

January 9, 1989

LB 112, 202-240  
LR 3

LBs 202-240 for the first time by title. See pages 100-108 of the Legislative Journal.)

Mr. President, I have a notice of hearing by Senator Rod Johnson who is Chair of the Agriculture Committee for Tuesday, January 17.

Mr. President, Senator Hannibal would like to announce that Senator Conway has been selected as Vice-Chair of the Intergovernmental Cooperation Committee.

Mr. President, a new resolution, LR 3. It is offered by Senator Baack and a number of the members. (Read brief explanation. See pages 108-109 of the Legislative Journal.) That will be laid over, Mr. President.

Mr. President, I have a request from Senator Smith to withdraw LB 112. That will be laid over. I believe that is all that I have, Mr. President.

PRESIDENT: Senator Lynch, are you ready to go back to work now? We will return back to adopting of permanent rules. Senator Lynch.

SENATOR LYNCH: Mr. President and members, I have one more proposed committee amendment, simple little amendment. It has to do with cloture. This change would adopt a cloture rule that would become effective after 12 hours debate at each stage of debate on any appropriation bill, and after 8 hours at each stage of debate on all other bills. To briefly explain it, and then Senator Moore will take it from there, let me give you a scenario. Some of you may be familiar with 428, the motorcycle helmet bill. It was my bill. An amendment, say, was offered under this rule by Senator Moore to the bill. As you know, sometimes amendments can take and need more time for discussion and debate than the bill, itself. After 8 hours of debate on Select File, I would move for cloture, or if that bill happened to be a committee bill, the chairman of the committee would move for cloture. The presiding officer then, under this proposal, would immediately recognize the motion and orders debate to cease on Moore's amendment. The vote on the Moore amendment would be taken without further debate. After that, a vote on the cloture motion without debate, 33 votes would be needed for that motion on cloture would be successful. If the cloture motion were successful, a vote on the advancement of the bill,

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

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.

May 4, 1989

LB 84A, 211, 767, 769, 813

Hall to LB 767; Senator Lamb to LB 84A; Senator Schmit to LB 813; Senator Chizek to LB 211. (See pages 2106-09 of the Legislative Journal.)

Mr. President, with the divided question, I now have an amendment to Section 1 by Senator Chambers. (Chambers amendment appears on page 2109 of the Legislative Journal.)

SPEAKER BARRETT: Senator Chambers, for your amendment to Section 1 of the divided Lindsay amendment.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, and, Senator Lindsay, I wish you would listen to this. In reading the amendments, what we have in this bill now are committee amendments in addition to the green copy. In the committee amendments, and I will read from the committee amendment, on page 2 of the committee amendments we have a new subsection added to the bill. Are you with me there? In line 11, where it says physician or attending physician shall mean the physician intending to perform the abortion. Do you see that language in the committee amendment?

SENATOR LINDSAY: Mmmm, hmmm.

SENATOR CHAMBERS: Okay. What my amendment would do in Senator Lindsay's amendment, since we're talking about a physician is to strike "person" and put the language in the penalty section that the bill is dealing with. And I'll be quite frank, the language in Senator Lindsay's amendment is much broader than what the bill purports to be concerned about. The bill, because of the addition in the committee amendment of the terms "physician and attending physician" make it clear that we're talking about a physician performing the abortion. In the penalty section we get away from the term "physician" and apply it to any person. It is not likely that a court would say when the Legislature wrote this bill and it intended to deal with an attending physician that it anticipated somebody who is not a physician giving this kind of notification and so forth. So I would narrow the sweep of the penalty provision so that it applies to the physician or attending physician and this is the way the Lindsay amendment would read with my amendment. "Any physician or attending physician who knowingly and intentionally performs an abortion in violation of this act shall be guilty of a Class I misdemeanor." As I stated before, I really don't like the bill and the amendment that I'm offering now does nothing



May 11, 1989

LB 211, 817

PRESIDENT: Senator Conway, please.

SENATOR CONWAY: Thank you, Mr. President. LB 817, I would also like to request that it be moved over to Final Reading. That was the bill dealing with the boundary bill between the State of Nebraska and the State of South Dakota. I would like to move its advancement, please.

PRESIDENT: You've heard the motion. All in favor say aye. Opposed nay. It is advanced. Very good, Senator Conway. Move on to General File, please. LB 211.

CLERK: Mr. President, LB 211 was a bill introduced by Senators Langford, Bernard-Stevens and Smith. (Read title.) The bill was introduced on January 9 of this year, referred to the Judiciary Committee. The bill was advanced to General File, Mr. President. I have no committee amendments.

PRESIDENT: Senator Langford, are you going to begin on this?

SENATOR LANGFORD: Yes, thank you.

PRESIDENT: Okay.

SENATOR LANGFORD: It's been so long, I've almost forgotten what the bill is about, Mr. President. Mr. President and colleagues, this bill does one thing, it's a real trust me. It changes the statutes of limitations from three to five years on sexual assault for children under 16 years of age. Actually children hesitate to reveal the assault until they are older and can fully comprehend what has happened to them. The extra two years will make it easier for prosecutors to bring these people to justice. I think the most important thing about this is that it has been found that once a person commits an assault, a sexual assault against a child, frequently this doesn't stop until the person is stopped. The only, the only really thing that has been said about this bill is that some of the people wanted it to be ten years instead of five. The Nebraska Domestic Violence, Sexual Assault Coalition wanted ten years, as did the Rape/Spouse Abuse Crisis Center. However, I feel that five years is a good compromise. The Nebraska County Attorneys Association, the Lincoln Police both testified, as did the Committee for Alcohol and Drug Education. It's a little hard to say very much about this problem since everyone is very well

May 11, 1989

LB 211

aware of how it's almost reached critical proportions. Colorado does have ten years, as does Utah, Minnesot...Utah has eight, Minnesota seven, and Arkansas starts when the victim reaches 18 years of age. I hope you will give very strong consideration to this bill. There is one point I would like to bring, and that is that third degree sexual assault is now a misdemeanor, but it is included in the change in time from three to five years, and this is to protect the plea bargain in these cases, after the perpetrator is allowed to plead guilty to the third degree sexual assault in exchange for entering counseling and family unification programs. Actually, I guess this is about all you can say, it's a very important thing right now that we give the prosecutors time to bring these people to justice. I want to tell you about just one case that happened in Kearney. There was a man who was convicted of five sexual assaults on boys. Had the five years been in he could have been convicted of 38 crimes. Thank you.

PRESIDENT: Thank you. Mr. Clerk, I understand we have an amendment.

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

PRESIDENT: Senator Chizek, please.

CLERK: Senator Chizek's amendment is on page 2108.

PRESIDENT: Senator Chizek.

SENATOR CHIZEK: I...

PRESIDENT: We'll wait.

SENATOR CHIZEK: Mr. President, why don't I pull that and I'll offer it on Select.

PRESIDENT: All right, you wish to withdraw it for now.

SENATOR CHIZEK: Yes.

PRESIDENT: All right, fine. Then we'll move on with the ones who wish to speak on it. Senator Chambers, please, followed by Senator Nelson.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, on its face this is a very alluring bill, as so many are. I had talked to Senator Lorraine Langford about this and told her some of the difficulties that I have with the bill. And I also told her that I would not grill her on the floor. But we do have somebody who can answer some questions, if he's willing. Senator Kristensen, would you, just so that we can lay the ground work for what we're dealing with, first. I'm not asking that you justify the bill but just to help establish some things for the record.

PRESIDENT: Would you respond, please, Senator Kristensen.

SENATOR KRISTENSEN: Yes.

SENATOR CHAMBERS: Could you open your bill book to LB 211, because I'm going to ask you some questions from the existing law, and then tie in what this bill would do, if I have a chance...if I have time.

SENATOR KRISTENSEN: Thank you. Okay.

SENATOR CHAMBERS: All right, now the four crimes, I'm on page 2 in line 7, which would be existing law. The four crimes, for which there is no statute of limitations, are treason, murder, arson and forgery. Would you agree that in all of those cases, in all of those instances there would be an act that would probably have some evidence, some physical evidence of its commission?

SENATOR KRISTENSEN: Yes.

SENATOR CHAMBERS: All right. Now, we go down to some language in the new portion of the law, and it tracks existing language in the statute. So I would ask you to go to the bottom of page 3, and it will continue at the top of page 4. And this is the language that I'm dealing with, starting in line 23, unless a complaint for the same shall be filed before the magistrate within five years next, after the offense shall have been done or committed, and a warrant for the arrest of the defendant shall have been issued. It's saying that a complaint would be filed against the alleged perpetrator. Is that correct?

SENATOR KRISTENSEN: Yes, that would toll the five years.

SENATOR CHAMBERS: And a warrant for that person's arrest would issue.

SENATOR KRISTENSEN: I believe that it says "and" so that you have to have both, yes.

SENATOR CHAMBERS: Right. Now, does...when it says a warrant would issue, does that mean it has to actually have been served?

SENATOR KRISTENSEN: No.

SENATOR CHAMBERS: And the complaint, when filed, would not necessarily mean that the person against whom it was filed was in custody at the time.

SENATOR KRISTENSEN: Oftentimes they are not in custody and they have no idea that a complaint has been filed or a warrant has been issued for their arrest.

SENATOR CHAMBERS: So, if all that does is toll the statute of limitations, how long would the complaint and the warrant be valid, for what period of time, or is there any limit as to how long they would be valid?

SENATOR KRISTENSEN: Well, I think once the complaint is filed there is no statutory time that a complaint becomes stale and invalid, as with a warrant, although the courts have their own internal system of determining what has become stale and will tell the prosecution that if they don't act or serve the warrant within a specific period of time it's invalid.

SENATOR CHAMBERS: Could you give any general idea, and this wouldn't apply in all cases, but so we have a notion of what might be entailed, would it be years or months or what?

SENATOR KRISTENSEN: Well, generally what happens, and I can give you some specific examples, such as a ticket for somebody who doesn't show up, let's...can we use the traffic ticket situation...

SENATOR CHAMBERS: Sure.

SENATOR KRISTENSEN: ...because that is where it happens. They'll file that complaint and they'll issue the warrant for the person, if they ever show back up in the State of Nebraska,

they'll then...and they get stopped for another case, there will be an active warrant out, and when the officer stops you he'll check your drivers license and he'll find there is an active warrant for you. At least in my experience those warrants...

PRESIDENT: One minute.

SENATOR KRISTENSEN: ...are out there no more than a year, but generally they try to comb through their files. I have no idea what Omaha and Lincoln does, but generally outstate that is what we do, just let them lay out there until the person, if we happen to find them, comes across.

SENATOR CHAMBERS: Okay. I'm not going to be able to finish, so I won't ask you the next question, because you probably wouldn't be able to complete an answer. But....Okay.

PRESIDENT: Thank you. Senator Nelson, followed by Senator Langford.

SENATOR NELSON: Mr. Speaker, members of the body, Senator Langford mentioned the concern that some of us had that going from three to five years simply was not doing enough. And I know that...where this bill was brought to her that the extra couple of years would have made a difference on a case to be prosecuted. I, too, am not going to make it difficult for Senator Langford on this. In fact actually I very much support the bill, and I see the technical point that Senator Chambers, and I know he raised the same points in Judiciary Committee. But there are a number of cases, instances as the child just doesn't even really realize that they have been sexually abused. And the bill is needed. But I just wanted to say that I, too, felt that it should be more than the five years length of time. But I know in the manner of compromise and those in the judicial system didn't want an additional three, or four, or five years. So, with that I am going to support the bill. And I'll give Senator Chambers or Senator Langford...Senator Chambers more of my time.

SENATOR CHAMBERS: Thank you, Senator Nelson. And I'm just trying to lay some ground work as to what the bill does, then I'm going to go into how I feel about the bill, because I have some serious concerns with it, and a lot of the concerns I got developed after I talked to some prosecutors who have to deal in the real world with these kinds of matters. Senator Kristensen,

I was asking about how long a warrant might be viable. So let's get out of the traffic situation, and I'll ask you, are you aware of any criminal...any warrants for criminal charges having been issued where the person was not in custody and his or her whereabouts was unknown?

SENATOR KRISTENSEN: Oh, yes, that happens frequently.

SENATOR CHAMBERS: And how long, if there is any general rule of thumb, might a warrant like that be deemed valid?

SENATOR KRISTENSEN: It's going to depend on how serious the crime. Obviously, if it's not a very serious crime, the warrant will sit out there and no one will actively work it. The more serious the crime, it will sit out there until the police officers determine, or the prosecutor determines that there is no hope to find that, and they'll close the case. But, if it's a serious crime, they'll keep it open longer.

SENATOR CHAMBERS: Okay, that is all that I have to ask you right now on that aspect of it. Now, do you have a copy of 28-318 before you?

SENATOR KRISTENSEN: 28-318?

SENATOR CHAMBERS: Yes, because that is referenced in the bill in lines...on page 3, oh, 28-319 is what I would want.

SENATOR KRISTENSEN: I have it right now.

SENATOR CHAMBERS: Okay. The three sections referenced in the bill that would be covered by this legislation are 28-319, 320, and 320.01. So I would like you to look at 319, first, because we're dealing with first degree sexual assault.

SENATOR KRISTENSEN: That's right.

SENATOR CHAMBERS: All right. Now, that would require penetration, which would be based on the definition in the statute, in 28-318, subsection (5), it would be ordinary intercourse, oral sex, anal intercourse, or any intrusion of any part of the actors or victim's body, however slight; or any object manipulated by the actor into the genital or anal openings of the victim, and the activity could not reasonably be construed to be for medical or health purposes. And there is no

requirement of an emission of semen.

PRESIDENT: One minute.

SENATOR CHAMBERS: Now, if...and I'm not trying to be facetious, but if sexual penetration is any intrusion of any part of the actor or victim's body, is the nose a part of the body?

SENATOR KRISTENSEN: Absolutely.

SENATOR CHAMBERS: Is the ear a part of the body?

SENATOR KRISTENSEN: Yes.

SENATOR CHAMBERS: Based on the definition in this statute, and it doesn't say it has to be by means of a sexual organ, could the intrusion into a person's nose or ear be...constitute sexual penetration, under this definition?

SENATOR KRISTENSEN: Are you talking about the actor's ears or noses, or the victim's?

SENATOR CHAMBERS: The victim's.

SENATOR KRISTENSEN: As long as the actor would put any one of his or her ears or noses into the others genital or anal openings, that is what constitutes the crime there.

SENATOR CHAMBERS: But...

SENATOR KRISTENSEN: You can't go nose to nose and have it be...

SENATOR CHAMBERS: Well, suppose you put a finger in somebody's nostril? Suppose you had one of these fetishes and that...

PRESIDENT: Time.

SENATOR CHAMBERS: ...was for sexual gratification. The statute, as it reads, says intrusion into any part of the actor or the victim's body, we...if you go by what the statute says.

SENATOR KRISTENSEN: That is not how that statute has been construed, though.

SENATOR CHAMBERS: But what does it say? Nobody has ever raised

that point, have they?

SENATOR KRISTENSEN: Well,...

PRESIDENT: Time. Senator Langford, please, followed by Senator Smith.

SENATOR LANGFORD: I really don't know what Senator Chambers is getting to here. I find it very difficult, because what he is talking about is present law, it is not this bill. Please don't be drawn aside on something that has nothing to do with the bill as we wish to change it. I have no intention of trying to argue what is actually in the law what is not in the bill. Thank you.

PRESIDENT: Senator Smith, please. I don't see Senator Smith. Senator Kristensen. Oh, here comes Senator Smith.

SENATOR SMITH: Thank you, Mr. President, members of the body. I would just say that you know we have had a lot of bills this year that deal with providing support for children and families. And this is a part of that whole package that we're talking about. It's one of the pieces of that total puzzle that we're dealing with when we talk about children and children's concerns. All I'm going to do is just take some time here to read part of a letter which was sent to me by a woman who lives here in Lincoln. She says, I wish I could tell each of you how many letters I have written and never mailed regarding the statute of limitations against child abuse. I am relieved to see the introduction of the bill, LB 211. Maybe now is the time to make a difference. I can only hope you will hear my thoughts, and if necessary call to meet me and visit in person. I will be available at any hour of the day or night. My thoughts are firsthand, it happened in my family. I've asked myself all the questions, why didn't she tell me? Why didn't I see something? Why? Why? Why? April 10, 1987, I filed for divorce from a 19-year marriage. It wouldn't...it hadn't been good, but I didn't realize just how bad, and I wouldn't for some time. The following day my 18-year-old daughter gave birth to a baby three and a half months premature. A lot went on in the next few months, but finally a vacation with a friend was planned to see my brother in Reno. I had been working full-time, fighting this ex-husband and raising a family. The oldest 18, a son 16, and two little girls, 4 and 6. I needed that vacation and little did I know it would be the start of a path to hell. Shortly after returning I received a rather



difficult call from the friend I went with. It seemed as though my sister-in-law had confided in her what had been going on. The next day I called my brother to hear first-hand what I had learned. It was true. My oldest had called her favorite uncle a number of times, but he was sworn to secrecy. Next came the confrontation of my daughter. How do you ask those kinds of questions of your daughter? I didn't know, but I do remember, as a matter of fact, I will always remember her confirming it. The next day the next step was to call my attorney. Again, a twist, she already knew. My oldest had already confided in her. What had happened earlier when the kid's father had shown up one day and the little girls went crazy. I remember that panic call from my oldest and I rushed home to get them out of the house until he left, but you know kids, they do silly things. Then she goes on to talk about how they finally made an appearance with the mental health to see a counselor, and when she told them about the situation then they called the protective services and told the story, then they had to meet with the children and basically the children did confirm it, although some of them...the two little ones were so young that they couldn't really take into account what they had to say. And then they found out, she says, this went right to the heart, nothing could be done. It had gone on for years and the oldest girl had finally stopped it three and a half years earlier. But what about the little girls? The youngest had reported the story that might have been something and the six year old, the protective service people couldn't be sure, she wasn't as open, and they just advised keeping the lines of communication open and maybe some day she would tell me. And so she goes on to say that in the end the father has proven to be the, whatever you want to call him here, the abuser by a polygraph test, and that the girl's stories were upheld. Then she says that's not all the problem. Maybe my kids are safe, but who can say he won't do this again to someone else. Maybe the real issue is what must we do. My story may be like others, we're telling our children it's okay to say no and to tell someone if people do things that make you feel icky. Must we have a time table for them to tell us? Will they muster up the nerve? Will there be little sisters to protect? Is five years long enough? I'm not sure it would change my case. Until my little girls are old enough to explain, and supervised visitation to their father's, the knife will twist in my gut when he's with them. Each time I see my granddaughter, who fought to stay alive and will bear the title legally blind due to prematurity, maybe caused by years of sexual abuse to her mother by her grandfather, each time I see

May 11, 1989

LB 211

my daughter how can I say, I'm sorry, I didn't see it. I'd be foolish to sweep all this under the carpet and think it was a special case. After all, I could talk about what happened to me,...

PRESIDENT: One minute.

SENATOR SMITH: ...a child for the first time, five years doesn't cover that. That doesn't make much sense right there, I think she left something out. But basically I think she's going back and saying that she could forget it and say we're the only ones that this happened to, but she knows that it's not true. Please, let me help with changes that are necessary to protect our children. I'm not afraid to speak up. A lot of personal research has gone on at our house. It might be good to note I'm not out for vengeance but rather peace of mind. Respectfully yours. This is one of many of the situations that we're talking about here. And I would ask you to consider very seriously this piece of legislation. If there are some things that are wrong with it, then let's see if we can improve it. But I think that we need to do something to increase the statute of limitations just because of these kinds of situations. Thank you.

PRESIDENT: Thank you. Senator Kristensen, please.

SENATOR KRISTENSEN: I'd yield my time to Senator Chambers.

PRESIDENT: Senator Chambers.

SENATOR CHAMBERS: Thank you. Members of the Legislature, when this kind of legis...this original law got into the books I had concerns about it then. But it was ramrodded through the Legislature. Senator Kristensen has been a prosecutor, and that is why I'm asking him these questions. I'm going to make a comment. When we get to 28-319 and talk about sexual assault, here's what it says, this is in the first degree, any person who subjects another person to sexual penetration and overcomes the victim by (one) force, (two) threat of force expressed or implied, (three) coercion, (four) or deception. Any one of those things, it doesn't say that it has to be against a person's will. And people say, if the individual is overcome by force, it's clear against the person's will. There are legislators who apparently don't know the reality in the world, because there are some people who engage in this kind of activity and they want to be subdued. I'm not talking about

strangers, I mean it's a relationship and that is how they turn each other on. So you have a set of circumstances where this activity occurs and somebody is aware of it. Four years later they fall out. And, remember, we don't require any corroboration, although this person can get it. So I'm not on the issue of corroboration. This person can then say four years ago this person sexually assaulted me because now he's with another woman, and I can prove it. He forced me to do this and I have people who saw it. And under the definition of the law that is first degree sexual assault, and, and I know we're talking about somebody 16 in this bill, but even if the person is not 16, what I'm talking about applies under the law as it is now. The law, as it is now, is not that good a law. But we need to know what is in the law when we start applying it, because in one instance the perpetrator, or alleged perpetrator can be younger than the 16-year-old victim. Now, deception, I would like to ask Senator Kristensen this question. Can you give an example of somebody overcoming another person through deception where there is no force, no threat of force, no coercion, but they deceive the person into having sexual intercourse with them?

SENATOR KRISTENSEN: Not having thought about this a long time, the first thing that comes to my mind is that people who may practice some sort of medicine, or may practice some sort of healing and try to convince the person that they will become healed or cured if they would have sex with them, that is one of the few.

SENATOR CHAMBERS: Could it be with the promise of something that is not going to be delivered?

SENATOR KRISTENSEN: Oh, sure, you...

SENATOR CHAMBERS: Would that be deception?

SENATOR KRISTENSEN: Well, it...I think the deception goes as to having the penetration with them. That's where the...

SENATOR CHAMBERS: Exactly, I meant...

SENATOR KRISTENSEN: ...the deception comes.

SENATOR CHAMBERS: Right, the penetration occurs and then in addition to that these other things. So the penetration is

presumed and the victim would allege that he or she had been deceived by the one that they agreed to do this with. When deception occurs it is not forced.

SENATOR KRISTENSEN: That's right.

SENATOR CHAMBERS: The person's agreement or consent or ascent has been obtained or procured.

SENATOR KRISTENSEN: That's right, and that's...the law says that when we go against someone's will that is what makes it a crime. Absent going against their will, they willingly consented to doing this, but they are saying the deception is going to take the place of that threat or the actual force.

SENATOR CHAMBERS: And that would apply, under the bill we're talking about, where the victim is under 16-years-old.

SENATOR KRISTENSEN: Yeah, that goes to the underlying crime of sexual assault, Ernie.

SENATOR CHAMBERS: Okay. And when we go to first degree sexual assault we have an age limit because the person must be 19-years-old,...

PRESIDENT: One minute.

SENATOR CHAMBERS: ...or...and the victim...

SENATOR KRISTENSEN: ...the victim.

SENATOR CHAMBERS: ...the victim...

SENATOR KRISTENSEN: ...less than 16.

SENATOR CHAMBERS: ...less than six...I think it's less than...yeah, less than 16. So, even if there is no force, no deception, no anything, if you have that age difference then that constitutes first degree sexual assault. Is that correct?

SENATOR KRISTENSEN: Right, and...

SENATOR CHAMBERS: ...we used to call it statutory rape.

SENATOR KRISTENSEN: That's right, that's the old statutory

rape.

SENATOR CHAMBERS: Okay, so we can go past first degree, and get to second degree, because this is where the person who is the alleged perpetrator could be younger than the victim. The only two things necessary for second degree sexual assault is the sexual contact which is touching only, would you agree, for the purpose of sexual arousal or stimulation.

SENATOR KRISTENSEN: Right, yeah, that says defined in the statute earlier. But, right, sexual contact is basically touching.

SENATOR CHAMBERS: All right. And they again would have to overcome by force and so forth, or deception.

SENATOR KRISTENSEN: Yes.

SENATOR CHAMBERS: So, if we have...

PRESIDENT: Senator Chambers, you've just finished with Senator Kristensen's time, now you start on your own five minutes.

SENATOR CHAMBERS: Okay. And this, Senator Langford, is going to the bill. Let's say we have a 15-year-old boy, could he, under the bill that we're talking about, commit second degree sexual assault?

SENATOR KRISTENSEN: Can a 15-year-old, yes.

SENATOR CHAMBERS: All right. Now, if he persuades a young woman to dance with him, and if you touch the intimate parts, and they describe those as breasts, buttocks, inner thighs and there is something else, I don't...the catalogue escapes me. But, at any rate, he does what they might call slow dancing or dirty dancing and tells her that he just wants to dance with her. So she agrees to dance with him. Then she finds out, from listening to locker room conversation, that he was getting his jollies, he did that for the purpose of his sexual arousal and gratification and had she known that she wouldn't have engaged in that kind of dance. Had there been the kind of contact, if he was rubbing against her breasts, that would constitute second degree sexual assault. Was the contact, was the type of contact there that would be necessary?

SENATOR KRISTENSEN: That's right, the contact was there.

SENATOR CHAMBERS: Now...

SENATOR KRISTENSEN: Now, whether the whole definition is there or not, I assume you're get...

SENATOR CHAMBERS: Now, if she said that had she known what his purpose was in dancing with her like that, she would not have agreed to the dance, did he deceive her into doing something she would not have done had she known his intentions. Because we're dealing with what is in the mind of the perpetrator.

SENATOR KRISTENSEN: Right, and that's what you've got to prove.

SENATOR CHAMBERS: Let's forget the proof, let's deal with the act that the law allows. Could that constitute second degree sexual assault, based on what the statute says?

SENATOR KRISTENSEN: You're making two assumptions, one is, yes, it could. If you want me to go on, I will, but, yes, that could be...but you're still going to have to show gratification, and you haven't, you haven't given me any evidence that would show or indicate gratification.

SENATOR CHAMBERS: All right. The boy who was dancing had told people that's what his purpose was, and when she asked him, he said, sure, why else do you think I'd do that.

SENATOR KRISTENSEN: Okay. And providing that she doesn't have some form of consent that he couldn't show that she voluntarily did it at the time, that would be the (interruption).

SENATOR CHAMBERS: Well, she's genuinely incensed and outraged...

SENATOR KRISTENSEN: Okay.

SENATOR CHAMBERS: That he would use her in that fashion.

SENATOR KRISTENSEN: Okay.

SENATOR CHAMBERS: She could bring a complaint as much as five years later, based on that.

May 11, 1989

LB 211

SENATOR KRISTENSEN: Yes.

SENATOR CHAMBERS: Now, I don't know whether a prosecutor would file a complaint like that, but he could under this law, couldn't he?

SENATOR KRISTENSEN: He could.

SENATOR CHAMBERS: Now, let's say the girl was the mayor's daughter, and the boy was from the wrong side of the tracks, and they didn't like him anyway and they became aware of this, the family, and pressure was put on the prosecutor. And I'm trying to give a situation that is shaky, because there are some less shaky than this where prominent families can force action to be taken in cases where ordinarily they wouldn't for a run-of-the-mill incident. Could a charge be filed in that situation? That is the question that I'm asking. You answered it once, but it could...

SENATOR KRISTENSEN: Yes.

SENATOR CHAMBERS: ...be filed.

SENATOR KRISTENSEN: It could be.

SENATOR CHAMBERS: Senator Langford, I'd like to ask you a question.

PRESIDENT: Senator Langford, please.

SENATOR LANGFORD: Certainly.

SENATOR CHAMBERS: Is that the kind of situation you had in mind?

SENATOR LANGFORD: It didn't even occur to me, Senator Chambers.

SENATOR CHAMBERS: Is it possible that we can enact laws, because of a particular case we have in mind, and the law goes much further than the case that brought it to us?

SENATOR LANGFORD: Well, I can't possibly see how you can bring...

SENATOR CHAMBERS: Would you answer the question, and then on

your time...here's what I'm asking you, is it possible, when a case occurs that outrages us and we bring legislation for that specific case, that the law we put on the books can go beyond what we intended?

SENATOR LANGFORD: This is not for a specific case, Senator Chambers, at all.

SENATOR CHAMBERS: You can't answer the question?

SENATOR LANGFORD: I don't see that you asked a question?

SENATOR CHAMBERS: Okay, thank you. All right, then I'm going to ask it. Can a law that is put on the books go beyond what the introducer intended?

SENATOR LANGFORD: Well, I suppose it could.

SENATOR CHAMBERS: All right. Could this one?

SENATOR LANGFORD: I doubt it.

SENATOR CHAMBERS: Did you listen to the...

SENATOR LANGFORD: I think your scenario was ridiculous, if you want to know what I think.

SENATOR CHAMBERS: Well, I don't care what you think, I want to find out what you know. Now, you listened to Senator Kristensen and I, and he said that a complaint, based on the scenario I gave, could be filed under this bill. Now, whether you think it's ridiculous or not, it could happen, and that doesn't trouble you, does it?

SENATOR LANGFORD: Indeed it does, but every issue that comes up here, some way you can find the downtrodden being hurt. I don't really see this bill at all as persecuting downtrodden people,...

SENATOR CHAMBERS: Senator Langford,...

SENATOR LANGFORD: ...unless they commit a crime.

SENATOR CHAMBERS: Senator...



PRESIDENT: Time.

SENATOR CHAMBERS: ...Langford,....

PRESIDENT: Thank you. Senator Korshoj, please, followed by Senator Bernard-Stevens.

SENATOR KORSHOJ: Mr. President, I will give Senator Langford and Ernie my time. Ernie, go ahead, and see if we can...

PRESIDENT: Senator Chambers.

SENATOR CHAMBERS: Senator Langford, I will make some assertions. Somebody brings you a bill, I'm not going to ask you a question right now. You acknowledge to me that you're not able to do that much with the bill in terms of discussing it or defending it on the floor, and ask me would I leave you alone, and I said yes. And I haven't bothered you. I've asked you some questions to get your understanding of the bill. But here is the fact, she doesn't understand this law. A lot of people have not read the statutes that are referred to in this law, and even the committee statement makes an error, it says that it deals with felony sexual assault offenses, but it goes beyond felonies, it goes to a Class I misdemeanor also. It deals with a misdemeanor also. So,....No, Senator Langford, I know you didn't write it, but, if you read the committee statement, that is the information that people on this floor have, and I need to get things into the record. Some people are careless and sloppy about criminal laws and I'm not. I am concerned. And whenever one comes before us I will deal with it. And on this, the one that is the misdemeanor, in 28-320 they talk about second degree sexual assault. Now, the contact constitutes second degree sexual assault. That's all you need, contact, not with the person's actual body but with the clothing covering those intimate parts. That constitutes second degree sexual assault, if the person who did it used force, the threat of force, coercion or deception, or if they knew or should have known that the victim was physically or mentally unable to resist. Now, it's a Class III felony if personal...if serious, personal injury was caused. The touching and the methods used to get to the touching, if it causes serious, personal injury, and that is described in the law as great bodily injury or disfigurement, extreme mental anguish or mental trauma, pregnancy, disease or loss or impairment of a sexual or reproductive organ. Then we get to sexual assault in the third degree. That is where no

injury occurs, only the touching, and it's a misdemeanor. And it would extend the statute of limitations five years on a misdemeanor, and the current law allows an 18 year statute of limitations on a misdemeanor. So that means if someone touches an individual, causes no injury, that person can be brought up on a charge for a period of five years, and that doesn't mean he or she did it, it means a complaint can be filed, the charge can be brought and that person can be taken to trial. And that doesn't concern you, and maybe it concerns nobody else on the floor, but it concerns me. And it's peculiar to me that we have age requirements and first degree sexual assault, and in sexual assault on a child, but not in second degree sexual assault where there is only touching. On the sexual assault on a child we have 28-320.01, and it says, a person commits sexual assault of a child if he or she subjects another person, 14-years of age or younger, to sexual contact and the actor is at least 19-years of age or older. So, sexual assault of a child would require the actor to be 19-years or older. I would ask Senator Langford this question, suppose a person is 18-years-old and the actor is 14-years or younger. That person cannot commit sexual assault of a child, or can they?

PRESIDENT: One minute.

SENATOR LANGFORD: Certainly.

SENATOR CHAMBERS: How? Let me ask Senator Kristensen the question.

SENATOR LANGFORD: Well, here you're talking about second degree sexual assault.

SENATOR CHAMBERS: No, I'm talking about sexual assault of a child, where the actor must be at least 19, so I'm asking you, if somebody is 18 and does the same thing, that is not sexual assault of a child, is it?

SENATOR LANGFORD: Certainly.

SENATOR CHAMBERS: I'd like to ask Senator Kristensen a question.

PRESIDENT: Senator Kristensen, please.

SENATOR CHAMBERS: Senator Kristensen, does 28-320.01 define

sexual assault of a child?

SENATOR KRISTENSEN: Right.

SENATOR CHAMBERS: If it says that the actor must be at least 19-years of age or older, can somebody less than 19 commit this act?

SENATOR KRISTENSEN: No, as long as the person is 14-years of age or younger that they do it to.

SENATOR CHAMBERS: So we'd have to have somebody at least 19 before there could be sexual assault of a child.

SENATOR KRISTENSEN: Right, at least 19.

SENATOR CHAMBERS: Thank you. Senator Langford,...

PRESIDENT: Time. Senator Bernard-Stevens, please.

SENATOR BERNARD-STEVENS: Thank you, Mr. President. As a co-signer of the bill I feel a need, at this point, to jump in just a little bit. I'll go ahead then give the rest of my time to Senator Chambers, so he can finish out the colloquy he had with Senator Kristensen. I do think there needs to be something clarified for the record, and I think Senator Chambers may have been...his mind was a little bit ahead of what he was saying because I think he was talking about limitations on misdemeanors being 18-years. And I think he meant to say 18 months on that. So I want to clarify that, it would be 18 months. And I see Senator Chambers nodding his head as he agrees that that is, in fact, the case. One of the reasons I co-sponsored the bill, actually there were two reasons, the first reason was a court case is going on now, so I certainly don't want to get into the specifics of the case. It would not be appropriate to do so at this point. But in general one of the things that happened in the western part of the state was a child who was severely handicapped, who was unable to speak, there may have been something that happened to that child in the nature of abuse. The child, being unable to communicate, it's very difficult, obviously, to get information to substantiate, with the exception of going to the boy's town or other area, where they do the doll testing, and whatever type of testing that they would be able to do to try to get information. One of the things that happened is the child was moved to a different

state, different location, and in a different environment, with different teachers and counselors and aid...people working with the child, the child was able to begin to communicate and being able to understand and speak responses. During the questioning of the child, and the questioning was simply to find out where we should place the child within the program, within their particular community, they stumbled onto what may be or could be potential abuse. And they went every...on different days, they approached it from different angles to try to make sure that the child was being consistent with what was now being for the first time spoken by the child. And, in fact, I'd have to guess...I would have to say to the body that the child was speaking it all the time, the child was trying to say it all the time, we just didn't know how to communicate with the child, or the child could not communicate with us in the normal fashion. Consequently, there came a report from the question and answers that would have a substantial or could have a substantial bearing on the case. But the information was beyond the statute of limitations by no fault of the child, certainly, and no fault of the parents, no fault of the institutions involved, it simply was one of those particular circumstances where the child was unable to communicate until after three years. The parents contacted me and asked if I would help support LB 211 which would extend it to five years. I told them at that time that I would do with the following understanding, that I felt that the case that they were involved with and is currently under...within the court system at this time, these types of cases and the statute of limitations needs to be discussed by the Judiciary Committee and needs to be discussed by the body as a whole, and to that degree I was willing to co-sponsor with Senator Langford in order to bring a bill to the body so that the body could philosophically discuss whether we need to advance the statute of limitations in this area from three to five years. Quite honestly there are good arguments...

PRESIDENT: One minute.

SENATOR BERNARD-STEVENS: ...both pro and con. And I'm relatively surprised that it came out of the committee without any particular amendments. I know Senator Chizek has an amendment dealing with murder and homicide that he'll be offering on Select File, and certainly that discussion will take place. But there are some other discussions that will need to take place as well. One of the things that the body needs to be concerned with, with a bill of this nature, is in my particular

case, in the case of western Nebraska, and certainly the case that Senator Smith was talking about and Senator Langford, an extension of the statute of limitations would be very helpful. But there is also a back side to this. And Senator Chambers has been good in pointing out the back side, and I think sincerely so, pointing out the other side to this. It always is difficult when you give people a longer period of time to be convinced whether or not they want to sue or not.

PRESIDENT: Time.

SENATOR BERNARD-STEVENS: And I'll try to finish a little bit later on on this. Thank you, Mr. President.

PRESIDENT: Thank you. Senator Langford, please, followed by Senator Smith and Senator Chambers.

SENATOR LANGFORD: Mr. President, one thing I would like to point out is LB 211 does not eliminate the prosecutors discretion. A county attorney still must decide if the case is worth filing. This will just give him the added protection of two years, it's a very, very simple bill. And I will give Bernard-Stevens the rest of my time.

PRESIDENT: Senator Bernard-Stevens. You have four minutes.

SENATOR BERNARD-STEVENS: Thank you, Senator Langford. I won't need all of that time. What I was going to conclude and say is that one of the things that the body, I think, needs to dis...to look at philosophically is this bill will certainly help in many, many cases. One side would say that it gives people longer to be convinced that they need to sue somebody for something that may have been done five years ago. Sometimes memory gets a little bit clouded, information is harder to find, substantiation and evidence is more difficult to obtain. One side says that makes it...that that in itself says we shouldn't extend it that far. One of the other side of the argument is in case such is happening, the one I was referring to, people, when you're looking at young children who cannot communicate or who are handicapped, what have you, there are things that can happen to young children who it may take over three years to get them to the point where they are able to communicate, where they are able to talk about it and deal with the problem psychologically, because they have been closing that information off to themselves and finding some other way to deal with an abuse

situation. So we need to give the Legislature and the legal system needs to give these children time so they can not only deal with it, but also deal with it in a court of law. And this is what this bill would do. Senator Langford is absolutely correct where the bill is not intended to cause more problems, the bill is intended to help children in this particular area. Senator Chambers has a very good point, however. He brings a lot of what some people would call silly analogies, but one thing that I have learned in my limited experience with the court, and that is all the intents in the world is not necessarily important, it's the way the law is worded. How is the law worded, because a good attorney and a sharp attorney would be able to look at the exact wording of the law and use that wording to make whatever case they so desired, even if it was a case as bizarre as what Senator Chambers was bringing up. So the wording of these particular bills is important. And I agree with Senator Langford that if there are changes that need to be made, certainly let us, as a body, not try to waste too much time in arguing on whether we should or should not, but bring amendments forward, try to work with the amendments, because the concept of the bill is good, the trust of the bill is good, but I would also concur that there needs to be some work done on the bill. And I think both sides are in good faith, and both sides are trying to advance the bill that would help children in the long run. And I thank Senator Langford for the use of her time.

PRESIDENT: Thank you. Senator Smith is next, followed by Senator Chambers, then Senator Kristensen.

SENATOR SMITH: Thank you, Mr. President. Ernie, I'm going to do two things. First of all, I'm going to chastise you a little bit. And, secondly,...

PRESIDENT: Senator Smith.

SENATOR SMITH: ...I'm going to ask for you to help me, help us. Number one, I'm going to say to you that, yes, I signed on this bill because my understanding of the bill was without...and perhaps I should have looked at everything in this bill, you know. But my understanding was that it was a bill that is going to deal with the kind of concern that I have expressed here on the floor. Until you brought this out this morning, I was not aware of that. And I will tell you that in reading the committee summary of the purpose and intent of the bill, that is

exactly what I thought it was. The other thing is as a member of that committee I think it should behoove yourself and other members of the committee to have worked on that in committee, instead of bringing it now to us, waiting until it is on the floor and bringing all this to our attention. You people are, many of you on that committee are attorneys. You do know the law, and that is where that should have been changed, if you were aware of it at that point in time. And before voting that out of committee some of these things should have been done. We have to rely upon you for your expertise in those areas. So then the next thing I'm going to do is ask you, because I understand now what you're saying, and I believe that this is just what I think I'm seeing here, that some of these should not have been a part of what we were talking about here in Section 2, which is really the content of the bill. Perhaps these should be removed, I don't know how you would do that, and I'm asking you to do that for us. I'll give you the remainder of my time, if you want to respond to that. Thank you.

PRESIDENT: Senator Chambers, you have three minutes to talk.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, Senator Smith, the whole time, practically, that I've been on that Judiciary Committee I've been like a voice crying in the wilderness. I have no influence in that committee, I have no influence on the committee. Bills are voted out that I oppose strongly in committee, I oppose them strongly on the floor. There is no need me trying to amend them there because I can't do it, and I can't do it out here either. My record of having contention within that committee is well established from the record. And I had concerns about this bill, even in committee there were some of the prosecutors who expressed concerns. But, because it was a senators priority bill and all those other reasons that are given for advancing this kind of legislation, I guess it was advanced. I was not there when the bill was advanced. But, at any rate, these kinds of things have to be looked at the way they are written. I have an amendment up there to try to do one of the things. But the bill came up quicker than I expected it to, and I can't rewrite all of these bills. And a lot of times there is suspicion when I raise a question. But to let Senator Langford have a concrete example, I clipped this article, two days ago, from the World-Herald. A man was released, the charges against him dropped after it was established that he had raped a woman in a wheelchair. They brought the charge under a law that said, if she cannot resist



or defend herself, something to that effect, they found out that she was able to try to push him off and cry out, so she did not meet the statutory definition of not being able to resist, so the charge was dismissed. And I'm sure all those who passed that law will say that's not what we meant. But that is what the law said. Sure.

SENATOR SMITH: (Inaudible) ...Senator Chambers, I guess what I would like to have you do is tell me, can this be fixed so that we can get around the kinds of concerns that you're expressing. That's what I would like to have you tell me.

PRESIDENT: One minute.

SENATOR CHAMBERS: Did you say time?

PRESIDENT: No, one minute.

SENATOR CHAMBERS: Oh. I think some parts of it can, and the reason I touched on the existing law is to indicate that I think there ought to be some language in there. As much as people presume that all of this happens against a person's will, I think that should be stated, that these things happen against the persons will. And then you have that provision that indicates that the act could be engaged in, as a result of deception, so that is how you overcome the person's objection. But the way the statute is written, if these things are done, then you've met the statutory definition, and nobody....I mean not you, Senator Smith, because you expressed an interest and concern about it. But when these things are raised in the Judiciary Committee very seldom can anything be done. People have too many reasons for supporting these bills. I have criticized a lot of legislation that has come out of that committee more stringently than anyone on the floor,...

PRESIDENT: Time.

SENATOR CHAMBERS: ...and it reflects my frustration from trying to work there and being so ineffective.

PRESIDENT: Thank you. Mr. Clerk, we have a motion?

CLERK: Mr. President, Senator Chambers would move to amend the bill. (Read Chambers amendment as found on page 2295 of the Legislative Journal.)



PRESIDENT: Senator Chambers, please.

SENATOR CHAMBERS: Yes, Mr. Chairman and members of the Legislature, I will explain what this is doing. In the bill, I'm on page 3, line 17, where it refers us to a section of the statute, 28-319. Oh, did I mean 28-319? I meant 28-320 that should be.

CLERK: 28-320?

SENATOR CHAMBERS: Yes, if you'll allow me to correct the reference. In 28-320 my amendment would have the effect of removing subsection (3) which is the misdemeanor. And, if the bill is passed, it will deal only with those felony offenses, and I have a problem even with 28-320, because all that's required is the touching. See, a man, and usually we're thinking about a man who has done this, although a woman, not too many days ago, was convicted of sexual assault against some boys, one was her nephew and maybe one her son, but that was in Lancaster County, so women sometimes are charged, too. So, if I say a man, I'm not being chauvinistic, but that's where most of the cases would occur. A man could beat a woman to a pulp, and maybe there was no sexual contact intended at all, but that could be alleged, and that could make it a much more serious offense, and maybe that is what the Legislature would want to do. And I'm not saying any of these things that people do to others are good. But there are so many times that we pass laws and it allows a heaping up of one thing on another out of one transaction, and it can so easily allow one thing to be labeled as something else. And the real problem that I see with the bill, even if some of the concerns that I've mentioned about the existing law were taken out, in cases that are not stale, you know that would be brought within the three years, there have been problems of children being coached, of women being coerced by family members or others. And, if you stretch it out an additional two years, Senator Langford indicated that it gives the prosecutor more time, but it also gives certain powerful families, especially in small towns, a chance to bring more coercion and pressure on a county attorney. And if they have one they don't like anyway then they can make him bring a bad case. And there are county attorneys who will yield to this pressure. So the bill, on its face, if it could do only what the people who want the bill would have it do, there would be no problem. And this amendment that I'm offering deals with just a

very small part of it. It would at least remove the misdemeanor as one of those things that would be covered by the bill, and that's all that that amendment does. By mentioning the two subsections it says that this bill would apply only to those two subsections that I put in (1) and (2), and subsection (3) would not be covered by this bill because subsection (3) of 28-320, is the misdemeanor. Where there has been only touching, no harm, I mean no physical injury of any kind, it's just a person making the allegation. Since we did away with the requirement of corroboration that is all that needs to be done to allow the complaint to be filed. So, even if somebody has gone off to school, a person could come up five years after an alleged happening and tell a prosecutor, I want him charged because he touched me in this fashion five years...well four years and 360 days ago. And, although it's a misdemeanor, the complaint could be filed and the warrant for his arrest issued. And, if he came back to that town with nothing on his mind, he can be put in jail. So, I think since we're...I guess you all are aiming at the serious kind of things you mentioned, this amendment, I think, would be reasonable.

PRESIDENT: Thank you. Senator Kristensen, please, on the Chambers amendment. Senator Korshoj, on the Chambers amendment. Senator Bernard-Stevens, on the Chambers amendment.

SENATOR BERNARD-STEVENS: Thank you, Mr. President, members of the body. Senator Chambers, let me see if I have it correct. Your amendment would take out, would really, on Section 28-320 would keep in Sections 1 and 2 and delete the third section, which is a misdemeanor, is that correct?

SENATOR CHAMBERS: Would you ask me again, Senator Bernard-Stevens, I was...

SENATOR BERNARD-STEVENS: Yeah, your amendment, if I have it, because I haven't seen it, was dealing with 28-320. You will include Sections 1 and 2, but delete Section 3 which was the misdemeanor, is that correct?

SENATOR CHAMBERS: Right, that's what it would do.

SENATOR BERNARD-STEVENS: Okay. One of the reasons that was given to the committee, if I remember correctly, was that the third degree sexual assault, or a misdemeanor, must also be changed to the five year statute, which is what LB 211 would do,

because it would protect the plea bargaining in cases. You know, for example, often the perpetrator is allowed to plead guilty to third degree sexual assault and they exchange that for agreeing to enter counseling and family reunification program. The feeling is what if you have a four year old case and then you...you're able now to go back and do something, because it is four years old, but with the statute of limitations now you wouldn't be able to do so. To stretch it to five you may in fact be able to take those cases that are four and five years old and be able to use that in order to get them into counseling, in order to use the plea bargaining approach to handle situations. I'd just be kind of curious to your comments about that. My experience in this area is very limited. Sometimes what is said to those of us that are not within the legal profession, are not within the courtroom day in and day out make sense on the surface, but down below the surface there are some problems with that. Can you respond to that type of...or maybe Senator Kristensen...who...Senator Kristensen is nodding his head, I'll have Senator Kristensen respond to that, if he would, please.

PRESIDENT: Senator Kristensen, please.

SENATOR KRISTENSEN: Well, I think, Senator Bernard-Stevens, what you're talking about is protecting a plea negotiation possibility. Let me explain to you what I think that the sponsors and what you intend to do. So many times you'll have a felony case, let's say it's four years old and your law is into effect now, and once the matter goes to trial as it progresses towards trial more evidence occurs, you have more interviews with witnesses and victims and the prosecutor starts to put his case together and he sees that it's going to be...you know, it's not a locked case. In other words, people haven't confessed to doing it. They're going to have to prove it. Every time you go to a jury you take a risk. And the guy says, well, I really didn't commit the felony, but he's kind of hemming and hawing around, like, you know, I'd go to treatment if you'd let me go to treatment. So, what you'll do is take that case from a felony, and oftentimes you're working with the victims themselves, and you'll say, well it's better to get some conviction and get the man into treatment and get something done, and it's better than nothing. In other words we've made the best we can get, and so they'll reduce it to a misdemeanor. The problem is, if you take the misdemeanor out of here, is that we're past the three years. So they'll reduce it down, the guy

will come before the judge and says, well I'm guilty of a Class I misdemeanor, the judge is not going to be able to take that plea because it's past the statute of limitations, if you take the misdemeanor back to three years.

SENATOR BERNARD-STEVENS: Let me see if I have it correctly. If we change...if we were to agree to Senator Chambers' amendment, and we would delete the misdemeanor part for the five years, that would still remain three; the felony would still be four years. You have a case that is being tried as a felony, you plea bargain it down. What you're saying is if you plea bargain it down, to those of us that are lay people within the...not within the court system, if you plea bargain down, then those rules and regs, if you wish, or the law regarding a misdemeanor now applies,...

PRESIDENT: One minute.

SENATOR BERNARD-STEVENS: ...even though it is a felony. So, since the Chambers amendment would take out the five year statute of limitation, you could not plea bargain it down, if it was a four year case, even though that would be possible as a felony, because we had a five year statute of limitation you could not plea bargain it down because the rules on the misdemeanor would then be only three years. Is that basically...

SENATOR KRISTENSEN: Yes, that's...you're basically correct. What happens is you dismiss the felony, you have to then file the misdemeanor charge and he will plead guilty to the newly filed misdemeanor charge. So that is how, technically, it happens. So, in other words, if you dismiss the felony, get rid of it, you've got a new misdemeanor case, and the agreement is that is what he's going to plead guilty to. That's what I think you're looking at.

SENATOR BERNARD-STEVENS: Thank you. On the surface, and I say on the surface because I'd like to hear Senator Chambers' response, on the surface it sounds to me that the amendment should not be agreed to.

PRESIDENT: Time has expired.

SENATOR BERNARD-STEVENS: I say that very hesitantly because I'm going to sit and listen to more of the discussion on this

amendment. Certainly my decision is not made in stone, but on the surface I think the plea bargaining and getting into counseling is a very important role in this matter. And I guess I'd like to hear what Senator Chambers has to say before we get at least certainly to a vote on this particular amendment. Thank you, Mr. President.

PRESIDENT: Yes. Senator Chizek, please, followed by Senator Smith and Senator Pirsch.

SENATOR CHIZEK: Just a few comments in general. We, as a committee, have taken some lambasting on occasion this morning. And people have a right to do that. However, I'm not going to stand for it. The committee had a workload of 127 bills this year. If you look at the committee statement you see six people testifying in support of the bill, no opponents, three neutral testifiers. Those people who testified in a neutral capacity did so because they wanted the five years increased even further. In my discussions, a couple of discussions I've had with Senator Chambers about this particular bill, he had some concerns. I said to him that there were a couple of areas that I had some concerns. However, I felt that the overall good was probably surfaced on past what my concerns were. There are very few bills that come out of any committee and come to the floor of this body that anyone, if they want to, can pick apart. I think that the committee did have some discussions, some concerns. When we met and we moved the bill to the floor we thought that perhaps some of those concerns could be addressed. However, some of the concerns that we're hearing about now were not expressed in the committee or the executive sessions. As you know, this bill moved out late. And I think our friends on the Appropriations Committee have gone through, this past week or so, some of the same things that any committee does from time to time. It's easy to stand here and chastise and criticize. But I know their workload, and I know the Judiciary Committee's workload. I don't resent attempting to make any piece of legislation better when it goes to the floor. That's what it is all about. There are 49 of us here, and the opportunity for dialogue exists once it's here. That's what we're doing this morning, and I think that's the way the system was designed, and that's what it's for. Senator Chambers has an amendment, maybe more than one that he'll offer. And, if he has convinced 24 other senators, then his amendment will be adopted. But I think to criticize a committee that has the workload...

SPEAKER BARRETT PRESIDING

SPEAKER BARRETT: One minute.

SENATOR CHIZEK: ...that the committee structure has had this year is wrong, and I'll defend the committee any time that happens.

SPEAKER BARRETT: Thank you. Senator Smith, followed by Senators Pirsch, Langford, Chambers, Kristensen and Bernard-Stevens. Senator Smith.

SENATOR SMITH: Thank you, Mr. Chairman. I won't belabor this, but I would like to have...I was visiting about this issue and didn't hear what Senator Kristensen had to say. So I would like it if he would repeat...are you stating that we should not remove this section...subsection (3)?

SENATOR KRISTENSEN: All I'm trying to do is explain to you what I think happens when you remove that. And, quite frankly, I haven't made up my mind how I'm going to vote. But I want to explain what I think the introducers are saying, if you take out the misdemeanor section. And you have a felony case that's pending, it's been filed, and as you get ready to go to trial you find out more facts. And you don't have a confession, so it's going to have to be a case that is going to have to be proved on the evidence. Okay? And you're not real sure, as a prosecutor, you know you're going to take a risk. Any time you go before 12 jurors you never know what that outcome is going to be. And a lot of times, well, in fact by law you have to work with the victims, because the victims rights law, which are very good, but you're in contact with those victims. And the victims say, well, you know we'd rather have...you know, we want...he was a friend or a relative at one time, we're concerned about him, we hate what he did, we despise what he did, but we want him to get treatment and we'd rather have some conviction than no conviction at all. And oftentimes you're going to be faced with that decision, do we go from a felony to a misdemeanor? If you go from a felony to a misdemeanor, and you take out the misdemeanor section here, I just want you to be aware that if it's past the three years you won't be able to do it.

SENATOR SMITH: All right. Let me ask you another question then. And that is, Doug, if this is removed, I guess someone has committed a felony and done the kinds of things that we're

thinking about here. I'm not sure that I agree that they should be let off with a misdemeanor charge, because I have a situation which I won't bring out, that was a very atrocious situation, where it was a grandfather molested eight grandchildren, and before that time molested his own three children, and there was a family fight about it because they didn't want it brought out and that sort of thing, but in the end the man got off with a misdemeanor charge and, to my knowledge, Bill is not receiving any kind of treatment. I've had numerous letters on this over a couple years time, and I won't go into the whole case. But what I'm saying is if this were removed, could they then lower his...the charge to something more than the misdemeanor charge? And I think he should have had more than a misdemeanor charge, but he happened to have a good attorney.

SENATOR KRISTENSEN: Well, your frustrations with the criminal system, and we'll debate the issues of whether plea negotiations are good things to do or not...

SENATOR SMITH: No, what I'm asking you is, if that were removed, is there something else they could lower...the other charge above that that they could lower it to which would still leave the statute of limitations in, the five years that we're talking about?

SENATOR KRISTENSEN: What was he charged with?

SENATOR SMITH: He ended up getting off with a misdemeanor.

SENATOR KRISTENSEN: Okay, but originally what was he charged with? A Class IV mis...a Class IV felony?

SENATOR SMITH: I don't know, I can't tell you.

SENATOR KRISTENSEN: Or Class III, it just depends what he was charged with whether there is anything else you could plead to. You know you kind of have to have it in the ballpark, you can't be charged with a Class IV felony and...or a Class III felony of sexual assault and go over to burglary and...

SENATOR SMITH: All right, now just let me give you...

SENATOR KRISTENSEN: ...plead to that just to get another charge.

SENATOR SMITH: ...let me just give you this as a person who has done this then. Let's just say this is a hypothetical case where someone did what I just related to you. What would you think he should have been charged with originally?

SENATOR KRISTENSEN: It depends on what I could prove. If I could prove everything...

SENATOR SMITH: Well there was proof, it was proven, he admitted it.

SENATOR KRISTENSEN: Well, okay, if I had a confession and it showed that there was some penetration, which I assume you're saying, then I'd charge him with first degree sexual assault, depending on what the ages were of the people. But I'd look at that and that's what I'd charge.

SENATOR SMITH: Okay, first degree, then now...now, based on that, what I'm asking you is if we remove this subsection (3) what would that leave you with, or would it leave you with anything so that you could reduce the charge and do what you were talking about and still retain the statute of limitations that we were talking about?

SENATOR KRISTENSEN: Were they children?

SENATOR SMITH: Yes.

SENATOR KRISTENSEN: Were they under 14?

SENATOR SMITH: Yes.

SENATOR KRISTENSEN: Then I...you would have the option to...

SPEAKER BARRETT: One minute.

SENATOR KRISTENSEN: ...going to a sexual assault of a child and contact which would be a Class IV felony.

SENATOR SMITH: So that...and still be able to retain the statute.

SENATOR KRISTENSEN: Right, providing you could stay within those age limitations. That is what is so difficult about those, is age. But you make an assumption, you know when I...if



May 11, 1989

LB 211

I'm going to plea negotiate on those things what happens if that confession is shaky? What happens if I don't know if that confession is any good? You know, and I go to trial and I risk having that confession thrown out, and then he gets off scot-free, I mean no conviction. His record will not show a thing. Do I run that risk?

SENATOR SMITH: So you're saying that we should, to be safe, leave this in law...

SENATOR KRISTENSEN: I just want you to...

SENATOR SMITH: ...the subsection.

SENATOR KRISTENSEN: I just want you to understand what the ramifications, if you leave it in, are.

SENATOR SMITH: I think I'll watch to see how you vote. Thank you.

SENATOR KRISTENSEN: Thank you.

SENATOR SMITH: I'll vote with you.

SPEAKER BARRETT: Senator Pirsch.

SENATOR PIRSCH: 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.

CLERK: 25 ayes, 2 nays to cease debate, Mr. President.

SPEAKER BARRETT: Motion prevails. The introducer may close. Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, prosecutors don't always act from pure motives. They have even been slapped down recently by the State Supreme Court for making improper statements and have been chastised for not knowing better. How unprepared they are and the kinds of things they say lead the court to chastise them. Here is an example that I clipped from the paper this morning and it says, the headline, Judge drops charge against Omahan. The felony drug charge

against Sandra L. Lyles (phonetic) has been dismissed. Deputy County Greg Abboud, it doesn't say Deputy County Attorney, Deputy County Greg Abboud said the charge against Ms. Lyles was filed to encourage her cooperation in the prosecution of a co-defendant. So, they filed a charge against her that should not have even been filed to pressure her into testifying against somebody else. If you leave these kind of things available to prosecutors, it is not there just as a basis to have somebody plea to a lesser offense. It is an offense available for misuse and improper use by a prosecutor and some can be pressured to bring these bad cases. You could have the instance that I mentioned of a female who is 16, well, just under 16, 15 years old and 360 days, a boy who is anything younger than that, he can be 12. So five years later she is 20 years old, almost 21. He was 14 at the time, so now he is 19, and a charge is brought against him of having touched her in an improper manner, and he is brought before the judge, and Senator Langford cannot conceive of this happening. But it can and I will try to find examples where things like this have occurred. This person who has been charged can't even remember where he was on the date in question, can't remember anything that is being alleged, even having been with the woman. But she brings some friends who say, yes, he was, and that is what he did. And she doesn't have to say why she was a long time in bringing it, but if she does have to say that, she can just say, well, it bothered her. She didn't want to be embarrassed. But he went on off to school, forgot about her, he is making it real well. She didn't go to school, she has got a lot of problems, and she is going to fix him, but it doesn't matter what her motivation is. The charge can be brought, and if you are going to extend the statute of limitations, you ought to see the way the current law deals with misdemeanors. The statute of limitations for other crimes, except murder, arson, treason, and forgery, is three years. For misdemeanors, it is 18 months. The policy of this state indicates that a misdemeanor is not as serious as a felony. Now for the purpose of this statute of limitation, you are going to make this misdemeanor on the same level as a felony that can carry from one to 50 years. And for this misdemeanor, there is no minimum and the maximum is a year. So a misdemeanor with a maximum of a year is being made as serious as a felony that can carry 50 years. The one who does the touching, for the purposes of this bill, is in the same category as the one who used force and violence and committed serious physical injury to the victim. They are both treated the same. Some people see no need for the law to make distinctions. I do. The purpose of

the law is to make distinctions, and this bill, I say has an allure and it probably will go.

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: But I cannot support it the way it is, and to be frank about it, I have doubts about being able to support extending the statute of limitations for five years because of the staleness of the evidence and the fact that people can be coached, they can be persuaded, they can be coerced, and then we have a situation where a law that we passed for one purpose won't be used in that situation at all, probably. But if you want to adopt the amendment, fine. If you choose not to adopt it, it makes me no difference. In a sense, it does, because I think we ought to do differently, but I won't...my feelings won't be hurt if you don't adopt it.

SPEAKER BARRETT: Thank you. The question is the adoption of the Chambers amendment to LB 211. Those in favor please vote aye, opposed nay. Have you all voted? Record vote has been requested. Record.

CLERK: (Record vote read. See pages 2295-96 of the Legislative Journal.) 14 ayes, 11 nays, Mr. President, on adoption of the amendment.

SPEAKER BARRETT: The motion fails. The Chair is pleased to note that Senator Byars has some guests in our north balcony. We have 12 ninth and eleventh graders from Odell High School and their teacher. Would you folks please stand. Thank you. We're glad to have you. Also, as guests of Senator Robak, we have 28 fourth graders from Columbus West Park School and their teacher. Would you folks please stand and be recognized. Thank you. We're glad you could be with us as well. Mr. Clerk, the next item.

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

SPEAKER BARRETT: Back to the bill itself. Discussion on the advancement of the bill, Senator Chambers, followed by Senator Kristensen.

SENATOR CHAMBERS: Mr. Chairman, all I am going to say on this now, I'm not going to offer any amendments. I think this is a very bad bill and I think the high hopes of those who vote for

it are going to be frustrated because prosecutors are not stupid. They're not going to be bringing cases five years old. So you all will feel good again and think that you have done something by passing this bill and it's not. A prosecutor, as Senator Kristensen tried to point out to you, is going to see whether or not he can win the case. That's what the prosecutor is interested in. It's futile and a waste of judicial time and resources to bring a case when the evidence is old, when the witnesses have faulty memories, when their credibility can be impeached or they have no credibility if it's clear that somebody has been coached, because the prosecutor is going to talk to the alleged victim and is going to talk to the witnesses. And you can have somebody coming in shifting from foot to foot...and I did have an article downstairs, I didn't...I didn't want Cindy to send it up to me, where these two girls had been coached to allege that a rape had occurred. And after there was some investigation, it was found that nothing had happened and the stepfather was exonerated. I don't know whether it was five years after, two years after or what period had occurred, but there are times when there can be very serious problems in a family setting and it can take a long period of time for some things to occur to a person or for them to read an article and get an idea. To pass laws that accommodate and encourage that kind of activity is not wise, in my opinion. I am trying...or I had tried to do something about this bill because laws that we put on the books come back to haunt us, just as the existing law on sexual assault, when I was questioning Senator Langford, elicited the response, I don't want to answer questions about the existing law, even though you see problems, but this is the Legislature that enacted that into law over my objections. So next year this becomes the existing law, then something equally without merit comes up and I will try to discuss this and show the problem that existed. And you know what the response will be? I don't want to be...I don't want to talk about existing law. But every existing law was once a bill before this Legislature. Most of these kind are brought by special interest groups who are very sincere and well-meaning but they don't know how to draft legislation and they don't understand the law and they don't blend these things together. And when they come before the committee they will say, you fix it. And the reason I made comments, Senator Chizek, about the Judiciary Committee is because Senator Smith wondered why I didn't do this in that committee. My seatmate, Senator McFarland, has seen me grappling in there like a pit bull...Senator Kristensen, they have seen me ask questions and I

raised these questions about this bill when it was there. I talked about the fact that somebody could be younger than the alleged victim. It doesn't take over there. Watch how some of the committee members vote out here and you will see why I couldn't do anything in there. Sometimes I think about what was said about Senator...I meant there was a general named George Brinton McClellan and Senator Warner can confirm that there was such a person, he was the general in charge of the army of the Potomac for the north and Lincoln said he's a man who had the slows, that he was always finding every reason not to engage the enemy. He always wanted more reinforcements. His intelligence people...Pinkerton was always...they were always overestimating the size of the rebel forces so McClellan would never move. Finally, he creaked into action a little bit but they wound up having to remove him and Lincoln and Stanton started directing the war effort themselves for a period of time. But somebody was talking about another general who ought to replace McClellan.

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: And when a letter was written to him about where he was he said, his...he wrote back, headquarters in the saddle. And somebody said, if his headquarters are in the saddle, then his hindquarters are where his headquarters should be. That's all I have to say about this bill.

SPEAKER BARRETT: Senator Kristensen.

SENATOR KRISTENSEN: Thank you, Mr. Speaker, and members, I guess sometimes we all have backgrounds that we want to talk about and things that we have experiences and I want to share a little bit with you some of my experiences. And, Senator Chizek, I want to kind of talk to you a little bit here about the committee. I think you're right. You know, with the workload that we had down there this year, it's very difficult for us to sort through every bill. And I'm not sure that you're correct that we have friends over at the Appropriations Committee, after sitting by Warner this whole session I have gained a new appreciation for that and Jerry said, welcome to the committee structure, it's about time that some of the Judiciary Committee members take a little of the pounding and we probably deserve that. And Senator Chambers does have an influence in the Judiciary Committee. He may be a little modest to admit that but he does have some influence, in fact, has a

tremendous amount of influence in that committee in the way that we think and ask questions and deal with bills. But I want to talk a little bit about this bill in particular and there are some real pros and cons and there's not one bill that we're going to pass here that's going to be foolproof, that somebody's not going to be able to manipulate for the wrong reasons and I don't care if it's from Senator Schmit's bills concerning the power companies, to Senator Lindsay's bills with prostitution, or whatever. They're all going to have some problems and somebody is going to be able to have a case that you will be able to stand up on the floor and just become outraged over and it really is our job to set a framework and a system to allow prosecutors to work within that. One of the major problems with extending the statute of limitations is going to be the family that comes in three years and maybe a week or two after an incident has occurred and they're going to have a case that you're most likely going to believe. You know, the kids are of an age that you can listen to them and talk to them and you're going to go, well, they did it, and as a prosecutor you're going to go, you know, we've got to be able to prosecute that, we've got to be able to convict those people because what they did was wrong. And so you look at that and at first blush every case that walks in your door looks pretty good. It's kind of like a lot of bills that the first time you hear it you say, well, that doesn't sound so bad. The more you work it, the longer you look at it, the tougher that case becomes. And Senator Smith has some tremendous frustrations about a case that she had. I don't know why those cases are knocked down from a felony to a misdemeanor but every case isn't perfect, in fact, most cases have a lot of problems with it. A lot of times your only witness is a child. Do you know how hard it is to have a child stand up in front of 12 jurors, the bailiff, the sheriff, the judge in a robe, lawyers on both sides and you're going to have family members in the back? A lot of times the guy that is alleged to have done the crime is going to be somebody they trusted, somebody who is a grandfather, an uncle, a stepfather, a baby sitter. Do you know how hard that is for them to stand up and testify against those people? The longer we extend this, the longer period of time there is from the time the crime occurred to when we go to trial. If you extend it to five years, you may well look at a trial six years after the time that it occurred. Well, six years to myself or Senator Lynch or Senator Hannibal may not be a very long time but to a child that could be twice their life. You know, if they're 12 years old now, they have only...they only had six years of their life

before that. Very difficult. And that's what...that's what one of the downsides are. I think that's what Senator Chambers was trying to talk about is that it becomes stale. As a prosecutor, quite frankly, I'm not going to file, unless it's a very rare case, I'm not going to file those charges because of the damage to the child and the possibility of winning is greatly diminished. But you're going to have cases...and I think Senator Langford had a very good case where they had the evidence, they had the horses, they had the witnesses and they had all their evidence there and the only thing that stopped them from punishing these people more was the statute of limitations. And so, on the other hand, how can you be against that? I mean, how can you be against being able to convict somebody for a crime that they did commit when you've got all the evidence? And that's the policies you're going to have to weigh here. So, in looking at the case, it's probably...

SPEAKER BARRETT: One minute.

SENATOR KRISTENSEN: ...a good policy to be able to convict the people that actually commit crimes. Even Senator Chambers can't deny that and he would never deny that to you that if somebody commits a crime, you ought to punish them. The key is how far back do you go? And what are the dangers of going back that far? And the dangers are...there are very few people that come in that are coached in terms of an intentional coach that we're going to pick out an innocent man and coach these witnesses to go get an innocent man. There's a fine line between coaching them and getting them ready to go to trial to put their best foot forward than it is to come back and say, we're going to go get an innocent man, because you've got social workers who are doing...you know, they have great causes. They're very committed to their work. They want to...they want to get this individual. They want to convict him. And so they're going to put the case best they can together and that means working with the witness...

SPEAKER BARRETT: Time.

SENATOR KRISTENSEN: ...and saying, here's how to do it. Thank you.

SPEAKER BARRETT: Senator Bernard-Stevens.

SENATOR BERNARD-STEVENS: Senator Kristensen, can you use

another couple of minutes? I will yield the first couple of minutes of my time, or so, to Senator Kristensen.

SENATOR KRISTENSEN: Thank you, Senator Bernard-Stevens. I want to...I want to finish this up by talking about the system and the discretion. Don't get into the trap here of being angry about plea bargains and about county attorneys who don't do their jobs. And, Senator Chambers, I can take issue with you at times because it's real easy to kick at the guy that has...that has the discretion. The job of the prosecutor is to win. If we look in the statute, what we have told him his job is to do is if you feel there is a crime, you go out and you charge it and you prove it. That doesn't mean win at all cost. And the reason it isn't win at all cost is we put laws and we take these little red books and we've got all sorts of laws in here and say, here are the rules you've got to follow but if you can follow those and convict them, fine. What we're doing is tinkering with the rules. If the rules need to be tinkered with, fine, no problem with that, but know what we're doing when we do those things. You're going to allow a little more discretion here. You don't like some of that discretion that gets exercised once in a while. You don't like the fact that cases get dismissed. You don't like the fact that cases get plea bargained down. That makes us angry. And prosecutors can't come out and necessarily try their cases in the papers and the ones that do aren't very good prosecutors. The good prosecutors are the ones that take the case, charge it the best they can and run with it. And if they can't win, they come back to the victims and the police and they say, look, here's the reason we're not going to win a trial and here's what we ought to do. And if all you had to do is have one case a year, you could prepare and you could have your witnesses and you can do the best job in the world, but you don't have one case. We don't have one bill. We had 817 odd bills. Do you think every one of us are prepared for every one of those bills? I know I'm not. The same way with prosecutors and cases, you've only got so many things you can do. So I take...I take affront to the fact that we're going to rip at the prosecutors for not doing their jobs. They've got a difficult job and we give them discretion and we do that for a reason. Know when you vote for this that you're allowing them more discretion. Whether you want to do that or not, that's the reason you hit a red or a green. Thank you, Bernard-Stevens, for your time and I will let...



SENATOR BERNARD-STEVENS: Thank you, Senator Kristensen. Senator Chizek, I just want to be on the record that I certainly have not said anything today detrimental to the committee process because I respect not only what you and your committee have tried to do with the number of bills you have but I also know how much deliberation and time you spend on some very crucial and emotional issues, going far, far late into the evening making sure everyone would have the time available. And I also remember I have a couple of bills still in the committee that may come out so I want you to know that your committee is doing an outstanding job and I commend it highly. However, on another note, Senator Kristensen, I think, has summed up the bill relatively well. I think the bill should advance. I think there are still some things that the body needs to consider. Senator Chambers' amendment, for example, had 13 votes for...in fact, there were more votes for taking out Section 3 of Chapter 28-320, and there were 20 people who didn't vote and I sometimes think that we try...in order to move in the body, we try not to do all the things we need to do and we probably should have had a roll call vote and had a call of the house so that everyone would have been here. But, unfortunately, most of the body may not have been listening because they were doing other things at that point. I don't know if we would have had a fair vote on it or not but I think it would be a good amendment to come back on Select File, Senator Chambers. I think the discussion today has been good. I think the discussion has been worthwhile. I think the bill should advance so we continue the discussion. The bill does have a downside to it. I don't think anyone is trying to say that it doesn't...

SPEAKER BARRETT: One minute.

SENATOR BERNARD-STEVENS: ...but there is a real positive side as well. And I agree with Senator Kristensen that a prosecutor is going to be very careful when they use that five-year statute of limitations because the evidence does become stale. There is...the longer you wait, the longer and more difficult it would be to get a conviction and I realize that. But I also realize, as Senator Kristensen and Senator Langford and others have stated, that there are those cases that will be able to be prosecuted, that will be good cases, and one of the examples would be one of the cases that I referred to earlier. And I also agree that the body needs to be careful of legislating for particular cases because sometimes you help one area of the law and help one group of people but you hurt a larger group in

another area and the body does so without thinking, without meaning any harm but it just happens.

SPEAKER BARRETT: Time.

SENATOR BERNARD-STEVENS: And we need to be very careful on that. But I think the bill is a worthy enough bill that should be advanced to Select File and give the body another chance to look at it at that level. Thank you, Mr. President.

SPEAKER BARRETT: Further discussion on the advancement, Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I would just like to clarify something that I think needs clarification based on something that Senator Kristensen said. Senator Kristensen, in talking about this bill, what I had indicated was that prosecutors try to win cases and if they have one that they know they can't win, it's a waste of judicial time, resources and so forth, but that there could be a situation where people could bring pressure to bear and try to insist that a charge be brought nevertheless, even against his better judgment. And there are prosecutors who will yield to that kind of pressure and bring a case because of the pressure and the public outcry. And that doesn't just happen in Nebraska, it has happened in other places. As for the Judiciary Committee, because of the workload it has, in reality it should be a five-day committee. There is no way it can process the work it has in three days but that still doesn't justify sending bad legislation out here that needs so much work on the floor. We have different points of view about those things. And I appreciate Senator Kristensen trying to massage my ego by saying I have the effect and impact in the Judiciary Committee but, youngster, I have been here 19 years and I know...I have been on the committee for 19 years. Every year I have been in this Legislature I have been a member of that committee and I have to do so much fighting out here because I know I can't get anything done there. I know it. I see the kind of bills that come through there. I see the kind of groups that bring them and I can spot the kind of bills, even before there is a hearing, that will be advanced by the Judiciary Committee and I have discussed that with some of my seatmates on occasion, and reporters and others, even before there is a hearing. I go down the list, sometimes we would just be referring bills to the committee and I can spot the ones that are going to come out and I haven't

even read it. I don't even know if it's properly drafted. I don't even know if it does what it says it's going to do but, because of who brought it and the nature of the subject matter, the Judiciary Committee is going to send it out here. I have said it years past. I will continue to say it as long as it happens. As far as saying in the committee statement that this deals with felonies, I didn't put that on there. Am I not supposed to mention it? Well, maybe some people think I shouldn't but I will. I'm not here to be anybody's friend. I'm not here to win a popularity contest, unless by saying what I think is right will make me popular, which it never has for anybody at any time in history. And why should mere, humble mortal, such as myself, expect to be treated any differently? So, all of those things aside, this is not a good bill. This is not sound public policy. But once it has been done for this particular type of offense because some people have some specific cases in mind, then others can start saying, hey, I know about a burglary that occurred and I didn't know about it until three years and a week afterward because I went to looking around these things that I have and they were gone and then I noticed there had been a forced entry. So I think what you need to do is extend that statute of limitations because no burglar should be allowed to get away just because three years and a week passed. Then the legislators will say, well, yeah, that sounds good to me. It will be put into the Judiciary Committee and I could probably tell you who will bring it and it will zip right out of that committee. Then somebody will say, well, if a burglar shouldn't get away, why should a sneak thief? Are we going to tell these criminals that all they have to do is lay low for three years and then one day after three years they're home free? We're encouraging crime, then sneak thieves, then every manner of thing. And that's the way the Legislature, in a lot of instances, operates and I can't stop it. But I'm going to speak against it. I'm going to try to stop it and do what I can. When I cannot stop it I want the record to be clear on how I distance myself from it. There are bills where I was the only no vote and the Supreme Court will strike down the bill...

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: ...as unconstitutional because it was passed on the basis of emotion and high public fervor at the time. That can't sway me and it doesn't sway me...oh, did you say time or a minute?

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: Okay. It won't sway me on this bill. I am as concerned about children as anybody in this body but I am also concerned about the proper operating of the system. And if we create unrealistic requirements and people begin to lose confidence in the system because those who have to administer it cannot explain to them that, although the allowance of this discretion is there, it wouldn't be wise to exercise it, they will begin to say, well, you're not doing your job. Then they will come back to the Legislature angry again and we'll jump the prosecutor. But with the job that they have to do and needing evidence from credible witnesses makes some things almost impossible to prosecute but we're not taking that into consideration here. And you ought to look at the four offenses...

SPEAKER BARRETT: Time.

SENATOR CHAMBERS: ...where there is no statute of limitations and see what the policy is on statutes of limitations references with reference to crimes and why that policy might be in place.

SPEAKER BARRETT: Thank you. Senator Langford, there are no other lights on, would you care to close?

SENATOR LANGFORD: Yes, thank you, Mr. Chairman. This issue, I believe, has been discussed extensively. Five years is not an unreasonable time, not when other states have as much as 10 years. I am going to read just a few lines from a letter that I believe probably was sent to every office. But it says what I feel about this issue. Just reading parts of it. "My purpose is to urge you, even plead with you, to bring LB 211 to the floor and pass it. I would also hope you would consider a grandfather clause for complaints already recorded." Now, in that, of course, I have no intention of doing. But, in bringing this bill, I brought what I thought was a very moderate proposition to the body to help families with young children who have had them abused. And in this letter it was beyond the statute of limitations. The child is in therapy, blurred vision, disorientation, muscle impairment and this is a seven-year-old. So, ladies and gentlemen, I think Senator Kristensen has given you a very good scenario of a prosecutor and I do hope you will consider the good this bill can do to protect other young children from people who have committed the

May 11, 1989

LB 211, 816

crime of abuse of a child. Thank you.

SPEAKER BARRETT: Thank you. And the question before the body is the advancement of LB 211 to E & R Initial. All in favor vote aye, opposed nay. Voting on the advancement of the bill. Have you all voted?

SENATOR LANGFORD: Mr. Chairman, I think we are going to have to have a call of the house. Maybe not. Mr. Chairman, may we have a call of the house.

SPEAKER BARRETT: Shall the house go under call? All in favor vote aye, opposed nay. Record.

CLERK: 15 ayes, 0 nays to go under call, Mr. President.

SENATOR LANGFORD: Mr. Chairman...

SPEAKER BARRETT: The house is under call.

SENATOR LANGFORD: ...call ins.

SPEAKER BARRETT: Call in votes have been authorized. Please return to your seats and record your presence.

CLERK: Senator Hannibal voting yes.

SPEAKER BARRETT: Please record.

CLERK: 25 ayes, 3 nays, Mr. President, on the advancement of LB 211.

SPEAKER BARRETT: LB 211 is advanced. The call is raised. Anything for the record, Mr. Clerk?

CLERK: Mr. President, I have a notice of hearing from the Revenue Committee for confirmation, gubernatorial appointment, confirmation hearing. That's offered by the Revenue Committee, signed by Senator Hall as Chair. (See page 2296 of the Legislative Journal.)

Senator Landis has amendments to be printed to LB 816. (See pages 2296-97 of the Legislative Journal.) That's all that I have, Mr. President.

May 15, 1989

LB 84, 137, 211, 215, 272, 377, 487  
639, 813, 816  
LR 211

SPEAKER BARRETT: Any discussion? If not, those in favor vote aye, opposed nay. Record.

CLERK: 27 ayes, no nays, Mr. President, on adoption of the amendment.

SPEAKER BARRETT: The amendment is adopted. Senator Lamb.

SENATOR LAMB: I'd move to readvance the bill, Mr. President.

SPEAKER BARRETT: Question is the readvancement of the bill. Those in favor say aye. Opposed no. Carried. The bill is readvanced. While the Legislature is in session and capable of transacting business, I propose to sign and I do sign Legislative Resolution 211. Senator Baack, for what purpose do you rise?

SENATOR BAACK: Mr. Speaker, I move that we recess till 1:30.

SPEAKER BARRETT: Mr. Clerk, anything for the record?

CLERK: Mr. President, amendments to be printed to LB 816 by Senator Haberman, Senator Landis and Scofield, LB 813; notice of confirmation hearing by the General Affairs Committee. Enrollment and Review reports LB 211, LB 639, LB 272, LB 137, LB 215, and LB 377 to Select File.

Mr. President, Senator Abboud asked unanimous consent to add his name to LB 84 as co-introducer. That's all that I had, Mr. President.

SPEAKER BARRETT: Thank you, and the question is recessing until 1:30. All in favor say aye. Opposed no. Carried. We are recessed. (Gavel.)

RECESS

SPEAKER BARRETT PRESIDING

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

SPEAKER BARRETT: Thank you. Anything for the record?

May 17, 1989

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 18, 1989

LB 211, 228

attention, and it was our initiative to ask that the bill be returned. The Governor's Office...I don't think the Governor's Office was aware of the problem with it. No, this is not a response to any executive action. It's a response to those people for whom we were carrying the bill.

SENATOR ABBOUD: Thank you.

SPEAKER BARRETT: Any other discussion? Seeing none, Senator Withem, anything further?

SENATOR WITHEM: Would please ask for a yes vote.

SPEAKER BARRETT: Thank you. The question is the adoption of the McFarland motion as explained by Senator Withem. All in favor vote aye, opposed nay. Record, please.

CLERK: 28 ayes, 0 nays, Mr. President, on the motion to request the return from the Governor of LB 228.

SPEAKER BARRETT: Motion is adopted. Moving on to Select File, senator priority bills. Mr. Clerk, LB 211.

CLERK: Mr. President, on LB 211 I have Enrollment and Review amendments, first of all, Senator.

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move the adoption of the E & R amendments to LB 211.

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

CLERK: Mr. President, the next amendment I had to the bill was by Senator Chizek. I had a note, Mr. President, that Senator Chizek wanted to withdraw, unless...

SPEAKER BARRETT: Senator Abboud, did you have something?

SENATOR ABBOUD: He'd like those amendments withdrawn. He'd like the amendment withdrawn.

SPEAKER BARRETT: Thank you. Withdrawn.



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

SPEAKER BARRETT: Senator Hall, please.

SENATOR HALL: Mr. President and members, the amendment that I have to LB 211, the Clerk has up there it shows up on 2482, and is a very simple amendment to the bill we have before us. The bill is Senator Langford's bill that deals with increasing the statute of limitations with regard to sexual assault on minors. And my amendment is...would be found on page 2 of the bill, line 7. Currently in statute there are four items that have no limitation whatsoever with regard to the statute of limitations. Those are treason, murder, arson and forgery. I don't have any problem with treason and murder, but I did...I was unaware of the issue of arson and forgery being a provision that there was no statute of limitations. I can think of a number of other crimes specifically that involve personal injury or other types of things, rape for example, that I would think would be more suitable, more justified with regard to an unlimited statute of limitations or at least an extended statute. And I can't understand why arson and forgery would be given the benefit of basically no limitation whatsoever. I would think that if one were to burn up their car, burn down their house, whatever in order to collect insurance, one were to write a bad check, that that would not be something that should have unlimited prosecution or the ability for that. But yet according to our statutes they do. And I don't understand that. And I think that it is a provision that goes back a long way, and basically goes back because of the individuals who lobby on behalf of it, the banks and the insurance companies. And I think since we have LB 211 before us it does open the statute and allow for this language to basically be cleaned up and taken out of there. All my amendment does is basically strike the words arson and forgery, allow for them to fall within the normal limitation that we have of three years. And I would urge adoption of the amendment to the bill.

SPEAKER BARRETT: Thank you. Discussion? Senator Smith, followed by Senator Kristensen. Senator Smith.

SENATOR SMITH: Thank you, Mr. Speaker. I would like to ask Senator Hall a few questions, if I might.

SPEAKER BARRETT: Senator Hall, would you respond?

SENATOR HALL: Yes.

SENATOR SMITH: Senator Hall, I don't know whether you know any more about this than I do. I just became aware of this a few minutes ago. And as a co-signer of the bill I felt obligated to find out a little bit more about the purposes, more than what you've said on the floor for removing these two words. I know it's a simple amendment in the fact that it's made up of only three words. But it does quite a lot to the bill, I believe. You know it was brought to my attention while we were sitting here listening to you talk. We were visiting about the fact that we've just come up...we've just come through a lot of debate on this floor about, for instance, the statute of limitations regarding the pharmacy college and things like that. And now we're talking here about making excuses for letting people off?

SENATOR HALL: Senator Smith, then it would have been appropriate for the pharmacy college, if it would have worked in that case, I probably wouldn't be offering this amendment. Since it wasn't applicable there I see no need to leave arson and forgery, since those didn't apply in the statute. I offer the amendment, hoping that I can be talked out of it, that there is good reason to not strike these two provisions.

SENATOR SMITH: Maybe if I let you have my time you can talk yourself out of it.

SENATOR HALL: No, no, I'd be more interested in listening to your arguments.

SENATOR SMITH: I don't really...I just am trying to understand why this is important to be taken out of this bill, if in fact it's already...it exists that way now in statute. Why, at this point in time, do you want to remove that limitation?

SENATOR HALL: It is my feeling that, Senator Smith, that there are a number of crimes that I would consider more heinous and would be more justified of having an open-ended or unlimited statute. And I gave the example in my opening of rape, rape of an 82-year-old woman, I would think, should not probably have any less statute of limitations than writing a bad check, or forging ones name on a document, or the fact that someone may

burn their car up to collect the insurance on it. I don't understand why these two provisions, arson and forgery, received the type of special benefit that they do. Treason and murder, I don't have a problem with. But arson and forgery are two that I believe, basically because the banks and the insurance companies have placed them into statutes, receive a special type of status that is unjustified. And I offered the amendment to strike them at this time. It just makes them equal to rape, for example, with regard to the statute of limitations.

SENATOR SMITH: Well, maybe we should be going the other way and adding some words in here instead. I really don't have a lot to talk about. I want you to listen to the discussion, then I'm hoping Senator Kristensen can inform you and myself, and maybe convince you that we don't need to have this amendment. Thank you.

SPEAKER BARRETT: Senator Kristensen.

SENATOR KRISTENSEN: Thank you, Mr. Speaker and members. I rise to object to Senator Hall's amendment. I think that these are one of those discussions that are fun to listen to and maybe if we had time and a hearing to flush these out, because they are major policy decisions about what sorts of crime should go in and should go out of the statute of limitations. And Senator Hall is correct, there are four of those crimes that right now have an unlimited amount of statute of limitations. But there are some unique things about treason, there are some unique things about murder, and there are also some unique things about arson and forgery. And I guess the latter two are the ones that I want to talk about. Senator Hall, can I ask you a couple of questions, please?

SENATOR HALL: Yes.

SPEAKER BARRETT: Senator Hall.

SENATOR KRISTENSEN: Do you know of any specific problems with let's say forgery having an unlimited amount of statute of limitations? Is there a specific problem that you're aware of?

SENATOR HALL: No, Senator Kristensen, there is none that I am aware of. The only problem I have, and the only reason I offer the amendment is because I questioned why we limit...give unlimited statute to these four provisions and not to crimes

that I would consider, and I think many others as Senator Smith mentioned, would consider just...as just deserving.

SENATOR KRISTENSEN: Do you have any specific problems that you know of with, let's see, we did forgery and the other one with arson. Is there any cases that were problems in particular out there on that one?

SENATOR HALL: Again, the same argument that these two received special privileges that I don't feel have been warranted. When there are other crimes that I would consider more deserving. And we are dealing with a specific provision to a specific crime in LB 211 that would add additional time to another area, but yet not give it the same standing as writing a bad check.

SENATOR KRISTENSEN: Okay, in general, would you be for a repeal of all statute of limitations and saying, look, if we could prove a crime, no matter what time it occurred, you ought to be held accountable for that, and we ought to be able to convict you and punish you? Would you be for repealing the statute of limitations on all crimes? I mean after all, if they've violated the law, we ought to be able to go after them, right?

SENATOR HALL: No, I would not.

SENATOR KRISTENSEN: Okay. And how would you make some distinctions between that?

SENATOR HALL: I would start by striking these two and leave treason and murder in there.

SENATOR KRISTENSEN: Okay, so you're...what you're saying is it's okay in the other cases, but you want to make a policy decision for just those two.

SENATOR HALL: At this point in time. I may have another amendment that would add additional to these. But this is where I would begin.

SENATOR KRISTENSEN: Okay, thank you. The reason that you have things like arson and forgery in there is because of the nature of the crime. And particularly forgery is very difficult, because you may not know for a period of time that the article has been forged. That article may well be a stock or a bond, it may well be a contract or a negotiable instrument, that may be

put in your safety deposit box and could sit there for a period of three, four, five years until you try to negotiate it. And all of a sudden you find out it's been forged or it's gone. And as much as we'd like people to obey the laws, we know that they don't. And it becomes a matter of what is practical and what is unique about the particular crimes. Arson is another one of those ones. Arson, of all the crimes that we have or the majority of the crimes, is very hard to prove because it's hard...usually no one is there to watch it. And usually you build those cases on patterns, you build them on circumstantial evidence. But a lot of those cases are built on somebody coming around and collecting insurance money later, and quite frankly they know when the statute of limitations are. But they also go out and they tend to brag about those cases, and a lot of times that's how you catch them. But it's a few years down the line. But in particular forgery is a very, very difficult crime to catch quickly. Three years is a short period of time. And I guess I don't see good policy reasons for taking them out right now on this short of notice. These are the types of things that I think are probably good discussion. I think Senator Hall is articulate...

SPEAKER BARRETT: One minute.

SENATOR KRISTENSEN: ...enough to take that to the Judiciary Committee and look at that. And there may well be some other crimes that we want to extend the statute of limitations, there might be some we want to take it away from. But right now I think forgery and arson are there for a purpose, they've been there for a long time. They might have even been there before there were lobbyists. I don't know, Senator Hall, if back in the good old days there were lobbyists. But I think the reason that they're there, quite frankly, is because they are traditionally the most serious crimes and they are the hardest ones to prove. And they are the ones that, as a practicality, society needed to have a period of time to prosecute and oftentimes they involve large amounts of money, and they are a rather subverted crime, they are not easily seen, there are usually not witnesses, and for that reason there aren't a statute of limitations for them. I would urge the body to defeat the Hall amendment. Thank you.

SPEAKER BARRETT: Thank you. Senator Langford, please.

SENATOR LANGFORD: I would, Mr. Chairman, colleagues, I really

would like to call the question, but I think I should probably talk about this a bit. One thing that came to my mind when Senator Hall brought this amendment was what about a will? A will is written and put in the safety deposit box, and the person doesn't die for 20 years. If it is a forgery, the statute of limitations could allow something unforeseen to happen in this case. I also think that probably sometimes when arson is involved this is found out much later when a person has been killed or something unusual happens that they find out who the person was who committed the arson and they can thereby prosecute. I do wish though that, since this does need more thought than we can give it today or that we want to give it today, I would appreciate it if you would withdraw this amendment. Maybe next year we can have a hearing. Thank you.

SPEAKER BARRETT: Thank you. Senator Pirsch.

SENATOR PIRSCH: Thank you, Mr. Speaker. I object strenuously to this method of amending on Select File, a bill, an issue that has not had a public hearing, has not ever been discussed and comes up because of some subjective idea of Senator Hall. And I think it's the wrong way to legislate. And I really resent the way it...that it isn't even...that it is presented in the first place. It's very misleading when we talk about forged checks. As Senator Kristensen pointed out, and Senator Langford, the forgery is of...could be of bonds that have been put in safety deposit boxes, of a number of things. This is a substantial change and should not be even considered at the whim on the last minute, lazy day of this body. And I would hope that we overwhelmingly defeat this amendment.

SPEAKER BARRETT: Thank you. Senator Bernard-Stevens.

SENATOR BERNARD-STEVENS: Thank you, Mr. President, members of the body. Senator Hall, for offering this kind of amendment at this time you are giving us a good thing to think about. But I would also go ahead and say to Senator Kristensen, that he's given a good view of why we had other particular things to keep arson and forgeries within. I would like to approach from just one other area, and that area would be that the intent of the bill, LB 211, is to look at child abuse, look at child assaults 16 and under, and focus on that narrow view. What you are bringing forth, I think, is a broader view. What do we want to do with statutes of limitations in a broad, whole spectrum of areas? And I think that's a very good thing to do. And I think

that's a very reasonable thing that this body should look at. But I think the way that the body should look at the whole idea of statute of limitations is to look at it through the interim, come back with a bill, go through the Judiciary Committee and come out with a good, broad-based policy discussion on the entire spectrum of statutes of limitations in a broad-based area. I think what we're trying to do with LB 211 is work with children, work with sexual and child abuse, and to that degree I think the amendment that you are proposing, though good for philosophical discussion, and good for policy discussion, is in my mind not going in the same direction as what we're trying to do in a more narrow view on LB 211. But I appreciate your concern. I certainly think your thoughts are in the right place, and it's something that we, as a body, should continue to look into. But I think to do it at this particular time, to go from a narrow perspective on child abuse that we're doing on 211, to a broad-based, total view of statute of limitations, in many, many areas, I think would be too much at this time for the body to do and do it reasonably. Thank you, Mr. Speaker.

SPEAKER BARRETT: Senator Hall, please.

SENATOR HALL: Thank you, Mr. President, members. The issue here is statute of limitations. LB 211 was introduced by Senator Langford and others to address the overall issue of statute of limitations, and a serious policy change that the bill was introduced would effect. Now to say that you only narrow the scope and deal with the one little item that is in there, without looking at the overall concept, tradition and past history of the statute of limitations, I think, is a real tunnel vision approach to both the bill and the entire concept of statute of limitations. Senator Kristensen, would you yield to a question?

SENATOR KRISTENSEN: Sure.

SENATOR HALL: Douglas, can you tell me what is the difference between murder and manslaughter.

SENATOR KRISTENSEN: You mean in our criminal statutes?

SENATOR HALL: Yes.

SENATOR KRISTENSEN: It...well what you're really referring to is murder in the first degree and a lesser defined crime of

manslaughter, and it goes to the intentional act. Manslaughter can be proven up and convicted without the presence of intent.

SENATOR HALL: I can give you an example, a drunken driver. I could run into another car, kill the occupants of that car and could very likely be charged with manslaughter.

SENATOR KRISTENSEN: You'd be charged with motor vehicle homicide, different case.

SENATOR HALL: But it could very easily be plea bargained down to manslaughter.

SENATOR KRISTENSEN: Well, yeah, it could, yes.

SENATOR HALL: With an attorney such...with your qualifications it's very possible, isn't that correct.

SENATOR KRISTENSEN: Probably with me defending you, you'd be convicted of first degree homicide. But...

SENATOR HALL: I'll take that to heart. (Laughter.) Thank you very much. The fact of the matter is, ladies and gentlemen, there is someone dead, someone doesn't come out of that, whether it be through a motor vehicle homicide, whether it be manslaughter, it's unintentional but there is still someone who is dead. Okay. Those individuals, because they fall under the category of manslaughter, if the charge originally is manslaughter, there is a statute of limitations. Still somebody is dead. But, if the charge is murder, there is an unlimited statute. I don't have a problem with that. I do have a problem though with the issue of someone forging a document, whether it be a will or a check, those are all applicable and they all apply the way our statute of limitation is written. And they can go after those people forever and ever. And if Senator Conway were to burn up his boat, the insurance company would come looking for him, and if they couldn't prove arson today but, as Senator Kristensen pointed out, ten years later, if he was in his cups and was bragging in a bar at the harbor as to how he had ripped off the insurance company, he could be taken to court and, if arson could be proved at that time, then he could be convicted. But if someone is raped, and no one is able to prove rape for the duration of the statute of limitations for three years, then that person goes free, even though that same person happens to be in their cups five years later, bragging



May 18, 1989

LB 211  
LR 220

about how they raped a 21-year-old. A 17-year-old would qualify, the way 211 is written, or a 92-year-old, those individuals walk because the statute of limitation has run. I mean I agree that this is a substantive issue. But when we look at these type of substantive issues, and we make these types of changes,...

SPEAKER BARRETT: One minute.

SENATOR HALL: ...that LB 211 would, you can't look at it in the narrow scope that you talk about and say no other amendments or no other issues that fall within the parameters of this law can't be touched. I would urge the body to pay great attention to the change that LB 211 is making and weigh it in comparison to some of the other provisions that have no statute and basically have no good reason to have unlimited statute. There are very few reasons have been given here this afternoon. I would respectfully withdraw the amendment. Thank you, Mr. President.

SPEAKER BARRETT: Thank you. It is withdrawn. Mr. Clerk.

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

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that LB 211 be advanced to E & R for Engrossment.

SPEAKER BARRETT: Shall LB 211 be advanced to E & R for Engrossing? Board vote has been requested. Those in favor of the motion vote aye, opposed nay. Have you all voted? Record, please.

CLERK: 27 ayes, 4 nays, Mr. President, on the motion to advance LB 211.

SPEAKER BARRETT: The bill is advanced. Mr. Clerk, to LB 588.

CLERK: Mr. President, may I read two items for the record?

SPEAKER BARRETT: Certainly.

CLERK: Mr. President, new resolution, LR 220. (Read.) That will be laid over. Mr. President, Senator Warner has amendments

May 18, 1989

LB 89, 137, 137A, 211, 215, 228, 279  
289, 289A, 352, 639, 651, 651A, 761A  
762A, 815A, 817A

Teachers buy books. Teachers buy supplies for kids that don't have them. They take money right out of their own pockets and give it to kids. And so it's...I guess that's one of the reasons why I feel very strongly about giving the money directly to teachers. Senator Warner's remarks struck a chord with me and reminded me of all the contributions that I know that individual teachers make to kids. And so I would urge us to get on with it. Let's pass this bill. It's time we did something for teachers.

SPEAKER BARRETT: Senator Schellpeper.

SENATOR SCHELLPEPER: I will give my time to Senator Moore.

SPEAKER BARRETT: Senator Moore.

SENATOR MOORE: Yes, Mr. Speaker. just to say I guess it's time to withdraw this. I apologize to the...to the original supporters of this bill, at least, because I think some of them wanted to read it tonight and because if my amendment was adopted, they couldn't, but I think it makes it a better bill, obviously, a bill that I can now support and I think there has been some fights among some varying entities on this bill. I think now we've got a bill that really does help education in the state. And, with that, I withdraw the amendment. The last things I will say on LB...the last things that all of us will say on LB 89 and come Monday we'll pass the bill over to the Governor.

SPEAKER BARRETT: Thank you. It is withdrawn. Anything further, Mr. Clerk?

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

SPEAKER BARRETT: Yes, for the record.

CLERK: Mr. President, amendments to be printed, Senator Scofield to LB 761A; Senator Chizek to LB 279. (See pages 2546-47 of the Legislative Journal.)

Mr. President, your Committee on Enrollment and Review respectfully reports they have carefully examined and engrossed LB 137, LB 137A, LB 211, LB 215, LB 228, LB 289, LB 289A, LB 352, LB 639, LB 651, LB 651A, LB 761A, LB 762A, LB 815A and LB 817A, Mr. President. (See pages 2548-50 of the Legislative

May 22, 1989

LB 137A, 137, 211, 215, 228, 352, 639  
761, 762, 780, 815, 815A, 817, 817A

voting, Mr. President.

PRESIDENT: LB 780 passes. We'll move on to LB 13....Oh, Senator Barrett, please.

SENATOR BARRETT: Thank you, Mr. President. I would move to suspend the rules in order to read the bills that were shared with the body just before lunch today. I believe the Clerk has the motion.

PRESIDENT: Mr. Clerk.

CLERK: Well, Mr. President, Senator Barrett would move to suspend Rule 6, Section 7(b) to permit consideration of LB 137, LB 137A, LB 211, LB 215, LB 228, LB 352, LB 639, LB 761, LB 762, LB 815, LB 815A, LB 817, and LB 817A on Final Reading today.

PRESIDENT: You've heard the motion. All in favor say aye...or vote aye. All in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 36 ayes, 0 nays, Mr. President, on the motion to suspend the rules.

PRESIDENT: The rules are suspended and we'll go to LB 137 with the emergency clause attached.

CLERK: (Read LB 137 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 137 pass with the emergency clause attached? All in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

CLERK: (Read record vote as found on pages 2664-65 of the Legislative Journal.) 46 ayes, 0 nays, 3 present and not voting, Mr. President.

PRESIDENT: LB 137 passes with the emergency clause attached. LB 137A with the emergency clause attached.

CLERK: (Read LB 137A on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 137A pass with the

May 22, 1989

LB 137A, 211, 215, 228

emergency clause attached? All in favor vote aye, opposed nay. Have you all voted? Have you all voted? Record, Mr. Clerk, please.

CLERK: (Read record vote as found on pages 2665-66 of the Legislative Journal.) 46 ayes, 0 nays, 3 present and not voting, Mr. President.

PRESIDENT: LB 137A passes with the emergency clause attached. LB 211, please.

CLERK: (Read LB 211 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 211 pass? All in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

CLERK: (Read record vote as found on page 2666 of the Legislative Journal.) 39 ayes, 8 nays, 2 present and not voting, Mr. President.

PRESIDENT: LB 211 passes. LB 215, please.

ASSISTANT CLERK: (Read LB 215 on Final Reading.)

PRESIDENT: Record, please.

ASSISTANT CLERK: (Read record vote as found on page 2667 of the Legislative Journal.) The vote is 47 ayes, 0 nays, 2 present and not voting.

PRESIDENT: LB 215 passes. LB 228, please.

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

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 page 2668 of the Legislative Journal.) The vote is 48 ayes, 0 nays, 1 present and not voting.

May 22, 1989

LB 211, 215, 228, 352, 639, 739, 761  
762A, 815, 815A, 817

LB 739, LB 211, LB 215, LB 228, LB 352, LB 639, LB 761. Move on to LB 762A.

ASSISTANT CLERK: (Read LB 762A on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 762A pass? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

ASSISTANT CLERK: (Record vote read. See pages 2672-73 of the Legislative Journal.) The vote is 48 ayes, 0 nays, 1 present and not voting, Mr. President.

PRESIDENT: LB 762A passes. LB 815, please.

ASSISTANT CLERK: (Read LB 815 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 815 pass? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

ASSISTANT CLERK: (Record vote read. See pages 2673-74 of the Legislative Journal.) The vote is 48 ayes, 0 nays, 1 present and not voting, Mr. President.

PRESIDENT: LB 815 passes. LB 815A.

ASSISTANT CLERK: (Read LB 815A on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 815A pass? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

ASSISTANT CLERK: (Record vote read. See page 2674 of the Legislative Journal.) The vote is 48 ayes, 0 nays, 1 present and not voting, Mr. President.

PRESIDENT: LB 815A passes. LB 817, please.

ASSISTANT CLERK: (Read LB 817 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having

May 23, 1989

LB 137, 137A, 211, 215, 228, 352, 639  
739, 739A, 744, 761, 762, 762A, 767  
767A, 780, 815, 815A, 817  
LR 115

PRESIDENT NICHOL PRESIDING

PRESIDENT: (Microphone not activated immediately) ...W. Norris Legislative Chamber. We have with us this morning, as our Chaplain of the Day, Reverend Homer Clements of Saint Luke's United Methodist Church in Lincoln. Would you please rise for the invocation.

REVEREND CLEMENTS: (Prayer offered.)

PRESIDENT: (Gavel.) Thank you, Reverend Clements. We appreciate it. Roll call, please.

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

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

CLERK: I have no corrections, Mr. President.

PRESIDENT: Good. Any messages, reports or announcements?

CLERK: Mr. President, just one item and that is a...your Enrolling Clerk did present to the Governor the last few bills read on Final Reading last evening, and that's all that I had, Mr. President. (See bills presented to the Governor regarding LB 767, LB 767A, LB 137, LB 137A, LB 744, LB 780, LB 739, LB 739A, LB 211, LB 215, LB 228, LB 352, LB 639, LB 761, LB 762, LB 762A, LB 815, LB 815A, and LB 817 as found on page 2677 of the Legislative Journal.)

PRESIDENT: Good. We'll move on to Legislative Resolution, LR 115.

CLERK: Mr. President, LR 115 is offered by Senator Baack. It's found on page 2092. It asks the Legislature to acknowledge the centennial celebration of Cheyenne County...Banner County. Banner County, excuse me, Senator.

PRESIDENT: Senator Baack, please.

SENATOR BAACK: They're fairly close together, I guess. Banner County at one time was a part of Cheyenne County, but is now a Banner County. Mr. President and colleagues, this is a resolution honoring Banner County for their 100th birthday that will take place this summer. Banner County was the first county

because last year Senator Langford had a bill in here that passed relatively easy extending the statute of limitations. It was her priority bill, LB 211. I think there were only eight people that voted against that. I voted against it. I'm sure much to Senator Langford's chagrin I voted against it. But I did that for a reason, because those cases become stale. There are problems with extending the statute of limitations. You allow vendettas, you allow all sorts of other things to come in when you extend the statute of limitations. And we also...Senator Chizek talked about ex post facto laws. You know those are laws that I want to make sure we know what we're getting into. We are not taking cases that are dead, in other words, cases where the statute of limitations have expired. We can't do that. If the statute of limitations on some of these actions have passed, they're gone. There is nothing we can do to revive them. My opinion of what the law is, we can extend the statute of limitations, though, for cases that are still pending. In other words, if the statute of limitations are going to run out in July, those cases are still prosecutable, we can extend that statute of limitations for another...as long as we want to. There is a problem here and you need to understand what we're doing. You're talking about an event that could happen when somebody was five years old, and they may well have another 19 or 20 years to bring that case. Think what could happen in those 19 or 20 years. It's a possibility. The reason I'm standing up here is to say that I don't like extending statute of limitations. But I'm also willing to go on a limb with the Franklin Committee who have guaranteed...well, they haven't guaranteed to me because they can't. Senator Baack just told us we can't, I agree with him, they can't guarantee us a thing, and they shouldn't. But I think what you've got to do is look at the statute of limitations and say, is it worth the chance, is it worth the gamble? I come down on the side right now it is. I don't like extending those statute of limitations. How big is Franklin? I don't know. Every sexual assault case...

SENATOR LABEDZ: One minute, Senator.

SENATOR KRISTENSEN: ...that I've prosecuted, or I think anybody else, if you all would have sat in and listened to what the police, the investigators would have told us, I don't care which sexual assault case, they're all big. I don't know if the Franklin Committee is experiencing things that I experienced as a prosecutor, you'd get this evidence brought to you, and you'd