

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 667 Service of Process

SPONSOR(S): Cruz

TIED BILLS: None **IDEN./SIM. BILLS:** SB 672

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N	Keegan	Cunningham
2) Judiciary Committee	15 Y, 0 N	Keegan	Havlicak

SUMMARY ANALYSIS

Witness subpoenas for criminal cases in Florida may be served by the sheriff of the county where the witness is found, by special process servers appointed by the sheriff, or by certified process servers. Process servers may charge reasonable fees, including fees for each attempted service. Sheriffs may charge a statutory fee for each criminal witness to be served, but they may not charge additional fees for multiple attempts to serve a witness, and may not charge anything at all in criminal cases with an insolvent defendant.

Failing to obey a subpoena can be considered contempt of court when the witness does not have a sufficient excuse for the failure. Criminal contempt of court may be punished by up to one year in jail and a \$500.00 fine.

Currently, Florida law permits a copy of a witness subpoena in a criminal case to be served on the witness by a sheriff or process server in the following ways:

- Hand delivery to the witness, or hand delivery to a qualifying person at the witness's usual place of abode;
- Mailing the subpoena to the witness via the United States Postal Service (USPS) at the witness's last known address, in specified criminal cases;
- Hand delivery to a designated supervisor or administrative employee at the witness's place of employment, for specified witnesses; and
- Posting the subpoena at the witness's residence after 3 attempts on different days and at different times have failed.

The bill amends s. 48.031(3)(b), F.S., to permit a criminal witness subpoena for a *deposition* to be served by posting it to the witness's residence after one attempt to serve the subpoena by another method has failed.

The bill may reduce state and local government expenditures because agencies and sheriffs attempting to serve process will be spared the expense of repeat service. However, the change to service of process made by the bill may increase the number of hearings to show cause, thereby increasing related expenses to circuit and county courts.

The bill is effective July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Service of Process

Witness subpoenas for criminal cases may be served by the sheriff of the county where the witness is found, by a special process server appointed by the sheriff, or by a certified process server.¹ Special and certified process servers are permitted to charge a reasonable fee for serving subpoenas,² but there is no statutory limit on the amount of the fee. They may also charge for each attempt to serve a subpoena. Florida sheriffs are permitted to charge a fee of \$40.00 for service of subpoenas; however, they cannot charge any fee in connection with insolvent criminal defendants, and they may not charge any additional fees for attempting to serve a witness multiple times.³

Failure to Appear

A witness who fails to obey a valid subpoena can be held in contempt of court when the witness does not have a sufficient excuse for the failure.⁴ If a witness disobeys a subpoena, a judge may issue an order to show cause, requiring the witness to appear before the judge to answer to the charge.⁵ Criminal contempt of court can be punished by up to one year in jail and a \$500.00 fine.⁶

If a witness claims that the service of the subpoena was not valid, the party seeking to invoke the court's jurisdiction over the witness (i.e., the party that subpoenaed the witness to appear) is responsible for proving the validity of the service of process.⁷ If the service of the subpoena is found to be invalid, the court cannot exercise personal jurisdiction over the witness.⁸

Serving Witness Subpoenas

Florida law currently provides multiple options for serving a witness subpoena in a criminal case. For example, a copy of the witness subpoena may be hand delivered to the witness, or it may be hand delivered to a qualifying person⁹ at the witness's usual place of abode.¹⁰

A witness subpoena in a criminal case may be also be served upon the witness by mailing the subpoena to the witness via the United States Postal Service (USPS) to the witness's last known address in the following types of cases:

- A criminal traffic case;
- A misdemeanor case; or
- A second or third degree felony case.¹¹

¹ ss. 48.021(1) and 48.29, F.S.

² ss. 48.021(3) and 48.29(8), F.S.

³ s. 30.231(1)(c), F.S.; 63-101 Fla. Op. Att'y Gen. 2 (1963).

⁴ FLA. R. CRIM. P. 3.220(h); *See Ex parte Crews*, 173 So. 275, 278 (Fla. 1937).

⁵ FLA. R. CRIM. P. 3.840(a).

⁶ *Schaab v. Florida*, 33 So. 3d 763, 765 (Fla. 4th DCA 2010) (citing to s. 775.02, F.S., *Moorman v. Bentley*, 490 So. 2d 186, 187 (Fla. 2d DCA 1986).); *see also Giordano v. Florida*, 32 So. 3d 96, 98 (Fla. 2d DCA 2009); *Johnson v. Florida*, 584 So. 2d 95, 98 n.3 (Fla. 1st DCA 1991).

⁷ *Thompson v. Fla., Dep't of Revenue*, 867 So. 2d 603, 605 (Fla. 1st DCA 2004); *Torres v. Arnco Constr., Inc.*, 867 So. 2d 583 (Fla. 5th DCA 2004).

⁸ *Thompson v. Fla., Dep't of Revenue*, 867 So. 2d 603 (Fla. 1st DCA 2004).

⁹ A qualifying person is any person who is at the witness's usual place of abode at the time of service, is 15 years of age or older, and resides at that location. s. 48.031(1)(a), F.S.

¹⁰ The "usual place of abode" is the place where the witness is actually living at the time of service. *Stettner v. Richardson*, 143 So. 2d 987, 990 (Fla. 3d DCA 2014); *Johnson v. Hudlett*, 32 So. 3d 700, 704-05 (Fla. 4th DCA 2010); *Heck v. Bank Liberty*, 86 So. 3d 1281, 1283 (Fla. 1st DCA 2012).

¹¹ s. 48.031(3)(a), F.S.

When serving a witness by USPS, the serving party must use certified mail in order for a court to hold the witness in contempt for failure to appear.¹² Additionally, subpoenas served by USPS must be mailed at least seven days prior to the date when appearance is required.¹³

Additional options are provided for serving criminal witness subpoenas on law enforcement officers, or federal, state or municipal employees who are called to testify in an official capacity. While a witness subpoena for these witnesses may be served by the methods explained above, it may also be hand delivered to a designated supervisor or administrative employee at the witness's place of employment.¹⁴

Florida law currently allows a criminal witness subpoena to be served by posting it at the witness's residence,¹⁵ but only after the sheriff or process server makes three separate attempts on different dates and at different times to serve the subpoena.¹⁶ The subpoena must be posted to the residence at least five days in advance of the witness's required appearance.¹⁷ These requirements apply to witness subpoenas for both depositions and court appearances in criminal cases.¹⁸

Effect of the Bill

The bill amends s. 48.031(3)(b), F.S., to permit a criminal witness subpoena *for a deposition* to be served by posting it to the witness's residence after one attempt to serve the subpoena by another method has failed.¹⁹

The bill reenacts s. 48.196(2), F.S., and 409.257(5), F.S., to incorporate the changes made to service of process requirements in s. 48.031, F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 48.031, F.S., relating to service of process generally; service of witness subpoenas.

Section 2. Reenacts s. 48.196, F.S., relating to service of process in connection with actions under the Florida International Commercial Arbitration Act.

Section 3. Reenacts s. 409.257, F.S., relating to service of process.

Section 4. Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

¹² s. 48.031(3)(a), F.S.

¹³ *Id.*

¹⁴ s. 48.031(4)(a), F.S. The subpoena may only be delivered to a supervisor or administrative employee who has been designated to accept service for the witness by the agency head or the highest ranking official at the witness's place of employment.

¹⁵ If a witness has more than one residence, the witness must be served at the residence in which he or she is actually living at the time the subpoena is served. *Heck v. Bank Liberty*, 86 So. 3d 1281, 1283 (Fla. 1st DCA 2012).

¹⁶ s. 48.031(3)(b), F.S.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ The bill does not change the process for serving any other type of criminal witness subpoena.

The bill may reduce state government expenditures because state entities attempting to serve process will be spared the expense of repeat service. However, the change to service of process made by the bill may increase the number of hearings to show cause, thereby increasing related expenses to circuit courts.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may reduce local government expenditures because local government entities attempting to serve process will be spared the expense of repeat service.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may reduce litigation expenses for private individuals in criminal cases because it spares such parties the expense of repeat service.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create the need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.