

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 22, 2024
Rough Draft

FREDRICKSON: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the thirty-second day of the One Hundred Eighth Legislature, Second Session. Our chaplain for today is Mr. Jim Haack from Beautiful Savior Lutheran in La Vista, Nebraska, Senator John Arch's district. Please rise.

JIM HAACK: Please join me in prayer. Almighty and most merciful God, you have given this good land and the ability to prosper and thrive. You have given us wisdom from above by which we are able to govern ourselves, enlightened by your precepts and motivated by self-sacrificing love for others. Our laws are but a dim reflection of your perfect law of love. Bless us, we pray, as we seek to do what is good and right for the people of Nebraska. May all our deliberations and decisions align with your will, Heavenly Father. Through Jesus Christ, your son, who with the Holy Spirit are one God, now and forever. Amen.

FREDRICKSON: I recognize Senator Brandt for the Pledge of Allegiance.

BRANDT: Please join me for the pledge. I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

FREDRICKSON: Thank you. I call to order the thirty-second day of the One Hundred Eighth Legislature, Second Session. Senators, please record your presence. Roll call. Mr. Clerk, please record.

CLERK: There's a quorum present, Mr. President.

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

CLERK: I have no correction this morning, sir.

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

CLERK: There are, Mr. President. Communication from the Governor concerning 2 appointments to the Nebraska State Electrical Board. Additionally, communication from the Governor concerning Stephen Farrington's appointment to the State Electrical Board. Your committee-- the Executive Board reports legislative bill LR298 to the Legislature for further consideration with an amendment. Additionally,

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notice that the Appropriations Committee will be holding an Executive Session under the north balcony at 9:30; Appropriations Exec Session 9:30 under the north balcony. The General Affairs Committee will hold an Executive Session under the north balcony at 10:00; General Affairs Executive Session under the north balcony at 10:00. The Transportation Telecommunications Committee will hold an Executive Session under the south balcony at 10:00; Transportation under the south balcony, Exec Session at 10:00. And an amendment to be printed to LB927 from Senator Fredrickson. That's all I have at this time, Mr. President.

FREDRICKSON: Thank you, Mr. Clerk. Senator Albrecht would like to recognize Dr. Dave Hoelting of Pender, Nebraska, serving as the physician of the day. Please rise and be recognized by your Nebraska Legislature. We will now proceed to the first item on the agenda. Mr. Clerk.

CLERK: Mr. President, LB137. When the Legislature left the bill yesterday, pending was the bill, excuse me, was an amendment from Senator Machaela Cavanaugh to indefinitely postpone the bill pursuant to Rule 6, Section 3(f).

FREDRICKSON: Thank you, Mr. Clerk. Senator Bosn, you are recognized for a one-minute refresh on the bill.

BOSN: Thank you, Mr. President. This is LB137, which was a bill I inherited from Senator Geist and was more than happy to take on when she resigned. I want to also thank Senator Holdcroft for prioritizing this bill and recognizing the importance of getting something done to address the fentanyl crisis and the loss of several hundred lives every year in Nebraska due to overdosing on drugs. This bill, LB137, if you look at the green copy on page 6 at the bottom explains the bill and at the very top of page 7. What this bill does is it allows for an enhancement of the next higher penalty classification if the individual delivered a substance, a controlled substance, and as a result of that delivery, someone else was seriously injured or died. That is the intent of this bill. And--

FREDRICKSON: That's your time, Senator.

BOSN: Thank you.

FREDRICKSON: Thank you, Senator Bosn. Senator Machaela Cavanaugh, you are welcome-- you are recognized for a one-minute refresh on the motion.

M. CAVANAUGH: Why thank you. This is a motion to indefinitely postpone. I think I can yield the remainder of that minute.

FREDRICKSON: Thank you, Senator Machaela Cavanaugh. We now turn to the queue. Senator Machaela Cavanaugh, you are first in the queue. You're recognized to speak.

M. CAVANAUGH: Thank you, Mr. President. Good morning, colleagues. So I rise still in opposition to LB137. As I stated yesterday, I, I really don't support enhanced criminal penalties. I don't think that they're an effective tool in, in addressing our criminal justice system when we are faced with massive criminal overcrowding, not criminal, but overcrowding in our prison system. And we haven't done nearly enough to address that issue. Before we start increasing the penalties that put people into incarceration, I think we need to be addressing the humanitarian crisis that our prisons face here in Nebraska. So, so that's why I have the motion to postpone. I did talk to Senator Bosn about this yesterday. I do not intend to take this 8 hours. I do know that many people have things that they want to say on this bill. So I'm going to leave my motion up this morning until we get to a vote on it, which will-- could be in 10 minutes, could be in 5 minutes. I'm not sure. But I do want to leave it up there so that we can have a little bit more of a conversation about this really important issue facing our justice system here in Nebraska. This has been an evergreen problem for a very long time, but it really is coming to a head currently with the allocation of hundreds of millions of dollars to build a new prison that even if we build a new prison, by the time it's built, as Senator McKinney has said numerous times, we will need to build another new prison if we don't do anything about sentencing reform. And what I would like to see us focusing on are things that are going to address that overpopulation, including our Parole Board and requiring them to show up to work and deal with the parole system. And I think that there is some legislation for that this year. So I hope that we can see-- have some debate on the floor on that legislation. I don't-- I think maybe it's Senator McKinney's. I'm not entirely sure who, who that bill belongs to. But we have had a longstanding problem of our Parole Board not, not showing up to work. And we need to address that, not continue enhanced criminal penalties. I, I did say yesterday I am an equal opportunity antienhanced criminal penalties. It's a nonpartisan issue for me. I have filibustered enhanced criminal penalties for several colleagues across the political spectrum. So I, I hope that Senator Bosn understands that this is about a fundamental policy viewpoint for me and not about the introducer, because I very much value her as a colleague and the

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perspective that she's bringing to this legislation. And I think that she is coming at this from a really important and heartfelt perspective of addressing the opioid crisis here in Nebraska. I just would like to do it in a different way. So with that, Mr. Speaker or President, how much time do I have left?

FREDRICKSON: You have 1 minute and 20 seconds, Senator.

M. CAVANAUGH: OK. I do want to just take a moment to acknowledge a loss that the Omaha community had yesterday. We lost a leader. Mr. Lauritzen of First National Bank passed away at 80 years old. And he has done a lot for not only the Omaha community--

FREDRICKSON: One minute.

M. CAVANAUGH: --but the state. Thank you. And so I just wanted to take a moment to acknowledge that that is a significant loss for our community and send my heartfelt sympathy to his family and thank them for their service to the community and for his service. And I hope that his memory will be a blessing. It is a blessing to all of us in Omaha. We enjoy some very wonderful things, including Lauritzen Gardens, because of his generosity and community leadership. So I just want to take a moment to acknowledge that loss. Thank you, Mr. President. I yield the remainder of my time.

FREDRICKSON: Thank you, Senator Machaela Cavanaugh. Senator McKinney, you're recognized to speak.

McKINNEY: Thank you. Thank you, Mr. President. I rise in support of the motion to indefinitely postpone LB137. I think I was clear yesterday. I just oppose enhancing penalties, especially when we already have an overcrowding crisis that there is a lack of willingness to really address, in my opinion, from this body. We're building a prison that's going to be overcrowded day one, and this is not going to help. But I'll point you to a article from the Omaha, no, actually it's the Journal Star titled "Report: Nebraska Legislature to blame for state's overcrowding crisis. An academic report released this week examining Nebraska's overcrowded prison system came to some of the same conclusions offered by previous assessments of the state's Department of "Punitive" Services. The root causes of overcrowding within the Nebraska prison system is legislative changes brought by state lawmakers in the last 15 to 20 years that have extended the average sentence duration of, of incarcerated individuals in state custody, according to the state commission report from the University

of Nebraska-Omaha. Their researchers made clear that the expansion of prison capacity will only provide a short-term fix, according to the report drafted by researchers who warned without sentencing reform and other legislative solutions, additional expensive prison expansions will be required routinely. I don't think a solution to our overcrowding crisis is another enhanced penalty that is going to cost taxpayers way more dollars to fund a facility that's going to probably cost half a billion dollars by the time it's up and running. The \$350 million does not account for supply chain issues, inflation, and we're not even talking about operational costs at our facility. And then we got the issue of people not wanting to close the Nebraska State Penitentiary. I have a bill today in Judiciary to demolish it upon completion of this new facility, because I think taxpayers shouldn't be paying for a facility that all these people ran around the state and said the Nebraska State Penitentiary was in such disarray, people shouldn't live there, it's inhumane, it's horrible conditions. We need a replacement prison ASAP. So if that's the case, nobody should be against demolishing a, a facility that is in such conditions that people can't live there. But back to LB137. I also would ask you guys to remember what happened during the crack epidemic when this country and this state overreacted to the crack epidemic, overincarcerated many individuals, many who had drug addictions. We gave the-- this country gave them felonies, sent them to prison, and didn't provide them help. I'm not saying somebody should be selling drugs. I'm not saying that fentanyl is a good drug or any of that. I'm just saying enhanced penalties have a lot of unintended consequences that we really need to consider. That's the point of this. It's not--

FREDRICKSON: One minute.

McKINNEY: --about whether something is good or bad. It's a lot of context that's been missing, and I think a lot of people are just going to vote for this bill because they think, oh, we're going to feel good. We're going to pass a law to criminalize people that sell fentanyl to people. And it's not-- it's going to be a positive impact on the state. I don't think it's really going to be that positive because you currently could prosecute these people, but also we're going to fill the prisons even more. And that's the truth. So I hope everybody calls their constituents say, I'm voting for legislation that's going to fill the prisons even more, which means we're going to ask for more taxpayer dollars in the future because of it. That is what's going to happen. Thank you.

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Rough Draft

FREDRICKSON: Thank you, Senator McKinney. Senator Bosn, you're recognized to speak.

BOSN: Thank you, Mr. President. I want to back up a little bit here, and I recognize that a lot of you don't practice in the area of criminal law and don't have the background working in narcotics cases that I perhaps do. This is a bill that every single person in here on both sides of the aisle should be saying, heck yes, let's attack this problem. I cannot think of another example where we have lost hundreds of children and people in our state, and we have turned around and said, you know, we just-- we aren't the people to make that decision on how to fix that problem. We don't really want to get involved with that. Hundreds of people are dying and we are sitting here saying that might-- this might not be the solution that we need. I have supported and I have encouraged everyone to support attacking this issue from every direction, whether that's encouraging treatment facilities, whether that's encouraging individuals to have Narcan in the schools and for police officers, whether that includes providing information to individuals while they're getting clean needles to continue using their drugs. We can walk and chew gum at the same time, and addressing this issue head on from every angle is the only way we're going to make any headway against this crisis. This is a nonpartisan issue. I don't know why it's become partisan in this body. It is a nonpartisan issue. If you look at the Biden administration, they've run a campaign that says one pill can kill. If you look at all the cities that have passed or the, excuse me, the states that have passed this legislation, several of them have democratically run Houses, democratically run Senate and Democratic governors. And they're passing legislation substantially the same or the same as this legislation. I want to go back again and first of all, I forgot to do this earlier. The families that came in and testified during the hearing for LB137 had lost children. And I-- several of them are here today. And I think-- I think that takes a lot of courage and I want to thank them for coming. The other issue that we have, and I'm losing my place here-- I went through and I provided a list, and this is going to sound like the Fifty Nifty United States song, but Nebraska won't be in this list of states that have passed this: Arkansas, Colorado, Florida, Indiana, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Pennsylvania, Tennessee, Texas, Ohio, Wisconsin, and Wyoming. There are others. I just haven't been able to check all of the statutes. Fentanyl is 100 times stronger than morphine. It is 50 times stronger than heroin. It take-- if you have a pack of sweetener, think of your Sweet and Low packets. Think of your Equal packets. That

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is enough fentanyl to kill 500 people in that packet. 500 people in one packet. The threat from fentanyl and other powerful synthetic drugs is greater-- is a greater threat to public health, excuse me, than any prior drug epidemic we have ever faced in this country. This must be a public safety and public health approach. In addition to other individuals who have championed this fight, former-- excuse me, former Attorney General Eric Holder cautioned, and I'm quoting from an article, the left and the right, to avoid a reflexive approach. The breadth and scope of this challenge requires both, both a vigorous criminal justice approach and a public health response. And yesterday, and a couple of weeks ago, I watched everyone in this body support Senator Vargas, support Senator Hunt in their efforts--

FREDRICKSON: One minute.

BOSN: --to address-- thank you-- in their efforts to address this from the public health approach. And I bring this bill and suddenly it's oh, pump the brakes. We don't want to enhance penalties for people who are dying. We have a responsibility. This is our exact job. Picking license plates, doing all those things, we do that too. This is our obligation. This is why people send you here. This is why they vote. Responds to the crises that we're facing. And this is our responsibility to Nebraskans to react to this crisis. And every day that we don't, more individuals will be lost. Thank you.

FREDRICKSON: Thank you, Senator Bosn. Senator Wayne, you're recognized to speak.

WAYNE: Thank you, Mr. President. It's easy to sit up here and say doom and gloom. We got to do something about the problem. And you're right. It's exactly our job to pass sound bills, not bills that have unintended consequences. The fact of the matter is, is this bill is overbroad. But here, here's the interesting part. Will Senator Bosn yield to a question?

FREDRICKSON: Senator Bosn, will you yield?

BOSN: Sure.

WAYNE: [INAUDIBLE]

BOSN: Sure. Sorry.

WAYNE: Thank you. When this started out, you talked about a family who came here and their-- and their young daughter died. And I don't want

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Floor Debate February 22, 2024
Rough Draft

to get too personal about it, because I think it's a tragedy in and of itself. But if this bill was on the, the books when that incident happened, would anybody have been charged today with your-- with this enhancement?

BOSN: I would assume that the answer to that would be yes, but I wasn't here for the testimony. So if there's a fact I'm not considering, I wasn't present when they testified. I have met with those individuals. I certainly believe legislation like this would enable and give us an approach to holding responsible the individual that killed their daughter.

WAYNE: So this is an enhancement, correct?

BOSN: Yes.

WAYNE: So enhancement means that there has to be a charge charged. And if that person died, they would enhance the penalty. Correct?

BOSN: Correct.

WAYNE: So in this case, has there been any charge filed against the individual or any individual of that tragic situation?

BOSN: I do not know the answer to that. My understanding is it was being investigated on a federal level. And I don't know.

WAYNE: So we brought a bill based off of a family, and we don't know the full circumstances of how that-- whether this bill would actually prevent that from happening?

BOSN: I don't understand your question.

WAYNE: Would this bill have prevented that from happening?

BOSN: Would this bill have prevented the individual from giving her a pill of Percocet cut with fentanyl? No. People can still break laws.

WAYNE: So we don't know what happened to the individual if there was even any charges. Is that what you're saying right now? You don't know if there was any charges or not?

BOSN: As I sit here today, I do not.

WAYNE: Will you-- well, I'll give you opportunity to find that out today. We'll have 2 hours. But if nobody was charged, then this, this

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 22, 2024
Rough Draft

bill is actually useless because nobody was charged, so it can't be enhanced. My point is, is we're reacting individual-- colleagues, we're reacting to a situation, but we are not actually addressing the situation that we're trying to react to. We're creating a bill, a new enhancement penalty, that doesn't solve the problem of the individuals who brought the bill. If we're going to pass legislation to fix problems, let's actually fix the problem. Let's not pass legislation that has unintended consequences. For example, in that situation, from my research, nobody's been charged locally. That means they couldn't prove the underlying crime or enough at least for probable cause for the underlying crime locally. In fact, news reports say the sheriffs have passed on no information to Lancaster County prosecutors that would result in a charge. This is us being tough on crime, but not actually solving the problem. This is actually what happens when 2 individuals may just--

FREDRICKSON: One minute.

WAYNE: --pass, not sell, not be a drug dealer, pass to their friend what they may think is oxy, and now they're charged with a homicide. Not just that, they can be stacked with multiple charges. When asked yesterday if, if this is the appropriate sentence and that's why she brought this bill with the amendment, she said yes. Then when asked, well, then let's limit all the other charges so manslaughter can't be stacked, it was we'll think about it. If we feel this is the appropriate charge, then accept an amendment that will make any other charge run concurrent with this. If we think this is the appropriate charge and sentencing range. Let's not just have another tool to stack on to a parent who thinks they're giving their 25-year-old a oxy for their sore back--

FREDRICKSON: That's your time, Senator.

WAYNE: Thank you.

FREDRICKSON: Thank you, Senators Wayne and Senator Bosn. Mr. Clerk, for an announcement.

CLERK: Mr. President, the Appropriations Committee will be meeting in Room 2022 now for an Exec Session; 2022, Appropriations Exec Session. Additionally, the Banking, Commerce and Insurance Committee will be holding an Exec Session in 2102 at 10:00; Banking, Commerce and Insurance Committee Exec Session, Room 2102 at 10:00. Additionally, an

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amendment to be printed from Senator Kauth to LB1340. That's all I have at this time, Mr. President.

FREDRICKSON: Thank you, Mr. Clerk. Returning to the queue, Senator Machaela Cavanaugh, you're recognized to speak.

M. CAVANAUGH: Thank you, Mr. President. I want to respond first to some things that Senator Bosn said. This is not a partisan issue, and I am not being partisan, and I have made that very clear. And I am displeased and offended by the implication that I am being partisan. I have consistently and fundamentally opposed criminal penalty enhancements since day one of being in this Legislature and even before then. And I don't have to have a background in criminal law to take that stance. And it does not matter what political party you belong to or I belong to. These are fundamentally what I believe to be bad policies and not an effective tool in addressing our criminal justice system. I also acknowledged that I thought you were bringing this from a place of heart and good intention. I just disagree with you on the solution. So I don't know where the miscommunication happened this morning, but I have never said anything about this to the degree that you were portraying this morning. And I think it is important that we maintain the integrity of this debate and not start throwing mud at each other. I have a great deal of respect for Senator Bosn and her background in criminal justice. I don't believe enhanced penalties are the way forward. Period. I don't care if Senator John Cavanaugh brings the bill. This is how I view it. And I think it is really important that we remember that this institution is nonpartisan and that we approach the problems that we are trying to combat with that spirit. I have oftentimes thought about what it's like to be in this place and how bizarre it is of a workplace, because you don't go into your office if you don't work here and engage with your coworker thinking entirely about what their political party is. But here, that seems to be an approach that some take. I don't make any assumptions about anyone in here based on what their political party is. I do not assume that Democrats in this body are going to agree with me just because we're Democrats. And I will tell you in 6 years, more times than not, we don't agree. And more times than not, I agree with my Republican colleagues. I have my fiscal conservative buddy from HHS, Senator Riepe. And I honestly, when it comes to fiscal issues, I think I agree with Senator Riepe more than anyone else in this body. Maybe we should be in charge of the budget. Yeah. We would definitely show fiscal constraint together. I just-- this keeps coming up, this hyperpartisan approach to things. And I am-- I am a progressive liberal Democrat, but I am not that first. I am a state senator for

Nebraska first. My policies are informed by my beliefs, and my beliefs fall into a category of convenience for communication. But I do not oppose this bill for partisan reasons. I oppose this bill because I don't think it's good public policy. And I hope moving forward this morning that we can stick--

FREDRICKSON: One minute.

M. CAVANAUGH: --to the facts of this. This is a debate over policy. This is a debate over what our perspectives are on what the policy should be. This is a debate over who we want to be as a state and how we want to tackle problems. It is not personal and it is not partisan and I don't want to make it such. I don't want us to slip into the-- back into the slippery slope of last year. A year ago yesterday, tomorrow started an epic journey for us all and I don't want to go back. And I hope none of you want to go back either. So let's stay the course. Let's keep the debate alive, robust, polite, collegial. Let's be respectful of one another. Thank you, Mr. President.

FREDRICKSON: Thank you, Senator Machaela Cavanaugh. Senator McKinney, you're recognized to speak.

McKINNEY: Thank you, Mr. President. I rise again in opposition to LB137. And just like Senator Machaela Cavanaugh, it wouldn't matter who introduced this bill honestly speaking. It wouldn't even matter if the President pushed Congress to do something. I would oppose it. That's how, how much I oppose the bill. I don't care who, who introduces the bill. If I feel like I disagree with it, I disagree with it, and it's not going to change my mind. And then we talk about addressing crisis. Our state has been in a crisis in our prison system for the whole time I've been here and even before, and we have yet to address that crisis in a meaningful way. And there are men and women whose lives are at risk every day. People are dying all the time. People getting stabbed and other types of things. But we haven't responded to that crisis at all. Why? I guess my guess, most people think people in prison are not human. So who cares? Let's just build a prison and that's our solution, which I disagree with as well. I point you back to the fiscal note says: LB137 provides for a penalty enhancement for a controlled substance violation, resulting in seriously bodily injury or death. This bill could increase the length of stays of persons in prison, thereby increasing the overall prison population. I hope after you vote for this bill, you send a note to your constituents that's going to say, I voted for a bill that is going to increase the prison population, and we're going to be

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 22, 2024
Rough Draft

spending a half a billion dollars on it, because that's what's going to happen. And yes, it is a crisis. Yes, it's a problem. But this is not the solution to enhance a penalty. If somebody could tell me the clear examples of increasing penalties actually preventing people from offending, I would be open ears. But the facts aren't there. Our prisons wouldn't be crowded if increasing penalties was a deterrent. They did that in the '90s and early 2000s. Prisons are still filled across this nation and another thing, disproportionately of men and women that look like me. And that's something I have to consider, which is highly probable with the passage of LB137. So this is also me looking out for the best interests of my constituents, because we know the laws of America are not applied justly all the time, especially when there's interactions with people from my community. That is a fact, and it's undeniable. But I just-- sometimes I wonder what is the goal of a lot of individuals here. Is it to say we did something to feel good, or is it we did something that was right? You know--

FREDRICKSON: One minute.

McKINNEY: --so many people have questions about why are you asking for dollars for this or this or this, this or that. But nobody's factoring in the financial impact of the passage of this bill and what it's going to mean for the state, especially since the state is going broke. Where's the money going to come from to expand the prison after this bill goes into effect? Are you going to keep NSP open? And hopefully you go tell the taxpayers that we didn't want to replace it. We wanted to keep it open and have 2 prisoners in Lincoln or 3 actually, or really 4, something like that. But my point is, I don't think this bill is needed, especially in the times that we're in. We need to--

FREDRICKSON: That's your time, Senator.

McKINNEY: All right.

FREDRICKSON: Thank you, Senator McKinney. Senator Conrad, you are recognized to speak.

CONRAD: Thank you, Mr. President. I'd yield my time to Senator Wayne if he so desires.

FREDRICKSON: Senator Wayne, you are yielded 4 minutes and 47 seconds.

WAYNE: Thank you. I thought it was kind of funny when we're talking about conservatives, Republicans, Democrats, liberals. I think this is

the very conservative thing to do when you talk about government overreach. This isn't-- this isn't just to-- this is casting a wide net. And the problem is, I know there's, there is Exec going on. There's a lot of things going on and people aren't listening. But this is the one thing that our Constitution has always tried to protect us against, government overreach, especially in 2 areas. That is due process of taking somebody's property and taking your liberty. And you are casting-- we are-- if you vote for this, you are casting a super broad net. And again, we're going to have some more conversations here about what the bill actually says. The bill actually uses the word "connected." So when Senator Bosn got up and started talking about what other states are doing, I actually went and started looking at those state statutes. And I'm going to pass around what North Carolina has, because North Carolina has a statute that says-- it has 4 things listed. It has to be an unlawful sale of, of a certain controlled substance. The controlled substance or substances causes the death of the user through "ingestion," and it has to be the proximate cause of the victim's death. Lastly, it says it can't be done with malice. Because if it's done with malice, so if you intentionally poison somebody, that's actually a first-degree murder. So that's why it can't be done with malice. That's not in our statute, colleagues. We use this broad, undefined, never used in criminal code "connected." Connected means I don't want-- I don't know. We have some legislative intent that says or at least dialogue that says if person A gives to person B and person B mixes it and gives to person C, then only person B should be charged, keyword there "should." So that means person A who had nothing to do with any of this by the letter of the law is still connected, which means they could be charged regardless of what they did. That is insane in the definition of government overreach. So again, I'm going to ask Senator Bosn to yield to a question.

FREDRICKSON: Senator Bosn, would you yield?

BOSN: Yes.

WAYNE: So I just want to make sure how this enhancement works. The underlining crime has to be knowingly and intentionally handing or distributing a controlled substance. Is that the base-- the base element of this new or enhanced charge?

BOSN: Are you asking me to quote it, or are you asking me if that's in general what it does?

WAYNE: You can quote it or whatever makes you feel more comfortable.

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Floor Debate February 22, 2024
Rough Draft

BOSN: So subsection (1), which is the controlling subsection: Except as authorized by the UCFS, it's unlawful for any person, knowingly or intentionally to manufacture, distribute, deliver, dispense, or possess with intent to manufacture, distribute, deliver, or possess a controlled substance, or to create, distribute, or possess with the intent to distribute a counterfeit controlled substance.

WAYNE: So do you have to--

FREDRICKSON: One minute.

WAYNE: --in order to be enhanced, the first element is to knowingly or intentionally distribute a controlled substance.

BOSN: Among other verbs, yes.

WAYNE: So if you didn't know it was a controlled substance, would this enhancement apply?

BOSN: If you don't know that it is a controlled substance?

WAYNE: Yes. Would this enhancement apply? So let's just say I thought it was an aspirin. Person A thinks it's aspirin. They give it to person B, but it's actually contains fentanyl. Would you be charged and including this enhancement underneath your-- could you be charged with this enhancement underneath your-- underneath this bill?

BOSN: I would have to give that some more thought, because I suspect that relying on a defendant to come in and acknowledge that he knew or didn't know that this--

FREDRICKSON: That's your time. Thank you, Senators Conrad, Wayne and Bosn. Senator von Gillern, you're recognized to speak.

von GILLERN: Mr. President, I yield my time to Senator Bosn.

FREDRICKSON: Senator Bosn, you're yielded 4 minutes and 53 seconds.

BOSN: Thank you. So I guess one of the things I want to just point out here is the smoke and mirrors hypotheticals that we are traveling on with some of Senator Wayne's fact patterns here. We are chasing a rabbit down a hole farther than Alice in Wonderland has ever even gone. I mean, this is a hypothetical based on what ifs, based on third person down the chain. And if you can get a prosecutor who's a bad actor who charges this case, and if they are good enough to convince a

jury of their peers, 12 individuals, that this is what happened, I mean, we can do that all day. We can amend this to death. We can come in and we can try and talk about, well, what about and I don't know what the word "connected" means. Those are common English words. Everybody in here knows how to connect things. I would encourage you to recognize that for what it is and to take a step back and say to yourself, people don't do that. We don't start charging the pharmacist because they delivered the Adderall to their-- to the patient, and the patient cut it with fentanyl and then delivered it to someone else. And we're going to go back and charge the pharmacist. Those things don't happen and it just doesn't. And that's not a good reason not to try to fix a problem as significant and dangerous as this problem. Quoting an article that came out in the Omaha World-Herald almost 2 years ago, some of the incredibly shocking statistics that are in there that I think point out why this should be supported across the board. It's a 2022 article: Through the first 6 months of 2022, excuse me, 2022, there were at least 26 overdose fatalities in Omaha, including 11 during the month of February alone. Nationally, the U.S. Drug Enforcement Administration says there have been some 108,000 overdose deaths in the last 12 months, more than enough people to fill Memorial Stadium on a football Saturday. That is 4 times as many who die from homicides in America each year, and more than twice as many as are killed in motor vehicle accidents. Doing nothing is not an option. This is a crisis. It is a public health crisis. It is a public safety crisis. This has to have a reaction. It has to be responded to. This is our opportunity to figure that out. Going on from the article: Law enforcement and public health officials note the accidental overdose deaths are cutting across all age groups, with those in ages 35 to 64 in Nebraska actually dying at higher rates than those 15 to 24. So for those of you who think this is kids who are drug users, they're individuals that are, you know, a drain on society or whatever negative thought you might think this is targeting, that's not it. This is impacting everyone of all socioeconomic groups, of all walks of life. This is an issue that all of us are susceptible to being the victim of. According to the Center for Disease Control and Prevention data between 2000 and 2020, so 20 years, annual deaths from accidental drug overdoses in Nebraska spiked from 22--

FREDRICKSON: One minute.

BOSN: --to 177. That is an increase of 705%. A 705% increase. If you can show me those kind of numbers in anything else that we're responding to as a Legislature, by all means get on the horn and give it-- give it a go. Maybe that's a good reason we shouldn't be doing

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate February 22, 2024

Rough Draft

this. Quoting another article: Between 2018 and November of 2022, so just under 4 years, at least 256 Nebraskans died from poisonings and overdoses on fentanyl and other synthetic opioids, according to the Centers for Disease Control and Prevention. More than half of those deaths, 138, just one more than the number of this bill, 138 occurred in 2021--

FREDRICKSON: That's your time, Senator.

BOSN: Thank you.

FREDRICKSON: Thank you, Senator Bosn. Senator Wayne, you're recognized to speak.

WAYNE: Thank you, Mr. President. And colleagues, when you pass bills, they live forever. So thinking of hypotheticals and how things apply is actually very, very important. The fact of the matter is this bill was brought on a fact pattern that this bill doesn't even address. It doesn't even solve the issue that the family came here for. To me. It's almost wrong to tell a family that we're going to solve a problem when the bill doesn't solve it. But nevertheless, there is clearly no intentionally and knowingly. And I'm going to ask the question again, because if we can't say on the mic what the elements are to a bill, then how the hell do we know how they're going to apply out in the real world? Then they come back and look at the testimony and the conversation we're having on the floor for a legislative history. So let's be clear on what the elements are of the bill. And the elements are you have to knowingly and intentionally violate this section in order for the enhancement to apply. Now think about that. Every individual who doesn't knowingly-- oh, are they leaving already? We didn't announce them. I'm going to end my conversation early because I think they should get their announcement. Every kid comes down here and waits for that. So, Mr. President, I'll yield my time back to the Chair.

FREDRICKSON: Thank you, Senator Wayne. Senator Aguilar would like to welcome a group of 40 4th grade students from Knickrehm Elementary in Grand Island in the north balcony. Please rise to be recognized by your Nebraska Legislature. Returning to the queue, Senator DeKay, you are recognized to speak.

DeKAY: Thank you, Mr. President. I'm going to read a letter that was part of our committee hearing last year on this bill. And it came from Taryn's parents. Taryn was a beautiful young woman inside and out with

her whole life ahead of her. With a 6-month-old baby girl and starting a new job, she finally found the true meaning of life along with the love of her life, her baby girl. Taryn was the type of person who made friends easily. She enjoyed life, she enjoyed being outdoors, and she enjoyed the company of her friends. On November 30, 2021, that all ended when someone offered her a counterfeit pill laced with enough fentanyl to kill 8 people. Besides the loss of our daughter, what makes it worse for us, we have this drug dealer's name, and the Lincoln Police Department have video footage of this individual giving Taryn the pill that took her life. Yes, a lot of proof. And yet he will not be charged for the murder of my daughter under the state of Nebraska, because there is no law to protect Nebraskans from this deadly crisis. Synthetic opioids are truly a weapon of mass destruction. This violent crime needs to be addressed in our state. Why do I say it's violent? The night of Taryn's death, she was with a so-called friend. Instead of rendering help or calling 911, she had Taryn placed in the back room of an establishment they were in, and decided to take snapshot pictures of her and post it on the internet. I was able to obtain one of these pictures showing my daughter clenching her chest, gasping for air, very similar to strangulation, except it's a lot slower process and there's no hands around her neck cutting off her air supply. Society in general tends to look at these death as an overdose. We need to change the narrative here and stop looking at these deaths as an overdose when it comes-- when the majority of these synthetic opioids should be treated as a poisoning. How can we continue to label this as an overdose when the victim, as in Taryn's case, is deceived in thinking that they're taking a legitimate pill? The majority of those who died from synthetic opioid do not know that they took a counterfeit Percocet or an Adderall or Xanax, did not know that their cocaine, marijuana or methamphetamines or drug of choice was laced with fentanyl or fentanyl "analogens" agents like carfentanil, which contained 100 times more-- which is 100 times more potent than fentanyl. Today, drug cartels are using other drugs like Xylazine and animal tranquilizer used by veterinarians for large animals. The purpose of this drug is to extend the euphoric effect. This drug is nonopioid, which Narcan has no lifesaving effect. Just recently, the U.S. Drug Enforcement Agency issued a public safety alert warning Americans about the widespread threat of fentanyl mixed with Xylazine called Tranq or zombie drug, making this one of the most deadliest drug threats of our country has ever faced. This new drug has been found in 48 of 50 states, including Nebraska. Along with our society looking at this as an overdose, they tend to blame the victim, not the cartel, drug dealer or pill pusher for their death. We need to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 22, 2024
Rough Draft

rethink the situation and not blame the victim we do not know or understand who these victims are.

FREDRICKSON: One minute.

DeKAY: Thank you. What they may be experiencing, whether it's occasional party, out on the night, someone pressured into experimenting for the first time, or someone who is suffering from anxiety or depression looking for something to escape the moment, or a person suffering from an addiction, he or she is labeled as an addict. This is so wrong to blame the victim for their death when these drug dealers are taking advantage of our loved ones. Today, with the anxiety and depression at an all-time high in our nation, what better way to put this deadly weapon in a pill form or disguised to look like candy and deceive our loved ones into thinking that they're taking a legitimate pill? I'll read the rest of the letter on the next time. Thank you.

FREDRICKSON: Thank you, Senator DeKay. Senator Duggan [SIC], you're recognized to speak.

DUNGAN: Thank you, Mr. President. Good morning, colleagues. I do want to rise just to say a couple of things regarding LB137. Before I get into that, I just want to say, too, I think it's important for us as a body to, to be able to have these conversations and not have it be necessarily perceived as a, quote unquote, filibuster. I mean, I understand filibusters do happen and filibusters do carry certain weight and precedent. But I think especially for us freshmen, it's very important that we be able to have actual debate over serious issues like LB137 and not have it automatically feel like it devolves into this concern of, oh, it's a pointless filibuster. I think the conversations that we're having surrounding LB137 are really, really important. And I think that the points that are being made by people on both sides are real. We only debated this for about an hour yesterday. And so I just want to urge caution when some of my colleagues, I think, tune out or think that this is just taking up time because the points that are being raised by everybody on both sides I think are vital. So I would ask people who are paying attention to, to continue to do so, because the debate that we're having is substantive. And I just-- there was a lot of conversation yesterday after we started having this debate on LB137 of, oh, it's a filibuster. And I understand there's an IPP motion on the board, but that doesn't mean what we're saying is not of substance. So I just would say that to urge caution to my colleagues, especially us

freshmen, who I think are still kind of getting our feet under us during what is a more normal session. With that being said, I do return to LB137 in opposition. I want to reiterate what I said yesterday, which is that I think Senator Bosn has come at this from an incredibly genuine place. I think that she's coming at this trying to address a real issue. The letter that we just heard from Senator DeKay is heartbreaking. And I have personally spoken to families who have dealt with this kind of substance use disorder and have dealt with people who have died. And it is incredibly tragic. But what is important and this, I think, goes back to some of the points that were being made yesterday is we have to be targeted in what we do to actually address those problems. The Nebraska Supreme Court has held that manslaughter charges can be brought against those in situations like what we just heard. And so there are currently structures in our law to address these problems. And it doesn't necessitate that we change the law in order to address them. Drilling down even more specifically, though, and I've expressed this concern to Senator Bosn, I have an issue with the way that LB137 is written. And the reason for that is the enhancement of the possession with intent to deliver charge is triggered, in part, if the use of that controlled substance with such violation results in either a serious bodily injury or the death of another person. Death is obviously very clear, right? We know when somebody has died. Serious bodily injury, though, colleagues, is a term of art. It is a legally and statutorily defined term. And so even though you may think you know what a serious bodily injury is, you have to turn to the case law and the statutes to see what a serious bodily injury means. Under the Section 28-109 terms defined, serious bodily injury means bodily injury that involves either a substantial risk of permanent, serious permanent disfigurement, protracted loss, or impairment of the function of any part or organ of the body and then, most importantly here, substantial risk of death. Any use of a controlled substance arguably could result in the substantial risk of death, depending on in any number of circumstances. The reason that I highlight this is including the term "serious bodily injury" in what can trigger the enhancement opens up a massive latitude of discretion for when that could or could not be put into play. I think this law-- I think LB137 would be far clearer if we were to exclude serious bodily injury and only have death--

FREDRICKSON: One minute.

DUNGAN: --thank you, Mr. President-- as the trigger for that enhancement. I'm not saying I would necessarily support that still, because I don't think that still addresses what the underlying concern

is. But by including serious bodily injury, we have created a statute that could potentially be overbroad. And we are creating a statute or a proposal that could trigger the enhancement to a higher felony in any circumstance where the person charging that crime believes there might have been a substantial risk of death. And I think that when we have that much discretion and that much leeway, it becomes complicated. So again, this is a substantive debate about the actual content of the bill. I think that having serious bodily injury as a part of that trigger is a problem. I've spoken with Senator Bosn about that. I will continue to speak to others about that. And my hope is that we could try to find some language that would maybe help to clarify some of that ambiguity. Thank you, Mr. President.

FREDRICKSON: Thank you, Senator Dungan. Senator McKinney, you are recognized to speak, and this is your third time.

McKINNEY: Thank you, Mr. President. I rise still opposed to LB137. Honestly, I'm not trying to filibuster this. I'm just, you know, standing up in opposition. I see the queue is low and very few people want to talk about a bill, which I believe is very important. So that's why I'm clicking my light. Until other people step up to give their opinions on whether they're for or against this, as long as I had time, I was going to stand up and speak. So it's not about filibustering this. It's about an important issue being on the board and very few senators standing up and giving their positions on the bill. I know some are in Exec and things like that. So not saying they're wrong for not getting in the queue. I'm just saying the queue has been low and I felt it was my duty to get on the mic. Again, this bill is going to increase the overcrowding problem in the state of Nebraska, which is going to result in the need to expand the new prison that is supposed to be built, which is going to cost, you know, like a half a billion dollars, not counting operation costs. And then they might also keep NSP open because we're going to fill our prisons up even more than they already are. If this passes and it has negative impact, and I or somebody else tries to, you know, repeal it or, you know, change the law, there's going to be a bunch of county attorneys in the Rotunda saying, no. They're going to fill up the Judiciary Committee and say, no, we shouldn't do this. That's why you should think about this. When you do enhancements, it's hard to take them back. Yes, there's very-- there's many sad stories. I know people that have been affected by fentanyl. I'm not up here saying that they should have died because they took a drug. I know people that died. I went to school with people that died. But I'm also aware that enhancements of crimes have disproportionately affected my community.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 22, 2024
Rough Draft

I understand that our prisons are overcrowded and we're talking about crisis, but there isn't a lot of willingness to address that crisis at the level it should have been addressed. We passed LB50 last year and we thought, you know, we made some progress and I still feel like it should have been more in LB50. But even, even so, we did that. Then Attorney General, at-- after a opinion request from the director of the Department of "Punitive" Services and the director of the Board of Parole, sent a letter seeking an opinion on the constitutionality of it, he said it's unconstitutional. So it's not being fully implemented because it's in the courts currently. So yeah, we passed LB50, but it really hasn't went into effect because it's in the courts. You see how hard it is to change things? We did small changes last year in LB50, and even those changes can't be fully implemented because so many people don't want change. They just want to fill the prisons and have this illusion of being tough on crime and not really solving anything, and that's my issue. So I think I'm out of--

FREDRICKSON: One minute.

McKINNEY: --chances to get on here again. So if anybody wants to yield me any time, if you don't want to talk, I'll talk. Just give me the mic. Just please take some time, think about the context of this or we're going to add to the overcrowding crisis. Let's talk about that. I don't like the bill. And I also don't like it because we're adding to the overcrowding crisis. And there's not a willingness in this body to actually address the overcrowding crisis. You all just want to build buildings and keep old, outdated buildings open, but not actually help people that are in horrible conditions and some of them are dying in those conditions. Thank you.

FREDRICKSON: Thank you, Senator McKinney. Senator Conrad, you're recognized to speak.

CONRAD: Thank you, Mr. President. Good morning, colleagues, I'm proud to follow my friend, Senator McKinney, because I'd like to echo a lot of the great points that he made and, and he always makes as a consistent and powerful advocate in regards to smart justice reform and prison reform. I also want to take a moment to kind of reset perhaps the tone or kind of provide another lens for some of the opening remarks that we heard from proponents of this measure. Now we all get carried away on the mic from time to time, particularly when we're passionate about the issue and I understand that. But let's be crystal clear. Smart criminal justice reform is not a partisan issue, especially in recent years. There has been con-- there have been

considerable amounts of efforts led by Right on Crime, led by the Platte Institute, led by Koch Industries, going hand to hand with traditional criminal justice reform allies like the ACLU. That's why we saw first of its kind, critical criminal justice reform happen under the Trump administration. It's why we've seen significant criminal justice reform happen in our sister states that have a similar political landscape to ours, if not more conservative. It's because people are coming together across the political spectrum to recognize redemption, to recognize fiscal responsibility. So it's important, as we set up this debate, that we do not devolve into partisan rancor and ridiculousness, which is not helping us solve problems, nor bring back loved ones who our hearts go out to those members of our community. So that's the first part that we need to be really clear about. And that was on display without LB50 last year as well, which of course is now being undercut by the Attorney General's Office, even though they helped negotiate that meaningful but modest reform. I also want to give credit, again, as I did yesterday, to my friend Senator Bosn for looking more holistically at these public health issues that go along with substance abuse and drug abuse. And we need to lean into those solutions, Senator, and we need to focus on the areas where there are-- where there is common ground and consensus. We shouldn't be doubling down on bad policy just because we can. I give her credit for stepping forward in supporting fentanyl test strips, Narcan in schools, safe needle exchange. These are proven public health solutions that help to address drug abuse in our communities, that help to move towards treatment and life change, and away from the punitive aspects of the criminal justice system that don't help people in the present instances get the help that they need to change their lives and to advance our shared public safety goals and our shared goals to be good stewards of the taxpayer dollars. And let me provide you a very, very clear example to echo some of the comments from my friends thus far. Once a bill goes, it almost never comes back, particularly in regards to criminal justice reform. And let me tell you my experience in picking up an important issue from my friend Senator Pansing Brooks, who worked on this for years during her time in the Legislature. We have report after report after report about how the current truancy statutes are hurting too many families--

FREDRICKSON: One minute.

CONRAD: --are snaring too many families. These are nonviolent issues. These are-- this is kids missing schools. And guess who won't come to the table to reform that? The County Attorneys Association because it's punish, punish, punish, punish, punish at every entree point. So

if you think there's going to be a rethinking of a significant criminal enhancement in regards to this issue down the road after we passed this, there will not be. This is the moment, and it's ridiculous to claim otherwise. And friends, we have no reason to rush. We literally have a criminal justice sentencing reform task force that is completing its work about how our statutes look, about how they should evolve. There is no reason to leapfrog or piecemeal forward with LB137 if we're serious--

FREDRICKSON: That's your time, Senator.

CONRAD: --about that task force. I'm going to get in the queue again.

FREDRICKSON: Thank you, Senator Conrad. Senator Blood, you are recognized to speak.

BLOOD: Thank you, Mr. President. I would like to yield my time to Senator Wayne since he did not get to finish in his last round.

FREDRICKSON: Senator Wayne, you are yielded 4 minutes and 59 seconds.

WAYNE: Thank you, Mr. President. And thank you, Senator Blood. Colleagues, what's interesting for those who are watching at home is how empty this body is. This body is completely empty. And I may call the house just to call the house at this point. I'll think about it. But here, here's the issue, colleagues. I understand what Senator DeKay was reading. There are people who, we have-- I have lost a lot of loved ones through drug use, drug abuse, gun violence, etcetera. But getting up and just keep telling stories that don't match the bill is just, in my opinion, wrong. Yes, fentanyl is dangerous. Yes, there are problems that we are dealing with, but we're not actually solving the problem that we're trying to, I guess, theoretically talk about like we're trying to solve. If there was camera footage, if there was evidence of a controlled substance being given or sold to an individual, that is a violation of the law. If they weren't charged, this bill does not change that. Will Senator Bosn yield to some questions?

FREDRICKSON: Senator Bosn, will you yield to a question?

BOSN: Do people ever say no? I'm just curious actually.

WAYNE: Yeah. People have. In my time, there's been Senator Aguilar, Senator Groene. I can count a handful-- Senator Blood, so you can say no. It's not a problem.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 22, 2024
Rough Draft

BOSN: I'm not going to say no. I just-- I always think it's funny when people ask. It's like, does anyone say no?

WAYNE: It-- yes. People do say no.

BOSN: Stranger things have happened. OK.

WAYNE: So will you yield to a question?

BOSN: Yes.

WAYNE: OK. Let's talk about the elements, 'cause I want to make sure I get this right and people understand. The first charge or the baseline charge has to be that they-- an individual knowingly and intelligently distributed or sold or gave to an individual a controlled substance.

BOSN: You said intelligently, and I would argue it's not intelligent. It's intentionally.

WAYNE: Sorry. You're correct. So knowingly and intentionally, correct?

BOSN: Knowingly or intentionally.

WAYNE: So if they do not believe it's a controlled substance but give it to somebody, there-- they can't even get to the next stage of when it's enhanced.

BOSN: If you are knowingly and intentionally giving something that you think is a Tylenol, I would say no. I-- unless I'm missing something, unless this is a gotcha, no.

WAYNE: No. Do you have to know what you are giving is, is an, a controlled substance? So do they have to know that oxy is a controlled substance versus aspirin? Does the individual have to be able to distinguish those two?

BOSN: So if I give you a pill and it's cut with fentanyl, I am held to a strict liability standard. Is that where you're going with this? I'm sorry.

WAYNE: No. I'm asking you if, if, if I give you a pill, do I have to knowing-- do I have to knowingly or intentionally know that it's a controlled substance, that it-- that I-- that it is banned, that I can't give it to somebody?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 22, 2024
Rough Draft

BOSN: Under the current state of the law, if you give someone something that is found to be a controlled substance, yes, you would be eligible to be charged currently.

WAYNE: I'm not-- I'm still not getting the clarity on the answer. So if I have a pill that I do not know is a controlled substance and I give or sell it to somebody, can I be charged with-- can I be charged with--

FREDRICKSON: One minute.

WAYNE: --knowingly and intelligently distributing it?

BOSN: Again, it's not intelligent. It's--

WAYNE: I'm sorry. Intentionally.

BOSN: So if you-- if I give you something and it is a controlled substance and I intentionally, knowingly give it to you, yes, under the current state of the law.

WAYNE: So in a fact pattern where somebody gives a controlled substance to an individual, they should be charged, right? If they knowingly and intentionally give a controlled substance to somebody, they should be charged at a baseline of a controlled substance violation.

BOSN: Under the current state of the law, yes.

WAYNE: So what would be the reason that a prosecutor wouldn't charge that first level?

BOSN: What would be a reason that a prosecutor would or would not?

WAYNE: Would not charge.

BOSN: If they can't prove that they had a controlled substance.

WAYNE: So if they can't prove that they had a controlled substance, we can't--

FREDRICKSON: That's your time.

WAYNE: Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 22, 2024
Rough Draft

FREDRICKSON: Thank you, Senators Blood, Wayne and Bosn. Senator Wayne, you are next in the queue. And this is your last time on this.

WAYNE: Thank you. Senator Bosn, will you yield to a question?

FREDRICKSON: Senator Bosn, will you yield?

BOSN: Yes.

WAYNE: So what are the reasons that prosecutors don't charge in case of a, in, in a situation where they watch, they saw somebody knowingly selling a controlled substance, intentionally selling a controlled substance. Why would a prosecutor not charge?

BOSN: There's a lot of reasons that may ultimately come into play, but among them, they couldn't prove that it was a controlled substance.

WAYNE: So if they couldn't prove that it was a controlled substance, then you can't get to the enhancement, correct?

BOSN: If you cannot prove that it is a controlled substance that I delivered to you, then you would not be eligible for an enhancement.

WAYNE: What would happen if someone took a controlled substance but later took something else with fentanyl in it? Would that first person who gave the person with the controlled substance without fentanyl, and the second person who gave the controlled substance with fentanyl, would that first person be enhanced underneath your bill?

BOSN: Under the current state of the law, if they're delivering the substance from person A to person B, there's under the current state of the law, they're guilty of delivery. But your question goes to when B cuts it with something that ultimately kills individual C, and your question is whether or not A is also culpable for the death of individual C. Is that right?

WAYNE: Correct.

BOSN: And my position is that the word "connected" is-- does not include that individual because your example would include then pharmacists who are disseminating the drugs legally to person B, who then cuts the drug and gives it to someone else illegally. So I don't think that's included under the word "connected."

WAYNE: Do you have a definition of the word "connected"?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 22, 2024
Rough Draft

BOSN: No, but I'll get it for you.

WAYNE: Is it in statute currently?

BOSN: Webster's dictionary I think has it.

WAYNE: Do we look at Webster's when we-- when we look at plain language or how do we do that in court interpretations?

BOSN: I think people interpret words without having them defined in statute.

WAYNE: So one-- so a prosecutor could interpret the word connected to mean person A in your scenario.

BOSN: A prosecutor could do a lot of things. Sure.

WAYNE: So then you would agree that in that situation where a prosecutor interprets person A, that that wasn't the intent of your language, and that's too broad, the word "connected"?

BOSN: My position is that this does not include that individual. That's what I can commit to.

WAYNE: But you agree that a prosecutor can take a different approach to the word "connected"?

BOSN: I agree that prosecutors have a lot of discretion.

WAYNE: Do you think we should limit that discretion when it comes to the word "connected" in your bill?

BOSN: No.

WAYNE: So you're OK with person A being charged?

BOSN: I don't think that's what I said.

WAYNE: I'm asking you. That's why I said so you're OK with that? It's a question.

BOSN: I do not believe that person A is involved in the death of person C, because person B cut the fentanyl. Now, if person A knew that that's what they were giving the drugs to person B for, that's different. That's connected. But unless you can make a connection between person A and person C beyond I gave it to B, didn't know that

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 22, 2024
Rough Draft

they were going to do something illegal with it and then they did, I think that's different.

WAYNE: So do you think your, your bill since you're an attorney, we should-- we should tighten this language up to make sure your connected is the only connected that's followed and not somebody else's version of the word connected?

BOSN: I think we could do amendments to this until we're all blue in the face, and I don't think it would change your position on it.

WAYNE: I'm asking you if we can [INAUDIBLE]

FREDRICKSON: One minute.

WAYNE: --I'm asking you, would you accept to make sure we tighten the language for your bill, to make sure another prosecutor doesn't have a different definition of the word connected?

BOSN: If you want to bring me something, I will happily consider it.

WAYNE: OK. So you-- so then you're-- let me ask you this. Do you think a prosecutor who can have a different interpretation of the word connected and you agree to that, but you still think the word connected is sufficient and not too broad, even though another prosecutor could charge person A, which is not what you want? I just want to make sure I understand you're OK with the language even if somebody-- if person A gets charged, that's not your intent. But you're OK with the language as is.

BOSN: I'm OK with the language as it is.

WAYNE: OK. It's not really more to go from there because I don't really believe that we should-- if the intent of the language is X and somebody could interpret it as Y, then by definition, it's too broad.

FREDRICKSON: That's your time, Senator.

WAYNE: Thank you, Mr. President.

FREDRICKSON: Thank you, Senators Wayne and Bosn. Senator Holdcroft, you're recognized to speak.

HOLDCROFT: Maybe some day to day. Thank you, Mr. President. Yes, I rise in support of LB137. It is my priority bill, so I really feel

like I should support it, I mean. But I wanted to challenge some of the things that have been said, which we've heard over and over and over again. And I'd like to, you know, give you the facts on, on some of these issues. And we'll start off first with that our prisons are overcrowded. And that is true. They are overcrowded. And what's the definition of that? That means that they were designed for a certain number and we have more than that number in the prison. So we are doubling up. I mean, we have cells that were designed for one. In fact, most of the cells in our modern prisons are designed for one inmate, and we have two. We've put bunk beds in there and we've doubled up. That's why we are overcrowded. Now our percentage of overcrowding is second in the nation. I mean, it sounds really bad, but there's 2 numbers there. I mean, it's a ratio. It's the number of prisoners to the number of cells. So does Nebraska have a higher incarceration rate than other states in the country? And the answer is no. I mean, if you look at the states just around Nebraska, Colorado has higher, Kansas has higher, Wyoming has higher, South Dakota has higher and Missouri has higher. So why isn't their overcrowding percentage higher than Nebraska's? Because they have more prisons. And so you have 2 solutions to our overcrowding situation in Nebraska. One, build more prisons. That's not ideal. I agree. And also to try to reduce recidivism, try to help with the reentry. And then the comment was made, we have done nothing to do that. And with that, we just passed LB50 and it's locked up in the courts, which was an inaccurate statement. In LB50 last year, we did have the increased eligibility for parole. And that piece is in the courts, only on the feature of bring-- being able to go back. So ret-- ret--that's the term I'm looking for, but reciprocity, not reciprocity, but going back in, in history, and, and allowing those cases to be reconsidered. We can't do that. And that's what's locked up in Supreme Court. But going forward, the enhanced parole is available to, to those coming up on parole as we move forward. Second, in that bill we, we did additional problem-solving courts. We also increase the number of probation officers. And we have a Sentencing Reform Task Force, which Senator Wayne and Senator McKinney are both members of. And they were supposed to give us some kind of report last December. I haven't seen it. Maybe Senator Wayne, Senator McKinney, can, can give us an update on where the Sentencing Reform Task Force is. One of the other things that the Governor has done is hired Director Jeffreys from-- he comes from Illinois as our new director of the Department of Corrections. And the reason he handed-- he, he hired him was because of his history with reentry programs. And just recently, they launched a new program. It's

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 22, 2024
Rough Draft

called Reentry 2030. And I'd just like to hit some of the highlights of what that vision is coming from Dr. Jeffreys and the Governor.

FREDRICKSON: One minute.

HOLDCROFT: Thank you, Mr. President. Increase reentry success rate by 15%, equating, to a 15% reduction in recidivism. Under education, 30% increase in GED completion during incarceration-- 15% increase in-- 15% increase in GED proctors; 50% increase college coursework enrollment. Under programming, 50% increase utilization of tablet program; 25% increase in participation in vocations and life skills programs. 100-- under health, 100% of incarcerated individuals will be enrolled in Medicaid or informed how access-- how to access healthcare benefits. Under critical documents, 100% of incarcerated individual will have a state identification and birth certificate prior to discharge. And there are others here which I'll come back to.

FREDRICKSON: That's your time, Senator.

HOLDCROFT: Thank you, Mr. President.

FREDRICKSON: Thank you, Senator Holdcroft. Senator DeKay, you're recognized to speak.

DeKAY: Thank you, Mr. President. And I do rise in support of LB137 and I will continue and finish up the letter that Taryn's parents wrote to committee last year. The last part of the letter goes like this. We cannot continue to punish drug dealers and distributors with a barely a slap on the wrist. It's imperative that our state legislators work together to pass a mandatory minimum law when fentanyl or any illicit drug is found to be the cause of bodily harm or death. In addition, our legislators must pass a criminal code requiring police to treat each apparent overdose as a crime scene, preserving evidence, questioning witnesses, searching through the cell phones, and photograph-- and photographing the scene before clearing the premises. Change to the criminal code must direct prosecutors and judges to indict and punish drug dealers and pushers for their action resulting in-- resulting in the death or bodily harm from a controlled substance. Drug dealers and pushers commit murder when citizens die as a result of their unlawful delivery of any controlled substances. They undoubtedly know the risk of death from the illicit drug being sold today. Drug dealers' premeditated actions are caused solely by unfathomable mentality of profits over people. These drug dealers and pill pushers must face harsh consequences. Light sentencing and in

most cases no prosecution does nothing to deter them from continuing their illegal trade. How many more Nebraskans have to die from this weapon of mass destruction before the state considers this issue? How many more families need to be devastated and have their life completely destroyed by these drug dealers and pill pushers who have no respect for life? Why is our state allowing these criminals to get away with murdering our loved ones with little or no consequences? Currently, there are 24 states that have drug-induced homicide law in effect, and it's time for the state of Nebraska to step up and protect these Nebraskans from these thugs who choose profit over life. I won't recall the states that are on this letter. Senator Bosn had already announced them. So with that, I yield back the rest of my time. Thank you.

FREDRICKSON: Thank you, Senator DeKay. Senator Conrad, you are recognized to speak.

CONRAD: Thank you, Mr. President. And good morning again, colleagues. I want to join in the chorus of voices that has extended their sympathy to families that have lost a loved one due to drug use. And I-- there is absolutely no way that doesn't speak to all of us as community members, as parents, as policymakers. But it is also incumbent upon us as policymakers to balance a variety of competing interests. And that includes fiscal components, that includes public policy components. And let me talk a little bit more about the public policy components, because no one has really delineated this or been clear about this. So under existing law we have manslaughter, right? So you're held liable for the acts and the mens rea related to whatever criminal act that might result in death. You're not charged under murder. You're not specifically intended to kill somebody, but it's the result. And that's our manslaughter cases which carry 0 to 20 years. 0 to 20 years. It's a significant sentence. And that existing law has been utilized to prosecute cases just like this. You can Google it and see the news stories. You can look at the filings in, in our courts. We also have existing law regarding the intent to deliver controlled substances that carries 1 to 50, 1 to 50, colleagues. We already have that. And those laws also have been utilized to prosecute cases like this, and rightly so. No one has told me and I haven't seen any studies about how increasing the penalties beyond 0 to 20, beyond 1 to 50 brings anybody back or is an effective deterrent. I haven't seen the studies and we have to be honest about that. Simply increasing penalties does not have the entire-- the desired effects. We already have as the purpose of our criminal law is to deter and punish purposeful criminal activity. When somebody has the guilty mind, when

somebody seeks to do harm, we bring harsher penalties. When somebody accidentally does harm, we do not. Those are the distinctions in the law, and rightly so, on a policy basis. And Senator Bosn and others also cannot divorce the practice that exists with our current code that affords a host of enhancements already on top of manslaughter, on top of intent to deliver, whether you've got a gun, enhancement; whether or not you're in a school gone-- zone, enhancement; whether or not habitual criminal applies, enhancement. And when we've asked Senator Bosn and others that are moving this forward to work with us on thoughtful amendments regarding technical language, like removing the resulting in bodily injury, nope. When we've asked Senator Bosn and others to work with us to--

FREDRICKSON: One minute.

CONRAD: --amend this bill to make clear that it's concurrent so it doesn't perpetuate abusive stacking that elicits pleas, nope. So we're clear about what this is. We're clear about what this is. It's doubling down on bad policy to act like we're tough on crime, to perpetuate a war on drugs without addressing real harm and real solutions that limit drug use and harm in our communities, that save taxpayers' dollars. And we have to be clear-eyed about those considerations as well as part of this debate. Thank you, Mr. President.

FREDRICKSON: Thank you, Senator Conrad. And that was your final time on this motion. Senator Holdcroft, you're recognized to speak.

HOLDCROFT: Thank you, Mr. President. I just wanted to, first of all, talk about again, LB50 and the enhanced parole expansion. And the term I was looking for was retroactivity. So-- and this is kind of an interesting thing. We talk about separation of powers. It's one thing for the Legislature to direct how, you know, sentencing should be done by the-- by the courts before sentencing. But after sentencing, it's really a violation of the division of powers or separation of powers for us to come back and say we didn't like your sentence and so we, we want to revoke it. So that's why right now in the courts is this question about can this enhanced parole be applied to people who are currently in prison and were sentenced without this legislation? So, of course, I-- personally, I was in, in favor of the expanded parole and would like to see that to go retroactive. But as I mentioned before, going forward we do have this enhanced eligibility for parole. And could I-- would Senator Bosn yield to a quick question?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 22, 2024
Rough Draft

FREDRICKSON: Oh, Senator Bosn, will you yield?

HOLDCROFT: Caught her by surprise. Sorry.

BOSN: I'm sorry. I was in another conversation. What, what was the question?

HOLDCROFT: I'm just about to ask you the question. Would you yield first of all?

BOSN: Yes.

HOLDCROFT: OK. We were just talking about the enhanced eligibility for parole, which is currently in the courts. But what did we finally decide on as far as the percentage of original sentence that can now--

BOSN: So when is someone now eligible under the new LB50?

HOLDCROFT: Yes.

BOSN: Although it is being debated, it's at 80% of their sentence.

HOLDCROFT: 80%. So before they had no eligibility. And, and they'd go up to their jam out date, which is not necessarily a good thing because we have no post, postrelease supervision. We have no incentive for them to, to do programs. And so for those who were in that situation, we built in some, some eligibility for parole, which lets them out earlier, but also gives us that incentive for programming and postrelease supervision. So to me, it was a win-win. Unfortunately, that's, right now it's tied up in the courts. I just wanted also to touch on a few things. During the-- during the interim, I made a point of, of visiting as many of our correction centers as I could. Because being on Judiciary Committee and never being in a prison, knock on wood, I really felt that I had something to learn there from the Department of Corrections. And so there are-- there are 9 corrections centers in the state of Nebraska. There are 5 maximum security prisons in Nebraska. And they are NSP here in Lincoln and RTC in Lincoln, also Tecumseh, the Omaha Correctional Center. And then there are 3 community corrections centers, which are your work release. So they are-- they are typically inmates who are getting ready for parole. They're still incarcerated, but they are able to get a job, check out in the morning, come back in the evening. And so we do have the Community Corrections Center in Omaha, the Community Corrections Center in Lincoln, and also the Women's Corrections Center here in--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 22, 2024
Rough Draft

well, the women's work release here in Lincoln. And then there is the, the, the Women's Corrections Center--

FREDRICKSON: One minute.

HOLDCROFT: --in York. Thank you, Mr. President. And finally, the last one is the Work Ethics Center in Scottsbluff. So that was just a bit too far for me to get to. But, but I visited the other 8, and, and I hate-- I hate to bring this analogy, but there are a lot of-- there are a lot of similarities between a prison and being on a Navy ship at sea. So you're kind of restricted. But there are some things that you learn as a naval officer as you go around the ship and look for different indications of the condition of, of the-- of the facility. And number one was cleanliness. And I was very impressed with the cleanliness of the corrections centers. I mean, there's no dust in the corners. There's-- the garbage cans are empty. You know, there's, there's definitely a lot of attention that goes to keeping those facilities in a clean condition. They're also the personnel. I was very impressed with the personnel.

FREDRICKSON: That's your time, Senator.

HOLDCROFT: Thank you, Mr. President.

FREDRICKSON: Thank you, Senator Holdcroft. Seeing no one else in the queue, Senator Machaela Cavanaugh, you are welcome to close on your motion.

M. CAVANAUGH: Thank you, Mr. President, colleagues. It's been a robust conversation this morning. After this motion, then I believe we will get to the committee amendment. So I, I went up to the front of the Chamber earlier today and grabbed a couple of books. They're the laws, statutes, rules of, of order. And I started reading on page 990 of book Volume 5, statute is 81-8204. This is our statute on Public Counsel. Colleagues, we are in a bit of a crisis. The administration has continually systematically tried to undermine our authority as the oversight branch of government. They are currently breaking the law. They are in violation of the law because of an Attorney General's Opinion, an Opinion. I've got lots of opinions that are not law. And it is my hope that this will be a moment in time that we collectively, 49 of us, will rise to the occasion, will defend the Legislature, will fight back at efforts to erode our role in government. I was disappointed last week by the Executive Board Committee hearing around the Inspector General's Office. I was taken off guard by the MOU,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 22, 2024
Rough Draft

which is not a real thing that there is no authority in. And I remain hopeful that we will continue to fight and defend our institution and our right to have the Inspector General, the authority of the Inspector General that is in statute. At the Legislative Council in December, we collectively met and discussed this issue, and I think it was clear by numerous people in this body that there was a interest in exploring a more aggressive approach to reinstating the authority of the Inspector General's Office. But we are a process entity, and we go through processes and we are diligent and we are thoughtful and we are methodical. But I am concerned. I am deeply, gravely concerned that we are going to dilute our own authority in this process. And in the process of that, the people are going to suffer. The people we've been talking about in this bill, the incarcerated people who do not have the advocacy of having an Inspector General come in and ensure that their health and well-being is being accounted for.

FREDRICKSON: One minute.

M. CAVANAUGH: Colleagues, I think we're going to be having this conversation tomorrow, or that's what I'm hearing in the high school rumor mill that is this building. And I just hope that we can collectively come together and stand up for this institution and stand up for the taxpayers and stand up for the people of Nebraska and stand against people who want to govern in darkness. We need to govern in light. Thank you, Mr. President. I would like a call of the house.

FREDRICKSON: Thank you, Senator Cavanaugh. There has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

CLERK: 12 ayes, 5 nays to place the house under call, Mr. President.

FREDRICKSON: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel, please leave the floor. The house is under call. Senator Conrad would like to welcome 3 guests visiting from Sweden: Mattias Brandt, Rebecka Petersen and Elisa Petersen under the south balcony. Please rise to be recognized by your Nebraska Legislature. Senator Bosn would like to welcome guests under the north balcony, Adam Wiblishouser from Omaha. Please rise and be recognized by your Nebraska Legislature. The house is under call. Senators Day, Conrad, Kauth, Armendariz, Linehan, Slama, DeBoer, Dover, Bostar, McDonnell, Ballard please return to the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 22, 2024
Rough Draft

Chamber. The house is under call. All members are now present. The question before the body is the motion to indefinitely postpone LB137. All those in favor vote aye; all those opposed vote nay. Have all those voted who wish to? Record, Mr. Clerk.

CLERK: 7 ayes, 36 nays, Mr. President, on the motion to indefinitely postpone.

FREDRICKSON: The motion fails. I raise the call. Mr. Clerk.

CLERK: Mr. President, LB137. Introduced by Senator Bosn. It's a bill for an act relating to the Uniform Controlled Substances Act; provides for a penalty enhancement for a controlled substance violation resulting in serious bodily injury or death; harmonizes provisions; repeals the original section. The bill was read for the first time on January 6 of last year, and referred to the Judiciary Committee. That committee placed the bill on General File with committee amendments, Mr. President.

FREDRICKSON: Thank you, Mr. Clerk. Senator Wayne, you are recognized to open on the committee amendments.

WAYNE: Thank you, Mr. President. And this is the kind of the committee that I run, may not even agree with the bill, but I help get it out and introduce the amendment from the committee and still be opposed to it. That's weird. So this is a real simple amendment. It just strikes the IB language and inserts the IC. This is an amendment that Senator Bosn and one of the opponents, I believe it was ACLU, worked out. But that's what this amendment does. It's pretty simple. It's straightforward. Don't take too many hours reading this one line amendment. And that's it.

FREDRICKSON: Mr. Clerk.

CLERK: Mr. President, Senator Wayne would move to amend the committee amendments with AM2643.

FREDRICKSON: Senator Wayne, you are invited open on your amendment.

WAYNE: Thank you. Didn't I just open on my amendment? It's OK. I move to overrule--

FREDRICKSON: That was the committee amendment.

WAYNE: I move to overrule the Chair [LAUGH]. Just kidding. We're good. I already opened on, and now we're going to go to my amendment. I, I'm just giving, giving the Chair a little hard time in this wonderful, gloomy, but great day. So we are on amendment 6-- AM2643? Oh, got it right here. So every time-- so let me tell you how I work, everybody. I work where I try to talk to people, figure out an amendment, and then I don't filibuster just to filibuster. But let me tell you what this amendment does. And I would like to get an interesting vote on this. This amendment, actually, what it does is remove residue. So we're talking about being smart on crime here. Let me tell you what happens. An individual who gets pulled over in their car or stopped on the street can have an empty pipe and have just a little pin drop of some substance in there. We don't know what that substance is because it's actually not usable. Let me repeat that. By the definition of residue, it's not usable. So they can't actually use the item in this pipe or in, in whatever they're-- they have. Despite it not being usable, the possession of a nonusable substance that is in a pipe or a paraphernalia is a felony. This just takes it to a misdemeanor. This simply says that if you can't use it, you shouldn't be charged with a felony. I think it's pretty simple. It's not a crazy idea. Most states have gone away from this. So how does this impact everyday people? Well, let's say you're charged with a felony. You know, in some places in western Nebraska, you might not get your first hearing for 28 days. So you're charged with something you can't use because there's not enough. They charge you with a felony. You sit in jail in many of our counties for over 2 weeks before you get your first hearing. At the 2-week hearing, they say, well, we believe this is residue. We're going to send it off for testing. Sometimes they just offer you a misdemeanor deal. Sometimes they don't. But by definition, we are giving people felonies for something they can't even use. It's called residue. This just removes that and charges them with a misdemeanor. I think if we're going to be smart on crime, then the culpability and, and the punishment should fit that crime. I don't believe somebody who can't use the drug or a drug should be charged with a felony. More importantly, nor should we be holding people and holding them in jail when half of the time they can't even test it because it's a nonusable amount, but they're still charged with a felony. So that's kind of what this bill does. I would entertain any conversation about this. Because if you don't think people go to prison for residue, I will tell you to ask Senator Wishart. She actually was an alternate juror of someone who was sentenced under this law to significant time for a substance that they cannot use. You know, what world does that make sense? In what world giving somebody a felony and sentencing them up

to 2 years for a bottle pen of something they cannot actually use. That makes no sense to me. With that, I'll yield the rest of my time to the Chair.

FREDRICKSON: Thank you, Senator Wayne. Senator Vargas would like to welcome guests. Approximately 100 nurses from the Nebraska Nurses Association in both the north and south balcony. Please rise and be greeted by your Nebraska Legislature. Turning to the queue, Senator McKinney, you're recognized to speak.

McKINNEY: Thank you, Mr. President. I think I probably might support AM2643. I oppose the committee amendment and this bill, and I wasn't being inaccurate. LB50 is not being fully implemented. How is that inaccurate? I don't know, but somebody said I was being inaccurate. I also passed around the report from Nebraska Sentencing Task Force so since we're taking time today, you could look at that as well. We met a couple times so far. We established subcommittees focused on sentencing reform, public safety, resource allocation, and recidivism reduction and data collection to try to figure out how do we address our criminal justice system. So I ask you, if we're going through a task force process to look at sentencing and those type of things, why are we trying to pass LB137? It's a little premature. It doesn't make sense if we're going through a task force process. But if I try to get a bill on the floor to decrease sentencing laws, people would tell me, Terrell, you should wait because you're going to-- through the Sentencing Task Force. We should wait. We shouldn't change anything this year because we're still going through the study process, and I don't even think we should go through it. We got the CJI study. We got all these other studies who this Legislature and this body refuses to fully implement. So no matter the study, no matter the task force, unless this body ever decides to grow a backbone and step up and fully implement the recommendations from all these reports, then we're just going to be back to square one every time. But if we're going through a Sentencing Task Force process, why are we trying to enhance a penalty right now? It doesn't make sense. What if the data shows that these enhanced penalties are the problem, which I wouldn't be surprised? Think about that. I don't care who bill it is. It's not partisan. It's not personal. I disagree with it fundamentally. We should not be increasing penalties. Number one, because it's just the impact of those are disproportionately not the greatest for people that look like me. Two, we have a prison overcrowding crisis. You voted to build a prison, which is going to cost a half a billion dollars, that's going to be overcrowded day one. And you're adding to the problem. And the third, we're going through this sentencing task

force process to look at sentencing, to look at our laws, to look at the data, to see what the trends are, to try to figure out what are the pain points and what are the bottlenecks, and what are the problems in our system? And what laws do we need to look at and change and address? In none of those discussions did any, any time, there was any mention of let's try to enhance a penalty this year, too. It was no, let's not do anything this year, essentially. Go through this process, meet over the interim-- this next interim. Get to about October, November or whatever, and come up with some-- a report or some recommendations to address our criminal justice system.

FREDRICKSON: One minute.

McKINNEY: So if we're wasting all these resources and time to do this, then why are we-- why do we have a task force? I told everybody in the beginning, don't actually be on the task force if we're wasting our time. So if this law passes, I probably just will resign from the Sentencing Task Force, because I think this goes against the, the spirit of it, in trying to figure out what's wrong and how do we effectively address it. So if this passes this year, I'm resigning from the Sentencing Task Force, and I promise you I will. Thank you.

FREDRICKSON: Thank you, Senator McKinney. Senator Bosn, you are recognized to speak.

BOSN: Thank you, Mr. President. I rise in opposition to the floor amendment, FA2643, filed by Senator Wayne. This is a hostile amendment. For anyone who wants to follow the protocol here of how things work, this is a bill that Senator Wayne filed last session, in-- it was referred to the Judiciary Committee and was granted a hearing. It has not been voted out of the Judiciary Committee. This is the bill that reduces possession of a controlled substance to a misdemeanor under some circumstances. That hasn't been voted out of committee because it won't pass out of committee, because there is a group of individuals in there who don't support this bill. So apparently, the solution is to just circumvent that, file floor amendments to other bills, and add them on. So please vote no on that amendment of Senator Wayne's. However, I would also tell you that the-- if any of you found his argument persuasive on this, that this is a nonusable amount and that no one can test to determine that and these individuals are sitting in jail is, again, a distraction, it deflects from reality, and it is not based in reality. One gram-- one half of one gram or less is a usable amount. And I can tell you that there are individuals who are drug dealers who would be happy to have

one half of one gram to get their fix, so to say that that's a nonusable amount is, is not accurate. And I'd encourage you to reach out to law enforcement to verify that if you need it. The other thing that Senator Wayne said was that these baggies-- these empty baggies can't be tested, and I would tell you that that is also false. His own argument was that Senator Wishart was on a judic-- was on a jury, where it was a, a baggie, and I would submit to you that that had to have been subject to testing before they could have even filed that charge. So, you can test baggies for purposes of residue. That isn't changed in this bill. However, to say that the total weight of the substance is one half of one gram or less is a nonusable amount, is not accurate. So, then we go, hoping everyone votes no on AM2643, to the actual amendment that I filed, which was an effort to work together with those who didn't initially like the bill or thought that it was too harsh or too strong. And we changed the penalties. So the penalty under the original bill was a IB felony. And Nebraska does our felonies-- our, our sentencing schemes a little bit differently. Also something we're looking at in LB50's sentencing committee, which I also sit on. IB felony is punishable by 20 to life, so 20 years to life. With good time, it's 10 years, so it's a 10-year to life sentence enhancement under the original bill. And in meeting with the individual who was initially in the only, the only opposition testimony to LB137, which I went back and reviewed, the only opposition person, I met with him and we came to a consensus and said, is that really the best solution for penalties or would I be willing to consider a Class IC, which is a reduction in the penalty. It, it requires a mandatory minimum of 5 and a maximum of 50. Does-- he-- his question to me was does that accomplish your enhancement without being an overkill? I gave it serious consideration. I thought about the concerns--

FREDRICKSON: One minute.

BOSN: Thank you. I thought about the concerns that were raised by others, of we're going to be putting people in prison for life here, which I disagree with, but I heard those concerns. And I came to the agreement that amending this to a IC felony was a move in the right direction that still accomplished the enhancement purpose, but better addressed what had actually transpired. So I agreed to do that. That is AM2154. That was voted out of committee-- it was voted on. So unlike AM2643, it was actually voted on by the Judiciary Committee and had enough votes to get out. I'm asking that we add that on, as part of my commitment to the opposition on this, that I would push for that amendment as a reasonable compromise. So I would ask that we add that

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 22, 2024
Rough Draft

on. Going back to the hostile amendment, we'll-- I, I believe I'm out of time, so I'll get on the mic again and continue.

FREDRICKSON: That's your time. Thank you, Senator Bosn. Senator Fredrickson would like to welcome some guests in the-- under the north balcony, 3 relatives: his father, Allen Fredrickson, his aunt, Judy Brown, and his aunt, Diane Swertzig, from Omaha and Grand Island. Please rise to be welcomed by the Nebraska Legislature. Returning to the queue. Senator Wayne, you are recognized to speak.

WAYNE: Thank you, Mr. President. Well, colleagues, I'll tell you my full intention of what I'm going to do here. I'm going to speak a couple times, have some people talk a couple of times, and I'm going to pull this amendment. Because, really, what I'm doing is I gave another amendment to Senator Bosn, that's under consideration, and I'm waiting for the answer on, on that. So that's kind of where I'm at. I do not think residue should be charged as a felony. If they could-- if you don't like the amount, .1 or .1 gram, we can change the amount. What we were trying to do is figure out what, what the error of the scale is, because if you can't actually, you know, put it on a scale, then it is, it is hard. But what's interesting is they charge people up front and then test. You would think if they had it in possession, they could charge later. Nevertheless, I want to go back to the elements of the crime of LB137. Would Senator Bosn yield to a question or questions?

FREDRICKSON: Senator Bosn, will you yield?

BOSN: Yes.

WAYNE: So we previously established that the first, the underlining [SIC] crime has to be intentionally-- knowingly and intentionally possess. And so now, I want to talk about the second to the enhancement. The second to the enhancement talks about, result in serious bodily injury. What is serious bodily injury?

BOSN: Well, I'm so glad you asked. Serious bodily injury is defined in Nebraska Revised Statutes, Chapter 28, Section 109 (21). Serious bodily injury shall mean bodily injury which involves a substantial risk of death or which involves substantial risk of serious permanent disfigurement or protact-- protracted loss or impairment of the function of any part or organ of the body.

WAYNE: So permanently-- so would you-- do you think the same penalty should be for serious bodily injury or, or death? Do you think it should be the same, or should we separate those out?

BOSN: Do I think that they're the same or they should be separated out? I think for purposes of the enhancement, that's why we have discretion for judges in sentencing, and discretion in charging for prosecutors.

WAYNE: So you trust judges to have discretion in this, in this matter? You trust their-- judges' opinions?

BOSN: Sure.

WAYNE: You trust judges' sentencing?

BOSN: Sure.

WAYNE: Do you oppose getting rid of the mandatory minimum and give judges full discretion?

BOSN: I don't-- I haven't contemplated that enough today to know the answer to that, for this moment in time.

WAYNE: Do you know, do you know in this per-- moment of time-- well, you just said you trust judges. You just don't know how far you trust judges?

BOSN: No. I, I said I trust judges. And right now, the law requires mandatory minimums. And so, judges sentence individuals within this-- the parameters of those mandatory minimums. And I trust them to use those mandatory minimums as they're controlled by.

WAYNE: OK. So then talking about-- so you don't think we need to separate out serious bodily injury. So you think somebody who, let's say they are coughing so bad and have to throw up the pill and break a rib. Is that considered seriously bodily injury?

BOSN: I am not a doctor, so I don't know the answer to that. But I would say that if, quite frankly, if coughing that up-- that pill up saved your life, that's a great thing.

WAYNE: But you were, you were a prosecutor, and you prosecuted crimes underneath serious bodily injury?

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Floor Debate February 22, 2024
Rough Draft

BOSN: Yes, and in every one of those, I relied on medical experts to--

FREDRICKSON: One minute.

BOSN: --to answer the question of whether or not it qualified as serious bodily injury.

WAYNE: So give me 2 examples of, of extremes that you prosecuted where there was a serious bodily injury, like everything from a, a fingernail being torn off to a, a broken-- or somebody had their skull bashed in but survived. Like, give me the, the range of what serious bodily injury that you've seen in your profession.

BOSN: I can't give you the range of what other individuals would do, but, I've-- in cases where an individual is strangled to the point where they have long-term bodily injury as a result of their strangulation, and they can't walk or they're paralyzed on, on certain parts of their body, or when someone is punched so hard in the eye that it breaks their orbital bone, I believe that having a broken eye is different than having a torn fingernail. And I would say that that rises to the level of serious bodily injury.

WAYNE: So--

FREDRICKSON: That's your time.

WAYNE: Thank you, Mr. President.

FREDRICKSON: Thank you, Senator Wayne and Senator Bosn. Returning to the queue. Senator Lowe, you're recognized to speak.

LOWE: Thank you, Mr. President. I rise in opposition of AM24-- or AM2643. The amendment would make possession of a smaller but still deadly amount of controlled substances a misdemeanor. This would undermine our laws that are meant to protect against seriously and deadly consequences of drug possession. Minimizing the penalty for drug possession sends the message that use of controlled substances in small amounts is not seriously dangerous. This is an enabling message that fails people who are experiencing addiction. The residue am-- argument fails to recognize that the residue was once a larger quantity of controlled substance consumed by a person likely experiencing addiction and likely violating other traffic laws while under the influence. This amendment threatens the efficiency of drug courts. The success of our drug courts is guided by punishment that come with failing to get sober. Facing a felony conviction is a scary

wake-up call, but it is an effective one. Lessening the impact of the hammer available may jeopardize a drug court's ability to motivate people. Our drug courts work through a scaling up process. First-time arrests are typically sent to diversion. If they aren't successful there, then they face the possibility of going to drug court, then a misdemeanor after that. It usually takes 4-7 arrests before individuals face a felony. This amendment interrupts that process and reduces the impact that the system has. This amendment fails to account for what is a user amount beyond fentanyl. Senator Wayne's amendment, amendment would exclude fentanyl and the fentanyl derivatives from the lesser penalty, but reduces to a misdemeanor possession of other deadly drugs, including heroin, meth-- methamphetamines, and opioids like OxyContin and hydrocodone. These are all serious, serious drugs and can be lethal, even in the amounts of less than a gram. That was a email that was sent to me by Paul Schaub, Cheyenne County Attorney. And the County Attorneys Association of Nebraska is against this amendment. I also received an email from a sheriff-- excuse me, from a chief deputy, saying that he is now opposed to LB137, if AM2643 gets amended onto it. That's the seriousness of this bill. As I look around to the other states around us that are lessening their controls on drugs and, and seeing the-- that the problems that these states have, and seeing that their tourism dollars are waning because people don't want to go to visit, visit cities like Denver anymore, because of the problems that they see on the streets there.

FREDRICKSON: One minute.

LOWE: Thank you, Mr. President. And thank you.

FREDRICKSON: Thank you, Senator Lowe. Senator Vargas would like to welcome a guest-- a group of guests from Moms Demand Action, Nebraska Chapter, about 30 people in the north balcony. Please rise to be recognized by your Nebraska Legislature. Returning to the queue. Senator Conrad, you're recognized to speak.

CONRAD: Thank you, Mr. President, and good morning again, colleagues. I rise in support of Senator Wayne's amendment, and I'm grateful that he brought it forward. I think it is germane and fitting to have this conversation within the context of LB137, that has been put before us in this regard. The, the broader lens here, the umbrella discussion, is how Nebraska chooses to approach the war on drugs, and whether or not we will have a doubling down of failed policy, or whether or not we will choose a different, more sensible path in regards to our

approach to drug policy. And again, let me be clear. I'm not calling for full legalization. I'm not calling for full decriminalization. But what I am saying is that when you move these issues forward in an attempt to go after kingpins or to go after dealers, that's not always what happens in terms of result in practice, friends. What happens is that these laws ensnare and criminalize and punish users, people who have a drug problem. That's who ends up in our county jails and our state prisons for nonviolent offenses, without access to treatment and services. That's what happens when you keep residue criminal penalties on the books. That's what happens when you enhance criminal penalties related to drug use. And what we should be doing is following the lead of our sister states, either through legislative action or through ballot initiatives that have been put forward by the citizenry of our other states, to take a more sensible approach to our drug policy. And that includes looking at recreational marijuana for the mass incarceration, for the racial justice, and for the revenue components. We know how this is played out in our sister states, but we still cannot get movement on those in Nebraska. Not only can we not get movement on those in Nebraska, we can't even get movement on medical marijuana to help people who are suffering, including veterans with PTSD, including little kids with seizures, including cancer patients. We can't even get forward movement on this issue in Nebraska, through the Legislature or even through effectuating the will of the people. After multiple efforts to put it on the ballot-- which we know will pass. We know what the polling shows. We know that the Nebraska Legislature is out of step when it comes to our approach to medical marijuana. The people are way out in front of us, including most Republicans and conservatives. But instead of learning those lessons from our sister states, we have before us efforts to double down on bad policy, to perpetuate a war on drugs, and to look tough on crime. When enhanced penalties and additional penalties don't get after the root of the problem, they put people with drug problems in jail. And in jail, they have less access to the programs and services they need to change their life, to treat the addiction, and to make sure that when they come out, they have the tools and the ability to not--

FREDRICKSON: One minute.

CONRAD: --reoffend, which hurts our overall shared public safety goals. Thank you, Mr. President. And look no farther than to how we extend this punitive policy to other areas. Voting rights, access to nutrition benefits. Senator Wayne, McKinney, and myself have asked the Pardons Board multiple times, please issue pardons for people who have convictions for simple possession. Nothing. Crickets. Nothing. So if

we're going to be thoughtful about our public policy and our approach to ensuring a sensible approach to our drug policy, we need to have these discussions that are a part of LB137 and AM2643. We have enough time in session to get it right from a variety of different perspectives.

FREDRICKSON: That's your time, Senator.

CONRAD: And I thank Senator Bosn and Senator Wayne for bringing forward the debate. Thank you, Mr. President.

FREDRICKSON: Thank you, Senator Conrad. Senator Slama, you're recognized to speak.

SLAMA: Thank you, Mr. President. And good morning, colleagues. I rise in support of LB137 in support of AM2154 and I'm grateful that compromise was able to be negotiated out, and opposed to AM2643. So I'm going to venture to guess a number of senators on the floor right now or those watching at home have access to streaming services like Hulu. And you might have found that, as you're watching the commercials on Hulu, they're like, weirdly targeted towards you. Now, I've had a lot of those, and I've tried to turn off all the privacy settings on my phone and everything to do with that, but they still figure out a way, that once whatever powers that be realized I'm pregnant, to send diaper ads, baby ads, everything along those lines. So I'm really interested to see when I bring up Hulu tonight after going down this rabbit hole, and I promise I'm getting to a point here, of how many hits you can get from different amounts of street drugs, what those targeted ads are going to look like. I am just genuinely interested to see, like, the rabbit hole I've gone down, of illicit drugs, just what my ads are going to look like. And my husband is probably going to be very concerned. But in any case, my biggest problem with AM2643 is the characterization of half a gram as residue and unusable, because I, I did do some research on this. And obviously, when we're talking about drugs like cocaine and meth and heroin, you have different levels of purity, especially when you're talking about drugs bought off the street. However, whether you're talking about coke, meth or heroin, a half a gram is a lot of drugs, especially depending on your tolerance specifically, to cocaine. So, a line of coke is about 0.1 grams. So half a gram, you get 5 lines of cocaine. For a new user, that's a really big amount of cocaine. When we're talking about meth, 0.1g is one "dosage" of meth, however you're choosing to intake it, so you're getting 5 uses out of that half a gram. And then the biggest, the biggest difference between street

level purity and a, a higher level of purity comes in with heroin. In a single dosage of street level purity heroin, like the average, it's probably cut with something other than heroin itself, about 0.1g will get you the high. But if we're talking about actually pure heroin, which would fall under this as well, half a gram of that is going to kill you. That's the easiest one I can point to, of definitively saying, half a gram of pure heroin will, will kill you. So I hope that we've learned something this morning, about a half a gram. While it may seem small, when it comes to the world of hard drugs, it's really not. And with that, I will yield my time to Senator Wayne.

FREDRICKSON: Thank you, Senator Slama. Senator Wayne, you have 1 minute and 9 seconds.

WAYNE: Thank you. I was going to tell a story, but I don't think I can do it in a minute. So I-- I'm going to go ahead and withdraw AM2643.

FREDRICKSON: So ordered. Mr. Clerk.

CLERK: Mr. President, Senator Wayne would move to amend with FA229.

FREDRICKSON: Senator Wayne, you are recognized to open.

WAYNE: Thank you, Mr. President. Colleagues, this is an amendment that I believe Senator Bosn and I agree on. We'll let her confirm that on, on the mic. But since we brought up some drugs and it's probably not the best appropriate time to tell the story, but I wanted to before some kids got in the balcony. So my first year, March 1, our celebration of Nebraska, we flipped our schedules and had hearings actually, in the morning. And that was the day of my first time I ever introduced or had a hearing on felon voting. And at the end of it, Senator Murante, Chairman of Government at the time, said-- and after I got done closing, said, and we'll Exec on this today after Governor Ricketts' speech, because this is Senator Wayne's priority bill. And he kind of joked, but it was reported and tweeted that, within minutes, that this was my priority bill before it was my priority bill. And I remember calling a dear friend of mine, Scott Lautenbaugh, and I was so pissed is the only word I could pick, because I didn't know the pathway forward on this felon voting issue. And so, he had already talked to Senator Murante ahead of time and kind of knew what was going on, but they were actually lining up votes and working the committee and making sure that we can get it done. But the reason why I say about the drugs and why I'm bringing it up is I never heard this word used or this phrase used until that day. And former Senator

Lautenbaugh said, "keep your powder dry." And I just remember not understanding what that was. And I, and I finally asked him. And I was like, man, I don't understand what you're saying. I've never, I've never done cocaine or powdered drugs. Are, are you talking about crying in the coke? I'm confused. I'm so confused. And he laughed for like a half hour, because that wasn't even close to the intent of "keep your powder dry." I just didn't understand what he was talking about. And it just made me think of that when she was talking about lines, was-- "keep your powder dry," has nothing to do with drugs. And it doesn't mean that you're crying into drugs. I, I learned that in my first year. It means don't fire your gun, thinking of muskets back when you were powder-- and like-- and make sure you protect it from rain. But don't fire off too quick. Just wait and see how things play out. But that random story was just a little bit more for me to kill time. But I thought it was important to tell that story, because when she said lines of cocaine, it just reminded me-- yelling at Scott Lautenbaugh, saying, I don't understand what you mean by that. Murante just picked my priority bill without talking to me, and it's on the front page the next day, and I, I really don't understand. But, it was just a good story, because you never know what you learn down here and what "keep your powder dry" means. So with that, I believe we have an agreement. I'm still opposed to the bill. I think it's bad policy. But I do think part of our job is to make bills as best as we can, to make sure we avoid as many unintended consequences as we can. And that's what FA229 is trying to accomplish. And with that, I'll yield my-- the remainder of my time to Senator Bosn.

FREDRICKSON: Thank you, Senator Wayne. Senator Bosn, that's 6 minutes and 31 seconds.

BOSN: Six minutes? I may yield it back. OK. So the floor amendment is-- that's proposed on there, for those of you who haven't seen it online-- I hate to go back to connected, but the concern that Senator Wayne raised, of person A deals to person B, person B cuts it with fentanyl and sells it to person C, and person C dies. And his concern of person A being charged for the death of person C, even though individual B is who added the deadly component to the drug. So he proposed a solution that would add the proximate cause, so there's a connection between the added substance and the loss of the individual. And I read the, the amendment that he's got. I, I think this is-- addresses his concern. I think it still keeps the intent of my bill, which is that those who are dealing drugs and killing our youth need to be held responsible to a heightened penalty. So FA229 is a friendly, consensus amendment, in an effort to resolve the concerns

with the word, connected. I, I would encourage everyone to sit back, consider their position on this bill, and consider the efforts to hit head on, the issue here, which is we need to have a solution to a problem. That is what our job is as, as senators. And Senator Conrad-- or Cavanaugh has encouraged me to use the word flummoxed. And I am flummoxed that someone could be on the fence about addressing this problem from every single angle that we can do as legislators. I can't go out and be the therapist that works with the addict and convince them. I can't wear that hat. I can't do a lot of things. But what I can do, as a senator, is come in and propose as many reasonable solutions to the problem. And one of those tools in a lot of other sister states and other states around us, red, blue or purple, has been to enhance the penalty when that dealing of fentanyl results in the death of someone else. And this is one of those tools that we do not have in Nebraska. And this bill has now been worked on with 2 opponents to come to a consensus. This is a solution to a very real problem. And if we don't address it, everyone in this body is only going to become more aware of it. We're going to lose more individuals to this. There will be more accidental deaths. And people will say, yeah but, what about, we can what about, we can talk about how those individuals, we couldn't have foreseen those circumstances. We were worried about bad actors. We can needle to death the solution that is being proposed, or we can say this is a good solution. Other states are using it. We've also added other good solutions. Let's send a message, as a legislative body, from every single angle that we can, that we are not messing around, we do not put up with individuals dealing fentanyl, dealing laced drugs, and killing our youth. And let me tell you, these are not detectable amounts. You are talking 2 grains of salt is enough to kill an individual, with fentanyl. Two grains of salt. You ever oversalted your food and thought, oh, I oversalted it? Think about how many grains that is. This is such a small amount, that can have long-lasting impacts. Parents who are saying, I didn't even know. I had no idea. And we have the opportunity today, to say we're-- not, not in our state. We're not doing that here anymore. I'm asking you to be a part of the solution. I'm asking you to take the position that this is one of the tools in our toolbox, and that we should fight this crisis together. I will give the rest of my time back to Senator Wayne.

FREDRICKSON: Thank you, Senator Bosn. Senator Wayne, that's 1 minute and 28 seconds.

WAYNE: Thank you. Colleagues, I know some people are in the queue. You don't hear me say this a lot, a lot, but I think if we still want to

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate February 22, 2024

Rough Draft

take time after this amendment, on the AM2154, that's fine. I would ask that you pull out the queue and at least get a vote on FA229 while we have agreement. I'm just saying, you know, tonight in Judiciary, Senator Bosn and I might start arguing about some other bill and then it--

FREDRICKSON: One minute.

WAYNE: --carries over the next day. So let's, you know, let's get this done today, as far as this amendment that we both agree on. And if we want to pick back up talking, we can do that on AM2154. Thank you, Mr. President.

FREDRICKSON: Thank you, Senator Wayne. Senator Erdman would like to welcome nine members of the Nebraska Petroleum Producers Association in the south balcony. Please rise and be recognized by your Nebraska Legislature. Returning to the queue. Senator Dorn, you're recognized to speak.

DORN: Here. Sorry about that. Thank you. Thank you very much, Mr. President. Would Senator-- well, first off, I'm in, in support of LB137, LB137, listening to the floor amendment with Senator Wayne here, and the, the conversation. But would Senator Bosn yield to a question?

FREDRICKSON: Senator Bosn, will you yield?

BOSN: Yes.

DORN: Yes. Thank you. Listening to the discussion, yesterday, today, off and on, Senator, you and some of the discussion, Senator McKinney, Senator Wayne-- I come over and talked to you a little bit ago. And this, this intrigued me, as we've had the conversation. Senator McKinney is, is-- rightfully so, said that we're going to have more inmates in our criminals-- or in our penit-- penitentiaries or whatever. Came over and talked to you and had you explain it to me a little bit. Can you comment on that? How many, maybe a, a, a thought process of how many we're looking at. Are we looking at 10 more people in a year or 100? And that's the question I asked you, and I appreciated your answer.

BOSN: Sure. So the potential is always there that more individuals would be convicted of a crime that's on the books. My hope is that this bill sends the message that that behavior has to stop, and we actually see less people in prison. There's nothing in this bill that

requires law enforcement to prosecute a set number of individuals or to convict a certain number of individuals. This gives us a tool to say, I'm not going to deal these drugs here because they have an enhanced penalty, and I could be held accountable to a higher standard for dealing that drug on this side of the state line than maybe somewhere else. And good riddance. I hope they never come back.

DORN: No.

BOSN: The reality is, if we have 100 deaths a year, for example, from fentanyl overdoses, there's the potential that we could have 100 additional crimes where there's a connection between a drug dealer being the one who cut that versus the user themselves doing that. So, broad picture. Can it happen? Yeah. I don't want to sit here and mislead anyone. But the reality is the hope with the bill and the angle that I'm hoping to persuade everyone is this is a deterrent, and let's use it as a deterrent so that we don't have more people in prisons, but we also don't have more people in our cemeteries.

DORN: Thank, thank you very much for that explanation. I think you made a couple points that really struck with me. Sometimes, we do forget that the probability of somebody being I call it prosecuted under this, generally speaking, not always. And I know you talked about what, what kind of level of hurt they would have to have or that. But there are deaths out there that now do not have the same, I call it, end result as some other types of things where we do with somebody taking gun and murdering somebody. And I think Senator Bosn, the conversation here is also, we hope we never have to use this. The reality is, as Senator McKinney talks about, is though, it most likely will be used. We will have additional prisoners in our system. But we have to remember, also, the effect on the families, the effect on the loss of life, and how do we, as a body, come forward with a bill like this? And I, I do, like, very much, most of this-- all of this bill, that we are doing things as a state that we need to do, so that we help that be a deterrent that they won't do that. So, yield the rest of my time. Thank you.

FREDRICKSON: Thank you, Senator Dorn. Senator Bostelman, you're recognized to speak.

BOSTELMAN: Thank you, Mr. President. I appreciate that. I'm going to just take a couple minutes. A lot of discussion on the floor this morning seems to be about we just lock up people and we throw them away, and we put them in--into the prison and we forget about them.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 22, 2024
Rough Draft

And that's not always true. And drug court, problem-solving court is a huge part of helping individuals to get over their addiction, keeping them out of our jails, and making them productive individuals in our, in our society. I've been to a number of drug courts with the individuals who graduate from them. There is an extremely large amount of time, commitment, dedication, by our probation officers, by our judges, working with, helping them overcome their addiction, helping them overcome the drug-related instance that put them in the position they are right now. And the reason why they can do that, is we have laws in place that provides that opportunity. And when I see those individuals lives change, and the things that those individuals go through to make that change, to make that decision, and then those individuals who come back that have graduated years before, they're mentors now, to those that are in the program and show what a change in their life that that has been, there is a lot that we're doing-- our courts are doing for those drug offenders. They don't land in prison on the very first time, if it's a minor offense, is my understanding. There's diversion programs. There's drug courts, problem-solving courts. They do a lot of work. They do great things for those individuals. You know, one of the individual-- I'll never forget it. And I always-- I talk to the drug courts when they, when they have graduations, I'll go to it and I'll speak with the graduates. And the one thing that, that really sticks with me one time-- because it takes 2 years, multiple times, sometimes, for this person to get through and graduate. And one time, one of the graduates said this-- I'll never forget it. Just talking to the probation officer who was standing right there, who was in charge of their case and, and helping them through this process. He says, you know what? The one time I-- because they, they do a test every morning, bright and early every morning. Pop positive on a test, guess what? Talking to the probation officer, guess what? You put me in jail. I went right straight to jail from that because I popped positive. I hated you for that. I despise you and I hated you for that. But today, I love you for that. Because that's the thing that changed my life. You cared about me. You cared about what was going on. And when you did that, that was-- changed my life. And now, that person was standing there as a graduate of that drug court. So there are great things that are happening to those who have addictions, to those who are-- who have a conviction that enters a drug court, problem-solving courts, to make a difference in their lives, to see their families, to see their friends. And I think this needs to be said, too. I think people need to understand that, here and across the state. Our judges are committed to it. It takes a enormous amount of time-- of their time.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 22, 2024
Rough Draft

Our probation officers are committed to it and do a wonderful job. So with that, I'll support the floor amendment and the--AM2154 and LB137. Thank you, Mr. President.

FREDRICKSON: Thank you, Senator Bostelman. Seeing no one else in the queue, Senator Wayne, you are welcome to close on FA229. And he waives. The question before the body is the adoption of FA229. All those in favor vote aye; all those opposed vote nay. There's been a request to place the house under recall. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

CLERK: 20 ayes, 3 nays to place the house under call, Mr. President.

FREDRICKSON: The House is under call. Senators, please record your presence. Those unexcused senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel, please leave the floor. The house is under call. Speaker Arch and Senator Conrad, please approach. Senator Wayne, for what purpose do you rise?

WAYNE: Accept call-ins.

FREDRICKSON: Thank you, Senator Wayne. All members are present. Senator Wayne has authorized call-in votes. Mr. Clerk.

CLERK: Senator Day voting yes. Senator Arch voting yes. Senator Wishart voting yes. Senator Armendariz voting yes. Senator Hughes voting yes. Senator McDonnell voting yes. Senator Ballard voting yes. Senator Bostar voting yes. Senator Lippincott voting yes. Senator Meyer voting yes. Senator Dover voting yes. Senator Halloran voting yes. Senator Clements voting yes. Senator Hansen voting yes. Senator Dorn voting yes. Senator DeKay voting yes. Senator Linehan voting yes. Senator Conrad voting--

FREDRICKSON: Record, Mr. Clerk.

CLERK: --yes. 40 ayes, 0 nays, Mr. President, on adoption of the floor amendment.

FREDRICKSON: The amendment is adopted. I raise the call. Returning now to debate on the committee amendments, Senator Wayne-- Senator McKinney, you're recognized to speak.

McKINNEY: Thank you, Mr. President. I rise opposed to the committee amendment and the bill. I heard a lot of conversation since I was off the mic about hope. We hope that we don't have to use this. We hope. Honestly, don't hope. It's going to happen. It's going to be used. You don't have to hope. Prosecutors will use this. Don't hope. Because if it was just based in hope, then why are you voting for the bill? Why, if it's just based in hope? Because what enhanced law has prevented somebody from committing that offense? What? Which one? So this hope, that you're hoping it doesn't have to be used, you don't have to. Prosecutors will definitely use this. And then the conversation about people going to prison. Yes. There, there will be more people going to prison because of, because of the result of this. It's already overcrowded. So I hope the members of the Appropriations Committee, as you take these votes, you're prepared-- well, I hope you're not prepared to vote for another prison, and I hope you're not prepared to give them more money for not doing any good. We talk about parole is doing a great job. Problem-solving courts are doing a great job. All these agencies and departments doing a great job, but we have one of the worst criminal justice systems in the country, if not the world. But they're doing a great job. If that is a great job, we need to reevaluate how we measure greatness and inadequateness. Honestly, it's, it's failing. We have a horrible criminal justice system. Our "Department of Punitive Services" is ran horribly. Parole is bad. I don't get where the greatness comes from. Even when you talk about problem-solving courts, if these people have felonies for drug court, they're not getting in. So talking about drug courts are amazing. It's, it's going to be great. A lot of these people are not going to be allowed in drug court. So I mean, your hope? You don't have to hope. Prosecutors will definitely utilize this enhancement that you're voting for, which is going to fill the prisons even more. And then you're going to be asked to vote to give more dollars to a department that is ran horribly, has been ran horribly. But you're OK with that, because there's questions about money on everything in this body but if it's going to the "Department of Punitive Services," nobody asks questions. We just give them a blank check to not do right, to not do anything. Last year, I had to force a amendment to get them to do-- finish the programming studies, the classification studies, those type of things before you even consider a prison. So don't hope. Hope was lost a long time ago, because this philosophy of being tough on crime, you don't need to-- you don't need to have hope. If it's such an epidemic and all these people are dying and all these bad things are happening in society, why are you hoping this deters people, when you know the county attorneys are going to use this to prosecute people

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 22, 2024
Rough Draft

and overincarcerate them? And our jails are going to continue to fill up, and fill up more, and fill up more. And you're going to be asked to give more taxpayer--

FREDRICKSON: One minute.

McKINNEY: --dollars into a failing system. That is exactly what's going to happen when you vote for this bill. But I know you all are not listening to me. I know you all don't care about my opinion on this. I know you all probably think I'm crazy. It is what it is. I just fundamentally think we should not be enhancing penalties. We're going through a whole sentencing task force, but this is jumping the gun. But you all don't care because you got the votes and you can do what you want, which, you know, all right. I know what the game is, but don't ever count on me to support any construction of prisons, giving more money to the "Department of Punitive Services" when it's boosting prison population a lot more. Thank you.

FREDRICKSON: Thank you, Senator McKinney. Seeing no one else in the queue, Senator Wayne, you're welcome to close on the amendment. On the committee amendment. Senator Wayne waives close. The question before the body is the adoption of AM2154. All those in favor vote aye; all those opposed vote nay. All those voted who wish to? Record, Mr. Clerk.

CLERK: 34 ayes, 1 nay, Mr. President, on adoption of the committee amendment.

FREDRICKSON: The amendment is adopted. Mr. Clerk.

CLERK: Mr. President, concerning LB137, Senator Bosn, I have FA219 with a note you wish to withdraw. Additionally, Senator Machaela Cavanaugh, MO1193 and MO1194, both with notes she wishes to withdraw.

FREDRICKSON: No objection. So ordered.

CLERK: I have nothing further on the bill, Mr. President.

FREDRICKSON: Thank you, Mr. Clerk. Senator Bosn, you are recognized to close on your bill.

BOSN: Thank you. I appreciate the conversations that we've had today. I appreciate the support that I've received via email, for the efforts that we've done here. I, I think this is part of the responsibilities of our State Legislature, as I've said several times, to come in, to

see the problem for what it is, and to say, how can we fix it and how can we fix it so fast and so hard that we never see this problem ever again? And I, I think this is part of the obligation that we have to address this issue. The families that have lost young people or quite frankly, people my own age, as this is the age group that's dying the most from this now, from fentanyl now, from this crisis. We are doing everything we can from different angles: public health, public safety, education, treatment, all the things. And we've got to send the message that this isn't acceptable. We have a response and we take this seriously. I would hope that everyone supports LB137, and ask for your green vote on LB137.

FREDRICKSON: Thank you, Senator Bosn. The question before the body is the advancement of LB137. All those in favor vote aye-- oh. I'm sorry. Senator McKinney has requested a roll call vote. Mr. Clerk.

CLERK: Senator Aguilar voting yes. Senator Albrecht voting yes. Senator Arch voting yes. Senator Armendariz voting yes. Senator Ballard voting yes. Senator Blood. Senator Bosn voting yes. Senator Bostar voting yes. Senator Bostelman voting yes. Senator Brandt voting yes. Senator Brewer voting yes. Senator John Cavanaugh not voting. Senator Machaela Cavanaugh voting no. Senator Clements voting yes. Senator Conrad not voting. Senator Day voting yes. Senator DeBoer voting yes. Senator DeKay voting yes. Senator Dorn. Senator Dover. Senator Dungan not voting. Senator Erdman voting yes. Senator Fredrickson not voting. Senator Halloran voting yes. Senator Hansen voting yes. Senator Hardin voting yes. Senator Holdcroft voting yes. Senator Hughes voting yes. Senator Hunt not voting. Senator Ibach voting yes. Senator Jacobson voting yes. Senator Kauth voting yes. Senator Linehan voting yes. Senator Lippincott voting yes. Senator Lowe voting yes. Senator McDonnell voting yes. Senator McKinney voting no. Senator Meyer voting yes. Senator Moser voting yes. Senator Murman voting yes. Senator Raybould. Senator Riepe. Senator Sanders voting yes. Senator Slama voting yes. Senator Vargas voting yes. Senator von Gillern voting yes. Senator Walz. Senator Wayne not voting. Senator Wishart voting yes. Vote is 35 ayes, 2 nays, Mr. President, on advancement of the bill.

FREDRICKSON: LB137 advances. Senator John Cavanaugh has guests he'd like to welcome to the Chamber, members of Autism Action Partnership from Omaha, Nebraska, in the north balcony. Please rise to be recognized by your Nebraska Legislature. Mr. Clerk.

CLERK: Mr. President, some items. Your Committee on Health and Human Services, chaired by Senator Hansen, reports LB1215 to General File with committee amendments. Additionally, your Committee on Education, chaired by Senator Murman, reports LB635 to General File. And your Committee on Government, Military, and Veterans Affairs, chaired by Senator Brewer reports LB861 to General File with committee amendments. Additionally, your Committee on Enrollment and Review reports LB83, LB102, LB102A, LB147, LB152, LB190, LB218, LB218A, LB303, LB317, LB731, LB771 as correctly engrossed and placed on Final Reading. The General Affairs has a committee report concerning gubernatorial appointments to the Nebraska Liquor Control Commission, as well as the State Racing and Gaming Commission, the Nebraska Commission on Problem Gambling, the Nebraska Arts Council. Additionally, your Committee on Enrollment and Review reports LB16A as correctly engrossed and placed on Final Reading. Notice of committee hearing from the Revenue Committee and the Judiciary Committee. Amendments to be printed: Senator Linehan to LB1317, Senator Wayne to LB137. Motion from Senator McKinney to withdraw LB1137. New LR, LR304 from Senator Arch, as well as LR305 and LR306, all of which will be laid over. Communication from the Health and Human Services Committee, requesting a briefing with Dr. Timothy Tesmer, Chief Medical Officer of the Department of Health and Human Services, dated for Thursday, February 29, 2024 at 1:00 p.m. The purpose of the hearing will be to review rules, rules and regulations pertaining to LB574. In conjunction with that, Senator Machaela Cavanaugh would withdraw LB879.

FREDRICKSON: Thank you, Mr. Clerk. Speaker Arch, for an announcement.

ARCH: Mr. Clerk, I would ask that we take up that last motion at this time.

FREDRICKSON: Mr. Clerk.

CLERK: Mr. President, Senator Machaela Cavanaugh would move, would move to withdraw LB879.

FREDRICKSON: Senator Machaela Cavanaugh, you're welcome to open on your motion.

M. CAVANAUGH: Thank you, Mr. President. Colleagues, LB879 is a bill to repeal LB574 passed last year. I am going to withdraw this and look forward to having a briefing from Dr. Tesmer on how LB574 is progressing. I would encourage you all-- this is a time you all can

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Floor Debate February 22, 2024
Rough Draft

vote green for Machaela. Please vote green to withdraw LB879. Thank you.

FREDRICKSON: This is a debatable motion. Senator Wayne, you're recognized to speak.

WAYNE: Out of principle, for all those who have never voted for Machaela, don't do it now. Don't do it now. Thank you, Mr. President.

FREDRICKSON: Thank you, Senator Wayne. The question for the body is the adoption of the motion 1203 from Senator Machaela Cavanaugh. All those in favor vote aye; all those opposed vote nay. Have all those voted who wish to? Record, Mr. Clerk.

CLERK: 30 ayes, 2 nays on the motion to withdraw the bill, Mr. President.

FREDRICKSON: The bill is withdrawn. Mr. Clerk.

CLERK: Mr. President, some additional items. Notice that the Appropriations Committee will be holding an Executive Session in room 1003 today, at 1:30, Appropriations, Exec Session, 1003 today, at 1:30. The Government, Military and Veterans Affairs Committee will be having an Executive Session immediately following their hearing today, in room 1507, Government Committee, following the hearing, in 1507. Finally, Mr. President, a priority motion. Senator Hunt would move to adjourn the body until Friday, February 23, 2024 at 9:00 a.m.

FREDRICKSON: The question before the body is shall the Legislature adjourn until Friday, February 22 [SIC]? All those in favor say aye. All those opposed say nay. The Legislature is adjourned.