

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 570

INTRODUCER: Senator Dean

SUBJECT: Service of Process of Witness Subpoenas

DATE: March 18, 2015

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|--------------|----------------|-----------|--------------------|
| 1. | <u>Brown</u> | <u>Cibula</u> | <u>JU</u> | Favorable |
| 2. | <u>Price</u> | <u>Eichin</u> | <u>TR</u> | Favorable |
| 3. | <u>Brown</u> | <u>Phelps</u> | <u>RC</u> | Pre-meeting |

I. Summary:

SB 570 adds civil traffic cases to the types of court cases for which service of process may be made on a witness by United States mail.

Service of process of witness subpoenas may be made by United States mail in criminal traffic, misdemeanor, or second or third degree felony cases. To serve process by mail, the server must mail the subpoena to the witness's last known address at least seven days before the witness's appearance is required.

II. Present Situation:

Service of Process

The role of a process server is to serve summons, subpoenas, and other forms of process in civil and criminal actions.¹ The term "to serve" means to make legal delivery of a notice or a pleading.² A summons is a writ or a process beginning a plaintiff's legal action and requiring a defendant to appear in court to answer the summons.³ A subpoena is a legal writ or order commanding a person to appear before a court or other tribunal.⁴ A subpoena can command a person to be present for a deposition or for a court appearance.

The sheriff of the county where the person is to be served is generally responsible for serving as process server. However, notice of the initial nonenforceable civil process, criminal witness subpoenas, and criminal summons may be delivered by a process server other than the sheriff; i.e., a special process server or a certified process server. Special process servers and certified

¹ Sections 48.011 and 48.021, F.S.

² BLACK'S LAW DICTIONARY (10th ed. 2014).

³ BLACK'S LAW DICTIONARY (10th ed. 2014).

⁴ BLACK'S LAW DICTIONARY (10th ed. 2014).

process servers must meet certain statutory conditions and appear on a list approved and maintained by the sheriff or the chief judge of a judicial circuit.⁵

A process server generally must effect service of process by personal service or substitute service. Typically these types of service occur by:

- Serving the person directly or by leaving a copy of a complaint, petition, or initial pleading or paper at the person's usual place of abode with a person who is 15 years old or older;
- Serving a person at his or her place of employment in a private area designated by the employer;
- Providing substitute service on a spouse if the cause of action is not an adversarial proceeding between the spouse and the person to be served, if the spouse requests service, and if the spouse and person to be served live together;
- Providing substitute service during regular hours at a business by leaving delivery with an employee or other person in charge if the person to be served is a sole proprietor and two attempts have been made to serve the owner.⁶

Service of process of witness subpoenas in criminal or civil cases is the same as provided above. However, service of process of witness subpoenas may be accomplished through United States mail for the following cases:

- Criminal traffic case;
- Misdemeanor case;
- Second degree felony; or
- Third degree felony.⁷

To serve a subpoena on a witness by mail, the subpoena must be sent to the last known address of the witness at least seven days before the appearance required in the subpoena. If a witness fails to appear in response to a subpoena served by mail, the court may not find the person in contempt of court.

A criminal witness subpoena may also be posted at the person's residence if the server has unsuccessfully attempted to serve the subpoena at least three times, at different times of the day or night on different dates.⁸ The process server must post the subpoena at least five days before the witness' required appearance.⁹

Civil Traffic Cases

A civil traffic case may result from a contest of a civil traffic citation, which may be for moving or nonmoving violations. Examples of moving violations include, but are not limited to:

- Speeding;¹⁰
- Failure to yield to highway construction workers;¹¹

⁵ Sections 48.021(1) and 48.29, F.S.

⁶ Section 48.031(1) and (2), F.S.

⁷ Section 48.031(3)(a), F.S.

⁸ Section 48.031(3)(b), F.S.

⁹ Section 48.031(3)(b), F.S.

¹⁰ Section 316.183, F.S.

¹¹ Section 316.079, F.S.

- Failure to drive on the right side of the roadway;¹²
- Improper passing of vehicles;¹³
- Failing to signal before turning;¹⁴ and
- Following too closely.¹⁵

Examples of nonmoving violations include, but are not limited to:

- Parking violations;¹⁶
- Leaving a motor vehicle unattended;¹⁷
- Riding on the exterior of a vehicle;¹⁸
- Tearing, breaking down, or defacing any detour sign;¹⁹ and
- Failing to yield the right-of-way to a funeral procession.²⁰

A traffic infraction is a noncriminal violation that may require payment of a fine and community service hours, but is not punishable by incarceration. As such, the person charged does not have the right to a jury trial or court-appointed counsel.²¹

A person who commits a moving or nonmoving violation may receive a citation in person by a law enforcement officer; in the mail subsequent to detection of a traffic violation by a traffic infraction detector, commonly known as a red light camera;²² or in the mail subsequent to a toll violation.²³ A person who receives a traffic citation has the option to pay the civil penalty listed on a traffic citation, enter into a payment plan, or contest the citation at a hearing.²⁴

III. Effect of Proposed Changes:

The bill adds civil traffic cases to the list of court cases for which service of process may be made on a witness by United States mail.

Under existing law, service of process of witness subpoenas may be made by United States mail in criminal traffic, misdemeanor, or second or third degree felony cases. To serve process by mail, the server must mail the subpoena to the witness's last known address at least seven days before the witness's appearance is required.

Civil traffic cases are less serious than criminal traffic, misdemeanor, and felony cases. However, current law allows witness subpoenas to be served by mail in these more serious cases, but not in civil traffic cases.

¹² Section 316.081, F.S.

¹³ Section 316.082, F.S.

¹⁴ Section 316.155, F.S.

¹⁵ Section 316.0895, F.S.

¹⁶ Sections 316.1945, 316.195, and 316.1951, F.S.

¹⁷ Section 316.1975, F.S.

¹⁸ Section 316.2015, F.S.

¹⁹ Section 316.078, F.S.

²⁰ Section 316.1974, F.S.

²¹ Section 318.13(3), F.S.

²² Section 316.0776, F.S.

²³ Section 316.1001, F.S.

²⁴ Section 318.14(4), F.S.

The bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18, Fla. Const., provides that a mandate potentially exists if a law:

- Requires cities or counties to spend funds or take action requiring the expenditure of funds;
- Reduces the authority of cities or counties to raise revenues in the aggregate; or
- Reduces the percentage of a state tax shared with cities and counties in the aggregate.

As this bill authorizes service of process by mail for witness subpoenas in civil traffic cases, the bill reduces costs for cities and counties. The bill does not impact the ability of a city or county to raise revenue. The bill also does not negatively impact the tax base of a city or county. Therefore, the bill does not appear to be a mandate.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

A person who challenges a civil traffic citation bears the costs of service of process for witness subpoenas. The fee for in-person service of a witness subpoena is \$40.²⁵ Thus, by allowing witness subpoenas to be served by mail, the costs of challenging a civil traffic citation will decrease.

C. Government Sector Impact:

The may result in a cost savings for local sheriffs by giving them the option of serving witness subpoenas by mail for appearances in civil traffic cases.²⁶ This cost reduction occurs because the \$40 fee authorized in statute covers all attempts to serve in a particular case.

²⁵ Section 30.231(1)(c), F.S.

²⁶ Email correspondence with Matt Dunagan, Florida Sheriffs Association (Feb. 19, 2015).

Hillsborough County alone had to deliver 5,878 witness subpoenas in civil traffic cases last year. Hillsborough County estimates a cost savings from this bill of almost \$100,000 a year in manpower costs.²⁷

The Office of the State Courts Administrator anticipates a minimal fiscal impact from the bill.²⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 48.031 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²⁷ Email correspondence from Lorelei Bowden, Manager, Legislative Affairs and Grants, Hillsborough County Sheriff's Office (Feb. 27, 2015).

²⁸ Office of the State Courts Administrator, *2015 Judicial Impact Statement on SB 570* (Feb. 20, 2015).