

**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 Criminal Justice

**BILL:** SB 1268

**INTRODUCER:** Senator Detert

**SUBJECT:** Service of Process

**DATE:** March 27, 2013      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	<b>Pre-meeting</b>
2.			JU	
3.				
4.				
5.				
6.				

**I. Summary:**

SB 1268 amends several different areas of the law as follows.

**Service of Process**

- Provides that a fee of \$40 will be charged by the sheriff for each summons served.
- Provides that execution must be accompanied by 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 form.
- Provides for changes to service of process on certain businesses.
- Adds a first degree misdemeanor penalty for an employer, employee, or a representative or agent of the employer who refuses to accommodate service on an employee.

**Involuntary Examinations**

- 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.
- Provides that a law enforcement officer may use reasonable force to gain entry to any premises to take custody of the person who is the subject of an involuntary assessment and stabilization order.

## **Injunctions Against Violence**

- Adds a first degree misdemeanor penalty for violating a stalking or cyberstalking injunction by possession of a firearm.

## **Warrantless Arrests**

- Expands circumstances in which a warrantless arrest can be lawfully made to include stalking, cyberstalking, and child abuse.

This bill substantially amends the following sections of the Florida Statutes: 30.231, 48.031, 56.27, 394.463, 397.6818, 608.463, 741.30, 741.31, 784.046, 784.0485, 784.0487, and 901.15.

## **II. Present Situation:**

### **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.<sup>1</sup> The sheriff may appoint special process servers who meet specified statutory minimum requirements.<sup>2</sup> The chief judge of the circuit court may establish an approved list of certified process servers.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

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 are 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 their contents.<sup>6</sup> 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.<sup>7</sup>

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<sup>1</sup> Section 48.021, F.S.

<sup>2</sup> *Id.*

<sup>3</sup> Section 48.27, F.S.

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

<sup>5</sup> 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).

<sup>6</sup> Sections 48.031(1), (3), F.S.

<sup>7</sup> Sections 48.29 and 48.031(5), F.S.

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.<sup>8</sup>

### **Service on Employees and Businesses**

Section 48.031, F.S., provides that employers “shall permit” service of process on employees in a private area designated by the employer. 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 person making service of process files a return with the court to show service has been made. 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.<sup>9</sup>

### **Sheriff’s Fees for Service**

Section 30.231, F.S., 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.

### **Sheriff Sales in Execution of Judgments**

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.<sup>10</sup> There is no statutory requirement that the parties in interest direct how proceeds of sale are to be paid.

### **Involuntary Examinations**

A court may enter an ex parte order to take a person into custody for evaluation who appears to be in need of treatment for mental illness and poses a threat to himself or herself, or others.<sup>11</sup> A person may also be taken into custody for involuntary evaluation based upon substance abuse.<sup>12</sup> In both instances, when the court enters its order for evaluation<sup>13</sup> 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.<sup>14</sup> The current statutes are silent as to whether an original signed order is required for a receiving facility to accept the person.

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<sup>8</sup> See s. 30.321, F.S.

<sup>9</sup> Section 48.061, F.S.

<sup>10</sup> See s. 30.30, F.S.

<sup>11</sup> 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.

<sup>12</sup> 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.

<sup>13</sup> Section 394.463, F.S., calls this an “involuntary examination,” while s. 397.6815 and 397.6818, F.S. call this an “involuntary assessment.” The term “evaluation” is used here for both.

<sup>14</sup> See s. 394.463, F.S., and s. 397.6818, F.S.

## **Injunctions**

Injunctions against violence may be issued under several statutes to the following:

- A victim of domestic violence;<sup>15</sup>
- A victim of repeat violence, sexual violence, or dating violence;<sup>16</sup> and
- A victim of stalking.<sup>17</sup>

Under each of these statutes, an ex parte temporary injunction is effective up to 15 days.<sup>18</sup>

## **Arrest Without Warrant**

Section 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 s. 784.046, F.S.

### **III. Effect of Proposed Changes:**

#### **Service on Employees and Businesses**

The bill creates a first degree misdemeanor for employers and their agents, or other employees who fail to permit service of process on employees in a private area designated by the employer.<sup>19</sup> 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. The bill adds that the person requesting service may also file the return-of-service form.

The bill also amends s. 608.463, F.S., to provide that service must be made as if a 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 another officer, and in their absence, a director.<sup>20</sup>

#### **Sheriff's Fees for Service**

The bill amends s. 30.231, F.S., 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.<sup>21</sup>

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<sup>15</sup> Section 741.30(1), F.S.

<sup>16</sup> Section 784.046, F.S.

<sup>17</sup> Section 784.048, F.S.

<sup>18</sup> Section 741.31, F.S., adds that an ex parte injunction is also effective for 15 days after the respondent is released from incarceration.

<sup>19</sup> A first degree misdemeanor is punishable by up to one year in county jail and/or a fine of up to \$1,000. Sections 775.082 and 775.083, F.S.

<sup>20</sup> Section 48.081, F.S.

<sup>21</sup> For example, a corporate debt might be personally guaranteed by an officer of the corporation. Suit may be brought against the same person in two capacities. Therefore, that person would be served twice with the complaint.

### **Sheriff Sales in Execution of Judgments**

The bill amends s. 56.27, F.S., by providing that a writ of execution must be accompanied by a statement directing the sheriff how to pay out the proceeds of sale. Additionally, it provides that the sheriff is not liable for damages in the event of a wrongful levy and/or payout.

### **Involuntary Examinations**

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 s. 394.463, F.S., and s. 397.6818, F.S. Further, the bill makes the law consistent between both statutes regarding involuntary evaluations in providing that the order is valid for seven days from the date of execution by the judge, unless otherwise specified.

The bill also makes the two statutes consistent in 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.<sup>22</sup>

### **Injunctions**

The bill provides that if a final injunction for protection against domestic violence, repeat violence, sexual violence, dating violence, stalking, or cyberstalking is issued in the same case in which an ex parte temporary injunction has been issued, that the temporary 15 day time 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 or ammunition commits a violation of s. 790.233, F.S., a first degree misdemeanor. This makes the stalking and cyberstalking provision parallel with the domestic violence injunction provision.<sup>23</sup>

### **Arrest Without Warrant**

The bill adds the following violations and offenses to the list of lawful warrantless arrests:

- A violation of an injunction pending investigation of child abuse;<sup>24</sup>
- A violation of an injunction for stalking<sup>25</sup> or cyberstalking;<sup>26</sup>
- An act of repeat or sexual violence;
- An act of stalking or cyberstalking; and
- An act of child abuse.<sup>27</sup>

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<sup>22</sup> 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.

<sup>23</sup> Section 741.31, F.S.

<sup>24</sup> As provided in s. 39.504, F.S.

<sup>25</sup> As provided in s. 784.0485, F.S.

<sup>26</sup> As provided in s. 784.0487, F.S.

<sup>27</sup> As provided in s. 39.01, F.S.

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

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

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.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. Other Constitutional Issues:**

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." 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).

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

None.

##### **C. Government Sector Impact:**

The bill does not appear to impact prison beds as there is no felony penalty, but there could be an impact on local jails to the extent that the bill's two misdemeanor offenses result in persons being sentenced to jail.

#### **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.)

None.

**B. Amendments:**

None.

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

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