

January 8, 1982

LB 347

Senator Kilgarin's amendment.

PRESIDENT: Motion carries, the amendment to the amendment is adopted. We are now ready to adopt the Chambers amendment as amended. Senator Chambers, any further discussion?

SENATOR CHAMBERS: Mr. Chairman, only for the purpose of trying to make clear what I am doing. The criminal justice system should for clarity relate only to acts that are crimes. The difference between a criminal act and a civil action is that the state has declared certain conduct to be forbidden. If you engage in that conduct, the state itself will use its money, its prosecutors, to charge you with that offense, then if you are convicted the state will punish you by putting you in jail, charging you a fine, or both, or probation or any of the means available to the state for punishment. That is what the criminal law does. It punishes forbidden conduct. The standard of proof is beyond a reasonable doubt. On the civil side where you have disputes among individuals and the state is not involved at all Senator Higgins and I reach such a state of disagreement that one of us or both of us do some things that one or both do don't like that we decide that maybe we should go to court to settle it. In that instance, the only thing the state has done is to provide the forum for the two of us to fight it out. The state does not provide the attorneys. The state does not pay the cost. We deal with each other, and if one of us wins, the other has to pay some money. But there is no jail, there is no fine, it is strictly a forum for citizens to fight it out with each other. So think of the criminal side on the right, the civil on the left. If we remove the language that I am trying to get out of the criminal law, the citizen's right to proceed against somebody who has damaged them still exists, but it leaves intact the requirements in the criminal law that before the state will punish you, you have to do something intentionally or maliciously, meaning that you know the conduct is forbidden, you are aware of what you are doing and you do it anyway. And all I am saying is that before you punish somebody for committing a crime, we ought to have the requirement that it be intentionally done or maliciously done. So criminal mischief would not be changed at all by my amendment. All I am saying is leave the statute dealing with criminal mischief as it exists now. That is all that my amendment would do. Thank you.

PRESIDENT: The motion then is the adoption of the Chambers amendment as amended. All those in favor vote aye, opposed nay. Have you all voted? Six are excused, Senator Chambers.

6356