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Floor Debate  
January 22, 2008

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[LB92 LB157 LB335 LB380 LB383 LB467A LB690 LB709 LB843 LB961 LB963 LB1061  
LB1062 LB1063 LB1064 LB1065 LB1066 LB1067 LB1068 LB1069 LB1070 LB1071  
LB1072 LB1073 LB1074 LB1075 LB1076 LB1077 LB1078 LB1079 LB1080 LB1081  
LB1082 LB1083 LB1084 LB1085 LB1086 LB1087 LB1088 LB1089 LB1090 LR5CA  
LR222 LR226 LR227 LR228 LR230CA]

SENATOR LANGEMEIER PRESIDING []

SENATOR LANGEMEIER: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the ninth day of the One Hundredth Legislature, Second Session. Our chaplain for today is Senator Kruse. Please rise. []

SENATOR KRUSE: (Prayer offered.) []

SENATOR LANGEMEIER: Thank you, Senator Kruse. I call to order the ninth day of the One Hundredth Legislature, Second Session. Senators, please record your presence. Mr. Clerk, please record. []

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

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Are there any items...are there any corrections to the Journal? []

CLERK: I have no corrections, Mr. President. []

SENATOR LANGEMEIER: Thank you. Are there any messages, reports, or announcements? []

CLERK: Mr. President, a priority bill designation: Senator Dwite Pedersen has selected LB843 for this session. Hearing notices from the Transportation Committee and Education Committee, signed by their respective Chairs. That's all that I had, Mr. President. (Legislative Journal pages 301-302.) [LB843]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. We will now proceed to the first item on the agenda, legislative confirmation reports. []

CLERK: Confirmation report, Mr. President, by the Retirement Systems Committee; offers the report with respect to the appointment of Elaine Stuhr to the Public Employees Retirement Board. (Legislative Journal page 283.) []

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Synowiecki, as Chairman of the Nebraska Retirement Systems Committee, would you please open on the committee appointment. []

Floor Debate  
January 22, 2008

---

SENATOR SYNOWIECKI: Thank you, Senator Langemeier. Members, good morning. The Nebraska Retirement Systems Committee held a confirmation hearing last Friday on January 18. Former State Senator Elaine Stuhr has been appointed by the Governor to serve a five-year term on the Public Employees Retirement Board. The Public Employees Retirement Board oversees the administration of the five public employee retirement plans which, as you know, includes the school employees, State Patrol, judges, and state and county employees. Senator Stuhr resides in Bradshaw, Nebraska. Following a career in education and operating the family farm, Senator Stuhr served honorably in the Legislature for 12 years, from 1995 to 2006. She chaired the Retirement Committee for six years, where she was instrumental in identifying and taking corrective action to remedy problems and inefficiencies in the retirement system administration. Her appointment was unanimously approved by the Retirement Committee. We genuinely appreciate Senator Stuhr's commitment to public service and we ask for your support in the confirmation, in Senator Stuhr's confirmation to the Public Employees Retirement Board. Thank you, Senator Langemeier. []

SENATOR LANGEMEIER: Thank you, Senator Synowiecki. You have now heard the opening on the confirmation reports offered by the Nebraska Retirement Systems Committee. The floor is now open for discussion. Senator Howard, you are recognized. []

SENATOR HOWARD: Thank you, Mr. President, members of the body. I can't resist the opportunity to say how glad I am that Senator...that Elaine has decided to take this position. She was in unwavering support for the retirement program for public employees and I'm just delighted that she is going to be serving on this board. She is a person that will do a wonderful job. Thank you. []

SENATOR LANGEMEIER: Thank you, Senator Howard. Senator Carlson, you're recognized. []

SENATOR CARLSON: Mr. President, members of the Legislature, I simply rise in support of the appointment of Senator Stuhr; however, I think this is an opportunity to make a point concerning other potential appointments. Senator Stuhr is not in a position to be a beneficiary of the retirement system. She doesn't benefit financially in any way and so she will be a member that can make objective decisions. And I'm going to be more sensitive all the way along to these appointments on various boards and so forth that they are people that are in a position to make unbiased evaluations and decisions and not those that benefit directly from the finances involved with a given group. But I am very much in support of Senator Stuhr. Thank you. []

SENATOR LANGEMEIER: Thank you, Senator Carlson. Senator Erdman, you're recognized. []

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Floor Debate  
January 22, 2008

---

SENATOR ERDMAN: Thank you, Mr. President, members of the Legislature. If I might follow up on Senator Carlson's comment, just to be clear, the members that are appointed to the Nebraska Employees Retirement Board are not and do not have the opportunity to advocate for different plans or opportunities that they would see fit. They have a fiduciary responsibility, regardless of their personal involvement in previous plans. So even though we have individuals that have the opportunity to be appointed from State Patrol or public employees or judges or whomever, regardless of their previous history, they don't have that opportunity under state law to advocate for benefits or opportunities beyond being the administrators and oversight of that board. I want to make it clear that that's on the record for this board, has been clarified to some extent by what Senator Synowiecki pointed out under Senator Stuhr's direction. But the fact is, is that regardless of Senator Stuhr's previous employment or opportunities, no member of the Public Employees Retirement Board may endeavor in areas that Senator Carlson had previously mentioned, and I just wanted to make sure that that was clear. Thank you, Mr. President. []

SENATOR LANGEMEIER: Thank you, Senator Erdman. Senator Chambers, you're recognized. []

SENATOR CHAMBERS: Mr. President, members of the Legislature, I also am strongly in support of Senator Stuhr's appointment, even though I'm little shaky now. I was absolutely in favor of it until I saw a guy stand up in a leather jacket and speak for her, and you know these leather-jacket-wearing people sometimes live on the edge. But the fact that he's a member of a reactionary legislature, I'm going to presume that he's merely making a fashion statement rather than any other kind. And now my total support of Senator Stuhr's nomination has been restored. Thank you, Mr. President. []

SENATOR LANGEMEIER: Thank you, Senator Chambers. Seeing no other lights on, Senator Synowiecki is recognized to close. Senator Synowiecki has waived closing. The question before the body is, shall the confirmation report offered by the Nebraska Retirement Systems be adopted? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. []

CLERK: (Record vote, Legislative Journal page 302.) 40 ayes, 0 nays, Mr. President, on adoption of the confirmation report. []

SENATOR LANGEMEIER: It is adopted. (Doctor of the day introduced.) Continuing to General File, LB335. [LB335]

CLERK: Mr. President, LB335, a bill by Senator Kruse. (Read title.) The bill was introduced on January 11 of last year, at that time referred to the Judiciary Committee. Bill was advanced to General File. I do have Judiciary Committee amendments

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Floor Debate  
January 22, 2008

---

pending. (AM207, Legislative Journal page 690, First Session, 2007.) [LB335]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Kruse, you are recognized to open on LB335. [LB335]

SENATOR KRUSE: Thank you, Mr. President and colleagues. Rather than look at the...focus on the bill, I'm going to look at the person that's involved, because all of these items that we consider have a person, and this one in particular. This person is middle-aged. He is an alcoholic by any definition. He is homeless. He is probably mentally ill, at least mildly so. He hasn't been making good decisions and he is a person who is hurting. He finds himself, and the police find him, on the sidewalks at night often, passed out sometimes just on the sidewalk, sometimes in the gutter, sometimes over a grate, and they pick him up and try to decide what to do. This is not an arrest situation. It could be, but there's not much point in that. So they have a series of options that they look at to deal with this man. First option is to take him home, find out if he's got a home, a family or somebody that would care for him in his condition, and on a cold night sometimes a dangerous condition. He does not. Next is does he have a friend or a guardian or somebody that would look after him and take the place of a family and do that, that person could care for him, but he does not. The next option is a mission, overnight mission, to bring him in there, but it's a cold night and that place is full. The next option is, if there is such a place, a treatment center within the community and, if there's room there, to take the person there where persons who are acquainted with alcoholism and probably acquainted with this person can give him some support and take care of him through the night. We have such a place in Omaha called Campus of Hope, and I speak to it because I am well acquainted with it. There are three women in that room whom I would certainly submit for sainthood. Every night they welcome these persons brought in by the police and put them into a ceramic-tile room where they can go through the process of trying to recover. It's a messy business, it's a smelly business. It's not fun. But hopefully by the end of the evening these persons can get them stabilized enough that they can remove them from the room, hose down the room, take the persons to...well, give them dry and warm clothing and take them to a dry and warm bed and try to get them in...and give them some medication and hope to get them on some food. Under our present law the police can also take them to a jail for 24 hours. There's a 24-hour limit on the custody. This bill, LB335, would extend that period to 72 hours. It would recognize what I have recognized when I have been in such a facility. I worked in a mental hospital where we had 50 alcoholics show up every weekend and we had to deal with them, and I guarantee you it wasn't fun. But I guarantee you another thing. At the end of 24 hours, they're not sober. A person that I'm describing is in poor health. He's been living on empty calories of sugar for weeks and months. He...his liver is hardened, part of it, so that his metabolism is down. He is not going to be able to process that alcohol and turn it into sugar at the right pace, and 24 hours later he's still drunk and hurting. If he's released at that time, which is our present position, he will go out and as fast as he can find something to take care of that hurt.

Floor Debate  
January 22, 2008

---

We call it addiction but I'd call it pain, and that's what I discovered in the hospital. This is real pain and they take the only option they know of to reduce that pain. We are saying that we need to give that enough time to really be sober and that's going to take more than 24 hours, and enough time to get some real food in their stomachs so that their head is cleared up and they can decide whether or not to accept the offer for treatment. Now as we've discussed this bill, legitimate questions have been raised by persons on the floor. Senator Chambers has challenged the protective custody, saying that you can put a person into jail for that time, and that is the present procedure. We would like to take it out of there and we have moved to change this so that a county, in order to qualify for this, has to apply for the program. I see it as a program to deal with hurting persons. They have to certify they have a treatment place. They have to certify they have room in that treatment place for persons like this before they can qualify for it. So we are dealing, I feel, not just with civil liberties but with the issue of what is just, what is right, and I would argue strenuously that giving a person a chance to think about something when he can't think is not a clear option. We have a chance here to extend the time so that persons who care, not persons in some cold prison...and I'm not putting down some of the sheriffs across the state. I know of some of them who have very lovingly cared for their neighbor in this situation and tried to help them, but in 24 hours, of course, could not. We're putting them into the hands of a care facility. The Cornhusker Place handout that you have there gives the, down toward the bottom, the account of a person who's been arrested 13 times in one month, just keeps going in and out. He's hurting. He's going to die. It's, it seems to me, a cruel thing to leave him in that pattern when we have an option. It's not our favorite option. It is a tough thing to deal with this situation. And again, I have many times tried to get somebody into treatment and failed, so there's no slam dunk to this. But we do want to take it out of the jail. We do want to be sure that the person is not selected just because they're drunk some night. They're selected because they've been that way three times in the last month, so they're self-selecting. And as you'll see on one of the handouts, that amounts to about 3 out of 100 persons. And so we're dealing with a small population, but we're dealing with persons who definitely need help. I want you to focus on that person and try to figure out what we can do for that person. We are certainly open to amendments that would help us deal with the person, because here is a hurting person. Here's a person who is not, absolutely not, going to be able to help himself, and we put him back on the street in a condition where he cannot make a good decision. Civil rights is about a person making decisions. He's not in any position to make a good decision on this. We would like for him to be able to do that. Now some of what I've talked about is in the committee amendment and that will be next up for us, Mr. President. Thank you. [LB335]

SENATOR LANGEMEIER: Thank you, Senator Kruse. As the Clerk has stated, there are amendments, a committee amendment offered by the Judiciary Committee. Senator Ashford, as Chair of the Judiciary Committee, you are recognized to open on the committee amendments. [LB335]

Floor Debate  
January 22, 2008

---

SENATOR ASHFORD: Thank you, Mr. President. And actually, Senator Kruse has given an excellent description of the discussion before our committee on this issue and some of the civil liberties issues that were raised, and obviously the overriding issue which is to find appropriate protection for these individuals who find themselves in this...the position that Senator Kruse so ably describes. Senator Kruse did outline the committee amendments but I will...in a general sense, but I will be a little more specific. The committee amendments on page 3, lines 1 and 2, strike the new language and insert additional new language, and as Senator Kruse indicated, a county board, what would happen in a case involving civil commitment is that a county board would accept applications from what we call in the statute a suitable facility; that in that application this facility, whether it be Cornhusker Place or some other facility around the state, would indicate to the county board their skill level, their experience level. In the case of Cornhusker Place, they did come to the committee and testify as to the services that they would provide to these individuals. And then the county board would, by resolution, determine whether there are suitable facilities for civil protective custody. I might add, Senator Lathrop in the committee did bring up the issue of jail, and there is a committee amendment, whether or not a jail could ever be a suitable facility, there is an amendment to the committee amendments which specifically excludes jails as a suitable facility. The other part of the committee amendments is essentially that in order for a 72-hour protective custody to occur there must be three incidents in the prior 30 days involving this individual of chronic alcoholism or substance abuse, where they have been placed in custody three times in the 30 days prior before this 72-hour provision would kick in. Again, the discussion in the committee was both about the need to protect these individuals to get them help, and that was obviously an overriding concern, but also to make sure that their civil liberties were protected. I know I've had questions from other senators about the civil liberties issue and that was discussed. The ACLU came in and raised some concerns. But the committee amendments, we believe, tighten the bill, do not abrogate the original intent, do provide for protective custody in a manner that we think is consistent with other states. By the way, there are a number of states that have adopted the 72-hour standard. There are some other states that have adopted a 48-hour standard of permissible protective custody. But with the three times prior in the prior 30 days, I think what we were getting at was, you know, this person really is in need of significant help and also to make sure in the statute that we are dealing with suitable facilities that could provide not only a place to be but also the time and the ability to deal with their particular problems, which are as Senator Kruse ably describes, can be extremely significant. So with that, Mr. President--and I know there are other individuals with their lights on that are more qualified to talk about this issue than I am, Senator Synowiecki and others--I would move the adoption of the committee amendments. [LB335]

SENATOR LANGEMEIER: Thank you, Senator Ashford. Mr. Clerk, for an amendment. [LB335]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Floor Debate  
January 22, 2008

---

CLERK: Mr. President, Senator Ashford would move to amend the committee amendments with AM1600. (Legislative Journal page 303.) [LB335]

SENATOR LANGEMEIER: Senator Ashford, you are recognized to open on AM1600 to the committee amendments. [LB335]

SENATOR ASHFORD: Thank you, Mr. President. Again, there were concerns raised by committee members as to whether or not a jail could ever qualify as a suitable placement, and this amendment simply states that a jail would not be a suitable placement in any case under this statute for a 72-hour commitment. With that, I would move that amendment. [LB335]

SENATOR LANGEMEIER: Thank you, Senator Ashford. You have heard the opening on LB335, the committee amendments, and the amendment to the committee amendments. The floor is now open for discussion. Senator Synowiecki, you are recognized. [LB335]

SENATOR SYNOWIECKI: Thank you, Senator Langemeier. I never doubted the sponsor's intentions here. I think they're well grounded. I think what we want to do is to assist a particular population in our communities, but I think this is the wrong way to do it. As Senator Kruse indicated, this is kind of a unique chronic population, but I doubt if it's in their best interest, this population, an individual suffering from chronic alcoholism, to essentially incarcerate them for up to 72 hours and not afford any due process rights during that period. I think this bill goes further to stigmatize addictions and alcoholism than anything else we can do in this Legislature. To hold an individual against their will for 72 hours because of an addiction is the wrong way, is the wrong response for this. And also...and I'll have some questions for Senator Kruse about why we even need this piece of legislation. I'd like to ask Senator Kruse some questions. [LB335]

SENATOR LANGEMEIER: Senator Kruse, would you yield to questions? [LB335]

SENATOR KRUSE: Yes, I will. [LB335]

SENATOR SYNOWIECKI: Senator Kruse, I think you correctly described this population. I think you're talking about a chronic population that suffer enormously from addictions of alcoholism. And if I could kind of walk you through this, and evidently there's a problem in the city of Lincoln in particular with this, but why cannot, given the depth and the degree of the addiction that these individuals are suffering from then, why can't we use existing mechanisms in the law, specifically the emergency protective custody route, to get these individuals the help they need and, at the same time, safeguard their constitutional and due process rights? Let me kind of walk you through the emergency protective custody statute. A law enforcement officer who has probable cause to believe that a person is mentally ill and dangerous, or a dangerous sex

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Floor Debate  
January 22, 2008

---

offender and that harm, described in Section 71-908, is likely to occur before mental health board proceedings under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act may be initiated to obtain custody of the person. Now, Senator Kruse, let me take you to 71-908 and the definition of a mentally ill and dangerous person, where it's defined. Let me quote here from 71-908: "Mentally ill and dangerous person means a person who is mentally ill or substance dependent and because of such mental illness or substance dependence presents: (1)," which is not applicable in this particular case, "A substantial risk of serious harm to another person or persons within the near future as manifested by evidence of recent violent acts or threats of violence or by placing others in reasonable fear of such harm; or (2)," which I believe is applicable here, "A substantial risk of serious harm to himself or herself within the near future as manifested by evidence of recent attempts at, or threats of, suicide or serious bodily harm or evidence of inability to provide for his or her basic human needs, including food, clothing, shelter, essential medical care, or personal safety." I think subsection (2) of 71-908 aptly describes and is an apt description of the kind of population we're talking about in these instances. Senator Kruse,... [LB335]

SENATOR LANGEMEIER: One minute. [LB335]

SENATOR SYNOWIECKI: ...I'd be interested in your thoughts on that. [LB335]

SENATOR KRUSE: Well, I appreciate the thought and certainly I've thought about those kinds of options. My wife has spent a lot of time working on getting persons into adult protective custody, which is the long-term thing of what you're describing. That is a tough go. That can take months. And the particular statute you're citing requires some evidence of mental illness with the definitions that you've given to it. Again, it does not bring into treatment. It loses its focus on that. It's simply protective custody. We...I want to commend the Lincoln Police Department for their creativeness and their caring about these citizens. That's where it comes from. They're trying to figure out how to deal with it. [LB335]

SENATOR LANGEMEIER: Time. [LB335]

SENATOR KRUSE: They've seen those other options and are not using them. Thank you. [LB335]

SENATOR LANGEMEIER: Thank you, Senator Synowiecki. Wishing to speak we have Senator Chambers, Pedersen, Friend, and others. Senator Chambers, you're recognized. [LB335]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I'm as sympathetic as anybody to people who have these addictions. I voted against sending this bill out here. I don't think people in the Legislature, in general, understand the

Floor Debate  
January 22, 2008

---

purpose of incarceration as punishment for a crime. The reason, when somebody is put in prison, you cannot use corporal punishment, deprivation of food, rest and so forth, because the courts have ruled that the punishment for committing the crime is deprivation of your liberty. Taking your freedom is the punishment. These other things are "tack-ons" which are not allowed as a punishment for the offense. When you take away somebody's freedom, take away somebody's liberty with no due process whatsoever, you are treating that person as though he or she committed a crime and you're imposing on that person what constitutes the punishment for a crime. Perhaps you can show a societal interest in taking somebody off the street for 24 hours maximum whose condition may be such that he or she would risk death or serious injury to himself or herself if left on the street. We're not talking about people who might hurt others. We are saying that the Legislature will substitute its judgment, from a great distance, for the person who has chosen to drink. I'm shocked that the Attorney General does not favor this bill because he wants to take some peppermint drug and make it illegal because it makes people hallucinate, but he couldn't show that it puts people out on the street in a condition where their life may be at stake. So he's politicking there. He ought to be concerned about due process here. I'd like to ask Senator Kruse a question or two. [LB335]

SENATOR LANGEMEIER: Senator Kruse, would you yield? [LB335]

SENATOR KRUSE: Yes, I will. [LB335]

SENATOR CHAMBERS: Senator Kruse, who determines whether this person will spend more than 24 hours in this, what I call, incarcerated condition? Who determines that? [LB335]

SENATOR KRUSE: The police department would have the criteria before them of how many times the person has been put under custody during the last month. [LB335]

SENATOR CHAMBERS: But this says up to 72 hours once you take them in. Who determines that it's going to be more than 24 hours once the person has been placed in this custody status? [LB335]

SENATOR KRUSE: The police department has to...or not certify but they have to verify that the person has been retained three times in the last month. They're the person... [LB335]

SENATOR CHAMBERS: Here's what I'm asking: Is it mandatory that the person stay there 72 hours,... [LB335]

SENATOR KRUSE: No. [LB335]

Floor Debate  
January 22, 2008

---

SENATOR CHAMBERS: ...or up to 72 hours? [LB335]

SENATOR KRUSE: Up to 72 hours. [LB335]

SENATOR CHAMBERS: Who determines that the person will be there longer than 24 hours once they've been picked up? Nobody in the bill has that responsibility that we know of. Isn't that true? [LB335]

SENATOR KRUSE: That would be up to the treatment facility. [LB335]

SENATOR CHAMBERS: Now where are the criteria in this bill that will determine as guidelines how long this person is to stay? There are none, are there? [LB335]

SENATOR KRUSE: That would be correct. [LB335]

SENATOR CHAMBERS: So that's all I will ask. [LB335]

SENATOR KRUSE: Thank you. [LB335]

SENATOR CHAMBERS: What we are doing is looking at a very arbitrary arrest, that's what I would call it, without due process; then some person, on his or her whim, can keep this individual for 72 hours. Suppose 24 hours and the person is sober, but the person is obnoxious, is combative, curses these people out for putting him or her in jail against his or her will, so these people now say, we're going to punish you; you could have gotten out after 24 hours, we're now going to keep you 72. I don't trust these people. I don't trust anybody when he or she is given untrammelled discretion as to how long a person will be deprived of his or her freedom when he or she has not been convicted of a crime,... [LB335]

SENATOR LANGEMEIER: One minute. [LB335]

SENATOR CHAMBERS: ...has not been through a judicial process, has not been accorded any person to defend and protect his or her rights. If anybody is vulnerable and needs protection, people whose minds are fogged with and by alcohol need that. So I remain opposed to this bill and since it was put out here by the Judiciary Committee, since the Speaker put it on the agenda, they are prepared for us to take as much time as necessary, and right now my sights are on this bill to kill it. I don't want anybody to be under misperceptions. Thank you, Mr. President. [LB335]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Senator Pedersen, you're recognized. [LB335]

SENATOR PEDERSEN: Thank you, Mr. Speaker and members of the Legislature.

Floor Debate  
January 22, 2008

---

LB335 is a bill I support; supported it out of committee and have supported it all along through the years that it has been introduced. It's been brought to us mostly by a place here in Lincoln called Cornhusker Place. I want to tell you a little bit about Cornhusker Place. Lancaster County is one of the only counties in the state of Nebraska that has a place like it. It is a place where law enforcement can take somebody who is intoxicated, put them under civil commitment, and they have to stay for 24 hours. It's a safe place. It has medical staff. They do medical detox. And it's a free place that these people need very badly. What has happened is after the first 24 hours the person sobers up and they hit the streets. They walk out. Cornhusker Place also has a treatment facility where they try to get these people to stay in for treatment because treatment does work. But with only 24 hours from their last drink, their thought process is not good. And if they have a physical addiction, the first thing they want to do is get out and get another drink. Adding 48 hours to the time that we now have, bringing it to 72 hours, is a chance to keep a few more of these people in treatment and help them get well. I agree with Senator Chambers, it does take away their liberty, but we've narrowed it down to this is the third time in a month they've had to be brought into the place so that magnifies the seriousness of their problem and how much they really do need to take a better look at it, and 48 hours may give that. It comes to mind that this is the least we can do for humanity--give them a shot at sobriety, which is another shot at life. If they continue down the road they were currently drinking, it will be suicide, liver disease, and any other crimes that they may commit under the influence of alcohol, and take away their liberties anyway. Forty years ago we'd have taken them to jail, locked them up and kept them up to 30 days for public intoxication. This is not a bill to discipline or to sanction. It is a bill to help. I would hope you would see that... [LB335]

SENATOR LANGEMEIER: One minute. [LB335]

SENATOR PEDERSEN: ...and vote for it. Thank you. [LB335]

SENATOR LANGEMEIER: Thank you, Senator Pedersen. Senator Friend, you're recognized. [LB335]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. The two years I spent on the Judiciary Committee, if it taught me anything--I don't know if I'll...you always lose more than you retain, right--if it taught me anything is it is that you get something out here to the floor, it better be tight, it better be precise, and you better be able to answer specific questions about what happens in the criminal code. Now I'm troubled by this legislation. It appears to me, the discussion here, we're all over the board. And one of the discussions I had earlier was interesting, off the record, was interesting because it's the so-called liberals in this body. Then you have somebody who's a so-called conservative stand up who has trouble with it. There are reasons that that type of thing happens, okay, because sometimes things just don't break easily ideologically. Or you have to look at criminal code and say, what is going to...do you

Floor Debate  
January 22, 2008

---

think a liberal, a so-called liberal, is going to stand up and ask a different question than a conservative when we're talking about pure, fundamental civil liberties? What's going to happen in 72 hours? What happens after 24 hours? The person stands up, stone sober or pretty darn close, and says, I want out of here. What happens? I would ask if Senator Kruse would yield to a question, please? [LB335]

SENATOR LANGEMEIER: Senator Kruse, would you yield? [LB335]

SENATOR KRUSE: Yes. [LB335]

SENATOR FRIEND: Thank you. Thank you, Senator Kruse. Senator Kruse, I said from the outset I'm troubled here. I don't know that I'm flat-out against this bill. I wouldn't mind seeing a good amount of discussion on it, but I would ask you a couple of quick things. I mean, the troubling part that I have, or what I'm having trouble getting my hands around is what happens right now. Let's say that there's somebody...let me give you a hypothetical that it's going to be difficult, they always are. Let's say somebody gets, you know, brought in for the third time. What happens right now under current law? What can they actually do with that person as far as protective custody? [LB335]

SENATOR KRUSE: And under current law they can put them into jail for 24 hours. [LB335]

SENATOR FRIEND: Okay. And if this is adopted, it's my understanding that...and Senator Ashford's amendment, too, by the way, changes the circumstances a little bit, or it clarifies it, but if this...these measures, the amendments are adopted and this measure is advanced, we are looking at a situation where a person would stand up after 24 hours and say, I want out of here, what type...what is that person going to face as far as circumstances? Can they just let the person go based on the judgment of the facility that's actually holding them, or do they have to hold them for that 72 hours because the determination was made from the outset that person was going to be kept for 72 hours? [LB335]

SENATOR KRUSE: No, that's pretty clear in here. First, this applies only to counties that have certified a treatment center, so most counties, it would be just as it is now. They would be in jail for up to 24 hours. For those who qualify, and that's those that have been in three times in the last month, the police have the option--they're not required to--they have the option of saying here's a person that we think might be helped by treatment, and that would have to be in a treatment center. It could not be in the jail. They would be doing that earlier than 24 hours. [LB335]

SENATOR LANGEMEIER: One minute. [LB335]

SENATOR FRIEND: Okay. Well, that helps. But the buzzword to me, Senator Kruse,

Floor Debate  
January 22, 2008

---

and thank you for yielding, the buzzword to me was I love the police but the police have the option? Which officers? What...a division captain or a department captain, the deputy chief? Look, I'm still troubled. I don't know where we go with this. All I'll tell you is this: There are a lot of Judiciary bills out here. There are a lot on General File right now and there's going to be more. I think these...I think that we owe it to the people of this state to use as much scrutiny as we possibly can. I'm troubled by this. I don't know where to go with it and I'm anxious to hear the rest of this debate. Thank you, Mr. President. [LB335]

SENATOR LANGEMEIER: Thank you, Senator Friend. Senator Synowiecki, you're recognized. [LB335]

SENATOR SYNOWIECKI: Thank you, Senator Langemeier, members. I know a lot of us, including...I know, speaking for myself, I oftentimes do not want to unnecessarily enact legislation. As I referenced earlier our emergency protective custody statutes, I think, are examples of current law that adequately responds to the needs of this population. Senator Kruse indicated that it takes a long time and there's no...it's tough to access treatment. I disagree. Within Senator Kruse's bill, there's no indication whatsoever that these folks got to do...have to have a chemical dependency evaluation. I didn't see that in there. There's no evidence...and who's going to pay for the chemical dependency evaluation? There's no evidence that they have to go to...be exposed to a treatment experience or a treatment program, while at the same time, again, I would affirm that the population we're speaking of here meets, by all means, meets the definition as set out under 71-908 for mentally ill, dangerous person. And if you look at the statute, current statutes under 71-919 for emergency protective custody, once these individuals are delivered to a treatment facility, it makes it very clear you can't haul these folks to a jail under emergency protective custody effort by a local law enforcement officer, that they be evaluated within 36 hours. Okay? So what we're doing with Senator Kruse's bill is we're expanding civil protective custody to 72 hours while, at the same time within our statutes for an emergency protective custody, a person must be afforded, must be afforded, an evaluation to determine whether or not they would continue to be held under our emergency protective custody statutes. Number one, we're not being consistent. Number one, we're saying that under a civil protective custody order you can be held for essentially 3 days with no opportunity for an evaluation, and at the same time under our emergency protective custody statutes an individual that's held has to be, statutorily, has to be evaluated within 36 hours. Why would we do this under LB335? Why will we violate the civil liberties of these individuals, who you may argue are at a lesser degree of harm to themselves and others than those under emergency protective custody? Although I would...I continue to stipulate and I continue to affirm that the population we're talking about under Senator Kruse's bill, the chronic population, that they continually resurface at these facilities, would indeed meet the criteria for emergency protective custody. Why in the world would we as a Legislature expand our civil protective custody commitment, hold these

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Floor Debate  
January 22, 2008

---

folks for up to 3 days, 72 hours, while at the same time in our emergency protective custody statutes those folks are afforded, rightfully so, an evaluation within 36 hours? You try to tell me that this makes sense. Why would we do this? I said earlier this promotes, it augments... [LB335]

SENATOR LANGEMEIER: One minute. [LB335]

SENATOR SYNOWIECKI: ...the stigmatization, stigmatizing this population, and this is the wrong direction for this Legislature to go. We should never hold anyone for 3 days, or 72 hours, and not afford them any due process rights. We do it in our emergency protective statutes, rightfully so. Within 36 hours those folks have a right to an evaluation by an accredited, licensed professional, and yet we're being asked here today to expand an incarceration or a holding against a person's will for 72 hours without any such evaluation. Thank you. [LB335]

SENATOR LANGEMEIER: Thank you, Senator Synowiecki. (Visitors introduced.) Mr. Clerk, new bills. [LB335]

CLERK: New bills, Mr. President. (Read LB1061-1077 by title for the first time.) Mr. President, that's all the new bills I have at this time. (Legislative Journal pages 303-306.) [LB1061 LB1062 LB1063 LB1064 LB1065 LB1066 LB1067 LB1068 LB1069 LB1070 LB1071 LB1072 LB1073 LB1074 LB1075 LB1076 LB1077]

With respect to LB335, I have a priority motion. Senator Chambers would move to bracket the bill until March 15, 2008. [LB335]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Chambers, you are recognized to open on your motion to bracket. [LB335]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, why in the world is it that every time I have a bill about to come up a bill is scheduled before it with which I disagree intensely? The other day it was the hunting bill. Now we have this incarceration bill. But as John Wayne said, a fella's got to do what a fella's got to do. And what I got to do on this bill is to try to dismantle it piece by piece so people can see what we're dealing with. Never, in my opinion, especially in a democracy, is it justifiable to address what is acknowledged to be a problem by creating a bigger, broader problem which goes to the very root and foundation of a democracy. In democracies, they talk about freedom, they talk about liberty, they talk about justice, they talk about due process. No person shall be deprived of life, liberty or property without due process of law unless you are what would be called a drunk. If you are a drunk then the Constitution of the U.S. is suspended, the Constitution of Nebraska is suspended, and in their place you put the arbitrary judgment of people who may have a financial interest in keeping a certain number of people in their facility. I have no way of knowing if

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Floor Debate  
January 22, 2008

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donations, contributions or grants are made available to any of these entities on the basis of how many clients, or prisoners, they have. I'd like to ask Senator Kruse a question or two before I proceed. [LB335]

SENATOR LANGEMEIER: Senator Kruse, would you yield? [LB335]

SENATOR KRUSE: Yes. [LB335]

SENATOR CHAMBERS: Senator Kruse, if a person chooses not to stay here after 24 hours but a decision has been taken to keep that person for 72 hours, how do they keep that person there for the remaining 48 hours against his or her will? How is that done? [LB335]

SENATOR KRUSE: Well, by that time the person would be in a treatment center and it would be up to the physicians within the treatment center. [LB335]

SENATOR CHAMBERS: No, here's what I mean. What would prevent the person from walking out the door? [LB335]

SENATOR KRUSE: Well, treatment centers have security for that purpose. [LB335]

SENATOR CHAMBERS: And "secure" means locked up. Isn't that true? [LB335]

SENATOR KRUSE: They are...there are many persons in a treatment center not free to leave, yes. [LB335]

SENATOR CHAMBERS: That means that they are held against their will by force and coercion if necessary. Is that true? [LB335]

SENATOR KRUSE: Yes, though... [LB335]

SENATOR CHAMBERS: Okay. Now the next step: If this person is so angry and incensed that he or she attacks the person who tries to hold him or her against his or her will, that person can be charged with a crime of assault. Isn't that true? [LB335]

SENATOR KRUSE: That is true, but that's not the way these treatment centers work in terms... [LB335]

SENATOR CHAMBERS: Well, Senator Kruse,... [LB335]

SENATOR KRUSE: They are not there to discipline somebody. [LB335]

SENATOR CHAMBERS: Thank you, Senator Kruse. Members of the Legislature, you

Floor Debate  
January 22, 2008

---

can see that Senator Kruse has difficulty answering these difficult questions directly. My motion is to bracket this bill. That would give Senator Kruse time to try to address these issues to satisfy the concerns of at least 32 of you so that you can put me in my place by invoking cloture. Otherwise, you're going to have to get 33 votes on the bill at this stage of its consideration. This is not a trifling, insignificant issue that we're dealing with. It is very consequential. I'd venture to say that there are drunks who are people of means and these drunks may wind up out on the street, but I'll bet you if they were picked up they'd be taken home and not put someplace against their will. And if inadvertently such a person were put in a facility, I guarantee you that person would not be kept there 72 hours. Political, ideological, sociological and other issues can come into play, and will come into play in some instances, to keep certain people in a condition where other people will not be kept in that condition solely on the basis of their social status and their means. My job is to look out for those who have nobody looking out for them, no ability to get a lawyer, maybe no family member, maybe nobody who can resist attempts by even a city council to say, look, we've got these three guys, they are habitual drunks, they're always down at the Gene Leahy Mall and people are offended by them, so we want you to get them off the street for 72 hours. And they're gone and they're away from the mall for 72 hours. I'm not going to pose this question to anybody on my time, but I challenge anybody to stand on this floor and tell me about an alcohol treatment program which is successful in 72 hours, which is going to cure this person's problem in 72 hours. And if it's not then there is no purpose or justification in holding that person. There is nothing in this bill that says this cannot become a repetitive process. You put the person in for 72 hours. During that month if they get drunk one more time they meet the qualification of having been drunk more than that threshold number and you put them again for 72 more hours. And you can continue on and on. Senator Kruse, bless his heart, as they say in my community, will tell us, well, they're not going to do that at these facilities. What I look at, brothers and sisters, friends, enemies and neutrals, is not trusting people that I know when it comes to taking away people's liberty, but what is allowed to be done under a law. Everything that I have said is allowable under the language of this proposed statute and it is not going to pass without my strenuous opposition. And if you advance it over my opposition, get ready to see me again on Select File and on Final Reading and be prepared to see me attack other bills, including my own, to take time. I am the only one who can invoke cloture on my bill. You mean to tell me, Senator Chambers, asks one of my naive colleagues, that you would sacrifice one of your bills just to stop this bill that you don't like? Responds Senator Chambers: Of course! No bill of mine that I have pending is as important as protecting the liberty of the individual and the due process requirements of the constitution and the law. You all swore to uphold the constitution. Included in the language of the constitution is not to deprive people of their liberty without due process of law. Fortunately for you all, after this session you're not going to have to be listening to this kind of conversation from anybody because I will be gone. But while I'm here I'm going to do everything I can to try to institutionalize the ideas that liberty is a very important factor in a democracy; that whether we like people or not, whether they stink

Floor Debate  
January 22, 2008

---

because they don't practice good hygiene or they're incapable of protecting it, whether they have a beard longer and shaggier than mine because they can't shave or just choose not to because they don't care how they look--which is, by the way, why I wear my beard and if people don't like the way I look they can look somewhere else--but those are the people whose rights have to be protected. And again, since you all pray every morning, I'm going to make a reference to the one in whose name most of you all pray. Jesus talked about not the big shots. He said the least of these my brethren. And who are His brethren and his "sisterens"? If God made of one blood all nations of people, then every person is His brother. [LB335]

SENATOR LANGEMEIER: One minute. [LB335]

SENATOR CHAMBERS: Every person is your brother. Every female is your sister. But we don't treat them that way. So when time comes to look after the interests of the least, I'm going to be there doing it. And someday, as unlikely as it may seem, you may find yourself without a voice and needing the protection of the law. Thank you, Mr. President. [LB335]

SENATOR LANGEMEIER: Thank you, Senator Chambers. You have heard the opening on the bracket motion. The floor is now open for discussion. Wishing to speak we have Senators Kruse, Ashford, Fulton, Chambers, and Pedersen. Senator Kruse, you're recognized. [LB335]

SENATOR KRUSE: Thank you, Mr. President and colleagues. I would like to speak to some of the comments that have been made because they are confusing the issue. I again would hope that we would focus on the person that needs the help. Senator Chambers has indicated that a well-to-do person might could go home, but he's going to go to 72 hours. No, already outlined that in the opening. If the person has a home or a place where they can be cared for, that's where the police presently take them and take them out of that situation. The question has been raised as to how they're going to be treated in a treatment facility. I would remind the...my colleagues that this is a licensed treatment facility, that their purpose is to give treatment. The suggestion was made that it ought to happen in 72 hours. No, no, and no. I worked in a facility where we had 15 days and that is not enough. That's enough to get started. We are talking about responsible people within a facility. The suggestion has been made that they can decide to discipline somebody who is becoming unruly by putting them into treatment. That would be a shocking abuse of the responsibility they have, of the licensing that they have and so on. They are there to get somebody through that situation. They are there to help that person. We are here to raise the question of how we might help that person. And finally, I would comment on the protective custody. Dealt with that, some of you have dealt with it. It is a very difficult process. It is a very expensive process and we don't pay the bills on protective custody. There we get into all kinds of systems that have to come into play at that point. I believe in doing the right thing for this person.

Floor Debate  
January 22, 2008

---

Senator Chambers has spoken to that and I don't doubt his commitment to doing the right thing for that person. It seems to me the right thing for that person is to get them to the point where they can think before we ask them what they do think. We are playing games with words if we act like a person in protective custody is exercising their judgment when they are not able to exercise judgment. We, within this bill, are simply trying to get them to the point where they can clearly think, where they can talk with a soul that cares about their situation and can help that person make the decision. If that person at that point, and most will, if that person refuses treatment, okay, but we made that try and maybe after two or three times the person will see the value in that. I believe that we've got to stay focused on the person and trust that other parts of the statute give protection to this person in the way they should. I also remind you that it's up to 72 hours. They're not automatically put in for that time. Thank you. [LB335]

SENATOR LANGEMEIER: Thank you, Senator Kruse. Senator Ashford, you're recognized. [LB335]

SENATOR ASHFORD: I just want to...Senator Friend isn't here, because I was going to ask him some...we actually, the Judiciary Committee, to be precise, I believe we have about 150 bills or so in committee from last session and this session, and almost every one of them is controversial, just like this one. So as these bills come pouring out of committee and come on to the floor and we have to talk about rights and responsibilities, we could be here...well, will be here until the middle of April talking about Judiciary Committee bills. And certainly there are many other issues...unless they get rereferenced from the Judiciary Committee to some other committee. Then we won't have 150 bills. But I appreciate Senator Friend's comments and certainly he's had some bills in the Judiciary Committee that have come out here and we've amended them on the floor and they've been good bills, and he's made good cases for them and many of those bills involve increased incarceration or, in some cases, increased liability and...but I think we try to give these bills their due course. Senator Chambers does have a bill that comes up next on informants that is a great bill and it really is a bill that I'm looking forward to discussing because it talks about an issue that I've always thought a lot about--what sort of...the testimony of informants, that's a critical issue in our criminal justice system. Senator Kruse has brought to us an idea about something he knows a lot about. We have to listen to that idea, and in the committee we listened to his idea and we listened to the issues about the constitution, about rights, but we also listened to discussion about responsibility. We as a society, at least in my case, we have some degree of responsibility for people who are so chronically in need of help, and that idea, combined with the discussion about what are the constitutional issues involved with keeping someone against their will, against their will, and we came up with what I think is certainly not constitutionally infirm, Senator Friend. I mean, I don't know of any case, and if there is a case I'd like to see it, a case where holding someone up to 72 hours who is chronically in need of help because of alcoholism or drug abuse, cannot be kept in a situation where they can go through detox and at least be in a position where they

Floor Debate  
January 22, 2008

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are not going to die on the street. I'm just not aware of any case anywhere about that, that would say that is in some way a denial of constitutional rights. And clearly, we had that discussion, because ACLU came in and said there's a potential constitutional issue here. Well, there isn't. There isn't a case that says that. There are many states that have a 72-hour rule. So I believe the Judiciary Committee...and I appreciate and respect Senator Chambers' opposition to this bill, but as was the case with the safe haven bill, we come to a conclusion. We come to...and I believe we will on the safe haven bill. Senator Chambers has raised some rights issues. We're sitting down; we're resolving them. Senator Synowiecki has raised some issues about emergency mental health commitments, which is a different issue, which is a different issue. It's my understanding, I may be wrong, that in cases of chronic alcoholism or drug abuse that we don't have county attorneys filing for emergency mental health commitments. [LB335]

SENATOR LANGEMEIER: One minute. [LB335]

SENATOR ASHFORD: That's my understanding. I could be wrong and, in fact, there are cases maybe where they do do that and a hearing is required. I don't think this is over the top. I don't think this is outlandish. I don't think it's irregular. I don't think we're talking about a denial of rights and I don't know of any case that has been presented to our committee that would say that it is. So I think what it comes down to, members, is not an issue on technicalities, it's not an issue of misinterpretation of the law, but it's an issue of what we think is the best way to go as a matter of policy. I think you are free to...and I...you know, you can all decide whether 72 hours is too long. That's your decision. But I can tell you, as Chair of this committee and having looked at this issue, there is not an issue of law here that would prevent you from deciding in favor of Senator Kruse's idea. And with that, Mr. President, again, I would move my amendment, which simply excludes jail from the 72-hour issue. And I think if jail were there, that might... [LB335]

SENATOR LANGEMEIER: Time. [LB335]

SENATOR ASHFORD: ...be an issue, but jail is going to be out with this amendment and I'd move my amendment... [LB335]

SENATOR LANGEMEIER: Time. [LB335]

SENATOR ASHFORD: ...and the committee amendments and oppose the bracket motion. Thank you. [LB335]

SENATOR LANGEMEIER: Thank you, Senator Ashford. Senator Fulton, you're recognized. [LB335]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Floor Debate  
January 22, 2008

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SENATOR FULTON: Thank you, Mr. President, members of the body. Would Senator Chambers yield to a question? [LB335]

SENATOR LANGEMEIER: Senator Chambers, would you yield? [LB335]

SENATOR CHAMBERS: I will yield to several. [LB335]

SENATOR FULTON: Thank you, Senator Chambers. You talked about there should...or you stated there should not be deprivation of liberty without due process of the law, and you also said that one shouldn't be held against his will without due process of the law, correct? [LB335]

SENATOR CHAMBERS: Yes. [LB335]

SENATOR FULTON: Okay. I assume then do you have a problem with the 24-hours that are being...that exists currently in statute? [LB335]

SENATOR CHAMBERS: What I said, Senator Fulton, is if it can be shown that this person is in the condition that Senator Kruse described, where his or her life or health are jeopardized, the 24 hours can be justified. [LB335]

SENATOR FULTON: Is it possible...so I'm trying to determine here at what point does one...at what point does society act contrary to an individual's will yet not contrary to what constitute...the constitution affords an individual? Because clearly, within the 24 hours, the individual would be held against his will. Can you help me flesh that out? [LB335]

SENATOR CHAMBERS: Yes. There are practical issues to be considered. I don't think everybody would need 24 hours to be dried out, but if you're going to let that person be taken off the street then you have to consider the circumstances under which he or she would be held. So 24 hours would be a minimum period of time. For my part, it's a maximum. Let's say that you are charged with a crime. That's done under the law and there are procedures by which you can try to be released. But this situation of saying a person has not committed a crime but, based on the whim or random determination by another person, liberty can be taken for 72 hours is over the line for sure, as far as I'm concerned, even if it doesn't rise to the level of an actual constitutional violation. I'm not sure whether it does or not. [LB335]

SENATOR FULTON: So is...would I be correct in saying then there is an element of judgment that needs to be employed here, whether 24 hours is appropriate, whether 48 hours might be appropriate? Your judgment is that 24 hours is the maximum amount of time at which one could be held as a matter of his or her safety. You're saying 24 hours is where your judgment falls, but that it's possible someone else's judgment may say 36

Floor Debate  
January 22, 2008

---

hours? [LB335]

SENATOR CHAMBERS: Yes. When the only reason that person is deprived of his or her liberty is the basis that we're discussing in this bill, 24 hours would be the maximum that I would agree with. And it doesn't mean I like the idea, but I wouldn't fight against that tooth and nail. [LB335]

SENATOR FULTON: Okay. Thank you, Senator Chambers. Thank you, Mr. President. [LB335]

SENATOR LANGEMEIER: Thank you, Senator Fulton. Senator Chambers, you're recognized. [LB335]

SENATOR CHAMBERS: Thank you, Mr. President. And I appreciate Senator Fulton's questions. Drawing a line between two notions, one of which, even though problematic, may be justifiable under certain circumstances, and on the other side of the line something which on its face is inappropriate, could easily be done. But if between those two there's an area where the certitude is diluted and a line nevertheless must be drawn, I draw it in favor of the individual who is going to have a burden placed upon him or her by a society, and that burden is to be deprived of your freedom of movement, your liberty. I know people who are alcoholics. I know people who are drunks and will not acknowledge that they're alcoholics. I know people who call themselves alcohol counselors and so forth, but I have yet to have anybody stand on the floor and answer my challenge that 72 hours is not going to cure a person. There is no treatment that can occur within 72 hours. That is the main argument. So if I have a craving for alcohol, which I don't, let's say candy and my sweet tooth is acting up and you want to stop the teeth from rotting out of my head so you deprive me of candy for 72 hours, what do you think I'm going to do when you let me out after 72 hours? That is when the beast emerges raging. All you might succeed in doing is put this person in a frame of mind where he or she is more eager to return to the bottle than before. If this person can repeatedly be incarcerated for the 72 hours, which can happen under this bill, it's clear that there is no treatment worthy of that name which occurs within 72 hours. If you all will look at this bill and what it allows and agree that it's what ought to be done, you will vote that way and I will have to abide the outcome, but because I see it as such an important core issue--I wouldn't want it done to me--you're going to have a hard time getting it done and I'm going to make you earn the opportunity to deprive people of three days of their life without any due process whatsoever on the mere say-so of somebody who might even be a preacher, whose ideology is in form by the notions that he or she thinks are found in the Bible that the sinner must be punished. Spare the rod and spoil the child, so you beat the hell out of little children. You've heard the expression beating the devil out of people? They literally took people who were deemed insane and beat them to beat the devil out of that person. Always, always, in the name of religion, any practice which is designed to bring a person to righteousness involves

Floor Debate  
January 22, 2008

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pain and cruelty. They burn people at the stake. They would lose their body but, by so doing, save their soul. When they're going to send somebody to the electric chair, in England they put on the black cap, the judges, and they always end, God have mercy on your soul. Well, why don't you? Why don't you have a little mercy? Those are mere slogans. The Legislature is not a place where slogans ought to prevail. If people wanted to discuss this issue and advocate for it outside the Legislature, I wouldn't even get in the discussion. What I am doing here is not speaking academically. I'm speaking as strongly and forcefully as I can against something being put into law that I think is execrable. Some people pronounce that "EXEC-cra-ble." They don't know how to pronounce it. "EX-e-CRA-ble" is the pronunciation that lets you know how bad the thing is. If something is execrable, it is as bad as it can possibly be. This is an execrable bill squared. [LB335]

SENATOR LANGEMEIER: Time. [LB335]

SENATOR CHAMBERS: Thank you, Mr. President. [LB335]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Wishing to speak we have Pedersen, Howard, Pankonin, and others. Senator Pedersen, you're recognized. [LB335]

SENATOR PEDERSEN: Thank you, Mr. Chairman and members of the Legislature. This will be very short. People cannot be treated in three days. People cannot be healed from their dependency in three days. I've never known anybody yet that's been healed from any dependency. Arrest? Yes. Healed? No. This bill was to help people have a little more emotional maturity after a bad hangover, bad drinking episode to make a decision of whether or not they would want to go to treatment which may help them arrest their addiction. I've seen over and over again many, many people who have gone through some of the most intensive inpatient treatment centers who have never got well. Some of them have arrested their addiction, but never have I seen healing. Thank you. [LB335]

SENATOR LANGEMEIER: Thank you, Senator Pedersen. Senator Howard, you're recognized. [LB335]

SENATOR HOWARD: Thank you, Mr. President and members of the body. There are times when an individual is simply not able, for whatever reason, in this case a chemical dependency, to make informed decisions in his own behalf, and there are times when this individual does not have the resources available to him, in terms of family support, to be able to fall back on those resources. In those situations, society has to step forward and care for that individual. I support Senator Kruse's bill. I support the committee amendments. I think this is an important piece of legislation. Having said that, I'd like to offer the remainder of my time to Senator Nantkes, who has asked me for

Floor Debate  
January 22, 2008

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it. [LB335]

SENATOR LANGEMEIER: Senator Nantkes, 4 minutes. [LB335]

SENATOR NANTKES: Thank you, Senator Howard. I really appreciate your accommodation this morning. Just a few quick points, member. I rise in support of Senator Chambers' bracket motion for a few important reasons. The issues that we're talking about, the issues underlying this well-intentioned legislation, are constitutionally and fatally flawed. We are talking about constitutionally protected liberty interests, particularly subject to some of Nebraska's most vulnerable citizens. And a key principle within due process analysis is to be free from arbitrary governmental action. Nothing in the committee amendments, nothing in the legislation eases my concerns about the very arbitrary public policy points which are promulgated through this flawed legislation. For example, moving from 24 hours to 72 hours, to 48 hours of confinement, those are arbitrary distinctions. Providing for different standards for those in custody in Lancaster and Douglas County versus the rest of the state, those are arbitrary distinctions. Senator Ashford says that this isn't over the top and it only affects a few people. Well, my friends, that's when the constitution is most important. If it's slightly over the top, if it affects one person, that affects all of us. That is when we must err on the side of personal liberty instead of arbitrary governmental regulation and restraint. I think we've had an important debate here this morning. I have grave concerns with the legislation. I do not believe the committee amendments address those constitutional liberty issues that are at play. Thank you. [LB335]

SENATOR LANGEMEIER: Thank you, Senator Nantkes and Senator Howard. Senator Pankonin, you're recognized. [LB335]

SENATOR PANKONIN: Question. [LB335]

SENATOR LANGEMEIER: The question has been called. Do I see five hands? I do see five hands. The question is, shall debate cease? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? For what purpose do you rise, Senator Pankonin? [LB335]

SENATOR PANKONIN: I'd like a call of the house. [LB335]

SENATOR LANGEMEIER: There has been a request to put the house under call. The question is, shall the house go under call? All those in favor vote yea; all those opposed vote nay. Record, Mr. Clerk. [LB335]

CLERK: 33 ayes, 0 nays, Mr. President, to place the house under call. [LB335]

SENATOR LANGEMEIER: The house is under call. Senators, please record your

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Floor Debate  
January 22, 2008

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presence. Those senators located outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Johnson, please return to the Chamber. The house is under call. Senator Pankonin, how would you wish to proceed when we all have arrived? [LB335]

SENATOR PANKONIN: Roll call vote in regular order. [LB335]

SENATOR LANGEMEIER: Thank you. Senator Johnson is on his way up. All members are present and accounted for. The question is, shall debate cease? All those in favor vote yea; all those opposed vote nay. And there has been a request for a roll call vote. Mr. Clerk, please call the roll. [LB335]

CLERK: (Roll call vote taken, Legislative Journal page 306.) 20 ayes, 21 nays, Mr. President, on the motion to cease debate. [LB335]

SENATOR LANGEMEIER: Debate does not cease. Thank you, Mr. Clerk. Returning to discussion on the motion to bracket, with that I raise the call, Senator Kruse, you are recognized. [LB335]

SENATOR KRUSE: Thank you, Mr. President and colleagues. And thank you for the good discussion of this, and that includes everybody on every side. This is an issue we'd rather avoid. It doesn't involve many of our citizens, and it's just easy to ignore it. But it is a matter of great concern. I would like to ask Senator Chambers some questions, Mr. President. [LB335]

SENATOR LANGEMEIER: Senator Chambers, would you yield? [LB335]

SENATOR CHAMBERS: Yes, I will. [LB335]

SENATOR KRUSE: Senator, would you agree that a person who is intoxicated, stumbling and incoherent, in terms of description at the time the officer finds them, would you agree that person needs help? [LB335]

SENATOR CHAMBERS: Based on what I know you're asking me, regardless of how you phrased it, my answer would be yes. [LB335]

SENATOR KRUSE: Does an intoxicated person make good decisions? [LB335]

SENATOR CHAMBERS: I cannot honestly answer that question. I think some do, and many don't. [LB335]

SENATOR KRUSE: Okay. Do you feel that we have a responsibility for this person in this condition in our society? [LB335]

Floor Debate  
January 22, 2008

---

SENATOR CHAMBERS: It depends on all of the circumstances, and I'm not being evasive. [LB335]

SENATOR KRUSE: I don't feel that you are. I appreciate that. The purpose of this is to establish that we have somebody that needs help. And my final question to you is, what would you do to help this person? What can we do? What amendments would be appropriate to this bill? What can we do to help the person? [LB335]

SENATOR CHAMBERS: Kill this bill and continue doing what is being done, namely, allow the 24-hour period, because I do not think there is a solution other than to ban alcohol consumption, possession, manufacture, or the growing of any substance which can be converted into alcohol, and we know that is not going to happen. That's why I say I don't know of any answer or solution. [LB335]

SENATOR KRUSE: Thank you, Senator. I would comment on some of the comments that have been made. One is by Senator Chambers that at the end of 72 hours they'll be eager to return to the bottle. Having been there I can assure you, not nearly as eager as they are at the end of 24 hours, because at the end of 24 hours there is a lot of pain. We call it addiction, but it's pain in the gut, and the only way they know to kill that pain in the gut is to pour some alcohol on it. Senator Pedersen has spoken to the next item: The suggestion has been made that 72 hours is there so they can be cured. That is not the case. We're looking for them to get to the point of being sober, and if somebody wants to define sober within this bill, we'll certainly be open to that because we don't want to give unlimited sanctions or any opportunities to those who are providing the treatment. Again, Senator Chambers has talked about biblical mandates in this. The only biblical mandate that I would recognize within this is "love your neighbor." This treatment, to be punishment, is a distraction. It's blowing smoke; it's outrageous. Treatment is to help persons, and that's what the religious persons and we as citizens are wanting to do. I do believe that we have some possibilities here. I certainly don't think that we have a final answer on this. [LB335]

SENATOR LANGEMEIER: One minute. [LB335]

SENATOR KRUSE: It's not an easy answer. Those constitutional questions applying to one person are very important to me. I see them as important within any situation that we might have. Constitution is the way we go. But applying the constitutional protection to somebody who is not able to respond because they are still intoxicated and they are still hurting in the gut is not really providing constitutional protection of that person. I think that we're playing games and we're fooling ourselves on that, if we assume that we are being kind to them in some way. I believe we need to get them help. Thank you. [LB335]

Floor Debate  
January 22, 2008

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SENATOR LANGEMEIER: Thank you, Senator Kruse. Wishing to speak we have Senators Synowiecki, Chambers, and White. Senator Synowiecki, you're recognized. [LB335]

SENATOR SYNOWIECKI: Thank you, Senator Langemeier, members. Normally on these issues I'm in agreement with the likes of Senator Pedersen, Senator Kruse, very much well-intended to have individuals that are suffering from some serious and chronic addictions, to get those individuals the help they need. But this bill is not the way to do that. Number one, there's no funding mechanism in here for evaluation and for treatment of these individuals--no additional funding. Number two, the whole purpose of this set of statute is to preserve life or prevent injury. It's very specifically written in the bill, very specifically written in the current statutes. The only reason why we take individuals into custody for up to 24 hours is because we feel it is necessary in some instances, some limited instances, to preserve life or prevent injury. The purpose of the civil protective custody statute is not so that it serves as a gateway to treatment. There's absolutely nothing in this bill that speaks to treatment, speaks to evaluation, speaks to assessment--nothing. Let me tell you the typical civil protective custody, perhaps in my old probation days, what would happen down in the south Omaha business district, is you have an individual that was obviously intoxicated and needed to be removed from the public premises. The police officers would simply take that person to a safe place, and as Senator Chambers indicated and I agree wholeheartedly, the 24 hours is a sufficient amount of time for that person to go through the detoxification process and to get some rest, and he or she is held there till they test .00 percent on the Alco-Sensor testing mechanism. I think the...and then the person is let go, as he or she should. We don't have no right to hold that person beyond the detoxification process. We absolutely have no right to do that. Civil protective custody statutes are to preserve life or prevent injury. When a person puts herself or himself in a dangerous situation that we need to intercede, we do it on a very limited basis. And we don't use, and we haven't used, and we shouldn't use these statutes as a mechanism to get people to treatment. That's not the purpose of this section of law. I can't help but always return to our emergency protective custody statutes and the fact that individuals that are held under these set of statutes, number one, are afforded a hearing within 36 hours, which I think is pretty remarkable that we're looking at a civil protective custody, holding individuals for 72 hours without any such hearing, and without any such intervention. You know, everyone is getting up and speaking of getting these folks into a treatment program and so forth, but there's nothing in the bill that indicates that there would be any sort of assessment, particularly a chemical dependency evaluation, that is, as those folks that are involved in the system know, that before you could do anything you need an assessment. You need a chemical dependency assessment to identify the level of care that is needed. There's nothing in here that says that these folks will be afforded a chemical dependency evaluation. [LB335]

SENATOR LANGEMEIER: One minute. [LB335]

Floor Debate  
January 22, 2008

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SENATOR SYNOWIECKI: Secondly, under emergency protective custody, which again...I think the population that Senator Kruse seeks to help here specifically fits within our emergency protective custody statutes. Those that have evidence of inability to provide for his or her basic human needs, and one basic human need is to keep yourself in a safe place, in a safe environment, I think these would include this population, is that once the evaluation takes place, if it's assessed by a mental health professional that a level of care is needed and if it's a residential level of care, the Board of Mental Health enters an order where that individual has got to go through the treatment program that's ordered by the county Board of Mental Health. What's important here is that the individual, the patient, has representation at that hearing, and it happens a lot in Douglas County where these folks... [LB335]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Time. [LB335]

SENATOR SYNOWIECKI: ...do indeed have representation at the hearing. Thank you, Mr. Speaker. [LB335]

SPEAKER FLOOD: Thank you, Senator Synowiecki. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR222, LR226, LR227, and LR228. Continuing with discussion, Senator Chambers, you are recognized. This is your last time. [LB335 LR222 LR226 LR227 LR228]

SENATOR CHAMBERS Thank you. Mr. President, members of the Legislature, our debate was being observed, and a person called my office and mentioned that based on the description of drunkenness, a person with diabetes could be in a set of circumstances where all of the symptoms or appearances of drunkenness would be visible, and if that person were treated as though he or she were drunk, there could be catastrophic consequences. So although these descriptions are given and all of the discussion, I believe, is sincere and well-intentioned, it can miss the mark in certain instances. Cindy, who works in my office, reminded me of an incident we had brought to our attention. A woman was suffering from MS. She had a seizure. Her 12- or 14-year-old son called 911. They sent some medical technicians and when they came, the woman was foaming and she was going through this seizure, and they called the police. The police came, they considered her to be combative. They determined, in their medical judgment, that she was suffering from a drug overdose. They roughed her up, they put handcuffs on her and took her to the hospital, and the treating physician was furious. He said, this woman has MS. Why did you put handcuffs on her? Why did you treat her so roughly? Because there were marks. Well, she was a black woman. That's the way the Omaha police operate. I'm not trustful of the police when you give them the authority to do bad things to people. Although this is not exactly on point with what we're

Floor Debate  
January 22, 2008

---

talking about, a mother whose daughter goes to Central was called because her daughter was accused of having drugs, and she was searched by male personnel. Nobody in the closed-door room with her, and the principal at Central High said, that's perfectly appropriate. You don't need to call the parents, and it's appropriate for a male to search a female student. She happened to be black, also. This is why white people need to understand that our children and we who are black are treated differently from the way white people's children and white people are treated. And when you have people in positions of responsibility saying it's appropriate to have a black female student searched by white men, then a black father needs to go up there and beat the you know what out of them. But what would happen to that father? He is the bad one, and the white people go along, saying this is all right. Why don't children want to have white teachers, go to school with white principals and white administrators? Because they hate black children, they can demonstrate it. The superintendent, the school board and everybody goes along with it. When efforts are made to put black people, Latinos, and poor white people in a position to have something to say about what happens to our children, the first thing these racists, who don't care about any of the three groups will say, that's segregation, that's socio-economic discrimination. And those things exist, and what we're offering is a remedy. But white people benefit and gain from things being exactly like they are. So when it comes to the mistreatment of vulnerable people, I am hypersensitive. This that we're talking about falls into that area. And my concern is that we don't have people giving us statements that have an allure, but when subjected to analysis fall, but we go along just because we like the person. I like Senator Kruse, I believe he's compassionate, and I think he's sincere. But he's sincerely wrong on this one, and it's my job to do what I can... [LB335]

SPEAKER FLOOD: One minute. [LB335]

SENATOR CHAMBERS: ...to stop this proposal from being enacted into law. Nobody has stood on the floor to talk about the criteria according to which somebody is going to be incarcerated for 72 hours. But no matter what criteria they offer, I am opposed to it, and I will oppose it in this guise or any other. I think that the constitution and our job, our work as legislators, should protect people from clever stratagems and simple-minded stratagems. I won't say which one this is, but in either case, it needs to be stopped, and I'm going to do what I can to see that it is brought to a halt. Thank you, Mr. President. [LB335]

SPEAKER FLOOD: Thank you, Senator Chambers. Senator White. [LB335]

SENATOR WHITE: Thank you, Mr. Speaker. I would yield my time to Senator Chambers. [LB335]

SPEAKER FLOOD: Senator Chambers, you have the balance of Senator White's time, 4 minutes, 50 seconds. [LB335]

Floor Debate  
January 22, 2008

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SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator White. I'm going to recapitulate or reiterate some things. Although to iterate means to repeat, when you say reiterate it's redundant, but since reiterate is deemed a word, and since when you say reiterate people think that means to repeat it for the first time, I shall iterate or reiterate some things. Senator Nantkes pointed out that regardless of how few people are having their liberty infringed, the constitution is as much in play for them, and in reality comes into play more. Constitutions and remedial laws are there for the purpose of protecting the numerical minority. Senator Ashford, as Senator Nantkes pointed out, mentioned that this would affect a few people. Those are the ones who need the protection. If the only ones who are protected are the Warren Buffett's or the people who constitute a numerical majority, you don't need to discuss any of what we're talking about here, because a bill like this would never come before us that would affect them. They would vote and get things their way. But because the majority is often--and I feel generally--wrong, constitutions are put in place, against which any inappropriate conduct is to be strong, and strong enough to repel it. There were people who had what was then called leprosy, and in some parts of the world it's still called that. They were required to holler as loud as they could that they were lepers, that they were unclean, so that other human beings who were fearful would not run the risk of being contaminated by their less fortunate brothers and sisters. Even worse than a person with an affliction being required to behave in such a fashion is when the society brands a person with that affliction when it may not exist. All of it is bad. We can always understand that mercy, compassion, understanding are to be extended if we are the ones who are to be the recipients. We want people to give us a break, and if we have enough money and political clout, we'll get it. I'm concerned about those who don't have those crutches to lean on or those ladders with which to climb out of the circumstances they live in. If you look at society like a pyramid, the vast majority of people are at the base of the pyramid where it's widest. As you proceed up the pyramid, naturally it narrows until you the apex. At the apex are the people who are most favored. They have the most power. The further you go up that pyramid, the fewer people there are and the more power they have. The further you come down the pyramid the opposite comes into play. So if we can comfortably say, take away people's freedom, we should never stand on the floor and laud the constitution again. These are the people the constitution was created to protect, and we have that responsibility. It would be... [LB335]

SPEAKER FLOOD: One minute. [LB335]

SENATOR CHAMBERS: ...much easier to say that our compassion is leading us to do this--excuse me, Mr. President. Thank you, Mr. President. [LB335]

SPEAKER FLOOD: Thank you, Senator Chambers. You're actually the last one on the queue, Senator White. The question has been called. Since you're the last one on the queue, Senator White, we will recognize Senator Chambers to close. Senator

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Floor Debate  
January 22, 2008

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Chambers waives closing. The question before the Legislature is, should LB335 be bracketed until March 15, 2008? All those in favor vote yea; all those opposed vote nay. Have all those voted who care to? Senator Chambers, for what purpose do you rise? [LB335]

SENATOR CHAMBERS: I will ask for a call of the house and a roll call vote. [LB335]

SPEAKER FLOOD: There has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record please, Mr. Clerk. [LB335]

CLERK: 31 ayes, 0 nays, Mr. President, to place the house under call. [LB335]

SPEAKER FLOOD: The house is under call. Senators, please record presence. Those senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Erdman, please check in. Senator Fulton, please check in. All senators are present or otherwise accounted for. Mr. Clerk, please read the roll. Please stand by as we address some technical difficulties. [LB335]

CLERK: (Roll call vote taken, Legislative Journal page 307.) 18 ayes, 25 nays. [LB335]

SPEAKER FLOOD: The motion to bracket LB335 is not adopted. Mr. Clerk. I do raise the call. [LB335]

CLERK: Mr. President, a series of reports. Select File reports LB380, LB383, LB157, LR5CA, LB690, and LB92 to Select File. Amendments to be printed: Senator Chambers, LB467A; Senator Pahls, LB709; Senator Pirsch to LB157. I have received a Reference report, Mr. President, referring certain legislative bills. Notice of hearings from the Agriculture Committee and the Urban Affairs Committee. New bills: (Read LB1078-1090 by title for the first time.) New resolution, Mr. President, LR230CA by Senator Pedersen. It proposes an amendment to Article VIII, Section 2 of the Nebraska Constitution. A series of name adds: Senator Pahls to LB961; Senator Fulton, LB963; Senator Dubas, LB1089. Two announcements: Education Committee will meet upon recess in Room 1126. Referencing will meet upon recess in 2102. (Legislative Journal pages 308-321.) [LB380 LB383 LB157 LR5CA LB690 LB92 LB467A LB709 LB961 LB963 LB1078 LB1079 LB1080 LB1081 LB1082 LB1083 LB1084 LB1085 LB1086 LB1087 LB1088 LB1089 LB1090 LR230CA]

And I have a priority motion. Senator Langemeier would move to adjourn until Wednesday morning, January 23, at 9 a.m.

SPEAKER FLOOD: You've heard the motion to adjourn. All those in favor say aye. All

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Floor Debate  
January 22, 2008

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those opposed say nay. The ayes have it, we are adjourned.