

REFERENCE TITLE: private process servers; trespass; assault

State of Arizona  
Senate  
Forty-eighth Legislature  
First Regular Session  
2007

# **SB 1040**

Introduced by  
Senator Gray C

AN ACT

AMENDING SECTIONS 11-445 AND 13-1204, ARIZONA REVISED STATUTES; RELATING TO  
PRIVATE PROCESS SERVERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 11-445, Arizona Revised Statutes, is amended to  
3 read:

4 11-445. Fees chargeable in civil actions by sheriffs,  
5 constables and private process servers: authority of  
6 private process servers: background investigation:  
7 constables' logs

8 A. The sheriff shall receive the following fees in civil actions:

9 1. For serving each true copy of the original summons in a civil suit,  
10 sixteen dollars, except that the sheriff shall not charge a fee for service  
11 of any document pursuant to section 13-3602 or any injunction against  
12 harassment pursuant to section 12-1809 if the court indicates the injunction  
13 arises out of a dating relationship.

14 2. For summoning each witness, sixteen dollars.

15 3. For levying and returning each writ of attachment or claim and  
16 delivery, forty-eight dollars.

17 4. For taking and approving each bond and returning it to the proper  
18 court when necessary, twelve dollars.

19 5. For endorsing the forfeiture of any bond required to be endorsed by  
20 ~~him~~ THE SHERIFF, twelve dollars.

21 6. For levying each execution, twenty-four dollars.

22 7. For returning each execution, sixteen dollars.

23 8. For executing and returning each writ of possession or restitution,  
24 forty-eight dollars plus a rate of forty dollars per hour per deputy or  
25 constable for the actual time spent in excess of three hours.

26 9. For posting the advertisement for sale under execution, or any  
27 order of sale, twelve dollars.

28 10. For posting or serving any notice, process, writ, order, pleading  
29 or paper required or permitted by law, not otherwise provided for, sixteen  
30 dollars except that posting for a writ of restitution shall not exceed ten  
31 dollars.

32 11. For executing a deed to each purchaser of real property under  
33 execution or order of sale, twenty-four dollars.

34 12. For executing a bill of sale to each purchaser of real and personal  
35 property under an execution or order of sale, when demanded by the purchaser,  
36 sixteen dollars.

37 13. For services in designating a homestead or other exempt property,  
38 twelve dollars.

39 14. For receiving and paying money on redemption and issuing a  
40 certificate of redemption, twenty-four dollars.

41 15. For serving and returning each writ of garnishment and related  
42 papers, forty dollars.

43 16. For the preparation, including notarization, of each affidavit of  
44 service or other document pertaining to service, eight dollars.

1           17. For every writ served on behalf of a justice of the peace, a fee  
2 established by the board of supervisors not to exceed five dollars per writ  
3 ~~shall be established~~. Monies collected from the writ fees shall be deposited  
4 in the constable ethics committee fund established by section 22-136.

5           B. The sheriff shall also collect the appropriate recording fees if  
6 applicable and other appropriate disbursements.

7           C. The sheriff may charge:

8           1. Fifty-six dollars plus disbursements for any skip tracing services  
9 performed.

10          2. A reasonable fee for executing a civil arrest warrant ordered  
11 pursuant to court rule by a judge or justice of the peace. The fee shall  
12 only be charged to the party requesting the issuance of the civil arrest  
13 warrant.

14          3. A reasonable fee for storing personal property levied on pursuant  
15 to title 12, chapter 9.

16          D. For traveling to serve or on each attempt to serve civil process,  
17 writs, orders, pleadings or papers, the sheriff shall receive two dollars  
18 forty cents for each mile actually and necessarily traveled but, in any  
19 event, not to exceed two hundred miles, nor to be less than sixteen dollars.  
20 Mileage shall be charged one way only. For service made or attempted at the  
21 same time and place, regardless of the number of parties or the number of  
22 papers so served or attempted, only one charge for travel fees shall be made  
23 for such service or attempted service.

24          E. For collecting money on an execution when it is made by sale, the  
25 sheriff and the constable shall receive eight dollars for each one hundred  
26 dollars or major portion thereof not to exceed a total of two thousand  
27 dollars, but when money is collected by the sheriff without a sale, only  
28 one-half of such fee shall be allowed. When satisfaction or partial  
29 satisfaction of a judgment is received by the judgment creditor after the  
30 sheriff or constable has received an execution on the judgment, the  
31 commission is due the sheriff or constable and is established by an affidavit  
32 of the judgment creditor filed with the officer. If the affidavit is not  
33 lodged with the officer within thirty days of the request, the commission  
34 shall be based on the total amount of judgment due as billed by the officer  
35 and may be collected as any other debt by that officer.

36          F. The sheriff shall be allowed for all process issued from the  
37 supreme court and served by the sheriff the same fees as are allowed the  
38 sheriff for similar services ~~upon~~ ON process issued from the superior court.

39          G. The constable shall receive the same fees as the sheriff for  
40 performing the same services in civil actions, except that mileage shall be  
41 computed from the office of the justice of the peace originating the civil  
42 action to the place of service.

43          H. Private process servers duly appointed or registered pursuant to  
44 rules established by the supreme court may serve all process, writs, orders,  
45 pleadings or papers required or permitted by law to be served ~~prior to~~

1 BEFORE, during or independently of a court action, including all such as are  
 2 required or permitted to be served by a sheriff or constable, except writs or  
 3 orders requiring the service officer to sell, deliver or take into the  
 4 officer's custody persons or property, or as may otherwise be limited by rule  
 5 established by the supreme court. A private process server is an officer of  
 6 the court. A PRIVATE PROCESS SERVER MAY NOT BE CHARGED WITH CRIMINAL  
 7 TRESPASS PURSUANT TO SECTION 13-1502, 13-1503 OR 13-1504 FOR CONDUCT THAT  
 8 OCCURS WHILE ENGAGED IN THE EXECUTION OF ANY OFFICIAL DUTIES. As a condition  
 9 of registration, the supreme court shall require each private process server  
 10 applicant to furnish a full set of fingerprints to enable a criminal  
 11 background investigation to be conducted to determine the suitability of the  
 12 applicant. The completed applicant fingerprint card shall be submitted with  
 13 the fee prescribed in section 41-1750 to the department of public safety.  
 14 The applicant shall bear the cost of obtaining the applicant's criminal  
 15 history record information. The cost shall not exceed the actual cost of  
 16 obtaining the applicant's criminal history record information. Applicant  
 17 criminal history records checks shall be conducted pursuant to section  
 18 41-1750 and Public Law 92-544. The department of public safety is authorized  
 19 to exchange the submitted applicant fingerprint card information with the  
 20 federal bureau of investigation for a federal criminal records check. A  
 21 private process server may charge such fees for services as may be agreed  
 22 ~~upon~~ ON between the process server and the party engaging the process server.

23 I. Constables shall maintain a log of work related activities  
 24 including a listing of all processes served and the number of processes  
 25 attempted to be served by case number, the names of the plaintiffs and  
 26 defendants, the names and addresses of the persons to be served except as  
 27 otherwise precluded by law, the date of process and the daily mileage.

28 J. The log maintained in subsection I of this section is a public  
 29 record and shall be made available by the constable at the constable's office  
 30 during regular office hours. Copies of the log shall be filed monthly with  
 31 the clerk of the justice court and with the clerk of the board of  
 32 supervisors.

33 Sec. 2. Section 13-1204, Arizona Revised Statutes, is amended to read:

34 13-1204. Aggravated assault; classification; definition

35 A. A person commits aggravated assault if the person commits assault  
 36 as defined in section 13-1203 under any of the following circumstances:

- 37 1. If the person causes serious physical injury to another.
- 38 2. If the person uses a deadly weapon or dangerous instrument.
- 39 3. If the person commits the assault after entering the private home  
 40 of another with the intent to commit the assault.
- 41 4. If the person is eighteen years of age or older and commits the  
 42 assault ~~upon~~ ON a child ~~the age of~~ WHO IS fifteen years OF AGE or under.
- 43 5. If the person commits the assault knowing or having reason to know  
 44 that the victim is a peace officer, or a person summoned and directed by the  
 45 officer while engaged in the execution of any official duties.

1           6. If the person knowingly takes or attempts to exercise control over  
2 a peace officer's or other officer's firearm and the person knows or has  
3 reason to know that the victim is a peace officer or other officer employed  
4 by one of the agencies listed in paragraph 10, subdivision (a), item (i),  
5 (ii), (iii), (iv) or (v) of this subsection and is engaged in the execution  
6 of any official duties.

7           7. If the person knowingly takes or attempts to exercise control over  
8 any weapon other than a firearm that is being used by a peace officer or  
9 other officer or that the officer is attempting to use, and the person knows  
10 or has reason to know that the victim is a peace officer or other officer  
11 employed by one of the agencies listed in paragraph 10, subdivision (a), item  
12 (i), (ii), (iii), (iv) or (v) of this subsection and is engaged in the  
13 execution of any official duties.

14           8. If the person knowingly takes or attempts to exercise control over  
15 any implement that is being used by a peace officer or other officer or that  
16 the officer is attempting to use, and the person knows or has reason to know  
17 that the victim is a peace officer or other officer employed by one of the  
18 agencies listed in paragraph 10, subdivision (a), item (i), (ii), (iii), (iv)  
19 or (v) of this subsection and is engaged in the execution of any official  
20 duties. For the purposes of this paragraph, "implement" means an object that  
21 is designed for or that is capable of restraining or injuring an individual.  
22 Implement does not include handcuffs.

23           9. If the person commits the assault knowing or having reason to know  
24 THAT the victim is a teacher or other person employed by any school and the  
25 teacher or other employee is ~~upon~~ ON the grounds of a school or grounds  
26 adjacent to the school or is in any part of a building or vehicle used for  
27 school purposes, any teacher or school nurse visiting a private home in the  
28 course of the teacher's or nurse's professional duties or any teacher engaged  
29 in any authorized and organized classroom activity held on other than school  
30 grounds.

31           10. If the person meets both of the following conditions:

32           (a) Is imprisoned or otherwise subject to the custody of any of the  
33 following:

34           (i) The state department of corrections.

35           (ii) The department of juvenile corrections.

36           (iii) A law enforcement agency.

37           (iv) A county or city jail or an adult or juvenile detention facility  
38 of a city or county.

39           (v) Any other entity that is contracting with the state department of  
40 corrections, the department of juvenile corrections, a law enforcement  
41 agency, another state, any private correctional facility, a county, a city or  
42 the federal bureau of prisons or other federal agency that has responsibility  
43 for sentenced or unsentenced prisoners.

1 (b) Commits an assault knowing or having reason to know that the  
2 victim is acting in an official capacity as an employee of any of the  
3 entities ~~prescribed by~~ LISTED IN subdivision (a) of this paragraph.

4 11. If the person commits the assault while the victim is bound or  
5 otherwise physically restrained or while the victim's capacity to resist is  
6 substantially impaired.

7 12. If the person commits the assault knowing or having reason to know  
8 that the victim is a fire fighter, fire investigator, fire inspector,  
9 emergency medical technician or paramedic engaged in the execution of any  
10 official duties, or a person summoned and directed by such individual while  
11 engaged in the execution of any official duties.

12 13. If the person commits the assault knowing or having reason to know  
13 that the victim is a licensed health care practitioner who is certified or  
14 licensed pursuant to title 32, chapter 13, 15, 17 or 25, or a person summoned  
15 and directed by the licensed health care practitioner while engaged in the  
16 person's professional duties. ~~The provisions of~~ This paragraph ~~do~~ DOES not  
17 apply if the person who commits the assault is seriously mentally ill, as  
18 defined in section 36-550, or is afflicted with Alzheimer's disease or  
19 related dementia.

20 14. If the person commits THE assault by any means of force ~~which~~ THAT  
21 causes temporary but substantial disfigurement, temporary but substantial  
22 loss or impairment of any body organ or part or a fracture of any body part.

23 15. If the person commits THE assault as prescribed by section 13-1203,  
24 subsection A, paragraph 1 or 3 and the person is in violation of an order of  
25 protection issued against the person pursuant to section 13-3602 or 13-3624.

26 16. If the person commits the assault knowing or having reason to know  
27 that the victim is a prosecutor.

28 17. IF THE PERSON COMMITS THE ASSAULT KNOWING OR HAVING REASON TO KNOW  
29 THAT THE VICTIM IS A PROCESS SERVER WHILE ENGAGED IN THE EXECUTION OF ANY  
30 OFFICIAL DUTIES.

31 B. Except pursuant to subsections C and D of this section, aggravated  
32 assault pursuant to subsection A, paragraph 1, 2 or 6 of this section is a  
33 class 3 felony except if the victim is under fifteen years of age in which  
34 case it is a class 2 felony punishable pursuant to section 13-604.01.  
35 Aggravated assault pursuant to subsection A, paragraph 14 of this section is  
36 a class 4 felony. Aggravated assault pursuant to subsection A, paragraph 7  
37 or 10 of this section is a class 5 felony. Aggravated assault pursuant to  
38 subsection A, paragraph 3, 4, 5, 8, 9, 11, 12, 13, 15, ~~or~~ 16 OR 17 of this  
39 section is a class 6 felony.

40 C. Aggravated assault pursuant to subsection A, paragraph 1 or 2 of  
41 this section committed on a peace officer while the officer is engaged in the  
42 execution of any official duties is a class 2 felony. Aggravated assault  
43 pursuant to subsection A, paragraph 14 of this section committed on a peace  
44 officer while the officer is engaged in the execution of any official duties  
45 is a class 3 felony. Aggravated assault pursuant to subsection A, paragraph

1 5 of this section resulting in any physical injury to a peace officer while  
2 the officer is engaged in the execution of any official duties is a class 5  
3 felony.

4 D. Aggravated assault pursuant to:

5 1. Subsection A, paragraph 1 or 2 of this section is a class 2 felony  
6 if committed on a prosecutor.

7 2. Subsection A, paragraph 14 of this section is a class 3 felony if  
8 committed on a prosecutor.

9 3. Subsection A, paragraph 16 of this section is a class 5 felony if  
10 the assault results in ~~a~~ physical injury to a prosecutor.

11 E. For the purposes of this section, "prosecutor" means a county  
12 attorney, a municipal prosecutor or the attorney general and includes an  
13 assistant or deputy county attorney, municipal prosecutor or attorney  
14 general.