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Floor Debate
March 21, 2013

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LB340 LB393 LB433 LB464 LB499 LB507 LB528 LB530 LB561 LB574 LB595 LB634
LR117]

SENATOR CARLSON PRESIDING

SENATOR CARLSON: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the forty-seventh day of the One Hundred Third Legislature, First Session. Our chaplain for today is Senator Watermeier. Please rise.

SENATOR WATERMEIER: (Prayer offered.)

SENATOR CARLSON: Thank you, Senator Watermeier. I call to order the forty-seventh day of the One Hundred Third Legislature, First Session. Senators, please record your presence.

SENATOR KRIST PRESIDING

SENATOR KRIST: Mr. Clerk, please record.

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

SENATOR KRIST: Thank you, Mr. Clerk. Are there any corrections for the Journal?

CLERK: I have no corrections this morning, Mr. President.

SENATOR KRIST: Thank you. Are there any messages, reports, or announcements?

CLERK: Mr. President, your Committee on Transportation and Telecommunication, chaired by Senator Dubas, reports LB595 to General File with amendments. Judiciary Committee, chaired by Senator Ashford, reports LB298 to General File with amendments. I have a confirmation report for Transportation, an amendment by Senator Dubas to be printed to LB530, and the weekly report acknowledgement, Mr. President, be on the legislative Web site and available for member review. That's all that I have. (Legislative Journal pages 803-806.) [LB595 LB298 LB530]

SENATOR KRIST: Thank you, Mr. Clerk. We will now proceed to the first item on the agenda.

CLERK: Mr. President, the first bill on General File this morning is LB203 offered by Senator Scheer. (Read title.) The bill was introduced on January 15 of this year, referred to the Natural Resources Committee. The bill was advanced to General File. There are committee amendments, Mr. President. (AM334, Legislative Journal page

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514.) [LB203]

SENATOR KRIST: Thank you, Mr. Clerk. And, Senator Scheer, you're recognized to open on LB203. [LB203]

SENATOR SCHEER: Thank you, Mr. President, and good morning to all my colleagues. Know everyone is anxious for a long weekend so hopefully I will start the process out with a quick process in regards to LB203. I'm here to introduce LB203 which really is just defining the term "products" in the Environmental Protection Act and goes on to exclude "products" that are definition...from the definition of "solid waste." In the steel production process, two products are actually created. One is the fabric of steel that you're used to, beams, wire, and so forth, and the other is slag. And slag is what I'm talking about this morning. The technical definition provided by the American Society of Testing Materials states that slag is a nonmetallic product consisting essentially of calcium silicates, ferrites, combined with fused oxides of iron, aluminum, maganese, calcium, and magnesium that is developed simultaneously with the steel in basic oxygen, electric arc and an open furnace. It's very technical, but essentially what slag is, for those of you that are not familiar with the steel process, is essentially a steel gravel. I do happen to have a sample for those that are not familiar with it that might want to look at it, but essentially the slag component, the steel gravel, is the top part of the steel as it's being produced. It...an analogy might be in the dairy production when you take raw milk and you put it in the centrifusion, you spin it, you develop two products. One is the milk, one is the cream. Well, in the steel products in the development of that, you have the steel...molten steel on the lower level of that product and the slag is the top layer. It comes off in bigger chunks and it is pulverized to bring it into different sizes that are produced and sold. It is a product that has been sold forever. The concern is that at some point in time there may be a determination by someone that it would be an industrial waste and it has always been a product, so we're just simply defining it as a product so that we don't have to worry at some point in time with someone changing their own individual mind. Slag has different...a defined market. It is a product made to a certain standard and it's always well within those definitions. Currently, slag has a beneficial use designation by the Department of Environmental Quality in Nebraska who are not asking that to be changed. We invited and included the Department of Environmental Quality as well as the Natural Resources Committee to work on this. This was one of my first bills and it needed the assistance of both the committee and the department to make sure that what we came up as a definition was the appropriate one. At this time, I'd like to thank Senator Carlson and the Natural Resources Committee for all the work they did, as well as the Department of Environmental Quality. It was a joy to work...and as well, I don't want to forget Laurie. The legal counsel did just a ton of work as well. It is fairly simple. It is simply...in the words of the committee, it simply is new language that adds the solid waste. It does not include slag, a product that is a result of the steel manufacturing process and is managed as an item of value in a controlled manner and not as a discarded product...waste. So I will close. There is a committee

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amendment to this, which I heartily endorse. It benefits my bill dramatically, and I appreciate all the effort on the part of Senator Carlson and the committee to produce that for me, and would encourage not only your approval of the amendment, but the bill as LB203. Thank you, Mr. President. [LB203]

SENATOR KRIST: Thank you, Senator Scheer. As the Clerk stated, there are amendments from the Natural Resources Committee. Senator Carlson, as the Chair of that committee, you're recognized to open on the amendment. [LB203]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. AM334 actually becomes the bill and if you're looking at the bill or you have it up on your computer, it's actually page 5 and that's where the wording is. Rather than excluding products as defined in the bill from being considered waste, the amendment instead would simply exclude slag from the definition of solid waste. Committee supports the production and use of steel slag because it is a material. It's been put to a beneficial use and is not wasted. The committee's concern was that the language in the original bill was overly broad and could cause unintended consequences for the Department of Environmental Quality. But the department supports the concept that slag is not a waste, but wants to ensure that other regulated hazardous waste is not unintentionally exempted from the law. And to ensure that slag could not be defined as hazardous waste, committee decided to narrowly exclude steel manufacturing slag from the solid waste definition because if slag cannot be defined as solid waste, then it can't be considered hazardous waste and fall into a different regulatory scheme. Also to ensure that only steel produced slag is exempted, the language also requires that slag is managed as an item of value in a controlled manner and not as a discarded material. So our intent is to keep slag from being classified as a hazardous waste while ensuring that an unintended product does not get excluded from being subject to the rules and regulations of solid and hazardous waste. We have worked with the Department of Environmental Quality to make sure they were comfortable that the exclusion was narrowly drafted and that they would be able to retain regulatory oversight if necessary, and they have agreed to this amendment. It's a good bill for a good business in the state of Nebraska that markets a good product, and I would ask for your support on AM334 and LB203. Thank you. [LB203]

SENATOR KRIST: Thank you, Senator Carlson. You've heard the opening on AM334 and the underlying bill, LB203. Is there discussion? Senator Johnson, you are recognized. [LB203]

SENATOR JOHNSON: Thank you, Mr. President, and thank you to the legislative body. I sit on the Natural Resources Committee and we had a good discussion on this. I definitely support the amendment and the bill. I spoke from the aspect of...in the business I was involved with where we used coal ash and that's a by-product of power and coal. And it has a value to the industry because it is a product that can be retailed,

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but it's also a product that's valuable to the consumer from the standpoint of an experience I had where we were putting in a platform scale and the surface at the end of each of the platforms was very weak as far as the soil being able to carry that. And we put the product of coal ash underneath the concrete and it made it very stable. It allowed us to put that in the ground and not have to dig down 15-20 feet and put in pillars underground in order to hold the end of the scale. So there is value to these by-products. They are not solid waste and should not be classified that way, and I definitely do support the amendment and the bill. Thank you. [LB203]

SENATOR KRIST: Thank you, Senator Johnson. Senator Kolowski, you are recognized. [LB203]

SENATOR KOLOWSKI: Thank you, Mr. President and members of the Legislature. I also stand in support of AM334 and LB203. Also being on the Natural Resources Committee, I want to thank Senator Scheer for bringing this bill forward and Senator Carlson for his leadership on the amendment as well. This is a good bill for the environment, good for the company involved, and very good for Nebraska. I've talked with NRDs in the area that have used this material in different ways in their own work with their communities and with their trails in many other places, and it's a very valuable product that we want to keep alive and healthy and use that in Nebraska. So I thank you very much for your support and seek your support on this particular bill. Thank you. [LB203]

SENATOR KRIST: Thank you, Senator Kolowski. Senator Ken Haar, you are recognized. [LB203]

SENATOR HAAR: Mr. President and members of the body, initially when the bill came forward I had concerns, but the amendment takes care...and Senator Carlson really explained it well, I thought, that we can now treat this as a valuable product, but it doesn't take away any future oversight. And so the public is protected and the industry is getting a definition that they want. So, again, I rise in support of this bill. I think the amendment does exactly what it should. Thank you. [LB203]

SENATOR KRIST: Thank you, Senator Haar. Senator Brasch, you are recognized. [LB203]

SENATOR BRASCH: Thank you, Mr. President, and good morning, colleagues. I also rise in support of LB203 with AM334. Also as a member of the Natural Resources Committee, I am very familiar with slag as a wonderful product. It is not a waste. It has had longtime utility in use. Agriculturally, it looks like gravel, feels like gravel, except it's stronger and more long wearing. It also has great potential for our roads use, and I do commend Senator Scheer for bringing this bill to us because this is valuable moving forward. Thank you, Speaker, and colleagues. [LB203]

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SENATOR KRIST: Thank you, Senator Brasch. Senator Chambers, you are recognized. [LB203]

SENATOR CHAMBERS: Thank you. Mr. President, members of Legislature, sitting around here all the years that I have while Senator Carlson, whom I dub "Parson," is here, some of the things he has said have finally settled into my mind. I would like to ask Senator Carlson a question. [LB203]

SENATOR KRIST: Senator Carlson, will you yield? [LB203]

SENATOR CARLSON: Yes, I will. [LB203]

SENATOR CHAMBERS: Senator Carlson, are you familiar with the verse in scripture that says, woe unto you when all men speak well of you? [LB203]

SENATOR CARLSON: Yes, I am. [LB203]

SENATOR CHAMBERS: Thank you. Members of the Legislature, all men who spoke, spoke well of this bill. But you'll notice that the verse said all men. We've had some from the female side say something, so this bill is exempted from that scripture. I just thought I'd throw that in. [LB203]

SENATOR KRIST: Thank you as usual, Senator Chambers. Seeing no one else in the queue, the question is, shall the committee amendments to LB203...I'm sorry, Senator Carlson, you're recognized to close. [LB203]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. Again, thanks for the comments that have been made. You can see that the committee is really behind this bill and Senator Scheer has done good work on it. And when we've got an agreement from DEQ, I think it's time to move forward so I ask for your support on AM334. Thank you. [LB203]

SENATOR KRIST: Thank you, Senator Carlson, and I apologize. Now the question is, shall the committee amendments to LB203 be adopted? All those in favor vote aye; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB203]

CLERK: 42 ayes, 0 nays, Mr. President, on adoption of committee amendments. [LB203]

SENATOR KRIST: The committee amendment passes. Seeing no one else in the queue, Senator Scheer, you're recognized to close on LB203. [LB203]

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SENATOR SCHEER: Thank you, Mr. President. Just final comment, again thanking the Natural Resources Committee and Senator Carlson and the Department of Environmental Quality. I would appreciate your support. This is important not only for my district where the industry resides and employs almost over 900 people with high-paid, high-quality jobs, it secures a product for the long term for them and it's a good thing for the state of Nebraska. It's good for the producers, it's good for about everybody that I can think of, and so I would appreciate your support in LB203. Thank you. [LB203]

SENATOR KRIST: Thank you, Senator Scheer. The question is the advancement of LB203 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB203]

CLERK: 40 ayes, 0 nays, Mr. President, on the advancement of LB203. [LB203]

SENATOR KRIST: The bill advances. Next item on the agenda. [LB203]

CLERK: Mr. President, LB464 is a bill by Senator Ashford. (Read title.) The bill was introduced on January 22, referred to the Judiciary Committee, advanced to General File. There are Judiciary Committee amendments, Mr. President. (AM615, Legislative Journal page 685.) [LB464]

SENATOR KRIST: Senator Ashford, you are recognized to open on LB464. [LB464]

SENATOR ASHFORD: Thank you, Mr. President. This is an incredibly important part of the juvenile justice package that is moving through the Judiciary Committee. The committee has, and I have, prioritized several initiatives that address the problems with our juvenile justice system that we've talked about now for seven years. This body has been forthright and responsive to the committee's proposals to try to reduce juvenile incarceration, to try to break the continuum from early indications of problems to violence and more difficult behavioral issues as these young people get older and go through the system. Senator Krist and I...Senator Krist, primarily, working on the pilot for probation where adjudicated youth are placed into a probation program that we are asking be made statewide this year in another bill has made significant gains in Douglas County and in the 11th and 12th judicial districts to reverse the trend of incarceration and placing juveniles back in a community placement setting. This is not only saving significant dollars, but it's having an impact on these youth as they are now attending school in greater numbers and we are seeing positive results. So at some point in the next few weeks, we will be talking about the pilot. One of the things that is odd about the Nebraska system is we file all of our cases against juveniles, no matter how minor they may be, in the juvenile system, in the adult court system, instead of in the juvenile system. The result of that is that numbers of juveniles are unable to receive treatment that they need early in the process and they wait until the legal process of deciding

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whether to prosecute a particular juvenile in the adult court or in the juvenile court proceeds to its conclusion. So, for example, if you have a juvenile who has acted out at school and has been suspended, but has committed what technically is a violation of the law, whether it's bringing contraband into the school, which is a common one, or other kinds of offenses, the county attorney has the discretion to decide whether to file that case in the district court...or, sorry, in the adult court or in the juvenile court. So you have...and it's really within the county attorney's discretion, not the courts. The court does have discretion at some point to waive the case back down to the juvenile court, but that's a long process. I have discussed with the county attorneys this matter, and in fairness, they did not come in, in opposition, but that was somewhat of a timing issue involving when the hearing was held. And I'm confident that the county attorneys are not particularly supportive of this. And so you will be hearing probably from county attorneys and others from counties saying, you know, we don't really like this; we, as county attorneys, want the discretion where these cases are going to be filed. The numbers are glaring. Nearly half of the cases involving juveniles are prosecuted in adult court. There are over 7,000 filings against juveniles for law violations each year. In 2012, approximately 4,537 youth were charged as adults and only 794 of those cases were transferred to juvenile court. The vast majority of juveniles prosecuted in adult court committed minor offenses which should be handled in a juvenile court environment. And as I suggested this earlier, the...it is that...it is that ability of the system to deal with juveniles early in this continuum or early in this process that is critical to the successful completion of any probation process. And especially now as we expand, hopefully, the pilot project for juveniles that are adjudicated into...out of the OJS system, which has been a dismal failure, and into the probation system, it is critical that that continuum start in the juvenile court system and be completed in the juvenile court system. There are going to be cases, clearly, very serious cases, law violations, homicides, where juveniles are involved. Those cases...I cannot even imagine a serious felony murder case or a homicide case that would not be transferred back up to the adult court. And once that case is filed in juvenile court, the county attorney has the option to move the case to the adult court. That's what happens in most every state in the United States except for Nebraska. And it is not...it is not hard to understand why we incarcerate more juveniles than only three other states in the United States because the system is weighted towards a corrections model, a prosecutorial model and not a treatment model. And after seven years of looking at this problem in the Judiciary Committee, we can come to no other conclusion that than there are a few very bad kids who cannot be in society, who must be out of society, and in some cases, incarcerated in the adult correction system. There are over 200 individuals in the adult correction system that committed their crimes as juveniles. That's a big number but those were serious...and many of those cases were serious and they are in the adult system. I believe there are 17 young people when they were tried for a serious 1A felony, which is a serious murder, homicide, there are 17 of those juveniles who are serving life imprisonment without parole. And that issue will be taken up later in this session as we address Miller v. Alabama where the Supreme Court clearly said, unequivocally said, that juveniles'

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brain development is different than that of adults, and that those 1A felonies must be at least be looked at and potentially resentenced. And so, we're dealing with a change now in thinking in the court system about juveniles generally. But in Nebraska because we have this sort of bifurcated system of how we deal with juveniles when they have committed some sort of crime, no matter how minor, no matter how minor, that they go into, potentially, an adult pathway. We are taking them out of the treatment options that are available and we will discuss later in the session about the capacity. There is a dreadful lack of capacity for many of these juveniles who need help and, hopefully, as we get into LB561, which is the bill that talks about juvenile treatment centers, that we can start talking about the flow of dollars, making sure that the counties have the money that they need to address these issues as juveniles come out of the system and are placed in some sort of community-based care. So, this is a jumble in many respects and because it is such a jumble, our juveniles...our juveniles, 5,000 or so juveniles that come into the system every year for some law violation, it is a jumble for them, it's a jumble for the parents, it's a jumble for the court system. The capacity is not there. We don't have a statewide sense or a statewide consistent treatment for these juveniles. We don't have evidence-based treatment across the state. We don't have the kinds of...the kinds of facilities, the kinds of resources. But one...this bill is so very critical, so very critical to starting the continuum at the right place and that's in the juvenile court system. [LB464 LB561]

SENATOR GLOOR PRESIDING

SENATOR GLOOR: One minute. [LB464]

SENATOR ASHFORD: Now, in a rural...in a county other than Douglas, Sarpy, and Lancaster, the county court acts as the juvenile court anyway. So what we're simply doing is asking that the county court apply, and the county attorneys in those counties apply, the juvenile law in determining how that case should proceed. So it's certainly not a massive change in rural counties, so I would urge the advancement of this bill with the understanding that it will sit on Select File, it will sit on Select File until the other juvenile bills come across. And so we can continue to talk to the county attorneys about their concerns, continue to talk to the counties about their concerns, but we cannot, we must not, we must not, we must not avoid this problem again. This must be solved this year. We must pursue this matter this year and we must develop a continuum for all juveniles that makes sense to the public, to the juveniles involved, and to the families. [LB464]

SENATOR GLOOR: Time, Senator. [LB464]

SENATOR ASHFORD: Thank you. [LB464]

SENATOR GLOOR: Thank you, Senator Ashford. As the Clerk stated, there are amendments from the Judiciary Committee. Senator Ashford, as Chair of that

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committee, you're recognized to open on the committee amendments. [LB464]

SENATOR ASHFORD Yes, this just very briefly, thank you. And the committee amendment has a very large fiscal note. We have the amendment. The amendment addresses that fiscal note and erases that fiscal note. The fiscal note of, I believe, over \$6 million--I don't have it in front of me--deals with a situation where juveniles are kept in the system until age 21. That is not in this bill and nor is it in future juvenile bills, so that fiscal note will not with this change, there will not be the fiscal note that you see in front of you on the bill. So with that, I would urge the adoption of the amendment and advancement of LB464 with, again, the understanding clearly, so everybody in the lobby understands this, we understand this is a big, big change. Not only LB464...could I get a gavel, please? Thank you. Not only LB464, but LB561 and the other related bills. This is big reform. This is big reform and as a result, it's going to take reflection and consideration as we move forward. And I realize there are many advocates on all sides of this issue including the counties and the county attorneys. I fully understand that. We have been working, the committee has been working. Stacey Conroy has been putting in incredible hours as have every committee member. Senator Krist, most especially in his work, Senator Campbell in her work on her committee, we are making massive progress here. We are almost there. We cannot just tweak the problem of juvenile justice and the problems related to adjudicated youth. We cannot any longer tweak the problem that so many juveniles come out of this system without the adequate family therapy, without adequate mental health treatment. With a facility like Kearney that needs to be changed, it needs to be modified so that the youth that are sent to Kearney, and there still will be a need for a Kearney-type facility or a Geneva-type facility, but the treatment that they receive there must be constructive and towards an end of not only rehabilitation but wellness. And so that the coordination with Senator Campbell's committee, with the Health Committee and with the oversight with the Ombudsman, with the Inspector General, all of these assets have been created and we have discussed them. Now, it is the time...it must be the time. We cannot shirk any longer from this. This is now the time to reform our juvenile justice system to get in line with the rest of the country and help our kids. I know Nebraskans deeply, deeply care about these cases and these children. They care deeply but we have to provide them with the system that works. We must provide them with the system that works. If we don't, we will continue to limp along, we will continue to overincarcerate youth, we will continue to have frustrated county attorneys, we will continue to have frustrated judges, we will continue to have frustrated advocacy groups like Voices for Children, who, by the way, has played a remarkably positive role in this matter. Please, members, listen closely and understand how difficult this problem is. So with that, a little divergence from the amendment, thank you, Mr. President, I would urge the adoption of AM615. [LB464 LB561]

SENATOR GLOOR: Thank you, members. You've heard the opening on LB464 and AM615, the Judiciary amendment. We now move to floor debate. Senators wishing to be recognized: Senator Dubas, you are recognized. [LB464]

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SENATOR DUBAS: Thank you, Mr. President. Good morning, colleagues. Would Senator Ashford yield to some questions, please? [LB464]

SENATOR GLOOR: Senator Ashford, would you yield? [LB464]

SENATOR ASHFORD: Yes. [LB464]

SENATOR DUBAS: Senator Ashford, first of all, thank you for all of the work you and your committee have done on this. This kind of goes hand in glove with what we've done as far as the child welfare changes and we do need to have some more cooperative efforts between child welfare as well as the juvenile justice system. But I'd just like to ask some questions, point of clarification for my own benefit. So what options for sentencing does a juvenile court have over an adult court? [LB464]

SENATOR ASHFORD: In juvenile court, the juvenile is not...they're adjudicated as juveniles and they are...their sentences are limited by the juvenile system, so they are...the disposition is treatment. The whole idea of the juvenile system is treatment, not punishment. So if the youth needs...if the crime is so heinous and so difficult that that sort of option is deemed inappropriate for that juvenile, then the case will be waived to the district court and the district court will try it like any other case, and the sentencing alternatives are the same as any other adult criminal violation. [LB464]

SENATOR DUBAS: So if a youth is in a juvenile court and the judge deems that this child needs specific, either DD services or behavioral health services or whatever, can they mandate the state, if that child qualifies for those services, to provide those services? [LB464]

SENATOR ASHFORD: Correct, if they stay in the juvenile system. If they go up to the adult system, then that would be handled by the adult system and the kind of treatments that would be available would be those that would be available through the...if they're sentenced to corrections facilities, those treatments would be determined by the corrections department. [LB464]

SENATOR DUBAS: Is there accountability or follow through on the part of the courts with the state to ensure that those particular services are being provided for these...? [LB464]

SENATOR ASHFORD: Not now, and that is the crux of this whole series of bills, is there isn't a clear and consistent regiment of treatment across the state for these juveniles, so the judges are in many cases frustrated because they don't know what to do with these kids and there aren't treatment alternatives. And so as we get into LB561...you can't do LB464 without LB561 because LB561 guarantees that there will be this continuum of

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care, and longitudinal analysis of how these kids are doing in the system. So the two...and that's why LB464 would remain on Select File, so everybody could look at it in the context of LB561. I think LB561 and LB464, they're interrelated. You can't do one without the other, so. [LB464 LB561]

SENATOR DUBAS: So are you seeing that too many of these children are being directed to the adult court system rather than the juvenile? [LB464]

SENATOR ASHFORD: Oh, a massive number of juveniles in Nebraska go into the adult system. And the problem is, it's not that they could be put on probation in the adult system, but they're...but it's through the adult probation system. And though there are alternatives available up there, they're much more sporadic, and for many cases where it's an offense that is shoplifting, drug-related offense, bringing contraband to school, carrying a firearm, things that are certainly serious, but are not...but these are committed by 15-, 16-year-olds, 14-year-olds, and they need treatment, not punishment. They need some degree of being told that they're going to be...and very...they could be in a treatment facility. Once we get Kearney fixed, if it's a male they could go to Kearney, but they'd be getting treatment there. They don't go home, but they would go to Kearney and they would get treatment and then the judge would determine when it's appropriate for them to go back into the community. But it's... [LB464]

SENATOR GLOOR: One minute. [LB464]

SENATOR ASHFORD: ...much more intensive treatment. [LB464]

SENATOR DUBAS: Are you aware of how many of these children may have been in the child welfare system for a long time and just had not been getting the services that they needed at that point and now they've ultimately ended up in the...? [LB464]

SENATOR ASHFORD: Almost all of them. Almost all of the juveniles we're talking about are in effect what are called crossover kids. They have been in the child welfare system, they have not had adequate care, they've not had adequate family therapy, but Senator Campbell is taking care of that problem so we don't have to worry anymore. It's just that the two...one of the things that's interesting, in a lot of states...we're way ahead of a lot of states in this regard because what's happened in most states they've focused on juvenile incarceration and they've done all these treatment regimens for the juvenile kids, the kids in the juvenile system, but it's the child welfare system that lags behind. But because Senator Campbell's committee has moved forward so quickly, the child welfare changes are actually parallel or a little ahead of the juvenile cases and that's a big deal. [LB464]

SENATOR GLOOR: Time, Senators. [LB464]

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SENATOR DUBAS: Thank you, Senator Ashford. [LB464]

SENATOR GLOOR: Thank you, Senator Dubas and Senator Ashford. Senators in the queue include Nelson, Pirsch, Campbell, Mello, Schumacher, Chambers, and others. Senator Nelson, you are recognized. [LB464]

SENATOR NELSON: Thank you, Mr. President and members of the body. Of course I have questions for Senator Ashford here, if he will yield. [LB464]

SENATOR GLOOR: Senator Ashford, would you yield? [LB464]

SENATOR ASHFORD: Most happily, Senator Nelson. [LB464]

SENATOR NELSON: All right, thank you, Senator Ashford. [LB464]

SENATOR ASHFORD: I'm in a real yielding mode here, so. [LB464]

SENATOR NELSON: I'll have to admit that I have not looked this over ahead of time, but let me ask you some questions perhaps in furtherance of what Senator Dubas...I think you made the statement that massive numbers of juveniles are going to adult court now. Why is this so? Is it because of the county attorney? [LB464]

SENATOR ASHFORD: Well, this is not any kind of a criticism of the county attorneys but they have the discretion to make the decision of where to file. They could file the case in juvenile court or adult court and it just depends on each case. But if it's in adult court, then of course it can be waived down to juvenile court, but that's a fairly long process, and so... [LB464]

SENATOR NELSON: Well, so basically we're taking away the discretion from the county attorneys and we're starting out in juvenile court, if I understand the bill. [LB464]

SENATOR ASHFORD: Well, we're...what we are...we are not taking away the discretion. The county attorneys...if there's a law violation, the county attorney will file that case, under this bill, will file that case in the juvenile court, but will then ask that the case be waived up to the adult court. So they don't lose discretion. It's just the case starts in juvenile court. So for the vast majority of juvenile cases which are not...they're all serious, but are not, let's say, real violent-type cases. You know, those cases will be in juvenile court, the very difficult cases can be waived up to adult court. [LB464]

SENATOR NELSON: Well, but there's not an automatic waiver. [LB464]

SENATOR ASHFORD: Well, not automatic, I mean... [LB464]

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SENATOR NELSON: There has to be hearing in juvenile court under your bill now, right? [LB464]

SENATOR ASHFORD: Right, right. [LB464]

SENATOR NELSON: And who will conduct that hearing? [LB464]

SENATOR ASHFORD: The juvenile court judge. [LB464]

SENATOR NELSON: Okay. Now there's reference in the fiscal note about hearing officers. Are you talking about judges there or do we have a new...a hearing officer...? [LB464]

SENATOR ASHFORD: There's 300...there are 300, I think there's \$300,000 for hearing officers in the fiscal note part. I believe it's 300 and so... [LB464]

SENATOR NELSON: Okay. [LB464]

SENATOR ASHFORD: ...but the juvenile judge would make the decision, not the hearing officer. [LB464]

SENATOR NELSON: Okay. The fiscal note is going to be changed, I understand. [LB464]

SENATOR ASHFORD: Yeah, it will go...yes. [LB464]

SENATOR NELSON: Right, very...it's quite high right now. [LB464]

SENATOR ASHFORD: Well, it's \$6 million or something. [LB464]

SENATOR NELSON: Yeah. Right. [LB464]

SENATOR ASHFORD: Yeah. [LB464]

SENATOR NELSON: Okay, so it seems to me that there's going to be a large volume that's going to have to be handled by the juvenile court. [LB464]

SENATOR ASHFORD: Correct. I mean in the sense that in the rural counties, the county judge does it anyway. The county judge and the district court, there's no separate juvenile court,... [LB464]

SENATOR NELSON: Right. Understood. [LB464]

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SENATOR ASHFORD: ...so then it won't have a big effect on the rural counties. [LB464]

SENATOR NELSON: Okay. So we're talking about Lincoln, Omaha, other large cities. [LB464]

SENATOR ASHFORD: Well, Lincoln, yeah, Lincoln, Omaha, and Sarpy County. [LB464]

SENATOR NELSON: Sarpy County. [LB464]

SENATOR ASHFORD: Yeah. [LB464]

SENATOR NELSON: Okay. So we'll eventually see a new fiscal note, I suppose about, but I guess I'm still coming back to the point that the decision is going to be with the juvenile court as to whether they want to waive it and let it go. Is that correct? [LB464]

SENATOR ASHFORD: Right, and I think that's a valid point. [LB464]

SENATOR NELSON: Okay. [LB464]

SENATOR ASHFORD: And that's part of what we need as we think through this between--hopefully, this bill advances--between now and Select File, those money issues have to be sorted out... [LB464]

SENATOR NELSON: Yeah. [LB464]

SENATOR ASHFORD: ...and also the issue of, are there cases that...where they're...that should be filed directly in adult court. I mean, those are...those kinds of questions need to be discussed. [LB464]

SENATOR NELSON: Okay. Is it in the bill that the juvenile judge will make the decision or can that be passed on to a hearing officer? [LB464]

SENATOR ASHFORD: Well, the way the bill is written now, Stacey just reminded me that it could go to a hearing examiner... [LB464]

SENATOR GLOOR: One minute. [LB464]

SENATOR ASHFORD: ...but we'll have to...if that's going to be a problem, we should look at that. [LB464]

SENATOR NELSON: All right. Okay. But the addition of hearing officers is just to take care of the additional volume. [LB464]

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SENATOR ASHFORD: Caseload, because the caseload will be so much larger.
[LB464]

SENATOR NELSON: Okay. All right. Where are we as far as Kearney and Geneva?
How are they impacted by this? [LB464]

SENATOR ASHFORD: It seems to me...and I'm just going to give you my general
conclusion about this whole thing. It seems to me that you're going to need a Kearney
facility and you're going to need a Geneva facility. You can't...there are juveniles that
need that kind of treatment and it needs to be secure, no question. If they're in the
juvenile system, if they're in the adult system, they're incarcerated anyway. So if they're
in the juvenile system, yes, so we need to have a Kearney and we need to have a
Geneva, but what I'm going to argue later in the session is that we need to modify the
criteria for kids that go there because we're getting a lot of mixed populations between...
[LB464]

SENATOR GLOOR: Time, Senators. [LB464]

SENATOR NELSON: Thank you. [LB464]

SENATOR GLOOR: Thank you, Senator Nelson and Senator Ashford. Apple slices are
being handed out around the Chamber in celebration of Senator McGill's birthday.
Happy birthday, Senator McGill. Continuing with floor debate, Senator Pirsch, you are
recognized. [LB464]

SENATOR PIRSCH: Thank you, Mr. President and members of the body. I also was not
aware of this until this morning being on the agenda, but in that light, I wonder if Senator
Ashford may yield to a question or two to help delineate the scope of his bill. [LB464]

SENATOR GLOOR: Senator Ashford, would you yield? [LB464]

SENATOR ASHFORD: Yeah. [LB464]

SENATOR PIRSCH: So, let me ask, in the bill or the amendment which I have not had
an opportunity... [LB464]

SENATOR ASHFORD: Yeah, the amendment is just one line, deletion of that age thing.
That's what the amendment is. [LB464]

SENATOR PIRSCH: Okay. I'm told in the back that this would not apply, this
automatic...let me just talk about the significance. The significance of juveniles which is
not a criminal court and in which you have no criminal conviction, therefore, if you are

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adjudicated,... [LB464]

SENATOR ASHFORD: Correct. [LB464]

SENATOR PIRSCH: ...is the term, not found guilty, but, therefore, for things like traffic offenses, like DUI priors, whatnot, that would have no application, you would not... [LB464]

SENATOR ASHFORD: Right. Those traffic cases would remain where they are. [LB464]

SENATOR PIRSCH: Okay, and that's...that was my...in all cases, traffic, DUI, driving during suspension, flight to avoid arrest, those kind of things, would that be... [LB464]

SENATOR ASHFORD: Yeah, and I should have made that clear. Those are moving violations... [LB464]

SENATOR PIRSCH: Yeah. [LB464]

SENATOR ASHFORD: ...and they would remain in the...where they are, in the county. [LB464]

SENATOR PIRSCH: Okay. That's helpful, so, you know, the, I guess, theoretical underpinning there is engaging in driving is an inherently adult activity and so I guess that's been addressed. [LB464]

SENATOR ASHFORD: Right. Well, there are so many cases... [LB464]

SENATOR PIRSCH: Yeah. [LB464]

SENATOR ASHFORD: ...that would be traffic related that the juvenile system couldn't take care of. [LB464]

SENATOR PIRSCH: Right. Well, that's the other part is the...that the resources for juvenile court in addressing that, being that they're rehabilitative in theory. [LB464]

SENATOR ASHFORD: Right, right. [LB464]

SENATOR PIRSCH: The other... [LB464]

SENATOR ASHFORD: And there is a...there is a drug and alcohol, you know, options and all sorts of diversion options. [LB464]

SENATOR PIRSCH: Oh, sure. [LB464]

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SENATOR ASHFORD: Well, you know that better than anybody. [LB464]

SENATOR PIRSCH: Yeah, there's...yeah, and probation is in theory designed to address that. Let me ask, though, so for those cases then, you said that you would be open to and are exploring certain categorical type of offenses that would be...remain the traditional method and whereas you would think the majority then would go to...under your bill, though, and in the revision would stay the way... [LB464]

SENATOR ASHFORD: The vast majority of cases that are waived up, or I'm sorry, that remain in adult court in the system now and there are, you know, many thousand...well, two or three thousand a year that do, the vast majority of those cases are not violent offenses. And if there is a degree of violence, I mean, we can look at the most difficult cases being started in adult court. That's something we can discuss with everyone involved, but right now, I mean, my sense would be that would be very...if you had a county judge in North Platte, Lincoln County, if there's a murder and it's a very serious case, I can't imagine that judge not waiving that case to adult court, I guess, so. [LB464]

SENATOR PIRSCH: Well, and so I think that speaks to the need for maybe some categorical type of listings there that would remain. I guess the only other question I'll ask you now because I'm running out of time (inaudible), is with respect to the language of the green copy and I don't know how that's changed by the amendment, but on page 14 in line 7, the juvenile court will retain the proceeding unless what's...the language here is, a sound basis exists for transferring the proceeding to the county court or district court. Is that quote, unquote, sound basis fleshed out... [LB464]

SENATOR GLOOR: One minute. [LB464]

SENATOR ASHFORD: It's the same language that we...it is fleshed out because it's the same language that we now have for waiver down to juvenile court. Sound basis is that...we talked a lot about the standard. It's sound basis is the standard that now applies for... [LB464]

SENATOR PIRSCH: Okay, so the... [LB464]

SENATOR ASHFORD: ...for the other way, for waiving down is sound basis. So waiving up would be sound basis as well. [LB464]

SENATOR PIRSCH: Okay. Well, I thank you for your answers. [LB464]

SENATOR GLOOR: Thank you, Senator Pirsch and Senator Ashford. The Chair recognizes Senator Campbell. [LB464]

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SENATOR CAMPBELL: Thank you, Mr. President and members of the Legislature. I would like to add my thanks to Senator Ashford and to the Judiciary Committee for taking on the issue of the juvenile justice system. Senator Ashford has had a deep commitment to doing what we all need to see done in the juvenile justice system and that is to bring a fractionalized system into some semblance of modernization and moving forward. This is only the first of a series of bills that we will be looking at the system and I really commend Senator Ashford for taking on this topic. I would like to note to my colleagues that if you are paying attention to the fiscal note, you should pay quite a bit of attention to this amendment because it strikes Section 9, which is the bulk of the cost of...that would have come from the department in serving young people until the age of 21. But please pay attention to that and do not be deterred by the large fiscal note because this amendment does begin to address that. I'd also like to underscore what Senator Ashford talked about in terms over the crossover kids between the juvenile justice system and the child welfare system. In a great study that was done at Georgetown University, it was found that in these kids who have both one foot in the child welfare system and one foot in the juvenile justice system, that there is a great disparity in that system, a disparity of a far greater percentage of youth of color that are in both of those systems. And also what was surprising to me was the great percentage of youth that are in that juvenile justice system having come from the child welfare system, that a great percentage...increasing percentage were females. Once they get into the juvenile justice system, it's difficult for them to get out of that system. They stay in longer to a greater depth. The work that the Judiciary Committee is doing this year on juvenile justice is to be commended and I hope has our full attention. Thank you, Mr. President. [LB464]

SENATOR GLOOR: Thank you, Senator Campbell. Senator Mello, you are recognized. [LB464]

SENATOR MELLO: Mr. President, members of the Legislature, I just wanted to rise. I was just talking with our colleague, Senator Nelson, who was on the mike with Senator Ashford and went over the fiscal note of LB464. Just as kind of a reminder, both engaged in a dialogue which they were correct. The current fiscal note is roughly about \$7.3 million in General Funds. It's my understanding with the adoption of AM615 from the Judiciary Committee, that will dramatically change the fiscal note, but just as a reminder of the process, those fiscal notes won't be changed until the bill ultimately moves on to the next round of debate. So while this bill is currently in a \$7.3 million status, with the adoption of AM615, that will change it and we will find out what that status will be when it comes back up on Select File. So it's more of a point of clarification. Senator Ashford had already answered the question Senator Nelson has asked prior to me getting on the mike today, but it's another simple reminder that I will have to do this on every bill, whether I cosponsor the bill, oppose the bill or support it, that we do only have a certain amount of funds that will be left for A bills and this will have an A bill fund to it when it moves on to Select File, if the body so chooses to move

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on to Select File with LB464. But just for a point of clarification, this will have a changed fiscal note at a future point in time. Thank you, Mr. President. [LB464]

SENATOR GLOOR: Thank you, Senator Mello. Senator Schumacher, you are recognized. [LB464]

SENATOR SCHUMACHER: Thank you, Mr. President and members of the body. Along the lines of fiscal notes, one of the problems I always have with fiscal notes is they only look at the cost to the state and they do not necessarily look at the cost to the counties or the municipalities that might involved and as a result, we really don't get the big picture on some things. Senator Ashford, would you yield to some questions? [LB464]

SENATOR GLOOR: Senator Ashford, would you yield? [LB464]

SENATOR ASHFORD: Yeah. [LB464]

SENATOR SCHUMACHER: Okay. [LB464]

SENATOR ASHFORD: I'm not sure, I think, yes. (Laughter) [LB464]

SENATOR SCHUMACHER: It's early in the morning. [LB464]

SENATOR ASHFORD: Yeah. [LB464]

SENATOR SCHUMACHER: Senator Ashford, in...who pays for the guardians ad litem, the extra attorneys that are needed in juvenile court that aren't needed in criminal court, the intervention of all the social workers and juvenile court reports, is that a state burden or county burden? [LB464]

SENATOR ASHFORD: The guardians ad litem are paid by the county, if there is one appointed, and there may not be in a delinquency case. But the probation which takes a much more active role now with juvenile justice than it did before, would be paid by the state. There is a...to your point, there is a cost to the county of housing the probation people. And one of the issues we need to discuss between now and Select on all of these bills, is how that...if there's a cost shift we need to address that cost shift. And all the cost shifts that may occur in and around this bill have to be...we're going to start meeting Monday on those to see what they exactly are, and so by the time we get to Select File, we'll see...there shouldn't be if we get, if what happens is that we get much more in-home placement, and the probation officers are in charge of those kids, there...we should be reducing costs because we're not detaining them. [LB464]

SENATOR SCHUMACHER: As I gather the gist of this bill is to get things funneled right away into a juvenile court where you have the guardians ad litem, all that other

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overhead attached, why in a minor type of misdemeanor where there isn't the need for that supervision nor should it be locked into juvenile court, why shouldn't the county attorney be able to say, you know, this is a minor kind of thing, we can...this kid does not need all the overhead of the juvenile court system, let's just dispose of it in... [LB464]

SENATOR ASHFORD: That's a great question and the answer is diversion. And in LB561, there is a major shift into diversion and which is a state responsibility or much of it is a state responsibility, but that's where those kids belong is in diversion, not even having a filing. I mean, is to divert them out of the system altogether and I think that...one of the big...I think when we start talking more about this, I think we're going to see that many cases that are filed in adult court are...should be in diversion anyway and shouldn't be even in the adult court with juveniles. And I think that's one of the potential areas of savings that we have to calculate into all this. But your point is well taken, but I think diversion is the answer, Senator Schumacher. [LB464 LB561]

SENATOR SCHUMACHER: Senator Ashford, I noticed in several points in the bill, for example, on page 5, when it says the county attorney or city attorney shall file the indictment as a juvenile court petition. Is this meant to be...when we prosecute, and I believe the law hasn't changed, we prosecute either by indictments rendered by a grand jury or by information filed by the county attorney. [LB464]

SENATOR ASHFORD: Right, right. [LB464]

SENATOR SCHUMACHER: Is there a reason that we're restricting it to indictments, we aren't including an information there too? [LB464]

SENATOR GLOOR: One minute, Senators. [LB464]

SENATOR ASHFORD: That's a good question and obviously it should include both, indictments and informations. [LB464]

SENATOR SCHUMACHER: Thank you, Senator Ashford. [LB464]

SENATOR ASHFORD: Thank you, Senator Schumacher. [LB464]

SENATOR SCHUMACHER: I'll watch this bill rather closely because I can see why the county attorneys might have a little heartburn and why things are...may not move as smoothly as this bill would indicate they would. There's a lot of overhead in juvenile court and it should be avoided if there's any way to avoid...perhaps diversion is one way, but I know that the county attorneys have worked out mechanisms in the past to use the threat of adult court, and their ability to funnel things to adult court in order to bring things to a more hasty conclusion, and in many cases, a better conclusion than

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sticking a juvenile in the maze of juvenile court. Thank you. [LB464]

SENATOR GLOOR: Thank you, Senator Schumacher. Senator Chambers, you're recognized. [LB464]

SENATOR CHAMBERS: Mr. President and members of the Legislature, this is one of those bills about which there is no complexity, there's no hidden motivation, and some of the questions raised are those by county attorneys who simply don't want anybody to dare suggest that there's a better, more appropriate way to deal with juveniles than the way that they have often, some of them, mishandled juvenile cases. And for those who like to see in what other states have done an indication of the mainstream movement in these areas, should consider the number of states which are doing what Nebraska is finally considering doing. This bill does not change sentences, it does not change anything that exists in the statutes now. I cannot for the life of myself understand why a county attorney objects to juveniles being initially brought into juvenile court. Let there be a hearing and the judge make a determination, not a prosecutor who is interested only in convictions, only in convictions. And there are areas of the state, I would say all areas of the state on occasion, where there could be an outcry against a particular juvenile and people would say, we want this done, we want that done, so the county attorney throws the child into adult court. That is not a civilized, rational way to deal with our young people. It is too easy to say, throw the book at them, but then when an adult commits a crime, then prosecutors, even the Attorney General, will cut a deal and let that person plead to something which does not even constitute a slap on the wrist because the person happens to be a politician. Nobody on this floor will make an outcry about that. Whenever we talk about doing something for the children, there seems to be a generalized hatred for young people and especially children in the society, that's why there's so much child abuse. Children are considered throwaway, unpeople, nonpeople. Children are not miniature adults. There is all kind of research which establishes that before the age of 20, and some put it a few years past 20, that the brain is fully developed. It is not developed until that point at least is reached. And you all are not going to pay attention to science when our friend, Senator Smith, brought us a bill based on science that indicated a certain test ought to be given to newborns. What is the value of science if the legislators are going to ignore it and go by hunches, feels, or direction of county attorneys? It boggles my mind and I think it is irresponsible. And you all know that it is. If it was your child, you would see it. If it was the child of a big shot, you'd see it. I've seen cases where the children of very important people were picked up for DUI and a deal was cut with the prosecutor so they would not even be charged with it. And if you all don't know that happens, you are not only unreasonable here, you are naive and blind. And I don't think it should be necessary in 2013 to be saying that... [LB464]

SENATOR GLOOR: One minute. [LB464]

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SENATOR CHAMBERS: ...a court system, a division of the court system dedicated to dealing with juveniles should be the first stop for a juvenile who gets enmeshed in the criminal justice system. That to me is totally unjustified and I will speak against that attitude. Thank you, Mr. President. [LB464]

SENATOR GLOOR: Thank you, Senator Chambers. Members remaining in the queue: Dubas, Schumacher, and Lautenbaugh. Senator Dubas, you're recognized. [LB464]

SENATOR DUBAS: Thank you, Mr. President. I'd just like to share a story that will help reinforce, I believe, what Senator Ashford and the Judiciary Committee has put forward to us to try to address. And this is about a family that I've been involved with for quite some time in trying to get them the help that they need for their child. This child was in the foster care system, was lucky enough to find a family that wanted to adopt him and make him a part of their family. It was a subsidized adoption, which means there was going to be financial resources provided for this family because the child had some higher needs, some special needs that we recognized. There was a diagnosis made and knowing that this child was going to need ongoing support and services. For whatever reason along the line, that subsidy wasn't fulfilled, the diagnosis and the recommendations for the child wasn't carried through on, and so the needs of this child continued to escalate causing problems for him within his family, within his community, and within his school. He was passed from caseworker to caseworker and every time a plan was put in place and started to move and make some progress, another caseworker came in and we were kind of back to square one. Ultimately, this person ended up at YRTC, left YRTC with what the family felt was a very workable plan to help this young man be able to at least function and be a part of a family and a part of his community. Again, the plan was not implemented, there was no follow through. You know, I think there's a lot of things that happen in-between all of these instances, but continually the ball was dropped and unfortunately when balls are dropped under these circumstances, real people's lives are impacted. The school got involved. He had a very severe incident at school. The school met with the family and with caseworkers and others saying, you know, this child needs help, we have to provide help for this child, there's no way that he can continue to be a part of our school system without needed help and services. Things still didn't happen. He ended up in a shelter. There was a recognition that he was not able to be unsupervised. For some reason he left the shelter and now he's in trouble with the law. So now we have a child who, had he received the support that was due him and that was promised to his family at the very beginning, would more than likely still face his challenges but be able to be functioning and to be able to be a part of his family who loves him and he loves them, who would be able to be a part of his school system, and now he's facing legal challenges, and the question fits right in with what we're talking about today. Will he be charged as an adult and end up in a prison where, for sure, nothing good is going to happen, or will he be put in the juvenile system where, hopefully, a treatment plan will be implemented and, hopefully, that plan will be followed through where this child can start to feel some self-worth,

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where this family can start to feel some hope that they might be whole again? You know, the conversations that I've had with this family are, to say the very least, heartrending and heartbreaking. These are people who are knowledgeable and understand the foster care system and the needs of children with these...how to meet the needs of these children with higher needs and have continually... [LB464]

SENATOR GLOOR: One minute. [LB464]

SENATOR DUBAS: ...over and over and over advocated for their child and nothing successful has happened. And so, I think this bill...that story alone indicates the need for LB464, and I hope by the time this is all said and done we have something that will get us back on the right track, that will get us cooperating in a much better fashion with the child welfare system, so there won't...so these instances that I just referenced will be far more the exception rather than the norm. Thank you, Mr. Speaker. [LB464]

SENATOR GLOOR: Thank you, Senator Dubas. Senator Schumacher, you are recognized. [LB464]

SENATOR SCHUMACHER: Thank you, Mr. Chairman and members of the body. I don't pretend to know a whole lot about the prosecutor's office or how things work in Omaha or Lincoln. Maybe it's a different world and I'll certainly defer to the hearings and the judgments of the Judiciary Committee who I'm sure has looked into that. But I do know about the way the court system and the prosecutors and the defense bar works in most of the counties in this state. And it is very conscientious people in all of those positions. And I know of no county attorney in those sized counties who does anything willy-nilly or in a discriminatory fashion. They are conscientious, they try to work the system the best that they can for the juveniles involved, for the interest of the taxpayers involved, and get good results far more than a far more bureaucratic system would. And I think it is part an obligation on my part having spent eight years as a prosecutor to say to this body that the decisions that a prosecutor makes are in the best interest of the children, and the best interest of moving the justice things forward. A prosecutor rarely will file in adult court unless there is a real good reason for it because he knows that he's going to get a motion to transfer back to juvenile court and that takes up hearing time and everything else. So I think that it would be a disservice to our county attorneys, most of whom are underpaid and overworked, to paint them with a black brush and that somehow they're using the existing mechanism in order to somehow not try to deliver justice. There's a good team in most all of our counties between the defense, the probation office, the county judges, prosecutors, CASA-type people, and it works. And I just think it's unfair to try to paint our county attorneys with anything other than the type of commendation that they deserve. Thank you, Mr. President. [LB464]

SENATOR GLOOR: Thank you, Senator Schumacher. Senator Lautenbaugh, you are recognized. [LB464]

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SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I did feel the need to rise and ask a few questions on this as well as I share some of the concerns that have been voiced, and I'm wondering if Senator Ashford would yield to some questions. [LB464]

SENATOR GLOOR: Senator Ashford, would you yield? [LB464]

SENATOR ASHFORD: Yes. [LB464]

SENATOR LAUTENBAUGH: Senator, I appreciate your bringing this and I guess I hesitate to ask you this because maybe if you don't want to discuss this aspect of it, but is this a bill that you see advancing to Final Reading, or do you see this eventually being merged into something else entirely? [LB464]

SENATOR ASHFORD: This is kind of a foundation piece to the LB561 matter which will come up in a few weeks, and this bill will be held on Select File until LB561 comes up. And then there are a series of meetings with the county attorneys and county officials on Monday to map out the cost shifts, if there are any, and what they are, and so it won't go ahead of those other bills, those other juvenile bills. [LB464 LB561]

SENATOR LAUTENBAUGH: Thank you, Senator. And you discussed some numbers earlier as far as how many cases originate, if you will, not in juvenile court and fail to get sent down. Do you have...do you recall what those numbers are? [LB464]

SENATOR ASHFORD: There's a...and we can hand...we can hand it out. It's a study that was done by...these are statewide numbers. There are over 7,000...these are statewide now, not just Douglas County, obviously, 7,000 filings against juveniles for law violations each year. That's the average. In 2012, approximately 4,537 youth were charged as adults and 794 of those cases were transferred to juvenile court. What we need to do is parse that out in the process next week to see what cases are those, what is the nature of the charges. But I think, I think what's clear is, this change in where the origination happens, whether juvenile or adult, is a foundational part of this whole juvenile justice reform and we just have to see how it parses out as we go through the next couple weeks. [LB464]

SENATOR LAUTENBAUGH: Now, was there any discussion to maybe creating a class of, I guess I'll say more serious offenses that were...that would not be part of this default juvenile position? [LB464]

SENATOR ASHFORD: Yes. [LB464]

SENATOR LAUTENBAUGH: Where is that going or is that to come? [LB464]

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SENATOR ASHFORD: Well, I mean, I think we're going to discuss all those issues. One of the...what we have discussed...that's a great question. What we have discussed is in many states that do this that have the original filing in juvenile court have what's called blended sentencing, so that if a juvenile is convicted of a serious offense, a violent offense of some nature and they will be serving time in an adult facility, that the time that they serve as a juvenile will be in a treatment facility like a, hopefully, a new Kearney facility that will be a better facility. And so, we've talked about how that could mesh together so you'd still have the treatment, but at the same time there would be adult incarceration involved in the sentence. And so that's also something we've discussed. [LB464]

SENATOR LAUTENBAUGH: How about at the originating or charging level, would there be...? [LB464]

SENATOR ASHFORD: Yeah, I mean, that's always been...and when we've had this bill in the past, we've always thought about should there be a category for significantly violent offenses that they have to originate in the adult court and that's still out there. But again, if we do that, I'd like to pursue the blended sentence idea as well. I mean I think they go hand in glove. [LB464]

SENATOR LAUTENBAUGH: There's a provision in here, and I apologize if there's an amendment addressing this that I haven't seen... [LB464]

SENATOR GLOOR: One minute. [LB464]

SENATOR LAUTENBAUGH: Thank you, Mr. President...that would require, as I read it, the county attorney to try to transfer something from juvenile court within 15 days. [LB464]

SENATOR ASHFORD: Right. And again, we're trying to get the status of that child determined as quickly as possible, you know, for obvious reasons, and the 15 days is in there. I mean, obviously, we can think about that as well. [LB464]

SENATOR LAUTENBAUGH: Okay. Thank you, Senator Ashford. I may have more questions but I know I'm running out of my time and I don't know if I'm up next again or not, but thank you for the answers. Colleagues, nobody in here is anti-children. That much is certain, but there are concerns and, you know, Senator Ashford has indicated he's working on those and open-minded on those and I appreciate that. The 15 day one was sort of striking to me in that I don't know that a county attorney would be in a position to present... [LB464]

SENATOR GLOOR: Time, Senator. [LB464]

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SENATOR LAUTENBAUGH: Thank you, Mr. President. [LB464]

SENATOR GLOOR: Thank you, Senator Lautenbaugh. Senator Dubas, you are recognized and this is your third time, Senator. [LB464]

SENATOR DUBAS: Thank you, Mr. President. Would Senator Ashford yield for questions? [LB464]

SENATOR GLOOR: Senator Ashford, would you yield? [LB464]

SENATOR ASHFORD: Yes. [LB464]

SENATOR DUBAS: Thank you, Senator Ashford. I'm going to kind of pick up on the line of questioning that has been going on in regards to county attorneys and juvenile systems out in rural Nebraska. And you referenced this in your opening that in rural parts of the state, the county court is the juvenile court. [LB464]

SENATOR ASHFORD: Correct. [LB464]

SENATOR DUBAS: Could you explain that to me a little bit more? [LB464]

SENATOR ASHFORD: Okay, there are three separate juvenile courts in the state, one in Sarpy, one in Douglas, one in Lancaster. Those three separate juvenile courts were created by statute, I think in the '80s, I believe, maybe it was the late '70s, the...and they applied juvenile law. So there isn't a conviction of a child, there's an adjudication and a disposition. In the county courts of the state, the county courts apply the same juvenile law, adjudication and disposition and treatment and rehabilitation as do the separate juvenile courts, but the adjudicator is the county judge as opposed to a separate judge...separate juvenile judge. So they do fulfill the same job, it's just that there aren't enough juvenile cases to justify creating a separate court and that's the difference. [LB464]

SENATOR DUBAS: So is there a difference on...in that scenario on who makes the decision whether the offender would go through the juvenile portion or would go through the adult? [LB464]

SENATOR ASHFORD: The county judge under this scenario would make the decision whether the case would remain in the juvenile court...the county attorney files a case for possession of a firearm. The juvenile judge, the county judge in your county would have a hearing, and the hearing would determine whether that case should stay with him or her in the county court or...applying juvenile law or whether it goes to the district judge to apply adult criminal law to that case. And that's how it would happen. [LB464]

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SENATOR DUBAS: So the concerns that I'm hearing from my county attorneys is that by having everything start in the juvenile system would make it more complex and more costly for the counties. [LB464]

SENATOR ASHFORD: The county attorneys are not going to support this bill the way it is, but...I understand that and I respect that, except the system is not working the way it is on the outcome side. The county attorney's role is to determine whether a law has been violated, and now those cases are primarily all filed in adult court. The problem with that is not the county attorneys. The county attorneys are doing their job, they're prosecuting a criminal offense. What we're talking about is a policy, it's a change in thinking about how we deal with juveniles. Do we treat them as adults from day one, or do we treat...day one of the process, or do we treat them as adults? And there is no difference. Let me be clear, there is no difference. Once those juveniles are tried as adults, they are in the adult system. There are 200 of...over 200 of those juveniles, and very possibly they should be there, but they are in the adult correction system now. So it is a change in how we look at juveniles, period. Know the county attorney...it's changed for the county attorneys. I don't expect them to jump up and down and raise banners over this. It's not that they're doing a bad job. There's nothing in this that says the county attorneys are doing a bad job. In fact, I would suggest they're doing a good job but...in general, but this is about a systems change, both in child welfare and juvenile justice reflecting the Supreme Courts, and other advocates are saying, there are issues involving juveniles which make them different from adults. And as a Legislature what we're at, the committee is asking this body to do is reflect that change in policy, that change in thinking, that change in science, reflect that in policy. [LB464]

SENATOR GLOOR: One minute. [LB464]

SENATOR DUBAS: If they are dealing with a youth who is...has committed a very violent crime, and they have to go through the juvenile system first, do they have the ability to incarcerate this youth... [LB464]

SENATOR ASHFORD: Oh, yeah. [LB464]

SENATOR DUBAS: ...in a secure place... [LB464]

SENATOR ASHFORD: Yes, oh, yes. [LB464]

SENATOR DUBAS: ...or do they have...okay. [LB464]

SENATOR ASHFORD: Oh, yeah, they've committed a crime and they are being charged with a crime and they're going to be incarcerated somewhere. And if it's in a county of...it would be at some secure facility, a jail facility or something. [LB464]

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SENATOR DUBAS: Well, my understanding is, if they are not charged in adult court, they cannot put them in a secure facility. [LB464]

SENATOR ASHFORD: They most certainly can. They can be placed in a juvenile secure facility. They can't...you know, they haven't been adjudicated or convicted, so they'd have to be in a juvenile facility. And that's part of the discussion we're going to be having with the counties over the next couple of weeks as to what happens in a case where that juvenile needs to be incarcerated in a secure facility. I mean whether it's... [LB464]

SENATOR GLOOR: Time, Senators. [LB464]

SENATOR DUBAS: Thank you, Senator Ashford. [LB464]

SENATOR GLOOR: Thank you, Senator Dubas and Senator Ashford. (Visitors introduced.) Returning to debate, senators in the queue: Pirsch, Chambers, Burke Harr, and Lautenbaugh. Senator Pirsch, you are recognized. [LB464]

SENATOR PIRSCH: Mr. President, members of the body, I thank you for that. And just a quick clarification with Senator Ashford, if he could yield to a... [LB464]

SENATOR GLOOR: Senator Ashford, would you yield? [LB464]

SENATOR ASHFORD: Yes. [LB464]

SENATOR PIRSCH: And I thank you for your taking this question. But with respect to the green copy,... [LB464]

SENATOR ASHFORD: You're welcome. [LB464]

SENATOR PIRSCH: ...there was on page 18, the last change in the bill, there was a change that would purport to indicate that the juvenile would remain committed until they attain the age of 19, and then that was...that's current. And then under this, that would change that to 21 years of age. Is that gone from the amendment? [LB464]

SENATOR ASHFORD: Yes. [LB464]

SENATOR PIRSCH: Okay. And I thank you for that clarification. That is... [LB464]

SENATOR ASHFORD: That won't be reflected until we pass...move the bill along, and then the fiscal note, as Senator Mello suggested, the fiscal note will reflect the fact that the age is 19. There's no change in age. [LB464]

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SENATOR PIRSCH: Would that be reflected in AM615,... [LB464]

SENATOR ASHFORD: Yes. [LB464]

SENATOR PIRSCH: ...the Judiciary Committee? [LB464]

SENATOR ASHFORD: Yeah. [LB464]

SENATOR PIRSCH: Okay. I'll have to pull out my gadget. Thank you. [LB464]

SENATOR GLOOR: Thank you, Senator Pirsch. Senator Chambers, you are recognized. [LB464]

SENATOR CHAMBERS: Thank you, Mr. President. I would like to ask Senator Nelson a question or two. [LB464]

SENATOR GLOOR: Senator Nelson, would you yield? [LB464]

SENATOR NELSON: Yes, I will. [LB464]

SENATOR CHAMBERS: Senator Nelson, criminal cases against adults commence in which court? There is a county court, a district court, an Appeals Court, the Supreme Court. [LB464]

SENATOR NELSON: Well, generally commence in district court, depending on what the charge is. Traffic and things are in county court. [LB464]

SENATOR CHAMBERS: Senator Nelson, where are preliminary hearings conducted? [LB464]

SENATOR NELSON: Preliminary hearings can be in either court depending... [LB464]

SENATOR CHAMBERS: I'm talking about adults. [LB464]

SENATOR NELSON: Adults? [LB464]

SENATOR CHAMBERS: Yes. [LB464]

SENATOR NELSON: I'm not sure that I can answer that, Senator. [LB464]

SENATOR CHAMBERS: Okay, that's...okay. Thanks. It's not a trick question. Senator Pirsch, I'd like to ask you a question. [LB464]

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SENATOR GLOOR: Senator Pirsch, would you yield? [LB464]

SENATOR PIRSCH: Yes, I would. [LB464]

SENATOR CHAMBERS: Senator Pirsch, have you worked in a prosecutor's office before? [LB464]

SENATOR PIRSCH: Yes. [LB464]

SENATOR CHAMBERS: Where do preliminary hearings...where are they conducted, which court? [LB464]

SENATOR PIRSCH: Conducted by county court judges. [LB464]

SENATOR CHAMBERS: And that...the purpose is to determine whether the person will be bound over to district court for trial on those criminal charges. Is that true? [LB464]

SENATOR PIRSCH: Yes. [LB464]

SENATOR CHAMBERS: Suppose the charge is murder. Will that go straight to district court or will the preliminary hearings still be in county court? [LB464]

SENATOR PIRSCH: Preliminary hearing. [LB464]

SENATOR CHAMBERS: Be where? [LB464]

SENATOR PIRSCH: I'm sorry, I'm having a hard time hearing. Just one second. [LB464]

SENATOR CHAMBERS: Let there be peace in the valley. I wanted to say it in a way that didn't sound...seem so aggressive as occurs when you hit the table with a hammer. Senator Pirsch, if the charge is murder,... [LB464]

SENATOR PIRSCH: Yes. [LB464]

SENATOR CHAMBERS: ...where will the preliminary hearing be conducted? [LB464]

SENATOR PIRSCH: In the same venue. [LB464]

SENATOR CHAMBERS: Thank you. Members of the Legislature, we're not talking about a trial. If the worst murder that can be committed has its first--that's all I would ask you, Senator Pirsch, thank you--would have its first connection with the court system at

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the county court where the trial is not going to be conducted, how in the world can these county attorneys deceive and beguile the members of this body by thinking that somehow you're coming up with something mystical when you say, let the first contact of the juvenile be with the juvenile court? Why don't you do away with the county court preliminary hearing? Because going to the county court, Senator Dubas, simply adds expense and more complexity. But when it's adults, nobody is concerned. Don't tell me they don't dislike children. Senator Lautenbaugh knows where these initial preliminary hearings are conducted--in county court. Some people think the person should go right to district court for trial. But these are adults, so you put that extra step in to let a court determine whether there is probable cause that a crime was committed, that the accused committed it and, therefore, should be bound over to district court for trial. That's what you do for adults. When you say take a child and let that child first come in contact... [LB464]

SENATOR GLOOR: One minute. [LB464]

SENATOR CHAMBERS: ...not with adult court but before a judge who is going to make a determination as to where or whether a trial, as we understand the term, should take place. We don't have to be bleeding hearts, but I feel very indignant when county attorneys are concerned about cost but when it comes to the death penalty they say the cost is no matter. If it costs \$1,500,000, fine, that's what we want to spend because we want somebody killed. But for the salvation of our children, it's too complex and too expensive to treat them like you treat adults. Thank you, Mr. President. And when I say like adults, in terms of that extra step. [LB464]

SENATOR GLOOR: Thank you, Senator Chambers. Senator Burke Harr, you are recognized. [LB464]

SENATOR HARR: Thank you, Mr. President, members of the body. So this is an interesting issue. We do not treat juveniles the same as we treat adults. There is no finding of guilt or innocence...well, no finding of guilt in juvenile court. You are adjudicated, you are not found guilty, and there's a big difference there. Currently, you start out in...if it's a misdemeanor, you start out in county court. If it's a felony, you do have a preliminary hearing in county court but, generally, the case is handled in district court. Small number of cases you can have a preliminary hearing in district court, but it is very unique. I don't necessarily disagree with the underlying concept that Senator Ashford is advocating for here. My question is, how do we do this to make sure that we have kids, who deserve to be in juvenile court, go to juvenile court to get the help they need, again, not the punishment, the help they need. Unfortunately, there are kids out there, while they are still kids, it's not the help they need; it's the punishment they need. And so we need to come up with a solution, and I look forward, between General and Select, to come up with a formula that helps answer this question of how do we make that decision and who makes that decision whether that kid deserves help or whether

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that kid deserves a hammer, because there are some kids, while they are still kids, abuse the system. They know...if we change this law there will be kids who will know that they will never be prosecuted and they will remain in juvenile court and they will go do their little sentence or they'll do their little time in Kearney, which is not, again, punishment. It's meant to rehabilitate the kid. He'll come back and he'll do the same thing again and again and again. And it happens to a certain degree now. We have to find a way to prevent this. One of the things I was thinking about is make...if you want everyone to start in juvenile court, fine. That's the district court in Douglas County. A lot of counties it's county court, but in Douglas County it's district. Everyone start in juvenile court, that's fine, but the presumption, we can create presumption, is to move it to adult court, that...and we can decide who has those presumptions. But I think we need to provide some structure to determine which parties has that presumption and what the court needs to look at. We need to provide some guidance. You know, we don't want a kid who's accused of murder going through juvenile court necessarily, if he's 17 years old and creates a heinous crime. But at the same time, a 17-year-old with an MIP, maybe they just need some help, or shoplifting, some of the lower-level misdemeanors. So I'm excited and I'm glad to hear Senator Ashford is willing to work on this. I'm excited to work with him on this, that we can come up with something amicable that works for both the kid, the prosecutor, and most importantly for our constituents. Thank you.
[LB464]

SENATOR GLOOR: Thank you, Senator Harr. Senator Bloomfield, you are recognized.
[LB464]

SENATOR BLOOMFIELD: Thank you, Mr. President. I'd like to yield my time to Senator Dubas. Senator Dubas. [LB464]

SENATOR GLOOR: Senator Dubas, 5 minutes. [LB464]

SENATOR DUBAS: Thank you, Senator Bloomfield, and thank you, Mr. President. I've been having some conversations with Senator Ashford off mike just to help me better understand this process, and my concern comes from if we do have some youths who have committed particularly violent crimes, I don't want them to be in a facility with other youth who are not in that same category, which could put those youth in danger, which could maybe, you know, allow this youth, that's perpetrated the violent crime, an opportunity to escape. It's just making sure that these kids are going where they need to go. That's my concern and I'm just trying to understand this process and how it all unfolds currently as well as what this bill would do. So I ask that question to Senator Ashford and then I would just yield the remainder of that time to him to help me better understand the process. [LB464]

SENATOR GLOOR: I'm sorry, Senator Dubas, you cannot yield time yielded to you.
[LB464]

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SENATOR DUBAS: That's right, I can't yield my time, but I would like you to answer that question. Thank you. [LB464]

SENATOR GLOOR: Would you yield, Senator Ashford, to that question? [LB464]

SENATOR ASHFORD: Yes. Oh, then I can. Oh, you can yield time. Oh, I can answer your question. I will answer it. The answer is that you cannot mix adults and juveniles at any time, so even if you have an adult or a juvenile who has been convicted of first-degree murder, as juveniles, they're going to be incarcerated in the corrections facility, juvenile facility, which is located in Omaha. So if you have a case where someone is convicted or is charged with a serious offense in the...whether it's in the adult court or in the juvenile court, under this system they still have to be incarcerated somewhere and they're going to be incarcerated in...what happens now is counties contract with Madison County, with Scotts Bluff, where there is a juvenile facility, with other places so that if you have...nothing changes there. But one of the issues is detention generally. The goal of all of this, members, the goal is to decrease juvenile incarceration to those...to only those juveniles who must be, for whatever reason, to protect themselves or the community, must be incarcerated in a secure facility; not everybody else. We incarcerate so many other juveniles. That's why we have such a high percentage of juveniles incarcerated. So to answer Senator Dubas' question, yes, they would be in a secure facility if they've committed and they're charged with a violent felony, for example, whether they're charged under the juvenile statute or whether they're charged under the adult statute. And that goes on now as counties contract with the five...there are five secure facilities for juveniles across the state that are run by counties. They have interlocal agreements or agreements to take those people and put them into the...for example, Madison County. Madison County has a staff-secure facility and juveniles from across the state or parts of the state go to that facility. So it's no different if they're charged in juvenile court or charged in adult court. And if there's confusion by the county attorneys about that, then we'll iron that out in this process. But clearly, there has to be capacity and there has to be a place, that are not an adult facility, for juveniles who have committed violent crime. [LB464]

SENATOR DUBAS: If a youth is charged as an adult and put into an adult facility, are there criteria that have to be met? [LB464]

SENATOR ASHFORD: Yes. [LB464]

SENATOR DUBAS: Is that youth able to mix with the adult population in the facility? [LB464]

SENATOR ASHFORD: No. No. [LB464]

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SENATOR DUBAS: So there's very specific criteria. [LB464]

SENATOR ASHFORD: Right. For example, in the corrections facility in Omaha there is a clear...there are federal guidelines, for one thing. I mean you...and there are state guidelines. [LB464]

SENATOR GLOOR: One minute. [LB464]

SENATOR ASHFORD: The facility in Omaha for juveniles who are charged as adults is separate. They're walled off from the other facilities. There is no contact. Even though it's in the same general area, there is no contact between juveniles...and I think there are about 90 juveniles in that facility in Omaha and there is no contact between them and the adult population. When they turn, you know, 19 then...or when they become adults under the system, then they go in the adult population. [LB464]

SENATOR DUBAS: Thank you, Senator Ashford, for that help. [LB464]

SENATOR GLOOR: Thank you, Senator Dubas and Senator Ashford. Senator Schumacher, you are recognized. And it's your third time, Senator Schumacher. [LB464]

SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. Over the last couple days, we spent some time trying to be meticulous in what we say on the floor, and I think we...there's been an inference that the county attorney's discretion is somehow bad in these particular cases and an inference also that the criminal prosecution of an adult has to begin in the county court. I think there's a procedure, and I've been trying to look through the statutes to make sure that nothing has changed, but I know that when I was county attorney you could file an information direct in the district court. You didn't do that often, except if it was an exceptional situation, and then the district judge ordered a magistrate to have the probable cause hearing. But I don't think that all cases have got to originate in the county court. I believe they can also originate in any court of jurisdiction, and that includes the district court. Thank you, Mr. Chairman. [LB464]

SENATOR GLOOR: Thank you, Senator Schumacher. Senator Chambers, you are recognized; third time, Senator Chambers. [LB464]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I would like to ask Senator Lautenbaugh a question. [LB464]

SENATOR GLOOR: Senator Lautenbaugh, would you yield? [LB464]

SENATOR LAUTENBAUGH: Yes, I will. [LB464]

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SENATOR CHAMBERS: Senator Lautenbaugh, is there expense connected with conducting a preliminary hearing? [LB464]

SENATOR LAUTENBAUGH: I would assume. [LB464]

SENATOR CHAMBERS: Oh, what did you say? [LB464]

SENATOR LAUTENBAUGH: I would assume so. [LB464]

SENATOR CHAMBERS: Okay. Would you be in favor of eliminating the preliminary hearing step altogether and allowing all issues that would be dealt with in a preliminary hearing be handled in district court where a trial, if there is to be one, would occur? [LB464]

SENATOR LAUTENBAUGH: I have to confess, Senator, I don't practice in this area. [LB464]

SENATOR CHAMBERS: Oh. [LB464]

SENATOR LAUTENBAUGH: I don't have the knowledge. I just don't know. [LB464]

SENATOR CHAMBERS: Okay. Thank you. Members of the Legislature, none of these are designed to be trick questions. Here's what I'm getting at. All the preliminary hearing determines is whether there's probable cause to bind a person over or send that person to trial at district court. Why not eliminate the involvement of the county court altogether? Do away with the time, do away with the expense, do away with the complexity, because sometimes a preliminary hearing is a miniature trial. And each side wants to see how much of the other side's case it can elicit during a preliminary hearing. Let that be done away with. Let the proceedings begin in district court. Let the prosecutor file the information, the complaint, in district court, allege anything he or she chooses, as they can do in county court for the preliminary hearing, and let the district court determine whether probable cause exists as a basis for going on with a trial. You don't need the county court. Oh, I'd like to ask Senator Pirsch a question, not to end his discussion. [LB464]

SENATOR GLOOR: Senator Pirsch, would you yield? [LB464]

SENATOR CHAMBERS: Senator Pirsch, if the preliminary hearing were eliminated and the county court were not involved at all, couldn't every issue handled in preliminary hearing at county court be decided by the district court where the trial will be conducted if there's to be a trial? [LB464]

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SENATOR PIRSCH: Well, in theory it could be. [LB464]

SENATOR CHAMBERS: A district court can determine whether there is probable cause, couldn't it? [LB464]

SENATOR PIRSCH: Sure. Yes. [LB464]

SENATOR CHAMBERS: And if the district court decided there was not probable cause, there would be no trial, correct? [LB464]

SENATOR PIRSCH: If the...yeah, if there's not probable cause, then the case ends just then. [LB464]

SENATOR CHAMBERS: Well, I'm trying to use the terminology that would be used in county court. If there was not a basis in law to support the charge, then the court would not go forward with a trial. Would you agree? [LB464]

SENATOR PIRSCH: Yes. [LB464]

SENATOR CHAMBERS: Okay. Now if it does go to preliminary hearing and the county court rules there's probable cause to bind the person over and does so, is that decision by the county court considered a final judgment for the purpose of being able to file an appeal? [LB464]

SENATOR PIRSCH: For the purpose of being able to find...no, it goes over then to the district court's domain, in terms of...then the... [LB464]

SENATOR CHAMBERS: Right. [LB464]

SENATOR PIRSCH: ...the case begins, so... [LB464]

SENATOR CHAMBERS: Okay. Thank you. That was what I was seeking and I got all the information that I really need. And I'm not just saying it. Senator Pirsch has worked in a prosecutor's office. There is no reason to have the county court step. It has always been done that way. And when I say always, maybe not forever but for the purposes of this discussion. If you want to save time and eliminate complexity, eliminate an entire step from the criminal prosecution... [LB464]

SENATOR GLOOR: One minute. [LB464]

SENATOR CHAMBERS: ...process. Did you say time? [LB464]

SENATOR GLOOR: One minute, sir. [LB464]

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SENATOR CHAMBERS: Oh, thank you. And I would like somebody, if they have an interest, because this is my third time, to explain to me why it is essential that a preliminary hearing occur in county court, thereby adding a separate step, more time, more complexity, and more expense. Thank you, Mr. President. [LB464]

SENATOR GLOOR: Thank you, Senator Chambers. Senator Burke Harr, you are recognized. [LB464]

SENATOR HARR: Thank you, Mr. President. And I couldn't have come at a better time because I wanted to answer that exact question Senator Chambers asked. I used to be a prosecutor and for nine long months all I did was preliminary hearings in the morning and bond settings in the afternoon. I think preliminary hearings serve a very valuable purpose in our court system. There are good cases brought 99 percent of the time, but there are also bad cases that are brought. And preliminary hearings can, if you want, if a prosecutor so chooses, be brought and filed in district court. But, at least in Douglas County, they're chosen, and by the way, I'm no expert so don't hold me out as an expert. But in Douglas County, we would file in county court because it's more efficient and it's actually cheaper, and it's a way to make sure that there is actually probable cause. They're filed because, you know, there are cases...prosecutors want to have a preliminary hearing because we want to make sure our witnesses are going to show. We want to make sure that they are going to say what they said in their police report. We want to have them on the record. And we really don't have a problem with letting the defense attorneys take a first bite at that apple and cross-examine witnesses. The rules of evidence are suspended in preliminary hearings and it is merely a probable cause hearing; is not a guilt stage, no one is found guilty. It's just that there is...that there is probable cause that a crime was committed and probable cause that this person committed that crime. That's all it is. It's a very low-level threshold but it's a threshold to make sure that there isn't prosecutorial abuse. That's why it was put in there. So you just don't file charges willy-nilly and then that person has to sit there and possibly in jail for, you know, up to the speedy trial of 180 days. It's a chance for defense attorneys to get a better idea of what the case is about. And I would say...again, I can only speak to Douglas County, 80 percent of the time they're waived. Preliminary hearings are waived. Matter of fact, tomorrow morning, 9:00 a.m., Courtroom 25, I will be waiving a preliminary hearing as a defense counsel on a case. So it happens quite frequently, but it's a good chance to judge how strong or weak a case is. It's a good chance for a defense attorney to let their client hear how good or how weak their case is, because you can give them all the reports they want but they don't believe in it until they actually see it. So I do think it serves a valuable purpose, but that's not what I'm really to talk about. I'm here to talk about and what this is really about is juveniles and how can we best serve juveniles, balance the rights of juveniles versus the rights of our society. That's what LB464 looks to do. And it's a judgment call. We are policymakers. I think Senator Ashford has a very good first step, but I think we can do better. Again, I'll be

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excited to work with Senator Ashford on this. We need to be able to look at...we need prosecutors...we need to have some faith in prosecutors. They're the front line. They're generally elected officials and they know the cases. They know the police officers. A lot of times they know the defendant, unfortunately, because they've been through the system so much or they know...they have a good idea or they might know the witnesses. So I'm a little leery of taking complete discretion away from the prosecutors. I think it's important for them to have some discretion. I think it's important, though, that we also have a juvenile system that works. We don't have the best juvenile system in the state. We are always emphasizing we got to have the best tax policy out there, we got to have the best, you know, when it comes to economics. I would be just as proud or prouder if we had the best juvenile system out there to really make sure our kids get the help they need so that they can become... [LB464]

SENATOR GLOOR: One minute. [LB464]

SENATOR HARR: Thank you...so they may become active members of society and, let's face it, good taxpayers. That's what we want to do. That's what LB464 is looking to do. And that's why I want to commend Senator Ashford. But, that being said, I also think we can tweak it a little bit so that we can make it better and it can be part of some other bills that are coming up down the road so that we can improve our juvenile court system, which, unfortunately is more of an embarrassment at this point than an asset to our state. If we had...the juvenile foundation existed, and maybe there is something called that but the equivalent of the Tax Foundation, I don't think we would rank as high as we do in the Tax Foundation. And I know our Governor is very embarrassed with that ranking and... [LB464]

SENATOR GLOOR: Time, Senator. [LB464]

SENATOR HARR: Thank you. [LB464]

SENATOR GLOOR: Thank you, Senator Harr. Senators remaining in the queue: Price, Coash, Murante, and Lautenbaugh. Senator Price, you're recognized. [LB464]

SENATOR PRICE: Thank you, Mr. President, members of the body. We have a very interesting and dynamic subject matter before us this morning and I dare say I have had the opportunity to brush up against this in my own personal life, particularly with the juvenile diversion program. And it's something I believe that many families have had to face. And I am sitting here listening, trying to determine how it is that we're going to go about helping these juveniles in our community because they're not just juveniles; they're our children and it matters. And with that, I'd yield the balance of my time to Senator Schumacher. I would yield the balance of my time to Senator Schumacher. [LB464]

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SENATOR GLOOR: Senator Schumacher, 4 minutes. [LB464]

SENATOR SCHUMACHER: Thank you, Mr. Chairman. Thank you, Senator Price, for yielding a little time. Basically, it might do a little bit of good to survey how criminal charges are brought and how the county attorneys and the juvenile law figure into it. Generally, a criminal prosecution begins with a law enforcement officer bringing a report to a prosecuting officer that alleges somebody did something wrong, and the prosecuting officer looks at that report and initially makes some decisions. The decisions that are made, if it's a juvenile case, in the great bulk of the cases the prosecutor files them in juvenile court unless there's a fairly compelling reason to file them as an adult. And that initial decision is what LB464 seeks to change the law on. It seeks to take that discretion away from the prosecuting officer and put that decision of what court it belongs into the juvenile court system. Essentially, it reverses in all cases the normal procedure. Assuming that the prosecuting officer wants to file it in the adult court system, another decision is made and that is whether it's to be filed in the county court or in the district court. Both courts have jurisdiction. As a matter of practice, it is filed in the county court regardless of whether it's a felony or a misdemeanor, and that's because the county court is set up to efficiently do the kind of things that are done with minor offenses, misdemeanors, and to efficiently and quickly hold a very cursory hearing called a preliminary hearing in which the only job a court has got is to determine whether there's reasonable grounds to believe that a crime has been committed and the person that is charged is the person who did it. A lot of rules of evidence don't apply. It is a hearing that is often waived by defense attorneys, sometimes used by defense attorneys to sober up their clients, who are protesting their innocence. But at any rate, if the county judge finds probable cause, they bind the person over. In other words, I suppose in old days they handcuffed them and put them on a horse and took them over to where the district court was because the county court isn't always in the same area, or wasn't at least. And it goes up to a court system which has much fewer judges and handles more important things--the district court. And that's how that particular procedure works in our system. [LB464]

SENATOR GLOOR: One minute. [LB464]

SENATOR SCHUMACHER: Even if it were filed directly in the district court, the district judge must have a preliminary hearing to make that first judgment before the information filed is considered to be valid enough to proceed on. I think that what we're dealing with here is an attempt to channel the county attorney's discretion with regard to juvenile matters and with regard to an existing system that really doesn't change the underlying things that we're dealing with, and that is a juvenile system that is very, very cumbersome and probably does not serve our children the way it...in outcomes at least, in the best possible way. Thank you. [LB464]

SENATOR GLOOR: Thank you, Senator Schumacher. Senators in the queue: Coash,

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Murante, and Lautenbaugh. Senator Coash, you are recognized. [LB464]

SENATOR COASH: Thank you, Mr. President. I do yield my time to Senator Chambers. [LB464]

SENATOR GLOOR: Senator Chambers, 4 minutes 55 seconds. [LB464]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Coash. Members of the Legislature, I'm in favor of the preliminary hearing. I'm in favor of the preliminary hearing being conducted in county court. And I explained what Senator Schumacher was explaining, how that process works. Now I want to complete the analogy. You allow that step for adults. The county court does not conduct the trial. All that the county court does is look at what is presented to determine whether there is sufficient evidence to require the person accused to be taken to district court and stand trial. The county court does not determine sentence, doesn't determine guilt or innocence, nothing else. The analogy that I want to make is to look at what Senator Ashford and the Judiciary Committee are proposing. By analogy, the juvenile has first contact with the system in the juvenile court, not for a trial, not for an adjudication, not for any final determination on the merits of the case, to use the term that they use. In the same way that the county judge makes a determination as to whether the person should go into district court for a trial, the judge...let me ask Senator Ashford a question before I continue. [LB464]

SENATOR COASH PRESIDING

SENATOR COASH: Senator Ashford, will you yield? [LB464]

SENATOR CHAMBERS: Senator Ashford, which judge would be making the determination as to whether the case of the juvenile would remain where it is in juvenile court or go to adult court? [LB464]

SENATOR ASHFORD: The juvenile judge. [LB464]

SENATOR CHAMBERS: Thank you. Members of the... [LB464]

SENATOR ASHFORD: Who, by the way, has the same status as a district court judge, which is an interesting...that hasn't... [LB464]

SENATOR CHAMBERS: But I don't want you to take my time. I don't want to be derailed or sidetracked. We have a judge, experienced in the types of issues that are involved in the case of the juvenile. And in addition to that, a determination as to whether treatment under the standards that exist in the juvenile court would be appropriate or whether the offense is such that, even though committed by a juvenile,

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lifts that person out from under the umbrella provided by the juvenile court and he or she must now go to the court where adults are tried, not adjudicated. So let the first appearance be analogized to the preliminary hearing in county court for adults. That judge makes a determination. In the juvenile system, a juvenile judge will make the first determination. And if the circumstances warrant it, the judge will decide to send the child to adult court for a trial. If you want to know whether or not our doing what is considered civilized toward our children is going to bring down Nebraska--well, I'd like to bring down Nebraska, as it's known, but let me change that--bring down the republic,... [LB464]

SENATOR COASH: One minute. [LB464]

SENATOR CHAMBERS: ...look at all the other states that do it. Have their criminal justice systems been destroyed or perverted? Have they turned loose on the streets miniature Jack the Rippers or Bonnies and Clydes? Absolutely not. So to suggest that is to go outside of what the facts would demonstrate and what the experience of other states will show. Thank you, Mr. President. [LB464]

SENATOR COASH: Thank you, Senator Chambers. Senator Murante, you are recognized. [LB464]

SENATOR MURANTE: Thank you, Mr. President. Good morning, colleagues. I stand, as the member of the Legislature who can say that Senator Chambers has voted for my motions more than he's voted for any other senator's motions in this body. And accordingly, I would like to pay him, his due service. And as a measure of my appreciation, I would like to yield him the balance of my time. [LB464]

SENATOR COASH: Senator Chambers, 4 minutes 30 seconds. [LB464]

SENATOR CHAMBERS: Thank you, Mr. President. And young Senator Murante is a man after my own heart in that he is clever, quick of wit, and has a sense of humor. And he can consider his debt paid from the first time I gave him all those votes, but he will accumulate another one as the future goes forward or as time goes forward. Members of the Legislature, none of us on the Judiciary Committee holds to the notion that wrongful conduct should not be dealt with appropriately. We are saying that what is appropriate for adults will not always be appropriate for children. Before the U.S. Supreme Court arrived at the status of civilization which it has, I was able to persuade this Legislature, which had far more conservative people in it then than are here now. They were so conservative that when they walked down the hall, they squeaked just like new leather shoes. But you know what I persuaded them to do? To pass a law saying that if a murder was committed by a person below the age of 18, that person could not be eligible for the death penalty. We're talking about murder most foul, and the death penalty was not on the table. Now what we're talking about is recognizing that there is

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even more scientific research available to guide our decisions. We're not doing this because we're bleeding hearts. I wouldn't qualify anyway because I don't have any kind of heart, bleeding or otherwise, and that's how it was determined that I don't have one, because they can detect no blood flow in my system, no pulse. So knowing that children are not miniature adults, the society should take that into consideration when it's formulating a system to determine whether, if, and how a child is to be punished. When there were arguments when this constitution that governs the country now was being finally formulated by way of adopting amendments, there was what came to be known as the Eighth Amendment that prohibits cruel and unusual punishment. Courts had always said that the Legislature has the power to criminalize any conduct that it chooses and then could annex a punishment. As this society matured and the courts observed that evolutionary process, recognizing the increasing civilizing effect of knowledge and information, began to say that the role of the... [LB464]

SENATOR COASH: One minute. [LB464]

SENATOR CHAMBERS: ...Eighth Amendment is to be sure that the punishment fits the crime. If there is too great a disparity, the court will say that punishment is cruel. It does not simply mean that it is torturous, but it's all out of proportion to the nature of the offense. It is unusual in the sense that intelligent, rational, judicial administrators of the law would have to be unusual in their orientation to say that this particular punishment should go along with this offense. So if it was determined to be cruel and unusual, the punishment would be struck down pursuant to the Eighth Amendment. We don't want cruel and unusual punishment inflicted on children. And what is not cruel for an adult may indeed be cruel for a child. Thank you. [LB464]

SENATOR COASH: Time, Senator. Thank you, Senator Chambers. Senator Lautenbaugh, you're recognized. [LB464]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. And I'm wondering if Senator Ashford would yield to a couple more questions. [LB464]

SENATOR COASH: Senator Ashford, will you yield? [LB464]

SENATOR ASHFORD: Yes. [LB464]

SENATOR LAUTENBAUGH: Senator, thank you. And I think we got... [LB464]

SENATOR ASHFORD: Throw them over. [LB464]

SENATOR LAUTENBAUGH: I'm sorry? [LB464]

SENATOR ASHFORD: No, just I'm ready. (Laugh) [LB464]

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SENATOR LAUTENBAUGH: I think we got cut short last time because I was being too verbose,... [LB464]

SENATOR ASHFORD: Yeah. [LB464]

SENATOR LAUTENBAUGH: ...but we were talking about that 15 days to proceed with some sort of a hearing as to whether or not this should be transferred from juvenile court. [LB464]

SENATOR ASHFORD: Right. Right. [LB464]

SENATOR LAUTENBAUGH: I have concerns that that's fairly aggressive for the county attorneys to get their ducks in a row, so to speak, and conduct a hearing. I don't know that they get a second bite at the apple on that. Is there a way to address that? [LB464]

SENATOR ASHFORD: Sure. You know, I'm trying to recall when the...what the deadline is for a preliminary hearing. It's 30 days for a preliminary hearing for an adult, so, I mean, we can discuss it. I...that...yes. Yeah, I mean we're going to discuss all these things, as I've told the county attorneys numerous times. In the next couple of weeks, we're going to address, not to...I understand your question, but yes. The answer is yes. [LB464]

SENATOR LAUTENBAUGH: Okay. Thank you, Senator Ashford. And just to clarify to some of you who have asked, are you filibustering this? If this the start of another filibuster? And, no, that is not the case. I'd be filing motions to bracket, motions to recommit. And I'd make some vague reference to the rules, which would be irresistible to Senator Chambers and he'd be off talking for a half hour and I'd just get to sit down. So, no, this is not what a filibuster looks like when I'm doing it. But there are concerns here, and I appreciate Senator Ashford conceding as much. And I understand he's committed to working on this and probably rolling it into another bill. And so, no, this is not a ditch to die in today. But again, I think we have to tread lightly and carefully, especially when we're talking about the most serious offenses and possibly some of the time limits involved here and other jurisdictional concerns regarding city attorneys and county attorneys and whatnot. So there's definitely work to be done. I'm glad the concerns of the county attorneys and the counties and others will be heard. I appreciate Senator Ashford doing that. And I will yield some of my time to Senator Chambers, if he'd like to talk about the rules a bit. [LB464]

SENATOR COASH: Senator Chambers, 2 minutes 30 seconds. [LB464]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Lautenbaugh. And I'm glad that Senator Lautenbaugh raised the issue that he did. Not all extended

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discussion is a filibuster. There are serious matters that require extensive discussion. I'm for the bill. I disagree with some of the concerns that are being raised in the sense that they should not be a determining factor as to whether we will act on this bill. But I think in creating a legislative history, all of the questions that are being asked serve a worthwhile purpose because responses can be given and it will establish not only what we did but why we did it. These questions and answers comprise the developmental discussion that lead us to the conclusion we ultimately will arrive at, which I hope is to advance this bill today and ultimately enact it into law. Those of us who are for the bill might be the first ones, other than myself, to talk about a filibuster, but that's why I harp so much on the rules and what our job is as legislators. We are not engaging in sound bites. We are allowed and our duty requires us to use more than 42 characters. And some people's attention span may be 30 seconds. [LB464]

SENATOR COASH: One minute. [LB464]

SENATOR CHAMBERS: And after that, they think nothing else should be said, even if there's something worthwhile that merits being said. The rest of us take seriously what we're doing and I haven't heard anybody, even those posing questions, say that we should not be doing something about the system. This is not a filibuster, and from time to time I will try to explain to my colleagues what they are. I never engage in a filibuster. Mine is always extended rational discussion of the issue before the house. Thank you, Mr. President. [LB464]

SENATOR COASH: Thank you, Senator Chambers. Senator Harms, you're recognized. [LB464]

SENATOR HARMS: Thank you, Mr. President, colleagues. I do rise in support of LB464 and the amendment, AM615. Nebraska has one of the highest rates of treatment, treating youth like adults in the entire country, in the entire country, colleagues. It tells us that there's something wrong with our system. In 2011, the cases of over 4,000 Nebraska children were filed in adult court. A little less than one-fifth were transferred back to the juvenile court. And in 2011, 90 percent of the cases where youth were prosecuted as adults were just misdemeanors. Studies have shown that youth have poor impulse control, are more susceptible to peer pressure, and are incapable of weighing long-term consequences here of their actions. The juvenile court was established to ensure children and youth have access to services that recognize the unique needs, and treatment is not offered in adult courts, where the focus is placed on punishment instead of rehabilitation. And when I look at Scotts Bluff and the system they have there, as Senator Ashford and I just spoke off the mike, we have a great system there and we have a place to put these children and these teenagers. But we need to address this issue, colleagues. This bill needs to be moved forward and this amendment needs to be moved forward so we can deal with the true issue that affect our adults. I don't think it's anything for us to be proud of when we can say that

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Nebraska has one of the highest rates treating youth like adults in the entire country. Other states have already made the adjustments. Other states have already begun to address this issue. We're behind; it doesn't help us. And so I would urge you to support this and if you have other further issues we need to correct, let's do it at the next level. Thank you, Mr. President. [LB464]

SENATOR COASH: Thank you, Senator Harms. Seeing no other lights, Senator Ashford, you're recognized to close on AM615. [LB464]

SENATOR ASHFORD: Thank you. Very briefly, this amendment simply amends the bill so that the large fiscal note goes away when the bill arrives on Select File, and I'd urge its adoption. [LB464]

SENATOR COASH: Thank you, Senator Ashford. Members, you heard the closing to AM615. The question for the body is, shall AM615 be adopted? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB464]

CLERK: 37 ayes, 0 nays, Mr. President, on adoption of committee amendments. [LB464]

SENATOR COASH: Committee amendment is adopted. Return to discussion on LB464. Seeing no other lights on, Senator Ashford, you're recognized to close on LB464. [LB464]

SENATOR ASHFORD: Thank you, Mr. President. I'm going to ask Senator Krist to say a few words about this process because LB464 is a process of changing how we deal with juveniles in a constructive manner. I want to just make two points. One is that it's because we have county attorneys who have tried to work in the system that we now have to address the needs of juveniles that we can make this change. And I, in the seven years I've been back in the Legislature, I have worked with the county attorneys, my county attorney, Don Kleine, especially, Lee Polikov in the areas around where I am, and Mark Young out in Grand Island to put in place a truancy initiative before anybody else did. And I understand their concern about violent crime. I get it, and I don't think this Legislature is going to forget that issue as we proceed along with this bill. This bill is critical to the overall reform of juvenile justice, not to release violent criminals who happen to be juveniles but to deal with the vast majority of juveniles who need treatment quickly and effectively. It is not now happening. Children are coming back in...juveniles are coming back into their communities without sufficient mental health screening. They're coming back into their communities without family intensive therapy. They're back on the street. And when they're on the street, they're going to commit additional offenses, and then for sure they will be in the adult system. Make no mistake about it, they will be in the adult system. As I have done on many occasions, looked back at the adults, at the juveniles who have been tried as adults who have committed violent acts

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in our city, I've looked at all...many if not all in the last few years, who are these kids, every single one of them started in the juvenile system. Every single one of them was not in school. Every single one had...not every one but many had siblings that were incarcerated. It is...we know the problems. Many of the 80...more than 80 percent of the girls at Geneva are mentally ill. Over 70 percent of the boys at Kearney have mental illness. We incarcerate more youth than almost every state in the United States. We are kind, generous people in Nebraska. It is not that. It is not that the county attorneys do a bad job. The system is broken. Every county attorney that I know and every county judge that I know and every district judge that I know will follow the policy we give them and the policy we give them will be a policy that reflects our values as a state. The system will change in a respectful manner, respecting the concerns of victims, respecting the concerns of the communities, and addressing the needs of the communities to develop additional capacity for mental health treatment for youth. That is a goal that Senator Campbell has taken on and Senator McGill started five years ago with the safe haven initiative. This, in order to complete our task, we must move forward. I would ask if Senator Krist would like the remainder of my closing. [LB464]

SENATOR COASH: Senator Krist, 1 minute 30 seconds. [LB464]

SENATOR KRIST: I'll be brief. This is part of the mosaic. Last year we were, I think, most of us very proud of LR37 and the associated bills. The mosaic here is we have a system that it is...that it's broken, that feeds into a process. That we need to start recognizing that children need to be treated like children in a juvenile system, and they need evidence-based treatment. They don't need to go into a holding cell for six months someplace and be lost in the system. Senator Ashford is absolutely right. [LB464]

SENATOR COASH: One minute. [LB464]

SENATOR KRIST: LB464 is, is another step in fixing the process and treating kids like kids. I would say to you, and I think it's undisputable, indisputable, you can tell or measure the quality of a man or woman by how they treat those that are less fortunate or those that need our attention in society. If we take the time with the youth now, they will not be problems when they become adults or less of them will be. You need to support LB464. You need to pay particular attention to an upcoming bill, LB561. It's another fix. Thank you, colleagues. [LB464 LB561]

SENATOR COASH: Thank you, Senator Krist. Members, you've heard the closing to LB464. The question before the body is, shall LB464 advance? All those in favor vote aye; all those opposed vote nay. Have all voted who wish? Record, Mr. Clerk. [LB464]

CLERK: 39 ayes, 0 nays, Mr. President, on the advancement of LB464. [LB464]

SENATOR COASH: LB464 does advance. You have items, Mr. Clerk? [LB464]

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CLERK: I do, Mr. President, thank you. Health and Human Services Committee reports LB240 to General File, LB260 to General File. Government, Military and Veterans Affairs reports LB433 to General File, LB224 to General File with amendments. Revenue reports LB574 to General File with amendments; those all signed by the respective committee Chairs. Confirmation reports from Health and Human Services Committee, two separate reports. Hearing notice from Natural Resources Committee. And a report from the Executive Board regarding appointments to the Behavioral Health Oversight Committee. That's all that I have, Mr. President. Thank you. (Legislative Journal pages 807-808.) [LB240 LB260 LB433 LB224 LB574]

SENATOR COASH: Thank you, Mr. Clerk. (Visitors introduced.) Moving on the agenda, next item, Mr. Clerk.

CLERK: Mr. President, LB634 is a bill introduced by Senator Davis. (Read title.) Bill was introduced on January 23, referred to the Natural Resources Committee, the bill was advanced to General File. There are Natural Resources Committee amendments, Mr. President. (AM298, Legislative Journal page 619.) [LB634]

SENATOR COASH: Thank you, Mr. Clerk. Senator Davis, you're recognized to open on LB634. [LB634]

SENATOR DAVIS: Good morning, Mr. President, members of the body. Today I'm introducing LB634 to adopt the Wildfire Control Act of 2013. LB634 seeks to address some serious deficiencies in Nebraska's response to fire, and I will demonstrate that the adoption of this bill will save the state a significant amount of revenue over time through prompt fire management, once appropriate resources and management systems are put in place. Two thousand twelve is the worst wildland fire year on record in Nebraska, with nearly half a million acres burned, 65 structures lost, and at least \$10 million in suppression costs. Higher temperatures, intense drought, increased forest fuel loads, and the spread of eastern red cedar by 38,000 new acres per year have created an explosive potential for very large wildfires across the state. These megafires occur far more frequently than in the past, spread and grow very rapidly upon ignition, and burn over large areas for weeks. They are difficult to control, overwhelm local suppression capacity, cost enormous amounts of money, and put lives and property of residents, visitors, and emergency response personnel at great risk. I will demonstrate that climatic conditions indicate that the fires of 2012 are not just a blip on the time line but are a real reflection of long-term change in Nebraska's climate and that this type of fire behavior will be the new normal for Nebraska. Dangerous wildfires now threaten lives, property, communities, and infrastructure statewide, including the Pine Ridge, the Niobrara Valley, the Wildcat Hills, the Central Loess Hills, the Loess Canyons, and along the Platte River, Dismal, Snake, Elkhorn, Missouri, and Niobrara Rivers, and in many developing areas in eastern Nebraska. Whole communities, recreation areas and

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camps, housing developments and individual homes across the state are threatened by weather conditions and the increasing fuel supply on the ground. Fires in the canyons at Valentine nearly destroyed the community in 2006 when hot, dry conditions coupled with high winds swept fire to the edge of that community and consumed several residences and a number of outbuildings. Chadron, Nebraska, also lost a number of homes in the 2006 fires in Dawes County, which forced evacuation of Chadron State College and resulted in fire destroying all the ponderosa pines on C Hill, which lies just south of the campus. In 2012, the villages of Whitney, Norden, and Crookston were evacuated, with structural losses in both Norden and Crookston. Long Pine, Nebraska, has been identified as one of the most threatened communities today. Vacation and permanent homes in scenic locations, like Devil's Nest, in the Wildcat Hills, at Morse Bluffs, and along the Platte River are also under siege from cedar encroachment, which is one of the contributing elements to the dangerous situation which is developing. Much of the Pine Ridge forest ecosystem has been lost to repeated catastrophic wildfires and the forested area lost to fire has reduced the forested area there by over two-thirds, which will impact communities on the ridge which have come to depend on the scenic vistas there for disposable income through increasing tourist revenue. Sow Belly Canyon in rural Sioux County was one of Nebraska's most beautiful areas before fire destroyed the trees there a few years ago. Now the Niobrara Valley forests are beginning to experience similar catastrophic losses to wildland fire. I'm sure many of you have canoed down the Niobrara River Valley from Valentine and enjoyed the incredible diversity and beauty of that area. Can you imagine the same trip without the trees, which make the region such a unique and beautiful experience? And can you imagine what the loss of that habitat would do to the Valentine economy? If I begin with the premise that in the simplest approach there is legislation that is desirable, more like a wish list, than legislation that is required, then LB634 must be placed in that latter category. This is legislation which I believe needs to be enacted as soon as possible. The bill provides for five components that will assist in creating quicker and safer responses to these megafires when they occur, as well as providing the volunteer firefighters in the impacted area with increasing training and additional equipment on loan from the federal government, and improved measures to ramp up the thinning of the forest that was to reduce the fuel loads, and then finally a rehabilitative measure to assist in areas that have been destroyed by wildfires. The details of the five components are outlined in the accompanying manual, which I have asked the pages to hand out to you. If you'll bear with me, I will briefly run through the booklet with you and give you a full and more explanation of what is being done and why time is so critical to this project. And I just recently e-mailed a photo out, and handed one to Senator Chambers, which was taken in the fires at Fort Robinson, in that area, by Sonia Wilson, who is a judge of Oglala Juvenile Court judge, and it's a photograph of a power pole which has been burned. So if everyone would pick up their booklet, I'd just like to run through this as quickly as I can and tell you a little bit about what the problem is. You can see on the first page we've got just an example of what was going on last year in all of rural Nebraska. Half a million acres burned in forested areas, very intense, very hot

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conditions which contributed tremendously to the problem. LB634 is must-have legislation. It protects life and property, including emergency responders, controls the megafires. Economic damages to rural Nebraska last year were \$124 million. We're looking at a \$1.7 million appropriation here, so, you know, it's a tremendous leveraging of your investment. It's fiscally responsible and saves the state money. It has several components and we'll run through those as we go along. On the next page, page 3, is just an example of the cost that took place to private landowners and to the state of Nebraska through the national Nebraska Emergency Management: \$7 million in fencing; \$2,800,000 in power pole losses; hay; lost income due to forage lost of \$3,763,000; 60 structures in the Niobrara Valley and 6 private residences; 66-head of livestock, valued at \$66,000; \$77,000 in losses to the community of Long Pine for fire equipment. And then right below that you'll see what we've determined to be volunteer service response time. Two thousand six was the last year of big fires. There were 225,000 man-hours. Forest Service and the volunteer firemen figured their time is worth \$17.50 an hour. That amounted to \$3 million and...\$3,937,000 in donated labor time by the volunteers in 2006; \$2,625,000 in 2011. And then if you look at 2012, you see we've said 85,000 hours. We think that figure is incredibly low because I don't think all the reporting is in at this point. The next page is a graph, and this demonstrates to you what the problem is and why we need to take action. This graph is a 50-year scan of the scale of the fire in the state of Nebraska starting in '64 and going on to 2012. And if you can look at it, you can see that the scale is moving up as we move into hotter, drier, windier conditions. It's time for Nebraska to take some steps to control some of these fires. The next page is an example of what one of the real problems is in Nebraska, and it has to do with the red cedar, which if anybody drives back and forth to Omaha, I'm sure you've seen it growing along the interstate. It grows through all of Nebraska. This particular picture was taken south of Maxwell, Brady and is the hills which are covered with cedars now. Fifty years ago that was all open pasture. This is not atypical, increasing cedar production of 38,000 acres per year. The next page demonstrates what that is. Back in '55, there were 12,500 acres of cedar, mostly planted. Today we've got 350,000 and you can see that we've doubled that in the last seven years. What these cedars do, they'll grow underneath other trees, and when they catch fire, the fire gets extremely hot and will top...crown the pines, and that's what happened on the...in the Pine Ridge last summer and in the Niobrara Valley. Following page is the density of the eastern red cedar. You can see there's a tremendous amount of it down below the Platte River, down by Maxwell, Brady, and North Platte, up in the Niobrara Valley. But if you look at the eastern part of the state, you'll see that red cedar is increasing all the time and I'd urge every one of you, as you're driving home, to look at the small little cedars that are growing in the ditches. In five years, those trees are going to be big. So part of the element that we are using with this bill is to thin these red cedars. The planning encourages the introduction of two single-engine air tankers. Those will be located in the Panhandle, somewhere around Alliance or Chadron, and also at Valentine. [LB634]

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SENATOR COASH: One minute. [LB634]

SENATOR DAVIS: In the following pages is an installation of the fire retardant with which these SEATs would use. You can see fuel reduction on these homes and you can see on the next page that there's a residence that survived because it was thinned. Finally, one of the other elements that is really important is training for staff and then equipment, which we are getting as surplus from the military overseas, and that's an example of that. Just the last couple pages of this booklet, you can see that fire danger is increasing in western South Dakota, and on the final page Colorado now, in their house, is looking at buying their own planes. So I would encourage you pass this bill and I'd sure take any questions. [LB634]

SENATOR COASH: Thank you, Senator Davis. (Visitors introduced.) Members, you've heard the opening to LB634. As the Clerk has stated, there are committee amendments. Senator Carlson, you're recognized to open on the committee amendments. [LB634]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. First of all, I introduce AM298. The committee amendment would change the entity charged with developing an incident management team to respond to wildfires throughout the state from the Nebraska Forest Service to the Nebraska Emergency Management Agency, hereafter referred to as NEMA, because supporters of the bill thought that NEMA would be a more appropriate agency. And after the committee advanced the bill with this charge, we learned two things. First of all, that this change would significantly affect the fiscal note and, secondly, that NEMA is already responsible for an incident management team to perform a similar function for wildfire response. And since NEMA is already responsible for conducting a similar function, it isn't necessary to require the Nebraska Forest Service to do it. So the committee amendment also removes the requirement in this bill that the Nebraska Forest Service perform the task of developing an incident management team. And with that, that takes care of this amendment. Then we have another amendment to the amendment and I'll address that in just a minute. Thank you. [LB634]

SENATOR COASH: Thank you, Senator Carlson. As the Clerk has stated, there is an amendment to the committee amendment. Senator Carlson, you're recognized to open on AM738. (Legislative Journal page 800.) [LB634]

SENATOR CARLSON: Thank you, Mr. President. AM738 is an amendment to the committee amendment, and AM738 would amend the committee amendment by removing the requirement that NEMA develop an incident management team because it's already their responsibility. What would remain then in the committee amendment is, first of all, the emergency clause, which I think is important, and secondly, the removal of the requirement that the Nebraska Forest Service perform the task of developing an

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incident management team. So I would ask for your support of AM738 to the committee amendment and then your support on AM298 and then the underlying bill. The committee amendment now would remove the requirement of the development of an incident management team and it would insert the emergency clause. And I would like to say, before I close on this opening to the amendment, this, members, is not a spending bill; it's a savings bill. In 2012, NEMA spent \$12 million fighting fires. The A bill on this is \$1.7 million. In 2006, NEMA spent \$6 million fighting fires. We don't have the statistics for years 2007 through 2011. I hope that we have those by Select File. But if this bill is passed and it puts these planes in a position they can respond quickly to fire, it will cut back the area that the fire takes so it costs less money to do that. It will take less money out of NEMA. And secondly, it saves a lot of property for citizens of Nebraska. That's an additional cost that Senator Davis went through in his presentation that would not be there. So it's a very important bill and I ask for your support on these amendments and the underlying bill. Thank you. [LB634]

SENATOR COASH: Thank you, Senator Carlson. Members, you've heard the opening to LB634, the committee amendment, and the amendment to the committee amendment. Floor is now open for discussion. Senator Carlson, you're recognized. Senator Carlson waives. Senator Harms, you're recognized. [LB634]

SENATOR HARMS: Thank you, Mr. President, colleagues. I rise in support of the amendments, as well as the bill. And, colleagues, we need to pay a lot of attention to this. I recently had a conversation with a climatologist who indicated, he said, John, if you think western Nebraska was dry last summer, wait till this summer; it's going to be a lot worse. And in the discussion with him, he denoted to me that they are believing that we're in the midst of at least an eight-year drought. He said, now during this drought period of time, you'll have some rain but you're not going to have enough moisture. Where I live right now, we're 10 inches below what we normally are. We are, in western Nebraska, up in the area of the Pine Ridge area and Wildcat Hills, living in a powder keg and we need to pay attention to this, because what's going to happen to us is we will start these fires early. They've already started in Colorado and normally that doesn't come until June or July. We're already starting to see what's going to happen to us. And so we're going to have to begin to look at this, and if we don't fix this, we'll be coming...they'll be coming back in for a pretty large deficit funding next year to fix this. And one of the things that I would really urge us to do is for this great state to join the Great Plains Interstate Fire Compact that's comprised of Colorado and North Dakota, South Dakota, and Wyoming. That's pretty important because it gives us access to a lot more individuals, people who come in and help, and also equipment. When you look at the price tag to this, you think, well, it's pretty high during a tough period of time. A question to you then is, what's the price if we don't do this? What's the price when you start losing homes and you start losing land and start losing lives? Colleagues, this is serious. And if the climatologists are correct, then it's going to be a long eight years for us and we need to get prepared and make sure we have placed all the necessary

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equipment and the planning and appropriate...done the appropriate planning and purchased the necessary equipment so we can battle these kinds of fires. And the interesting things about a fire like this, it creates its own weather. That's an amazing thing that takes place. When you talk to people who fight these, say, you know, it creates its own weather, it creates its own wind and you can get trapped pretty easily. In the center of this and one of the arguments we've been...not arguments, one of the concerns we've had in Appropriations Committee has been we don't have a communications system that functions appropriately. That's a whole other story, but I will tell you from last year we had firemen who were almost trapped because they thought they were back burning and they weren't back burning and almost got caught. And it could have been a tragedy for us. And so the whole communication link not only of the Highway Patrol but with Fire Service is critical for us. And in Appropriations Committee, we're working on that and we hope to be able to resolve that particular issue. So I would urge you to give great thought to this and to approve this. It is critical and it is coming. And unless moisture comes rapidly, we're going to start much earlier than we've ever seen before in this great state. So I'd like to close now and I'd like to yield the rest of my time, Mr. President, to Senator Mello. [LB634]

SENATOR COASH: Senator Mello, 1 minute 20 seconds. [LB634]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. And thank you, Senator Harms. I could not agree more with what Senator Harms had said in regards to the underlying concepts in LB634. One of the reasons that Senator Harms discussed this issue was the reality of... [LB634]

SENATOR COASH: One minute. [LB634]

SENATOR MELLO: Thank you, Mr. President...the ongoing issue of drought in the rural parts of our state, particularly in the Panhandle in the western part of our state, and the need to try to find ways to be preventative in that nature, knowing that the way the state provides funding is through the Governor's emergency fund, usually in deficit appropriation requests, which we have one this year as well for roughly \$5 million. As I've had to say, though, with other pieces of legislation, even pieces I do support, this has a sizeable fiscal note of \$3.4 million over the biennium. I've spoken with Senator Davis multiple times now, with the understanding that a bill like this, which really is a general appropriations bill that for one reason or another was referenced to the Natural Resources Committee instead of the Appropriations Committee, that he's committed to myself and he'll commit to the body that he obviously understands the need that this number may need to come down. The whole \$3.4 million may not fit within the framework outside of the budget, which is roughly between \$16 million and \$19 million. [LB634]

SENATOR COASH: Time, Senator. [LB634]

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SENATOR MELLO: Thank you, Mr. President. [LB634]

SENATOR COASH: Thank you, Senator Mello. Senator Krist, you're recognized. [LB634]

SENATOR KRIST: Thank you, Mr. President, colleagues. I have some experience in this area. While I was in the Air Force flying helicopters, we acted as forward air controllers, calling in those water strikes on a fire. I've also flown on a fixed-wing airplane known as a P-2 Orion, I'm sorry, Neptune, and had some experience in the rapid refueling and also reloading of water at these forward sites. It is incredibly important that you have the right equipment on scene immediately. Imagine, if you will, that rather than calling the fire department in your hometown you call the fire department two towns away. You've basically written off the home and maybe the next home and the home after that. The equipment, the right equipment needs to be in place and the right people need to be overseeing the problem, to execute immediately to get the best results. I would venture to say that if we had two tankers in place on contract during all of our fires, we would have probably reduced the fire devastation by a quarter, maybe a half, maybe three quarters. And it all has to do with how fast you can get the airplane back up and get it on target. I caution my colleagues in terms of thinking that we should have our own equipment. This is a pretty difficult process and it requires a lot of training, and I think the committee and Senator Davis have taken a very sound stand in contracting for those services because those services are out there. I also think that if one of them were in place at the beginning of the process, you could always add to the contract--and I've seen contracts written that way--the Forest Service, and particularly in the state of California. This is a sound judgment that has brought us to LB634 and the committee amendments, and I support both. I would also say the Appropriations Committee...and I understand money is tight, but I don't see that this money couldn't be rolled over for the specific purpose of fighting fires. And hopefully God and the weather are good to us in the next few years and that money stays there until it needs to be replenished. It may be one of those things where we need to just tighten the belt, take a deep breath, and put this money away and dedicate it, because I don't know how many more trees or homes or lives we should risk without having some preventative measure out there. Thank you, Mr. President. [LB634]

SENATOR COASH: Thank you, Senator Krist. Members, as the agenda indicates, we will go to the 11:50 a.m. Select File agenda. Mr. Clerk, the first bill. [LB634]

CLERK: Mr. President, LB94 on Select File. Senator Murante, I have E&R amendments to the bill, Senator. (ER23, Legislative Journal page 555.) [LB94]

SENATOR COASH: Senator Murante for a motion. [LB94]

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SENATOR MURANTE: Mr. President, I move to adopt the E&R amendments. [LB94]

SENATOR COASH: Members, you've heard the motion to adopt the E&R amendments to LB94. All those in favor say aye. Those opposed say nay. The E&R amendments are adopted. [LB94]

CLERK: I have nothing further, Senator. [LB94]

SENATOR COASH: Senator Murante for a motion. [LB94]

SENATOR MURANTE: Mr. President, I move to advance LB94 to E&R for engrossing. [LB94]

SENATOR COASH: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. LB94 does advance. Next bill, Mr. Clerk. [LB94]

CLERK: LB340, Senator, I have no amendments to the bill. [LB340]

SENATOR COASH: Senator Murante for a motion. [LB340]

SENATOR MURANTE: Mr. President, I move to advance LB340 to E&R for engrossing. [LB340]

SENATOR COASH: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. LB340 does advance. Next bill, Mr. Clerk. [LB340]

CLERK: LB499, I have no amendments, Senator. [LB499]

SENATOR COASH: Senator Murante for a motion. [LB499]

SENATOR MURANTE: Mr. President, I move to advance LB499 to E&R for engrossing. [LB499]

SENATOR COASH: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. LB499 does advance. The next bill, Mr. Clerk. [LB499]

CLERK: LB262, once again, Senator, I have no amendments to the bill. [LB262]

SENATOR COASH: Senator Murante for a motion. [LB262]

SENATOR MURANTE: Mr. President, I move to advance LB262 to E&R for engrossing. [LB262]

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SENATOR COASH: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. LB262 does advance. Next bill, Mr. Clerk. [LB262]

CLERK: LB133, no amendments to the bill, Senator. [LB133]

SENATOR COASH: Senator Murante for a motion. [LB133]

SENATOR MURANTE: Mr. President, I move to advance LB133 to E&R for engrossing. [LB133]

CLERK: I'm sorry, Senator, LB133, no amendments. [LB133]

SENATOR COASH: Senator Murante for a motion. [LB133]

SENATOR MURANTE: Mr. President, I move to advance LB133 to E&R for engrossing. [LB133]

SENATOR COASH: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. LB133 does advance. Next bill, Mr. Clerk. [LB133]

CLERK: LB316, Senator, I have no amendments to the bill. [LB316]

SENATOR COASH: Senator Murante for a motion. [LB316]

SENATOR MURANTE: Mr. President, I move to advance LB316 to E&R for engrossing. [LB316]

SENATOR COASH: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. LB316 does advance. Next bill, Mr. Clerk. [LB316]

CLERK: LB6, Senator, I do have Enrollment and Review amendments pending. (ER24, Legislative Journal page 651.) [LB6]

SENATOR COASH: Senator Murante for a motion. [LB6]

SENATOR MURANTE: Mr. President, I move to adopt the E&R amendments. [LB6]

SENATOR COASH: Members, you've heard the motion to adopt the E&R amendments to LB6. All those in favor say aye. Those opposed say nay. The E&R amendments are adopted. [LB6]

CLERK: I have nothing further on that bill, Senator. [LB6]

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SENATOR COASH: Senator Murante for a motion. [LB6]

SENATOR MURANTE: Mr. President, I move to advance LB6 to E&R for engrossing. [LB6]

SENATOR COASH: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. LB6 is advanced. (Visitors introduced.) Next bill, Mr. Clerk. [LB6]

CLERK: Mr. President, LB170. I do have Enrollment and Review amendments. (ER26, Legislative Journal page 656.) [LB170]

SENATOR COASH: Senator Murante for a motion. [LB170]

SENATOR MURANTE: Mr. President, I move to adopt the E&R amendments. [LB170]

SENATOR COASH: Members, you've heard the motion to adopt the E&R amendments to LB170. All those in favor say aye. Those opposed say nay. The E&R amendments are adopted. [LB170]

CLERK: I have nothing further on the bill, Senator. [LB170]

SENATOR COASH: Senator Murante for a motion. [LB170]

SENATOR MURANTE: Mr. President, I move to advance LB170 to E&R for engrossing. [LB170]

SENATOR COASH: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. LB170 does advance. Next bill, Mr. Clerk. [LB170]

CLERK: LB105, Senator, I have Enrollment and Review amendments. (ER28, Legislative Journal page 718.) [LB105]

SENATOR COASH: Senator Murante for a motion. [LB105]

SENATOR MURANTE: Mr. President, I move to adopt the E&R amendments. [LB105]

SENATOR COASH: Members, you've heard the motion to adopt the E&R amendments to LB105. All those in favor say aye. Those opposed say nay. The E&R amendments are adopted. [LB105]

CLERK: I have nothing further on the bill, Senator. [LB105]

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SENATOR COASH: Senator Murante for a motion. [LB105]

SENATOR MURANTE: Mr. President, I move to advance LB105 to E&R for engrossing. [LB105]

SENATOR COASH: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. LB105 does advance. Speaker Adams for an announcement. [LB105]

SPEAKER ADAMS: Thank you, Mr. President. Members, I want to just take one second before we adjourn and remind you again what our schedule is for next week. Now we'll have half-day debate on Monday and Tuesday. And Monday, the afternoons are set aside for Exec Sessions for two-day committees and Appropriations, and then on Tuesday the three-day committees will have that time for Exec Session. Wednesday morning we begin daylong debate and whatever it takes to get all the work done that we have in front of us. Thank you, Mr. President.

SENATOR COASH: Thank you, Speaker Adams. (Visitors introduced.) Items, Mr. Clerk?

CLERK: Mr. President, your Committee on Transportation and Telecommunications reports LB393 to General File with committee amendments attached. Senator Gloor offers LR117; that will be laid over at this time. Amendments by Senators McCoy and Kintner to LB528 to be printed. Name add: Senator Bolz would like to add her name to LB507. (Legislative Journal pages 810-813.) [LB393 LR117 LB528 LB507]

And a priority motion: Senator Lathrop would move to adjourn the body until Monday morning, March 25, at 10:00 a.m.

SENATOR COASH: Members, you've heard the motion to adjourn. All those in favor say aye. Those opposed say nay. We are adjourned.