

APRIL 18, 2001

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April 18, 2001 LB 641
 LR 58

SPEAKER KRISTENSEN PRESIDING

SPEAKER KRISTENSEN: Good morning. Welcome to the George W. Norris Legislative Chamber. This morning our chaplain of the day is Senator Jim Jones. Senator.

SENATOR JONES: (Prayer offered.)

SPEAKER KRISTENSEN: I call the sixty-sixth day of the Nebraska Unicameral Legislature to order. Senators, please record your presence. Roll call. Record, Mr. Clerk.

CLERK: I have a quorum present, Mr. President.

SPEAKER KRISTENSEN: Thank you, Mr. Clerk. Any corrections?

CLERK: No corrections, Mr. President.

SPEAKER KRISTENSEN: Items for the record.

CLERK: Just one item, LR 58 is ready for your signature, Mr. President. That's all that I have.

SPEAKER KRISTENSEN: While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR 58. We next move to General File, 2001 Speaker priority bills. LB 641, Mr. Clerk.

CLERK: Mr. President, LB 641 by Senator Landis. (Read title.) The bill was introduced on January 16 of this year, referred to the Banking, Commerce, and Insurance Committee, advanced to General File. I do have committee amendment, Mr. President.

SPEAKER KRISTENSEN: Senator Landis, you're recognized to open on the bill.

SENATOR LANDIS: Thank you, Mr. Speaker, members of the Legislature. The consumer rent own act originally was introduced by Senator Lindsay a number of years ago, and this is our first chance to revisit it. One of the things that's happened in the field is that people who have rented high-priced

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items have been offered a damage waiver. This is like a collision damage waiver that you get when you get a rental car where you pay a certain amount of money beforehand, and then if the product gets broken or the car gets hit, there's no questions asked when you bring it back. It's not a form of insurance exactly, although when the bill came to us it had two ideas and that was premiums for insurance or a liability damage waiver. But the committee discovered that there were no liability... there were no premiums for insurance used around the state and that people who were doing this were using the liability damage waiver. And the virtue there is that you don't have to have an insurance agent to sell that particular product. So this authorizes a liability damage waiver for products that are rented by rent-to-own locations. And we have adopted a cap on the charge for that liability damage waiver. Now this is authorized in a large number of other states, and in many of them there is no cap. In a number of other states, that cap is at 10 percent of any lease payment. There are some states at 7.5 and there's one or two at 5. The bill has an 8 percent of any lease payment or \$2 for each lease payment, whichever is greater in any monthly period or a percent or \$5 on a monthly basis if there are not more than two payments in a month, and that cap is among the tighter ones around the country. I would say we're in the top third as far as the stringency of that cap with respect to the liability damage waiver. There are a couple of other things that the committee amendments do to the green copy of the bill and then some new provisions. But the general scope of this act is to update and make some changes in terms, disclosures, and then, of course, the damage waiver idea in the consumer rent to own. Thank you, Mr. Speaker.

SPEAKER KRISTENSEN: The Chair of the Banking Committee, Senator Landis, you're recognized to open on the committee amendments. (AM0472, Legislative Journal page 675.)

SENATOR LANDIS: Thank you. There are committee amendments. One of them is to indicate that a lessor may contract and receive a late fee, but the late fee is not more than \$3 on any payment that is at least three business days late or later in the case of a consumer rent to own made if it's more frequently than monthly. We also define the term consumer rental purchase

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agreement and that term is used to replace "rental purchase agreement." We indicate that advertisements in store don't have to have the disclosures on them. There are some stores that wanted to have banners or signs in the windows, but the rent-to-own statute says that all solicitations like that will have the terms written out. And they didn't want to write a banner and write all these rather minuscular terms on the banner so it does say that in-store advertisements such as sign windows and ceiling banners don't have to have all of the disclosure statements on them. We make a new term called the total of payments to acquire ownership so that we can label all of the fees that have to be told to the purchaser or the renter at the time of renting. And that fee will include lease payments, and that means the number, amount, timing, and total of those payments. It will also mean any initial nonrefundable administration fee like an origination fee or required delivery charges, any charges that are used to acquire ownership. However, we also identify some fees which are not known at the time or which are changeable or which are not as an incident to the contract. And they do not have to be included in this amount, and that includes taxes or late charges because, of course, that depends on the behavior of the consumer; reinstatement fees, that, too, because of the consumer, or charges for optional products or services not associated with the rental. There are places that sell, for example, I believe like some 3-in-1 oil or something like that that you might get at the same time. Well, that wouldn't have to be part of this disclosure. In addition to that, under the disclosure we make clear again that the property is not the consumer's until they've paid the total of those payments. That we list out the charges that it does not include which I've just recited. Also an indication, there has to be an indication that the consumer is responsible for the fair market value of the remaining rent or early purchase cost of the property, whichever is less. So if the value of the product is less than the payments, then it's the value the product. If the amount of the payments is less than the value of the product, then it's the amount of the payments, whichever is less. But that needs to be on the face of the agreement. And those terms, by the way, are essentially terms from a separate bill, LB 743, that were put into this bill by the committee at the time of the hearing. I would ask for

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the adoption of the committee amendments. Thank you, Mr. Speaker.

SPEAKER KRISTENSEN: (Visitors introduced.) Debate on the committee amendments. Senator Jensen.

SENATOR JENSEN: Thank you, Mr. Speaker, members of the body. Senator Landis, would you just reply to a question. And I was on the committee and heard this and also voted to advance the bill. The insurance is only for the rental property only. Is that correct?

SENATOR LANDIS: Yes. And when we use the word "insurance," we're using a word that sort of covers our common understanding although this will not be referred to as insurance. It will be referred to as a liability damage waiver. But, essentially, what that means is you've paid a certain amount of money and then if the product gets broken or injured, you can return it no questions asked because you've paid for that by having paid the damage waiver.

SENATOR JENSEN: Okay. My interest was there...of course, we have so many people in our society who are renting property. And the number of individuals that do rent property and do not have any renter's insurance is really low. And occasionally you, whether it be a fire or some other storm or damage or whatever, and you see these individuals who have really lost everything. Yes, it's their responsibility to maintain that coverage, but I just wondered if under a bill like this if...but they would not be allowed to even have any liability damage on anything other than the property that was rented. Is this correct?

SENATOR LANDIS: It's true. The coverage is for the rented item only. There is no authority in this bill or in the consumer rent-to-own act that would allow for a rent-to-own company to offer any kind of a product that would go beyond that. There are rental insurance policies, but you need to get them from an insurance agent.

SENATOR JENSEN: All right. I understand that and I just wished

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there was some way that there were more people who saw the need for that sort of thing and then so they wouldn't be...totally lose everything that they do have. But I'll support the bill and I think it is also a way for those individuals not to be caught short in case there is damage to that rental property. Thank you, Mr. Speaker.

SPEAKER KRISTENSEN: Senator Landis, you're recognized to close on the committee amendments.

SENATOR LANDIS: Thank you, Mr. Speaker, members of the Legislature. This is the first time this issue has been back since Senator Lindsay had the bill passed several years ago. I will say this, that the damage deposit limit that we put on here is relatively strict compared to other states, many of whom do not cap it at all or others who cap it at 10 percent. It seems to me that that's...we've done well by the consumer at least in a sense of trying to keep a lid on the costs here but at the same time make this kind of damage waiver available. And for that reason, I'd ask for the adoption of the committee amendments and then eventually the advancement of the bill.

SPEAKER KRISTENSEN: You've heard the closing. The question before the body is the adoption of the committee amendments. All those in favor vote aye; all those opposed vote nay. Record.

CLERK: 28 ayes, 0 nays, Mr. President, on the adoption of committee amendments.

SPEAKER KRISTENSEN: The amendments are adopted. Debate on advancement. Senator Beutler.

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, Senator Landis, could I just ask a couple of questions. With respect to the green copy of the bill, page 3, subsection (2), which describes the ability of the parties to contract for premiums paid for insurance and then it provides in addition that you can contract for fees for liability damage waiver or similar products or services. And then it goes on to define the conditions under which that can be done. First of all, the only

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kind of insurance we're talking about, I assume from your conversation with Senator Jensen, would be damage insurance related to any products that are rented out. Is that accurate? There would be nothing beyond that.

SENATOR LANDIS: The word "insurance" has been stricken so the sections you're looking at you should understand "premiums for insurance" that phrase is stricken because...

SENATOR BEUTLER: Was stricken in the committee amendment somewhere?

SENATOR LANDIS: Yes.

SENATOR BEUTLER: All right.

SENATOR LANDIS: The reason being...

SENATOR BEUTLER: So the only thing left...

SENATOR LANDIS: ...you can do two...you have two different instruments to get to the same end and only one of those instruments is now being used and we wanted to keep it that way because it's working just fine. And it doesn't trigger the notion that these are, for example, insurance agents which they aren't. So the only mechanism that's authorized is a damage waiver...liability damage waiver. But it's very much like insurance. It's a preassigned amount of money you pay under the understanding that if it's injured during that time you won't be responsible.

SENATOR BEUTLER: Okay.

SENATOR LANDIS: It's rather like a security deposit by which you agree that that's the maximum that you can be responsible for.

SENATOR BEUTLER: Okay. So the standard form contract would say that the lessee is responsible for damage.

SENATOR LANDIS: Yes.

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SENATOR BEUTLER: And you can contract for something that essentially eliminates that clause and says they're...

SENATOR LANDIS: Yes.

SENATOR BEUTLER: ...not responsible.

SENATOR LANDIS: The contract will say you're responsible and the contract will also say that it's going to be the lesser of the fair market value of the good or the remaining payments to purchase, whichever is less, that will be in the standard contract. And then they will have the option of using the damage waiver mechanism.

SENATOR BEUTLER: Okay. And when the lessee is presented with a contract, will the price of the contract be less? Can they make the price of the contract less depending on whether they execute the waiver option or not?

SENATOR LANDIS: The...

SENATOR BEUTLER: In other words, if I agree to pay for the waiver option, is that then added to the price of the contract?

SENATOR LANDIS: It is added.

SENATOR BEUTLER: So they...

SENATOR LANDIS: But it's not explicit. Let me tell you what I know in the field. That is to say there's a contract that does not have this term that's called the total payments for ownership, and it does not include the damage waiver. That contract says you do these things and you own it. And that does not include the damage waiver because it's optional. Now if you put the waiver in there, it will also be reflected in there, but the fees are itemized. And although it never says, that I can recall, you can't play with the numbers, I think the implied notion is this costs what it costs...

SPEAKER KRISTENSEN: One minute.

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SENATOR LANDIS: ...and the damage waiver is a separate fee. The Banking Department does have oversight. My guess is that they would interpret it that way.

SENATOR BEUTLER: Okay. I just want to be sure I understand. So that there will be a product that's priced at two levels, essentially, depending on whether you pay for the waiver or not.

SENATOR LANDIS: Well, when you get a rental car and you use the charges or not, is the rental car priced at two different amounts? That's...the words, I'm not sure I'm clear. I think what this...I think this is the situation. The product has one price and that price can be added to by the purchase of a damage waiver.

SENATOR BEUTLER: Okay. And if I choose not to have the damage waiver, the price of the product is the same to me.

SPEAKER KRISTENSEN: Time.

SENATOR LANDIS: Yes. I think that's the way it will be...that's the way it will be interpreted although there isn't a specific...

SPEAKER KRISTENSEN: Time.

SENATOR LANDIS: ...language on that score.

SPEAKER KRISTENSEN: Senator Landis, you're recognized to close on the advancement of the bill.

SENATOR LANDIS: If there are people who had questions and they want to acknowledge them, I would share some of that time with them. Senator Chambers, I saw him pouring over his books, perhaps I can waive a little bit of my time to Senator Chambers.

SPEAKER KRISTENSEN: Yes, Senator Chambers.

SENATOR CHAMBERS: Thank you, Mr. President. And, Senator Landis, all I wanted to mention is that I haven't had a chance

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to look at the bill. But not on the mike, at some point before it gets to Select File, I'll just talk to you about it and maybe an explanation will clear up anything that's bothering me. That's all that I have and I'm through with your time, thank you.

SPEAKER KRISTENSEN: Senator Landis, you still have roughly four minutes left.

SENATOR LANDIS: I will clarify for Senator Beutler what his question was. I think his question was, look, if you...will the underlying contract change in price depending on whether or not I use the damage waiver and the answer is no. Can I point to a piece of language that says that affirmatively, no. But I think it's implied in the sense that the costs have to be structured and built into the contract and disclosed absent the liability damage waiver and then with the waiver. And I'm going to guess that the Department of Banking would interpret it as I do that that is the understanding of what this section says. I don't need to have it say that. I don't know if anybody who does it differently than that, and as far as I'm concerned, I'm confident that it will be done in that way. So for my purposes, I don't need to say what I think is the operation of the bill. But I will say that that's implied because you construct this cost piece by piece from the payments that are so authorized. I would ask for the advancement of LB 641.

SPEAKER KRISTENSEN: You've heard the closing. The question before the body is the advancement of LB 641. All those in favor vote aye; all those opposed vote nay. Have you all voted who care to? Record.

CLERK: 28 ayes, 0 nays, Mr. President, on the adoption of the motion to advance to E & R Initial.

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: LB 641 does advance. Mr. Clerk, next item.

CLERK: Mr. President, LB 468, a bill by Senator Suttle. (Read title.) The bill was introduced on January 10, referred to the

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Health Committee, advanced to General File.

SENATOR CUDABACK: Senator Suttle, you're recognized to open on LB 468.

SENATOR SUTTLE: Thank you, Mr. President. Members of the Legislature, the name of this bill, the Nursing Scholarship Act, the Nursing Incentive to Practice Act, the Nursing Student Loan Act, and the Nursing Loan Repayment Act, all of those parts of the bill have been modified greatly. I will go into that when I am introducing the amendment that I have, but it has been greatly reduced because of the cost of the initial bill, the green copy. I don't know whether the body is aware or not, but nurses are in shortage nationwide as well as in the state of Nebraska. We had an article in the paper yesterday that indicated that hospitals in Omaha were closing their emergency rooms. And one of the problems that they cited in the article, early in the article was that on some days four of the Omaha's seven hospital emergency rooms have been closed to ambulances for various lengths of time. They are finally getting together and talking about the safety and the unsafety of this practice, and they are not coordinating their efforts. And so now they're talking to one another and they are coordinating their efforts. There are many problems, the article goes on to say, in healthcare that are forcing emergency rooms to turn away ambulances including the shortage of nurses' care for patients when they are transferred from the emergency room to recovery beds. It's pretty bad when you can get into an emergency room; but if you're so sick and you need care upstairs in the hospital, you don't have a nurse to take care of you. I am afraid that those of us who are baby boomers, and that would probably include just about everybody in this room, except Senator Chambers, when we get old and have to go to a nursing home or to a hospital because we're ill or because we're too old to take care of ourselves, we're going to push the button and nobody is going to come. And that would not be a very good thing to happen. Part of the reason for a nursing shortage in the country is, one, because nursing is usually a female profession which it shouldn't be. More men should go into nursing. But one of the things is that we have a big choice now. Our choices are not limited to teacher, secretary or

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nurse. We can do anything we want to do. The other problem is, of course, salary and that I think is true of all professions at some point. And the other is that there is a great deal of dissatisfaction with the work and the work environment. I handed out some information concerning the number of students that are...that have gone down in Nebraska from '91 to '99. Nursing students have decreased from 3,046 to 2,012 in the state. That's almost 1,000 less students. And the other important item that I want you to look at that I passed out are the ages of nurses. Boy, the older you get the harder it is to be a nurse. Moving patients and just the physical stress on us is just really very, very bad. In Nebraska, on the right side of the page that I handed out, in 1980, 66 percent of the work force that were nurses were under 40 and 34 percent were...are now. But significantly, under 30 years of age, 1980, 38.2 percent of the work force were under 30. But in the year 2000, only 7.9 percent of the work force that are RNs are working in the profession. This is a significant decrease in young nurses. And Senator Cudaback told me he wanted a young nurse taking care of him when he gets old. There have been surveys that say that while the United States population grew 13.7 percent between 1990 and 2000, the rate of nurses entering the work force between '96 and 2000 was a mere 4.1 percent, down from 14.2 percent between '92 and '96. So it's becoming more and more acute. The shortage is becoming more and more acute. And the argument that these are cyclical and there are times when a profession has a shortage but then very quickly it spikes again and there's a glut of a particular profession, that's not true anymore for nurses. And we need to get a more variety of people into nursing. There's been a significant shift in the ages of nurses nationwide. RNs were under...very few under the age of 40. Then also they're leaving the profession. Health and Human Services Department gave me some information about RNs and LPNs that have left the job; 42.5 percent were dissatisfied with the job or dissatisfied with the salary, those two things together make up 42.5 percent. LPNs, 38 percent of them are leaving because of salary and dissatisfaction with the job. When there's a shortage, that means the person that is doing the work is working longer. A significant number of percentage of nurses are working more than 50 hours a week. That is a very...that's a high burnout time when you are working 50 hours

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a week, week after week without any breaks and with the kind of responsibility that nurses have. I will open on the amendment and that consists of the opening on the bill. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Suttle. Senator Suttle, you're recognized to open on your amendment, AM1493, to LB 468. (Legislative Journal page 1478.)

SENATOR SUTTLE: Thank you, Mr. President. AM1493 amends, as we said, LB 468. The scholarships are changed to loans to nursing students. The loans will be forgiven if the student practices for two years in the state following graduation or completion of a nursing program. This is done for tax reasons and that is the reason it was changed from a scholarship act to a loan forgiveness act. Under the amendment, the Regulation and Licensure section of Health and Human Services will work with institutions who offer nursing programs to the state to identify students with financial needs and motivation to practice in Nebraska. HHS may loan up to \$1,000 per student for one year of schooling for a maximum of two years. Upon completion of the program, the loan is forgiven if the student practices in Nebraska for two years. If the student drops out of school, does not practice nursing, or leaves the state prior to the end of the two years, the student must repay the state with interest, one point below prime rate. The original scholarship provisions in the bill were changed into loans because the IRS taxes scholarships given by a state. The purpose of creating the loans is to avoid the taxation issue. The amendment requires that at least one student be awarded a loan at each institution offering an approved nursing program. It's also the intent of the Legislature that nontraditional and ethnic minority students be included in this program. That is all there is left of this bill. I have whittled it down to bare, bare bones. We can make the A bill as lucrative or as cheap as we want it to be. The more nursing students that we can help, the more nursing...nurses we will have at the end. If we have 150 students the first year, that would be \$150,000 and plus probably a little bit more to administrate the loan situation. And institutions would be the ones that would find the deserving student, the needy student, the minority student who would

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benefit from this loan forgiveness program. And with that, I will take questions from anybody, but I would urge you to pass the amendment. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Suttle. You've heard the opening on AM1493 offered by Senator Suttle to LB 468. We're now open for discussion on that amendment. Senator Dwite Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Mr. President, members of the Legislature. Just wanted to make a couple comments in this field. Senator Suttle was talking about nurses. My wife is a nurse. She's a retired nurse. And I just want to tell you everything she said is very true. My dear wife worked 40 years in the field of nursing, most of it in the area of surgery. And the return that nurses got years ago was nothing more than, you know, the satisfaction of taking care of people which is a wonderful, wonderful thing. And I'd like to compare this to what we're going to be talking about later down the road, teachers and teacher salaries. Yes, we have a shortage of teachers. Yes, I think we're going to have to do something for teachers. I don't know what that is. But I'm going to from time to time compare teachers to other fields that we have also forgotten about and nursing is one. After 40 years of nursing, my wife retired on \$283 a month. For many years, they had no retirement, most of the years we were married. Hospitals didn't furnish that. Compare that to what teachers are getting for retirement today. The field of nursing has not paid very well at all until recently, and it's still not paying what it should be paying. This is one little move to help nurses and to get more nurses. A lot of the people that I know in the field, I have an office in a hospital, I work with a lot of people in the medical field with substance abuse; and all of us know that there's a terrible shortage of nurses. And why? The same reason we have a shortage of teachers. We're not paying. I don't know where all of that money goes in the healthcare, whether it's in the pharmacy, medications, and not necessarily pharmacy but in the medications field, whether it's going to the doctors or whatever, but the nurses are not getting it. And we're not getting nurses. This is one little step and I urge you people to support this amendment and this bill. Thank you.

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SENATOR CUDABACK: Thank you, Senator Pedersen. Senator Price, on the Suttle amendment.

SENATOR PRICE: Many years ago we had a lot of nurses, and I remember when I was in school we had our first male nurse and that was kind of an oddity. But as we see more and more male students going into the profession, you know, I'm grateful they're there because they are needed in this profession. I went through school on \$500, three years on \$500 and that was a long time ago because now it costs a lot of money to pursue three years or four years if you graduate with your bachelor's degree. Nurses are in great demand. And as I visit hospitals and care centers, they're stretched as far as they can go. And if you have a shortage, it does push the other nurses that are on duty much, much harder. When you have a nurse in intensive care, they really should just work eight hours because of the stress that they're under. When they are pushed beyond the eight hours, their eyes begin to glaze over and they are not as alert to lifesaving signals that are coming out from the patient that are it's in a life and death situation. You need somebody who is afresh, who has had their time off, knowledgeable, and then you get to go on 10, 12 hours, and if that other person doesn't come in, then you work yet another shift. And in a life and death situation, even just in a regular care situation, you want somebody who is alert, responsive, and to give the best possible care because the patient will recover much better because of the care. I also compare nursing to teachers. We have a teacher shortage. They form the minds of young people. Nurses provide good care to return you to health or to keep you comfortable as your life ebbs away. We need to replenish this supply. I look at the rural areas. There's a shortage of nurses out in the rural areas and Lincoln and Omaha are short even in the city. The pay is not comparable to the demands of the job. We need nurses desperately and other healthcare providers, but we're speaking particularly to nurses this morning. We need teachers going into the profession. We need them desperately. And I urge your support of this bill because look down the road at who is going to be serving you and your family because the crunch is on and you just don't grow a nurse overnight. It takes years to get through school and then years

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to become established out in the community. The hammer is down and we're in front of a steamroller. We need nurses. I urge your support of this amendment and the bill.

SENATOR CUDABACK: Thank you, Senator Price. Senator Suttle, at this time no other members are wishing to speak to your amendment. You can close if you wish to.

SENATOR SUTTLE: Thank you, Mr. President. Just one thing. I've had a couple of questions off the mike concerning the fiscal note on this. As I said, at 150 nursing students, this would be about \$150,000 the first year. The second year, with more, it will be a little bit more than that. It will be another 150 and whoever else begins that first year. Then it will be up to the Appropriations Committee to decide how many nursing students they want to help and how much the state can afford. This is very modest compared to some of the other requests that we've had. I would like to do more. My green copy bill indicates how much I would really like to do. But this is what I think that the state can afford at this time, and I would urge you to support the amendment. Thank you.

SENATOR CUDABACK: Thank you, Senator Suttle. You've heard the closing on AM1493 to LB 468. The question before the body is, shall the amendment be adopted?. All in favor vote aye, opposed nay. We are voting on the Suttle amendment to LB 468. Have you all voted who care to? Record please, Mr. Clerk.

CLERK: 33 ayes, 0 nays, Mr. President, on the adoption of Senator Suttle's amendment.

SENATOR CUDABACK: The amendment is adopted. We are now open for discussion on the advancement of LB 468 to E & R Initial. Senator Suttle, there are no lights on. Senator Suttle waives closing. The question before the body is, shall LB 468 be advanced to E & R Initial? All in favor vote aye, opposed nay. We are voting on advancement of LB 468. Have you all voted who care to? Record please, Mr. Clerk.

CLERK: 32 ayes, 0 nays, Mr. President, on the advancement of LB 468.

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SENATOR CUDABACK: LB 468 does advance. Mr. Clerk, items for the record.

CLERK: Thank you, Mr. President. Enrollment and Review reports LB 362 and LB 668 as correctly engrossed. That's all that I have at this time. (Legislative Journal pages 1520-1521.)

SENATOR CUDABACK: Thank you, Mr. Clerk. We now turn to General File, 2001 senator priority bills. Mr. Clerk, first item.

CLERK: Mr. President, LB 659, a bill by Senator Chambers. (Read title.) Bill was introduced on January 16 of this year, referred to the Judiciary Committee, advanced to General File. I do have committee amendments pending. (AM1342, Legislative Journal page 1399.)

SENATOR CUDABACK: Senator Chambers, you're recognized to open on LB 659.

SENATOR CHAMBERS: Thank you. Mr. President and members of the Legislature, I've discussed this bill with many of you in general terms and I doubt that anybody has to be persuaded that DNA testing is a valuable tool now. Just a couple of days ago a federal judge raised it to the level of a constitutional right. This judge ruled that denying an inmate the right to DNA testing violated federal due process. In the field of criminology, DNA testing, deoxyribonucleic acid testing, is the instrumentality which has literally rescued some people from the executioner minutes before life was to be taken. Not only would it stave off the execution but people would be released because they were actually innocent. DNA testing demonstrated that the person who was illegally arrested, unfairly convicted, improperly sentenced to death had committed no crime whatsoever. The thing that troubles me so much about what that has revealed is the fact that innocent people, obviously, have been executed in this country and they have been executed in numbers that are appalling. In Illinois alone, a greater number of people have been released from death row as being innocent than were kept there, so you can imagine how many people had been executed. As we proceed on this bill through a discussion of the committee

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amendments, some technical aspects will be discussed in greater detail, but I just want to kind of give an overview during my presentation of this opening. I have talked to representatives of the county attorneys. They have some matters they would like to discuss with me, but because they have suggested that the bill has not received the amendments...or the amendments have not yet been attached they cannot go forward with certitude. But I can just about divine the types of issues they may want to raise. I'm not going to hold the bill up while we work our way through those matters, and I don't think we're that far apart anyway, but after the bill moves, which I expect it to do, there will be awhile before it comes up again on Select File. I will talk to the county attorneys, anybody else who has an interest in the bill. This is not the type of bill which I think should slide through without questions being answered that people may have. I and everybody else on this floor have a legitimate concern about people trying to abuse the opportunity created by this bill to attempt to establish innocence, but it's not the size of issue that some people might think. First of all, the vast majority of crimes are not going to involve evidence of a biological nature. If there is no biological evidence there is no DNA testing. DNA exists in saliva, blood, urine, body fluids, any tissue, hair, fingernails. Anything that's a part of you, your biological makeup, is going to contain DNA. The progress and advancements made in the technology now make it possible to take very minute amounts of biological evidence and test for the DNA. The tests are legitimate and of value. Some materials that had been tested in the past but did not bring forth conclusive results have been retested and the results now are conclusive, and that's why many people have been exonerated. The exonerations have occurred not just in capital cases, but rapes and other crimes where there was biological evidence left at the scene. Sometimes an improper conviction will occur, just as an improper arrest will take place, because of mistaken eyewitness testimony, the misidentification of an individual through photographs or line-ups. Witnesses sometimes have an interest in fabricating testimony. Snitches are known to lie to get benefits for themselves. There are prosecutors, believe it or not, who deliberately hold back exculpatory evidence or that which inclines toward mitigating the guilt of the defendant or suggesting that the defendant is innocent. I had mentioned that

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I'm troubled by the number of people who probably have been executed, although innocent. Another terrible aspect of this whole issue that we're discussing is that when DNA testing has exonerated a person and it can be shown that along the way there were improper actions by the prosecutor, lawyers have slept through trials, judges have upheld death sentences even though the defense lawyer slept and did not make objections which should have been made and would have altered the outcome of the case, many prosecutors are saying they would not do anything differently. Even where DNA testing has conclusively eliminated a person as a suspect, there are prosecutors and judges who have resisted correcting the obvious injustice. Fortunately in Nebraska, a group of prosecutors and those from the largest or most populous counties had a press conference and expressed their support of DNA testing. They asserted that it is not their interest to have innocent people locked up and, from what I have seen, that is an assertion with which I will take issue, but that's not the purpose of this bill or my presenting this opening. It is good that they recognize that, as prosecutors, they have an obligation not just to seek to convict people but to see that all of the evidence that bears on the facts of the case are brought forth during a trial. That is not always done in Nebraska. But in a letter which I think all of you got there was a reference specifically to the code of professional conduct that governs lawyers and especially public prosecutors that lay out that obligation that I've just mentioned. So the purpose of this bill is to make possible DNA testing which cannot occur under the present state of Nebraska law. There is no means under the law today to have inmates who have been locked up and may be innocent to even obtain this testing, so it does open a door of opportunity which the prosecutors know and which they support. You don't need to worry about this bill even though initially there may be a flood, as some people would see it, of motions for this testing. After we get through that first onslaught, if you will, of approaches to take advantage of the opportunity created by this bill, it will be a rapidly diminishing pool of individuals. Now pretrial there is DNA testing and, in many cases, charges are dropped and no trial even takes place. So what this bill really is aiming at is rectifying an existing set of circumstances which the Nebraska Supreme Court has even acknowledged cannot be addressed without

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legislation. Senator Brashear, as Chairperson of the Judiciary Committee, is going to present the committee amendments which will replace the bill.

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: They do not rewrite the bill in terms of...or by way of striking out most of what's in it. Because of the types of changes here and there, it was deemed less confusing to just bring one white copy of a committee amendment that will contain all of the changes and you will see what we're looking at. I have some amendments to the committee amendments which I will explain. So if you have any questions of Senator Brashear, who has done yeoman work on this bill also, or of me, we both are prepared to answer those questions. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. There are committee amendments. Senator Brashear, as Chairman of the Judiciary Committee, you are recognized to open on committee amendments to LB 659.

SENATOR BRASHEAR: Mr. President, thank you. Members of the body, I would point out initially with regard to the committee amendments or before discussing the committee amendments specifically that this bill was advanced to the floor by your Judiciary Committee unanimously and certainly the points that Senator Chambers makes are correct. I think we...we dare...we dare not become insensitive and I think we need to all agree, as I'm sure we would, that if any person is convicted of a crime inappropriately or wrongly, then we've had a miscarriage of justice and we need to acknowledge that. The committee amendments further the intent of LB 659. The amendments make technical changes to the bill and they are as follows. We specifically set forth the type of testing to be addressed by the DNA Testing Act, which is how the bill will be known. We set forth when, during process and procedure, counsel will be appointed for an indigent person requesting DNA testing. We specify who will pay for the DNA testing. We specify a procedure whereby an individual may take possession of DNA evidence in order that it be preserved to protect that

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individual in the future if public authority is otherwise going to dispose of it. And we establish a procedure to be followed after results from DNA testing are received. The committee amendments specify that the type or what types of DNA testing will be included and we utilize all of the technical terminology that is appropriate to make the...to establish those procedures which have been demonstrated scientifically and from an evidentiary standpoint to be reliable. As written, LB 659 does not specify when an indigent person would be appointed counsel. The amendment provides that, upon a showing that DNA testing may be relevant to a wrongful conviction claim, then the court shall appoint for an indigent person an opportunity...counsel in order to pursue that remedy. The amendments further explain that the person filing the motion will pay for the DNA testing except in those instances where the court has determined that the subject individual is indigent, in which case then there will be...the costs will be paid by the state and the court will determine and approve of the testing process. LB 659 provides a process for securing and disposing of the biological material in connection with criminal cases. We deemed amendments necessary because it is...it's obvious that someone...we have to preserve the chain of custody and control with regard to this evidence. If the required party receives notice that biological material in connection with his or her case is to be disposed of and notice is required that, instead of filing a motion to test the material if the individual may not want to do that at that particular point in time, the party may request in writing the opportunity to take possession of that biological material and obviously, with the guidance of counsel, then chain of custody and control would be attended to. The costs of acquiring, preserving and storing the material would be at the expense of the person requesting possession, except for the "indigency" showing that I mentioned earlier. The committee amendments modify the procedural process in dealing with the results of the ordered DNA testing. The results are to be disclosed specifically to the person filing the motion, to that person's attorney, and to the county attorney relative to the prosecution. Any party, any party may then request a hearing before the court when such results exonerate or exculpate the individual. Following the hearing, the court may vacate, set aside the conviction, and release the person from custody based

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upon the final testing results and without further process or procedure. If that relief is not granted, however, the individual is provided an opportunity for new trial, new trial being an established procedure within our civil and criminal code. Finally, the committee amendments modify those statutes pertaining to new trial in order that we are...that we establish grounds which would be appropriate given the DNA Testing Act. Specifically newly discovered exculpatory DNA testing evidence obtained under the act would be added as a ground...ground for which a new trial may be granted. Also, a motion for new trial on the basis of DNA testing results would be required to be supported by appropriate affidavits. An exception is added to the three-year limitation on a motion for new trial when there is new evidence and such evidence claims actual innocence and is supported by clear and convincing evidence of that innocence. And a motion for a new trial based on DNA testing would otherwise be filed within 90 days after a final order is issued pursuant to the hearing request setting aside a conviction or within 90 days if there is no ruling, so that we've covered both exigencies. We're adding newly discovered exculpatory DNA testing evidence as a ground for a motion for new trial that allows a petitioner, an avenue for the petitioner when such results would support the petitioner's claim for innocence but reasonable people might disagree as to whether the results are those which it would exonerate. That summarizes the committee amendments. I, too, want to acknowledge the...first of all, I want to acknowledge the leadership and support of Senator Chambers; secondly, the help and cooperation of all the interested parties, including criminal defense and county attorneys. And there has been an agreement that we will do some further refining between now and Select, but I, too, join in urging that we move the bill over to Select File and utilize the time in-between. With that, I submit the committee amendments, urge their adoption and the advancement of the bill. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Brashear. Mr. Clerk.

CLERK: Senator Chambers would move to amend the committee amendments. (AM1487, Legislative Journal page 1472.)

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SENATOR CUDABACK: Senator Chambers, to open on AM1487 to LB 659.

SENATOR CHAMBERS: Thank you, Mr. President. Members of the Legislature, what this amendment does is to, first of all, make some technical amendments. For example, there are several places in the committee amendment which will use the word "enumerated", which we decided the term "set forth" would be more effective and accurate, because we're not simply counting or declaring how many elements are in the bill but we're laying out certain procedures and describing certain steps. So we substituted the term "set forth" for the word "enumerated". When we talk about the issue of a new trial, many people don't realize that after...it may be a three-year period, whatever it is, under Nebraska law you cannot even raise the issue of actual innocence through any process we have on the books right now. U.S. Supreme Court Chief Justice William Rehnquist stated that a claim of actual innocence does not raise a constitutional basis for another trial. If you have a claim of actual innocence Rehnquist says there's nothing in the U.S. Constitution that entitles you to relief. In Nebraska, after three years, when it comes to new evidence, you have no way of bringing that evidence even if actual innocence could be proved conclusively. You're left to the Pardons Board, which is what the Nebraska Supreme Court pointed out. In view of what has happened around the country, I don't think it's necessary anymore to try to persuade people that the issue or claim of actual innocence should be available to a person during any of the time that he or she is locked up or facing death. So what we're going to offer in this amendment that I'm presenting to you now is the opportunity to bring a motion for a new trial based on a claim of actual innocence when that claim is supported by a preponderance of the evidence. Since a person obtaining a new trial is then put in the position once again of having to have proof proved against him or her beyond a reasonable doubt, we do not want to raise the threshold so high that a person with evidence of innocence cannot even get into court. So if a preponderance of the evidence that is presented, the new evidence, suggests that the claim of innocence is legitimate, then the person can get into court. This does not mean that once you get into court your claim is going to be upheld. It means that the doors of the

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courthouse are open to you. They will be open to you during any point or period of your incarceration, even after three years, if the new evidence meets the standards existing in the law right now as to what kind of new evidence is allowable for seeking a new trial. What Senator Brashear and I are both doing, even though this is not one of those subjects that I often will say is not sexy, we're making a record, a legislative history of this bill, what it means, the amendments we're offering, why we're offering them and the purpose intended to be achieved by them. You will notice, if you're looking at this amendment on your gadget, a paragraph which says: "All forensic DNA tests shall be performed by a laboratory which is accredited by the American Society of Crime Laboratory Directors--LAB--Laboratory Accreditation Board or the National Forensic Science Technology Center or by any other national accrediting body or public agency which has requirements that are substantially equivalent to or more comprehensive than those of the society or center." The prosecutors agree that the lab that does this work must be accredited. If it's not, the results can be challenged by either party and the court need not accept them. There are standards which must be met to obtain accreditation of a lab, as is the case with anything that is being accredited. We don't want some guy in his garage or somebody in his basement taking some test tubes and pouring one thing from one to the other and saying, eureka, I have found it. That won't cut it. The Nebraska State Patrol lab is not accredited. They're working toward that. I understand that UNL Medical School Center has an accredited DNA testing lab. One thing that kind of knocked my socks off, if you allow me to say that, was when the "Baron", during the committee hearing, pointed out that expense is not a basis for not enacting a bill like this because we're dealing with that core issue of innocence. So it being necessary to have an accredited lab and the State Patrol's lab not being accredited, there is going to be an A bill. That cannot be avoided. I know that; I want the body to be aware of that. The State Patrol's lab cannot do the testing. If the defendant would have a test taken and it's done by the State Patrol and it comes back in favor of the defendant, the prosecutors appropriately will challenge those findings because the lab is not accredited. If the test results came back negative toward the defendant, the defendant would

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challenge those findings appropriately. So we are in agreement that the lab must be accredited. The other items that are contained in this amendment have not been objected to by anybody. They're not earthshaking. But, nevertheless, if there are questions about any of the amendments that I'm offering to the committee amendments, if there are questions about any aspect or aspects of the committee amendments which will become the bill, I hope people will be...feel free to raise those questions so that we can have a full record. Again, I want to applaud Senator Brashear for the work that he did, and this is not going to deteriorate into a mutual admiration society, but crafting legislation of this kind is not something you just get up of a morning and say, I'm going to write this bill, any more than you could get up of a morning, Senator Cudaback, and say I think I'm going to yodel. Yodeling is a musical art form that takes skill, ability and knowledge to master. Crafting legislation like this takes even more care. We're dealing with the core issue of any criminal justice or judicial system that deals with crime and punishment--the issue of innocence. We do not want one innocent person to be locked up. We want innocent people released from jail. But the question that we ought to ask and be even more concerned about is how they went to jail in the first place...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...since they are innocent. This bill is not going to solve all the problems in the criminal justice system. It is not even addressing those underlying problems in the criminal justice system. It is in the nature of an eraser whose goal is to correct some possible miscarriages of justice. So I'm offering this amendment to the committee amendments and, once again, I'll answer any questions that you may have.

SENATOR CUDABACK: Thank you, Senator Chambers. You've heard the opening on AM1487 to the committee amendments to LB 659. There were several lights on prior to the amendment. If you don't wish to address the amendment your light will remain on. Senator Brown.

SENATOR BROWN: Thank you, Mr. President. I will speak to the

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amendment as long as I don't have to yodel. I am rising in support of the amendment and the committee amendments. You may remember the bill that we have on Final Reading that deals with the use of genetic testing and...and protection of individuals in the use of that genetic testing information. That bill includes aspects that are somewhat similar to the amendment that is before us in terms of the quality control about the testing. There is a provision in terms of requirement of labs to be accredited that is very similar to what is in this amendment. And so we will have a situation when both bills get on Final Reading where we will have some duplication, I believe, in A bills that we'll need to resolve at that point in time. But I believe that this is an obligation that we have to our criminal justice system and to those individuals that are a part of that system that we take advantage of. When we were discussing LB 432, we talked a lot about the dangers that this kind of information can provide. In this bill, we are looking at one of the positive aspects that technology provides us in being able to, in those instances where there is biological evidence, to be able to prove either the guilt or innocence of the individual involved, and so we...we have sort of competing things, but they include similar provisions because they both address the quality of the testing so that we can make sure that whatever...whatever that we're doing that we...we are doing it in a way that is justifiable. And I support not only the amendment but the committee amendments because I think the committee amendments make clear the process by which an individual would get the opportunity to have the test done. And this is, as I said before, the positive side of technology and I think that we should embrace it, as long as we put in place all those quality controls, that we make sure that what we're doing is the right thing. Thank you.

SENATOR CUDABACK: Thank you, Senator Brown. For discussion, the Chambers amendment to the committee amendments to LB 659, the lights that are on are Senators Chambers, Bromm, Brashear, and Aguilar. Senator Chambers.

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I had touched on a provision in my amendment that says that a claim of actual innocence would be supported by a

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preponderance of the evidence. Remember, this is talking about the threshold necessary to get into court. You should not have to have so high a threshold to even get into court that you may not be able to make it. I think that whenever you're seeking a new trial, whatever the standard is for obtaining a new trial is what should be the case here. It probably wouldn't even be necessary to say, by a preponderance of the evidence, but that the claim...that you raise the claim and it is supported by evidence, and then the court is going to make the determination of whether there should be a new trial. But, beyond that particular item, there is going to be court involvement at every step along the way. I had been asked whether or not the defendant could depose experts. Those are issues that the court will make a decision on, as it does in other cases, so it is not necessary in a bill like this to give a laundry list of every step and stage that will take place. What we're doing here is simply providing a process by which a person can raise an issue that will be decided by a court. There is no way under the law, as it exists now, for that to take place. Once it gets into court the judge is going to make rulings, the lawyers will make arguments, evidence will be presented. Some evidence may be allowed in; some may not. But those are the things that attend any trial, any hearing that takes place, so all of those things are already taken care of by the existing law. What I want to mention that Senator Brown may or may not have mentioned, in her genetic testing bill there is a requirement that the State Patrol lab be accredited also. The State Patrol, from what I have been told, is working in that direction now, but it won't hurt to have it statutorily required. I'm not going to take a great amount of time speaking on turns that I have when I punch on my button, but I will answer questions that people bring up. If it's not necessary to go into a matter any further, I will not just automatically do so. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Bromm, on the Chambers amendment.

SENATOR BROMM: Thank you, Mr. President, and let me say right off the top that this is a bill which I very much think that I will support and want to support, and I commend the committee and Senator Chambers for getting into the issue and doing what

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would appear to be a lot of work and a lot of good work. But that doesn't mean that I don't have questions or that there aren't some things that need to be discussed or perhaps, shall I say, fine tuned, and so that is the purpose for which I am reading the bill and have tried to have a chance to read it and I do have some questions. And the questions I'm going to try to confine myself to would be the amendment, but it may slip over into the...I would say the Chambers amendment, but it may slip over into the committee amendment. I wonder if Senator Chambers would yield to a question, please.

SENATOR CUDABACK: Would you yield, Senator?

SENATOR CHAMBERS: Yes, and while I'm yielding, Senator Bromm, I think the amendment and the committee amendment are so interlaced that all of it is available and on the table.

SENATOR BROMM: Okay. Senator Chambers, one of the...and if you said this and I missed it because there were some other discussions going on here, I'll ask you to repeat it, but in your amendment, you're...you're specifying that the lab must be accredited and so forth or...or by a public agency which has requirements that are substantially equivalent to one or...to or more comprehensive than the American Society or the...the other center that you mentioned. Now, my question is this. Right now, at least from what I'm familiar with, most of the testing that's done on crimes is done at the Nebraska State Patrol laboratory. Do you know whether or not that laboratory meets the criteria that is specified in your amendment?

SENATOR CHAMBERS: I know that it does not. And the prosecutors, in the letter that they sent around, some of the senators got it, I don't know if everybody did...

SENATOR BROMM: I haven't read it yet.

SENATOR CHAMBERS: ...okay, but they're mentioning the very accrediting agency that is contained in the amendment that I'm offering and we hadn't gotten our heads together on that, but maybe they saw this amendment printed in the Journal. But a part of it, and I don't know if this is what you're considering,

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that may not be necessary since we're talking about accrediting, maybe we...we don't need "or public agency" and the rest of that. But the reason the language was drafted like that was to have it broad enough to cover whatever kind of accrediting may occur, but I don't think it should be so broad and there be so many entities that a question could arise. The one that seems to be accepted and that the prosecutors mention specifically is this American Society of Crime Laboratory Directors. So I...that's one of the matters that I will discuss between now and Select File to see if some of this language could be eliminated. But to specifically answer your question, the State Patrol lab is not accredited at this time by any agency but they're working toward it and it might be a two-year process before they will complete what needs to be done in order to be accredited.

SENATOR BROMM: Okay, then if you...if this situation comes up before the State Patrol lab is...meets whatever requirements you settle on in the bill, does that mean the material goes out of state to some accredited laboratory, I assume?

SENATOR CHAMBERS: I was told, and I think I may have had a letter to that effect some time ago, that UNMC has an accredited lab...

SENATOR BROMM: Okay.

SENATOR CHAMBERS: ...that can do this kind of testing.

SENATOR BROMM: Okay.

SENATOR CHAMBERS: But, once again, the parties will be battling,...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...the judge is there and a determination can be made at that time of where they would agree it should go. But that UNMC lab, I understand, is accredited.

SENATOR BROMM: Okay. And then just for my education and

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consideration by the body, what...do you have any idea what kind of cost we look at when we do a DNA test at a certified lab?

SENATOR CHAMBERS: At this point, I do not.

SENATOR BROMM: Okay. Then in...and this may relate to the...this may relate to the bill or the committee amendment. You mention in Section 5 that if the person filing the motion for the testing is indigent the costs shall be paid by the state. Okay. Are we talking...are we talking the state as in the state of Nebraska, I assume? If the prisoner...and most likely the person would be incarcerated...

SENATOR CUDABACK: Time.

SENATOR BROMM: ...in the State Penitentiary, but I'm wanting to know if we're involving county versus state cost in any fashion. So when I have more time I'll get into that. Thank you.

SENATOR CUDABACK: Thank you, Senator Bromm. We're discussing the Chambers amendment to the committee amendments. Senator Brashear, followed by Senators Wehrbein, Bromm, and Chambers. Senator Brashear.

SENATOR BRASHEAR: Thank you, Mr. President. Members of the body, I simply want to rise in support of the amendment to the amendment by Senator Chambers. It is an improvement on the work that is on file before it. It adds specificity. It certainly adds standards and qualifications with regard to the testing. It's obviously what we want to do and I urge the adoption of the amendment to the amendment. Thank you.

SENATOR CUDABACK: Thank you, Senator Brashear. Senator Wehrbein, on that amendment.

SENATOR WEHRBEIN: Thank you, Mr. President. Members, I want to ask a question or two, I guess maybe Ernie, Senator Chambers, please, if he'll...

SENATOR CUDABACK: Would you yield,...

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SENATOR CHAMBERS: Yes.

SENATOR CUDABACK: ...Senator Chambers?

SENATOR WEHRBEIN: Two questions that have not been brought up and is the approximate cost per lab test and what you presume the use of this would be in terms of (inaudible). Now, I could talk to our Fiscal, but I'd like to hear some comments from you, Senator Chambers, on that if you know.

SENATOR CHAMBERS: No, Senator Wehrbein, I wasn't aware that the State Patrol lab was not certified, and I'm not aware of what the cost would be at UNMC or if that's the only lab that would be used, so there's going to have to be some work done on that and I want the work to be done so that the body will know exactly what we have or as close as we can come to figuring exactly what we'll have in the way of expenses. I don't have any idea of how many people would make use of this bill but, remember, it has to be a case where biological evidence is available. If there's no biological evidence, no matter what the crime or what a person's sentence, there is no way that this bill can be used. And if the biological evidence has not been maintained in a manner that would avoid contamination, then a question is raised as to whether or not this bill would come into play, but some of those are questions that would have to be resolved once a person files to try to take advantage of this bill. I cannot give you a more specific answer than I have, though.

SENATOR WEHRBEIN: Okay. And is there...what I'm also concerned about, and maybe you don't know but maybe you'd have a comment about, is there potential for frivolity here or abuse of the system doing this? Are you fairly confident the way you have the bill written that it should preclude using the preponderance of evidence, if I may, that would...should preclude someone doing this for a lark or...

SENATOR CHAMBERS: Right. First of all, Senator, if...when we're talking about the DNA testing, a test may prove to be inconclusive. Now, I don't know what the court will say in that set of circumstances. The court may say, well, I'm not going to

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make a final determination at this time, but the testing will have taken place. Senator Brashear was wise enough to realize that there should be an avenue available for the person to raise the issues during a motion for a new trial, so if the test is inconclusive it raises a set of issues apart from what we're talking about mainly in the bill. If the test comes back and exonerates the person, then the court should release that person. But, again, if the court chooses not to, then the inmate can move for a new trial and get relief in that set of circumstances. If the test comes back and nails the person, then that just about is curtains. I'm not going to say he or she might not try to appeal, but here is what inmates know, and sometimes we don't give them credit for being intelligent because we say if they were intelligent they wouldn't have embarked on a life of crime and gotten caught. But if I was involved in a crime I'd know whether I did it or not, and I will know that if that evidence is tested it's going to nail me. So, because of the nature of the test and how reliable it is in making determinations, I do not believe that people who do not genuinely have an issue of their innocence will go through this process,...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...because it can establish guilt as well as innocence.

SENATOR WEHRBEIN: Well, thank you very much, because I agree with you. I kind of wanted to hear that said because I...I...that's my view of this too, and I wouldn't think that there would be abuse. On the other hand, maybe there's something I hadn't thought of. Because I want to support the bill. I will support the bill. Obviously, a huge A bill might catch me by shock, but at this point I would be...want to advance the bill. It will hinge...we don't get the fiscal note till this amendment is passed. We will have that for Select File and so I guess I have cautious support at this point. But I do want to have a better understanding of the cost. Thank you.

SENATOR CUDABACK: Thank you, Senator Wehrbein. Senator Bromm,

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on the Chambers amendment to the committee amendment.

SENATOR BROMM: Thank you, Senator Cudaback. And, again, I apologize if I missed comments on this, but I need to ask about it. In the...in the Chambers amendment to the committee amendments, Senator Chambers, on...in...it would be line, well, 17-18 of that amendment, it changes a portion of the bill...of the committee amendment which said that...that...and this deals with getting a new trial after a conviction and after some DNA testing. The present language in the bill says that the motion for new trial "shall be filed within a reasonable time after discovery of the new evidence and cannot be filed more than three years after the date of the verdict unless the new evidence claims actual innocence and is supported by clear and convincing evidence of such innocence." That's what the committee amendments says. If I'm putting this in the right place, your amendment says "cannot be filed more than three years after the verdict unless the new evidence supports a claim of actual innocence by a preponderance of the evidence." Now, those are a lot of legal terms, but I see the amendment being significantly different than the...I see your amendment putting in a significantly different standard than the committee amendment and I would certainly...I guess I would ask you the difference between those two terminologies, the committee amendment and your amendment, if you could give me your understanding or your intent in that respect.

SENATOR CUDABACK: Are you asking for a response?

SENATOR BROMM: I...I would ask Senator Chambers if he would yield to a question...

SENATOR CUDABACK: Senator Chambers, do you yield?

SENATOR BROMM: ...in that respect.

SENATOR CHAMBERS: Yes. Mr. President and members of the Legislature, we have two streams flowing in the same direction. They are parallel, but they are distinct. One part of the bill deals with the system we're establishing for handling DNA testing, DNA testing which can take place after a person has

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been convicted and locked up. That is the primary thrust of the bill. Under existing law, move over to this parallel stream now, if you bring new evidence of your innocence but that evidence is found more than three years after you've been sentenced, you cannot get into court to bring that new evidence. So this amendment that I'm offering amends the existing law that sets a cutoff date of three years for bringing new evidence for any purpose. What my amendment would do is say that if the claim is based on actual innocence that three-year cutoff date does not apply; that if your claim is one of actual innocence, after the three-year cutoff you can raise that claim, but to get into court on that claim you have to show by a preponderance of the evidence that you have such a claim. Once you get into court there will be a hearing and the judge will look at this matter like any other motion for a new trial would be looked at. That's why I was saying earlier I don't know that any standard needs to be put in such as by a preponderance of the evidence because, and now,...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...Senator Bromm, I'll address it to you, this is looking at the existing law relative to new evidence being introduced for any purpose. This is dealing only with a claim of actual innocence. It would waive that three-year absolute cutoff date, but you would have to show by a preponderance of the evidence that you have a legitimate claim, and I don't think I have...oh, was I on your time or mine?

SENATOR BROMM: Yeah. Yeah.

SENATOR CHAMBERS: I was on my time or yours?

SENATOR BROMM: No, mine.

SENATOR CHAMBERS: I'm sorry.

SENATOR CUDABACK: On Senator Bromm's time.

SENATOR CHAMBERS: But are you ready now to take it back?

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SENATOR BROMM: I'm ready to take it back.

SENATOR CHAMBERS: Okay.

SENATOR BROMM: Thank you.

SENATOR CUDABACK: About 30 seconds.

SENATOR BROMM: Thirty seconds. Let me say that I think that subject that Senator Chambers speaks of cries out for more discussion and consideration and, although I don't have enough time to ask him, I will ask him at some point whether that is another area that he would be willing to work on between now and Select File, because...

SENATOR CUDABACK: Time.

SENATOR BROMM: ...I think it's significant and there are some inconsistencies that I would like to go into. Thank you.

SENATOR CUDABACK: Thank you, Senator Bromm. Senator Chambers, your light is next.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I know what it means to be cut off in mid flight, so I'm going to give Senator Bromm a bit of my time, whatever he needs to finish the thought that he was embarking upon.

SENATOR BROMM: Okay. Senator Chambers, the thought that I had is the terminology in the committee amendment which speaks about new evidence claiming actual innocence and supported by clear and convincing evidence of such evidence is in my view quite a bit different than...than supporting a claim of actual innocence by a preponderance of the evidence. I think that is...I think you would agree there is a difference. We want to explore that difference at some point and see which the best policy decision is. And so I won't take any more of your time, but that's my thought.

SENATOR CUDABACK: Thank you, Senator Bromm. Senator Chambers, you have about four minutes left.

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SENATOR CHAMBERS: Thank you. And, Senator Bromm, here's what I wanted to emphasize. Right now, under the law, there is no way to raise the issue of actual innocence after three years. You cannot raise it, period. So what this amendment is designed to do, and it's contained in the committee amendment, is to allow a claim of actual innocence, apart from DNA testing. This is for anybody, anybody, to allow that issue to be raised after the three-year period. It first was thought, when the committee amendment was being drafted, that a very high threshold should be put in a person's path before even getting into court. Remember, all that we're talking about with this amendment that I'm offering is getting a new trial. You cannot even request a new trial...I meant, you can request it but you're going to be kicked out right away because if the three years have elapsed since you were sentenced you cannot get a new trial based on a claim of actual innocence. There is no way under the law you can raise that issue after the three-year period has passed. What I wanted to see us do, while we're correcting the problem of the DNA testing being made available, we would also look at what I have always felt was an unreasonable cutoff of the right to raise the issue of actual innocence. You should not be left to going to the Pardons Board when evidence has come forth that would show your innocence. Let's say that somebody on deathbed confesses to the crime and gives information that only the perpetrator would know. Under the existing law, you could not raise that issue and get back into court on that basis. Let's say that you could bring an alibi that you forgot about because you were having an audience with the Pope when the crime was committed, and you have tickets from the airline and every thing else and photographs, that would not get you into court after the three-year period. The only thing possible is to go through the Pardons Board. Some problems that exist because the system itself miscarried should be correctable within the system. So what this amendment does is to waive the three-year limitation when it comes to a claim of actual innocence, and the bar should not be raised so high that you cannot even get into court. If you get into court for a new trial, and the court listens to what you say and says, all right, you're entitled to a new trial. That means that you're situated as you were before the conviction and now you are deemed innocent and the state has to

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prove...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...beyond a reasonable doubt that you're guilty. You don't have to say a word. So we should not put a high threshold before you even get into court. I don't even know that we need to put a preponderance of the evidence. Let the claim be made. Let the person raising the claim present the evidence. Let the court review that evidence and determine whether there should be a new trial in that case as the court would in every other case where a request is made for a new trial. If before the three-year period is up, you want to raise the issue of actual innocence, you don't have to meet a standard of clear and convincing proof. You don't have to do that. You just file your motion and you present your evidence. And if it reaches that level that the court feels justifies a new trial, you get the new trial. So I want that to be the system and the standard that we would apply in this...

SENATOR CUDABACK: Time.

SENATOR CHAMBERS: ...case.

SENATOR CUDABACK: Thank you, Senator Chambers, and that was your third time outside of closing. Senator Bromm, and this will be your third time.

SENATOR BROMM: Thank you, Senator Cudaback, and, Senator Chambers, I...there isn't a lot that you said that I disagree with at all, but I want to be sure that we are clear and that we know what we're doing when we make this change. As I see the green copy of the bill, getting into the standard for a new trial for a postconviction situation was not addressed in the green copy of the bill. It was DNA subject matter and the committee amendment does deal with it, and then your amendment deals with it more. So that's why I am wanting to spend a little bit of time on that and I don't want to hold the bill up because I think, for the most part, you've said there is work to do, you understand that, and you're going to be working on it, and I appreciate that. But I...I don't know yet how I feel

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about the language you've chosen to use. I know it's a lower threshold than the committee amendment, and the committee amendment is a lower threshold. As you indicated, there really isn't any provision after three years in existing law statewide, at least, but the language that you've chosen which simply says if the evidence supports a claim of actual innocence by a preponderance of the evidence seems to me to be fairly...fairly modest and maybe...and maybe it should be but we all know that there's also a concern about frivolous claims that can be made that do clog up the court system and do make it difficult to find time to deal with those cases that are actually very...very much needing attention. And so I have that concern. I will tell you that I have that concern. I don't have a problem with the rest of your amendment. I do...I do want to see some additional information before Select File on how we can make sure that we have labs available and at least approximately what kind of cost we're looking at because I think we're going to see, at least initially, the first year or two I would envision that we would see a fairly significant or a number of cases, and if they're...and there should be. And after that, I am sure we will level off but we should have some idea of what we're looking at in terms of potential cost and I'm sure that you will do your best to try to narrow that down. So with that, I will conclude my...my comments and say that I will be looking for more discussion on this particular language on a new trial standard prior to Select File and discussing of it, Senator Chambers. Thank you.

SENATOR CUDABACK: Thank you, Senator Bromm. (Visitors introduced.) On with the discussion, Senator Landis, followed by Senator Suttle, to the Chambers amendment to the committee amendment to LB 659.

SENATOR LANDIS: Mr. Speaker, members of the Legislature, I received a letter from Gary Lacey, the Lancaster County Attorney, who said that we would be debating the merits of this and that the prosecutors in Douglas, Sarpy and Lancaster County believe that there should be a law protecting erroneously convicted persons. So I suppose as a general goal I think they share that with Senator Chambers and the Judiciary Committee. There were six points in the Lacey letter and I will, of course,

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give it to Senator Chambers. I thought I'd read them into the record and then let Senator Chambers react to these six in any way that he wants to. I am not endorsing the Lancaster County Attorney's point of view, I'm just raising the same questions he did. He said a bill like this should require that the convicted person must, in a verified petition filed in the court, allege that the identity of the perpetrator was the issue at the trial and DNA testing of biological material will convincingly demonstrate the actual innocence of the petitioner, the first of six ideas, and I'll hand these to Senator Chambers when I'm done. Two, any remedy enacted should be fashioned to identify the innocent and protect against abuse by petitioners. Three, the laboratory performing DNA testing should be certified by the American Society of Crime Laboratory Directors, ASCLD lab, I guess it is, or a similar reputable forensic lab adhering to ASCLD procedures. Many labs today are not so certified. Fourth, the particular test conducted must be generally accepted in the scientific community to be admissible in evidence. Fifth, the state of Nebraska should provide funding for the testing under judicial supervision. And, sixth, funding should be provided for the training of judiciary, law enforcement, prosecutors, and the defense bar due to the complexity and nuance inherent in the forensic DNA testing. What I am going to do is I am going to give this letter to Senator Chambers. I am going to yield him whatever time I have or I'll renew my light and let him use my time as well. My questions to him will be this, how close does LB 659 come to approximately meet these concerns and in what way does LB 659 not reflect these six interests? With that, I'll...actually, I'll...well, I'll waive whatever time I have to Senator Chambers. I will renew my light and also give him the letter.

SENATOR CUDABACK: Senator Chambers, you have about two and a half minutes.

SENATOR CHAMBERS: Thank you. And, Senator Landis, I have a copy of the letter. They may have sent it to everybody, but in number one it mentions the convicted person must, in a verified petition filed in court, allege that the identity of the perpetrator was the issue at the trial, and DNA testing of biological material would convincingly demonstrate the actual

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innocence of the petitioner. This, in general, is what the bill does aim at, but in terms of specific words and language, it's not in the bill with a definitional attachment as the county attorneys seem to want. But it seems to me that whenever a person is accused of a crime, his or her identity is at issue because you've got to establish that this person accused is the one who committed the crime, so that is one of the areas I'm going to explore with him to see precisely what they're asking. And I've talked to their representative and they understood what I was seeking and we will be able to work our way through that. Two, any remedy should be fashioned to identify the innocent and protect against abuse by petitioners. We've attempted to do that in the bill, but when it comes to what they call abuse, I don't know if they mean that somebody would file a frivolous motion. That is something that...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...the court would handle and it would simply reject it out of hand. For example, if there is no biological evidence in the case, if the chain of custody is defective, that would not get a person into court. On number three, where we talk about the certified or accredited lab, we, meaning those who support this bill, and what the prosecutors have asked for are in sync by mentioning the same organization. Four, the particular test conducted must be generally accepted in the scientific community. We have taken care of that in the bill by mentioning specific types of tests which are considered state of the art, and since your time is running out at this point, I will continue going through this the next time I get a chance to.

SENATOR CUDABACK: Thank you, Senator Landis and Senator Chambers. Senator Suttle, on the Chambers amendment.

SENATOR SUTTLE: I would yield my time to Senator Chambers.

SENATOR CUDABACK: Senator Chambers, you have almost five minutes.

SENATOR CHAMBERS: Thank you, Senator Suttle. Thank you,

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Mr. President. One day earlier this week I had mentioned how we timed these things in the culture corner, that...or when time is needed, somebody is right there to give it. The fifth item that Senator Landis mentioned from the letter sent by the county attorney says, "The state of Nebraska should provide funding for the testing under judicial supervision." I agree with that. I do believe that this is a state procedure that is being created and the state, meaning the state of Nebraska, has the obligation to pay. The term state could mean in a criminal proceeding whichever subdivision is bringing the action because any criminal action, no matter how insignificant or serious, is brought in the name of the state. If it's a traffic violation, it will say state versus whoever it is in the captions on the proceeding. So I intend that the state of Nebraska would provide the funding. Six, funding should be provided for the training of the judiciary, law enforcement, prosecutors, and the defense bar due to the complexity and nuance inherent in forensic DNA testing. This is something which I'm not sure that the state should set money aside for specifically. We already have a requirement in the law based on some legislation I brought in the past that requires county attorneys to take this continuing education and for them that could simply be made a part of their testing. I think the court, itself, and I will talk to the Chief Justice about this, could implement a program for giving the judges training. When it comes to the defense bar, they should assume the responsibility for acquainting themselves with new rules of evidence, new types of evidence but, again, it's one of those areas that I will discuss. While Senator Bromm and I were engaged in our discussion, one of these things that comes over these gadgets was sent to one of my colleagues and it is from Sheriff Vern Hjorth, H-j-o-r-t-h, Madison County Sheriff. The "Baron" doesn't need this because he already supports the bill. Here is what he wrote: While watching debate on LB 659, I speak on behalf of all sheriffs in the state of Nebraska. Let it be known we support LB 659 and it's amendments. As professional law enforcement officers, we do not expect or accept the wrongful convictions of innocent persons. That's from the Madison County Sheriff who is the Chairman of the Nebraska Sheriffs Association Legislative Committee. And he mentioned the amendment. Senator Bromm,...oh, what did you say?

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SENATOR CUDABACK: I said nothing, Senator.

SENATOR CHAMBERS: Oh, I thought I heard somebody...okay. The amendments that I'm talking about that I'm offering to the committee amendment were printed in the Journal. The prosecutors and everybody else who reads the Journal had the opportunity to see them. The sheriffs organization has seen and agrees. I believe the discussion initiated by Senator Bromm is extremely important. I believe it is right on point and I think we ought to continue it because there is a point or two that I believe need to be made and we should have a complete record. When I said that I didn't want the bill to get hung up, I didn't mean we cannot discuss it thoroughly on General File. I meant I don't want to just leave it here until every issue that somebody may have...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...will be resolved. So at this point, while some of these issues are clear in people's minds, while questions may be formulating, they should be asked. And even if you cannot get the words exactly the way you want to in formulating a question, I will help you to see if we can't come to the issue that you're trying to raise so that it can be addressed. I don't want anybody at any point to say that some significant portion of this bill was slipped through. I am opening myself to any question about any aspect of the bill, and I've tried to cover all of those matters that I thought were important, and I believe that Senator Brashear, in presenting the committee amendment, did the same thing from his perspective. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. (Visitors introduced.) Senator Landis, followed by Senator Brown and Jones. Senator Landis. I do not see Senator Landis. Senator Brown.

SENATOR BROWN: Mr. President, members of the Legislature, I will quickly explain to you the very bad copy, the copies, it's not the technology here, the copies we started with were not

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very good, but of how this issue, if you will look on...in the first grouping, the stain is the middle one, and the one immediately to the left of the stain is identical and that is how...there is a staining process that is done on the genetic material and that's how they match it up. In the second grouping, there is a mother and a child, and then the father is the F2, and on the third one the specimen is the second one over and the one next to it on the right is the...is the suspect, and I just thought you might like to have something that you can look at that shows how this will be used and how this will be done, and I would yield the rest of my time to Senator Chambers. Thank you.

SENATOR CUDABACK: Senator Chambers, you have about four minutes left.

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Brown. And I don't want to try to give the impression that I am an expert in this field because I'm not. But this shows why the State Patrol needs to have its lab accredited. That is just a little bit of lighthearted humor based on the poor copy. As Senator Brown pointed out, it wouldn't reproduce well, but I think there is enough there for you to get a general idea of how this science might work. But something that's interesting, when it's alleged that a sample has been contaminated, say that you're trying to determine whether a suspect committed a rape and you have semen. There are certain washes, as they are called, that they use to release DNA, and I don't know whether nature anticipated this or not, but the wash that will release DNA from blood is milder, if you will let me use that term, than the wash that releases DNA from sperm. So what you can actually do is put the sample, let's say there is blood and sperm. You can put a wash that will eliminate the blood DNA, and it leaves the sperm untouched. It takes a stronger wash to release the DNA from the sperm, so they have different types of tests to get at DNA from different substances or biological parts of the body. Oh, well, all parts are biological. But I want to get back to what Senator Bromm was talking about. In my language I'm talking, Senator Bromm, about merely filing a motion for a new trial. On page 8 of the committee amendment, because that's what I'm amending, this is what it would say starting in

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line 12: A motion for new trial based on the grounds enumerated in subdivision (5) of this sec...a certain section, shall be filed within a reasonable time after the discovery of the new evidence and cannot be filed more than three years after the date of the verdict. That's the way the law is now, three years after the date of the verdict you're out. Then, this is new: unless the new evidence claims actual innocence and is supported by clear and convincing evidence of such innocence. That is new language. That is not in the law right now. It was put into the committee amendment. The more I analyze this, we should not have any standard, not even preponderance of the evidence because all we're talking about here is the right to file a new trial. So if you make a claim of actual innocence, all that this...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...amendment does is makes it possible for you to file that claim, and then the court, whether in a hearing if one is felt necessary, or no hearing if the claim is flimsy, will determine whether or not there should be a new trial. Filing this motion does not guarantee you a new trial. All that is does, all the amendment does is to say that when you're making a claim of actual evidence, you can raise that claim even if the three-year period after verdict has elapsed. So I think, Senator Bromm, what has created the confusion was putting in any standards because if you file a motion for a new trial now,...

SENATOR CUDABACK: Time.

SENATOR CHAMBERS: ...there is no standard that is mentioned in statute. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Jones, on the Chambers amendment to the committee amendments to LB 659.

SENATOR JONES: Mr. President, members of the body, I'd like to yield my time to Senator Bromm.

SENATOR CUDABACK: Senator Bromm, you have almost five minutes.

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SENATOR BROMM: Thank you, Senator Jones. Senator Chambers, we spoke about cost, I am going to shift back to cost for a minute, and we didn't...we didn't get back to that on the microphone, at least I didn't, and what I expressed the concern was at least in part of the fiscal note on the green copy of the bill had indicated that there could be costs incurred by the county or local political subdivision. And in the committee amendments, and I think what you told me off of the microphone that it was your feeling when the DNA testing is ordered in a situation that we've been talking about this morning that the state should incur that cost. And I would agree with that, but I would like to ask you to yield to a question and ask you if the language in the committee amendment, if that is adopted, if it is your intent and understanding that the cost of the DNA testing ordered under subsection (5) would be paid by the state, if you will yield to that question?

SENATOR CHAMBERS: Yes.

SENATOR CUDABACK: Senator Chambers.

SENATOR CHAMBERS: Senator Bromm, I will yield, and in response to a series of questions Senator Landis put to me, I said explicitly that I believe and it is my intention that the state of Nebraska absorb those costs. This is a system or a procedure being created by the state and I believe it's appropriate that the state bear the cost, not the county, not the city, if that answers the question directly enough.

SENATOR BROMM: Right, I think it does. Then, again, probably slipping over to some language which is probably in the committee amendments and it speaks about, in Section 4 of the committee amendments: Notwithstanding any other provision of law, a person in custody pursuant to the judgment of a court may, at any time after conviction, file a motion, with or without supporting affidavits. I noticed that "with or without supporting affidavits" and recall that in certain situations in the motion for a new trial, it must be supported by affidavits under the existing law, and that's...are you intending to simply eliminate the need for affidavits in all situations or in the new trial based on DNA testing or the biological matter, that it

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can be filed with or without affidavits?

SENATOR CHAMBERS: This is language that Senator Brashear wanted and I don't see him at his seat right now.

SENATOR BROMM: Okay.

SENATOR CHAMBERS: Oh, here he comes. Senator Brashear, Senator Bromm, is going to phrase a question and I would like him to phrase it so you will understand what he is asking, about filing the motion with or without affidavits, just so you will be aware of what we were purauing.

SENATOR BROMM: Thank you, Senator Chambers. Senator Brashear, I'd ask if you would yield.

SENATOR CUDABACK: Will you yield, Senator Brashear, to a question from Senator Bromm?

SENATOR BRASHEAR: Yes, Mr. President.

SENATOR BROMM: Senator Brashear, if you didn't hear it, I'm trying to reconcile, and this may be one of the things that need to be worked on between now and the next time the bill is on the floor, but the language in the committee amendment at the top of...at the top of page 3, it talks about the person in custody at any time after conviction can file a motion with or without supporting affidavits. Now that is...that is intended...is that intended to...

SENATOR CUDABACK: One minute.

SENATOR BROMM: ...apply to the situation where the new trial is based on DNA testing? Or does it apply to any...any basis for a new trial, that you don't have to have affidavits?

SENATOR BRASHEAR: That is intended to apply with regard to the DNA testing. It makes specific reference to it.

SENATOR BROMM: Okay, so the...

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SENATOR BRASHEAR: At line 4.

SENATOR BROMM: ...the existing law, which requires affidavits under certain subsections would still be in place?

SENATOR BRASHEAR: Yes, that would be my understanding.

SENATOR BROMM: Okay. Thank you, thank you very much. I'll...I'll yield the rest of my time back to the Chair.

SENATOR CUDABACK: Thank you, Senator Bromm. (Visitors introduced.) Senator Tyson, on the Chambers amendment.

SENATOR TYSON: Thank you, Senator Cudaback. My time, please, to Senator Chambers.

SENATOR CUDABACK: Senator Chambers, you have almost five minutes.

SENATOR CHAMBERS: I want to thank Senator Tyson, and thank you, Mr. President. I want to go back to something that Senator Bromm had brought up about this language that I'm offering with reference to a new trial. Senator Bromm, the reason it's appropriate for the committee amendment and then my amendment to the committee amendments to address that matter is because in the green copy at the bottom of page 4, it starts: If the results of DNA testing conducted under the DNA Testing Act are favorable to the person, the court shall, then it lists the different types of relief that can be granted by the court, including in subsection (d) granting a new trial. So instead of leaving these statements or elements just sitting out there, it was determined by Senator Brashear, and I agree with him, that if a court does not grant any of these actions, remember, we are talking about the court that is hearing the matter related to the DNA testing, that is the court which could grant a new trial. Let's say the court, that court does none of these things, then the defendant, under the committee amendments, is allowed to bring a motion in another court for a new trial. So every thing does not end right at that point. Let's say that you have one of these judges, I don't know if there is one and I hope there isn't, who says, well, you can say what you want to

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about DNA, I don't believe that it is valid and I'm not granting any relief. Then the defendant can seek a new trial. And because of that, it was necessary to bring into the committee amendment the entire statute that relates to new trials because, as you know, if we strike one word from a bill...from a statute, we have to bring the entire statute in. What is new that I'm adding to the existing new trial language goes not just to DNA testing because this entire scheme that we are creating is self-contained, in a manner of speaking, so that it deals with DNA testing from the time that the first request is made by the defendant to the final resolution by whatever court handles it. That is on a track to the left. That's Track A. When we get to Track B where my amendment to the committee amendment changes the new trial law, it deals only with waiving that three-year limitation. After the verdict is entered, you have only three years, period, to raise any issue based on new evidence. If your new evidence comes three years, more than three years after verdict under the present law, you cannot file a motion for a new trial. What my amendment deals with is not proving your case. It deals with allowing you to file a motion for a new trial, and that's why I think it might remove confusion, and we can discuss this between now and Select, if all that was said is that you got to raise your issue within three years after the verdict unless it is a claim based on actual innocence. That's all that's really needed. Then when you file your motion,...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...you're going to have to include in that motion what the basis of it is. The court may look at it and say this can be resolved without a hearing. The court may look at it and say, well, we need an evidentiary hearing on this motion, and at that time, as you know, all that is available in a hearing that can be presented by both sides will be considered. This, that I am offering, has nothing to do with winning on the issue of a claim of actual innocence. It deals only with giving you the right to file a motion for a new trial more than three years after the verdict if the claim is based on actual innocence. And as you and I know, the term "claim" does not mean what it means in the street where anything a person says can be considered a claim. A claim is a request to the

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court with a factual basis and foundation which is recognized by the law...

SENATOR CUDABACK: Time.

SENATOR CHAMBERS: ...as justifying you or entitling you to what you're asking for. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. There is or there are no more lights on, Senator Chambers. If you wish to close on your amendment to the committee amendments to LB 659, you may.

SENATOR CHAMBERS: Thank you, Mr. President and members of the Legislature, nobody has really expressed opposition to the amendment that I'm offering to the committee amendments but there may be lingering questions, some of which will be put off until this bill has been advanced and we will work between today and the time that the bill comes up on Select File. I believe that every question can be answered to everybody's satisfaction. I believe that any sticking points can be smoothed over. And regardless of what the A bill happens to be, this legislation must be enacted. There is no way I would agree to enact a bill that did not require a certified or accredited lab to do the testing. Anything below that standard is pointless because what is produced by way of a result of such a test is not going to be admissible by a court anyway because it's unreliable. So what we're looking at is either passing a bill that really will meet the standards necessary to provide for testing that is going to be accepted by a court in terms of at least being admitted or we're not going to have a bill at all. I don't just want a bill that says DNA Testing Act that has my name on it, if it's just a charade. I want the bill to accomplish the purpose that we've all discussed, that the head of the sheriffs organization discussed in his e-mail that he sent this morning, that the prosecutors say is their interest, and it's a very simple one that can be simply stated. Getting to it is what all of our discussion is about. The goal is to put in place a process within the law that allows a person who may have been convicted while innocent will be able to raise that issue and obtain DNA testing if there is biological evidence available. Remember

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this, we're not talking about an alibi. We're talking about a crime where DNA or biological evidence was obtained, was a part of the evidence used to convict the person. I ask that you adopt this amendment.

SENATOR CUDABACK: Thank you, Senator Chambers. You've heard the closing on AM1487 to the committee amendments to LB 659. All in favor of that amendment vote aye, opposed nay. We are voting on the Chambers amendment to the committee amendments. Have you all voted who wish to? Record, please, Mr. Clerk.

CLERK: 29 ayes, 0 nays, Mr. President, on the adoption of Senator Chambers' amendment to the committee amendments.

SENATOR CUDABACK: The Chambers amendment is adopted. We're now open for discussion on the committee amendments to LB 659, open for discussion. Senator Bromm.

SENATOR BROMM: Thank you, Mr. President. As I have listened to the discussion this morning. and I think that it is a bill that I hope we can pass and that we can have considerable discussion on in the process for purposes of improving the bill, not for the purposes of stopping it or stalling it in any shape or form, but as I was listening to the debate and reading the bill, a question came into my mind, what happens in a situation where before...before we knew the importance of DNA, lots of time evidence, lots of time evidence was...was perhaps not taken or kept properly or might have gotten destroyed or something, and I guess I would like for Senator Chambers to comment on what ha...what does he thing would be the consequences or the remedies or the circumstances if, following this bill, the evidence was already disposed of or not adequately preserved to be tested, and that occurred before the passage of this bill, if he would yield and be willing to comment on that?

SENATOR CUDABACK: Would you respond, Senator Chambers.

SENATOR CHAMBERS: Yes, I will. Senator Bromm, I had touched on that earlier to point out that this bill cannot deal with every problem that might arise. So if there was handling of the evidence in such a way that it could have been contaminated, the

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chain of custody cannot be established, or if the evidence is no longer here, this bill offers no remedy. But when it comes to the contamination or chain of custody, we at least have evidence available, and there still is a way to get a hearing on that evidence to see if it meets the standard for testing but if, as you pointed out or asked, the evidence is no longer with us, there is no remedy available under this bill.

SENATOR BROMM: Okay, then if there were motions filed claiming that the evidence had not been properly preserved and trying to use that as a basis for something, I take it that that really wouldn't be a basis for exoneration or drastic action based on this bill, at least. Is that correct?

SENATOR CHAMBERS: No, based...right, based on this bill, there is nothing. That's why we want it narrowly limited to DNA testing. That may raise an issue in some other kind of proceeding but not under this DNA bill. Even if, Senator Bromm, a motion is made for the DNA testing, and let's say you've got a vindictive prosecutor who destroys the evidence, what the bill says is that the court can impose appropriate sanctions but that, in and of itself, that act of destruction does not put the person in a position to say that I'm innocent because the evidence was destroyed.

SENATOR BROMM: Thank you. I yield the rest of my time, Mr. President.

SENATOR CUDABACK: Thank you, Senator Bromm. Senator Chambers, your light is next. Senator Chambers waives his right...his option to speak. Senator Brashear, there are no further lights, did you wish to close on the committee amendments to LB 659?

SENATOR BRASHEAR: Mr. President, and members of the body, I simply want...there has been good discussion on the bill and there's been repeated indications there is going to be additional work done between General File and Select File. I urge the adoption of the amendments, committee amendments, and the advancement of the bill. Thank you.

SENATOR CUDABACK: You've heard the closing on the committee

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amendments to LB 659. The question before the body is, shall those amendments be adopted? All in favor vote aye, opposed nay. We are voting on the committee amendments to LB 659. Have you all voted who care to? Record, please, Mr. Clerk.

CLERK: 33 ayes, 0 nays, Mr. President, on the adoption of committee amendments.

SENATOR CUDABACK: The committee amendments are adopted. Open for discussion on advancement to E & R Initial of LB 659, Senator Hilgert on that motion.

SENATOR HILGERT: Thank you, Mr. President, members. Senator Chambers, if you could yield to a quick question. I am looking at the fiscal note and I know that you addressed part of this earlier but one of the parts in the fiscal note refers to our Attorney General's Office, and it says the Attorney General advises the bill will generate a significant amount of litigation and appeals. However, as the bill is written, I will fast forward it, and, basically, he says that the Attorney General would like to have money for a half a position. Is that...would that be in an A bill that would be following this or what are your views on the request for additional help for the Attorney General's Office regarding this bill.

SENATOR CUDABACK: Do you yield, Senator Chambers?

SENATOR CHAMBERS: Yes, I will yield. Mr. President and Senator Hilgert, I think the Attorney General's Office can absorb whatever work would be done or generated by this bill, and if he thinks that his office needs more money, he should make a request for the Appropriations Committee, but I don't think this bill, in and of itself, will generate so much work that a half person needs to be provided for in an A bill. But I certainly am not going to bring the A bill. If our fiscal staff is required to offer an A bill because some agency head says that some money is necessary, when the bill comes before us we don't have to accept that.

SENATOR HILGERT: Okay, that's an answer and thank you very much, Senator Chambers. It just came to my attention as I

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reviewed the fiscal note and wanted that into the record and some comment regarding that as far as your wishes and plans for an A bill regarding LB 659. Thank you very much, Mr. President.

SENATOR CUDABACK: Thank you, Senator Hilgert. Senator Chambers, followed by Senator Bromm.

SENATOR CHAMBERS: Mr. President, members of the Legislature, we are going to have to have an A bill. The state is going to assume the responsibility but here is what we have to consider in trying to come up with an A bill. First of all, we don't know how many cases involved biological evidence that was obtained at the scene. We don't know how many of such cases the evidence would have been maintained properly in. We don't know whether in how many cases where there may have been biological evidence that that biological evidence played no part in the case that was presented to convict the person. Let's say that there is biological evidence that the prosecution did not use, feeling that there was sufficient other evidence to convict, that would not prevent a defendant from saying you got some bloody clothes at this scene and people talked about that but it was never introduced in evidence. Well, I want that tested because the test will show it was not my blood because I've got an alibi, I wasn't even there. Those kind of issues nobody can resolve at this time because we don't know how such an issue would be raised, what impact a court would feel it has in terms of its being what they call relevant in a legal sense. There is no way of knowing how many of these cases will be disposed of in such a way that no appeal would be taken. If the test exonerates, other than the Attorney General, I don't know anybody who would say, well, we want to prosecute this case again because it wouldn't be for the Attorney General to prosecute it, it would go back to a county court and the prosecutor there would say, no, I am not going to file another action in this case, it's over. There are so many variables which exist without anybody stretching or reaching to create them that I don't know how an accurate A bill can be constructed. Maybe they will have to contact the Department of Corrections and ask how many people are here. Well, the department wouldn't know what evidence was preserved. It's not my duty or responsibility to craft an A bill. It's going to be

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difficult but my view is that whatever it is the bill still ought to be enacted. Any money that is not appropriated just won't be appropriated and the bill can still go forward. If money is appropriated, it is going to be appropriated for a purpose and somebody is going to be in charge of it. If the money is not expended for the purposes of the bill, then it will lapse somewhere, and if they don't have a place for it, I've got a big old wooden box at home. But at any rate, I don't know how they will formulate an A bill so I'm curious to see how they will do it and what the amount will be. They might say it's not determinable, but they will estimate based on the likelihood of one thing or another happening. I just don't know. What I want to assure Senator Bromm is that any question he asks I think ought to be asked. One...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...one time a young student came up to Malcolm X and said I have a question that I want to ask and it's a stupid question, and Malcolm said the only stupid question is the one that remains unasked. So while we are on an issue as serious as this, as meaningful as this, I have no resentment toward anybody for any question that is asked, or if it has to be asked again and again and again to properly get at the issue and have it addressed in a forthright manner. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. On with discussion, Senator Bromm.

SENATOR BROMM: Thank you, Mr. President, and, Senator Chambers, just to comment on the fiscal note or the A bill that you mentioned. A question was asked of me just a couple of minutes ago, we've clearly made a record that we expect the state to pay for the testing, the details as to whether that would come out of...out of the court's budget or the State Patrol budget or where it would come from perhaps can maybe be addressed in connection with the A bill, at least that's a suggestion, so we clarify what part of the state is going to pay it, so we prepare for that properly and don't unintentionally cause some budget problems somewhere. Now that's just a comment.

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Another...another question, I guess, and you talked about stupid questions, and if this...if this is one, I will take credit for it, but in the...in a situation where you've had a defendant plead guilty to a crime and the identity or use of DNA or that type of evidence never...never really reached the point where it was an issue or was used, but at a later date there is an issue of an opportunity presented by this bill where there might be a biological evidence that could be used and wasn't used in the original case partially because they pled guilty. Could you comment on that and tell the body whether or not this act would possibly provide an opportunity for a person in that situation to get before the court and use DNA evidence and ask for a test and so forth, if you would yield to that question.

SENATOR CUDABACK: Will you respond, Senator?

SENATOR CHAMBERS: Yes, I will, and, Senator Bromm, I am so happy you asked that question because it's a subject that I wanted to cover and I neglected to. There was a man sentenced to die on the basis of a confession. It was determined that his confession had been coerced. In Nebraska confessions have been thrown out that were obtained by the State Patrol, that were obtained by the Omaha police. But because DNA testing established the innocence of this person, the confession was disregarded. The existence was shown up by biological evidence. There are defendants who are advised by a public defender, and even private attorneys, things are so stacked up so bad against you, you'd better take this deal and we will work it out so you are not going to serve a lot of time. Even if I think you're innocent, you're not going to beat this. So the mere fact of a confession would not prevent a person from making a motion for DNA testing if the biological evidence is available. And I don't think that a confession should prevent that especially when people who were on death row as a result of a confession were subsequently removed because the evidence, and sometimes other than DNA, established that despite their confession they didn't commit the crime.

SENATOR BROMM: And I wanted to...I wanted to explore that because it is...certainly it happens that people plead guilty for various and sundry reasons. Maybe...maybe the risk is such

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that they just don't want to risk a death penalty. Maybe they're advised to do that by their attorney for various reasons.

SENATOR CUDABACK: One minute.

SENATOR BROMM: Maybe it's for family considerations or whatever, but I wanted to be sure to have something in the record about whether or not under those circumstances and many others, if DNA testing became available and would provide some evidence of innocence, whether or not that would, in fact, be available. In those situations you have indicated that it would be and that's the answer I thought that you would give. So thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Bromm. Senator Hilgert, on advancement of LB 659.

SENATOR HILGERT: Thank you, Mr. President. Could I ask Senator Wehrbein a question.

SENATOR CUDABACK: Will you yield, Senator Wehrbein, to a question?

SENATOR WEHRBEIN: Yes.

SENATOR HILGERT: Not to beat a dead horse so we have to take DNA testing or anything like that of that dead horse, but about this A bill, I'd like you to comment on a couple of things. And could you briefly explain because I think it might be educational to some of us. If we have an A bill that follows the bill to fund the bill, or if we put money into the budget through an amendment once our budget comes out on the floor, are there pros and cons of either methodology? And, you know, because I've seen bills passed and A bills vetoed, I've seen A bills overturned like on a moratorium. So there's a lot of permutations at the end of the day when the dust settles. Can you comment on the procedure of the A bill versus just amending the mainline budget to take care of any additional expenses once they are determined, if they can be?

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SENATOR WEHRBEIN: Well, there's probably...Mr. President and members, there's probably several ways to do but the preferable way on bills like this is to have the cost implied in this bill to follow up with an A bill. We can't, Fiscal Office, in this case, can't determine the cost of an amendment until the amendment is passed, and I will use this as an example. We have this amendment to LB 659 passed. What the implications of that will have to be determined by the Fiscal Office. Now there's always, not always, many times there is a difference of opinion as to what that actual cost from an A bill should be. From my perspective as the committee and as state statute, per state statute, it's going to be the obligation of the fiscal analyst, in this case, to determine the actual cost of this amendment. And if that includes something from the AG sobeit or whatever. In some ways I make that call as to the legitimacy of it but, under all circumstances, the true cost of this amendment will try to be arrived at and presented to the body.

SENATOR HILGERT: Okay.

SENATOR WEHRBEIN: And based on Senator Chambers testimony and in my understanding it is going to be difficult to know how many cases are going to be, what that cost will be. I think there needs to probably be some discussion about that, part of the reason I asked the question here on the floor. I haven't talked to the fiscal analyst at this point but...

SENATOR HILGERT: Thank you very much, Senator Wehrbein, and lest anyone misinterpreted by questioning, this is a matter of justice and it is a bill that I will support. And even if the A bill turns out to be something that is rather surprising as far as size, it is something that we should support. We should not skimp at all when it comes to a matter of basic fundamental justice, which I believe this bill certainly enhances in our state. So lest Senator Chambers or anyone in the lobby or watching is thinking that this is somehow some criticism of the bill and Senator Chambers' and the Judiciary Committee's efforts, they are mistaken. I am in totally support of this bill. Thank you.

SENATOR CUDABACK: Thank you, Senator Hilgert. Senator

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Chambers, there are no further senators wishing to speak at this time. Did you wish to close on advancement?

SENATOR CHAMBERS: All I would like to say, Mr. President and colleagues, is that I appreciate the discussion this morning. I believe it has value because specific areas of the bill were referred to. Senator Landis had some specific items he wanted addressed based on a letter that he had gotten from the county attorneys. I've tried to give assurances of my intention to work with people, now that doesn't mean that I'm going to agree with every position that the county attorneys may have because I don't know what all their positions may be. But it is the kind of bill where I think all those who have a legitimate interest and may have to take some action one way or the other under the bill should have the opportunity to be heard. And it is my intention to make that opportunity available by making myself available. Any questions that any of you have you need not wait till we get the bill on the floor again, you need not set up a meeting with me. You can slip me a note. You can write me a note. However you want to get your questions to me, I want you to do that. I don't want anybody after we finish our discussion of this bill to say, well, I wish this point or that point had been considered. And I am not going to say what they say at a wedding to give a person that escape hatch, speak now or forever hold your peace. I hope you will speak. I hope you will not hold your peace. I want this bill to have been thoroughly discussed, and as Senator Bromm pointed out, we need to know for sure what it is we are doing. I have not tried to spring any surprises. I don't have any surprises. And maybe that, in itself, is a surprise. But with that...oh, we do have a different person in the Chair. I just wanted to be sure that my eyes were not playing tricks. Mr. Speaker, that is all that I have to say on this bill. I hope that we will vote in sufficient numbers to advance it. Thank you.

SPEAKER KRISTENSEN PRESIDING

SPEAKER KRISTENSEN: There has been a closing, the question before the body is the advancement of LB 659. All those in favor vote aye; all those opposed vote nay. Have you all voted? Record.

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CLERK: 36 ayes, 0 nays, Mr. President, on the advancement of LB 659.

SPEAKER KRISTENSEN: The bill advances. We next move to LB 781. Mr. Clerk.

CLERK: LB 781, Mr. President, introduced by Senator Wehrbein. (Read title.) Bill was introduced on January 17, referred to the Judiciary Committee for public hearing, advanced to General File. I do have committee amendments, Mr. President. (AM1352, Legislative Journal page 1403.)

SPEAKER KRISTENSEN: Senator Wehrbein, you're recognized to open on the bill.

SENATOR WEHRBEIN: Mr. Speaker, members of the body, I will open briefly on the bill. Suffice it to say the Judiciary Committee amendment will become the bill and I'm going to just give a brief introduction as to the reason for the bill. The original intent of LB 781 and, by the way, this is about the third time I've introduced a bill similar to this, but the original intent was to provide for a rebuttable presumption in a civil action for damages involving livestock on a Nebraska highway. Specifically, the green bill or the bill...copy states that if the livestock owner shows that the livestock escaped a legal fence, as defined by Nebraska state law, there would be a rebuttable presumption that the livestock was outside the enclosure through no fault or negligence of the owner. However, the pending committee amendment, one which I fully endorse and support, would strike the original provisions of LB 781 in order to establish sound principles that are to apply in all civil actions involving motor vehicle collisions with escaped livestock. And I will let Senator Brashear, who worked with us very diligently over the last few years actually, and particularly the last few months, to arrive at some common ground that I believe will be more acceptable to the broad public as...in general, and I applaud the committee for working through that. We've had several conferences and discussions on...on this. It is obviously...a lot of it is a lawyers' issue, because of the...the philosophy and the discussion behind

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res ipsa loquitur. I finally learned how to pronounce that. But I will let Senator Brashear explain his committee amendments in due time. If I may, Mr. Speaker, I would like to have Senator Jones, who I appreciate prioritizing this bill, I'd like to have Senator Jones have a few minutes of my time and then it will be time for Senator Brashear and his committee amendments. Mr. Speaker, Senator Jones, if I might.

SPEAKER KRISTENSEN: Senator Jones.

SENATOR JONES: Thank you, Mr. Speaker, members of the body. And thank you, Roger Wehrbein, for this time to talk just a minute on it. This has been an issue that I've been interested in for several years and I've been following the issue every time that Senator Wehrbein introduced a bill. In fact, I was going to take it as my priority bill last year but we failed to get every...all the details worked out on it. Animals on the road is...can happen in the state of Nebraska, I realize that, and there's a big number of cattle in this state and so it's bound to happen. So we kind of like to have something in place. I don't want to talk about the bill very much the way it's drafted right now because the committee amendments become the bill, and I guess I'd, at this time, I'd just like to thank the committee, Judiciary Committee, for working on this and get it worded so that I think it's really the right way to have it worded, and I commend the committee for doing that and I especially want to thank Senator Brashear for the work he did on it. With that, I'm going to just let people understand just exactly what the committee amendments do and I think it will become the bill after that. Thank you.

SPEAKER KRISTENSEN: Chair of the Judiciary Committee, Senator Brashear, you're recognized to open on the committee amendments.

SENATOR BRASHEAR: Thank you, Mr. Speaker. Members of the body, the committee amendments do become the bill. You've heard of Senator Jones' interest over a long period of time. You've heard Senator Wehrbein indicate that he's introduced the bill three times, and your Judiciary Committee has heard the bill three times. We thought that this was the point in time, that moment in history, when we should come forward and

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constructively work together to be responsive to a significant segment of our population and their concerns. Let me tell you as background that LB 781 relates to a 1995 Nebraska Supreme Court decision which permitted or stood for the proposition that the doctrine of res ipsa loquitur could be utilized in a negligence case arising from a livestock-automobile collision incident. Res ipsa loquitur is a term of art. It's also the name of a doctrine of law in negligence. Its origins are traced to the series of eighteenth and nineteenth century English cases. Under the doctrine of res ipsa loquitur, which literally means "the thing speaks for itself", the plaintiff or claimant in a livestock-automobile collision incident has the burden of proving, by the greater weight of the evidence, each of the following elements of the claimant's case: one, that the livestock-automobile collision was proximately caused by escaped livestock that was in the exclusive control of the defendant; two, that in the normal course of events the collision would not have occurred but for the negligence of the defendant; three, if the plaintiff proves the first two elements then the law permits, but does not require, that the fact finder, judge or jury, infer that the defendant was negligent with respect to the escaped livestock while it was under the exclusive control of the defendant. The bill, in its original form, attempted to provide for a presumption of nonnegligence if the defendant cattle owner had such cattle contained in a fence, as interpreted under the law. After consultation with Senators Wehrbein and Jones, your committee determined that such effort at defining fences for such a presumption was not the appropriate course to take. The committee amendment replaces the bill and establishes various principles that are to apply in all civil actions involving collisions with livestock. The principles for courts to apply in such cases include: a provision that the plaintiff's burden of proving his or her claim shall not shift at any time to the defendant; secondly, the fact of escaped livestock is not, in and of itself, by itself, sufficient to raise an inference of negligence against the defendant; and, third, that a requirement that the standard of care shall be according to principles of ordinary negligence and shall not be in accordance with strict liability or absolute liability. Now I want to be clear for the record, this...this bill, the committee amendments which become the bill, are

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essentially a codification of existing case law as decided by the Nebraska Supreme Court, and that is the intent. The amendment does not prohibit the principle or the application of the doctrine of *res ipsa loquitur*, which still would apply in any and all instances in which that doctrine is appropriately applied, but it...but this does provide a codification and clarification responsive to the concerns of any number of Nebraskans, particularly those in the livestock industry. The committee amendment strikes a balance on the subject. The amendment does not reverse the Supreme Court decision, I say again. The committee amendment will provide guidance for courts in Nebraska for...on these negligence claims and will specify that the plaintiff is to prove the plaintiff's claim under ordinary negligence law. Additionally, the amendment clarifies that escaped livestock in and of itself is not a...that's not a sufficient fact to raise an inference against the defendant. As I mentioned, the committee was unanimously in support of this amendment and I would urge the adoption of the committee amendments and the advancement of the bill. Thank you.

SPEAKER KRISTENSEN: Debate on the committee amendment, Senator Connealy.

SENATOR CONNEALY: Thank you, Mr. President. I just want to rise in support of the committee amendments. As Senator Brashear laid out, we're not raising the bar any for the plaintiffs, but we are putting into law what the practice is now. We're making it clear. And I, too, want to thank Senator Brashear and the introducers and Senator Jones for working on this to make the law more clear on livestock on the road. And so I ask for your support of the committee amendments.

SPEAKER KRISTENSEN: Senator Quandahl.

SENATOR QUANDAHL: Thank you, Mr. Speaker. I was wondering if Senator Brashear would yield to one quick question.

SPEAKER KRISTENSEN: Senator Brashear, would you respond?

SENATOR BRASHEAR: Yes, Mr. Speaker.

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SENATOR QUANDAHL: And I guess...I guess I'd start off by saying I understand that the...the rationale behind the amendment to LB 781 is to codify the status of the law in the state of Nebraska as it exists now, but I do have just one question. It looks like subsection (c) of the amendment says, "The standard of care shall be according to the principles of ordinary negligence and shall not be strict or absolute liability", and I guess I...I do understand that but, if you could, could you explain to me the addition or what's the rationale behind the (a) and the (b) portions of the amendment? That seems to be some extra frosting on the cake that...I guess if you could, just help me understand that.

SENATOR BRASHEAR: The addition, Senator Quandahl, of subpart (a) is simply to clarify what is, in fact, the law and to overcome a widely spread notion that...or understanding, which is mistaken, that burdens have been shifting. Burdens do not shift under the doctrine of res ipsa loquitur, and we are specifically saying, in non-Latin language, the burden does not shift. This is also an established principle under decided case law in the state of Nebraska by our Supreme Court.

SENATOR QUANDAHL: Okay. Thank you. That's all the question I have.

SPEAKER KRISTENSEN: Further debate on the committee amendments? Senator Brashear, you're recognized to close on those amendments.

SENATOR BRASHEAR: Mr. Speaker, members of the body, I would simply urge the adoption of the committee amendments, so they can become the bill, and then the advancement of the bill. Thank you.

SPEAKER KRISTENSEN: You've heard the closing. The question before the body is the adoption of the committee amendments. All those in favor vote aye; all those opposed vote nay. Have you all voted? Record.

CLERK: 32 ayes, 0 nays, Mr. President, on the adoption of committee amendments.

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SPEAKER KRISTENSEN: Committee amendments are adopted. Debating on advancement of the bill, Senator Jensen.

SENATOR JENSEN: Thank you, Mr. Speaker. Members of the body, would Senator Brashear yield to a question, please?

SENATOR BRASHEAR: Yes, Mr. Speaker.

SENATOR JENSEN: Could you tell me, when it talks about domesticated animal, we do have a few places, not too many, in the state that are raising elk and deer and other types of animals. Does that then qualify as a domestic animal when they are either in a fence or...?

SENATOR BRASHEAR: (Laugh) Senator Jensen, it would be my understanding that if somebody undertakes to raise any animal under such conditions as would replicate domesticating them then they assume the responsibility for that under the law, but it's going to be a question of fact for the trier of fact. Is that responsive?

SENATOR JENSEN: I know now as much as I did before I asked the question. (Laughter)

SENATOR BRASHEAR: Well, then it wasn't responsive, and I'm sorry. I'm saying if you have a herd of a hundred buffalo and you put them in a fence and they're on your land then we're going to have exactly the same application of the law with this bill as we'd have without this bill.

SENATOR JENSEN: All right. Thank you. I'll yield my time back to the Chair.

SPEAKER KRISTENSEN: Further debate on advancement? Seeing none, Senator Wehrbein, you're recognized to close.

SENATOR WEHRBEIN: Very briefly, Mr. Speaker, I appreciate the work done on it by the Judiciary Committee and those on the Judiciary Committee and Senator Brashear. I think there was some misunderstanding, particularly in the country, about some

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of this. I think it's important to have some of these explanations in law; that it's better understood. You heard Senator Brashear's explanation. I'm not going to expand on that, but I am, myself, much more comfortable and I've come to learn a lot about this part of the law, not to the extent that I could practice it, but I appreciate the advancement of this bill. Thank you.

SPEAKER KRISTENSEN: You've heard the closing. Question before the body is the advancement of LB 781. All those in favor vote aye; all those opposed vote nay. Have you all voted who care to? Record.

ASSISTANT CLERK: 33 ayes, 0 nays on the motion to advance the bill, Mr. President.

SPEAKER KRISTENSEN: The bill advances. Before we move on, and I would anticipate that we would not start another bill this morning, there's a memo that's been passed out to you about working into the evenings starting next week, and I want to try to just make you aware of what my plans would generally be. The Appropriations Committee will be placing the budget bill on General File, hopefully by the end of this week. It's my intention we're going to start debate on the budget bills next week and most likely on Tuesday. This is going to give you time to review the committee recommendations and to have questions to the committee, and hopefully it will make it easier to debate the budget when we do that. In terms of going into evening sessions next week, at least for the next two weeks, it's my intention that we work into the evening, and by that I mean somewhere around 6:30, and to do that on Tuesday and Wednesday of next week, which is the 24th and the 25th. The week after that it would be Monday and Tuesday, April 30th and May 1st. In my memo I have May 2nd. It should be Tuesday, May 1st. Again, I'd say around 6:30, but that's not a hard and fast rule. Kind of depends on how much progress we're making at that point, the likelihood of making something get accomplished if we have to go a few minutes over to do that. I don't plan to have any meals provided or...you'll have to do those on your own for the next two weeks. I figure if we go to 6:30 that you can make your own plans to do that. It just runs a little easier. Beyond those

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next two weeks, it kind of depends on what progress we make in the next two weeks as to how much we're going to need for time in the evenings, whether that's something the body wants to do, whether we want to go beyond the 6:30 in the evenings. Earlier in the session, I talked to the Clerk's Office about trying to clear the month of May for too many events in the evenings and hopefully that's occurred so that we can focus on what we're supposed to be doing, and that is finishing the state's business. So I'll try to give you as much notice as I can, but at least for the next two weeks refer the memo. We'll put the memo out on the e-mail system as well. Mr. Clerk, items for the record.

CLERK: Just one, Mr. President, a new resolution. Senator Hilgert offers LR 62, designating April 28 as Workers Memorial Day. That will be laid over. That's all that I have at this time, Mr. President. (Legislative Journal pages 1521-1522.)

SPEAKER KRISTENSEN: Thank you, Mr. Clerk. (Visitors introduced.) Senator Connealy, you're recognized for a motion to recess.

SENATOR CONNEALY: I move we recess till 1:30.

SPEAKER KRISTENSEN: You've heard the motion. The question before the body is, shall we recess? All in favor say aye. Those opposed say nay. We're in recess.

RECESS

SPEAKER KRISTENSEN PRESIDING

SPEAKER KRISTENSEN: Good afternoon, and welcome to the George W. Norris Legislative Chamber. Members, please record your presence so we can begin this afternoon. Roll call.

ASSISTANT CLERK: I have a quorum present, Mr. President.

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SPEAKER KRISTENSEN: Thank you, Madam Clerk. Any items for the record?

ASSISTANT CLERK: I have no items for the record.

SPEAKER KRISTENSEN: We'll next move to General File, LB 598. Madam Clerk.

ASSISTANT CLERK: Mr. President, LB 598, introduced by Senator Dwite Pedersen at the request of the Governor. (Read title.) The bill was introduced on January 12, referred to the Judiciary Committee. That bill was advanced to General File. And I do have committee amendments, Mr. President. (AM0192, Legislative Journal page 715.)

SPEAKER KRISTENSEN: Thank you, Madam Clerk. Senator Dwite Pedersen, you're recognized to open on the bill.

SENATOR DW. PEDERSEN: Thank you, Mr. Speaker, members of the Legislature. This bill is commonly referred to as the gatekeeper bill. I bring it at the request of the Governor. And it's very important to the success of his juvenile justice package. The concept came from a recommendation made in the juvenile services master plan. This report recommended that Nebraska reform its juvenile offender service delivery system to develop a single point of entry into state custody. LB 598 would require that the Office of Juvenile Services, rather than the court, determine physical placement of a juvenile entering state custody, based on an assessment of risk and treatment need, as well as the availability of a range of services. In the past, judges have lacked confidence in the placement making decisions and operations of the Office of Juvenile Services, and therefore have continued to directly commit youth to placements in programs. This practice has made monitoring of caseloads, program costs, and program effectiveness difficult to evaluate, and ultimately led to the Chinn report recommendation that a gatekeeper system be implemented. With the adoption of the Governor's juvenile service plan, an objective and accurate assessment and request...as requested by the master plan would be conducted, and that levels of programs both residential and

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nonresidential will be available to match these young people with the appropriate placement. This bill will help to coordinate the effort by clarifying the existing law. LB 598 will increase the flexibility for the Office of Juvenile Services, and will facilitate the shortening of youth detention time, since multiple placements could be considered if one or more possible placements are full. This would also help to alleviate a situation where a specific court-ordered placement could be set up contempt of court problems if a specified placement has no available beds, thereby inhibiting timely placement by the Office of Juvenile Services. LB 598 does not prohibit the courts from continuing to make direct placements into the YRTC's, the youth development centers. The bill does not reduce or otherwise change the numbers of juveniles in treatment, but will promote more efficiency in relation to the treatment of those juveniles within the system. The bill does not prohibit or otherwise adversely affect the ability of the courts to specify the level of treatment that should be provided to each juvenile that falls within the court's jurisdiction. The increased flexibility by the department will allow for the proper matching of juveniles' specific placements within identified treatment levels, since the Office of Juvenile Services has a needed familiarity with placement resources, and knows the strength and weaknesses of those resources. I urge your support for sending LB 598 through the legislative process. Thank you.

SPEAKER KRISTENSEN: Chair of the Judiciary Committee, Senator Brashear, you're recognized to open on the committee amendments.

SENATOR BRASHEAR: Mr. Speaker, members of the body, the committee amendments specify the intent of LB 598 by addressing concerns the juvenile court judges had with language which was used in the green copy of the bill. The first change to the bill strikes language directing the committing court to order the initial level of treatment as defined by the Office of Juvenile Services rules and regulations and case management standards for each level. The language directing the committing court to order the initial level of treatment for a juvenile committed to the Office of Juvenile Services is set out in a...in a specific statute that precedes the bill...where the

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bill will be effective. The committing court would not order a specific placement for the juvenile, but rather would order an initial level of treatment. The second change by the committee amendments clarifies some wording in the bill. Specifically, with the change, the Office of Juvenile Services is charged with providing treatment that conforms to the court's ordered level of treatment. LB 598 simplifies statutory language to plainly describe the role of the court in committing youth to the Office of Juvenile Services. The committee amendments also restate and clarify the intent of LB 598. With that, Mr. Speaker, I would conclude the introduction of the amendments, and would urge their adoption. Thank you.

SPEAKER KRISTENSEN: Debate on the committee amendments. Senator Aguilar. Further debate on the amendments? Seeing none, Senator Brashear waives closing. The question before the body is the adoption of the committee amendments. All those in favor vote aye; all those opposed vote nay. We're voting on the committee amendments. Have you all voted who care to? Senator Brashear.

SENATOR BRASHEAR: Mr. Speaker, I think...

SPEAKER KRISTENSEN: I'll accept the time back. Thank you.

SENATOR BRASHEAR: Thank you.

SPEAKER KRISTENSEN: Record.

CLERK: 25 ayes, 0 nays, Mr. President, on the adoption of committee amendments.

SPEAKER KRISTENSEN: The committee amendments are adopted. Amendments to the bill.

CLERK: Mr. President, on the bill, Senator Thompson, I have AM0928, Senator, and AM1549, both with notes to withdraw at this time. Mr. President, Senator Thompson would move to amend the bill, AM1568. (Legislative Journal pages 1523-1529.)

SPEAKER KRISTENSEN: Senator Thompson, you're recognized to open

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on your amendment.

SENATOR THOMPSON: Thank you, Mr. Speaker. It's going to take me a little bit of time to open on the amendment, because this is a very complicated issue, and I want to give you the history of why we're here and why this amendment is being proposed. On your desks are two packets. One of them, that I want to give you the history from, is entitled, "Timeline: Legislative Enactments Impacting Out-of-Home Placements." And I bring this to you so that you know this isn't necessarily a new issue. Actually, it's been dealt with by previous Legislatures. It's been going around and coming around since the state made the decision in the early 1980s to eliminate county welfare offices, move those functions to the state. We later created an Office of Juvenile Services, which was located in the Department of Corrections, which provided services including out-of-home placements. We then merged that office, with the five-agency merger, into the office...or, into the Department of Health and Human Services, where the Office of Juvenile Services is today. And as a result of a number of mergers and changes, the issue of out-of-home placements for juvenile offenders, other than Kearney and Geneva, which for a long time were all that the state provided, has caused confusion, it's caused dispute, and it's been an area that the Legislature hasn't resolved. And so today I hope we'll be able to take the time to consider this amendment, which I believe comes to resolve the issue. First of all, quickly, what the amendment does. The amendment takes us on the time line to 1989. And Senator Coordsen was a member of the Legislature at the time, and carried the bill that set up the process that I'm attempting to amend to this bill. The bill still contains the language...the amendment still contains the language, as has been proposed by the bill and the committee amendment, directing the department to be able to make the specific placement. But it takes the language from the child welfare side, which is the abuse and neglect cases that Senator Coordsen led efforts in 1989 to establish, and it applies it to the kids in the juvenile justice system and their placements in out-of-home placements. And the two changes and the two differences in this amendment are: number one, the case plan needs to be presented to the court; and number two, that if any party to the plan that's determined by the court, as presented

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by the department, not the placement, but as the plan that's developed by the department, then any party to the court action and the placement by the Department of Human...Health and Human Services, may appeal that to a review panel. Those are the parts of law that currently exist. The earlier amendment, we attempted to amend that in, take this whole section of review and put it in the child welfare section. Feedback I was getting was that it made more sense to just amend the OJS section of law, which a couple of years ago Senator Suttle chaired a committee with people across the state, working on the changes to the juvenile code because of the merger. So the bill essentially sets up the same process, same process for out-of-home placements, for all out-of-home placements in the department. Now let me take you back to what...how we got here. When I first was elected to the county board, and prior to being elected to the county board when I sat in on meetings from time to time on different issues, the counties had the welfare department. There were a lot of problems when counties had the welfare department. There were some efficiencies that couldn't be accomplished. There were some things that weren't happening. And as the day goes on here, I'll talk about some of those things. But the Legislature, at the end of the Thone administration, made the decision that the state should take over public assistance functions. And the Kerrey administration was the implementation group to put that in place. And so that was done in 1984. When the department was taken over, there were misunderstandings, there were disputes over who paid for what, what paid for what. Probably the general feeling at the time was that they weren't adequately funded, first of all because the clarity of what they were taking over, and second because in some cases the counties hadn't provided a very high level of services to start with. And if the equities were going to be placed across the state and we didn't have things such as highway welfare, where we all, in our counties, just gassed up the car of the person who broke down in their county and sent them on the road and caused the problem for some other county to pick up some of those services that needed to happen. But along during the eighties, the dispute was, should the courts continue to be able to make these out-of-home placements that the state now had to pay for, and...or should that be purely an agency administrative decision. In 1998...in 1988, there was a Supreme

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Court case that basically said, what you did in the early eighties means the department has total administrative authority over kids' placements. And at this point, I would like to ask Senator Coordsen a few questions.

SPEAKER KRISTENSEN: Senator Coordsen, would you respond?

SENATOR COORDSEN: Yes, I would.

SENATOR THOMPSON: Senator Coordsen, you carried the legislation in 1989. But I know you worked on it for...with lots of meetings and lots of discussions the year prior to that. Can you tell me why you brought this legislation, and...

SENATOR COORDSEN: Okay.

SENATOR THOMPSON: Thank you.

SENATOR COORDSEN: Thank you. If I have a couple minutes, at that time, there was a situation that existed in law where the then existing Department of Social Services had the statutory authority to ignore placement orders by county courts or county courts acting as separate juvenile courts. So at that time, I worked with a number of county court judges, a deputy county attorney for juvenile justice, and several others, in crafting what came to be a three-judge appeals panel that gave...restored to the courts the dominant authority that I believe a court ought to have, pending appeal to a further court. But it was...the issue at that time was what were appropriate placements. And at that time, the department could in fact ignore a court order. I think that's an important thing to repeat. And so the panel was put in place, consisting of three judges, to hear disagreements between a county or juvenile court and the Department of Social Services in out-of-home placements for wards of the state. And that came into being at that time. And as I understand, it's functioning pretty well yet today. And it's protected, I think, the state from excessive costs brought about by a...an individual judge perhaps making an inappropriate out-of-home placement, perhaps in another state or something like that. But it has maintained the authority of the...primarily juvenile courts, but certainly county courts, in

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overseeing the placement of...out-of-home placement of wards of the state for treatment.

SPEAKER KRISTENSEN: One minute.

SENATOR COORDSEN: I think it's been a pretty good program. And that's why it came into being. So, if that was a response to your question?

SENATOR THOMPSON: Yes. And we may have to go to another time. I have a follow-up question. And you and I have discussed this also. Your original bill at that time also would have addressed the same issue we're addressing today, dealing with placements for juvenile offenders. But you ended up changing the bill and introducing an interim resolution which is attached to the time line page. Could you talk about what happened during the session that caused that change? And...

SENATOR COORDSEN: Well, I think what happened during the session, I've got to search back quite a number of years, was that the original proposal didn't...(laugh) I shouldn't get into personalities, I guess, but I remember a fairly strongly worded confrontation with a former...

SPEAKER KRISTENSEN: Time.

SENATOR COORDSEN: ...director of the department.

SPEAKER KRISTENSEN: Thank you. Senator Thompson, your light is next.

SENATOR THOMPSON: Thank you. Senator Coordsen, I'd just kind of like to continue that. So the department, basically, opposed having to provide services for juveniles, and therefore that came out of the bill?

SENATOR COORDSEN: No.

SENATOR THOMPSON: Or...?

SENATOR COORDSEN: That's not necessarily accurate, Senator.

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What they opposed was having the county...or, the court system direct placements. And they wanted the...and had at that time the authority to ignore court orders. And that was the major issue, is that there was someone, somewhere within the Department of Social Services, one or more people, who felt that money could be saved, and in fact several years prior to that had been successful in getting the statutes changed, the law changed so they could do that. And, of course, that did not work very well from the perspective of the courts. And again, I would not want to reiterate the scheme that we went through. But I did meet, at a number of times, on a number of times throughout the intervening time, till the passage of the bill that created, with individuals who had...were judges in the system and/or represented wards of the state as juvenile...can't think of the right word, but anyway, as deputy county attorneys representing juveniles in those cases. And that's how that came about, because they...I know I'm repeating myself quite regularly here, Senator, and I do apologize for that. But there was a...just a terrific, terrific feeling of discontent, and almost of war between the department and the judiciary system at that point in time. And there was probably a feeling of inappropriate placements on both sides, that the judges felt that there were many state wards that were not getting the appropriate treatment, and the people on the executive branch side feeling that there were many judges out there who were, by court order, directing too expensive of treatments. And that's basically the simple history of how we came to the review panel.

SENATOR THOMPSON: Thank you. Just one more question, Senator Coordsen. There was a large fiscal note on this bill. And one of the debates at the time was that providing these services for juvenile offenders added about \$10 million worth of costs, I believe, from the floor debate and the bill testimony. And there was a concern that having this process continue through the courts would be very expensive. Can you tell me what you were able to find out after the passage of this bill,...

SENATOR COORDSEN: Well, a little before...

SENATOR THOMPSON: ...in terms of actual costs?

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SENATOR COORDSEN: Thank you. Before the passage of the bill, we added by amendment a proposal...or, an amendment to the bill that required the Department of Social Services to file a report with the Legislature annually with respect to the additional costs of carrying out the recommendations of the three-judge review panel. And then we noticed about a year later that the Legislature did not receive that report that was required by statute. And in a...when we asked why,...

SENATOR SCHIMEK PRESIDING

SENATOR SCHIMEK: One minute.

SENATOR COORDSEN: ...the response we got was that the costs were so minimal, they really didn't keep track of them. And I take some amount of pride in that, because the original fiscal note I think was the largest, or close to the largest I'd ever been able to achieve on a piece of proposed legislation. And it ended up, with the three judges reviewing contested...only contested cases, that no one could make a determination that it actually cost anything more, and maybe even less, because more rational thought process went into the original disagreement between the department and what...whoever the county or juvenile court judge was.

SENATOR THOMPSON: Thank you, Senator Coordsen. I really appreciate your bringing us up to speed on how we got here on the child welfare side. And also, just for further clarification,...

SENATOR SCHIMEK: Time. Thank you, Senator Thompson. Senator Dwite Pedersen is next, followed by Senators Jensen, Coordsen, Thompson, Bruning, and Brown.

SENATOR DW. PEDERSEN: Thank you, Madam President. First of all, I want to say what Senator Thompson is trying to do is...I'm not so sure it's all bad ideas. But at this point, that is strictly ideas. This is a substantial change to this bill. It's a twelve page amendment. It changes it drastically. I will not be supporting the amendment, and hope that you will do...ask the questions and listen to what Senator Thompson has

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to say about this amendment. But it...when you come into a bill like this that has this many substantial changes at this late date, I would hope that you would not support it. Thank you.

SENATOR SCHIMEK: Thank you, Senator Pedersen. Senator Jensen.

SENATOR JENSEN: Thank you, Madam President, members of the body. As Senator Pedersen probably told you at the introduction of his bill, this is part of a \$10 million juvenile justice bill that's been...being proposed by the Governor. And it proposes both changes in legislative and budget initiatives over the next several years. It will coordinate juveniles' entry into the state system through this gatekeeper bill that we have before us. It will create a new General Fund aid program for counties, for...so that they can develop and sustain foster community-based programs for juvenile delinquents. Matter of fact, that has a fiscal impact of \$5,350,000. It will expand the array of services for juvenile offenders, including mental health, substance abuse treatment, through LB 691, that is also in line. That's a \$4,126,000 portion. And it will sustain substance abuse and mental health programs for juveniles committed to the youth rehabilitation and treatment centers, \$373,000. And then it will also provide for a program statement to transition an existing Department of Correctional Services secure facility to the Offices of Juvenile Services, to serve as a level 5 secure confinement facility. And that has...that's LB 599, and that has a \$150,000 impact. Senator Thompson has done a great job in juvenile services, not only here in the Legislature, but before she came to the Legislature. And I applaud her for that. But I think this amendment, however, which did not have a public hearing, really is a very, very large transition from what the bill was initially proposed. And if she would wish to bring this back next year and we can have a public hearing on it and discuss it, I think that would be absolutely proper. But I do have a little problem with the process when you bring an amendment to a bill that is so opposite of what the bill's intent really was. So I have a problem with that. And then also, LB 598 is just a part of a \$10 million package. So at this point in time, although I can understand where she's coming from, and I think there's some good things in her proposal, it is just not...it doesn't flow

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with the rest of the juvenile justice program that has been set forward. Last year we had LB...I think it was LB 352 that the Governor vetoed. But he did make a commitment at that time that he would come back next year with a program to alleviate some of the juvenile justice problems that we have in this state. And, boy, there are many. And so when he did come forward with this program, I was really pleased to see that we were addressing all parts of the juvenile justice system, partnering with the counties, picking up some of the expenses that the counties have had in the past, that the state will now participate in, to do a coordinated system. And I think that's really what we need in this particular instance. And so with that, I would oppose the Thompson amendment, and certainly support LB 598. Thank you, Madam President.

SENATOR SCHIMEK: Thank you, Senator. Senator Coordsen, you are next.

SENATOR COORDSEN: Thank you, Madam President, members of the body. A little bit of history. I do recall sitting here,...and I was reminded of this by Senator Thompson just after lunch, about the 10-year-old effort to bring some order into what then was a chaotic situation. One of the things that happened to me personally out of that was that I became so disenchanted with the care system for wards of the state that, quite frankly, over the years I've chosen not to participate in any way in those, because of...and I know all of the people have changed, programs have changed, funding has changed. But that whole effort left me with such a bitter aftertaste that I've not been very enthused about juvenile programs since that time. I have come to believe, with certainly a rebuttable belief, that there are many in the system that farm wards of the state in the same manner that I might farm a field, for personal gratification, or job, or whatever the reasons. Having said that, and recognizing that times have changed, I would give the rest of my time to Senator Thompson.

SENATOR SCHIMEK: Senator Thompson.

SENATOR THOMPSON: Thank you, Senator Coordsen. To just finish up the time line, and why this problem has continued to be with

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us, after that decision was made and the juvenile issues were not taken on, largely because of a concern of the costs, a lot of things were happening, historically, nationally, and in our state with juvenile offenders. If you notice the box right under there, we're starting to see a different type of offender with different types of issues. There are more law violations dealing with drugs and alcohol problems. There are more offenses to persons. The violence is escalating. And the juvenile offenders needing special services are getting more and more numerous. They need drug and alcohol treatment. They need treatment for mental illness.

SENATOR SCHIMEK: One minute.

SENATOR THOMPSON: They have a serious history of sex...sexual abuse, and they are sex offenders. And this is when costs began to escalate. And it was start...the start of a serious look at whether the YRTC's at Kearney and Geneva could handle these type of kids with these type of problems. And as a result of that, judges and social workers and probation officers and others in the system, as well as the service providers, began looking at other types of out-of-home placements. And as a result, the placements for juvenile offenders which previously were only in the Department of Corrections, now began to be looked at as, why not have some services from the Department of Health and Human Services for these same types of needs? There were also some studies done during this time that discovered that the profiles of the kids in the juvenile justice system was very similar to what was happening in the foster care system. Kids with lots of problems and lots of issues that they hadn't seen...

SENATOR SCHIMEK: Time.

SENATOR THOMPSON: ...in these numbers before.

SENATOR SCHIMEK: Thank you, Senator Thompson. The next speaker is Senator Thompson.

SENATOR THOMPSON: Thank you. As a result, the Legislature, in 1994, after a two-year study commission was formed by the Legislature to look at these issues, and decided to create the

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Office of Juvenile Services. It was a freestanding office, but administratively placed in the Department of Corrections. It reported directly to the Governor. Its budget was separate, and the director was appointed by the Governor. But there was always a stress with the Department of Health and Human Services, because of the fact that services needed to be provided, and some of those services could be provided through the department. There were some funds given to the department to develop some separate community-based services and tracking systems and other things. But these essential treatment services that are out-of-home placements were still being sought after by both judges and by the department and the Office of Juvenile Services for these kids. And it was very difficult to serve them at the YRTC's, and it still is to this day. One of the issues that came up with the merger in 1996 of the five agencies was that the Office of Juvenile Services, were it part of the same agencies, would not have the same turf wars that were going on and getting these services for juveniles if they were all under one roof and the kids...there was a seamless delivery of services, it didn't matter whether you entered the system through the Office of Juvenile Services or through the Child Welfare System. What a lot of judges did, and continue to do, is what's called dual adjudication. They file both as a delinquent and as a child needing services for abuse and neglect. And as those of you who have been tracking the juvenile justice issue know, at Geneva, for example, 85 percent of the girls has had some type of sexual abuse. Sim...not as high a number, but the same issues happen for boys. We also know, as of this year, the number of mental illness issues that happen in both of the facilities, or that have happened to the kids and are part of the plan to try to rehabilitate them. We know that a lot of services need to be there. As a result, nationally, more kids started to be put in these out-of-home placements. And it happened here in the state; not to the YRTC's, but looking for specialized treatments, sometimes outside the state, and sometimes inside the state. After the merger occurred, the department was now merged into a section of law where one agency was going to have authority over both child welfare and juvenile justice. And Senator Suttle chaired a group, probably not her easiest assignment that she's ever had. And shortly after I got appointed to the Legislature, I sat in

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on the last few meetings of this group, attempting to deal with all the law changes that would need to happen in order to get to the merger language that needed to be there. And at that point in time, a decision was made that...by those involved. And that's part of the law, but it's part of the law that hasn't really been implemented, and is why the department is here today saying that this placement by the judges should be place into a level of treatment, and that the department would decide what the specific placement would be. However, that needed to be clarified in statute in order to be able to accomplish that. And from talking to judges, it isn't necessarily enforced in all parts of the state. As a result of this bill being introduced, and having spent the interim working on this issue, I have some opinions that are pretty strong. One of the...

SENATOR SCHIMEK: One minute.

SENATOR THOMPSON: ...biggest problems that we have if we do this is the status of our evaluation and assessment process. Not to get even more complicated, but this is why this is a difficult bill, when we passed the bill creating the Office of Juvenile Services back in 1994, one of the issues that was discussed was to take the evaluations that used to be done at Geneva, which were 30-day evaluations that judges could send a child for observation and to help identify issues and treatment needs, and put those into the communities. When we did that, there were contracts made with service providers to be able to provide those assessments. And I'm going to need some more time to talk about what I heard over the interim, what the juvenile justice team that's been created to work on detention, diversion, and probation issues has discovered in its...

SENATOR SCHIMEK: Time.

SENATOR THOMPSON: ...discussions on assessment processes.

SENATOR SCHIMEK: Thank you, Senator Thompson. (Visitors introduced.) Senator Bruning.

SENATOR BRUNING: Madam President, members of the Legislature, I rise in opposition to the Thompson amendment. And I do so

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knowing, of course, that nobody is more passionate about these issues than Senator Thompson. In fact, I would argue nobody knows more about these issues than Senator Thompson in this body, about juvenile justice and how it should be done. And in fact, Sarpy County, where Senator Thompson and I both live, is a model for creativity and for planning in how to handle juvenile justice issues. The reason I rise in opposition is a coup...is twofold, actually. Number one, there's a plan in place. And Senator Jensen talked about this in some detail. But there's a plan in place, and we're moving down that track as we speak. This particular amendment will shortcut that plan, and ultimately cause the state some difficulty, because of my second point: it creates a fiscal impact. Right now, LB 598, as Senator Pedersen has introduced it and as it is on the floor before us, does not have a fiscal impact. If this amendment is added on, it does change that dramatically. Now of course, the fiscal impact is for wonderful reasons. I mean, Senator Thompson has proposed this to help kids, and we all want to do that. But we need to stick to the plan and do it in time. We're going to get here. We're going to get where we need to be. But we need to stick with the plan we created when we set up the Office of Juvenile Services. So I rise in opposition to the amendment. But I do look forward to getting to a place where we're better off than we are now. And I think we will get there in due time. Thank you, Madam President.

SENATOR SCHIMEK: Thank you, Senator. There are a number of lights on, and they are Senator Brown, Brashear, Suttle, Tyson, Aguilar, Bourne, and Byars. Senator Brown.

SENATOR BROWN: Thank you, Madam President and members. We've had some discussion on this about the process and about the fiscal impact. But I am as much concerned about the...what the implications are of the Thompson amendment from the standpoint of all kids receiving services that are roughly similar for their level of need, no matter where they're from. And Senator Thompson referenced that not necessarily being the case across the state. And I see the Pedersen bill as an opportunity to have the court involved in determining the level of services that are needed, by virtue of their understanding of the issues in the case, and then having a statewide system in terms of

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where those services are going to be delivered, that it's not...that the role of...there needs to be one central way of determining where those services are delivered, rather than what kinds of services are delivered. And I wondered if Senator Pedersen would yield to a couple questions, because I want to have a res...your response. One of the issues that's been raised is the...that the kinds of juveniles...I mean, the kinds of problems that bring juveniles into the system has escalated a great deal. And I want to make sure that we're not talking about the YRTC's being the only service delivery system. Are we going to have an opportunity with these kids who have specialized needs, with sexual issues, and drug and alcohol, are we going to have different levels of services available?

SENATOR SCHIMEK: Senator Pedersen, would you yield?

SENATOR Dw. PEDERSEN: Yes, Madam President. Senator Brown, yes, LB 598 does not prohibit or otherwise adversely affect the ability for the courts to specify the level of treatment that should be provided for these juveniles.

SENATOR BROWN: Okay. One other question. There are some judges I know that are very supportive of the Thompson amendment. There are other judges that are supportive of the bill in its original form. Is that not true?

SENATOR Dw. PEDERSEN: There was a judge...there was a...excuse me. There was a meeting, Senator Brown, between the people from Health and Human Services, Office of Juvenile Services, and judges. There was five judges from the state that were at that meeting, and agreed with the...with LB 598 as the way it was. Yes.

SENATOR BROWN: Thank you. Which is another indication to me that if there is a difference of opinion about this bill amongst the judges, then it indicates a difference of opinion about how they would want to deal with the juvenile offenders. And once again, to me, it argues for a more coherent system in dealing with juvenile offenders that's based not on what specific knowledge a specific judge might have about services that are available...the service itself, but rather relying on their

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understanding of the issues in the case in determining...

SENATOR SCHIMEK: One minute.

SENATOR BROWN: ...the level of services. And so I am comfortable at this point with the Pedersen bill as it was originally introduced, and would argue that the Thompson amendment could very possibly keep a system that does not guarantee that each child, from wherever they happen to be in the state, will receive the service at the level that they need to receive it and in the manner that they need to receive it. Thank you.

SENATOR SCHIMEK: Thank you, Senator Brown. Senator Brashear, you're next.

SENATOR BRASHEAR: Madam President, thank you. Members of the body, I, like all the rest of us, have just been studying the Thompson amendment. And I'm not certain how I feel about it, but I need to make inquiry of Senator Thompson, if she will yield to some questions.

SENATOR SCHIMEK: Senator Thompson.

SENATOR THOMPSON: Yes, Senator Brashear.

SENATOR BRASHEAR: Senator Thompson, one of my concerns is, we're establishing a procedure...when I look at the amendment, I'm...and I'm looking at a printed copy, at page 2.

SENATOR THOMPSON: Yes.

SENATOR BRASHEAR: When I look at line 17, we're retaining the standard of the juvenile's best interest, which of course I know you want to maintain. But then we are specifically stating, the rules of evidence shall not apply at a dispensational hearing...dispositional hearing when the court considers the plan. And we're saying in the conclusion of that section, the court may order the office to carry out the plan, or the court may choose an alternative disposition. If you turn to page 9, line 12, we're saying, the committing court shall not order a

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specific placement for a juvenile committed to the office. And to me, those are inconsistent, and I think incon...I think we're getting into a specificity with regard to gatekeeping that is not what I understood the bill to be about when it was heard in our committee and when the committee did its amendments which have been adopted. And I'd ask you to respond to that, if you would, please.

SENATOR SCHIMEK: Senator Thompson.

SENATOR THOMPSON: Thank you. The amendment is replicating the language from the child welfare side. So the plan and the court approval and the language about evidence applying, and so forth, is from another section of current statute. But the language regarding disposition and the language on page 9, it's...the issue here, as I understand this bill, which, on page 9, should be replicating what the bill wanted to do. We're just adding on a planning piece. So the bill as amended says the court can't name the placement. So in other words, if it's Uta Halee, Cooper Village, if it's a drug treatment center, if it's a group home, they can't say group home "x." Now, the judges want to be able to say that, and currently do say that. But under this they can't. But they could...

SENATOR BRASHEAR: But don't we...

SENATOR THOMPSON: ...they could...

SENATOR BRASHEAR: But don't we then allow them...aren't we letting them do by the back door that which they cannot do by the front door? We're saying they can't order a specific disposition. But once the Office of Juvenile Services has made that placement or made that decision, then we're saying any interested party, without benefit of rules of evidence, but with a judiciary standard, which is the best interests of the child, can have a hearing. And at that hearing, where the rules of evidence won't apply, the court can undo the disposition and make a different one. Isn't that what we're saying?

SENATOR THOMPSON: Yes.

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SENATOR BRASHEAR: And don't we have a problem here in terms of standards of justice? And I'm not trying to...I'm just trying to pick a phrase that captures the sense of fairness, making a record, doing it right. And also, if everybody chooses to, aren't we undermining the gatekeeper concept by allowing everybody to go in and do a retrospective hearing evaluating the result?

SENATOR THOMPSON: What this bill does...and I haven't had...

SENATOR SCHIMEK: One minute.

SENATOR THOMPSON: ...a chance to talk about some of those things, and I will on my next time, because this is going to take a little longer to answer. This...and I want to mention that I did have another bill that was heard by Judiciary Committee which set up a process like this. So this specific one didn't have a hearing, but that one did. And that was because of concerns that I spent time with judges over the summer of the status of the system today, and why they need the oversight of the plan that the department should be presenting, which they already have and already write. And so I just replicated the same process. And it does, it changes this significantly, and I agree with that. But it still preserves the department's right to name the specific placement, which I understood from my discussions with them was a...

SENATOR SCHIMEK: Time.

SENATOR THOMPSON: ...bone of contention.

SENATOR SCHIMEK: (Visitors introduced.) Senator Suttle, you are the next to speak.

SENATOR SUTTLE: Thank you, Madam President, members of the Legislature. I rise to support the Thompson amendment. We talked about this a great deal in the...back in the nineties, when I was Chair of this particular task force, interim task force. One of the things that Senator Brown talked about was a meeting that occurred. And Senator Federsen alluded to the fact that there were judges there. Some were there, some were on the

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phone, some couldn't hear. But as they read the bill in the green form and started looking at it, in Senator Thompson's packet there is a letter from Judge Wadie Thomas, from Douglas County, who says that he does not support LB 598 without the Thompson amendment. I would ask you to look at that. There are initial thoughts and initial things that can be said, during the interim, the change in the actual writing. And I don't think that we should hold the judges to what they might have said in the year 2000, before the...anything was really written, just the idea was out there. Judges have been very clear to me that they want to keep an oversight. They don't want to give up all claim on a youth just because they are in the Office of Juvenile Services, that there needs to be some kind of court oversight, and having a plan where the best interests of the child seems to me to be just basic common sense. With that, I will give my...any extra time I have, Madam President, to Senator Thompson.

SENATOR SCHIMEK: Thank you. Senator Thompson, you have about...

SENATOR THOMPSON: Thank you very...

SENATOR SCHIMEK: ...three minutes left.

SENATOR THOMPSON: Thank you very much. One of the things I haven't had an opportunity to talk about is the original recommendation that the administration has taken this particular bill from. And I think it's important to have that in context. And I have a copy of that, and also a copy of the testimony...she wasn't present, but of the...of Karen Chinn, who is the consultant who wrote the juvenile facilities master plan. This is recommendation...in your packet under the pink sheet are these recommendations. And I'm going to just go...it would probably be easiest for you to go to the last page, if you care to follow along, of her rec...second to the last page of the handout. And what she said was, in order to build confidence in utilizing a single point of entry assessment process and continuum of service, there will have to be confidence among judges that an objective and accurate assessment will be conducted and that levels of programs, both residential and

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nonresidential, are available to match youth with appropriate placement need. Once the confidence level of the system among judges is established and a continuum of services is funded within the Office of Juvenile Services, a single point of entry into state custody can be implemented. The consultant didn't recommend, go from A to Z and not do the middle steps. The consultant said, before we can take this sweeping change, before we leave kids to just mere administrative decisions within the Department of Health and Human Services, we have to have these other pieces in place. One of them is the assessment process. The juvenile committee that's been studying the...

SENATOR SCHIMEK: One minute.

SENATOR THOMPSON: ...point of entry at detention level also has spent a lot of time talking about various assessments throughout the system. There is great concern, and I'm going to try to say this delicately, but I will say it the way it's been said to me privately also. When we stopped doing the evaluations at Geneva, we began a process of doing community-based evaluations. Those were done with local service providers. In some cases, it's the professional bias of the provider, but in other cases, it's providers recommending people for their same type of services. In some cases, it's not having people who are trained in these service provisions in the broad array of possibilities. And actually I've looked at and thought about, should the...

SENATOR SCHIMEK: Time.

SENATOR THOMPSON: ...department do its own evaluations?

SENATOR SCHIMEK: Thank you, Senator. Senator Tyson, you are recognized to speak.

SENATOR TYSON: Thank you, Senator Schimek, members of the body. As I understand this version of the amendment, AM1568, it captures a portion of LB 595. I would ask Senator Thompson if that is correct.

SENATOR THOMPSON: I'm sorry. I was being asked a question off the mike. Could you repeat that, please?

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SENATOR TYSON: Would Senator...Senator Schimek, would Senator...?

SENATOR SCHIMEK: I'm sorry. Senator Thompson.

SENATOR THOMPSON: I did not hear the question. Thank you.

SENATOR TYSON: It is my understanding, from reading it and from what I've been told, that your amendment recaptures into LB 598 a portion of LB 595. Is that a correct statement, or a partially correct statement?

SENATOR THOMPSON: It's partially correct. The part of LB 595 was the review panel by the judges, a review process.

SENATOR TYSON: Thank you. Members of the body, there was a hearing on LB 595, and we had some testimony. And some of the numbers and some of what I am going to say may not land on all fours with LB 595. But we had testimony from Ms. Jone Bosworth, who is deputy director of services and protection for Health and Human Services, and she testified in opposition to LB 595. A portion of what she had to say, and I'm going to concentrate on what interests me most, which is money. There is something floating around saying that the lowest estimate of Senator Thompson's amendment would be a fiscal of about \$600,000. I don't know how accurate that is. We have no fiscal on this, and we would not have until the bill would advance further, and we may not have it then. However, the testimony that she gave is as follows. The fiscal implication of these changes would be...could be astronomical. Under this bill, the state may become responsible for paying for all of the preadjudication detention, and adjudication placement or commitment costs for a large number of juveniles. She goes on to say that the total impact for evaluation, detention, and placement could be as high as \$15 million. Conservatively, we estimate HHS would require up to an additional \$5 million to cover new staffing, detention, evaluation, and placement costs. I don't know and cannot tell you how accurate those statements are. They may be precise; they may be, in the guise of this amendment, that could be only a portion of those numbers. This, however, is an attempt on the

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part of Senator Thompson to capture into LB 598 a bill that has not had the usual perusal, nor have we been given the time to think about it. We've been given time to read it. But reading and thinking about it are two different things. LB 598, to me, is a step in a long process. Every one of us here wants to have good, thorough, effective treatment for juveniles that need the assistance that in this case the state would provide. Every one of us here wants that. That is a good end. The means by which we capture it is what we're discussing. LB 598...

SENATOR SCHIMEK: One minute.

SENATOR TYSON: ...is relatively noncontroversial in that it has been the result of a compromise process beginning with the juvenile services master plan, HHSS, the judiciary of the state, including, I believe, the chief justice of the Nebraska Supreme Court. I think this is the way we ought to go. This is not to denigrate in any way what Senator Thompson is attempting to do, because I think that is the process that we all want to participate in. But we want to participate in it in a very steady, considered manner, because everything we do here is going to cost the people that sent us here additional monies. And I think especially as we look at the possibilities of lesser revenues, we must be very careful, very careful. And I would offer to you that...

SENATOR SCHIMEK: Time.

SENATOR TYSON: ...this is not the way we have to go. And I urge that you do not support the Senator Thompson amendment. Thank you,...

SENATOR SCHIMEK: Time.

SENATOR TYSON: ...Senator Schimek.

SENATOR SCHIMEK: Thank you, Senator. Senator Aguilar, you're next.

SENATOR AGUILAR: Thank you, Madam Chairman, members of the body. I rise in opposition to the amendment. Actually, I

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prioritized LB 598. And I did so for a specific reason. Number one, it is a large part...a small part of a very large master plan. And I think that master plan really is in the best interest of juveniles throughout the state. Another reason I really felt the bill was somewhat appealing was there was not a large negative fiscal impact with it. Now, the amendments that Senator Thompson is bringing forward would cause such a negative impact. And I think it's a little too far in the game to ask the body to accept that much of a detriment. And for that reason I ask you to vote red on the amendment and green on LB 598. Thank you.

SENATOR SCHIMEK: Thank you, Senator Aguilar. Senator Bourne, you're next.

SENATOR BOURNE: Thank you, Senator Schimek. I yield my time to Senator Thompson.

SENATOR SCHIMEK: Senator Thompson, you're recognized.

SENATOR THOMPSON: Thank you. Senator Dwite Pedersen, I would like to ask him some questions, please. He's apparently left the floor. So I guess I want to get to this discussion of a fiscal note. And I'm puzzled by it. I am reading from the Department of Health and Human Services manual. And it's attached to the pink sheet. It's about the third one in. And it says, juvenile services cases. A written case plan will be developed following the assessment for children at home or in out-of-home care. I have been told, not directly by the department, but by people carrying this piece of paper around, that the cost of this bill is because one of the things required is the plan, that you...the plan has to be presented to the court. Some courts already require the plan. And I have an example there, right behind the pink sheet, of two of what we're talking about. It's about...it's a one-page memo in both cases. One of them is a little longer than the other. But it isn't much. And I would be shocked at any department in our state that's placing children out of their homes that didn't have a written down plan. So they already have to do this. If they're not doing it, then they should be coming to the Legislature and telling us that they need more resources to do it. But they're

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supposed to be doing it. That's already done. In fact, we called some case workers around the state and said, do you write a plan in juvenile cases for out-of-home placements? And they said, yes. We're required to do it, and we also have to do it for the federal money. There are some serious questions about this bill's impact on the state being able to pay for these services if we're not requiring the plan. And the federal language is that it's submitted to the court. So there's no change there. I will say, there is a change in having a review panel. And Senator Coordsen faced these same obstacles ten years ago when he was attempting to work with this. And I liked one of his comments at the beginning of the discussion. He has a much more colorful way of putting things, saying, it was like parking your butt in a beehive. And so, in my case I probably need three beehives, but, anyway, that's kind of how he felt about carrying this type of legislation. But it is very difficult. And the department opposed it, the same way they're opposing this now. They wanted to have sole authority over the juvenile plan. And so that changed for the kids on the child welfare side. I've heard, well, this is just a novel idea that just came out of the blue. This idea didn't come out of the blue. I discussed this idea a year ago, the previous summer, with the Governor, when it was brought to me as a compromise at that point in time. I have discussed this with numerous groups and people throughout the state. This isn't an out of the blue idea. This has been an idea that's been talked about, because we already have it in place on the child welfare side. And there are those who think it should be in place here. And actually, in fact, it is being used in some of the courts now. They do require the plan. The plan comes in. And there are advantages to having this planning process with the court. Otherwise, it's a pure administrative process. And ten years ago, the argument...

SENATOR SCHIMEK: One minute.

SENATOR THOMPSON: ...against the administrative process in the previous debate was that an administrative process is in Lincoln. And there were people and judges and parties who wanted to be involved who couldn't get to the administrative review. It was a burdensome thing, and the arguments being,

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well, that's where it should be. It should be done in Lincoln, should be the same, should be the same for everybody. No, it shouldn't. It should be in the community where the caseworker, the guardian ad litem, the public defender, the prosecutor, the social worker, the school, the police, the people who know the family, who know the children, who have worked with these kids, the decision should be made with that court. It shouldn't be a bureaucratic administrative thing that we don't even have the staff to make sure that it's in place. And again, I go back to the Chinn recommendation. We shouldn't be doing this without the continuum of care, and...

SENATOR SCHIMEK: Time.

SENATOR THOMPSON: ...without a good assessment process.

SENATOR SCHIMEK: Thank you, Senator Thompson. (Visitors introduced.) Senator Byars, you're recognized to speak.

SENATOR BYARS: Thank you, Madam President. I would yield my time to Senator Thompson, if she would like it.

SENATOR SCHIMEK: Senator Thompson.

SENATOR THOMPSON: Thank you very much. To the other...I just stand corrected. My office was given a copy of the fiscal note. And I apologize for my comments on that. But I do stand by the fact that there shouldn't be a fiscal note, that the off...they're already doing this, according to their own plan. Same obstacles Senator Coordsen hit ten years ago, same arguments. Actually, some of the same people. So even though some of the appointees have changed, some of the same people are making the same arguments within the department. So let's get to the review process. I asked the Court Administrator's Office to let me know how often that review process was used. And on the very back page of the handout there's a list of the review panels, how many there have been over the last 10-11 years. I also talked to them about the cost. The only cost to the panel is if the judge has to drive a distance to come in. The mileage is paid, and if there's an overnight stay. So there's really not much cost to this. It's not been a burden, and it's not

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been a problem. But I agree with Senator Coordsen. If I'm writing a memo for my own memory to put in my file to keep track of what meeting I've been to or where I've gone to, I treat that a lot differently than if I had to come into a court and defend it. Would have better detail, better information when those documents go public. And to leave this to a pure administrative decision is a big problem. Now, juvenile offenders have caused problems in their communities. They have caused issues that communities and others have to deal with. And they need to have consequences for that. But they also deserve some due process. We're going to hand this totally off to an administrative agency, with no oversight from the court. That's what this amendment...that's what this bill, excuse me, does. It says, we're not going to give you or ensure that you have your case heard by a number of people who have been working with you on it. Now goes just directly to an administrative department. And I know the people at HHS work very hard. I know they are very dedicated people. But I'm going to cite the Journal-Star series from last week. Also, I know earlier on the floor this morning there were discussions about some of the problems with...that the Governor is now addressing, of people with felony convictions being foster parents, of the concern over the death in Omaha of the child. But these are...this is an excerpt that I want to read into the record of following people around who are caseworkers. These are the same caseworkers with the merger that do the child welfare side, as well as the juvenile justice side. Those who work along CPS, attorneys, judges, child advocates, see the dedication and commitment of these front-line workers. They also see a Child Protection Service overburdened by increasing numbers of at-risk kids, too little funding, too few foster homes, devastating turnover, and a behemoth bureaucracy. On January 1, 1997, five agencies were merged into three, creating the Nebraska Health and Human Services System. And this is a quote: When Governor Ben Nelson restructured the department, everything went to hell, says Lacey. Maria Lavicky, southeast service area protection and safety administrator, agrees. This merger killed us. Caseworkers accustomed to working with abused and neglected children...

SENATOR SCHIMEK: One minute.

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SENATOR THOMPSON: ...were asked to take on juveniles in trouble with the law and master a trouble-prone new computer system at the same time, all with two new employees and no new money. We have been reeling ever since, says Lavicky. Quote: The system is really hurting for resources, says Lincoln attorney Rich Hollarup. It's crumbling under its own weight. Caseworkers are doing the best they can in an impossible situation. I'm not comfortable turning over the sole decision for where kids get placed with no oversight at this point in our history. This bill as presented is included in the amendment. It contains two new things in the amendment. One is that the court will receive the plan and review the plan prior to a child being placed in a level of treatment. The department will be able to place in a level of treatment. The second piece...

SENATOR SCHIMEK: Time. Senator Dwite Pedersen, you are next to speak, followed by Senators Suttle and Wehrbein.

SENATOR Dw. PEDERSEN: Thank you, Madam President. I would yield a little bit of my time to Senator Thompson so she can ask me the questions that she wanted to ask me when I was out of the room.

SENATOR SCHIMEK: Senator Thompson.

SENATOR THOMPSON: Thank you. Thank you, Senator Pedersen. I'm talking about the fiscal note. Would you tell me where...I will just say that I understand if there's a court review that some attorneys there will have to spend time on the court review. They already do it on the child welfare side, and this adds to their work. I will agree to that. What is the rest of the costs that were every...I've heard Senator Aguilar say it, I've heard Senator Tyson say it, I've heard Senator Brown and some others talking about the cost of my amendment. I want to know what that cost is for.

SENATOR Dw. PEDERSEN: Senator Thompson, correct me if I'm wrong, but the way I see your amendment is it mirrors what we are doing now on the Health and Human Services side of those kids that are brought in abused and things like that. Is that

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right?

SENATOR THOMPSON: Yes.

SENATOR Dw. PEDERSEN: And them are the ones that we are now doing reviews on. Is that right?

SENATOR THOMPSON: Both sides...it's a plan.

SENATOR Dw. PEDERSEN: So...but this...your amendment will say that we do it on all of them, even the ones that are being charged...even those that are brought into the system from the delinquency side, which will really put a lot more work on them, which will absolutely raise the amount of people we need, and the cost.

SENATOR THOMPSON: I was wondering...would you...do you have this handout that I have? The pink one?

SENATOR Dw. PEDERSEN: Right here.

SENATOR THOMPSON: Okay. On the third page in is the Nebraska Health and Human Services manual. Okay. And at the bottom where it's starred, could you read me that first sentence and tell me how...

SENATOR Dw. PEDERSEN: Yes. A written case plan...

SENATOR THOMPSON: ...that's different?

SENATOR Dw. PEDERSEN: ...will be developed following the assessment for children in home or in out-of-home care.

SENATOR THOMPSON: Right. And the amendment says "plan." So I don't...I see them as already doing this. This is just bringing their plan to the court, the same as these two examples that they already do.

SENATOR Dw. PEDERSEN: But my understanding is they're not doing that now on all of the kids that are brought in in the juvenile court syst...on the delinquency side.

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SENATOR THOMPSON: So are you telling me that the agency that wants to do direct placements doesn't even have a plan for where they're going to put these kids, and a reason for where they're putting them?

SENATOR Dw. PEDERSEN: Oh, I think very much so they do, or they wouldn't be bringing this in here at this time.

SENATOR THOMPSON: Then why is there a cost, if they're already doing it?

SENATOR Dw. PEDERSEN: You can't do all these reviews without adding...

SENATOR THOMPSON: This is not a review. This is the plan. The same, p-l-a-n, plan I see that they already are required to do under their own regulations, bringing that plan to the court.

SENATOR Dw. PEDERSEN: I will get that answer, and I'll bring it back to you here in a few minutes.

SENATOR THOMPSON: Thank you.

SENATOR Dw. PEDERSEN: The...again, I need to mention that this is really tough for Senator Thompson and I to go back and forth at one another, because she's been my sidekick in all of these juvenile court type things and all the juvenile issues. She knows the system a lot better than I ever dreamed of knowing it. I only work in the system. I'm a therapist. I work with young people. And I'm telling you, we, as far as bureaucracies go, we've got a bureaucracy in every one of the juvenile courtrooms. The other day, I went to court with a kid, this was two weeks ago, with a young man who asked me to go to court with him because he was scared of how many people were in there. There was eight, nine people in there getting in that courtroom with this one kid that are tax-paid individuals. You have a guardian ad litem, you have a public defender, you have the judge, you've got a court reported, you've got...

SENATOR SCHIMEK: One minute.

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SENATOR DW. PEDERSEN: ...a law officer. You've got all these people. And so the plan in itself, we need to do something is what I'm saying, is what Senator Thompson's idea is not a bad idea at all. It is something that has to be worked on and brought in another year. It substantially, again, changes this bill, and I cannot see that it would...that we can...we don't have enough people at the table for this issue at this time, and I don't think it's a good idea. Thank you.

SENATOR SCHIMEK: Thank you, Senator. The next speaker is Senator Suttle.

SENATOR SUTTLE: Thank you, Madam President, members of the Legislature. When...historically, we have had a lot of trouble dealing with juveniles. We treat juveniles differently than we treat lawbreakers as adults. I don't understand where the department gets \$600,000 to put in a plan. There's no review. Senator Tyson is talking about LB 595. That's not part of this. The part of LB 595 is only the overseeing of the judges. There's no review panel. There's nothing that will cost the state anything more than they're already doing. I am just reiterating what Senator Thompson has said. But I don't know whether that has penetrated the minds of the people in the body. I think that the judges fought desperately to maintain control of how juveniles are watched and what is going on with juveniles. The facilities in Kearney and Geneva are...have a revolving door on them at this point. And we need more community-based involvement. And having...that has been the mantra of the department for...ever since I've been in this body, since 1997. Community-based services, community-based services. Well, suddenly we have decided we don't want community-based services; we want everything to come to Lincoln. I...you can't change the rules in the middle of the game and expect all of us to just say, well, that's a great idea, let's go back, let's take away the court's jurisdiction and just do everything from Lincoln. I don't think that's in the best interest of the child. And I'll give the rest of my time to Senator Thompson.

SENATOR SCHIMEK: Senator Thompson.

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SENATOR THOMPSON: Thank you, Senator Suttle, members of the body. I would like to talk now about...more about the evaluation assessment process, and a concern that I have about what's happened. And this is relatively new. It's in the last couple of years. The actual shutdown of the Geneva evaluation didn't happen until 1999. So we're talking some recent history here. Let me tell you a story that was told to me by a judge about one particular evaluation that was presented to his court for a youth. The youth had been having sex...I mean, not...well, probably yes, but having...(laugh) meant to say substance abuse problems. I don't know about the sex part. But anyway, substance abuse problems, and had been put in inpatient...I haven't ever done that before. So, it's probably something for the sine die tape. But anyway, the issue was, having substance abuse problems, and was put in a treatment center, had been there for many months, and had completed the treatment. The youth then went back to his family, and had been living at home for about several months, and doing pretty well, but had a relapse. The same facility where he was for nearly a year was also the contractor that had the evaluation. And their recommendation to the...from the department to the court was,...

SENATOR SCHIMEK: One minute.

SENATOR THOMPSON: ...put him back in inpatient treatment for six months. Well, the parents were pretty shocked by that. And the parents were concerned, the judge was concerned, saying, this shouldn't really have to have inpatient treatment. But, remember, the same provider who provided the treatment also recommended he go back for six months. So the parents in this situation had the money to be able to pay for a separate evaluation, which was then presented to the court. They went to another provider. The provider said, this is a child that can go to outpatient. We think we can address it. There's no need to go back to an expensive inpatient treatment, and there's no reason to take the kid out of school, out of his community, put him back in inpatient treatment, when we think it can be addressed. And that's what the court did. And that's why there's some differences of opinion among all the people involved about those...this evaluation process.

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SENATOR SCHIMEK: Time. Senator Wehrbein, you are next in line.

SENATOR WEHRBEIN: Thank you, Madam President, members of the body. Senator Thompson, I'm a little concerned about I think what I consider a major amendment here, perhaps, on this bill. But I'm open. And I'd like to pursue a little bit more the fiscal cost. That would be a surprise to you, wouldn't it? But I know you're discussing the fiscal cost with Senator Pedersen and others. I haven't had a chance to talk to our fiscal analyst. But do you believe that there's not a fiscal responsibility...increased fiscal note for the state of Nebraska in this amendment as you've presented it? Is that what I hear you saying?

SENATOR THOMPSON: What I have heard...this is what I've been able to find out about it. One is that the lawyers for the Department of Health and Human Services, if there were an adminst...a review panel created, which is what this bill creates, feels their work load would increase. And if you'll look at the last page here, this is the child welfare side, what...after the Legislature created the same process on the child welfare side, the number of reviews a year. And essentially, it looks like, if you took an average, maybe seven or eight. So whatever they need to do in preparation for those hearings and their defense of their placement would be a cost. And I agree that would be a cost. Maybe they can absorb that; maybe they can't. They claim...they are saying that they cannot. Now, if you...you may have been off the floor when Senator Coordsen had the same issue brought...

SENATOR WEHRBEIN: I was off, yes.

SENATOR THOMPSON: Yeah. And I asked him for...because this same debate went on 11 years ago in 1989, when he was able to pass the review panel concept on the child welfare side, it actually had both...all of it in the original bill, but the juvenile justice side was amended out. He...but what he said was that the people at the time felt there would be, in the department, a very, very large fiscal note. So part of the bill was to have an annual report back of what the actual costs were.

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And it wasn't presented, and he later was not able to find that there was any cost. And he was told, and he can correct me if I'm wrong here, he was told that there were very minimal costs. I also talked about the review panel to the State Court Administrator's Office. And what the costs are are the costs of the judge...three-judge panel coming to Lincoln to review the case. And their...they pay their mileage. And if they're coming, for example, from the western part of the state, they would have their overnight stay. So this has been a very minimal cost that's been absorbed by the State Court Administrator. They have not indicated to me that they felt they would need much of anything to be able to accomplish this on the juvenile side.

SENATOR WEHRBEIN: I do have another area then.

SENATOR THOMPSON: And the third issue, which they're supposedly finding out about is in their own rules and regulations they are already required to have a plan. These examples are plans that have been provided to courts. They have to have a plan for...if any federal money is involved in this. They can't not have a plan. So my argument is, why do they need \$600,000 to do what they're already required to do in their own reg...department regulations, and which we know is actually happening?

SENATOR WEHRBEIN: Okay.

SENATOR THOMPSON: I'm dumbfounded by that.

SENATOR WEHRBEIN: Well, then look on...one other issue, on page 2 of the amendment, line...

SENATOR SCHIMEK: One minute.

SENATOR WEHRBEIN: ...line 10, that paragraph (b)(i). I don't know which one that's supposed to be. But "After adjudication", it looks like, to me, that is...move the costs back to the state earlier in the process, as I understand the process. Because it says after adjudication now the court may commit such juvenile to the care and custody office of OJS, and so forth and so forth. Doesn't that move it, the state costs back earlier in

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the process than it is at the present time? And wouldn't that be an increased cost to the state?

SENATOR THOMPSON: Well, after adjudication is when the child is determined, I guess in adult language lingo, they're found guilty, and are placed with the Office of Juvenile Services.

SENATOR WEHRBEIN: Well, that's been added in there, compared to what it is, the way I read it. Because right now it's saying the court may commit such office to the Office of Ju...

SENATOR THOMPSON: Well, I would be happy to work with you on that. My understanding was that wasn't changing anything in terms of current practice. I know there was a Supreme Court case, and you have a bill...

SENATOR SCHIMEK: Time.

SENATOR THOMPSON: ...addressing that. And I'd be happy to merge up, if the body chooses to go another way with that.

SENATOR SCHIMEK: Thank you, Senator Wehrbein. Senator Bourne. (Visitors introduced.) Senator Bourne.

SENATOR BOURNE: Thank you. Thank you, Madam President, members. Senator Thompson, I'm going to yield my time to you. I'd like you to kind of expand a little bit more on the cost issue, if you would. Thank you.

SENATOR THOMPSON: Thank you. The cost of this bill, there are two things that we're asking the department to do. We're incorporating what the original bill said, which is that the department shall make the placement. We are adding two processes. One is that they must supply a plan. If we're going to do that, they need to supply a plan and there needs to be oversight by the court. They already do plans. I've got examples of two plans in this document. I also have a page from their own training manual that says that they provide a written case plan. And to be honest with you, I'd be totally shocked that you have any administrative agency in this state that removes a child from his home, puts him in an out-of-home

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placement, or moves them from a detention center to an out-of-home placement that doesn't have something written down about it. It's not a large process, as you can see from these examples. It's a one-page memo telling what the problems were, what the level of care is, what kind of facility they recommend, what kind of treatment they recommend. Remember, this is just a relatively new development in the history of the state. If you go back 20 years, these were part of the counties' responsibilities. The counties' responsibilities were transferred to the state in the early eighties. And it's been a fight ever since then, over who, which department, how the services are going to be provided. But what this amendment does is attempt to make this gatekeeper piece work better. And I'm going to go back to the recommendation by the national consultant, which is the one that's listed A2. And here's the recommendation: Develop single point of entry into state custody. And if things worked well, maybe you could get there. But I'm not sure, and I've had a real change of thought on this, I'm not sure, over the years because I think there are advantages to the department having the placement ability, and I do support that, because then they can develop the continuum of care, they can contract for the services, and they're available to kids from all over the state. But to do this without any oversight, to put kids in out-of-home placements, to have a department call up there, and say, hey, how's Johnny doing? And the only oversight of that is them calling back and saying, he needs to stay another 6 months. Having no standing of the court, in the plan, the planning process, or to have any way for that...the parties to that court case, have an ability to appeal it, other than an administrative process. Senator Dwite Pedersen, could you answer a question please?

SENATOR Dw. PEDERSEN: Yes, Senator.

SENATOR THOMPSON: An administrative hearing would have to be held if someone wanted to object within the dep...to the department placement? Is that part of...do you see that as happening, even though it's not in the bill? If someone...if my child were placed in a placement, and I had concerns; I think he's being molested, I think he's not getting the treatment, I think he's being bullied by someone, I think the staff has

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assaulted him. I go to the department, is that correct?

SENATOR Dw. PEDERSEN: Yes. The kid can ask for a review too.

SENATOR THOMPSON: Right. But in terms of the placement...

SENATOR SCHIMEK: One minute.

SENATOR THOMPSON: I don't want my child to go to this placement. Maybe he's been there before. I don't want him to go. I have to go through an administrative process. I don't go...I don't...for the placement, we're trying to narrow that down, so that's an administrative process, not a court process, correct?

SENATOR Dw. PEDERSEN: Right.

SENATOR THOMPSON: Where would...where are administrative hearings held?

SENATOR Dw. PEDERSEN: I'm not sure of that, Senator, I've never been to one.

SENATOR THOMPSON: Well, one of the things that I read in the history of the bill in 1989 was that one of the issues at that point was they were just doing administrative reviews, and they were being done in Lincoln. And they weren't being done in the communities, and it was...things were happening that people couldn't even get to.

SENATOR Dw. PEDERSEN: Senator Thompson, aren't most of...

SENATOR THOMPSON: I just want to know if you see any difference in what you're doing with your bill?

SENATOR Dw. PEDERSEN: Well, some of these happen in a courtroom...

SENATOR SCHIMEK: Time. Senator Connealy, you're next.

SENATOR CONNEALY: Thank you, I'd like to yield my time to

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Senator Thompson.

SENATOR SCHIMEK: Senator Thompson.

SENATOR THOMPSON: Did somebody yield or ask?

SENATOR SCHIMEK: Senator Thompson, yes.

SENATOR THOMPSON: Oh, thank you. Thank you. I'm getting back to Senator Wehrbein's question. Senator Wehrbein, this is from Section 43-285, juvenile violator...or, excuse me, 286. And the section is entitled "Juvenile violator or juvenile in need of special supervision; disposition; violation of probation; procedure." When any juvenile is adjudicated to be a juvenile described in subdivision (1), (2), or (4) of Section 23 (sic 43)-247, and then there's (a), (b)...(a) and some things, but (b) is: The court may commit such juvenile to the Office of Juvenile Services. To get back to the amendment; I've spent most of my time talking about the history, why we're here, why we have the problem, what's been done before, what Legislatures chose to take up, what they didn't. And I'm just going to get down to the brass tacks at this juncture. If we pass LB 598, we are turning over to the state the responsibility of placing kids in out-of-home placements only to a department. No oversight by the court, and no review process through the court. It's totally administrative. I am not comfortable with that. The recommendation for the gatekeeper came with a number of other recommendations. The gatekeeper said it would be good if the state had, at the point the kids were put with the Office of Juvenile Services, the ability to place in placements, and make those decisions totally, but you aren't going to get there. You're not going to get there if, number one, you don't have a good assessment evaluation process; we have a community-based assessment evaluation process that's in its infancy. It has a number of problems and concerns that are being raised. I think it's too early to consider this type of radical change, until that whole process gets straightened out. And the courts, and the people who work with the courts, have the confidence that that process is giving the best recommendations, not biased recommendations, not recommendations from the same provider who provides the service, provide...and I don't know how to

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accomplish all that at this point, but I think that's the reason that the consultant said, until you have that in place and there's confidence in that system, you can't have the gatekeeper be totally an administrative function. You have to have the confidence of the judges. What else don't we have in place? One of the problems is, we don't take a kid in, at least in my experience in talking with people, and say, gee, this is Johnny so-and-so, I'd like to look at four or five of the best possible options for treatment for this child. And why is it that we can't do that? Well, one is we don't have four or five treatment options usually available. The other is we have waiting lists. The other is some of the treatment providers have IQ tests that you can't get in, so not everybody can serve Johnny if Johnny has special behavior problems, or if he doesn't have a 70 IQ. This is a problem for the department too. We need to make sure we have that array of services in our communities across the state, this year. And it's not enough, but it's a good start. You're going to hear, in the appropriations bill, and we've also passed it in the...

SENATOR SCHIMEK: One minute.

SENATOR THOMPSON: ...tobacco settlement interest income, a way to boost some of those community-based services. So there are some more alternatives, but they aren't there yet, and they aren't enough. And therefore there's no confidence in that. And I have a real problem, and I'm told, and I'm not going to go there because I'm not as familiar with the constitutional issues, but I hear there may be a constitutional problem. I hear that there are federal laws that require oversight by the courts of out-of-home placements through plan submission, which we don't...won't have in place, that may jeopardize our federal funding. All these issues have been brought up, they've all been talked about. This is my solution, I didn't write this, once again I have to admit, I had a lot of help with this. I'm not an attorney, but I did seek out help from people in the system to help write this section. It's not identical to what was presented...

SENATOR SCHIMEK: Time.

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SENATOR THOMPSON: ...in LB 595, but I think it is better and it is a good solution.

SENATOR SCHIMEK: Thank you, Senator Thompson. Senator Suttle, you're next to speak.

SENATOR SUTTLE: Is this my third time?

SENATOR SCHIMEK: Yes, it is.

SENATOR SUTTLE: Thank you, Madame President. I again want to iterate a fact that the juvenile judges are not comfortable with LB 598. In the packet that Senator Thompson gave us, we have a letter from Senator...or from Judge Wadie Thomas, who is the head juvenile judge right now for the Douglas County juvenile judges. And he says that they oppose LB 598 in its current form, without the Thompson amendment, which essentially provides for the same type of judicial oversight as the court already has in neglect and abuse cases. I don't know why we'd be willing to take on the liability of taking care of a child without any overview from the courts. Why would we as the state want that liability, I wonder if that would be the smartest way to go, without any kind of judicial overview to see what kind of treatment was being provided, and whether that treatment was doing any good, or whether the child was further abused? The court stays with an overview for abused and neglected kids. I would think that we would want the same thing for the kids that have become delinquent, because they are so closely related. Usually the abused becomes the abuser. Senator Thompson, do you need some more time? If so I would yield any time I have left to Senator Thompson.

SENATOR SCHIMEK: Senator Thompson, you have a little less than three minutes.

SENATOR THOMPSON: On your desk today, someone has passed out, and I apologize for whomever the Senator is, I can't see it from here, a little turquoise ribbon. And it has to do with the issue of child abuse, and sexual abuse of children. And it's to create an awareness. When we look at the population of juvenile offenders, and the population of youth who are abused and

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neglected, they have a lot of similar similarities. In some cases, the abused and neglected child, hopefully through the process we have set up, is getting a plan, a plan review by the court, and they're getting a way to appeal. And the same child with some of the same issues, who has been caught for a juvenile offense, needs those same services. And they need someone who's watching out for them. We have checks and balances all over our systems of government. And what this amendment that I'm proposing does, is provide a system of checks and balances. No longer, if you adopt my amendment, would this bill just be giving a total administrative decision without review by a court. It also takes away a valuable tool that the courts have in helping children and families resolve these issues. Probably those who are attorneys of the body, who do trial work, have advised their clients that sometimes going to trial may not be the best thing. Actually, if you can work things out ahead of time,...

SENATOR SCHIMEK: One minute.

SENATOR THOMPSON: ...it can be a better, perhaps, solution, and for us as a state, it will save us some money if we don't have as many court hearings over these issues. But by a judge calling in all the parties, including the parents, and the child, and those people who are working with the child, the prosecutor and say, how can we resolve these issues? How can we look look at this plan that's been developed by the department? And how can we all work together to solve these problems that we're facing? And having buy-in from the parents, and from the other parties, can help make treatment work better. Handing it over to the department that's understaffed, according to some of the newspaper accounts, and other people I talk to. According to their fiscal note, that they're claiming...

SENATOR SCHIMEK: Time.

SENATOR THOMPSON: ...that is in this bill, they aren't even doing this. We need this amendment. Thank you.

SENATOR SCHIMEK: Senator Peterson, you are next to speak.

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SENATOR Dw. PEDERSEN: Thank you, Madam President, and members of the Legislature. First of all, to answer Senator Thompson's questions on the money, I've got some answers on that. I got mixed up between case plans and case reviews. With your amendment, we're saying that that's going to add 720 more reviews. Case plans are already done by rules and regs, as you have mentioned yourself. It's not in statute, and it's not figured into the fiscal note. The fiscal note reflects 720 new court reviews a year. That includes in-home placements and the kids at the YRTC's. This would be to finance or pay for CPS workers, for preparing court plans, which are more detailed than case plans. I want to go on and add a little bit more to what we were talking about, about the gatekeeper in itself. Senator Tyson said it real well when he was talking; we've been on the road for some years to move and get some things done, and we've done that. In the Governor's plan we've got \$10 million that has been put into the plan for this year. And the Governor said last year, that if we put in \$10 million, we needed to have a gatekeeper. And that's only prudent fiscal practice, that you don't just give people money and say spend it any way you want. We've got to have somewhere and some way to have some control over that. One of the things that excites me most about the gatekeeper, and the LB 598 without Senator Thompson's bill, is we're going to... I see it as a way that we're going to get more kids out of our youth centers faster. In Douglas County last weekend, we had going on 180 kids locked up. A lot of them don't even need to be locked up. A lot of them are waiting placement, placement through the courts. I believe by putting the gatekeeper bill in place, that these kids will get to placement faster than what they are now. And if we put Senator Thompson's amendment on there, I think it may even keep them a little bit longer. Again, I want to say I like what she's talking about, but we don't have enough people to the table, and that's moving towards getting more done on this as we go, but not now. A step at a time. We've already been told that they're willing to sit at the table, and come back and look at this for another year. But this is, again, a substantial change with Senator Thompson's amendment to LB 598. And LB 598 is good legislation and needs to be passed. Thank you.

SPEAKER KRISTENSEN PRESIDING

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SPEAKER KRISTENSEN: Senator Baker.

SENATOR BAKER: I'd call the question, please.

ASSISTANT CLERK: Do I see five hands? I do. The question is, shall debate cease? All in favor vote aye; all those opposed vote nay. Have you all voted? Record.

CLERK: 27 ayes, 3 nays to cease debate, Mr. President.

SPEAKER KRISTENSEN: Debate ceases. Senator Thompson, you're recognized to close on your amendment.

SENATOR THOMPSON: Thank you, Mr. Speaker, members of the body. I think everyone who works in the juvenile justice system wants what's going to be best and most effective for the child, in terms of rehabilitation. And they want to protect the community. And they want very good outcomes. We haven't talked about that much today, because we're talking about procedure. LB 598, as it's been amended, gives the decision for a placement of a juvenile offender to the Department of Health and Human Services. It becomes a total administrative decision. We were in a similar position about 10-12 years ago, on both sides, juvenile justice and child welfare. Actually, the Department of Health and Human Services, at that time, did not provide services to juvenile offenders per se, and the bill that addressed that didn't...in the end took that idea out. But we're back with it again today. So the question is, do you adopt my amendment, which incorporates LB 598, which says the department can make the placement, but it requires two things? I want you to think about whether, if this were you, or your child, or your grandchild, how you would feel if you knew that the only review of where your child was going to be placed, could be in the state, could be out of the state, could be in your community, could be somewhere else, the only place that was going to be able to make that decision would be in the Department of Health and Human Services. Now think about it, if you read the series last week, in the Lincoln Journal Star and think how comfortable you would feel about that. Parents are important to the process. Sometimes it's the kid's grandparent,

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the people who've worked with them, the prosecutors, the public defenders, the guardian ad litem, the...or however it's assigned in their community, the caseworker. I've sat in on hearings that many of you were invited to last year with the judges, sat in with the school folks and others, coming together to try to resolve the problems of the youth, so that they can come back to their community and not reoffend. We're now going to give that totally to the Department of Health and Human Services. They have good people, they have caring people, but they're overworked. They have too much on their plates. When the national consultant came in and recommended this gatekeeper piece, she said you have to have in place, first of all, an assessment process. And in our state, this assessment/evaluation community-based process has just only been here a couple of years. You have to have one that the judges and the system have confidence in. I'm not sure we're there yet, at least from some of the meetings I've sat in. And you have to have a continuum of care. You have to have options. You have to have significantly more funding, so that there's confidence that the department can make these placements. And that they aren't, as we heard earlier, when I heard the cost thing, and I'm not saying cost doesn't drive a lot of what we do here, but we should be looking for a placement that's going to have a good outcome. Otherwise the kid is going to be back and back, and then we're going to build more prisons, and then we're going to be paying for them for the rest of their lives. If you pass my amendment, you're going to put in place two processes, two processes that have been on the books for the child welfare side for a dozen years, without complaint. To the extent that they've been in place, I think good recommendations and plans have been presented. And a few times they've been appealed, not a lot but a few. But that's a safeguard. That's a check and balance that we have in our system for those kids. Those kids have the same issues as juvenile offenders. Eighty-five percent of the girls in Geneva have experienced some type of sexual abuse. They've committed property crimes, they've done other things to be there, they violated probation; but they have treatment issues that are needed. We also know the increase of diagnosed mental illnesses...

SPEAKER KRISTENSEN: One minute.

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SENATOR THOMPSON: ...that our department itself, in its briefings, gave us information on. We're going to hand all that off, for those out-of-home placements, to administrative decision of the department. This has been talked about, this is not a new process. We have had a hearing on an aspect of this, that was contained in another bill. I am not comfortable making a decision to turn this entire process over to the Department until, as the recommendation by the consultant, we have an assessment process and a continuum of care, so that we have a great...better information, and a greater array of services. So I urge you to add these two pieces on, just as the Legislature did in 1989, to guarantee some process...

SPEAKER KRISTENSEN: Time.

SENATOR THOMPSON: ...that has oversight by the courts. Thank you.

SPEAKER KRISTENSEN: You've heard the closing. The question before the body...

SENATOR THOMPSON: Call of the house, please.

SPEAKER KRISTENSEN: Thank you. There's been a request to place the house under call. All those in favor vote aye; all those opposed vote nay. Record.

CLERK: 28 ayes, 0 nays, Mr. President, to place the house under call.

SPEAKER KRISTENSEN: The house is under call. Would all unexcused members please report to the Chamber and record your presence. The house is under call. Senator Thompson, for what point?

SENATOR THOMPSON: Roll call vote.

SPEAKER KRISTENSEN: Thank you. There's been a roll call request. Senator Baker requested it in reverse order. The house is under call. Senator Chambers, would you record your

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presence. Senator Wickersham, the house is under call. Senator Coordsen, Senator Quandahl, the house is under call. Senator Quandahl, the house is under call. All members are present. We're voting on the Thompson amendment. There's been a request for a reverse order roll call. Mr. Clerk.

CLERK: (Roll call vote taken, Legislative Journal pages 1529-1530.) 5 ayes, 29 nays, Mr. President, on the amendment.

SPEAKER KRISTENSEN: The amendment is not adopted. I raise the call.

CLERK: Mr. President, I have a priority motion. May I read some items first, Mr. President?

SPEAKER KRISTENSEN: Items.

CLERK: Thank you, Mr. President. Senator Raikes would like to print amendments to LB 366; Senator Coordsen, LB 305; and a new A bill, LB 827A, by Senator Bromm. (Read by title for the first time). (Legislative Journal pages 1530-1531.)

Mr. President, Senator Thompson would move to reconsider the vote just taken on AM1568.

SPEAKER KRISTENSEN: Senator Thompson, you're recognized to open on your motion to reconsider. (AM1568, Legislative Journal pages 1523-1529.)

SENATOR THOMPSON: Thank you, Mr. Speaker, members of the body. I rise to offer this motion to reconsider, because I think this is probably one of the most crucial decisions we're going to make this session. And I think there are some things that I may not have had time to mention in my closing that I would like made part of the record. We don't make too many decisions, we make a few while we're here. We make taxing decisions, we make regulatory decisions. But this is a decision about children. This is a decision about them being taken from their homes, placed in an institutional setting, and having that decision made by a department, without review by a court. And I think

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that's a monumental decision to make about a child, without any oversight from the judicial process. And that concerns me. Now I've heard from people here, well, we really...this is some...this is a new and this is a big change that you're proposing, by offering this amendment. And to people who have been working in the system, it's probably not that big of a change, but probably for a Legislature, I'll admit that it is. And I know that this bill has been worked all morning by the administration, and I know that this amendment does not have the support of the Governor or the department. But I'm not going to let that cloud my view of how critical I think it is that we need to keep judicial oversight. Now there are those who think this bill is unconstitutional. And that you could just let it go, and it's going to get overturned anyway, and so what. But that process will take years. Think of the kids that are in these out-of-home placements that don't have...haven't had the ability of the court to review the plan for them, to be told of any placement changes, and don't have the ability to appeal that plan, or their parents don't have the ability, or some other party doesn't have the ability to appeal that plan, if they think it's inappropriate. And that's a check and a balance to what we do for kids in this state. This is a monumental change to give this responsibility to an administrative entity only. And I am very concerned about the state heading in this direction. And I think this bill kind of slipped along rather quickly. I'm being told it's part of a package, and I think we know that occasionally things that look like a good idea on the surface move forward, and we catch them. We catch them in the legislative debate. And we talk about them to a greater extent. And we don't shut down all of our thinking just because a particular group, or a particular individual wants it to pass the way it is. And that's why I think it's important we reconsider this motion, and look at a better way to do it. We're not making up a new idea. This idea is the way it currently is on the child welfare side. And remember that a lot of these kids have the same issues, whether it be on the child welfare side, or another side, or the juvenile justice side. There should be oversight by someone other than an administrative department. This still allows the department to make the specific placement, which I think gets to the issue of the gatekeeper. But other people need to be at the gate,

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particularly in a system that's fraught with problems right now. People work hard in the system. They care about the kids. But it's an overwhelming system. Has problems with the computer system, it has problems with finding placements. It needs this oversight at this point in our history. Now is not the time. And the recommendation that came down, from which this bill was developed, was also made with the caveat that you have to get the confidence of the system of people who surround it, not just the department, that the evaluations and the assessments that are being provided are working to make sure that it's the best possible treatment for the child, and will have the outcome that we want to have. There isn't confidence in that system in some parts of the state. The second thing is you need to have the continuum of care built, and the options there. If you pass this amendment, the department will be able to get...continue to build that depar...that, by having the ability to make the placements, which I support. The court will be able to direct level of treatment, but the placement will be with the department. However, before that placement is made, a plan must be in place, and there is an appeal process to that plan. So I support a vote for reconsideration. We're probably going to spend a lot of time on this bill, because this is something I cannot rest without knowing we've given it a thorough, thorough review. Because this is significant, this is significant. This is a huge change. And I think we shouldn't leave it up to a court process, and leave these kids in these limbo situations for years, until this is resolved. We need to take care of it now, on the floor, by getting this system either deferred, or the suggestion that's in LB 598 that's being considered; we either need to defer it or we need to amend it. And this reconsideration motion gives you the option to amend it, with a process that's worked in the state since it was voted on by the Legislature in 1989. We're just extending that same level of oversight to the courts, and not taking it away from them in terms of plans for juveniles, and oversight of those placements that can be appealed through a court process. So you have two options; one is to reconsider this motion, and fix this bill now. And the other is to spend some time talking about deferring this decision, which will come in subsequent amendments if you don't reconsider this motion. Thank you.

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PRESIDENT MAURSTAD PRESIDING

PRESIDENT MAURSTAD: Thank you, Senator Thompson. (Visitor introduced.) For debate on the motion to reconsider AM1568, Senator Bromm.

SENATOR BROMM: Thank you, Mr. President. I wanted to make a couple of comments. I didn't support the amendment, and I won't support the reconsideration. But one thing that I just wanted to at least make clear from my reading of the bill, that I think maybe isn't being emphasized enough, in response to Senator Thompson's concerns, and that is that under the law as it is now, and under the law as it will be under LB 598, the court continues to maintain jurisdiction over the juvenile from the time the juvenile is committed to the Office of Juvenile Services, until the time the juvenile is discharged from the Office of Juvenile Services. Now by maintaining jurisdiction, that means the court can make various orders, or findings, or requests, or demands. And I don't think that we can take that power away from the court. And LB 598 doesn't take it away from the court. And if there are problems and concerns, as Senator Thompson is indicating, the court does maintain jurisdiction over that juvenile. Now, the law goes on to say when the court shall conduct hearings, but it doesn't say that the court can't conduct hearings at an earlier time. Don't we still have CASA workers tracking kids? Senator Thompson, would you yield to a question or two?

PRESIDENT MAURSTAD: Senator Thompson.

SENATOR THOMPSON: Yes.

SENATOR BROMM: Senator Thompson, first of all, am I not correct that under the green copy of the bill and your amendment, that the court maintains jurisdiction over that juvenile, until that juvenile is discharged from the system?

SENATOR THOMPSON: The concern that was given to me is that...may I go? Okay. The concern that was raised to me by judges, several months ago when we first started looking at this bill, was that the actual placement, placement decisions,

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movements within placements, and review of the plan took them out of the ability to impact that. And that this...the language that's currently there, because I asked the same question, because of the change with the amendment, really limits their ability to take an action...

SENATOR BROMM: Well, if...

SENATOR THOMPSON: ...or allow anyone to take...

SENATOR BROMM: Okay...

SENATOR THOMPSON: ...a part...become a party to that.

SENATOR BROMM: ...but the court would maintain jurisdiction to make sure that that juvenile is getting the level of treatment that was ordered by the court. Right?

SENATOR THOMPSON: Yes.

SENATOR BROMM: And yes, the court couldn't say, you must put the juvenile in Wayne, Nebraska, to obtain this level of treatment, or in Kansas, but the court could say, you must provide this level of treatment, and as I understand the bill and the law as it has been, the court could...could order a hearing, the court could order that the Office of Juvenile Services file a report with the court once they've placed the juvenile, and where the juvenile is at, and what the level of treatment is. Is that not correct?

SENATOR THOMPSON: What I was told is that they would have no authority to do anything about it.

PRESIDENT MAURSTAD: One minute.

SENATOR THOMPSON: They could hear it...

SENATOR BROMM: That...

SENATOR THOMPSON: ...but they have no authority beyond...

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SENATOR BROMM: Yeah.

SENATOR THOMPSON: ...that.

SENATOR BROMM: Well I guess I would question that. And I...and I'd be interested in finding out the rationale of who is saying that, because the law clearly says, the court shall retain jurisdiction over the juvenile committed to the Office of Juvenile Services, until such time that the juvenile is discharged from the Office of Juvenile Services. If the court maintains jurisdiction, the court has an awful lot of power that we as a Legislature can't, in my opinion, delegate and take away. We are saying the court shall order a level of treatment, or may order a level of treatment, but we are saying the Offices of Juvenile Services shall decide where that treatment occurs. But they have an obligation to comply...

PRESIDENT MAURSTAD: Time, Senator Bromm.

SENATOR BROMM: ...is that time?

PRESIDENT MAURSTAD: Time.

SENATOR BROMM: With the order of the court, and I wanted to inject that into the discussion. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Bromm. Further debate on the motion to reconsider. Senator Suttle.

SENATOR SUTTLE: Thank you, Mr. Lieutenant Governor. I wondered if I could ask Senator Pedersen a question?

PRESIDENT MAURSTAD: Senator Pedersen, would you yield?

SENATOR DW. PEDERSEN: Yes.

SENATOR SUTTLE: You mentioned in your last statement that there would be 720 reviews, according to the amendment that Senator Thompson gave us in AM1568. Can you cite the verse of that? I don't see anything in there that requires that they have a judicial review. They have to have a case plan, but I don't see

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anything written in here, and I just can't find it.

SENATOR DW. PEDERSEN: Her amendment will add reviews to in-home and the YRTCs.

SENATOR SUTTLE: That's what you said, but I can't find it in the amendment. Could you fin...tell me where it is in the amendment.

SENATOR DW. PEDERSEN: I'll have to find that. I can't look it up right now in that long of amendment. Just...

SENATOR SUTTLE: Okay. I'll let him look that up. I just am having a hard time finding where this review...there isn't anything about a review in this amendment that I can find. That doesn't mean there isn't one in there. There's a case plan, which she has the examples of in her packet. But we just...I'm just having a hard time looking for 720, which is how many kids we have in juvenile justice right now, that are delinquent apparently, that that would have to require a review. I just can't find it there. So I'm concerned that we have done something here, by summarily rejecting this out of hand, because Senator Thompson introduced it. I see this as your looking at the two do-gooders, and not looking at what's best for kids. And we always try to do everything in this state on the cheap. We are the cheapest bunch of people, especially when it comes to our kids. And I don't understand...I don't understand that, and never understood it. And we are trying to keep these kids from being adult criminals. And if they don't get the treatment when they're kids, then they'll just end up in penitentiaries when they get older. So you guys can take care of them in the penitentiaries instead of treating them as juvenile...when they are juveniles. So anytime I might have left, I'll give to Senator Thompson.

PRESIDENT MAURSTAD: Senator Thompson, about two minutes.

SENATOR THOMPSON: Thank you. In my amendment, the word review is used, it's on page 24 of page 2...or line 24 of page 2. And it says the office or any other party may request a review of the court's order concerning the juvenile by a juvenile review

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panel, as provided in Section 43-287.04. And what this is referring to is, if there is an appeal of the placement and the plan, then that would go to this review panel. The same way it's been working for eleven years through the abuse/neglect side. And on the back page of the pink sheet, which I've already pointed out before, are the numbers of reviewed...the review panels...

PRESIDENT MAURSTAD: One minute.

SENATOR THOMPSON: ...that have been convened on the child welfare side. And it doesn't come anywhere near the 700 plus that we're talking about. What I'm talking about here is a plan, a proposed plan for the care and level of treatment to be provided to the juvenile. That's what we're talking about. I then cite the department's own regulations, which state, and that's in this booklet of different documents, a written case plan will be developed following the assessment for children at home or in out-of-home care. The case plan for juvenile offenders will be based on the factors which are most closely related to the possibility of the child reoffending. The child's need for restrictiveness will be considered in providing services. The reclassification will relate to the progress toward goals in the case plan.

PRESIDENT MAURSTAD: Senator Thompson, you can continue on your own time.

SENATOR THOMPSON: Thank you. The case plan for status offenders will address the issues which brought the child to the attention of the department. A written court report will be prepared for status offenders, as described in the child welfare cases above. And the child welfare cases that's referring to, what we've already put in place on the child welfare side. And as I pointed out, we have examples of what's currently being provided to the court, when they review the plan. These are not extensive memorandum. They are one front of one page, both of these examples. I can't believe that we're going to have to spend \$700,000, or \$600,000 if you take out part of the money for the increased load to the department to defend these cases, that it's going to cost that much money. And I would point out,

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from the floor debate from 1989, some things that I thought were kind of interesting. This is the comment of Senator Doug Kristensen on the floor debate; because I guess one of our problems is that the fiscal impact of this bill comes back so high, the Department of Social Services automatically going to know that that's the way to defeat the bill if they...if they have a high fiscal impact. Kind of looked on as a tactic. Also, have several other comments from several other senators. Put a real high A bill on and high fiscal note, and it's a way to say we can't possibly do this. I don't believe they can't do this. I don't believe that a caseworker doesn't have time, and I would be appalled to consider that they haven't even got this much written down when they make a placement decision for a child. When they decide what level of treatment they need to be in, when they look at their circumstances, why they can't do what they're already doing, and present that to the court, and that that's going to cost \$600,000. I...and you know what, if it did cost \$600,000, I think we should think about doing it, but it isn't. It isn't going to cost that much money. We already...no one's disputed that it's not going to cost very much for the review panels. So I don't agree that...with this assessment at all. And it's the case plan that we're talking about, that they already have to write. So to get back to this amendment, and why this is a good way to go, it's already been proven to work on the child welfare side. Back when this was discussed, when the counties gave up, and happily so in my case as a county commissioner, the responsibilities of the county, well, most of the responsibilities of the county welfare office, and the state took it over, I think the state did not realize how much they were taking on. I think it was underfunded, and I think the problems continue as a result. We've tried to address the needs of juvenile offenders, and we've done some things to do that, but we aren't there yet. We cannot put this kind of a gatekeeper piece in place in statute, and be the first thing that we do. This should be the last thing that we do. I've heard earlier about packages, and overall proposals, but this is a one-piece thing. Some of the things in the package haven't even been advanced from committee yet, nor have they been considered by the Legislature. Some of them I think are...I'll be actively supporting and championing, and others I won't, depending upon what gets out of committee and what gets to us

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this session. But one thing that's not going to...

PRESIDENT MAURSTAD: One minute.

SENATOR THOMPSON: ...happen is a quick decision to make this level of change. And to get to some of Senator Bromm's concerns, let me tell you the process I go through before I bring a bill, or decide to oppose a bill in this fashion. I have worked with people in the juvenile justice system for close to 20 years. And when something comes up, I routinely send copies of bills out, have my staff call, say take a look at this, what do you think. Well, I had the bill that was up in committee after this bill, and I was kind of dumbfounded at how quickly this discussion went. So I took the bill, and said to my legislative aide make sure our usual contacts are aware of what this does, I'd like some input. And what of the feedback I got was that this is a radical change, and I didn't get that,...

PRESIDENT MAURSTAD: Time.

SENATOR THOMPSON: ...Senator Bromm, from just one person, I got that from several. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Thompson. Senator Thompson, you're recognized to close on your motion to reconsider.

SENATOR THOMPSON: Thank you, Mr. Speaker, members of the body. This amendment solves the problem, as far as I see it, that's significant to LB 598, and it gives a review process. This isn't a big thing, in terms of process. It's already happening in courts today, so most courts are going to be familiar with and have been in this practice of the department coming to them with these decisions about youth that are under their review. A big change will be a review panel to oversee these decisions, which wouldn't have to be here if we didn't put the bill in place. But because we're making a change to a total administrative decision, by a department of the state, there should be an option for the court, the people who come to the court, not the court itself, but the people who are a party to the action, to be able to ask for a review of that should that

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placement be of concern to the parties involved. Now there are some things in the law currently, as Senator Bromm says, that deal with things after the fact. But kids will be put in these placements, and the court will not have the authority, as I read this bill, to be able to make changes to that, or to be able to convene people to discuss that prior to it happening. So we can put these two assurances in place, to give processes for the youth to be able to, and their families, to be able to come to the court to work together on a plan. One of the biggest objections that I have heard from people in the system is you're taking away the ability of the parties involved to talk, and plan, and talk through the plan, and get buy-into the plan. Now it will be the decision of a worker in the department. There won't be a process that everyone can be brought to the table. And when a judge says come to the table, people come to the table. They can work through the plan, they can talk about it, they can get buy-in and they can get comfort from parents. I have, since I've been working on this in the Legislature, been sought out by parents and grandparents of children in our juvenile justice system. And they've been some pretty heartbreaking stories. And I got one just last week from someone concerned about a placement, and something not happening. And I think had...if we take away all of the oversight that goes into the decision for that plan, and if we take away the ability of people to appeal the plan, other than through an administrative process, we're doing a big disservice to the way juvenile justice works in this state. There are concerns about the ability of the department, currently, in its contracting for assessments. There are concerns about that at this point in time, that need to be dealt with before we go forward. There were concerns about adequate placements that need to be dealt with before we go forward. The consultant, in her recommendation, said these things need to be put in place. You shouldn't do this, or can't do this, without some confidence of the judges. I didn't sit back, look at this, and cook this up on my own. This is the result of feedback I got from the system. But I'm here...

PRESIDENT MAURSTAD: One minute.

SENATOR THOMPSON: ...in any capacity, not speaking for any

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particular individual in the system, but someone has to speak for the child. We need to assure that this child, no matter what they've done, no matter what their problems are, at least has the ability to go through a process, with oversight from the court, that decides where they're going to go, and what kind of placement it's going to be, and that someone knows where they are. One of the concerns of the judges is that kids get lost in space. And without the court having that information, and knowing about that information in a timely fashion, and being part of that decision, we're taking away the one place where that child has someone looking out for them. Some of the kids in the juvenile justice system may have parents, and grandparents, and others who are engaged. Some of them are there because the parents aren't engaged.

PRESIDENT MAURSTAD: Time.

SENATOR THOMPSON: We need to pass this amendment. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Thompson. Question is, shall AM1568 be reconsidered? Those in favor vote aye; those opposed vote nay. Mr. Clerk, please record.

CLERK: 2 ayes, 19 nays, Mr. President, on the motion to reconsider.

PRESIDENT MAURSTAD: The motion is not agreed to.

CLERK: Mr. President, Senator Thompson would move to amend with AM1505. (Legislative Journal page 1532).

PRESIDENT MAURSTAD: Senator Thompson, you're recognized to open on AM1505.

SENATOR THOMPSON: Thank you, Mr. Lieutenant Governor, members of the body. LB 1505 (sic-AM1505) gives you another option with this bill. And I think from the discussions that you've heard thus far, this is a very complicated process. But we do have in place, that we created last year, a juvenile diversion detention and probation services implementation team. And this group has consulting and facilitation by the Department of Criminal

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Justice of the University of Nebraska at Omaha. It is Chaired by Karen Authier, who is the Policy Director from Boys Town. It has people from across the state, and I'm going to read into the record who those people are. But they, at their last meeting, talked about this particular bill. They spent a couple of hours talking about the evaluation processes and assessment processes that are going on, and they, I believe, can look at the whole issue, take a neutral body, I don't Chair this group, but I serve on it, Senator Aguilar serves on it, Senator Jensen serves on it, let this group work through this recommendation before we pass a bill with this significant change. What the amendment does is to strike the language in the bill, and put in that this group will study and make recommendations as follows: First of all, they will examine the effectiveness, accuracy, and trends of juvenile evaluation practices since these evaluations were moved to community-based evaluation programs supplemented by residential evaluation programs; and examine the recommendations in the 1999 Nebraska Juvenile Services Master Plan regarding the evaluation and placement process. They'll have a report to the Governor and Legislature by December 1, 2001. This will give them several meetings and ample time to be able to make a recommendation to us, and to the Governor, as the best way to approach this recommendation from the Nebraska Juvenile Services Master Plan, and also to take on the issues of the effectiveness, accuracy, and trends of juvenile evaluation. This group, as I said, began meeting after the session last year. They've met several times, and in the course of their discussion on one of their duties, which was to recommend on a statewide intake assessment process for detention, they spent time, as a matter of course, talking about the other points in the juvenile system when evaluations were made. And because I happen to be able to go to the last meeting, I had the opportunity, or the meeting, this probably was in January, I had the opportunity to hear firsthand about some of the things and some of the concerns about some of the placement recommendations coming from these evaluations. This isn't to say that all evaluations are bad, and they aren't well done, and their biased. This is to say that issues were raised, that the issue that Karen Chinn said, having the confidence of the system in the evaluation process, convinced me we don't have the confidence of the system. The people who serve on this task

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force are, and they come from the three Congressional Districts, and they represent all aspects of the juvenile system. As I mentioned, the three senators who serve; Senator Aguilar, Senator Jensen, and myself. Karen Authier, who's the Chair, is Director of Public Policy from Boys Town. Dennis Banks is the Lancaster County Juvenile Detention Center Director. Ed Birkel is the State Probation Administrator. Jone Bosworth is the HHS Deputy Director. Charles Brewster is the Buffalo County Public Defender. Ellen Brokofsky is Sarpy County Chief Probation Officer. Vernon Daniels is Douglas County Juvenile County Attorney. Judge Larry Gendler is the Sarpy County Juvenile Judge. Karen Hadley is the director of the Omaha Community Partnership. Chris Hanus is HHS Protection and Safety Administrator. Anne Hobbs is from Cedars Youth Services, William Laux is a Morrill County Commissioner. The new director of Health and Human Services Protection and Safety Administrator of the Office of Juvenile Services will be joining our group. She's just recently been appointed. Terry Medina is Tribal Probation Officer from Winnebago. Monica Miles is with the Nebraska Crime Commission. Nancy Oates is the Boys and Girls Home Director from North Platte. Judge Linda Porter is a Lancaster County Juvenile Court Judge. Dick Shea is the Sarpy County Juvenile Detention Program Director, Linda Steinman is a Lancaster County Commissioner. Judge Kent Turnbull is a Lincoln County Court Judge. Mary Tyner is with the Sarpy County Juvenile Diversion program. Doug Watson is Chief Probation Officer from North Platte, and Carole Woods Harris is a Douglas County Commissioner. This group of people has been meeting for several months, on a variety of issues dealing with juvenile justice. I think they're the appropriate group to take this issue and come back with a recommendation that the juvenile justice system is comfortable with. This doesn't have to happen today. We can let the system continue as it has been. And we can go forward with a recommendation that people statewide have been involved in developing the plan for. It's...there needs to be a greater deal of review by the body of anything of the magnitude of LB 598. So I'm going to urge that you adopt this amendment and delay the change, this very significant change to an administrative decision only, without court review of that placement plan and treatment plan, or an appeal process, let just an administrative process. Let's take the time to spend

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more time with this particular recommendation, and hand it off to this group that I think represents some of the most dedicated people to the issue of juvenile justice in this state, and have them make a recommendation after they have had an opportunity to review the bill and the issues surrounding it that I think cloud the clarity of a decision that we should be making. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Thompson. On the Thompson amendment, Senator Dwite Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Mr. Lieutenant Governor, members of the Legislature. Senator Thompson's amendment, AM1505, basically kills the bill. So, of course, I'm not going to be supporting this amendment. And she mentioned that, you know, there's no hurry to get this done. The Governor has put \$10 million, when Senator Suttle mentioned we have been cheap and not putting any money into the program, \$10 million, we've never had anything even close to \$1 million, let alone \$10 million, that rides on this bill. It needs to be done, and needs to be done this year. I will not be supp...the study that basically AM1505 says to turn it back to the committee, this committee, and have them look at it, this has been done. This is not a "whim-flam" thing that happened overnight, this has been worked on for...since the Office of Juvenile Services has been there, it's been one step at a time. This has been a big step, it's just not ready for the step in the amendment that Senator Thompson wants. And I'm not so sure that wouldn't be a step that came back next year. Please do not support this amendment. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Pedersen. Senator Jensen on the Thompson amendment.

SENATOR JENSEN: Thank you, Mr. President, members of the body. I stand also in opposition to the amendment. I served on the juvenile detention committee, and attended at least three-fourths of the meetings, maybe more. I did not attend the last meeting because it was during the session here. But I want to reiterate what Senator Pedersen did say, that this is part of the Governor's juvenile justice total plan. LB 598 is the gatekeeper part. We have LB 691, which will expand the array of

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services for juvenile offenders. We have LB 599 which is the level 5 secured confinement. Now to take one piece out of that, to take the gatekeeper piece out, and you've destroyed the entire Governor's initiative. I would ask that you do not go that way. This will actually gut the bill, and put it back into the hands of the study. The people on that detention committee were outstanding; some of the best minds and people in the state, dealing with juvenile issues. And we can use the information that they brought forth, and the determinations that were made, and also make those a part of this program. But at this point in time, to stop, to eliminate the funding of a total juvenile justice program, I think would be wrong, and would ask the body to stay the course, not to do the amendment of Senator Thompson's at this time. Thank you, Mr. President.

PRESIDENT MAURSTAD: Thank you, Senator Jensen. Senator Suttle on the Thompson Amendment.

SENATOR SUTTLE: Thank you, Mr. Lieutenant Governor, members of the Legislature. I rise to support the amendment. Senator Jensen, may I ask you a question?

PRESIDENT MAURSTAD: Senator Jensen.

SENATOR JENSEN: Yes.

SENATOR SUTTLE: You...you've mentioned two bills, LB 599, and what was the other one?

SENATOR JENSEN: LB 691.

SENATOR SUTTLE: What are the status of those bills?

SENATOR JENSEN: They both have been moved out of committee and should be before the body, hopefully before the end of session.

SENATOR SUTTLE: Have they been prioritized?

SENATOR JENSEN: I can look and give you an answer.

SENATOR SUTTLE: That's okay. If this is so very important, I'm

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surprised that we haven't, we haven't seen this before. If LB 599 and LB 691 aren't prioritized, where's the rush. They'll still be here next year, and we will have more information if this amendment is adopted. Ten million dollars, I'm not sure...Senator Pedersen, may I ask you a question?

PRESIDENT MAURSTAD: Senator Pedersen.

SENATOR Dw. PEDERSEN: Yes, Lieutenant Governor. Yes, Senator Suttle.

SENATOR SUTTLE: Where does LB...or the \$10 million, where does that come from?

SENATOR Dw. PEDERSEN: That would be in the general budget.

SENATOR SUTTLE: That is an itemized budget item that the Appropriations Committee will be bringing to us...

SENATOR Dw. PEDERSEN: To my understanding,...

SENATOR SUTTLE: ...next week.

SENATOR Dw. PEDERSEN: ...yes.

SENATOR SUTTLE: So then, if we had adopted the amendment before this, \$600,000 is a drop in a bucket out of \$10 million. I...could you tell me what that...excuse me, Senator Pedersen, I'm still asking you questions,...

SENATOR Dw. PEDERSEN: Sorry, that...

SENATOR SUTTLE: ...I'm sorry. Could you tell me what that \$10 million will be spent on, if you know.

SENATOR Dw. PEDERSEN: I can't tell you specifically, no. But I know it's going into the juvenile justice programs. I'll get that for you.

SENATOR SUTTLE: Okay. I just, you know, not being on Appropriations Committee, I'm not aware of what they have

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discussed, and what will be addressed in the juvenile justice. But I don't see how this would jeopardize that money. If the appro...if it's already part of the budget, it will be used, believe me. I don't understand how looking at the best way to do this would jeopardize \$10 million, except that the Governor may decide not to fund this money. That'd be the only thing that I could see that he would line-item veto his own budget allocation. And that to me would seem a rather silly thing to do. So I would...I will give my any remainder time, Mr. Lieutenant Governor, to Senator Thompson.

PRESIDENT MAURSTAD: One minute and 40 seconds, Senator.

SENATOR THOMPSON: Thank you. Senator Pedersen, well, I'll take Senator Jensen, he's at his seat. Senator Jensen, would you yield to a question?

PRESIDENT MAURSTAD: Senator Jensen.

SENATOR JENSEN: Yes.

SENATOR THOMPSON: I would have asked Senator Brashear since it's his bill, but I'm looking at the screen on LB 599, which was to create the Hastings Secure Youth Treatment Facility, is still in committee.

SENATOR JENSEN: I also picked...pulled it up also.

SENATOR THOMPSON: Okay. So that...now is this is the Governor's package, he's introduced several bills, and I'm going to ask Senator Dwite Pedersen, who's on...

PRESIDENT MAURSTAD: One minute.

SENATOR THOMPSON: ...the committee, whether he thinks, this year, we're going to begin work toward creating a secure youth facility. So, so one piece of the Governor's package isn't there. Senator Wehrbein, may I ask you a question?

SENATOR WEHRBEIN: Yes.

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SENATOR THOMPSON: That I actually know the answer to, but since...

PRESIDENT MAURSTAD: Senator Wehrbein.

SENATOR THOMPSON: ...this way they'll think I'm not playing with the figures. The bill to add LB 691 was heard by the Appropriations Committee?

SENATOR WEHRBEIN: Yes.

SENATOR THOMPSON: And the Appropriations Committee, next week, will be advancing a budget bill with some aspects of that, but not all?

SENATOR WEHRBEIN: Yes.

SENATOR THOMPSON: Could you tell me what's been funded out of LB 691, voted on by the Appropriations Committee at this point?

SENATOR WEHRBEIN: As I recall, \$500,000 each year, and 10 beds renovated at Hastings, and \$424,000 of federal funds.

PRESIDENT MAURSTAD: Time. Senator Thompson, you can continue, though, on your time.

SENATOR THOMPSON: Okay, thank you. Just to clarify, at this point, we're putting money toward community-based services and also adding 10 beds, if the body approves the budget,...

SENATOR WEHRBEIN: Right.

SENATOR THOMPSON: ...at the Hastings Treatment Center for youth who are sent to Kearney, and determined they need substance abuse treatment. So part...

SENATOR WEHRBEIN: Yes.

SENATOR THOMPSON: ...of that is the match to the federal funds...

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SENATOR WEHRBEIN: Yes.

SENATOR THOMPSON: ...which was roughly 200...

SENATOR WEHRBEIN: Four hundred and twenty-four thousand.

SENATOR THOMPSON: Four-twenty-four in federal funds, 200 and some in match each year, I believe.

SENATOR WEHRBEIN: It'd be \$500,00 each year. So there's...

SENATOR THOMPSON: Right.

SENATOR WEHRBEIN: ...more than enough match.

SENATOR THOMPSON: Right, and the remainder going to community-based services.

SENATOR WEHRBEIN: Yeah, and I can't give you the community base off the top of my head.

SENATOR THOMPSON: So essentially we...

SENATOR WEHRBEIN: It's...we put in...

SENATOR THOMPSON: ...we've allocated about a \$500,00 each year. And I'll...

SENATOR WEHRBEIN: Yeah, and we have some...

SENATOR THOMPSON: ...clarify this yea. I've got...

SENATOR WEHRBEIN: ...additional.

SENATOR THOMPSON: ...a nod from the fiscal analyst.

SENATOR WEHRBEIN: Yes. And we have some additional juvenile services money, and I can't give you that number off the top of my head.

SENATOR THOMPSON: Yes, we do. But it was...it was a

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decision...

SENATOR WEHRBEIN: It's a separate decision,...

SENATOR THOMPSON: ...it wasn't part of the Governor's package.

SENATOR WEHRBEIN: That's right. It's a separate decision.

SENATOR THOMPSON: Right. There...it isn't part of the Governor's package. So there's a million dollars being recommended by the Appropriations Committee. What happened to the program, the rest of it, I believe it was several million dollars for multisystemic therapy?

SENATOR WEHRBEIN: Well, we chose not to put that in.

SENATOR THOMPSON: Okay. So I guess the point I'm making is that the Governor is not the Legislature. The Governor has a set of proposals. We run those through processes in each of our committees. There are four pieces that are legislative bills. One is still in committee. One was not adopted in totality, but part of it was; a million dollars of it was in the package. So we've got \$1 million of the package. Senator Jensen's committee heard LB 640, which I believe has been advanced, and it was roughly \$4 million, Senator Jensen? He's nodding, so I'll just go with that. So there's a 4 million dollar proposal coming up next week. So Senator Dwite Pedersen, may I ask...

PRESIDENT MAURSTAD: Senator Pedersen.

SENATOR THOMPSON: ...you a question?

SENATOR Dw. PEDERSEN: Yes, Senator Thompson.

SENATOR THOMPSON: Well, you knew we couldn't get to this without having some pointy questions. But I'm just going to ask you one little one. The proposal for the Hastings Secure Youth Facility, do you think that's going to happen this year?

SENATOR Dw. PEDERSEN: No.

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SENATOR THOMPSON: So maybe next year we'll look at the issue of the secure youth facility. You have another bill on secure youth facility also, don't you Senator Dwite Pedersen?

SENATOR Dw. PEDERSEN: Yes, Senator, I do.

SENATOR THOMPSON: And that would be to transfer the facility that's in Omaha to the system?

SENATOR Dw. PEDERSEN: Yes, Senator.

SENATOR THOMPSON: Okay, and that's not going to happen this year either, maybe?

SENATOR Dw. PEDERSEN: No.

SENATOR THOMPSON: I don't know.

SENATOR Dw. PEDERSEN: At this point,...

SENATOR THOMPSON: Probably not.

SENATOR Dw. PEDERSEN: ...I would say, no, it's not going to happen.

SENATOR THOMPSON: It's not going to happen. Well, I would say then that this total package concept that keeps getting brought up, we can't do without this, without that, part of the package is already not happening this year. Decisions will be deferred to next year, unless someone chooses to amend on the floor the proposal to add the multisystemic therapy program that was proposed in LB 691, all of that proposal. So we don't have...we're down to half the...half the money at this point. One million dollars from the Appropriations Committee recommendations, from LB 691, \$4 million from the Department...from the Committee on Health and Human Services, recommendation LB 650, which...LB 640, which is a committee priority bill that may be scheduled in the near future. So I don't see any reason why we have to make a decision on this part of the package this year.

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PRESIDENT MAURSTAD: One minute.

SENATOR THOMPSON: The whole package is not going to pass. It's not going to happen as a total package. It was introduced as four different bills for our consideration. We shouldn't make this decision this year, with the problems that are out there. Let's concentrate, instead, on the recommendations from the Appropriations Committee, and the recommendations from the Health and Human Services Committee on services. Let's defer the decision on the secure facility, which has been talked about this...this session, which people have been offered rides for tours of the Hastings facility, and the facility in Omaha. All that's going on, but that's not going to pass this year. We don't have to do this this year. Let's let this group of the people appointed by the Governor to serve on the Juvenile Detention, Diversion, and Probation Task Force...

PRESIDENT MAURSTAD: Time.

SENATOR THOMPSON: ...take on this issue and study it.

PRESIDENT MAURSTAD: Thank you, Senator Thompson. Senator Suttle, on the Thompson amendment.

SENATOR SUTTLE: Thank you, Mr. President, members of the Legislature. Senator...thank you, Senator Pedersen, for the information that you provided. And concerning these bills, and if we like to do things cheaply, and we do in this state, I think, especially when it deals with children, delaying this would save us money. Delaying this would save us money. I've never known this body not to want to save money, especially when it comes to kids. So let's do this study, let's let the people who know about juvenile justice tell us what's the best way to do it, and not let a...an administration who's telling us that this is the only way to do it is my way or the highway, I don't know that that is the thing that we should be doing. The Appropriations Committee has already said we're not going to give you this much money, even though it's in your budget. Our budget must be different than the Governor's budget. I anxiously await the report out from the Appropriations Committee. So if this is going to save us money, this

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particular amendment, AM1505, I think we ought to do it, and not go with the cheaper way of doing things, as we always have, and look at the best way. I'll give my time to Senator Thompson.

PRESIDENT MAURSTAD: Senator Thompson.

SENATOR THOMPSON: Thank you, Mr. Lieutenant Governor, members of the body. One of the points I think we need to come back to, is what we're ready to do, and what we're not ready to do. If we pass the \$5 million that's still on the table of the Governor's proposal, we're going to put in place some long overdue services. Most of this, \$4 million of this, is going to go at the community level, at the county level, and it's intent is to create that array of services that needs to be there, so the kids don't penetrate the system, end up at Kearney and Geneva, or in an out-of-home placement, the most expensive part of the system. I like to compare the juvenile justice system, when I'm invited to speak to groups, to a swimming pool. The services that...that are at the deep end of the pool are very, very expensive. Governor's proposal will take, not exactly the shallow end, which I kind of see as prevention, but kind of a combination of just past the shallow end of the 4 feet mark, where your head's still above water, you got opportunities, and those ideas that can be cultivated at the community level, with the funding from the Governor's bill, will create a part of this system that we have lacked. The \$1 million is going to be able to be used to provide some of those more specialized treatment services, and that's a good thing too. But we aren't ready to make a decision about a secure facility at Hastings, as the bill says. And we probably won't make the decision, as proposed by Senator Dwite Pedersen, to put it in Omaha this session. We shouldn't make this decision this session either. One of the things that juvenile services' plan states is, the Office of Juvenile Services does not have the appropriate infrastructure to effectively administer,...

PRESIDENT MAURSTAD: One minute.

SENATOR THOMPSON: ...manage, and monitor services for juvenile offenders throughout the state. Administrative functions which are lacking, and which are typically found within the

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administrative structure of the State Juvenile Correction Agency include: Contract program and quality assurance monitoring, evaluation and classification management, management information offender service data and research, financial oversight and monitoring of services, outcome and service effectiveness evaluation, and service area monitoring. These are the things that were found lacking. Let's not give the sole decision for placement until the department is ready to be there, and until, as we've said before, we have the confidence of the system. Now, if the department is telling us they should have the confidence of the system, well, then let's take a year and build that confidence, so that the juvenile justice folks in Nebraska...

PRESIDENT MAURSTAD: Time.

SENATOR THOMPSON: ...are comfortable with it.

PRESIDENT MAURSTAD: Senator Thompson, your light is on next.

SENATOR THOMPSON: Thank you. I'm going to distribute, have a Page distribute copies of this page of the juvenile services' plan, because I think it's very helpful to the discussion of what we have here today, and to this package concept. Some of this package doesn't have to be done this year, it can wait a year. I think this is a piece that's controversial enough, that's worrisome enough, that has the people in the juvenile justice system concerned. And I admit, I haven't talked to everyone in the system, but the people that I have relied on over the last 20 years, are the ones that I go to when these types of bills come up, and say, what do you think. And this isn't the only bill I asked them to take a look at. I think we should use the resources of this team to look at the issue, and say how should we approach this? How do we determine the gate? I think we need to have the ability of the department develop that array of services and be able to put in place a continuum of care. And we should be able to evaluate what we have, we should be able to know what we have, and we don't have that capacity with our information systems right now to do some of that analysis. We need to have that to be able to have the confidence to give it to the department purely administratively.

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If we defer this, and I go back to what the consultant said, you can't...in order to build the confidence in utilizing a single point of entry and continuum of services, there will have to be confidence among judges that an objective and accurate assessment be conducted, and that levels of programs, both residential and nonresidential, are available to match youth with appropriate placement needs. We don't have that confidence now. Let's defer this, just as we have deferred, either through committee...actually at this point all through committee process, let's defer some of these decisions in this package to next year. Let's wait with this particular decision, which is very critical to children. Let's wait, let's let this group of people, the people who were appointed, who are known for their outreach and work throughout the state on juvenile justice issues, have been on some of these panels for 20 years, have worked tirelessly, and haven't given up, let's let them look at this recommendation, and make a recommendation to us and the Governor. I don't think that's something that would be difficult to do. And I would hope that the administration and the Governor could support the fact that we're going to let one of our stellar groups of people, who've chosen to devote their time to this particular issue, with the support of the University of Nebraska at Omaha College of Criminal Justice as a consultant, to work through a process, look at this recommendation, and tell us what direction we should head. And I hope you will adopt this amendment.

SENATOR CUDABACK PRESIDING:

SENATOR CUDABACK: Thank you, Senator Thompson. Senator Jensen on AM1505 to LB 598.

SENATOR JENSEN: Thank you, Mr. President, members of the Legislature. First of all, remember the whole reason for this bill. Remember the reason for LB 598. We've had judges throughout the state who have placed juveniles outside the state, into Minnesota, Texas, Iowa, at a very, very high cost to the counties, and to the state. And what this piece of legislation does is says the judge still has control over that juvenile; it doesn't take that away, the judge is still responsible, the judge still will set the program, but through a

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gatekeeper effect, the department then may place this individual, placing in the state of Nebraska where I, frankly, think that we can come up with the proper array of services for that youth. We have had kids who have been placed all across the United States, at very high expense to the state, some with some good results and, frankly, some that were not. I happen to be shadowing a judge last fall, where this young man who had spent 90 days in a facility up in Minnesota, that was supposed to take care of this individual, come back and no progress had been made whatsoever, at a great cost to the state of Nebraska. We work on a biennium. Certainly whether the Appropriations Committee decides how much to fund of a certain program, that's their prerogative. We all then will vote on a budget within a next few weeks. But the other bills are progressing. There hasn't been one of these that have been killed at this point in time. I see nothing wrong with the progress that is being made. Some are still in committee. Some of them will be heard by this body next week. Others are moving through the process. Certainly the gatekeeper bill is the first piece of legislation that should pass. That is the bill that is before you today. Why do we want to delay this process and again have judges placing kids far away from their home at a much higher expense than what is obtainable here in the state? That's all this bill really does. The judge still has the jurisdiction over that child, that juvenile. All that this bill does is give the department the decision of where they can place this child at the judge's recommended care. So with that, I still again would support LB 598 but without Senator Thompson's amendment. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Jensen. Senator Suttle, on AM1505.

SENATOR SUTTLE: Thank you, Mr. President, members of the Legislature. Senator Jensen mentioned that the judges put kids out of the state and this with LB 598 would stop that. No, it wouldn't. We still don't have anyplace to put some of these kids. We still don't have any facilities to put them in. Judges can do anything they want to. They can put the kid wherever they want to. The state may not have to pay for it which would be...thrill them if they don't have to pay for them.

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Supreme Court says, though, that it's the state's responsibility to pay for them. We don't have any community services that will deal with many of these juveniles and their problems and their mental health problems and their behavioral problems and all the problems that these kids have. If they are a sexual abuser, we have nothing that will treat sexual abusers, juvenile sexual abusers. Maybe part of the reason we don't want to do this study is that we don't want to find the best way to handle these kids. We just want to keep on plugging along like we've always done and letting these kids just go ahead and grow up and become really good criminals. I think that if the list of people that we have, and I don't know what I did with it, it's in this pile of stuff somewhere, these are all really well-informed and know how the juvenile justice system works. I don't think there is anything in LB 598 that prevents a judge from placing a child out of state. Thanks. Thank you, Senator Byars. The group that is being put together are just, I can't even believe all these people. I know a lot of them. I don't know them all, but I know a lot of them. And I truly think that they should be the ones that work on this and come up with the best idea and not the administration. Sometimes the administration, all it wants to do is see how they can get out of paying for a kid, at least that's the experience that I have come across. We don't want to pay for these kids because they're expensive. If we had more care when a child is prenatal and when a child is an infant and we took care of the kids and we gave good parenting to the kids, we wouldn't be in this fix. But we aren't there yet. We won't spend any money on kids. So any time I have left I yield to Senator Thompson. Thank you, Senator Cudaback.

SENATOR CUDABACK: Senator Thompson, you have about a minute and a half left.

SENATOR THOMPSON: Thank you, Mr. President, members of the body. I'm going to read from Judiciary Committee testimony from February 23, 1989, because I think this hits the nail on the head of some of the discussion that was made by Senator Jensen and previous speakers. And this was the last time a legislative...our Legislature...

SENATOR CUDABACK: One minute.

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SENATOR THOMPSON: ...amended the juvenile code for out-of-home placements, and I probably...is my light next by any chance?

SENATOR CUDABACK: Senator Thompson, you have spoken three times, I'm sorry.

SENATOR THOMPSON: Oh, okay. Has Senator Suttle spoken? Okay, I'm going to start this and then hopefully someone will lend me some time so I can finish. This is from Senator or from Judge John Icenogle. As you probably know, in 1994, (sic--1984) a series of amendments were made to the juvenile code. Those amendments specifically provide that when a child is placed with the Department of Social Services that the department would have the exclusive authority to determine the care, placement and services to be provided to that child. The problem that exists is that when the department accepted that responsibility they made almost no effort in great respect to include the families or the children, the attorneys, the court, or anyone else in their decision-making problem.

SENATOR CUDABACK: Time. Thank you, Senator Thompson and Senator Suttle. Senator Dwite Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Mr. President and members of the Legislature. I needed to add just a couple things here as we go along. We talked about the judges and I don't think it's any secret at all that Senator Thompson is basically carrying this amendment for some judges that she works with. But I want you to know that there was an agreement, the Governor and the judges agreed on LB 598 and not all the judges obviously or Senator Thompson wouldn't be in here with this amendment. I will name the judges that did meet with the people, Judge Dawson, Judge Porter, Judge Crnkovich, Judge O'Neal and Judge Thorson. Judge O'Neal is from Sarpy County. Judge Crnkovich is Douglas County. The rest are from Lancaster County. The county court judges, County Court Judges Association, and the chief justice's office, not the Chief Justice, but the chief justice office, were involved in this, bringing LB 598 to where it's at today. Even though every individual judge may not agree with it, that was the agreement and I think the agreement should be

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honored. That's what I'm asking you to do by voting for LB 598 and not Senator Thompson's amendment. There will be concentrated effort during the interim to work on a complete rewrite of the juvenile code and this is the place where we can bring...that this concept should be addressed and I believe it will be addressed, especially if I have something to do with it and I know Senator Thompson has something to do with it, but not as a substantive amendment to LB 598. Thank you.

SENATOR CUDABACK: Thank you, Senator Pedersen. Senator Price, on AM1505 to the LB 598.

SENATOR PRICE: Senator Cudaback, I would like to yield my time to Senator Thompson.

SENATOR CUDABACK: Senator Thompson, you have almost five minutes.

SENATOR THOMPSON: Thank you, Mr. President, members of the body. I'm going to finish with the issue that Senator Jensen brought up and then I'm going to move, which I hoped we didn't have to get into who snitched to who and what people said after meetings and so forth, but apparently we're going there so we'll have a discussion of that, too. This is again Senator Judge Icenogle's testimony. And to preface what I already read, in 1984 we did the same thing to the juvenile code. It was reversed then in 1989, Senator Coordsen's bill that we talked about earlier, that set up the process that the previous amendment was rejected to do. But I think we need to take time before we get into this situation which we were in in the early...in the mid eighties from a decision made in 1984 which was reversed. It specifically provided that when a child is placed with the Department of Social Services that the department would have the exclusive authority to determine the care, placement, services, and so forth. And I'm reading from Judge Icenogle's testimony. The greatest problem with the current dispositional scheme or the juvenile code when decisions are beyond local authority is the denial to the child and his parents of any input, legal representation, or authority in assessing the necessity of an out-of-home placement or the nature and the quality of services to be provided. I'm going to

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repeat that. The greatest problem with the current dispositional scheme, and I'm jumping ahead, is the denial to the child and his parents of any input, legal representation, or authority in assessing the necessity of out-of-home placement or the nature and quality of services to be provided. This is the problem with passing the bill this year. We're going to be putting the same problem we had in 1984 until 1989 when we took care of it on the child welfare side, we're going to have that same problem. And I don't think we should have history repeat itself again. It's not a good thing to do without some deliberation. If you adopt this amendment, you merely delay for a short time this decision to place our youth in Nebraska solely in the hands of the Department of Health and Human Services for placement. And I think we should let that decision and a recommendation be made by the group that was appointed by the Governor last year that includes the leaders in juvenile justice issues around the state and let them deal with it. Now to get to Senator Dwite Pedersen's he said, she said, there was this meeting, there was that meeting, anytime there's a legislative bill proposed, I think and my experience has been right up to the minute that that bill hits the floor we should be still thinking and seeking input. Sometimes people go to meetings and they aren't clear what the outcome is. Sometimes they thought they knew what the outcome was and maybe they have second thoughts later. Maybe when you have these processes, and I guess I've done...I've spent most of my adult life, for better or for worse, either in government or in community services and I've worked with teams and I can go have a meeting and think everything was all hunky-dory and when you only have one meeting, that's what happens.

SENATOR CUDABACK: One minute.

SENATOR THOMPSON: Then you think you've got it ready and you think it's ready to go and those of you who have done this kind of work, you come back and, gee, people have been talking to each other and they've had...having second thoughts and maybe they don't want to hurt the feelings of the person who called the meeting so they go to somebody else and they tell them their concerns. But now it's sort of a political process and maybe they're not that comfortable. So people in this body get asked

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to, not get asked, but I sought out opinions. And there was a process started with an association that ended up being halted, and I'm not going to get into that either, but...and not say I got into it, but I'm not going to say who stopped it and how it was stopped unless I have to. But we're now beyond that. We're beyond who had a meeting and who was at the meeting...

SENATOR CUDABACK: Time.

SENATOR THOMPSON: ...and so forth. I think we need to pass the amendment.

SENATOR CUDABACK: Thank you, Senator Thompson. Senator Bruning.

SENATOR BRUNING: Question.

SENATOR CUDABACK: Senator Bruning, that won't be necessary for yours is the last light. Thank you anyway. Senator Thompson, did you wish to close on your AM1505 to LB 598?

SENATOR THOMPSON: Thank you, Mr. President, members of the body. This is an opportunity to take a different approach. Last amendment you had was to look at a way to improve the bill by creating two processes to provide oversight for the court. Now we're at a point where we've chosen not to go that way which I would say would be to fix up the bill. Now we've chosen to defeat that idea. And the reason that a lot of people said was, well, you brought it up at the last minute although I did file the first amendment, which was essentially similar to this except it amended a different part of the law of that amendment, a month ago. But we hadn't had enough discussion, we hadn't studied it enough. We needed to be more thorough with any action we take. I think because of the concerns that are out there on this bill, because the recommendation from the consultant was not to do this until there was confidence from the system in this kind of a change and because we have a group who can do this for us that can take people from all aspects of the system and we've been hearing, well, the judges are too powerful and they're doing some stuff they shouldn't be doing, well, this group only has three judges on it. The rest of the

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people come from all other aspects of the system. I have confidence that they will make an open-minded decision and that they'll come back and we can have a comfort level with making this dramatic a change. So I think we should pass this amendment. We should say we aren't necessarily going to oppose the Governor's proposal as is stated, but we're going to take some time to think about it. And we're going to ask some other people in the state to think about it and ask them to come back with their best thinking on this, with their best thinking on it. These are the people from around the state appointed by the Governor to this panel, three senators appointed by the Executive Board to this panel. Let this process continue and give them the deadline to come back with a suggestion. It also has the support through a consulting contract with the University of Nebraska Omaha Department of Criminal Justice that can look at how it's done in other states, who can look at how processes work, who can bring some studied and researched positions to the group to take a look at, and we can make a more informed decision. I think we need to step back, take this a piece at a time. We're not going to enact all of the Governor's proposals this year. This can come back next year. Let's wait and let's make the best decision we can by deferring the review of this and a recommendation to this panel. Thank you, Mr. Speaker.

SENATOR CUDABACK: Thank you, Senator Thompson. You've heard the closing on AM1505 to LB 598. Senator Thompson.

SENATOR THOMPSON: (Microphone malfunction) ...house and a roll call vote.

SENATOR CUDABACK: There's been a request for a call of the house. All in favor of the house going under call vote aye, opposed nay. Record please, Mr. Clerk.

CLERK: 14 ayes, 0 nays to place the house under call.

SENATOR CUDABACK: The house is under call. All unauthorized personnel please leave the floor, unexcused senators report to the Chamber. The house is under call. The house is under call. Senator Wickersham, the house is under call. Senator

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Kristensen. Senator Connealy and Senator Coordsen, the house is under call. Senator Coordsen and Senator Kristensen. Would you check in, Senator Connealy. I'm sorry, you have, I'm sorry. Senator Kristensen. All present or accounted for. Mr. Clerk, there has been a roll call vote requested. Call the roll, please.

CLERK: (Roll call vote taken, Legislative Journal page 1533.)
6 ayes, 26 nays, Mr. President, on the amendment.

SENATOR CUDABACK: The amendment is not adopted and I do raise the call. Mr. Clerk, items for the record.

CLERK: Mr. President, if I may, some items, thank you. Senator Dierks, an amendment to LB 536 to be printed; Senator Bruning to LB 536. (Legislative Journal pages 1533-1537.)

Mr. President, I have a priority motion. Senator Thompson would move to reconsider the vote just taken on AM1505.

SENATOR CUDABACK: Senator Thompson, to open on your motion to reconsider AM1505.

SENATOR THOMPSON: Thank you, Mr. President, members of the body. I believe we should reconsider this motion. We have a reasonable alternative to passing the bill this year. I think this particular bill takes us in a direction that we've been before as a state and didn't work. And now we're just going to go back on the juvenile justice side and try it again. And I think what's going to happen if we don't take the time to study it and find a reasonable way to implement it is that you're going to have hearings and bills and discussions and complaints. Those of you who were here in 1989, Senator Coordsen, I'll bet the hearing on this bill must have taken hours. And what amazed me as I read through the hearing testimony was the number of senators on the committee as well as the senator presenting commented on meetings in their districts, on discussions that they had, and from numerous people throughout the state what I would call absolutely heartrending stories of what happened when this was only a departmental decision for placement. I think that's a mistake to go that direction without allowing the key

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people in the state who work in the juvenile justice area to have the opportunity to review this decision and go forward. This is controversial. What you're doing with this bill is significant. It changes the way the lives of the children and families who are in the system are going to be treated when it comes to decisions on placement and planning. As a foster parent, I used to attend these kinds of meetings, and they served a purpose in bringing the whole group together. Can't say that necessarily the parents in this particular case came, but sometimes they did. And I did attend...I wasn't a foster parent for that long, but I did attend a hearing with another foster parent one time where the parent did come. But when people sit around the table and they talk about the placement, they have a higher comfort level with what's going to happen. And in terms of treatment, they have the ability to help that treatment become successful. They have an investment in it. When you do things just through an administrative policy, the resentment tends to be there, right or wrong, because everybody wasn't at the table. And probably tomorrow we'll have the opportunity, I'm going to read you some of the things that happened from 1984 until Senator Coordsen's bill in 1989 passed. And I hope that if I'm elected again I will have the opportunity to continue to work on juvenile justice issues. But I'm here now and I'm here for next year, and I'm not going to be comfortable passing this bill in the form that it's in now. I think it needs more work and I think it needs more study. Now from a department perspective, having to go to a court meeting and defend your position or if there's a challenge and you have to prepare and you go to a three-person panel, that's extra work. And maybe what's going to be revealed is that we don't have enough of those services that we want to have out there. But we don't solve the problem by saying we don't want anyone else to look at it. We don't want anyone else involved. And if they want to complain about it, they have to come through a departmental administrative hearing. That's not going to improve the system. What Karen Chinn recommends is that we get the assessment process under control, we do a good job with that, we convince the system that we're doing a good job with our assessment process. We have an array of services out there so that the system knows that the kids are going to get the best, most effective level of treatment. The parents know

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what's going to happen so they can be part of that and helpful to that. And we go forward at that point in time, which is probably a few years down the road. Or with something that's this level of change, but that there's a comfort level with it. Or we go to the idea that I presented earlier and make it the same on the juvenile justice out-of-home placements as it is on the child welfare side out-of-home placements. But we've chosen not to go there, but maybe we can think about that on Select File again should this bill move to Select File. We need to take this slowly because this involves lives. This involves kids. This involves them being put in a placement that we don't have enough of, of no one reviewing where they're going to go ahead of time and no one being able to come to the court and bring an action outside of an administrative action without the advantage of the parties to the court case being able to bring that concern to the review panel. So I believe we need to reconsider the motion so that this group that works directly in this area can make a recommendation. And I pledge to stand by that recommendation. I know because I've heard from people, some of whom are being branded as some kind of itinerant band of complainers and that's not who they are, but it's been enough for me to be concerned about going forward at this time. And it should be enough for you to think about, and I urge you to call people in your juvenile justice arena in your communities tonight, between tonight and tomorrow morning, and ask them what they think about this idea. We should step back, take this piece of the proposal and give it a rest for a year and let's, during that time, bring the best minds in the state, or at least very representative minds and I think the best minds, come together and let them look at it, the people who have to live with this decision. We don't live with this decision, they live with this decision, and have them take a look at it and go forward with a recommendation to be given to us by December 1. And with that, I urge your reconsideration of this motion.

SENATOR CUDABACK: Thank you, Senator Thompson. Senator Suttle.

SENATOR SUTTLE: Thank you, Mr. President, members of the Legislature. I wonder if anybody's read this amendment. It says that we want to develop a plan for regional secure juvenile detention facility. We don't have a secure juvenile detention

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facility. We built one in Omaha and then we did something real quick in 1997, towards the end of the session when we were all tired and we didn't want to talk about it anymore. And we gave this juvenile detention center to the Department of Corrections and said just juveniles who've been convicted of adult crimes would go there. I believe, as I look back on that, that was a mistake. We would have that and we wouldn't be looking at Hastings and building money...and spending money on an ancient, ancient building that's not up to modern care. I don't know how many of you all took the opportunity to go to Hastings, but those buildings I don't believe even Senator Chambers was alive when those buildings were built.

SENATOR CHAMBERS: You're right.

SENATOR SUTTLE: He says I'm correct. Is that the best thing, is that the best use of money to refurbish those buildings in Hastings and put ten beds in there or put any beds in there for juvenile justice? Here we are instead of using a new modern facility that we already have, we're going to take an old facility and we're going to refurbish it. It's on...it's a multistory, it's not on one floor. It's not a good place to put kids. It's not a good place to put anybody. I think that we ought to have some kind of a plan. Let's not just go out there and take this poor old building and try to get it rigged up to be able to hold kids. I don't think that's a good idea. Do we even have standards for juvenile diversion services throughout the state? We don't have juvenile services throughout the state. That's part of the problem. We don't have any community-based services. The mantra of the Health and Human Services Department has been community-based services and yet there aren't any there. Instead of putting money into Hastings into that old building, we ought to be developing community-based services. Maybe these people could come up with away to do it. And since we're Nebraskans, we would come up with a cheap way to do it. We view the structure, purpose, and function of juvenile probation. We don't have much money based in our probation officers. Poor probation officers in Douglas County, they're in the basement and they don't even have a decent computer. It's ridiculous. And probation is cheaper than incarceration or in any kind of other thing that we want to

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do to juveniles.

SENATOR CUDABACK: One minute.

SENATOR SUTTLE: I think that we need to reconsider this. I don't think that it will pass because you people do what the Governor tells you to do, and you're going to vote to do this because the Governor wants this. I've never in all the times I have observed this Unicameral, I've never seen a Governor run the Legislature like this one does. He ought to be mighty proud because we...he says jump and we say how high. I do not think that this is a good thing without a plan, and I think this plan by these outstanding individuals that the Governor himself appointed should be the ones that come up with a plan. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Suttle. Senator Bruning.

SENATOR BRUNING: Mr. President, members of the Legislature, I just forgot what I'm going to say. Hang on, I got to go ask the Gov...no, I'm...it's...I wanted to give credit where credit is due here. I think it's time to pull out the "f" word and not the one that I use in reference to Tyson, but the one defined by our friends here, the Oxford English Dictionary editors, and the beauty of this is they define filibuster as to obstruct progress in a legislative assembly, to practice obstruction. But the little known fact here in the Oxford English Dictionary, there you can conjugate this word filibusterism; filibusterism, that would be the practice of filibustering. You can say filibusterous so our filibustering fillies, filibustering fillies, and I didn't know how to include Senator Chambers because he, of course, is the master, but being female, filibustering females, maybe that will work, I worry for Senator Bourne, of course, that maybe there's something in the water down there. The next bill he may filibuster. But I did want to go on the record in admiration of my friends who are venturing into territory that the rest of us, other than Senator Chambers, of course, have not yet stepped. So "filibusteresses" outstanding. Good luck. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Bruning. Senator Smith,

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on the motion to reconsider the vote taken on AM1505.

SENATOR SMITH: I'd call the question.

SENATOR CUDABACK: Senator Smith, according to Rule 7 in Section 4, a full and fair debate in my opinion has not taken place. Senator Thompson.

SENATOR THOMPSON: Thank you, Mr. President, members of the body. Two years ago, actually three years ago I was appointed by then Governor Nelson to chair the Nebraska Juvenile Justice Task Force. And we had had debate in this Legislature prior to my being here and after I came about what to do about the practice of juvenile court judges making direct placements, not through the Office of Juvenile Services, but through their own volition in their courts and having that paid for by the counties. And we've spent a lot of time the last few years debating this issue and what we decided was that we needed to bring a group of people together and make some recommendations. And those of you who've been through the Legislature with me for the last three years know that I have been able to have the opportunity, sometimes to the chagrin of the Judiciary Committee, in particular, but I have been developing bills to recommend implementation of those recommendations from that process. I think we should allow the group that's currently formed to deal with this to go forward and study it and give us recommendations just like we brought from the juvenile services plan in 1998. I want to cite two conclusions from that plan that I think bear on our reconsideration of this motion. First is that parental involvement and responsibility in the care for their children are essential components of any prevention and crime reduction strategy. The juvenile justice system should acknowledge the importance of parental responsibility by providing parents the opportunity to fulfill their roles by providing parents access to resources needed to meet their parental obligations; providing parents the ability to make choices and be involved in decision making regarding their children; and holding parents accountable for the behavior of their children in cases where the parents' lack of involvement is shown to have contributed to the child's misbehavior. If we pass this bill, we take the parental participation in the

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decision for placement from a court-based team approach to a departmental approach. That is a big step backwards. We also learned in study of the plan...in study of the juvenile justice system in 1998, and I'm kind of being prompted even though quite a few people have left, I'm not taking this personally, that there may be some new members who didn't receive this report; and so I'm going to make sure you have a chance to see it. But there were some other recommendations which also impact LB 598. The task force finds that significant improvements to overall services for youth in Nebraska may be realized by the integration of child welfare and juvenile services. However, these efforts are being compromised by unmanageable caseloads. Workers in some areas are carrying excess of 50 to 60 cases while professional standards recommend ratios in the 1 to 25 range. It's going to be difficult for me to feel that I'm at the comfort level and that the state is at the comfort level to turn the placement decision without judicial oversight and without...

SENATOR CUDABACK: One minute.

SENATOR THOMPSON: ...participation from parents and the juvenile and other people involved to an administrative decision by the Department of Health and Human Services. Because of the great caseloads, it's going to be difficult for me to feel that we shouldn't have this kind of oversight at this point. There are things that need to happen in the system before we can get to that comfort level. Maybe there's a compromise. Maybe there's a way that our team of some of the brightest people dealing with this on a daily basis in their jobs every day, the only three of us who don't are Senator Jensen, Senator Aguilar, and me. We don't have to figure out where kids belong. We don't have to find placements. We don't have to deal with court processes. We don't have to counsel parents and provide treatment services, but the people who do are all on this team. They also have the advantage of UNO's Department of Criminal Justice...

SENATOR CUDABACK: Time.

SENATOR THOMPSON: ...to assist them.

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SENATOR CUDABACK: Thank you, Senator Thompson. Senator Suttle, on the motion to reconsider AM1505.

SENATOR SUTTLE: Thank you, Senator Cudaback, members of the Legislature. There's been talk about the articles in the Journal Star over the last week and what our caseworkers have to go through. They do unbelievably wonderful work. They are overworked, underpaid. I think the average salary is about \$27,000 a year. They have awesome responsibilities. They have awesome tasks to do. I think that it ought to be read into the record some of the things that they do. They find foster homes for kids. They find therapists for parents. They devise plans for the courts. They counsel and cajole, always on the go to psychiatric units, schools, homes, courthouses. They drive state cars so angry parents or vengeful teens won't recognize them in their own cars. Most of them keep unlisted phone numbers. They weather death threats, cantankerous computers. Oh, my, what stories, Senator Jensen, you and I can tell about Health and Human Services' cantankerous computers. The computers in Health and Human Services are legendary. Are we going to put these kids under a computer system that doesn't work a lot of the time? We lose foster kids. What makes us think we won't lose juvenile offenders? We lose them now. We find them dead under bridges. They run away from Kearney. They run away from Geneva and we find them dead. I can't tell you that this system doesn't need fixing. It does. But is this the right fix? And for the Governor to threaten taking \$10 million away from the juvenile justice system because he doesn't get his way is fighting dirty. I think that we need to look carefully before we leap into the fray. To continue with the article, they weather death threats, caseloads twice the ideal. That's what our caseworkers need are more cases. They walk into homes reeking of feces, snapping rubber bands around their pant legs to keep the roaches from crawling up inside. They see the bruises and the hurt. There's is a job filled with awesome responsibility, and they perform it for less than garbage collectors get. Apparently that's what kids are in this state, just pieces of garbage. Let's do something cheap and get them out of our hair and we'll do it the best way we can at the cheapest way and we won't look at it carefully. I am concerned

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about...

SENATOR CUDABACK: One minute.

SENATOR SUTTLE: ...the fact that we are doing this at the behest of an administration who's not doing that great of a job now. The head people will come and go. You and I will come and go. And we won't be here, some of us in six years and some of us maybe in two years, and some of us in eight years. But these kids who have needs will be. And the folks that take care of them over in Health and Human Services will still be here. That's why we call them the "webeies"--we be here after you're long gone, folks. I think that we need to look carefully before...

SENATOR CUDABACK: Time.

SENATOR SUTTLE: ...we leap into this. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Suttle. Senator Thompson, your light is last. You can either close or you can take your five minutes.

SENATOR THOMPSON: I'll take my five minutes, thank you. I'm referring again to the juvenile services master plan. For those of you who are new to the Legislature, after the 1998 study that was done by the task force created by the Legislature on the condition of juvenile services in the state, we had considerable discussion about the condition of the facilities at Kearney and Geneva. We were able to, from, on a floor amendment, add money to the budget to begin a building at Geneva. The Governor vetoed part of that money out, but he left about three-fifths of it I guess and so we were able to get started. The Appropriations Committee also added money to the HHS budget to conduct a Nebraska juvenile facilities master plan. And by the master plan, they looked not only at the two facilities but also at the other issues, staffing, processes and so forth. And the Legislature didn't have a direct report to them, but we were given a report to the Health and Human Services Committee by the consultant in December after the plan came out. I have a copy

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of the plan. I carry it around. I go to hearings with it, but I use that as a basis for what I think should be happening in juvenile services in Nebraska. I've told you about parts of the recommendations, but there's another piece in terms of the recommendation which says, enforce uniformity in process and procedures. And I think this is another reason not to go forward with this bill this year until we've been able to move forward with some of the flaws in the system that need to be addressed. And in order to make those placement decisions and make those recommendations for placement decisions, we have to have good processes in place. This is the finding. Policy that has been developed by the Office of Juvenile Services is not consistently followed in the field. The places and services matrix for juvenile services included in Appendix D shows the policy related to custody level placement setting, required staff contacts, desired time allotment, appropriate behavior management services, and placement options for youth committed to state custody. This process is not uniformly followed. Part of the reason for this can be attributed to the heavy caseloads making required contacts unable to be achieved. And again, Senator Suttle referred to the series of articles in the Lincoln Journal Star looking at the system which point out some of the problems from that. Another reason is that the placement matrix is not consistently followed as well as other policies and procedures that have been developed by OJS. Is the fact that oversight and management of the field staff is not the direct responsibility of OJS? Field staff do not report directly to OJS and, therefore, policy developed by OJS is not consistently implemented in the field. The existing fragmentation of policy and implementation can only be corrected if the group making policy is responsible for policy implementation. Just to recap, the current "org" chart for the Office of Juvenile Services is the way it is because when we merged the agencies back in 1987 the field workers were merged between the child welfare side and the juvenile justice side. They don't report...now they've got a new name...

SENATOR CUDABACK: One minute.

SENATOR THOMPSON: ...which escapes me at this point, but they don't report to the Office of Juvenile Services director. So

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the Office of Juvenile Services director can say, you have to have a case plan and I want to see it right away or it has to be done in ten days. But those workers don't report to him or her, in this case it's now a her. It's a difficult process to work within, and it makes this bill even more difficult to pass because now we're going to give an administrative responsibility to an agency that is divided in terms of the way it's organized and its accountability. It's kind of a goofy system, but we all did it. Actually, I wasn't here, but I was here afterwards. I was actually working on it as part of my assignment from the Governor's office when I worked there during the Nelson administration. We created a system that needs to have...

SENATOR CUDABACK: Time.

SENATOR THOMPSON: ...some of the kinks taken out of it.

SENATOR CUDABACK: Thank you, Senator Thompson. Senator Thompson, there are no further lights. you are recognized to close on your motion to reconsider if you wish to.

SENATOR THOMPSON: Yes, thank you, Mr. Speaker, Mr. President. So what we are doing at this point in time without taking the recommendations from the plan as a package is expecting a department that's overworked and overburdened, that isn't following, according to this unless somebody can tell me by tomorrow, and I realize this document is a year old, isn't able to necessarily implement its policies because all the people who work there don't necessarily report to the Director of the Office of Juvenile Services which has now been changed to the Coadministrator for Protection and Safety. But one of the things, if you reconsider this motion and you consider allowing some time for this group of people to be able to study and make recommendations to you is maybe find a way to improve the way the Office of Juvenile Services and the department is organized so that there could be that confidence that needs to be there in both the assessment process and placement process in order to adopt this gatekeeper idea. I don't think we're ready for it. I don't think we're ready for it as a state, and I know that I'm not going to be comfortable and I will probably...it will be one of those things unfortunately that keeps me awake at night.

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When I first ran for office, one of my fellow commissioners said, just make sure you don't do anything that keeps you awake at night. And I'm sort of an awake-at-night person so his good advice...I worried about everything I did I guess in those years. But this one I'm going to have a very hard time thinking about how our system will operate if we don't bring those people that are on this task force together to get their best minds and their best ideas forward so that we consider that as a Legislature. We take the time, we step back, and we make sure what we're doing works and make sure we have the outcomes that we want. Otherwise, we'll be in the same position that the Legislature was from 1984 to 1989, hearing about problems and cases and going to community meetings and maybe it won't be me, but it might be...it was Senator Coordsen then who took up this extremely thorny issue, as he said, backing your butt into a beehive and I guess we're there. But I'm willing to do that and I'm willing to and I made this decision several weeks ago that if the first amendment wasn't adopted I would attempt to get this amendment passed to give it to this group to study. But as you may have noticed, I filed a number of other amendments, and we're going to keep talking about this because I hope that as we consider this for eight hours on General and eight hours on Select and we'll see where we go from there, that we'll be able to hopefully come to agreement that this is not the year to pass this, that we need to take the time, it doesn't have to be part of a package. There are other things that aren't part of the package. We need to take the time to study this issue further, make recommendations for how the department be organized, but most importantly put the kids, the troubled youth of this state, and helping their lives be turned around as our primary goal, not an administrative act...

SENATOR CUDABACK: One minute.

SENATOR THOMPSON: ...to either to save money or time or because we don't like what a few judges do. We need to look at how we can best make these decisions, make sure the people involved in the decisions are part of that process, make sure parents understand and buy into and can support where their children are going to be placed and what the outcomes will be and how they can participate in their child's rehabilitation. We need to do

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all that. If we pass LB 598 as it is, we won't have that process in place to bring the people to the table. So I urge you to reconsider AM1505 which creates a process to step back, study the issue with the leaders in juvenile justice in the state and make a recommendation to the Governor and the Legislature by December 1 of this year.

SENATOR CUDABACK: Thank you, Senator Thompson. You've heard the closing on the reconsider motion. The question before the body is to reconsider the vote just taken on AM1505 to LB 598. All in favor vote aye, opposed nay.

SENATOR Dw. PEDERSEN: Call of the house.

SENATOR CUDABACK: There's been a motion for a call of the house. All in favor of the house going under call vote aye, opposed nay. Record please, Mr. Clerk.

CLERK: 17 ayes, 0 nays, Mr. President, to place the house under call.

SENATOR CUDABACK: The house is under call. All unauthorized personnel please leave the floor, unexcused senators please report to the Chamber. The house is under call. Senator Bourne, Senator Connealy, Senator Chambers, the house is under call. Senator Stuhr, Senator Quandahl. Senator Chambers, Senator Quandahl, Senator Stuhr, the house is under call. Please report to the Chamber. Senator Pedersen said we may proceed. Did you request a roll call vote, Senator Thompson? Machine vote. A roll call vote has been requested. The question before the body is the reconsideration of the vote AM1505 to LB 598. Call the roll, please.

CLERK: (Roll call vote taken, Legislative Journal pages 1537-1538.) 5 ayes, 24 nays on the motion to reconsider.

SENATOR CUDABACK: The motion to reconsider is not successful. I do raise the call. Mr. Clerk, items for the record.

CLERK: Mr. President, I have amendments to be printed; Senator

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Chambers to LB 536; Senator Connealy to LB 180; Senator Thompson to LB 598 and Senator Raikes to LB 305. (Legislative Journal pages 1538-1553.)

Mr. President, I have a priority motion. Senator Bruning would move to adjourn until nine o'clock tomorrow morning.

SENATOR CUDABACK: The motion is to adjourn until Thursday morning, nine o'clock. All in favor say aye. Opposed nay. We are adjourned.

Proofed by: LaVera Benischek