

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

29 attempting service; authorizing law enforcement officers
 30 to serve facsimile copies of injunctions in the same
 31 manner as certified copies; providing an effective date.
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33 Be It Enacted by the Legislature of the State of Florida:
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35 Section 1. Subsection (1) of section 48.021, Florida
 36 Statutes, is amended to read:

37 48.021 Process; by whom served.--

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

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

48 48.27 Certified process servers.--

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

57 | serve initial nonenforceable civil process.

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

66 | Section 3. Subsection (2) of section 56.041, Florida
67 | Statutes, is amended to read:

68 | 56.041 Executions; collection and return.--

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

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

80 | 56.21 Execution sales; notice.--Notice of all sales under
81 | execution shall be given by advertisement once each week for 4
82 | successive weeks in a newspaper published in the county in which
83 | the sale is to take place. The time of such notice may be
84 | shortened in the discretion of the court from which the

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

113 same manner as notice is made to any judgment debtor pursuant to
 114 this section. When selling real or personal property, the sale
 115 date shall not be earlier than 30 days after the date of the
 116 first advertisement.

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
 126 lienholder under s. 55.202, s. 55.204(3), or s. 55.208(2), as
 127 set forth in an affidavit required by subsection (4), or his or
 128 her attorney, in satisfaction of the judgment lien, if provided
 129 that the judgment lien has not lapsed at the time of the levy.
 130 The receipt of the attorney shall be a release of the officer
 131 paying the money to him or her. If ~~When~~ the name of more than
 132 one attorney appears in the court file, the money shall be paid
 133 to the attorney who originally commenced the action or who made
 134 the original defense unless the file shows that another attorney
 135 has 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 judgment 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).

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
161 he 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 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
167 records of the clerk of court of the county where the property
168 is 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)
 172 for 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
 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
 178 of lien pursuant to s. 55.10(1) and (2) for each lien recorded
 179 on 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
 182 process, the levying creditor believes in good faith that the
 183 total value of the property under execution does not exceed the
 184 amount of 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
 192 the petition, financial affidavit, Uniform Child Custody
 193 Jurisdiction and Enforcement Act affidavit, if any, notice of
 194 hearing, and temporary injunction, if any, to the sheriff or a
 195 law enforcement agency of the county where the respondent
 196 resides or can be found, who shall serve it upon the respondent

197 as soon thereafter as possible on any day of the week and at any
198 time of the day or night. When requested by the sheriff, the
199 clerk of court may transmit a facsimile copy of an injunction
200 that has been certified by the clerk of court, and this
201 facsimile copy may be served in the same manner as a certified
202 copy. Upon receiving such a facsimile copy, the sheriff must
203 verify receipt with the sender before attempting to serve it
204 upon the respondent. In addition, if the sheriff is in
205 possession of an injunction for protection that has been
206 certified by the clerk of court, the sheriff may transmit a
207 facsimile copy of that injunction to a law enforcement officer
208 who shall serve it in the same manner as a certified copy. The
209 clerk of the court shall be responsible for furnishing to the
210 sheriff such information on the respondent's physical
211 description and location as is required by the department to
212 comply with the verification procedures set forth in this
213 section. Notwithstanding any other provision of law to the
214 contrary, the chief judge of each circuit, in consultation with
215 the appropriate sheriff, may authorize a law enforcement agency
216 within the jurisdiction to effect service. A law enforcement
217 agency serving injunctions pursuant to this section shall use
218 service and verification procedures consistent with those of the
219 sheriff.

220 2. When an injunction is issued, if the petitioner
221 requests the assistance of a law enforcement agency, the court
222 may order that an officer from the appropriate law enforcement
223 agency accompany the petitioner and assist in placing the
224 petitioner in possession of the dwelling or residence, or

225 otherwise assist in the execution or service of the injunction.
226 A law enforcement officer shall accept a copy of an injunction
227 for protection against domestic violence, certified by the clerk
228 of the court, from the petitioner and immediately serve it upon
229 a respondent who has been located but not yet served.

230 3. All orders issued, changed, continued, extended, or
231 vacated subsequent to the original service of documents
232 enumerated under subparagraph 1., shall be certified by the
233 clerk of the court and delivered to the parties at the time of
234 the entry of the order. The parties may acknowledge receipt of
235 such order in writing on the face of the original order. In the
236 event a party fails or refuses to acknowledge the receipt of a
237 certified copy of an order, the clerk shall note on the original
238 order that service was effected. If delivery at the hearing is
239 not possible, the clerk shall mail certified copies of the order
240 to the parties at the last known address of each party. Service
241 by mail is complete upon mailing. When an order is served
242 pursuant to this subsection, the clerk shall prepare a written
243 certification to be placed in the court file specifying the
244 time, date, and method of service and shall notify the sheriff.

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

252 Section 7. Paragraph (a) of subsection (8) of section

253 784.046, Florida Statutes, is amended to read:

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

259 (8)(a)1. The clerk of the court shall furnish a copy of
 260 the petition, notice of hearing, and temporary injunction, if
 261 any, to the sheriff or a law enforcement agency of the county
 262 where the respondent resides or can be found, who shall serve it
 263 upon the respondent as soon thereafter as possible on any day of
 264 the week and at any time of the day or night. When requested by
 265 the sheriff, the clerk of court may transmit a facsimile copy of
 266 an injunction that has been certified by the clerk of court, and
 267 this facsimile copy may be served in the same manner as a
 268 certified copy. Upon receiving such a facsimile copy, the
 269 sheriff must verify receipt with the sender before attempting to
 270 serve it upon the respondent. In addition, if the sheriff is in
 271 possession of an injunction for protection that has been
 272 certified by the clerk of court, the sheriff may transmit a
 273 facsimile copy of that injunction to a law enforcement officer
 274 who shall serve it in the same manner as a certified copy. The
 275 clerk of the court shall be responsible for furnishing to the
 276 sheriff such information on the respondent's physical
 277 description and location as is required by the department to
 278 comply with the verification procedures set forth in this
 279 section. Notwithstanding any other provision of law to the
 280 contrary, the chief judge of each circuit, in consultation with

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281 the appropriate sheriff, may authorize a law enforcement agency
282 within the chief judge's jurisdiction to effect this type of
283 service and to receive a portion of the service fee. No person
284 shall be authorized or permitted to serve or execute an
285 injunction issued under this section unless the person is a law
286 enforcement officer as defined in chapter 943.

287 2. When an injunction is issued, if the petitioner
288 requests the assistance of a law enforcement agency, the court
289 may order that an officer from the appropriate law enforcement
290 agency accompany the petitioner and assist in the execution or
291 service of the injunction. A law enforcement officer shall
292 accept a copy of an injunction for protection against repeat
293 violence, sexual violence, or dating violence, certified by the
294 clerk of the court, from the petitioner and immediately serve it
295 upon a respondent who has been located but not yet served.

296 Section 8. This act shall take effect July 1, 2008.