

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 672

INTRODUCER: Senator Dean

SUBJECT: Service of Process

DATE: March 13, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 672 authorizes a process server to post a criminal witness subpoena commanding a witness to appear for a deposition at a witness's residence if one attempt to serve the subpoena has failed. Under existing law, a process server must make three attempts, at different times of the day or night on different dates, to serve a criminal witness subpoena before the subpoena may be posted at the witness's residence. These requirements for three attempts at service continue to apply to a criminal witness subpoena that commands a witness to appear.

II. Present Situation:

Service of Process

The role of a process server is to serve summons, subpoenas, and other forms of process in civil and criminal actions.¹ The term "to serve" means to make legal delivery of a notice or a pleading.² A summons is a writ or a process beginning a plaintiff's legal action and requiring a defendant to appear in court to answer the summons.³ A subpoena is a legal writ or order commanding a person to appear before a court or other tribunal.⁴ A subpoena can command a person to be present for a deposition or for a court appearance.

The sheriff of the county where the person is to be served is generally responsible for serving as process server. However, notice of the initial nonenforceable civil process, criminal witness subpoenas, and criminal summons may be delivered by a process server other than the sheriff—a special process server or a certified process server. Special process servers and certified process

¹ Sections 48.011 and 48.021, F.S.

² BLACK'S LAW DICTIONARY (10th ed. 2014).

³ BLACK'S LAW DICTIONARY (10th ed. 2014).

⁴ BLACK'S LAW DICTIONARY (10th ed. 2014).

servers must meet certain statutory conditions and appear on a list approved and maintained by the sheriff or the chief judge of a judicial circuit.⁵

A process server generally must effect service of process by personal service or substitute service. Typically these types of service occur by:

- Serving the person directly or by leaving a copy of a complaint, petition, or initial pleading or paper at the person's usual place of abode with a person who is 15 years old or older;
- Serving a person at his or her place of employment in a private area designated by the employer;
- Providing substitute service on a spouse if the cause of action is not an adversarial proceeding between the spouse and the person to be served, if the spouse requests service, and if the spouse and person to be served live together;
- Providing substitute service during regular hours at a business by leaving delivery with an employee or other person in charge if the person to be served is a sole proprietor and two attempts have been made to serve the owner.⁶

Service of process of witness subpoenas in criminal or civil cases is the same as provided above. However, service of process of witness subpoenas may be accomplished through United States mail for the following cases:

- Criminal traffic case;
- Misdemeanor case;
- Second degree felony; or
- Third degree felony.⁷

To serve a subpoena on a witness by mail, the subpoena must be sent to the last known address of the witness at least 7 days before the court appearance required in the subpoena. If a witness fails to appear in response to a subpoena served by mail, the court may not find the person in contempt of court.

A criminal witness subpoena may also be posted at the person's residence if the server has unsuccessfully attempted to serve the subpoena at least three times, at different times of the day or night on different dates.⁸ The process server must post the subpoena at least 5 days before the witness' required appearance.⁹

III. Effect of Proposed Changes:

This bill authorizes a process server to post a criminal witness subpoena commanding a witness to appear for a deposition at a witness's residence if one attempt to serve the subpoena has failed. Under existing law, a process server must make three attempts, at different times of the day or night on different dates, to serve a criminal witness subpoena before the subpoena may be posted

⁵ Sections 48.021(1) and 48.29, F.S.

⁶ Section 48.031(1) and (2), F.S.

⁷ Section 48.031(3)(a), F.S.

⁸ Section 48.031(3)(b), F.S.

⁹ Section 48.031(3)(b), F.S.

at the witness's residence. These requirements for three attempts at service continue to apply to a criminal witness subpoena that commands a witness to appear.

The bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18, Fla. Const., provides that a mandate potentially exists if a law:

- Requires cities or counties to spend funds or take action requiring the expenditure of funds;
- Reduces the authority of cities or counties to raise revenues in the aggregate; or
- Reduces the percentage of a state tax shared with cities and counties in the aggregate.

This bill reduces from 3 to 1 the number of times a process server must fail to deliver subpoenas for depositions to witnesses before authorizing the posting of subpoenas. As such, the bill reduces costs for cities and counties. The bill does not impact the ability of a city or county to raise revenue. The bill also does not negatively impact the tax base of a city or county. Therefore, the bill does not appear to be a mandate.

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:

Defendants represented by private counsel in criminal cases bear the costs for service of process. As a result, this bill may reduce costs for those defendants.

Although an indigent defendant represented by the Office of the Public Defender does not pay up front for service of process on a witness for deposition, the cost may be included in a lien. This bill may reduce the amount of money placed on a lien for service of process costs.

C. Government Sector Impact:

The Florida Sheriff's Association will realize a cost savings as its process servers will need to attempt service only once before posting. This cost savings will occur because the fee charged by the sheriffs is a fixed fee that includes all attempts in a particular case.

The Office of the State Courts Administrator (OSCA) anticipates more show cause hearings for non-appearance, due to the bill making service of process for depositions easier. However, the OSCA cannot accurately determine a fiscal impact.¹⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 48.031 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 48.196 and 409.257.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

None.

B. Amendments:

None.

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

¹⁰ Office of the State Courts Administrator, *2015 Judicial Impact Statement for SB 672* (Feb. 20, 2015).