

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- This bill allows private individuals to perform a duty currently carried out by government officials by allowing special process servers and certified process servers to serve criminal witness subpoenas and criminal summonses in addition to the sheriff.

B. EFFECT OF PROPOSED CHANGES:

Background

Service of process is the formal delivery of a writ, summons, or other legal process or notice to a person affected by that document. Statutes governing service of process are strictly construed to insure that defendants receive notice of an action against them and have the opportunity to protect their rights. There are two types of service of process: enforceable and non-enforceable. Enforceable service is a court order which requires the sheriff to take action such as make an arrest or seize property. Non-enforceable service of process is designed to place another party on notice that he or she must take action.

Civil executions are court orders directing a sheriff or other officer to enforce a judgment, usually by seizing and selling the judgment debtor's property. Writs of execution are issued to a sheriff or officer of the court that directs and authorizes the sheriff or officer to carry into effect the judgment of the court.¹ In 2001, Florida established a statewide docketing system for civil writs of execution where priority among creditors is based on the date of lien filing.

Effect of Bill

Persons Authorized to Serve Process

Current law

Florida law establishes three categories of persons by whom process may be served in Florida. These persons include a sheriff, a person appointed by the sheriff in the sheriff's county (known as a special process server) and a certified process server appointed by the chief judge of the circuit court.² Section 48.021(1), F.S., provides that all process, except non-enforceable civil process, must be served by the sheriff of the county where the person to be served is found.³ Non-enforceable civil process may be served by a special or certified process server. Currently, only the county sheriff or a deputy sheriff may serve criminal witness subpoenas and criminal summonses.

Furthermore, the chief judge of each judicial circuit may establish an approved list of natural persons who can serve as certified process servers and may periodically add names to the list of natural persons who have met the requirements for certification provided for in s. 48.29, F.S.⁴ A person may select from the list for the circuit where the process is to be served, one or more certified process servers to serve initial nonenforceable civil process.⁵

¹ *Raulerson v. Peeples*, 81 Fla. 206, 87 So. 2d 629 (1921).

² *Abbate v. Provident Nat. Bank*, 631 So. 2d 312 (Fla. 5th DCA 1994).

³ Types of non-enforceable service of process include summons, subpoenas, orders to show cause, injunctions, notices, and writs of garnishment.

⁴ Section 48.27(1), F.S.

⁵ Section 48.27(2), F.S.

Proposed Changes

The bill amends s. 48.021(1), F.S., to add that criminal witness subpoenas and criminal summonses may also be served by a special process server or a certified process server. This bill also amends s. 48.021(1), F.S., to provide that any person authorized by the civil rules of procedure may also serve civil witness subpoenas.⁶ This change conforms to the above changes made in this bill to s. 48.021(1), F.S., relating to service of criminal witness subpoenas and summons.

This bill amends s. 48.27, F.S., to provide that the addition of a person's name to the list of approved certified process servers authorizes him or her to serve criminal witness subpoenas and criminal summonses within the circuit in addition to initial nonenforceable civil process. It further provides that the state in any proceeding or investigation by a grand jury or any party in a criminal action, prosecution, or proceeding may select a person from the list to serve a subpoena or summons.

Unsatisfied Executions

Current Law

In 2001, Florida established a statewide docketing system for civil writs of execution. Prior to October 2001, a writ of execution had to be filed with the sheriff in the specific county where the assets were located. This was problematic because a debtor could avoid judgment liens by moving personal property from county to county. A lienholder would have to withdraw the writ of execution from one county and file it with a new county whenever property was moved from one county to another. The date of the writ was the most recent filing, which then affected the priority of such liens.

Sections 55.201 to 55.209, F.S., effective October 1, 2001, provided a system of obtaining a judgment lien on personal property by filing a judgment lien certificate with the Department of State. This established priority among creditors statewide based upon the date of lien filing, rather than requiring a race from county to county in search of leviable property.

Section 56.041(2), F.S., provides that all unsatisfied executions in the hands of the sheriff may be returned to the court issuing the execution 20 years after the date of issuance of final judgment upon which the execution was issued.

Proposed Changes

This bill amends s. 56.041(2), F.S., to provide that sheriffs may return all unsatisfied executions docketed before October 1, 2001. This effectively disposes of writs of executions still held by sheriffs that were deposited before the statewide docketing system created in 2001.

Execution Sales and Payment of Money Received Under Executions

Current Law

Section 56.21, F.S., provides that notice of all sales under execution must be given by advertisement once each week for 4 successive weeks in a newspaper published in the county in which the sale is to take place. When personal property is levied upon, a notice of such levy and execution sale and a copy of an affidavit required by s. 56.27(4), F.S., must be sent by the sheriff to all judgment creditors. When real property is levied upon, notice of such levy and execution sale must also be made to the property owner of record in the same manner as notice is made to any judgment debtor.

⁶ Fla.R.Civ.P. 1.410(d) provides that a civil subpoena may be served by any person authorized by law to do so who is not a party to the proceedings and is 18 years of age or older.

All money received under executions must be paid, in the order prescribed, to the following:

- The sheriff for costs of the sale;
- The levying creditor in the amount of \$500 as liquidated expenses;⁷
- If the levy is on real property, the judgment lienholder of first priority under s.55.10, F.S.;
- If levy is on personal property, the judgment lienholder having the earliest recorded judgment lien acquired under ss. 55.202, 55.204(3), F.S. or 55.208(2), F.S., or his or her attorney, provided the judgment lien is not satisfied;
- Other judgment creditors in the order of priority of their filed liens if the monies exceed the amount necessary to satisfy the above;⁸ and
- The debtor, who receives any remaining funds.

Section 56.27(4), F.S., provides that the levying creditor must deliver to the sheriff an affidavit prior to the first publication or posting of the notice of sale. The affidavit must contain the following information about the judgment debtor:

- A verification that the levying creditor has reviewed the database or judgment lien records and that the information in the affidavit based on that information is true and correct;
- Information required under s. 55.203, F.S.,⁹ for each judgment lien certificate, the file number assigned to the judgment lien, and the date of filing for each judgment lien certificate; and
- A statement that the levying creditor either does not have any other levy in process or, if another levy is in process, that the levy creditor believes in good faith that the total value of the property under execution does not exceed the amount of outstanding judgments.

Proposed Changes

The bill amends s. 56.21, F.S., to require creditors attempting to levy on real property to supply an affidavit notice of which must be made to the property owner.

This bill amends s. 56.27(4), F.S., to create specific information that must be provided in an affidavit, used in connection with the levy on real property. The affidavit must state that the levying creditor has reviewed the records of the clerk of court of the county where the property is situated, or has performed a title search, and that the information contained in the affidavit based on this review or title search is true and correct. The affidavit must also include the information contained in the certified copy of recordation of lien for each lien recorded on real property. This bill also specifies that the requirements for an affidavit, already provided in current law, are to be used in connection with a levy on personal property.

The bill further revises s. 56.27, F.S., to provide that for the purpose of the sheriff's distribution of the surplus, the priority of judgment liens on personal property is based on the effective date the judgment lien was acquired under ss. 55.202, 55.204(3), F.S. or 55.208(2), F.S., and the priority of judgment liens on real property is based on the effective date the judgment lien was acquired under s. 55.10(1) and (2), F.S.

⁷ Section 56.27(1), F.S.

⁸ Section 56.27(2), F.S.

⁹ Section 55.203, F.S., provides a judgment lien certificate must contain: the legal name of each judgment debtor; the last known address and social security number or federal employer number of each judgment debtor if shown on the judgment itself; the legal name of the judgment creditor and if a recorded legal entity, then the registered name and document filing number; the address of the judgment creditor; the identity of the court which entered the judgment and the case number and date the written judgment was entered; the amount due on the money judgment and the applicable interest rate; the signature of the judgment creditor or the judgment creditor's attorney or duly authorized representative; and an affidavit if the lien was acquired prior to October 1, 2001.

Service of Process for an Injunction for Protection against Domestic Violence and Sexual Violence

Current Law

Section 741.30, F.S., provides a statutory cause of action for an injunction for protection against domestic violence, which is initiated by a petition by the victim or by family or household members. The petitioner need not be a spouse and need not be represented by an attorney. Upon the filing of the petition, the court is required to set a hearing and the respondent must be personally served with a copy of the petition and other specified documents.¹⁰

Section 741.30(8), F.S., provides that in a domestic violence case where a protective injunction is being sought, a county clerk is required to furnish with the original injunction of protection petition

"a copy of the petition, financial affidavit, Uniform Child Custody Jurisdiction and Enforcement Act affidavit, if any, notice of hearing, and temporary injunction, if any, to the sheriff or a law enforcement agency of the county where the respondent resides or can be found, who shall serve it upon the respondent as soon thereafter as possible on any day of the week and at any time of the day or night."

Section 784.046, F.S., provides for a cause of action for an injunction for protection against sexual violence similar to that provided in s. 741.30, F.S. for protection against domestic violence. Section 784.046(8), F.S., also includes the same requirements of the clerk of court found in s. 741.30(8), F.S., discussed above.

Due to the time sensitive nature of obtaining injunctions against domestic violence, the delay in time caused by the requirement to provide the original injunction of protection petition to the respondent may be problematic.

Proposed Changes

This bill amends ss. 741.30(8) and 784.046(8), F.S., to provide that the clerk of court, when requested by the sheriff, may transmit a facsimile copy of an injunction that has been certified by the clerk of court, and this facsimile copy may be served in the same manner as a certified copy. This would allow the facsimiled copy to be served to the respondent sooner. This bill also provides that upon receiving a facsimile copy, the sheriff must verify receipt with the sender before attempting to serve it upon the respondent. In addition, if the sheriff is in possession of an injunction for protection that has been certified by the clerk of court, the sheriff may transmit a facsimile copy of that injunction to a law enforcement officer who shall serve it in the same manner as a certified copy.

C. SECTION DIRECTORY:

Section 1 amends s. 48.021, F.S., relating to the types of process required to be served by the sheriff.

Section 2 amends s. 48.27, F.S., relating to certified process servers.

Section 3 amends s. 56.041, F.S., relating to civil execution orders.

Section 4 amends s. 56.21, F.S., relating to notice of execution sales.

Section 5 amends s. 56.27, F.S., relating to the payment of money collected under an execution sale.

Section 6 amends s. 741.30, F.S., relating to injunctions for protection from domestic violence.

¹⁰ Section 741.30(4), F.S.

Section 7 amends s. 784.046, F.S., relating to injunctions for protection from repeat, sexual, or dating violence.

Section 8 provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill appears to have an indeterminate and likely minimal fiscal impact on local government revenues. See Fiscal Comments.

2. Expenditures:

This bill appears to have an indeterminate and likely minimal fiscal impact on local government expenditures. See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The provision allowing certain criminal process be served by private process servers may have a fiscal impact on local sheriffs. Sheriffs may see a decrease in revenues related to service of process, but they may also realize a corresponding reduction in expenditures due to decreased demand for services.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This 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:

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On January 23, 2008, the Committee on Courts adopted three amendments to this bill. The amendments made the following revisions to the bill:

- Added the term "criminal" to s. 48.021, F.S., to conform to other changes made by this bill.
- Made changes to s. 48.27, F.S., to conform with other changes made by this bill by providing that the addition of a person's name to the list of certified process servers allows the person to serve criminal witness subpoenas and criminal summonses in addition to civil process.
- Specified that s. 56.27, F.S., governs the priority of the sheriff's disbursements, but that the affidavit does not change the legal priority of liens established under Florida law in chapter 55.
- Specified that the owner of the property sold is entitled to the surplus after the sale rather than the defendant.¹¹

The bill was then reported favorably with amendments.

On April 1, 2008, the Safety & Security Council adopted one substitute amendment to this bill. The amendment makes grammatical changes and removes the word "criminal" from s. 48.021, F.S. The bill was then reported favorably as a council substitute. This analysis is drafted to the council substitute.

¹¹ This change recognizes that on rare occasions the defendant authorized to execute and levy may only have a partial ownership interest.