

the Executive Board will meet in...the Reference Committee will meet in Room 2102 at three-fifteen today for purposes of referencing bills, Reference Committee at three-fifteen.

Mr. President, new bills. (Read LBs 161-189 by title for the first time. See pages 82-88 of the Legislative Journal.)

Mr. President, in addition to those items, I have requests from Senators Chambers, Nelson, Schellpeper, Hefner, Lamb, Crosby and Hartnett to add their name to LB 48 as co-introducer; Senator McFarland and Schellpeper to LB 52 as co-introducer and Senator Carson Rogers to LB 84 as co-introducer. (See page 88 of the Legislative Journal.)

PRESIDENT: No objections, so ordered.

CLERK: Mr. President, an announcement from the Agriculture Committee and signed by Senator Rod Johnson, the Ag Committee has selected Senator Owen Elmer as its Vice-Chairperson. Mr. President, I believe that is all that I have.

PRESIDENT: Ladies and gentlemen, we're about to start the proceedings for the afternoon, and we're very grateful to have with us Father Dawson this afternoon for our invocation. Would you please rise for Father Dawson.

FATHER DAWSON: (Prayer offered.)

PRESIDENT: Thank you, Father Dawson. Please feel free to stay with us as long as you like. We're privileged to have with us this afternoon the Nebraska National Guard who will present colors. Would you please rise.

PRESENTATION OF COLORS

PRESIDENT: Ladies and gentlemen of the National Guard, we appreciate your being with us and presenting the colors today. If I might say a word to those who will be escorting the folks in today, it will be necessary that we do it a little bit different than we usually do it. When one group of ushers brings in their group, please bring them up onto the stage and then retire back to your seats until the inauguration proceedings are over with and then I will call you back one group at a time to take your group back, because if we should all come in and all stay up here on the podium, we wouldn't have

March 13, 1989

LB 46, 54, 145, 182, 211, 237, 247
259, 288, 315, 316, 356, 379, 388
411, 418, 437, 447, 449, 449A, 506
587, 630, 651, 652, 809

SPEAKER BARRETT PRESIDING

SPEAKER BARRETT: (Microphone not activated) ...to a new week in this the life of the First Session of the Ninety-first Legislature. Our Chaplain this morning for the opening prayer, Pastor Jerry Carr of First Four-Square Church here in Lincoln. Pastor Carr, please.

PASTOR CARR: (Prayer offered.)

SPEAKER BARRETT: (Gavel.) Thank you, Pastor Carr. We hope you can come back again. Roll call.

CLERK: Quorum present, Mr. President.

SPEAKER BARRETT: Thank you. Any corrections to the Journal?

CLERK: I have no corrections, Mr. President.

SPEAKER BARRETT: Messages, announcements, reports?

CLERK: Mr. President, your Committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 587 and recommend that same be placed on Select File; LB 379, LB 46, LB 388 and LB 145, LB 237, LB 418, LB 506, LB 449, LB 449A and LB 54, all placed on Select File, some of which have E & R amendments attached. (See pages 1059-66 of the Legislative Journal.)

Mr. President, Business and Labor Committee reports LB 630 to General File; LB 315 to General File with amendments; LB 288, indefinitely postponed; LB 316, indefinitely postponed, LB 411, indefinitely postponed, and LB 652, indefinitely postponed, those signed by Senator Coordsen as Chair of the Business and Labor Committee. (See pages 1067-69 of the Legislative Journal.)

Mr. President, a series of priority bill designations. Senator Withem, as Chair of Education, has selected LB 259 and LB 651. Mr. President, Senator Nelson has selected LB 447; Senator Langford, LB 211; Senator Coordsen, LB 182; Senator McFarland, LB 437; Senator Byars, LB 809; Senator Withem, LB 247; and Senator Crosby selected LB 356, Mr. President.

I have an Attorney General's Opinion addressed to Senator Hefner

March 14, 1989

LB 182, 340, 432, 483, 586, 628, 683
714, 733, 779, 783, 785, 786

Judiciary Committee reports LB 182 to General File with amendments, LB 483 General File with amendments. Those are signed by Senator Chizek. Revenue Committee reports LB 779 indefinitely postponed, LB 783 indefinitely postponed, LB 785, LB 786, all indefinitely postponed. Those are signed by Senator Hall as Chair. (See pages 1144-45 of the Legislative Journal.)

I have a Rules Committee report, Mr. President, regarding proposed rules change offered earlier this session.

Judiciary gives notice of confirmation hearing.

Senator Wesely has amendments to LB 733, Senator Conway to LB 340 to be printed and Senator Robak to LB 628. (See pages 1146-47 of the Legislative Journal.)

Mr. President, Senators Landis, Schellpeper, Goodrich and Barrett would move to raise LB 683 and Senator Wesely would move to raise LB 432, both those will be laid over.

Senator Kristensen would like to add his name to LB 586 as co-introducer and Senator Conway to LB 714. (See page 1148 of the Legislative Journal.) That is all that I have, Mr. President.

SPEAKER BARRETT: Thank you. Senator Wehrbein, would you care to adjourn us?

SENATOR WEHRBEIN: Sure, I can handle this. Mr. Chairman, I move we adjourn until tomorrow morning at nine o'clock on March 15.

SPEAKER BARRETT: Thank you. You've heard the motion. Those in favor say aye. Opposed nay. Ayes have it, motion carried, we are adjourned.

Proofed by:

Sandy Ryan
Sandy Ryan

April 12, 1989

LB 182, 211, 586, 642, 767A, 769

advancement of LB 586.

SPEAKER BARRETT: LB 586 is advanced. Anything for the record?

CLERK: Mr. President, your Committee on Judiciary, whose Chair is Senator Chizek, reports LB 211 to General File, and LB 642 to General File with amendments, those signed by Senator Chizek. I have a proposed rule change offered by Senator Korshoj. That will be referred to Rules Committee. Senators Bernard-Stevens and Schimek have amendments to be printed to LB 769. General Affairs gives notice of confirmation hearing, as does Business and Labor, those signed by Senators Smith and Coordsen as Chairs. And new A bill, LB 767A, by Senator Smith. (Read by title for the first time.) That's all that I have, Mr. President. (See pages 1657-60 of the Legislative Journal.)

SPEAKER BARRETT: Thank you. Senator Peterson, would you like to recess us, please.

SENATOR PETERSON: I move, Mr. President, we recess until one-thirty.

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

RECESS

SPEAKER BARRETT PRESIDING

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

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

CLERK: Mr. President, I have an Attorney General's Opinion addressed to Senator Wesely regarding LB 182. That's all that I have, Mr. President. (See pages 1661-63 of the Legislative Journal.)

SPEAKER BARRETT: Thank you. Proceeding immediately then to our General File agenda, 1989 senator priority bills, LB 182.

CLERK: Mr. President, 182 is a bill introduced by Senators Coordsen, Bernard-Stevens, Scofield, Ashford, Lindsay, Schellpeper, Labedz, Kristensen and Moore. (Read title.) The bill was introduced on January 5 of this year, Mr. President, referred to Judiciary. The bill was advanced to General File. I have committee amendments pending by the Judiciary Committee.

SPEAKER BARRETT: On the committee amendments, Senator Chizek.

SENATOR CHIZEK: Mr. Speaker, colleagues, 182 is a bill that creates a review panel in certain juvenile cases when the court ordered treatment plan conflicts with the treatment plan of the Department of Social Services. Senator Coordsen will address the bill shortly. The committee amendments are on page 1144 of the Journal, and the amendments were brought to us by the introducer. These are basically technical amendments designed to clarify the intent of the bill, ensure the process is completed in a timely fashion and provide for emergency placement situations involving a youngster. That's basically what the amendments are, and I would ask for adoption of the committee amendments.

SPEAKER BARRETT: Thank you. Senator Coordsen, on the amendments.

SENATOR COORDSEN: Thank you, Mr. President and members of the body, I think to explain the committee amendments and the necessity for adopting them we should background the history of this bill just a little bit. This bill was brought about as a result of a Supreme Court decision in January of 1988 and some problems that members of the county and juvenile courts had with how that impacted the placement and the care and treatment of juveniles when they were assigned to the Department of Social Services, wards of the court. In the process of developing the bill that we have in the green copy, that process, basically, consisted of a by-mail transmission of various proposals to a number of interested parties. By the very nature of the process, it was somewhat lengthy. About mid-December I said that we had to prepare our bill for introduction and that further changes that were felt...further modifications in the bill should be done at the hearing. The last modification then of LB 82 (sic) is the committee amendments, which were presented to the Judiciary Committee at the time of the hearing. What they provide for is that to ensure the language is plain that only contested placements will be afforded the review process

that is provided for in the bill, that any other appeals will be processed in the same manner that is currently provided by law. There was a feeling that the bill, as originally drafted, was not specific enough in establishing some time lines in order to be sure that decisions were made in the best interest of a juvenile in as most expeditious a manner as possible, and that is paragraph 2 of the proposed committee amendment. In the drafting process, there was one of the parties that would probably be present in a case that was inadvertently left out, and that was the guardian ad litem, this would install that language into the bill. Second page of the committee amendment or further down, I'm looking at a different copy than the one in your bill book, Section 5 is a little language change in the first part of that. And then it provided that the court may order the department and the probation officer to work together in the preparation of the proposed plan for the affected juvenile. Section 6 of the committee amendment provides that all interested parties would receive copies of any notice of placement change that is given, and Section 7 provides an addition to the bill to provide for a hearing to review such change in placement.

SPEAKER BARRETT: One minute.

SENATOR COORDSEN: The original bill, if there was a placement change, the notice of the placement change would be provided to the court at least seven days prior to the change, and it was felt that there needed to be a provision for emergency situations where a change needed to be made right now. So that's the reason behind the committee amendment, the reasons for the contents in the committee amendment, and I would move for its adoption, Mr. President.

SPEAKER BARRETT: Thank you. Any other discussion? Senator Chizek, would you care to close on the adoption of the amendments?

SENATOR CHIZEK: Just very briefly, Mr. Speaker. You heard a synopsis of the committee amendments and I think they are very necessary to the bill, and I would urge the body's adoption of the committee amendments.

SPEAKER BARRETT: Thank you. The question is the adoption of the committee amendments to LB 182. All in favor of that motion please vote aye, opposed nay. Record, please.

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

SPEAKER BARRETT: The committee amendments are adopted. Senator Coordsen, would you care to explain the bill as amended.

SENATOR COORDSEN: Thank you, Mr. President, members of the body. I was asked a question a few weeks ago that probably should be put somewhat delicately, and the question revolved around the issue of why I would become involved in an issue such as this that was highly controversial. I think the comment that was made was, George, why would you put your butt in the beehive? I became aware of the issue that is addressed in LB 182 late last winter, or early spring, during a coffee drinking session with a county judge. Shortly after the Supreme Court decision that in effect said that whenever custody of a juvenile was given to the Department of Social Services that the department had total authority over the placement of that juvenile, the treatment that they received, or it received, and, as a matter of fact, the total control over that life. The only option that was left open for the court was to retrieve custody from the Department of Social Services and assign the custody to the county. Well, two things came to my mind that, one, was that since we were talking about a department of state government, a state agency basically being given the authority to ignore a court order without anyone having any recourse to appeal that, with the exception of the return to the county, a county that we've taken away by law any mechanical ability to provide services for these juveniles, a county that in most cases do not have the money being, in many cases across Nebraska, up to their constitutional limit as to the amount of money that they can raise, a county that does not have access to any federal matching funds to prepare for...to provide for the care of the juvenile, it seemed to me that what we had was a travesty, in my mind, of the separation of powers doctrine that is so evident in not only the Constitution of the United States but in the Constitution of the State of Nebraska. Even though we had this thin thread of constitutionality that remained in effect, we had a situation where a person, working for a state agency, could ignore a court order. I have no personal axe to grind in this matter. I have no friends or relatives or acquaintances of any kind that have ever fallen through the cracks in the system, but since we began work on this issue it has become readily apparent to me that there are far too many

people falling through the cracks of a system that has no hearing process insofar as the courts are concerned, where some of the basic civil rights of juveniles are generally stripped from them, simply by having them awarded to a state agency by the court. So what does 182 do? LB 182 is the result of a rather significant amount of work on the part of a number of judges in the State of Nebraska, a number of child care agencies...entities, I should say, child care entities in the State of Nebraska in trying to provide a process, a process whereby the rights of the juveniles can be better protected and also a process whereby the budget of the State of Nebraska might be protected from the whims of a capricious judge who would order treatment that was too expensive, unneeded, or in other ways did not fit the best interest of the juvenile. Remember what we're trying to do is to provide four people who are assigned as wards of the court and to assure to them some of the same protections that some of the rest of us enjoy. The consensus of opinion then was the development of what is called a juvenile review panel. And, if you have 182 in front of you, the first sections of that detail the establishment of this particular panel. This panel, with the adoption of the committee amendment, would only be put in place in instances where there were disputed plans for one individual juvenile. The juvenile review panel would consist of three county or juvenile court judges that are appointed to this panel by the Supreme Court. Any judge at that level is eligible to serve on the panel, except the judge who originally heard the case. Another thing that is a little bit different than today, the juvenile review panel may hear the case in the county where the case was originally cited, which would bring justice out to Nebraska where currently decisions and the people involved may have to travel to a remote location even to be present. In the interest of cost-effectiveness, the juvenile review panel will use existing courtroom office facilities and staff. About the only cost connected with this review panel is the extra cost, is the cost for travel and per diem for the judges. The juvenile review panel will review the disposition of a court when that court makes a decision different from the plan that is ordered by the Department of Social Services or probation officer. If the Department of Social Services or probation officer decides that they do not like, they disagree with the court plan, they have 10 days, after the court order, to file a request for a review. The review panel will review the disposition of a court de novo on the record. Their options, if they're given clear and convincing evidence that the disposition was not in the best

interest of the juvenile, in which case the court...the panel may modify the court ordered plan, the department's plan, the probation officer's plan, or may, in fact, substitute the department plan for the court ordered plan. The review by the juvenile panel is to be as expeditious as possible within, hopefully, 30 days on the...upon the filing of the original appeal.

SPEAKER BARRETT: One minute.

SENATOR COORDSEN: After that, if there is still not agreement then there is provided a direct appeal from the review panel to the Supreme Court. In addition, there is one other thing that changes in this bill, and that is currently only, let's see, I think it's 43-2473(b), juveniles may be assigned as wards of the state. This would open up to all of the four categories of juveniles those that are assessed as felons, misdemeanors or traffic offenses, as well as wayward children. All juveniles could be looked upon by the court as possible candidates for assignment as wards of the State of Nebraska. With that, I'll close and put my light back on.

SPEAKER BARRETT: Thank you. Senator Warner is announcing that he has some special guests in the north balcony. From the Norris High School Student Council we have 12 ninth, tenth, eleventh and twelfth graders, with their principal. Would you folks please stand and be recognized. Thank you, we're glad you could take the time to be with us. Also let the record show that Senator Richard Peterson had some guests in the north balcony a few moments ago, 44 fourth graders from Grant Elementary in Norfolk. Mr. Clerk, a motion on the desk.

CLERK: Mr. President, Senator Wesely would move to indefinitely postpone LB 182. Senator Coordsen would have the option to lay the bill over, Mr. President.

SPEAKER BARRETT: Senator Coordsen.

SENATOR COORDSEN: We are going to take it up.

SPEAKER BARRETT: Thank you, sir. Senator Wesely.

SENATOR WESELY: Thank you, Mr. Speaker, members. I know this is an issue that probably is not all that familiar to you, and Senator Coordsen did try to explain the intent of the bill. Let

me try and give you some further background and tell you why the bill ought to be killed. First off, the bill is very likely unconstitutional, suspect, whatever other term you want to utilize. There is an opinion that just came out that I have distributed to you that indicates the very heart and nature of the problem that we have with this issue and that is who will make the decisions and who will pay for those decisions involving these children. And clearly this has been a point of contention between our judicial system and our executive branch for some period of time. The executive branch, in the form of the Department of Social Services, has taken the position for quite some time that they have the authority, as they have felt they had for some time, and had exercised that authority. The courts felt differently and the lawsuit did end up going to the Supreme Court which ruled in favor of the Department of Social Services just over a year ago, said you cannot interfere, from the judicial branch, with the executive function performed by the Department of Social Services. This bill is nothing more, in my estimation, than a circumvention of that Supreme Court decision of just over a year ago. It attempts to set up a system that still maintains, in the judicial branch, the decisions about what will happen in terms of the placement of these wards of the state under the care of the Department of Social Services. Yes, it isn't the court having direct power completely, but it will, through the judicial system in general, have a review panel of judges reviewing a court decision to override a Department of Social Services decision dealing with placement of these children. In other words, the executive branch makes a decision, the judicial branch doesn't like the decision, the department appeals and the judicial branch makes the overall decision through this review team. You still don't get away from the fundamental fact and the Supreme Court decision of just over a year ago, you can't do that. The judicial branch cannot function as the executive branch of our state government. And I think the Attorney General's Opinion, if you get a chance to read it, will clearly lay that out for you. I understand where Senator Coordsen is coming from, I understand where the other co-sponsors of the bill are coming from. We are all concerned about what happens to these children. I think my record on that has been very clear over the years. I've introduced a number of pieces of legislation to help protect our children, concerned about our children. I want them to be cared for in the best possible situation. But I think in terms of constitutionality you have that issue raised, and I hope you understand why we need not further pursue the

line of approach to this that Senator Coordsen is proposing, I don't think you can do it. But, secondly, in addition, that whole issue raises a further question of who is responsible financially in the circumstances we're talking about. If the courts have the sort of mechanism in place that we're talking about here, if they revert back in taking over control, as they would have liked to have had that power in the past, you have the question of them making placement decisions and not being financially responsible for them. In other words, we basically open up the state purse and allow the court system to make decisions without regard to cost in terms of placement of these children. Now I think whatever it costs to protect and care for our children is money well spent, and I've got bills to accomplish that goal. It isn't just a financial question, in my mind, but it's a question of overproviding for these children and in fact hurting them more than helping them that has been the trademark of a number of different judges and judicial decisions in this area. The judges that we've had problems with in the past have tended to like psychiatric hospitals. They put children in there in appropriate situations, and they're very costly, and that is part of the real concern here about the cost is that we will place too many children in psychiatric settings, which are really detention centers with a hospital function with a psychiatric function attached to them. I mean, they are mandatorily placed in there. A psychiatrist may pop in on them every once in a while to talk to them, but they are not really much more than a detention facility with the idea of providing for psychiatric care, in many instances. I have to question where some of these placements have occurred. I just got a case today of a three-year-old that a court wanted to place into a psychiatric hospital, the department said that is inappropriate for this three-year-old girl. The court now has that authority to take away from the state, Department of Social Services, bring back into the court's authority, under the county level, and then place the child wherever they wish. Of course the county then has to pay for it, but it's a county court, a county judge, and the county then is responsible. You've got the person making a decision and the responsible party for financing it all in the same governmental entity. So that judge made that decision to place that three-year-old child into a psychiatric hospital where, right now, there are a number of people trying to get that reversed. A three-year-old girl, and under the circumstances, very inappropriately shouldn't be in that situation. But talk about the option of changing that, right now we're not sure there is anything we can do about it right

now. So I know that there will be examples given of the department making mistakes. I don't deny the fact that they've made mistakes and I can cite a number of other examples in terms of the judicial branch making mistakes, we have made mistakes. It's a question of, who can do a better job and are there other solutions to the problem? To do a better job, it seems to me you will find that the department is doing a better job than was the case before, they've set up a team, mental health review team, that is there to provide some oversight to the department and their staff. There is a handout, I had given a position paper to the department on this bill. If you have a chance, you might look through it. It does indicate the improvements made under the current system versus the old system and their attempts to provide for the discontinuation of the warehousing of children in hospitals. As I mentioned before, the attempt to bring children together with their families or other circumstances that are more appropriate, less restrictive, there is, in some cases, less cost involved. But, again, that isn't particularly my concern, although at the same time, as I mentioned, the cost factor, you do, if you have a chance, note on the fiscal note this is a \$20 million bill. I understand there may be amendments that would reduce that perhaps in half by discontinuing the part of the bill that would add to the coverage, by the State Department of Social Services, juvenile offenders who aren't now under their authority. This bill would add them to the department's responsibility in addition to the dependent, neglected and status offenders we've always had responsibility for. So, clearly, a \$20 million price tag should concern us, and especially if it is inappropriately used in situations where it's not needed. But, in any event, again, what I'm saying is in terms of who can do the better job the Department of Social Services has improved in this situation and I hope can be continually pressed to improve further so we don't have any child ever misplaced or harmed by the system that we have. I am certainly willing to work with Senator Coordsen and Senator Smith and other individuals concerned about this issue who have expressed their concern to me. I very much would like to see a way in which we can provide for these children and care for their needs and, at the same time, not take this unconstitutional step and expensive step, I think, that would be very inappropriate. In addition, how can we help the department to do a better job? Well, one of the reasons we have the problems that we have is lack of staff right now under their responsibilities. I have a bill, LB 720, dealing with child protective custody workers, foster care workers. We did not

have enough staff overseeing our children that are our responsibility as a state. We do not have enough staff looking out for our children who are potentially in abusive situations. We need to put more money and resources into that area and if we could do that, it would help tremendously. We have too large a workload and not enough people to manage it. And the sufferers, the people hurt by that are the children of the state. So I am suggesting a couple of alternatives to this bill, number one, that we examine in the budget and perhaps with that other legislation the question of adequate staffing for the department to deal with this circumstance; and, secondly, in terms of an oversight function, if that is preferable, a way could be examined to take the mental health review team under the department and work with them or modify that circumstance so that we could have that function performed within the department and constitutionally available. I'm willing to look at that issue. At this point, this bill is not in a position to deal with the matter, and I would be glad to go through the bill in more detail at a later point. How much time do I have?

SPEAKER BARRETT: One minute.

SENATOR WESELY: I do have a summary of the bill, that I won't go into because of the lack of time. The summary goes through, section by section, the problems of the bill, the shift from the judicial branch, excuse me, from the Department of Social Services to the judicial branch, the costs involved, the access problems, the timing problems under this bill, the review mechanism difficulties, the fact that additional juveniles would be brought under the authority of the department, the costs involved with that, the problems of inadequate or unfair provisions for appeal under this system. And the fact is with a review team of judges you essentially have not changed anything, all you've done is move back to the judicial branch this power without an adequate or fair review, and I certainly feel that we need to proceed in killing the bill and working together on this issue for perhaps some further action next session.

SPEAKER BARRETT: Thank you. Senator Coordsen, the floor is yours to respond to the motion to indefinitely postpone the bill.

SENATOR COORDSEN: Thank you, Mr. President. Thank you, Senator Wesely, for making most of my case for me. The case that brought about LB 182 was in regard to the interests of GBMB and

TB and it was about...I think, written the end of January 1988. The issue in question in that particular situation was what was meant by language placed in statute in 1982 that said the Department of Public Welfare shall have the authority to determine the care, placement, medical services, psychiatric services, training and expenditures on behalf of each child committed to it. And the court found, with that wording, the contention was made that that wording was unconstitutional. The court found that the wording was, in fact, constitutional because under the statute the court still was the final authority in what happened to the juvenile, although the court also found that in cases where the juvenile was awarded to the Department...to the custody of the Department of Social Services, they had no voice in approval or disapproval of those services because the department was paying for them. The suit was found on behalf of the department, because under the statute again I would emphasize, as I stated in my opening, the juvenile court does have the authority, if they disagree with the Department of Social Services, to return the child to an entity, the county who, quite frankly, has no department, has no resources, has no ability to care for the needs of a child. LB 182 is an effort, and I think a good effort, and a reasonable effort, and a sound effort, to provide a means of recourse that does not exist today in light of the Supreme Court's interpretation of the meaning of 43-284, as it currently exists, to provide a means for questioning those very cases, those very cases that Senator Wesely mentioned. Today, if you happen to be involved in one of those cases, and if the court chooses not to return custody to the county, there is no appeal, there is no modification, there is no access to the system for the parents, for the guardian ad litem, for the guardians, for the courts to seek corrections in what might be perceived to be errors in those few, those few department plans that are not made in the best interest of the juvenile. LB 182 seeks to provide a mechanism to allow...

SPEAKER BARRETT: One minute.

SENATOR COORDSEN: ...a process of questioning those few, those few cases where there is reason to question the determination of whoever is the person who is in charge of making the determination, preparing the plan for the juvenile. I would charge you with this, that we can do nothing more than provide this access for appeal in disputed cases. Court orders are items that cause many individuals, many agencies of government

to spend money.

SPEAKER BARRETT: Time has expired.

SENATOR COORDSEN: Thank you.

SPEAKER BARRETT: Thank you. On the motion to indefinitely postpone, Senator Rod Johnson, followed by Senators Smith and Haberman.

SENATOR R. JOHNSON: Mr. President, members, I rise to strongly oppose the indefinite postponement of this bill. I was listening to Senator Wesely's comments relative to the kill motion. He brought up, I thought, some fine testimony, but he said each of us can develop examples from our districts where we've had a bad case or bad cases in that district, and that improvements are now being made to correct and rectify those problems. Well, the fact is, yes, there are some very significant problems in this state with the placement of juveniles either in foster care or for adoption. I've been involved in a couple just recently that I won't go into on this floor because I don't think it's necessary, just to say that there are some bad examples out there, and I think the department is aware that they need to get their house in order and that steps need to be taken to correct the problem. But as a former colleague of ours, Senator Harold Sieck, used to say we need to send a message and I don't know if LB 182 is the right message to send or not, because I'm not an expert on this bill, but I feel very strongly that by killing the bill we simply tell the department that everything is okay, that we'll give some more lip service to the problem and then let the problem continue to fester. I think move the bill and push it as hard as we can and send a very loud and clear message that we're not going to tolerate this kind of situation any longer, that there needs to be some steps taken to correct the problem. Senator Coordsen's bill, I think, is headed in the right direction to have some oversight on the problems that exist, and make sure that somebody in the state is minding the store as it relates to juveniles, because there are some young people in this system that are not being served correctly and their lives will forever be damaged by the decisions that have been made. As I said, I've got some pretty bad examples of what has happened to some young people in an area that I was involved in last week. We had a meeting with the Department of Social Services. And I don't know if I necessarily feel as if I should be a conduit to

bring a judge, an attorney who is serving as guardian ad litem with the department, I don't know if that is my responsibility solely. I think that those people should be able to communicate without a state senator having to be present at every meeting. I think there needs to be better communication, and I think the message is getting across that these judges and these attorneys who are serving as guardians ad litem and the department need to be communicating better, and I'm hoping they will. But I feel as if we're heading in the wrong direction if we kill 182 at this time. I don't know if 182 has the support to pass this year, but I commend Senator Coordsen for bringing this issue to head, because I think it's about time we started talking about a situation that exists in this state that should not be tolerated.

SPEAKER BARRETT: Chairperson of the General Affairs Committee, Senator Smith.

SENATOR SMITH: Thank you, Mr. Speaker. Members of the body, I stand also to oppose Senator Wesely's IPP motion. Listening to what Senator Rod Johnson had to say, I could stand here and almost repeat his speech to you. I have had a number of instances in my district where I feel that there has been inappropriate action taken on the part of the Department of Social Services on behalf of juveniles, young children. Actually, when we talk about juveniles we used to think of like 10, 12, and 11-year-old kids, what I'm talking about here are children much younger and I think it's a very sad state of affairs, and I feel exactly as he does, where I'm having to be asked to intervene in so many instances because of what is considered to be lack of the appropriateness of the way they reacted in the placement of these children, in the way they handled the case. I was sitting here and I was reading the paper, the position paper the Department of Social Services and while I was reading all these little cases through here that they had put out I thought to myself, my golly, this could get me really confused because I could sit down and I could enumerate, on the other hand, a number of kinds of situations which were exactly like this, only it was being directed at the department because of the lack of appropriateness in what they had done with the children. Again, I agree with Senator Johnson. I think it's an unfortunate state of affairs when we have, I guess it's a bureaucracy which is so huge, so vast that there is no way even we can get to it, it seems like, to make it become responsive. I just had a letter in the mail yesterday

from a judge in Hastings about the actions of the Department of Social Services. I don't know who to blame for this, and that is what is hard about it. You talk to someone at the top...first you start at the local level, with the people at the local level, and you try to talk to the local office, you can't get anything there because you're supposed to talk to the regional office. Talk to the regional office, they end up bringing in the state. The state sends someone out, you talk to them, nothing happens, nothing changes. I've been working on a case with them on another issue with the Mary Lanning Hospital because it's so important that we have the intermediate kind of care that they are talking about here with the transition from children from psychiatric, drug kinds of care, be transitioned out into the community. We want very badly...they tell me they want very badly for us to establish such a home at that location in central Nebraska, and yet it took a year of working on the contract, basically, I might even be wrong on that, it's probably longer, with no results, until I finally got involved, we sat down together. Supposedly, they've been trying to talk this out for months since that time, and now I've recently gotten another letter and they're back to square one again. It seems as though there is somewhere in one of these articles that I was looking at here, I guess it's a letter that I have from a family who are so upset about the way their child was handled. When they asked for help, basically, what they said was instead of showing us help lines they drew battle lines, and they took over this child's placement because the parents had no recourse, and against the wishes of many people who are also experts, not just the department has an expert status, you know, in these kinds of affairs. They overruled and did what they thought was right, which was totally, in the eyes of all these other people, wrong. Now where do we...how do we decide who is right and who is wrong here? I guess we shouldn't spend as much time worrying about which of these departments has control, as over why can't we resolve this issue on behalf of our young people. What has happened in our society and in our state, because I'm sure it's not just true of Nebraska. Well, we have a system which is set up for the benefit of people and which does everything except benefit people in the end, at a tremendous cost to all of us and to their lives. I can't say that I think this bill is perfect, but at least probably I'd say that we're making an effort to look at this whole issue, and it's time we looked at this issue. I think that the Department of Social Services has now come out with alternative proposals to it, from what I understand here, you know, maybe that should be looked at. It's unfortunate that

we have to wait until we get deadlocked on an issue before either side will ever decide that we need to sit down and talk and compromise and do what is best...

SPEAKER BARRETT: One minute.

SENATOR SMITH: ...for those we were set up to serve. I find this terribly frustrating. I've been frustrated over and over in my district with this issue, dealing with cases, with problems the department has mishandled in the eyes of everyone except the department, and trying to reach some kind of resolution, and we never seem to. We get answers back, I get letters. Once in awhile I get a letter from the Director of the Department of Social Services justifying why they made the decision they made. But it still is contrary to everything that in my mind says this is the way...they're wrong, this is the way it should have been instead, or at least it wasn't accurate in what they should have been doing. Once in awhile they admit they made a mistake, but that's as far as it goes. So I oppose the IPP motion. I don't know, as I said, I tremendously support 182 in its current form and maybe we need to work on this bill a little bit. But I'm going to stick with this because this is the only way we're going to make any progress, Senator Wesely, in this area, and it's crucial that we do this.

SPEAKER BARRETT: Thank you. The member from Imperial, Senator Haberman. Senator Crosby on deck.

SENATOR HABERMAN: Mr. President, members of the body, I am going to wait to unload about the mental health team and some of the other problems we have on the bill. But right now I'm opposing the indefinite postpone motion. As I understand, all of the states in our immediate area place the responsibility with the care and placement of juveniles with the juvenile court judge. In addressing the unconstitutionality letter that we have before us, I am assured that we can fix what is brought up and what is wrong by changing a statute, as if they're doing it in other states, I'm sure we can arrange to do it here. Now in the position paper of the Social Services on LB 182, dated March 10, which you have in front of you, it was prepared by the Director of the Department of Social Services. And, as has been stated before, it's a case involving a two-year-old who had been inappropriately spent six weeks at a locked psychiatric hospital and was given as an example of inappropriate care. However, upon questioning about this case the department admitted that it

was a caseworker who had placed the child in this inappropriate climate and not a judge, that a caseworker had done this. I have many, many other facts and figures, I have court history to tell you about, to show you some of the testimony given by the department under oath, it's not exactly true, but I will save all of that until we get to the bill. I just ask you not to vote to indefinitely postpone this bill. Thank you, Mr. President.

SPEAKER BARRETT: Thank you. Senator Crosby, followed by Senators Nelson and Schmit.

SENATOR CROSBY: Thank you, Mr. Speaker. I rise also to oppose the kill motion on this bill because I do support the bill. And I want to remind...today we have been talking many times it seems like about judges, they seem to be taking a little beating in here today. But the other thing is, again here, we're talking about children from the cradle up to their 18 years of age, probably. And I think you should put yourself into the role of that child that is battered back and forth between the agencies, foster homes, courts and so on and try to remember that that is what we're talking about, that trauma that the child goes through every time a change is made. One of my questions about what Senator Wesely said, and I asked this in all good faith, if a child needs psychiatric help and the court says they need psychiatric help and places them in a psychiatric atmosphere, would not the department do the same thing? That's a rhetorical question, you don't have to answer, Senator Wesely. I surely hope that the department would get psychiatric help for the child that needs it, someone who is on drugs or whatever the problem is. The other couple of things I'd like to mention, some of the people who appeared for this bill I have great respect for, Father Val Peter from Boys Town who certainly has a knowledge of children who need help; Topher Hansen, a young, local lawyer whom I've known since high school, and he is an advocate for children and people in general, and I have great respect for this young man and his feelings about people. I notice that the department did oppose it, but the Foster Care Review Board was for it, and ever since the Foster Care Review Board was...had been established DSS, for some reason, has resisted that. I have the feeling they don't want to be reviewed. So I do feel strongly that we should keep in mind that it's the children that we are thinking about. The other thing about members of bureaus, and they all work very hard, we have caseworkers who I know are burned out because they do have

heavy caseloads. The administration works very hard, I know that, and they all work in good faith. I don't think they are malicious people, but they are not elected. The Legislature and the executive branch was elected, and judges are reviewed on the ballot periodically. So our system works, the checks and balances from executive, legislative and judicial back and forth. And I do think this should be given a chance, even if it's a small group of people, I think it should be given a chance to see if we can't help that small group of people and not leave them out in the cold. The other question I have about it, and maybe somebody will answer this later when we speak on the bill itself, is about the fiscal note. It seems high, but if that is because it's taken for granted that all these people would be put into psychiatric care, and that is where the expense comes from, I could understand that. So I do hope that you'll vote not to kill this bill, and let's move the bill and see what we can do to help the people that need the help, the children that need the help. Thank you.

SPEAKER BARRETT: Senator Nelson, please.

SENATOR NELSON: Yes, Mr. Speaker, members of the body, as quite a few of you know, I've been working on some juvenile issues all last summer and fall and spring and so on, so I've had a great interest in this bill. I, too, have the same horror stories to tell that I'm sure that Senator Johnson, Senator Smith and many of you and I had another meeting for a little bit, so I missed out on the first part of the debate. But I serve in Judiciary and I had the opportunity to hear the testimony for the bill. I guess it's somewhat like this, under the current interpretation of the Nebraska law, the Department of Social Services has taken the position that they don't need the court's approval and, furthermore, want to do everything themselves in their own way, and that is probably the problem. This destroys the intent and the purpose of our juvenile system. And I'm not questioning the professionalism of some of the social service workers, particularly local, I think most all of them are probably overworked and underpaid. But I, too, get constant calls because of problems, the same as Senator Smith related to. I have tried to stay out of as many of them as I can, and I will have to say that 80 percent of the time I usually do have to agree with the social service worker. They are doing their best. But there are too many children, entirely too many children that are being misplaced or mishandled, or not the best of service. Just because they control the pocketbook does not mean that they have

the professional ability to handle these. I will address, for just a minute, the fiscal note that Senator Wesely referred to, as well as Senator Crosby. You know, a good way to come in and kill a bill is double the fiscal note on a senator and I suspect that that is probably what happened in this case, that \$21 million fiscal note. That included foster care reimbursement for over 2 in home...or out of home cases probably, and that would be residential treatment, hospitalization and intensive services, and including the NCCY campus...school. As most of you know, I've done some work and some checking on NCCY campus, and I probably could use this bill or this discussion to talk about that, but I won't. Probably also that bill may include foster care children, over 6,000 of them. But this is the dollar amount that is I think a lot closer to it. Youth development centers, 5 million; probation, adult and juvenile, more like 5.5 million; and parole, foster care more like 188,000, or about an \$11 million fiscal note; just about half, I think, would be closer to it. But LB 82...182 may not be perfect. We tried to move it out of committee in the best shape that we could. I don't know whether Senator Coordsen mentioned but there are at least 20 people that had a hand in drawing up this bill and the need. But it is just too serious a situation to be swept under the rug. It was rather amusing or incidental in the Judiciary hearings, one of the guardian ad litem came in and mentioned a case of a boy, here in Lincoln, sexual...not sexual abuse, he was being abused and was in a home with his older brother, a 13-year-old boy. He had tried...

SPEAKER BARRETT: One minute.

SENATOR NELSON: ...and tried for four months to get him into NCCY center. They just fell through the cracks, there was just absolutely no place to place this boy. Everywhere he turned he ran into a stone wall. And I asked them the question why he could not be taken to NCCY center, and they told him, well, in order...he didn't fit in their program, and in order to do that they would have to hire another specialist to handle his particular case. And my question was with 18 out there, you mean, and a staff of 146 people that they don't have someone available to handle or to help treat this boy? I think that the Lincoln-Journal or the Star picked this up, too. The next day the boy was placed at NCCY center, so it does show that sometimes a little bit more action needs to be taken. I certainly hope that you don't vote to indefinitely postpone this

bill.

SPEAKER BARRETT: Thank you. Senator Schmit, followed by Senator Scofield.

SENATOR SCHMIT: Mr. President and members, it's not very often that I disagree with Senator Wesely in an area where children are involved, but I do disagree with him in this instance. And I know that he has spent a lot of time on this area and has devoted a considerable amount of his waking effort to trying to improve the lot of children. But I do believe that sometimes, and this is not just a peculiarity of this agency but other agencies, but I do believe that sometimes there needs to be some different kind of action taken that might be considered to be remedial and, hopefully, supportive, in fact, of the department. I do not condemn the department, I do not know enough about the operation of the department to do so, or to be critical. But I have had, as others have mentioned here today, some concerns and some complaints and, in my instance, it boils down to the fact that I have I suppose to go on record in support of the county court system, in this instance, to protect the children. It is not normal, of course, that we concern ourselves with the immediacy of a problem as much as it is in this case. In this case, you have the lives of children, many times very small children, that are at stake, and these children are in their formative years and the treatment or lack of treatment that they receive can be very, very crucial to their development as they grow up. I believe that notwithstanding the often times good intentions of the department, I believe that the discipline that goes with the court system can be helpful. Senator Nelson mentioned the cost, and I believe, and again I'm not certain of it, maybe Senator Wesely or someone from the Appropriations Committee can comment on it, I wish they would, I believe the cost that is mentioned here is more than twice the amount of money that is presently being spent on these programs. If that's not true, I hope that I can be corrected. But I do want to point out that I think this is a critical bill, I think the bill does signify a change in direction, a change in responsibility and one which I think we ought to try. I would hope that we would not indefinitely postpone the bill. Again, as I said this morning, it's a new program, a new method of addressing this issue, and I think it's one which we need to address, and in this instance I believe that we have to remember that the individuals we are trying to protect have no one to speak for themselves and, in this case, I believe that I would

rather place that responsibility with the court than with an individual. I had just this morning a personal contact with an individual who expressed to me their deep concern and their support for the bill, their strong support for the bill. So I would hope that we would not indefinitely postpone the bill, that we would advance the bill and discuss it further this year. Thank you.

SPEAKER BARRETT: Thank you. Senator Scofield, followed by Senators Wesely, Bernard-Stevens, Coordsen and Elmer.

SENATOR SCOFIELD: Thank you, Mr. Speaker and members. I'm rising to urge you to not indefinitely postpone this bill and, in fact, to continue the discussion of this issue until we finally get to the bottom of what has been a very frustrating and difficult issue for us all. It's frustrating and difficult for social services and the judges as well. I think when I listen to people speak we all have essentially the same goals in here, and those goals are to serve the best interests of children in this state. We would all like very much to resolve what has been a conflict between social services and the judges for some time and, obviously, Senator Coordsen is bringing us a proposal for an avenue of appeal when there is a dispute about what the best interests of the child are here. I got interested in this issue last spring about this time when a group of judges came to me and some other individuals outside the court system and raised some concerns saying we're not convinced that the present system really, in all cases, serves the best interest of children. And, as I listened to their stories, I became concerned that they might, in fact, be right. And I would hasten to add that I think there is plenty of room for professionals to disagree about what is the best placement for a child. I think that is one of the reasons why we're going to have a very difficult time of ever coming up with absolutely the perfect answer or the perfect solution. I can put a group of counselors, social workers, psychiatrists and so on in a room together and all of them analyze one case, and there is, certainly, in many cases, going to be a lot of disagreement. Nevertheless, I think Senator Coordsen has very patiently tried to work through this system and tried to figure out some way of resolving this problem and, at this point, I think he's brought us a proposal that is worth considering and trying to move forward on. I want to address, at this point, just a point that Senator Schmit in particular raised, and that is the fiscal note is one that is bound to make your eyebrows shoot right straight

up in the air, if you take a look at it. And yet I questioned the basis for those numbers, because I think, from my understanding of this issue, that frankly very few disputes are going to be resolved in this manner and I think even with the specific section that seems to be attributed to the bulk of the cost, but here again I think it's very unlikely that you would see those kinds of costs occur. In fact, I think the assumption there is that if somehow we pass this bill that every judge in the world is going to go crazy and shut every kid up in a psychiatric hospital and I guess I have more faith in our judicial process than that. So I think that that note can very well be questioned and, in fact, should be questioned. I visited with a number of judges after seeing that saying, good grief, does this really mean what it says? I have been assured that it does not. Another reason that I might have been concerned about this bill at one point was in some cases it's been alleged that this bill will undermine the very purposes of the Family Policy Act, 637, which, of course, was my priority bill a couple of years ago. I don't think that's the case either. Obviously, we don't want to send a lot of kids back to psychiatric hospitals and inappropriate places. If I thought this was going to do that, I would be standing up here ranting and raving the other way. But I'm not convinced that is the case and, in fact, although I still have plenty of frustrations with how quickly we're moving the direction we want to go, that some of you have ranted and raved here on the floor today, I believe that some of our best allies out there are, in fact, in the judicial system. We've had a lot of help from those folks in trying to move down the road and trying to refine better services for children. So I just have to put aside those concerns for right now. I don't think that they are justifiable. So I would take in particular that cost provision with more than a grain of salt. Let me also say, though, that I'm not going to stand up here and bash the Department of Social Services, frustrated though I get, once in a while, too because, as some of you others have said, Senator Crosby said it very well,...

SPEAKER BARRETT: One minute.

SENATOR SCOFIELD: ...this is no easy job that those folks have. The child protective service workers out there, in particular, have a very, very difficult time. I think what this issue really says is not only do we have this problem right here with how to resolve disputes, but we have a system yet in this state

that is simply unresponsive to kids, unresponsive to their needs. Senator Wesely has said we probably need to spend more money on them than we do, and that's true, we do. So I guess I would urge you, at this point, not to kill the bill. We should continue to deliberately and carefully assess the impacts of this particular legislation and hope that it brings us a solution, but use this also as a mechanism to continue us talking about what I think has been given high priority in this state, and those are kids in this state. But we have a very long way to go before we're actually able to resolve that. Senator Wesely has done some good things in that direction. Our Select Committee on Children has done some good things in that direction, but we've got to keep hammering away on this or we're simply never going to get where we want to be. So I guess I'm suggesting, don't kill the bill, ask some hard questions. I think there is a mechanism here that deserves our examination.

SPEAKER BARRETT: Time.

SENATOR SCOFIELD: Thank you.

SPEAKER BARRETT: Thank you. Senator Wesely.

SENATOR WESELY: Mr. Speaker, members, I want to thank all of you for your comments, even though not one of you supported my motion. (Laugh.) Kind of used to that actually, but I at least didn't get yelled at or personally attacked. That was a nice change of pace and I appreciate everybody for taking it on the up and up on the policy issue. Let me kind of tell you, I agree with most of what you're saying. It's not that we're in disagreement, it's a question of how do we accomplish what we want to do. Okay. We've had problems with kids and placement in social services. We have had problems with placement in the judicial branch. I mean I could...I'm not going to go through the examples, you know, the examples. In both cases, we've had kids misplaced, hopefully, not very many, but even the handful of cases that I've seen are a handful too many. In any situation where a child is placed inappropriately, hurt in any way whatsoever I am concerned and want to see it stopped. So how do we accomplish this? That's really...okay, we're all saying we're concerned, we're all agreeing on what we need to do. How do we get the job done? This bill is not the answer, it will make the situation worse than you can ever imagine. What it does is it brings back the contention, the ranker, the division that we had a little bit of before the Supreme Court

ruling. It will pit, again, the judges against the Department of Social Services in a very strained effort, hopefully, both trying to accomplish, again, those similar goals of helping the children, but very different philosophies and goals in certain instances. Yet at the same time that can be converted into perhaps a healthy difference of opinion on those cases of difference, if we could have a dispute resolution process that can work and is constitutional. You see what I'm saying? I'm saying you're going to have a fight and a difference between the judicial branch and executive branch on occasion. I don't know how often. This bill will make it worse, much worse, because it will clearly give the green light to judges that they have the right to go ahead, and then their review is by other judges, so it's definitely an open door and they should feel pretty comfortable in moving toward it and through it. So, in addition to the unconstitutional questions I raise, you can't have the judges determining executive branch action. The budget is involved, the Constitution is involved, it's inappropriate, it's wrong, this bill is not the answer to the problem. That's why I filed a kill motion. But it does at least raise the issue and one that we need to address. I think a better solution, and I made it...somewhat referred to earlier, is to amend the bill with some review by an independent group of individuals where, if a judge disagrees with a department placement, this review can occur over in the executive branch, not in the judicial branch with the judges, but with an independent group that isn't biased on the judicial side and isn't necessarily biased on the department side, but some group who we can go to and deal with this matter in a fair fashion, with some expertise involved, not just anybody but somebody whose got a background and an ability to deal with these types of very complicated, difficult issues. I can live with an amendment in that regard. And I know Senator Smith is drafting something to that effect. I'm willing to work on that, I already said that in my opening on the kill motion. In addition, we don't have enough staff, we just simply do not have the people that are needed to look out for these children. We have, on a monthly basis, average monthly basis, over 3,000 children that we handle, that we place, over 3,000 of these cases. I'm not sure if that's...is that every month, or is that...on the average a month. An incredible number of children are affected by this. And I'm not sure what we've got, I don't see the figures right now for how many staff are involved with handling this important function. But I have, again, legislation...

SPEAKER BARRETT: One minute.

SENATOR WESELY: ...and the Appropriations Committee is looking at this to raise support for child protective custody workers and foster care workers, we've got to that. And so either an amendment to the budget, either through the Appropriations Committee, on the floor, bring 720 up, we can deal with that matter. So that is the two things I think we need to do, and I'm willing to do that. As a result, I'm going to ask that this kill motion be withdrawn and that we discuss how we solve this problem short of this bill, because this bill is not the solution, it is unconstitutional, it is inappropriate, but it raises the right issue we need to be looking at. So let us find the right solution to that issue.

SPEAKER BARRETT: Thank you, sir. The motion to indefinitely postpone is withdrawn. Back to a discussion of the bill itself. Senator Bernard-Stevens, would you care to discuss the bill? Thank you. Senator Coordsen, we're back to you.

SENATOR COORDSEN: Mr. Speaker, members of the body, Senator Wesely and others on the floor have made good statements. Every one is speaking from the position of what they believe in. The people who were involved in writing this bill, the judges, county attorneys, child care groups also believed in what they were doing and were addressing a problem. And the problem is not within the policies of DSS, because the established policies are good, they're within the parameters of our Nebraska Family Policy Act, they're in keeping with federal guidelines. The Family Policy Act and guidelines, I might say, are also incumbent upon the judges when they make their decisions. LB 182 was not introduced to base DSS. In conversation with the people who have been heavily involved on the court side of juvenile issues, I've heard the figure used that they feel that the placements are right in an estimated 95 percent of the time. What this bill would do is provide a mechanism in those 5 percent or less of the cases that we're talking about where there is a good, sound, valid reason for disagreement between the parties that are involved. I've seen this develop from four proposals, down to three proposals, down to one proposal that was modified from time to time until we have 182 as it is presented to us today. LB 182, with the juvenile review panel, will provide the mechanism for agreement between the people who are seriously dedicated to the best possible care of juveniles that come before the courts that are assigned to the state as

their wards. I would quote to you from a study that was commissioned by DSS with regard to their interest in improving how their foster care program worked. And it was...the study was not a study that condemned DSS in general, but pointed out areas where there might well be improvement including, as Senator Wesely mentioned, the need for more staff, for more funds to pay for the placement costs. Among things listed in here, with regard to the Nebraska Family Policy Act, I would quote their formal policies are extremely consistent with the broad goals. There is ample evidence of an...

SPEAKER BARRETT: One minute.

SENATOR COORDSEN: ...unqualified commitment to the principles of the act. However, because there are larger questions about the overall relationship between DSS policy and actual practice, there are concerns about the degree to which the principles of the act actually have been translated into daily activities. LB 182 would provide the mechanism whereby those deviations from the high concepts of the Family Policies Act, the disagreements on enforcement, could be resolved. The forum is there, I think, within the broader concept of 182...

SPEAKER BARRETT: Time.

SENATOR COORDSEN: ...that...thank you, Mr. President, that those concerns could be addressed.

SPEAKER BARRETT: Thank you. Senator Elmer, followed by Senator Smith.

SENATOR ELMER: Thank you, Mr. Speaker. One of the things I would like to hear some time in this debate, the fiscal note adds 182 positions to the Department of Social Services, that sounds a little bit strange for a small panel of review judges. Seems like they're trying to fill needs in many other areas on the back of this bill to give it a large fiscal note. And I echo the comments of Senator Coordsen, Senator Johnson, Senator Crosby, Senator Haberman, Senator Smith, Senator Schellpeper, and urge the advancement of LB 182. And I would yield the balance of my time to Senator Haberman.

SPEAKER BARRETT: Senator Haberman, approximately four minutes.

SENATOR HABERMAN: Mr. President, members of the body, reviewing

the Wesely summary of the bill, pertaining to Section 12, when it comes to funds the state has federal funds available to use for this purpose and the counties do not. So this is another plus for the legislation. Now whenever any one department or state agency has a problem doing something their first reaction is we need more staff, if I had more staff I can solve this problem. I've heard that year, after year, after year. I do not think that having more staff is going to solve the problem. I will agree that possibly we do need some more staff, but I seriously doubt the \$20 million fiscal note that is with this bill. I have found out over the years that any agency or department that is opposed to legislation, the first thing they do is say if you change this situation, if you change this legislation, if you do this, it's going to cost millions of dollars and we have a prime example before us of that type of maneuver. Now we have said on this floor we're not necessarily pointing the finger at who is responsible, but I'm going to read for you, with the time I have left, a report from the courts pertaining to a case, and it states, as a side, however, this court is disturbed by the fact that despite lack of sanitary conditions in the appellant's home, which rendered the dwelling unsuitable as a place to raise children and provide the partial basis for termination of appellants parental rights, DSS failed, they failed to take any action with regard to the younger child, M.T., Christine McCauley of DSS, who is in charge of supervising PMC's case, testified that to remove M.T. would have caused more problems than it solved. This inconsistency...

SPEAKER BARRETT: One minute.

SENATOR HABERMAN. ...is particularly disturbing since the practical effect was to ignore the best interests of younger children by leaving him exposed to extremely unsanitary conditions. How DSS can claim that a home is unsanitary, they're not meeting the department's minimum standards for one child to live in, and yet virtually sit idly by leaving another child in those same conditions is beyond the imagination of this court. So we have a deeper problem that is here on the surface. And I'm sure with the passage of LB 182 we can solve these problems and help those children. Thank you, Mr. President.

SPEAKER BARRETT: Thank you. Motion on the desk, Mr. Clerk.

CLERK: Mr. President, Senator Smith would move to amend the bill.

SPEAKER BARRETT: Senator Smith. (Gavel.)

SENATOR SMITH: Thank you, Mr. Speaker. I offer this amendment to LB 182. I believe that some of the things that Senator Wesely said I believe in very much. I support his concerns. I think that part of the problem is, in fact, that we have departments, we have the judicial system who are supposedly acting in the best interests of these people. But you have conflicts, you have all the problems that erupt, you also have a lack of staff, and I really believe that is true, in the Department of Social Services, which makes it very difficult for them to deal with the issue. My amendment, on page 3, line 17, would strike, beginning with the word "three" through the period in line 25, and insert these words, "a six-member panel appointed by the Governor and confirmed by the Legislature. The membership shall include a judge, a county attorney, psychiatrist, social worker, clinical psychologist and a citizen at large. The board shall elect a chairman from its membership annually." On page 4 you would strike all of line 1 through line 10, and on page 5, line 4, strike beginning with the second "the" through the period and insert "chairman of the juvenile review panel appointed in Section 2". It strikes references to the panel sitting judicially, and it has a request to convene the panel be filed with the clerk of the court, who then notifies the chairman of the panel. Those are the changes. The main part is the membership of the panel itself. I would ask the body to support this. I'd like to have some discussion on it to see if there is enough interest in this amendment or not. Thank you.

SPEAKER BARRETT: Thank you. To the Smith amendment, Senator Dierks, would you care to speak to the amendment? Senator Haberman, to the amendment. Senator Abboud, would you care to speak to the amendment? Senator Wesely, followed by Senator Bernard-Stevens on the amendment.

SENATOR WESELY: Thank you, Mr. Speaker, members. I would rise in support of the amendment and caution you, though, that it does not solve my concerns completely. It at least recognizes the inequity and unfairness of the system set up under this bill. See, the problem is that the whole bill is clearly slanted toward giving judges and the court system the final say on what happens to these children. It isn't attempting to be fair to provide that independent review that has been called for

in some of the floor debate. It really is a shift back to the courts, to let them have the hammer and authority and power to ultimately decide where these children go to. By doing so, I think, number one, you're placing unconstitutional authority into the judicial system; and, secondly, you're opening up the state pursestrings without any real restraint whatsoever. But, if there is room for compromise, and I think there is, this starts us down that road with Senator Smith's amendment, recognizes at least that the review ought to be conducted by an independent panel, not by judges reviewing a judicial decision, which clearly would seem to not be a very fair review. But the problem that remains with this is how the whole system is set up and how it completely, again, sets it up to make the courts the last authority on these decisions. And, if you look at the one handout I have, it indicates that the review panel has to... is tied by what they can decide to having an overwhelming preponderance of the evidence against the court and in favor of the state department's position in order to overrule a judicial decision. If you're going to be fair, you're going to have to deal with that issue as well, and also the time constraints and other problems. This bill is filled with different pitfalls and problems that simply are going to take some time to resolve. I will support the Smith amendment. We won't have further time to further amend the bill. I would still oppose the bill, but at least we can start talking about some solutions if we can at least acknowledge this much. I don't know how the supporters of this bill are going to respond to this. I've been told privately that they will oppose it. If the supporters of the bill oppose this amendment, what they're saying is clear and loud and unmistakable that they're really not interested in a fair, and open, and impartial review on behalf of these children. What they're looking for is to give back the power, in these instances, to the judicial system and the judges and the courts and take it away from the Department of Social Services, and I think that is a mistake. In fairness, what we ought to do is recognize both courts and the department have made mistakes on occasion, hopefully, not very often, but in those few times that it has occurred we're all concerned and upset by that. But certainly the current system would need further review after the Smith amendment. But I'm willing to adopt it and work toward what she is trying to do, which I think is a very reasonable attempt to reach a compromise between these two warring factions.

SPEAKER BARRETT: Senator Bernard-Stevens.

SENATOR BERNARD-STEVENS: Thank you, Mr. President, members of the body. I rise in opposition to the Smith amendment, not on intent but virtually I believe it would be blatantly unconstitutional. I do not believe that you can have a decision made by a district court judge and then have a civilian panel acting in a review and have any decision that would be binding on a district court or county court judge. No decision would be binding, and consequently the process would be, in my opinion, not productive or would not gain the goals that Senator Smith is trying to do. I can understand Senator Wesely supporting the amendment, because I suspect that Senator Wesely realizes the amendment is somewhat controversial and unconstitutional and that would certainly support what he's been trying to do with the bill, 182. I understand what Senator Smith and others what their concerns are, and I've heard it a couple of times now. You have courts, judges reviewing the decisions of judges, and how can that be, how can that be fair. I'd just like to remind the body on an appeals process we always have judges reviewing the decision of other judges, and we do not question that. Just as many times we have, in Congress of the United States, we have members of Congress looking at the ethics and behavior of other members of Congress. Those things simply happen, there can be professionalism. And I think just to simply say that one group cannot make decisions that are fair and on its own colleagues I think is a little bit farfetched, particularly when we're looking at an appeals process. I don't think any judge, on an appeals process, or any panel of judges on an appeals process would say, gosh, we sure hate to overturn Judge Murphy out there again because, doggone, you know, we like him and let's just don't do it this time. I don't think that goes into the decision-making process. I think they look at what is happening, I think they look at the facts of the case. I think they look at the questions of facts and the questions of law, I think they make the best legal decision they can based on the law. Again, my main opposition to the Smith amendment is that I do believe, without a thorough review, that it is unconstitutional, because I do not believe you can have civilian panel making a binding decision on a judicial decision. And, therefore, I would hope that the body would not agree to the Smith amendment. Thank you.

SPEAKER BARRETT: Senator Coordsen, on the amendment.

SENATOR COORDSEN: Thank you, Mr. President, members of the

body. My position on the Smith amendment, although again I understand that she's trying to find a compromise to this, I would feel that in all areas where law is addressed that the courts are, in fact, the final, binding authority; that a citizen review panel would be just exactly that, it would have absolutely no authority to change or modify plans either of the court, nor of a state agency. I would share with you some comments out of a letter from Judge John P. Icenogle where he comments on a conversation with Mr. Hunter Hurst of the National Center for Juvenile Justice in Pittsburgh, Pennsylvania, where he says Mr. Hurst advised me that a plurality of the states have now embarked in a program which allows the initial treatment decisions for a child placed in a state agency to be made by that agency. However, he advised me that all other states, all other states have some form of procedural due process which can limit or cap the authority of the state agency. And then he goes on to state how they provide, in one way or the other, recourse for an aggrieved party through the courts to contest placement decisions on the part of that state agency. So, while I respect Senator Smith, I certainly cannot support her amendment, and I would give the remainder of my time to Senator Abboud.

SPEAKER BARRETT: Senator Abboud.

SENATOR ABOUD: Mr. President, colleagues, thank you, Senator Coordsen, for allowing me a few minutes of your time. I rise also in opposition to this particular amendment. I think we're going to have to realize that really there is no middle ground on this particular issue. And I think it's a bit unfortunate that the Department of Social Services has become involved in the decision-making power, which I feel should have been always...should have been and should have remained in the courts. It really...it's an interesting situation that we're talking about, because at least with the judicial system you do have some review. I recall we had a juvenile judge in Douglas County a number of years ago who was not well liked by a large group of...a large contingency of individuals that had a lot of reviews before the juvenile justice system, and that particular judge was voted out of office because of his beliefs on how children should be taken care of. That shows, I believe, that the system does work. Taking care of children in our society is probably one of the more controversial areas that the court system has to deal with, but at least we do have accountability, and the accountability is in the form of voting the judges out

of office, if they do a poor job in dealing with our children. That cannot be said for the Department of Social Services. If a director isn't doing a good job, or an individual that is in the bureaucracy, there is no accountability. The accountability does not exist. That is why I'm supporting Senator Coordsen's proposal in LB 182. Now this particular amendment, I understand Senator Smith does have a deep concern for our children and I do appreciate her approach and maybe there will be some area of middle ground, but this particular amendment is virtually the same as we currently have in our existing system in regards to accountability, and that is really what we're talking about, accountability that our judicial system does have in the current system. I would urge the rejection of this amendment. Thank you.

SPEAKER BARRETT: Senator Crosby.

SENATOR CROSBY: Thank you, Mr. Speaker. I second what Senator Abboud said. He said it a lot better than I could.

SPEAKER BARRETT: Senator Kristensen.

SENATOR KRISTENSEN: Mr. Speaker, I'd like to yield just a couple minutes of my time, the first two or three minutes to Senator Smith.

SPEAKER BARRETT: Senator Smith.

SENATOR SMITH: Thank you, Senator Kristensen. I would just like to clarify or maybe I need to ask some other people who may be in a position to tell me better than I know, isn't the reason for this bill being brought to us...maybe I should ask Senator Coordsen, George, isn't the purpose for the bill being brought to us the problem that is perceived in the fact that right now the Department of Social Services is autonomous in its decisions?

SENATOR COORDSEN: That's right.

SENATOR SMITH: Then why are we, all of a sudden, raising and talking about...rising and talking about the fact that this would be unconstitutional for me to say that we have a review panel, an independent review panel made up of other people to review the decisions that they're making, if right now the Department of Social Services supersedes, evidently, the

determination of the judges?

SENATOR COORDSEN: My understanding of the problem that whatever decision was made by the review panel, under 182, would be binding, there is no way that I know of, at this point in time, where the panel that you provide for would, in fact, have any authority.

SENATOR SMITH: What I'm asking you, George, is how is it then that until this time why didn't we just question the constitutionality of the right of the Department of Social Services to be making any decisions prior to this then instead of bringing a bill to change this so that the judges now have that power?

SENATOR COORDSEN: You talking about...

SENATOR SMITH: (inaudible) no one supersedes the judges decisions.

SENATOR COORDSEN: There is not a constitutional issue at this time because the judges still have the authority over the child, they can at any time return from DSS the custody and give that custody to the county.

SENATOR SMITH: Well, then I guess I come to the question of what's this bill for?

SENATOR COORDSEN: This bill is to provide a mechanism for resolving disputes in areas where DSS provides a different program.

SENATOR SMITH: How can there be a dispute, George, if the judges have final authority?

SENATOR COORDSEN: Because they do not have final authority over the Department of Social Services. Their final authority is to return to the county the custody. Counties do not have any means of providing services for the...for the juvenile.

SPEAKER BAFRETT: Two minutes and one-half.

SENATOR SMITH: I'm afraid I'm taking Senator Kristensen's time but I understand I'm next and I will give him my time when it's my turn.

SPEAKER BARRETT: Senator Kristensen. Excuse me.

SENATOR SMITH: I will just go ahead...

SPEAKER BARRETT: Go ahead.

SENATOR SMITH: ...if you don't mind then. I guess I have a concern that we're hearing all kinds of things coming out of the woodwork here now and I'm trying to understand which is right and which is wrong. I don't...I'm trying to understand also how it is that we, in this legislative body, can create review panels or committees or commissions or whatever you call them, appointed by the Governor, which we review in the body and approve and they're sitting out there making decisions, recommendations and that sort of thing on behalf of those different departments and agencies that are already in existence. Now if someone can answer that question, I wish you would raise your hand...and at the same time saying we can't do this. Can someone who is an attorney tell me whether we can or whether can't do that? All of you attorneys...Doug, you can have my...you can have the rest of your time to answer. Okay, Senator Kristensen, my question is...I'm becoming very confused here by what I'm hearing these people saying to me, on the one hand. First of all, because of the...it's true, I've gone back and I have agreed with all of their concerns about some of the decisions that were being made, the way cases were being handled and so on. Now I'm trying to create a separate and independent six-member review panel to review whenever there is a dispute between a decision that's been made among the different...between the Department of Social Services and the judicial system, to help to arbitrate, to try to help to...

SPEAKER BARRETT: One minute.

SENATOR SMITH: ...resolve those problems that they...the problem, the dispute that they had to negotiate and I'm being told that this is unconstitutional. How is it that we then can do this in other areas in this legislative body? They would be appointed by the Governor and reviewed and approved by the Legislature. How is it that this is unconstitutional?

SENATOR KRISTENSEN: Well, I think the problem is and I want to paraphrase what you're saying to me is, how can we...we'll set up this panel and the panel is going to help arbitrate it. But

what happens if we reach no decision? The panel says, yes, the child ought to go here. The Department of Social Services says, no, it should go here, and the court says, no, it should go a third place. Who is going to decide? I mean, the problem with your panel is very good in terms of you get all the points of view and it's a very good arbitration but it doesn't solve our problem. What you can do...

SPEAKER BARRETT: One minute.

SENATOR KRISTENSEN: ...with a three-judge panel is mandate the change back to the court. That's the power of three judges. They can do that. I don't think that you can have citizens mandate to a court what they should do.

SENATOR SMITH: See, I don't think that was the intent. It's to help arbitrate and negotiate.

SPEAKER BARRETT: Excuse me, the time had expired. Now, Senator Smith, we're back on your time.

SENATOR SMITH: Thank you, Mr. Speaker. I would like to continue my discussion and then give the rest of my time to Senator Kristensen. Senator Kristensen, I would just say then if that's the case, if you had a dispute that was not resolvable, you're saying because they have both sides and nothing came out of the negotiations or the arbitration, and I guess the way it is now, according to what we're saying the Department of Social Services is able to make a final decision. Is that what you're saying?

SENATOR KRISTENSEN: Well, I think it's important for you to go back and look at the law the way it is today. Once a ward is made...or a child is made a ward of the State of Nebraska, placement is made by the Department of Social Services and then there is a little phrase in the law called "with the assent of court". Okay, they come back to the court and say, here's the placement. We suggest the child go, let's say, to placement A. The court said, well, we don't like that. So the placement doesn't happen and the Department of Social Services has to come back again and present another plan. After a while what happens is that you have this inevitable dispute. The Department of Social Services may well get their placement but it doesn't work and the court reaches this frustration. The court can't place the child and pretty soon the Department of Social Services

says, well, this is costing us too much money, we don't like this, and they get frustrated. And the Department of Social Services says, if you think you can do any better, here, and they throw it back to the county and do it. The problem I have with the panel, and I wanted to ask you some questions about that, could...would the panel that you propose have any binding authority? Could they force anybody to do anything?

SENATOR SMITH: Their...what the purpose of the panel for me would be, they would be an independent group who would be set to sort of intermediate, sit down to try to help negotiate and to resolve the conflict and provide their own input as supposedly concerned and knowledgeable people.

SENATOR KRISTENSEN: Okay, and that's fine but they don't have any binding power. They couldn't...they couldn't settle the dispute, in other words?

SENATOR SMITH: Well, they can.

SENATOR KRISTENSEN: Well, it's your amendment, I guess I would ask of you...

SENATOR SMITH: Well, I didn't think so but I do know one thing I have been told and that is that what I suggested to you a little bit ago is, in fact, true. The State Supreme Court has said that the Department of Social Services' decision is final.

SENATOR KRISTENSEN: They have...they have the power of placement. The phrase, "with assent of court" is still in the statutes, though, isn't it? I mean, that's not out.

SENATOR SMITH: I don't imagine it is but, evidently, according to the Supreme Court the decision that they make is final.

SENATOR KRISTENSEN: What the Supreme Court says is that the court can't force with that phrase the Department of Social Services to make a placement. That's what they're saying. Okay, I guess the other thing I want to go on and talk a little bit about is that somewhere down the line somebody has got to make a decision and how do we do that and who is going to make that decision? The real choice we have today is, are you going to let the Department of Social Services make those decisions until they get tired of the case or they get frustrated enough? And they say, here, county you have it back, you do something

with it. And if the county wants to do anything, they wind up with a very expensive tab but they also have burned out every foster home in the area. They have also gone away with a lot of resources. I like the idea of your panel, the problem is that's the reason we have the Foster Care Review Board and that's what the Foster Care Review Board basically comes in and looks at those problem areas. And, Senator Smith, I think that we have that in placement. We have a very good Foster Care Review Board in this state. Now they don't look at every case. They only look at the problem cases. I think what you would have is some duplication with your amendment with the Foster Care Review Board. I think we would find that cumbersome.

SENATOR SMITH: Well, I first thought of the Department...I mean, of the Foster Care Review Board but I didn't think that it worked in that same capacity, plus the fact it would not be as...I would want an independent group. We have local Foster Care Review Boards and the other thing is I would just ask you this question if you don't mind. Could the Department of Social Services, can they make a state...

SPEAKER BARRETT: One minute.

SENATOR SMITH: ...can it become...can they put it back to the county? Can they...

SENATOR KRISTENSEN: Sure.

SENATOR SMITH: ...can the Department of Social Services do that?

SENATOR KRISTENSEN: Sure. What they will do is they will come in and say, look we can't...we can no longer provide services to this juvenile. We just...we're done, there's nothing we can do. There's not a foster home we can send him to, there's not an institution we can send him to and...

SENATOR SMITH: I don't think I asked that right.

SENATOR KRISTENSEN: ...we send them back to you. If you, the judge, want to make those placements, you go ahead and that. The problem is that the judge is going to look across the table to the county attorney and say, well, do you...you know, what do you want to do? And that's a real tough decision. Most of those counties aren't in a position, financially, to do it

because all their local resources have been basically frittered away. And it's a large concern. That's the reason Senator Coordsen's bill is so good. And I think it takes that unbridled power away from the Department of Social Services and I'm very concerned about the way the department has operated and continues to operate with their attitude. They will work as long as it's a fairly good case...

SPEAKER BARRETT: Time has expired.

SENATOR KRISTENSEN: Thank you.

SPEAKER BARRETT: Thank you. Senator Haberman.

SENATOR HABERMAN: Mr. President and members of the body, Senator Smith, would you yield to a question, please.

SPEAKER BARRETT: Senator Smith, would you respond?

SENATOR SMITH: Oh, I'm sorry. Yes.

SENATOR HABERMAN: Senator Smith, would you consider pulling your amendment? We can straighten the situation out, write an amendment that will be acceptable and then offer it on Select File so we can advance this bill and go ahead.

SENATOR SMITH: Absolutely. That's exactly what I was just standing here discussing. I realize there is some confusion on it (interruption).

SENATOR HABERMAN: If you will...then you're offering to...

SENATOR SMITH: I will withdraw my amendment and offer it again on Select in a revised way, if I can, if it's possible to do that. Thank you.

SPEAKER BARRETT: Thank you, Senator Haberman. Thank you, Senator Smith. It's withdrawn. I didn't say you were, Senator Haberman.

SENATOR HABERMAN: Oh.

SPEAKER BARRETT: I don't think there is anything more to say on the amendment and that's where we were, for discussion purposes. You have just negotiated a masterful stroke. Now we're back to

the bill. It is withdrawn, Senator Wesely. We're back to a discussion of the bill now. Senator Dierks, followed by Senator Wesely. Senator Dierks, please. Senator Wesely, we'll go to you for discussion on the bill.

SENATOR WESELY: Thank you, Mr. Speaker. I would like to follow up on Senator Kristensen's comments to Senator Smith. The situation that Senator Kristensen talked about I think was reflective of what the circumstance was before the Supreme Court decision a year ago, but since that time I think there is a different scenario that plays out right now. And, for all of you, I'm no attorney and so I'm going to do the best I can in simple terms to describe what I understand the circumstance. But you have a child come to the court in a number of different categories, a status offender, other...let me see here, dependent, neglected, status offender. Okay, they come to the court, the court says, I want that child to be a state ward and provided services that they need. And so they send the child to the Department of Social Services and say, I want you to help this child, it's a state ward, and they make that decision, they have the authority. The department takes the child, determines what the best course of action is to help the child. They report back to the judge. The judge now in most cases says, fine. But every once in a while they say, don't like it, rather see them in a different situation. So the judge has the power now to say, I don't want that child to be a state ward anymore. I'm going to make that child a county ward. And, as a county judge, then...as a county ward, they can determine exactly whatever placement is made but the county pays for it because they're a county judge, a county decision, county paying it, it's the right decision at the right level of government, paid for by the right level of government. That's fine. What the court said in the Supreme Court decision is you can't have this judge over here making a decision binding on the executive branch of state government determining what that state ward...how that state ward will be placed by the Department of Social Services. They said you can't do that, it's unconstitutional. For Senator Coordsen and everybody, Senator Bernard-Stevens, everybody concerned about Senator Smith's unconstitutional amendment, then you ought to vote against this bill because it's blatantly unconstitutional based on an Attorney General's Opinion and a Supreme Court ruling that just came out. Now the way this could be handled, I think constitutionally, is that you have again the court saying, I want this child a state ward. The State Department of Social

Services makes a plan, reports back to the court. The court says, I don't like that, I think that ought to be different. So then that's kicked back to this independent panel appointed by the Governor and they have a review, a chance for somebody independently to take a look at the circumstance and tell the department yes or no as an ultimate overseer of a second court of appeal, so to speak, of that placement. And they would make that determination and if they agreed with the department, they would go ahead and if they didn't agree, they could overrule it. You can do that. See, they're not overruling the court then, they're...it's an executive branch function and that would be an executive branch oversight review. It's no problem. The confusion that's been brought to Senator Smith's amendment is inappropriate. It just...the amendment wasn't drafted to reflect what I just said but it can be drafted to accomplish that goal. And in so doing, I could support the bill with that concept and it would be, I think, a reasonable effort, a compromise and it also would be constitutional. So that's the intent and direction, I think, we need to go to. We're not ready to do that. We can't draft it in this quick a fashion so I do plan to oppose the bill. But if the bill does get advanced, I hope you realize that the confusion now being raised can be cleared up quite readily and easily on Select File and I would be willing to work with Senator Smith to see that we adopt just such a change to this bill. But at this moment, at this point, the bill in its current form ought not to be advanced. It's in bad shape. It's wrong and I have yet to hear any of the supporters talk about compromise or reasonable effort to reach a constitutional solution to this problem. So I can't feel good about advancing the bill on anybody's word because no word has been given whatsoever to change...

SPEAKER BARRETT: One minute.

SENATOR WESELY: ...anything in this bill. In addition, nobody has talked yet about a provision I thought was going to be amended out of this bill a long time ago, a \$10 million ticket to have juvenile delinquents now under the state and services provided for them. Nobody has even talked about that part of the bill. A tremendous change in status for these individuals now in the judicial system under this bill moved into the executive branch and a responsibility of our state, a very expensive change, very dramatic change, one we haven't thought through whatsoever and ought not to be advanced. So, for that part of the bill to continue on is a tremendous mistake, in

addition, the unconstitutional part of the review process to continue is a mistake and I would still oppose the bill. But there is a way to resolve this and I would sure like to see the supporters of this recognize that there is an offer here, a good faith offer to try and deal with this and this bill is not the solution and should not be advanced or passed in its current form.

SPEAKER BARRETT: Senator Bernard-Stevens.

SENATOR BERNARD-STEVENS: Question.

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

ASSISTANT CLERK: 25 ayes, 2 nays on the motion to cease debate, Mr. President.

SPEAKER BARRETT: Debate ceases. Senator Coordsen, would you care to close?

SENATOR COORDSEN: Thank you, Mr. President, and members of the body, Senator Wesely mentioned a pledge. I have no problem between now and Select working with Senator Smith, Senator Wesely and the people who were involved in bringing this bill to me, trying to work out and for that matter the Department of Social Services, trying to work out amicable amendments that will address the problem that can be offered on Select File. So, with that, I would urge the advancement of the bill.

SPEAKER BARRETT: Thank you. The question is, shall LB 182 be advanced? All in favor vote aye, opposed nay. Record, please.

ASSISTANT CLERK: 34 ayes, 2 nays on the motion to advance the bill.

SPEAKER BARRETT: LB 182 is advanced. Anything for the record? Proceeding directly then to the next bill, LB 325. Mr. Clerk.

ASSISTANT CLERK: LB 325 was introduced by Senators Hefner, Rod Johnson, Morrissey, Nelson, Beck, Lowell Johnson, Smith, Pirsch, Schimek, Scofield and Peterson. (Read title.) The bill was read for the first time on January 11th, was referred to the Natural Resources Committee. The bill was reported by the

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LB 84, 84A, 89, 89A, 182, 247A, 325
603, 603A, 651A, 761
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this go on about the possibility down the road of some kind of discussion down the line of the two entities, namely, the local monitoring committee and DEC, under its rules and regs, getting into a dispute over was the money properly expended, and maybe we need a better agreement right up front on how that process is going to work. We are about out of time and we may want to come back to that. That is the question I want to raise and I think we have got, at least, some intent here into the record, and I would not want to see this unnecessarily tie the hands of a local monitoring committee that might have legitimate reasons to wish for more data or a different analysis of data. Thank you.

SPEAKER BARRETT: Time has expired. Any other discussion? Any closing, Senator Schmit?

SENATOR SCHMIT: I have no closing, Mr. President.

SPEAKER BARRETT: Thank you, sir. The question is the adoption of the Schmit amendment, AM1403. Those in favor vote aye, opposed nay. Record, please.

CLERK: 27 ayes, 0 nays, Mr. President, on adoption of Senator Schmit's amendment.

SPEAKER BARRETT: The amendment is adopted. Mr. Clerk, for the record.

CLERK: Mr. President, I have a reference report referring certain gubernatorial appointees to the appropriate Standing Committee for confirmation hearing. I have a series of appointment letters from the Governor. Those will be referred to the Reference Committee, Mr. President.

Enrollment and Review reports LB 182 to Select File, LB 325 Select File, LB 247A, LB 651A, LB 603, LB 603A, all to Select File. Enrollment and Review reports LR 2 as correctly engrossed, Mr. President. A series of amendments to be printed, Senator Coordsen to LB 89; Senator Lynch to LB 89, Senator Lynch to LB 89A; Senator Lamb to LB 84 and LB 84A. (See pages 1726-33 of the Legislative Journal.)

Mr. President, the next amendment I have is by Senator Schmit. Senator, I have AM1417 in front of me. (See page 1733 of the Legislative Journal.)

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LB 89, 182, 280, 586

those in favor of the advancement of the bill say aye. Opposed no. Carried, the bill is advanced. LB...anything for the record?

CLERK: Mr. President, two items, amendments to be printed by Senator Smith to LB 89 and to LB 280. (See pages 1875-76 of the Legislative Journal.) That's all that I have, Mr. President.

SPEAKER BARRETT: Thank you, Mr. Clerk, LB 182.

CLERK: Mr. President, 182 is on Select File. I do have E & R amendments pending, Senator.

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move the adoption of the E & R amendments to LB 182.

SPEAKER BARRETT: Shall the E & R amendments be adopted to LB 182? Those in favor say aye. Opposed no. Carried, they are adopted.

CLERK: Mr. President, Senator Coordsen would move to amend the bill. Senator, I have your AM1498 before me. (Coordsen amendment appears on pages 1877-78 of the Legislative Journal.)

SPEAKER BARRETT: Senator Coordsen.

SENATOR COORDSEN: Thank you, Mr. President, members of the body. Last week, early last week we had a meeting between the proponents of the bill, the opponents of the bill, Senator Wesely and myself were present, and we worked out a series of amendments to address the concerns of the opponents to the bill and what I'm presenting to you in 1498 then is the result of that particular meeting. And I would direct your attention to a handout that went out this morning with a two-page explanation and then the language of the amendment. We'll run quickly through the two-page explanation with the changes in LB 182 that will be brought about with the adoption of this amendment. First is a definition of costs which shall mean the sum or equivalent expended, paid or charged for goods or services, or the contracted or negotiated price. And I would share with you that if we adopt this amendment there will be an amendment to this amendment to change the language in that small amount. Page 2 of the explanation, paragraph 2, will change the standard

of evidence that will be required in a hearing to the review panel. This was done...this change was done at the request of the Department of Social Services so that the level of evidence at each level of the process would be the same. Then we struck the word "not", the word...this is a pretty big word "not" because what this does, this makes the department's plan that is put in place for a juvenile will be the plan that is implemented until the review panel might reverse their decision. This will stay the court's order in disputed cases. Number three, reinsert "subdivision (3) of". This reinserts the language which allows only juveniles that fit within the 43-247.3(b) classification to be committed to the department. This returns the language of the type of juvenile that can be committed to the state as wards of the Department of Social Services back to the situation or the type of juvenile that exist today. Then Section 4 is an addition to the bill, an additional wording to the committee amendment that we adopted on General File and it provides better language in the event that a caseworker needs to remove a juvenile from wherever their placement is immediately and a judge cannot be found. It says, "The department may make an immediate change in placement without court approval only if the juvenile is in a harmful or dangerous situation or when the foster parents request that the juvenile be removed from their home. Approval of the court shall be sought within 24 hours after making the change in placement or as soon thereafter as possible." So I think the explanation you have on your desk pretty well explains the amendments, the reasons behind them and with that I would move the adoption of the amendment.

SPEAKER BARRETT: Thank you, Sir. Amendment on the desk.

CLERK: Senator, you now have your amendment to the amendment. (Read Coordsen amendment as found on page 1878 of the Legislative Journal.)

SENATOR COORDSEN: This is again clarifying language to make sure that everyone understands what is meant by costs, those people who are impacted by the bill. As I indicated in my explanation of the amendment that this amendment would follow, that would add on line 21, page 2 of the amendment, after the "or expenses incurred." So with that, I would move the amendment to the amendment.

SPEAKER BARRETT: Thank you. Any discussion? Senator Wesely, on the amendment to the amendment. Thank you. Seeing no other

lights, those in favor of the adoption of the amendment to the Coordsen amendment please vote aye, opposed nay. Record, Mr. Clerk.

CLERK: 27 ayes, 0 nays, Mr. President, on adoption of the amendment to the amendment.

SPEAKER BARRETT: The amendment to the amendment is adopted. Back to the Coordsen amendment as amended. Senator Wesely.

SENATOR WESELY: Thank you, Mr. Speaker, members. I have worked with Senator Coordsen on these amendments and I do appreciate his willingness to amend the bill. We had a meeting with Senator Coordsen, myself and Senator Smith to talk about this matter. We also had Judge Icenogle and Judge Gless and several other individuals that joined us trying to resolve the...if you remember on General File, we had quite a fight over this. I had a kill motion and several other amendments talked about and we finally decided that the best course would be to advance the bill and see if we couldn't come to some compromise. The fundamental question is, should the courts be involved in these placement issues or should the department continue to have that responsibility? The courts are very adamant in wanting to retain some oversight function and, of course, from the vote on a bill on General File it's clear that they also have the majority support of this body, so the question then became more than fundamental about who has that right but how is it to be functioned? I still have concerns about the way this will work. Obviously, when you interject the judicial branch and the executive branch in this, we've had some conflict and some difficulties and, I don't know, I think going back to that will bring those conflicts and difficulties, but I also must add that the discussion that we had was a very positive one and the discussion was a pretty good one about greater cooperation and trying to meet the needs of the kids involved and trying to do the right thing. And if the attitude that prevailed at this meeting were the attitude that was carried forward after this bill is passed, I think we'd all be better off because it's the attitude that the department has the primary responsibility and expertise, the judges are there to provide oversight to make sure that they don't abuse that power and the responsibility, that if there is a conflict that we have a system in place to resolve that conflict and that we go forward in those few instances. One estimate was 1 percent of the cases, another was at most 5 percent of the cases is what we're fighting over here,

that in those 1 to 5 percent of the instances of conflict that we will now have a system to resolve it in a positive fashion. I had been concerned about the cost involved with the judges involved and we still don't know exactly what the A bill will be on this, but they assure me that there are a few of them that are causing the exceedingly expensive placements that are also inappropriate and that they hope with the review panel they'll have a chance to level that out and not have those problems. They also assured me that with the review panel of three judges, that they will be independent minded and selected not so much as a club atmosphere where everything one judge wants is what the panel will go with, but that the judges will try to maintain some independence and review will be indeed impartial. You know, my concern was that judges reviewing a judge versus a department decision would lean toward the judge. I hope that's not the case, but they assure me that it isn't and so I guess we'll see how it functions. The changes here on the costs, going through these, the first change on the cost I think help dramatically with the concern about trying to make sure that the department has a chance to negotiate the best price for the services needed. The level of review from clear and convincing to preponderance of evidence at least gives the appearance of a level playing field and that's helpful. The decision that the department plan goes forward until the review panel takes action is helpful so you don't have the back and forth changing of plans all the time. That's good. The elimination of the juvenile offenders from the department responsibility will save at least \$10 million out of the bill. I think that's good, although we do need to study that issue further. The emergency placement decision and then contacting of the judges will help so that we don't have the problem of needing to get ahold of a judge when an emergency problem exists and not being able to contact one and hopefully we'll be able to get children in those vulnerable situations dealt with...

SPEAKER BARRETT: One minute.

SENATOR WESELY: ...quickly and then we can go back to the courts to get their review. There are other things that we talked about that aren't in the amendment that we'll have to study. One of those is the authority of a court, as they contend they wish to place a child under a state status if they don't like the situation, would still continue under the statutes to be able to pull the child out of the state and put them under county supervision. We talked about eliminating that

provision so that that additional advantage to the judges and problem with the judges could be dealt with, but it's a more complicated issue than that, and so I do anticipate part of the study that we're going to do will look at that opt out provision and potentially next year we'll be back with legislation that takes out the right of the county judge to take a child out of state responsibility and put them in county responsibility. And I know I'm running out of time so we'll...I would support this amendment and then we can talk further about where we're at with the bill.

SPEAKER BARRETT: Thank you. Senator Coordsen.

SENATOR COORDSEN: I would just...are there any other lights on?

SPEAKER BARRETT: There are none. This constitutes your closing if you'd prefer.

SENATOR COORDSEN: Okay, thank you, Mr. President, members of the body. Senator Wesely made some good points. I would share that I've already introduced an interim study resolution, hopefully this body will adopt it, that will call for a study of the issues that are still being contested. I think that this bill was introduced not to be involved in department bashing, hopefully we have established a level playing field that will stop the pendulum at midpoint where the judiciary will not have total authority, the department will not have total authority and we will put in place with this bill, if there is cooperation on both sides, the opportunity for the judiciary, the Department of Social Services, the guardians, everyone to be involved at the beginning of the care and planning for the care of a juvenile where they will come together and discuss openly what is best for that particular person without one side having a lever over the other side. I hope that this bill will protect the budget of the State of Nebraska as amended by preventing unnecessary care and treatment procedures that come simply from a court decision. So with that, I would urge the adoption of the amendment to the bill and the movement of the bill.

SPEAKER BARRETT: Thank you. The question is the adoption of the Coordsen amendment to LB 182. Those in favor vote aye, opposed nay. Record, please.

CLERK: 31 ayes, 0 nays, Mr. President, on adoption of Senator Coordsen's amendment.

SPEAKER BARRETT: The amendment is adopted.

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

SPEAKER BARRETT: Thank you. Discussion on the advancement of LB 182. Senator Wesely.

SENATOR WESELY: Thank you, Mr. Speaker, as I talked about, the amendments did help considerably deal with concerns that I had with the bill and we did try reasonably to sit down and cooperate on this issue. I think everybody is very concerned about this matter. We're dealing with a lot of kids here, very vulnerable in a situation where we're trying to make sure that their needs are cared for. There are differences of opinion about what to do with these children and what is best for those children. The conflict has been in some cases where the department has wanted to place them in a local setting. Judges have, in some cases, wanted to place them outside of the state in very expensive hospital settings, not even sometimes outside of the state. There is a lot of concern about the appropriate response to these children and the cost involved and the arguments made on General File were that judges were less concerned about the costs than the department were and that was a concern and, secondly, that sometimes they see hospitalization much more favorably than the department does, and we just talked about the Family Policy Act and that there are less restrictive settings that are better for those children. And so we've tried to recognize those concerns and our discussions in our meeting were such that I think some of the judges agree with those concerns and want to try and take care of this problem, and so it's one of those situations where there are few judges causing these problems and we're very afraid of going back to giving them some of the powers that they had before and having the problems that result. But with the review panel and some of the mechanisms set up here, we're hoping that this will all work out, that wherever we have these problems where some of the abuses we were talking about occur again in returning the power back to the county courts, that we will have an oversight function, that we will not have this situation occurring that we've had in the past. And so it's very difficult to know how this will all work and I'm still very apprehensive about this, but in a spirit of cooperation, I feel like we can proceed and at least examine how this function goes forward. The Attorney General Opinion, if you remember on General File, said that this

bill was unconstitutional, that we can't give back to the courts this kind of power. An opinion written by Judge Icenogle, to me, countering that opinion, I thought was pretty persuasive that you could argue that it was constitutional. So the constitutional question, I don't know where we end up on that, if the bill goes through, if there will be a challenge or not a challenge, or constitutionally we have a problem or not a problem. It looks to me like you could argue both sides. Again, this bill also points out the need for more caseworkers. One of the big problems in this and the last bill we had by Senator Pirsch is not enough people working with these kids and these problems and I would argue again for the need for more staff to work with these children. One of the things we all agreed to in our discussion was that whether the judges or the department have the authority, we don't have enough people working on these problems and enough staff to meet the need. So, ultimately, that could help solve the problem more than this legislation, to have adequate caseworkers and there will be legislation that attempts to do that. I'm basically, for the record, expressing concern and apprehension but also expressing a desire to cooperate and cooperate is what we need to see more of in this issue, more communication between the department and the judges, more understanding between the judicial branch and the executive branch, more effort to meet the true needs of the children, less conflict than we've had over the past few years. This has certainly not been good for anybody I think and maybe this bill will help resolve it. I contend that in the original version of the bill it probably would have made that bad situation worse. I think we're a long way with the amendments we adopted toward hopefully not having that happen, and instead of making that bad situation worse, hopefully we'll make it better. That's my hope anyway. And so with that, I don't plan to oppose the bill and most likely will vote to advance the bill and hope that we continue the communication and cooperation that our amendments have started. This is the first time in a long time that we've had that sort of communication and cooperation and it's the start maybe of a good thing that we need more of. And so with that, I commend Senator Coordsen and the others that have been involved, Senator Smith, in trying to work out these...this bill and this problem and hopefully it will be the start of a new approach to working together on this issue.

SPEAKER BARRETT: Thank you. Any other discussion on the advancement of the bill? Seeing none, Senator Coordsen, anything further?

April 24, 1989

LB 182, 325

SENATOR COORDSEN: Just move the bill, Mr. President.

SPEAKER BARRETT: Thank you, Sir. The question before the body is the advancement of LB 182 to E & R Engrossing. Those in favor say aye. Opposed no. The ayes have it, the bill is advanced. LB 325.

CLERK: Mr. President, 325 is on Select File. The first item I have are Enrollment and Review amendments.

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: (Microphone not activated) ...LB 325.

SPEAKER BARRETT: You have heard the motion to adopt the E & R amendments to LB 325. Those in favor say aye. Opposed no. Carried. They are adopted.

CLERK: Mr. President, Senator Baack would move to amend the bill.

SPEAKER BARRETT: Senator Baack, for an amendment to 325.

SENATOR BAACK: Yes, Mr. Speaker and colleagues, I will...I understand that Senator Hefner has an amendment coming up so for right now I will withdraw that amendment, and if his amendment is adopted, I will probably just withdraw it altogether. So we'll just withdraw that for right now. Thank you.

SPEAKER BARRETT: It is withdrawn. Thank you.

CLERK: Mr. President, Senator Hefner would move to amend the bill. (The Hefner amendment appears on page 1878 of the Legislative Journal.)

SPEAKER BARRETT: Senator Hefner.

SENATOR HEFNER: Mr. President and members of the body, I do have an amendment that I wish to offer. It's a compromise amendment. I would like to ask a Page to pass these out. This amendment was worked out with some of the opponents and this is the amendment to an amendment that we adopted the other day. We strike "January" and insert "October". So the effective date would be delayed from January 1993 to October 1993. We also put

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

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LB 84, 84A, 182, 813

happens with greater rapidity and it's the kind of thing at least the Legislature ought to keep in mind, each of us, and it's not a factor this year, we're passed that, but in future years it's something that we need to take into account. Certainly, in this case the bill was at issue and the same as the bill that was already over on Final Reading that deals with the federal changes...

SPEAKER BARRETT: Time.

SENATOR WARNER: ...it was appropriate that those be handled as they are and as they were but they were handled in one committee and the allocation of funds was there and it was a much more orderly process. But when we get dual requests it does create some problems trying to sort out what kind of priority the Legislature wants.

SPEAKER BARRETT: Senator Ashford. Thank you. Senator Wesely.

SENATOR WESELY: I move to recess till one-thirty.

SPEAKER BARRETT: Mr. Clerk, for the record.

CLERK: Mr. President, two items. Senator Schmit has a motion to be printed and Senator Moore has amendments to LB 813 to be printed. That's all that I have. (See page 1977 of the Legislative Journal.)

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

RECESS

SPEAKER BARRETT PRESIDING

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

SPEAKER BARRETT: Thank you. Anything for the record?

CLERK: Mr. President, your Committee on Enrollment and Review respectfully reports they've carefully examined and engrossed LB 84 and find the same correctly engrossed; LB 84A, LB 182,

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LB 78, 182, 262, 591, 591A, 606, 646
681, 813
LR 110-115

amendment is adopted. Do you have anything else on it, Mr. Clerk?

CLERK: Mr. President, Senator Wesely would move to amend Senator Bernard-Stevens' amendment.

PRESIDENT: Senator Wesely, please.

SENATOR WESELY: Yeah, I move to recess till one-thirty.

PRESIDENT: You've heard the motion. All in favor say aye. Opposed nay. You are recessed until one-thirty.

RECESS

PRESIDENT NICHOL PRESIDING

PRESIDENT: Record, Mr. Clerk, please.

ASSISTANT CLERK: There is a quorum present, Mr. President.

PRESIDENT: Do you have anything to read in, Mr. Clerk?

ASSISTANT CLERK: One item, Senator Coordsen would ask unanimous consent to print amendments to LB 182.

CLERK: Mr. President, I have a series of things, a communication from the Governor to the Clerk. (Re: LB 606, LB 681, LB 78, LB 646, LB 262, LB 591, LB 591A. See page 2089 of the Legislative Journal.)

A new study resolution by Senator Rod Johnson, LR 110. LR 111 by Senator Johnson. LR 112 by Senator Baack. LR 113 by Senator Barrett. LR 114 by Senator Hefner. LR 115 by Senator Baack. (Read brief explanation of each. See pages 2089-93 of the Legislative Journal.)

Mr. President, received a report from U S Ecology which is filed pursuant to rule and reg. Senator Wesely has amendments to LB 813, as does Senator Bernard-Stevens... Senator Bernard-Stevens has amendments to LB 813, Mr. President. (See pages 2093-94 of the Legislative Journal.)

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LB 175, 182

SENATOR HALL: Mr. President, could I have a call of the house and a roll call vote.

SPEAKER BARRETT: We are technically under call.

SENATOR HALL: Can we check in, please.

SPEAKER BARRETT: Members, please check in for roll call vote on the motion to suspend. Senator Lamb, please. Senator Lynch. Senator Landis. Senator Schimek, please. Senator Wehrbein, please check in. Members, return to your seats for roll call. Mr. Clerk, proceed with the roll call on the question of suspension of rules.

CLERK: (Roll call vote taken. See page 2325 of the Legislative Journal.) 25 ayes, 12 nays, Mr. President, on the motion to suspend the germaneness rule.

SPEAKER BARRETT: The motion fails. Anything further?

CLERK: Nothing further on that bill, Mr. President.

SPEAKER BARRETT: Next item.

CLERK: Mr. President, the next bill for consideration, LB 182. Senator Coordsen would move to return the bill for a specific amendment. Senator Coordsen's amendment is on page 2088 of the Journal.

SPEAKER BARRETT: Senator Coordsen.

SENATOR COORDSEN: Thank you, Mr. Speaker, members of the body. When this bill was amended on Select File with a compromise amendment with the adoption of a part of that it left some language in the bill referring to probation officers that was not applicable anymore since we had narrowed, again, the scope of the type of juvenile that could be assigned to the Department of Social Services as a ward of the state. So this amendment, wherever the word "probation officer" or "probation officer" or "probation officer's plan" appears in the bill, it strikes those words. So, with that, I would move to return the bill for the amendment.

SPEAKER BARRETT: Thank you. Discussion on the Coordsen motion to return the bill. Senator Haberman, your light is on. Any

discussion? If not, those in favor of the motion vote aye, opposed nay. Please record.

CLERK: 33 ayes, 0 nays, Mr. President, on the motion to return the bill.

SPEAKER BARRETT: The bill is returned. Senator Coordsen, on your amendment.

SENATOR COORDSEN: I would just move the adoption of the amendment.

SPEAKER BARRETT: Thank you. Discussion? Seeing none, those in favor of the adoption of the amendment offered by Senator Coordsen vote aye, opposed nay. Please record.

CLERK: 34 ayes, 0 nays, Mr. President, on adoption of Senator Coordsen's amendment.

SPEAKER BARRETT: The amendment is adopted. Senator Coordsen.

SENATOR COORDSEN: I move the readvancement of the bill.

SPEAKER BARRETT: Shall the bill be readvanced? Those in favor say aye. Opposed no. Carried, the bill is readvanced. Mr. Clerk.

CLERK: Mr. President, Senator Withem would move to return LB 228 to Select File for a specific amendment. That amendment may be found on page 2291 of the Journal, Mr. President.

SPEAKER BARRETT: Senator Withem.

SENATOR WITHEM: Yeah, Mr. Speaker, members of the body. First of all, I'd apologize to Senator McFarland. I was reviewing some bills that came out of the Education Committee on Wednesday afternoon. Came across this one and noted that there was an amendment that I had meant to propose way back when it was in committee and we didn't. I had the amendment drafted and filed. I was gone to a conference on Thursday and Friday and haven't even had a chance to visit with him about this. What Senator McFarland's bill does, and may I also...maybe it ought to be pointed out that this was a bill that the Education Committee had heard last year, had advanced it with an amendment similar to the one I'm proposing to the full Legislature. We ran out of

May 15, 1989

LB 182, 289, 487, 761, 813

SENATOR SCHMIT: ...hope that we advance the bill onto Final Reading here today.

PRESIDENT: Thank you. Senator Lamb, please, followed by Senator Langford and Senator Abboud.

SENATOR LAMB: Question.

PRESIDENT: The question has been called. Do I see five hands? I do. The question is, shall debate cease? All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 30 ayes, 1 nay, Mr. President, to cease debate.

PRESIDENT: Debate has ceased. Senator Schmit, do you wish to close?

SENATOR SCHMIT: I have no closing. I only ask that you move the bill onto General File...to Final Reading.

PRESIDENT: You have heard the motion. All those in favor say aye. Opposed nay. It is advanced. Thank you. Do you have any items, Mr. Clerk?

CLERK: Mr. President, I have amendments to LB 289 by Senator Landis; Senator Warner to LB 813; Senators Coordsen and Crosby to LB 813. (See pages 2390-92 of the Legislative Journal.)

Enrollment and Review reports LB 182 correctly engrossed and LB 487 correctly engrossed. That's all that I have, Mr. President.

PRESIDENT: Senator Barrett, do you have some words for us, please.

SPEAKER BARRETT: Mr. President, I move we adjourn until tomorrow morning at eight o'clock.

PRESIDENT: You said eight o'clock.

SPEAKER BARRETT: I did.

May 17, 1989

LB 162A, 175, 175A, 182A, 182

and not voting, Mr. President.

Mr. President LB 162A passes. LB 175, please.

CLERK: (Read LB 175 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 175 pass? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

CLERK: (Record vote read. See pages 2466-67 of the Legislative Journal.) 35 ayes, 7 nays, 3 present and not voting, 4 excused and not voting, Mr. President.

PRESIDENT: LB 175 passes. LB 175A.

CLERK: (Read LB 175A on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 175A pass? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

CLERK: (Record vote read. See pages 2467-68 of the Legislative Journal.) 38 ayes, 1 nays, 6 present and not voting, 4 excused and not voting, Mr. President.

PRESIDENT: LB 175A passes. LB 182, please.

ASSISTANT CLERK: (Read LB 182 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 182 pass? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

ASSISTANT CLERK: (Record vote read. See pages 2468-69 of the Legislative Journal.) The vote is 45 ayes, 0 nays, 1 present and not voting, 3 excused and not voting, Mr. President.

PRESIDENT: LB 182 passes. LB 182A.

ASSISTANT CLERK: (Read LB 182A on Final Reading.)

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LB 44, 44A, 49, 49A, 134, 137A, 158
158A, 162, 162A, 175, 175A, 182, 182A
198, 228, 228A, 305, 815, 816, 816A

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 228 pass? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

ASSISTANT CLERK: (Read record vote as found on pages 2473-74 of the Legislative Journal.) The vote is 47 ayes, 0 nays, 1 present and not voting, 1 excused and not voting, Mr. President.

PRESIDENT: LB 228 passes. LB 228A.

ASSISTANT CLERK: (Read LB 228A on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 228A pass? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

ASSISTANT CLERK: (Read record vote as found on page 2474 of the Legislative Journal.) The vote is 45 ayes, 1 nay, 2 present and not voting, 1 excused and not voting, Mr. President.

PRESIDENT: LB 228A passes. While the Legislature is in session and capable of transacting business, I propose to sign and do sign LB 44, LB 44A, LB 49, LB 49A, LB 134 with the emergency clause attached, LB 158, LB 158A, LB 162, LB 162A, LB 175, LB 175A, LB 182, LB 182A, LB 198, LB 228, and LB 228A. Anything for the record, Mr. Clerk?

CLERK: Mr. President, yes, thank you. Your Committee on Enrollment and Review reports LB 305, LB 815, LB 816, and LB 816A as correctly engrossed, all signed by Senator Lindsay as Chair of Enrollment and Review. (See pages 2475-76 of the Journal.)

I have a confirmation hearing report from Health and Human Services Committee signed by Senator Wesely as Chair. That's all that I have, Mr. President.

PRESIDENT: We'll move on to LB 137A.

CLERK: Mr. President, 137A is a bill introduced by Senator Warner. (Read title.)

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LB 44, 44A, 49, 49A, 134, 158, 158A
162, 162A, 175, 175A, 182, 182A, 198
211, 228, 228A, 308, 309, 309A, 362
377, 429
LR 88

Mr. President, bills read on Final Reading today have been presented to the Governor. (Re: LB 44, LB 44A, LB 49, LB 49A, LB 134, LB 158, LB 158A, LB 162, LB 162A, LB 175, LB 175A, LB 182, LB 182A, LB 198, LB 228 and LB 228A. See page 2482 of the Legislative Journal.)

Mr. President, amendments to be printed, Senator Hall to LB 211, Senator Ashford to LB 362, Senator Weihing to LB 377, Senator Lynch to LB 377. (See pages 2482-88 of the Legislative Journal.)

Enrollment and Review reports LB 308 as correctly engrossed, LB 309 and LB 309A as correctly engrossed.

And, Mr. President, I have a communication from the Chair of the Reference Committee rereferring study resolution LR 88 from the Banking Committee to the General Affairs Committee. That is signed by Senator Labedz as Chair. And that is all that I have, Mr. President.

PRESIDENT: We'll go to Final Reading on number 9. We'll start with LB 429, but we need to get into our seats and get ready for Final Reading, please. Mr. Clerk, LB 429.

CLERK: The first motion...I have motions on 429, the first is by Senator Wesely. Senator Wesely would move to return the bill, the purpose being to strike the enacting clause.

PRESIDENT: Senator Wesely, please.

SENATOR WESELY: I will withdraw that amendment at this time.

PRESIDENT: All right, it is withdrawn.

CLERK: Mr. President, Senator Moore and Lindsay would move to return the bill for a specific amendment. (Moore-Lindsay amendment appears on page 2489 of the Journal.)

PRESIDENT: Senator Moore, please.

SENATOR MOORE: Well, it's another one of those cows to the ring and see who bought her this time. This time it's one of my old rangy old cow. This one I believe in. This is the Bergan Mercy amendment. Now 429 is a bill dealing with certificate of need, 429 introduced by Senator Baack and the intention of this bill I

May 24, 1989 LB 95, 132, 134, 158, 158A, 175, 175A, 182, 182A
183, 183A, 198, 228A, 228, 261, 261A, 280, 283
285, 285A, 302, 303, 303A, 305, 309, 309A, 310
312, 312A, 335, 335A, 340, 340A, 469, 525, 566
588, 651, 651A, 695, 706, 727, 781, 816, 816A

PRESIDENT NICHOL PRESIDING

PRESIDENT: Welcome to the George W. Norris Legislative Chamber. We have with us on our closing day as our Chaplain, Reverend Harland Johnson. Would you please rise for the invocation.

REVEREND HARLAND JOHNSON: (Prayer offered.)

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

PRESIDENT: Do we have any corrections this morning?

CLERK: Mr. President, one small correction. (Read correction found on page 2719 of the Legislative Journal.)

PRESIDENT: Okay, do you have any messages, reports, or announcements today?

CLERK: Mr. President, I do. I have a series of communications from the Governor. First of all, Mr. President, the last few bills read on Final Reading yesterday afternoon have been presented to the Governor as of 2:48 p.m., yesterday. (Re: LB 525, LB 566, LB 588, LB 651, LB 651A, LB 695, LB 706, LB 781. See page 2720 of the Legislative Journal.)

Mr. President, a series of communications from the Governor. (Read. Re: LB 228A.) A second communication to the Clerk. (Read. Re: LB 134, LB 158, LB 158A, LB 175, LB 175A, LB 182, LB 182A, LB 198.) A third communication. (Read. Re: LB 95, LB 261, LB 261A, LB 280, LB 283, LB 303, LB 303A, LB 312, LB 312A.) A fourth communication, Mr. President, to Mr. President, and Senators. (Read. Re: LB 183, LB 183A.) A fourth, Mr. President, to the Clerk. (Read. Re: LB 132, LB 285, LB 285A, LB 302, LB 305, LB 309, LB 309A, LB 310, LB 335, LB 335A, LB 340, LB 340A, LB 469, LB 727, LB 816, LB 816A.) The last letter I have received, Mr. President, with respect to signing of bills. (Read. Re: LB 228. See pages 2720-22 of the Legislative Journal.)