

**STORAGE NAME:** h1349z.cpcs.doc

**DATE:** June 29, 2001

**\*\*AS PASSED BY THE LEGISLATURE\*\***

**CHAPTER #:** 2001-114, Laws of Florida

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
CRIME PREVENTION, CORRECTIONS, AND SAFETY  
FINAL ANALYSIS**

**BILL #:** HB 1349 (Passed as SB 1198)

**RELATING TO:** Criminal Offenses

**SPONSOR(S):** Representative(s) Mealor

**TIED BILL(S):** None.

**ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:**

- (1) CRIME PREVENTION, CORRECTIONS, AND SAFETY YEAS 6 NAYS 0
- (2) UTILITIES AND TELECOMMUNICATIONS YEAS 11 NAYS 1
- (3) COUNCIL FOR HEALTHY COMMUNITIES YEAS 13 NAYS 0
- (4)
- (5)

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**I. SUMMARY:**

This bill provides that any person who uses a two-way communications device, including, but not limited to, a portable two-way wireless communications device, to facilitate or further the commission of any crime commits a felony of the third degree, ranked in level 4 of the Criminal Punishment Code's offense severity ranking chart.

This bill creates a new section of the Florida Statutes and amends s. 921.0022.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |  |   |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

This bill creates new statutory language, that would prohibit activity that is not currently illicit under Florida law.

B. PRESENT SITUATION:

Current Florida law does not punish the use of a two-way communications device, including, but not limited to, a portable two-way wireless communications device, to facilitate or further the commission of any crime.

C. EFFECT OF PROPOSED CHANGES:

The bill provides that any person who uses a two-way communications device, including, but not limited to, a portable two-way wireless communications device, to facilitate or further the commission of any crime commits a felony of the third degree, ranked in level 4 of the Criminal Punishment Code's offense severity ranking chart. To compare this ranking with a current offense similarly ranked, possession of burglary tools is a level 4 offense. The range of punishment that can be imposed for someone convicted of this crime would be between any non-state prison sanction to up to 5 years imprisonment.

The bill would not make the mere possession of such communications devices a criminal offense, even if possessed by a person suspected of criminal activity or with a criminal record, or if on the person's body during the person's commission of an offense. The State would be required to prove that the communications device was used to facilitate or further the commission of a crime. Evidence that the device was on the person's body when he or she committed a crime would be of itself insufficient to meet the elements of this criminal offense. For example, this offense could not be likened to the offense of wearing body armor while possessing a firearm and committing a robbery (s. 775.0846, F.S.), since the State in proving that offense is not required to prove that the body armor facilitated or furthered the commission of the robbery.

The bill takes effect July 1, 2001.

D. SECTION-BY-SECTION ANALYSIS:

Please see Present Situation and Effect of Proposed Changes sections.

III. 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:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

A fiscal impact analysis to determine whether or not this bill would necessitate the need for more prison beds by the Criminal Justice Estimating Conference has not been completed at the time of this analysis.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

As the bill is currently drafted, if someone uses a two way communications device to facilitate the commission of a misdemeanor offense, such as petit theft, that person could be charged with the felony offense provided in this bill, in addition to the misdemeanor. The Committee on Crime Prevention, Corrections & Safety adopted an amendment that the device must be used to facilitate or further the commission of a felony offense.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 3, 2001, The Committee on Crime Prevention, Corrections, and Safety adopted an amendment to HB 1349. The amendment provides that an offender must use a two-way portable communication device in the commission of a felony for this bill to be applicable. The amendment is traveling with the bill.

VII. SIGNATURES:

COMMITTEE ON UTILITIES AND TELECOMMUNICATIONS:

Prepared by:

Allen Mortham, Jr.

Staff Director:

David DeLaPaz

AS REVISED BY THE COMMITTEE ON UTILITIES AND TELECOMMUNICATIONS:

Prepared by:

Patrick L. "Booter" Imhof

Staff Director:

Patrick L. "Booter" Imhof

AS FURTHER REVISED BY THE COUNCIL FOR HEALTHY COMMUNITIES:

Prepared by:

Allen Mortham, Jr.

Council Director:

Mary Pat Moore

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**FINAL ANALYSIS PREPARED BY THE COMMITTEE ON CRIME PREVENTION, CORRECTIONS,  
AND SAFETY:**

Prepared by:

Council Director:

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Allen Mortham, Jr.

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David De La Paz