

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1539 Impeding, Provoking, or Harassing Law Enforcement Officers

SPONSOR(S): Criminal Justice Subcommittee, Rizo

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	16 Y, 2 N, As CS	Hall	Hall
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

A “law enforcement officer” is any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, and highway laws of the state.

Florida law prohibits a person from interfering with a law enforcement officer while he or she is engaged in the lawful performance of a duty in several ways, including by:

- Prohibiting a person from resisting, obstructing, or opposing a law enforcement officer without offering or doing violence to the person of the officer under s. 843.02, F.S. A violation for resisting an officer without violence is a first degree misdemeanor.
- Prohibiting a person from knowingly and willfully resisting, obstructing, or opposing a law enforcement officer by offering or doing violence to the person of such officer under s. 843.01, F.S. A violation for resisting an officer with violence is a third degree felony.
- Reclassifying the misdemeanor or felony degree of assault, aggravated assault, battery, and aggravated battery when a person is charged with knowingly committing any such offense upon a law enforcement officer while the officer is engaged in the lawful performance of his or her duties under s. 784.07, F.S. The penalty for such an offense is reclassified to the next highest degree of misdemeanor or felony.

CS/HB 1539 creates s. 843.31, F.S., to prohibit a person, after receiving a warning not to approach from a law enforcement officer who is engaged in the lawful performance of a legal duty, from violating such warning and approaching or remaining within 20 feet of the law enforcement officer with the intent to:

- Interrupt, disrupt, hinder, impede, or interfere with the law enforcement officer’s ability to perform such duty;
- Threaten the law enforcement officer with physical harm; or
- Harass the law enforcement officer or make so much noise that the law enforcement officer is prevented from performing his or her duties.

A violation of the prohibition is a second degree misdemeanor, punishable by up to 60 days in county jail and a fine of \$500.

The bill may have a positive indeterminate impact on jail beds by creating a new second degree misdemeanor for approaching or remaining within a specified distance of a law enforcement officer with specified intent after receiving a warning.

The bill provides an effective date of October 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Law Enforcement Officers

Section 943.10(1), F.S., defines a “law enforcement officer” as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, and highway laws of the state. The definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by an employing agency.

Resisting an Officer Without Violence

Section 843.02, F.S., prohibits a person from resisting, obstructing, or opposing, without offering or doing violence to the person of the officer, any:

- Law enforcement officer, part-time law enforcement officer, or auxiliary law enforcement officer;
- Correctional officer, part-time correctional officer, or auxiliary correctional officer;
- Correctional probation officer;
- Member of the Florida Commission on Offender Review or any administrative aide or supervisor employed by the commission;
- County probation officer;
- Parole and 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.

A violation of the prohibition is a first degree misdemeanor punishable by up to one year in county jail and up to a \$1,000 fine.¹

Florida courts have held that to convict a defendant of obstructing or resisting an officer without violence, the State must prove two elements:

- The officer was engaged in the lawful execution of a legal duty; and
- The defendant’s actions constituted obstruction or resistance of that lawful duty.²

There is a difference between an officer who is engaging in the lawful execution of a legal duty and an officer who is merely on the job. “Legal duties” of an officer may include: serving process; legally detaining a person; asking for assistance in an emergency situation; or performing specified undercover activities.³ “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.”⁴

¹ Ss. 775.082 and 775.083, F.S.

² See *C.W. v. State*, 76 So.3d 1093 (Fla. 3d DCA 2011); *J.P. v. State*, 855 So.2d 1262 (Fla. 4th DCA 2003); *Jay v. State*, 731 So.2d 774 (Fla. 4th DCA 1999).

³ *C.W. v. State*, 76 So.3d 1093, 1095 (Fla. 3d DCA 2011).

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

Resisting an Officer with Violence

Section 843.01, F.S., prohibits a person from knowingly and willfully resisting, obstructing, or opposing, by offering or doing violence to the person of such officer or legally authorized person, any:

- Law enforcement officer, part-time law enforcement officer, or auxiliary law enforcement officer;
- Correctional officer, part-time correctional officer, or auxiliary correctional officer;
- Correctional probation officer;
- Member of the Florida Commission on Offender Review or any administrative aide or supervisor employed by the commission;
- Parole and probation supervisor;
- 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.

A violation of s. 843.01, F.S., for resisting an officer with violence, is a third degree felony. ⁵

Reclassification for Assault or Battery on a Law Enforcement Officer

Section 784.07, F.S., reclassifies the misdemeanor or felony degree of assault,⁶ aggravated assault,⁷ battery,⁸ and aggravated battery⁹ when a person is charged with knowingly committing any such offense upon an officer or employee described as follows while that officer or employee is engaged in the lawful performance of his or her duties:

- A law enforcement officer;
- A firefighter;
- An emergency medical care provider;
- A railroad special officer;
- A traffic accident investigation officer;
- A nonsworn law enforcement agency employee who is certified as an agency inspector, a 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 law enforcement explorer;
- A traffic infraction enforcement officer;
- A parking enforcement specialist;
- A person licensed as a security officer and wearing a uniform bearing at least one patch or emblem that is visible at all times and clearly identifies the person's employing agency and that the person is a licensed security officer; and
- A security officer employed by the board of trustees of a community college.

The reclassification of the degree of the offense is as follows:

- In the case of assault, from a second degree misdemeanor to a first degree misdemeanor.
- In the case of battery, from a first degree misdemeanor to a third degree felony.

⁵ A third degree felony is punishable by up to five years imprisonment and up to a \$5,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

⁶ Assault, which is a second degree misdemeanor, is an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent. S. 784.011(1) and (2), F.S.

⁷ Aggravated assault, which is a third degree felony, is the commission of an assault using a deadly weapon without intent to kill or the commission of an assault with the intent to commit a felony. S. 784.021(1) and (2), F.S.

⁸ Simple battery, which is a first degree misdemeanor, is actually and intentionally touching or striking another person against the will of that person or intentionally causing bodily harm to another person. S. 784.03(1)(a), F.S.

⁹ A person commits aggravated battery, a second degree felony, if the person, in committing a battery: intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; uses a deadly weapon; or the person who was the victim of the battery was pregnant at the time of the offense and the offender knew or should have known that the victim was pregnant. S. 784.045(1) and (2), F.S.

- In the case of aggravated assault, from a third degree felony to a second degree felony, and any person convicted of aggravated assault upon a law enforcement officer is subject to a three-year mandatory minimum term of imprisonment.¹⁰
- In the case of aggravated battery, from a second degree felony to a first degree felony, and any person convicted of aggravated battery of a law enforcement officer is subject to a five-year mandatory minimum term of imprisonment.¹¹

Further, if the person, during the commission of a battery subject to reclassification as a third degree felony, possessed:

- A firearm or destructive device, the person is subject to a mandatory minimum term of imprisonment of three years; or
- A semiautomatic firearm and its high-capacity detachable box magazine or a machine gun, the person is subject to a mandatory minimum term of imprisonment of eight years.¹²

Effect of Proposed Changes

CS/HB 1539 creates s. 843.31, F.S., to prohibit a person, after receiving a warning not to approach from a law enforcement officer who is engaged in the lawful performance of a legal duty, from violating such warning and approaching or remaining within 20 feet of the law enforcement officer with the intent to:

- Interrupt, disrupt, hinder, impede, or interfere with the law enforcement officer's ability to perform such duty;
- Threaten the law enforcement officer with physical harm; or
- Harass the law enforcement officer or make so much noise that the law enforcement officer is prevented from performing his or her official duties.

A violation of the prohibition is a second degree misdemeanor, punishable by up to 60 days in county jail and a fine of \$500.

The bill defines the following terms:

- "Harass" means to engage in a course of conduct directed at a law enforcement officer which causes substantial emotional distress to that law enforcement officer and serves no legitimate purpose.
- "Law enforcement officer" is defined the same as in s. 943.10(1), F.S., and means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, and highway laws of the state.

The bill provides an effective date of October 1, 2023.

B. SECTION DIRECTORY:

Section 1: Creates s. 843.31, F.S., relating to approaching a law enforcement officer after a warning with intent to impede, provoke, or harass.

Section 2: Provides an effective date of October 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

¹⁰ S. 784.07(2)(c), F.S.

¹¹ S. 784.07(2)(d), F.S.

¹² S. 784.07(3), F.S.

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have a positive indeterminate impact on jail beds by creating a new second degree misdemeanor for approaching or remaining within a specified distance a law enforcement officer with specified intent after receiving a warning.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

The bill may be subject to an overbreadth challenge. A law is unconstitutionally broad when the law potentially captures both activities that are protected and unprotected by the First Amendment of the United States Constitution, which impedes fundamental rights.¹³

In addition, the bill may be subject to vagueness analysis. A law is void on the basis of vagueness, when a person of average intelligence would not be on notice of the prohibited criminal activity and the law promotes arbitrary and discriminatory application.¹⁴ It is unclear whether the 20 foot "halo" within which a person is prohibited from approaching or remaining is fixed at the time a law enforcement officer issues a warning not to approach, or whether the "halo" moves with the officer as he or she moves.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

¹³ *State v. Catalano*, 104 So. 3d 1069, 1077 (Fla. 2012).

¹⁴ *Russ v. State*, 832 So. 2d 901, 906 (Fla. 1st DCA 2002); see also, *Kolender v. Lawson*, 461 U.S. 352, 357 (1983).

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 29, 2023, the Criminal Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Defined the term “harass.”
- Clarified that a law enforcement must be engaged in the lawful performance of a legal duty at the time he or she issues a warning not to approach.
- Reduced the “halo” from 30 feet to 20 feet.
- Revised the prohibition against provoking a physical response from a law enforcement officer to a prohibition against threatening a law enforcement officer with physical harm.
- Prohibited a person from approaching or remaining within the “halo” after receiving a warning with the intent to make so much noise that the law enforcement officer is prevented from performing his or her official duties.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.