

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

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30 or other lien that is junior in priority to the
31 judgment lien; requiring a levying creditor to deliver
32 the affidavit to the sheriff at the time of the levy
33 request setting forth certain information and
34 attestations; requiring certain information to be
35 contained in the certified copy of recordation of
36 lien; amending ss. 741.30 and 784.046, F.S., relating
37 to service of process in cases of domestic violence or
38 sexual abuse; authorizing clerks of the court to
39 transmit facsimile copies of previously certified
40 injunctions to sheriffs upon request; requiring
41 sheriffs to verify receipt of facsimile copies of
42 injunctions with clerks of the court before attempting
43 service; authorizing law enforcement officers to serve
44 facsimile copies of injunctions in the same manner as
45 certified copies; authorizing a law enforcement
46 officer to arrest a person suspected of violating a
47 condition of pretrial release if the original arrest
48 was for an act of dating violence; amending s. 901.15,
49 F.S.; conforming provisions to changes made by the
50 act; providing an effective date.

51
52 Be It Enacted by the Legislature of the State of Florida:

53
54 Section 1. Subsections (1) and (4) of section 30.231,
55 Florida Statutes, are amended, and subsection (6) is added to
56 that section, to read:

57 30.231 Sheriffs' fees for service of summons, subpoenas,
58 and executions.—

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

62 (a) All summons or writs except executions: \$40 ~~\$20~~ for
63 each summons or writ to be served, except when more than one
64 summons or writ is issued at the same time out of the same cause
65 of action to be served upon one person or defendant at the same
66 time, in which case the sheriff shall be entitled to one fee.

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

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

72 (d) Executions:

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

75 2. Fifty dollars for each levy.

76 a. A levy is considered made when any property or any
77 portion of the property listed or unlisted in the instructions
78 for levy is seized, or upon demand of the sheriff the writ is
79 satisfied by the defendant in lieu of seizure. Seizure requires
80 that the sheriff take actual possession, if practicable, or,
81 alternatively, constructive possession of the property by order
82 of the court.

83 b. When the instructions are for levy upon real property, a
84 levy fee is required for each parcel described in the
85 instructions.

86 c. When the instructions are for levy based upon personal
87 property, one fee is allowed, unless the property is seized at

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88 different locations, conditional upon all of the items being
89 advertised collectively and the sale being held at a single
90 location. However, if the property seized cannot be sold at one
91 location during the same sale as advertised, but requires
92 separate sales at different locations, the sheriff is then
93 authorized to impose a levy fee for the property and sale at
94 each location.

95 3. Forty ~~Twenty~~ dollars for advertisement of sale under
96 process.

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

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

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

106 (6) Fees under this section chargeable to the state or its
107 agencies shall be those fees that were effective under this
108 section on June 30, 2009.

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

111 48.021 Process; by whom served.—

112 (1) All process shall be served by the sheriff of the
113 county where the person to be served is found, except initial
114 nonenforceable civil process, criminal witness subpoenas, and
115 criminal summonses may be served by a special process server
116 appointed by the sheriff as provided for in this section or by a

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117 certified process server as provided for in ss. 48.25-48.31.
118 Civil witness subpoenas may be served by any person authorized
119 by rules of civil procedure.

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

122 48.27 Certified process servers.—

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

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

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

142 56.041 Executions; collection and return.—

143 (2) All unsatisfied executions in the hands of the sheriff
144 docketed before October 1, 2001, or 20 years after the date of
145 issuance of final judgment upon which the execution was issued

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146 may be returned, to the court issuing the execution, ~~20 years~~
147 ~~after the date of issuance of final judgment upon which the~~
148 ~~execution was issued.~~ Upon such return, the clerk of the court
149 of issuance shall provide a receipt, to the sheriff submitting
150 the return, acknowledging the return of the unsatisfied
151 execution.

152 Section 5. Section 56.21, Florida Statutes, is amended to
153 read:

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

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175 55.202, ~~or~~ s. 55.204(3), or s. 695.01, and whose liens have not
 176 lapsed at the time of levy, at the address listed in the
 177 judgment lien certificate or other recorded liens, or, if
 178 amended, in any amendment thereto ~~to the judgment lien~~
 179 ~~certificate~~, and to all secured creditors who have filed
 180 financing statements as provided in part V of chapter 679 in the
 181 name of the judgment debtor reflecting a security interest in
 182 property of the kind to be sold at the execution sale at the
 183 address listed in the financing statement, or, if amended, in
 184 any amendment to the financing statement. Such notice shall be
 185 made in the same manner as notice is made to any judgment debtor
 186 under this section. When levying upon real property, notice of
 187 such levy and execution sale and affidavit required by s.
 188 56.27(4) shall be made to the property owner of record in the
 189 same manner as notice is made to any judgment debtor pursuant to
 190 this section, and shall be made to each other person holding a
 191 mortgage or other lien against the real property as disclosed by
 192 the affidavit. When selling real or personal property, the sale
 193 date shall not be earlier than 30 days after the date of the
 194 first advertisement.

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

197 56.27 Executions; payment of money collected.—

198 (1) All money received under executions shall be paid, in
 199 the order prescribed, to the following: the sheriff, for costs;
 200 the levying creditor in the amount of \$500 as liquidated
 201 expenses; ~~and if the levy is upon real property, the first~~
 202 ~~priority lienholder under s. 55.10(1) and (2), s. 55.10; and if~~
 203 ~~the levy is upon personal property, the first priority~~

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204 ~~lienholder under~~ s. 55.202, s. 55.204(3), or s. 55.208(2), as
205 set forth in an affidavit required by subsection (4), or his or
206 her attorney, in satisfaction of the judgment lien, if provided
207 ~~that~~ the judgment lien has not lapsed at the time of the levy.
208 The receipt of the attorney shall be a release of the officer
209 paying the money to him or her. If ~~When~~ the name of more than
210 one attorney appears in the court file, the money shall be paid
211 to the attorney who originally commenced the action or who made
212 the original defense unless the file shows that another attorney
213 has been substituted.

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

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233 (b) If the affidavit required by subsection (4) discloses
234 that the property is also subject to any recorded mortgage,
235 financing statement, tax warrant, or other lien, other than a
236 judgment lien, which is junior in priority to the levying
237 creditor's judgment lien, any surplus from the sale of the
238 property shall be paid over to the registry of the court from
239 which the execution issued for further proceedings to determine
240 the priority in which such surplus shall be distributed among
241 judgment lienholders, other lienholders, and the owner of the
242 property sold.

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

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

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262 correct.~~†~~

263 (b) The information required under s. 55.203(1) and (2) for
264 each judgment lien certificate indexed under the name of the
265 judgment debtor as to each judgment creditor; the file number
266 assigned to the record of the original and, if any, the second
267 judgment lien; and the date of filing for each judgment lien
268 certificate under s. 55.202 or s. 55.204(3). For each judgment
269 lien recorded on real property, the information contained in the
270 certified copy of recordation of lien under s. 55.10(1) and (2),
271 and for each other lien recorded on real property, the name and
272 address of the lienholder as shown in the copy of the recorded
273 lien disclosed by the title search.~~;~~ ~~and~~

274 (c) A statement that the levying creditor either does not
275 have any other levy in process or, if another levy is in
276 process, the levying creditor believes in good faith that the
277 total value of the property under execution does not exceed the
278 amount of outstanding judgments.

279 Section 7. Paragraph (a) of subsection (8) of section
280 741.30, Florida Statutes, is amended to read:

281 741.30 Domestic violence; injunction; powers and duties of
282 court and clerk; petition; notice and hearing; temporary
283 injunction; issuance of injunction; statewide verification
284 system; enforcement.—

285 (8) (a) 1. The clerk of the court shall furnish a copy of the
286 petition, financial affidavit, Uniform Child Custody
287 Jurisdiction and Enforcement Act affidavit, if any, notice of
288 hearing, and temporary injunction, if any, to the sheriff or a
289 law enforcement agency of the county where the respondent
290 resides or can be found, who shall serve it upon the respondent

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

314 2. When an injunction is issued, if the petitioner requests
315 the assistance of a law enforcement agency, the court may order
316 that an officer from the appropriate law enforcement agency
317 accompany the petitioner and assist in placing the petitioner in
318 possession of the dwelling or residence, or otherwise assist in
319 the execution or service of the injunction. A law enforcement

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320 officer shall accept a copy of an injunction for protection
321 against domestic violence, certified by the clerk of the court,
322 from the petitioner and immediately serve it upon a respondent
323 who has been located but not yet served.

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

339

340 If the respondent has been served previously with the temporary
341 injunction and has failed to appear at the initial hearing on
342 the temporary injunction, any subsequent petition for injunction
343 seeking an extension of time may be served on the respondent by
344 the clerk of the court by certified mail in lieu of personal
345 service by a law enforcement officer.

346 Section 8. Paragraph (a) of subsection (8) and subsection
347 (13) of section 784.046, Florida Statutes, are amended to read:

348 784.046 Action by victim of repeat violence, sexual

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349 violence, or dating violence for protective injunction; dating
350 violence investigations, notice to victims, and reporting;
351 pretrial release violations.-

352 (8) (a) 1. The clerk of the court shall furnish a copy of the
353 petition, notice of hearing, and temporary injunction, if any,
354 to the sheriff or a law enforcement agency of the county where
355 the respondent resides or can be found, who shall serve it upon
356 the respondent as soon thereafter as possible on any day of the
357 week and at any time of the day or night. When requested by the
358 sheriff, the clerk of the court may transmit a facsimile copy of
359 an injunction that has been certified by the clerk of the court,
360 and this facsimile copy may be served in the same manner as a
361 certified copy. Upon receiving a facsimile copy, the sheriff
362 must verify receipt with the sender before attempting to serve
363 it upon the respondent. In addition, if the sheriff is in
364 possession of an injunction for protection that has been
365 certified by the clerk of the court, the sheriff may transmit a
366 facsimile copy of that injunction to a law enforcement officer
367 who shall serve it in the same manner as a certified copy. The
368 clerk of the court shall be responsible for furnishing to the
369 sheriff such information on the respondent's physical
370 description and location as is required by the department to
371 comply with the verification procedures set forth in this
372 section. Notwithstanding any other provision of law to the
373 contrary, the chief judge of each circuit, in consultation with
374 the appropriate sheriff, may authorize a law enforcement agency
375 within the chief judge's jurisdiction to effect this type of
376 service and to receive a portion of the service fee. No person
377 shall be authorized or permitted to serve or execute an

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378 injunction issued under this section unless the person is a law
379 enforcement officer as defined in chapter 943.

380 2. When an injunction is issued, if the petitioner requests
381 the assistance of a law enforcement agency, the court may order
382 that an officer from the appropriate law enforcement agency
383 accompany the petitioner and assist in the execution or service
384 of the injunction. A law enforcement officer shall accept a copy
385 of an injunction for protection against repeat violence, sexual
386 violence, or dating violence, certified by the clerk of the
387 court, from the petitioner and immediately serve it upon a
388 respondent who has been located but not yet served.

389 (13) Whenever a law enforcement officer determines upon
390 probable cause that an act of dating violence has been committed
391 within the jurisdiction, or that a person has violated a
392 condition of pretrial release as provided in s. 903.047 and the
393 original arrest was for an act of dating violence, the officer
394 may arrest the person or persons suspected of its commission and
395 charge such person or persons with the appropriate crime. The
396 decision to arrest and charge shall not require consent of the
397 victim or consideration of the relationship of the parties.

398 Section 9. Subsection (13) of section 901.15, Florida
399 Statutes, is amended to read:

400 901.15 When arrest by officer without warrant is lawful.—A
401 law enforcement officer may arrest a person without a warrant
402 when:

403 (13) There is probable cause to believe that the person has
404 committed an act that violates a condition of pretrial release
405 provided in s. 903.047 when the original arrest was for an act
406 of domestic violence as defined in s. 741.28, or when the

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407 original arrest was for an act of dating violence as defined in
408 s. 784.046.

409 Section 10. This act shall take effect July 1, 2009.