

21.1 RESISTING OFFICER WITH VIOLENCE

§ 843.01, Fla. Stat.

To prove the crime of Resisting Officer with Violence, the State must prove the following four elements beyond a reasonable doubt:

Note to Judge: An issue arises when the State charges that the defendant resisted more than one officer in one count. Under the current law, a defendant can commit only one count of Resisting With Violence even if several officers are involved in the same event. See Wallace v. State, 724 So. 2d 1176 (Fla. 1998). One possible remedy for this problem would be to instruct:

To prove the crime of Resisting Officer with Violence, the State must prove all of the following four elements beyond a reasonable doubt as to at least one of the alleged victims named below:

1. (Defendant) **knowingly and willfully [resisted] [obstructed] [opposed]** (victim) **by [offering to do [him] [her] violence] [doing violence to [him] [her]].**
2. **At the time, (victim) was engaged in the [execution of legal process] [lawful execution of a legal duty].**
3. **At the time, (victim) was [an officer] [a person legally authorized to execute process].**
4. **At the time, (Defendant) knew (victim) was [an officer] [a person legally authorized to execute process].**

In giving the instruction below, insert the class of officer to which the victim belongs, e.g., law enforcement officer, correctional officer. See Wright v. State, 586 So. 2d 1024 (Fla. 1991). See §843.01 Fla. Stat. for the type of officer covered by this statute.

The court now instructs you that every (name of official position of victim designated in charge) is an officer within the meaning of this law.

Note to Judge:

A special instruction incorporating § 776.051(1) Fla. Stat. should be given when the defendant is charged with resisting an arrest by a law enforcement officer or with resisting a law enforcement officer and the defense claims the officer was acting unlawfully.

A special instruction incorporating instructions 3.6(f); 3.6(g); and/or 3.6(h) should be given when the defense claims the police used excessive force.

Definition. Give if applicable.

“Offering” to do violence means threatening to do violence.

Walker v. State, 965 So. 2d 1281 (Fla. 2nd DCA 2007).

Lesser Included Offenses

RESISTING OFFICER WITH VIOLENCE — 843.01

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Resisting officer without violence	843.02	21.2

Comment

This instruction was adopted in 1981 and amended in 1995 [657 So. 2d 1152], 2008 [996 So. 2d 851], and 2014.