

January 4, 1990

LB 259, 259A, 505, 678A, 720A, 969-996
LR 231

SENATOR CHAMBERS: I don't mind.

PRESIDENT: Thank you for being so cooperative. We'll take it up after lunch. Mr. Speaker.

SPEAKER BARRETT: Mr. President, I move that we recess until one-thirty.

PRESIDENT: You have heard the motion. All in favor say aye. Opposed nay. We are recessed until one-thirty. Senator Chambers, we'll take yours up...Senator Chambers, we'll take yours up right after...at one-thirty. Okay.

RECESS

PRESIDENT NICHOL PRESIDING

PRESIDENT: Members of the Legislature who are hiding out in their offices, appreciate it if you would come to the sanctuary so we can start the service. We already have three members here but we need a few more.

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

PRESIDENT: Senator Chambers will be here in a moment, and then we can begin on the...Mr. Clerk, do you want to read in new bills while we are waiting, please?

CLERK: Mr. President, yes, I do. Thank you, new bills. (Read for the first time by title: LB 969-996. See pages 150-57 of the Legislative Journal.)

Mr. President, I have a series of amendments to be printed, Senator Hefner to LR 231, Senator Wesely to LB 720A, LB 678A, Senator Withem to LB 259, LB 259A, and Senator Weihing to LB 505.

Mr. President, I will announce now that there will be a Reference Committee meeting at three o'clock in Room 2101, Reference Committee at three o'clock. 2102. That is all that I have, Mr. President.

PRESIDENT: Ladies and gentlemen, as you will recall, we are on

January 8, 1990

LB 409, 958-1013, 1031, 1032
LR 235

SPEAKER BARRETT: Let's stand at ease until eleven-fifteen, Mr. President.

PRESIDENT: Okay, thank you.

EASE

CLERK: Three quick announcements. Reference will meet underneath the south balcony now. Referencing Committee, underneath the south balcony right now.

SPEAKER BARRETT PRESIDING

SPEAKER BARRETT: (Microphone not activated immediately.) ...return to the Legislative Chamber. The Legislature will reconvene and continue our discussion on the adoption of our permanent rules. Please return to the Legislative Chamber. Mr. Clerk, would you read in new bills, please.

CLERK: (Read LB 1031 and LB 1032 by title for the first time. See pages 198-99 of the Legislative Journal.)

Mr. President, in addition to those items, I have a new resolution. (Read brief summary of LR 235. See page 199 of the Journal.) That will be laid over.

I have amendments from Speaker Barrett to be printed to LE 409. Mr. President, I also have a Reference Report referring LBs 958-1013, as well as certain gubernatorial appointments received. That's all that I have, Mr. President. (See pages 199-201 of the Legislative Journal.)

SPEAKER BARRETT: Thank you, Mr. Clerk. Have you a motion, Mr. Clerk, to reconsider action taken last week?

CLERK: Mr. President, Senator Chambers would move to reconsider the vote on the Wesely amendment to the rules, which I believe the Legislature discussed on Thursday afternoon.

SPEAKER BARRETT: Thank you. The Chair recognizes Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, this motion is designed to reconsider the vote that was taken on

bills or wants a lot of bills, but this is the system. You know, clearly it says here that that bill belongs in Transportation. Now we are either going to abide by the rules or the whole system goes to pot, as far as I am concerned. I realize there is a lobby group out there that wants this bill go to Judiciary. It does not belong in Judiciary, clearly does not belong in Judiciary. Jack Rodgers put it in Transportation and then it was changed by the Reference Committee. So it clearly belongs in Transportation, and I just urge you to rerefer that bill to Transportation.

PRESIDENT: Thank you. Senator Chizek, please.

SENATOR CHIZEK: Well, obviously, I disagree with Senator Lamb, and I think the realities are simple to grasp. The public has demanded that government act on the problems of drug abuse, and they rightly...and rightfully so, in my opinion. And I think these problems are multifaceted, multidefinitional, if you will, and in short, there is an overlap, and not pieces that have any connection with each other. The public is not failing to see that alcohol abuse is a part of the fabric of the problem. Response is being made to that which the public sees and demands a response to. One response is Senator Langford's LB 846 addressing suspension of driver's license for drug related offenses. Another response, colleagues, is Senator Abboud's LB 927. Other responses are Senator Pirsch's LB 976 and LB 977. Another response is Senator Lynch's LB 1062. Finally, there is LB 1114. Whether each and every sentence of these bills represents the best that we can do is a question for review in the next few weeks, colleagues. Today I think it is important that we see they share a common element of that being a response, that they share one common element in approach, specifically, cementing these suggestions with criminal penalties. All, including LB 1114, were assigned to the Judiciary Committee. At first blush, LB 1114 might, in fact, not seem to belong in this group, but its proposal to lower the level at which a person is considered legally intoxicated is, in effect, a proposal that goes to the abuse of a drug constituting a crime against society. It may even be considered, and I stress, not by its words by themselves but by their effect, to be a newly defined crime, again, one piece of the main is at were, which is the final reason why the bill should remain in Judiciary. As we respond, we need to see what the public sees. The view and the review of the issue must not be piecemeal. We must ask ourselves the logic of expected responsible hearings

before a single committee of LB 846, of LB 927, of LB 976, of LB 977, LB 1062, but advocating, advocating a piece of responsibility posed by 1114 elsewhere. I would like us at least to keep pace with what the public sees and knows is common sense, a virtue which my colleague, Senator Lamb, would in the first...be one of the first in line to defend. In that spirit, I would ask respectfully that we not be so eager to dispose of the motion that you approve it, and I respectfully ask for your defeat of the motion.

PRESIDENT: Thank you. Senator Peterson, please, followed by Senator Beck and Senator Labedz.

SENATOR PETERSON: Mr. President, and members, I rise to support the motion to refer this back to Transportation. That is where Dr. Rodgers "invidiously" said it should belong, by the statutes, the chapters and everything, and we, Senator Chambers, of course, is always in that committee trying to get a lot of things moved over to Judiciary, and I get offended a lot of times when I am sitting there referencing when this happens. And this is what happened, and from like Dr. Rodgers said, and he has expressed it to the committee time and time again, you know, this is where these bills should go, but it happens every once in awhile within that committee, especially with Senator Chambers, that this is where he wants it to go to Judiciary, and I get a little fed up with that, and I think that if anybody knows where they should go it should be Dr. Rodgers because he has done this for a number of years. So I would request that you, like you colleagues of mine, that you refer it back to Transportation where it was originally put by Dr. Rodgers. Thank you.

PRESIDENT: Thank you. Senator Beck, you are next, but may I introduce some guests, please, in the south balcony. From around the state, we have 30 members of the Nebraska Speech, Language, and Hearing Association and they are composed of members all over the state. Would you please rise and be recognized by the Legislature. Thank you for visiting us this morning. We should also recognize our physician of the day, comes from Senator Wehrbein's area. Dr. Gary Rademacher of Nebraska City, would you please rise so we can recognize you. Dr. Rademacher, we appreciate your services today. Thank you. Senator Beck, please.

SENATOR BECK: Thank you. Mr. President, and members of the

PRESIDENT NICHOL PRESIDING

PRESIDENT: Ladies and gentlemen, welcome to the George W. Norris Legislative Chamber. We have with us this morning Mr. Harland Johnson, who will have the invocation. Would you please stand.

MR. HARLAND JOHNSON: (Prayer offered.)

PRESIDENT: (Gavel.) Thank you, Harland Johnson. We appreciate it. Roll call, please.

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

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

CLERK: No corrections, Mr. President.

PRESIDENT: Do you have any messages, reports or announcements?

CLERK: Mr. President, Senator Pirsch has announced to the Speaker, indicated to the Speaker that she has selected LB 976 as her priority bill.

I have an Attorney General's Opinion addressed to Senator Elmer. Mr. President, that will be inserted in the Journal. (See pages 444-45.) That is all that I have, Mr. President.

PRESIDENT: All right, we will continue on with General File, LB 769.

CLERK: Mr. President, LB 769 was a bill introduced by Senator Labedz and a number of the members. (Read title.) The bill was introduced on January 19 of last year, Mr. President. At that time it was referred to the Judiciary Committee for public hearing. The bill was advanced to General File. It was discussed on April 24, May 2nd, May 3rd, and May 8 of last year, Mr. President. The committee amendments were adopted. There were amendments offered to the bill by Senator Ashford that was adopted; an amendment by Senator Lindsay, and an amendment to that by Senator Chambers that were adopted; as well as an amendment from Senator Bernard-Stevens; a second amendment from Senator Chambers. I now have pending, Mr. President,...

PRESIDENT: Senator Labedz, Senator Labedz, Senator Labedz,

February 13, 1990 LB 159, 163A, 624, 642, 862, 923, 943
976, 1010, 1086, 1090, 1091, 1141, 1171
1180, 1195, 1197, 1238
LR 239

PRESIDENT: Mr. Clerk, do you have anything for the record?

CLERK: Mr. President, I do. A reminder, the Speaker would like to have a meeting of Committee Chairs tomorrow morning at eight-thirty, Committee Chairs tomorrow morning at eight-thirty in Room 2102.

Mr. President, your Committee on Education whose Chair is Senator Withem reports LB 1086 to General File, LB 1090 General File with amendments, LB 1195 General File, those signed by Senator Withem, and LB 1180 indefinitely postponed, LB 1197 indefinitely postponed. Urban Affairs reports LB 943 indefinitely postponed, LB 1171 indefinitely postponed, signed by Senator Hartnett. Banking reports LB 624 to General File, that signed by Senator Landis. (See pages 779-80 of the Legislative Journal.)

Mr. President, a series of priority bills designations. Senator Wesely as Chair of Health and Human Services selects LB 923, Senator Withem selects LR 239CA, Senator Warner selected LB 1141. General Affairs Committee selected LB 862 as one of its priority bills, that's offered by Senator Smith. Senator Dierks has selected LB 1238.

I have amendments to be printed to LB 163A by Senator Schimek. (See page 781 of the Legislative Journal.)

A confirmation report from the Education Committee. That is offered by Senator Withem.

A series of adds, Mr. President. Senator Weihing would like to add his name to LB 642, Senator McFarland to LB 1010, Senator Lowell Johnson to LB 976 and Senator Pirsch to LB 1091 and Senator Warner to LB 159, AM2372. That is all that I have, Mr. President. (See page 782 of the Legislative Journal.)

PRESIDENT: Thank you. Senator Moore, please.

SENATOR MOORE: Yes, Mr. President, I move we adjourn until 9:00 a.m., February 14, Valentine's Day.

February 27, 1990

LB 445, 662, 854, 923, 945, 976, 1023
1042, 1057, 1062, 1146, 1147, 1151, 1212
LR 233

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

CLERK: 18 ayes, 1 nay to go under call, Mr. President.

SPEAKER BARRETT: The house is under call. Members, record your presence, please. Those outside the Chamber, please return. Senator Lynch, please. Senator Nelson, please. Senator Haberman. All members return to your seats for a roll call vote. The question again is the indefinite postponement of the resolution. Mr. Clerk, please call the roll.

CLERK: (Roll call vote taken. See pages 998-99 of the Legislative Journal.) 17 ayes, 19 nays, Mr. President.

SPEAKER BARRETT: The motion fails. The call is raised. Anything for the record, Mr. Clerk?

CLERK: Mr. President, I do. Your Committee on Urban Affairs reports LB 945 indefinitely postponed, and LB 1057 indefinitely postponed, those signed by Senator Hartnett. Judiciary Committee reports LB 445 to General File; LB 854 to General File; LB 976 to General File; LB 1023, General File; LB 1042, General File; LB 1147, General File; LB 1212, General File; LB 1062, indefinitely postponed; LB 1151, indefinitely postponed, those all signed by Senator Chizek as Chair of the Committee. (See pages 999-1003 of the Legislative Journal.)

Mr. President, I have a series of amendments to be printed. Senators Lynch and Wesely have amendments to LB 923, Senator Conway to LB 1146, and Senator Scofield to LB 662. (See pages 1003-07 of the Legislative Journal.)

Mr. President, Senator Hall would like to announce that the Revenue Committee will meet at one o'clock this afternoon for their hearings as opposed to one-thirty. Revenue Committee, one o'clock, as opposed to one-thirty. That's all that I have, Mr. President.

SPEAKER BARRETT: We are back to the motion to advance the bill or the resolution. I have only one light. Senator Landis, would you care to....

SENATOR LANDIS: If we wish to run over it, I will be happy to

March 7, 1990

LB 976, 1031, 1080, 1146
LR 272, 273, 274

Senator Landis. That motion would be to indefinitely postpone. Senator Schmit, as primary introducer, has the option to lay the bill over, Mr. President.

SPEAKER BARRETT: Senator Schmit, please.

SENATOR SCHMIT: I move to lay the bill over, Mr. President.

SPEAKER BARRETT: The bill is laid over. For the record.

CLERK: Yes, Mr. President, I do. Mr. President, Senator Coordsen has amendments to LB 1031 to be printed; Senator Langford to LB 976. (See pages 1240-41 of the Legislative Journal.)

Mr. President, new resolutions. LR 272 by Senator Abboud. (Read brief description as found on pages 1238-39 of the Legislative Journal.) That will be laid over. Mr. President, LR 273 by Senator Rod Johnson. (Read brief description as found on page 1239 of the Legislative Journal.) And LR 274 by Senator Johnson. (Read brief description as found on pages 1239-40 of the Legislative Journal.) All three of those resolutions will be laid over, Mr. President. That's all that I have at this time.

SPEAKER BARRETT: Thank you. Proceeding then to LB 1080.

CLERK: Mr. President, the first order of business on LB 1080 are adoption...or consideration, I should say, of Enrollment and Review amendments.

SPEAKER BARRETT: The Chair recognizes Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move the adoption of the E & R amendments to LB 1080.

SPEAKER BARRETT: Any discussion? Senator Wesely. Seeing none, those in favor of the adoption of the E & R amendments, please say aye. Opposed no. Ayes have it. Motion carried. They are adopted.

CLERK: Mr. President, Senator Coordsen would move to amend the bill. Senator, I have your AM2800 before me.

SPEAKER BARRETT: The Chair recognizes Senator Coordsen.

March 7, 1990

LB 866, 880, 976, 1031, 1059, 1184A, 1243
1246
LR 251

SPEAKER BARRETT: Discussion? Shall LB 1184A be advanced? Those in favor say aye. Opposed no. Carried, the bill is advanced. To LB 880.

CLERK: LB 880, Senator, I have no amendments to the bill.

SENATOR HALL: Mr. President, I'd move that LB 880 be advanced to E & R for engrossing.

SPEAKER BARRETT: Is there discussion? Seeing none, the question is the advancement of LB 880. Those in favor say aye. Opposed no. Carried, the bill is advanced. Mr. Clerk, have you anything for the record?

CLERK: Mr. President, I do. Amendments to be printed to LB 976 by Senator Pirsch; and Senator Bernard-Stevens to LB 1031; Senator Warner to LB 1059. (See pages 1248-49 of the Legislative Journal.)

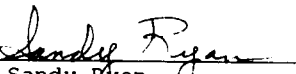
Mr. President, your Committee on Revenue, whose Chair is Senator Hall, reports LB 866 to General File with committee amendments attached. That is signed by Senator Hall as Chair. Judiciary Committee reports LB 1246 to General File with amendments; LR 251C, indefinitely postponed; LB 1243, indefinitely postponed. Those signed by Senator Chizek as Chair. That's all that I have, Mr. President. (See page 1249 of the Legislative Journal.)

SPEAKER BARRETT: Thank you. Senator Baack, for what purpose do you rise?

SENATOR BAACK: Yes, Mr. Speaker, I move that we adjourn until tomorrow morning at 9:00 a.m.

SPEAKER BARRETT: You've heard the motion to adjourn until tomorrow morning at nine o'clock. All in favor say aye. Opposed no. Carried, we are adjourned.

Proofed by:


Sandy Ryan

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LB 976, 1031, 1153

do operate under a little different set...well, a different set of statutes for process. In the past we have attempted to offer appropriations that were contingent, that is that they were, would not be approved until a proposal had been filed and then...the appropriation made, those efforts were always reversed by the body. This, to me then, is a very modest attempt to at least ensure the growers that they will have an opportunity to know before the check is written how the money is proposed to be used and respond if they choose to do so to the Ethanol Board.

PRESIDENT: Thank you. The question is the adoption of the Warner amendment. All those in favor vote aye, opposed nay. Senator Warner.

SENATOR WARNER: Mr. President, I assume in view of the time, I should ask for a call of the house.

PRESIDENT: Okay, the question is, shall the house go under call? All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 18 ayes, 1 nay to go under call, Mr. President.

PRESIDENT: The house is under call. Please record your presence. Those not in the Chamber, please return so that we may handle this last amendment. Senator Landis, would you illuminate your light, please. Senator McFarland, Senator Lindsay, Senator Firsch, Senator Robak, please. Thank you. Senator Hartnett, Senator Goodrich, Senator Owen Elmer. Senator Firsch. Senator Goodrich, Senator McFarland, Senator Chambers and Senator Firsch. Okay, did you ask for a roll call vote, Senator Warner? Okay. The question is the adoption of the Warner amendment. All those in favor respond aye, and opposed nay and we're having a roll call vote. Mr. Clerk.

CLERK: (Read roll call vote. See pages 1343-44 of the Legislative Journal.) 28 ayes, 4 nays, Mr. President.

PRESIDENT: The amendment is adopted. Do you have anything for the good of the cause, Mr. Clerk?

CLERK: I do, Mr. President. Mr. President, amendments to be printed by Senator Chambers to LB 1031; Senator Johnson, Firsch, Peterson and Beck to LB 976; Senator Barrett to LB 1153; Senator

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LB 976, 1221

CLERK: 27 ayes, 0 nays, Mr. President, on the advancement of LB 1221.

SPEAKER BARRETT: LB 1221 advances. The Chair is pleased to note that Senator Lowell Johnson has guests under our north balcony, Mr. and Mrs. Bob Taylor of Fremont, Nebraska. Would you folks please stand and be recognized. Thank you. And in our south balcony from Senator Hartnett's district we have a number of eighth and ninth graders from Logan Fontanelle, Bellevue, Nebraska, with their teacher. Would you folks please stand and be recognized. Thank you. We're pleased that you guests could be with us today. Anything for the record, Mr. Clerk?

CLERK Not at this time, Mr. President.

SPEAKER BARRETT: Moving then to LB 976.

CLERK: Mr. President, LB 976 was introduced by Senators Pirsch, Beck, Langford, Peterson and Lowell Johnson. (Read title.) The bill was introduced on January 4 of this year, referred to Judiciary. The bill was advanced to General File. I have no committee amendments, Mr. President.

SPEAKER BARRETT: The Chair recognizes Senator Pirsch.

SENATOR PIRSCH: Thank you, Mr. Speaker, members of the body, LB 976 increases criminal drug penalties for violations which take place within 1,000 feet of the real property comprising a public or private elementary, secondary, postsecondary or vocational educational institution or of a playground, public or private youth center, public swimming pool or video arcade. And each violation within the 1,000-foot zone would be punished by the penalty prescribed to the next higher penalty classification. LB 976 also provides that any person convicted of violations within that 1,000-foot zone shall not be placed on probation nor shall that person have the imposition or execution of his or her sentence suspended for any reason. LB 976 also allows courts to impose fines against those persons convicted under Section 28-416 where the penalty is a Class II felony, Class ID felony, Class IC felony and Class IB felony. The maximum fine which may be imposed under each felony classification is as follows: Class II felony, \$50,000; Class ID felony, \$100,000; Class IC felony, \$150,000; Class IB

felony, \$200,000. Those of you in Omaha have seen the drug-free zone signs which are posted around our city and this is done under a federal law which makes it a criminal offense to distribute, possess with intent to distribute or manufacture a controlled substance within this 1,000 feet of the school zones and 100 (sic) feet of playground, youth center, public swimming pool or video arcade. Generally speaking, the federal law doubles the terms of imprisonment and fines if the drug violation occurs within the drug-free school zone, and I have handed out tables which have the specific penalties that the federal law calls for. The federal law which enhanced the penalties within the drug-free school zones was enacted in 1984 and has been upheld against constitutional attacks that it violates the equal protection and due process clauses. In United States v. Holland in 1987 the United States Court of Appeals in the District of Columbia held that the federal statute imposing the enhanced punishment upon those convicted is rationally structured to affectuate the purpose of reducing drug use by children and is not overinclusive because it applies to transactions that take place in nearby private dwellings or underinclusive because it does not apply to drug transaction centers, or drug transactions that take place near nonschool playgrounds and recreational centers. The court also held that Congress' heightened interest in protecting children from both indirect and direct perils of drug traffic amply supports the decision not to require a showing of mens rea or proximity of school in order to enhance punishment to those convicted or distributing controlled substances within 1000-foot zone of school, thus the statute did not violate due process laws. In late 1988 Congress directed the federal court's study committee to examine among other things, the work load in federal courts, and the committee stated in their tentative recommendations many of the new drug cases now flooding the federal court systems could be just as federally, could be just as effectively prosecuted in state court as in the federal court. According to Robert Frohling of the National Conference of State Legislatures, at least 34 states have enacted some form of drug-free school zone legislation similar to the federal legislation. The Nebraska Drug Policy Board which consists of 27 members representing law enforcement, judiciary, prosecution, education, treatment and corrections is charged with investigating the state enforcement of activities in regard to efforts and control and improvement of enforcement of the state and local drug laws. The board, which was created in 1987, compiles information, develops a statewide strategy with

recommendations for changes, improvements or continuations for projects. The board did examine the operation of drug-free school zones which were created with federal assistance and those in other states. After examining the data in other parts of the country as well as in Omaha, the board recommended that the drug-free school zones be made available on a statewide basis and the board legislative committee recommended to create legislation in the drug-free school zones. I became involved as we had seminars across the state this fall and it was very apparent that Mayor Morgan did a good job in promoting and displaying the drug-free zone signs in the City of Omaha which made people aware and all...sent a message not only to the drug dealer who would sell drugs around the places where our children congregate, but also send a message to our children that we care enough that we are going to enhance the penalty and we care enough about them, that we will make it harder and more difficult because we feel that drugs are dangerous. At the present time the dilemma is that the U.S. Attorney's Office has 15 people under indictment for offenses within the 1000-foot zone, and because of the limited resources and because of the limited access of our state to the U.S. Attorney offices and courts, the federal courts, we are asking the passage of LB 976 which will allow local prosecutors in all parts of Nebraska to prosecute offenses which take place within these drug-free zones. LB 976 will be of benefit to all of Nebraska and I point out to you the little pamphlet that I passed around which shows various schools and cities and law enforcement agencies who have written in support of 976 to have this available across the state. With that, I will urge the passage and answer any questions.

SPEAKER BARRETT: Thank you. An amendment on the desk.

CLERK: Mr. President, I do. Senator Pirsch, as primary introducer has the right to offer her amendments first. Senator, the first amendment I have is AM2843. It is found on page 1248 of the Journal, Senator. This is the one you had printed earlier in March, 1248.

SPEAKER BARRETT: Senator Pirsch, please.

SENATOR PIRSCH: Yes, thank you, Mr. Speaker, for your indulgence. AM2843 would add a bill that was also heard by the Judiciary Committee which increases the penalty from a Class...from the infraction penalty of marijuana to a

misdemeanor. In 1978 the Legislature made a mistake, I believe, and they reduced possession of less than one ounce of marijuana to an infraction which is \$100 fine slap on the wrist. Now with that reduction, I think we left a misleading message with our young people. To give you a little history, through the sixties you remember the flower children and the basic philosophy, do it if it feels good and do your own thing, and continued through the permissive seventies of, gee, a little drug use doesn't hurt anything, and today I think through the eighties we are reaping the harvest of those young people who have graduated, if you will, to harder drugs, the crack and cocaine that have become an increasing problem in the eighties and also still the marijuana. Law enforcement, when they testified on this bill say that where they find crack and cocaine, they find large amounts of marijuana. The distributors tend to distribute both. Our society wonders why youth can't learn, workers can't produce, critical thinking skills have deteriorated and senseless accidents occur. And I think sometimes we are finding now more and more through probes that these are alcohol or marijuana related. Time and time again also, young people have raised the question with those who work with drug programs in the schools, why is a minor in possession of alcohol a three to \$500 fine and a misdemeanor and marijuana is \$100, an infraction? They ask, why is the penalty of possession of a 12 ounce can of beer in your hand more than 12 ounces of marijuana in your pocket? That's hard to answer and counsellors and school people and law enforcement have no reply. It's widely accepted and acknowledged that alcohol and marijuana are the gateway drugs for our young people. I was asked why I didn't include alcohol in the 1000-foot drug-free school zone and I had to accept the fact that alcohol is legal, it's a legal drug for those over 21 while marijuana and other drugs are not. Marijuana is illegal for all ages and should be and I think it is time to correct that mistake the Legislature did in 1978 and send the message not only to our children, but to adults also that marijuana is a dangerous drug and should be given at least a low misdemeanor status, it is a crime. One of the absurdity of keeping marijuana an infraction is that if I'm smoking marijuana and holding it, it's an infraction, \$100. If I pass it to my buddy it's a felony because that is delivering a controlled substance. That's too much difference in between those kinds of penalties. I do want to point out also that Senator Chambers who was one of the few that were in the body in 1978 did vote against reducing marijuana as an infraction, and I think we did send the wrong message. So with that, I would hope you would adopt this

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LB 457, 976, 1059
LR 403-406

amendment and put that in 976.

SPEAKER BARRETT: Thank you. Discussion on the Pirsch amendment, Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman, I have a request up there to divide the question on this amendment. This amendment is in three parts and I would like to divide it so that we take each one of the three parts separately.

SPEAKER BARRETT: Senator Pirsch and Senator Chambers, would you like to come up and discuss this for a moment. (Mike off.) ...recognizes Senator Haberman.

SENATOR HABERMAN: I move that we recess until one-thirty.

SPEAKER BARRETT: You've heard the motion to recess until one-thirty. All in favor say aye. Opposed no. Ayes have it, motion carried, we are recessed. (Gavel.)

RECESS

PRESIDENT NICHOL PRESIDING

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

PRESIDENT: Mr. Clerk, would you remind us where we were before we recessed for lunch.

CLERK: Mr. President, may I read some items for the record. Mr. President, new resolutions. (Read brief explanations of LR 403, LR 404, LR 405, LR 406. See pages 1661-64 of the Legislative Journal.)

Senator Conway has amendments to or a motion to reconsider the Warner amendment to LB 457. That will be laid over. Amendments to be printed to LB 1059 by Senator Abboud. (See page 1664 of the Legislative Journal.)

The where we were with respect to LB 976, Senator Pirsch had offered her amendment, AM2843. Senator Chambers had requested a division of that amendment. That request was pending.

PRESIDENT: Senator Chambers, I don't see any reason why that can't be divided in three parts as you have suggested. Do you have any objection to that, Senator Pirsch? If not, we will proceed on that basis. Senator Pirsch, we will...Senator Pirsch, we will take your amendment in three parts and take (1) first, (2) second, and (3) third, any problem with that?

SENATOR PIRSCH: Well, I don't think I have any choice, Mr. President.

PRESIDENT: Did you want to make a (inaudible)?

SENATOR PIRSCH: Well, let me just explain to the body that this is dividing the amendment by page, which is not necessarily the subject. So you will kind of have to listen and follow along. I think if you consider the amendment as a whole, please, rather than in segments, although because of the division, we will be looking at this page by page.

PRESIDENT: Do you prefer them in any other order than (1), (2), (3)?

SENATOR PIRSCH: No.

PRESIDENT: Okay.

SENATOR PIRSCH: That is fine and do I get to open then?

PRESIDENT: Yes, why don't you open on number one, Senator Pirsch.

SENATOR PIRSCH: Fine. The first amendment is on page 4 of the bill and we are speaking about at the top of the page the one ounce to one pound, and we are saying, and this is old language, any person knowingly or intentionally possessing marijuana weighing more than one ounce but not more than one pound shall be guilty of a Class IIIA misdemeanor. That is the old language. What we are saying is because of the enhancement is that it will be a Class II misdemeanor. A Class IIIA misdemeanor is a \$500 fine and 7 days in jail. That is what it is presently. To enhance that to a Class II, it is \$1,000 fine and six months in jail. As we go on, and that is on that amount of marijuana, as we go on to Section 8, and we are saying in Section 7, except as provided in subsection (8) of this section, and that is a Class IV felony, but we are saying in

subsection (8) that any person who violates any provision of subsections (1) through (7), and you will recall that runs the gamut of the marijuana laws, and that if they do violate that within 1,000 feet or in the drug-free school zones, that they shall be punished by the penalty prescribed in the next higher penalty classification than the one prescribed in each subsection, and so then the amendment speaks now to the first offense when we had raised that from the infraction that they would be guilty of a Class IV misdemeanor. Now a Class IV misdemeanor is what the penalty was before they changed it in 1978 to an infraction. Now even though it is a Class IV misdemeanor, they would still receive a citation. That has not changed. Still easy, receive a citation, and then the amended language would be to set a minimum of \$100, and that would not include imprisonment. In case any of you are wondering, could not throw any more people in jail, this would be a Class IV misdemeanor. They would receive a citation and we put in a minimum of \$100. That is the first page. It kind of stops abruptly but that is what you will be voting on, and I hope that you will approve this as well as the next two pages. Thank you.

PRESIDENT: Thank you. Is Senator Haberman here? I don't see him. Senator Chambers, please.

SENATOR CHAMBERS: Mr. Chairman, and members of the Legislature, I am opposed to this bill itself and I am opposed to the types of amendments that are being offered. What I have sent around to you is a legal-sized sheet with two articles. One contains a depiction and a description of the hypocrisy of conduct that borders on illegality participated in by the President of the United States. He had a drug deal set up outside the White House for his first speech on television so that he could hold up a plastic bag and say I have got crack cocaine here and it was purchased outside the White House and it could have as easily been PCP. And if you read the article, you will see that in setting up this drug deal, the drug enforcement agent said it was not easy. And the one they picked to be their pigeon was a teenager. They didn't even pick a bad evil midlevel dealer that you can find on the streets. They picked a teenager, and this teenager was so uninformed about things that he didn't know where, expletive deleted, the White House was. The had to explain to him how to get to the White House so he could engage in a crime being manufactured by the drug enforcement agency to help the President have a prop for a speech he was going to give about why the drug war should be fought. Not only is he the

Commander-in-Chief of the Armed Forces, he is the commander-in-chief of the drug dealing. He sponsored a drug deal, and to tell you the rest of the story before I tell you the middle part of it, when they tried to take this teenager to trial, Senator Robak, do you know what happened? The jurors were so offended that they refused to convict. They said that the government had engaged in reprehensible conduct and refused to convict. But what made it difficult also, while these rascals with the drug enforcement agency were trying to film this young guy so they would have him dead to rights, a homeless woman attacked him with an umbrella or some implement and they had to flee and couldn't carry out their wickedness. The President of the United States who is talking about a war on drugs, and this is the kind of conduct that he engaged in to make a political point. This whole so-called war on drugs is about politics, high profile actions that seem to be doing something but which do nothing, in effect, because they don't attack the root causes of the problem and the changes in the law are not the type as to make any difference anyway. An appearance of having done something can be foisted on the public without the Legislature ever doing anything. Then those grandiose statements can be made, as they are being made by Bush and his Bushwhackers that they are fighting the war on drugs. The DEA at one point was boasting about the fact that for drugs coming into this country they successfully interdicted 14 percent, and everybody was saying, wow, but nobody stopped to think about the 86 percent that they were missing. And it is felt that that 14 percent figure was an inflation. So to try to get some political hay, the President said, well, we will enlist the Armed Forces. The thousands of men and women necessary to patrol the borders as was discussed would have been so large that the Armed Forces could not have absorbed that great a raid on their personpower.

PRESIDENT: One minute.

SENATOR CHAMBERS: That quickly?

PRESIDENT: Yeah.

SENATOR CHAMBERS: Okay, I am not having fun but time sure seems to be flying. In this article, you will see that they claimed after their hand was called and they were caught red-handed, the Drug Enforcement Administration said they had been engaged in a three-month undercover operation to catch this teenager, that

they were negotiating with this teenager for a kilo of cocaine, and that they were going to go through this teenager to those on top. That is crazy and it is an outright fabric of lies which is what politicians will resort to when they are caught red-handed. That is what this war on drugs is about, and I am not through, but that is about all I can say this time around, and I will put my light on again to continue.

PRESIDENT: Thank you. May I introduce some guests, please, in the south balcony, who are guests of Senator Wehrbein. There are 17 fourth graders from Murdock School in Murdock, Nebraska with their teacher. Would you students and teacher please stand up so we may welcome you. And we do welcome you and we are glad that you are here. Thank you. Senator Haberman, please. Senator Bernard-Stevens, I don't see him. Oh, Senator Bernard-Stevens, you are next, followed by Senator Langford and Senator Hall.

SENATOR BERNARD-STEVENS: Senator Pirsch, would you yield to a couple of questions at this time.

SENATOR PIRSCH: Surely.

SENATOR BERNARD-STEVENS: Senator Pirsch, I am just trying to...I am looking at the amendment that is on 1248. I am trying to make sure that I understand the portion that we are looking at now. And one portion would set the minimum fine, the mandatory fine, or excuse me, the minimum fine would be from 100 to 300 dollars, is that correct on this portion we are looking at now?

SENATOR PIRSCH: At the top of the page, that is one ounce to one pound or less, and that is, yeah, currently there is no minimum on that, but the maximum is \$500 fine and 7 days. And what we are saying is that it should be a Class II and that is \$1,000 fine and six months, and we are saying, yeah, you know fines at the top are wonderful but we are insisting that, and most of these is, that we are putting in minimums.

SENATOR BERNARD-STEVENS: Okay, Senator Pirsch...

SENATOR PIRSCH: That is one enhancement over the federal program who has zero minimum throughout.

SENATOR BERNARD-STEVENS: Right. Senator Pirsch, I guess my

question now is on the system that we have now or the law that we currently have, notwithstanding 976, what on the average has been the average fine that has been levied for such an offense?

SENATOR PIRSCH: I don't know that I have that. I do have some...I would have to get that for you. I know that there has been an increase from '87 to '88 in the arrests but I would have to get more detailed, the amount of the fine.

SENATOR BERNARD-STEVENS: Okay, I understand that. Would this portion of the amendment, if it were passed, obviously, I am looking at public schools now or private, public schools, I assume we are looking at private as well, but looking at public schools, would this apply then to the children there? Because when you are looking at possession?

SENATOR PIRSCH: No, not this part, not this part at the top. That...

SENATOR BERNARD-STEVENS: Okay, then clarify for me please what this would...

SENATOR PIRSCH: That is the confusing thing because this is carried over from page 3 of 976 and we don't get into the drug-free zones until Section 8.

SENATOR BERNARD-STEVENS: Okay, then let me just go ahead and ask a question on Section 8, and I know it is not the part of the bill now, but will we be having a minimum fine then on possession within the drug-free zone, if your amendments and bill is agreed to?

SENATOR PIRSCH: Yes.

SENATOR BERNARD-STEVENS: So that will deal with the children as well?

SENATOR PIRSCH: Yeah, if you look in...I have that over under the balcony.

SENATOR BERNARD-STEVENS: That is okay because I punched my light again so if we need time to come back we can do so. I guess my concern, members of the body, and I am not sure if it is a concern yet or not until I get some of the data, but when I start looking at minimum fines, I want to ask myself the

question, well, what is the average fine now, and, you know I don't know, and I don't know if we have that information.

PRESIDENT: One minute.

SENATOR BERNARD-STEVENS: The other question I sense in my mind that I am going to have to whittle with or think about for awhile, as we get on through the bill, is if we are looking at children, you know, \$100 fine, for example, is almost as devastating to many of those children as \$1,000 fine, and to put a minimum on of \$300, I guess I am going to ask the question at some point, what are we trying to accomplish? If we think that school children or high school young adults are going to worry about the fine and thus not do it, is this going to be a deterrent, you know, for the children actually to possess? Those are the things I am going to be weighing because I am not so sure that that \$300 fine or a \$500 fine or \$100 fine, many, the numbers themselves are very high to the children. I don't know if that will be a deterrent or not and I am going to be asking some questions along that line of what the real purpose is.

PRESIDENT: Time.

SENATOR BERNARD-STEVENS: And, Mr. Speaker, I will come back a little bit later when that information starts coming out. Thank you.

PRESIDENT: Thank you. Senator Langford, please, followed by Senator Hall.

SENATOR LANGFORD: I would like to call the question.

PRESIDENT: I think perhaps it might be a little bit quick, Senator Langford, since we haven't had those supporting it yet. So, we will overlook it for the time being. Senator Hall.

SENATOR HALL. Thank you, Mr. President.

PRESIDENT: Followed by Senator Chambers, Senator Bernard-Stevens and Senator Wesely.

SENATOR HALL: Thank you, Mr. President, and members. I rise in opposition to Senator Pirsch's amendment. I appreciate her concern for the issue of the drug problem that is out on our

streets today, and not only on our streets, but in our school areas as well. I also appreciate some of the stuff that is taking place in Omaha that I have been privy to that does deal with it on a very up front basis. My problem with the amendment is, and if I understand it correctly, this is the first amendment on page 1248 of the Journal, AM2843. This is the amendment that deals with the issue of making the possession of under an ounce of marijuana a misdemeanor. The problem with that, I think the reason the change in law took place in 1977 is when the Legislature dealt with it and took effect in 1978, was that when you got under an ounce, clearly you were talking about someone who is basically in possession of a marijuana cigarette, a joint. I don't know if they still call it that. They did back then when I was in school. But the issue is one that was changed because the courts were being clogged with these types of cases that brought people into the system because they were possessing less than an ounce, and this provision that allowed for a citation to be issued, a fine of \$100, a provision that then required for these individuals to take a course of study, go to a school for a minimum of five hours, ten hours maximum, and require that there be satisfactory completion of that, put into the record. But if they did not complete that, then they were cited again. They had to go through the whole thing again, had to pay another fine. What you did was you put in place a system that educated kids of the problem, and I will read right from the statute, and you are going to strike this provision when you adopt this portion of Senator Pirsch's amendment. It says in Section 29-433, which is referenced in the bill, such instruction shall include counseling on legal, medical, psychological, and social effects of drug use and abuse. Such course shall consist of a minimum of five hours, maximum, ten. Upon completion, blah, blah, blah, and it goes on to say that satisfactory completion is necessary within thirty days after the assignment or you are going to be guilty of another infraction. You are going to be guilty of another fine. You are going to have to go through the system until you get it right, until you accept it. What is happening is is that with the Pirsch amendment, what you do is you, basically, you do criminalize it. You do put it up to a misdemeanor. You allow every individual who gets nailed with that misdemeanor to have a jury trial. You clog the courts again. You, basically, make a heyday for the attorneys, I guess. If that is what you want to do, that is fine but that is exactly what will happen. You do away with any reference or any provision to the issue of putting these kids into an education program that says, hey, look, take

a look at what you are doing. Because, and the reason for that is that you are dealing with, granted, you are dealing with a serious substance, you are talking about marijuana. You are talking about something that is sold and is out there and we have to deal with it day in and day out, but you are dealing with it in such a small amount at this point that you are not probably dealing with somebody who is either selling or somebody who is using...

PRESIDENT: One minute.

SENATOR HALL: ...it in an abusive nature. What you are dealing with is somebody who actually happens to have in their possession a marijuana cigarette. I think the best public policy is to get them into some kind of an education program, fine them so it hurts, and at that level, let me tell you, it is going to hurt. Even \$100 hurts, \$100 is a lot of money. We don't seem to think about that when we deal with billions of dollars in terms of our budget, but \$100 fine is a large fine. Get them into the program so they are educated, get them out, give them an opportunity to straighten up. What you don't allow to happen if you adopt the Pirsch amendment is you don't allow those individuals an opportunity for education. You don't allow them a second chance and I understand the arguments that say we don't want pushers, we don't want drug dealers to proliferate our schools. I totally agree with that.

PRESIDENT: Time. Senator Chambers, please, followed by Senator Bernard-Stevens.

SENATOR CHAMBERS: Mr. Chairman, and members of the Legislature, these are the kind of bills that I like and I am going to invite Senator Pirsch's attention to page 4, the first part of the amendment that has been divided, which would be in lines 1 through 4, where in line 3, we change the punishment from a Class IIIA misdemeanor to a Class II misdemeanor. Am I correct so far? And in addition, we would put in a minimum of \$300 fine. Okay, now Section 8 will come into play because under Section 8 anybody who violates the section I am talking about within a thousand feet of a school zone will be bumped up into the next higher category, is that correct? So that would take it, if this amendment is adopted, from a Class II misdemeanor to a Class I misdemeanor, correct? Now, Senator Pirsch, would you look at the penalty for a Class I misdemeanor and you will see that by committing this crime within a thousand feet of a

school, you will have less chance of a punishment by bumping up into the next category because there is no minimum. Under the amendment you are offering here for a Class II, you are setting a minimum of \$300 fine, but if they commit that offense within a thousand feet of a school, they commit an offense that has no minimum, how about that? Members of the Legislature, this is an attempt to try to put into this bill an ill-conceived bill of the Governor's which failed. So by doing what is being done here and amending the present bill, 976, with these new harsher punishments, and they are harsher because they install minimums, under the existing portions of the bill if you commit that crime within a thousand feet of a school zone, you are bumped into the next higher category where, under the present statute, there is no minimum, which means you get a harsher punishment if you commit it away from a school than if you commit it near a school. Because what Senator Pirsch is...she is not saying that everyone of these misdemeanor offenses that exist in the statute now will contain a minimum. No, she is creating new punishments for these offenses that she is talking about in her bill. And those new punishments will make a mockery of the bill, and the law that she is trying to pass. So to be frank with you, I hope you adopt part one of this amendment that I have divided. The part we are discussing now would be found at the top of page 4 in lines 3 and 4, and I am speaking strongly in support of that provision. I am asking that you adopt that so that somebody who commits a crime close to a school gets a smaller punishment than if they commit a crime far from a school. And with the puzzled looks I am getting, I am going to go through this again. Senator Pirsch with her amendment is saying that if you violate this marijuana law, the new punishment with the amendment she is offering will be one that contains a minimum of \$300 because the present offense does not have a minimum, is that clear? Now if you commit that offense near a school, then the punishment is the next highest...the next level of crime,...

PRESIDENT: One minute.

SENATOR CHAMBERS: ...which would take you to a Class I misdemeanor. A Class I misdemeanor has no minimum at all. So, if you commit the crime away from the school, the minimum you can get is \$300. If you commit the crime within 1,000 feet of the school, the minimum is nothing. The war on drugs, as Sheriff Dick Roth said in the other article that I missed (sic) with you, misses the target because these things are not well thought out. They are put out there to achieve a political

purpose, and that is what that original drug package of the Governor was for. I think Senator Pirsch had a different idea in mind when she offered 976 than what 976 is becoming, thanks to the Governor's amendment that is being offered, but because I am becoming kinder and gentler, I am supporting, I am strongly supporting the first part of this amendment that Senator Pirsch is offering.

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

SENATOR BERNARD-STEVENS: Thank you, and maybe when Senator Pirsch has some time or I have some time left, she can clarify if I don't quite understand parts of this. And, Senator Pirsch, I guess maybe I will start out by asking you a couple of questions.

PRESIDENT: Senator Pirsch, would you respond, please?

SENATOR BERNARD-STEVENS: Yeah, the amendment that we have, 2843 is actually a bill that you introduced, that went before the Judiciary Committee, that you have now redrafted to put into 976, is that correct?

SENATOR PIRSCH: It is similar to fit in.

SENATOR BERNARD-STEVENS: Right. That bill did not make it out of the Judiciary Committee. I guess I would be curious as to why the committee did not feel it to be a reasonable bill to advance?

SENATOR PIRSCH: Actually, I did not even raise it to move because I knew that there would be only one priority bill, and we would not have time.

SENATOR BERNARD-STEVENS: Okay, so the committee actually did not in Executive Session so get together and talk about that.

SENATOR PIRSCH: That is right.

SENATOR BERNARD-STEVENS: Okay, that answered one part. The other thing, I have just is a concern and, again, I will make it kind of a comment and a question, and let you respond to it, Senator Pirsch, if you can, please, or if you would, please. The way I understand the first part of the amendment as it would

be, if we agreed to, is that, and again I am thinking of public schools, I am thinking of a high school or a middle school or junior high, even elementary, I guess, but in a high school situation if a student would purchase or obtain, even if it was just a gift, I guess, the amounts of marijuana that you are talking about in this particular section of the bill, it would not be the person who sold the material to the student, but the student or the person who actually possessed it that would be punished, am I correct in the interpretation?

SENATOR PIRSCH: I am sorry. The person that actually possessed?

SENATOR BERNARD-STEVENS: Possesses it would be the one that would be punished?

SENATOR PIRSCH: Yes. As I said, you can possess it and it is an infraction, and if you hand it to your buddy, it is a felony.

SENATOR BERNARD-STEVENS: Right, I understand that, but I guess one of the interesting things I am just trying to mull over is I understand the difference between just the distribution and actual possession, and I guess one of the things I am still mulling over on this particular part is that I am not sure we are doing anything for the person within the school that is actually doing the selling of the...

SENATOR PIRSCH: Well, you know you have raised an interesting question because for I would say about the last five years anyway, we have concentrated on the distributor, the dealer. The feds are doing that now. And, quite frankly, I think we need to work on the user now and I think education programs, prevention programs such as DARE that are in our schools, are doing some good. In fact, I have some PRIDE surveys that shows that marijuana use has actually dropped in those elementary grades, but in junior high and senior high, it is increasing, and it seems to me that those are the ones who have missed out on that education and that prevention, but it is the user that we have got to focus on also, as well as that drug distributor and dealer.

SENATOR BERNARD-STEVENS: Senator Pirsch, answer me another question if you can. If a student within a public school in Nebraska is caught with the limits of marijuana that we are talking about in the first portion of the divided amendment, if

the student is caught now with the illegal substance, what is the punishment now?

SENATOR PIRSCH: Well, it would be a Class IIIA misdemeanor...

PRESIDENT: One minute.

SENATOR PIRSCH: ...which is a up to a \$500 fine, no minimum, and 7 days. Now you would find most of these students going into juvenile court.

SENATOR BERNARD-STEVENSON: Correct.

SENATOR PIRSCH: And it is difficult to say what the juvenile court does.

SENATOR BERNARD-STEVENSON: Yeah, I guess the question I would like to have answered at some point is I am, again, mulling it over in my mind and I am thinking that we have a law that, in essence, says \$500 fine, if it is a...we are talking about a IIIA, is that correct?

SENATOR PIRSCH: Right.

SENATOR BERNARD-STEVENSON: Okay.

SENATOR PIRSCH: At the top of the page.

SENATOR BERNARD-STEVENSON: Yeah, minimum 7 days imprisonment, maximum 7 days imprisonment, \$500 fine or both, minimum none, except we are looking at juveniles, so it is going to be a little bit different, obviously, because of juvenile court.

SENATOR PIRSCH: Could be.

SENATOR BERNARD-STEVENSON: Yeah, I guess what I am having a hard time figuring out for myself is if right now we have a potential \$500 fine that the student may be looking at, why do we think that putting the minimum at the \$300 fine is going to be an actual deterrent because you could go right now and tell the student it is illegal, you can't possess it. If you are caught with it, it could be as...

PRESIDENT: Time.

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SENATOR BERNARD-STEVENS: ...much as a \$500 fine, and if we agree with this, which I am not saying we shouldn't, necessarily, but if we agree with it, now we are going to say to a student, it is illegal. If you get caught, it could be \$500 fine, it will be a minimum \$300 fine. Is there any support that will actually show where the students are afraid of that?

PRESIDENT: Time.

SENATOR BERNARD-STEVENS: And that is why, is it really a deterrent and I have a real question there.

PRESIDENT: Thank you. May I, Senator Wesely, you are next, but may I introduced some guests under the north balcony of Senator Dierks, and would you ladies please stand up as I read your names. First of all, we have Shirley Hestekind from Neligh, Nebraska, who is the Northwest Poppy Chairman of seven states, Nebraska, Colorado, North and South Dakota, Montana, Wyoming, and Montana (sic); Karen Ohlrich of Brunswick, Nebraska, who is the State of Nebraska Poppy Chairman; Lisa Kerkman of Elgin, Nebraska, who is the American Legion Auxiliary Junior President for Nebraska; and Jan Aver of Syracuse, who is the State President of the American Legion Auxiliary, and Lynne Wild of Lincoln, who is the Secretary-Treasurer of the American Legion Auxiliary. Would you please welcome these ladies. Thank you ladies for visiting us today. Senator Wesely, please.

SENATOR WESELY: Thank you. Mr. President, and members, I guess, Senator Pirsch, I'd ask you to yield and follow up on some of the questions of Senator Bernard-Stevens and I have some as well, if you don't mind.

PRESIDENT: Senator Pirsch, please.

SENATOR PIRSCH: Surely.

SENATOR WESELY: You started in on this, and I guess this is the fundamental question and maybe you already addressed it and I missed the earlier speeches that you gave on this measure. Where are we at in terms of the marijuana usage in Nebraska? Have you...you talked about younger people, it is down. In terms of junior-senior high, we are seeing it go up. Do you have statistics about utilization of marijuana? We passed this lower penalty back in I think it was '77. It was described as the Vendette compromise and has held ever since. You are asking

to change a policy that I am not sure, you know, what are the problems, where are we at? Could you go into that a little bit.

SENATOR PIRSCH: Sure, I would like to. Thank you. As I stated earlier, from a PRIDE survey, and this is reprinted with permission from alcoholism and drug abuse newsletter that...of course, they are concerned with alcohol, too, and, in fact, I might read you first that PRIDE sent me a letter saying allow me to counter a few points in the testimony from the hearing. In answer to Mike Kelly's challenge to my statement that when we prevent an individual from using the gateway drugs, alcohol, tobacco and marijuana until the age of 21, we almost certainly guarantee that the individual will never use illicit drugs nor ever have a problem with alcohol, and that is according to a Dr. DuPont (phonetic) with the press. The statistics that PRIDE points to, and I have to have my glasses, but as I said it has gone down in the lower grades, 6 to 12, (sic) but has gone up in the junior high grades, and the...(laughter) thank you, I have got lots of them. Sorry, Senator Wesely, don't count the time for this. That the survey revealed only 22 percent of the Class of '89 was drug free, which is a horrendous percentage. The other 78 percent admitted using a drug or alcoholic beverage in the past year.

SENATOR WESELY: When you say drug free, do you mean drug free in terms of marijuana, or do you mean drug free in terms of (interruption)?

SENATOR PIRSCH: Alcohol and marijuana, yes.

SENATOR WESELY: But that is a very different...I mean when you throw in alcohol, I think you really skew the results of that, but let me...

SENATOR PIRSCH: Okay, (interruption) claiming intoxication.

SENATOR WESELY: But let me, let me...Senator Pirsch, I am afraid...I am going to let you answer on your own time.

SENATOR PIRSCH: Okay.

SENATOR WESELY: Let me ask the questions and raise some points, and then let you take the time to answer them later. It is just you obviously need to get your light on and do that. Let me talk, again, about what my concern is. Number one, marijuana

has got everybody concerned and should and we need to think about where we are at on that issue, but we have had a policy now for a number of years and this is the first time I have seen an effort to change that policy in my 12 years. So the question is how...has the policy failed, how has it failed, how does this address those failures, what age are we talking about, how will this penalty actually have an impact? And that is I think a fundamental question. One way to identify a marijuana problem is convictions. For instance, where are we at in terms of convictions from '79, '80 on up to current times? Are we seeing more convictions? And that may be one indication of whether or not we are having a problem going up or a problem going up and how much time that takes to do those convictions because one of the things I am thinking of is this lower penalty, though it may...

PRESIDENT: One minute.

SENATOR WESELY: ...not be thought of well, it could also have some advantageous results in terms of time in court and the legal aspect of trying to prosecute, and we need to think about the cost in terms of court time and legal fees and what have you that will be changed as a result of this penalty change, and I just raise that issue about where are we at now in terms of court utilization, and where might we be with this amendment? Also, the question about marijuana usage, most of the people when we are talking about drugs are thinking cocaine, crack, and the different problems there. Marijuana utilization, how often does it lead to those type of drugs. I mean, are we seeing more linkages and gateway type drug into those higher, harder drugs, and that would concern me as well. And the last point I would want to make is the Governor in her State of the State emphasized the drug package, talked about the drug issue, made it the centerpiece of her 1990 legislative package, and I, frankly, did not have one call or one letter that I can identify that is in support of any of the bills that have been introduced. I know the public out there by the opinion polls have indicated their desire to see something happen but they sure have not expressed it to me and perhaps to others in this Legislature as to their desire to see that legislation pass. If it is failing and not succeeding, it may be because the public is not as interested as it might appear. So I am interested about whether or not there is, in fact, the public outcry that some would have us believe there is.

PRESIDENT: Thank you. Senator Langford, please.

SENATOR LANGFORD: Is it still too early to call the question?

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

CLERK: 11 ayes, 2 nays to go under call, Mr. President.

PRESIDENT: The house is under call. Will you please record your presence? Those not in the Chamber, please return to the Chamber and record your presence. Please record your presence and please return to your seats and record your presence so we can tell who is here. Senator Langford, do you wish to have call in votes? Okay, call in votes are authorized and the question is, shall debate cease?

CLERK: Senator Rod Johnson voting yes. Senator...you voted yes, Senator. Senator Byars voting yes. Senator Haberman voting yes.

PRESIDENT: Please return to your seats. We are under call. Senator Abboud, would you return to your seat, please. Thank you. Senator Bernard-Stevens, would you record your presence, please. Thank you. Looking for Senator Lindsay. Looking for Senator Hefner and Senator Rogers. We are voting to cease debate. Call in votes are authorized.

CLERK: Senator Moore voting yes. Senator Barrett voting yes. Senator Hefner voting yes. Senator Peterson voting yes.

PRESIDENT: Looking for Senator Rogers. Senator Langford, did you wish a roll call vote? Okay, a roll call vote has been requested. Did you wish to wait for Senator Rogers or may we go ahead without him? Pardon me. Go ahead, okay, a roll call and the question is, shall debate cease? Mr. Clerk.

CLERK: (Roll call vote taken. See page 1665 of the Legislative Journal.) 21 ayes, 8 nays, Mr. President, on the motion to cease debate.

PRESIDENT: Debate does not cease. Senator Hall, would you like

to continue, followed by Senator Chambers.

SENATOR HALL: Thank you, Mr. President, and members. Again, I rise in opposition to the amendment because...

PRESIDENT: The call is raised.

SENATOR HALL: ...what the amendment does is it basically takes what we currently do with a citation for less than an ounce of marijuana, makes it a misdemeanor, Class III misdemeanor. We will allow now for all of these cases which deal with less than an ounce of marijuana which is, basically, yeah, it is someone who is using and we should address that, but you don't address that issue, in my opinion, with tougher criminal penalties, you address it on the education side. You address it on the treatment side. You address it on the prevention side, and we have, I think, done a good job and need to do more, though, in those areas. We probably need to spend more money than we currently do in those areas of education, prevention, and treatment, but with this amendment, you do come across as being tough on drugs, I guess, but what do you do? You also wipe out the only provision that I know of in the statute, as I pointed out, 29-433, that I referenced that deals with making those individuals who currently are charged with that citation, who have to pay the \$100 fine, there is a requirement that they go to class, they be educated for a minimum of five hours, maximum of 10, and be taught what they are dealing with, what the problems are with the drugs. The drug that they are looking at, the psychological, the physical, the mental affects that it will have on them as individuals. There is mandatory requirement that they successfully complete that education course. You wipe that out if you adopt Senator Pirsch's amendment and, yes, you do penalize them. Yes, you do put a misdemeanor into place. But what you also do with that is you clog the court system to a massive extent because one of the reasons for the change that was made back in '78, the passage of the law in 1977, was the fact that the courts were just becoming jammed with these types of misdemeanors and the decriminalization, if that is what you want to call it, the fact that we made it a fine and a mandatory education provision for under an ounce, was specifically for the reason that we could not absorb all the cases that were being presented to the court. Remember, anybody charged with a misdemeanor has the right to a jury trial. The costs that will be incurred by the public through the court system, tax dollars that will be spent on this type of an amendment, although it

sounds good and, yes, I would like to be able to support it to say I am being tough on drugs, the fact of the matter is is that you are going to see more and more of these cases appealed, more of them go to court, more and more of them ask for jury trials, and nobody is going to get educated in the process except for the kids who are using it to how the judicial system works and how they might be able to skirt it. With the citation that is currently in place, they have to pay that \$100 fine. They have to successfully complete that education course. That is the way we ought to be dealing with this issue. I haven't seen where it isn't working. I have yet to hear anyone talk about how this system is not working. If anything, I have heard that some usage of marijuana in these cases is actually down. It is not something to take lightly. Drug abuse is something that we need to continue to look at. I think the original intent of Senator Pirsch's bill, I have some problems with that as well, but not near the problems that this amendment presents with the stiffer penalties that it puts in place,...

PRESIDENT: One minute.

SENATOR HALL: ...ignoring the fact that there is a real problem out there with regard to education and prevention which is the route of the solution if there is one to this drug problem. I would urge you to reject this amendment.

PRESIDENT: Thank you. Senator Chambers, please.

SENATOR CHAMBERS: Well, Mr. Chairman, and members of the Legislature, I hope you weren't beguiled by what Senator Hall talked about. I am in favor of Senator Pirsch's amendment. Senator Pirsch, like that commercial from the guy who is supposed to be from Russia, I love these bills. I love this amendment. Senator Hall, I wish you would have kept your mouth closed because now I have got to complete what he said. Whenever you risk imprisonment, then you are entitled to a jury trial. All of these new punishments risk imprisonment, so you get a jury trial, but in addition to that, you must be appointed a lawyer. Whenever you run the risk of going to jail and you can't afford a lawyer, you must be appointed a lawyer. Senator Hall, why did you have to bring this into the sub...the discussion, and I don't want you to answer because you will bring us something else to discourage my colleagues from accepting this good amendment, and I am going to tell you, brothers and sisters, another reason why I think it is so good.

If you adopt Senator Pirsch's amendment, then the punishment for selling an ounce of marijuana near a school is greater than the punishment for selling a pound of marijuana near a school. Because if you sell an ounce near a school, the minimum punishment is \$200, that is for an ounce or less, because that is written into the law. But if you sell a pound near a school, that is bumped up to a Class I misdemeanor which has no minimum. So if you are going to sell these drugs near a school, sell a pound of marijuana because there is no minimum.

PRESIDENT: Senator Chambers. (Gavel.)

SENATOR CHAMBERS: That is all right.

PRESIDENT: Could we please hold the conversation down so...

SENATOR CHAMBERS: Oh, I am enjoying what I am saying so much, if nobody else hears me (interruption).

PRESIDENT: Yes, but I wanted to hear you.

SENATOR CHAMBERS: Oh, okay, Mr. Chairman. This means that if I have got a pound of marijuana and, Senator Smith, for those who might not know it, I can make a lot of joints with a pound of marijuana because I can make a goodly number...a fair number with an ounce. If I sell a pound near the school, the minimum punishment is nothing. If I sell an ounce or less, the minimum punishment is \$200. So common sense will tell you to commit the crime, if you are going to commit the one, that carries the lesser punishment. So the lesser punishment in this case in terms of the minimum sentence is to sell a pound of marijuana near a school rather than an ounce. I love this amendment. (Laughter). I have said before that the Governor gets some poor advice and counsel over there in that part of the building where she is at, but this time I applaud whoever gave...whoever advised making this amendment a part of Senator Pirsch's 976. So I hope that this will be added to the bill. We have got to show those people who are selling an ounce or less of marijuana near a school that, by God, there is going to be a price to pay. We just happened to have drafted the amendment in such a way that those who sell a pound near the school have a loophole. Legislating can be funny even though it is not designed to be. Many times when things are done in haste and toward the latter part of the session, that becomes necessary if you want to get certain things in a bill that were killed in committee. That

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haste, not only makes for waste, but it makes for foolishness. You wind up doing the opposite of what is intended. I know what Senator Pirsch's intendment was and is, but thanks to help from the Governor's Office, we are going to have bill like no bill we have ever had before. This will be a first, even for the Nebraska Legislature. I don't think even Congress has achieved what we are achieving here this afternoon. So, Senator Pirsch, this is one time I am not just saying orally that...

PRESIDENT: One minute.

SENATOR CHAMBERS: ...I am going to support the amendment, I am going to vote yes. And if I could vote yes more than once, I would vote enough times myself to make sure this amendment is added. I sure would hate to be in a position of having argued strongly for this amendment, then shamefacedly having to vote against it or pull it, so I sure hope she doesn't become like a dentist and pull it. (Laughter) Mr. Chairman, we are at that time in the session when I think it is necessary to add a little levity because this is such a serious matter that we are dealing with, and with the time being short that I have left at this point, I will stop for now.

PRESIDENT: Thank you. While the Legislature is in session and capable of transacting business, I propose to sign and do sign LR 398, LR 399, and LR 400. Senator Landis, please. Senator Pirsch, would you like to close on this part of the amendment, please?

SENATOR PIRSCH: Thank you, Mr. President. Mr. Speaker, I will try and answer some of the questions that have been going. This, of course, being dealing with the same thing, we will have more of the same subject on the other three parts of the amendment, but I do want to point out in answer to Senator Hall, we are not striking the course. That is still in the bill, if you would look. It is a Class IV misdemeanor because we are saying this is a serious crime. This is a misdemeanor crime, and it should be considered more serious than an infraction. The course will still be mandated and this isn't going to clog the courts. Less than 1 percent will go to court, and if you are caught, you are caught. It is kind of like the alcohol, but remember in the case of marijuana, if you are caught, you have \$100 fine, infraction. If you hand your joint to a friend, you committed a felony. That is far too much disparity in the severity of using marijuana and that has been the problem all

these years. We have said, hey, it is okay, alcohol is okay, marijuana is okay, but time after time after time, surveys, psychologists, drug abuse counselors discover that marijuana and alcohol are those entry gateway drugs for our young people. Now you talk about \$100 being such a terrible fine. Hey, \$100 today won't even buy you a pair of jeans or a pair of shoes. I hate to tell you this, guys, but the Governor did not bring this bill to me. I have been involved in a course of study at UN-O on Youth and Crisis, and during that course of study, there were several seminars held across the City of Omaha in the various high schools, and time and time again, we heard both in those seminars and also in my course of study of the youth at risk, those who commit suicide, those who go on to destroy their lives with drugs, it can start with that simple joint of marijuana. I mean, what can that hurt? It is exactly that kind of mindset that I think we need to counteract by making this a more serious crime. Again, there is still the educational courses and I think we need more money for educational courses, and we need to have more prevention. And I commend the law enforcement in Omaha and I think they are spreading across the state also with their DARE, with their intervention and their education programs. Felonies have no minimum fines. That hasn't seemed to stop judges from using their good sense on how to apply fines...

SPEAKER BARRETT PRESIDING

SPEAKER BARRETT: One minute.

SENATOR PIRSCH: ...as well as punishments. The minimum is nothing now, even under the federal law, and again we have to bow to the courts to make those decisions. As far as Senator Wesely saying that the public has not spoken on this issue, I disagree. We passed around a poll on the tougher drug penalties for marijuana and 78 percent favored it, 76 percent, excuse me, and 21 percent opposed it. I guess my whole feeling is, and this is strictly a personal feeling, nobody tells me what amendments to introduce or what bills to introduce.

SPEAKER BARRETT: Time has expired.

SENATOR PIRSCH: I feel very strongly, but with that, Mr. Speaker, I am withdrawing my amendment to make possession of one ounce of marijuana a misdemeanor.

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SPEAKER BARRETT: Thank you. The first part of the amendment, 2843, has been withdrawn. I am sorry.

SENATOR PIRSCH: Sections of that amendment.

SPEAKER BARRETT: All of AM2843 are withdrawn. Thank you. Mr. Clerk.

CLERK: Mr. President, the next amendment I have is by Senator Pirsch. Senator, again, because you are primary introducer, I have 2844 in front of me now.

SENATOR PIRSCH: (Mike off) that is the same, is it not, Mr. Clerk? Yeah, pull that.

SPEAKER BARRETT: Withdrawn.

CLERK: Mr. President, the next amendment I then have is one offered by Senators Johnson, Pirsch, Peterson, and Beck found on page 1345 of the Journal. AM2799, Senator.

SPEAKER BARRETT: Senator Pirsch. Senator Johnson.

SENATOR L. JOHNSON: Mr. Speaker, am I perceived with an opening statement?

SPEAKER BARRETT: Certainly.

SENATOR L. JOHNSON: Thank you. Mr. President, and members of the Legislature, I think like all of us I have been increasingly aware and alarmed about the high incidence of drug use by minors. This amendment proposed to Senator Pirsch's excellent school yard bill was introduced by me during our current session of the Legislature as LB 1091. The bill received a committee hearing before the Judiciary Committee on February 21st, and at that hearing, LB 1091 received wide and unanimous support from both law enforcement officials and those involved with drug prevention programs. Those who testified and from the letters I have received are unified in their agreement that the current penalty system for drug offenses in Nebraska does not adequately address those crimes perpetrated against the young. It is a fact that our statutes pertaining to drug offenses fail to make a distinction between crimes perpetrated on an adult compared to those involving minors. In conjunction with Senator Pirsch's 976, this amendment signals a clear message to those who pedal

drugs, if you use minors to do your dirty work, you will be punished more severely if caught. It achieves this simply by upping the Nebraska felony classification one increment above that which would normally be charged if an adult were involved. This incidentally is the same method employed in federal law which allows for increased punishment on drug convictions where an adult has either distributed drugs to a minor or used a minor in a drug trafficking operation. This amendment would provide our state and local law enforcement officials with the same authority that exists at the federal level in prosecuting, convicting, and sentencing drug-related crimes where a child is involved. It would also give Nebraska a system of punishment which is commensurate with the crime, that is criminals who choose to corrupt our youth by introducing them to drugs or enlisting them in their distribution networks should and must suffer additional penalties for that crime. As you are also, I am sure, frightened and sickened, I am sure you are that drug dealers target societies most vulnerable group, its children, into the business of trafficking drugs and introduce them to other illegal activities. These criminals ensnare the young and then profit at these children's expense. Such exposure to crime often has a corruptive effect on an individual child's life with irreparable harm requiring exhaustive treatment and rehabilitative programs. The question before us and all Nebraskans is what can we do to protect and safeguard our children from a negative and criminal environment of the drug activity. Many knowledgeable people argue for tougher laws, more law enforcement officers, while others believe greater emphasis on education and rehabilitation is necessary. An honest evaluation of the problem would probably indicate that both views have merit, both are correct, and neither can be mutually exclusive of the other. In fact, the battle for the mental and physical health of our youth is not won with a single solution. It is rather a multidimensional social problem that can only be resolved if challenged with an equally diverse and unbending approach. The amendment I have offered for your thoughtful consideration this afternoon is a small but could be a significant contribution to the law enforcement part of that equation as it revises the Nebraska statute drug penalty law by incorporating the federal system of having laws specifically detailed for drug crimes where children are the victims. One of those who testified at the hearing of LB 1091 was a young man from my own district who is a senior in high school, Fremont High School. He is currently Boys State Governor of Nebraska and Ben Sass, in his testimony, said this. "This bill sends a

message to drug dealers that they are not welcome in this state. It also sends a message to the youth of Nebraska that you support us in our attempts to avoid drug use and abuse. It even sends a message to all Nebraskans that you recognize the magnitude of the problem in our state and that you are ready to act." With that, I would urge you to support my amendment which could hopefully help prevent this insidious form of child abuse and protect the weak and defenseless children of Nebraska. Thank you, Mr. President.

SPEAKER BARRETT: Thank you. Discussion on the Johnson amendment? Senator Landis, would you care to discuss it, followed by Senator Chambers.

SENATOR LANDIS: Thank you, Mr. Speaker, members of the Legislature. I do agree very much with a part of Senator Johnson's analysis here and that is that the law has every reason to distinguish in this situation between the harm done an individual and the harm done a child. It is quite common for the law to make that distinction and the distinction is a rational one, that while there may be a criminal intent and a criminal motive, and a reason for punishment where a wrong is done to an adult, when one is subverting an individual incapable of creating the capacity to defend themselves or to argue in opposition or to physically defend themselves and compel a child or persuade a child to do that which is against their interest, and which may scar them for life depending on their own personal strength and their ability to respond to adversity, the law certainly permits the idea of a greater penalty when an act imposes a wrong on a child. And for that reason, I rise to support Senator Johnson's amendment. On the other hand, it, by very clear relief, calls into question what is a difficulty in the bill that it is being amended onto, because while Senator Johnson's distinction between the age of the victim is a sensible distinction, one in which penalties should be increased, the distinction on geography in 976, in my estimation, is not a rational distinction. The crime is to sell mind-altering, life-threatening drugs to kids. If that is done on a school yard, if that is done in the doorway of a church, or if that is done in a basement of a private home, the quality of the crime is no different. The evil is no different, and in my estimation, the punishment should be no different. What is legitimate is the age of the individual, how impressionable they are, what is at risk for them, the fact that they are more easily misled and subverted, the fact that they have less of an

ability to respond by standing up for their own interests, the fact that they are at risk in their peer groups and the like, all of those situations occur without regard to geography. In other words, I wish that LB 976 was being amended into Senator Johnson's language because then I can far more easily vote not for LB 976 and continue to vote for that which I think is the rational distinction, which is the age of the victim, and in this situation, the Johnson amendment. One of the difficulties is that you are saying that as a matter of law if we put the Johnson amendment into the 976 that you are going to have these little circles on the map, if you will, these little thousand yard circles, or whatever, around a wide variety of locations, schools, playgrounds, video arcades, and these areas will have a special protected quality with a higher standard of penalty than all others. I don't understand the rationale for that.

SPEAKER BARRETT: One minute.

SENATOR LANDIS: I do understand the rationale for the Johnson amendment. I guess if I had my druthers, I guess I will vote for the Johnson amendment and then maybe strike the provisions of 976 or support the striking of those. But what is critical to remember here is not that we protect spaces but that we protect people. That we protect in this case the defenseless with a greater standard than we protect those who we deem to be able to weigh and measure their own interests, like an adult, and that we think taking advantage of the young is more pernicious than simply prevailing upon the predilections of an adult who has already formed their opinion. In that sense, I intend to support the Johnson amendment, but it, because of its merit, highlights the difficulty in 976, and that is that we don't protect geography, we don't protect spaces.

SPEAKER BARRETT: Time.

SENATOR LANDIS: We protect people. That is why the Johnson amendment is right and 976 really isn't very good policy.

SPEAKER BARRETT: Thank you. The Chair is pleased to take a moment to recognize some students at UN-L under our south balcony from England. From Chester, we have Alison Paul; from St. Albans, we have Alison Sharp; and from London, we have Steve Lumsden. Would you people please stand and be recognized. Thank you. We are delighted to have you with us this afternoon. Mr. Clerk, you have a motion on the desk.

CLERK: Mr. President, Senator Chambers would move to amend Senator Johnson's amendment. (Read Chambers amendment, FA428, on page 1666 of the Legislative Journal.)

SPEAKER BARRETT: Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman, and members of the Legislature, so you can follow where this is in the Journal, it would be on page 1346, in the first sentence. I have been on the Judiciary Committee ever since I have been in this Legislature and I have seen many well-intentioned efforts to try to change the law to achieve what was felt to be a social good. However, those without experience in these matters will make statements and give speeches of the kind Senator Johnson with which nobody can take exception. However, when you get right down to it, these penalties overlap each other. I would like to ask Senator Lowell Johnson a question.

SPEAKER BARRETT: Senator Johnson, please.

SENATOR CHAMBERS: Senator Johnson, the Class IB felony reads the maximum sentence is life imprisonment with a minimum of 10 years imprisonment.

SENATOR L. JOHNSON: That is correct.

SENATOR CHAMBERS: Is it your opinion that the same act, remember, we are talking about an act that constitutes a crime can be so different in nature or essence that one person ought to get life for it and the other 10 years, isn't that too great a disparity in your opinion? Anything that is that disparate in nature, two things that disparate in nature, are different in essence. They are different acts. You feel that that is not too wide?

SENATOR L. JOHNSON: My feeling at the time, I am sure, was that we are dealing in a very special class, a distinction of crime in selling to or using a minor in that operation of drug trafficking is such the penalty cannot be too severe, in my opinion.

SENATOR CHAMBERS: All right, no, I am asking you does the penalty make sense, 10 years is the minimum. Now if a judge gives a flat sentence, then that is not a minimum, that is the

minimum and the maximum. So a judge can sentence somebody under a IB felony to ten years, period. They can do that. The judge can do that.

SENATOR L. JOHNSON: Right.

SENATOR CHAMBERS: So what are you talking about when the sentence is really less than ten years? Isn't this, again, giving the appearance that the Legislature is getting tough on drugs, and yet we are not really doing anything?

SENATOR L. JOHNSON: Well, I think in the final analysis, Senator Chambers, would it not also be true that the judge has that ability to set that penalty within the realms of this?

SENATOR CHAMBERS: Yes, and he has the power, he or she has the power under all of the classifications below that down to a Class III felony because the maximum is 50 years. Judges can sentence up to 50 years right now and they are not doing it. So what makes you think by putting this language in the law and then giving the speeches that are being given on the floor here today that these judges are going to give different sentences than they are giving now? What makes you think that?

SENATOR L. JOHNSON: I guess by our own interpretation of it, or at least mine, on this particular amendment that is offered, does indicate to those people, not only the offenders, but to those who work on the sentences that we feel that this is an insidious crime using youth under 18 years of age.

SENATOR CHAMBERS: Well, what difference does what we feel about it have to do with what a judge is going to actually give as a sentence because by setting these existing punishments, a Class IB felony, which is two levels below the one you are talking about, has a maximum of 50 years. Now a judge right now can give a stiffer sentence than under what you are talking about, 10 years to life. Right now he can give up to 50 years, he can give a sixteen and two-thirds to life, and that would be more than a flat 10 years under the Class IB which is the stiffest penalty you are talking about. It doesn't make sense but I am not going to keep asking you questions. I am on my time, and then you can respond to it, but I wanted enough out there for you to see what I am talking about. Members of the legislature, there are some judges who have common sense and they know that nothing happens in a vacuum, that the Legislature

for political reasons will often undertake to change the law in such a way as to disjoint and disrupt everything that currently was in place, and the judges will just disregard and ignore that. They know that if everything the Legislature has set down as a law or recommendation to the court were followed, we would have chaos. Why in the world is the Legislature going to have three different categories of punishment penalties and each level is supposed to be more serious than the one before, and the maximum in each case is 50 years. It doesn't make sense. That is why the judges disregard this. They make a reasoned judgment based on the realities of life, and one of the realities is that this kind of stuff that happens that the Legislature is doing now occurs at the top of a political bubble when the national administration has told the Legislature what is politically hot and what the legislators who are interested in gaining political hay ought to be about. So we come in here with these kind of crazy, lame-brained bills whose intent is not crazy, whose intent is not lame-brained, but it simply shows that when you try to do through legislation that which may be socially desirable, it's not as easy as it might seem at first blush. And there are people on this floor who might say because it is such a serious thing to have drugs sold to youngsters, to have them enticed into selling or transporting drugs is a terrible thing, we have got to change the law to make that law reflect how terrible we think it is. Yet when we change the law, we don't change the law. That is what it comes down to, we have not changed the law. I regret that Senator Pirsch withdrew that amendment she had offered. I talked too much. There was a frog that wanted to fly. Well, I won't tell it. It is an Aesopian Fable but I am probably close to the end of my time and it wouldn't make the point as solidly as I want to make it right now. But in any case, every thing that Senator Lowell Johnson is trying to do with his amendment can be done right this minute. If you take a Class II felony which has a maximum of 50 years and that is the name of the crime that exists in one of these sections and you bump it up to a Class IB felony, the maximum is 50 years. So you bump a Class D to a IC and the maximum is 50 years. So what have we changed? Nothing. But what can we go out and tell the public? We are protecting our children because now if somebody commits a crime, whereas they could get 50 years, now they can get 50 years. What I am doing with the amendment that I am offering is trying to bring some rationality into this by taking away this Class IB felony which says the maximum is life imprisonment. Now let's say there is a black person who commits this dastardly crime in conjunction

with a white person. The white person gets 10 years, Chambers gets life, and the Pardon Board is going to look at that, and they are going to say, no, there is no life for this. A murderer is eligible for consideration for a pardon or a reduction of a life sentence to a term of years after they have served about 15 1/2 years. So you don't want to make it a death penalty, but you make it the same as a penalty for somebody who committed murder and didn't get death, and that person is going to face the likelihood of being paroled after 15 1/2 years. So you impose one of these stiff sentences, let's say that the judge says, 50 years to life. Then after the person serves the minimum amount of that 50 to make him or her eligible for parole, the person will probably get paroled.

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: But I would challenge Senator Johnson or anybody else on this floor to tell me which judge they know who because this is put in place is going to give a harsher sentence than they give right now. And there is another point that I want to make that I think is very significant, even when we talk about the age, itself, but I will do that the next time that I have an opportunity to speak. But my amendment would strike IB felony and substitute IC, which still gives you a maximum of 50 years.

SPEAKER BARRETT: Thank you. Discussion on the Chambers amendment to the Johnson amendment. Senator Pirsch, would you care to discuss it? Senator Bernard-Stevens on deck.

SENATOR PIRSCH: Senator Chambers, you were opening on your amendment, is that right? Which is to change the one to seven ounces of cocaine or the 28 grams?

SENATOR CHAMBERS: No, mine would simply change...if you have your Journal, on page 1346 at the top. It says, what it is saying that as you bump these penalties up, in no case shall the penalty be greater, it says presently, than a Class IB felony. I am saying IC. That is all that my amendment changes.

SENATOR PIRSCH: Than the IB.

SENATOR CHAMBERS: Uh-huh, it changes IB to IC, and it doesn't talk about any of those amounts or anything else. That is the only thing that mine would do.

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SENATOR PIRSCH: Which would mean that your IC has a mandatory minimum of five years to 50 years, and the IB is 10 years to life?

SENATOR CHAMBERS: Right.

SENATOR PIRSCH: So what you are really doing then is changing the minimum?

SENATOR CHAMBERS: And the maximum.

SENATOR PIRSCH: You are reducing the minimum, and, well, the maximum, yes.

SENATOR CHAMBERS: Mm-huh.

SENATOR PIRSCH: I think what Senator Johnson is getting at is that we are talking about the minimum, and as you rail against the judges that gives direction to them for a more comprehensive and equitable minimum, and I would oppose your amendment.

SPEAKER BARRETT: Senator Bernard-Stevens, please. Thank you. Senator Chambers, your light is next, followed by Senators Abboud and Pirsch.

SENATOR CHAMBERS: Mr. Chairman, and members of the Legislature, I would like to ask Senator Pirsch a question based on the observation she just made.

SPEAKER BARRETT: Senator Pirsch.

SENATOR CHAMBERS: Can a judge right now give a sentence in these categories...let me make clear the categories that I am talking about, the categories that have a maximum of 50 years, disregarding whatever the minimum might be for a moment, because the smallest minimum is five years.

SENATOR PIRSCH: And that is your one to seven ounces of cocaine sales.

SENATOR CHAMBERS: Well, forget all that because this bill is going to bump it up to the next higher so I don't (interruption).

SENATOR PIRSCH: That would be from the ID to a IC.

SENATOR CHAMBERS: Right, but here is what I am getting to. Under the law right now, without having a IB in it, a person can be sentenced up to 50 years with the maximums in law right now, would you agree to that?

SENATOR PIRSCH: Correct.

SENATOR CHAMBERS: All right, so can a judge right now...let's say that you are in one of those (interruption).

SENATOR PIRSCH: But the minimum is five years.

SENATOR CHAMBERS: Let's say the...I am going to get to that...the category is where the minimum is five years.

SENATOR PIRSCH: Um-huh.

SENATOR CHAMBERS: Is the judge bound to set that as the minimum?

SENATOR PIRSCH: Yes, mandatory minimum.

SENATOR CHAMBERS: No, he cannot set it any lower than that, but is he bound to make that the minimum? Can he set a higher minimum than that?

SENATOR PIRSCH: Right.

SENATOR CHAMBERS: It can be up to one-third of the maximum. Now if the judge sentences a person to 16 2/3 years, he can do that within whether the minimum is five years, 10 years, or no years, if we had a category of zero to 50, couldn't he or she do that?

SENATOR PIRSCH: But it isn't zero to 50.

SENATOR CHAMBERS: But I am saying even it were, then he or she could still set it higher than five or 10 as a minimum.

SENATOR PIRSCH: Yes, that is correct.

SENATOR CHAMBERS: So why do you think that by saying what Senator Johnson wants to say that it is from 10 years to life

instead of 10 years to 50 is going to make the judge set a stiffer sentence? What makes you think that?

SENATOR PIRSCH: Well, I believe, unlike you, that judges do look at the intent of the Legislature and that the 10 years would be the minimum in this case which would be a stiffer penalty for what we consider a more serious crime.

SENATOR CHAMBERS: Thank you. Senator Kristensen, may I ask you a question. If a judge can set a sentence from 10 to 50 years and sets just a flat sentence of 10 years, what is the effect of that?

SENATOR KRISTENSEN: That becomes the minimum, and a 10-year sentence, actually what they get is the good time provisions would kick in so that becomes the minimum, any flat figure in there.

SENATOR CHAMBERS: And it would be less than that amount that he had set?

SENATOR KRISTENSEN: Yes.

SENATOR CHAMBERS: So do you see what I am trying to tell you in the Legislature. Even if it is 10 years to life, it doesn't matter what kind of felony the prosecutor calls it as far as the sentence. It doesn't matter what it is called. You have to look at what is available as a sentencing range. So the judge can say 10 years in any of these categories, and then it is 10 minus the good time. So it is not even 10 years. I am trying to explain what I had started by mentioning that people who don't deal with these sentencings think they are doing something when they are not. And these judges are not going to be carried away in the same way we are, unless they are sentencing a black person. And that is why I think these kind of laws are so desirable. The study that was done on the court system, as far as sentencing in Nebraska a few years ago, and I have a copy of it, demonstrated the disparate sentencing, demonstrated it. When you took into consideration every variable,...

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: ...the racism was still there to a greater extent in Douglas County than anywhere else because more black people and other nonwhites were sentenced there than anywhere

else. So when you pass these laws, the most you can hope for is that it would place at the hands of a racist a tool to engage in more racism. But if you put all of those things aside and just look at it in a vacuum, you are not doing anything. You are not doing anything at all, and when you create discretion in a judge as far as sentencing, the judge can do anything within that discretionary swing that is allowed by the law. So saying 10 years to life doesn't mean anything different from 10 years to 50 years, or five years to 50 years.

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

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

SPEAKER BARRETT: Debate ceases. Senator Chambers, would you like to close on the adoption of your amendment?

SENATOR CHAMBERS: Yes, I would, Mr. Chairman. I want to give Sheriff Dick Roth some credit here by reading into the record something that he said in the Omaha World-Herald, dated September 29, 1989. "'The United States' war on drugs has gone from one battlefield to the other but never will be successful until it incorporates a dedicated system of education and treatment," Douglas County Sheriff Richard Roth said Thursday. 'The War on drugs is a bunch of garbage,' Roth told the Suburban Rotary Club at Anthony's restaurant. 'It's like the war on poverty. It won't work. The problem is we're treating the symptoms, not the disease.' Roth said local, state and federal anti-drug problems (sic) have not worked in the past and will not work in the future. 'The problem is our citizens,' Roth said. 'We are the No. 1 market for illegal drugs in the world. We have 25 to 30 million people using drugs. Any time law enforcement comes up against numbers like that, we're bound to lose.' The solution, Roth said, is a combined effort of education and treatment. Businesses should demand a drug-free workplace, he said. Children should have the anti-drug message drilled into them regularly, he said. 'We've seen a lessening of smoking in recent years because of anti-smoking education, Roth said. We can do the same thing with drugs.' For those already on drugs, Roth said, free or low-cost treatment centers should be available. 'We don't have a treatment center available to the average citizens of Omaha, Roth said. We have some very fine treatment centers, but they're very expensive.

We know of instances of addicts who wanted to get in a center but there was no place to go.' Roth stopped short of advocating legalization of some drugs, but he noted that a number of people in the country have called for such a change. Whatever the course of action, he said, the country so far has failed in its attempts to control drug abuse. Although television news shows often show law enforcement officers making spectacular drug busts, he said, they don't show the large amount of drugs that enter the country unnoticed. 'You ever see those shows from Africa where you've got the herd of zebras and a couple of lions? Roth asked. One of the lions kills a zebra and then all the lions stand around eating it. Meanwhile, there are still 8 million zebras. Well, we're like the lions and the zebras are the drug dealers.' Some people have called for construction of more jails for drug offenders, Roth said. That plan has little merit, he said, considering the large number of people who use drugs and the small number of beds in jails and prisons. 'We just spent \$7 million to build an annex at the county jail, he said. We got 350 more beds and it's already full.' Others have called for more police officers, he said. But the drug problem is so extensive, he said, that more police would result in more arrests with no place to put the prisoners. 'We'd bring the criminal justice system to a grinding halt,' he said. Most law enforcement efforts in the past targeted drug dealers, he said, but that didn't work. Then the effort was aimed at the countries where much of the illegal drugs are produced, he said, and that didn't work. 'You try to tell a peasant not to grow coca leaves because Joe Schmoe in Detroit is blowing it up his nose, Roth said, and it just doesn't mean anything. That's a cash crop.' Lately, Roth said, the ware has shifted to the drug users. That has had little impact, he said, because of the staggering number of people who use drugs." That is from the sheriff. The sheriff is trying to say that what is being done here hasn't worked in the past, it is not going to work now, and I am adding this, but it makes very good political fodder, very good political fodder, and that is all. Senator Johnson, I understand very well what it is you are talking about.

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: But legislation cannot always be crafted to reach the specific result that you have in mind and part of that is because of the sentencing schedule or the punishments that have been affixed to crimes existing in the statute right now. There are such wide ranges of punishments for the same crime

that it makes a rational type of sentencing impossible. What Senator Johnson is trying to do will not be hurt by my amendment. My amendment is an attempt to restore some appearance of rationality to what is being done. If you don't adopt this amendment, it is not going to do anything, not going to make any difference. If you do adopt it, it will incorporate into his amendment a bit more of logic that ought to exist in...

SPEAKER BARRETT: Time.

SENATOR CHAMBERS: ...sentencing processes.

SPEAKER BARRETT: The question is the adoption of the Chambers amendment to the Johnson amendment to LB 976. All in favor vote aye, opposed nay. Have you all voted? Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman, I will ask for a call of the house and a roll call vote.

SPEAKER BARRETT: Thank you. The question is, shall the house go under call? All in favor vote aye, opposed nay. Record.

CLERK: 18 ayes, 1 nay to go under call, Mr. President.

SPEAKER BARRETT: The house is under call. Members, please record your presence. Those members outside the Legislative Chamber, please return and check in. The house is under call. The house is under call, members please return to your seats and record your presence. Will the Sergeant-at-Arms please cooperate and move members back to their seats. Those outside the Chamber, please return. Senator Landis, please check in. Senators Moore, McFarland, Robak. Senators Haberman and Wesely, please report to the Chamber. Senators McFarland, Haberman, Wesely and Moore, the house is under call. Senator Chambers, the other two are supposedly on their way. May we proceed or do you want to wait? Thank you. Members, return to your seats for a roll call vote. The question is the adoption of the Chambers amendment. Mr. Clerk, proceed.

CLERK: (Roll call vote taken. See pages 1666-67 of the Legislative Journal.) 15 ayes, 17 nays, Mr. President, on the amendment.

SPEAKER BARRETT: Motion fails. Another amendment on the desk, Mr. Clerk?

CLERK: Yes, Mr. President, the next amendment is by Senator Landis. (See AM3205 on pages 1667-68 of the Legislative Journal.)

SPEAKER BARRETT: The call is raised and the Chair recognizes Senator Landis.

SENATOR LANDIS: Mr. Speaker, members of the Legislature, I made this amendment because of the issue I raised in my previous speech. I support the Johnson amendment. I support the idea of increasing penalties for the sale of drugs to kids. I don't support the idea of the geography in 976 and what the amendment does is this. It attaches itself to the Johnson amendment, and then if the Johnson amendment is attached to 976, it strikes the provisions that relate to the drug-free zones and, basically, replaces it with the Johnson amendment. In other words, what we get is the Johnson amendment standing alone, if this amendment is passed. Why? Because we are out to protect kids. That is what we are out to do, and it seems to me no different to exact a penalty whether that kid is being taken advantage of 990 feet away from the school as opposed to 1,003 feet away from the school. It is the child's tender years and the pain and suffering that a drug addiction will mean for the child and that is what we should be defending. Don't mix it with the issue of trying to defend certain spaces above others. It is a way of...in a way, think of what that message says? It says that it is twice as bad to addict a kid in one physical locale than it is in another one. Is that the message you want? Is it a message that you want some bravado, to have some drug dealer in some area take a spray paint and make a line down the street at 1,000 feet and have all the kids come up and laugh and say, well, here is the drug line and dance on one side or the other. The point is we are protecting kids, not city blocks, not streets, not curbs, not playgrounds, not video arcades, not swimming pools, not schools or churches, but kids. They deserve our protection and it shouldn't make a difference if they happen to be located in one part of the city or another, standing next to one kind of a facility or whether they are out in an open cornfield in the middle of Buffalo County. Those children deserve all the same protection and standards, and to sell them drugs is the same offense, it has the same heinous quality about it. The fact that it is done in the shadow of a church or a school does not increase the heinousness. It is in the taking advantage of a child that the heinousness inures, and for that

reason, inheres, rather, and for that reason should be penalized severely. I ask you to adopt this amendment so that in voting for the Johnson amendment we establish the right message, which is that it is wrong to sell to kids. That is the right message. The wrong message is that we are going to draw with a little compass a circle around certain privileged facilities and call those more sacred than any other facilities. Places aren't sacred, children, if anything, their well-being is what is the highest value. That is what should be defended and that is what this amendment does.

SPEAKER BARRETT: For purposes of discussion of the Landis amendment, the Chair recognizes Senator Hall, followed by Senators Pirsich and Chambers.

SENATOR HALL: Thank you, Mr. President, and members. I rise in support of Senator Landis's amendment. I filed an amendment similar earlier that was specifically to 976 to extract portions of the bill that dealt with areas other than schools, specifically for the reason that I find it difficult to understand how they are defined, difficult to interpret how they would be judged by a court, and whether or not the definitions in the bill allow for a complete and thorough explanation. If you take the time to look at the definitional section. The video arcade is one that has at least ten machines, so that the provisions would not apply to a video arcade that had three pool tables and nine machines. I know there has to be some kind of definitional provision if you are going to put these...list these areas in a bill, but I think Senator Landis in his opening on the amendment clearly spelled out the problems you run into when you do those kinds of things. If the issue is we want to protect children, then I think the amendment that he offers does address that issue. I would have preferred to have his amendment offered after Senator Chambers amendment had been adopted to Senator Johnson's, but since that is not the case, I will support Senator Landis's effort to I think clean up the provision that, basically, has us enact two separate standards with regard to the selling of drugs to kids, which one being that if we are around any of these things that we list in the statute, it is twice as bad to do it, as if we are not. And that to me is ridiculous, because what you will see then is a growing list of those areas or you will see folks come in and try to change that list year in and year out, instead of addressing the issue of the fact that it flat out is bad to sell drugs to kids. That is what you ought to be dealing with, and,

granted, that is where we are at now. That is what is before us but the issue that we should be addressing is the issue of education, prevention, and treatment, and we always look at the easy side, the side that deals with the penalties and the fines and the crimes and the provisions with regard to records and how hard we want to play ball with regard to these individuals that are in the area of drugs, selling it, both to kids and those who are using it. But we don't very often want to deal, we want to play soft ball with the issue which is the tough side of putting money up for treatment, putting money up for prevention, and putting money up for education, and that is not as easy to extract out of the body in the form of legislation. We have done some things in the last few years that I applaud both the Appropriations Committee and the Legislature for, but we are far from anywhere near correcting the situation that does get at the root of the problem. By the time you get to using the stuff that is in 976 or Senator Johnson's amendment, or even in Senator Landis's amendment to that amendment, it is too late. They have already used the drugs. They have already abused their bodies. They have already committed a crime. You are playing catch-up, and that is the problem with this type of legislation, you are playing catch-up. What we have to do is have LB 976 be the kind of legislation that deals with the education aspect, deals with the prevention aspect, and deals with the treatment aspect.

SPEAKER BARRETT: Time or, excuse me, one minute.

SENATOR HALL: Until we do that...oh, I am sorry, I thought you were going to bang your gavel. I was waiting to hear that. I thought you had broken it again. Until we do that, ladies and gentlemen, we are never going to correct the situation. We are going to come in here, and we are going to do nice little things like increase the penalty that looks good, sounds good, feels good, but does absolutely nothing, and hopefully next year when we look at the budget, we will address that issue with regard to these types of prevention education measures and with the same kind fervor that we are doing in terms of the penalty side of the equation. With that, I would urge you to support Senator Landis's amendment.

SPEAKER BARRETT: Thank you. Senator Pirsch on the Landis amendment.

SENATOR PIRSCH: Thank you, Mr. Speaker. Just to point out a

couple of things, Senator Chambers so nicely passed around the quotes from Sheriff Roth and the solution, quoting from this article Roth said, is a combined effort of education and treatment. Businesses should demand a drug-free workplace. We are establishing a drug-free workplace as a space. Children should have the antidrug message drilled into them regularly, he said. These signs, everyone of them, are drug free...these signs that are put up around our schools are antidrug messages, which our children will see daily, and which people talk about, and in their talking reaffirm the fact that we want, yes, the whole state to be a drug-free zone, but we have got to start with little pieces at a time. It also goes on to quote that the war has shifted to the drug users, and that is right, and that has had little impact because of the staggering number of people who use drugs. So what do we do? We just give up then. We just give up. We just say, hey, we don't do this little bit, and this little bit, and this little bit. Well, I am not giving up, and I think that by establishing these zones in Omaha we have accomplished something. We have started people talking about it and the drug-free zones are working, and the federal courts are prosecuting under this law. It is a law now. I hate to tell you guys but there is circles now 1,000 feet around all of these things, around...we have taken 976 from the federal legislation. Federal law has already interpreted through court decisions and it has been found constitutional because they have said that we have a higher duty to children, and that means that where our children congregate, we have a higher duty to protect them. And it isn't protection of the playground, it is protection, or the school, or the video arcade, it is protection for the children who congregate there. We are talking about places where our children congregate. We have them now. We protect those spaces through federal law and Congress has said, yes, that is a little piece of what we should do. Now, what you have in your packets are letters from all across Nebraska that say, hey, we don't have access to federal courts. We don't have access to this kind of prosecution. We want our county attorneys to have that ability. We want that same ability. Lahners said in our Judiciary hearing that they can't handle it, and besides that, they are located in the eastern end of the state, and people on the western end of the state say we want that same opportunity...

SPEAKER BARRETT: One minute.

SENATOR PIRSCH: ...to send that same message to kids. You

know, we have a precedent. We have said that liquor stores have to be so far from churches and schools. We have said where the crime takes place determines the severity of the crime. Arson in an open field is a lesser punishment than arson in an occupied building or an unoccupied building, the arsonist certainly doesn't know whether it is occupied or unoccupied unless they specifically plan it that way. And when you talk about confusing, that is good. We want drug dealers to be confused and we want them to just stay away from those places where our children congregate and people all across Nebraska want that same ability that we have in Omaha because we have more access to federal courts. It is still federal law across this whole nation, and 34 states have adopted that for their state because they want that ability to send a message to drug abusers that we don't want you even where our kids are.

SPEAKER BARRETT: Time. Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman, and members of the Legislature, I must say, again, that Senator Pirsch's original bill, 976, is of little value in doing anything, and when she began to read the comments of Sheriff Roth, I think it soaked in at the time she was reading it what he said in a way that it didn't when I was reading it, because when you visually behold something, it has a greater impact than when somebody is droning on about it. But I handed out some other articles in a packet, and the last page deals with some of the things I am talking about in terms of the disparate treatment which is what these bills will do. Senator Pirsch, there is more drug use in white high and junior high schools than in the black community. Channel 7 did a three-day report and they talked to the white kids at these schools in Omaha, talking about the amount of drug use and how they are not bothered by the police. So, if the drug-free school zones are to be effective, why don't they go into those white schools and arrest those white kids? Why don't they do it? Because they don't know whose kids they are, or they know whose kids they are, and they are not going to do it. And one of the articles I have here that I handed out to you was in USA TODAY, December 20th of '89, and the headline, Drug Arrests Rate Higher For Blacks, and some people will say that is because black people are more involved in drugs, but here is what the article says. Blacks are being arrested in the USA's drug wars at a rate far out of proportion to their drug use, according to a USA TODAY study of FBI data. The FBI data, I emphasize demonstrates that black people are being arrested out of all

proportion to drug use, because when they want to make the sweeps and give the impression they are fighting drugs, they are really fighting black people under the rubric of fighting drugs. To continue with the article, "Although drug use is broad-based, the enforcement falls on the underclass, says American University Criminologist, James Lynch. USA TODAY'S wide ranging analysis, first ever of drug arrests reported to the FBI, found blacks in 1988 made up 38 percent of drug arrests, up from 30 percent in 1984, but blacks make up only about 12 percent of those who regularly use illegal drugs." They make up 12 percent of those who use drugs, but 38 percent of the arrests. That is disparity even in South Africa. Here is another quote, and you have this. I am trying to select items that will bear directly on the issue. "Black males comprised a vastly disproportionate number of people being arrested, says Barry Krisberg, K-r-i-s-b-e-r-g, President of the National Council on Crime and Delinquency. Drug czar William Bennett declined to be interviewed on the analysis's findings. 'What's the beef,' said his spokesman, Don Hamilton." The drug czar's spokesman is saying black people are arrested out of proportion to their use of drugs, what is the beef? That is America. Racism is of the warp and woof of America. Racism is as American as apple pie. "There are few treatment centers available in the minority community," says Arlene Williams of the National Organization of Black Law Enforcement Executives. "The only stopgap measure is to arrest them and lock them up." Here is an interesting item from the Lincoln Star, dated October 12th, 1989. "Two percent of blacks use cocaine. Today 98 percent of all black Americans over the age of 12 do not use cocaine, including crack."

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: "And 90 percent of them never use the stuff. As for crack, itself, a particularly dangerous form of cocaine, it is used by fewer than 1 percent of all blacks and used by fewer than 1 percent of the 12- to 25-year-olds, the group thought to be most at risk. These statistics offered by the Ombudsman of The Washington Post show the inaccuracy of a popular impression that the drug problem is a black problem. This incorrect impression is an undesirable side effect of the barrage of media stories about the problems created by drug abuse." Racism is what we are talking about and this is a racist piece of legislation. Is my time up, Mr. Chairman?

SPEAKER BARRETT: Fifteen seconds.

SENATOR CHAMBERS: Well, I will sit down and put on my light.

SPEAKER BARRETT: Thank you. Senator Bernard-Stevens, please.

SENATOR BERNARD-STEVENS: Thank you, Mr. Speaker, and members of the body, I am kind of in a quandary of what to do with the Landis amendment. Quite honestly, I have some reservations about the bill, 976, but I think those reservations can be cured at some point through the amendment process. I understand Senator Landis, what he is trying to do with the Johnson amendment because we set two different criteria, then one is a zone and a geographic criteria, and I, too, have some real concerns with that. I guess my problem is if we agree with the Landis amendment, then we cannot pursue, necessarily, some of the areas in 976, and I think Senator Pirsch and others deserve to have an opportunity to do that. The Landis amendment would, in essence, strip all of that out. So I guess I am speaking against the Landis amendment at this point, but I also want to comment for a couple of reasons on the Johnson amendment that Senator Landis wants to maintain, and that is being in public education, well, we use that a lot, but I have been around kids for a long time as many of you have, and the one thing that I am convinced of is that increasing the fine is not going to solve a problem, and as Senator Johnson has with his amendment, and maybe later when he gets his chance to speak a little bit, he can clarify some things for me, but the way I understand the amendment, if I am 18 or younger and I distribute and set up my own distribution network within the school, I am not covered necessarily by...in fact, I am not covered at all by the bill. The bill only refers to those 18 or older, or if they use a person 18 or younger to distribute for them. It totally, apparently it is inconceivable or it is not possible or it doesn't happen out there that actually someone 18 or younger will be in the business of making money by selling or distributing illegal drugs. And, in fact, that does happen out there, and this bill ignores that. So, consequently, I have a problem with that particular amendment simply because I think if we would agree with the amendment all that we would do is simply create a new what President Nixon would have called a private enterprise zone, because it certainly would bring a higher incentive I think for those young kids to get involved. And I don't think that is the message we want to send at all. I also think the body needs to go in and ask themselves a deep question as to why. are our young people buying the illegal drugs. Why

are they doing this? Because if we could get to the root of that question, why, that is where we need to attack. Because even if we agreed with 976, even if we agree with Senator Johnson's amendment, the question of why would not be answered. We are not attacking that problem and the situation would continue to exist, and I have a difficulty, I have a problem with that. Senator Pirsch is absolutely correct, we need to send the messages out there. But how many times do we keep sending the message? How many times do we keep saying, well, apparently we are not being strong enough, we need to send a stronger message? When maybe the message is being received but maybe we are not going at the right...doing the right process. Maybe the message we need to receive ourselves is the message of what we are doing in our society that is driving our children to use these drugs. Maybe instead of we always wanting to send a message, maybe it is time for us to receive a message.

SPEAKER BARRETT: One minute.

SENATOR BERNARD-STEVENS: And the message is our children are crying for help for one reason or another. Our children are escaping through illegal drugs for one reason or another, and they are crying for help and they are sending us a message, and we are responding to the message of help from these kids by saying we are going to punish you more. And I have a problem with that, and I think we need to really think about that as a body. I think we need to really think about that as a body. Thank you.

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

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

SPEAKER BARRETT: Debate ceases. Senator Landis, would you like to close on the adoption of your amendment.

SENATOR LANDIS: Mr. Speaker, let me open by saying that with the number of people off the floor, I think that there is a chance that they won't understand the intricacies of the amendments. I would like to ask for a call of the house. I will give a brief closing and then we can proceed to the vote. I ask for a call of the house, Mr. Speaker.

SPEAKER BARRETT: Thank you. The question is, shall the house go under call? All in favor vote aye, opposed nay. Record, please.

CLERK: 17 ayes, 1 nay to go under call, Mr. President.

SPEAKER BARRETT: The house is under call. Members, return to your seats and record your presence. All members outside the Legislative Chamber, please return and record your presence. The house is under call. Senator Landis.

SENATOR LANDIS: I wouldn't mind beginning my closing during the time people are coming in to compress the amount of time necessary to do this.

SPEAKER BARRETT: Thank you. If that is your desire, proceed.

SENATOR LANDIS: Thank you. There were a number of people not voting in the last couple of votes which makes me think they were off the floor, and if you come right back into the floor, you will have a tough time asking your seatmate what is up for grabs because it is getting pretty intricate. So I thought maybe we would have a chance to just talk about where we are in the process so you will know what this issue is when we get to the voting. Senator Pirsch has a measure which increases penalties in certain drug-free zones. They are to be posted, if possible. They are I think 1,000 feet away, as I recall from the terms of the bill, but the list includes schools, playgrounds, swimming pools, video arcades, and other locations, and the measure says that in this location penalties will be upped if drug sales occur. Senator Johnson has an amendment that says we will stiffen the penalties for the sale of drugs to kids. We will stiffen the penalties for the sale of drugs to kids, and this amendment that I am offering to the Johnson amendment says as we attach the Johnson amendment to 976, the original provisions are stricken. So it makes, if this amendment is adopted to the Johnson amendment, which I then would intend to vote for the Johnson amendment, it would say that we would be supporting increasing penalties for the sale of drugs to kids. We would not, however, be creating the drug-free zone concept that is now in 976. That having been said, let me tell you why I think that is the case, and perhaps it is easiest to do that by going through some of the points that Senator Pirsch made in a very articulate and heartfelt speech that she

gave a moment ago. In justifying LB 976, she indicated we were trying to protect children. Although we couldn't do all of the job, we were making a particular effort where they congregate. She pointed out that, for example, penalties have varied. For example, arson in an open field has a lesser penalty than arson in an occupied building. And my response to that is this, yes, we should protect children where they congregate but we should protect the solitary child as well. The child who happens to be on their own in a location outside one of these zones should have the same protection of the law as the child who is in one of these areas that is congregating. While it is true that there may be a difference in the criminal penalty for arson in an open field and arson in an occupied building, that is with good reason because the occupied building has a human life in it as opposed to the open field. Now, would we countenance the notion that arson in an occupied building with one person had one penalty but three people the penalty would be higher, and five people the penalty would be higher still, as if in aggregating the number of people, you are aggregating the heinousness of placing any human life at risk. Senator Pirsch asks us to send a message and the message of the Johnson amendment is this, and that is why it is the more important of the two messages. The message of the Johnson amendment is every child is precious, every child is equally precious, no matter where they are, no matter what shadow of what building they happen to be standing in, no matter where they are located in this state, every child is equally precious and to subvert any of them to a drug addiction is equally as heinous and should be (interruption) punished.

SPEAKER BARRETT: One minute.

SENATOR LANDIS: The message of the Pirsch bill, however, is that it is more heinous in some locations than others to entice children to drug usage. Of those two messages I think the far more critical one and the better public policy is that every child, no matter where they are located, is under the equal protection of the law and to subvert their will and to entice them into an addiction is a heinous act no matter where it occurs, no matter how many there are. No matter whether they are congregating or individual, it is the fact that they are young that makes them precious and that they are all entitled to be defended by an equal criminal penalty for the subverting whether they are as one or six or ten of them congregating at the moment.

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LB 976, 1059, 1062A, 1141, 1151

SPEAKER BARRETT: Time.

SENATOR LANDIS: Each of them is precious. I would urge you to adopt this amendment. Thank you, Mr. Speaker.

SPEAKER BARRETT: Thank you, sir. All present but Senator Peterson. Senator Landis, may we proceed with the vote? Thank you. The question is the adoption of the Landis amendment to the Johnson amendment to LB 976. All in favor of that motion please vote aye, opposed nay. Have you all voted? Please record. Senator Landis.

SENATOR LANDIS: Can I...pardon me, pardon me, nothing, Mr. Speaker.

SPEAKER BARRETT: I understand. Thank you. Record.

CLERK: 23 ayes, 14 nays, Mr. President, on the adoption of Senator Landis's amendment to Senator Johnson's amendment.

SPEAKER BARRETT: The amendment is adopted. I believe at this point, ladies and gentlemen, before we raise the call, we should announce that we have an annual proceeding which will take place momentarily in this Chamber, something that we look forward to every year, but before asking Senator Morrissey to make the appropriate motion and read some items into the record, the Chair would advise you that tomorrow morning we will begin our proceedings on the floor at eight o'clock with Final Reading; Final Reading tomorrow morning and we do need at least 30 members present to start our Final Reading. So I would ask for your cooperation. Hopefully, we will read on final until noon, at which time we will then proceed to the processing of additional senators' priority bills. Mr. Clerk, have you items for the record?

CLERK: Yes, Mr. President, I do. Mr. President, a communication from the Governor to the Clerk regarding a gubernatorial appointment. A new A bill, LB 1062A by Senator Bernard-Stevens. (Read for the first time by title. See page 1669 of the Legislative Journal.)

Amendments to be printed to LB 1151 by Senator Dierks; Senator Coordsen to LB 1141; Senator Withem to LB 1059. Two Attorney General's Opinions, Mr. President, one to Senator Nelson

county attorneys are not able to do the job, step in and carry out that function. In addition, there'd be 85,000 dollars each year for a Crimes Against Children Fund and this would help bring in expert witnesses for these different cases. A very important part of prosecuting crimes against children is having these expert witnesses. It's a very difficult case and these witnesses can come in and interpret and work with the children and this would be very valuable in helping to prosecute these cases. In addition, what we found is the county attorneys would like to have additional legal education in this area. We would provide 45,000 a year to do that, particularly looking at prosecuting crimes against children trying to assist them with the high turnover that county attorneys have and the problem they have in gaining expertise to prosecute in this area. We would provide for, on a one-time basis, trial aide publications, about 20,000 dollars. This would assist them with different reference materials across the state to help them in prosecuting these crimes. And, lastly, there'd be about 9,000 dollars for specialized training to send a county attorney or assistant county attorney to national training who would then be able to come back and train other county attorneys and assistants across the state. That's the package. It's a very important package and I hope that you'll advance the A bill.

PRESIDENT NICHOL: Any further discussion? If not, the question is the advancement of the A bill. All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 26 ayes, 0 nays, Mr. President, on advancement of LB 1246A.

PRESIDENT NICHOL: LB 1246A is advanced. LB 976.

CLERK: Mr. President, LB 976 was last discussed yesterday. When the Legislature adjourned for the day, Mr. President, they had...were considering an amendment to the bill by Senators Lowell Johnson, Pirsch, Peterson, and Beck. Senator Landis had an amendment adopted to that amendment. Mr. President, then I now have a priority motion. Senator Bernard-Stevens would move to reconsider the adoption of Senator Landis's amendment.

PRESIDENT NICHOL: Senator Bernard-Stevens, please?

SENATOR BERNARD-STEVENS: Thank you, Mr. President, and members of the body. This particular reconsideration I threw up

yesterday as the body might have been a little anxious to adjourn because of the frustration of the topic on that particular time period and we had other things, more ceremonial things, to do. And one of the things that happened yesterday was that a senator's priority bill was, in essence, gutted out and then simply what was left was an amendment that Senator Lowell Johnson had. And, quite honestly, my...I guess my problem with that procedure, though I have no problem necessarily of what the majority of the body wants to do, but I do kind of have a sense of fairness and fair play when we use an amendment to an amendment procedure which takes a simple majority vote and a senator's priority bill, that had not really been discussed, we had spent most of the time discussing a Pirsch amendment that was divided, and then we talked about Senator Johnson's amendment, we never really discussed the bill at all, that such a bill without real discussion of the merits of the bill could actually be gutted or defeated by a less than major...or less than 25 votes. In fact, I think there were 23 at the end. Mine certainly was there for the reconsideration purposes, so it probably, all practical purposes, was 22. And I filed the reconsideration motion yesterday and I was simply going to ask the body to decide which was they want to do, but I feel a sense of fair play simply to any senator in that circumstance where a priority bill that has been worked very hard for may have problems, which most priority bills do, because they're somewhat controversial in many cases, but any senator's priority bill to be deleted or gutted, in essence, on a less than 25 vote before the bill had actually really been debated on the merits, I really don't think that's a good procedure for the body to do. So I filed the reconsideration motion. I'll let the body obviously choose what they want to do. If the reconsideration motion is agreed to, then we would go back to the Landis amendment, to the amendment, and then I would then hope that we would defeat that amendment to the amendment which, in essence, gutted Senator Pirsch's priority bill, and that would then leave us to, if you can...if I do this correctly, Senator Pirsch's bill, LB 976, with a Johnson amendment. And then the body can deal with the Johnson amendment, up or down, whichever way it wants to do so, and then we'll finally get to the bill itself. And I think there's a lot to be said that Senator Pirsch, in a very excellent speech yesterday, a very moving speech, one of the things that she argued was that in the beginning that we don't want to begin "Christmas treeing" this particular bill with all the other bills that are out there because obviously now we're going to

get...bring the politics into it. If we can keep the focus on the bill, we can keep the focus on trying to make it a good bill, I think it has a good chance of getting through this body and sending a strong message on what we're trying to do. But if we get into the politics of it and try to bring too many things into it and/or we start using the procedure of the amendment, the amendment routine, I think we run into problems on that and I simply would like to give, as I would any senator, a fair shot at a priority bill and if we don't agree with it, that's fine, but at least to have it debated and discussed on its merits. I hope the body approves the reconsideration motion.

PRESIDENT NICHOL: Thank you. Senator Pirsch, please, on the reconsideration.

SENATOR PIRSCH: Thank you, Mr. President, and thank you, Senator Bernard-Stevens. I do appreciate this and I guess I would ask your support in reconsidering the vote. In speaking with several people, I think maybe there was confusion. I hope there was. And I hope that you will give me the opportunity to present my bill without the clutter and confusion that has followed. I would hope that you would vote to reconsider and then defeat the Landis amendment so we will have clear-cut issues before us and the will of the body prevails. I'm willing to accept that. But I think it should be the majority and I hope that you will give me consideration in this. Thank you.

PRESIDENT NICHOL: Thank you. Senator Chambers, please.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, how many times have I been shot down on this floor by virtue of an amendment with less than a majority? That's one of the weak....Senator Haberman says "not enough". Senator Haberman, you just wait. (Laugh) See, when I'm trying to be very serious, see what happens to me--kibitzers, peanut gallery shots. But I guess they got to take them when they can. But anyway, if the only argument that can be given for striking a very well thought out, carefully structured amendment is that you want to give a senator who has a priority bill a chance, that's weaker than cream. That's not even a worthwhile argument. And Senator Steve (sic)...Bernard...Senator Bernard-Stevens needed to look at this bill that he thinks is so great. For example, on page 2, this is some of the new language, "any person convicted of violating subsection (8) or (10) of this section shall not have the imposition or execution

of his or her sentence suspended for any reason." Suppose a person files an appeal and the appeal overturns the conviction? Then you've got to execute the sentence anyway. That's crazy. Senator Bernard-Stevens, this is not just a poorly drafted bill. This is the kind of thing that the Judiciary Committee is worthy...did this come out of the Judiciary Committee? Oh yeah, oh, okay. Yes, it did. This is the kind of thing you expect to come out of the Judiciary Committee, but this reaches a new low. You're going to execute a sentence even if the conviction is overturned on appeal. That's the kind of thing that creeps into a bill such as this when it's going, its purpose is to carry out a national agenda. George Bush decided he needed an issue and he picked it up during the campaign when Jesse Jackson touched a responsive chord in the public by talking about drugs. After Jesse Jackson raised the issue and these white politicians saw the reaction, that little short guy from Massachusetts grabbed the first "George Deukmejian"? "George Dukakis", he did it first. Then "Ronald Bush" jumped onto it also, and to show how shallow they were, they had no proposals, no rationale. They just said more prisons, and somebody else said that's not enough, then the death penalty. How about the army and the national guard and the navy? All of this insane nonsense, and the unfortunate thing is that there are politicians at lower levels who take all this mess seriously and they knew it was mess and that's why they never offered it before, but they decided that if it is, indeed, so serious that President Bush is going to go this way, maybe we on the local level missed something. So, despite misgivings, this kind of stuff like LB 976 comes before the committee and it should have been killed. I can't stop this kind of stuff in the Judiciary Committee from finding its way to the floor, but once out here the body has an obligation to not enact this just as a favor to a senator, whoever that senator is. How many times would I have liked to have been able to make an appeal to the majority on this floor in the words of "do me the favor"? You have walked on me so many times, be fair, be just, and somebody would say, hey, Ernie's got a point. In addition to being fair and just, the proposal has validity, but what I read, what I read in national magazines, the way Ernie talks on the floor is so upsetting I can't vote with him even when I want to. That's what I get. Now here comes Senator Bernard-Stevens talking some nonsense like strip a good amendment...

PRESIDENT NICHOL: One minute.

SENATOR CHAMBERS: ...from a bill as a favor to somebody, and we're not enacting legislation as favors, Senator Bernard-Stevens, to those who have trash legislation. We're supposed to be enacting fair, just laws that achieve a worthwhile social purpose. And if you can stand on this floor when you turn your light on and tell me that you think its constitutional to put into a bill that the execution of a sentence cannot be...give you the exact wording, "the execution of his or her sentence cannot be suspended for any reason," which would include overturning of the sentence on appeal. That's what he's asking us to go for. If a bill is a priority bill, don't say that it has a lot of trouble because it's a priority bill. That's the very reason it ought to be very carefully drafted.

PRESIDENT NICHOL: Time. Thank you. Senator Langford; followed by Senator Landis; Senator Bernard-Stevens.

SENATOR LANGFORD: Thank you, Mr. President. I want to thank Senator Bernard-Stevens for bringing back the reconsideration. I think this bill is something we need so badly to protect the spot where all children congregate.

PRESIDENT NICHOL: Pat.

SENATOR LANGFORD: The children....Pardon? The children are there because they're in school, or because it's a spot where they go for recreation. It may be a spot of geography, but it's where children are and they should be safe in their schools or in their play areas. I think this is a very good bill and, just to prove that I mean exactly what I am saying, I am going to withdraw my amendment on this bill when it comes up in hopes that it can go through clean. And again, thank you, Senator Bernard-Stevens, for giving us this opportunity.

PRESIDENT NICHOL: Thank you, Senator Landis, please; followed by Senator Bernard-Stevens.

SENATOR LANDIS: Mr. Speaker, members of the Legislature, I'm not sure I understand exactly the rationale here for the change. Although I certainly can sense that the waters are different; that some work has been done, I don't exactly understand what's the argument for the reconsideration. Is it that the principle that was adopted yesterday with this amendment to the Johnson amendment was mistaken? Is it an endorsement of the underlying

principle in LB 976? Apparently Senator Langford does...acknowledges that that's an appropriate rationale, but I'm not sure that I understand. Is it that we are returning to the notion that says that depending on where a child is located there should be a higher penalty for selling drugs to them? Because I couldn't make that out in Senator Bernard-Stevens' remarks and he's the next speaker. I'll be fascinated to hear. I don't think the discussion was confused yesterday. I don't think we were deluded. I don't think that we were confused. It seemed to me that the body was making a knowing choice. Senator Langford just expressed that value choice again. She said, you know, this spot where children congregate may be geography, but it's a place where children are, whether it's for school or for recreation. What if children are in a spot that is neither school nor for recreation? Should their protection be less? Is it somehow the case that they're fairer gam; that the wrong of selling them drugs in a location which does not happen to be school or does not happen to be recreation is somehow less, less heinous? I don't think so. The greater wrong is to sell drugs to kids, not that we sell drugs to kids in certain locations. That value choice was clearly spelled out yesterday and the body made a decision. I would be interested again in having Senator Bernard-Stevens explain to us what the principle that he is espousing is. If I understood it, it is more a deference to an introducer of a bill. And as much as the deference I would pay Senator Pirsch, who has served in this body for 12, the same 12 years that I have, and we have agreed and disagreed on many bills, I'm sure that Senator Pirsch would agree that if she had to choose between the well-being of children and paying deference to me, her choice would be the children, as legitimately it should be. That's right, whether it was my priority bill or not, if she thought the welfare of children was at risk, she would pursue that interest, would she not? That's why she's introduced LB 976. I feel the same way. Deference is irrelevant here. This is not a matter of deference. This is a matter of the welfare of children. My guess is that Senator Pirsch would acknowledge that that's what's at issue here, not deference, not names on bills, not protocol, not the niceties between senators, but what's good for kids, what's the best way to attack drugs. She's serious-minded about it, so am I. We happen to disagree as to which principle is more important. My guess is that her sensibilities are not so slender or thin that a good-faith discussion of how to pursue that agenda with a tough-minded attitude is legitimate. I am interested in understanding in what way today is different than yesterday, and

I will await Senator Bernard-Stevens to illuminate me on whether or not...

PRESIDENT NICHOL: One minute.

SENATOR LANDIS: ...the principle that we will criminalize the mistreatment of children based on where the child is located is somehow a higher value than simply the criminalization of the mistreatment of children, no matter where they are, 'cause that's what is at stake with this reconsideration motion. Thank you.

PRESIDENT NICHOL: Thank you. Senator Bernard-Stevens, please; followed by Senator Pirsch.

SENATOR BERNARD-STEVENS: Thank you, Mr. Speaker, members of the body. Senator Landis, I'll try to refresh your memory just a little bit. Sometimes you really intrigue me with your arguments. I remember, for example, on Commonwealth earlier this year you pleaded to the body for a sense of fairness, a sense of justice, of right, doing what's right. It may not be the best political thing to do, but it was a fair play because you wanted the Commonwealth voted on before the other A bills. I remember last year, again on Commonwealth, beseeching the body for a straight shot, a fair play, a straight shot at it, none of the other things, just give me one shot and if I don't have the votes I don't have the votes. I remember yesterday, Dave, Senator Landis, that before we came to a vote there was a call of the house and one of the things that's done sometimes in the body is when there haven't been a lot of people present so they may not have heard the debate and they may not really know what is currently pending, Senator McFarland usually does...has done this in the past, but you used the procedure, which is perfectly acceptable, of asking for a call of the house, and as people were coming in you then began to give a closing so that they might have a clue of what it was they were voting on. You didn't wait for them to come in so they hear all that they're voting on, but you went ahead to expedite matters and explained as they were coming in. And what happened, in my sense of the body yesterday, is that many members were not quite certain what actually was being voted on. I think you were very clear and you were not deceiving at all about the explanation of your amendment. I have no question about that. But I think there are many members of the body who said, you know, I was...I didn't realize, Senator Pirsch, that your priority bill was

going to be, number one, taken out totally, and the number two thing that was interesting was many members in the body were looking at the board and they said, oh, wouldn't you know, it only got 23-24 votes, it didn't pass, it needed 25. They were unaware, because they just weren't paying that close attention, that, again, an amendment to the amendment just takes a majority vote. In fact, Senator Landis, you were in fact ready to call the house and have a roll call vote because even you thought it took 25 and then you realized your mistake and said, excuse me, I don't need to do that because I've won. There was a lot of confusion out there. And so this is one of those where I say, David, it's also time for fair play on this side. There was some confusion. I feel we need to give Senator Pirsch a straight shot. I think we need to do what you've asked us to do many times, and that is give a fair shot to the bill, and if the votes aren't there, they're not there. And I think we need to try to be consistent in our arguments. Senator Chambers makes some very interesting arguments, and I'm not going to respond to a lot of them right now. We'll wait and see how the reconsideration vote goes. But, Senator Chambers, I'm always one to...it's always easy to be a person and criticize and say, I don't like this, and do you realize this does that, and how can you vote for something this asinine, and I agree, there are certain parts in that bill that are literally disgusting as far as what they would do and need to be changed. But that's what the amendment process is for, Senator. If you have so many problems with parts of the bill, you can take those parts out as an amendment if you want.

PRESIDENT NICHOL: One minute.

SENATOR BERNARD-STEVENS: If you don't like certain parts of the bill, you can come back through the amendment process and that's the way our process works, Senator. Senator Chambers talks about degrees of punishments sometimes, about increasing punishments for crimes, and isn't that a terrible thing. Shoot, we do that all the time with our children. We find a level of punishment that fits the need of what we're trying to get across to them. If that doesn't work, we try to the ante. Maybe we're just going to have a talking with them. Maybe we're going to have a family meeting. Maybe we're going to take away a toy. Maybe we're going to do something else. But we always increase the ante if it gets very, very serious. And, Senator Chambers, we're saying in this body that we have a very, very serious problem, one that destroys our kids, one that destroys our

children and we're willing to up the ante, and if you're not willing to up the ante that's fine, but I think the rest of the body is.

PRESIDENT NICHOL: Time.

SENATOR BERNARD-STEVENS: And I think we need to give a little fair play and give Senator Pirsch a chance straight up. Thank you.

PRESIDENT NICHOL: Thank you. Senator Pirsch, you're next, but may I introduce a guest please? Under the north balcony we have with us today Mr. Clyde Webb, who is the Commander of the Nebraska Wing of the Civil Air Patrol. Mr. Webb, would you please stand so we may recognize you? Thank you. While I have the floor, Senator Pirsch, Senator Morrissey and Senator Wehrbein have guests in the south balcony. We have 11 seniors from the Lourdes School and their teacher. Would you folks please stand and be recognized? Thank you. Then Senator Rogers has 16 seniors from Greeley, Nebraska, High School and their teachers. Would you folks please stand? Then, from the Auburn area, Senator Morrissey has some guests under the south balcony, Tom Smiley, Mark Kubik, Theresa Hamilton, Gary Volkmer, Darrell Wellman, and Bill Nelson. Would you folks please be recognized? Thanks to all of you for visiting us today. Senator Pirsch, thank you.

SENATOR PIRSCH: Thank you, Mr. President. Senator Landis, why does it have to be either/or? That's what I can't understand. And I don't think that some who came later at the end of the vote did know that, and some have told me that. I think both are important, and I think both complement each other. I'm not putting a higher value on drug-free school zones, and I don't think you should put a higher value on selling to minors. I think both are important and have been asked for across the state so that children will be protected, and I supported Senator Johnson's amendment. Mine is not a higher value and you're right, I did not bring LB 976 and defend LB 976 because of political value, but because I believe very strongly that this is another way we can get the message across, not only to the drug dealers but to the children who frequent these areas. Tell me why these two bills are not copacetic. Tell me why you cannot accept both concepts that we have these areas and we mark them, and it's like the radar controlled zones. We say, hey, those who would sell drugs to our children, these are areas

where our children gather and so we say stay away, keep away from our children and where they gather. I agree also, and if you agree that selling to children does deserve, is more heinous a crime, does deserve a more severe penalty, I can't understand why that is not copacetic with those areas where we hope our children are safe. I did not get a chance to debate LB 976 and perhaps it does need amendment. The specific thing that Senator Chambers spoke to, of course, is covered in other sections of our statutes and if any of LB 976 needs amendment then we look at that, and usually, after we discuss a bill on General File, that's when amendments come on Select. I would like that opportunity. I certainly was told of no amendments that needed in Judiciary Committee. Judiciary Committee passed it out without amendment. I don't understand...

PRESIDENT NICHOL: One minute.

SENATOR PIRSCH: ...how one cannot be compatible with the other and I would be glad to discuss drug-free school zones and other places, playgrounds, but, Senator Landis, with 22 votes, 23, Bernard-Stevens to reconsider wiped out that opportunity and I hope that you vote to reconsider; that you do deny Senator Landis's amendment and allow those kinds of discussions to follow.

PRESIDENT NICHOL: Thank you. Senator Chambers, please; followed by Senator Morrissey and Senator Hall. Senator Chambers, please.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, let me say why I say this is a political bill, not ascribing those motives to Senator Pirsch. This kind of bill never came to us until the Bush administration got on its hobby horse. Then it never came to us until the federal government's representatives came down here and said, we don't want to handle this because it's burdening our system, we want to dump it on the state. As Senator Pirsch pointed out to you, this kind of stuff can be done right now by the federal government, but they even had a meeting and they talked to Douglas County District judges and wondered if there was going to be direct opposition to the federal government trying to do this, and I think the judges said they would not take a position opposing it. But that's where...that's why this bill is here. And, Senator Pirsch, if you're not aware of it, I want to tell you whatever a U.S. Attorney does, who is a political appointee and often a

political hack who can't make it in private practice, whenever that U.S. Attorney gets involved in politicking on a bill and lobbying it's because he's doing the administration's work. That's why Ron Lahners and those others were down here--the administration sent them. I'd like to ask Senator...Senator Langford, I'd like to ask you a question, and while she's coming I'll just make a couple of more comments along that general line.

PRESIDENT NICHOL: Senator Langford, please.

SENATOR CHAMBERS: Oh, she's here. Senator Langford, I was...

SENATOR LANGFORD: Mr. Speaker, yes.

SENATOR CHAMBERS: ...I was somewhat distracted. Did you say earlier that an amendment that you were going to offer you're going to withdraw?

SENATOR LANGFORD: Yes.

SENATOR CHAMBERS: Have you talked to the Governor since yesterday?

SENATOR LANGFORD: No, I have not.

SENATOR CHAMBERS: Can you explain why you decided to withdraw it?

SENATOR LANGFORD: Because I want this bill to go through and if my...

SENATOR CHAMBERS: Without any amendments.

SENATOR LANGFORD: Pardon?

SENATOR CHAMBERS: When you say "go through" you mean without any amendments.

SENATOR LANGFORD: Well, I don't want to try to put my amendment on which you don't like, and you're the one that I'm not...that I feel will give me the most trouble because it's suspending driver's licenses with drug convictions.

SENATOR CHAMBERS: Okay, don't explain the bill. So then you

haven't discussed withdrawing your amendment with anybody from the Governor's Office.

SENATOR LANGFORD: I have not.

SENATOR CHAMBERS: Okay, thank you. There's a commercial out that the Governor is giving in her reelection campaign that refers to the work she's done to get drug-free school zones and the bill hasn't even passed. I bet if I went around this room I could find some people in here that the Governor has talked to about this and the necessity of salvaging a program. Senator Korshoj says she hasn't talked to him. Senator Korshoj, I think any communication between you and the Governor would not be described as "talk" anyway. (Laugh) Senator Korshoj is one of those people that you've got to use something a little more...a little more forceful than just words to make a point if he's in opposition to you. But I listened to Senator Bernard-Stevens talk and if we were talking about rearing little children, if we're talking about a day care center then what he said would be right on point, but he's new here, wet behind the ears. Somebody called him "David fighting Goliath" and that kind of caught his fancy, so now he's on a hobby horse comparing giving somebody a life sentence to upscaling the punishment you give for your children. First of all, if you love your children, Senator Bernard-Stevens, you don't have to always be doing that punishing. If I go by my experiences as a father with my children, I didn't whip my children, I didn't scold my children, I didn't try to humiliate them, none of that. I used to take my children for rides on the bus, took them for walks all the time, changed their diapers, fed them, let them work with me when I was washing dishes, when I was cooking and developed a rapport where this concept of doing harsh things to children did not enter into the relationship between me and my children and maybe that's why...

PRESIDENT NICHOL: One minute.

SENATOR CHAMBERS: ...I condemn so strongly those kind of activities when I see them institutionalized in schools, in Sunday schools, in day care centers and other places. So maybe, Senator Bernard-Stevens, what you see as undue leniency on my part is the humanity that I developed in treating children the way I wish adults would treat all children; the way perhaps I wish I had been treated by adults when I was a child. But that is not what we're talking about here. I realize this is a

childish bill. I realize there are childish motivations behind it and the understanding level is childish, but we're talking about very serious things when we try to incorporate some of these simple-minded notions into the law that has to be enforced on people out there who are an unwitting public thinking they have a Legislature more responsible than a majority of this one may show itself to be. So I'm opposed to your reconsideration motion. There is no validity to it, and when the strongest argument you can give again is that you want to do somebody a favor, you don't have an argument.

PRESIDENT NICHOL: Thank you. Senator Morrissey, please.

SENATOR MORRISSEY: Thank you, Mr. President and members.

PRESIDENT NICHOL: Just a moment.

SENATOR MORRISSEY: I oppose.

PRESIDENT NICHOL: Try it.

SENATOR MORRISSEY: Hello. Am I on?

PRESIDENT NICHOL: I think so.

SENATOR MORRISSEY: Time?

PRESIDENT NICHOL: (Laugh)

SENATOR MORRISSEY: Mr. President and members, thank you, I think. I'd oppose the reconsideration motion because no one has given me a good reason why to reconsider, if not for a political reasons. You want to protect the children. We've done that. Senator Landis's amendment will do that. It doesn't just say protect the children in the school zones. It says protect the children. That's what our ultimate end is. If it's not political, what is the reason? We didn't have any...show any sympathy to Senator Beyer the other day when we gutted his priority bill, and you probably won't show me any sympathy if you have anything in mind for my priority bill when it comes up. If it's not political, what is the reason? It's what's hot, what is politically hot, and the term, the words "drug-free school zone" are hot. Drugs are hot; alcohol is not. The drugs are. Bennett was in town the other day and said, don't do what's right, don't do what's the biggest problem, - children and

alcohol; do what's hot--drugs. And that's the same thing we're talking about here, folks. We have to have the words "drug-free school zone" stenciled on this, no matter if what we're doing is right or not. And if you want to build a foundation for a good bill, I bought my grandparent's house a few years back, a hundred years old. Spent a ton of money on it trying to fix it up and I've got the same thing as I had then--a hundred-year-old house that needs a lot of work. If you want to build a drug bill, build off a good base--build off of Senator Johnson's amendment. Start here and build from this. You might not get the terms drug-free school zone in there but I bet we could probably stamp it on there somewhere if someone really feels that will do a lot of good. But if you want to build, build off the good base, the amendment we have, and don't go back to the quagmire of LB 976. I'd urge you not to reconsider and I'd like to give the rest of my time to Senator Landis.

PRESIDENT NICHOL: Senator Landis, please.

SENATOR LANDIS: Thank you. I was asked...

PRESIDENT NICHOL: Three minutes.

SENATOR LANDIS: ...a couple of questions and so I'll try to answer those questions. Got an appointment to go explain an appropriation to the Governor so I'll have to leave at 2:30, but I'll do this quickly and then leave momentarily. First question was by Senator Bernard-Stevens and it was about, now wait a second, haven't you asked for a straight shot for your issues in the past; wasn't that your claim for fairness; why can't you then give Senator Pirsch the same treatment? Fair?

PRESIDENT NICHOL: Are you asking that as a question?

SENATOR LANDIS: No, I'm just establishing that that's the question that has been asked of me.

PRESIDENT NICHOL: Okay.

SENATOR LANDIS: And the answer to that question is this, if you wish, Senator Bernard-Stevens, to give Senator Pirsch a fair, straight-up shot on her bill, simply kill the Johnson amendment. My amendment is not to her bill. My amendment is to the Johnson amendment. I have not amended Carol Pirsch's bill. It is there to be, at this point, amended by the Johnson amendment. You are

not reconsidering the Johnson amendment. You're reconsidering only my amendment to it. If your reconsideration is successful, then what will be before the body is still the adoption of the Johnson amendment, which will alter Carol Pirsch's bill. If you want to get to the place of a straight-up shot on the Pirsch bill alone, all you have to do is defeat the Senator Johnson amendment. As a matter of fact, that's the only way to get to a straight shot on the Pirsch bill. You can't get there from here, because after your reconsideration success, well, you go to Lowell Johnson's amendment. You still don't have a straight-up shot on LB 976. If you want that straight-up shot, withdraw your reconsideration motion and kill the Lowell Johnson amendment. Then what will be before the body is exactly what you think this body should have. With respect to Senator Pirsch's question, "why can't both of these ideas coexist," the reason is because the two principles are, in one sense, antithetical. It is the relationship between, let's say, the color black and the color white. Now they can coexist side-by-side, but they cannot coexist at the same location. Why? Because black is the absence of white, and white is the absence of black. It's the absence of all color. You can't have them together. In fact, gray is not black and white put together. Black will simply be the color when you're mixing two different light sources. Now what this means is this; if, for example, the Lowell Johnson amendment is adopted to the Carol Pirsch bill, you will have a strengthening of the penalties for selling to a minor, which will then be enhanced double should it be done close to a school, which means then that you have two different levels. This new higher standard for selling to a kid and then that, itself, being doubled if it's done in front of the school. You can't get the notion of a high penalty for selling to children which is uniform geographically and have LB 976 in its original form. You must give up that to get LB 976.

PRESIDENT NICHOL: Time.

SENATOR LANDIS: And for that reason it is impossible for those two ideas to coexist. Of the two, Senator Johnson's idea is much stronger because it protects kids and not geography and that's why it's the better policy.

PRESIDENT NICHOL: Thank you. Senator Hall, please; followed by Senator Landis. The question been called, do I see five hands? I do and the question is, shall debate cease? All those in

favor vote aye, opposed nay. Senator Hall, I think we're short some members. Where are your friends?

SENATOR HALL: Well, let's not get personal.

PRESIDENT NICHOL: Record, Mr. Clerk, please.

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

PRESIDENT NICHOL: Debate has ceased. Senator Bernard-Stevens to close, please.

SENATOR BERNARD-STEVENS: Thank you, Mr. President and members of the body. Very briefly, and I'll give the rest of the time then to Senator Pirsch...

PRESIDENT NICHOL: Senator Pirsch, please.

SENATOR BERNARD-STEVENS: No, no, I want to say a comment first, then I'll give...give the time. Mr. Nichols (sic), you know I'm not going to not say anything on the bill. I've got to say something.

PRESIDENT NICHOL: Well, I was just hopeful.

SENATOR BERNARD-STEVENS: I know. Members of the body, Senator Landis made some good points and there is...there are many ways that we can get around to get in a fair shot at Senator Pirsch's bill. I chose this method. It seemed to be...it seemed to be as good a method as anyone...anything else. Yes, you can go one way or you can go this way, and this is the one that's before us now. So we have an opportunity at this point to simply say that we are going to go back, look at what we did and move on at that particular point and give the bill a fair chance for the most part. And I'd like to go ahead and point out that, you know, one of the things that I've always tried to do is a sense of fairness on the floor, and that goes back to something like this or whether somebody tries to shut off debate from General, Select, to Final Reading, or we're trying to shut off debate and give no one even a chance of a particular time period, and I object to those type of things and this is being very consistent in what I've been trying to do. Senator Pirsch, I give you the rest of my time.

SENATOR PIRSCH: Thank you, Senator Bernard-Stevens, and again

thank you for your consideration in bringing this again before us. Yes, you can have black and white in the same area. You cannot charge two counts. You, the prosecutor, would pick one or the other. You can enhance the penalty only once and my legal counsel tells me that legislative intent would establish that, but also that could be an amendment on Select. Again, I ask you. Thirty-seven states have done this in their state. It has been effective. It is copacetic with selling drugs to minors and I ask your support in reconsidering and taking off Senator Landis's amendment.

PRESIDENT NICHOL: Thank you. Ladies and gentlemen, the question is the reconsideration of the Landis amendment to the Johnson amendment. All those in favor for reconsideration vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 26 ayes, 5 nays, Mr. President, on the motion to reconsider.

PRESIDENT NICHOL: The amendment to the amendment will be reconsidered. May I introduce some guests, please, in the north balcony. They are guests of Senator Langford, Senator Lowell Johnson, and Senator Korshoj, and they are with the FirstTier Bank 55 and Better Club, Fremont, Blair and Kearney. There are about 60 members. Would you folks please stand and be recognized by your Legislature? Thank you for visiting us today. Senator Pirsch. Senator Pirsch. Senator Pirsch, may I have your attention a moment? We're on the Landis amendment and he is excused. Did you wish to take his amendment?

SENATOR PIRSCH: Oh my! I will try to be fair. Senator Landis's amendment would completely gut the original intent of LB 976. Senator Landis's amendment would also retain the Johnson amendment, which is...which has involved selling drugs to minors.

PRESIDENT NICHOL: Excuse me, Senator. Excuse me a minute.

SENATOR PIRSCH: Uh-huh.

PRESIDENT NICHOL: Senator Chambers.

SENATOR CHAMBERS: Point of order. Is Senator Pirsch handling Senator Landis's amendment?

PRESIDENT NICHOL: Yes.

SENATOR CHAMBERS: No, I would object to that.

PPRESIDENT NICHOL: Okay.

SENATOR CHAMBERS: I wasn't aware that Senator Landis wouldn't be scared up. I'll talk about it or let anybody other than the opponent.

PRESIDENT NICHOL: Okay. May I ask, did Senator Landis appoint anyone to handle this for him? Alright, we'll do that, Senator Chambers, since you're on the pro side there. He did not appoint anybody, but if you're volunteering we'll go along with that.

SENATOR CHAMBERS: And, for the record, he did check out to be excused?

PRESIDENT NICHOL: Yes, I understand that's true. Senator Withem?

SENATOR WITHEM: Yes, and I am not attempting to enter into the debate or anything other than I think this is an important question that maybe needs to be clarified as we go through as to what happens when an amendment is pending, a matter is pending and the individual that's carrying that is not present, and I think our customary fashion is to allow a person to either have appoint...designated somebody to do that. In that absence, it's usually not taken up, is my understanding, and I don't think it makes a big difference in this particular case. I'm sure Senator Chambers can do justice to it, but I'm wondering some time when I'm gone and I have something pending, I don't know if I just want whoever wants to stand up and volunteer to take that to be taking it, so I'm concerned about the precedent that may be being set here. And I have no problems with the amendment or with Senator Chambers handling that, but I just think it's probably not covered in our rules and we need to at least talk about the rationale for doing what we're doing.

PRESIDENT NICHOL: I would think that you're correct. We should really probably have somebody on the proponent's side open up with it since we're starting to reconsider, rather though someone who is opposed to it. So I'll take the responsibility and the blame for a bad decision. Senator Chambers, do you wish

to proceed on it?

SENATOR CHAMBERS: Mr. Chairman, I would agree with Senator Withem because what we have now as a result of that vote is the Landis amendment pending. It's as though we hadn't voted on it. So if he had offered his amendment and were not here, we'd pass over his amendment and go to the next one and I think that would be appropriate at this point. I'm not in a position where I want to do it, but that's why I said anybody who is for it rather than an opponent, if we must take it, but I think the better choice would be to let his amendment pend, as it would be, pass over it and proceed in that fashion, and I will let that be the extent of what I'm going to say on that.

PRESIDENT NICHOL: Well, we're at somewhat of an impasse here inasmuch as at this stage of the session, with not much time left, I hate to jeopardize a bill. We have other amendments. I don't know if they fit in with the amendment by Senator Landis to the amendment or not, and I don't have any way of knowing that at this time. However, ...and I don't know that our rules cover that exactly. Senator Johnson. Thank you for your tolerance. We worked this out, I believe, to the satisfaction of everyone, and that is this; that we will continue on the Johnson amendment with other amendments to it and hold up the Landis amendment until Senator Landis gets back. So with that, Mr. Clerk, would you please tell us what the next amendment to the Johnson amendment is?

CLERK: Mr. President, Senator Chambers would move to amend Senator Johnson's amendment on page 3, line 8, strike "IB" and insert "IC".

PRESIDENT NICHOL: Okay. Senator Chambers, please.

SENATOR CHAMBERS: Mr. Clerk, in order that I can be where we are, you read where it's located. It's on page...?

CLERK: Page 3, line 8, Senator.

SENATOR CHAMBERS: Oh. Members of the Legislature, if any of you want to follow this, it's on page 1346 of the Journal, page 1346 of the Journal, and it's in line 8, the line 8 that's nearest to the bottom of Senator Johnson's amendment. In fact, it's the fifth line from the end of Senator Johnson's amendment, and what I'm trying to do is change this "IB" felony to "IC". I

had tried it the other day on an aspect of this bill where you might say the conduct involved is more serious than what this would be that we're talking about, and to try to bring us back somewhat to the subject that we were considering, the bill is designed to achieve a level of punishment one notch above that which is ordinarily prescribed if the act involves somebody 18 or older dealing with somebody younger than 18. A Class IC...Class IB felony carries a punishment of up to life. There is no other crime besides homicide in this state that carries a life sentence, and I don't believe that we should get so carried away with the hysteria and the other things associated with fighting this so-called drug war that we begin to impose sentences that have no rational basis, no logical basis, and that will throw out of kilter the rest of the law as far as sentencing people for crimes. It's one thing to state as a principle that young people need to be protected from drugs, they need to be protected from those who would try to get them to use drugs, try to persuade them to sell drugs, or try to persuade them to transport drugs. But in our abhorrence for that kind of conduct, we should not skew the entire system of sentencing that exists in the statutes now. When we begin to change punishments on a piecemeal basis, we wind up with a set of circumstances where, at some point, the public is going to become aware of what we've done and say, well, you have such a serious punishment for that but this other act, which is far worse, doesn't carry that stiff a sentence. Senator Johnson, I'm going to ask you a question because it's your amendment, but not for the purpose of trying to trick you in any way. Do you think that it's worse to give drugs to a young person than it is to cut a young person's arm off with a meat cleaver, such as the kind that our Speaker had the other day.

SENATOR L. JOHNSON: I have it in my drawer.

SENATOR CHAMBERS: Oh, I'm glad I'm over here and you're over there. How are you at throwing those things? Well, I have Senator Conway between us and a cleaver won't hurt wood too much, which is what his desk is made of. But, Senator Johnson, here's my question. Which do you think is worse? We've got a child here. Well, anybody 17 years, 364 days old is covered by this bill. So, in effect, one day can be the difference between the one doing this and the one being persuaded to do it, and the one doing it can get life. You've got two youngsters. One, they could be brothers. They could be twins. One was born at 11:59 today and the other is born at 12:03 tomorrow, so in

effect they're the same age, but because one is 18 and the other is not, then the 18-year-old gets life. But that's not what I'm asking. Here's what I'm asking. Is it worse for that person to give a counterfeit drug to somebody? This means it's not narcotic. Doesn't produce any effect. It is not a controlled substance. It's a counterfeit. You give that to this youngster and the youngster ingests it and nothing happens, and a person under the right circumstances can get life for having given that. Now, let's take that person, instead of giving the pill he takes that meat cleaver and chops the arm off, or both hands off this other one, because the other one would receive the drugs and he doesn't think he should receive the drugs so he chops the hands off. Which do you feel is worse? You want to let your aide answer? (Laugh)

SENATOR L. JOHNSON: Just pointing out a difference in that the current statutes do not distinguish between counterfeit and real.

SENATOR CHAMBERS: Then let's let it be real. But what I am saying is it can be counterfeit, so I want to deal with, since there's no distinction because I'm saying you treat them the same so it can be a counterfeit drug that gets somebody life. Would you agree with that under your bill?

SENATOR L. JOHNSON: It's correct.

SENATOR CHAMBERS: Okay. So somebody gives a counterfeit drug and they can get life. Which do you think is worse--giving the counterfeit drug or chopping the person's arm off?

SENATOR L. JOHNSON: I am unable to answer that.

SENATOR CHAMBERS: Thank you. I've got to ask somebody who can. Senator Hall, are you willing to give an opinion?

PRESIDENT NICHOL: Senator Hall, please.

SENATOR CHAMBERS: Senator Hall, which of the two do you think is worse?

SENATOR HALL: I think clearly chopping the young person's arm off.

SENATOR CHAMBERS: And suppose it got good to me and I chopped

the other arm off?

SENATOR HALL: Well, I think that would be probably twice as bad.

SENATOR CHAMBERS: And yet which do you think ought to carry the most severe punishment?

SENATOR HALL: The example that you give, I would say that the penalty for the chopping off of the arms should be the more severe one.

SENATOR CHAMBERS: Thank you, Senator Hall. Now back to you, Senator Johnson. Which of the two allows for the harshest sentence--giving the counterfeit drug or chopping off the limbs?

SENATOR L. JOHNSON: Counterfeit Drugs Act.

SENATOR CHAMBERS: Do you see what I mean about skewing our system of punishments because we're frantic now and we're going to give a life sentence to somebody who gives a counterfeit drug to somebody a day younger than he or she is, but if that person, instead of giving the counterfeit drug, chopped off the arm, the leg, the ears and did everything short of actually killing the person and the one who gives the counterfeit drug is exposed to a life sentence. I'm saying that I think with these overlapping punishments we're doing nothing anyway, but this "IB" felony is not, strictly speaking, an overlapping because it does change the maximum. And I think it is a mistake to do that. So what my amendment would do is say that, instead of having, and I still think what I'm suggesting would be too harsh if you adopt my amendment. My amendment would say you change that "IB" to a "IC", but if you're going to make it a "IB" you may as well make it "IA", whatever the death penalty is. Do...go all the way like they've done at the federal level. Do like those people running for Governor in Texas have done. One who's running for Governor say, I would execute so many; the other one say, yeah, but I was Governor and I did execute more, and if I get to be Governor I'll execute even more than that. What kind of argument is that for people in a humane, civilized, or purportedly civilized culture to be boasting about? And if you're talking about giving messages, what kind of message does that give to the young people? The top person in the government is saying, elect me because I will see...

PRESIDENT NICHOL: One minute.

SENATOR CHAMBERS: ...that more people are killed than anybody else. You inflame people's passions; you get votes. But in the meantime, you do irreparable harm to those impressionable people. This kind of punishment put in the statutes ought to be stricken. It makes no sense. It is not logical and it's completely out of step with the attempt that was made years ago to bring some kind of logic to the sentencing structure. Now I know Senator Lowell Johnson did not sit down and craft these punishments himself. I'm sure that somebody recommended the bill and he had confidence in those people because they have the expertise. So I'm addressing my comments to Senator Johnson because it's his amendment, but I'm not blaming him for what's in there. What I'm trying to do is call it to the attention of enough of us to strike it from that amendment. You would still have a punishment, a possible punishment of 10 years to 50 years for somebody giving a counterfeit substance to another person.

PRESIDENT NICHOL: Time. Thank you. Senator Morrissey, did you wish to speak about this?

SENATOR MORRISSEY: Yes, Mr. President and members. I would rise to support Senator Chambers' amendment. What he's saying only makes sense. We're losing sight of what we're doing. In the name of drugs, we're going to do whatever it takes. We're saying drugs is the most heinous crime, the most heinous crime that we can think of. Again, I'll refer to Secretary Bennett's trip to Lincoln and the hypocrisy of what we're doing here. We know that alcohol is the biggest problem with our kids. We know that for a fact. We know alcohol and tobacco kill many times more people in this country, in this state than drugs, all drugs combined, but we...it's popular to pick on drugs. We experienced this in the railroad for six, seven years. All of a sudden there was a drug problem in the railroad. Some senator's mistress died on an Amtrak crash in Washington, D.C., so all of a sudden, boy, TV cameras flicked on and we're on drug testing no matter what. Talk to the Senators and House of Representative about other safety issues, we don't want to hear it; drugs is issue; we don't want to hear it. But there's more people hurt by these other safety problems, we don't want to hear it; drugs is the issue. And that's what we're doing here. That's what we're doing here. And I hate to just keep saying what Senator Chambers has said, but it's just simply because it's political; because it's the hot issue right now. We refuse

to face up to the problems with alcohol. It's the biggest problem there is and we insist on going overboard with penalties for drugs that we wouldn't even consider. Life in prison, we wouldn't even consider that for many, many other heinous crimes. So you're making a judgment call here that doing drugs is just the worst thing possible. We can't take the time to address the root of the problem. We can't take the effort to address poverty, ignorance, and hopelessness. It's much easier to simply stand up here and say, well, execute them all. I've got a cartoon here from the Christian Science Monitor. I had it all ready to pass out, but I haven't passed it out except for Senator Korshoj. It says, "Vote for me; I'll execute the convicted murders." The other man says, "Oh yeah? I'll execute arrested murders." His opponent says, "I'll execute suspected murders." And his opponent says, "I'll execute people who haven't even done anything yet." The opponent says, "What", and the politician...the politician says, "Thank you. Thank you. I love you all." And that's where we're heading, folks. That's where we're heading. I'd urge you to adopt Senator Chambers' amendment.

PRESIDENT NICHOL: Thank you. Senator Bernard-Stevens, please; followed by Senator Hall and Senator Lowell Johnson.

SENATOR BERNARD-STEVENS: Thank you, Mr. President and members of the body. Senator Johnson, you know, I'm not sure what you're going to say or do on this particular amendment, so I'll guess I'll try to say what I think we would do, and I don't think it's that bad of an amendment to agree to and I'll try to state why, though, on the other hand, I will also be able to argue, Lowell, where it may not be that helpful, as well. What Senator Chambers is actually trying to do is simply say that when we're comparing crimes, whether we're talking about ounces of marijuana or speeding 200 miles an hour down an interstate or something along that type, that there is a difference in the type of crime committed and certainly there should be a difference in the type of punishment, and that the bill is going to get those skewed in a particular manner. Instead of going to the "IB" level that would be the ceiling, if you wish, on your amendment, Senator Chambers is going to just try to lower that ceiling, you know, just one step lower, and I guess theoretically I don't have a problem with that because, in my mind, the court's word, if we went to the top, the "IB", I doubt seriously that we're going to get life imprisonment or anything else; that they're going to get some type of so many years. I

also have this feeling that if the crime was so bad that the judge felt that it needed to be a higher one, then he would probably go to the maximum of 50 years. And I'm really not sure, you know, even if we went to the higher one and you took...take the good time and everything else, would probably be right around that 50-year period anyway or below. So I'm really not sure if the Chambers amendment harms the amendment that you offer at all. In fact, it may make it a little bit easier for some other people a little bit more palatable to support the amendment. I guess my feeling, members of the body, is the amendment is a...is one that you can go one way or the another and it really doesn't change the focus of the amendment, so it's simply a policy decision of what the body wants to do. In this particular case, if you agree with the Chambers amendment, you may in fact on the very serious crime set the ceiling and the floor at 50 years, but you can't go above that. If you reject the Chambers amendment, then you can go to the "IB" category, but chances are the way decisions have been made, in most cases you won't get the maximum so you're going to be right around the "IC" category or below that Senator Chambers would set with his amendment anyway. So I really feel that in this particular case, if it makes the amendment a little bit more palatable, it certainly doesn't change the intent of what we're trying to do. It certainly sends a strong message. I think this is one that we could agree to and it wouldn't slow us up much further and we might be able to move on. And with that, members of the body, I would...I guess I would urge the adoption of the amendment because it doesn't change that much of the intent of the Johnson amendment at this time. Thank you.

PRESIDENT NICHOL: Thank you. Senator Hall, please; followed by Senator Lowell Johnson.

SENATOR HALL: I'll pass.

PRESIDENT NICHOL: Pass. Senator Lowell Johnson.

SENATOR L. JOHNSON: Mr. Speaker, members of the Legislature, Senator Bernard-Stevens said it better than I can even, and I would say that it would be agreeable to me, as introducer of the amendment, to accept the "IC" classification.

PRESIDENT NICHOL: Okay, thank you. Senator Chambers; followed by Senator Hefner. Okay. Senator Hefner, please. Question been called, do I see five hands? I do. Two of them are on one

person, though. There I do. The question is, shall debate cease? All those in favor vote aye, opposed nay. We're voting on ceasing debate. Record, Mr. Clerk, please.

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

PRESIDENT NICHOL: Debate has ceased. Senator Chambers, would you like to close, please? One second, okay.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, there is another spot in the bill where that same thing appears and the rules will allow me to modify my amendment, if there's no objections, so I want to ask Senator Johnson would he...

PRESIDENT NICHOL: Senator Johnson, reply please.

SENATOR CHAMBERS: Senator Johnson.

SENATOR L. JOHNSON: Yes, sir.

SENATOR CHAMBERS: You know where that other place is where that same thing appears.

SENATOR L. JOHNSON: Line 1 on page 2, or line 2.

SENATOR CHAMBERS: Would you object to my modifying my amendment so it picks that up too, and they can both be handled with this one amendment?

SENATOR L. JOHNSON: No, I would indicated no, no objection.

SENATOR CHAMBERS: Then, Mr. Chairman, I would like my amendment to be modified to reflect the other place in the bill where the "ID" appears, and that also should be changed to a "IC felony", and I have conversed with the Clerk so he will make that change in the amendment and, with that, I have nothing further to say. I would ask that you adopt the amendment. (See Chambers amendment FA437 as found on page 1728 of the Legislative Journal.)

PRESIDENT NICHOL: Let the record show that it is modified, as outlined by Senator Chambers, and the question is the adoption of the Chambers amendment. All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 27 ayes, 0 nays on the adoption of Senator Chambers' amendment to Senator Johnson's amendment, Mr. President.

PRESIDENT NICHOL: The Chambers amendment is adopted. May I introduce some guests please under the north balcony. They are guests of Senator Bernard-Stevens. We have Jennifer Martin, Michelle Shandera, Heidi Schaef, and Candace Books, all of North Platte and they are with the Youth Advisory Council. Would you folks please stand so we may recognize you? Thank you for visiting us today. Mr. Clerk, do you have another...anything else on the bill?

CLERK: Mr. President, Senator Chambers would move to amend. Senator, I have your amendment that reads, "Strike the final four lines of the Johnson amendment." (See Chambers amendment FA438 as found on page 1728 of the Legislative Journal.)

SENATOR CHAMBERS: Yes, and, members of the Legislature, again, this amendment is on page 1346 of the Journal and I'm going to read the the language that I would strike. Then I'll explain why I think it should be stricken. "It shall not be a defense to prosecution for violation of subsection (15) or (16) of this section that the defendant did not know the age of the person through whom the defendant violated such subsection." Members of the Legislature, if you look at the way this amendment is crafted you'll see that it correctly requires, in lines 5 and there are a couple of...oh, line 14, that a person to be guilty of violating any of these sections must knowingly and intentionally do the things involved in this offense. We're creating a new crime. The crime, and I hope that Senator Johnson will be able to follow to some extent what I'm saying so he'll know my rationale, the crime consists not only in doing the activities, but the age of the individual. We're not just making it a crime to sell drugs to any person regardless of age. We are making it a crime, a brand new crime, to sell drugs and do these various other things, persuade somebody to sell them and so forth, under the age of 18. The elements that are necessary to have the crime are the conduct knowingly and intentionally engaged in, and knowing the age of the individual to whom you sell it. Otherwise, there's...the knowingly and intentionally does not apply to all elements of the crime. So what you're running the risk of, if you leave this language in....Because remember when you go to trial on this you want the person who's going to do these things to somebody under 18. That's what you're aiming at. So you're going to have to

establish that the person is under 18 before you have the crime. If the person is 18 or older, this that we're talking about does not even apply. So the elements that must be known to have this new crime that we're creating are the conduct that is prohibited and the age of the person with whom this conduct is engaged in. So by striking this language you will not erase what you've written in other parts of the bill where you require knowledge. Let me say it a different way. In the body of the bill, where you're creating the crimes, you're saying that there must be knowledge. But in this language you're saying there doesn't have to be knowledge, so what you're really trying to do is take away a requirement that the courts have always had when you have criminal conduct and that's that the person knowingly does what is prohibited. But if in part of the bill you say you've got to know, but in another part of the bill you say you don't have to know, then you have created a wash. I'd like to ask Senator Johnson, if I may.

PRESIDENT NICHOL: Senator Lowell Johnson, please.

SENATOR CHAMBERS: Senator Johnson, did you have a chance to look at the parts of the bill where it says that the perpetrator must knowingly and intentionally do this conduct which, you know, in whichever section it is?

SENATOR L. JOHNSON: Yes, I see it.

SENATOR CHAMBERS: Alright, now if you require in that section for the person to know and in that section we see the conduct plus the age of the person, then this language at the last part of your amendment says that if you don't know it's not defense. So how can you be required to know and not know at the same time? Or do you want to remove "age 18" from that section and try to rewrite it somehow where it's not a part of the offense? But if it's not a...if the age is not a part of the offense, then you don't have the crime that you're trying to commit...create. Do you at least understand what I am saying?

SENATOR L. JOHNSON: Go through it once more, please.

SENATOR CHAMBERS: Okay. In the parts...let's take the two parts on page 1346 where we're creating crimes. One of them, one of them relates to giving some of these drugs to a person, and I'm not going to state all the things like persuade, coax and so forth, giving these drugs to a person would be this crime

that we're creating if the person is under 18 and the giver is over 18; in subsection (b), if you aid, or abet, or persuade this young person to aid or abet in doing these things, so we have two different offenses here. What I'm trying to say is this, there is the conduct that has to be engaged in or we don't have the offense, and the person...there are two people involved. The perpetrator, we're presuming, is over 18. The one who is the victim, based on the way the statute is drawn, is the one under 18. The portion of the statute that creates those two offenses says you must knowingly and intentionally engage in this conduct, so you must know the nature of the conduct you're engaging in. For example, if there were drugs in a sack and you didn't know the sack contained drugs and you passed that to somebody, you haven't committed the crime because you don't know what it is that's in the sack. So you know what this is and you intend to do it, because if I've got drugs in a sack and I drop the sack on the ground and somebody picks it up, I have not committed this offense because, although I knew what I did when I dropped the sack, I did not intend that that drug would get to whoever got it. So you've got to have them both. You have to know what you're doing and you have to intend to do that which you know you're doing. And the person who is involved must be under 18. If you don't know that the person is under 18, then one of the elements that you're requiring to be known is not known, and that's what these four lines at the end say. They say, "It shall not be a defense to prosecution for violation of subsection (15) or (16) of this section that the defendant did not know the age of the person through whom the defendant violated such subsection." How can you violate the subsection if you don't know, when the subsection itself said you must know? And if you want to answer that while I've got time, you can, or on your time you can address it. Whichever way you'd like to do.

SENATOR L. JOHNSON: I'll do it on my own.

SENATOR CHAMBERS: Okay.

PRESIDENT NICHOL: Senator Bernard-Stevens, please? Senator Pirsch. Oh, there's Senator Bernard-Stevens.

SENATOR BERNARD-STEVENS: Thank you, Mr. President, members of the body. I rise at this point to oppose the...this particular Chambers amendment and I'll...I think I'll let Senator Pirsch and Senator Johnson respond a little bit more, but I guess my

initial reaction is that this is no different than other laws that we particularly have in the State of Nebraska. For example, if we're looking at statutory rape, we're certainly not looking at...we don't gauge whether or not the person actually knew that age of the child. If, in fact, the child was a minor then, in fact, a crime existed. We don't go ahead and say, but did you know at the time that the crime existed what the age of the person was? I think everybody would know if we'd put that type of an amendment in any type of statute it would be a defense attorney's dream come true because it'd be so difficult in a court of law to prove that at that particular point of the crime the alleged criminal knew the exact age of the person. So I would hope that the body would not go on that particular course and would reject the Chambers amendment. Thank you.

PRESIDENT NICHOL: Thank you. Senator Pirsch, please; followed by Senator Chambers.

SENATOR PIRSCH: Thank you, Mr. President. Senator Bernard-Stevens did point out the statutory rape statutes and I also would like to point out the alcohol sales where the age is, no matter whether you knew it or not, it is not a defense, and that is perfectly constitutional and has been allowed, of course, for many years. I went back to talk to our expert county attorney, ex-county attorney, and I think I quote him fairly accurately when it said, look, the burden should be on the perpetrator; it's impossible to put that burden on the prosecutor or on the state. This, in essence, would gut the bill and I am very, very firmly opposed to it as you should be, too, if, indeed, you are truly interested in the danger and the protection of children as Senator Johnson's original intent was. Please oppose this amendment by Senator Chambers.

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

SENATOR CHAMBERS: Mr. Chairman, and members of the Legislature, we were discussing some language under the balcony, which is found in this bill, in lines 12 and 13, we have the language, except as authorized by the act. And Senator Johnson's argument is that since the act through these last four lines do not require knowledge of the age of the one that I refer to as the victim, then it is all right not to require that knowledge. But if in order to have a crime you must have knowledge and intent, then even if you have a statute that says in this case you don't

have to have knowledge or intent, then you don't have a crime. In certain crimes, you have to have a specific intent to do the act that you are prosecuted for, and in this one, forgetting the age element, I am going to give the example that I gave earlier. If I have drugs in a sack or in a container, but I think that there is candy in that container and it is marked as a container with candy, and I pass it on to anybody, then I cannot be convicted of possessing drugs, passing drugs, or anything else because there is no knowledge. A common carrier who delivers a package containing drugs is never charged with transporting drugs, delivering drugs, or possessing drugs, if that common carrier did not know what was in that container. But if the common carrier knew, then that common carrier is really a drug courier and he or she will be charged because they knew that drugs were involved and they intended to transport what they knew to be drugs from one place to another. And there you have the knowledge of what is being done and you have the intent to do it. If you know, for example, if I know that there are drugs in this container and I leave the drugs in my office or in my car or in my home and somebody comes across that package and opens it and discovers there are drugs, or if they break into my car and take the package because they think it is of value and they later find out it is drugs, I am not charged with illegal delivery of drugs because the transmission from my possession to that person's was not intended by me. They can get me for possession because I knew that I had it. They can get me for intent to deliver if it is a larger quantity than I would use. So the knowledge is there, but no intent to deliver so they can't charge me with that. I have got to have the knowledge and the intent. When it comes to the possession, I know I have got the drugs and I intend to possess the drugs so I can be charged with that no matter what happens to them after that. In this situation, in creating the new crime, you put all of the elements in the provision that creates the crime. You say that the person who does it must be over 18, the other party has to be under 18, and there has to be a knowing and intentional engaging in the conduct that is prohibited. And yet the last four lines of the statute or the Johnson amendment say that you don't have to know the age of the one who is involved with you. So I am moving to strike those four lines. That is what the amendment would do and I have given the rationale for why I say it. And they were mentioning statutory rape.

PRESIDENT: One minute.

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SENATOR CHAMBERS: What we would have to look at to see if that statute is drafted the same way this is, and I would like to ask Senator Bernard-Stevens a question since he brought it up, but he is not here. I would ask him because I didn't look at the statute, does the statute say that it is no defense if the person doesn't know the age within the statute, within the provision that creates that offense? And if there is somebody else who is going to talk, I am going to see if I can locate that myself since I don't see Senator Bernard-Stevens.

PRESIDENT: Thank you. Senator Langford, please.

SENATOR LANGFORD: Mr. President, I call the question.

PRESIDENT: The question has been called. Do I see five hands? I do not. Do I see five hands? Okay, I do. The question is, shall debate cease? All those in favor vote aye, opposed nay.

SPEAKER BARRETT PRESIDING

SPEAKER BARRETT: Please record.

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

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

SENATOR CHAMBERS: Mr. Chairman, I am serious about this amendment and Senator Bernard-Stevens and others have made reference to other provisions of law, and I was going to see if they could point me to those sections. So rather than have this voted down when I think it is a worthwhile amendment, and then try to have to reconsider it, at this point I am going to withdraw the amendment.

SPEAKER BARRETT: Thank you. It is withdrawn. Next item.

CLERK: Mr. President, the...may I read some items for the record, Mr. President, please.

SPEAKER BARRETT: Proceed.

CLERK: Mr. President, a series of resolutions, (Read brief explanations of LR 407-413. See pages 1719-33 of the Legislative Journal.) Mr. President, the next amendment I have

to LB 976 and to the Johnson amendment is by Senator Chambers. Senator Chambers, page 1, line 13, strike: "or a counterfeit controlled substance."

SPEAKER BARRETT: Senator Chambers.

SENATOR CHAMBERS: Yes, Mr. Chairman, and members of the Legislature, I have up there, Mr. Clerk, are there three amendments related to the same basic idea of striking that particular language from the bill?

CLERK: Yes, sir.

SENATOR CHAMBERS: I would like to take all of these that I have as one amendment because they would all do the same thing even though at different points in the bill. So if I can consolidate these into one amendment, I would like to take them in that fashion.

SPEAKER BARRETT: Are there any objection?

SENATOR CHAMBERS: The reason I am doing it this way...

SPEAKER BARRETT: Proceed.

SENATOR CHAMBERS: Oh, excuse me. Because, Mr. Chairman, I had a motion up earlier and it wound up being adopted where I was going to make the same change even though it would have to be made in two places, and once it was accepted in one place, it was accepted in the other. So I hope I can give a rationale that will help you accept this. The way the bill is drafted we are dealing with a person 18 or older and an individual under the age of 18. So that means the one under the age of 18 could be 17-years old, 364 days, or if that person is lucky and it is a leap year, they can be 365 days. So somebody who ordinarily would be 18 would not be 18, or if they unlucky it is a leap year, because it would take 366 days to reach that age. But the point I am trying to make is that we are dealing at a marginal point with the way this bill is drafted and with what it will do. There are going to be many instances where people are going to be roughly the same age, their ages are separated by a few days. They run in the same circle. They engage in the same conduct. I would like to ask Senator Johnson a question.

SPEAKER BARRETT: Senator Lowell Johnson, please.

SENATOR CHAMBERS: Senator Johnson, why would you consider it worse for somebody 18-years old to give drugs to somebody 17 years, 364 days but it is not as bad if the one 17-years old, 364 days gives it to the one who is 18? Why is one so much worse than the other?

SENATOR L. JOHNSON: There is no difference provided for now in existing state statutes about the (interruption) difference in age.

SENATOR CHAMBERS: Right, and your bill would make that difference. And your bill would make that difference, right?

SENATOR L. JOHNSON: Yes, sir.

SENATOR CHAMBERS: Okay, let's say that we have somebody, and believe it or not, there are some people who don't use drugs by the time they are 18 and even beyond, even some old geezers and codgers, and geezeresses and codgeresses, and I think they are well beyond 18. Let's say that you have an individual who, for whatever reason, has been involved in the drug culture, as it is called, for a number of years, at least two years, since he or she was 15-years old, streetwise, has been homeless, may have been victimized and abused, and is a pretty hardened person at this point. So he or she reaches the age of 17 years, 364 days, and comes across some person who is naive but 18-years old. And this 17-year older plus gives drugs to the one 18, that would not come under your bill. That transaction would not be covered by your bill. But if we turn it around and that person who is relatively naive, as far as the drug culture is concerned, has some pills or counterfeit substance and this streetwise, hardened person who has been a part of the drug culture says, give me this, and the 18-year older gives it to the streetwise, hardened one. The 18-year older who is naive runs the risk of the punishments under your bill, isn't that correct?

SENATOR L. JOHNSON: That is true.

SENATOR CHAMBERS: Is that what you are after? I know that is what happens, but is that what you have in mind? Is that the kind of situation you have in mind? I will answer for you. No. If I had this bill, that wouldn't be what I'd have in mind. What we are all thinking about, based on the discussions, are the situations where somebody who at the upper level is really

the one who is doing the encouraging, the enticing, and so forth, but this bill doesn't require you to just entice, coax, and so forth. You can just pass something to somebody. So if it is going to hit those situations that we are not concerned about even, then I think we ought to take out this language that I am talking about where you enhance the punishment if it is a counterfeit substance. There already are laws on the books that will make dealing in counterfeit drugs a crime. Do you agree with that?

SENATOR L. JOHNSON: Yes. I also feel that consideration of a case in that parameter that you are describing could be and would be addressed by the judge involved or the juries, the case might be.

SENATOR CHAMBERS: But the jury has nothing to do with setting the punishment. The jury has nothing to do with bringing the charge, nor does the prosecutor. The prosecutor would bring the charge something like this in the language of the statute. So-and-so on or around such-and-such a date at such-and-such a place did knowingly and intentionally deliver, whatever it is, drugs to so-and-so, who at the time of receiving these drugs was a minor under the age 18, something like that. The prosecutor draws that charge and that is the charge that has to go to trial. That is the charge that is presented to the jury and that is the charge if the person is found guilty on which the sentence will be based. So, if there are already laws dealing with counterfeit substances, and that is not where the crux of the drug problem is anyway, why is it not enough to limit this kind of Draconian law to the real drugs, the ones that we say we are concerned about? It would be so much better if the only kinds of substances being dispensed are counterfeit nonnarcotics because then we wouldn't have junkies, wouldn't have the killing, the violence, and the other things that accompany drug use and drug dealing. So even though I don't like the amendment, the overlapping punishments, the bringing of the whole idea because the federal government wants it done and wants to dump their responsibilities onto the state, despite that, I think again the bill ought to have some rationality. A person can get more time for selling a counterfeit drug than they can get for selling a real drug. For selling a counterfeit drug, Senator Johnson, would that be your intent that a person gets more time for selling a counterfeit drug than selling a real drug?

SENATOR L. JOHNSON: No, I think present statutes draw no distinction between the two.

SENATOR CHAMBERS: But if I am 18 and you are 18, both of us just turned 18, and I sell you a real drug, my punishment is not enhanced because your bill doesn't apply if the one to who I sell it or give it is 18. We both just turned 18. But if I one day...I am 18 and you are 1 day less than 18 and I give the drug to you, then, and it is a counterfeit, I get more time for selling you that counterfeit than I would get for selling somebody else the real thing.

SENATOR L. JOHNSON: Because this is addressing the problem of sale to a minor and a minor is defined as 18 or under.

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: So if a person were of a mind to deal with minors, he or she would just as well sell them the real drug as a counterfeit since the punishment is the same, right? There is no advantage in trickery, because here is what some people do, they will make these naive kids think they are getting drugs and charge them the price but what they get is not drugs, it's not harmful, but if they are going to do this anyway and they are going to get the same sentence, then they may as well sell them the real drug. You give an incentive to people to sell a real drug rather than a counterfeit. And we are so anxious again to jump on President Bush, the one who sets up drug deals outside the White House, so anxious to get with him, that we would rather have drug dealers sell the real thing to these kids than a counterfeit. We don't want them to do either one.

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

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

SPEAKER BARRETT: Debate ceases. Senator Chambers, please.

SENATOR CHAMBERS: Mr. Chairman, and members of the Legislature, another thing, and Senator Hall touched on it and he may have an amendment that deals with it in more detail, so I will just

briefly mention it. There is an incentive for the drug dealers to be under 18 because they are exempt from this. If the drug dealers are under 18 and they sell to adults and children, then the law says that they have been put in a protected category. The law actually says that a young drug dealer is not the same as an old drug dealer. So if you have somebody 17 years 364 days and he or she goes to a grade school or an arcade, all these other places, and deals drugs, Senator Johnson's bill doesn't touch them because he doesn't mind that somebody that age is selling the drugs. I know he does, but based on the way this bill, this amendment is drafted, there is an incentive to have younger drug dealers. Sometimes in enacting legislation with the meat-axe approach, we think that we are going to be able to tell the public we did great things, but when it comes into actual fruition, we are going to see that we created protected classes of drug dealers, and there are people who will be aware of what the Legislature does and will take advantage of this. And then the legislators will come back and say, that didn't occur to us, we didn't mean to do that. But a criminal statute is construed and applied based on what the words actually say, and the Legislature can say all it wants to that it didn't mean to do that. The Supreme Court of this state in construing certain laws has even said the court can feel that it was stupid for the Legislature to do something unwise, but it is not for the court to rewrite the law that the Legislature passes. It has to strictly construe a criminal statute, which means, you take the words that are written and you apply them as they are written. However, if the way they are written winds up in vagueness or ambiguity so that a person does not know what is allowed and what is prohibited, or if it punishes conduct that is protected by the Constitution, then the court strikes all such laws down as being unconstitutional. But in most instances when these kind of bad bills are enacted, when they are offered by Governors in a package or pushed by a President, by the time they are struck down, the political advantage has already been gained. But a lot of harm happens out there where people really live who are going to be subjected to this type of poor legislation. There are a lot of people who say anybody accused of the crime is the same as being convicted because you wouldn't be accused if you hadn't done it. There might be fewer or there might be more who hold to the idea that until somebody has been proved guilty they are innocent. Being arrested for an offense puts you to the expense of hiring a lawyer, perhaps going to trial, or if there is a decent prosecutor who is intelligent and mindful of the law will dismiss the charge and you don't have to

go to trial, you still have been arrested. You have been booked, which means you were charged. You were photographed. You were fingerprinted, and you are in a computer someplace as a person who has been arrested for a felony. And if you apply for a job, what they ask is not whether or not you have been convicted but have you been arrested for a crime. And if you say no because you weren't convicted, they find out you were arrested, you get fired for lying. If you tell the truth and say, yes, you were arrested, what their presumption is that you were close enough to this conduct to have been involved, so you are too great a risk and you don't get the job. And we pass all these kinds of laws that encourage that kind of activity. You can see how issues such as this become politicized because a very regrettable murder of a young girl in Omaha is now being made into a political football by two people in Douglas County running for the Third District, or whatever seat it is that comes out of Omaha...

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: ...to Congress, the second district. Thank you, Senator Hall. He is more politically mature than I am at the federal level when it comes to who these people represent at these various levels because I think they represent special interest groups. Excuse, Senator Rod Johnson, you are not in that category yet. You are trying to get there. But at any rate, those are the kinds of things that are done with these issues because crimes are high-profile occurrences, criminals are a disliked group of people unless they happen to be former President Nixon, or a Mr. Poindexter, or a convicted felon, Oliver North. Certain categories of criminals are not liked and they are good for political hay. I don't see the necessity for us passing these kind of bills with this kind of loose language in it. So in order that you are aware of what we are voting on, I am trying to strike from the bill any reference to counterfeit substance.

SPEAKER BARRETT: Time.

SENATOR CHAMBERS: It is not a drug. It has no narcotic effect, and I want that stricken from the amendment, and that is what I am offering.

SPEAKER BARRETT: Thank you. And the...shall the house go under call? All in favor vote aye, opposed nay. Record, please.

CLERK: 16 ayes, 1 nays to go under call, Mr. President.

SPEAKER BARRETT: The house is under call. Members, please return to your desks and record your presence. Members outside the Legislative Chamber, please return and record your presence. The house is under call. While waiting for members to return, the Chair has the pleasant duty of announcing a special guest under our south balcony. We have visiting the father of our Page, Stacey Harris, my assistant; Stacey's father, Air Force Lieutenant Colonel Harold J. Harris of Omaha. Thank you, sir. We are glad to have you with us. Senators Baack, Bernard-Stevens, Goodrich. Senators Landis and McFarland, please. Senators Scofield, Smith, and Warner, the house is under call. Senator Landis, please check in. Senators Baack, McFarland, Scofield, Smith, and Warner, the house is under call. I had a request for the Clerk to read the amendment. Mr. Clerk, would you please read the amendment.

CLERK: Mr. President, Senator Chambers amendment would strike the following language, "counterfeit controlled substance", I am sorry, "or counterfeit controlled substance", found on page, line 1...found on page 1, line 13, excuse me, on page 1, line 11, and page 2, line 21. Strike the language, creates "or a counterfeit controlled substance".

SPEAKER BARRETT: Thank you. The question is the adoption of the Chambers amendment to the amendment. All in favor vote aye, opposed nay. Have you all voted? Please record.

CLERK: 9 ayes, 18 nays, Mr. President, on adoption of the amendment.

SPEAKER BARRETT: The motion fails.

CLERK: Mr. President, Senator Chambers would move to amend the Johnson amendment. On page 1, line 12, after the word "dispense" insert "any alcoholic beverage"; on page 2, line 10 after the word "some" insert "any alcoholic beverage"; on page 2, line 20 after the word "some" insert "any alcoholic beverage".

SPEAKER BARRETT: Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman, and Senator Pirsch.

SPEAKER BARRETT: Excuse me. The call is raised.

SENATOR CHAMBERS: Oh, and I am putting out the call, and I am calling Senator Pirsch by name, and Senator Lowell Johnson, and all the others who have recognized that alcohol is the most abused drug in this society. Now if a person is over the age of 21, they can partake of alcohol legally. Senator Hall, am I right about that? Senator Hall nods yes. If a person is under the age of 18, if they are under the age of 21, they cannot, but I am keeping it in line with what Senator Lowell Johnson is talking about. Senator Pirsch, I would like your help on this. I am going to ask you a question.

SPEAKER BARRETT: Senator Pirsch.

SENATOR CHAMBERS: If a person is under the age of 18 and is given alcohol, is that alcohol a legal substance for that person at that age to consume?

SENATOR PIRSCH: Absolutely not. In fact, someone who is 20 years, 364 days, it is not legal.

SENATOR CHAMBERS: Thank you. Members of the Legislature, what I am doing is taking a substance which under the circumstances of Senator Johnson's bill is an illegal substance, it is the drug of choice of young people. Now this is my polygraph amendment. I am going to see if we are playing politics or if we are really going after the substance that affects more young people than all of these other drugs put together. There are more crimes committed if there is some narcotic substance involved where the substance is alcohol. There are more automobile accidents where the substance is alcohol. There are more deaths and accidents where there is alcohol, whether it is in a vehicle or on the job, where alcohol is the problem. If this amendment that Senator Lowell Johnson is offering has received the support from the members that it has because we are concerned about the children because they are precious, then why should not this same bill protect those from the most abused destructive drug in this society. Alcohol, given to somebody under the age of 18, is not a legal substance, even though William Bennett came here and said, you ought to forget about dealing with alcohol where young people are involved because I am the drug czar and I have made alcohol verboten. We don't talk about that because he couldn't have his parties and his

dinners where alcohol is served if at the same time alcohol is being condemned. This is not a temperance amendment. This is not a prohibition amendment. This is an amendment that treats all of these narcotic substances that may be passed on to children the same. If you go into a grocery store and the checker is below the age where alcohol can legally be dealt with, somebody above the age of 21 has to come there and handle that liquor and check it through. That happens all the time at Baker's, all the time. What I want to do is hear somebody stand on this floor and tell me the rationale for putting these stiff punishments on drugs that don't cause nearly the heartache and pain as alcohol. If I remember correctly, Senator Pirsch said the other day...Senator Pirsch, may I ask you a question so I won't have to remember and misstate what you said.

SPEAKER BARRETT: Senator Pirsch.

SENATOR CHAMBERS: At what age was it that you said PRIDE, the organization PRIDE, says if a person reaches that age without using alcohol or drugs, there is a good chance they will be free of these substances?

SENATOR PIRSCH: I believe it is 21 that I said. I don't have that right in front of me but I believe that was what it said, what it referred to.

SENATOR CHAMBERS: But whatever the age is, it would have to be beyond 17, the one that I am talking about.

SENATOR PIRSCH: And they do agree that alcohol is one of the most serious drugs and, of course, that is why we deal with that in another section in making that illegal for minors.

SENATOR CHAMBERS: Do you feel that this amendment that I am offering is in line with the philosophy of the Johnson amendment?

SENATOR PIRSCH: I don't really even know what your amendment is, Senator Chambers.

SENATOR CHAMBERS: Okay, it puts alcoholic beverages in the same category as these other drugs.

SENATOR PIRSCH: How about if we just take the selling to minors and possession of minors and increase those penalties?

SENATOR CHAMBERS: No, I want some place in the law to show that this Legislature recognizes alcohol when it is given to minors as the drug that it is.

SENATOR PIRSCH: We have done that in the statutes. We have done that now...

SENATOR CHAMBERS: But we have other places in the statutes...

SENATOR PIRSCH: ...because it is serious.

SENATOR CHAMBERS: But we have other places in the statutes where all of these drug offenses that we are talking about are made crimes, but we are creating a special category of crime when it involved somebody below the age of 18.

SENATOR PIRSCH: But we are talking about illegal drugs. Alcohol is a legal drug, like it or not.

SENATOR CHAMBERS: If it is given...

SENATOR PIRSCH: It is sold. It is consumed. It is freely carried by supposedly legally those over 21.

SENATOR CHAMBERS: Can marijuana be prescribed by a doctor and be legal for that person to have access to it?

SENATOR PIRSCH: Yes, I believe so. Those are controlled substances.

SENATOR CHAMBERS: Now, even though when it is prescribed to Mr. or Ms. A, it is legal. If I, Mr. B get it, it doesn't become legal for me, even though it is legal for some.

SENATOR PIRSCH: That is right. And that is true with prescription drugs and the whole lot.

SENATOR CHAMBERS: Now what about if you got it by prescription legally, and I got it from you, does the fact that it was legal for you to have it make it legal for me to have it, too?

SENATOR PIRSCH: Well, you know, that would be a case for lawyers to argue whether my care and custody and control should have kept you from getting that drug.

SENATOR CHAMBERS: No, I am not saying it would make you a drug dealer. Does it become legal in my hands?

SENATOR PIRSCH: No.

SENATOR CHAMBERS: But now let's say that you, in fact, give it to me knowing it is an illegal drug.

SENATOR PIRSCH: Then, that is my crime.

SENATOR CHAMBERS: So alcohol is legal in your hands.

SENATOR PIRSCH: Right.

SENATOR CHAMBERS: I am under 18. If you give it to me, is it legal in my hands?

SENATOR PIRSCH: Well, actually, I was just reminded that if you serve it in your home that that is a private affair, if you are my minor.

SENATOR CHAMBERS: Stay with this, Senator Pirsch.

SENATOR PIRSCH: 53-180.02 is the statute.

SENATOR CHAMBERS: Right, I think we are all aware of that because that is how a lot of youngsters wind up using alcohol without...

SENATOR PIRSCH: Right.

SENATOR CHAMBERS: ...running afoul of the law. But what my amendment does is to make it the same as these other drugs, so that if parents give their children alcohol, just as if they give them marijuana or share their pills with them because let's say they have got a serious exam coming up and they are tense, so they need something to relax them so they get a Valium or whatever is given in that area where people use those substances. It is still not the thing to do.

SENATOR PIRSCH: But we are still dealing with an illegal and a legal substance.

SENATOR CHAMBERS: So then you don't like this amendment?

SENATOR PIRSCH: I don't believe I will support it, no.

SENATOR CHAMBERS: So then from your failure to support it, you would not see...

SENATOR PIRSCH: Would you support an amendment to the alcohol that would make it a stiffer penalty and change...

SENATOR CHAMBERS: What we need to do, and then you ask me the question, is scrap all of these tack-on piecemeals and say we are going to look at all the laws relative to all of the drugs, including alcohol, and then set appropriate punishments for all of them, then you and I would find something at last we can work on. But when we are going to piecemeal and pitch and patch because there is political hay to be made, and to quote Senator Morrissey, these issues are hot...that is all that I would ask you because my time is almost out.

SENATOR PIRSCH: Okay.

SENATOR CHAMBERS: Because it is a hot issue, then we wind up with an illogical system of punishments. The inconsistencies that not only make the Legislature look ridiculous but bring courts, judges, jurors, and prosecutors...

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: ...into contempt and subject them to criticism because there is the appearance that a greater punishment is placed on a lesser offense. Now when people stand upon this floor, if they ever do, and say "Liz" Karnes is right to say that alcohol has to be dealt with because it is the most serious problem facing youngsters, but we are so afraid of alienating those interests that want to push alcohol on our children that we cannot treat it as the drug it is, there is a word that starts with "h" that I am known to use but I am not going to use it. I will say the conduct describes what that person is. So I don't want to hear people talking against alcohol anymore, whether it is drunk driving, giving it to minors, or anything else unless we adopt this amendment.

SPEAKER BARRETT: Thank you. Senator Hall, followed by Senator Morrissey.

SENATOR HALL: Mr. President, and members, I rise to oppose Senator Chambers amendment to the amendment, and he probably gave you the best arguments for opposing the amendment was that it would wreak havoc on the provisions in statute with regard to having anything that resembled consistency across the board dealing with the issue of alcohol, although he does raise an issue that is a legitimate one in terms of consistency on the side of what is or is not harmful to young people, and old people for that matter, in terms of legal, illegal substances, whatever they might be, drugs, alcohol, or anything that might fall in between. So with that, I would just stand and oppose that because the...the amendment...because the provisions in the bill that I think he tried to strike earlier, the last four lines of the bill dealing with the issue of it would not be a defense from prosecution to not be aware that an individual was a minor would wreak havoc on the spirits industry, if you will. You know, currently we deal with the issue of a minor book, we deal with all kinds of stuff in the bar business, and it is extremely difficult now to even plead your case when you have done all the things that are provided for in statute and you still have serving a minor put to you as a restaurant or a tavern owner, you are in an extreme disadvantage, and if you adopt the Chambers amendment, you just, I think because of the section in the bill that would not allow a defense for prosecution based on the fact that even this individual could show ID that even to a trained eye would lead you or me to believe as a person that is serving them that they were of legal age, if you adopt it to this amendment, it wouldn't matter. They'd still be guilty, they'd still be in violation of a Class IC felony potentially, not to mention the issues...the penalties that are currently in law with regard to serving a minor. So it would be a double hit for those people who happen to be in the business, whether it be a restaurant or a tavern, but they would be I think doubly persecuted by this provision. So I would urge you to reject his amendment, even though I respect the fact that it is very consistent with the presumptions in the bill.

SPEAKER BARRETT: Senator Morrissey, please.

SENATOR MORRISSEY: Thank you, Mr. Speaker, and members. I was going to rise to support the Chambers amendment but I see Senator Hall's point. I do agree with the intent of what Senator Chambers has done here. If we are going to do it, let's do it. If we are going to impose these penalties on people for

using the illegal substances or selling illegal substances, alcohol to minors, illegal for minors to possess, let's include the substance that does the most damage in this country. I think it is only right. I might not disagree with everything in the bill, but if we are going to get this bill in the correct shape, we definitely need to include alcohol some time or another. Because if you want to address the drug problem in my district, you will address the drug of alcohol. Too many people in my district, and I suppose in a lot of your districts, still say, thank goodness, my kids are only drinking. At least they are not doing drugs. That attitude is still prevalent out there all across the state, and it is wrong. I don't care if it is the American way. It is breaking into your manhood or cutting your teeth, or whatever, to go out and get drunk with the boys, if you will. It is doing a lot of damage in the country. It is doing a lot of damage in my district to minors. If you want to address the drug problem in my district, you will include alcohol because it is number one, and it is number one in the state and in the country. And I would hope we could tack this on somehow to address Senator Hall's concerns because I think he is correct. Thank you.

SPEAKER BARRETT: Thank you. Senator Schimek, followed by Senator Bernard-Stevens.

SENATOR SCHIMEK: Thank you, Mr. President, and members of the body. Senator Chambers, I would like to be the first to say that "Liz" Karnes was right and, frankly, you have hit one of my hot buttons here. I think that this is an issue that is something that affects all of us. I was shocked to see the editorial in the Omaha World-Herald, on March 26th which said that the Commission on Drugs, of which "Liz" Karnes is a member, should not address this particular problem in its report, as I understood it anyway, I don't have that right in front of me, and I really am rising to support I guess the concept of what Senator Chambers was talking about. But like Senator Morrissey and Senator Hall, it looks as if there might be problems in incorporating this into this bill, so I would like to encourage some of us to put our heads together and see if there is some other way that we might address this problem. I don't know, Senator Pirsch, I think that it is an illegal drug for those under 21 years of age, and it is something that we need to talk about, whether we can talk about it in this bill or not, I am not certain, but I hope that we don't let this matter drop. It is the most serious problem, I think, and if we choose to ignore

it, we are really not...we are not really addressing the major problem which leads to some of these other problems. So I would with that encourage us to look at it in the future.

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

SENATOR BERNARD-STEVENS: I am almost tempted to yield back my time at this point in anticipation of Senator Kristensen this afternoon, but I want to make a couple of comments. Senator Chambers brings us again with one of those moral dilemmas, I am not even sure it is a moral dilemma. It is one of the areas of known hypocrisy and I think we are all aware of that but, obviously, the adoption of the amendment quite honestly would be too big a burden for the bill. And I agree with Senator Hall and Senator Pirsch and will oppose the amendment at this particular point, but I would like to comment on a couple of things and a couple of my concerns. Senator Pirsch mentioned something that in discussion with Senator Chambers about the alcohol at least of 21 and over being a legal drug, and, thus, it is okay because it is a legal drug, and it brought me back a year ago or two years ago to smokeless tobacco debate where we were talking about a legal substance because you can actually legally buy it. And Senator Dierks and others, rightfully so, talked about the addictiveness of the smokeless tobacco, but even though it was a legal drug, the body decided that they were going to...they weren't going to stop the distribution and they understood it could have harmful affects, they decided they are still going to allow it, that is no problem, but they were going to stop the free sampling, and they were supposedly going to help minors by doing that, as if minors wouldn't get chewing tobacco from any other source. And one of the things I argued is that one of the things in our laws that we have, and it is not against the law, for example, for a minor to purchase or to possess tobacco products, so I have an amendment that will be coming up on the bill when we get to actually talking about the zones that within that zone it will be illegal to possess any alcohol or tobacco product, not within the State of Nebraska but within those zones, and that will include any adult and any child within the school. And I will be very serious on that amendment. I think Senator Chambers...I would also like to join Senator Schimek and say that "Liz" Karnes was right, and I think many of the body know that the drug of choice right now among our students, if you put it on a scale on a weight of whether to going into the hard core drugs or the cocaine or the marijuana

or we're going into alcohol, the major, by far, severe problem is alcohol. And for the body to simply say, well, we are going to deal with the one and we are not going to deal with the alcohol, I think the body is really missing a major part of it, and I agree with Senator Schimek that we need to, we need to at some point address that issue, and I will be trying on a later amendment, at least, to the bill. That is basically my comments. Senator Chambers asked if he could have at least a minute of my time, and I think Senator Kristensen is going to be trying to call the question, so I will at least give the last minute or so of my time to Senator Chambers, if he still wants it.

SPEAKER BARRETT: Senator Chambers, approximately a minute and a half.

SENATOR CHAMBERS: Mr. Chairman, and members of the Legislature, it is my amendment, and as I did before, I would like to modify this one, and can I have the Clerk read the modification to this amendment, and it is based on what Senator Pirsch that I didn't feel would become an issue in the discussion.

SPEAKER BARRETT: Mr. Clerk.

ASSISTANT CLERK: Mr. President, Senator Chambers modified amendment would be to amend the Johnson amendment. (Read. See FA440, on page 1734 of the Legislative Journal.)

SENATOR CHAMBERS: Thank you. Mr. Chairman, and members of the Legislature, and I won't have time to completely discuss it but I wanted you to know that I modified the amendment so that it takes care of that situation which is, in fact, allowed under the law right now where parents can make lusher out of their children as long as they do it in the sanctity and the protective environment of their own home.

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: And since that is a legal fact, Senator Pirsch, and it has been raised, it is a serious amendment for me, I want that amendment to reflect the state of the law as it exists now with reference to minors. Then what I would do is amend that provision that Senator Hall is concerned about for the liquor dealers, those who hold a valid liquor license, where

it says, except in the case of those people, then not knowing the age would not be a defense, if you want to keep that language because the law apparently now gives that protection to liquor dealers. And it is funny we will give it to them, but we don't want to say that other people will not have the defense if they don't know the age. But if that is what the liquor dealers have been able to get so far, I will let them keep that. But that is what the amendment will do because I am as serious as I say, Senator Schimek, no reflection, as a gallstone on this one.

SPEAKER BARRETT: Time. Senator Kristensen.

SENATOR KRISTENSEN: Mr. Speaker, to take the burden off of my colleague from the 36th District, I respectfully call the question.

SPEAKER BARRETT: Thank you, Senator Langford (sic). The question has been posed, shall debate now cease? Do I see five hands? I do. Senator Bernard-Stevens, for what purpose do you rise?

SENATOR BERNARD-STEVENS: Just a point of inquiry, not to hold up proceedings, but if an amendment has been modified, is that, in fact, then a changed amendment so you need to have pro and con on that debate or is that considered still the debate from the original amendment?

SPEAKER BARRETT: Excuse me, Mr. Clerk, you were about to say something? No, okay, I thought you were. The Chair is under the impression we are still debating the modified Chambers amendment. The five hands were recognized, Senator Chambers. We will call it to a vote and let the body decide.

SENATOR CHAMBERS: (Mike on and off.) ...challenge the Chair.

SPEAKER BARRETT: Thank you. Oh, I am sorry, I didn't understand. Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman, since I don't think there has been enough debate on the modified amendment and it does offer a substantive element, in fairness I think there should be a chance to deal with that and I don't think there has been...in fact, there has been no discussion of that at all. I was allowed to modify the amendment through unanimous consent...

SPEAKER BARRETT: Yes.

SENATOR CHAMBERS: ...and it is substantively changed, I think.

SPEAKER BARRETT: I have three lights on, if you would care to discuss the modified amendment. There was adequate, full and fair discussion on the initial. Senator Bernard-Stevens.

SENATOR BERNARD-STEVENS: Mr. Speaker, and members of the body, I don't know if this will help or not. Instead of maybe into a point where we rule and have an over...the Chair rules and maybe there'd be a decision or a motion by Senator Chambers to overrule that decision, spend more time, I guess I would ask just a point of order. Is it possible, Mr. Speaker, to do what Senator Chambers actually has done and that is to modify or, in fact, change, and it is a substantial change to his amendment, which, in actuality, is allowing Senator Chambers to amend the amendment to the amendment.

SPEAKER BARRETT: Senator Bernard-Stevens...

SENATOR BERNARD-STEVENS: Does that raise a point of order.

SPEAKER BARRETT: ...the Chair has made a decision. We will go ahead and discuss the modified amendment.

SENATOR BERNARD-STEVENS: Okay, a point of order at this point, then, Mr. Speaker. I would challenge the ability of Senator Chambers to make an amendment to the amendment to the amendment, because that in actuality is what is happening here as a precedent, and I don't mind as long as we understand that a precedent is being made here.

SPEAKER BARRETT: That decision was made earlier, I believe, Senator, and it is in agreement with the Chair.

SENATOR BERNARD-STEVENS: Okay.

SPEAKER BARRETT: Thank you. We have three lights on to discuss the amendment. Senator Chambers, followed by Senators Hall and Bernard-Stevens.

SENATOR CHAMBERS: Mr. Chairman, and members of the Legislature, to clarify, Senator Bernard-Stevens, what happened, when a person offers an amendment, our rules allows that person to

modify the amendment if nothing has been done to it. So there was the offering by the Chair as to whether there was an objection to it, and there wasn't. So you are about, I am not going to say a day late and a dollar short, you are about a second late and a penny short. But almost, right, Senator Kristensen, he always tells me almost doesn't count. But in all seriousness, this amendment that I am offering is offered in seriousness. Two or three who have spoken have acknowledged how grave a problem alcohol really is in this society where our young people are concerned. There are all kinds of parties that the youngsters have in places outside the home and that liquor is provided to them by adults. And sometimes the results of these parties may be more than just fights and fracas among themselves and the foolishness that attends them. They may drive and have accidents or go someplace else, either to their own neighborhood or some other location on the way there, they may have some difficulties with other people who are not as cheerful as they are. So it is not necessary for me to give a litany of problems that are associated with alcohol. The problem that I face is trying to persuade a Legislature, which is devoting so much time to fighting drugs, to take seriously the issue of alcohol as a devastating, destructive drug. If I could enlist the silver-tongue of Senator Landis in the cause of protecting our precious children from the ravages of alcohol, then it would probably help a great deal in obtaining acceptance of this amendment. If I could get Senator Hall, who I know has a concern for children, to see the validity of this amendment as altered with the proviso that when we get through with this amendment in conjunction with Senator Hall, if necessary, I will draft an amendment to those last four lines in the Johnson amendment that currently say "lack of knowledge of the age of the person who receives this substance is not a defense", we could exempt out those who sell alcoholic beverages under a legal license from the state. And nothing in the present law would be changed as far as those who legally can do these things now. What the amendment would do then is be targeted specifically to the circumstances where somebody older gives this drug to somebody younger and we will put it at the same level as these other forbidden substances, which do not cause nearly as much damage to society as alcohol. They cannot produce anybody who, as a result of marijuana or heroin, has cirrhosis of the liver, or the other types of ailments associated with alcohol. When they talk about the problems created by drugs of the other variety, the illegal variety, they have to go on television and contrive situations like a skillet,

a hot skillet, put an egg in it, and say, the skillet represents drugs and the egg represents your brains. When we want to show the ravages of alcohol, we don't have to do that. Everybody sitting in here right now could be on drugs and we would never know. That is why you have to contrive this other stuff, but when you go to certain locations where people have used alcohol, nobody has to contrive anything. I have seen Bill Cosby do skits where if he walked in the way he walks, you wouldn't say he is on drugs, you'd say he is drunk.

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: You could show a stretch of sidewalk littered with people in ragged clothes and you would call it skid row, and you'd say they are probably all drunk and they are drunk on cheap wine. We can see with our eyes and have experienced what alcohol does, so there is no question about it, but there is a very powerful alcohol lobby. This amendment as drafted would not make anything illegal which is legal now. It would not make anything illegal which is legal now. What it would do is put alcohol in the same category these other drugs, as "Liz" Karnes and these other wise people have indicated, and I agree with her, I hope she sticks by her guns and doesn't let anybody back her away, because she has taken a position that is in line with the truth that we all know.

SPEAKER BARRETT: One minute. Excuse me, time.

SENATOR CHAMBERS: I would rather accept what you said at first but I understand we misspeak sometimes.

SPEAKER BARRETT: Thank you. Senator Hall.

SENATOR HALL: Thank you, Mr. President, and members. Again I rise in opposition to even the amended Chambers amendment which does hit right at home in terms of the issue of how are we going to deal with drugs, no matter if those drugs be illicit drugs, whether they be legal prescription drugs or whether they be the drug of alcohol, because clearly that is what Ernie is saying. He is saying let's be consistent. If we are going to do this, let's not be hypocritical and say on one hand one drug that kills people is that much worse than another drug that kills people because they all kill people. I mean that is plain the fact, but even with the amended version that he has offered, you do wreak havoc on the statutes and you wreak havoc on the

alcohol industry. I don't like to stand up here and defend them but it is an issue that when you look at changing the penalty provision that you would in this bill to a IC felony, as with the Chambers amendment we have done, you are talking about a IC felony for a clerk at Baker's or a clerk at the Hy-Vee or a clerk at the Safeway who happens to sell a six-pack to an individual who looked to be 21, who showed ID to be 21, but yet proved later in actuality that they weren't 21, and you would have the potential there to put that individual away for, what was it, 50 years, I think was the penalty. I don't know, I can't remember now, the maximum side of that. That is what you are doing when you adopt the amended version that Senator Chambers offers. It is a good policy question and it really does bring out the whole issue that we are dealing here, both in 976 as it was originally offered, and Senator Johnson's amendment to that bill because you can't look at the situation in a vacuum. You can't look at each of these separate issues in a vacuum. You have to look at all the aspects of the drug problem, and the drug problem encompasses both alcohol, illegal and legal drugs, prescription drugs that are out there. They are all being abused. You shouldn't look at one because it is a hot topic because it does make for great political hay, and you shouldn't make legislation like my buddy, Al Buda. He is on the front page of the World-Herald tonight, and Al's grocery store is going to close. I was just thinking, I probably have to pass a resolution for Al. I used to buy penny candy there, and when I got older, I bought beer there. But Al is pictured there with his very famous sausage and makes me think that is exactly what we are doing here in the way of legislation. We are doing the old axiom about you don't want to see how legislation and sausage are made, and we are grinding it up right now, and this amendment that Senator Chambers offers does prick the ears up and it does sound great, but it wreaks havoc on the system that is currently in place with regard to our statutes on alcohol and how we deal with the penalties that are involved with serving alcohol to a minor or making alcohol available to a minor. I would urge you again to oppose this amendment. I have no problem dealing with all of these issues across the board in an interim study that addresses the use and abuse and the penalties, specifically the penalties with regard to allowing...

SPEAKER BARRETT: One minute.

SENATOR HALL: ...these types of substances to be made available to a minor, but we shouldn't be doing it here today at four,

twenty-nine, not in this form.

SPEAKER BARRETT: Senator Bernard-Stevens, please.

SENATOR BERNARD-STEVENS: Thank you, Mr. Speaker, and members of the body. Just very briefly, Senator Chambers brings us now an amendment that really does strike to the heart of things, and I understand Senator Hall when he says that this would wreak havoc in the spirits industry. I also know that the tobacco industry is having a difficult time because of the decreased amount of usage among Americans today, so I know the tobacco industry is doing some things to protect itself because it is a business. They are expanding. They are getting into the other areas. I don't have a real big concern about the spirits industry if all of a sudden there was a market drop in consumption. I think like any other industry, when the product is not acceptable anymore, not being accepted en masse by the public, the industry either goes belly-up or the industry does what all business does, that is, diversify, expand, get into other areas. And that is part of capitalism, that is part of the free-market system, so that doesn't bother me. What does kind of bother me a little bit, and I know this debate on the Chambers's amendments after amendment after amendment has gone on, but I really thing we have an amendment here that people need to think seriously about. If we are truly serious about our children and alcoholic consumption, if we are truly serious about admitting that there is a terrible problem out there, and we understand that our children and the students that we have in our schools look at adults and imitate a tremendous amount, and if we at the one hand say that we are going to allow the distribution of alcohol for lack of a better term to our minors, but at the same point we are going to try to criticize our minors for that consumption, we can do that as a body. I suspect we probably will do that as a body, but the body deep down has to have one of those feelings that this isn't right. I think Senator Chambers gives us an interesting choice. The drugs that Senator Lowell Johnson is dealing with and Senator Pirsch in her bills are terrible and devastating and the bills, the amendment and bills need to be moved forward. But Senator Chambers is also saying that there is a tremendous alcohol problem and he is willing to apply alcohol to the same standards as drugs because it is equally as bad, if not more harmful, but yet he is willing to say, listen, if you want to do different things in the privacy of your own home, that is fine. We have already got statutes and legal decisions on those. So it really gets down

to the heart of the matter, how far are we willing to admit the truth that certain things are harmful and we are simply not going...we are going to draw the line and say that is it, enough is enough? And I think he has given us a chance to do so. I also think I know how this amendment, the vote will be taken, and I hope if the amendment is adopted, but I assume it will not be, when the amendment is...if it is voted down, as I think it will be, and I hope it is not, I hope that there is a feeling inside people who vote red on this particular amendment, a little feeling that maybe this time...

SPEAKER BARRETT: One minute.

SENATOR BERNARD-STEVENS: ...their talk is a lot bigger than their words, this time their intentions and all their propensity in trying to do what is best for kids, ah, maybe we got a little political on this one and we are afraid to because it hit a little bit close to home because few people in the body use drugs, I suspect, therefore, it is easy to do that, but when we get to alcohol, oh, now we are getting to a different problem, and I think it is time that the body really looked at it and decide if they are really serious on the matter, and I hope we support in this particular case the Chambers amendment. Thank you.

SPEAKER BARRETT: Senator Langford.

SENATOR LANGFORD: Call the question, please.

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

SENATOR LANGFORD: I hate to call the house but I guess we will have to.

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

CLERK: 15 ayes, 1 nay to go under call, Mr. President.

SPEAKER BARRETT: The house is under call. Members, please return to your desks and record your presence. Those members outside the Chamber, please return and check in. Senator

Langford, would you accept call ins?

SENATOR LANGFORD: Yes, please.

SPEAKER BARRETT: Call ins are accepted.

CLERK: Senator Abboud voting yes. Senator Schellpeper voting yes. Senator Hartnett voting yes. Senator Hefner voting yes.

SPEAKER BARRETT: Record.

CLERK: 26 ayes, 1 nay to cease debate, Mr. President.

SPEAKER BARRETT: Debate ceases. Senator Chambers to close.

SENATOR CHAMBERS. Mr. Chairman, and members of the Legislature, I will agree, if somebody wanted to characterize what we call legal drugs as a raging rhinoceros, destroying and wreaking havoc wherever it goes. It is nearsighted but it has a keen sense of smell so it may not be very good at distinguishing that which it ought to run over from that which it should not. And the same way with these illicit drugs, they make no distinction between the young, the middle-aged, or the old, the infirm, the highly intelligent, or whatever, but if illicit drugs are a rhinoceros, alcohol is a Tyrannosaurus Rex. It causes far more harm in every respect than all of these other drugs put together. If we speak against an amendment such as the one that I am offering, we will continue to be in the position of telling young people just say no to drugs of the kind that society doesn't like, but just say maybe to alcohol, or perhaps. A rationalization can be made to justify that drug which the young people constantly hear causes more damage than all the others put together. So it is clear to those who may have just arrived, what this amendment would do is to enhance the punishment for those who give alcoholic beverages to anybody below the age of 18, but it contains a proviso that exempts alcohol which is provided or consumed in the residence of the parent or guardian of the minor. In other words, it retains the law in its present condition. All it does is enhance a punishment. It does not make anything illegal which is legal now. The only thing that it does is to enhance the punishment. That is all, Senator Hall, that is all. It brings us face-to-face with whether we really believe that enhanced punishments ought to attach to conduct which the law already makes illegal, but since Mr. William Bennett said don't touch

alcohol, since George Bush did not put it in his national agenda, since the Governor did not call for it, all of these people on this floor who say they are fighting drugs because they are concerned about the problem, they are interested in our precious children, suddenly are drawn up short because this is not a part of the approved agenda, but we have young people in this Chamber and other places who will see the inconsistency in what it is we are doing. They will see that "Liz" Karnes is like a voice out there crying in the wilderness because those others who under ordinary circumstances will say something needs to be done about alcohol will draw back and not do that which is within our power to do. We are already dealing with an issue of drugs. We are already enhancing punishments, but when it comes to the most abused one, we halt and are afraid. We become timid. The courage is gone. The spine becomes Jello, and we say just say no to an enhanced punishment when it comes to the worst drug of all. Don't do anything about that punishment, but on all of the other drugs, you can do it because the President has given us permission to do it; William Bennett has given us permission to do it; the Governor has given us permission to do it. You won't see one of these politicians going on television with their commercials saying we have done something concrete to attack the problem of alcohol being given to minors.

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: This does not prohibit the consumption of alcohol. Everything that is legal to be done with alcohol remains legal with my amendment. The only thing that is changed is the punishment. Senator Hall had indicated, but before I say that, hard liquor cannot be advertised on television, so there have already been some things done by the government to show its disapproval. We can go further. Senator Hall has just established that candy is the gateway drug to beer, because when he went to John's store or Al, when he went to Al's store, first thing he bought there was candy. Al kept talking to Tim, and as Tim grew older, he graduated to sausage. Then maybe he would get an extra chicken wing, then maybe an extra piece of lunch meat or a pork chop, luring him. Then when he comes of age, then it is beer. That is how they work subtly.

SPEAKER BARRETT: Time.

SENATOR CHAMBERS: They get you. I hope you will adopt this amendment.

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LB 220, 976, 1055, 1153, 1153A, 1221, 1246A
1247

SPEAKER BARRETT: Thank you. The question is the adoption of the Chambers amendment to the amendment. Those in favor vote aye, opposed nay. Have you all voted? Have you all voted? Senator Chambers. Roll call vote has been requested. Members, please return to your seats. The question is the adoption of the Chambers amendment to the Johnson amendment. Mr. Clerk. Excuse me, members, please return to your seats. (Gavel.) The call is not raised. Please check in. All members please check in. Senator Smith, please, record your presence. Senator Beyer. Senators Goodrich, Moore, and Scofield, the house is under call. Senators Moore, Goodrich, and Scofield, the house is under call. The question, again, the adoption of the Chambers amendment to the Johnson amendment to LB 976. Mr. Clerk, call the roll.

CLERK: (Roll call vote taken. See pages 1734-35 of the Legislative Journal.) 11 ayes, 18 nays, Mr. President.

SPEAKER BARRETT: Motion fails. The call is raised. Next item.

CLERK: Mr. President, Senator Landis would move to amend.

SPEAKER BARRETT: Senator Landis.

SENATOR LANDIS: Mr. Speaker, members of the Legislature, I move to adjourn until tomorrow morning at nine o'clock.

SPEAKER BARRETT: Would you care to amend that to eight o'clock, Senator Landis?

SENATOR LANDIS: I certainly would.

SPEAKER BARRETT: Thank you. Any items to read in, Mr. Clerk?

CLERK: I do, Mr. President. Your Committee on Enrollment and Review respectfully reports they have carefully examined engrossed LB 220 and find the same correctly engrossed.

Mr. President, I have a new bill, LB 1247 offered by the LR 232 Special Investigative Committee. (Read for the first time by title. See pages 1735 of the Legislative Journal.)

Mr. President, LB 1153 is reported to Select File, LB 1153A, LB 1055, LB 1221, and LB 1246A, all those on Select File.

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LB 902, 976, 1019, 1153

Mr. President, Senator Haberman would like to add his name to LB 902, and to LB 1019 as co-introducer. Mr. President, Senator Byars has amendments to be printed to LB 1153. That is all that I have. (See pages 1736-40 of the Legislative Journal.)

SPEAKER BARRETT: Thank you. You have heard the motion to adjourn until eight o'clock in the morning. A machine vote has been requested. All in favor of adjourning until tomorrow morning at eight o'clock vote aye, opposed nay. Voting on a motion to adjourn until tomorrow morning at eight o'clock. Please vote if you'd care to vote. Have you all voted? Have you all voted? Was there a request for a roll call vote? I'm sorry, I did not hear. Request for a call of the house. Shall the house go under call? All in favor vote aye, opposed nay. Record.

CLERK: 22 ayes, 0 nays to go under call, Mr. President.

SPEAKER BARRETT: The house is under call. Members, check in please. Members, record your presence. Those members off the floor, please return. Senators Goodrich, Scofield, Korshoj, the house is under call. Members, return to your seats for roll call vote. (Cavel.) Return to your seats for a roll call vote. The question is adjournment. Mr. Clerk, proceed.

CLERK: (Roll call vote taken. See page 1741 of the Legislative Journal.) 17 ayes, 18 nays, Mr. President, on the motion to adjourn.

SPEAKER BARRETT: Motion fails. Next item, Mr. Clerk.

CLERK: Mr. President...

SPEAKER BARRETT: Call is raised.

CLERK: Mr. President, the next amendment to the Johnson amendment is by Senator Landis.

SPEAKER BARRETT: Senator Landis.

SENATOR LANDIS: Mr. Speaker, members of the Legislature, it strikes me that a number of our colleagues have voted with their feet on this last motion to adjourn, and that both Senator Pirsch, Senator Johnson and myself are suffering from the difficulty of trying to get 25 votes with 38 people on the

floor. On the other hand, let's soldier on. My amendment is as it was indicated to you yesterday. It amends the Johnson amendment. The Johnson amendment is, as you recall, a strengthening of our general prohibition against selling drugs to young people, or, also in the case of young people, using them as sellers or purveyors of drugs as part of a network. I believe that the principle of the Johnson amendment as written is the better of the two principles and supplants the principle that is currently found in LB 976. Now, Senator Pirsch and I had a conversation a moment ago talking about were there other ways in which these principles might co-exist. And I said, in fact there was an element of her bill that I found antithetical to the Johnson amendment, which is the enhancement notion, which is to take an existing penalty and make it greater because that act is done in proximity to a school. If that's the case, you can't take the Johnson amendment or our normal drug laws and make them have the same meaning, the same penalty for treating an individual who happens to be farther away from a school than somebody who would be within the ambit of 976, and still criminalize the action of selling to that person with the same gravity as you would somebody close to a school. Of the two, if I'm made to choose, I would say that it's more important to criminalize the behavior of selling to young people, that's the crime, that's the heinous act, that should be our stiffest penalty. Whether that's done close to a school or far away from a school, or whether, for example, a Christian school, a home school applies and that creates a 1,000 foot barrier, I'm not exactly sure. The simpler answer to me, rather than to get a compass out and to draw a whole lot of circles on a city's map, is to simply make it a stiff, heavy penalty to sell drugs to kids. And then it doesn't make a difference where you are inside the borders of Nebraska once that action has taken place, a very heavy criminal sanction attaches to the act. So, my amendment says in the event the Johnson amendment is attached to 976, the existing provisions are stricken, that the Johnson principle prevails because, in essence, it's antithetical to the existing principle in the bill. Now, could you change the principle in the bill? Well, Senator Pirsch challenges me to think of how that could be done, and I say, well, it would be possible. You could make it a separate offense to sell close to schools, with a separate penalty that doesn't change, that doesn't enhance existing penalties but makes it a separate penalty. That would not be directly contradictory to the Johnson amendment. And at that point you've got to think about it, maybe the equities are there, if you can draft the bill

well, maybe that one starts to make sense. But right now that's not the principle in 976. And since we don't have time to spend between now and tomorrow to work out any additional language, I'm going to offer this amendment again. The amendment is to strike the...should the Johnson amendment be attached to 976, that those become the operative sections of the bill. That is the superior public policy. Make it, without regard to where the child is, a crime of serious consequence to sell drugs to the kid. Don't premise that crime or that penalty on the location, premise that crime on the fact that this is a child of tender years whom you are subverting, and make the action of doing that, without regard to geography, a very heavy sanctioned act by passing the Johnson amendment to the exclusion of the existing provisions of 976. I move the amendment.

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

CLERK: Mr. President, Senator Chambers would move to bracket LB 976.

SPEAKER BARRETT: Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, my bracket motion says bracket it until April 10th. I'm prepared to stay here all night on this bill, or whatever we have to do, and I have some other amendments up there, because this is a terrible bill and I'd rather see nothing done with it at all. I don't believe the bill can be put in a decent form. I'm going to be very blunt, as I've been before. This kind of trash legislation, if it is placed on the books, is not going to be employed and used all over the state because present drug laws that could be enforced all over the state are not being enforced there. They're being used as an excuse and a facade to come into my community, and the communities of poor people who are not black, by the police, some of whom are like marauders. There is an investigation underway right now in the Omaha Police division where a lady has alleged that she was assaulted while in jail. She went there, wound up at some point not being awake, and when she awakened her tampon had been taken from her, she was bleeding, and some parts of her clothing had been torn from her. I called the public defenders office and said before the lady goes to jail I want to be sure she has some clothes, because she and her mother called me, she was going to jail for bond setting, and she said her clothes were ripped, she had blood all over her and that's the way they were going to take

her before the judge. That doesn't happen to white women. And that's the kind of thing that I'm talking about. So if we're going to stay here all night, we're going to stay here all night. And I have enough motions to keep us there. And we'll stay here until 12:00 p.m., and if we go to 12:01 a.m., then that starts another legislative day, and that's all right with me. I've tried and tried all this session in every way I could to point out the disparity in treatment that occurs between black communities and white communities when we're talking about law enforcement. I've talked about the television stories that channel 7 did to point out that the majority of drug dealing occurs in west Omaha, and the vast majority of arrests occur in my community. Senator Pirsch and others stand up here and talk about a drug-free school zone, and that program also showed that more drugs were being sold probably at Millard North than at any of the other schools. But there are no arrests there. A lady told about the fact that her child wanted to go to Millard North, but she would not let her go because of the amount of drug dealing. And this was told and the mayor can hear it, the police chief can hear it, and do you think they went out to Millard North to see about any drug problems? No. And when they asked the kids themselves what kind of drugs they use, and these were in their lower teens, lower and mid-teens, one boy says he uses crack, cocaine, some amphetamines and pills. That covers the spectrum. Some of them said they get drugs from home, they get money from their parents. And when they were asked why do you think the arrests are not made out here, they said, well maybe it's cause we're all clean cut and they don't think we use drugs. They know drugs are used. This same lady who said she didn't want her child to go to Millard North said she has to accompany her to school because there are houses in the neighborhood where drugs are sold and it's known that drugs are sold. The police could hear that, the mayor could hear it, the Governor can hear it, the State Patrol can hear it, and if they're fighting drugs and concerned, why don't they go out there in west Omaha, especially southwest Omaha and make their arrests. There is not enough money in the black community to justify the existence of the amount of drugs that are in Omaha. And when they make these little arrests and drug sweeps, as they call them, through the black community and get a fraction of an ounce of cocaine, do you mean to tell me you think that's what we mean by drug traffic in Omaha? What the chief is talking about when he goes to these various civic groups and talks about the seriousness of the drug problem, what these kids in these white high schools are talking about, a fraction of an ounce of

cocaine in a drug sweep? The heavy drugs and the large amounts of drugs are in west Omaha, because that is where the money is, but no drug enforcement occurs there to speak of. One man on the channel 7 program talked about some drugs being sold in one of the hotels out there, and he said there was so much money involved that the man didn't count it, he weighed it. But after it was weighed this guy went on and counted it, it was thirty something thousand dollars. And the man who had it didn't even care about quibbling about the amount, he weighed the money. And this was said on television. And what was done about it? They don't make any sweeps in the ghetto and get \$37,000. That's one transaction, and you mean to tell me I'm supposed to believe this Legislature is sincere and the Governor is sincere, that the chief of police is sincere, the head of the State Patrol is sincere? I handed you this thing about that Can-Do program out in western Nebraska, where it took them more than a year of undercover work to round up 70 street junkies, and the State Patrol coordinated it, several of your best law enforcement agencies out there in western Nebraska. And I was the only public official to condemn it when it happened. And then a few months later, did you condemn it? Senator Nelson says she condemned it, but I didn't read about her, you read about mine. I want to make sure they know that I'm condemning it. She wasn't as vocal, and that's the problem. All that is needed for evil to triumph is that good men and women say and do nothing. And when you have all these white kids out there selling drugs, and using drugs, and watching television where there's supposed to be a fight against drugs, and it doesn't affect them, we talk about sending messages. What message do you send to them? They are exempt, they get a free pass, they get a free ride. Every time you...Don't leave, Senator Langford, you wanted to stay. Well, you wanted to stay. You know I'm here. She's sick of me, that's why she's leaving. But she wanted to stay, that's why I'm talking. I thought she wanted to hear some more. Then she picks up her books and runs home, like a spoiled child. (Laugh.) Some people act like those who are 18 and 20 years old, as they've been characterized erroneously by one of my elderly colleagues here. This is serious, it's not to you all, because it's not going to affect your community. You know good and well when the doors are broken down and you see it on television it's going to be in my community, you know that. When you see the police with somebody and their face is on the ground and the cop got his knee or his foot in their back, you know it's not going to be any of your kind, it's going to be in my community. And when they drag

these teenagers off to jail and say they're a part of a big drug dealing ring and they've got a fraction of an ounce of cocaine, and a few hundred dollars, and this is a success in the war on drugs. And I got all of these people in this Legislature, all of those police officers, the state troopers who are going to brag to you all about all they're doing, take their little dare programs into these white schools where the kids are dealing drugs and know that all that cop had better do is come up there and beat his gums about dare and don't use drugs, he better not try to arrest anybody who is selling, he had better not. And I've issued the challenge over and over; do you see the World-Herald write about it? No. But they'll write day after day about some black youngster being grabbed with a fraction of an ounce of this or that, and you want to tell me it's not racism. And that Senator Langford says she's sick of hearing me, you think I'm not sick of what goes on down here, you think I'm not sick of these people? I'm talking about my community. Then you all want to have your little gatherings and your meetings and invite some black person there to entertain and amuse you, about what can we do about the drug problem. Let's have a task force, and then we'll complete...we'll report every word said at the task force. Let's go out to the theater in Omaha where they have opera and acts and the World-Herald is there to report all of this stuff we've heard over and over and over ad nauseam, cause that's what you can report, because that's your job. And we watch it. And you all have a monster in your neighborhood. And you think that by focusing on us and abusing us you're doing something with the problem. You really are because you see us as the problem. And pretending to do something about drugs, you can do to us the things that you want to do. But there are young black men and young black women who see the things that happen to their parents. They're aware when they go to get the job, they're turned away...

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: ...and said to be not qualified. They know when they go get the job their application is not even taken, then you send cops among our young people to brutalize them as though every one of them is a gang member, a drug dealer or a criminal. So when these young men begin to get weapons and they develop the idea that it's their responsibility to protect and defend their community, then a lot of you all are going to be hollering for stiffer drug...for stiffer penalties when things begin to happen to those who bring the violence into our

community when they're wearing police uniforms, kick people's doors in, plant drugs on them. I deal with these cases all the time. I'm calling the mayor's office constantly, I'm referring people to the police chief. And because my time is about up I'm going to talk again,...

SPEAKER BARRETT: Time.

SENATOR CHAMBERS: ...I'm going to talk plenty more before we get out of here today.

SPEAKER BARRETT: Senator Pirsch. Senator Pirsch.

SENATOR PIRSCH: Thank you, Mr. Speaker. And I just rise to oppose the bracket motion. We voted to stay here and deal with this, and let's go forward with it and oppose the bracket motion.

SPEAKER BARRETT: Senator Chambers, followed by Senators Hall and Dierks.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, when we have the serious problems in Omaha this summer, let us see if the Mayor is going to go to those groups that have been hustling him for money and saying what all influence they have in the community, bring in white people on there on tours of our community. When they went out to Liz Karnes affair at Boys Town to talk about drugs, some of them said you nice white people come with us and we'll let you tour the black community. And you think that the black people don't feel resentment about that? Every shred of dignity is taken away. These nice white women have the opportunity to ride in a car legitimately with some black men and gawk out the windows at black youngsters and black old people, and they're learning about the streets, they're learning about the black community, and now they are authorities and experts on what happens in the black community. Then they'll come down here and talk to some of these people in this Legislature and say, hey, I know, I was there, you need these laws. It's crazy. And you all will leave here and you'll go to your parties and you go home and you forget it, and you put these hellish laws on the books and then we have to live with it and deal with it. I haven't moved out of my community. I live out with white people and then get up in front of the mayor and say I represent a black community, these are my people. You see the way that I dress. You hear the way that I

talk. I don't dress like you all, I don't talk like you, I'm not trying to be one of you. I have a responsibility to represent the people who sent me here, and you need to see in me what I come from in that community. And not everybody in that community wears a suit, and they're not people who go to the Nebraska Club and who fare sumptuously with these lobbyists and go to the parties and ride in the buses to the special events. That's not the community that I come from. You won't find me at all these morning breakfasts, afternoon luncheons and evening dinners and the social hours. You all know that that's not what I'm sent down here for, so you shouldn't be surprised when I talk in this fashion, when I'm confronted with legislation and other things of the kind that are brought here. When we pass laws we don't have to say for white people, because everything we pass is for you all. When we talk about a housing program for NIFA, funds loaned at a bargain rate, we don't have to say for white people, because NIFA is for white people. When we talk about education assistance programs I have to get some money from the Legislature that specifically is going to minorities, because that's the only time any of them get anything. Everything we do is for white people until it's an onerous burden or some unjust law. And Senator Pirsch can say over and over these laws are necessary so that they can be used all over the state, they're not going to be used all over the state, and she knows it. They're not using the laws right now that they have. That is an excuse and a justification to come into our community to do the kinds of things that they want to do. And we are going to stay here and I'm going to talk and you all are going to listen. And how you feel is for you to cope with. Wherever this bill goes in this process I'm going to follow it and I'm going to hound it, I'm going to harry it, and I'm going to bring it to Earth. And if it fails this session and comes again next year,...

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: ...I'll be there to do it again next year and the year after. I look at how hard and assiduously people work for Commonwealth. But I'm going to tell you all something about how that thing started in the beginning and how Lincoln senators condemned me when I told these people they ought to go put some heat on the Governor and the Attorney General, those white senators said, no, they're nice, honorable men. And the reason that these Commonwealthians cleaved to me in the way that they did, they were at the meeting where I said that and said the

Attorney General should be impeached. And I have the article where the experts said that will never happen, and it did, not because of people in here, I offered that resolution and not one senator would sign on it with me as a co-sponsor. I know the things I've been through down here trying to help you all's people when some of you all wouldn't help them. Bear the heat of the day. Then like the little red hen, when the bread is cooked, they'll all run and eat it.

SPEAKER BARRETT: Time. Senator Hall.

SENATOR HALL: Thank you, Mr. President and members. I rise to oppose the bracket motion. I have supported I think virtually all of Senator Chambers amendments to the bill. I haven't offered any myself, except for the next one which is up, which is to the Johnson amendment and have tried to deal with it on an up front manner. I don't think I will support LB 976 in any form that has been suggested today. But I'm more than willing to sit here until twelve o'clock. I really don't have anything to do tonight, and I can get back for class at eight, it really doesn't bother me. The thing here is that we're talking about a number of different things which is interesting, because I do think that Senator Chambers, although I don't like the method that he uses to address some of these issues, has legitimate concern in what he is saying about some of the ways that we have been treating the issue of drug abuse and stiffer penalties on either drug dealers or drug users or whatever. But I would just as soon deal with it on an up front way, in an up front manner, vote the bill up or down, vote the amendments up or down one way or another as they come, because what you do with the bracket motion, I guess, is you possibly move the bill out of the way. Look what comes up if we move the bill out of the way. Maybe I should support the bracket motion, because I think if you look on your agenda there is a little bill there called LB 854, and I would argue that that is one of the other agendas that we've been dealing with here today, and it's one of the reasons that Senator Pirsch's bill, like it or not, and I don't, but...has suffered the afternoon along is because there are other agendas out there that would prefer we not get to LB 854. There probably were two amendments to LB 976 that probably should have...one was the one that I have up next, it was a straightforward amendment that took away any reference to things other than school grounds. If you're going to call it a school bill, let's just deal with schools, not arcades and some of the other things that you really couldn't define. And then there

was the amendment that Senator Chambers had that dealt with the issue of not being able to have the penalty removed, even if you were acquitted on appeal, which really made no sense at all. Those two provisions could have been adopted into this bill, and then there could have been a straight up argument on whether you thought the bill was good law or not, and it could have been voted up or down. But it's my belief that folks didn't want to do that, at least some folks, not all. I think Senator Chambers is honest in his opposition to this issue. But there is others, I believe, that didn't want to get any farther than LB 976, they didn't want to deal with the bill that is behind it. They wanted to talk about kids and how they're affected by drugs and alcohol and other things, and they wanted to talk about kids under the age of 18. Well, let's...I don't have any problem talking about very little kids, kids still in the womb, what's wrong with that. Why don't we offer that amendment. Make it illegal for anybody over the age of 18 to supply those kids with drugs, a mother, for example, who is expecting. That would be an interesting amendment to this bill, wouldn't it.

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

SENATOR DIERKS: (Response inaudible.)

SPEAKER BARRETT: Question has been called. Do I see five hands? I do. Shall debate now cease? All in favor vote aye, opposed nay. Have you all voted? Shall debate cease? Record, please.

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

SPEAKER BARRETT: Debate ceases. Senator Chambers, to close on the motion to bracket.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, Senator Hall made an interesting observation, I won't call it a suggestion, that why not an amendment to make it a crime for a pregnant woman to take drugs that may affect the fetus. That fits the attitude that exist in this country, put the woman in jail, make her a criminal. Always the woman, always the woman, always the harsh punishments are directed at the woman, not just any woman, the poor woman, the ignorant woman. From time immemorial, royalty, the elite, the upper class have been able to obtain abortions, always. Religious people, who are not

supposed to be pregnant in the first place, have always been able to obtain abortions. So, that subject is dealt with in the real world the same as everything else we deal with in this legislative body. The elite control everything, they dictate what the Legislature is going to do, because most people in Legislatures perceive themselves as being of peasant origin, more or less, so they're always trying to cheese up to their betters. They think if they carry water they'll get invited to these parties and these lobbyists will put their arm around them and squeeze that ill-fitting shoulder pad and that ill-fitting coat and then the lobbyists go home and they laugh at the legislators, laugh, it's a joke. And if you all think this is not true, you try to get some of those lobbyists to take you all to some of their social affairs where they go with those on their own level, not when they're putting out the trough to bring in the cattle and the hogs to be fed. I'm talking about where they bring their special ladies or significant others, whoever or whatever they might be. You all aren't going to be there. They let you all press the floor boards of the Nebraska Club when they're going to treat you all like their hired servants. But, if they put on a genuinely significant elitist event, do they invite the legislators. If there is not something they want to get from the Legislature, are the senators invited? No, because senators don't have anything to talk about, they're not broad enough in their scope and they haven't conducted themselves in a way to merit genuine respect. And that's why legislators are the butts of jokes even in the corridors of this building. You all may not hear those jokes, but I do. Lobbyists can't give me anything. And there are some who can't receive enough from the lobbyists. They say, let's go eat, and you run and eat. So that's why I know that I'm talking to these walls when I discuss the kind of issues of equity and justice that I feel compelled to raise. We have poor little reporters trying to make a living. Once they learn something they take them out of the Legislature and send the rookies here, because legislators and what we do is not important. And legislators are what reporters portray legislators as being.

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: But fortunately, I get to go other places and talk to people, not lobbyists, but students and others where I'm not fed. Senator Hall said he has a good amendment. And because I don't put myself in a corner from which I cannot emerge, I'm withdrawing my bracket motion.

March 29, 1990

LB 976

SPEAKER BARRETT: It is withdrawn. Mr. Clerk, the next item.

CLERK: Mr. President, priority motion. Senator Elmer would move to adjourn until 8:00 a.m., March 30th.

SPEAKER BARRETT: Anything for the record?

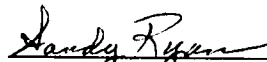
CLERK: No, sir.

SPEAKER BARRETT: A motion to adjourn until eight o'clock tomorrow morning. All in favor of that vote...or that motion please vote aye, opposed nay. Have you all voted? Record, please.

CLERK: 17 ayes, 4 nays, Mr. President, on the motion to adjourn.

SPEAKER BARRETT: Motion prevails, we are adjourned until eight o'clock tomorrow morning.

Proofed by:


Sandy Ryan

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

SENATOR BERNARD-STEVENS: Thank you, Mr. President, members of the body, I wanted to pick up a little bit on a topic that I broached on earlier that Senator Landis talked about as well and that is the frustration that everyone has had on both sides. I understand the frustration of a group when you have the votes to do something and you're unable to do that which you want to do. I experienced it, though briefly, not nearly as much as others have but on helping Senator Pirsch the other day on her bill, LB 976, and the frustration not being able to move, but I understand that was the system, but I also understand the frustration. There's frustration on the other side as well, the frustration of having a bill and not being able to amend it, and I don't mean not having the votes to amend it, but a mentality there that we're simply not going to allow you to amend it. You can offer whatever amendments you want, we're just not going to agree to them no matter what the scenario, and that's very frustrating. And I kind of want to put a couple things also on the record because I'm afraid at some point they're going to get lost and they probably will anyway even if it is on the record, and that is what we tend to forget just a little bit as a body is how the system works, and the system has worked very, very well. It's very frustrating to have a very vocal and strong minority slow and sometimes stop the majority if they feel the majority is wrong, but the system, for example, last year on LB 769 worked very, very well. This same majority was offering motions and amendments and causing their traditional havoc of destruction I guess on the bill, but yet in the course of the session last year, twice, not once, but twice LB 769 came up for an actual vote on the suspension of rules, to cease debate, no further amendments and we would have voted on the bill. We came to that point twice and the proponents, for whatever reasons and I'm sure all of them were legitimate, simply did not have the votes either time. They did not have the 30 votes twice to get the bill that they're still trying to get now. And yet they're saying we'd like to have just a straight up and down vote, we'd just like to suspend the rules, we've got the votes. Well, they didn't have the votes then, twice. Then we had a long interim. We came back this session and the bill was on General File. It was going to be one of those first discussed and I know everyone was anticipating what was going to happen on the bill. And what threw everything in a tizzy was the way things unfolded, and I

SPEAKER BARRETT: Have you items to be read in?

CLERK: Mr. President, I do. Thank you. I have amendments to be printed from Senator Abboud to LB 1246; Senator Hall to LB 1090; and Senator Abboud to LB 976. That's all that I have, Mr. President. (See pages 1769-74 of the Legislative Journal.)

SPEAKER BARRETT: Thank you. A motion to adjourn until Monday morning at nine o'clock. Those in favor vote aye, opposed nay. Have you all voted? Record.

CLERK: 15 ayes, 19 nays to adjourn.

SPEAKER BARRETT: Motion fails. Back to the matter of reconsidering the motion to return the bill to Select File. Senator Schimek, please, followed by Senators Chambers and Landis.

SENATOR SCHIMEK: Thank you, Mr. President and members of the body. I'd like to talk about parental notification, and I'd like to talk about the impact on young women as opposed to perhaps young men. You know, when we were discussing this bill before, Senator Nelson and I had an amendment which I think we withdrew, Senator Nelson, I can't remember for sure. But it would have required notification of the young man's parents, also, or parent, believing that both people were partners in a pregnancy. In Minnesota, as in all other states with mandatory parental involvement laws, no statute similarly requires teenage men to prove their maturity before making decisions concerning sexuality or parenting. In fact, where the decision or treatment might involve young men, such as statutes regulating venereal disease, treatment and contraception, many states, including Minnesota, recognize minor's capacity to give informed consent. In this way the effect of parental consent laws is to single out unmarried, minor women whose sexual activity results in a pregnancy and subject them to burdensome and often traumatic requirements. Such requirements are not imposed upon unmarried, minor men whose sexual activities results in pregnancy. By telling a young woman that she may not decide in whom she will confide, or that the abortion decision is not her's to make, these laws reenforce disabling notions that women are not and never can be mature, that women's sexuality is dangerous, and that a young woman's separation from her family is somehow bad, while her brother's is not. The evidence

that are the 1990 senators' priority bills. All nine of them, as I look at them and read them, are very important bills, and today is the last day for General File. So I have a motion up there to suspend the rules and to advance the nine senators' priority bills to Select File without any further amendments or debate. This has been done in the past. I believe Senator Chambers and Senator DeCamp, in the years that I've been here, have done it two or three times. I can remember at one time we moved 30 bills off of General File, that were consent bills, without any debate. Now, if we do this, then I'm sure Senator Barrett's motion to suspend the rules on Final Reading will also move. And then we will read the bills on Final Reading. And then by chance we may be able to go today to General File for the 1990 committee priority bills. As I look through that list, there are many bills on that list that are very important. And we would have time because, as I say, today is the last day for General File. So my motion would be to suspend the rules and to...but I understand that I may have to overrule the Speaker's agenda first. So that will require 30 votes, and then the 30 votes to suspend the rules without any further debate or amendments and just to advance the nine bills that are the senators' priority bills. And I urge the members of the Legislature to give the nine bills a chance. The...Senator Morrissey's bill for the Radioactive Waste Disposal Liability Act, that's an important bill, we have Senator Lamb's bill, we have Senator Wesely's bill for a health care cost data center, and, of course, LB 976 which is Senator Pirsch's bill that has been debated at length, it's a violating drug laws, a bill that is important, and then last but not least there is LB 854, which is Senator Lindsay's bill to change the informed consent provisions for abortion. So I urge the members of the Legislature to give the senators a chance on Select File to advance those bills, or they automatically will die as of today, because today is the last day for General File. I remind you, we have to have 30 votes twice, once to suspend...or to...for the Speaker's agenda, and then to advance the bills to Select File. Thank you.

PRESIDENT: Thank you. Senator Chambers first, followed by Senator McFarland and Senator Schmit.

SENATOR CHAMBERS: Mr. Chairman, I have a question on procedure here. After the vote is taken, should it be adopted to suspend the rules and change the Speaker's order, will that motion that is being made be amendable?

suspend the rules and overrule the agenda. That is fine. I can live with that. But what Senator Chambers has done is he has taken the first rule of debate and he has used it to his advantage because what he has done is he has defined the terms, he has used his position to say these are the definitions, folks, and we are going to play by this. He has said this is an abortion vote. If that be the case, then I guess I am in what we might call deep trouble and, in my opinion, that is not what that vote was. It was a procedural vote. As you all know, we all have the ability to vote any way we want to on a procedural motion for whatever purposes we might have. Maybe it is LB 854, as Senator Labedz has so forthrightly stated on her behalf, maybe it is another bill down the agenda on Select file, maybe it is another bill on General File, or one that is on Final Reading. Whatever the purpose, we each have our own reason for voting the way we did on those proposals, but don't let Senator Chambers define the terms for you in terms of what that vote was. It clearly, Senator Schmit, was not my masochistic tendencies that got me to vote with Senator Chambers. If you look what you are going to be doing in terms of this next vote, what will happen is we will move these bills off General File, all nine of them, and you will move them behind all the bills that are currently on Select File. So they will go off the list being second from the very top of General File, very likely we could have been to LB 854 by now, with some of the amendments I understood were on LB 976, and be debating that bill presently, which I have no problem that I would like to be able to do. But with this motion, we are going to move them to the bottom of Select File. They are going to fall behind the approximately 15, 17 other bills. Instead of being second from the top on General File, which we would go back to after the one-thirty proposal, which I am not going to support either, excuse me, Mr. Speaker, but I am not, that motion, they are now going to be ranked about 18th and 19th and that is the way they will come in order. That is exactly what we are doing. That is exactly where we will be. That is what the vote on this proposal will do. You will take, if you think it is an abortion issue, or if you think it is a LB 1062 issue, or if you think it is a radioactive waste disposal issue, or in Senator Lamb's case, if you think it is a pride of authorship issue, that is where it is going to be when it comes to Select File, and all you do is you delay the inevitable. You, basically, put off the debate until Select File. That is fine. I don't have any problem with that. You are not going to change the outcome.

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adopt Senator Labedz's motion, the issue will not be completely laid to rest but it will come closer to having...Senator Schmit is messing with me, it will come closer to having been laid to rest than if we don't. If we don't...

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: ...defeat Senator Labedz's motion, then other things will be set in motion which will lead us to who knows where. The Far Side cartoon that was handed around might carry a hint of it, but I hope, indeed, that you will vote for this reconsideration motion.

SPEAKER BARRETT: Thank you. The question is the adoption of the reconsideration motion of the vote taken on the previous motion. Those in favor please vote aye, opposed nay. Record.

CLERK: 4 ayes, 26 nays, Mr. President, on the motion to reconsider.

SPEAKER BARRETT: Motion fails. Have you items for the record?

CLERK: No, I do not, Mr. President.

SPEAKER BARRETT: Next motion, please.

CLERK: Mr. President, Senators Labedz and Schmit would move to suspend Rule 6, Section 3, Rule 7, Sections 3 and 7, and place LB 976, LB 854, LB 1062, LB 1062A, LB 1151, LB 989, LB 989A, LB 866, and LB 866A on Select File without amendment or debate.

SPEAKER BARRETT: Senator Labedz, please.

SENATOR LABEDZ: Thank you, Mr. Speaker. I certainly will not go into a long, lengthy discussion on the motion to adopt the motion that I have up there, which is to suspend the rules with no further amendments or debate. And it will require another 30 votes, and then we can go on to Final Reading. Or, I should correct myself, Mr. Speaker, we will go on to your motion to suspend the rules with no further amendments or debate and read all the bills on Final Reading. And, as I said before, I have at least 40 or 50 amendments on some of the bills on Final Reading, but I will vote in the Speaker's favor to read the bills without further amendments or debate. And I will relinquish the rest of my time to Senator Schmit, and hopefully

And for that reason I am voting to suspend the rules to enable to advance all of the bills to Select File. My intention is to vote for some of them on Select File to advance them to Final Reading and to vote against them...against others. As you consider this vote I'd ask you to consider one question. What if we don't vote to suspend the rules at this time? What's going to happen is that you have LB 976 coming up, and it is a bill that now has 12 amendments on it, as I understand. It may have more at this time. The last time I checked there were 12 amendments. If you just took the opening and closing time of 10 minutes opening, 5 minutes closing, for 12 amendments, that's over...that's three hours of debate right there. Obviously, what's going to happen is if you do not vote to suspend the rules at this time we can start to discuss 976, we'll go to Final Reading this afternoon, and when we get done with Final Reading about five o'clock or so, then you'll discuss 976 for the rest of the evening, and you'll be here until six, seven, eight, nine o'clock and adjourn. I think these bills deserve to be considered. And even though I don't want to vote for all of them, I'm willing to vote to advance them to Select File at this time with the understanding that I will vote against some of them, at that time, and vote in favor of others at that time as well. And that is my reason for the vote. And I hope that you will consider that as well, and consider what will happen, if you vote against this motion, consider what you're voting for for the rest of the day and on into this evening. Thank you.

SPEAKER BARRETT: Senator Pirsch, please. Question has been called. I think I will probably...we've only had two speakers, Senator Pirsch I'll let it go a little bit longer. Thank you. Next speaker, Senator Langford. Thank you. Senator Lynch. Senator Labeledz. Senator Schmit.

SENATOR SCHMIT: Mr. President and members, much has been debated already, and in fact probably some of the best debate that has taken place this session. I would suspect that each of us can find reason to vote as we see fit to vote. Each of us will vote our convictions, and that will not necessarily determine the future votes of each of us, because each vote, as we cast it on this floor, is a separate and individual vote. Senator McFarland has given you some reasons why he will vote for this issue when he might not have voted for it at another place, another time, another issue. And each of us has to consider those. Senator Chambers has made his points very clear. And I would just ask that you support the motion. I

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will give the balance of my time to Senator Labedz.

SPEAKER BARRETT: Thank you. Senator...

SENATOR LABEDZ: I certainly don't need the balance of his time, but I'm so glad that Senator McFarland mentioned the fact, and I didn't notice that this morning, that if you turn on the back of your agenda, item number 8, General File, we go back, after Final Reading, to the senators' priority bills. So that means this afternoon, after four and a half hours of Final Reading, we definitely will go back to LB 976, which is Senator Pirsch's bill on changing the penalties for violating the drug laws. And then LB 854 would be next. So, I am sure what is going to happen, as Senator McFarland stated, we'll probably be here again until midnight. So I urge the members to take that into consideration, because after Final Reading we can go onto the committee priority bills rather than turning back again to number 5 which is the senators' priority bills. Thank you.

SPEAKER BARRETT: Thank you. Senator Crosby.

SENATOR CROSBY: Thank you, Mr. Speaker and members. I am concerned about when I listen to all this discussion about the fact that this happens to be about one bill. I know that. Everything we do in here, the last two or three weeks, maybe the whole session, seems to center around abortion. But yesterday afternoon the word "abortion" was never mentioned, but we had a filibuster on LR 239, which was keeping us from getting to LB 854. And I'm sure that's all planned. And I have to admire the people who orchestrate all that, because they are really adept and adroit at what they do, because it took me about ten minutes to figure out what was going on. And then I relaxed and listened to everything that was said, and learned some more. I was concerned this morning when Senator Moore said he didn't know who John L. Lewis is...was. Senator Schmit, you know, what Scott Moore needs to do is go down to the university and take John Braeman's course on the Roosevelt years, he would learn about legislative maneuverings and political maneuverings like he has never seen or heard of before. And that's...John L. Lewis was a member of all that, part of all that. A man whose name I cannot bring up this morning, I think maybe it was Robert Murphy, a senator from New York State who was a part of all that agenda and those years, he was the master who built and planned all the labor legislation that we have in place today and has been refined since then, when the unions started being strong

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LB 854, 866, 866A, 976, 989, 989A, 1062
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Chambers motion to return all bills on Select File to General File? Senator Chambers, any further statement? Thank you. The question is the return of bills on Select File to General File. Those in favor vote aye, opposed nay. Have you all voted? Senator Chambers. Thank you. Have you all voted? Please record.

CLERK: 1 ayes, 15 nays, Mr. President, on the motion to return the bills to General File.

SPEAKER BARRETT: The motion fails. Next item.

CLERK: Mr. President, I now have a motion to overrule the Speaker's order and consider a motion by Senator Chambers to return specified bills to General File. That motion is to return LB 976, LB 854, LB 1062, LB 1062A, LB 1151, LB 989, LB 989A, LB 866, and LB 866A.

SPEAKER BARRETT: The Chair recognizes Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman, before I begin, there might be a question as to whether this is a reconsideration, so the person that wants to raise the issue, I will let them raise it, but these are the bills that were included in the package yesterday that were all advanced to Select File on one vote without amendment or discussion.

SPEAKER BARRETT: Thank you.

SENATOR CHAMBERS: And, Mr. Chairman, before I go into my opening, I will go ahead and we can dispose of the question that Senator Bernard-Stevens wants to raise.

SPEAKER BARRETT: Thank you. Senator Bernard-Stevens.

SENATOR BERNARD-STEVENS: Thank you, Mr. Speaker. I am going to raise the question and ask for a ruling. I would assume that this would be a reconsideration motion then of what we did yesterday. Is that the Chair's understanding as well?

SPEAKER BARRETT: Senator Chambers, have you any comment?

SENATOR CHAMBERS: Well, it really wouldn't be that because it is not saying vote again on what was done yesterday. That action was done. This is taking it back. I had misunderstood

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unusual thing yesterday. We went ahead and moved nine or so bills without any debate and without any further amendment, controversial bills at that on General File, moved them to Select File, and I think we all knew what was going on that day. But what we did yesterday, in essence, I think as a body was decided that we could do this to the rules because of the situation that we are in in order to get some things done, and I want to try to give the body at least a chance to do the same thing today. I am not trying to do as others, I am not trying to say I don't want an abortion fight today. I am ready for an abortion fight today. I am ready for it now. I am ready for it an hour from now. I am ready for it at four o'clock, and I am ready for it at 11:59 tonight. It doesn't bother me when we are going to have that fight and I want to have that fight. What I am also suggesting, though, is that we have a chance now in the beginning to say as we did yesterday that there are some things we, as a body, can do that will not jeopardize the fight that is to come, but we can do these things today. I am suggesting to you that I am not trying to put off the fight. I am, in fact, trying to give the body an opportunity to at least say when the fight is going to take place. What my amendment would do, what my motion would do, excuse me, would change the agenda in the following way, and it is not a major change so it's easy to follow. If the motion is agreed to, we will simply jump to item six and item seven on the agenda. Those are bills on Final Reading that need to come back for specific amendment. I know Senator Hall has an interest in LB 1090. I know on item seven, if I understand that motion correctly, it is on the low-level nuclear waste, LB 1054, that needs to come back for a specific amendment. After we take care of item six and seven, which will take some time, I am then proposing that we go back to Select File, right at the top of Select File. I am also going to suggest, and actually it is not a suggestion, it is in my motion, I want you to know also what I have done. I have also said that if you look at Select File, we have got LB 431, which, Senator Wesely, regardless of what we do today, that will be the first bill up and there is going to be an attempt and an amendment on that one, I know. LR 239CA, I don't know what is going to happen. Originally I had heard from Senator Withem that there is a motion filed, and I believe it was filed, to have a discussion whether or not the body wants to bracket LR 239CA. If you go down with me on the Select File list, LB 1055, LB 1221, LB 1124 are gone. We passed them yesterday. Which brings us to LB 976 and LB 854. Beneath LB 854 is a bill, LB 1062 which I, myself, in discussion with Senator Lynch, I

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CLERK: Mr. President, the next motion I have with respect to today's activity is by Senator McFarland. Senator McFarland would move to overrule the Speaker's agenda and consider a motion to suspend the rules relative to LB 854.

SPEAKER BARRETT: The Chair recognizes Senator McFarland.

SENATOR MCFARLAND: Thank you, Mr. Speaker. Fellow senators, this is a very important motion. I think it is one that will get us out of the logjam and I notice a mood of the legislative body to get on with business, and the motion, in effect, is to consider a subsequent motion that is up next to suspend the rules. That motion to suspend the rules will allow for debate on LB 854 for a one-hour time period. It would permit people on the legislative floor to speak only once, and at the end of that hour, the primary introducer will be able to close on that bill and the bill will be voted, either advanced to Final Reading or will not advance. One of the things that we all know is going on here right now, as evidenced by the initial motions, is that there is a concerted effort to delay any consideration of any business on this day, and there have already been statements by members on the legislative floor that they will do anything to filibuster so that LB 854 never comes to a vote. This, I think, would allow us, assuming this motion to override the Chair's or to overrule the Chair's agenda and to approve the motion to suspend, and they are passed, it would give us one hour of debate on the bill. I am sure that there will be enough chances for both proponents and opponents to voice their view. Actually, LB 854 is a fairly simple bill. It only makes a couple of changes. One is to require a 24-hour waiting period before an abortion is performed, and the second thing it does is to require that the woman considering the abortion have information about the stage of development of the fetus at the time of the abortion. That is all. There are already some...there is already requirements about certain information given to the woman already so it would just add that one particular thing. The problem we are facing right now in this last day in which any bill from Select File can advance is that other bills, as you well know, have been purposely delayed in an attempt to prevent a vote on LB 854. My suspicion is that LR 239CA has had several amendments to it that were not absolutely necessary and the purpose of all those amendments was to delay consideration on LB 854. I am almost 100 percent assured and believe that all of the amendments to LB 976 were not offered just to try to improve LB 976. They were offered

because LB 976 just happens to precede LB 854. For that reason, what my motion would do, and we overrule the Chair's agenda or the Speaker's agenda, will allow us to get LB 854 up, allow us to debate it for an hour, take the vote, advance or not advance. I think this proposal will have a lot of positive effects. One, it allows LB 854 to be debated. If we get to it now, we have to go right to the motion to suspend. Otherwise, it is going to be filibustered until the end of the session, and we wouldn't have sufficient debate except on the motion to suspend. This will allow debate on the one hour period. The second thing, it would eliminate a lot of delay on other bills that are before us right now because we know if this agenda is not changed, you're going to see lots of amendments filed to 976, to 1141, to 441 I think is coming up and we will just be in a log jam and we won't even get to consider any of the others. For that reason I would urge you to adopt the motion or the motion to overrule the Speaker's agenda and then to vote on a motion to suspend the rules to allow consideration for a one-hour time limit period.

SPEAKER BARRETT: Senator Landis.

SENATOR LANDIS: Mr. Speaker, I'm not sure under what authority the motion is made. My notion is it might be out of order to make a motion since it is not on the agenda of the Speaker and I don't believe this is a priority motion. I just ask for a ruling of the Chair if this motion is in order.

SPEAKER BARRETT: Thank you. For what purpose do you rise, Senator Lynch?

SENATOR LYNCH: Mr. Speaker, members, I rise, as far as I'm concerned, you know, making deals up there and talking, everybody talking to try to work out something, if we're going to talk about it, let's get out here and talk about it and we'll all understand what we're doing. But I see people walking up there. We've got more people up on the podium than we've got out here on the floor. If we're going to cut deals, try to work out compromises, get back here and do it or do it before we come to work in the morning so we don't have to waste all the time.

SPEAKER BARRETT: Senator Lynch, in the opinion of the Chair, we might be in an area of new ground. Believe me, this is not a deal-making process, it is an effort to make the correct, fair and equitable decision on the question before us and I believe it's new ground. It's a difficult area. We can stand at ease

and I think the Chair's ruling is incorrect. Once we have taken up the motion to overrule the Chair, it is appropriate, overrule the agenda, then we take it up and it is appropriate to consider it. I think realistically, and we all know what is going on here, if this motion is successful and we vote on 854 right now, you're not going to see other motions to overrule the agenda because that bill, once that advances, once, and my whole point is once LB 854 is disposed of, this day will go much smoother for all of us and I don't think anyone is kidding anyone when you say if we delay a vote on LB 854, we're going to see amendments and motions to suspend the rules and motions to override and motions to reconsider and motions to overrule the Chair on all of these other bills that precede it and we're never going to get to it. Senator Barrett, our Speaker, has said he is trying to be fair in all of the rulings he makes and I appreciate his attempted objectivity, but the truth of the matter is that the rules can be perverted as they have been perverted all this session. The reason we have not considered important legislation is because senators have manipulated and perverted the rules to delay votes on the parental notice bill, on LB 854, on LB 976, on other types of bills that we have had before us, all of those kind of things. And there comes a time when you say, when the Speaker has to exercise some authority and say, I have the discretion whether to consider certain things, I have the discretion whether to acknowledge them or this whole session breaks down and we never get anything passed. My reason for moving to overrule the Chair is that...

SPEAKER BARRETT: One minute.

SENATOR MCFARLAND: ...there has been precedent established. Second thing is that implicit in the rules, the Rule 1, Section 16 means nothing if you can never make the motion as Senator Withem said, and it's not something you consider after the fact and have...say it's up to the Rules Committee next year. It is, in fact, something that has to be considered. The Chair has already recognized it and it should be debated, discussed and voted upon. If it fails, it fails. Bring it to a vote, and with that, I'll end and I urge you to overrule the Chair's ruling.

SPEAKER BARRETT: Thank you, sir. Senator Chambers, Senator Labeledz on deck.

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

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LB 769, 976, 1241

more sane time, we might possibly be able to get together and be concerned about the child all the way from...

PRESIDENT: Time.

SENATOR SCHMIT: ...conception until it is too late to do anything about it. Thank you very much.

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

SENATOR PIRSCH: Thank you, Mr. President. My, oh-my, oh-my, what...we started at 3:20 p.m. As I told you, I had a series of amendments and I was prepared to stand up here and talk about LB 1241, and I had a lot of support. And I think that is reflective of the frustration that many of us have experienced on this floor at different times. A fair chance, that is all we wanted. I wanted that on LB 976, my priority bill. Senator Labedz wanted that last year when she named LB 769 as her priority bill, and so on and so forth. But, you know, I discovered that being on this side was much more fun, and it is fun to be on the filibustering side, and I open my statement saying I am going to see if I have the same stomach that others who have filibustered have and, you know, I discovered I have the stomach for it. I have the guts for it but, you know, colleagues, having the stomach for this is easy, but I have discovered that I don't have the heart for it, and with that, I will support readvancing 1241 and will pull my other amendments at that time.

PRESIDENT: Thank you. Senator Labedz, please, followed by Senator Moore.

SENATOR LABEDZ: Thank you. I appreciate the fact that those that were here and gave me the support to bring the bill back to Select File, give me the opportunity to read what I did, and Senator, I don't know if Senator Chambers is on the floor or not. Yes, he is. I was prepared to stand here and read 20,000 signatures because everyone of these names on these petitions and their address and their zip code, and I would have done it, but there are many of my friends who say that they have bills that have to be advanced tonight, and I sincerely believe that my friendship means as much to me as the unborn child of everyone of you that have been supporting me on this floor. So I would not...not able to do what I wanted to do but I kept