

The Effect of Service of Process on the Criminal Justice System

Tom Brabant

Abstract

As revenue decreases for governments at every level, there is a constant changing effect on government. As with private industry, there must be change to maintain an effective and efficient organization. A reduction of government revenue is causing all facets of government operations to be examined. Like other components of government, Florida Sheriffs' offices are analyzing their agency operations and attempting to reduce cost without impacting the primary functions of the organization. One of the areas in which sheriff's offices are evaluating is their requirement to serve process issued by the courts. Sixty-five county sheriff's offices were surveyed to determine what possible cost effective solutions might be available in the area of service of process and what impact the different methods have on the criminal justice system.

Introduction

The criminal justice system is the foundation for the quality of life that every citizen enjoys in America today. It is this system that protects the rights and freedoms that have been established by the people. If there was no criminal justice system to enforce the laws that were enacted to provide for the lifestyle we currently enjoy there would be no freedoms, fairness or peace. Our criminal justice system determines the degree of society's civilization and has provided the protections needed for our way of life.

The three main components of the criminal justice system are law enforcement, court system and legislators. The law enforcement component of the system is by far the largest component in relation to personnel required to accomplish that portion of the system. In the state of Florida the county Sheriff's offices are one of the largest elements of the law enforcement component. In the multitude of required duties associated to a sheriff in our state there is one responsibility that I would venture most people would not know is required of the sheriff. The sheriff is charged with serving process created by the courts. Where this may be a lesser known responsibility of a sheriff, it is listed in Florida Statute Section 30.15, which describes the powers, duties and obligations of the sheriff in paragraph (1) (a) and (b). This statute mandates the sheriff's responsibilities for serving process originating from the Supreme Court, Circuit Court, County Court, and the Board of County Commissioners. Also, it requires the sheriff to serve any and all other process as may be directed to them. (FSS 30.15)

This paper will provide a thorough understanding of the service of non-enforceable process which is process from the court that requires no action other than

delivery. Also, it will share how the service of non-enforceable process is performed in our state and the effect it has on the criminal justice system.

Literature Review

The general purpose for serving court process on a person or a business is to place that person or business under the jurisdiction of the court. It compels them to appear in court or bring physical evidence before the ordering authority. Some common types of non-enforceable process are Subpoena, Summons, Order to Show Cause and a Notice. All of these types of process can be issued in either criminal or civil cases. (Florida Rules 1.070 & 3.030 , FSS 48)

A subpoena is a writ issued by a court that has authority to compel testimony and the most two common forms of subpoena are a witness subpoena and subpoena duces tecum. A witness subpoena orders a person to testify before the ordering authority at a particular time and place to testify. A subpoena is used to obtain testimony from a witness at both depositions and at trial. A subpoena duces tecum orders a person or organization to bring physical evidence before the ordering court, at a certain place and at a certain time. Failure to appear as required by the subpoena can be punished as contempt of court if it appears the absence was intentional or without cause. (Law.com 2041, 2042)

A Summons is addressed to a defendant in a legal proceeding. Typically, the summons will announce to the person to whom it is directed that a legal proceeding has been started against that person, and that a case has been initiated in the issuing court. (Law.com 2064)

An order to show cause is a type of court order that requires one or more of the parties to a case to justify, explain, or prove something to the court. This method of making a party appear with proof and legal arguments is applied to cases of possible contempt. Courts commonly use orders to show cause when the judge needs more information before deciding whether or not to issue an order requested by one of the parties. (Law.com 1409)

A Notice is a prepared legal document that invokes all parties to hear a motion and may be emitted by any party. Most notably the notice contains a time and date for the court clerk to schedule for and what motion will be attempted. A Notice is a vital principle of fairness and due process in legal procedure. (Law.com 1350)

Every level of the court system outlines procedures and statutes that delineate the methods necessary to properly serve process for that court. The United States Federal courts utilize Federal Rules of Civil Procedures to establish the requirements necessary for a service to be proper. (Federal Rules 4 & 45) The State of Florida courts use Florida Rules of Civil Procedures, Florida Rules of Criminal Procedures and Florida Statutes to delineate the methods of how to properly serve process. (Florida Rules 1.070 & 3.030 , FSS 48)

Florida Statute Section 48 outlines the responsibility associated with the service of process. It provides the sheriff with guidelines and options to accomplish the task of serving process. Also, the statute defines the manner in which the court process is to

be served and the requirements associated with handling the court process documents. (FSS 48.021)

Statute mandates that all process shall be served by the sheriff of the county where the person to be served is found. It allows for the service of non-enforceable criminal process to be completed by a special process server or a certified process server as opposed to be served by a deputy sheriff. (FSS 48.021)

The sheriff of each county may, at his or her discretion, appoint persons as special process servers. A special process server does not have authority to take any action related to the issued process other than the delivery of the process to the person to be served. (FSS 48.021)

The chief judge of each judicial circuit may establish an approved list of natural persons designated as certified process servers. A certified process server has the same stipulations as special process servers in relation to the service of process. However, a certified process server is authorized to service process throughout the judicial circuit where as a special process server may only serve process in the county where the sheriff has authority. (FSS 48.27)

It is the responsibility of the person perfecting the service of process to perform proper service so that the courts may take the appropriate course of action in the case. The best worked criminal case can result in a court disposition of something other than guilty by a simple improper service. Therefore, it is of extreme importance the process is served in a proper method. (FSS 48.021)

The most preferred and common method of service is personal service which is made by delivering a copy of the process to the person to be served. The person being served is not required to physically accept the process. The deputy or process server's actions determine the validity of service. If the party to be served refuses to accept service of process nothing prohibits the deputy or process server from dropping the process on the ground or floor at the feet of the person to be served. (FSS 48.031)

Fortunately, statute allows for different methods to achieve proper service on the party otherwise the court system would be back logged with continued cases waiting on people to be served. Proper substitute service can be made by leaving a served copy with a person who is 15 years of age or older and residing at the person to be served usual place of abode. Also, substitute service may be made on the spouse of the person to be served at any place in the county, if the cause of action is not an adversary proceeding between the spouse and the person to be served, if the spouse requests such service, and if the spouse and person to be served are residing together in the same dwelling. (FSS 48.031)

Service of a criminal witness subpoena upon a law enforcement officer or any government employee called to testify in an official capacity in a criminal case may be made as mentioned above or by delivery to a witness coordinator at the witness's place of employment if the agency head or highest ranking official at the witness's place of employment has designated such a person to accept such service. (FSS 48.031)

Statute also affords service by United States mail for a subpoena on a witness in a criminal traffic case, a misdemeanor case, or a second degree or third degree felony. Service may be made by United States mail directed to the witness at the last known address. The subpoena must be mailed at least 7 days prior to the date of the witness's

required appearance. This type of service does not provide the court with the same level of service as being served by a deputy or process server. (FSS 48.031)

A criminal witness subpoena may be posted by a person authorized to serve process at the witness's residence if three attempts to serve the subpoena, made at different times of the day or night on different dates, have failed. The subpoena must be posted at least 5 days prior to the date of the witness's required appearance. (FSS 48.031)

All persons serving non-enforceable process shall place, on the first page of at least one of the processes served, the date and time of service and his or her identification number and initials for all service of process. They shall list on the return-of-service form all initial pleadings delivered and served along with the process. The issuing party of the process shall file the return-of-service form with the court. (FSS 48.031)

Each method of service may offer a different level of service. It is the level of service that has the biggest effect on a court case. The outcomes of criminal cases weigh heavy on the evidence presented in the case. If the process issued by the court to obtain that evidence or witness is not properly served it reduces the courts effectiveness and can create an unfair judicial system. A reduced effectiveness could have a significant impact on the criminal justice system.

Method

Purpose

The intent of my research is to study how sheriff offices in the state of Florida comply with the statutory mandated duty of the service of process.

Participants & Sampling Procedures

Since, Florida Statute Section 30.15 mandates that Sheriffs of each county are responsible for service of process from the courts I choose to survey them all in this research.

I attempted to survey a supervisor or administrator in each of the other sixty-six county Sheriff's Offices civil sections. I was unable to obtain a contact person to survey for Miami – Dade Sheriff's Office. Therefore, I emailed the supervisor or administrator of each civil section in the sixty-five other Florida county Sheriff's Offices.

Apparatus and Research Design:

I used a computer and an online website called "Survey Monkey" to create a sixteen question survey. The questions were developed to gather demographics information of the agencies workload, personnel used to serve non-enforceable process, fees collected for the service of non-enforceable process and methods used to serve non-enforceable process. Once the survey was completed I developed a

distribution list in Microsoft Outlook that included the email addresses for all of the participants that would be taking the survey.

I created an email that informed the participant the purpose of the survey and provided them with the understanding that the data collected was for the sole use of this research paper. The email contained a hyper-link to the survey on the Survey Monkey site. The survey was sent out to each participant and they were given over 4 weeks in which to complete the survey.

Experimental Manipulations/Interventions/Instrumentation

The survey contained mostly closed ended questions with the intent to gather standardized information specific to that participant's unit. However, some of the questions allowed for an open input from the participant. This allowed the participant to provide additional information to that question if desired.

Data Collections & Analysis Plan

Data collection was completed by the Survey Monkey software. It gathered all of the participant's responses to the questions and amassed them in a report that could be used for analysis of the data. I intended on using the data to determine the central tendency of the participants.

Assumptions

I took for granted that all participants tracked or could obtain the statistical data related to the questions in the survey. Also, since the information I was receiving is coming from a member of a law enforcement organization the information should be accurate.

Results

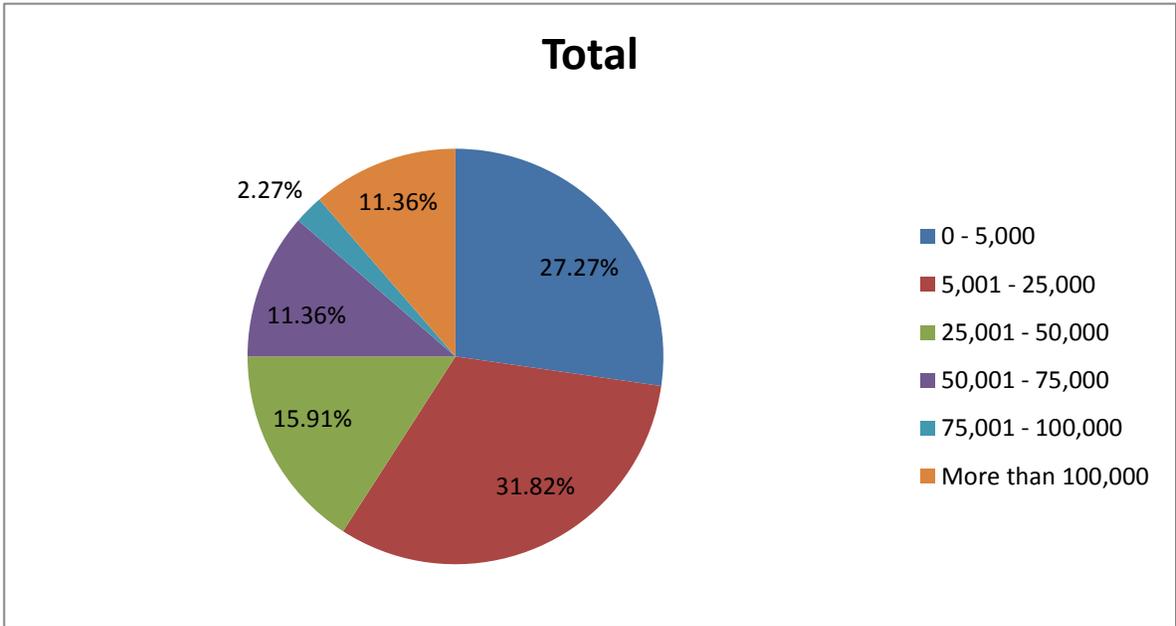
Of the sixty-five county sheriff's office that I emailed the survey to forty-four of them completed all or part of the survey resulting in a 67.7% return rate. The following table represents the sample used for my research.

	Agency Name:		Agency Name:
1	Alachua County Sheriff's Office	23	Manatee County Sheriff's Office
2	Baker County Sheriff's Office	24	Marion County Sheriff's Office
3	Bradford County Sheriff's Office	25	Martin County Sheriff's Office
4	Broward County Sheriff Office	26	Monroe County Sheriff's Office
5	Citrus County Sheriff's Office	27	Nassau County Sheriff's Office
6	Collier County Sheriff's Office	28	Okaloosa County Sheriff's Office
7	Desoto County Sheriff's Office	29	Orange County Sheriff's Office
8	Escambia County Sheriff's Office	30	Osceola County Sheriff's Office
9	Flagler County Sheriff's Office	31	Palm Beach County Sheriff Office
10	Franklin County Sheriff's Office	32	Pasco County Sheriff's Office
11	Gadsden County Sheriff's Office	33	Pinellas County Sheriff's Office
12	Hardee County Sheriff's Office	34	Putnam County Sheriff's Office
13	Hernando County Sheriff's Office	35	Santa Rosa County Sheriff's Office
14	Highlands County Sheriff's Office	36	Seminole County Sheriff's Office
15	Hillsborough County Sheriff's Office	37	St. Johns' County Sheriff's Office
16	Indian River County Sheriff's Office	38	St. Lucie County Sheriff's Office
17	Jacksonville Sheriff's Office	39	Sumter County Sheriff's Office
18	Jefferson County Sheriff's Office	40	Suwannee County Sheriff's Office
19	Lee County Sheriff's Office	41	Union County Sheriff's Office
20	Leon County Sheriff's Office	42	Volusia County Sheriff's Office
21	Levy County Sheriff Office	43	Walton County Sheriff's Office
22	Madison Co. Sheriff's Office	44	Washington Co. Sheriff's Office

Question 1 of the survey asked for the agency name of the participant that was completing the survey. Therefore, the following are the results of the remainder of the survey.

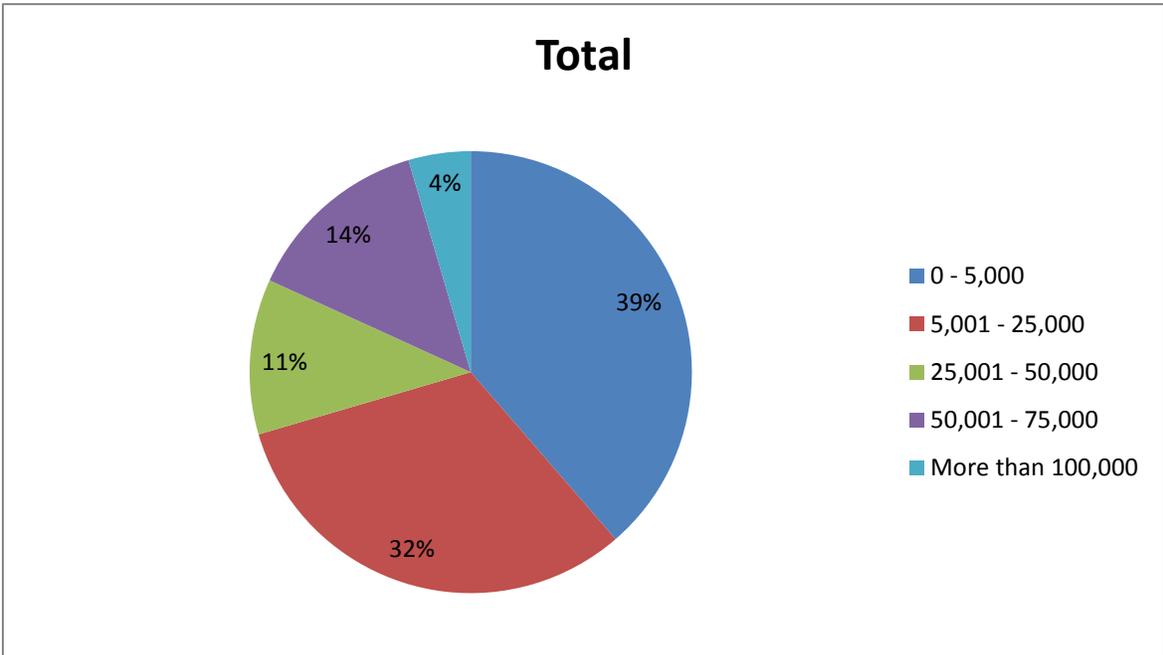
Question 2

How many total pieces of process does your agency receive annually to be served?	Total
0 - 5,000	12
5,001 - 25,000	14
25,001 - 50,000	7
50,001 - 75,000	5
75,001 - 100,000	1
More than 100,000	5
Grand Total	44



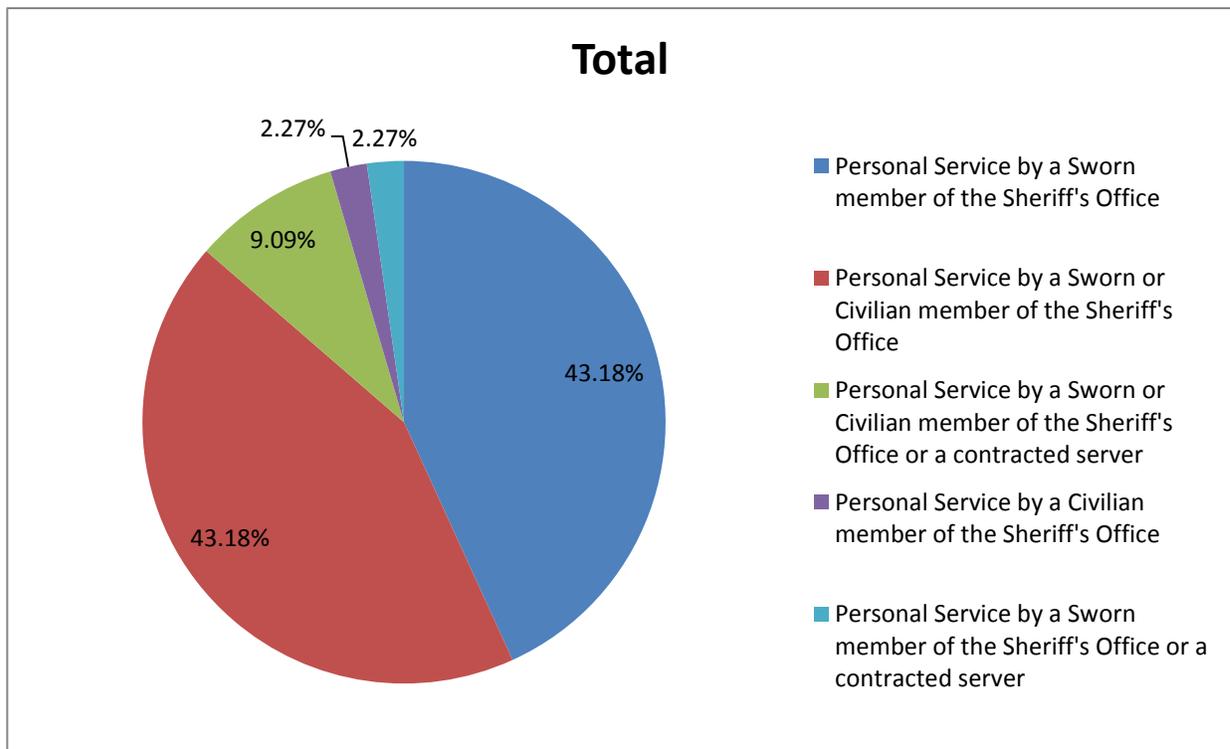
Question 3

How many of that total are non-enforceable process?	Total
0 - 5,000	17
5,001 - 25,000	14
25,001 - 50,000	5
50,001 - 75,000	6
More than 100,000	2
Grand Total	44



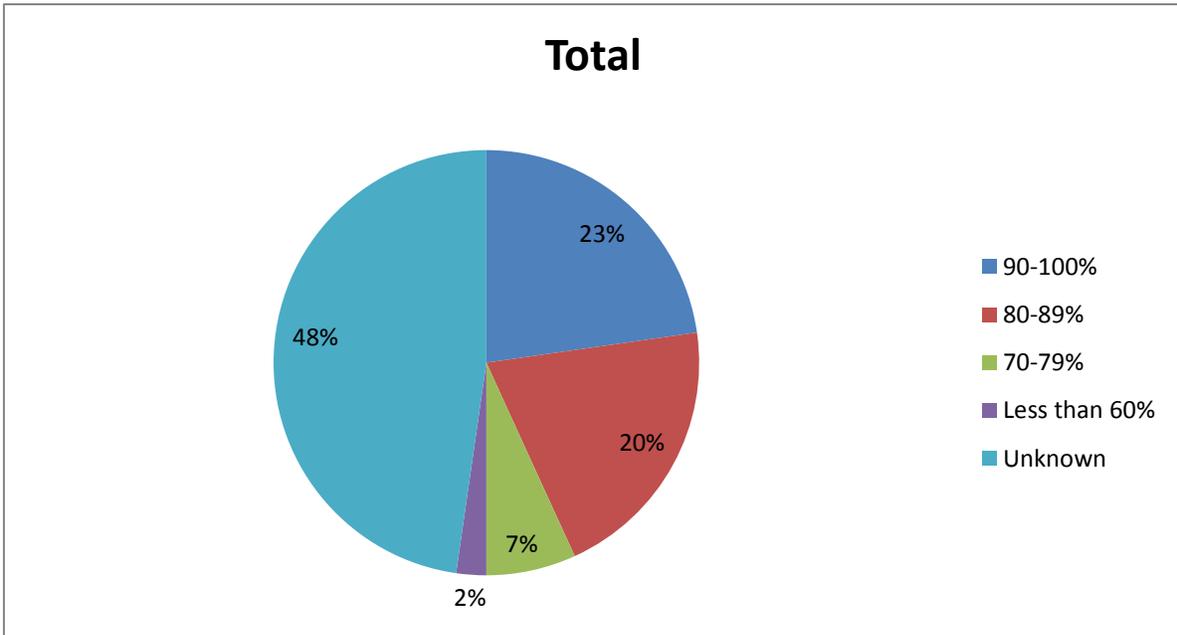
Question 4

What type of service does your agency offer or use to perfect service on non-enforceable process?	Total
Personal Service by a Sworn member of the Sheriff's Office	19
Personal Service by a Sworn or Civilian member of the Sheriff's Office	19
Personal Service by a Sworn or Civilian member of the Sheriff's Office or a contracted server	4
Personal Service by a Civilian member of the Sheriff's Office	1
Personal Service by a Sworn member of the Sheriff's Office or a contracted server	1
Grand Total	44



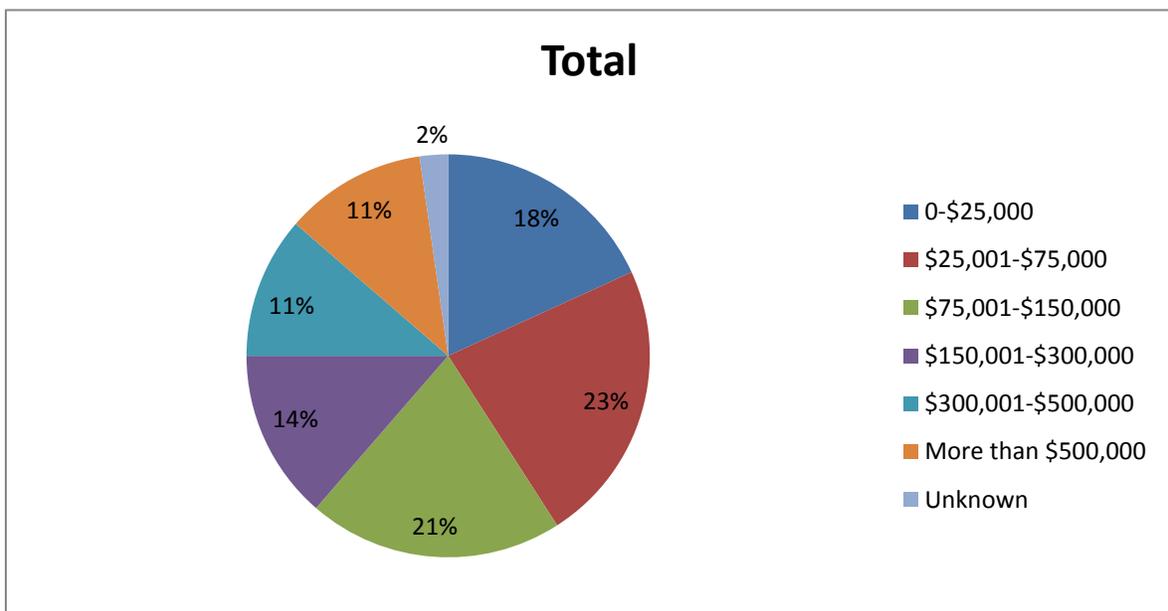
Question 5

What is your agency's percentage of service rate on non-enforceable process?	Total
90-100%	10
80-89%	9
70-79%	3
Less than 60%	1
Unknown	21
Grand Total	44



Question 6

On average, what is the amount of fees collected by your agency for the service of process?	Total
0-\$25,000	8
\$25,001-\$75,000	10
\$75,001-\$150,000	9
\$150,001-\$300,000	6
\$300,001-\$500,000	5
More than \$500,000	5
Unknown	1
Grand Total	44



Question 7

Are the revenues you collect from the fees for service sufficient to pay for the cost of the staff required to serve the non-enforceable process? Only three agencies stated that the revenue collected completely satisfy the cost associated with their agency’s responsibility of serving non-enforceable process. Seven agencies answered that the fees collected partially satisfy their cost. Twenty agencies responded that the fees do not satisfy the cost while twelve others replied that it was unknown to them if the fees satisfied the cost associated with the service. Two counties did not answer the question.

Question 8, 9, and 10

Does your agency serve criminal witness subpoenas by mail if it meets the qualifications necessary to be mailed? If so what type of mailing do you use? What level of subpoenas do you mail? Thirty-seven agencies replied that they do not mail criminal witness subpoenas and were directed to question eleven. Seven agencies responded “yes” meaning they mailed subpoenas. Of the seven counties that mailed subpoenas six of them mailed using only first class mail while the other county mailed using a combination of first class and certified mail. Six of the counties that mailed subpoena mailed both misdemeanor and felony subpoenas while one county only mailed misdemeanor subpoenas.

Question 11

	Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree
Mailing of subpoenas is as effective as personal service?	4	5	8	13	14
Court cases are not affected by mailing of subpoenas?	3	4	15	10	12
Cost saved by mailing justifies the depreciation in the level of service?	3	4	15	9	13

Question 12

Would you be in favor of statute changes that allowed for electronic service of process, electronic signature or electronic filing of returns to the court? Thirty-one of the counties of the sample answered “yes”. Eleven counties responded to the question with a “no” answer and two counties did not answer the question.

Question 13 and 14

Does your agency utilize or are they considering any type of electronic service of process? Twenty-six of the counties of the sample answered “no”. Fifteen counties responded to the question with a “yes” and three counties did not answer the question.

Question 15

	Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree
Use of technology saves time and money, thus reducing the cost of a process?	9	20	11	2	2
If a budget supports it, every agency should have a goal of creating a paperless electronic process?	9	13	8	13	1
Electronic service of process will become the preferred method of perfecting service?	7	15	10	10	2

Question 16

Please feel free to provide any additional information. Seven counties responded by leaving additional comments related to the survey.

Discussion

The first three questions of the survey provided me with some demographics of each agency in the sample group. The data gave me understanding of the volume of process being received by each agency. Like other areas of law enforcement the larger the population of the county the larger the volume of process to be served. Since, most of non-enforceable process is linked to criminal cases the volume of process coincides with the volume of criminal cases in that county.

The next portion of the data from the survey supplied me with the staffing associated with how the different agencies perfected service of non-enforceable process and how proficiently they accomplished that service. The main two manner of staffing used by the sample group were personal service by a sworn member of the agency and personal service by a sworn or civilian member of the agency. The majority of survey participants did not know what their agency's percentage of service rate was. However, of the participants that did provide their rate of service the agency's that utilized only sworn members of the agency had a much higher service rate than those who used another method of service.

A segment of the survey was used to discover how many if any of the sample were using United States mail as a method of service of non-enforceable process. Seven counties which are about 16% of the sample are mailing criminal witness subpoenas. There doesn't appear to be any correlation between the seven participants. Some have extremely large volumes of non-enforceable process while others that are mailing have the lowest volumes. What they do have in common is that most of them are mailing both misdemeanor and felony case subpoenas. Though this method of service is authorized by statute it doesn't appear that the majority of the sample group believes that it is as effective as personal service. The majority also think that mailing service has an ill effect on court cases.

The final topic surveyed was the use of technology in the service of process. The majority of the sample is in favor of future statutory modifications to allow for more electronic options associated with the service of process. Most agreed that technology saves both time and money and they were in favor of creating an electronic solution to perfecting service of process.

The research gathered in this study assisted me in understanding the different methods being used throughout the state for the service of process. The participants in my survey are subject matter experts in the field of civil process for their agency. One of the things that amazed me about this survey was the amount of agencies that did not know what their percentage of service was. In today's statistically driven work place you must maintain a record of how effectively you are accomplishing the mission.

Some of the data that was obtained was typical with my own analysis of the operation. Such as the fact that only one agency receives enough revenue in fees to completely fund the service of process was not surprising. Like many of the statutorily mandated tasks assigned to Sheriffs the task of service of process must be funded by the Sheriff's budget. However, each agency has the responsibility to provide the most effective service possible even though it may be limited by resources. As reflected in the survey results it appears that the majority of participants did not support the service

of process by mail. They believed that personal service was the most effective form of service and supported the judicial process of court in a much more adequate method.

In its basic form service of process affects the judicial proceeding immensely. If the service of process was inadequate the entire course of action in a case could be affected. The verdicts of cases are impacted by the evidence presented in the court. It is with effective service of process that we ensure justice is maintained. This research only scratches the significances of service of process in relation to the criminal justice system. However, it does provide able understanding of what service of process is and its place in the criminal justice system.

Lieutenant Tom Brabant has been in law enforcement for 19 years all of which has been as a member of the Polk County Sheriff's Office. During his career he has been assigned to various positions to include Inmate Intake Section Lieutenant and is currently assigned as the Court Process Section Lieutenant. Tom supervises 48 members with the responsibility of serving all criminal and civil process that is submitted to the Polk County Sheriff's Office. Tom is a Certified Jail Inspector and serves on a County Jail Inspection Team. He has an AA Degree in Liberal Arts and AS Degree in Criminal Justice from Polk State College; a Bachelor of Arts Degree in Organizational Management and a Master's Degree in Business Administration from Warner University.

References

Federal Rules of Civil Procedures with forms December 2010. Retrieved from
<http://www.utsouthcentral.edu/uscourts.gov/forms/civil2010.pdf>

Florida Rules of Civil Procedure 2011 Rule 1.070 Process. Retrieved from
[http://www.floridabar.org/TFB/TFBResources.nsf/0/10C69DF6FF15185085256B29004BF823/\\$FILE/Civil.pdf](http://www.floridabar.org/TFB/TFBResources.nsf/0/10C69DF6FF15185085256B29004BF823/$FILE/Civil.pdf)

Florida Rules of Criminal Procedure 2011 Rule 3.030 Service of Pleading and Papers.
Retrieved from
[http://www.floridabar.org/TFB/TFBResources.nsf/0/BDFE1551AD291A3F85256B29004BF892/\\$FILE/Criminal.pdf?OpenElement](http://www.floridabar.org/TFB/TFBResources.nsf/0/BDFE1551AD291A3F85256B29004BF892/$FILE/Criminal.pdf?OpenElement)

Law.com (n.d.). Notice definition. Retrieved from
<http://dictionary.law.com/Default.aspx?selected=1350>

Law.com (n.d.). Order to show cause definition. Retrieved from
<http://dictionary.law.com/Default.aspx?selected=1409>

Law.com (n.d.). Subpoena definition. Retrieved from
<http://dictionary.law.com/Default.aspx?selected=2041>

Law.com (n.d.). Subpoena duces tecum definition. Retrieved from
<http://dictionary.law.com/Default.aspx?selected=2042>

Law.com (n.d.). Summons definition. Retrieved from
<http://dictionary.law.com/Default.aspx?selected=2064>

The 2011 Florida Statutes Chapter 30 sheriffs 30.15 powers, duties, and obligations..
(n.d.). Retrieved from
http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0000-0099/0030/Sections/0030.15.html

The 2011 Florida Statutes Chapter 48 civil practice and procedure process and service of process (n.d.). Retrieved from
http://www.leg.state.fl.us/STATUTES/index.cfm?App_mode=Display_Statute&URL=0000-0099/0048/0048ContentsIndex.html&StatuteYear=2011&Title=->2011->Chapter 48

The 2012 Florida Statutes Chapter 48.021 Process; by whom served. (n.d.). Retrieved from
http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0000-0099/0048/Sections/0048.031.html

The 2012 Florida Statutes Chapter 48.031 Service of process generally; service of witness subpoenas (n.d.). Retrieved from
http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0000-0099/0048/Sections/0048.031.html

The 2012 Florida Statutes Chapter 48.27 Certified Process Servers. (n.d.). Retrieved from
http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0000-0099/0048/Sections/0048.27.html

Appendix A

1. Agency Name:

2. How many total pieces of process does your agency receive annually to be served?

- 0 - 5,000
- 5,001 - 25,000
- 25,001 - 50,000
- 50,001 - 75,000
- 75,001 - 100,000
- More than 100,000

3. How many of that total are non -enforceable process?

- 0 - 5,000
- 5,001 - 25,000
- 25,001 - 50,000
- 50,001 - 75,000
- 75,001 - 100,000
- More than 100,000

4. What type of service does your agency offer or use to perfect service on non-enforceable process?
(Check all that apply)

- Personal service by a sworn member of the Sheriff's Office
- Personal service by a civilian member of the Sheriff's Office
- Contract service by a certified process server or special process server

Other (please specify)

5. What is your agency's percentage of service rate on non -enforceable process?
(Enter "unknown" if applicable)

6. On average, what is the amount of fees collected by your agency for the service of process?

- 0 - \$25,000
- \$25,001 - \$75,000
- \$75,001 - \$150,000
- \$150,001 - \$300,000
- \$300,001 - \$500,000
- More than \$500,000

7. Are the revenues you collect from the fees for service sufficient to pay for the cost of the staff required to serve the non-enforceable process?

- Yes, the revenues completely satisfy the cost of serving the non-enforceable process
- No, the revenues do not satisfy any of the cost of serving the non-enforceable process
- Partially, the revenues satisfy a portion of the cost of serving the non-enforceable process
- Unknown

If partially funded, please indicate the approximate percentage:

8. Does your agency serve criminal witness subpoenas by mail if it meets the qualifications necessary to be mailed?

- Yes
- No

9. What type of mailing do you use? (Check all that apply)

- First Class Mail
- Certified Return Receipt Mail

Other (please specify)

10. What level of subpoenas do you mail?

- Misdemeanor only
- Felony only
- Both misdemeanor and felony

11. Please indicate your level of agreement to the following statements:

	Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree
Mailing of subpoenas is as effective as personal service	<input type="checkbox"/>				
Court cases are not affected by mailing of subpoenas	<input type="checkbox"/>				
Cost saved by mailing justifies the depreciation in the level of service	<input type="checkbox"/>				

12. Would you be in favor of statute changes that allowed for electronic service of process, electronic signature or electronic filing of returns to the court?

- Yes
- No

13. Does your agency utilize or are they considering any type of electronic service of process?

- Yes
- No

14. If yes, what type of electronic procedure?

15. Please indicate your level of agreement to the following statements:

	Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree
Use of technology saves time and money, thus reducing the cost of a process	<input type="checkbox"/>				
If a budget supports it, every agency should have a goal of creating a paperless electronic process	<input type="checkbox"/>				
Electronic service of process will become the preferred method of perfecting service	<input type="checkbox"/>				

16. Please feel free to provide any additional information.