

PROPOSED LEGISLATION

THE PETITIONER

The petitioner of this proposed legislative change is Arizona Association of Certified Process Servers, a non-profit organization representing Arizona certified process servers statewide.

LEGISLATION AFFECTED

The legislation affected by the proposed changes herein is A.R.S. § 28-454 at K. 3. and at K. 6.

BACKGROUND AND DISCUSSION

The authority of the certified process server is established in A.R.S. § 11- 445 I.

Certified process server is designated “an officer of the court” in A.R.S. § 11-445 I, which reads in pertinent part, “[A] private process server is an officer of the court.”

Regulation of certified process servers is vested in the Supreme Court Licensing and Regulation Division.

Certification and administration of process servers is vested in the Superior Court, specifically the Superior Court in the county in which the certified process server resides.

Certified process servers undergo a criminal background investigation as required in A.R.S. § 11-445 I, which reads in pertinent part, “[A]s a condition of registration, the Supreme Court shall require each private process server applicant to furnish a full set of fingerprints to enable a criminal background investigation to be conducted to determine suitability of the applicant.”

Certified process servers undergo examination prior to certification as required in the Arizona Code of Judicial Administration § 7-204 at E. Initial Certification 3. Examination, which reads in pertinent part, “[E]ach applicant for certification or renewal shall personally take and pass the examination provided by the director and administered and scored by the clerk of the superior court.”

Certified process servers must undergo ten hours of continuing education per year of certification as required in the Arizona Code of Judicial Administration § 7-204 at F. Role and Responsibilities of Certificate Holders. 7. Continuing Education, which reads in pertinent part, “[C]ertified private process servers shall complete ten hours of continuing education each twelve months...”.

Certified process servers renew their certifications every three years, and a criminal background investigation is accompanied by a fingerprint card submission for both a state and federal criminal records check.

The certified process server is by rule a neutral party having no interest in the case related to the process being served, as written in the Arizona Rules of Civil Procedure Rule 4 (d), which reads in pertinent part, "...[a] private process server shall not be a party, an attorney, or the employee of an attorney in the action whose process is being served." The public perception of the certified process server is generally contrary to the spirit and letter of that regulation, and the certified process server is too often viewed as a messenger of bad news or worse an instigator of or party to the action.

The name of the certified process server appears on the face of each affidavit and certificate filed with the court in conjunction with the corresponding service of process, so their identity is readily available to the party served with process and the public; it is a possible procedure for a disgruntled or disturbed individual to have conducted a motor vehicle records search to locate this officer of the court.

Certified process servers as officers of the court deserve and warrant the now available personal information protection by and through A.R.S. § 28-454. This is the identical level of personal information protection now accorded to other potentially vulnerable parties, including judges, prosecuting attorneys, law enforcers, correctional officers, and code enforcement officers.

PURPOSE AND INTENT OF PROPOSED LEGISLATION

It is the purpose and intent of this proposed legislation to provide additional protection for the certified process server by way of eliminating the possibility that a disgruntled or disturbed individual could locate the residence address of this officer of the court via a records search at the governmental office where such records are maintained.

IMPACT UPON STATE FUNDS AND ARIZONA TAXPAYERS

The proposed revision of A.R.S. § 28-454 shall have no negative impact whatsoever upon state funds nor shall the revision have a negative impact upon Arizona taxpayers as it seeks neither funding nor tax relief of any sort.

IMPACT UPON THE PUBLIC AND THE CERTIFIED PROCESS SERVER

The proposed legislation aids the public by:

- a. there is no perceivable or foreseeable negative impact upon the public.

The proposed legislation aids certified process servers by:

- a. providing protection to the certified process server by keeping their residence address information out of the public domain, and
- b. providing protection to the immediate families of the certified process server by keeping their residence address information out of the public domain, and
- c. reducing the potential for a potentially violent confrontation between a member of the public who has been served with process or affected by the service of process and the certified process server.

The proposed legislation aids the courts by:

- a. protecting their officers of the court, and
- b. protecting the families of their officers of the court, and
- c. better ensuring that service of process is not dissuaded or deterred by threats issued to certified process servers as these officers of the court attempt to serve process in the field.

PROPOSED STATUTORY REVISIONS

The proposed statutory revision to A.R.S. § 28-454 shall add wording as follows in bold type:

A.R.S. § 28-454. Records maintained by department of transportation; redaction; definitions

A. Notwithstanding sections 28-447 and 28-455, an eligible person may request that persons be prohibited from accessing the person's residential address and telephone number contained in any record maintained by the department.

B. An eligible person may request this action by filing an affidavit that states all of the following on an application form developed by the administrative office of the courts in agreement with an association of counties, an organization of peace officers and the department:

1. The person's full legal name and residential address.
2. The position the person currently holds and a description of the person's duties, except that an eligible person who is protected under an order of protection or injunction against harassment shall attach a copy of the order of protection or injunction against harassment.
3. The reasons the person reasonably believes that the person's life or safety or that of another person is in danger and that redacting the residential address and telephone number from the department's public records will serve to reduce the danger.

C. The affidavit shall be filed with the presiding judge of the superior court in the county in which the affiant resides. To prevent a multiplicity of filings, an eligible person who is a peace officer, prosecutor, code enforcement officer, corrections or detention officer, corrections support staff member or law enforcement support staff member shall deliver the affidavit to the peace officer's commanding officer, or to the head of the prosecuting, code enforcement, law enforcement, corrections or detention agency, as applicable, or that person's designee, who shall

file the affidavits at one time. In the absence of an affidavit that contains a request for immediate action and that is supported by facts justifying an earlier presentation, the commanding officer, or the head of the prosecuting, code enforcement, law enforcement, corrections or detention agency, as applicable, or that person's designee, shall not file affidavits more often than quarterly.

D. On receipt of an affidavit or affidavits, the presiding judge of the superior court shall cause to be filed with the clerk of the superior court a petition on behalf of all requesting affiants. Each affidavit presented shall be attached to the petition. In the absence of an affidavit that contains a request for immediate action and that is supported by facts justifying an earlier consideration, the presiding judge may accumulate affidavits and file a petition at the end of each quarter.

E. The presiding judge of the superior court shall review the petition and each attached affidavit to determine whether the action requested by each affiant should be granted. The presiding judge of the superior court shall order the redaction of the residence address and telephone number from the public records maintained by the department if the judge concludes that this action will reduce a danger to the life or safety of the affiant or another person.

F. On entry of the court order, the clerk of the superior court shall file the court order with the department. No more than one hundred fifty days after the date the department receives the court order, the department shall redact the residence addresses and telephone numbers of the affiants listed in the court order from the public records of the department. The residence addresses and telephone numbers shall not be disclosed and are not part of a public record.

G. If the court denies an affiant's request pursuant to this section, the affiant may request a court hearing. The hearing shall be conducted by the court in the county where the petition was filed.

H. On motion to the court, if the presiding judge of the superior court concludes that a residential address or telephone number has been sealed in error or that the cause for the original affidavit no longer exists, the presiding judge may vacate the court order prohibiting public access to the residential address or telephone number.

I. Notwithstanding sections 28-447 and 28-455, the department shall not release a photograph of a peace officer if the peace officer has made a request as prescribed in this section that persons be prohibited from accessing the peace officer's residential address and telephone number in any record maintained by the department.

J. This section does not prohibit the use of a peace officer's photograph that is either:

1. Used by a law enforcement agency to assist a person who has a complaint against an officer to identify the officer.
2. Obtained from a source other than the department.

K. For the purposes of this section:

1. "Code enforcement officer" means a person who is employed by a state or local government and whose duties include performing field inspections of buildings, structures or property to ensure compliance with and enforce national, state and local laws, ordinances and codes.

2. "Corrections support staff member" means an adult or juvenile corrections employee who has direct contact with inmates.

3. "Eligible person" means a peace officer, justice, judge, commissioner, public defender, prosecutor, code enforcement officer, adult or juvenile corrections officer, corrections support staff member, probation officer, **certified process server**, member of the board of executive clemency, law enforcement support staff member, national guard member who is acting in support of a law enforcement agency, person who is protected under an order of protection or injunction against harassment or firefighter who is assigned to the Arizona counterterrorism center in the department of public safety.
4. "Law enforcement support staff member" means a person who serves in the role of an investigator or prosecutorial assistant in an agency that investigates or prosecutes crimes, who is integral to the investigation or prosecution of crimes and whose name or identity will be revealed in the course of public proceedings.
5. "Prosecutor" means a county attorney, a municipal prosecutor or the attorney general and includes an assistant or deputy county attorney, municipal prosecutor or attorney general.
6. **"Certified process server" means any officer of the superior court, who is certified to serve process.**