

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 Judiciary Committee

BILL: CS/SB 654

INTRODUCER: Criminal Justice Committee and Senator Crist

SUBJECT: Offenses Against Officers/Execution of Legal Duty

DATE: April 15, 2008 **REVISED:** _____

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

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

The bill amends the justifiable use of force statute in two significant ways. The bill:

- Protects 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, including situations other than arrests; and
- Protects 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 unlawful and known by him or her to be unlawful.

This bill substantially amends section 776.051, Florida Statutes.

II. Present Situation:

The bill amends the current law on the viability of the defense of “justifiable use of force” when a citizen resists or obstructs a law enforcement officer in situations that include encounters other than arrests.

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.¹

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 (BLEO). Under current law, whether the defense is applicable or could be viable largely turns on whether the law enforcement officer is making an arrest.² If the officer is making an arrest, the defense does not generally apply under the criteria of s. 776.051, F.S.³

If the defendant uses 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 BLEO⁴), or “in the lawful execution of any legal duty” (element of Resisting an Officer⁵ – “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.⁶ As is the case with the viability of all legal defenses to crimes, the law and facts of the particular case will determine the success of the defense in court.

Courts’ Differing Interpretations of Justifiable Use of Force

The Fifth District Court of Appeal⁷ and the First District Court of Appeal⁸ 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.

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 v. State* 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

¹ Section 776.051, F.S.

² *Tillman v. State*, 934 So. 2d 1263 (Fla. 2006).

³ *Id.* at 1266.

⁴ Section 784.07, F.S.

⁵ Sections 843.01 and 843.02, F.S.

⁶ *Ivester v. State*, 398 So. 2d 926, 930 (Fla. 1st DCA 1981).

⁷ *Tillman v. State*, 807 So. 2d 106 (Fla. 5th DCA 2002).

⁸ *Taylor v. State*, 740 So. 2d 89 (Fla. 1st DCA 1999).

Resisting cases) while *allowing* the “justifiable use of force” defense. Those trial courts based their rulings on the *Taylor v. State* 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 proved against a defendant, the Florida Supreme Court issued a ruling on these matters in 2006.

In 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.”⁹ 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.”¹⁰

The Court noted, “Section 776.051(1) forecloses the defense of justifiable use of force by a defendant who resists an arrest by a law enforcement officer, regardless of the legality of the arrest.”¹¹

Policy Considerations Mentioned by the Court

The Supreme Court’s decision in *Tillman* may pose policy considerations for the Legislature. A concurring opinion noted, “I write separately to note my concern 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 statutes.”¹² The concurring opinion then advised:

This Court’s interpretation of the statutory language is a fair one. But, given the above, whether the plain meaning of the term “lawful performance” conforms to legislative intent or narrows the scope of protection too far is an important question the Legislature should examine in light of this decision.¹³

⁹ *Tillman*, 934 So.2d at 1266.

¹⁰ *Id.* at 1266 (quoting ss. 784.07(2) and 843.01, F.S.) (emphasis added).

¹¹ *Id.* at 1269.

¹² *Id.* at 1274 (Bell, J., concurring).

¹³ *Id.* at 1276 (Bell, J., concurring).

Meanwhile, the majority opinion in *Tillman* also noted the potential policy choices to be made by the Legislature. The Court made the comparison between an arrest situation and a citizen encounter that leads to a patdown or detention.¹⁴ The Court 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.¹⁵

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 do not rise to the level of arrests, should a citizen respond to an officer aggressively or violently. These protections exist 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.

¹⁴ *Id.* at 1269-1270.

¹⁵ *Id.* at 1270.

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 Law Enforcement Officer and Resisting an Officer With or Without Violence.

B. Amendments:

None.