

REFERENCE TITLE: private process servers; criminal liability

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SB 1140

Introduced by
Senators Crandall: Barto, Cajero Bedford, Gallardo, Klein, Landrum Taylor,
Lopez, Lujan, McComish, Nelson, Reagan, Shooter, Yarbrough

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, 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.

45 17. For every writ served on behalf of a justice of the peace, a fee
46 established by the board of supervisors not to exceed five dollars per writ.

1 Monies collected from the writ fees shall be deposited in the constable
2 ethics standards and training fund established by section 22-138.

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

5 C. The sheriff may charge:

6 1. Fifty-six dollars plus disbursements for any skip tracing services
7 performed.

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

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

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

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

34 F. The sheriff shall be allowed for all process issued from the
35 supreme court and served by the sheriff the same fees as are allowed the
36 sheriff for similar services on process issued from the superior court.

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

41 H. Notwithstanding subsection G of this section, in a county with a
42 population of more than three million persons, if an office of a justice of
43 the peace is located outside of the precinct boundaries, the mileage for a
44 constable shall be calculated pursuant to subsection D of this section,
45 except that the distance between the precinct boundaries and the office of
46 the justice of the peace, as determined by the county and certified by the

1 board of supervisors of that county, shall be subtracted from the mileage
 2 calculation. This certified mileage calculation shall be transmitted to the
 3 justice courts and the clerks of those courts shall calculate the mileage
 4 between the office of the justice of the peace and the location where the
 5 civil process, writ, order, pleading or paper was served and reduce the
 6 mileage used to calculate the mileage fee according to the certified mileage
 7 calculation for that respective jurisdiction.

8 I. Private process servers duly appointed or registered pursuant to
 9 rules established by the supreme court may serve all process, writs, orders,
 10 pleadings or papers required or permitted by law to be served before, during
 11 or independently of a court action, including all such as are required or
 12 permitted to be served by a sheriff or constable, except writs or orders
 13 requiring the service officer to sell, deliver or take into the officer's
 14 custody persons or property, or as may otherwise be limited by rule
 15 established by the supreme court. A private process server is an officer of
 16 the court AND HAS THE SAME PRIVILEGES AND PROTECTIONS AFFORDED TO A SHERIFF
 17 OR CONSTABLE WHILE PERFORMING THE DUTIES AUTHORIZED BY THIS SUBSECTION. As a
 18 condition of registration, the supreme court shall require each private
 19 process server applicant to furnish a full set of fingerprints to enable a
 20 criminal background investigation to be conducted to determine the
 21 suitability of the applicant. The completed applicant fingerprint card shall
 22 be submitted with the fee prescribed in section 41-1750 to the department of
 23 public safety. The applicant shall bear the cost of obtaining the
 24 applicant's criminal history record information. The cost shall not exceed
 25 the actual cost of obtaining the applicant's criminal history record
 26 information. Applicant criminal history records checks shall be conducted
 27 pursuant to section 41-1750 and Public Law 92-544. The department of public
 28 safety is authorized to exchange the submitted applicant fingerprint card
 29 information with the federal bureau of investigation for a federal criminal
 30 records check. A private process server may charge such fees for services as
 31 may be agreed on between the process server and the party engaging the
 32 process server.

33 J. Constables shall maintain a log of work related activities
 34 including a listing of all processes served and the number of processes
 35 attempted to be served by case number, the names of the plaintiffs and
 36 defendants, the names and addresses of the persons to be served except as
 37 otherwise precluded by law, the date of process and the daily mileage.

38 K. The log maintained in subsection J of this section is a public
 39 record and shall be made available by the constable at the constable's office
 40 during regular office hours. Copies of the log shall be filed monthly with
 41 the clerk of the justice court and with the clerk of the board of
 42 supervisors.

43 Sec. 2. Section 13-1204, Arizona Revised Statutes, is amended to read:
 44 13-1204. Aggravated assault; classification; definition

45 A. A person commits aggravated assault if the person commits assault
 46 as prescribed by section 13-1203 under any of the following circumstances:

- 1 1. If the person causes serious physical injury to another.
- 2 2. If the person uses a deadly weapon or dangerous instrument.
- 3 3. If the person commits the assault by any means of force that causes
- 4 temporary but substantial disfigurement, temporary but substantial loss or
- 5 impairment of any body organ or part or a fracture of any body part.
- 6 4. If the person commits the assault while the victim is bound or
- 7 otherwise physically restrained or while the victim's capacity to resist is
- 8 substantially impaired.
- 9 5. If the person commits the assault after entering the private home
- 10 of another with the intent to commit the assault.
- 11 6. If the person is eighteen years of age or older and commits the
- 12 assault on a minor under fifteen years of age.
- 13 7. If the person commits assault as prescribed by section 13-1203,
- 14 subsection A, paragraph 1 or 3 and the person is in violation of an order of
- 15 protection issued against the person pursuant to section 13-3602 or 13-3624.
- 16 8. If the person commits the assault knowing or having reason to know
- 17 that the victim is any of the following:
- 18 (a) A peace officer, or a person summoned and directed by the officer
- 19 while engaged in the execution of any official duties.
- 20 (b) A constable, or a person summoned and directed by the constable
- 21 while engaged in the execution of any official duties.
- 22 (c) A firefighter, fire investigator, fire inspector, emergency
- 23 medical technician or paramedic engaged in the execution of any official
- 24 duties, or a person summoned and directed by such individual while engaged in
- 25 the execution of any official duties.
- 26 (d) A teacher or other person employed by any school and the teacher
- 27 or other employee is on the grounds of a school or grounds adjacent to the
- 28 school or is in any part of a building or vehicle used for school purposes,
- 29 any teacher or school nurse visiting a private home in the course of the
- 30 teacher's or nurse's professional duties or any teacher engaged in any
- 31 authorized and organized classroom activity held on other than school
- 32 grounds.
- 33 (e) A health care practitioner who is certified or licensed pursuant
- 34 to title 32, chapter 13, 15, 17 or 25, or a person summoned and directed by
- 35 the licensed health care practitioner while engaged in the person's
- 36 professional duties. This subdivision does not apply if the person who
- 37 commits the assault is seriously mentally ill, as defined in section 36-550,
- 38 or is afflicted with alzheimer's disease or related dementia.
- 39 (f) A prosecutor.
- 40 (g) A code enforcement officer as defined in section 39-123.
- 41 (h) A state or municipal park ranger.
- 42 (i) A public defender.
- 43 (j) A DULY APPOINTED OR REGISTERED PRIVATE PROCESS SERVER WHILE
- 44 ENGAGED IN THE EXECUTION OF ANY OFFICIAL DUTIES.

1 9. If the person knowingly takes or attempts to exercise control over
2 any of the following:

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

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

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

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

23 (a) Is imprisoned or otherwise subject to the custody of any of the
24 following:

25 (i) The state department of corrections.

26 (ii) The department of juvenile corrections.

27 (iii) A law enforcement agency.

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

30 (v) Any other entity that is contracting with the state department of
31 corrections, the department of juvenile corrections, a law enforcement
32 agency, another state, any private correctional facility, a county, a city or
33 the federal bureau of prisons or other federal agency that has responsibility
34 for sentenced or unsentenced prisoners.

35 (b) Commits an assault knowing or having reason to know that the
36 victim is acting in an official capacity as an employee of any of the
37 entities listed in subdivision (a) of this paragraph.

38 B. A person commits aggravated assault if the person commits assault
39 by either intentionally, knowingly or recklessly causing any physical injury
40 to another person, intentionally placing another person in reasonable
41 apprehension of imminent physical injury or knowingly touching another person
42 with the intent to injure the person, and both of the following occur:

43 1. The person intentionally or knowingly impedes the normal breathing
44 or circulation of blood of another person by applying pressure to the throat
45 or neck or by obstructing the nose and mouth either manually or through the
46 use of an instrument.

1 2. Any of the circumstances exists that are set forth in section
2 13-3601, subsection A, paragraph 1, 2, 3, 4, 5 or 6.

3 C. A person who is convicted of intentionally or knowingly committing
4 aggravated assault on a peace officer while the officer is engaged in the
5 execution of any official duties pursuant to subsection A, paragraph 1 or 2
6 of this section shall be sentenced to imprisonment for not less than the
7 presumptive sentence authorized under chapter 7 of this title and is not
8 eligible for suspension of sentence, commutation or release on any basis
9 until the sentence imposed is served.

10 D. Except pursuant to subsections E and F of this section, aggravated
11 assault pursuant to subsection A, paragraph 1 or 2 or paragraph 9,
12 subdivision (a) of this section is a class 3 felony except if the victim is
13 under fifteen years of age in which case it is a class 2 felony punishable
14 pursuant to section 13-705. Aggravated assault pursuant to subsection A,
15 paragraph 3 or subsection B of this section is a class 4 felony. Aggravated
16 assault pursuant to subsection A, paragraph 9, subdivision (b) or paragraph
17 10 of this section is a class 5 felony. Aggravated assault pursuant to
18 subsection A, paragraph 4, 5, 6, 7 or 8 or paragraph 9, subdivision (c) of
19 this section is a class 6 felony.

20 E. Aggravated assault pursuant to subsection A, paragraph 1 or 2 of
21 this section committed on a peace officer while the officer is engaged in the
22 execution of any official duties is a class 2 felony. Aggravated assault
23 pursuant to subsection A, paragraph 3 of this section committed on a peace
24 officer while the officer is engaged in the execution of any official duties
25 is a class 3 felony. Aggravated assault pursuant to subsection A, paragraph
26 8, subdivision (a) of this section committed on a peace officer while the
27 officer is engaged in the execution of any official duties is a class 5
28 felony unless the assault results in any physical injury to the peace officer
29 while the officer is engaged in the execution of any official duties, in
30 which case it is a class 4 felony.

31 F. Aggravated assault pursuant to:

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

34 2. Subsection A, paragraph 3 of this section is a class 3 felony if
35 committed on a prosecutor.

36 3. Subsection A, paragraph 8, subdivision (f) of this section is a
37 class 5 felony if the assault results in physical injury to a prosecutor.

38 G. For the purposes of this section, "prosecutor" means a county
39 attorney, a municipal prosecutor or the attorney general and includes an
40 assistant or deputy county attorney, municipal prosecutor or attorney
41 general.