

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility – This bill expands s. 776.051, F.S., to preclude a person from using a “justifiable use of force” defense if they obstruct with violence a law enforcement officer who is engaged in the execution of a legal duty.

B. EFFECT OF PROPOSED CHANGES:

Justifiable Use of Force

Chapter 776, F.S., contains a variety of statutes that outline when a person may justifiably use force against another.¹ These “justifiable use of force” defenses are commonly used in criminal prosecutions (e.g. a person charged with battery may claim that the use of force [i.e. the battery] was justified because they were defending themselves). Chapter 776, F.S., also contains statutes that *preclude* a person from using “justifiable use of force” defenses in a criminal prosecution.²

Section 776.051, F.S., is a statute that *precludes* a person from using a “justifiable use of force” defense in a criminal prosecution. Specifically, the statute provides that “a person is *not* justified in using force to resist an arrest by a law enforcement officer who is known, or reasonably appears, to be a law enforcement officer.”³ Thus, if a person resists an arrest and is subsequently charged with “battery on a law enforcement officer⁴,” that person is precluded from using a “justifiable use of force” defense. Section 776.051, F.S., also precludes a law enforcement officer from using a “justifiable use of force” defense if the officer used force during an arrest that he or she knew was unlawful.

In recent years, Florida’s First and Fifth District Courts of Appeal issued conflicting opinions as to whether s. 776.051, F.S., applied only to arrest situations, or whether it also applied to other types of police-citizen encounters (e.g. searches). The Florida Supreme Court resolved this conflict in 2006 when they decided *Tillman v. State*.⁵ In *Tillman*, the court held that s. 776.051, F.S., by its plain terms, applied only to arrest situations.⁶ Thus, if a person hits a law enforcement officer during an *arrest* and is subsequently charged with “battery on a law enforcement officer,” that person may not use a “justifiable use of force” defense. In contrast, if that same person hits a law enforcement officer who is

¹ See e.g., s. 776.012, F.S., (A person is justified in using force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to defend himself or herself or another against the other's imminent use of unlawful force); s. 776.031, F.S., (A person is justified in the use of force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to prevent or terminate the other's trespass on, or other tortious or criminal interference with, either real property other than a dwelling or personal property, lawfully in his or her possession or in the possession of another who is a member of his or her immediate family or household or of a person whose property he or she has a legal duty to protect.)

² See e.g., s. 776.041, F.S., (The justification described in the preceding sections of this chapter is not available to a person who is attempting to commit, committing, or escaping after the commission of, a forcible felony).

³ This is true even if the arrest is technically illegal. See, *Jones v. State*, 570 So.2d 433 (Fla. 5th DCA 1990); *Wallace v. State*, 557 So.2d 212 (Fla. 2nd DCA 1990); *Delaney v. State*, 489 So.2d 891, (Fla. 1st DCA 1986).

⁴ s. 784.07, F.S.

⁵ 934 So.2d 1263 (Fla. 2006)

⁶ *Id.*

conducting a *search* and is subsequently charged with “battery on a law enforcement officer,” that person may use a “justifiable use of force” defense.

It should be noted that while the court in *Tillman* held that s. 776.051, F.S., applied only to arrest situations, the court commented that policy reasons may support extending the prohibition in s. 776.051, F.S., beyond arrests, but that it was not the court’s function to substitute its judgment for that of the legislature.⁷

Effect of the Bill

HB 61 expands s. 776.051, F.S., so that in addition to applying to arrest situations, it also applies to other police-citizen encounters. Specifically, the bill provides that a person is not justified in using force “to obstruct with violence a law enforcement officer who is engaged in the 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.” Thus, under the provisions of the bill, if a person hits a law enforcement officer who is conducting a *search* and is subsequently charged with “battery on a law enforcement officer,” that person may *not* use a “justifiable use of force” defense.

The bill also precludes a law enforcement officer from using a “justifiable use of force” defense if the officer used force during an arrest or during an execution of a legal duty that he or she knew was unlawful.

Assault or Battery on a Law Enforcement Officer & Resisting With and Without Violence

Section 784.07, F.S., provides enhanced penalties for persons who knowingly commit an assault or battery on a law enforcement officer⁸ who is engaged in the lawful performance of his or her duties. Similarly, ss. 843.01 and 843.02, F.S., make it a crime to knowingly and willfully resist, obstruct, or oppose, with or without violence, law enforcement officers⁹ in the lawful execution of a legal duty. All three statutes require that the officer be *lawfully* performing or executing a duty.

In *Tillman*, the Florida Supreme Court examined the language of the above statutes and held that “proof that the officer was acting lawfully is necessary...”¹⁰ Thus, a person who hits an officer during the course of a search could not be prosecuted for “resisting with violence” if the search was held unlawful. The court noted that “this interpretation may narrow the intended scope of protection for public officials further than actually intended and, thereby, undermine the very purpose of these

⁷ *Id.* at 1269-1270.

⁸ The enhanced penalties in s. 784.07, F.S., also apply to persons who knowingly commit an assault or battery on a firefighter, an emergency medical care provider, a traffic accident investigation officer as described in s. 316.640, F.S., a nonsworn law enforcement agency employee who is certified as an agency inspector, blood alcohol analyst, or a breath test operator while such employee is in uniform and engaged in processing, testing, evaluating, analyzing, or transporting a person who is detained or under arrest for DUI, a traffic infraction enforcement officer as described in s. 316.640, F.S., a parking enforcement specialist as defined in s. 316.640, F.S., a person licensed as a security officer as defined in s. 493.6101, F.S., and wearing a uniform that bears at least one patch or emblem that is visible at all times that clearly identifies the employing agency and that clearly identifies the person as a licensed security officer, or a security officer employed by the board of trustees of a community college, while the officer, firefighter, emergency medical care provider, intake officer, traffic accident investigation officer, traffic infraction enforcement officer, inspector, analyst, operator, parking enforcement specialist, public transit employee or agent, or security officer.

⁹ Also included are members of the Parole Commission or any administrative aide or supervisor employed by the commission; parole and probation supervisors; county probation officers; personnel or representatives of the Department of Law Enforcement; or other persons legally authorized to execute process. *See* ss. 843.01 and 843.02, F.S.

¹⁰ *See Tillman*, at 1270.

statutes.”¹¹ The court reviewed other similar state statutes and commented that the majority of them did not use the narrow phrase “lawful performance,” but rather used a broader phrase such as “engaged in the execution of any official duty.”¹²

Effect of the Bill

HB 61 amends ss. 784.07, 843.01, and 843.02, F.S., by deleting the requirement that the officer be engaged in the *lawful* performance of his or her duties. As a result, a person who hits an officer during the course of a search can still be prosecuted for “resisting with violence,” even if the search was held unlawful.

C. SECTION DIRECTORY:

Section 1. Amends s. 776.051, F.S., relating to use of force in resisting or making an arrest.

Section 2. Amends s. 784.07, F.S., relating to assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers; reclassification of offenses; minimum sentences.

Section 3. Amends s. 843.01, F.S., relating to resisting officers with violence to his or her person.

Section 4. Amends s. 843.02, F.S., relating to resisting officers without violence to his or her person.

Section 5. This bill takes effect July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

¹¹ *Id.* at 1274.

¹² *Id.* at 1275.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES