

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 75 Impeding, Threatening, or Harassing First Responders

**SPONSOR(S):** Criminal Justice Subcommittee, Rizo

**TIED BILLS:** IDEN./SIM. BILLS: SB 184

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	17 Y, 1 N, As CS	Butcher	Hall
2) Judiciary Committee	17 Y, 4 N	Butcher	Kramer

### SUMMARY ANALYSIS

Florida law prohibits a person from interfering with specified first responders while such an officer or employee is engaged in the lawful performance of a duty in several ways, including, but not limited to, 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, a firefighter, or an emergency medical care provider 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 75 extends protections for first responders by creating s. 843.31, F.S., to prohibit a person, after receiving a verbal warning not to approach from a person he or she knows or reasonably should know is a first responder, who is engaged in the lawful performance of a legal duty, from knowingly and willfully violating such warning and approaching or remaining within 20 feet of the first responder with the intent to:

- Interrupt, disrupt, hinder, impede, or interfere with the first responder's ability to perform such duty;
- Threaten the first responder with physical harm; or
- Harass the first responder.

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

Under the bill, a first responder includes a law enforcement officer as defined in s. 943.10(1), F.S., a firefighter as defined in s. 784.07(1), F.S., and an emergency medical care provider as defined in s. 784.07(1), F.S.

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 first responder with specified intent after receiving a verbal warning.

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

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### First Responders

###### *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 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 an 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.

###### *Firefighters*

Under s. 784.07(1)(b), F.S., a “firefighter” is any person employed by any public employer of this state whose duty it is to extinguish fires; to protect life or property; or to enforce municipal, county, and state fire prevention codes, as well as any law pertaining to the prevention and control of fires.

###### *Emergency Medical Care Providers*

Section 784.07(1)(a), F.S., defines an “emergency medical care provider” as 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 chapter 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 chapter 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 security thereof.

##### Criminal Laws Protecting Specified First Responders

###### *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 supervisor;
- 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.<sup>1</sup>

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.<sup>2</sup>

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.<sup>3</sup> "If a law enforcement 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."<sup>4</sup>

### *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.<sup>5</sup>

### *Reclassification for Assault or Battery on Specified Officers or Employees*

Section 784.07, F.S., reclassifies the misdemeanor or felony degree of assault,<sup>6</sup> aggravated assault,<sup>7</sup> battery,<sup>8</sup> and aggravated battery<sup>9</sup> 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*,<sup>10</sup>

<sup>1</sup> Ss. 775.082 and 775.083, F.S.

<sup>2</sup> 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).

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

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

<sup>5</sup> 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.

<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> 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), F.S.

<sup>9</sup> 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 on 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.

<sup>10</sup> Section 784.07(1)(e), F.S., defines a "law enforcement officer" as 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, and an

- A firefighter;
- An emergency medical care provider;
- Hospital personnel;
- 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.
- 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.<sup>11</sup>
- 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.<sup>12</sup>

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.<sup>13</sup>

### **Effect of Proposed Changes**

CS/HB 75 creates s. 843.31, F.S., to prohibit a person, after receiving a verbal warning not to approach from a person he or she knows or reasonably should know is a first responder, who is engaged in the lawful performance of a legal duty, from knowingly and willfully violating such warning and approaching or remaining within 20 feet of the first responder with the intent to:

- Interrupt, disrupt, hinder, impede, or interfere with the first responder's ability to perform such duty;
- Threaten the first responder with physical harm; or
- Harass the first responder.

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

The bill defines the following terms:

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auxiliary correctional officer, as those terms are respectively defined in s. 943.10, and any county probation officer; an employee or agent of the Department of Corrections who supervises or provides services to inmates; an officer of the Florida Commission on Offender Review; a federal law enforcement officer as defined in s. 901.1505; and law enforcement personnel of the Fish and Wildlife Conservation Commission, the Department of Environmental Protection, or the Department of Law Enforcement.

<sup>11</sup> S. 784.07(2)(c), F.S.

<sup>12</sup> S. 784.07(2)(d), F.S.

<sup>13</sup> S. 784.07(3), F.S.

- “Harass” means to willfully engage in a course of conduct directed at a first responder which intentionally causes substantial emotional distress in that first responder and serves no legitimate purpose. The peaceful audio or video recording, photographing, or eyewitness observing of a first responder is a legitimate purpose that does not, by itself, constitute harassment.
- “First responder” includes a law enforcement officer as defined in s. 943.10(1), F.S., a firefighter as defined in s. 784.07(1), F.S., and an emergency medical care provider as defined in s. 784.07(1), F.S.

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

**B. SECTION DIRECTORY:**

**Section 1:** Creates s. 843.31, F.S., relating to approaching a first responder after a warning with intent to impede, threaten, or harass.

**Section 2:** 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:

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 of a first responder with specified intent after receiving a verbal 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.<sup>14</sup>

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.<sup>15</sup> It is unclear whether the 20 foot “halo” within which a person is prohibited from approaching or remaining is fixed at the time a first responder issues a verbal 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.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On December 6, 2023, the Criminal Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Added peaceful photographing to the list of conduct that does not constitute harassment and specified that the peaceful audio or video recording, photographing, or observing of a first responder, by itself, does not constitute harassment;
- Removed the prohibition against physically preventing a first responder from performing his or her lawful duties; and
- Specified that a threat to the first responder must be a threat of physical harm to be prohibited under the bill.

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

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<sup>14</sup> *State v. Catalano*, 104 So. 3d 1069, 1077 (Fla. 2012).

<sup>15</sup> *Russ v. State*, 832 So. 2d 901, 906 (Fla. 1st DCA 2002); *see also, Kolender v. Lawson*, 461 U.S. 352, 357 (1983).