

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1657 Criminal Offenses Against Law Enforcement Officers and Other Personnel

**SPONSOR(S):** Judiciary Committee, Criminal Justice Subcommittee, Baker

**TIED BILLS:** IDEN./SIM. BILLS: SB 1092

| REFERENCE                              | ACTION           | ANALYST | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF |
|--|------------------|---------|--|
| 1) Criminal Justice Subcommittee       | 15 Y, 3 N        | Butcher | Hall                                     |
| 2) Justice Appropriations Subcommittee | 11 Y, 3 N        | Saag    | Keith                                    |
| 3) Judiciary Committee                 | 16 Y, 5 N, As CS | Butcher | Kramer                                   |

### SUMMARY ANALYSIS

Under current law, a person may lawfully resist an illegal arrest *without* force or violence, but may not lawfully resist an illegal arrest *with* force or violence. Accordingly, s. 776.051, F.S., specifies that:

- A person is not justified in using or threatening to use 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.
- A law enforcement officer, or any person whom the officer has summoned or directed to assist him or her, is not justified in using force if the arrest or execution of a legal duty is unlawful and known by him or her to be unlawful.

However, because applicable statutes and jury instructions reference an officer's *execution of a legal duty*, some defendants have raised the technical illegality of an officer's conduct to attempt to justify using force against that officer.

Under s. 782.065, F.S., a court must sentence a defendant to life imprisonment without eligibility for release if the defendant committed a specified murder offense and the victim was a law enforcement or correctional officer engaged in the lawful performance of a legal duty. Manslaughter under s. 782.07, F.S., is not included under s. 782.065, F.S., as an offense for which a court must sentence a convicted defendant to life imprisonment without eligibility for release.

CS/HB 1657 amends ss. 776.051 (use of force in resisting or making arrest), 782.065 (murder of law enforcement officer), 784.07, F.S. (assault or battery of law enforcement officer), and 843.01, F.S. (resisting a legally authorized person with violence), to change the current requirement for a law enforcement officer or other specified personnel to *be engaged in the lawful performance of a legal duty* to a requirement that the officer or personnel *be engaged in the performance of his or her official duties*. The bill also repeals s. 776.051(2), F.S., which currently provides 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 by him or her to be unlawful, thus removing any reference to a requirement of a legal duty and instead requiring that an officer be engaged in the performance of his or her official duties.

The bill amends s. 782.065, F.S., to add manslaughter under s. 782.07, F.S., when committed against a law enforcement officer, to the list of offenses for which a court must sentence a convicted defendant to life imprisonment without eligibility for release.

The Criminal Justice Impact Conference reviewed the bill on February 12, 2024, and determined that the bill may have a positive indeterminate prison bed impact. See Fiscal Comments.

The bill provides an effective date of October 1, 2024.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Resisting or Using Force Against an Officer

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, or highway laws of the state.<sup>1</sup>

Under current law, a person may lawfully resist an illegal arrest *without* force or violence,<sup>2</sup> but may not lawfully resist an illegal arrest with force or violence.<sup>3</sup> Under s. 776.012, F.S.,<sup>4</sup> however, a person may lawfully use force to resist a law enforcement officer’s use of *excessive* force.<sup>5</sup>

Accordingly, s. 776.051, F.S., specifies that:

- A person is not justified in using or threatening to use 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>6</sup>
- A law enforcement officer, or any person whom the officer has summoned or directed to assist him or her, is not justified in using force if the arrest or execution of a legal duty is unlawful and known by him or her to be unlawful.

Florida’s Standard Criminal Jury Instructions for the justifiable use of deadly and non-deadly force provide:

- A person is not justified in using force or threatening to use 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 is acting in good faith and he or she is known, or reasonably appears, to be a law enforcement officer.

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<sup>1</sup> 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>2</sup> See, e.g., *K.Y.E. v. State*, 557 So. 2d 956, 957 (Fla. 1st DCA 1990) (citations omitted).

<sup>3</sup> See *Tillman v. State*, 934 So. 2d 1263, 1270 n. 4 (Fla. 2006) (superseded by statute on other grounds) (explaining that in arrest situations, Florida courts have consistently read s. 776.051(1), F.S., *in pari materia* with offenses described in ss. 784.07(2) (assault or battery of officer) and 843.01 (resisting officer with violence), F.S., and, in so doing, have not required the State to prove that an arrest was lawful). The Legislature amended s. 776.051, F.S., after *Tillman* to make the prohibition against using force to resist a law enforcement officer apply to both arrest and nonarrest situations. Ch. 2008-67, Laws of Fla.

<sup>4</sup> Section 776.012, F.S., provides that (1) 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. Additionally, 2) 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>5</sup> *Jackson v. State*, 463 So. 2d 372, 374 (Fla. 5th DCA 1985).

<sup>6</sup> Courts apply the legal standards governing the duty undertaken by a law enforcement officer to determine whether he or she was lawfully executing a legal duty. *Tillman*, 934 So. 2d at 1271. When determining whether an officer was performing a legal duty, courts have noted that there is a valid distinction between a police officer in the lawful execution of a legal duty and a police officer who is “merely on the job.” *Jay v. State*, 731 So. 2d 774, 775 (Fla. 4th DCA 1999).

- However, if an officer uses excessive force to make an arrest, then a person is justified in the use or threatened use of reasonable force to defend himself, herself, or another, but only to the extent he or she reasonably believes such force or threat of force is necessary.<sup>7</sup>

Although a person may not lawfully use force or violence to resist a law enforcement officer in arrest or detention scenarios, because applicable statutes and jury instructions reference an officer's *execution of a legal duty*, some defendants have raised the technical illegality of an officer's conduct to attempt to justify using force against that officer.<sup>8</sup> Other Florida statutes similarly require an officer to be engaged in the execution of a legal duty or lawful performance of a duty, and have created similar confusion regarding whether an officer's conduct must be technically legal.

### Assault and Battery of a Law Enforcement Officer

Section 784.07, F.S., reclassifies<sup>9</sup> the offenses of assault or battery to assault or battery of a law enforcement officer or other specified personnel if the victim was a specified officer *engaged in the lawful performance of his or her duties*.

For purposes of determining whether a person commits assault or battery:

- An "assault" 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, punishable as a second degree misdemeanor.<sup>10</sup>
- A person commits a "battery" if he or she actually and intentionally touches or strikes another person against the will of the other, or intentionally causes bodily harm to another person, generally punishable as a first degree misdemeanor.<sup>11</sup>

Florida's Standard Criminal Jury Instructions for assault/battery and aggravated assault/aggravated battery of a law enforcement officer or other specified personnel require the victim to have been *engaged in the lawful performance of his or her duty*.<sup>12</sup>

### Resisting a Law Enforcement Officer with Violence

Section 843.01, F.S., prohibits a person from willfully resisting, obstructing, or opposing an officer or other specified personnel in the execution of legal process or in the *lawful execution of any legal duty*, by offering or doing violence to such person, punishable as a third degree felony.<sup>13,14</sup>

Florida's Standard Criminal Jury Instructions for resisting an officer with violence<sup>15</sup> require that an officer was *engaged in the lawful execution of a legal duty* or the execution of legal process. When a defendant claims the officer acted unlawfully or raises self-defense to a charge under s. 843.01, F.S., the court must provide:

<sup>7</sup> Fla. Std. Jury Instr. 3.6(f) and 3.6(g) (Crim).

<sup>8</sup> See, e.g., Frank Fernandez, *Convicted cop killer Othal Wallace sentenced to 30 years in Jason Raynor's death* (Oct. 27, 2023), The Daytona Beach News-Journal, <https://www.news-journalonline.com/story/news/courts/2023/10/27/live-convicted-daytona-beach-cop-killer-othal-wallaces-sentencing/> (last visited Feb. 14, 2024).

<sup>9</sup> Reclassification under s. 784.07, F.S., occurs as follows: a) in the case of assault, from a misdemeanor of the second degree to a misdemeanor of the first degree; b) in the case of battery, from a misdemeanor of the first degree to a felony of the third degree; c) in the case of aggravated assault, from a felony of the third degree to a felony of the second degree, and any person convicted of aggravated assault upon a law enforcement officer shall be sentenced to a minimum term of imprisonment of three years; and d) in the case of aggravated battery, from a felony of the second degree to a felony of the first degree, and any person convicted of aggravated battery of a law enforcement officer shall be sentenced to a minimum term of imprisonment of five years.

<sup>10</sup> S. 784.011, F.S. A second degree misdemeanor is punishable by up to six months in county jail and a \$500 fine. ss. 775.082 and 775.083, F.S.

<sup>11</sup> S. 784.03, F.S. A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

<sup>12</sup> Fla. Std. Jury Instr. 8.10, 8.11, 8.12, and 8.13 (Crim).

<sup>13</sup> Section 843.02, F.S., similarly prohibits a person from resisting, obstructing, or opposing an officer or other specified personnel in the execution of legal process or in the lawful execution of any legal duty, *without* offering or doing violence to such person, and is punishable as a first degree misdemeanor.

<sup>14</sup> A third degree felony is punishable by up to five years in prison and a \$5,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

<sup>15</sup> Fla. Std. Jury Instr. 21.1 (Crim). See also *supra* note 6.

- A special instruction incorporating s. 776.051(1), F.S., which prohibits using or threatening to use 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, when the defense claims the officer's conduct was technically unlawful.
- A special instruction incorporating instructions 3.6(f), relating to the justifiable use or threatened use of deadly force, or 3.6(g), relating to the justifiable use or threatened use of non-deadly force, when the defense claims the officer used excessive force.

### Offenses Requiring a Sentence of Life Imprisonment

Under s. 782.065, F.S., a court must sentence a defendant to life imprisonment without eligibility for release if:

- The defendant committed first degree murder under s. 782.04(1), F.S., and a death sentence was not imposed; second or third degree murder under s. 782.04(2), (3), or (4); attempted first or second degree murder under s. 782.04(1)(a)1. or (2); or attempted felony murder under s. 782.051, F.S.; and
- The victim was 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*.

The Florida Supreme Court has held that s. 782.065, F.S., is a reclassification statute that creates a substantive offense, and accordingly, the trial judge must add the following elements to jury instructions relating to such murder offenses:<sup>16</sup>

- The victim was a specified officer;
- The defendant knew that the victim was a specified officer; and
- The victim was *engaged in the lawful performance of a legal duty*.

### Manslaughter

Under s. 782.07, F.S., manslaughter is the unlawful killing of a human being by the act, procurement, or culpable negligence<sup>17</sup> of another, without lawful justification. Generally, manslaughter is punishable as a second degree felony.<sup>18</sup>

However, under s. 782.07(4), F.S., manslaughter may be enhanced to a first degree felony<sup>19</sup> if a person causes the death, through culpable negligence, of a law enforcement officer or other specified personnel who is *performing duties that are within the course of his or her employment*.

Currently, manslaughter committed against a law enforcement officer is not included under s. 782.065, F.S., as an offense for which a court must sentence a convicted defendant to life imprisonment without eligibility for release.

### **Effect of Proposed Changes**

<sup>16</sup> See Fla. Std. Jury Instr. 7.2 (first degree murder), 7.3 (first degree felony murder), 7.4 (second degree murder), 7.5 (second degree felony murder), and 7.6 (third degree felony murder) (Crim). See also Fla. Std. Jury Instr. 7.13 (Crim), which clarifies that reclassification under s. 782.065, F.S., does not apply to manslaughter.

<sup>17</sup> According to Fla. Std. Jury Instr. 7.7(a) (Crim), "culpable negligence" is more than a failure to use ordinary care toward others. In order for negligence to be culpable, it must be gross and flagrant. Culpable negligence is a course of conduct showing reckless disregard of human life, or of the safety of persons exposed to its dangerous effects, or such an entire want of care as to raise a presumption of a conscious indifference to consequences, or which shows wantonness or recklessness, or a grossly careless disregard for the safety and welfare of the public, or such an indifference to the rights of others as is equivalent to an intentional violation of such rights. The negligent act or omission must have been committed with an utter disregard for the safety of others. Culpable negligence is consciously doing an act or following a course of conduct that the defendant must have known, or reasonably should have known, was likely to cause death or great bodily injury.

<sup>18</sup> A second degree felony is punishable by up to 15 years in prison and a \$10,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

<sup>19</sup> A first degree felony is punishable by up to 30 years in prison and a \$10,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

## Use of Force in Resisting Arrest or Making an Arrest or in the Execution of a Legal Duty

CS/HB 1657 amends ss. 776.051 (use of force in resisting or making arrest), 782.065 (murder of law enforcement officer or other specified personnel), 784.07, F.S. (assault or battery of law enforcement officer or other specified personnel), and 843.01, F.S. (resisting a legally authorized person with violence), to change the current requirement for a law enforcement officer or other specified personnel to *be engaged in the lawful performance of a legal duty* to a requirement that a law enforcement officer or other specified personnel *be engaged in the performance of his or her official duties*<sup>20</sup> as described in s. 943.10, F.S.

The bill repeals s. 776.051(2), F.S., which currently provides 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 by him or her to be unlawful.

In doing so, the bill removes any reference to a requirement of a legal duty and instead requires that an officer be engaged in the performance of his or her official duties.

### Offenses Requiring a Sentence of Life Imprisonment

The bill amends s. 782.065, F.S., to add manslaughter under s. 782.07, F.S., when committed against a law enforcement officer, to the list of offenses for which a court must sentence a convicted defendant to life imprisonment without eligibility for release.

The bill provides an effective date of October 1, 2024.

#### B. SECTION DIRECTORY:

**Section 1:** Provides the act may be cited as the “Officer Jason Raynor Act.”

**Section 2:** Amends s. 776.051, F.S., relating to use or threatened use of force in resisting arrest or making an arrest or in the execution of a legal duty; prohibition.

**Section 3:** Amends s. 782.065, F.S., relating to murder; law enforcement officer, correctional officer, correctional probation officer.

**Section 4:** Amends s. 784.07, F.S., relating to assault or battery of law enforcement officers and other specified personnel; reclassification of offenses; minimum sentences.

**Section 5:** Amends s. 843.01, F.S., relating to resisting, obstructing, or opposing by offering or doing violence to legally authorized person, police canine, or police horse.

**Section 6:** Provides an effective date of October 1, 2024.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

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<sup>20</sup> An officer is engaged in the performance of his or her official duties when acting within the scope of his employment. See *State v. A.R.R.*, 113 So. 3d 942, 944-45 (Fla. 5th DCA 2013) (citations omitted).

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference reviewed the bill on February 12, 2024, and determined that the bill may have a positive indeterminate prison bed impact. The bill enhances the penalty for manslaughter under s. 782.07, F.S., when committed against a law enforcement officer, to require a convicted person to serve a sentence of life imprisonment without eligibility for release.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 14, 2024, the Judiciary Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Revised the prohibition against using or threatening to use force to resist a “lawful or unlawful” arrest to instead prohibit a person from using or threatening to use force to resist “any arrest” by a law enforcement officer under specified circumstances.
- Changed the phrase “acting in the performance of his or her official duties” to “engaged in the performance of his or her official duties” throughout the bill.
- Made other technical changes.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.