

April 11, 1979

LB 378

SPEAKER MARVEL: Motion is the adoption of the committee amendments. All those in favor vote aye, those opposed vote no. Record.

CLERK: 27 ayes, 2 nays, Mr. President.

SPEAKER MARVEL: The motion carries, the amendment is adopted. Now do you wish to advance the bill? Ready to move the bill?

SENATOR NICHOL: Yes, Mr. President. I had some material to give but we pretty well covered it in the amendments and the amendments to the amendments so I move for the advancement of the bill to E & R Initial.

SPEAKER MARVEL: Senator Chambers, do you wish to be recognized?

SENATOR CHAMBERS: Mr. Chairman, I would like to ask Senator Johnson a question since he voted on the bill and maybe he can instruct me in this area. Senator Johnson, do you know what the McNaughton rule is relative to...okay, does that rule obtain in Nebraska?

SENATOR JOHNSON: Yes.

SENATOR CHAMBERS: Now do you feel that the term mental disorder is sufficiently precise for a criminal statute?

SENATOR JOHNSON: The a....

SENATOR CHAMBERS: I'm not going to argue with you on it. I just want your opinion.

SENATOR JOHNSON: No....I'm...when I read the bill myself and the committee amendments I had some pause over the use of the word mental disorder. But, I saw the term mental disorder, Senator Chambers, used in the context of a civil overlay to a criminal statute. I felt that the McNaughton rule would obtain with respect to the underlying sex offense. That is if the criminal defendant had committed a rape, but did not know that his act was wrong, or did not know the nature and quality of his act, then he would not be guilty of that criminal offense simply because we would judge him to be insane. So the McNaughton rule would obtain there, but under the statute as it is written, if he is guilty of the sexual offense, that is the underlying offense, we then take a look to determine whether or not he is suffering from an undefined mental disorder. Why? Because that deals with the treatment aspect, or the sentencing aspect of the underlying crime. I look upon that as basically as a civil