

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

Prepared By: The Professional Staff of the Governmental Operations Committee

**BILL:** CS/SB 654  
**INTRODUCER:** Criminal Justice Committee and Senator Crist  
**SUBJECT:** Offenses Against Officers/Execution of Lawful Duty  
**DATE:** March 31, 2008      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	<b>Fav/CS</b>
2.	McKay	Wilson	GO	<b>Favorable</b>
3.			JU	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

The bill 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 execution of a legal duty and acting in good faith, which would include situations other than arrests; 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.

This bill substantially amends section 776.051 of the Florida Statutes.

**II. Present Situation:**

The bill 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 in situations that include encounters other than arrests.

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 reasonably 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 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.

Under current law whether the defense is applicable (or could be viable) 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, and 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<sup>1</sup> – “BLEO”), or “in the lawful execution of any legal duty” (element of Resisting an Officer<sup>2</sup> – “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 particular 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)) were, prior to the Florida Supreme Court’s ruling in 2006, in direct conflict with their interpretation and application of s. 776.051, F.S., in Resisting and BLEO cases.

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<sup>1</sup> Section 784.07, F.S.

<sup>2</sup> Sections 843.01 and 843.02, F.S.

In cases where the law enforcement/citizen encounter involved some *lesser form of intrusion* or detention *other than an arrest*, some trial courts had 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 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 2006.

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).

Senate Bill 654 would statutorily adopt the lower court’s *Tillman* standard statewide.

### ***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 urged 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:**

The bill extends the current prohibition against a citizen’s use of violence to resist an arrest to include virtually any legal duty undertaken by a law enforcement officer so long as it is undertaken in good faith.

The bill prohibits the use of force “to resist a law enforcement officer who is engaged in the execution of a legal duty, if the law enforcement officer was acting in good faith.”

The bill gives law enforcement officers greater legal protections in citizen encounters that don’t rise to the level of arrests, should a citizen respond to an officer aggressively or violently. These protections have previously existed, under current law, in arrest situations.

The bill also prohibits the use of force by a law enforcement officer or any person summoned or directed by the officer to assist the officer if the execution of a legal duty is unlawful and known by the officer to be unlawful.

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

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

None.

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

None.

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

None.

### **V. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

#### **B. Private Sector Impact:**

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference met on February 26, 2008, and determined that this bill would have no prison bed impact on the Department of Corrections.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Criminal Justice on March 11, 2008:**

- The Committee Substitute removes language in the original bill that would have made a court's ruling on the lawfulness of an officer's actions during a citizen encounter moot, with regard to determining whether the citizen could present a defense of self-defense.
- The Committee Substitute also deleted sections 2-4 from the bill, restoring current law with regard to Battery on a LEO and Resisting an Officer With or Without Violence.

B. Amendments:

None.