

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Criminal Justice Committee

BILL: SB 350

INTRODUCER: Senator Crist

SUBJECT: Use of Force Against Law Enforcement Officer

DATE: February 5, 2007

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Fav/1 amendment
2.			JU	
3.				
4.				
5.				
6.				

## Please see last section for Summary of Amendments

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

### I. Summary:

Senate Bill 350 amends the justifiable use of force statute in two significant ways:

- to protect law enforcement officers from a citizen’s use of violence against him or her when the officer is engaged in the lawful execution of a legal duty and acting in good faith, even if it is later determined by a court that the officer’s actions were unlawful; and
- to protect citizens from use of force by a law enforcement officer or any person assisting him or her in the execution of a legal duty, if the execution of the legal duty is actually unlawful and known by the officer to be unlawful.

This bill substantially amends section 776.051 of the Florida Statutes.

### II. Present Situation:

Senate Bill 350 amends the current law on the viability of the defense of “justifiable use of force” in situations where a citizen resists or obstructs a law enforcement officer.

Section 776.051, F.S. states:

Use of force in resisting or making an arrest; prohibition.—

(1) A person is not justified in the use of force to resist an arrest by a law enforcement officer who is known, or reasonable appears, to be a law enforcement officer.

(2) A law enforcement officer, or any person whom the officer has summoned or directed to assist him or her, is not justified in the use of force if the arrest is unlawful and known by him or her to be unlawful.

The current law protects law enforcement officers from the use of force against them by a citizen who is resisting arrest, notwithstanding the illegality of the arrest. A citizen is also protected from the use of force by a law enforcement officer against him or her, when the arrest of the citizen is unlawful and the officer knows it is unlawful.

The defense of “justifiable use of force” is often raised by a defendant charged with Resisting an Officer With Violence or Battery on a Law Enforcement Officer.

Whether the defense is applicable (or will be successful) largely turns on whether the law enforcement officer is making an arrest:

- was the law enforcement officer making an arrest?
- if so, the defense does not generally apply under the criteria of s. 776.051, F.S.
- if not, but the defendant used force or violence against the officer, in a non-arrest situation,
  - the State must prove that the officer was “engaged in the lawful performance of his or her duties” (element of Battery on a Law Enforcement Officer – “BLEO”), or “in the lawful execution of any legal duty” (element of Resisting an Officer – “Resisting”) for the charge to be proven against the defendant, and
  - the defense of “justifiable use of force” may be applicable.

It should be noted that one may defend oneself against a law enforcement officer’s use of excessive or unlawful force, even when the officer is making an arrest, under s. 776.012, F.S. (see *Ivester v. State*, 398 So.2d 926 (Fla. 1st DCA 1981)). As is the case with the viability of all legal defenses to crimes, the law and facts of the case will determine its success in court.

### ***The Courts’ Differing Interpretations of s. 776.051, F.S. – Florida Supreme Court Ruling Ends Conflict***

The Fifth District Court (in *Tillman v. State*, 807 So.2d 106 (Fla 5th DCA 2002)) and the First District Court (in *Taylor v. State*, 740 So.2d 89 (Fla. 1st DCA 1999)) have been in direct conflict with their interpretation and application of s. 776.051, F.S., in Resisting and BLEO cases.

In cases where the law enforcement/citizen encounter involved some *lesser form of intrusion* or detention *than an arrest*, some trial courts have tended to *exclude* the “justifiable use of force” defense, and *not* dismiss cases when the law enforcement officer was acting outside the realm of “lawful performance” or “lawful execution.” Those trial courts made their rulings based on the *Tillman* precedent from the Fifth District Court.

Other trial courts have followed a strict interpretation of the statute, which states: “a person is not justified in the use of force to resist an *arrest...*”, s. 776.051(1), F.S., thereby requiring the State to *prove the elements* of “lawful performance” (in BLEO cases) and “lawful execution” (in

Resisting cases) while *allowing* the “justifiable use of force” defense. Those trial courts based their rulings on the *Taylor* precedent from the First District Court.

With the lower courts at odds on the applicability of the “justifiable use of force” defense in non-arrest cases, as well as the interwoven issue of whether an officer had to be “engaged in the lawful performance of his or her duties” or “in the lawful execution of any legal duty” for charges of BLEO or Resisting to be proven against a defendant, the Florida Supreme Court issued a ruling on these matters.

In *Tillman v. State*, 934 So.2d 1263 (Fla. 2006) the Court interpreted the plain meaning of the statutes and found that “section 776.051(1), Florida Statutes (2005), which prohibits the use of force to resist an arrest notwithstanding the illegality of the officer’s actions...applies only to arrest situations.” (*Id.* at 1266)

The legal effect of this ruling was to quash the Fifth District Court’s statutory interpretation and application in *Tillman* and approve the *Taylor* court’s ruling.

The practical effect of the Supreme Court’s decision in *Tillman* is articulated by the Court in this passage from the case:

“In non-arrest cases, in order to convict a defendant under sections 784.07 and 843.01, Florida Statutes (2005), which define the crimes of battery on a law enforcement officer and resisting an officer with violence, the State must prove that the officer was ‘engaged in the lawful performance of his or her duties’ or ‘in the lawful execution of any legal duty’.”

(*Id.* at 1266).

#### ***Policy Considerations Mentioned by the Courts***

Interestingly, both the District Courts’ rulings in *Tillman* and *Taylor*, and again in the Florida Supreme Court’s *Tillman* opinion, the comparison was made between an arrest situation and a citizen encounter that leads to a patdown or detention. The courts not only noted the similarity of those types of encounters, but noted that it is within the prerogative of the Legislature (not the courts) to prohibit use of force by a citizen against a law enforcement officer in those situations in addition to arrests.

The Supreme Court cautioned, as well, against adopting what amounts to a subjective standard for determining whether an officer is acting “lawfully.” Law enforcement officers are well-educated on Search and Seizure jurisprudence, the constitutional standards and the “tension” between effective law enforcement and citizens’ rights to freedom from unlawful searches and seizures. The Court urges continued reliance on the law (both statutory and decisional) governing the duty being undertaken by the officer in the citizen encounters that sometimes lead to the use of force.

### **III. Effect of Proposed Changes:**

Senate Bill 350 effectively eliminates the citizen's legal defense of "justifiable use of force" in any citizen-law enforcement officer encounter which results in the citizen being charged with Resisting an Officer (or, quite likely Battery on a Law Enforcement Officer). The bill does this by extending the current prohibition against use of force to resist an arrest to include virtually any action undertaken by an officer so long as it is undertaken in good faith.

The bill prohibits the use of force "to obstruct with violence a law enforcement officer who is engaged in the lawful execution of a legal duty, regardless of whether a court later finds that the action of the law enforcement officer was unlawful, if the law enforcement officer was acting in good faith."

The bill gives law enforcement officers greater legal protections in citizen encounters, should a citizen respond aggressively or violently. Essentially, the bill eliminates the constitutional limitations in any citizen encounters, including search and seizure situations, that lead to a violent citizen reaction.

Under the provisions in the bill, so long as the officer was acting in good faith, his or her actions in a citizen encounter (i.e., conducting a patdown, automobile or other search, seizure, entry, detention, and so on) – may in fact be unlawful under Fourth Amendment constitutional law, but regardless of the officer's conduct (or a court's ruling on its unlawfulness)

- if a citizen resists or obstructs the officer with violence, in any situation, the "justifiable use of force" defense is prohibited; and
- the State will no longer be required to actually prove that the officer was engaged in the lawful execution of a legal duty in Resisting with Violence (and in all likelihood, BLEO) cases.

The bill extends citizens additional protections from the use of force against them if the law enforcement officer is acting in the execution of a legal duty that is unlawful and known by him or her to be unlawful. This effectively extends the "unjustified" nature of force used by an officer in a "known" unlawful arrest situation to a "known" unlawful legal duty as well.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

At the time of this bill analysis the Criminal Justice Impact Conference had not yet met. Staff has requested feedback on any potential prison bed impact that may result from more Resisting and Officer with Violence and Battery on a Law Enforcement Officer convictions.

**VI. Technical Deficiencies:**

There is a typographical error in the bill which can be easily corrected. Specifically, on page one, line 21, change the word “lawful” to “law”, and on page one, line 22, change the word “law” to “lawful.”

**VII. Related Issues:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

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## **VIII. Summary of Amendments:**

### **Barcode 691182 by Criminal Justice:**

The amendment corrects a simple typographical error.

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