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# A BILL FOR AN ACT

RELATING TO PUBLIC SAFETY.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

PART I

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SECTION 1. The legislature finds that process servers play an important role in facilitating a timely judicial process and protecting public safety. The legislature attempted to regulate process servers in the early 1990s. Auditor's Report No. 91-17, an after-the-fact sunrise analysis on the state regulation of process servers, alluded to concerns such as alleged delays by the sheriffs in serving process. However, the Auditor recommended in that report that the State not regulate process servers at the time. Nearly two decades later, Auditor's Report No. 10-06, *Audit of the Department of Public Safety, Sheriff Division* (June 2010), stated, "Inefficiencies in the warrant process point to larger problems in the Sheriff Division." The Auditor recommended, among other things, "that the department pursue accreditation for the Sheriff Division from the Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA), to ensure that proper law enforcement policies and procedures are enacted and followed."



1           A survey by the Feerick Center for Social Justice at  
2 Fordham Law School, entitled *State-by-State Survey of Process*  
3 *Server Provisions*, was conducted in 2009. The purpose of the  
4 project was to explore the potential for process server  
5 education and training as one method to improve industry  
6 practice. The survey demonstrates that regulation of process  
7 servers varies greatly throughout the country. In some states,  
8 only law enforcement personnel may serve legal process whereas  
9 in other states, process can be served by any adult who is not a  
10 party to the action. Some states require licensure,  
11 registration, or appointment while others do not. Additional  
12 provisions mandate education, such as training or testing, bond  
13 or insurance requirements, and fee guidelines. Finally, some  
14 state requirements are statutory and regulatory whereas others  
15 are imposed by court rule. Based on the survey, twenty-four  
16 states require some type of license, registration, or  
17 appointment.

18           Civil process servers in Hawaii are not required to obtain  
19 a license. Section 634-21, Hawaii Revised Statutes, identifies  
20 who may perform service of process:

21           "**§634-21 Service of process, by whom.** Except as  
22 otherwise provided, service of all process and orders



1 shall be made by the sheriff or the sheriff's deputy,  
 2 the chief of police of the county in which the service  
 3 is made or the chief's duly authorized subordinate,  
 4 some other person specially appointed by the court for  
 5 the purpose, any investigator appointed and  
 6 commissioned by the director of commerce and consumer  
 7 affairs pursuant to section 26-9(j), or a person  
 8 authorized by the rules of court."

9 For persons authorized to serve process by the rules of court,  
 10 Rule 4(c), Hawaii Rules of Civil Procedure, requires the  
 11 following:

12 "Service of all process shall be made: (1) anywhere  
 13 in the State by the sheriff or the sheriff's deputy,  
 14 by some other person specially appointed by the court  
 15 for that purpose, or by any person who is not a party  
 16 and is not less than 18 years of age; or (2) in any  
 17 county by the chief of police or the chief's duly  
 18 authorized subordinate. A subpoena, however, may be  
 19 served as provided in Rule 45."

20 For the service of subpoenas, Rule 45(c), Hawaii Rules of Civil  
 21 Procedure, provides in pertinent part:



1 "A subpoena may be served: (1) anywhere in the State  
2 by the sheriff or deputy sheriff or by any other  
3 person who is not a party and is not less than 18  
4 years of age; or (2) in any county by the chief of  
5 police or a duly authorized subordinate."

6 Thus, in addition to law enforcement officers and individuals  
7 specially appointed by the court, any individual may perform  
8 service of process so long as that individual is not a party to  
9 the matter and has reached the age of majority.

10 In light of ongoing concerns regarding service of process,  
11 the legislature finds that the department of public safety  
12 should more clearly define and delineate the duties and  
13 responsibilities of process servers under its jurisdiction and  
14 examine ways of certifying and registering its process servers.

15 The purpose of this part is to require the department of  
16 public safety to convene a working group to clarify the duties  
17 and responsibilities of process servers under the department's  
18 jurisdiction, create a process of registration, examine  
19 licensing of process servers, and address other relevant issues.

20 SECTION 2. The department of public safety shall convene a  
21 working group with the following objectives:



- 1 (1) Defining and delineating the duties and
- 2 responsibilities of process servers under its
- 3 jurisdiction;
- 4 (2) Creating a process of registration for process servers
- 5 in the State;
- 6 (3) Examining the licensing requirements of and
- 7 jurisdictional concerns with the private process
- 8 server industry in the State; and
- 9 (4) Addressing other issues deemed relevant by the working
- 10 group or by the department of public safety.

11 SECTION 3. The working group established under section 2  
12 of this Act shall be composed of ten members as follows:

- 13 (1) Two current process servers to be appointed by the
- 14 governor;
- 15 (2) Two current employees of the sheriff division to be
- 16 appointed by the director of public safety;
- 17 (3) Two employees of the judiciary to be appointed by the
- 18 chief justice;
- 19 (4) Two members of the Hawaii state bar association to be
- 20 appointed by the president of the Hawaii state bar
- 21 association;



1 (5) A representative from the professional and vocational  
2 licensing division of the department of commerce and  
3 consumer affairs; and

4 (6) The director of public safety, as an ex officio  
5 member, to serve as chair.

6 SECTION 4. Members of the working group shall serve  
7 without compensation for their service on the working group.

8 SECTION 5. The working group established by this Act shall  
9 report its findings and recommendations to the legislature no  
10 later than twenty days prior to the convening of the regular  
11 session of 2014. The working group shall meet at least four  
12 times.

13 PART II

14 SECTION 6. The purpose of this part is to authorize the  
15 director of public safety to maintain a list of independent  
16 civil process servers to process orders to show cause,  
17 garnishment documents, writs of replevin and attachment, writs  
18 of possession, and orders for examination.

19 SECTION 7. Chapter 353C, Hawaii Revised Statutes, is  
20 amended by adding a new section to be appropriately designated  
21 and to read as follows:



1        "§353C-    Service of process; list.    (a) For service of  
2 process, the director may maintain a list of independent civil  
3 process servers to process:

4        (1) Orders to show cause pursuant to chapters 603 and 604;

5        (2) Garnishment pursuant to chapter 652;

6        (3) Writs of replevin and attachment pursuant to chapter  
7        634;

8        (4) Writs of possession pursuant to chapters 501 and 666;  
9        and

10       (5) Orders for examination pursuant to chapter 636.

11       (b) Any independent civil process server may submit the  
12 server's name to the director to be placed on the list; provided  
13 that a person shall not be placed on the list if the person:

14       (1) Is serving a criminal sentence;

15       (2) Has been convicted of a crime within the previous ten  
16       years;

17       (3) Is required to register as a sex offender; or

18       (4) Is subject to any other legal restriction, including a  
19       temporary restraining order, that prevents the person  
20       from serving process.

21       (c) The department, the State, and the agencies, officers,  
22 and employees of the department or the State shall not be



1 responsible or liable for the actions of any independent civil  
2 process servers on the list. The maintenance of the list shall  
3 not create a private cause of action against the department or  
4 State.

5 (d) Placement of a person's name on the list shall not  
6 make the person a law enforcement officer, sheriff or deputy  
7 sheriff, or an employee or agent of the State."

8 PART III

9 SECTION 8. New statutory material is underscored.

10 SECTION 9. This Act shall take effect upon its approval;  
11 provided that section 7 of this Act shall be repealed on June  
12 30, 2015.





**Report Title:**

Sheriff; Process Servers; Working Group

**Description:**

Requires the Department of Public Safety to form a working group to define and delineate the duties and responsibilities of process servers under its jurisdiction, create a process of registration, and address other relevant issues. Authorizes the Director of Public Safety to maintain a list of independent process servers. (HB1280 HD2)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

