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Floor Debate  
April 09, 2013

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[LB44 LB55 LB68 LB205 LB216 LB230 LB265 LB269 LB341 LB390 LB495A LB495  
LB497 LB561 LB585 LB595A LB595 LB634A LR22 LR42 LR145]

PRESIDENT HEIDEMANN PRESIDING

PRESIDENT HEIDEMANN: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the fifty-seventh day of the One Hundred Third Legislature, First Session. Our chaplain for today is Senator Carlson. Please rise.

SENATOR CARLSON: (Prayer offered.)

PRESIDENT HEIDEMANN: Thank you, Senator Carlson. I call to order the fifty-seventh day of the One Hundred Third Legislature, First Session. Senators, please record your presence. Roll call. Mr. Clerk, please record.

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

PRESIDENT HEIDEMANN: Thank you, Mr. Clerk. Are there any corrections for the Journal?

CLERK: I have no corrections this morning.

PRESIDENT HEIDEMANN: Thank you. Are there any messages, reports, or announcements?

CLERK: Mr. President, your committee on Judiciary, chaired by Senator Ashford, reports LB390 to General File with amendments. And, Mr. President, your Committee on Enrollment and Review reports LB216, LB495, LB495A, LB55, LB265, and LB634A to Select File, some of which have Enrollment and Review amendments attached. And that's all that I have at this time, Mr. President. (Legislative Journal pages 945-948.) [LB390 LB216 LB495 LB495A LB55 LB265 LB634A]

PRESIDENT HEIDEMANN: Thank you, Mr. Clerk. We now proceed to the first item on the agenda, Mr. Clerk.

CLERK: Mr. President, LB44, offered yesterday by Senator Ashford as Chair of the Judiciary Committee. (Read title.) Senator Ashford opened on the bill, offered the committee amendments. When the Legislature left the issue yesterday afternoon, Senator Schumacher had opened and presented AM950 as an amendment to the committee amendments, Mr. President. That's the first item for consideration this morning. (AM950, Legislative Journal page 943.) [LB44]

PRESIDENT HEIDEMANN: Senator Ashford, would you like to summarize and refresh

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us on LB44 and AM151? [LB44]

SENATOR ASHFORD: Thank you, Mr. Lieutenant Governor, for this opportunity. Good morning. I believe that's correct. I believe Senator Schumacher has an amendment that would amend the factors that a judge would take into consideration in pronouncing a sentence on a juvenile. Where we are in this matter, at this point, is that amendment. The bill itself is in response to Morris v. Alabama. The U.S. Supreme Court in 2012 held that, in a case where a juvenile has been convicted of, in Nebraska, a IA felony or a capital crime, that the judge must have the ability to give a sentence that is less than life imprisonment without parole. The Judiciary Committee, in reviewing the responses across the country to the decision in Morris v. Alabama and in looking at Nebraska's sentencing law and, of course, reading the case of Morris v. Alabama, the committee has recommended in AM151 that the sentence for a juvenile, the options for sentencing range, or the sentencing range for a juvenile who is convicted of a IA felony would be 30 years on the minimum and life on the maximum end. The practical effect of that, of AM151, would be that the judge would have the discretion to give a life sentence to a juvenile but, in what we believe to be in conformity with Morris v. Alabama, would have a series of other sentencing options. Those sentencing options would reflect the judge's review of a variety of factors that the court talked about in the Morris case that separate juveniles from adults--their actions, their mind-set, their ability to understand, and their...the various factors that we all, I think, have some appreciation for that juveniles are susceptible to. So with that, Senator Schumacher has asked that the word "mitigating" be, in this amendment that we have before us...and he can explain it himself, but that the word "mitigating" be excluded from the portion of AM151 that sets forth the factors that are in AM151 that would allow a...or provide that the judge utilize in determining the sentence. So with that, that's, I believe, where we are, Mr. Lieutenant Governor. And with that, I guess, we'll go to Senator Schumacher's amendment. [LB44]

PRESIDENT HEIDEMANN: Thank you, Senator Ashford. Would Senator Schumacher like to refresh us on his amendment to the committee amendment? [LB44]

SENATOR SCHUMACHER: Yes, I would. Mr. Lieutenant Governor, members of the body, yesterday we were focused on what the minimum sentence should be in a case of cold-blooded murder by a juvenile. We rejected the amendment of 60-year minimum as being a bit too high. Clearly, 30 years' parole and 15 years is on the low side. And so this particular amendment began to focus at the second section of the bill which seems to structure a playing field between the prosecution and the defense that is tilted in favor of mitigation rather than a neutral, flat playing field. That being said, the importance of this procedural wrangling is less important if we come to an agreement on a reasonable minimum/maximum sentence. And there is some hope that we'll be able to expeditiously do that this morning, so I would ask that this amendment be withdrawn. [LB44]

PRESIDENT HEIDEMANN: Thank you, Senator Schumacher. Mr. Clerk, next item.

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[LB44]

CLERK: Mr. President, Senator McCoy, I have AM951 but, Senator, I have a note you wish to withdraw AM951. (Legislative Journal page 943.) [LB44]

SENATOR McCOY: That's correct. [LB44]

CLERK: Mr. President, Senator McCoy would move to amend with AM967. (Legislative Journal page 948.) [LB44]

PRESIDENT HEIDEMANN: Senator McCoy, to open on your amendment. [LB44]

SENATOR McCOY: Thank you, Mr. President, and good morning, members. What you have before you is the product of quite a few conversations yesterday during a long discussion about some amendments that have come and gone to AM151 and LB44. But this amendment would simply set the mandatory minimum sentence for these juveniles at 25 years. So however you want to look at that, I mean, you could say, well, it's a 50 which, with good time, gets you 25 and, in this case, it's mandatory minimum of 25 years. And here's the rationale behind this, in my mind, and why I think this makes sense. And I would hope, respectfully, that you would as well because we already have in our statutes with offenses...this would line up with the highest mandatory minimum for any crime, this 25 years. So already, if a juvenile is charged as an adult in a sexual assault case, second offense, mandatory minimum is 25 years. I think this makes sense because it doesn't seem commonsense, I guess, or fair, whatever the case may be or however you want to look at it, to say that a sexual assault, second offense, is a greater prison time, sentence time, than murder. I think that's a fundamental skewing of the order of things that I just think isn't right. I think that this is a good time. I think it's a sentence that lines up where it should. I think if you also look at the handout, which I think you all have, the back page shows where some of the other states are and what they're doing. And what you'll find is that a number of them...and they word it a little bit differently. They may say eligible for parole after 25 years. So you could say mandatory minimum 25 or eligible for parole after 25, whatever the case may be, but, in this case, mandatory minimum of 25 years. I think, members, that this speaks to the seriousness of these crimes. You'll probably hear a little bit more about that this morning. It leaves in place the mitigating factors that Chairman Ashford and others have talked about that they believed were important with Graham v. Florida and Miller v. Alabama. The mitigating factors all stay in place. The only thing that would change here would be mandatory minimum of 25 instead of what the current situation that we have with 30 years, with good time, would be 15. So it lines up, as I said, what the sentence would be to be equal to the highest mandatory minimum that we have of juveniles that are charged as adults. I think that makes sense for the seriousness of these crimes, the taking of a life in some of the most heinous ways that you can possibly imagine that, as I said yesterday, aren't any less heinous if it's a juvenile or an adult. So all of the things

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with mitigating circumstances, the comprehensive mental health evaluation, all of that would stay in place. I think then that will afford judges and the Parole Board opportunities to determine whether there are mitigating family situations, upbringing situations, mental situations, whatever the case may be. But I think that a mandatory minimum of 25 years, at the very least, considering what we already have in statute, mandatory minimums that would...that at 25 years, for what you perhaps could deem lesser crimes, at least in the sense that someone's life wasn't taken, I think this is important. And I think this is something that I hope we have good discussion about this morning because this is an important precedent, I believe, that we're setting when we deal with this issue. I think it's important to the citizens of Nebraska that we send a message that we recognize what the Supreme Court has handed down, starting in 2005, with the decision on capital punishment for juveniles clear up to the Miller v. Alabama case from last year. I think it's prudent. It shows that we recognize the authority of the courts, particularly the Supreme Court. At that same time, we are doing what we think is best in our state that fits the confines of the legal system that we have in place and what we already have on statute for mandatory minimums. And with that, I would close. Thank you, Mr. President. [LB44]

PRESIDENT HEIDEMANN: Thank you, Senator McCoy. Those wishing to speak on the proposed amendment is: Janssen, Schilz, Ashford, Carlson, Gloor, Brasch, and Burke Harr. Senator Janssen, you are recognized. [LB44]

SENATOR JANSSEN: Thank you, Mr. President and members. I didn't plan to speak on this, but I do rise in support of AM967 to AM151. And as I was sitting at home last night, thinking about this upcoming day, I wondered, who is on this list? Who are we speaking about? And I'll go back to 1983, as a sixth-grader in Nickerson Elementary School. We had a substitute teacher that day--actually, for a couple of weeks. Our teacher was out at the time for a few weeks. Now that's not important. What is important is she asked all of us...now, probably, not the appropriate thing to ask a group of fourth- through sixth-graders, but she asked every one of us if we knew anybody that could have anything to do with the abduction, rape, and murder of her sister-in-law. That sister-in-law was right up the road from us, in Blair. She was a worker at a donut shop. This is 1983, mind you. She didn't know where her sister-in-law was. They found two people that did it. One of their names is Dale Nollen. They, of course, took him into the jail, went through the procedures. Eventually, they admitted that they had abducted, raped, shot, and pushed her into the Missouri River. So that's who we're dealing with here. I think the crime fitting the punishment, I don't think it does, but I will agree to Senator McCoy's amendment. So that's always been something that I think about. And that's pretty scary times, being a sixth-grader hearing this. Somebody is on the loose at the time, eventually detained, that abducted, raped, and shot and then pushed into the Missouri River, right there by the Blair Bridge--I'm sure we're all familiar with it; actually, it's a different bridge now; it was...used to be called the "singing" bridge; it's a different bridge now--thrown into the river. Others on this list, as I went through it, are not as

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personal to me, admittedly. Luigi Grayer, now 57, 1971, Douglas County, victim was shot and killed when Grayer tried to take her purse. Patrick Russell, now 56, Douglas County, 1974, an eight-year-old boy victim strangled with a telephone cord. Joseph McDonald, 55, Douglas County, 1965 (sic)--excuse me, '75--victim of robbery attempt put in trunk of car which was then set on fire. Imagine that. Rodney Stewart, now goes by Shakur Abdullah, 54, Douglas County, 1977, originally sentenced to death, victim shot in the head after a drug deal gone awry. Bernie Schaeffer, 52, of Hall County, 1977, hardware store manager was robbed and shot 17 times. Kelvin Anderson, now 50, Douglas County, 1978, random robbery victim just shot in the head. Juan Bradley, 49, Douglas County, 1981, random robbery victim shot to death. Dewayne Tucker, 48 now, Douglas County, 1982, waitress shot and killed during a robbery. The one that I spoke about, Dale Nollen, now 47, Washington County, 1983, donut shop manager sexually assaulted, tied up, and put in back seat of car that was pushed into the Missouri River. [LB44]

PRESIDENT HEIDEMANN: One minute. [LB44]

SENATOR JANSSEN: Thank you, Mr. President. Johnnie Ray, now 40, 1991, Douglas County, victim shot during attempted drug deal. Sydney Thieszen, 39, York County, 1996, stepsister shot after argument about plans to run away. Eric Ray McCain, 39, Dawson County, police officer shot after McCain questioned the criminal mischief complaint of graffiti and vandalism at an auto dealership. Darren McCracken, 33, Gosper County, 1994, mother shot in head as she slept. Jessica Reid, 23, Cass County, 2007, rural Cass County couple shot in their home after a break-in. Eric Ramirez, now 21, Douglas County, 2010, two people shot and killed at an ATM. Trevelle Taylor, 20, Douglas County, 2012, victim killed in ambush shooting. [LB44]

PRESIDENT HEIDEMANN: Time. [LB44]

SENATOR JANSSEN: Thank you, Mr. President. [LB44]

PRESIDENT HEIDEMANN: Thank you, Senator Janssen. Senator Schilz, you are recognized. [LB44]

SENATOR SCHILZ: Thank you, Mr. President, and, members of the body, good morning. I want to stand in support of AM967. I think that it's probably right that we look at longer than 15 years, longer than 30 years, however you want to look at that. You know, we're starting to see the same problems here in Nebraska that they've got in other places with prison overcrowding, things like that. And I think that, as you look at it, the argument could be made that, if we do start to see more problems with overcrowding, then the correctional folks are going to be looking at ways to reduce that. And one of the things that they'll use is parole. And I want to make sure, as I think we all do, that those folks, those offenders, that are there serve their time and serve enough

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time to make sure that it's not going to happen again. So I stand in strong support of this. And I was just looking at a wild fact, just sitting around and looking at these sentences for...and sentencing guidelines. You know, second-degree murder, if you put it at 30 and 15, you could have somebody that commits first-degree murder getting out before somebody that would commit a second-degree murder. I mean, it just...it starts to make you wonder whether or not we can...whether or not we should really be looking at 30 years with the chance to get out in 15. The 25 just seems, to me,...I just feel more comfortable with that. So I do stand in support of AM967. I hope that everyone else can get on board with that as well and move this amendment forward. Thank you very much. [LB44]

PRESIDENT HEIDEMANN: Thank you, Senator Schilz. Senator Ashford, you are recognized. [LB44]

SENATOR ASHFORD: Oh, just very briefly, I would stand in opposition to AM967. I think, as we've talked about yesterday, the AM151, the amendment that's before you, provides a range, a sentencing range, of 30 to life that is consistent with the case of Morris v. Alabama, and that provides the judiciary with the discretion to...the cases that Senator Janssen is talking about, without getting into each case in detail and examining the facts and circumstances of that case, it's difficult to know--in fact, it's impossible to know--what a judge would do with it. But it's very unlikely--and I think all of us can use our common sense here--it's very unlikely that a judge in a Nebraska that...who is up for retention every six years, that is appointed by the Governor, or our Parole Board, that is appointed by the Governor and approved by the Legislature, is going to start paroling juveniles or adults who were convicted as juveniles if they commit the kinds of heinous crimes that Senator Janssen is describing. The point here, what we're focusing on in this discussion, is the minimum sentence, 30 years. That's the minimum. The maximum is life imprisonment. And if the normal sentence...in talking to my brother who happens to be a judge, district judge, normally what...the judge has very broad discretion and can determine a sentence in a variety of ways. If we have a case, like Senator Janssen is talking about, in Nickerson where the...and it's very likely that a county attorney would ask the judge to give a life-to-life sentence, which means life imprisonment without parole. It's very likely that in another case that may not be as heinous or may have other factors involved in it, a judge could and often does...this is an oft-given sentence of 30 to life. Thirty to life, there's no maximum number of years. Life is indeterminate. So though the individual defendant would be entitled to at least apply for parole after 15 years, there would be no "jam date," so to say, no date when that person would be...could walk out of the prison because they have a life sentence. So please, please...I think when we start to talk about individual cases that are...that nobody in this body would condone a light sentence for--the Nickerson case, nobody--we're starting to play with numbers here for reasons that I really fail to understand because what we're trying to do is comply with the Supreme Court Opinion. I don't think there's any question in my mind that the 30-to-life sentencing range is in compliance with Morris v. Alabama.

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There will...and it does provide our judges, who are conservative by nature, the discretion to take into consideration, for example, the 12- or 13-year-old juvenile who...and I saw this, actually, a case in Washington state, when I was visiting a juvenile facility there, where two sisters killed, I believe, their parent, mother, by burning a house down at age 14 or 15. Well, you know, they got a very, very stiff sentence but not life imprisonment. There were factors involved in that family that were...had some relation...that had some...that was a factor in what motivated these juveniles to commit the crime that they did. [LB44]

PRESIDENT HEIDEMANN: One minute. [LB44]

SENATOR ASHFORD: And the court in Washington did have the ability to look at those factors. Every case is different and, of course, the judges are going to take into consideration the heinous nature or the very, well, heinous nature of what happened in Nickerson if...in a similar...if a similar case happened somewhere else. And...but what is key here? The...I don't want to play a numbers game out here. I don't want to play a numbers game out here because, quite frankly, I don't think it gets to the bottom-line issue. We entrust our judiciary to make decisions that are in the best interest of the people of the state of Nebraska. We have a process in place for their appointment and, I believe, we ought to trust the judges to make the right decisions. And I think, normally, they do. Thank you, Mr. Lieutenant Governor. [LB44]

PRESIDENT HEIDEMANN: Thank you, Senator Ashford. Those wishing to speak on AM967, we have: Senator Carlson, Gloor, Brasch, Burke Harr, Dubas, Bloomfield, Karpisek, and others. Senator Carlson, you are recognized. [LB44]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. I spoke yesterday and really tried to emphasize how I believe that this is a very serious bill and, perhaps, one of the most serious that we debate this session. And so, again, today I'm going to speak from the standpoint of a nonlegal mind. Yesterday I talked about the 17-year-old that shot the 15-month-old baby in the head because the mother wouldn't give money. She said she had no money. Those are the kinds of things that happen that, to me, no form of penalty is too severe. We all understand that legislation is a process. It's a process of negotiation. It's a process of compromise, whether some of us want to admit to compromise or not. That's what it is. It's a process of being fair. We hope fairness really enters the picture. And we hope whatever we decide upon makes sense, it's a sensible solution to a challenge. And I would hope that, in the end, it really is not partisan. I understand and believe that the judge needs room for discretion to consider circumstances and should do that. And unfortunately, in our system, one judge with poor judgment can give all judges a bad reputation. But one rotten apple does not ruin the whole barrel. But it just seems that way. We don't want to handcuff all judges for the purpose of dealing with one poor judge. And I tend to support AM967. But I'd like to address Senator Ashford if he would yield. [LB44]

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PRESIDENT HEIDEMANN: Senator Ashford, will you yield? [LB44]

SENATOR ASHFORD: Yes. [LB44]

SENATOR CARLSON: Senator Ashford, and I don't know if you heard what I said about the process of legislation, but you were one that I picture as someone who you think things through. You are willing to compromise when you believe that's in the best interest of the legislation. Am I correct? [LB44]

SENATOR ASHFORD: Yes. [LB44]

SENATOR CARLSON: Okay. We started out with your bill which is 30 years, and you've indicated that we're trying to conform--and I don't know that you used the word "conform"--to what the Supreme Court has said. But we, as a state, we don't have to exactly do what the Supreme Court says. We certainly have the ability to create and pass our own legislation. And so your bill, at 30 years, and then we had FA53 which changed 30 to 60, and that was defeated. But in this process of considering and being able to and willing to compromise, a true compromise on that would change it from 30 to 45,... [LB44]

SENATOR ASHFORD: Yes. [LB44]

SENATOR CARLSON: ...with 22.5 year mandatory sentence, mandatory confinement. Would you be willing to consider that? Because you've indicated you're against AM967. [LB44]

SENATOR ASHFORD: Senator Carlson, here's what I would be willing to do. I...we started with 20 in the committee, and we moved it...we moved to 30. That was the consensus view of the committee. So if the body...it's...honestly, Senator Carlson, I don't see...I do agree with you that, from time to time, compromise is what we do here. But someone has got to explain to me why 30 years...the range of sentencing between...sentences between 30 years and life, when we're dealing with juveniles, is not good public policy. I think...I don't get it, I mean, because the judge is going to... [LB44]

PRESIDENT HEIDEMANN: One minute. [LB44]

SENATOR ASHFORD: ...make a decision, based on the facts of that case, as to what the sentence should be. And I quite... [LB44]

SENATOR CARLSON: All right, Senator Ashford, I'm... [LB44]



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SENATOR ASHFORD: So, I guess, no, I don't see...someone has got to explain to me why, other than to...just to...there's got to be another reason to say, it shouldn't be 30, it should be 40, because we're dealing with the lives of individuals. Certainly, victims, as you've...as has been stated by Senator Janssen, are part of this. But also, we're dealing with juveniles, and the Supreme Court has asked us to deal with them differently. And that's where I'm stuck. [LB44]

SENATOR CARLSON: How much time left, Mr. President? [LB44]

PRESIDENT HEIDEMANN: Twenty-two seconds. [LB44]

SENATOR CARLSON: All right. Senator Ashford, I think that there are times that--and I've seen you do this--you may not get exactly what you want but you end up with a good bill that really does the job. And sometimes, we give in to people, to a certain extent, because they've taken a hard line, you've taken a hard line, and we meet somewhere in the middle. And I don't think anything is wrong with that. I think that's what's attempting to happen here, and I hope that we can end up with something that is agreeable to the body. Thank you, Mr. President. [LB44]

PRESIDENT HEIDEMANN: Thank you, Senator Carlson and Senator Ashford. Senator Gloor, you are recognized. [LB44]

SENATOR GLOOR: Good morning, Mr. President. Good morning, members. I've listened the past couple of days. I've had an opportunity to vote several times and want to make sure that I'm on the record as explaining my views on this since that's dictated some of my votes. I am in support of AM967 and hopefully there will be enough time for me to give my answer to Senator Ashford about why we find ourselves playing around with numbers here. There is an interesting balance here. And I'm enjoying the process of this, as uncomfortable as the subject matter is, given the fact that it deals with some heinous crimes. The process here is a good reminder to me that we have a legislative responsibility, we have a judicial branch, and we also have another group that, obviously, is part of the judicial branch but also operates separate and distinct. And that seems to be, to a large extent, separate and distinct, prosecutors, the county attorneys. We set parameters. We pass a law and we set parameters that provide guidance. That's what we're doing, and I'm very comfortable in that role. Then we trusted the discretion of the judges who are supposed to remain neutral but, as has been pointed out several times, there are, occasionally, bad judges, just as there are excellent judges. We have to be careful that we don't make laws that rein in the best the judiciary, the best that the judges can give us. But I am and have the most empathy and respect for the job done by the prosecutors. And so my decisions and my vote are weighed very heavily by what I hear from county attorneys who must decide, when it comes to the penalty they wish to pursue, if it's too harsh, will I lose jurors and not be able to get a conviction, if it's too light, do I not meet societal expectation, whether it's the family,

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whether it's the people who live in this particular community or state or country. And they think LB44, with AM151, isn't the right bill. I'm not sure whether they think AM967 is, as far as that goes, except what I clearly hear is that 30 is and doesn't meet what they see as, within their discretion of judging, a help to them. Senator Janssen made reference of a horrific crime in my community back in the late 1970s where a clerk closing down for the evening from a hardware store was taken out in the country and loaded with bullets. Now I've listened very carefully to the discussion about juvenile brains not being formed, and I believe that. And if you're a parent and don't believe that, you haven't been paying attention to your kids. I mean, I believe that. I believe the philosophy. I believe the physiology of that. But one of the things that we seem to gravitate towards in this discussion is that, as those brains form, they will become kinder and gentler, smoother and more rounded within society. The fact that those brains aren't formed could also mean that they become harsher and meaner and more distant from societal norms. As those brains form, they can go either way. And the concern here, for me---... [LB44]

PRESIDENT HEIDEMANN: One minute. [LB44]

SENATOR GLOOR: ...thank you, Mr. President--is that we will release those youngsters, who are then adults, far too early, not trusting the judgment of the prosecutors by what they see in this crime and in this criminal who they think should be in for far longer than the 15 years that we may be looking at if we accept LB44 and AM151. I'm in support of AM967. And what we may be doing here is walking down the number of years until we get to a comfort level. AM967 meets my comfort level for approval with this bill as it currently stands. Thank you, Mr. President. [LB44]

PRESIDENT HEIDEMANN: Thank you, Senator Gloor. Senator Brasch, you are recognized. [LB44]

SENATOR BRASCH: Thank you, Mr. President, and good morning, colleagues. I rise in support of AM967 to AM151. AM151 lists specifics for the judge to consider, for the courts to consider. It talks about the mitigating factors, about the child's age, about impetuosity. I mean, it lists many things there to be taken into consideration. And recognizing that this is a child, the science, all the factors of the formation of the human brain, 18 years old, whether...I've also read, for males, possibly later. There are factors there. However, this morning we are also talking about justice and justice for those victims. And those victims have people that they have left behind, children who are murdered, whose family, whose neighbors will suffer, not a number of years, but they will suffer an entire lifetime, an entire lifetime. That sentence is never minimized. It never goes away. It is heavy on the hearts of many for years and years to come. I have heard and learned of situations, horrific, horrific situations of victims. And yes, there are victims. It is a minor that committed this crime, but it is a crime. There are ways that we can address this, but we should never minimize the extent of the horror of the death of

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the victim here. I also want to remind colleagues here that 31 of you signed a resolution, LR42, that encourages Congress and the House to have an amendment to our constitution for parents' rights over their children because, currently, the rights of the child are only brought out in court cases and case law. And parents are being challenged, also, by the Convention on the Rights of the Child, which is really interesting and relates to this, simply because should the United States decides to enter that treaty on the rights of the child, a child will be treated like an adult. That innocence of the child is taken away immediately. The parents are guilty. Our court system is pushed behind and not honored or validated when a treaty takes place. There are many signatures across the state, in legislatures like ours, that are signing a resolution that we ratify the amendment, should Congress pass this. So if you're talking about the guilty child, the guilty youth, we need to consider those who are innocent. We need to consider the importance of our constitution and that treaties can trump state law and federal law. These crimes, I have a list here. And you look at this poor little boy here, in Douglas County, eight years old, strangled with a telephone cord. [LB44 LR42]

PRESIDENT HEIDEMANN: One minute. [LB44]

SENATOR BRASCH: There is a lifetime sentence for that young boy's father, grandfather, grandmother that the pain and suffering lingers on in these deaths. It is important to help these youths early, early as possible, starting at age zero. We just had that among us, here on the floor, and we've agreed that those early years are important. But we have dealt with something that has happened, horrific in nature, and AM967 to AM151 does bring the nature of this murder to the front. I ask you to support AM967 to AM151. Thank you, colleagues. [LB44]

PRESIDENT HEIDEMANN: Thank you, Senator Brasch. Senator Burke Harr. [LB44]

SENATOR HARR: Thank you, Mr. President, members of the body. Not sure if AM967 is a good or a bad amendment. But I will say I don't like the level of debate we've been having so far and, yes, that is a direct criticism of the body. We aren't looking at the facts. We aren't looking at what the Supreme Court said we should be looking at. We're giving worst-case scenarios out there, and that's not what this is about. What this law is about, and I'm going to quote: An offender's age is relevant to the Eighth Amendment. Criminal procedure laws that fail to take defendant's youthfulness into account at all would be flawed. Chief Justice Roberts in his dissent went on to say, Roper concludes that juveniles are typically less culpable than adults. An offender's juvenile status can play a central role. Ladies and gentlemen, we've agreed in the past that we ought to treat juveniles different. Look at the legislation out there. It's riddled. Our statute book is riddled with cases where we treat juveniles different. We're going to have Senator Ashford's juvenile justice bill. Why? Because we treat juveniles differently. This isn't always about justice. I prosecuted. You know what? There's no way to fix the problem that has occurred. There is none. If I could, I would. I'd probably still be prosecuting and

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not here today. I want to get on the forefront. I want to make policy changes so that people don't get in that situation. I've heard debate today in the debate that, well, sexual assault, second offense is 25 years, so that's why this is 25 years. Ladies and gentlemen, let me explain the difference. Sexual assault, second offense by its very nature is a second offense. That means that person hasn't done it once, they've done it twice. They haven't learned from the first time. That's why there is harsher penalties. I do that with my children. You do it with your children. You give them something the first time. If they do it a second time, you give them something harsher. I guarantee you. The other argument I've heard out there, sorry, is that, if you rape a child or rape somebody, if you're a child, it is smarter to kill that kid than it is...because the sentence will be less than if you get a second offense. First of all, you're never going to be...chances of you getting convicted the first time and getting out and having a chance a second time are slim to none. But let's assume that does happen. A judge has discretion. A judge is going to look at that, a murder to cover up a sexual assault. You don't think a judge is going to throw a book at that child? Of course, they are. I heard someone else talk about, well, I trust my prosecutors and I trust their discretion. Ladies and gentlemen, what we're doing is taking away their discretion because they know the facts of that individual case. We don't. We're coming up with scenarios in our head. A prosecutor is going to know. And they may say, hey, that was a 15-year-old with a 25-year-old, and he was forced to go in and there was a murder, a robbery that went astray, felony murder rule, and maybe I think 15 years is the right answer. We've taken away that discretion. That's what AM151 does. You talk about you want discretion. Well, if you want discretion, then give discretion. Trust your prosecutors. Trust your judges. We are sitting here and we are playing judge and jury when we don't even know the facts. That's a problem. The Supreme Court says that's a problem. That's why we have Miller v. Alabama. I don't know what the right answer is. I wish I did and I could tell you. But if you're... [LB44]

PRESIDENT HEIDEMANN: One minute. [LB44]

SENATOR HARR: Thank you. But we do have to trust our prosecutors and we have to trust our judges to make the right decisions because they are going to know the facts. We know juveniles are not fully developed. My purpose is, yes, I want that person to know what they did was wrong because it was and it is wrong. There is no doubt about that. But are they a danger to society? I don't know because I don't know the facts of that case. So I would ask that you consider long and hard. I trust the Judiciary Committee. That's why we have the committee hearing. I heard about pull motions, we've got to trust our committees. Well, then let's turn around and let's trust the Judiciary Committee. Thank you very much. [LB44]

PRESIDENT HEIDEMANN: Thank you, Senator Harr. Senator Dubas, you are recognized. [LB44]

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SENATOR DUBAS: Thank you, Mr. Lieutenant Governor. Good morning, colleagues. Senator Carlson has certainly framed this discussion very appropriately. This is one of the most important issues that we'll, probably, deal with as a Legislature of...in putting this policy into place. And not wanting to diminish what has happened with the victims and the families and those who have been on the receiving end of these sentences, but we do have to, kind of, step back and look at this in a little bit more of a sterile fashion because we are putting a policy into place, and we need to make sure that the policy we're putting into place is one that will be strong and defensible. And so that's why I'm leaning towards supporting what the committee has done because they have the expertise. They've invested a lot of time and energy into this issue, certainly, something that I don't have a lot of expertise in. I've heard from my prosecuting attorneys. I've also heard from a judge. And there may be a little bit of differences of opinions there but, you know, I don't want to dismiss what they're telling me either. And when I ask questions about the mandatory, putting a mandatory minimum in place, for a judge, that makes their job easier. They simply say, this is the mandatory. But it also takes away their discretion. And I think this has been brought up by multiple people on the floor about our need to trust judges and our need to trust parole boards. These are, certainly, people who are in the public eye. These types of cases definitely catch the public's attention, and they are watching what is going on in the court system. And these judges have to stand for election and appointments, so they're not going to be...they're not going to dismiss what the public sentiment is when they're dealing with these cases. We're making an assumption that, if it's a 30-year minimum, that, automatically, 15 years, they're up for parole. The Parole Board doesn't automatically grant parole, so there's a lot of circumstances that go into...come into play when they're making their decisions. So we can't just automatically assume that a 30-year sentence is going to create a 15-year parole opportunity. The judge I have visited with says that, when making their decision about a sentence, they're considering what is the earliest parole date available for this particular offender. So if it is 15 and they're not feeling comfortable with that, they're going to implement a tougher sentence. They're going to go beyond the 30. It was pointed out to me that every case is different, and I think that's where the mitigating factors come in. This comes in with giving the judges, the parole boards, our prosecuting attorneys that discretion to evaluate each case on its merits and the severity of the case and what are those mitigating factors. We, again, can't ignore what the Supreme Court decision is dictating for us to do, and that's why we're having this discussion that we're having on LB44 and the various amendments. What is it that we can put into policy that will serve the citizens of the state of Nebraska but that will also be sound policy that won't cause us to end up in another challenge to what we've had which will cost us untold dollars and, if we don't make a decision, having the federal government coming in and saying, this is what you will do? So, you know, there are a lot of numbers being thrown around out there. I think these...this is a good discussion for us to have. But we have to be able to support, build a record for the choices that we're making. And so, at this point in time, I'm not supportive of AM967... [LB44]

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PRESIDENT HEIDEMANN: One minute. [LB44]

SENATOR DUBAS: ...and will continue to support the Judiciary Committee's amendment and the underlying bill. Thank you. [LB44]

PRESIDENT HEIDEMANN: Thank you, Senator Dubas. (Visitors introduced.) Senator Bloomfield, you are recognized. [LB44]

SENATOR BLOOMFIELD: Thank you, Mr. President. Colleagues, yesterday morning or afternoon, I'm not sure which, I stood up and said I thought the 60-year sentence was, maybe, a little too long and the 30-year was a little too short and I'd hoped to find something somewhere in the middle. I believe AM967 has done that. It gives enough time to pass that the memories of losing that loved one, while raw forever, will have calmed down a little bit. I think 25 years is a reasonable point to go and I will be supporting AM967. Senator Ashford, when questioned by Senator Carlson, seemed to say that 30 years and 10 minutes was too long, and that appears to leave no room for compromise. I hope we haven't got to that point. With that, I would yield the remainder of my time to Senator Lautenbaugh if he'd like to have it. [LB44]

PRESIDENT HEIDEMANN: Thank you, Senator Bloomfield. Senator Karpisek, you are recognized. Excuse me. Senator Lautenbaugh, actually, you're...you have three minutes. [LB44]

SENATOR LAUTENBAUGH: Thank you, Mr. President, and thank you, Senator Bloomfield. Again, a very serious topic that we discussed very thoroughly yesterday, and we are just down to picking the right number of years. As you know, my amendment yesterday would have put the number at 60, which would have allowed for parole, possibly, at 30. This is a different approach but, instead of setting that parole number at around 30, this goes for a mandatory minimum of 25. I, of course, support this amendment. And I don't accept the argument--we've touched on this several times--that we need to defer to the committee process and the committee's judgment, or else the session becomes very short and our jobs become very easy. I mean, this is not my committee, so I guess I have to vote for this. That's not how this is designed. And we've heard talk about taking away discretion, taking away discretion. Yes, there's a point at which we take away discretion. When we make certain things, certain classes of crimes, we take away discretion. When we make certain things crimes and certain other things not crimes, we take away discretion. We set the law of the state, and that includes routinely setting sentences. And I defy anyone to read the Supreme Court decision, the U.S. Supreme Court decision we've been talking about, and find where it actually says that all mandatory minimums are impermissible. I think you've been...it's been suggested to you that, oh, jeez, if we have a mandatory minimum, this is going to be challenged. Well, it may be, but mandatory minimums have been upheld. The narrow holding of that court was that the mandatory life sentence without parole was improper.

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This will give the judges discretion above a mandatory minimum. [LB44]

PRESIDENT HEIDEMANN: One minute. [LB44]

SENATOR LAUTENBAUGH: Thank you, Mr. President. And we do that routinely. No one in here is unmindful of the specifics of a juvenile defender (sic) and the specific issues involved--offender, I should say. But we also have an obligation to the public, to protect the public, and that's where this mandatory minimum comes in. This is reasonable. This is just. We do have to act this year and, one way or another, we will pass something. But this is appropriate. We need a mandatory minimum in here. Fifteen years is not enough. Twenty-five, at least, goes toward suggesting that we do take this seriously and underlining that you will do serious time for this. And that's a message that must be sent and we can't shrink from that and we have to be clear. And this does that and I support this amendment to the committee amendment wholeheartedly. Thank you, Mr. President. [LB44]

PRESIDENT HEIDEMANN: Thank you, Senator Lautenbaugh and Senator Bloomfield. Senator Karpisek, you are recognized. [LB44]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. I, too, understand that we're talking about juveniles. We've talked about their brains not being completely formed. My question is, what if it's another juvenile that they murder? Not, to me, that that matters all that much, but we talk about how many years. They take away that person's life. They take away a family's person. They take away, if it's someone older, maybe, children's parents that will live with this the rest of their lives. Their actions affect not only themselves, not only the victim, but the families and friends of the victim. And I realize it affects their family too. How long is long enough? I understand what the Supreme Court has said. And we can argue that's too long, that's not what they meant. We can argue that's not long enough. I know we get into the retribution. We argue about that. If someone takes away one of my children or one of my family members, I want it to be a harsh penalty. Maybe that's not the right thing to do. But they're gone forever. We talk about taking discretion from judges. I'm not a lawyer. I'm not on the Judiciary Committee. But if we don't give some way or some measure for judges to work with, then what do we do? Do we just leave it open? Why do we do anything? We trust the judges. Let them decide. We've also said that we all know that the Parole Board wouldn't really release someone at 15 years. If we know that, then what is the problem of putting a mandatory minimum? We say these things because we believe them. I don't. If we have a mandatory minimum, the judge can do more. But I think we have to put something on. This is not my best amendment that I would like to see. But if we can come somewhere in the middle and think we can satisfy the Supreme Court, then I will vote for it. With that, Mr. President, I would yield the rest of my time to Senator Lautenbaugh, if he'd like it. [LB44]

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PRESIDENT HEIDEMANN: Senator Lautenbaugh, 1 minute and 5 seconds. [LB44]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I think this has been, actually, a very good debate. And I don't have a lot I would add except to point out that, one way or another, this will be addressed this year. And I think the 25-year mandatory minimum is very reasonable and, probably, a proper result. I would have preferred the 60 and 30, but we are where we are. This will go forward. What I don't like is getting in the circumstance of being told, well, if you do this, then the bill will be killed. We have to act this year, and we will act. And I don't want the will of the body to be swayed by that kind of an argument. This is our call, and this is a good amendment. And we do need to be heard on this and we do need to weigh in, and this is a proper amendment and a proper outcome. And I would urge you, again, to support the floor amendment, filed by Senator McCoy, to the committee amendment. Thank you, Mr. President. [LB44]

PRESIDENT HEIDEMANN: Thank you, Senator Lautenbaugh and Senator Karpisek. Senator Chambers, you are recognized. [LB44]

SENATOR CHAMBERS: Oh, me? [LB44]

PRESIDENT HEIDEMANN: Yes, Senator Chambers, you are recognized. [LB44]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, the kind of debate we're having now indicates why judges are the ones who make these decisions. The state of Alabama and others, including the Chief Justice of the United States, made arguments similar to what are being made now. The majority rejected those arguments and put in place a decision which constitutes the law of the land. Now the prosecutors and Senator Lautenbaugh, Senator McCoy, can tell you what you had better do. Well, you don't better do anything. As Senator Lautenbaugh half spoke the truth when he said something would be done this year, it may not be done by the Legislature, and it may not be done until 1 of the people, 1 of the 26, will bring a case to the U.S...to the Nebraska Supreme Court. Senator Lautenbaugh doesn't know what the outcome will be. I don't know what the outcome will be. But a sentence of life without parole that was imposed on somebody below the age of 18 or who was a juvenile, which would be a conflict with what the Nebraska...U.S. Supreme Court said, the sentence is going to be set aside. What none of us knows is whether or not the court will put a remedy in place, drop the matter to a second-degree situation, say that, since these people were sentenced pursuant to an illegal system, they'll be given credit for time served and released. There is a multitude of approaches that a court can take. When people bring up these horrendous cases, we know that they're trying to make an emotional appeal, as is always made, and that's why courts have to undo action by legislatures who act in--my phrase--a heat and a rush to appeal to or appease an outcry of indignation because of a particularly horrendous crime. I will tell you one that I



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thought was horrible and nobody in this Legislature got upset. A white guy watched a football game. He got upset because he thought the referee was making decisions that favored black people. So he put on fatigues, got himself a rifle with a scope, and positioned himself where he could spot a young black woman who drove into a Kentucky Fried Chicken drive-through. And he shot her through the head and killed her. Now all these white people who are so indignant, Senator Lautenbaugh, and none of them who could have read about the case got offended when he was not even charged with first-degree murder. It was not a hate crime, even though he pointed out that race motivated him. So that's why I get sick of these hypocrites pretending to be so outraged. They are pushing an agenda, which they can do. But the court says, this far you'll come and no farther. I don't know what the outcome will be here. He can't dictate to Senator Ashford what he's going to do. How is he going to force the enactment of a bill this session? That's what I would like to hear him explain. And if he doesn't explain it, he's full of hot air. [LB44]

PRESIDENT HEIDEMANN: One minute. [LB44]

SENATOR CHAMBERS: And this is serious enough to call things what they are--hot air, pomposity. Nobody has indicated that a murder of any kind is horrible, nobody. We're not even talking about that if we're discussing what kind of law we have to put in place to comply with what the Supreme Court said. How stupid would I be to say that there is a clean murder and a dirty murder? I know how upset people are when they lose a loved one. I had a nephew who was murdered, but the Omaha Police never found the one who did it. I was very close to my young sister. I say "was" because she died, not from murder. But she knew that my position was... [LB44]

PRESIDENT HEIDEMANN: Time. [LB44]

SENATOR CHAMBERS: Thank you, Mr. President. [LB44]

PRESIDENT HEIDEMANN: Thank you, Senator Chambers. Those wishing to speak on AM967, we have: Senators McCoy, Wallman, Schumacher, Wightman, Davis, Lautenbaugh, Ashford, Harms, and others. Senator McCoy, you are recognized. [LB44]

SENATOR McCOY: Thank you, Mr. President and members. Senator Burke Harr brought up, in Miller v. Alabama, Chief Justice John Roberts' dissenting Opinion. And I...not that it needs reminding, but I don't know that it's been mentioned at this point yet. This was a 5-4 decision by the Supreme Court, not exactly a unanimous, or anywhere close, decision. Not that they always are but, clearly, there were some strong opinions on the Supreme Court among the justices as to how Miller v. Alabama should be decided. And I would read to you, since it's been mentioned, part of the dissenting Opinion. This is, again, Chief Justice Roberts writing the dissent: We therefore hold that mandatory life without parole for those...pardon me. This, of course, would be from the

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majority Opinion. But I'm going to read this, and then I'll read John Roberts' argument against this: We therefore hold the mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on cruel and unusual punishments. I don't see, members,...I respect, immensely, Chairman Ashford and others' work on this in Judiciary Committee. But I don't see anywhere in the majority Opinion of the Supreme Court where 30 years is in there. I think this is an arbitrary distinction. I've yet to hear a rationale for where we got to 30 years. Now I'll read from what John Roberts said, Chief Justice Roberts said, in the dissent: Mercy toward the guilty can be a form of decency, and a maturing society may abandon harsh punishments that it comes to view as unnecessary or unjust. But decency is not the same as leniency. A decent society protects the innocent from violence. I would merely say, in response to Senator Burke Harr's time on the microphone a few minutes earlier...he articulated that, well, second-offense sexual assault is just that. It's a second offense. Well, members, I would remind you that we're talking about, in this case, a death, a loss of life. And I will not apologize nor do I agree with those who bring up, well, we don't want to talk about these cases because they're awful. They are awful. It's not fiction. They happened. They happened. I think this mandatory minimum, to line up with the highest mandatory minimum we have in statute, is necessary. And with all respect to Senator Chambers, I would say that his articulation that, this is why judges make decisions, it is the prerogative of the legislative branch to establish mandatory minimums. Many, many states have them, including ours. This, members, is why we got elected to be here. It is to set this kind of public policy, and I believe that AM967 does that. I would yield the remainder of my time to Senator Lautenbaugh. [LB44]

PRESIDENT HEIDEMANN: Senator Lautenbaugh, 1 minute and 38 seconds. [LB44]

SENATOR LAUTENBAUGH: Thank you, Mr. President. And I do feel the need to respond. And we've kind of tipped our hand on this, the two of us, over the last couple of days. Yes, I am confident we will act this year. I'm fairly confident we'll act this morning on this. But, that said, if we have to bring this bill back, if we have to, you know, whatever we have to do, we have the authority to do it. Again, we're talking about suspending the rules and whatnot. But we have to act and we will act. I'm hoping we're going to resolve this, this morning yet. But to say that this is our chance and we'd better... [LB44]

PRESIDENT HEIDEMANN: One minute. [LB44]

SENATOR LAUTENBAUGH: Thank you, Mr. President...today is our only chance, otherwise, the introducer is going to pull the bill and we're not going to have anything, that's not necessarily correct. It does not have to be that way and I don't think we should be pressured in that way. This is a serious topic and a serious debate, I think, we've had. This remains a good amendment. The mandatory minimum of 25 is entirely appropriate, and I would urge your support for this amendment. Thank you, Mr.

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President. [LB44]

PRESIDENT HEIDEMANN: Thank you, Senator McCoy and Senator Lautenbaugh. Mr. Clerk for announcements. [LB44]

CLERK: Mr. President, thank you. Hearing notice from Business and Labor regarding a confirmation hearing and a new resolution, LR145, offered by Senator McCoy, that will be laid over. Revenue Committee will have an Executive Session at 10:30. Revenue Committee at 10:30 in Room 2102. Thank you, Mr. President. (Legislative Journal pages 948-949.) [LR145]

PRESIDENT HEIDEMANN: Senator Schumacher, you are recognized. [LB44]

SENATOR SCHUMACHER: Question. [LB44]

PRESIDENT HEIDEMANN: The question has been called. Do I see five hands? I do. The question is, shall debate cease? All those in favor vote aye; all those opposed vote nay. There has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB44]

CLERK: 33 ayes, 0 nays, Mr. President, to place the house under call. [LB44]

PRESIDENT HEIDEMANN: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. All members are present. There has been a roll call motion on the motion to cease debate. Mr. Clerk, please call the roll. [LB44]

CLERK: (Roll call vote taken, Legislative Journal pages 949-950.) 19 ayes, 29 nays, Mr. President, to cease debate. [LB44]

PRESIDENT HEIDEMANN: Debate does not cease. The next speaker in the queue is Senator Davis. The call is raised. [LB44]

SENATOR DAVIS: Thank you, Mr. Lieutenant Governor and members of the body. I would just like to reiterate that the committee spent a great deal of time on this issue. We talked it over very thoroughly, came to the conclusion that the decision that we made was valid. I'd like to remind the body that this doesn't mean anybody is going to be getting out in 15 years. That's not what this is all about. It's a red herring. But I did go back and look up a specific case which I think was pertinent, and that's the case of Caril Ann Fugate, who was 14 years old when she committed her crime with Charles Starkweather. Eleven people were killed. In 1973, her sentence was commuted to life;

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and then, in 1976, she was paroled. So she served 17 years. I think what we're trying to do is be tougher than tough. But what we've done is a reasonable thing in that committee, and I would certainly urge the body to support the decision of the committee. Thank you. [LB44]

PRESIDENT HEIDEMANN: Thank you, Senator Davis. Senator Lautenbaugh, you are recognized. [LB44]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I'm not going to really belabor this point because I think we're still discussing the same thing that we discussed all afternoon yesterday. And this is an important issue and does bear discussing. But at this point we have shifted from trying to set a range of sentence with an eye towards what the possible parole date would be, towards establishing a mandatory minimum of 25 years. Again, I believe this is the proper mandatory minimum, and I would again state that the ruling of the Supreme Court did not say that we may not have a mandatory minimum. And we do limit discretion, as I already discussed. Every time we pass a law, every time we declare something legal or illegal, every time we set a sentence, every time we pass a bill, we limit someone's discretion in some ways. And in the criminal realm, it's no different. We're either limiting prosecutors, limiting judges, or limiting citizens and their discretion. But I would note that there is prosecutorial discretion, no matter what, as Senator Chambers illustrated. I don't know all of the specific facts of the case he cited, but the charge was what it was. And I'm not going to comment on the propriety or impropriety of that because I just don't know. On the one hand, we're either supposed to trust the prosecutors and the judges; on the other hand, we're not, depending on...you know, it seems to be sort of situational in these arguments. I think it falls to us to express very clearly how serious we consider these crimes. And a 25-year mandatory minimum is appropriate for murder. I don't know. Again, I feel like I'm belaboring the point, so that's probably a good time to stop talking about it. But I believe that is a just sentence. I believe it represents lopping 5 years off of what the last amendment would have done, instead of 30 at parole--this would be the mandatory minimum of 25--obviously, slightly different approach but largely the same outcome, arguably, and I think it's a proper outcome. And again, I can't stress enough: You can focus on, you know, juveniles are different and we should treat them different and we do treat them different. And with this amendment, we're treating them differently so, rest assured, that is still happening. And with the mitigators that are set forth that this amendment does not remove, we are still treating juveniles differently. And that, I don't even believe, was necessarily mandated by the court. I think some of it came from just discussion, or what we call dicta, in the Opinion that wasn't necessarily binding upon us and did not represent the 5-4 holding of the court. So please understand, no decision said we may not have mandatory minimums. This is a mandatory minimum. It is an appropriate mandatory minimum for very serious criminal activity, again, murder. I would urge you to support this. I would urge you to support the floor amendment. It is the proper approach to this, and I would urge you to vote green when the amendment

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comes to a vote. Thank you, Mr. President. [LB44]

SENATOR GLOOR PRESIDING

SENATOR GLOOR: Thank you, Senator Lautenbaugh. Senators in the queue: Ashford, Pirsch, Hadley, Chambers, Wightman, Crawford, and others. Senator Ashford, you are recognized. [LB44]

SENATOR ASHFORD: Thank you, Mr. President and members. I want to just chat a little bit about how we deal with juveniles in the prison system generally. And one of the challenges we've had in the Judiciary Committee in dealing with LB561 and reform of the juvenile justice system generally is how...what sort of treatment a juvenile does get when they are incarcerated. And the difference in Nebraska and many other states that have adopted juvenile justice reform is we don't have blended sentencing in Nebraska, which means that, if a juvenile is tried as an adult at 16, let's say, and convicted and is sentenced to 20 to life for second-degree murder, that juvenile would be eligible for parole at some point, obviously, under that sentence range. But they would go directly into the adult corrections system. They would not go into a juvenile treatment center. The trend in the country today is to move those juveniles into treatment centers. And then their adult corrections time would start once they reach their...the age of majority. And the benefit to that, of course, is that when a juvenile gets to an adult facility, having had four, five, three, whatever the number of years it is, treatment for many of the underlying problems that they exhibited in their earlier...in their life before they committed the crime has been very successful in those states that have adopted blended sentencing. So I think we have to think about, when we look at sentencing generally for juveniles, is we have to think about what...it's not just about the crime they committed though, albeit that is an extremely important part of this process because, obviously, those crimes are very difficult to understand and can be very destructive and are, in many cases, very destructive. But we also have to center on what I think the Supreme Court did clearly talk about. Not only are adults and juveniles different, but juveniles are also susceptible to treatment and they are younger. They have, many of them, have had...in fact, in almost every case I've looked at in my seven years of looking at juvenile justice reform issues, so many of these young people who are shooters in...and are sentenced to long periods of incarceration have many years of histories of abuse, many years of living in difficult family situations, many years of not attending school. That doesn't excuse the act that they committed, but it does identify the problems that we need to address and solve with these juveniles, whether or not they've committed a IA felony or whether they've committed a lesser offense. So it's just not...as we talk about this, there are so many issues that enter into our thinking and my thinking about why we should treat juveniles differently, not just because of Miller v. Alabama. Yes, I agree with Senator Lautenbaugh, you could come up with a scheme for mandatory minimum sentences under Miller v. Alabama. But what has been said...and I think Senator Carlson was correct. Senator Carlson is correct. He is a wise, wise

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gentleman and...when he talks about how we come together on issues on this floor.  
[LB44 LB561]

SENATOR GLOOR: One minute. [LB44]

SENATOR ASHFORD: And I'm fine with that. And I...we're trying to deal with that now in this...on this bill. But when we deal with issues like this--juvenile justice, juvenile crime, about the lives of juveniles in our state that have gone awry--they are extremely complex. And the decisions that we make on this bill, when we're dealing with the most serious crime, does reflect on how we're going to deal with the less serious crimes and the less serious problems, going back even to truancy. I think what this body has exhibited over the last seven years is a willingness to deal with juveniles as juveniles. And that's a...that is a sea change in the thinking of this Legislature compared to when I was here in the '80s and '90s. We are trying to find the right way to go here. And I do understand Senator Carlson's point in that regard and I respect it. So as we think through this bill...and I'm hopeful we can get to a resolution. As we think through this bill, we have to think about... [LB44]

SENATOR GLOOR: Time, Senator. [LB44]

SENATOR ASHFORD: ...all of these other issues that involve juveniles as they grow.  
[LB44]

SENATOR GLOOR: Time. [LB44]

SENATOR ASHFORD: Thank you. [LB44]

SENATOR GLOOR: Thank you, Senator Ashford. Senator Pirsch, you are recognized.  
[LB44]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I think there's no doubt that youth are not adults, no doubt upbringing and a number of other factors do play a result--I'm sorry--do play a role in everyone's development. It's understood that that was clearly the justification for why the Supreme Court, in a 5-4 decision, said, you cannot sentence a youth to life in prison without the least...without at least the possibility of parole. And that's what this Miller v. Alabama case stands for. You can't sentence a youth to life in prison with at least...without, at least, the possibility of parole. But beyond that, the rest is up to the Legislature, is up to us. The rest is a matter of policy. Certainly, we all hope that a youth who has committed a murder is rehabilitated. Certainly, we realize that we can't fix the harm, in the sense that we can't bring a murdered loved one back from the grave. But an innocent life has been lost, taken forever away, and the lives of the family, the friends, and society are damaged forever in ways that defy calculation. So it is appropriate that this body, as the voice of the people, as the rightful

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designers of policy, are concerned with this issue. This is exactly why we're here. The Legislature certainly has the duty to establish policy that reflects the value that this body and the people of Nebraska place on the innocent life lost. That is not properly the role of unelected judges; that is not properly the role of unelected attorneys who serve as either prosecutors or defense attorneys. We need to put ourselves not just in the shoes of the youth who murdered but, rather, in the shoes...in....as we debate the best outcome in this body but, rather, place ourselves in the shoes of the victim, who is no longer here with us and may themselves be a youth, and the victim's family. Rehabilitation is one objective of the criminal justice system. But when murder is involved, the balance has to shift. Rehabilitation cannot properly be the sole focus of which we are concerned with here. Thank you. [LB44]

SENATOR GLOOR: Thank you, Senator Pirsch. Senator Hadley, you are recognized. [LB44]

SENATOR HADLEY: Mr. President, members of the body, it seems like every year we have one or two issues that stick in our mind as we go through the rest of the year, and I think this is one of them. I think this is a very, very difficult decision. I don't think there is anyone here who is making the argument that there shouldn't be some kind of minimum and maximum. I think we understand that not only from what the Supreme Court has said but what we, probably, believe. And so, to me, I agree with my good friend, Senator Karpisek, earlier. I think it's our job to set that minimum and maximum. If you don't believe that, then why do we have sentencing guidelines on anything? Why don't we let the judge just decide, on every case, what is the appropriate sentence? We don't do that because part of our job is to set that minimum and maximum. And good people can disagree then on what the minimum and what the maximum should be, and I would not argue or take offense at anybody who is on the other side of this than I am. It's a judgment call that each of us have to make and that each of us have to live with. On one side, you have the perpetrator, who is a juvenile we hope to rehabilitate to have a useful life. On the other side, we have the victims, and we can't forget those. A life has been taken. This isn't a minimum sentence for a robbery. It is for capital punishment. So I stand in favor of this amendment and I will vote green on it. With that, I will yield the rest of my time to Senator Carlson. [LB44]

SENATOR GLOOR: Senator Carlson, three minutes. [LB44]

SENATOR CARLSON: Thank you, Mr. President. Thank you, Senator Hadley. I would like to address Senator Seiler if he would yield. [LB44]

SENATOR GLOOR: Senator Seiler, would you yield? [LB44]

SENATOR SEILER: I will. [LB44]

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SENATOR CARLSON: Senator Seiler, as we're considering this bill, it's my understanding, because I've been told, that there are 26 people in for life imprisonment on first-degree murder that were young people but, of those 26, 6 of them didn't actually pull the trigger, didn't actually kill somebody. Are you aware of those figures? [LB44]

SENATOR SEILER: I am not, but the figures I've heard bounced around are real close to that. [LB44]

SENATOR CARLSON: All right. And I said earlier that I'm tending to support AM967, but I have a question here. If this...if we have 26 up for life and 6 of them didn't actually do the killing, they were convicted of first-degree murder, why? Well, apparently, they had a chance to plead second degree and chose not to. Can you imagine why somebody would choose not to? [LB44]

SENATOR SEILER: Well, they thought the jury would find them innocent. [LB44]

SENATOR CARLSON: But who would tell them that? [LB44]

SENATOR SEILER: Their counsel. [LB44]

SENATOR CARLSON: So they took a chance, didn't they? [LB44]

SENATOR SEILER: They rolled the dice. [LB44]

SENATOR CARLSON: Okay, well, I've got a concern for these six people. I think a 25-year mandatory sentence may be too severe. Do you know of any options that these six would have if this becomes law? [LB44]

SENATOR SEILER: Well, they would...their option is to go to the Parole Board and...based on that. But the history of the Parole Board isn't that good at releasing people either. You don't get it the first many times that you apply. So it's not a done deal. When you say, at 40--and not a minimum, but 40 years--and they're going to get out in 20, very doubtful, very doubtful. [LB44]

SENATOR GLOOR: One minute. [LB44]

SENATOR SEILER: They'd have to be very exceptional. [LB44]

SENATOR CARLSON: All right, thank you, Senator Seiler. And I've spoken off the microphone with Senator Lautenbaugh about this concern. And I think that there are some cases where to specify that the judge give a mandatory 25-year term is bothersome and, yet, the whole idea of the amendment I can support. So we'll continue to listen to the debate and, hopefully, we make the right decision. Thank you, Mr.



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President. [LB44]

SENATOR GLOOR: Thank you, Senator Carlson. Senator Chambers, you are recognized. [LB44]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I'm going to read a letter which maybe all of you received from Jim Cunningham, on behalf of the Nebraska Catholic Conference, regarding LB44, juvenile sentencing. The Nebraska Catholic Conference, representing the mutual concerns and interests of the three dioceses and bishops serving in Nebraska, supports LB44, as proposed by the Judiciary Committee, and urges you to advance it to E&R Final (sic)--Initial. The bishops conference believes it addresses a compelling issue responsibly and is worthy of your support. When viewed from the perspective of Catholic social teaching, there is no question that responsibility, accountability, and effective punishment are fundamental to the demands of a just society. Those who commit violent, serious crimes, crimes encompassed by this legislation, must be held accountable for the devastating harm and loss they cause. There is no question that violent and dangerous juveniles need to be confined for the safety of society and their own safety. In no way does the NCC's support for LB44 have any intent or purpose of minimizing the seriousness of crimes or the concern and compassion due to victims and their families. Nonetheless, the NCC's firmly held view is that minors should not be treated as though they are equal to adults in moral or cognitive development. Public policy and the common good are best served by recognizing that juveniles have a remarkable capacity for reform and change. Their youth and immaturity can be transformed into redemptive, responsible adulthood, but not without opportunity. Life sentences eliminate opportunity as well as hope, not merely opportunity for parole review but, even more significantly, all meaningful opportunity for second chances, for rehabilitation, reform, and reintegration into society for those who lacked adult development, rationality, and judgment when they committed crimes that caused them to be punished as adults. All they have forfeited in their claims on society notwithstanding, their lives should be respected and their human dignity upheld. The bishops conference believes the Judiciary Committee has formulated an appropriate balance of the legitimate public policy obligations and interests, namely, the real need for just punishment and protection but, also, openness to meaningful opportunity, not merely for parole review but for reform, redemption, rehabilitation, and reintegration. Thank you for your attention and consideration. Mr. President, members of the Legislature, when we get to a discussion of the death penalty, there are a lot of opportunities for both sides of that issue to present horrendous examples of horrific murders. But not all of the horrifically committed murders result in the perpetrator being sentenced to death. There are some counties where a death penalty will never be sought because of the expense and the lack of capability of the prosecutor. And as shocking as it may be, there are prosecutors in this state who do not believe in the death penalty and, therefore, would never seek one. [LB44]

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SENATOR GLOOR: One minute. [LB44]

SENATOR CHAMBERS: When you have 93 counties and 93 different views of how this, and whether the taking of a human life, is appropriately done by the state, there is no way to say that there is not arbitrariness and uncertainty and consistency in the way that punishment is imposed. When it comes to what we are talking about, I will not discount all of the horrible examples that are given. But you see how they're at the extreme end because most people know that the ordinary murder, if there is such a thing, is what we're dealing with. And they don't want you to look at that, so they take the extreme case. A maxim in the law: Hard cases make bad law. Thank you, Mr. President. [LB44]

SENATOR GLOOR: Thank you, Senator Chambers. Senator Wightman, you are recognized. [LB44]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. As you know, I've declared a conflict in this situation. But I did want to speak on the issue. The reason I declared a conflict is that our office has been involved with...if you looked at the list of 26 or 27 people who have been sentenced to life without parole, he probably committed the worst crime, or would be considered by many as the worst crime, in the state of Nebraska. And at the same time, he's turned around and, basically, has been a model prisoner. He has become a strong Christian. But let me tell you a little about what he did. He was 16 years of age, lived at Gothenburg or near Gothenburg, Nebraska. He shot a policeman. And that's why I say it would probably be considered the worst crime of all because, by most of you, it is, if a law enforcement officer is the person who has been killed. He's served now since 1990, so he would have served for approximately 23 years. He was given the sentence which, at that time, you know, our office was looking at the possibility of a death sentence. So one of my partners at that time, who is now a district court judge, decided that it would be best in his interest if he was able to enter into something that would keep him from being...getting the death penalty. Now, 23 years later, my son, who has been appointed as a county court judge, has been representing him since the case came out, the U.S. Supreme Court case came out. He is now 39 years of age, as I say, has served as a model prisoner, which really gets into the minimum sentencing-type of thing. I'm still not going to tell you which position I would take if I were voting. But I thought you should know. And it's probably...you couldn't look at a case in the 26 or 27 that you've been...I think many of you have seen a copy of all of the list that have life sentences without parole. But it probably would be the most extreme case and, yet, probably, indicates, maybe, someone who has overcome the situation he was in more than...as much as, probably, any of the 27. So it's a very difficult situation and, probably, I could vote fairly but felt that I shouldn't. My son is giving up the position in representing him now. But it certainly lets me see the problems that all of you have when you're speaking here today. So with that, I'll go ahead and close but...and will not intend to vote but did want you to know why I'm not

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voting and why I have very strong opinions. Thank you. [LB44]

SENATOR GLOOR: Thank you, Senator Wightman. Senator Crawford, you are recognized. [LB44]

SENATOR CRAWFORD: Thank you, Mr. President. And thank you, Senator Wightman, for sharing your experience and expertise. That's been...as someone who is not as familiar with this type of law, it's been very helpful to have the opportunity to hear from so many in this body who do have that experience, and I have appreciated learning from them very much. And I rise in opposition to the amendment not because of the number that's in the amendment. I'm not sure what the appropriate number is. But I rise in opposition instead to the minimum...max...the minimum sentence, excuse me, mandatory minimum sentence component of the amendment. From what I have learned in talking to people about sentencing and services for juveniles and from what I've learned just from someone in my own family who is a...works in a prison that leverage is very important. And so I'm concerned that if, whatever minimum we set, it's done in a manner such as this amendment, where it is a mandatory minimum, that you lose a lot of leverage. And that...and it seems, to me, if we're talking about juveniles and we're...we have this bill because we're wanting to treat juveniles differently, one of those reasons is that we have some expectation that at least some juveniles can change their behavior. And so we want to maximize our leverage not take away our leverage. And so it's a concern to...so that is my policy concern is that, wherever we decide the minimum should be, that we don't do it in this manner, so that we keep maximum leverage to be able to work with those juveniles because, as we've discussed, we've...the judges have discretion, the prosecutors have discretion. And so any of the juveniles that land in this bottom end of sentencing are going to be the juveniles that we have the most expectation that some leverage would matter. And so at the bottom end is where we need maximum leverage because either there is mitigating circumstances that make us think that these are juveniles for which some services and leverage, in terms of incentive for getting out, might actually make a difference. This is also where, I would imagine, some of those folks that Senator Carlson is most concerned about would land, perhaps, here, at the lower end of the sentencing range. And again, that's where we would want maximum leverage, in terms of trying to make sure that they get the services and have the incentive to participate in whatever services are available, so that we can expect to actually see some change in their behavior, so that those juveniles, when they do leave the system, leave the system and are ready to be citizens in our society. And so I would urge you to vote against this amendment, again, because I believe that, whatever the...whatever minimum we decide is appropriate, we want that minimum to be done in a way that provides leverage, to really provide rehabilitation and leverage to get services and leverage to get changes in behavior from those juveniles that are in the bottom range of the sentencing, which I think it will be a different kind of juvenile than the juveniles we've discussed, who would be the ones that we would expect to get very harsh sentences. [LB44]

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SENATOR GLOOR: One minute. [LB44]

SENATOR CRAWFORD: Thank you. [LB44]

SENATOR GLOOR: Thank you, Senator Crawford. Senator Harms, you are recognized. [LB44]

SENATOR HARMS: Thank you, Mr. President, colleagues. I've been rather silent on this topic. I have listened for a day and a half and struggled a little bit with my own values and principles. I'm trying to decide what is the right thing to do with youth and teenagers. Well, this is what I know about teenagers, and scientific studies have proven that they have very poor impulse control; they're very susceptible to peer pressure; they're incapable of weighing long-term consequences; and they seem to have more capability of rehabilitation. And the question that I have for Senator Ashford, if he would yield for me so I... [LB44]

SENATOR GLOOR: Senator Ashford, would you yield? [LB44]

SENATOR HARMS: Senator Ashford, in people going into prison and being rehabilitated and come out, what's the data show us of how many of those people that come out that go back into the prison that, supposedly, have been rehabilitated? [LB44]

SENATOR ASHFORD: That's a great question. And I don't have the exact number, but I can tell you that the recidivism with...is this juveniles or anybody? [LB44]

SENATOR HARMS: On juvenile. [LB44]

SENATOR ASHFORD: Well, Kearney, I know the know the recidivism is in the...is around 25 to 30 percent. But recidivism doesn't really...that's a juvenile facility. So we really don't know, we don't have any data, and we're...we've been trying to get data, over the years, to show what, longitudinally, happens to these Kearney kids that get out, and do they get into the adult system. And that's hard to track, but there are...there is recidivism. And part of it is they're, in my view, not getting the treatment. [LB44]

SENATOR HARMS: Okay, well, thank you very much because that's an area that I struggle a little bit with. And here's how I see this, colleagues. And I'm not an attorney, basically, like most people watching, basically, a lay citizen. I don't have that legal background. But when I look at this...and a teenager killed a neighbor of mine. You know what? That family never has the opportunity to celebrate Christmas, celebrate Thanksgiving, celebrate birthdays, go on hikes, go on vacations. It's lost. And what Senator Karpisek said is, absolutely, on target. And so my concern is that 15 years and still not knowing whether or not rehabilitation truly works and how many of these young

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people come back, I don't think...I think 15 years is way too light. I don't agree with it, particularly when you are not sure just how successful we're going to be in rehabilitating some of these teens. So I'm really leaning towards a much heavier penalty. And I would support AM967. It's taken me a while to get there. But after I've thought through it and after I have given it a great deal of thought, I've listened to all the people who have talked about all the different pro and cons of this issue, it simply boils down to me that, somewhere along that line, that penalty has to be higher. It needs to be higher. Until you can have the data and the science that shows us that we can rehabilitate this teenager, that's where I'm going to be, because I'm not convinced in my own mind... [LB44]

SENATOR GLOOR: One minute. [LB44]

SENATOR HARMS: Thank you, Mr. President. I'm not convinced in my own mind that you can rehabilitate every teenager that goes in. They bring in a lot of heavy issues. They're there for a particular reason, and they've killed or murdered someone. And there's no way that we can get away from that. There's no way that we can say to this family, we're sorry but we're just going to give your...this person who killed your loved one maybe just 15 years if he works hard and we think that we have rehabilitated him. So that's where I'm at, Mr. President, and I thank you. [LB44]

SENATOR GLOOR: Thank you, Senator Harms. Chair recognizes Senator Wallman. [LB44]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. This is a discussion that we should have. And what is justice, if I can hire a good attorney and make deals? Senator Wightman, I appreciate what he said. They make deals. And I'm going to get the best attorney I can for my child if something happens. And that bothers me a little bit, putting mandatory minimum sentence, because the wrong person may go to jail because of what he or she said or lied about. And then I would like to ask Senator Ashford a question, if he would yield. [LB44]

SENATOR GLOOR: Senator Ashford, would you yield? [LB44]

SENATOR ASHFORD: Yes. [LB44]

SENATOR WALLMAN: Thank you, Senator. If I'm 22 or 23 and commit a heinous crime, is there a limit on my...is there a date set on my parole? [LB44]

SENATOR ASHFORD: No. Well, if you're convicted of a Class I felony, it's likely that you're serving life. And so that's an indeterminate number of years. You'd be eligible for parole at some point, but you would not...there would be no date when you would be released without parole. [LB44]

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SENATOR WALLMAN: No mandatory date? [LB44]

SENATOR ASHFORD: Without parole. I mean, you could be paroled at some point. [LB44]

SENATOR WALLMAN: Yep, yep. Thank you. And that's why I struggle with a mandatory date and plea deals that attorneys make in the courtroom. I've been in the courtroom with situations with family members, and I know that deals are made. And for better or for worse, the more money you have, the better attorney you hire. If you want constitutional law, you get somebody like this; and if you want land rights things, you get somebody like this. There's lots of expertise out there and if you know who to ask. We have a tremendous legal system in this country for those that have the money. Thank you, Mr. President. [LB44]

SENATOR GLOOR: Thank you, Senator Wallman and Senator Ashford. Senators in the queue: McCoy, McGill, Price, Lautenbaugh, Janssen, Ashford, Schumacher, and others. Senator McCoy, you are recognized. [LB44]

SENATOR McCOY: Thank you, Mr. President. Would Senator Ashford yield to a question, please? [LB44]

SENATOR GLOOR: Senator Ashford, would you yield? [LB44]

SENATOR ASHFORD: Yes. [LB44]

SENATOR McCOY: Thank you, Senator. Did Graham v. Florida or Miller v. Alabama talk about a year, any amount of years, or have states kind of made some different determinations for the years? [LB44]

SENATOR ASHFORD: It's up to us. It's up to us to determine the number of years. [LB44]

SENATOR McCOY: And it's...so currently, your amendment, AM151, has this at 30 years. With good time, someone would be...could be eligible for parole after 15 years. Is that correct? [LB44]

SENATOR ASHFORD: Correct. [LB44]

SENATOR McCOY: And I know you've probably seen it, Senator Ashford, since it originated...well, obviously, the fiscal note on this particular bill, on LB44, members, if you look at it, it says, as of...the bottom line of the fiscal note is: As of December 31, 2012, the inmate population was 143.81 percent of design capacity. So the Vice Chairman of Judiciary Committee stood up on the floor yesterday, Senator Ashford, and

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said we should never worry about a district court judge letting someone out after 15 years. And if I'm off a word or two, I apologize. Maybe he could stand up and correct me if I'm wrong. [LB44]

SENATOR ASHFORD: Well, it's not the judge's decision, so. [LB44]

SENATOR McCOY: Well, I understand, whether that's a parole...what would that be then? Would it be a Parole Board decision? [LB44]

SENATOR ASHFORD: Yes, yes. [LB44]

SENATOR McCOY: Okay. So my question is, at almost 144 percent of design capacity for prisons, is there not a compelling motivation, if there is good behavior by an inmate in this case, to let them out at...when they are eligible for parole. Is that the current situation and what happens? [LB44]

SENATOR ASHFORD: No. Eighty percent of the inmates in the corrections system are eligible for...to be released within three years of their date of sentence. So what the...where the problem lies is in these nonviolent offenders who are not being released quickly enough, that, or being...or not going into community corrections. That's where the problem is, not the violent offenders on the other end. They generally...parole is very difficult to get in Nebraska. [LB44]

SENATOR McCOY: I under... [LB44]

SENATOR ASHFORD: It happens. It happens, but it's very difficult. [LB44]

SENATOR McCOY: I understand when you say "they generally," but there's no... [LB44]

SENATOR ASHFORD: Well, I mean, there may be a case. [LB44]

SENATOR McCOY: There's no prohibition. There wouldn't be any in it, in statute. We are saying, with good time, you would be eligible for parole at 15 years. [LB44]

SENATOR ASHFORD: That...yes. And it could happen. It is very unlikely that it would happen. It could happen. [LB44]

SENATOR McCOY: So to go back to if a juvenile is charged as an adult in a case of sexual assault, second offense, mandatory...the Legislature, a past Legislature,... [LB44]

SENATOR ASHFORD: Right. [LB44]

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SENATOR McCOY: ...has determined the mandatory minimum is 25 years. [LB44]

SENATOR ASHFORD: Right. [LB44]

SENATOR McCOY: So there is no eligibility for parole before that 25 years has passed, correct? [LB44]

SENATOR ASHFORD: Correct, correct, correct. [LB44]

SENATOR McCOY: Okay. So the Legislature made a...could be arbitrary, could be for some other compelling reason I don't know. I could go back and look, but I haven't had the opportunity to do that. But the Legislature made that determination, correct? [LB44]

SENATOR ASHFORD: Correct, yes. And we could...I'm not arguing, Senator McCoy, that you can't do it here. You can. But my argument is that because these young people are not...these juveniles, for the most part, are not getting treatment, that, you know, it's...if we focused on treatment, which we do not do, then I...you know, we could start having that conversation. But if you're just...anyway, I don't want to take your time. [LB44]

SENATOR GLOOR: One minute. [LB44]

SENATOR McCOY: No, I understand and I appreciate that. But aren't we building that in by leaving in place the mitigating factors, the comprehensive health evaluation, the judge, with sentencing, looking at all those factors, coming up for parole, looking at all those factors? We're addressing the concerns that were raised by the Supreme Court in the Graham case and in the Miller case, right? [LB44]

SENATOR ASHFORD: Right, right. But the real...Nebraska is terrible, terrible in the way it treats juveniles who have offended. We are one of the worst states. We incarcerate more juveniles than 47 other states. We are absolutely horrible. And here's...and that is really the issue we're...we can come up with a number of years and we could...and I'm...this is not reacting to you, Senator McCoy. But we...this state is absolutely in the dark ages,... [LB44]

SENATOR McCOY: But we're addressing... [LB44]

SENATOR ASHFORD: ...in the dark ages, not... [LB44]

SENATOR McCOY: But we're addressing that, are we not, Senator Ashford? [LB44]

SENATOR ASHFORD: This state is in the dark ages, Senator McCoy. We incarcerate youth up and down, all over the place, and it's not solving anything. [LB44]



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SENATOR McCOY: But we're looking at mitigating factors. [LB44]

SENATOR ASHFORD: And it's not deterring anybody. [LB44]

SENATOR GLOOR: Time, Senators. Thank you, Senator McCoy, Senator Ashford. Senator McGill, you are recognized. [LB44]

SENATOR MCGILL: Thank you, Mr. President, members of the body. I rise in opposition to this amendment and, in part, to thank Senator Davis for the last time he spoke and bringing up what is, probably, seen as the most heinous crime in Nebraska history and the Starkweather murders and the young lady who was involved in that being charged with first-degree murder and serving 17 years in prison and is now living a life as a regular human being, up in Michigan, I believe, and has contributed a great deal to society, paid her bills, done everything that a normal person would do, as opposed to the \$2 million it costs, per person, to keep a young person in jail for the rest of their lives. She is someone who was rehabilitated, was, arguably, charged with the wrong thing in the first place. But I'm here to argue. Yesterday we were using the example of the accessory who drives his buddy to the gas station, he ends up shooting somebody, and the driver being charged with first-degree murder. And we had people saying that, oh, that would never happen, they wouldn't be charged. Yes, it does. It happened to her. I've seen it happen. When I was a television reporter, I was in court, seeing accessories being found guilty of first-degree murder when they didn't even know that the murder...a murder was going to take place. But when the public starts getting all excited and looking for people to blame, then, yes, juries move in that direction; yes, prosecutors move in that direction. And luckily, we do have judges who overturn some of these cases, but that isn't how it is for everybody. We need to be wise in how we're sentencing our young people to prevent further costs from litigation and to make sure that we are treating each individual with a sentence that is appropriate. Even if they were a part of one of these heinous crimes, you know, in terms of recidivation or recidivism, I mean, Senator Wightman talked about the young man they're working with and how they have seen a drastic difference in who he is today from who he was before. And we heard other individual cases in the Judiciary Committee over the years that we've been hearing this bill. When they're there for 15, 16, 17 years, it's much different than the lack thereof, I guess, of rehabilitation that we currently have for juveniles. They're there. They're captive. They're learning and trying to find peace for themselves as well; at least, many of them are. We need to give the opportunities to make sure there is that variety so that we can sentence to what is appropriate for that individual. And with that, I yield the rest of my time to Senator Ashford. [LB44]

SENATOR GLOOR: Senator Ashford, 2 minutes 10 seconds. [LB44]

SENATOR ASHFORD: Thank you, Mr. President. And I apologize to Senator McCoy. I

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certainly wasn't reacting to his question. It was a fair question. But our committee has been working for seven years to try to get to the bottom of why we overincarcerate juveniles, why juvenile crime does not go down, why violence continues to go rampant and throughout our state and primarily in our urban areas but also throughout the state. We've been trying to understand why that is, and we have tried many different options. We've thought about many different options. One thing is absolutely for...it's clear, and that is that incarcerating juveniles has not deterred anybody and it has not reduced crime. So when we think about how we're going to look at this particular problem, the worst of the worst, so to say, I don't think we can look at it in isolation. I think you have to look at it...as Senator Crawford so aptly stated, you can't just sit here and talk about years. You have to sit here...you have to talk about what treatment options are available for juveniles because juveniles can get better. [LB44]

SENATOR GLOOR: One minute. [LB44]

SENATOR ASHFORD: The earlier they get treatment, the better they can be. They can be rehabilitated. They can be of value. Every life has value. Every life has value, in my view. And to just squeeze the value out of a youth who has lived the life that has put them in a place where they had to be involved in a homicide is excruciating but it can be done. Senator Carlson was absolutely correct when he asked the question about the felony murder rule. When I was in law school and I was taking criminal law and I would sit there and scratch my head in law school and wonder why...yes, it's not a good thing to be an accessory to a murder. It's not a good thing to run around, driving the getaway car or finding a gun and giving it to someone who shoots somebody else. That's not good. It's awful, it's awful. But as Senator Carlson correct...he's asking the right question. [LB44]

SENATOR GLOOR: Time, Senator. Time, Senator. Thank you, Senator Ashford. Senator Price, you are recognized. [LB44]

SENATOR PRICE: Thank you, Mr. President and members of the body. I thought I would rise to add my voice to the chorus of this very important discussion we're having. In reflecting in the comments that I've heard so far, in challenging my own understanding, which doesn't really...which really doesn't involve having to personally deal with the subject of murder, loss of life...I've had people in my family die. We've all had people in our families die, some more horrible than others. But here we're debating a law and, for myself, I'd like to take it and break it into pieces. And I like to look at what's concrete, what do I know. And then I like to look at those things that I want to believe or I think I know or what the perturbations or possibilities could be, based on what's involved. What we know with our good time laws is that if a person is sentenced to 30 years, the minimum, the very first opportunity for parole is 15 years. I'm not looking at the extenuating things. I'm not looking at everything else that goes on after that. I have to look at what starts the conversation. And the conversation, the decision,

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starts at 15 years. And for myself, as I struggle with this, 15 years does not equate to the taking of a life. That was agreed upon; that was ruled on by a judge and jury. Whether...and I'm not an attorney. I don't know whether it could be just a judge only in this case that a minor does not get an opportunity to have a hearing in front of a jury. I don't know that. I'll be up front and honest. Fifteen years is a possibility. I'm not looking at the percentage of possibility. I'm looking at how do I look at a family and say, 15 years, notwithstanding the rehabilitation of the individual which, I'm sure, we all hope and pray for, 15 years that a judge and a jury found someone guilty of murder. So I'm looking for something that's more than that. And I agreed and I am accepting that the higher levels that we talked about were too much. I believe there can be something that's different. But I found my basement. My basement is above 15. I cannot accept that, myself, and I will be supporting the efforts that make it above 15 years. And with that, I'd yield the balance of my time to Senator Schumacher, if he would like it. [LB44]

SENATOR GLOOR: Senator Schumacher, 1 minute 25 seconds. [LB44]

SENATOR SCHUMACHER: Thank you, Senator Price. Mr. Chairman, members of the Legislature, one thing I'd like to point out with reference to this bill on the...it sets it at 25-year mandatory maximum. That means that there would be no parole hearing before the 25 years. For some reason, the committee chose to add an entire section here and create some new rights. And the new rights the committee is trying to create says that, once they come up for parole, if they are denied parole by the Board of Parole, there will be a hearing every year thereafter. So as early as 15 years and every year thereafter, no matter if the Parole Board rejects it, rejects it, rejects it, this guy is not fit for parole, starting at, conceivably, the 15-year mark, the family, the officers, the victims are going to have to appear at a hearing, even if it's a futile hearing, to go through and meet the requirements of this statute that, every year, it happen. At least, with this amendment, that process of a revolving annual hearing on even ones that aren't worthy of even consideration, may never be, will not start until they're 25 years old. This is a good compromise between where we were yesterday, at 60 years,... [LB44]

SENATOR GLOOR: Time, Senator. [LB44]

SENATOR SCHUMACHER: Thank you. [LB44]

SENATOR GLOOR: Thank you, Senator Schumacher. (Visitors introduced.) Continuing with floor discussion, Senator Lautenbaugh, you are recognized. Senator Janssen, you are recognized. [LB44]

SENATOR JANSSEN: Question. [LB44]

SENATOR GLOOR: Do I see five hands? I do. The question is, shall debate cease? All those in favor vote aye; those opposed vote nay. Senator Janssen, for what purpose do

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you rise? [LB44]

SENATOR JANSSEN: I'd ask for a call of the house, Mr. President. [LB44]

SENATOR GLOOR: There has been a request to place the house under call. The question is, shall the house go under call? Those in favor vote aye; those opposed vote nay. Record, Mr. Clerk. [LB44]

CLERK: 31 ayes, 0 nays, Mr. President, to place the house under call. [LB44]

SENATOR GLOOR: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senators Lathrop, Conrad, Mello, Hadley, Larson, and Adams, please return to the Chamber and record your presence. Senator Adams, please return to the Chamber and record your presence. Senator Janssen, how do you wish to proceed? [LB44]

SENATOR JANSSEN: Thank you, Mr. President. I'd like to proceed with a roll call vote in reverse order. [LB44]

SENATOR GLOOR: Members, the question is, shall debate cease? We will do so in reverse order at the request of Senator Janssen who placed the house under call. Mr. Clerk, please call the roll. [LB44]

CLERK: (Roll call vote taken, Legislative Journal pages 950-951.) 25 ayes, 20 nays, Mr. President, to cease debate. [LB44]

SENATOR GLOOR: Debate does cease. Senator McCoy, you are recognized to close on your amendment. A reminder to the house: We are still under call. [LB44]

SENATOR McCOY: Thank you, Mr. President and members. I do rise before you this morning to close on AM967 which, again, would change AM151 and, in turn, LB44 to reflect a mandatory minimum sentence of 25 years. I believe that this is crucial to this discussion, again, to portray to the people of Nebraska, the citizens of Nebraska, especially those families that have lost loved ones because of these crimes that you've heard about this morning and others. These families have names. These families have faces. These communities where these crimes happened are real. These are serious offenses, murder, loss of life. It should give us pause to consider the policy decisions that we're making in regards to this issue. A mandatory minimum sentence of 25 years would be at the same level as the highest other mandatory minimum sentences that we have in the state of Nebraska, and we have a number of them. I handed out that earlier. In addition, at least seven other states--pardon me--eight other states have seen fit to

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make a similar mandatory minimum sentencing requirement, including three of our surrounding states. I think, members, this leaves in place, as Senator Ashford and others have articulated over the last two days, the important mitigating factors that the United States Supreme Court cases, Miller v. Alabama and Graham v. Florida, along with the Roper case and others. I believe this is good public policy. I think this sends a right message to the people of Nebraska that we recognize that some of these juveniles may be able to be rehabilitated later in their life. But there is a consequence for their actions. And 25 years is an appropriate consequence, as it is also the mandatory minimum sentencing requirement if a juvenile were to be charged as an adult in the case of a sexual assault, second offense. Otherwise, if we leave it where the committee amendment, AM151, has it now, the juvenile charged as an adult for murder could serve up to ten years less than a juvenile sentenced with sexual assault, second offense. I don't think that's right. I don't think that's good public policy for our state. And the Supreme Court clearly left it up to the 50 states to determine how we would go about this. All they said was we have to look at mitigating factors, which we are, and that we can't have a mandatory life without parole, which we are doing. [LB44]

SENATOR GLOOR: One minute. [LB44]

SENATOR McCOY: Beyond that, I believe it is the will of the body, the will of the Legislature, to set policy beyond that. And I believe we are with AM967. I think this walks that tightrope between recognizing, as Senator Ashford has said very eloquently, changing how we view sentencing juveniles while at the same time respecting the rule of law, of which we value so highly in our state. Thank you, Mr. President. [LB44]

SENATOR GLOOR: Thank you, Senator McCoy. Members, the question is, shall the amendment to the committee amendment to LB44 be adopted? Senator McCoy, for what purpose do you rise? [LB44]

SENATOR McCOY: I would request a roll call vote in reverse order, please. [LB44]

SENATOR GLOOR: Mr. Clerk, call the roll, reverse order, please. [LB44]

CLERK: (Roll call vote taken, Legislative Journal page 951.) 23 ayes, 14 nays, Mr. President, on the amendment. [LB44]

SENATOR GLOOR: The amendment fails. Mr. Clerk, raise the call. [LB44]

CLERK: Mr. President, I have a priority motion. Senator... [LB44]

SENATOR GLOOR: Mr. Clerk for an amendment. [LB44]

CLERK: Mr. President, we're back to consideration of the committee amendments.

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[LB44]

SENATOR GLOOR: Senator Ashford, you are next in the queue. [LB44]

SENATOR ASHFORD: Thank you, Mr. President. And I...we are back on AM151. I think we are in the process of discussing some thoughts about this amendment. And I'm not sure where we are in those discussions, but I can tell you mandatory minimum is not on the table, in my view. But there are some other discussions being had, and so I'm going to suggest we wait and see how those go on and how they conclude. [LB44]

SENATOR GLOOR: Thank you, Senator Ashford. Mr. Clerk for a priority motion. [LB44]

CLERK: Mr. President, Senator Lautenbaugh would move to bracket LB44 until June 5, 2013. [LB44]

SENATOR GLOOR: Senator Lautenbaugh, you are recognized to open on your motion to bracket. [LB44]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. And I'll be honest, the last vote was a disappointment because we had some people who voted for 60, which would have resulted in 30, and some who voted for mandatory 25 an hour ago take a walk on this. And maybe "take a walk" is kind of a frivolous term to use here, but that's what happened. We fell a couple votes short. And I'm going to explain why we fell a couple votes short, because we were told this is so important that it must pass this year. But if we change it to a 25 mandatory minimum, it'll be killed by the introducer. But if we change it to 20, then that's fine. Well, folks, some of us wanted the 60 to get you to 30, and the 25 was a compromise. And I would hope...and the bracket motion was withdrawn because the last vote failed. That was a maneuver that worked. It worked last year. It worked the year before. And I would question you and I would urge you to question the introducer and others when they stand up and say, this is a serious topic that we must deal with but unless you do it exactly how I want, you're not going to get to deal with it this year. And you can be subject to that and you can sell what you think, in your best judgment, would have been proper. And we know we had more than 25 votes for the mandatory minimum of 25 years, but some of you folded. There's no other way to put it. And if this was just something that nobody in their right mind cared about, like, oh, I don't know, something less serious than murder, that might be okay. But this is not okay and this is not the right way to make policy, do it my way or I'll kill my own bill. And frankly, I am so tired of that, the next time anyone who is a party to that stands up here and tells me something is serious, I'm going to jump up and say, I disagree, because, frankly, you're not serious. This is a despicable way to make policy, a despicable way to make policy. Let me be clear on that. And those of you who were stampeded by it, shame on you. Yes, it's critically important that we pass something this year, but it darn well better be, down to the year, what I'm willing to agree to and not

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what the body was willing to do a while ago, which was 25 mandatory minimum. Twenty-five is totally unacceptable, wrongheaded, unconstitutional, some have suggested, but 20 is just fine. I don't know why. I don't know the difference. I don't know why you're being bullied in this way. But you are. And maybe it's time for us to say, look, I was of the opinion that 30 sent the signal that this was a serious crime and we are taking it seriously, 60, with the possibility of parole at 30. I accepted 25. Maybe it's incumbent upon me now just to talk this bill to death now and on Select File because I don't want any of you to be deluded. It is obviously not important that we pass this bill this year because if there was a five-year variance between what the proponents of this committee amendment would accept and what the body would accept, the bill would be killed over those five years. We have left the realm of seriousness at this point and entered the realm of, kind of, petty blackmail. So maybe it's time to draw a line in the sand. We do, do that on, sometimes, important things and, more often than not, trivial things. Maybe we just talk it to death because I don't believe it's important. Sponsors don't seem to believe it's important. So I guess it's just not. And I hope, in your experiences here, because you've just experienced it, you will reject people who come to you and say, my way or I'm going to kill my own bill, but it's important that we pass something this year, just not with a slight deviation from what I say is proper. It worked, so I guess we're doing nothing to dissuade that behavior. But I don't know that you have me on whatever is coming next. You certainly don't have me on the committee amendment. And I was just told, well, there was a majority in favor of the committee amendment. I'd like to know what majority of 25 people thinks that getting out in 15 years is okay because that's not the sense I've gotten from the body. Last time around, we all...we came very close to doing the 60, which would have resulted in 30. We came close to the 25 mandatory minimum. Is there really a sense of the body that 15 years is going to be okay for this, which is the committee amendment? And if that wasn't the bottom line, if that wasn't what's acceptable, then the committee amendment should say something different, shouldn't it? But it doesn't. And we'll just attempt to change it. And maybe the next amendment will be, well, then it should be 50 years with the possibility of parole at 25. Careful observers would note that that's largely the same thing that we just voted on. And so that would, probably, result in this all-important bill being killed by its own introducer as well. But 40, which will get you 20, well, that's apparently fine, with absolute metaphysical certitude. And it might be unconstitutional; it might not. We've had, from time to time, what I refer to as "constitutional open-mike night" where, if you don't like something, you just stand up here and say, oh, it's unconstitutional. I'm not sure where. I think it's somewhere near the back that that's prohibited. And here we are now, reading things into a court case that simply aren't there and being told that mandatory minimums are somehow unconstitutional. The court didn't say that, quite the opposite. There's no language to that, that would even lead you to that conclusion, that broad of a conclusion and, yet, we were told that at one point and that the 25-year mandatory minimum would somehow be unconstitutional. It hasn't been held that way by any court. But what are you going to believe? I would suggest, at this point, you not believe this is a serious bill, if the introducer was willing to kill it over the last

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amendment. So I'd like to say I'll keep on listening, but I think I'd be the only one if I made that promise. And we'll see where this takes us. Thank you, Mr. President. [LB44]

SENATOR GLOOR: Thank you, Senator Lautenbaugh. Members, you've heard the opening on the motion to bracket. Members in the queue: Cook, Chambers, Burke Harr, Ashford, McCoy, Schilz, and others. Senator Cook, you are recognized. [LB44]

SENATOR COOK: Thank you, Mr. President. Good morning, colleagues. I pushed my button to register my deep philosophical opposition to the concept of mandatory minimums and had intended to speak about that. But the topic of juvenile justice and criminal justice in general lends itself to the bulk of what I was going to say anyway. We talk a lot on this floor. And I recognize that many of the members hold deep spiritual values that speak to justice. I claim many of those same spiritual values. What I don't hear us talking about, especially since this bill presents such an opportunity, is mercy. That's kind of the other end of that Bible verse, if you're thinking about the same one that I am. So if we are using this as an opportunity to really make a distinction between the young person in the car and the person who goes in to commit the murder, then I would like us to talk about that in the...with this same seriousness that we've been talking about the other examples of horrible rapes and murders that have been brought up this morning. Statistics point to, here in our state and across the United States, horrible disparities not only between men of color, primarily black men, being incarcerated at rates much higher than white men but, also, people who live in poverty being incarcerated at greater rates. And that is, as we've talked about a little bit before this morning, due to the fact that, if you know the system, if your daddy can pick up the telephone and call a really good criminal attorney who knows the...how to work things, you will, in all likelihood, get a better deal. You can do just as heinous a crime or more heinous a crime, not go to jail at all or be out well before the person sitting in the car. I would like to also, as we get further into the session, remind people of the statistics that were generated, district by district, by the Planning Committee. Those will tell you the high rates at which poverty is increasing across this state, not just in my district, not just in District 11, but the pocket of people to whom a bill like this would apply, potentially, in a negative fashion. It's growing in our state. And what are we doing about that? With that, Mr. President, I would yield the bulk of my time to Senator Ashford. Thank you. [LB44]

SENATOR GLOOR: Senator Ashford, 2 minutes 10 seconds. [LB44]

SENATOR ASHFORD: Thank you, Mr. President. First of all, I was very clear and that I would not support my bill if there was a mandatory minimum added to this bill. The reason for that...there are many reasons. Senator Crawford said it best when she was talking about juveniles and rehabilitation but, also, the practical impact of a mandatory minimum on this sentence, as well as mandatory minimums on related crimes that are committed in the same time, the same occurrence, such as a gun crime. We've already



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had mandatory minimums for gun crimes. We did those in LB63. So what you would have is a mandatory minimum stacked on a gun crime, stacked onto another mandatory minimum, if the charge...if there was a IA felony committed. So we already have mandatory minimums. I do not support mandatory minimums. I will not support mandatory minimums. I will bracket my bill. I will not proceed with this bill if mandatory minimums are put on there. I'm sorry. We already have mandatory minimums. As Senator McCoy talked about, in the case of sexual assaults, second offense, we have mandatory minimums. [LB44]

SENATOR GLOOR: One minute. [LB44]

SENATOR ASHFORD: We don't need more mandatory minimums, so the...but, also, this calling the question when we're engaged in the middle of discussions on this bill is also something that is quite unusual in this body. When the Speaker of this Legislature has the parties in his office, talking about a resolution, and there's a call the question motion, where does that come from, Senator Lautenbaugh? Anyway, just so it's absolutely clear to everyone, absolutely clear to everyone, I will not support and I will move to bracket any bill with any more mandatory minimums than what already exist in the law today. Thank you. [LB44]

SENATOR GLOOR: Thank you, Senator Ashford. Senator Chambers, you are recognized. [LB44]

SENATOR CHAMBERS: Mr. President, members of the Legislature, Senator Lautenbaugh has exhaled a lot of hot air. I'm one who talked to him about a 20-year minimum mandatory. I'm the one who told him, I will depart from my rigid opposition to mandatory minimums for this bill, even though I knew I'd be out of step with everybody else. But now that's off the table. Senator Bloomfield, Senator Schumacher, Senator Lautenbaugh, Senator Murante, and some of the others who you can always count on being in that clique are trying to push an ideological agenda. We're going to take the gloves off and use bare knuckle. Fine, but I'm not full of hot air. I will do what I say. Now he's the one who said, you've got to do something this year and something will be done with this bill. Then he moves to bracket it. He's not like me. Let him bracket it. Let him take his vote. He said he will talk it to death. Let him and his clique talk it to death. I think the votes are not there to bracket it. He knows they're not there and he couldn't talk it to death by himself. And his clique would get tired, also, because there are other people with interest. When I say I'm going to talk a bill do death, I don't care what anybody else says. I'm going to do it and I will do it alone. I say, test me. Test him. Those of you all who are for this bill, I had to get my comments in to make a suggestion. I've been around here a long time. Let him take a vote on his bracket bill, his motion to bracket. It'll lose. Then he's going to have to go ahead and deliver on what he said about talking it to death. And let's see how long he can go. But here's what he's looking at if he's a tactician like I am. The Speaker is going to leave this bill at 3:00. So he only

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has to talk for an hour and a half, he and his clique, and they should be able to do that very easily. But let him get his vote on the bracket. You don't have to do what I say. I'm not ordering anybody to do anything. I'm making a suggestion. He has changed the rules. He said we've got to do something this year. Didn't he say we have to do something this session? Is he serious about his bracket motion? Is he? I tell you, put me to the test, try me, and I mean it. There are a lot of people around here who huff and puff like the big, bad wolf, but they can't blow the house down. I will. I will, if that's what I say I will do. But I could also tell you how to stop it very easily. Just everybody clump together and say, we're going to throw everything to the winds and try to stop Ernie, and that's how we're going to spend the rest of the session. You don't have to do that on Senator Lautenbaugh's motion. Who wants to argue against a motion that's going nowhere anyway? I think the discussion has been serious. I think it has been on point, except when Senator McCoy stands up, over and over, and tells what he doesn't understand and repeats, almost verbatim, everything, over and over and over and over and, well, I don't understand, I don't know, this is bad, people don't like this. He told me the other day he's not running for Governor. He told me that. But it sounds mighty much like he's trying to change his mind. And I want him to stand on the floor and say he did not tell me that he's not running for Governor. We had a discussion going on. [LB44]

SENATOR GLOOR: One minute. [LB44]

SENATOR CHAMBERS: And that's what I told him. He said, I'm not running for Governor. I said, well, everybody thinks you are. He said, well, they're wrong, I'm not running for Governor. Now if I'm lying, let him stand up and call me a liar. And I wouldn't lie on him. But I'll find out what kind of man he is. So it's in the hands of the body. You can take the time. Oh, we're almost to noon anyway. He can talk between now and noon, and one of his cronies will give him some extra time. And he'll stand up here and, if there is such a word, "pompousterate," and let's just see what he can do. We'll get along again before the session is over, perhaps, but we'll certainly clash. Thank you, Mr. President. [LB44]

SENATOR GLOOR: Thank you, Senator Chambers. Senator Burke Harr, you're recognized. [LB44]

SENATOR HARR: Members of the body, I'm not quite sure what's going on here today. I said I was disappointed with the level of debate earlier, that we weren't talking about what was really the issue, the Supreme Court case. And now I'm somewhat baffled by, when there negotiations going on in the Speaker's office to come to a resolution, why is the question called? We're working this through and, instead, one party felt like they were, maybe, going to lose a little. So they called the question immediately, played a game of chicken, and lost. They lost that game of chicken. And now what are they doing? They're taking their bat...they want to take their bat and go home. People, we were sent to Lincoln to do a job, and that job was to make policy. I heard earlier we may

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not always win, you may not always lose, but we've got to compromise. We were in that process of compromise. We were doing exactly what the system required. And now they lost and now they're crying. Now they want to go home with the bat. We can't do that. We have to make a decision. I'm not sure if AM151 is the right answer. I'm not sure if the previous amendment was the wrong answer. But we were talking about it. That's what we do. We are a deliberative body. I'm going to sit back and I'm going to listen to this debate. But I am adamantly against this bracket motion as unnecessary. We were sent here to do something. We need to make a decision, whether you like it or not. You know, a good compromise, no one is happy. So maybe there is room for compromise. But from what I can tell, the losing party doesn't even want to negotiate anymore. They just want a bracket motion and go home. That's not how law gets done. That's not how this body works. If we're going to do that, this system is going to break. And I'll tell you what, the voters are going to be upset with us, they're going to be disappointed, and I don't blame them. I wouldn't blame them one bit. I didn't vote last time because I thought we were working something out. And maybe you lose and maybe we could still negotiate, but a bracket motion is not the way to do that, to continue a negotiation. That is a way to cease debate and cease negotiation. I respect Senator Lautenbaugh. I respect Senator McCoy. They are good people. I do not respect what they are doing at this moment. This was a 5-4 decision. It was very close, as Senator McCoy mentioned earlier. One vote, it would have changed the other way. Same thing happened here. One vote, it would have changed the other way. But now we've got to work. We've got to work with each other, ladies and gentlemen. It's only April 9. We've got a long time. We can't continue to fight like this. We've got to find a way to work together. And with that, I would yield the remainder of my time to Senator Krist. Thank you. [LB44]

SENATOR GLOOR: Senator Krist, 1 minute 40 seconds. [LB44]

SENATOR KRIST: Thank you, Senator Harr, for your courtesy. Thank you, Mr. President, colleagues, and good afternoon, or good morning, Nebraska, almost afternoon. I'll be very brief. I was asked by the lobby to carry a bill, in the event that Senator Lautenbaugh couldn't be here--or an amendment, I'm sorry--to go to 60. I said I would for discussion purposes. I said, where I think I am on this is 40, not mandatory sentence, 40. That's the compromise I agreed to. I understand there's a floor amendment coming up that says 40. Let's get rid of this bracket motion and get to 40. I think it's reasonable. I think it's sellable. I think it's something that we should do. But for the lobby to be the final say-so in what happens in here, in policy decision, to stop negotiation when the Speaker is at a point in negotiating, that is just bad politics. It's bad juju, and we don't need to be going down this path. Forty means 20, and 20 is not a guarantee. But it's more reasonable than 60 and it's well more reasonable, in my mind, than mandatory, for all the reasons that Senator Ashford has brought up in conjunction with other mandatory sentences. Think about 40 before it comes up. Let's get this done. Let's make some policy decisions in this room. It needs to be done today. Thank you. [LB44]

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SENATOR GLOOR: Thank you, Senator Krist. Chair recognizes Senator Ashford.  
[LB44]

SENATOR ASHFORD: Thank you, Mr. President. And as usual, my good friend and colleague, Senator Carlson, has come to our rescue. This is not the first time that he has done this. And I'll give Senator Scheer some credit as well because he came up with the same idea just now. The idea of 40 to life is a fair compromise. And Senator Carlson has such an amendment that, I believe, he is in the process of or has filed. It may not be acceptable to everybody and I'm not suggesting it is. But I can accept 40 to life, and I would urge the body to do so as well. I think it is the compromise that's been out there. I think Senator Krist, as well, mentioned that to me last night and again this morning. I think it's the right way to go. Mandatory minimums, stacked on top of mandatory minimums, is not the right way to go. It's too punitive and it doesn't get at the issue of rehabilitation which, I think, is part of this balance as well, so. And then, having...hopefully, passing this bill on, we can then get to the issues that really rack me, and those are the issues of how do we treat juveniles who have not committed these most heinous crimes. That's where the real challenge is as well, and we need to address that as well in this body. But I appreciate, as I have said on this floor many, many times over the last seven years, Senator Carlson for his diplomacy and his caring and for his thorough review of the matters that are before us in this body. Thank you, Mr. President. [LB44]

SENATOR GLOOR: Thank you, Senator Ashford. (Visitors introduced.) Mr. Clerk, announcements and items for the record. [LB44]

CLERK: I have no announcements, Mr. President. I have a priority motion. Senator Adams would move to recess the body until 1:30 p.m.

SENATOR GLOOR: Members, you've heard the motion to recess until 1:30. Those in favor say aye. Those opposed say nay. We stand recessed.

RECESS

SENATOR COASH PRESIDING

SENATOR COASH: Good afternoon, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber. The afternoon session is about to reconvene. Senators, please record your presence. Mr. Clerk, please record.

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

SENATOR COASH: Thank you, Mr. Clerk. Any items for the record?

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CLERK: I have no items at this time, Mr. President.

SENATOR COASH: Thank you, Mr. Clerk. We will continue on our debate. Senator McCoy, you are recognized. [LB44]

SENATOR McCOY: Thank you, Mr. President and members. In the absence of Senator Lautenbaugh, I am standing for his bracket motion, which is before us. And at this time I would ask to have that bracket motion withdrawn. [LB44]

SENATOR COASH: Without objection, the bracket is withdrawn. Next item, Mr. Clerk. [LB44]

CLERK: Mr. President, Senator Carlson would move to amend the committee amendments with FA55. (Legislative Journal page 952.) [LB44]

SENATOR COASH: Senator Carlson, you're recognized to open on FA55. [LB44]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. Again, this has been a serious and I would say rather deep discussion that we've had on LB44. And we talked about the fact that the whole process of legislation really is negotiation. It involves compromise. We want it to be fair. We want what we end up with to be sensible. And we hope that it's nonpartisan. Now in what we've discussed so far, the bill itself, LB44 with AM151, involves a 30-year minimum sentence. What we just voted down earlier or before noon was an amendment that would make a 25-year mandatory sentence. I had indicated that I was tempted to amend with a 22.5-year mandatory sentence. But instead, the amendment that is before you is simply on page 1 of AM151, line 11, striking "thirty" and making it "forty" years, a minimum sentence of 40 years imprisonment, which means there's a possibility of parole at the end of 20 years. With the one that we voted down, that would have been 25 years. So 20 years is not 25 years, but 20 is much closer to 25 years than 15 years is to 25 so it's perhaps a negotiated settlement and an option. Senator Ashford has indicated that he would support this amendment. That's as simple as it is, simply changing "thirty" to "forty," page 1, line 11. I would ask for your support, and I'm interested in the discussion. Thank you, Mr. President. [LB44]

SENATOR COASH: Thank you, Senator Carlson. Members, you heard the opening to FA55. The floor is now open for debate. Senator Avery, you are recognized. [LB44]

SENATOR AVERY: Thank you, Mr. President. I rise to support AM151 and the underlying bill. I hear that there is an amendment soon to come that will reflect a compromise. But I want to speak about two things that bear on this discussion we're having today. I am generally not very fond of minimum mandatory sentencing. I believe

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that they represent an unnecessary intrusion into the realm of judicial discretion, and I'm not sure that's a good thing. The American Bar Association in 2009 stated that sentencing by mandatory minimums is the antithesis of rational sentencing policy. This is the ABA. That same organization in 2004 called for an end to mandatory minimum sentencing. And why is that? Well, the reasons are that when you do mandatory minimum sentencing you effectively shift discretion from judges to prosecutors. Prosecutors decide what charges to file and how they can very easily stack the deck by overcharging the defendant in order to get the defendant to plead guilty. Mandatory minimum sentencing also upsets the balance of power in our democratic system. Prosecutors are part of the executive branch of government and they control the sentence and not the judges. So you have a real conflict of interest there in the balance of power between those two branches of government. It's the proper role of justices and judges to determine sentencing, not prosecutors and not legislatures. So I will look carefully at this amendment to see how much mandatory minimum sentencing is a part of it. There's a second reason why I support the underlying bill and why I support the committee amendment, AM151. We've heard a lot of discussion this morning and yesterday of when inmates are eligible for parole. And we talk about this halfway point as if that's when they're going to be released. I think it's important for us to understand that really we are talking about the date at which they are eligible--and I know that we are aware of that, but maybe we need to pay a little bit more attention to it--the day at which they are eligible, not when they are released. I serve on the advisory committee at the Nebraska State Penitentiary, and I also have worked with a citizen group that works inside the prisons to reduce violence. The result of these experiences with the advisory committee and with the citizen group is that I have had a great deal of contact with the prison system and with prisoners. I regularly receive what I think is an extraordinary amount of mail from inmates. I can tell you that it is extremely rare for someone who is eligible for parole to get paroled in certainly not that first appearance before the Parole Board, not the second, third. In fact, it is a long time. Why is that? There is something that goes on in the prison system that I would call punching the ticket. There are a certain number of things that every inmate must do before they can actually be released on to parole. [LB44]

SENATOR COASH: One minute. [LB44]

SENATOR AVERY: They have to attend counseling sessions. They have to undergo anger management therapy. They have a variety of places in that ticket where they have to punch it. And they are not going to be really eligible for release until that ticket is punched, and the system does not provide adequate opportunities for inmates to punch the ticket where they need to punch it. So they are up against the wall. There they are eligible for parole, but they cannot qualify for parole until they have punched their ticket, and the system doesn't provide them with enough opportunities to meet those requirements. It is a frustrating thing for any inmate. Let me tell you when we talk about a 40-year or 50-year minimum sentence and then in here we're talking as if they're

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going to be out of the system, out of the prison system within half of that time... [LB44]

SENATOR COASH: Time. [LB44]

SENATOR AVERY: ...that's not likely to happen. Thank you, Mr. President. [LB44]

SENATOR COASH: Thank you, Senator Avery. Senator Ashford, you're recognized. [LB44]

SENATOR ASHFORD: Thank you, Mr. President. And thank you, Senator Avery. I think that your time spent within the institutions is extremely helpful as we talk about what's real, what really happens to an inmate. I support this amendment. I think that Senator Carlson is correct in his analysis of the situation, that coming at the right number is not really science. It's a sense of what is the right thing to do, and I think he's landed on it. I'd also like to remind the body that it is a 40-year minimum, 40 to life, which is a range of 40 to life potentially. It does not necessarily mean that the minimum sentence given an inmate or a convicted juvenile would be 40 years. It could and most likely would be greater than that. So in reality, we would most likely, if we're looking at a first-degree murder case, be looking at 50 to life or 60 to life and parole eligibility would be then based on that minimum number. So 40 is not a guarantee of 20. And as Senator Avery has suggested, absolutely correctly, anybody that...and I spend a lot of time talking to Bob Houston about corrections policy, most every week I'm having conversations with him, and we've had him in front of our committee many, many times. And the overwhelming point, and I think Senator Avery has made it well, is that these individuals who get to their parole date, whether it's 20 years, 30 years, or 40 years, are not paroled on that date. In fact, I think it would...there may be one or two, I doubt if there even is one person who has been paroled at their earliest parole date and that's for a variety of different offenses. What's real in the prison system is that numbers of individuals go in and out of the prison system very quickly, as I said, 80 percent within three years, which is another policy question that we need to face--and I know we're going to work on it this summer--and that is to expand community corrections even further. And I know Senator Chambers and Senator Brashear were very much involved in creating the community corrections alternative, and that needs to be expanded, both for adults and juveniles. So that's important. But 40...again, 40 to life in my view...Senator Carlson has put forth a responsible range of sentences. It is what he feels to be right, and I think that's the indicia for most of us: Does it feel right? Does 40 to life take into consideration the factors that we've talked about that the court talked about in Miller v. Alabama? Yes, it does. It does because it does permit early release for a juvenile. It does create a way to get at or to arrive at an early release for a juvenile, even if that juvenile has committed the most serious of offenses. It's not easy on offenders. It is not giving them a break necessarily. That isn't what his, Senator Carlson's amendment is all about. It's creating a sentencing range. It does give...clearly gives hope to juveniles who have committed a serious offense, a very serious offense.

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And we...there are cases, we don't need to go through all 27, but there are cases where a child, a juvenile... [LB44]

SENATOR COASH: One minute. [LB44]

SENATOR ASHFORD: ...has killed their parent out of...in an emotional state, after lots of abuse, and that child is in prison for life. Now is that wrong or right? Well, that's up to the judge, the jury, the prosecutor, and the process to determine. But at the very least here as a legislature, Senator Carlson early on in the debate recognized the idea of felony murder and that there are offenders who aren't directly involved in the homicide but are accessories. That's a factor that enters into a lot of these cases and could very well enter into the sentence, does not have to, but could. But at least the sentence range is...I think it's responsible. It's kind of...it is a compromise, but I think more than a compromise it's a responsible alternative, it's a responsible proposal, and I most definitely support it. I think we ought to go with it. If there are going to be other discussions on this, we can do it between General and Select. Obviously we're just on Select (sic) File so... [LB44]

SENATOR COASH: Time, Senator. [LB44]

SENATOR ASHFORD: ...there may be nuances. But I think this is the way to go. [LB44]

SENATOR COASH: Thank you, Senator Ashford. (Visitors introduced.) Welcome. Senator Davis, you are recognized. Senator Davis waives. Senator Chambers, you are recognized. [LB44]

SENATOR CHAMBERS: Mr. President, members of the Legislature, I'd like to ask Senator McCoy a question or two. [LB44]

SENATOR COASH: Senator McCoy, will you yield? [LB44]

SENATOR McCOY: I would. [LB44]

SENATOR CHAMBERS: Senator McCoy, you kept offering various amendments and you kept saying when the number was 30 that 15 years you couldn't accept. Did you honestly believe that somebody would be paroled at their first eligibility date, which would have been 15 years? Did you believe that? [LB44]

SENATOR McCOY: Well, statutorily, Senator Chambers, that possibility would exist. [LB44]

SENATOR CHAMBERS: No, I'm asking you did you believe it? You kept saying it. Did you believe it or did you not? If you didn't believe it, you were deliberately trying to



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mislead this body. That's what I'm getting at. You kept repeating it over and over and over. Did you believe that would happen? [LB44]

SENATOR McCOY: Statutorily, yes, that is possible and I do believe that. [LB44]

SENATOR CHAMBERS: You believe that somebody would have gotten out in 15 years. That's what I'm asking you. [LB44]

SENATOR McCOY: Statutorily the possibility would exist, Senator Chambers. [LB44]

SENATOR CHAMBERS: Thank you. He doesn't believe it and he knows better. He was deliberately disingenuous. I'd like to ask Senator Harms a question. [LB44]

SENATOR COASH: Senator Harms, will you yield? [LB44]

SENATOR HARMS: Yes. [LB44]

SENATOR CHAMBERS: Senator Harms, you said, I think, 15 years was too short a period. [LB44]

SENATOR HARMS: That's correct. [LB44]

SENATOR CHAMBERS: Did you say that? [LB44]

SENATOR HARMS: Yes. [LB44]

SENATOR CHAMBERS: Did you believe that somebody... [LB44]

SENATOR HARMS: Yes. [LB44]

SENATOR CHAMBERS: ...who would be eligible at 15 years would get out? [LB44]

SENATOR HARMS: Yes. Yes, I did. [LB44]

SENATOR CHAMBERS: Why did you believe that? [LB44]

SENATOR HARMS: Because I think that has the option and the judge could do whatever he...the parole officers can do whatever they want, and I think that option is there, yes. [LB44]

SENATOR CHAMBERS: Did you have any evidence of it ever having happened? [LB44]

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SENATOR HARMS: No. [LB44]

SENATOR CHAMBERS: And you're a professor. Were you a professor? [LB44]

SENATOR HARMS: No. [LB44]

SENATOR CHAMBERS: What did you do before you came to the Legislature? [LB44]

SENATOR HARMS: Unfortunately, I was an administrator. [LB44]

SENATOR CHAMBERS: An administrator. [LB44]

SENATOR HARMS: Right. [LB44]

SENATOR CHAMBERS: You were around education. Is that true? [LB44]

SENATOR HARMS: Correct. [LB44]

SENATOR CHAMBERS: When people are trying to emphasize education, do they lay emphasis on having facts on which an opinion ought to be based? Do they encourage you to have facts? [LB44]

SENATOR HARMS: Yes. Yes, they have facts, but you also... [LB44]

SENATOR CHAMBERS: Have you... [LB44]

SENATOR HARMS: ...go ahead. [LB44]

SENATOR CHAMBERS: ...heard the term evidence-based data? [LB44]

SENATOR HARMS: Yes. [LB44]

SENATOR CHAMBERS: Meaning that there's data based...there are data... [LB44]

SENATOR HARMS: That's correct. [LB44]

SENATOR CHAMBERS: ...based on evidence. [LB44]

SENATOR HARMS: That's correct. [LB44]

SENATOR CHAMBERS: You had no evidence that anybody would get out upon reaching their eligibility date, did you? [LB44]

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SENATOR HARMS: But they have the option. And... [LB44]

SENATOR CHAMBERS: You had no evidence that they would, did you? [LB44]

SENATOR HARMS: But they have the option and that's the point. [LB44]

SENATOR CHAMBERS: Thank you, Senator Harms. [LB44]

SENATOR HARMS: Yes. [LB44]

SENATOR CHAMBERS: I see all of this vacillating by people who pretend to have principles, who talk about morality, who pray every morning and they deliberately are disingenuous. Both of these men know better. They know that in Nebraska nobody is going to get out. He didn't talk to anybody with the Department of Corrections. He didn't talk to anybody at the Parole Board. He listened to somebody. Senator McCoy, who knows nothing and cannot even be honest about what he doesn't know, and that kind of thing has been allowed to go unchallenged on the floor for too long. They do all of this misstating about 15 years and they can get out. You know they're not going to get out. I know they're not going to get out. Senator Schumacher knows they won't get out. Everybody on this floor knows they're not going to get out. So what it causes me to do is to be skeptical about anything they say. And you know what I base it on? Something that a transcendental philosopher from the early days of this country said, well, not really early but it was a while ago, Ralph Waldo Emerson, a man who was false in one particular may be deemed false in all. When they are untruthful in one, they'll be untruthful in all. There's only one way to make a straight line. But you can make a curved or crooked line in an infinite number of ways. [LB44]

SENATOR COASH: One minute. [LB44]

SENATOR CHAMBERS: Then they walk around as though somebody is mistreating them. If they don't want to be called, don't make those kind of statements on the floor when I'm here. I've listened to Senator Harms talk about other things, and he's got better sense than what he's manifesting here today. I don't care what may have happened in his district. I don't care what crime may have been committed. That ought not to make him take leave of his intelligence and his senses in order to try to play on people's emotions and misrepresent a situation. If he can find me one case where anybody got out on their first date of eligibility, not a bet, I'll give him \$1,000. I'll give him \$1,000. And, Senator Harms, as the song says, I'm a man of means by no means. But I know what happens in Nebraska. And these Parole Board members will tell you how afraid they are of letting some people out on parole when not only have they reached their eligibility date, but they've satisfied every requirement. But because there's too high... [LB44]

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SENATOR COASH: Time, Senator. [LB44]

SENATOR CHAMBERS: ...a political situation...thank you, Mr. President. [LB44]

SENATOR COASH: Thank you, Senator Chambers. (Visitors introduced.) Senator McCoy, you are recognized. [LB44]

SENATOR McCOY: Thank you, Mr. President, members. Would Senator Carlson yield to a question, please? [LB44]

SENATOR COASH: Senator Carlson, will you yield? [LB44]

SENATOR CARLSON: Yes. [LB44]

SENATOR McCOY: Thank you, Senator. And I apologize. I missed the first little bit of your opening so if I'm asking you to repeat, forgive me. Can you...would you mind walking through again how you arrived at the 40 years instead of 30 years that's found in the committee amendment, if you'd be so kind. [LB44]

SENATOR CARLSON: I just reflected back on what I've listened to in the debate today. And we're starting out with a 30-year minimum. That's the bill. What was requested in the amendment that we voted down was 25-year mandatory and 25-year mandatory and 25-year minimum. I'm not smart enough to know the difference. Either one of them involve 25 years. So that didn't pass. And it's very simple, then 40-year minimum with parole as a possibility after 20 years is halfway between 15 and 25. So it's a compromise. And for those that believe that 15 years is not long enough, and I tend to be in that group, then 20 is a compromise between 15 and 25. [LB44]

SENATOR McCOY: So under your amendment, this would still allow a judge to still give a maximum sentence of life, correct? [LB44]

SENATOR CARLSON: Correct. Maximum sentence of life, but minimum of 40 years. [LB44]

SENATOR McCOY: Which would mean with good time under your FA55 someone would be eligible for parole at 20 years. Right? [LB44]

SENATOR CARLSON: That's correct, eligible for parole. [LB44]

SENATOR McCOY: Do you...and I mentioned this a few times and others have, Senator Carlson, but walk me through. Do you think that that's problematic when we have mandatory minimums, which this isn't necessarily what you have here, but do you think that that's problematic at all when we have other offenses that have mandatory

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minimums for, I don't want to say similar offenses because I don't think they are similar, but we have other mandatory minimums that I've talked about this morning that are some 20 years, some 25 years. Do you...I guess what I'm trying to get at is do you find that problematic or not? Or do you think it's just something we'll just deal with or do you have any thoughts along those lines? [LB44]

SENATOR CARLSON: Well, on what we're kind of comparing this to where it says sexual assault, first-degree of child second offense is 25 mandatory minimum, I don't know the difference between saying 25 mandatory minimum or 25 minimum. Either one is 25 years. So technically I don't know the difference. [LB44]

SENATOR McCOY: I think effectively, and I would stand corrected if somebody would want to correct me if I'm wrong, but I think under your floor amendment with good time that person would be eligible for parole at 20 years. Under the case the offense that you just mentioned, sexual assault second offense, they wouldn't be...they would be required to serve at least 25 years before they would be eligible for parole. So I think we would be talking about a difference of five years effectively. Is that the way you would see that too? [LB44]

SENATOR CARLSON: No, because we're using one reading where it actually is 25 years mandatory. My amendment would make it 40 years minimum, which means eligible after 20. So there's five years--maybe that's what you said--there is five years difference here. [LB44]

SENATOR McCOY: Right. I...my concern with that would be you have an offense, in the case of second offense sexual assault, that mandatory minimum prison time would be 25 years. Where you would have a murder involved, and we'd be talking five years less of a penalty. Is that...I mean, is that...I mean... [LB44]

SENATOR COASH: One minute. [LB44]

SENATOR McCOY: Is that problematic do you think? [LB44]

SENATOR CARLSON: It's not problematic to me, but you're correct. That's the difference between the two here. And after our discussion, certainly the body is going to judge whether or not we want to go that direction or not. [LB44]

SENATOR McCOY: Thank you, Senator Carlson. And I greatly appreciate the hopefully not too much duplication there from his opening. But that remains my concern. We already have in statute, some of these being for quite some length of time, mandatory minimums for juveniles that are charged for adults. And unless we're going to go back into statute and change those mandatory minimums, we're talking what I believe to be the greatest offense that there is, and that's murder, loss of life, having a penalty that

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could be less than other offenses, other crimes that don't involve a loss of life. I think that's problematic. [LB44]

SENATOR COASH: Time, Senator. [LB44]

SENATOR McCOY: Thank you. [LB44]

SENATOR COASH: Thank you, Senator McCoy. Senator Schilz, you're recognized. [LB44]

SENATOR SCHILZ: Thank you, Mr. President, members of the body. I don't know where I'm going to be on this amendment to tell you the truth. I had my mind set on the amendment that was before, 50 and 25. But so here we are another afternoon. At least it's cloudy out. Maybe we're getting some rain outside, something productive is happening hopefully. I guess I look at this and we seem to be going around in circles a little bit now. And I'm just hoping that we can come to some conclusion on this today. I keep looking on the agenda and my bill still sits there in second place, gets a little nerve-racking after a while. Just want to get it up and get it going. It's a little simpler bill than this obviously, but. I think some of the stuff that gets lost in this argument are the types of crimes that are going on by the folks that are committing these. Yes, they're young, but these are some pretty heinous crimes that we're talking about. And I want to make darn sure that we're keeping that in perspective, that, you know, these aren't shoplifters. These are people doing really bad things. First-degree murder is about as bad as it gets. So I don't want to be too lenient. And, you know, I listened to Senator Chambers and Senator Harms back and forth there and, you know, it's like everything else. It's in the law so it could happen. Does it happen? I don't know. I'm going to have to plead ignorance on that. This is not an area where I have any expertise at all. But I do know that I think we need to make sure that if we do...that when we put this in place, that we make sure that there's enough time and we make sure that folks, you know, the people that perpetrate these crimes have a sentence that not only is punishment for the crime but also then gives them the chance to be able to rehabilitate themselves, and we need to be careful. I mean we've heard a lot today about how children's brains are not fully formed by the time maybe some of this happens. And I don't discount that. I don't have any reason to argue that. But on the other side of it we know also that as people grow older they tend to be less aggressive, less ambitious when it comes to violence and things like that. And I think we need to be thinking of that. We need to be thinking of the crimes these folks committed and what does it really take if, if they can be rehabilitated, what does that take? And are we allowing them or are we allowing society the right punishment to be able to take care of these crimes? That's what I struggle with here and that's what I'm trying to figure out in my head. With that, I would give the rest of my time to Senator McCoy if he would like it. [LB44]

SENATOR COASH: Senator McCoy, you've been yielded one minute ten seconds.

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[LB44]

SENATOR McCOY: Thank you, Senator Schilz, and I would go back to a question that I have had, kind of an overarching question throughout the two days of discussion...

[LB44]

SENATOR COASH: One minute. [LB44]

SENATOR McCOY: ...thank you...here and I won't get time to really elaborate too much on it. But I would ask if we're not going to go down the road of a higher threshold with a mandatory minimum, that case of 25 years which we talked about before lunch, then why do we have any mandatory minimums in statute at all? Why did legislatures in past ever determine we needed mandatory minimums? At some point they decided, whether you rehabilitated yourself as a prisoner or not, you have to answer for the crime that you committed. I think that's appropriate in this case when we're talking about murder. Thank you, Mr. President. [LB44]

SENATOR COASH: Senator Ashford, will you yield? [LB44]

SENATOR ASHFORD: I'm sorry. Yes. [LB44]

SENATOR COASH: Excuse me. Senator Ashford, you're recognized. [LB44]

SENATOR ASHFORD: Oh, thank you. There are inconsistencies in our sentencing law throughout the criminal code. And it may very well be that this is an inconsistency in that there is a crime, second offense, but again, this is second offense, not first offense, second offense where the mandatory minimum is 25 years and the maximum is life and if it's sexual assault of a child. So this in this case would be a juvenile committing on a second occasion sexual assault on a child. It can happen. And we as a Legislature have determined that the appropriate penalty is 25 years and the maximum is life. We can certainly revisit that. We can certainly revisit that next year. And as I indicated to the body a few minutes ago, we intend to look at the sentencing regimen anyway of all of the criminal statutes because there are inconsistencies going both ways. And oftentimes we do get bills up here to adjust certain inconsistencies involving similar crimes that are...that have penalties that are inconsistent or different. And that happens quite a bit. We don't go into the sentencing law every year and make it uniform. It's...maybe we should. But this summer we are going to be spending time on it, and we can take that up. Again, I do stand in support of the 40 year to life range. It is a reasonable response to this court case. I think it's consistent with the court case of Miller v. Alabama. Senator Scheer brought up an interesting point about a 16-year-old who is sentenced to 40 years or in effect 40 years to life and is eligible for parole at 20 years. That's longer than he's been alive or she's been alive. And I think that's an interesting comment that Senator Scheer made. The other point, too, is what's real. And

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again, I'm going to trod a little bit on Senator Chambers' district because he should be the one and I shouldn't be presumptuous enough to think I know about this necessarily. But we do have issues, and I remember when I was at the housing authority of cases where we had younger juveniles that would be...or young girls. In fact, what is really problematic is young girls being used to drive older juveniles or even adults as part of a gang slaying. And that young juvenile driver, in many cases female, can be charged with life in prison...with felony murder, life imprisonment without parole. There are...maybe that's the appropriate charge. But when it comes time to the...to have the court...the court determine a sentence for that driver of the car who is recruited to be the driver, and I know that the...that it can be extremely difficult for these young people to not be part of that kind of an enticement, and they spend the rest of their lives in prison, it happens. It happens. So I think Senator Carlson's point again about the different types of crimes committed, especially when you have more than one individual involved in a homicide in one way or another that the sentencing, especially when we're dealing with juveniles... [LB44]

SENATOR COASH: One minute. [LB44]

SENATOR ASHFORD: ...should reflect those differences and the roles that are played by the various juveniles in the homicide. And again, what is the public policy for putting that driver in prison for the rest of their lives and making that sentence apply to that person without the opportunity of looking at other sentencing alternatives? I don't think there is one. So again, the range that Senator Carlson has come up with, again, I wholeheartedly support. This is General File. We can continue to look at this. But I think 40 years to life on General File, and we can look at some of the issues Senator Schumacher has raised on the language, legitimate points that can be looked at, and more discussions can be had. But I think this is as good as we're going to get on General File. We do need to pass something that's responsible, and I think this is such a proposal. [LB44]

SENATOR COASH: Thank you, Senator Ashford. Senator Chambers, you're recognized. [LB44]

SENATOR CHAMBERS: Mr. President, members of the Legislature, what the U.S. Supreme Court has said, among other things, in its Opinion: That in these states where the only available penalty is life without parole, there was reason to believe, based on reviewing the transcripts of the trials and other information...I'm paraphrasing, so let me not do the paraphrasing. Had there been other alternatives, life without parole would not have been the sentence. So when you have people on this floor talking about how dangerous these people were as juveniles because they got this sentence, that's because it was the only sentence available. No distinction could be made. Other sentences would have been imposed were they available. What I'm going to do with Senator Schilz from now on, let him bring an ag bill up. I'm going to speak from a



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position of ignorance, but authoritatively how...I don't know anything about it but this is the position I take on his bill. I don't talk about these kind of things ordinarily, but I'm going to talk about it from now on. That's what I'm hearing on this floor--I don't know anything about this area, then you're going to speak like you're an authority. This is unbelievable to me. The word they use is "surreal." Then you don't use correct words like unintelligible, insane, stupid, ignorant, crazy. But you let a student stand up to give a presentation in class and say to the professor, well, I know what the assignment is but I don't know anything about it, but I want my view to be taken with as much seriousness as those of somebody who studied, who knows what he or she is talking about. Only on the floor of this Legislature can such vincible ignorance be utilized. You know the difference between vincible and invincible ignorance? Vincible ignorance can be corrected and overcome with information, facts, and instruction. Invincible ignorance cannot be overcome. So maybe I used the wrong word. Maybe it is invincible ignorance. If people don't know, they ought to be quiet. Senator McCoy knows nothing about what he's talking about. When they put these mandatory sentences on, it was during the period when everybody was trying to be what they call tough on crime. Since there was already a crime on the books and a punishment for it, the only way they could be tougher was to say, well, we're going to force somebody to serve a certain number of years, and that showed how tough they were on crime. That's where they came from, and I fought against them when I was here. And once I left, you all put a lot of crazy stuff in the statute. Senator McCoy may have helped put some of these mandatory sentences on. Then he (inaudible), well, why do we have mandatory sentences on anything? Because you do things piecemeal. Those of us who were here many years ago decided that something was needed other than pitching and patching the criminal law. And each time somebody wanted to create a crime they would give a specific sentence such as three to five or seven to ten, the traditional that they heard on television. So we did a study. And we created a formula, if you want to call it that, or a schedule, instead of saying that any offense which required at least one year in the penitentiary would be a felony. And if you look in Black's Law Dictionary, you'll find those words were used in early days to separate a felony from a misdemeanor, the amount of time that you spent in prison. So we looked at some of the types of offenses... [LB44]

SENATOR COASH: One minute. [LB44]

SENATOR CHAMBERS: ...that were deemed serious and they were called a felony. But because there were different degrees of that particular offense, the categories of felony were put in place. Then you got senators who came along wanting to be tough on crime, and they started saying we want, despite what the formula or the schedule says, to put in a minimum number of years that people have to serve. That's why you need somebody who will read history if they were not here to see how it happened. You got people on this floor who will not read. They won't even read what is available. Then they stand up here and talk. It's better to be quiet and let people think you're a fool than to

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open your mouth and remove all doubt, which is what's been happening. Thank you, Mr. President. [LB44]

SENATOR COASH: Thank you, Senator Chambers. Senator Price, you are recognized. [LB44]

SENATOR PRICE: Thank you, Mr. President. It's with some trepidation I stand to speak following Senator Chambers and getting a lesson on the vincibility of my intellect. Being what it is, I thought I'd say why or share insight to how I view some of what goes on in our legal system because truly we are the sum of our experiences, however you gather that experience. In discussing the would have, should have, could have, might, can be, I harken back to 2004 when my wife was in a car accident and injured and car totaled. And it turned out the other party was drunk. Well, that's an accident and it's unfortunate. What gave me cause to ponder what happens in courts, and I don't understand everything, I'll admit that, I've come to better understanding through time, this wasn't the first time the person had been caught driving under the influence. And I know this is not the same thing that we're talking about and with the same gravity of the subject of murder and life imprisonment and children, I'll call them what they are, children in my eyes. I know we age of minority and majority. But it was the fifth time this person had been caught under the influence while intoxicated, and he had one conviction. And when it came to the punishment phase, that's where it played out a lot. And over the years that I've been here, I've listened to these bills. I've tried to understand what goes on behind it, but I was always, for lack of a better word, befuddled, bewildered how you could have four and have a conviction for one and on the fifth one then we had a...I believe they were going for a felony-type conviction. So now when I look through that lens at this topic, I have concern that again, as I said earlier, an individual who does happen to be a minor, a juvenile of the age we're talking about, was found and considered to stand against trial as an adult and 15 years would be that first opportunity, notwithstanding, as Senator Chambers says, I'd agree with him, you probably won't find any. And I also agree with him in saying that the only punishment meted out was that which was available. And now with more flexibility, we talk about that in other areas of our statutes how...for lack of words, the lack of maturity in our system. You know, we don't have a very responsive system, I mean, across the board. We have so many things and we'll hear later on in other debates about thresholds, all in or all out. There is no ability to consider the pertinent aspects of the situation before us--all in, all out. I did some simple math, I guess I actually call it arithmetic, if you're 17 years old because the bill says under the age of 18, and I'm not parsing hairs on months, half months, weeks, a 17-year-old with 15 years will be 32 years old. A 17-year-old who got 20 years under the formula would be 37. [LB44]

SENATOR COASH: One minute. [LB44]

SENATOR PRICE: A 17-year-old...thank you...who got 25 would be 42. And if we go

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down to 14, those same numbers would be 29, 34, and 39. I have no way to measure what it is like to be in prison. I have no idea to understand the burden that that person has in their mind for the act that they have committed. I do know the burden of having someone killed, I mean my family, a brother. It's not easy. The amendment before us is greater than 15 years, and I can support that. Thank you, Mr. President. [LB44]

SENATOR COASH: Thank you, Senator Price. Senator Harms, you're recognized. [LB44]

SENATOR HARMS: Thank you, Mr. President, colleagues. I rise in support of FA55. I think it's an appropriate way to go. I did want to comment just a minute on Senator Chambers in regard to attacking my values, my principles, my ethics, and my religious beliefs. I don't think you have the right to do that. I don't think you should be doing that. And to stand there and call me ignorant and stupid and inability to read, I object to that. And I will tell you that that's not true, and I will tell you, you don't have that right. Not only that, you don't know me because I happen to believe that the possibilities exist that the Parole Board could let you out at 15. Whether they have or not after 15 years doesn't make the difference. The point they have, that they have the right to do that, and that's what this is about. You're a legend here, and I have respected you from the time I have met you. But I will not accept being called stupid, ignorant, inability to read. I will also not tolerate the fact that you challenged my values and my principles. I do support this piece of...this amendment and this legislation, and I thank you, Mr. President. [LB44]

SENATOR COASH: Thank you, Senator Harms. Senator Davis, you're recognized. [LB44]

SENATOR DAVIS: Thank you, Mr. President, members of the body. Before I really get into what I want to say, I just want to explain to the body again that, you know, the committee did not come to a decision on this without a lot of thought. We took a lot of testimony. We visited about it, tossed it around a number of times and came up with what we thought was a fair sentence. Let's remember what the bill originally said. It said a maximum sentence of life imprisonment with a minimum of 30 years. And that is up to the judge as to what he's going to do or the jury, however that's going to be done. So I don't really think Nebraska has a lot of judges in place who are going to say, well, by gosh I'm just going to give them the minimum because that's all they deserve. I think those judges in large part are going to look at the seriousness of that crime and make an appropriate choice in what they decide they're going to do. I think if the committee had come out with a recommendation of 60 years that probably the discussion on this floor would be that that's not enough, we need 90 years, because it seems to me a lot of people are taking the ball and trying to run with it for political purposes. And I really resent that as to how it affects the decision that the committee made. That said, I'm going to support Senator Carlson in this amendment because I think it's time that we

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move on to something else. And I hope the body will pull together and do that for the good of this process. And one other thing I'd like to say is remember that what this is, is corrections. Now if somebody serves their time and they have demonstrated that they are correct, maybe parole is appropriate; and that Parole Board can make that choice when the time comes. With that said, I'll yield the rest of my time to Senator Chambers. [LB44]

SENATOR COASH: Senator Chambers, 3 minutes. [LB44]

SENATOR CHAMBERS: Thank you. Mr. President, when I talked about people specifically being ignorant and not knowing, I mentioned Senator McCoy by name. I mentioned Senator Schilz by name and mentioned what I would do. I asked Senator Harms did he know of certain things and he didn't. And I said, based on what my understanding, and I'm paraphrasing, of him would be, he would have facts on which to base an opinion, and I stand by that. If I make a description and somebody applies it to himself, that's on him. We'll get the transcript and see if I said Senator Harms is stupid, he can't read and so forth. We'll check the transcript. But I'll tell you this--what I've said I meant. There has been stupidity articulated on this floor. There has been ignorance manifested. People have admitted they don't know what they're talking about and yet they speak authoritatively. How many of you are going to say that I'm not correct in saying that when the ones talking admit it themselves? They admit it. But you're not accustomed to anybody speaking forthrightly to you. I don't know what your background is or where you came from. But I am not the kind of man who pussyfoots, shilly-shallies, swallows spit and pretend that something is on my mind other than what I say. You need to know what I am. I didn't tell anybody to make me a legend. People form their opinion, and opinions don't mean anything. If I've got no money and I'm hungry, can I go in the store and say, I'm a legislative legend; will you give me some bread and meat free? He'd say, man, you must be out of your mind. I'll say, well, some people call me an icon. He said, I call you ignorant. [LB44]

SENATOR COASH: One minute. [LB44]

SENATOR CHAMBERS: That's what I say. Why are your feelings so easily hurt? Tell me I can't read and I'll laugh at you. I'll laugh at you. Say whatever you want to say. You think it makes me any difference? You think somebody who cannot multiply past two digits will tell Einstein, well, Mr. Einstein, when it comes to math I think you're ignorant? Is Einstein even going to argue with such a person? Think and apply. Use your brains and you haven't had to use your brains. Some of you tell me what Senator Flood did when he was here. You know what Senator Flood told me when he found out I was coming back? Ernie, I'm glad I won't have to be there to deal with you. Ask him. He knew things would be different when I came from when all they had to do was run stuff through here like food would go out of a constipated goose. We've got to get so many bills passed. We've got to show production. Quality means nothing. You know what

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manufacturers deal with? [LB44]

SENATOR COASH: Time, Senator. [LB44]

SENATOR CHAMBERS: Thank you, Mr. President. [LB44]

SENATOR COASH: Thank you, Senator Chambers. Senator Lathrop, you're recognized. [LB44]

SENATOR LATHROP: Question. [LB44]

SENATOR COASH: The question has been called. Do I see five hands? I do. [LB44]

SENATOR CHAMBERS: I don't think there's been full and fair debate, but you can take your vote anyway, and I'll take the consequences. [LB44]

SENATOR COASH: Members, the question is, shall debate cease? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB44]

CLERK: 25 ayes, 11 nays to cease debate, Mr. President. [LB44]

SENATOR COASH: Debate does cease. Senator Carlson, you're recognized to close on your amendment. [LB44]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature, and thanks to those of you that got involved in this debate, even this afternoon. FA55 is a very simple change. On line 11 of the bill it crosses out "thirty" and puts in "forty" which means it would be a minimum sentence of 40 years. I don't know where everybody stands on this. If you certainly aren't for this amendment, vote against it. If you are for it and you believe it makes the bill better, I would ask you to vote for it. Appreciate the cooperation of Senator Ashford, and I think this perhaps puts us in a position that we can vote for this amendment and then move the bill. And I would ask for your support on FA55. Thank you. [LB44]

SENATOR COASH: Thank you, Senator Carlson. Members, you've heard the closing to FA55. The question before the body is, shall FA55 be adopted? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB44]

CLERK: 30 ayes, 3 nays, Mr. President, on the adoption of the amendment to the committee amendments. [LB44]

SENATOR COASH: FA55 is adopted. Next item, Mr. Clerk. [LB44]

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CLERK: Mr. President, Senator Lautenbaugh would offer FA56. I understand Senator McCoy has been authorized to handle the amendment. [LB44]

SENATOR COASH: Senator McCoy, you're recognized to open on FA56. [LB44]

SENATOR McCOY: Ask to withdraw that amendment, please, Mr. Clerk. [LB44]

SENATOR COASH: Without objection, FA56 is withdrawn. Next item, Mr. Clerk. [LB44]

CLERK: I have nothing further to the committee amendments at this time, Mr. President. [LB44]

SENATOR COASH: Senator Scheer, you're recognized. Senator Nelson, you are recognized. Senator Schilz, you are recognized. Senator Karpisek, you're recognized. Senator Chambers, you are recognized. [LB44]

SENATOR CHAMBERS: Thank you, Mr. President and members of the Legislature. Now we've been brought to this, and I am not going to be silenced. I had a motion that had a specific amount of time on the agenda to be discussed, and that was clear when the agenda came out. I didn't get a vote on that motion. I didn't criticize the Speaker for giving an hour or an hour and 15 minutes. That was the agenda. If I didn't like it, I could have tried to get a vote, whether successful or not, to alter the Speaker's agenda. If the people supporting this bill didn't like what the agenda showed, get it changed. But you didn't. And I'm not going to be silenced. This bill is important, but it's not an issue which will not be addressed if we don't pass a bill. It will be addressed, and it doesn't have to be addressed by the Legislature. And people speculate about what the court might or might not do if the Legislature doesn't act. But nobody knows. I speculate, some of it on the mike; other of it in my mind. Some possibilities I do not even want to entertain and think completely through because you don't have any way of knowing how a court might resolve an issue. But every day I'm on the floor of the Legislature is like every other day to me. When people have an agenda they want to see taken care of, they do all they can to have it turn out that way. Am I right or wrong? If we were marching and I said, and Senator Price were there, I say, and I'm the sergeant, am I right or wrong, he would say, you're right. So you all have your agenda; I have mine. And I'm not going to be silenced. Now if you want to take it to cloture, then you can silence me with 33 votes. I wonder if there are 33 votes for any version of this piece of legislation. Senator Ashford knows and we all know that the discussion has not been about this bill, even though that is what we ostensibly were talking about. There are different groups on this floor and you know how they're going to vote. When an amendment is offered by Senator Lautenbaugh, I make lists--I've done it once before and I read the names of the people who vote a certain way and they all did it--you all observe. If you observe at all, you know who is going to support those amendments. They know who they are. We all know or should know or could know. And by now you all ought to know how I'm going to

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behave when I'm dealt with in the way that I was. That amendment, the one that was actually before us, had been debated not much more than an hour, a serious amendment that is to resolve all of the issues related to this bill and it will be debated one hour and then cut off because some of the other people don't want to talk about it. Well, I take it seriously. And I don't care, not to insult the Speaker, just because I use the possessive, I don't care what the Speaker's agenda says. I'm not going to stop talking about what I think needs to be discussed because the agenda says at 3:00 or whatever time it's over. [LB44]

SENATOR COASH: One minute. [LB44]

SENATOR CHAMBERS: That's one of the vagaries of being in this Legislature. And just to make sure that I got enough time to talk, I got a kill motion up there, too, which if we get to it I'm going to discuss, unless Senator Ashford wants to lay his bill over. And then will it ever come up again? You don't know what's going to happen tomorrow. The Speaker might put this thing on the agenda again tomorrow. Did you ask him? You don't have to answer. That's a rhetorical question. Thank you, Mr. President. [LB44]

SENATOR COASH: Thank you, Senator Chambers. Senator McCoy, you're recognized. [LB44]

SENATOR McCOY: Thank you, Mr. President, members. Would Senator Chambers yield? [LB44]

SENATOR COASH: Senator Chambers, will you yield? [LB44]

SENATOR CHAMBERS: Yes. [LB44]

SENATOR McCOY: Thank you, Senator Chambers. If I may ask, you didn't address it on the mike, which is completely your prerogative, a moment ago, but I noticed you were a no vote on the last amendment that we just talked about that was advanced. Is...when you talked about and I wanted you to elaborate if you wouldn't mind, when you talk about a...if the Legislature doesn't address this the courts will. Did I understand you correctly in what you were saying? [LB44]

SENATOR CHAMBERS: Yes. [LB44]

SENATOR McCOY: So were you opposed to the 40 years, which with good time would get you to 20, or were you...are you opposed to the Legislature discussing this? I'm just trying to understand a greater understanding of what...and if I'm not understanding you correctly, forgive me. But would you mind elaborating on that? [LB44]

SENATOR CHAMBERS: You used the word elaborate. That's the correct word. When

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this bill came out with the committee amendment, the number was 30. Senator Ashford had assured me that 30 was the number we were going to stick by because of the work we did in the committee to arrive at that number. Then other amendments began to be offered. He made it clear and reemphasized it that if a mandatory minimum were put in place he would pull his bill. Then there was the discussion of how can you get around to a certain number being what would be the eligibility date so it started going 40, 60 some had talked about, and now we come to the 40. I am not in favor of all of that. The 30 was what I was going to stick by. Earlier when I was told that there were negotiations and these differing sides were going to reach an accord, and then Senator Lautenbaugh stood up and said some things and took some action--I don't want to say much because he's not here now to defend himself--but it triggered a different attitude on the part of a number of people. A suggestion and offer that I made to Senator Lautenbaugh of a 20-year mandatory minimum sentence I took off the table. I acknowledged that I was taking a position in doing that that I had not taken before. And it was difficult. But in trying to get to something that needed to be done by the Legislature, I was willing to give that much. When that was discounted and dismissed and spoke about in the way Senator Lautenbaugh did, then that made it clear to me that he apparently was rejecting, in the most forceful way that he could, what I offered. So I said it's off the table now and I'm not involved in any of the rest of that. And that's what brings me to the place where I am now. When they had the 40-year up there, I voted against it. [LB44]

SENATOR McCOY: Thank you, Senator. I'm making sure I'm trying to understand you correctly. So you just said something the Legislature needs to do, if I'm catching what you said correctly. But your time previous on the mike a moment ago, you said if the Legislature didn't act, then that's not the end of the road. Did you mean by that meaning... [LB44]

SENATOR CHAMBERS: The court (inaudible)... [LB44]

SENATOR McCOY: Does the Legislature need to act or not? [LB44]

SENATOR CHAMBERS: Here's what I said. It makes...and I'm paraphrasing. It doesn't matter whether the Legislature acts or not. This matter will be resolved; and if the Legislature doesn't, then the courts will. That's what I'm saying. [LB44]

SENATOR McCOY: In... [LB44]

SENATOR CHAMBERS: If we do nothing, the courts will resolve it. [LB44]

SENATOR McCOY: And would that be through the pending case that deals with retroactivity or in another...or will the courts deal with it in another case or in another way (inaudible)? [LB44]



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SENATOR CHAMBERS: It will be dealt with when one of the people who was sentenced under that illegal system... [LB44]

SENATOR COASH: One minute. [LB44]

SENATOR CHAMBERS: ...brings a case to the Supreme Court, it will get there and say, my sentence violated the U.S. Supreme Court holding and I want that sentence vacated or however his or her lawyer would choose to frame the issue. But it would be based on one of those persons bringing the case. [LB44]

SENATOR McCOY: And would then...and I wouldn't ask you to speculate, Senator, but I'm just trying to think of what possibilities could arise, especially in the case of the state of Iowa where the governor commuted those sentences, and now a court will decide that. That court then would have a full range of options to how they could address a sentence being vacated or they could say...they could say something else other than that, correct? [LB44]

SENATOR CHAMBERS: I'm not sure what you said, but I think you're asking me would there be more than one way the court could resolve it? [LB44]

SENATOR McCOY: Yes, that's what I meant. [LB44]

SENATOR CHAMBERS: And if that's the question, the answer is yes. [LB44]

SENATOR McCOY: Thank you. And thank you, Mr. President. [LB44]

SENATOR COASH: Thank you, Senators. Senator Chambers, you are recognized. [LB44]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I had said early on that questions being asked, regardless of whether the person knew anything about law or not, were valid questions. They needed to be asked. They needed to be addressed and answered directly by those who supported the committee amendment. It was not the asking of the questions that troubled me. It was the assertions and the disingenuousness of continuing to say when a person reached parole eligibility there's a likelihood that person would be paroled. That was said over and over and over and over and over and my problem is that I listen to these people. You all don't pay attention to them. You don't know how many times they repeat because you don't pay attention and you don't listen. Unfortunately, I listen and I hear the same thing over and over. Get the transcript and read it and find out what I was paying attention to, as they say, in real-time. And because the people asking all those questions, despite knowing that I had as strong an interest in the bill as Senator Ashford, why would they not address their questions to me? Why didn't Senator

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Lautenbaugh ask me those questions? Why didn't Senator McCoy ask me those questions or Senator Nelson or Senator Schilz or Senators whoever else? Why didn't they ask me? Because they didn't want to hear my answer. They know that Senator Ashford tends to be more accommodating and maybe they could get him to misspeak. But they knew that in their questioning if the question goes for the jugular, my answer is in kind. So why didn't they ask me the questions? If they thought the questions were unanswerable, isn't that the time to put the questions to me and show that I haven't read the Opinion, that I don't know what I'm talking about? But I was one of the first ones to start reading substantial amounts from the Opinion in response to questions that they were asking to show what the Supreme Court had actually said. And I know now that you can call up the Opinion on your gadget because somebody was doing so and reading it from the gadget. If you wanted to know what the court said, why didn't you read it? Then when they would ask Senator Ashford, do we have to put everything in the bill that the Supreme Court said, absolutely not. We would not take the Supreme Court's Opinion and say be it enacted by the people of the state of Nebraska, and you print that whole Opinion out and offer that as a bill. He would have been laughed out of here and I would have led the laughter, but I would have stopped him. So then they say, well, you got impetuosity. I don't know what impetuosity means. Well, the fact that you don't know what it means doesn't mean nobody else knows. Then it's explained and explained, and because you won't accept the explanation, it has to be changed. When I criticize something in a bill like that and I say the word doesn't make sense or it's not clear, what do I do? Look at those sheets up there and read the Journal and see how many alternatives I've offered and how many changes I've recommended that have been adopted by the body. And sometimes the person whose bill it was said, this is better than it was. I didn't just sit there and say, I don't know what this word means. It's not defined in this dictionary. And to have a lawyer say that is strange to me, strange to me. But I'm going to keep doing just as I do. This is instruction time. [LB44]

SENATOR COASH: One minute. [LB44]

SENATOR CHAMBERS: Instruction is not always pleasant. When I was a student in law school, they used the Socratic method where they ask questions and the purpose and intent was to embarrass and humiliate the student. But I was prepared and they couldn't humiliate me so when I raised my hand they wouldn't call on me. They couldn't humiliate me and I'd talk back to the professor. And I'll give you all a concrete example when I speak next time and I'm turning my light on. [LB44]

SENATOR COASH: Thank you, Senator Chambers. Senator McCoy, you're recognized. [LB44]

SENATOR MCCOY: Thank you, Mr. President, and would Senator Chambers yield, please? [LB44]

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SENATOR COASH: Senator Chambers, will you yield? [LB44]

SENATOR CHAMBERS: Happily. [LB44]

SENATOR McCOY: Thank you, Senator. I'm going to take you up on your offer, not to ask questions in the Socratic method, but just because I actually like a little bit of clarity. So I'm going to ask you a question that I asked earlier in the day and I'm going to read from Chief Justice Roberts' dissent... [LB44]

SENATOR CHAMBERS: I didn't read Chief Justice Roberts' dissent. [LB44]

SENATOR McCOY: No, Senator, I didn't say you did. I said I asked a question earlier today to someone else from this same passage that I'm going to read to you from and I just wanted to get your impression of what that means. [LB44]

SENATOR CHAMBERS: And while we're at it, I didn't read Clarence Thomas's dissent either, nor did I read Judge Breyer's concurring Opinion. [LB44]

SENATOR McCOY: Well, be that as it may, Senator, reading from Chief Justice Roberts' dissent, mercy toward the guilty can be a form of decency in a maturing society, may abandon harsh punishments that come to view as unnecessary or unjust, but decency is not the same as leniency. A decent society protects the innocent from violence. I guess what I'd like, if you wouldn't mind, Senator Chambers, to address, is do you think that the committee amendment that we have before us now, it's been changed with, I think it's FA55 that was just advanced, so committee amendment was 30 years which with good time will get you 15, now it would be 40 years of good time will get you 20. The previous committee amendment, do you think that addresses not only what the majority Opinion was but also the concerns? Does the committee amendment...I guess my fundamental question is, does the committee amendment address, in your mind, that protecting the innocent from violence, but at the same time looking at the mitigating factors, the rehabilitative nature of that, did the 30 years answer that in your mind? [LB44]

SENATOR CHAMBERS: What are you asking me? Are you asking me whether I agree with Chief Justice Roberts? You read his words. Is that what you're asking me or are you...? [LB44]

SENATOR McCOY: No, Senator, I bring that up as a concern that the dissenting justices, of which there were four, had. [LB44]

SENATOR CHAMBERS: But I meant, specifically what are you asking me from that? [LB44]

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SENATOR McCOY: Is there a distinction in your mind from a fairness standpoint between 40 years, which is where the committee amendment stands now, and the committee amendment that was voted out of Judiciary Committee? Is there a distinction in your mind? Are the years important to you? Do you feel like... [LB44]

SENATOR CHAMBERS: Yes. [LB44]

SENATOR McCOY: ...that's a necessary component of this? Is there a...not being arbitrary, but is there a number in your mind that's the right number? [LB44]

SENATOR CHAMBERS: Senator, I said and I'll say it again, the committee worked its way to the number 30. Initially it was 20. There was some discomfort with that. I would have accepted the 20. But since the committee, at least by way of consensus, agreed on 30 and that's what we were going to defend, that is the number that I was defending. That is the number which I had accepted, so I feel that 30 is more appropriate than 40, and that's why I would have supported 30 and voted against the 40. Now, if...I don't know what you're really asking me but that's the way I'll answer what I think you may have been asking. [LB44]

SENATOR McCOY: Well, I'm getting to a question of which you mentioned earlier and I'll happily correct myself for the record if that need exists. [LB44]

SENATOR CHAMBERS: You can just ask me. I'll... [LB44]

SENATOR McCOY: Well, I'll get to one of your questions earlier and that was, you said, well, it's been said here that, you know, 30, which good time gets you 15, that we shouldn't be worried about... [LB44]

SENATOR COASH: One minute. [LB44]

SENATOR McCOY: Thank you, Mr. President...we shouldn't be worrying about someone getting out at 15 because it's not going to happen. Well, I'm having a hard time understanding, if it's in the statute that it can occur, how is that not a possibility? However slim that possibility may be, that possibility exists, does it not? [LB44]

SENATOR CHAMBERS: I'm practical, I'm pragmatic, I'm realistic, and these theoretical-type questions, I'm like the court, I don't even waste my time talking about them. It's possible and America has the means of doing it to launch a preemptive nuclear attack against North Vietnam, but America is not going to do it. And America can do it and has the means to do it, but America is not going to do it. The possibility is there. Now you go out on these streets and say, it's possible America is going to launch that attack and say it like you believe it. You wouldn't say that. Wait a minute, let me back off. Many people wouldn't say that. [LB44]

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SENATOR COASH: Time, Senator. [LB44]

SENATOR CHAMBERS: Thank you, Mr. President. [LB44]

SENATOR COASH: Senator Chambers, you're recognized and this is your last time. [LB44]

SENATOR CHAMBERS: Yeah. Mr. President, this is why it's good, I say again, that judges make these decisions. Legislators have all kind of nonsensical reasons for what they do, but the judges look at what the purpose of the law is. There was a scene from a movie based on a play by Robert Bolt. It was called A Man for All Seasons. I believe that some of the people who acted in it received Academy Awards. The man who played Sir Thomas More was in his home with his family and a snitch for Cromwell was there and the man's daughter was going to marry some guy. So there was an exchange of words and at this time, Sir Thomas More held the highest judicial or legal position in the realm. And when this guy left, the young, impetuous man said, aren't you going...you're going to let him go? Thomas More said, go, he did, and go, he should, were he the devil himself. And the young man said, well, why didn't you arrest him? Thomas More said, he has violated no law. The young man said, he violated God's law and Sir Thomas More said, then let God arrest him. And then there came a discussion about laws and this young guy asked, would you give the devil the benefit of law? And Thomas More said, yes, I would give the devil the benefit of law. And then he asked this young man, he pointed out how England is a country that's planted thick with laws from coast to coast, from border to border, would he cut down those laws to get at the devil? And the young man said, I'd cut down every law in England to get at the devil. And Sir Thomas More said, and what would you do if the devil...when the devil turned upon you and all the laws of England having been laid flat and winds are blowing that you can't stand against, yes, I would give the devil benefit of law for my own sake. That's what people who believe in the law will do. All this stuff about he violated God's law, then let God arrest him. And this stuff about moral this and moral that, and your own life won't stand up to that kind of scrutiny. We know that victims hurt when they lose somebody. You don't need to keep saying that, we know it. Who is the one who dredges up that pain? These people who will read it over and over as though it's going to have a greater impact through repetition, which it's not. We are supposed to be, but we never will be, philosopher lawmakers. We think. We look beyond the moment. We are trying to put in place those directives that guide the conduct of human beings, not because you want to punish them or restrict them, but to have an ordered society where the greatest number can seek the greatest good available. And that's why you have laws. And even when the people were putting together this constitution, they acknowledged that a government has the power and authority, any legislative body, to make any kind of criminal that they choose, but when it comes to annexing a punishment, the punishment must fit the offense and because there are people who overly punish, we are going to put into the

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constitution... [LB44]

SENATOR COASH: One minute. [LB44]

SENATOR CHAMBERS: ...a restriction on that. You cannot lawfully in accord with this constitution impose and carry out a punishment that is cruel and unusual. You cannot do it. You want to do it. You want to clip people's noses, you want to clip their ears. You want to torture them, but you're not going to do it in this country under this constitution and you all forgot what your forefathers told you. But I didn't forget even though they were slaveholders holding my people in slavery. But it often takes those on the outside to make those on the inside may understand. "Parson" Carlson has heard Jesus often say, never have I found so much faith in Israel. In other words, the Gentiles showed more of what the Hebrews ought to have shown. That's reality and that's what I'm standing up for and we're going to go on this bill some more. [LB44]

SENATOR COASH: Time, Senator. [LB44]

SENATOR CHAMBERS: Thank you, Mr. President. [LB44]

SENATOR COASH: Thank you, Senator Chambers. Seeing no other members wishing to speak, Senator Ashford, you're recognized to close on the Judiciary Committee amendment. [LB44]

SENATOR ASHFORD: Thank you, Mr. President. I would just urge the adoption of AM151. [LB44]

SENATOR COASH: Thank you, Senator Ashford. Members, you've heard the closing to AM151 to LB44. The question is, shall AM151 be adopted? All those in favor vote aye; all those opposed vote nay. Have all voted who wish? Record, Mr. Clerk. [LB44]

CLERK: 31 ayes, 1 nay on adoption of committee amendments, Mr. President. [LB44]

SENATOR COASH: The committee amendment is adopted. Next item, Mr. Clerk. Per the agenda, Mr. Clerk, we'll move to our 3:00 p.m. agenda. First bill, Mr. Clerk. [LB44]

CLERK: Mr. President, LB68 is a bill offered by Senator Schilz. (Read title.) The bill was introduced on January 10, referred to the Agriculture Committee, advanced to General File. There are Agriculture Committee amendments pending, Mr. President. (AM333, Legislative Journal page 561.) [LB68]

SENATOR COASH: Thank you, Mr. Clerk. Senator Schilz, you're recognized to open on LB68. [LB68]

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SENATOR SCHILZ: Thank you, Mr. President and members of the body. LB68 was brought at the request of the Department of Agriculture and this bill would make a series of revisions to the Plant Protection and Plant Pest Act to assist administration of the act, revise the schedule of fees collected under the act, and revise the administrative and enforcement authorities exercised by the department. The act currently licenses three categories of commercial nursery activities: growers, dealers, and brokers. LB68 would replace these categories with a single license of nursery stock distributor. A definition of nursery stock distributor is inserted by Section 7 of the bill to encompass all activities currently subject to one of the three existing license categories. The bulk of LB68 is the harmonizing revisions made throughout the act as necessary to accommodate the consolidation of three license categories into a single licensure category. New Sections 3 and 4 insert new defined terms: Certification inspection of Nebraska-grown nursery stock and grow. The certification inspection refers to the existing nursery grower inspection found at Section 2-1095. The insertion of the defined term "grow" is necessary due to the consolidation of license categories to confine the grower inspections of those licensees that currently are subject to inspection. Section 2-1095 is amended by Section 10 to incorporate the requirements for nursery stock distributors who grow and distribute nursery stock in Nebraska. As currently applicable to grower licensees, nursery stock distributors who grow nursery stock in Nebraska would be required to apply for certification inspection. The certification standards inserted into Section 2-1095 consolidate those contained in existing Sections 2-1092 through 2-1096, and remain substantially unchanged. Harmonizing revisions made elsewhere throughout the act by Sections 9, 10, 12, 13, 14, 16, 17, 19, and Section 20 to utilize the term "nursery stock distributor." Section 11 of LB68 consolidates fees changed at various locations under the act in the new section of the act. Establishes uniform annual nursery stock distributor licensure fee of \$115 for the first acre and \$5 for each additional acre with authority to adjust within a statutory minimum. This fee schedule replaces the fees charged dealers and brokers under the outright repealed Sections 2-1097 and 2-10,100.01, currently at the existing statutory maximum of \$100 per distribution location regardless of the size. The nursery stock distributor license fee schedule also replaces the annual certification inspection fee of \$25 per location and \$5 per each additional acre charged growers under outright repeal of Section 2-1092. Nursery stock distributors that grow nursery stock would also be required to apply for certification inspection of Nebraska-grown stock, but would no longer be charged a separate inspection fee provided application for inspection is received by January 1, or prior to distribution for new licensees. Late applications for certification would be charged an inspection fee of actual costs as set forth in Section 11 of \$24 per hour and 42 cents per mile. The amendment to 2-1091.01 provides that the nursery stock distributor license expires on December 31 and the deadline for renewal is set for January 1. Additionally, applications for certification inspection and any associated inspection fee would accompany the license renewal application. Currently, annual license renewal for the licensure categories are set for different times of the year. Section 11 also sets forth fees charged for various voluntary certification and inspection

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services requested by the industry for which the department provides third-party verification services as authorized by Section 2-1091 and other sections within the act. The section also sets forth changes...or charges for regulatory reinspections which are currently imposed by statute as actual costs determined by rule and regulation. Statutory fee schedule for these services codifies existing schedules as imposed by regulation. LB68 makes a series of revisions to enforcement authorities exercised by the department including the following: The bill relocates to Section 11 charges for late fee payment currently found in Section 2-10,116.01. LB68 imposes an administrative surcharge of 25 percent of the delinquent amount for each month delinquent not to exceed 100 percent of the unpaid fee. The bill declares the fee to be for recovery of additional administrative expense in collecting the fee and directs late fees to be remitted to the program cash fund. Section 2-1091 of the act set forth general authorities that may be exercised in the administration and the enforcement of the act is amended by Section 8 to expressly authorize the issuance of quarantine certificates and licensure and to clarify that authority to enter into cooperative agreements includes harmonizing plans. Harmonizing plans, a term utilized in federal regulatory schemes the state participates in, is added as a new defined term by Section 5 of the bill. The maximum administrative fine that may be imposed for violations of the act as set forth in Section 2-10,103.02(1), as amended by Section 15 of the bill, is increased from \$500 to \$1,000 per violation, with violation defined as each action violating a distinct requirement of the act. Language regarding disposition of the fines is clarified to be consistent with its distribution according to Article VII, Section 5. Sections 2-10,103.04 pertaining to administrative process in disciplinary proceedings and actions is amended to clarify that the department's authority to issue notices and orders extends to any person violating the act. Currently, the department's authority is limited to licensees as the remedies are limited to license discipline. Provisions regarding elements to be included in notice of disciplinary proceedings relevant to only licensees is revised to generically require notice of potential actions that may be taken against the violator. A new section to the act inserted by Section 21 of the bill imposes a liability for costs incurred by the department in the enforcement of quarantines and withdrawal orders to the persons in possession of plants or in violation of the act. This section further declares the department is not liable for costs incurred by any person due to the department's actions in enforcement. That's the gist of what the bill does. I know we had no opposition in the hearing. The nursery folks...the horticulture folks are all on board with this and I would ask for your support and your yes vote on LB68. Thank you very much, Mr. President. [LB68]

SENATOR COASH: Thank you, Senator Schilz. As the Clerk has stated, there is an amendment from the Agriculture Committee. Senator Schilz, as Chair of the committee, you're recognized to open on AM333. [LB68]

SENATOR SCHILZ: Thank you, Mr. President and members of the body. The committee amendment addresses minor drafting errors. Section 21 of the bill as



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introduced was meant to replace Section 2-10,111 of current law, but the introduced version failed to outright repeal that section. The committee amendment relocates to Section 2-10,111 the provisions of Section 21 of the bill after striking the existing provisions of that section. This provides a more direct comparison of existing text to the proposed changes in the bill. The provisions of Section 21 inserted into Section 2-10,111 would more comprehensively than current law provide that costs incurred in the enforcement of the act are the responsibility of the violator. Current law limits this declaration to costs associated with withdrawal from distribution orders. This language is common in the programs administered by the department to remove any ambiguity that the violator is responsible for initiating actions to address violations in directly incurring compliance costs. Additionally, should a person default on this responsibility, any such costs incurred by the department are expressly recoverable by the department. Additionally, the state as represented by the department would not be liable to a violator for incidental costs or losses due to the regulatory action. The committee amendment also corrects an internal reference to the fee table provisions of Section 11 in the bill, and the correction is inserted on page 15, line 14, to be correctly referenced to authorizing section corresponding to the fee for quarantine compliance agreements. I would move the adoption of the committee amendments and advancement of the bill. Mr. President, thank you. [LB68]

SENATOR COASH: Thank you, Senator Schilz. Members, you've heard the opening to LB68 and the committee amendment. The floor is now open for debate. Senator Campbell, you're recognized. [LB68]

SENATOR CAMPBELL: Thank you, Mr. President and members of the Legislature. I have to tell you that I am sure if anyone in the Campbell family is watching this afternoon to this debate, they will be quaking in their shoes because it's well known that I have the brown thumb in the Campbell family. Our company is a nursery and landscape company started by my husband's grandfather 101 years ago, which we're very proud of. I will be brief in the sense that I want to support the bill and the underlying amendment. And as I told Senator Schilz, the industry certainly supports this, and all of us need to realize that we need a strong Ag Department as it is important to carry out the inspections of plant material, not only that which is grown in the state but that which comes into the state. It can be very dangerous to a number of our plants and trees across the state of Nebraska if we do not have a good, solid inspection program. And I appreciate all of the work that the Agriculture Committee and Senator Schilz has done to bring this bill forward to the Legislature and would strongly encourage your vote for the bill and the underlying amendment. Thank you, Mr. President. [LB68]

SENATOR COASH: Thank you, Senator Campbell. Seeing no other members wishing to speak, Senator Schilz, you're recognized to close on the committee amendment. [LB68]

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SENATOR SCHILZ: Thank you, Mr. President. As Senator Campbell said, I think that it really is important that we get this put into place. It's important that we have the ability to inspect, that the program has the ability to do what it needs to do and that's done here within this amendment. So I just vote for...I just appreciate your vote for this amendment. Thank you very much. [LB68]

SENATOR COASH: Thank you, Senator Schilz. Members, you've heard the closing to AM333 to LB68. The question for the body is, shall the committee amendment be adopted? All those in favor vote aye; all those opposed vote nay. Have all voted who wish? Record, Mr. Clerk. [LB68]

ASSISTANT CLERK: 26 ayes, 0 nays on the adoption of committee amendments, Mr. President. [LB68]

SENATOR COASH: The committee amendments are adopted. Returning to discussion on LB68. Seeing no members wishing to speak, Senator Schilz, you're recognized to close on the advancement of LB68. Senator Schilz waives closing. Members, the question for the body is, shall LB68 advance to E&R Initial? All those in favor vote aye; all those opposed vote nay. Have all voted who wish? Record, Mr. Clerk. [LB68]

CLERK: 28 ayes, 0 nays on the advancement of LB68, Mr. President. [LB68]

SENATOR COASH: LB68 does advance. Next item, Mr. Clerk. [LB68]

CLERK: LB205 by Senator Schumacher. (Read title.) Introduced on January 15, referred to Banking, Commerce and Insurance. The bill was advanced to General File. There are committee amendments, Mr. President. (AM431, Legislative Journal page 648.) [LB205]

SENATOR COASH: Thank you, Mr. Clerk. Senator Schumacher, you're recognized to open on LB205. [LB205]

SENATOR SCHUMACHER: Thank you, Mr. President and members of the body. LB205 was advanced 8-0 by the Banking, Commerce and Insurance Committee and carries the priority of that committee. It deals with a little understood and a little known problem for entrepreneurs in Nebraska. It is a result of many years of working in that community in Nebraska myself and also fortuitously a need that developed and was observed by the Department of Banking in regard to community projects where a small community was trying to organize money in order to save a local business and in the process, tripping over some rather complex securities laws which were intended for a much broader and much larger kind of situation. Here's the problem. Let's say that you are a young "entrepreneurish" person, well-educated, thirty-some years old, got a good job, and maybe a little equity in your house and car and trying to make it in the

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American way. But you have an idea and the idea is kind of a long shot, but maybe not to do some business-type activity or something that's never been done before in an entrepreneurial fashion. And as a practical matter, you need \$100,000, \$200,000 to make the thing go, to buy the equipment, to make the investment, to hire the initial employees to do something of that nature. And immediately thereupon, no matter how good your idea, you're confronted with a situation. And that situation is, where do you come up with the money? Well, assuming that your money has been going into your house payments up to that point, you probably don't have any. In the usual case, there's no big estate in your family to fall back on. Your family may not have the kind of money that they're willing to loan to you in that situation. So you think, well, maybe I can go to the VA, if you're a veteran, or the SPA or to the good old local banker and borrow the money. But, gee, the first thing those folks want to do is they want you to sign a personal guarantee and say that if I don't have the money, if the business doesn't work quite right, you can take what little equity I have in my house, my car, whatever, and I will pay you back or go to the bankruptcy courts. And about that time, your spouse sobers you up a little bit and says, no, honey, I don't think we're going to do that. And many, many good ideas go away by that process. The other thing you could do is go out and try to find some folks with money in your community and share...sell them a share of your idea. What the securities book says, selling a security in your business, selling stock. But the minute you do that, you hit a very complex set of regulations called the Nebraska Securities Act. And those require an expense of accountant, expense of lawyers, they carry special type of insurance, and pretty soon that bill looks pretty big, may even be bigger than what it would take to get your business started. And it's designed for large, large businesses to comply with. Raising millions of dollars for a start up, not your little \$100,000, \$200,000 business that you need to start. Similarly...and it would be nice if you could draw upon some of that community money because generally when those people have a little money, invest in your business, they put a little soul into it, too, and make sure that you help succeed, and do what they can to advise you of what is smart and what is good business practices. Simultaneously, take the situation of a small community who is desperately wanting to hang on to--and I understand this is pretty close to actual facts--the clothing store on main street. The business isn't doing well, it can't afford to pay the debt, it looks like it's going to go under and as most communities know, once a business on main street goes under, it has to close its doors and it doesn't reopen. But you have a few people in the community who want to invest in that business, who want to get together and pool their money and come up with a couple hundred thousand dollars to spruce the thing up and keep it open. But there again, they hit that securities law and, in fact, tripped across it in the case cited by the Department of Banking in the most recent case and they had real difficulty undoing the situation even though after some expense were able to do so. What this particular bill does, it says, okay, for small things under \$250,000, you can do this in a short fashion. You can file with the department a paper telling them what you're going to do so and providing you've got a clean record and haven't been involved in any stock or fraud shenanigans in the past, you can go ahead and under the requirement

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set forth in the bill, issue stock and sell shares in this business to the folks in the community. Requires at least 80 percent of the money be invested back in Nebraska and the sales be only to Nebraskans and the Department of Banking be kept apprised of what is going along every step of the way. It also addresses a bothersome and...a provision of the Securities Act which says that right now in these large offerings, if you negligently, even though innocently, fail to say something in connection with the issuance of stock in your business and the business ends up going bad, that you're liable to return the money even though you really didn't mean to cheat anybody and it was just an honest error and analysis that you didn't know of a snake that was in the grass in the future of your business. This requires that for you to be liable for return of the money to the investor, you had to actually intend to cheat them. It's a big step forward, I think, for entrepreneurs. It's an opportunity for folks in the community that have a little money to organize that money on an equity basis without putting somebody in a position that their home is on the line or their car is on the line or that they would have to go to the bankruptcy if the business goes under. It's small enough in scope that it addresses basically just small businesses and a way for entrepreneurs to put together the kind of money it takes to do the first two, three years of operation of a business in which an entrepreneurial activity will either succeed or will fail. And it makes possible a spirit of investment and an ability to take risk that probably will come out okay but which you wouldn't take if you had to actually take the complete fall yourself if it went south. I think it will be a good thing for Nebraska. I think that's the reason it was advanced by the Banking Committee with its priority, and it costs no money to anyone. I think there's a minor \$6,000 fiscal note or something like that, but it's basically, costs us nothing and it empowers people with money to help people with ideas create jobs and hopefully economic activity in Nebraska. Thank you. [LB205]

SENATOR MCGILL PRESIDING

SENATOR MCGILL: Thank you, Senator Schumacher. As the Clerk stated, there are amendments from the Banking, Commerce and Insurance Committee. Senator Gloor, as Chair of the committee, you are recognized to open on the amendments. [LB205]

SENATOR GLOOR: Thank you, Madam President. The committee amendments were offered by Senator Schumacher and are the outgrowth of a number of discussions I know that he had with our Department of Banking and Finance and I give him credit for working hard on this bill. I think it's an important bill. The committee amendments would restructure and enhance the language that would allow for a new small offering transaction that would be exempt from registration under the Securities Act of Nebraska. There are no shortcuts, by the way, in this bill and these amendments make sure there are no shortcuts when it comes to something as important as securities. The new transaction would have to be in Nebraska. It would be by a Nebraska issuer and it would have to be sold solely to Nebraska residents. The proceeds from sales of securities in any two-year period could not exceed \$250,000 and at least 80 percent of

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the proceeds would have to be used in Nebraska. No commission could be paid except to a registered agent of a registered broker-dealer. The persons connected to the issuer cannot have been convicted of a state or federal securities law violation; cannot have been found to have engaged in fraud or deceit in state or federal administrator or criminal proceedings; and, of course, the issuer must file a notice. These filings are, in fact, extremely important with the Department of Banking and so they must file a notice with the information that would be required within this bill. The offeree must receive a written disclosure statement with information required by the bill. The purchaser must sign a subscription agreement. The issuer must file with the Department of Banking a statement showing the number of investors, the total dollar amount raised, and the use of the offering proceeds. The committee amendments also address concerns about the liability of them issuer might face for a misstatement of material fact or an omission of material fact. Currently, under securities statutes, the offer can be subject to fines imposed by the Director of Banking in an amount not to exceed \$25,000 or the offerer can be sued in civil action for recovery of consideration paid, interest, and attorney's fees. Because of the small amount of investment we're talking about here, because this is an entrepreneur's type bill, the committee amendments would provide that in the case of these small offerings there would be no liability for a fine by the director and no civil liability in court unless the statement or omission was made with the intent to defraud or mislead. And in the case of the civil action, in this case the burden of proof would be on the claimant. Senator Schumacher has suggested that people might avoid being part of this kind of small offering if they're afraid of potential liability for an unintended misstatement of a material fact or an unintentional admission of the material fact. The committee amendments would strike the appropriate balance we think in order to encourage these small offerings by entrepreneurs. Those are the committee amendments and I would urge their adoption. Thank you, members, and thank you, Madam Chair. [LB205]

SENATOR MCGILL: Thank you, Senator Gloor. The floor is now open for debate. Senator Crawford, you are recognized. [LB205]

SENATOR CRAWFORD: Thank you, Madam President. I rise in support of the committee amendments and LB205. I serve on the Banking, Commerce and Insurance Committee and this bill was one of my favorites that came across through the committee and I just wanted to stand in support of the bill. I think many of us know that most of the jobs that are created are created through small business and many of us have an interest in making sure that we're creating rules of the game that allow small businesses to succeed and thrive. And I believe that that is what this bill is about is providing a tool that an entrepreneur can use and I am very...I was also pleased to see that the idea for the bill really came out of Senator Schumacher's experience as a small business entrepreneur and out of his experience counseling people...as legal counsel, excuse me, for small business entrepreneurs. And so, they really saw, well, what's something that's keeping this from happening and how can we address that and provide

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a better tool to allow people with interesting ideas to set up small businesses across the state of Nebraska, and I believe that LB205 as amended does that. Also great, as noted earlier, but a nice...another important use of this tool is that it can be used by rural communities who want to band together, save a grocery store, or set up some kind of enterprise. It appears that in some communities when that has been attempted, well-meaning people in the community have unintentionally violated the Securities Act and so this provides guidance and a tool for those communities to use for those kinds of enterprises as well. So it's good for small business. I think it's good for our small communities as well, and I stand in support of the committee amendment and the bill itself. Thank you. [LB205]

SENATOR MCGILL: Thank you, Senator Crawford. Seeing no other senators in the queue, Senator Gloor, you're recognized to close on the committee amendment. Senator Gloor waives closing. The question is, shall the committee amendments to LB205 be adopted? All those in favor vote aye; all those opposed vote nay. Have all those who voted...wish to have voted? Record, Mr. Clerk. [LB205]

CLERK: 27 ayes, 0 nays, Madam President, on adoption of committee amendments. [LB205]

SENATOR MCGILL: We return to debate on LB205. Senator Nelson, you are recognized. [LB205]

SENATOR NELSON: Thank you, Madam President and members of the body. I didn't quite get my light on in time to address this to Senator Gloor, but I think if he will entertain a couple of questions, I would...if he will yield. [LB205]

SENATOR MCGILL: Senator Gloor, would you yield? [LB205]

SENATOR GLOOR: Certainly. [LB205]

SENATOR NELSON: Just a couple questions. I am in support of this. I think it's a good idea. I notice in...if you look at the explanation of amendments on the statement...or the committee statement, you...whereas, the original bill had said the proceeds of any three-year period do not exceed \$250,000, you reduced it to a two-year period. Could you comment on that? [LB205]

SENATOR GLOOR: That might be a better comment for Senator Schumacher. [LB205]

SENATOR NELSON: All right. [LB205]

SENATOR GLOOR: I think this came about as a result of conversations with the Department of Banking... [LB205]

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SENATOR NELSON: Okay. [LB205]

SENATOR GLOOR: ...and their comfort level and because of that we included that in the amendment. It came up, I think, after the committee hearing. [LB205]

SENATOR NELSON: All right. And then on (b) there, in the explanation of amendments, no commission to be paid except to a registered agent. So, apparently someone that wants to issue the stock they can't do it themselves on their desktop or anything, they'd have to go through a registered agent to do this? [LB205]

SENATOR GLOOR: That's correct. [LB205]

SENATOR NELSON: Okay. Thank... [LB205]

SENATOR GLOOR: Senator Schumacher had a sharp reaction to that. You might want to direct that question to Senator Schumacher. [LB205]

SENATOR NELSON: All right. Thank you, Senator Gloor. Would Senator Schumacher yield? [LB205]

SENATOR MCGILL: Senator Schumacher, would you yield? [LB205]

SENATOR SCHUMACHER: Yes, I would. [LB205]

SENATOR NELSON: Well, with regard to my first question there as far as \$250,000 over a two-year period, you had originally gone with a three-year period. What was the thinking on that? [LB205]

SENATOR SCHUMACHER: The Banking Department felt that I was being too conservative. [LB205]

SENATOR HANSEN: All right. And the Banking Department, I see John Munn spoke as a proponent of the bill then, is that correct? [LB205]

SENATOR SCHUMACHER: That's correct. It actually helped solve a problem that they observed in the situations where people get together in a small community to try to save a business. [LB205]

SENATOR HANSEN: All right. Then did you have comments on the fact that you needed to engage a state or a registered broker-dealer? [LB205]

SENATOR SCHUMACHER: You do not have to engage a registered broker. You could

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do it right, for example, through an attorney, but if you pay a broker to sell it, or someone to sell it, it has to be a registered broker. [LB205]

SENATOR HANSEN: Can you handle the sales yourself without using a broker? [LB205]

SENATOR SCHUMACHER: Well, you can sell it yourself, you just can't pay somebody to run around the country selling it. [LB205]

SENATOR HANSEN: All right. All right. Thank you, Senator Schumacher. Thank you, Madam President. [LB205]

SENATOR MCGILL: Thank you, Senator Nelson. Senator Price, you are recognized. [LB205]

SENATOR PRICE: Thank you, Madam President. Would Senator Schumacher yield to a question? [LB205]

SENATOR MCGILL: Senator Schumacher, would you yield? [LB205]

SENATOR SCHUMACHER: Yes. [LB205]

SENATOR PRICE: Thank you, Senator Schumacher. Too many years in Germany, I keep wanting to say "Schumocker." In looking in the bill before us, or AM431, I should say, am I in the right place here, Senator Schumacher? I wanted to ask about within this legislation there seemed to be some prescribed information on who can't be involved, like people who have been in some type of...been fraudulent or have a felony, is all this language captured somewhere else in our statutes? Is this the normal business or the normal rules? [LB205]

SENATOR SCHUMACHER: Basically this language takes into account a history of the Securities Acts. One reason that the federal Securities Acts, these things came into being was back in the '20s and '30s, the 1920s and 1930s, there were folks that were selling oil wells without oil at the bottom of them and all kinds of things like that. And so these prohibitions came into being and what we learned from that period is that people who were inclined to be oil well salesmen did it over and over again. So what this does is, it says, look it, if you ever run into trouble doing this, you're not going to do it again. [LB205]

SENATOR PRICE: So the short answer is, this is how this is done in other areas of the statute. [LB205]

SENATOR SCHUMACHER: Correct. [LB205]



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SENATOR PRICE: Thank you very much. Thank you, Madam President. [LB205]

SENATOR MCGILL: Thank you, Senator Price. Seeing no other lights on, Senator Schumacher, you're recognized to close on your bill. [LB205]

SENATOR SCHUMACHER: Thank you, Madam President. This is a very simple bill. It facilitates the organization of capital in a community. It helps entrepreneurs and it doesn't cost taxpayers anything. Thank you. [LB205]

SENATOR MCGILL: Thank you, Senator Schumacher. The question is the advancement of LB205 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have all voted who wish to? Record, Mr. Clerk. [LB205]

CLERK: 26 ayes, 0 nays, Madam President, on the advancement of LB205. [LB205]

SENATOR MCGILL: The bill advances. Mr. Clerk, we all will proceed to General File, LB341. [LB205 LB341]

CLERK: LB341 by Senator Wightman. (Read title.) Introduced on January 18 of this year, referred to the Revenue Committee for public hearing. The bill was advanced to General File. There are Revenue Committee amendments, Madam President. (AM564, Legislative Journal page 712.) [LB341]

SENATOR MCGILL: Thank you, Mr. Clerk. Senator Wightman, you are recognized to open on LB341. [LB341]

SENATOR WIGHTMAN: Thank you, Madam President, members of the body. LB341 is the product of an interim study conducted pursuant to LR514. LR514 called for a comprehensive review and update of the laws governing the process for the sale of real property for delinquent property taxes. The local political subdivisions such as counties and school districts rely on property tax revenues to fund their operations. To collect these taxes the county conducts an annual sale of tax certificates to raise the money necessary to operate local government. The tax certificates represent the power of the county to collect property taxes for local government operations and are a lien on the real estate. The property itself remains in the hands of the property owner who may redeem the tax sale certificate by buying it from the investor in the tax sale certificate. And, of course, this only takes place in the event the taxes haven't been paid for up to a year. If the taxes are unpaid for three years, the law provides for the holder of the tax sale certificates to use the formal judicial process to foreclose on the property to secure title to the property or more commonly obtain a treasurer's tax deed to the property. LB370 passed last year will require additional procedural safeguards for owners who are losing their property under the treasurer's tax deed process. In summary, LB341 is

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intended to update and streamline the process for the collection of delinquent property taxes and does the following: LB341 eliminates the bid-down process. Under current law, the bidder wins the auction if they pay all of the taxes and bids down the percentage of ownership in the property. The attractive return on the investment is causing bidders to bid for fractional ownership of the underlying property. This complicates the eventual sale of the property, the process to rehabilitate the property, and the ability to turn it back to the property tax rolls. LB341 sets a uniform procedure for round robin format sales in all 93 counties if a round robin format is used. LB341 requires bidders to register with the county treasurer prior to participating. It requires a corporation organized under another state's law, is called a foreign corporation, to provide proof that it has an agent on file with the Nebraska Secretary of State who can be served with process if a lawsuit is required, and requires a \$25 nonrefundable registration fee. LB341 changes obsolete language such as sale book for record. The bill also updates the fees charged for the issuance or transfer of tax certificates from \$10 to \$20 to help cover the cost of the tax sale process and expressly makes the fees nonrefundable. LB341 further streamlines the treasurer's tax deed process by requiring personal or residential service only on owner-occupied property, eliminates a redundant notice sent by certified mail concerning owner-occupied property, but requires additional information be provided in the initial notice. Notice to owners of all types of property is given by certified mail, return receipt requested. LB341 requires the sheriff to provide additional information concerning how and to whom the notice of a pending issuance of a treasurer's tax deed was conducted by the sheriff. This requirement applies only to owner-occupied property. LB341 also requires a tax sale certificate to be issued for each parcel of property instead of combining several parcels on a single certificate. The bill also makes needed changes to update the process used to sell property that must be sold to collect delinquent property taxes that fund the operation of local political subdivisions. I would urge the members to advance LB341 with the committee amendment, which are technical in nature. Thank you. [LB341]

SENATOR MCGILL: Thank you, Senator Wightman. As the Clerk stated, there are amendments from the Revenue Committee. Senator Hadley, you are recognized as Chair of that committee to open on the amendments. [LB341]

SENATOR HADLEY: Ms. President, members of the body, the Revenue Committee does have an amendment, AM564 to LB341 and as Senator Wightman said, they are technical in nature. There's three of them. The first one is that each tax lien shall be shown on a single certificate. In the past, it's my understanding that they would use different liens and they would be put on the same certificate. This means that each tax lien shall be shown on a single certificate. This will help the counties in their process of handling tax liens. Secondly, the redemption of the certificate will require payment of fees. That, in essence, is the fees will be paid by the person who owes the taxes. If they want to redeem the tax certificate, they have to pay the fees, which I think is fair and just. And thirdly, time lines for tax deeds for owner-occupied properties are prescribed

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by new language. We changed the time lines on some of the processes that are in this type of situation. With that, I would ask that you approve the amendment and the underlying bill. And with that, I would yield Senator Wightman any further time if he would like it. [LB341]

SENATOR MCGILL: Senator Wightman, would you like that time? [LB341]

SENATOR WIGHTMAN: I'll pass at this time. [LB341]

SENATOR MCGILL: Thank you, Senators. The floor is open for debate. Senator Wallman, you're recognized. [LB341]

SENATOR WALLMAN: Thank you, Mr. President...Madam President. Would Senator Schumacher yield to a question? [LB341]

SENATOR MCGILL: Senator Schumacher, would you yield? [LB341]

SENATOR SCHUMACHER: Yes. [LB341]

SENATOR WALLMAN: Now, this round robin thing where you pick out numbers, what if there's too many people...more people than there are tickets, how do you handle that? [LB341]

SENATOR SCHUMACHER: I am actually not familiar with the round robin process. We did it in a simpler way twenty years ago in Platte County, so I personally have no experience of that and wouldn't want to answer. (Laugh) [LB341]

SENATOR WALLMAN: I'm sorry. Would Senator Wightman have some information on that? Would you yield? [LB341]

SENATOR MCGILL: Senator Wightman, would you yield? [LB341]

SENATOR WIGHTMAN: Yes, I will. [LB341]

SENATOR WALLMAN: This round robin thing, if you have more people there than you have tickets for sale...I mean, property tickets, how is that handled? [LB341]

SENATOR WIGHTMAN: Well, it's done on a drawing basis and so everybody gets the same opportunity. I don't know that that ever happens. Usually there's some that nobody wants. If somebody has one that he wants, I guess he can take one that nobody is willing to bid on because some of those properties are probably worth less than the unpaid taxes. [LB341]

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SENATOR WALLMAN: And can the city or municipalities then acquire this property as well? Because some of this stuff has, you know, falling down buildings, nobody wants them. And it gets hard to find the owner; it's a phantom ownership under this. I noticed some LLCs testified in neutral. Was that their problem? [LB341]

SENATOR WIGHTMAN: I'm not sure why they testified neutral, but certainly the county or city can buy these properties for taxes. [LB341]

SENATOR WALLMAN: Yeah, thank you. And that is a problem in rural America that gets something on the tax rolls but if the county takes it over, it will not be on the tax rolls. And so, thank you, Madam President. [LB341]

SENATOR MCGILL: Thank you, Senator Wallman. Seeing no other lights in the queue, Senator Hadley, you're recognized to close on the amendment. Senator Hadley waives closing. The question is, shall the committee amendments to LB341 be adopted? All those in favor vote aye; all those opposed vote nay. Have all voted who wish to? Record, Mr. Clerk. [LB341]

CLERK: 28 ayes, 0 nays, Madam President, on adoption of committee amendments. [LB341]

SENATOR MCGILL: The amendment is adopted. Discussion on the advancement of LB341 to E&R Initial. Seeing no lights, Senator Wightman, you're recognized to close on your bill. [LB341]

SENATOR WIGHTMAN: Thank you, Madam President. As I probably didn't say earlier, this was done at the request of the county officials. They thought that this would make a much better method of selling property taxes to take out some of the things that were a problem in their current procedure. I think that it will do that and would ask for your support for LB341. [LB341]

SENATOR MCGILL: Thank you, Senator Wightman. The question is the advancement of LB341 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have all voted who wish to? Record, Mr. Clerk. [LB341]

CLERK: 32 ayes, 0 nays on the advancement, Madam President. [LB341]

SENATOR MCGILL: The bill advances. Mr. Clerk, we will proceed to General File, LB269. [LB341 LB269]

CLERK: LB269, a bill by Senator Campbell. (Read title.) The bill was introduced on January 16, referred to Health and Human Services Committee, advanced to General File. I do have committee amendments, Madam President. (AM678, Legislative Journal

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page 825.) [LB269]

SENATOR MCGILL: Thank you, Mr. Clerk. Senator Campbell, you are recognized to open on LB269. [LB269]

SENATOR CAMPBELL: Thank you, Madam President and members of the Legislature. The intent of LB269 is to address child welfare issues revealed by reports and studies completed as a result of the child welfare legislation enacted last session and the LR37 study conducted by the Health and Human Services. Colleagues, what we have taken in this bill and in the ensuing amendments is trying to go back and refine what we have learned over this past year. The first change is LB269 makes changes to Nebraska's Children's Commission. It provides that the CEO of the Department of Health and Human Services and the director of Children and Family Services become nonvoting. They have been voting this year, but on some issues in which they felt there might be a conflict they were...they chose to abstain or not vote. I have talked with both Mr. Pristow and Mr. Winterer and they are fine with this and understand that they're probably more comfortable in a nonvoting position. Also, it adds members to the Children's Commission. It adds the Inspector General of Nebraska Child Welfare and it adds the executive director of the Foster Care Review Office. And, Senator Christensen, this is for your ears. I talked to you about this the other day. I do not know where he is, but this is a note. It moves the office of the commission from within the Department of Health and Human Services to the Foster Care Review Office. The department has gone out of their way to make the Children's Commission welcome and to get them a good start. But I think all of us recognize they needed to step away and have some sense of independence from the department, and so they talked to the Foster Care Review Office and they were more than willing to share that. And it provides for the hiring of a policy analyst to assist the commission with child welfare and juvenile justice public policy research and analysis. We have given them a great list of duties, we have continued to add more policy questions we want them to research, and it was felt that this analyst would help them because at this point the commission has only one paid staff person who acts more as an administrative aid. LB269 takes actions to increase Nebraska's Title IV-E funding. This is the funding that comes from the federal government that presently pays for foster care inside the home, and we are trying to move away from that...or we're trying to move away from outside of the home, sorry, and more services in home. So, first, it increases the reimbursement Title IV-E administration costs for foster care candidates, children who are still in their homes but who are receiving services to prevent placement. We can do that if we apply with the Title IV-E waiver. Secondly, according to federal guidelines and in order to receive Title IV-E reimbursement, children must be placed in licensed placements. So LB820, the final report stated that the majority, approximately 52 percent, of children in Nebraska are ineligible for Title IV-E reimbursement due to the child's placement in an unlicensed home. So LB269 requires the department to adopt and promulgate rules and regs for new foster home licensing requirements that ensure children's safety, health, and

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well-being but minimizes the use of licensing mandates for nonsafety issues. This will help facilitate some of the homes who will say, I'll be willing to be licensed if it's a little less onerous. Third, Nebraska should submit allowable maintenance costs for reimbursement. There are certain maintenance costs--transportation, school supplies, clothing--that we are not now doing and could do. The Medicaid analysis report recommended that Nebraska pursue Title IV-E claiming for services provided through the Nebraska Juvenile Service Delivery Project. This is the project that Senator Krist and Senator Ashford have championed not only in Douglas County but in the 11th and 12th Judicial Districts and western Nebraska. So it's important, if at all possible, that we try to include that project in our Title IV funding. Finally, LB269 makes some basic requirements regarding child welfare contracting, and in that contracting it requires that the child welfare provider show financial stability. We had a great problem with that last year, if you remember, where we had some of the lead agencies who could not fulfill their financial commitments to agencies, and the Legislature finally stepped in and made sure that those providers were whole. It prohibits, in those contracts, noncompete clauses in employee contracts to ensure flexibility and expansion where needed, and services are then available. We have had some concern that there are agencies that might have a noncompete. That is very difficult in this field, and we would like to see it prohibited. Finally, in LB269, the department will implement a formal grievance process for families included and involved in the child welfare or juvenile justice system. And with that, Madam President, that concludes my opening for LB269. [LB269]

SENATOR MCGILL: Thank you, Senator Campbell. As the Clerk stated, there are amendments from the Health and Human Services Committee. Senator Campbell, as the Chair of that committee, you are recognized to open on those amendments. [LB269]

SENATOR CAMPBELL: Colleagues, I'm going to now cover changes that we made to the bill based on what we heard in the hearings or additional information that came to us. So the technical changes in this amendment would correct the title of the Probation Program Cash Fund. It would add that the department will work in conjunction with the Administrative Office of Probation to develop that policy that I talked about on the Douglas County and judicial district project. It removes the October 1, 2013, deadline for development of rules and regulations regarding the policy determination for foster care home licensing--and that really kind of fits with Senator Coash's bill that we talked about on kinship and relative care--and it removes the ability for the Inspector General or the Foster Care Review Office director to name a designee to the Children's Commission. In other words, the people that hold that office need to be there. We've also added a very important representative to the Children's Commission from a tribal representative. And I want to thank Senator Bloomfield for a great hearing this summer on some of those issues, and it made us aware and, therefore, we added that person to the commission. It also provides that the Inspector General for the Nebraska Child Welfare is an ex officio, nonvoting member--again, separation of the Nebraska Constitution--is added as a member to the Child Death Review Team. We do have such a team in this

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state. I think Senator Howard has a bill that also talks about that team. And we provide information regarding the resolution of grievances, so as that grievance process is set up for families the Inspector General would receive reports. Additionally, the committee amendment removes the requirement for joint training--and this is very important--of caseworkers and on-site, unannounced verification. Colleagues, that was really the big chunk of money, in terms of what would drive the cost of this bill up, and we also felt that it was far too intricate and probably we should start with an interim study and then bring back any recommendations. Finally, the committee amendment requires determination regarding eligibility for Medicaid coverage for children who are state wards. These determinations will be made, and I will cover some of that in the next amendment. Thank you, Madam President. [LB269]

SENATOR MCGILL: Thank you, Senator Campbell. Mr. Clerk, there is an amendment to the committee amendment. [LB269]

CLERK: Madam President, you're correct. Senator Campbell would move to amend the committee amendments with AM922. (Legislative Journal page 943.) [LB269]

SENATOR MCGILL: Thank you, Mr. Clerk. Senator Campbell, you are once again recognized to open on your amendment to the amendments. [LB269]

SENATOR CAMPBELL: Thank you. What the intent of the Health and Human Services Committee was in this amendment was to ensure that, as a child or youth is in the foster care system, in the custody as a state ward, that as the reviews are done by the court, by the agencies that they are with, they continually update and ensure that if the young person is eligible for Medicaid that they have that ability to apply for that and to stay. There is only one agency in the state who can okay eligibility for Medicaid, and that is the department, the Division of Medicaid. And so we are working in this amendment with language that would work in tandem with what the Medicaid director is trying to achieve and what we want to look at. And it's important here that it clarifies on the first line--and this is if you're following--is an amendment that the department, with the court assent, regarding medical care for child will include applying for Medicaid. No one other than the Office (sic) of Medicaid can declare someone eligible. The Medicaid Division was concerned that the language of the amendment indicated that the court was making that determination, which would not be allowed by federal law, so we needed to clarify that language. And secondly, the Medicaid Division requested clarification of services required by the department. So we were very careful and inserted language to say that, "coverage for health care and related services under medical assistance," and that means Medicaid, "in accordance with Section 68-911." We continue to work with the Division of Medicaid, and we may have a few more refinements of the language. But we want to make sure that what's in the bill is very accurate. Colleagues, state wards do not automatically...are not automatically eligible for Medicaid. Now that process, that application has to be put together and is reviewed. This language ensures that there is

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constant review of that in order to get a young person, as they are going through the foster care system, ready. And with that, Madam President, that concludes my opening for this amendment. Thank you. [LB269]

SENATOR MCGILL: Thank you, Senator Campbell. The floor is now open for debate. Senator Coash, you are recognized. [LB269]

SENATOR COASH: Thank you, Madam President. I am a member of the Nebraska Children's Commission. I sit on that commission as a legislative representative, along with Senator Campbell and a member of the Appropriations Committee. And I'm not sure who that is at this time, but we'll let Senator Campbell clarify that at her next time at the mike. But I wanted to take an opportunity to share my experiences serving on that committee and what that's doing to move the child welfare system forward across the state. First of all, we've got the right people on that committee. We've got people from all aspects of serving children, from parents to advocates to providers to people who work with children through the HHS system, people who work with children through foster care, who work with children through the court system, people who work with their own children and have experience with the system. So we've got a good mix of people in there, and they're all working very hard to give the Legislature some direction. And there's a couple of things that have been really important as this process has gone, and I agree 100 percent with the changes that Senator Campbell and the committee are proposing through LB269. First of all, this is a commission that was given birth by the Legislature, so we get to decide, as a body, the direction that the commission goes. And I think that's healthy from the standpoint of we get to set the policy but we always have to punt things to the executive branch to execute it. And so the commission, in a large part, is our voice as legislators into the direction of policy. It's how our constituents get to have voice into the direction of child welfare in our state, and that is certainly a good thing. One of the things that LB269 does is it removes...it further separates that distinction by moving the office from the executive branch over to the Foster Care Review Office, which is also given birth by the Legislature. I think that's appropriate. And it may seem like, well, we're just moving offices. But it sends a message, and it's an important thing to note that we are in charge of that commission. We gave authority to that commission, and then they give feedback back to us. Their role...and maybe I shouldn't say we're in charge of the commission. Maybe that's too strong of a word. They are responsive to the Legislature as the Legislature is also responsive to the commission. And one of the things that LB269 is doing is it's moving the office, and it's moving the CEO to a nonvoting member; and there is a reason for that, and Senator Campbell may have touched on that during her opening. But when you go to these commission meetings, some of the initiatives cost money, so the CEO has to sit there and say, well, I can't vote on that initiative. And there's a reason for that, and that's usually tied to money. The department is part of this commission, and rightfully so. They have to inform the commission, they have to inform the Legislature how policy decisions that we make and the commission recommends would be carried out, and that's an



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important, important thing. The commission is moving forward. They work very hard. They come together frequently. I can tell you that that first report that was due at the end of last year took a tremendous amount of effort by all people involved, and we got it done. And we're going to continue... [LB269]

SENATOR MCGILL: One minute. [LB269]

SENATOR COASH: Thank you, Madam President. We're going to continue this work. And what LB269 and all the amendments do is they help clarify the work. They do add some things to it, and that's why we've got some resources to do that. Policy research that is part of this bill is really going to move the commission forward, and so I really appreciate that part being in the bill and I would urge the body's adoption of the underlying amendments and the bill. Thank you, Madam President. [LB269]

SENATOR MCGILL: Thank you, Senator Coash. Senator Kintner, you are recognized. [LB269]

SENATOR KINTNER: Madam President, thank you very much. Boy, this stuff is mind-numbing, absolutely mind-numbing, the bureaucracy that we've created here, to expect a citizen to look at this and try to figure it out. I can't even figure it out. So we've got that LB269 moves the office of the commission from within the chief executive of the Department of Health and Human Services--if you're having trouble sleeping at home, stick with me, folks, I've got a cure--to the Foster Care Review Office. Additionally, the bill provides for the hiring of a policy analyst to assist the commission with information and child welfare and juvenile justice public policy research and analysis. Well, I feel better now. And we keep going down through this thing. And I'm looking at...as I'm rolling this down through this, I've got a good three inches of straight print. Get to the next paragraph, "Second, in order to receive Title IV-E reimbursement, children must be placed in a licensed placement in accordance with ACF regulations," whatever that is, and it goes on and on and on and on. And we've created it. We've created this incredibly large, gigantic bureaucracy. Very few people understand it, although I think Chairman Campbell understands it. And to try to go down through this, we've got a fourth one here. "Fourth, the Medicaid Analysis report recommended that Nebraska pursue Title IV-E claiming for services provided through," on and on and on and on. I've got to tell you, I am just sickened by this absolutely, incredibly large bureaucracy we've created, and we're expected to understand it and to legislate and try to fix it. And we tweak it yearly and tweak it some more, spend a little more money, hire a few more bureaucrats, shift a little more money, and hopefully we're helping someone, somewhere. I just wanted to point out that I'm just...this is absolutely mind-numbing to try to digest and understand all this. But I would like to yield the rest of my time to Chairman Campbell. Maybe she can make some sense of it. [LB269]

SENATOR MCGILL: Senator Campbell, you have 2 minutes and 37 seconds. [LB269]

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SENATOR CAMPBELL: Thank you, Madam President and Senator Kintner. I realize that for our first-year senators this is difficult. I recognize that. The senators that were here last year recognized that we spent a year studying the system through LR37, and then last year we dealt with the problems that we had found in the privatization model that had been instituted. And so much of the background, Senator Kintner, is in LR37 and is in the five bills that we passed last year. And much of the language here is also in responsive to the federal regulations that we follow in order to draw down those Title IV-E money. We generally created the citizens...Children's Commission, which represents every phase of the child welfare system on the Children's Commission, and gave them a number of tasks so that we would have representatives from across the state of Nebraska working on the child welfare system and being a voice for it. So I can appreciate that it is difficult; but the steps go way back, and it's meant to be a very systematized approach to how we can improve our child welfare system. So I hope that touches a little bit on the questions that you had. Thank you, Madam President. [LB269]

SENATOR MCGILL: Thank you, Senator Campbell. Senator Krist, you are recognized. [LB269]

SENATOR KRIST: Thank you, Madam President, and good afternoon, colleagues, and good afternoon, Nebraska. Senator Campbell did a wonderful job of recapping the events that probably would bring the structure into focus for Senator Kintner and many folks that were not exposed last year to the Department of Health and Human Services' and the administration's wasting of nearly \$100 million involved with child welfare, the foster care system, privatization, reducing the infrastructure around the state to shambles, and the action that had to happen. But if you've got a pen and a piece of paper, I'm going to give you a few that you can review, and you can bring yourself up to speed on where we are and why this commission exists. Last year, the associated bills were: LB985, transfer the JJ; LB820, foster care reform; LB821, Nebraska Children's Commission formation and the Department of Children's Services reformatting; LB1160, DHHS individual (sic) systems; LB901, this was the DD waiting list; LB1072, the claims bill; LB825, ACCESSNebraska, which is still in disarray. When you review those seven bills, you can also take a look at LB95, which is the pilot program established in Douglas County and also the 11th and the 12th Judiciary District, which is going to be expanded yet again, I think, with LB561, if we review it and pass it this year. It is a long list of bureaucratic inventions that are meant to help a huge department--the Department of Health and Human Services, which is arguably too big--to carry on the function that they do...that have a budget the size of most South American countries that money was being shifted back and forth between subprograms so that it could not be tracked. It's taken this kind of oversight to try to bring that focus back to that department, this state, and to this Legislature because, again, as I like to stand on my soapbox and say, we legislate, we appropriate, and then we apply the oversight to make sure that the money and the execution is going where it needs to be. I hope that's a gentle review of those

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things that we have come through and again, for those of you who weren't here last year, a good history lesson in terms of going forward, because in this term-limited environment that we live in, no joke intended, continuity sometimes goes out the window. And it is up to us to carry on and to pass on to the freshman who come in the kind of things that we have gone through and the intensity and continuity that is there. Thank you for your time. Thanks, Ms. President. [LB269 LB561]

SENATOR MCGILL: Thank you, Senator Krist. Senator Bloomfield, you are recognized. [LB269]

SENATOR BLOOMFIELD: Thank you, Madam President. I would like to encourage Senator Kintner, sometime in his next six years here or seven years here, to apply to serve on the Health and Human Services Committee. Senator Watermeier, Senator Howard, and Senator Crawford have my admiration for struggling through that committee their freshman year. I had that opportunity also. You learn many things you don't want to learn when you serve on that committee. LR37, again, for those who don't know it, was an effort by the HHS Committee to get ahead of some of this stuff. We've held hearings across the state, from Scottsbluff to Omaha, Norfolk to Lincoln, I think, five or six different hearings where the public was brought in, which is the one thing that gives me hope for our tax commission that we're going to hopefully send out to study the taxes. It can be done in one summer. We did it. It doesn't leave you a lot of time to do other things through the summer, but it can be done and I think it will be with the taxes. But again, Senator Kintner, I would ask you to consider serving on that committee. And I will be supporting this. I don't like bureaucracies and spending money any better than anybody else in here does, but I will be supporting this going forward. Thank you, and I would yield any time left to Senator Campbell if she'd like it. [LB269]

SENATOR MCGILL: Senator Campbell, would you like time? [LB269]

SENATOR CAMPBELL: Thank you, Madam President. I will just quickly respond to Senator Coash. In the original commission, the Chairman of the Judiciary Committee or their designee--and Senator Coash is the designee from Judiciary--the Chairman of Appropriations, which will now be Senator Mello, and the Chairman of Health and Human Services also serve on the commission. So that is an answer to his question. Thank you, Madam President. [LB269]

SENATOR MCGILL: Thank you, Senator Bloomfield and Senator Campbell. Senator Chambers, you are recognized. [LB269]

SENATOR CHAMBERS: Thank you, Madam President. Members of the Legislature, I listened to Senator Kintner very well. But before I mention anything to Senator Kintner, I want to comment briefly on what, I believe it was Senator Krist, but I don't...oh, I see him there. I wanted him to hear it. He was very succinct when he said, our job is to legislate

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and appropriate. Then I held my breath because I thought he was going to say, and then abdicate. But he didn't. He went ahead and completed the circle and indicated what it is that we have to do. Senator Bloomfield is correct in mentioning that the work of some of these committees is so painstaking, so "nitpickyish," in a way. You have to give such an attention to detail that to an outsider it looks like it's way too much, in terms of what is being done, based on what's needed. So I'd like to ask Senator Kintner a question or two, to see if I understood what he said. [LB269]

SENATOR MCGILL: Senator Kintner, will you yield? [LB269]

SENATOR KINTNER: Sure. I don't even know what I said. Go ahead. [LB269]

SENATOR CHAMBERS: Now, Senator Kintner, you had mentioned, I believe, that seeing a bureaucracy as wide-ranging as this just makes you sick, correct? [LB269]

SENATOR KINTNER: Yes, absolutely. [LB269]

SENATOR CHAMBERS: Okay. And you said that it is mind-numbing, trying to deal with it, correct? [LB269]

SENATOR KINTNER: Yes. [LB269]

SENATOR CHAMBERS: And you said that it's hard to digest all of this that is being presented in this way, is that correct? [LB269]

SENATOR KINTNER: I know you're taking me down a path, but yes. [LB269]

SENATOR CHAMBERS: I'm not a doctor, but I'd suggest that you take two aspirins and see me in the morning. (Laugh) [LB269]

SENATOR KINTNER: Oh, jeez. [LB269]

SENATOR CHAMBERS: That's all I have. [LB269]

SENATOR MCGILL: Thank you, Senator Chambers and Senator Kintner. Senator Coash, you are recognized. [LB269]

SENATOR COASH: Thank you, Madam President. I wanted to share a few other comments, after listening to Senator Kintner, as well. Take your time with LR37. That's fairly mind-numbing. And what I will tell you is, while this may feel like that, the problems that this Legislature had to take up in the past three years are the real mind-numbing problems. This commission was our response as a Legislature. And we had many hours of debate, many initiatives in this Legislature not to add bureaucracy but to add direction

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and oversight. Those are the two main charges of this commission: provide direction and provide us with some oversight. It was the lack of those two things that got us to where we had to institute this commission in the first place, and so the work is worthy. And it is valuable to us as legislators who have to make policy, it's valuable to HHS who has to execute policy, and it's valuable to the citizens that they now know they have a voice into how the most vulnerable children in our state are dealt with. And finally I wanted to comment on one other specific change. It's either in the bill or in the amendment. I believe it's in the amendment. We added a member of the tribes to this bill. And I served this year as the Chair of the State-Tribal Relations, and one of the things I've started to look at that became very evident in the Kids Count report is that, if you are a Native American child in Nebraska, look out. There's a good chance, better chance than any of your other peers, that you won't be sleeping in your family's home at night. If you're a child on the reservation in Senator Bloomfield's district, you probably aren't sleeping in your own bed. And Native American children across our state--and I'm not talking just about the children who happen to live on one of the reservations, but I'm talking about all the Native American Children across our state--are finding themselves placed out of the home at a higher rate than their non-Native American peers. And when you consider that Nebraska has a high rate of placing a child out of the home and that if you're a Native American child that rate is even higher, that's a pretty scary thing. And so the voice of the tribes in this commission is going to be a valuable voice. And I applaud Senator Bloomfield for suggesting that, and I applaud the committee for taking that into consideration and making that part of the final bill. Thank you, Madam President. [LB269]

SENATOR MCGILL: Thank you, Senator Coash. Senator Nelson, you are recognized. [LB269]

SENATOR NELSON: Thank you, Madam President, members of the body. Senator Campbell sees Senator Nelson stand up and says, oh, no, here we're going to talk about money. So may I ask Senator Campbell a question or two, if she would yield? [LB269]

SENATOR MCGILL: Senator Campbell, would you yield? [LB269]

SENATOR CAMPBELL: Yes, certainly. [LB269]

SENATOR NELSON: Thank you, Senator Campbell. I think I heard you mention Senator Mello sits on the Children's Commission, or at least is involved in some way, from the Appropriations Committee? At least I heard Senator Mello's name, so. [LB269]

SENATOR CAMPBELL: Sure. When we passed the bill last year with the Children's Commission, it required that, as nonvoting members, the Chair of Judiciary or their designee, the Chair of Health and Human Services, and the Chair of Appropriations sits

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on the Commission. [LB269]

SENATOR NELSON: All right, thank you. I don't know if you have a copy of the fiscal note there in your file, pink fiscal note, if you could locate that. And you probably may not need to refer to it. But Senator Coash says we're looking for direction, we're looking for oversight. Well, it always involves people and cost. And we haven't gotten to the fiscal topic yet, but I think, as a member of the Appropriations Committee, I would just like to get a little advance information here. Section 2, apparently the cost may be covered fairly well with Title IV-E. But then the Department of Health and Human Services goes on to say that the training requirement in LB269 will result in a fiscal impact, and that is because of training topics related to evidence-based and promising casework practice that are not specifically addressed within the curriculum. And there will be a cost for curriculum development, training delivery, and evaluation. Six contracted positions--and it goes on to say what those are--from the UNL Center on Children and Families would be required at a cost of \$473,000, including salary, and you go on. Turns out that the first fiscal year of '14 is over half a million dollars and then a little less the second year of the biennium. Now my question is this: Is it going to take two years to develop a curriculum and training for this project, in your mind? [LB269]

SENATOR CAMPBELL: Senator Nelson, we were going through a lot of information pretty quickly. In the amendment to LB269 we struck all the language with regard to training and we struck on-site visitation to the providers, which will greatly reduce that cost. And, one, we were very worried about the cost; and, number two, we felt that we needed a whole lot more look at this. And so we'll probably do an interim study because we, too, were somewhat puzzled by that. So I hope that helps. [LB269]

SENATOR NELSON: All right, well, that's encouraging. And you think that things can proceed without those now that you've taken them out, I mean, satisfactorily? You're not doing it just because of the cost? [LB269]

SENATOR CAMPBELL: No. The department does training now and works with the providers, but we're trying to see whether we need to have more specific training with regard to best practices. Came through a consultant's report this summer, but it needs more work, Senator. [LB269]

SENATOR NELSON: All right, all right. The next thing that I would inquire about is: Do you still have the monetary duties that are going to be required, which would require three social workers at a cost of \$206,000? Is that going to be an ongoing thing, the monitoring? [LB269]

SPEAKER ADAMS PRESIDING

SPEAKER ADAMS: One minute. [LB269]

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SENATOR NELSON: Thank you, Mr. President. [LB269]

SENATOR CAMPBELL: Senator Nelson, that is also the second, on-site visitation that was removed through the amendment. [LB269]

SENATOR NELSON: All right. So essentially, then you've eliminated most of these costs with it. All right, thank you. Well, very good. I...these are things that we need to do, really, as far as the foster children and revamping the system. And whereas we wasted a lot of money, as has been said before, we're going to have to spend some money here, but I think we need to do it judiciously. And I commend you, Senator Campbell, on taking those things out and taking another route, so thank you very much. Thank you, Mr. President. [LB269]

SPEAKER ADAMS: Thank you, Senator Nelson. Senator Mello, you are recognized. [LB269]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. And I guess it's a kind of a poetic follow-up here to my colleague and friend, Senator Nelson, who raised some fiscal issues regarding the fiscal note on LB269. And speaking with both the legal counsel for HHS as well as the Fiscal Office, the adoption of both AM922 and the committee amendment, AM678, would essentially eliminate three-quarters of the fiscal note that's laid out in the green copy, in the pink sheet here. Primarily--as Senator Nelson was just asking Senator Campbell--in respects to the training costs that are estimated by the department, with the adoptions of the amendment that would be removed, as well as the verification of contracts with child welfare providers, as well as services. That also would be removed from the fiscal note with the adoptions of the amendment. So the underlying fiscal note, while the Fiscal Office will have to redraft one based on the adoption of the amendments and if LB269 moves to Select File, the real fiscal cost essentially is left to the hiring of a new policy analyst, which, as you look at the green copy version of the fiscal note, is about \$85,000 per year. With that, I'd urge the body to adopt LB269. Thank you, Mr. President. [LB269]

SPEAKER ADAMS: Thank you, Senator Mello. Senator Campbell, there are no other senators in the queue, if you'd like to close on the amendment. [LB269]

SENATOR CAMPBELL: I shall be very brief. Colleagues, this is the amendment that begins the process of clarifying language with regard to Medicaid. And I neglected to mention that an underlying premise of this and what drew the committee to it was the fact that, in the Foster Care Review Office review of documentation and charts, a number of those charts did not have the medical information. And so we're trying to be very sure that, if that child is eligible, it is...they can apply and it, therefore, would be in their medical record. Thank you, Mr. President. [LB269]

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SPEAKER ADAMS: Thank you, Senator Campbell. Members, you've heard the closing on AM922 to the committee amendment. The question is, shall the amendment to the committee amendment to LB269 be adopted? All those in favor vote aye; all those opposed vote nay. Have all voted that wish to? Record, Mr. Clerk. [LB269]

CLERK: 31 ayes, 0 nays, Mr. President, on adoption of the amendment to the committee amendments. [LB269]

SPEAKER ADAMS: The amendment is adopted. We now move back to the committee amendment. Senator Campbell, you are recognized to close on the committee amendment. Senator Campbell waives her opportunity to close. The question is, shall the committee amendments to LB269 be adopted? All those in favor vote aye; all those opposed vote nay. Have all voted that wish to? Record, Mr. Clerk. [LB269]

CLERK: 34 ayes, 0 nays, Mr. President, on adoption of committee amendments. [LB269]

SPEAKER ADAMS: The amendment is adopted. Discussion now on the advancement of LB269 to E&R Initial. Senator Campbell, there are no senators wishing to speak. You are recognized to close on the bill. [LB269]

SENATOR CAMPBELL: Thank you, Mr. President, and I wanted to thank all the colleagues for their comments and questions. This is an issue which we have been working on for a long period of time. I tell people, when I am asked to speak on child welfare, how proud I am of the Nebraska Legislature, and last year we passed five major bills on child welfare with not one negative vote. And it speaks to the intensity that all senators put into the issue to be informed and to care very much about the protection of our children. Thank you, Mr. President. [LB269]

SPEAKER ADAMS: Thank you, Senator Campbell. Members, you've heard the closing on LB269. The question before the body is the passage. All those in favor vote aye; all those opposed vote nay. Have all voted that wish to? Record, Mr. Clerk. [LB269]

CLERK: 34 ayes, 0 nays, Mr. President, on the advancement of LB269. [LB269]

SPEAKER ADAMS: The bill advances. Next bill, Mr. Clerk. [LB269]

CLERK: Mr. President, LB497 is a bill by Senator Sullivan. (Read title.) The bill was introduced on January 23, referred to Education for public hearing, advanced to General File. There are Education Committee amendments, Mr. President. (AM694, Legislative Journal page 865.) [LB497]



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SPEAKER ADAMS: Senator Sullivan, as Chair of the committee and the introducer of the bill, you are recognized to open on LB497. [LB497]

SENATOR SULLIVAN: Thank you, Mr. President. Good afternoon, colleagues. Today I'm asking you once again to look at lottery dollars and how we use them. Last week you gave your support to LB495 and LB495A which would designate additional lottery dollars being used for early childhood education through what's called the Education Innovation Fund. I think it's safe to say that lottery dollars fund many good and important programs around education. The Education Innovation Fund represents about \$7 million of those dollars on an annual basis or 19.75 percent of the lottery proceeds after prizes and expenses. And another very important part of that are the Nebraska Opportunity Grants. This fund uses about 24.75 percent of the lottery proceeds to the tune of about \$8.8 million annually. Now to the essence of LB497. This bill proposes to study all the current and possible new uses of dollars in not only the Education Innovation Fund but also the Nebraska Opportunity Grants. It says that this study will be conducted by the Education Committee and it charges us to give you a report, a report to the Legislature, by no later than December 31 of this year. This bill also outlines the priorities of this study. One, that we will look at the educational priorities of the state. We'll look at what types of educational activities are suited to be funded by state lottery funds as opposed to state General Funds; and whether state lottery funds should be used for significant projects requiring temporary funding or to sustain ongoing activities; and whether or not we should schedule periodic reviews of lottery funds for education. So those would be sort of the priorities that we would look at in this proposed study. Why are we doing this? Well, first of all I think it's important to note that currently all the funding for programs in this Education Innovation Fund will sunset in 2016. And also it should be noted that under current law funding for the Nebraska Opportunity Grant program does not sunset. But in this study I'm saying that we might as well look at both of those areas that we fund out of these lottery dollars and to see how they're currently being used. Now as I did this, this has caused a little bit of consternation. I want to emphasize that I am not in any way trying to eliminate what the Nebraska Opportunity Grants currently do or that the funding that's going into them. They're too important quite frankly. As I said earlier, lottery dollars that are currently directed to the Nebraska Opportunity Grant, which represents 24.75 percent of the total lottery dollars in any given year, they support a little over half of the monies the state provides for need-based financial aid to Nebraska students attending our postsecondary educational institutions. And I think you would agree with me that that's very important. But as also we've said many times on this floor, we need to review how we spend the state's dollars to be sure we are directing them according to the priorities that we set. And to that end, that's exactly what we're doing with LB497--opening these funding sources, the Education Innovation Fund and the Nebraska Opportunity Grant Fund, to an interim study to be sure the use of these funds are aligned with our educational priorities. That in essence is the bill. I ask for the body's support and will be willing to answer any questions. Thank you, Mr. President. [LB497 LB495 LB495A]

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SPEAKER ADAMS: Thank you, Senator Sullivan. As the Clerk stated, there are amendments from the Education Committee. Senator Sullivan, as Chair of the committee, you're recognized to open on those amendments. [LB497]

SENATOR SULLIVAN: Thank you again, Mr. President. This amendment seeks to clarify not only the intent of the study in LB497, which I've outlined, but also to make sure we direct current and future funds to the educational priorities identified in this study. Under this amendment, the names of the two funds that I've referred to, the Education Innovation Fund and the Nebraska Opportunity Grant Fund, those two names go away and a new fund is created called the Nebraska Education Improvement Fund. At the time of its creation, which would be July 1, 2016, all the unexpended lottery funds dedicated to education would be transferred to this fund. And as the study unfolds under LB497, more specific distribution of these funds would be determined. That is the essence of AM694. I ask for your support. [LB497]

SPEAKER ADAMS: Thank you, Senator Sullivan. Now open the floor for discussion on the committee amendment. Senator Wallman, you're recognized. [LB497]

SENATOR WALLMAN: Thank you, Mr. President. Lottery funds (laugh). Would Senator Sullivan yield to a question? [LB497]

SPEAKER ADAMS: Senator Sullivan, do you yield? [LB497]

SENATOR SULLIVAN: Yes, I would. [LB497]

SENATOR WALLMAN: These are grant funds. Is that right? [LB497]

SENATOR SULLIVAN: Yes, they are. [LB497]

SENATOR WALLMAN: And do certain school districts seem to get more grants than others, would you say? [LB497]

SENATOR SULLIVAN: Well, I guess I can't answer that. We have currently with the Education Innovation Funds, I think we've got about 152 school districts that are using lottery dollars through what we call those early childhood education grant funds for three to five. [LB497]

SENATOR WALLMAN: Thank you, Senator. Yes, you know, lottery grants, some people probably should have them. Do you think that low-performing districts would be favorable to get a grant or not, Senator? [LB497]

SENATOR SULLIVAN: Well, it takes the initiative and persuasion, if you will, of the local

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district to develop these early childhood programs. And they are designed for low-risk or high-risk children. And so if this a perceived need of the district and they recognize the importance of early childhood education, they have the opportunity to apply for these grants. And I should also mention that they are matching grants. [LB497]

SENATOR WALLMAN: Thank you. But aren't we taking some money away from early childhood education monies or it's the same? [LB497]

SENATOR SULLIVAN: No, we're not taking...we're actually through LB495 which I introduced last week, actually designating another million dollars... [LB497 LB495]

SENATOR WALLMAN: Oh. [LB497]

SENATOR SULLIVAN: ...for early childhood grants for birth to three. [LB497]

SENATOR WALLMAN: Okay. Thank you. I stand corrected. Yeah, I will vote for this bill. And thank you, Senator. [LB497]

SPEAKER ADAMS: Thank you, Senator Wallman. Senator Scheer, you're recognized. [LB497]

SENATOR SCHEER: Thank you, Mr. President. I rise to support LB497. It's very rare that we get the opportunity to look at existing legislation that will sunset and make sure that it's done what it was supposed to do, that we go look back at the positive points that have been provided during the life of that bill. We also look at the advantage of not having any of those encumbrances on us as we look to the future. I think the study is an appropriate way to look in the future of the using of the lottery funds for educational uses. Sometimes we end up having blinders on after so long and not looking at things outside that perhaps would be very beneficial as we move forward. And so I want to thank Senator Sullivan for bringing this forward and more importantly just informing the rest of the state that these funds are going to be disappearing as of 2016 so that everyone is aware of that so that as we start looking at the new uses and perhaps continued uses of those funds everyone is aware that there is the possibility of some of those funds changing. There's also the possibility that none of them will change. But we'll only know that after we take a look at all the expenditures and the opportunities that exist. So again, I urge your support of LB497 and would hope that we would be able to even perhaps maximize our use of those funds in the future going on in 2016 so thank you. [LB497]

SPEAKER ADAMS: Thank you, Senator Scheer. Senator Dubas, you're recognized. [LB497]

SENATOR DUBAS: Thank you, Mr. Speaker. I wholeheartedly support what this bill is

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intending to do as far as evaluating how these lottery dollars are being spent. I think it's, as has been said, it's great when the Legislature takes the opportunity to really go back and look at how are these programs working, do they need changes. So I think, as I said, I wholeheartedly support that. But I do have some questions I'd like to have some clarification for if Senator Sullivan would yield. [LB497]

SPEAKER ADAMS: Senator Sullivan, do you yield? [LB497]

SENATOR SULLIVAN: Yes, I will. [LB497]

SENATOR DUBAS: Thank you, Senator Sullivan. And you did clarify some things in your opening as far as the Nebraska Opportunity Grant Funds and that's where my, as I read through the bill and the amendment, that's where my concern came in. It's not your intention to do away with this grant program. Is that correct? [LB497]

SENATOR SULLIVAN: That is absolutely right. I have no intentions of doing that. [LB497]

SENATOR DUBAS: And so just by the changes that are outlined in the amendment and the bill, is this going to cause any problems for students who are applying for these grant funds now or in the near future? [LB497]

SENATOR SULLIVAN: It shouldn't. I mean, you know, they're going to...under this bill, the Nebraska Opportunity Grant program would sunset by fiscal year '16, '15-16. But some decisions will be made prior to that. So it doesn't stop a student from applying for a grant right now. But nothing would be obligated beyond '15-16, but decisions will be made prior to that so that there should be no interruption in service. I wouldn't anticipate that. [LB497]

SENATOR DUBAS: Very good. So there's the potential for maybe changes as to how this grant fund is operated or qualifications or what have you. But the intention is to continue on with this Opportunity Grant Fund. [LB497]

SENATOR SULLIVAN: Absolutely. [LB497]

SENATOR DUBAS: And as far as applying for it, especially in the next year or two, nothing should change in that regard. [LB497]

SENATOR SULLIVAN: Absolutely not. [LB497]

SENATOR DUBAS: All right. I just needed that clarification, and I appreciate that for the record. Thank you, Senator Sullivan. [LB497]

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SPEAKER ADAMS: Thank you, Senator Dubas. Senator Hadley, you're recognized. [LB497]

SENATOR HADLEY: Mr. President, members of the body, Senator Lautenbaugh is not here so I'll try and do my best imitation of him right now. Would Senator Sullivan yield to a question? [LB497]

SPEAKER ADAMS: Senator Sullivan, would you yield? [LB497]

SENATOR SULLIVAN: Yes, I would. [LB497]

SENATOR HADLEY: Now where do these funds come from, Senator Sullivan? [LB497]

SENATOR SULLIVAN: Which ones are you talking about? [LB497]

SENATOR HADLEY: The...I believe it's the lottery. Is that correct? [LB497]

SENATOR SULLIVAN: The lottery dollars, yes. [LB497]

SENATOR HADLEY: They're lottery dollars, okay. [LB497]

SENATOR SULLIVAN: Yeah, um-hum. [LB497]

SENATOR HADLEY: Well, I happened to go in and I looked at the lottery and since the lottery has started, we have spent...I'm sorry, about a half a billion dollars has been given to the various recipients from the Nebraska lottery. Senator Sullivan, is the Nebraska lottery a gambling mechanism? [LB497]

SENATOR SULLIVAN: Well, yes, I guess you'd have to consider that it is. [LB497]

SENATOR HADLEY: Okay. I guess my only point is, is that we spent a lot of time talking earlier this session about gambling and such as that. And right now we have...we're seeing some of the good that comes from some of the gambling. Now I'm not going to make the argument that all gambling is good. But it's interesting that a half a billion dollars has been raised through gambling in the state of Nebraska for these uses, whether it be the Environmental Trust, education, whatever it might be. I would just leave that idea with the body. Thank you, Mr. President. [LB497]

SPEAKER ADAMS: Thank you, Senator Hadley. Senator Karpisek, you're recognized. [LB497]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. I stole Senator Hadley's thunder a little earlier and he just stole mine. I can't let a bill like this go by

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without pointing out that if we had no gambling we'd not have this money to do anything with. So I always like to watch who wants to get a hold of this money and do what they want with it. And I'd like to see if it's antigambling people that want to use that money. I want to point that out. That is not my case today at all. And I did have a bill to do something with this money also. But I do...I can't let it go by without saying without the lottery we wouldn't have this money. And when we get back on a gambling issue, I'm sure I will bring it up again. Thank you, Mr. President. [LB497]

SPEAKER ADAMS: Thank you, Senator Karpisek. Senator Chambers, you're recognized. [LB497]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Hadley. Thank you, Senator Karpisek. When that constitutional amendment comes before us again, I do have an amendment prepared to do away with the authorization and maintaining of a lottery. I want to abolish it. I opposed it. I opposed the gambling. All you've done by giving it to these different entities, and I said it when they were trying to get the lottery approved, the program that defines it is called "The Price is Right." You can get all these people concerned about the environment on your side if you make the price right. You can get all these people who are concerned about educating our children in the ways of Americanism, justice, and the American way of life if the price is right. So if you give them enough money, you can overcome any moral compunctions of any operation in this society. Out in Denver, an action was brought against a Catholic hospital because of the death of a fetus due to inappropriate action by those in the hospital. It may have been a wrongful death. And the Catholic Church, which says that life begins at conception, made a very peculiar argument, and I'm going to bring the article that discusses it. Since the statute does not say that a fetus is a human being, then the Catholic hospital should not have to pay, which is using the argument that the fetus is not a human being where money is involved. When money is involved, the Catholic Church backs away from that notion that all life is sacred, life begins at conception; and when the money was on the table, the church backed away and said, well, the state has said it's not. So since accepting what the state says saves us some money, we accept what the state said. Then the Legislature starts the next day and a Catholic priest may be praying to a legislature like this and say, God, bless them and open their minds and their hearts so that they will accept the notion that life begins from conception and that a human being is there except when to acknowledge that means that a judgment in cash may have to be paid. So you all get upset with what I say, but catch me in a lie. Your church is corrupted by money. Education is corrupted by money. Environmental people with their activities can be given a pass because they don't base what they say on morality and teaching people how to be well-rounded, constructive contributors to society. But I'm sure that those getting this money would not argue that gambling is a positive good; that the interests of society are advanced by gambling so they rationalize. And they say, well, it's in the interest of society to have its children educated. And if gambling is the way to get the money, they have to articulate and adopt that most

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maligned principle--the end justifies the means. And Machiavelli would say, bravo, bravo, bravo. Except that Machiavelli did not advocate the various things he talked about. He observed what was going on and described what was happening and said... [LB497]

SPEAKER ADAMS: One minute, Senator. [LB497]

SENATOR CHAMBERS: ...if you want to reach a certain result, this is how you do it. And Machiavelli was not the only one to write that kind of literature. He is the only one who did it so well, studied history to get examples to prove or demonstrate the validity of what he said, and he wrote with such flair. So he is now known as the father of political science in the same way that Edgar Allan Poe is known as the father of the detective story. But for Senator Karpisek and Senator Hadley and the other gambling favorers, I'm still against gambling. And when your bills come before us, get ready to go the distance. Thank you, Mr. President. [LB497]

SPEAKER ADAMS: Thank you, Senator Chambers. Senator Bloomfield. [LB497]

SENATOR BLOOMFIELD: Thank you, Senator Adams. It appears to be a day for stealing thunder. And Senator Chambers stole mine probably more eloquently than I could have started out with. But I wonder, "beings" we're going to talk about gambling a little bit here, how many of these dollars that we are going to take from the gambling industry and use here would have been used to feed somebody had the parent not spent the money on the ticket. How many of the property tax dollars that we are severely hurting for that we're looking at creating a whole new level of government in Omaha to deal with property that hadn't had the tax paid on it? How many of those dollars would have been available to the state had they not been spent on gambling? This is one of the places where Senator Chambers and I are probably going to be in agreement. There will be many more where we are not. But I don't think the people in favor of gambling need to stand up here and tout this as a great thing because a lot of this money would have been available had the parents not spent it unwisely at gambling and other vices. Thank you. [LB497]

SENATOR KRIST PRESIDING

SENATOR KRIST: Thank you, Senator Bloomfield. Seeing no one else in the queue, Senator Sullivan, you are recognize to close on the committee amendment. Senator Sullivan waives her closing. The question is, shall the committee amendments to LB497 be adopted? All those in favor vote aye; opposed vote nay. Have all voted that wish to? Mr. Clerk, please record. [LB497]

CLERK: 32 ayes, 0 nays on adoption of committee amendments. [LB497]

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SENATOR KRIST: The amendment is adopted. Further discussion. Seeing no lights, Senator Sullivan, you are recognized to close on the advancement of the bill. [LB497]

SENATOR SULLIVAN: Thank you, Mr. President. LB497 creates the avenue for the Education Committee to conduct an interim study on the potential uses of lottery dollars for the improvement of education in our state. The study would be conducted by the Education Committee and a report would be provided to the Legislature by December 31 of this year. All current uses of lottery dollars for educational purposes would sunset on June 30, 2016. And any unexpended funds in the Nebraska Opportunity Grant Fund and the Education Innovation Fund would be transferred to the Nebraska Education Improvement Fund. Since the lottery was approved by the voters in 1992, lottery dollars have funded many valuable educational programs in our state. LB497 simply seeks to make sure the use of those lottery proceeds continue to fund the educational priorities of our state. Thank you, Mr. President. [LB497]

SENATOR KRIST: Thank you, Senator Sullivan. You heard the closing. The question is the advancement of LB497 to E&R Initial. All those in favor vote aye; opposed vote nay. Have all those voted that wish to? Mr. Clerk, please record. [LB497]

CLERK: 34 ayes, 0 nays, Mr. President, on the advancement of LB497. [LB497]

SENATOR KRIST: The bill advances. Next item, Mr. Clerk. [LB497]

CLERK: Mr. President, LB595 is a bill by Senator Price. (Read title.) Introduced on January 23, referred to Transportation, advanced to General File. There are Transportation and Telecommunications Committee amendments, Mr. President. (AM695, Legislative Journal page 803.) [LB595]

SENATOR KRIST: Thank you, Mr. Clerk. Senator Price, you are recognized to open on LB595. [LB595]

SENATOR PRICE: Thank you, Mr. President, members of the body. LB595 is a result of a lot of consternation that has been generated over technology advances that are being presented to the state of Nebraska for our 911 system. Right now as we look at the 911 system, referred to sometimes as the E911, the enhanced 911 system, what we see is a highly used, critical part of our society where our citizens can get the support they need. Going forward after this system has been put in place, there are some technology advancements that are being considered, and these considerations have come about over a number of years and have led to what is now being coined the enhanced 911 system. And what is this all about is and this study is setting the table for the future when we are going to have to make a policy decision on where we want to go with our 911 system and how we want to go to that location. Right now I dare say that most people in the body and most Nebraskans are unaware of what happens behind the 911



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call, the technology involved and where it goes. When a person makes a call to 911, it goes into a public service answering point, which will be referred to from here on out as a PSAP. This PSAP can be in a lot of different locations. Matter of fact, right now we have 70 of these in Nebraska. And we have four counties that have multiple PSAPs within that county. When we move forward to the next-generation 911, the capabilities we're going to see in that will be the capabilities to text to 911. What are the driving forces here? I'm going to lay those out for you. We have some driving forces from the federal government. The federal government is moving to bring about this change, this technology change across the nation. We see pressures being done by our neighboring states, Colorado and Iowa, for example, who are moving forward with the implementation of enhanced 911. And how this plays out, a citizen in Bellevue fired up the 911 system and the Iowa side responded, slightly problematic. That was fixed through a reconfiguration of a router. But what we see is our peer states are moving to a new technology. The federal government is asking and proposing new technology. There were 66 different circulars last year put out by the FCC. And I think the coup de grace, if you would, would be that the four major wireless carriers are going on the texting to 911 capability in their system. Colleagues, our citizens will be somewhat concerned and perplexed when they find themselves in a situation where they fire up the text to 911 and it doesn't work. They're going to get a bounce-back that says please call 911. This feature doesn't work. So what the bill does is it's going to direct that the Public Service Commission, along with a third party, conduct a study to tell us what is our baseline of our technology, where are we at today, set the table, and tell us what we need to become capable in this enhanced 911 environment we're moving to, and to provide us road maps, decision points, and actionable information to get from where we are today to where we're going to go in the future. It's imperative that all of us understand in this debate going forward that we know and have actual information because let me tell you about some of the competing interests in this. The competing interests involve what we currently have, our legacy systems. Our competing interests are those communities that have PSAPs that might be using tremendous skills and cross-utilization of their personnel who do other functions other than the 911 operator they are. And if we have something come up that changes that status, there's someone's ox being gored. We also have the competing interests of wireless and wired. And then there's this thing out there on the edge called "the cloud," you know, and VoIP, the voice over IP. All these technologies are going to come in competing. They're all going to have the latest and greatest solutions. And before we are asked to make that policy decision, I believe it's imperative and prudent to have the Public Service Commission conduct this study. The question is, do they have the authority? Well, the Public Service Commission did not believe they had the authority to use the funds that they have, these cash funds, to conduct a study. The Attorney General agreed with them. So I believe again, as I said, it is a prudent move for us to get the information we need to make these decisions going forward; to figure out do we want to do this in a one fell swoop and one day turn it all on or do we want to do a rolling implementation. Do we understand that the solution that works in my neck of the woods in the greater Omaha

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metro area doesn't necessary work in Furnas or Keith County. And I don't want to have a one size fits all. But we need to then have the maturity in our program development milestones to understand what it means what we do. This study will do that. It will be a very involved study. The committee voted it out unanimously. We do have a committee amendment that Senator Dubas will talk about, and I will come up and talk about it more as questions are asked. But I would let you know there are a number of states right now that have moved forward with this. And I can go down a long list and be fairly nauseating on that, but far be it from me to do that. But I would tell you that right now they have eight states have moved forward on this. There will only be more movement. And ladies and gentlemen, I believe that while I know doing a study is prudent, I think we're behind the power curve. That is why we've asked for an E clause on the bill. We want to get the information. We want to get it to the committee. We want to get it to the Legislature to make decisions so we can move forward on this very, very important, if somewhat misunderstood, topic. And with that I would close and we can move on to the amendment. Thank you, Mr. President. [LB595]

SENATOR KRIST: Thank you, Senator Price. As the Clerk stated, there are amendments from the Transportation and Telecommunications Committee. Senator Dubas, as the Chair of the committee, you are recognized to open on the amendments. [LB595]

SENATOR DUBAS: Thank you very much, Mr. President. Senator Price has done a really great job of outlining why this bill is needed. The committee amendment reflects the work that Senator Price, his staff, legal counsel of the committee, as well as the Public Service Commission did to get this bill into the shape that it needs to be in order to be able to conduct the study. So the amendment is a reflection of that work. It does add the emergency clause because, as Senator Price said, it's important that we get moving on this work as soon as possible. It allows for the Public Service Commission to contract with an independent third party to assist with the study. It creates an initial and a final report requirement, the first one due January 31 of 2014 and then April 1, 2014, respectively. The initial report will include the assessment of the existing 911, the examination of plans in Nebraska and other states for next-gen 911 implementation, identification of parties involved with the implementation in Nebraska, and any other issues that would be deemed necessary by the Public Service Commission. The final report will include the initial report; the recommendations of a variety of options for planning, development, phased-in implementation, and management of next-gen 911; options for deployment, interconnection, and management of emergency services, IP networks, including necessary technology upgrades; a time line and a cost for the phases of implementation and who should have the authority to oversee such options; identification of necessary changes to address guide and geocoding; identification of equipment changes needed; the estimated cost of planning, implementation, and management of next-gen 911 and possible sources of funding; and then any other issues that would arise during the course of this study. Senator Price did reference what

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is going on at the federal level, and there is an open docket right now dealing with a proposed rule change and what the Federal Communications Commission is proposing and amending its rules is by requiring all wireless carriers and providers of interconnected text messaging applications to support the ability of consumers to send text messages to 911 in all areas throughout the nation where 911 public safety answering points, or PSAPs, are also prepared to receive the texts. In addition, to inform consumers and prevent confusion, the commission proposes to require all wireless carriers and interconnected text messaging providers to send automated bounce-back error messages to consumers attempting to text 911 when the service is not available. I think we have all become very dependent on our telephones, our smartphones. We think, you know, they are ready access. We've got the apps on them. They should be able to do whatever it is that we're wanting them to do. And I think having access to 911 as citizens we've become pretty dependent on those. It's kind of like flipping the light switch and knowing that there's going to be a light that goes on at the other end of that. We have that same feeling when it comes to 911. When I call 911, it is going to go to where it needs to go so that I can get the help that I need immediately. And again, becoming so dependent on our telephones and our ability to text with, you know, that instant access. And I think when consumers find that they might not have that access and they either get this bounce-back message or it doesn't go through there's going to be some real outcries from our citizens as to why isn't this happening. This is a public safety issue big time, and our citizens have a right to expect that recognition that when they call 911 they're going to get the emergency response that they expect. So conducting this study is going to be very, very important in order to help our Public Service Commission, our wireless providers, our communication providers to understand what is it that we need to do to make sure that we are able to meet that expectation from our consumers and have that ready access to 911 service. So this study will certainly take us a long way down the road in getting those answers and beginning to put that plan in place and helping not only our emergency responders but our citizens who have that expectation. So I appreciate all the work that Senator Price, my committee counsel that has put into this and having a bill that is going to put a good plan into place. Senator Price did reference the question as to whether the Public Service Commission had the authority to do this. The Attorney General Opinion was, well, no, currently you don't have the authority. But through this bill and the amendment that will follow, we feel that this gives the Public Service Commission that authority to conduct this study. So thank you, Senator Price, for all of the work that you've done on this. And if there are any questions, we will certainly make every effort to get those answered for you. Thank you. [LB595]

SENATOR KRIST: Thank you, Senator Dubas and Senator Price. You've heard the opening on AM695 and LB595. The floor is now open for debate. Those in the queue: Senator Schumacher, Senator Price, and Senator Gloor. Senator Schumacher, you're recognized. [LB595]

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SENATOR SCHUMACHER: Thank you, Mr. Chairman, members of the body. E911, what an evolution it's gone through. Originally, simply designed as a way that you could quickly dial the local emergency assistance, ambulance by dialing only three numbers and you didn't get confused as you spun the thing on your old rotary telephone. It evolved a little bit more in which you could dial a center and that center automatically would have the information that would know where you were dialing from and be able to dispatch emergency facilities to that particular location. We've now moved upon and off of the age of dinosaurs. We are now in the realm of Internet technology. And isn't it interesting that E911 started out with a fee of either, I think it was 50 cents or \$1 per telephone line when a family only had one telephone line. Now how many cell phones does each family have in addition to if they haven't already dropped their old telephone line? And each of those phones are bringing in 50 to 75 cents in E911 fees. Somewhere in the great black hole of E911 land there is going a great deal of money. Who's the beneficiary of that money? We don't really know nor is there necessarily good accounting for it. But nevertheless, we do need this study provided it is done objectively and not with the design of preserving the old providers of E911. Isn't it odd that each of you in your cell phone has a device which is broadcasting your location around the clock--with a simple application that you probably could download free at some future not too distant date--would be able to link you to the nearest hospital and the nearest emergency dispatch center? We need to bridge a tremendous range of technology. But if we're going to spend the money on it, lest us not make the mistake we've always made and that has the primary objective of all this of preserving the existing provider who just happens to be the recipient of other great funds that are designed to preserve the existing landline companies. This is a good bill, but we need to make sure that the money we're spending goes in an objective fashion and is not unduly tainted by the political and economic forces of the current providers of landline E911 services. And that is a challenge of this bill. If we engage in the authorization of this bill and put it under the Public Service Commission, we've got to recognize the political realities of the Public Service Commission and that the result we get better be or the structure we lay down better be such that the third-party independent is truly acting in the best interest of the people of this state, not a limited economic interest who currently feeds off of these endless list of fees that appear on your local telephone company bill. So a good bill, but I believe that we need to watch it very carefully and make sure that whatever third-party provider or third-party advisor or studier that is involved here is indeed independent and indeed capable of saying, look, what is in the past is in the past. Let's design a new system that we all know how it's going to work with our various hand-carried tablets or cell phones and that we are in constant communication with a emergency center. That's good. But embalming the past... [LB595]

SENATOR KRIST: One minute. [LB595]

SENATOR SCHUMACHER: ...and continuing to build a system which already has got to be extremely fat because of all these additional fees that it's been getting is not the

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way to go. And we've got to guard against that in the deployment of a study. Hopefully Senator Price has structured something here which will protect us against the evils of the dinosaur. Thank you. [LB595]

SENATOR KRIST: Thank you, Senator Schumacher. Senator Gloor, you are recognized. [LB595]

SENATOR GLOOR: Thank you, Mr. President. Good afternoon, members. I want to be clear that I support the committee amendment and Senator Price's underlying bill, LB595. And I appreciate Senator Price bringing this bill forward so that we can make sure we've clearly authorized the use of funds for this study. And I want to talk about 911 in a couple of context. First, I want to talk about 911 not from the standpoint of traditional public safety, police, fire, but healthcare since I think we are soon to be engaged in a spirited discussion on healthcare in this state, specifically coverage under the Affordable Care Act. And it seems to me this provides an opportunity to warm ourselves up a little bit to some of the issues and some of the challenges we face in this discussion. All of us, I believe, when it comes to 911 and the health part of it have an expectation that an ambulance will show up and rescue workers will show up hopefully if we call 911, responding to that heart attack, responding to that car accident and rightfully so. And hopefully with the passage of this bill and the report that comes back we set a course for ourselves to improve those response times, even improve the care that's provided since the components of this might be able to have rescue workers, might be able to have hospitals specifically prepared to take care of injuries in the field, not having to wait until somebody shows up in an emergency. We will talk about this independent of the emergency rooms and how they're equipped and staffed across the state and the dollars that we allocate to train trauma staff. We've had a discussion about the rescue workers and the fact that in this state a majority of those rescue workers are volunteers. In an aging population, it becomes harder and harder for us in our communities to find people who are willing to volunteer their time because there are fewer and fewer people in those communities and because the demands of work force issues make that a problem. We need to talk about healthcare as a system, and we need to begin connecting the dots. Senator Campbell and I have introduced LR22, a joint study for both Health and Human Services and Banking, Commerce and Insurance to talk about our healthcare system as an entire unit. That's very, very important for us, folks. And as we get into this discussion about our healthcare system, understand that it does not function as a system right now. We are extremely fragmented. We have individual physician practice scattered across the state. We have individual hospitals who aren't connected to themselves in any way, shape, or form short of telephones and perhaps computers. And we enter into that system thinking that there are simple answers. Whatever report comes back on this, I guarantee you will fall short of connecting all the dots that it should, not that it won't address the technological need or the opportunities that exist to upgrade things from a technological standpoint, but won't get into the rescue workers' piece that I talked about or the coordinated emergency

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room care or the coordinated medical record that's necessary. [LB595 LR22]

SENATOR KRIST: One minute. [LB595]

SENATOR GLOOR: Thank you, Mr. President. My point here again is as we talk about healthcare we need to stand back and not look at individual trees. We need to take a look at the forest. This bill is important. This bill should pass, but this bill clearly is one tree in that large forest of expectations that we have about our healthcare system. It is not a system, and therein lies a lot of our problems and a lot of what we'll be talking about in the next week or two. Thank you, Mr. President. [LB595]

SENATOR KRIST: Thank you, Senator Gloor. Senator Price, you are recognized. [LB595]

SENATOR PRICE: Thank you, Mr. President, members of the body. As you've heard the discussion, I think a lot of people can agree that this is an important topic and subject that we address. One of the things I wanted to share is that there was a broad consensus and even the PSC has said that they wanted that third party to be involved. And that when we worked with Senator Dubas and her staff, who did a tremendous amount of work in walking this across the multiple domains to ensure that we've cast a net that is wide enough to be inclusive of the entities that might have an impact on this because we want to get it right. And the first step to getting it right is understanding what it is, and that's what we're doing. In conversations off the mike, it's my understanding that Senator Bloomfield had some questions. So if he would yield, I'd like to engage in a conversation with Senator Bloomfield. [LB595]

SENATOR KRIST: Senator Bloomfield, will you yield? [LB595]

SENATOR BLOOMFIELD: Yes. [LB595]

SENATOR PRICE: Senator Bloomfield, I believe you had some questions that you would like to address. [LB595]

SENATOR BLOOMFIELD: Yeah, just some information I'd kind of like to get out on the floor. I asked you off the mike precisely where this money came from and how much there was in that account. And I wish you'd explain that and then I'd have a little more too. [LB595]

SENATOR PRICE: Well, thank you. And so what we have here and I believe Senator Schumacher was talking about that. You have on your bill right now, which by the way I pay for four of them in my family, we currently have a surcharge on there that was 50 cents, is now 45 cents that you pay into that fund. There's approximately I'm going to say \$18 million in that fund. And it's important to note that this...the 50 cent reduction to

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45 cent reduction happened because of this rapid growth which was due to the fact that one of the very largest wireless carriers has decided that they were not going to take the bill. They were not going to accept funds from Nebraska because of their internal business policy decision to not do that. That is our windfall and so the fund has grown much quicker than thought, ergo the PSC had ratcheted back that surcharge. I hope that answers your question. [LB595]

SENATOR BLOOMFIELD: It does but I would like to go a little further, but I still have my light on... [LB595]

SENATOR PRICE: Sure. [LB595]

SENATOR BLOOMFIELD: ...and I can do that on my time. Thank you. [LB595]

SENATOR PRICE: So again, you look at that and if you look at the A bill that's associated with it, there were some questions involved there. Bottom line is we're going to be looking at a lot of people to look at a lot of things. When you're talking about 70 different PSAPs, you're talking about all the various policy implications and the funding mechanisms. But let's look at also what we're going to get. Right now if you're--I became very conversant in this in my community--if you're in a highly populated area and you have that accident that Senator Schumacher said, we can tell where you are kind of. With a new system, we're going to be able to tell you what floor, what corner, in what building, and what floor you're on if you can't provide that information. To talk to what Senator Gloor said, it isn't just responding to an accident that's important and the timeliness. But you're going to have the ability with a video capability being sent, a live feed from the accident so the first responders can prepare the medical kit that they're going to actually respond with. I mean, if you've had the unfortunate experience of seeing the first responders respond sometimes, they're carrying huge bags, carrying practically everything they have to with them, the load list is very large because they don't know what they're dealing with. But when they can get on-site and they already know if we had a live feed then we can help with that, and that can be transferred to the hospital. And I think that only brings better service to our citizens. [LB595]

SENATOR KRIST: One minute. [LB595]

SENATOR PRICE: And with that, I will yield to the Chair. Thank you. [LB595]

SENATOR KRIST: Thank you, Senator Price. Senator Bloomfield, you're recognized. [LB595]

SENATOR BLOOMFIELD: Thank you, Mr. President. And thank you, Senator Price, for the answers to those questions. Colleagues, I'm going to support this bill and the amendment. But just a friendly little reminder, when "big brother" offers a hand to help

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you and watch you and make sure that no harm befalls you, remember that "big brother" can also lend a hand to watch you and know what you do when you really don't want him knowing what you might be doing, not that you're doing something nefarious. There comes a point where it is not anyone's business but yours what you are doing. And as technology grows and allows folks to help us, it also allows them to interfere with us. Keep that in mind as we go forward with things. And again, I will be supporting the amendment and the bill. Thank you. [LB595]

SENATOR KRIST: Thank you, Senator Bloomfield. Seeing no other folks wanting to speak, Senator Dubas, you're recognized to close on the committee amendment. [LB595]

SENATOR DUBAS: Thank you very much, Mr. President. I think everything has been covered. This is an important bill. We really need it to go forward so I'd appreciate a green light on AM695. Thank you. [LB595]

SENATOR KRIST: Thank you, Senator Dubas. The question is, shall the committee amendment to LB595 be adopted? All those in favor vote aye; all those opposed vote nay. Have all those voted that wish to? Mr. Clerk, please record. [LB595]

CLERK: 37 ayes, 0 nays on adoption of committee amendments. [LB595]

SENATOR KRIST: The amendment is adopted. Further discussion on LB595. Seeing none, Senator Price, you are recognized to close. [LB595]

SENATOR PRICE: Thank you, Mr. President, members of the body. I appreciate the green light on the amendment. And again, I appreciate the conversation. As we move forward if there are any senators who have questions, I have an incredible amount of information that I can share with you and we can answer your questions going forward. And I do appreciate your support and a green light on LB595. Thank you. [LB595]

SENATOR KRIST: Thank you, Senator Price. The question is the advancement of LB595 to E&R Initial. All those in favor vote aye; opposed vote nay. Mr. Clerk, please record. [LB595]

CLERK: 37 ayes, 0 nays on the advancement of LB595, Mr. President. [LB595]

SENATOR KRIST: The bill advances. Mr. Clerk. [LB595]

CLERK: LB595A by Senator Price. (Read title.) [LB595A]

SENATOR KRIST: Senator Price, you're recognized to open on LB595A. [LB595A]



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SENATOR PRICE: Thank you very much, Mr. President. As you look at that note, there may be some questions on this. But again, we're talking about a rather extensive report with a lot of answers to be...questions to be answered. I would note that in Iowa there were 82 participants in the study and that when we look at that fiscal note it represents a range that the PSC was able to find from these other states. And that the PSC believes that the number in the end will come in much less, perhaps even after this and we go into Select they will have input to the fiscal note to represent that. But again, the high note represents what Tennessee did, and they were dealing with voice over IP a long time ago when it was brand new. There were a lot of issues that were new on the technology horizon that now today are commonplace. All you have to do is be watching the television and see your Vonage commercial, and you'll see what voice over IP is. So I'm sure that the survey of that technology is much less expensive. And again, it's an extensive survey with a lot of things we need. I would let you know just so we know the impact, in Colorado when they did their study they found out that nationally consumers are sending 2.3...are using 2.3 trillion minutes in 2010 on their cell phones, and that we're sending 1.8 trillion texts. So again as we see and we've talked about before on the underlying bill, there is a lot of information to be looked over for the impacts and how we go forward in the technology. And with that, I would ask for a green light and will stand ready to answer any questions. Thank you. [LB595A]

SENATOR KRIST: Thank you, Senator Price. You've heard the opening on LB595A. Are there any members wishing to speak? Seeing none, Senator Price, you are recognized. Senator Price waives closing. The question is the advancement of LB595A to E&R Initial. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB595A]

CLERK: 34 ayes, 0 nays, Mr. President, on the advancement of LB595A. [LB595A]

SENATOR KRIST: The bill advances. Next item. [LB595A]

CLERK: Mr. President, just a couple of items before we proceed. I have amendments to LB44 to be printed and an amendment to LB495. (Legislative Journal pages 954-955.) [LB44 LB495]

Mr. President, LB585 is a bill by Senator Smith. (Read title.) The bill was introduced on January 23, referred to the Education Committee, advanced to General File. There are committee amendments pending, Mr. President. (AM832, Legislative Journal page 846.) [LB585]

SENATOR KRIST: Senator Smith, you are recognized to open on LB585. [LB585]

SENATOR SMITH: Thank you, Mr. President, and good afternoon, colleagues. If you have followed the discussion of this bill in committee, you understand the intent of the

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proposed legislation and probably understand the concept of the learning community and its origins. However, if this has not been on your radar, I hope that the discussion of this bill during the introduction will provide you with the information you need to make a decision on this specific bill, as well as provide you with an understanding of the learning community in general. I encourage those senators that were present during the learning community origins to participate in the discussion. I also want to encourage Senator Chambers and Senator Kolowski whom served on the learning community board to provide their input on the learning community structure itself. And whether that discussion is good or bad, I welcome their input on this discussion. And, finally, I ask those that have reservations about the intent and the results of the learning community to speak their mind today. However, when the day is over and the debate is done, I hope that we can focus on the merits of LB585 and AM832 that will be following and focus on those alone, please. I want to give a brief history of learning community legislation. And, again, I would encourage those senators who were here at the time to correct me if I'm wrong. Senator Chambers is the only senator who was serving in the body during the beginning of the learning community with the passage of LB1024 in 2006. At that time, the coordinating council was made up of one member from each of the 11 school districts, and OPS was divided into three identifiable districts. In the end, LB1024 was signed into law by Governor Heineman. In the next year in 2007, Senators Ashford, Adams, Avery, and other champions of the learning community joined the Legislature and more changes were made with the passage of LB641. LB641 put OPS back together, and the coordinating council was increased to 18 members, 12 elected and 6 appointed from the school boards represented. The learning community was given a 5-cent levy authority which, by the way, is not the same as the common levy that you may hear referred to. In the end, once again LB641 was signed into law by Governor Heineman. In 2010, LB1070 was introduced by Speaker Adams. There were some other learning community bills that were sandwiched in between LB641 and LB1070, but LB1070 made changes with respect to the learning community levy authority, which LB585 also does. LB1070 reduced the 5-cent levy at that time and reduced the 5-cent levy authority by 2 cents and specified what remaining...what the remaining 3 cents would be used for. It would be used for a levy authority of up to 2 cents for elementary learning center and focus programs, bricks and mortar projects, and then it also allowed for a 1-cent levy for elementary learning center operations and pilot programs. This is how the law stands today, colleagues. And, again, it is...this is not the common levy though that you hear referred to so often but a levy for the learning community specifically. Prior to the learning community's creation, all school districts in this state levied property taxes as needed for the operation of their individual districts. The state caps this levy at \$1.05. The common levy for districts in the learning community is capped at 95 cents. It is collected across both Douglas and Sarpy Counties regardless of the differences in valuation practices and the number of TIF properties, but that's going to be a different discussion. The funds are essentially put into one pot and are divvied up out to the districts based on needs formula. The learning community school districts are then able to levy the difference between that 95-cent levy

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and the \$1.05 in order to meet their funding needs. And it is my understanding that all the school districts in the learning community do exercise this extra levy authority. LB585 would make some changes to the statutes governing learning communities. Though the law is written to allow the creation of other learning communities, there is currently only one in Nebraska, and that is the learning community of Douglas and Sarpy County. It encompasses 11 school districts that includes Omaha, Papillion-La Vista, Ralston, Millard, Springfield Platteview, Gretna, Bellevue, Elkhorn, Westside, Douglas County West, and Bennington. A public hearing on the bill was held in front of the Education Committee on February 26, and after a near-death experience and much discussion and negotiation, LB585 was advanced with seven members voting in favor and one abstaining. There is a committee amendment that will follow, AM832, which will become the bill. I plan to spend time explaining the bill as amended in subsequent times on the mike. I do appreciate your interest in this topic and I look forward to the discussion on the floor. Thank you, Mr. President. [LB585]

SENATOR KRIST: Thank you, Senator Smith. As the Clerk stated, there are amendments from the Education Committee. Senator Sullivan, as the Chair of the committee, you're recognized to open on the amendments. [LB585]

SENATOR SULLIVAN: Thank you, Mr. President. I do stand to explain AM832. And as Senator Smith indicated, this has come about with a certain amount weeping and gnashing of teeth, but a compromise in coordination and I think everybody appears to be on board with it. And as Senator Smith indicated, it does replace the original provisions of the bill and I will try to outline what the new features encompass. I will say at the onset that it does not change the governance structure of the learning community council. However, it addresses the following items: early childhood education, certain levies, and transportation in learning communities, and provides additional authority to coordinating councils and advisory committees. First of all, with respect to the early childhood education, early childhood education for children in poverty are added to the responsibility of the learning community coordinating councils. Also, the advisory committee, which consists of superintendents, would be required to develop a plan. They'd be required to seek input from and collaborate with the member school districts and community resources to accomplish that. They'd be allowed to recommend services to be provided through contract with or grants to the school districts to provide or contract for some or all of the services. And they'd be required to take special efforts to establish those early childhood programs that are readily available and accessible to children and families located in areas with high concentrations of poverty. The next component addresses the levy authority. The current 2-cent learning community levy authority for elementary learning center facility leases and remodeling and for focus school and program capital projects would be reduced by 1.5 cents to .5 cent. And the current 1 cent levy authority for learning community pilot projects and for elementary learning center employees and contracts would be increased to 1.5 cents and expanded to cover those early childhood education programs for children in poverty. The net effect

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of these two changes would be a decrease in overall levy authority for learning communities of 1 cent. A third component has to do with transportation. The districts would not be required to provide free transportation to new open-enrollment students if transferring to another school within the home district or transferring to a school in a district that does not share a border with the home district. Also, new-enrollment, open-enrollment students would not include students who have already been accepted for open enrollment into the district prior to the effective date of the bill this fall. Also, transportation is only...would only be required for students who live more than one mile from the school if the student either increases the socioeconomic diversity of the school, qualifies for free or reduced lunch...priced lunches, or attends a focus or magnet school or program. That's the transportation component. A fourth component has to do with the coordinating councils. Again, I stress that it does not change the structure of that council or the councils; it merely authorizes them to levy for early childhood education programs for children in poverty within those levy limits, and it authorizes them to hold public hearings in response to issues raised by residents regarding the learning community, a member district, and academic achievement. And the fifth component of the changes references the advisory committees which are composed of the member district superintendents. Under the change, they submit a plan to the coordinating council providing for the implementation and administration of those early childhood education programs for children in poverty. And they provide for recommendations for improving the learning community's diversity plan, and also under current law they're required to meet a certain time...four times a year; that would be eliminated. So those are the components of the new learning community features and represented in AM832. And I offer your...or ask for your support of this amendment. [LB585]

SENATOR KRIST: Thank you, Senator Sullivan. The floor is now open for debate. In the queue, Senator Kolowski, Avery, Smith, Price, Kintner, and Wallman. Senator Kolowski, you are recognized. [LB585]

SENATOR KOLOWSKI: Thank you, Mr. President, and good evening, fellow senators. Thank you, Senator Sullivan, for that excellent explanation. And I stand in support of Senator Smith's original LB585 now modified to AM832. And I wanted to thank him for the time and energy he spent to modify and bring this current bill forward as AM832. Over the past four years of the life of the learning community of Douglas and Sarpy Counties, that organization has brought desired changes to the Education Committee of the Legislature for consideration in 2009, 2010, and 2011. The learning community organization was very involved in the suggested modifications that are represented in the Senator Smith's bill, and these stand as their 2012 desired changes. Again, I thank Senator Smith for his work on this bill and heartily recommend AM832. Thank you. [LB585]

SENATOR KRIST: Thank you, Senator Kolowski. Senator Avery, you are recognized. [LB585]

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SENATOR AVERY: Thank you, Mr. President. I want to add my praise to the people who were involved in the negotiations on this bill. This is a classic example of what can be done when opposing parties with wide differences are determined to find common ground. I was a part of helping Senator Smith reach the compromise that you see here in AM832. This is an amendment that makes significant changes to the original bill. It is an amendment that the Education Committee supported. I believe it was 7:4 with 1 person present and not voting. The parties that were brought together had very strong interests in the learning community. Some of the parties were, of course, not so fond of the learning community. But there were a number of people who were deeply involved in the learning community who were part of this negotiation. We had representatives from the learning community itself, from the professional staff and from the elected community. We had all...virtually all of the school districts were consulted along the way and they were a part of the negotiations. The Education Committee was a part of this from the beginning. Senator Smith's office and his legislative aide worked tirelessly to bring about this compromise. And the result is a bill that preserves the learning community and strengthens it. Probably the most attractive feature of the amendment is the idea that it is a good public policy position for us to start moving some money in the learning community into early learning opportunities. That is important. And to do that, some adjustments are proposed in this amendment to change current law in which the learning community may levy up to an additional 2 cents for elementary learning center facility leases, remodelling of such facilities, and things of that sort. What it does is, AM832 reduces the levy authority from 2 to .5 cent. And you may say, well, that's too drastic. The learning community professionals agreed to this. They, in fact, thought it was a good idea because it did open up an opportunity to increase the levy authority from 1 cent to 1.5 cents, including allowing the funds for early childhood education programs. So the levy authority went from 2.5 cents down to 2 cents. There was an overall reduction in the levy authority which saves some money, but it also opens up opportunities in the area of early childhood education. Transportation was another important issue that was addressed. Transportation changes include, first of all, allowing the learning community school districts to pay for transportation if the student is transferring within a district or if the student is transferring to a district that is not contiguous to his or her home district. So the transportation piece is important because it addresses of the big criticisms that has been levied at the learning community by people who are not necessarily in support of it. The whole point here is that we could not and should not assume that what we did in 2007 was perfect. [LB585]

SENATOR KRIST: One minute. [LB585]

SENATOR AVERY: What we did in 2007 was a very innovative approach to the...closing the achievement gap in the Omaha metro area. This learning community is strengthened by what is being proposed here. The governing structure is not touched. The levy authority is, however, loosened up a bit and reduced a bit so as to allow for

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funding early childhood. Transportation is made more rational. You don't have, under this amendment, students transferring across district lines way to the other side of the district. It will put some breaks on that. There is a grandfather clause, however, that will protect those students who are already being transferred to schools outside their district. I believe that there are many elements of this that we should embrace, and I would tell you that the negotiations while long and detailed and sometimes quite difficult, it was always done in the spirit of what is best for the student. [LB585]

SENATOR KRIST: Time. [LB585]

SENATOR AVERY: And we believe we've achieved that. Thank you. [LB585]

SENATOR KRIST: Thank you, Senator Avery. Senator Price, you are recognized. [LB585]

SENATOR PRICE: Thank you, Mr. President, members of the body. For many of you it may not come as a surprise that I'm going to rise up to speak on a topic of the learning community. So let me spend some time prefacing my statements. I do not disagree with the concept and the construct of a learning community. I do have heartburn being lumped in without a choice into it. I have over the years tried to educate myself more on the intricacies of the learning community such that the levy dollars being used aren't really state aid dollars because I used to have heartburn thinking why are we spending education dollars. I think the constitution says up to 21, and yet we're spending state dollars in education and wraparound services. But they're not really education dollars levied...brought about by the TEEOSA as I understand it, and that the constitution sets a floor, not a ceiling, and we can add to it, and that the Legislature in 2007 must have recognized this and the courts have recognized it. It's been to court a couple of times on a couple of aspects. But I still find it difficult because I look at the construct in such a manner that when I move to a community, if I choose to move into a city, I have agreed complicity if not explicitly to the social contract that that area has. If I don't like what they're doing in their tax policy, I can move. I reside in the ETJ of Bellevue. If I had such heartburn that I did not want to reside there, I could move to the county. I could move to Papillion or, as you know ad nauseam, I could move...I couldn't hold office but I could move to Iowa. So when I move to a community, I move there with that complicit understanding of an agreement of supporting their infrastructure. It could follow that when I move away from somewhere and to another location, I don't want to be burdened by the construct and social contracts in the place that I left. It's not a foreign concept. Sarpy and Douglas County are very closely aligned. As a matter of fact due to other people's efforts or lack of efforts, to be honest, I have OPS in my district in Sarpy County. You can't just cleanly draw a line and excise it. I would have liked to have seen an opportunity where a district could opt out, the citizens of a district could vote to opt out of the learning community. I'd heard when I mentioned it, oh, no, no, no, no, we can't have that. I believe Bellevue is a net gainer of learning community dollars. But

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when I dove into the law and I went down into it, and specifically I would encourage those of you who have time and want to read, 79-2114. I'll repeat that--and for our citizens you might want to read that, too--79-2114, elementary learning center services and programs report required. When you delve into that, it talks about these wraparound services that will be offered in the elementary learning centers. And the wraparound services include transportation, ESL classes for parents, mental health services. Clue into that one, folks. We've talked a lot about this stuff before. [LB585]

SENATOR KRIST: One minute. [LB585]

SENATOR PRICE: Thank you. Mental health services, child care for parents working on their literacy, transportation for participating families--I hope this bill addresses that in its way--and nutritional services, and pretty much whatever they believe needs to be given to not just the child but the family members. And I wonder where is HHS and where are these dollars? I question why are education dollars, tax dollars, being raised...being used for what has to be wrapped around in terms of wraparound services. It isn't reading, writing, and arithmetic and transportation and the things that you need like kickballs and whatever it is you need for schools. I don't discount the value. [LB585]

SENATOR KRIST: Time. [LB585]

SENATOR PRICE: Thank you. [LB585]

SENATOR KRIST: Thank you, Senator Price. Senator Kintner, you are recognized. [LB585]

SENATOR KINTNER: Well, thank you, Mr. President. You know, we're coming back six years later at the learning community which created on this floor, not in a hearing and not with a...you know, it was created right here on this floor with a lot of negotiation. And, you know, they talk about how sausage is made. Well, this is a piece of sausage. As a matter of fact, it's probably a rotten egg. And six years later we try to fix a rotten egg, and you know what? It's still rotten. You're not going to rehabilitate a rotten egg. You know, something that Senator Avery said, he said, what's best for the students. And I would also say what's best for the taxpayer. We keep forgetting about the taxpayer. You know, I've been involved in politics for about 30 years now. And I can't ever say anytime in my life when I've seen a group of people--when I say people I mean my constituents--so against anything. I've never seen almost near unanimous dissent against something like the learning community. I mean, I've knocked on every door, just about every door in my district in Sarpy County and I couldn't find more than two people that might be willing to give learning community another chance, a chance to rehabilitate it. It was almost unanimous. Get us out. Get rid of this thing; return to local control. And what we have here is social engineering. We've got "educrats" and we've got senators from Lincoln and senators from Omaha telling people in Sarpy County this

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is what's best for your kids. Well, I would submit to this body and to the people at home and anyone else who wants to listen that the parents and the local school districts know what's best for their kids and not some people in Omaha, Lincoln, and scattered throughout the state of Nebraska. We've created this 11-member superschool district type organization that spends a little bit over \$6 million which is designed to mix poor and rich public school students together from the Omaha area to try to narrow the achievement gap. If that's not social engineering, I don't know what is. You know, the World-Herald in an editorial said, quote, the learning community's coordinating council was shaking the public's confidence with its most recent decision to appropriate \$100,000 for the research project to provide mothers with help and information on parenting, health, and other needs for their babies. And you want to know why it costs so much to educate kids? Because we're not teaching them reading, writing, and arithmetic; we're teaching them how to rear a child and health of their baby and all this other stuff. That's why it costs so much to educate a kid in some of these school districts. Go on to say they also said: by stepping far afield from the learning community's mission, the project creates confusion about what the learning community is doing and whether the council was setting appropriate priorities. Now the learning community council for the first couple of years kind of stumbled around trying to figure a purpose for itself, and they finally have settled on programs to help young kids. Now it's not helping the achievement gap one bit. As a matter of fact, ACT scores are down in Omaha since the learning community was started. So we've gone the wrong way on ACT scores, and the rest of these scores that we look at have been a mixed bag. We can't say in any way, shape, or form... [LB585]

SENATOR KRIST: One minute. [LB585]

SENATOR KINTNER: ...that the kids are coming out more educated, they're better students, they're better human beings. We can say that we've helped some young kids and we put all of our resources toward young kids. Those kids are nowhere close to graduating. And so I think what we have now is we have one big mess and we're trying to make something out of it. We're trying to salvage it. We're trying to make it work. But the people in Sarpy say, let me out. I want out of this thing. And that's what they deserve. Thank you, Mr. President. [LB585]

SENATOR KRIST: Senator Wallman, you're recognized. [LB585]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. Does it bother you, any of you, that in a learning community, don't we have...every school district should be a learning community? And we single this out as another bureaucracy, another oversight thing we're supposed to make things better. Has it made things better? There's a bunch...a few of us in there that didn't support this and I'm not a sore loser. I was hoping it would work. But has it worked? Folks, just ask the question. Has it really, really worked? And the bigger the house, the better the school. That just follows



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the money. Follow the money, folks. If we truly want a better school system in Omaha or anywhere else, we'll take care of the teachers and the principals, not administration people. Take care of the people that deal with the kids. The kids are the most important thing we should have in our schools. If we're going to bus them across town to a better school, I guess that's my prerogative because we have open enrollment. And so should we pay for that? Some school districts do. In our place, we have school buses all over the place. And is that right? I don't know. My tax dollar is paying for it. If you're in a couple of different school districts, your tax dollars are paying for it. Do I like that? No. But the kids I think are getting a good education and that's what I care about. So if my kid is more happy at Freeman or Wilber-Clatonia or Crete or whatever or Norris or Beatrice, I have this option. And so the learning community here, I don't know how it could really work the way it was set up. And that bothered me. And in this many years we should have seen some improvement I think, more than we have. We assess the children; why don't we assess the administrators? Then maybe we would start to see some improvement, folks. And, you know, as former school board members, we did deal with administrators and we did make recommendations. And we have no problem with that as farmers have no problem with giving advice--some of it's good; some of it's bad. And I'd yield the rest of my time to Senator Price if he'd wish. [LB585]

SENATOR KRIST: Senator Price, you're yielded 2 minutes and 40 seconds. [LB585]

SENATOR PRICE: Why, thank you very much, Senator Wallman, Mr. President, members of the body. I was having a sidebar conversation as some other conversations were going on. And obviously we know what's on the agenda coming up and we are, you know, thinking about what are we going to say and what are we going to do, and I have to be honest with you. Time is...can be a good thing. My first year down here I would have jumped on this like a pogo stick on a point. I'd have been all over this thing making...trying to do as much mayhem as I could. But now we're here today. This topic has been through numerous court debates. The people still do feel unhappy. I think it's important that a member stand up and address their constituents' concerns. But in doing so we have to look at the entirety of the question. And I'm not one...when I came down here, you know, fairly newly minted, retired from the military, I had a saying that kind of went like this: I only have so many rounds. I'm in a target-rich environment, and I'm not going to waste them on hardened targets. All right. Now I know in the vernacular of today's discussion that might not be the smoothest commentary to provide. But I believe the underpinning of it still applies today. We do what we can as we can and we're doing that on this transportation thing. [LB585]

SENATOR KRIST: One minute. [LB585]

SENATOR PRICE: Thank you, Mr. President. But I would also add to you this following. There will be some question about as we decrement one area and we add to another. In debate we had earlier today, I talked about logic and setting things aside. And I can

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resolve myself to support this predicated on the absolute of a reduction of an authority. And I think that's important to bring forward in the debate. Obviously there will be more to be said as we go along. Thank you, Mr. President, and thank you, Senator Wallman. [LB585]

SENATOR KRIST: Thank you, Senator Wallman and Senator Price. Senator Nelson, you are recognized. [LB585]

SENATOR NELSON: Thank you, Mr. President, members of the body. I have...I'd like a couple of points of clarification on this and if Senator Sullivan would yield to some questions, please. [LB585]

SENATOR KRIST: Senator Sullivan, will you yield to Senator Nelson? [LB585]

SENATOR SULLIVAN: Yes, I would. [LB585]

SENATOR NELSON: Thank you, Senator Sullivan. Greetings in this dark Chamber this evening. I think you're standing over there. As I read through this, the original or the actual bill, LB585, it appears to me that it provides that elementary learning centers will be replaced by early childhood education programs. Is that what... [LB585]

SENATOR SULLIVAN: Basically, yes, um-hum. [LB585]

SENATOR NELSON: Okay. So my question is, in reading through the amendments here, I see that a 1-cent levy is expanded to 1.5 cents to cover early childhood education programs or expansion. Now does this mean that the elementary learning centers are still going to function in part on those programs? Are they going away now? Is it all going to be early childhood education? Or what's your understanding of that? [LB585]

SENATOR SULLIVAN: I'm not sure. Senator Smith may have...or Senator Kolowski may be able to shed a little more light on that. But the ones that are in operation right now wouldn't necessarily go away. I think it just simply gives a little more latitude for not only the learning community coordinating council but also the member school districts to make a decision how they're going to handle...with this additional levy authority, to handle early childhood programs and maybe some other related programming under this levy authority. [LB585]

SENATOR NELSON: All right. Thank you, Senator Campbell (sic--Sullivan). Let me address some questions then to Senator Smith if he's here. [LB585]

SENATOR KRIST: Senator Smith, will you yield for some questions from Senator Nelson? [LB585]

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SENATOR SMITH: Yes, I will. [LB585]

SENATOR NELSON: Thank you, Senator Smith. Did you hear my questions to Senator Sullivan? [LB585]

SENATOR SMITH: I'm sorry, Senator Nelson, I did not. [LB585]

SENATOR NELSON: You did not. All right. Your bill provided that, as I understand it, the elementary learning centers would be replaced by early childhood education programs. Is that correct? [LB585]

SENATOR SMITH: Not entirely. There is an allowance in the statute, we're making an allowance for the funding on that 1.5-cent levy to also be used for early childhood development for children in poverty. [LB585]

SENATOR NELSON: Well, under your bill, 77-3442, it says the elementary learning center facilities would be replaced with early childhood education programs for children in poverty. Now are you telling me you're still going to keep the elementary learning centers, I mean, under your bill? [LB585]

SENATOR SMITH: Senator Nelson, I believe you're looking at the green copy for LB585. And the committee amendment, AM832, that was revised. [LB585]

SENATOR NELSON: Yeah. That's correct. So my question now to Senator Sullivan, and maybe you can tell me, where are we now? What's the intent of the committee amendment? Are we still going to continue the elementary learning centers, some of the programs there, and then bring in early childhood education, or what's your understanding of that? [LB585]

SENATOR KRIST: Is that question for Senator Sullivan or Senator Smith? [LB585]

SENATOR SMITH: Yeah, yeah, yeah, I... [LB585]

SENATOR NELSON: No, no, that's for you, Senator Smith. Thank you. [LB585]

SENATOR SMITH: Okay. Yes, the intent is to keep the current allowances in place but to expand that to allow for early childhood development for children in poverty where we...my school district and other of the other ten school districts believe there's a great need. [LB585]

SENATOR NELSON: I'm sorry, what was your last? [LB585]

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SENATOR SMITH: There's a great need for funding for early childhood development. [LB585]

SENATOR NELSON: Okay. Well, correct me but I think in Omaha we have... [LB585]

SENATOR KRIST: One minute. [LB585]

SENATOR NELSON: ...we have two elementary learning centers. Maybe one is completed and another under construction in south Omaha. Is that correct? [LB585]

SENATOR SMITH: I'm not certain of that. But the bill would reduce the levy that would allow for the capital projects for centers such as that. [LB585]

SENATOR NELSON: And this early childhood would take place at other locations in your school districts then, not necessarily at the elementary learning centers. [LB585]

SENATOR SMITH: That would be under the authority of the individual school districts to have those early childhood development programs. [LB585]

SENATOR NELSON: All right. Thank you, Senator Smith. My concern here is that it seems to be rather nebulous as to what amount of money of the levy is going to go for early childhood education and what's going to go for elementary learning center programs. I think that's kind of important in as much as we have several bills here that want to address more money for early education. I'd like a little more understanding about how this is all going to fit together. Thank you, Senator Smith and Senator Sullivan. Thank you, Mr. President. [LB585]

SENATOR KRIST: Thank you, Senator Nelson, Senator Smith, and Senator Sullivan. Senator Ken Haar, you are recognized. [LB585]

SENATOR HAAR: Mr. President, members of the body, first of all, I want to start by saying thank you to Senator Smith for the work he's put in, also Senator Kolowski and Avery on this bill. I will vote to support this bill. And just to tell you, I had some really early concerns about it because there are...you know, as we've heard today, there are people who would like to just get rid of it, there's people who would like to change it. I wasn't here when it was put together, so I must admit I don't understand it totally. But my concerns have been assuaged because of the work that was done by the people I just thanked. Going back to the learning community itself, talking to those people to put in place useful changes, changes that will make things even better. I am more than willing to give this more time to work. The learning community, it's only been there a short time. And I'm very pleased with its added emphasis on early childhood education. And just a brief note on that, I was reading a little book the other day and it...a statement in that book was something, we should look forward to the day when we spend more

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money on early childhood education than we spend on our prisons. And that's what I'm looking forward to. So thank you very much. [LB585]

SENATOR KRIST: Thank you, Senator Haar. Senator Cook, you are recognized. [LB585]

SENATOR COOK: Thank you, Mr. President. Good evening, colleagues. I, as you can see from the committee statement if you have that up on your computer, am the lone present not voting for this amendment and proposal that you see before you. And so I wanted to speak to that for a little bit. I certainly am not rising to be in any way critical of the learning community. I'm very proud of the work that I have seen done so far or have read about being done so far and trust that the trajectory that the leadership and the programming and the participants are on is a trajectory that meets the intended outcome. My concern, which I have given voice to but will for the record offer, is that this proposal along with a couple of others that were brought on learning community day in the Education Committee represents a slice in what the Chinese ancient torture of death by a thousand cuts might represent. Some of you were here last year, perhaps two years ago, when Senator Fischer brought a proposal to eliminate the salary for participants. And certainly no one is here for the money. Certainly nobody is participating in the learning community council for the money, but that represented to me an example of a slice in the structure of the learning community. Would Senator Smith yield to a question? [LB585]

SENATOR KRIST: Senator Smith, will you yield to a question from Senator Cook, please? [LB585]

SENATOR SMITH: Yes, I will. [LB585]

SENATOR COOK: Thank you, Senator Smith. And thank you for your work on this proposal. As I mentioned earlier in my presentation this evening, I am an enormous supporter of early childhood education. There are a number of initiatives going on in my community, and that along with the learning community in general enjoys a great deal of support among my constituents and constituencies. I'm going to ask you very directly about your intentions. Did you introduce this proposal to slice the learning community toward its eventual elimination? [LB585]

SENATOR SMITH: No, not this...no, not at all, not with this bill. [LB585]

SENATOR COOK: Okay. Thank you very much. With that I will yield the balance of my time to the Chair. [LB585]

SENATOR KRIST: Thank you, Senator Cook. Senator Hansen, you are recognized. [LB585]

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SENATOR HANSEN: Thank you, Mr. President, members of the Legislature. Got a couple of questions about the learning community and the learning council that this bill pertains to. And it was real interesting to read it. I didn't realize until kind of late that the amendment became the bill, so I was reading the green copy. But that was my fault and no one else's. But I do have a question for Senator Sullivan if she would yield. [LB585]

SENATOR KRIST: Senator Sullivan, will you yield to a question? [LB585]

SENATOR SULLIVAN: Yes, I would. [LB585]

SENATOR HANSEN: Thank you, Senator Sullivan. You and I both live in rural Nebraska. And I think that most populated areas in rural Nebraska--there aren't too many of them--may have the same problem that my county has. My county has a, what I call anyway, an opt-out problem. We opt out about 350 children of all ages from kindergarten on to other schools in the county, into Hershey, Sutherland, Brady, Maxwell, and to three schools outside the county. And so they have no bad feeling about buying ads in the paper, ads on TV, ads on the radio saying, you know, come to Tryon, we'll give you that small school experience that you're looking for. We'll give you that access to teachers, that teacher ratio that we have. My question to you, Senator Sullivan, is that if the learning community seems to be working in Douglas County where they just move through a county line, do you think that this will ever be a possibility out in rural Nebraska? [LB585]

SENATOR SULLIVAN: Well, one of the things I always say, Senator Hansen, is never say never. And just a few minutes ago I had a conversation with someone, another senator who said we need to really look at this TEEOSA formula and really rework it. And then we have conversations about the changing demographics of schools all across Nebraska, particularly in rural Nebraska. So would I say it would or wouldn't work? You know, it's brought up periodically and I wouldn't take it off the table. But it's like anything. It...and just like we saw here a number of years ago when I wasn't here when this learning community came into being, a lot of consternation and discussion about it. And if we went that route in rural Nebraska, I'd have to say that same sort of discussion would have to take place. [LB585]

SENATOR HANSEN: Okay. I think my underlying concern for the learning communities and learning coordinating councils that run them would be the early childhood program. And my wife works with early childhood children from birth to three. I probably should have filed a conflict of interest there because that's what's paying for my retirement someday. But that is...the early childhood can...I mean, it should have every child evaluated, able to be in some type of a learning situation. I'm not sure how we can do that in those small schools, in the small schools that we have without some type of consolidation of school districts. Every legislative district has about 37,000 adults or

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population. So we'd have about the same number of kids. I want to see what a school district would look like in Senator Davis' area. One school district up there, Senator Davis, you have the same number of kids as I do in Lincoln County, same number as you have in 15 blocks in Omaha. But we've got to take...we've got to find a funding mechanism to work for all the children of the state in this early childhood program without jabbing property taxes again. I think it's very important. I don't know. Maybe it's the first step in school consolidation... [LB585]

SENATOR KRIST: One minute. [LB585]

SENATOR HANSEN: ...on a...not a mandatory, it would have to be on a voluntary basis to take care of our early childhood programs. Do you have any comment to that? [LB585]

SENATOR SULLIVAN: Well, it's clear to me in the discussion we've had thus far in this body this session that early childhood programming is important to all of us. And this has been brought up in the Education Committee, too, is that how do we reach out to all school districts and make these kinds of programs available? You know, we're doing it through some of the lottery dollars with the grant programs, but is that enough and do we help school districts sustain that? If this becomes a priority of our state, early childhood education, I couldn't agree with you more, Senator Hansen. We're going to have to figure out a way to put more dollars into it. [LB585]

SENATOR HANSEN: Thank you, and... [LB585]

SENATOR KRIST Time. [LB585]

SENATOR HANSEN: Thank you, Mr. President. [LB585]

SENATOR KRIST: Thank you, Senator Sullivan and Senator Hansen. Senator Murante, you are recognized. [LB585]

SENATOR MURANTE: Thank you, Mr. President and members. I rise in support of LB585 and the underlying committee amendment. This year, we have heard a lot of criticism of committees when things didn't go our way. But today I want to rise to praise and to thank the Education Committee and Senator Sullivan in specific. Senator Smith and I sat down before this legislative session began and we talked about what we wanted to do with the learning community, changes that we needed that we thought were necessary. Senator Smith outlined where he wanted to go with LB585. And I thought that he had absolutely no prayer of his bill getting serious consideration in the Education Committee and that there would be no chance that the Education Committee would advance a serious piece of legislation dealing with the learning community to the floor. I felt so strongly about that that I introduced a bill on my own right dealing with the

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learning community which was structured in such a way that we got it sent to the Government Committee so we could have a public hearing outside the Education Committee. But I've spoken through this process with Senator Smith. I've now had the opportunity to speak with almost every member of the Legislature regarding the learning community and every member of the Education Committee. And I'm exceedingly pleased that they worked with him on this piece of legislation, they found common ground, and they sent a bill to the floor. Now what I would like to commit to Senator Sullivan and to the members of the Education Committee is that there is more common ground than what exists in LB585. I'm not going to attempt to amend it this year. I'm not going to even attempt to offer a proposal in 2013. But I believe that through the interim and into 2014 there is more that can be done. I believe we have to trust each other to a certain extent that even though I am an opponent of the learning community, that I am committed to operating in a constructive and not a destructive way to finding additional common ground. I hope that going forward questions like the one Senator Cook asked, they're reasonable, but we have to understand that not every idea offered by an opponent of the Legislature is a means to the end of abolition of the learning community. I am committed to doing that. I thank the Education Committee for their work on this. I look forward to working with them in the future. Thank you, Mr. President and members of the body. [LB585]

SENATOR KRIST: Thank you, Senator Murante. Senator Smith, you're recognized. [LB585]

SENATOR SMITH: Thank you, Mr. President. And, colleagues, I really appreciate the discussion we've had this afternoon and early this evening on this issue. And I want to echo what Senator Murante said as well. I cannot tell you how much I appreciate Senator Sullivan and her leadership and her committee for working together with me on this bill. I also appreciate the individual school districts that worked on this and the representatives from the learning community as well. And, you know, I just wanted to go back to a question that Senator Cook had for me. And Senator Cook asked my intentions on this bill. And I just...I want to be very clear. I don't want to have any hidden agendas here or secrets. I think it's no secret that I've not been a fan of the learning community and nothing has changed on that level. I do value the local control of the school districts. However, the learning community is law; it's here. And I'm committed to do whatever I can to make it better. And I believe that that's what this bill does. It helps to make it more efficient in a couple of particular areas. And one of the things I'm hoping to discuss tomorrow whenever I'm able to reintroduce a part of this and to talk on the mike, I want to talk about the early childhood development for children in poverty and how critical that piece is for the 11 school districts that are part of the learning community and how this bill helps us provide that type of funding for those school districts. So with that, Mr. President, I'm finished for the day and I thank you for your time, colleagues. [LB585]



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SENATOR KRIST: Thank you, Senator Smith. Mr. Clerk for an announcement. [LB585]

CLERK: Mr. President, an amendment to be printed: Senator Murante to LB230.  
(Legislative Journal page 955.) [LB230]

I do have a priority motion. Senator Brasch would move to adjourn the body until  
Wednesday, April 10, at 9:00 a.m.

SENATOR KRIST: You have heard the motion. All those in favor say aye. Opposed,  
nay. The ayes have it. We are adjourned. Tail wins.