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Floor Debate  
March 08, 2017

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[LB1 LB2 LB3 LB4 LB5 LB11 LB45 LB56 LB57 LB61 LB74 LB75 LB80 LB87 LB92 LB131  
LB132 LB134 LB157 LB182 LB195 LB223 LB248 LB275 LB322 LB323 LB337 LB340  
LB345 LB352 LB358 LB368 LB429 LB444 LB447 LB447A LB461 LB469A LB486 LB488  
LB496 LB506 LB512 LB533 LB535 LB547 LB566 LB578 LB590 LB600 LB618 LB625  
LB626 LB657 LB660 LR59 LR60]

PRESIDENT FOLEY PRESIDING

PRESIDENT FOLEY: Good morning, ladies and gentlemen, and welcome to the George W. Norris Legislative Chamber for the forty-third day of the One Hundred Fifth Legislature, First Session. Our chaplain for today is Senator Geist. Please rise.

SENATOR GEIST: (Prayer offered.)

PRESIDENT FOLEY: Thank you, Senator Geist. I call to order the forty-third day of the One Hundred Fifth Legislature, First Session. Senators, please record your presence. Roll call. Mr. Clerk, please record.

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

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

CLERK: I have no corrections.

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

CLERK: Your Committee on Banking, Commerce and Insurance reports LB345 to General File and LB486 to General File with amendments, those signed by Senator Lindstrom. Mr. President, a communication from the Governor to the Clerk. (Read re LB1, LB2, LB3, LB4, LB5, LB45, LB56, LB74, LB80, LB131, LB132, and LB134.) Priority bill designations: LB578 by Senator McDonnell; LB248 by Senator Harr; LB512 is one of the Education Committee priority bills offered by Senator Groene. Urban Affairs has selected LB590. That's signed by Senator Wayne. New Resolution: LR59 by Senator Albrecht. That will be laid over. I also have, Mr. President, your Committee on Urban Affairs reports LB496 to General File with amendments attached. And a new A bill (Read LB469A by title for the first time.) That's all that I have, Mr. President. (Legislative Journal pages 644-645.) [LB345 LB486 LB1 LB2 LB3 LB4 LB5 LB45 LB56 LB74 LB80 LB131 LB132 LB134 LB578 LB248 LB512 LB590 LR59 LB496 LB469A]

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Transcriber's Office

Floor Debate  
March 08, 2017

---

PRESIDENT FOLEY: Thank you, Mr. Clerk. We'll now proceed to the first item on the agenda. General File, 2017 Senator priority bills. Mr. Clerk.

CLERK: Mr. President, Judiciary offered LB447. It was a bill originally introduced by Senator Chambers. (Read title.) It was discussed yesterday. Senator Chambers presented his bill. When we left the issue that Senator Chambers had an amendment pending to the bill, Mr. President. I also have a priority motion pending. [LB447]

PRESIDENT FOLEY: Thank you, Mr. Clerk. Senator Chambers, if you would like to take a minute or two to refresh us on the bill before we proceed to the debate on the bill. [LB447]

SENATOR CHAMBERS: Mr. President, members of the Legislature, yesterday those of us who were here, the few, discussed practically all of the aspects of the bill. But since the vast majority of the senators were not here, it's as though we had no debate at all. So today will be almost like starting from ground zero. And that's all I need to say on that score. But what this bill would do is remove mandatory minimums from two categories of felonies. And that's what the bill would do. Thank you, Mr. President. [LB447]

PRESIDENT FOLEY: Thank you, Senator Chambers. Mr. Clerk. [LB447]

CLERK: Mr. President, a priority motion, Senator Larson would move to bracket the bill until January 3 of 2018. [LB447]

PRESIDENT FOLEY: Senator Larson, you're recognized to open on your bracket motion. [LB447]

SENATOR LARSON: Thank you, Mr. President. I was here for a majority of the debate yesterday morning and frankly, I think it seems like the proponents talked most of the time. I heard two opponents talk, and I really just want to see where our votes are on this. I hear that a lot from certain senators of, well, let's just have the test vote and see where the votes are and move forward. I think there were two people that spoke against it yesterday, many that spoke for it. So, I think this is a good opportunity for us to move and see where the votes are and if the votes aren't there, we can move forward. I'd urge everybody to support MO51. [LB447]

PRESIDENT FOLEY: Thank you, Senator Larson. Senator Krist, you're recognized. [LB447]

SENATOR KRIST: Thank you, Mr. President. First of all, I want to say that I do not support MO51. I believe that we had a good debate yesterday, but I know for a fact that there were at

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Floor Debate  
March 08, 2017

---

least a half a dozen, if not more, folks who stood up who were convinced by Mr. O'Brien in the AG's Office or by their county attorneys that this was not a good idea. And make no mistake, that's where the opposition comes from. It comes from the county attorneys, it comes from the prosecutors, and it comes from the AG's Office. It does not come from a consolidated effort to look at justice reinvestment in terms of a macro level, which I stated on the mike several times yesterday. Before I continue with my comments, I do need to clear the air though. I have ordered a transcript of what I said yesterday and I wanted to tell you last night my wife said, I think you need to apologize to the guy who sits down in front with the white hair, that Halloran guy. And I said, well, you know what, I'm not going to apologize to him because I think I was trying to point out that even though he didn't understand the information when we started the debate in our committee, he asked good questions and he made his own decision and he actually participated in the debate, the great debate. That's why we're here, to debate and do what's in the best interest of the people of Nebraska. So I hope he took that as a compliment when I said it to him yesterday, although when he did ask me if I would yield to a question I happened to be sitting by the clerk and didn't get back to my chair fast enough. I was here every minute of the debate yesterday with the exception of two times that I had to use the little boys room. So I know what I said and I will, if I need to prove that on the mike, I will do that. But again, Senator Halloran, you participated in the committee, you did a great job in asking questions, your vote is your vote, and I pointed that out to make a point of that fact. So if you need an apology, I would certainly do that off the mike, but I think you understand that it is a compliment. The last thing that I want to read into the record this morning and talk about is the fact that we...we're hearing different opinions and we were hearing different statistics of how mandatory minimums don't work. They just flat out don't work in the macro sense of today's criminology and the ability to maintain control and also to rehabilitate and reduce recidivism, that concept, those concepts of mandatory minimums have proven not to work. But we really didn't have any legitimate conversations until we started quoting ALEC. As soon as we started looking at the information that came from ALEC, there seemed to be a few people, and I know Senator Hilkemann was one of them, who asked Senator Chambers many good questions about giving an example of a state where this was employed in some concept and it worked. And we talked about the state of New York who actually closed a facility. I talked about the state of Georgia who was three years ahead of us in the CSG structured justice reinvestment process that has closed three of their facilities. Three whole corrections facilities have been closed down. It's three or four, but I know a three minimum. So I just would like to read again, in case you've trashed what was handed out yesterday, this is the ALEC, the "State Factor," the ALEC report, American Legislative Exchange Council. Mandatory minimum sentencing reform saves states money and reduces crime rates. If you don't have a copy of it, I'd be happy to give you another copy of it. I'd just like to scroll ahead, script ahead and read the conclusion. Protecting, and I quote... [LB447]

PRESIDENT FOLEY: One minute. [LB447]

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

Floor Debate  
March 08, 2017

---

SENATOR KRIST: ...protecting public safety is an essential function of government, but governments have an obligation to taxpayers to avoid unnecessary spending by providing public services as efficiently as possible. Imposing mandatory minimum sentences on low-level, nonviolent, and drug offenders who pose little threat to public safety is wasteful, ineffective, counterproductive. On the other hand, reserving prison space for the violent and repeat offenders maximizes the efficiency of the criminal justice system thus giving taxpayers the most public safety benefit for their dollar. And that, colleagues, is the judiciary that weighs out in the courtroom, where is public safety and where is it not best served. Thank you, Mr. President. [LB447]

PRESIDENT FOLEY: Thank you, Senator Krist. Senator Blood, you're recognized. [LB447]

SENATOR BLOOD: Thank you, Lieutenant Governor. Fellow Senators, friends all, and I hope the people that are thinking about supporting the bracket are listening as well. I rise today in support of LB447 and against the motion to bracket and I was unable to be here on the floor to debate yesterday because I was in Executive Session and I want to bring a little different picture to light that was not discussed yesterday. And I speak from experience and I want to tell you a story. I'm pretty confident that when you speak to your children and grandchildren and the children that are your neighbors, maybe when you go as a firefighter, Senator McDonnell, to speak to children in schools, when you ask children what they want to be when they grow up, they might say, I want to be a fireman. And I want to be a police officer. I want to be a teacher. But you probably don't hear that when they grow up they want to be a corrections officer. Citizens really like having bad guys put away because it's out of sight, out of mind. They really don't think much about the people that are locked in with those inmates eight hours or more a day. And they're locked in behind those walls without any weapons, with the exception of those in the tower. They have a radio. Their only weapon is up here. And if they're really good at their job, the best tool that they have is the tool of deescalation. And so I want you to think today about these staff people that are locked in with hundreds of inmates every day and now I want you to imagine a low-level offender who is in prison by our one-size-fits-all system. He's probably not very happy, and guess what we're going to do? We're going to put him in with more savvy criminals who have much more experience and possibly are more violent and so we have two really unhappy groups of offenders. And now we're putting this corrections staff person in the middle of it all, asking them to work more hours, asking them to be in this overcrowded system with our one-size-fits-all sentencing. And what do you think is going to happen? Do you think it's a perfect storm? I speak from experience. It is a perfect storm and it's not a new one. It's not something that just happened this year, last year. This is a decades-old problem. And so when you think about bracketing this bill or not supporting this bill, I want you to remember the people that are working there, not just the inmates. They're your brothers, your sisters, your mothers, your fathers, your grandparents, your neighbors, the members of your church. They want to go home to their families, too. When you continue a system that is not working, that

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

Floor Debate  
March 08, 2017

---

continues to make overcrowded prisons, you can't keep throwing money at this problem. You've got to figure out some long-term solutions. I like how a lot of people are unable to look at me right now. This bill is about people. I still have friends that work there. I'm sure you know people that work there. Do you want them to go home and see their families? I do. Let's do some long-term solutions like this bill. The inmates and their incarceration is an important topic, but don't forget the people that work there as well. And again, with lack of change comes danger, as we've already found with Tecumseh. [LB447]

PRESIDENT FOLEY: One minute. [LB447]

SENATOR BLOOD: I rise in support of Senator Chambers' bill, LB447. Don't forget that this bill isn't just about those incarcerated, but those that are incarcerated with them as well. [LB447]

PRESIDENT FOLEY: Thank you, Senator Blood. Senator Chambers, followed by Senators Harr, Ebke, Smith, Linehan, Pansing Brooks, and Hansen. Senator Chambers. [LB447]

SENATOR CHAMBERS: Mr. President, members of the Legislature, I'm a realist. I'm very serious about bills that I bring and I'm more serious about some than others. I'm very serious about this one, but the only bill I bring that I really feel deeply about is the one to abolish the death penalty. So if Senator Larson has gotten his group together, the Governor and the Attorney General have done their work and the bill is doomed, I don't want you to waste your time on my bill. And I'm not going to beg you to do or not do anything that would hurt this bill. I'm not going to say anything other than I'm opposed to his bracket motion, but I think you ought to go ahead and let him get a vote on it and before you all expend a lot of emotional capital, intellectual work, if they want...when I say they, if the majority of the senators don't want to talk about the bill, don't put people who are serious about it through that agony because that's what it is. There are people watching these debates and they take it seriously, more so than many of the senators did yesterday. So I'm not going to speak again on his motion. I'm opposed to it. And if I could have my way, I would say go ahead and take a vote on it and if he has the votes let him prevail. And if he hasn't got the votes, we don't have to have a long debate with something hanging over the entire proceedings which may nullify all that was said. Now, that's all that I have to say. Thank you, Mr. President. [LB447]

PRESIDENT FOLEY: Thank you, Senator Chambers. Mr. Clerk for an announcement. [LB447]

CLERK: Mr. President, the Health Committee will meet in Executive Session at 9:30 in room 2022. [LB447]

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

Floor Debate  
March 08, 2017

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PRESIDENT FOLEY: Thank you, Mr. Clerk. Senator Harr. [LB447]

SENATOR HARR: Thank you, Mr. President and members of the body. So yesterday, I got up and spoke about this and I gave a little history and I said, this moves power from the judicial branch to the executive branch, meaning from judges deciding and looking at what the sentence is, should be, knowing the facts before them, to the prosecutor who gets to charge and then they can decide if they want to lower that charge and give someone a little break. We are sitting here prejudging situations that may or may not happen. We don't know the facts of the cases that we are inputting these mandatory minimums. And we have to think about what we do has consequences. Yesterday, I mentioned a felon in possession of firearms. Of the mandatory minimum sentences, and I want to thank the Attorney General's Office for getting me these statistics, 43 percent of those who have a mandatory minimum sentence, 43 percent of those people are felon in possession of firearms...43 percent. Okay? Now, before 2009, there was no mandatory minimum on felon in possession of firearms. None. (In) 2009, we put a mandatory minimum on. Before that the majority of felons in possession of firearm cases went federal, meaning it became a federal court issue and they weren't filling our prisons. Since we implemented mandatory minimums, the number of individuals prosecuted for felon in possession of firearms has doubled. Doubled, folks. It's tripled in Douglas County. Think about that. Why is that? Is it because we put mandatory minimums in, we have more people committing this crime? Is that the correlation? Is it, well, we had a new administration and President Obama came in in 2009 and he said, I'm going to go after felon in possession of firearms? Well, no, because this is state, not federal. Is it that President Obama came in and said, I'm soft on crime, I don't care about guns? No, I think the NRA would disagree with you there. No, the reason we had this uptick on the state level is because the feds said, it's about the equivalent sentence. You take them. Go ahead. You take that expense. You take it on. These laws don't have the consequences that we think they do, folks. And what we're doing is, in this budgetary time, we are increasing a cost on ourselves, we're filling our own prisons that are already overfilled. Now, if your argument is, we need mandatory minimums so that these people don't go out and commit these crimes, well, let me ask you this. You're the lawmakers, do you know what laws have these mandatory minimums? If you don't know it, why do you think a common street person would? Okay? Now we get to the third argument and the third argument generally goes, well, we want these people in prison until they age out. We're going to put these sentences on them and what we're going to do is keep them in there, and the term age out means until they're old enough that they don't want to live this thug lifestyle anymore. [LB447]

PRESIDENT FOLEY: One minute. [LB447]

SENATOR HARR: Thank you, Mr. President. If that's true, show me the stats that that has happened or that works. As a matter of fact, the opposite has been shown. There has been no decrease. As a matter of fact, 29 out of our 50 states have taken actions to decrease or eliminate

Floor Debate  
March 08, 2017

---

mandatory minimums because they don't see that as working. You have groups as diverse as the Heritage Foundation and the ALEC Foundation. How much more diversity can you get saying, they don't like it? Of course, I'm being facetious there. But it's not a left or right issue. It's a what is just issue and where do we think the power should lie? Should it lie with us in the executive not knowing the facts of the case, with the executive prosecutors having that control, or the judges? Decide where you want that power to be. That's what this is about. Thank you, Mr. President. [LB447]

PRESIDENT FOLEY: Thank you, Senator Harr. Senator Ebke, you're recognized. [LB447]

SENATOR EBKE: Thank you, Mr. President. I rise in opposition to the bracket motion. Whether this bill survives, is amended and survives, or doesn't survive at all, I think this is a discussion we need to have. This is a debate we need to have. It is our job, as Senator Harr suggested, to be the policymakers. It is not the role of the executive branch to tell us what the policies should be, just as it is not our job to tell them how to execute our policies. This is basic separation of powers 101. I want to thank Senator Harr for bringing us the chart that discusses the admissions to our prisons. For those of you who have not been actively involved in the justice reinvestment effort over the last couple of years, and I think there is a fairly small group of us who have had any real involvement, myself, Senator Morfeld, Senator Chambers, Senator Krist, Senator Pansing Brooks, Senator Bolz. I don't know if I'm missing anybody. But it's a small group of us. Senator Schumacher. We've seen things a little bit differently perhaps than some of the rest of you have. And we have a vision, I think, for the way that things are supposed to go as we try to avoid lawsuits, as we try to avoid further disruptions, riots, whatever you want to call them in our prison system. And so I thank Senator Krist for asking this question. And one of the questions we have to ask where this bill is concerned is, where does it fit into the justice reinvestment effort? So I want to remind you, take this opportunity to remind you that Monday at 9:00 a.m. we are having a justice reinvestment overview. It will be a very brief briefing lasting about 45 minutes, but it gives you an opportunity to see what's going on, to get sort of a broad overview. And I will pay very close attention to who is able to be there and how you vote today because if you don't understand what we've been doing and you don't make the effort to understand what we've been doing, then I think it speaks less highly of the body if we engage in knee-jerk reactions based on what the prosecutors tell us is the best thing to do. It's our job to make policy. So again, I object to the bracket motion. Senator Chambers, if you want a minute or two or whatever I've got left, you're welcome to have it. Senator Chambers doesn't want it. I saw Senator Morfeld standing up, you want it? Okay. I yield the rest of my time. Thank you. [LB447]

PRESIDENT FOLEY: Thank you, Senator Ebke. Senator Smith, you're recognized. [LB447]

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

Floor Debate  
March 08, 2017

---

SENATOR SMITH: Thank you, Mr. President, and good morning, colleagues. Although I do stand opposed to LB447 the way it's currently written, I also oppose the motion to bracket at this point. I do think that we need to have further discussion on that, on this issue this morning. And my apologies that I was not on the floor as much as I needed to be yesterday to hear this discussion, but I do agree with the...I believe the concept of what we're trying to do here. I do believe that if we want to address the underlying cost in our state and address long term the issues that we have in our corrections system, I think we need to be talking about such things as this. And again, I oppose LB447 in its current form in that I believe it's too broad, but do I believe that there are things that can be done along these lines? Absolutely, I agree with that. And Senator Krist was referencing something that Senator Wishart, I believe, handed out on the floor yesterday, the State Factor publication of the American Legislative Exchange Council. This was a March 2016 publication. So anyone watching if they want to reference what we've been talking a little bit about, it was a March 2016 publication and it was based on model legislation that was called the Justice Safety Valve Act. And in that publication, I just want to highlight a couple points. I think Senator Krist did a nice job of covering the conclusions of the report, but basically the State Factor publication talked about allowing judges to depart from mandatory minimums for nonviolent low-risk offenders, incarceration rates drop, they say, without compromising public safety. Other excerpts of it says that if mandatory sentences for nonviolent and drug offenders were necessary for public safety, their cost would be justified. However, as corrections spending has climbed, most experts have come to believe incarcerating huge numbers of low-level, nonviolent and drug offenders postconviction is an inefficient and ineffective method for controlling crime. Let me get to the heart of some of the points that are made in this publication. They talk about a number of ways of doing this and they talk about that legislators have a wide range of policy options available to combat inefficient prison spending and to protect public safety. Back end postconviction reforms including vocational training and reentry programs are valuable tools to help reduce recidivism, changes to occupational licensure laws to allow ex-offenders to find employment more easily are also beneficial. These are the things we need to be working on as a society to address these problems. Then it says toward that end, American Legislative Exchange Council members developed the Justice Safety Valve Act. The Safety Valve basically says that...the Safety Valve Act is a narrowly tailored reform that applies only, only to nonviolent, nonsex crime offenders. Additionally, the Safety Valve does not apply to any offender who has a previous conviction for the same offense within the last ten years, uses a firearm in a manner that causes physical injury during the commission of the offense, or three, was the leader, manager, or supervisor of others... [LB447]

PRESIDENT FOLEY: One minute. [LB447]

SENATOR SMITH: ...in a continuing criminal enterprise. Now, there could be variations from this, but I think that's basically what this report is talking about, is that there are some cases to provide flexibility. And I believe that that's where this discussion is going. I agree with this



Floor Debate  
March 08, 2017

---

discussion. I cannot support LB447, but if we can find some way of taking smaller steps in this direction, I would be fully supportive of doing just that. And I appreciate the discussion going a little bit longer today and to that, I yield the remainder of my time. Thank you, Mr. President. [LB447]

PRESIDENT FOLEY: Thank you, Senator Smith. Senator Linehan. [LB447]

SENATOR LINEHAN: Good morning. Thank you, Mr. President. I'm not an expert on this issue. I wish I knew far more, but I have spent some time talking to Chairman Ebke and listening to conversation. I'm not ready to support the bracket motion. I'm not ready to support LB447, but I am ready to continue listening for a bit. I want to read from a USA Today story that was published on December 22, 2016. The title is "AG nominee Jeff Sessions reversed course on harsh drug sentence policy." When it comes to long prison sentences for crack cocaine, Attorney General nominee, Jeff Sessions, was for them before he was against them. Sessions, as a federal prosecutor in southern Alabama in the 1980s and early '90s, was one of the most hard-charging soldiers in the war on drugs who aggressively pursued dealers and users, big and small, and touted the harsh sentences as an effective deterrent. But as a Republican senator in the 2000s, he grew critical of cocaine sentencing policy that was tougher on crack than powder and the ratio imbalance it created in federal prisons around the country. The severe punishments for cheap, crystallized cocaine compared to the more expensive powdered version, had become enough of a racial blight on the criminal justice system that even the law-and-order conservative like Sessions wanted reform. Sessions had seen firsthand how five grams of crack drew a mandatory five-year sentence, while it took 500 grams of powder to trigger the same sentence. He introduced legislation in 2001 to narrow that gap. Let's see if I can figure out how to use a computer. I think we're at a point now where this 100-to-1 disparity that does fall heavier on African-American community simply because that's where crack is most often used, has got to be fixed, Sessions said during the debate in the Senate Judiciary Committee. Sessions' role, including hammering out a final deal in the Senate gym with Illinois Democratic Senator Dick Durbin, was hailed for its man-bites-dog twist. An enthusiastic drug war lieutenant was acknowledging that prisons were clogged with low-level offenders, many of them black, who needed treatment, not decades of incarceration. Now, as President-elect Donald Trump's nominee for Attorney General, Sessions' views on race and criminal justice are under scrutiny. Allies are highlighting his work to reduce the crack/powder disparity as proof of his commitment to racial justice. And I'm not defending Senator Sessions or I don't want to talk about our President or get into that, but I do think it's interesting that we have...that this...and part of the reason I remember this this morning because I was in D.C. at this time, and I remember that a lot of people were shocked that Sessions would even take under consideration reducing mandatory minimums, but he was very committed to it. I'm going on and read down here, if I can find the story. One of the people snagged in Sessions' drug dragnet was Stephanie Nodd. She was a young, first-time offender, caught helping people who were selling crack in Mobile. She was sentenced in 1990 to 30 years

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

Floor Debate  
March 08, 2017

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in prison. Putting a 23-year-old single mother away for 30 years, I would hope it gnaws at your conscience and causes you to reconsider... [LB447]

PRESIDENT FOLEY: One minute. [LB447]

SENATOR LINEHAN: ...said Kevin Ring, vice president of Families Against Mandatory Minimums. Nodd served 21 years. She won early release when the U.S. Sentencing Commission made the first new crack/powder guidelines, championed by Sessions, retroactive, freeing people who were stuck in prison sentences that the Congress no longer thought were warranted. Thank you. [LB447]

PRESIDENT FOLEY: Thank you, Senator Linehan. Senator Pansing Brooks, you're recognized. [LB447]

SENATOR PANSING BROOKS: Thank you, Mr. President. I rise again today, number one, to wholeheartedly oppose Senator Larson's bracket motion. To have him come up today and do that I think is insulting to the issue. We still have many things to discuss. It's quite clear that this is an issue that people have a variety of opinions on and it's important to discuss. This issue also directly deals with our prison overcrowding, our community safety, and the dollars that we are spending on corrections. So to bracket something that deals directly with the issues with which we are charged is insulting. So I'm going on to talk about the fact that this bill is an important bill. I think each of the senators who have spoken today, I thought Senator Linehan had some important points. Senator Ebke, our Chair, has led this body well...or the committee well and has made some really good points. Again, this all relates to LR34 and the vicious circle of overcrowding, to failure to complete programming, to failure to be parole-ready so people can get out, to failure to discharge resources, to discharge and the resources to become a contributing member of society, to recidivism, to overcrowding. I wanted to speak briefly to Senator Burke's (Harr) comments regarding the fact that we have...the federal government has basically decided to let us charge and house the inmates charged with possession of a deadly weapon. When you look at his numbers which show an increase from 2010 to 2013, I multiplied it out. The number of inmates, it's an increase of 68 inmates without possession. You multiply that by the \$34,000 that it costs to house an inmate, and you get about \$2,312,000. You multiply that by the three years, you've got over \$6.9 million that we have spent just on this charge alone because we believe so wholeheartedly in mandatory minimums and aren't letting the federal government go ahead and do their job on it. So I'm interested in how each of you can say that that money was well-spent. That we can do a job housing inmates for \$7 million better than the federal government could. The other thing that I wanted to add is that we have many judges who say this is not a good idea. It ties the hands of our judges. I quoted Judge Gerrard, federal Judge Gerrard yesterday in an article that gained national attention about a young man who was in therapy and

Floor Debate  
March 08, 2017

---

changing his whole life, and I quote from the NBC news article. At his sentencing in mid-February, U.S. District Court Judge John Gerrard agreed. He praised Guthmiller's turnaround, but said federal drug statutes gave him no choice. He called the case "Exhibit A" on why Congress needed to pass The Sentencing Reform and Corrections Act, which would give judges more flexibility. A ten-year mandatory minimum sentence in a case like this is absolutely ridiculous, Gerrard said from the bench. And the only reason I am imposing that sentence that I am imposing today is because I have to. [LB447]

PRESIDENT FOLEY: One minute. [LB447]

SENATOR PANSING BROOKS: So again, it's fine that the county attorneys want to be able to charge people with as severe a crime as they can, but it is up to the judges and if there is a heinous act, they'll give more than the mandatory minimum. So what we are saving by having those mandatory minimums is very little. And they'll give above that mandatory minimum anyway. So we are deciding right here and now that we know better than the judges who are charged with understanding our laws, charged with hearing the facts of each case, and charged with making a determination and a disposition of each case. Clearly, I trust the judges to make informed decisions and do not want to tie their hands in making those determinations. Thank you, Mr. President. [LB447]

PRESIDENT FOLEY: Thank you, Senator Pansing Brooks. Senator Hansen, you're recognized. [LB447]

SENATOR HANSEN: Thank you, Mr. President. Colleagues, I rise today in continued support of LB447 and thus in opposition to the Larson bracket motion, MO51. Although I will say just as a...for initial comment, I will disagree with Senator Pansing Brooks. I do think when you are opposed to a bill and we've debated the bill for a little while, it's not necessarily out of line to impose a bracket motion. And certainly that's something I'm sure we'll all consider or support at various bills in the future. That being said, I do think there was a little bit of unusual timing yesterday just in terms of the amount of committees in the Exec Session for how long they are. I don't think that was inappropriate or strategic or planned in any way. I understand that's just what happens when we have so many bills requesting to be executed upon, especially with our priority bill designation deadline looming above us. I myself and the Judiciary Committee, I know personally I missed almost all of Senator Quick's LB181 on Monday because we were discussing various bills in Judiciary Exec. That being said, I do think yesterday in the Chamber was about one of the smallest and lowest attended times I've seen recently, just by happenstance and so I just wanted to rise and encourage and appreciate all of the comments we've heard on the floor. I've heard several senators get up and frankly both on and off the microphone talk to me about their indecision on this issue or the ideas they're grappling with. And I would encourage you to

Floor Debate  
March 08, 2017

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continue asking those questions, continue to ask good questions to both on and off the microphone to illustrate this point. Fundamentally for me, I'll just restate what I said yesterday when I first spoke on this bill was, to me it's an issue of judicial discretion. And that's an issue that I feel strongly about, you'll probably see me bring up in other bills. But it's an issue of judicial discretion. I believe our judges should have the discretion to weigh the facts and merits of each case individually. Obviously, I understand and recognize the Legislature's role in providing a framework and the public policy considerations for both sentencing guidelines and the different felony classifications, as well as the differences between various similar felonies. That being said, for just two of the ten classes of felonies to have a mandatory minimum to be treated so differently, I think there is no longer a good public policy argument for keeping them. I think there is good arguments in terms of fiscal policy. I think there's good elements in terms of actually crime reduction. I think there's good arguments in terms of judicial discretion to support this bill, and I would encourage all my colleagues to continue to listen to debate and ultimately vote against the bracket motion and for Senator Chambers LB447. Thank you, Mr. President. [LB447]

PRESIDENT FOLEY: Thank you, Senator Hansen. Senator Hilgers, you're recognized. [LB447]

SENATOR HILGERS: Thank you, Mr. President. Good morning, colleagues. I rise this morning in opposition to LB447 and I had some comments and questions from constituents last night and listening to the debate today and yesterday, I think it's important to sort of separate two different things. And one thing is the general principle that has been discussed today and yesterday, which is, hey, look, we should look at how we are sentencing people. We should look at people who could be rehabilitated. We should find ways to help those people get out of incarceration and back into productive society. That's a principle that will lower cost, it's fair and just to the people who could rehabilitate their lives. It is an important thing we ought to look at. I think that general principle would, if we were to vote on that principle, would receive wide support in this body and elsewhere. But that is not what we're voting on today. What we're voting on today is something that relates to specific crimes in Nebraska. So when we talk about, for instance, in the general, that we ought to look at nonviolent drug possessors, that doesn't apply here. So when we talk about people who have marijuana possession, those individuals do not get charged with a IC or ID felony. Today, this morning, in the Journal Star there was an article about an individual who was charged...or reached a plea bargain for transporting almost 200 pounds of marijuana through the state of Nebraska. That individual did not receive a IC or a ID felony. In fact, he only...he got probation, I think he got a 30-day jail sentence. So we're not talking about that subset of users that may apply in other states. Maybe other states the federal government are actually imprisoning folks who are nonviolent possessors of low-level amounts of drugs and that might be a big issue for those jurisdictions. That's not what we're talking about today. What we're talking about today, and I listed off some of these crimes yesterday, are IC and ID felonies. Those include possession of a firearm by a felon, use of a firearm to commit a felony, unlawful

Floor Debate  
March 08, 2017

---

discharge of a firearm. Possession...not possession, possession with intent to distribute meth, heroin, cocaine. In my view, these are very serious crimes. And I think it's entirely appropriate for the state of Nebraska to say as a policy matter that if you are to commit those crimes, you will have some minimum amount of jail sentence. I think it's entirely appropriate. Now those...there are those certainly who disagree with me on this floor and I want to address a couple of the counterarguments that have been made. One is that this is a cost savings. Undoubtedly, if we incarcerate fewer people, we will save costs. Undoubtedly. If we were to let every...if we were to close our prisons we would save hundreds of millions of dollars. But in my view, the appropriate way to approach that would be to find the individuals who will both save us costs by getting them out of the system, but also not causing a corresponding increase in societal costs because they're causing harms on our neighborhoods and communities. In my view, the felonies in IC and ID are not those crimes. I'm certainly open to listening to counterarguments as to those crimes. I'm all ears as to those crimes, but if you...but possession of marijuana and the like are not what we're talking about today. So I don't think that this is the appropriate vehicle for cost savings. The second argument that I've heard is that this does cabin the discretion of judges. That is also true. We have excellent judges, as I spoke with Senator Pansing Brooks yesterday, completely agree. However, we in a whole lot of circumstances cabin the discretion of judges. Judges do not have unbounded discretion. They apply the law that we as legislators create. So in this case, in my view, it is entirely appropriate to the state of Nebraska to set a minimum threshold for prison time for certain bad offenses. [LB447]

PRESIDENT FOLEY: One minute. [LB447]

SENATOR HILGERS: And I view that as something that's entirely appropriate for us to do. So I wasn't here yesterday for a chunk of the debate because I was in the Executive Session. I have appreciated the debate this morning. I hope we have the opportunity for more debate on this issue this morning. I'm certainly listening to all the counterarguments. And with that, Mr. President, I would yield the remainder of my time to Senator Larson. [LB447]

PRESIDENT FOLEY: Thank you, Senator Hilgers. Half minute, Senator Larson. [LB447]

SENATOR LARSON: Thank you, Mr. President. You know, there are a few members that want a little more debate. I have an IPP motion following FA42 up there in line, so I'll withdraw MO51. [LB447]

PRESIDENT FOLEY: The bracket motion is withdrawn. Senator Chambers, we're back on FA42 if you'd care to refresh us on FA42. [LB447]

Floor Debate  
March 08, 2017

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SENATOR CHAMBERS: Thank you. Mr. President, I have to give a bit of context. I often start one of these discussions with a quote where a king said, my kingdom for a horse. And I had indicated that if I had a kingdom and I were in a situation like that, I would say my kingdom for nuanced thinking. Bills like this, issues that are serious, those that have complexity require not only nuanced thinking, but context. Yesterday...and I will not go into what I think happened and how, but a lot of people, in fact the majority of people in the Legislature, were not here. The matter is a serious one. I had pointed out to the Speaker, not beforehand but I just made it as a general statement, that since he would not accept a motion to adjourn since the majority were gone, would not support a motion to recess, then I had an obligation to keep us here until noon when we do adjourn so that we could discuss the bill today. The Speaker told me that we will get to six hours today and I guess he was suggesting that if I don't invoke cloture, then he'll take the bill off the agenda. I don't care if he does that, but he's going to have to do that with every bill. And if he does it, I'm going to leave that statement hanging. But if he sabotages this bill, I will sabotage his Speakership. He's not going to be able to set the agenda in the way that he wants it. There have been a couple of times at least when bills were being discussed and I was taking a lot of time, but I stopped in order for the bill to get a vote and it moved. I'm not going to be doing that. I may not have another bill out here this session, so I will have plenty of time to deal with the Speaker and my colleagues here. Playtime is over. I thought Senator Larson would go ahead and play out what he wanted to have done. When I'm in this mode, you won't find me raising my voice unless I do so, then I laugh and let you know that's just part of the theater which is what we will be in. What this amendment that I offered yesterday would do is change the word "fifty" to "forty." If you open the green copy of the bill in your book, you will see...or pull it up on your gadgets if that's how you look at the bills, there are three different felonies and the maximum in the range is fifty years. The maximum should not be the same in all of those instances. So I was going to move right up and the first one, the lowest one, would be to change "fifty" to "forty." If there were not enough discussion, not enough discussers, and I finished with that amendment, I would have offered that the next one would drop from fifty to forty-five. But the aim was to keep us here, and I didn't want a vote on the bill yesterday. But if the discussion on such a serious matter as this is going to be cut off by that man sitting up there, when he saw what happened yesterday, it had never happened in this Legislature before. He's setting a precedent, then I will do the same. But that motion that's up there now was a place saver. I do not intend to take a vote on it and I needed to take that amount of time to explain why it was put up there, why I will not seek a vote on it, that it is not something that I'd be trying to do on this bill. If while I have the floor it's allowable, I will withdraw that motion since that's what I was allowed to speak on. [LB447]

SPEAKER SCHEER PRESIDING

SPEAKER SCHEER: Seeing no objections, so ordered. [LB447]

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

Floor Debate  
March 08, 2017

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CLERK: Mr. President, Senator Larson would move to indefinitely postpone LB447. Senator Chambers, you have the option to lay the bill over or take it up, Senator. [LB447]

SPEAKER SCHEER: Senator Chambers, your choice. [LB447]

SENATOR CHAMBERS: Take it up. [LB447]

SPEAKER SCHEER: Thank you, Senator Chambers. Senator Larson, you're welcome to open. [LB447]

SENATOR LARSON: Thank you, Mr. President. Motion 52 follows the same lines as motion 51. Like I said, kind of see where we are and we'll move forward. And I know a number of senators wanted more debate. That's why I pulled MO52, or MO51. It looks like the floor amendment was pulled as well, so we'll start on MO52. Thank you. [LB447]

SPEAKER SCHEER: Thank you, Senator Larson. Senator Chambers, your response? [LB447]

SENATOR CHAMBERS: Did Senator Larson say he's going to pursue? I'd like to ask him a question. [LB447]

SPEAKER SCHEER: Senator Larson, would you please yield, please? [LB447]

SENATOR LARSON: Yes. [LB447]

SENATOR CHAMBERS: Senator Larson, did you say you're going to pursue your motion to indefinitely postpone? [LB447]

SENATOR LARSON: Yes. [LB447]

SENATOR CHAMBERS: Members of the Legislature, just as I said on the other one, you can do what you want to do. I'm not going to waste my time on that silliness and that's what this is. He's smarting because of what happened on his gambling bill. I killed it. And I would do it again. If you all want to talk about the bill, I wish you would not take a lot of time on his motion. Dispose of it. If you want to kill it, all you need on General File is a majority of those voting. If you want to be rid of the bill and the discussion, all he needs is a majority vote. But if you waste time on his motion, then I guess the Speaker is going to do what he indicated to me. The bill will have had six hours. And I always thought that the six hours was the minimum time that a bill would

Floor Debate  
March 08, 2017

---

be allowed before cloture could be made, not a maximum time for the bill to be discussed. But we'll see how that plays out. I would suggest that people not discuss anything until Senator Larson's motion is disposed of. And I will say this as emphatically as I can. If you kill it, that doesn't hurt me at all. So whatever you want to do, which you would do anyway, do it, but I don't think we ought to delay on doing it. Thank you, Mr. President. [LB447]

SPEAKER SCHEER: Thank you, Senator Chambers. Senator Schumacher, you're recognized. [LB447]

SENATOR SCHUMACHER: Thank you, Mr. Speaker and members of the body. I rise in general support of LB447. That's not saying that there may be some tweaks that could be made to make it a more feasible bill, but nevertheless, my support for it, and opposition to this premature attempt to terminate discussion on a very legitimate issue, comes basically from some discussions that I've had with district judges, the people who have got the power to sentence folks to the penitentiary who stand there and look at a defendant, having pledged their lives to the administration of justice, and see a defendant who for whatever reason does not, should not, society would not be benefited by them being put in the penitentiary, but, yet, faces this law. Those judges feel pretty comfortable talking to me. I was a prosecutor for eight years, and I think there's lots of mutual respect. But they said, look, we cannot do justice because our hands have been tied by this legislation. Now, my approach to fixing a problem, a bit different than Senator Chambers' approach, but it's a bill in Judiciary Committee, was to say, okay, when we get to those cases where the glove doesn't fit, if a judge feels strong enough about it, let him call in a couple extra judges and if all three of them, or two out of three or some number, agree, they can pull the plug on the mandatory part of it and sentence as though the mandatory was not there. So there's several different ways in order to, I was going to say, skin this cat, but as Senator Chambers pointed out, crack this nut, is a better way to do it. But it's an issue that we should not be proud of that we are forcing our justice system into a number of cases doing injustice. And Senator Chambers' approach, maybe the approach being worked on I understand by a few senators to amend this bill, the approach I came up with, whatever other approach is out there should address the thing so we do not mandate injustice, and we should be able to do that. When I was prosecuting, there was no such thing as mandatory minimums. It was a clean new criminal code adopted in 1976, which because it's great fun to get up here and make speeches and act like you're appealing to some interest group, that '76 code got adulterated with all kinds of political spin which has really made it a much less just, much more complicated code. There used to be only four basic classes of felony. They were easy to understand. Everybody knew and could work with them, and I never saw a case where there wasn't enough flexibility for the prosecutor to put together a set of charges for the judges to do justice. They can do it with consecutive sentences. You can slice and dice whether you charge something as one grade or another grade, or as an attempt of another grade, or as a conspiracy or, oh my goodness, a prosecutor is so powerful it's unbelievable. And normally they do a real good job of trying to come up with



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

Floor Debate  
March 08, 2017

---

justice and are able to do it with the assistance and the power that's vested in the district judge, who themselves are usually former prosecutors and in this state usually appointed by law and order, Governors. [LB447]

SPEAKER SCHEER: One minute. [LB447]

SENATOR SCHUMACHER: Were it up to me, I'd say get rid of every mandatory minimum, but I know that wouldn't sell right now. Go back to the way it was, which worked. Take the political spin out, let judges do their job. This bill limits the number of the crimes that we're dealing with and the kind. Maybe it can be further limited. But one thing for sure, this is an important topic. It deals with the fundamental integrity of our society. And to attempt to cut off debate when so little debate has been had...and I compliment Senator Hilgers. He raises good issues. That's the kind of debate we should have, and I just think that this motion to indefinitely postpone is way, way not in the interest of the Legislature. Thank you. [LB447]

SPEAKER SCHEER: Thank you, Senator Schumacher. Senator Ebke, you're recognized. [LB447]

SENATOR EBKE: Thank you, Mr. President. I rise, as well, in opposition to the motion to indefinitely postpone. I think this is a great conversation we're having. I am grateful to my colleagues for most of them being here today and actually engaging in the discussion. I wonder if Senator Smith would yield to a question or two. [LB447]

SPEAKER SCHEER: Senator Smith, would you please yield? [LB447]

SENATOR SMITH: Yes, I will. [LB447]

SENATOR EBKE: Senator Smith, thank you for engaging this morning and being here. I realize that this isn't exactly your wheelhouse. I wonder...you mentioned that you couldn't support LB447 in its current form, but that you might be open to taking some small steps. What kinds of things might make you more comfortable with it? [LB447]

SENATOR SMITH: Well, Senator McDonnell was sharing with me a little bit earlier another publication that had some ideas, and I'm going to go back to...again I'm going to take this opportunity to again refer back to the ALEC "State Factor" that Senator Wishart had handed out before. And in that publication it talks about whether there was a previous conviction of the same offense within the last ten years, whether there was a firearm used in a manner that causes physical injury during the commission of the offense, and then also what their role in the offense

Floor Debate  
March 08, 2017

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was. I think at a minimum, I think we would want to address those items, and, of course, the threshold there is being whether there was a sexual offense, a nonsex crime offender, and that was nonviolent that it would be necessary. [LB447]

SENATOR EBKE: So let's look at something like some of the drug crimes found under there, under the IC and ID felonies currently. If they are nonviolent and it's merely a matter of possession, perhaps with intent to sell, could you be more comfortable in just getting rid of the mandatory portion of the offense? [LB447]

SENATOR SMITH: Yes, I mean if you're referring to the Class IC and the Class ID felonies, those that are dealing with controlled substance, manufacture, distribute, deliver, dispense, or possess, those are the types of things that I think fit into the framework of what the model ALEC legislation dealt with. [LB447]

SENATOR EBKE: Thank you, Senator Smith. I want to thank Senator Hilgers as well for engaging this morning, and I have a couple of questions for him. [LB447]

SPEAKER SCHEER: Senator Hilgers, would you please yield? [LB447]

SENATOR HILGERS: Yes, I would. [LB447]

SENATOR EBKE: Thank you, Senator Hilgers. Now, as you know, I'm not an attorney, and I don't play one on TV, so...maybe I do, I don't know. You made a comment that I wrote down as you were talking and you said that you thought that for the crimes that are covered under ICs and IDs that there ought to be a minimum threshold. So you would suggest that for all of the crimes that are covered under IC and ID that we ought to have a mandatory minimum threshold because LB447 doesn't get rid of the minimum threshold for judges in sentencing. It gets rid of the mandatory minimum portion, right? [LB447]

SENATOR HILGERS: What I was saying was, I believe that it's an appropriate policy judgment of the state to have a mandatory to say there has to be a minimum, and in this case a mandatory minimum, understanding how this works, a mandatory minimum of some jail time, yes. [LB447]

SENATOR EBKE: Is there...what's the difference between a 19-year-old mule, I think that's the appropriate term for somebody who is selling on behalf of somebody else that's carrying drugs, between somebody who is carrying 27 grams of a controlled substance and 28 grams of a controlled substance? [LB447]

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

Floor Debate  
March 08, 2017

---

SPEAKER SCHEER: One minute. [LB447]

SENATOR HILGERS: In what way? Under the law, or you're saying normatively? [LB447]

SENATOR EBKE: Yeah, under the law. [LB447]

SENATOR HILGERS: Well, I think that's the threshold, so I think your point is, you know, that that additional gram takes you up a felony. [LB447]

SENATOR EBKE: Right, well, yeah, it takes you up to a mandatory minimum then, but you have a one-time...a one-time first...you know, one-time event perhaps and they may not be dangerous, strictly speaking, and yet we're saying that because they're carrying 28 grams instead of 27 grams, they can be stuck in prison under a mandatory minimum of three years. I think that's the ID, so. I think that this is something, colleagues, that we need to think about. Are our numbers arbitrary? Do they make sense? And do we want to really relieve judges of the discretion that they need to say, okay, here's this kid fresh out of high school, just turned 19 years old, who's carrying for...you know, to try to make a little cash before he goes off to college or whatever, do we really want to... [LB447]

SPEAKER SCHEER: Time, Senator. [LB447]

SENATOR EBKE: Thank you. [LB447]

SPEAKER SCHEER: Thank you, Senator Ebke, Senator Smith, and Senator Hilgers. Senator Wishart, you're recognized. [LB447]

SENATOR WISHART: Thank you, Mr. President. Colleagues, I spent a lot of time last night and this morning thinking about this legislation. I stand in opposition to Senator Larson's motion to indefinitely postpone LB447, and I'm leaning in support of LB447 because I do believe we need to reform our justice system, but I do have a lot more to learn before I feel comfortable voting on this legislation and deciding whether this is the best way to achieve the reforms. We need to reduce recidivism and overcrowding in our prison system, so I do hope we continue to have healthy debate on this legislation. Last night I asked my husband what his thoughts were on this legislation. He has served for five years as a Lincoln Police officer, and I want to take a moment to thank all of our law enforcement officers for their commitment to keeping our community safe. So when I asked him what his thoughts were, instead of giving me his advice, he reminded me of the advice that I gave myself before I was sworn in. I am not here to make decisions based only what a party tells me or what I think will be politically expedient to get me reelected. I'm

Floor Debate  
March 08, 2017

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here to learn, to listen to my constituents and my colleagues, to consult with experts and to ultimately make thoughtful decisions that will have a positive impact on our community long into the future. So with that mindset, I spent a good portion of the rest of the night really thinking about this legislation, so I've spoken with the prosecutors, I've spoken with defense attorneys. I've looked up statistics and tried to really understand this issue, and here are some of my thoughts so far. I really need to know more about why we have decided, for example, that five years is the right mandatory sentence for certain offenses. Why five years? Do we expect that five years is the time it will take for somebody to realize their wrongdoing? We spend a lot of time debating the length of sentences and making laws regarding those, but what I really think we need to talk about even more than that is what is somebody doing with their time in jail? How is a person who has committed a crime working on paying restitution and giving back to the community he or she harmed? How is this person working to improve themselves while they are serving their time so that they can reenter society as a responsible community member and wake up like all of us did today. We go to work, we take care of our children, we pay our taxes and our health insurance. So with that I have a question for Senator Schumacher. Would you yield, please? [LB447]

SPEAKER SCHEER: Senator Schumacher, would you please yield? [LB447]

SENATOR SCHUMACHER: Yes, I will. [LB447]

SENATOR WISHART: So, Senator Schumacher, you've talked a lot about the history of some of the laws that we're dealing with today. Can you explain to me why...I know you've talked about in the 1970s when we put a lot of these sentencing laws into place. Why did we decide, for example, five years was a minimum sentence for some of the offenses we're talking about today? [LB447]

SENATOR SCHUMACHER: If my memory serves me correct, the minimum...the word no mandatory minimums, and the sentences mostly started with one on up. The Class IV felony, which was most of your drug stuff, most of the driving third offense, drunk driving, that kind of stuff, was one to five. Then there was the Class III felony which was 1 to 20 years and there's also some fines that you could have, too, in this deal. And then you got up to the Class IIs which were the serious assaults and armed robberies and those kind of things... [LB447]

SPEAKER SCHEER: One minute. [LB447]

SENATOR SCHUMACHER: ...where you got up to 50 years, 1 to 50. And then there was the murders and the life sentence type of sentencing, so we didn't get tied up with the number of five. That was the range on one to five on the lowest grade of felony. A lot of this stuff just came

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

Floor Debate  
March 08, 2017

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in and after I left the prosecutor's office and things got complicated, and folks somewhere in some debate, probably some compromise of some kind, went ahead and picked an arbitrary number. I don't know exactly how that five got in there. [LB447]

SENATOR WISHART: Okay, thank you. [LB447]

SPEAKER SCHEER: Thank you, Senator Wishart and Senator Schumacher. Senator Krist, you're recognized. [LB447]

SENATOR KRIST: Thank you, Mr. President. Good morning again, colleagues, and good morning, Nebraska. While we've been talking about the actual LB447, not necessarily the motion to indefinitely postpone, which I do not support, there have been a number of discussions that have gone on in terms of a possible amendment. It seems that most of the conversation has been, at least intelligent conversation has been about...in the area of change has been about the information that we did receive from the ALEC handout. So I want to point out that even if I was a supporter of this bill, I would not confuse nor pollute the process by even asking that we would substitute one of these pilot projects, one of these programs that are here, because in fact it has had no public hearing. So I think that's important for you to understand. It has no public hearing, therefore, we have not as a committee, as a Judiciary Committee, have not sorted out what the consequences and unintended consequences might be. Just to say this state has done...you've heard these things on the floor already. Well, Georgia did this. New York did this, whatever. Well, there's a whole different construct in terms of sentencing parameters in all of these states. Now, if we, perchance, would have something that would be more palatable to those who would be willing to listen to it, I believe that, for example, if we changed IC and ID in general to IC and ID drug offenses only, drug-related offenses only, it would be a step in the right direction, a bite of the apple that I think we could all support. The reason I think we could all support it is, we can see what these programs have done and the statistics and the evidence-based data that we've been given. This is no different, but we're taking it as Senator Chambers said, taking what we can get, one bite of the apple at a time. There are some who will disagree vehemently with making any changes. They're called prosecutors. They're called the Attorney General. They're called people who don't want to take this tool out of their bag. And then we start talking about justice reinvestment. I'd like to ask Senator Chambers a question if he'll yield, please. [LB447]

SPEAKER SCHEER: Senator Chambers, would you please yield? [LB447]

SENATOR CHAMBERS: Shudderingly with great trepidation, I will. [LB447]

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

Floor Debate  
March 08, 2017

---

SENATOR KRIST: Thank you, Senator. If we reach a consensus that potentially as I just described, it would not be blanketly ICs and IDs, but would be focused on IC and ID drug-related offenses only. Would you support that kind of an amendment? [LB447]

SENATOR CHAMBERS: Can I give an answer other than a simple yes or no? [LB447]

SENATOR KRIST: Yes, sir, take the rest of my time. [LB447]

SENATOR CHAMBERS: How much time do I have, Mr. Speaker? [LB447]

SPEAKER SCHEER: 1:45. [LB447]

SENATOR CHAMBERS: Members of the Legislature, yesterday I said when I do things and they're of a serious nature, I've had to do them incrementally, a bite of the apple at the time. I want the bill just the way it is, but I recognize I'm dealing with a tightwad, I think was the word that I used, and I said I will take what I can get. If we can move at all in the right direction, it means that the Legislature is willing to take a comprehensive look at how we sentence, not just with reference to the mandatories, but overall. So if this consensus that Senator Krist mentioned may be coalescing, I will not derail it, and I would be more pleased to have that happen... [LB447]

SPEAKER SCHEER: One minute. [LB447]

SENATOR CHAMBERS: Did you say time? [LB447]

SPEAKER SCHEER: No, sir, one minute. [LB447]

SENATOR CHAMBERS: Okay. I would rather have that happen than say because I'm a purist on this issue, it's an all or nothing matter. This bill goes beyond me, and after we dispose of Senator Larson's motion, I will go into detail as to how my name wound up on this bill and how it wound up on the earlier version of it. So those who are trying to reach a consensus should continue doing so, and if you reach it I will not be the one to derail it. In fact, if the track is a little low in one place, I'll raise it to where it ought to be. If it's a little high in another place, I'll lower it to where it ought to be in order that the track will carry the weight of a bill, whatever form it takes, that's moving in the right direction. Thank you, Mr. President. [LB447]

SENATOR KRIST PRESIDING

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

Floor Debate  
March 08, 2017

---

SENATOR KRIST: Thank you, Senator Krist and Senator Chambers. I've never been able to say that, thank you. (Visitors introduced.) Mr. Clerk. [LB447]

CLERK: Mr. President, some items, thank you. Natural Resources Committee reports LB566 to General File with committee amendments attached. I have a hearing notice from the Executive Board. New resolution, LR60 by the Urban Affairs Committee calling for an interim study. That will be referred to the Reference Committee. I also have priority bill designations, LB358 by Senator McCollister. And amendments to be printed: Senator Morfeld of LB57, Senator Krist to LB11. And the Revenue Committee has selected LB461 as one of the committee priority bills, and Urban Affairs, LB625. It's one of the committee priority bills. Thank you. That's all that I have. (Legislative Journal pages 646-654.) [LB566 LR60 LB358 LB57 LB11 LB461 LB625]

SENATOR KRIST: Thank you, Mr. Clerk. Senator Baker, you're recognized. [LB447]

SENATOR BAKER: Thank you, Mr. President, members of the body. I'm going to refer again to the ALEC handout that was distributed, and then we go right to the conclusion. By the way, I'm in opposition of MO52. Conclusion, protecting public safety is an essential function of government. Governments have an obligation to taxpayers to avoid unnecessary spending by providing public services as efficiently as possible, imposing mandatory minimum sentences on low-level, nonviolent, drug offenders who pose little threat to public safety is wasteful, ineffective, and counterproductive. On the other hand, reserving prison space for violent and repeat offenders maximizes the efficiency of criminal justice system, thus giving taxpayers the most public safety benefits for their dollar. It goes on to talk about some safety valve features and Senator Krist was right, said those things have not had a public hearing so we can't really go into those things. But I think the principles outlined in the conclusion about what we need to do to be efficient with taxpayer dollars and preserve safety is supported by LB447 and I'd be open to any amendments that are agreeable, but as it stands I support LB447. Thank you. [LB447]

SENATOR KRIST: Thank you, Senator Baker. Senator...Speaker Scheer, you're recognized. [LB447]

SPEAKER SCHEER: Thank you, Mr. President. I rise for a couple of items. First of all, I do not support the IPP motion. I have never supported a IPP motion on a priority bill in the term that I've been here and I will not today. I believe anybody's priority bill deserves the discussion on the floor and certainly this is no different. Having said that, I do not support LB447, but I don't support the IPP simply because I believe a priority bill should have the opportunity to have the floor discussion. Second item, there was comments made in the relationship to the time frame. I just wanted to clarify what was said. I did talk to Senator Chambers this morning and I told him that at noon we would be at the six-hour time frame. I do believe that is full and fair debate at

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

Floor Debate  
March 08, 2017

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some point in time. I don't consider this a filibuster motion. Most of the discussion has been led by Senator Chambers on his bill, so I'm not precluding a simple vote on the bill. I wasn't trying to imply we had to have a cloture vote at all. I'm just simply stating that six hours I thought was a sufficient amount of time to discussion on the bill. I still do believe that. I don't believe I've seen anyone trying to filibuster the bill. This bill can certainly come up for an up or down vote. It doesn't necessarily need 33 votes. We're simply having debate, but I do stand by my comment that six hours would be sufficient discussion on this bill and that would come at approximately noon today. So thank you very much, Mr. President. [LB447]

SENATOR KRIST: Thank you, Speaker Scheer. Seeing no one else in the queue, Senator Larson, you're recognized to close on your motion. Senator Larson waives closing. The question before you is the motion to IPP, indefinitely postpone LB447. All those in favor vote aye; opposed nay. Have all those voted that wish to? Senator Larson, for what purpose do you rise? Are you waving it off? Okay, thank you. Please record, Mr. Clerk. [LB447]

CLERK: 13 ayes, 25 nays, Mr. President, on the motion to indefinitely postpone. [LB447]

SENATOR KRIST: Motion fails. Mr. Clerk for an amendment. [LB447]

CLERK: Mr. President, Senator Linehan would move to amend with AM546. (Legislative Journal pages 654-659.) [LB447]

SENATOR KRIST: Senator Linehan, you are recognized for your motion. [LB447]

SENATOR LINEHAN: I do not, again, support LB447 that was written by Senator Chambers. I do think we need to keep talking about this and I think we need to look at any way we can to avoid having to build a new prison and keep the public safe. I am absolutely for putting the bad guys in prison and putting them for a very long time. Sex offenders, murderers, rapists, I want them put away a very long time. And I want prisons where we can keep them safely, but I don't see the purpose in having a mandatory minimum for somebody on drugs if they have not committed...if they've not hurt anyone, if they have not...I do think they need to pay a cost. And I think...I feel we should trust the judiciary. If they're repeat offenders, they need to go to jail. But I don't...we've got a budget crisis in the state. I'm sure I'm not the only one in this body that gets a call every night about our taxes, whether it be property taxes or income taxes or all our taxes. Everybody wants us to both lower taxes and spend more on education and more on Health and Human Services, which I sit on both those committees. The needs are great. I think if there is a way we can keep the public safe by keeping...and I've been told it's only a handful of people. Well, it's only a handful, but it's \$37,000 a year. And what else I've learned in the last 24 hours is that if they're mandatory they get put in, they're jammed out, they get no services, and they're



Floor Debate  
March 08, 2017

---

probably just as likely to go back to their same habits because they haven't gotten any help. And they're going to go back to prison again. So if this is a way to say...maybe it's just a handful of people, but if it keeps a handful of people out and we look at this, I think it's worth considering. With that, I yield my time. Thanks. [LB447]

SENATOR KRIST: You heard the opening on AM546 to LB447. Those wishing to speak: Senator Chambers and Harr. Senator Chambers, you're recognized. [LB447]

SENATOR CHAMBERS: Mr. President, members of the Legislature, this might be the only something that I can get. I'm not speaking against it. I am not such a doctrinaire person on this that I would vote against the amendment because it's not everything that I want, but I'm going to allow those who want to see a change in the bill and they can support it to have the time they need. I will support the amendment, and I give Senator Linehan credit for being willing to bring it. But I want to read a few comments from April 15 Floor Debate, 2015, two years ago. "There's something I want to call to your attention at the beginning. My name is on this bill..."--it was this, the early version of this one, to get rid of the mandatory minimums--"...and was also on LB172 which was incorporated into this bill. They are not my bills in the sense of there being a proprietorship relationship. These bills resulted from much study, not just by the Council of State Governments," but by the committee. And the testimony goes on to mention the difficulty of getting the information that we needed. But the main thing I pointed out was that we parceled out, those of us who were working on these reforms, the tasks that would be undertaken. I was asked to take the sentencing, not only doing away with mandatory minimums, but also the habitual criminal statute. So we didn't get it done in 2015. I did not offer such a bill last year. That's why this year the bill is before you. The Judiciary Committee which has members who've engaged in some of the work that was done in investigating...to show you how serious--I'm somewhat digressing--our purposes were, we subpoenaed former Governor Heineman, and he testified seven hours before that committee. We were not trifling. We were not playing. He knew that, so did everybody else. So this bill is the result of very serious study, a lot of hard work. My name happens to be on it, but it was not all done by me. There are others, and you've heard some of them express that opinion on this floor, who can see that our sentencing structure is skewed by having mandatory minimum sentences. None can be shown to have achieved any penological goal. Not one has contributed to a reduction in recidivism. Not one has contributed to more stability and less volatility in the prisons. Everything about the mandatory minimums is negative. It would be difficult, I understand, in a state like Nebraska, a Legislature like this one to see an issue which needs to be eradicated. But giving consideration to the political realities, that's not going to happen. There are others here, and I understand that, who made a pledge to the Governor... [LB447]

SENATOR KRIST: One minute. [LB447]

Floor Debate  
March 08, 2017

---

SENATOR CHAMBERS: ...signed, sealed, delivered, I'm yours. They probably will have to vote against this bill in any form. But for those who are willing to take a meaningful step, this is that opportunity. And in order not to consume time from others, this is the only time I will speak on this amendment. The only time I will speak again on the bill is when I close, unless something comes up that I think needs to be addressed specifically. Thank you, Mr. President. [LB447]

SENATOR KRIST: Thank you, Senator Chambers. Senator Harr, you're recognized. [LB447]

SENATOR HARR: Thank you, Mr. President. Since Senator Chambers started by quoting lyrics, I'm going to quote a lyric that's said at a lot of Donald Trump rallies, and that is, you can't always get what you want, but you get what you need. And I think that's what this amendment is. I want to thank Senator Linehan for bringing this amendment. I fully support this amendment, and I want to thank the body for listening and debating and talking and interacting with each other. I think this was a good thing. This is a very good bill. I saw a lot of interaction and dialogue, and not just monologue on this bill. And it brought up something I guess I hadn't even thought about is...and it's what Senator Linehan mentioned and it was brought up yesterday, is servicing. It's so important when we sentence someone to make sure that, one, we punish them for their crime and, two, we rehabilitate them. And if we're failing on the rehabilitation side then maybe we need to take a second look at what we're doing, because then all we're doing is creating new felons or potential felons, and the only purpose mandatory minimums serve is to keep them in prison until they age out, which is just warehousing people, and I don't think that's what we as a state want to do. So I want to thank Senator Linehan for bringing this motion. I fully support it. And with that, I will support LB447. Thank you, Mr. President. [LB447]

SENATOR KRIST: Thank you, Senator Harr. Senator Ebke, you're recognized. [LB447]

SENATOR EBKE: Thank you, Mr. President. I want to thank Senator Chambers for bringing this bill, and I want to thank my colleagues for engaging in the vigorous debate and discussion. This is the way legislation is supposed to be done, in my view. I also want to thank Senator Linehan for bringing the amendment. I think it's a good compromise and it is taking steps in the right direction. What I would say is this, there are still some who are a little unclear about what this does, but fundamentally this moves us in the right direction, I think, in terms of mandatory minimums dealing primarily with the drug charges. What I would say is this, I would encourage my colleagues to vote yes on AM546, and then I would encourage them to vote yes on LB447 with the understanding that we will continue to talk, we will continue to dialogue, and if there are still concerns I think that we can look at things again on Select File, that this is not the forever vote necessarily, so if there are things that still need to be worked out we can do that then. But I would encourage us to go ahead and move ahead. Senator Chambers, did you have any...would you have any use of time? This never happens. Thank you, Mr. President. [LB447]

Floor Debate  
March 08, 2017

---

SENATOR KRIST: Thank you, Senator Ebke. Senator Geist, you are recognized. [LB447]

SENATOR GEIST: Yes, thank you, and I rise in opposition actually to this amendment, and let me just explain why. I have appreciated the discussion. I think there's a lot here to think about, but my understanding was this was completely about drug offenses and I just don't feel this goes in the right direction and let me tell you why. On page 7 of the amendment, and starting with line 7 it says: Any person knowingly or intentionally possessing a firearm while in violation of subsection (1) of this section shall be punished by the next higher penalty classification than the penalty prescribed in subsection (2) of this section, but in no event shall such person be punished by a penalty greater than a Class IB felony. If an enhancement under this subsection results in the imposition of a Class IC or ID felony, the minimum term shall not be a mandatory minimum. So this is an individual who has up to 140 grams of meth, cocaine, or heroin with a firearm, and this individual will not be...will not have a mandatory minimum. And for that reason I don't see this as a nonviolent offender. The that is a lot of meth, cocaine, or heroin, and for that reason I'm opposed to this. Thank you. [LB447]

SENATOR KRIST: Thank you, Senator Geist. Senator Wayne, you are recognized. (Visitors introduced.) Senator Wayne, you're recognized. [LB447]

SENATOR WAYNE: Good morning, Nebraska. This is the first time that I spoke on this primarily because we were in Exec yesterday, and today I had a couple conference calls and I actually had a court hearing that I had to do over the phone. This is an area in which is unique to me because I actually practice in this area. I am a criminal defense attorney. And I think the example that Senator Geist just gave, there is still a mandatory underneath the Linehan amendment because it would be the commission of a felony with the use of a weapon if they have a gun on them, they're still using a weapon. My problem with, and I said this to Senator Chambers, is right now when looking there is probably about 800 different statutes that there are crimes in. Nope, about 1,400. Many of them are felonies. Many of them are misdemeanors, and when we make a blanket cut across, I don't know what all we're cutting. And I've been looking at this Excel sheet for a day now. There are some crimes that expired, some that just expired under LB605. And so I think we need to have a comprehensive conversation about everything, but I do think Senator Linehan's amendment is moving in the right direction. Most of the felons that I have represented and most of the people that I interact in a court who have drug issues, going to jail simply doesn't help them. Having a mandatory minimum of five years simply doesn't help them. We need to do more and we need to do something else. And so there are some alternatives that are beginning to happen with drug court, with young adult court, and those kind of things. But I am supporting the underlined amendment. I also am supporting the overall bill. But I do have some concerns and those concerns are, what are we all cutting for everything? I just want us to have a deeper conversation, and I don't think it's probably the right spot on the floor because there are so many situations and so many different laws that two days of debate going through

Floor Debate  
March 08, 2017

---

1,400 different charges you can get whether it's a misdemeanor or felony, even though we're only dealing with felonies, is a broad swoop that sometimes we paint that brush too big, and we need to chisel down to what we're actually trying to do. And I think the Linehan amendment is trying to do that in the start, and that's why I'll support it. But I think along with Chairwoman Ebke, we have to have a broader conversation about our overall criminal code, and maybe it's time that we actually sit down and update our entire criminal code. I don't think we've done that. I think LB605 was a start, but the problem that I have with LB605 was many practitioners who were everyday practicing were not a part of that process. And so there's a lot of theory. And in here we hear about a lot of theory, but there's a whole practical side to this that people don't understand. When somebody gets caught with a gun it is not always just the felon in possession who was walking around to commit a crime, but there are recent Supreme Court decisions that say if you are in the house of somebody who has a gun you are constructively in possession of that weapon and that's a mandatory minimum. If you get in a car with somebody with a gun, whether you know or unknowingly you know they have a gun in their car, they could actually be a police officer you're riding with to go to a basketball game and you are a felon, you are technically in violation of that law, and you will have a mandatory minimum. It's that abuse that I see day in and day out where there's a group of kids who are in a car, and one is sitting in the front seat and there's a gun in the trunk, and now they're facing a mandatory minimum. That person had no way to access that gun and many times don't even know it was in that gun and the gun is registered to the driver, yet they still get charged and are facing a mandatory minimum and oftentimes will plead out because there is a chance of... [LB447]

SENATOR KRIST: One minute. [LB447]

SENATOR WAYNE: ...sixty days verses three to five. So, yes, mandatory minimums are used quite a bit to influence the outcome of a case as far as pleading. But I think we have to take a strong look at our entire criminal code and have a conversation about what makes sense and what doesn't make sense because we have, for example, witnessing a dog fight or cockfighting is a felony. That is an interesting conversation we can have, if you're a witness to it. And how does that compare to somebody who is doing...a drug dealer with a gun when it actually is the same charge and the same mandatory minimum. We have got to have a conversation about how we break down our criminal code and how it is actually being used. It's nice to give judges discretion. It's nice to give prosecutor's discretion, but we as lawmakers have to go in and look at this overall criminal code process. And we have to have a big conversation about updating our entire code. With that, I thank you. [LB447]

SENATOR KRIST: Thank you Senator Wayne. Senator Linehan, you're recognized. Flush.  
[LB447]

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

Floor Debate  
March 08, 2017

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SENATOR LINEHAN: It was brought to my attention this morning that the Platte Institute in February of 2014 published a study on... [LB447]

SENATOR KRIST: Senator Linehan, could you pull the mike down a little bit, the transcribers to get your words. [LB447]

SENATOR LINEHAN: Thank you. It was brought to my attention this morning that the Platte Institute, which I think we all know is a very conservative group, did a policy study and they released it in February of 2014. I just pulled this up this morning, so I'm just going to pull a few things out here. The astonishing growth in prison population between 1995 and 2000 was accompanied by an equally astonishing growth in corrections expenditures, spending tripled during this period from \$72 million to \$206 million. From '95 to 2004, total state expenditures in Nebraska increased only 52 percent, but corrections expenditures increased by 119 percent. As of 2013, Nebraska's correctional expenditures were nearly \$193 million and on an upward trajectory from the years immediately preceding. Capacity constraints, too, have been growing. As of July 2012 the Vera Institute calculated that when accounting for capital costs, pension contributions, and all other expenses related to prisons whether inside or outside the corrections budget, Nebraska spends \$35,950 on each inmate annually. And that was, as we know, five years ago. Prison conditions constitute...excuse me, lost here. The study goes on to suggest that there's many things you can do to help keep prison costs down. And we do have to understand that we're talking about if we don't get a handle on this we're talking about spending probably another \$100 million or more to build yet another prison to put more people in. Our prison population according...I've got these, we can make them available to you. In 1995 per 100,000 adults, so population, 100,000 adults, we had 186 people in prison. By 2002, we had 235 people in prison for every 100,000 adults, and by 2012 we have 254 people in prison for every 100,000 adults. Huge increases in the number of people we have in prisons. Now, I am and mostly focus since I've been down here on educating young people who aren't getting educated. And I hope to continue to be my focus because I think, and Senator Wayne has spoken to this, we are failing too many kids in our schools, and he spoke, I thought, quite well one morning on the floor about kids in school getting ticketed and sent to juvenile court when they're at school. So I think where they're dropping the ball in several places along here, especially with probably some of our most vulnerable people. In the Platte Institute study, it says that a better way to handle this prison population, the mandatory sentences is to have mandatory probation with drug treatment requirements for certain drug possession offenders. Again, I am not talking about nor do I believe that we should do away with mandatory minimums for... [LB447]

SENATOR KRIST: One minute. [LB447]

Floor Debate  
March 08, 2017

---

SENATOR LINEHAN: ...people who harm, people who commit murder, people who rape, people who abuse children, pornography, all those things. This is just a little step. If you've got somebody who's gotten caught with drugs, do we really want to put him in a mandatory sentence for three to five years in jail and then turn him back on the street without getting them any help so we can just keep having the revolving door go around and around and spend...take a 20-year-old and keep them in prison until they're 80? I just don't think it's a good use of public funds. With that, I don't think I have much time left, but Senator Ebke. Thank you very much. [LB447]

SENATOR KRIST: Twenty-seven seconds. Thank you, Senator Linehan. Still wishing to speak, Senator Smith, McCollister, Hansen, and Hilgers. Senator Smith, you are recognized. [LB447]

SENATOR SMITH: Thank you, Mr. President. Would Senator Ebke yield to some questions for me, please? [LB447]

SENATOR KRIST: Senator Ebke, will you yield? [LB447]

SENATOR EBKE: Yes. [LB447]

SENATOR SMITH: Senator Ebke, I'm going to direct my questions to you because I think you have a very thorough understanding of what we're attempting to do with the amendment before us. And I'm not attempting to stump you, but I do want to get some clarifications. So in this amendment, how would we address the individual that has a conviction for the same offense during a ten-year period? [LB447]

SENATOR EBKE: For the same offense, I don't...we haven't fundamentally changed any of those things except that...okay, so let me tell you what it does. If you look...if people have copies of the amendment in front of them, we have this line that falls in at the end of the current...at the end of the current statute. It says: If an enhancement under this subdivision results in the imposition of a Class IC or ID felony, the minimum term shall not be a mandatory minimum. This falls into place in several...I don't know, seven or eight times at least in the amendment. And basically those are all the drug crimes, so it doesn't stop the stacking of charges. If you have multiple charges, prosecutors can still stack the charges and the judges can take that into consideration. The question is, if somebody's got 28 grams of cocaine, not a good thing by the way, but if somebody does have 28 grams of cocaine do we want to not give the judge--and that's a Class 1D felony--do we want to not give the judge some options in terms of letting somebody be eligible for parole? Now, if they're also carrying a gun or they have some sort of a violent act associated with that, then those things can start to stack. I don't know if I'm answering your question, probably not. [LB447]

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

Floor Debate  
March 08, 2017

---

SENATOR SMITH: No, I think that was good. I appreciate that. I'm going to...I will yield you the remainder of my time if you would like the time to clarify anything further. [LB447]

SENATOR EBKE: Well, thank you, Senator Smith. I will just take another minute or so to talk about this particular amendment. It is a step in the right direction. It's not the magic bullet. It's not going to substantially change. Somebody came up to me and asked me, well, what about if somebody has a...is carrying drugs and also has a weapon, a firearm? All this does is say that it's not subject to the mandatory minimum, but the reality is, and I wish Senator Harr was here or one of my attorney friends, but the reality is that...Senator Schumacher, Senator Schumacher, he's the man. Would Senator Schumacher yield to a question? [LB447]

SENATOR KRIST: Senator Schumacher, can you yield? [LB447]

SENATOR SCHUMACHER: I will. [LB447]

SENATOR EBKE: Thank you. You were a prosecutor once, correct? [LB447]

SENATOR SCHUMACHER: Yes. [LB447]

SENATOR EBKE: So tell us what happens if somebody has one of these 1D felonies, possession of drugs, and they're also carrying a firearm, what's going to happen? What will the prosecutor do and what will the judge do? Are they going to give them three years in prison? [LB447]

SENATOR SCHUMACHER: Well, I don't think we even had 1D felonies when I was a prosecutor, but if somebody...we complicated lives that maybe... [LB447]

SENATOR KRIST: One minute. [LB447]

SENATOR SCHUMACHER: ...with the changes over the years. But basically if there were two possible crimes and one of them was carrying a weapon and another one was possession of drugs and the weapon was a concealed weapon, if I remember right you could...you had the option of charging both. And the judge had the ability to impose consecutive sentences, so you'd do one and then you'd start the second. If you...and that was...that happens all the time. That's prosecutorial discretion. [LB447]

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

Floor Debate  
March 08, 2017

---

SENATOR EBKE: In the current era, if you had two 1D felonies, they could...right now they would both carry a mandatory minimum of three years, or would they stack up and have six years mandatory or...? [LB447]

SENATOR SCHUMACHER: I think it's still optional for it to be consecutive or concurrent sentencing, and that's up to the judge. But I'm not sure on that. [LB447]

SENATOR EBKE: Okay. Thank you, Senator Schumacher. [LB447]

SENATOR KRIST: Thank you, Senator Smith, Senator Ebke, and Senator Schumacher. Senator McCollister, you are recognized. [LB447]

SENATOR MCCOLLISTER: Thank you, Mr. President, and good morning, colleagues. I would like to thank Senator Scheer, Speaker Scheer, for extending debate. I think its been a productive debate. I'd also like to thank Senator Linehan for her amendment. I think the direction we're heading is a good thing--a good thing for Nebraska and a good thing for this Legislature. Senator Linehan referred to the Platte Institute. I managed that body for four years starting in 2009, and we started the initiative on...the Right on Crime, which occurred when I was the director of the Platte Institute. And we put out a number of policy studies that showed that both the right and the left can agree on this particular issue. And in fact, the fact...some of our policy papers were written up in the Lincoln Journal as being favorable, and I think that's the only time the Platte Institute ever received a favorable editorial from the Lincoln Journal. I'd like to read a couple quotes from The Wall Street Journal, certainly no liberal newspaper. And this came from the January 27 edition called "A better approach to violent crime." "In our politically fractured age, the problem of mass incarceration is one of the very few issues that brings liberals and conservatives together." Can I have a gavel, Mr. President? Mr. President, can I have a gavel? Bring the body to order. "The shocking facts of our criminal justice system are surely one reason for this. The U.S. is home to 5 percent of the world's population but 25 percent of its prisoners. Our incarceration rate is 19 percent higher than Turkmenistan's, 36 percent higher than Cuba's and 57 percent higher than Russia's--all repressive regimes. No other liberal democracy has an incarceration rate that's anything like ours, which is more than 370 percent higher than the U.K.'s and almost 800 percent higher than Germany's. In recent years, a bipartisan coalition of politicians, think tank scholars and reformers has sought to rein in and reform the worst excesses of our system." "The good news is that a growing number of proven tactics can keep violent crime low, and perhaps reduce it even further, without relying as much on prison. If governments lock up fewer people for violent crimes, they can use some of the savings to help fund some of these alternatives." I'm grateful for this conversation. Thank you, Senator Linehan, for your amendment. And I hope this debate continues. Thank you, Mr. President. [LB447]



Floor Debate  
March 08, 2017

---

SENATOR KRIST: Thank you, Senator McCollister. (Visitors introduced.) Senator Hansen, you are recognized. [LB447]

SENATOR HANSEN: Thank you, Mr. President. Colleagues, I rise in continued support of LB447 and I will be supporting Senator Lou Ann Linehan's AM546. I am very appreciative of the floor debate and discussion we've had today, and I'm very supportive of attempts to find the area, and this is where we can get the broadest support. And I'm very appreciative of Senator Linehan for bringing this forward. I just want to remind folks as we're having these discussions, as we're offering amendments, as we're discussing the implications of the bill and, frankly, getting into some of the more technical impacts of our criminal code, this is not the last vote we will have on this bill. This is not the last vote we'll have on this amendment, if it should be adopted, or the bill in total. We will obviously have opportunity between General File and Select File, and then between Select and Final Reading. And I bring that up to implore anybody who is on the fence, who is interested in the discussion, who thinks they maybe can be persuaded. I would encourage you today to support Senator Linehan's amendment, to support the efforts to keep the discussion going forward, and then support LB447 moving to Select File. We will have the opportunity in the coming days and weeks to address further questions. I certainly know Senator Chambers is always happy to talk about his bills and explain the full impact of them. And I invite you to do so, and I certainly know Judiciary Committee members and staff can be helpful there. So that's just my simple plea. I know I've been trying to get to a lot of you, talk to a lot of you, check in with you throughout this morning. And there are some people who I think are on the fence as to the actual ramifications that AM546, the overall concept of LB447. If you're on that fence and you're hesitating, I ask you to consider giving us that opportunity for a little bit more time to change your mind, a little bit more time to fully change whatever we need to change in order to get this to be a broad, consensus bill. That might be a bit ambitious, but I'm hopeful we can move forward to that point. With that, thank you, Mr. President. [LB447]

SENATOR KRIST: Thank you, Senator Hansen. Senator Hilgers, you're recognized. [LB447]

SENATOR HILGERS: Thank you, Mr. President. Good morning again, colleagues. I rise in opposition to AM546, although I appreciate very much Senator Linehan's efforts in crafting the amendment and her work to try to find some sort of compromise. And I'll just start where I left off before, which is we've got this debate over a general principle I think everyone would agree with which is we probably are putting too many people in prison. We probably are ruining lives. We are raising the costs to Nebraskans and to specific families and inmates by the way we have set up our criminal justice system. But we're not voting on that general principle. What we're voting on now is AM546. And AM546, as I understand it, would eliminate the mandatory minimum, keep the minimum part, eliminate the mandatory minimum for all drug offenses for IC and ID felonies. And I think I've got the complete list, but those are manufacturing or dealing with possession with intent to distribute--not possession--crack cocaine, heroin, and meth,

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

Floor Debate  
March 08, 2017

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essentially...I don't have the full list here, but that is essentially what we're talking about. What we're not talking about is mere possession of marijuana, possession of cocaine, possession of heroin. Those are lower level thresholds. Those are lower offenses. I think possession is generally around a Class IV with no mandatory minimum. So if that's what we want to do, then I think we ought to talk about the impact of folks who manufacture heroin on our communities and talk about the people who have been convicted of manufacturing heroin who have turned their life around or talk about how those people are raising the cost to Nebraskans, because according to the recent data that I've seen, that group, all the IC and ID drug felons that are currently in the system, there are 88 individuals. So let's talk about what that subset of folks, what that's going to save us and let's talk about those crimes in particular. This is not possession of marijuana ruining someone's life. This is not possession of heroin ruining someone's life. This is manufacturing, distributing. These are the folks at the top of the food chain for a lot of these drug rings. These are serious crimes. Let's talk about those because the general principle I agree with. But the specific vehicle that we're dealing with in AM546 is too broad and I have not heard, to my ear, the evidence or discussion, as to those specific crimes, the cost and how those folks ought not to have a mandatory minimum. So with that, I would urge your red light on AM546 and on LB447. I certainly have appreciated the comments and debate and the thoughtful consideration of this bill this morning and yesterday and I look forward to continuing to listen. Thank you, Mr. President. [LB447]

SENATOR KRIST: Thank you, Senator Hilgers. Senator Crawford, you are recognized. [LB447]

SENATOR CRAWFORD: Question. [LB447]

SENATOR KRIST: The question has been called. Do I see five hands? I do see five hands. The question is, shall debate cease? All those in favor...I'm sorry? The question is, shall debate cease? All those in favor vote aye; all those opposed vote nay. Please record, Mr. Clerk. [LB447]

CLERK: 27 ayes, 2 nays to cease debate, Mr. President. [LB447]

SENATOR KRIST: Debate does cease. 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; opposed, nay. Please record, Mr. Clerk. [LB447]

CLERK: 32 ayes, 0 nays, Mr. President, to place the house under call. [LB447]

SENATOR KRIST: The house is under call. Senators, please record your presence. Those unexcused senators please return to the Chamber and record your presence. All unauthorized

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

Floor Debate  
March 08, 2017

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personnel please leave the floor. The house is under call. Senator Williams, Senator Riepe, Senator Friesen, Senator Groene, please return to the Chamber and check in. The house is under call. Senator Linehan, you're recognized to close on your amendment. [LB447]

SENATOR LINEHAN: I want to answer one question, if my math is right. I had a couple of my colleagues check it. So 88 people times almost \$40,000 a year is \$35,200,000 per year. So, yes, 88 people in prison for a year adds up to a lot of money. This deals with limited offenses. Not talking about violent criminals here. We're not talking about people who are carrying guns and doing drive-by shootings or rapists or murderers. This doesn't affect the habitual criminal statutes. I would hope that you would move to advance LB447. Thank you...excuse me, adopt AM546 and then advance LB447, if adopted. Thank you. [LB447]

SENATOR KRIST: Thank you, Senator Linehan. Still missing Senator Williams. Senator Williams, please return to the Chamber. The house is under call. Senator Williams, please return to the Chamber. The house is under call. Senator Williams. We're all present. How would you like to proceed, Senator Linehan? There has been a request for a roll call vote in reverse order. Just to refresh your memory, this is AM546 to LB447. Mr. Clerk. [LB447]

CLERK: (Roll call vote taken, Legislative Journal pages 659-660.) 29 ayes, 9 nays, Mr. President, on the amendment. [LB447]

SENATOR KRIST: AM546 is adopted. Raise the call. Returning to debate, Senator Harr, you are recognized. [LB447]

SENATOR HARR: Thank you, Mr. President, members of the body. I'll speak quickly. I just wanted to clarify the record. This applies to drug offenses only. It does not apply to habitual criminals. It does not apply to felon in possession of firearms. When you look at the total population of those who are in prison for mandatory minimums, it makes up 12.5 percent of that population. Now, the question is would that change if we got rid of mandatory minimums? Would the sentences that those individuals change? Maybe, I don't know. All we're doing is changing that, who makes the determination of the sentence from initially you and I by saying this is what it should be to then the prosecutor fitting the crime to the law and saying, okay, this is where a mandatory minimum comes in, we got to get this; to instead what we say is we still think this activity is wrong. We still think this activity deserves a harsh punishment. But we are going to turn it over to the judge who knows the specific facts of the crime and the mitigating factors and the aggravating factors to determine what is or is not the proper sentence. It's that simple. That's all this bill does. It does not change the maximum from what it is today. There is nothing that requires a judge to go...prevents a judge from going beyond the mandatory minimum today. After this passes, if this does pass, there will be nothing that prevents him

Floor Debate  
March 08, 2017

---

afterwards to giving the maximum or going beyond what was previously the mandatory minimum. This is about who do we want to make those decisions? Do you think you and I should be making this decision about John Q. Public five years from now, six months from now, whenever, when we have no idea what the facts surrounding it are other than we can say heroin dealer bad. By the way, we don't change that. Heroin dealers, you are bad people. And we will find you and we will use our prosecutors and our judges to make sure you receive the proper punishment. But we are also going to make sure you receive the proper rehabilitation. With mandatory minimums, we've heard it--the programming isn't available. Do we want to incentivize those people in prison to do the right things, to go through rehabilitation? Or do we want to say you are going to...here's the mandatory minimum, you get no good time. You're going to max out. Sit on your hands. We don't care. By the way, when you come out, hopefully you have aged out. But if you haven't, you know what, we haven't provided you any new skill sets. Go, go back to where you were before and do what you did before. That's what this is about. It's pretty simple. I want to thank Senator Linehan for bringing her amendment and I would...want to thank Senator Chambers for bringing this legislation and I would encourage you all to vote for it. Thank you. [LB447]

SENATOR KRIST: Thank you, Senator Harr. Senator Wayne, you're recognized. [LB447]

SENATOR WAYNE: Again, I think this is a step in the right direction. I want to stress the importance of this body over a interim study looking at our complete criminal code. I think we have to deal with drugs different than we deal with violent criminals and we deal with guns. In this particular case, at least the people I represented and have represented, most of the time they commit a drug felony, they also have a weapon on them. Most of the time the mandatory minimum, which was cited by Senator Harr, dealt with people who should not have guns at this point, felons in possession, which is a mandatory minimum. This is not necessarily what everybody in this body will agree with. But it's the start of a bigger conversation about our criminal code that we have to have. Some of our code has not been updated over the last 40 years. It used to be when you stole something worth over \$1,500, you typically had to go into a house or go into a convenience store and take a big screen TV. Today it's as small as an iPhone. That is a different technology, but the cost is still high. And now we have 18-year-old kids being charged with felonies when they take somebody's iPhone from their locker room and, yes, they should not be stealing it. But really, an 18-year-old at that point being charged with a felony is not probably what's in the best interest of our society. It was a bad joke gone wrong or maybe they did steal it. To cite an example I used in government relations, which I can't wait to hear the conversation around LB75 and felons' right to vote. And I can take you through the historical context of where felonies really came from and why it was used after the Thirteenth, Fourteenth, and Fifteenth Amendments were passed giving blacks the right to vote and how our state Legislature at the time and our state adopted banning felons' right to vote. But the historical context is important because many of our laws are still written in some of that same context. For

Floor Debate  
March 08, 2017

---

example, an example I used that day was if I tell Senator Lowe I'm going to hit him, that is a felony. That is a terroristic threat. But if I actually go up and hit him, it's a misdemeanor. That makes no sense. But that happens day in and day out in the judicial system that I am involved in. So we have to go back into these laws. We have to take a comprehensive look at every statute and, yes, there are over 1,600 subsections and statutes that we have to look at to determine what should be a felony in this day and age and what shouldn't be. And furthermore, we should also go in and have a conversation about what rights should attach after they've done their sentences. Is it gun rights? Is it voting rights? We have to have that conversation, because a felony today is not the same felony that it was 70 years ago. And I can tell you that many of the things on the books 70 years ago were put on the books not for the purposes that we're all here today. And we have to have that conversation and we have to have the historical context of why some of these things were passed. One of the biggest changes from 1871 to 1875 in our constitution and our criminal code which later got changed again in 1921 was taking a...stealing of a horse from a felony to a misdemeanor. Wonder why that happened? You can go back and read the reason. It was because young white people were stealing horses and they didn't want to make them felons. But if you were to cuss at a 14-year-old kid or cuss at a woman, you were charged with a felony. And guess who was getting charged with those felonies? Minorities. [LB447 LB75]

SENATOR KRIST: One minute. [LB447]

SENATOR WAYNE: Some of those laws are still on our books today. And at some point we have to go in and look at our entire criminal code and start making changes to move our criminal code into the twenty-first century. And this is a start today and that's why I'm supporting it. Thank you, Mr. President. [LB447]

SENATOR KRIST: Thank you, Senator Wayne. Those still wishing to speak: Senator Groene, Senator Pansing Brooks, and Senator Larson. Senator Groene, you're recognized. [LB447]

SENATOR GROENE: Thank you, Mr. Speaker. I've always believed, and we've had this debate before, crime is down nationwide because of laws like minimum sentences and three strikes you're out. You keep the bad guy in jail. You talk to my local sheriff, he says when a young person gets out that's a criminal in a small town, he knows crime is going to increase immediately if they're career criminals. Minimum sentences and three strikes you're out stop a lot of that, at least delay it, how long they can be on the street. That said, I voted for Senator Linehan's amendment because the first time you do something wrong...and I'm not sure about all the laws. But if you sold an ounce of marijuana or something and you get...end up with three years, that's not right. So I agree with her amendment. I'm going to ask Senator Schumacher a couple of questions if he'll answer them. Will you? [LB447]

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

Floor Debate  
March 08, 2017

---

SENATOR KRIST: I'm sorry, who did you want to talk to? [LB447]

SENATOR GROENE: Senator Schumacher. [LB447]

SENATOR KRIST: Senator Schumacher, will you yield? [LB447]

SENATOR SCHUMACHER: Yes, I will. [LB447]

SENATOR GROENE: Senator Schumacher, what we're discussing here today doesn't affect three strikes, you're out, does it? [LB447]

SENATOR SCHUMACHER: That's correct, it does not. [LB447]

SENATOR GROENE: So if you have a drug dealer, a bad one and the judge was soft on him the first time. Second time the judge might have threw him in for three years. The third time he comes back, does the judge have the option to not put him away for a long time because of three strikes you're out? [LB447]

SENATOR SCHUMACHER: In the description that you have, I think three strikes you're out requires you to be sentenced to the penitentiary for two times before. For your description, if he was soft on him and just turned him loose, no, it wouldn't work. [LB447]

SENATOR GROENE: No. [LB447]

SENATOR SCHUMACHER: But if he went to the penitentiary for a year, then it would be. [LB447]

SENATOR GROENE: All right. No, instead of mandatory three years, if we enacted this and the judge said I'm going to him give him three years and he's out for good time in a year and a half, that's still serving time in the penitentiary. That's his first strike, is it not? [LB447]

SENATOR SCHUMACHER: Right. A felony with a sentence for at least a year is a strike. [LB447]

SENATOR GROENE: And then his second time he comes in and he does it again and the judge says I'm going to give you six years now, so to make sure you stay in there three years with good time, that's his second strike, right? [LB447]

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

Floor Debate  
March 08, 2017

---

SENATOR SCHUMACHER: Strike two. [LB447]

SENATOR GROENE: The third time the judge says mandatory. The judge said three strikes, you're out. Is that correct? [LB447]

SENATOR SCHUMACHER: The third time if the prosecutor charges three strikes you're out and that's the case, you're out. [LB447]

SENATOR GROENE: So enacting Senator Linehan's amendment, I do not believe that in the long-term we're not...still have the ability to throw the really bad guy away for a long time. That is still in place, the three strikes you're out. I think it's a good compromise. I'm a fiscal conservative and I'm also for law and order. But some of these drug offenses are not usually associated with violence. And when they are, there is probably a gun involved or another crime involved of violence that will have a minimum sentence. So that's where I stand and that's why I voted for Senator Linehan's amendment. I think it's a good compromise and, hey, I don't got to build another prison if I can get two dozen here and three dozen here. And hopefully... [LB447]

SENATOR KRIST: One minute. [LB447]

SENATOR GROENE: ...they turn their lives around and get on with their lives. So thank you. But I stand in support of LB447 as amended. Thank you. [LB447]

SENATOR KRIST: Thank you, Senator Groene and Senator Schumacher. Senator Larson, you're recognized. [LB447]

SENATOR LARSON: Question. [LB447]

SENATOR KRIST: The question has been called. Do I see five hands? I do see five hands. The question before you is the question to cease debate. All those in favor vote aye; opposed, nay. Please record, Mr. Clerk. [LB447]

CLERK: 27 ayes, 1 nay, Mr. President, to cease debate. [LB447]

SENATOR KRIST: Debate does cease. Senator Chambers, you're recognized to close on LB447. [LB447]

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

Floor Debate  
March 08, 2017

---

SENATOR CHAMBERS: Thank you, Mr. President, members of the Legislature, Senator Linehan's amendment is now the bill. So when you voted for the amendment, you changed the bill. Everything is out of it except her amendment. Kenny Rogers said, you have to know when to "hold 'em," know when to "fold 'em." Bob Seger had a song called "You're Still the Same" (sic--"Still the Same"). He said, this guy said the cards had never done him wrong. He said the trick is don't play the game too long. I think the game has been played and I will have nothing else to say. But to ensure that everybody is here, I will ask for a call of the house and I will accept a machine vote. [LB447]

SENATOR KRIST: 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; opposed, nay. Please record, Mr. Clerk. [LB447]

CLERK: 34 ayes, 3 nays to place the house under call, Mr. President. [LB447]

SENATOR KRIST: 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. Senator Vargas, could you check in for me, please. Thank you. Senator Bolz, please return to the Chamber. The house is under call. Everyone is accounted for. Senator Chambers, I'm assuming...you said just a machine vote? The question before you is the advancement to E&R Initial for LB447. All those in favor vote aye; opposed, nay. Please record, Mr. Clerk. [LB447]

CLERK: 25 ayes, 22 nays, Mr. President, on the advancement of the bill. [LB447]

SENATOR KRIST: LB447 advances. Raise the call. Any items? [LB447]

CLERK: Not at this time, Mr. President.

SENATOR KRIST: Next item.

CLERK: Senator Chambers offers LB447A. (Read title.) [LB447A]

SENATOR KRIST: Senator Chambers, you're recognized to open on LB447A. [LB447A]

SENATOR CHAMBERS: Thank you. Mr. President. Members of the Legislature, Senator Blood, my seatmate, had an A bill that spent such a small amount of money that she asked to kill



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

Floor Debate  
March 08, 2017

---

it. I have an A bill that will reduce expenditures, so I'm asking that you vote to advance this A bill. Thank you, Mr. President. [LB447A]

SENATOR KRIST: Thank you, Senator Chambers. Seeing no one else in the queue wishing to speak, the question before you is the advancement of LB447A to E&R Initial. All those in favor vote aye; opposed, nay. Have all those voted that wish to? Please record, Mr. Clerk. [LB447A]

CLERK: 30 ayes, 10 nays, Mr. President, on the advancement of LB447A. [LB447A]

SENATOR KRIST: LB447A advances. Next item. [LB447A]

CLERK: Mr. President, LB195 offered by Senator Craighead. (Read title.) Introduced on January 10 of this year, referred to the Health and Human Services Committee. The bill was advance to General File. I have no committee amendments. I do have an amendment from Senator Craighead. (AM547, Legislative Journal page 660.) [LB195]

SENATOR KRIST: Senator Craighead, you're recognized to open on LB195. [LB195]

SENATOR CRAIGHEAD: Thank you. We did have a friendly amendment that we put in this morning, too, AM547. [LB195]

SENATOR KRIST: Would you like to open on both of them together? [LB195]

SENATOR CRAIGHEAD: Yes, I would, please. [LB195]

SENATOR KRIST: Mr. Clerk. [LB195]

SENATOR CRAIGHEAD: Thank you. I come today to introduce LB195 and also AM597. This bill is known as Cheri's Law. [LB195]

SENATOR KRIST: Senator Craighead, could I interrupt? You mean AM547, correct, AM547? [LB195]

SENATOR CRAIGHEAD: AM547, yes. [LB195]

SENATOR KRIST: Okay, thank you. [LB195]

Floor Debate  
March 08, 2017

---

SENATOR CRAIGHEAD: LB195 would require all healthcare facilities that perform mammography to include in the summary of the mammography report that is provided to a patient, information that identifies the patient's individual breast tissue density classification, based on the breast imaging reporting and data system established by the American College of Radiology. The information would be provided to raise awareness of the impact of breast density on cancer detection and to encourage patients to discuss this issue, as well as other breast cancer risk factors, with their healthcare provider to decide if further screening options may be required. This bill does not create a duty of care or other legal obligations beyond the duty to provide notice. I have introduced this bill in memory of Cheri Rauth, an Omaha, Nebraska, resident, who passed away from breast cancer one year ago in January. She received a stage IV diagnosis within eight months of her 15th normal mammogram. Had Cheri been notified of her breast dense tissue and discussed additional screening options to her mammogram, her cancer would most likely have been diagnosed at an earlier stage. Breast cancer awareness has become a hot topic issue, encouraging women to be strong advocates for their health. Yet most women are never told about one of the most important factors in breast cancer detection. The knowledge of one's breast density plays a key role in the detection of breast cancer. Ninety-five percent of women do not know their breast density, and 40 percent of women do have breast dense tissue. For perspective, high breast density is a greater risk factor than having two first-degree relatives with breast cancer. The reporting requirement in Cheri's law would provide women important breast density results and give them ability to discuss with their healthcare provider if further screening options may be required. These options were not afforded to Cheri Rauth by the time her cancer was detected. There are currently 28 other states with breast density reporting laws enacted, and another 11 are introducing legislation this year. LB195 is modeled after the laws that are enacted with those 28 states. And now for the amendment, AM547, is simply to strike the words, "A facility shall notify the Department of Health and Human Services each time it makes changes to the notice required by this section and shall provide an updated copy for the department's information and review." The reason that I put that in is we do not think it's necessary to let the Department of Health and Human Services know. In closing, I want to thank you for your consideration of LB195 and ask that you support the women of Nebraska with a green vote today. Thank you. [LB195]

SENATOR KRIST: Thank you, Senator Craighead. The floor is now open for debate on AM547 and LB195. Those wishing to speak: Senator Chambers and Senator Riepe. Senator Chambers, you are recognized. [LB195]

SENATOR CHAMBERS: Thank you, Mr. President, members of the Legislature and Senator Craighead, a bill of mine advanced. I'm not staying here to fight a bill. But I want you to notice that I'm staying on the floor. And I'd like to ask you a question if you'll answer. [LB195]

SENATOR KRIST: Senator Craighead, would you yield? [LB195]

Floor Debate  
March 08, 2017

---

SENATOR CHAMBERS: Is this a particularly special day to our sisters? [LB195]

SENATOR CRAIGHEAD: It is. It's because all of the women in this room are not supposed to be here today. This is women don't go to work day. Women don't show up day. [LB195]

SENATOR CHAMBERS: It's a day--thank you--that we pay a special note, or should, to the presence of women, the value that women have always been in this country. I'm not going to take a long time. But I'd wish that people would read something about Abigail Adams. Her husband is well-known by everybody. But she even told her husband, paraphrasing, I hope you'll not forget the women. Read some of the things that Abigail Adams said, things that women have done and the world would be a far worse place were women not here. But it would be a far better place if no woman ever gave birth to a male child. But we can't have perfection, so we take what we can get and do the best we can with it and I think it's very appropriate that a bill of this kind dedicated to the health of women would come on this day. And my sisters in the Legislature came so that they could participate in this legislative act of advancing this bill and helping women yet unborn. Thank you, Mr. President. [LB195]

SENATOR KRIST: Thank you, Senator Chambers. Senator Riepe, you're recognized. [LB195]

SENATOR RIEPE: Mr. President, members of this Senate, I want to rise to the point of saying I am a member of the Health and Human Services Committee. I do happen to serve as Chairman. My piece is that I am supportive of AM547 and I have concerns with the underlying bill only from the standpoint of its mandatory reporting because when you have mandatory reporting you also open yourself up from a healthcare provider standpoint, which is obviously my background, to contingent liability. Most of my conversations with physicians are that women that do have dense breast on their examinations, most of them are told by the physician. I just have an objection with the mandatory section. [LB195]

SENATOR KRIST: Thank you, Senator Riepe. Senator Hilkemann, you're recognized. [LB195]

SENATOR HILKEMANN: Thank you, Mr. President. I rise in support of LB195. This is important legislation. In fact, I'm very pleased that Senator Craighead prioritized this, I signed onto this legislation early. This is one of those bills that, yes, Senator Riepe, there is a mandate here. This is a time that we should have a mandate because this particular diagnosis for the breast cancer, if you don't inform people properly of this, the results are devastating. And the results don't have to be devastating because one of the cancers that has been significantly improved the treatment on over the years is breast cancer and one of the things that you need to get it quickly. And, therefore, this is good legislation and I strongly support it and I would urge everyone to vote green on the amendment and also on LB195. Thank you. [LB195]

Floor Debate  
March 08, 2017

---

SENATOR KRIST: Thank you, Senator Hilkemann. Senator Schumacher, you are recognized. [LB195]

SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. This is good legislation, but I do want to raise a concern that crosses my mind and I don't know if there is a way to resolve it or not. Once this written...we're in a very uncertain world when it comes to healthcare right now. We don't know what the rules are going to be or if there are going to be rules regarding preexisting conditions. And to the extent there is written documentation of--and I don't know if this is even considered a preexisting condition, but it might be--and there is documentation that the patient knows of this condition and there is no way around that documentation because this mandates it, then if there is an application for an insurance policy and no rule against preexisting conditions being discriminated against, I'm wondering if this could have one of those unintended consequences of causing somebody's insurance premiums and ratings to go up. I don't know the answer to that, but it does concern me that there's nothing in the bill that basically limits this thing having a bad impact on an insurance policy premium, assuming that the federal government allows such discrimination. Thank you. [LB195]

SENATOR KRIST: Thank you, Senator Schumacher. Senator Blood, you're recognized. [LB195]

SENATOR BLOOD: Thank you, Mr. Speaker. Fellow senators, friends all, I rise in support of this amendment as I feel it makes LB195 a better bill. I did cosponsor early on. I support this bill in honor of Mary Lou Blood, who died and passed away because of this very thing in Minnesota. And so I have a personal connection to the bill. That is not why I supported it. I supported it because it is good legislation. But I want you to know that you don't have to reach out very far to find people that passed away because they were not told appropriately. And by the time they knew what was going on with their breast cancer, unfortunately, it was too late and did pass away. I know that my mother-in-law is not the only victim because of this. And so I just want you to think about that when you vote in favor of LB195 today. [LB195]

SENATOR KRIST: Thank you, Senator Blood. Those still wishing to speak: Senator Howard, Kolterman, and Riepe. Senator Howard, you're recognized. [LB195]

SENATOR HOWARD: Thank you, Mr. President. I rise in support of LB195 and AM547. I did want to clarify for Senator Schumacher the issue around preexisting conditions because I do think that that's nationally something that we need to keep our eye on. The difference between a preexisting condition and what we're discussing here is that breast density is considered a physical characteristic like a mole, whereas a diagnosis of a preexisting condition would be something more along the lines of asthma or a chronic condition or something like that. And so because this is like saying you have a third arm, but that's not a preexisting condition, it is more

Floor Debate  
March 08, 2017

---

like a physical characteristic than a preexisting condition, to clarify your point. I also have to say, the testimony on this bill was incredibly compelling. We heard from women who had...who never knew that their breasts were dense and had received mammograms that were fine. And so for me, this seems like an issue not just for women, but for families of women who maybe have breast dense and don't know they should be asking more questions. And so this gives them the opportunity to really understand what's going on with their own bodies and I applaud Senator Craighead for bringing this bill to us today and I would urge your green vote on both the amendment and the bill. Thank you. [LB195]

SENATOR KRIST: Thank you, Senator Howard. Senator Kolterman, you are recognized. [LB195]

SENATOR KOLTERMAN: Thank you very much, Mr. President. Good morning, colleagues. I rise in support of AM547 and LB195. I signed onto the bill early for Senator Craighead. I listened to the testimony that came out of the committee. It was very compelling as you just heard. And after that, I went home and started talking to women in my life that get mammography screened and asked them questions like, do you discuss this with your doctor? Has a doctor ever told you you have dense breasts? And they told me yes, they have and all it did for them was it gave them the opportunity to seek additional screening and found out that, in many cases, it's not a tumor that needs to be dealt with, but at least they had peace of mind. Is it something that doctors are going to have to do or the facilities are going to have to do? Yes, it is. But shouldn't we be told of the problems that we have and be able to deal with them up front rather than wait until after the fact and then have an abundance of problems in dealing with the cancer situation. So I would hope that people would give LB195 and AM547 the green light. Thank you. [LB195]

SENATOR KRIST: Thank you, Senator Kolterman. Senator Riepe, you're recognized. [LB195]

SENATOR RIEPE: I'd like to...I'm sorry. Mr. President and colleagues, I would like to ask my friend, Senator Craighead, if she would answer a couple of questions for me, please. [LB195]

SENATOR CRAIGHEAD: Certainly. [LB195]

SENATOR RIEPE: Senator, can you tell me what happens if a facility fails to notify? [LB195]

SENATOR KRIST: Senator Craighead, would you yield? [LB195]

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

Floor Debate  
March 08, 2017

---

SENATOR CRAIGHEAD: Absolutely. First of all, it's always in the report that the physician writes if a woman has dense breast tissue or not. All we are asking is that women be told. So there is really nothing other than the fact of just be told. And just as an example for you, the three of us in my office happened to get mammograms the same week in October. So after this was done, we had a conversation and I said, were you asked if you had dense breast tissue? None of the three of us were asked or told that we had breast dense tissue. Two of the three did. So all this is--and it's already in writing in the report--is just for the mammographer or the physician to say, by the way, you have dense breast tissue. That's it. That's all it does. It does not create a duty of care or other legal obligation beyond the duty to provide notice. [LB195]

SENATOR RIEPE: Let me ask this follow-up question. What is the punishment then if they fail to do that? [LB195]

SENATOR CRAIGHEAD: Excuse me, repeat? [LB195]

SENATOR RIEPE: What is the punishment should they fail to do that? [LB195]

SENATOR CRAIGHEAD: There is none. [LB195]

SENATOR RIEPE: Okay. Thank you. Thank you, Senator. [LB195]

SENATOR CRAIGHEAD: Thank you. [LB195]

SENATOR KRIST: Thank you, Senator Riepe and Senator Craighead. Seeing no one else in the queue, Senator Craighead, you're recognized to close on your amendment AM547. [LB195]

SENATOR CRAIGHEAD: Thank you. As I mentioned AM547 simply removes the notification to Health and Human Services about dense breast tissue because we don't think it's necessary. [LB195]

SENATOR KRIST: Thank you, Senator Craighead. You have heard the closing on AM547 to LB195. The question is the adoption of AM547. All those in favor vote aye; opposed, nay. Have all those voted that wish to? Please record, Mr. Clerk. [LB195]

CLERK: 38 ayes, 0 nays, Mr. President, on the adoption of Senator Craighead's amendment. [LB195]

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

Floor Debate  
March 08, 2017

---

SENATOR KRIST: AM547 is adopted. Senator Craighead, you're recognized to close on LB195. [LB195]

SENATOR CRAIGHEAD: Thank you. LB195 requires all healthcare facilities that perform mammography to include in the summary of the mammography report that is provided to the patient information that identifies the patient's individual breast tissue density classification. We do not want to have another Cheri Rauth. Again, as was mentioned, the testimony in the committee was very compelling. There was no opposing testimony. We did have a number of physicians in there who agreed with this. I would ask for your green vote on LB195. Thank you. [LB195]

SENATOR KRIST: You heard the closing on LB195 from Senator Craighead. The question is the advancement to E&R Initial. All those in favor vote aye; opposed, nay. Have all those voted that wish to? Please record, Mr. Clerk. [LB195]

CLERK: 38 ayes, 1 nay, Mr. President, on the advancement of LB195. [LB195]

SENATOR KRIST: LB195 advances. Senator Pansing Brooks, you would be the next bill up. Would you like to delay until tomorrow or would you like to proceed?

SENATOR PANSING BROOKS: I think it would be great if we could delay until tomorrow if that's all right, because we have amendments and closings and different additional factors, so if that's all right.

SENATOR KRIST: Okay. Just wanted that for the record. Thank you. Any items, Mr. Clerk?

CLERK: Mr. President, Natural Resources reports the following bills indefinitely postponed: LB87, LB352, LB429, LB488, LB533, LB547, LB626, LB657, LB660; those all signed by Senator Hughes as Chair. Priority bill designations: Senator Howard, LB223; Senator Brasch, LB600 as Agriculture Committee priority; Natural Resources, LB182 and LB566; LB337, Senator Lindstrom; LB444, Senator Walz; LB535 by Senator Hughes. I have a series of amendments to be printed to LB368 by Senator Hilkemann; those will be printed. Transportation Committee reports LB157 to General File, LB618 to General File, LB275 to General File with amendments. And Health Committee reports LB61 to General File. Name adds: Senator Briese to LB92; McCollister, LB322; Bostelman, LB323; Briese, LB340; Bostelman, LB506. (Legislative Journal pages 661-670.) [LB87 LB352 LB429 LB488 LB533 LB547 LB626 LB657 LB660 LB223 LB600 LB182 LB566 LB337 LB444 LB535 LB368 LB157 LB618 LB275 LB61 LB92 LB322 LB323 LB340 LB506]

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Floor Debate  
March 08, 2017

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Mr. President, Senator Lindstrom would move to adjourn until Thursday, March 9, at 9:00 a.m.

SENATOR KRIST: You've heard the motion. Let's see we can make this a consensus. All those in favor vote aye. Opposed, nay. Yeah, ayes still have it. We are adjourned. You don't have to go home, but you can't stay here.