

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 Committee on Criminal Justice

BILL: SB 1126

INTRODUCER: Senator Avila

SUBJECT: Impeding, Provoking, or Harassing First Responders

DATE: March 24, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Stokes	CJ	Pre-meeting
2.			CA	
3.			RC	

I. Summary:

SB 1126 provides that it is a first degree misdemeanor for any person, after receiving a warning from a first responder not to approach, to violate the warning and approach or remain within 30 feet of a first responder who is engaged in the lawful performance of any legal or emergent duty, with the intent to:

- Interrupt, disrupt, hinder, impede, or interfere with the first responder’s ability to perform such duty;
- Provoke a physical response from the first responder; or
- Directly or indirectly harass the first responder or make so much noise that a first responder is prevented from performing their official duties or providing medical aid.

A “first responder” is a law enforcement officer, firefighter, or emergency medical care provider.

The bill does not have an impact on the state prison system but may have an indeterminate impact on county jails. See Section V. Fiscal Impact Statement.

The bill takes effect October 1, 2023.

II. Present Situation:

Currently, depending upon the facts of the case, interfering with a law enforcement officer in the performance of his or her official duties can be punished as resisting an officer without violence (s. 843.02, F.S.) or resisting an officer with violence (s. 843.01, F.S.).

Section 843.02, F.S., provides that it is a first degree misdemeanor¹ to resist, obstruct, or oppose any of the following persons in the execution of legal process or in the lawful execution of any legal duty, without offering or doing violence to that person:

- A law enforcement officer;
- A correctional officer;
- A correctional probation officer;
- A part-time law enforcement officer;
- A part-time correctional officer;
- An auxiliary law enforcement officer;
- An auxiliary correctional officer;
- A member of the Florida Commission on Offender Review or any administrative aide or supervisor employed by the commission;
- A parole and probation supervisor;
- A county probation officer;
- Personnel or representative of the Department of Law Enforcement; or
- Other person legally authorized to execute process in the execution of legal process or in the lawful execution of any legal duty.

The Florida Supreme Court has found that to support a conviction of s. 843.02, F.S., the state must prove:

- The officer was engaged in the lawful execution of a legal duty; and
- The defendant's action, by his words, conduct, or combination thereof, constituted obstruction or resistance of that lawful duty.²

Additionally, in the context of obstruction of an officer without violence, it has been held that “a person’s exercise of free speech, without more, in an open public place while an officer is engaged in the execution of a legal duty must do more than merely irritate, annoy, or distract the officer to constitute a crime.”³ Reviewing Florida cases on obstruction of an officer, one court opined that these cases

seem to support the following general proposition: If a police officer is not engaged in executing process on a person, is not legally detaining that person, or has not asked the person for assistance with an ongoing emergency that presents a serious threat of imminent harm to person or property, the person’s words alone can rarely, if ever, rise to the level of an obstruction. This obstructive conduct rather than offensive words are normally required to support a conviction under this statute.⁴

¹ A first degree misdemeanor is punishable by not more than 1 year in county jail and a fine not exceeding \$1,000. Sections 775.082 and 775.083, F.S.

² *C.E.L. v. State*, 24 So. 3d 1181 (Fla. 2009) (citations omitted).

³ *D.A.W v. State*, 945 So.2d 624, 627 (Fla. 2d DCA 2006).

⁴ *D.G. v. State*, 661 So.2d 75, 76 (Fla. 2d DCA 1995).

Section 843.01, F.S., provides that it is a third degree felony⁵ to knowingly and willfully resist, obstruct, or oppose any of the persons previously described in the lawful execution of any legal duty, by offering or doing violence to that person.

III. Effect of Proposed Changes:

The bill creates s. 843.31, F.S., which provides that it is a first degree misdemeanor for any person, after receiving a warning from a first responder not to approach, to violate the warning and approach or remain within 30 feet of a first responder who is engaged in the lawful performance of any legal or emergent⁶ duty,⁷ with the intent to:

- Interrupt, disrupt, hinder, impede, or interfere with the first responder's ability to perform such duty;
- Provoke a physical response from the first responder; or
- Directly or indirectly harass the first responder or make so much noise that a first responder is prevented from performing their official duties or providing medical aid.

A "first responder" is a law enforcement officer, firefighter, or emergency medical care provider.⁸

The criminal offense does not appear to be violated if the person to whom the warning is issued is within the 30-foot zone but the person does not have the required intent (e.g. impeding the first responder's ability to perform his or legal duty).

The bill takes effect October 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁵ A third degree felony is generally punishable by not more than 5 years in state prison and a fine not exceeding \$5,000. Sections 775.082 and 775.083, F.S.

⁶ "Emergent" means arising unexpectedly. Merriam-Webster (online), available at <https://www.merriam-webster.com/dictionary/emergent> (last visited on March 21, 2023).

⁷ The bill is silent on whether the first responder must be engaged in the lawful performance of any legal or emergency duty when the first responder issues the warning. See *C.W. v. State*, 76 So.3d 1093, 1095-1096 (3d DCA 2011), *rev. den.*, 107 So.3d 406 (2012) ("[T]here is a difference between an officer who is engaging in the lawful execution of a legal duty, and a police officer who is merely on the job.... The officers' initial request that C.W. move a de minimus distance out of the road was a reasonable part of their job as community safety officers. But the officers had no legal duty to insist on compliance and to enforce that insistence with arrest where the record shows that there were no circumstances warranting this.").

⁸ An "emergency medical care provider" is an ambulance driver, emergency medical technician, paramedic, registered nurse, physician as defined in s. 401.23, F.S., medical director as defined in s. 401.23, F.S., or any person authorized by an emergency medical service licensed under ch. 401, F.S., who is engaged in the performance of his or her duties. The term also includes physicians, employees, agents, or volunteers of hospitals as defined in ch. 395, F.S., who are employed, under contract, or otherwise authorized by a hospital to perform duties directly associated with the care and treatment rendered by the hospital's emergency department or the security thereof. Section 784.07(1)(a), F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

First Amendment

“A statute is overbroad when it criminalizes legal as well as illegal activity and has a chilling effect on First Amendment freedoms.”⁹

It is unclear whether protected speech or conduct is captured by the words “provoke a physical response from the first responder” and “directly or indirectly harass a first responder” in the new offense created by the bill. Additionally, the term “harass” is defined in three sections of the Florida Statutes.¹⁰ This term has faced constitutional challenges, but ultimately has been upheld because the statutory definition¹¹ requires a defendant to engage in a “course of conduct,” which expressly excludes “constitutionally protected activity.”¹² There is no such definition provided for the term “harass,” in the bill.

Additionally, “where a vague statute ‘abut[s] upon sensitive areas of basic First Amendment freedoms,’ it ‘operates to inhibit the exercise of [those] freedoms.’ Uncertain meanings inevitably lead citizens to steer far wider of the unlawful zone ... than if the boundaries of the forbidden areas were clearly marked.”¹³ (See discussion, *supra*, of due process.).

Due Process

Due process requires that a penal statute use “language sufficiently definite to apprise those to whom it applies what conduct on their part is prohibited. It is constitutionally impermissible for the Legislature to use such vague and broad language that a person of common intelligence must speculate about its meaning and be subjected to arrest and punishment if the guess is wrong.”¹⁴

⁹ *K.L.J. v. State*, 581 So.2d 920, 921 (Fla. 1st DCA 1991) (citation omitted).

¹⁰ *See ss.* 784.048, 817.568, and 843.20, F.S.

¹¹ Section 784.048, F.S., provides that “harass” means to engage in a course of conduct directed at a specific person that causes substantial emotional distress in such person and serves no legitimate purpose.

¹² *See Burroughs v. Corey*, 92 F. Supp. 3d 1201 (M.D. Fla., 2015).

¹³ *Grayned v. City of Rockford*, 408 U.S., 104, 108-109 (1972) (citations and other internal quotations omitted).

¹⁴ *State v. Wershow*, 343 So.2d 605, 608 (Fla. 1977).

A vague statute, “because of its imprecision, may also invite arbitrary and discriminatory enforcement.”¹⁵

Questions may arise when determining how the warning requirement and 30-foot requirement are to be applied, including, but not limited to, whether the distance is to be measured from the first responders position when he or she issued the warning, or whether such “halo” around the officer moves with the officer who issued the warning.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill creates a first degree misdemeanor. The bill does not have impact on the state prison system but may have an indeterminate impact on county jails.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 843.31 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

¹⁵ *Southeastern Fisheries Ass’n, Inc. v. Department of Natural Resources*, 453 So.2d 1351, 1353 (Fla. 1984).