

## METHODS FOR PERSONAL SERVICE OF PROCESS

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**House Bill 4666 (reported from committee as H-3)**  
**Sponsor: Rep. Jim Runestad**

Analysis available at  
<http://www.legislature.mi.gov>

**House Bill 4670 (reported from committee as H-2)**  
**Sponsor: Rep. Joseph N. Bellino, Jr.**

**Committee: Judiciary**

**Complete to 2-16-18**

***BRIEF SUMMARY:*** House Bill 4666 would amend the procedure for providing proof of service of process under the Revised Judicature Act (MCL 600.1910).

House Bill 4670 would incorporate false certification of personal service as a felony violation in the sentencing guidelines chapter of the Code of Criminal Procedure (MCL 777.15d).

***FISCAL IMPACT:*** House Bill 4666 would have an indeterminate fiscal impact on the state's correctional system and on local court systems. The number of people who would be convicted under provisions of the bill is unknown, but new felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2017, the average cost of prison incarceration in a state facility was roughly \$37,000 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,600 per supervised offender in the same year. The fiscal impact on local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

House Bill 4670 amends sentencing guidelines and would not have a direct fiscal impact on the state or on local units of government.

### ***THE APPARENT PROBLEM:***

Service of process refers to the formal procedure whereby a party to a lawsuit is notified that a legal action has been initiated. The documents served—a court summons and a copy of the plaintiff's complaint—are collectively referred to as "process," and give a defendant the notice required in order for the court to exercise personal jurisdiction over the defendant. Service can be either personal/actual or constructive/substituted, with personal service referring to actual delivery to the person to whom it is directed and constructive service to any other method of service allowed by law in place of personal service, such as service by mail.

Every person has a fundamental right to due process of law, which means that a person has the right to be heard by a court. As such, service of process—or the notice that legal action has been initiated—and process servers are important to facilitate due process. According to the sponsors of the bills, fraudulent service of process is an issue in Michigan and is hindering a person’s right to due process. By treating falsification of service as perjury (which carries a maximum punishment of 15 years in prison) and requiring a declaration under penalty of perjury with a maximum sentence of 15 years in prison, the sponsors of the bills hope that process servers will do their jobs more diligently.

***THE CONTENT OF THE BILLS:***

Currently under the Revised Judicature Act, proof of service may be made by written acknowledgment of the receipt of the process, a certificate stating the facts of service if made by a sheriff or other related official, or an affidavit stating the facts of service if made by any other person.

House Bill 4666 would retain the first two methods, and amend the third, so that the document, instead of an affidavit, would be a written statement of the facts of service, verified by a statement that the individual asserts the truth of the proof of service under penalty of perjury. The exact statement would read: “I declare under the felony penalty of perjury that this proof of service has been examined by me and that its contents are true to the best of my information, knowledge, and belief.”

The bill would provide that a person who intentionally makes a false declaration under the statement would be guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not more than \$2,000, or both.

House Bill 4670 would incorporate that penalty into the sentencing guidelines provisions of the Code of Criminal Procedure, so that the statutory maximum sentence for the Class C felony “Proof of service of process – false declaration of personal service” would be listed as 15 years.

The bill would also update the descriptions of other, unrelated felonies within the Code.

HBs 4666 and 4670 would take effect 180 days after enactment, and are tie-barred together, meaning that neither could take effect unless both were enacted.

***ARGUMENTS:***

***For:***

Supporters of the bills argue that process servers have an important job and that they should recognize that importance with every service of process. Service of process can have profound financial and personal consequences on a litigant and individuals can lose substantial rights if service is inadequate due to a process server’s unethical behavior. The bills would serve as a deterrent to process servers and ensure that service is adequate.

***Against:***

Critics of the bills are concerned with not including a notary requirement for the written statement of acknowledgment of perjury. In order for the written statement to have any kind of holding on the process server, there must be validation that the process server in question was the one who made the written statement. Otherwise, a process server accused of fraudulent service could simply deny having made the written statement. Having the written statement notarized would add another layer of needed protection.

Additionally, opponents of the bills argue that service of process is traditionally governed by the Michigan Court Rules, which are approved by the Michigan Supreme Court. Although these bills would be amending Michigan Compiled Laws, the laws regarding court procedures are merely a codification of the court rules. Thus, changing the laws infringes on the Michigan Supreme Court's power to regulate court procedures.

***POSITIONS:***

Representatives from the following organizations indicated support for the bills:

- Michigan Court Officers, Deputy Sheriffs and Process Servers' Association (10-24-17 and 2-6-18)
- Michigan Creditors Bar Association (10-24-17)

The State Bar of Michigan indicated a neutral position regarding the bills. (1-30-18 and 2-6-18)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.