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**SENATE COMMITTEE ON CRIME & CORRECTIONS**

**February 28, 1997 Hearing Room B**

**1:00 P.M. Tapes 22 - 23**

**MEMBERS PRESENT:**

**Sen. Shirley Stull, Chair**

**Sen. Jeannette Hamby, Vice-Chair**

**Sen. Avel Gordly**

**Sen. Eileen Qutub**

**Sen. Veral Tarno**

**Sen. Cliff Trow**

**MEMBER EXCUSED:**

**STAFF PRESENT:**

**Nikola Jones, Counsel**

**Julie Clemente, Administrative Support**

**MEASURE/ISSUES HEARD:**

**Public Hearing: SB 405**

**Public Hearing & Work Session: SB 35**

**These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.**

<b>Tape/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>Tape 22, A</b>		
004	Chair Stull	Calls meeting to order at 1:03 p.m.
<b><u>OPENS PUBLIC HEARING ON SB 405</u></b>		
009	Kevin Mannix	<p>Appearing at the request of Sen. Fisher and as a volunteer representing The Pioneer Cemetery Commission. Testifies in support of SB 405.</p> <p>&gt;upgrade to a Class C felony</p> <p>Explains that under the sentencing guidelines, not likely a person will be sentenced to prison time for this offense because even as a felony it would be considered a property crime. In recent years there has been an increase in vandalism to cemeteries. Sometimes deliberate damage due to racial or ethnic reasons, but more often just out of a general disregard for those memorials to the dead. The Commission has asked about possible amendments regarding the engaging in the sale or trade of parts of memorials, cemeteries, etc.</p> <p>&gt;Oregon Pioneer Cemetery tradition overlooked in the state</p> <p>&gt;part of historical heritage</p>
055	Chair Stull	Would that be covered under one of the theft statutes?
	Mannix	<p>Reference probably would be ORS 166.???. Continues</p> <p>&gt;talks of adding language to the statute</p>
070	Chair Stull	Asks for opinion of crime category level.
	Mannix	Replies. Higher levels because of the discretion and the emotional impact to family members. Explains.
087	Chair Stull	Who would the victim would be and how it would be handled?
	Mannix	The community is always a victim. Continues
094	Sen. Trow	Any evidence that if the fine was increased, it would diminish this activity?
	Mannix	<p>No evidence. Explains</p> <p>&gt;a sign might add to the deterrent value</p>

		>word "felony" has some impact
113	Sen. Trow	The wording of bill is not very good, sees problems.
	Mannix	You have a good point. Continues
126	Sen. Trow	Bill ought to be reworded
126	Sen. Bill Fisher	Representing District 23. Testifies in support of SB 405. Gives background regarding initial introduction. >cemetery in Roseburg sustaining numerous acts of vandalism >appreciative of any help regarding wording to make it the best bill we could have
180	Sen. Tarno	Agrees with Sen. Trow's comments. Suggests changes in wording.
	Sen. Fisher	I don't know. Explains >like to see something about trees and shrubs >could certainly change classification
195	Chair Stull	Offers comments regarding memorial environments. >agrees there is a way to work with Sen. Fisher and Mr. Mannix with language
209	Sen. Trow	We have to be very careful to craft bills that fit punishment with the crime. Explains.
217	Sen. Qutub	Offers some clarification in wording.
	Sen. Fisher	I believe it would. Explains
<b><u>CLOSES PUBLIC HEARING ON SB 405</u></b>		
<b><u>OPENS PUBLIC HEARING ON SB 35</u></b>		
265	Richard Schuening	Sergeant, Oregon State Police Arson/Explosives Section. Submits written testimony in support of SB 35. <b>[Exhibits B &amp; C]</b>
325	Schuening	Continues. Discusses various incidents involving hoax devices. >no recovery for hours spent in responding >refers to SB 35-2 amendments <b>[Exhibit A]</b>
		Offers actual examples of hoax devices for Committee to view,

380	Schuening	<p>explaining each.</p> <p>&gt;concern is they are constructed to look like a bomb, but are not. Continues.</p> <p>&gt;no statute for the placement of this device</p>
434	Scheruning	<p>Continues.</p> <p>&gt;basically no recourse</p> <p>&gt;bill would create a mechanism for us to file criminal charges</p> <p>&gt;avenue to recover some of our losses</p>
<b>TAPE 23, A</b>		
026	Sen. Trow	Do we have a good definition of a destructive device?
	Schuening	<p>Refers to destructive statutes.</p> <p>&gt;ORS 166.382 - 166.660 gives definitions</p> <p>&gt;no guns</p>
043	Sen. Trow	My other problems deals with word "possession." Continues.
	Schuening	Possession is actually a Class A Misdemeanor. Explains.
	Sen. Trow	"Is that clear in the bill?"
	Schuening	Replies.
055	Sen. Trow	Continues for clarification.
064	Chair Stull	Comments for clarification. I think I have a partial answer.
075	Sen. Qutub	Questions for clarity. Refers to example of a device in the back seat of an automobile.
	Schuening	Currently we have no law to address. Explains.
098	Sen. Qutub	Continues for clarification.
	Schuening	If the law was imposed, he could be charged with a Class A Misdemeanor and we could recover some of our costs.
105	Jim Fields	<p>Sergeant, City of Eugene Bomb Squad Commander. Preferences testimony with statement that the Eugene City Council has not reviewed nor approved his testimony. He is here to provide anecdotal evidence to Sergeant Schuening on the approval of his department.</p> <p>&gt;20 to 30 calls a year regarding hoax devices resulting in 2 to 4 hours of overtime each call</p> <p>&gt;disruption to our citizens</p> <p>&gt;experience dictates that we treat as the real thing until known otherwise</p>

145	John T. Nickols	<p>Oregon Gun Owners, Inc. Testifies in support of SB 35-2 amendments.</p> <p>No problem with punishing people, just want to make sure the collector isn't penalized.</p> <p>&gt;some devices that haven't been covered</p> <p>&gt;would like to have "intent" placed in the bill</p> <p>&gt;basically in agreement with the -2 amendments <b>[Exhibit A]</b></p>
189	Jim Ebert	<p>Board Member, Oregon Gun Owners, Inc. Discusses his concerns. Would feel more comfortable if there were some sort of an exclusion in referencing "inert or deactivated military ordnance or paraphernalia." In addition an exemption for "destructive devices that were owned in accordance with federal law".</p>
208	Sen. Trow	<p>If the person was committing a felony using these devices, would you want them exempted?</p>
	Ebert	<p>Just for possession. Explains</p>
219	Nikola Jones	<p>Committee Counsel - explains SB 35-2 amendments <b>[Exhibit A]</b></p> <p>&gt;mental element</p> <p>&gt;category of innocent possessor</p>
244	Ebert	<p>References line 8, subsection 2. Talking strictly about the possession.</p>
	Jones	<p>Responds. Makes reference to line 4, Section 1. Continues to explain.</p>
259	Ebert	<p>Understands. Still makes me feel a little uncomfortable.</p>
262	Sen. Hamby	<p>Clearly, the -2 amendments addresses your concern. Suggests the witness look at an engrossed version of the bill for clearer understanding.</p>
	Chair Stull	<p>Arranges for witness to look at a hand engrossed version of the bill</p>
<b>COMMITTEE STANDS AT EASE</b>		
284	Ebert	<p>Makes me uneasy, but will accept that.</p>
288	Sen. Trow	<p>Questions language for clarification.</p> <p>&gt;Isn't there already a penalty for attempting to commit a felony?</p>
	Jones	<p>What this is designed to do -</p>
	Sen. Trow	<p>Again asks for clarification of language</p>
	Jones	<p>Additional charge that either the police or district attorney could charge a person.</p>
	Sen.	<p>Questions wording "placing or placed." Would Section 1 cover that?</p>

316	Hamby	>Relates an example. Explains
339	Schuening	Questions for clarification - mere placement - would it be a crime?
	Hamby	Continues. It was real, but not "possessed" simply "placed".
354	Schuening	In this case, through the course of an investigation, the person was identified and it was a hoax device and not real, currently there is no recourse against the person. Continues.
376	Sen. Tarno	Refers to Section 1 of the bill. >add word - "or places"
	Schuening	Yes.
	Sen. Tarno	Continues for clarification.
407	Jones	Explains - to place a device, it would have been possessed at some time >could add "delivering" - continues explaining
<b>TAPE 22, B</b>		
018	Sen. Tarno	Continues to question for clarification
	Jones	Questions for clarification - You never saw him place it but you have other evidence to show that he possessed it?
	Sen. Tarno	Continues.
034	Jones	Very difficult to answer right now. Continues.
039	Sen. Trow	Objects to lines 12 through 16 - creating a mandatory minimum sentence. Continues.
046	Chair Stull	Those lines are taken care of with the amendments.
052	Jones	The mandatory minimum was taken out with the amendments. >judge has the discretion to order less
058	Schuening	Questions for clarification - deletion of lines 12 through 22 >where does the police department fit with using props in training?
	Jones	Intent of serious bodily injury must be proven
<b><u>CLOSES PUBLIC HEARING ON SB 35</u></b>		
<b><u>OPENS WORK SESSION ON SB 35</u></b>		
078	Sen. Hamby	<b>MOTION: Moves to ADOPT SB 35-2 amendments dated 02/18/97.</b>
		<b>VOTE: 5-0</b>

		<b>EXCUSED: 1 - Sen. Gordly</b>
	<b>Chair Stull</b>	<b>Hearing no objection, declares the motion CARRIED.</b>
093	Sen. Trow	Questions impact on bed space.
	Chair Stull	Recalls Oregon State Police dealt with approximately 62 hoax devices. Continues.
104	Chair Stull	Mentions that there is still one witness to be heard.
113	Robert Gordon	Testified in opposition to SB 35. States his objection was to the original bill. Still has concerns with the -2 amendments. >Gives an example and asks if that would be considered a crime.
124	Chair Stull	It is about knowingly placing something there to place the other person in fear of serious physical injury. >requiring intent
	Gordon	If you don't have any intent to place a person in fear, then there isn't a crime?
	Chair Stull	Right.
137	Sen. Trow	Who prepared the -2 amendments?
	Chair Stull	Prepared with various inputs.
	Sen. Trow	Continues for clarification.
147	Sen. Tarno	Still uncomfortable - likes the word "place" in there. Explains.
170	Jones	You could add that in or rely on the aiding or abetting statutes currently on the books.
	Chair Stull	We will add the "placing or causing to be placed".
185	Jones	Reads lines 1 through 6 the way it will read with both the -2 amendments and the conceptual amendments in place: >"A person commits a crime of possession of a hoax destructive device if a person knowingly places another person in fear of serious physical injury by possessing, manufacturing, selling or delivering or placing or causing to be placed a hoax destructive device or sends a hoax destructive device to another person."
196	<b>Sen. Hanby</b>	<b>MOTION: Moves to AMEND SB 35 conceptually as read by Ms. Nikola Jones, Committee Counsel".</b>
		<b>VOTE: 5-0</b>
		<b>EXCUSED: 1 - Sen. Gordly</b>
	<b>Chair Stull</b>	<b>Hearing no objection, declares the motion CARRIED.</b>
206	Sen. Trow	Still concerned that this penalty fits the crime. Explains.

	Chair Stull	Judge has the option to consider the individual circumstances.
211	Sen. Hamby	<b>MOTION: Moves SB 35 to the floor with a DO PASS AS AMENDED recommendation.</b>
		<b>VOTE: 5-0</b> <b>EXCUSED: 1 - Sen. Gordly</b>
	Chair Stull	<b>Hearing no objection, declares the motion CARRIED.</b> <b>SEN. HAMBY will lead discussion on the floor.</b>
	Chair Stull	Declares meeting adjourned at 2:12 p.m.

Submitted by, Reviewed by,

Julie Clemente, Nikola Jones,

Administrative Support Counsel

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**EXHIBIT SUMMARY**

**A - Proposed SB 35-2 Amendments - Staff - 1 pg**

**B - Testimony in Support of SB 35 - Sergeant Richard Schuening - 2 pgs**

**C - Bill-At-A-Glance (SB 35) - Sergeant Richard Schuening - 2 pgs**