c2

88 successive weeks in a newspaper published in the county in which
89 the sale is to take place. The time of such notice may be
90 shortened in the discretion of the court from which the execution
91 issued, upon affidavit that the property to be sold is subject to
92 decay and will not sell for its full value if held until date of
93 sale. On or before the date of the first publication or posting
94 of the notice of sale, a copy of the notice of sale shall be
95 furnished by the sheriff by certified mail to the attorney of
96 record of the judgment debtor, or to the judgment debtor at the
97 judgment debtor's last known address if the judgment debtor does
98 not have an attorney of record. Such copy of the notice of sale
99 shall be mailed even though a default judgment was entered. When
100 levying upon real or personal property, a notice of such levy and
101 execution sale and a copy of the affidavit required by s.
102 56.27(4) shall be sent by the sheriff to the attorneys of record
103 of all judgment creditors and other lienholders, or to all
104 judgment creditors and other lienholders who do not have an
105 attorney of record, who have acquired a ~~judgment~~ lien as provided
106 in s. 55.10(1) and (2), s. 55.202, ~~or~~ s. 55.204(3), or s. 695.01,
107 and whose liens have not lapsed at the time of levy, at the
108 address listed in the judgment lien certificate or other recorded
109 liens, or, if amended, in any amendment thereto ~~to the judgment~~
110 ~~lien certificate~~, and to all secured creditors who have filed
111 financing statements as provided in part V of chapter 679 in the
112 name of the judgment debtor reflecting a security interest in
113 property of the kind to be sold at the execution sale at the
114 address listed in the financing statement, or, if amended, in any
115 amendment to the financing statement. Such notice shall be made
116 in the same manner as notice is made to any judgment debtor under

591-07898-08

20081730c2

117 this section. When levying upon real property, notice of such
118 levy and execution sale and affidavit required by s. 56.27(4)
119 shall be made to the property owner of record in the same manner
120 as notice is made to any judgment debtor pursuant to this section
121 and shall be made to each person holding a mortgage or other lien
122 against the real property as disclosed by the affidavit. When

123 selling real or personal property, the sale date shall not be
124 earlier than 30 days after the date of the first advertisement.

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

127 56.27 Executions; payment of money collected.--

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

144 (2) (a) If when property sold under execution brings more
145 than the amount needed to satisfy the provisions of subsection

591-07898-08

20081730c2

146 (1), the surplus shall be paid in the order of priority to any
147 judgment lienholders whose judgment liens have not lapsed, unless
148 the affidavit required by subsection (4) discloses that the
149 property is also subject to any recorded mortgage, financing
150 statement, tax warrant or other lien, other than a judgment lien,
151 that is junior in priority to the levying creditor's judgment
152 lien. For the purpose of the sheriff's distribution of the
153 surplus to judgment lienholders under this paragraph, priority of
154 judgment liens on personal property shall be based on the
155 effective date of the judgment lien acquired under s. 55.202, s.
156 55.204(3), or s. 55.208(2), and priority of judgment liens on
157 real property shall be based on the effective date of the
158 judgment lien acquired under s. 55.10(1) and (2), as set forth in
159 an affidavit required under subsection (4). If there is a surplus
160 after all valid judgment liens and execution liens have been
161 satisfied under this paragraph, the surplus must be paid to the
162 owner of the property sold ~~defendant~~.

163 (b) If the affidavit required by subsection (4) discloses
164 that the property is also subject to any recorded mortgage,
165 financing statement, tax warrant or other lien, other than a
166 judgment lien, that is junior in priority to the levying
167 creditor's judgment lien, any surplus from the sale of the
168 property shall be paid over to the registry of the court from
169 which the execution issued for further proceedings to determine
170 the priority in which such surplus shall be distributed among
171 judgment lienholders, other lienholders, and the owner of the
172 property sold.

173 (4) Before the date of the first publication or posting of
174 the notice of sale provided for under s. 56.21, at the time of

591-07898-08

20081730c2

175 the levy request to the sheriff, the levying creditor shall
176 deliver to the sheriff an affidavit setting forth all of the
177 following as to the judgment debtor:

178 (a) For a personal property levy, an attestation by that
179 the levying creditor or the creditor's attorney of record that he
180 or she has reviewed the database or judgment lien records
181 established in accordance with ss. 55.201-55.209 and that the
182 information contained in the affidavit based on that review is
183 true and correct. For a real property levy in accordance with s.
184 55.10(1) and (2), an attestation by the levying creditor or his
185 or her attorney of record that he or she has reviewed the records
186 of the clerk of court of the county where the property is
187 situated, or that he or she has performed a title search, and
188 that the information contained in the affidavit, including a
189 disclosure of all judgment liens, mortgages, financing
190 statements, tax warrants and other liens against the real
191 property, based on that review or title search is true and
192 correct.~~;~~

193 (b) The information required under s. 55.203(1) and (2) for
194 each judgment lien certificate indexed under the name of the
195 judgment debtor as to each judgment creditor; the file number
196 assigned to the record of the original and, if any, the second
197 judgment lien; and the date of filing for each judgment lien
198 certificate under s. 55.202 or s. 55.204(3). For each judgment
199 lien recorded on real property, the information contained in the
200 certified copy of recordation of lien pursuant to s. 55.10(1) and
201 (2), and for each other lien recorded on real property, the name
202 and address of the lienholder as shown in the copy of the
203 recorded lien disclosed by the title search.~~;~~ ~~and~~

591-07898-08

20081730c2

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

209 Section 6. Paragraph (a) of subsection (8) of section
210 741.30, Florida Statutes, is amended to read:

211 741.30 Domestic violence; injunction; powers and duties of
212 court and clerk; petition; notice and hearing; temporary
213 injunction; issuance of injunction; statewide verification
214 system; enforcement.--

215 (8)(a)1. The clerk of the court shall furnish a copy of the
216 petition, financial affidavit, Uniform Child Custody Jurisdiction
217 and Enforcement Act affidavit, if any, notice of hearing, and
218 temporary injunction, if any, to the sheriff or a law enforcement
219 agency of the county where the respondent resides or can be
220 found, who shall serve it upon the respondent as soon thereafter
221 as possible on any day of the week and at any time of the day or
222 night. When requested by the sheriff, the clerk of court may
223 transmit a facsimile or electronic copy of an injunction that has
224 been certified by the clerk of court, and this facsimile or
225 electronic copy may be served in the same manner as a certified
226 copy. Upon receiving such a facsimile or electronic copy, the
227 sheriff must verify receipt with the sender before attempting to
228 serve it upon the respondent. In addition, if the sheriff is in
229 possession of an injunction for protection that has been
230 certified by the clerk of court, the sheriff may transmit a
231 facsimile or electronic copy of that injunction to a law
232 enforcement officer who shall serve it in the same manner as a

591-07898-08

20081730c2

233 certified copy. The clerk of the court shall be responsible for
234 furnishing to the sheriff such information on the respondent's
235 physical description and location as is required by the
236 department to comply with the verification procedures set forth
237 in this section. Notwithstanding any other provision of law to
238 the contrary, the chief judge of each circuit, in consultation
239 with the appropriate sheriff, may authorize a law enforcement
240 agency within the jurisdiction to effect service. A law
241 enforcement agency serving injunctions pursuant to this section
242 shall use service and verification procedures consistent with
243 those of the sheriff.

244 2. When an injunction is issued, if the petitioner requests
245 the assistance of a law enforcement agency, the court may order
246 that an officer from the appropriate law enforcement agency
247 accompany the petitioner and assist in placing the petitioner in
248 possession of the dwelling or residence, or otherwise assist in
249 the execution or service of the injunction. A law enforcement
250 officer shall accept a copy of an injunction for protection
251 against domestic violence, certified by the clerk of the court,
252 from the petitioner and immediately serve it upon a respondent
253 who has been located but not yet served.

254 3. All orders issued, changed, continued, extended, or
255 vacated subsequent to the original service of documents
256 enumerated under subparagraph 1., shall be certified by the clerk
257 of the court and delivered to the parties at the time of the
258 entry of the order. The parties may acknowledge receipt of such
259 order in writing on the face of the original order. In the event
260 a party fails or refuses to acknowledge the receipt of a
261 certified copy of an order, the clerk shall note on the original

591-07898-08

20081730c2

262 | order that service was effected. If delivery at the hearing is
263 | not possible, the clerk shall mail certified copies of the order
264 | to the parties at the last known address of each party. Service
265 | by mail is complete upon mailing. When an order is served
266 | pursuant to this subsection, the clerk shall prepare a written
267 | certification to be placed in the court file specifying the time,
268 | date, and method of service and shall notify the sheriff.

269

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

276 | Section 7. Paragraph (a) of subsection (8) of section
277 | 784.046, Florida Statutes, is amended to read:

278 | 784.046 Action by victim of repeat violence, sexual
279 | violence, or dating violence for protective injunction; powers
280 | and duties of court and clerk of court; filing and form of
281 | petition; notice and hearing; temporary injunction; issuance;
282 | statewide verification system; enforcement.--

283 | (8) (a) 1. The clerk of the court shall furnish a copy of the
284 | petition, notice of hearing, and temporary injunction, if any, to
285 | the sheriff or a law enforcement agency of the county where the
286 | respondent resides or can be found, who shall serve it upon the
287 | respondent as soon thereafter as possible on any day of the week
288 | and at any time of the day or night. When requested by the
289 | sheriff, the clerk of court may transmit a facsimile or
290 | electronic copy of an injunction that has been certified by the

591-07898-08

20081730c2

291 clerk of court, and this facsimile or electronic copy may be
292 served in the same manner as a certified copy. Upon receiving
293 such a facsimile or electronic copy, the sheriff must verify
294 receipt with the sender before attempting to serve it upon the
295 respondent. In addition, if the sheriff is in possession of an
296 injunction for protection that has been certified by the clerk of
297 court, the sheriff may transmit a facsimile or electronic copy of
298 that injunction to a law enforcement officer who shall serve it
299 in the same manner as a certified copy. The clerk of the court
300 shall be responsible for furnishing to the sheriff such
301 information on the respondent's physical description and location
302 as is required by the department to comply with the verification
303 procedures set forth in this section. Notwithstanding any other
304 provision of law to the contrary, the chief judge of each
305 circuit, in consultation with the appropriate sheriff, may
306 authorize a law enforcement agency within the chief judge's
307 jurisdiction to effect this type of service and to receive a
308 portion of the service fee. No person shall be authorized or
309 permitted to serve or execute an injunction issued under this
310 section unless the person is a law enforcement officer as defined
311 in chapter 943.

312 2. When an injunction is issued, if the petitioner requests
313 the assistance of a law enforcement agency, the court may order
314 that an officer from the appropriate law enforcement agency
315 accompany the petitioner and assist in the execution or service
316 of the injunction. A law enforcement officer shall accept a copy
317 of an injunction for protection against repeat violence, sexual
318 violence, or dating violence, certified by the clerk of the
319 court, from the petitioner and immediately serve it upon a

591-07898-08

20081730c2

320 | respondent who has been located but not yet served.

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