

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Floor Debate  
February 05, 2008

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[LB235 LB268 LB386 LB495 LB624 LB728 LB765 LB774 LB775 LB782 LB812 LB823  
LB826 LB849]

PRESIDENT SHEEHY PRESIDING []

PRESIDENT SHEEHY: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the nineteenth day of the One Hundredth Legislature, Second Session. Our chaplain for today is Senator Dierks. Would you all please rise. []

SENATOR DIERKS: (Prayer offered.) []

PRESIDENT SHEEHY: Thank you, Senator Dierks. I call to order the nineteenth day of the One Hundredth Legislature, Second Session. Senators, please record your presence by roll call. Please record, Mr. Clerk. []

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

PRESIDENT SHEEHY: Any corrections for the Journal? []

CLERK: I have no corrections, Mr. President. []

PRESIDENT SHEEHY: Messages, reports, or announcements? []

CLERK: A series of hearing notices: one from Appropriations Committee; two from Government, Military and Veterans Affairs, signed by the respective Chairpersons. I have an amendment to be printed to LB386 by Senator Langemeier. That's all that I have, Mr. President. (Legislative Journal pages 505-506.) [LB386]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We'll move to the first item under General File. []

CLERK: LB782, a bill discussed yesterday, originally introduced by Senator Howard, at the request of the Governor. (Read title.) The bill was discussed yesterday, Mr. President. The committee amendments, as offered by Health and Human Services, were adopted. At this time I have no additional amendments pending to LB782. [LB782]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Are there members wishing to speak on LB782? Senator Howard, would you like to refresh us on LB782? [LB782]

SENATOR HOWARD: Thank you, Mr. President, members of the body. Under LB782, the chief executive officer of the Department of Health and Human Services or Division of Children and Family Services director may, keep in mind "may," disclose information regarding child abuse or neglect and the investigation of any such services if, keep in

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mind "if," this is in the best interest of the child and any one of the following factors are present, and I'll go over these just briefly for you: The alleged perpetrator has been charged with a crime relating to the child abuse or neglect report; a judge, a law enforcement official, county attorney, or another local investigative agency or official has publicly disclosed the services related to the investigation; an individual who is the parent, custodian, foster parent, provider, guardian, or child victim over 14 years of age has made a disclosure; the information is released to confirm, clarify, or correct information concerning an allegation of actual instance of child abuse or neglect made public by sources outside the department; or a child who is in the custody of the department is missing from placement, in which case the CEO or director may release the name and physical description of the child for reasons of safety for the child, or for purposes of community safety. Senator Chambers, yesterday, asked the question of what information would be disclosed? And this would be, I'd like to just clarify this for you to provide further information, again may be disclosed includes, but is not limited to, child placement, whether in-home or out-of-home; the hearing date, so those would be the court dates; the reason the child was removed from the parents or from this placement; the number of placements the child has had and the type; permanency objective; court-ordered services or other services provided by the Department of Health and Human Services; and status of the court process. Also, the chief executive officer or director may release the results of criminal history record checks that have been completed by the department as authorized by law. I would like to also let you know that this bill passed out of committee unanimously. Senator Johnson was not able to vote, due to his surgery. We had two speakers, they were both proponents. We had no opponents. So I hope this information is helpful. Thank you. [LB782]

PRESIDENT SHEEHY: Thank you, Senator Howard. Members wishing to speak are Senator Harms, Senator Chambers. Senator Harms. [LB782]

SENATOR HARMS: Thank you, Mr. President and colleagues. Senator Howard, could you yield for just a moment, please? [LB782]

PRESIDENT SHEEHY: Senator Howard, would you yield? [LB782]

SENATOR HARMS: Could you help me better understand why we want this information transparent and revealed? As I look at this, there are some families that just accidentally, for whatever reason, get caught in this mix. They're very good families, want to do the best thing they can, but by displaying and exposing this to the public, quite frankly, I think could hurt the family and could destroy them, that in most cases they would like to have private. I'm struggling a little bit with that aspect. I'm almost in agreement with what Senator Chambers was talking about yesterday. He kind of caught my attention about that issue. Could you help me better understand that, Senator Howard? [LB782]

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SENATOR HOWARD: Absolutely, Senator Harms. And I'm glad you asked that question because I think that's the first thing that anyone would wonder, that anyone would ask. And I'd like to just take a moment to reflect on the years that I worked for Health and Human Services. One of the big problems was that the department was in a position where they couldn't disclose any information whatsoever. There would be high profile cases that would be in the paper. As an employee, I would know the information was not correct, and other workers would know it was not correct, but the department was unable to even clarify. We always kind of considered it a circling of the wagons and that they wouldn't release information. This bill specifically says that if this information, the disclosure, is contrary to the best interest of the child, the child's siblings or other children in the household, this information would not be released. And that's a pretty broad statement. I think we have to bear in mind that one of the things we all are so concerned about is protecting the child, protecting the child from any exposure that would put them in a position that they would not...they would have their identity compromised. And that is the last thing this bill aims to do. [LB782]

SENATOR HARMS: Senator Howard, thank you. Just one more question. Is that okay, Mr. President? Could you explain to me how it might be of the best interest of the child, please? [LB782]

SENATOR HOWARD: There are specific situations where, with a high profile case, there's information in the paper, and that information is incorrect or misleading or in some way is damaging information to the child. That information could be corrected; the record could be corrected for that child. Right now the only time that's possible is if the court releases information regarding the situation where the child is involved. And I think we'd all agree that it's far better to have correct information than incorrect information out there for the public. [LB782]

SENATOR HARMS: Thank you, Senator Howard. Thank you, Mr. President. [LB782]

PRESIDENT SHEEHY: Thank you, Senator Harms. Just so the senators are aware, the cookies being handed out are...at your desks, are to celebrate Senator Dubas' birthday, which is today. (Doctor of the day and visitors introduced.) Senator Wallman. [LB782]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. And I would urge you to support Senator Howard. I know it's tough to be fair across police, teachers, healthcare providers. But we need to protect the children and I know Senator Howard loves children, as do I. So protecting the children is the government's responsibility. As we know, this country was founded on child labor and all these things. So I think it's very important we send a message out here that the children can be safe in Nebraska. And I appreciate and I'd urge you to support it. Thank you. [LB782]

PRESIDENT SHEEHY: Thank you, Senator Wallman. Are there additional members

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wishing to speak on LB782? Seeing none, Senator Howard, you're recognized to close. [LB782]

SENATOR HOWARD: Thank you, Mr. President and members of the body. I appreciate your support on this bill. As you know, I wouldn't, no matter who asked me to carry in a bill, if I didn't believe this bill was in the best interest of children and families I'd have to respectfully decline to do that. But I do feel this is step forward. It's not the entire answer to the service delivery issue, but it certainly is forward-thinking and a forward movement on the department's part. I want to just briefly quote...the Omaha World-Herald has had two editorials in recently regarding the department and child welfare. And one is regarding disclosure information. And they quoted: Such transparency has considerable value; experience shows that when facts are stonewalled, rumors flood in. And that's been the very concern for decades with the department and the care of children that are with the department. And then the second comment from the Omaha World-Herald editorial that I think is right on the money is: For the first time in nearly a generation, hope for a better run system seems plausible. If the state remains focused on providing second chances for the more than 5,000 children who remain in foster care, Nebraska's improbable movement toward better lives for these children just might continue. I appreciate your support with this bill and I thank you for giving me your time. [LB782]

PRESIDENT SHEEHY: Thank you, Senator Howard. You have heard the closing. The question before the body is, shall LB782 advance? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB782]

CLERK: 35 ayes, 0 nays, Mr. President, on the advancement of LB782. [LB782]

PRESIDENT SHEEHY: LB782 does advance. We'll move to items under Select File. [LB782]

CLERK: Mr. President, LB235 on Select File has been discussed by the membership. When the Legislature last left the issue, Senator Chambers had offered...well, there was pending, I should start with this, an amendment by Senator Nantkes, AM1719. Senator Chambers had moved to amend that amendment with FA166. That motion failed. Subsequent to that vote, Senator Chambers moved to reconsider the vote on FA166. Senator Chambers, that's the motion I have at this time. [LB235]

PRESIDENT SHEEHY: Senator Nantkes, would you like to give us an overview, quick overview of LB235 and then your principal amendment? [LB235]

SENATOR NANTKES: Yes, thank you, Mr. President. Colleagues, as many of you know, LB235 creates the Nebraska Film Advantage Act. And it's an economic development program that seeks to retain and create...retain and recruit major and independent movie and other theatrical programs for Nebraska, to promote good jobs

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and increase economic development. We've had considerable debate on the bill. Senator Chambers has filed a series of amendments that I expect we'll have a good discussion about this morning. And I have in two amendments, one that mirrors Senator Raikes's that sunsets the program in three years and requires an economic development analysis at that period of time, and then one that caps the annual amount that could be paid out from the original \$5 million down to \$2.5 million. Thank you. [LB235]

PRESIDENT SHEEHY: Thank you, Senator Nantkes. Senator Chambers, you're recognized to open on your motion to reconsider. [LB235]

SENATOR CHAMBERS: Thank you, Mr. President and members of the Legislature. I don't offer kill motions often. I'm not going to put a kill motion on this bill. If it was a matter which I had great interest in, in terms of investment of emotional capital, I might would offer a kill motion. And I've offered them before, but generally it's to generate discussion. On this bill I am serious about this reconsideration motion because, should the Legislature be beguiled into trying to enact this into law, probably over a gubernatorial veto, some things ought to be done with the bill. What I'm offering a reconsideration motion on can be found on page 2 of AM1719. The two sentences...the two lines I want to eliminate are 10 and 11. The language says, "Material that portrays the state of Nebraska, its citizens, or its institutions in a negative light." There is nothing in this language that refers to accuracy or truth. I try to make my arguments by offering reasons that I think will carry the day. That having failed, I have handed out some material to you today, and it's designed to make what I consider to be a very important point. It should be kept in mind, first of all, that we're talking about subsidization of certain film projects. Any films can be made in Nebraska, but certain ones will receive subsidies from the state if certain thresholds are met. I handed out a very gruesome picture of a barbaric incident that occurred in Omaha, Nebraska, in 1919. And the only reason it won't occur in these days is because black people are in sufficient numbers and we will fight, although sometimes a person who is innocent, like the young black woman in Omaha, not many days ago, will be the victim of a skulking coward who, from a great distance, will execute her. This was done with a high-powered rifle with a scope on it, and she was murdered because she was black. Will Brown, whose picture you see in the handout I gave you, was black. He was falsely accused of raping a white woman. He was so physically debilitated and ill that it was clear he couldn't do anything. He was dragged from his cell by white Christian Omahans. The mayor, who was trying to object, was himself strung up on a light pole in downtown Omaha, but he was cut down before he died. This man was hanged, dragged through the streets of Omaha, with Christians cheering, his body was shot. Then you can see that they set his body afire. You can see the leering, grinning Christians. There is even a person standing there in military regalia. If you look to the right-hand side you will see peeping between two of the Christians the face of a young tender Christian who is being brought up in the ways of Christ and white supremacy. Now that picture speaks for itself. It has appeared

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in magazines all over the world. It has been written about, the incident that is, by the Omaha World-Herald, on several occasions. Some people don't realize--Senator Harms may, other don't--that there was tremendous anti-Greek sentiment in Omaha. And there was a point where law and order broke down and Greeks were driven out of the city. Racism, but it happened to have been directed against people of the same complexion as the mobs. Do you think if a movie were made about these things they would be...cast Nebraska in a negative light? Certainly. They are negative, atrocious, shameful, inexcusable actions. But with this language that is in this bill, should some serious filmmaker come along, let's say a Steven Spielberg, who was given awards for having done a film about a man who supposedly rescued Jews during the time they were being so horribly persecuted in Germany. So he would have what are considered impeccable credentials. Let's say a person of that stature came to Nebraska and was going to do a film, historical and documentary in nature. But because it casts Nebraska in a negative light, everything in it is as true as you all say the Gospel is, that film could not be given subsidies. But if some fool came here and produced one of these bubble-headed, inane, simpleminded movies that are the fare of the day, that project could receive a subsidy. I know you all don't take seriously the things that I bring. And you evaluate them differently from the way you do when your white colleagues bring things here. But I want to put things on the record so it's clear why I say the things that I say, take the positions that I take. Another part of my handout consists of two sheets. One refers to trying to keep people in this state. The headline is, "Bill aims to keep top scholars in state." Why must Nebraska, if it's great, as Senator Harms pointed out, with reference to some things, must young people be bribed to stay in Nebraska? If you read...I don't know if I underlined the ones that I handed out, but the first paragraph says...by the way, this appeared in the Omaha World-Herald, January 18, "Keep Nebraska's top high school graduates in the state for college, and they may settle down to live and work here after school." In the third paragraph, we find these words: "It's really to keep Nebraska kids in Nebraska," Senator Gay said, who introduced the bill. "I think we should work to keep these kids in the state." When these young people, who are the ones deemed to have good minds, are deemed to achieve well academically, will see legislation of this kind where the state is so fragile in its self-concept that it fears a film project which would cast the state, its citizens or its institutions in a negative light, if you just had to try to shield Nebraska, why didn't you, instead of saying "negative," say "false" or "inaccurate"? Even that ought not to be done. You should be encouraging thought, discussion, and so forth. The second sheet is a World-Herald editorial and it appeared February 4. It talks about the situation that I touched on briefly of the young black woman who was shot to death by this person with a high-powered rifle. And the World-Herald, in its editorial, is saying: "Shooting death deserves swift public scorn to avert ill will." [LB235]

PRESIDENT SHEEHY: One minute. [LB235]

SENATOR CHAMBERS: It points out that this was an unprovoked shooting, it was

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deemed by the prosecutor to be a hate crime, and the World-Herald is suggesting that because of the racial implications it ought to be condemned. Next to it is an item from the "Public Pulse," in the World-Herald, appearing on the same day, which pointed out where two accidental shootings occurred. One involved a white man who was an expert gunman; one involved a black teenager. The black teenager was charged with a felony; the white man with a misdemeanor. So whereas the World-Herald is editorializing out of one side of its mouth in its editorial, the other side is pointing out that the racism is alive and well even in law enforcement. Thank you, Mr. President. [LB235]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Nantkes. [LB235]

SENATOR NANTKES: Thank you, Mr. President. Colleagues, it's beginning to feel a lot like Groundhog Day, not the holiday that we just celebrated last week with the famed weather prediction, but rather the movie where the main character gets up each day and lives the same day over and over and over again. And that's how I'm beginning to feel during the debate on this bill. I rise in opposition to Senator Chambers' amendment. I think that we've had full and fair debate on the amendment that he proposed. And, I guess, I just want to utilize this opportunity to draw the focus back into where it needs to be. There's been some discussion about the limiting language proposed in the amendment and what types of projects that will prevent from utilizing this new program. And, I guess, that I just want to...the primary purpose of the Nebraska Advantage Film Production Incentive Act is not just to subsidize productions that may be focused on Nebraska history and all aspects thereof, but rather...that, of course, could potentially happen, but rather it's really to support a budding industry that we have here in Nebraska. It's to recruit in major production efforts from out of state and to utilize the inherent natural beauty of our landscape in filming scenes in so many different genres of potential projects. So let's not get too caught up on that limiting language. That's an additional safeguard that we wanted to include to calm the fears of some of my colleagues that we came across in the midst of discussion on this legislation. And so that's really not the focus, though, and I think that the body is well aware of that. And so, for those reasons, I would ask you to oppose the reconsideration motion. Additionally, I wanted to also draw our attention back to the quality and the type of jobs that we're seeking to create and promote underneath this important legislation. We had some discussion earlier on this bill that these jobs may not look exactly like some of the other jobs targeted in Nebraska's economic development programs. But that does not mean they're any less valuable. I think if you look at the committee statement, if you look at your "Inbox" from communications you've received, and you see the really diverse group of people that are supporting this legislation. Those groups have no interest in fleeting or substandard jobs or any sort of legislation that would create that kind of work force. Instead, those many interests from the Nebraska Chamber of Commerce, Omaha Chamber of Commerce, the Lincoln Chamber of Commerce, the Teamsters Union, the AFL-CIO, and others all care about a strong and viable work force in terms of this industry, and clearly understand the highly competitive wages that are paid to cast and

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crew who work in this important industry, that enable families to put down roots and buy homes and contribute to our communities. And retaining a skilled work force who has expertise in those critical areas is why there is so much support for this legislation. These are good quality jobs that help to meet the needs of many, many Nebraska families. We have a unique opportunity with this legislation to promote the advancement of the arts and humanities, to advance smart and clean growth, to create and retain good jobs, and to... [LB235]

PRESIDENT SHEEHY: One minute. [LB235]

SENATOR NANTKES: ...leverage important economic development dollars into Nebraska and then see those multiplied with the multiplier effect that comes with any sort of tourism activity. We know here in Nebraska that agriculture and manufacturing are important; they're our top two industries. Tourism, my friends, is the number three, is the number three top earning industry for our state. And we have yet to really make a significant investment in that regard. This legislation allows you the opportunity to achieve those objectives. Thank you, Mr. President. [LB235]

PRESIDENT SHEEHY: Thank you, Senator Nantkes. Mr. Clerk, do you have an announcement on your desk? [LB235]

CLERK: Health Committee, north balcony now, Mr. President; Health Committee will meet under the north balcony now. [LB235]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Members wishing to speak: Senator Chambers, followed by Senator Dubas. Senator Chambers. [LB235]

SENATOR CHAMBERS: Thank you, Mr. President, members of the Legislature. Senator Nantkes is learning how the legislative process works. I'll tell you, when people come here and they're new, they get carried away with all the compliments they were fed, so they got the idea that everybody was going to roll over and accept anything that they present. She has gotten an easy ride. This bill has been discussed at length, but it has not been nearly as raucous and acrimonious as other bills which were harried, harassed, and ultimately killed. So if this little bit is giving her heartburn, she should realize that she is merely in training, that's all, and this not difficult. But regardless of how she reacts to it, I'm going to continue to push for what I think is right. This is a crippled bill. It is a pathetic little thing. The amount of money is so piddling that you can say the bill lacks integrity when it comes to the issue it supposedly is trying to advance. There is not enough money in this bill to make it be taken seriously. When I offered an amendment that would put the money into the bill, that was voted down. Now if the body, on the one hand, is against putting some money in this bill at a level that might give it a chance to have a degree of competitiveness, how in the world are they going to turn around and support it when it has no competitiveness whatsoever, yet

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competitiveness is the word we keep hearing? Nebraska must be made competitive. What are they going to be competing in with a bill such as this? Stinginess, small-mindedness, misapprehension about the nature of movie making? This is not going to draw the kind of jobs here that Senator Nantkes keeps breezily talking about will be created. Any jobs that are created are not going to last long. You're not going to see people purchasing houses as a result of getting a job on one of these projects. That is preposterous. But she knows that you're not paying attention. So these things are blithely stated, but they need to be evaluated and analyzed. That's exactly what I intend to do. There are people outside this Chamber aware of what we're talking about. They can see the foolishness of this legislation, the worthlessness of it in terms of even accomplishing what those who support it say it will accomplish, and that is due to the piddling amount of money which is made available for rebates. What is it that causes this Legislature, the majority anyway, to take such a perverse view of this state that they must put in law language to protect it from criticism? That's what they're trying to do. If you are going to criticize Nebraska, if you're going to criticize Nebraskans, if you're going to criticize Nebraska institutions, forget about coming here and taking advantage of a project which is on the books whose purpose is to encourage filmmakers to come to Nebraska and create jobs. An entire area of... [LB235]

PRESIDENT SHEEHY: One minute. [LB235]

SENATOR CHAMBERS: ...intellectual consideration is taken off the table. What I was getting at, and I think Senator Nantkes may have missed it, is not that I think every film made in Nebraska will be about Nebraska. They couldn't go anywhere. Nebraskans wouldn't even go to watch it. I'm talking about somebody who is interested in making a documentary about this state's history, and it would cast Nebraska in a negative light because the things that happened and will be portrayed are negative. They could not get the subsidy that empty-headed, "bimboish," stupid movies would have the opportunity to get, because all they have to do is offer a reasonable chance of economic success. When you're starting to address content, then you ought to put that in across the board,... [LB235]

PRESIDENT SHEEHY: Time, Senator. [LB235]

SENATOR CHAMBERS: ...not just when it comes to Nebraska. Thank you, Mr. President. [LB235]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Additional members wishing to speak on the motion to reconsider: Senator Chambers, this is your third time. [LB235]

SENATOR CHAMBERS: I'm aware, but thank you for reminding me, Mr. President. You ought to put in one of the requirements that nothing can be said that would cast any state, its citizens or its institutions in a negative light. In other words, let it be white

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bread, let it be mayonnaise, let it be bland, let it be olive oil, but nothing with any bite to it, nothing with an edge to it. This language that Senator Nantkes is defending so vociferously should not even be in the bill. It is worthless, but it goes beyond that; it is detrimental. It does not talk about accuracy, it does not talk about truth, it does not talk about artistic worth, it doesn't even use the terms "redeeming quality." That's how these "nekkid", n-e-k-k-i-d, these "nekkid" magazines can avoid being considered obscene. They'll put in some interviews, some editorials, a smattering of news, some novels, when they know everybody is purchasing the magazine so they can look at "nekkid" women. This language is pitiful, it is pathetic. And the bill will be further weakened if this language is added. I want to call attention to it. And if the body intends to keep it, fine. That's your prerogative and you'll probably stick with it in order to "stick it to Chambers," as if that makes me any difference. Here's a little rhyme, because somebody told me something: Colleagues, I have an itching ear. / Rumbblings of cloture do I hear, / Regarding LB235. / When I heard this, land sakes alive, / The very idea, who would birth it? / Is this pitiful little effort worth it? When that motion is made there can be no debate. Think about what you're doing. You new people don't have any concept of the significance of cloture if you have as little awareness of that maneuver as you have of the bad impact of this bill. But some will recognize it. Are the members of the Appropriations Committee going to join in a group to make 35 to cut off debate so this atrocity can move across the board? And when it moves across the board, you think I'm going to just stay on General File and not be waiting for it when it gets to Select File, and waiting for it again when it gets to Final Reading? How many of you are going to support the bill? I think it would be cynical to vote for cloture just to fix me, because, first of all, you're not going to fix me. It's not going to make any difference at all in terms of how I carry on my affairs on the floor of the Legislature. So if the Appropriations Committee members vote for the cloture vote, they're going to have to vote to advance the bill. And if they're not going to support the bill, you should not give... [LB235]

PRESIDENT SHEEHY: One minute. [LB235]

SENATOR CHAMBERS: ...Senator Nantkes false hope. She will think that your intent is to support the bill. She's new, she's hopeful, she's praying. And I would tell her, Senator Nantkes, (singing) wishin' and hopin' and thinkin' and prayin' is not going to do you any good. It might be they'll do it this morning because they're in a get Ernie mood, but as we move farther along and people come back to their senses and they start looking at the projects that are seeking money, they're going to say this one does not make the cut. Jettison it now. But before we get to that point, if you adopt this amendment it will make a bad bill not better, it will make it less bad. Senator Carlson remembers Winston Churchill said, this is not the end, this is not even the beginning of the end,... [LB235]

PRESIDENT SHEEHY: Time, Senator. [LB235]

SENATOR CHAMBERS: ...but it may be the end of the beginning. (Laugh) Thank you,

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Mr. President. [LB235]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator White. [LB235]

SENATOR WHITE: Thank you, Mr. President. I would just like to make a couple of comments about this bill, generally, and Senator Chambers' comments on it. Number one, people are defined not by where they live but by their imagination. This bill will help Nebraska and will help people come to Nebraska, not because of our landscape, or because of what people think of our politics, or our social background, or our industry, but because Nebraskans have, for generations, been known for having enormous gifts in literary and other artistic areas. If we look back at the number of Nebraskans that have written amazing works of art, whether it's Willa Cather, Mari Sandoz, Neihardt, any of those people also would have the ability to write scripts and to create documents and create films that reflect their love for this state. It misses the point to say we're in the wrong place to have films. The point is not where we are; it's who we are. It's not what our politics are; it's what our imagination is. We have a history as a city, as a state with its cities of people who have over and over again found enormous success in the world at large. The number of people who have won literary prizes, the number of people who have won Oscar awards that come from this state, that have ties to this state, who will return to this state is staggering. If you go back and you look at the number of actors and actresses, historically, and then about those who are still in the industry today--Senator Nelson's son, his friends, all of the others, Dana Altman, Alexander Payne, Nick Nolte, all these people have affection for this place and they recognize the inherent talent. All this does, all this does is give the people of the state a tool to use. I understand this bill now is in trouble and it is a pity, because what it is, is a lack of faith in the talent and the abilities of some extraordinary people who call this place home. Thank you. [LB235]

PRESIDENT SHEEHY: Thank you, Senator White. Further members wishing to speak on the motion to reconsider? Seeing none, Senator Chambers, you're recognized to close. [LB235]

SENATOR CHAMBERS: Thank you. Mr. President and members of the Legislature, had I been here when this bill came up on General File, I could have made clear at that time problems that I saw with the bill. I would have encouraged the ones who have said they support it to put enough money in the bill so that were it to be passed by the Legislature, even if it wound up facing a veto, there would be a package with credibility. There would have been first the statement of purpose to try to draw film projects to this state. The second thing would be to create a pool of money which could lend an element at least of competitiveness to what Nebraska is attempting to do, and it would show a level of seriousness that might draw somebody to this state to do something. It might encourage private donations. That was not discussed by any of the people who spoke in support of this bill during this long discussion. If the Legislature doesn't think

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enough of the project to put a decent amount of money into it, why should the private sector offer any donations or contributions? You all understand those things when you're dealing with other items. I think the introducer of the bill could have been served better by some of those who said that they supported it, if they truly supported it. Then even if the measure did not make it this year and were it to come back, it would be in the form which shows that those who support it are serious about pushing something like this for the purposes they articulated. It's not going to go. It wasn't going to go. But it could have been handled in a better way by those who supported it. I even left openings. You should have cut out that language that talked about having a reasonable chance of success. That has nothing to do with anything the bill is trying to accomplish. If the company comes here and it spends money in all the ways laid out in this bill, if the thing bombs that's of no moment to the state. The project, the studio, the individual has expended the amount of money and met all of the thresholds. The ultimate end of the film is of no concern to the state. If enough things were done, they should get the 25 percent rebate, the 10 percent, or 15 percent as that scale slides. But there should be no concern as to whether or not the film has a chance of economic success. If it's a small rat race operation, not a major studio, they have to have a bond to insure that certain things will be covered. That's in the bill, but it wasn't discussed. So I had doubts about the sincerity and seriousness of those who supported the bill. It is not necessary for me to take this motion to a vote. So I'm asking unanimous consent to withdraw this motion to reconsider. [LB235]

PRESIDENT SHEEHY: Thank you, Senator Chambers. You have heard a request to withdraw. So ordered. Mr. Clerk, you have a motion on your desk? [LB235]

ASSISTANT CLERK: Mr. President, Senator Nantkes would move to bracket the bill until March 1, 2008. [LB235]

PRESIDENT SHEEHY: Senator Nantkes, you're recognized to open on your floor amendment to bracket until March 1. [LB235]

SENATOR NANTKES: Thank you, Mr. President. Thank you, Senator Chambers, for your words of wisdom this morning in terms of this ongoing learning process here in the legislative arena. And I will take those lessons to heart, believe me. And I really appreciate your candor in the discussion this morning. Colleagues, we have had a wondrous debate on this important piece of legislation. In talking with many of you this morning, I've realized that we probably don't have the support to end debate. And there are many, many important issues to Nebraska and to you that deserve the same attention. So with that, colleagues, I want to be very clear that my passion for the underlying public policies contained in LB235 has not waned. I want to thank the so many, many Nebraskans who have really poured their heart and soul into helping to craft and move this legislation forward. And I want to be very clear that, while I am asking for unanimous consent to bracket this legislation until a later date, I'm hopeful

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that this will not be the final curtain on the Nebraska Advantage Film Production Incentive Act, but rather we'll have a chance to regroup, to come forward with maybe a cleaner, more pure version of the bill as it was in its original form. And hopefully, down the road, after we have a chance to look at what happens with economic forecasting and otherwise, and having, you know, the benefit of this full and fair debate, I am hopeful that maybe this important economic development idea will be a part of our ongoing economic development discussions throughout the rest of this session. With that, I thank you all for your hard work, your time, and your consideration. And with that, I ask unanimous consent in support of the bracket motion. Thank you, Mr. President. [LB235]

PRESIDENT SHEEHY: Thank you, Senator Nantkes. You have heard the motion to bracket until March 1, 2008. Any objection to the motion of unanimous consent? So ordered. We'll continue under General File, Mr. Clerk. [LB235]

ASSISTANT CLERK: Mr. President, next bill, LB823, which was introduced by the Legislative Performance Audit Committee. (Read title.) The bill was read for the first time on January 10 of this year, referred to the Committee on Transportation and Telecommunications. That committee reports the bill to General File, with committee amendments. (AM1614, Legislative Journal page 463.) [LB823]

PRESIDENT SHEEHY: Senator Schimek, you're recognized to open on LB823. [LB823]

SENATOR SCHIMEK: Thank you, Mr. President and members. LB823 is the result of a performance audit of the Nebraska Information Technology Commission, better known as NITC, that was conducted by the Legislative Performance Audit section. In the audit the section found that NITC complies with the relevant portion of the Information Technology Infrastructure Act. The section also found that NITC has a review process that is sufficient to identify the strengths and weaknesses of reviewed technology projects and that NITC uses this process to address significant weaknesses it finds in these projects. However, the audit also identified some larger policy issues that the Performance Audit Committee felt needed to be addressed through legislation. LB823 addresses these issues. In the audit, the section found that the Information Technology Infrastructure Act contained unclear language about what are called "Enterprise projects," chiefly large technology projects that involve several agencies. For example, the additional oversight of such projects required by the act never came into play, because the act did not give NITC or any other entity the authority to actually declare a project an Enterprise project. LB823 assigns NITC the responsibility of designating projects as such and provides for review and oversight of these projects. In addition, at the request of the Office of the Chief Information Officer, the bill expands the definition of "Enterprise project" to encompass a project that either affects an agency's core business or affects multiple government agencies or programs. The audit also found that NITC does not receive comparable technology information from state agencies,

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which hampers its ability to meet its statutory requirement to coordinate state technology projects. LB823 would compel state agencies to provide an information technology plan, in a format determined by NITC, to the Chief Information Officer regarding technology assets and planned acquisitions and projects. NITC's annual statewide technology plan would include an analysis of the reported data. Finally, the audit found that NITC's review of projects is restricted to those requiring General Fund appropriations and those voluntarily submitted to the commission for review. This means that many projects paid for with other types of funds occur without the benefit of any NITC review, even though they could pose similar risks of cost, feasibility and suitability to those associated with the projects NITC reviews and, therefore, could end up costing the state money. Further, NITC is not currently authorized to review progress on a project beyond the planning stage, effectively missing the highest risk periods of a project; namely, construction and implementation. LB823 requires government entities to submit projects to NITC review regardless of funding source--this includes General, federal, and/or cash funds--and allows NITC to require progress reports on these projects. It is important to note that this bill does not give NITC authority to stop an agency's technology project; rather, the bill enhances NITC's advisory role and helps state agencies take advantage of the wealth of knowledge and expertise represented by NITC, its members, and staff. With increased oversight and review, the state of Nebraska should be able to avoid or at least mitigate costly technology failures. Further, with increased information about agency technology goals, NITC will be better able to coordinate projects and investments, in order to save the state money. State agencies have a great resource in NITC, and this bill will help them make the most of it. I would also add that the following consideration of the committee amendment...that following that consideration, I will be proposing one additional amendment, which I will explain at that time. And before I close, I should mention that at the hearing itself, the people from NITC were very complimentary of the staff's audit of their agency, and I believe it was very successfully done with cooperation on both sides. Thank you, Mr. President.  
[LB823]

PRESIDENT SHEEHY: Thank you, Senator Schimek. We will move to the committee amendment from Transportation and Telecommunications, AM1614. Senator Fischer.  
[LB823]

SENATOR FISCHER: Thank you, Mr. Lieutenant Governor, members of the body. The committee amendment, AM1614, makes a few technical changes to the bill. The amendment gives the NITC discretion on whether to require progress reports from an agency of an Enterprise project. The amendment also changes the reporting requirement of state agencies, boards, and commissions from reporting their technology assets to reporting their technology plans. This will keep the NITC focused on future projects. Additionally, AM1614 narrows the scope of the NITC, determining what is considered an Enterprise project. The amendment removes the requirement that the commission create a program, but leaves the commission to create policies and

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procedures for the designation of the project. I would like to thank Senator Schimek and the Legislative Performance Audit Committee for bringing this bill before the Transportation and Telecommunications Committee, and I would urge your support of this amendment and the underlying bill. Thank you, Mr. Lieutenant Governor. [LB823]

PRESIDENT SHEEHY: Thank you, Senator Fischer. You have heard the opening to AM1614. Are there members wishing to speak? Seeing none, Senator Fischer, you're recognized to close. Senator Fischer waives closing. The question before the body is, shall AM1614 be adopted to LB823? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB823]

ASSISTANT CLERK: 32 ayes, 0 nays on the adoption of committee amendments, Mr. President. [LB823]

PRESIDENT SHEEHY: AM1614 is adopted. We will now return to discussion on LB823. Senator Harms. [LB823]

SENATOR HARMS: Thank you, Mr. President, colleagues. Senator Schimek, would you yield to a question? [LB823]

PRESIDENT SHEEHY: Senator Schimek, would you yield? [LB823]

SENATOR SCHIMEK: Yes, I will. [LB823]

SENATOR HARMS: In the green copy on page 3, line items 11 through 14...are you with me yet, or... [LB823]

SENATOR SCHIMEK: I will be in a moment. Lines 11 through 15? [LB823]

SENATOR HARMS: Right. [LB823]

SENATOR SCHIMEK: Yes, I am with you. [LB823]

SENATOR HARMS: Okay. Let me look one more time here. I believe, Senator, I gave you the wrong line and I'm wanting to look at that right now. I guess, Senator, the area in the green copy--and I can't find it right at the moment, I pulled up the wrong--it indicates that you are going to eliminate...you took out political subdivisions like cities and counties. Does that mean that this commission will no longer be a part of this, or they will not be a part of this aspect in this bill? [LB823]

SENATOR SCHIMEK: No, I don't think so, Senator Harms. Could we find that language so that I know exactly what you're talking about? [LB823]

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SENATOR HARMS: Yeah, I'm looking for that. [LB823]

SENATOR SCHIMEK: And maybe it's replicated somewhere else. [LB823]

SENATOR HARMS: Yeah, I'll have to...I apologize for that, Senator. I'll have come back on that,... [LB823]

SENATOR SCHIMEK: No problem. [LB823]

SENATOR HARMS: ...relook at that. I do want to bring up another question... [LB823]

SENATOR SCHIMEK: Sure. [LB823]

SENATOR HARMS: ...that led me to this thing, is that in your audit, did you review anything at all about the pricing and also the ability to connect to this delivery system? Because my concern has been for years that the technology backbone of this great state has stopped at North Platte for many years, and we could never get it from North Platte to western Nebraska. And after enough battling we finally got it to Alliance, Nebraska, and down to Scottsbluff, but we're unable to use it because the state offices and the university has it pretty much locked up. In fact, the ESU units and the community college and the public schools, because of the pricing factor, have had to go to Laramie, Wyoming, to connect and come back in, because it's cheaper, and I think that's an embarrassment to the state. I'm complained often about this issue, and I want to know did the audit pick this up? Did you pick up the pricing and realize that if you're around Lincoln and Omaha, it's pretty cost-effective, but the further you go to the west, it's not, and it's not appropriate, and the fact is that we have to go into Wyoming to get better services and delivery to come back into this great state? And I think that's wrong, and I don't know if this is the place to bring this up or not. I'm just posing this question to you. [LB823]

SENATOR SCHIMEK: Senator Harms, you've kind of lost me, but I don't believe that was part of the scope of the audit. I don't...are you on LB823? [LB823]

SENATOR HARMS: Yes, I am. [LB823]

SENATOR SCHIMEK: Okay. I don't believe that was part of the scope of the audit. I think you've addressed a problem, or you've raised a question about a problem that is real, but that was not part of the scope of this audit. [LB823]

SENATOR HARMS: And my question is, where would that go from here? As a new senator, how would we take on this issue, and who would actually pick that up to address that issue? Because I think it is a major problem. [LB823]

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SENATOR SCHIMEK: Sometimes I think you have to do that bill by bill. [LB823]

SENATOR HARMS: Okay. [LB823]

SENATOR SCHIMEK: Unfortunately. [LB823]

SENATOR HARMS: Well, thank you very much, and I apologize if I'm out of line on this. [LB823]

SENATOR SCHIMEK: No problem. I just wasn't sure if I was understanding you correctly. But I do think that that would be one way you could approach it, on a bill-by-bill basis. Or you know, maybe make it more general policy statement through one bill. [LB823]

SENATOR HARMS: Okay. Thank you very much. [LB823]

PRESIDENT SHEEHY: Thank you, Senator Harms. Senator Erdman. [LB823]

SENATOR ERDMAN: Thank you, Mr. President and members of the Legislature. I wanted to provide some additional insight on the NITC. As a member of the Legislature, we have in the past, and I'm going to be following up to see who our replacement is--Senator Mines had taken my position as a representative of the Legislature, as an ex officio member of the NITC. And I'm not sure if we have filled that position or not, but I'll visit with the Executive Board to find out. But the NITC really is a great opportunity, as Senator Schimek pointed out, for us to be able to utilize the folks that have the knowledge and expertise of how to put informational technology systems in place, to be effective. And it also provides us a great opportunity to ensure that we don't have agencies and entities out putting in systems and technology that is obsolete or has limited applicability beyond their own little kingdom that they have, and so it's a great opportunity. We spent many hours on the commission with subcommittees and task force reviewing these proposals from a number of agencies, whether it's how we handle different filings in the Department of Labor with some of their requirements, or a number of things, and so it is of value. The issue that Senator Harms has brought up is one that's...while it's tied to IT and the services or the deliverability of them, it's really the issue that came out of LB1208. And if you recall, we went through a process of trying to determine how to better deliver or more effectively deliver distance education through the backbone, through Network Nebraska and the state of Nebraska. And over the course of the last year some of the RFPs that went out were overly restrictive. They continue to create that dynamic that Senator Harms and I and Senator Loudon experience in western Nebraska of having a more cost-effective way of receiving that type of service from out of state than from within our state, which is a barrier to getting Nebraskans connected to Network Nebraska and having access to other school districts and other services that are available to other communities that are within that network.

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So there are two issues: The NITC is not a policy body that necessarily says this is the solution to the policy. They're designed to review the practices and procedures and to make sure that they're appropriately implemented. That was what the vision of this audit was, as I understand it, was to ensure that they were complying with the responsibility that they have under current law. This has some ability to broaden their scope, but again, the issue that Senator Harms brings up is something that we as a Legislature will address, and that I know that the Chief Information Officer has requested or has offered a new RFP for those bids that will be coming out for distance education, specifically in western Nebraska. So while it deals with information technology, it's not all-encompassing. And Senator Schimek is partially correct when she says that you can do it on a bill-by-bill basis. The reality is, is that there are different areas of law that are affected. The NITC is...the Lieutenant Governor knows, who chairs that commission, has some very beneficial insight that we can all draw upon, and it's a great asset, I think, to the state of Nebraska to have coordination, especially with the increasing technology and the advancement that happens in that dynamic field. Thank you, Mr. President. [LB823]

PRESIDENT SHEEHY: Thank you, Senator Erdman. Are there additional members wishing to speak? Seeing none, Senator Schimek, you're recognized to close. [LB823]

SENATOR SCHIMEK: Thank you, Mr. President and members of the body. I don't see Senator Harms in here right now, but I do have, I think, the answer to his question which he posed to me off the mike after we had our little exchange. But I think he was worried about the elimination of the language on page 3, lines 9 through 11, which takes out: government entities and political subdivisions may submit other projects. If you look above that on lines 4 through 9, it says: Governmental entities, state agencies, and political subdivisions shall submit all projects which...oh, for information technology purposes. So instead of the looser language down here that says "may submit," up above it says "shall submit" and "all projects," so we've actually strengthened that oversight, I believe, if they are using any combination of General Funds, federal funds, or cash funds. With that, Mr. President, I would urge the advancement of LB823. Thank you. [LB823]

PRESIDENT SHEEHY: Thank you, Senator Schimek. You have heard the closing on LB823. The question before the body is, shall LB823 advance? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB823]

ASSISTANT CLERK: 33 ayes, 0 nays on the motion to advance the bill, Mr. President. [LB823]

PRESIDENT SHEEHY: LB823 does advance. (Visitors introduced.) Mr. Clerk, do you have items for the record? [LB823]

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ASSISTANT CLERK: Mr. President, I do. Your Committee on Natural Resources gives notice of public hearing for February 13, 20, and 21. Your Committee on Enrollment and Review reports LB268 to Select File, and your Committee on Education reports LB849 as indefinitely postponed. (Legislative Journal page 507.) [LB823 LB268 LB849]

PRESIDENT SHEEHY: We'll move to next item under General File, Mr. Clerk.

ASSISTANT CLERK: Mr. President, next bill is LB624. (Read title.) The bill was read for the first time on January 17, 2007; referred to the Judiciary Committee. That committee reports the bill to General File without any committee amendments. [LB624]

PRESIDENT SHEEHY: Senator Pirsch, you're recognized to open on LB624. [LB624]

SENATOR PIRSCH: Thank you, Mr. Lieutenant Governor, members of the body. I am the sponsor of LB624, and LB624 deals with a crime that currently exists on the book called flight to avoid arrest or, probably more technically, operating a motor vehicle to avoid arrest--essentially police chases. Two types of crimes exist currently with respect to this flight to avoid arrest or, as it's also known as, operating a motor vehicle to avoid arrest. There is a misdemeanor crime and a felony crime. So my bill doesn't create any new classes of crime. It utilizes these already existing categories. I think the problem that this bill seeks to address is that the determination or the way in which the law currently decides whether a flight to avoid arrest is either a misdemeanor or a felony just doesn't make any sense. It's not rational, not based in logic, and so this bill seeks to cure that, simply. Currently, the way the law determines whether it will be a misdemeanor or whether it will be a felony really has nothing to do with the crime itself of flight to avoid arrest. It's based on factors that could have occurred years before that. Let me explain. It is currently based upon the reason that officers are out there, that law enforcement is seeking you, to begin with. So if law enforcement is seeking you on, say, a misdemeanor warrant, then when they ultimately locate you, any flight that then occurs can only be, by law, a misdemeanor flight to avoid arrest. And conversely, if the reason why law enforcement was out there looking for you was a felony, then when they actually locate you, at the point in time that you begin this chase, then it is predetermined that that flight to avoid arrest must be a felony. And you can see the odd results that this ascribing a penalty, not to the crime but to some other circumstance that may have occurred years before, you can see the nutty results that this would lead to. No matter how mild your operation of a motor vehicle to avoid arrest is, whether it's just a matter of a few blocks and going at 15 miles per hour, you're not stopping for the police, you keep going. Say it's a situation where an individual just wants to...doesn't want to have his car towed so he keeps going 10 or 12 blocks but at 25 miles per hour, stops at all the stop signs, doesn't present any great danger to himself or others, that person nonetheless must be charged with a felony flight to avoid arrest and face felony penalties. And conversely, for an individual who is wanted on, say, for a failed to appear in court two years ago, and when the officers turn on him and turn the overhead lights

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on, that individual, no matter how dangerous the flight is, can only face a misdemeanor flight to avoid arrest charge, no matter if that person goes 180 miles per hour down the middle of the downtown area, Grandma is jumping out of the way, helicopter is involved putting hundreds of people at risk. And so you can see the just nonsensical results of tying penalties and punishments to factors other than the actual crime itself, the flight to avoid arrest and the danger presented by that. And so this bill seeks to address that and right-size that and say, the penalty should suit the crime. We want...and so what it does is essentially says that every flight to avoid arrest, the baseline, shall be a misdemeanor, and only in certain circumstances, where extra dangerous factors are present during the flight itself, shall it be capable of being a felony, and one of those factors is if willful, reckless driving is present. That's the highest level of bad driving that exists in law--higher than careless or negligent, and reckless even wouldn't suffice. So it's that dangerous, where you're putting, by definition, people's lives--your life and other people's lives--in jeopardy. That would be the difference and the distinguishing mark between a misdemeanor and a felony, and I think a far more logical one. Also, two other circumstances, where you've had a prior flight to avoid arrest and also in circumstances where your flight to avoid arrest results in the death or injury to any person. And so that is essentially the reason underlying my introduction of the bill, and also some of the...I guess the features of the bill, how it would operate. And I appreciate your attention and look forward to, you know, answering any questions that you'd have about this bill. Thank you. [LB624]

PRESIDENT SHEEHY: Thank you, Senator Pirsch. You've heard the opening to LB624. Mr. Clerk, you have an amendment on your desk? [LB624]

ASSISTANT CLERK: Mr. President, I do. Senator Chambers would offer FA172. [LB624]

PRESIDENT SHEEHY: Senator Chambers, you're recognized to open on FA172. [LB624]

SENATOR CHAMBERS: Mr. President, I would like to lay that aside for now. I want to keep it on the desk, but I think there needs to be some discussion of the bill first, so that's what I'd like to do, lay that amendment...I'll say pull it, but I don't want it thrown away yet. [LB624]

PRESIDENT SHEEHY: Okay. Thank you, Senator Chambers. Members wishing to speak, Senator Chambers. [LB624]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, what I'm going to say is why I don't want to take that amendment right this minute. I should say this first, by way of introduction. One of the things that makes a good lawyer movie interesting and compelling is to confront the lawyer with a case that seems unwinnable.

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All the facts seem to be against his or her client. Then as the lawyer begins to apply his or her knowledge, begins to discuss the facts, establishes the context in which things occurred, then some doubt begins to creep in, because what at first seemed a lead-pipe cinch for the prosecution begins to look not quite so lead pipe, then pretty soon not lead at all. Then it results in a wet noodle, and the defendant is acquitted, especially if the lawyer is Perry Mason or Andy Griffith, who took on an alias and became a lawyer. What Senator Pirsch said about charging a person fleeing arrest with the level of offense for which the arrest is to be made would make no sense. But there is method to the madness of the existing structure. I have always been against police chases--always, always, always. And as we proceed, I will tell what really put me on that hobbyhorse. In trying to discourage police chases, I had pointed out that the vast majority of them start with a minor traffic infraction, sometimes not even a moving violation--a broken tailpipe...I meant taillight, maybe a hanging muffler. The idea is this: If these cops know that the person is wanted for a misdemeanor, an intelligent, prudent cop would not initiate a chase through a neighborhood, through downtown, trying to apprehend a misdemeanant. I don't think the chase ought to occur in the instance of a felony either, unless there's something immediately going on which must be stopped immediately, and nobody has been able to give me an example of that where it makes sense to risk the three people in front of me who have done nothing, in order for a cop to catch me, who may have done something. If they know that there is a minor offense involved, there should be no chasing, period. The Legislature, by classifying offenses, lets the public know which types of violations are considered serious. A misdemeanor is not deemed serious. I believe all police chases are dangerous--to the person being chased, any who may be in that vehicle, innocent bystanders, and even to the idiot cop who's chasing--the idiot cop. There was a guy who used to suck a sucker on television, and he had a bald head--his name was Kojak. And this cop got killed in a high-speed chase, and everybody was just boo-hooing and moaning and saying, oh, he was a good cop, and this and that. And they asked Kojak what he thought, since the guy was dead. Kojak said, in this case, dead is dumb--dead is dumb. He was dumb to do... [LB624]

PRESIDENT SHEEHY: One minute. [LB624]

SENATOR CHAMBERS: ...what he did, and being harvested by the Grim Reaper does not transform him into anything other than a dumb, dead cop. But he can no longer endanger the public. So that is one of the rationales for saying that if it's a misdemeanor that the person is to be arrested for and the person flees, it's only a misdemeanor. It's trying to give a message to these cops by hitting them on the head with a two-by-four--fool, do not chase somebody and create a greater danger to the public than that individual you're chasing had presented. [LB624]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Wallman, followed by Senator Chambers. Senator Wallman. [LB624]

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SENATOR WALLMAN: Thank you, Mr. President, members of the body. I would like to...would Senator Pedersen yield to a question? [LB624]

PRESIDENT SHEEHY: Senator Pedersen, would you yield? [LB624]

SENATOR PEDERSEN: Yes. [LB624]

SENATOR WALLMAN: Thank you. I noticed you didn't vote for this. Was there a reason you had for not voting? [LB624]

SENATOR PEDERSEN: No, I just didn't feel I had enough information on it that I wanted to vote for it at that time. And I'm still pretty much in that position. I'm just listening. [LB624]

SENATOR WALLMAN: Thank you. I kind of have to be on Senator Chambers' page about police chasing, knowing a young woman who got hit with a police car. She's still in a semi-coma, and that's been over a year. So...it was a routine chase, I guess, no lights on the police car. So I'm basically always for the police, the firemen, the teachers, but the police chases, you know, that cuts to the heart if somebody gets hurt. And we all know if I'm a young policeman...I used to like to drive fast myself, and it's the excitement of the chase. I think Senator Chambers would agree. It's pretty exciting to get in your high-powered police car and try out how much power it's got. So we have a tremendous temptation here to chase somebody, to maybe even to push somebody to speed. So with that, I would turn the rest of my time over to Senator Chambers, if he would like it. [LB624]

PRESIDENT SHEEHY: Thank you, Senator Wallman. Senator Chambers, about 3 minutes, 20 seconds. [LB624]

SENATOR CHAMBERS: Thank you, Senator Wallman. Thank you, Mr. President. Let me tell you what really called my attention to this atrocious misconduct by police officers, whose car will carry the words "To protect and serve." When I wore a younger man's clothes, was not a member of the Legislature, I read about an incident where a teacher--I think he had four children--was driving, maybe it was on 13th Street heading north. The police were chasing an individual. This individual went through a stop sign, hit the car, killed the teacher, and those children were left orphans. Before I came along, there was no way for that family to recover anything, because the one being pursued was the one whose vehicle struck the teacher's car. I managed to persuade the Legislature to pass a bill into law, and the Governor signed it, that any time an innocent third party is hurt due to a police chase, whatever political subdivision, from the state on down, will have to compensate that innocent third party and respond in money damages for the injuries suffered. I don't believe in half baking a cake. There are police persons who will chase people from Iowa into Nebraska. I got a change in the law, an

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amendment, which said that the fact that this officer pursued into the state of Nebraska, gave enough connection to this state to render that person subject to the laws of the state of Nebraska, and whatever police agency that person who came into Nebraska worked for, would have to respond in damages to any innocent third person injured in Nebraska. I'm looking out for the citizens of this state when they don't even know it, and they might see something in the law and say, wow, a genius must have been on the scene! They say, Chambers did that. They say, all this stupid, crazy stuff on the bill, that's what's the matter with him; he wastes the Legislature's time and put all this crazy stuff in the law. Well, there were many police officers who didn't like that provision,... [LB624]

PRESIDENT SHEEHY: One minute. [LB624]

SENATOR CHAMBERS: ...providing for recompense to the families of innocent third parties or the persons themselves, if they survived. A former police officer, maybe he was still an officer, was hit by a fleeing person, and his family was very happy that that legislation, which the cops had excoriated, was on the books when it provided compensation for that cop's family, when he was the victim of a person being chased by the stupid Omaha police. Thank you, Mr. President. [LB624]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Chambers, you're next in the queue, followed by Senator Pirsch. [LB624]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, the vast majority of high-speed chases or low-speed chases, the law simply says somebody who is resisting being caught, in so many words--you're fleeing. It doesn't say it has to be high speed. The vast majority stem from minor traffic infractions. Let me give you a little more of the story, as Paul Harvey is wont to do, w-o-n-t. This person who was being chased had been to court and the officers had seen him have his driver's license revoked. There was a little eating establishment in south Omaha at that time, and you could drive in. These cops were sitting there and what to their wandering eyes should appear but this guy whose driver's license had been revoked. So you know what they did? They positioned their cruiser, they waited until he got into his van and started. And when he started driving, they turned on the sirens and the lights and zoomed up, and he took off. And like jackasses and fools like Omaha police officers are--things that Senator Friend says to the contrary notwithstanding--every stupid, life-endangering move made by this person was made by the police. He went down alleys, they went down alleys. He went through backyards, they went through backyards. He went up an embankment and the undercarriage of his van scraped away a good percent of that embankment, and the police officers did and their undercarriage did the same thing, because they knew this man had lost his driver's license. He went through an alley, came back on the street, and he was coming down the street when what I described earlier happened. He struck the car of this teacher and the teacher was killed, because these cops had seen this

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man lose his license. Now if they are what Senator Friend tells us, these great people, who when they're disciplined should not have it made known to the public, you know what they would have done if they were enforcing the law or behaving as law enforcement officers should? They would recognize that prevention is better than cure. They would have approached the man and let him know, you don't have a license. If you get in that van and drive away, you've got something coming. They should have prevented that. That teacher might be alive today; might not. The man's children would not have grown up without a father. I fought against high-speed chases before I got in the Legislature. I went before the city council to try to persuade them to stop the police from doing it, went before the county board to try to get them to stop the sheriffs from doing it. I collected articles showing the number of people who were killed in these chases, the number of people who were injured, the property damage. Houses were run into, people had decorative items in their front yard, from light poles to lions and whatnot were run into, sometimes by the person being chased, sometimes by the police cruiser. None of it had any impact at all. So I decided, since those whose job it is to oversee the police would not act on the basis of what is reasonable and rational, I would try to go into the pockets of the political subdivisions and maybe that would lead them to impose some regulations and restrictions. [LB624]

PRESIDENT SHEEHY: One minute. [LB624]

SENATOR CHAMBERS: And that resulted in the bill which I related to you earlier, that now is the law. Innocent third parties will be recompensed. I care about people for real, not like you all, where you just get up here and talk about it when it's convenient. There are things we can do as a Legislature, and we should. Senator Pirsch brings us a bill which on its surface has a certain allure, but I do not think that it's accomplishing what ought to be accomplished. It will encourage police to chase, and it will put a greater burden on people who sometimes flee for no reason other than that a cop car has got in behind them, and the police have found that to be the case, and they even say, we don't know why he ran. But people are afraid of the police. Thank you, Mr. President. [LB624]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Pirsch. [LB624]

SENATOR PIRSCH: Thank you, Mr. Lieutenant Governor and members of the body. I appreciate the discussion that has gone on thus far. I would like to just point out and clarify one important fact. This law is not creating any new categories of operation of a motor vehicle to avoid arrest. They exist today, so. This bill just talks about the deciding line of what is a misdemeanor and a felony, but they already exist today. And so to the extent that you don't trust law enforcement, under the current law the same amount of potential danger exists, so it neither increases nor decreases nor affects that, the willingness of the police to engage in a chase, and so I don't see how that's affected. We're just talking about how you categorize each, and so misdemeanor and felony flight to avoid arrest today, if the same officers would be on the street today under this current

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law as would be out in the street in two weeks or a year from now under the new law, so to the extent that you don't trust the officers, you know, under this new law, then even if you left the law the way it is today, you'd still have that same potential danger. Now I don't share that concern, but I just wanted to point out--it's really irrelevant to the discourse of this...to the way you approach the bill, I think. But with respect, I think, just to address that briefly...and right now there is a strict liability requirement on political subdivisions. Every...any injury or accident that occurs, as Senator Chambers pointed out rightly, is paid for by the political subdivision. That gives them the correct incentive. And not only that, on top of that, 29-211, a statute, was created, and I think Senator Chambers probably--I'll let him talk about that--was a major architect of that, and I think it's good legislation--I'm assuming he was; I guess I don't know for sure--which deals with each law enforcement agency within the state of Nebraska is required to adopt and implement a written policy regarding the pursuit of motor vehicles--when to pursue, when to discontinue, the number of vehicles that would be allowed in a pursuit, their interplay with other jurisdictions, review of personnel training, and annual review of policy with each officer. So there is an annual review with each police officer of policy, as well, and these officers are subject to discipline. And so in cases where...you know, as Senator Wallman indicated, there was no lights on a police car. Well, certainly that would not accord with policy, and the jurisdiction, of course, because it's strict liability in every case. No matter how careful the jurisdiction is about...even if they're pursuing at five miles an hour, if the individual himself, you know, miles down the road gets into a collision with another vehicle, it's the political subdivision that's on the line. And so the correct incentive is in place, just to assure. But again, I just wanted to point out--it really doesn't bear relevancy for this bill, because this bill isn't creating a new crime. The crimes already exist. It's just delineating the marker between the two, the felony and the misdemeanor, and I think rightfully so. It's indicating that the punishment should fit the crime, not on some artificial thing that may have occurred years and years and years ago, that... [LB624]

PRESIDENT SHEEHY: One minute. [LB624]

SENATOR PIRSCH: And when you look at the incentive, if you are someone who knows he has a misdemeanor warrant, then you know the flight that you go on can only be a misdemeanor. You should go like a bat, you should go like a bat, because the worst that can happen to you is a misdemeanor, and there's no incentive to do the right thing. And so for a misdemeanor, there's an incorrect incentive. For a felony, if you know you have a felony warrant, you're going to go like a bat, too, because you know that the worst is going to happen to you, no matter how mild you keep it, so you might as well go for it. So the incorrect incentive is placed on both of these types of drivers, and I think that's why it's really a paradigm not followed by any other criminal statutes. I can't think of any other criminal statutes that attributes a penalty, not to the actual crime itself, but on an artificial fact that has nothing to do with it, that occurred maybe years ago. So I just urge you to make the penalty fit the actual danger. [LB624]

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PRESIDENT SHEEHY: Time, Senator. Mr. Clerk, you have an amendment on your desk. [LB624]

ASSISTANT CLERK: Mr. President, Senator Chambers would offer FA172. (Legislative Journal pages 507-508.) [LB624]

PRESIDENT SHEEHY: Senator Chambers, you're recognized to open on FA172. [LB624]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, there were no other lights on, so I'm offering the amendment now. I did want to let everybody who had a desire to discuss the bill to do so before my amendment came up. But I have to make something clear by emphasizing it. Senator Pirsch said that what I had indicated about a felony being the punishment for fleeing if you were wanted for a felony, a misdemeanor being the punishment if you're fleeing for a misdemeanor--it is very relevant. The law itself is not enough to stop these cops from chasing. In Omaha, the mayor has a new chief. The last chief was a black guy who was afraid of the police union. They talked about him like he had a tail in their paper; they called him names and he wouldn't do anything. But then when they went after the white mayor, Fahey, Fahey ordered that Negro chief, Tommy Warren, to move against the police union and the scurrilous things they were saying in the newspaper. The World-Herald editorialized about the fact that this Negro chief was so quick to defend the police, that whenever an incident occurred, he immediately exonerated the police before he even had seen the reports or had any inkling of what the facts were, and that kind of conduct is what contributed to a lack of trust on the part of the community. And I've said much harsher things, than I'm saying here today, on a program that I do. He knows what I think of him, how little. But after all of these things began to crop up, he was eased out of that position, and now they have somebody else who is the chief. This person may, perhaps, want to alter policies referenced to police chases. If the law remains as it is, that chief is able to say, don't chase if somebody is wanted for a misdemeanor--don't chase. But currently--and I don't know if Senator Pirsch is aware of this but I suspect he is, since he's a prosecutor--whether under the current law a person is being chased because he or she had committed a misdemeanor or a felony, any crimes committed along the way during the chase are charged. It's not as if, since I committed a misdemeanor and that's what they want me for, I can fly like a bat out of hell and don't have to worry about the consequences. Every stop sign I go through, every red light I disregard, if I go the wrong way on a one-way street, if I run over somebody, even though that innocent third party is compensated by the political subdivision for which the officer works, I, as the one in the car who did the damage, will be held criminally liable and responsible for the harm that I cause. So there is no incentive for a person to say, well, I know the law. Most people who run from the police have no idea of what the difference between a misdemeanor and a felony would be anyway. We get these unrealistic arguments from

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prosecutors and the police saying that people know this or that about the law and, therefore, they behave in a certain way. Most people on this floor cannot tell you what the penalty is for a Class IV felony. I don't know if Senator Pirsch can tell you. But that's why you have law books, you have prosecutors who can look these things up. But if the lawmakers don't know, you think the ordinary citizen is going to say, I know that they're after me for a misdemeanor, and if I run they'll only charge me with a misdemeanor and may not even know what a misdemeanor is? Maybe he thinks that's the feminine form of the demeanor. If a woman commits it, it's a Miss Demeanor. If a man commits it, it's a Mr. Demeanor. (Laughter) So they don't know the law. The point that I'm making or trying to make is this: Where there are minor infractions there should be a policy, a strict policy, of no police chases. There have been instances where they chase a person and he got away, but they got his license number, so when he comes home they're waiting at his front door for him. They've got ways other than police chases. In Baltimore, they didn't chase at all. They had helicopters and didn't have any police chases, and there are other cities that have none. Senator Wallman is right about these chases being exciting; officers have acknowledged it themselves. Those who have studied police chases have acknowledged it, and most of them wind up with the cops being so heated up and the testosterone running rampant that they will beat up the person when they stop the person, and that's not their job. But they get angry because somebody dared to run from them. Police chases are the most debilitating, undermining, anti-law enforcement activities that can be conducted by law enforcement. If you are insistent on passing this bill, this is the language that I'm offering. I haven't determined yet to what extent I'm going to fight this bill, because we got to it sooner than I thought we would today. I thought we were going to be on LB235, the movie bill, for awhile, but instead of it being a saga, it turned into a short subject, and it ended before I even got comfortable. But if anybody is interested, and for the sake of the record, I'm going to state what this amendment would do. On page 2 or 3...page 3 of the green copy, in lines 15 and 16, this simple language is there: "The flight to avoid arrest results in the death of or injury to any person." I would amend it so that after "the flight to avoid arrest results" I would insert, after "results," "directly and proximately in the death or injury of any person," and I would insert "if such death or injury is caused directly and proximately by the vehicle being driven by the person fleeing to avoid arrest." I'd like to ask Senator Pirsch a question or two, for the sake of the record. [LB624 LB235]

PRESIDENT SHEEHY: Senator Pirsch, would you yield? [LB624]

SENATOR PIRSCH: Yes, I would. [LB624]

SENATOR CHAMBERS: Senator Pirsch, under the language as it exists now, by saying "the flight results in the death or injury of any person," the cop could be the one whose vehicle causes the death, and that would be attributed to the one fleeing, under the language as it exists now; isn't that true? [LB624]

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SENATOR PIRSCH: It's possible. [LB624]

SENATOR CHAMBERS: My language would keep that from happening; would you agree? [LB624]

SENATOR PIRSCH: That and more. [LB624]

SENATOR CHAMBERS: Okay, and you may not like the language, but I at least want people to know that I'm trying the best I can... [LB624]

SENATOR PIRSCH: Oh, yes. It...yeah, it's your... [LB624]

SENATOR CHAMBERS: That's all I'll ask you...trying to state the way it is now and what it would be under my language. I have been well aware, and police agencies have been aware, those who have done studies have been aware, that officers sometimes pose a greater hazard by their driving than the person being pursued. So to let these cops think again, perhaps, to maybe persuade some of these chief executive officers of police agencies to tell these cops, don't be chasing for minor infractions, don't chase a vehicle through a commercial area, don't chase it through a neighborhood. This happens in Omaha. They run them through neighborhoods, children out playing in the summertime. That's what the Omaha police do, and it's allowed. If the death or injury is caused by the police officer's vehicle, that is not ascribed or attributed to the person being pursued. The only way this language would apply to the person being pursued is if that person's vehicle caused the death or the injury. The way this language fits, the way this language goes, a person could be in the process of being pursued,... [LB624]

PRESIDENT SHEEHY: One minute. [LB624]

SENATOR CHAMBERS: ...it's on a street that has one lane of traffic coming one way, one lane of traffic going the other way. So the cop is going to get around this person, get in front of the car, and stop the cop's vehicle. Well, in the process of going around, there's a car coming from the other direction, and the cop runs head-on into that car. Under this language, the person being pursued is charged or made responsible for the injury caused by a stupid cop. I would have to listen to Senator Pirsch to tell me how that is not going to happen under the existing language and tell me why it should happen. In other words, the cop is responsible, but the person being chased is held accountable and culpable. Thank you, Mr. President. [LB624]

PRESIDENT SHEEHY: Thank you, Senator Chambers. You have heard the opening to FA172 to LB624. Members wishing to speak: Senator Pirsch, Senator White, and Senator Chambers. Senator Pirsch. [LB624]

SENATOR PIRSCH: Thank you, Mr. Lieutenant Governor, members of the body. I'd just

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like to relate, share a little bit of what I've learned with regard to the Nebraska State Patrol, with respect to what they offered as far as training. Apparently, recruits have 50 hours of training, including 8 hours of classroom. The practical skills include a review of personal driving skills, and then they participate in live pursuits. Over time the speed of the pursuit increases and the training becomes more difficult. In addition, recruits learn to pursue with lights on and with another officer's vehicle in pursuit. Eventually, the instructor bows out and the recruit must make decisions about a practice pursuit in his or her own. Existing officers have annual reviews of pursuits. One-year officers will have an in-service policy review. The next year officers will actually review pursuit policies in a patrol car with respect to when to call off. Throughout the pursuit the officer is asked to reevaluate the risks of the situation. So it's not done on a single basis but rather reevaluated as the chase goes on. Termination occurs when the degree of danger is greater to the public and/or the officer than the need to pursue, even if it is, in fact, a felony. So even on felonies that's always the case, that the danger to the public is always addressed and evaluated. And so I just wanted to relate to you a little bit of the feedback from the State Patrol with regard to their training and policies, and again reinforce that, again, the political subdivisions have a correct incentive. They are strictly liable, not...even if they act in what we all agree is the most reasonable and careful of manners in their approach to these. If something happens, they're on the hook, period. And so they have the correct incentive in place. And you know, obviously Senator Chambers was the architect of that bill as well; has left a very pronounced fingerprint upon this area. And I think that with respect to, I guess, my earlier topic, right now...I meant my earlier point, right now under the law, there are both felony and misdemeanors in place, and so to the extent that you believe that officers are not going to follow the existing policies that are put forward, to the extent that you believe that law enforcement is full of rogue officers, I don't see how you're going to change that, whether it's the old law or the new law. This doesn't create new classes of crime. This simply delineates between the two, what constitutes the basis of why it would be a misdemeanor or why it would be a felony. And simply, that is all this bill does. And so with respect to Senator Chambers' point about officers not following policies and, rather, engaging in chases that I think Hollywood has made, I think, overblown and famous, they don't or shouldn't happen that way, and I don't, by and large, think that they do. But to the extent that officers are creating danger and violating policy, they, too, can be disciplined, which can include termination. And that doesn't mitigate the stupidity of the driver. It isn't a zero-sum game. The determination of whether an officer is acting against policy... [LB624]

PRESIDENT SHEEHY: One minute. [LB624]

SENATOR PIRSCH: ...is a separate analysis, and they are responsible for that. But you have to...that doesn't in any way vitiate or change the fact that these individuals who engage in these high-speed chases are creating danger, and so they need to be addressed, as well. And so this bill simply, I think, right-sizes the penalty to actually fit

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the crime, the actual danger presented by the criminal activity, and doesn't base it upon factors that, as I mentioned, could have occurred years and years ago. It has about as...the way we do things now has about as much relevance as, you know, whether you dined at a restaurant in the last month or so. And so I would ask you to...you know, I enjoy the dialogue here, and I look forward to more dialogue and I appreciate your comments. Thank you. [LB624]

PRESIDENT SHEEHY: Thank you, Senator Pirsch. Senator White. [LB624]

SENATOR WHITE: Thank you, Mr. Lieutenant Governor. May I ask whether Senator Chambers would yield to a question? [LB624]

PRESIDENT SHEEHY: Senator Chambers, would you yield? [LB624]

SENATOR CHAMBERS: Yes, I will. [LB624]

SENATOR WHITE: Senator Chambers, one of the concerns you've addressed to the body in this bill is, it might be the police officer's car causing the injury, and whether or not the person being pursued should be, in fairness, charged for that injury with a crime. You are aware, I know, of a body of law, I suspect, that other members may not, that if a person engages in a shootout with police officers and someone is injured or killed, there have been successful prosecutions, even though it's established the bullet that hit the innocent bystander came from a police officer's weapon. Are you familiar with those, sir? [LB624]

SENATOR CHAMBERS: Yes, that's true. And I don't want to misstate, but I think one may have happened, even in Florence, and the guy wound up on death row. But if I'm mistaken on that one, there have been cases, for sure, where the person engaging the police is responsible for everything that happens, even if the police are the ones who do it. [LB624]

SENATOR WHITE: Yes, so you have a police bullet, and yet you can still be charged with murder. Do you disagree with that fundamental kind of legal trend, or is it just in connection with this particular case? [LB624]

SENATOR CHAMBERS: I disagree with that. I think the one whose act resulted in the harm is the one held culpable. If the officer is going to be exonerated on the basis of being in a position of trying to carry out his or her duties and will not be prosecuted criminally, and there's not intent and negligence and such things as that, then it's one of those things where nobody is charged criminally for that particular part of it. But the other person ought not be charged, who didn't do it. [LB624]

SENATOR WHITE: And that has been a debate in the law. I take the opposite view on

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that issue with Senator Chambers. I take the position that if a person creates a dangerous circumstance and then, with a predictable police response, a person is injured, the person who in the first instance creates the dangerous condition should properly be charged. We can talk about level of charging. I think it's a reckless base, so I would never support a first-degree murder, although I would say a felony murder can be supported in those circumstances. I would like to mention that I worked with Senator Chambers for over 20 years on the police pursuit bill on the civil side, and I would tell you that his work in that area was exceptional. I look at police pursuits as a very dangerous, though sometimes necessary, activity, and when people are injured, it's like taking land. You're doing something that hurts...to help the general public but may hurt an individual and, therefore, we should remain responsible for that. Thank you, Mr. Lieutenant Governor. Thank you, Senator Chambers. [LB624]

PRESIDENT SHEEHY: Thank you, Senator White. Senator Chambers. [LB624]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, to show the extremes to which the principle can be pushed that Senator White had mentioned, I have read of instances where cops have shot each other, and the person that they supposedly were after is charged. The police officers discharged their gun in a way that would hit one of their fellow officers, and sometimes several. And I think responsibility and training should prevent those things from happening. Training does not ensure good judgment. There are patrol officers who have violated their policies. There are Omaha police and various sheriffs' deputies who violated policies. What I want to see happen with the legislation that I've brought is not necessarily the recompensing of innocent third parties. I would like there to be no third parties, innocent ones to be recompensed, by eliminating the police chases. So although what I've gotten into the law is helpful to those who are hurt while innocent, it hasn't resulted in what I would desire to see happen. Eliminate police chases or restrict them considerably. When you tell these officers to evaluate the risk and break off the chase, that's like, without trying to be vulgar, you have two young people petting and going on, and then when the moment of truth arrives, one of them says stop. And there's no stopping. There are some things that you know are going to happen. When these cops are in the midst of a testosterone deluge, they're not going to see any risk. In fact, the more danger there is to other people, the more they like it, and some have acknowledged that. When Senator Pirsch talks about cops violating the policy and being disciplined, thanks to what you all did, we'll never know whether they're disciplined or not. Such things as that are kept secret. On the one hand, Senator Pirsch will laud the activity of maybe a police department in disciplining officers, and on the other he says, but the public should not know. So to my way of thinking, there really is no discipline. They can hide behind that. Senator Pirsch did not address my amendment, so I don't know what his view on that is. But he said we should keep in mind that the one creating the danger is the one who is running. But we ought to go a step back and consider that the one who first set that chain in motion is the one responsible, and that's the cop. Senator

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Pirsch, the "Holly Bible" says, respect thy father and thy mother. That's what it says. And parents don't go any further, but if they went a little further into the "Bible" they'd see where it says, parents, provoke not your children to wrath. Cops, don't provoke people to run. They talk about these things. They know what will provoke a person to run. They know! And some of them generate these chases. They want to chase! It's not like they're all out here protecting and serving, and suddenly something happens and they chase. They want to chase, and they know they're chasing in circumstances where they ought not to do it. But they know that they're going to be protected by the chief, never disciplined, never told, terminate a chase. If that was done, they wouldn't come rip-roaring through the neighborhoods where I live and where poor people in south Omaha live. If ever a chase should be terminated, it's when you're driving through a residential area, where many children are known to be outside playing. These cops don't care about people. Do I mean every cop? No. [LB624]

PRESIDENT SHEEHY: One minute. [LB624]

SENATOR CHAMBERS: I'm talking about the ones who do this, and there are plenty of them. And contrary to what Senator Friend and others said, there are cops who cover for wrongdoing cops. They know other cops are wrong and they cover for them. You all have heard of the blue wall of silence. If you saw Eddie Murphy's movie, you saw where he said one cop doesn't rat another cop out. That's their philosophy. They know that; that's the way they are. That's why they do these things, because they get away with them. Then the Legislature protects them. As I've stated, I don't know to what extent I'm going to fight this bill, but I hope that Senator Pirsch, when he speaks again, will give me and the body his view on this amendment, and if he doesn't say anything I will take his silence to be consent to it. Thank you, Mr. President. [LB624]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Pirsch. [LB624]

SENATOR PIRSCH: Thank you, Mr. Lieutenant Governor, members of the body. And just to address the last issue raised there, with respect to my view of the amendment, I've got to tell you, I have concerns about it with respect to that which was already said, which is somehow the officer's actions, whether they be against policy, somehow would mitigate the bad action of the defendant. There are two separate analyses, and I wouldn't give a break or a favor that if the bad acts of a...criminal acts of a driver...if, in fact, you know,...what the officer does, if that's bad, he is to be held accountable, as well. But I also wanted to...so I do have also a concern about unintended consequences. There's a number of scenarios envisioned here. When you're limiting to that which is only directly and proximately, that is a very, very extremely limited accountability to the person who has started...engaged in this horrendously dangerous activity, knowing that you're driving a, you know, a 2,000-pound bullet at hundreds of miles, you know that you're creating vast amounts of danger, danger which you couldn't even totally encompass or recognize, in particular at the time that you start this, just by

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the mere nature of this activity. And so I don't have any...I guess I would oppose anything that would...I certainly wouldn't support anything that limits this accountability for engaging in this. Just...you know, when you talk about types of activities that put the public at danger, going hundreds of miles per hour in a multi-thousand-pound steel encasement, and when you talk about, well, yes, they may be responsible...I mean, there may be other laws that you violate in the abstract, such as stop sign violation, okay, that's a \$10 fine typically, or failing to yield the right of way or, you know, another, in and of themselves, infraction, they were never encompassed or meant to be used in situations such as this as an alternative. Clearly, this is the law that is designed to prevent this type of dangerous activity, and there...carnage happens all the time--deaths, injuries. This is truly one of the most dangerous criminal behaviors that is exhibited. And just a comment with respect to the officers who, you know, Senator Chambers commented about, you know. And I did function as a prosecutor for nearly a decade in Douglas County, and I can tell you it is not the Hollywood perception. These are people who live in the community. This is not a Hollywood film. The ones that I know have families and kids and want to live and don't want to be injured, and so it is a scary and...a scary situation to these officers, that they don't want to--the ones I know--engage in, but that is the nature of their duty and so that's why they do it. So I don't think that that's fair, to characterize them as thrill seekers looking to get into trouble, and I think that you realize that. But in any event, again, the importance...to restate what this bill is, this bill is not creating any new crimes. It's just the determination between the misdemeanor and the felony, which already exists, and making that more commonsensical. [LB624]

PRESIDENT SHEEHY: One minute. [LB624]

SENATOR PIRSCH: Again, if you don't have faith in the individuals who...in law enforcement in the state, you're not going to have any more or less faith in them whether this bill is passed. The same type of activities or abuses could occur or could not occur. And again, I would just say that I enjoyed the dialogue and look forward to continuing it and appreciate the questions. [LB624]

PRESIDENT SHEEHY: Thank you, Senator Pirsch. Senator Chambers, this is your third time. [LB624]

SENATOR CHAMBERS: Thank you. Mr. President, I'm going to have to find other ways to keep us on this bill, because I don't think that Senator Pirsch has adequately addressed my amendment. He says he's against it. He doesn't want to mitigate the wrong that anybody else has done. I want some responsibility on these cops who set the chain of events in motion. That's what I want. He doesn't want the police to bear any responsibility whatsoever. The existing law exists for the purpose of encouraging those who set policy to tell these cops, don't chase where minor offenses are involved--don't chase. Senator Pirsch wants to do away with that. He knows, if he was awake when he

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was a prosecutor, that there are cops who talk about other cops who want to be in chases. He knows that. I'd like to ask Senator Pirsch a question or two. [LB624]

PRESIDENT SHEEHY: Senator Pirsch, would you yield to some questions? [LB624]

SENATOR PIRSCH: Yes, I would. [LB624]

SENATOR CHAMBERS: Senator Pirsch, you said these cops who chase, they live in the community and so forth. No cop who has been involved in a police chase in my community has ever lived in my community. Are you aware of any cop who conducted a police chase through the community where he lived? [LB624]

SENATOR PIRSCH: You know, offhand... [LB624]

SENATOR CHAMBERS: No, you're not aware of any. [LB624]

SENATOR PIRSCH: ...I...yes. I believe I am aware of that, yes. [LB624]

SENATOR CHAMBERS: Okay, tell me. Who was the cop, and what was the incident? [LB624]

SENATOR PIRSCH: Well, I guess offhand, I don't have the specific recollection of the officers, but all chases out in...there's a limited parcel of land out in Douglas County that isn't encompassed in the city, and so when you're talking about Douglas County sheriffs, I know that that does involve...and you're just asking off the top of my head,... [LB624]

SENATOR CHAMBERS: Let's talk about the... [LB624]

SENATOR PIRSCH: ...and I know that there's been flights out there, so it has to, by its very definition, have occurred in their neighborhood. [LB624]

SENATOR CHAMBERS: Well, if it happens in the county outside the city of Omaha, do you prosecute it? [LB624]

SENATOR PIRSCH: I'm sorry? Yes, I do. [LB624]

SENATOR CHAMBERS: If something happens outside the city limits of Omaha, out in the county, do you prosecute it? [LB624]

SENATOR PIRSCH: Yes, I do,... [LB624]

SENATOR CHAMBERS: Okay. [LB624]

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SENATOR PIRSCH: ...throughout the Douglas County. [LB624]

SENATOR CHAMBERS: Okay, then you'd be aware of police officers; let's talk about those in Omaha. Are you aware of a police officer on the Omaha Police Department conducting a police chase in his neighborhood, in his community? Are you? If you're not, just say no. [LB624]

SENATOR PIRSCH: Yeah, I think of Omaha as one community. [LB624]

SENATOR CHAMBERS: Okay, Fred Astaire, I'll ask you a different question. Cops can be on the Omaha Police Department and live in a different city, can't they? [LB624]

SENATOR PIRSCH: Just one second. Could you say that one more time? Cops live in one city... [LB624]

SENATOR CHAMBERS: People can be on the Omaha... [LB624]

SENATOR PIRSCH: ...and can work in a different city? Yes. [LB624]

SENATOR CHAMBERS: They can be on the Omaha Police Department if they live in a different city, can't they? [LB624]

SENATOR PIRSCH: Yes, that's correct. [LB624]

SENATOR CHAMBERS: They can be on the Omaha Police Department if they live in a different state, can't they? [LB624]

SENATOR PIRSCH: That is correct, as well. [LB624]

SENATOR CHAMBERS: So these police are not all people who live in the city of Omaha. Isn't that true? [LB624]

SENATOR PIRSCH: Some, although I don't know the percentage. [LB624]

SENATOR CHAMBERS: That's all I will ask you. Thank you, Senator Pirsch. Members of the Legislature, again, there might be an allure in this bill, but there is a broader issue than just the chasing. I'm looking at an inducement to a chief executive officer of a police agency putting in place regulations that will restrict these chases, because the officers on their own don't have good judgment. They will chase for minor issues. We should leave the law where it is. Omaha is where most of the chases occur. [LB624]

PRESIDENT SHEEHY: One minute. [LB624]

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SENATOR CHAMBERS: It's where most of the judgments are paid out. But since the cops don't pay them themselves, they don't care. You need to have the political official, which would be the mayor, put pressure on the chief, whom he appoints, to put some regulations in place reining in these police chases. Where minor offenses are concerned, no chasing. If you know in advance that a person has committed a misdemeanor, don't chase. You know who the person is; that's why you chased the person. Then go get a warrant and go to the house and arrest the person. They want to chase, Senator Pirsch. They want to chase. The bill as it stands is not acceptable, in my view, as sound public policy. [LB624]

PRESIDENT SHEEHY: Time, Senator. [LB624]

SENATOR CHAMBERS: Thank you, Mr. President. [LB624]

PRESIDENT SHEEHY: Are there additional members wishing to speak on FA172? Seeing none, Senator Chambers, you're recognized to close. [LB624]

SENATOR CHAMBERS: Thank you. Mr. Presidents and members of the Legislature, if my amendment is adopted it will not alter what Senator Pirsch says his intent is--to determine what a person should be charged with on the basis of what happens during the pursuit. He also wants the person to be responsible and held culpable for anything the cop does. I'd like to ask Senator Pirsch a question. [LB624]

PRESIDENT SHEEHY: Senator Pirsch, would you yield? [LB624]

SENATOR PIRSCH: I would. [LB624]

SENATOR CHAMBERS: Senator Pirsch, one of the things that can lead to an enhancement... [LB624]

SENATOR PIRSCH: Yes. [LB624]

SENATOR CHAMBERS: ...is if the person drives in a way that includes willful, reckless operation. Do you think an officer can operate a motor vehicle during a chase in a manner that's willful...that qualifies as willful recklessness? [LB624]

SENATOR PIRSCH: If that officer is the one being pursued by police; is that what you mean? [LB624]

SENATOR CHAMBERS: No, if the officer is pursuing. Can the pursuing officer operate his vehicle in a willfully reckless way? [LB624]

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SENATOR PIRSCH: I think that in this and in many crimes, when you're talking about officers acting in their duties or capacities, they can perform things such as carrying a gun, and... [LB624]

SENATOR CHAMBERS: That's not what I'm asking you. [LB624]

SENATOR PIRSCH: So yes, I think that they can perform in such a way that would, ordinarily, if they were laypeople, might constitute the basis of willful, reckless driving ordinarily, but for the fact that they are police officers. [LB624]

SENATOR CHAMBERS: But your view then is that a person...a police officer cannot commit willful, reckless driving during a police chase, no matter how he operates his vehicle. That's your view, correct? [LB624]

SENATOR PIRSCH: Cannot effectuate willful, reckless driving? Well, I would say that, certainly, if they are the driver of the car that's getting away and they're off duty or whatnot, sure. [LB624]

SENATOR CHAMBERS: No, no, the one chasing, the one chasing. [LB624]

SENATOR PIRSCH: Yeah. That's the nature of the duty, that we want that to occur. [LB624]

SENATOR CHAMBERS: Well, let's say that the person fleeing drives through a crossing area where children are crossing. Children are now crossing the street, and the officer runs through those children. The officer is exempt from responsibility because he's in a chase. That's your view, correct? [LB624]

SENATOR PIRSCH: I don't think officers are necessarily exempt from criminal acts while they're on duty. I'm just saying that, you know, you have to look at policy and what is...what their policy allows for. [LB624]

SENATOR CHAMBERS: You'll probably escape on this amendment, because I don't think they've paid any attention, but I'm going to keep us on this bill for awhile. Mr. President, I will ask for a call of the house before we take a vote. [LB624]

PRESIDENT SHEEHY: Thank you, Senator Chambers. There has been a request for a call of the house. The question before the body is, shall the house be placed under call? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB624]

ASSISTANT CLERK: 32 ayes, 0 nays to go under call, Mr. President. [LB624]

PRESIDENT SHEEHY: The motion to place the house under call is adopted. The house

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is placed under call. All unexcused senators please report to the Chamber. All unauthorized personnel please step from the floor. The house is under call. Senator Raikes, Senator Kruse, the house is under call. You have heard the closing to FA172. Senator Chambers, how would you like to proceed? [LB624]

SENATOR CHAMBERS: Machine vote. [LB624]

PRESIDENT SHEEHY: The question before the body is on the adoption of FA172 to LB624. All those in favor vote yea; opposed, nay. Have all voted who wish? Please record, Mr. Clerk. [LB624]

ASSISTANT CLERK: 2 ayes, 18 nays on the adoption of FA172, Mr. President. [LB624]

PRESIDENT SHEEHY: The motion fails. The call is raised. Mr. Clerk, you have a message on your desk? [LB624]

ASSISTANT CLERK: Mr. President, Education Committee will hold an Executive Session under the north balcony at 11:30. Mr. President, I do have a priority motion. Senator Chambers would move to reconsider the vote just taken. [LB624]

PRESIDENT SHEEHY: Senator Chambers, you're recognized to open on your motion to reconsider. [LB624]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, there is any number of motions I could offer, including one to kill the bill, but that's not my approach or intent at this time. I'm going to talk about this amendment now, because I'll have enough time to adequately discuss it. Other matters have been considered. Senator Pirsch comes here with the attitude of a prosecutor, that police can do no wrong. I'd like to ask Senator White a question, to see if he is conversant with traffic laws. [LB624]

PRESIDENT SHEEHY: Senator White, would you yield? [LB624]

SENATOR WHITE: Yes. [LB624]

SENATOR CHAMBERS: Senator White, do ambulance drivers have to obey traffic laws when they're going to...they've got their lights on and so forth? [LB624]

SENATOR WHITE: Yes. They are allowed to cross a red light if they stop, they do it in a reasonable manner, they have their lights on and their siren operated. [LB624]

SENATOR CHAMBERS: Are they to obey speed limits? [LB624]

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SENATOR WHITE: There is no exception I'm aware of that allows them to exceed them, though they frequently do under conditions of life and death. [LB624]

SENATOR CHAMBERS: Right. They do it, but there is no exemption in the law. [LB624]

SENATOR WHITE: That I'm aware of. I mean, it may be there. [LB624]

SENATOR CHAMBERS: Nor I. What about fire trucks? Can they violate speed limits? [LB624]

SENATOR WHITE: Fire trucks can cross against red lights under the same circumstances as ambulances, as I understand it. [LB624]

SENATOR CHAMBERS: But not violate speed limits. [LB624]

SENATOR WHITE: Not that I'm aware of. [LB624]

SENATOR CHAMBERS: Thank you. [LB624]

SENATOR WHITE: I know of no law that allows them to. It may be there; I don't know. [LB624]

SENATOR CHAMBERS: I'm not aware, either. Thank you. I'm going to ask Senator Pirsch a question or two now. Mr. Prosecutor. [LB624]

PRESIDENT SHEEHY: Senator Pirsch, would you yield? [LB624]

SENATOR PIRSCH: I would. [LB624]

SENATOR CHAMBERS: Mr. Prosecutor, whose job it is to uphold the law, you have told us, I think, that cops can break all traffic laws, and be immune when they do that, if they're in a police chase. Is that what you meant to say when you said that they are not responsible for driving in a way that would be willfully reckless, were they a private citizen? To make the question direct: Is it your view that cops can violate speed limits while they are in a police chase? I know they can, they do it. But is there something in the law that allows them to do that, grants them an exemption? [LB624]

SENATOR PIRSCH: Yeah, well, I appreciate the question. With respect to...I don't think that it is...that there is a carte blanche to commit any acts, that you're above the law if you're an officer. However, the courts do recognize, I think it's termed...areas in which...towards the public good, envisions certain acts where the public is deriving utility, more utility from them, even though in and of themselves they would not...they may constitute violations of law. Choice of... [LB624]

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SENATOR CHAMBERS: Okay, now if a person being pursued drove through a front yard and a backyard, the police would be...the police should do the same thing, in your view, correct? Wherever the pursuit goes, the pursuer should follow; that's your view, correct? [LB624]

SENATOR PIRSCH: No. I certainly am not an expert in the area, and that's why I think that it is heavily fact dependent, needs to be constantly evaluated and reevaluated as the pursuit goes on, that information shared with the supervisor, and policies and...go ahead. [LB624]

SENATOR CHAMBERS: But the fact is...the fact is, Senator Pirsch, it's not. They drive through neighborhoods. I have seen them drive through neighborhoods--black neighborhoods. I've seen it with my own eyes, more than once. And it's been reported by others, more than once. They don't do that in west Omaha. Now you think that's acceptable, don't you? As a prosecutor, are you aware of any case where officers pursued through a neighborhood? Maybe you don't know that they've ever done that. [LB624]

SENATOR PIRSCH: By my neighborhood, yes. [LB624]

SENATOR CHAMBERS: And you think that's acceptable? [LB624]

SENATOR PIRSCH: Well, I think it's, given the...I mean, it's heavily fact dependent. You can't give a one-size-fits-all answer to whether or not a chase should...it's the totality-of-the-circumstances type of analysis, so depends...what might go on in "Fulton" County, Nebraska, at 2:00 in the morning is a different set of circumstances... [LB624]

SENATOR CHAMBERS: That's not what I'm talking about and you know it. Your neighborhood...do black people live in your neighborhood? [LB624]

SENATOR PIRSCH: Yes. [LB624]

SENATOR CHAMBERS: Black people live in my neighborhood. Police, they chase in our neighborhood, regularly. Have you ever seen any action taken against police officers, because they chased through a residential neighborhood, while you were a prosecutor during those ten years? Have you ever seen any action brought against a cop for doing that? No. [LB624]

SENATOR PIRSCH: I...no, I've never seen...I mean, I've never been personally part of a case where an officer had engaged in a flight to avoid arrest, where he's been prosecuted for that, but I wasn't aware of any improper violations of policy. [LB624]

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SENATOR CHAMBERS: Thank you, Senator Pirsch. You know what this man is telling you all? If they run these people through neighborhoods, the right neighborhood, that's not a violation of their policy. That's what he's saying. And I object to it. I reject it, and I'm going to talk about it on this floor. I'm talking about the reality that occurs in my community. And you can have one guy stand up here and tell you, well, if they have policy and what happens in "Fulton" County at 2:00 in the morning, and that's not what I'm talking about. That's the way the cops and prosecutors do every time we raise an issue. Every time we raise an issue they get off that issue and go to something else. And you all got the votes; you can do whatever you want to do. But I'm going to make it hard for you to do it. I'm going to make it as difficult as I can. And there are people watching us who will know that I'm interested in the safety of the public. And Senator Pirsch could have been a prosecutor for 30 years, and that means nothing to me. There are some people who were privates for 30 years. He's going to talk about doing something for the public good, so these cops can violate traffic rules and laws. When they are a greater danger to the public than the one they're pursuing, they are wrong. Senator Pirsch would probably say, well, if that fellow hadn't killed himself at Von Maur and the police saw him, they could just go in there and open fire from all directions and kill up as many people as they need to, to get him. And that's the attitude of a lot of police, if that guy hadn't killed himself. Black people would have been killed because the only one they arrested was a black guy, and it was on television. A white man did it and that was the description that went out, and I saw a black kid in handcuffs being put into a police cruiser. And on television, when they talked about it, they said this person...the one person who was arrested is in the cruiser, and other officers are standing around, and he was found under a bench. Well, white people were hiding, too, but that wasn't a basis for arresting them. They were hiding everywhere they could--in storerooms and everywhere else. So if the shooting would have occurred, black people would have died, and people like Senator Pirsch would have said, well, they thought--they thought. They didn't think! And if they did think, they said, these black people are expendable; we can tell any white jury that we thought he probably did it--somebody told us it was a black guy. They lie, also. And they've been found in court to lie, Senator Pirsch. I don't know if you're aware that they don't tell the truth. And the one who forced that black woman to have oral sex with him was found to have lied to the police officers, all the way through, and he lied to Internal Affairs, and he lied during the investigation. So cops do lie, and you probably can't accept that, so I'm going to bring some articles and hand them out so you all will see how these guys lie. It's not a pleasant subject. You all get upset with the discussion, and you all don't want me to get upset when the actions occur that lead me to talk like this. You all can't deal with words, and you think I'm supposed to allow these kind of things to happen and not even talk about them? I don't come in here, leave my shell at the door, retract my eyes that are on stalks, and stop leaving a stream of slime behind me, because I'm a snail? I'm not a snail. [LB624]

PRESIDENT SHEEHY: One minute. [LB624]

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SENATOR CHAMBERS: And we're going to deal with these issues, you all your way, and I my way. You've got the votes, you've got control, you can do anything you want to do, and I know you will! I know what I'm dealing with in this Legislature, but I'm prepared to deal with it. I'm not going to shrivel up and run away because I know what your attitudes are and what you're going to do. If you thought that, you've got another thing coming. We're going to be on this bill, and I can carry us from now till the cows come home. This amendment is eminently reasonable. It says that if somebody is killed or injured by the pursuing officer, that cannot be attributed to the one the officer is chasing. [LB624]

PRESIDENT SHEEHY: Time, Senator. [LB624]

SENATOR CHAMBERS: Thank you, Mr. President. [LB624]

PRESIDENT SHEEHY: Thank you, Senator Chambers. You have heard the opening on the motion to reconsider. (Visitors introduced.) Members wishing to speak are Senator Pirsch, followed by Senator Lathrop, and Senator Chambers. Senator Pirsch. [LB624]

SENATOR PIRSCH: Mr. Lieutenant Governor, members of the body, having had an opportunity to look at the amendment Senator Chambers has brought and, you know, Senator Chambers had pointed out in another important bill from last year, sometimes it's good to approach issues with a modicum of flexibility in a cooperative spirit, and I think that we can find some...I'm hoping that we can find, then, some middle ground with a...if we were to reconsider the amendment that is put forward here with respect to the direct...LB624, the amendment that deals with limiting the penalty where the death or injury is caused directly and proximately by a...only to the circumstances where the death or injury is caused directly or proximately by the vehicle being driven by the person fleeing to avoid arrest. And you know, in the greater picture, I think that it's important to look at the totality of the bill, and with this amendment, if that brings about the possibility, then, of this moving along, I would acquiesce to such amendment and, in such reconsideration movement, would be supportive of Senator Chambers' amendment to put that limitation to limit the death or injury to that which is caused directly or proximately by the vehicle being driven by the person fleeing to avoid arrest. And if...so I would urge you in this reconsideration amendment, in light of speaking with Senator Chambers, to vote yes on it. [LB624]

PRESIDENT SHEEHY: Thank you, Senator Pirsch. Senator Lathrop. [LB624]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I am standing on LB624 because I have some thoughts on a number of different things, and maybe I can get it in, in five minutes. The first point I would make is, I think Senator Pirsch in LB624 has a good idea, and the idea is that we're not going to make a distinction. Once the chase is over, we're not going to make a distinction and charge somebody who causes

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a ridiculous, mind-numbing, senseless chase through north Omaha primarily--and I'll agree that that's where most of them happen--senseless car chases through crowded neighborhoods, through...down streets where people are trying to drive and go home from work, and then have them pull some guy out and charge him with a misdemeanor, running from the police because he happened to have, as his first infraction, some crossing the center line. And that's the way it is right now. And what Senator Pirsch is trying to do with LB624 is to say it's not just what you started running for or from, but it's what you did during the chase, and I think it makes an awful lot of sense. And my colleague, Senator Chambers, doesn't agree with that proposition. I know he doesn't. But what I think is going to get lost in this, and something that I feel strongly about, is Senator Chambers' police chase bill. That bill is law and it's good law, and I think I don't want to see that law become a casualty of this discussion. We aren't here to decide today whether the police are boneheads or not boneheads. The question today in LB624 is whether or not we should charge people who run from the police according to, not just what they did when the police started chasing them, but what they did during the chase. And the discussion, I think, has to some extent degenerated into the cops are boneheads. And believe me, I think there's an awful lot of police chases, Senator Chambers, that start out on some small traffic infraction that never should happen. I agree with Senator Chambers, that happens. But understand, the police chase bill is not law because the Legislature has determined that the police never should chase, or they're wrong, or they're doing something careless when they do. The police chase statute that Senator Chambers got through is a recognition that there is fallout from police chases, and that fallout should be paid for by the city, the political subdivision or the state, to make sure that all of society bears the cost, the fallout, if you will, from those chases. And so as we proceed today, recognize that while Senator Chambers certainly has reason to be concerned about police officer conduct, that doesn't mean the police chase statute is a bad idea, nor does it mean that Senator Pirsch's LB624 isn't good policy, which I think it is. On FA172, I oppose FA172 and I do for this reason: If you think of it this way, you're an innocent person who's driving home from work, gets hit by a car. Senator Chambers' amendment would basically say, we're not going to increase the penalties if the bullet car, or the car that struck the innocent party, is the officer, or somebody getting out of the way of this chase, but we will allow it if the bullet car is the guy that started the chase in the first place. I don't think there's a reason to make that distinction. If someone is going to run from the police, they run from the police,... [LB624]

PRESIDENT SHEEHY: One minute. [LB624]

SENATOR LATHROP: ...and anything that happens as a consequence ought to serve to increase the penalty for what they've engaged in. So I oppose FA172, I support LB624, and I implore you not to see this as the police chase bill, which we will at some point or another in my career review; that we don't view that as something that you have to first accept the police are wrong when they chase. Thank you. [LB624]

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PRESIDENT SHEEHY: Thank you, Senator Lathrop. Senator Chambers, followed by Senator White. Senator Chambers. Senator Chambers waives. Senator White. [LB624]

SENATOR WHITE: Thank you, Mr. Lieutenant Governor. I had a question that I've asked Senator Chambers and Senator Pirsch. Ordinarily, if for example you had a bank robbery, a police pursuit ensued, a police officer's tire blew out, lost control, came across the curb and struck a pedestrian, I think general common law would have allowed a felony murder charge to lie against the person that caused the pursuit. I don't know what impact this provision would have on that in this situation, and I don't want to unintentionally take that ability to charge that kind of serious act, by this amendment. On the other hand, Senator Chambers has made a very good point to me which--I live in an area, there are a fair number of police pursuits--if a person simply at low speed crawls through a light, a police officer sees it three or four blocks away, suddenly accelerates to 60, 70, 80 miles an hour, loses control and hurts someone, is it reasonable or fair that a person who simply didn't stop fully at a stop sign be charged with a murder or a felony? So we have an issue where there are, I think, some really serious public policy considerations that we need to think through, to make sure we do the right thing and that we not do things unintentionally. For the body's position, I mean, if somebody commits a bank robbery and a police pursuit ensues and people die, I would hold them responsible. But if somebody simply misses a stop sign and a police officer overreacts and causes a death of a civilian, I have a horrible time charging someone with a crime of that seriousness for simply missing a stop sign. So I don't know where Senator Pirsch and Senator Chambers are at this time, but I ask the Chamber to pay...all of us to pay careful attention, because this is potentially very important. And I thank you for your attention. [LB624]

PRESIDENT SHEEHY: Thank you, Senator White. Senator Chambers. [LB624]

SENATOR CHAMBERS: Mr. President, members of the Legislature, Senator Pirsch is looking at an additional statute. Here's what he and I agree to. If this amendment as it sits now is added to the bill, I will not resist the bill. It will move forward. I will continue to work with Senator Pirsch between now and when the bill comes up again. The questions that anybody would have I'm willing to entertain, talk to them, and work our way through it. I heard what Senator Lathrop said. What I acknowledged in the beginning is that there is an allure to what Senator Pirsch is talking about. However, what Senator Lathrop ignores, what Senator White ignores, what others ignore is that I'm saying I don't want cops to have carte blanche to do anything they want to and somebody else is held accountable, and under the language that exists right now that can happen. The cop can drive in a willfully reckless manner, and the one being pursued is responsible. The cop can commit an intentional act during a chase and the one being chased is responsible, and neither Senator White nor Senator Lathrop can show me that, under the language that exists here, that cannot happen. And I think that

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is terribly irresponsible. When you give cops under ordinary circumstances the discretionary right to kill somebody, which no one in this society, from the President on down has, you don't need to cloak them with additional incentives to do wrongful things, knowing that they're exempt, and somebody else is going to be held accountable. That's what can happen under the language that exists now. Under Senator Pirsch's bill, if a person is driving in a way that is willfully reckless, that elevates that activity to a felony--I'm not touching that. Another part of the bill says if the person had been convicted prior to this, under this subsection of law, that prior conviction causes the second conviction to be enhanced to a felony--I'm not touching that. I'm looking only at this area which has been a problem for me, even before I got in the Legislature--not me personally. But I've seen what the police do! You all don't see it, so you don't believe they do it. That's what is so infuriating to me--not frustrating--because we die! We have people crippled because of police chases through our community! And you all say, well, if a tire blows out on a cop car, you're not going to elevate it to a felony. I want to put things into law that will discourage these chases and discourage these cops, because they do know the law. They will know that whatever they do, the one they're chasing is going to be liable for it, is going to be responsible for it. The person being pursued may not operate that vehicle in a way that's willfully reckless, may not even violate the speed limit, may not have been convicted before. But if the cop does something wrong and injures another person, then that person being pursued is now charged with a felony, not because of the way he or she operated the vehicle, but because of the way the cop operated his vehicle, because of what the cop did, and only what the cop did! And I find that to be abhorrent, I find it to be repugnant, and I will do everything I can to prevent that from going on and being encased in the law, like those creatures in amber. [LB624]

PRESIDENT SHEEHY: One minute. [LB624]

SENATOR CHAMBERS: They're there forever. And that's what I'm fighting against. I've told Senator Pirsch, and he is satisfied that we'll continue to work on it. Senator Lathrop, I didn't hear everything he said, but I think he's going to oppose what we've agreed to. So if he opposes it, then we'll just fight it here. I'll fight it here or any other place, and if I lose then I lose, but I'll lose after eight hours. And I've had that happen before. But I will not back away from this, and if Senator Lathrop wants it that way, Senator Lathrop will have his way. That's all I have. Thank you, Mr. President. [LB624]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Are there additional members wishing to speak on the motion to reconsider? Seeing none, Senator Chambers, you're recognized to close. Senator Chambers, did you wish to close? [LB624]

SENATOR CHAMBERS: Yes, and I'm going to allow my time to be running as I talk to Senator Pirsch, because it will determine what I'm going to say. Mr. President, without telling you who is whom, Jesse James and the sheriff have reached an accord. I'm going to withdraw my reconsideration motion. Senator Pirsch wants to look at some

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other statutes to be sure that they're not implicated in an unintended way by the amendment that I'm offering. I will not pursue the reconsideration motion at this point, and I am delivering myself into Senator Pirsch's hands. I'm going to let the bill go ahead and move, and I'm going to trust, even though I'm unable to verify. But sometimes when you're in the game, you roll the dice. Sometime they come up craps. I will see what happens in this instance. Under all the circumstances, Mr. President, I ask unanimous consent to withdraw my reconsideration motion. [LB624]

PRESIDENT SHEEHY: Thank you, Senator Chambers. With unanimous consent to withdraw the motion to reconsider, without objection, so ordered. We will now move to LB624. Are there members wishing to speak? Seeing none, Senator Pirsch, you're recognized to close on LB624. [LB624]

SENATOR PIRSCH: Thank you, Mr. Lieutenant Governor, members of the body. And, yes, I very much appreciate the cooperative spirit Senator Chambers has exhibited yet again today. And I think that there is some common ground here, and so I do appreciate that and I can only say that I will, you know, work in good faith with Senator Chambers as he has outlined. I tell you, his word has proven to be good as gold in other matters that we've worked through, and so you know, I strive for that as well. And so I just urge you at this point in time, I think that we're going to reach some sort of arrangement that everyone can live with in the end, and so at this point in time, I'd just ask you to advance it through General File to give us the time to adequately address that issue. Thank you very much. [LB624]

PRESIDENT SHEEHY: Thank you, Senator Pirsch. You have heard the closing. The question before the body is, shall LB624 advance? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB624]

ASSISTANT CLERK: 39 ayes, 0 nays to advance the bill, Mr. President. [LB624]

PRESIDENT SHEEHY: LB624 does advance. Next item under General File. [LB624]

ASSISTANT CLERK: Mr. President, next bill is LB495, introduced by Senator White. (Read title.) The bill was read on January 17, 2007; referred to the Business and Labor Committee. The committee reported the bill to General File with committee amendments attached. I do have a priority motion, Mr. President. Senator White would move to recommit the bill to the Business and Labor Committee. [LB495]

PRESIDENT SHEEHY: Senator White. [LB495]

SENATOR WHITE: Thank you, Mr. Lieutenant Governor. This is an important bill that we're going to need to take up at some point in time. A number of families are having problems coordinating sick benefits, vacation leave, and Americans with Disabilities Act

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benefits, Family Medical Leave Act benefits. There has been a substantial change in federal law from the time this bill was drafted until we have it now. Accordingly, the language in this bill isn't really appropriate, and nor does it deserve full and complete debate because of those changes. Therefore, I ask the body to please vote in favor of sending it back to the committee so that we can harmonize it with the new federal decisions that have come out since it was initially drafted and since it was sent out of the committee. Thank you. [LB495]

PRESIDENT SHEEHY: Thank you, Senator White. Senator Cornett. [LB495]

SENATOR CORNETT: Thank you, Mr. President and members of the body. I rise to support Senator White's motion to recommit LB495 to the committee. As Business and Labor Committee worked through this bill, we offered AM804. Since that time, case law from the Seventh Circuit had made this language less useful than when we intended. I would ask the body to support the motion to recommit, so that Senator White, the committee, and I can continue to work through these issues. I know Senator White and myself continue to work with interested parties to come to a resolution. With that, I encourage the body to accept Senator White's motion to recommit. Thank you. [LB495]

PRESIDENT SHEEHY: Thank you, Senator Cornett. Additional members wishing to speak on the motion to recommit to committee? Seeing none, Senator White, you may close. Senator White waives closing. The question before the body is on the motion to recommit LB495. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB495]

ASSISTANT CLERK: 35 ayes, 0 nays on the motion to recommit the bill, Mr. President. [LB495]

PRESIDENT SHEEHY: The motion to recommit passes. Do you have items for the record, Mr. Clerk? [LB495]

ASSISTANT CLERK: Mr. President, I do. An amendment to LB823 from Senator Schimek; your Committee on General Affairs reports LB728 to General File; and certain gubernatorial appointments. The Committee on Judiciary reports LB774, LB775, LB826, all to General File. Health and Human Services reports LB765 to General File with amendments. Name adds: Senators Aguilar, Schimek, Harms, Pedersen, Pankonin, and Avery to LB812. (Legislative Journal pages 508-516.) [LB823 LB728 LB774 LB775 LB826 LB765 LB812]

And I have a priority motion. Senator Pankonin would move to adjourn until Wednesday, February 6, 2008, at 9:00 a.m.

PRESIDENT SHEEHY: You have heard the motion to adjourn until Wednesday,

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February 6, 2008, at 9:00 a.m. All those in favor say aye. Opposed, nay. We are adjourned.