

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1240

SPONSOR: Senator Bronson

SUBJECT: Police Communications/Interception

DATE: March 22, 2000 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
2.	_____	_____	<u>FP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

Senate Bill 1240 creates s. 843.167, F.S., which provides that when a person intercepts a police radio communication by use of a police scanner or any other means, for the purpose of assisting in the commission of a crime, or escaping from or avoiding detection, arrest, or prosecution for a crime, the penalty for the crime committed shall be enhanced by one misdemeanor or felony degree, as applicable. The bill also provides that it is a first degree misdemeanor for a person to divulge a police radio communication to a person he or she knows to be a suspect in the commission of a crime with the intent to facilitate that suspect's escape from or avoidance of detection, arrest, trial, conviction, or punishment.

The bill also provides that any person who is charged with a crime and who, during the time such crime was committed, possessed or used a police radio scanner or similar device capable of receiving police radio transmissions is presumed to have violated the communication interception provision

This bill creates s. 843.167, a new section of the Florida Statutes.

## II. Present Situation:

Section 843.16, F.S., in part, prohibits a person, firm, or corporation from installing "in any motor vehicle or business establishment, except an emergency vehicle or crime watch vehicle . . . or a place established by municipal, county, state, or federal authority for governmental purposes, any frequency modulation radio receiving equipment so adjusted or tuned as to receive messages or signals on frequencies assigned by the Federal Communications Commission to police or law enforcement officers of any city or county of the state or to the state or any of its agencies."

While s. 934.03(2), F.S., provides that "[i]t is unlawful to intercept any communication for the purpose of committing any criminal act," "any communication" does not include police radio

communications. The section applies to “wire communication,” “oral communication,” and electronic communication” and is essentially applicable to wiretapping.

### III. Effect of Proposed Changes:

Senate Bill 1240 provides that a person may not:

- Intercept a police radio communication by use of a scanner or any other means to use that communication to assist in committing a crime; or escape from or avoid detection, arrest, or prosecution in connection with the commission of a crime (paragraph (1)(a)); or
- Divulge the existence, contents, substance, purport, effect, or meaning of a police radio communication to any person he or she knows to be a suspect in the commission of a crime with the intent that the suspect may escape from or avoid detection, arrest, trial, conviction, or punishment for a crime (paragraph (1)(b)).

The bill provides that when a person intercepts a police radio communication by use of a police scanner or any other means, for the purpose of assisting in the commission of a crime, or escaping from or avoiding detection, arrest, or prosecution for a crime, the penalty for the crime committed shall be enhanced by one misdemeanor or felony degree, as applicable (paragraphs (1)(a) and (3)).

It appears that paragraph (1)(a) is really in the nature of a set of criteria which, if satisfied, trigger an enhanced penalty for a criminal offense, even though satisfaction of (1)(a) is described as a “violation” and the act or conduct is proscribed (a person “may not” intercept any “police communication” in the manner described in (1)(a)). There are no criminal sanctions for commission of the act as a separate and distinct offense. On the other hand, the divulging of a police communication as described in paragraph (1)(b) is clearly a criminal offense: a first degree misdemeanor.

The bill also provides that any person who is charged with a crime and who, during the time such crime was committed, possessed or used a police radio scanner or similar device capable of receiving police radio transmissions is presumed to have “violated” the communication interception provision (paragraph (1)(a)) created by this new section.

The presumption created by the bill does not appear to be a presumption that an element of the crime (subject to the enhanced penalty) is met on proof of a basic or evidentiary fact but rather a presumption that the criteria for the enhanced penalty have been satisfied upon proof that the person committing the crime used a police radio scanner or similar device during the time the crime was committed.

The effective date of the bill is July 1, 2000.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

On February 16, 2000, the Criminal Justice Impact Conference found the fiscal impact of HB 977, which is identical to SB 1240, to be indeterminate.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.