

By Senator Crist

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1 A bill to be entitled
2 An act relating to service of process; amending s.
3 30.231, F.S.; increasing the fees charged by the
4 sheriff in civil cases for service of process;
5 exempting the State of Florida and its agencies from
6 increased fees; deleting a prohibition on additional
7 fees for certain documents; amending s. 48.021, F.S.;
8 providing that criminal witness subpoenas and criminal
9 summonses may be served by a special process server
10 appointed by the local sheriff or by a certified
11 process server; amending s. 48.27, F.S.; providing for
12 the selection of authorized certified process servers
13 to serve such subpoenas and summonses; amending s.
14 56.041, F.S.; providing that all unsatisfied
15 executions in the possession of the sheriff docketed
16 before October 1, 2001, may be returned to the issuing
17 court; amending s. 56.21, F.S.; requiring the
18 submission of an affidavit before levying a judgment
19 upon real property; requiring the sheriff to furnish
20 to the judgment debtor or lienholder, or the debtor's
21 or lienholder's attorney of record, a copy of the
22 notice of sale, notice of levy, and affidavit within a
23 specified period before execution of a sale or levy;
24 amending s. 56.27, F.S.; requiring that priority of
25 liens on real property be based on the effective date
26 of the judgment lien for a specified purpose, unless
27 an affidavit discloses that the property is subject to
28 a recorded mortgage, financing statement, tax warrant,
29 or other lien that is junior in priority to the

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30 judgment lien; requiring a levying creditor to deliver
 31 the affidavit to the sheriff at the time of the levy
 32 request setting forth certain information and
 33 attestations; requiring certain information to be
 34 contained in the certified copy of recordation of
 35 lien; amending ss. 741.30 and 784.046, F.S., relating
 36 to service of process in cases of domestic violence or
 37 sexual abuse; authorizing clerks of the court to
 38 transmit facsimile copies of previously certified
 39 injunctions to sheriffs upon request; requiring
 40 sheriffs to verify receipt of facsimile copies of
 41 injunctions with clerks of the court before attempting
 42 service; authorizing law enforcement officers to serve
 43 facsimile copies of injunctions in the same manner as
 44 certified copies; providing an effective date.

45
 46 Be It Enacted by the Legislature of the State of Florida:

47
 48 Section 1. Subsections (1) and (4) of section 30.231,
 49 Florida Statutes, are amended to read:

50 30.231 Sheriffs' fees for service of summons, subpoenas,
 51 and executions.—

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

55 (a) All summons or writs except executions: \$40 ~~\$20~~ for
 56 each summons or writ to be served, except when more than one
 57 summons or writ is issued at the same time out of the same cause
 58 of action to be served upon one person or defendant at the same

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59 time, in which case the sheriff shall be entitled to one fee.

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

63 (c) Witness subpoenas: \$40 ~~\$20~~ for each witness to be
64 served.

65 (d) Executions:

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

68 2. Fifty dollars for each levy.

69 a. A levy is considered made when any property or any
70 portion of the property listed or unlisted in the instructions
71 for levy is seized, or upon demand of the sheriff the writ is
72 satisfied by the defendant in lieu of seizure. Seizure requires
73 that the sheriff take actual possession, if practicable, or,
74 alternatively, constructive possession of the property by order
75 of the court.

76 b. When the instructions are for levy upon real property, a
77 levy fee is required for each parcel described in the
78 instructions.

79 c. When the instructions are for levy based upon personal
80 property, one fee is allowed, unless the property is seized at
81 different locations, conditional upon all of the items being
82 advertised collectively and the sale being held at a single
83 location. However, if the property seized cannot be sold at one
84 location during the same sale as advertised, but requires
85 separate sales at different locations, the sheriff is then
86 authorized to impose a levy fee for the property and sale at
87 each location.

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88 3. Forty ~~Twenty~~ dollars for advertisement of sale under
89 process.

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

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

93

94 Fees under this subsection chargeable to the State of Florida or
95 its agencies shall be those fees that were effective under this
96 subsection on June 30, 2009.

97 (4) All fees collected under paragraphs (1)(a), (b), (c),
98 and (d) shall be nonrefundable and shall be earned when each
99 original request or service of process is made, ~~and no~~
100 ~~additional fees shall be required for alias and pluries~~
101 ~~documents when service was not effected on the original document~~
102 ~~in that county by that sheriff.~~

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

105 48.021 Process; by whom served.—

106 (1) All process shall be served by the sheriff of the
107 county where the person to be served is found, except initial
108 nonenforceable civil process, criminal witness subpoenas, and
109 criminal summonses may be served by a special process server
110 appointed by the sheriff as provided for in this section or by a
111 certified process server as provided for in ss. 48.25-48.31.
112 Civil witness subpoenas may be served by any person authorized
113 by rules of civil procedure.

114 Section 3. Subsection (2) of section 48.27, Florida
115 Statutes, is amended to read:

116 48.27 Certified process servers.—

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117 (2) (a) The addition of a person's name to the list
118 authorizes him or her to serve initial nonenforceable civil
119 process on a person found within the circuit where the process
120 server is certified when a civil action has been filed against
121 such person in the circuit court or in a county court in the
122 state. Upon filing an action in circuit or county court, a
123 person may select from the list for the circuit where the
124 process is to be served one or more certified process servers to
125 serve initial nonenforceable civil process.

126 (b) The addition of a person's name to the list authorizes
127 him or her to serve criminal witness subpoenas and criminal
128 summonses on a person found within the circuit where the process
129 server is certified. The state in any proceeding or
130 investigation by a grand jury or any party in a criminal action,
131 prosecution, or proceeding may select from the list for the
132 circuit where the process is to be served one or more certified
133 process servers to serve the subpoena or summons.

134 Section 4. Subsection (2) of section 56.041, Florida
135 Statutes, is amended to read:

136 56.041 Executions; collection and return.—

137 (2) All unsatisfied executions in the hands of the sheriff
138 docketed before October 1, 2001, or 20 years after the date of
139 issuance of final judgment upon which the execution was issued
140 may be returned, to the court issuing the execution, ~~20 years~~
141 ~~after the date of issuance of final judgment upon which the~~
142 ~~execution was issued.~~ Upon such return, the clerk of the court
143 of issuance shall provide a receipt, to the sheriff submitting
144 the return, acknowledging the return of the unsatisfied
145 execution.

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146 Section 5. Section 56.21, Florida Statutes, is amended to
147 read:

148 56.21 Execution sales; notice.—Notice of all sales under
149 execution shall be given by advertisement once each week for 4
150 successive weeks in a newspaper published in the county in which
151 the sale is to take place. The time of such notice may be
152 shortened in the discretion of the court from which the
153 execution issued, upon affidavit that the property to be sold is
154 subject to decay and will not sell for its full value if held
155 until date of sale. On or before the date of the first
156 publication or posting of the notice of sale, a copy of the
157 notice of sale shall be furnished by the sheriff by certified
158 mail to the attorney of record of the judgment debtor, or to the
159 judgment debtor at the judgment debtor's last known address if
160 the judgment debtor does not have an attorney of record. Such
161 copy of the notice of sale shall be mailed even though a default
162 judgment was entered. When levying upon real or personal
163 property, a notice of such levy and execution sale and a copy of
164 the affidavit required by s. 56.27(4) shall be sent by the
165 sheriff to the attorneys of record of all judgment creditors and
166 other lienholders, or to all judgment creditors and other
167 lienholders who do not have an attorney of record, who have
168 acquired a ~~judgment~~ lien as provided in s. 55.10(1) and (2), s.
169 55.202, or s. 55.204(3), or s. 695.01, and whose liens have not
170 lapsed at the time of levy, at the address listed in the
171 judgment lien certificate or other recorded liens, or, if
172 amended, in any amendment thereto to the judgment lien
173 certificate, and to all secured creditors who have filed
174 financing statements as provided in part V of chapter 679 in the

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175 name of the judgment debtor reflecting a security interest in
 176 property of the kind to be sold at the execution sale at the
 177 address listed in the financing statement, or, if amended, in
 178 any amendment to the financing statement. Such notice shall be
 179 made in the same manner as notice is made to any judgment debtor
 180 under this section. When levying upon real property, notice of
 181 such levy and execution sale and affidavit required by s.
 182 56.27(4) shall be made to the property owner of record in the
 183 same manner as notice is made to any judgment debtor pursuant to
 184 this section, and shall be made to each other person holding a
 185 mortgage or other lien against the real property as disclosed by
 186 the affidavit. When selling real or personal property, the sale
 187 date shall not be earlier than 30 days after the date of the
 188 first advertisement.

189 Section 6. Subsections (1), (2), and (4) of section 56.27,
 190 Florida Statutes, are amended to read:

191 56.27 Executions; payment of money collected.—

192 (1) All money received under executions shall be paid, in
 193 the order prescribed, to the following: the sheriff, for costs;
 194 the levying creditor in the amount of \$500 as liquidated
 195 expenses; ~~and if the levy is upon real property, the first~~
 196 ~~priority lienholder under s. 55.10(1) and (2), s. 55.10; and if~~
 197 ~~the levy is upon personal property, the first priority~~
 198 ~~lienholder under s. 55.202, s. 55.204(3), or s. 55.208(2), as~~
 199 set forth in an affidavit required by subsection (4), or his or
 200 her attorney, in satisfaction of the judgment lien, if provided
 201 ~~that~~ the judgment lien has not lapsed at the time of the levy.
 202 The receipt of the attorney shall be a release of the officer
 203 paying the money to him or her. If ~~When~~ the name of more than

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204 one attorney appears in the court file, the money shall be paid
205 to the attorney who originally commenced the action or who made
206 the original defense unless the file shows that another attorney
207 has been substituted.

208 (2) (a) If ~~When~~ property sold under execution brings more
209 than the amount needed to satisfy the provisions of subsection
210 (1), the surplus shall be paid in the order of priority to any
211 judgment lienholders whose judgment liens have not lapsed,
212 unless the affidavit required by subsection (4) discloses that
213 the property is also subject to any recorded mortgage, financing
214 statement, tax warrant, or other lien, other than a judgment
215 lien, which is junior in priority to the levying creditor's
216 judgment lien. For the purpose of the sheriff's distribution of
217 the surplus to judgment lienholders under this paragraph,
218 priority of judgment liens on personal property shall be based
219 on the effective date of the judgment lien acquired under s.
220 55.202, s. 55.204(3), or s. 55.208(2), and priority of judgment
221 liens on real property shall be based on the effective date of
222 the judgment lien acquired under s. 55.10(1) and (2), as set
223 forth in an affidavit required under subsection (4). If there is
224 a surplus after all valid judgment liens and execution liens
225 have been satisfied under this paragraph, the surplus must be
226 paid to the owner of the property sold ~~defendant~~.

227 (b) If the affidavit required by subsection (4) discloses
228 that the property is also subject to any recorded mortgage,
229 financing statement, tax warrant, or other lien, other than a
230 judgment lien, which is junior in priority to the levying
231 creditor's judgment lien, any surplus from the sale of the
232 property shall be paid over to the registry of the court from

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233 which the execution issued for further proceedings to determine
234 the priority in which such surplus shall be distributed among
235 judgment lienholders, other lienholders, and the owner of the
236 property sold.

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

242 (a) For a personal property levy, an attestation by that
243 the levying creditor or the creditor's attorney of record that
244 he or she has reviewed the database or judgment lien records
245 established in accordance with ss. 55.201-55.209 and that the
246 information contained in the affidavit based on that review is
247 true and correct. For a real property levy in accordance with s.
248 55.10(1) and (2), an attestation by the levying creditor or his
249 or her attorney of record that he or she has reviewed the
250 records of the clerk of the court of the county where the
251 property is situated, or that he or she has performed a title
252 search, and that the information contained in the affidavit,
253 including a disclosure of all judgment liens, mortgages,
254 financing statements, tax warrants, and other liens against the
255 real property, based on that review or title search is true and
256 correct.†

257 (b) The information required under s. 55.203(1) and (2) for
258 each judgment lien certificate indexed under the name of the
259 judgment debtor as to each judgment creditor; the file number
260 assigned to the record of the original and, if any, the second
261 judgment lien; and the date of filing for each judgment lien

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262 certificate under s. 55.202 or s. 55.204(3). For each judgment
263 lien recorded on real property, the information contained in the
264 certified copy of recordation of lien under s. 55.10(1) and (2),
265 and for each other lien recorded on real property, the name and
266 address of the lienholder as shown in the copy of the recorded
267 lien disclosed by the title search. ~~and~~

268 (c) A statement that the levying creditor either does not
269 have any other levy in process or, if another levy is in
270 process, the levying creditor believes in good faith that the
271 total value of the property under execution does not exceed the
272 amount of outstanding judgments.

273 Section 7. Paragraph (a) of subsection (8) of section
274 741.30, Florida Statutes, is amended to read:

275 741.30 Domestic violence; injunction; powers and duties of
276 court and clerk; petition; notice and hearing; temporary
277 injunction; issuance of injunction; statewide verification
278 system; enforcement.—

279 (8) (a) 1. The clerk of the court shall furnish a copy of the
280 petition, financial affidavit, Uniform Child Custody
281 Jurisdiction and Enforcement Act affidavit, if any, notice of
282 hearing, and temporary injunction, if any, to the sheriff or a
283 law enforcement agency of the county where the respondent
284 resides or can be found, who shall serve it upon the respondent
285 as soon thereafter as possible on any day of the week and at any
286 time of the day or night. When requested by the sheriff, the
287 clerk of the court may transmit a facsimile copy of an
288 injunction that has been certified by the clerk of the court,
289 and this facsimile copy may be served in the same manner as a
290 certified copy. Upon receiving a facsimile copy, the sheriff

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291 must verify receipt with the sender before attempting to serve
292 it upon the respondent. In addition, if the sheriff is in
293 possession of an injunction for protection that has been
294 certified by the clerk of the court, the sheriff may transmit a
295 facsimile copy of that injunction to a law enforcement officer
296 who shall serve it in the same manner as a certified copy. The
297 clerk of the court shall be responsible for furnishing to the
298 sheriff such information on the respondent's physical
299 description and location as is required by the department to
300 comply with the verification procedures set forth in this
301 section. Notwithstanding any other provision of law to the
302 contrary, the chief judge of each circuit, in consultation with
303 the appropriate sheriff, may authorize a law enforcement agency
304 within the jurisdiction to effect service. A law enforcement
305 agency serving injunctions pursuant to this section shall use
306 service and verification procedures consistent with those of the
307 sheriff.

308 2. When an injunction is issued, if the petitioner requests
309 the assistance of a law enforcement agency, the court may order
310 that an officer from the appropriate law enforcement agency
311 accompany the petitioner and assist in placing the petitioner in
312 possession of the dwelling or residence, or otherwise assist in
313 the execution or service of the injunction. A law enforcement
314 officer shall accept a copy of an injunction for protection
315 against domestic violence, certified by the clerk of the court,
316 from the petitioner and immediately serve it upon a respondent
317 who has been located but not yet served.

318 3. All orders issued, changed, continued, extended, or
319 vacated subsequent to the original service of documents

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320 enumerated under subparagraph 1., shall be certified by the
321 clerk of the court and delivered to the parties at the time of
322 the entry of the order. The parties may acknowledge receipt of
323 such order in writing on the face of the original order. In the
324 event a party fails or refuses to acknowledge the receipt of a
325 certified copy of an order, the clerk shall note on the original
326 order that service was effected. If delivery at the hearing is
327 not possible, the clerk shall mail certified copies of the order
328 to the parties at the last known address of each party. Service
329 by mail is complete upon mailing. When an order is served
330 pursuant to this subsection, the clerk shall prepare a written
331 certification to be placed in the court file specifying the
332 time, date, and method of service and shall notify the sheriff.

333
334 If the respondent has been served previously with the temporary
335 injunction and has failed to appear at the initial hearing on
336 the temporary injunction, any subsequent petition for injunction
337 seeking an extension of time may be served on the respondent by
338 the clerk of the court by certified mail in lieu of personal
339 service by a law enforcement officer.

340 Section 8. Paragraph (a) of subsection (8) of section
341 784.046, Florida Statutes, is amended to read:

342 784.046 Action by victim of repeat violence, sexual
343 violence, or dating violence for protective injunction; dating
344 violence investigations, notice to victims, and reporting;
345 pretrial release violations.—

346 (8) (a) 1. The clerk of the court shall furnish a copy of the
347 petition, notice of hearing, and temporary injunction, if any,
348 to the sheriff or a law enforcement agency of the county where

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349 the respondent resides or can be found, who shall serve it upon
350 the respondent as soon thereafter as possible on any day of the
351 week and at any time of the day or night. When requested by the
352 sheriff, the clerk of the court may transmit a facsimile copy of
353 an injunction that has been certified by the clerk of the court,
354 and this facsimile copy may be served in the same manner as a
355 certified copy. Upon receiving a facsimile copy, the sheriff
356 must verify receipt with the sender before attempting to serve
357 it upon the respondent. In addition, if the sheriff is in
358 possession of an injunction for protection that has been
359 certified by the clerk of the court, the sheriff may transmit a
360 facsimile copy of that injunction to a law enforcement officer
361 who shall serve it in the same manner as a certified copy. The
362 clerk of the court shall be responsible for furnishing to the
363 sheriff such information on the respondent's physical
364 description and location as is required by the department to
365 comply with the verification procedures set forth in this
366 section. Notwithstanding any other provision of law to the
367 contrary, the chief judge of each circuit, in consultation with
368 the appropriate sheriff, may authorize a law enforcement agency
369 within the chief judge's jurisdiction to effect this type of
370 service and to receive a portion of the service fee. No person
371 shall be authorized or permitted to serve or execute an
372 injunction issued under this section unless the person is a law
373 enforcement officer as defined in chapter 943.

374 2. When an injunction is issued, if the petitioner requests
375 the assistance of a law enforcement agency, the court may order
376 that an officer from the appropriate law enforcement agency
377 accompany the petitioner and assist in the execution or service

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378 of the injunction. A law enforcement officer shall accept a copy
379 of an injunction for protection against repeat violence, sexual
380 violence, or dating violence, certified by the clerk of the
381 court, from the petitioner and immediately serve it upon a
382 respondent who has been located but not yet served.

383 Section 9. This act shall take effect July 1, 2009.