

**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.)

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Prepared By: The Professional Staff of the Committee on Criminal Justice

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BILL: SB 1092

INTRODUCER: Senator Martin

SUBJECT: Criminal Offenses Against Law Enforcement Officers and Other Personnel

DATE: January 12, 2024

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Vaughan	Stokes	CJ	<b>Pre-meeting</b>
2.	_____	_____	ACJ	_____
3.	_____	_____	FP	_____

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**I. Summary:**

SB 1092 amends s. 776.051, F.S., to revise language to expand law enforcement officers' protection from citizens' use or threatened use of force during an arrest or detention. The bill prohibits a person from using or threatening to use force to resist a lawful or an unlawful arrest or detention, or resisting an officer acting in their legal performance of duties.

The bill further amends s. 776.051, F.S., to remove provisions stating that 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 or execution of a legal duty is unlawful and known to be unlawful.

The bill amends s. 782.065, F.S., to provide a person must be sentenced to life imprisonment without the eligibility of release for certain offenses committed against specified officers who were acting in the performance their official duties.

The bill also amends s. 784.07(2) and s. 843.01(1), F.S., to specify that such officer is acting in the performance of his or her official duties.

The bill amends s. 784.07(1), F.S., to provide clarification as to where the duties and responsibilities are cited in statute.

The bill takes effect October 1, 2024.

**II. Present Situation:**

Section 943.10(1), F.S., defines "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, or highway laws of the state. The term 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 the employing agency. The term also includes a special officer employed by a Class I, Class II, or Class III railroad pursuant to s. 354.01, F.S.<sup>1</sup>

### **Use of Force or Threatened Use of Force**

Section 776.012, F.S., specifies that a person is justified in using or threatening to use 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. A person who uses or threatens to use force in accordance with this subsection does not have a duty to retreat before using or threatening to use such force.<sup>2</sup>

Additionally, a person is justified in using or threatening to use deadly force if he or she reasonably believes that using or threatening to use such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony. A person who uses or threatens to use deadly force in accordance with this subsection does not have a duty to retreat and has the right to stand his or her ground if the person using or threatening to use the deadly force is not engaged in a criminal activity and is in a place where he or she has a right to be.<sup>3</sup>

Section 776.051, F.S., specifies that a person is not justified in the use or threatened use of force to resist an arrest by a law enforcement officer, or 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 and he or she is known, or reasonably appears, to be a law enforcement officer.<sup>4</sup>

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 or execution of a legal duty is unlawful and known by him or her to be unlawful.<sup>5</sup>

The Florida Supreme Court ruled that s. 776.051, F.S., does not apply outside of arrest scenarios.<sup>6</sup> In non-arrest cases, to convict for battery on a law enforcement officer, the State must prove the officer was acting lawfully.<sup>7</sup>

Courts have found that ss. 776.012 and 776.051, F.S. (1974), were both enacted as a part of the same act.<sup>8</sup> Statutes that are a part of a single act must be read in *pari materia*.<sup>9</sup> The effect of

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<sup>1</sup> Section 943.10(1), F.S.

<sup>2</sup> Section 776.012(1), F.S.

<sup>3</sup> Section 776.012(2), F.S.

<sup>4</sup> Section 776.051(1), F.S.

<sup>5</sup> Section 776.051(2), F.S.

<sup>6</sup> *Perry v. State*, 953 So.2d 459 (Fla. 2007).

<sup>7</sup> *Tillman v. State*, 934 So.2d 1263 (Fla. 2006).

<sup>8</sup> See ch. 74-383 L.O.F.

<sup>9</sup> *Ivester v. State*, 398 So. 2d 926 (Fla. 1st DCA 1981), citing *Major v. State*, 180 So.2d 335, 337 (Fla.1965).

reading these statutes in pari materia is to permit an individual to defend himself against unlawful or excessive force, even when being arrested.<sup>10</sup> This view is consistent with the position taken by other jurisdictions that have been confronted with questions relating to statutes similar to ss. 776.012, 776.051 and 843.01, F.S.<sup>11</sup>

Chapter 776, Florida Statutes, recognizes principles set forth in the case law of other jurisdictions in that the right of self-defense against the use of excessive force by a police officer is a concept entirely different from resistance to an arrest, lawful or unlawful, by methods of self-help. [citations omitted] The former concept is grounded on the view that a citizen should be able to exercise reasonable resistance to protect life and limb; which cannot be repaired in the courtroom. The latter view is based on the principle that a self-help form of resistance promotes intolerable disorder. Any damage done by an improper arrest can be repaired through the legal processes.

Therefore, self-defense is not “irrelevant” to a prosecution for resisting arrest with violence.<sup>12</sup>

### ***Assault or Battery on Law Enforcement***

Under s. 784.07(2), F.S., a person convicted of an assault or battery, or the attempt to commit such offense upon a law enforcement officer, or other specified persons, must be sentenced 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. A person convicted of battery upon a law enforcement officer committed in furtherance of a riot or an aggravated riot prohibited under s. 870.01, F.S., must be sentenced to a minimum term of imprisonment of 6 months.
- In the case of aggravated assault, from a third degree felony to a second degree felony. Any person convicted of aggravated assault upon a law enforcement officer must be sentenced to a minimum term of imprisonment of three years.
- In the case of aggravated battery, from a second degree felony to a first degree felony. Any person convicted of aggravated battery of a law enforcement officer must be sentenced to a minimum term of imprisonment of five years.

### ***Murder of a Law Enforcement Officer, Correctional Officer, or Probation Officer***

Under s. 782.065, F.S., a person convicted of a murder offense upon a law enforcement officer<sup>13</sup> engaged in a legal duty, must be sentenced to life imprisonment without eligibility for release upon findings by the trier of fact that, beyond a reasonable doubt:

- Murder in the first degree in violation of s. 782.04(1), F.S., and a death sentence was not imposed;

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<sup>10</sup> *Ivester v. State*, 398 So.2d 926 (Fla. 1981).

<sup>11</sup> *Id.*

<sup>12</sup> *Ivester v. State*, 398 So.2d 926 (Fla. 1981).

<sup>13</sup> Section 782.065(2), F.S., includes a law enforcement officer, part-time law enforcement officer, auxiliary law enforcement officer, correctional officer, part-time correctional officer, auxiliary correctional officer, correctional probation officer, part-time correctional probation officer, or auxiliary correctional probation officer, as those terms are defined in s. 943.10, F.S., engaged in the lawful performance of a legal duty.

- Murder in the second or third degree in violation of s. 782.04(2), (3), or (4), F.S.;
- Attempted murder in the first or second degree in violation of s. 782.04(1)(a)1. or (2), F.S.;
- or
- Attempted felony murder in violation of s. 782.051, F.S.

### ***Resisting Arrest***

Under s. 843.01, F.S., a person who knowingly and willfully resists, obstructs, or opposes specified officers or other persons legally authorized to execute process in the execution of legal process or in the lawful execution of any legal duty, by offering or doing violence to the person of such officer or legally authorized person, commits a third degree felony.<sup>14</sup>

Officers specified in s. 843.01, F.S., include:

- Officers defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9);
- Members of the Florida Commission on Offender Review or any administrative aide or supervisor employed by the commission;
- Parole and probation supervisors;
- County probation officers; or
- Personnel or representatives of the Department of Law Enforcement.

### **III. Effect of Proposed Changes:**

The bill amends s. 776.051, F.S., to revise language to expand law enforcement officers' protection from citizens' use or threatened use of force during an arrest or detention. The bill prohibits a person from using or threatening to use force to resist *a lawful or an unlawful arrest or detention*, or resisting an officer *acting in the performance of his or her legal duties as described in s. 943.10(1)*, F.S., if he or she is known, or reasonably appears, to be a law enforcement officer.

The bill removes language requiring that an officer must *be engaged in the execution of a legal duty, if the law enforcement officer was acting in good faith*.

The bill further amends s. 776.051, F.S., to remove provisions stating that 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 or execution of a legal duty is unlawful and known to be unlawful.

The bill amends s. 782.065, F.S., to provide a person must be sentenced to life imprisonment without the eligibility of release upon findings by the trier of fact, that, beyond a reasonable doubt the defendant committed:

- Manslaughter in violation of s. 782.07(1), F.S.; or
- A felony resulting in the death of a law enforcement officer as defined in s. 943.10(1), F.S.,  
AND

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<sup>14</sup> Section 843.01, F.S.

The offense was committed against specified officers<sup>15</sup> *who were acting in the performance of their official duties as described in s. 943.10, F.S.*

The bill also amends s. 784.07(2), and s. 843.01(1), F.S., to specify that such officer is acting in the performance of his or her official duties, and to remove language requiring the officer be engaged in the lawful performance of his or her duties.

The bill amends s. 784.07(1), F.S., to provide clarification as to where the duties and responsibilities are cited in statute.

The bill takes effect October 1, 2024.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

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<sup>15</sup> Specified officers include law enforcement officers, part-time law enforcement officers, auxiliary law enforcement officers, correctional officers, part-time correctional officers, auxiliary correctional officers, correctional probation officers, part-time correctional probation officers, or auxiliary correctional probation officers, as those terms are defined in s. 943.10. Section 782.065, F.S.

**C. Government Sector Impact:**

The Legislature's Office of Economic and Demographic Research (EDR) and the Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed the bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 776.051, 782.065, 784.07, and 843.01.

**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.