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Floor Debate
March 07, 2017

[LB10 LB34 LB46A LB92 LB122 LB161 LB207 LB287 LB289 LB300 LB331 LB407 LB430
LB444 LB447 LB487 LB506 LR6 LR58]

PRESIDENT FOLEY PRESIDING

PRESIDENT FOLEY: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the forty-second day of the One Hundred Fifth Legislature. I will be our chaplain for the day. Please rise. (Prayer offered.) I call to order the forty-second day of the One Hundred Fifth Legislature, First Session. Senators, please record your presence. Roll call. Mr. Clerk, please record.

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

PRESIDENT FOLEY: Thank you, Mr. Clerk. Are there any corrections for the Journal?

CLERK: I have no corrections.

PRESIDENT FOLEY: Thank you, sir. Are there any messages, reports, or announcements?

CLERK: Priority bill designation by Senator Baker, LB122. That's all that I have, Mr. President. (Legislative Journal page 633.) [LB122]

PRESIDENT FOLEY: Thank you, Mr. Clerk. Members, we'll now proceed to the first item on the agenda, legislative confirmation report. Mr. Clerk.

CLERK: Mr. President, the Transportation Committee reports on two appointments to the Motor Vehicle Industry Licensing Board. (Legislative Journal page 590.)

PRESIDENT FOLEY: Thank you, Mr. Clerk. Senator Friesen, as Chair of the committee, you're welcome to open on the Transportation Committee's confirmation report.

SENATOR FRIESEN: Thank you, Mr. President. This morning I ask for your confirmation on two appointments that will be made. One is William Ashburn and Dennis Schworer. Bill Ashburn resides in Lincoln and he is a reappointment to the board filling a public member position on the board. Mr. Ashburn is a retired former telecommunications executive. Dennis Schworer resides in Bellevue and is a new appointment to the board filling a new car dealer position on the board. Mr. Schworer operates three new car dealer franchises in Bellevue and

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Lincoln. Both Mr. Ashburn and Mr. Schworer appeared before the committee and there was no opposition to the appointment of either appointee and the Transportation and Telecommunications Committee unanimously supports approval of confirmation report. Mr. President, I would ask for the approval of the confirmation report.

PRESIDENT FOLEY: Thank you, Senator Friesen. Debate is now open on the confirmation report. Seeing no members wishing to speak, Senator Friesen, you're recognized to close. He waives closing. The question for the body is the adoption of the confirmation report of the Transportation and Telecommunications Committee. All those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please, Mr. Clerk.

CLERK: (Record vote, Legislative Journal pages 633-634.) 37 ayes, 0 nays, Mr. President, on the adoption of the confirmation report.

PRESIDENT FOLEY: The confirmation report is adopted. Moving on to the agenda, General File, 2017, Senator priority bills. Mr. Clerk.

CLERK: LB447 is a bill by Senator Chambers. (Read title.) Introduced on January 17 of this year, referred to the Judiciary Committee. The bill was advanced to General File. I have no amendments to the bill at this time, Mr. President. [LB447]

PRESIDENT FOLEY: Thank you, Mr. Clerk. Senator Chambers, you're recognized to open on LB447. [LB447]

SENATOR CHAMBERS: Thank you. Mr. President and members of the Legislature, this is a very serious bill. It deals with a very serious significant subject. It touches on the operation and management of the prisons. It touches on judicial discretion and it also touches on the system of sentencing as a system. Now, there will be opposition to the bill, I'm sure. The Attorney General and the Douglas County Attorney, Donald Kleine, a week ago Sunday put a piece in the World-Herald attacking the bill. Neither of them appeared to testify against the bill when we had the hearing. When I offered this bill two years ago, Mr. Kleine did appear to speak against the bill, and we had a relatively cordial exchange as we always do, but there were admissions that he had to make which he may not have wanted to make this time. So in their statement, they had mentioned an editorial the World-Herald had written back in 2015 and how it was a great editorial. So in the recently past Sunday, last Sunday, the World-Herald ran a similar editorial against the bill, but they spent more time attacking me than they did the bill using the tactic that some people have used when they ran for office. All of that, it may be rough and tough, but in a political setting, a political warfare, those kind of things can be expected. This bill would do away with mandatory minimums in two categories of felonies which I will touch on, but before I

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do that, I want to point out that this kind of legislation has been favored publicly by the Koch brothers, by what are called conservative groups all over the country. There have been bipartisan efforts in Congress to do away with anything smacking of a mandatory minimum in federal laws to restore parole because they are recognizing now that when all of those so-called tough on crime bills were put into law, all they did was increase the number of people locked up, increase the expenses to such an extent that even conservatives began to attack these kinds of laws from the standpoint of cost alone. What I want to do is read from a transcript February 11, 2015, and this is the testimony that you'll find on page 53 of that transcript. The committee hearing was before the Judiciary Committee, February 11th, I will give the date again, 2015. Senator Seiler had called on the next person to speak for this bill. Chairman Seiler, members of the Judiciary Committee, my name is Dick Clark. I'm director of research for the Platte Institute. Thank you for the opportunity to testify in support of LB172 which would eliminate certain mandatory minimum sentences in Nebraska. Nebraska has a prison problem. And though Nebraska has historically had a lower incarceration rate than many other states, its correction facilities currently house far more prisoners than they were designed to hold and the number of incarcerated offenders in the state continues to climb. Crowding in prisons can mean that program areas may not be available for services that would otherwise help prepare inmates to transition back into their communities upon release and makes these correctional programs less effective at preventing future crimes. But the evidence suggests that overcrowded prisons are not just less effective at rehabilitating inmates, they're also significantly more dangerous for the inmates and for corrections officers too. A federal Government Accountability Office study in 2012 reported that overcrowded facilities led to more violence between inmates, as well as more violence against corrections staff. While some have proposed building a new prison to reduce overcrowding, the price tag is expensive. One bill waiting to be heard in Appropriations would allocate more than \$261 million to Corrections for this purpose. Nebraska currently spends, for comparison, about \$185 million a year in state General Funds to operate DCS. That's the Department of Correctional Services. Reducing the use of mandatory minimum sentences means trusting our judges to use their discretion. It also means saving taxpayers the high cost of incarcerating offenders who might otherwise more rapidly move through the corrections system into programs that actually work to prevent future offenses. Long terms of incarceration destroy families, disrupt living arrangements, and impair employment opportunities. Those are all critical factors in reentry, and most of those who are locked up will eventually leave prison and have to reintegrate with the rest of society. Not all crimes charged under a particular statute involve offenders who are equally blameworthy. Allowing judges a greater measure of discretion in sentencing will better ensure that justice is done, that the public is protected from dangerous criminals, and that people are not being imprisoned unnecessarily. Eliminating these mandatory minimums is one of a number of reforms that you and your colleagues can enact this session to make Nebraska's criminal justice system serve Nebraska better. We all want dangerous criminals off the street. We all want offenders to have every incentive to become law-abiding, productive members of our communities. Our latest report from the Platte Institute, which I believe you've

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all received, contains a number of recommendations. This bill is a part of the reforms that are needed and hope that we can continue to be part of the conversation. Thank you for this opportunity to testify. I'd be happy to answer any questions. Chambers: Mr. Clark, you were moving so rapidly I wanted to exhale and now I can. Thank you. But you had stated that you work with the Platte Institute. Correct? Clark: Yes, sir. Chambers: Has anybody ever accused your organization of being soft on crime? Clark: I don't believe so. Chambers: It hasn't been. So what your organization did was to study data and, to the extent that you can in a study, look at what is probably in the best interest of society with reference to this issue that you were discussing? Clark: Yes, sir. Chambers: And it has nothing to do with saying, I don't think people should be punished for their wrongdoing. Clark: No, sir. I think that everybody needs to be protected, including taxpayers, including the folks that might get hurt when the wrong people are released. And the way that we can keep the public more safe and protect the taxpayers is to use discretion where it's warranted, allow judges to use discretion in this area. Chambers: And your organization actually released a report and put its name behind what it was stating. Is that true? Clark: Yes, sir. Chambers: Thank you. Mr. President, members of the Legislature, I know that the Attorney General's Office and others are working assiduously to keep this bill from even being discussed. Maybe they will succeed, maybe they won't, but this is such an important matter, and it bears on what just happened not too long ago at Tecumseh. Those of us who have studied these issues, some on the LR424 Committee... [LB447]

PRESIDENT FOLEY: One minute. [LB447]

SENATOR CHAMBERS: ...others have done so on bills that come before the Judiciary Committee and we have to take the long view, a panoramic view of the system of Corrections and the impact on society of how Corrections are run, not just the expense, not just rehabilitation, not just sentencing, but all of it because the pieces interconnect and have interplay. Thank you, Mr. President. [LB447]

PRESIDENT FOLEY: Thank you, Senator Chambers. Members, you have heard the opening on LB447. Senator Ebke, you're recognized. [LB447]

SENATOR EBKE: Thank you, Mr. President. I want to ask my conservative friends who have asked me about this bill to pay attention to the conversation today. As Senator Chambers alluded to, there are some who have sort of a knee-jerk reaction to this concept. And I think it's important that we give it its due and let the chips fall where they may. But I know how people in this body sometimes are. It's a Chambers' bill, and that can sometimes be a cause for tuning out. And I will tell you that as the Judiciary Committee Chair, this is not a situation, this is not a case that we want to tune out. So Senator Chambers, if you will indulge me a bit, I would like to ask you a couple of questions. [LB447]

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PRESIDENT FOLEY: Senator Chambers, would you yield, please? [LB447]

SENATOR CHAMBERS: Yes. [LB447]

SENATOR EBKE: Thank you. I noticed that on our committee statement that there were two groups that came in to testify in opposition, the Nebraska Attorney General's Office and the Nebraska County Attorneys Association. Why would those two groups be the only two groups that would come in to testify in opposition, supposing? [LB447]

SENATOR CHAMBERS: Both of them represent the prosecutorial arm of the executive branch. By having mandatory minimums, they can use it as a chip in trying to procure guilty pleas, plea bargaining. And by holding this over somebody's head, they are often able to obtain a plea bargain and they do not look beyond that aspect of it. [LB447]

SENATOR EBKE: So in other words, if someone were charged with a ID felony, as it currently stands, I believe it's a three to 50 year...three-year mandatory minimum, if they threaten the mandatory minimum for a first-time offender, what might they get a plea to? How do they avoid the prosecution? [LB447]

SENATOR CHAMBERS: Well, there are a number of offenses which don't carry a mandatory minimum and they are so numerous that I don't even know what all of them are, but they would put before the person the mandatory minimum, which means you serve three years, day for day, no good time, no parole, no possibility. On the other hand, if you plead to this other offense, maybe the judge will sentence you to one to three, no mandatory, which means you can get out between 6 months and 18 months. [LB447]

SENATOR EBKE: Okay. So this is a way in many ways for prosecutors to avoid the time and effort of actually prosecuting and proving their case, but they have somebody sign off. [LB447]

SENATOR CHAMBERS: Oh, excuse me. And they also bypass the jury system, they bypass the trial, and they keep their conviction rate well over 90 percent. [LB447]

SENATOR EBKE: Okay. How...and I think you alluded to this in your opening, but how does this bill fit in to the larger overall framework of our LB605 efforts and justice reinvestment efforts, which I would argue as Judiciary Committee Chair that we need to be all on the same page on as a body, if we're actually going to make it work? [LB447]

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SENATOR CHAMBERS: In some of those working groups, judges were present and the idea of allowing judicial discretion is very high on the list. Judges are familiar with the crimes that are committed. Judges know how to work around the good time laws, all of the criticisms that generally are made. For example, Mr. Polikov, who is the...not the Attorney General... [LB447]

SENATOR EBKE: County attorney. [LB447]

SENATOR CHAMBERS: He is the County Attorney... [LB447]

PRESIDENT FOLEY: One minute. [LB447]

SENATOR CHAMBERS: ...for Sarpy County. He said that judges are familiar with the good time laws. When they sentence, they take that into consideration. If they want a certain sentence, they look at what the sentence would be if the good time law were to apply, they double that number and they keep the person in jail. And these judges know how to use their discretion, so that would play into our overall attempt to improve the system. [LB447]

SENATOR EBKE: So if you had a three...if the judge had a range of 3 to 50 years, even with the mandatory as it currently is, if you get rid of the mandatory, it's still a 3 to 50 years. Is that correct? [LB447]

SENATOR CHAMBERS: That's correct. [LB447]

SENATOR EBKE: And if they really want them to serve three years and not be out before that, they could sentence them to six years. Correct? [LB447]

SENATOR CHAMBERS: If there's no mandatory minimum, right. They sentence them to six years, that would be cut in half before they could even be considered for parole. [LB447]

SENATOR EBKE: Okay. And still there's no guarantee of parole at three years. [LB447]

SENATOR CHAMBERS: That's correct. [LB447]

SENATOR EBKE: Okay. And I think... [LB447]

PRESIDENT FOLEY: Time, Senators. [LB447]

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SENATOR EBKE: Thank you, Mr. President. [LB447]

PRESIDENT FOLEY: Thank you, Senators Ebke and Chambers. Senator Pansing Brooks, you're recognized. [LB447]

SENATOR PANSING BROOKS: Thank you, Mr. President. I rise in support of LB447 to get rid of the mandatory minimums. It's clearly something that is not a conservative versus liberal issue. Even the Koch brothers have taken a stand against the mandatory minimums that have filled our prisons across the nation. Again, it relates to the whole issue that we are dealing with in Corrections, which is the overcrowding issue. And when we have mandatory minimums, that's not to say that there aren't people that are going to be put away for a long time. But we trust the judges to be able to determine, most of whom are prosecutors, we give judges the discretion to determine what is the appropriate sentence in a case. In these cases, if the mandatory minimum is 10 years to 50, then it's absolutely 10 years, and there cannot be any good time. I would wager that there are cases where judges...and I have heard from many judges saying we need discretion. We need the ability to determine in each case what is the appropriate sentence. And if a judge thinks that 10 years is the appropriate sentence, they'll increase the lower penalty to 20 so that 10 years...so that they do have a 10-year sentence. And clearly, judges are aware of our good time rules in our state. They are clearly aware when they set a minimum sentence that according to good time and according to cooperation of the inmate, that those inmates will be released at half the sentence if everything goes according to plan. Last year Senator Chambers had a mandatory minimum bill, came out of Judiciary, and was on the floor. It went down because in addition to the mandatory minimum was a habitual criminal penalty, the discussion of that. Senator Chambers has taken that out, whatever you think about that. This is a streamlined mandatory minimum-only bill. It's about making sure that our prisons aren't filled with people who don't necessarily need to be there, and I trust judges to make that decision. I want to tell you a couple of things about mandatory minimums. If a person is convicted in a mandatory minimum sentence, the defendant must serve that actual sentence, so there's no good time allowed. The sentencing judge has no discretion to go below or less than the mandatory minimum, even though the judge in various cases wants to, and literally I have had judges contacting me saying there are instances where they are not heinous crimes but because of the charge, they have to file the mandatory minimum. That's shackling our judges. That's deciding that our judges and our judicial system is not capable of making the determination of what is the most appropriate sentence for people about to be sentenced. This only applies--and I'm not sure most people understand that--it only applies to the ID and IC felonies. And clearly, those crimes are generally heinous crimes, but it doesn't apply the whole way along. It's, it's...I don't think people have an understanding fully of what crimes this actually covers. [LB447]

PRESIDENT FOLEY: One minute. [LB447]

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SENATOR PANSING BROOKS: It will save money. That's why the Koch brothers have been opposed against the mandatory minimums nationally. According to the fiscal note on the Department of Correctional Services estimates that inmates could reach their parole eligibility dates and tentative release dates approximately 2.3 years sooner than under current law. This could result in a savings of \$182,685 to \$259,605 in fiscal year '19 alone. I hate to bring it down to dollars and cents, but clearly we can save money, we can help solve some of the overcrowding issues. This is a commonsense bill. We need to get rid of the words "mandatory." Let the judges determine if somebody needs a high sentence where good time applies. And clearly... [LB447]

PRESIDENT FOLEY: Time, Senator. [LB447]

SENATOR PANSING BROOKS: ...judges understand good time. Thank you, Mr. President. [LB447]

PRESIDENT FOLEY: Thank you, Senator Pansing Brooks. Senator Chambers, you're recognized. I'm sorry, excuse me, Senator. Mr. Clerk for an announcement. [LB447]

ASSISTANT CLERK: Mr. President, an announcement. The Health Committee will hold an Executive Session at 9:30 in room 2022. [LB447]

PRESIDENT FOLEY: Thank you, Mr. Clerk. Senator Chambers, you're recognized. [LB447]

SENATOR CHAMBERS: Thank you. Mr. President and members of the Legislature, these mandatory minimums are a relatively recent vintage. Before they were put in place, every crime that is mentioned as a IC or ID felony was there without a mandatory minimum. Judges use their discretion. Nobody said that the judges were abusing their discretion by letting people out early who should have been locked up. There was an exchange between me and Don Kleine when he came the last time this bill was up. And this is the significant portion. Chambers: I want to take away all mandatory minimums on all of the offenses and put the sentencing in the hands of judges. Those crimes would have minimum sentences, we would have a minimum, no mandatory. And then if the prosecutors felt that a sentence was not appropriate right now, right now under the law, you as a prosecutor can go to court and challenge if you think that a sentence handed down was too lenient. You can do that, can't you? Kleine: If we feel it's excessively lenient. Chambers: That's what I'm... Kleine: Not just a lenient sentence but an excessively lenient sentence. Chambers: Right. So there are alternatives right now in the case of excessive leniency. But you said that judges can factor in the particulars with reference to the person, the circumstances and so forth, and then tailor a sentence to fit that. Kleine: Yes. There are tools right now in the hands of the prosecutors. The problem with these mandatory minimums is that a person cannot have any good time accrue while one of these sentences is in effect. You serve it

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out day for day. Under the good time law, a person is given a sentence, say, of ten years. They start with good time in their account, so to speak, of five years. Five years worth of good time. If they behave, they don't lose any of that good time, and that's how that ten-year sentence is cut in half. It is like telling a person I'm putting this money in the bank for you, you can save it or you can squander it. It was determined that the good times should be given at the outset instead of having people earn it as they go along. When that was the methodology, there was a discriminatory, unfair granting of good time. Once the good time was in place, the United States Supreme Court said, after this all had happened, that good time cannot arbitrarily be taken away, there has to be due process made available. There still are abuses in terms of unfairly taking good time, but at least it cannot be totally on whim. So, if the person has that incentive and wants to get out of jail, out of prison, then infractions are not committed. Good time is a management tool for the prison in the same way that plea bargains are considered a management tool for prosecutors and their caseloads because they could not possibly take to trial every crime committed that a person is charged with. They have to find a way to avoid going to trial... [LB447]

PRESIDENT FOLEY: One minute. [LB447]

SENATOR CHAMBERS: ...and certainly avoiding jury trials. So plea bargaining is allowed, but judges do exercise some degree of oversight to make sure that unfair advantage is not taken of a defendant or an accused. So without the mandatory minimums, the system functioned all of those years. Senator Ashford and Senator Lautenbaugh, when I was not here due to term limits, decided that they should join the get tough on crime brigade. They didn't want to try to create new crimes because there was an overabundance already, so they said what we will do is put mandatory minimums on categories of offenses that will cover a lot of people and we can say that we're tough on crime. All it did was aggravate and exacerbate the problems of managing the prisons, calculating a person's release date and expense without achieving anything which would be considered scientific penological actions. Thank you, Mr. President. [LB447]

PRESIDENT FOLEY: Thank you, Senator Chambers. Senator Krist, you're recognized. [LB447]

SENATOR KRIST: Thank you, Mr. President. Good morning, colleagues. Good morning, Nebraska. I would emphasize once again the comment made by Senator Pansing Brooks. If you look at the fiscal note, there appears to be a quarter of a million dollar potential savings in 2019, '18-19 all by itself. I would remind you of a letter that I handed out as an open letter to the JRICC the other day and trying to explain to both that group, essential stakeholders across the state of Nebraska that are looking at corrections reform and justice reinvestment, as well as to you to emphasize the fact that we need to be diligent and have some fidelity to the system we've set up, if we're going to see any changes. I mentioned in there that some of the changes that were

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proposed that were settled in LB605 became unsettled when we had a new administration and new lobbying efforts by the county attorneys as well as the Attorney General. This was one of those things. This mandatory minimum conversation came up in CSG phase one, and they estimated that by eliminating the mandatory minimums for certain categories in certain ways that we would again see a reduction in the corrections population. This was one of those that was thrown out of the discussion. And if you look at just what the Department of Corrections has said we could potentially save, you can see where we are. So I am looking at it from two perspectives, not just the monetary perspective, but also from the corrections reinvestment perspective. Now I am going to tell you if you sit down and talk to Scott Frakes or anybody else who reportedly has the experience to run a prison system, a warden or a director, they're going to tell you that one of the things that is deeply embedded in the system is the ability for them to instill or to have instilled order, order being lack of chaos or lack of riotous activity. If you had a mandatory minimum in some of these cases and you knew you were going to be there for ten years minimum, what does that do to your behavior or your projected behavior within the walls of the system? The less mandatory minimums we can have, those participants or those, I'm sorry, those inmates, the less mandatory minimums we have and the more ability to rehabilitate and meet parole requirements as early as possible, the better potential behavior that warden or that director is going to be able to muster from that group; hence, less chaos, more orderly conduct, less riotous conduct. I would also mention that in the actual vote in the committee that all those who were here before who were involved in the conversation and participated in the conversation, 7-1 was the vote, were clearly still in line with the messages that have been sent by those who testified in the past few years, and those comments that I have just made in relationship to the CSG process. And I am not singling out Senator Halloran because he is capable of voting any way he wants to vote. But for those of us who have heard this and understand the process and understand, again, what's involved, it was a 7 vote unanimous...I'm sorry, 7-1 vote for those of us who have been involved with it for several years. [LB447]

PRESIDENT FOLEY: One minute. [LB447]

SENATOR KRIST: Again, no condescending comment for Senator Halloran, but I think that in order to vote on some of these things, you have to have the background. I believe that Senator Chambers in bringing it back and excluding the very contentious parts of the bill that we heard last year, make it more palatable. For many--I, for one--find it to be essential and it fits right in with our justice reinvestment effort in terms of what we're doing today. Thank you, Mr. President. [LB447]

PRESIDENT FOLEY: Thank you, Senator Krist. Senator Ebke, you're recognized. [LB447]

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SENATOR EBKE: Thank you, Mr. President. I wonder if Senator Chambers would yield. [LB447]

PRESIDENT FOLEY: Senator Chambers, would you yield, please? [LB447]

SENATOR CHAMBERS: Happily. [LB447]

SENATOR EBKE: Thank you, Senator Chambers. Two years ago when I became a part of the Judiciary Committee, there were a lot of terms being thrown around that I didn't really understand and it took me a while to really be able to dig in and understand. Are you familiar with the term jamming out? [LB447]

SENATOR CHAMBERS: Yes. [LB447]

SENATOR EBKE: Could you tell us just a little bit about what that means and maybe perhaps even the most famous case of it in Nebraska? [LB447]

SENATOR CHAMBERS: Without going through a lot of details that could lose you along the way, some people...I knew one person who did not want to leave by way of parole. He wanted to stay in prison until the mandatory release date because once he reached that mandatory release date, that was called jamming out. You're cut free, there's no parole, there is nobody you have to report to. There is no supervision. You now are on your own. And they would rather serve that whole sentence and go to where they're completely free rather than get out on parole. [LB447]

SENATOR EBKE: Thank you, Senator Chambers. And Senator Krist, before you leave, anyhow...so the whole jamming out piece is something that could happen when you have a mandatory minimum, correct? [LB447]

SENATOR CHAMBERS: Yes. [LB447]

SENATOR EBKE: And it would be easy to have it happen. [LB447]

SENATOR CHAMBERS: Here's the way it could happen with or without. A judge could give a flat 20-year sentence. Now, if you half, you cut the lower half, the lower portion of it in half, you cut the top portion of it in half. If you cut half off the 20 at the bottom, you get 10 years. If you cut half off the top, you get 10 years. That becomes a flat sentence of 10 years, no matter what.

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That's why they didn't like the idea of a flat sentence, but they would have a minimum and a maximum, and I might be leaving out steps to keep from making it confusing. [LB447]

SENATOR EBKE: Okay. Thank you, Senator Chambers. Let me move to Senator Krist if he would yield. [LB447]

PRESIDENT FOLEY: Senator Krist, will you yield, please? [LB447]

SENATOR KRIST: Absolutely. [LB447]

SENATOR EBKE: Senator Krist, you have been around the justice reinvestment stuff for quite a while, maybe since the beginning. Can you tell us a little bit about where post-release supervision falls into the broad justice reinvestment framework? [LB447]

SENATOR KRIST: It's essential. It is one of the hallmarks of trying to reduce the recidivism on the backside, and post-release supervision also includes rehabilitation in certain areas. Remember that in our system right now, we don't have a...potentially don't have the right services for rehabilitation, behavioral, mental health, substance abuse. In most cases...in some cases, it's that post-release supervision that ensures that that reinforcement of those services are available and is a critical part in reducing recidivism. [LB447]

SENATOR EBKE: Tell me, if you can't...can we force inmates to participate in programming while they're in prison? [LB447]

SENATOR KRIST: We can make it available to those people, but they're not available, remember, in every institution, every service, and we would have to move them around. We can offer it to them, but we cannot force them to participate. [LB447]

SENATOR EBKE: And is that...is some of that programming necessary or beneficial when it comes time for parole review? [LB447]

SENATOR KRIST: Absolutely. The parole board looks at all of those things, and in fact, in years past has made it mandatory that if you want to be paroled early, which is, again, that lack of chaos structure, that motivated structure to get out, if you want to get paroled early, you need to... [LB447]

PRESIDENT FOLEY: One minute. [LB447]

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SENATOR KRIST: ...comply with and get those particular services. [LB447]

SENATOR EBKE: And so if we assume that a person doesn't necessarily want to be in prison but they have a mandatory minimum of three years and they're going to be there for three, and they've been given a three-year sentence, is there any motivation psychologically speaking maybe...is there any motivation for them to participate in in-house programming? [LB447]

SENATOR KRIST: I'm not a psychologist or a psychiatrist, but personally, there would be great motivation for me to do what I needed to do to get out of that place as soon as possible. [LB447]

SENATOR EBKE: But if you can't get out of the place, there is no point in going... [LB447]

SENATOR KRIST: There's no point. [LB447]

SENATOR EBKE: ...there may be no point, and if you aren't eligible for parole, and you won't have post-release supervision and won't have programming afterwards either if you jam out. [LB447]

SENATOR KRIST: That's right, and jamming out then becomes my option to never have to deal with the system again and go out there and do bad things. [LB447]

SENATOR EBKE: And so from a public safety perspective, mandatory minimums could be argued to be... [LB447]

PRESIDENT FOLEY: Time, Senators. [LB447]

SENATOR EBKE: ...a harmful thing. [LB447]

SENATOR KRIST: Yes. [LB447]

PRESIDENT FOLEY: Thank you, Senators Ebke, Chambers and Krist. Senator Wishart, you're recognized. [LB447]

SENATOR WISHART: Thank you, Mr. President. I have spent quite a bit of time this past week looking into this legislation because it's really important that...I mean, this is a big piece of legislation and so it's important that we have the necessary time to really learn what we're voting on. When I was looking into this, I pulled the statutes that show all of the crimes that this

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specific bill would be dealing with. But what I found is that we have other crimes, pretty serious crimes, IB felonies, second-degree murder, for example, which is if you kill somebody with intent but without premeditation, that's 20 years to life. There's no mandatory minimum for that. So one of the concerns that I have is that it seems in looking through this that it's very patchwork in term of our criminal penalties. And so that's something just to keep in mind when we're looking at this legislation. I do have a question for Senator Chambers if he would yield. [LB447]

PRESIDENT FOLEY: Senator Chambers, will you yield, please? [LB447]

SENATOR CHAMBERS: Yes, I will. [LB447]

SENATOR WISHART: So when I've been looking through the crimes that this specific LB447 would be dealing with, I notice that there are a lot of drug offenses that currently fall within this mandatory minimum category. Is that correct? [LB447]

SENATOR CHAMBERS: Yes, and that came about when everybody was getting tough on drugs, the war on drugs was taking effect. They even said that they were going to make it an aggravated criminal offense, drug selling, if it's within a school zone. But the purpose of that and it was argued, is to make sure that nobody tries to sell drugs to a school child. Nobody who's been convicted under that had ever been convicted of trying to sell drugs to a child. If you sell these drugs within a certain distance of a school, that becomes selling drugs in a school zone, and it can bump it up into one of these felonies where there now is a mandatory minimum. And since a city like Lincoln is almost totally a school zone with the universities, with the schools, then you could be in your house--I'm not advocating selling drugs anywhere--it could be in your house, have nothing to do with school children, and it would be aggravated to the level of a felony. So there is a patchwork, and it's based on what the going fad is of the time of the crime that is to be fought. [LB447]

SENATOR WISHART: Thank you, Senator Chambers. So in looking at, you know, all of these different crimes, I do notice a lot are drug offenses. And it seems that looking at the history, like Senator Chambers and other senators have said, that we've kind of over the years added different categories of crimes, added the mandatory minimum sentencing on them. So my thought process is if we've added those over the years, maybe we need to sort of dismantle them over the years. So, Senator Chambers, would you yield to another question? [LB447]

SENATOR CHAMBERS: Yes. [LB447]

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SENATOR WISHART: Would you at all consider an amendment where for this year we deal with removing mandatory minimums for drug offenses? [LB447]

SENATOR CHAMBERS: Ever since I've been in this Legislature, I've had an uphill struggle on any bill that I bring as somebody mentioned. So I've had to do things incrementally whereas others can do it... [LB447]

PRESIDENT FOLEY: One minute. [LB447]

SENATOR CHAMBERS: ...in one fell swoop. I don't know that that would be feasible or practical, but you get what you can from a tightwad. And if that's all I can get, it will be all I can get. But that, again, would be that piecemeal approach. These crimes should just not be subject to a mandatory minimum, as should none of the others, because as you pointed out, some homicides have no mandatory minimum and certainly they're more serious than somebody selling drugs in a school zone. [LB447]

SENATOR WISHART: Thank you, Senator Chambers. Thank you. [LB447]

PRESIDENT FOLEY: Thank you, Senators Wishart and Chambers. Senator Chambers, you're next in the queue and this is your third opportunity. [LB447]

SENATOR CHAMBERS: Thank you, Mr. President. And by the way, so people won't think that everybody is leaving the floor because of this bill, there are...hmm, no, there just happened to be a number of Exec Sessions for various committees and that's why people are not on floor. But I do think a record needs to be compiled. This is my third time. I had said I'd be willing to filibuster my own bill. If I have to make motions on this bill to get the time to discuss it, that's what I will do. Then people don't have to give me time. But after discussing the motion, I will pull it, then I will offer an additional one just so that there can be a complete record of what this floor debate consisted of. Senator "Wiseheart", as I deliberately, intentionally refer to her as, brought up some very good points which I could not completely discuss. I don't use drugs. I don't smoke cigarettes. I don't take aspirins, but I don't try to impose my spartan way of living on anybody else. Here's what happens to a lot of school people. And Senator Morfeld has bills which don't get on this...at this directly. There are kids who use drugs on college campuses all over the country and they'll sell marijuana to get money to feed a drug problem that they've got, but remember, a university is a school zone. So if they want to make this person plead guilty and not even go to trial, they say, look, here is what you get for selling drugs in a school zone. The guy or the woman would say, but it was one marijuana, one joint. The law says if you sell it in a school zone, you get a three-year mandatory minimum or a five-year mandatory minimum if by weight. Then this person is going to plead guilty to a lesser offense, and they might be told,

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you'll get probation. Well, that helps the prosecutors' conviction rate. This person might be lucky enough not to have a felony conviction like a ball and chain following him or her throughout life. These are some of the most pernicious types of penalties that you can have. We want people taken off the streets who have committed crimes. We want competent, vigorous prosecution, but we do not want to let the law be distorted and used in a way that is not intended. We don't want the jails filled up just because space is there. I, on all of these bills whether it's good time or whatever, have worked with the directors of Corrections. They have come to me and asked me to bring legislation because they knew I could shepherd it through. For example, sexual conduct between an employee even up into the highest levels of administration with an inmate is a crime. The director of Corrections and I talked about it. Then the people who are running some of the local jails said, can we get in that too? Can you make it a law that goes across the board? They wanted it because it took the onus off of them of dealing with the situation. It's now a crime under the statutes and if you get caught doing it, this is what's going to happen to you and you know it. When it came to the good time law, I was the one approached to bring it because, first of all, I understood the confusing good time law that existed at the time. Stair stepping, meritorious, as they called it, where you could favor certain inmates by giving them the opportunity to earn good time and not others. The director wanted to get rid of all that. So I said, here's what we ought to do. [LB447]

PRESIDENT FOLEY: One minute. [LB447]

SENATOR CHAMBERS: I mentioned...I think the bill number may have been LB816, the idea of giving the good time at the beginning. Give one day of good time for every day of the sentence and give it when they first wind up in the place. The director of Corrections supported it. The person who was charged at that time with calculating good time and tentative release dates, then mandatory release dates, was thankful and said so when we had the hearings. People who have not been here don't know what we went through to wind up with some kind of somewhat rational sentencing structure. Then others came along, and in the war against this crime or that crime, they started adding harsher penalties for certain crimes although there were crimes that were more vicious than the ones that they were interested in where the sentence was not nearly as harsh. [LB447]

PRESIDENT FOLEY: Time, Senator. [LB447]

SENATOR CHAMBERS: Thank you, Mr. President. [LB447]

PRESIDENT FOLEY: Thank you, Senator Chambers. (Visitors introduced.) Mr. Clerk, you're recognized. [LB447]

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ASSISTANT CLERK: Thank you, Mr. President. An announcement that the Natural Resources Committee will hold an Executive Session at 10:00 in room 2022. [LB447]

PRESIDENT FOLEY: Thank you, Mr. Clerk. Continuing debate on LB447, Senator Schumacher, you're recognized. [LB447]

SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. It's unfortunate that there are so many committee meetings are going on right now because these are kind of interesting and really pretty important issues that we're dealing with today. Senator Chambers likes to talk a little bit about history, and today I'd like to talk a little bit about history too. It was 1976, I had a freshly issued Florida bar license and enjoying the sunshine and the beach of south Florida when Senator Curtis, the U.S. Senator from Nebraska, asked me to return to Nebraska and help run the U.S. Senate campaign of a guy named Don Chasteen. It was pretty much a doomed campaign because he was running against J.J. Exon. And I came back. Senator Curtis had given me a job under him in D.C. that helped me pay for the Georgetown law degree and I certainly owed him. I came back and also in that same election filed for county attorney in Platte County and got elected. And that was an interesting time in the criminal law because over the years a lot of mishmash had developed in our criminal law system. It was the kind of thing that you would expect with somebody passing a bill here and there and amending it and it really wasn't a very pretty thing or very understandable thing. And I guess maybe that made a lot of the old lawyers money because they were the only ones that understood it. But a new criminal code was enacted in 1976 and began to take effect and full impact about when I became county attorney. And so I was on equal footing with all the old lawyers because they didn't understand the new stuff and I did. And I understood it pretty well, and it was a simple code. It covered the whole range of bad behavior. And with just the slightest amount of creativity and understanding, you could fashion a set of charges against an individual that genuinely fit the crime and, if you needed to, genuinely had leverage on the individual to give a guilty plea without costing the taxpayers a lot of money or trial. And the judges under that system had what judges should have, a great deal of discretion. Once someone was convicted of the crime, they could then without having to wear the hat of heavy-handed or light-handed, tried to use their judgment which we hired them for and do justice, apply a sentencing range that was prescribed for the crime. Very simple set of things on the felony side, that's the side that can go to prison. There was only four classes of crime. Very easy to understand. The lowest one was a Class IV felony which carried one to five years in the penitentiary and it worked. You could, with the district judge, pretty much get a glove that fit the hand every time. And I can't recall anytime in which we said, gee, we don't have enough crimes on the book or sentencing range in order to do justice. I don't think the district judges ever felt there was a time when they didn't have the necessary tools to do it either. What happened over time and after I left the county attorney's office in '87, was the mishmash resumed. One by one this good idea came to add this kind of special crime or this kind of special victim, or this kind of special circumstance. And we began to have a mishmash of laws

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again. Mostly because it was good, fun politics to stand up in this hall and campaign for a few votes, a few contributions, by claiming you were protecting this or that particular interest. I don't think the interest of justice was served by that whole exercise. And one of the things that exercise left us with was the mandatory minimum in which a majority of the folks in this body decided they knew better in any individual case what somebody should be sentenced to than the judge who sat there listening to the prosecutor argue, listening to the defense attorney argue, reading the probation report and presentence investigation, and looking the defendant in the eye. That probably is not the best way to arrive at justice under the system of mandatory minimums. They are expensive. Certainly, it is worth the expense if public safety is enhanced, but I don't think a case can be made that... [LB447]

PRESIDENT FOLEY: Time, Senator. [LB447]

SENATOR SCHUMACHER: Time? [LB447]

PRESIDENT FOLEY: Yes, that's time, Senator. [LB447]

SENATOR SCHUMACHER: Thank you. [LB447]

PRESIDENT FOLEY: Thank you very much, Senator Schumacher. Mr. Clerk. [LB447]

ASSISTANT CLERK: Mr. President, an amendment to LB447 from Senator Chambers, FA42. (Legislative Journal page 634.) [LB447]

PRESIDENT FOLEY: Senator Chambers, you're recognized to open on your amendment. [LB447]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I invite everybody to look around the Chamber. When you pick up the agenda for today, you see whose bill is up, don't you? You will not see this many Exec Sessions called at the same time as on this bill. I call your attention to it because some of you all think that I imagine things. And another committee is going to go into Exec Session at 10:00. So I'm going to take time on my bill, and they're going to have to call Exec Sessions tomorrow also. I'm going to stay on this bill until noon. And then, I'm going to continue tomorrow by discussing the things that were discussed today. I would like to ask a question of the Speaker if he's in the Chamber. [LB447]

PRESIDENT FOLEY: Speaker Scheer, would you yield to a question, please? [LB447]

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SENATOR SCHEER: Certainly. [LB447]

SENATOR CHAMBERS: Senator Scheer, I've stated it as my intent, and I will carry through on it, that I will carry us until noon. What would you say if a motion to adjourn were offered? Look at the Chamber. [LB447]

SENATOR SCHEER: You're asking if we should adjourn at this point? [LB447]

SENATOR CHAMBERS: Yes. [LB447]

SENATOR SCHEER: Certainly not. [LB447]

SENATOR CHAMBERS: All right. What would you say to recessing until 11:15? [LB447]

SENATOR SCHEER: Well, you would have to tell me what the purpose would be for. [LB447]

SENATOR CHAMBERS: For people to come to the Chamber. You've not seen the Chamber this empty before, have you? [LB447]

SENATOR SCHEER: Well, certainly, Senator, if you'd like a call of the house to bring them back to the floor, that's your prerogative to do. [LB447]

SENATOR CHAMBERS: Thank you. Members of the Legislature, it's not just to bring them here. It's to let them hear the discussion, for whatever value it has. But I'll tell the Speaker and everybody else, you all are showing me something this morning. Now, I will not leave the floor. I cannot clear it out and I want my friend, Senator Brewer, to see how the only black man in here is treated. Oh, there is another one--Senator Wayne,-- but the only black man who speaks and participates on a regular basis and who has a reputation. You all know that I'm treated differently here from the way everybody else is. And what's happening right now today demonstrates it. So because I'm going to talk on this bill and other things and I have two hours to do so, I will discuss whatever I think is appropriate. I have indicated that the purpose of this bill is to deal with the system as relates to criminal justice, corrections, and so forth. I think the system of legislating is something that merits discussion also. At the time this country was adopting a U.S. Constitution, a constitution for the country, I believe they were replacing something called the Articles of Confederation. When you reach my age, you become a bit forgetful. Some people may think that I was present at the Articles of Confederation's adoption and the adoption of the U.S. Constitution. Had I been alive at the time the constitution was developed, I stood a good chance of being the slave of one of those who was going to be a signer of the constitution. The

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Declaration of Independence was signed by slaveholders and those documents are insults to black people. Thousands of black people were lynched in this country. No other group can that be said about. People talk about what happened to the Jews in Nazi Germany, and I'm one of those people. However, nothing befell any group over an extended period of time like what befell people of my complexion, of my, quote, race, unquote. You know why they had laws against intermarriage in the south? It wasn't interracial sex, because white men were having sex with their housemaids all the time. There's one old guy, Strom Thurmond, who had a woman working as a maid and she had a 14-year-old daughter, and Strom Thurmond, as a member of the U.S. Senate, impregnated that young girl. This white, powerful senator who found black people so abhorrent that we should not have rights, we should not be allowed to drink out of a water fountain that white people drank out of, impregnated this 14-year-old child. You don't hear that about Strom Thurmond, do you? Suppose Senator Chambers impregnated a 14-year-old white girl. Senator Chambers would be in prison. But these white men did not want to have to assume the responsibilities of fatherhood that were spelled out in laws in those days. You had to take care of your children. So there could be no recognition of these liaisons between white men and black women, and there also were white women who wanted to spend time in bed with black men, and it was known. And the white women knew that to save their reputation as soon as somebody caught them or told on them, they were to say that they were being raped. A man just had to be accused of it. Then here comes the mob. This morning, I didn't bring anything to read to describe how they killed these black people. It's thought that lynching meant they put a rope around your neck, threw it over a limb and that was it. They would cut a black man's testicles off. That's what these white people would do. They had white women, white children, and it was a gala event. And people were invited from miles around. They photographed it, they put these things on postcards. They were sold throughout the country and throughout the south. And people took pieces of the victim's body and pickled them and put them on their mantelpieces and these things were photographed and put on postcards. And there were books written about these things and they carried photographs of them. There can be nothing as disturbing as to see a woman of your race or a girl of your race hanging by her neck, and she'd be stripped naked by these white Christians. That's what they would do. And they would fondle these women while they were in their death throes at the end of a rope. And you know how it's known? They wrote about it. They described it. They photographed it. And those are the things that happened to people who were my forebears. What should I do if I were going to be true to those like me who died before I came into existence? Should I start an organization like ISIS? Should I start an organization like Al-Qaeda? Other people are lauded when they fight to avenge wrongs. None of you were ever deemed property. You have no concept of what it means... [LB447]

PRESIDENT FOLEY: One minute. [LB447]

SENATOR CHAMBERS: ...and I try to follow your rules and master them better than you because I know what I'm dealing with. Then we have a display like this, this morning, in a

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legislative assembly, and people want to say that I'm imagining things. This is so plain that even Stevie Wonder or Ray Charles could see what is going on. Some of my colleagues who are here are embarrassed, but you don't have to be embarrassed. You're not the ones who did it. They're your kind, and there will be people out there who sent you here who will be happy at what is happening here. Because they think that I will be daunted, that I will be deterred, that I will be discouraged, that I will be defeated, but I knew what I was dealing with when I came down here. [LB447]

PRESIDENT FOLEY: Time, Senator. [LB447]

SENATOR CHAMBERS: Thank you, Mr. President. [LB447]

PRESIDENT FOLEY: Thank you, Senator Chambers. Senator Ebke, you're recognized. [LB447]

SENATOR EBKE: Thank you, Mr. President. I thought I would put on the record some of the...some of the felonies that are included as ICs and IDs for my colleagues who might be interested in taking a look. They all fall under Chapter 28 in your statutes, 28-202: conspiracy is a IC felony; gets you a mandatory minimum of five years, doesn't say what the conspiracy is about. There are controlled substances...if you manufacture, distribute, deliver, or dispense or possess with the intent to manufacture, distribute, deliver, or dispense at least 28 grams, but less than 140 grams of cocaine, heroin, or amphetamine or methamphetamine. Sexually explicit conduct, 28-813.01: sexually explicit conduct, visual depiction--that is a Class IC felony. Discharge of a firearm in certain cities and counties is a Class C felony, 28-1212.04. And then you go to the ID felonies which are a mandatory minimum of three years. And, again, you have unlawful discharge of a firearm, possession of a deadly weapon by a prohibited person. How easy would that be? We've heard several bills in Judiciary related to that one this year. Nobody is justifying any of these acts. No one is saying that any of these acts are good things which shouldn't receive some level of punishment. But what we are saying is that having a mandatory minimum, especially in a case of a person who committed a relatively minor offense, a one-time shot that may be requiring them to stay in prison for three or five years without any...without any supervision might be a problem. I would, at this point, yield the remainder of my time to Senator Chambers if he would like it. [LB447]

PRESIDENT FOLEY: Thank you, Senator Ebke. Senator Chambers, 2:45. [LB447]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Ebke. You're performing yeoman work this morning, let's say yeoperson work. Members of the Legislature, it's easy for me to speak in an empty Chamber. I'm accustomed to it. Some of you are not. There are things that some white people do that are embarrassing to other white people, but they dare

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not say anything about it because they are all in a situation where at some point they're going to have to clump together, so they have to avert their eyes and pretend they don't see what is happening. Peter, Paul, and Mary put out a song, "Blowin' in the Wind," and they were talking to and about their white brothers and sisters...how many roads must a man walk down before they call him a man? How many seas must a white dove sail...or fly...before she sleeps in the sand? Then she went on, how many deaths will it take until he knows...a white man...too many people have died? The answer, my friend, is blowing in the wind. The answer is blowing in the wind. Now, if I talk about what happened to Jewish people in Nazi Germany, you might be somewhat better able to identify them because they're closer to being white than I am. But they're not considered brand A white people. Look at the cemeteries,... [LB447]

PRESIDENT FOLEY: One minute. [LB447]

SENATOR CHAMBERS: ...the way they are being vandalized and desecrated. Unfortunately, in the society, dead people are accorded more respect and protection than living people. So when a tombstone is knocked over or some grave may be partially dug, redug, people are outraged. Yet if the Jewish persons who were under the gravestone or within this grave that was partially dug were walking, talking, and breathing, they might be objects of contempt because they are not corpses. And I will stop until I'm recognized, Mr. President. Thank you. [LB447]

PRESIDENT FOLEY: Thank you, Senator Chambers. Senator Krist, you're recognized. [LB447]

SENATOR KRIST: Thank you, Mr. President. Good morning, again, colleagues and Nebraska. Off-mike discussions with several of you trying to decide whether these IC, IDs are the right place to start, potentially the drug penalties may be the right places to start in terms of reducing or eliminating mandatory minimums. I would argue that you have to listen and carefully digest what Senator Pansing Brooks told you earlier on the mike. There is...there needs to be a trust for the judicial branch and the judges to make sure that the penalties fit the crime. And ICs and IDs, there is more than enough latitude for those crimes to be...for the penalties to be assessed. I would also say this, again, following what Senator Ebke asked me earlier: What is the key to order, non-chaos, non-riotous activities? It's the ability to tell someone no matter how you have been, no matter what you have done, there is an avenue for you to rehabilitate and return to society. If we throw that out the window, we will be going back 40 years in terms of tough on crime. We will be going back 20 years in terms of tough on drugs. We cannot house all the bad people that are in this world. We have to have an attitude of rehabilitation. We have to have a program of rehabilitation. I'll stand up here every day and say the same thing. Building another prison, spending another \$300 million to put more beds in place so we don't have an overcrowding problem is just going to kick the can down the road to your grandkids and my grandkids and your kids to say you're going to have an overcrowding situation again. It's the

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process whereby we put people there. It is the processes whereby we release them, being trained correctly, or rehabilitated correctly in order not to recidivate that brings...that keeps people out and keeps them productive. With that, I would yield the balance of my time to Senator Chambers. [LB447]

PRESIDENT FOLEY: Thank you, Senator Krist. Senator Chambers, 2:45. [LB447]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Krist. I was just sitting here contemplating various things. Now, I have an honorable discharge from the Army. I always point out I didn't shoot at anybody, nobody shot at me, I didn't go overseas, none of that and I got in so I could get in and get out and go to school. But there were black men who wore that uniform and they went into combat. And even some of their commanders talked about how courageously they fought because not only did they have an enemy in front of them, but they had an enemy behind them in the person of their white soldiers in the same uniform. And in the country, they supposedly were giving their lives to defend, and the proof of that was when they came back, some of them were lynched in uniform, and the lynchers said they probably would get the wrong idea and think just because they were in the Army that they can take liberties. There were black soldiers who guarded Italian prisoners of war, who guarded Nazi prisoners of war, and when these people were transported on trains, the Nazis and the Italians who fought for Mussolini, one of the axis powers, would ride in the white sections of the train, and the black soldiers guarding them rode in the inferior colored coaches, as they were called. When they were in the south and they had to be fed, the black soldiers had to stand outside these restaurants while the white prisoners of war... [LB447]

PRESIDENT FOLEY: One minute. [LB447]

SENATOR CHAMBERS: ...who were trying to destroy this country, ate where white people are allowed to eat. And you think that doesn't tell us something? You think we are blind, that we are deaf, that we cannot think? But there are black men who will think about their wife, their children, and if they don't suffer these indignities, and if they stand up and be the man in this country they were asked to be overseas fighting the Nazis, then they could be removed, then their wife, their children have no protector or even the semblance of protection. You all couldn't live under circumstances like those. And the lynchers always had a mob, not one on one. That's in American history, and the attitude still exists today. Look around this Chamber. If they had the nerve and nobody saw them, they would try to lynch me. [LB447]

PRESIDENT FOLEY: Time, Senator. [LB447]

SENATOR CHAMBERS: Thank you, Mr. President. [LB447]

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PRESIDENT FOLEY: Thank you, Senator Chambers. Next in the queue is Senator Wishart. I do not see her. Oh, there she is. Senator Wishart, you're next in the queue. [LB447]

SENATOR WISHART: Thank you, Mr. President. I...if Senator Pansing Brooks, if she would yield to a question. [LB447]

PRESIDENT FOLEY: Senator Pansing Brooks, would you yield, please? [LB447]

SENATOR PANSING BROOKS: Yes. [LB447]

SENATOR WISHART: And I may actually ask this question again when we have more of our colleagues in the Chamber, because I do think it's important. This is following up to a conversation that Senator Ebke had about, you know, about public safety and about the issue of potentially mandatory minimums causing more jamming out of inmates who are released back into the community. So Senator Pansing Brooks, you and I talked have earlier off the mike about the process through which people are released back into our community and why mandatory minimums can result in jamming out, which Senator Ebke has explained to us, and in less transitional time for inmates back into our community which threatens our public safety, can you talk more about why this is...this should be a concern when we're addressing this legislation? [LB447]

SENATOR PANSING BROOKS: Well, I would agree with us. Thank you, I would be happy to. I would agree with Senator Ebke that our public safety is at risk by some of these laws because what's happening is that...and part of this happened back during the get tough on crime era, which Senator Chambers referenced. But we got rid of something called the one-third rule. And that was something where the minimum sentence could be no greater than one-third of the maximum sentence, and CSG even talked about that rule. What's happening is that we are not allowing our offenders to have ample time to get rehabilitated, or have any kinds of the programming necessary before they're released. So we are not allowing our parole board to do its work, which is to help...have contact and make the transition from prison to our community much more smooth and positive. We are just allowing, as was referenced earlier, the inmates to jam out, to just...they go from prison to community, and that's it. No one oversees, no one connects and tries to help...help the inmate to fit into the community, to work in the community. We know that about 96 percent of inmates will rejoin us in our communities, and to arbitrarily make it so that the judges don't have...have their power to sentence appropriately, so the parole board doesn't have the ability to fully do its job, we are...it really is sort of a pie in the sky idea of, oh, we're getting tough on crime, we're going to stop crime in our communities, we're going to throw away the key on these inmates. And what we're doing is actually harming our own communities more. [LB447]

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SENATOR WISHART: So, just to walk through the...how this process would work, so if we eliminated a mandatory minimum, for, say an offense that would be anywhere from 5 to 50 years, and the judge determines that this person who has committed this crime needs to at least serve the minimum time, so five years. That judge would then be able to sentence this person to ten years, and then at five years, this person would be up for parole, and if they were paroled, then they would also have some probationary period. Is that correct? [LB447]

PRESIDENT FOLEY: One minute. [LB447]

SENATOR PANSING BROOKS: I'm sorry, I think we need to get the...we're just talking about IC and ID felonies...IB felonies. So we really need to get those statistics, or the classification of crimes, because it's not...there wouldn't be anything as low as a five, so I think the minimum is 20, but I need to check that; Senator Chambers probably knows this off of the top of his head. But, again, a judge can, instead of...if a judge feels that somebody needs to spend 20 years in prison, then with good time, they know there's good time, they would then put it at 40 years minimum. So the sentence might be 40 to 50 years, so that then, if we get rid of the mandatory minimum, the judge has a total ability to put somebody who is dangerous and needs some extra time to be rehabilitated, they can affect the sentence by increasing it to the point where they would be in there 20 years anyway. So, you know, this allows the judges that discretion, to be able to...and they clearly work with... [LB447]

PRESIDENT FOLEY: Time, Senators. [LB447]

SENATOR PANSING BROOKS: ...with good time all the time right now. They do. [LB447]

SENATOR WISHART: Thank you. [LB447]

PRESIDENT FOLEY: Thank you, Senators Wishart and Pansing Brooks. Senator Pansing Brooks, you are next in the queue. [LB447]

SENATOR PANSING BROOKS: Okay. If Senator Wishart has another question, I'd be willing to take that question. [LB447]

PRESIDENT FOLEY: Senator Wishart, do you have additional questions? [LB447]

SENATOR WISHART: Yes, so I'm just trying to work through this process, to learn it. So regardless of what the sentencing is, and I think you're correct, we need to be really specific about exactly what sentences we're dealing with, and I'm taking time to learn, you know, what all

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of those are. Regardless of that, for this discussion, what we're dealing with is somebody either serves at least the minimum time and jams out through a mandatory minimum structure, or somebody...the judge sentences them to the exact amount of time that they would have served even on the mandatory minimum structure, but when they come up for parole, is it correct that if they get paroled they will have some probationary programming within the community, or do they...? [LB447]

SENATOR PANSING BROOKS: No, they would jam out. [LB447]

SENATOR WISHART: I mean if we eliminate... [LB447]

SENATOR PANSING BROOKS: If we eliminate, yes, and then what happens is that they will be subject to parole and can come forward and make an argument about why they needed to be paroled. It will give them...it gives them incentive to take the classes and the programming. Right now with the mandatory minimum, there is no incentive to take any of the programming to make our community safer. So the fact that somebody who is not under a mandatory minimum and just knows, well, that's fine, I'm just going to get out. I don't want to be followed after I'm out. I don't want anybody from the state, any probation officer dictating to me that I might have to come in for drug tests, not dictating to me that I have to follow any other additional requirements and that's the whole problem. And so they are jamming out, they have no connection to anybody that might help provide rehabilitative services or any kind of programming, and they're free to do whatever they want. So we haven't given them programming in the prisons, and then we just release them to the community. And our prisons are to be rehabilitation....rehabilitative, not just places of punishment. And again, I mentioned previously that this is the whole vicious circle that's happening in our Corrections department. We have overcrowding, which leads to a failure to complete the programming necessary. And the reason it leads to that is that we don't have the physical rooms to be able to provide the programming, we don't have the staff to be able to take people to the programming and be in the rooms while the programming is going on, and we don't have the programs that are going on. So the failure to complete the programming then leads to the failure of the inmates to be parole-ready. And the failure to be parole-ready leads to a failure to discharge because...and leads to a failure to allow the person to become a contributing member of society, which then, of course, since they haven't had programming, they haven't had the necessary classes to help with their addictions or their violence or whatever the issue may be, that then makes these inmates more susceptible to recidivating. And so then once we have recidivism, it leads to coming back into the prisons and the whole issue of overcrowding. So we are completely in a vicious cycle. I'm going to continue to bring this up throughout because it related to the prison riot we just had. It relates to these issues of mandatory minimums. And again, there is study after study that shows the mandatory minimums do not save us money and do not make communities safer. And I will speak to those issues the next time on the mike. But again, I thank Senator Chambers for bringing this bill. [LB447]

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PRESIDENT FOLEY: One minute. [LB447]

SENATOR PANSING BROOKS: It's very simple, if you look at it. It just removes the word "mandatory" on two classes of felony, and I hope that you...I again, a minute ago, I counted and there were 17 senators in this body who were sitting in here, and, again, I am dismayed, because this is a key issue that affects Corrections, it affects overcrowding, it affects the understaffing, it affects our community safety, and we have people not here listening to this important subject. This is not an intent to filibuster or take...the extended debate is necessary for people to understand this issue. And it is a critical issue for us to be discussing on the floor of the Legislature. Thank you, Mr. President. [LB447]

PRESIDENT FOLEY: Thank you, Senator Pansing Brooks. Senator Chambers, you're recognized. [LB447]

SENATOR CHAMBERS: Thank you, Mr. President. And I have to express a degree of admiration for my colleagues who are here, who are engaging in a discussion of the bill. I give credit where credit is due. I wanted some things that I have said in the record so that it would be clear to people from my community and people from other communities to understand that I will not allow what is happening this morning in term of the absences to go by without notice being taken. Now, back to the bill. Everything that has been said this morning has been on point. It's just that those who need to hear it are not here. But we must press on because we have a job to do, and we are compiling a record. I'm going to read something from an article dated October 9, 2014, the Omaha World-Herald, and although the subject had to do with good time law, it still has a direct bearing on these mandatory minimums because the prosecutor from Sarpy County was explaining something. The article says, quote, while it's a hot topic now, good time in Nebraska law dates back to at least 1969, when the state created the then-named Division of Corrections. The goal of good time is to encourage good behavior behind bars. Since prisoners generally want to get out as soon as possible, the practice helps keep them in line, said Sarpy County Attorney, Lee Polikov, P-o-l-i-k-o-v. And while critics say the practice cuts judges' sentences in half, Polikov said that judges take the law into consideration when crafting a sentence. Quote, the judge picks the numbers he wants them to serve and doubles them, unquote, Polikov said. It's funny how when we're on a bill like this some people dummy-up and pretend that judges don't know what goes on in the criminal justice system. Senator "Wiseheart" has not discussed this matter before today, as far as I know, and you see how quickly she grasped the way that a sentence can be put together by a judge within the range of sentencing for a particular crime, even if there is no mandatory minimum. If a judge wants a person to serve five years with no mandatory minimum in the statute, sentence the person to ten years, and it has two roles or purposes that will be filled. The person stays in prison for five years before being eligible for parole, which would happen under a mandatory minimum five years. But by having been sentenced to ten years, when that person walks into the prison, he or she has five years of good

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time credited. So however upset that person may be with having been caught, tried, convicted, or having plea bargain, he or she is aware that there will be a day cut off that sentence for every day served... [LB447]

PRESIDENT FOLEY: One minute. [LB447]

SENATOR CHAMBERS: ...as long as there's no misbehavior. So the incentive is there to behave while locked up. It not only takes away some of the pressure within the prison, it diminishes the danger to the employees. The person is not sitting there just doing dead time, so to speak; no programming, nothing. Idleness. Anger. Bitterness. Simmering. If you are the kind of person who cannot control your emotions, you may commit a violent act against an inmate or against a guard. They call them Corrections officers now. When you give any person a stake in what is happening, or an incentive, that person is more likely to behave. [LB447]

PRESIDENT FOLEY: Time, Senator. [LB447]

SENATOR CHAMBERS: Thank you, Mr. President. [LB447]

PRESIDENT FOLEY: Thank you, Senator Chambers. Items for the record, Mr. Clerk. [LB447]

CLERK: Thank you, Mr. President. Priority bill designations: Senator Halloran, LR6; Senator Ebke, LB34; and the Judiciary Committee, LB289 and LB487. Committee Reports: Judiciary Reports LB300 to General File, and LB444 to General File with amendments as signed by Senator Ebke. Enrollment and Review reports LB46A and LB92 to Select File. Amendments: Senator Krist, an amendment to LB207; Senator Stinner to LB331, to be printed; and a notice of hearing from Appropriations. That's all. Thank you, Mr. President. (Legislative Journal pages 634-637.) [LR6 LB34 LB289 LB487 LB300 LB444 LB46A LB92 LB207 LB331]

PRESIDENT FOLEY: Thank you, Mr. Clerk. Continuing debate, Senator Morfeld, you're recognized. [LB447]

SENATOR MORFELD: Thank you, Mr. President. Colleagues, I rise in support of LB447 for a variety of reasons. First, I understand that this issue is one of those issues that creates some gut reactions, that we look at the crimes, and we say, listen, they did a bad thing, at the very least they should get this. That being said, after serving on the Judiciary Committee, even to a certain extent in the my legal studies, I have found that these issues are rarely black and white. I've also found that our judges are incredibly hard-working and conscientious members of our community, and I haven't met too many judges in our state that I would consider, quote, softies.

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Most of them care about making sure that dangerous folks are not on the streets; that they receive the rehabilitation they need once they're back on the streets, and want to ensure that not only our communities are safe, but their communities are safe that their children and grandchildren live in. And for me, this is an issue about giving those judges the judicial discretion they need to make the right decisions to ensure that our community is safe. And I have a lot of trust in them, and I think that our judicial branch has proven themselves to be highly conscientious and incredibly fair-minded when it comes to sentencing and ensuring that our communities are safe. I understand that a lot of the committees have important business to take care of and that people are trying to get bills out of committee because the priority designation is coming up. So I understand that some people are...some committees are execing right now. That being said, there's a lot of important issues that we're going to address this session, but I think this is perhaps one of the most important. So I, too, am a bit disappointed that we're taking care of Executive Session business right now during debate on an issue that, quite frankly, I don't know how much more of an important issue you can debate or talk about than the safety of our communities, particularly at a time when our correctional institutions are in crisis. And so, I hope that we take a little bit more time tomorrow to talk about this issue when the full body is here so that we can actually have a discussion about it, because if there's one thing that I have found is that there are a lot of misconceptions about this issue, there are a lot of...not a lot of, but I would say that there is a general lack of understanding of how this works and why this is an important policy, and why this is a policy that makes sense. And I've talked to a few of my colleagues on both sides of the political spectrum that understand this and are in support of it, because once you really dig down to some of the issues that we see in corrections, that we see in our community with people jamming out, which Senator Pansing Brooks talked about very well, you understand that a lot of it comes to some of these mandatory minimum issues. And that if we're really serious about tackling our issues with corrections, if we're really serious about tackling our issues with mental health and the community and jamming out, then this is a policy that needs to be debated, and it's a policy that we need to have everybody in the Chamber discussing and listening to. And so I'll help Senator Chambers continue debate on this, as much as we can, because I hope that we can have this discussion at 9:00 a.m. in the morning when more than a tenth of the body is in the Legislature; I suppose it's a little bit more than a tenth, maybe it's a fifth, because this is an issue that goes to the very core of our corrections issue, it goes to the very core of the safety of our communities, and it's an issue that needs to be addressed, and I believe that this is a good step in the right direction... [LB447]

PRESIDENT FOLEY: One minute. [LB447]

SENATOR MORFELD: ...in addressing that issue. That being said, I will note that given the discussion about narrowing this just to drug offenses, I think we'd also be a step in the right direction as well. And if we want to take an incremental approach, I think that's a prudent way of

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doing that, and I think that that would be a good step in the right direction in moving forward to solve some of these critical issues in our community. Thank you, Mr. President. [LB447]

PRESIDENT FOLEY: Thank you, Senator Morfeld. Senator Ebke, you're recognized. [LB447]

SENATOR EBKE: Thank you, Mr. President. There was some discussion a few minutes ago about specific penalties for these, and I do have a little bit of a crib sheet. Class IC felonies currently have a mandatory minimum of five years or a maximum of 50 years, which is a 45-year difference, which it gives judges a fair amount of discretion on the upper end, but it certainly doesn't give them discretion on the lower end with the mandatory nature of it. And Class ID felonies have a minimum of three years and a maximum of 50 years, a mandatory minimum of three years and a maximum of 50 years. I, too, am disappointed because it seems to me that over the last couple of days I've had a couple of...my colleagues who I would say are certainly right of center who have asked me about this bill, and I've tried to explain to them what it would do, the value of the bill, why it isn't something that conservatives, if you will, should have a knee-jerk reaction to. I wish that all of my conservative friends in the body were here right now. I wish that they were here and ready to be in the midst of a grand debate on this bill, because there is nothing more important for us as a legislative body to deal with than the matters of corrections and criminal justice and public safety. We hear about this all the time and yet we really don't debate it much. What we do instead is we have these visceral reactions rather than, you know, talking about the issues, debating back and forth, coming to some sort of a conclusion. This is an especially important issue, I think, because we have so many new members. My class had 17 or 18, depending on how you count it. This new class has 17 or 18 members. There's an awful lot of us who really have relatively little experience in dealing with our criminal codes and criminal justice reform, and it's critical that everybody tries to...tries to educate themselves about this. I understand, as well as Senator Morfeld, that there are Executive Sessions going on and that there are issues. But if you look around, the disparity in membership and the types of people who are here, and the types of people who aren't, is pretty clear to many of us. That being said, I think this is a discussion we need to continue to have. I hope that tomorrow there will be more people here. I hope that later this morning there will be more people here to listen to this and that more people will engage. Let's talk. Come, let's reason together. I think that's an important thing for us to all think about doing. So with that, I would yield the remainder of my time to Senator Chambers, if he would like it. [LB447]

PRESIDENT FOLEY: Thank you, Senator Ebke. Senator Chambers, 2:00. [LB447]

SENATOR CHAMBERS: How many? [LB447]

PRESIDENT FOLEY: Two. [LB447]

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SENATOR CHAMBERS: Oh, thank you. And thank you, Senator Ebke. Members of the Legislature, let me tell you how I came to have my name on a bill like this in the first place. This is for the new white senator, Senator McDonald. When we were doing all of that research, a number of issues arose. Rather than have one person such as the chairperson of the committee carry all of those bills, we parceled out the responsibility. One of the areas had to do with sentencing. I was asked by the Chairman of the Judiciary Committee if I would take the bills that dealt with sentencing. The two bills dealt with the the...this getting rid of the mandatory minimums and the habitual criminal statute. I accepted them. I was a team player. But because there's so much racism here, my name... [LB447]

PRESIDENT FOLEY: One minute. [LB447]

SENATOR CHAMBERS: ...associated with the bill killed both of them. Now suppose I treated you all the way I'm being treated this morning, and it's awfully strong, the temptation to do so, and I would like those who are not here to try to stop me from taking my revenge. I'm about an eighth of an inch from stepping across a line that I have drawn for myself, which I would not step across. But when I am going to be publicly insulted, ignominiously slighted, not one of you would take it. Not one of you. But not one of you would have to stand alone, as many times as I have to, and do this hard work day after day after day. [LB447]

PRESIDENT FOLEY: Time, Senator. [LB447]

SENATOR CHAMBERS: Thank you, Mr. President. [LB447]

PRESIDENT FOLEY: Thank you, Senator Chambers. (Visitors introduced.) Continuing debate. Senator Krist. [LB447]

SENATOR KRIST: Thank you, Mr. President. I, too, am going to share the outrage over the participation in the debate and the responsibilities, or lack thereof, that senators have taken for some of these issues. I used to joke that if I wanted to talk about dry beans, I knew who to talk to. If I wanted to talk about irrigation and farming, wet farming, I knew who to talk to, because I am not an expert in either of those. But I'm disappointed because...and I want Nebraska to take a look at this Chamber right now. I want you kids to look at the Chamber right now. It is an honor to be down on this floor and to be able to debate the bills as they come up and become intelligent by listening to my colleagues. But it's embarrassing when I have to sit down and look up at you and see approximately 20 out of 49 senators here, and most of them not participating in the debate, nor do they want to learn anything because they've made their mind up. They're either going to vote red or green or not vote at all because they've been told what to do, or they've been instructed that this is not the good thing. Mr. Corey O'Brien from the AG's Office is out there and

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he's talked to everybody and he's told them this is a good idea or this is not a good idea, and I get basically it's not a good idea, because we're taking bags or tools out of the toolbox for the Attorney General and the prosecution. There's a good side to this bill. The good side to this bill, kids, very, very candidly, is everybody who goes into the system, everybody who goes to the penitentiary has an opportunity to rehabilitate their life and come back out, because mandatory minimums by themselves degrade that opportunity. So when you get home, no matter who is your senator, who is your representative, ask them if they were here on this floor and participated in the debate and ask questions of the people who are supposed to be the experts. They didn't just take their marching orders from the Attorney General or from the county attorneys. If that's what you're doing in here today, cash it in. Show up, check in at 9:00, and do something else productive. The business of the people, the business of the state is at stake. And whether you vote yes or no, that should be a factor of your education, the education you get from participating in the greatest event that you will ever participate in your life--government--debate--understanding what we stand for, what the state stands for. You know, the most trite used saying on this floor is, it's the Nebraska way. This is not the Nebraska way. Where are you, colleagues? Who are you, standing up here saying, no, you know what, Senator Krist, this is not the right thing to do. This is not the right thing to do because Corey O'Brien told me it wasn't the right thing to do. I'd even accept that. But where's the debate? Where is the debate? If I ask Senator Halloran to walk me through the process of all that goes into the sentencing parameters and the parole parameters and probation parameters, I don't think he could do that. And you know why? Because he's not a trained lawyer, and neither am I, but I have eight years of listening to this debate and understanding some of the intricacies of the debate. You have the right to say yes or no, and you did that in committee. I'm only pointing at you because I'm looking around at the rest of our colleagues and saying, where are they? Where are they? [LB447]

PRESIDENT FOLEY: One minute. [LB447]

SENATOR KRIST: Senator Halloran admitted on several debates in the Judiciary Committee that he did not know everything about the subject matter. But you know what? He asked questions. Where are the rest of you? Where are the rest of you? Once again, I'll look at the galley and say, I'm sorry. I'm sorry you have to come and witness a lack of the legislative prowess today. Thank you, Mr. President. [LB447]

PRESIDENT FOLEY: Thank you, Senator Krist. (Visitors introduced.) Continuing debate. Senator Chambers, you're recognized. This is your third time at this level, Senator. [LB447]

SENATOR CHAMBERS: Thank you. Mr. President, one thing I hope these students understand and learn from this, when you are a member of a minority group which is hated, held in contempt and disrespected, this is what happens even on the floor of the Legislature, where there

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is supposed to be an exemplification of justice, respect for the law, setting a standard and an example for youngsters such as you. If you learn the lesson which is being taught to you today, you need not respect anybody of my complexion. You're not required to do that. They made a mistake because they couldn't figure how to keep me out of this Legislature. They tried to do it with term limits, but I came back, and I'm here. And I want you to see how you need to stand alone for what you believe. You cannot count on other people. You need that moral conscience inside of yourselves, and no matter who tells you what may be right and what may be wrong, if there's something inside of you that says this is wrong, you stand for what you believe is right. There was a man who wrote a book, the title was 1984, and there was a passage. It was the book that talked about big brother and the government doing everything, spying and so forth. It said, there was truth, and there was untruth, and if you stood for the truth against the whole world, you were not mad. You get that moral compass, and that righteous center, and if everybody is on the other side of the question, but you believe that you are right and you have the facts to back you up, you are not mad. It's possible to have one sane person in an insane asylum. And I've been doing this going on 43 years. But a number of things have happened this session that I had not seen before. This is one of them, the overt contempt. And I believe all of these Executive Sessions were deliberately set for today so that they could have an excuse not to be in the Chamber. The Chamber has never been emptied like this by as many committees being excused so they can have an Executive Session. A few of them will go under the balcony. That's where they will have it, so they can be a part of the discussion; none of them over there. They will go under that balcony for their Executive Session; none of them there, all of them gone. But even when they're here, they're not heeding what I say anyway. But there are people outside this Chamber who need to know that when they sent me here, I'm prepared to do the work that they sent me, no matter how difficult it may be. And when these insults such as today are cast, what they really do is offer a tribute to me. They never gang up on anybody in this fashion. And there is always a silver lining to every cloud. When the vipers are hissing the loudest, you know you're striking nearest to their nest. And you tell them, hiss on, but they're not here to hiss. If the lobbyists... [LB447]

PRESIDENT FOLEY: One minute. [LB447]

SENATOR CHAMBERS: ...Senator Halloran, would set up a luncheon for them over the noonhour, they would all flock there like the swallows returning to Capistrano. So I'm going to intersperse my remarks with comments on the bill, but I am working my way toward a decision. Do you all recall what happened the first 30 days? Those 30 days belonged to me. We are almost halfway through the 90-day session now. Are you going to give the rest of that to me also? You're coming close. I think the largest person physically in this body is Senator McDonnell, right in front of me. [LB447]

PRESIDENT FOLEY: Time, Senator. [LB447]

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SENATOR CHAMBERS: Thank you, Mr. President. [LB447]

PRESIDENT FOLEY: Thank you, Senator Chambers. Senator Hansen, you're recognized.
[LB447]

SENATOR HANSEN: Thank you, Mr. President, and thank you, colleagues. Good morning, colleagues. This is my first chance to get and speak in support of LB447 to end mandatory minimums. I, obviously, heard it on the Judiciary Committee, and I was one of the seven votes that voted it out this year. I just wanted to get up and address and kind of share my views on the subject and the scope. Oftentimes on a bill like this...and we've seen this many times throughout Judiciary when there's a bill related to sentencing or criminal procedure or the courts in someway, you often have the two groups where basically on behalf of their clients or on behalf of their role in the system, you'll have a situation such as this bill, where the defense attorneys are in support, and the county attorneys are opposed. Frankly, it often reminds me of...and I've yet to experience a full throat of one, but it reminds me what other people talk about a scope of practice debates when you might have an ophthalmologist versus an optometrist. And that's what we do, that's what we do, don't make my job harder, don't make my job...do make my job easier, probably how people want. And that's what I see here. So then it's our...and we see this in all areas, not just criminal law. Certainly Senator Chambers, Senator Halloran, and myself get it both ways in terms of business and labor in the Workers' Compensation Court. We certainly had a long and lengthy hearing last night on the role of plaintiff and defense bar in workers' compensation. So this is this thing that expands more than one committee, more than one subject matter. So then it becomes on us as senators, or at least this is the way I think about it, it falls back on us as senators to kind of take...step back, take a holistic approach at how we want the system to be run, what we think...what we think should happen. Now, will this change, this bill if passed, change how county prosecutors and the Attorney General's Office operate? Of course, it's changing sentencing guidelines. The question is whether or not we as a Legislature think that change is appropriate or...and we could also probably dispute with then the amount and impact that that change will have. Fundamentally when I look at an issue like this with mandatory minimums, I think about what is the role of the judiciary in our court system, in our criminal justice system. And here, when we have mandatory minimums, we say irregardless of everything else we've said and everything else we apply to different crimes, we're talking about two of our classes of felonies. We're not even going to talk about all of our classes of felonies, we're talking about two of them, and we say, irregardless of what we said that the policies, the procedures, and whatnot on these penalties, we want to limit judicial discretion. Where elsewhere we have a minimum, here we have a mandatory minimum, and we treat it just a little bit differently. And I think that's an important discussion on whether or not we should...we should...we should do that, and I appreciate that my colleagues that have gotten up and spoken today and tried to illustrate the types of people impacted, the types of crimes impacted, and appreciate that we're going to...likely to continue that discussion. Fundamentally it's for me it's a simple issue of if I trust a

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judge's discretion in every other instance, if I trust the judge's discretion in all the other categories of felonies and all the other categories of misdemeanors, I don't know why for...I'm going to forget the exact numbers at the moment, I believe IC and ID felonies, all of a sudden these are the two classes of felonies where we don't trust judges. That's how I view this issue, and I think we should give them the opportunity to view the facts of each individual case to hear the presentation and arguments of both the prosecutor and the defense attorneys to weigh any other factors they feel are important and come up with the most appropriate action of justice in the state of Nebraska. I trust our judges and I trust our judiciary to do so, and that's why I'm supporting this bill. Thank you, Mr. President. [LB447]

PRESIDENT FOLEY: Thank you, Senator Hansen. (Visitors introduced.) Continuing debate. Senator Ebke. [LB447]

SENATOR EBKE: Thank you, Mr. President. We're all relatively bright people here, so I'm going to ask you all if you've got your computers or your smart phones or anything else with you, to check out the committee statement on this bill. The committee statement says, and this is just by way of giving you a little overview, that this bill would amend the Nebraska criminal code regarding penalty classifications. The bill keeps the current statutory construction of dividing felony offenses into ten classes. We have ten classes of felonies, we aren't changing that at all. And those are differentiated from one another by the penalties that may be, you know, authorized upon conviction. The bill would eliminate mandatory minimum sentences for IC and ID penalties only. Okay. There are only two classes out of those ten that are being affected by this. It would keep the nonmandatory minimum penalty for a Class IC felony, which would remain five years imprisonment. All it would do is take out "mandatory," becomes a mandatory...it becomes a minimum 5 to 50 instead of a mandatory minimum of 5 to 50, gives judges some discretion. Again, you don't have to trust all the judges. This is always...you know, there's always a vehicle for appeal by prosecutors should they think that the judge has been unduly lenient. I would also suggest to you that you...if you've got your computer out, Google "mandatory minimum." Mandatory minimum, some of us are a little slow on the uptake; I know that I was. Mandatory minimum sentencing laws set minimum sentences for certain crimes that judges cannot lower even for extenuating circumstances. The most common of these laws deal with drug offenses which is the case in our ICs and IDs and set mandatory minimum sentences for possession of a drug over a certain amount. I had somebody ask me a few minutes ago about murderers and rapists and all that sort of thing. They aren't covered with this. IA felonies call for life imprisonment, and that would be murder in the first-degree. IB felonies, again, are murder in the second-degree, sexual assault, and those sort of things. Those things are still in place. We aren't touching IAs or IBs. What we're touching is primarily drug offenses and a few other: firearms, deadly weapons, possession by a prohibited person, and that sort of thing. I think it's important that we educate ourselves on these things, folks, and it's important that we have a great debate about it. This is our job. Our job is to be here, to make public policy and not to be knee-

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jerk...have knee-jerk responses. Everybody wants to feel like they're tough on crime. Maybe this is tough on crime. Let's talk about it. So I would yield the remainder of my time to Senator Chambers if he would like it. [LB447]

PRESIDENT FOLEY: Thank you, Senator Ebke. Senator Chambers, 1:30. [LB447]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Ebke. I appreciate what you've put into the record. This is not anything that is frightening. If anybody else's name was on this bill, they would be able to listen to the discussion and see that getting rid of these mandatory minimums can only smooth out a bump that exists in the scheme of sentencing. If you eliminate mandatory minimum,... [LB447]

PRESIDENT FOLEY: One minute. [LB447]

SENATOR CHAMBERS: ...judges can still do everything that is sought to be accomplished by mandatory minimums, but you would eliminate a problem. A problem where a judge is who...I'll wait until I get a chance to speak on my own time for that because it will take longer than I have right now, so I will stop. Thank you, Mr. President. [LB447]

PRESIDENT FOLEY: Thank you, Senator Chambers. Senator Crawford, you're recognized. [LB447]

SENATOR CRAWFORD: Thank you, Mr. President. And I rise in support of LB447, and I want to thank the members of the Judiciary Committee for their hard work this morning and the introducer of the bill, Senator Chambers, for their hard work this morning in terms of laying out the record of what this bill does, and the public safety impact of the bill. And I want to thank my colleagues, so many of my colleagues on the Judiciary Committee who have been working for years on this issue of how do we best change our public policy on issues such as sentencing to make sure that we're keeping Nebraskans safe and making the best choices. And I thank Senator Krist for his years of work on this issue, as well--Senator Chambers, Senator Pansing Brooks, and some of our colleagues who are no longer here because of term limits, who spent so many years studying these issues. And I'm glad that I've had a chance, just in my now coming on five years here, to hear those conversations and to learn from that research to see how important this issue is. It's a package, as Senator Chambers noted, there's a whole package of reforms that we have been pushing forward in the state to try to turn things around and try to make sure that we're making the best policy to keep Nebraskans safe. And this is a part of that package that's been a multiyear effort, and I appreciate the efforts of those who have been working diligently in the body to keep pushing that reform agenda to make sure that we keep these issues in the forefront. And, again, I appreciate their effort this morning to lay a record and to make sure that

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they're putting out...putting on the record those important issues and making sure that we understand which crimes this relates to and which it does not, and again the public safety emphasis, and I appreciate that effort. I want to speak just briefly...I have a relative who has worked in prisons, not Nebraska, but has worked in prisons and just from my relationship with him, I know how important it is that we have incentives for prisoners in ways to try to encourage them to take advantage of programming and encourage them to recognize that their behavior matters. And so making sure that we have that mechanism is critical, and so one of the concerns in terms of the safety of our Nebraskans that we asked to serve for us in our correctional facilities is making sure that they have that ability to have incentives that can be given to help make their job easier, which is a very tough, tough job. And so, I think LB447 is critical for public safety in our neighborhoods. It's also critical for public...for the safety in our prisons, and for those who we ask to do that hard work for us of being on the front lines, protecting us by working in our correctional facilities. And so, I think...so it's important that we support LB447, and I urge you to make sure that you're attentive to these...this research and this evidence and how LB447 will impact public safety and impact what's happening in our prisons. And I encourage your support of LB447. I yield any of the remaining of my time to Senator Chambers. [LB447]

PRESIDENT FOLEY: Thank you, Senator Crawford. Senator Chambers, 1:16. [LB447]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Crawford. Members of the Legislature, when I get enough time I'm going to mention what might be called the four steps that are involved in criminal statutes from the time they are enacted to the time a sentence is imposed on a person, and in the process, all three branches of government are involved. All three are involved. And up to now in Nebraska, as in other states, it has been to you, Senator "Wiseheart's" word, a patchwork approach. Then I have said, whatever is the particular evil, as it might be called, that is the fad of the day. Many laws will be enacted to address that, but they spill over into other areas, and that brings us to the kind of situation we're facing today. Thank you, Mr. President. [LB447]

PRESIDENT FOLEY: Thank you, Senator Chambers. Senator Halloran, you're recognized. [LB447]

SENATOR HALLORAN: Thank you, Mr. President. Fellow colleagues, fellow Nebraskans, I would like to speak for a few minutes because I was the only no vote on this bill, and I'd like to explain some of the rationale behind that. And, but first, I need to say, you know, it is kind of...it is a bit of an irony that showing up this morning caused someone to disparage my vote on this bill. I have an opinion. I ask questions in the committee, and I'm learning through this process. I'm learning here today, I'm here today. But that being said, my biggest issue with this bill is that

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I believe we're looking at the wrong end of sentencing guidelines. Senator Schumacher made the point that a lot...oftentimes laws are a mishmash. We just keep adding to and adding to, sometimes we delete some language, but we end up with a patchwork of laws. And I think if we look at...I would ask for Senator Krist to yield time, but I don't know that he's here. But if we look at Class ID felony, my concern about the sentencing guidelines is the broad range of three to five years, for example, or five to 50 years. And I trust judges, but I think sometimes we have...and I know it has been said that we need to give them discretion, and indeed we do. But sometimes I think we afford them too much discretion. I think sometimes we don't narrowly define enough within the law of sentencing guidelines for time. But if you look at class ID felony, 3-50 years, part of that...what includes in that crime are certain substances, drugs, and if you look at a Class 3A felony, which includes manufacture and distribution of certain drugs. To me I think we need to come a little bit closer in defining where we put the sentences in regard to certain crimes. It puzzles me why we have certain drug crimes in Class ID and in Class 3A, which is a much lower level of felony. It seems like we could maybe spend some time, can't do it here now possibly, but in the near future, spend some time redefining the levels of crimes so that we're not putting people in too high a level of a felony and then contributing to their time in prison and the overcrowding in prison. With that, now this may surprise people, but I will yield the balance of my time to Senator Ernie Chambers. [LB447]

PRESIDENT FOLEY: Thank you, Senator Halloran. Senator Chambers, 2:00. [LB447]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Halloran. And I think people have seen me on the floor disagree with Senator Halloran, but not on this. Senator Halloran does ask good questions. Senator Halloran, I thought that those ranges were way out of kilter. There's no way that the same act can be worthy of only three years, but then worthy of 50 years at another point. But see anytime I try to bring them together, they use the term, Chambers is soft on crime, he's sending the wrong message, and we can never get a comprehensive look at it. But I am the one who will be willing to tackle these hard issues. Sometimes all I can do is call attention to it, and if enough other senators could see what it is that we need to do in terms of a comprehensive look at our sentencing structure, somebody else, if they were willing, could bring a bill, and I would work with that person, even draft it. But as soon as my name appears on something, it's like the kiss of death around here. But not making Senator Halloran the focus of everything, he just got here not that long ago as a new person. He immediately saw this wide range, and it does not make any kind of sense logically, penologically, or otherwise. I have to take things a step at the time by eliminating the mandatory minimums. We then have three categories of felonies, the top level of which is 50 years. How can three different classifications have the same maximum penalty? Because there has been no rational approach taken to sentencing and... [LB447]

PRESIDENT FOLEY: Time, Senator. [LB447]

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SENATOR CHAMBERS: ...a consideration...oh, thank you, Mr. President. [LB447]

PRESIDENT FOLEY: Thank you, Senator Chambers. Senator Schumacher, you're recognized. [LB447]

SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. Before I yield some time to Senator Chambers, just remember that one of the things lawyers are trained to do is argue for their side, and pretty much, trained in the context of that argument, to blind themselves to the other arguments. So it's not surprising that you have defense attorneys outside in the lobby arguing for their side and certainly not surprising that you have an elected Attorney General's Office and county attorneys arguing for their side. The job inside this room, however, is to think through the problem and debate the issue, realizing that either side out there is doing their job. Our job is to make decisions and not to simply do what we are told. Doing what we are told by politically motivated forces in this and other areas drives up the bill. Driving up the bill cost tax dollars, and we're going to see the first part of a tsunami hit us this year on taxes, but it isn't going to hit hard. We've got a deep cash reserve and we will just comfortably get rid of it slowly over the next couple years. You guys are going to have to deal with the problem, the consequences of not thinking through a whole bunch of issues, including this. With that, I'd yield the rest of my time to Senator Chambers. [LB447]

PRESIDENT FOLEY: Thank you, Senator Schumacher. Senator Chambers, about 3:00. [LB447]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, "Professor" Schumacher. Here are the four steps, if you want to call them that. The most important one is the policymaking level. That's us where we create the crimes by establishing that certain conduct is not allowed, and if you engage in it, you'll be punished. The second level would be law enforcement or the police. If somebody is apprehended as being in violation of the law, they make the arrest, they write the reports, that's the second branch or phase. It then goes to the county attorney who knows nothing about the accused whatsoever other than what is presented in these police reports. The county attorney then has almost carte blanche to decide what to charge that person. If a person attempts a robbery and doesn't succeed, he or she can be charged with a gun crime, assault, attempted assault, attempted robbery, and just stack offenses on top of offenses. Then let's say that it goes to court. The person does not plead guilty. The person can ask for a bench trial or a jury trial, but in any case it ultimately is going to wind up in the hands of the judge. A verdict of guilt has come in. The judge will have presentence reports to look at. The judge will have had an opportunity to hear the evidence presented, listen to the witnesses, observe the demeanor of the witnesses and the accused. Then the time comes to announce or pronounce sentence, and a judge is required to particularize that sentence. Look at this individual who stands before the judge. Not the color, not the class, not the gender, but a person. What are the

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facts that were presented? The person has been found guilty and a sentence is to be imposed. Does the person have a record of other crimes? Is this a first-time offense? Is it a young person? Is it a middle-aged person? Is it an old person? Is it a poor person? [LB447]

PRESIDENT FOLEY: One minute. [LB447]

SENATOR CHAMBERS: Is it a rich person? And factor all of these considerations into arriving at what a sentence is going to be. Not all judges are fair. Not all of any group will be the same. But presume the judge does the job properly and the individual is sentenced, the judge has to go to the law and observe what is available under the law. The judge cannot sentence the individual to less than the minimum set in statute nor more than the upper limit. So this person is a young person. This person sold drugs in the dorm room. This person was charged with the offense of selling drugs in a school zone. No record of anything before that, one joint. The judge says, probation is what this person ought to get, but the judge cannot give probation. [LB447]

PRESIDENT FOLEY: Time, Senator. [LB447]

SENATOR CHAMBERS: The judge has to give a mandatory five years. Thank you, Mr. President. [LB447]

PRESIDENT FOLEY: Thank you, Senator Chambers. Senator Baker, you're recognized. Actually, Senator Baker, before you do that. (Visitors introduced.) Continuing debate. Senator Baker, you're recognized. [LB447]

SENATOR BAKER: Thank you, Mr. Lieutenant Governor, members of the body. I was one of the seven Judiciary Committee members who voted to advance LB447. I suspect Senator Krist is right. Too many people are not paying attention. Senator Ebke gave you a very good explanation of what LB447 does and does not do. Yet I suspect many in this body could not tell you right now what a Class IC and ID felony are because they're either not here or they're tuned out. I've also noticed that some of this body hit the red light whenever Senator Chambers makes any motion. We should give Senator Chambers some credit. He can actually be right some of the time. Had an interesting conversation outside the glass this morning with a former senator who served here several years ago. He said at that time he worked for the strongly-supported mandatory minimums, but would not do so now. We have a problem, we have a crisis. Our prisons are overcrowded. If, in fact, we have people in prison that's longer than necessary due to mandatory minimums in these two class of felonies, that just feeds the crisis. Thank you. [LB447]

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PRESIDENT FOLEY: Thank you, Senator Baker. Senator Pansing Brooks, you're recognized.
[LB447]

SENATOR PANSING BROOKS: Thank you, Mr. President. I rise to continue supporting LB447. I wish, again, that there were more people in this body to hear these discussions. It's interesting to me because it's such a broad partisan, broad bipartisan movement across the country. In fact, there's an article that was in the Washington Post that's titled "Clemency." The issue that Obama and the Koch brothers actually agree on, and it relates to a pretty famous story about a young rapper named Angelos who sits...and this is a quote, it sits at the intersection of an unusual alliance between the industrialists and President Obama, longtime political...his longtime political nemesis. Their cooperation illustrates the depth of a bipartisan effort--bipartisan, my friends, remember that?--bipartisan effort to reduce the nation's overcrowded prisons and undo the show no mercy sentences meted out to drug offenders in recent decades. As, quote, as Koch has emerged as one of the most influential advocates of sentencing reform, he has seized on the Angelos story to illustrate the inequities of the American criminal justice system. And Angelos is one of thousands of prisoners who have applied for clemency from the president under an initiative launched by the Obama administration. The one-time rapper from Utah was sentenced in 2004 to a mandatory 55 years in federal prison after he was arrested for selling a total of about \$1,000 worth of marijuana in three separate transactions with a police informant. Quote, I obviously did something illegal which was stupid, said Angelos, now 36, in an interview at the federal prison in Mendota, California. I've accepted responsibility for everything and I've already served 12 years of my life because of my mistakes. I lost my family I started, my career, and my father's final days. I just want to move on. My main goal in life is to get out and take care of my children. Take care of his children. He was 25 when he was sent away. He will be nearly 80 when he gets out. Think of the money. We're spending \$35,000 per year on each prisoner. The federal judge who put him there expressed his absolute frustration and anger at the, quote unquote, irrational sentence he was compelled to impose, and urged then President George Bush to commute it. Monstrous said Koch, 79, of the Angelos case. Obscene. Somebody makes one mistake, violates the law, and I'm not talking about people who are violent criminals who are hurting people and destroying property, and their lives are ruined by these massive sentences, and our coffers are ruined. We're dealing with nearly a billion dollar deficit, and we're paying for many of these mandatory minimums where we could be saving some money and getting help in the community. Koch and his brother, David, have used their vast wealth to counter Obama at almost every turn from the administration's initiative on climate change to healthcare, but their recent detente began with a 45-minute meeting at the White House with one of the President's most trusted confidants and top lawyer for Koch Industries. It went on to say that when he gives his speeches, Charles Koch says he asks those in the audience to raise their hand if they have never made a mistake that could have gotten them in serious trouble. And I ask each of you whether you have made a serious mistake that could have gotten

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you into serious trouble, or whether somebody in your family has made a mistake. We all know people who have made mistakes, serious mistakes. [LB447]

PRESIDENT FOLEY: One minute. [LB447]

SENATOR PANSING BROOKS: And he went on to say that there but for the grace of God or good luck or good fortune, go all of us. I would add to that, each of us is susceptible to this kind of penalty. Again, Senator Halloran said, oh, we all know about incidents where judges make these mistakes. I don't know about these incidents. In fact, on my next time on the mike, I'd like to ask Senator Halloran about the sentences of which he speaks. Again, I trust our judges. I trust our county attorneys and prosecutors to do their work, but we aren't including the public defenders in these sentences. They're fighting to protect them and keep them out and to save our money. Crimes have gone down in states where mandatory minimums have been eradicated. We are not causing...we are hoping to have safer communities where we can institute the work of the parole board and allow probation... [LB447]

PRESIDENT FOLEY: Time, Senator. [LB447]

SENATOR PANSING BROOKS: ...to do their work. Thank you, Mr. Lieutenant Governor. [LB447]

PRESIDENT FOLEY: Thank you, Senator Pansing Brooks. (Visitors introduced.) Continuing debate. Senator Walz, you're recognized. [LB447]

SENATOR WALZ: Thank you, Mr. President. I am going to yield my time to Senator Chambers, but before I do, I agree that eliminating the mandatory minimum sentence will incentivize people to maybe try harder to learn from their mistakes, but I'm really interested and I'm sorry if I missed out on this. I was in a committee meeting. I'm really interested in the programming piece, and just wanted to know if you can tell me a little bit about the current programming and its effectiveness, and then I'll yield the rest of my time to Senator Chambers. I yield that question to you, Senator Chambers. [LB447]

PRESIDENT FOLEY: Thank you, Senator Walz. 4:30, Senator Chambers. [LB447]

SENATOR CHAMBERS: Thank you. I would like to ask Senator Walz a question, if she will you yield. [LB447]

PRESIDENT FOLEY: Senator Walz, would you yield, please? [LB447]

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SENATOR WALZ: Yes. [LB447]

SENATOR CHAMBERS: Senator Walz, what was the question you asked of me? [LB447]

SENATOR WALZ: I apologize. If you can just tell me a little bit more about the programming piece of this and its effectiveness. [LB447]

SENATOR CHAMBERS: Well, here's what happens if you have a mandatory minimum of five years, there's no programming. First of all, they don't have adequate programming for anybody, but they're going to wait until you get close to the time when you might be eligible for parole before you are even given a shot at anything, so for maybe four and a half years you get nothing. You're just sitting there doing the time because even people without a mandatory minimum are not getting the programming. What people on the parole board have said in the past, they cannot be eligible for parole in terms of getting it because they don't have the programming, which they have to have taken first. Some people don't have the ability to read well. Other people are mentally challenged, cannot understand what is necessary to fulfill the programming, so they get no programming, their conditions are not taken into consideration, no chance for parole. Not that they will never get out, but when they get out they will have had no programming. They will have had a chance to do only dead time. The bitterness will grow, and what they found out with Guantanamo Bay, that prison, that it is a recruiting facility for ISIS. Now they call it ISIL. ISIS meant Islamic state in Syria. But now that they've spread throughout the Levant, those countries around the Mediterranean and other parts of the Middle East, it's now ISIL. So that's what ISIL means now. These people who were sent to that prison meet individuals trained in terrorism whom they never would have met otherwise. And some of them are released and they are more lethal when they are released. And that's what happens when you send some of these people to prison who shouldn't go there in the first place. The judge cannot give them probation. They are naive, they're like sponges, they absorb everything that comes their way. They can look at others who committed crimes worse than theirs of the drug variety, but they didn't get mandatory minimums because they may have copped a plea. This person didn't cop a plea because he or she thought that they had a case. So they get bitter because of the way they were mistreated by the system. People in prison recognize the marks, so they take this person under their wing, and this person comes out, is going to get out far worse than he or she was upon entering, and nobody can tell that person anything. Don't tell me about justice. Don't tell me about the law. I saw people come in after I came in and get out before me. They sold drugs, but they didn't get what I got. I sold a joint on the college campus to a roommate. One joint. I got five years... [LB447]

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SPEAKER SCHEER: One minute. [LB447]

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SENATOR CHAMBERS: ...because it was bumped up to one, whatever it is C, because it was sold in a school zone. That's what's happening now. And that person can't get any programming because he or she has too much time and they don't have the programming to go around. Everything about these mandatory minimums corrupts the system, but there are some people who are so hung up on it, they will not change no matter what. Remember this: for most of the years that there have been sentencing structures in these crimes, there were not mandatory minimums. It came about when some senators wanted to show that they were tough on crime and all they could do was put mandatory minimums on categories of offenses. They didn't pick a gun crime and say this crime, they said a category. A certain class of felonies, and they looked at everything in the net from a minnow to a shark. [LB447]

SPEAKER SCHEER: Time, Senator. [LB447]

SENATOR CHAMBERS: And they were all treated exactly the same. Thank you, Mr. President. [LB447]

SPEAKER SCHEER: Thank you, Senator Chambers. Senator Hansen, Hilkemann, Hilgers and others. Senator Hansen, you're recognized. [LB447]

SENATOR HANSEN: Thank you, Mr. President. Colleagues, I rise in continued support of LB447 as I did voting it out of Judiciary Committee. I hadn't necessarily planned to speak another time, but I was really appreciative of the earlier conversation that Senator Halloran and Senator Chambers had about the...our overall criminal code penalty classifications. I do think there's an opportunity there where there are some, frankly, haphazard or questionable, or however we want to call it, classification sentencing ranges and whatnot. I do think that is actually going to be an appropriate and very important opportunity for us in the Legislature and us in the Judiciary Committee to look for and look forward to...look at and work on in the future. So I would just add my name in support of efforts to continue to study and figure out how it is best to have our criminal code structured. One of the things I'm learning in Judiciary Committee is kind of the distinction of...I wish I could, you know, put up a TV screen on the front of the room and get everybody to hear some of the testimony we hear. I'm sure you feel the same way about the committees you feel on when I'm stubborn on one of your bills, but I wish we could because we're hearing about some of the situations where we think the law is cut and dried, or we talk about the law being cut and dried, and all of a sudden we're hearing it applied, we're getting actual real, real case examples, and it's being applied in ways that I don't think we expected or I don't think we knew or I don't think we could have known. This isn't necessarily directly impacted by the bill, but we just had a bill...we actually had...it was on the morning of Statehood Day, we had a bill dealing with the definition of a knife because if you conceal a knife more than three and a half inches in Nebraska that's a felony. And there are people who have

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been arrested and prosecuted for having file knives in a tackle box that were over three and a half inches. That's something we're going to have to look at. That's one of the many elements of the criminal code that is probably not what we as a Legislature intended, and then we're having to bridge that gap from what we as a Legislature viewed our criminal justice system as doing as opposed to how it is actually being implemented out in the field. That, as I said, that's not a situation directly impacted by this bill, but it's just one of the many stories we hear from both prosecutors, defense attorneys, and all sorts of various stakeholders about how sometimes what we write and what the words on the page say, and how it's actually being implemented outside, can lead to surprising results. With that, I continue to support of LB447 and would yield the rest of my time to Senator Chambers. [LB447]

SPEAKER SCHEER: Senator Chambers, 2:05. [LB447]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Hansen. Members of the Legislature, I'm glad Senator Hansen mentioned that crime of this blade more than three and a half inches long, and it could be in a tackle box, but here's the problem. When it's in the tackle box, it becomes a concealed weapon. That is preposterous, but that's the law. So we have some people who seem to look at whatever is in the statute book and because it's there, that was put there when Moses brought down the tablets from Mount Sinai. God wrote on that tablet that if you have a knife blade more than three and a half inches long, then that is a felony, and if you got it in the tackle box or your pocket, that is a concealed weapon. God didn't do that. God is not the author of confusion. That's what the "Bible" says. Maybe the "Bible" was wrong. But here's something to consider. ALEC, some of you all belong to ALEC. Somebody on this floor, I think, is the chairperson or something or other. ALEC is against minimum...mandatory minimum sentences. If anybody else's name were on this bill, it would be treated differently. And some people will say, well, it's been the law so long. All that argues for is how long a wrongful law has been on the books and applied unjustly and unfairly. When a law itself is unjust, there is no way it can bring anything but injustice. We have it before us. You have ten categories of crime. None of the others has a mandatory minimum except these two. Why were they selected out? Because there was specific crimes that the individuals wanted to be tough on. [LB447]

SPEAKER SCHEER: Time, Senator. [LB447]

SENATOR CHAMBERS: Thank you, Mr. President. [LB447]

SPEAKER SCHEER: Thank you, Senator Chambers and Senator Hansen. Senator Hilkemann. [LB447]

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SENATOR HILKEMANN: Thank you, Mr. President. I rise...I am opposed to LB447. I'm guilty as some of those here that I was approached early on, on this bill and was told all the bad things about it, but I've been listening in this debate this morning and been one of those that's actually been here, and I've got some questions. And I'm wondering if Senator Chambers would yield to some questions? [LB447]

SPEAKER SCHEER: Senator Chambers, would you please yield? [LB447]

SENATOR CHAMBERS: I'm at your complete disposal. [LB447]

SENATOR HILKEMANN: Senator, how many states have similar legislation to which you're proposing? [LB447]

SENATOR CHAMBERS: I have no idea. [LB447]

SENATOR HILKEMANN: Okay. Are there any studies that show that if we enacted this legislation...I know we talk about that it will cut down the overcrowding. I know that's one of the things that I've come up with at this point, but are there studies that indicate that this is a better way of reducing recidivism? [LB447]

SENATOR CHAMBERS: Let me mention an example. In New York, they got rid of mandatory minimums. In Nebraska, if we pass the law like this, it can apply only to those whose crime is committed after the crime...after the law takes effect. In New York, their law allows it to apply retroactively. So anybody who had been sentenced under the mandatory minimum, that law would apply and they closed six prisons and the crime rate did not go up. They closed six prisons, and they said as they go through the records, there probably will be others that will be handled the same way. No place can you find a study that says mandatory minimums deterred crime or prevented recidivism. If anything, it produced worst people after they served that mandatory sentence than would have been the case otherwise. I can't tell you all the studies, but that's what the literature in general arrives at as a conclusion. [LB447]

SENATOR HILKEMANN: Thank you, Senator. Another question on that is, is that as I understand this for simply, and as I read through this legislation again, we're taking out, we're deleting the term "mandatory" and we're..."minimum" and just putting "minimum," and the number of years stays the same. Is that correct? It stays three years for one of these crimes. [LB447]

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SENATOR CHAMBERS: Yes. In one of the categories it's 3 to 50, in the others it's 5 to 50. [LB447]

SENATOR HILKEMANN: Right. And so by putting the minimum on there that means that these people could come out within a year or year and a half rather than serving the entire three years. Is that correct? [LB447]

SENATOR CHAMBERS: What it actually means is that a judge can put some of these people on probation. They will not serve any time in prison because upon examining this particular person and looking at all the circumstances of the offense, jail is not the place, so some of them would not go to prison at all. But from those who do, they will start accumulating good time as soon as they enter prison, and whatever that minimum sentence is, it will be cut in half if the person does not misbehave. To be eligible for parole, that doesn't mean they'll necessarily get it. [LB447]

SENATOR HILKEMANN: So that it does not mean that they would even see...when it says a minimum of three to five years, they would not...what I've just heard you say is they may not even serve any time. Is that correct? [LB447]

SENATOR CHAMBERS: Right, based on how the judge views it. But I'll assure you this, if it was a gun crime or any of these others where there was jail time that should be imposed, the judge will send people to jail. I don't know of any judges in Nebraska who have been considered unduly lenient. [LB447]

SPEAKER SCHEER: One minute. [LB447]

SENATOR HILKEMANN: Thank you, Senator Chambers, for those answers. I appreciate it. [LB447]

SPEAKER SCHEER: Thank you, Senator Hilkemann and Senator Chambers. Senator Hilgers, you're recognized. [LB447]

SENATOR HILGERS: Thank you, Mr. President. Good morning, colleagues. I rise today in opposition to LB447, but I'm appreciative of the debate that's happened here on the floor today because I think this is a debate that's not just happening in Nebraska and around the country, and it's a debate we ought to have. Because as Senator Chambers and others have pointed out, there is a significant cost with incarceration, and it's not just the dollars and cents that cost the taxpayers to house those individuals, it's also tremendous cost to the families of those who are incarcerated. Children being raised without a father or a broken home, a tremendous cost on

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those families, and every statistic we know of suggests that families have an increased likelihood of living in poverty or drug use or all sorts of other bad outcomes that we don't want as a society if they come from a family without a father. So I think those costs are incredibly important. The reason I'm opposed to LB447, however, is because I do think there's some other additional cost that we ought to consider. And those costs are the costs of society of having individuals who will...who have a propensity potentially to commit significant and serious crimes on our society. And so I think it's important to think about exactly what the felonies that we're talking about today are, because I think it's easy to talk about labels, mandatory minimums, felony IC, felony ID. What are those precisely? And I have a list of them here, and some of these are...I think it's worthwhile to discuss, or at least mention. So some of the IC felonies, for instance, are certain violent class ID felonies committed against a pregnant woman; second offense, sexual assault of a child; distribution, manufacture, possession with an intent to distribute cocaine and heroin above a certain limit; use of a firearm to commit a felony for instance. These are very serious crimes, and while it is...we don't want to have individuals who can be rehabilitated, who might benefit and their families might benefit from having a reduced sentence, there are other individuals who the opposite would be true in having reduced sentence or no sentence at all or limited jail sentence could go out and have a significant, negative impact on society. And I'll give you an example that has come up in the research that I focused on with another bill that we will talk about LB68, which is my bill relating to the preemption of gun rights...or gun possession laws around the state of Nebraska. And what my research has shown is that generally applied laws relating to possession, for instance, registration, ordinances, or the like, have no...there's no correlation with those laws or causation with lower levels of gun violence. But what there is a correlation of causation with, for increased level of gun violence, is where an individual has shown a propensity to use a firearm to commit a felony. So for instance, if one of the Class IC felonies is use of a firearm to commit a felony, those individuals tend to, again the research shows, I'm generalizing, that those individuals do tend to use firearms to commit violence. So that would have an arguably greater impact on the increase of gun violence in our state than maybe a registration...not having a registration law. But I think it's important debate to have and important discussion to have. And one of the other arguments I've heard against...or repealing the mandatory minimums is that in the prior system that we had where it was up to the discretion of the judge, those individuals, there was a big...there was a disparate sentencing that we saw. In other words, people who could afford lawyers and who could have...you know, could afford counsel had lower sentences than those who maybe couldn't. So, I would...Senator Chambers would you yield to a question? [LB447]

SPEAKER SCHEER: Senator Chambers, would you please yield? [LB447]

SENATOR CHAMBERS: Yes. [LB447]

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SENATOR HILGERS: Thank you, Senator Chambers. To that argument that some individuals put forward for mandatory minimums, in other words, this disparate sentencing... [LB447]

SPEAKER SCHEER: One minute. [LB447]

SENATOR HILGERS: ...I'm just curious, how would you respond to that? [LB447]

SENATOR CHAMBERS: I'm one of those who criticize that kind of unfair sentencing, but I'm the strongest one who would...I would speak most strongly probably in saying, we should not create a whole category of injustice to everybody because some currently are treated in an unfair way. We could never undo that anyway because remember, the minimum doesn't have to be the mandatory five. It can be ten years, but they have to serve that first five with no good time, and then the five years on top of it. So with the mandatory, it just aggravates the unjust sentencing. [LB447]

SENATOR HILGERS: Thank you, Senator Chambers. I don't know how much time I have left, but I yield it to you if you can use it. [LB447]

SPEAKER SCHEER: Fifteen seconds, Senator. [LB447]

SENATOR CHAMBERS: I probably had 20, but the Speaker wasn't paying attention, but thanks for the gesture. Thank you, Mr. Speaker. [LB447]

SPEAKER SCHEER: Oh, I was paying attention. (Laughter) Thank you, Senator Hilgers and Senator Chambers. Senator Pansing Brooks, you're recognized. [LB447]

SENATOR PANSING BROOKS: Thank you, Mr. President. I would like to ask Senator Hilgers a question. [LB447]

SPEAKER SCHEER: Senator Hilgers, will you please yield? [LB447]

SENATOR HILGERS: Of course. [LB447]

SENATOR PANSING BROOKS: And I appreciate some of the comments that you made. I didn't hear them all because I was trying to research something quickly but, you know, one of the issues is whether you trust judges or not. So, I'd like to ask you to speak to whether or not you

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trust our judges in Nebraska to be able to make good determinations about what happens to an inmate, or about a person accused. [LB447]

SENATOR HILGERS: I think we have excellent judges here in Nebraska, and I practice in front of many. [LB447]

SENATOR PANSING BROOKS: So do I. [LB447]

SENATOR HILGERS: So I do think we have excellent judges. [LB447]

SENATOR PANSING BROOKS: Thank you very much, Senator Hilgers. That's what I wanted. And that, my friends, is the issue. Whether you believe the judges in our state can make determinations that are good and valid and will protect our communities, and I would add that many...and most of the judges in our communities are prosecutors, or were prosecutors originally, a preponderance of them. So they have an interest in keeping the bad guys away. If you Google mandatory minimums and the ridiculous nature of them, an interesting NBC news article comes up. It says, as drug sentencing debate rages, ridiculous sentences persist. And I started reading and it's about our case that happened here in Nebraska. When a young man had stopped popping painkillers and smoking meth, he was going to...he was on route to his drug counseling session and he was stopped by two federal agents because his girlfriend from a previous time in his life had told investigators, because she was facing about a tough sentence, that this Guthmiller, who was the young man that was picked up by the federal agents, that he had introduced them to his meth dealer at around the time he was getting sober. This young man ended up, instead of going to his counseling session, instead suddenly facing about at least ten years behind bars as a co-conspirator. This young man said he was devastated. Guthmiller didn't dispute the couple's accusation, but he bristled at the government's portrayal of him as a scheming operative. Besides, he was a changed man. He was sober, he was working, he was studying for his GED. He was leading AA meetings; completing the drug court program; newly married; still he pled guilty, unwilling to risk a trial that could get him an even longer sentence in the long term. He said, I'm not an innocent person, but at the same time this is all a bit much, I feel. At his sentencing in mid-February, this is a quote, U.S. District Court Judge John Gerrard agreed. I don't know if any of you know John Gerrard, but he's one of the most outstanding and upstanding federal judges that we have. He praised Guthmiller's turnaround, but said the federal drug statutes gave him absolutely no choice. He called case "Exhibit A" on why Congress needed to pass a sentencing reform in Corrections Act which gives judges more flexibility. Quote, a ten-year mandatory minimum sentence in a case like this is absolutely ridiculous, Gerrard said from the bench. And the only reason I am imposing the sentence... [LB447]

SPEAKER SCHEER: One minute. [LB447]

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SENATOR PANSING BROOKS: ...that I am imposing today is because I have to. Again, the whole idea on these ten-year sentences that were written was to get serious drug offenders and not be applied to a guy who's going home and later will end up driving himself to prison. There are instances where we need to give the judges latitude to be able to say, this case is different. Senator Lowe, Senator Halloran, Senator Brasch cannot know those facts at this moment on this day when you vote. I'm just mentioning you guys because...just for the fun of it to have you pay attention that you're here. So it's clear, we need to be able to give the judges the ability to not tie their hands, and the ability to make valid sentences. They're going to be able to decide instead of 5 years that they give 20 years, and they can impose harsher sentences than the mandatory minimums would warrant. This just gives them the ability in a case where somebody's at home, they're going to drug rehab, they're making a difference, they're married, it's going to allow... [LB447]

SPEAKER SCHEER: Time, Senator. [LB447]

SENATOR PANSING BROOKS: ...them to make a difference in lives and a better decision. Thank you, Mr. President. [LB447]

SPEAKER SCHEER: Thank you, Senator Hilgers and Senator Pansing Brooks. (Visitors introduced.) Senator Bolz, you're recognized. [LB447]

SENATOR BOLZ: Thank you, Mr. President. Like Senator Hilgers reviewing this piece of legislation, I took pause when I reviewed the felonies that would be implicated by this legislation, including sexual assault. And so I've been trying to do some research, and to be frank, I'm still thinking through the implications and the right choice on this bill. But as a member of the Justice Reinvestment Committee, I did want to share a statistic that I thought was informative with the body that comes from work on that committee. And that is this--in the past, this body has passed legislation to offer presumptive probation for Class IV felonies. So in the past, we have said, hey, judges, let's presume probation for the lower level of Class IV felonies. In the year since, what JRICC reports out to us is that felony IV dispositions to probation are increasing and to jail are decreasing, but dispositions to prison are inconsistent. And so what I take away from that is that even when we gave judges the authority to prevent preemptive probation, they still used their discretion to incarcerate individuals when based on their expertise they thought that that was the appropriate sentence for that individual. So like Senator Hilgers, I continue to grapple with this bill and with the implications of this bill, but I do think it's important to understand that judges use their discretion in cases in which they think incarceration is appropriate. And with that, I'll yield the remainder of my time to Senator Harr. [LB447]

SPEAKER SCHEER: Senator Harr, 3:10. [LB447]

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SENATOR HARR: Thank you, Mr. Speaker. Members of the body, let me just say on this bill, this isn't what you think it is. All right? What this bill does is it transfers power from the prosecutor to the judge. It's that simple. That's all it does. And so you got to decide who should have the power in sentencing. Should it be the prosecutor by determining what sentence should be...or excuse me, by determining what charges shall be made and what plea bargains shall be made. Do I charge a felon in possession of firearms, do I do attempted felony possession of a firearm? Big difference. And then they can turn to the judge and give the judge the discretion to make the sentence, or do you think the judge up-front should have that determination? That's what this bill is about. Since this bill has...since we've introduced mandatory minimums, do look at the record. There's been no changes in the discrepancy of sentences. Not just Nebraska, it's nationwide. Heritage Foundation did a study, found that to be true. Okay. That's one. Two, the University of Minnesota did a study Consequences of Mandatory Minimum Sentences, a summary of recent findings. What they found is that, in fact there is not a great difference in time that prisoners received. Let me...Senator Hilgers would you yield to a question? [LB447]

SPEAKER SCHEER: Senator Hilgers, would you please yield? [LB447]

SENATOR HILGERS: Of course. [LB447]

SENATOR HARR: Thank you, and I'm sorry I didn't get a chance to talk to you beforehand, but a felon in possession of firearms has a mandatory minimum. Is that correct? [LB447]

SENATOR HILGERS: Correct. [LB447]

SENATOR HARR: Okay. And do you know when we passed that? [LB447]

SENATOR HILGERS: The year that that was passed? [LB447]

SENATOR HARR: Yeah. [LB447]

SENATOR HILGERS: I'm not aware of that. [LB447]

SENATOR HARR: Okay. It was approximately 2008. You know what happened after we passed that law? [LB447]

SENATOR HILGERS: I do not. [LB447]

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SENATOR HARR: The sentences and the number of citizens for a felon in possession of firearms skyrocketed. Do you have any idea why? [LB447]

SENATOR HILGERS: Why they skyrocketed? [LB447]

SENATOR HARR: Yep. [LB447]

SENATOR HILGERS: I could make some guesses, but I don't know for certain. [LB447]

SPEAKER SCHEER: One minute. [LB447]

SENATOR HARR: Okay. Thank you. The reason is, folks, before, the feds took those charges. A felon in possession of a firearm, a lot of these drug trafficking. Guess what? See how many people are actually in prison for those drug charges. I've asked Attorney General for that information and haven't gotten it. Look at how many people are in there in federal possession of firearms. It's skyrocketed after we introduced mandatory minimums because the feds said, you know what, you take the money, you take the cost of this prison time. They're about equivalent between the feds and the state. So what used to always go federal, now goes to state. What used to be a federal responsibility is a state responsibility. That's the consequences of what we're doing. That's the consequences of mandatory minimums. I'll talk about this some more, but I think this, ultimately, at the end of the day is about who should have the power in determining sentences, the prosecutor or the judge who receives the training in how to sentence people. Thank you, Mr. Speaker. [LB447]

SPEAKER SCHEER: Thank you, Senator Bolz and Senator Harr. Mr. Clerk for announcements. [LB447]

CLERK: Mr. President, the Committee on Health and the committee reports LB287 and LB430 to General File with amendments, and LB506 to General File with amendments. Amendments to be printed: Senator Krist to LB10; Senator Pansing Brooks to LB407. Priority bill designations: LB161 by Senator Smith. Confirmation reports from Health and Human Services, and a new resolution, Senator Baker offers LR58. Senator McDonnell would like to add his name to LB161 as cointroducer. (Legislative Journal pages 638-641.) [LB287 LB430 LB506 LB10 LB407 LB161 LR58]

Mr. President, Senator Burke Harr would move to adjourn the body until Wednesday, March 8, at 9:00 a.m.

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SPEAKER SCHEER: You all heard the motion. All those in favor say aye. All those opposed say nay. I believe the ayes have it. We are adjourned.