

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. 56.041, F.S.; providing that all
7 unsatisfied executions held by the sheriff that were
8 docketed before October 1, 2001, or held after a specified
9 period may be returned to the issuing court; amending s.
10 56.21, F.S.; requiring the submission of an affidavit
11 before levying a judgment upon real property; requiring
12 the sheriff to furnish to the judgment debtor or the
13 debtor's attorney of record a copy of the notice of sale,
14 notice of levy, and affidavit within a specified period
15 before execution of a sale or levy; amending s. 56.27,
16 F.S.; requiring that priority of liens on real property be
17 based on the effective date of the judgment lien;
18 requiring a levying creditor to deliver affidavit to the
19 sheriff at the time of the levy request setting forth
20 certain information and attestations; amending ss. 741.30
21 and 784.046, F.S., relating to service of process in cases
22 of domestic violence or sexual abuse; authorizing clerks
23 of court to transmit facsimile copies of previously
24 certified injunctions to sheriffs upon request; requiring
25 sheriffs to verify receipt of facsimile copies of
26 injunctions with clerks of court before attempting
27 service; authorizing law enforcement officers to serve

28 | facsimile copies of injunctions in the same manner as
 29 | certified copies; providing an effective date.

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

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

35 | 48.021 Process; by whom served.--

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

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

46 | 56.041 Executions; collection and return.--

47 | (2) All unsatisfied executions in the hands of the sheriff
 48 | docketed before October 1, 2001, or 20 years after the date of
 49 | issuance of final judgment upon which the execution was issued
 50 | may be returned~~7~~ to the court issuing the execution~~7~~, ~~20 years~~
 51 | ~~after the date of issuance of final judgment upon which the~~
 52 | ~~execution was issued~~. Upon such return, the clerk of the court
 53 | of issuance shall provide a receipt~~7~~ to the sheriff submitting
 54 | the return~~7~~, acknowledging the return of the unsatisfied
 55 | execution.

56 Section 3. Section 56.21, Florida Statutes, is amended to
57 read:

58 56.21 Execution sales; notice.--Notice of all sales under
59 execution shall be given by advertisement once each week for 4
60 successive weeks in a newspaper published in the county in which
61 the sale is to take place. The time of such notice may be
62 shortened in the discretion of the court from which the
63 execution issued, upon affidavit that the property to be sold is
64 subject to decay and will not sell for its full value if held
65 until date of sale. On or before the date of the first
66 publication or posting of the notice of sale, a copy of the
67 notice of sale shall be furnished by the sheriff by certified
68 mail to the attorney of record of the judgment debtor, or to the
69 judgment debtor at the judgment debtor's last known address if
70 the judgment debtor does not have an attorney of record. Such
71 copy of the notice of sale shall be mailed even though a default
72 judgment was entered. When levying upon real or personal
73 property, a notice of such levy and execution sale and a copy of
74 the affidavit required by s. 56.27(4) shall be sent by the
75 sheriff to the attorneys of record of all judgment creditors, or
76 to all judgment creditors who do not have an attorney of record,
77 who have acquired a judgment lien as provided in s. 55.10(1) and
78 (2), s. 55.202, or s. 55.204(3), and whose liens have not lapsed
79 at the time of levy, at the address listed in the judgment lien
80 certificate, or, if amended, in any amendment to the judgment
81 lien certificate, and to all secured creditors who have filed
82 financing statements as provided in part V of chapter 679 in the
83 name of the judgment debtor reflecting a security interest in

84 property of the kind to be sold at the execution sale at the
 85 address listed in the financing statement, or, if amended, in
 86 any amendment to the financing statement. Such notice shall be
 87 made in the same manner as notice is made to any judgment debtor
 88 under this section. When levying upon real property, notice of
 89 such levy and execution sale and affidavit required by s.
 90 56.27(4) shall be made to the property owner of record in the
 91 same manner as notice is made to any judgment debtor pursuant to
 92 this section. When selling real or personal property, the sale
 93 date shall not be earlier than 30 days after the date of the
 94 first advertisement.

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

97 56.27 Executions; payment of money collected.--

98 (1) All money received under executions shall be paid, in
 99 the order prescribed, to the following: the sheriff, for costs;
 100 the levying creditor in the amount of \$500 as liquidated
 101 expenses; ~~and if the levy is upon real property, the first~~
 102 ~~priority lienholder under s. 55.10(1) and (2), s. 55.10; and if~~
 103 ~~the levy is upon personal property, the first priority~~
 104 ~~lienholder under s. 55.202, s. 55.204(3), or s. 55.208(2), as~~
 105 set forth in an affidavit required by subsection (4), or his or
 106 her attorney, in satisfaction of the judgment lien, if provided
 107 ~~that~~ the judgment lien has not lapsed at the time of the levy.
 108 The receipt of the attorney shall be a release of the officer
 109 paying the money to him or her. If ~~When~~ the name of more than
 110 one attorney appears in the court file, the money shall be paid
 111 to the attorney who originally commenced the action or who made

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112 the original defense unless the file shows that another attorney
113 has been substituted.

114 (2) If ~~When~~ property sold under execution brings more than
115 the amount needed to satisfy the provisions of subsection (1),
116 the surplus shall be paid in the order of priority to any
117 judgment lienholders whose judgment liens have not lapsed.
118 Priority of liens on personal property shall be based on the
119 effective date of the judgment lien acquired under s. 55.202, s.
120 55.204(3), or s. 55.208(2), as set forth in an affidavit
121 required under subsection (4). Priority of liens on real
122 property shall be based on the effective date of the judgment
123 lien acquired under s. 55.10(1) and (2), as set forth in an
124 affidavit required under subsection (4). If there is a surplus
125 after all valid judgment liens and execution liens have been
126 satisfied, the surplus must be paid to the defendant.

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

132 (a) For a personal property levy, an attestation by that
133 the levying creditor or the creditor's attorney of record that
134 he or she has reviewed the database or judgment lien records
135 established in accordance with ss. 55.201-55.209 and that the
136 information contained in the affidavit based on that review is
137 true and correct. For real property levy in accordance with s.
138 55.10(1) and (2), an attestation by the levying creditor or his
139 or her attorney of record that he or she has reviewed the

140 records of the clerk of court of the county where the property
 141 is situated, or that he or she has performed a title search, and
 142 that the information contained in the affidavit based on that
 143 review or title search is true and correct.†

144 (b) The information required under s. 55.203(1) and (2)
 145 for each judgment lien certificate indexed under the name of the
 146 judgment debtor as to each judgment creditor; the file number
 147 assigned to the record of the original and, if any, the second
 148 judgment lien; and the date of filing for each judgment lien
 149 certificate under s. 55.202 or s. 55.204(3). For real property,
 150 the information contained in the certified copy of recordation
 151 of lien pursuant to s. 55.10(1) and (2) for each lien recorded
 152 on real property.† ~~and~~

153 (c) A statement that the levying creditor either does not
 154 have any other levy in process or, if another levy is in
 155 process, the levying creditor believes in good faith that the
 156 total value of the property under execution does not exceed the
 157 amount of outstanding judgments.

158 Section 5. Paragraph (a) of subsection (8) of section
 159 741.30, Florida Statutes, is amended to read:

160 741.30 Domestic violence; injunction; powers and duties of
 161 court and clerk; petition; notice and hearing; temporary
 162 injunction; issuance of injunction; statewide verification
 163 system; enforcement.--

164 (8)(a)1. The clerk of the court shall furnish a copy of
 165 the petition, financial affidavit, Uniform Child Custody
 166 Jurisdiction and Enforcement Act affidavit, if any, notice of
 167 hearing, and temporary injunction, if any, to the sheriff or a

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168 law enforcement agency of the county where the respondent
169 resides or can be found, who shall serve it upon the respondent
170 as soon thereafter as possible on any day of the week and at any
171 time of the day or night. When requested by the sheriff, the
172 clerk of court may transmit a facsimile copy of an injunction
173 that has been certified by the clerk of court, and this
174 facsimile copy may be served in the same manner as a certified
175 copy. Upon receiving such a facsimile copy, the sheriff must
176 verify receipt with the sender before attempting to serve it
177 upon the respondent. In addition, if the sheriff is in
178 possession of an injunction for protection that has been
179 certified by the clerk of court, the sheriff may transmit a
180 facsimile copy of that injunction to a law enforcement officer
181 who shall serve it in the same manner as a certified copy. The
182 clerk of the court shall be responsible for furnishing to the
183 sheriff such information on the respondent's physical
184 description and location as is required by the department to
185 comply with the verification procedures set forth in this
186 section. Notwithstanding any other provision of law to the
187 contrary, the chief judge of each circuit, in consultation with
188 the appropriate sheriff, may authorize a law enforcement agency
189 within the jurisdiction to effect service. A law enforcement
190 agency serving injunctions pursuant to this section shall use
191 service and verification procedures consistent with those of the
192 sheriff.

193 2. When an injunction is issued, if the petitioner
194 requests the assistance of a law enforcement agency, the court
195 may order that an officer from the appropriate law enforcement

196 agency accompany the petitioner and assist in placing the
197 petitioner in possession of the dwelling or residence, or
198 otherwise assist in the execution or service of the injunction.
199 A law enforcement officer shall accept a copy of an injunction
200 for protection against domestic violence, certified by the clerk
201 of the court, from the petitioner and immediately serve it upon
202 a respondent who has been located but not yet served.

203 3. All orders issued, changed, continued, extended, or
204 vacated subsequent to the original service of documents
205 enumerated under subparagraph 1., shall be certified by the
206 clerk of the court and delivered to the parties at the time of
207 the entry of the order. The parties may acknowledge receipt of
208 such order in writing on the face of the original order. In the
209 event a party fails or refuses to acknowledge the receipt of a
210 certified copy of an order, the clerk shall note on the original
211 order that service was effected. If delivery at the hearing is
212 not possible, the clerk shall mail certified copies of the order
213 to the parties at the last known address of each party. Service
214 by mail is complete upon mailing. When an order is served
215 pursuant to this subsection, the clerk shall prepare a written
216 certification to be placed in the court file specifying the
217 time, date, and method of service and shall notify the sheriff.

218
219 If the respondent has been served previously with the temporary
220 injunction and has failed to appear at the initial hearing on
221 the temporary injunction, any subsequent petition for injunction
222 seeking an extension of time may be served on the respondent by
223 the clerk of the court by certified mail in lieu of personal

224 service by a law enforcement officer.

225 Section 6. Paragraph (a) of subsection (8) of section
226 784.046, Florida Statutes, is amended to read:

227 784.046 Action by victim of repeat violence, sexual
228 violence, or dating violence for protective injunction; powers
229 and duties of court and clerk of court; filing and form of
230 petition; notice and hearing; temporary injunction; issuance;
231 statewide verification system; enforcement.--

232 (8)(a)1. The clerk of the court shall furnish a copy of
233 the petition, notice of hearing, and temporary injunction, if
234 any, to the sheriff or a law enforcement agency of the county
235 where the respondent resides or can be found, who shall serve it
236 upon the respondent as soon thereafter as possible on any day of
237 the week and at any time of the day or night. When requested by
238 the sheriff, the clerk of court may transmit a facsimile copy of
239 an injunction that has been certified by the clerk of court, and
240 this facsimile copy may be served in the same manner as a
241 certified copy. Upon receiving such a facsimile copy, the
242 sheriff must verify receipt with the sender before attempting to
243 serve it upon the respondent. In addition, if the sheriff is in
244 possession of an injunction for protection that has been
245 certified by the clerk of court, the sheriff may transmit a
246 facsimile copy of that injunction to a law enforcement officer
247 who shall serve it in the same manner as a certified copy. The
248 clerk of the court shall be responsible for furnishing to the
249 sheriff such information on the respondent's physical
250 description and location as is required by the department to
251 comply with the verification procedures set forth in this

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252 section. Notwithstanding any other provision of law to the
253 contrary, the chief judge of each circuit, in consultation with
254 the appropriate sheriff, may authorize a law enforcement agency
255 within the chief judge's jurisdiction to effect this type of
256 service and to receive a portion of the service fee. No person
257 shall be authorized or permitted to serve or execute an
258 injunction issued under this section unless the person is a law
259 enforcement officer as defined in chapter 943.

260 2. When an injunction is issued, if the petitioner
261 requests the assistance of a law enforcement agency, the court
262 may order that an officer from the appropriate law enforcement
263 agency accompany the petitioner and assist in the execution or
264 service of the injunction. A law enforcement officer shall
265 accept a copy of an injunction for protection against repeat
266 violence, sexual violence, or dating violence, certified by the
267 clerk of the court, from the petitioner and immediately serve it
268 upon a respondent who has been located but not yet served.

269 Section 7. This act shall take effect October 1, 2008.