

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1379 Service of Process
SPONSOR(S): Civil Justice Subcommittee; Mayfield
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1268

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	9 Y, 3 N, As CS	Ward	Bond
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

The duties of a sheriff include service of process and execution of money judgments. Service of process is the means by which official notice of an action is delivered to a defendant or respondent. A "return of service" proving by affidavit that the process was delivered to the proper party is then filed with the court. The bill:

- Provides that a fee of \$40 will be charged by the sheriff for each summons served;
- Provides that execution must be accompanied with an affidavit containing a statement directing distribution of proceeds of public sale;
- Provides immunity to the sheriff for wrongful levy or distribution of the proceeds of sale;
- Requires that the party requesting service of process or the process server file the return of service;
- Provides for changes to service of process on certain businesses; and
- Adds a criminal penalty for an employer who refuses to accommodate service on an employee.

A mentally ill, or substance addicted person may be involuntarily taken into custody by law enforcement and delivered to the nearest treating facility by order of court. The bill:

- Makes an electronically transmitted order sufficient for the receiving facility to accept the person;
- Provides that the order may be served and executed any time of the day or night; and
- Provides that a law enforcement officer may use reasonable force to gain entry to any premises to take custody of the subject person of involuntary evaluation.

An injunction is issued to prevent domestic violence, repeat violence, stalking, or cyberstalking. The bill makes the statutes providing for these injunctions more parallel. The bill adds a criminal penalty for violation of a cyberstalking injunction, and for violation of a stalking or cyberstalking injunction by possession of a firearm.

The criminal penalty added in both of the bill's provisions - failing to accommodate service of process on an employee, and stalking by possession of a firearm - is a first degree misdemeanor, punishable by up to one year in county jail or a fine of up to \$1,000 or both.

Certain arrests may be made by an officer without a warrant. The bill adds to warrantless arrests:

- A violation of an injunction pending a child abuse investigation;
- A violation of an injunction for stalking or cyberstalking;
- An act of stalking or cyberstalking; and
- An act of child abuse.

The bill does not appear to have a fiscal impact on the state or local governments.

The bill takes effect July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Service of Process

Under Florida Rule of Civil Procedure 1.070(b), any person who is authorized by law to complete service of process may do so in accordance with applicable Florida law for the execution of legal process. Chapter 48, F.S., provides that service of process may be served by the sheriff in the county where the defendant is located.¹ The sheriff may appoint special process servers who meet specified statutory minimum requirements.² The chief judge of the circuit court may establish an approved list of certified process servers.³ Additionally, each trial judge has the authority to appoint a special process server in any particular case.

Authorized process servers serve the complaint or petition on a defendant or a respondent in a civil case so that the court may acquire personal jurisdiction over the person who receives service. Strict compliance with the statutory provisions of service of process is required in order for the court to obtain jurisdiction over a party and to assure that a defendant or respondent receives notice of the proceedings filed.⁴ Because strict compliance with all of the statutory requirements for service is required, the failure to comply with the statutory terms renders that service defective, resulting in a failure to acquire jurisdiction over the defendant or respondent.⁵

The law specifies the manner and methods that service of process must be executed by process servers. Service of original process and most witness subpoenas is made by delivering a copy of it to the person to be served with a copy of the complaint, petition, or other initial pleading or paper or by leaving the copies at his or her usual place of abode with any person residing therein who is 15 years of age or older and informing the person of the contents.⁶ Each process server must document all service of process by placing the date and time of service and the process server's identification number and initials on the copy served.⁷

The sheriffs of all counties of the state in civil cases must charge fixed, nonrefundable fees for docketing and service of process. The sheriffs must charge \$40 for docketing and indexing each writ of execution, regardless of the number of persons involved. It is the responsibility of the party requesting service of process to furnish to the sheriff the original or a certified copy of process and sufficient copies to be served on the parties receiving the service of process.⁸

Service on Employees and Businesses

Section 48.031, F.S., currently provides that employers "shall permit" service of process on employees in a private area designated by the employer. The bill creates a first degree misdemeanor for employers and their agents who fail to comply with this provision. A first degree misdemeanor is punishable by up to one year in county jail or a fine of up to \$1,000 or both.⁹

¹ Section 48.021, F.S.

² Section 48.021, F.S.

³ Section 48.27, F.S.

⁴ *Vidal v. SunTrust Bank*, 41 So.3d 401, 402-03 (Fla. 4th DCA 2010).

⁵ Section 48.031, F.S.; *Vidal*, 41 So.3d at 402-04 (holding that the process server's failure to note the time of service of the bank's complaint on the copy of the complaint that was served on the debtor rendered the service of the complaint defective).

⁶ Sections 48.031(1), (3), F.S.

⁷ Sections 48.29 and 48.031(5), F.S.

⁸ See s. 30.321, F.S.

⁹ Sections 775.082 and 775.083, F.S.

Currently, substitute service may only be made on a person in charge of a business when the owner is absent after two or more attempts at service. The bill provides that a sole proprietorship may be served by serving the person on the first attempt even if the owner is temporarily absent from the office.

Currently, the person making service of process files a return with the court to show service has been made. The bill adds that the person requesting service may also file the return.

Currently, service of process against a limited liability company is made as upon a partnership. Service on a partnership is effective when served on any partner and is as valid as if served on each individual partner.¹⁰ The bill amends s. 608.463, F.S to provide that service must be made as if the limited liability company were a corporation. Service on a corporation is made on the registered agent, president, vice president, or other head of the corporation, and in their absence, upon any officer, and in their absence, a director.¹¹

Sheriff's Fees for Service

The bill amends s. 30.231, F.S., which currently provides that if a sheriff is serving more than one process regarding the same action at one location, the sheriff is only entitled to one fee. The bill removes this limiting provision, allowing the sheriff to charge \$40 per process served at the same time in the same cause of action. The effect is that the sheriff may be paid multiple times to serve one person who has multiple capacities in one lawsuit.¹²

Sheriff Sales in Execution of Judgments

Currently, sheriffs may levy upon assets in satisfaction of a judgment, and sell those assets for payment of the judgment when they are provided a writ of execution by the court.¹³ There is no statutory requirement that the parties in interest direct how proceeds of sale are to be paid. The bill provides that a writ of execution must be accompanied by a statement directing the sheriff how to pay out the proceeds of sale, and provides that the sheriff is not liable for damages in the event of a wrongful levy and/or payout.

Involuntary Examinations

Currently, a court may enter an ex parte order to take a person into custody for evaluation¹⁴ who appears to be in need of treatment for mental illness and poses a threat to himself or herself, or others.¹⁵ A person may also be taken into custody for involuntary evaluation based upon substance abuse.¹⁶

In both instances, when the court enters its order for evaluation a law enforcement officer takes the person into custody based upon this order and delivers him or her to a receiving facility for involuntary evaluation.¹⁷ The current statutes are silent as to whether an original signed order is required for a receiving facility to accept the person.

The bill makes an electronically transmitted order sufficient for the receiving facility to accept the person who is subject to the order for involuntary evaluation under either statute. Further, the bill makes the

¹⁰ Section 48.061, F.S.

¹¹ Section 48.081, F.S.

¹² For example, a corporate debt might be personally guaranteed by an officer of the corporation. Suit may be brought against the the same person in two capacities. Therefore, that person would be served twice with the complaint.

¹³ See s. 30.30, F.S.

¹⁴ Section 394.463, F.S. calls this an "involuntary examination," while ss. 397.6815, and 397.6818, F.S. calls this an "involuntary assessment." The term "evaluation" is used here for both.

¹⁵ Section 394.463, F.S. The elements are that a person has a mental illness, and has refused examination and is a threat to himself or herself, or others which threat cannot be avoided through other means in the community.

¹⁶ Section 397.675, F.S. There are 3 elements: a loss of self-control regarding the substance, threatened or real infliction of harm; and impairment of judgment in respect to a need for substance abuse services

¹⁷ See s. 394.463, F.S., and s. 397.6818, F.S.

law consistent between both statutes regarding involuntary evaluations by providing that the order is valid for 7 days from the date of execution by the judge, unless otherwise specified.

The bill also makes the two statutes consistent by providing that the involuntary evaluation order may be served and executed any time of the day or night, and the law enforcement officer acting on the order may, under both statutes, use reasonable force to gain entry to any premises to take custody of the subject person.¹⁸

Injunctions

Injunctions against violence are entered under a number of statutes:

- A victim of domestic violence¹⁹ may seek protective injunctive relief;²⁰
- A victim of any repeat violence may seek injunctive relief;²¹
- A victim of stalking may seek injunctive relief.²²

Under each of these statutes, an ex parte injunction is effective up to 15 days.²³ The bill provides that if a final injunction is issued in the same case, that limit is extended until the final injunction is served.

The bill provides that a person who violates a final injunction for protection against stalking or cyberstalking by having in his or her care, custody possession, or control any firearm of ammunition commits a violation of s. 790.233, F.S., a first degree misdemeanor. A first degree misdemeanor is punishable by up to one year in county jail or a fine of up to \$1,000 or both.²⁴ This makes the cyberstalking provision parallel with the domestic violence injunction provision.

Arrest Without Warrant

Currently, s. 901.15 F.S provides for certain arrests that may be made by an officer without a warrant. Included among these is probable cause to believe that the person has violated an injunction for protection against domestic or repeat violence under s. 741.30, F.S. or 784.046, F.S. The bill adds to the list of warrantless arrests:

- A violation of an injunction pending investigation of child abuse;²⁵
- A violation of an injunction for stalking,²⁶ or cyberstalking;²⁷
- A violation of an injunction for stalking;²⁸
- An act of repeat or sexual violence;
- An act of stalking or cyberstalking; and
- An act of child abuse.²⁹

The bill also adds these statutory offenses to the list of good faith arrests an officer may make without civil liability.

The bill takes effect July 1, 2013.

¹⁸ The bill adds s. 396.6818 (3)(b), F.S., which conforms with the existing provision found in s. 394.463(2)(a)3.(d), F.S.

¹⁹ Section 741.28(2), F.S., defines "domestic violence" as "any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member."

²⁰ Section 741.30(1), F.S.

²¹ Section 784.046, F.S.

²² Section 784.048, F.S.

²³ Section 741.31, F.S., adds that an ex parte injunction is also effective for 15 days after the respondent is released from incarceration.

²⁴ Sections 775.082 and 775.083, F.S.

²⁵ Section 39.504, F.S.

²⁶ Section 784.0485, F.S.

²⁷ Section 784.0487, F.S.

²⁸ Section 784.0485, F.S.

²⁹ Section 39.01, F.S.

B. SECTION DIRECTORY:

Section 1 amends s. 30.231, F.S., regarding sheriff's fees for service of summons, subpoenas, etc.

Section 2 amends s. 48.031, F.S., regarding service of process generally.

Section 3 amends s. 48.081, F.S., regarding service on corporation.

Section 4 amends 56.27, F.S., regarding executions and payment of money collected.

Section 5 amends s. 394.463, F.S., regarding involuntary examinations.

Section 6 amends s. 397.6818, F.S., regarding court determinations.

Section 7 amends s. 608.463, F.S., regarding service of process.

Section 8 amends s. 741.30, F.S., regarding domestic violence injunctions.

Section 9 amends s. 741.31, F.S., regarding violation of an injunction for protection against domestic violence.

Section 10 amends s. 784.046, F.S., regarding actions by victims of repeat violence.

Section 11 amends s. 784.0485, F.S., regarding stalking.

Section 12 amends s. 784.0487, F.S., regarding violation of an injunction for protection against stalking or cyberstalking.

Section 13 amends s. 901.15, F.S., regarding when arrest by officer without warrant is unlawful.

Section 14 provides that the bill takes effect July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Art. III, s. 6 of the Florida Constitution provides, "Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title."

"The single subject clause contains three requirements: 1) a law shall embrace only one subject; 2) the law may include any matter properly connected with the subject; and 3) the subject must be briefly expressed in the title. *Franklin v. State*, 887 So.2d 1063, 1072 (Fla. 2004). There is a proper connection between a provision and the subject "(1) if the connection is natural or logical, or (2) if there is a reasonable explanation for how the provision is (a) necessary to the subject or (b) tends to make effective or promote the objects and purposes of legislation included in the subject." *Id.* at 1078. "[I]n determining whether a reasonable explanation exists for the connection between a specific provision and the single subject, the court may consider the citation name, the full title, the preamble, and the provisions in the body of the act." *Id.*

Ellis v. Hunter, 3 So.3d 373, 380 - 381 (Fla. 5th DCA 2009).

Combining criminal penalties with civil actions has proven to be particularly troublesome in the single subject context. *State v. Thompson*, 750 So.2d 643 (Fla. 1999); *Franklin v. State*, 887 So.2d 1063 (Fla. 2004).

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 18, 2013, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removes the word "provided" from s. 48.081, F.S., with the effect that a process server is no longer limited to service at the address provided. The amendment also corrected a scrivener's error and made a conforming title amendment. This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.