

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: CS/SB 912

INTRODUCER: Judiciary Committee and Senator Dean

SUBJECT: Service of Process

DATE: March 21, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
2.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 912 provides that a process server, either as appointed by the sheriff or the court, does not commit the criminal act of trespass and is immune from civil liability when the process server needs to enter property other than a structure or conveyance to serve process, provided that the process server does not open a closed gate or door or cross any fences.

The bill authorizes a process server to post a criminal witness subpoena for witnesses to appear for a deposition if the process server has attempted but failed to serve the subpoena one time, rather than the three times required in current law.

II. Present Situation:

Service of Process

Process servers deliver summons, subpoenas, and other forms of process in civil actions.¹ The sheriff is responsible for serving as process server for the initial nonenforceable civil process, criminal witness subpoenas, and criminal summonses. However, Florida law authorizes two options to the sheriff serving as process server. The sheriff may establish an approved list of

¹ Section 48.011, F.S.

special process servers.² Alternatively, the chief judge of each judicial circuit may establish an approved list of persons.³

Process Servers Selected by the Sheriff

A person applying as a special process server must:

- Be at least 18 years old;
- Have no mental or legal disability;
- Be a permanent resident of the state;
- Submit to a background investigation, including a criminal history check;
- Provide a certificate of good conduct that specifies that the applicant has no pending criminal case or any record of a felony conviction or misdemeanor involving moral turpitude or dishonesty within the last 5 years;
- Take an examination testing the applicant's knowledge of laws and rules on service of process; and
- Take an oath that the applicant will honestly, diligently, and faithfully exercise the duties of a special process server.⁴

The sheriff issues each special process server an identification card with an identification number, printed name, signature and photograph, and expiration date.⁵

The sheriff is authorized to revoke an appointment at any time that the sheriff determines a special process server is not fully and properly discharging the duties as a special process server.⁶ Every special process server appointed is subject to annual recertification and reappointment by the sheriff.⁷

Process Servers Selected by the Chief Judge

The chief judge of each judicial circuit may establish an approved list of certified process servers. The chief judge may add to the list persons who have met the same requirements as that provided for sheriff appointments of special process servers.⁸

Each person whose name has been added to the approved list is subject to annual recertification and reappointment by the chief judge.⁹

Rule 1.070, Florida Rules of Civil Procedure, authorizes service of process to be made by an officer authorized in law to serve process, or through court appointment of any competent person provided that the person does not have an interest in the civil action.¹⁰

² Section 48.021(1), F.S.

³ Section 48.27, F.S.

⁴ Section 48.021(2)(b), F.S.

⁵ Section 48.021(2)(d), F.S.

⁶ Section 48.021(2)(e), F.S.

⁷ Section 48.021(2)(a), F.S.

⁸ Section 48.27(1), F.S.

⁹ *Id.*

¹⁰ FLA. R. CIV. PROC. 1.070(b); Rule 3.030, FLA. R. CRIM. PROC., requires service of every pleading subsequent to an initial indictment or information on which a defendant is to be tried unless the court orders otherwise.

Service of Process Procedure

Service of process is made by delivering a copy of it to the person to be served with a copy of the legal complaint, petition, or other initial pleading or paper, or by leaving copies at his or her residence with any resident who is at least 15 years old.¹¹ If an employer is contacted by a person authorized to make service of process, the employer must allow the person to serve an employee in a designated private area.¹² A server may make substitute service on the spouse of the person to be served anywhere in the county, unless the underlying cause of action is an adversary proceeding between the spouses.¹³

Gated residential communities must grant unannounced entry into the community, including common areas and elements, to a person who is attempting to serve process.¹⁴

Few appellate cases exist nationally in which an appellate court has considered whether a process server was trespassing. However, in a 2012 opinion from the Florida Fourth District Court of Appeal, the court stated in dicta that a process server serving process is not trespassing.¹⁵

A criminal witness subpoena may be posted by a process server at the witness's residence if the process server has attempted, but failed, three times to serve the subpoena at different times of day or night or on different dates.¹⁶

Trespass

A person commits trespass on property other than a structure or conveyance if the person willfully enters upon, or remains in any property other than the actual structure or conveyance:

- After notice against entering or remaining is given, either through actual communication to the offender or by posting, fencing, or cultivation;¹⁷ or
- If the property is the unenclosed curtilage of a dwelling and the offender enters or remains with the intent to commit an offense other than the offense of trespass.¹⁸

The term unenclosed curtilage refers to the unenclosed land or grounds and outbuildings directly and immediately adjacent to and connected with the dwelling and necessary, convenient, and regularly used in connection with the dwelling.¹⁹

Trespass on property other than a structure or conveyance is a first degree misdemeanor, punishable by up to a year in jail and a \$1,000 fine.²⁰ However, if the person is armed with a

¹¹ Section 48.031(1)(a), F.S.

¹² Section 48.031(1)(b), F.S.

¹³ Section 48.031(2)(a), F.S.

¹⁴ Section 48.031(7), F.S.

¹⁵ *Garrido v. State*, 97 So. 2d 291, 298 (Fla. 4th DCA 2012).

¹⁶ Section 48.031(3)(b), F.S.

¹⁷ The term "cultivated land" is land cleared of its natural vegetation and presently planted with a crop, orchard, grove, pasture, or trees or fallow land as part of a crop rotation. Section 810.011(6), F.S.

¹⁸ Section 810.09 (1)(a), F.S.

¹⁹ Section 810.09(1)(b), F.S.

²⁰ Sections 810.09(2)(a), 775.082, and 775.083, F.S.

firearm or other dangerous weapon during the time of the trespass, he or she commits a third degree felony, punishable by up to 5 years in prison and a \$5,000 fine.²¹

Immunity from Liability

The term “sovereign immunity” refers to the English common law concept that the government may not be sued because “the King can do no wrong.” Sovereign immunity bars lawsuits against the state or its political subdivisions for the torts of officers, employees, or agents of governments unless immunity is expressly waived.

Article X, s. 13, of the Florida Constitution recognizes the concept of sovereign immunity and gives the Legislature the power to waive immunity in part or in full by general law.

Section 768.28, F.S., contains a broad, limited waiver of sovereign immunity applicable to the state. Under this law, officers, employees, and agents of the state are not personally liable in tort for any injury or damage suffered as a result of any act, event, or omission of action committed in the scope of employment.²² However, personal liability may result from actions committed in bad faith, with a malicious purpose, or when in wanton and willful disregard of human rights, safety, or property.

The waiver of immunity places caps on recovery at \$200,000 for any one person or \$300,000 for all recovery related to one incident. A plaintiff may receive a judgment exceeding the caps, but only at the prerogative of the Legislature through the claims bill process.²³

III. Effect of Proposed Changes:

The bill provides that persons who serve as process servers, either as appointed by the sheriff or the court do not commit the criminal act of trespass of property other than a structure or conveyance when they need to enter property to serve process. However, the person may not open a closed gate or door or cross any fences.

The bill also grants process servers civil immunity as the result of entering property to serve process, provided that the process server does not open a closed gate or door or cross over any fences. A court would consider a sheriff serving process to be an agent of the state. With respect to sheriffs, this bill provides an exception to the broad waiver of sovereign immunity in the statutes. Therefore, the bill appears to grant absolute immunity from suit to sheriffs who comply with the provisions of this bill.

Absolute immunity is also granted to private process servers.

The bill authorizes a process server to post criminal witness subpoenas for witnesses to appear in a deposition if the process server has attempted but failed to serve the subpoena one time, rather than the three times required in current law.

²¹ Section 810.09(2)(c), F.S.

²² Section 768.28(9)(a), F.S.

²³ Section 768.28(5), F.S.

The bill takes effect July 1, 2014.

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:

None.

B. Private Sector Impact:

More private individuals may apply for and serve as process servers as they will not be deterred by concern of a criminal charge of trespass or civil liability. The bill, by clarifying the authority of process servers to enter property, may facilitate the delivery of process to the intended recipients.

C. Government Sector Impact:

This bill may reduce costs for sheriffs, to the extent that sheriffs incur litigation costs in civil liability actions. The bill, by clarifying the authority of process servers to enter property, may protect process servers from improper arrests by law enforcement officers.

Costs of service of process may be reduced by permitting the posting of criminal witness subpoenas for depositions if the process server is unable to serve the subpoena one time, rather than the current three times required in law.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 48.031 and 810.09.

IX. 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 March 11, 2014:

The committee substitute:

- Provides that process servers are immune from civil liability and the criminal charge of trespass only if the process server does not open a closed gate or door or cross any fences.
- Authorizes a process server of a criminal witness subpoena for a deposition to post the subpoena if the process server attempted but failed to serve the subpoena one time.

B. Amendments:

None.