

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 Criminal Justice Committee

BILL: CS/SB 300

INTRODUCER: Judiciary Committee and Senator Crist

SUBJECT: Service of Process

DATE: February 20, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Treadwell	Maclure	JU	Fav/CS
2.	Cellon	Cannon	CJ	Favorable
3.			JA	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes
 B. AMENDMENTS..... Technical amendments were recommended
 Amendments were recommended
 Significant amendments were recommended

I. Summary:

The bill increases fees charged by a sheriff in connection with docketing and service of process in civil cases to \$40 from \$20. The State of Florida or its agencies are exempted from the increase in fees. The bill also deletes the provision of law that prohibits additional fees to be charged by the sheriff for successive attempts at service. In addition, the bill:

- permits special process servers and certified process servers to serve criminal witness subpoenas and criminal summonses;
- permits sheriffs to return to the clerk unserved writs that have been on a docket prior to October 1, 2001;
- specifies that the sheriff will provide notice of an execution sale prior to the advertisement of the sale to the judgment debtor;
- requires creditors to identify in an affidavit provided to a sheriff the liens recorded on real property subject to an execution sale;
- clarifies that the sheriff's distribution of the surplus from the sale to judgment lienholders on real property is based on the date the lien was acquired; and
- permits sheriffs to serve facsimile copies of protective injunctions instead of certified copies of protective injunctions.

This bill amends the following sections of the Florida Statutes: 30.231, 48.021, 48.27, 56.041, 56.21, 56.27, 741.30, and 784.046.

II. Present Situation:

Overview

Service of process is the formal delivery of a writ, summons, or other legal process or notice.¹ As a general rule, “statutes governing service of process are to be strictly construed to insure that a defendant receives notice of the proceedings.”² Currently, under Florida law process may be served by a sheriff, a person appointed by the sheriff in the sheriff’s county (“special process server”), and a certified process server appointed by the chief judge of the circuit court.³ All process must be served by the sheriff of the county where the person to be served is found, except initial nonenforceable process.⁴ Initial nonenforceable process may be served by a special or certified process server.⁵ Any person authorized by the Florida Rules of Procedure may also serve witness subpoenas.⁶ However, at present, there is no statutory authority or rule of procedure that allows anyone other than a sheriff or a sheriff’s deputy to serve criminal subpoenas.

Process Fees and Price Level Data

Under Florida law, county sheriffs of the state must charge fixed, nonrefundable fees for the service of process in civil actions as established by a statutory schedule.⁷ All fees collected under the statutory provisions for sheriffs’ fees for service of process are to be paid monthly into the county’s fine and forfeiture fund.⁸

In addition, special and certified process servers may charge any reasonable fee for services, which can be more or less than the statutorily set fee for sheriffs.⁹ Section 30.231, F.S., provides that the sheriff must charge \$20 for service of summons or writs except for executions and \$20

¹ “The term ‘process’ is not limited to ‘summons.’ In its broadest sense[,] it is equivalent to, or synonymous with, ‘procedure,’ or ‘proceeding.’” BLACK’S LAW DICTIONARY (8th ed. 2004). Thus, service of process may trigger the constitutional issue of procedural due process, which requires notice and the opportunity to be heard. *See, e.g., Minda v. Ponce*, 918 So. 2d 417, 422 (Fla. 2d DCA 2006) (citing *Schnicke v. Schnicke*, 533 So. 2d 337, 337-38 (Fla. 5th DCA 1988)).
² *Abbate v. Provident Nat’l Bank*, 631 So. 2d 312, 313 (Fla. 5th DCA 1994) (citing *Henzel v. Noel*, 598 So. 2d 220, 221 (Fla. 5th DCA 1992)).

³ *Id.*

⁴ Section 48.021(1), F.S. Service of process may be categorized as enforceable or nonenforceable. *See* Florida Senate, Committee on Justice Appropriations, *Sheriff Costs – Service of Process*, Interim Project Report 2006-144, at 1 (August 2005). “Enforceable service of process involves a court order requiring the sheriff to take action (i.e., eviction, seizure of property)” *Id.* On the other hand, “[n]onenforceable service of process is designed to place another party on notice that he or she must take action (i.e., summons to appear, witness subpoena)” *Id.*

⁵ Section 48.021, F.S. In addition, s. 48.27(2), F.S., expressly authorizes certified process servers, in civil actions, to serve initial nonenforceable civil process on a person found within the circuit where the process server is certified.

⁶ Section 48.021(1), F.S. Rule 1.070, Florida Rules of Civil Procedure, provides that service of process may be made by a person appointed by court order, known as an elisor.

⁷ Section 30.231, F.S.

⁸ Section 30.231(5), F.S.

⁹ *See* s. 48.021(2)(a), F.S.; *see also* ss. 48.27(1) and 48.29, F.S.

for each witness to be served.¹⁰ Executions are court orders directing a sheriff or other officer to enforce a judgment, usually by seizing and selling the judgment debtor's property.¹¹ The sheriff's office must keep files and index these orders. For executions, the sheriff must charge \$20 for docketing and indexing each writ of execution, \$20 for advertisement of the sale of property under process, \$20 for each sale under process, and \$20 for each deed, bill of sale, or satisfaction of judgment.¹² However, if an execution is unsatisfied, a sheriff may return the writ to the court 20 years after the date of issuance of final judgment.¹³

Fee Adjustments for Inflation

Service of process was the subject of a Senate Interim Project Report by the Committee on Justice Appropriations in 2005. The report noted that the fees for service of process, summons, and executions had not been addressed by the Legislature since 1994.¹⁴ The report considered the fees using, among other indicators, the Consumer Price Index (CPI), which measures the average change over time in prices paid for consumer goods and services. Survey data of county sheriffs' offices compiled by the Florida Senate Committee on Justice Appropriations indicated that sheriffs acting as process servers require an average of four attempts to serve a party for an average cost of \$37.¹⁵

When service of process for a defendant is returned not effected, or returned improperly executed, the party issuing it is entitled to the additional process against the unserved party as is necessary to effect service.¹⁶ Currently, Florida law prohibits sheriffs from charging additional fees for second or third attempts at service when initial efforts to serve process were unsuccessful.¹⁷

Execution Sales and Payment of Lienholders

Under existing law, notice of all sales under execution must be advertised weekly for four successive weeks in a newspaper published in the county in which the sale is to take place.¹⁸ On or before the date of the first publication or posting of the notice of sale, a copy of the notice of sale is to be furnished to the judgment debtor, although s. 56.21, F.S., does not specify who is to furnish the notice. When personal property is levied upon, notice of the levy and execution sale and a copy of an affidavit required by statute must be sent by the sheriff to all judgment creditors.¹⁹ When real property is levied upon, the notice of the levy and execution sale must be given to the property owner of record in the same manner as notice is made to the debtor.²⁰

¹⁰ Section 30.231(1)(a) and (c), F.S.

¹¹ BLACK'S LAW DICTIONARY (8th ed. 2004).

¹² Section 30.231(1)(d), F.S.

¹³ Section 56.041(2), F.S.

¹⁴ Interim Project Report, *supra* note 4, at 1. The "[b]asic data relating to increases in the consumer price index, gasoline prices, and wages for deputy sheriffs since 1994 indicate the probability that sheriff's costs to serve process have risen substantially." *Id.* at 6.

¹⁵ *See id.* at 5. The \$37 figure accounts for things such as increased fuel costs.

¹⁶ *See generally* s. 30.231, F.S.

¹⁷ Section 30.231(4), F.S.

¹⁸ Section 56.21, F.S.

¹⁹ *Id.*

²⁰ *Id.*

Florida law also specifies the order of payment when money is received by execution in the following manner:

the sheriff, for costs; the levying creditor in the amount of \$500 as liquidated expenses; if the levy is upon real property, the first priority lienholder under s. 55.10; and if the levy is upon personal property, the first priority lienholder under s. 55.202, s. 55.204(3), or s. 55.208(2), as set forth in an affidavit required by [law] or his or her attorney, in satisfaction of the judgment lien, provided that the judgment lien has not lapsed at the time of the levy.²¹

Florida law delineates the order of payment for lienholders when personal property that is sold under execution results in a surplus. Under the law, “the surplus shall be paid in the order of priority to any judgment lienholders whose judgment liens have not lapsed.”²² Florida law also requires a levying creditor in the real property context to deliver an affidavit to the sheriff with information about a judgment debtor and property lien before the first publication or posting of notice of the sale.²³ Currently, there is no levying creditor affidavit requirement in the real property context.

Service of Process in Domestic Violence and Sexual Violence Cases

In domestic violence cases, a county clerk is required to furnish:

a copy of the petition [for injunction], 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.²⁴

The clerk of the court is also responsible for furnishing the sheriff with information on the respondent’s physical description and location.²⁵ In a similar fashion, the sexual violence statute requires the clerk to furnish a sheriff or county law enforcement agency with a copy of the petition, notice of hearing, and temporary injunction to be served as soon thereafter as possible.²⁶ The clerk must also furnish the sheriff information on the respondent’s physical description and location.²⁷

²¹ Section 56.27(1), F.S.

²² Section 56.27(2), F.S.

²³ Section 56.27(4), F.S.

²⁴ Section 741.30(8)(a)1., F.S.

²⁵ *Id.*

²⁶ Section 784.046(8)(a)1., F.S.

²⁷ *Id.*

III. Effect of Proposed Changes:

This bill amends s. 30.231, F.S., to increase sheriff's fees to \$40 from \$20 for service of the following:

- Summons or writs except executions; and
- Witness subpoenas.

Private process servers indicate that they will likely increase fees for service of process to reflect these changes.

In addition, the bill increases the fees charged by sheriffs to \$40 from \$20 to:

- Docket and index each writ of execution;
- Advertise sales under process;
- Conduct each sale under process; and
- Prepare each deed, bill of sale, or satisfaction of judgment.

Although the sheriff's service of process fee is increased, the bill exempts the State of Florida or its agencies from this increase in fees, and makes clear that the fees applicable to the state and its agencies will be those in place on June 30, 2008, which is the day before the new law takes effect.

The bill also removes the provision that prohibits the sheriff from charging additional fees for subsequent attempts at service when it was not accomplished on the first attempt.²⁸ The effect of the removal of this provision in the bill is that sheriffs will now be able to charge the party requesting service for each additional attempt at service, if the service attempt is initially unsuccessful.

In addition, the bill allows criminal witness subpoenas and criminal summonses to be served by special process servers and certified process servers in addition to a sheriff. Currently, there is no statute or rule that allows anyone other than a sheriff or deputy to serve criminal witness subpoenas and criminal summonses. The bill also amends s. 48.27(2), F.S., to ensure that the statute is consistent with the authority given to certified process servers in s. 48.021, F.S.

The bill also amends s. 56.041, F.S., to allow sheriffs to return to the clerk unserved writs that have been on a docket prior to October 1, 2001.

In conjunction with these changes, the bill requires creditors attempting to levy on real property to supply an affidavit to the sheriff similar to the affidavit required for levying on personal property, as indicated in the proposed changes to s. 56.27, F.S., discussed below. The sheriff also is to provide notice of the execution sale, in addition to the notice of levy, to the property owner.

²⁸ According to survey data from sheriffs' offices around the state, a process server makes an average of four attempts to perfect service. Interim Project Report, *supra* note 4, at 5. Existing law refers to successive attempts at service of process as "alias" and "pluries" documents, which are the Latin terms for second and subsequent writs, respectively. *Id.* at 1.

Section 56.27, F.S., is revised to require an affidavit, used in connection with the levy on real property, to state that the creditor has reviewed the property and lien records for real property subject to the execution sale. Additionally, the affidavit must identify the liens recorded on the real property subject to an execution sale. The required affidavit does not change the legal priority of liens established under Florida law, and solely governs the sheriff's distribution of the surplus to judgment lienholders. The bill clarifies that, for the purpose of the sheriff's distribution of the surplus to judgment lienholders, the priority of judgment liens on real property is based on the date the lien was acquired. The bill also clarifies that any remaining surplus must be paid to the "owner of the property sold" rather than to the "defendant."

Finally, the bill allows sheriffs to serve a facsimile copy of a protective injunction instead of a certified copy in domestic violence and sexual violence cases. Thus, faster service of process could be accomplished in these cases.

The bill provides an effective date of July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

This bill will increase the service of process fees collected by sheriffs to \$40 from \$20, as well as allow sheriff's to charge for successive attempts at service, which will, in turn, increase county revenues. See "Government Sector Impact" below.

B. Private Sector Impact:

By increasing the service of process fees, this bill may increase the cost to persons paying a sheriff or certified and special process server for service of process. It is likely that certified and special process servers will increase their fees to reflect the increases in fees for sheriffs.

C. Government Sector Impact:

The bill will increase the fees that are collected by sheriffs for carrying out service of process, which will increase county revenues. The Revenue Impact Conference has not

yet reviewed this bill. Thus, the exact fiscal impact of the bill is unknown at this time. Last year, a review by the Conference indicated that that increase in fees would result in a recurring local government revenue increase of approximately \$25.2 million for fiscal year 2007-08. However, this estimation was made prior to the inclusion of the exemption from the fee increase for the State of Florida and its agencies. As a result, it is likely that the revenue generated under this bill would be less than the estimate of \$25.2 million under last year's legislation.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Judiciary on January 23, 2008:

The committee substitute:

- Revises the exemption from the fee increase by broadening its application to cover the state and its agencies regardless of their role in the relevant legal action or proceeding.
- Amends an additional statutory provision governing the authority of certified process servers to include service of criminal witness subpoenas and criminal summonses.
- Clarifies that the bill governs the priority of the sheriff's disbursements of any surplus from an execution sale to judgment lienholders, and that the affidavit submitted by creditors for property levies does not augment the legal priority of liens established under Florida law.
- Clarifies that any remaining surplus from property sold under execution must be paid to the "owner of the property sold" rather than to the "defendant."

B. Amendments:

None.