PRESIDENT: LB 33 advances. LB 34, please.

CLERK: LB 34, Mr. President, offered by Senator Labedz as Chair of the Board. (Read title.) Introduced on January 5, referred directly to General File.

PRESIDENT: Senator Peterson, please.

SENATOR PETERSON: Mr. President, LB 34, the final revisor's bill, makes numerous internal changes relating to the Game and Parks Commission. I ask that this bill be advanced to E & R Initial.

PRESIDENT: You've heard the explanation. The question is the advancement of the bill. All those in favor please vote aye, opposed nay. Ladies and gentlemen, I need a little help, please. Thank you. Record, Mr. Clerk, please.

CLERK: 27 ayes, 0 nays, Mr. President, on the advancement of LB 34.

PRESIDENT: LB 34 is advanced to E & R Initial. Mr. Clerk, do you want to read in a few more bills?

CLERK: Mr. President, yes, thank you. Mr. President, before I proceed to do that, two announcements, the Education Committee has selected Senator Dierks as Vice-Chair and General Affairs Committee has selected Senator Hartnett as Vice-Chair. Signed by Senator Withem and Smith respectively.

(Read by title for the first time LBs 330-340. See pages 179-81 of the Legislative Journal.

Mr. President, other items for the record. Your Committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 1 and recommend that same be placed on Select File; LB 2, Select File; LB 3, Select File; LB 4, Select File; LB 5, Select File; LB 6, Select File; LB 8, Select File; LB 9, Select File; LB 10, Select File with E & R amendments attached; LB 11, Select File; LB 12, Select File; LB 13, Select File; LB 14, Select File; LB 15, Select File with E & R amendments attached; LB 16, Select File; and LB 17, Select File. (See pages 181-83 of the Legislative Journal.) That's all that I have at this time, Mr. President.

bill, Mr. President.

SPEAKER BARRETT: LB 155 is advanced. Messages on the President's desk, Mr. Clerk?

ASSISTANT CLERK: First of all, Mr. President, a reminder that the Urban Affairs Committee is having a short Exec Session at one o'clock in the Senator's Lounge. That's from Senator Hartnett. Revenue Committee, whose Chairperson is Senator Hall, refers LB 346 to General File; LB 437 to General File; LB 329 to General File with committee amendments; and LB 504, indefinitely postponed. (See pages 877-78 of the Legislative Journal.)

New A bills. (LB 449A and LB 250A read by title for the first time. See page 878 of the Legislative Journal.)

A series of name additions. Senator Bernard-Stevens to LB 218 and LB 330; Senator Lindsay to LB 478; Senator Hartnett to LB 335; Senators Peterson, Rogers and Beyer to LB 809. That's all that I have, Mr. President.

SPEAKER BARRETT: Thank you. Senator Schimek, would you care to adjourn us until Monday.

SENATOR SCHIMEK: Mr. Speaker, I move we adjourn until Monday, February 27th, at nine o'clock.

SPEAKER BARRETT: Thank you. You've heard the motion. Those in favor say aye. Opposed no. Ayes have it, motion carried, we are adjourned.

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Marilyn Zank

indefinitely postponed; LB 478, indefinitely postponed; LB 561, indefinitely postponed; LB 387, indefinitely postponed, all those signed by Senator Chizek as Chair of the Judiciary Committee. (See pages 1081-82 of the Legislative Journal. Journal page 1082 shows LB 721 as indefinitely postponed.)

Mr. President, a series of priority bill designations. Senator Hall would like to designate LB 762 as a committee priority. Senator Hartnett designates LB 95 and LB 444 as Urban Affairs priority bills. Senator Hartnett chooses LB 603 as his personal priority bill. LB 739 has been selected by Senator Hannibal; LB 606 by Senator Schimek; LB 761 and LB 289 by the Natural Resources Committee, and LB 807 by Senator Schmit, personally. LB 769 by Senator Labedz; LB 705 by Senator Ashford; LB 438 by Senator Wehrbein; LB 710 by Senator Scofield; LB 643 by Senator Bernard-Stevens; LB 588 by Senator Chambers; LB 739 by Senator Hannibal; LB 330 by Senator Pirsch; LB 767 by Senator Smith; LB 736 and LB 780 by General Affairs Committee; LB 395 by Senator Peterson. Senator Lamb selected Transportation Committee's LB 280 as a priority bill. LB 311 has been selected by Senator Landis as his personal priority bill; LB 683 by Senator Schellpeper.

Mr. President, I have a series of amendments to be printed. LB 744 by Senator Withem; LB 336 and LB 257, those by Senator Withem. (See pages 1083-88 of the Legislative Journal.)

I have an Attorney General's Opinion addressed to Senator Haberman regarding an issue raised by Senator Haberman. (See pages 1088-90 of the Legislative Journal.)

Mr. President, Natural Resources Committee will have an Executive Session at eleven-fifteen in the senate lounge, and the Banking Committee will have an Executive Session at eleven o'clock in the senate lounge. Banking at eleven o'clock, Natural Resources at eleven-fifteen. That's all that I have, Mr. President.

SPEAKER BARRETT: Thank you, Mr. Clerk. Proceeding then to Select File, LB 140.

CLERK: Mr. President, 140 is on Select File. Mr. President, the bill has been considered on Select File. On March 2nd the Enrollment and Review amendments were adopted. There was an amendment to the bill by Senator Chizek that was adopted.

nay. Record, Mr. Clerk, please.

CLERK: 25 ayes, 0 nays, Mr. President, on adoption of Senator Nelson's amendment.

PRESIDENT: The Nelson amendment is advanced. Now...is adopted. Now we're on the advancement of the bill, Senator Nelson.

SENATOR NELSON: Just move for the advancement.

PRESIDENT: Thank you. The question is the advancement of the bill. All those in favor say aye. Opposed nay. It is advanced. LB 157.

CLERK: Mr. President, may I read some items?

PRESIDENT: Yes, please.

CLERK: Mr. President, your Committee on Judiciary, whose Chair is Senator Chizek, to whom was referred LR 8, instructs me to report the same back to the Legislature with the recommendation it be advanced to General File with amendments, LB 50 General File with amendments, LB 203 General File with amendment, LB 330 General File with amendments, LB 455 General File with amendments, LB 571 General File with amendments, LB 586 General file with amendments, LR 9 indefinitely postponed, LR 10 indefinitely postponed, LB 496 indefinitely postponed, LB 583 indefinitely postponed, LB 584 indefinitely postponed, LB 585 indefinitely postponed, all signed by Senator Chizek as Chair of the committee. (See pages 1129-38 of the Legislative Journal.)

Senator Morrissey offers LR 52 congratulating the Falls City Sacred Heart boys basketball team. That will be laid over. LR 53 is offered by Senators Chizek, Abboud and Beyer congratulating the Millard South boys basketball team. (See pages 1138-40 of the Legislative Journal.)

Mr. President, Senator Wehrbein has amendments to be printed to LB 54 and Senator Abboud to LB 597. (See pages 1140-41 of the Legislative Journal.)

Mr. President, on LB 157 which is on Select File, the first order of business are Enrollment and Review amendments.

PRESIDENT: Senator Lindsay, please.

CLERK: Mr. President, LB 330 was a bill introduced by Senator Pirsch. Senator Bernard-Stevens also offers the proposal. (Read title.) The bill was introduced on January 11, referred to the Judiciary Committee. The bill was advanced to General File, Mr. President. I have Judiciary Committee amendments pending.

SENATOR LAMB: The Chair recognizes Senator Chizek for the amendments.

SENATOR CHIZEK: Mr. Speaker, colleagues, LB 330 is a bill that concerns domestic abuse. Senator Pirsch will address the bill shortly. The committee amendments are found on 1131 of the Journal. The amendments contain general improvements in 330 made after testimony at the public hearing. And the committee amendments conform penalty provisions in Sections 42-357 with changes proposed in LB 330. They also amend Section 42-926 by establishing a procedure for service and filing of a protection order. In addition, they delete the requirement that the court shall determine whether a person is in contempt which is pursuant to Section 9 of LB 330. And, finally, the last portion of the amendment ensures that the Clerks of the District Court will not be required to provide assistance in completing the forms. These amendments are positive, we feel, progressive changes and will make 330 a better bill and I would urge your adoption of the committee amendments.

SENATOR LAMB: Senator Pirsch, do you care to address the committee amendments?

SENATOR PIRSCH: Thank you. I do approve of the committee amendments and hope that the body will adopt them. They do make the bill better. And, with that, I will just endorse them.

SENATOR LAMB: If there is no other discussion, Senator Chizek, do you care to close on the committee amendments? Senator Chizek waives. The motion is to adopt the committee amendments to LB 330. Those in support vote aye, those opposed vote no. Have you all voted on the committee amendments? Record, Mr. Clerk.

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

SENATOR LAMB: The committee amendments have been adopted.

Senator Pirsch, on the bill.

SENATOR PIRSCH: Thank you, Mr. Chairman. LB 330 is a restraining order revision. In 1978, Nebraska passed legislation to assist victims of domestic violence in obtaining temporary restraining orders. These orders are extremely necessary for protection for many battered persons. Nebraska's statute needs to be modified in order to provide the protection that was originally intended in this legislation. In its present form, these orders are not readily available and are rarely enforced. Existing policies, as reflected in the state statutes, prevent appropriate law enforcement response and offer little to no protection to victims of domestic violence. La enforcement personnel, public and private attorneys, victims and representatives of local Domestic Violence and Victim Witness Programs have met several times over these past few months to suggest changes. Such changes have been successfully implemented in many other states and some are South Dakota, Minnesota, Wyoming and Iowa. We will have, with 330, easier availability of protection orders. It will also allow enforcement of those protection orders so everyone involved knows that that protection order shall be followed through by law enforcement. There is also penalties for violations as the committee amendments also helped. With this easy availability we would ensure that filing fees and service costs would be waived if the applicant does not have the financial resources to pay for these costs. The enforcement does have a limited time of one year and the law enforcement is required to arrest if probable cause for the violation of that order exists. And it would be easily available in the District Clerk's office and available for law enforcement to check. With that, I urge the passage of LB 330.

SENATOR LAMB: The Chair recognizes Senator Bernard-Stevens.

SENATOR BERNARD-STEVENS: Thank you, Mr. President, and members of the body, Senator Pirsch did a good job in defining the parameters of LB 330. On your desk you have a handout, actually a little booklet entitled "Working Together Toward a Violence Free Future" and on the first page of that, for those of you that are looking through and trying to figure out the...what the guts of LB 330 actually consists of, the first page gives a very, very thorough and I think a good review of what's within LB 330. LB 330, for the most part, is trying to correct a situation that has developed, certainly unintentionally, but

over the years, on protective orders. Many of these protective orders, in fact, I would say a high majority of the protective orders simply are not enforceable anymore. Police officers have gone and enforced certain protective orders only to find out that they had expired. They have gone and enforced other protective orders only to find out that they have been changed or modified or that they have changed it to a different person and so on. And what basically has come down over a period of time is that they have felt uncomfortable...uncomfortable about enforcement of the protective orders even if violated, simply because there is no updated information as to whether or not the order was still valid or changed and it makes a very difficult situation out there. LB 330 would basically make some clear changes. The first thing, that all protective orders would have a...for one year would be in force for one year unless modified by the court, certainly. Also, it would be very...it would be...any protective orders would be sent from the Clerk of the District Court and the Clerk's office to the law enforcement agencies within the county and the state so that if there was a question that could be simply radioed in and the information would be there, yes, there is an order even though the alleged victim is not...does not have a copy available. They would be able to arrest then the person that, in all probable causes, violated the protective order with or without a warrant. One of the things I would like to say in explanation is that there are certain parts of the bill and current legislation now that I think the body should be at least made aware of and that would be there will be certain conditions that the court would say, we're going to issue this protective order, we are not going to let the adverse party know first. In most cases, if there is not a very definite possibility of severe harm or damage to the individual needing protection, the court then will advise the adverse party and they have 14 days to respond to the court so as then the court will decide whether the protective order is indeed necessary. There will be certain occasions when the court will say that there is a clear fear of harm or damage to the person, individual needing protection in this case, that they will go ahead and issue the protective order, to wit then the adverse party will not be notified upon the introduction of the order. At that point, the adverse party will be made...will be at least made aware of as soon as possible and they will have five days to respond to the court order. That, in essence, is the guts of LB 330. I know there will be some questions in regard to LB 330 on the liability part. I think Senator Chambers will probably...or may be speaking to that either on

General File now or at a later time and that certainly is up for discussion. But the other area simply is something that needs to be done; it is a procedural thing. It is also a needed thing so that the protection orders that are there to protect individuals can, in fact, serve their purpose and the purpose is to protect the individual and if that protective order is indeed violated that the law enforcement officials have knowledge of what exactly the warrants are, where the parameters are and they can arrest the person and separate those...the people that are violating the protective order so the word "protective order" actually does what it implies, protect the victim or the individual that is being threatened. And, with that, I conclude my remarks unless more are needed at a later time. Thank you, Mr. President.

SENATOR LAMB: The Chair recognizes Senator Lynch.

SENATOR LYNCH: Question.

SENATOR LAMB: The question has been called.

SENATOR CHAMBERS: No, I object.

SENATOR LAMB: Yes, I think there has not been sufficient debate so we will continue down the list. The next speaker is Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, this is a very significant bill. It's very important and it does deal with a serious problem that exists in this society. And it creates mixed feelings in me and let me tell you why. I agree with what the bill is trying to do and I see the necessity that that be done, namely, that if the court issues a restraining order...a protective order or an order of protection, under the circumstances that are envisioned here, it lets us know we're dealing with a situation where violence stands a good chance of being inflicted usually on a female, physically weaker, defenseless and without the means to properly protect herself. So if the court issues that order under those circumstances, this type of restraining order can be viewed in a different light than ordinary restraining orders which are enforced by means of a contempt citation for violation. Since the violator of this order may, himself, be in the process of inflicting violence, it is necessary to recognize the reality of that situation, see it as being different from some of the

others and craft legislation to deal with it and that's what 330 is attempting to do. My concern goes to the reality also that police officers don't want to get involved in domestic situations. They're irritated when they get there and they are as likely to turn on the female who made the call as they are on the male. The way it goes now and from the testimony we have had, the man generally is told to leave the premises, if he's still there, and he can come back and inflict whatever damage he wants to inflict. And I hope the question won't be called if I don't get to finish what I'm saying on this first five minutes because there are some things I would like to get into the record. This bill would require the officer to answer the call. If there is an establishment that the order has been issued and this man is in violation of that order, the officer must arrest. The officer may not want to answer the call in the first place. He may not want to leave whatever he is doing to take this person into custody, downtown and before a judge and the other things that may be required. So he's not in a good mood and by the time he gets there maybe some of the heat has settled down, so, since the man is the reason he has got to be there and make an arrest, he walks in and collars him and begins to rough him up and the woman says, I called you to arrest him, not to beat him up. And the cop says, it's my job, you stay out of it. She says, I'm the one who called you. And he says, you say one more word and I will arrest you. And she says, it's my house, you can't arrest me. And he charges her with interfering with an officer, disturbing the peace and takes her to jail and these kinds of things have happened. I want it clearly in the record that the Legislature does not approve of that. I talked to Senator Pirsch and others who were in favor of this bill and they, obviously, do not approve of that and the purpose of the bill is not to facilitate or encourage that kind of police misconduct. But I want it clearly in the record that we also have agreed that we would observe the way this particular legislation is enforced. We will observe the way the police conduct themselves. If there develops an inordinate number of resisting arrest charges where violence has been inflicted by the police on either party, then there will be a review of that and special legislation crafted to deal with that kind of police misconduct should it develop as a result of this bill.

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: I talked to a representative of an association against domestic violence and she was mentioning

that there is similar legislation in Minnesota and she gave this account, after talking with an advocate in Minnesota, to show the difference between the way white people and black people charged with the same kind of offense were treated. On Monday mornings in Hennepin County, Minneapolis, over 25 to 30 batterers are arraigned. They are usually half white and half men of color in a community that has 15 percent people of color. The men of color often have chipped teeth, black eyes and bruises that they got from the police. They got these bruises from the police for the same reasons their partners got their bruises. She got it because she is a woman. He got it because he is a man of color. Our issue is not only a battered woman's cause issue, it's a police brutality issue. We will not tolerate police in our community going out and doing someone else's violence. We must join with people of color in raising the issue that they have been raising for years about police brutality. Violence in any form is assault and must not be tolerated.

SPEAKER BARRETT: Time has expired. Senator Lynch, please.

SENATOR LYNCH: (Microphone not activated) ...the first three minutes of my time to Ernie so he can finish his...

SPEAKER BARRETT: Thank you. Senator Chambers.

SENATOR CHAMBERS: Thank you, Senator Lynch. There has been a recent outcry in Minneapolis because of police brutality directed against nonwhite people. I don't want this bill to be viewed by them as the Legislature telling them, we know what you have been doing, we endorse what you're doing, what you're doing. To ensure even further than what my remarks might do because they won't be aware of the transcript, there are two provisions in the bill that exempt these officers from criminal and liabili...criminal and civil liability for what they may be doing under the provisions of this act. I told Senator Pirsch I won't try to do anything about that provision on General, but between now and Select she said she would talk to the people who wanted that provision in. And I will make it clear I will try, on Select, to get rid of that language because we don't put it in bills that authorize police to do other things. And if that stays in, then my ability to support the bill would be placed in serious doubt.

SPEAKER BARRETT: Senator Lynch.

SENATOR LYNCH: Question.

SPEAKER BARRETT: The question has been called. Do I see five hands? I do. Shall debate now cease? Those in favor vote aye, opposed nay. Voting on ceasing debate. Have you all voted? Record, please.

CLERK: 25 ayes, 1 nay to cease debate, Mr. President.

SPEAKER BARRETT: Debate does cease. Senator Pirsch, would you like to close on 330?

SENATOR PIRSCH: The first minute Senator Bernard-Stevens would like to speak.

SPEAKER BARRETT: Senator Bernard-Stevens, please.

SENATOR BERNARD-STEVENS: Thank you, Senator Pirsch, for giving me a minute or so of your closing. Senator Chambers, I understand totally the view and perspective of what you're...where you're coming from. You and I have had a brief discussion on this and a companion bill, 218, before and you and I share the same concerns on what do we do...how far do we go over that thin line between protecting victims and also protecting rights of individuals at the same time. How much latitude do we give law enforcement officials and so on? And we have...we both have a mutual concern there and I would be certainly willing to work with everyone on the...on the Section 9 at the end on the civil liab.lity and criminal liability exemptions. I would say, however, that I agree also, Senator Chambers, that there are circumstances that exist, and we cannot ignore that, where there is abuse of the victim by the law enforcement official, but I think Senator Chambers would also be the first to agree that the protective orders that we have out there not being enforced is also a crime and a...a problem for the victim as well. And that, in this case and in my opinion, is a little bit more on the scales of justice of why I would support legislation such as LB 330 because the victim is who I have in mind and, yes, there will be some abuses and I would be the first to say with Senator Chambers that when those things are documented, when we have examples of that, that we need to come back and do whatever thing we need to do legislatively to bring those individuals in question. And I would be the first to support that with Senator Chambers. But

the bill itself, LB 330, is a necessary thing for the protection of people who deserve protection on protective order, who are not getting the protection under this case and LB 330 is the first piece of a larger puzzle that we need...the Legislature needs to deal with and I thank Senator Pirsch for giving me a couple minutes of opening...or closing.

SPEAKER BARRETT: Senator Pirsch.

SENATOR PIRSCH: Thank you. I believe Senator Bernard-Stevens said a great deal in those few minutes. And I want to reemphasize that this is one piece of a larger problem. We are not solving the entire problem of domestic violence but what we are doing is assuring that that victim, the offender and the law enforcement know that if there is a restraining order, that restraining order will be carried out and that perpetrator, that offender will be arrested. It's just a piece of the puzzle. And I do want to comment that, Senator Chambers, I appreciate your cooperation in talking with me these last few days and recognizing that there is a problem in this area and I definitely do not approve, no matter whatever occasion, that there is police brutality and I think you would be joined in whatever we could do to eliminate that problem. Unfortunately, it isn't just that at...would be at this time that 330 covers but at any time that we must rise up and protest against police brutality. I would be willing to talk to those who did put in that provision of the criminal and civil liability. In my own mind, I question that that wouldn't be covered under their due process of acting within their professional scope. And so we will follow through on that and I appreciate the supportive words that you have given and hope that the body does advance LB 330 and we will discuss further on Select that civil and criminal liability, that is needed. And I just move we advance LB 330.

SPEAKER BARRETT: Thank you. The question before the body is the advancement of LB 330 to E & R Initial. Those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk.

CLERK: 26 ayes, 0 nays, Mr. President, on the advancement of LB 330.

SPEAKER BARRETT: The bill is advanced. I'm pleased to take a moment to advise that Senator Moore has some guests in the north balcony, 27 fourth graders from St. Joseph's School in York,

PRESIDENT NICHOL PRESIDING

PRESIDENT: Ladies and gentlemen, welcome to the George W. Norris Legislative Chamber. We have with us this morning as our Chaplain of the day, Reverend Frederick Felger of the Central Park Congregational - United Church of Christ. Would you please rise for the invocation this morning.

REVEREND FELGER: (Prayer offered.)

PRESIDENT: Thank you, Reverend Felger, please return to give us our invocation again. Reverend Felger is in Senator Lynch's district in Omaha. Roll call, please. Mr. Clerk, please.

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

PRESIDENT: Thank you. Any corrections to the Journal today?

CLERK: No corrections, Mr. President.

PRESIDENT: Any messages, reports or announcements?

CLERK: Mr. President, your Committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 575 and recommend that same be placed on Select File, LB 575A, LB 330 and LB 586 all on Select File. (See pages 1709-11 of the Legislative Journal.)

The last item, Mr. President, I have a report from the Department of Roads Operation Cash Fund for the period of March, 1989. That is all that I have, Mr. President.

PRESIDENT: Fine, thank you. Before we start Final Reading, a few days ago you had introduced LR 75 which has to do with heart disease and cholesterol situation coming up, and since today is the day that we start the blood pressure and cholesterol testing, it was felt appropriate that we take up this LR 75 today rather than wait. Is there any objection? If not, Mr. Clerk.

CLERK: Mr. President, LR 75 is found on page 1692 of the Journal. It was introduced by Senator Wesely. (Read brief description.) Again, Mr. President, on page 1692 of the Journal.

LB 739A.

PRESIDENT: You've heard the motion. All in favor say aye. Machine vote has been requested. All those in favor vote aye, opposed nay. Have you all voted that care to? Record, Mr. Clerk, please.

CLERK: 28 ayes, 5 nays, Mr. President, on the advancement of 739A.

PRESIDENT: LB 739A advances. LB 575.

CLERK: 575, Senator, I have E & R amendments pending.

PRESIDENT: Senator Lindsay, please.

SENATOR LINDSAY: Mr. President, I would move the adoption of the E & R amendments.

PRESIDENT: You've heard the motion. All in favor say aye. Opposed nay. They are adopted.

CLERK: Senator, I have nothing further on the bill.

PRESIDENT: Senator Lindsay, please.

SENATOR LINDSAY: Mr. President, I'd move that LB 575, as amended, be advanced to E & R for Engrossment.

PRESIDENT: You've heard the motion. All in favor say aye. Opposed nay. The bill is advanced. LB 575A.

CLERK: Senator, I have no amendments to that bill.

PRESIDENT: Senator Lindsay, please.

SENATOR LINDSAY: Mr. President, I would move that LB 575A be advanced to E & R for Engrossment.

PRESIDENT: You've heard the motion. All in favor say aye. Opposed nay. It is advanced. LB 330.

CLERK: Senator, first item on LB 330 are Enrollment and Review amendments.

PRESIDENT: Senator Lindsay, please.

SENATOR LINDSAY: Mr. President, I would move the adoption of the E & R amendments to LB 330.

PRESIDENT: You've heard the motion. All in favor say aye. Opposed nay. They are adopted.

CLERK: Mr. President, Senators Pirsch and Bernard-Stevens would move to amend the bill.

PRESIDENT: All right. Senator Pirsch, please. Senator Pirsch, before you begin, (gavel). Could we hold it down a little bit, we're having a little trouble hearing the speakers. We'd appreciate it, if you would.

CLERK: Senator, I have AM1366 in front of me.

SENATOR PIRSCH: Pardon?

CLERK: AM1366 is the amendment I have. (Pirsch and Bernard-Stevens amendment is on pages 1865-66 of the Legislative Journal.)

SENATOR PIRSCH: 1366, okay. Do you know what number, what page it's on?

CLERK: It's not printed, Senator.

SENATOR PIRSCH: Well, I believe Senator Bernard-Stevens probably has a copy, and I don't, I don't know where he is right now...

PRESIDENT: I don't see him at the moment.

SENATOR PIRSCH: ...because we should pass those copies out so that the members will be aware. But until he gets here, I can tell you that the amendment to 330...thank you...is essentially LB 218, which was heard before the Judiciary Committee and which we would like to amend into LB 330. If you want to look in your bill book, then you can see that. We also are passing around a copy of the study that actually I found in the sociology book when I took a course at UN-O, which kind of confirmed the whole premise of LB 218. We're talking about domestic violence here. When you're dealing with domestic violence and the police are

called on the scene, sometimes the best time to alleviate the situation is to physically remove that person from the scene. And so we are saying along with the mandatory arrest that 330 principally has, where a person has a protection order, there is no doubt that that person would be arrested, if they have that protection order and that is on record. But we are saying, and law enforcement asked us in that hearing on LB 218 if we would give them more flexibility when they go into a situation like this and can allow them to apprehend or to take physically away from the scene that person who is causing the violence. The study that I'm passing out was a field experiment in Minneapolis, and it did show graphically, and they are reproducing this same study in other cities right now, that the objective of this study was to determine which of the three alternative police responses would be most effective in deterring future violence, future domestic violence. And the clearest finding of this experimental study in Minneapolis was that suspects arrested in domestic violence cases were less likely to be involved in violence at a later date. Specifically, suspects who were arrested and temporarily incarcerated were less likely to appear on police records in the next six months. Something that has come up again and again in the years that we have worked on the domestic violence scene is the fact that some times the violent perpetrator, and this is generally the man in the case of domestic violence, don't really confront the fact that beating their wife and their children is a crime, and it's a crime against society as well as against their family. Sometimes when that person is confronted with the arrest situation, the taking away and the facing the fact that the assaults and domestic violence is a crime in this state, that they do come to the realization. They are able to go before the court and the court can assign them help and the court can see that as a condition of probation that they go to some of these seminars and some of these self-help groups that can help them deal with this problem of violence. It takes more than just someone telling them that this is wrong. It takes a deep emotional and personal confrontation of what they are doing and help from others so they can break this pattern of violence in our families. To that end then, we are asking that you amend LB 218 into LB 330, so it gives that flexibility to the law enforcement officer, along with the protection of the protection order. Thank you, Mr. President.

PRESIDENT: Thank you. Senator Chambers, please.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I'm opposed to this amendment. First of all, as Senator Pirsch pointed out, LB 218 did have a hearing before the Judiciary Committee and the committee chose not to advance the bill. So this is an attempt, by way of amending a bill, to pull a bill from committee, which the committee felt should not be advanced. I wanted that stated so that it's clear in the record. What you need to understand, in terms of what is being done here, is that an amendment is being offered to allow an arrest without a warrant, that is what is being done with this amendment. The bill, as it was originally written, was designed to require an arrest, if one of these protective orders is being violated, and that's the basis on which LB 330 was sold to the Judiciary Committee, advanced to the floor and moved across from General File. There are many who are uncomfortable, including myself, with the mandatory arrest provision, but at least there had to be a protective order that was being violated. In this instance, if you adopt this amendment, there need not be a protective order, there need not be a warrant that the officer has. He or she can come to the situation and make an arrest. And I want you to look at some of the language, when you get this amendment, that would justify an arrest without a warrant. Threatening another in a menacing manner, that means, and those of you who have had families, and everybody in here was at some point a member of a family, would be in a situation where, if one of these menacing threats is engaged in, it doesn't have to result in injury, it doesn't have to pose a threat of immediate injury, just a menacing threat and an officer can come in and make an arrest without a warrant. I think that I am as much concerned about the welfare of children as anybody on this floor. I demonstrate it by traveling all over this state to talk to young children. I'm going to various schools to read to them, and I'm going way out to Loup City, after we get through here tonight, to talk at an Honor Society induction for some young people who requested me to do this. And I've been doing that around the state, so I have a genuine concern for children. But there is also consideration that should be given to how intrusive law enforcement is going to be allowed to be when we're talking about the family setting. You are not talking, in this amendment, about somebody who has been battered, who has even been struck, or who has been placed in danger of eminent injury, none of that. If a threat, in a menacing way, is made, then an officer can be called in to make an arrest without a warrant. I think this amendment is overbroad, LB 218 was overbroad and that's why the committee didn't want it. And I

think it would be very unwise for the Legislature to do this thing. But I'm going to ask the Chair for a ruling. Mr. Chairman, this bill, LB 330 had the specific design of allowing an arrest in the case of the violation of a protective order. This amendment is radically different from that by requiring, without any order from any court, an arrest without a warrant. I would like to have a ruling as to whether or not this amendment is germane.

PRESIDENT: Okay, thank you. Senator Pirsch.

SENATOR PIRSCH: I do point out that this does amend 29-404.02, which is specifically in the first page of the bill, that exact, same section.

PRESIDENT: I'm going to rule that this is germane based on the fact that it's related and it's pretty close to what we're talking about here. Senator Chambers. Okay. We're back to the Pirsch amendment. Senator Bernard-Stevens, did you wish to talk on the Pirsch amendment? All right.

SENATOR BERNARD-STEVENS: Thank you, Mr President. The amendment that is now being handed out is technically LB 218. So, for those of you that have been wondering where the amendment is, or what the amendment has, it should be on your desk at this point, or it's LB 218, which is...was still in the...is still now in the Judiciary Committee. What we have in the State of Nebraska...this deals with domestic violence. There are two basic bills that were introduced this session on domestic violence, LB 330, which is before us now, and LB 218 which was also introduced as a companion bill with LB 330. LB 218 was not advanced, nor was it killed. And Senator Pirsch and I have, for discussion sake, brought this amendment to the floor for discussion, knowing that it could be somewhat controversial. There are many situations out in Nebraska at this particular point. We have a law on the books and the law on the books is confusing to law enforcement officials. In some counties and some cities, such as Lincoln's county, police have done a more aggressive role and interpreted that they may arrest in certain situations, or they can arrest in certain situations on domestic violence. Other counties, such as in my home county, Lincoln County, and other counties throughout the western part of the state, they have not aggressively interpreted the law. They felt uncomfortable with aggressively interpreting the law. They wanted the law to specifically say

to them what they could or could not do. What LB 218 is trying to, or this amendment now, which is LB 218, is trying to appeal to is a sense of what do we do in cases of domestic violence when a police officer is called to a scene and all of a sudden the person who is doing the violence has done a total 180 degree turnaround in personality. The police officer comes, the person who has been involved...that has actually done the violence in the area is now calm, you do not see a particular cause that anything may have done...that something may have happened, a felony or misdemeanor may have occurred, but you know something happened. It may be a spouse, it may be a live-in, it may be a joint...couple that has a child that are unmarried. The police officers have to make judgments, has something happened, has something not happened? What has traditionally happened in many parts of our state is the police officers may take one away temporarily, walk around the block, they may take one separately and discuss the issue, but they do not feel that they have the authority at this point to make an arrest. And what we find and what the study shows are two-fold; one, when the police officer does not aggressively, because they do not feel comfortable with the current statutes, when they leave the situation many times, too many times, way too many times violence then occurs. The aggravating party is aggravated further because someone called the police and violence then occurs, and it is unfortunate. Others things that begin to happen is that studies have shown through other states that when the police have definite, clearly stated laws that they can arrest that the domestic violence and repeat violence, in these cases, has significantly dropped. What we are doing in this amendment is not doing something new. The law is being interpreted now that they can aggressively go out and arrest in domestic abuse cases. However, the law is also significantly vague so that not all law enforcement officials feel comfortable with that. We are merely going to clarify what those institutions, what many law enforcement officials are now doing...

PRESIDENT: One minute.

SENATOR BERNARD-STEVENS: ...so that all law enforcement officials will feel comfortable. I might point out that on line 7 of the amendment, and again we're on AM1366, a police officer may arrest a person, it does not say shall, it says may arrest. Then you get down to the bottom part of 19, if they've committed a misdemeanor in the presence of the officer or, and it's very short, one or more of the following acts to one or

more household members: One, attempting to cause or intentionally knowing or recklessly causing bodily injury with or without a deadly weapon; or threatening another in a menacing manner. And that's the section, that's the line 3 on page 2 that Senator Chambers was concerned about. On lines 4 through 10, for purposes of this section household members shall include spouses, former spouses, children, particularly children, persons who are presently residing together or who have resided together in the past, persons who have a child in common, whether they...whether or not they have been married or have lived together at any time, and other persons related by the other laws that we have in the state.

PRESIDENT: Time, time.

SENATOR BERNARD-STEVENS: I'll speak further on the bill when I have my light on again. Thank you.

PRESIDENT: Fine. We have an amendment. But may I introduce some guests of Senator Wesely, please. We have, in the south balcony, 43 sixth grade students from Brownell School in Lincoln, with their teachers. Would you folks please stand and be recognized by the Legislature, students and teachers both. Thank you for visiting us today. Mr. Clerk.

CLERK: Mr. President, Senator Chambers would move to amend the Pirsch amendment. On page 2, line 3, strike subsection (b), which reads, "Threatening another in a menacing manner."

PRESIDENT: Senator Chambers, please.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, when we get into issues like this, I know there is a great lack of interest on the part of the body as a whole, but I have no choice other than to try to help us legislate at least in a technically proficient manner. I would like to ask Senator Stevens a question, Senator Bernard-Stevens.

SENATOR BERNARD-STEVENS: Yes.

SENATOR CHAMBERS: Senator Bernard-Stevens, what is the purpose of the line that I want to eliminate on page 2, line 3, which says, "Threatening another in a menacing manner."

SENATOR BERNARD-STEVENS: Senator, I think you...can I take a

minute of your time to respond to that?

SENATOR CHAMBERS: Yes, yes.

SENATOR BERNARD-STEVENS: You've hit the heart of it. The proposed law would permit peace officers to intervene at an earlier time because, in essence, it says, the proposed amendment that we have, would be where reasonable belief that someone had threatened another or attempted to cause. The key thing is where someone had threatened another, and in order to get that particular thing, we have then on line 3 threatening another in a menacing manner.

SENATOR CHAMBERS: Senator Bernard-Stevens, this threatening another in a menacing manner is a part of the definition of third degree assault, or Class III assault, or whatever it is. Are you aware of that?

SENATOR BERNARD-STEVENS: Yes.

SENATOR CHAMBERS: If that already is the law, then why do we need to deal with the warrantless search provision of the law to put in something else that is already covered by the law?

SENATOR BERNARD-STEVENS: If that's the question, I guess I could turn it around and say, if it is currently the law, then why are we objecting to simply restating again what is current law?

SENATOR CHAMBERS: Thank you. That is what I want to get to, and I like the way he phrased the question. How many times, on this floor, to satisfy some particular special interest group, are we going to pass a bill saying what is already in the law, in a law that they want their name on to say, and this time we mean it. The law, as it exists now, allows an arrest under these circumstances. What some of these people who are talking about domestic abuse want to do is allow intrusions of the police into the household on very flimsy reasons. But even under the existing law, that can be done because the present law, talking about warrantless searches, indicates that the officer may arrest a person without a warrant, if the officer has reasonable cause to believe that such person has committed a misdemeanor and the officer has reasonable cause to believe that such person either will not be apprehended, may cause injury to himself or herself, or others, or damage property, or destroy or

conceal evidence, or if its committed in the presence of the officer. An assault is a misdemeanor. Why are we going to continue to do what I consider to be very bad legislating? If the problem that these people who are concerned about domestic abuse, if the problem they are encountering is that officers don't want to make an arrest without a warrant simply because somebody says, hey, so-and-so threatened to do such and such to me, if you make it discretionary, what have you changed? You are telling these people that supposedly you're concerned about protecting, that you're strengthening the law and putting more pressure on the police to make an arrest, when in fact you haven't done anything. This is deceptive legislation. We, on this floor, say we care about children, we care about abused spouses. Then we come in with legislation so we can tell them later, yeah, we did something to help you. But the legislation does not change the law and an officer does not have to make an arrest. He still does not have to, you have just taken language from another part of the statute and put it over here. And if, under the existing law, under this portion that is being amended, the officers are not making these kind of arrests, why do you think they're going to make an arrest because you say and this time we mean it. You can make an arrest, in the case of a misdemeanor, and we really mean it, however, you don't have to. Let me ask Senator Bernard-Stevens a question in the few seconds I may have remaining. Senator Bernard-Stevens, didn't I hear you say that the way this amendment would be incorporated into the existing law it is discretionary with the officer as to whether he or she would make an arrest under these circumstances?

SENATOR BERNARD-STEVENS: That is correct.

SENATOR CHAMBERS: Is that the way the law is now? May an officer now make an arrest under these circumstances, under the current state of the law?

SENATOR BERNARD-STEVENS: They have the discretion to make an arrest on their interpretation, that is correct.

SENATOR CHAMBERS: And don't...isn't that what it would be if this amendment is adopted?

SENATOR BERNARD-STEVENS: Yes and no.

SENATOR CHAMBERS: Tell me why you say no. Either it's

discretionary or it's not.

SENATOR BERNARD-STEVENS: Why don't I let you finish on your time and I'll explain it on mine and then you...I'll...you can ask question then, if you like.

SENATOR CHAMBERS: All right. An assertion, under the present state of the law, an officer may make an arrest under these circumstances. With the Bernard-Stevens-Pirsch amendment an officer, under these circumstances, may make an arrest. If it's not mandatory, nothing has changed. And, if it's made mandatory, then the law is placed in a shambles because then we've put it in a position where anybody making a charge can mandate that somebody else be arrested. This is terrible legislating that we're doing on this bill, and I want the record clear on what my position is and how I've distanced myself from it. The Judiciary Committee, remember, did not advance LB 218, and this amendment is LB 218 to be amended into this bill, LB 330. I hope you will vote in favor of my amendment to strike that line that says "Threatening in a menacing manner."

SENATOR LABEDZ PRESIDING

SENATOR LABEDZ: Senator Chambers, you still have four minutes.

SENATOR CHAMBERS: Oh, I forgot I was opening. Then maybe that would be enough time for Senator Bernard-Stevens and I to engage in a little back and forth. Senator Bernard-Stevens, we have four minutes. I'm going to ask the questions again. Under the current state of the law, where warrantless arrests are allowed, do you agree that in the case of a misdemeanor, of the kind we're talking about in your amendment, an officer may make an arrest but is not required to?

SENATOR BERNARD-STEVENS: The way the question is worded that is correct.

SENATOR CHAMBERS: Under your amendment, how is that changed?

SENATOR BERNARD-STEVENS: We have a couple of minutes, is that correct?

SENATOR CHAMBERS: Yes.

SENATOR BERNARD-STEVENS: Okay, can I use a minute of that?

SENATOR CHAMBERS: Oh, sure.

SENATOR BERNARD-STEVENS: Okay. Under the....Senator Chambers, you are absolutely correct in many areas of what you've just said. There are a couple of areas that I feel that you are incorrect. What this amendment would change, the amendment...the Pirsch amendment to LB 330, under the current law on domestic abuse that was passed sessions ago, it would permit peace officers to intervene at an earlier time than they could under existing law because under existing law it requires a reasonable belief that a felony or misdemeanor had actually been committed, had actually been committed. But when you walk into a home and the gentleman or lady who has done the violence has made a 180 degree total change in personality, you cannot tell, in many instances, whether a misdemeanor or felony has been committed. This amendment would simply say it is also within the discretion of the police officers to say if there is a threatening manner, and as the amendment goes on to say, if they reasonably believe that there is a possibility of that, and I understand that is vague,...

SENATOR CHAMBERS: Okay, let...

SENATOR BERNARD-STEVENS: ...I understand that.

SENATOR CHAMBERS: Now let us go on. Here's what I'm telling you, that line about the threatening manner is currently a misdemeanor. That is a misdemeanor under the current law. Under the assault statutes threatening another in a menacing manner is a misdemeanor now. So, if that is the law now and that would justify an arrest now, and all your amendment is doing is saying the same thing over here, what have you added to the law? Nothing. LB 218 was a poorly...it was an ill-advised bill, it was unnecessary. This amendment is unnecessary. And when Senator Bernard-Stevens gets his time, he will be able to go into greater detail as to why the Legislature should pass a law to say what the law already clearly says.

SPEAKER BARRETT PRESIDING

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: Officers are still going to be reluctant in the absence of the protective order, that's separate from what

I'm talking about, in the absence of the protective order, no appearance of anything having been done wrong an officer now is going to be reluctant to make an arrest. And with this language being put in this bill, which is just a restatement of what already is in the law, the officer is still going to be reluctant, and the officer still does not have to make an arrest. But what is going to happen is that the Legislature will engage in deception to mislead the public and give the impression that a kind of protection is being put into the law with the enactment of this legislation, which is not the case. The law will not be changed, and I stand on that.

SPEAKER BARRETT: Before proceeding to Senator Bernard-Stevens, followed by Senator Pirsch, the Chair is pleased to announce some very special guests of Lieutenant Governor Bill and Ruth Nichol from Japan. A very special guest, Yumiko Yokomichi, who is the wife of the Governor of Hokkaido, and also a person very active as a leader of the Women's Volunteer Associations for Handicapped and Senior Citizens. Please take a bow, Yumiko Yokomichi. Also traveling with Yumiko is Hisako Sato MacQueen, Conference Interpreter. Hisako, please take a bow. Thank you. We're delighted to have you as our guests this morning. Thank you for coming. Senator Bernard-Stevens.

SENATOR BERNARD-STEVENS: Thank you, Mr. President. I always enjoy, though I don't get to do it often enough, get into a colloquy or discussion with Senator Chambers. I always find it immensely stimulating. And once again Senator Chambers has brought up an important point, but if we're not careful, we carry the logic a little bit too far. I've always argued that Senator Chambers is very, very good at circular arguments, and if you try to attack in a linear argument, you get in trouble. So I'm going to try to continue with the circular arguments to see if we can come back around to where we should be and that is, even if in separate statutes of the State of Nebraska, there are what some people say clarifications, yes, you can, and over here it doesn't say particularly you can in another section of domestic violence, that is irrelevant when you get to the point of domestic violence. In the issue of domestic violence what we have, regardless of the reasons, regardless of the circumstances, law enforcement officials throughout the State of Nebraska are uncertain. They do not know whether they actually have the authority to arrest or not. Now if the statute is already there, then that statute obviously has been interpreted poorly and it is un...un...clearly vague. What this amendment

will do is make sure that in the domestic violence area where children are abused, where women are abused, and it's the fastest growing crime that we have in this state, of domestic violence, we will make sure that there is no misunderstanding in domestic violence cases. They can, if we pass the Pirsch amendment, they can arrest. Even if they can't show that there was a felony, if they can't show a misdemeanor had occurred, they can, if they feel there is a threatening situation to those people present, they can make an arrest. Now please understand, I agree with Senator Chambers that I get very, very uneasy about giving way too broad of powers to law enforcement officials. The particular rights of human beings sometimes are at a very critical balance when we do such things. I do not normally stand up and say let's give more authority to police officials. I'm very wary of that, but I'm also, as Senator Chambers is as well, extremely, extremely concerned on domestic violence cases and we know studies show that in states where they have clearly defined and clearly understood what they can do in domestic violence cases, that when arrests have been made, domestic violence continuing in that same household with the same people involved has declined, has declined. And I will state that again. When law enforcement officials are comfortable in the domestic violence statutes that they can make arrests because of potential threats, which is what Senator Chambers wants to remove, when they make the arrests in those cases, domestic violence has declined in repetitive natures and that's important. And, yes, maybe there are some other statutes out there that clarify over there, but over here in domestic violence it's not so, and maybe we don't have all Rhodes scholars out there in the police force that can interpret, that can make interpretations of the entire constitutions of all our legal codes and precisely know what they can do. Maybe we don't have all those people, but we have good, dedicated people, for the most part, who are telling me that they would like some clarification here so they can do what is necessary to reduce domestic violence. I would hope at this point that we would not agree to the Chambers amendment which would delete in essence, line 3 of page 2 of the amendment, though I...

SPEAKER BARRETT: One minute.

SENATOR BERNARD-STEVENS: ...understand his concern. I deeply understand his concern, but I also understand that in so many cases the police officers are at difficulty in making the arrest because of the interpretation of the present law. Thank you,

Mr. President.

SPEAKER BARRETT: Senator Pirsch.

SENATOR PIRSCH: I would like to set the record straight, too, as far as LB 218. As you know, Judiciary Committee had a great many bills and, quite frankly, LB 218 never came before us to be voted on, so I did want to add that to the record. And, of course, LB 330 was my priority, and that is why it even came up before us. I think that we should remember just a few points. The results of that Minneapolis study showed that when the offender is arrested there are fewer repeat calls to domestic disturbance scenes, that is recidivism is reduced, the person gets the help they need to deal with their anger or their frustration. Nebraska State Statutes 29-404-02, 29-404-03 and 29-427 govern police officers' arrest powers. As long as probable cause exists for an arrest, an officer may arrest regardless of whether he or she saw the misdemeanor offense. What Senator Bernard-Stevens has brought up is the fact that because of county attorneys across the state, because of law enforcement across the state, that they came before the Judiciary Committee and asked that we...well, and for a year before that we were working on this, that we put into that 29-404-02, that kind of instances where they may use their discretion to cool off a hot domestic violence incident. Now a computer cannot replace the police officer at the scene of domestic disturbance calls. It does rely on the officer's senses and they will still determine whether probable cause exists for the arrest of an individual. This just adds the backup that an officer needs when he uses that discretion and supports and confirms the officer who, quite frankly, is very nervous in domestic violence cases. That's one of the toughest calls that a police officer or a law enforcement officer makes. The policy decision then is that we have to decide that if the misdemeanor did not happen in the presence of the officer, but there is probable cause to believe attempting to cause or intentionally, knowingly or recklessly causing bodily injury with or without a deadly weapon or there is the threat in a menacing manner which, as Senator Chambers pointed out, has been identified, it has been defined and there are court definitions on threatening another in a menacing manner, and then goes on to tell who the household members shall be. That is a policy matter if we want to give that police officer that discretion in those times. And while the statistics from the Minneapolis Police Department are inconclusive, the incidence of officer

injury may decrease as a...

SPEAKER BARRETT: One minute.

SENATOR PIRSCH: ...result of officers responding to fewer second and third calls which may get more and more violent to the same residence. This is what we are attempting to get at, prevention, to defuse that domestic violence situation and see that that person who is doing the violence gets literally forced to deal with themselves and their anger and their violent behavior, and that is what we are trying to do by giving that discretion to the law enforcement officer. Thank you.

SPEAKER BARRETT: Senator Chambers, followed by Senators Kristensen and Crosby.

SENATOR CHAMBERS: Mr. Clerk and members of the Legislature, I would like to ask Senator Kristensen a question or two if he will indulge me.

SPEAKER BARRETT: Senator Kristensen.

SENATOR KRISTENSEN: Yes.

SENATOR CHAMBERS: Senator Kristensen, under the current state of the law without this amendment, can an officer make a warrantless arrest in certain cases where a misdemeanor is involved?

SENATOR KRISTENSEN: Yes, he can.

SENATOR CHAMBERS: The sentence that I'm going to strike says, threatening another in a menacing manner, is that from the existing assault statutes?

SENATOR KRISTENSEN: Right, that's the third degree assault. That's your bottom misdemeanor assault statutes.

SENATOR CHAMBERS: And if that is done currently, can an officer make an arrest if it occurs in the household as this amendment is trying to touch on?

SENATOR KRISTENSEN: Yes, he can go ahead and still make that arrest based on the existing statutes that we have providing he finds that there could be cause for injury or damage unless he

arrests them, so if he has a difficult situation that he is responding to, using our current statutes, he still can make those arrests.

SENATOR CHAMBERS: If this amendment, as Senators Stevens, Bernard-Stevens and Pirsch have drafted it would be added to the law, does it in fact give the officer more authority to make an arrest than he has now in these situations?

SENATOR KRISTENSEN: Well, I don't think that it does. I don't think that it adds the authority. I think it restates what you really already have there. The key is that you still, as a police officer, when you walk into that situation have to make some subjective judgments. Has a misdemeanor occurred or not? And when you walk into those situations and you have two people sitting on the couch and it's obvious that there has been some disputes, the place is a wreck, the kids are in the other room crying, the chairs are overturned or whatever, that officer still has got to decide, one, who did the threatening in a menacing manner because he wasn't there to see it? How does he know? He's still got to make that discretionary call as to whether there was a misdemeanor committed.

SENATOR CHAMBERS: Will this amendment that is being offered give him more guidance in making that subjective decision?

SENATOR KRISTENSEN: He's still got to...no, he is still going to have to go in and make that decision about who created this disturbance, who is at fault and, one, should I arrest anybody and remove them out of their home. Oftentimes he is going to go there and there could be a dispute as to who was there or for custody or whatever, there is some real problems. And Senator Pirsch is right, those are dangerous situations. He has got a lot of other judgments to make at that time. This doesn't give him any other help. He has still got to make a basic judgment call.

SENATOR CHAMBERS: Thank you, Senator Kristensen. Members of the Legislature, that exchange I think should make it crystal clear that what is being offered here does not add anything to the law. If you want to insist on doing it, you can get 25 votes and do it. But I think it is a very poor way to legislate, not only on this particular law, bill, but on others. There is no need to say over and over and over in the law what is already there and now I'm going to focus in on what I think

the terrible thing about this kind of legislating is. Police officers are given no more authority under this amendment than they already have, number one. Number two, there is nothing in this amendment that would cause them to make an arrest in a situation where they won't make an arrest now. And, number three, the whole thing is a hoax and a sham and those who say they're concerned not only I think about the physical well-being, but the mental and psychological tranquility of the people in these situations, those who claim to be concerned about that...

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: ...are belying that supposed concern by an amendment like this. You are telling them that somehow you're giving them more protection than they currently have under the law. That is absolutely, unequivocally not true. So why put into the statute something that is not going to give more protection if protection is what we're after? Frankly, I don't know. But I do know that it is very bad legislating. I think it is not dealing with the public that is affected by this kind of legislation in a straightforward fashion. If you adopt my amendment and strike that sentence, you're not going to change really their amendment as it applies to the current law, and if you add their amendment to the bill, you're not going to change the current law. So I think now that they have had their discussion, the Pirsch-Bernard-Stevens amendment should be defeated.

SPEAKER BARRETT: Time. Senator Kristensen.

SENATOR KRISTENSEN: Thank you, Mr. Speaker. You know, it's scary, Ernie, if I'm going to start to agree with you early on Monday morning of a week, but I think Senator Chambers is correct here. We make some policy decisions in the law about when you can go and arrest somebody and we can arrest them if they've committed a felony, any felony at all. And if a police officer thinks they committed that felony, they can go and arrest them without an arrest warrant. And we say that misdemeanors are a little different because they are not quite as serious. In other words, if I see somebody out making a U turn where they shouldn't on the highway, we don't want the police officers to have the authority and the ability to go out and arrest those people and put them in jail. Why? Because it's not that serious, it's a burden on the system and there is

some real possibilities for abuse and discretion there. But we do make some exceptions for misdemeanor arrests, and if you'll look in the front of this amendment, the Pirsch-Bernard-Stevens amendment, subsection 2, starting on line 11, talks about the misdemeanors that you can arrest people for. And if you go to that domestic violence disturbance and the officer believes that there is going to be additional injuries or there has been injuries, and there may be property damage possible, he can go ahead and arrest those people. That is what is already in the law. Now, granted, some officers go to those situations, they're are dangerous, you don't know who has caused it, you don't know what is behind all this and you have no idea if you've been there five or ten times before in most situations because usually it happens in different shifts and so on. When you go ahead and put on threatening in a menacing manner as another reason to go in and arrest those people, it's just an additional cause. It really says to the officers, we want you to take another hard look at this. Believe me, they already know that. They know when they go to a domestic dispute that if they don't do something that caused that situation, they are going to be back in a half an hour or in an hour, and this time maybe somebody is going to wind up stabbed or shot or whatever happens. So at the time they go in to make those judgment calls the first time they're there, they already use the existing law, and if there isn't enough evidence there, by giving them another standard, they're not going to make another arrest or a better arrest, and I think really all you do is open it up for the marginal calls and you, in effect, say to them, this is the next step towards mandatory arrest, that we're going to go to a domestic dispute, somebody has got to get arrested just so we don't take that one chance that somebody may get hurt. Well, that's a tremendous shift and change in what we do in law enforcement in our criminal law and I agree with Senator Chambers, I think that this is too broad. It already includes what is in the law and the officers have a difficult choice to make when they go now. This doesn't help them a bit and, in fact, it may be of some difficulty and some problems to you and I would support the Chambers amendment.

SPEAKER BARRETT: Senator Crosby, followed by Senator Bernard-Stevens.

SENATOR CROSBY: Thank you, Mr. Speaker and members, contrary to some of the statements that were made, there are a lot of us who relate to this bill, to both of these bills and I am interested.

I just have a couple of questions. I feel somewhat close to it because I think it happens to all of us. Right here in Lancaster County, a young sheriff was killed a year or two ago when he went to answer a domestic abuse call and the man came to the door and shot him, and the young widow lived in my block, so, you see, we all...it's very close to all of us if we start examining who we know and what happens in our own communities. I have a couple of questions maybe Senator Kristensen could answer for me.

SENATOR KRISTENSEN: Sure.

SENATOR CROSBY: Since you're on the committee and there...in the first...Senator Bernard-Stevens said something that the peace officers were coming and saying they had a hard time making these decisions, but the only peace officers who testified was Ron Tussing, our sheriff, and he was neutral. Did actually most of this come from the groups who work with families and so on, actually? Is that the background or...?

SENATOR KRISTENSEN: Well, I don't have that...I've got to tell you, it's been so long since...I remember that hearing, we had so many of them in committee I don't...

SENATOR CROSBY: Oh, okay.

SENATOR KRISTENSEN: ...and there is not a statement in the bill book that testified who was for and who was against it, so I don't have those right off.

SENATOR CROSBY: Well, this lists...most of the proponents were people who were related to the support groups and the counselors and that kind of thing, right?

SENATOR KRISTENSEN: My recollection of all that testimony was that we have a lot of people who are very concerned about domestic violence. These support groups are strong advocates. The problem I see is in the practicalities.

SENATOR CROSBY: Mmmm, hmmm. On LB 218, one other statement was made that I didn't quite understand. You did have a hearing, right?

SENATOR KRISTENSEN: Yes.

SENATOR CROSBY: Okay, but it just wasn't...you didn't move it or...

SENATOR KRISTENSEN: It hasn't come up I don't think in Exec Session.

SENATOR CROSBY: You haven't discussed it, okay. And one other thing, what was the objection, do you remember, to the Nebraska Defense Criminal Attorneys? What were...was it just the fuzziness of the law or maybe they thought it was already there or maybe some of the things...

SENATOR KRISTENSEN: I think they are, you know, similar to what has been made this morning, that it's already there and this just confuses it a little further.

SENATOR CROSBY: Okay, all right. Thank you.

SPEAKER BARRETT: Senator Bernard-Stevens.

SENATOR BERNARD-STEVENS: Thank you, Mr. Speaker. Boy, there have been some misrepresentations or misunderstandings on the floor stated so far. I hope too many people haven't been listening real close. One of the main supporters of the bill was the Police Officers Association. The Police Officers Association came before the committee, if the committee can't remember, fortunately I can. The Police Officer Association came and said, we're having some problems here. County attorneys came, specifically in Lancaster County, and said we're having some problems here. Now maybe Senator Kristensen and Senator Chambers, who both agreed on the same committee, don't have any problems with it, but other county attorneys, other police officers including police officers from my area came and testified and said we do. Now it can be argued all day long that it's clear in the statutes, it's stated over thus and it's stated over there and it's clear, but if it's so clear, why do we have county attorneys and police officers coming before the Legislature and saying, hey, we've got some problems in the domestic violence area which is serious enough for us to ask, and in many cases on phone calls I've had say, we're begging for a clarification because we can see what is happening on the reoccurrences of domestic abuses and domestic violence and we're heartsick for this. We want some more clarification. Now that is what they said to us. That's what they said to the committee, and for those members of the committee if you go back

and search your long recollection, we may be able to come to that conclusion again. I might point out that it's the Judiciary Committee who saw so many bills that it was difficult for them at the end to even get all the bills, decide what they're going to do and many of them carried over. They didn't have enough time really to go through everything, so it's no wonder that sometimes we're a little fuzzy on some of these as they come up, areas that are very, very important to some of the rest of us. I'd like to point out something else that was talked about. Senator Chambers alluded to it in his little colloquy with Senator Kristensen. He said, and I hope the body did not take it too seriously, he said, hey, we've already got this, it's bad legislation, it's bad policy. If you look on the amendment particularly on page 1, line 18, the section (d) says, has committed a misdemeanor in the presence of the officer. I state that again, in the presence of the officer. Now what happens if it hasn't been in the presence of an officer? Now Senator Chambers and Senator Kristensen are correct, now a decision comes, it's decision time. We could have done one of two things on this amendment, on this bill, LB 218. We could have stricken that line or we could have clarified further. We chose to clarify it further on lines 19 to the following page to say, hey, by the way, it is confusing. If it is not in the presence of the officer, we want to clarify it a little bit further, here is some other things we can do. Now Senator Chambers, in the amendment, wants to strike line 3 on page 2, threatening another in a menacing manner. That's one of the things that is at the discretion of the police officer. If he feels there is a threatening situation of one person to another, if the police officer feels in his judgment, and Senator Kristensen is correct, these are all crucial judgment decisions. This bill will not take away judgment calls. It will not take away judgment calls. It will not also set up marginal calls either. This bill will legislate to the police officers and give them the power in a threatening situation to say in a domestic violence now,...

SPEAKER BARRETT: One minute.

SENATOR BERNARD-STEVENS: ...in domestic violence only, we've got the power to separate, to take away, to arrest and we know that by arresting a domestic violence case the repetitive domestic violence cases go down. This is not bad policy, this is not bad legislation, this is clarifying language that people in the field, not people here sitting in cushy chairs, people in

the field who are coming to us and saying, hey, we need some help here. You may think it's clear, we don't, and LB 218 clarifies that. It keeps in it has to be in the presence of an officer, but it also goes on in the next line, so that's the second page, and clarifies and maybe we can save a child abuse some day. Maybe we can save a mother or even a father from being abused by another...if his wife is with somebody else and he comes, those are domestic violence cases.

SPEAKER BARRETT: Time.

SENATOR BERNARD-STEVENS: We've expanded that area. This is not bad legislation. I urge you to defeat the Chambers amendment and to support the Pirsch amendment. Thank you.

SPEAKER BARRETT: Thank you. Senator Haberman is announcing that he has some guests in our north balcony from Stratton, Nebraska, Linda Zahl and 10 high school students. Would you folks please stand and be welcomed. Thank you. We're glad to have you with us. Senator Nelson, additional discussion, followed by Senators Chambers and Langford.

SENATOR NELSON: Mr. Speaker, members of the body, I do have the privilege of serving on the Judiciary Committee, and for my part, I would like to clarify a few of the statements made on the floor this morning. I was going to keep out of this discussion, but I think there is some distorted views and statements being made. I wish that Senator Chizek was on the floor. I serve in Judiciary Committee and I don't think my memory is failing me in the least. This bill was discussed to some extent. I don't think an actual vote was taken on it. I'm not sure whether Senator Pirsch was there that evening that we discussed it or not. If I recall, I don't think she was and I guess it doesn't make a difference whether she was or wasn't, but there were problems and there were concerns on this bill and naturally I have a statement of some of the sheriff's association. I would like to know from Senator Stevens just exactly how many people beat on his door for passing LB 218 that actually understood what is in LB 218. Many, many groups and associations, it is a problem, we all have that concern out there. But, again, there is no simple solution and I just simply want to clarify that that is the reason the bill did not move out of the Judiciary Committee. I don't want to blame Senator Chambers or Senator Stevens or anyone else, but there were some problems and some concerns and that's exactly why it

didn't. My local sheriff said, there are two bills introduced, LB 218 and 330. The bills appear they would reduce domestic violence. Sure, it sounds good and so on, but let's get down to we're making laws and that's the reason LB 218 did not move out of Judiciary Committee. My memory is not failing me. I serve on that committee and that's exactly why the bill was held in committee because we could see, as members of the Judiciary Committee and heard the testimony, that there was work that needed to be done on the bill and I just wanted to clarify that for the record. Thank you.

SPEAKER BARRETT: Thank you. Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, part of the difficulty in dealing with a bill like this is that people confuse the goal of it with the law we're attempting to enact to try to get us to that goal. I don't know whose advising, given Senator Bernard-Stevens's legal advice, but I want to read to the body and into the record what existing Section 28-310.1(b) says. Assault in the third degree: A person commits the offense of assault in the third degree if he threatens another in a menacing manner. Senator Bernard-Stevens and Senator Pirsch's amendment says that a warrantless arrest can be made if one is guilty of threatening another in a menacing manner. The language is taken from the existing law of assault. If a person makes a threat in a menacing manner now, that is a misdemeanor under the present law. Under the Bernard-Stevens-Pirsch amendment, an officer can make an arrest in the case of a misdemeanor not committed in his presence and this is a misdemeanor and they keep saying the reason they want these arrests undertaken is to avoid damage being done to the person after the officer leaves. Let me see if I did understand Senator Pirsch correctly in that regard. Senator Pirsch, we've had a lot of discussions where by the time the officers get there, nothing is going on so they might be reluctant to make an arrest and the aim is to try to prevent something from happening after the officers have gone. Is that right?

SENATOR PIRSCH: Correct.

SENATOR CHAMBERS: All right, and thank you. I can agree with that, but look under the existing law, and I hope Senator Bernard-Stevens is looking at this and listening to me instead of that bad legal advice, a misdemeanor...and a warrantless arrest can be made when a person has committed a misdemeanor and

the officer has reasonable cause to believe that such person, subsection (b), may cause injury to himself or herself or others or damage to property unless immediately arrested. If the officer under the current law thinks that there may be injury to a person, not that there has been injury already, but future, that there may be injury to a person, then he can make an arrest now even if the misdemeanor committed was not in his presence. And if that misdemeanor is threatening in a menacing manner, that is already in the law. But Senator Bernard-Stevens wants his bad legal advice to be incorporated into the law, so I'll tell you what I'm going to do. I think the amendment is poor. I'm going, at this point, Mr. Chairman, I'm going to withdraw my amendment and just discuss the Bernard-Stevens-Pirsch amendment, unamended by mine.

SPEAKER BARRETT: Thank you, it is withdrawn. Senator Langford. Thank you. Senator Bernard-Stevens, followed by Senator Pirsch.

SENATOR BERNARD-STEVENS: Thank you, Mr. President. Let's see if we can circulate the argument back to its beginning premise. In fact, let's go ahead and assume for a minute Senator Chambers is correct, and he is correct in one area, in fact, he is correct in a lot of areas. The one area he is correct in is that when he quotes the statute stating that arrests can be made, that is true. That is within another statute elsewhere. But somehow I remember seeing many bills come across my desk in the last two years, and Senator Chambers, I'm sure, has seen more, and many times we have the bill drafters go in and clarify. They say, you know we have this statute over here in X, we want to go ahead and put that in here, too, because we have a lot of different areas that need to be covered. And I really don't see, I'm kind of puzzled in a way because on one side the argument is, you know, on another section of the codes elsewhere there is a section that says you can do that. Now it doesn't say it over here. It doesn't say that you can do it in the domestic abuse area, but if you put the two together, you certainly can, and it seems so reasonable, but obviously that is not being done out there. Either they are incapable of putting A and B together to come up with the proper arrests policy, B, they don't want to or, C, they feel that there is...they're uncomfortable because they feel there is a problem in doing so. I don't see any particular problem, personally, if we have something in another section that we can do, which we are doing, to put this in the domestic abuse section as well to clarify, to say, hey, in this domestic abuse section, we want you to know

the same rules that apply that are over there. We can do that. And if that helps us cut down the domestic abuse on the repetitive domestic abuse because it increases the number of arrests, then so be it, then so be it. I really fail to see the heart of what Senator Chambers is driving at. I can't really feel that that is the real issue. I think there has to be something else that is driving the opposition. There has to be something more than simply, geez, somewhere else over here in the codes it says we can do that. One of the things I'd like to point out again is part of the section says on domestic violence, the misdemeanor committed in front or in face of the officer at the scene, and that's confusing, because if it's not done in front of the officer, then they wonder if they can arrest or not. We are clarifying. We are saying, hey, there are other sections out there and we're just letting you know that you can do that. You can arrest in threatening manners and if you feel they have threatened, a threat occurs or is going to occur, you can do that, it is okay. It's a small thing to do and it is something this Legislature can do, and Senator Chambers is right, it may have no effect whatsoever. I can honestly tell you it will have no bad effects, I can honestly tell you that, but I suspect it may have some good effects. In those areas there are people, counties attorneys and police officers, and by the way, Senator Nelson, if you're listening, the Police Officers Association represents a heck of a lot more than your one county sheriff, I'm sorry. If the Police Officer Association throughout the State of Nebraska and county attorneys throughout the State of Nebraska, if some of them are saying we have a problem, then I think this type of legislation, though some may say not needed, this type of legislation will, in fact, be a positive thing.

SPEAKER BARRETT: One minute.

SENATOR BERNARD-STEVENS: And I heard it before in this body. I hesitate to say it because I don't particularly like the argument. I heard it on LB 70 when we posted the sign. We said if we can help one, and maybe that is the argument that I should say here, if we can help one, ten or fifteen, I think the bill can help. I know the bill cannot hurt and I think it's a logical step to do for the Legislature to help the law enforcement people in the field who say to us, we think we're the ones in the area, we're the ones in the trenches, we're the ones putting our lives, we're the ones that have to live with the decisions of what we make, whether we arrest or not and the

consequences, we think we need some help. And this amendment will do that. Thank you, Mr. President.

SPEAKER BARRETT: Thank you. Senator Withem is announcing that he has a guest under the north balcony, Mr. Dean Loftus, County Commissioner from Sarpy County. Mr. Loftus, would you please stand. Also, in our east balcony Senator Ashford has 14 fourth grade students from Brownell-Talbot School in Omaha with their teacher. Would you folks please stand and take a bow. Thank you. We're pleased to have you. Senator Pirsch.

SENATOR PIRSCH: Question.

SPEAKER BARRETT: The question has been called. Do I see five hands? Do I see five hands? I do. Shall debate now cease? Those in favor vote aye, opposed nay. Record, please.

CLERK: 25 ayes, 0 nays to cease debate, Mr. President.

SPEAKER BARRETT: Debate ceases. Senator Pirsch, to close.

SENATOR PIRSCH: Thank you, Mr. Speaker. LB 218 is a policy question, one which our law enforcement has asked us for, has asked us through the summer when we were meeting on this issue and also asked through their association in the Judiciary Committee. It has been well discussed today, and that's good, that this is also in another section and is indeed the same language. What we are asked by those law enforcement and county attorney is if that would be clarified in that case of a household dispute. That is the other section that we are adding, specifically for that, but not expanding the police's power but confirming and affirming their responsibility to use their good judgment in arrest. It is the same language, it is in this section to give clarification to that law enforcement officer who responds to one of the more difficult law enforcement problems that we have, and that is for the household members to get that violent person some help, and I will give the rest of my time to Senator Bernard-Stevens if he chooses.

SPEAKER BARRETT: Senator Bernard-Stevens, approximately three minutes.

SENATOR BERNARD-STEVENS: I'll just need a minute. There have been some good arguments both pro and con on the amendment and I knew there would be. I knew when we offered the amendment there

would be lively discussion and it has been. I'm sure it hasn't ended yet. But I would hope in closing that we can agree with the Pirsch amendment. We can then get on discussion with LB 330, but at the same time I think if we can keep in mind in the body that people out in the field and in the areas are having some difficulty in interpreting this particular law, whether their difficulty is whether they should know better, whether we should have better education, whether we need a higher intelligent officer, I'm not arguing that. I don't think so. But there is some, regardless of the reasons, some difficulty out there in understanding when they can or cannot arrest, and all this does is clarify that. It takes another statute we have elsewhere, puts it in the domestic abuse and saying, hey, you can do this as well. You could do it all along, but we're just clarifying. You can do this as well. And I hope I wasn't misleading. It was my understanding that Mike Heavican of Lancaster County came in support of the bill in committee. He is supportive of the bill, my understanding, but he was not at the committee hearing. I do not want to be misleading on that. I would hope that we could support the amendment. It is a good amendment, a small amendment, to be sure, that will have a small role, but I think it can have a role in reducing one of the more hideous crimes that we have. It's one of the more difficult problems that our communities are having to deal with, and that to being domestic violence. And I urge the passage of the amendment. Thank you.

SPEAKER BARRETT: Thank you. The question is the adoption of the Pirsch amendment to LB 330. Those in favor vote aye, opposed no. Have you all voted? Senator Pirsch.

SENATOR PIRSCH: I do think that this is a policy issue that is important enough for all to vote on in a record vote. And to that end, I guess I will call for a call of the house.

SPEAKER BARRETT: The question is, shall the house go under call? All in favor vote aye, opposed no. Record.

CLERK: 21 ayes, 0 nays to go under call, Mr. President.

SPEAKER BARRETT: The house is under call. Members, please report to your desks and record your presence. Those members outside the Chamber, please return and record your presence. Senator Byars, please. Senator Schimek. Senator Nelson. Senator Labedz. Senator Haberman. Senator Hartnett. Senator

Hefner, Senator Rod Johnson, the house is under call. Senator Moore, please, report to the Chamber. While waiting, Senator Wehrbein has some guests under our south balcony from Weeping Water, Nebraska, Chuck and Marilyn Spohr. Would you folks please stand. Thank you. We're pleased that you could be with us. Senator Moore, please check in. Senators Haberman, Hefner and Rod Johnson, the house is under call. Senator Haberman, record your presence, please. Senator Hefner is on his way, may we proceed, Senator Pirsch? We've had a request for a roll call vote and the question again is the adoption of the Pirsch amendment. Mr. Clerk.

CLERK: (Roll call vote taken. (See page 1867 of the Legislative Journal.) 26 ayes, 15 nays, Mr. President.

SPEAKER BARRETT: The amendment is adopted. For the record.

CLERK: Mr. President, your Enrolling Clerk has presented to the Governor, bills read on Final Reading this morning. (Re: LB 361 and LB 361A. See page 1868 of the Legislative Journal.) That is all that I have, Mr. President.

SPEAKER BARRETT: Thank you. Next item.

CLERK: Mr. President, the next amendment I have to the bill is by Senator Chambers. Senator, this is the first amendment that you provided me. On page 9, starts out page 9, line 1. (Chambers amendment appears on page 1868 of the Legislative Journal.)

SPEAKER BARRETT: Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature...

SPEAKER BARRETT: The call is raised.

SENATOR CHAMBERS: ...the amendment that I'm offering, if that last vote is an indication, will be rejected. There is language in this bill that says that "No peace officer or law enforcement agency shall be held criminally or civilly liable for his or her actions pursuant to this section taken in good faith". And the same language appears in lines 15 and 18 on page 9 of the bill. My amendment is to strike that language. Currently, law enforcement officers have no liability if they perform their

duty properly. What this bill is doing is requiring mandatory arrests which is a departure from the law. You know what the last amendment was that you added to this bill because it was discussed and I'm not going to go into that again. And now we are saying that officers who do things pursuant to this bill are not liable criminally or civilly. I don't think that ought to be in this bill. I don't think that ought to appear anywhere in the law. Instead of us lowering the level of our legislation to meet the mentality of certain ignoramuses who call themselves law enforcement officers, we should require them to meet the levels of the law as the law is written. We should not say that because an officer may not understand what the word assault means and he doesn't know to go look it up in the statute, if he commits an assault pursuant to this bill if he thinks he's right, then he should not be liable civilly or criminally because how can a cop be expected to know what the law says, which, by the way, every other citizen is presumed to know. If this language is not designed to lower the standard of law enforcement, it has no place in the law. If its purpose is to lower the standard, then it certainly has no place in the law. So what my amendment would do is, on page 9, in the two places the language appears would strike that language and I will read it again. No peace officer or law enforcement agency shall be held criminally or civilly liable for his or her actions pursuant to this section taken in good faith. I can commit an assault in good faith but I'm still held liable. And police officers who are given discretionary power to take human life, to deprive people of their freedom, to make warrantless intrusions into people's homes, to mandatorily arrest people who violate one of these orders, this bill is going a long way toward undermining or weakening rights that Americans, to use that term loosely, have come to believe traditionally are theirs. That is simply because a person represents law enforcement, he or she does not have a right to do any and everything he or she has the power to do, and by power I mean the gun, the badge, the club, the mace and the handcuffs. So this is the worst type of language that could be in a bill such as this and I'm asking that it be stricken.

SPEAKER BARRETT: Thank you. Senator Bernard-Stevens, discussion on the Chambers amendment.

SENATOR BERNARD-STEVENS: It will just take a brief moment, Mr. President. I concur with Senator Chambers. I think it's a good amendment and I hope it is adopted. Thank you.

SPEAKER BARRETT: Thank you. Senator Pirsch.

SENATOR PIRSCH: Thank you, Mr. Speaker. I also agree with Senator Chambers, and as we discussed on General File, we will not tolerate police brutality, we will not tolerate anything that the police officer does not do in the course of his duty. And I agree, and incidentally, the police officers that we have checked with also agree that this language is unnecessary, that they fall under the same standards in the same good faith actions that are in our political subdivisions code. So I do encourage the adoption of this Chambers amendment. Thank you.

SPEAKER BARRETT: Thank you. Senator Chambers, any closing? Thank you. The question is the adoption of the Chambers amendment to LB 330. All in favor vote aye, opposed nay. Record, please.

CLERK: 26 ayes, 0 nays, Mr. President, on adoption of Senator Chambers amendment.

SPEAKER BARRETT: The amendment is adopted.

CLERK: Mr. President, the next motion I have on the bill is by Senator Scofield. Senator Scofield would move to amend, but in order to do that she would move to suspend Rule 7, Section 3(d), the germaneness rule, so as to permit consideration of her AM1356.

SPEAKER BARRETT: Senator Scofield.

SENATOR SCOFIELD: Thank you, Mr. President. This is an amendment that Senator Pirsch has graciously agreed to let us take care of on this bill, and I think it is of enough concern to all of us that we want to do it this year. Let me give you a little background on this amendment. You have before you two handouts. One is a copy of this amendment and the other one is a handout also referencing the policy, Family Policy Act which we passed in 1987, which is obviously doing good things around the state. The copy you have here specifically talks about family preservation teams set up in five communities and then the center that has been created in Beatrice. That's the good news. I think it indicates the Family Policy Act is operating for the most part as it was intended. But a number of us in here from time to time have had conversations as far as concerns

about occasionally there have been decisions made about when to remove a child from a home, and because of the legitimate statement in the Family Policy Act about our desire to leave children in the least intrusive and least restrictive settings and whenever possible to keep families together, there have been isolated instances of decisions made where a child has been left in a home and what I think most of us would agree is under questionable circumstances, and, in fact, has in some cases clearly been at the expense of the child's best interests. I think that is partly a problem with training that has not necessarily always taken place adequately within the agency, which I think we're going to try to address through some of the budget recommendations that we've made, and I've brought specifically this language to another bill before the Health and Human Services Committee and I don't think anybody objected to it. In fact, many people who weren't absolutely certain about the bill we were going to attach this to were strongly in favor of this language. And so I'm asking that you help me suspend the rules on this so that we do not let another summer, another fall go by waiting for perhaps that particular bill to pass, where a child might in some instances be inappropriately left in a family where that child's emotional and physical development might be threatened. I think this sufficiently clarifies the language in 637 so that there shouldn't be recurring instances of children inappropriately left in families where clearly their best interests aren't being served. I'd be happy to try to answer questions, and if there are no questions, I'd simply ask for you to suspend the rules and adopt this amendment. Thank you.

SPEAKER BARRETT: Thank you. Before recognizing Senator Wesely, Senator Hartnett announces some guests in our north balcony, 60 fourth graders from Bellevue with their teacher. Would you folks please stand and be recognized. Thank you. We're pleased to have you with us this morning. Senator Wesely, further discussion.

SENATOR WESELY: Thank you, Mr. Speaker, members, Senator Scofield did refer to this amendment. It was adopted by the Health and Human Services Committee as an amendment to LB 662. It was brought to us at the hearing and, as she stated, I think most people were in agreement that it did help clarify in a positive fashion concern about the Family Policy Act. It does recognize one of the concerns I've had and others have had about that act and does, I think, further leave the notion and clarify

that if we have a situation of a child in a family that is being harmed by staying in that family, that despite all best efforts to retain that family and maintain it, that it does not violate the policy act to remove that child. And so I think this is an important change and I would certainly support it and ask your support for it.

SPEAKER BARRETT: Thank you. Senator Chambers, on the motion to suspend.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, when we deal with a suspension motion, we usually will have some discussion of the issue for which the rule will be suspended, and I'd like to ask Senator Scofield a question or two. Senator Scofield, on page 2 of your amendment, in line 15, I paused...are you with me now? Okay. Immediately or cumulatively, we're talking about harm that may come to the child in this particular environment. That means that something could stretch...a course of conduct could stretch over a long period of time and no one thing in the course of that conduct would be sufficient to take the child, but if you added it all up together, then taken together it may be a basis to remove the child. Is that what it is?

SENATOR SCOFIELD: That is correct, Senator Chambers. And I think particularly in cases of emotional abuse, that might be the easiest example that I can think of right off the top of my head. This is clearly a judgment call on the part of a child protective service worker which gets back to the issue of training which we will address in other places, but clearly sometimes it isn't an immediate threat that you can absolutely see but a well-trained person could identify a clear threat to that child's well-being over a certain period of time.

SENATOR CHAMBERS: Senator Scofield, how would that decision be made now without this law?

SENATOR SCOFIELD: Well, Senator Chambers, I requested a copy of the training materials that are given to CPS workers and I'm not sure how that would be made. That is one of the things that concerns me is then the reason I bring this for additional clarification. It's obviously a very difficult choice, I'm sure, to decide to remove a child from a home. There is a manual which I think could be significantly improved in terms of the guidelines given to a CPS worker, but as I understand it,

that worker, after a complaint is filed or whatever, would first investigate that and then that would have to go through the supervisor before that decision to remove the child would actually be made.

SENATOR CHAMBERS: Thank you. Members of the Legislature, I'm not really familiar with this amendment and a lot of times when we read things like this they look good and they sound good, but when time comes to apply them, there can be difficulties, and when I look at the word cumulatively and we're talking about an agency making this judgment, a department, agency, institution, committee or commission of state government making this judgment, then I do have some concerns and, again, I'm very protective of children. But sometimes in the attempt to accomplish a very worthwhile goal, certain other things that have to be weighed in the balance are kind of pushed aside, and I'm not certain that the people who work for these agencies always have the interests either of the particular child at heart or of the family that is being approached. There have been cases that I'm sure we can all describe here and I won't go into any specifics although I know of some where an alert worker could have prevented serious damage from occurring to a child or from continuing to occur over a period of time, but that action was not taken. So currently if these people are properly trained, the thing that we're talking about here can be done and all of these actions are supposed to be done with the best interest of the child or the children at heart. But to put into the law, the last sentence in this amendment on page 2, while children may develop best in nurturing families, families shall not be kept together at the expense of a child's best interests and safety. On its face that is one of those beguiling sentences that seemed like it could have nothing wrong with it and nobody could object to it, but I'm not comfortable with putting that into the statute where we're talking about social workers and others working with agencies which are not even defined here or identified, commissions and so forth. There is a lot of talk about the family and holding it together. When we begin to seriously consider specific pieces of legislation, sloganeering won't work anymore and we have to try to postulate...

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: ...if we can how it's going to act in reality. We get some notion of that from analyzing the conduct,

the present conduct of those who will be given power under the laws that we are about to enact. If we have confidence that those people are properly trained and that they are dedicated in their job and are looking out for the interest of the child, there is no court in the land that would say, if it's in the best interest of a child to be removed, the child would not be removed. The question develops when we make a determine of what is in the best interest of the child. My home could be one where I teach my children about slavery. I show them where we're discriminated against in trying to get jobs. They see me bitter because I tell them I've walked till my shoes are run-over and I go to these places to get this job and the white people refuse to hire me even though I have the qualification and more so of or than the one who was hired.

SPEAKER BARRETT: Time. Senator Smith.

SENATOR SMITH: Thank you, Mr. Speaker. I'm supportive of Senator Scofield's efforts here, but I do want to continue to hear what Senator Ernie Chambers has to say and I'll give him my time.

SPEAKER BARRETT: Senator Chambers.

SENATOR CHAMBERS: To continue, the smaller children have teenage brothers and sisters who go to high school and have white classmates and there are these jobs open in the summer for students, and he sees, or she, older siblings go apply for the same jobs as their white classmates. Then they come home looking blue after a number of days talking to me, the parent, and say, I went and applied the same times they did and they got jobs and I didn't. The reason I know, because they asked me why I'm not at work, and then I tell them, see, your complexion, that's what it is. So a social worker comes into the home and says, I don't like what you're teaching your children. You're teaching them hatred, you're teaching them racism, you're teaching them this is a bad country, this is a bad society, you don't have a wholesome environment for your children. And I say, my children have to survive in this society and my job as a parent is to tell them the truth and alert them to the problems they are going to have, and if I don't do that, I'm not a proper parent. And they say, well, in our opinion at the department, that is not going to produce a well-adjusted child who views himself as an American first. And then the argument continues, if he were viewed as an American first, I wouldn't have this

attitude because they could get the jobs. They would be treated fairly in school. They wouldn't go to the largest school system in the state where a national association investigated that school's practices and found out that there is racial discrimination practiced when they expel students, when they penalize them in every manner that by which the school penalizes, and they want to say, well, that's just a coincidence. No, my children have to be made aware of these things. I don't see, other than the effort in LB 250, strong concentrated efforts to make the education system responsive to the needs of the children who were there. While we were discussing giving teachers a salary increase, I didn't bring up any of these points because it is difficult for me to discuss them in a way that is low-key and laid back because so many children are hurt by them. When you are a member, as I am, of a group that is psychologically, politically, economically, every manner you can think of, educationally, at risk, then these matters that are not of great moment to others who are not so situated are very serious to us and we have an obligation to our children. Maybe we can't dress them like everybody else. We can't give them the quality or even quantity of food that others have. So our whole approach to this society is going to be different, and when we put into the statute that people outside the home can make a determination based on this psychological profile, they make that determination. It is based on their standards, their background, their mores, their position and then they impose that kind of judgment on those of us who are on the bottom rung of the ladder of society. And when we react in a hostile way as any people backed into a corner will react, that is taken as additional evidence of our unsuitability to rear our children, because when those who are trying to help us come to us and are going to explain to us and educate us in the ways of rearing children, we don't accept it like little birds with our mouths wide open to receive anything...

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: ...that the feeder is going to put into it. And our frustration grows and it grows and our children pick it up. So this kind of language in a homogeneous society might work and not pose problems, but I see some very serious ramifications because of what already is existing in this society without this kind of language. So when new words are added to the statute, they have to be taken to have some meaning and they are giving broader authority to these people to take

children out of homes than they already have, not on the basis of physical abuse, not on the basis of specific anything, but a cumulative concept that somebody outside that family and outside that culture is going to, in my opinion, imperiously make. So I have serious reservations about this and I cannot vote to suspend the rules or to add the amendment to the bill.

SPEAKER BARRETT: Thank you. Senator Chambers, yours was the next light if you'd care to make any other statement.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I want to reciprocate and give Senator Smith an opportunity to make a few remarks, and if you have time left, would you give it back? Thank you.

SPEAKER BARRETT: Senator Smith.

SENATOR SMITH: Thank you, Mr. Speaker, thank you, Senator Chambers. I would like to ask Senator Scofield a question if I might.

SPEAKER BARRETT: Senator Scofield.

SENATOR SMITH: Sandy, do you see any problem with, I think what you're trying to accomplish is done to that sentence and that this is just more...it is just more a comment, and I think that I understand what he is saying here when he is talking about someone else's interpretation of what is best, you know, in their best interests may be very different from mine and yet I should, as a parent, have the I think...you know, I understand what he is saying. I'm wondering if you'd be willing to strike that last sentence from this amendment, or from the bill itself which is an amendment.

SENATOR SCOFIELD: Senator Chambers makes a valid point, Senator Smith, and if I could use a little bit of your time to address this. I've got my light on, Senator Chambers.

SENATOR SMITH: Senator Chambers, I'm asking her if she'd be willing to strike that sentence which you're discussing and I agree with you on this and she says she is too and she'd like to discuss it a little bit. And I'll give it back to you then.

SENATOR SCOFIELD: Let me tell you...Senator Chambers, you are absolutely making the point and one of the reasons why we did

the Family Policy Act was because there were instances, which I'm sure you are as aware of as anybody, where somebody was imposing, usually they are white, middle-class values on a family coming in and saying, this family for whatever reason doesn't meet my standards and, therefore, I'm taking this kid out of home. I think that accounts for why you have more black children often out of homes and Indian children out of their homes than white children and that is a well-established fact. That is why we passed the Family Policy Act with very...with the language saying you should try to keep those families together. What I think has happened, given the experiences we're having right now, is that pendulum has swung so far over that what we're seeing is families have been in some instances kept together, the way they are interpreting this language, when it is clearly in not in the best interests of the child and children have not been removed from home settings when I think any of us walking in there and taking a look around would have said, this child is in danger. I guess I'm not absolutely married to this language. I'm simply trying to adopt language that gets us out of that predicament that I see right now which I don't think that no matter what we put in statute, it is still going to come down to a matter of interpretation and judgment of that person out there who is investigating whatever is going on with that child. And so that is why I keep stressing the notion of training and why that is so important, but you bring in a very interesting and valid point about individuals going in and imposing their own economic and social values and when they make these decisions here, your discussion is very valid in terms of the difficulties we've seen trying to come up with good language.

SPEAKER BARRETT: Senator Chambers.

SENATOR CHAMBERS: How much time do I have?

SPEAKER BARRETT: Two and a half minutes.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I appreciate the comments of Senators Smith and Scofield. Maybe all they need to do is, if they've got to put something in the law, is take the words on the first page consistent with the needs of the child. See, a lot of people, especially in the schools, have no concern about black children at all. A lot of times our children are more spontaneous in what they do, they speak in a more...in a louder voice, so if a black teacher were

dealing with these children and the child spoke in a loud voice, that's just the way the children do. A white teacher takes it as disrespect, as a challenge to his or her authority, and that child gets an inschool suspension as happens at Bryan Junior High School in Omaha. And then they have teachers who will put posters up making fun of black children's names. For some reason, a child was victimized with the name Con Tiki, so the teacher, because the child was going to play in a basketball game had him coming out of a toilet and the name Con Stinky and it was posted on the walls in the junior high school and white people don't understand why we're offended at that, and I wish I had known at the time it happened. I would have taken down the sign and I would have dealt physically with anybody who tried to stop me.

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: In my office I have paddles that I have physically confiscated from black schools in Omaha. I took them from the principal, and I told the child in the office, the principal, he may do something to you, but let him try it with me right now, and I have the paddles that I took. And it shouldn't be my responsibility or anybody else to go into these schools to provide physical safety for our children. All you read about is that they are gangsters, they deal in drugs, but you don't have to worry about your child being sent to school and a teacher calling her or him a little honky, a little redneck, a little peckerwood, but our children are victimized by racial epithets, and when they react, then they are the bad children and you see these editorials, more black children are suspended because more of them are bad. More...

SPEAKER BARRETT: Time.

SENATOR CHAMBERS: ...of them are expelled because more of them are bad. It is hell for our children in these public schools and I just wish that there weren't so much of my time taken in this Legislature when school is in session because I would probably wind up being arrested at a school except that I'm always so right, when I go there and put my hands on some of these teachers, that they dare not challenge or accuse me in court.

SPEAKER BARRETT: Time has expired. Senator Nelson.

SENATOR NELSON: I move we recess until one-thirty.

SPEAKER BARRETT: You've heard the motion to recess until one-thirty. All in favor say aye. Opposed no. Carried, we are recessed.

RECESS

PRESIDENT NICHOL PRESIDING

PRESIDENT: Roll call, please.

CLERK: Mr. President, I have a quorum present. Mr. President, one item for the record, a communication from the Secretary of State regarding the passage of LR 2 this morning. (See pages 1870-71 of the Legislative Journal.) That is all that I have, Mr. President.

PRESIDENT: Going back to LB 330, would you remind us where we were when we recessed, Mr. Clerk. Okay, before we do that, however, Speaker Barrett would like to have a word with you. (Gavel.)

SPEAKER BARRETT: Thank you, Mr. President. At this point, simply an announcement, we have a very special guest with us in the front of the Chamber, a friend of several of us, visiting Nebraska not for the first time, but Mr. Carl Tubbesing, who is the Director of the Washington Office of the National Conference of State Legislatures is with us. Carl, take a wave, thank you. Thank you, Mr. President.

PRESIDENT: Glad to have you with us, Carl. Thank you. Mr. Clerk, where were we?

CLERK: Mr. President, LB 330, there was pending a motion by Senator Scofield. Senator, do you want to take up your motion or defer for a moment?

SENATOR SCOFIELD: I will defer for a moment. I think we have worked out some language that is acceptable to interested parties over lunch and it is coming down from the bill drafters, so why don't we just pass over this for awhile.

PRESIDENT: All right.

CLERK: In that case, Mr. President, Senator Chambers would move to amend the bill. Senator, I have your amendment that reads on "P. 4, lines 1 and 3, strike the new language and reinstate the stricken language."

PRESIDENT: Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, is Senator Pirsch here today, I am asking is she here yet? Okay, so she will be aware that I am offering this amendment. I had discussed it with her and I am not 100 percent sure what her feeling about it is, but she does understand the concern that I have and the point that I am trying to make. We discussed this morning this language "Threatening another in a menacing manner.", and I said that is already in the law. We encountered this language again, but if you can, take all of the conversation we had this morning out of your mind and pay attention to what I am talking about now. I am looking past you, Dan, to my colleague who is a "Repelican" sitting under the balcony. What we are talking about in this portion of the bill, remember, is a mandatory arrest if a person is in violation of one of these protective orders. The language that I want stricken is redefining the word "abuse" for the purpose of the Domestic Abuse Act. Since what we are going to do with LB 330 is mandate an arrest under certain circumstances, I would prefer that the present language in the law be retained, so that means we would strike the new language "Threatening another in a menacing manner.", and reinstate this language, "Placing, by physical menace, another in fear of imminent serious bodily injury." By requiring that there at least be the threat of bodily injury and not just a menacing gesture, I feel a little less comfortable about the mandatory arrest. Remember, when we talked this morning, it was a warrantless arrest, which it was left up to the officer to make or not to make. We are at the portion in 330 now where we are talking about a mandatory arrest. The officer has no discretion. So when we are going to redefine the word "abuse", I don't think we ought to define it so that a lesser activity can be construed to be abuse. We are putting a definition in statute now. So threatening another in a menacing manner, and this happens frequently in families when there is no intent to inflict violence and no violence is going to follow, and the one being menaced knows that there is not going to be any violence, if we define abuse as being merely a

threatening another in a menacing manner, families are put in a position where they cannot possibly function anymore. I love peace, harmony, and tranquility, but families are not the places where you find these things. There could be an occasion where were somebody fortunate enough to be married to me, somebody is fortunate enough to not be married to me any longer, but that is a judgment call and somebody could deem that to be fortunate, either way, but in any case, maybe I, as easy to get along with as I am, could make what somebody would consider to be a threat in a menacing fashion. I could crinkle my brows, drum up my eyebrows right together at the bridge of my nose, and look fearsome, former Senator Nichol, so fearsome, in fact, that the one that I am piercing with that gaze could think that Judgment Day is about to descend, and that is the extent of it. To threaten somebody in a menacing manner, it doesn't say a threatening gesture, nothing. So since we are defining abuse, I don't think merely threatening in a menacing manner should be the definition for abuse. The current language that is being stricken that I want reinstated says that there has to be more than just a mere threat. There has to be a physical menace, and by that, we take it to mean the person who is doing the menacing is in a position to carry out whatever it is they are attempting to do, and there is fear of imminent serious bodily injury. So when we put fear in, we are talking about the way the one menaced perceives it. We have to require that the person who is facing the threat of injury perceives it as a threat and is put in fear. If my child, I don't have any three years old now, but if I had a three-year old child, and that child picked up a baseball bat and was as angry as a child that age could be, and using language, baby talk, to say to me what somebody 40 years old and in the Navy would say in a similar circumstance, came at me with a baseball bat, that would be threatening in a menacing manner. That would be abuse from that child to me, but I have no fear of it. The child cannot carry it out, so the definition does not fit that circumstance. I would hope that this bill is going to be crafted in such a fashion that it deals realistically and practically with the problems that people may face. If a person is, indeed, put in fear of receiving serious bodily injury and the one they fear is in a position to carry out the act that would lead to that bodily injury, then that could be taken as abuse. In neither case does any action have to occur that inflicts an injury. It puts the person in imminent peril of receiving the injury and that would remain a part of the definition of abuse. But since we are talking about a domestic situation, although I didn't raise my voice at my

children very much, I don't think the mere raising of a voice is abuse. I never laid a violent or angry hand on my children, but there are other people who might believe in the laying on of hands in moderation, and that, in and of itself, would not be abuse. So I don't say that everybody has to view these things the way that I do, but when we are talking about a definition for the purpose of the law, and that definition will be utilized to convict people of crimes, then we should have a definition of conduct that is criminal, meaning something detrimental to the order of society, and I don't think that every threatening in a menacing manner should be considered abuse. There are some parents who by using a threat in a very menacing manner are able to avoid having to take the next step which is physical violence of some kind. So I wouldn't want to make threatening in a menacing manner the same thing as putting somebody in peril of receiving serious bodily injury. And the term "imminent" means right now. So I am hoping that you will adopt my amendment. I hope there are more people here now than when I started so that there will be enough to vote on this bill, but the amendment would be on page 4, in lines 1 and 3, I would strike the new or underlined matter and reinstate the language that is stricken.

PRESIDENT: Thank you. Senator Pirsch, please.

SENATOR PIRSCH: Thank you, Mr. President. Members of the body, this language was put in really to be consistent with the other language, both in the criminal statutes and in the first part. Senator Chambers does have a point and I think it is something that I will leave up to the body, quite frankly. This is under the domestic violence statutes, and while we thought that would be consistent with the present statute in another section, that was what it was intended to do, and again, as I say, this bill was written by, I hate to say, a consortium, but by many representatives that are working in the domestic violence field, and that was one of their recommendations that we do keep that consistent with the other language. With that, I guess I have nothing more to say. Thank you.

PRESIDENT: Thank you. May I introduce some guests, please, of Senator Korshoj. In the north balcony, we have nine students from the Zion Lutheran Church in Bancroft, Nebraska with their teachers. Would you folks please stand and be recognized by the Legislature, all of you. Thank you for visiting us today. Senator Bernard-Stevens, please.

SENATOR BERNARD-STEVENS: Thank you, Mr. President, members of the body. I am a little bit, after lunch, I have had a nice lunch, maybe I am a little logy right now, to coin a phrase from Senator Scofield, but I think I have stumbled on to a couple of things that might be happening. Senator Chambers was arguing earlier that we already had within another statute that which we were asking to be done also in an amendment that this body agreed to this morning on LB 330, and the argument was that it was redundant, it was not necessary. And I know Senator Chambers asked us all to forget what we heard this morning, but I would like to reconstruct one part of it, and that part I would like to reconstruct was that there seemed to be some type of confusion out there. Those people out in the field, in the trenches, so to speak, they didn't seem to feel that there was adequate clarification on this type of an arrest, whether they can or could not. The argument, again, was made that, well, it is already within the statute, they can do it, but we don't want to have any more confusion. To me, this amendment, Senator Chambers, and, hopefully, if your light is on again, you will be able to respond on your time, but to me this would do more to confuse the issue out there than anything else, because if your argument is true, it is not if, your argument is true this morning. There is another statute out there saying they do have the possibility. They do have the right to arrest on these kind of cases a misdemeanor, but now you are going to put a different burden, a higher burden in domestic abuse cases. You are going to put a different level. There will be even more confusion with this amendment. You are going to switch it from being serious...from being the bodily injury to serious bodily injury, and I am looking at the statute book now how it is defined, and there is a significant increase in what I must do to show cause. Serious bodily injury defined by statute, it involves a substantial risk of death or which involves a substantial risk of serious permanent disfigurement, or protracted loss or impairment of the function of any part or organ of the body. That is what Senator Chambers wants us to shift to, a very, very high, if not nearly impossible, burden to meet, a very exclusive burden, if you wish. The bodily injury which he wants to throw out is defined by physical pain, illness, or any impairment of the physical condition. If we are going to deal with domestic violence, I think we'd want to have the statutes clear. I think we do not want to have any misinterpretations of what we can or cannot do, and we did so with the agreement of the amendment this morning. It may be somewhat redundant but it is now, at least, clear. There are judgment decisions that will have to be

made in the field, and those judgment decisions we may or may not agree with, and if in those judgment decisions poor arrests are made, it will go against that person's record and we will have to attack those situations as they arise. But to agree with Senator Chambers' amendment would put even more confusion because, again, in one section of the law we have that we can arrest, but now we are going to have in this particular case, in domestic violence, one of our most violent, one of our most increasing crimes, we are going to have to have serious bodily injury, and that increases that burden of proof to such a degree that it would prove the whole section, I think, worthless at this point, and add even more confusion. I don't think it is necessary. I understand the point that is being made but I still am opposed at this point to the Chambers amendment because of the tremendous increase of burden that it would place. Thank you.

PRESIDENT: One minute. Okay. Senator Chambers, please.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, one of the difficulties in dealing with mixing criminal laws with other laws is that we have a mixture of concepts such as Senator Bernard-Stevens is going through now. Senator Bernard-Stevens, this morning we were in Chapter 29. This domestic abuse is in Chapter 42. What 330 does, and we are talking about that now, is distinct from the amendment that was offered this morning. That amendment offered this morning was another entirely different bill that had nothing to do with LB 330. The purpose of LB 330 is to mandate that an arrest be made if one of these protective orders is violated. This morning, Senator Bernard-Stevens, you were talking about a warrantless arrest where no protective order was involved. So the first thing you do is distinguish between those two cases. If you look on page 3 of LB 330 as it exists now, there is in subdivision (a) starting in line 22, "Attempting to cause or intentionally, knowingly, or recklessly causing..." That is where you either cause it or you make an attempt. You have gone beyond the point of merely putting yourself in a position where you look like you are going to do something. You are initiating action where the outcome of it will be serious bodily injury. So the worst thing that you can do is to inflict the act. The second worse thing you can do is attempt it. Those two things are not touched. When you turn the page to what I am talking about, there has been...you haven't reached the point of an attempt. You haven't reached the point of an attempt. This

language that is new that is being offered, Senator Bernard-Stevens, is in the definitional section of abuse and you are lowering that standard to such an extent that the term "abuse" has no meaning. It is as you are as guilty of abuse if you put somebody in a position where they can feel endangered of serious bodily injury, as if the serious bodily injury actually occurs. So you are making two very different acts exactly the same. What Senator Bernard-Stevens wants the Legislature to do by keeping this language is say that if you threaten somebody in a menacing fashion, not that you are making an attempt, but you threaten them in a menacing fashion, even if they are not put in fear, that is just as serious and just as bad as if you intentionally and knowingly inflict serious bodily injury on somebody. And a definition that covers that much territory is a nondefinition. It makes anything abuse, and whereas, this language that I am trying to strike may be acceptable in the criminal law to define a very low grade of assault, the lowest grade you can find, and I don't know of a case where somebody was charged with this, that is one thing, but to take it over into an entirely different chapter, Chapter 42, where you're defining domestic abuse for all purposes, and you are going to make it domestic abuse to threaten in a menacing fashion I think is to lower the standard to too great a degree. Ordinary things that happen in the course of running a family are abuse, and that is even different from what I was talking about this morning, this is even a lower standard than what I was talking about this morning.

PRESIDENT: One minute.

SENATOR CHAMBERS: What is threatening in a menacing way in a family setting? We all know of a number of activities that can be viewed as a threat. The current language says that the person who is being placed in a position to be harmed, although no attempt has been made and no harm has been inflicted, fears that there will be some harm. The person who would be the victim has to have that fear. Senator Bernard-Stevens wants to do away with that, and I think it is a mistake. If you accept my amendment, it is not going to weaken this bill at all. If you accept his, you have people who, because the language appeared someplace else, as we dealt with this morning, want to put it every place in the statute where they think something pertaining to abuse...

PRESIDENT: Time.

SENATOR CHAMBERS: ...is going to be found and I think, again, that that is inappropriate.

PRESIDENT: Senator Chambers, may I introduce some guests of yours in the north balcony. We have 60 fourth graders from Mount View of Omaha with their teachers. Would you please welcome those students, and would you folks please stand? Thank you for visiting us today. Senator Bernard-Stevens, please.

SENATOR BERNARD-STEVENS: Thank you, Mr. President. Senator Chambers, I stand corrected. When I came in, I came in just a tad bit late and I saw the amendment that would take away the threatening in a menacing manner, and I assumed, and you know what you do when you assume, that it had to deal with the amendment that we adopted this morning, and you are on Section 2, and not Section 1. To that degree, I have no problem because we were talking about two different things. I apologize for that and I think the amendment is not a bad amendment to go with. Thank you, Mr. President.

PRESIDENT: Senator Chambers, would you like to close on your amendment, please?

SENATOR CHAMBERS: I think with the clarification, I don't have anything else that I need to say, and Senator Bernard-Stevens did make it clear that I am not touching the amendment that was adopted this morning, so I am just asking that this be adopted.

PRESIDENT: Okay, thank you. The question is the adoption of the Chambers amendment. All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 25 ayes, 0 nays, Mr. President, on adoption of Senator Chambers' amendment.

PRESIDENT: The Chambers amendment is adopted. Do you have anything else on it, sir?

CLERK: Mr. President, Senator Chambers, I now have your third amendment, Senator, that amended the...

PRESIDENT: Senator Chambers, please.

SENATOR CHAMBERS: Would you read it?

CLERK: Mr. President, Senator Chambers moves to amend the Pirsch/Bernard-Stevens amendment. (Read. See page 1871 of the Legislative Journal.)

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, and I wish Senator Bernard-Stevens would listen up. Senator Bernard-Stevens, you persuaded me this morning that we have some people wearing the uniform who are not really bright, and you have to put in each section of statute what it is they may and may not do. So what I am doing is not touching your amendment that you had this morning, I am just further clarifying it, and my amendment says, in effect, that in line 7 where it is talking about a peace office may make an arrest, that where that word "may" appears, it means that the officer may make an arrest but he or she is not required to do so, and I think that makes it crystal clear for those officers that you have out there in your part of the country who are not too conversant, not only with English but the law, itself. And I don't see that this takes anything away from the law and, Senator Bernard-Stevens, it won't hurt anything. How do you feel about that?

PRESIDENT: Did you wish to respond, Senator Bernard-Stevens? Was that a question?

SENATOR BERNARD-STEVENS: Oh, I would be delighted. I can't pass up on something like that. Senator Chambers, I think it is just a peachy amendment on there and I just want to clarify something particularly that in my particular area there are no problems with law enforcement, as you know, just like there are none in Omaha, as I am sure you are aware. But as you are aware, we need clarification sometimes and I think we could extend it a little bit further. Senator Chambers, you and I can get together and actually define in statute what a not voting means in this body particularly, so we can say it is not really voting against, it is not really voting for, it is just kind of not making a decision because I am too lazy to make a decision on that. We might want to do that in here as well. To a degree you are right, it doesn't hurt. It certainly helps clarify. I think it is a dandy amendment and I certainly would go along with it.

SENATOR CHAMBERS: Mr. Chairman, I will withdraw that amendment.

PRESIDENT: It is that good. Okay, do you have anything else on

it, Mr. Clerk?

CLERK: Mr. President, Senator Wesely would move to amend the bill. (See pages 1871-73 of the Legislative Journal.)

PRESIDENT: Senator Wesely, please.

SENATOR WESELY: Thank you. Mr. President and members, this is an amendment found on page 1851 of the Journal. I have discussed it briefly with Senator Pirsch and Senator Chizek. It is an attempt to provide for in the bill provisions of another bill that was heard by Judiciary Committee dealing with an issue brought to me by the Department of Social Services. The department has had some difficulty with a few schools in the state to be able to go onto the school grounds and visit with children suspected of being victims of abuse. Under these circumstances, it is primarily a situation where parental abuse is suspected and the need to talk to the child outside of the home is in the best interest of that child. This amendment had a hearing and there was some confusion about support or opposition to it. It does provide for a concern expressed by the school board, School Board Association, in terms of any liability exposure they might have. I don't think there is any, but it does provide for liability protection to anyone who does provide access to that child under this provision. In checking with Paul O'Hara and the trial attorneys, I don't believe that that has any problem with them, and so the liability issue, hopefully, isn't a problem. With that, the school boards should be favorable. Again, this amendment was brought to me by the Department of Social Services. It is the only bill they asked to be introduced this year and it does try and address the problem that we have in certain circumstances with dealing with child abuse under circumstances where the parents may be involved, trying to separate that out, and allow that discussion to occur in the schools, and what we are trying to accomplish, most of the schools are cooperative and there is no problem with them, but in a few instances, we have had a problem. This would deal with that problem and I would ask for adoption of the amendment.

PRESIDENT: Senator Pirsch, please.

SENATOR PIRSCH: Yes, I, respectfully, ask for germaneness to LB 330.

PRESIDENT: One moment, please. Senator Wesely, do you have an opinion on this germaneness? Have you thought about that any?

SENATOR WESELY: Well, this bill I thought dealt with the question of abuse and protection of individuals from abuse. The amendment I have deals with the same topic of trying to allow for the Department of Social Services to investigate abuse complaints on a school grounds. So with that regard, I felt that they were germane.

PRESIDENT: Thank you. Senator Pirsch, would you like to elaborate on this?

SENATOR PIRSCH: Well, I believe that LB 330, as amended, deals with law enforcement and direction to law enforcement and not to the furthering of social service activities.

PRESIDENT: I am going to rule that it is not germane, Senator Wesely. It has to do with reporting child abuse and so forth.

SENATOR WESELY: Then I would like to move to suspend the rules to consider that amendment.

PRESIDENT: All right.

CLERK: Mr. President, Senator Wesely would move to suspend Rule 7, Section 3(d) so as to permit the consideration of his amendment.

PRESIDENT: Senator Wesely, please.

SENATOR WESELY: Thank you, again. Mr. President, members, this amendment is a bill, the form of a bill, brought to me by the Department of Social Services, introduced by the Health and Human Services Committee, referred to the Judiciary Committee, and killed by the Judiciary Committee. I believe that it was a mistake to have that legislation killed. I don't think there is justification for having it killed. I think it needs to be addressed. The department had a concern about several schools and school districts in the state that don't allow child protective custody workers onto the school grounds to meet with and talk with children suspected of being victims of abuse. These are circumstances that involve the parents and a need to talk to those children away from the parents, away from the home, is what is in order here, and if we are concerned about

child abuse, if we are concerned about trying to help these children, I think you will want to support this amendment and allow the department the opportunity to move in this manner. The bill also includes the State Patrol, which asks for that addition. That is the only change from the bill, I believe, as it was introduced, and also the change on liability which the school boards asked for. Those are the only other changes from when the bill was introduced and I do believe those changes take care of some concerns, and I would ask for the suspension of the rules to allow this amendment to be considered.

PRESIDENT: Thank you. Senator Pirsch, please, followed by Senator Chambers. Okay, Senator Chambers, please, followed by Senator Nelson.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I would like to start by asking Senator Wesely a question.

PRESIDENT: Senator Wesely, please.

SENATOR CHAMBERS: Senator Wesely, oh, and by the way, for those in the body, this amendment can be found printed on pages 1851 and 1852, and Senator Wesely, I am reading, starting in line 10, where it says, "The law enforcement agency or department shall notify the parent or guardian of the child that an interview has taken place within a reasonable time subsequent to such interview." What is a reasonable time?

SENATOR WESELY: That would depend on circumstance. I think that is the reason that reasonable is in there. If after the interview on the school grounds, they find a situation, maybe there was a complaint filed, they talked to the child, from their review they don't see a problem, I think that you would say reasonable would be the next day or very quickly. If in that discussion they find grounds to be concerned, then, obviously, there may need to be some follow-up and what have you, and it may take a couple of days before they feel appropriate to go to the parent. I guess I would want to give them the opportunity to determine on a case by case basis what is reasonable.

SENATOR CHAMBERS: Senator Wesely, how much training do these law enforcement agencies have in interrogating children without having notified the parents and outside the parents kin?

SENATOR WESELY: I think these individuals handle many different child abuse cases and have the training both before and in the process of doing their jobs.

SENATOR CHAMBERS: Thank you. Members of the Legislature, I don't share Senator Wesely's blanket endorsement of law enforcement and how well they handle these cases, but I think we need to look very, very carefully at what it is that is being attempted here this afternoon, and probably will be for the rest of the session. We are allowing more and more intrusions into the family by law enforcement people, by agencies of the state, and in this case, the parents don't even have to be notified. I am not in favor of child abuse and I am not in favor of abusive parents, but this language allows them to interview any child where somebody suspects that there has been child abuse. We don't know the kind of questions that will be asked, but one thing we have found out as a result of the investigation, parts of it on the Franklin case, is that there was a county attorney and people in the State Patrol who had more than adequate reason to know that there was abuse and did nothing. So if they are not going to do anything in those cases where they have actually been officially and formally involved, I am not in favor of giving them this additional long arm reach to accost people's children in the schools without the parents knowing, and it is not just in the schools. Any person or entity standing in loco parentis to a child who is a suspected victim of abuse or neglect can have access to that child, the law enforcement agency, to interview. This was a bad bill when it was brought to the Judiciary Committee on its own lack of merit, and after hearing the testimony and discussing the bill at length, the committee killed the bill, which I think is appropriate. If we could just get the Department of Social Services and some of these other agencies, law enforcement, child protective services, to do what they are required to do under the law now, there are a lot of cases that would come properly before them and be handled in a way that would protect the interests and rights of the child. But those cases are not being properly handled, and here comes somebody, Senator Wesely said the Department of Social Services, saying open the way for cops to accost people's children without telling the parents. So the child gets talked to at school. The cops may feel that a reasonable time is next week to notify the parents.

PRESIDENT: One minute.

SENATOR CHAMBERS: We don't have any idea what is entailed there. The State Patrol is going to be involved. Then this talk about waiving immunity, I don't care what the defense attorney said, that is crazy. Whenever we start putting things like that in legislation where we are talking about the interest of children, the rights of parents, and others, and say that those who may intrude on these rights, who may violate these rights are immune from criminal and civil liability, then how, on the one hand, are we going to say, this is legislation to uphold some kind of right, while at the same time we trample so many others. A lot of wrongfulness is committed under the rubric of helping and protecting children. This is one such wrong and I hope the rules will not be suspended to allow this to be attached to 330. 330, even though I have questions with it, is not carrying the kind of baggage right now that would make me vote against it, but in the same way I voted against this bill that Senator Wesely is trying to incorporate into it in committee, I will vote against 330 if this bill is attached.

PRESIDENT: Thank you. Senator Nelson, followed by Senator Smith and Senator Wesely. Senator Nelson, please.

SENATOR NELSON: Mr. Speaker, I, somewhat caught me a little bit by surprise, I don't think my memory fails me altogether on when we heard this bill, too. I believe the committee felt that again this was opening the door too far. I believe we heard testimony a year or so ago, and I remember it very distinctly, that about 64.4 percent of some of these cases are true and some are not true, and, again, I have a little problem. We are running into the 19th or the 20th day of the session, and here we are, we are coming in with the bills that had been discussed in committees, regardless of whatever committee it is, and come in and amend my bill into it. I think the Judiciary Committee went over the bill with a fine tooth comb, and some of these law enforcement agencies and social service workers, as much as I would hate to have to say, leaves a little bit to desire in their compensating in coming in to address a child or so on, and so I would hope that the body would defeat the amendment and we could move on with the bill.

PRESIDENT: Thank you. Senator Smith, please.

SENATOR SMITH: Thank you, Mr. Chairman. Senator Wesely, I am sorry that all of us seem to be standing up here attacking you today, but I have to join the crowd. I have a concern in

looking at this bill, when I look at line 5, it says the law enforcement agency or department shall be given unrestricted access by any school or any person or entity, so to me that is absolutely too broad, unrestricted access. Does that mean that they have...the school, they will have no say-so whatsoever about when or where or how they come on the school grounds and deal with this child? I am asking Senator Wesely, if he would respond.

PRESIDENT: Senator Wesely, please.

SENATOR WESELY: Yes, we put that in there specifically because right now most of the schools do provide access and are very cooperative. There are some schools, however, that do not provide the access and place restrictions on that access, and make it next to impossible to utilize this.

SENATOR SMITH: But unrestricted to me makes it...I don't believe that the purpose for our children being in school, and I realize what you are trying to do. I know that there are times when you can't deal with this child in the home setting, when you have a suspect as far as abuse is concerned, and I am like Senator Chambers, I have the concern that we all have in here, but I am finding after working with Senator Scofield during the noon hour that this is just not so easy to achieve without creating some other problems. I think the biggest problem that we really have when we were discussing this, a number of us said it almost goes back to the fact that the lack of the dollars maybe, and the training, and the qualifications and the numbers of people that are out there doing this really, really, very, very important job on behalf of children, and, you know, we end up giving them...bad mouthing the Department of Social Services and in many ways they are not to blame because they are not...many of those people out there they have to hire, their salaries are not high enough, so they can't get people that are really truly qualified. They probably don't have adequate funds to train them appropriately, and maybe those are the things that we should be addressing instead of trying to put into law what's good judgment or sound judgment. I, at this point in time, don't believe I can support this amendment to the legislation, Senator Wesely. I don't even like the idea where you talk about back here...I have another question, on page 1852, where it says (2) at the bottom of the page, you are starting starting with line 7 there, that little underlined section that says, "Any person who provides unrestricted access to a child who is a

suspected victim of abuse or neglect pursuant to Section 1 of this act shall be immune from any liability, civil or criminal, which might otherwise be incurred or imposed." Is that the standard or the level of their immunity at this point in time, or is this increasing their immunity? The workers evidently you are speaking to here. Who are you speaking about?

SENATOR WESELY: Senator Smith, that is in there, as I mentioned earlier, by the school board's desire. If you look right above it on Section 1, it is essentially the same...

SENATOR SMITH: Oh, it is the board that is not...that is not held liable because of the access.

SENATOR WESELY: The schools want it, if they open up and allow the department to come in, they were concerned about a liability issue. And if you look, it is essentially the same language that is just above it, only it applies to...

SENATOR SMITH: Okay, I understand. I am sorry I misconstrued that one section there.

SENATOR WESELY: Oh, that is okay.

SENATOR SMITH: I thought you were speaking to the worker who came in.

SENATOR WESELY: No.

SENATOR SMITH: All right. Thank you very much. At this point, because of the way it is worded, I don't like especially the word "unrestricted" access. Thank you.

PRESIDENT: Thank you. Senator Wesely, please, followed by Senator Abboud.

SENATOR WESELY: Thank you. Mr. President, clearly from the discussion, there is a lot of concern about the amendment. I bring it to you for a couple of reasons. First off, again emphasizing how much of a problem we have in child abuse in this state. We have 7,000 some cases reported, 4,000 some confirmed, and to find the truth, to identify who is being hurt, who is being abused, and what the situation is, in some cases, you have trouble working through the home of the child involved. You need to go to the school. The vast majority of schools have

been working with us and we have had no problem. A small minority of schools have been a problem. They have restricted access. They have made it difficult for child protective custody workers to come in and interview the children to find out the situation, and just because we have a couple of dozen of these schools, I guess it is unfortunate, but that is why some laws are passed. When some people are unreasonable, it causes us to pass legislation. I don't think there is the problems that Senator Smith and Senator Nelson and Senator Chambers have raised, really. I think the lack of caseworkers and training is something we can address with LB 720, which we hope we will have a chance to vote for very shortly, but, again, the basic gist of this amendment is...it shouldn't be a problem. I still don't understand, the unrestricted access, for instance, again, it is related to the current problem with, yes, you can get access in some of these schools, but it is so restricted, you can't really utilize it, and so unless you say unrestricted, you really don't accomplish anything. That is the problem that we have. That is why we use it. It is not to say that you can come in any hour, hopefully, that wouldn't be the case. Yeah, the unrestricted is an attempt to hopefully you would make a contact and you would work with the local school. Usually the way it is handled now is you go into a school that is a cooperating school, like I said, most of them. You get a hold of the principal or whoever, and you don't want everybody in the world to know. I mean, you just can't do that, but you make the proper contact. The school nurse, perhaps, goes with the caseworker, whoever, and they pull the child at an appropriate time and pull them out and sit down with them in a comfortable setting and have a talk with them about what the allegations are, and that is really how it is handled. Now that is what we contemplate this doing but the reason "unrestricted" is in there is because we now have access in some cases, but it is so restricted that it just doesn't work, and so I think everything is fine here. I don't like to spring amendments up and surprise people, so I think rather than proceed, I will withdraw this motion to suspend the rules but let you know that we are going to have some kids out there in situations that we are not going to be able to help because we don't have this amendment passed, and I am sorry that that is the case, but I guess we will have to keep working on trying to address that problem, so I would move to withdraw my motion.

PRESIDENT: Okay, the motion is withdrawn. Mr. Clerk, do you have anything else?

CLERK: Mr. President, the next motion I have is by Senator Scofield. Senator, this is your motion to suspend the germaneness rule to permit consideration of your amendment, AM1521. (See pages 1873-74 of the Legislative Journal.)

PRESIDENT: Okay, Senator Scofield, please.

SENATOR SCOFIELD: Thank you.

PRESIDENT: Just a minute, Senator Scofield. (Gavel.) Let's hold it down so we can hear the speakers, please.

SENATOR SCOFIELD: Thank you, Mr. President and members. You have before you an amendment that looks very much on the front page like the previous amendment we discussed, so I want to make sure and reference you to AM1521. When we met over the noon hour and I discussed further particularly the concerns that Senator Chambers raised, I think Senator Chambers raises some valid concerns about the breadth of the language, and even Senator Pirsch was a little bit concerned about her children coming in and using that on her, and I think that we have some language here that gets at the message that I think it is important to convey, and the points that Senator Chambers made about when the time comes to apply these pieces of language, it can be difficult. And as I stated earlier, the reasons for the Family Policy Act were whenever possible to keep families together and to avoid a child protective service worker or whomever to come in and lay their values on that family and unnecessarily disrupt that family's life. But we have had instances of where I think, for one reason or another, children have been left in a home at great risk. And so what I am proposing here is language on page 1 of the amendment, we reiterate our desire to leave children in the least intrusive and least restrictive settings, in this case, we talk about method, consistent with the needs of the child, and then on page 2, where the language was broad enough to raise some concern, what I have substituted here is language that essentially recognizes that there isn't any way in statute that we can give clearer direction about when that child protective service worker and that supervisor is making that decision that there is ever going to be a black and white distinction, but I think the language that is offered here sets a standard of an assessment of risk, and so the language that I am offering states, "The family policy objectives prescribed in sections 43-532 to 43-534 shall not be construed to mean that a child

shall be left in the home when it is clearly shown that continued residence in the home places the child at greater risk than removal from the home does." I think that recognizes the need to strike a balance. If you are out there trying to make that decision about, should I move this child out of the home or not, then I am asking that person to make a judgment about where is this child at greater risk. If the child is at greater risk leaving the child in the home, then you get them out of the home, and I think given the knowledge we have today about child development and the kinds of risk situations that we see children in, that broad a language again reiterates the need to train workers well enough so they are familiar with the theory of child development, and, obviously, it puts a burden on the agency to make sure they send well-trained people out there, but it does ask them to make an assessment of risk, and then make the choice that they think places the child at lesser risk. So with that clarification, I would be happy to answer questions or else I would ask you to suspend the rules so that we can hopefully move ahead and not have children placed at risk out there any longer. Thank you.

PRESIDENT: Thank you. Senator Abboud, followed by Senator Pirsch. Senator Pirsch.

SENATOR PIRSCH: Thank you. I did want to stand up and thank Senator Scofield for working with Senator Chambers on this. We had kind of a powwow after the session closed and I do like this language much better, and, indeed, while I would not support the first, I will support this second amendment to LB 330. Thank you.

PRESIDENT: Okay, thank you. Senator Scofield, would you like to close on your motion? Okay, the question is the adoption of the Scofield amendment. All those in favor vote aye, opposed nay. Actually, the motion is to suspend the rules, so need 30 votes. It requires 30 votes. Record, Mr. Clerk.

CLERK: 31 ayes, 0 nays, Mr. President, on the motion to suspend the rules to permit consideration of the amendment.

PRESIDENT: Now, Senator Scofield.

SENATOR SCOFIELD: Thank you, Mr. President. I think I adequately explained the language here. I simply want to do something I neglected to do on my motion to suspend and that is

to thank Senator Chambers for raising the issue because I think he has kept us true to the intention of the Family Policy Act and made sure that our language is clear, and Senator Pirsch was helpful, and Senator Smith was helpful on that. And so I hope this is language that moves us down the road. I don't think this in any way erodes the original intention of the Family Policy Act but it is clarifying language that sets that standard of assessment of risk to a child, and perhaps will be of some assistance to those hardworking and overworked folks out there in the field who are trying to make these difficult choices as far as when do you remove a child from a home and when do you leave the child there. So with that, I would ask you to adopt the amendment. Thank you.

PRESIDENT: Thank you. Senator Pirsch, did you wish to speak on this? Okay, Senator Wesely.

SENATOR WESELY: Thank you. Mr. President, I just am a little concerned, I guess to some degree, the amendment that we had originally had been brought up at a hearing and then adopted by the committee, and not having had a chance to look at this other language, it is considerably weaker in terms of concern for the child, and I am very concerned about children in dangerous situations. And I think the Family Policy Act, which is very positive in a lot of ways, but I have had an ongoing concern about its impact on children and I think this amendment was all an attempt to try and deal with that particular issue, and I think this is definitely an improvement on the Family Policy Act but the change is maybe a little more than I would like to have seen from that original amendment, and without having had a chance to review it, I am just going to reserve the right to perhaps not feel good about it.

PRESIDENT: Thank you. Senator Scofield, would you like to close on the adoption of your amendment?

SENATOR SCOFIELD: Thank you, Mr. President. I would, in some ways I think I would disagree with Senator Wesely's assessment that this is weaker. It certainly doesn't leave the broad language in there in terms of perhaps a judgment being made by a worker, making a judgment that that environment is physically, developmentally, or emotionally harmful either immediately or cumulatively, but I think the concerns that Senator Pirsch and Senator Chambers raise are legitimate concerns and could, under certain circumstances, be used to inappropriately leave a child

in a home, and I guess the reason that I bring you this second language that I think, frankly, is better in terms of recognizing the kind of judgment call that a person has to make out there. And I think we are probably doing the best we can in terms of a policy statement of saying, we know that when it comes right down to it, it is you, on the front line, who is eventually going to make that decision about, is the child at greater risk in the home or out of the home, and so I think this is a standard that will work. It is okay with me if you feel uncomfortable about it, Senator Wesely, and I will want to keep working on this, I share your concern for the welfare of the child. But I think this may get us down the road a ways as far as solving some of those problems, and if it doesn't, I am sure we will revisit this issue. Thank you.

PRESIDENT: Thank you. The question is the adoption of the Scofield amendment. All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 26 ayes, 0 nays, Mr. President, on adoption of Senator Scofield's amendment.

PRESIDENT: Senator Scofield's amendment is adopted.

CLERK: Mr. President, Senator Pirsch would move to amend the bill. (See page 1875 of the Legislative Journal.)

PRESIDENT: All right, Senator Pirsch, please.

SENATOR PIRSCH: Thank you, Mr. President, and hopefully this is the last amendment. I appreciate the patience of this body in dealing with this serious matter. As you will recall, we did agree with Senator Chambers' removal of the "Threatening another in a menacing manner" at the top of page 4 and reinstating the old language. Really, the problem with that language is that who can define the imminent serious bodily injury, and I would like to read how those terms are defined in the statutes and tell you that my amendment would take out "serious" and leave in "of imminent bodily injury", imminent bodily injury meaning physical pain, illness, or any impairment of physical condition. Now that by fear is a great deal, but when it comes to how do you prove the intent of that fear when it comes to serious bodily injury, which means substantial risk of death, substantial risk of serious permanent disfigurement, or protracted loss or impairment of the function of any part or

organ of the body. If this is being threatened, it is difficult to prove that more serious standard of serious bodily injury. Since we are talking about the threat and the fear, and a woman can be in fear of being killed, but she is more likely in fear of being hit or thrown across the room or having her arm broken, and that is why, and I believe Senator Chambers agreed to this, and I wish he was listening. Okay, you agree? Yes, that this now then would keep in the "Placing by physical menace another in fear of imminent bodily injury." We have eliminated the threatening in a menacing manner but we are saying that bodily injury would be more likely to be that kind of injury she would be in fear of rather than having to prove that it was fear of being killed or the more serious. With that, I would hope that you would adopt this amendment and, hopefully, we can get on and pass LB 330 and I appreciate your patience. Thank you.

SPEAKER BARRETT PRESIDING

SPEAKER BARRETT: Thank you. The question is the adoption of the Pirsch amendment to LB 330. Those in favor vote aye, opposed nay. Have you all voted?

SENATOR PIRSCH: I don't know if there are enough here who are paying attention, but, thank you.

SPEAKER BARRETT: Record, Mr. Clerk.

CLERK: 26 ayes, 0 nays, Mr. President, on the adoption of Senator Pirsch's amendment.

SPEAKER BARRETT: The amendment is adopted.

CLERK: I have nothing further on the bill, Mr. President.

SPEAKER BARRETT: To the bill, discussion on the advancement of LB 330 as amendment. Any discussion? Seeing none, Senator Pirsch, any close?

SENATOR PIRSCH: I would waive closing and just move LB 330 to Final Reading.

SPEAKER BARRETT: Thank you. The question is the advancement of LB 330 to E & R Engrossing. Those in favor vote aye, opposed nay. Request for a machine vote by Senator Barrett. Have you all voted? Record, please.

CLERK: 29 ayes, 0 nays, Mr. President, on the advancement of LB 330.

SPEAKER BARRETT: LB 330 is advanced. LB 586.

CLERK: Mr. President, the first item on 586 are Enrollment and Review amendments, Senator.

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move the adoption of the E & R amendments to LB 586.

SPEAKER BARRETT: Shall the E & R amendments to LB 586 be adopted? All in favor say aye. Opposed no. Carried, they are adopted.

CLERK: Mr. President, I have nothing further on the bill.

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that LB 586 as amended be advanced to E & R for Engrossing.

SPEAKER BARRETT: The question is the advancement of LB 586. All in favor say aye. I'm sorry, Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman, I just want to say one thing on this bill and on another bill. I did everything I could on General File to express what I thought was wrong with the bill and why I didn't think it was wise. It's clear that I'm not going to be able stop the bill or amend it so I'm not going to attempt to do that. And when the judges' salary bill comes up, since you all have persuaded me that you feel that the judges are entitled to the consideration that they're seeking this session, I'm not going to fight them on their salary either. I had said that I would, but since the body is in such a collegial attitude with reference to the judges, their salary bill should fly right through also, but at least it won't have any impediments put in its path by me. And with that, I'm not going to vote for this bill, but I'm not going to try to do anything to stop it.

SPEAKER BARRETT: Thank you. Any other discussion? If not,

the kill motion but I did want Senator Warner to know why I didn't vote on the other one, and I hope, too, that if there is a problem, which obviously there is, that, Senator Warner, that you will talk with Landis and the other senators who are on the bill and try and work it out for Final Reading because I feel that we should do the right thing and the correct thing, the correct thing, in the bonding issue of this bill. It is a wonderful bill, I think, to bring...to help the municipalities all over the state, and so I don't want to see it falter because of a bonding mechanism or a defect in that part of the law, of the bill. Thank you.

SPEAKER BARRETT: Senator Wesely, Senator Scofield next.

SENATOR WESELY: Mr. Speaker, members, Senator Warner's comments I think point out exactly where we are at in the session. It is crunch time, ladies and gentlemen. We are down to the last few weeks. We have got too many bills, too many amendments, too much to do, and not enough time to get the job done, and the frustrations of Senator Warner and Senator Landis are felt by all of us. They all may be a little bit under the surface right now but they are all going to come out in time as we try and struggle through these very difficult issues, and this issue, frankly, among all of them, is not as difficult as what we are about to face. What we have got to recognize, and I think we need to think through this as we go forward, is how vitally important it is to give ourselves time to talk to one another, to share our feelings and thoughts about these bills and the amendments. There is amendments to LB 330 that we came up with and they were perfectly good in some instances and we just didn't know enough and couldn't share enough with one another to deal with them, and then in some cases over the noon hour, we sat down and had a chance to talk to one another and things got worked out. LB 182, a bill that we fought over on General File, Senator Coordsen, Senator Smith, and I, and others sat down, we have worked it out. We are not all happy and tremendously excited about it but the time we spent together, we spent about two hours, I think, together, we have worked something out to where we could at least go forward with the legislation and hopefully work it out. And we just have got to recognize we don't give ourselves enough time here off the floor to deal with one another, to talk to one another, and to work with one another on these issues, and when a late amendment comes up like this, I don't think we should come down on Senator Warner and recognize the fact that he has got a million other things he is

would primarily, well, only affects the interstate construction within Douglas County. I know...there is language in the bill urging the department to again apply this year. If I remember correctly, last year they applied, I think it was $16 million and this year I think the number is, I know it is larger, it seems to me it is around 30 but that may not be exactly right, but there is language encouraging or concurring in the department making that request the second time, and, frankly, if it does not occur, if the state does not receive those discretionary funds, a year from now we will have to look at that issue and make a determination if there is a way and logical method in which the state could help accelerate that program other than with those discretionary funds. I have spoken with Senator Kerrey one day within the last month and talked about it and he was very interested in trying to assist in whatever way he could in that area. So, but the only direct relation to those discretionary funds is concurrence, in effect, in the appropriation bill that the Department of Roads should proceed with those requests, and I know that is being done.

SENATOR HARTNETT: Thank you.

SPEAKER BARRETT: Thank you. Senator Hannibal, please.

SENATOR HANNIBAL: Mr. Speaker, I would move that we recess until one-thirty.

SPEAKER BARRETT: Thank you. Mr. Clerk, anything for the record.

CLERK: Mr. President, yes, thank you. A series of amendments to be printed to LB 813. (See pages 1942-46 of the Legislative Journal.)

Enrollment and Review reports LB 330 and LB 586 as correctly engrossed. Mr. President, I have an Attorney General's Opinion addressed to Senator Beyer, Byars, (Re. LB 809) excuse me, and Senator Bernard-Stevens had amendments to LB 814, Mr. President, and that is all that I have. (See pages 1936-46 of the Legislative Journal.)

SPEAKER BARRETT: Thank you. You have heard the motion to recess until one-thirty. Those in favor say aye. Opposed no. The ayes have it. Carried. We are recessed. (Gavel)

SPEAKER BARRETT: Senator Wesely.

SENATOR WESELY: Page 1499, did you say?

CLERK: This one, no, that was the amendment number, the page is 1851, 1851.

SENATOR WESELY: Okay. Okay, I'm just going to take one second and withdraw this. This is an amendment that I offered earlier on LB 330. It deals with the problem, don't worry, Senator Chambers, (laugh). It deals with the problem of getting onto the school grounds and investigating child protective custody complaints. It was obvious there is a misconception and confusion about the amendment. I'd like to work with Senator Chambers and other people to try and deal with that, because clearly there is a problem on the part of the department and some schools, and we need to deal with it. But rather than take time and go into it right now, I'm just asking that the motion be withdrawn and hopefully we can come back next year and resolve this problem.

SPEAKER BARRETT: Thank you. It is withdrawn.

CLERK: Mr. President, the next motion I have is by Senator Korshoj.

SPEAKER BARRETT: Senator Korshoj, please.

CLERK: Senator, you have the next motion.

SENATOR KORSHOJ: Withdraw, please.

SPEAKER BARRETT: Thank you, it is withdrawn.

CLERK: Mr. President, the next motion I have is by Senator Abboud. Senator Abboud would move to suspend the germaneness rule so as to permit consideration of AM1530. The amendment itself, Mr. President, is found on page 1882 of the Journal.

SPEAKER BARRETT: Senator Abboud.

SENATOR ABBOUD: Yes, Mr. President. This particular amendment provides, page 1882. What it provides for is at the current time when a child dies from sudden infant death syndrome, which

Mr. President, Senator Barrett would like to ask unanimous consent to add his name to LB 84 as co-introducer. That is all that I have, Mr. President.

PRESIDENT: Thank you. I would like to introduce two guests that we have in the north balcony. We have two groups of students, one group as guests of Senator Warner, we have 48 students in the fourth grade from Norris School and three teachers with them. Would you students and teachers please stand and be recognized. Thank you for visiting us today. Senator Rogers also has a group with us, there are 38 seventh grade students from St. Paul Public Schools in St. Paul, Nebraska, with their teachers. Would you folks please stand and be recognized. For those of you that will be here for a few minutes, we will be doing Final Reading in a moment or two, and that is a situation where the Clerk must read the bills prior to their being voted on at the final stage of the bill going across the board. So they read quite fast and you will have to listen closely to understand it, but we are happy that you are with us today. Mr. Clerk, are we ready to start on Final Reading? Will you please take your seats so that we may start Final Reading. (Gavel.) Please return to your seats so that we may start on Final Reading, ladies and gentlemen. Mr. Clerk, will you please read LB 330.

CLERK: (Read LB 330 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 330 pass? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

CLERK: (Record vote read. See pages 2094-95 of the Legislative Journal.) 41 ayes, 0 nays, 4 present and not voting, 4 excused and not voting, Mr. President.

PRESIDENT: LB 330 passes. LB 325.

CLERK: (Read LB 325 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 325 pass? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

way or what a person should do. I guess it is disgusting but go ahead and fix it, I guess. I would yield the rest of my time to Senator Schmit if he wants it but I think he is coming up soon.

PRESIDENT: All right, thank you. We are going to Senator Haberman, please. Now as I understand it, we could grant this by unanimous consent, but is there any objection to bracketing this bill as suggested by Senator Withem? Is there any objection to that? If there is, we could continue to discuss it. Otherwise, we will grant the bracketing if there is no objection. Pardon me. Is there any objection to the bracketing of this motion until this coming Monday? If so, let me see your hand. So if not, we will bracket this motion until this coming Monday. Speaker Barrett, is Speaker Barrett here, so he will know about it. Thank you, Senator Withem. Anything for the record at this time, Mr. Clerk.

CLERK: Yes, Mr. President, I do, thank you. I have amendments to be printed to LB 84 from Senator Lamb and others; explanation of vote from Senator Beck (Re. LB 330); and, Mr. President, I have an Attorney General's Opinion regarding LB 812. That is all that I have, Mr. President. (See pages 2097-99 of the Legislative Journal.)

PRESIDENT: Thank you. With that, we'll move on to General File. LB 769.

CLERK: Mr. President, 769 was discussed yesterday. The first amendment I have pending is by Senator Ashford. Senator, this is your amendment that reads... (Read Ashford amendment as found on page 2099 of the Legislative Journal.)

PRESIDENT: Senator Ashford.

SENATOR ASHFORD: Thank you, Mr. President and members. This is the only amendment that I plan on bringing to the body today on General File. And I've passed around, and I apologize to the body. When I was walking past Senator Schmit, earlier, I apologized to him for trying...for "over lawyering" this bill. And I do apologize for that, but I do have some concerns and I want to raise them. Could I get a gavel, please.

PRESIDENT: (Gavel.) Please, let's hold the conversation down so that we can hear the speaker. Thank you.

solid decision, a solid, good public policy decision that is going to make sense. Obviously, we would like both parents to be notified in an ideal world. And I suggest to you that in most cases, if you have a one parent requirement, if that minor girl is going to make the decision to notify one parent, she'll notify both of them, that's her desire. But if it's...if the requirement of notifying two is going to dissuade her from notifying at all, that encourages abortion. The two parent requirement in 20...out of the Minnesota experience, in 20 to 25 percent of the cases encourages abortion, encourages judicial bypass, which is an easy road to abortion. I really wish you'd listen to this and think through this on your own without necessarily following what the lobbyists may be telling you to do on this, because this really makes sense. So I would encourage you, please, to adopt this amendment at this time. This is the only amendment I'm going to offer on General File. On Select File, consistent with the concerns that Judge Urbom had with confidentiality and the concerns that the court had with Hodgson, with the 48-hour rule, I believe it should be 24 and not 48, but I'm not going to argue that today, but I do think that the one parent makes good, solid sense. It answers some of the concerns that I believe Senator Lynch and maybe some of the others, Senator Hannibal and others may have raised in their very, very well thought out comments on this bill. So let's relieve some of the pressure here and let's pass an amendment that is good public policy, because it is good public policy and makes good sense. Thank you.

PRESIDENT: Thank you, Senator Ashford. We'll try to have better attention for you when you close. While the Legislature is in session and capable of transacting business, I propose to sign and do sign engrossed LB 330, LB 325, and LB 811. I'd like to introduce a special group up in the north balcony today. Senator Moore has a group of 52 fourth grade students from Willard Elementary School in York, Nebraska. They are accompanied by their teachers. Would you folks please stand and be recognized, students and teachers. I want to draw your attention to Senator Moore's necktie, ladies and gentlemen, if you'll turn around and show us. As I understand it, when the students in this school read a book they get a, is that a flag, Senator Moore, and all the...you'll notice the great number of flags. So apparently you're learning to read, which is an important thing for all of us. We're happy that Senator Moore gracefully wears the tie. Thank you for visiting us today. Senator Haberman, please, on the Ashford amendment. Senator

Senator Ashford amendment. All those in favor vote aye, opposed nay. Record, Mr. Clerk, please. Record vote has been requested.

CLERK: (Read record vote. See pages 2099-2100 of the Legislative Journal.) 32 ayes, 4 nays, Mr. President, on the adoption of the amendment.

PRESIDENT: The Ashford amendment is adopted. Do you have anything else on it, Mr. Clerk?

CLERK: I do, Mr. President. May I read some items into the record?

PRESIDENT: Yes, you may.

CLERK: Mr. President, the Enrolling Clerk has presented to the Governor bills read on Final Reading this afternoon. (Re: LB 330, LB 325, LB 811.)

A study resolution by Senator Withem. (Read brief explanation of LR 116.) It will be referred to the Reference Committee. LR 117 by Senator Johnson. (Read brief explanation.) LR 118 by Senator Johnson. (Read brief explanation.) LR 119 by Senator Rod Johnson. (Read brief explanation.) LR 120 by Senator Johnson. (Read brief explanation.) LR 121 by Senator Johnson. (Read brief explanation. See pages 2100-04 of the Legislative Journal.)

Senator Schmit has amendments to be printed to LB 132; Senator Landis to LB 323. (See page 2104 of the Legislative Journal.)

Mr. President, the next amendment I have to LB 769 is an amendment from Senator Lindsay. Senator, I understand you wish to withdraw this amendment, however, and substitute another amendment, is that correct?

SENATOR LINDSAY: That is correct.

CLERK: And, Senator, the amendment you would like to substitute is the one that reads on page 5, lines 22 and 23, strike the original language and insert the following, a new Section 9, is that right? (See Lindsay amendment found on pages 2104-05 of the Legislative Journal.)

SENATOR LINDSAY: The couple of concerns, I think is the health, first of all, is a very broad term, that what constitutes a serious risk to health can just about open up, open it up to anything. Number two, I think if we are talking about that type of situation where there are serious problems of some immediacy, there is going...I think general consent statutes require that parents be notified of the health dangers anyway, so I think the parent is going to be involved regardless.

SENATOR CHAMBERS: No, this...

SPEAKER BARRETT: Time. Senator Chambers, your light is on next, if you would like to continue the discussion.

SENATOR CHAMBERS: Right. Senator Lindsay, what you are talking about is something entirely different. We are talking about abortion which by law has been set off into a separate category by itself, different from all other medical procedures, and the U.S. Supreme Court has done so. Now you have voted this session, because I've watched you, although I didn't raise the issue at that time, on bills where it can be a crime to threaten serious harm to somebody, which is broader than this and you voted for that and that could be a crime. Why could you vote for that, but you can't vote for this? LB 330 will give you an example where we are talking about the type...

SENATOR LINDSAY: Pardon me.

SENATOR CHAMBERS: LB 330 was one that we passed this morning and you voted for it all the way across the board, the protective orders where the threat of serious injury to somebody.

SENATOR LINDSAY: Yeah.

SENATOR CHAMBERS: And we don't know what that means.

SENATOR LINDSAY: Well, that is not what this statute does though. This says health, if you want to put serious injury, that is different.

SENATOR CHAMBERS: Well, no...

SENATOR LINDSAY: (Interruption) ...health can be a broad range

That is all that I have, Mr. President. (See pages 2207-17 of the Legislative Journal.)

SPEAKER BARRETT: Thank you. Senator Landis.

SENATOR LANDIS: I move we recess until one forty-five, Mr. Speaker.

SPEAKER BARRETT: A motion to adjourn, or recess, I am sorry, until one forty-five. All in favor say aye. Opposed no. Carried. We are recessed until one forty-five.

RECESS

PRESIDENT NICHOL PRESIDING

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

PRESIDENT: Do you have items for the record, Mr. Clerk?

CLERK: Mr. President, I have a communication from the Governor addressed to the Clerk. (Read communication regarding LB 330, LB 325, and LB 811 as found on page 2218 of the Legislative Journal.)

Mr. President, I have amendments to be printed to LB 588 by Senators Withem and Hartnett. That's all that I have, Mr. President. (See page 2218 of the Journal.)

PRESIDENT: All right, we'll turn over the page to number 11 and start on LB 814.

CLERK: Mr. President, the Legislature considered 814 yesterday. It's the capital construction bill. Mr. President, the...Senators Hartnett and Korshoj had offered an amendment to the bill, Mr. President. That amendment was subsequently divided. When the Legislature left it, I believe, they had acted on several of the amendments. I believe the next one, Mr. President, is an amendment to strike Section 29 from the bill. Senator, is that consistent with where you are?

SENATOR HARTNETT: That's great, yeah, yeah.

connect these two bills. The interesting thing is that I worked with one of the co-sponsors of LB 769 to keep the bill from being unconstitutional on its face, amendments that I offered to that bill were accepted, by the co-sponsor, because they were necessary to improve the bill and cause it to do what they claim their intent was. I had stated that I would not make any attempts to help the bill become constitutional, but then when I saw what Senator Lindsay was doing, and the feeling that I have about legislating, I felt compelled to offer those amendments that clarified and that removed unconstitutional language. Now, as far as the rest of what Senator Labedz said, she certainly does have a right to be offended at the approach that I take to bills. There are a number of things that are said on this floor, a number of things that are done that I take offense at, but I stand up and do battle. And if there is ever an attempt to try to have me ruled out of order, because of the approach that I take to legislating, then I'm sure we'll fight that battle when it arises. But there are others of you with whom I've fought tooth and nail on bills. It just happens that on 769 there are others who are opposed, too, so I presume Senator Labedz is going to take out after Senator Smith, after Senator Bernard-Stevens, and after Senator Ashford. And, if she does not, then we'll know what her real motivation is. But on LB 84, which is the bill that Senator Hall and others had worked out an agreement on, the property tax bill, or LB 89, whichever one it is, I gave them a lot of grief. I gave Senator Kristensen considerable grief on his appellate bill, where he wanted to create an appellate division of the court. On LB 330, the protection order, Senator Bernard-Stevens had an amendment, and I meant we locked horns on that, until he paid attention on a subsequent amendment and realized I was right. But he won on the one that we argued about. So, I expect to argue with people on these bills. I expect the debate to be vigorous, I expect it to be very strong. And when people have an emotional involvement in a bill I, understanding human nature, recognize what that emotional involvement will cause a person to do. Now, there was another bill about which I felt very strongly, and that was LB 592, establishing a minimum sentence in drug cases. Senator Abboud and I went at that. As Senator Korshoj mentioned, I was looking at the green copy and he was named "Senator Abbound" in that bill. A-b-b-o-u-n-d. But I didn't bring that up during the debate because it was extraneous to the issues that we were discussing. But the method that...by which I argue and debate is well known by everybody on the floor.