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Floor Debate
March 04, 2009

[LB51 LB63 LB111 LB136 LB188 LB227 LB260 LB307 LB327 LB356A LB361 LB402
LB422 LB488 LB501 LB544A LB550 LB577 LR7 LR32 LR33 LR34 LR43]

PRESIDENT SHEEHY PRESIDING []

PRESIDENT SHEEHY: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the thirty-eighth day of the One Hundred First Legislature, First Session. Our chaplain for today is Reverend Clayton Lundstedt from Wymore Church of Christ in Wymore, Nebraska, Senator Wallman's district. Would you all please rise. []

PASTOR LUNDSTEDT: (Prayer offered.) []

PRESIDENT SHEEHY: Thank you, Reverend Lundstedt. I call to order the thirty-eighth day of the One Hundred First Legislature, First Session. Senators, please record your presence. Please record, Mr. Clerk. []

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

PRESIDENT SHEEHY: Are there corrections for the Journal? []

CLERK: I have no corrections. []

PRESIDENT SHEEHY: Any messages, reports, or announcements? []

CLERK: Mr. President, the motion to withdraw LR7 by Senator Fulton, that will be laid over. And an announcement, the Education Committee will meet in Exec Session today at 10:30 in Room 2022, Education at 10:30 this morning. That's all that I have, Mr. President. (Legislative Journal page 645.) [LR7]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR32, LR33, and LR34. Mr. Clerk, we'll move to first item under legislative confirmation reports. (Legislative Journal page 645.) [LR32 LR33 LR34]

CLERK: Mr. President, Senator Langemeier, as Chair of Natural Resources, reports on the appointment of Robert Krohn to the Nebraska Environmental Trust Board. (Legislative Journal page 624.) []

PRESIDENT SHEEHY: Senator Langemeier, you're recognized to open on the Natural Resources Committee confirmation report. []

SENATOR LANGEMEIER: Mr. President and members of the body, thank you. Robert

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Krohn is being reappointed to a four-year term representing District 2 to the Nebraska Environmental Trust. He was first appointed to the board in June of 2009, or excuse me, 2002. His current term would run from March 11, 2009, to March 10, 2015. He has a degree from the University of Nebraska in civil engineering. He is the chairman of the board of Psi Group, Inc. of Omaha. He is the chairman of the UNMC Medical Research Advisory Board, chairman of the Immanuel Health Systems Board, as well as many others. The committee advanced his appointment. We did it via teleconference. He happened to be in Arizona the day of the hearing but he made it via teleconference and did a great job. All those present at the time voted him out unanimously, and we'd ask for your reappointment and your adoption of Mr. Robert Krohn to the Nebraska Environmental Trust Board. Thank you. []

PRESIDENT SHEEHY: Thank you, Senator Langemeier. You have heard the opening of the Natural Resources Committee confirmation report. The floor is open for discussion. Are there members requesting to speak? Seeing none, Senator Langemeier, you're recognized to close. Senator Langemeier waives closing. The question before the body is on the adoption of the Natural Resources Committee confirmation report. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. []

CLERK: (Record vote, Legislative Journal page 646.) 35 ayes, 0 nays, Mr. President, on the adoption of the confirmation report. []

PRESIDENT SHEEHY: The Natural Resources Committee confirmation report is adopted. We'll move to first item under General File. []

CLERK: Mr. President, LB260, a bill by Senator Rogert. (Read title.) The Legislature has discussed the issue on March 2 and March 3. Committee amendments have been presented. Amendments to the committee amendments have been adopted. Committee amendments are still pending. I do have additional amendments to the committee amendments, the first being offered by Senator Fulton. (AM456, Legislative Journal page 571.) [LB260]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Rogert, would you like to give us a brief recap of LB260. [LB260]

SENATOR ROGERT: Thank you, Mr. President. Good morning, members of the body. LB260 adopts the wrongfully convicted imprisonment act. We moved yesterday to accept my amendment to the committee amendments, AM545, and I thank everybody for doing that. I just have a few brief comments that I will talk about. What LB260 does is it brings a new avenue through which somebody who was wrongfully convicted in prison can make a claim against the state for restitution. Once again, this bill brings upon us a process. The bill gives no money to anyone. Anyone making a claim must

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clear at least five hurdles to get their claim. And the discussion yesterday wandered to a trial of some of those who might seek a claim under this bill if it is passed. That is not our purpose here with this bill. This is not the trial. This gives those few people, and very few future people, a vehicle who are victims of injustice the right to trial, to file that tort claim against the state. We are not here today to decide if possibly six people are innocent or guilty or free of involvement in a horrific crime that happened some 20 years ago. That is the next step. LB260 is a precedent, the precedent in that LB260 is the first step. We're here to discuss and create the best process that we see fit. We can cap it, cap the amount, limit the way we do it, and effectively close it down to those who should be considered for a claim with several of the amendments that are coming before us today. It is my hope that we can move forward at the end of the morning to Select File to work on an omnibus amendment that will fluently catch the process. Senator Fulton comes forth with a cap that I think is reasonable and we should fully discuss and consider that. Thank you, Mr. President. [LB260]

PRESIDENT SHEEHY: Thank you, Senator Rogert. As...Mr. Clerk, you have a amendment on your desk. [LB260]

CLERK: Mr. President, Senator Fulton would now move to amend the committee amendment with AM556. (Legislative Journal page 641.) [LB260]

PRESIDENT SHEEHY: Senator Fulton, you're recognized to open on AM556 to LB260. [LB260]

SENATOR FULTON: Thank you, Mr. President and members of the body. Good morning. This amendment will be the first of, I believe, a number of amendments to invoke a cap on what we are doing under the, under this act. To be clear, I do support the underlying principles and the underlying bill, LB260. My concern has to do with the fiduciary responsibility that we as a Legislature will have going into the future. Not so much a responsibility that we have as a means of rectifying justice, but as a monetary expression. We need to watch our money and at least have an idea of what kind of fiduciary obligations we'll have under this act. So my amendment is fairly straightforward. I talked with Senator Lathrop, talked with Senator Ashford, Senator Rogert, and a number of others. There are places within the statute which invoke caps with regard to tort claims, specifically within the part of the statute dealing with medical malpractice as well as political subdivisions. So we have drafted a means. This is a mechanism by which we have some cap in place. The cap that I am proposing shall not exceed \$1 million per claimant or \$2 million per claimant on death row. This is on page 3, after line 12, on AM456, as it has been amended. Basically, at the end of Section 4 we will be saying that all remedies envisioned within Section 4 will be capped at \$1 million or \$2 million if the claimant was on death row. If you have a problem with the amount of the cap, certainly make your voice heard. Perhaps even bring forward an amendment to adjust that cap from \$1 million up or maybe \$1 million down, whatever

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the case may be. Senator Ashford said we may be in an auction situation. That may well be the case, but I ask that we do adopt this amendment such that we have a mechanism by which we are capped. Then at least we know mathematically and numerically what we are talking about when we are passing...what we are talking about financially when we pass LB260, if indeed we pass LB260. With that, I'd ask for your favorable adoption of AM556. Look forward to discussion. Thank you, Mr. President. [LB260]

PRESIDENT SHEEHY: Thank you, Senator Fulton. You have heard the opening of AM556 to AM456. Members requesting to speak, Senator Howard followed by Senator Gay and Senator Pirsch. Senator Howard. [LB260]

SENATOR HOWARD: Thank you, Mr. President and members of the body. We've been discussing this now for, I believe, this is the third day. And I've listened to all the debate, all the conversation and it's been certainly worthwhile, very good comments, certainly things to think about as we look at this difficult, difficult issue. We are really being put in the position of second-guessing what took place during the court process and the decision regarding individuals who have been convicted of crimes and now are declared to be not guilty. What remains unknown are the contributing factors such as did the accused plead guilty as these individuals did. We can all speculate on the circumstances, but frankly I don't have a lot of sympathy for people who claim they were not responsible for something they did due to impairment by their own drug use. Do we have equal compensation for the victims or the family of the victim in this case, Helen Wilson, who no amount of money will restore to her family or give her another holiday with her children? I sympathize with those who lost their freedom. I feel more compassion for those innocents who lost their lives due to a senseless act by another. Thank you, Mr. President. [LB260]

PRESIDENT SHEEHY: Thank you, Senator Howard. Senator Gay. [LB260]

SENATOR GAY: Thank you, Mr. President. Would Senator Fulton yield to a question? [LB260]

PRESIDENT SHEEHY: Senator Fulton, would you yield to questions? [LB260]

SENATOR FULTON: Yes. [LB260]

SENATOR GAY: Thank you, Senator Fulton. Senator Fulton, when you came to these damages, it's my understanding all this compensation is tax-free awards. But when you came...how did you come up with these numbers? [LB260]

SENATOR FULTON: Well, the...within the part of statute dealing with medical liability, I believe the number was \$1.75 million. I think that was right. It's just under \$2 million. So

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I, using...there's not any magic by which I came to these numbers nor any mathematical convolution. I just looked into the statute to get an idea of the order of magnitude of existing caps. [LB260]

SENATOR GAY: Okay. Well, when I look at this I think it's going to be hard, and again I brought up yesterday the whole idea, and that's why we're here to discuss these, but a legislative...there's a lot of different opinions. My opinion is that's a pretty large judgment on tax free. When you go through and you go through trial, we do the best...the judicial system does the best they possibly can and we found a problem. Now it's DNA evidence releases some people but we had talked about other people who might be using this vehicle as awards for damages that may happen whether, you know, the worst case you're convicted of a crime and you're on death row and you're found innocent. Of course, that's the worst. But on down, I'd say when you look at these caps that's an awful lot of money to be awarded. No one did anything blatantly wrong. Now, I think if there were some circumstances where it was absolutely the prosecutor was doing something totally illegal or, you know, and I'm no expert and I know you're no lawyer either, but I can see if there was something being unjustly done in the...on the way to convict somebody and then, maybe, there would be an opportunity for damages against the county or something like that. But here this all goes to the state. I've got an amendment being drafted to go to \$500,000 cap and \$20,000 a year as a compromise. I just think, and this is just me and I'd like to hear others, I don't know if we could put a price on it. I just think as people look at what we're doing here, \$1 million, \$2 million, here you go. Here's some money. We feel bad for what happened, which everybody would, of course, and does. But to say, here you go, you're putting them in a much, much better position after the fact than many people who have worked their whole lives and can't save near this money tax free for their retirement plans. So I just have a problem with where we're at and maybe...and I know I'll probably get schooled on judgments and what courts of law will award damages, but I just think that's an awful lot of money. I think we need to set an amount where they can go and try to get their life together, and by all means, no question. Like I said yesterday, I'm for a some kind of compensation. I just think this is too much. So with that, I do have an amendment that I'm drafting and going to be introducing as well, \$20,000 annual limit to a \$500,000 cap on all services. Thank you, Mr. President. [LB260]

PRESIDENT SHEEHY: Thank you, Senator Gay. Senator Pirsch. [LB260]

SENATOR PIRSCH: Thank you, Mr. President and members of the body. I wonder if Senator Fulton might yield to a quick question then. [LB260]

PRESIDENT SHEEHY: Senator Fulton, would you yield to questions? [LB260]

SENATOR FULTON: I will. [LB260]

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SENATOR PIRSCH: Very good. Senator...and the function of your amendment then is to cap the total amount that a claimant can derive from the state at a million dollars, is that what you said? [LB260]

SENATOR FULTON: Yes. I really, if I could compartmentalize what my intention here is. Presently as this bill...as this amended bill stands, there is no cap whatsoever and that causes me great discomfort. It's open-ended. So primarily, this amendment is about invoking a cap. Secondly, is the amounts. And I had to choose an amount and so I have chosen amounts that are already reflective in statute. I want to make it clear that what that amount is, I'm completely open to what that amount ought to be. But that we have a cap, I think, is a necessity. [LB260]

SENATOR PIRSCH: Very good. And I just want to check with you again. I am not, you know, I'm glad there are those among the body who are concerned about the dollar aspect and whatnot on that account. But again I would urge the body to focus your attention on a different, and I would posit more important feature that needs to be looked at, at this bill, which is the actual process or procedure in determining which claimant is eligible for, you know, remuneration from the state, because I have a number of concerns about the process. Now, again, there are two elements that either...there's one of the following two elements have to be met. Either the pardons board pardons you and, or the court overturns your conviction. But in the way in which those two institutions operates, if the pardons board now currently pardons you, it does not mean now that you are considered innocent, and yet that may be the springboard to get you an automatic judgment now. And so I'm concerned about that that we need to put in some language to make sure that that doesn't happen. The pardons board is not an entity that was created out of like a court in determining guilt and innocence. They don't hold trials. They don't hear witnesses. They don't accept exhibits. What they are borne out of, this entity, is one that was created to decide, notwithstanding the guilt of the defendant, should we grant mercy or clemency. And all they do is determine along those lines. And so to say that they have the historical, historically speaking, the ability to or a process in place where they can actually decide guilt or innocence, that just isn't a consideration or a built-in procedure to that body. And so...and so in any case, that's one of the concerns. The other avenue that you can take is having a court overturn your conviction. Well, the court overturning your conviction has not meant and does not mean that you are actually innocent. What that does mean is that you have an avenue...that some sort of process needs to be followed by the court, the lower, I'm sorry, by the original court. So for instance, it is oftentimes one of the biggest reasons to appeal is ineffective assistance of counsel. Hey, when I had my trial years ago before I went to jail I was found guilty, but my lawyer didn't do a good job for me. That doesn't...if a judge grants that, the court, that doesn't mean that you're necessarily innocent. It's just saying, we want to make sure that the procedures, the safeguarding procedures, make sure everybody gets a fair trial is in place. And so to use that as a springboard and say... [LB260]

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PRESIDENT SHEEHY: One minute. [LB260]

SENATOR PIRSCH: ...if it's...if a judge vacates or remands it back for a trial that you are therefore innocent is very worrisome. And so what I would...and we will talk about this. I've got a couple of amendments coming through today that will help to make sure that that doesn't occur. But again, there are some unintended consequences that I urge you to pay attention on. One of which the Board of Pardons may not pardon people even though they believe they deserve clemency out of fear that it will be misinterpreted as a declaration of innocence, of actual innocence. And another worry is that if you make application to the Board of Pardons and so you're actually in...or to a court, say you're actually innocent and the court doesn't accord with that, are you opening yourself up then to some sort of other civil liability? And so... [LB260]

PRESIDENT SHEEHY: Time, Senator. [LB260]

SENATOR PIRSCH: Thank you. [LB260]

PRESIDENT SHEEHY: Thank you, Senator Pirsch. Additional members requesting to speak on AM556 to AM456 are Senator Lautenbaugh, followed by Senator Lathrop and Senator Janssen. Senator Lautenbaugh. [LB260]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I do rise in support of Senator Fulton's amendment and I think we've had a good, albeit lengthy, discussion on this bill and we've, I think we've improved the bill as we've moved on and I think we still have work to do. That said and as we're at the eight hour mark, my intention is to withdraw the amendments I have pending, and I'm hoping others are doing the same with the exception of Senator Fulton. And then we will move on and try to come up with an amendment that addresses the body's concerns on Select. Please don't interpret this as me saying we've said too much on this bill. That's not the case. We've all pointed out legitimate concerns that we have with the bill, I believe. And I think we need to improve it. I also think we probably do need to move on at this point. So again, I would ask you to support Senator Fulton's amendment that puts caps on this and trust us to come up with amendment, an amendment, excuse me, that addresses many of the various pending amendments and tightens the bill for Select File. So I would ask for your support for that, and it's not proper for me to pull my amendments now but I will at the proper time. [LB260]

PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh. Senator Lathrop. Senator Lathrop, you're next in the queue. Senator Lathrop waives. Senator Janssen, followed by Senator Friend and Senator Pirsch. Senator Janssen. [LB260]

SENATOR JANSSEN: Thank you, Mr. President, members of the body. I rise in support

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of the amendments before us. Sitting here yesterday I was pondering this whole issue at large and it kept coming up to me, and I'm not, not throwing any amendments. The last time I did that I ended up in three op-ed pieces so I'm just going to offer some ideas here on the floor today that maybe can get woven into this debate somewhere. I see quite a caucus going...we can't call it that, going on right now. But I was thinking about the price of taking somebody's freedom away from them and can you really put a number on that. And what I kept coming back to is, no, you really can't put a number on taking that away from somebody but that's exactly what we're trying to do here. And I thought let's try to put a tangible number to this, and I talked to some constituents and one of the ideas that came back to me that I thought was at least somewhat plausible is they said, well, why don't we look at the earning capacity of these individuals that were put away at the time they were put away, and at that case, look at their last full year's wages where they were at, take that, lock that number up, and basically, ratchet it up with the cost of living whatever that is, 3 percent over the whole time they're in, and that would be their package when they got done. In many cases, we're talking about people that may not have been employed. In that case we would revert back to the federal minimum wage where it was on an annualized basis, start there, and move that up, and if the minimum wage were to change, move it up along those guidelines as well. So that was just an idea that came out. There's many ideas here, like I said. There's no amendment forthcoming from me, but I just wanted to get that idea out there maybe for some discussion and that's all I have. Thank you. [LB260]

PRESIDENT SHEEHY: Thank you, Senator Janssen. Senator Friend. [LB260]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. I see that there are discussions going on relative to LB260, probably AM456, and then the pending amendments on General File. I haven't even been engaged. I've been watching this discussion and I think part of the reason that we don't get engaged as individual senators for...there are a lot of reasons, but on occasion the reason that we don't get engaged is because it doesn't philosophically engage us. And I know this sounds kind of crazy but this doesn't. It seems to me, Senator Lautenbaugh, Senator Rogert, and others out here...and by the way, the people that have raised concerns, I haven't heard yet a major philosophical disagreement with trying to make things right or trying to provide restitution for somebody who is wrongly convicted. Now, I have heard people raise concerns associated with caps or anything else. I'm not trying to be redundant or regurgitate but it's important when we think about process and it's important when we think about moving from General File to Select File to make a determination, each of us, to make a determination based on philosophy. If you're sitting on General File and you think this is a bad philosophical idea, the last thing you want to do is acquiesce and let that thing move on to Select File. But not once have I heard anybody stand up and say, this is just a flat out bad idea. I've gotten in trouble. I've...Senator Christensen, who is a friend of mine, you know I called his bill stupid earlier in the session. And I've gotten in trouble with folks because I've used that type of demeanor. I don't know if I've gotten in

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trouble but I mean I've had issues with that. Well, I had a philosophical issue with that bill, not because I thought that it was something that was horribly bad with the state and would create all kinds of problems, because I just didn't think we needed it and I think it was a ridiculous thing to be dealing with. I thought it was two years ago, I thought it was at this time as well. That was my point. I mean, I feel almost strange that I got involved to the degree that I did. Most of the time I probably wouldn't even have been here listening to what I thought was a ridiculous argument for a ridiculous bill. All that being said, this isn't a ridiculous argument. This isn't a ridiculous bill, but I can fully understand why somebody wouldn't want to be philosophically engaged. We've got a group of ten people over here trying to decide whether we should move it to Select File. Are you kidding me? If you don't hate the bill and you think that there are ways to improve it, move it to Select File. Have the discussions between General and Select. We've done that on hundreds of occasions since I've been here. If you are philosophically opposed and we've had eight hours of discussion and I haven't heard yet where anybody is inherently disgusted with the idea of moving this bill forward, why are we still stuck on it eight hours from now, or at the eight-hour point right now? I have no problem with the idea that if we had 25 people out here that are philosophically opposed to a bill that we got a 25-person filibuster going on. [LB260]

PRESIDENT SHEEHY: One minute. [LB260]

SENATOR FRIEND: The problem that I have is, I haven't heard that yet. And right now it is a...to use the crass saying, it's a Chinese fire drill. Nobody knows what to do with this. Here's what you do. Here's what you do with this bill right now. Between General and Select, you vote on it. And if you don't like it, vote no, because then it doesn't advance to Select. If you like the idea of providing more parameters, the proponents of this bill have already said that that's going to be done between General and Select. And if they don't do that on Select File, you kick them so hard that they'll be wearing...(laugh)...you kick them so hard on Select File that they won't like it. It's as simple as that. And quite frankly, I think that would probably happen based on this discussion out here. So in other words, I'm not saying for the sake of brevity, let's move on. I'm saying for the sake of... [LB260]

PRESIDENT SHEEHY: Time, Senator. [LB260]

SENATOR FRIEND: ...sanity. Thank you, Mr. President. [LB260]

PRESIDENT SHEEHY: Thank you, Senator Friend. Senator Wallman. [LB260]

SENATOR WALLMAN: Thank you, Mr. President and the body. May I ask Senator Friend a question? [LB260]

PRESIDENT SHEEHY: Senator Friend, would you yield to questions? [LB260]

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SENATOR FRIEND: Yes, I will. Someday I'm going to say no. That will surprise you.
[LB260]

SENATOR WALLMAN: Thank you. Senator Friend, is this the state's fault or is this the county's fault? [LB260]

SENATOR FRIEND: Well, it depends. [LB260]

SENATOR WALLMAN: Yeah, I appreciate Senator Friend's comments. And, you know, we're going here in territory reimbursing people. Are they innocent, are they guilty, what is the truth? Did somebody make a mistake, court records, whatever? This can happen. It happens. Will it be a lot of number of people? Nobody knows. So you know, we put a number up here, millions of dollars, thousands of dollars. It doesn't make any difference. If I'm incarcerated 25 years for nothing, money is not going to bring my life back. But if people care for me and they rehab me and give me a job and set me up so I can make a living, I will never get that 20 years back, 25 years, 30 years back no matter how much you give me. So that's where I stand. I don't like this bill and I tried to ratchet the numbers down. It didn't work so, thank you, Mr. President. [LB260]

PRESIDENT SHEEHY: Thank you, Senator Wallman. Senator Fulton. [LB260]

SENATOR FULTON: Thank you, Mr. President, members of the body. I think that there is some agreement out in the body that there ought to be a cap. What, what numerical amount that cap ought to be, there will be some debate to ensue. So part of this meeting over here that a number of us with interest in this bill had, has to do with the process moving forward. To that end, I want to explain what I'm going to do, why I'm going to do it, and then I'm going to actually do it. What I'm going to do is withdraw my amendment with the understanding that there will be some collaboration between interested parties on Select File such that there will be a cap. What amount that cap will be remains to be collaborated or debated among interested parties. The reason why I think this is important is we have to have a cap. And if that becomes the basis of our debate, so be it. But that a cap needs to exist I think, I think is obvious. So to that end, to allow this process to move forward, Mr. President, I would like to withdraw my amendment, AM556. [LB260]

PRESIDENT SHEEHY: AM556 is withdrawn. Senator Fulton. [LB260]

SENATOR FULTON: Do I still have time? Or does that end my time? [LB260]

PRESIDENT SHEEHY: Unless you're not withdrawing just yet, you'd still have...
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SENATOR FULTON: I would like to withdraw and refile on Select File and then I will desist. [LB260]

PRESIDENT SHEEHY: Thank you, Senator Fulton. Mr. Clerk, we will move to the next amendment. [LB260]

CLERK: Mr. President, the next amendment, Senator Lautenbaugh, FA16. [LB260]

PRESIDENT SHEEHY: Senator Lautenbaugh, you're recognized to open on FA16. [LB260]

SENATOR LAUTENBAUGH: Thank you, Mr. President. Thank you, Senator Fulton, for withdrawing your amendment and I will do likewise. [LB260]

PRESIDENT SHEEHY: FA16 is withdrawn. Next amendment, Mr. Clerk. [LB260]

CLERK: Senator Lautenbaugh, FA17. [LB260]

PRESIDENT SHEEHY: Senator Lautenbaugh, you're recognized to open on FA17. [LB260]

SENATOR LAUTENBAUGH: Thank you, Mr. President. I'd like to withdraw that one as well. [LB260]

PRESIDENT SHEEHY: FA17 is withdrawn. Next amendment, Mr. Clerk. [LB260]

CLERK: Mr. President, Senator Gloor would move to amend AM567. [LB260]

PRESIDENT SHEEHY: Senator Gloor, you're recognized to open on AM567. [LB260]

SENATOR GLOOR: Thank you, Mr. President. I would also like to withdraw and refile on Select File. [LB260]

PRESIDENT SHEEHY: AM567 is withdrawn. [LB260]

CLERK: Mr. President, Senator Pirsch would move to amend, FA18. [LB260]

PRESIDENT SHEEHY: Senator Pirsch, you're recognized to open on FA18. [LB260]

SENATOR PIRSCH: Thank you, Mr. President and members of the body. Just to...clarification, Mr. Clerk, this is not the last amendment that I filed, correct? [LB260]

CLERK: No, sir. [LB260]

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SENATOR PIRSCH: This was the first one. I'm going to withdraw this particular amendment at this time, AM456...I'm sorry, this amendment that's at hand, I will withdraw at this time. [LB260]

PRESIDENT SHEEHY: Thank you, Senator Pirsch. FA18 is withdrawn. [LB260]

CLERK: Senator Lautenbaugh, I now have AM572. [LB260]

PRESIDENT SHEEHY: Senator Lautenbaugh, you're recognized to open on AM572. [LB260]

SENATOR LAUTENBAUGH: Thank you, Mr. President. I would like to withdraw this amendment as well and offer it as part of the amendments on Select File. [LB260]

PRESIDENT SHEEHY: AM572 is withdrawn. [LB260]

CLERK: Senator Pirsch, FA19. [LB260]

PRESIDENT SHEEHY: Senator Pirsch, you're recognized to open on FA19. [LB260]

SENATOR PIRSCH: Thank you, Mr. President and members of the body. This is...I will move to withdraw this amendment as well at this time. [LB260]

PRESIDENT SHEEHY: FA19 is withdrawn. [LB260]

CLERK: Senator Pirsch, FA20. [LB260]

PRESIDENT SHEEHY: Senator Pirsch, you're recognized to open on FA20. [LB260]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. Again, I would move to withdraw this floor amendment at this time. [LB260]

PRESIDENT SHEEHY: FA20 is withdrawn. [LB260]

CLERK: Senator Carlson, AM577. [LB260]

PRESIDENT SHEEHY: Senator Carlson, you're recognized to open on AM577. [LB260]

SENATOR CARLSON: Mr. President, and members of the Legislature. I want to make a comment before I request to withdraw this amendment. I know that there are many of us concerned about a cap that is realistic and fair, and I believe that Senators Lathrop and Lautenbaugh will work between now and Select File to address that issue. So I would

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request that AM577 be withdrawn and I will refile on Select File. Thank you. [LB260]

PRESIDENT SHEEHY: Thank you, Senator Carlson. AM577 is withdrawn. [LB260]

CLERK: Mr. President, Senator Pirsch, AM582. (Legislative Journal page 648.) [LB260]

PRESIDENT SHEEHY: Senator Pirsch, you're recognized to open on AM582. [LB260]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. This is a floor amendment that I intend to take up today again. I've been speaking about the problems or concerns that I have from a procedural aspect, having nothing to do with working out payments. This amendment is designed to at least help cure some of those. Right now, again, as I mentioned, if, in floor debate with Senator Lathrop you...and just a bit of background process, you fill out some information when you want a pardon. Included in that you can mention things like, I served this many years in jail, you know, my family member is sick and dying and I'd like to see him. You can virtually put a lot of...a limitless number of reasons why you want to have clemency or mercy. In addition, you can also say you include in that, that you're innocent. So there might be 64 different facets that you put in front of the pardons board and 63 of them might say, even if you think I'm guilty, you know, I've served 30 years in jail and I've been a model prisoner. One of those 64 reasons might be, oh, by the way, I'm innocent too. But in speaking with Senator Lathrop yesterday, he said that if one of those 64 reasons is that you declare you're innocent, then that's why you put it down your petition to the pardons board. As a matter of law, any pardon that occurs then would function to declare you actually innocent and then make the state liable to payment for you. And so my amendment would say...and similarly, it affects courts as well. If a judge grants reverses or overturns, automatically according to that theory it would be a state...you should interpret it as a statement as Senator Lathrop, that that is actual innocence declared there impliedly, even though not expressly. I would say that since a great majority of the cases in the pardons board and these...and I think in all cases with respect to the courts, are not actual declarations of innocence. I would posit that it's extremely important that we have something that says, if in fact you're the pardons board and you want to make a statement that this person is actually innocent, you should put that expressly in writing and the same with the judge. And so that's what this amendment would function to do. If the intent of the pardons board or the judge is to declare someone actually innocent, then they should say that expressly in their findings. And so, I don't think this should be opposed. I think it, you know, it...to do otherwise would lead to unintended results. I'm not sure that Senator Lathrop or the Judiciary Committee has any objection to this. So this, I think, helps clarify it. And similarly, the tail part of this amendment speaks to when you can have your record expunged. And so I don't think it's enough just for you to have a pardon, which is by the way an act of mercy, or have a judge overturn your conviction. I think that if you're going to have your record expunged, it should be based upon the pardons board or a judge declaring you actually innocent,

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expressly in writing. So that's the sum and substance of that amendment, and I would urge you to vote yes on it. Thank you. [LB260]

PRESIDENT SHEEHY: Thank you, Senator Pirsch. You've heard the opening of AM582 to AM456. Members requesting to speak are Senator Rogert, followed by Senator Wallman. Senator Rogert. [LB260]

SENATOR ROGERT: Thank you, Mr. President. Thank you, members of the body. I want to thank all you guys who pulled your amendments and then refiled them on Select File. I commit to you that between today and when it comes up again on Select File, the groups concerned will get together and we'll get some language together with an omnibus amendment that will, hopefully, take care of everybody's concerns in terms of a cap and some of the process. And this is exactly what I had envisioned would happen and that's fine. It's a new idea. There's a lot of different theories and methods behind everybody's thinking on this. And so there's concerns from several of you here, several outside the glass, and so between now and Select File we'll all...the folks get involved, we'll put it together and make sure all the concerns are taken care of that we can, and we'll bring forth a clean amendment for Select File and hopefully, move it on at that point. So thank you, Mr. President. [LB260]

PRESIDENT SHEEHY: Thank you, Senator Rogert. Senator Wallman. [LB260]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. I appreciated Senator Pirsch's statement, have mercy. Do we have mercy on the victims? Nobody mentions the victim. Why is that? No compensation for the victims. But they might be innocent if they're in prison, but they maybe not. You know, plea bargaining and all these things that go forth in the courtroom. I've been in the courtrooms. I know what goes on behind the scenes as well as anybody in here. My son-in-law is an attorney. So, yes, do we want to open this book here? Compensate the victims. Yes, they could be victims in prison, I agree with that. But they could be guilty, too, as well as innocent or partially guilty, partially innocent. I think we're going down a slippery path here where it's going to be costing a lot of time and money and anguish and sorrow for the victims and the families. I think, you know, I appreciate Senator Rogert bringing this out. I know he has a passion for this bill and I'm proud to call him my friend, but that's where I'm at. And I hate to have things go back to Select File and work things out and then the whole body does not exactly...they can get interested in it but usually you don't. You have something else to do. So thank you, Mr. President. [LB260]

PRESIDENT SHEEHY: Thank you, Senator Wallman. Senator Pirsch, you're the last one in the queue. [LB260]

SENATOR PIRSCH: Thank you, Mr. President and members of the body. I wonder if Senator Ashford might answer a quick question. [LB260]

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PRESIDENT SHEEHY: Senator Ashford, would you yield? [LB260]

SENATOR ASHFORD: Sure. [LB260]

SENATOR PIRSCH: Thanks. Senator Ashford, do you have any objection to my amendment as put forward in AM582? [LB260]

SENATOR ASHFORD: What is it? [LB260]

SENATOR PIRSCH: What I just opened on. Essentially, it says, should...there's two springboards, the pardons board and the court and essentially, what it would say is that you have to have an express written finding that the person is innocent and not just impliedly... [LB260]

SENATOR ASHFORD: I don't...I did not imply from the response to the, to the, implied in their decision you mean. [LB260]

SENATOR PIRSCH: Right. It can't be implied if a judge is...if a judge is finding, saying somebody is actually innocent, then it should come out and expressly state that this person... [LB260]

SENATOR ASHFORD: Right. And I'm sorry, Senator Pirsch, I wasn't listening to your introduction but...I have no objection to that. I think it's an appropriate amendment and I appreciate you bringing it. [LB260]

SENATOR PIRSCH: I wonder if Senator Lathrop might yield to a quick question. [LB260]

PRESIDENT SHEEHY: Senator Lathrop, would you yield? [LB260]

SENATOR LATHROP: Yes. [LB260]

SENATOR PIRSCH: I'll ask you the same question. Do you have any objection to this amendment that would require an express written finding by the court or Board of Pardons to achieve a determination of actual innocence? [LB260]

SENATOR LATHROP: I'll probably vote against it. I think you brought up a good point and a valid concern. I don't know that it's being addressed with your amendment. I have promised to work with Senator Lautenbaugh and Rogert and I'd be happy to include you in that working group to come up with a solution to make sure that we are limiting this to the people that are actually innocent but that we're not dependent upon a document that may or may not address everything that needs to be addressed in order for us to get

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there. And...but I do believe you've raised a valid concern, Senator Pirsch. [LB260]

SENATOR PIRSCH: So you would not support this amendment then? [LB260]

SENATOR LATHROP: No. No, but I think we need to work on the subject matter to improve it. [LB260]

SENATOR PIRSCH: Very good. Well, I appreciate that. I think, I'd posit to you that this amendment is extremely important. If you do not include this amendment, the Board of Pardons will as a matter of operation, I would posit, not grant pardons because they will be fearful of being misinterpreted in all cases when they grant clemency out of the goodness of their heart, saying as they always do, we don't say that this person is innocent but we do say that they've been a model prisoner and in light of things that have occurred after they've been imprisoned, and in light of other facts, we will grant out of the goodness of our hearts, clemency. I think the Board of Pardons will in all cases no longer look at doing that. Will actually say, we don't...we're out of the business of granting pardons because the moment we do is the moment we automatically sign the state over to a judgment by that claimant. And so if you do want the Board of Pardons to function effectively, if you do want them to have the ability to grant mercy, then you will also support this. And this is really the only...I mean, effective way to do that. So as Senator Ashford indicated he has no objection to that, I would urge you to vote green on this amendment, and thank you very much. [LB260]

PRESIDENT SHEEHY: Thank you, Senator Pirsch. (Visitors introduced.) Members requesting to speak on AM582 are Senator Howard, followed by Senator Council. Senator Howard. [LB260]

SENATOR HOWARD: Thank you, Mr. President. I thank Senator Pirsch for this amendment. It's important to establish parameters for the declaration of innocence of the crime for which individuals were convicted. Without definite boundaries, there's little basis for an accurate decision. None of us is going to take the time to read the court transcript or interview the victim's family members. That's just a reality. I think we've all heard that many of the incarcerated individuals declare their innocence while they're in prison and I support this amendment. [LB260]

PRESIDENT SHEEHY: Thank you, Senator Howard. Senator Council. [LB260]

SENATOR COUNCIL: Thank you, Mr. President. I certainly appreciate the concern that has been raised through Senator Pirsch's amendment. But as I discussed yesterday, I think that the better course of action, and I have discussed it with members of the Judiciary Committee, is to remove the pardons board from this process in its entirety, and to address the issue of exoneration based upon a judicial determination of revocation, reversal, or vacation of a conviction. Now, I know that there are questions as

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to how that would operate in the event that an individual has been convicted, has already served his or her time when the newly discovered evidence establishes that they did not commit the offense. Well, we currently have a statutory mechanism that will enable an individual to seek the reversal or vacation of a conviction. And at that point in time, the judge would determine whether or not the newly discovered evidence establishes that the individual did not commit the crime that he or she was convicted of. The result of that statutory process would either be the granting of an order of vacation or it wouldn't be. And it would be that granting of an order of vacation or an order of reversal that would trigger the individual's right to submit a claim. So I think the better course of action rather than trying to place restrictions or requirements on a constitutional body like the Board of Pardons, is to rather, in terms of how an individual can meet the prerequisite for filing a claim, that it just be based upon a court issuing an order vacating or reversing the conviction. And again, the post-conviction route, post-conviction appeal route is available to those who are incarcerated at the time, and the statutory route for vacation of a judgment is the route would be available to those who may have been released at the time. And I would urge during the course of the discussions about amendments to this bill, that all, everyone seriously consider just removing the pardons board from the entire equation. [LB260]

PRESIDENT SHEEHY: Thank you, Senator Council. Members requesting to speak on AM582 are Senator Pirsch, followed by Senator Price and Senator Nelson. Senator Pirsch, this is your third time. [LB260]

SENATOR PIRSCH: Thank you, Mr. President and members of the body. I just wanted to point out that what I said about the pardons board equally applies to a judge. If you have served your time, 20 years, and then you make an appeal to a court and ask to have it reversed or vacated, that court is not going to...they may look and see if any of your substantive, constitutional rights, if the process by which you were convicted 20 years ago were fair. Did the court obey the constitution, recognize the constitutional rights? That reviewing court 20 years later is not going to say, I'm going to start...I'm going to hold a hearing, we're going to bring in witnesses right now, and I'm going to determine your actual guilt or innocence right here today. They may remand it back to a court. They may reverse or remand it back to a court. They're not going to say in so doing, we...you're innocent or guilty. They're just going to say, you had an ineffective assistance of counsel so it has to go back to another trial. And then there will be witnesses and whatnot. They may say other things were not obeyed and therefore, they may throw out the conviction. But they're not going to declare you, and they never have, and they never will declare you right there on the spot, actual innocence. That's not the business the courts are into is determining guilt or innocence. As a matter of fact...I mean, in this type of matter, as a matter of fact the only thing, the only standard courts and criminal courts determine is and find is, guilt beyond a reasonable doubt. We don't even have a standard for determining actual innocence. Was it innocent beyond a reasonable doubt? There is no such standard. No court has ever suspended it. So to

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say that a court has the ability to have some sort of a hearing on the spot is inaccurate. To say that they have the ability to determine somebody's actual innocence, we don't even have a standard like we do in a criminal court for determining guilt. It's guilt beyond a reasonable doubt. There is no standard set out in law for determining actual innocence. Is it preponderance of the evidence? Is it clear and convincing evidence? Is it innocent beyond a reasonable doubt? It never...I mean, we've never...the courts in the history of humankind have never reached that because they don't, they're not in that business. And so I'm telling you these safeguards are absolutely needed. If you're going to have a judge overturn a conviction for what could be ineffective assistance of counsel, we're not sure if you're guilty or not from 20 years ago but your attorney certainly didn't do you justice, so we'll go ahead and give you a new trial. Right now under the law, the fact that your attorney may or may not have done a good job for you, but another attorney would have done a better job for you, and we're not sure if you're guilty or not, right now you just get the mere fact that it's overturned and it's sent back for that determination, that gets you an automatic access to a state payoff. And that's not, that's not right. We want to make sure that those are reserved for those people who are actually innocent. So this safeguard just says, if the judge means that you're actually innocent, just say it on a piece of paper. If you believe that he's actually innocent and therefore automatically entitled to a payment from the state, you should just be able to write it down on a piece of paper. That's all this bill does is say, if you're finding him actually innocent, write it down on a piece of paper. Board of Pardons or a judge, write it down on a piece of paper. This isn't going to take lengthy bits of time. It is just a simple matter of writing down, if it is actual innocence that you're declaring on this person, then write it down on a piece of paper. [LB260]

SENATOR FISCHER PRESIDING []

SENATOR FISCHER: One minute. [LB260]

SENATOR PIRSCH: Because otherwise, you may be just saying, I don't like the procedure, the constitutional process that was followed 20 years ago, and so I want to reverse it and remand it back for a trial, consistent now this time with the constitutional safeguards. And so, I think that we are opening up Pandora's box if we do not have this amendment added, and so to that, I would urge you to vote green and again it applies both to judges and to Board of Pardons equally. [LB260]

SENATOR FISCHER: Thank you, Senator Pirsch. Senator Price, you are recognized. [LB260]

SENATOR PRICE: Thank you, Madam President, members of the body. Just in speaking with Senator Lautenbaugh off to the side, I wanted to bring up a scenario to make sure that this, too, is covered in the compromise on Select. If a person is involved in a crime and let's say they were charged with pulling the trigger, all right, and then

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later found out that they weren't, they didn't pull the trigger but they were with the group of people that pulled the trigger. I want to make sure that if a person is associated in a criminal act, and let's say they changed it. I mean, obviously I'm not an attorney, but if they've changed...if the charge is changed, they weren't the one that pulled the trigger but they were in the group that pulled it...there's certain terminology there, but I just want to make sure that these people aren't given a payout when they have been involved in committing a crime, but maybe was not exactly the one they were charged with. So I wanted this to stick to the tape and make sure this is part of the compromise and Senator Lautenbaugh has assured me, or he has told me that that would be the case, and thank you very much, Madam President. [LB260]

SENATOR FISCHER: Thank you, Senator Price. Senator Nelson, you are recognized. [LB260]

SENATOR NELSON: Thank you, Mr. President, members of the body. Would Senator Pirsch yield to a question or two? [LB260]

SENATOR FISCHER: Senator Pirsch, would you yield? [LB260]

SENATOR PIRSCH: I would. [LB260]

SENATOR NELSON: Senator Pirsch, I'm supportive of your position here in your amendment. Senator Council suggested that perhaps a better way might be to take the Board of Pardons out of this altogether, out of this process. What is your position on that? [LB260]

SENATOR PIRSCH: Again, it doesn't cure the...you're saying...there's two mechanisms, Board of Pardons and judges and you're saying, and she's suggesting take the Board of Pardons out. Either way then, even if it's with judges you still have the same problem, the same exact problem which is, if a judge remands or reverses a case that he is not...and I would posit in almost every case saying I believe he is actually innocent, he's saying I, as a judge, am the safeguarder of the constitution. I need to make sure the courts, even 20 years ago, followed proper process constitutionally. And in my estimation, that process was not followed. Now, I don't know if the person, if they had followed the constitutional process would have been found guilty or innocent. I don't know that, but I don't determine that. I determine if the right process was followed. So even if the Board of Pardons is off the table, you're still talking about judges who by reversing or remanding are not automatically saying, they're not stating this person is... [LB260]

SENATOR NELSON: Well, Senator Pirsch, I agree. I agree with that. [LB260]

SENATOR PIRSCH: ...they're not saying this person is innocent so you still have that

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problem. And if the judge actually, and I don't even like the idea of giving a judge without...they're not going to have a hearing. They're not going to hear witnesses and enter exhibit. So I don't even like the idea of judges after the fact being...they're not even in a position where they could determine actual innocence. But that aside, I'm willing to cede that. I'm saying, but if a judge for some reason, even though he's not privy to all this information, has an actual firm belief that somebody is actually innocent, and such that they get an automatic payoff from the state just by saying we reverse or remand, then they ought to state in that same finding, I am reversing and remanding, and by the way, I believe this person is actually innocent. I'm not reversing and remanding for some other reason. I'm reversing and remanding, overturning the conviction because I believe this person is actually innocent. That alone then would be...I mean, I'd be willing to...I think that's a better step than just leaving it vague now. Who knows what was in the mind of the judge going forward. What the suggestion is under this bill that you can just imply. Hey, you overturned the conviction, he must have thought the person was actually innocent. He didn't say so. It could have been for, you know, as in the case of 99.9 percent of the cases, for just constitutional safeguards. But let's imply, let's in all cases imply that it was for that one, you know, one in a million case where the person, where the judge believes they're actually innocent. And by the way, how would a judge determine that? There's no standard for determining actual innocence. So I'm sorry I took a little bit more of your time there, but I hope that helps. [LB260]

SENATOR NELSON: Quite a bit of time, but that's all right, Senator Pirsch. Are we going to have to set some standards along the way then in addition to what you're proposing here? Just a yes or no. (Laugh) [LB260]

SENATOR PIRSCH: Is that addressed to me? [LB260]

SENATOR NELSON: Yes. [LB260]

SENATOR PIRSCH: Well, I...you know, I don't...(laugh) I don't know how you set a...I mean, it opens up a lot of questions along that line. My amendment is a simple one though, which just...I don't know about curing the rest of it but I'm saying as a beginning, as a simple point that I think we should all agree on, if a judge really is declaring somebody... [LB260]

SENATOR FISCHER: One minute. [LB260]

SENATOR PIRSCH: ...somebody innocent, why can we not just have them take pen to paper and say, he's innocent in his findings? [LB260]

SENATOR NELSON: All right. Thank you, Senator Pirsch. May I ask a quick question of Senator Council, please. [LB260]

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SENATOR FISCHER: Senator Council, would you yield? [LB260]

SENATOR COUNCIL: Yes. [LB260]

SENATOR NELSON: Thank you, Senator. You suggested taking the Board of Pardons out and leaving it in the hands of a judge or a court. What is your position on, as far as the court is concerned, of having a finding of innocence on the part of the claimant? [LB260]

SENATOR COUNCIL: Okay. The interesting thing of, Senator Nelson, that's being ignored in this discussion, I believe, is that the bill itself provides for two levels. And regrettably, Senator Pirsch is focusing on the resolution of the claim as opposed to the presentation of the claim. If you read the bill, the burden is on the claimant. The burden is on the claimant to present documentary evidence that he or she... [LB260]

SENATOR FISCHER: Time. [LB260]

SENATOR COUNCIL: ...was exonerated due to innocence, that he or she has a judgment vacating or reversing their conviction, and then it is only... [LB260]

SENATOR FISCHER: Senator Council, time please. [LB260]

SENATOR COUNCIL: Yes, sir. (Laugh) [LB260]

SENATOR FISCHER: Thank you, Senator Nelson, Senator Pirsch, and Senator Council. (Visitors introduced.) Senator Council, you are recognized. [LB260]

SENATOR COUNCIL: Thank you. I will continue answering Senator Nelson's question. Again, if we look at the language of the bill, on page 1 of AM456, Section 3, line 20, "In order to present an actionable claim for wrongful conviction and imprisonment, a claimant must verify the claim and establish by documentary evidence that: (1) He or she was convicted," bah, bah, bah, "(2) Due to exoneration based on actual innocence:" and then it lists how, what kind of documentary evidence he or she can present. But it's only after they have presented that that they have an actionable claim that can be presented to the State Tort Claims Board. If the State Tort Claims Board does not consider that documentary evidence as being sufficient to satisfy the requirements of the bill, there is nothing in this bill that says that that claimant gets automatically paid. In order to even establish a claim, the burden is on the claimant to present that evidence. And if it doesn't meet the satisfaction of the Claims Board, the State Claims Board, Tort Claims Board, they don't have a claim. So, you know, the whole issue as to whether or not the judge, you know, specifies innocence or not, that's a problem in terms of what the claimant is able to receive from the court on the basis of his or her challenge to the

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conviction. It specifically says, "Due to exoneration based upon actual innocence." It's up to the State Claims Board to determine whether or not they have adequately presented documentary evidence of that fact. And I submit to you, all of this discussion about ineffective counsel, you know, if it's vacated for ineffective counsel, it's not due to an exoneration based upon actual innocence. And so presumably, the members of the State Tort Claims Board would understand that that does not meet the based standards for having a claim. And I suggested eliminating the pardons board from the entire process because, again, that only establishes your right to file a claim. That doesn't establish your right to a recovery. So if there's a problem with what the pardon board can or cannot issue, take them out of the equation. Just leave it up to the claimant to otherwise present evidence that their conviction has been overturned due to exoneration, and they must submit that documentary evidence in order to have a valid claim. And I submit that if there's any concern about what kind of evidence, documentary evidence would be satisfactory to the state Tort Claims Board, those are some of the issues that can be discussed between now and Select File. But I just wanted to focus on the fact that it's the claimant's responsibility to meet the standards set forth in Section 3 before you even get to Section 4. They don't even have a claim if they can't satisfy the requirements of Section 3. And, you know, to suggest that somebody walks in with an order vacating their conviction on the basis of ineffective counsel, that doesn't satisfy the requirements of Section 3. And I would trust that if we have granted the State Claims Board the authority to hear these claims, that they would in the first instance determine whether the claim is valid. And I would reserve, I would defer any remaining time I have to Senator Lathrop. [LB260]

SENATOR FISCHER: Thank you, Senator Council. Senator Lathrop, 1 minute. [LB260]

SENATOR LATHROP: Thank you, Senator Council, and with the balance of Senator Council's time, I'd like to kind of give you, where are we at in this process. There are a number of us, including Senator Lautenbaugh, myself, Senator Rogert, and some others, and presumably Senator Council and Ashford as well, who intend to work and to make some changes to this bill between General File and Select. We hear you when you say, we don't want to, we don't want to have these claims result in too much of a judgment. I hear that. That will be part of what we work on. Part of what we work on is what was attempted to be addressed by Senator Pirsch with his amendment, which is, what's the document have to say coming out of the Board of Pardons or out of the court in order for someone to meet sort of the element which is in Section 3, paragraph 2. I understand, and I hear Senator Pirsch's concerns. [LB260]

SENATOR FISCHER: Time, Senator Lathrop, but you are next up in the queue. [LB260]

SENATOR LATHROP: Thank you, Madam President and colleagues. Continuing, if you have concerns other than...because I've met with a number of you, a number of you have expressed concerns about the annual rate that would be paid for the loss of one's

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freedom, which is an element of the damages, and an overall cap on the damages. We will address that between General and Select. If you have other concerns, and we hear the concerns of Senator Pirsch. If you have other concerns about the bill, please share them with myself or any one of the people that will be working on it between General and Select. We hope to come in...I have the first amendment up on Select. We hope to come in with a comprehensive amendment that provides and is responsive to everyone's concerns, pass one amendment on Select, and move it on to Final Reading. Now I'd like to address Senator Pirsch's amendment. It was offered with this statement: How do we know whether somebody's sentence was vacated for a reason related to exoneration? You need my amendment because it will clarify it. It does not. I appreciate Senator Pirsch's concern for making sure that a person is actually innocent and not having their sentence vacated for...or their judgment vacated for a different reason. But understand, the amendment says, and this you might not appreciate after listening to Senator Pirsch's remarks, the amendment as it stands right now requires that the person essentially had been exonerated by either the Board of Pardons or by the court. I agree there are some processes. The County Attorney in Douglas County has offered to work with me, people from the Innocence Project has offered to work with me to fix that language. Senator Pirsch's amendment does not do that. It does not direct the court or the Board of Pardons to take up the issue and enter a specific finding. It just says it needs to be in the finding, pardon me, in the finding of the Board of Pardons or in a finding of the court. But nothing tells the court that they have to do that. So if it's not in there, you could have somebody perfectly innocent, everybody agrees they're innocent, but if the judge doesn't put particular language in his order, his or her order, or if the Board of Pardons doesn't do that, no recovery. You don't get to the question of whether you can make a claim or not. That is a very simple approach but it's not an appropriate approach because it doesn't recognize the realities of a hearing on a motion to vacate and what an order vacating the sentence can look like. Again, we will work on this issue and come up with a clarification which will work. I don't believe Senator Pirsch's amendment will work. It won't solve the problem and you will be adding an amendment to this committee amendment which will serve no purpose in the end because it doesn't solve the problem. I'd ask you to vote...and with all due respect to Senator Pirsch, I'd ask you to vote against his amendment and then hopefully we can vote on the other amendments and move this on to Select File. Thank you. [LB260]

SENATOR FISCHER: Thank you, Senator Lathrop. Senator Langemeier, you are recognized. [LB260]

SENATOR LANGEMEIER: Question. [LB260]

SENATOR FISCHER: The question has been called. Do I see five hands? I do. The question is, shall debate cease? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB260]

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ASSISTANT CLERK: 34 ayes, 1 nay, to cease debate, Madam President. [LB260]

SENATOR FISCHER: Debate does cease. Senator Pirsch, you are recognized to close. [LB260]

SENATOR PIRSCH: Thank you, Madam President and members of the body. I would ask for...I'm going to ask for a call of the house on this vote when the...after I'm done speaking here. I guess the two points that...why don't I do a call of the house then. [LB260]

SENATOR FISCHER: Okay. Senator Pirsch has requested a call of the house. All those in favor vote aye; all those opposed, nay. Record, Mr. Clerk. [LB260]

CLERK: 35 ayes, 0 nays, Madam President, on placing the house under call. [LB260]

SENATOR FISCHER: The house is under call. Would all members please return to their seats. Senator Pirsch, the clock is running if you would like to continue your close. [LB260]

SENATOR PIRSCH: Thank you, Madam President and members of the body. Again, what...the sum and substance of my amendment is quite simple, and if they don't...right now in the bill, which I didn't write, they say it has to go through one of two channels, Board of Pardons or the judge who determines that somebody is actually innocent. I don't necessarily like that process but I'm willing to...by the way, the implications is if the Board of Pardons or a judge says this person is actually innocent, then there's an automatic payout by the state. And so...and as we're talking about it now, the dollar values could be in the millions for each case. Right? That's fine. We want to make sure that people who are actually innocent are fairly compensated. But here's the deal is, we want to make sure that the people who are not actually innocent, and especially given the language here, the majority of people who will be, who get pardons are not actually innocent. The majority of people who have a judge vacate their sentences are not actually innocent. And so in those cases, under the language of this bill you get an automatic payout just for those two things...for getting a pardon or having a judge vacating and remand your sentence. Now, Senator Council said, well there's a, before those two things happen you have to go through a State Claims Board who...and that's really where you...they're the ones who sort out who's "exonerated." State Claims Board is not a criminal trier of fact. They have no experience with respect to that. And they don't even have a standard or a process in place where...what are they going to bring in, have a criminal trials within the State Claims Board, bring in witnesses, and retry the case to make a determination of actual guilt or innocence. And here's the thing, there isn't a court in the land, much less the State Claims Board, who has a process by which, or standard of proof to prove actual innocence. So the structure that is set up is...just makes, it's nonsensical. And so this just says on the tail end, if you're saying as the

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proponents of the bills does, that a judge is saying this person is actually innocent and therefore gets the payout or a Board of Pardons isn't just pardoning out of the mercy of their heart but saying this person is actually innocent, let's make the status quo, they have to put that down on a piece of paper. By the way, we're doing this because he's actually innocent. Now, Senator Lathrop suggests doing it the opposite way. That the status quo should be, assume everyone is innocent and that you get the payoff. And so what I'm suggesting is you flip it. If you're talking about this type of money, there's no harm whatsoever. And Senator Ashford indicated he'd have no opposition to adding this language which simply just says, if by the pardon or by the vacation...vacating the sentence by a judge, if you're saying that he's actually innocent, then just put it expressly in writing. So that's the sum and substance of my amendment. It's not a large amendment. It is not a harmful amendment. It is just saying that thought that is in your head that you are...that everyone is going to lead to this judgment, put it down on a piece of paper before the check is written. So it's a very simple amendment and I would urge you to support this. [LB260]

SENATOR FISCHER: Thank you, Senator Pirsch. All members are present or accounted for. You have heard the closing on the amendment. The question is, shall the amendment to the committee amendment to LB260 be adopted? All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB260]

CLERK: 11 ayes, 25 nays, Madam President, on the amendment. [LB260]

SENATOR FISCHER: The amendment fails. [LB260]

CLERK: I have nothing further pending to the committee amendments. [LB260]

SENATOR FISCHER: Seeing none, no further lights on for debate, Senator Ashford, you are recognized to close on the Judiciary Committee's amendment. [LB260]

SENATOR ASHFORD: I would simply urge the body to adopt the committee amendments and advance the bill. We have an excellent cross section of Senators that are willing to work on the issues that have been raised on the caps and on the standards of liability. I trust we will do that. And I think this is a good indication of the body's willingness to do this where you have a bill that we all, I think most of us agree, it conceptually needs to become law. We've gone through General File. We've raised the issues that are critical issues that need to be addressed prior to and on Select File. Excellent way to deal with tough issues and tough bills. I appreciate the body's willingness to work on this. I thank them for it and would certainly urge the adoption of the amendment and advancement of the bill. Thank you, Madam President. [LB260]

SENATOR FISCHER: Thank you, Senator Ashford. You have heard the closing on the amendment. The question is, shall the amendment be adopted? All those in favor vote

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aye; all those opposed vote nay. Have all those voted who want to? Record, Mr. Clerk. [LB260]

CLERK: 42 ayes, 0 nays, Madam President, on adoption of committee amendments. [LB260]

SENATOR FISCHER: The amendment is adopted and the call is raised. [LB260]

CLERK: I have nothing further on the bill, Madam President. [LB260]

SENATOR FISCHER: The bill is open for discussion on advancement. Seeing no lights, I recognize Senator Rogert to close on his bill. [LB260]

SENATOR ROGERT: Thank you, Madam President, and thank you, members of the body. I want to commend everybody for doing exactly what we needed to do the last few days and that is find out what issues we need to work out on this bill coming from every idea on this floor. The committee did as much work as we thought we could do without getting a lot of input from the body and we put it out here and we got exactly that. And I want to thank Senators McCoy, Senator Fischer, Senator Carlson, Senator Gay, Senator Fulton, Senator Price, Pirsch, Utter, Gloor, and Council, and anybody else who brought an idea or a concern to me, and when I tell you that we're going to work on it, we definitely are. I especially want to thank Senators Lathrop, Lautenbaugh and Ashford for their continued work on this and as talented attorneys to help me get this language to the point where we need it to be. The few of us will work with the ideas that have been brought forth by the body and folks from the Innocence Project, the AG's Office, the Risk Manager, Douglas County Attorney's Office to address all those concerns, hopefully come forth with a bill that everybody can agree to with an omnibus Select File amendment. At that point, I welcome any additional suggestions between now and Select File, and I ask for the advancement of LB260. Thank you, Madam President. [LB260]

SENATOR FISCHER: Thank you, Senator Rogert. You have heard the closing on the advancement of LB260 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have all members voted who care to? Record, Mr. Clerk. [LB260]

CLERK: 37 ayes, 6 nays, Madam President, on the advancement. [LB260]

SENATOR FISCHER: The bill advances. Items for the record, Mr. Clerk? [LB260]

CLERK: Thank you, Madam President. Your Committee on Government, Military and Veterans Affairs, Chaired by Senator Avery, reports LB402 to General File; LB550 General File; LB361 General File, with amendments; likewise with LB422 and LB488 and LB501; and LB227 reported indefinitely postponed. Those reports signed by

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Senator Avery. Hearing notice from Judiciary, signed by Senator Ashford. Senator Dierks offers LR43. That will be laid over. And amendment to be printed to LB260 by Senator Lathrop. And new A bill, LB544A by Senator Giese. (Read LB544A by title for the first time.) And priority bill designations: Banking, Commerce and Insurance selects LB327 as one of its two priority bills; and Retirement Systems selects LB188 as one of its two. Those signed by the respective Chairpersons. That's all that I have, Madam President. (Legislative Journal pages 648-654.) [LB402 LB550 LB361 LB422 LB488 LB501 LB227 LR43 LB260 LB544A LB327 LB188]

SENATOR FISCHER: Thank you, Mr. Clerk. Mr. Clerk, we will proceed to General File, LB307. [LB307]

CLERK: LB307, a bill by Senator Council. (Read title.) Bill was introduced on January 15 of this year, at that time referred to the Judiciary Committee. The bill was advanced to General File. At this time I have no amendments to the bill, Madam President. [LB307]

SENATOR FISCHER: Thank you, Mr. Clerk. Senator Council, you are recognized to open on LB307. [LB307]

SENATOR COUNCIL: Thank you, Madam President, members of the body. I rise this morning as the sponsor of LB307. As you know, this is not the first time a bill of this nature has been presented to this body for its consideration. As with previous such bills, the purpose of LB307 is remove life imprisonment without parole as a sentence for juveniles convicted of a Class I felony. In lieu of life imprisonment without parole, LB307 provides for a sentence of 50 years to life if the juvenile was at least 16 years of age, but under 18 years of age at the time of the commission of the crime. If the juvenile was under 16 years of age at the time of the commission of the crime, LB307 provides for a sentence of 40 years to life. The practical effect of this legislation is that a juvenile under the age of 16 will have to serve 20 years before he or she is eligible for parole, and a juvenile between ages 16 and 18 will have to serve 25 years before he or she is eligible for parole. Many have asked why this legislation is necessary. Well, there are numerous reasons and there was adequate and ample testimony provided during the hearing on this matter. However, I will limit my discussion to what I believe to be the primary and compelling reasons for this legislation. And that reason is the volume of medical research that establishes that the human brain continues to grow and develop through adolescence. In fact, the areas of the adolescent brain that govern impulse control, regulates emotions and risk assessment and moral reasoning is still developing as late as age 20. Indeed in a conversation this week with my colleague, Senator Price, he reminded me that there's research that establishes that the male brain does not reach full development until age 26. It was the recognition of this fact that led to the establishment of a separate juvenile justice system, a system designed to take into account the lessened culpability of juvenile offenders and consider their well-being. The

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fact that juveniles possess a diminished culpability led the United States Supreme Court to rule in 2005 that juveniles could not be executed. The court noted among other things, that a lack of maturity and underdeveloped sense of responsibility are found in youth more so than in adults, and therefore, it is more understandable among the young in terms of their inability to make correct decisions. Indeed the laws that prohibit the consumption of alcohol and the purchase of cigarettes by juveniles are premised upon this very lack of maturity and judgment. Anticipating the arguments in opposition to LB307, allow me to first address the opposition you have heard from the county attorneys. As I understand their opposition, they submit that the legislation is unnecessary because they consider the age and maturity of the offender when considering the charge and ultimately the sentence being sought. While age and maturity may be considered, the critical question is whether or not due weight is given to these issues. I submit that the county attorneys more often than not focus largely on the gravity of the offense without due regard to the age and maturity of the offender. To illustrate this point, allow me to share with you the story of the 14-year-old in Omaha who last year undeniably committed a horrible act when he took the life of a 6-year-old. The county attorney charged the 14-year-old as an adult. After noting that the youth was the youngest teen ever charged by that office, the county attorney said the youth's mental problems and possible use of controlled substances would be taken into consideration. However, the fact of the matter is, that the decision had already been made to charge him as an adult. Further evidence of the fact that it was the gravity of the offense that dictated the charge was the county attorney's statement, and I quote, We need to do whatever it takes to make sure we don't tolerate this. The juvenile court would have jurisdiction on him for four years maybe. This is the most serious charge we can file against an individual in Nebraska is first-degree murder, and we feel it's most appropriately prosecuted in adult court. I believe that that statement establishes that while the county attorneys may profess to take age into consideration, those decisions are more often than not dictated by the gravity of the offense committed by the juvenile. LB307 ensures that the age and maturity of juveniles is given its due consideration. LB307 ensures that there is a recognition of the inherent ability of young people to redeem themselves, of young people to grow and change as they mature. Moreover, LB307 does not ignore the fact that some juveniles commit horrendous crimes subjecting the families of the victims to tremendous grief, and consequently they should be punished for their actions. LB307 provides that punishment. It provides for a minimum sentences of 40 and 50 years respectively. The appropriateness of these sentences as punishment for taking the life of another is evidenced by the fact that they are consistent with the sentences that have previously been imposed on juveniles convicted of a Class IB felony. According to the records of the Department of Corrections, of the 14 individuals currently incarcerated for commission of a Class IB felony when they were under the age of 16...under the age of 18, 6 have maximum sentences of 40 years or less. In fact, only 2 of the 14 have minimum sentences of more than 40 years. As a matter of fact, the 14-year-old I earlier referenced will be eligible for parole in 30 years. Now, LB307 also does not ignore the fact that there are some

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juvenile offenders that may never be able to develop into reasoning members of society outside of prison. Contrary to the misunderstanding that many are laboring under, LB307 does not provide for the automatic release of anyone. Rather, LB307 provides only that a person is eligible for parole. Indeed, in a newspaper...in today's paper an individual who has been paroled shares my opinion where he says that there are just some guys who are animals and they need to be locked up. However, he goes on to say knowing the Parole Board there's not going to be anything easy for anyone, and at least it would give LB307 some of the guys a chance who deserve it. I also need to address the many e-mails and calls all of us have received from the families and friends of victims of horrible acts committed by juveniles who are currently incarcerated. And I would please beg you to pay attention to this fact: While I can see that there are some individuals who are incapable of redemption, we should not be willing to throw out the baby with the bath water. It is inherently unfair to judge everyone on the basis of the acts of a few. Second and of even greater significance, is the fact that there is nothing, let me repeat, nothing in LB307 that would require that anyone who is currently serving a life sentence without parole ever become eligible for parole. In fact, it is my understanding of the law that if the Legislature passes a law that imposes a lesser punishment in a criminal case than that which previously existed, that lesser punishment cannot be applied retroactively. [LB307]

SENATOR FISCHER: One minute. [LB307]

SENATOR COUNCIL: So with regard to the concerns about those currently incarcerated, this bill cannot be applied retroactively. I'd urge your advancement to Select File. [LB307]

SENATOR FISCHER: Thank you, Senator Council. You have heard the opening on LB307. Members wishing to speak: Senator Coash, Campbell, Lautenbaugh, Harms. Senator Coash, you are recognized. [LB307]

SENATOR COASH: Thank you, Madam President and members of the body. I rise to bring up a couple of points on this bill. I've had some concerns with that. I've talked with other members and I thought it would be helpful to clarify some things. Should this bill pass, any person who is sentenced under this bill will remain on parole for life. This bill does nothing to change that. Any juvenile sentenced will remain on parole for life. And I needed to find out what that meant. How do you get on parole? So I'm going to share with you a little bit of how parole works for the members of the body. The criteria for determining parole is determined by a five-member Parole Board. These are members who determine parole regarding committed offender's parole, factors considered. And before making a determination regarding a committed offender's release on parole, the Parole Board has eight things that they have to consider, and I want to share those with you. First thing they have to consider is a report that's prepared by the caseworkers. They have to consider the prior criminal record. They have to consider the presentence

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investigative report. They have to consider recommendations regarding parole made at the time of sentencing by the judge. They have to consider the reports of any physical, mental, and psychiatric examinations of the offender. They have to consider the risk and needs assessment completed, and any other relevant information concerning the offender as may be reasonably available. And then there's one more that I think is very, very important. The Parole Board must consider relevant information which may be submitted by the offender, their attorney, the victim of his/her crime. That means the victim and their families have input into whether or not the Parole Board will see fit to parole the person. Senator Council mentioned the scientific research that says that juveniles are not the same person as adults as they were juveniles. And I've worked with juveniles and I can tell you that she's correct. With all that said, I do struggle with this bill. This is why I struggle: We operate in a criminal justice system. This is not just about rehabilitation, understanding that people are different. This is also about justice. So we have a question before us today, members of the body: Is justice served under this bill? And that's something that we are going to have to continue to talk about. I myself, I'm struggling to understand whether or not with 50 percent good time that we have in our state, with the eligibility, and I do stress that, this is not a mandate. People don't get out at 50 percent time. They become eligible, but we're opening up that possibility. And we have to ask ourselves, is justice served within this? With that, I'll yield the rest of my time to Senator Council, if she would like it. [LB307]

SENATOR FISCHER: Senator Coash, you've yielded to Senator Council. Senator Council, you are recognized. [LB307]

SENATOR COUNCIL: Madam President, how much time? [LB307]

SENATOR FISCHER: You have 1:15. [LB307]

SENATOR COUNCIL: Thank you very much. I certainly appreciate Senator Coash's statements. I particularly want to applaud him for his reason and objective view of this. I know he's put a lot of work and time into studying this issue. But with regard to the question of justice, what this bill intends to do is balance that rehabilitation, society's interest in rehabilitation, society's interest in redeeming young people with society's responsibility provide for the safety and protection of all of its citizens. I believe that LB307 does that by virtue of the minimum sentence required for eligibility and to compare the sentences that would be mandated under this legislation with the sentences that adults have received for committing murder in the state of Nebraska--over 200 who are currently in the general population of the Nebraska correctional system who will be eligible for parole far earlier than the young people would be eligible for parole under LB307. [LB307]

SENATOR FISCHER: Time. Thank you, Senators Coash and Senator Council. Senator Campbell, you are recognized to speak. [LB307]

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SENATOR CAMPBELL: Thank you, Madam President and colleagues. How often have we as parents, and for those of us who served as high school teachers, said what were they thinking? And having spent time looking at this bill, I chose to put my name on as a cosponsor because I believe that there are some issues that we as lawmakers need to look for in considering this bill and looking at adolescents. One of the things that we should pay attention to is new technology, new research. In the last five years, a great amount of research and technology has come to the forefront to tell us what is different about an adolescent brain than an adult brain. One of the technologies that we have talked a lot about in this Chamber for adults is the whole issue of DNA. It is now time in this Legislature to consider the technology of what we have learned about adolescence. In a great article from the American Bar Association, they outline the technology that has been used through the MRI and mapping the adolescent brain. And basically what they have found out is just as Senator Council alluded to is that that brain develops far differently and doesn't fully develop in reasoning, understanding, moral judgment until age 20 or perhaps even later. In the last five years, scientists using these technologies have discovered that the adolescent brain is far less developed than we had previously thought. And I quote from this article: Also, appearances may be deceiving. Just because they're physically mature they may not appreciate the consequences or weigh information the same way as adults do. So we may be mistaken if we think that although somebody looks physically mature, their brain may be in fact not be mature. I'd also like to add why I chose to cosponsor this bill. Having spent 30 years in children's issues, one of the most important factors that I have worked for over those years is the prevention of child abuse and neglect. And if you begin looking through the research, you will realize the extensive nature that child abuse, physical and sexual, family dysfunction has played in these young people's lives. And to a great extent we also need to take that into account. This is not the same issue as what we will debate in the death penalty for adults. And I urge you to look at this issue far differently than you might that one. And I would be glad to share any of the articles that I have looked at. Thank you, Madam President. I'll yield the rest of my time to Senator Council. [LB307]

SENATOR FISCHER: Thank you, Senator Campbell. Senator Council, you have 1 minute 45 seconds. Senator Council waives. Senator Lautenbaugh, you are recognized. [LB307]

SENATOR LAUTENBAUGH: Thank you, Madam President and members of the body. I do have to rise in opposition to this bill. I did not support it coming out of committee and this is a very difficult thing. It's a very painful topic. It's a very difficult topic. We had a lot of moving testimony from mothers whose sons are gone forever to prison. And it was impossible not to be moved and not to be affected by that. No one wants to see a young life over--no parole, no hope, no future, nothing at all. No one wants that. That's not...that can't be described as a desirable outcome. But I can't support this. This bill does not just ask prosecutors to pay special attention to age when utilizing their

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discretion. This bill says age is the factor. Age is the factor, the difference between one possible outcome and another possible outcome. And I can't support that. I have a lot of concerns about the circumstances where I think prosecution as an adult would still be appropriate. Gang related violence, for instance. We have older members of gangs and we have youthful members of gangs. And if we pass something that by law treats all juveniles differently, then we know what we're going to end up with is a lot of juvenile trigger men because the older members will say I'll have a different sentence, I'll have a harsher sentence, you do the shooting. I fear that's what'll come about. And I'm not going to stand here right now and make all of the possible points that will come out on the debate over this. I don't think that's necessary at this time. I don't know where this bill is going and how much support it has. So I'll be here listening and participating in the debate, but I'm not going to try to talk it to death at this point as I stand here. But I am opposed to it. I'm concerned about it. And I'll urge you to vote against it and just leave it at that at this point. [LB307]

SENATOR FISCHER: Thank you, Senator Lautenbaugh. Senator Harms, you are recognized. [LB307]

SENATOR HARMS: Thank you, Madam President, colleagues. Senator Council, would you yield please? [LB307]

SENATOR COUNCIL: Yes, Senator Harms. [LB307]

SENATOR FISCHER: Senator Council, would you yield? [LB307]

SENATOR COUNCIL: Yes. [LB307]

SENATOR HARMS: Senator Council, do you know what is one of the biggest factors that hinders the development of a teenager brain? What was the one factor that causes lots of issues with teenager brain development? [LB307]

SENATOR COUNCIL: Well, the research I read, Senator Harms, I just focused on the natural course of development. Certainly a child's development, the brain development can be hindered or enhanced by the environment. There's ample evidence of the effect of lead in the child's system and retarding the development of the brain. There's ample evidence of a controlled substance in a child's system that could hinder or retard the development of the brain. I have not explored every factor that can have an effect on whether or not a child fully develops. [LB307]

SENATOR HARMS: Thank you. Actually one of the biggest factors that has an impact on brain development for teenagers, could be even for our pages, is the frontal lobes. And in fact because of this issue it has an impairment on your brain development, you will find that...I call it the remodeling stage is going on, in our pages' minds also at

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this...at their young age. Your brain is being remodeled and this process, how it impacts this is the fact that the use of alcohol will, in fact, impair their long-term, short-term memories, their reasoning powers, their ability to plan for the future. So there are a lot of issues that prepare a person to head for the prisons. And one of the things that society does not understand is the fact that if a teenager starts drinking early, there's a great chance that that teenager may very well be in prison because their brain is going to be altered to a point where they cannot reason. Now, Senator Council, is it correct, and I believe I heard you say that this bill would not be retroactive. Is that correct? [LB307]

SENATOR COUNCIL: And Senator Harms, it is my understanding that under the constitution of the state of Nebraska when it comes to lessening punishment on criminal cases that the Legislature can only act prospectively, and the only body authorized under the constitution to commute or grant reprieves is the pardon board. [LB307]

SENATOR HARMS: Okay. Senator Council, can you tell me how many people do we have in prison today that went in as juveniles that are in the Nebraska prison? [LB307]

SENATOR COUNCIL: Well, the numbers vary, Senator Harms. There's a number of 24 if you look at the fiscal note provided to LB307 by the Department of Corrections. The number that they address is 19. [LB307]

SENATOR HARMS: Now, can I ask you, were those 19 put in prison for killing someone, murder or were they in there for another particular sentence? [LB307]

SENATOR COUNCIL: They're all Class IA and IB felonies. [LB307]

SENATOR HARMS: Okay. Thank you very much. How many of those teenagers that went in were minority? [LB307]

SENATOR COUNCIL: Well, according to the information that I have with regard to 24, over half were youngsters of color. [LB307]

SENATOR HARMS: Okay. How many historically that went in as a teenager were eventually placed on death row? [LB307]

SENATOR COUNCIL: Well, in terms of being placed on death row, Senator Harms, Nebraska repealed the law that would allow teens to be placed on death row. I can't give you...sorry, I forget the exact year that that legislation was passed, but it was shortly after... [LB307]

SENATOR FISCHER: One minute. [LB307]

SENATOR COUNCIL: ...the Supreme Court ruled in 2005 that that was cruel and

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unusual punishment. [LB307]

SENATOR HARMS: Thank you. How many that we have in there...of the number that you gave me, are they all on life...I assume they're on life sentence. [LB307]

SENATOR COUNCIL: Yes. Life sentences and life without parole. [LB307]

SENATOR HARMS: Okay. In regard to your bill now...how much time do I have, Madam President? [LB307]

SENATOR FISCHER: Forty seconds. [LB307]

SENATOR HARMS: I'll wait so we can have this conversation a little bit later. It's a good conversation. I just need some help here. Thank you, Madam President. [LB307]

SENATOR FISCHER: Thank you, Senator Harms and Senator Council. Senator Gloor, you are recognized. [LB307]

SENATOR GLOOR: Thank you, Madam President, members of the body. I, too, struggle with this issue, and certainly as relates to the previous piece of legislation we discussed relating to reimbursement for those wrongly incarcerated. It fails in for me personally as it relates to this bit of legislation. I devoted a good part of my life towards providing a scope of services to adolescents, and I understand because of issues we dealt with of substance abuse, bad decisions made by adolescents that their brain clearly is not well developed and that they make decisions that are often bad decisions. Combining that with the fact as a parent dealt with adolescents who were my own who clearly made wrong decisions. But that is not my responsibility here. I also worry about the innocent victims and potential victims of crimes caused by this. An issue has been brought to me by law enforcement that falls into the category of unintended consequences, specifically some of us in this room are in communities where there is gang activity. How do we protect ourselves from adult gang members who turn 12- and 13-year-olds into trigger men and trigger women? This is a concern that's been brought to me and a concern that I have. Would Senator Council yield to a question? [LB307]

SENATOR COUNCIL: Yes, sir. [LB307]

SENATOR GLOOR: Senator Council, during the... [LB307]

SENATOR FISCHER: Senator Council, would you yield? [LB307]

SENATOR COUNCIL: Yes, Madam President. [LB307]

SENATOR GLOOR: Senator Council, during the public hearing were there discussions

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from anyone related to gang activity and the fact that there may be an unintended consequence of adult members of the gang putting younger members of the gang up to different activities, and if so, what was the nature of that discussion? [LB307]

SENATOR COUNCIL: I must admit, Senator Gloor, there was one individual, and that was the representative of the County Attorneys Association who made reference to that possibility. And in that regard, I would direct you and all of my colleagues to the pending legislation that is designed to address those issues by enhancing the punishment for people who provide weapons to juveniles, for people who encourage juveniles that commit criminal acts. There is a bill that has been presented to the Legislature that will address that side of the equation by enhancing the penalties for the adult who'd do that. And the fact, Senator Gloor, that that is a concern is further support for the fact that these juveniles don't have the capacity to make those kinds of judgments and are subject to that kind of influence. And for that reason, the legislation that's been introduced to make responsible the adults that provide the weapons and encourage that activity is the appropriate way, in my opinion, to address that issue. [LB307]

SENATOR GLOOR: Thank you, Senator Council. That is very helpful. [LB307]

SENATOR FISCHER: Thank you, Senator Gloor and Senator Council. Senator McGill, you are recognized. [LB307]

SENATOR MCGILL: Madam President, members of the body, I also rise in support of LB307 for many of the same reasons that Senator Council and particularly Senator Campbell elaborated on dealing with an adolescent's ability to reason and make decisions and understand the full consequences of their actions. I mean, this is a very difficult issue for all of us. And I have an astonishing number, actually, of victims' family members in my district and had a conversation with one of them in the Rotunda yesterday that did not, and pleasantly, unfortunately, since we are on different sides of this issue. But I'm certainly listening to their concerns and the thoughts of the people who have had to deal firsthand with a tragedy of having a young person kill a family member of theirs. But through my experience with learning more about the adolescent mind, particularly in relation to safe haven and some young people that are truly troubled, I don't think all of them should be paroled. Some of the young people that are in life without parole right now do have...are very, very troubled, and I am concerned about some of them being paroled one day. But there are others in there who committed crimes when they were 14 years old--14 years old! Think of the own children in your lives that are only 14 years old who are then tried as an adult and put in prison for their entire lives. Fourteen-year-olds can't...do not have the same ability to understand the consequences of their actions that any of us here in the body do. For those people that, you know, hopefully will not be paroled, I did pull up some statistics on the number of denials that the Parole Board gives. Most of their good data goes back five years, and in general the number of denials from the Parole Board have been 1,377

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denials, and of those, 29 denials were for inmates incarcerated for murder or manslaughter. So just because you're eligible for parole does not mean you're going to be paroled. We have statistics to show that the Parole Board does deny those wishes for parole to some members that they feel should not be let out into society. Thank you, Madam President. [LB307]

SENATOR FISCHER: Thank you, Senator McGill. (Visitors introduced.) We have a number of members wishing to speak: Senator Council, Hadley, Fulton, Adams, and others. Senator Council, you are recognized. [LB307]

SENATOR COUNCIL: Madam President, I'm going to waive at this time. I want to hear the rest of my colleagues. [LB307]

SENATOR FISCHER: Senator Council waives. Senator Hadley, you are recognized. [LB307]

SENATOR HADLEY: Thank you, Madam President and members of the body. Would Senator Council waive (sic) questions? [LB307]

SENATOR FISCHER: Senator Council, would you yield? [LB307]

SENATOR COUNCIL: (Microphone malfunction)...Madam President. [LB307]

SENATOR HADLEY: Senator Council, just so that I understand, I realize this is a tough case. Explain to me again that the judge now has leniency or has discretion in the sentencing, is that correct? [LB307]

SENATOR COUNCIL: Currently, the judge does not have. If an individual is convicted of...a juvenile is convicted of a Class I or a Class IA felony, the statute requires life in prison without possibility of parole. [LB307]

SENATOR HADLEY: Okay. So the judge does not have that ability. Does the prosecuting attorney then has the discretion of what they charge the juvenile with? [LB307]

SENATOR COUNCIL: Yes. [LB307]

SENATOR HADLEY: Is that correct? [LB307]

SENATOR COUNCIL: Yes. [LB307]

SENATOR HADLEY: So that would be the key point as to whether or not the life without parole would enter into it. [LB307]

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SENATOR COUNCIL: Yes. [LB307]

SENATOR HADLEY: Okay. Thank you. Thank you. I, too, did some information on this and I'm finding it a very difficult decision. I did find one piece of information that I thought was of interest, that this is a problem that faces all of the nations in the world. And I ran across a November...I'm sorry, February 9 article that said the country of Israel now does give life without or does not allow life without parole for juveniles. And that means the new confirmation by Israel means that the United States with 2,381 such cases is now the only country in the world known to either issue the sentence or to have children serving without parole. Which I realize that there are a lot of people that talk about that we shouldn't be comparing ourselves to other states and I understand that, but to be the only country in the world that now has sentencing children to life without parole does bother me. Thank you. I would yield any of the rest of my time to Senator Council, if she would like it. [LB307]

SENATOR COUNCIL: Yes, thank you. [LB307]

SENATOR FISCHER: Senator Council, 2:40. [LB307]

SENATOR COUNCIL: And I'm glad you raised that point, Senator Hadley, because that is in fact the case that the United States is the only nation in the world that sentences juveniles to life without possibility of parole. I wanted to add a bit of information to that. The United States is party to a treaty which arguably requires that we not sentence juveniles to life without possibility of parole. And there is some judicial suggestion in case law that states have an obligation to enact legislation that brings the country, brings our country into compliance with these treaties that we have signed. So we are party to treaties that require that we eliminate life without possibility of parole for juveniles, yet we're the only nation in the world who does not abide by those treaties. And I can provide you, Senator Hadley, or any other senator who'd be interested in reviewing that documentation. And if I may just again to Senator Lautenbaugh's concern, certainly there is the possibility that adults can encourage and entice youngsters to engage in criminal activity. But I think it is, you know, highly speculative to suggest that the mere passage of this legislation would result in any increase in that type of activity. Again, coupled with the fact that the Legislature will soon be addressing enhancing penalties for adults who do... [LB307]

SENATOR FISCHER: One minute. [LB307]

SENATOR COUNCIL: ...engage in that activity by providing weapons to juveniles by enticing juveniles to commit criminal acts. The issue here is culpability and taking into consideration the development of juvenile offenders and more importantly, I guess, the opportunity and the inherent ability of young people to redeem themselves. A life

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without possibility of parole sentence, in the minds of many, is death by incarceration for young people. But what it does, in fact, say to young people is that there is absolutely no hope that you could ever change. There's absolutely no hope that you could ever redeem yourself. And as Senator McGill stated, there certainly are some juveniles who may never reach a point of redemption. [LB307]

SENATOR FISCHER: Time. [LB307]

SENATOR COUNCIL: And that is why we have a Parole Board. The Board of Parole is there for that purpose and if there's a concern... [LB307]

SENATOR FISCHER: Time. [LB307]

SENATOR COUNCIL: ...then we need to look at our Parole Board system. [LB307]

SENATOR FISCHER: Thank you, Senator Council. Senator Fulton, you are recognized. [LB307]

SENATOR FULTON: Thank you, Madam President and thank you, Mr. President, members of the body. Obviously, this is an issue worthy of debate because once again we're talking about lives and specifically we're talking about lives that are still in the process of formation. I probably...I think Senator Lautenbaugh encapsulates what my position is. I'm opposed to this bill and I think I'll try to articulate why and I'll do that here during some exchange hopefully I can have with Senator Council. My concern here has to do with the process that exists right now. It seems to me that within the purview and judgment of the judicial branch of government that those who are under...those who are juveniles who commit a felony have the opportunity to enter into the process via the judicial branch of government already. If we were to put this bill forward, it seems to me that we would be taking the ability for a judge to pronounce judgment on that specific...on the specific subject matter that we're debating right now. Mr. President, would Senator Council yield to a question? [LB307]

SPEAKER FLOOD PRESIDING []

SPEAKER FLOOD: Senator Council, would you yield to a question from Senator Fulton? [LB307]

SENATOR COUNCIL: Yes, Mr. President. [LB307]

SENATOR FULTON: Senator, have there been individuals under the age of 18 who have committed murder previously who did not get sentenced to life in prison without parole? [LB307]

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SENATOR COUNCIL: I have knowledge that there have been instances where the county attorneys have not charged juveniles with first-degree murder, but there have been instances where youngsters have taken the life of others where they either have not been charged or have been treated as juveniles. [LB307]

SENATOR FULTON: Okay. What was that process? How...if we were to put this bill forward, then just without getting into the specificity of the age groups delineated in the bill, generally speaking, those under the age of 18 would be treated somewhat differently than they are today. So my question is how did those individuals who committed felonies or...I don't know technically how to say this, who did something very bad that would qualify as a felony, how is it that they were treated differently without this bill? [LB307]

SENATOR COUNCIL: And that would be a question better posed to the county attorney since it's the exercise of prosecutorial discretion that determines whether or not a juvenile is charged as an adult. In fact, the case that I was referring the body to involving the 14-year-old, the county attorney made the decision at the outset that that youngster would be tried as an adult. [LB307]

SENATOR FULTON: Would it be safe to say then, just generally speaking, and I understand and respect your response about...you're not going to have specificity as to how some youngster was able to avoid life in prison without possibility of parole, but would it be generally accurate to say that that which occurred which disallowed one underage from being sentenced to life without parole, this occurred through the judicial branch of government previously? [LB307]

SENATOR COUNCIL: It occurred through the prosecutorial discretion with regard to whether the individual was either charged as an adult or charged with first-degree murder. [LB307]

SENATOR FULTON: Okay. Thank you, Senator Council. I think therein lies where we will find the crux of this bill. And I come down as an element of judgment, my own judgment, that we have remedies in place... [LB307]

SPEAKER FLOOD: One minute. [LB307]

SENATOR FULTON: ...today if there is a youngster who has committed a serious crime. Remedies exist within our present order of things today. Now, whether they go far enough or whether they encompass the entirety of what we might experience in the future, certainly that is legitimate for LB307. And for that I would thank Senator Council for bringing this forward. But in my judgment I would be opposed to LB307 because I believe that remedies which would be envisioned by this bill exist today by the judgments of those on the judicial...within the judicial branch. Thank you, again, Senator

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Council, for engaging. Thank you, Mr. President. [LB307]

SPEAKER FLOOD: Thank you, Senator Fulton. (Visitors introduced.) Continuing with discussion on LB307, we now go to Senator Adams. [LB307]

SENATOR ADAMS: Thank you, Mr. President, members of the body. I thought about this bill last year. And I've toiled over it again this year. Thirty-one years in a high school classroom I got a pretty good idea about how 16- and 17- and 18-year-olds screw up. And there's a side of me as a result of that experience that says, give them a break. And you know what? Most of those kids I can see them on the street today and they're not the same kid I knew 10, 15, 31 years ago. They've changed. But I can't support this bill today. I can't. And I don't say that with a great deal of enthusiasm or passion, but I say it with compassion. Compassion for victims. Compassion for the families of victims. Compassion for communities that remember and are scared to death this very minute that we may set a course to release people that do not belong in the street. There's something else. And Senator Fulton raised the issue. I said yesterday on the prior piece of legislation that was up that we have a judicial system that's not perfect. It's not. It's the best we've come up with, and I'll say it again right here. And what I'm concerned about here is that we may be casting away the judgment of a prosecuting attorney dealing with these cases before that prosecuting attorney ever decided: Does this go to adult court? Does it go to juvenile court? What charge do I go for? They're looking at the age, the maturity of, the ability to reason of this young person. The judge, the jury. I have faith that all the way along the way they have taken into account the youth, the crime, the mistakes that youth make, plea bargains, all the things that happen. I have faith in that process that those persons who are prosecuted under the law as it exists today needed to be prosecuted that way, and again I'll say it. Though I look forward and I am concerned about how we deal with juveniles that commit these crimes in the future, I'm also looking back at communities, at families in this state that are wrenched by the possibility that though they were young when they committed the crime they may show up on their streets again. Thank you, Mr. President. [LB307]

SPEAKER FLOOD: Thank you, Senator Adams. Senator Dubas, you are next, followed by Senators Ashford, Pankonin, Wallman, Howard, McGill, and Karpisek. Senator Dubas, you are recognized. [LB307]

SENATOR DUBAS: Thank you, Mr. Speaker. Would Senator Council yield to some questions, please? [LB307]

SPEAKER FLOOD: Senator Council, will you yield to a question from Senator Dubas? [LB307]

SENATOR COUNCIL: Yes, Mr. President. [LB307]

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SENATOR DUBAS: Thank you, Senator Council. I, too, have been receiving a lot of e-mails from families who are extremely fearful right now and not understanding maybe exactly what this bill is doing, and I need to understand exactly what this bill is trying to achieve. So if we have a juvenile...this law is passed and we have a juvenile then who has been convicted of a crime and is sentenced to life without parole, tell me what happens now after that? [LB307]

SENATOR COUNCIL: First of all, I think it needs to be reiterated that this legislation can only be prospectively applied. [LB307]

SENATOR DUBAS: Right. [LB307]

SENATOR COUNCIL: So if a juvenile is charged with first-degree murder and convicted of first-degree murder and that's being charged as an adult and convicted in adult court that the sentence, if they were less than 16 at the time they committed the crime, the minimum sentence would be 40 years, the maximum would be life imprisonment. And what that...the practical effect of that is that after 20 years--and I'm just dealing with a youngster under 16 because it's a different sentence for 16 to 18--after 20 years that individual is eligible for parole. That doesn't mean they're automatically released, they're eligible for parole. And I need to remind my colleagues that the Parole Board is a part of our criminal justice system. And the Parole Board would then consider all of the factors that Senator Coash outlined that the Parole Board considers. And in the event that they grant parole, under the rules that individual is on parole for the rest of his/her natural life and would be subject to whatever conditions on that parole the Parole Board imposed. [LB307]

SENATOR DUBAS: Is the parole process then once they reach that 20 years and they're eligible for parole it's the same kind of process that's in existence now? They would go through the same types of hearings and... [LB307]

SENATOR COUNCIL: Yes. [LB307]

SENATOR DUBAS: And so the family wouldn't be required to...there wouldn't be anything that would happen until 20 years. Is that correct? [LB307]

SENATOR COUNCIL: Right. [LB307]

SENATOR DUBAS: Okay. Are these children, once they're incarcerated now or even in the future, are they going through any kind of rehab or are they just incarcerated? Is there any kind of program? [LB307]

SENATOR COUNCIL: Well, first of all, they're placed, you know, with adult offenders and they are eligible for the same types of programs that are available to the general

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population. I cannot speak, Senator Dubas, as to how specifically those programs are then geared towards their age group, but they are eligible for the same educational opportunities that any adult...the same substance abuse treatment programs as any adult, participation in the kinds of activities...some may have seen the article in yesterday's paper with regard to the speaking group, the Toastmasters, those types of things. They are eligible for participation in all of those programs that are designed to rehabilitate. [LB307]

SENATOR DUBAS: Thank you very much, Senator Council. And I would yield the rest of my time to Senator McGill. [LB307]

SPEAKER FLOOD: Senator McGill, you have 1 minute, 30 seconds. [LB307]

SENATOR MCGILL: Thank you, Mr. President, members of the body. I'd like to offer a little rebuttal to some of the opponents of this bill, including Senator Adams. I think it's pretty clear that while we do have a judicial process that determines if someone is going to be charged as an adult or as an adolescent that it's really the crime and how high profile it is, the circumstances that end up determining whether that person is tried as a youth or as an adult. I think that's very clear in the cases we see. You have, in some parts of the country, 12-year-olds who are being tried as adults. It's about the crime and if it's in the press. And I'm not blaming the prosecutors for doing that, it's their job to try to get that strict of sentence for the state and for the family. Moving on to the families, I mean, my heart goes out to anyone who's a victim of murder and the families involved. But we don't just say if someone commits murder, they're all getting the death penalty. We don't say if somebody commits murder, they're all getting life in prison without parole. It's our job to designate what levels, and we have levels right now in different levels of felonies and different levels of sentences. We don't just...I mean, all families probably who have suffered from a murder of a loved one are going to want that person in jail for life. But everyone who murders somebody isn't in jail for life. We make different determinations based on situations. And in my mind, the age and the ability of a human brain to not have matured to the point of understanding all these consequences of their actions and be able to reason... [LB307]

SPEAKER FLOOD: Time, Senator. [LB307]

SENATOR MCGILL: Thank you, Mr. President. [LB307]

SPEAKER FLOOD: Thank you, Senator McGill. Senator Ashford, you are recognized. [LB307]

SENATOR ASHFORD: Thank you, Mr. Speaker and members. Let me try to talk a little bit about what the Judiciary Committee is trying to accomplish with a variety of bills that will be coming to the floor. This one by Senator Council is...clearly deals with crime and

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punishment as it relates to juveniles. The bill dealing with the death penalty, which undoubtedly will be out here in the next several days, and it will also deal with the issue of crime and punishment, the ultimate punishment and how it should be applied in the state. There's also a bill, LB63, which hopefully will come up soon, it's my priority bill so maybe it'll be next, but maybe not. (Laugh) But it's on the floor. And seriously, it's a bill that is a very...is a serious effort by the Judiciary Committee to address the issue of gang violence. We are in a variety of different ways not only enhancing, fairly significantly enhancing penalties for gang violence that will apply to juveniles and adults alike. But we are also addressing the issue of intervention. What role should intervention play in, especially with juveniles, street offenders and violent offenders, to get them off the street to prevent these individuals from committing violent acts. There's no question that...and Senator...I can't recall who mentioned it, I think it was Senator Fulton mentioned that...or someone else, mentioned that there is an issue that the county attorneys are raising regarding juveniles. And that is that an adult gang member will hand off a firearm, for example, to a juvenile because the juvenile will get potentially or theoretically is more likely to get a lesser penalty. And that if we change the law somehow here that that's going to affect that practice. It won't. And I've been working with gang members in my capacity at the Housing Authority in dealing with gang violence, and I can tell you that whether or not we give parole to juvenile offenders is going to have nothing to do with that activity. And I don't think there is any data anywhere, anyplace that can support that conclusion. It may be...there may be some anecdotal evidence of that, but that's not how we should be making policy. Let me just tell you this: Senator Council's bill needs to be moved ahead. That doesn't mean that it needs to get final approval on Final Reading. It doesn't mean that it needs to be moved beyond Select File necessarily if you are absolutely against doing something like this. But it needs to be in the mix. You cannot...and that's why we put this bill out as early as we did so that the issue of juvenile life imprisonment cases can be thought about by this body as it looks at the death penalty, as it looks at enhancing penalties for gang members, as it looks at the issue of what degree of intervention in gang-related events should the state be involved in. They all go together. We really...it would be doing an injustice, I think, to the discussion of these issues if we somehow stopped this piece from moving to Select File. It doesn't mean...the other thing I would say is this: A vote...I know how politics works and I know people pick out votes and say, well, you voted for this or voted for that. But the system gets messed up that way. It's the Final Reading vote that matters, because as a Unicameral Legislature, as a Unicameral Legislature if we can't in the first round of debate and on the Select File debate, if we can't... [LB307 LB63]

SPEAKER FLOOD: One minute. [LB307]

SENATOR ASHFORD: ...take an idea and move it along, and then massage it and think about it and in the case of the Judiciary Committee relate it to other bills that are in my view very relevant then I think we're missing an opportunity. And I just want to say one

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last point about the Parole Board. The Parole Board is five members. The Parole Board is appointed by the Governor, approved by the Legislature. They don't grant parole very often. It's a rare instance that the Parole Board grants parole. There is no way that the Parole Board in this state is going to let somebody out that's going to go out and hurt somebody else. So, you know, and again, you know, consciously. So I think the possibility of that happening is so remote as to be almost de minimis and really...and so I would suggest to you that we've created a process that we are intimately involved in, in approving the Parole Board members... [LB307]

SPEAKER FLOOD: Time, Senator. [LB307]

SENATOR ASHFORD: Thank you, Mr. Speaker. [LB307]

SPEAKER FLOOD: Thank you, Senator Ashford. Senator Pankonin, you are recognized. [LB307]

SENATOR PANKONIN: Thank you, Mr. President. I've got a question for Senator Ashford since it looks like he's available. [LB307]

SPEAKER FLOOD: Senator Ashford, will you yield to a question from Senator Pankonin? [LB307]

SENATOR ASHFORD: Yes. [LB307]

SENATOR PANKONIN: Senator Ashford, I had a county attorney in my area I talked to this morning on the phone who asked this question: What if a young person who we'll say was 17 years old killed someone and then was in custody and killed again in custody another inmate or person in that type of facility, would they still be eligible for parole since they hadn't passed the age of 18, in 25 years? [LB307]

SENATOR ASHFORD: Are they 17 when they killed the second person? [LB307]

SENATOR PANKONIN: Well, I think doesn't the bill say that if you're 16 to 18 you'd be eligible in 25? [LB307]

SENATOR ASHFORD: I can't imagine a Parole Board granting a parole if there's a second homicide when they're 17, if that's what you're saying. It's theoretically possible. I can't imagine it ever happening in our system. So, you know, you could create a scenario where something like that could happen. In reality it doesn't happen. But I suppose it's potentially possible, but very, very unlikely. [LB307]

SENATOR PANKONIN: Thank you, Senator Ashford. I just want to make a couple other points about this bill, LB307. I respect those that have brought it, and I think there is

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comments that are true that folks change and at a young age are affected by many things. But I have to agree with my colleague, Senator Adams, who did a much more eloquent job than I'm going to do in explaining his opposition to it. Shortly before I was elected in 2006, we had a brutal murder about six miles away from where I live, Murdock, Nebraska, a farm couple where a couple of teenagers drifted off the interstate, apparently, and it was a brutal murder of a couple my age who I knew well, who were well known in the community, great community folks. And they were killed in their bedroom in the most heinous crime and it just...it still affects the community and obviously the family members involved. And unfortunately the young woman involved made some statements early on that she'd do it again, she enjoyed it. These things are so painful and I hope the best for the perpetrators. But having these folks get out...and it wouldn't apply to these two, but these are the kind of things that happen that folks in the community look to us to try to protect them and try to also give justice to victims. And for that reason, the fact that...the Otoe County attorney, who's a good friend, has written a great e-mail, and also on a phone conversation this morning pointing out some of the difficulties and the fact that, you know, our system right now has discretion in those cases where they think folks can be rehabilitated and get out earlier. But in many cases that is not good policy. And so for those reasons, I think we do need to stop this bill before it moves on, and I'm going to be voting against it in General File. Thank you. [LB307]

SPEAKER FLOOD: Thank you, Senator Pankonin. Senator Wallman, you are next followed by Senators Howard, Karpisek, Price, Nantkes, Haar, and Lathrop. Senator Wallman, you are recognized. [LB307]

SENATOR WALLMAN: Thank you, Mr. President. I appreciate anybody who brings forth a bill whether I agree with it or not. And this bill I definitely cannot agree with. We have programs where teens...I used to be on the school board member. We had some violent children come out of Lincoln Public and went down to a different school. So they've had numerous opportunities, most of them, not all maybe, most of them through self-help programs, counseling, mentoring. They've had their chance. And they still keep doing what they do if they're in gangs. They don't have to be in gangs necessarily, just a small group of people going around and doing what they do, stealing out of cars, stealing out of garages. I think we have to let the law as it is. We have a law on the board now. So are we trying to change everything out of this courthouse and take away county control? The counties, the local judges we hope would have some wisdom in this. And so I'm sorry I can't support this bill. Thank you, Mr. President. [LB307]

SPEAKER FLOOD: Thank you, Senator Wallman. Senator Howard, you're next. [LB307]

SENATOR HOWARD: Thank you, Mr. President, members of the body. In listening to the discussion, I cannot help but think of the senseless killing that took place at the

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Infinite station at 52nd and Leavenworth, which is in my district and only a few blocks from my home. In December 2008, a 27-year-old clerk who was working alone closed up the station at 11:30 at night and walked toward her car. She didn't carry a purse and she only had a little change in her pocket. She reached her car, which was only a few steps away, when a youth put his hand on the car roof, opened the door, and drug her out of her vehicle. He forced her into the alley, put a gun to her head, and he killed her. She did not expect to die that night. Her family did not expect to bury her on Monday, and her friends did not expect that they would never see her again. The man who killed her was 17 years old and had already killed a man earlier that night, a man he didn't even know, just like this clerk. It's been said that this was a gang initiation. I don't know that, but the fact is that this 17-year-old killed with no thought of the impact or the consequences. My support is with the family of the 27-year-old girl who was responsibly working a job and just happened to be in the wrong place at the wrong time. There was no consideration for her life. For the killer it had no meaning. I stand here today and I tell you that I've seen violent youth who kill without feeling and apparently without consequence. Again, my support is with the family of the victim and not with the individual who commits a senseless act and claims innocence due to age. Thank you, Mr. President. [LB307]

SPEAKER FLOOD: Thank you, Senator Howard. Senator Karpisek. [LB307]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. I also cannot support LB307. I guess my feeling is that the people that are affected, it's happened. The people are just as dead as if they were shot by someone who is 21 or 30. Those families have lost a loved one. I think we have all known at a pretty young age what right and wrong is. And we need to suffer the consequences. Yes, children don't always pick the right choice. And we can blame a lot of things on their upbringing, things that happened in their life. But I get real tired of watching Oprah, and there's always someone on there crying that this happened or that happened because of their mom or their dad or something that happened. I think they need to take a little personal responsibility. I know many people in this body, probably everyone if we looked into your past, into your childhood we'd probably find something that wasn't so great. If you ever want to talk to me off the mike, I'd be more than happy to. Sometimes that will get someone fired up enough to try to become a state senator. There's different ways to go about what you do and you can control your own destiny. What we try to teach kids is you can be anything you want to be. I know it's tough and it's not fair for everyone, but darn it, you need to make a stand and be your own person and quit blaming everything on everyone else. I agree with Senator Howard. I feel horrible for those families. I, too, was affected a little bit by Senator Pankonin's story. Some of the relation lives in my district, wonderful people. I've been e-mailing with one of the people that was involved in one of these. It affects their life. It's horrible. I can't even imagine. So I'm sorry if they're young. I'm sorry for them. It is a waste. It's not a waste of only one life, it's a waste of two. I don't know the right answer, but I don't think that this is it--to give a free

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pass...I shouldn't say a free pass, to give a pass. But I don't think it's enough. I think it just says, well, you made a mistake, we'll slap you around a little bit. I don't think it's enough. I know it's a very tough issue to talk about. I just can't support it. Thank you, Mr. President. [LB307]

SPEAKER FLOOD: Thank you, Senator Karpisek. Senator Price, you are recognized. [LB307]

SENATOR PRICE: Mr. President and members of the body, thank you. Today I rise first and primarily in opposition to this bill. There are aspects of it which have been very provoking as far as how we view these issues in our criminal system. But questions I'd like the body, those remaining here, to consider is the recidivism rate which is available and we can find that, particularly if you look at recidivism of minors in the system. And quite frankly...and not just minors, adults, what that recidivism rate is, you know, when are they going to come back again and be a ward of the state, so to speak. And the question is, if we let someone out and they've gone through the entire process, are the members of this body comfortable with the risk knowing that there is not 100 percent or that there's an actual recidivism rate that exists? I mean, that they even measure that should give one pause for concern. So are you able to sit there and say, yeah, I take this risk on? It's okay. I think this is going to happen predicated on a prior behavior. So that's one point I'd bring up is something that people can dig into. Also Senator Ashford said earlier, and I look up to Senator Ashford...well, I look him eye to eye actually, but I look up to Senator Ashford for his leadership on many issues within the body as a freshman. But I was wondering why Senator Ashford would tell us that we need to move something onto Select File that here on General File, let's move and get work on and we really...he seemed to say that it'd be okay to move it along to the next step in the life cycle. But yet we get things in a committee and many of us have bills in committee that are killed outright. We don't just submit bills to committee and say, hey, let's move this bill right out of committee onto General File. We discern all the way along. That's our function. So just moving it along, I mean, I don't know if that's exactly...and perhaps that's a mischaracterization of Senator Ashford's position, and I apologize up front if that is so. And then finally, you know, sitting here listening about the...and Senator Council made the statement of how the United States is the only country that has this type of law. And while that may be true, I grow weary these days of people poking the United States in the eye. This is arguably the best country in the world on many, many fronts. Exceptionalism is appropriate. People wait to get in line to come to this country. People break laws to come to the country. People die to come to our country. This is a great land. Many men and women have given their lives and we sit there...and I understand we try to work at home to become better. But I grow weary when I turn on the news and people talk how bad things are. Yet in Nebraska we probably have 94 to 95 percent of our people employed. Let's not constantly poke ourselves in the eyes and beat ourselves and tear ourselves down. Yes, let's polish things, make them better but, again, I grow weary of the negative aspect. When we argue bills here on the floor

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already about people dying and trying to get into this great country, and I stand here...
[LB307]

SENATOR LANGEMEIER PRESIDING []

SENATOR LANGEMEIER: One minute. [LB307]

SENATOR PRICE: ...in front of everybody to say I am proud to be an American, I'm proud of the United States, and I would hope that everybody else would feel the very same way about this great country. Thank you, Mr. President. [LB307]

SENATOR LANGEMEIER: Thank you, Senator Price. Those wishing to speak, we have Senator Nantkes, Haar, Lathrop, Council, and others. Senator Nantkes, you're recognized. [LB307]

SENATOR NANTKES: Thank you, Mr. President. Good morning, colleagues. I think there's been a good dialogue this morning in regards to this important issue. But I wanted to take a step back from some emotional arguments that we've heard thus far, and talk a little bit about the history and the legal framework surrounding the juvenile justice system as we know it today and really how it was initially prescribed. As you may or may not know under common law, infancy was a complete defense to criminal punishment and culpability. In terms of how exactly that applied or was defined, there was an automatic presumption up from 0 to age 7; a gray area with rebuttable presumption from about age 7 to 14; and then those 14 and over were treated accordingly to the traditional criminal justice system. As our laws and society have evolved, we've created a separate juvenile justice system to deal with youthful offenders in civil and criminal offenses. And that's an important distinction because the separate juvenile justice system sole mission and sole focus is on rehabilitation of youthful offenders, wherein our traditional criminal justice system is focused on retribution, punishment, and a variety of other social concepts in regards to how we deal with those who violate our social contract. We've heard it said on the floor this morning that there's existing processes to deal with these types of situations, and I was hoping that Senator Council would yield to a question so that we can clarify that issue. [LB307]

SENATOR LANGEMEIER: Senator Council, would you yield to a question from Senator Nantkes? [LB307]

SENATOR COUNCIL: Yes, Mr. President. [LB307]

SENATOR NANTKES: Thank you, Senator Council. I know...you and I had a chance to visit off the mike about this argument from opponents to this bill that there's existing processes and frameworks in place to deal with these types of situations. And I'm not really sure if that's an accurate statement. It seems to me in my very limited experience

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in the juvenile justice system that really folks who would be affected by this type of a situation have a variety of pretty difficult procedural burdens to deal with in terms of seeking access and security of the juvenile justice system. I was wondering if you could talk a little bit about those jurisdictional issues. [LB307]

SENATOR COUNCIL: Okay. Yes, Senator, and I will try. And I need to preface my remarks by saying that my practice wasn't principally in the juvenile courts, but I have had occasion to represent young people in the juvenile court system and have been an observer of how juveniles have and have not been treated in the adult court system. But the way the process ordinarily works, the prosecutor, the county attorney makes the determination as to whether a juvenile is charged as an adult or a juvenile. Once the decision is made that the juvenile is charged in adult court, then that juvenile's defense counsel can file to transfer to juvenile court, but then the burden is on the defense counsel to establish the basis for that case being transferred to juvenile court. And I can say without giving you any statistical data that once the prosecutor has filed as an adult, it's very difficult to get that case referred to juvenile. And that's what the process is at this point in time that the controlling factor is the county attorney's decision to charge as an adult. [LB307]

SENATOR NANTKES: Um-hum. Thank you, Senator Council. And I think that helps to clarify... [LB307]

SENATOR LANGEMEIER: One minute. [LB307]

SENATOR NANTKES: ...the existing structure and whether or not it truly does offer an opportunity for all youthful offenders to be afforded their rights within the context of the juvenile justice system. And the severity of these crimes, as contemplated by your legislation, is almost always going to dictate the fact that we're going to see these being brought in the traditional criminal justice system rather than having an ability or opportunity to move back. And if so, that opportunity is burdened by a very, very high level in burden of proof. I think that we have to ensure that we have accuracy for the record when dealing with these issues, and... [LB307]

SENATOR LANGEMEIER: Time. [LB307]

SENATOR NANTKES: Thank you, Mr. President. [LB307]

SENATOR LANGEMEIER: Thank you, Senator Nantkes. Senator Haar, you're recognized. [LB307]

SENATOR HAAR: Mr. President, members of the body, I think everyone here believes in punishment for crimes, and everyone here has the utmost sympathy for victims, and also, though, many of us also believe in redemption and rehabilitation. A few weeks ago

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on public television, if you saw it, was the story of Oliver Twist. And at the time that Oliver Twist was written, eight-year-old pickpockets were hung for that theft. For picking a pocket, the judge could decide that you should be hung. And so I think just because we're talking about changing the law doesn't mean we're soft on crime; it doesn't mean that we're un-American, any of those sorts of things. It's that as time goes on and we learn more about human behavior and we learn more, frankly, about just how the body operates, we can take that into account in terms of creating a just society. And for me it comes down to this, the part...it's very sound science. We know now that the part of the brain that matures last deals with judgment. And I think we have to take that into account in our criminal justice system. As we've heard today, we have all kinds of safeguards built into this system. It's not a free ticket. Just because someone did a heinous crime when they were a juvenile doesn't mean they're going to get parole. That whole process is in place to appropriately parole people if they deserve it. So I would just like to say again that we know from science, it's very sound science, that the brain matures at different rates, and the last part to mature has to deal with judgment. And I think that it's our responsibility to look at those kind of things and see if maybe, maybe the criminal justice system needs to be tweaked. Thank you very much. [LB307]

SENATOR LANGEMEIER: Thank you, Senator Haar. Senator Lathrop, you're recognized. [LB307]

SENATOR LATHROP: Thank you, Mr. President and colleagues. Almost good afternoon. I do want to rise in support of LB307. And you frequently hear Senator Ashford get on the floor and tell you that over in Judiciary Committee we deal with a lot of complex issues. And you know from your own experience on whatever committee you serve on that you sit and listen to people testify and you get a deeper understanding of issues in committee than generally your colleagues will receive out on the floor. And I believe this is one of those bills that falls in that class of proposed legislation. You might have expected the Judiciary Committee hearing on LB307 to involve victims' families coming in, in opposition; county attorneys coming in, in opposition; and a couple of do-gooders that come in, in favor of the bill. I will tell you that in three years of sitting through committee hearings and seeing an awful lot of things in my professional life, this may have been...there was a person that testified in this hearing that may have been the most moving thing I've seen since I've been here. It wasn't the mother of somebody who was incarcerated for the rest of their natural life because of something they did as a young person. It was the mother of someone whose son was killed. A mom of somebody who was murdered came in, in support of this bill. And she said...and she told a story, it was the most courageous thing I've seen since I've been down here. She came in and talked about how her son had been murdered, and she began to correspond with the young man who is now doing a natural life sentence. He'll never get out. And she came in and said, you know, this was a terrible thing he did to my son. He took a life from me that can never be replaced, a hole that can never be filled, but I don't think the kid who did it should have no hope. I had people

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two years ago that came in front of the Judiciary Committee and talked about stem cells. And that was a debate where we talked about could this provide the cure for MS or Alzheimer's, and those people said, my religious convictions...I have MS, I still don't think you should do it. This lady's courage to come before the Judiciary Committee...I walked out of the Capitol. I thought you know what? Senator Price just gave us a rousing speech on how great this country is. What makes Nebraskans great is that people like this would come and have the courage to come before the committee and say, I think this is the right thing to do because these are young people. We also heard from Father Val Peter, who was the president, and I'm probably using the wrong term, but he was the guy that ran Boys Town for a long time. And if you've never met Father Val Peter, I will tell you he's the kind of guy that makes me proud to be a Catholic. And Father Peter said, you know what? You can put these people in jail...and those of you that are out here contemplating this bill understand, we're not going to open the doors at 20 years and these people all come out. That isn't how this is going to work. Most people to get life sentences never...you can't find...I don't know how long it's been since they've commuted one of those to a term of years. [LB307]

SENATOR LANGEMEIER: One minute. [LB307]

SENATOR LATHROP: So we're not opening the floodgates. All this bill will do, I'd be surprised if anybody gets out, but what it does is it provides for those people who did something wrong very terrible when they were young, hope. And if you're sitting in prison and you don't have hope, there's no reason to go to AA meetings, there's no reason to improve yourself. But if you have hope, if you have hope that maybe when you're 65 years old, 50 years after something you shouldn't have done, if you have hope that 50 years from now you might see the light of day, then you might try to improve yourself. And you'd be an easier prisoner to incarcerate if you have hope if you are learning, if you are taking classes, if you are going to AA meetings or NA meetings while you're incarcerated. These issues that we deal with in Judiciary Committee are more... [LB307]

SENATOR LANGEMEIER: Time. [LB307]

SENATOR LATHROP: ...complex than they appear on their surface. Thank you. [LB307]

SENATOR LANGEMEIER: Thank you, Senator Lathrop. Mr. Clerk, items for the record. [LB307]

CLERK: I do, Mr. President. Thank you. Your Committee on Natural Resources chaired by Senator Langemeier reports LB577 as indefinitely postponed. Business and Labor chaired by Senator Lathrop reports LB51 indefinitely postponed. New A bill, LB356A by Senator Dubas. (Read LB356A by title for the first time.) Priority bill designation,

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Senator Janssen has selected LB111 as his priority bill. Senator Janssen would like to add his name to LB111 and Senator Mello to LB136. (Legislative Journal page 655.)
[LB577 LB51 LB356A LB111 LB136]

And I do have a priority motion. Senator Pahls would move to adjourn until Thursday morning, March 5, at 9:00 a.m. []

SENATOR LANGEMEIER: Thank you. You have heard the motion to adjourn. All those in favor say aye. All those opposed say nay. The ayes have it. We are adjourned.
(Gavel) []